Ordinance NS-2036

AN ORDINANCE OF THE CITY OF BEND AMENDING THE Bend City Code Sections 7.260 to 7.279 which MITIGATE THE PUBLIC HEALTH AND WELFARE IMPACTS OF FORCED EVICTIONS ASSOCIATED WITH CLOSURE OF MANUFACTURED HOME PARKS

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1 The following provisions of Title 7 of the Bend City Code are amended as follows:

A. Section 7.262. Definitions.

(a) The following words, terms and phrases have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

"Appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

"Closure of a manufactured home park" means to stop or cease leasing spaces in a manufactured home park, to terminate manufactured home space rental agreements for all or a portion of the park spaces for the purpose of ceasing; to use all or a portion of the park as a manufactured home park. Termination of tenancy for violation of rental agreements or park rules, actions required by the exercise of eminent domain or by order of State or local agencies shall not constitute closure of a manufactured home park.

"Comparable manufactured home park space" means any space, lot, or parcel of land within Deschutes County that is (1) decent, safe, and sanitary; (2) adequate in size to accommodate the manufactured dwelling; (3) within the financial means of the displaced tenant (the higher of rent not greater than current rent of tenant or a rent, with mortgage on home if applicable, that is not greater than 30% of tenants income) ;

"Manufactured home" means a manufactured home, mobile home or residential trailer as these terms are defined in ORS 446.003(26).

"Manufactured home park" means place where four or more manufactured homes are located in a residential zone, the primary purpose of which is to rent space or keep space for rent to any person for a fee as defined in ORS 449.003(27). Manufactured Home Parks not defined under this section must still complete the closure impact report under Section 4 of this ordinance prior to closing.

"Owner" means a mortgagee in possession and means one or more persons, jointly or severally, in whom is vested all or part of the legal title to a manufactured home park; or all or part of the beneficial ownership and a right to present use and enjoyment of the manufactured home park. Owner includes an authorized representative of the Owner.

"Relocation costs" means and includes actual reasonable expenses in moving the tenant's manufactured dwelling and possessions to a comparable replacement space. Such expenses include:

1. Removal and reinstallation of skirting;
2. Disconnecting utilities;
3. Disconnecting and removing awning(s) and deck(s) from the manufactured dwelling;
4. Trip permit and public inspection fees;

5. Transportation costs;
6. Set up charges;
7. Utility connection expenses and fees;
8. Unit improvements to meet destination facility space standards;
9. Costs for packing and unpacking manufactured dwelling or residential vehicle contents as necessary for unit relocation for elderly and disabled persons, as defined in OAR 813-005-0005 and 813-060-00 10, respectively;
10. Temporary housing, relocation consultant costs and meals (not to exceed City of Bend Meal Reimbursement Rate) for the tenant and permanent occupants during unit relocation and set up (Meal Reimbursement does not apply if temporary housing has kitchen facilities); and
11. Landlord expenses to secure the relocation space acceptable to the tenant from the time of tenant acceptance until the date the relocated manufactured dwelling or residential vehicle is approved for occupancy.
12. Disassembly and sealing of multi-unit manufactured homes.

Notwithstanding the above, relocation costs shall not include, and shall be offset by, relocation assistance received, including, but not limited to financial incentives to move into a new park, from a person or entity other than the owner. Any assistance paid for by Park Owner shall be reimbursed up to the amount of the State of Oregon Mobile Home Tax Credit received by the tenant.

"Tenant" means a person who owns and occupies a manufactured dwelling in a manufactured home park. For the purpose of this chapter, a tenant does not include a tenant who has accepted an earlier termination date or contracted with the landlord as provided in ORS 90.630(6)(a) or (b).

B. Section 7.264 Manufactured Home Park Closure Permit

1. Permit Required. No person may close a manufactured home park unless a manufactured home park closure permit has been obtained. Provided, however, that nothing in this section is intended to limit or regulate in any manner a person's ability a) to apply for and obtain a plan amendment, zone change, or other land use decision pursuant to the City's Comprehensive Plan or Zoning Ordinance; b) sell, convey or transfer a manufactured home park; or c) provide notification pursuant to Oregon State Law.

2. Scope of Permit Requirement, Construction. These provisions shall apply to all closures commenced after March 7, 2006 by the notice provided for in Oregon State Law. These provisions shall be construed as not to conflict with state law, and shall be applied in a manner such that the provisions and state law operate concurrently.

3. Application Filing. Applications for closure permits shall include the following but not limited to additional relevant information as may be required by this chapter and the City Manager or City Manager's designee:

(a) A detailed narrative description of and timetable for the proposed closure.

(b) A report on the impact of the closure of the manufactured home park on its residents pursuant to Section 4.

(c) The Relocation Plan pursuant to Section 5.

(d) Notice pursuant to Section 6.

(e) The application filing fee in an amount established by the City Council.

4. Application Processing: Upon receipt of a complete application the City Manager or designee shall review the application and within 45 days of the receipt of the complete application, issue a decision either denying the application, approving the application, or approving the application with conditions. A decision of the City Manager or designee may be appealed to the Council by the owner of the park.

C. Section 7.266 -- Closure Impact Report

1. Any person filing an application for a Closure Permit shall file a Closure Impact Report on the impact of the closure, change of use, or cessation of use upon the residents of the manufactured home park. At a minimum, the Closure Impact Report shall include the following, as well as any other information deemed necessary and appropriate by the City Manager or Designee.

(a) A detailed description of the manufactured home spaces within the manufactured home park, including but not limited to
i) The total number of manufactured home spaces in the park and the number of spaces occupied,
ii) The length of time each space has been occupied by the present resident(s) thereof,
iii) The age, size, and type of manufactured home occupying each space,
iv) The monthly rent currently charged for each space, including any utilities or other costs paid by the present resident(s) thereof,
v) Name and mailing address of the primary resident(s) and owner if different than occupant of each manufactured home within the manufactured home park. Tenant shall provide this information at request of park owner. Any refusal of cooperation by tenant for this information will negate any benefits for tenant.

(b) The City of Bend will assist the Park Owner by providing a list of all comparable manufactured home parks spaces within the City of Bend and in Deschutes County. This list shall include the age of the manufactured home park and the manufactured homes therein, a schedule of rents for each park listed, a listing of the vacancies in the parks and the criteria of the management of each park for acceptance of new tenants and used manufactured homes.

(c) A detailed analysis of the economic impact of the relocation on the tenants including comparisons of current rents paid and rents to be paid at comparable manufactured home parks in Deschutes County the estimated costs of moving a manufactured home and personal property and any direct or indirect costs associated with relocation to another manufactured home park.

(d) A list of the names, addresses and telephone numbers of one or more housing specialists, with an explanation of the services the specialists will perform. These services shall include but not be limited to assistance in locating a suitable replacement manufactured home park, coordination of moving the manufactured home and personal property, and any other tasks necessary to facilitate the relocation to another comparable manufactured home park.

D. Section 7.268 -- Relocation Plan

1. A Relocation Plan for tenants of the manufactured home park shall be submitted for review and approval as part of the application for a

Closure Permit. The Relocation Plan shall provide, at a minimum, for the following:

(a) Units to be Relocated -- The Relocation Plan for units that can be relocated shall provide for the owner to pay all reasonable relocation costs to relocate tenant to a comparable manufactured home park space within Bend or within Deschutes County for tenants who relocates from the park after City approval of the closure Permit. Tenants shall be required to solicit a minimum of two bids from a licensed, bonded manufactured home moving company for moving of their unit and shall be required to take the lower of: two bids received by tenant or bid received from the Park Owner for moving of unit. However, tenants being moved must apply for the State of Oregon Mobile Home Tax Credit and shall enter into an agreement with the owner to reimburse owner for full amount of moving costs up to the $10,000 amount of State of Oregon Mobile Home Tax Credit. When any tenant has given notice of their intent to move prior to City approval of the Use Permit, eligibility to receive moving expenses shall be forfeited.

(b) Units that cannot be relocated -- The relocation plan shall identify those manufactured homes that cannot be relocated to a comparable manufactured home park space in Deschutes County. The owner shall be required to offer to purchase any manufactured home that cannot be relocated in conformance with this chapter. The offer to purchase the manufactured home will be made at the real market value, per Deschutes County Property Records, of the home as reported on the most recent property tax assessment roll. Either the owner of the manufactured home park or tenant owner of a manufactured home in the park may challenge the Deschutes County Property Records Real Market Value and, at the challenging party's expense, have an independent appraisal of the home to determine value. The opposing party or their designated representative shall be given an opportunity to accompany the appraiser during the inspection of the property. If the opposing party desires they may, at their expense, have a second independent appraisal of the home to determine value. If both parties then cannot agree on a value a review appraiser shall evaluate the appraisals and the Deschutes County Property Records Real Market Value and determine a value. The cost for the review appraisal shall be divided between the two parties.

(c) Individual Negotiated Agreements -- In order to facilitate a proposed closure, the tenants and owners may agree to mutually satisfactory conditions. To be valid, however, such an agreement shall be in writing, shall include a provision stating that the tenant is aware of the provisions of this ordinance, shall include a copy of this ordinance as an attachment, shall include a provision in at least twelve-point type which clearly informs the tenants that they have the right to seek the advice of an attorney of their choice prior to signing the agreement with regard to their rights under such agreement and shall be drafted in the form and content otherwise required by applicable state law.

E Section 7.270 -- Required Notifications

1. Any written notice by the landlord of termination of a rental agreement because of facility closure and the land or leasehold being converted to a different use shall conform with the requirements of ORS 90.630 and provide at least the following information:

(a) The landlord's or representative agent's address for contact and communications;

(b) The firm date set for the closure of the facility or of the relevant portion of the facility;

(c) The actions and activities the landlord plans to take in the facility closure that may affect the facility tenants;

(d) The landlord's obligations under ORS 90.630(5), (6), (7) and (8);

(e) The tenant's rights under ORS 90.630(4) for a 365-day closure notice or 180-day closure notice, as applicable, including the right, if any, for payment of moving expenses under OAR 813-008-0030 and the eligible moving expenses defined under OAR 813-008-0025;

(f) The voluntary benefits, if any, to be provided to the tenant by the landlord or contracted between the parties, together with any shortened period between notice and termination of the rental agreement arising therefrom;

(g) A copy of the statute ORS 90.630 and of OAR Chapter 813, Division 008;

(h) Any definitions referenced within these rules applicable to the tenant's rights under these rules; and

(i) A description of any city or county regulations, laws, or ordinances that apply to tenant interests in facility closures.

2. Notices required by ORS 90.630 or by these rules shall be delivered personally or by first class mail to each affected tenant or tenant organization. If served by mail, the minimum period before facility closure shall be extended by three days, and the notice shall recite the fact and extent of the extension. The notice shall be delivered to the tenant at the address specified in the lease or rental agreement between the tenant and the landlord. In any sublet unit, the notice shall be delivered to the tenant at his or her current address and to the subtenant in possession. If the tenant's address is unknown and not reasonably discoverable, his or her copy shall be delivered to the subtenant with written instructions to forward it to the tenant. Failure of the subtenant to deliver such copy to the tenant shall not limit the landlord's right to terminate the rental agreement because of facility closure.

3. For 365-day closure notices as provided in ORS 90.630(5)(a), the provisions of OAR 813-008-0020 through 813-008-0030 do not apply.

4. For 180-day closure notices as provided in ORS 90.630(5)(b), the landlord shall comply with the provisions of OAR 813-008-0020 through 813-008-0030.

F. Section 7.272 -- Required Findings

1. In approving a Permit for a manufactured home park closure, the City Manager or Designee shall find that the proposed closure meets the following requirements in addition to the other requirements of this Chapter.

(a) That the tenants or tenant's association of the manufactured home park have been adequately notified of the proposed closure, including information pertaining to the anticipated timing of the proposed closure.

(b) That the age, type size, and style of manufactured homes to be displaced as a result of the closure will be able to be relocated into other comparable manufactured home parks within Deschutes County, or that the owner has agreed to purchase any manufactured home that cannot be relocated as described in Section 7.268.

(c) That any manufactured home tenants displaced as a result of the closure shall be compensated by the owner for all reasonable relocation costs, excluding the value of tax credits owing the tenant under state law and as stated in Section 7.268.
(d) That if the owner files a tentative plat or plan for a land division to be created from the closure of a rental manufactured home park, the owner provides tenants such offers and other information required by law.

G. 7.274 -- Conditions of Approval

City Manager or Designee may impose necessary and appropriate conditions of approval to satisfy and implement the intent, purpose, and content of this Chapter. In addition, any other necessary and appropriate conditions of approval to protect the health, safety and welfare of the residents of the City of Bend may be imposed. The City Manager or Designee shall not deny, but must approve or conditionally approve, the permit involving the closure of the park or cessation of the use of the land as a manufactured home park, provided the applicant has properly complied with the requirements of this ordinance and there is no evidence that the applicant or prior owners have attempted to evict or otherwise cause the removal of residents for the purpose of avoiding the requirements of this Chapter.

I Section 7.278 Enforcement

1. Violations. Any person who closes a manufactured home park without a permit, who fails to comply with the requirements of this chapter or the conditions of the permit, or who willfully makes an untrue or misleading statement of material fact or willfully omits to provide required information in the process of application or whose actions, through the raising of rent or otherwise, objectively manifests a intent or effort to avoid the requirements to this Chapter, shall be guilty of a violation. Notwithstanding any other provision of this code, the penalty for any such violation shall be not greater than $1,000. Each day of non compliance shall constitute a separate violation.

Section Two. The following provisions are added to Title 7 of the Bend City Code:

A. Section 7.279 -- Waiver of Relocation Requirements Option

1. Owner will not be subject to the requirements of Sections 3 through 5 of this Ordinance if the Owner satisfies one of the following provisions:

(a) Enters into a development agreement for increased density in exchange for the tenant protection provisions of this section; or

(b) Enters into an alternative program for the protection of tenants including the protective provisions of this section. Such alternative programs may include but not be limited to the exchange of real estate.

(c) Enters into a sales agreement with the tenants of the park to be purchased as a tenant owned cooperative.

2. Increased Density Alternative. The City intends to adopt amendments to the City's Zoning Ordinance that will create a Manufactured Home Park Overlay Zone at locations where existing manufactured home parks are located. Utilization of that

Overlay Zone will permit increased density within the manufactured home park but require that the Park Owner enter into a development agreement protecting manufactured home park tenants and expanding affordable housing opportunities. The required provisions include the following:

(a) Owners must agree to pay the relocation costs for those units that can be moved pursuant to Section 5 (1)(a). This requirement, however, only applies if tenants being moved agree to apply for the Mobile Home Tax Credit and enter into an agreement to reimburse the owner for the full amount of moving costs up to the $10,000 amount of the State of Oregon Mobile Home Tax Credit.

(b) Of the new units developed utilizing the increased density bonus, at a minimum, a number equal to the spaces removed from the park being redeveloped, not to include spaces for units that can be relocated, must be affordable and offered, either for rent or purchase, to tenants who are being displaced and whose units cannot be moved. Tenants new mortgage/rent shall not be greater than the higher of:

(1) Amount of current space rent and mortgage on home;

(2) The new mortgage or rent does not exceed 30 percent of the family's adjusted income per Department of Housing and Urban Development (HUD) standards; or

(3) a rent or mortgage that does not exceed 30 percent of the income for a family at 50% of median income. This will be based upon most recent HUD Income Limits for the Bend Metropolitan Statistical Area (Bend MSA) and family size shall correspond to unit size as follows: For one bedroom units the income shall be based upon a family of two. For two bedroom units the income shall be based upon a family of three; for three bedroom units the income shall be based upon a family of four; and for four bedroom units the income shall be based upon a family of six.

(4) In addition, up to 10% of the newly created affordable units as stated in Section 12 2 (b) shall have a rent or mortgage that is affordable for a family at or below 30% of Median Income. The number of units that will be required to meet this threshold shall be based upon the income surveys of existing tenants. Income surveys of all existing tenants shall be initiated by the owner and tenants shall be required to provide verification information to the owner as condition of receiving benefits/housing under this section. Units created as part of this section must be offered to existing tenants whose incomes are at or below 30% of median income.

(c) The Park Owners shall ensure that the tenant owners who are displaced shall not be held responsible for any demolition costs if their unit cannot be moved.

(d) The Real Market Value, per Deschutes County Property Records, of the tenant owner's property (Manufactured Home) will be credited towards the purchase or rent of the new unit. Either the owner of the manufactured home park or tenant owner of a manufactured home in the park may challenge the Deschutes County Property Records Real Market Value and, at the challenging party's expense, have an independent appraisal of the home to determine value. The opposing party or their designated representative shall be given an opportunity to accompany the appraiser during the inspection of the property. If the opposing party desires they may, at their expense, have a second independent appraisal of the home to determine value. If both parties then cannot agree on a value a review appraiser shall evaluate the appraisals and the Deschutes County Property Records Real Market Value and determine a value. The cost for the review appraisal shall be divided between the two parties.

(e) Any displaced tenant owner shall be assured of affordable transitional housing and the payment of any necessary and reasonable moving expenses to relocate from their existing unit to a transitional unit and from the transitional unit to the permanent housing in the new unit. Tenant shall be required to solicit a minimum of two bids from licensed moving companies and shall be required to take the lower of these bids. The allowable transitional relocation expenses shall not exceed:

(i) Actual reasonable expenses in moving family or other personal property;

(ii) Actual direct losses of tangible personal property as a result of moving but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the City Manager or designee;

(iii) An amount not to exceed $4,000, (adjusted annually by the increase, if any, in the Consumer Price Index (CPI) based on the index published by the US Department of Labor, Bureau of Labor Statistics, using the index US City Average, All Items, All Urban Consumers, Not Seasonally Adjusted (1982-84 = 100)), in total for relocation to transitional housing and from transitional housing to permanent housing. However, during the period of transition, tenant will still be required to pay, for rent, the amount stated above in Section 12 Paragraph 2 (b)(1) and comply with lease agreement and applicable Landlord Tenant Law. Any significant violations of lease will negate tenant rights under this ordinance.

(iv) Park owner's may elect to contract for moving of tenant or may move tenants utilizing other resources, provided that all bonding and insurance is satisfied for the moving of the belongings.

(v) Park owner's may provide transitional housing, either on site or off site to meet the requirements of this section.

(vi) Tenant owners who cannot qualify for the new permanent unit due to rental history issues, credit worthiness or other factors shall not be eligible for relocation benefits under this section but shall receive compensation for their units as stated in Section 5(b). Income alone cannot be a factor in excluding someone from receiving benefits under this section.

(f) The development agreement shall ensure that the tenant owners who can move their units and who have assured spaces of comparable affordability to their present site shall not be liable for any moving expenses above those allowed by State of Oregon Mobile Home Tax Credit.

(g) All tenant property in a park under closure notice shall remain secure and all services in rental agreements shall be provided to tenants remaining in park until closure.

(h) New rental units developed under the density bonus program shall meet the affordability requirements for not less than 20 years, beginning after project completion and must be offered first to existing tenants in the park. The affordability requirements for the rental units apply without regard to the term of any loan or mortgage or the transfer of ownership. The requirements must be imposed by deed restrictions, covenants running with the land, or other mechanisms approved by the City of Bend, except that the affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure. The City of Bend, the owner, or other entity having property rights in project may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure or deed in lieu of foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property.

(i) Subsequent rents for units vacated during affordability period: Units that are vacated by original tenants during the period of affordability shall remain available and rented to low-income tenants. Rents for these units shall not exceed 30% of income for tenants at 80% of median per HUD Income Limits for Bend MSA and family size will be based upon unit size as stated in Section 12 Paragraph 2(b)(3). Owners of rental properties shall be required to submit an annual rent schedule for all units to the City of Bend.

(1) Rent Increases: Any increase in rents for assisted units is subject to the provisions of outstanding leases, and in any event, the owner must provide tenants of

those units not less than 30 days prior written notice before implementing any increase in rents.

(2) Over-income tenants: Units continue to qualify as affordable housing despite a temporary noncompliance caused by increases in the incomes of existing tenants if actions satisfactory to City of Bend are being taken to ensure that all vacancies are filled in accordance with this section until the noncompliance is corrected.

(j) New affordable ownership units developed under the MHP Overlay Zone shall be acquired by an existing tenant or homebuyer whose family qualifies as a low- income family and the housing must be the principal residence of the family throughout the period of affordability. Units shall be first offered to tenants being displaced.

(1) Mortgage Amounts: Mortgage for new unit shall be as stated in Section 12 (2)(b).

(2) Periods of affordability. The newly created/assisted ownership unit must remain affordable for a period of eight years. However, a portion of the gained equity shall be recaptured for a period of 20 years as stated in Section 12 Paragraph 2(j)(3)(v) below.

(3) Resale and recapture. To ensure affordability, the property owner/developer must impose either resale or recapture requirements, at its option and upon agreement with the City of Bend. The resale or recapture requirements shall comply with the following standards:

(i) Resale. Resale requirements must ensure, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability, that the housing is made available for subsequent purchase only to a buyer whose family qualifies as a low-income family (80% of Median Income per HUD Income Limits for the Bend MSA) and will use the property as its principal residence. The resale requirement must also ensure that the price at resale provides the original -assisted owner a fair return on investment (including the homeowner's initial investment (downpayment) and any capital improvement) and ensure that the housing will remain affordable to a reasonable range of low-income homebuyers.

(ii) Deed restrictions, covenants running with the land, or other similar mechanisms must be used as the mechanism to impose the resale requirements. The affordability restrictions may terminate upon occurrence of any of the following termination events: foreclosure, transfer in lieu of foreclosure or assignment of an FHA insured mortgage to HUD. The owner/developer of the property, with approval of the City of Bend, may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event, obtains an ownership interest in the housing.

(iii) Recapture. Recapture provisions must ensure that the Market Value of the assistance to the homebuyers (real market value of property minus total cost to purchaser at time of initial sale/occupancy), if the housing does not continue to be the principal residence of the family for the duration of the period of affordability is recouped. Deed requirements shall ensure that this recaptured amount of funding is deposited with NeighborImpact (or designated successor) and shall be utilized, minus administrative costs, to assist a future purchaser of the property. NeighborImpact will market the property to eligible purchasers as stated in Section 12 (j). Trust Deeds, Mortgages or other instruments of property transfer executed at time of sale shall ensure compliance with the above section.

(iv) Reduction during affordability period. The Market Value amount to be recaptured shall be reduced on a prorata basis for the time the homeowner has owned and occupied the housing measured against the required affordability period. This shall be at a rate of 50% per year beginning in year six and accelerating to 100% per year beginning in year eight.

(v) Shared net proceeds. Upon recapture of Market Value of assistance 10% of the amount of seller's net proceeds shall be deposited in the City of Bend Affordable Housing Fee Fund to be utilized for affordable housing projects. This requirement shall expire 20 years after project completion.

(vi) Uses of recaptured proceeds. All funding recaptured upon sale of any unit during period of affordability shall be utilized to assist a qualifying low-income homebuyer to purchase the unit. Portion of seller's net proceeds recaptured shall be utilized as stated in Section 12 Paragraph 2 (j)(v) above.

(k) The Park Owner dismisses all litigation against the City related to the legality and application of the City's Manufactured Home Park Ordinance.

Section Three -- Severability.

If any section, subdivision, sentence, clause, phrase of portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section Four. Repeal of Sunset Provision.

By adoption of this ordinance the sunset provision in Ordinance NS- 2028 is hereby repealed.

Read for the first time the 20th day of December, 2006.

Read for the second time the 17th day of January, 2007.

Placed upon its passage the 17th day of January, 2007.

YES: 6 NO: 1

Authenticated by the Mayor the 17th day of January, 2007.

Bruce Abernethy, Mayor

ATTEST:

~~Patricia Stell~~, City of Bend Recorder
Kim Meyers Deputy

ORDINANCE NO. NS-2037

AN ORDINANCE TO AMEND THE CITY OF BEND ZONING ORDINANCE NO. NS-2016 BY CHANGING FIGURE 2.7.200B THE PARKS AND PEDESTRIAN ACCESS WAYS MAP OF THE LAVA RIDGE REFINEMENT PLAN.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council has held a public hearing, considered the testimony, the record, and the Hearings Officer decision, and has found that there is a public need and benefit for the proposed change. The Bend City Council adopts the Hearings Officer Findings and Decision, dated November 6, 2006 file number PZ 06-375.

Section 2. The Parks and Pedestrian Access Ways map of the Lava Ridge Refinement Plan, Figure 2.7.200B of Section 2.7.200 of the City of Bend Zoning Ordinance No. NS-2016, is amended by changing the approved location of Park #2 as shown in "Exhibit A".

Read for the first time the 15th day of November, 2006.

Read for the second time the 17th day of January, 2007.

Placed upon its passage the 17th day of January, 2007.

YES: 6 NO: 1

Authenticated by the Mayor the 17th day of January, 2007.

Bruce Abernethy

Bruce Abernethy, Mayor

ATTEST:

Patricia S Stell

Patricia Stell, City of Bend Recorder

Exhibit A

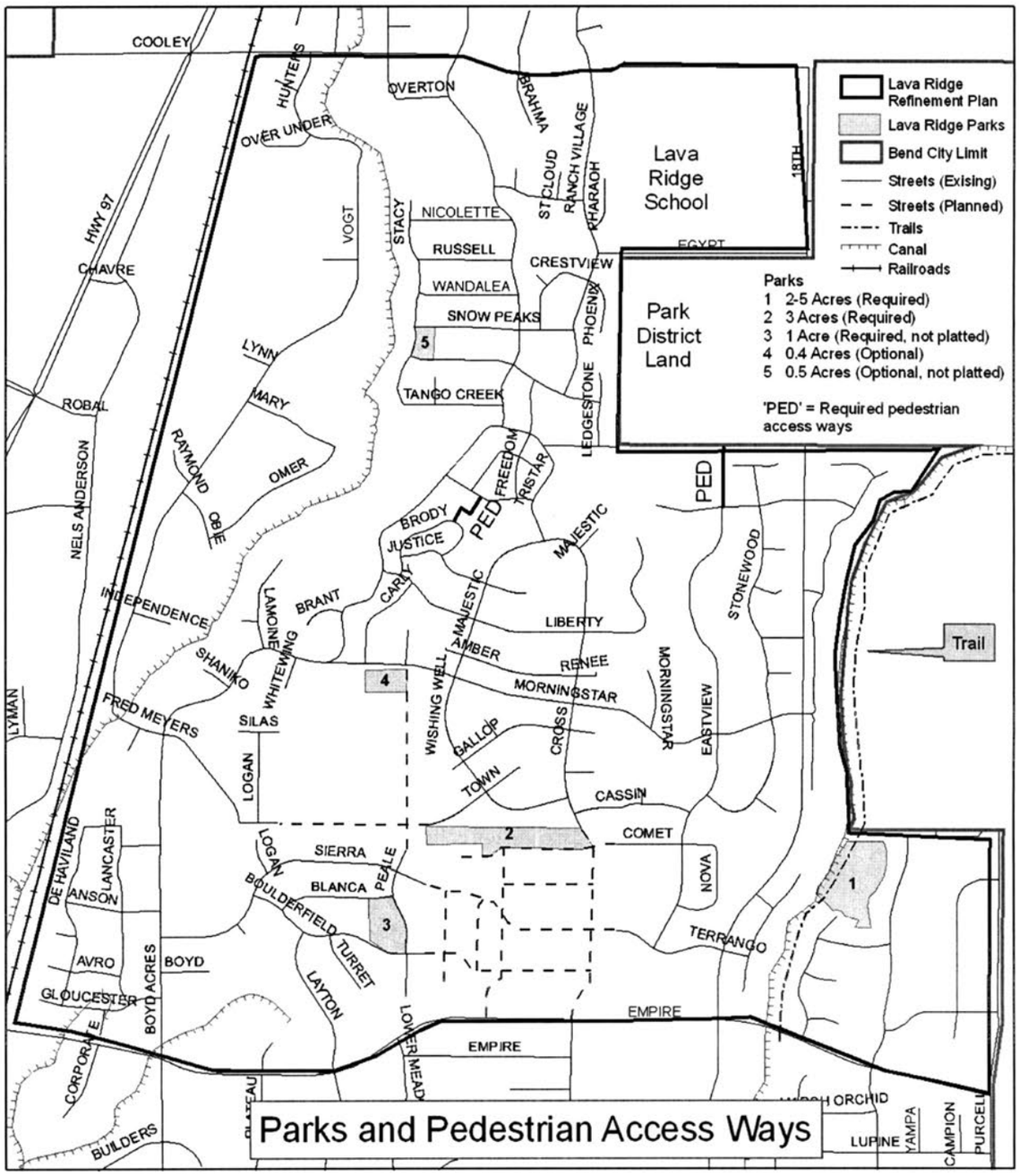


Figure 2.7.200B

ORDINANCE NO. NS-2038

**AN ORDINANCE AMENDING
THE CITY OF BEND GENERAL PLAN AND THE BEND URBAN AREA - TRANSPORTATION SYSTEM PLAN
IN RESPONSE TO A REMAND BY THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

WHEREAS, on November 12, 1998, the Oregon Department of Land Conservation and Development (DLCD) issued a notice of Periodic Review Order of the Bend Area General Plan; and

WHEREAS, on March 6, 2000, the DLCD gave final approval for a revised Periodic Review work program (Order No. 001110), including Task #1, adoption of a Transportation System Plan; and

WHEREAS, on October 11, 2000, the city of Bend adopted the Transportation System Plan (TSP) incorporating it into Chapter Seven of the Bend Area General Plan; and

WHEREAS, on March 1, 2001, the DLCD remanded several items (Remand Order No. 001291) of the TSP back to the City to address as a part of Periodic Review work subtasks; and

WHEREAS, on December 20, 2006, the Bend City Council held a public hearing, for which public notice was provided, to receive public testimony about a proposed ordinance to amend the Bend Area General Plan and the Bend Urban Area Transportation System Plan related to certain subtasks of Periodic Review.

THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

The Bend Area General Plan and Transportation System Plan are amended to read as follows (***Text additions*** are represented by **bold font** and ***deleted text*** is represented in **bold, strike-out font**):

SECTION ONE

TSP: Chapter 5

Section 5.4.1 Quantitative Comparisons
(Add NEW text following the 5th paragraph of this section):

Further evaluation of the near- or over-capacity segments illustrated on Figure 17 was conducted in 2006. This analysis postulates that there may be some questions with the manner that the transportation computer simulation was coded. Such as, if provision of a more comprehensive system of connectors that load the transportation analysis zones onto the transportation system and if more appropriate link capacities were used for specific roadway segments (that may have been set too low for particular link segments) would likely have resulted

in better transportation link service-level performances on the problem State highway segments than were illustrated in Figure 17. As these modeling assumptions were common within each of the System Alternatives compared in the Alternatives Analysis of the TSP, there should be no performance distinction between the alternatives reviewed, thus the system comparisons are still valid.

The city of Bend in cooperation with the Bend Metropolitan Planning Organization (MPO) and the State of Oregon – Transportation Planning and Analysis Unit (TPAU) is engaged in the development of a more detailed and updated transportation model over the course of the last several years. This new model is anticipated to be completed by early 2007. This new edition of the model includes a more comprehensive system of TAZs, TAZs connectors, and a thorough re-evaluation of roadway link capacities, among many other modeling refinements and enhancements. This work should yield a better and more accurate representation of transportation link levels of service.

Section 5.5.1 Land Use
(Add the following NEW text to the end of this section):

Monitoring Environmental Impacts: Statewide Planning Goal 5 and the Transportation Planning Rule require that implementation of the City's Transportation System Plan be coordinated with programs to protect significant natural, cultural and historic resources. The recommended alternative includes proposed improvements that could affect Bend's identified Goal 5 resources. These resources were inventoried during Spring and Summer of 2000 (city of Bend Periodic Review Work Task No. 7), and are documented in the Goal 5 Inventory and Analysis, December 2000. This inventory identified significant riparian resources along both the Deschutes River and Tumalo Creek, as well as significant wetlands and scenic resources along portions of the Deschutes River corridor. The inventory also notes that a State Scenic Waterway designation has been applied to the South Canyon and North Canyon segments of the Deschutes River corridor.

There were seven basic steps to the city of Bend's Goal 5 review:

1. ***Determine the scope of work for the Goal 5 review;***
2. ***Collect information about Goal 5 resource sites (inventory);***
3. ***Determine the adequacy of the information;***
4. ***Determine the significance of the resource sites;***
5. ***Adopt a list of significant resource sites;***
6. ***Conduct an analysis of the consequences of allowing, limiting or prohibiting conflicting uses for any significant sites (ESEE analysis) if applicable; and***
7. ***Develop and adopt a program to achieve Goal 5.***

Where significant resources are identified under Statewide Planning Goal 5, state law requires that local jurisdictions develop and adopt a program to conserve and protect those resources. Depending on the type of resource and its characteristics, it may be necessary to identify conflicting uses and activities that could adversely affect the resource. Where conflicting uses are identified, state law requires an analysis of the potential ESEE consequences of prohibiting, limiting, or permitting the conflicting use. The results of the conflicting uses/ESEE analysis form the basis for a program to provide appropriate levels of protection to the resources.

The Goal 5 Inventory and Analysis, as well as a draft program to protect the inventoried resources, have been reviewed by the Bend Planning Commission, and were adopted by the City Council in Fall 2002. One

specific transportation project included in the Recommended Alternative had the potential to affect resources identified along the Deschutes River corridor. That project is the Reed Market Road extension and construction of the Southern River Crossing, which was constructed in 2003. Although the City's Goal 5 program was not yet adopted, the ESEE consequences of building this project were addressed as part of the Bend Planning Commission's review and approval of the bridge proposal on February 25, 2002. It was determined that the Reed Market Road extension and the Southern River Crossing complied with the ESEE requirements.

Other transportation projects included in the Recommended Alternative may also have potential impacts to Goal 5 resources. Where this occurs, coordination with Goal 5 requirements will take place as follows. The City's Goal 5 program, which was adopted in Fall 2002, includes an identification of conflicting uses and ESEE analysis for significant resources as inventoried for Goal 5 compliance. The Waterway Overlay Zone, which implements the City's Goal 5 program, will require that transportation projects affecting an inventoried resource comply with development standards that have been designed to provide appropriate levels of protection to the resource. In this way, potential adverse impacts to the resource will be addressed and avoided or minimized in a manner consistent with findings of the Goal 5 Inventory and Analysis and policies of Bend's Goal 5 program. The city of Bend will make Goal 5 findings on a project-by-project basis for all other transportation projects in the Recommended Alternative that may also have potential impacts to Goal 5 resources.

SECTION TWO

TSP: Chapter 6

Section 6.5.1.1 Expressways
(Modify this sub section per the following **bold** and **strike-out** text):

Highway 20 – 12th Street to the "eastern" Urban Growth Boundary

East of 12th Street to the eastern Urban Growth Boundary, Highway 20 is designated as an expressway. The roadway follows an alignment around the south side of Pilot Butte and heads eastward beyond the urban area. From 12th Street eastward, the existing highway is ~~***comprised of two***~~ ***five*** *lanes around Pilot Butte* ~~***merging to three, then it widens to a five-lane roadway near***~~ ***to a point east of*** *27th Street. The roadway* ***then*** *transitions back to a two-lane facility as it heads east outside of the UGB.* ~~***Additional widening to five lanes, plus the construction of sidewalks, bike lanes and raised medians is planned for the area between 12th and 27th streets. The section of the highway around Pilot Butte will require realigning and a lowering of the roadway grade in order to accommodate the construction of a future intersection with 15th Street (to the south). The intersection at 15th Street would eventually be signalized.***~~

No other intersections, between 15th Street and Purcell Boulevard, on Highway 20, are planned to have traffic signals. However, if subsequent refinement plans demonstrate an additional signal would improve the highway's function and safety, then another signal might be added consistent with the requirements ~~***in***~~ ***of*** *the Oregon Highway Plan* ***(OHP)*** *for signal spacing. Along portions of Highway 20, in particular east of Pilot Butte, access management and some frontage road construction should be sought in conjunction with adjacent land development and redevelopment.*

As a part of the Oregon Transportation Investment Act (OTIA) Program improvements implemented along this portion of Highway 20 (in the early 2000s), the City agreed to conduct a refinement level study of access management with affected businesses and property owners. It is envisioned that a plan would be adopted that would focus on a reduction/consolidation of access points and thus improve the capacity and safety factors along this portion of the highway and better fulfill the Mobility Standards of the OHP.

Section 6.9.1 TRANSPORTATION AND LAND USE

(Add **NEW** policies, numbered 9 – 17):

9. ***The city of Bend shall continue public and interagency involvement with Deschutes County in the transportation planning process for projects within the UARs.***

10. ***The lead agency for transportation project review in the UARs shall be Deschutes County.***

11. ***The city of Bend shall coordinate the City Transportation System Plan with the Deschutes County Transportation System Plan. The City shall emphasize continuity in the classification of roads and appropriate design standards for roads that link urban areas with rural areas outside the urban growth boundary. The City and County shall agree on the functional classification and design standards of County roads within the UARs.***

12. ***Road, pedestrian and bicycle projects occurring in the UARs shall be governed by the County's road and street standards. Those requirements shall be coordinated between the city of Bend, Deschutes County and the applicant during the land use process according to procedures identified in the Deschutes County Road Standards and Specifications document.***

13. ***The city of Bend shall continue to work with ODOT and Deschutes County to coordinate solutions to highway and non-highway road issues that cross over jurisdictional boundaries.***

14. ***The city of Bend shall work with Deschutes County and the Bend Metro Parks and Recreation District (where applicable) to acquire, develop and maintain those sections of trails that are located outside of the Bend UGB, but are inside a UAR, and are part of a trail plan or map that has been adopted by the city of Bend.***

15. ***The following transportation facilities, which are shown on the Bend TSP's Roadway System Plan map, but are located outside the Bend UGB and therefore not authorized by the TSP, shall not be constructed to an urban standard until approved by the County and the area is brought into the UGB.***

Street	*From*	*To*
Clausen Drive	*Grandview Drive*	*UAR Boundary*
Grandview Drive	*Hunnell Road*	*Clausen Drive*
Hunnell Road	*Cooley Road*	*UAR Boundary*
Cooley Road	*Hunnell Road*	*OB Riley Road*
North Loop Road	*OB Riley Road*	*OB Riley Road*
OB Riley Road	*North Loop Road*	*UAR Boundary*
US 20 Frontage Road	*Robal Road*	*Cooley Road*
Robal Road	*US 20*	*Britta Road*
Britta Road	*Robal Road*	*UGB*
US 20 Frontage Road	*Britta Road*	*US 20*
Tumalo Creek Road	*UGB*	*UAR Boundary*
Skyline Ranch Road	*Tumalo Creek Road*	*Century Drive*
Shevlin Park Road	*UGB*	*UAR Boundary*
Skyliners Road	*UGB*	*UAR Boundary*
Metolius Drive	*Skyline Ranch Road*	*Mt. Washington Drive*

China Hat Road	*US 97*	*UAR Boundary*
Knott Road	*15th Street*	*Rickard Road*
27th Street	*Rickard Road*	*Ferguson Road*
Bear Creek Road	*UGB*	*UAR Boundary*
US 20	*UGB*	*UAR Boundary*
Neff Road	*UGB*	*UAR Boundary*
Beal Road	*UGB*	*UAR Boundary*
Butler Market Road	*Deschutes Market Road*	*UAR Boundary*
Empire Avenue	*Purcell Blvd.*	*UGB*
Purcell Blvd.	*UGB*	*Yeoman Road*
Yeoman Road	*UGB*	*UAR Boundary*
18th Street	*UGB*	*UAR Boundary*
Deschutes Market Road	*UGB*	*UAR Boundary*
Hamehook Road	*Deschutes Market Road*	*UAR Boundary*
Cooley Road	*Deschutes Market Road*	*UAR Boundary*

16. ***The city of Bend shall seek approval from Deschutes County for the improvement of transportation facilities to urban standards that are located in UARs.***

17. ***Transportation facilities currently located on rural lands shall not be constructed to an urban standard until the area is brought into the UGB.***

6.9.4 PEDESTRIAN AND BICYCLE SYSTEM *Implementation*

(Add a NEW Policy to this section, numbered 16, per the following):

16. ***The city of Bend shall include the Bend Metro Parks and Recreation District and the general citizenry in the planning and design of Transportation related river crossings.***

Section 6.9.6 STREET SYSTEM Implementation

Add NEW implementing measures to Chapter **6.9.6 STREET SYSTEM Implementation**, numbered 7 - 9, per the following:

7. As a part of the Project Development for the construction, or reconstruction, of roadways that will impact Resource Areas that have been identified by the city of Bend - Goal 5 Inventories, an Environmental, Social, Energy and Economic (ESEE) analysis shall be conducted. Land-use findings will be required on all transportation projects that will have impacts to a Goal 5 identified resource. Mitigation measures to address Goal 5 impacts shall be developed and implemented as a part of the construction of transportation projects where Bend's Goal 5 protection ordinances apply.

8. The City shall work cooperatively with the state of Oregon to resolve any level-of-service issues on the state highway system that are forecast to exceed the mobility standards of the Oregon Highway Plan (OHP). Methods to be considered to accomplish this goal shall include limiting the number and type of access points to the highway system. Refinement Plans shall be initiated cooperatively by the City and the State, involving affected property owners, to help identify these issues and to develop agreed upon strategies that will help fulfill the OHP standards.

9. The City shall seek alternative highway classifications, where appropriate, as identified in the Oregon Highway Plan (i.e., STAs and/or UBAs) for qualifying state highways within the urban area.

SECTION THREE

The City Council adopts **Staff Report PZ 06-769** and the analysis contained therein - including **Ordinance Exhibit - A.**

Read for the first time the 20th day of December 2006.

Read for the second time the 17th day of January, 2007.

Placed upon its passage the 17th day of January, 2007.

YES: 7 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 17th day of January, 2007.

Bruce Abernethy, Mayor

Attest:

Patricia Stell, City Recorder

STAFF REPORT

LEGISLATIVE AMENDMENT TO THE BEND AREA GENERAL PLAN AND THE BEND URBAN AREA - TRANSPORTATION SYSTEM PLAN

PROJECT NUMBER: **PZ 06-769**

DATE OF REPORT: November 17, 2006

DATE OF HEARING: November 27, 2006: Planning Commission
December 20, 2006: City Council

APPLICANT: City of Bend

REQUEST: This request is to consider adoption of Text and Policy amendments to the TSP.

This amendment will address (1) ESEE Analysis & Goal 5 Protection, (2) Resolving conflicts with the Oregon Highway Plan (3) Ensuring Coordination with Deschutes County concerning roadways built within Urban Area Reserves (UARs), (4) Ensuring coordination with the Park District and general citizen involvement in river crossing transportation facility design. (5) Adoption of Land Use Regulations – per OAR 660-012.

Approval of this action will amend both the Bend Area General Plan - Chapter 7 AND the Transportation System Plan [TSP] to fulfill stipulations made by a remand order from the Oregon Department of Land Conservation and Development (DLCD), which the Bend City Council had adopted earlier as part of completion of a periodic review subtask item.

PROJECT MANAGER: Rick Root, Transportation Planner

APPLICABLE CRITERIA:

(1) The Bend Area General Plan
(2) Bend Urban Area - Transportation System Plan
(3) State of Oregon Transportation Planning Rule - TSP Remand

ATTACHMENTS:

Exhibit - A *Proposed* Plan Amendment PZ 06-769: Implementing Ordinance

I. BACKGROUND

A. LAND CONSERVATION AND DEVELOPMENT COMMISSION

In 1993, the State of Oregon Land Conservation and Development Commission (LCDC) adopted the Transportation Planning Rule (TPR). The TPR directed cities and counties in the state to adopt Transportation System Plans (TSP). In accordance with this mandate, the city of Bend adopted the *Bend Urban Area – Transportation System Plan* (TSP), in 2000.

Periodic Review Task 1, the Bend Urban Area *Transportation System Plan*, was reviewed by the State of Oregon - Department of Land Conservation and Development, following adoption by the city of Bend on October 11, 2000. This review included input from five (citizen) parties that had *objected* to the City Council approved *Transportation Systems Plan.*

Upon reviewing the TSP, and when also considering public comments concerning the plan, the Oregon Department of Land Conservation and Development (DLCD) issued a Remand Order (No. 001291), in 2001, directing the City to address certain deficiencies that they had identified in the plan.

The Remand included eleven general topic areas. This plan amendment will address five of the topic areas of the remand.

B. CITY OF BEND

1. ESEE Analysis

- DLCD (2001) comment:

"...Where a proposed transportation facility affects an identified Goal 5 resource, a more detailed ESEE inquiry is triggered. Specifically, the local government is required to identify conflicting uses based upon analyzing ESEE consequences and develop a program to protect the resource. The city of Bend is required to complete Goal 5 inventory and analysis (Periodic Review Work Program Task #7). This task has not yet been completed. It is likely that riparian areas along the Deschutes River and Tumalo Creek will be identified as Goal 5 resources. Since these resources are affected by planned facilities contained in the ***BUATSP*** *[**B**end **U**rban **A**rea **T**ransportation **S**ystem **P**lan], the city has an obligation to complete the necessary Goal 5 analysis and ensure the BUATSP is consistent with Goal 5..."*

- City response:

In its review of the Bend Urban Area Transportation System Plan (TSP), the DLCD instructed the city of Bend to coordinate the TSP with the City's Goal 5 inventory and conduct an Environmental, Social, Energy, and Economic (ESEE) analysis where planned transportation facilities affect a Goal 5 resource or defer land use decision-making regarding Goal 5 to project development. Specific potential project impacts were called out for the Southern River Crossing and the Skyline Ranch Road crossing of Tumalo Creek.

Goal 5 resources were inventoried by the City during Spring and Summer of 2000 (city of Bend Periodic Review Work Task No. 7), and were documented in the Goal 5 Inventory and Analysis, December 2000. This inventory identified significant riparian resources along both the Deschutes River and Tumalo Creek, as well as significant wetlands and scenic resources along portions of the Deschutes River corridor. The inventory also acknowledged State Scenic Waterway designations that have been applied to the South Canyon and North Canyon segments of the Deschutes River corridor.

TSP Amendments proposed to address this element of the Remand:

- ***TSP - Text Amendments***

To address the DLCD's remand regarding ESEE analyses, the city of Bend shall add the following new text to the end of **Section 5.5.1 Land Use** in the TSP:

> ***Monitoring Environmental Impacts:*** *Statewide Planning Goal 5 and the Transportation Planning Rule require that implementation of the City's Transportation System Plan be coordinated with programs to protect significant natural, cultural and historic resources. The recommended alternative includes proposed improvements that could affect Bend's identified Goal 5 resources. These resources were inventoried during Spring and Summer of 2000 (city of Bend Periodic Review Work Task No. 7), and are documented in the Goal 5 Inventory and Analysis, December 2000. This inventory identified significant riparian resources along both the Deschutes River and Tumalo Creek, as well as significant wetlands and scenic resources along portions of the Deschutes River corridor. The inventory also acknowledges that a State Scenic Waterway designation has been applied to the South Canyon and North Canyon segments of the Deschutes River corridor.*
>
> *There were seven basic steps to the city of Bend's Goal 5 review:*
>
> 1. *Determine the scope of work for the Goal 5 review;*
> 2. *Collect information about Goal 5 resource sites (inventory);*
> 3. *Determine the adequacy of the information;*

4. *Determine the significance of the resource sites;*
5. *Adopt a list of significant resource sites;*
6. *Conduct an analysis of the consequences of allowing, limiting or prohibiting conflicting uses for any significant sites (ESEE analysis) if applicable; and*
7. *Develop and adopt a program to achieve Goal 5.*

Where significant resources are identified under Statewide Planning Goal 5, state law requires that local jurisdictions develop and adopt a program to conserve and protect those resources. Depending on the type of resource and its characteristics, it may be necessary to identify conflicting uses and activities that could adversely affect the resource. Where conflicting uses are identified, state law requires an analysis of the potential ESEE consequences of prohibiting, limiting, or permitting the conflicting use. The results of the conflicting uses/ESEE analysis form the basis for a program to provide appropriate levels of protection to the resources.

The Goal 5 Inventory and Analysis, as well as a draft program to protect the inventoried resources, have been reviewed by the Bend Planning Commission, and were adopted by the City Council in Fall 2002. One specific transportation project included in the Recommended Alternative had the potential to affect resources identified along the Deschutes River corridor. That project is the Reed Market Road extension and construction of the Southern River Crossing, which was constructed in 2003. Although the City's Goal 5 program was not yet adopted, the ESEE consequences of building this project were addressed as part of the Bend Planning Commission's review and approval of the bridge proposal on February 25, 2002. It was determined that the Reed Market Road extension and the Southern River Crossing complied with the ESEE requirements.

Other transportation projects included in the Recommended Alternative may also have potential impacts to Goal 5 resources. Where this occurs, coordination with Goal 5 requirements will take place as follows. The City's Goal 5 program, which was adopted in Fall 2002, includes an identification of conflicting uses and ESEE analysis for significant resources as inventoried for Goal 5 compliance. The Waterway Overlay Zone, which implements the City's Goal 5 program, will require that transportation projects affecting an inventoried resource comply with development standards that have been designed to provide appropriate levels of protection to the resource. In this way, potential adverse impacts to the resource will be addressed and avoided or minimized in a manner consistent with findings of the Goal 5 Inventory and Analysis and policies of Bend's Goal 5 program. The city of Bend will make Goal 5 findings on a project-by-project basis for all other transportation projects in the Recommended Alternative that may also have potential impacts to Goal 5 resources.

- ***TSP - Policy Amendments***

Add a new implementing measure to Chapter **6.9.6 STREET SYSTEM Implementation**, numbered 7, per the following:

*7. As a part of the **Project Development** for the construction, or reconstruction, of roadways that will impact Resource Areas that have been identified by the city of Bend - Goal 5 Inventories, an Environmental, Social, Energy and Economic (ESEE) analysis shall be conducted. **Land-use findings** will be required on all transportation projects that will have impacts to a Goal 5 identified resource. **Mitigation measures** to address Goal 5 impacts shall be developed and implemented as a part of the construction of transportation projects where Bend's Goal 5 protection ordinances apply.*

2. Conflict with the Oregon Highway Plan

- DLCD (2001) comment:

(a) One issue that the DLCD described in the remand related to the Oregon Highway Plan (OHP): *"...The BUATSP indicates that implementation of the preferred alternative will result in some state highway segments exceeding the mobility standards established in the OHP (TSP: Figure 17, p. 90). This is not adequately described or resolved within the BUATSP..."*

- City response:

(a) In its review of the Bend TSP, the DLCD reported that the TSP indicates that implementation of the preferred transportation system alternative will result in some ***state*** highway segments exceeding the mobility standards established in the Adopted 1999 Oregon Highway Plan (OHP). The DLCD indicated that this was not adequately described or resolved within the TSP.

In Figure 17, city streets that operate at a volume-to-capacity ratio (V/C) less than 0.80 and state highways that meet their OHP mobility standards are shown in green. City streets that operate at a V/C of 0.80 to 0.90 are shown in blue. City streets that operate at a V/C greater than 0.90 and state highways that do not meet their OHP mobility standards are shown in red.

As identified by the DLCD, some of the roadway system links in the Bend transportation computer model (EMME/2) representing the state highway system are shown in red in Figure 17. As part of the city of Bend's response to the DLCD's remand of the TSP, city of Bend staff reexamined EMME/2 model inputs and outputs for the roadway system links shown in red in Figure 17. For each of those links, staff has recommended a change to the EMME/2 model that would likely correct the problem of the links being over capacity in the Year 2020 traffic assignment. However, staff did not test the recommended changes because the EMME/2 model is going through a *major* update in the year 2006. The Base Year is being changed from the Year 2000 to the Year 2003. The Forecast Year is being changed from the Year 2020 to the Year 2030. Also, the study area is being changed from generally the area that was slightly larger than the Bend Urban Growth Boundary (UGB) to an area that is well beyond the Bend Metropolitan Planning Organization (MPO) Boundary. Thus, the number of Transportation Analysis Zones (TAZs) is being significantly increased from 155 to 464. The recommended changes will be incorporated into the updated EMME/2 model.

- DLCD (2001) comment:

(b) Another issue related to the OHP that the DLCD noted was, *"...The status of Hwy. 20 as it relates to the OHP mobility standards should be reconciled in the BUATSP. If sufficient information is not available at this time, the city could defer decisions regarding Hwy. 20 to a refinement plan..."*

- City response:

(b) Since adoption of the Bend TSP in year 2000, one of the many roadway projects that were funded by Oregon's *Transportation Investment Act* (OTIA) Program was Highway 20. Two phases of the OTIA program (OTIA I & II), provided the completion of significant roadway improvements on Highway 20, from NE 10th Street to Purcell Boulevard. The improvements included widening to five lanes, addition of sidewalks and bike lanes, median construction and access control, grade separation of the Larkspur Trail and signalization of the new 15th Street extension intersection. Additional work on a highway *access plan* that will work toward developing a strategy of limiting the number of access points along this section of highway will be the subject of a future area **refinement plan**. Completion of these improvements and implementation of further access control will help to fulfill the mobility standards articulated in the Oregon Highway Plan.

In the current preparation of the MPO Regional Transportation Plan (RTP), the RTP is anticipated to *revisit* the historic topic of finding an alternative

route for Highway 20 around the community (i.e., a Highway 20 bypass of Bend in the northeast quadrant of the MPO area). If an alternative route is chosen in the MPO Preferred Alternative, and the current alignment of Highway 20 (that follows Third Street and Greenwood Avenue) reverts back to a *local arterial* street, the City's level-of-service (LOS) standards would then apply - not the mobility standards called out in the OHP. It is expected that those problem highway segments would meet the present city of Bend's LOS standards.

However, in the case where the roadway corridor remains as a State highway on the plan, the City can seek an alternative designation from the State for portions of Highway 20. The OHP calls-out *Special Transportation Areas* (STAs) or *Urban Business Areas* (UBAs) for certain qualifying highway segments that can meet the definition of the categories. These categories also have alternative mobility standards in the State policy document (there are also lower mobility standards in areas designated as MPOs that *now* apply to Bend not present during adoption of the TSP in 2000). The problematic portions of Highway 20 would seem to better fit these highway classifications and hence, may well address the OHP conflict pointed-out by the DLCD in TSP Figure 17.

- ***TSP - Text Amendments***

In response to the first issue, ***item (a)***, the TSP shall be modified per the following:

Add new text following the 5th paragraph of TSP **Section 5.4.1 Quantitative Comparisons:**

Further evaluation of the near- or over-capacity segments illustrated on TSP Figure 17 was conducted in 2006. This analysis postulates that there may be some questions with the manner that the transportation computer simulation was coded. Such as, if provision of a more comprehensive system of connectors that load the transportation analysis zones onto the transportation system was used and if more appropriate link capacities were used for specific roadway segments (that may have been set too low for particular link segments) they would likely have resulted in better transportation link service-level performances on the problem State highway segments than were illustrated in Figure 17. As these modeling assumptions were common within each of the System Alternatives compared in the Alternatives Analysis of the TSP, there should be no performance distinction between the alternatives reviewed, thus the system comparisons are still valid.

The city of Bend in cooperation with the Bend Metropolitan Planning Organization (MPO) and the State of Oregon – Transportation Planning and Analysis Unit (TPAU) has been engaged in the development of a more detailed and updated transportation model over the course of the last several years. This new model is anticipated to be completed by early 2007. This new edition of the model includes a more comprehensive system of TAZs, TAZs connectors, and a thorough re-evaluation of roadway link capacities, among many other modeling refinements and enhancements. This work should yield a better and more accurate representation of transportation link levels of service.

In response to the second issue, ***item (b)***, the TSP shall be modified per the following:

♦ Modify the following text subsection of TSP **Section 6.5.1.1 Expressways** per the following **bold** and **strike-out** text:

Highway 20 – 12th Street to the "eastern" Urban Growth Boundary

East of 12th Street to the eastern Urban Growth Boundary, Highway 20 is designated as an expressway. The roadway follows an alignment around the south side of Pilot Butte and heads eastward beyond the urban area. From

12th Street eastward, the existing highway is ~~***comprised of two***~~ ***five*** *lanes around Pilot Butte* ~~***merging to three, then it widens to a five-lane roadway near***~~ ***to a point east of*** *27th Street. The roadway* ***then*** *transitions back to a two-lane facility as it heads east outside of the UGB.* ~~***Additional widening to five lanes, plus the construction of sidewalks, bike lanes and raised medians is planned for the area between 12th and 27th streets. The section of the highway around Pilot Butte will require realigning and a lowering of the roadway grade in order to accommodate the construction of a future intersection with 15th Street (to the south). The intersection at 15th Street would eventually be signalized.***~~

No other intersections, between 15th Street and Purcell Boulevard, on Highway 20, are planned to have traffic signals. However, if subsequent refinement plans demonstrate an additional signal would improve the highway's function and safety, then another signal might be added consistent with the requirements ~~***in***~~ ***of*** *the Oregon Highway Plan* ***(OHP)*** *for signal spacing. Along portions of Highway 20, in particular east of Pilot Butte, access management and some frontage road construction should be sought in conjunction with adjacent land development and redevelopment.*

As a part of the Oregon Transportation Investment Act (OTIA) Program improvements implemented along this portion of Highway 20 (in the early 2000s), the City agreed to conduct a refinement level study of access management with affected businesses and property owners. It is envisioned that a plan would be adopted that would focus on a reduction/consolidation of access points and thus improve the capacity and safety factors along this portion of the highway and better fulfill the Mobility Standards of the OHP.

♦ Add new implementing measures to Chapter **6.9.6 STREET SYSTEMS Implementation**, numbered 8-9, per the following:

8. The City shall work cooperatively with the state of Oregon to resolve any level-of-service issues on the state highway system that are forecast to exceed the mobility standards of the Oregon Highway Plan (OHP). Methods to be considered to accomplish this goal shall include limiting the number and type of access points to the highway system. Refinement Plans shall be initiated cooperatively by the City and the State, involving affected property owners, to help identify these issues and to develop agreed upon strategies that will help fulfill the OHP standards.

9. The City shall seek alternative highway classifications, where appropriate, as identified in the Oregon Highway Plan (i.e., STAs and/or UBAs) for qualifying state highways within the urban area.

3. Urban Area Reserves

■ DLCD (2001) comment:

"...With regard to transportation facilities located on urban reserve areas on Map B, local governments are authorized to plan for the eventual provision of public facilities in urban reserve areas. However, local governments are not authorized to construct ***urban*** *facilities in rural areas prior to their inclusion in the UGB. OAR 660-021-0040(6). The BUATSP should include a policy or other implementing measure that identifies the facilities that are not authorized and will not be constructed until approved by the county and the area is brought into the UGB.*

In conclusion, the city has satisfactorily coordinated with Deschutes County. Additional action is required by Deschutes County before a portion of the 27th Street/Empire Blvd. major arterial is considered a land use decision. The BUATSP should include a policy that commits the city to seeking approval from

the county for those facilities located in urban reserve areas. In addition, the BUATSP should include a policy that states facilities currently located on rural lands will not be constructed until the area is brought into the UGB..."

□ City response:

In its review of the TSP, the DLCD instructed the city of Bend to include a policy or other implementing measure that identifies the facilities that are not authorized by the TSP because they lie outside the City Limits and Urban Growth Boundary (UGB) and are located in Urban Area Reserves UARs), and will not be constructed to an urban standard until approved by the County, and the area is brought into the UGB. In addition, the city of Bend was instructed to include a policy that commits the city to seeking approval from the county for those facilities located in urban reserve areas and to include a policy that states facilities currently located on rural lands will not be constructed to urban standards until the area is brought into the UGB.

The DLCD's remand is consistent with Oregon's Transportation Planning Rule (Oregon Administrative Rule Chapter 660, Division 12), which sets requirements for coordination among affected levels of government for preparation, adoption, refinement, implementation and amendment of transportation system plans. The preparation of TSPs shall be coordinated with affected state and federal agencies, local governments, special districts, and private providers of transportation services (OAR 660-012-0015(5)). Regional TSPs shall provide for coordinated project development among affected local governments, and the process shall include designation of a lead agency to prepare and coordinate project development (OAR 660-012-0050(2)(a)).

Deschutes County, by virtue of a City/County Joint Management Agreement, transferred building and land use authority for the unincorporated area between the City Limits and Urban Growth Boundary to the city of Bend on July 1, 1998. Before that date, land use decisions for this area were administered by the ordinances, codes and roadway standards that were in place and adopted by Deschutes County. Also, as a result of a November 1998 voter approved measure, the City officially annexed these unincorporated areas out to the UGB on July 1, 1999. A similar City/County agreement or policy is needed to address the lands within the Urban Area Reserves (UARs). Currently, the County has jurisdiction over the lands within the UARs. Although the city of Bend can comment and provide input on land use matters within the UARs, the County has not yet delegated authority over those lands to the City.

Deschutes County TSP Policy - regarding interagency Coordination

Deschutes County, in its TSP, recognizes the need for interagency coordination in the transportation planning process through the following policies:

1. e. Deschutes County shall continue public and interagency involvement in the transportation planning process.

5. a. The lead agency for transportation project review in Deschutes County shall be Deschutes County for projects outside UGBs.

23. a. Deschutes County shall coordinate the County Transportation System Plan with the transportation system plans of the cities of Bend, Redmond and Sisters. The County shall emphasize continuity in the classification of roads and appropriate design standards for roads that link urban areas with rural areas outside the urban growth boundaries. The County and affected city shall agree on the functional classification and design standards of County roads within the proposed UGB area.

25. Road, pedestrian and bicycle projects occurring in unincorporated areas within urban growth boundaries shall be governed by the respective city's road and street standards. Those requirements shall be

coordinated between the city, the County and the applicant during the land use process according to procedures to be identified in the Deschutes County Road Standards and Specifications document.

31. Deschutes County shall continue to work with the ODOT and the Cities of Bend, Redmond and Sisters to coordinate solutions to highway and non-highway road issues that cross over jurisdictional boundaries.

49. The County shall work with local agencies and jurisdictions to acquire develop and maintain those sections of trail that are located outside of UGBs, but are part of a trail plan or map that has been adopted by the local jurisdiction and the County.

- ***TSP - Policy Amendments***

To complement Deschutes County's policies regarding interagency coordination in transportation planning in the UARs, the city of Bend shall adopt the following new policies in TSP Chapter **6.9.1 TRANSPORTATION AND LAND USE**:

9. *The city of Bend shall continue public and interagency involvement with Deschutes County in the transportation planning process for projects within the UARs.*
10. *The lead agency for transportation project review in the UARs shall be Deschutes County.*
11. *The city of Bend shall coordinate the City Transportation System Plan with the Deschutes County Transportation System Plan. The City shall emphasize continuity in the classification of roads and appropriate design standards for roads that link urban areas with rural areas outside the urban growth boundary. The City and County shall agree on the functional classification and design standards of County roads within the UARs.*
12. *Road, pedestrian and bicycle projects occurring in the UARs shall be governed by the County's road and street standards. Those requirements shall be coordinated between the city of Bend, Deschutes County and the applicant during the land use process according to procedures identified in the Deschutes County Road Standards and Specifications document.*
13. *The city of Bend shall continue to work with ODOT and Deschutes County to coordinate solutions to highway and non-highway road issues that cross over jurisdictional boundaries.*
14. *The city of Bend shall work with Deschutes County and the Bend Metro Parks and Recreation District (where applicable) to acquire, develop and maintain those sections of trails that are located outside of the Bend UGB, but are inside a UAR, and are part of a trail plan or map that has been adopted by the city of Bend.*

To address the DLCD's remand regarding transportation facilities located in the UARs, the city of Bend shall adopt the following policies in TSP Chapter **6.9.1 TRANSPORTATION AND LAND USE:**

15. *The following transportation facilities, which are shown on the Bend TSP's Roadway System Plan map, but are located outside the Bend UGB and therefore not authorized by the TSP, shall not be constructed to an **urban standard** until approved by the County and the area is brought into the UGB.*

Street	From	To
Clausen Drive	Grandview Drive	UAR Boundary
Grandview Drive	Hunnell Road	Clausen Drive
Hunnell Road	Cooley Road	UAR Boundary
Cooley Road	Hunnell Road	OB Riley Road
North Loop Road	OB Riley Road	OB Riley Road
OB Riley Road	North Loop Road	UAR Boundary

US 20 Frontage Road	Robal Road	Cooley Road
Robal Road	US 20	Britta Road
Britta Road	Robal Road	UGB
US 20 Frontage Road	Britta Road	US 20
Tumalo Creek Road	UGB	UAR Boundary
Skyline Ranch Road	Tumalo Creek Road	Century Drive
Shevlin Park Road	UGB	UAR Boundary
Skyliners Road	UGB	UAR Boundary
Metolius Drive	Skyline Ranch Road	Mt. Washington Drive
China Hat Road	US 97	UAR Boundary
Knott Road	15th Street	Rickard Road
27th Street	Rickard Road	Ferguson Road
Bear Creek Road	UGB	UAR Boundary
US 20	UGB	UAR Boundary
Neff Road	UGB	UAR Boundary
Beal Road	UGB	UAR Boundary
Butler Market Road	Deschutes Market Road	UAR Boundary
Empire Avenue	Purcell Blvd.	UGB
Purcell Blvd.	UGB	Yeoman Road
Yeoman Road	UGB	UAR Boundary
18th Street	UGB	UAR Boundary
Deschutes Market Road	UGB	UAR Boundary
Hamehook Road	Deschutes Market Road	UAR Boundary
Cooley Road	Deschutes Market Road	UAR Boundary

16. *The city of Bend shall seek approval from Deschutes County for the improvement of transportation facilities to* ***urban standards*** *that are located in UARs.*
17. *Transportation facilities currently located on rural lands shall not be constructed to an* ***urban standard*** *until the area is brought into the UGB.*

4. The Southern River Crossing

- DLCD (2001) comment:

*"... With regard to BAGP Street Systems Policy ~~17~~ [**Bend staff correction:**] **18** regarding the design of the Southern River Crossing, the BUATSP states that the city "shall involve the public, the Park District and other governmental agencies in developing a roadway design for the southern river crossing that complements the natural features of the river area" (TSP p. 116). The BUATSP should but does not include an implementing measure that is consistent with and adequate to carry out this portion of the plan, as required by Goal 2..."*

- City response:

In its review of the Bend TSP, the DLCD instructed the city of Bend to include an implementing measure that is consistent with and adequate to carry out Street Systems Policy 18 regarding the design of the Southern River Crossing, as required by Statewide Planning Goal 2. Goal 2 outlines the basic procedures of Oregon's statewide planning program. It says that land use decisions are to be made in accordance with a comprehensive plan, and that suitable "implementation ordinances" to put the plan's policies into effect must be adopted. It requires that plans be based on "factual information;" that local plans and ordinances are coordinated with those of other jurisdictions and agencies; and that plans be reviewed periodically and amended as needed. In addition, Statewide Planning Goal 1 calls for "the opportunity for citizens to be involved in all phases of the planning process." It requires each city and county to have a citizen involvement program with six components specified in the goal. It also requires local governments to have a committee for citizen involvement to monitor and encourage public participation in planning.

Pedestrian and Bicycle Systems Policy 17 states the following, "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."

The Southern River Crossing is, in fact, adjacent to a proposed park and an existing trail.

The city of Bend complied with Statewide Planning Goals 1 and 2 when planning and designing the Southern River Crossing because the City conducted a series of citizen - *Design Charrettes* during project development. The city of Bend complied with Goal 1 because the City formed a committee for citizen involvement, the Bend Transportation Advisory Committee (BTAC) that participated in the planning process, as did the general citizenry. The city of Bend complied with Goal 2 because the planning and design of the Southern River Crossing was based on "factual information" such as traffic forecasts, topography, and potential impacts to Deschutes River plant and animal life. In addition, the city of Bend coordinated with other agencies, such as the Bend Metro Parks and Recreation District.

- ***TSP - Policy Amendments***

To address the DLCD's remand regarding Pedestrian and Bicycle Systems Policy 17, the city of Bend shall add a new implementation measure to Chapter **6.9.4 PEDESTRIAN AND BICYCLE SYSTEM Implementation**, numbered 16, per the following:

16. *The city of Bend shall include the Bend Metro Parks and Recreation District and the general citizenry in the planning and design of Transportation related river crossings.*

5. Land Use Regulations

- DLCD (2001) comments:

"...However, the BUATSP should but does not include land use and subdivision regulations that anticipate an operational transit system within the planning period. These regulations should (1) require transit facilities and building orientation in some important locations, such as activity centers or other areas that are planned major transit stops 660-012-0045 (4) (a) and (b) (C); and (2) designate types and densities of land uses adequate to support transit along planned transit routes 660-012-0045 (4) (g)..."

"...Many of the land use regulations that implement the BUATSP were adopted and became acknowledged prior to the adoption of the BUATSP. Generally, these ordinances are not subject to review as part of this periodic review. The scope of the department's review of previously adopted ordinances is limited to an assessment of whether or not these land use regulations are consistent with and adequate to carry out the policy decisions in the BUATSP. Therefore, there was no need to include these ordinances for public review as part of the BUATSP since they had been previously adopted and acknowledged. DLCD's review of the previously acknowledged ordinances indicate they are adequate to comply with the minimum requirements of the TPR..."

"...There are two exceptions to this: (a) the city has not yet adopted land use regulations to implement transit service [660-012-0045]... and (b) the city has prepared amendments to the city's land use and subdivision regulations necessary to comply with portions of the TPR and implement the BUATSP. These amendments have not yet been adopted. The TSP cannot be considered complete until the ordinances necessary to implement the plan have been adopted..."

"...The city has not yet adopted all of the necessary land use and subdivision regulations necessary to support transit service. The city has adopted many land use and subdivision regulations to implement the BUATSP and comply with the TPR, and the city has identified additional planned changes (TSP Tables 16 and 17, pp. 168-172). The BUATSP also includes policies that support making additional changes with regard to integrating land use and transit (TSP Policies

6.9.1.6, 6.9.1.7, and 6.9.5.5). However, it does not appear the city has adopted all of the land use and subdivision ordinances necessary to designate "types and densities of land uses adequate to support transit along existing or planned transit routes..."

"... the city has not yet adopted street standards to implement BAGP Street Systems Policy 3..."

□ City response:

In its review of the Bend TSP, the DLCD instructed the city of Bend to adopt land use regulations necessary to implement the TSP. The DLCD's remand is consistent with Oregon's Transportation Planning Rule (Oregon Administrative Rule Chapter 660, Division 12), which sets requirements for the preparation, adoption, refinement, implementation and amendment of TSPs. Each local government shall amend its land use regulations to implement the TSP (OAR 660-012-0045 (1)).

The city of Bend adopted a new Development Code, in 2006. The adoption of the new code followed a lengthy public process including neighborhood workshops, sub-committee meetings and public hearings with the Planning Commission. The new Development Code was initiated by staff as a means of updating the existing Zoning Ordinance and thereby implementing the 1998 General Plan and fulfilling a Periodic Review Work Task. City of Bend staff believes that the new Development Code contains the necessary land use regulations necessary to implement the TSP.

In the following sections of this response to the Land Use Regulations Remand Item, the requirements of OAR 660-012-0045 – *Implementation of the Transportation System Plan* are in **bold text**, and the city of Bend's responses are in standard text. [Note: Given the greater inter-relationship of pedestrian-friendly design, transit design and other pertinent elements of design, the following is a comprehensive review of how the new Development Code has addressed all of the elements of the Transportation Planning Rule (year 2000 edition) section -0045.]

OAR 660-012-0045

Implementation of the Transportation System Plan

(1) Each local government shall amend its land use regulations to implement the TSP.

(a) The following transportation facilities, services and improvements need not be subject to land use regulations except as necessary to implement the TSP and, under ordinary circumstances do not have a significant impact on land use:

(A) Operation, maintenance, and repair of existing transportation facilities identified in the TSP, such as road, bicycle, pedestrian, port, airport and rail facilities, and major regional pipelines and terminals;

(B) Dedication of right-of-way, authorization of construction and the construction of facilities and improvements, where the improvements are consistent with clear and objective dimensional standards;

(C) Uses permitted outright under ORS 215.213 (1) (m) through (p) and 215.283(1) (k) through (n), consistent with the provisions of OAR 660-012-0065; and

(D) Changes in the frequency of transit, rail and airport services.

(b) To the extent, if any, that a transportation facility, service or improvement concerns the application of a comprehensive plan provision or land use regulation, it may be allowed without further land use review if it is permitted outright or if it is subject to standards that do not require interpretation or the exercise of factual, policy or legal judgment;

(c) In the event that a transportation facility, service or improvement is determined to have a significant impact on land use or to concern the application of a comprehensive plan or land use regulation and to be subject to standards that require interpretation or the exercise of factual, policy or legal judgment, the local government shall provide a review and approval process that is consistent with OAR 660-012-0050. To facilitate implementation of the TSP, each local government shall amend its land use regulations to provide for consolidated review of land use decisions required to permit a transportation project.

City of Bend Response to OAR 660-012-0045 (1): The new Development Code amended the city of Bend's land use regulations to implement the TSP.

(2) Local governments shall adopt land use or subdivision ordinance regulations, consistent with applicable federal and state requirements, to protect transportation facilities, corridors and sites for their identified functions. Such regulations shall include:

(a) Access control measures, for example, driveway and public road spacing, median control and signal spacing standards, which are consistent with the functional classification of roads and consistent with limiting development on rural lands to rural uses and densities;

(b) Standards to protect future operation of roads, transitways and major transit corridors;

(c) Measures to protect public use airports by controlling land uses within airport noise corridors and imaginary surfaces, and by limiting physical hazards to air navigation;

(d) A process for coordinated review of future land use decisions affecting transportation facilities, corridors or sites;

(e) A process to apply conditions to development proposals in order to minimize impacts and protect transportation facilities, corridors or sites;

(f) Regulations to provide notice to public agencies providing transportation facilities and services, MPOs, and ODOT of:

(A) Land use applications that require public hearings;

(B) Subdivision and partition applications;

(C) Other applications which affect private access to roads; and

(D) Other applications within airport noise corridors and imaginary surfaces which affect airport operations.

(g) Regulations assuring that amendments to land use designations, densities, and design standards are consistent with the functions, capacities and levels of service of facilities identified in the TSP.

City of Bend Response to OAR 660-012-0045 (2): The new code will protect transportation facilities, corridors and sites for their identified functions. Access control measures that regulate driveway and public road spacing are contained in Chapter 3.1 Section 400 – *Vehicular Access Management.* Standards to protect future operation of roads are contained in Chapter 4.7 Section 400 – *Approval Criteria.*

The new Development Code does not contain operational standards for transitways and major transit corridors over and above the operational standards for roadways.

The new Development Code does not contain measures to protect public use airports because there are no public use airports within the Bend City Limits.

The new Development Code contains a process for coordinated review of future land use decisions affecting transportation facilities in Chapter 4.7 –

Transportation Analysis. A process to apply conditions to development proposals in order to minimize impacts and protect transportation facilities, corridors or sites is contained in Chapter 4.7 Section 500 – *Mitigation Requirements/ Conditions of Approval.*

Regulations to provide notice to public agencies providing transportation facilities and services, MPOs and ODOT are contained in Chapter 4.1 Section 245 – *Notice to Public Agencies.*

Regulations assuring that amendments to land use designations, densities, and design standards are consistent with the functions, capacities and levels of service of facilities identified in the TSP are contained in Chapter 4.7 Section 400 – *Approval Criteria.*

(3) Local governments shall adopt land use or subdivision regulations for urban areas and rural communities as set forth below. The purposes of this section are to provide for safe and convenient pedestrian, bicycle and vehicular circulation consistent with access management standards and the function of affected streets, to ensure that new development provides on-site streets and accessways that provide reasonably direct routes for pedestrian and bicycle travel in areas where pedestrian and bicycle travel is likely if connections are provided, and which avoids wherever possible levels of automobile traffic which might interfere with or discourage pedestrian or bicycle travel.

(a) Bicycle parking facilities as part of new multi-family residential developments of four units or more, new retail, office and institutional developments, and all transit transfer stations and park-and-ride lots;

(b) On-site facilities shall be provided which accommodate safe and convenient pedestrians and bicycle access from within new subdivisions, multi-family developments, planned developments, shopping centers, and commercial districts to adjacent residential areas and transit stops, and to neighborhood activity centers within one-half mile of the development. Single-family residential developments shall generally include streets and accessways. Pedestrian circulation through parking lots should generally be provided in the form of accessways.

(A) "Neighborhood activity centers" includes, but is not limited to, existing or planned schools, parks, shopping areas, transit stops or employment centers;

(B) Bikeways shall be required along arterials and major collectors. Sidewalks shall be required along arterials, collectors and most local streets in urban areas, except that sidewalks are not required along controlled access roadways, such as freeways;

(C) Cul-de-sacs and other dead-end streets may be used as part of a development plan, consistent with the purposes set forth in the section;

(D) Local governments shall establish their own standards or criteria for providing streets and access ways consistent with the purposes of this section. Such measures may include but are not limited to: standards for spacing of streets or accessways; and standards for excessive out-of-direction travel;

(E) Streets and accessways need not be required where one or more of the following conditions exist:

(i) Physical or topographic conditions make a street or accessway connection impracticable. Such conditions include but are not limited to freeways, railroads, steep slopes, wetlands or other bodies of water where a connection could not reasonably be provided;

(ii) Buildings or other existing development on adjacent lands physically preclude a connection now or in the future considering the potential for redevelopment; or

(iii) Where streets or accessways would violate provisions of leases, easements, covenants, restrictions or other agreements existing as of May 1, 1995, which preclude a required street or accessway connection.

(c) Where off-site road improvements are otherwise required as a condition of development approval, they shall include facilities accommodating convenient pedestrian and bicycle travel, including bicycle ways along arterials and major collectors;

(d) For purposes of subsection (b) "safe and convenient" means bicycle and pedestrian routes, facilities and improvements which;

(A) Are reasonably free from hazards, particularly types or levels of automobile traffic which would interfere with or discourage pedestrian or cycle travel for short trips;

(B) Provide a reasonably direct route of travel between destinations such as between a transit stop and a store; and

(C) Meet travel needs of cyclists and pedestrians considering destination and length of trip; and considering that the optimum trip length of pedestrians is generally ¼ to ½ mile.

(e) Internal pedestrian circulation within new office parks and commercial developments shall be provided through clustering of buildings, construction of accessways, walkways and similar techniques.

City of Bend Response to OAR 660-012-0045 (3): The new code provides for safe and convenient pedestrian, bicycle and vehicular circulation consistent with access management standards and the function of affected streets in Chapter 3.1 Section 300 – *Pedestrian Access and Circulation*, and in Chapter 3.1 Section 400 – *Vehicular Access Management.*

Bicycle parking requirements are contained in Chapter 3.3 Section 600 – *Bicycle Parking Standards.*

The requirements for bikeways on arterials and major collectors, and local streets are contained in Chapter 3.4 Section 200 – *Transportation Improvement Standards.*

The requirements for cul-de-sacs and dead end streets are also contained in Chapter 3.4 Section 200 – *Transportation Improvement Standards.*

Standards for providing streets and accessways are contained in Chapter 3.1 Section 200 – *Lot and Block Design.*

The requirements for site design and development standards: Residential Districts: Chapter 2.1 Section 900 – *Architectural Design Standards*, Commercial Districts: Chapter 2.2 Section 600 – *Block Layout and Building Orientation* and Section 900 – *Pedestrian Amenities*, Chapter 2.2 Section 1000 – *Development and Design Standards for the CB Zone*, Mixed-Use Districts Chapter 2.3 Section 400 – *Building Orientation* and Section 500 *Architectural Standards.*

(4) To support transit in urban areas containing a population greater than 25,000, where the area is already served by a public transit system or where a determination has been made that a public transit system is feasible, local governments shall adopt land use and subdivision regulations as provided in (a) - (g) below:

(a) Transit routes and transit facilities shall be designed to support transit use through provision of bus stops, pullouts and shelters, optimum road geometrics, on-road parking restrictions and similar facilities, as appropriate;

(b) New retail, office and institutional buildings at or near major transit stops shall provide for convenient pedestrian access to transit through the measures listed in (A) and (B) below.

(A) Walkways shall be provided connecting building entrances and streets adjoining the site;

(B) Pedestrian connections to adjoining properties shall be provided except where such a connection is impracticable as provided for in OAR 660-012-0045 (3) (b) (E). Pedestrian connections shall connect the on site circulation system to existing or proposed streets, walkways, and driveways that abut the property. Where adjacent properties are undeveloped or have potential for redevelopment, streets, accessways and walkways on site shall be laid out or stubbed to allow for extension to the adjoining property;

(C) In addition to (A) and (B) above, on sites at major transit stops provide the following:

(i) Either locate buildings within 20 feet of the transit stop, a transit street or an intersection street or provide a pedestrian plaza at the transit stop or a street intersection;

(ii) A reasonably direct pedestrian connection between the transit stop and building entrances on the site;

(iii) A transit passenger landing pad accessible to disabled persons;

(iv) An easement or dedication for a passenger shelter if requested by the transit provider; and

(v) Lighting at the transit stop.

(c) Local governments may implement (4) (b) (A) and (B) above through the designation of districts and adoption of appropriate implementing measures regulation development within pedestrian districts. Pedestrian districts must comply with the requirement of (4) (b) (C) above;

(d) Designated employee parking areas in new developments shall provide preferential parking for carpools and vanpools;

(e) Existing development shall be allowed to redevelop a portion of existing parking areas for transit-oriented uses, including bus stops and pullouts, bus shelters, park and ride stations, transit-oriented developments, and similar facilities, where appropriate;

(f) Road systems for new development shall be provided that can be adequately served by transit, including provision of pedestrian access to existing and identified future transit routes. This shall include, where appropriate, separate accessways to minimize travel distances;

(g) Along existing or planned transit routes, designation of types and densities of land uses adequate to support transit.

City of Bend Response to OAR 660-012-0045 (4): The new code encourages transit-oriented developments, as described in the following paragraphs.

Chapter 2.1 Section 300 – *Building setbacks*; requires that the building setback standards encourage placement of residences close to the street.

Chapter 3.6 Section 300 – *Non-residential uses*; requires that for neighborhood commercial uses, off-street parking, driveways and other vehicular use and circulation areas shall not be placed between a building and the street.

Chapter 2.2 Section 100 – *Purpose*; states that one of the purposes of the Central Business District (CB), Convenience Commercial District (CC), Limited Commercial District (CL) and General Commercial District (CG) is to facilitate development (land use mix, density and design) that supports public transit where applicable.

Chapter 2.2 Section 600 – *Block Layout and Building Orientation*; promotes walkable, storefront character in commercial districts and facilitates walking, bicycling and transit use by forming short blocks. This section also requires that all commercial developments shall be oriented to a street where practical. Pedestrian pathways shall be provided from the street right-of-way to buildings, as necessary to ensure reasonably safe, direct, and convenient access to building entrances and off-street parking. In addition, buildings shall have an entrance(s) visible or oriented to (facing) a street.

Chapter 3.3 provides the standards for parking. Chapter 3.4 provides the standards for roads adequate for public transit service.

(5) In MPO areas, local governments shall adopt land use and subdivision regulations to reduce reliance on the automobile which:

(a) Allow transit-oriented developments (TODs) on lands along transit routes;

(b) Implements a demand management program to meet the measurable standards set in the TSP in response to OAR 660-012-0035 (4):

(c) Implements a parking plan which:

(A) Achieves a 10% reduction in the number of parking spaces per capita in the MPO area over the planning period. This may be accomplished through a combination of restrictions on development of new parking spaces and requirements that existing parking spaces be redeveloped to other uses;

(B) Aids in achieving the measurable standards set in the TSP in response to OAR 660-012-0035 (4);

(C) Includes land use and subdivision regulations setting minimum and maximum parking requirements in appropriate locations, such as downtowns, designated regional or community centers, and transit oriented-developments; and

(D) Is consistent with demand management programs, transit-oriented development requirements and planned transit service.

(d) As an alternative to (c) above, local governments in an MPO may instead revise ordinance requirements for parking as follows:

(A) Reduce minimum off-street parking requirements for all non-residential uses from 1990 levels;

(B) Allow provision of on-street parking, long-term lease parking, and shared parking to meet minimum off-street parking requirements;

(C) Establish off-street parking maximums in appropriate locations, such as downtowns, designated regional or community centers, and transit-oriented developments;

(D) Exempt structured parking and on-street parking from parking maximums;

(E) Require that parking lots over 3 acres in size provide street-like features along major driveways (including curbs, sidewalks, and street trees or planting strips); and

(F) Provide for designation of residential parking districts.

(e) Require all major industrial, institutional, retail and office developments to provide either a transit stop on site or connection to a transit stop along a transit trunk route when the transit operator requires such an improvement.

City of Bend Response to OAR 660-012-0045 (5): The new code implements land use and subdivision regulations that help promote reduced reliance on the automobile. The Transportation Planning Rule (TPR) applies specific

requirements to local governments located in MPO areas. The city of Bend currently meets the criteria for designation as an MPO; however, this designation had not yet occurred when the TSP was adopted in November 2000. Therefore, the requirements of the TPR related to MPO areas did not apply to the city of Bend. The city of Bend was designated as an MPO on December 18, 2002.

As described in the following paragraphs, as a result of adopting the new Development Code, the city of Bend also has taken significant steps toward complying with the MPO requirements in OAR 660-012-0045 (5).

The new Development Code allows and encourages transit-oriented developments as described above in the city of Bend's response to OAR 660-012-0045 (4).

In October 2001, the city of Bend implemented a Transportation Demand Management (TDM) Program, in accordance with the State Transportation Planning Rule, the Bend Area General Plan, and the Bend Transportation System Plan. The specific goals and objectives of the City's TDM Program were developed based on the directives outlined in the Bend Transportation System Plan.

The Program consists of three components: an Employee Program, Policy Directions, and Strategic Planning. Under a contract with the city of Bend, *Commute Options for Central Oregon* implements the Strategic Planning component of the Program. The Strategic Planning component of the Program is focused on long-term program development and outreach and partnership-building to engage various community interests in TDM. The following outlines Commute Options' commitment to the city of Bend with regard to the implementation of this component of the City's TDM Program.

- Identify and establish relationships with other community groups, committees, and organizations that can contribute to the implementation of the city of Bend's TDM goals.
- Provide information, assistance and support to Bend employers in developing and implementing TDM programs to serve their employees.
- Assist with corporate outreach during Commute Options Week.
- Work with the Bend-LaPine School District to develop and implement a TDM program to encourage staff and students to bicycle, walk, carpool and ride the bus to school.
- Work with the Bend Downtowners Association and the Bend Chamber of Commerce to encourage businesses to adopt TDM programs and measures for their employees, and to assist them with the implementation of such measures.
- Work with the Clean Air Committee, the city of Bend Parking Manager, Bend Area Transit (BAT) and the Urban Renewal District to promote alternative modes of transportation.
- Develop TDM promotional and informational materials for inclusion in the City's quarterly newsletter, the City web site and the Clean Air Committee newsletter.
- Work with the Central Oregon Bicycle Transportation Alliance and the Deschutes County Bicycle/Pedestrian Committee to educate the general public about the rights and responsibilities of bicyclists on City streets.
- Prepare and submit to the City quarterly reports that demonstrate Commute Options' progress toward meeting the identified measurable outcomes.

The new Development Code, in Chapter 3.3 – *Vehicle Parking, Loading and Bicycle Parking*; implements a parking plan which helps to achieve the 10% reduction in the number of parking spaces per capita in the MPO area over the

planning period, it supports the reduction of automobile vehicle miles traveled (VMT) per capita, it sets minimum and maximum parking requirements, and it is consistent with TDM programs, transit-oriented development requirements, and planned transit service.

In Chapter 3.3 Section 300 – *Vehicle Parking Standards for On-site Requirements*; the new Development Code contains new minimum off-street parking requirements that are lower than existing requirements, thus reducing requirements below 1990 levels and helping to achieve a reduction in the number of parking spaces per capita and the reduction in VMT over the planning period. This section of the new Development Code also contains maximum off-street parking requirements that state the number of parking spaces provided by any particular use in ground surface parking lots shall not exceed the required minimum number of spaces provided by more than 50%. Spaces provided on-street, or within the building footprint of structures, such as in rooftop parking, or under-structure parking, or in multi-level parking above or below surface lots, shall not apply toward the maximum number of allowable spaces. This section of the new Development Code is consistent with TDM programs and transit-oriented development requirements because it allows the total number of required motor vehicle parking spaces for an industrial, commercial, or office use to be reduced by 5% for providing a transit facility (e.g., bus stop) that is approved by the local transit authority, with related amenities (e.g., public plaza, pedestrian sitting areas, shelter, and additional landscaping) and for other incentive programs provided in an approved Employee TDM Plan.

Chapter 3.3 Section 300 – *Vehicle Parking Standards for On-site Requirements*; allows provision of on-street parking and shared parking to meet minimum off-street parking requirements. Uses within the CB Zone may pay a fee in lieu of providing the required parking, with the fee used only for the planning, acquisition, development and maintenance of off-street parking facilities located in and/or adjacent to the CB Zone.

In Chapter 3.3 Section 300 – *Vehicle Parking Standards for On-site Requirements*; the amount of off-street parking required may be reduced by one off-street parking space for every on-street parking space abutting the development, up to 50% of the requirement, except for uses in the CB Zone. On-street parking spaces credited for a specific use may not be used exclusively by that use, but shall be available for general public use at all times. Shared parking is encouraged. Required parking facilities for two or more uses, structures, or parcels of land may be satisfied by the same parking facilities used jointly, to the extent that the owners or operators show that the need for parking facilities does not materially overlap, and provided that the right of joint use is evidenced by a binding agreement that is tied to the land or similar written instrument establishing the joint use. The motor vehicle parking areas shall be located and designed to facilitate safe and convenient pedestrian and bicycle movement to and from public sidewalks, streets, or transit stops. Internal drives or streets are designed to City standards for local streets in regard to pavement width, sidewalks, and street trees.

Chapter 3.2 Section 300 – *New landscaping*; requires that one tree per eight (8) parking spaces shall be planted to create a partial tree canopy over and around parking areas.

(6) In developing a bicycle and pedestrian circulation plan as required by OAR 660-012-0020 (2) (d), local governments shall identify improvements to facilitate bicycle and pedestrian trips to meet local travel needs in developed areas. Appropriate improvements should provide for more direct, convenient and safer bicycle or pedestrian travel within and between residential areas and neighborhood activity centers (i.e., schools, shopping, transit stops). Specific measures include, for example, constructing walkways between cul-de-sacs and adjacent roads, providing

walkways between buildings, and providing direct access between adjacent uses.

City of Bend Response to OAR 660-012-0045 (6): The new code identifies improvements to facilitate bicycle and pedestrian trips to meet local travel needs in developed areas in Chapter 3.1 Section 300 – *Pedestrian Access and Circulation.* The City also recently completed a comprehensive amendment to the TSP (PZ 06-481, on 10-18-06) that further addressed Remand issues related to OAR 660-012-0020.

(7) Local governments shall establish standards for local streets and accessways that minimize pavement width and total right-of-way consistent with the operational needs of the facility. The intent of this requirement is that local governments consider and reduce excessive standards for local streets and accessways in order to reduce the cost of construction, provide for more efficient use of urban land, provide for emergency vehicle access while discouraging inappropriate traffic volumes and speeds, and which accommodate convenient pedestrian and bicycle circulation. Not withstanding subsection (1) or (3) of this section, local street standards adopted to meet this requirement need not be adopted as land use regulations.

City of Bend Response to OAR 660-012-0045 (7): The new code establishes standards for local streets and accessways that minimize pavement width and total right-of-way consistent with the operational needs for the facility in Chapter 3.4 Section 200 – *Transportation Improvement Standards* and Chapter 3.4 Section 1000 – *Street Improvement Standards.*

- ***TSP Amendments:***

No TSP amendments are recommended to respond to this element of the Remand.

II. ANALYSIS

A. LOCATION

The proposed amendments will affect the *city wide* planning for Bend area streets.

B. PUBLIC HEARING NOTICE

Notices of public hearings were published in ***The Bend Bulletin***, on November 17, 2006, for the *Planning Commission* hearing and on December 10, 2006 for the *City Council* hearing. Hearing notice was also sent (by U.S. Postal mail) to those (5) parties that had appealed the original adoption of the Bend Transportation System Plan.

PROPOSAL DESCRIPTION

Approval of this proposed amendment will modify the Bend Urban Area General Plan, Chapter Seven, AND the Transportation System Plan [TSP]. It addresses items that were stipulated in a remand order from the Oregon Department of Land Conservation and Development to address issues that were identified in an earlier adoption of the Periodic Review subtask item. This amendment will address:

1. ESEE analysis and Goal 5 resource protection
2. Resolving conflicts with the Oregon Highway Plan
3. Ensuring coordination with Deschutes County for the improvement of roads to urban standards within Urban Area Reserves (UARs)
4. Ensuring coordination with the Bend Metro Parks and Recreation District and general citizen involvement in river crossing transportation facility design.

5. Adoption of Land Use Regulations consistent with the Transportation Planning Rule (OAR 660-012)

APPLICABLE CRITERIA

(1) The Bend Area General Plan

Future plan Updates – General Plan Preface: *"The General Plan is a document that changes over time to reflect new information and new directions for the future. Amendments or additions to the General Plan text, exhibits, and policies go through a public hearing and review process before being adopted by the governing bodies. Changes and updates can be generated in at least six ways:"...* [The applicable items:]

- (Second bulleted item) *"Evaluation of land use topics required to be reviewed under the Oregon Land Conservation and Development Commission's periodic review of the General Plan. The state requires all local plans to be updated periodically to comply with applicable new state laws, administrative rules, or to incorporate new data available to the state."...*
- (Fourth bulleted item) *"City or county response to new issues or changes. Issues that were unforeseen during the development of the plan can arise that have an impact on a particular neighborhood or the whole urban area. The city and county officials can direct staff to amend the Plan to address these issues."...*

Findings:

1. ***These amendments will complete part of the DLCD remanded issues concerning Task 1 of the Periodic Review Work Program, as it relates to ESEE analysis and Goal 5 resource protection, resolving conflicts with the Oregon Highway Plan, ensuring coordination with Deschutes County for the improvement of roads to urban standards within Urban Area Reserves (UARs), ensuring coordination with the Bend Metro Parks and Recreation District and general citizen involvement in river crossing transportation facility design, and adoption of Land Use Regulations consistent with the Transportation Planning Rule (OAR 660-012)***
2. ***It will bring the City General Plan into conformance with state statutes and administrative rules as applicable to these issues. The proposed changes to the TSP will fulfill this directive.***

(2) Bend Urban Area Transportation System Plan

*(TSP **Goals** which are applicable to the amendments)*

5.0.1.2 Plan Goals

Mobility and Balance:

- Develop a transportation system that serves all modes of travel and reduces the reliance on the automobile.
- Provide a variety of practical and convenient means to move people and goods within the urban area.

Efficiency:

- Address traffic congestion and problem areas by evaluating the broadest range of transportation solutions.
- Encourage the development of land use patterns that provide efficient, compact use of land, and facilitate a reduced number and length of trips.

Accessibility and Equity:

- Provide people of all income levels with the widest range of travel and access options within the Bend urban area.
- Provide all transportation modes access to all parts of the community.

Environmental:

- Recognize and respect the natural features over which transportation improvements pass to minimize adverse impacts.
- Design transportation improvements to preserve air and water quality, minimize noise impacts, and encourage energy conservation.

Livability:

- Design and locate transportation facilities to be sensitive to protecting the livability of the community.

(*TSP* ***Objectives, Policies*** *and* ***Implementation*** *elements which are applicable to the amendments*)

6.9.1 TRANSPORTATION AND LAND USE

Objectives:

- To promote land use patterns that support fewer vehicle trips and shorter trip lengths
- To ensure that future development, including re-development will not interfere with the completion of Bend's transportation system

Policies:

1. Medium and high-density residential development shall be located where they have good access to arterial streets and be near commercial services, employment and public open space to provide the maximum convenience to high concentrations of population.

3. The City shall consider potential land needs for long-range transportation system corridor improvements and related facilities including transit during the review of subdivisions, partitions, and individual site applications.

4. Developments at the edge of the urban area shall be designed to provide connectivity to existing and future development adjacent to the urban area.

5. The Zoning Ordinance shall be revised so that building design, building orientation and site plans for commercial and public facilities promote pedestrian and bicycle access to and from nearby neighborhoods.

6. The City shall continue to explore mixed use zoning as one of the land use patterns that will promote fewer vehicle trips and shorter trip lengths.

7. The City should be receptive to innovative development proposals, including zone changes, plan amendments, and text changes that promote alternatives to vehicular traffic thus reducing vehicle trips and reduced trip lengths.

Implementation:

1. In general, implementation of these objectives and policies will occur during the review and processing of individual land use applications.

2. Policies 1, 3, 4, and 5 will be implemented by reviewing and updating the standards in the General Plan, subdivision code and zoning code.

3. City staff shall review and update the General Plan amendment criteria and zone change criteria to encourage innovative developments that reduce motor vehicle trips or trip lengths and to encourage mixed-use development.

4. City staff will study the impact of new mixed-use developments in Oregon on reducing motor vehicle trip numbers and length of trips.

5. City staff will review development codes from other cities for examples of performance standards that continue to improve the transportation system.

6.9.4 PEDESTRIAN AND BICYCLE SYSTEMS

Objectives:

- To support and encourage increased levels of bicycling and walking as an alternative to the automobile
- To provide safe, accessible and convenient bicycling and walking facilities

6.9.5 PUBLIC TRANSPORTATION SYSTEM

Objectives:

- Continue to develop public transportation services for the transportation disadvantaged
- Reduce reliance on automobiles and develop public transportation facilities
- Increase mobility and accessibility throughout the urban area
- Continue to provide infrastructure and land use planning to support transit

Policy:

5. To accommodate a fixed-route transit system, land use ordinances and other regulations shall be implemented that establish pedestrian and transit-friendly design along potential or existing transit routes.

Implementation:

5. To accommodate a fixed-route transit system, land use ordinances and other regulations shall be implemented that establish pedestrian and transit-friendly design along potential or existing transit routes.

Findings:

1. ***The proposed plan amendment is consistent with and further fulfills the goals of the Bend TSP.***

2. ***The proposed plan amendment is consistent with and further fulfills the objectives, policies and implementation strategies of the Bend TSP.***

(3) State of Oregon – Transportation Planning Rule (OAR: 660-012)

The State Department of Land Use, Conservation and Development (DLCD) reviewed the City adopted Transportation System Plan for consistency with the Transportation Planning Rule and "remanded" certain items back to the City for refinement and/or additional clarification, and amendment.

Findings:

1. ***An amendment has been prepared as part of Bend's Periodic Review of the Bend Area General Plan, as required by state law. Task 1 of the Periodic Review work program, adopted by the City in October 2000, and later remanded to the City (Remand Order No. 001291), in March 2001, that required the City to perform additional review and policy revisions on various elements of the plan.***

2. ***Inventory work has been completed by the city of Bend which has identified resource areas consistent with Statewide Goal Planning 5***

and the Waterway Overlay Ordinance has been adopted to ensure protection of theses areas.

3. ***The amendments ensure TSP direction as it relates to:***
   a) ***Providing Policy direction toward evaluating and implementing Goal 5 resource protection.***
   b) ***Resolving any potential conflicts as it relates to the fulfilling mobility standards established by the Oregon Highway Plan, specifically as it relates to Highway 20.***
   c) ***Ensuring coordination with Deschutes County as it relates to building roadways to an urban standard beyond the City Urban Growth Boundary.***
   d) ***Ensuring coordination with the Bend Metro Parks and Recreation District and general citizen involvement in river crossing transportation facility design.***
4. ***Adoption of the new Bend Development Code has further fulfilled local Code compliance with the State Transportation Planning Rule particularly as it relates to development of transit-friendly community design.***

III. CONCLUSION

Based on the Findings of Fact, staff finds that this proposed action satisfies all applicable criteria for amendment of the Bend Area General Plan (BAGP)/ Transportation System Plan (TSP), and resolves the pertinent elements of the DLCD Remand of the BUATSP regarding the Bicycle and Pedestrian Plan.

IV. RECOMMENDATION

Staff recommends that the proposed amendments to the BAGP/TSP and Text as described in, and incorporated within, the Ordinance, attached as Exhibit A, be adopted by the Bend City Council.

BLANK PAGE

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK

2007-42802

$41.00

00565099200700428020030048

08/03/2007 12:13:35 PM

D-IPPS Cnt=1 Stn=25 CE
$15.00 $11.00 $10.00 $5.00

Do not remove this page from original document.

Deschutes County Clerk

Certificate Page

If this instrument is being re-recorded, please complete the following statement, in accordance with ORS 205.244:

Re-recorded to correct [give reason] _____
previously recorded in Book _____ and Page _____,
or as Fee Number _____.

ORDINANCE NO. NS-2039

AN ORDINANCE VACATING PORTION OF THE ALLEY IN BLOCK 6, MILL ADDITION THAT LIES WITHIN SW ¼ OF SW ¼ OF SECTION 32, TOWNSHIP 17 SOUTH, RANGE 12 EAST, W.M., IN THE CITY OF BEND, DESCHUTES COUNTY, OREGON.

A petition having been presented to the Bend City Council on July 19, 2006 requesting that the following described area be vacated:

SEE EXHIBIT "A"

and stating the purpose for which the described property is proposed to be used and the reason for such vacation; and said petition being duly acknowledged;

The City of Bend having caused a notice of public hearing for vacation of public property describing the above street right of ways to be published in the Bulletin, as provided by ORS 271.110, once each week for two (2) consecutive weeks;

Within five days after the first day of publication of said notice, the City having caused a notice of street vacation to be posted at or near each end of the proposed vacation and in at least two conspicuous places in the proposed vacation area; the first publication and posting of said notice having occurred not less than 14 days prior to the hearing for said proposed vacation;

The City Council of the City of Bend having fixed the 6th day of December, 2006, at 7:00 p.m. local time in the City Council Chambers at 710 NW Wall Street, City of Bend, Oregon, as the time and place for the hearing upon said proceedings and at that time having heard all objections to the proposed vacation; and;

The City Council having determined that the public interest will not be prejudiced by the proposed vacation and that the property should be vacated:

NOW, THEREFORE, THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

That the above described portion of street right of ways located in Bend, Deschutes County, Oregon, be vacated subject to the following:

That the Petitioner dedicate to the City the land described in Exhibit A as the "proposed alley to be dedicated with Miller's Landing Project", the Petitioner construct and the City accept the alley and related improvements.

The City Recorder shall forthwith cause a certified copy of this ordinance to be filed and recorded in the Office of the County Clerk of Deschutes County, Oregon.

Read for the first time the 20th day of December, 2006.

Read for the second time the 17th day of January, 2007.

Placed upon its passage the 17th day of January, 2007.

Yes: 7 No: 0

Authenticated by the Mayor the 17th day of January, 2007.

Bruce Abernethy

Bruce Abernethy, Mayor

ATTEST:

Patricia S Stell

Patricia Stell, City Recorder

Please record pages 1-3 of Ordinance NS-2039 after Recording Return to Deputy City Recorder, City of Bend, 710 NW Wall, Bend 97701

W&H PACIFIC
AN ASCG COMPANY

920 SW Emkay, Suite C100
Bend, Oregon 97702-1041
541.388.4255
Fax 541.388.4229

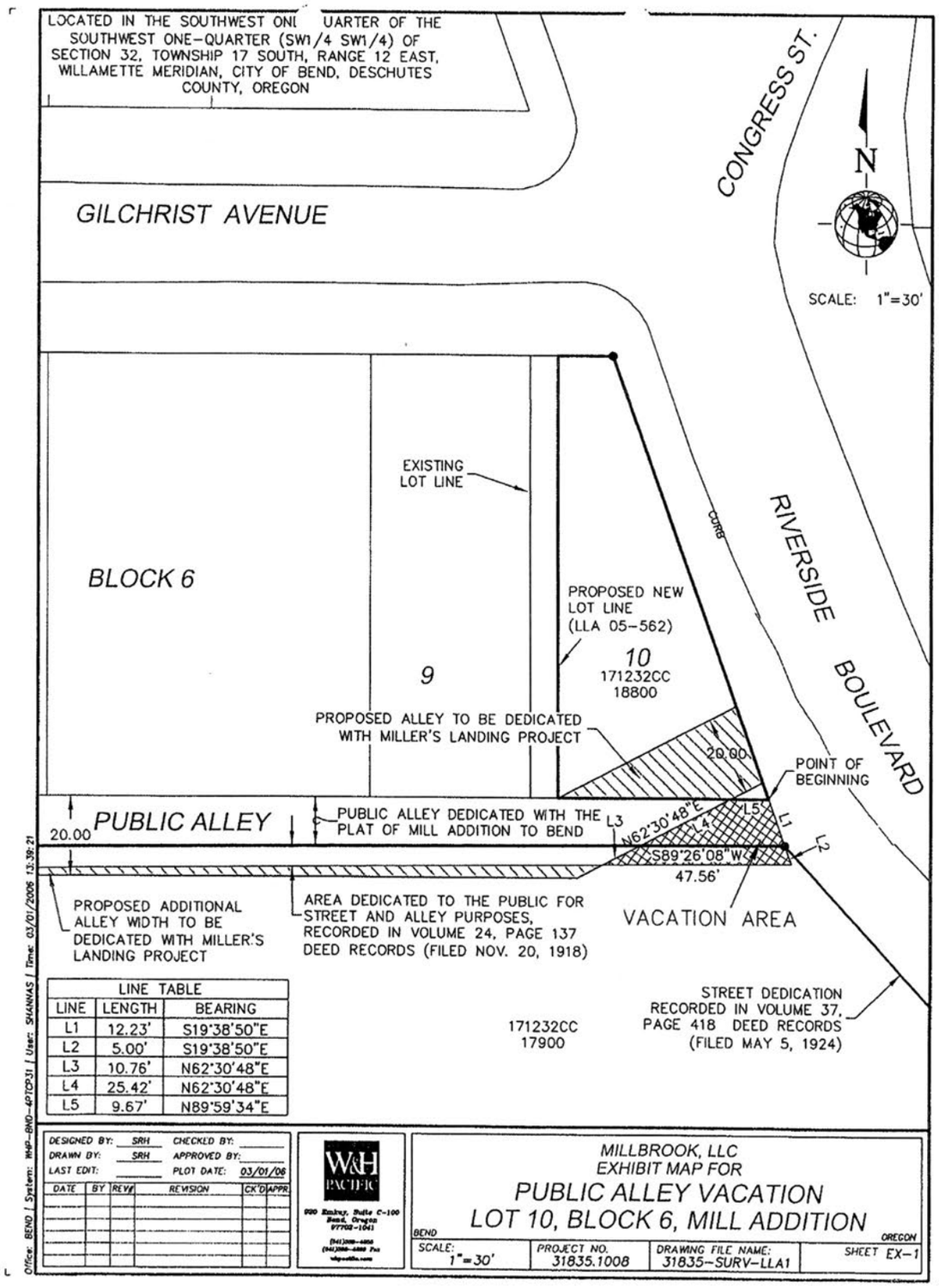
PUBLIC ALLEY VACATION

A parcel of land located in the southwest one-quarter of the southwest one-quarter (SW1/4 SW1/4) of Section 32, Township 17 South, Range 12 East, Willamette Meridian, City of Bend, Deschutes County, Oregon being more particularly described as follows:

Beginning at the southeast corner of Lot 10, Block 6, Mill Addition to Bend, City of Bend, Deschutes County, Oregon, said point being on the westerly right of way of Riverside Boulevard; thence along said westerly right of way, South 19°38'50" East, 12.23 feet to the southeast corner of the plat of Mill Addition to Bend; thence along the easterly line of that tract of land dedicated to the public in Volume 24, Page 137, Deed Records, South 19°38'50" East, 5.00 feet; thence along the southerly line of said tract, South 89°26'08" West, 47.56 feet; thence leaving said southerly line, North 62°30'48" East, 10.76' to a point on the south line of said plat of Mill Addition to Bend; thence continuing North 62°30'48" East, 25.42 feet to the south line of said Lot 10; thence along said south line, North 89°59'34" East, 9.67 feet to said southeast corner of Lot 10 and the True Point of Beginning.

Said parcel contains 468 square feet, more or less.

REGISTERED
PROFESSIONAL
LAND SURVEYOR
Steven R Hannas
OREGON
JULY 11, 2000
STEVEN R. HANNAS
47021
RENEWAL DATE: 6-30-07


LOCATED IN THE SOUTHWEST ONE QUARTER OF THE SOUTHWEST ONE-QUARTER (SW1/4 SW1/4) OF SECTION 32, TOWNSHIP 17 SOUTH, RANGE 12 EAST, WILLAMETTE MERIDIAN, CITY OF BEND, DESCHUTES COUNTY, OREGON
GILCHRIST AVENUE
CONGRESS ST.
N
SCALE: 1"=30'
EXISTING LOT LINE
BLOCK 6
9
PROPOSED NEW LOT LINE (LLA 05-562)
10
171232CC 18800
CURB
RIVERSIDE BOULEVARD
PROPOSED ALLEY TO BE DEDICATED WITH MILLER'S LANDING PROJECT
20.00
POINT OF BEGINNING
20.00 PUBLIC ALLEY
PUBLIC ALLEY DEDICATED WITH THE PLAT OF MILL ADDITION TO BEND
L3
N62°30'48"E
L4
L5
L1
L2
S89°26'08"W
47.56'
VACATION AREA
PROPOSED ADDITIONAL ALLEY WIDTH TO BE DEDICATED WITH MILLER'S LANDING PROJECT
AREA DEDICATED TO THE PUBLIC FOR STREET AND ALLEY PURPOSES, RECORDED IN VOLUME 24, PAGE 137 DEED RECORDS (FILED NOV. 20, 1918)
171232CC 17900
STREET DEDICATION RECORDED IN VOLUME 37, PAGE 418 DEED RECORDS (FILED MAY 5, 1924)
LINE TABLE
LINE | LENGTH | BEARING
L1 | 12.23' | S19°38'50"E
L2 | 5.00' | S19°38'50"E
L3 | 10.76' | N62°30'48"E
L4 | 25.42' | N62°30'48"E
L5 | 9.67' | N89°59'34"E
DESIGNED BY: SRH CHECKED BY:
DRAWN BY: SRH APPROVED BY:
LAST EDIT: PLOT DATE: 03/01/06
DATE | BY | REV# | REVISION | CK'D | APPR
W&H PACIFIC
920 Emkay, Suite C-100 Bend, Oregon 97702-1641
MILLBROOK, LLC
EXHIBIT MAP FOR
PUBLIC ALLEY VACATION
LOT 10, BLOCK 6, MILL ADDITION
BEND OREGON
SCALE: 1"=30'
PROJECT NO. 31835.1008
DRAWING FILE NAME: 31835-SURV-LLA1
SHEET EX-1
Office: BEND | System: WHP-BND-4PTCP31 | User: SHANNAS | Time: 03/01/2006 13:38:21

BLANK PAGE

ORDINANCE NO. NS-2040

AN ORDINANCE AMENDING THE CITY OF BEND AREA ZONING MAP, BY CHANGING THE ZONING DESIGNATION OF A PARCEL OF LAND AS SHOWN IN EXHIBIT "A" FROM UAR, URBAN AREA RESERVE, TO RS, STANDARD DENSITY RESIDENTIAL.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council has held a public hearing, considered the Hearings Officer's findings and record, and has found that there is a public need and benefit for the proposed change. The Bend City Council adopts the Findings and Recommendation of the Hearings Officer dated December 10, 2006 file number PZ-06-569.

Section 2. The Bend Area Zoning Map is amended by changing the designation of the property described as Tax Assessor's Map 17-11-26, Tax Lot 108, as shown in Exhibit "A". The change will be from Urban Area Reserve (UAR) to Urban Standard Density Residential (RS).

Read for the first time the 17th day of January, 2007.

Read for the second time the 7th day of February, 2007.

Placed upon its passage the 7th day of February, 2007.

YES: 7 NO: 0

Authenticated by the Mayor the 7TH day of February, 2007.

Bruce Abernethy

Bruce Abernethy, Mayor

ATTEST:

Patricia S Stell

Patricia Stell, City of Bend Recorder

Exhibit A
Zone Change from Urban Area Reserve to Standard Density Residential
1 in = 421.3 feet
SUBJECT PROPERTY (UAR)
(RS)
SKYLINE RANCH RD
MCCARRAN DR
PARKSIDE RANCH DR
MT MAGRUDER AVE
MT MAGRUDER CT
MT MAGRUDER DR

ORDINANCE NO. NS-2041

AN ORDINANCE AMENDING THE CITY OF BEND AREA ZONING MAP, BY CHANGING THE ZONING DESIGNATION OF A PARCEL OF LAND AS SHOWN IN EXHIBIT "A" FROM STANDARD DENSITY RESIDENTIAL (RS) TO URBAN MEDIUM DENSITY RESIDENTIAL (RM).

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council has held a public hearing, considered the Hearings Officer's findings and record, and has found that there is a public need and benefit for the proposed change. Except as provided in Section 3 hereof, the Bend City Council adopts the Findings and Recommendation of the Hearings Officer dated December 20, 2006 file number PZ-06-490.

Section 2. The Bend Area Zoning Map is amended by changing the designation of the property described as Tax Assessor's Map 17-11-28CA, Tax Lots 800, 1100 and 1201, as shown in Exhibit "A". The change will be from Urban Standard Density Residential (RS) to urban medium Density residential (RM).

Section 3. In order to provide compatibility between the proposed development, the solar access required by the Bend Zoning Ordinance NS-1178 shall be required for any construction on the 4 proposed lots, lot numbers 55, 56, 57, and 58, that lie directly south of the home on tax lot 803 on Deschutes County Tax Assessor's Map #17-12-28 CA, also known as 2135 NE 8th Street, in Bend, OR.

Read for the first time the 21st day of February, 2007.

Read for the second time the 7th day of March, 2007.

Placed upon its passage the 7th day of March, 2007.

YES: 6 NO: 0

Authenticated by the Mayor the 7th day of March, 2007.

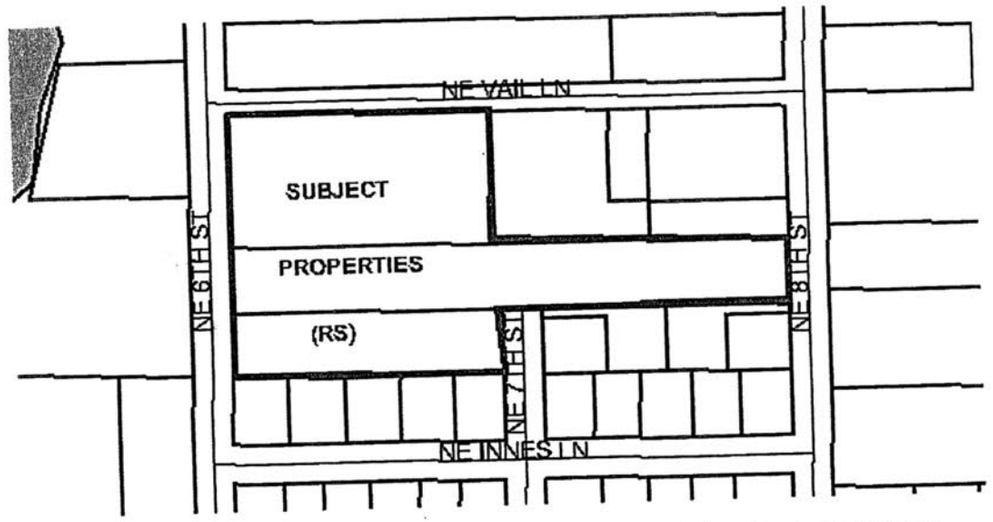
Bruce Abernethy, Mayor

ATTEST:

Patricia S. Stell

Patricia Stell, City of Bend Recorder

Exhibit A



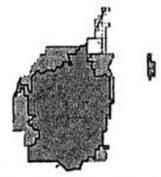
Zone Change from Urban Standard Density Residential to Urban Medium Residential Density

1 in. = 102.0 feet

canals
Streams
Streets
Taxlots
Current Zoning
CB
CC
CG
CH
CL
CN
IG
IL
IP
MC
MR
PF
PO
PO/RM/RS
RH
RL
RM
RS
SM
SR2-1/2
UAR10
Deschutes River
bend city limits
Urban Area Reserve (UAR)

LGmaps

Tax Map 17-12-28CA 00800,01100,01201 Zone Change from Urban Standard Residential Density to Urban Medium Density Residential



ORDINANCE NS-2042

AN ORDINANCE ESTABLISHING AN ECONOMIC IMPROVEMENT DISTRICT WITHIN THE CITY'S CENTRAL BUSINESS DISTRICT APPLYING ONLY TO COMMERICIAL PROPERTIES, AND ESTABLISHING A PROCESS FOR IMPOSITION OF ASSESSMENTS

WHEREAS, the City Council upon request by various downtown business and property owners, through the Bend Downtowners' Association, Inc., conducted a public hearing on March 7, 2007 on the question whether to create the BEND DOWNTOWN ECONOMIC IMPROVEMENT DISTRICT; and

WHEREAS, the City provided not less than thirty days notice of the March 7, 2007 hearing; and

WHEREAS, ORS 223.112 to ORS 223.161 authorizes the City to establish economic improvement districts and to use assessments from the district to fund specific economic improvement projects, which power is in addition to other powers of the City to form economic improvement districts under ORS 223.132; and

WHEREAS, the City Council finds that the creation of the District has various beneficial purposes as set forth in this ordinance; and

AND WHEREAS, the City is required after establishment of the District to provide notice to property owners of assessments and then conduct an additional hearing to receive remonstrances (also called objections), if any.

THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

Section 1: **Findings:** The City Council adopts the following findings of facts:

1) The City Council on March 7, 2007 held a public hearing regarding the establishment of an economic improvement district;

2) Written notices to the affected property owners were mailed no less than thirty (30) days prior to that hearing:

3) The area within the boundaries of the proposed district is zoned commercial;

4) No residential real property or any portion of a structure used primarily for residential purposes will be assessed;

5) A preliminary estimate of the probable cost of the activities to be funded pursuant to Section 2 of this Ordinance is approximately $100,000.00 per year, and the proposed formula for apportioning costs is set forth in Section 4 of this Ordinance;

6) The rate to be assessed each benefited and assessed property is in proportion to the benefit that the property may be derived from the district.

Section 2: **Creation of District:**

(a) The City Council of Bend hereby approves and creates the "Bend Downtown Economic Improvement District." The Bend Economic Improvement District is authorized to make economic improvements defined by ORS 221.112(2), and in particular, is authorized to expend revenues generated by assessments imposed by this ordinance and the assessment resolution on the following improvements, which shall all be deemed part of the economic improvement project undertaken by the Economic Improvement District as provided in ORS 223.117(1)(a):

- Flower baskets-every block-spring and summer
- Beautified planters-every block-year around
- Sidewalk snow removal-District wide-November to April
- Sidewalk sweeping and debris removal-year around
- Graffiti removal-year around
- Tree lights-winter
- Holiday Wreaths-winter
- Banners
- Benches
- Outdoor Music

Beautification projects and services will be provided equally throughout the EID area with every block receiving flowers, every tree with electrical service receiving lights, etc. Maintenance will be performed throughout the entire EID area. Capital improvements will be phased in over the life of the EID in a geographically equitable manner. The EID will be managed by a professional director (Project Manager), paid from EID revenues for 30 hours per week.

The tasks of the Project Manager shall include, but not be limited to:

- Organize and oversee Committees that will help direct the economic improvement projects (beautification etc.)
- Research contractors for projects and operate RFP processes to find best candidates
- Oversee and manage contractors from concept to completion
- Develop quarterly reports to property and business owners on EID progress
- Coordinate resources with the City of Bend to ensure there is maximum leveraging of funding
- Report monthly progress in newsletter to all downtown stakeholders
- Organize and coordinate monthly Board Meetings to report on EID progress
- Oversee all fiscal EID activities including budgeting and accounts payable and receivable
- Act as a liaison between property and business owners and the City of Bend and others
- Organize monthly General Meetings to get information out to all stakeholders
- Meet regularly with property and business owners one on one to address issues
- Develop, negotiate, administrate all contracts and interact with all vendors
- Ensure execution of the Scope of Work
- Interact with City of Bend Finance Department to ensure accurate accounting of EID funding
- Work with property owners to ensure accurate assessment of square footage

(b) The boundaries of the District are as depicted on Exhibit A to this ordinance. All commercial property located within the boundary shall be subject to the assessment.

Section 3: **Duration:** The Bend Downtown Economic Improvement District shall be in effect for two (2) consecutive years, commencing upon adoption of a resolution assessing the affected property as provided Section 7(c) of this ordinance and as otherwise provided by law. Council may extend the duration of the District, after following the required public notice requirements and opportunity for remonstrances contained in ORS 223.122.

Section 4: **Assessment Rate:** The property shall be assessed as follows: $0.11 per square foot per year of real property, which shall not exceed one percent of the real market value of all real property located in the district.

Section 5: **Total Assessment:** The initial total assessment each year of the two (2) year term is expected to be approximately $100,000.00 subject to change as the amount of commercial building spaces changes.

Section 6. **Agreement to administer program and providing for the Expenditure of Funds.** City shall enter into an agreement with the Bend Downtowners' Association, Inc., for the Downtowners' to administer the EID funds, provide for public meetings, budget adoption and consideration at open publicly noticed meetings, limitations on expenditures and other appropriate matters. This agreement will be adopted at the time of approval of proposed assessments. No less than thirty-five percent of the voting members of the Board shall own real property within the district. Also, the City shall have at least one ex officio (nonvoting) member of the board who can participate in discussions, and provide liaison with the City.

Section 7. **Notice of assessments and hearing to receive remonstrances.**

(a) The City Clerk shall promptly mail or personally deliver to property owners within the boundaries of the District, a notice identifying the amount of the proposed assessment for each property, and informing the property owner of a public hearing scheduled for May 2, 2007 during the regular city council meeting at Bend City Hall, at which the property owners may appear to submit written objections (sometimes called remonstrances) to the assessment.

(b) The City Council will consider the objections and may adopt, correct, modify or revise the proposed assessment. The Council will not impose the assessment if written remonstrances are received at the public hearing from owners of property upon which more than 33 percent of the total amount of assessment is imposed.

(c) After the May 2, 2007 hearing, if the Council decides to impose the assessment, it shall impose the assessment by resolution, determine whether the properties within the district shall bear all or a portion of the costs of the activities to be funded, and approve the amount of assessment on each lot.

(d) The City Recorder, or designee, shall prepare the proposed assessment for each lot and file it in the city docket of liens.

Read for the first time the 7th day of March, 2007.

Read for the second time the 21st day of March, 2007.

Placed upon its passage the 21st day of March, 2007.

YES: 5 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 21st day of March, 2007.

Bruce Abernethy, Mayor

Attest:

Patricia Stell, City Recorder

ORDINANCE NO. NS-2043

**AN ORDINANCE AMENDING
THE CITY OF BEND GENERAL PLAN AND THE BEND URBAN AREA - TRANSPORTATION SYSTEM PLAN
IN RESPONSE TO A REMAND BY THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

WHEREAS, on November 12, 1998, the Oregon Department of Land Conservation and Development (DLCD) issued a notice of Periodic Review Order of the Bend Area General Plan; and

WHEREAS, on March 6, 2000, the DLCD gave final approval for a revised Periodic Review work program (Order No. 001110), including Task #1, adoption of a Transportation System Plan; and

WHEREAS, on October 11, 2000, the city of Bend adopted the Transportation System Plan (TSP) incorporating it into Chapter Seven of the Bend Area General Plan; and

WHEREAS, on March 1, 2001, the DLCD remanded several items (Remand Order No. 001291) of the TSP back to the City to address as a part of Periodic Review work subtasks; and

WHEREAS, on March 7, 2007, the Bend City Council held a public hearing, for which public notice was provided, to receive public testimony about a proposed ordinance to amend the Bend Area General Plan and the Bend Urban Area Transportation System Plan related to certain subtasks of Periodic Review.

THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

The Bend Area General Plan and Transportation System Plan are amended to read as follows (***Text additions*** are represented by **bold font** and ***deleted text*** is represented in **bold, strike-out font**):

SECTION ONE

Table of Contents

(Revise the Table of Contents, per the following recommended changes to sections of the TSP, as required.)

SECTION TWO

List of Figures and Illustrations

- **Delete Figure 18: Wall/Bond/Colorado/Arizona One-Way Pair (Couplet) System**
- **Replace** the existing Figure 15 with a **NEW Figure 15** titled: **Bend Area Transit (BAT) Route System** ***(see: Attached Exhibit A.1)***

SECTION THREE

List of Resource Documents

Add one document *to the list of Resource Documents:*

- **B.5.1 City of Bend – Final Service Plan, 2006**

SECTION FOUR

TSP: Chapter 3

(Replace the Sections 3.4.1 and 3.4.2 per the following:)

3.4 PUBLIC TRANSPORTATION SYSTEM
3.4.1 BEND DIAL-a-RIDE PROGRAM
Bend's Dial-a-Ride (DAR) system is available for use by low income seniors (60 and older) not living near a bus route and eligible disabled persons unable to use the fixed-route bus system. The Dial-a-Ride transit provides personalized door-to-door service and requires reservations up to two weeks in advance of a planned trip. The service is provided to participants within the city limits. The program operates Monday through Friday from 6:15 AM to 6:15 PM, and on Saturday 7:15 AM to 5:15 PM, and Sunday from 9:30 AM to 3:30 PM. The rides are provided at a cost of $2.00 per one-way trip, and $1.00 for certified low income riders. All vehicles are equipped with wheelchair lifts.

3.4.2 OTHER EXISTING PUBLIC TRANSPORTATION FACILITIES
There are currently two Park and Ride facilities located in the city of Bend. One is in the north (State owned) parking lot of the ODOT, Region 4, Administration Office and the other is the Mt. Bachelor (private owned) Parking lot, located at the northeast corner of Simpson Avenue and Columbia Street. The Mt. Bachelor parking lot is primarily used by Mt. Bachelor employees and their customers however some other park-and-ride (and, park-and-walk) activity is permitted at that location. Capacity of this lot is currently about 580 parking spaces. Mt. Bachelor staff has estimated that peak weekends use about 85-percent of the lot and normal weekend ski activity uses about 60 to 70-percent of the lot. The lot has also been used as an overflow, shuttle parking lot for large events in the Old Mill District, the downtown area and shuttle service during the County fair in Redmond each summer. Also, Commute Options for Central Oregon has been actively seeking other sites for Park and Ride activity.

SECTION FIVE

TSP: Chapter 5

(Replace Section 5.5.2 per the following:)

5.5.2 Public Transportation

5.5.2.0 Recommended Alternative Analysis: **In the transportation modeling of the *TSP Recommended Alternative*, a fixed-route transit system was contemplated, that would run along many of the arterial and collector streets throughout the urban area. The Kittelson Associates, Inc., Report (TSP - Appendix B: *Transportation Model Update*, KAI, June 2000) illustrated the roadways that would be served with transit (KAI Report - Figure 18). The report envisioned this transit network would serve the major travel corridors of the City in the year 2020.**

5.5.2.1 Transit Systems Evaluated:

In 1996, the City completed a *feasibility study* of transit for the Bend urban area[B.4]. The study evaluated alternatives that included a 3, 5 or 9-bus fixed-route system. The 5-bus (6-route) transit system, depicted in the 1996 study, is illustrated in Figure 13. This represented an example of the scale of the most likely type of *"start-up"* fixed-route transit system. The larger, more comprehensive 9-bus (7-route) transit system, illustrated in Figure 14, was a similar representation of the transit system envisioned in the TSP Recommended Alternative transportation modeling work. Considering the findings of this study, City Council deemed fixed-route transit service *feasible*, as required by the State Transportation Planning Rule (TPR).

In 2000, a study[B.5] was done on Dial-a-Ride to evaluate possible changes in this system for improving and adding general public service. This study proposed a six zone-route system. This service would have had hourly headways during peak afternoon hours and two-hour headways off-peak. This route zoning system would have been a demand-responsive service that would have traveled through defined service areas according a predefined window of time. Zone-routes would have been built around key destinations such as the medical center. The Zone-Route system was not pursued.

In 2006, a transit consultant provided a Service Plan analysis[B.5.1] of fixed-route service options that would meet City budget constraints, optimize transit related resources and meet demand for paratransit and demand response service. This work supported a recommendation that the City split allocated transit resources between operating both DAR and a fixed-route service. Various service options that included principally six fixed-routes were evaluated. The recommendations of that report supported the concept of reallocating the existing DAR funding in a manner that would provide both a limited fixed-route transit *and* paratransit service for just low income seniors and people with disabilities.

5.5.2.2 Transit Service Enhancements:

***Expanded Dial-a-Ride Service*: In 2002, the City opened up eligibility for the general public to use the Dial-a-Ride system. This was in response largely to the growing community concern that transit service was needed for a larger population than just seniors and the disabled.**

***Pilot Transit Project:* In the fall of 2006, based on the consultant's service plan recommendation, continued community interest in the need for general public transportation service, the fact that increased general ridership demand was now taxing the available DAR resources and the increase in demand was beginning to result in a growing number of *ride refusals*; the city of Bend initiated a "Pilot (Fixed-Route Transportation) Project". The new fixed-route service is illustrated in Figure 15. This system closely resembled the start-up system shown in Figure 13 The new fixed-route service was named; *Bend Area Transit* (BAT).**

This new fixed-route bus service began on September 27, 2006. The service includes seven routes with over 180 stops. Six routes are all day service and one is during peak morning and afternoon hours only. Service is provided Monday through Friday between 6:15 a.m. and 6:15 p.m. with buses running along routes on about 30-minute frequencies. Saturday service is hourly, between 7:15 a.m. and 5:15 p.m. DAR resumed service for eligible disabled riders that are unable to use the new fixed-route service and low income seniors that are not near a fixed-route. DAR service provides users with typically 'door to door' rides during the same hours as fixed-route transit. The fixed-route schedules are coordinated so buses would meet *on the hour* and *on the half hour* at a transit transfer station, located on NE Hawthorne Avenue between 3rd and 4th streets. This site was chosen over a downtown location due to its central location geographically and ease of accessibility by all of the bus routes.

No additional funding was added to the operation and maintenance of the combination of both of these transit services; rather resources for the entirety of the new system were principally split between the two. In this manner, equipment and manpower simply shifted proportionately between DAR and BAT to cover the requirements of the new Monday through Saturday service schedules. The City did maintain Sunday DAR service.

Capital Improvement Costs: **The City purchased six used, larger capacity buses for use on the new fixed-route service. All the new transit stops were identified with new curb side signing. Improvements were made to the existing roadway and sidewalks at the Transit Center at Hawthorne Avenue, as well as new lighting, new bike racks, new street trees and three new passenger shelters were placed at this site. Heating elements were installed within the new transit station sidewalks to address winter ice and snow conditions.**

Fixed-Route Service Evaluation: **City Council stipulated that when the new fixed-route service was established, an evaluation would be conducted after a period of about two years. Continuation of the service and/or expansion of the system would be contingent upon the satisfactory performance of the service and the availability of funding to dedicate to this transit service. Due to the demand on existing General Fund resources to fund transit, as well as, meeting other critical City services, there was a growing City Council and staff dialogue that a Transit District would ultimately need to be established in order to provide a stable, long-term funding stream for public transportation.**

5.5.2.3 Transit Service Funding: **In the fall of 2000, the City placed a local option tax measure on the ballot. This local option tax was proposed to provide a modest level of funding to support three things; roadway maintenance, sidewalk construction and funding for a fixed-route transit system. The measure failed.**

In the fall of 2004, the City again placed ballot measures before the voters this time seeking support to form both a *transit district* and the establishment of a *permanent tax rate* to support a district. The transit district would have covered a geographic area that was equivalent generally to the newly formed Metropolitan Planning Organization (MPO) boundary. Both measures failed.

The major issue with public transportation service continues today as to whether, or not, voters would support a transit operating funding measure (which is currently the traditional funding source for this type of public service). The 1996 Transit Feasibility Study did include a citizen survey that indicated that there was a strong community acknowledgment at the time that Bend had become large enough to have a transit system. However if the issue were put on the ballot, the survey suggested that voter support would be limited to a funding measure sufficient only to operate the 3-bus fixed-route system characterized in the report.

5.5.2.4 Transit Service Phasing Strategy: **The *TSP Recommended Transit Alternative* includes provision of a full-scale intra-city transportation service, available to the general public, as a part of the future transportation improvement strategy.**

Recognizing the fact that the City has limited funds for transit operation, the City will continue to actively seek voter approval of a funding measure sufficient to support public transportation. Also, other local partnerships, and state and federal grants will be pursued to augment transit funding.

If ballot measures remain unsuccessful, the City will continue to evaluate other strategies for gaining public transit funding for transit operations. These may include; redesigning or scaling back

the proposed funding measure, and resubmitting them for voter reconsideration.

Assuming stable, long-term funding is established, subsequent service expansions (i.e., additional routes) would occur typically, as warranted by transit ridership. Over a twenty-year time period, a more comprehensive transit system is envisioned (achieving, if not exceeding, the transit network illustrated in Figure 14). Also, the appropriate scale of transit capital improvements (i.e., bus stop benches and shelters, transit signage, other transit user conveniences, vehicle maintenance/storage facilities, etc.) would be provided with each respective step or level of service enhancement.

The City will evaluate the pilot transit project in approximately 2008. It is also anticipated that the City will pursue establishment of a Transit District – possibly in that same time frame. In either case, any service expansions would be considered at that time.

The final design of a permanent fixed-route system, including the location, number and type of transit stops will continue to remain the subject of additional study or analysis as conditions and transportation system demands change, and transit routing needs and opportunities continue to evolve in Bend's ever growing community.

[See: Section 6.4 Public Transportation System *for more details* concerning planned transit facilities.]

5.5.2.5 Inter-city transit: **The Bend urban area is the economic engine for the region; it supplies the majority of job opportunities, as well as it serves as the center of various cultural activities and services (including vital medical facilities). It is therefore important, in respect to providing regional linkages, that the Bend public transportation system will support a full-range of transportation choices and connections to the other surrounding communities in the region. Consequently, the provision of an inter-city transit system between Bend and Redmond was specifically modeled and included within the TSP Recommended Alternative**

Regionally, implementation of expanded intercity service will augment the effectiveness in providing mobility for the public that goes well beyond Bend's city limits. As Bend's transit system grows, it will need to accommodate a suitable means of interfacing with future regional transit services. Currently, discussions at the regional level have supported pursuit of the establishment of a Regional Transit District. Formation of this regional district may well include the Bend urban area.

(Delete text within Section 5.5.5 per the following:)

[5.5.5 Street System 1st and 2nd paragraphs]

***Proposed Roadway System Changes*:: ~~Included in this TSP adoption process are revisions to the transportation system to facilitate improvement of the south access to the downtown from the Parkway. A number of alternatives were examined including changes of various streets to one-way roadways. The alternative that emerged as the best traffic capacity (and most cost effective) solution was to extend the Wall/Bond system to the south to include the area between Franklin Avenue and Industrial Way. This alternative also includes the reconstruction of Colorado Avenue as a westbound roadway, between Broadway Street and the Parkway, and Arizona (to be constructed) as an eastbound roadway, between Colorado (i.e., just west of Broadway) and the Parkway.~~**

~~To address this element of the Transportation Plan, (the described section of) Arizona Avenue will be added to the roadway network of minor arterial streets (Figure 18). The Transportation Plan currently shows the Bond Street system extending between Arizona Avenue and Industrial Way. Industrial Way is shown as a collector street that links Colorado Avenue and the Wall/Bond system to Bond Street in the Old Mill District. The TSP also calls for a study of whether an extension of Lava Road (see Figure 18) should be used as an additional connection between the Old Mill District and the Parkway. Determining whether this extension should be used to improve traffic flow in this busy part of the City road network shall include a careful consideration of issues. These issues include a balancing of the adequacy of Old Mill District access and mitigating cut-through traffic in the neighborhood located between the Old Mill District and downtown.~~

~~The policies section of the TSP requires that before the Lava Road connection to the Arizona/Colorado couplet can be finalized as part of the TSP road system, the City must conduct a traffic study. This study shall include an analysis of the performance of the Bond/Wall Street system and an analysis of traffic impacts of the Lava Road extension on adjacent neighborhoods and how those impacts could be mitigated. If the City proceeds with the Lava Road extension, or a combination of alternatives using the Lava Road extension, it shall prepare a plan for and fund traffic control and calming measures that will minimize cut-through traffic, while allowing residents of the neighborhood reasonable ingress and egress. The mitigation measures must be in place before a Lava Road extension alignment is implemented. The area of primary concern is located between the Arizona/Colorado one-way pair system and Franklin Avenue.~~

SECTION SIX

TSP: Chapter 6

(Replace Section 6.4 per the following:)

6.4 PUBLIC TRANSPORTATION SYSTEM

6.4.1 TRANSIT SYSTEM STUDY

The feasibility of transit within the Bend urban area has been the subject of two separate studies. In 1994[B.3], the City studied Bend's demographic, employment, travel and transportation system characteristics in relation to how they might support transit use. In 1996[B.4], the City hired a transit consultant to further evaluate how transit could be implemented in the community. This study augmented the previous analysis of transit feasibility by analyzing transit systems from similar sized cities, developing system evaluation criteria, conducting a public opinion survey on transit attitudes and financing methods, and evaluating capital needs and financing strategies.

In 1997, based on this comprehensive evaluation of transit feasibility, the City Council declared that transit was feasible at build-out for the city of Bend.

In 2000[B.5], an additional study evaluated possible expansions and improvements to the existing Dial-a-Ride system. The report recommended that the City pursue this strategy as an initial method of providing public transportation for the general public. This strategy was not pursued.

In 2006, a review of service plan proposals for new fixed-route service was completed. This work focused on an evaluation of fixed-route design options that would meet City budget constraints, optimize resources and meet the demand for paratransit and demand response service.

6.4.2 MULTI-MODAL STRATEGIES

Public transportation is an important element of multi-modal transportation planning. It provides a valuable transportation alternative for high volume travel corridors. Public transportation can improve the efficiency of arterial streets because fewer vehicles are required on the road to serve the same number of trips. When faced with costly road improvement or construction difficulties, concerted trip reduction programs can add years of life to a roadway's capacity. Improvements to air quality can also be achieved by the net reduction of motor vehicle emissions. Public transportation can also play an important role in reducing congestion and parking requirements in high demand areas such as the downtown.

6.4.3 COMMUNITY MOBILITY

Public transportation improves mobility for a wide range of the traveling public. School age children can use public transportation for trips to school, after-school activities, or recreational pursuits. Likewise, there are many other segments of the population that either don't have a car (many for financial reasons), are unable to drive or would simply prefer to let someone else do the driving. Seniors who need to make unscheduled trips for shopping, medical or other trips have added flexibility to augment their Dial-a-Ride activity. Workers of all ages can get to their jobs without owning or relying on a car. Thus, public transportation is a valuable service that fills a much broader function than solely trip reduction. It provides mobility for those without cars as well as being an alternative to the automobile for many travel needs of the community.

6.4.4 PUBLIC TRANSPORTATION FACILITY DESIGN

6.4.4.1 Transit Centers

Transit centers are locations where several transit vehicles converge for the purpose of passenger transfer. This creates a very efficient, convenient and safe method of exchanging people between transit vehicles. This can also provide a location and opportunity where several inter- and intracity transportation services can meet to exchange passengers. It is desirable to coordinate public transportation operations such that all vehicles meet at a transit center at close to the same scheduled time. This allows passengers to make easy transfers without a long wait.

The existing transit center on NE Hawthorne Avenue, between 3rd and 4th streets, is currently the *interim* transit center location. Further evaluation of the effectiveness of this site should be conducted to determine whether it will meet longer-term Transit Center needs. A transit center located in the downtown can also provide a convenient connection to the many governmental, banking and shopping activities that are located in this focused business district as well as provide a good location for a central point of operation. Thus, a transit center is planned to be located in the downtown area to serve this function.

In designing a transit center, the location of the facility should provide for orderly circulation and accessibility of all types of transit vehicles, while minimizing the conflict with other traffic flow. The center should be located to minimize the number of pedestrian and vehicle conflicts, and be easy to access by walking or bicycling. Bicycle parking facilities should be designed and located for safe and convenient use, and provided in adequate supply to meet demand. More study will be required to determine the best long-term candidate location(s) and spatial requirements of facilities necessary to serve this important transportation system function.

6.4.4.2 Major Transit Stops

Major transit stops are locations along the transit system that are important to the functioning of the system and provide a high level, volume or frequency of transit service. Additional transit related amenities and pedestrian facilities should be provided to accommodate the differing types of demand. Adjoining developments should be encouraged to provide transit-friendly design elements that facilitate bus movements and convenient pedestrian access to the major transit stop.

At the present, the following are proposed as major transit stops; the downtown transit center, St. Charles Medical Center and Central Oregon Community College. Also as the system grows, evaluation of major transit stops in the northern and southern reaches of the Bend urban area should be conducted. Consideration should also be given to planning for a functional regional inter-modal facility where an efficient connection between local and regional trip activity can occur (See: TSP 5.5.2 *Inter-city Transit*). Additional major transit stops may be defined as the system matures and other destinations with high transit ridership potential are identified.

6.4.4.3 Transit Friendly Design

Transit friendly design is an important element in the encouragement of transit trips. Access to transit stops must feel safe and be convenient. The construction of sidewalks and accessways helps to assure that the walking link of the transit trip is a safe and pleasant experience. The Bend Urban Area TSP was recently amended (by Ordinance NS 2026) to ensure development of walking and bicycling corridors on approximately a one-quarter mile transportation system grid.

As routes are planned and local transit stops are located throughout the system, pullout lanes should be considered for bus stops to permit buses to pull-out of the traffic flow on heavier traveled arterial streets. Constructing suitable and convenient bike parking and providing buses equipped with bike racks will also encourage longer distance inter-modal trips to connect with transit. Providing benches, shelters and lighting at bus stops can also increase the comfort of transit users.

6.4.4.4 Land Use Organization (transit oriented)

Land use organization that situates high-density residential, mixed-use, entertainment and employment concentrations along transit routes is an important strategy that supports transit use. Additionally, site design elements such as building layout that sites structures in close proximity to the street and provides convenient pedestrian corridors, will also help to promote transit trip activity. Bend's General Plan typically designates the types of land uses; high-density, mixed-use and commercial activities, along the arterial and collector street system that is likely to have future transit service.

The city of Bend also adopted a new Development Code (Ordinance No. 2016), in 2006, that has incorporated the transit friendly site design (for all land use development) objectives of the State Transportation Planning Rule (OAR 660-012).

6.4.4.5 Park and Ride Lots

Park and ride lots, when strategically located, can support both public transportation and rideshare activities. If park and ride lots are located on the edge of the city, they can conveniently serve both directions of travel into and out of the urban area. Park and ride lots also provide a meeting place for car pools and a location for motorists to access a public transportation system. Park and ride lots can either be publicly constructed facilities, or more commonly, a partnership between public and private property interests, typically requiring a cooperative use agreement with the landowner. Shopping centers, churches, or the like, commonly have large parking lots that are underutilized during the day,

making park and ride activity complementary with the business demands of the property owner. Van or shuttle systems can also incorporate park and ride lots into a parking management plan by shuttling employees to the work place. This can help to minimize localized parking demand or impacts generated by employee traffic.

Bend currently has two existing designated Park and Ride lots and coordination effort is continuing between the City and the Commute Options Working Group to identify and secure other facilities for this function [See also: Section 3.4.2]. Work continues to identify, locate and secure other candidate park and ride lots through out the Bend area. The highest priority areas are at the north and south entries to the City along or near Highways 97 and 20.

6.4.4.6 Transit Trunk Routes and Transitways

***Trunk routes* are transit routes that normally maintain a higher level of transit service. Greater service levels are achieved by providing more frequent headways (times between buses) either by designating overlapping bus routes down the same street or by running a greater number of, or larger buses along the trunk route. In larger cities, trunk routes also deliver riders from outlying areas to *activity centers* where riders may need to transfer to a feeder bus that continues on to the core area. These larger urbanized areas may also have lesser trunk routes that travel exclusively *between* these outlying activity centers. Trunk routes typically provide transit service for specific high ridership demand hours of the day/days of the week. As trunk route stops or stations typically have more ridership activity, they often have greater waiting capacity (i.e., larger shelters) and other rider amenities (i.e., pay phones, drinking fountains, route information/maps, ticketing equipment, scheduling monitors, etc.).**

***Transitways* are very specialized trunk routes that provide very high levels of transit service. Transit is normally given a very high priority along transitways to enhance transit service levels. This is often accomplished by making improvements for transit travel that will optimize travel speeds and/or reduce travel delay/times. Examples of typical transitway features are; exclusive transit travel lanes or shared use of High Occupancy Vehicle (HOV) lanes with other multi-passenger vehicle traffic (commonly found in large metropolitan areas in conjunction with freeway systems), bus rapid transit systems (typically buses running along "bus only" lanes that are often located within separate right-of-ways, traffic signal/queue-bus bypass lanes and/or other transit preferential treatments.**

The Bend urban area, for the most part, is not geographically large enough or experiencing the type of traffic delays or congestion points that will likely warrant the designation and/or improvement of transit trunk or transitway routes within the planning period. Should conditions warrant this form of transit operation, the most likely candidate corridors for consideration of this type of express transit service would possibly be the main east-west route between C.O.C.C. and St. Charles M.C. and a north-south route in the center of the city.

6.4.4.7 Transit System Implementation

The city of Bend is currently providing an active pilot fixed-route transit system along seven routes through-out the City and a companion paratransit, Dial-a-Ride (DAR) service. Federal law requires the paratransit service provide coverage within a 3/4 mile of any fixed-route. The City has chosen to continue to serve the entirety of the City with DAR service in order to better accommodate the needs of its low income senior citizens and the disabled population.

Expansions to this public transportation system will be considered by the City based on an evaluation of the pilot transit project and subject to the

availability of funding necessary to support transit service. An alternative to a City funded public transportation system would be the successful formation of a local or regional transit district. To date, the affected taxing district area has not provided the necessary voter support to establish this alternative service provider and the requisite funding mechanisms.

The current strategy of implementing public transportation service shall be as depicted in the *Transit Service Phasing Strategy* that is articulated in TSP Chapter 5.5.2.4.

(Edit portions of Section 6.5.1.4 per the following:)

Arizona/Colorado one way pair (couplet) system: The conversion of Arizona and Colorado streets to a one way pair "couplet" system, between Broadway and the Parkway, ~~is~~ **was** planned as a method of increasing **east-west** arterial road capacity without the need to widen existing Colorado Avenue. This ~~is~~ **was** also planned as a strategy to improve downtown access to and from the Parkway. Both roadways ~~would be~~ **are** designated as minor arterials, with Colorado carrying the westbound traffic ~~and bike lane~~, and Arizona Avenue the respective eastbound movements. ~~The City will develop a street design; including turn lanes, landscaping and access control that will fit the specifics of this project. Wall and Bond streets, between Colorado Avenue and Industrial Way, will serve as major collectors. See, Figure 18. Wall and Bond streets will connect, via Industrial Way to Bond Street South, as shown on Figure 18 through the Old Mill site, to meet and connect to Brookswood Boulevard. The City has acquired right-of-way to extend Wall and Bond streets from Arizona to Industrial Way. This extension will link downtown Bend with the Old Mill District mixed use development zone. As previously mentioned in the "Proposed Roadway System Changes" section of this TSP, the City will also be studying an additional connection, the use of Lava Road in combination with Bond and Wall Streets for this street connection.~~ **Companion transportation improvements were the extension of Wall and Bond streets south to Industrial Way as one way roadways.**

6.5.2.6 Truck Routes
(Delete the third paragraph of this section of the TSP, per the following):

~~Citizens have voiced issues about rock and cement trucks that travel the Newport Avenue corridor. This truck traffic is more local in nature and addressing this situation is difficult, due to the lack of alternative routes. Also citizens have expressed concern of the potential for the Empire Avenue/East 27th Street and Knott Road/27th Street corridors becoming a Highway 20 truck bypass routes after the completion of those roadway connections and/or improvements. These facilities will be designed as local arterials, and as such, they are not intended to carry *through* truck traffic. The need to place truck restrictions on arterial streets and to establish other designated routes in the urban area will be monitored as truck volume or noise issues change.~~

6.9.6 Street System:
(Amend Street Policy #3 per the following:)

3. Streets shall be classified and generally located according to the Bend Urban Area - Roadway System Plan (Map Exhibit B), the Street Functional Classification (Table 12), and the Street Grid System (Figure 29). Street right-of-ways and improvements standards shall be developed to meet the needs of the Transportation Plan and Functional Classification System. **Transportation project development review and approval shall be subject to the provisions of the Bend Development Code and Oregon Administrative Rule 660-012, Section 0050, as applicable.**

(Delete Street *Implementation* Subsection "2 [f]" in its entirety)

1. Study alternatives to improve the street grid system and east/west street connectivity in order to address future transportation needs:

~~**[f] Regarding the study of the Lava Road connection alternatives between Arizona and Industrial Way:**[1]~~

~~**i) Before extending Lava Road between Industrial Way/Bond Street and the Colorado/Arizona couplet, the City shall conduct a study (which may be done in conjunction with a refinement plan), with public involvement from the affected neighborhood and other interested parties. This study shall include evaluating the adequacy of the street system to handle anticipated traffic loads, impacts on the affected neighborhood (located between downtown and the Old Mill District) and how those impacts could be mitigated.**~~

~~**ii) If the study shows that using the Lava Road extension will operate at a more acceptable level of service, minimize neighborhood cut-through traffic and that neighborhood access will be adequately accommodated, the City shall proceed with an amendment to the BUATSP (which may be done in conjunction with a refinement plan) followed by the completion of the roadway improvements and traffic mitigation measures. It is important that the study demonstrate that adverse traffic impacts on the neighborhood can be mitigated without unduly compromising the residents' ability to enter and leave the neighborhood. Consequently, the study shall include the following elements:**~~

~~**(1) A mitigation plan that combines traffic control and traffic calming measures that will minimize cut-through traffic through the adjacent neighborhoods while allowing neighborhood residents reasonable ingress and egress to streets adjoining the neighborhood;**~~

~~**(2) Analyzing the level of service at nearby intersections and making any changes that may be necessary to attain at least an acceptable level of service so long as those improvements can be accomplished within the existing pavement.**~~

SECTION SEVEN

The City Council adopts **Staff Report PZ 07-43** and the analysis contained therein - including **Ordinance Exhibit - A.**

Read for the first time the 7th day of March, 2007.

Read for the second time the 21st day of March, 2007.

Placed upon its passage the 21st day of March, 2007.

YES: 5 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 21st day of March, 2007.

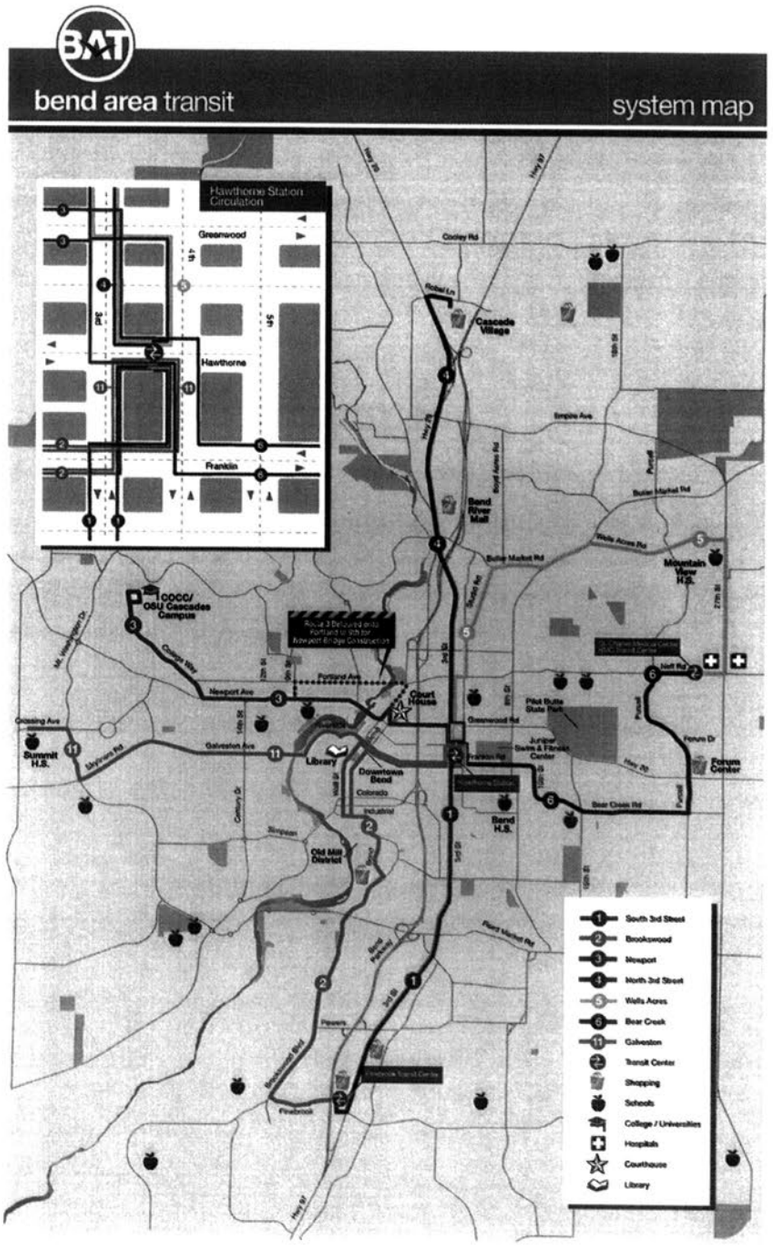
Bruce Abernethy, Mayor

Attest:

Patricia Stell, City Recorder

Exhibit A.1

Ordinance NS-2043
Figure 15
Bend Area Transit (BAT) Route System



ORDINANCE NO. NS-2044

AN ORDINANCE ADOPTING THE NEW 2007 OREGON FIRE CODE PRESCRIBING REGULATIONS GOVERNING CONDITIONS HAZARDOUS TO LIFE AND PROPERTY FROM FIRE, HAZARDOUS MATERIALS OR EXPLOSION.

THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

Section 1. ADOPTION OF 2007 OREGON FIRE CODE.

There is hereby adopted by the City of Bend for the purpose of prescribing regulations governing conditions hazardous to life and property from fire, hazardous materials or explosion, that certain Code known as the *2007 Oregon Fire Code*, including Appendices B, C, D, H, I and L.

Section 2. DEFINITIONS

2.1 Wherever the word "jurisdiction" is used in the *2007 Oregon Fire Code,* it is City of Bend, Oregon.

2.2 Where the party responsible for enforcement of the *2007 Oregon Fire Code* is given the title of "fire code official", the Fire Chief or other designated authority charged with the administration and enforcement of the code, or duly authorized representative.

Section 3. DIVISION OF FIRE PREVENTION

3.1 GENERAL. The division of fire prevention is established within the jurisdiction under the direction of the fire code official. The function of the division shall be the implementation, administration and enforcement of the provisions of this ordinance.

3.2 DEPUTIES. In accordance with prescribed procedures of this jurisdiction and with the concurrence of the appointing authority, the fire code official shall have the authority to appoint a deputy fire code official, other related technical officers, inspectors and other employees.

3.3 LIABILITY. The fire code official, officer or employee charged with the enforcement of this ordinance, while acting for the jurisdiction, shall not thereby be rendered liable personally, and is hereby relieved from all personal liability for any damage accruing to persons or property as a result of an act required or permitted in the discharge of official duties.

Section 4. ESTABLISHMENTS OF LIMITS OF DISTRICTS WHICH STORAGE OF FLAMMABLE OR COMBUSTIBLE LIQUIDS IN OUTSIDE ABOVEGROUND TANKS IS PROHIBITED.

The limits referred to in Tables 2703.1.1 (1-4) of the *2007 Oregon Fire Code* in which the storage of flammable or combustible liquids is restricted are hereby established as follows: Within the corporate limits of the City of Bend. Exception #1 – General Industrial Zones in approved tanks that are not in heavily populated or congested areas. Exception #2 – Light Industrial Zones in an approved tank with an individual capacity of 3,000 gallons and an aggregate capacity of 6,000 gallons on each property. Exception #3 – Combustible liquids in approved tanks not greater than 550 gallons solely used for heating. Exception #4 – Flammable and Combustible liquids in approved tanks solely used for emergency equipment not exceeding the amounts prescribed in Chapter 6 of the *2007 Oregon Fire Code.* Exception #5 – Flammable and Combustible liquids in approved tanks not exceeding 1,000 gallons in business areas not heavily populated or congested.

Section 5. ESTABLISHMENTS OF LIMITS IN WHICH STORAGE OF LIQUEFIED PETROLEUM GASES IS PROHIBITED.

The limits referred to in Section 3801.3 of the *2007 Oregon Fire Code*, in which storage of liquefied petroleum gas is restricted, are hereby established as follows: Within the corporate limits of the City of Bend. Exception #1 - General Industrial Zones not heavily populated or congested.

Section 6. ESTABLISHMENTS OF LIMITS OF DISTRICTS IN WHICH STORAGE OF EXPLOSIVES IS TO BE PROHIBITED.

Storage of Mass-detonating explosives as defined in Section 3301.8.1.1 of the *2007 Oregon Fire Code* is prohibited within the corporate limits of the City of Bend. Exception #1 - Limited amounts of Nonmass-detonating explosives as defined in Section 3301.8.2 and 3301.8.3 of the *2007 Oregon Fire Code* may be allowed in areas that are not heavily populated or congested with approval of the Fire Code Official when stored and used within the scope of nationally recognized standards.

Section 7. ESTABLISHMENTS OF LIMITS OF DISTRICTS IN WHICH THE STORAGE OF COMPRESSED NATURAL GAS IS TO PROHIBITED.

The limits referred to in Section 3004 of the *2007 Oregon Fire Code*, in which the storage of compressed natural gas storage is prohibited, are hereby established as follows: Within the corporate limits of the City of Bend. Exception #1 - General Industrial Zones not heavily populated or congested.

Section 8. ESTABLISHMENTS OF LIMITS OF DISTRICTS IN WHICH THE STORAGE OF STATIONARY TANKS OF FLAMMABLE CRYOGEN FLUIDS ARE TO BE PROHIBITED.

The limits referred to in Section 3204 of the *2007 Oregon Fire Code* in which the storage of flammable cryogen fluids in stationary containers is prohibited are hereby established as follows: Within the corporate limits of the City of Bend. Exception #1 - General Industrial Zones not heavily populated or congested.

Section 9. ESTABLISHMENTS OF LIMITS OF DISTRICTS IN WHICH THE STORAGE OF HAZARDOUS MATERIALS IS TO BE PROHIBITED OR LIMITED.

The limits referred to in Section 2703 of the *2007 Oregon Fire Code*, in which the storage of hazardous materials is prohibited or limited is hereby established as follows: Within the corporate limits of the City of Bend. Exception #1 - Light Industrial and General Industrial Zones not heavily populated or congested. Exception #2 - Limited amounts of hazardous materials may be approved by the Fire Code Official within Commercial areas not heavily populated or congested when stored and used within the scope of nationally recognized standards.

Section 10. AMENDMENTS TO THE 2007 OREGON FIRE CODE.

The *2007 Oregon Fire Code* is amended and changed in the following respects:

(1) Appendix B Section B104.2 Area Separation. *Portions of buildings which are separated by one or more four-hour area separation walls constructed in accordance with the Oregon Structural Specialty Code, without openings and provided with a 30-inch parapet, are allowed to be considered as separate fire-flow calculation areas.*

Section 11. APPEALS.

Whenever the Fire Code Official disapproves an application or refuses to grant a permit applied for, or when it is claimed that the provisions of the code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the Fire Code Official to the regional appeal advisory board established under ORS 476.113 to 476.115 in addition to following the

procedures as described in ORS 479.180 within ten (10) days from the date of the decision appealed.

Section 12. PENALTIES.

12.1 Any person who violates any of the provisions of the *2007 Oregon Fire Code* as adopted and amended herein or fails to comply therewith, or who violates or fails to comply with any order made thereunder, or who builds in violation of any detailed statement of specifications or plans submitted and approved thereunder, or any certificate or permit issued thereunder, and from which no appeal has been taken, or who fails to comply with such order as affirmed and modified by the regional appeals advisory board or by a court of competent jurisdiction, within the required time, shall severally for each and every violation and noncompliance, respectively, be guilty of a Class "A" infraction, punishable by a fine of not more than $1,000. The imposition of one penalty for any violation shall not excuse the violations or defects within a reasonable time; and not otherwise specified, each day that prohibited conditions are maintained shall constitute a separate offense.

12.2 The application of the above penalty is in addition to other remedies available to the City including but not limited to the enforced removal of prohibited conditions.

Section 13. REPEAL OF CONFLICTING ORDINANCES.

The current Chapter 8 of the Bend City Code is hereby repealed and the provisions of this ordinance shall be codified in Chapter 8 in place of the repealed provisions.

Section 14. VALIDITY.

The City of Bend hereby declares that should any section, paragraph, sentence or word of this ordinance or of the *2007 Oregon Fire Code* as adopted and amended herein be declared for any reason to be invalid, it is the intent of the City councilors that it would have passed all other portions of this ordinance independent of the elimination herefrom of any such portion as may be declared invalid.

Read for the first time the 7th day of March, 2007.

Read for the second time the 21st day of March, 2007.

Placed upon its passage the 21st day of March, 2007.

YES: 5 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 21st day of March, 2007.

Bruce Abernethy

Bruce Abernethy, Mayor

Attest:

Patti S Stell

Patricia Stell, City Recorder

ORDINANCE NO. NS-2045

AN ORDINANCE AMENDING THE CITY OF BEND AREA ZONING MAP, BY CHANGING THE ZONING DESIGNATION OF A PARCEL OF LAND AS SHOWN IN EXHIBIT "A" FROM UAR, URBAN AREA RESERVE, TO RS, STANDARD DENSITY RESIDENTIAL.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council has held a public hearing, considered the Hearings Officer's findings and record, and has found that there is a public need and benefit for the proposed change. The Bend City Council adopts the Findings and Recommendation of the Hearings Officer dated February 9, 2007 file number PZ-06-737.

Section 2. The Bend Area Zoning Map is amended by changing the designation of the property described as Tax Assessor's Map 17-11-26AD, Tax Lot 2800, as shown in Exhibit "A". The change will be from Urban Area Reserve (UAR) to Urban Standard Density Residential (RS).

Read for the first time the 7th day of March, 2007.

Read for the second time the 21st day of March, 2007.

Placed upon its passage the 21st day of March, 2007.

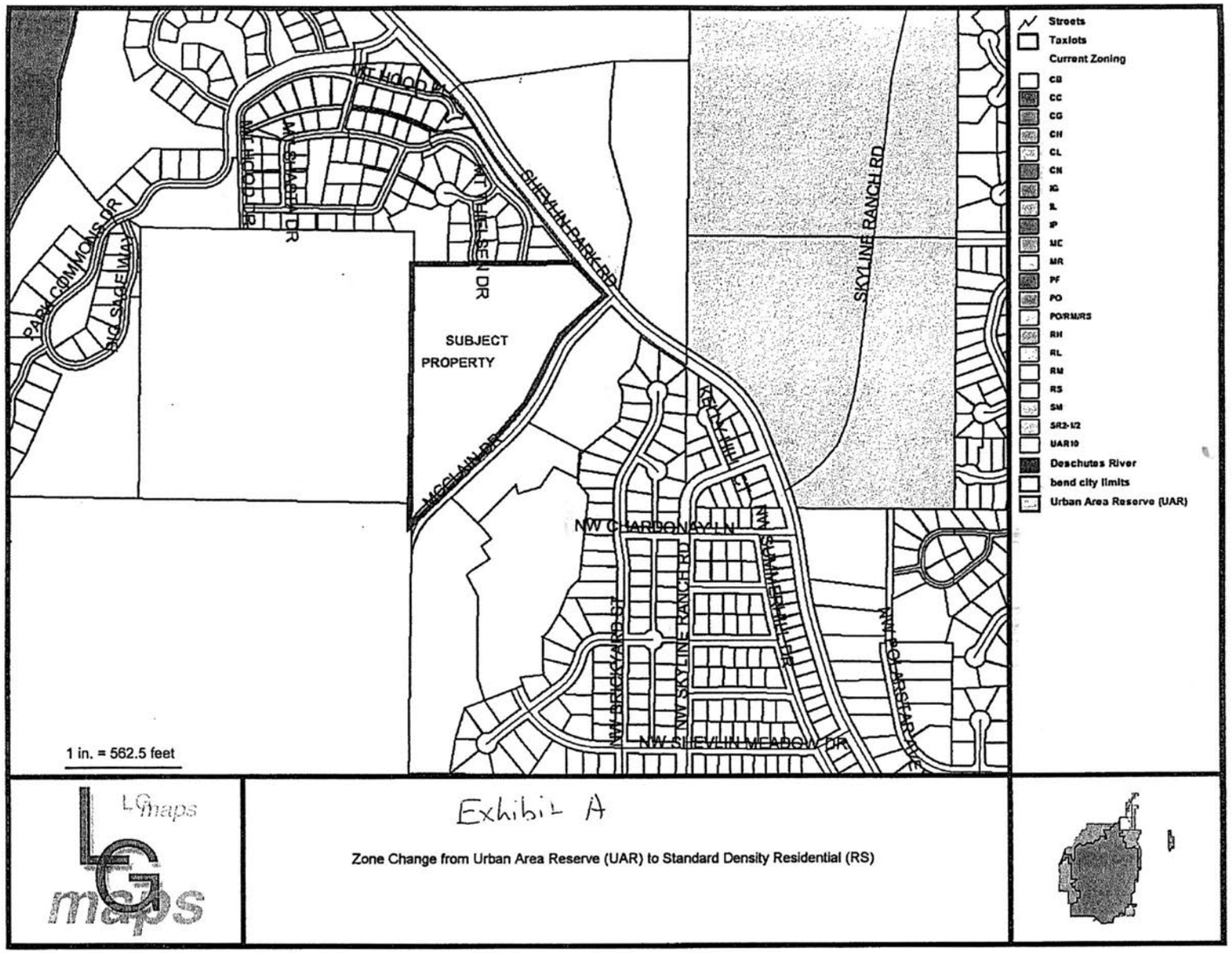
YES: 5 NO: 0

Authenticated by the Mayor the 21st day of March, 2007.

Bruce Abernethy, Mayor

ATTEST:

Patricia Stell, City of Bend Recorder


Streets
Taxlots
Current Zoning
CB
CC
CG
CH
CL
CN
IG
IL
IP
MC
MR
PF
PO
PORM/RS
RH
RL
RM
RS
SM
SR2-1/2
UAR10
Deschutes River
bend city limits
Urban Area Reserve (UAR)
SUBJECT PROPERTY
SKYLINE RANCH RD
SHEVLIN PARK RD
MCCLAIN DR
NW CHARDONAY LN
NW SHEVLIN MEADOW DR
1 in. = 562.5 feet
LG maps
Exhibit A
Zone Change from Urban Area Reserve (UAR) to Standard Density Residential (RS)

Added text appears in ***bold italicized*** typeface.
Deleted text appears in ~~struckthrough~~ typeface.

ORDINANCE NO. NS-2046

AN ORDINANCE AMENDING THE BEND CODE RELATING TO PROCEDURES FOR PUBLIC CONTRACTING

WHEREAS: The Oregon Legislature adopted HB 2341 (2003 Oregon Laws, Chapter 794) ("The Public Contracting Code"), which was signed by the Governor, and has an operative date of March 1, 2005, and

WHEREAS: On February 16, 2005 the City of Bend adopted Ordinance No. NS- 1960 to implement the new Public Contracting Code. Following several months of experience with the new ordinance, it has become apparent that some changes are necessary. The necessary changes are set forth herein.

THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

Section 1. Bend Code Sections 1.550 through 1.590 is amended to read as follows:

PUBLIC CONTRACTS

1.550 The Bend City Council is designated as the local Contract Review Board under the State of Oregon Public Contracting Code.

(a) The Contract Review Board may, from time to time, and in addition to delegations made under this ordinance, delegate its powers and responsibilities consistent with the Oregon Public Contracting Code, the Model Rules, or the Bend Code.

(b) The City Manager, or his/her designated purchasing agent, and the Purchasing Division of the City of Bend Finance Department are designated as the city's "Contracting Agency" for purposes of contracting powers and duties assigned to the City of Bend as a "Contracting Agency" under the State of Oregon Public Contracting Code or the Model Rules. ***The director of any department of the City or his/her designee may solicit bids/quotations under the rules in this section and under the direction of the Contracting Agency.***

(c) Except as provided in these rules, and as may be determined by future delegations of authority, the powers and duties of the Contract Review Board shall be exercised by the Contract Review Board, and all powers and duties given or assigned to the Contracting Agency shall be exercised or performed by the Contracting Agency.

1.551 Except as specifically provided herein, Public contracts shall be let by the City of Bend according to the State of Oregon Public Contracting Code, including the Model Rules adopted by the Oregon Attorney General as they now exist and as they may be amended in the future, and the Bend Code. Definitions provided by the State of Oregon Public Contracting Code or the Model Rules shall apply to City of Bend procurements, except as may be specifically provided herein.

1.552 The following classes of public contracts are hereby exempted from competitive procurement:

(a) Any contract exempted by the State of Oregon Public Contracting Code or Model Rules;

(b) Contracts under $5,000, which may be entered into by direct award under rules and procedures adopted by the Contracting Agency.

(c) Contracts for the purchase of computer equipment and software, which may be by requests for quotations, under the procedures in Bend Code Section 1.555(a) and (b).

(d) Purchases through federal programs, pursuant to ORS 279A.180.

(e) An emergency contract, provided that the Contracting Agency adheres to the requirements of ORS 279B.080 or 279C.335(5) and the Model Rules. ***In addition: (1) The City Manager or designee is authorized to sign all purchase order/contract, agreements; (2) In the event the emergency is of a nature that requires immediate action to prevent damage to property or health (e.g., a major water line break or sewage overflow) the department may use all the means necessary to meet the emergency and if the expenditure is in excess of $100,000, as soon as time allows, bring the matter before the Contract Review Board for ratification or other action consistent with law.***

(f) A Public Facility Improvement Agreement entered into between the City of Bend and a person responsible for carrying out conditions of approval of a land use decision of the City of Bend. The term "Land Use Decision" has the meaning provided by ORS 197.015.

(g) Any other contract (including sole source and brand name specification contracts) where the public interest would be promoted by exempting the contract from the competitive bidding process, provided that the Contract Review Board adheres to the Public Contracting Code and the Model Rules in making the exemption.

1.553 Administrative staff and departments have contracting authority and responsibilities as follows:

(1) The City Manager (or designee) is authorized to enter into ~~city contracts not to exceed the limits of the Public Contracting Code and Model rules~~ ***all City contracts that are within the approved current year*** budget without further review from the Contract Review Board, provided that ~~funds for such contract are in the current year budget~~ ***all major contracts (over $100,000.00) shall have financial review and approval by the Finance Director or her/his designee prior to award. Contracts over $100,000 that are not approved in the current year budget will require additional authority from the Contract Review Board prior to execution.***

(2) The Contracting Agency shall, consistent with the Bend Code, adopt forms, computer software, procedures, and administrative policies for all city purchases. In addition, the Contracting Agency may adopt purchasing limits and procedures for City Departments and rules establishing change order authority, provided that such rules are consistent with the Public Contract Code and Model Rules.

(3) The City of Bend Department of Finance, Purchasing Division (referred to as the "Purchasing Division"), shall have the authority to enter into city contracts ***or acquisitions*** not to exceed $20,000 without obtaining additional authority from the City Manager, provided that funds for such contract are in the current year budget.

(4) Purchases of goods from city employees, or sale of goods to city employees, shall require authorization of the City Manager or designee. Provision of services by city personnel shall be in accordance with the City Personnel Policies in Chapter 5 of the City Policy Manual, and other applicable law.

(5) Each department shall operate within its budget, or seek supplemental budgetary authority from City Council with respect to any contract that is not within the adopted budget for such department for the current year.

(6) Purchase of used equipment: The City will purchase used (vehicles and the like) under the same procedures as new equipment. In addition, the City will adopt procedures to insure the equipment is suitable for City use: verifying source, manufacturer, seller, the condition of the equipment - checked by experts/professionals of that equipment. City will not buy used equipment if new equipment is available at a compatible price and within budget.

(7) ADA: The City of Bend shall comply with Americans with Disabilities rules, regulations, & procedures, and will not discriminate on the basis of disability in its purchasing and contracting policies, practices, and procedures. The prospective contractor shall execute and provide a certification that it is in compliance with ADA in its employment practices, and that it shall perform its contractual obligations consistently with ADA federal requirements/regulations, state disability law, and applicable regulations.

(8) Sustainability - Policy Statement: The City of Bend recognizes that the actions it takes in its operations, policies and planning efforts will have impacts on sustainability in our community. It is the City of Bend's policy to encourage implementation of sustainable purchasing. Sustainable practices incorporate three broad factors: environmental stewardship, life cycle costing and equal opportunities for every person impacted by a purchase. By including sustainability in purchasing decisions, The City of Bend can promote practices that improve public and worker health, utilize economic resources responsibility, conserve natural resources, and reward environmentally conscious manufacturers while maintaining cost excellence and value standards.

1.554 Notice of public improvement contracts may be published electronically where the Contracting Agency finds that such publication is likely to be cost effective, as provided in ORS 279C.360.

1.555 ***Public contracts will be let in accordance to the ORS 279 Procedures, the Attorney General Model Rules, and the City Policy.***

(a) Contracts under $5000.00 may be let without competitive quotes.

(b) Contracts not to exceed $50,000 may be let by competitive quote under the following procedures. The Contracting Agency ***or director of any department of the City or his/her designee, acting under the supervision of the Contracting Agency,*** shall informally solicit at least three price quotes from prospective contractors. If three prospective contractors are not available, then fewer quotes may be solicited, and the

Contracting Agency shall maintain records of the attempts to obtain quotes.

(c) Contracts over $50,000 will be let by a formal competitive process (for the purpose of this section, formal solicitation is defined as an advertised solicitation with prepared bid documents). This process may be waived by the City Manager or designee if the procurement is (1) under $100,000 allowing for informal solicitation or (2) exempted under 1.552 of this code.

(d) The Contracting Agency shall award the contract to the prospective contractor whose quote will best serve the interests of the City of Bend, taking into account price and other applicable factors, such as experience, specific expertise, availability, project understanding, contractor capacity, and contractor responsibility. If the contract is not awarded on the basis of the lowest price, the Contracting Agency shall make a written record of the basis for the award. ***The Contracting Agency will ensure the prospective contractor complies with the requirements of the Americans with Disabilities Act.***

(e) A procurement may not be artificially divided or fragmented to qualify for the informal contract award procedures provided by this section

(f) Change orders to the purchase order/contract will follow the same rules as the original agreement (excluding competitive solicitation). Engineer/Project Manager or designee will issue an "Engineering Change Order" in accordance to the established engineering format on all public improvement (labor) contracts.

1.556 Personal services contracts (other than ~~personal services contracts for architectural or engineering services~~ ***those specifically exempted by the Public Contracting Code or Model Rules***), are subject to the rules established by this section:

(a) Personal service contracts will be used to retain the services of independent contractors***.*** Nothing in this section shall apply to the employment of regular City employees.

(b) Unless otherwise approved by the City Manager, all personal service contracts shall require the contractor to defend, indemnify, and hold harmless the city, its officers, agents and employees against and from any and all claims or demands for damages of any kind arising out of or connected in any way with the contractor's performance there-under and shall include a waiver of contractor's right to ORS 30.285 and ORS 30.287 indemnification and defense.

(c) Unless otherwise approved by the City Manager, City personal service contracts shall contain a provision requiring the person or entity providing the service to obtain and maintain liability insurance coverage in at least the amount of the City's tort liability limits, naming the City as an additional named insured, during the life of the contract.

(d) All City personal service contracts shall contain all contract provisions mandated by State ***and Federal*** law. These provisions may be incorporated in the personal service contract by reference to State ***or Federal laws*** provides otherwise. The Contracting Agency will prepare model contract provisions for use in City personal service contracts. ***All personal service contracts will contain specific language with regard to discrimination under the Americans with Disabilities Act. Independent contractors are required to adhere to federal accessibility requirements.***

(e) The following procedure shall be observed in the selection of personal service contractors:

(1) For personal service contracts involving an anticipated fee of $10,000 or less per annum, the City Manager or his or her designated officer may negotiate a contract for such services with any qualified contractor of his or her selection.

(2) For personal service contracts involving an anticipated fee of more than $10,000 per annum, the City Manager or his or her designated officer shall solicit at least three (3) prospective contractors who shall appear to have at least minimum qualifications for the proposed assignment, notify each prospective contractor in reasonable detail of the proposed assignment, and determine the prospective contractor's interest and ability to perform the proposed assignment.

(3) The City Manager or his or her designated officer may arrange for any or all interested prospective contractors to be interviewed for the assignment by an appropriate City employee or by an interview committee.

(4) Following a review of the qualifications and interview, where conducted, of the interested prospective contractors, the City Manager or his or her designated officer shall select the prospective contractor, and shall prepare a personal service contract.

(f) The above provisions regarding selection procedures do not apply to amendments, modifications or supplements to executed personal service contracts.

(g) The following criteria shall be considered in the evaluation and selection of a personal service contractor:

(1) Specialized experience in the type of work to be performed.

(2) Capacity and capability to perform the work, including any specialized services within the time limitations for the work.

(3) Educational and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, ability to meet schedules, and contract administration, where applicable; and

(4) Availability to perform the assignment and familiarity with the area in which the specific work is located, including knowledge of design or techniques peculiar to it, where applicable.

(5) Any other factors relevant to the particular contract.

(h) The selection procedures described in this section may be waived by the City Manager, at his or her discretion where ***(1) an emergency exists; (2) there is only one consultant/individual available to perform the services; (3) the award of the contract is in the public's best interest; or (4) the contract is for legal services or professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which the City is or may become interested.***

(i) The City Manager ***or his/her designee*** is delegated the authority to sign all personal service contracts.

(j) Nothing contained in this section shall preclude the City from complying with provisions of Federal or State law ***(including requirements of grant awards)*** that require the City to utilize a different selection or contracting procedure, including circumstances where applicable rules require a different procedure for selecting architects, engineers and land surveyors.

1.557 Disposition of surplus personal property may be made, at the discretion of the City Manager or his/her designee, under provisions of the State of Oregon Public Contracting Code, or the Model Rules, or under the provisions of this section:

(a) From time to time and after personal property owned by the City of Bend is determined by the City Manager or his/her designee to be surplus to the needs of the City, the city may sell the property at public auction. The city may utilize a contracting firm, approved by the Contract Review Board, for disposition of the property on terms and conditions contained in a contract approved by the Contract Review Board. The City shall give notice of the public auction by posting notice of the means by which the property will be disposed of on the City of Bend Internet Website, or by advertisement in a newspaper of general circulation.

(b) Auction sales may be (but are not required to be) conducted entirely on the internet. Sale shall be for cash to the highest bidder. All proceeds of the sale shall be paid to the City, subject to the terms and conditions of the contract (if any) approved by the Contract Review Board between the City of Bend and a firm (if any) selected to conduct the auction.

(c) All personal property sold pursuant to this section shall be sold as-is without any warranty, either express or implied, of any kind, including but not limited to warranties of title or fitness for any purpose. Upon receiving payment for the personal property from the successful bidder, the person or company conducting the auction shall execute an appropriate bill of sale or receipt, which shall recite that the sale is without warranty, as provided in this sub-section.

1.558 If bids are solicited for a public improvement contract, and all bids exceed the budget for the project, the Contracting Agency may, prior to contract award, negotiate for a price within the project budget under the following procedures:

(a) Negotiations will begin with the lowest, responsive and responsible bidder. If negotiations are not successful, then the Contracting Agency may begin negotiations with the second lowest responsive, responsible bidder, and so on.

(b) Negotiations may include the inclusion of value engineering and other options to attempt to bring the project cost within the budgeted amount.

(c) A contract may not be awarded under this section if the scope of the project is significantly changed from the description in the original bid documents.

(d) The Contracting Agency will adhere to the provisions of ORS 279C.340 in applying this section.

1.559 The Contracting Agency shall adopt appropriate purchasing policies dealing with ethics, environmental ***(recycling) and sustainability*** considerations and the like, subject to review and modification by the Contract Review Board.

(a) See attached "Purchasing Ethics/Environmental" attached (Contract Review Board to review)

(b) See 1.553(8) Sustainability

1.560 In the event of a conflict between any provision of the State of Oregon Public Contracting Code or the Model Rules and this chapter of the Bend Code, the provisions of the State of Oregon Contracting Code or the Model Rules shall control.

Read for the first time the 18th day of April, 2007.

Read for the second time this 2nd day of May, 2007.

Placed upon its passage this 2nd day of May, 2007.

YES: 7 NO: 0

Authenticated by the Mayor this 2nd day of May, 2007.

Bruce Abernethy, Mayor

ATTEST:

Kim Meyers, Deputy City Recorder

BLANK PAGE

ORDINANCE NO. NS-2047

**AN ORDINANCE AMENDING
THE CITY OF BEND GENERAL PLAN AND THE BEND URBAN AREA - TRANSPORTATION SYSTEM PLAN
AND
ADOPTING FINDINGS OF COMPLIANCE OF THE TRANSPORTATION SYSTEM PLAN WITH THE BEND AREA GENERAL PLAN**

IN RESPONSE TO A REMAND BY THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

WHEREAS, on November 12, 1998, the Oregon Department of Land Conservation and Development (DLCD) issued a notice of Periodic Review Order of the Bend Area General Plan; and

WHEREAS, on March 6, 2000, the DLCD gave final approval for a revised Periodic Review work program (Order No. 001110), including Task #1, adoption of a Transportation System Plan; and

WHEREAS, on October 11, 2000, the city of Bend adopted the Transportation System Plan (TSP) incorporating it into Chapter Seven of the Bend Area General Plan; and

WHEREAS, on March 1, 2001, the DLCD remanded several items (Remand Order No. 001291) of the TSP back to the City to address as a part of Periodic Review work subtasks; and

WHEREAS, on May 2, 2007, the Bend City Council held a public hearing, for which public notice was provided, to receive public testimony about a proposed ordinance to amend the Bend Area General Plan and the Bend Urban Area Transportation System Plan related to certain subtasks of Periodic Review.

THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

The Bend Area General Plan and Transportation System Plan are amended to read as follows (***Text additions*** are represented by **bold font**):

SECTION ONE

TSP: Chapter 6

(Amend Section 6.9.1 per the following bold text :)

5. City staff will review development codes from other cities for examples of performance standards that continue to improve the transportation system. **After review of standards from other cities, Bend has identified a set of performance standards that balances operations criteria with financial constraints, safety impacts, quality of living aspects and community values. These operations criteria are included in the City' Development Code and included in this TSP by reference.**

SECTION TWO

The City Council adopts **Staff Report PZ 07-165**, the findings and the analysis contained therein – including; **Exhibit - B.**

Read for the first time the 2nd day of May, 2007.

Read for the second time the 16th day of May, 2007.

Placed upon its passage the 16th day of May, 2007.

YES: 6 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 16th day of May, 2007.

Bruce Abernethy, Mayor

Attest:

Patricia Stell, City Recorder

STAFF REPORT

LEGISLATIVE AMENDMENT TO THE BEND AREA GENERAL PLAN AND THE BEND URBAN AREA - TRANSPORTATION SYSTEM PLAN

PROJECT NUMBER: **PZ 07-165**

DATE OF REPORT: April 12, 2007

DATE OF HEARING: April 23, 2007: Planning Commission
May 2, 2007: City Council

APPLICANT: City of Bend

REQUEST:

This amendment will consider (1) adoption of *Findings* of Compliance of the TSP with the Bend Area General Plan, and (2) an amendment to TSP Section 6.9.1 Transportation and Land Use *Implementation* Policy 5.

Approval of this action will amend *both* the Bend Area General Plan - Chapter 7 AND the Transportation System Plan [TSP] to fulfill stipulations made by a remand order from the Oregon Department of Land Conservation and Development (DLCD), which the Bend City Council had adopted earlier as part of completion of a periodic review subtask item.

PROJECT MANAGER: Rick Root, Transportation Planner

APPLICABLE CRITERIA:

(1) The Bend Area General Plan
(2) Bend Urban Area - Transportation System Plan
(3) State of Oregon Transportation Planning Rule - TSP Remand

ATTACHMENTS:

Exhibit - A Plan Amendment PZ 07-165: Implementing Ordinance
Exhibit - B Finding of Compliance of the Transportation System Plan with Applicable Goals and Policies of the General Plan

I. BACKGROUND

A. LAND CONSERVATION AND DEVELOPMENT COMMISSION

In 1993, the State of Oregon Land Conservation and Development Commission (LCDC) adopted an Administrative Rule called the Transportation Planning Rule (TPR). The rule was intended to provide interpretation and guidance to agencies concerning the implementation of Statewide Planning Goal 12 on Transportation. The TPR directed cities and counties in the state to adopt Transportation System Plans (TSPs). In accordance with this mandate, the city of Bend adopted the *Bend Urban Area – Transportation System Plan* (TSP), in 2000.

Periodic Review Task 1, the Bend Urban Area *Transportation System Plan* (**BUATSP**), was reviewed by the State of Oregon - Department of Land Conservation and Development, following adoption by the city of Bend on October 11, 2000. This review included input from five (citizen) parties/organizations that had *objected* to the City Council approved *Transportation System Plan*.

Upon reviewing the TSP, and when also considering public comments concerning the plan, the Oregon Department of Land Conservation and Development (DLCD) issued a Remand Order (No. 001291), in 2001, directing the City to address certain deficiencies that they had identified in the plan.

The Remand included eleven general topic areas. This plan amendment will address topic areas of the remand concerning findings and one additional non remand related TSP amendment.

B. CITY OF BEND

1. TOPIC: *Findings of Compliance*

■ **(a)** DLCD (2001) comment: *"Adopt findings regarding consistency with the Bend Area General Plan and land use regulations."*

□ **(a)** City response: There are *two sub parts* to this item of the remand:

(i) The first part relates to adopting findings of consistency of the TSP with the ***Bend Area General Plan***.

Exhibit-B to the staff report (PZ 07-165), ***Finding of Compliance of the Transportation System Plan with Applicable Goals and Policies of the General Plan,*** provides a detailed review of each of the applicable *goals* or *policies* within each respective chapter of the Bend Area General Plan (GP) and articulates factual evidence concerning how the TSP is consistent with the GP.

TSP Amendments proposed to address this element of the Remand:

No TSP Amendments are required to address this item of the DLCD Remand. Rather this proposed action will adopt finding(s) of plan compliance. See: Staff Report **Section II ANALYSIS**.

(ii) The second sub part relates to adopting findings of consistency of the TSP with ***land use regulations*** (i.e., the **Bend Development Code)**.

The adoption of findings of compliance has already been fulfilled by a previous Land use action: PZ 06-769, adopted by the Bend Planning Commission, on November 27, 2006, and the Bend City Council, on January 17, 2007, and the previous adoption of the new Bend Development Code (Ordinance No. 2016).

TSP <u>Amendments proposed</u> to address this element of the Remand:

None required addressing this item **(a)**. Land use action has already been completed.

■ **(b)** DLCD (2001) comment: *"Adopt land regulations necessary to implement the BUATSP."*

□ **(b)** City response: As a part of the City's preparation of the New Development Code, the City received a Transportation and Growth Management (TGM) Grant from the DLCD to review and adapt the State's *Model Development Code* for local land use regulation. The *Model Development Code* was designed - to a large extent - to assist cities in implementing codes that would comply, among other things, with the State's Transportation Planning Rule (TPR). Therefore, the City fulfilled this element of the Remand through the adoption of the new Bend Development Code.

TSP <u>Amendments proposed</u> to address this element of the Remand:

None required addressing this item **(b)**. Land use action has already been completed.

<u>2. TOPIC: *Amend the TSP to conform to the Development Code*</u>

■ This action item was ***not*** identified by the DLCD in the Remand of the TSP. This proposed land use action is primarily to ensure conformance of the TSP to the Development Code, however staff considers augmentation of this one policy of the TSP to be consistent with the objectives of this land use action.

When the TSP was adopted, in 2000, an ***Implementation Policy*** was included in TSP Chapter 6, Section 6.9.1, that encouraged the City to review other development codes from other cities and to seek adoption of performance standards that would continue to improve the transportation system. This work was completed and incorporated into the new Development Code.

TSP <u>Amendments proposed</u> to address this element of the Remand:

In response to this issue, TSP text is proposed to be amended to include the following bolded and underlined language to further supplement the existing Section 6.9.1 Land Use and Transportation, Implementation Policy 5:

5. City staff will review development codes from other cities for examples of performance standards that continue to improve the transportation system. **<u>After review of standards from other cities, Bend has identified a set of performance standards that balances operations criteria with financial constraints, safety impacts, quality of living aspects and community values. These operations criteria are included in the City' Development Code and included in this TSP by reference.</u>**

II. ANALYSIS

A. LOCATION

The proposed amendments and findings are general in natural and do not affect any *specific* Bend area locations.

B. PUBLIC HEARING NOTICE

A notice of the Planning Commission public hearing was published in ***The Bend Bulletin***, on April 11, 2007. Hearing notice was also sent (by U.S. Postal mail) to the

(5) parties that had appealed the original adoption of the Bend Transportation System Plan.

PROPOSAL DESCRIPTION

Approval of this proposed amendment will modify the Bend Urban Area General Plan, Chapter Seven, AND the Transportation System Plan [TSP]. It addresses items that were stipulated in a remand order from the Oregon Department of Land Conservation and Development to address issues that were identified in an earlier adoption of the Periodic Review subtask item. This amendment will address:

1. Adoption of Findings of Compliance with the Bend Area General Plan and the Bend Development Code.
2. One Policy of the TSP in Section 6.9.1.

APPLICABLE CRITERIA

(1) The Bend Area General Plan

Future plan Updates – General Plan Preface: *"The General Plan is a document that changes over time to reflect new information and new directions for the future. Amendments or additions to the General Plan text, exhibits, and policies go through a public hearing and review process before being adopted by the governing bodies. Changes and updates can be generated in at least six ways:"...* [The applicable items:]

- (Second bulleted item) *"Evaluation of land use topics required to be reviewed under the Oregon Land Conservation and Development Commission's periodic review of the General Plan. The state requires all local plans to be updated periodically to comply with applicable new state laws, administrative rules, or to incorporate new data available to the state."...*
- (Fourth bulleted item) *"City or county response to new issues or changes. Issues that were unforeseen during the development of the plan can arise that have an impact on a particular neighborhood or the whole urban area. The city and county officials can direct staff to amend the Plan to address these issues."...*

Findings:

1. These amendments will complete part of the DLCD remanded issues concerning Task 1 of the Periodic Review Work Program, as it relates sections of the Plan related to certifying compliance of the Transportation System Plan with the Bend Area General Plan and the Bend Development Code.

2. These amendments will bring the City General Plan into conformance with state statutes and administrative rules as applicable to these issues. The proposed changes to the TSP will fulfill this directive.

3. Based on statements of fact, contained in Exhibit – B, the Transportation System Plan (TSP) is consistent with the Bend Area General Plan.

(2) Bend Urban Area Transportation System Plan

*(TSP **Goals** which are applicable to the amendments)*

5.0.1.2 Plan Goals

Efficiency:

- Encourage the development of land use patterns that provide efficient, compact use of land, and facilitate a reduced number and length of trips.

Environmental:

- Design transportation improvements to preserve air and water quality, minimize noise impacts, and encourage energy conservation.

Economic:

- Implement transportation improvements to foster economic development and business vitality.

Livability:

- Design and locate transportation facilities to be sensitive to protecting the livability of the community.

Safety:

- Design and construct the transportation system to enhance travel safety for all modes.

(*TSP **Objectives, Policies** and **Implementation** elements which are applicable to the amendments*)

6.9.1 TRANSPORTATION AND LAND USE

Objectives:

- To promote land use patterns that support fewer vehicle trips and shorter trip lengths
- To ensure that future development, including re-development will not interfere with the completion of Bend's transportation system

Policies:

2. The City shall continue to use and develop performance standards and guidelines that can reduce vehicle trip lengths and/or promote non-vehicle transportation modes.

Implementation:

2. Policies 1, 3, 4, and **5** will be implemented by reviewing and updating the standards in the General Plan, subdivision code and zoning code.
5. City staff will review development codes from other cities for examples of performance standards that continue to improve the transportation system.

6.9.6 STREET SYSTEM

Objectives:

- To provide a practical and convenient means of moving people and goods within the urban area that accommodates various transportation modes
- To provide a safe and efficient means to access all parts of the community

Policies:

General:

10. The City shall consider the impact of improvements to, or completion of, existing facilities when considering the need for constructing new facilities.

Findings:

1. The proposed plan amendment is consistent with and further fulfills the goals of the Bend TSP.

2. The proposed plan amendment is consistent with and further fulfills the objectives, policies and implementation strategies of the Bend TSP.

(3) State of Oregon – Transportation Planning Rule (OAR: 660-012)

The State Department of Land Use, Conservation and Development (DLCD) reviewed the City adopted Transportation System Plan for consistency with the Transportation Planning Rule and "remanded" certain items back to the City for refinement and/or additional clarification, and amendment.

Findings:

1. An amendment has been prepared as part of Bend's Periodic Review of the Bend Area General Plan, as required by state law. Task 1 of the Periodic Review work program, adopted by the City in October 2000, and later remanded to the City (Remand Order No. 001291), in March 2001, that required the City to perform additional review and policy revisions on various elements of the plan.

2. The amendments ensure TSP direction as it relates to: Providing guidance on the future planning for Bend area Transportation system improvements.

3. Adoption of the new Bend Development Code has further fulfilled local Code compliance with the State Transportation Planning Rule particularly as it relates to development of transit-friendly community design.

III. CONCLUSION

Based on the Findings of Fact, staff finds that this proposed action satisfies all applicable criteria for amendment of the Bend Area General Plan (BAGP)/ Transportation System Plan (TSP), and resolves the pertinent elements of the DLCD Remand of the BUATSP as referenced in this staff report.

IV. RECOMMENDATION

Staff recommends that the proposed amendments to the BAGP/TSP and findings of fact as described in, and incorporated within, the Ordinance, attached as Exhibit-A and Exhibit-B, be adopted by the Bend City Council.

EXHIBIT- B

Finding of Compliance of the Transportation System Plan With Applicable Goals and Policies of the General Plan

---

[NOTE: The following is a review of the applicable **Goals** or **Policies** within each respective chapter of the **General Plan (GP)** and is followed by *italicized text* that describes consistency of the **Transportation System Plan (TSP).** In most cases, there may be *many* pertinent references in the TSP document – only the most relevant citations are made in the following review. Referenced sections of the TSP and the adopting ordinance of the TSP are attached as **appendices**.]

Chapter 1 Plan Management and Citizen Involvement

- ***Goals:***

  - *Transportation Options Appropriate to Bend* - Foster transportation systems that provide opportunities for all practical modes to facilitate the livability of neighborhoods and the community.

*The TSP Goals are consistent with this GP Goal – see: TSP **Chapter 5 Section 5.0.1 Plan Goals; Mobility and Balance** ♦ Develop a transportation system that serves all modes of travel and reduces the reliance on the automobile, ♦ Provide a variety of practical and convenient means to move people and goods within the urban area, and **Livability** ♦ Design and locate transportation facilities to be sensitive to protecting the livability of the community.*

  - *Public/Civic Involvement* - Encourage involvement by all citizens, corporate and individual, to keep the city vital and the Plan an "evolving vision".

*A substantial number of public meetings and hearings were held during the review and adoption process of the TSP. Specifically, the public was provided various forms of information and multiple opportunities to become involved or to provide input into the process – see: TSP **Chapter 1 Section 1.6.3** Informational Materials and Public Meetings, **Table 1**, AND the amending TSP **Ordinance, No. NS-1756 Item 2,** Citizen Involvement.*

- ***Policies:***

Urban Planning Coordination

1. Growth in the Bend Area shall be managed through the cooperative efforts of the City of Bend and Deschutes County.

*Development and preparation of the TSP involved numerous efforts to ensure coordination during the review and adoption process – see: the amending TSP **Ordinance, No. NS 1756**, **Item 3** – Preparation and Coordination.*

Development within the Urban Growth Boundary

4. 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.

*This is a basic policy of the GP – the TSP does not alter that requirement. Further, see: TSP **Section 6.9.6** Street System, **Policy 5** states: The City shall manage the development process to obtain adequate street right-of-way and improvement commensurate with the level of impact of development…*

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

*This is a fundamental premise of the TSP - see: TSP **Section 6.9.1** Transportation and Land Use: **Objective** • to promote land use patterns that support fewer vehicle trips and shorter trip lengths. Also, **Policy 1**: Medium and high-density residential development shall be located where they have good access to arterial streets and be near commercial services, employment and public open space to provide the maximum convenience to high concentrations of population.*

6. The city and county will encourage infill and redevelopment of the core area of the city.

*TSP **Section 6.9.1** Transportation and Land Use, **Policy 8**: The City shall explore incentives for re-development of existing commercial strips in order to help reduce the need to expand the Urban Growth Boundary.*

Citizen Involvement

15. The city shall continue to use advisory committees in their planning process, members of which are selected by an open process, and who are widely representative of the community.

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.

The TSP review and adoption process included the formation of a special committee: the Bend Transportation Advisory Committee (BTAC), held a substantial number of public meetings and hearings, and provided various forms of information to involve the public and other interested parties – see: TSP ***Chapter 1****,* ***Table 1****, AND the amending TSP* ***Ordinance NS-1756, Item 2*** *Citizen Involvement.*

Chapter 2 Natural Features and Open Space

- ***Goals:***

  - to establish a system of trails, greenways and wildlife corridors that are interconnected

There is considerable support within the TSP to establish a system of trails for the community; TSP ***Chapter 6 Section 6.3.1.3*** *Multi-Use Trails addresses the plan intent to develop a system of trails. Also,* ***Section 6.9.4*** *Pedestrian and Bicycle Systems,* ***Policies: 1-3, 9, 14, 16 and 17****,* ***Implementation Items: 1–7, and 12****, and* ***Benchmarks: 1, 2 and 6****, all collectively support the development of trails in the community. Also a planned trail system of Primary and Connector Trails is illustrated on TSP* ***Map Exhibit-B****.*

  - to soften the appearance of street corridors with planter and median strips

Sidewalks that are separated from the street by a planter strip are advocated by the TSP – see: ***Chapter 6****;* ***Section 6.3.1.1*** *The Landscape Strip,* ***Section 6.3.1.2*** *Street Crossings – Construction of Raised Medians,* ***Section 6.9.4*** *Pedestrian and Bicycle Systems,* ***Policies 7 and 9,*** *and* ***Section 6.9.6*** *Street System,* ***Policy 25****.*

Chapter 3 Community Connections

- ***Policies:***

Urban Trails

18. The city, county, irrigation companies, state and park district shall work together 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.

19. The city shall work with the irrigation districts to limit development within the canal easements that would impair the maintenance and operation of the canals.

20. 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.

21. The city, when practical, shall require connecting links to the urban trail system from all adjacent new developments.

There is considerable support within the TSP to establish a system of trails for the community; TSP ***Chapter 6 Section 6.3.1.3*** *Multi-Use Trails, addresses the plan to develop multi-use trails. Also,* ***Section 6.9.4*** *Pedestrian and Bicycle Systems,* ***Policies: 1-3, 9, 14, 16 and 17****,* ***Implementation Items: 1–7, and 12****, and* ***Benchmarks: 1, 2 and 6****, all collectively support the development of trails in the community. Also a planned trail system of Primary and Connector Trails is illustrated on* ***TSP Map Exhibit-B:*** *Bend Urban Area – Bicycle and Pedestrian Plan.*

Schools

22. The Bend-La Pine School District shall participate in providing necessary street, pedestrian and bike facilities adjacent to school sites as new schools are erected.

Accessibility to schools is part of the TSP strategy to reduce vehicle trips that could otherwise be made by foot or bicycle – see: TSP ***Chapter 6 Section 6.3*** *Pedestrian and Bicycle Systems,* ***Section 6.9.4*** *Pedestrian and Bicycle Systems;* ***Policies 4 and 15****.*

Chapter 4 Population and Demographics

[There are no applicable sections of this chapter that relate to the transportation plan.]

Chapter 5 Housing and Residential Lands

- ***Goals:***

  - A transportation system of streets, bicycle ways, and trails that connect our neighborhoods to schools, parks, shopping and employment and to other neighborhoods is an important factor in building and maintaining a sense of community.

The entirety of the TSP promotes this goal. Specifically, the following TSP Goals fulfill this GP Goal - see: TSP ***Chapter 5 Section 5.0.1 Plan Goals; Mobility and Balance:*** *♦ Develop a transportation system that serves all modes of travel and reduces the reliance on the automobile, ♦ Provide a variety of practical and convenient means to move people and goods within the urban area, and* ***Livability*** *♦ Design and locate transportation facilities to be sensitive to protecting the livability of the community.*

- ***Policies:***

Neighborhood appearance

14. All new developments shall include trees, as practical, in the planter strip between the curb and sidewalk. Such trees shall be consistent with the city's Urban Forestry Plan.

The TSP advocates the inclusion of landscape planter strips for a multitude of reasons including the primary one which is to accommodate street trees. The intent to accommodate a planter strip is best articulated in ***Chapter 6*** *of the TSP,* ***Section 6.3.1.1*** *The Landscape Strip, and also supported in,* ***Section 6.9.4*** *Pedestrian and Bicycle Systems,* ***Policy 7*** *- This policy advocates construction of "property tight" sidewalks – which creates the "planter strip" between the curb and sidewalk.*

Transportation connectivity

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

The TSP ***Chapter 6 Section 6.9.1*** *Transportation and Land Use,* ***Policy 1,*** *has the exact wordage.*

30. Street widths on public residential local streets may vary depending on topography, anticipated traffic volumes, natural features that warrant protection, and existing street patterns in the neighborhood. Narrower streets may have limited on-street parking to ensure emergency vehicle access.

The TSP ***Chapter 6 Section 6.9.6*** *Street System,* ***Policy 16,*** *states essentially the same language.*

31. The city may require adjustment to the street pattern or installation of traffic calming devices in order to discourage high speed traffic on local residential streets.

The TSP ***Chapter 6 Section 6.9.6*** *Street System,* ***Policies: 12, 15 and 16,*** *provide for protection of local streets. (Policy 15 has the exact language.)*

32. In all residential areas the city shall encourage the use of open space amenities such as landscaped traffic islands or extra-width planting strips.

The TSP ***Chapter 6 Section 6.3.1.1*** *The Landscape strip and* ***Section 6.9.6*** *Street System,* ***Policy 1****, advocates for the inclusion of planter strips in typical street design that would accommodate landscaping.*

34. Sidewalks shall be required in all new residential developments. Separated sidewalks shall be required, as practical, on streets that provide or will provide access to schools, parks, or commercial areas. However, an alternative system of walkways and trails that provide adequate pedestrian circulation may be approved.

35. Efforts shall continue to complete or connect existing walks along routes to schools, parks, or commercial areas.

The TSP ***Chapter 5 Section 5.5.5*** *Street System,* ***Figure 16b****, Sidewalk System Improvement Priorities, establishes a prioritization list that further emphasizes the importance of sidewalks.* ***Chapter 6 Section 6.3.1*** *The Pedestrian System supports the construction of sidewalks on both sides of the street. Further TSP support for sidewalk construction is found in* ***Section 6.9.4*** *Pedestrian and Bicycle Systems,* ***Objectives: 1.*** *To support and encourage increased levels of bicycling and walking as an alternative to the automobile,* ***2.*** *To Provide safe, accessible and convenient bicycling and walking facilities, and* ***Policies: 7 and 9*** *support the construction of separated sidewalks in the construction of all streets, including a prioritization for infill or retrofit improvements.*

36. Bikeways shall be considered as both a circulation and recreation element in the Plan, and adequate facilities should be obtained for this purpose in all new development.

37. Efforts shall be made to extend trails, pedestrian ways, and bikeways through existing residential areas.

*The TSP **Chapter 6 Section 6.3** Pedestrian and Bicycle Systems, underscores the value of "Bikeways" as both circulation and recreation elements of the plan. The TSP includes the strategy of developing Primary and Connector trails, as well as accessways through-out the planning area. **Chapter 6 Section 6.9.4** Pedestrian and Bicycle Systems; **Objectives: 1 and 2** (cited in the preceding section above), **Policies: 1-4, 6, 7, 9, 10 and 14-16**, **Implementation Items: 2-4, & 6**, and **Map Exhibit-B** Bend Urban Area – Bicycle and Pedestrian Plan, all support the development of the trail system in the Bend urban area.*

38. To encourage connectivity and pedestrian access, residential block length shall not exceed 600 feet except for topographic constraints. When existing conditions or topography prevent a cross street, a pedestrian accessway to connect the streets shall be required.

*TSP **Chapter 6 Section 6.9.6** Street System, **Policy 13,** makes the same block length provision.*

39. Residential local streets shall be developed whenever practicable to increase connectivity within and between neighborhoods.

*TSP **Chapter 6 Section 6.9.6** Street System, **Policy 14,** makes the same street grid, connectivity provision.*

40. Cul-de-sac and "hammer-head" residential streets may be allowed only where existing development, steep slopes, open space, or natural features prevent connections, or when the objectives of connectivity are met within the neighborhood.

*TSP **Chapter 6 Section 6.9.6** Street System, **Policy 18,** makes the same dead-end street exception provision.*

Destination Resorts

51. Destination resorts shall provide for any arterial or collector streets that are shown on the transportation system plan map to be extended through the site, or as needed as a result of a traffic study.

52. Destination resorts shall provide for pedestrian and bicycle access through the development from the urban area to the National Forest and/or other public lands such as parks, scenic areas, and designated trails.

Planning and construction of Destination Resorts shall conform to the same road, sidewalk and trail provisions as any other Bend Urban Area development and shall be consistent with the Goals, Policies and provisions of the TSP.

Chapter 6 The Economy and Lands for Economic Growth

- ***Goals:***

  - Stimulate economic development that will diversify and strengthen economic activity and provide primary and secondary job opportunities for local residents.

*The TSP Goals are consistent with the stated GP Goal – see: **Chapter 5 Section 5.0.1 Plan Goals; Accessibility and Equity** ♦ Provide people of all income levels with the widest range of travel and access options within the Bend urban area, ♦ Provide all transportation modes access to all parts of the community, and **Economic** ♦ Implement transportation improvements to foster economic development and business vitality.*

- ***Policies:***

Industrial Development

2. Prior to permitting industrial development on the Juniper Ridge site, the City shall prepare and adopt a development plan for the area. Preparation of the plan shall include an assessment of public facilities improvements, including transportation facility improvements that may be needed to support industrial development.

*Transportation Improvements are planned along the southern edge of Juniper Ridge along Cooley Road and at its intersection with Highway 97 - see: TSP **Section 6.5.1.1** Expressways: Highway 97 at Cooley Road, **Section 6.5.1.4** Minor Arterials: Cooley Road, **Section 6.5.2.9** Railroad Crossings; at Cooley Road. Follow-up studies and plans are now underway to address the Juniper Ridge Transportation requirements.*

12. Development of the industrial lands at the West edge of the urban area between Skyliners Road and Shevlin Park Road shall be limited to the Industrial Park and Mixed Employment land use categories to minimize additional heavy truck traffic on Newport Avenue and Galveston Avenue.

*The TSP (in 2000) included plans for the completion of Mt. Washington Drive on the west side of the city (now completed), with the function of helping to serve the transportation needs of the developing areas on the west side of Bend, as well as, providing some relief to the traffic loading on Newport and Galveston avenues - see: TSP **Section 6.5.1.4**; Minor Arterials: Mt. Washington Drive.*

16. The property south of Cooley Road between Highway 20 West and the Mountain View Mall, as shown on the General Plan Map, shall be designated for mixed industrial and commercial development. Because this area is along the state highway and is an entrance to the community, it shall be subject to access controls and design review standards.

*Access control along expressways is advocated by the TSP **text**. The intent of Cooley Road, Robal Lane and Hunnel Road, within the above described area, is to serve as backage roads that would serve the commercially zoned properties (described above) for most of their access. Access to Expressways is permitted only on a case-by-case basis until alternative access becomes available - see: **TSP Section 6.5.1.1** Expressways, **Section 6.5.1.4** Minor Arterials: Cooley Road, Robal Lane and Hunnel Road.*

17. The area west of Highway 97 North and north of Empire Avenue, as shown on the General Plan Map, shall have a mixed-use designation for industrial and commercial development. Properties in this area shall take access from the frontage road or other internal roads that are shown on the transportation plan. Because of the high visibility of these properties, they shall be subject to design review standards.

*The TSP **text** advocates managed access to the higher order streets through the construction of medians and the development of "interior" street systems (including frontage roads). This strategy is to maintain an emphasis of travel mobility along the higher order classified streets - this would include those areas that are adjacent to the city such as cited above. For specific related TSP language that is pertinent to this topic area, see: **Section 6.5.1.2** Principal Arterials, **Section 6.5.1.5** Frontage Roads, **Section 6.5.1.4** Minor Arterials; Empire Avenue, **Section 6.9.6** Street System, **Policy 26** and TSP **Map Exhibit-A** (formerly Map Exhibit B) The Roadway System plan.*

Commercial Development

30. An area south of Murphy Road on the west side of Highway 97 has been marked for highway commercial with a flexible "sawtooth" boundary. This area shall be approved for development only when a system of frontage road and limited access control is created that will protect the capacity and safety of Highway 97 and South 3rd Street.

*Since the adoption of the TSP in 2000, an amendment (2006) has addressed the circulation needs of this geographic area. This study area was also known as the "Murphy Crossing Refinement Plan" area. **TSP Section 6.5.1.4** Minor Arterials; Murphy Road provides a description of the street system envisioned for this area. This roadway system is also depicted on (a new) **Figure 26b** and (a re-labeled) **Map Exhibit-A**.*

31. It is the intent of the Plan to allow commercial development adjacent to arterial streets and highways in areas designated for commercial development, provided that the developments access onto frontage roads or interior roads, and that access onto the highway or arterial will be limited. Points of access will be encouraged that provide for adequate and safe entrances and exits, and that favor right turns and merging over the use of traffic signals.

*Access Control is a common element in the strategy along all higher order streets in the TSP text; **Sections 6.5.1**; Expressway, Principal Arterials, Major Arterials and Minor Arterials all advocate access control as a means of maximizing roadway capacity. Access management strategies are best articulated in the text in **Section 6.5.2.2** Access Management. Also, **Section 6.9.2** Transportation System Management (TSM) **Objective** ♦ Provide cost effective transportation improvements and implement strategies that will improve the efficiency and function of existing roadways, **Policies: 1 & 2**, and **Section 6.9.6** Street System **Policy 6**, all support access management strategies along highway or arterial streets.*

Chapter 7 Transportation

[The Transportation System Plan IS Chapter 7]

Chapter 8 Public Facilities and Services

- ***Goals:***

  - For new development to pay its fair share of the cost of major facilities needed to support development

*This is a basic policy of the GP – the TSP does not alter that requirement. Further, see: TSP **Section 6.9.6** Street System, **Policy 5** states: The City shall manage the development process to obtain adequate street right-of-way and improvement commensurate with the level of impact of development…*

Chapter 9 Community Appearance

- ***Goals:***
  - To make a concerted effort to improve the appearance of the community, particularly in the commercial, industrial and multifamily areas
  - To significantly improve the appearance along the state highways and other transportation corridors as one means of recapturing the individual and distinct identity of the Bend area.

- ***Policies:***

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.
6. After the Highway 97 Parkway opens, the city and county shall work with ODOT to improve the appearance of Highway 20, NE 3rd Street and South Business Highway 97.
7. The city shall develop designs for arterial and collector streets that include landscaped planter strips and medians. Such designs shall include trees in the planter and median strips when practical and safe.

*The TSP **text** advocates the inclusion of landscape planter strips for a multitude of reasons including the primary one which is to accommodate street trees. The intent to accommodate a planter strip is best articulated in Chapter 6 of the TSP **Section 6.3.1.1** The Landscape Strip, and is also supported in, **Section 6.9.4** Pedestrian and Bicycle Systems, **Policy 7** - This policy advocates "property tight" sidewalk construction – which creates the "planter strip" between the curb and sidewalk. Also, **Section 6.5.2.3** Community Appearance supports the strategy of landscaping medians to make them attractive as well as functional for access control, and **Section 6.9.6** Street System, **Policy 24**, supports the design philosophy of working with the State to line the highways entering the city with large stature trees.*

8. Special design consideration shall be given to development on hillside areas visible from developed areas, and from Highway 20 and the Parkway within the Bend area.

*The TSP Goals are consistent with this GP Goal – see: TSP **Chapter 5 Goals**: **Environmental** ♦ Recognize and respect the natural features over which transportation improvements pass to minimize adverse impacts. And, the TSP also advocates permitting flexibility in street standards on hill side areas in the text – See: **Section 6.5.2.4** Steep Slope Areas to minimize cuts and fills.*

Chapter 10 Natural Forces

- ***Goals:***
  - To maintain or improve the air quality for a healthful and desirable urban environment
  - To encourage energy conservation and the development of energy producing facilities that use renewable resources

*The TSP Goals are consistent with this GP Goal – see: **TSP Chapter 5 Goals**: **Environmental** ♦ Design transportation improvements to preserve air and water quality, minimize noise impacts, and encourage energy conservation.*

- ***Policies:***

2. The city, county and state shall continue to work towards improving circulation and traffic flow through the city in order to reduce carbon monoxide levels.

*The basic premise of the TSP is to reduce reliance on the automobile, specifically reducing single-occupant vehicle travel, by promoting walking, bicycling, transit use and telecommuting – see: **Chapter 5 Section 5.0.1.1 Goal Statement:** ...Completion of a multi-modal road network, trail, and transit system will help to achieve a balanced transportation system and reduce automobile reliance... Also the TSP advocates the completion of the street grid system and compact community design to reduce trip lengths – see: **Section 6.9.6** Street System; **Policies 3 & 14, Implementation item 2**, and **Figure 29**. Additionally, the TSP "Preferred Alternative" (i.e., the 'Combined Alternative', iteration #2) advocates the completion of the missing segments of arterials and collectors to increase system connectivity and also reduce trip length, as well as the inclusion of some roadway widening to reduce traffic congestion and the resultant exhaust emissions that result from automobile congestion and 'stop and go' traffic – see: TSP **Chapter 5** specifically **Section 5.4.2**, and **Tables 8, 9 and 10.***

FINDING

Based on the preceding statements of fact, the Transportation System Plan (TSP) is consistent with the Bend Area General Plan.

BLANK PAGE

ORDINANCE NO. NS-2048

AN ORDINANCE AMENDING CHAPTER 5 OF THE BEND AREA GENERAL PLAN AND CHAPTER 2.7 OF THE CITY OF BEND ZONING ORDINANCE NS-2016 BY ADDING A MANUFACTURED HOME PARK REDEVELOPMENT.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council has held a public hearing, considered the Planning Commission's recommendation and record, and has found that there is a public need and benefit for the proposed change.

Section 2. The City of Bend Zoning Ordinance NS-2016 is amended by adding Section 2.7.900; Manufactured Home Park Redevelopment Overlay as described in Exhibit "A".

Section 3. The Bend Area General Plan Chapter 5 is amended by adding revised text as described in Exhibit "B".

Read for the first time the 2nd day of May, 2007.

Read for the second time the 16th day of May, 2007.

Placed upon its passage the 16th day of May, 2007.

YES: 5 NO: 1

Authenticated by the Mayor the 16th day of May, 2007.

Bruce Abernathy, Mayor

ATTEST:

Patricia Stell, City of Bend Recorder

EXHIBIT "A"

2.7.900 Manufactured Home Park Redevelopment Overlay

Sections:

2.7.910 Purpose and Applicability
2.7.920 Residential Density
2.7.930 Special Development Standards

2.7.910 Purpose and Applicability

A. Purpose. Manufactured homes located within Manufactured Home Parks provide a significant amount of the City's affordable housing. When a manufactured home park redevelops, this type of affordable housing stock is lost, leaving the residents of those parks with few options. The purpose of the Manufactured Home Park Redevelopment Overlay is to implement the City ordinance No. NS-2036, by providing incentives to the Park owners to continue the use of the land as a Manufactured Home Park and when redevelopment does occur, by providing a mechanism for capturing a portion of the redevelopment potential as replacement affordable housing. The Manufactured Home Park Redevelopment Overlay creates overlay development standards for increased residential housing and, where appropriate commercial and mixed use development and designated open space within existing Manufactured Home Park boundaries. The overlay development standards will:

- Provide a variety of housing types for a variety of markets;
- Promote pedestrian and other multi-modal transportation options;
- Ensure compatibility of uses within the development and within the surrounding area;
- Create an interconnected system of streets with design standards appropriate to the intensity and type of proposed and adjacent uses.

If City ordinance No. NS-2036 is repealed, invalidated by a court of competent jurisdiction or preempted by State or Federal law, and then this subsection of the Bend Development Code shall automatically be repealed.

B. Applicability. The provisions of this overlay shall apply to all existing manufactured home parks at the date of adoption of this overlay. The provisions herein shall satisfy the *Waiver of Relocation Requirements Option, (2) Increased Density Alternative* referred to in the City Ordinance No. NS-2036, when implemented in conjunction with a Development Agreement with the City of Bend as required by City Ordinance No. NS-2036.

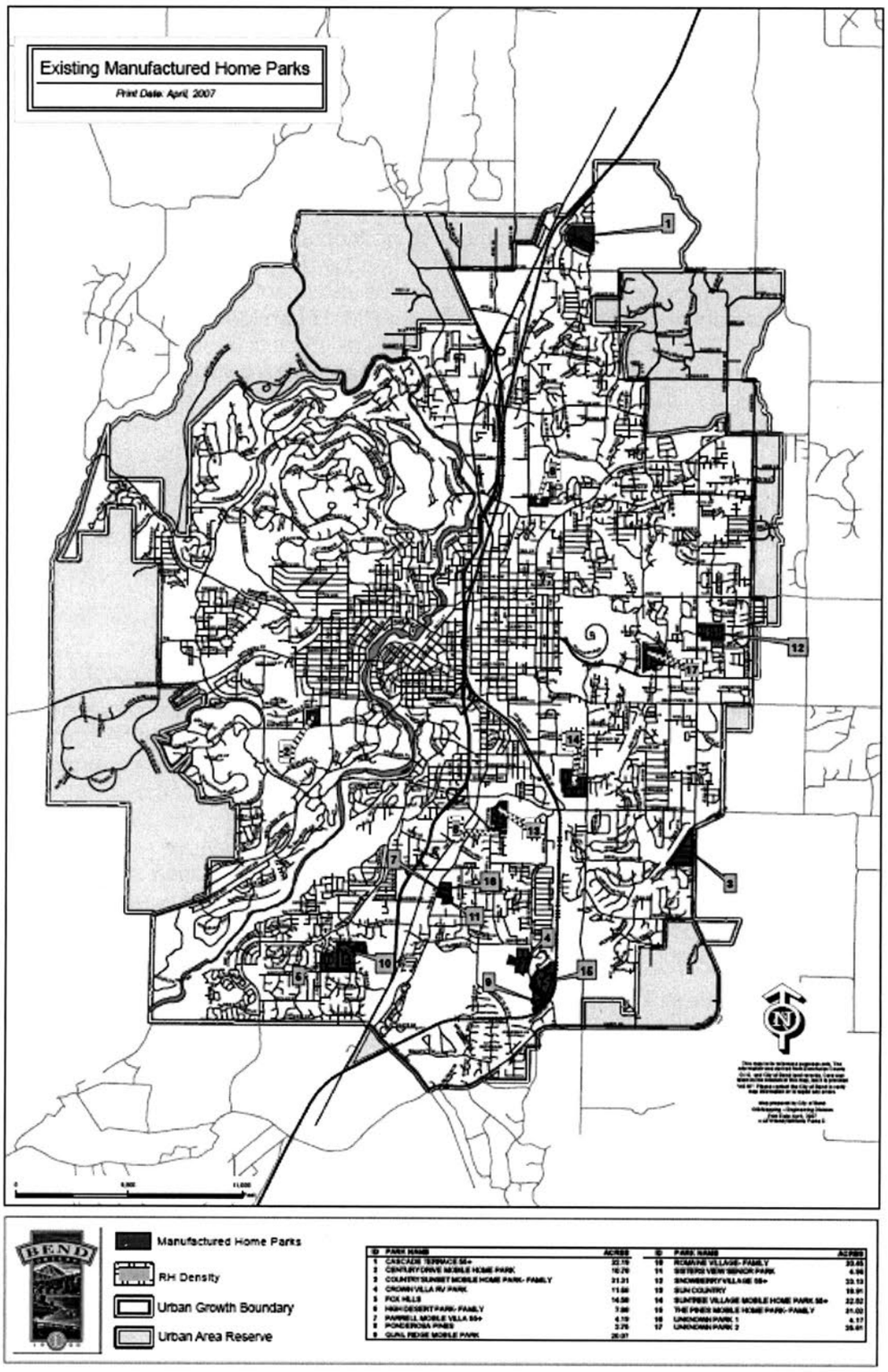

Existing Manufactured Home Parks
Print Date: April, 2007
Manufactured Home Parks
RH Density
Urban Growth Boundary
Urban Area Reserve

Figure 900A

2.7.920 Residential Density

A. Residential Density Provisions. The Oregon State Law allows manufactured home parks to develop at a maximum residential density of 10 units per acre regardless of the underlying zone. This overlay will provide special increased density incentives for existing parks that are redeveloped as described below.

1. Manufactured Home Parks in existence at the date of adoption of this overlay with an occupancy rate of at least 80%, that are developed in accordance with the City ordinance No. NS-2036 and the provisions of the City of Bend Development Code shall be allowed to develop at a residential density consistent with the RM, Urban Medium Density Residential District. The property owner shall mitigate all impacts of such development including but not limited to those impacts related to sewer, water, transportation and compatibility issues.

    a. Exception to density. Where an existing Manufactured Home Park already has a General Plan Density of Urban Residential Medium Density at the date of adoption of this overlay, the density bonus may be increased to RH, Urban High Density Residential District with the same provisions for redevelopment as described above.

2.7.930 Special Development Standards

A. Permitted Land Uses. The uses and special standards permitted by the implementation of the Manufactured Home Park Redevelopment Overlay shall supersede the standards of the underlying intended rezone. Where no special development standards are provided by the overlay, the applicable standards of the intended RM or RH rezone or previously approved refinement plan shall apply.

B. Continued Use as a Manufactured Home Park. Manufactured homes have reduced impacts on the land because the unit does not require a permanent foundation. However many existing Manufactured Home Parks are not developed at the maximum density. In order for the existing parks to develop at the allowable 10 units per acres park owners may take advantage of the following incentives:

1. The average area of a mobile home site may be 3000 square feet provided all spacing requirements of the Building Code can be met.

2. Park owners that receive displaced residents from redeveloping parks will not be obligated to relocate these displaced units when the park redevelops as required by Ordinance No. NS-2036.

3. Up to 10% of the existing trees may be removed to accommodate new manufactured home placement, provided the trees being removed are not specimen trees. For the purpose of this code, a specimen tree would be a tree of any species which is determined by a certified arborist to be of an exemplary size or variety for the area;

C. Redeveloping Manufactured Home Parks. Redeveloping Manufactured Home Park owners that choose to take advantage of the provisions of this overlay shall initiate an "Intent to Rezone" with the City by filing an application for a plan amendment and zone change in conformance with Chapter 4.6 of the Bend Development Code. The application for "Intent to Rezone" shall be accompanied by an application for development, and the applicable fees.

In addition to the approval criteria for development found in Chapter 4.6 of the Bend Development Code, the applicant shall address the following general standards.

1. General Development Standards.

    a. Meet with the City of Bend Transportation Division to determine if a transit stop is needed with ¼ mile of the subject property along an existing or future transit route. If needed, design and construct the transit stop to City standards. The transit stop shall be accessible from the redevelopment site.

    b. Passive and/or active open space areas shall be incorporated into the redevelopment plan.

    c. Where a redeveloping Manufactured Home park adjoins a residential zone, the development along the perimeter of the site within 100 feet of the property

boundary shall be subject to the development standards of the adjoining residential zone including but not limited to lot coverage, building heights and setbacks.

2. Building Height. To encourage innovative housing designs, provide more efficient use of land, encourage the preservation of open space and existing trees and to achieve greater allowable densities, an increase in building height not to exceed 10 feet above the height of the zone may be allowed provided the applicant's proposal meets all of the following criteria:

    a. The added height will provide for additional affordable housing units.
    b. The additional building height is needed to preserve existing trees and the added height and total building area proposed is equivalent to the area of significant trees being saved.
    c. The additional building height is buffered from view by existing preserved trees.
    d. The building requesting the added height has a required minimum 1:1 side and/or rear yard setback from an existing adjoining residential use based on the finished building height.

        Example: a 40 foot tall building would have a 40 foot minimum side and/or rear yard setback from an existing adjoining residential use.
    e. The proposed building incorporates sustainable Leed Silver Certification construction methods.

3. Building Setbacks. To ensure a safe livable environment, the following setbacks shall be observed:

    a. Front yard: 6 foot minimum for all portions of the structure, except garages shall be setback a minimum of 18 feet.

    b. Side and rear yard: The setbacks of the proposed RM or RH rezone shall apply.

        Exception to side and rear yard setbacks:

        i. Attached single family townhome development shall have an interior side yard setback of zero (0) feet. End units not fronting on a street corner shall have the sum of the side yards equal to 12 feet. End units fronting on a street corner shall have a minimum setback of 10 feet, except as necessary to comply with the clear vision standards in Table 3.1.400(N) of the Development Code.
        ii. Garages and on site parking shall take access from an alley or rear driveway

4. Lot Coverage. As a means of balancing the building mass on the land, the following lot coverage shall be applied based on housing type and / or use.

Standard	Residential Use	Mixed-use / Commercial
Lot Coverage	**40%**	**50%**

5. Standards for Non-residential Development. Portions of some Manufactured Home Parks may be suitable for non-residential use development that will support the increased overlay density.

    a. Location Standards. The following location criteria shall be met to allow a park owner to develop non-residential uses as a secondary use in conjunction with the allowable residential development.

        i. Non-residential uses shall be subject to the location and size standards for Neighborhood Commercial Uses in Chapter 3.6.300(K).

        ii. Access can be provided from an existing intersecting local street or a new local street can be developed in conformance with Chapter 3.1.

        iii. The property is within ¼ mile of an existing or future transit stop.

        iv. The surrounding property is developed at RS density or greater.

6. Development Standards for Non-residential Uses. Non-residential uses shall be subject to the development standards for Neighborhood Commercial Uses in Chapter

3.6.300(K)(6-10).

7. Non-residential Uses. The Neighborhood Commercial Uses identified in Table 2.1.200 shall be permitted or conditionally allowed as a component of a Manufactured Home Park Redevelopment. Some of the uses may have special development standards as identified in Chapter 3.6 of the Development Code.

EXHIBIT "B"

Bend Area General Plan
Chapter 5 – Housing and Residential Lands

The following highlighted text is recommended to be added to Chapter 5.

(Pages 5-15 & 5-16)

To provide for the long-term self-sufficiency of low and moderate income households in Bend the issue of affordable housing must be addressed in a comprehensive manner. The City will provide incentives to the manufactured home park owners to encourage the parks to remain a residential park or incorporate affordable housing into the redevelopment plans as replacement housing. In addition, the city and county must continue to rely on housing groups and the local housing market to assure that affordable housing is available throughout the urban area. The General Plan and implementing codes encourage the market to provide affordable housing by:

- *allowing smaller single family lots which may lower prices and spread development costs out over more dwellings;*
- *reducing street widths in residential areas;*
- *allowing accessory dwellings in new single family subdivisions;*
- *creating more flexible and easier to administer development standards;*
- *creating a new zoning district that permits attached housing, detached housing and manufactured home parks at a density between the existing standard residential and multifamily residential zones;*
- *providing special overlay standards for existing Manufactured Home Parks as an incentive to develop affordable housing.*
- *increasing the percentage of multifamily housing in the future housing mix; and*
- *reducing the minimum lot size in the multifamily zones to allow smaller homes on lots as small as 2,500 square feet.*

The following plan policies are proposed to be added to the Bend Area General Plan.

(Pages 5-26 & 5-27)

29. *The city shall provide special redevelopment standards for manufactured home parks as an incentive to develop affordable housing.*

30. *Density bonuses may be considered as an incentive to providing affordable housing.*

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK
2007-42803
$51.00
00565100200700428030040067
08/03/2007 12:13:35 PM
D-IPPS Cnt=1 Stn=25 CE
$25.00 $11.00 $10.00 $5.00

Do not remove this page from original document.

Deschutes County Clerk

Certificate Page

If this instrument is being re-recorded, please complete the following statement, in accordance with ORS 205.244:

Re-recorded to correct [give reason] _____
previously recorded in Book _____ and Page _____,
or as Fee Number _____.

ORDINANCE NO. NS-2049

AN ORDINANCE VACATING PORTION OF WOODLAND BOULEVARD THAT LIES WITHIN NW ¼ of Section 4, Township 18 South, Range 12 East, Willamette Meridian, Bend, Deschutes County, Oregon.

A petition having been presented to the Bend City Council on January 17, 2007 requesting that the land described as the "STREET VACATION" area be vacated:

SEE EXHIBIT "A"

and stating the purpose for which the described property is proposed to be used and the reason for such vacation; and said petition being duly acknowledged;

The City of Bend having caused a notice of public hearing for vacation of public property describing the above street right of ways to be published in the Bulletin, as provided by ORS 271.110, once each week for two (2) consecutive weeks;

Within five days after the first day of publication of said notice, the City having caused a notice of street vacation to be posted at or near each end of the proposed vacation and in at least two conspicuous places in the proposed vacation area; the first publication and posting of said notice having occurred not less than 14 days prior to the hearing for said proposed vacation;

The City Council of the City of Bend having fixed the 16th day of May, 2007, at 7:00 p.m. local time in the City Council Chambers at 710 NW Wall Street, City of Bend, Oregon, as the time and place for the hearing upon said proceedings and at that time having heard all objections to the proposed vacation; and;

The City Council having determined that the public interest will not be prejudiced by the proposed vacation and that the property should be vacated:

NOW, THEREFORE, THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

That the above described portion of street right of ways located in Bend, Deschutes County, Oregon, be vacated subject to the following:

That the Petitioner dedicate to the City the land described in Exhibit A as the "PUBLIC DEDICATION", the City accept the dedicated land.

The City Recorder shall forthwith cause a certified copy of this ordinance to be filed and recorded in the Office of the County Clerk of Deschutes County, Oregon.

Read for the first time the 2nd day of May, 2007.

Read for the second time the 16th day of May, 2007.

Placed upon its passage the 16th day of May, 2007.

Yes: 6 No: 0

Authenticated by the Mayor the 16th day of May, 2007.

Bruce Abernethy, Mayor

ATTEST:

Patricia Stell, City Recorder

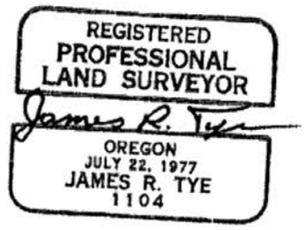
Please Record Pages 1-5 of Ordinance NS-2049. After Recording, return to: Deputy City Recorder, City of Bend, 710 NW Wall, Bend OR 97701

STREET VACATION

EXHIBIT ``A"

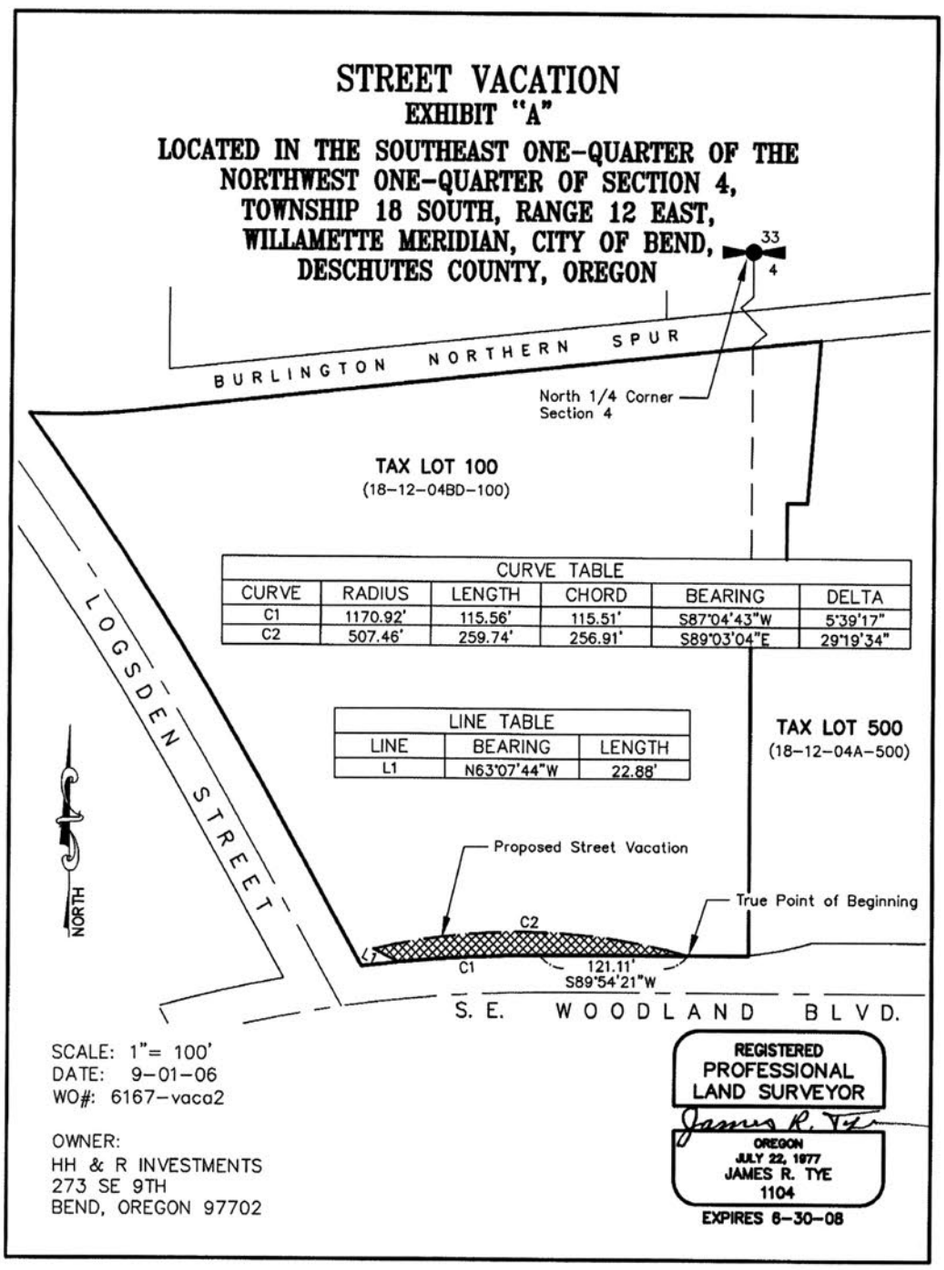
A strip of land located in the Southeast One-Quarter of the Northwest One-Quarter (SE 1/4 NW 1/4) of Section Four (4), Township Eighteen (18) South, Range Twelve (12) East, Willamette Meridian, City of Bend, Deschutes County, Oregon, said strip of land being more particularly described as follows:

Beginning at a point on the North right-of-way line of S.E. Woodland Boulevard, said point being South 1808.36 feet and West 49.02 feet from the North One-Quarter Corner of said Section 4; thence South 89°54'21" West 121.11 feet; and along an arc of a 1170.92 foot radius curve to the left 115.56 feet, the chord of which bears South 87°04'43" West 115.51 feet; thence North 63°07'44" West 22.88 feet a point on said North right-of-way line; thence along said North right-of-way line on an arc of a 507.46 foot radius curve to the right 259.74 feet, the chord of which bears South 89°03'04" East 256.91 feet to the point of beginning.



Sun Country Engineering & Surveying, Inc.

STREET VACATION
EXHIBIT "A"
LOCATED IN THE SOUTHEAST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF SECTION 4, TOWNSHIP 18 SOUTH, RANGE 12 EAST, WILLAMETTE MERIDIAN, CITY OF BEND, DESCHUTES COUNTY, OREGON



CURVE TABLE					
CURVE	RADIUS	LENGTH	CHORD	BEARING	DELTA
C1	1170.92'	115.56'	115.51'	S87°04'43"W	5°39'17"
C2	507.46'	259.74'	256.91'	S89°03'04"E	29°19'34"

LINE TABLE		
LINE	BEARING	LENGTH
L1	N63°07'44"W	22.88'

SCALE: 1"= 100'
DATE: 9-01-06
WO#: 6167-vaca2

OWNER:
HH & R INVESTMENTS
273 SE 9TH
BEND, OREGON 97702

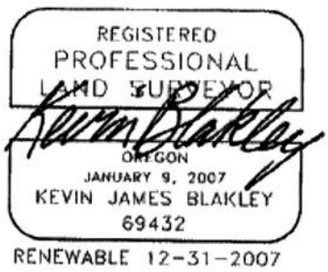
REGISTERED
PROFESSIONAL
LAND SURVEYOR
James R. Tye
OREGON
JULY 22, 1977
JAMES R. TYE
1104
EXPIRES 6-30-08

PUBLIC DEDICATION

EXHIBIT ``A''

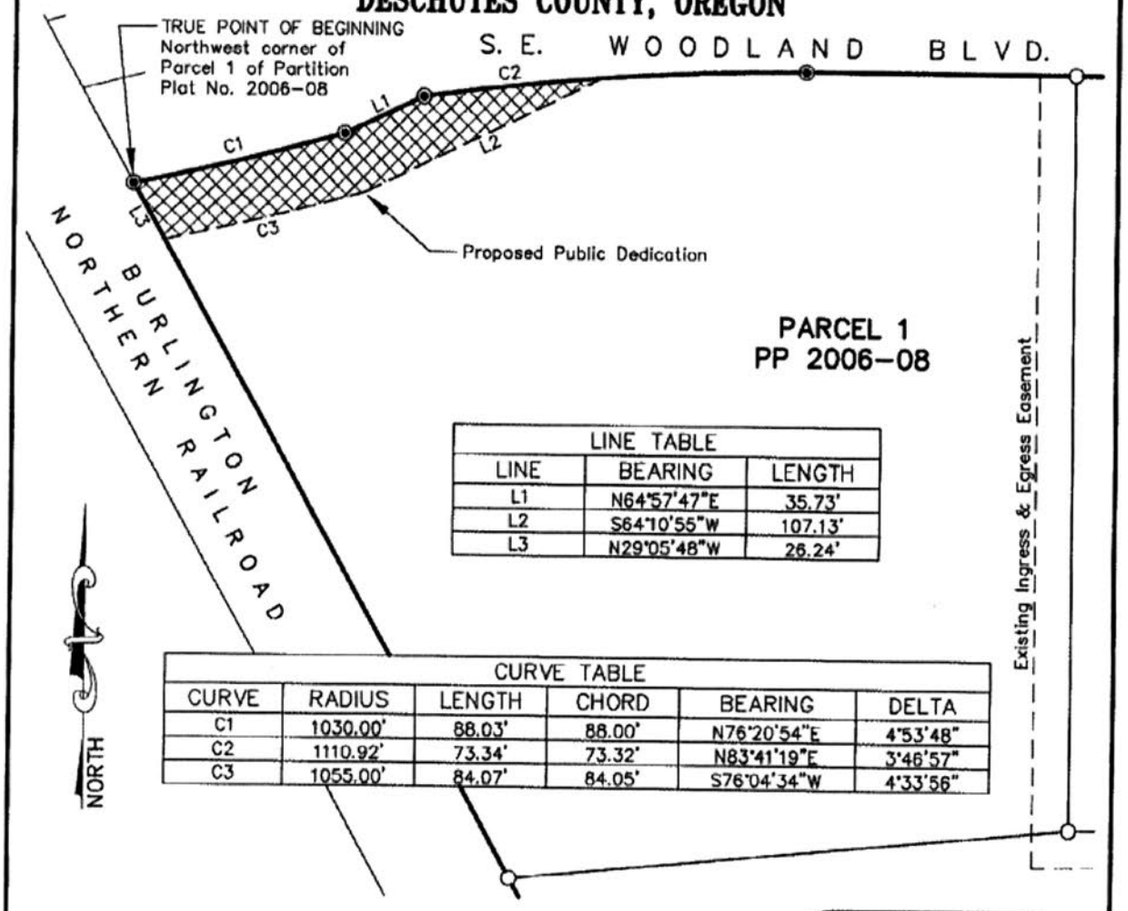
A Public Dedication located on Parcel 1 of Partition Plat No. 2006-08, Deschutes County, Oregon, located in the Southeast One-Quarter of the Northwest One-Quarter (SE 1/4 NW 1/4) of Section Four (4), Township Eighteen (18) South, Range Twelve (12) East, Willamette Meridian, City of Bend, Deschutes County, Oregon, said dedication being more particularly described as follows:

Beginning at the Northwest corner of said Parcel 1, said point being the TRUE POINT OF BEGINNING for said dedication; thence along the North line of said Parcel 1 along an arc of 1030.00 foot radius curve to the left 88.03 feet, the chord of which bears North 76°20'54" East 88.00 feet; and North 64°57'47" East 35.73 feet; and along an arc of a 1110.92 foot radius curve to the right 73.34 feet, the chord of which bears 73.32 feet; thence leaving said North line South 64°10'55" West 107.13 feet; thence along an arc of a 1055.00 foot radius curve to the right 84.07 feet, the chord of which bears South 76°04'34" West 84.05 feet to a point on the West line of said Parcel 1, also being the East right-of-way line of Burlington Northern Railroad; thence along the said East line of Parcel 1 North 29°05'48" West 26.24 feet to the TRUE POINT OF BEGINNING, containing 3,940 square feet, more or less.



Sun Country Engineering & Surveying, Inc.

PUBLIC DEDICATION
EXHIBIT "A"
LOCATED IN THE SOUTHEAST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF SECTION 4, TOWNSHIP 18 SOUTH, RANGE 12 EAST, WILLAMETTE MERIDIAN, CITY OF BEND, DESCHUTES COUNTY, OREGON



LINE TABLE		
LINE	BEARING	LENGTH
L1	N64°57'47"E	35.73'
L2	S64°10'55"W	107.13'
L3	N29°05'48"W	26.24'

CURVE TABLE					
CURVE	RADIUS	LENGTH	CHORD	BEARING	DELTA
C1	1030.00'	88.03'	88.00'	N76°20'54"E	4°53'48"
C2	1110.92'	73.34'	73.32'	N83°41'19"E	3°46'57"
C3	1055.00'	84.07'	84.05'	S76°04'34"W	4°33'56"

SCALE: 1"= 60'
DATE: 4-13-07
WO#: 6167-ded

OWNER:
HH & R INVESTMENTS LLC
1916 NE CLIFF DRIVE
BEND, OREGON 97701

REGISTERED
PROFESSIONAL
LAND SURVEYOR
OREGON
JANUARY 9, 2007
KEVIN JAMES BLAKLEY
69432
RENEWABLE 12-31-2007

BLANK PAGE

ORDINANCE NO. NS-2050

AN ORDINANCE AMENDING THE CITY OF BEND ZONING MAP, BY CHANGING THE ZONING OF APPROXIMATELY 20-ACRES OF LAND FROM UAR, URBAN AREA RESERVE, TO IL, INDUSTRIAL LIGHT.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council opened a public hearing on March 21, 2007, continued the hearing to April 4, 2007 to accept additional evidence and rebuttal, considered the Hearings Officer's findings and record, and has found that the zone change satisfies the criteria for approval contained in Section 4.6 of the Bend Development Code.

Section 2. The Bend Area Zoning Map is amended by changing the zoning of the property described as portions of section 10, Deschutes County Assessor's map 17-12-10, as shown in Exhibit "A". The change will be from Urban Area Reserve (UAR) to Industrial Light (IL).

Section 3. The Bend City Council adopts and incorporates into this decision the portion of the Hearings Officer's March 15, 2007, decision (on pages 5-6) that interprets both Table 2.4.300 of the Bend Development Code (BDC) and the definition of "corporate headquarters" of the BDC Chapter 1.2. The City Council adopts as findings in support of this ordinance the Hearings Officer's findings in her March 15, 2007, decision. The Hearings Officer's decision is attached as Exhibit B. The City Council also adopts as additional findings in support of this ordinance the findings attached as Exhibit D. To the extent that any conflict exists between Exhibit D and Exhibit B, Exhibit D shall control.

Section 4. This zone change is subject to the conditions of approval contained in Exhibit "C".

Read for the first time the 4th day of April, 2007.

Read for the second time the 16th day of May, 2007.

Placed upon its passage the 16th day of May, 2007.

YES: 6 NO: 0

Authenticated by the Mayor the 16th day of May, 2007.

Bruce Abernethy

Bruce Abernethy, Mayor

ATTEST: Patricia S Stell

Patricia Stell, City of Bend Recorder

JUNIPER RIDGE

Exhibit: A

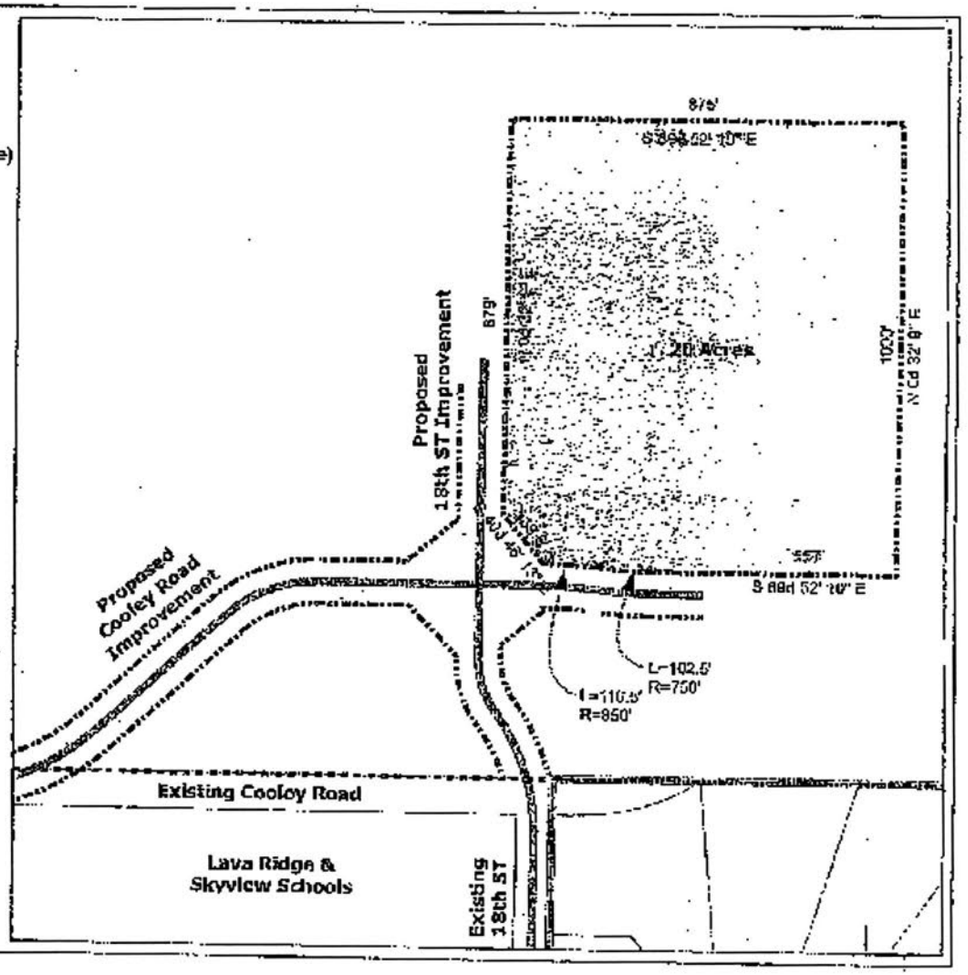
City Council Initiated
Zone Change
From UAR (Urban Area Reserve)
To IL (Industrial Light)
In Conformance With
General Plan Map
Designation IL

City of Bend
November 15, 2006



Legend:

- Bend City Limit
- Juniper Ridge Boundary
- Proposed ROW
- Proposed Street Improvements
- TAP Corner Parcel



HEARINGS OFFICER'S FINDINGS AND RECOMMENDATION

PROJECT NUMBER: PZ 06-809

HEARING DATE: February 13, 2007

APPLICANT/OWNER: City of Bend
710 NW Wall St
Bend, OR 97701
(Contact: Jerry Mitchell)

AGENT: W&H Pacific, Inc.,
920 SW Emkay Dr. Suite C-100
Bend, OR 97702
(Contact: Kevin Brady, AICP)

ATTORNEY: Glenn Klien
360 east 10th Ave, Suite 300
Eugene, OR 97401

LOCATION: The subject property is located northeast of the planned realignment of the intersection of Cooley Road and 18t Avenue, based on the northern extension of 18th Street and easterly extension of Cooley Road just to the northeast of Lava Ridge Elementary School and Skyview Middle School.

All of Section 10 in Township 17 S., Ranch 12 E., City of Bend, Deschutes County, Oregon.

REQUEST: The applicant is requesting a Zone Change approval for 20 acres from Urban Area Reserve (UAR) to Industrial Light (IL). The proposed request is in compliance with the General Plan.

The intended use of the subject property, subsequent to both Zone Change approval, final Plat approval and Site Development Review approval, is for the corporate headquarters of Les Schwab Tire Centers, which is being relocated to Bend from Prineville, OR. Such development will be subject to a limited land use decision for Site Plan Review approval and can only occur subsequent to approval of the zone change.

STAFF: Colin Stephens, Planning Manager

HEARINGS OFFICER: Sharon R. Smith

APPLICABLE CRITERIA:

(1) City of Bend Code – Chapter 10-10, Development Code

- (a) Chapter 1.2, Definitions (Corporate Headquarters)
- (b) Chapter 2.1, Residential Districts, Urban Area Reserve (UAR) Zone.
- (c) Chapter 2.4, Industrial Districts, Industrial Light (IL) Zone.
- (d) Chapter 4.1, Land Use Review and Procedures.
- (e) Chapter 4.6, Land Use District Map and Text Amendments.
- (f) Chapter 4.7, Transportation Analysis.

(2) The Bend Area General Plan

(3) Oregon Administrative Rules (OAR) 660-12-0021, Statewide Planning Goals 9 and 12

FINDINGS OF FACT:

1. LOCATION: The subject property is located northeast of the current intersection of Cooley Road and 18th Street. The property is further identified as Section 10 on Deschutes County Assessor's Map #17-12-10.

2. ZONING: The entire 20 acres lies within the City of Bend. A portion of the property lies within Deschutes County and the reminder has been annexed into the City of Bend, therefore, the subject property is currently split zoned. The portion within the City of Bend is zoned Urban Area Reserve (UAR). The portion of the property within the City of Bend is designated Industrial Light (IL) on the Bend Area General Plan Map.

3. SITE DESCRIPTION AND SURROUNDING LAND USES: The subject property is 20 acres in size, is regular in shape, and is currently completely vacant of development and use. The subject property is vegetated with a mix of mature and immature juniper trees scattered throughout the site. There are some significant rock outcroppings on the subject property. The land abutting the subject property is vacant. However, currently the City of Bend is designing the extension of Cooley Road and 18th Street, including the associated roundabout, which will serve the newly created 20-acre subject parcel.

The subject site abuts vacant land. The extension of 18th Street and Cooley Road will provide dedicated right-of-way along the southern and western property boundaries. To the south, Lava Ridge Elementary School and Skyview Middle School are located across Cooley Road. There are also large residential lots to the south with existing residential development. All parcels approximately 1000 feet to the west are zoned Residential Urban Low or Medium Density (RL or RM) and consist of single-family dwellings and a small mobile home park. The property to the north and east of the subject property is vacant and is currently being analyzed and reviewed under the Juniper Ridge Master Planning process.

4. PROPOSAL: The applicant requests approval of a Zone Change from UAR to IL for a portion of the overall property, (20 acres) currently zoned UAR, in order to make this portion of the overall property conform to and be consistent with the Bend Urban Area General Plan and Map. The surrounding property owned by the City of Bend will remain UAR.

The intended use of the subject property, subsequent to both Zone Change approval, Final Plat approval and Site Development Review approval, is for the re-location of the Les Schwab Corporate Headquarters.

5. PUBLIC NOTICE AND COMMENTS: On January 9, 2007, the applicant conducted a Public Meeting, as required by 4.1.210.B. The City of Bend Planning Division sent notices of the zone change request to surrounding owners of record of property as shown on the most recent property tax assessment roll within 250 feet of the subject property. No letters or comments were submitted other than comments and evidence from City Staff and the Oregon Department of Transportation (ODOT). A public Hearing was held February 13, 2007. The Applicant presented testimony and evidence at the hearing. No Opposition testified. The Record remained open for additional evidence until March 2, 2007 at 5:00 p.m. The Record remained open until March 9, 2007 for final legal argument. The Record closed on March 9, 2007.

CONCLUSIONARY FINDINGS:

CHAPTER 4.6, LAND USE DISTRICT MAP AND TEXT AMENDMENTS

Chapter 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 as to a specific factual setting. Quasi-judicial amendments shall follow the Type III procedure...

FINDING: The application is considered a Type III Quasi-judicial land use application. The scope of the application includes a 20-acre portion of land currently owned by the City of Bend. This Type III application is subject to the procedures identified in Chapter 4.1.500, Type II and III Applications. In addition, all of the criteria identified in Chapter 4.6.300.B are addressed below.

B. Criteria for Quasi-Judicial 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;

FINDING: In a memorandum to the Hearings Officer dated February 13, 2007, Colin Stephens stated that two Statewide Planning goals are germane to this request: Goals 9 and 12. The Hearing's Officer finds the zone change is consistent with those goals for the following reasons.

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.

The administrative rule implementing Goal 9 requires the City to maintain its comprehensive plan and land use regulations so as to provide adequate opportunities for a variety of economic activities. In Bend, the purposes of Goal 9 and OAR 660-009 are achieved, in part, through implementation of the recently approved General Plan amendments, the UGB expansion that included the subject land, and related actions to make the Juniper Ridge site available for industrial development (City File No. PZ 03-565). OAR 660-009-0010(4) provides that, when a city changes its plan designations of lands in excess of two acres to or from commercial or industrial use, pursuant to a post acknowledgment plan amendment, it must demonstrate that the proposed amendment is consistent Goal 9. The City made such a demonstration when it changed the plan designation for the subject site to an industrial designation. The zone change now at issue merely implements that previous plan designation change.

The proposed zone change is one of the necessary steps to make part of the Juniper Ridge site available for industrial development. The City's Economic Lands Study, produced as part of the earlier UGB expansion, identified the need for at least 245 acres of industrial land. This zone change will enable 20 acres of that need to be available for industrial development. The zone change therefore is consistent with Goal 9.

Goal 12 - Transportation: To provide and encourage a safe, convenient and economic transportation system.

Goal 12 is implemented through the Transportation Planning Rule (TPR), as defined in Oregon Administrative Rule OAR 660-012-0060. The rule generally requires that where a proposed rezone or a proposed amendment to a comprehensive plan or land use regulation (hereafter referred to as "proposed land use action") would "significantly affect" a transportation facility, action must be taken to mitigate those significant effects. For the reasons discussed below, the rezone proposed here would "significantly affect"

certain facilities and the proposed mitigation complies with the TPR's mitigation requirements.

Significant affect – OAR 660-012-0060(1)

OAR 660-012-0060(1) provides that a proposed land use action "significantly affects" a transportation facility under three different circumstances. The first two circumstances - changing the functional classification of a facility and changing standards implementing a functional classification system - are not applicable to this rezone. The third circumstance is applicable. Paragraph (1)(c) provides that significant effect occurs if the proposed land use action would**, as measured at the end of the planning period:**

- allow land uses or levels of development that would result in travel inconsistent with the functional classification of the transportation facility;

- reduce the performance of a transportation facility below the minimum acceptable performance standard; or

- worsen the performance of a transportation facility that is otherwise projected to perform below the minimum acceptable performance standard.

The record contains a transportation analysis prepared by DKS Associates. In undertaking that analysis, DKS used the year 2022 as the study year for purposes of the TPR. As explained in DKS' analysis at page 3, the adopted planning horizon for Bend is the year 2020. However, the 1999 Oregon Highway Plan ("OHP") requires that the future planning horizon be either the local planning horizon (here, 2020), or 15 years from the proposed date of the proposed land use action (here, 2022), whichever is greater. See OHP at 60; and OHP Action 1F.2. Consequently, 2022 is the year used for this part of the transportation analysis.

In undertaking that analysis, DKS also used "corporate headquarters" as the use which represented the worst case scenario for the proposed rezoning of the 20 acres to the IL zone. Such a scenario raises two questions. First, is "corporate headquarters" an authorized use in the IL zone? And second, is "corporate headquarters" the "worst case scenario." Each will be discussed in turn.

Chapter 1.2 of the Bend Development Code defines "Corporate Headquarters" as follows:

"Corporate Headquarters means a building or portion of a building in which persons are employed in the management or direction of a business consisting of one or more divisions or groups of companies. To be considered a corporate headquarters in an industrial zone, the office shall be directly associated with an industrial use on the same site or meet the applicable employee threshold and site size specified elsewhere in this Code. Corporate headquarters or regional headquarters may be permitted as part of light-manufacturing use. **Corporate and regional headquarters may also stand alone provided the headquarter site is ten acres or more and the use shall have at least 100 or more employees at the time of occupancy**." (emphasis added.)

This definition states that a corporate headquarters may stand alone, without being directly associated with an industrial use on the same site. Table 2.4.300 identifies permitted uses in industrial zones. That table identifies as a permitted use "Corporate Headquarters/Office when located with a permitted or conditional use." Table 2.4.300 would seem to conflict with the language contained in Chapter 1.2. However, the two sections can, and should, be read together to mean that a corporate headquarters can be located in an IL zone (a) if it is connected with an industrial use, regardless of the acreage of the headquarter site or the number of employees; or (b) as a stand alone use if the headquarter site is ten acres or more or will have at least 100 employees. The site subject to the rezone is 20 acres in size and anticipated number of employees at time of occupancy is 350. Therefore, with respect to the first question noted above, it is appropriate to use corporate headquarters for the modeling of the transportation impacts.

With respect to the second question, it also is appropriate to use "corporate headquarters" as the worst case scenario. In the February 21, 2007 memorandum from Nick Arnis (Bend Transportation Division Manager), argued that corporate headquarters is, for all practical purposes, the worst case scenario:

"The corporate headquarters selected for TPR analysis represents the "reasonable" worst case scenario for the proposed zone change, as opposed to the absolute worst case scenario. Consistent with planning practice for the City's Transportation System Plan (TSP), land use planning reflects anticipated densities and land use types around the City, as opposed to maximizing development on every parcel.

"The proposed IL zoning permits several types of industrial, residential, commercial, and public/institutional land use types. Of the permitted land use types that could be used to cover the land for the proposed rezone, the corporate headquarters has the highest potential trip generation rate based on ITE Trip Generation data (compared to medical/dental laboratories, commercial parking, manufacturing, warehouses, and contractor storage). Other types of development permitted under the IL zoning (e.g., vehicles service and equipment rental) have a higher potential trip generation rate, but would be significantly smaller in nature. Due to the location of the proposed zone change (not adjacent to a highway or major arterial), it is reasonably likely that any commercial service type uses that could be developed would compliment corporate headquarters and would primarily attract trips from the corporate headquarters (instead of attracting trips from the greater Bend area). With this high level of internal site trip capture, these higher trip generating uses would not have a significant impact on trips added to the surrounding roadway network. Therefore, the scenario selected for analysis (20 acres of corporate headquarters) does represent a reasonable worst case scenario for determining impacts to the surrounding transportation system."

Based on this information, I find that the use of 20 acres of corporate headquarters for purposes of the transportation analysis is appropriate.

DKS' analysis identifies as the transportation facilities that might be impacted by the proposed rezone primarily three facilities: Cooley Road, 18th Street and US 97. The analysis then proceeds to evaluate four intersections for these roads: (1) US 97 at Cooley Road; (2) US 97 at Robal Road; (3) Cooley Road at Boyd Acres Road; and (4) Cooley Road at 18th Street.

(a) US 97 at Cooley Road

US 97 is a state transportation facility, and as such, ODOT established the mobility standard as part of the 1999 Oregon Highway Plan. According to the OHP, US 97 is considered a Statewide Expressway, and because it is located within an MPO, it must operate at a volume to capacity (v/c) ratio equal to or less than 0.80. OHP at 68, Table 6.

In the year 2022, the projected v/c ratio (weekday PM peak hour) based on the existing zoning (i.e., without the proposed rezone) is 0.95. (DKS analysis at 18, Table 5.) Therefore, even without this proposed rezone, this intersection will fail to meet the adopted mobility standard.

In the year 2022, the projected v/c ratio based on the proposed rezone is 0.96. (DKS analysis at 19, Table 6.) Therefore, with the proposed rezone in place and without any mitigation, the projected traffic volumes increase the v/c ratio from 0.95 to 0.96, resulting in a slight degradation of the intersection. Consequently, the proposed rezone "significantly affects" this intersection as that phrase is used in the TPR.

(b) US 97 at Robal Road

As noted above, the mobility standard for US 97 is a v/c ratio equal to or less than 0.80. Table 5 of DKS' analysis shows that based on the existing zoning, in 2022 the v/c ratio for this intersection will be the same as for US 97 at Cooley Road: i.e., 0.95. Therefore,

this intersection, even without the proposed rezone, is projected to fail to meet the standard.

With the rezone in place, the projected v/c ratio increases from 0.95 to 0.97. (DKS analysis at 19, Table 6.) Thus, absent any mitigation, the proposed rezone would slightly worsen the operation of the intersection. Consequently, without mitigation, the proposed rezone "significantly affects" this intersection as that phrase is used in the TPR.

(c) Cooley Road at Boyd Acres Road

The City of Bend has established operational standards for roads and intersections in Bend. Those standards B which used to be found in Street Policy No. 6 B are now located in the new Bend Code, at 4.7.400.B. The standards are based on the type of intersection control that is used at a given intersection. The intersection of Cooley Road and Boyd Acres Road is controlled by a two-way stop. Under 4.7.400.B.1., the standard for a two-way stop control normally is an average delay that is less than or equal to 50 seconds during the Peak Hour. This intersection is projected to fail to meet the 50 second delay standard with or with out the rezone, based on the City's mobility standards.

The City Engineer, by letter dated February 23, 2007, stated that he waived the city's mobility standard for purposes of this rezone application. Section 4.7.100.B provides that the City Engineer may modify or waive requirements of Chapter 4.7. The Hearings Officer questions whether this section appropriately or effectively grants the unfettered discretion to waive any land use criteria. Such absolute discretion may not comply with state land use Goals 1 and 2. Moreover, any waiver authority may not be used to override the TPR. These issues were not raised at the hearing. However to the extent that the waiver by the City Engineer is that, for the purposes of the re-zone application, the appropriate Traffic Impact analysis is compliance with the TPR, the Hearing's Officer finds that the TPR standards are applicable to this re-zone. As explained in the City Engineer's letter, the Cooley Road/Boyd Acres Road intersection, along with the other intersections in the Cooley Road corridor, is being evaluated and will be improved as part of a much bigger transportation analysis. Improvements to the Cooley Road/Boyd Acres Road intersection need to be coordinated with and take into account the other changes in the Cooley Road corridor and the US97 & US20 refinement plan projects. As stated by the City Engineer, the effect would only be temporary. The Hearings Officer finds that the Cooley Road Corridor Improvement Study and the U97 and US 20 Refinement Plan project provides adequate support for the City Engineer's deferral of the application of the city standards contained in Bend Code 4.7. The city intersections will not be impacted by the re-zone. Compliance with the City mobility standards may be appropriately deferred until site plan application. However, the Hearing's Officer does not find that the City Engineer has waived compliance with Bend Code 4.7 for future applications on this property.

(d) Cooley Road at 18th Street

As noted above, the City has established operational standards based on the type of intersection control. Although Cooley Road and 18th Street is only a corner with no north or east approaches, it is proposed to be constructed as a roundabout in the future. Section 4.7.400.B.3. establishes the mobility standard for roundabouts as a v/c ratio that is less than or equal to 1.0 during the Peak Hour.

Table 5 of DKS' analysis identifies the projected v/c ratio for the year 2022 based on the existing zoning as 0.27. The projected v/c ratio for the year 2022 based on the rezone is 0.33. Because the projected v/c ratio is less than 1.0, there is no significant effect.

(e) Summary

In summary, the proposed rezone has a significant effect on the intersections of US 97 at Cooley Road and US 97 at Robal Road. . The proposed rezone does not have a significant effect on the intersection of Cooley Road at 18th Street, however, based on the deferral of compliance with the City's mobility standards by the City Engineer. Accordingly, the Hearings Officer finds that the mitigation may be deferred to the time of development of the property. The proposed rezone does not have a significant effect on the intersection of Cooley road at Boyd Acres Road.

Mitigation under the TPR – OAR 660-012-0060(2) and (3)

OAR 660-012-0060(1) requires that where a proposed land use action would significantly affect a transportation facility, a local government must "put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with" the applicable mobility standards. Notwithstanding that requirement, however, section (3) states that a local government "may approve an amendment that would significantly affect an existing transportation facility without assuring that allowed land uses are consistent with the . . . . performance standards of the facility" if the requirements of subsections (3)(a) - (e) are met.

The proposed rezone is projected to significantly affect the two US 97 intersections by reducing the v/c ratios from 0.95 to 0.96 for one intersection and to 0.97 for the other intersection. The mobility standard for those intersections is a v/c ratio of 0.80. In the absence of section (3), section (2) of the rule would require mitigation to ensure that allowed uses are consistent with applicable mobility standards, i.e., a v/c ratio to 0.80. For the reasons explained below, however, section (3) of the rule is applicable and the City need only ensure that mitigation is sufficient so that conditions are not worsened. In other words, mitigation is necessary to ensure that the projected v/c ratio is equal to or less than 0.95. The proposed mitigation is described in the Recommendation section of DKS' analysis on page 20.

Section (3) of OAR 660-012-0060 states a local government may approve a proposed land use action that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with performance standards if five conditions are met:

- The facility is already performing below the minimum acceptable performance standard identified in the TSP or comprehensive plan on the date the amendment application is submitted. [OAR 660-012-0060(3)(a)]

  Table 3 of DKS' analysis (page 10) identifies the existing performance of the two US 97 intersections. The current v/c ratio for US 97/Cooley Road is 0.95. The current v/c ratio for US 97/Robal Road is 0.84. ODOT's standard is a v/c ratio of less than or equal to 0.80. Both of these intersections are performing below the minimum acceptable performance standard today.

- In the absence of the amendment, planned transportation facilities and improvements would not be adequate to achieve consistency with the performance standard by the end of the planning period. [OAR 660-012-0060(3)(b)]

  Table 5 of DKS' analysis identifies the projected v/c ratios for the two US 97 intersections based on the existing zoning (i.e., in the absence of the proposed rezone). Those projections for the year 2022 take into account the transportation improvements that are currently planned and assumed to be in place by the year 2022 (those improvements are identified on page 13 of DKS' analysis). With those planned improvements in place, and based on the existing zoning, DKS is projecting that the v/c ratios for both US 97 intersections are 0.95, which would not meet ODOT's 0.80 standard.

- Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a

combination of transportation improvements or measures [OAR 660-012-0060(3)(c)]

DKS' analysis identified mitigation to address the projected degradation resulting from the proposed rezone. The recommended mitigation includes the following:

Conduct a detailed traffic analysis and preliminary design of improvements of US 97 at Cooley Road. This may include realignment of US 97 to the west and construction of a jug handle configuration.

Construct improvements at US 97 at Cooley road as determined by the detailed analysis. To mitigate impacts of the proposed rezone, include capacity equivalent to constructing a northbound right turn lane on US 97 at the intersection with Cooley road to supplement the currently planned reasonably funded improvements at this intersection.

Construct a westbound right turn lane on Robal toad at the intersection with US 97 and modify the westbound approach to include a separate left turn lane, a shared through left lane and a separate right turn lane.

Applicant will be required to comply with the proposed mitigation at the time of development of the property.

The amendment does not involve property located in an interchange area as defined in paragraph (4) (d) (C) of the OAR 660-012-0060. [OAR 660-012-0060(3) (d)]

The Juniper Ridge property is not located in an interchange area.

- For affected state highways, ODOT provides a written statement that the proposed funding and timing for the identified mitigation improvements are sufficient to avoid further degradation. [OAR 660-012-0060(3)(e)]

  In ODOT's February 20th supplemental comment, ODOT states that the proposed mitigation meets the standard of "not making it worse," or in other words, avoids further degradation.

Based on the above analysis, the proposed rezone satisfies the requirements of the TPR, on the condition that the Applicant participates in the proposed mitigation.

BEND DEVELOPMENT CODE SECTION 4.6.300(B) 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: The Planning Director identified the following policies from the Bend General Plan as relevant policies to the proposed zone change: Chapter 1, Policy 4; Chapter 6, Policy 1; and Chapter 6, Policy 4. In addition, the Planning Director identified the Bend General Plan Map as a controlling portion of the Plan. The proposed zone change is consistent with the referenced policies for the reasons stated below. Further, the zone change is necessary to conform the site's zoning to the Bend General Plan Map designation for the site.

Chapter 1, Policy 4 (Development within the UGB): 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.

The record shows that sewer, water and transportation facilities to serve the site are being planned and will be extended to serve the property prior to development of the site with urban uses. The applicant will propose a specific development proposal after the zone change request has been approved. Based on the proximity of the site to existing public facilities (See applicant's site plan), only minor extensions of the City of

Bend sewer and water facilities will be necessary to serve that proposal. This is supported by the City Engineering Division through their "Will Serve Letter" (See Public Works Will Serve Letter, Exhibit F to the application), and by the February 23, 2007 supplemental memo from Ken Fuller. Adequate sewer and water capacity is available within the existing City of Bend system adjacent to Juniper Ridge to accommodate development that can occur on the site under the requested IL zoning. With respect to transportation facilities, the findings made above under Statewide Planning Goal 12, and below under BDC §4.7.400 are incorporated here by this reference.

Chapter 6, Policy 1 (Industrial Development): In order to help meet the long-term need for future industrial development, at least 500 acres of the City-owned property known as Juniper Ridge shall be brought into the Urban Growth Boundary, annexed to the city, and designated on the Bend Urban Area General Plan Map as Industrial Light.

This policy was implemented in 2004 when the subject site was brought into the UGB, annexed to the city and designated consistent with the policy. The proposed zone change furthers the intent of the policy by advancing the ability to develop the site to help meet the long-term need for future industrial developments.

Chapter 6, Policy 4 (Industrial Development): The city shall work to preserve prime industrial lands for industrial purposes.

The city has identified the subject site as crucial in its efforts to meet its long-term employment needs. Under current zoning, the property could be developed with housing (one residential dwelling per 10 acres). By rezoning the property from UAR to IL, the city is preserving the property for industrial use.

Bend General Plan Map.

The Bend General Plan Map designates the subject site as Industrial Light (IL). The current zoning for the site, Urban Area Reserve (UAR), is inconsistent with the Plan Map. The change in zoning on the site, from UAR to the Industrial Light (IL) zone, will result in a zoning classification that will bring the approximately 20-acre site into conformance with the Bend Urban Area General Map. In fact, the impacts to the subject property and the City as a whole if the site's zoning is not brought into conformance with the General Plan would indeed create a greater burden financially and functionally as the plan to allow the site to develop under IL designation could not be realized.

BEND DEVELOPMENT CODE SECTION 4.6.300(B)3.

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

FINDING: Public facilities, services and transportation networks to support future uses on the site are planned to be provided concurrently with the development of the property.

As part of the City's designation of the property to IL during the Urban Growth Boundary expansion and annexation, provision of public facilities, services and transportation networks was considered. The proposed zone change request will contribute to a logical sequence of growth with sensible extension of such facilities, services and networks in the area consistent with the Bend Urban Area General Plan and Map.

This zone change will promote and support the orderly and efficient extension of public services in the area by accommodating efficient analysis and planning for future needs in the area and granting potentially needed access to such services. Currently, with the present zoning anomaly, provisions for extension, expansion, access to public services could be hampered and complicated.

The requested zone change contemplates the future need for, or a request of, additional public services. The site will need to be served by roads, water, sewer, and storm drainage, as well as service of police and fire, schools and parks. In addition to addressing adequacy of services during the zone change process, future development will undergo additional review requirements through the required Site Development and Design Review process. Any potential impacts to public services will be considered during this later, review process. Therefore, the City has adequate protection regarding adequacy of public services and will have ample opportunity for agency comment as well.

Public Facilities and Services: The applicant will propose a specific development proposal after the zone change request has been approved. Only minor extensions of the City of Bend sewer and water facilities will be necessary to serve that proposal. This is supported by the City Engineering Division through their 'Will Serve Letter" (See Public Works Will Serve Letter, Exhibit F to the application). Adequate sewer and water capacity is available within the existing City of Bend system adjacent to Juniper Ridge to accommodate development that can occur on the site under the requested IL zoning.

Transportation Network: Regarding transportation impacts, the applicant submitted a Transportation Site Review study prepared by DKS & Associates, Inc (see Transportation analysis, Exhibit D to application). Findings made above under Statewide Planning Goal 12, and below under BDC §4.7.400 are incorporated here by this reference.

BEND DEVELOPMENT CODE SECTION 4.6.300(B)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 the provisions of Section 4.6.600; Transportation Planning Rule Compliance.

FINDING: The requested zone change is based on a change in the neighborhood/ community. Since the subject parcel was originally zoned UAR, a number of circumstances have changed:

a) The subject site, along with all adjoining and contiguous lots and parcels, have been incorporated into the City of Bend city limits.

b) The comprehensive land use plan has been amended and updated. For some time, the subject property has been designated IL, not UAR.

c) Master planning for the area is occurring and continues to occur, indicating that if the site/parcel remains UAR, it is contrary the comprehensive plan and the zoning of surrounding and contiguous parcels of land that are being master planned for uses commensurate with IL zoning.

In conclusion, there has been a change in circumstances since the original UAR zoning was applied to the property, with the most noteworthy change being the incorporation of the site into the City of Bend city limits.

BEND DEVELOPMENT CODE SECTION 4.6.300(B)4.

The provisions of [BDC] Section 4.6.600 ("When a development application includes a proposed . . . land use district change. . . 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 application is consistent with BDC §4.6.600. Findings made above under Statewide Planning Goal 12, and below under BDC §4.7.400 are incorporated here by this reference.

BEND DEVELOPMENT CODE SECTION 4.6.300(B)4. Transportation Planning Rule Compliance.

FINDING: The application is consistent with the Transportation Planning Rule. Findings made above under Statewide Planning Goal 12, and below under BDC §4.7.400 are incorporated here by this reference.

BEND DEVELOPMENT CODE 4.7.400. Transportation Impact Study Approval Criteria. (Required per BDC §4.7.100(C)1.)

FINDING: Chapter 4.7 of the Bend Code provides that land use actions should be reviewed to ensure that new development contributes to the orderly development of the transportation network in Bend. Section 4.7.100 seeks to implement that goal by requiring the preparation of a transportation impact study (section 4.7.200), which is similar, but not identical, to the analysis required by the TPR. The approval criteria for a transportation impact study, contained in section 4.7.400, are likewise very similar to the TPR requirements.

As noted above, section 4.7.100B. provides that the "City Engineer may, at his/her discretion, modify or waive the required content of this chapter when in his/her judgment, special circumstances dictate such change." By letter dated February 23rd, the City Engineer provided reasons why it is appropriate to waive several provisions of chapter 4.7, including the mobility standard for the two-way stops that otherwise would have applied to the Cooley Road/Boyd Acres Road intersection. As is discussed above, the Hearings Officer questions whether this section appropriately or effectively grants the unfettered discretion to waive any land use criteria. Such absolute discretion may not comply with state land use Goals 1 and 2. Moreover, any waiver authority may not be used to override the TPR. These issues were not raised at the hearing. However to the extent that the waiver by the City Engineer is that, for the purposes of the re-zone application, the appropriate Traffic Impact analysis is compliance with the TPR, the Hearing's Officer finds that the TPR standards are applicable to this re-zone. The Hearings Officer finds that the Cooley Road Corridor Improvement Study and the U97 and US 20 Refinement Plan project provides adequate support for the City Engineer's deferral of the application of the city standards contained in Bend Code 4.7. The city intersections will not be impacted by the re-zone. Compliance with the City mobility standards may be appropriately deferred until site plan application. However, the Hearing's Officer does not find that the City Engineer has waived compliance with Bend Code 4.7 for future applications on this property.

In addition, the City Engineer waived the provisions of chapter 4.7 that exceed the requirements of the TPR. The City Engineer noted that DKS' transportation analysis was prepared to satisfy the requirements of the TPR, and that in light of the other transportation studies being undertaken that cover the Cooley Road corridor and the US97 & US20 refinement plan area, it was not necessary to duplicate those efforts with an additional analysis at this time that addressed every aspect of chapter 4.7. Based on the analysis above demonstrating compliance with the requirements of the TPR, the rezone application also complies with chapter 4.7.

RECOMMENDATION: Based on the Findings of Fact and Conclusions of Law, the Hearings Officer recommends to City Council APPROVAL OF THE ZONE CHANGE, on the following Conditions:

1. Applicant shall comply with the requirements of Bend Code chapter 4.7 at the time of site plan application.

2. Applicant shall comply with the following mitigation proposed in the traffic study at the time of site plan application:

    a. At the time of site plan application, conduct a detailed traffic analysis and preliminary design of improvements of US 97 at Cooley Road. This may include realignment of US 97 to the west and construction of a jug handle configuration.

b. Based on the detailed analysis and agreement with ODOT on timing, construct improvements at US 97 at Cooley road as determined by the detailed analysis. To mitigate impacts of the proposed rezone, include capacity equivalent to constructing a northbound right turn lane on US 97 at the intersection with Cooley road to supplement the currently planned reasonably funded improvements at this intersection.

c. Based on the detailed analysis and agreement with ODOT on timing, construct a westbound right turn lane on Robal road at the intersection with US 97 and modify the westbound approach to include a separate left turn lane, a shared through left lane and a separate right turn lane.

DATED this 15th day of March, 2007

Exhibit C

Conditions of Zone Change Approval (PZ06-809)

1. The property shall be used for corporate headquarters.

2. Trips generated by development on the rezoned acreage shall be limited to 325 peak hour trips.

3. Prior to issuance of certification of final occupancy for a corporate headquarters building, the following improvements must be constructed:

   a. a northbound right turn lane on US 97 at the intersection with Cooley Road; and

   b. a westbound right turn lane on Robal Road at the intersection of Robal Road and US 97.

Exhibit D

Supplemental Findings
Juniper Ridge Zone Change (PZ06 809)

The following findings are intended to supplement the findings forwarded by the hearings official. To the extent that the following findings conflict with the findings of the hearings official, these supplemental findings shall control.

Mitigation under the TPR – OAR 660-012-0060(3)

OAR 660-012-0060(3)(c): Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation.

Finding:

The development that will occur as a result of this rezone is construction of the Les Schwab corporate headquarters. The corporate headquarters is both a "reasonable worst case scenario," as found by the hearings officer, and an "actual worst case scenario" in light of a new condition of approval that requires the property to be used for corporate headquarters. In order to mitigate the impacts from that use, the city will construct a northbound right-turn lane at US97/Cooley Road, and a westbound right-turn lane at US97/Robal Road. That mitigation, and its completion prior to occupancy, also is now a condition of approval.

At the time that the corporate headquarters would be occupied, the volume to capacity ("v/c") ratio for US 97/Cooley Road is predicted to be 1.05 without the rezone; 1.10 with the rezone; and 1.02 with the mitigation discussed above (addition of right-turn lanes). For US 97/Robal Road, the v/c ratio is predicted to be 0.91 without the rezone; 0.92 with the rezone; and 0.87 with the mitigation.

With the mitigation in place, the current v/c ratio for one intersection of 1.05 would drop to 1.02, and the current v/c for the other intersection of 0.91 would drop to 0.87. In other words, with this mitigation, the development will mitigate the impacts of the development in a manner that avoids further degradation.

Study Area

Finding:

The applicant analyzed the potential transportation impacts in a certain area. That analysis was attacked based on an assertion that the wrong study area was used. The primary basis for that attack was that the study area was different than the area used for an analysis that was performed for a proposed Wal-Mart. The study area chosen for this rezone was based on the requirements of Bend Code, which requires a study area of 1-mile from the site. It is unreasonable, in addition to not being required by the code, to use the same study area as used in Wal-Mart's analysis. The proposed Wal-Mart store was in a different location, and was expected to generate 1,188 peak hour trips, as compared to 324 peak hour trips for this proposed rezone. In light of those differences, it makes no sense to use the same study area.

Mitigation is Feasible

Finding:

The proposed right-turn lanes at US97/Cooley and US97/Robal correct for the impacts resulting from this development. Without the mitigation measures or the rezone, the v/c ratio for US 97/Cooley Road today is 1.05, and with the mitigation and rezone it is reduced to 1.02. For US 97/Robal Road, without the mitigation measures or the rezone, the v/c ratio is 0.91, and with the mitigation and rezone, it is reduced to 0.87. That analysis demonstrates that the mitigation will work.

Funding is available for the projects. The Juniper Ridge Urban Renewal Plan anticipates more than $35 million of expenditure for road improvements for this area including specifically US 97 intersections.

The City can acquire the right of way needed for the improvements. To the extent that the City does not presently own all of the right-of-way needed, the City has condemnation powers that can ensure that the City obtains that right-of-way.

BDC §4.6.300(B)3. The property and affected area is presently provided with adequate public facilities, services and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided concurrently with the development of the property.

Finding:

Opponents argued that there was no demonstration that the transportation component of this criterion was not met. The findings above with respect to the mitigation likewise demonstrate that improvements to the transportation network will be provided concurrently with the development of the property in order to ensure that the transportation network is adequate.

ORDINANCE NO. NS-2051

AN ORDINANCE DEDICATING ONE-PERCENT OF CONSTRUCTION OR ALTERATION ON MUNICIPAL BUILDINGS FOR THE ACQUISITION OF ART

The Bend Code is amended by adding new Sections 5.560 through 5.569 to read as follows:

1.562 **~~5.560~~ Purpose**

It is the purpose of this Chapter and the policy of the City of Bend to dedicate one-percent of the total Eligible Costs or one-percent of the total Eligible Funds of all Improvement Projects (whichever is less) to the selection, acquisition, fabrication, installation, maintenance, project management, conservation, deaccessioning, community education, documentation and registration of Public Art.

1 **~~5.~~565 Definitions** As defined in this Chapter, the following terms shall apply.

(1) Building: Any structure used or intended for supporting or sheltering any use or occupancy

(2) Eligible Costs means the City's capitalized costs for completion of an Improvement Project, including costs for capitalized tenant improvements. Eligible Costs do not include costs for: design and engineering, administration, fees and permits, building demolition, relocation of tenants, environmental testing, environmental remediation, non-construction contingency or indirect costs, such as interest during construction, advertising and legal fees. When an improvement project involves the acquisition of real property, costs attributable to land acquisition are not Eligible Costs, while costs attributable to improvements on the real property are Eligible Costs.

(3) Eligible Funds The City of Bend's monetary contribution to an Improvement Project including bonded indebtedness proceeds unless those proceeds are not eligible as follows. The following are not Eligible Funds: private development revenue, federal and state grants that preclude Public Art as an object for expenditure, Local Improvement District revenue, Water Operating Fund revenue, Water Construction Fund revenue, Sewer Systems Operating Fund revenue, Sewer Systems Construction Fund revenue and revenue from any other funding source subject to legal restrictions which preclude Public Art as an object for expenditure. . Improvement Projects exclude projects funded by systems development charges

(4) Improvement Project means any project paid for wholly or in part by the City of Bend in which the City's contribution of Eligible Funds equals $50,000 or more for the construction, rehabilitation, remodeling, improvement or purchase for a public use of any building, structure or parking facility or any portion.

(a) Maintenance and repair does not constitute an Improvement Project.

(b) The purchase of improved or unimproved property by the Bend Urban Renewal Agency solely for resale or redevelopment, in which property is not otherwise to be put to a governmental use, shall not constitute an Improvement Project subject to the provisions of this Chapter.

(5) Parking Facility means any area provided for public parking that is controlled through parking management by the City of Bend, including the Bend Centennial Parking Plaza, surface parking lots, on-street parking spaces, and areas controlled through issuance of parking permits.

(6) Public Art means original artwork which is accessible to the public and/or public employees, and which has been approved as public art by the Regional Arts Council, acting on behalf of the City of Bend.

(7) Regional Arts Council means the organization recognized by the State of Oregon that serves the Bend community.

(8) Structure means that which is built or constructed.

(9) Selection Panel means a group responsible for reviewing proposed Public Art and making recommendations to the Regional Arts Council on the selection of Public Art.

5.570 Dedication.

Any City of Bend official or employee acting on behalf of the City who authorizes or appropriates expenditures for an Improvement Project shall include in the capital improvement program of the City's capital budget, and disburse to the Regional Arts Council, a monetary contribution for Public Art equal to one-percent (1%) of the total Eligible Costs or one-percent of the total Eligible Funds of the Improvement Project, whichever is less, no later than by the completion of the project.

5.575 Public Art Trust Fund

The Regional Arts Council, under contract with the City, shall maintain a special fund called the Public Art Trust Fund into which funds dedicated to Public Art pursuant to Section 5.560 shall be deposited.

(1) Such funds shall be deposited into the Public Art Trust Fund, and shall be allocated as follows:
   (a) 75 percent shall be used by the Regional Arts Council for costs associated with Public Art including, but not limited to the acquisition, fabrication, and installation of Public Art.

   (b) 15 percent shall be used by the Regional Arts Council for costs associated with Public Art, including, but not limited to costs of selection, project management, documentation, community education and registration of Public Art.

   (c) 10 percent shall be retained by the City for the maintenance, conservation and deaccessioning of Public Art.

(2) Such funds shall be deposited in separate accounts within the Public Art Trust Fund if separate accounting is requested by the City or required by law.

(3) Disbursements from the Public Art Trust Fund shall be made by the Regional Arts Council.

   (a) Disbursements shall be made according to the terms of this Chapter and any guidelines adopted hereunder by the Regional Arts Council.

   (b) If acquisition, fabrication and installation of art is funded by revenue sources whose expenditure is restricted by the City Charter, Bend Code, or other law, the Regional Arts Council, prior to making a disbursement for Public Art from such a restricted account in the Public Art Trust Fund, shall adopt written findings demonstrating that the proposed disbursement complies with all applicable restrictions.

   (c) The Regional Arts Council will report annually to the City on the disbursement of funds from the Public Art Trust Fund.

5.580 Siting

Public Art selected pursuant to this Chapter may be sited in, on or about any Improvement Project or other property owned, leased, or rented by, donated to, or otherwise made available to the City of Bend in accordance with any restrictions placed by the City.

5.585 Guidelines.

The Regional Arts Council shall, under contract with the City, adopt guidelines to:

(1) Provide for annual reporting to the City;

(2) Develop an annual plan for Public Art that takes into account the views of the City;

(3) Provide a method for the appointment of representatives to Selection Panels;

(4) Determine a method or methods of selecting and contracting with artists for the design, execution and siting of Public Art;

(5) Determine the dedication and disbursement process for the Public Art Trust Fund;

(6) Determine a process for the ongoing care, maintenance and conservation of Public Art;

(7) Determine a process to deaccession art;

(8) Set forth any other matter appropriate to the administration of this Chapter.

(9) Develop a public involvement plan for selecting and siting public

5.590 Ownership

All Public Art acquired pursuant to this Chapter shall be acquired in the name of the City of Bend, and title shall vest in the City of Bend.

5.593 Decisions

The Regional Arts Council's decisions as to the acquisition, fabrication, installation, deaccessioning, management, community education and registration of Public Art, and disbursement of the Public Art Trust Fund, shall ratified by the City Council.

5.597 Implementation.

The Regional Arts Council, shall implement the provisions of this Chapter, in cooperation with the City Manager or designee.

Read for the first time the 16th day of May, 2007.

Read for the second time the 6th day of June, 2007.

Placed upon its passage the 6th day of June, 2007.

YES: 6 NO: 0

Authenticated by the Mayor the 6th day of June, 2007.

Bruce Abernethy

Bruce Abernethy, Mayor

ATTEST:

Patricia S Stell

Patricia Stell, City of Bend Recorder

ORDINANCE NO. NS-2052

AN ORDINANCE AMENDING ORDINANCE BEND CODE, CHAPTER 7, SECTION 7.200 SPECIAL EVENTS TO UPDATE LANGUAGE RELATED TO FIRE PROTECTION, MEDICAL SERVICES, ACCESSIBILITY, THE USE OF BANNERS AND PARKING FACILITIES

THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

REGULATORY PERMITS

GENERAL

7.200 Applicability and Definitions.

(1) The provisions of section 7.200 to 7.924 shall apply to sections 7.270 to 7.924 when not in conflict with specific provisions contained in those sections.

(2) As used in sections 7.202 to 7.924 the term "Manager" shall include his/her designee.

7.202 Purpose.

(1) The regulatory permit provisions of section 7.200 to 7.240 are intended to serve the purpose of regulation of the activities and not the purpose of taxation or revenue raising.

(2) Obtaining a regulatory permit shall not exempt the permittee from other Code or ordinance requirements, including business license tax and parking district tax requirements.

7.204 Permits Required. No person shall engage in an activity or operate a device regulated under sections 7.270 to 7.924 without first obtaining a permit from the city as provided in those sections or without complying with conditions imposed by a permit obtained under those sections.

7.206 Permit Duration. The duration of the Permit shall be as provided in the permit.

7.208 Permit Renewal.

(1) The application for renewal of a permit shall be made to the city prior to the permit expiration date.

(2) If a permittee fails to apply for and pay the required fee within 30 days from the expiration date of the permit and continues to operate without a valid permit, a new application fee must be paid prior to issuance of the permit.

7.210 Review of Renewal. If the city has received complaints about the permitted activity or device, the application for renewal of the permit may be reviewed under section 7.214.

7.212 Application Requirements. Application for all permits required by sections 7.270 to 7.924 shall be made to the city on forms prescribed by the Manager. Application shall be made at least 30 days prior to the date the permit is requested to be effective. The application forms shall provide for information necessary to determine the identity and address of the applicant and of the owner of any business, activity or device to be permitted and shall provide for other information as required by specific provisions of this code or as necessary for review. The application shall be signed by the applicant and shall constitute the applicant's consent to conduct an investigation of the applicant's qualifications by the city. All fees shall be paid at the time of application. Fees shall be

refunded if an application is denied, less the investigation fee set by resolution pursuant to the Bend Cost Recovery Code.

[Section 7.212 amended by Ordinance No. NS-1485 passed December 21, 1988]

7.214 Application Review. Each application shall be referred to the person, department or agency designated by this code or the Manager to review the application.

7.216 Information from Applicant. A person, agency or department designated to review a permit application may require the applicant to supply information necessary to determine under section 7.214 the applicant's qualifications for the permit. If the applicant fails to supply information so required or submits false or misleading information, the permit shall be suspended or denied.

7.218 Criteria for Grant or Denial.

(1) Approval or denial of the application shall be based on consideration of all available evidence indicating whether the applicant meets the requirements of this code for the permit that the applicant seeks.

(2) The permit shall not be granted if:

(a) The activity or device to be permitted would not comply with this Code, city ordinances or state or federal law.

(b) The information supplied for the review does not indicate that the applicant has the special knowledge or skill required to perform the permitted activity.

(c) The permitted activity or device would endanger property or the public health or safety; or

(d) The applicant's past or present violation of law or ordinance, including a violation that does not lead to a conviction, presents a reasonable doubt about his/her ability to perform the permitted activity without danger to property or public health or safety.

7.220 Issuance or Denial by the Manager. For regulatory permit applications required to be made to the Manager, the following provisions shall apply:

(1) After receipt of reports from all persons, departments and agencies designated to review an application, the Manager shall determine whether the applicant qualifies for issuance or renewal of a permit pursuant to section 7.216.

(2) If the applicant is qualified, the Manager shall issue or renew the permit.

(3) If, on the basis of the application review under section 7.214 the Manager determines that the applicant does not qualify for issuance or renewal of the permit applied for, the Manager shall notify the applicant in writing that the application has been denied. The notice shall state the reason for appeal in section 7.228.

7.222 Issuance or Denial by the City Council. For regulatory permit applications required to be made to the Council, the following provisions shall apply:

(1) After receipt of review reports from all persons, departments and agencies, the Manager shall prepare a background and recommendation report and present it to the Council at its next regularly scheduled meeting. The applicant shall be advised by mail of the time and place of the Council meeting.

(2) Based upon the report of the Manager, plus any additional evidence that may be presented to the Council during the course of the meeting, the Council shall determine whether the applicant qualifies for issuance or renewal of the permit pursuant to section 7.216.

(3) If the applicant is qualified, the Council shall issue or renew the permit.

(4) If the Council determines that the applicant does not qualify, the application shall be denied and the applicant shall be notified in writing. The notice shall state the reasons for the denial.

(5) The decision of the Council shall be final.

7.224 Revocation of Permit. The Manager, upon determining that a permitted activity, establishment or device is violating this Code, city ordinances, or state or federal law, shall notify the permittee in writing that the permit is to be revoked. Said violations need not lead to a conviction but must establish a reasonable doubt about the permittee's ability to perform the permitted activity without danger to property or public health or safety. The notice shall be given at least 30 days before the revocation. If the violation ends within 30 days, the Manager may discontinue the revocation proceedings. A notice of revocation shall state the reason for the revocation and inform the permittee of the provisions of section 7.228.

7.226 Suspension of Permit. Upon determining that a permitted activity or device presents a substantial danger to person or property, the Manager may suspend the permit for the activity or device at once. The suspension shall take effect immediately on notice being received by the permittee, or being delivered to the permittee's business address as stated on the permittee's application for the permit that is being suspended. The notice shall be mailed to the permittee and state the reason for the suspension and inform the permittee of the provisions for appeal under section 7.228. The manager may continue suspension so long as the reason for the suspension exists or until a determination on appeal regarding the suspension is made under section 7.228.

7.228 Appeal.

(1) An applicant whose application to the Manager for a permit has been denied, or a permittee whose permit had been denied renewal, has been suspended, or is to be revoked, may within 30 days after the notice of denial, suspension or revocation is mailed, appeal in writing to the Council. The appeal shall be filed with the City Recorder and shall state:

(a) The name and address of the appellant.
(b) The nature of the determination being appealed.
(c) The reason the determination is incorrect.
(d) What the correct determination of the appeal should be.

(2) An appellant who fails to file such a statement within the time permitted waives his/her objections, and the appeal shall be dismissed. If a notice of revocation is appealed, the revocation does not take effect until final determination of the appeal. The Council shall hear and determine the appeal on the basis of the written statement and such additional evidence as it considers appropriate. The appellant shall be provided at least 14 days written notice of a hearing on the appeal.

(3) At the hearing, the appellant may present testimony and oral argument, personally or by counsel, and any additional evidence. The rules of evidence as used by courts of law do not apply, and the decision of the Council after the hearing is final.

7.230 Posting of Permit.

(1) Except as provided in Subsection (2), the permit shall be posted in a

conspicuous place upon the business premises, available for inspection by the public, employees and prospective employees of the business.

(2) If the permittee has no office, business premises or other established place of business within the city, the permit shall be at all times in the possession of the representative of the business present within the city while business is being transacted by any employe or representative within the city.

7.232 Applicability to Persons Exempt by State or Federal Law. Nothing in sections 7.270 to 7.924 shall be construed to apply to any conduct which is exempt from the permit requirements or regulations imposed by those sections by virtue of the Constitution or laws of the United States or the constitution or laws of the state.

7.234 Transfer or Assignment of Permit. Except as otherwise provided by sections 7.270 to 7.924 no person shall transfer or assign a permit issued under this chapter.

7.236 Prorating of Permit Fee. The permit fee imposed by sections 7.270 to 7.924 shall not be subject to proration.

7.238 Penalty. A violation of sections 7.270 to 7.924 is a Class A civil infraction.

7.240 Enforcement. In addition to the civil infraction procedure, the city may file a civil action to recover taxes unpaid or, after mailing notice via certified mail to the person responsible for said business, the city may place a lien against the real property where the business is located for the amount of the tax plus interest. Said lien shall be filed with the city recorder and noted in the lien docket.

(7.252 to 7.268 reserved for expansion)

[Section 7.250 amended by Ord. No NS-1484 passed December 21, 1988]
[Section 7.270 - 7.278 repealed by Ord. No. NS-1485 passed December 21, 1988]
[Sections 7.200 through 7.250 amended by Ord. No. NS-1675 passed April 2, 1997]

SPECIAL EVENTS

7.350 Definitions. As used in sections 7.352 to 7.396, the following shall mean:

(1) "Accessibility Plan" A detailed, written plan, including a detailed site map, addressing for a given event. The plan should include, but is not limited to, accessible: parking, seating, sanitary facilities, communications, route(s) of travel, signage, loading/unloading zone, transportation, facilities, sales/display venues, and amenities (telephones, drinking fountains) if any/all of these elements are provided to the public. The plan will also address how people with disabilities will be evacuated if an emergency occurs.

(1) "Assembly." Except as provided in B.C. 7.354, the term assembly includes all gatherings of a group or groups of the public of more than 75 persons in a public park or on public property for a given day. This term shall also include a parade as defined in B.C. 7.350 (3).

(2) "Beer Garden." A temporary outdoor facility located on public property or premises open to the public for dispensing beer or wine in accordance with a Special Beer or Wine License issued by the Oregon Liquor Control Commission. The term does not include the dispensing of alcoholic beverages at Vince Genna Stadium during regularly scheduled and sponsored sports contests, or a temporary Special Dispenser License issued to a Dispenser by the Oregon Liquor Control Commission for use upon the premises of the licensee.

(3) "Downtown - Drake Park District" here after referred to as "District". That area encompassed by the perimeter of Newport, Greenwood, Hill, Franklin, Bond, Louisiana, Riverside, Tumalo, and Harmon Blvd.

(4) "Chief of Police." The Chief of Police of the city and his/her duly authorized

officers and representatives.

(5) "Parade." A procession of persons using the public right-of-way and consisting of 10 or more persons or 3 of more vehicles, with the exception of funeral processions which must comply with B. C. 6.115.

(6) "Parking Facility" Any area provided for public parking in the District that is controlled through parking management by the City of Bend, including the Bend Centennial Parking Plaza, surface parking lots, on-street parking spaces, and areas controlled through issuance of parking permits.

(6) "Premises Open to the Public." Any premises open to the general public for special events, whether the premises are publicly or privately owned and whether or not a fee is charged for the use of the premises.

(7) "Public Benefit". A benefit that accrues to the public at large rather than to a person, a small group of persons or to a private enterprise.

(8) "Public Property." Property owned by or under the control of the City of Bend, the Bend Metro Park and Recreation District or private property and premises open to the public as defined in ORS 487.535.

(9) "Special Event." An assembly as defined in B.C. 7.350 (1).

[Section 7.350(1) amended by Ord. NS-1493, passed July 5, 1989]
[Section 7.350 (2), (4) and (5) added by Ord. NS-1493, passed July 5, 1989]
[Section 7.350 (1) amended by Ord. NS-1644, passed January 3, 1996]
[Section 7.350 (3) and (7) added by Ord. NS-1644, passed January 3, 1996]

7.352 Assembly Prohibited.

(1) No person shall allow, promote, conduct or cause to be advertised an assembly of persons in a public park or on public property when the person believes or has reason to believe that 75 or more persons will attend, unless a valid city permit has been obtained for the use of the park or other property for the assembly. The organizer or operator must apply to the City Recorder for a permit. The city shall process said application as soon as is practicable. One permit shall be required for each assembly. Liability for failure to comply with the provisions of B.C. 7.352 to 7.396 shall attach to persons who are responsible for obtaining permits under those provisions.

(2) With the exception of July and August, the City of Bend will permit two special events in the District, as defined in 7.350 (3) or adjacent area that displace on and/or off street parking within the area, excluding parades in any one month. In the months of July and August, the number of events subject to these criteria increases from two events to three events.

(a) A calendar shall be created designating each event and its date. All existing events have precedence over new events. New events, unable to obtain a date on this calendar, will need to seek a special events permit for other areas of town. They may, at such time an existing event either terminates its event or forfeits its date, apply for that date on the calendar.

(b) Events will be judged on a first come basis and their performance, if applicable, in other locations.

(c) Events applying under the criteria established in 7.352 (2) must make application to the City not earlier than October 1 in the year prior to the event and not less than 30 days in advance of the event.

(3) It is the intent of the City of Bend to hold special events in the District, on NW

Brooks Street, the Riverfront Plaza, and adjacent parking lots. All events will initially be reviewed on their applicability in these spaces. An event organizer wishing to hold an event elsewhere in the District or adjacent area must, in addition to meeting all other requirements for a permit, demonstrate that the event will be a public benefit and cannot reasonably be held at another site.

[Section 7.352 amended by Ord. NS-1493, passed July 5, 1989]
[Section 7.352 (2)(a), (b), (c) and (3) added by Ord. NS-1644, passed January 3, 1996]

7.354 Exclusions. Bend Code 7.350 to 7.394 shall not apply to any regularly organized and supervised school district activity or program of the city or to athletic contests organized by the Bend Metro Parks and Recreation District which do not utilize public streets and rights-of-way. Further, the City Manager shall be authorized to waive the permit requirement for certain limited assemblies when no significant public health, safety or welfare issues are involved and when no police service or other city service is determined to be necessary. These assemblies may include, but are not limited to: family picnics, weddings, and retail parking lot sales. All such events must, however, comply with park rules and ordinances if the event is being held in a public park.

7.356 Permit Required; Fee.

(1) No assembly shall be held unless the person sponsoring the assembly obtains a permit and pays the fee set by resolution pursuant to Bend Code 1.800 - 1.806. The fee for the permit is to cover the cost of inspecting facilities and issuing and administering the permit prior to the event. The applicant shall also pay for City costs incurred as a result of the assembly. These costs may include any expenses or lost revenue incurred by the City and/or its departments. These additional costs shall be determined in the application review process and shall be paid prior to the event, except for expenses that cannot be determined until after the completion of the event.

(2) Unless the time limit is waived by the City Manager, written application for each assembly permit shall be made to the city 30 or more days prior to the first day on which the assembly is to be held as required by B.C. 7.212. In addition to the information required by B.C. 7.212 to 7.216, each application shall state a description of the event, proof of insurance required by B.C. 7.276, a parking plan, vehicle traffic flow plan, sanitation plan, fire protection plan, a map showing the location to be used for the assembly, the number of persons reasonably anticipated to attend, and that the applicant will abide by all rules and regulations of B.C. 7.352 to 7.396 and other regulations and laws for the protection of the health, morals, peace and safety of the persons employed at the location, the patrons or participants, and the public. No permit shall be transferable or assignable without the consent of the issuing body.

(3) For parades, the application shall also include the desired route of the parade and assembly points, the proposed starting and ending time and the approximate number of persons, vehicles and animals anticipated to participate in the parade. The City of Bend will grant no more than one (1) parade permit per month.

(4) A calendar will be created and all existing events will have precedence over new events. New events unable to obtain a date on the calendar must wait for a time on the calendar that becomes open by either an existing event terminating its event or forfeiting its date.

[Section 7.356 (1) amended by Ord. NS-1485, passed December 21, 1988]
[Section 7.356 amended by Ord. NS-1493, passed July 5, 1989]
[Section 7.356 (1), (2) and (3) amended by Ord. NS-1644, passed January 3, 1996]
[Section 7.356 (4) added by Ord. NS-1644, passed January 3, 1996]

7.358 Application Procedure. Within 10 days after the application for the permit is

made, the applicant must obtain written approval and assurance from each of the appropriate city officials or departments that satisfactory arrangements have been made by the applicant to comply with all of the conditions specified in B.C. 7.360 to 7.370. The City Recorder shall identify the appropriate officials to be contacted for completion of the permit. The officials or departments may approve the permit, subject to conditions necessary to assure compliance with the appropriate criteria enumerated in those sections. When any type of physical facility is required or subject to approval, preliminary approval may be granted based upon specific plans proposed and submitted by the applicant. The approval shall be on forms provided and shall be filed with the Recorder.

[Section 7.358 amended by Ord. NS-1493, passed July 5, 1989]

7.360 Sanitary Facilities. The applicant shall provide sanitary facilities that are in accordance with state regulations and proof that the necessary permits have been procured.

[Section 7.360 amended by Ord. NS-1493, passed July 5, 1989]

7.362 Fire Protection Standards Events shall comply with the Fire Safety codes and Ordinances. These regulations include, but are not limited to, fire apparatus access, exit paths, flammable materials, open flames, fire extinguishers, use of tents, canopies, and membrane structures, inspection of vendors, vehicle parking, occupant load, electrical wiring and equipment, the use of decorations, life safety plans, emergency public notification plans and standby personnel.

[Section 7.362 amended by Ord. NS-1493, passed July 5, 1989]

7.364 Medical Services
If emergency medical services are required by the applicant's insurance carrier, the applicant shall notify the Bend Fire Department Emergency Management Services (EMS) Coordinator who will assist the applicant with obtaining the proper level of EMS coverage. First aid coverage can be provided "on scene" by any qualified medical personnel. If a patient needs to be transported for the event, only the Bend Fire Department may transport the patient according to the Deschutes County Ambulance Service Area Franchise ordinance. The individuals "on scene" who are providing first aid coverage shall use the 911 emergency dispatch system to call for an ambulance.

[Section 7.364 amended by Ord. NS-1493, passed July 5, 1989]

7.365 Accessibility. The applicant shall assure compliance with the American's With Disabilities Act of 1990 by submitting an accessibility plan.

7.366 Public Safety.

(1) Adequate traffic control and crowd protection security shall be contracted for or otherwise provided by the applicant, as required by the Chief of Police. Security personnel shall conform to the standards required by the Chief of Police. The number of adequate fire control personnel, if needed, shall be determined by the Fire Chief.

(2) The security personnel may be required to wear appropriate identification or a uniform approved by the Chief of Police and must be on duty during the entire assembly unless a relief schedule has been planned and approved.

(3) It shall be the duty of the security personnel to report any violations of law to the Chief of Police and to take whatever action is reasonable and necessary to enforce the terms of the permit.

(4) Reasonable access to public infrastructure must be maintained through the entire event. The Manager may require certain event facilities to be located/relocated away from items such as hydrants, water valves, manholes and storm drains to ensure proper access.

[Section 7.366 amended by Ord. NS-1493, passed July 5, 1989]

7.368 Parking Facilities. The applicant shall demonstrate that adequate parking facilities have been made available within or adjacent to the location for which the permit is requested by submitting a parking facilities plan. Adequate access shall be provided for the parking area to facilitate the movement of vehicles at any time to or from the parking area. If buses are used to transport the public to the event, it shall be shown that public parking or parking as described above is available at a site from which buses are scheduled to pick up persons to transport them to the event. Accessible parking facilities and transportation shall be addressed in the plan.

[Section 7.368 amended by Ord. NS-1493, passed July 5, 1989]

7.370 Inspection of Required Facilities. All facilities shall be in place a sufficient time, but not less than two hours, before the assembly for which an application is submitted and shall be subject to inspection by the city. If the actual facility, construction or other condition fails to meet the standards approved in the proposed plans, preliminary approval may be withdrawn and all permits granted subject to such approval may be withdrawn.

[Section 7.370 amended by Ord. NS-1493, passed July 5, 1989]

7.371 Animals at Special Events

(1) For reasons of public safety and sanitation, no person shall bring an animal into an area where a special event is being held, unless authorized by the Chief of Police.

(2) This prohibition does not apply to service animals utilized by ~~disabled~~ persons with disabilities.

3) This prohibition does not apply to events held specifically for animals

(4) Violation of this section is subject to the penalties prescribed in Section 7.398

Section 7.371 added by Ord NS-1974, adopted June 1, 2005]

7.372 Beer Gardens. Alcohol may be served in conjunction with an assembly only in an approved beer garden, under the following conditions:

(1) The applicant has obtained a special retail beer or wine license from the Oregon Liquor Control Commission and City Council approval.

(2) Minors under the age of 21 years shall be excluded from the premises where alcohol is to be served.

(3) The beer garden must comply with the City's beer garden policies.

(4) The applicant has paid the beer garden fee set pursuant to B.C. 1.800 - 1.806.

[Section 7.372 added by Ord. NS-1493, passed July 5, 1989]
[Section 7.372 (1) and (4) amended by Ord. NS-1644, passed January 3, 1996]

7.374 Insurance. The permit applicants shall be required to furnish evidence of liability insurance providing primary coverage in an amount which is not less than the City's tort liability limits established by the Oregon Legislature and naming the city as an additional insured. The liability insurance shall apply to, and provide coverage for, any and all claims for bodily injury and property damage arising from or caused by the assembly for which the permit is granted and shall be the primary coverage. In lieu of meeting the insurance requirements of this section, any governmental entity may enter into an agreement with the City to indemnify and hold the City harmless in the event of any damage or injury resulting from the assembly.

[Section 7.374 amended by Ord. NS-1493, passed July 5, 1989]

7.376 Street Closure.

(1) No City street will be closed for an assembly unless the applicant has specifically requested that the street be closed at least 30 days prior to the date of closure and has obtained City Manager approval of that request (see B.C. 6.025 & 6.030). In the event that the street to be closed is a state highway, the applicant shall obtain approval from the Oregon Department of Transportation to close the highway. Notwithstanding the foregoing time limit, the City Manager may order closure of streets that are not arterial, collector or commercial streets, provided that the Manager has received a request to close the street at least 72 hours prior to the time of closure.

(2) Requests for street(s) closures in the District will be granted only if the event can not be held without a street closure or there is a specified safety reason to close the street(s). The event organizer must demonstrate that these conditions exist.

[Section 7.376 added by Ord. NS-1493, passed July 5, 1989]
[Section 7.376 (2) added by Ord. NS-1644, passed January 3, 1996]

7.377 Sound Regulation. All assemblies must comply with the City's noise and sound regulation ordinances, including but not limited to B.C. 5.320 (p) and B.C. 5.385 (2). If an assembly will be utilizing amplified sound at any location within the City or radios, tape recorders or record players on public property, the applicant shall obtain City Council or City Manager approval, as specified in B.C. 5.320 (p) and B.C. 5.385 (4)(b) and in the City's amplified sound policy. The use of sound amplification requires provisions for assistive listening devices to be available to persons who are deaf or have low hearing and should be addressed in the Plan.

[Section 7.377 added by Ord. NS-1493, passed July 5, 1989]
[Section 7.377 amended by Ord. NS-1644, passed January 3, 1996]

7.378 Permit approval.

(1) The City Manager shall grant and issue the assembly permit if, after consideration, he or she finds:

(a) All city officials and department shave issued their approval pursuant to B.C. 7.358 to 7.368 and all other provisions of B.C. 7.350 to 7.396 have been complied with.

(b) The proposed activity and use will not unreasonably interfere with or detract from the promotion of public health, welfare, safety and recreation.

(c) The facilities desired have not been reserved for other use at the day and hour required in the application and the event will not conflict with another event for which a permit has already been issued.

(d) The conduct of the activity will not substantially interrupt the safe and orderly movement of traffic.

(e) The conduct of the activity will not require the diversion of so great a number of city personnel of the city to properly police the activity and the contiguous areas as to prevent normal police protection to the city.

(f) The conduct of the activity is not reasonably likely to cause injury to persons or property so as to incite violence, crime or disorderly conduct.

(g) The appropriate provisions of B.C. 7.374 have been complied with.

(h) The proposed activity or use of a park or park facility will not unreasonably interfere with or detract from the general public enjoyment of the park.

(2) In order to assure compliance with the criteria of this section, the City Manager may impose conditions on the grant of a permit reasonably designed to assure compliance. The permit will not be issued if the applicant refuses to agree to abide by or comply with all conditions of the permit.

[Section 7.378 (1) (g) amended by Ord. NS-I395, passed January 18, 1984]
[Section 7.378 amended by Ord. NS-1493, passed July 5, 1989]

7.380 Permit Denial. The City Manager shall deny the assembly permit if he finds that the requirements of B.C. 7.350 - 7.396 have not been or cannot be complied with. If the permit is denied, the applicant shall be notified of the denial and the reason for denial.

[Section 7.380 amended by Ord. NS-1493, passed July 5, 1989]

7.382 Appeal.

(1) Applicant. If the permit is denied the applicant may appeal the denial to the City Council in accordance with the provisions of B.C. 7.228.

(2) Others. Persons wishing to appeal the issuance of a special event must submit, in written form, a complaint specific to the event that has transpired after the fact. The City will take such written comment into account prior to issuing any subsequent permits for the event. The complaint must be filed no more than three months after the event takes place.

[Section 7.382 amended by Ord. NS-1493, passed July 5, 1989]
[Section 7.382 (1) amended by Ord. NS-1644, passed January 3, 1996]
[Section 7.382 (2) added by Ord. NS-1644, passed January 3, 1996]

7.384 Permit Information. A permit issued pursuant to B.C. 7.356 to 7.378 shall contain the following information:

(1) Date of the activity.

(2) Location of the activity, including, if applicable, restrictions to certain areas of a park.

(3) Hour when the activity will start and terminate.

(4) Number of persons anticipated to attend or participate.

(5) Special conditions imposed on the activity.

(6) Full name and signature of applicant.

[Sections 7.384 (4) & (6) added by NS-1493, passed July 5, 1989]
[Section 7.384 amended by Ord. NS-1493, passed July 5, 1989]

7.386 Inspection. The City Manager or Chief of Police or designee or its authorized representatives shall have the right to go on the premises or facilities for which the permit has been granted for the purpose of inspection and enforcement of this Code and state law.

7.388 Crowd Limitation. If at any time during the assembly the size of the crowd exceeds the number of persons reasonably anticipated to be in attendance, the Chief of Police may require the permittee or sponsor to limit further admissions until sanitation, parking, fire, health, medical, traffic and crowd control requirements have been brought into conformity with the standards under which the permit was issued.

7.390 Duty to Preserve Order Placed on Operator. It is the purpose of B.C. 7.350 to 7.396 to put the burden of preserving order upon the operator of the assembly. If the assembly is not operated in accordance with the rules and regulations prescribed by those sections, the permit shall be subject to revocation.

[Section 7.390 amended by Ord. NS-1493, passed July 5, 1989]

7.392 Rules and Regulations. The rules and regulations for parks set forth in B.C. 5.320 shall govern and control the permitted use of all city parks and public property during an assembly unless otherwise specifically provided in the permit.

[Section 7.392 amended by Ord. NS-1493, passed July 5, 1989]

7.394 Revocation of Permit.

(1) If an assembly is not being operated according to the rules and regulations of B.C. 7.352 to 7.392, the Manager shall have the right to revoke the permit and the applicant or other responsible individual shall be subject to applicable penalties under this Code, city ordinances and state law. Failure to comply with the terms and conditions of B.C. 7.350 to 7.392 shall constitute a public nuisance and shall be subject to all criminal and civil remedies.

(2) The revocation decision of the Manager shall be subject to the appeal procedures of B.C. 7.224.

[Section 7.394 amended by Ord. NS-1493, passed July 5, 1989]

7.396 Offenses Against Special Events.

(1) No person shall knowingly interfere with the conduct of a licensed special event or authorized activities of an event participant.

(2) No person shall operate a vehicle that is not part of a special event between the vehicles or persons in the event.

[Section 7.396 amended by Ord. NS-1493, passed July 5, 1989]

7.398 Penalties.

(1) Failure to obtain a permit for an assembly or to pay permit fees or City costs, as required by B.C. 7.352 and 7.356 (1), is a Class A civil infraction.

(2) Failure to provide the facilities and services required by B.C. 7.360 - 7.366 or to comply with the conditions of the assembly permit is a Class A civil infraction.

(3) A violation of B.C. 7.371 (1), 7.372 (3) and (4), 7.390 and B.C. 7.396 (1) is a Class A civil infraction and a violation of B.C. 7.396 (2) is a Class A traffic infraction.

(4) Closure of a City street or right-of-way in violation of B.C. 7.376 is a Class A infraction.

(5) Failure to comply with the directives of the Police Chief relating to crowd limitation is a Class A infraction.

[Section 7.398 added by Ord. NS-1493, passed July 5, 1989]
[Section 7.398 (3) amended by Ord. 1974, passed June 1, 2005]

7.399 **Event Banners, Displays and Information**

(1) Any advertising of the event before, during or after the approved event date shall not deface or obstruct City property. Only approved signs and banners placed on appropriate hangers or display areas may be used. Signs and banners must be approved by the City prior to placement. Banners must meet specifications as defined by City Codes 3-14.1 thru 3-14.3, Sidewalks and streets shall not be stenciled, painted, or marked in any fashion without express permission from the City.

(2) Signs for parades, races, tours or other mobile events must be temporary and easily removed. Removal of directional or informational signs will be the responsibility of the event producer. Signs will not impair intersection and crosswalk vision clearances for pedestrians and motor vehicle operators.

(3) If road markings are used, only biodegradable, water-soluble material may be used. Such material as chalk, flour and tape are acceptable but must be removed within 24 hours after the event.

AERIAL EVENTS

7.400 Permit Required. No person shall organize, promote or participate in an aerial event unless that event is permitted by the City of Bend. The term "aerial event" shall include parachuting, hang gliding or operating a hot air balloon within the city limits of Bend. Aerial events are required to obtain a Special Events Permit in accordance with Bend Code 7.350 through 7.398.

[Section 7.404 amended by Ord. No. NS-1485 passed December 21, 1988]
[Section 7.400 amended by Ord. No. NS-1675 passed April 2, 1997]
[Sections 7.402, 7.404 and 7.406 repealed by Ord. No. NS-1675 passed April 2, 1997]

(7.408 to 7.448 reserved for expansion)

Read for the first time the 16th day of May, 2007.

Read for the second time this 6th day of June, 2007.

Placed upon its passage this 6th day of June, 2007.

YES: 6 NO: 0

Authenticated by the Mayor this 6th day of June, 2007.

Bruce Abernethy, Mayor

ATTEST:

Patricia S. Stell, City Recorder

ORDINANCE NS-2053

AN ORDINANCE RENAMING CROSS ROAD TO HIGH DESERT LANE WITHIN THE CITY OF BEND, OREGON.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. That the street name of Cross Road be changed to High Desert Lane.

Section 2. The effective date for the renaming of this street shall be 30 days following the adoption of this ordinance.

Read for the first time the 16th day of May 2007.

Read for the second time the 6th day of June 2007.

Placed upon its passage the 6th day of June 2007.

YES: 6 NO: 0

Authenticated by the Mayor the 6th day of June 2007.

Bruce Abernethy, Mayor

ATTEST:

Patricia Stell, City Recorder

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK

2007-42804

$31.00

00565101200700428040010018

08/03/2007 12:13:35 PM

D-IPPS Cnt=1 Stn=25 CE
$5.00 $11.00 $10.00 $5.00

Please record this side only. After Recording, return to Deputy City Recorder City of Bend, 710 NW Wall, Bend OR 9770

BLANK PAGE

Language in ~~Struckthrough~~ typeface is deleted;
Language in **Bold** typeface is added

ORDINANCE NO. NS-2054

AN ORDINANCE AMENDING THE BEND CODE TO PROVIDE THAT MAINTAINING OFFENSIVE DEBRIS OR FAILING TO CLEAN AND GRADE A BUILDING SITE IN THE CB AND COMMERCIAL ZONING DISTRICTS IS A NUISANCE

THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

Section 1. The Bend Code is amended to add a new section as follows:

5.381 OFFENSIVE DEBRIS AND UNCLEANED AND UNGRADED PROPERTY IN CB AND COMMERCIAL ZONING DISTRICTS

(1) No person may place offensive debris or allow offensive debris to remain on public or private property in the Downtown CB zone or other commercial zoning districts more than 36 hours after the City Council makes a finding that the debris is substantially detrimental to commerce in that zoning district.

(2) No person may allow public or private property in the CB or other commercial zoning districts to remain in a state of disrepair for more than 36 hours after the City Council determines that the property is in a state of disrepair. Property is in a "state of disrepair" when it is uncleaned or ungraded in such a manner that the City Council determines is substantially detrimental to commerce in that zoning district.

(3) Following any finding by the City Council as provided in Subsections 1 or 2 of this Section, the City will provide notice to the property owner to repair the offensive condition, and may thereafter abate the offensive condition as a nuisance.

Section 2. Declaration of Emergency. The City Council finds that this ordinance is necessary for the health, safety and welfare of the public, and finds that an emergency exists. The ordinance therefore becomes effective upon its passage.

Read for the first time the 16th day of May, 2007.

Read for the second time the 6th day of June, 2007.

Placed upon its passage the 6th day of June, 2007.

YES: 6 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 6th day of June, 2007.

Bruce Abernethy

Bruce Abernethy, Mayor

Attest:

Patricia S Stell

Patricia Stell, City Recorder

BLANK PAGE

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK

2007-42805

$41.00

00565102200700428050030046

08/03/2007 12:13:35 PM

D-IPPS Cnt=1 Stn=25 CE
$15.00 $11.00 $10.00 $5.00

Do not remove this page from original document.

Deschutes County Clerk

Certificate Page

If this instrument is being re-recorded, please complete the following statement, in accordance with ORS 205.244:

Re-recorded to correct [give reason] _____
previously recorded in Book _____ and Page _____,
or as Fee Number _____.

ORDINANCE NO. NS-2055

AN ORDINANCE VACATING A PORTION OF AMERICAN LANE, located in the SW ¼ of the NE ¼ of Section 9, Township 18 South, Range 12 East, Willamette Meridian, Bend, Deschutes County, Oregon.

A petition having been presented to the Bend City Council on April 4, 2007 requesting that the land described as the following area be vacated:

SEE EXHIBIT "A"

and stating the purpose for which the described property is proposed to be used and the reason for such vacation; and said petition being duly acknowledged;

The City of Bend having caused a notice of public hearing for vacation of public property describing the above street right of ways to be published in the Bulletin, as provided by ORS 271.110, once each week for two (2) consecutive weeks;

Within five days after the first day of publication of said notice, the City having caused a notice of street vacation to be posted at or near each end of the proposed vacation and in at least two conspicuous places in the proposed vacation area; the first publication and posting of said notice having occurred not less than 14 days prior to the hearing for said proposed vacation;

The City Council of the City of Bend having fixed the 6th day of June, 2007, at 7:00 p.m. local time in the City Council Chambers at 710 NW Wall Street, City of Bend, Oregon, as the time and place for the hearing upon said proceedings and at that time having heard all objections to the proposed vacation; and;

The City Council having determined that the public interest will not be prejudiced by the proposed vacation and that the property should be vacated:

NOW, THEREFORE, THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

That the above described portion of street right of ways located in Bend, Deschutes County, Oregon, be vacated subject to the following:

That the Petitioner provide a 20' wide sewer easement whose centerline shall follow the sewer main within the above described portion of street right of ways. Said 20' wide sewer easement shall be paved no later than October 31, 2008 or this ordinance shall be null and void.

The City Recorder shall forthwith cause a certified copy of this ordinance to be filed and recorded in the Office of the County Clerk of Deschutes County, Oregon.

Read for the first time the 6th day of June, 2007.

Read for the second time the 20th day of June, 2007.

Placed upon its passage the 20th day of June, 2007.

Yes: 7 No: 0

Please record pages 1-3 of ordinance NS-2055. after recording return to ~~Deputy~~ City Recorder, City of Bend 710 NW Wall, Bend OR 97701

Authenticated by the Mayor the 20th day of June, 2007.

Bruce Abernethy, Mayor

ATTEST:

Patricia Stell, City Recorder

STREET VACATION

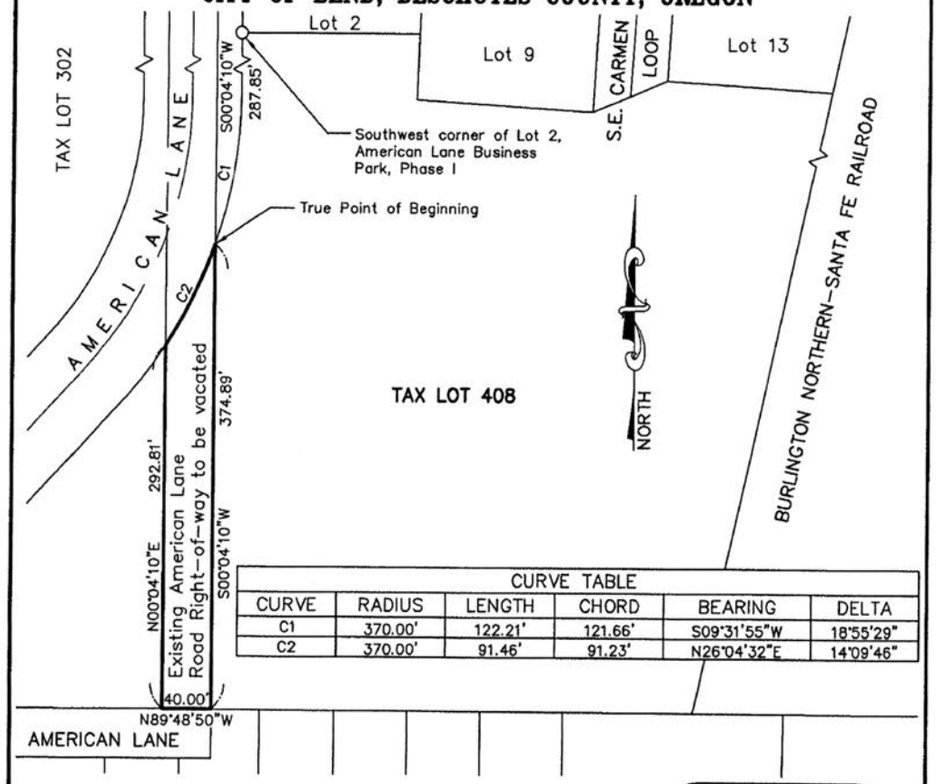
EXHIBIT ``A"

A street vacation located in the Southwest One-Quarter of the Northeast One-Quarter (SW 1/4 NE 1/4) of Section Nine (9), Township Eighteen (18) South, Range Twelve (12) East, Willamette Meridian, City of Bend, Deschutes County, Oregon, said street vacation being more particularly described as follows:

Commencing at the Southwest corner of Lot 2, American Lane Business Park, Phase I, thence leaving the South line of said Lot 2 and along the East right-of-way line of American Lane South 00°04'10" West 287.85 feet; thence along said East right-of-way line along an arc of a 370.00 foot radius curve to the right 122.21 feet, the chord of which bears South 09°31'55" West 121.66 feet to the TRUE POINT OF BEGINNING of said street vacation; thence leaving said East right-of-way line South 00°04'10" West 374.89 feet; thence North 89°48'50" West 40.00 feet; thence North 00°04'10" East 292.81 feet to t point on the aforementioned East right-of-way line; thence along said East right-of-way line along an arc of a 370.00 foot radius curve to the left 91.46 feet, the chord of which bears North 26°04'32" East 91.23 feet to the TRUE POINT OF BEGINNING.

REGISTERED
PROFESSIONAL
LAND SURVEYOR
OREGON
AUGUST 22, 1975
MICHAEL W. TYE
1046
EXPIRES 6-30-06

VACATION MAP
EXHIBIT "A"
LOCATED IN THE SW 1/4 NE 1/4 OF SECTION 9, TOWNSHIP 18 SOUTH, RANGE 12 EAST, WILLAMETTE MERIDIAN, CITY OF BEND, DESCHUTES COUNTY, OREGON



CURVE TABLE					
CURVE	RADIUS	LENGTH	CHORD	BEARING	DELTA
C1	370.00'	122.21'	121.66'	S09°31'55"W	18°55'29"
C2	370.00'	91.46'	91.23'	N26°04'32"E	14°09'46"

SCALE: 1"= 100'
DATE: 11-22-05
WO#: 6440-VAC2

OWNER:
COMCO PLUS INC.
1404 N.E. THIRD ST.
BEND, OREGON 97701

REGISTERED
PROFESSIONAL
LAND SURVEYOR
OREGON
AUGUST 22, 1975
MICHAEL W. TYE
1046
EXPIRES 6-30-06

BLANK PAGE

New language appears in underlined typeface,
Deleted language appears in ~~struckthrough~~ typeface.

ORDINANCE NO. NS-2056

AN ORDINANCE RE-AUTHORIZING THE CITY COUNCIL TO SUSPEND, BY RESOLUTION, PROVISIONS OF BEND CODE SECTION 5.252 RELATING TO DOGS ON LEASH

Whereas, Ordinance No. NS-1854, adopted on January 15, 2003 authorized the City Council to suspend the leash law to allow operation of "dog parks," The ordinance was codified as Section 5.253 in the Bend Code; and

Whereas, Ordinance No. NS-1854 included a sunset date. The purpose of the sunset date was to ascertain whether the parks were workable, and subsequent experience shows that they are workable, if properly administered. and

Whereas, Citizens have called for the creation of additional dog parks, and the Bend City Council wishes to authorize the continuation of dog parks in Bend,

THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

Section 1. Section 5.253 of the Bend Code is re-enacted to read as follows:

(a) The Bend City Council may designate certain areas of public parks, owned and operated by the Bend Metro Parks and Recreation District, or other properties under the control or ownership of others, in the discretion of the City Council, as areas where dogs are not required to be leashed, subject to the other provisions of this section.

(b) A designation of an area by the Bend City Council under Section 5.253(a) of the Bend Code shall not be effective unless the governing body of an organization, or other owner, of land where dogs will be allowed off-leash provides written consent to the Bend Chief of Police specifying the terms and conditions under which dogs will be allowed off-leash. The terms and conditions provided by the owner of the land, together with the terms and conditions established by the Bend City Council for the preservation of the health, safety and welfare of the public, shall be posted at the property where dogs are allowed off-leash. Any dog owner or person responsible for control of a dog shall be subject to a civil penalty under Bend Code 5.252 for violation of the terms and conditions for off-leash dogs as provided in this Section.

(c) Except as may otherwise be provided in the Bend Code, no dog may be allowed off-leash except in an area enclosed by a fence sufficient to prevent any dog from escaping the area.

(d) No dog is allowed off-leash unless its owner is within voice- control range of the dog at all times.

(e) Dog owners must control their dogs at all times. Allowing a dog to engage in fighting with other dogs or allowing a dog to harass, bark at, threaten or injure a person or animal is not permitted.

(f) Dog owners must clean up all dog waste promptly after it occurs.

Section 2. Bend Code Section 5.292 is amended as follows:

(1) A violation of Bend Code Section 5.252, 5.253, 5.255. 5.260, 5.265 and 5.290 is a Class B civil infraction.

Read for the first time the 6th day of June, 2007.

Read for the second time the 20th day of June, 2007.

Placed upon its passage the 20th day of June, 2007.

YES: 7 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 20th day of June, 2007.

Bruce Abernethy, Mayor

Attest:

Patricia Stell, City Recorder

ORDINANCE NO. NS-2057

AN ORDINANCE AMENDING THE CITY OF BEND DEVELOPMENT CODE ORDINANCE NO. NS-2016, BY CHANGING THE ZONE OF AN AREA OF LAND FROM URBAN RESIDENTIAL MEDIUM DENSITY (RM) TO COMMERCIAL GENERAL (CG), AND AMENDING THE BEND AREA GENERAL PLAN DESIGNATION FOR THE SUBJECT PROPERTY FROM RESIDENTIAL URBAN MEDIUM DENSITY (RM) TO COMMERCIAL GENERAL (CG).

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council has held a public hearing, considered the City Council's Resolution No. 2512, and has found that the applicant has fulfilled the special conditions of the intent to rezone and there is a public need and benefit for the proposed change. The Resolution included the intent to re-designate the property to Highway Commercial. However, since adoption of Resolution No. 2512, the Bend Urban Area General Plan map and the Bend Area Zoning Map have been changed to rezone all property previously zoned Commercial Highway to Commercial General and the City of Bend Zoning Ordinance has been replaced with the Development Code. Therefore, this intent to rezone has been modified to comply with the appropriate zoning designation of the City of Bend Development Code Ordinance No. NS-2016.

Section 2. The Bend Area Zoning Map of the City of Bend are amended by changing the designation of the property described in the Hearings Officer Request for Reconsideration Decision dated January 24, 2005 and identified as City of Bend File No. 02-430 and depicted on "Exhibit A" from Urban Residential Medium Density (RM) to Commercial General (CG).

Section 3. The Bend Area General Plan and the Bend Urban Area General Plan Map are amended by changing the designation of the property described in the Hearings Officer Request for Reconsideration Decision dated January 24, 2005 and identified as City of Bend File No. 02-430 and depicted on "Exhibit A" from Urban Residential Medium Density to Commercial General (CG).

Read for the first time the 6th day of June, 2007.

Read for the second time the 20th day of June, 2007.

Placed upon its passage the 20th day of June, 2007.

YES: 7 NO: 0

Authenticated by the Mayor the 20th day of June, 2007.

Bruce Abernethy

Bruce Abernethy, Mayor

ATTEST:

Patricia S Stell

Patricia Stell, City of Bend Recorder


BOND ST
TRUMAN AVE
WILSON AVE
TAFT AVE
TAFT AVE
3RD ST
HIGHWAY 97
NONAME ROAD 13
NONAME ROAD 15
2ND ST
ROOSEVELT AVE
ROOSEVELT AVE
HILL ST
PELTON PL
SISEMORE ST
MCKINLEY AVE
MCKINLEY AVE
NONAME ROAD 13
NONAME ROAD 15
Subject Property
CLEVELAND AVE
CLEVELAND AVE
CLEVELAND AVE
HILL ST
ROSCOE CT
JAMES DR
BEAVER LAKE BLVD
HIGHWAY 97
DIVISION ST
REED MARKET RD
SUMMER LAKE DR
CHUKAR LN
MARICOPA DR
HIGHWAY 97
HAYES AVE
HAYES AVE
DIVISION ST
TANNER CT
ALSTRUP RD
GROSSENBACHER RD
BARNETT RD
BEND
PZ 02-430 Intent to Rezone
Subject Property
0 250 500 1,000
Feet
Imagery acquired March 2004.
Map created April 2007.
CURRENT ZONING
RS
RM
CG
CL

ORDINANCE NS-2058

AN ORDINANCE RENAMING THE NORTH SEGMENT OF PROVIDENCE DRIVE TO ALEX PLACE IN THE CITY OF BEND, OREGON.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. That the street name of the north segment of Providence Drive which runs south from Yellow Ribbon Drive and ends at Red Oak Drive be changed to Alex place.

Section 2. The effective date for the renaming of this street shall be 30 days following the adoption of this ordinance.

Read for the first time the 20th day of June 2007.

Read for the second time the 2nd day of July 2007.

Placed upon its passage the 2nd day of July 2007.

YES: 6 NO: 0

Authenticated by the Mayor the 2nd day of July 2007.

Bruce Abernethy

Bruce Abernethy, Mayor

ATTEST:

Patricia S Stell

Patricia Stell, City Recorder

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK

2007-42806

$31.00

00565103200700428060010011

08/03/2007 12:13:35 PM

D-IPPS Cnt=1 Stn=25 CE
$5.00 $11.00 $10.00 $5.00

Please record this side only. After recording, return to Deputy City Recorder, City of Bend 710 NW Wall, Bend OR 97701

ORDINANCE NS-2059

AN ORDINANCE GRANTING A NON-EXCLUSIVE ELECTRIC UTILITY FRANCHISE TO PACIFIC POWER, AND FIXING TERMS, CONDITIONS AND COMPENSATION OF SUCH FRANCHISE.

WHEREAS, the City of Bend ("City") is authorized by state statutes, its charter, and ordinances to grant non-exclusive franchises to Persons desiring to occupy Rights of Way and Public Places within the City.

WHEREAS, Pacific Power is an Oregon corporation that owns, maintains, and operates, in accordance with regulations promulgated by the Public Utility Commission ("PUC"), an electric energy utility system and desires to install, operate, and maintain its Electric Facilities in Rights of Way in the City.

WHEREAS, the purposes of this franchise are to: establish reasonable regulations applicable to the construction, operation and maintenance of Electric Facilities in, along, across, under and over City Right of Way and Public Places and the provision of Services within the City; protect the health, safety and welfare of the public in the City; and to limit the City's liability for claims arising from the granting of this franchise and the operations of Grantee thereunder.

WHEREAS, the City agrees to grant a franchise to Grantee under the terms and conditions provided in this ordinance.

WHEREAS, the existing franchise expires on May 20, 2007

.

NOW, THEREFORE, THE CITY OF BEND ORDAINS AS FOLLOWS:

1. Definitions and Explanations.

1.1 As used in this ordinance the following words and terms have the meaning stated in this section. Any words not defined in this franchise that are defined by the Bend Code shall have the meaning provided by the Bend Code.

1.2 "Bridge" includes a structure erected within the City to facilitate the crossing of a river, stream, ditch, ravine or other place, but does not include a culvert.

1.3 "City" means the City of Bend and the areas within its boundaries, including its boundaries as extended in the future.

1.4 "Council" means the Bend City Council.

1.5 "Grantee" means Pacific Power, its successors and assigns.

1.6 "Electric Facilities" includes Grantee's electric energy transmission and distribution facilities, poles, wires, meters, fixtures, circuits, connections and all attachments, appurtenances, and all accessories necessary and incidental thereto located within any Public Place or Rights of Way, whether the facilities are located above or below ground.

1.7 "Gross Revenue" shall be defined as any revenue earned by Grantee within the corporate limits of the City of Bend, after adjustment for the net write-off of uncollectible accounts, from the performance of the utility business; and from the use, rental or lease of operating facilities of the utility. Unless otherwise provided in this franchise, there shall be no deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery cost, taxes or other expense. Gross revenue does not include revenue paid directly by the United States of America or its agencies.

1.8 "Person" includes an individual, corporation, association, firm, partnership and joint stock company.

1.9 "Public Place" includes any City-owned property that is open to the public and that is not a Right of Way, and includes public squares and parks.

1.10 "Right of Way" means the space in, upon, above, or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, bicycle lanes, Bridges, and places used or intended to be used by the general public for

travel as the same now or may hereafter exist, that the City has the right to allow Grantee to use.

1.11 "Services" means the electric energy transmission, distribution, sales and marketing services provided by Grantee to its customers located within the City.

2. Rights Granted. Subject to the terms, conditions and reservations contained in this ordinance, the City hereby grants to Pacific Power the right, privilege and franchise to:

2.1 Construct, maintain and operate an electric energy utility system within the City.

2.2 Install, maintain and operate Electric Facilities on and under the Right of Way and, with respect to existing Electric Facilities in Public Places, in Public Places, for distribution of electricity to its customers located within the City and its inhabitants and to other customers and territory beyond the limits of the City; and

2.3 Transmit, distribute and sell electricity to customers within the City.

2.4 This franchise does not authorize Grantee to install or use Electric Facilities or other facilities in the Right of Way for any other purposes. This franchise does not authorize Grantee to install Electric Facilities in Public Places not currently occupied by Grantee's Electric Facilities, unless Grantee first obtains an easement or other necessary right to occupy the land.

3. Use of Right of Way/Construction and Location.

3.1 Grantee shall comply with Bend Municipal Code prior to commencing any construction, installation, extension, removal, relocation, or maintenance of any Electric Facilities in the Right of Way or any Public Place. Compliance with all City Code requirements includes, but is not limited to, compliance with Bend Code Sections 2.400 through 2.432. Prior to commencing all such work in any Public Place, Grantee shall first obtain permission and permits from the City to do so and shall comply with all permitting requirements the City may impose on such work, use or occupation. Grantee will comply with all City engineering standards and specifications in effect at the time the work is performed for all future work under this franchise. In the process of obtaining permits from City, the location of the proposed construction, installation, extension, removal, relocation, or maintenance of Grantee's Electric Facilities is subject to approval by the City Engineer and shall not be undertaken in such a way so as to interfere unreasonably with the use by the City and the public of the Right of Way, any Public Place, or any other public improvement.

3.2 Where protection of the public health and safety requires emergency work to be performed before a City permit can be reasonably obtained, Grantee may proceed with such work, provided such work is performed in accordance with all City standards and specifications, and provided that Grantee obtain a permit from the City for such work as soon as practical after the work is commenced. Failure to comply with all requirements of the Bend Code, or performance of work under this section where no real emergency exists shall subject Grantee to the penalties provided by Bend Code Section 2.432. City shall have, in addition to the penalties provided in its code, all other remedies provided by law.

3.3 Grantee or its contractor may prune all trees and vegetation which overhang a public Right-of-Way, property or place, whether such trees or vegetation originate within or outside said Right-of-Way, property or place, in such manner and to such extent as will prevent the branches or limbs or other parts of such trees or vegetation from growing within limits specified in the "Oregon Public Utility Commission Staff Policy on Tree and Power Line Clearances" and consistent with ORS 758.280-758.286. Such pruning shall comply with the *American National Standard for Tree Care Operation (ANSI A300)* and be conducted under the direction of an arborist certified with the International Society of Arboriculture. Prior to removal of any trees planted in the Right-of-Way, Grantee shall obtain written approval from the City, which approval may be withheld by the City in its reasonable discretion. A growth inhibitor treatment may be used for trees and vegetation species that are fast-growing and problematic.

4. Duration.

4.1 This franchise is granted for a period of 10 years from and after the effective date of this ordinance, provided that Grantee has provided unconditional written acceptance in accordance with Section 21. This franchise shall expire on the last day of the 10 year period unless extended or modified by the parties in writing.

4.2 Either party, by written notice delivered not less than 90 days, nor more than one year, in advance of the termination date of this Agreement, may request renewal, extension or modification of the Agreement, and both parties agree to negotiate in good faith toward a renewal, extension or modification of the Agreement in a timely manner.

5. Franchise Not Exclusive. This franchise is not exclusive, and shall not be construed as a limitation on the City in:

5.1 Granting rights, privileges and authority to other Persons similar to or different from those granted by this ordinance;

5.2 Constructing, installing, maintaining or operating any City-owned public utility.

5.3 This franchise is subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the Right of Way or Public Places. Nothing in this franchise shall be deemed to grant, convey, create, or vest in Grantee a real property interest in land, including any fee, leasehold interest, or easement.

6. Public Works and Improvements Not Affected by Franchise. The City reserves the right to:

6.1 Construct, install, maintain and operate any public improvement, work or facility in, over or under any Right of Way or Public Place;

6.2 Perform or authorize or direct the performance of any work that the City may find desirable or convenient in, over or under any Right of Way or Public Place;

6.3 Vacate, alter or close any Right of Way or Public Place, provided that the City shall make available to Grantee with alternative Right of Way for the location of its facilities or provide for the preservation of Grantee's rights of use, replacement and maintenance. If Grantee's Electric Facilities must be relocated from a vacated Right of Way, the petitioners of the vacation shall bear the cost of relocation of the Electric Facilities.

6.4 Control or prevent the use of any Public Place by Grantee and require payment of additional compensation for the use of the Public Place in any amount the parties agree is reasonable.

6.5 Exercise any non-regulatory power that the City currently holds, or may hereafter be authorized or granted by the laws of the State of Oregon or the City Charter, except where that power may be preempted or superseded by the constitutions of the United States or the State of Oregon.

6.6 Exercise any regulatory power that is abandoned by the Oregon Public Utility Commission, not vested exclusively by law in any other state regulatory body, and that can be lawfully exercised by the City.

6.7 Whenever the City shall perform or cause or permit to be performed any work in any Right of Way where such work may disturb or interfere with Grantee's Electric Facilities, the City shall, or require its permittee, to notify, in writing, Grantee sufficiently in advance of the contemplated work to enable Grantee to take those measures, including relocation or removal, as may be deemed necessary to protect its Electric Facilities, at its own expense.

6.8 Before installing new underground conduits or replacing existing underground conduits, Grantee shall first notify the City of such work and shall allow the City, at its own expense, to share the trench of Grantee to lay its own conduit therein, provided that such action by the City will not unreasonably interfere with Grantee's Electric Facilities or delay project completion.

7. Service Standards; compliance with Laws.

7.1 The Grantee shall maintain and operate an adequate and safe system for the distribution of electric energy in the City. The Grantee shall use due diligence to maintain continuous and uninterrupted 24-hour a day service which shall at all times conform at least to the standards common in the business and to the standards adopted by state authorities. Under no circumstances shall the Grantee be liable for an interruption or failure of service cause by act of God, unavoidable accident or other circumstances beyond the control of the Grantee or through no fault of its own.

7.2 Grantee shall comply with those rules lawfully prescribed by the Oregon Public Utility Commission with respect to rates to be charged and the conditions, quality, character and standards of service furnished.

7.3 Grantee shall comply with all laws, including those of the United States, the State of Oregon, and the Ordinances of the City of Bend.

8. Safety Standards and Work Specifications.

8.1 Grantee's Electric Facilities shall be constructed and maintained in good order and condition, in a safe manner, and in accordance with standard engineering practice and all lawful governmental regulations.

8.2 For the purpose of carrying out the provisions of this section, the City may provide such specifications relating thereto as may be necessary or convenient for public safety or the orderly development of the City. The City may amend and add to such specifications from time to time.

9. Street Excavations and Restorations; Moving Buildings.

9.1 Grantee shall comply with the Bend Code, and without limitation, Chapter 2 of the Bend Code, with respect to work in the Right of Way. All work is subject to inspection by the City.

9.2 Whenever it becomes necessary to temporarily rearrange, remove, lower or raise Grantee's aerial Electric Facilities to permit the passage of a building, machinery, or other object, Grantee shall perform the rearrangement upon receipt of written notice from the Persons desiring to move the building, machinery or object. The rearrangement shall not be required unless the City Building Official has approved the structural relocation. The costs incurred by Grantee in making the rearrangements to its aerial Electric Facilities shall be borne by the Persons requesting rearrangement, unless the aerial Electric Facilities are placed or maintained in violation of the applicable PUC rules and regulations and thereby interfere with the movement.

10. Relocation of Facilities; Overhead to Underground Conversion.

10.1 Whenever the City determines that it is necessary to change the location of any Electric Facilities located in a Right of Way or Public Place, the Grantee shall, at its own expense, remove, relocate, and/or alter the Electric Facilities within a reasonable time after receiving written notice to do so from the City. The cost of such removal, relocation and/or alteration of the Electric Facilities shall be paid by the Grantee, but when the removal, relocation, and/or alteration is required for the convenience or benefit of any Person, governmental agency or instrumentality other than the City, Grantee shall be entitled to reimbursement for the reasonable cost thereof from that Person, agency or instrumentality. The City shall provide the Grantee with timely notice of any anticipated requirement to remove, relocate or alter its Electric Facilities and shall cooperate with the Grantee in the matter of assigning or allocating the associated costs.

10.2 If Grantee fails to relocate, remove or alter any Electric Facilities as requested by the City by the date established by the City, the City may cause the Electric Facilities to be removed by qualified contractors at Grantee's sole expense. Upon receipt of demand for payment from the City, Grantee shall promptly reimburse the City for the costs the City incurred.

10.3 Grantee shall remove and replace overhead Electric Facilities underground at the request of the City. Cost responsibility shall be allocated in accordance with all applicable Oregon Administrative Rules and a schedule agreed upon by the City

and Grantee. The City shall require that each customer served from the existing overhead Electric Facilities shall make all facility changes to the customer's premises in accordance with Grantee's policies and standards necessary to receive service from the underground facilities as soon as they become available.

11. Co-Location.

In consideration for granting this franchise, Grantee grants the right and privilege without payment or charge to the City, but at the City's expense, with prior notice and approval of Grantee, to place and maintain wires, control boxes, and any other necessary equipment as the City may require for fire, police, emergency or other municipal purposes, on Grantee's Facilities placed by Grantee in the Right of Way or Public Places, whether above or underground. All such installations shall be made in a manner so as not to interfere with Grantee's electric energy service and in conformance with good electrical practice, Grantee's standards, and local, state and federal regulations. When safety is an issue, Pacific Power shall not be required to share locations with water or sewer utilities. The City shall not sell or lease its rights under this subsection to any third parties. If City uses Grantee's Facilities in the Right of Way for proprietary purposes, then, in addition to the procedures for co-location described in this paragraph, City and Grantee agree to negotiate in good faith regarding compensation to Grantee for use of such Facilities for proprietary purposes. The parties agree to negotiate such fees in good faith and within a reasonable time. The City shall hold Grantee harmless from all claims or liability for damage that arises out of the City's use of Grantee's Electric Facilities under this subsection.

12. Compensation.

12.1 As compensation for the benefits and privileges of this franchise granted by this ordinance, the Grantee shall pay to the City a franchise fee in the amount equal to five percent (5%) of Gross Operating Revenue. Grantee may offset against such compensation the amount of any license, permit or other fees paid to the City in connection with the Grantee's use of the Right of Way when the fee or charge is imposed upon Grantee alone or not under an ordinance or resolution applicable to others in addition to Grantee. Notwithstanding any provision to the contrary, at any time during the term of this Franchise, the City may elect to increase the franchise fee amount as may then be allowed by state law. The City shall provide Grantee with prior written notice of such increase following adoption of the change in percentage by the City. The increase shall be effective sixty (60) days after City has provided such written notice to Grantee.

12.2 Acceptance by the City of any payment due under this section shall not be deemed as an accord that the amount paid is the correct amount, nor shall any acceptance of payment be construed as a release of any claim the City may have for additional funds or as a waiver by the City of any breach of this franchise.

12.3 Grantee shall also pay any other fees required by City ordinance or the City's Fee Resolution.

12.4 Except as provided herein, Grantee is exempt from payment of business license fees required by City ordinance and any other occupation or excise taxes levied by the City against businesses with respect to business operations within the corporate limits of the City, however, Grantee is not exempt from payment of any City imposed fee for service, such as permit fees, land use fees, system development charges, fees imposed by the City fee resolution, and the like.

12.5 The franchise fee shall be paid monthly on or before the 20th of each month during the term hereof, and shall be computed upon the gross operating revenue accruing during the previous calendar month or portion thereof. The City license fee shall be paid as required by City ordinance.

13. Books of Account and Reports.

Grantee shall keep accurate books of account at an office in Oregon for the purpose of determining the amounts due to the City under Section 12 of this ordinance. Grantee shall provide City with its customer account data, to the extent permitted by law, without request each year. The City may inspect the books of account at any time during

business hours and may audit the books from time to time, provided that only payments which occurred during a period of 36 months prior to the date the City notifies Grantee of its intent to conduct an inspection shall be subject to such review. The City may also require Grantee to provide an audit report prepared at Grantee's expense or an audit report prepared by an independent accounting firm prepared at the City's expense, but not more than once per calendar year. The City may require periodic reports from Grantee relating to its operations and revenues within the City.

14. Supplying Maps Upon Request.

The Grantee shall maintain on file, at an office in Oregon, maps and operational data pertaining to its operations in the City. Upon reasonable notice, authorized representatives of the City may inspect the maps and data any time during business hours at an office of the Grantee. Grantee and the City may determine that the location of certain Electric Facilities should be confidential as the public interest may require. In such a case, Grantee is under no obligation to provide records of the location of these facilities to the public and the City shall treat any public record disclosing the location of these facilities as confidential, subject to the provisions of state law and the Oregon Public Records Law. The City shall limit access to any such confidential record to trustworthy employees of the City with a need to know the information set out in the record. The City shall store any such confidential record in a secure and private place and avoid making and distributing copies of the record.

15. Annexation

15.1 Extension of City Limits. Upon the annexation of any territory to the City, the rights granted herein shall extend to the annexed territory to the extent the City has such authority. All Electrical Facilities owned, maintained, or operated by Pacific Power located within any public ways of the annexed territory shall thereafter be subject to all of the terms hereof.

15.2 Notice of Annexation. When any territory is approved for annexation to the City, the City shall, not later than ten (10) working days after passage of an ordinance approving the proposed annexation, provide by certified mail to the Grantee: (a) each site address to be annexed as recorded on county assessment and tax rolls; (b) a legal description of the proposed boundary change; and (c) a copy of the City's ordinance approving the proposed annexation. If notice is not provided within 10 days of the annexation, Pacific Power's obligation to pay franchise fees on revenue generated by service to the annexed property shall begin 10 days after notice is actually provided.

The notice shall be mailed to:

Pacific Power Customer Contact Center
P.O. Box 400
Portland, Oregon 97202-0400

With a copy to:

Pacific Power
Attn: Office of the General Counsel
Suite 1800
825 N E Multnomah
Portland, OR97232

16. No Value in Franchise.

If, during the term hereof, the franchise is terminated, no value or damage of any kind shall be claimed by or allowed to Grantee in respect to the unexpired term of the franchise hereby granted.

17. Indemnification and Insurance.

17.1 Grantee shall indemnify and save harmless the City and its officers, agents and employees from any and all loss, cost and expense arising from damage to property and/or injury to, or death of, Persons due to any wrongful or negligent act or omission of the Grantee, its agents or employees in exercising the rights, privileges and franchise granted under this ordinance, but not arising solely out of

or by reason of any negligence or willful misconduct by the City, its officers, agents or employees.

17.2 Grantee shall maintain automobile, comprehensive general liability and property damage insurance that protects Grantee and the City, as well as the City's officers, agents, and employees, from the claims referred to in Section 17.1. The insurance shall provide coverage in the amount not less than two times the City's statutory limit on tort claims, and this amount may be raised by resolution of City. The insurance policies may provide for self-retention or deductibles in reasonable amounts to be approved by the City in advance. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of this franchise.

17.3 The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing in this section shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one Person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy.

17.4 The insurance policy shall provide that the insurance shall not be canceled or materially altered without thirty (30) days' prior written notice first being given to the City Manager. If the insurance is canceled or materially altered within the term of this franchise, Grantee shall provide a replacement policy with the same terms. Grantee shall maintain continuous uninterrupted coverage, in the terms and amounts required, upon and after the effective date of this franchise.

18. Assignment of Franchise.

This franchise shall not be assigned or transferred without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed, provided the franchise is transferred or assigned to an entity that controls, is controlled by, or is under the common control of the Grantee. If the City consents to an assignment or transfer of the franchise, the transfer or assignment shall not be effective until the assignee or transferee has complied with the requirements in Section 21 and filed a signed acceptance of the terms of this franchise. Notwithstanding anything in this franchise to the contrary, Grantee may mortgage this franchise, together with its Electric Facilities and properties within the City, in order to secure any legal bond issue or other indebtedness of Grantee, with no requirement that the trustees accept this franchise.

19. Termination of Franchise for Cause.

The City may terminate this franchise as provided in this section, subject to Grantee's right to a court review of the reasonableness of such action, upon the willful failure of the Grantee to perform promptly and completely each and every material term, condition or obligation imposed upon it under or pursuant to this ordinance. The City shall provide Grantee written notice of any such failure and the Grantee shall have sixty (60) days from receipt of notice to cure the failure, or if the failure cannot reasonably be cured within sixty (60) days, to commence and diligently pursue curing the failure. If Grantee does not cure the failure within the sixty day period, or does not commence and diligently pursue curing the failure to the City's satisfaction within the 60 day period, then the City Council may declare the franchise terminated.

20. Remedies Not Exclusive, When Requirement Waived.

All remedies and penalties under this ordinance, including termination of the franchise, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other remedy or penalty. The remedies and penalties contained in this ordinance, including termination of the franchise, are not exclusive and the City reserves the right to enforce the penal provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the grantee by or pursuant to this ordinance. A specific waiver of a particular breach of any term, condition or obligation imposed upon Grantee by or pursuant to this ordinance shall not be a waiver of any other or subsequent or future breach of the same or of any other term, condition or obligation, or a waiver of the term, condition or obligation itself.

21. Acceptance; Effective Date.

The Grantee shall, within sixty (60) days from the date this ordinance takes effect, file with the City its written unconditional acceptance of this franchise, and if the Grantee fails so to do, this ordinance shall be void. This franchise shall be effective the later of 30 days after passage by the City Council and Grantee's acceptance. Grantee shall continue paying the franchise fee required by Bend Code 3.112 during any time a franchise agreement is not in effect.

22. Miscellaneous Provisions.

22.1 Severability of Provisions. If any one or more of the provisions of this ordinance is held by a court of competent jurisdiction to be invalid or unenforceable or pre-empted by federal or state laws or regulations, such provision(s) shall be deemed severable from the remaining provisions of this ordinance and shall not affect the legality, validity, or constitutionality of the remaining portions of this ordinance to the extent consistent with the original intent of the parties.

22.2 Governing Law and Choice of Forum. This ordinance and the franchise granted under it shall be governed and construed by and in accordance with the laws of the State of Oregon without reference to its conflicts of law principles. If suit is brought by a party to this franchise, the parties agree that trial of such action shall be vested exclusively in the state courts of Oregon, County of Deschutes, or in the United States District Court for the District of Oregon.

22.3 Representations and Warranties. Each of the parties to this franchise represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other Person or entity in connection herewith.

22.4 No Third Party Beneficiaries. Nothing in this ordinance shall be construed or applied to create rights in or grant remedies to any third party as a beneficiary of this franchise or any duty or obligation established in this franchise.

22.5 Independent Contractor Status. When performing under this franchise, Grantee shall be an independent contractor and not an agent, employee or representative of the City in the performance of work pursuant to this franchise. No term or provision of this franchise, or act of the Grantee or its agents shall be construed as changing that status.

22.6 Amendment of Franchise. This franchise may not be amended, except pursuant to a written instrument signed by Grantee and approved by the City Council.

22.7 Entire Agreement. This franchise contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this franchise that are not fully expressed herein.

Read for the first time the 20th day of June, 2007.

Read for the second time the 2nd day of July, 2007.

Placed upon its passage the 2nd day of July, 2007.

YES: 6 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 2nd day of July, 2007.

Bruce Abernethy, Mayor

Attest:

Patricia Stell, City Recorder

Added text appears in underlined typeface;
Deleted text appears in ~~strikethrough~~ typeface.

ORDINANCE NO. NS - 2060

AN ORDINANCE AMENDING THE AVION WATER COMPANY FRANCHISE (BEND CODE SECTION 11-20.13) BY CHANGING THE SERVICE TERRITORY AND EXTENDING THE TERM OF THE FRANCHISE

Whereas, On June 7, 2000, the City of Bend, by ordinance No. NS-1748, adopted a revised Franchise Agreement with Avion Water Company ("Avion"), which adopted an allocation of service area between the City of Bend and Avion, and

Whereas, the City and Avion have agreed to an exchange of service areas, which is expected to provide long term benefits to the citizens served by both utilities due to ease of coordination related to topics such as financing, fire flow planning, infrastructure development, rate setting, forecasting, conservation and related efforts.

THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

Section 1: Bend Code 11-20.13, Section 6(4) is amended as follows:

(4) Company's service to properties within the City shall be confined to the properties shown on the map entitled "Water Service Area Exhibit" which is marked EXHIBIT A, Amended July, 2007, attached hereto and incorporated by reference herein. Company shall not serve any other properties within the City. Exhibit A, Amended July, 2007 shall replace the existing water service area allocation between the City of Bend and Company.

Section 2: Bend Code 11-20.13, Section 17 is amended as follows:

(17): Franchise Term.

This franchise is granted for a term of 20 years beginning with the acceptance by Company of the amendment to the franchise adopted by the Bend City Council in July, 2007 ~~this franchise by Company~~.

Read for the first time this 20th day of June, 2007.

Read for the second time this 2nd day of July, 2007.

Placed upon its passage this 2nd day of July, 2007.

YES: 6 NO: 0

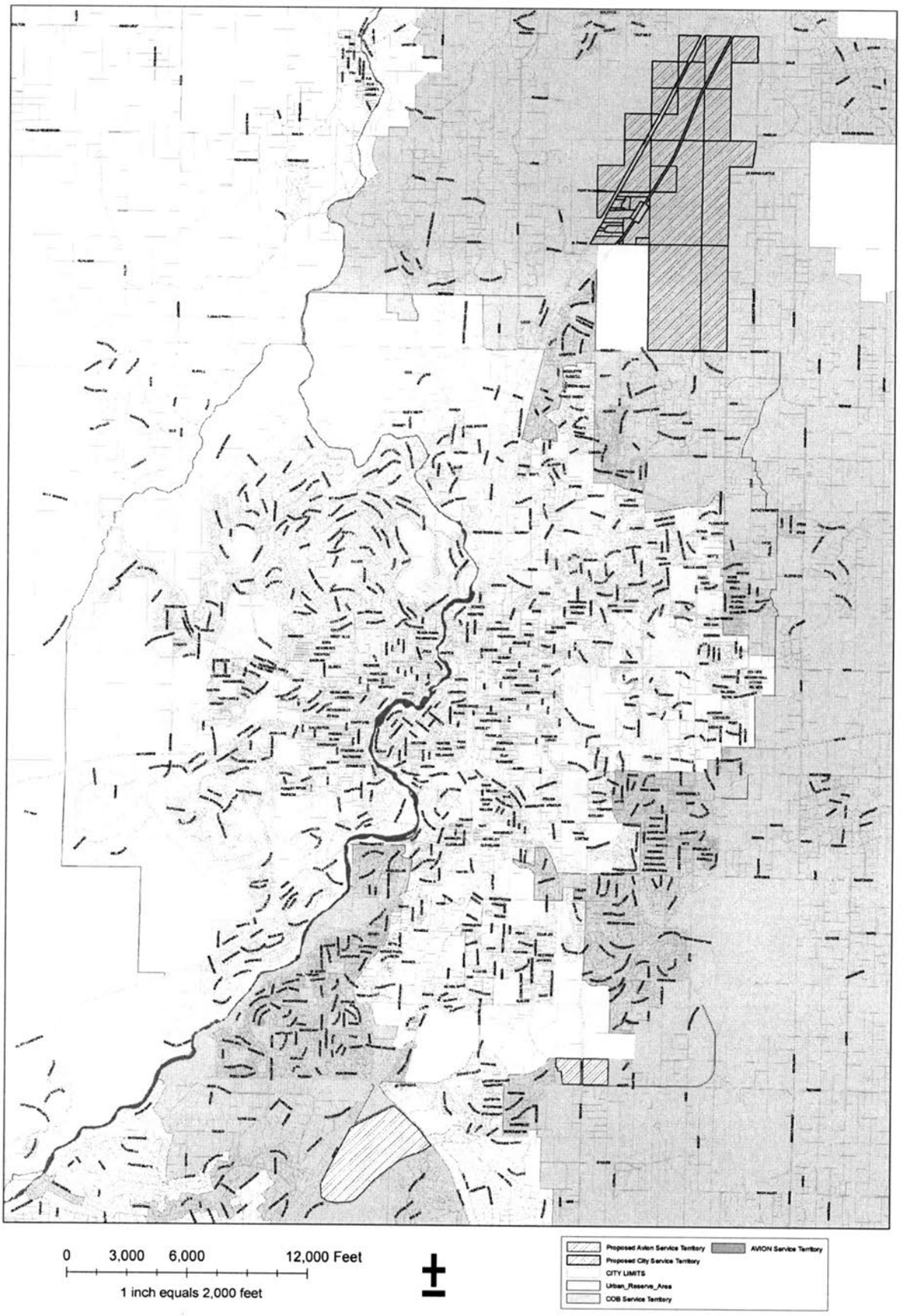
Authenticated by the Mayor this 2nd day of July, 2007 .

Bruce Abernethy, MAYOR

ATTEST:

Patricia Stell, City Recorder

Avion Water Company Inc / City of Bend
Proposed Service Territory Exchange 2007



BLANK PAGE

ORDINANCE NO. NS-2061

AN ORDINANCE AMENDING THE BEND URBAN AREA ZONING MAP BY CHANGING THE ZONING DESIGNATION OF A PARCEL OF LAND TOATLING 6.78 ACRES NORTH OF QUAIL PINE ESTATES SUBDIVISION FROM RS RESIDENTIAL URBAN STANDARD DENSITY TO PF PUBLIC FACILITIES.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council held a public hearing to consider the Hearings Officer's findings and record, and found that the proposal is consistent with the criteria of the Bend Development Code Section 4.6.300. The Bend City Council adopts the Findings and Decision of the Hearings Officer dated May 25, 2007, file numbers PZ 07-72 and PZ 07-73.

Section 2. The Bend Urban Area Zoning Map is hereby amended by changing the designation of the property shown in "Exhibit A" and described in "Exhibit B" from Residential Urban Standard Density (RS) to Public Facilities (PF).

Read for the first time the 20th day of June, 2007.

Read for the second time the 2nd day of July, 2007.

Placed upon its passage the 2nd day of July, 2007.

YES: 6 NO: 0

Authenticated by the Mayor the 2nd day of July, 2007.

Bruce Abernethy, Mayor

ATTEST:

Patricia Stell, City of Bend Recorder

EXHIBIT A

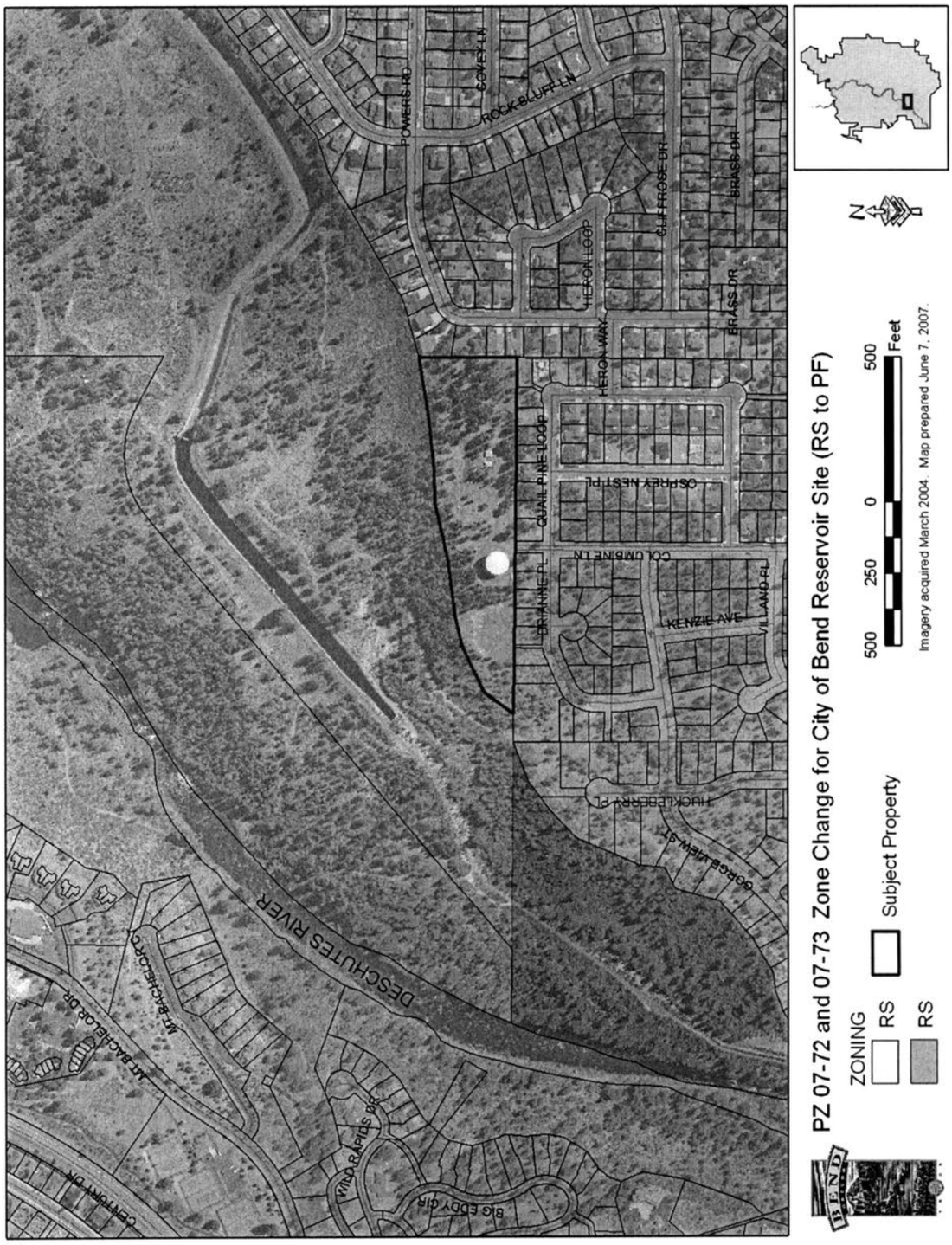

PZ 07-72 and 07-73 Zone Change for City of Bend Reservoir Site (RS to PF)
ZONING
RS
RS
Subject Property
500 250 0 500 Feet
Imagery acquired March 2004. Map prepared June 7, 2007.
N
POWERS RD
EGRET LN
ROCK BLUFF LN
HERON LOOP
HERON WAY
CLIFFROSE DR
BRASS DR
QUAIL PINE LOOP
OSPREY NEST PL
COLUMBINE LN
BRAINING PL
KENZIE AVE
VILAND PL
HUCKLEBERRY PL
SAGEBRUSH ST
DESCHUTES RIVER
MT BACHELOR CT
MT BACHELOR DR
WILD RAPIDS DR
BIG EDDY CIR
CENTAUR DR

EXHIBIT B

Property Description from WARRANTY DEED
Recorded in Book 194, Page 0266, Deschutes County Official Records

A Parcel located in the North Half of the Northwest Quarter of the Southeast Quarter (N ½ NW ¼ SE ¼) of Section Seven (7), TOWNSHIP EIGHTEEN (18) SOUTH, RANGE TWELVE (12) EAST OF THE WILLAMETTE MERIDIAN, Deschutes County, Oregon, being fully described as follows:

Commencing at the Northeast corner of the Southeast Quarter (SE ¼) of said Section 7; thence North 89° 53′14″ West 1333.63 feet to the Northeast corner of said North Half of the Northwest Quarter of the Southeast Quarter (N 1/2 NW 1/4 SE 1/4); thence South 00° 00′ 37″ East along the East line of said Northwest Quarter of the Southeast Quarter (NW ¼ SE 1/4) 318.40 feet to a point which is the Southwest corner of that Tract recorded in 236-D-934 of the Deschutes County Deed Records and the point of beginning for this description; said point is South 16° 35′ 45″ East 1.06 feet from a 1/2″ iron rod set by Robert L. Davenport in his survey for C.O.I.D. dated August 14, 1975; and running thence South 00° 00′ 37″ East a distance of 343.32 feet to a 5/8″ iron rod at the Southeast corner of said North Half of the Northwest Quarter of the Southeast Quarter; thence North 89° 55′ 40″ West along the South line of said North Half of the Northwest Quarter of the Southeast Quarter (N ½ NW ¼ SE ¼) 1232.83 feet to a 5/8″ iron rod; thence North 34° 18′ 18″ East 126.16 feet to a 5/8″ iron rod; thence North 64° 08′ 05″ East 177.47 feet to a 5/8″ iron rod; thence North 75° 39′ 37″ East 107.97 feet to a 5/8″ iron rod; thence North 82° 21′ 20″ East 196.31 feet to a 5/8″ iron rod; thence North 76° 56′ 43″ East 195.74 feet to a 5/8″ iron rod; thence North 87° 11′ 48″ East 134.46 feet to a 5/8″ iron rod; thence North 83° 22′ 26″ East 161.51 feet to a 5/8″ iron rod; thence North 80° 07′ 23″ East 220.66 feet to the point of beginning.

BLANK PAGE

ORDINANCE NO. NS-2062

AN ORDINANCE AMENDING THE BEND URBAN AREA ZONING MAP BY CHANGING THE ZONING DESIGNATION OF A PARCEL OF LAND TOTALING 2.49 ACRES BETWEEN NE 6TH STREET AND NE 8TH STREET IN THE ELLIS SUBDIVISION FROM RS RESIDENTIAL URBAN STANDARD DENSITY TO RM URBAN MEDIUM DENSITY.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council held a public hearing to consider the Hearings Officer's findings and record, and found that the proposal is consistent with the criteria of the Bend Development Code Section 4.6.300. The Bend City Council adopts the Findings and Decision of the Hearings Officer dated June 7, 2007, file number PZ 07-008.

Section 2. The Bend Urban Area Zoning Map is hereby amended by changing the designation of the property shown in "Exhibit A" and described in "Exhibit B" from Residential Urban Standard Density (RS) to Residential Urban Medium Density (RM).

Read for the first time the 2nd day of July, 2007.

Read for the second time the 18th day of July, 2007.

Placed upon its passage the 18th day of July, 2007.

YES: 5 NO: 0

Authenticated by the Mayor the 18th day of July, 2007.

Bruce Abernethy

Bruce Abernethy, Mayor

ATTEST:

Patricia S Stell

Patricia Stell, City of Bend Recorder

EXHIBIT A



EXHIBIT B

The Northerly 75 feet of Lot Three (3), Block Four (4); the Northerly 75 feet of Lot Three (3), Block Six (6); the Southerly 50 feet of Lot Four (4), Block Four (4); and the Southerly 50 feet of Lot Four (4) in Block Six (6), all in Ellis Subdivision, Deschutes County, Oregon.

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK
2007-48446
$36.00
00571258200700484460020036
09/04/2007 03:39:17 PM
D-IPPS Cnt=1 Stn=23 CLERK
$10.00 $11.00 $10.00 $5.00

Do not remove this page from original document.

Deschutes County Clerk

Certificate Page

If this instrument is being re-recorded, please complete the following statement, in accordance with ORS 205.244:

Re-recorded to correct [give reason] _____
previously recorded in Book _____ and Page _____,
or as Fee Number _____.

ORDINANCE NO. NS-2063

AN ORDINANCE VACATING A PORTION OF MEYER DRIVE THAT LIES WITHIN NE ¼ of Section 8, Township 18 South, Range 12 East of the Willamette Meridian, Bend, Deschutes County, Oregon.

A petition having been presented to the Bend City Council on September 20, 2006 by Carey Sheldon, B&C Development LLC (Petitioner) requesting that the land described as the "STREET VACATION" area be vacated:

SEE EXHIBIT "A"

and stating the purpose for which the described property is proposed to be used and the reason for such vacation; and said petition being duly acknowledged;

The City of Bend having caused a notice of public hearing for vacation of public property describing the above street right of ways to be published in the Bulletin, as provided by ORS 271.110, once each week for two (2) consecutive weeks;

Within five days after the first day of publication of said notice, the City having caused a notice of street vacation to be posted at or near each end of the proposed vacation and in at least two conspicuous places in the proposed vacation area; the first publication and posting of said notice having occurred not less than 14 days prior to the hearing for said proposed vacation;

The City Council of the City of Bend having fixed the 6th day of June, 2007, at 7:00 p.m. local time in the City Council Chambers at 710 NW Wall Street, City of Bend, Oregon, as the time and place for the hearing upon said proceedings and at that time having heard all objections to the proposed vacation; and;

The City Council having determined that the public interest will not be prejudiced by the proposed vacation and that the property should be vacated:

NOW, THEREFORE, THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

That the above described portion of street right of ways located in Bend, Deschutes County, Oregon, be vacated for $18,624 to be paid by the Petitioner;
and that the real property is vacated subject to the restriction that no "building", as herein defined, may be constructed on the vacated real property. "Building" is defined as a structure which is designated and suitable for the habitation or shelter of human beings or animals or the shelter or storage of property, or for the use and occupation for some purpose of trade or manufacture.

The City Recorder shall forthwith cause a certified copy of this ordinance to be filed and recorded in the Office of the County Clerk of Deschutes County, Oregon.

Read for the first time the 18th day of July, 2007.

Read for the second time the 1st day of August, 2007.

Placed upon its passage the 1st day of August, 2007.

Yes: 6 No: 0

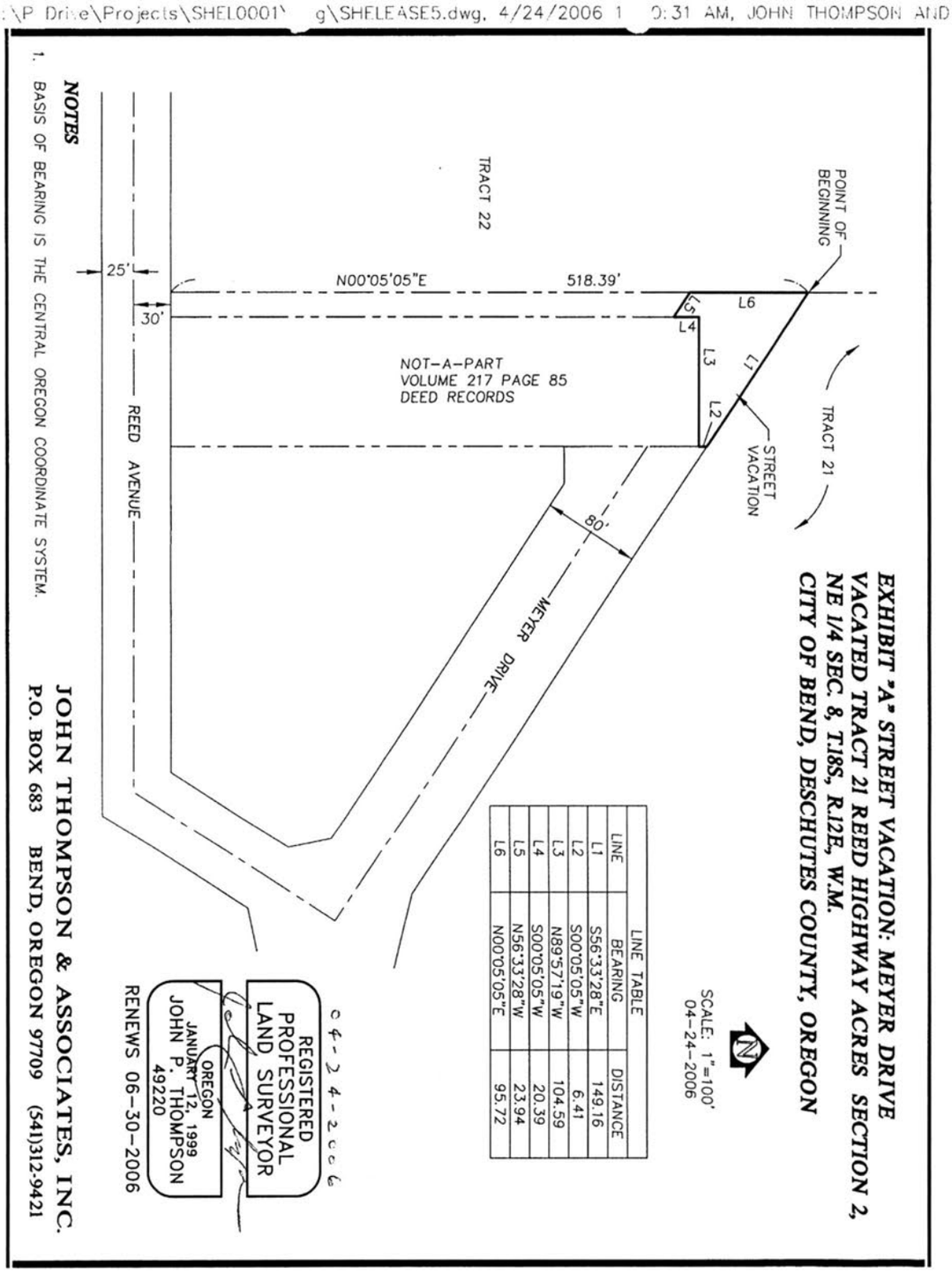
Authenticated by the Mayor the 1ST day of August, 2007.

Bruce Abernethy

Bruce Abernethy, Mayor

ATTEST: Patricia S Stell

Patty Stell, City Recorder



Please record pages 1 and 2 of Ordinance NS-2063.
After recording return to: Deputy City Recorder, City of Bend, 710 NW Wall, Bend OR 97701.

ORDINANCE NO. NS- 2064

AN ORDINANCE AMENDING THE BEND URBAN AREA GENERAL PLAN MAP, AMENDING THE CITY OF BEND ZONING MAP AND AMENDING THE CITY OF BEND ZONING ORDINANCE NO. NS-2016 TO CHANGE APPROXIMATELY 9.37 ACRES OF LAND DESIGNATED AS INDUSTRIAL LIGHT, (IL) TO MIXED EMPLOYMENT, (ME).

WHEREAS, The Bend City Council has held a public hearing, considered the Hearing Officer's findings and record, and has found that there is a public need and benefit for the proposed change; and

WHEREAS, The Bend City Council adopts the Findings and Recommendation found in the Hearings Officer's decision, attached as Exhibit "A", dated February 14, 2007 regarding file PZ-06-21, with the exception of the condition imposed by the Hearings Officer;

WHEREAS, the Bend City Council adopts supplemental findings and modified conditions of approval attached as Exhibit "B";

WHEREAS, the application consists of properties of different size and owned by different entities as shown in EXHIBIT "C";

WHEREAS the redevelopment of the smaller property known as Cascade West Property and described as tax lot 200 on Deschutes County Tax Assessor map 18-12-06A, independent of the larger property will result in a development pattern which is not orderly; and

WHEREAS, the applicant has agreed to the imposition of the modified conditions of approval, whereby different conditions shall be required based on property ownership as indicated below;

1. The Century Center Property, LLC agrees that part of the subject property described as tax lots 100, 300, 301, 400, 500, 904, and 907 on Deschutes County Tax Assessors map 18-12-06A, hereinafter referred to as the "Century Center Property" shall not be sold as separate lots or parcels until such time an application for land division /replat which provides street connectivity to the extent required by the City's Development Code is approved by the City and recorded by the property owner.

2. The City will not issue any building permits for the construction of new buildings on the Century Center Property or issue any development approvals for the re-use of the existing buildings where the total vehicle trips for the site will exceed the existing 144 trip credit, until the provisions of subsection 1 above are met.

3. The Century Center Property, LLC shall construct improvements on the streets fronting the subject property as follows:

    A. Construct sidewalk and curb on the Century Drive property frontage; and
    B. Construct curbs and a street with 36' minimum pavement width for Commerce Avenue between Century Drive and Columbia Boulevard; and
    C. Construct sidewalk and landscape strip the length of the subject property along the Commerce Avenue frontage.

    Improvements shall be constructed when the subject property redevelops either by subdivision, replat or through the reuse of the existing buildings where the total vehicle trips for the site will exceed the existing 144 trip credit.

4. The Century Center Property, LLC is hereby credited for the cost of making the off-site street improvements east of the subject property on Commerce Avenue to the intersection of Columbia Boulevard described in Section 3, above in

calculating a reasonable nexus for additional off-site impact mitigation for site development of the Century Center Property.

5. The Century Center Property, LLC is hereby credited with a Vehicle Trip Credit of 144 pm peak hour vehicle trips for the existing use of the subject property in accordance with City Transportation Policy. The City will allocate the available vested trips to development on the site in the sequence in which land use applications are received. A new TIA shall be required for subsequent land use proposals which exceed the Vehicle Trip Credit of 144 trips.

6. The Cascade West Property described as tax lot 200 on Deschutes County Tax Assessor map 18-12-06A; shall submit a development plan establishing a public or private street with public access oriented east / west through the subject property which is aligned with Knoll Avenue across 14th Street to the west, with subsequent redevelopment.

7. The Cascade West Property is hereby credited with a Vehicle Trip Credit of 25 pm peak vehicle trips for the existing use of the subject property in accordance with City Transportation Policy. A new TIA shall be required for subsequent land use proposals which exceed the Vehicle Trip Credit of 25 PM Peak trips.

8. The owner of the Cascade West Property shall sign and record a waiver of remonstrance for right of way improvements on 14th Street fronting the subject property

9. The completion of infrastructure improvements may be required by both the Century Center Property and the Cascade West Property to mitigate impacts to the City's transportation, sewer, water and storm water drainage systems as determined during the development review process.

NOW, THEREFORE, The City of Bend Zoning map is amended by changing the designation of the property shown on "Exhibit "C" from Light Industrial (IL) to Mixed Employment (ME); and the Bend Urban Area General Plan map is amended by changing the designation of the property shown on "Exhibit C" from Industrial Light (IL) to Mixed Employment (ME)

Read for the first time the 18th day of July, 2007.

Read for the second time the 1st day of August, 2007.

Placed upon its passage the 1st day of August, 2007.

Yes: 6 No: 0 Abstain: 0

Authenticated by the Mayor the 1st day of August, 2007.

Bruce Abernethy

Bruce Abernethy, Mayor

ATTEST:

Patricia Stell

Patricia Stell, City of Bend Recorder

DECISION OF CITY OF BEND HEARINGS OFFICER

FILE NUMBER: PZ 06-21

APPLICANT: Century Center Property, LLC
c/o Dave Hill
P.O. Box 825
Bend, Oregon 97709

PROPERTY OWNERS: Century Center Property, LLC
c/o Dave Hill
P.O. Box 825
Bend, Oregon 97709
(Tax Lots 100, 300, 301, 400, 500, 904 and 907)

K & O Holdings, LLC
64 S.W. Century Drive
Bend, Oregon 97702
(Tax Lot 200)

APPLICANT'S ATTORNEY: Liz Fancher
644 N.W. Broadway Street
Bend, Oregon 97701

REQUEST: The applicant is requesting approval of a plan amendment and zone change from IL to ME for a 9.37-acre parcel located on the east side of Century Drive north of Simpson Avenue in west Bend.

STAFF REVIEWER: Mark Rust, AICP, Associate Planner

HEARING DATES: June 28 and August 15, 2006

RECORD CLOSED: September 26, 2006

I. APPLICABLE STANDARDS AND CRITERIA:

A. City of Bend Zoning Ordinance, Ordinance No. NS-1178, Chapter 10

1. **Section 10-10.4, Definitions**
2. **Section 10-10.20, Light Industrial (IL) Zone**
3. **Section 10-10.21B, Mixed Employment (ME) Zone**
4. **Section 10-10.33, Amendments**

B. City of Bend Ordinance NS-1775, Land Use Review and Procedures Ordinance

1. **Section 10-16.1, Introduction and Definitions**
2. **Section 10-16.5, Review of Land Use Action Applications**
3. **Section 10-16.8, Land Use Action Decision**[1]

C. The Bend Area General Plan

D. Oregon Administrative Rules, Chapter 660,

1. **Division 12, Transportation Planning**
   a. **OAR 660-012-0060, Plan and Land Use Regulation Amendments**
2. **Division 15, State-Wide Planning Goals and Guidelines**
   a. **OAR 660-015-000, State-Wide Planning Goals and Guidelines No. 1 Through No. 14**
   b. **OAR 660-015-005, State-Wide Planning Goal and Guideline No. 15**
   c. **OAR 660-015-010, State-Wide Planning Goals and Guidelines No. 16 Through No. 19**

I. FINDINGS OF FACT:

[1] The city adopted a new development code effective August 7, 2006. Because the subject applications were submitted, and the initial public hearing took place, prior to that date the city's former land use procedures ordinance, Ordinance No. NS-1775, applies to these applications.

A. **Location:** The subject property has assigned addresses of 30, 64 and 86 S.W. Century Drive, Bend, and is further identified as Tax Lots 100, 200, 300, 301, 400, 500, 901, 904, and 907 on Deschutes County Tax Assessor's Map 18-12-06 A. The subject property also is part of the Enterprise Acres Subdivision. The subject property is bordered on the west by 14th Street/Century Drive (hereafter "Century Drive"), a designated minor arterial street, and on the north by Commerce Avenue, a designated local street.

B. **Zoning and Plan Designation:** The subject property is zoned and designated Light Industrial (IL).

C. **Site Description:** The subject property is approximately 9.37 acres in size and is generally rectangular in shape with the long axis running parallel with Commerce Avenue. Tax Lots 100, 300, 301, 400, 500, 904 and 907 are developed with the Brightwood wood products manufacturing plant and associated parking areas and lumber yards. Tax Lot 200 is developed with the Cascade West pub and parking lot. Existing vegetation on the site includes a few mature ponderosa pine trees and native shrubs and grass along Century Drive. Access to the Brightwood plant site is from both Century Drive on the west and Commerce Avenue on the north. Access to the Cascade West pub is from Century Drive.

D. **Surrounding Zoning and Land Uses:** Abutting properties to the north across Commercial Avenue are zoned Urban Standard Density Residential (RS) and are developed primarily with single-family dwellings. To the northwest across Century Drive is property zoned Convenience Commercial (CC) and developed with a convenience store. To the west across Century Drive are properties zoned CC and developed with a variety of commercial uses including restaurants, taverns, retail establishments, several professional offices, and a youth center operated J Bar J Youth Services. Abutting properties to the south are zoned CC and developed with retail uses including a Mail Boxes Etc. and Skjersaa's Ski and Snowboard shop. Property to the east is zoned IL and developed as the Shevlin Center with a variety of light industrial and commercial uses.

E. **Procedural History:** On October 21 and November 4, 2005 the applicant conducted two neighborhood meetings to discuss its proposal. The record indicates eight members of the public attended the first neighborhood meeting, and no members of the public attended the second meeting. On January 17, 2006 the applicant submitted the subject applications. They were accepted by the city as complete on February 27, 2006. Because the applications include a request for a plan amendment and related zone change, under Section 10-16.5(D) the 120-day period for issuance of a final local land use decision under ORS 227.178 does not apply. The initial public hearing on the applications was held on June 28, 2006. At the hearing, the applicant requested a continuance for the purpose of responding to issues raised in the staff report. At this hearing the Hearings Officer received testimony and evidence and continued the hearing to August 15, 2006. At the continued hearing, the Hearings Officer again received testimony and evidence, left the written evidentiary record open through September 12, 2006, and allowed the applicant through September 19, 2006 to submit final argument. By a letter dated August 24, 2006 the applicant requested a one-week extension of the post-hearing submission schedule to allow city staff adequate time to review and comment on the applicant's proposal. By an order dated August 28, 2006 the Hearings Officer extended the post-hearing schedule by one week. The record closed on September 26, 2006. The Hearings Officer submitted a draft decision to the Planning Division on December 14. 2006.

F. **Proposal:** The applicant is requesting approval of a plan amendment and zone change from IL to Mixed Employment (ME) in order to develop the subject property with a variety of industrial, commercial and residential uses. The applicant proposes to retain the existing Cascade West pub with redevelopment of the site. The applicant has proposed a concept plan for the subject property that generally identifies the types and locations of proposed uses and the anticipated traffic impacts from those uses. The proposed concept plan does not include the Cascade West pub.

G. **Public/Private Agency Notice:** The Planning Division sent notice of the applicant's proposal to a number of public and private agencies and received responses from: the City of Bend Engineering Division, Traffic Engineer, Grading/Drainage, Building Division, and Long-range Planning. These comments are set forth verbatim at pages 4-8 of the staff report and/or are included in the record.

H. **Public Notice and Comments:** The Planning Division mailed individual written notice of the applicant's proposal and the initial and continued public hearings to the owners of record of all property located within 250 feet of the subject property. The record indicates these notices were mailed to 57 property owners. In addition, notice of the initial public hearing was published in the Bend "Bulletin" newspaper, and the subject property was posted with a notice of proposed land use action sign. As of the date the record in this matter closed the city had received three letters from the public in response to these notices. In addition, one member of the public testified at the initial public hearing and two members of the public testified at the continued hearing.

III. CONCLUSIONS OF LAW:

LOT-OF-RECORD STATUS

A. City of Bend Ordinance No. NS-1775, Land Use Permit & Review Procedures

1. Section 10-16.8, Land Use Action Decision

* * *

(3) Findings as to Legal Lot of Record Status

Each decision shall include a finding that the property subject to the proposed land use action is a legal lot of record as that term is defined in the City of Bend Zoning Ordinance.

FINDINGS: The applicant has requested approval of a plan amendment and zone change from IL to ME. The applicant's burden of proof states the applicant also submitted an application for a lot-of-record verification for the subject property. That application is not before the Hearings Officer. The staff report states, and I agree, that under this section in order to approve the applicant's proposed plan amendment and zone change I must find the subject property consists of at least one legal lot of record. Section 10-10.4 defines "lot of record" as:

> **A lot held in separate ownership as shown on the records of the County Clerk at the time of the passage of an ordinance or regulation establishing the zone in which the lot is located, legally created pursuant to law at that time.**

The applicant argues the subject property in fact consists of eleven legal lots of record. In support of that argument the applicant's burden of proof and supplemental memoranda include detailed analyses of the legal history of the subject property. The staff report states, and the Hearings Officer agrees, that based on that analysis the subject property includes *at the very least* three legal lots consisting of Lots 1, 2 and 3 of Enterprise Acres. I find I need not determine whether or not the subject property includes additional legal lots of record inasmuch as that determination will be made by city staff through the separate lot-of-record verification application.

PLAN AMENDMENT APPROVAL CRITERIA

B. Bend Area General Plan

1. <u>Future Plan Updates (page P-6)</u>

> **The General Plan is a document that changes over time to reflect new information and new directions for the future. Amendments of additions to the General Plan text, exhibits, and policies go through a public hearing and review process before being adopted by the governing bodies. Changes and updates can be generated in at least six ways:**
>
> * * *
>
> - **Changes proposed by individuals or other agencies. At any time an individual, corporation, or public agency can propose a change to the Plan text, land use map, other exhibits, or policies. <u>A person or agency proposing the change has the burden to demonstrate a public need and benefit for the change.</u>** (Emphasis added.)

FINDINGS: The applicant has requested approval of an amendment of the subject property's plan designation from IL to ME, and filed a plan amendment application. The above-quoted plan provision requires the applicant to demonstrate the proposed plan amendment is justified by "a public need and benefit for the change."

The applicant's burden of proof provides the following justification for the proposed amendment:

> *"The zone change and plan amendment to ME, Mixed Employment is requested because economic forces, roadway improvements and area development since the property was first zoned IL have made the property unsuited for continued use as a purely industrial site; especially one related to the wood products industry. No other industrial zoned land is found to the north, south or west of the property boundaries of this tract of land.*
>
> *The Century Drive area has developed over the last decade or so to become a major commercial area. This change has brought more traffic to Century Drive. It has also caused the City to install roundabouts in the area on every major roadway that brings truck traffic to and from the subject property. The small radius roundabouts installed by the City are an impediment to industrial truck traffic.*
>
> *The industrial use zoning of the property is a reflection of the fact that this property was a part of the Brooks-Scanlon mill property and the fact that the north part of this property was developed with light industrial uses related to the wood products industry and the local mills. A private railroad and a road named Industrial Way built along the railroad right-of-way used to provide convenient truck and rail access to this property. Both allowed businesses on the subject property to ship goods via the railroad and, when the railroad line was abandoned, to use Industrial Way for easy access to Highway 97.*
>
> *The sawmills have been closed and redeveloped with high-end housing, the Mount Bachelor parking lot, Shevlin Center subdivision, shopping centers and other commercial uses. Wood products now must be transported to Bend to be remanufactured over increasingly crowded urban streets.*

Most of the subject property is developed for the industrial use of remanufacturing wood products. The property was once located on the western edge of an industrial area that was related to the wood products industry. Brightwood is now removed from a convenient source of supply and must import wood to Bend on trucks or rail for remanufacturing. In the past, the subject property was located near the Brooks Scanlon and Shevlin Hixon lumber mills where lumber was manufactured for use by companies like Brightwood. It was a part of an industrial area that developed around the wood products industry. The City's lumber mills closed many years ago. The Bend mills closed because of the near exhaustion of area forests by timber companies and the adoption of environmental protections for remaining forests. Most of the industrial area around the nearby mill sites has been redeveloped with offices and other uses that do not support wood products remanufacturing.

The old Brooks Scanlon mill site is now developed with the Mount Bachelor parking lot and bus stop and a Mixed Riverfront development of commercial, residential and office uses. The Shevlin-Hixon mill site is a mixed use development of national chain store shops, a huge multi-plex movie theater, restaurants, offices, a hotel and residences. An amphitheater used for concerts and events is now located on the old mill property. Persons attending concerts at the amphitheater park near the subject property in the Mount Bachelor parking lot and in area neighborhoods and walk to the amphitheater.

The Cascade West Grub & Alehouse was originally a tavern that relied heavily on workers from nearby mills and industrial businesses. Now, area workers from the Shevlin Center are only a small part of the customer base of the tavern as the tavern also serves tourists and local residents who are employed in other parts of the City. The industrial area served by the tavern has shrunk and the number of other residents and tourists has grown rapidly.

The City of Bend plans to adopt a new zoning code in the near future. The code will prohibit offices in the IL zone. This use is currently allowed and viable on the applicant's property. This change will make it difficult for the applicant to obtain new tenants to replace Brightwood when its lease ends. Changed circumstances in the area make it unattractive for Brightwood to remain as a tenant on the property once its lease expires. The City has a documented shortage of commercial land. No new commercial land will be added to rectify the shortage or to allow room for office uses that would locate in industrial zoning districts. Office businesses associated with the service economy of the United States, like call centers, engineering and construction offices or insurance companies, will no longer be able to locate in areas zoned IG or IL.

The approval of the zone change is warranted as mixed use development has proven to be effective in creating attractive and popular areas for business, commerce and living and there is a demand for more land of this type. The supply of available MR-zoned land in the City is being absorbed rapidly. ME-zoned land in Northwest Crossing is also being absorbed quickly. As a result, the City recently rezoned more land in Northwest Crossing from industrial IP zoning to ME zoning. The only other parcel of land found on the zoning map is land that is a part of the Mountain View Mall shopping center property redevelopment project.

The fact that the subject property is located between an established, historic City neighborhood and commercial and industrial development makes it a logical candidate for ME zoning. The ME zoning district will continue to allow for industrial uses as it is primarily an industrial zoning district.

The zone will, however, also allow the property owner to redevelop the northern part of the property with residential and/or office uses that will have a lower impact on the existing neighborhood.

The need for industrial use only lands is rapidly diminishing due to the repeal of trade restrictions by the federal government. Businesses that used to manufacture goods in the United States are now manufacturing them overseas. These businesses still require offices in the United States to support their businesses. The MR zoning will allow these former industrial production businesses to find a home in Bend."

The Hearings Officer finds the applicant's proposal and arguments in support of it present two principal issues concerning the "public need and benefit" requirement: (1) the impact of the proposed plan amendment on the city's industrial lands inventory; and (2) whether, and what kind of, a master plan is required to assure the subject property is developed with the mixture of uses contemplated in the ME Zone. Each of these issues is addressed separately in the findings below.

1. Industrial Lands Inventory.

Statewide Land Use Planning Goal 9 requires the city provide for "at least an adequate supply of sites of suitable sizes, types, locations, and service levels for a variety of industrial and commercial uses consistent with plan polices." The administrative rules implementing Goal 9 – specifically OAR 660-009-0015 -- require the city to develop an inventory of industrial and other employment lands comprised of "vacant and developed lands within the planning area designated for industrial or other employment uses." In addition, OAR 660-009-010(4) provides:

> **For a post-acknowledgement plan amendment under OAR chapter 600, division 18, that changes the plan designation of land in excess of two acres within an existing urban growth boundary from an**

industrial use designation to a non-industrial use designation, or another employment use designation to any other use designation, a city or county must address all applicable planning requirements, and :

(a) Demonstrate that the proposed amendment is consistent with the most recent economic opportunities analysis and the parts of its acknowledged comprehensive plan which address the requirements of this division; or

(b) Amend its comprehensive plan to incorporate the proposed amendment, consistent with the requirements of this division; or

(c) Adopt a combination of the above, consistent with the requirements of this division. (Emphasis added.)

The city's comprehensive plan, at page 6-9, states that during the 25-year planning period (2000-2025) the land needed for industrial uses is 886 acres. Table 6-4 of the plan shows that as of 2000 the city had only 539 of the 886 needed acres of land for industrial development, including 478 acres of industrial-zoned land, 50 acres of land zoned Mixed-Use Riverfront, and 11 acres of ME-zoned land. Consequently, the plan states the city has a deficit of available industrial land consisting of 347 acres as of 2000.[2] This deficit calculation predates the city's annexation of the Juniper Ridge land in the northeast corner of the Bend urban growth boundary (UGB).

The record indicates 2.02 acres of the subject property is included in the city's inventory of available industrial land.[3] For that reason, to comply with the requirement of OAR 660-009-010(4) set forth above, the applicant's representative Jon Skidmore conducted an update of the city's industrial lands inventory. Mr. Skidmore submitted two memoranda dated August 2 and August 15, 2006. The August 2 memo includes Mr. Skidmore's calculations of the amount of industrial land absorbed since July 2004. In arriving at his calculations, Mr. Skidmore used factors including the city's building permit data, tax lot information including valuation, property plan designations and zoning, and the amount of undeveloped and developed acreage on properties. Based on this data, Mr. Skidmore concluded that prior to the city's annexation of Juniper Ridge there was a deficit of 293.2 net acres of industrial land within the Bend UGB. The Juniper Ridge annexation brought a total of 513 acres and approximately 380 net acres of industrial land into the inventory, creating an industrial land surplus of 86.8 net acres. Mr. Skidmore found that 23.4 acres of industrial land were removed from the inventory through approval of a 2004 zone change from Industrial Park (IP) to ME in the "Northwest Crossing" development (*West Bend Property Company,* PZ 04-551), and an additional 44.14 net acres were absorbed through development between July 2004 and July 2006. Based on these figures, Mr. Skidmore concluded that as of July 2006 there was a surplus of 19.26 net acres of available industrial land, and consequently a surplus of industrial-zoned land would remain following the removal of either the entire 9.37-acre subject property or the 2.02 acres included in the industrial land inventory.

The staff report questioned some of Mr. Skidmore's methodology and conclusions. In response, Mr. Skidmore submitted his August 15 memo which provided more detailed information concerning his methodology and responses to specific comments in the staff report. At the continued public hearing on August 15, 2006, Associate Planner Mark Rust stated that based on Mr. Skidmore's analysis and the data he used to update the city's inventory of available industrial lands, Mr. Skidmore's estimate of an approximate 19-acre industrial land surplus "is reasonable."

In a document dated September 12, 2006 and entitled "Revised Supplemental Analysis of Economic Lands Policies and Goal 9," the applicant's attorney Liz Fancher argues that with annexation of the Juniper Ridge land the city has far more than the 886 gross acres of vacant and developed industrial land the plan is required to identify for the 25-year planning period under OAR 660-009-0015, and that the surplus of industrial land will continue to exist even after removal of either the entire 9.37-acre subject property or just the 2.02 acres of the property included in the city's industrial lands inventory. In other words, the applicant argues the proposed plan amendment from IL to ME will not reduce the city's supply of industrial land below that identified in the comprehensive plan as needed for the 25-year planning period. Ms. Fancher's memo correctly notes that the evidence in the record concerning gross and net industrial acres and absorption rates is not entirely consistent, and therefore the city's industrial land surplus may in fact be greater than the approximately 19 acres calculated by Mr. Skidmore.

The Hearings Officer understands the city is very sensitive to the loss of any industrial-zoned land through its conversion to non-employment uses. However, I concur with the applicant that since the proposed ME plan designation and zoning would allow the subject property to be developed with a mixture of industrial and commercial uses – both "employment uses" under Goal 9 – and would address the documented shortage of commercial lands, the applicant's proposal is consistent with both Goal 9 and the comprehensive plan's economic development policies.

2. Master Plan for Mixed-Use Development.

---

[2] The plan also shows the 585 acres of available *commercial* land falls short of the identified need for 827 acres of commercial land for a deficit of 242 acres in 2000.

[3] The applicant questions inclusion of this acreage in the inventory inasmuch as the entire subject property is developed, including parking lots and lumber yards that are an integral part of the Brightwood plant and therefore are not truly "available" for other industrial development. Nevertheless, because these 2.02 acres are included in the inventory the Hearings Officer finds the Goal 9 requirements under OAR 660-009-010(4) apply to the proposed plan amendment.

Planning staff argued that if the proposed plan amendment and zone change from IL to ME were approved, without a master plan there is no guarantee the subject property will be developed with the mixture of industrial, commercial, office and residential uses contemplated in the plan and zoning ordinance for the ME Zone. Specifically, staff expressed concern that the "highest and best use" for the property might be development exclusively with retail establishments that would not pay a "living wage" and that could generate traffic exceeding the capacity of affected transportation facilities. In addition, staff expressed concern that the subject property could be developed in a piecemeal fashion that could result in poor planning and overtaxing of public facilities. For these reasons, staff recommended the applicant be required as a condition of plan amendment and zone change approval to submit a "Master Planned Development Concept Plan" as required for "Master Planned Developments" under Section 4.5.300 of the city's new development code. The applicant responded that there are no provisions in the city's former zoning or procedures ordinance, and no precedent for, requiring this type of detailed master plan as a condition of approval for a plan amendment or zone change.[4] In addition, the applicant notes that by definition the master plan required under Section 4.5.300 is for a development that "seeks to change one or more of the development standards contained in this ordinance, the underlying zoning and/or Bend Area General Plan designation," and the applicant is not requesting any such deviations.

It appears from the new development code that future development of the subject property may require submission of a "Master Planned Development Concept Plan." Nevertheless, the Hearings Officer concurs with the applicant that I lack authority under the city's former zoning and procedures ordinances to condition approval of the proposed plan amendment and zone change on the applicant's submission of such a plan. However, I find that in order to determine whether the proposed plan amendment will confer a public benefit as required under the plan amendment approval criterion set forth above, and whether uses permitted under the plan amendment and zone change to ME will exceed the capacity of affected public facilities, the record must include evidence of the types and intensities of uses that would be developed on the subject property under an ME designation and zoning.

In recognition of this fact, the applicant submitted proposed a "concept development plan" for development of the subject property, attached to the September 12, 2006 transportation analysis and transportation "master plan" for the subject property prepared by Group Mackenzie and discussed in the findings below concerning the proposal's compliance with the Transportation Planning Rule (TPR). The applicant described the purpose of the submitted "concept development plan" as follows:

> *"The purpose of the applicant's concept plan is to commit the applicant to provide a mix of land uses on the subject property, to prohibit and permit certain uses in certain areas of the property and to provide a road development plan. This information is provided to address and resolve staff concerns that the approval of the zone change and plan amendment may not meet a public need and benefit without assurance of a mix of uses and compatible land uses."*

The "concept development plan" includes four pages. The first page, labeled "Site Development Assumptions," shows the subject property (except the Cascade West pub) divided into four areas – i.e., "bubble plan." The proposed uses within each "bubble" are identified as "restaurant/bank," "retail/general office," "medical/dental office/general office," and "residential." The total square footage of these uses is identified as 155,000 square feet. The "residential" area is located along most of the property's northern boundary across Commerce Avenue from existing residential development on RS-zoned land. The medical, dental and general office uses are shown as occupying the majority of the property (81,000 square feet) and abutting the eastern and southern property boundaries. The area for retail and general office is located in the center of the site, and the area for restaurant and bank is located along the western property boundary abutting Century Drive. The second page, labeled "Facilities Plan," shows locations for sewer and water lines along Century Drive and Commerce Avenue, five points for future access (three from Commerce Avenue and two from Century Drive), and the direction of storm drainage. The third page, labeled "Landscape Concept Plan," identifies locations for internal site streets connecting to the potential site access points shown on page two of the plan, as well as the locations for various types of introduced landscaping along the internal streets and around the site perimeter. The fourth page, labeled "Site Analysis Plan (Existing Conditions)," shows the location of existing utility easements, buildings, access points, street right-of-way, and surrounding zoning.

In addition, as discussed in detail in the findings below concerning the proposal's compliance with the TPR, the September 12, 2006 submission from Group Mackenzie includes a discussion of "reasonable" and "absolute" worst case scenarios for trip generation from uses permitted in the ME Zone, as well as a discussion of the lot coverage assumptions on which the traffic generation predictions were made. As discussed below, Group Mackenzie's analysis concludes development of the subject property with 155,000 square feet of the uses identified on the applicant's "concept development plan" would generate fewer p.m. peak hour trips than would be generated by development under the subject property's current IL designation and zoning.

The Hearings Officer finds the applicant's "concept development plan" and supporting traffic analysis from Group Mackenzie clearly demonstrate the subject property can be redeveloped under the proposed ME designation and zoning in a manner that will not exceed the capacity of affected streets, and will reflect and be compatible with the nature of the uses on surrounding land. The remaining question is whether approval of the applicant's proposed plan amendment and zone change should be conditioned on the applicant's compliance with the submitted "concept development plan." By its terms, this plan does not constitute a binding master development plan under Section 4.5.300 of the new development code. And as noted above the applicant may be required to submit such a plan for future development of the subject property. Nevertheless, I find it is appropriate for me to recommend to the city council that it approve the applicant's proposal subject to a condition of approval requiring that the subject property

---

[4] The applicant notes the city did not require such master development plan for approval of the recent zone change from IP to ME in the "Northwest Crossing" development.

be developed in a manner consistent with the submitted "concept development plan" in terms of the mixture, distribution and size of uses and predicted traffic generation.

For these reasons, and with imposition of the above-described condition of approval, the Hearings Officer finds the applicant has demonstrated the proposed plan amendment from IL to ME is justified as meeting public needs for additional commercial and residential land, and conferring a public benefit by providing a mixture of additional commercial, office, and residential uses on the subject property thereby creating an appropriate transition area between the existing residential, commercial and industrial uses surrounding the subject property.

PLAN PREFACE (pages P-4 and P-5)

The policies in the General Plan are statements of public policy, and are used to evaluate any proposed changes to the General Plan. Often these statements are expressed in mandatory fashion using the word "shall." These statements of policy shall be interpreted that the actual implementation of the policies shall be accomplished by land use regulations such as the city's zoning ordinance, subdivision ordinance and the like. The realization of these policies is subject to the practical constraints of the city such as availability of funds and compliance of all applicable federal and state laws, rules and regulations and constitutional limitations.

* * *

The Plan text and policies describe several land use categories that provide for the various types of development expected to occur within the urban area during the 20-year planning period. These land use categories are graphically portrayed on the General Plan Map. The major land use categories – residential, commercial, industrial and mixed use – have very specific boundaries that are shown on the General Plan Map. The city and county apply zoning to property based on the General Plan map categories.

In several previous decisions the Hearings Officer has held the comprehensive plan preface does not establish mandatory approval criteria for quasi-judicial land use applications. E.g., *Awbrey Towers* (02-508), *Shevlin Neighbors* (PZ-05-429, PZ-05-430), *Rimrock Riders* (PZ-05-556, PZ-05-557). My interpretation was upheld by LUBA in its decision in *Save Our Skyline v. City of Bend*, 48 Or LUBA 192 (2004). For these reasons, I find the plan preface merely indicates plan policies are to be implemented by the city's adopted land use regulations.

PLAN POLICIES

CHAPTER 1 – PLAN MANAGEMENT AND CITIZEN INVOLVEMENT

<u>Development within the Urban Growth Boundary</u> (Plan, page P 1-7)

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

FINDINGS: The applicant argues, and the Hearings Officer concurs, that the proposed plan amendment from IL to ME would allow compact development on the subject property with uses that would encourage walking and reduce vehicle trips and miles traveled. Although the record indicates Century Drive has not been identified in the city's fixed route transit service plan as a transit corridor, the ME Zone is designed to provide a mix of uses that are more consistent with the goals of this plan policy than are most uses permitted in the IL Zone. Therefore I find the applicant's proposal is consistent with this plan policy.

CHAPTER 6: THE ECONOMY AND LANDS FOR ECONOMIC GROWTH POLICIES

4. The City shall work to preserve prime industrial lands for industrial purposes. (Plan, page 6-16)

FINDINGS: Staff and the applicant appear to agree that the subject property does not constitute "prime" industrial land because at 9.37 acres it is relatively small, it no longer is located adjacent to the large mills that once supplied its raw materials, and it now lacks rail service and easy large truck access due to development in the surrounding area. As discussed elsewhere in this decision, the applicant's proposal would allow the subject property to be developed with uses that would be compatible with surrounding residential, commercial and industrial development and that would have adequate access. Therefore, the Hearings Officer finds the applicant's proposal is consistent with this plan policy.

5. The community shall attempt to diversify its industrial base. (Plan, Page 6-16)

FINDINGS: The applicant argues the proposed redesignation of the subject property from IL to ME will allow the subject property to be developed with light industrial uses within a mixed-use development that would be compatible with the surrounding area and would diversify the city's industrial base. The staff report responds that because the ME Zone allows many uses other than industrial uses, without a master plan for the subject property it is not possible to determine whether the applicant's proposal would satisfy this policy. However, as discussed in the findings above, the applicant has submitted a mixed-use development concept plan for the subject property that shows the property will be developed with uses that are compatible with the surrounding neighborhood. Although the "concept development plan" does not specifically show light industrial uses, the Hearings Officer finds they are

permitted in the ME Zone. For this reason, I find the applicant's proposal will be consistent with this plan policy.

6. Industrial areas shall be protected from incompatible commercial and residential uses. (Plan, page 6-17)

FINDINGS: As discussed in the findings below, while it operated the Brightwood plant produced numerous complaints from neighboring residents concerning noise and other emissions. These complaints are not surprising considering the residential, commercial and office uses located in close proximity to the plant. This incompatibility is cited by the applicant as one of the reasons for the proposed redesignation from IL to ME. However, as discussed in the findings above, the abutting property on the east is developed with an industrial use consisting of Nosler Bullets. In his comments on the applicant's proposal Mark Roberts, Nosler's CFO, expressed concern that some uses permitted in the ME Zone such as residential uses would be incompatible with his company's operations. In response to these concerns, the applicant negotiated with Nosler to develop a set of covenants that would be recorded and would limit the types of uses that could be developed on the eastern part of the subject property adjacent to the Nosler facility. In addition, as discussed above the applicant also has submitted a mixed-use development concept plan that identifies the types and areas of uses that would be developed on the subject property under an ME plan designation and zoning, and shows the residential uses would not abut the Nosler property. The Hearings Officer finds that with these protections the applicant's proposal will satisfy this plan policy.

19. The City may designate other areas for mixed use development to encourage a variety of jobs and services close to residential areas. (Plan, page 6-18)

FINDINGS: The Hearings Officer finds this policy expressly authorizes the city to designate areas within the city for mixed-use development. The applicant's proposed plan amendment to ME would allow the subject property to be developed with a mixture of residential, commercial, office and industrial uses providing a variety of jobs close to residential areas on the west side of Bend. Therefore I find the applicant's proposal is consistent with this plan policy.

CHAPTER 7: TRANSPORTATION SYSTEMS

POLICIES

6. The City shall continue to explore mixed-use zoning as one of the land use patterns that will promote fewer vehicle trips and shorter trip lengths.

7. The City should be receptive to innovative development proposals, including zone changes, plan amendments, and text change that promote alternatives to vehicular traffic thus reducing vehicle trips and trip lengths. (Plan, page 7-4)

FINDINGS: As discussed above, the Hearings Officer concurs with the applicant that the proposed plan amendment and zone change will allow the mixed-use development of the subject property and provide a variety of jobs that will allow residents of the west side of Bend to walk or reduce vehicle trip lengths for traveling to work and/or to obtain goods and services. I also concur with the applicant that its proposal will not interfere with the completion of Bend's transportation system. In fact, redevelopment of the subject property will require improvements to the adjacent segment of Commerce Avenue which will improve connectivity within the surrounding neighborhood. For these reasons I find the applicant's proposal will be consistent with this plan policy.

For the foregoing reasons, the Hearings Officer finds the applicant's proposed plan amendment will be consistent with the city's comprehensive plan policies.

C. OAR Chapter 660, Division 12, Transportation Planning

1. OAR 660-12-060, Plan and Land Use Regulation Amendments

(1) Amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility. This shall be accomplished by either:

(a) Limiting allowed land uses to be consistent with the planned function, capacity and level of service of the transportation facility;

(b) Amending the TSP to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division; or

(c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.

(2) A plan or land use regulation amendment significantly affects a transportation facility if it:

(a) Changes the functional classification of an existing or planned transportation facility;

(b) Changes standards implementing a functional classification plan;

(c) Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or

(d) Would reduce the level of service of the facility below the minimum acceptable level identified in the TSP [Transportation System Plan]**.**

FINDINGS: The Hearings Officer finds the provisions of this administrative rule apply to the proposed plan amendment and zone change because they would require an amendment to the city's comprehensive plan and zoning maps, and therefore the applicant is proposing an amendment to a land use regulation. The remaining issue is whether the proposed plan amendment and zone change from IL to RS will "significantly affect a transportation facility." I find the proposed plan amendment and zone change, in and of themselves, will not generate any traffic. However, redesignation and rezoning of property could allow types of development generating traffic that would exceed the capacity of the city's street system. For that reason, in numerous previous plan amendment and/or zone change decisions I have concluded it is appropriate for me to review the impact on the street system from traffic anticipated to be generated by potential uses under the proposed zoning in a reasonable "worst case" scenario. I find such an analysis is particularly appropriate where, as here, the proposed designation and zoning to ME would allow a wide variety of uses.

As discussed in the Findings of Fact above, the subject property is bordered on the west by Century Drive, a designated minor arterial street, and on the north by Commerce Avenue, a designated local street. Primary access to the subject property is from Century Drive. The staff report notes the minor arterial designation is one of the highest street classifications within the city, signifying a street designed and intended to handle large amounts of traffic. In support of its proposal, the applicant submitted three traffic studies:

- a study dated January 11, 2006 performed by Ferguson & Associates and attached to the applicant's burden of proof as Exhibit "C;"
- a study dated August 7, 2006 and performed by Ferguson & Associates; and
- a study dated September 12, 2006 and performed by Group Mackenzie.

Each of these studies is discussed separately in the findings below.

1. January 2006 Ferguson Study. This study analyzed the incremental difference in vehicle trip generation between the existing IL zoning and the proposed ME zoning to determine the impact on the affected transportation facilities in the year 2020. This study found the current uses on the subject property – Brightwood and the Cascade West pub – generate 1,276 average daily vehicle trips (ADTs) of which *169* would occur during the p.m. peak hour (4:00 p.m. to 6:00 p.m. weekdays). The study predicted redevelopment of the subject property with uses permitted under an ME plan designation and zoning – i.e., specialty retail, general office, medical office, light industrial, drive-in bank, and high-turnover (sit-down) restaurant – would generate 1,627 ADTs of which *170* would occur during the p.m. peak hour. Based on these findings, the study concluded the proposed plan amendment and zone change from IL to ME would not have a significant effect on the affected transportation system because it would result in an increase of only one p.m. peak hour trip over current trip generation from existing uses on the subject property.

2. August 2006 Ferguson Study. This study states it was prepared to respond to comments from the city's traffic engineer Robin Lewis that the January 2006 study did not analyze a reasonable "worst-case" scenario and therefore underestimated the potential density of development under ME zoning and consequently also underestimated traffic generation and impacts on affected transportation facilities. Consequently, this study used more "aggressive" assumptions concerning development density and trip generation under both the current IL zoning and the proposed ME zoning. The August traffic study compared the maximum lot coverage and building footprint and height in the IL and ME Zones, and found the maximum building sizes in the ME and IL Zones would be 816,000 and 1,224,000 square feet, respectively, or a difference of 408,000 square feet. The study also concluded that taking into consideration the amount of parking required for the projected ME Zone uses the maximum usable area on the subject property would reduce the overall maximum building size to 805,000 square feet.

Based on this maximum building size and the projected uses, the traffic study concluded development of the subject property under the proposed ME zoning would generate 672 p.m. peak hour trips. The study went on to state:

> *"By inspection, this level of trip generation is far in excess of what could be accommodated by the existing street system. As such, a development of this intensity would not be approved under the existing ordinance. As such, we do not believe that this development scenario reflects a 'reasonable' worst case scenario; instead, it is a 'theoretical' worst case scenario"*

The August study also analyzed the theoretical maximum development potential for the subject property under its current IL zoning – i.e., development with a 3-story parking structure with a restaurant on the ground floor – and concluded such a development would generate 1,400 p.m. peak hour trips, well above the predicted maximum such trips under the proposed ME zoning. Based on this analysis, the traffic study concluded:

> *"* * * even if a significantly higher density were assumed, the IL zone would have a greater trip generation potential than the proposed ME zone. Moreover, if the ME development were constructed in a way that mixed uses were provided (not just a single use) and the design and layout of the site supported mixed use development principles, the ME zone would provide the*

opportunity to reduce the trip generation of new development relative to what would happen if the same uses were provided as stand-alone uses throughout the community.

* * *

After reviewing this information, City Staff has agreed that the ME zoning would not result in a higher trip generation potential than the existing zoning but has asked that the applicant agree to master plan the site. The applicant has agreed to master plan transportation facilities and to provide a mix of uses on the site. If the zone change is approved in such a way that there are assurances that the site would be master planned and not developed piece-meal, the existing policies that are in place would naturally limit the amount of development that could occur on the site. A master planning process for the whole site would also ensure that the transportation system would not be overburdened. Since the site could develop in a piece-meal fashion with the existing zoning and since the existing zoning would allow for a significant amount of development, the proposed rezone (if conditioned as discussed by City Staff) would result in a net improvement in the future transportation system compared to what could happen if no action is taken."

7. September 2006 Group Mackenzie Study. This study states it was prepared specifically to address the standards in the TPR established in OAR 660 Division 12. The study reviewed the assumptions and analysis contained in the two Ferguson traffic studies concerning the "reasonable" and "theoretical" worst case trip generation scenarios, and included an independent analysis of these two scenarios. In addition, as discussed in the findings above, the analysis predicted the maximum trips generated on the subject property under the current IL Zone, and under the proposed ME Zone developed as depicted on the applicant's submitted "concept development plan," at 284 and 225 p.m. peak hour trips, respectively. Based on that analysis, this traffic study concluded:

"The proposed Comprehensive Plan Amendment and Zone change applications are not anticipated to have transportation impacts greater than those contemplated by the current zone designation. Therefore, the proposed land use actions do not significantly affect the transportation facilities and the TPR requirements outlined in Oregon Administrative Rule (OAR) 660-012-0060 are met.

The Comprehensive Plan Amendment and Zone Change applications do not generate trips; therefore, any anticipated improvements and their associated funding mechanisms should not be assessed based on this analysis. Rather, via future development applications and potential conditions of approval for this application, impacts could be assessed based on trip generation resulting from a specific development application."

Based on the findings and conclusions in these three traffic studies, the Hearings Officer finds the proposed plan amendment and zone change will not change the functional classification of or standards applicable to Century Drive or Commerce Avenue. And I find that if the property is developed consistent with the submitted "concept development plan" in terms of the types, distribution and sizes of uses the proposed plan amendment and zone change will not allow types or levels of land uses which would result in levels of travel or access that are inconsistent with the functional classification of these facilities. I further find that since the city does not have an acknowledged TSP the standard in paragraph (2)(d) is not applicable.[5] For these reasons, I find the applicant's proposed zone change will be consistent with the TPR.

2. OAR 660-015-000, 660-015-005, and 660-015-010, Statewide Land Use Planning Goals

Goal 1, Citizen Involvement. The Hearings Officer finds this goal requires that a governing body responsible for adopting a comprehensive plan adopt and publicize a program for citizen involvement that clearly defines the procedures by which the general public will be involved in the on-going land use planning process. The city has established an extensive citizen involvement process to assist it in periodic updates of its plan. Public involvement in the review of this application will be assured by the fact that the city's code requires that a hearing be held regarding the plan amendment and zone change by a land use hearings officer and by the Bend City Council (hereafter "council"). Mailed public notice was provided for both public hearings before the Hearings Officer and will be provided for the public hearing before the council. As discussed in the Findings of Fact above, the city also provided general public notice of the initial public hearing by publication in the Bend "Bulletin," a newspaper of general circulation in Bend and Deschutes County and by posting the subject property with a notice of proposed land use action sign. For these reasons, I find the applicant's proposed plan amendment is consistent with Goal 1.

Goal 2, Land Use Planning. The Hearings Officer finds this goal requires the city to establish a planning process and policy framework that will serve as a basis for all decisions and actions related to the use of land. It also requires that the city assure an adequate factual base for its decisions and actions. The city complies with this requirement by appointing hearings officers to review all plan amendment and zone change requests and to prepare detailed findings regarding the application for review and adoption by the council. I find the goal exception portion of Goal 2 is not applicable to the subject plan amendment application because no goal exception has been requested or is required. For these reasons, I find the proposed plan amendment is consistent with Goal 2.

Goal 3, Agricultural Lands and Goal 4, Forest Lands. The Hearings Officer finds these goals do not apply to the applicant's proposed plan amendment because the subject property is located within an urban growth boundary and is not designated or zoned for agriculture or forest use.

Goal 5, Open Spaces, Scenic and Historic Areas and Natural Resources. The Hearings Officer finds this goal is not

[5] The city has identified acceptable levels of service in its street policies.

applicable to the applicant's proposed plan amendment because the subject property does not include any inventoried Goal 5 resources.

Goal 6, Air, Water and Land Resources Quality. The Hearings Officer finds this goal requires that the city's zoning decisions not degrade air, water and land resources in applicable air sheds and river basins. I find approval of this zone change will not adversely affect natural resources as the subject property is already developed and will be redeveloped with urban uses following approval of the proposed plan amendment and zone change. The applicant argues, and I concur, that the proposed ME designation and zoning may reduce air pollution by reducing vehicle trip length through mixed-use development.

Goal 7, Areas Subject to Natural Disasters and Hazards. The Hearings Officer finds this goal is not applicable to the proposed plan amendment because the subject property is not a known natural disaster or hazard area. The applicant argues, and I agree, that to the extent this goal considers natural hazards outside the subject property, the general volcanic and seismic hazards in the Bend area have, to the extent practical, been taken into account in the city's plan and land use regulations. Therefore, I find the applicant's proposed plan amendment is consistent with this goal.

Goal 8, Recreational Needs. The Hearings Officer finds this goal is not applicable to the proposed plan amendment because the subject property is not identified or planned for recreational uses or for a destination resort.

Goal 9, Economic Development. The applicant argues, and the Hearings Officer agrees, that the proposed plan amendment is consistent with this goal because it and the related zone change would allow the subject property to be developed with a mixture of residential, commercial and industrial uses, thereby stimulating and supporting economic development. In addition, as discussed above, the record indicates the city has a documented shortage of commercial lands which the proposed plan amendment will address. Finally, as also discussed above, I have found approval of the proposed plan amendment will not reduce the city's industrial lands inventory below the minimum identified as needed in the 25-year planning period identified in the comprehensive plan. For these reasons, I find the applicant's proposed plan amendment is consistent with this goal.

Goal 10, Housing. The Hearings Officer finds this goal is not applicable to the proposed plan amendment because neither IL- nor ME-zoned land is included in the city's inventory of residential lands, and therefore the proposed plan amendment will not affect that inventory.

Goal 11, Public Facilities and Services. This goal requires the city to plan and develop land in a timely, orderly and efficient fashion, based upon the availability of public services. As discussed in the findings below, the Hearings Officer has found all needed public facilities and services are available to and currently serve the subject property. Therefore, I find the proposed plan amendment is consistent with this goal.

Goal 12, Transportation. As discussed in the findings above, incorporated by reference herein, the Hearings Officer has found the proposed plan amendment is consistent with and satisfies the requirements of the TPR which implements this goal.

Goal 13, Energy. The Hearings Officer finds this goal requires that land uses be developed and managed so as to maximize the conservation of all forms of energy, based upon sound economic principles. The applicant argues, and I concur, that the mixed-use development that would be facilitated by the proposed plan amendment and related zone change will reduce the number of vehicle trips and trip lengths associated with development on the subject property, thereby helping to conserve fossil fuel energy. For these reasons, I find the proposed plan amendment is consistent with this goal.

Goal 14, Urbanization. The Hearings Officer finds the proposed plan amendment is consistent with this goal because it and the related zone change will facilitate urban density development with urban uses on land located within an urban growth boundary.

Goal 15, Willamette River Greenway. The Hearings Officer finds this goal is not applicable because the subject property is not located within the Willamette River Greenway.

Goal 16, Estuarine Resources. The Hearings Officer finds this goal is not applicable because the subject property does not contain an estuary or related wetland.

Goal 17, Coastal Shorelands. The Hearings Officer finds this goal is not applicable because no property in the Bend urban area has coastal shorelands.

Goal 18, Beaches and Dunes. The Hearings Officer finds this goal is not applicable because the subject property does not include beaches or dunes as those terms are used in Goal 18.

Goal 19, Ocean Resources. The Hearings Officer finds this goal is not applicable because the proposed plan amendment and related zone change will not have an impact on ocean resources.

Based on the foregoing findings, the Hearings Officer finds the applicant's proposed plan amendment from IL to RS satisfies all applicable plan amendment approval criteria.

ZONE CHANGE APPROVAL CRITERIA

E. City of Bend Zoning Ordinance, Ordinance No. NS-1178, Chapter 10

1. Section 10.10.33, Standards for Zone Change

Amendments. This ordinance may be amended by changing the boundaries of zones or by changing any other provisions thereof, whenever the public necessity and convenience and the general welfare requires such an amendment. Such a change may be proposed by the City Council on its own motion or by motion of the Planning Commission, or by petition as hereinafter set forth.

(1) Application. An application for amendment by a property owner or his authorized agent shall be filed with the City Planning Director. The application shall be made on the forms provided by the City. Before taking final action on a proposed amendment, the Approval Authority shall hold a public hearing thereon. The Approval Authority shall follow the procedures set forth in the City of Bend's land use procedures for map changes. (Emphasis added.)

FINDINGS: The applicant proposes to develop the subject property with a mixed-use development that would include residential, commercial and office uses. The ME Zone also would allow light industrial uses. As discussed above, the applicant wants to include office uses in redevelopment of the property, uses not permitted in the IL Zone under the city's new development code. For these reasons the applicant submitted an application for a zone change from IL to ME. The record indicates the application was submitted on a city application form, accompanied by the required application fee and a burden of proof. Before the approved zone change becomes effective the Bend City Council will hold a public hearing.

The staff report states previous hearings officer decisions have found the above-underscored language constitutes a mandatory approval criterion for a proposed zone change, and therefore requires the applicant to demonstrate the proposed zone change is required by "the public necessity and convenience and general welfare." This Hearings Officer has not always treated this language as a zone change approval criterion, although arguably it could be read to constitute one. Assuming for purpose of discussion that this language constitutes a mandatory approval criterion, the staff report questions whether the applicant's proposal satisfies this criterion because staff believes the proposed zone change would have both positive and negative consequences. On the benefit side, staff notes the proposed zone change and resulting redevelopment would remove from the neighborhood an industrial use that has been incompatible with nearby residences, would allow development with a mix of more compatible uses, and would address a need for more commercial and residential land in the Bend urban area.

On the detriment side, staff argues the applicant's proposal would reduce the potential for family wage industrial jobs in this part of Bend, and would replace those jobs with employment in retail, restaurant, and service commercial businesses of which there already is a "significant supply" on the west side of Bend. In addition, as discussed above staff argues any zone change approval should be conditioned on the applicant submitting a master development plan pursuant to Section 4.5.300 of the city's new development code in order to assure a mix of uses that would leave open the opportunity for some industrial "family wage jobs." As also discussed above, the applicant submitted a "concept development plan" that identifies the types, distribution, and sizes of -- and potential traffic generation from -- a proposed mixture of uses on the subject property permitted under the ME Zone. Based on the applicant's evidence, including the "concept development plan," the Hearings Officer has found the identified benefits from the proposed plan amendment justify its approval because a public need will be met and a public benefit will be conferred. For the same reasons, I find these benefits also justify the proposed zone change. As discussed in detail in the findings above, I have found it is appropriate for me to recommend that the council approve the proposed plan amendment and zone change subject to a condition of approval requiring the applicant to develop the subject property consistent with the submitted "concept development plan" in terms of the types, distribution and sizes of, and traffic generation from, the proposed uses.

(2) Standards for Zone Change. The burden of proof is upon the one seeking change. The degree of that burden increases proportionately with the degree of impact of the change which is sought. The applicant shall in all cases establish:

A. That the change conforms with the Comprehensive Plan. Specifically, the change is consistent with the Plans intent to promote an orderly pattern and sequence of growth.

FINDINGS: In several previous decisions the Hearings Officer has held this approval criterion includes three elements: 1) conformance with the comprehensive plan map; 2) conformance with the comprehensive plan text; and 3) consistency with the plan's intent to promote "an orderly pattern and sequence of growth." Each of these elements is discussed separately in the findings below.

1. Conformance with Comprehensive Plan Map.

The subject property is designated IL on the comprehensive plan map. The applicant has requested approval of a plan amendment from IL to ME, and as discussed in the findings above the Hearings Officer has found the applicant has demonstrated the proposed plan amendment satisfies the applicable approval criteria and has recommended that it be approved subject to a condition of approval requiring the applicant to develop the subject property consistent with the submitted "concept development plan." Therefore, assuming the council approves the plan amendment, the proposed zone change from IL to ME would be consistent with the plan map.

2. Conformance with Comprehensive Plan Text.

As discussed in detail in the findings above, the Hearings Officer has found the proposed plan amendment from IL to ME is consistent with the applicable plan policies. With respect to the proposed zone change, in several previous

decisions I have held that because the city's comprehensive plan is implemented through its zoning, subdivision and procedures ordinances, the plan does not establish mandatory approval criteria for quasi-judicial land use applications such as the applicant's proposed zone change. I adhere to that holding here.

3. Consistency with the Plan's Intent to Promote an Orderly Pattern and Sequence of Growth.
In previous zone change decisions the Hearings Officer has held the phrase "orderly pattern and sequence of growth" contemplates consideration of both the location and timing of urban development. I have concluded an orderly *pattern* of growth is one that promotes compatible physical relationships between zoning districts and uses, while an orderly *sequence* of growth promotes urban-density development concurrent with the provision of adequate urban services. I adhere to that interpretation here.

a. Orderly Pattern of Growth.

The staff report notes the area surrounding the subject property consists of a mix of industrial, commercial and residential zones and uses. The requested zone change from IL to ME would facilitate redevelopment of the subject property with a similar mixture of residential, commercial, industrial and office uses that would be more compatible with the surrounding neighborhood than the existing wood products business and would provide a transition area between the existing residential, commercial and industrial uses on surrounding land. The Hearings Officer finds the proposed rezoning of the subject property will promote an orderly *pattern* of growth because it would foster proper relationships between zoning districts and uses, and would be consistent with the type of mixed-use urban-density development contemplated in the ME Zone. In addition, as discussed in the findings above, the applicant's traffic studies show the subject property can be developed in a manner that generates traffic not exceeding the capacity of affected streets. Finally, as also discussed above, I have recommended the proposed plan amendment and zone change be approved subject to a condition requiring the applicant to develop the subject property consistent with the submitted "concept development plan." For these, I find the proposed zone change from IL to ME will promote an orderly *pattern* of growth.

b. Orderly Sequence of Growth.

In numerous previous decisions, this Hearings Officer has found an orderly *sequence* of growth is one that promotes urban-density development concurrent with adequate urban infrastructure, including sewer, water, police and fire protection, schools and transportation facilities. Each of these facilities and services is discussed separately in the findings below.

(1) Police Protection. Because the subject property is located within the Bend city limits it will be served by the Bend Police Department which did not comment on the applicant's proposal. The Hearings Officer finds this lack of comment indicates the department believes it can serve mixed-use development on the subject property.

(2) Fire Protection. Because the subject property is located within the Bend city limits it will be served by the Bend Fire Department. The record indicates a local fire station is located very close to the subject property near the intersection of Century Drive and Simpson Avenue. Because the applicant has not proposed a particular development the fire department did not comment on the applicant's proposal. However, the Hearings Officer is aware the department's typical comments address adequate water pressure to meet minimum fire flows, adequate fire hydrants, and adequate access for emergency vehicles. Because the subject property currently is developed with a wood products use and is surrounded by a variety of urban uses, I find the applicant will be able to provide fire protection satisfying the requirements of the fire code.
(3) Sewer and Water. The subject property currently is served by city sewer and water. The Hearings Officer finds particular sewer and water facility requirements will be addressed at the time approval of a development proposal is requested. However, I find that given the type and density of current development on the subject property and surrounding properties there is no reason to believe the applicant or its successors cannot provide sewer and water facilities and services that meet the city's standards and specifications.

(5) Schools. The subject property is located within the boundaries of the Bend-La Pine School District. As discussed above, the proposed zone change to ME would allow a portion of the subject property to be developed with residential uses that could have an impact on schools by adding students. The record does not include comments from the school district. However, the Hearings Officer is aware the school district's typical comments state the district does not take a position on particular development proposals and responds to growth in enrollment through a variety of means, and also recommends that sidewalks be required for student pedestrians.

(6) Parks. The subject property is located within the boundaries of the Bend Metropolitan Park and Recreation District. The proposed zone change to ME would allow a portion of the subject property to be development with residential uses that could have an impact on parks. The Hearings Officer finds that any residences would be subject to park systems development charge (SDC) to support park property acquisition.

(7) Transportation Facilities. The subject property is bounded on the west by Century Drive, a designated arterial street, and on the north by Commerce Avenue, a designated local street. As discussed in detail in the findings above concerning the proposal's compliance with the TPR, the applicant's traffic studies show the subject property can be developed with uses permitted in the ME Zone without exceeding the capacity of affected streets. The applicant submitted a "concept development plan" that identifies the types, distribution and sizes of proposed uses to be developed on the subject property under the proposed ME zoning as well as the predicted trip generation from such uses and densities. The Hearings Officer has recommended the proposed plan amendment and zone change be approved subject to a condition requiring the applicant to develop the subject property consistent with the "concept development plan." For these reasons, and with imposition of this condition of approval, I find the proposed zone

change will promote an orderly sequence of growth considering traffic impacts.

For the foregoing reasons, the Hearings Officer finds the proposed zone change from IL to ME will promote an orderly *sequence* of growth.

B. That the change will not interfere with existing development on, development potential, or value of other land in the vicinity of the proposed action.

FINDINGS: As discussed above, the area surrounding the subject property is characterized by a mixture of residential, commercial and industrial zoning districts, densities and uses, as well as a number of office uses. The subject property currently is developed with an industrial use and a restaurant. As discussed in the findings above, operation of the existing wood products plant has created conflicts with nearby residential uses. The proposed zone change to ME would allow the portion of the subject property developed with the industrial use to be redeveloped with a broader mixture of residential, commercial, industrial and office uses than currently is permitted in the IL Zone, including uses that would be more compatible with surrounding uses and would provide an effective transition between the commercial, industrial and residential zoning districts that adjoin the subject property. In addition, redevelopment of the subject property likely would require improvement to the abutting segment of Commerce Avenue, providing greater street connectivity in this area. For these reasons, the Hearings Officer finds the proposed zone change will not interfere with either existing or potential development on other land in the vicinity.

With respect to impact from the proposed zone change to ME on surrounding property values, the Hearings Officer finds the determination of value impact can be highly subjective. The staff report states, and I agree, that although there is no evidence in this record specifically addressing impacts on property values, there is little doubt that redevelopment of the subject property under ME zoning would have a positive impact on surrounding property values because of the potential mixture of uses consistent with the applicant's submitted "concept development plan." The staff report also notes that of the surrounding property who received notice of the applicant's proposal, only two had negative comments – Nosler, Inc. and Merrill Holdings. The record indicates that Nosler's concerns about compatibility of ME Zone uses with its bullet manufacturing business have been addressed by the private covenants proposed by the applicant. The other property owner, O.J. Merrill of Merrill Holdings, submitted a lengthy letter attacking the character of the applicant's representative Dave Hill, and expressing frustration that the adjacent Merrill Holdings property was not included in the applicant's redevelopment proposal. However, at the continued public hearing Mr. Hill testified that Mr. Merrill no longer opposed the applicant's proposal. In addition, attached to the applicant's September 12, 2006 submission are statements signed by 65 nearby property owners, including Mr. Merrill, supporting the applicant's proposal to redesignate and rezone the subject property.

For the foregoing reasons, the Hearings Officer finds the proposed zone change from ME to IL will not interfere with existing or potential development, or the value of, land in the vicinity of the subject property, therefore satisfying this criterion.

C. That the change in classification for the subject property is consistent with the purpose and intent of the proposed zone classification.

FINDINGS: The purpose of the ME Zone is set forth in Section 10-10.21B(1) as follows:

> **The zone is designed to provide for a mix of uses such as office, retail, services, light manufacturing and warehousing that offer a variety of employment opportunities in an aesthetic environment and having a minimal impact on surrounding uses.**

The Hearings Officer finds the proposed zone change will be consistent with the purposes of the ME Zone. As discussed above, the subject property is surrounded by residential, commercial and industrial zones and uses. The applicant's burden of proof states, and I agree, that these uses are exactly the types of uses allowed outright or conditionally in the ME Zone.

D. That the change will result in the orderly and efficient extension and provision of public services. Also, that the change is consistent with the City of Bend policy for provision of public facilities.

FINDINGS: As discussed in detail in the findings above, the Hearings Officer has found the applicant's proposed zone change from IL to ME will promote an orderly sequence of growth because necessary and adequate public facilities and services are available to the subject property, and because redevelopment of the subject property with uses permitted in the ME Zone, and consistent with the submitted "concept development plan," will not exceed the capacity of affected transportation facilities. Based on these findings, incorporated by reference herein, I find the proposed zone change also will satisfy this criterion because it will result in the orderly and efficient extension and provision of public facilities.

E. That there is proof of a change of circumstance or a mistake in the original zoning.

FINDINGS: The applicant does not argue the current IL zoning of the subject property was a mistake. Rather, the applicant argues the proposed zone change to ME is justified by changes of circumstance that have occurred since the subject property originally was zoned IL. The applicant's burden of proof includes the following brief history of the subject property:

"The subject property was zoned and planned for General Industrial use at the time of the adoption of the Bend Area General Plan around 1979 to match the industrial use of the property. At that time, the primary uses in the area were industrial and residential uses. Some tourist commercial establishments, such as ski shops, were located along Century Drive but much of the commercial land in the area was vacant. After 1979, the last of the area lumber mills was closed due to a lack of harvestable timber in Oregon and the Pacific Northwest. Following mill closure, the former mill properties were subdivided and redeveloped with an office park (Shevlin Center) and mixed use development on both sides of the Deschutes River.

In 1995, the City of Bend adopted the Mixed-Riverfront zoning district and applied it to most of the former Shevlin-Hixon mill site. The primary rationale for the change was that the location of the property adjacent to the Deschutes River and in the center of the City of Bend was not the appropriate location for the heavy industrial uses allowed by the IG zoning district. The river was a key part of the historic lumber mill operations as logs were floated to the mill in the Deschutes River. The river does not, however, serve a similar role for any other heavy industrial use.

In 1998, the City of Bend and Deschutes County made major amendments to the Bend Area General Plan map. In 2000, the City adopted a Transportation System Plan in October 2000. The Land Conservation and Development Commission, however, declined to acknowledge the TSP. As the TSP was adopted under periodic review procedures set forth in ORS 197.628 through ORS 197.644, rather than ORS 197.610 through ORS 197.625, the TSP is not yet effective. ORS 197.625.

Two major shopping centers have been developed on formerly vacant land a short distance of the subject property within the last ten years on the east side of Century Drive. One center includes Ray's Market grocery store, Subway, a bank, McDonald's, a veterinarian and other stores. The other major shopping center is the Century Park shopping center. It contains Safeway, Blockbuster Video and a Starbucks store. A bank is also being constructed in this center. In about the same period of time, land on the west side of Century Drive has been developed with a series of commercial buildings with multiple commercial tenants."

The applicant's burden of proof goes on to identify the specific changes of circumstance on which it relies to justify the proposed zone change from IL to ME as follows:

- the city's 2004 annexation of 513 gross acres and 380 net acres of industrial land (Juniper Ridge) into the UGB, thereby eliminating the shortage of inventoried industrial land;
- the city's adoption of mixed-use zones such as the ME Zone to allow and encourage mixed-use development;
- the city's construction of numerous transportation system improvements on the west side of Bend, generally improving access to the subject property and surrounding properties, but making more difficult access for large trucks used in Brightwood mill operations due to the installation of single-lane roundabouts;
- the dramatic reduction in heavy manufacturing and industrial uses in the region and in Bend as the result of changes to the global marketplace, and a shift in the local economic base from heavy reliance on resource extraction and industrial uses to professional, service and high-tech businesses that typically do not require industrial zoning; and
- the closure of the Brightwood mill and all other mills in the Bend area, whose presence created the primary need for industrial zoning.

The Hearings Officer agrees that the changes of circumstance cited by the applicant justify the proposed zone change from IL to ME. Therefore I find the applicant's proposal satisfies this criterion.

For the foregoing reasons, the Hearings Officer finds the applicant's proposal satisfies all applicable zone change approval criteria.

IV. DECISION:

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer hereby **RECOMMENDS APPROVAL** of the applicant's proposed plan amendment and zone change, **SUBJECT TO THE FOLLOWING CONDITION OF APPROVAL:**

1. The subject property shall be developed in a manner that is consistent in terms of the mixture, distribution, and size of uses and the predicted traffic generation with the "concept development plan" submitted by the applicant and attached to the September 12, 2006 Group Mackenzie traffic analysis.

Dated this _____ day of February, 2007 Mailed this _____ day of February, 2007.

_____
Karen H. Green, City of Bend Hearings Officer

SUPPLEMENTAL FINDINGS AND MODIFICATION OF CONDITIONS

FILE NUMBER: PZ 06-21

APPLICANT: Century Center Property, LLC
c/o Dave Hill
P.O. Box 825
Bend, Oregon 97709

PROPERTY OWNERS: Century Center Property, LLC
c/o Dave Hill
P.O. Box 825
Bend, Oregon 97709
(Tax Lots 100, 300, 301, 400, 500, 904 and 907)

K & O Holdings, LLC
64 S.W. Century Drive
Bend, Oregon 97702
(Tax Lot 200)

APPLICANT'S ATTORNEY: Liz Fancher
644 N.W. Broadway Street
Bend, Oregon 97701

REQUEST: The applicant is requesting approval of a plan amendment and zone change from IL to ME for a 9.37-acre area of land located on the east side of Century Drive north of Simpson Avenue in west Bend.

PURPOSE OF THE SUPPLEMENTAL FINDINGS: The City agrees with the Hearings Officer's recommendation to approve of the applicants proposed zone change and plan amendment from Light Industrial to Mixed Employment. However, these supplemental findings are intended to identify areas of concern that were not adequately addressed by the Hearing Officer's report. The City feels that the applicant's ability to meet some of the approval criteria could be strengthened through the application of conditions as addressed below.

(2) Standards for Zone Change. The burden of proof is upon the one seeking change. The degree of that burden increases proportionately with the degree of impact of the change which is sought. The applicant shall in all cases establish:

A. That the change conforms with the Comprehensive Plan. Specifically, the change is consistent with the Plans intent to promote an orderly pattern and sequence of growth.

The Hearings Officer finds the proposed rezoning of the subject property will promote an orderly *pattern* of growth because it would foster proper relationships between zoning districts and uses, and would be consistent with the type of mixed-use urban-density development contemplated in the ME Zone. In addition, the Hearings Officer has recommended the proposed plan amendment and zone change be approved subject to a condition requiring the applicant to develop the subject property consistent with the submitted "concept development plan." and finds that the proposed zone change from IL to ME will promote an orderly *pattern* of growth.

Due to the broad variety of uses permitted in the Mixed Employment Zone the City initially sought a Master Plan for the area as a means of identifying the proposed uses and impacts without approving a site plan. However the City questions the validity and benefit of the "concept master plan" referred to in the Hearing Officer's recommendation. This plan was introduced late in the process and was not fully vetted through a public process. In addition, the concept plan is very sketchy and does not provide adequate information for determining the impacts of the proposal. There is concern from the City that the actual impacts to the nearby neighborhoods have not been and cannot be analyzed.

The approval criteria for a zone change ask two questions; 1) ability to promote an orderly pattern of growth and 2) the ability to promote an orderly sequence of growth. A concern raised by the City with regard to *orderly sequence of growth* is the manner in which the recognized legal lots could be sold and/or developed. Some of the identified "legal" lots do not meet the definition of a lot by today's standards. The City discussed this concern with the applicant. As a condition of approval, the applicant, Century Center Property, LLC agrees that part of the subject property described as tax lots 100, 300, 301, 400, 500, 904, and 907 on Deschutes County Tax Assessors map 18-12-06A, hereinafter referred to as the "Century Center Property" shall not be sold as separate lots or parcels until such time an application for land division / replat which provides street connectivity to the extent required by the City's Development Code is approved by the City and recorded by the property owner. This additional condition reinforces the applicant's ability to meet the criteria for orderly development, therefore justifying the recommendation for approval.

D. That the change will result in the orderly and efficient extension and provision of

public services. Also, that the change is consistent with the City of Bend policy for provision of public facilities.

Similar to the concerns raised above with regard to promoting an orderly sequence of growth is the provision of public facilities, specifically the construction of needed street improvements. The subject property is located in an area of town where substandard streets exist. Commerce Avenue remains a gravel street today despite the frequent use by the adjoining neighborhood and local businesses. As a matter of safety, both Commerce Avenue and Century Drive need to be improved to City standards prior to any reuse of the existing buildings with more intense uses. Again, the City has discussed this issue with the property owner. As a condition of approval, The Century Center Property, LLC shall construct improvements on the streets fronting the subject property as follows:

D. Construct sidewalk and curb on the Century Drive property frontage; and
E. Construct curbs and a street with a 36' minimum pavement width for Commerce Avenue between Century Drive and Columbia Boulevard; and
F. Construct sidewalk and landscape strip the length of the subject property along the Commerce Avenue frontage.

Street improvements shall be constructed when the subject property redevelops either by subdivision, replat or through the reuse of the existing buildings where the total vehicle trips for the site will exceed the existing 144 trip credit.

Additional conditions which strengthen the arguments of orderly development include:

1. The City will not issue any building permits for the construction of new buildings on the Century Center Property or issue any development approvals for the re-use of the existing buildings where the total vehicle trips for the site will exceed the existing 144 trip credit, until the provisions of subsection 1 above are met.

2. The Century Center Property, LLC is hereby credited for the cost of making the off-site street improvements east of the subject property on Commerce Avenue to the intersection of Columbia Boulevard described in Section 3, above in calculating a reasonable nexus for additional off-site impact mitigation for site development of the Century Center Property.

3. The Century Center Property, LLC is hereby credited with a Vehicle Trip Credit of 144 pm peak hour vehicle trips for the existing use of the subject property in accordance with City Transportation Policy. The City will allocate the available vested trips to development on the site in the sequence in which land use applications are received. A new TIA shall be required for subsequent land use proposals which exceed the Vehicle Trip Credit of 144 trips.

The proposed zone change and plan amendment applies to properties under two different ownerships. This raises a separate, but similar issue with regard to orderly development and sequence of growth. The majority of the property is held by Century Center Property, while a single property identified as tax lot 200 on Deschutes County Assessors map 18-12-06A is held by Cascade West Property. The Cascade West Property is developed with a viable business use and is integral in achieving local street connectivity through the site. The City has concern with granting approval of the zone change and plan amendment for this property without any guarantee for orderly street connectivity. Through separate conditions of approval specific to the Cascade West Property, the City can be guaranteed an orderly pattern of growth and provision of public facilities. Conditions that are specific to the Cascade West Property include:

1. The Cascade West Property described as tax lot 200 on Deschutes County Tax Assessor map 18-12-06A; shall submit a development plan establishing a public or private street with public access oriented east / west through the subject property which is aligned with Knoll Avenue across 14th Street to the west, with subsequent redevelopment.

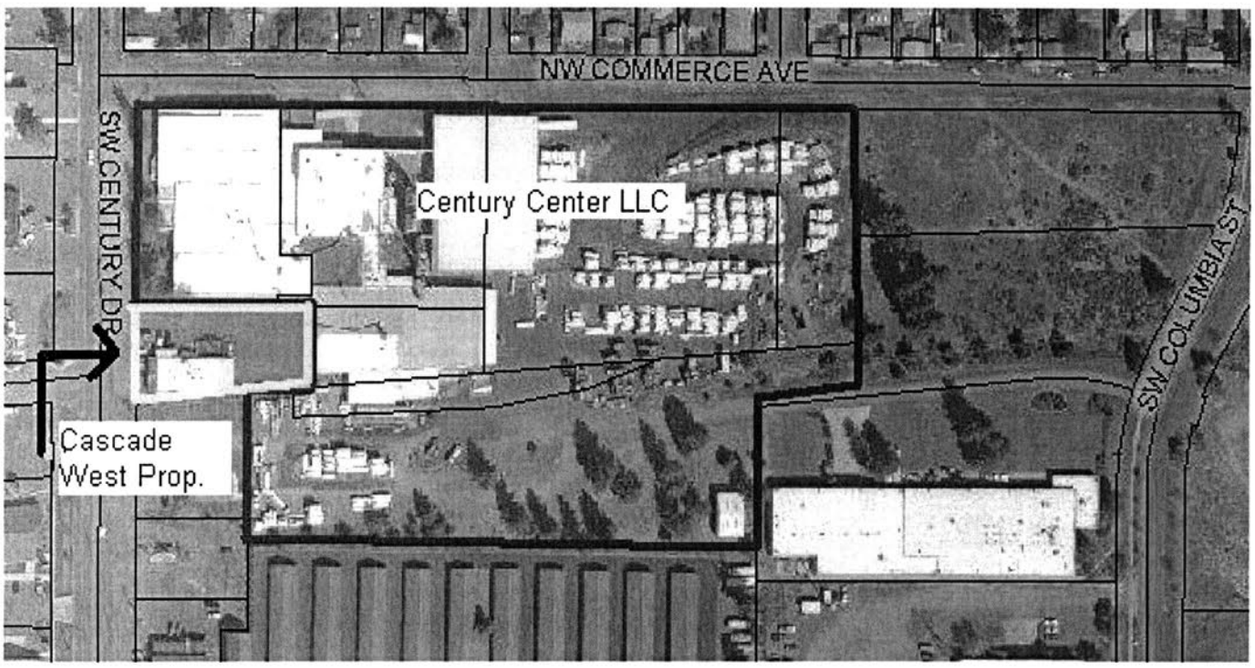
2. The Cascade West Property is hereby credited with a Vehicle Trip Credit of 25 pm peak vehicle trips for the existing use of the subject property in accordance with City Transportation Policy. A new TIA shall be required for subsequent land use proposals which exceed the Vehicle Trip Credit of 25 PM Peak trips.

3. The owner of the Cascade West Property shall sign and record a waiver of remonstrance for right of way improvements on 14th Street fronting the subject property

4. The completion of infrastructure improvements may be required by both the Century Center Property and the Cascade West Property to mitigate impacts to the City's transportation, sewer, water and storm water drainage systems as determined during the development review process.

Certainty for the planning and construction of these needed street improvements within a built up area of town adds further justification of the proposals ability to meet the approval criteria for orderly pattern and sequence of growth and the provision of public facilities.

EXHIBIT "C"



Century Center, LLC consists of tax lots 100, 300, 301, 400, 500, 904, and 907 on Deschutes County Tax Assessor Map 18-12-06A.

Cascade West Property consists of tax lot 200 on Deschutes County Tax Assessor Map 18-12-06A.

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK
2007-49620
$31.00
00572632200700496200010015
09/12/2007 02:20:52 PM
D-IPPS Cnt=1 Stn=25 CLERK
$5.00 $11.00 $10.00 $5.00

ORDINANCE NS-2065

AN ORDINANCE RENAMING TERRANGO AVENUE TO SIERRA DRIVE WITHIN THE CITY OF BEND, OREGON.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. That the street name of Terrango Avenue be changed to Sierra Drive.

Section 2. The effective date for the renaming of this street shall be 30 days following the adoption of this ordinance.

Read for the first time the 1st day of August 2007.

Read for the second time the 15th day of August 2007.

Placed upon its passage the 15th day of August 2007.

YES: 7 NO: 0

Authenticated by the Mayor the 15th day of August 2007.

Bruce Abernethy, Mayor

ATTEST:

Patricia Stell, City Recorder

After recording return to:
Deputy City Recorder
City of Bend
710 NW Wall
Bend, OR 97702

BLANK PAGE

ORDINANCE NO. NS-2066

AN ORDINANCE APPROVING DEVELOPMENT AGREEMENTS BETWEEN THE CITY OF BEND AND ELKHORN DEVELOPMENT LLC

WHEREAS, The City of Bend is authorized by ORS 94.504 to enter into Development Agreements with persons having legal or equitable interests in real property; and

WHEREAS, Each of the attached Development Agreements describes the ways and means for accomplishing the objectives of the Development Agreements; and

WHEREAS, Each of the attached Development Agreements includes documents that are assembled as part of a set of exhibits which support each Development Agreement; and

WHEREAS, The City of Bend has conducted public hearings and has considered the testimony and written public comment relating to the Development Agreements; and

WHEREAS, The Bend City Council finds that each of the Development Agreements listed in Sections 1 and 2 of this ordinance complies with all applicable land use goals, laws, rules and regulations,

THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

SECTION 1. That the attached "DEVELOPMENT AGREEMENT BETWEEN CITY OF BEND AND ELK HORN LAND DEVELOPMENT INC. RELATING TO THE REED MARKET & 15TH STREET ROUNDABOUT" is hereby approved.

SECTION 2. That the attached "DEVELOPMENT AGREEMENT BETWEEN CITY OF BEND AND ELK HORN LAND DEVELOPMENT INC. RELATING TO SEWER IMPROVEMENTS" is hereby approved.

SECTION 3. That the City Manager is authorized to execute each of the Development Agreements referred to in Sections 1-2 of this Ordinance when all such Development Agreements are fully executed by each of the Property Owners listed in such Agreements and provided to the City of Bend.

Read for the first time the 1st day of August, 2007.

Read for the second time the 15th day of August, 2007.

Placed upon its passage the 15th day of August, 2007.

YES: 7 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 15th day of August, 2007.

Bruce Abernethy

Bruce Abernethy, Mayor

ATTEST:

Patricia S Stell

Recorder of the City of Bend

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK
2007-52194
00575443200700521940340349
$196.00
09/27/2007 12:16:48 PM
D-AG Cnt=1 Stn=1 BN
$170.00 $11.00 $10.00 $5.00

COVER SHEET FOR RECORDING

DEVELOPMENT AGREEMENT BETWEEN

CITY OF BEND

AND

ELK HORN LAND DEVELOPMENT INC.

RELATING TO THE REED MARKET & 15TH STREET ROUNDABOUT

This agreement is to be attached to the land referenced in Book 2008, page 86140 in the Deschutes County, State of Oregon deed records. JL Ward to Rocky Mountain Land LLC.

Consideration as stated in the agreement
Taxes mailed to: No change

Shadow Glen
PZ 60-261 ps
34 page document

After Recording Return To:
City of Bend Engineering Division
PO Box 431, Bend, OR 97709

DEVELOPMENT AGREEMENT BETWEEN CITY OF BEND
AND ELK HORN LAND DEVELOPMENT INC.
RELATING TO THE REED MARKET & 15TH STREET ROUNDABOUT

This Development Agreement ("Agreement") is dated as of the 30 day of August, 2007, by and between ELK HORN LAND DEVELOPMENT INC., an Oregon corporation ("EHLD"), and THE CITY OF BEND, an Oregon municipal corporation (the "City"). Each of EHLD and the City is hereinafter referred to as a "Party" and collectively as the "Parties."

1. Definitions:

1.1 "Development Agreement" means this Development Agreement between EHLD and the City pursuant to ORS 94.504 (the "Development Agreement").

1.2 "EHLD Development" means the Shadow Glen Development (PZ 06-261.06-262) that is to be constructed by EHLD, on property owned by EHLD and is more particularly described on attached Exhibit A.

1.3 "Land Use Approval" shall mean the land use approval in City Case No. PZ 06-261, and PZ 06-262.

1.4 "Mitigation Improvement" means the off-site transportation improvement described in Section 15 of the Land Use Approval.

1.5 "Qualified Costs" means the costs eligible for reimbursement or credit under Street Policy No. 5, attached hereto as Exhibit D.

1.6 "Reed Market Roundabout Project" means the creation of a multi lane roundabout at the intersection of Reed Market Road and S.E. 15th Street as more particularly described on Exhibit B.

1.7 "Repayment Schedule" means the method of reimbursement of qualified costs as provided by Street Policy 5, attached hereto as Exhibit D and under the Repayment Schedule, attached hereto as Exhibit C.

1.8 "SDC Credit" means a repayment of Qualified Costs by the City of Bend. SDC Credits shall occur as provided by City Street Policy No. 5, and other applicable policies.

1.9 "SDC Recovery Time Frame" means the recovery period as provided by Street Policy 5, attached hereto as Exhibit D.

1.10 "SDC Reimbursement" means a repayment of Qualified Costs by the City of Bend. SDC Reimbursements shall occur as provided by City Street Policy No. 5, and other applicable policies.

1.11 "SDC Shared Recovery Area" shall have the meaning ascribed to it in Street Policy 5, attached hereto as Exhibit D.

1.12 "SDC Sole Recovery Area" shall have the meaning ascribed to it in Street Policy 5, attached hereto as Exhibit D.

2. Terms of Agreement

2.1 Under the City of Bend General Plan and land use regulations, new development cannot occur until there are adequate public facilities necessary to support it. The City's General Plan provides that if the public facilities are not adequate, new development must either wait for the installation of the required facilities by the City; or the required facilities must be supplied by the developer.

2.2 The Reed Market Roundabout Project is necessary to provide adequate off-site transportation capacity necessary to serve the EHLD Development and other area developments. The principal obligations of the parties to this Agreement are for EHLD to construct the Reed Market Roundabout Project as the means of complying with the conditions of the Land Use Approval; and for City to participate in funding the Reed Market Roundabout Project and reimbursement of costs to EHLD as provided herein. If EHLD is prevented from building the Roundabout Project for reasons identified in this Agreement, then EHLD shall provide alternative Mitigation Improvement as provided in the Land Use Approval and in this Development Agreement. The Parties desire to enter into this Development Agreement for the Reed Market Roundabout Project.

2.3 Under this Development Agreement, EHLD shall oversee construction and development of the Reed Market Roundabout. The City and EHLD desire to work together on the completion of the Reed Market Roundabout Project for the benefit of the citizens of the City of Bend. The City and EHLD wish to identify the terms of what work is done by each party and how EHLD will receive SDC reimbursement for the work it performs. In addition to SDC reimbursement, City and EHLD agree that City will make a Cash Contribution to the Roundabout Project as provided herein.

2.4 It is the intention of the Parties that the legal mechanism for accomplishing these improvements will be expressed in this Development Agreement.

2.5 ORS 94.504 authorizes cities to enter into development agreements with private parties who own or otherwise have a legal interest in property in connection with the development of that property. Such development agreements may have a duration of up to fifteen years and may establish each of the Parties' rights and obligations in connection with certain aspects of the proposed developments. The Parties wish to establish all of

their obligations relative to the Reed Market Roundabout Project through this Development Agreement with the City.

2.6 The Development Agreement shall be recorded and binding upon the Parties, their successors and assigns, and shall be enforceable as covenants running with the land; and may be enforced by any remedy provided by law.

2.7 The Parties agree that their execution of this Development Agreement represents their acceptance of the purpose expressed in these recitals, and the ways and means of accomplishing this purpose. Towards this end, the Parties expressly agree:

2.7.1 The Parties shall cooperate in good faith to the extent reasonably practicable to accomplish the purpose of the Development Agreement. This shall include, but not be limited to, cooperation in the defense of this Agreement.

2.7.2 The terms and conditions of this Development Agreement are intended as an implementation of, and are consistent with, the City's land use laws, rules and regulations, together with all applicable state and federal laws, rules, and regulations.

2.8 City and EHLD are authorized to enter into this Development Agreement by ORS 94.504 through 94.525 and Bend Code Section 4.1.150.

2.9 This Development Agreement is based on the assumption that: When the Reed Market Roundabout Project is complete, the transportation system improvements (together with the widening of a portion of 15th Street, as provided in the Land Use Approval) will allow the City to serve all portions of Shadow Glen as well as other developments planned for the SE part of Bend.

2.10 Shadow Glen is already annexed to the City of Bend.

3. Effective Date; Term of Agreement. This Agreement shall be effective upon adoption of the City Council approving this Agreement pursuant to ORS 94.508, and execution by EHLD (the "Effective Date"). The term (the "Term") of this Agreement shall commence on the Effective Date and shall continue for a period of fifteen years unless terminated sooner in accordance with the provisions contained herein.

4. Reed Market Roundabout Project.

4.1 Project Description and Summary. The City has determined the appropriate Master Plan improvement for the Reed Market/S.E.15th Street intersection is a multi-lane roundabout. Condition 15 of the Conditions of Approval for the EHLD Development reads as follows:

"With respect to the S.E. 15th Street/Reed Market Road intersection improvements, either:

a. A multi-lane roundabout shall be installed and accepted by the city at the intersection of Reed Market and 15th Street (the "roundabout"); or

b. The "Mitigation Improvement" shall be constructed and approved by the city and the applicant shall have paid the "Contribution" to the city. As used herein, "Mitigation Improvement" means an improvement or improvements (such as the turn lane proposed in the traffic report submitted by applicant in connection with this project) that will mitigate the impact of Phases 2-5 on the intersection of Reed Market and 15th Street as evidenced by a written report of a licensed traffic engineer. As used herein, "Contribution" shall mean Six Hundred Twenty-Five Thousand Dollars ($625,000) less the costs of the Mitigation Improvement."

The parties agree that unless there is a Project Schedule Delay, as identified in 4.4.2 below, the City and EHLD shall work together on the multi-lane roundabout installation.

4.2 Distribution of Duties. Exhibit E – Reed Market Roundabout Project Distribution of Duties, identifies the specific allocation of responsibilities by City and EHLD.

4.3 Schedule. The Parties anticipate that the construction of the Reed Market Roundabout Project will start in February of 2008 and be complete by September 2008.

4.4 Modification of Land Use Approval. This Agreement modifies Condition of Approval 15 of the Land Use Approval by changing Condition 15.a. to state:

"A multi-lane roundabout shall be ~~installed and accepted by the city~~ under construction at the intersection of Reed Market and 15th Street (the "roundabout"); or "

4.5 Contingencies.

4.5.1 EHLD Development Phase 2 Plat. The Reed Market Roundabout Project must be under construction or the Mitigation Improvement must be completed and approved prior to EHLD being able to record final plat on EHLD Development Phase 2 (all lots after the first 100).

4.5.2 Project Schedule Delay. In February 2008, if the construction start is delayed due to the fact that the City has not completed its obligations under Exhibit E and the projected construction start date is not anticipated before EHLD is ready to submit for final plat approval of EHLD Development Phase 2 then EHLD's responsibility for oversight of the Roundabout installation and requirement to pay $675,000 of SDC Reimbursable Improvements shall cease, and EHLD shall make other mitigations as required by Condition 15 of the Land Use Approval. Upon EHLD's removal of responsibility for the Roundabout installation, the City and EHLD shall work cooperatively and in good faith together on the choice of Mitigation Improvement which would be most beneficial to the City, and which is consistent with the Land Use Approval, while not delaying EHLD's ability to obtain final plat approval.

4.5.3 City may perform some portions of EHLD's obligations under Exhibit E toward construction of the total Reed Market Roundabout Project in conjunction with City's adjacent work projects and in advance of the EHLD schedule; provided, however, City shall give EHLD advance written notice of such intent. Upon City's performance of such items, the value of that performance shall be a credit against City's obligation to make its cash contribution, as provided in this Agreement. The parties shall agree in good faith on the determination of the value of such performance.

4.5.4 If EHLD fails to perform the obligations of Condition No. 15 of the Land Use Decision on the schedule provided herein, then City may, at its sole option, construct any improvements deemed necessary by City, and EHLD shall have no further rights under this Development Agreement, and shall be deemed in violation of its conditions of the Land Use Approval.

4.5.5 This Agreement is contingent on adoption by the Bend City Council of a resolution exempting the Reed Market Roundabout Project from competitive bid procedures. This Agreement shall not take effect until such resolution is adopted and the period for challenge to the resolution has passed, or if a challenge is made, until it is successfully resolved in favor of allowing this Agreement to go into effect.

4.5.6 Repayment. Exhibit C – Reed Market Roundabout Project Calculation shall be as provided in City Street Policy No. 5, attached hereto as part of Exhibit D.

4.6 Marketing. City shall coordinate with EHLD on press releases and provide areas of signage, consistent with City's sign regulations, promoting the project as a collaborative effort between City and EHLD and its affiliated companies which shall include but not be limited to Pahlisch Homes Inc.

5. Schedule and Procedure for Compliance Review. Commencing on the first anniversary of the Effective Date, EHLD shall prepare annual written reports of its compliance with the terms of this Agreement to the City. Such reports shall include an update as to compliance with all schedules set forth herein. After receipt of such reports, the City may request such additional or backup information as it deems reasonably necessary.

6. Applicability of New Rules, Ordinances, Regulations and Policies. To the extent any new City rule, ordinance, regulation or policy is adopted on a jurisdiction-wide basis after the date of this Agreement that is not, in the reasonable discretion of EHLD, inconsistent with the substance, purposes or conditions of this Development Agreement, then the City rule, ordinance, regulation or policy shall be applicable. Changes in state or federal law shall apply according to their terms. If any such change substantially alters the obligations of this contract, then the parties agree to negotiate in good faith to accomplish the objectives of this Development Agreement.

7. Assignability of Agreement. This Agreement shall be fully assignable, in whole or in part, by either Party upon advance written approval of the assignment by City, which approval shall not be unreasonably withheld. Any purported assignment without City's written consent is void. This Agreement shall run with the land (the EHLD Development and the Roundabout) and shall bind and inure to the benefit of the Parties and their respective successors and assigns. If any portion (other than lot sales to individuals or builders) of the EHLD Property is sold, the duties, rights and interests of EHLD under this Agreement shall become the duties, rights and responsibilities of the purchaser and EHLD. Notwithstanding the foregoing, no purchaser of an individual lot(s) shall have any rights hereunder.

8. Schedule. This Agreement provides a schedule and timeline for performance of the Parties to this Development Agreement.

9. Defaults

9.1 A breach of a material provision of any part of this Agreement, whether by action or inaction of a Party which continues and is not remedied within thirty (30) days after the other Party has given notice specifying the breach shall constitute a default by the non-notifying Party. If the breach is of such a nature that it cannot reasonably be cured within such thirty-day period, the cure period shall be extended to such amount of time as is reasonable but only if the breaching Party promptly commences, and thereafter diligently prosecutes, such cure.

9.2 The exercise by either Party of any one or more of such remedies available to it shall not preclude the exercise by it, at the same or different time, of any other such remedy for the same default or breach or of any of its remedies for any other default or breach by the other Party, including, without limitation, the right to compel specific performance.

10. Release of Development Agreement. The City shall release developed lots from this Development Agreement upon the request of EHLD provided that the terms and conditions of this Development Agreement have been performed as they relate to the lot to be released.

11. Force Majeure. In the event that any Party (the "Delayed Party") is delayed or prevented from performing any of its obligations under this Agreement by reason of strikes, lockouts, labor problems, inability to procure materials, contractors, professionals, inability to obtain utilities or failure of utilities, laws or other governmental requirements, riots, war, or other cause not brought about by the Delayed Party, and not related to any financial liability on the part of the Delayed Party, the time for performance of the obligation shall be extended by a period of time equal to the period of such delay or prevention.

12. Notices. Any notice, demand, request, approval, consent, or other communication (collectively referred to as a "Notice") concerning this Agreement or any matter arising in connection with this Agreement shall be in writing and addressed to the other Party at the address set forth below. Any Notice shall be given by either: (i) personal delivery in which event it shall be deemed given on the date of delivery; or (ii) certified mail return receipt requested in which event it shall be deemed given three (3) business days after the date deposited in any post office, branch post office, or official depository. Any Party may change any address for the delivery of Notice to such Party, by giving Notice in accordance with the provisions of this Section. The attorneys for the Parties may give any Notice.

Notices Addresses:

If to EHLD: Elk Horn Land Development Inc.
63088 NE 18 Street Suite 100
Bend, OR 97701
Attn: Dan Goodrich

With a copy to: Ball Janik LLP
15 SW Colorado, Suite K
Bend, Oregon 97702
Attn: Laura Craska Cooper

If to City:

City of Bend
Engineering Division
710 N.W. Wall Street
Bend, OR 97701
Attn: City Engineer

and
City of Bend Finance Department
710 NW Wall Street
Bend , OR 97701
Attn: Finance Director

13. Miscellaneous.

13.1 City Funding. The Parties agree that any provision herein which requires the City to expend funds is contingent upon future appropriations as part of the City budget process as provided in ORS 94.504(5). Nothing herein requires the City to appropriate such funds.

13.2 Waivers. No covenant, term or condition of this Agreement shall be deemed to have been waived by any Party, unless such waiver is in writing signed by the Party charged with such waiver. Any waiver of any provision of this Agreement, or any right or remedy, given on any one or more occasions shall not be deemed a waiver with respect to any other occasion.

13.3 Entire Agreement/Modifications. This Agreement, along with all exhibits incorporated therein constitutes the entire agreement between and among the Parties with respect to the subject matter herein contained and all prior negotiations, discussions, writings and agreements between the Parties with respect to the subject matter herein contained are superseded and of no further force and effect. This Agreement cannot be amended or modified without a writing signed by all of the Parties hereto. Except as specifically provided herein, nothing in this Agreement shall be interpreted to change the terms of the Land Use Approval. If any provision of this agreement is found to be inconsistent with the Land Use Approval, then the Land Use Approval shall control.

13.4 Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be an original and all of which, when taken together, shall constitute one and the same instrument.

13.5 Captions. The captions contained in this Agreement were inserted for the convenience of reference only. They do not in any manner define, limit, or describe the provisions of this Agreement or the intentions of the Parties.

13.6 Gender/Singular/Plural. Whenever masculine, feminine, neuter, singular, plural, conjunctive, or disjunctive terms are used in this Agreement, they shall be construed to read in whatever form is appropriate to make this Agreement applicable to all the Parties and all circumstances, except where the context of this Agreement clearly dictates otherwise.

13.7 Severability. The unenforceability or invalidity of any provisions hereof shall not render any other provision herein contained unenforceable or invalid.

13.8 Time of Essence. Time is of the essence of this Agreement.

13.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

13.10 Indemnity. Each party shall comply with all applicable laws in performance of this agreement. Each party shall be responsible for any torts committed by such party. EHLD specifically accepts the responsibility to comply with prevailing wage and hour laws in performance of this agreement, and shall indemnify, defend and hold City harmless from any claim that it failed to do so.

13.11 PFIA. EHLD shall execute a standard City of Bend Public Facility Improvement Agreement with City, attached hereto as Exhibit G.

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date set forth in the first paragraph of this Agreement.

"EHLD"

ELK HORN LAND DEVELOPMENT INC.,
an Oregon corporation

By: Nancy E. Kowalski
Name: Nancy E. Kowalski
Title: VP LAND ACQUISITION & FINANCING

"CITY"

CITY OF BEND, an Oregon Municipal Corporation,

By: Harold A. Anderson
Name: Harold A Anderson
Title: City Manager

OFFICIAL SEAL
CHERYL REINERTSON
NOTARY PUBLIC-OREGON
COMMISSION NO. 400919
MY COMMISSION EXPIRES JANUARY 9, 2010

STATE OF OREGON)
)ss.
COUNTY OF DESCHUTES)

This instrument was acknowledged before me on August 30, 2007 by Nancy E. Kowalski as Vice President Land Acquisition & Financing of Elk Horn Land Development Inc.

Cheryl Reinertson
Signature of Notarial Officer
My Commission Expires: Jan. 9, 2010

STATE OF OREGON)
)ss.
COUNTY OF DESCHUTES)

This instrument was acknowledged before me on 9/11/07 by Harold A Anderson as City Manager of the City of Bend.

Kim Parsons
Signature of Notarial Officer
My Commission Expires: 1/6/08

OFFICIAL SEAL
KIM PARSONS
NOTARY PUBLIC-OREGON
COMMISSION NO. 375857
MY COMMISSION EXPIRES JAN. 6, 2008

Exhibit A

Shadow Glen Property and SDC Sole Recovery Area

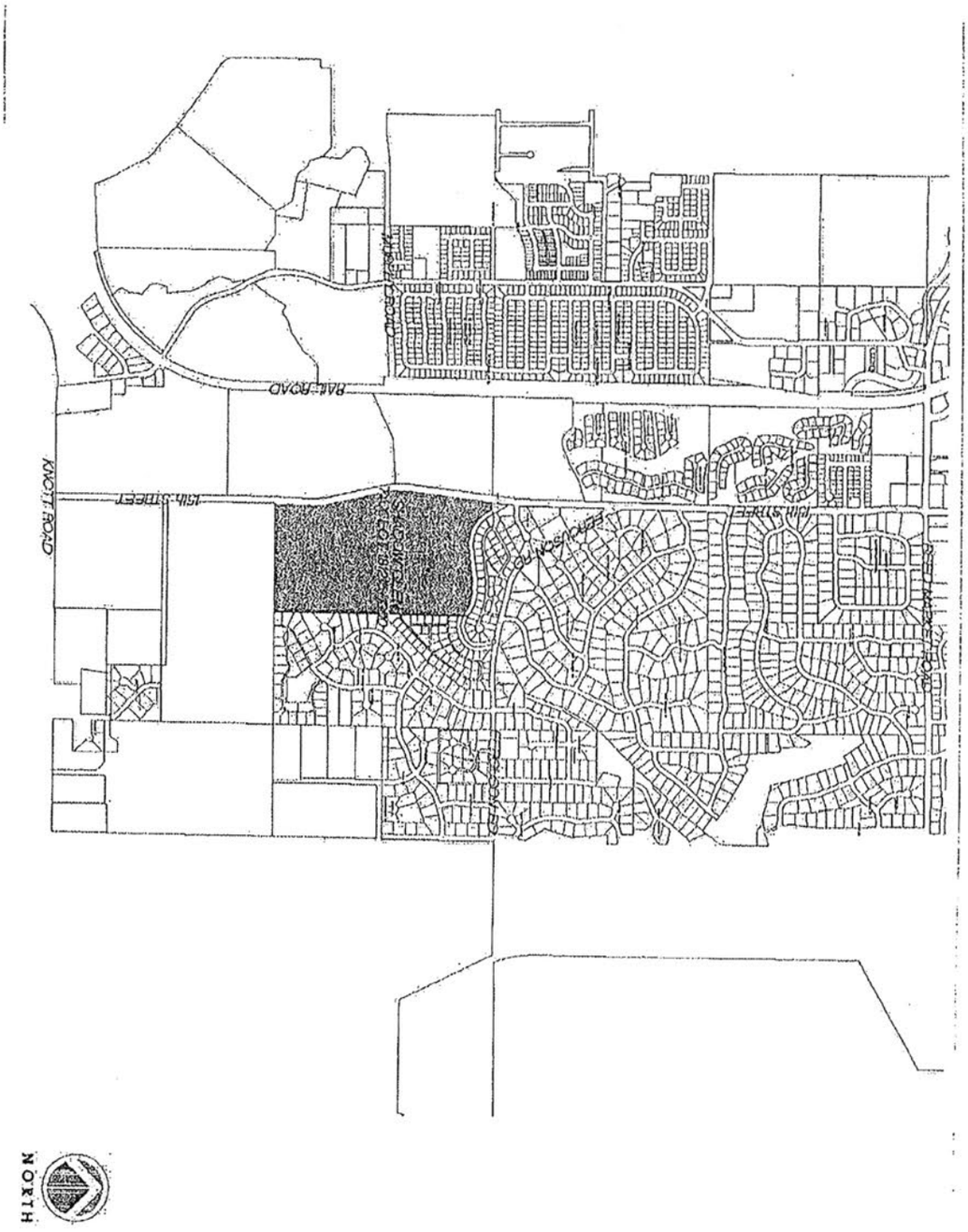


Exhibit B
Reed Market Roundabout Project

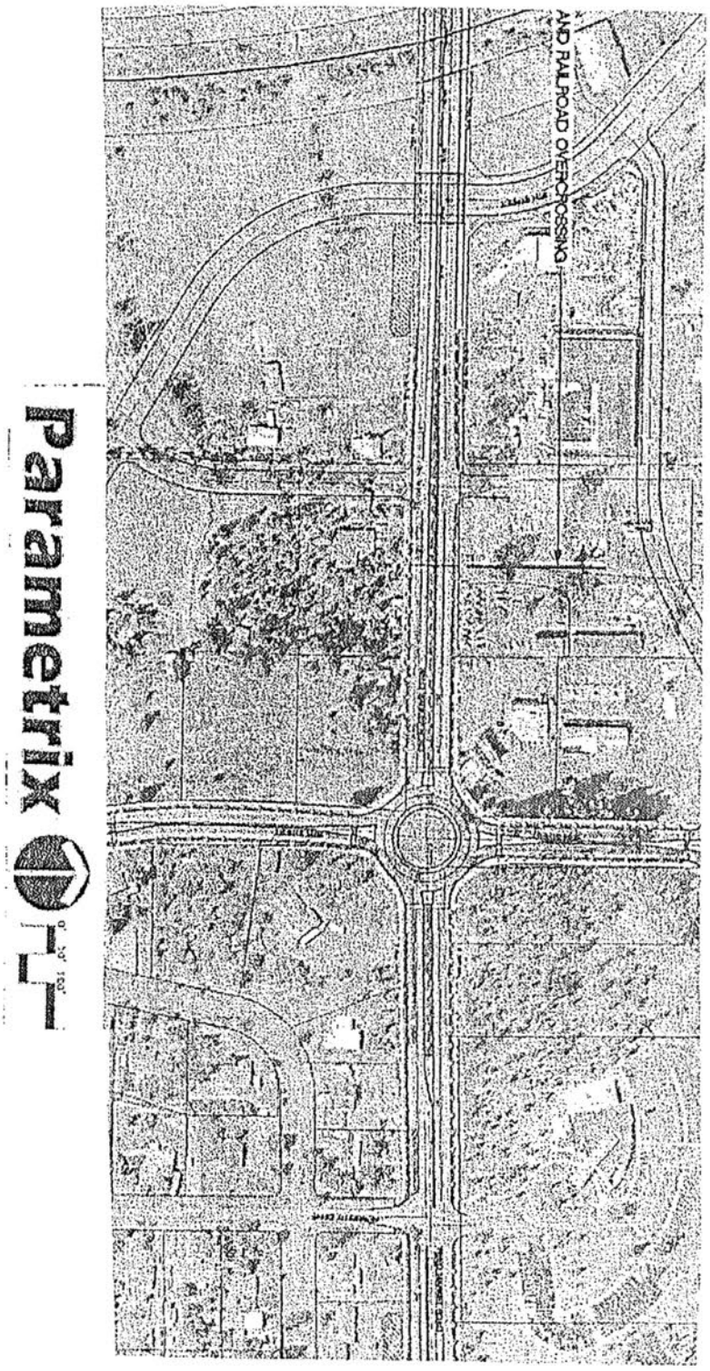


Exhibit C

Repayment Schedule

This construction project has a maximum budget of $2.3 Million. City has $1 Million that it will contribute to EHLD for Qualified Costs of the project, to be distributed in progress payments as provided herein. For purposes of this Agreement, Qualified Costs shall include a 3% project management fee. EHLD shall make a $625,000 contribution towards the project, which contribution is not reimbursable. If needed, EHLD shall provide an additional contribution of up to $675,000 toward Qualified Costs, which shall be reimbursed by the City via SDC Reimbursements at the rate of 100%, and in the manner provided in Street Policy No. 5, attached hereto as Exhibit D.

Progress payments shall be made as follows: At a regular time each month, EHLD shall submit to the City a request for payment based upon an estimate of the amount of work completed and of the value of such completed work. This request shall also include an estimate of the amount and value of acceptable material to be incorporated in the completed work which has been delivered and acceptably stored. Upon verification and approval of the City, the sum of these values will be referred to as the "value of completed work." With these estimates as a base, a progress payment will be made to EHLD, which progress payment shall be equal to the value of the completed work, less such amounts as may be previously paid, less such other amounts as may be deductible or as may be owing and due to the City for any cause, and less amount to be retained in protection of the City's interests. EHLD will also provide the City with actual invoices, receipts and other documents to allow for a reconciliation of the value of the completed work to the actual Qualified Costs incurred for the project".

City Contribution Portion:
City shall make a cash contribution of up to $1 Million to EHLD through progress payments during the course of construction as provided in the paragraph above. Progress payments by City shall be proportionate with City's contribution to project in relation to the first $1.625 Million of total qualified project costs. City's contribution of $1 Million represents 61.54% of the first $1.625 Million of Qualified Costs, and the EHLD's contribution of $625,000 represents 38.46%. For example, if Qualified Costs of $300,000 is estimated for the amount of work completed, City will pay $184,620 and EHLD will pay $115,380.

SDC Reimbursement Portion
EHLD shall not invoice City for Qualified Costs in excess of $1.625 Million up to a maximum of $675,000. Those costs shall be submitted for SDC Reimbursement according to Street Policy No. 5, attached hereto as Exhibit D, and on a schedule and under terms provided in a Master Plan Facility Reimbursement Agreement to be executed by the parties (following satisfactory completion of the warranty period) on a form substantially the same as provided in Exhibit F.

City will set aside Transportation SDC Improvement Fees paid by development in the Shadow Glen Development (which is described in the Land Use Approval), as those SDCs are collected. No SDC reimbursement shall be made, however, until after the maintenance period for the Reed Market Roundabout Project has been completed to the City's satisfaction and City has performed

a final inspection and acceptance of the project, at which time, the reimbursements shall be disbursed according to the Master Plan Facility Reimbursement Agreement (Exhibit F).

The sole recovery area for the Reed Market Roundabout Project shall be the Shadow Glen Development as described in the land Use Approval.

Exhibit D

2-11-4.1

City of Bend
Street Policy 5
Street System Development Charge Credit and Reimbursement

Section 1. Purpose:

It shall be the policy of the City of Bend that expansions to the City's street system shall only be accomplished as directed and approved by the City. The timing and financing of system expansions shall be as provided in this policy.

Expansions to the street system that involve the construction of collector and/or arterial streets shall be accomplished pursuant to the City's Comprehensive Plan. It is anticipated that these improvements will be financed by funds generated from systems development charges (SDC's), other resources or by developers as provided below. The timing of improvements to be constructed by the City will be subject to the availability of City funds to finance them.

Section 2. Procedure:

Developers who wish to expand the street system by dedicating land and/or constructing streets may do so according to the following procedure:

2.1 Prior City approval will be required.

2.2 An executed agreement between the developer and the City shall be required and shall set forth the development requirements as well as an SDC credit and/or SDC reimbursement, if available.

2.3 All improvements must be constructed according to applicable City Standards, rules and regulations, including the Comprehensive Plan, as determined by the City Engineer.

2.4 All of the cost of such improvements shall be paid by the developer.

2.5 The developer's costs associated with the construction of these qualified public improvements may be eligible for SDC credit and/or SDC reimbursement as provided in this policy.

Section 3. SDC credit:

The SDC credit shall be determined first and shall:

3.1 Only be available for qualified public improvements as defined in Oregon Revised Statutes (ORS) 223.304(3) (i.e., improvements that are identified in the City's Comprehensive Plan).

3.2 Be a credit against only the improvement fee portion of the SDC. The improvement fee portion against which the credit may be applied shall be calculated by using the methodology as it is employed in the City's SDC Ordinance and Resolution. If less than the maximum allowable SDC is charged in the Resolution, the percentage of the maximum allowable SDC used shall also be used to determine that portion of the improvement fee against which the SDC credit can be applied.

3.3. The amount of the credit shall not exceed the improvement fee as calculated above. e.g., if a developer incurs $100,000 for collector and/or arterial street improvement costs of which $70,000 is related to qualified improvements, and, if the development has 20 lots and the SDC improvement fee is 70% of the maximum allowable SDC improvement fee of $1,149, or $804, the SDC credit would be $16,080 (20 x $804). If the development included 100 lots the SDC credit would be limited to $49,000 as the SDC improvement fee times the number of lots (100 x 804 = $80,400) exceeds the qualified costs subject to the SDC credit times the percentage of the maximum allowable SDC improvement fee. ($70,000 x .70% = $49,000)

Section 4. SDC Reimbursement:

In addition to the SDC credit a developer may be eligible for SDC reimbursement. SDC reimbursement shall be determined as follows:
The maximum SDC reimbursement shall be limited to the collector and/or arterial street improvement costs expended by the developer, as determined by the City Engineer, times the percentage of the maximum allowable SDC in place at the time of executing an agreement with the City, less any SDC credit related to the improvements. There shall be no SDC reimbursement if the SDC credit exceeds the maximum SDC reimbursement. Qualified costs of collector and/or arterial street improvements shall include actual construction costs, exclusive of right-of-way and preliminary engineering costs.

Section 5. SDC Credit and Reimbursement-Collection and Payment Procedures:

SDC credit and SDC reimbursement will be collected and paid as follows:

5.1 The current SDC, as established by the Bend City Council, shall be collected by the City on all building permits issued by the City or with other agreements as applicable. The SDC may have two components; an improvement fee for future system improvements and a reimbursement fee for existing or in-progress improvements.

5.2 SDC improvement fees collected by the City shall be paid to developers and retained by the City in accordance with this policy.

5.3 SDC reimbursement fees collected by the City shall be retained by the City to reimburse the City for previous system expenditures, related debt service or future improvements.

Section 6. Shared/Sole Recovery Areas:

6.1 The area served or to be served by the City's street system within the City limits will be categorized as either shared recovery area or as sole recovery area. Sole recovery areas shall be determined by the City Engineer and shall include only the developer's property that is to be served by the approved facilities constructed by the developer. Shared recovery area shall include all area served or to be served by the City's street system that is not otherwise designated as sole recovery area within the City limits.

6.2 SDC improvement fees collected from each sole recovery area shall be applied as follows:

6.2.1 SDC credit due the developer of the sole recovery property, until paid.

6.2.2 SDC reimbursement due the developer of the sole recovery property, until paid or until the 10 year recovery period expires.

6.2.3. Once items 1 and 2 are met the sole recovery property shall become shared recovery area.

6.3 SDC improvement fees collected from the shared recovery area shall be applied as follows:
To developers with outstanding SDC credit and SDC reimbursement balances, including the City, in proportion to the outstanding SDC credit and SDC reimbursement balances, at the end of the repayment period, of all developers, including the city participating in the shared recovery area.

6.4 SDC improvement fees collected and paid to developers from the shared recovery area shall be limited to the amount of SDC credit and/or SDC reimbursement that would not otherwise be collectible from SDC improvement fees within a developer's sole recovery area.

6.5 There shall be no payment made, for either the SDC credit or SDC reimbursement, to the developer from any SDC improvement fee collected within the sole recovery area or shared recovery area until the improvements are accepted by the City.

6.6 There shall be no SDC credit or SDC reimbursement paid after 10 years from the date the qualified improvements are accepted by the City.

6.7 A sole recovery area shall become shared recovery area when the developer has been paid the SDC credit and/or SDC reimbursement in full, or the SDC credit is paid in full and the 10 year SDC reimbursement period expires.

Section 7. **Payment Schedule:**

7.1 Payment of SDC credit and SDC reimbursement amounts shall be payable annually by the City for SDC improvement fees collected by the City from January 1 through December 31 of each year by January 31 of the year following collection by City.

7.2 No interest shall accrue on SDC credit or SDC reimbursement payable to developers.

7.3 There shall be no adjustments made to the amount of any SDC credit or SDC reimbursement amount as a result of inflation.

Section 8. Assignment of Claims:

8.1 Claims from SDC credit and SDC reimbursement are personal and may not be assigned without the written consent of City.

Section 9. Future Changes to Maximum Allowable SDC:

9.1 Future changes by the City of the maximum allowable SDC or the percentage of the maximum allowable SDC imposed shall neither increase or decrease the SDC credit or SDC reimbursement determined above, however, if the percentage of the maximum allowable SDC is changed, all active public improvement agreements will be reviewed, and if necessary, SDC credit and/or SDC reimbursement amounts to be collected and reimbursed developers from sole and shared recovery areas will be recalculated in accordance with this policy.

Section 10. City's Obligation to Pay:

10.1 The City's obligation to pay or apply SDC credit or SDC reimbursement shall be limited to SDC improvement fees actually collected by the City as provided in this policy. City's obligation to pay or apply SDC credit or SDC reimbursement from SDC improvement fees collected shall be further limited to the total of the SDC credit and SDC reimbursement calculated as provided in this policy. Payment of SDC credit and SDC reimbursement shall be subject to prior reimbursement claims which are payable from SDC collections. Persons who receive, or are entitled to claim, SDC credit or SDC reimbursement shall indemnify and hold the City harmless in the event the City is subject to claims by others for SDC credit or SDC reimbursement for the same improvements. City shall have the right to set off the amount of any competing claims for SDC credit or SDC reimbursement against prior claims for the same SDC credit or SDC reimbursement if in the City's judgment it becomes necessary to do so.

Section 11. Applicability:

11.1 This policy shall apply to all eligible improvements installed and accepted after City Resolution #2146 which established street SDCs effective June 15, 1995.

Exhibit E
Distribution of Duties

City of Bend:

1. Create final design plans.
2. Include EHLD in design and review process with consultant group.
3. Provide EHLD with approved engineered construction plans.
4. Acquisition of all rights of way necessary for the construction of this project.
5. Identify all components and scope of project – provide EHLD with all such relevant information.
6. Obtain all necessary governmental and agency approvals for the project.
7. Coordinate with all franchise utility companies for the relocation of existing utility lines underground.
8. Relocate all existing overhead and underground utilities that will hamper development of project.
9. Sign and approve permit applications as needed.
10. Obtain all necessary permits and licenses.
11. Provide EHLD with City criteria for bid process and contractor selection.
12. Oversee that EHLD utilizes the bid process contractor selection process appropriately, and have final approval of contract requirements, which shall contain standard City of Bend contract terms for public works projects.
13. Coordination with project management and cost accountability.
14. Cooperate with EHLD on the preparation and processing of documents for repayment in a timely fashion.
15. Provide cash contribution of $1 Million during course of construction, and provide EHLD with SDC reimbursements in accordance with Street Policy No.5 for Qualified Costs in excess of $1.625 Million up to $675,000.
16. Irrigation Canal Relocation. Coordinate in a timely fashion with Arnold Irrigation District, and Central Oregon Irrigation District to relocate an existing Arnold Irrigation lateral that currently is piped through the intersection prior to the construction of the roundabout. Work must be coordinated during the off irrigation season.
17. Provide marketing/signage locations for EHLD.
18. Coordinate with EHLD on press releases.
19. Assume complete responsibility for the Project in the event of Schedule Delay releases EHLD from responsibility for the Project.

EHLD:

1. Manage the bid process including advertising and selection of contractor in compliance with the City's Bid Policy. EHLD will have sole discretion in awarding the bid and the City will assist in the process.
2. Manage the construction contract (timeline, costs, and tasks).
3. Manage site management including traffic control plans, pay sheets, change orders (if not handled by subcontractor).
4. Coordinate with City on change orders and cost control.
5. Contribute $625,000 toward all costs related to bidding and construction.

6. Pay costs in excess of $1.625 Million up to $675,000 and enter into a Master Plan Facility Reimbursement Agreement with the City for reimbursement of such Qualified costs up to $675,000.
7. Create press releases with approval of City.
8. Provide and install collaborative project signage with approval of City.
9. Allow the City access to all books and records for the purpose of conducting an audit to assure compliance with all terms and conditions of this Development Agreement and the contract entered into between EHLD and the contractor selected to perform the Reed Market Roundabout Project.
10. Provide a one year warranty on the Reed Market Roundabout Project, with a maintenance bond, and all other requirements of the Public Facilities Improvement Agreement (Exhibit G).

JOINT:

1. Project management shall be on a cooperative basis by both the City and EHLD. Cooperate in good faith to complete project on a timely basis.
2. The contract between EHLD and the contractor selected to perform the work on the Reed Market Roundabout Project shall contain all standard City of Bend terms and conditions for public works projects, including provisions relating to acceptance of work, warranty and maintenance.
3. All construction changes orders shall be reviewed and approved in writing by both parties prior to execution.
4. Under no circumstances shall project cost exceed the maximum budget of $2.3 million without express written approval by both parties.

EXHIBIT F

MASTER PLAN FACILITY REIMBURSEMENT AGREEMENT

The **CITY OF BEND**, an Oregon municipal corporation, hereinafter referred to as "CITY" and _____, hereinafter referred to as "DEVELOPER" agree as follows:

DEVELOPER has received, read and understands City's public facility improvement policies which are attached to the Applicable Public Facility Improvement agreement. The terms used in this agreement have the meanings assigned to them by City's policies unless specifically provided otherwise in this agreement. All provisions of the City of Bend's Policies are made a part of this agreement. Developer understands and agrees that City's SDC reimbursement policies may be changed by the Bend City Council and that the amount of the SDCs collected may change. Developer fully accepts any risk of reduced reimbursement (including termination of any reimbursement) that may result from future City Council action.

DEVELOPER shall comply with and meet all requirements specific to this development as stipulated in the City of Bend Land Use Decision and Development Agreement (attached to this agreement and identified as Exhibit "A"), including additional conditions for public facility improvements not mentioned above.

DEVELOPER understands and acknowledges if master plan facilities, as defined and approved by the City Engineer, are constructed and ultimately approved by the City, Developer is eligible for a system development charge reimbursement entitlement pursuant to City policy, rules and regulations now in effect and as such policies, rules and regulations may be amended in the future. Future amendments may result in less money being reimbursed than is currently estimated. The estimate of the potential reimbursement is shown on Exhibit "B" and is attached to this agreement. Developer acknowledges that the calculations on Exhibit B are estimates only, based on current policies. This document does not create a contractual obligation requiring the City to reimburse the amount shown on Exhibit B or any other amount. Developer accepts the risk that actual reimbursement amounts may vary from (and may be less than) the estimates on Exhibit B, due to reduced SDC collections or changes in SDC methodology or reimbursement policy.

DEVELOPER must submit actual invoices, receipts and cancelled checks to the City to establish qualified costs. City approval of qualified costs will be required prior to payment to Developer pursuant to City policy.

DEVELOPER agrees that system development charges (SDCs) improvement fees collected from the sole recovery area will be applied as SDC credit or SDC reimbursement due Developer, according to City policy as it may be amended from time to time, commencing from the date of this agreement. SDC improvement fees collected from the sole recovery area prior to the date of this agreement will not be applied as SDC credit or SDC reimbursement due Developer.

DEVELOPER agrees that payment of SDC improvement fees collected by the City and applied as SDC credit and SDC reimbursement due Developer shall begin from the date the qualified improvements are accepted by the City and shall be payable annually by the City pursuant to City policy. No SDC improvement fees shall be paid to Developer prior to qualified improvements being accepted by the City.

No interest shall accrue on SDC credit or SDC reimbursement payable to Developer.

DEVELOPER agrees that there shall be no SDC credit or SDC reimbursement paid after 10 years from the date the qualified improvements are accepted by the City.

DEVELOPER agrees that this agreement constitutes the entire reimbursement agreement for the master plan improvements to be constructed by Developer. Developer is solely responsible for reimbursement to any other developers or other parties for contributions that such other developers or third parties may make to fund Developer's improvements. If Developer receives such contributions from other developers or other parties, Developer will be responsible for determining and administering SDC credits and reimbursements if any, to the other developers or other parties. Developer will indemnify, defend and hold the City harmless from any claims for reimbursement asserted against the City by another person or entity that makes a claim for the same reimbursement money. Developer will not hold the City responsible for determining or administering SDC credits and reimbursements to other developers or other parties for such contributions.

In accordance with Street Policy No. 5, SDC credits and reimbursements shall not be assigned without the written consent of the City.

DEVELOPER agrees that any future or subsequent Master Plan Facility Reimbursement Agreements that Developer enters into with the City will be considered subordinate to this agreement. SDC improvement fees collected from the sole recovery area will be applied first to SDC credits and reimbursements under this agreement, then to SDC credits and reimbursements under subsequent agreements if any.

DEVELOPER agrees that this agreement is subordinated to any previous Master Plan Facility Reimbursement Agreement or any other agreement to reimburse SDCs that the Developer may have entered into with the City. SDC improvement fees collected from the sole recovery area will be applied first to SDC credits and reimbursements under the prior agreement if any, and then to SDC credits and reimbursements under this agreement.

Dated this _____ day of _____, 2007.

Developer

_____

By:

_____

_____
Print Name and Title

CITY OF BEND

_____
Harold A. Anderson, City Manager

REVIEWED BY

_____ _____ _____
Planning Manager Asst. Finance Director Engineering

EXHIBIT G

LICENSE

PUBLIC FACILITY IMPROVEMENT AGREEMENT:

☐ STREET ☐ SEWER ☐ WATER ☐ MASTER PLAN ☐ OTHER

The CITY OF BEND, an Oregon municipal corporation, hereinafter referred to as "CITY" and _____, hereinafter referred to as "DEVELOPER" agree as follows:

1. In this License and Public Facilities Improvement Agreement ("PFIA") is applicable to the construction of _____ _____ in Bend. DEVELOPER represents to CITY that DEVELOPER has all necessary approvals from all persons or entities owning land affected by the construction of _____ _____ _____ in Bend (called "the Improvement(s)") to commence and complete construction of the Improvement(s). DEVELOPER represents that landowners in said area will be notified of project improvement(s) and schedule of activity.

2. CITY and DEVELOPER recognize that a land use decision has been made permitting the Improvement(s) to go forward. This PFIA adds to, but does not supercede any provision of the land use approval.

GENERAL CONDITIONS

1. DEVELOPER has received, read and understands City's public facility improvement policies. The terms used in this agreement have the meanings assigned to them by City's policies unless specifically provided otherwise in this agreement.

   1.1 DEVELOPER desires to construct the Improvement(s) in Bend. DEVELOPER shall be solely responsible for payment of all costs of construction of the Improvement(s).

   1.2 The DEVELOPER and City intend that this agreement shall constitute a covenant running with the land, binding on the DEVELOPER and the DEVELOPER'S heirs, successors, creditors or assigns.

   1.3 DEVELOPER agrees to pay applicable sewer, water and street System Development Charges (SDC's) in accordance with City policies.

PROVISION OF PUBLIC FACILITY IMPROVEMENTS

2. **IMPROVEMENT(S)** shall be supplied only through components constructed by City approved contractor, installed to City Standards and Specifications and owned by City. All facilities shall be installed within public right of ways and easements. City shall provide all approvals under this PFIA in writing, in advance.

2.1 City shall not be deemed to have accepted the Improvement(s) installed by DEVELOPER until City does so in writing and a Maintenance Agreement between the City and DEVELOPER is established.

3.8 DEVELOPER shall promptly pay all charges for City services when due. Charges shall be as prescribed by the appropriate schedule and may be changed from time to time.

2.3 No other use of CITY services or CITY facilities shall be permitted without express written consent of the CITY.

2.4 DEVELOPER, when constructing Improvement(s), shall comply with all applicable governmental laws, rules and regulations including but not limited to CITY ordinances, resolutions and the provisions of City public facility improvement policies as they now exist and as they may be changed from time to time. Any failure to comply with all terms and conditions of this agreement shall entitle CITY to terminate facility improvement services at CITY'S sole discretion.

2.5 DEVELOPER shall submit all construction documents for CITY approval in advance (including plans for signage and traffic flow during construction, if applicable), and DEVELOPER shall not commence construction until CITY has given full approval of all plans.

EXTENSION OF PUBLIC FACILITY IMPROVEMENTS

3. **DEVELOPER** shall comply with the following conditions with regard to the Improvement(s):

3.1 DEVELOPER agrees to perform all work necessary for the construction of the Improvement(s) at DEVELOPER'S sole expense and in accordance with the City's Standards and Specifications, within 120 days from the commencement of physical construction of the Improvement(s) unless extended by City in writing. Regardless of the commencement date of physical construction of the Improvement(s), DEVELOPER agrees to complete all work related to construction of the Improvement(s) within one year of the date of this agreement, or shall be deemed to be in default of DEVELOPER's obligations hereunder. Other events of default shall include: *Insolvency:* Insolvency of Developer; an assignment by Developer for the benefit of creditors; the filing by Developer of a voluntary petition in bankruptcy; an adjudication that Developer is bankrupt or the appointment of a receiver of the properties of Developer and the receiver is not discharged within 30 days; the filing of an involuntary petition of bankruptcy and failure of Developer to secure a dismissal of the petition within 30 days after filing; attachment of or the levying of execution on the leasehold interest and failure of

Developer to secure discharge of the attachment or release of the levy of execution within ten days.

Default in Development: Failure of Developer to actively pursue completion of the Improvement(s) required by the land use approval and this Public Facilities Improvement Agreement/License in the manner reasonably necessary to complete construction of the Improvement(s) within 12 months of the date of execution of the Public Facilities Improvement Agreement/License.

3.2 The person, firm or corporation performing the work shall have construction liability coverage. Coverage shall be in the amount of a one million dollars combined single limit for bodily injury liability and property damage. DEVELOPER shall hold City harmless and indemnify City from any liability of any kind in connection with activities resulting from this agreement. DEVELOPER shall furnish to CITY a certificate evidencing the insurance coverage before physical construction is commenced.

3.3 DEVELOPER agrees to submit to the City a statement of all costs incurred on the project upon completion of the project.

3.4 City will charge appropriate fees for services rendered to DEVELOPER.

3.5 DEVELOPER agrees to obtain an Oregon State Highway, City or County street cut permit prior to any construction in right of ways, if applicable.

3.6 When required by CITY, DEVELOPER agrees to deliver to CITY "AS BUILT" reproducible drawings of the completed work, signed by an Oregon professional engineer prior to acceptance of the work by CITY.

3.7 The total amount due and payable upon signing this agreement is listed on Exhibit "C".

3.8 DEVELOPER hereby grants CITY a license to enter and remain on DEVELOPER's property for the purpose of inspecting public facility Improvement(s) constructed pursuant to this Agreement, including, but not limited to, any water lines, meters, backflow prevention devices, sewer lines, streets, test cocks and other facilities.

ADDITIONAL CONDITIONS

REQUIREMENTS FOR MODIFICATION OF WATER FACILITIES

DEVELOPER agrees to perform all work necessary to install, relocate or modify water service lines with meters and housings if required. Said installations to be completed in accordance with Exhibit "B", and City Standards and Specifications. If any meters are

required, they shall be installed by contractor, must be stamped and registered by CITY Public Works Department prior to installation.

DEVELOPER agrees to perform all work necessary to install on DEVELOPER'S property at a City approved location any necessary backflow prevention device approved by the Oregon State Health Division and the City of Bend Standards and Specifications if required. This device must pass inspection by a certified backflow prevention inspector. DEVELOPER agrees to have test cocks installed on this device as shown in the specifications. DEVELOPER also agrees to comply with the annual requirement for checking the backflow protection valves at DEVELOPER'S expense.

☐ Not required ☐ Double check type ☐ Reduced Pressure Type

FIRE SERVICES: When required, fire services will be included on Exhibit "B", including locations of all fire services and associated backflow devices.

FOR PROVISION OF SEWER FACILITIES

If the Improvement(s) require(s) the construction or relocation of any sewer facility, DEVELOPER shall obtain all necessary permits from the City of Bend Public Works Department.

FOR PROVISION OF STREET FACILITIES

DEVELOPER shall construct all required public and private street Improvement(s) according to the CITY Street Policies, where applicable, and according to the plans and specifications on the engineering documents submitted to CITY for approval before construction of the Improvement(s) commences. DEVELOPER will submit for approval and comply with the provisions of all signage and traffic flow plans submitted to CITY and approved by CITY. DEVELOPER will also comply with all the terms of the land use approval previously granted by CITY. CITY shall review and approve all private street Improvement(s) in accordance with the City of Bend Zoning Ordinance.

LAND USE DECISION REQUIREMENTS

DEVELOPER shall comply with and meet all requirements specific to this development as stipulated in the City of Bend Land Use Decision and/or Development Agreement, including additional conditions for public facility improvements not mentioned above.

BUILDING PERMIT ISSUANCE POLICY

DEVELOPER acknowledges that City policy prohibits release of building permits for new construction requiring a land use permit until all of the required public facility Improvement(s) for the project have been completed, approved by the City, and the one-year warranty (maintenance) period has begun.

DEVELOPER'S OBLIGATION TO COMPLY WITH ALL LAWS, AND TO INDEMNIFY, DEFEND AND HOLD CITY HARMLESS

As a condition of this PFIA, DEVELOPER agrees to be solely responsible for compliance with all state, federal and local laws that pertain to this PFIA and the construction of the Improvement(s). DEVELOPER shall fully indemnify, defend and hold CITY harmless from any and all claims arising or connected to this PFIA, including claims arising from construction of the Improvement(s) and claims that may arise under ORS 279C.800 through 279C.870. DEVELOPER shall comply with any applicable provisions of ORS 279A, 279B and 279C in the advertisement for bids, the request for bids, the contract specifications, the accepted bid, the completion of the contract, and elsewhere in any contract related to fulfillment of the terms of this PFIA.

DEVELOPER TO FURNISH FINANCIAL SECURITY FOR COMPLETION OF WORK

Prior to commencement of work on the Improvement(s), DEVELOPER shall furnish CITY with a bond or other suitable form of security, securing all of DEVELOPER's obligations under this PFIA, including DEVELOPER's obligation to complete the Improvement(s) on schedule and according to CITY's standards and specifications. The bond or other form of security shall also be sufficient to cover any claims that may arise under ORS 279.A, 279B, and 279C.

SYSTEMS DEVELOPMENT FEE REIMBURSEMENT

DEVELOPER understands and acknowledges if master plan facilities, as defined and approved by the City Engineer, are constructed by the applicant and approved by the City, DEVELOPER has the potential for a system development charge reimbursement entitlement pursuant to City policy, rules, regulations and the Master Plan Facility Reimbursement Agreement. DEVELOPER acknowledges that CITY's policies with regard to SDC reimbursement are subject to change at any time, and DEVELOPER fully accepts the risk that reimbursement may be less than as provided by CITY's current policies.

DATED this _____ day of_____, 2004.

DEVELOPER

_____

BY: _____

_____

Title: _____

STATE OF OREGON)
)ss
County of Deschutes)

This instrument was acknowledged before me on _____
by _____ as Member of _____.

_____
NOTARY PUBLIC FOR OREGON

CITY

_____
Engineering Division

STATE OF OREGON)
)ss
County of Deschutes)

This instrument was acknowledged before me on _____
by _____ for the City of Bend Engineering Division.

_____
NOTARY PUBLIC FOR OREGON

EXHIBIT "A"

and

EXHIBIT "C"

Engineering Fees		
Grading drainage review submittal $650.00		$ 00
Storm sewer piping fee _____ If x $2.00/ft		$ .00
Drywell, # of drywells _____ x $250.00 per drywell		$.00
Water plan review submittal $650.00		$ .00
Water line fee _____ If x $2.00/ft		$ .00
Fire service/hydrant fee ____ x $250.00 per service/hydrant	$ .00	
Street review submittal$650.00		$ .00
Street fee _____If x $3.00/ft		$.00
Inspections		
Submittal fee $500.00		$.00
Miscellaneous		
Agreement processing fee	$.00	
Recording fee	$.00	
	TOTAL DUE$	

DATE PAID _____ RECEIPT # _ HTE # _____

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK
2007-52195
$226.00
00575444200700521950400404
09/27/2007 12:16:48 PM
D-AG Cnt=1 Stn=1 BN
$200.00 $11.00 $10.00 $5.00

40

COVER SHEET FOR RECORDING

DEVELOPMENT AGREEMENT BETWEEN

CITY OF BEND

AND

ELK HORN LAND DEVELOPMENT INC.

RELATING TO SEWER IMPROVEMENTS

This agreement is to be attached to the land referenced in Book 2008, page 86140 in the Deschutes County, State of Oregon deed records. JL Ward to Rocky Mountain Land LLC.

Consideration as stated in the agreement
Taxes mailed to: No change

Shadow Glen
PZ 60-261 ps
40 page document

224

After Recording Return To:
City of Bend Engineering Division
PO Box 431, Bend, OR 97709

DEVELOPMENT AGREEMENT BETWEEN CITY OF BEND
AND ELK HORN LAND DEVELOPMENT INC.
RELATING TO SEWER IMPROVEMENTS

This Development Agreement ("Agreement") is dated as of the 30 day of August, 2007, by and between ELK HORN LAND DEVELOPMENT INC, an Oregon corporation ("EHLD"), and THE CITY OF BEND, an Oregon municipal corporation (the "City"). Each of EHLD and the City is hereinafter referred to as a "Party" and collectively as the "Parties."

1 DEFINITIONS:

1.1 "Development Agreement" means this Development Agreement between EHLD and the City pursuant to ORS 94.504 (the "Development Agreement").

1.2 "EHLD Development" means the Shadow Glen Development (PZ 06-261 and 06-262) that is to be constructed by EHLD, on property owned by EHLD and is more particularly described on attached Exhibit A.

1.3 "Excess Capacity" shall mean that amount of additional sewer capacity provided by facilities constructed by EHLD that are in excess of the sewer capacity necessary for the Shadow Glen Development described in the Land Use Approval.

1.4 "Land Use Approval" shall mean the land use approval in City Case No. PZ 06-261.and 06-262.

1.5 "Qualified Costs" means the costs eligible for reimbursement under City policy.

1.6 "Repayment Schedule" means the method of reimbursement of qualified costs as provided by City policy, and a Master Plan Facility Reimbursement Agreement to be separately negotiated between the parties.

1.7 "SDC Sole Recovery Area" shall be the Shadow Glen Development as described in Exhibit A.

1.8 "SDC Regional Recovery Area" shall be the Regional Basin as described in Exhibit C, and consistent with the city sewer master plan, as it may change from time to time.

1.9 "SDC Reimbursement" means a repayment of Qualified Costs by the City of Bend as described in the Master Plan Facility Reimbursement Agreement described in Section 1.5

1.10 "Sewer Improvements" mean the sewer system improvements more particularly described on Exhibit B, as required by the Land Use Approval, and as modified by this Development Agreement.

1.11 "Ward Basin" means the land described in Exhibit E.

2 RECITALS:

2.1 City and EHLD are authorized to enter into this Development Agreement by ORS 94.504 through 94.525 and Bend Code Section 4.1.150.

2.2 The Bend Urban Area General Plan provides that development shall be directed to areas where infrastructure adequate to provide for the development is in place. In the Shadow Glen development, sewer service is not adequate to serve all phases of the development. Under Bend land use regulations, EHLD can either wait for the city to upgrade the sewer system to serve EHLD's Shadow Glen development, or EHLD can provide the improvements, subject to reimbursement under applicable City policies. EHLD has chosen to provide the improvements, and this Development Agreement is intended to identify the terms and conditions under which the improvements will be made.

2.3 EHLD has acquired land in SE Bend that it wishes to develop as a PUD in Phases as Shadow Glen. A tentative plan, conditional use and site plan have been prepared and approved for the Shadow Glen Development under the Land Use Approval. EHLD shall be allowed to use Shadow Glen as permitted in the Land Use Approval (including building height and size of allowed structures, and shall be allowed to develop Shadow Glen to the intensity and density allowed in the Land Use Approval. Dedication and preservation of land for public purposes shall be as required by the Land Use Approval.

2.4 Under Condition of Approval No. 7 in the Land Use Approval for Shadow Glen, City requires EHLD to complete Phase 1 Sewer Improvements which include a regional pump station together with a 6-inch force main and a 12-inch force main from the pump station through the existing Central Oregon Irrigation District (COID) canal easement (unless COID approval cannot reasonably be obtained in which event the alignment shall be adjusted as reasonably necessary), where the 6-inch force main will tie into the existing 4-inch force main in the Ferguson Road right-of-way (ROW). The 12-inch force main is not necessary to serve Shadow Glen. It provides for City's future demands in conjunction with the regional pump station, when the sewer basin beyond Shadow Glen is developed. The regional pump station is intended to communicate with the Ridgewater I, Ridgewater II, Camden Park, Desert Skies, and Darnell Estates pump stations via smart telemetry so that the existing force main does not exceed its capacity.

2.5 Under the Conditions of Approval No. 19 for Shadow Glen, City requires EHLD to complete the Phase 2 Sewer Improvements. Phase 2 Sewer Improvements includes the extension of the 6-inch force main and the 12-inch force main constructed as part of the Phase 1 Sewer Improvements through the Ferguson Street ROW to 27th Street and then north in 27th Street to the existing 6-inch force main. The newly constructed 6-inch force main will connect with the existing 6-inch force main. The existing 4-inch force main in the Ferguson Street ROW will remain connected to the existing pump stations (and not to the pump station installed as part of the Phase 1 Sewer Improvement).

2.6 City and EHLD's engineers have identified altered requirements for the work to be performed that differ from the original conditions of approval and are presented herein.

2.7 A purpose of this Development Agreement is to remove EHLD's obligation to build the Regional Pump Station from EHLD under the Land Use Approval. The intent of this agreement is that City will provide a regional pump station or alternate means to serve the Regional Basin (Exhibit C).

2.8 The parties desire to remove development and building permit availability restrictions that are currently dependant on the completion of the regional pump station facility under the Shadow Glen Conditions of Approval No. 7.

2.9 The parties desire to change the improvement requirements for the Phase 2 Sewer Improvements and to also remove the requirement for the installation to be performed solely by EHLD as required under Condition of Approval No. 19 of the Land Use Approval if the condition is satisfied by any other means.

2.10 The parties also desire to define Master Plan Sewer Improvements to be constructed with the development and therefore eligible for reimbursement as prescribed in this agreement.

2.11 EHLD and the City wish to identify terms of what work would be done by each party and what portions of the improvements would qualify for City Reimbursement and which portions would qualify for reimbursement through the City's SDC Reimbursement process.

2.12 EHLD and City desire to modify the Land Use Approval Conditions of Approval No. 7 and No. 19. Performance of the obligations of this Development Agreement will satisfy Conditions of Approval No. 7 and 19 of the Land Use Approval. The Land Use Approval is, only as specifically provided herein, modified by this Development Agreement to reflect the changes in scope and performance of the

Phase 1 and Phase 2 Sewer Improvements. All other provisions and conditions of the Land Use Approval shall continue to apply.

2.13 This Development Agreement is based on the assumption that: When all Phase 1 and Phase 2 Sewer Improvements are complete, the sewer system improvements will allow the city to serve all of Shadow Glen as well as portions of the Regional Basin.

2.14 Shadow Glen is already annexed to the City of Bend.

IN CONSIDERATION of the mutual promises of the parties set forth in this Development Agreement, the parties agree as follows:

3 MODIFICATIONS TO PHASE 1 SEWER IMPROVEMENT PLANS: EHLD OBLIGATIONS

3.1 EHLD shall construct the sewer line so that it is increased in size from a 6-inch/12-inch force main to a 6-inch/16-inch force main. The 16-inch will better handle the additional capacity that will be directed to the regional pump station from the Regional Basin, as identified on Exhibit C.

3.2 The sewer line from the pump station to the 4-inch force main in the Ferguson Road ROW shall be routed through the Shadow Glen development and then through Sage Creek Drive in the Ridgewater II development as identified in Exhibit B.

3.3 All EHLD improvements under this Section 3 shall be completed no later than June 1, 2009.

3.4 Upon completion of the sewer line to City, EHLD shall grant City a permanent 20' wide easement for operation and maintenance of the sewer line located on EHLD property to allow City to perform maintenance and repair work as necessary.

3.5 Performance of the obligations of this Development Agreement will satisfy the Shadow Glen Condition of Approval No. 7 of the Land Use Approval. The Land Use Approval is modified only as specifically provided herein, and all other obligations of the Land Use Approval shall continue to apply.

CITY OBLIGATIONS:

3.6 The Regional Basin (Exhibit C) will be served by a regional pump station or other means built by the City to serve Shadow Glen and the Regional Basin.

3.7 The timing of City's completion of the improvements described in Section 3.6 is not expected to coincide with the completion of the Shadow Glen first phase of development. The Conditions of Approval for Shadow Glen prohibits Shadow Glen from obtaining house construction permits until the regional pump station (or

equivalent improvement(s)) completion. City will allow EHLD to install an interim pump station that will then connect the Shadow Glen pump to the Camden Park pump under a peer to peer communications system to insure that both are not operating at the same time. Since the Regional pump station (or equivalent improvement(s)) will not be constructed as part of Shadow Glen the City will remove any restriction on Shadow Glen plat recording or obtaining house construction permits that relate to the installation and completion of the Regional pump station (or equivalent improvement(s)).

4 MODIFICATIONS TO PHASE 2 SEWER IMPROVEMENTS: EHLD OBLIGATIONS

4.1 EHLD shall continue to extend the sewer line so that it is increased in size from a 6-inch/12-inch force main to a 6-inch/16-inch force main. The 16-inch will better handle the additional capacity that will be directed to the regional pump station from the Regional Basin, as identified on Exhibit C.

4.2 EHLD and City shall review the Sewer Master Plan requirements prior to EHLD performing the Phase 2 Sewer Improvements identified in this agreement, to verify that the work identified is still consistent with the Sewer Master Plan. In the event that the scope has changed, City and EHLD shall identify the changes and amend this Development Agreement accordingly. In no event shall EHLD be required to perform improvements that would be in excess of the scope of work contained in this Development Agreement.

4.3 In the event that a development other than Shadow Glen triggers a necessity for (and builds) the Phase 2 Sewer Improvement, or equivalent, prior to EHLD's schedule of development in Shadow Glen, then EHLD shall be released from responsibility for constructing the remaining required improvements.

4.4 Performance of the obligations of this Development Agreement will satisfy the Shadow Glen Condition of Approval No. 19 of the Land Use Approval. The Land Use Approval is modified only as specifically provided herein, and all other obligations of the Land Use Approval shall continue to apply.

4.5 All EHLD improvements under this Section 4 shall be completed no later than June 1, 2017.

5 MASTER SEWER PLAN IMPROVEMENTS: EHLD OBLIGATION

5.1 The sewer line extending south on SE 15th shall in part be re-routed through the Shadow Glen Development to avoid difficulty in locating the line through an Area of Special Interest (ASI) portion on SE 15th Street. The sewer line – referred to as a "Main Trunk Line" and identified on Exhibit B shall be upsized from an 8-inch line which only serves Shadow Glen to a 12-inch and 15-inch line which will serve areas beyond Shadow Glen. EHLD has anticipated at some point in the future the

potential for rezoning properties within Exhibit E. The actual installation of the Main Trunk Line has been increased in size by EHLD to account for the density that would occur with a zone change from RS to RM. Since the zone change has not been applied for nor approved, then the City can only base the reimbursement amount on the increased capacity of a 10-inch and 12-inch trunk line which would be the appropriate size if the increase in density was not factored in. The density allocation and unit count for the Ward Basin (Exhibit E) is identified in Exhibit F.

CASH CONTRIBUTION FOR CERTAIN WORK

5.2 City and EHLD have agreed that EHLD shall provide additional work to be reimbursed by City through a Cash Contribution as provided within Exhibit G. EHLD shall provide this additional work for the public benefit. The additional work items shall include the following:

(a) Reconstruction of the Sage Creek Drive and all qualified costs including, but not limited to, monumenting disturbed property pins, striping, adjusting surface utilities and other necessary, incidental cost for Sage creek Drive through the Ridgewater II community;

(b) Blasting and subsurface work for a future regional pump station and all necessary qualified costs;

(c) Furnishing and installing a back up generator to the new regional pump station;

(d) Furnishing a 1" water line to the future regional pump station;

(e) Construction of a gravity sewer manhole and main from 15th Street to the regional pump station for future regional facilities;

(f) Preliminary design work for the regional pump station.

6 SDC REIMBURSEMENT CALCULATION AND PAYMENT

6.1 Qualified costs for the forcemains installed under Phase 1 and Phase 2 Sewer Improvements shall be eligible for SDC Reimbursements at a rate of 87.67% according to Sewer Policy No. 4, attached hereto as Exhibit H, and on a schedule and under terms provided in a Master Plan Facility Reimbursement Agreement to be executed by the parties.

6.2 Qualified costs for the 10-inch Main Trunk Line shall be eligible for SDC Reimbursements at a rate of 44.0% and Qualified Costs for the 12-inch Main Trunk Line shall be eligible for SDC Reimbursements at a rate of 66.0% according to Sewer Policy No. 4, attached hereto as Exhibit H, and on a schedule and under terms provided in a Master Plan Facility Reimbursement Agreement to be executed by the parties.

6.3 All parties have agreed to Preliminary Cost Estimates of Qualified Costs (detailed in Exhibit K) for labor, materials, installation, engineering and management fees for

the Sewer Improvements to be constructed. Final Qualified Costs shall be determined by the City from actual invoices submitted by EHLD.

6.4 City will set aside Sewer SDC Improvement Fees collected through both the SDC Sole Recovery Area and the SDC Regional Recovery Areas as those SDCs are collected. No SDC reimbursement shall be made until after the maintenance period for the improvements has been completed to the City's satisfaction and City has performed a final inspection and acceptance of the improvements, at which time the reimbursements shall be disbursed according to the Master Plan Facility Reimbursement Agreement.

6.5 SDC reimbursements for Phase 1 & 2 Sewer Improvements shall be paid from Sewer SDC Improvement Fees collected in the SDC Sole Recovery and SDC Regional Recovery Area described in Exhibits A and C. The SDC Regional Recovery Area described in Exhibit C is subject to modification by the City of Bend in the future, and may include additional areas not currently identified on the Exhibit. It is the intent of this agreement that all new areas that become served by the Regional Pump station located in the Shadow Glen Development, shall be incorporated into the modified Regional Recovery Area. Any such modification can be initiated by either party, but shall be done in writing and agreed to by both parties.

6.6 SDC Reimbursements for the Main Trunk Line described in Section 5.1 shall be paid from Sewer SDC Improvement Fees collected in the SDC Sole Recovery Area described in Exhibit A.

6.7 The parties shall execute Master Plan Facility Reimbursement Agreements substantially in the form attached hereto as Exhibit I, and such agreements shall determine the basis for SDC reimbursement.

6.8 SDC reimbursement shall be paid according to City policy as invoices and receipts for actual cost of work are received and a determination of Qualified Costs is made by City.

6.9 SDC collections: The parties anticipate that, during the reimbursement period provided by City Policy, sewer SDCs may change. In the event that the change results in SDC revenue available for reimbursement to EHLD that is less than that collected under the current City sewer SDC, then the Parties specifically agree that EHLD may elect to have all developments in Shadow Glen pay SDCs at the rate currently in effect. By this provision, EHLD binds its successors and assigns (including buyers of individual lots) to pay the higher of the SDC currently charged or the new SDC, whichever SDC results in a full reimbursement of Qualified Costs to EHLD. This provision shall not affect SDC collections in the Recovery Area outside of the Shadow Glen development identified in the Land Use Approval, which shall be required to pay SDCs at the rate in effect at the time building permits are issued.

7 OBLIGATIONS OF EHLD

7.1 Obtain an Agreement with the Ridgewater II Association prior to execution of this agreement, to obtain a public sewer easement on a portion of their private streets to allow for the connection of the sewer line from Shadow Glen through Sage Creek Drive to the force main located in Ferguson.

7.2 Record Utility Easements obtained from Ridgewater II Association within 60 days of the execution of this agreement and approval by City on sewer alignment.

7.3 Install a manhole and gravity main stub from 15th Street to the regional pump station location.

7.4 Prepare and submit engineered construction plans to City for the Phase 1 Sewer Improvement Plans as modified by the Agreement prior to plat recordation of Shadow Glen Phase 1. City and EHLD acknowledge that preparation and review time for these plans are on a different schedule than those for Shadow Glen Phase 1. City will allow EHLD to submit separate plan sets for the Phase 1 Sewer Improvements.

7.5 Prepare and submit engineered construction plans to City for the Phase 2 Sewer Improvement Plans prior to plat recordation of Shadow Glen Phase 3, unless another developer has triggered the need for the improvements to be performed. City and EHLD acknowledge that preparation and review time for these plans are on a different schedule than those for Shadow Glen Phase 3. City will allow EHLD to submit separate plan sets for the Phase 2 Sewer Improvements as amended by this Agreement.

7.6 Plan for future expansion of regional pump station by drilling and shooting for future wet well. Improvement will be included within Phase 1 Sewer plans and will be completed with the Shadow Glen Phase 1 improvements.

7.7 Obtain all necessary permits, and pay all applicable permit fees.

7.8 Provide project management for improvements performed.

7.9 Submit qualifying improvements to City for SDC Reimbursement upon completion of the warranty period, and final acceptance by the City.

7.10 Convey Regional Pump Station tract to City with the plat recording of Shadow Glen Phase 1.

8 MUTUAL OBLIGATION

8.1 The Parties shall work in good faith to determine the method to serve the Southeast Corner of the property outside of the Ward Basin as illustrated on Exhibit E. The flows and density from this parcel have been included within the Ward Basin and capacity is allocated within the Main Trunk Line. Choices are pressure systems,

gravity feed or other system. A low pressure system is preferred by EHLD. Determination shall be made prior to plat recordation for Shadow Glen Phase 1.

9 OBLIGATIONS OF CITY

9.1 Provide information on depth and size of gravity main from the existing Murphy Pump Station for wet well depth requirements to EHLD in a timely manner.

9.2 Review submitted designs and plans separately if requested from the Shadow Glen development plans so as to not delay EHLD's construction of either onsite of offsite improvements for Shadow Glen. Review shall be done in a timely manner after submittal by EHLD, however, nothing in this Development Agreement shall require the City to issue permits or approve plans that are not consistent with City's standards and specifications or in accord with other standard City requirements.

9.3 Sign and approve permit applications submitted by EHLD in a timely manner, provided such applications are complete, all fees are paid, and the permit applications comport with all standard City requirements, standards and specifications.

9.4 Facilitate the design and construction of the regional pump station (or equivalent improvement(s)) which shall be sized to include Shadow Glen, the remaining property in the Regional Basin. The design shall consider increased capacity for future zone changes to portions of the Ward Basin that would increase density as identified in Exhibit F. Subject to availability of funds and timely performance by City consultants, the City will make a good faith effort to build the regional sewer pump station on the following schedule:

a. Initiate design during the fall of 2007;

b. Begin construction during the summer of 2008; and

c. Aspire for substantial completion by the winter of 2008 - 2009

9.5 Cooperate with EHLD on the preparation of and processing of documents for SDC Reimbursement in a timely fashion. All requests for review and approval shall be handled as provided by the Reimbursement Agreements.

OTHER PROVISIONS:

10 Schedule and Procedure for Compliance Review. Commencing on the first anniversary of the Effective Date, EHLD shall prepare annual written reports of its compliance with the terms of this Agreement to the City. Such reports shall include an update as to compliance with all schedules set forth herein. After receipt of such reports, the City may request such additional or backup information as it deems reasonably necessary.

11 Applicability of New Rules, Ordinances, Regulations and Policies. To the extent any new City rule, ordinance, regulation or policy is adopted on a jurisdiction-wide basis after the date of this Agreement that is not, in the reasonable discretion of EHLD, inconsistent with the substance, purposes or conditions of this Development Agreement, then the City rule, ordinance, regulation or policy shall be applicable. Changes in state or federal law shall apply according to their terms.

12 Assignability of Agreement. This Agreement shall be fully assignable, in whole or in part, by either Party upon advance written approval of the assignment by City, which approval shall not be unreasonably withheld. Any purported assignment without City's written consent is void. The obligations of this Development Agreement shall run with the land (the EHLD Development) and shall bind and inure to the benefit of the Parties and their respective successors and assigns. If any portion (other than lot sales to individuals or builders) of the EHLD Property is sold, the duties, rights and interests of EHLD under this Agreement shall become the duties, rights and responsibilities of the purchaser and EHLD. Notwithstanding the foregoing, no purchaser of an individual lot(s) shall have any rights hereunder.

13 Schedule. This Agreement provides a schedule and timeline for performance of the Parties to this Development Agreement.

14 Defaults. A breach of a material provision of any part of this Agreement, whether by action or inaction of a Party which continues and is not remedied within thirty (30) days after the other Party has given notice specifying the breach shall constitute a default by the non-notifying Party. If the breach is of such a nature that it cannot reasonably be cured within such thirty-day period, the cure period shall be extended to such amount of time as is reasonable but only if the breaching Party promptly commences, and thereafter diligently prosecutes, such cure. Failure of EHLD to complete its obligations under this Development Agreement shall serve as a basis for denying building permits in Shadow Glen.

15 The exercise by either Party of any one or more of such remedies available to it shall not preclude the exercise by it, at the same or different time, of any other such remedy for the same default or breach or of any of its remedies for any other default or breach by the other Party, including, without limitation, the right to compel specific performance.

16 Release of Development Agreement. The City shall release developed lots from this Development Agreement upon the request of EHLD provided that the terms and conditions of this Development Agreement have been performed as they relate to the lot to be released.

17 Force Majeure. In the event that any Party (the "Delayed Party") is delayed or prevented from performing any of its obligations under this Agreement by reason of strikes, lockouts, labor problems, inability to procure materials, contractors, professionals, inability to obtain utilities or failure of utilities, laws or other

governmental requirements, riots, war, or other cause not brought about by the Delayed Party, and not related to any financial liability on the part of the Delayed Party, the time for performance of the obligation shall be extended by a period of time equal to the period of such delay or prevention.

18 Notices. Any notice, demand, request, approval, consent, or other communication (collectively referred to as a "Notice") concerning this Agreement or any matter arising in connection with this Agreement shall be in writing and addressed to the other Party at the address set forth below. Any Notice shall be given by either: (i) personal delivery in which event it shall be deemed given on the date of delivery; or (ii) certified mail return receipt requested in which event it shall be deemed given three (3) business days after the date deposited in any post office, branch post office, or official depository. Any Party may change any address for the delivery of Notice to such Party, by giving Notice in accordance with the provisions of this Section. The attorneys for the Parties may give any Notice.

Notices Addresses:

If to EHLD:
Elk Horn Land Development Inc.
63088 NE 18 Street Suite 100
Bend, OR 97701
Attn: Dan Goodrich

With a copy to:
Ball Janik LLP
15 SW Colorado, Suite K
Bend, Oregon 97702
Attn: Laura Craska Cooper

If to City:
City of Bend
Engineering Division
710 N.W. Wall
Bend, OR 97701
Attn: City Engineer

and

City of Bend
Finance Departments
710 NW Wall St
Bend, OR 97701

19 MISCELLANEOUS

19.1 City Funding. The Parties agree that any provision herein which requires the City to expend funds is contingent upon future appropriations as part of the City budget process as provided in ORS 94.504(5). Nothing herein requires the City to appropriate such funds.

19.2 Waivers. No covenant, term or condition of this Agreement shall be deemed to have been waived by any Party, unless such waiver is in writing signed by the Party charged with such waiver. Any waiver of any provision of this Agreement, or any right or remedy, given on any one or more occasions shall not be deemed a waiver with respect to any other occasion.

19.2 Entire Agreement/Modifications. This Agreement, along with all exhibits incorporated therein constitutes the entire agreement between and among the Parties with respect to the subject matter herein contained and all prior negotiations, discussions, writings and agreements between the Parties with respect to the subject matter herein contained are superseded and of no further force and effect. This Agreement cannot be amended or modified without a writing signed by all of the Parties hereto.

19.3 Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be an original and all of which, when taken together, shall constitute one and the same instrument.

19.4 Captions. The captions contained in this Agreement were inserted for the convenience of reference only. They do not in any manner define, limit, or describe the provisions of this Agreement or the intentions of the Parties.

19.5 Gender/Singular/Plural. Whenever masculine, feminine, neuter, singular, plural, conjunctive, or disjunctive terms are used in this Agreement, they shall be construed to read in whatever form is appropriate to make this Agreement applicable to all the Parties and all circumstances, except where the context of this Agreement clearly dictates otherwise.

19.6 Severability. The unenforceability or invalidity of any provisions hereof shall not render any other provision herein contained unenforceable or invalid.

19.7 Time of Essence. Time is of the essence of this Agreement.

19.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

19.9 Indemnity. Each party shall comply with all applicable laws in performance of this agreement. Each party shall be responsible for any torts committed by such party. EHLD specifically accepts the responsibility to comply with prevailing wage and hour laws in performance of this agreement, and shall indemnify, defend and hold City harmless from any claim that it failed to do so.

19.10 PFIA. EHLD shall execute a standard City of Bend Public Facility Improvement Agreement with City, attached hereto as Exhibit J.

19.11 Except as otherwise specifically provided herein, all terms, conditions and obligations of the Land Use Approval shall continue to apply.

19.12 The duration of this Development Agreement is 15 years from the date of execution. The SDC Reimbursement period for SDC Reimbursements provided in Section 6 of this Agreement shall be 10 years from the date the qualified improvements are accepted by the City.

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date set forth in the first paragraph of this Agreement.

"EHLD"

ELK HORN LAND DEVELOPMENT INC.
an Oregon Corporation

By: Nancy E Kawalski
Name: NANCY E. KAWALSKI
Title: VP LAND ACQUISITIONS FINANCING

"CITY"

CITY OF BEND, an Oregon Municipal Corporation

By: Harold A. Anderson
Name: Harold A Anderson
Title: City Manager

OFFICIAL SEAL
CHERYL REINERTSON
NOTARY PUBLIC-OREGON
COMMISSION NO. 400919
MY COMMISSION EXPIRES JANUARY 9, 2010

STATE OF OREGON)
)ss.
COUNTY OF DESCHUTES)

This instrument was acknowledged before me on August 30 2007 by Nancy E. Kowalski as Vice President Land Acquisition & Financing of Elk Horn Land Development Inc.

Cheryl Reinertson

Signature of Notarial Officer
My Commission Expires: Jan. 9, 2010

STATE OF OREGON)
)ss.
COUNTY OF DESCHUTES)

This instrument was acknowledged before me on 9/11/07 by Harold A Anderson as City Manager of the City of Bend.

OFFICIAL SEAL
KIM PARSONS
NOTARY PUBLIC-OREGON
COMMISSION NO. 375857
MY COMMISSION EXPIRES JAN. 6, 2008

Kim Parsons

Signature of Notarial Officer
My Commission Expires: 1/6/08

Exhibit A

Shadow Glen Property and SDC Sole Recovery Area

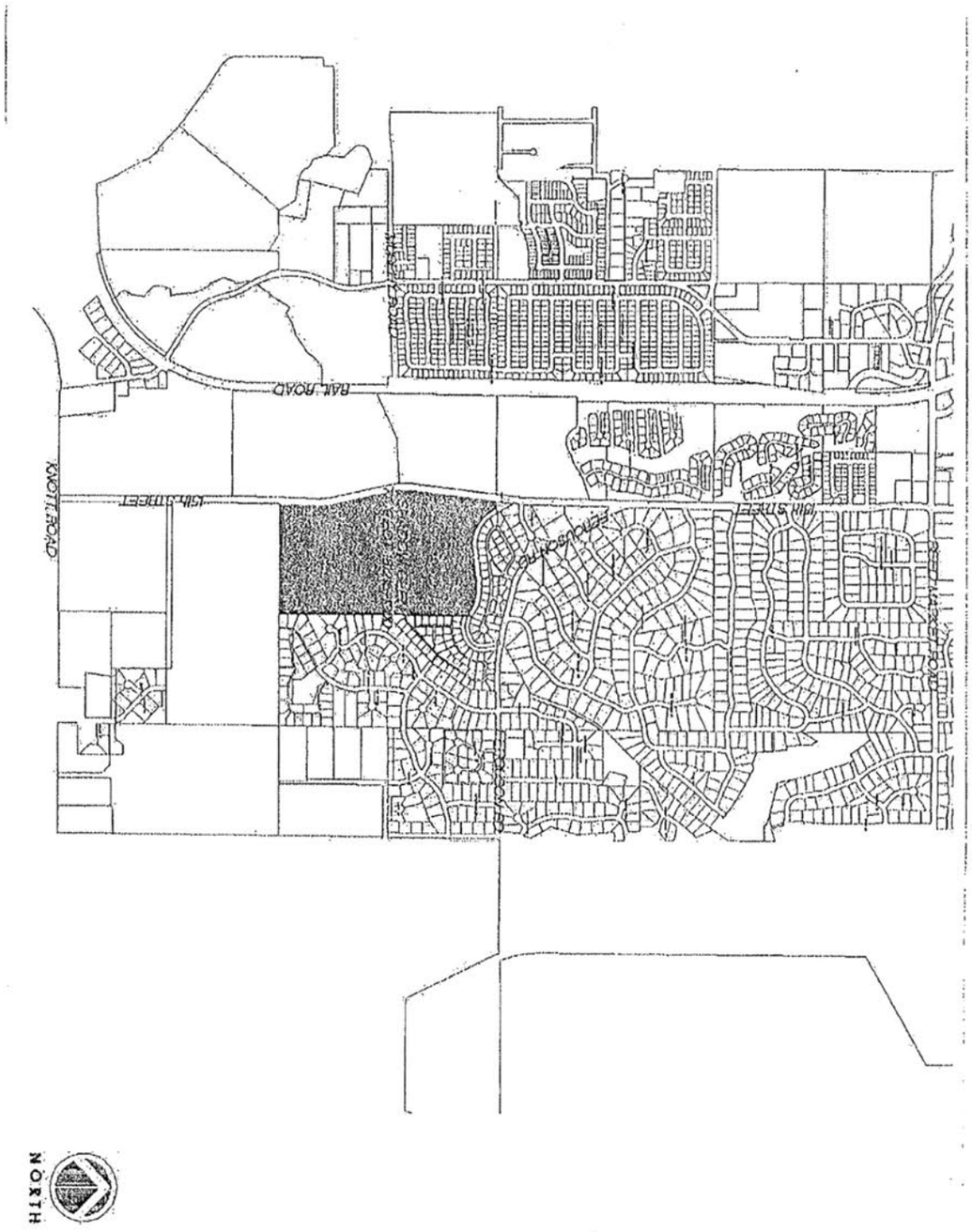


Exhibit B

Sewer Improvements

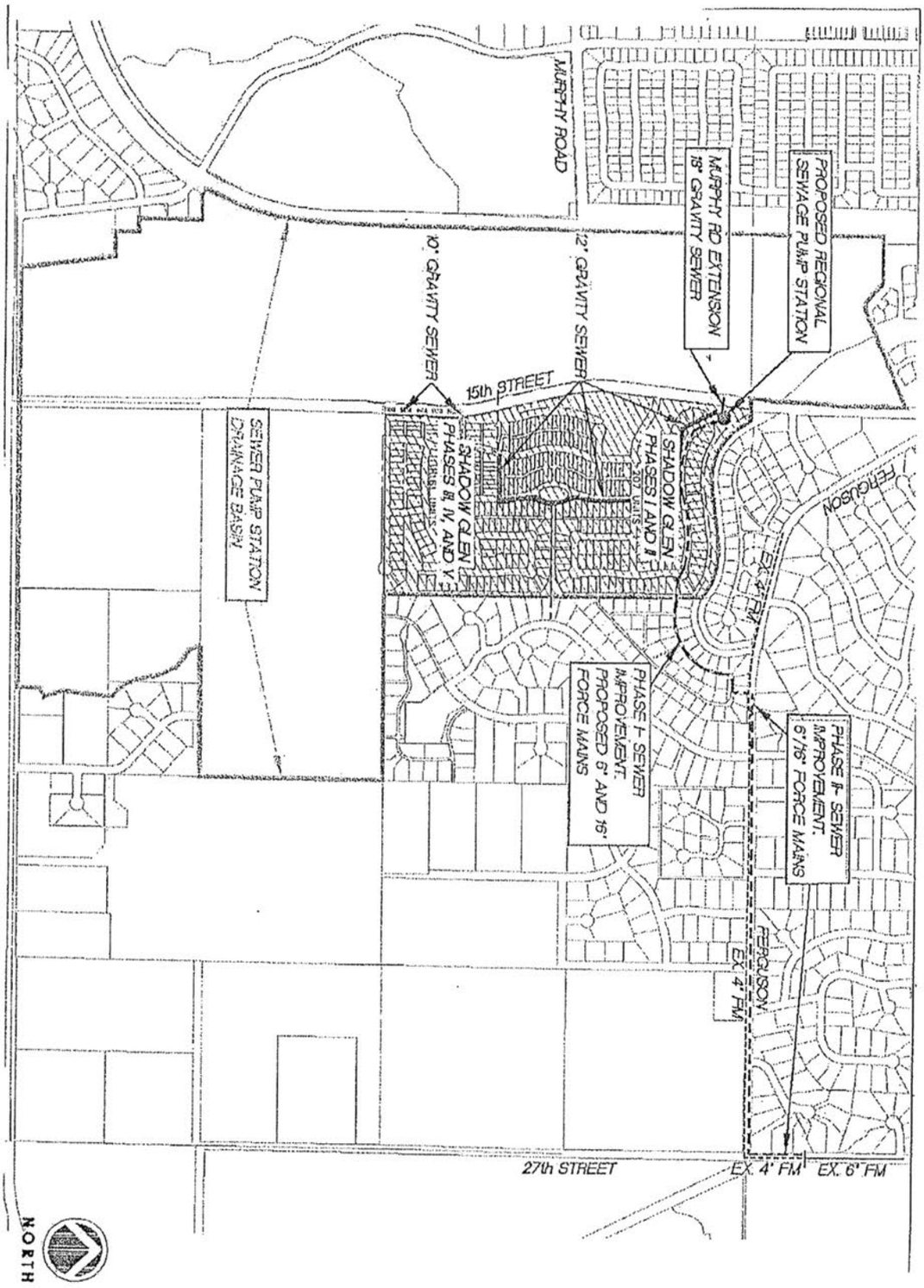


Exhibit C

Regional Pump Station Basin and SDC Regional Recovery Area

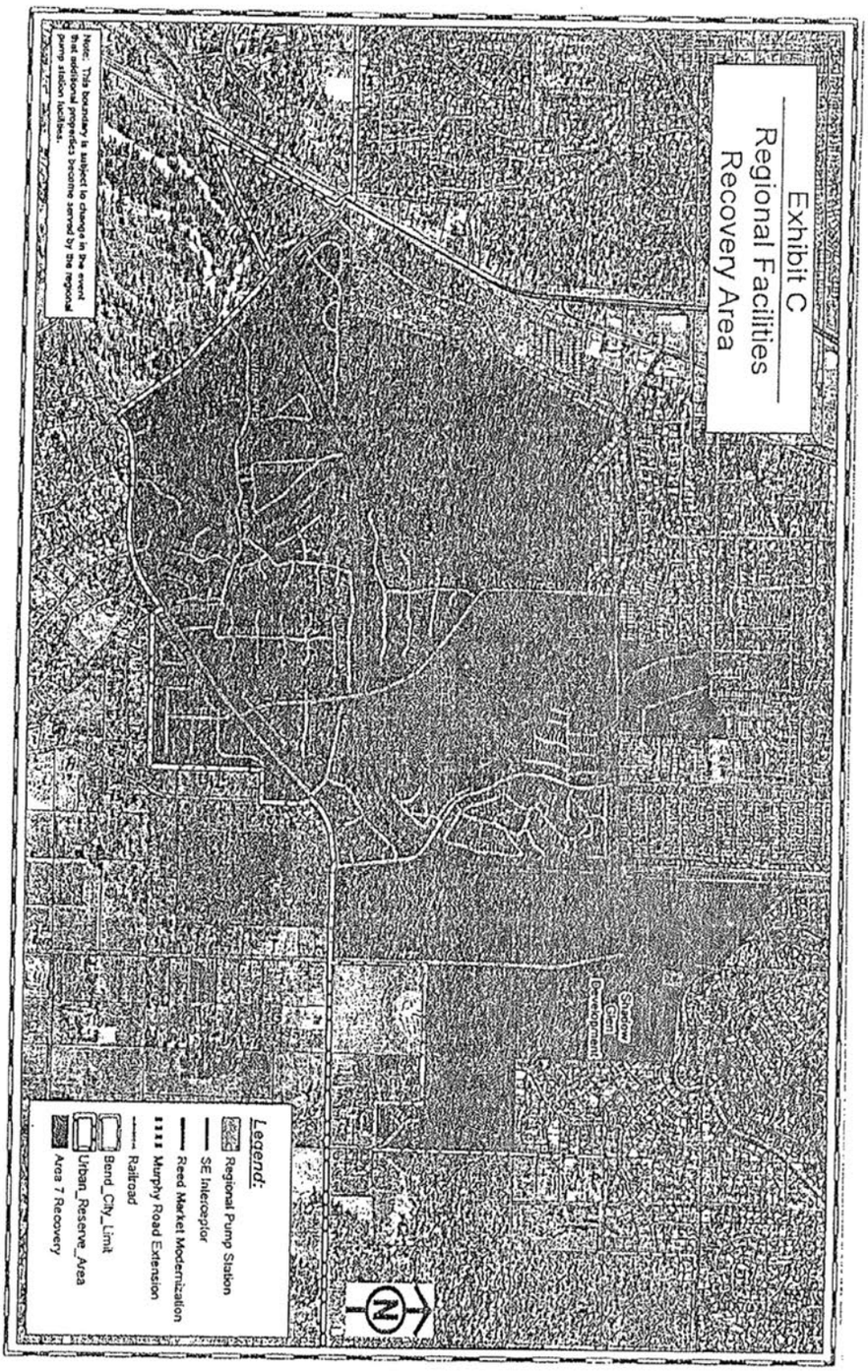


Exhibit D

Shadow Glen Regional Pump Station

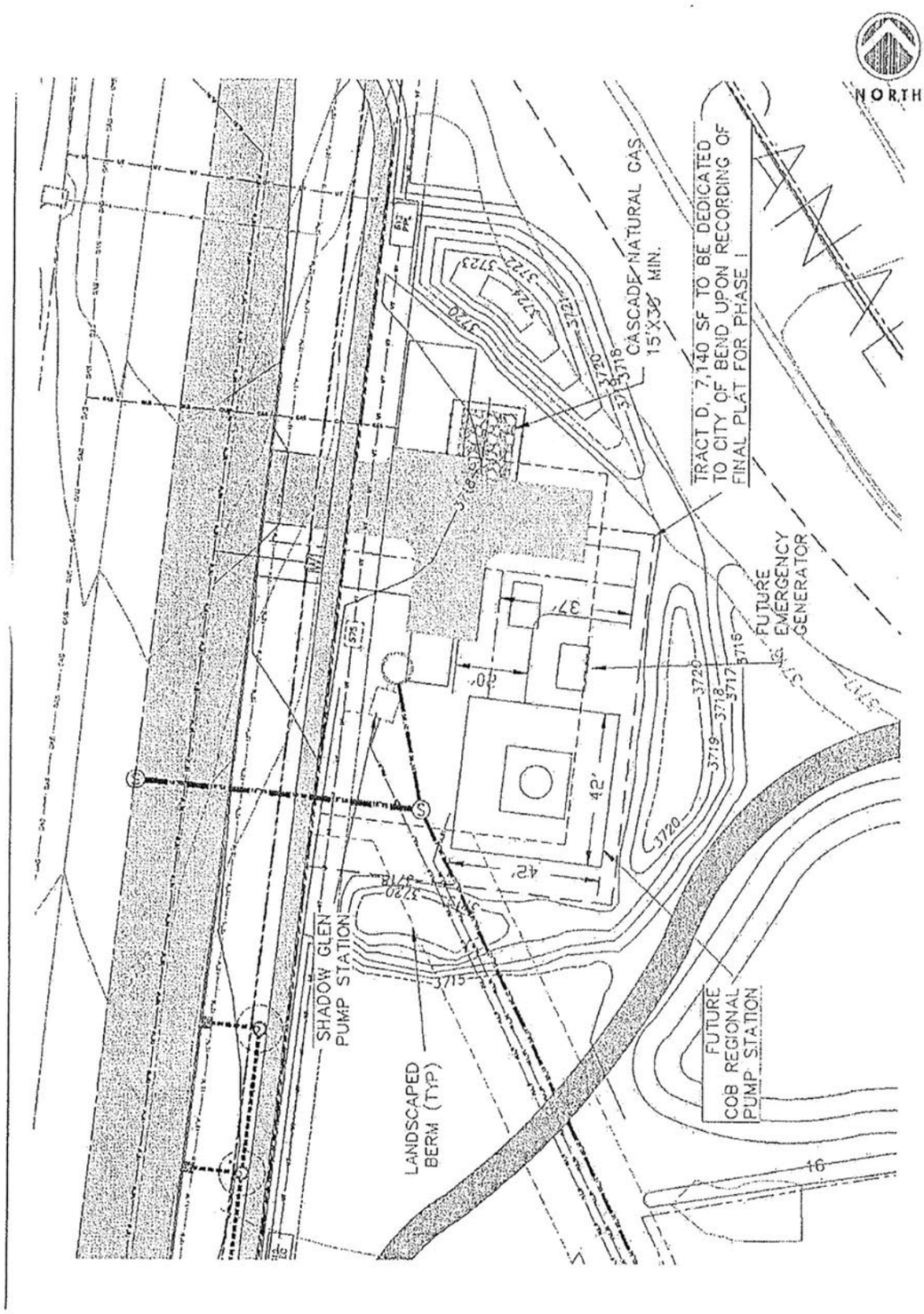


Exhibit E

Ward Basin Area Map

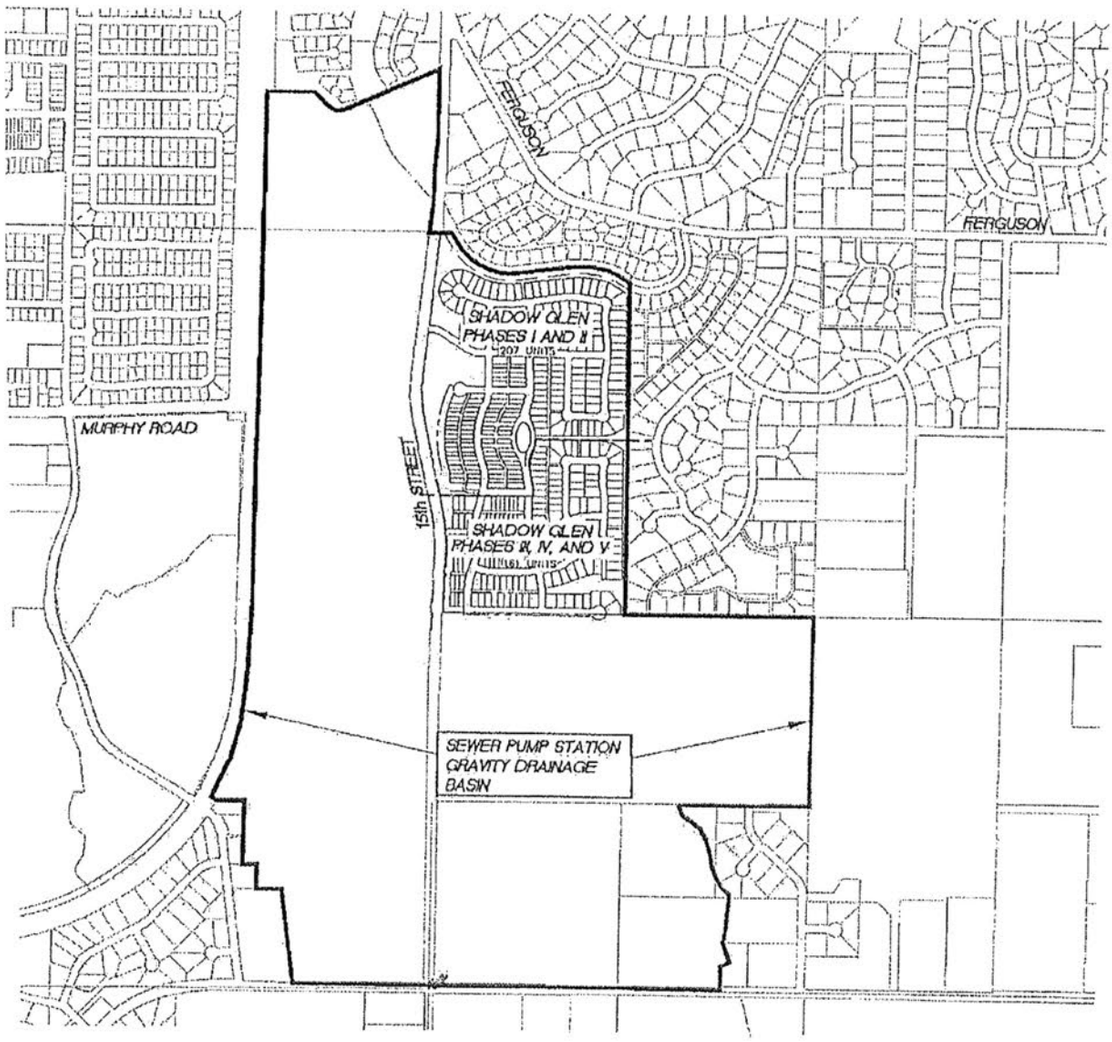


Exhibit F

Ward Basin and Additional Density Calculations

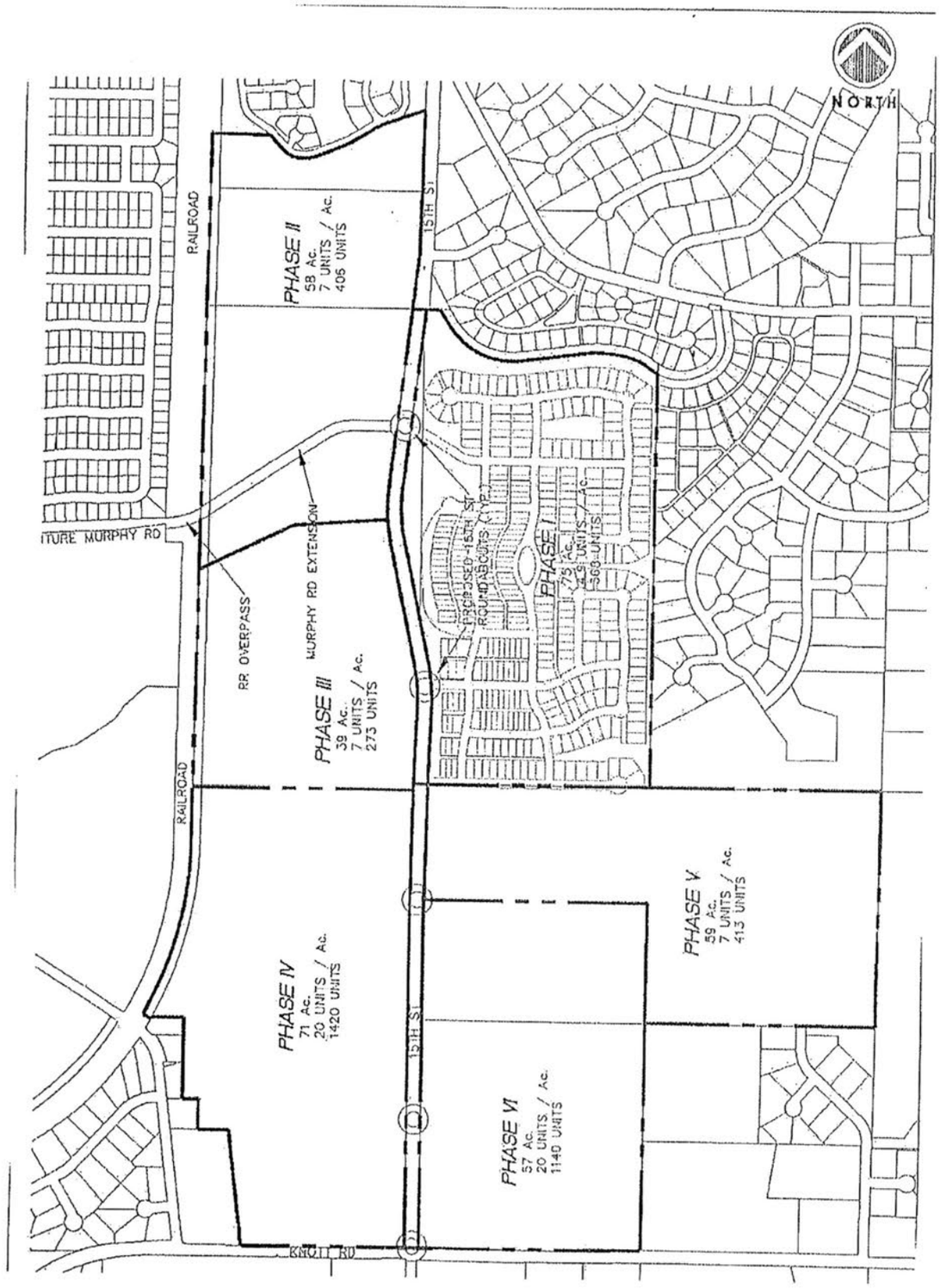


Exhibit G

Cash Contributions

Ridgewater II Sewer

Item	Unit	Est. Unit Cost	Est. Total Cost
1.5" AC Overlay - SY	4280	$7	$27,820
No Parking' Stripe-Ea	14	$50	$700
4" White Stripe-lf	790	$0.35	$277
Raising Property Pins-LS	1	$5,300.00	$5,300
Adj Manhole Rims-EA	11	$200.00	$2,200
Adj Water Valves-EA	9	$200.00	$1,800
		SUBTOTAL	$38,097

Drilling and Blasting for Regional Pump Station

Item	Unit	Est. Unit Cost	Est. Total Cost
Drill and Blast	1	$18,000	$18,000
		SUBTOTAL	$18,000

Emergency Generator for Sewage Pump Station

Item	Unit	Est. Unit Cost	Est. Total Cost
Generator	1	$35,000	$35,000
Generator Pad	1	$1,000	$1,000
		SUBTOTAL	$36,000

1" Water Service for Pump Station

Item	Unit	Est. Unit Cost	Est. Total Cost
1" Water Service with meter	1	$2,000	$2,000
SDC	1	$3,385	$3,385
		SUBTOTAL	$5,385

18" Murphy Extension Gravity Sewer

Item	Unit	Est. Unit Cost	Est. Total Cost
18" Sewer Main - lf	80	$125	$10,000
Manhole	1	$2,400	$2,400
		SUBTOTAL	$12,400

Regional Pump Station Design Work

Item	Unit	Est. Unit Cost	Est. Total Cost
Engineering Design	1	$9,000	$9,000
		SUBTOTAL	$9,000
		TOTAL	$118,882

The costs identified above are based upon developer's best faith estimate of material quantities and prices in May 2007, and knowledge of the work to be performed. Some of the work identified above will be done at a future date. The above estimates are estimates only and should not be construed as a 'not to exceed amount', as the future pricing of materials, quantities, and work specifics cannot be known at this time. All improvements performed and submitted for reimbursement shall be accompanied by actual invoices identifying the work, quantities and pricing shall be submitted for reimbursement at that time.

City of Bend
Systems Development Charge Credit Reimbursement
Sewer Policy No. 4

Section 1. **Purpose:**

It shall be the policy of the City of Bend that expansions to the City's sewer system shall only be accomplished as directed by the City. The timing and financing of system expansions shall be as provided in this policy.

Expansions to the sewer system that involve the extension of collection systems within new developments shall be accomplished by developers, at their cost and according to City approved development plans.

Extensions of the sewer system that involve the construction of interceptor, main and truck lines or permanent pumping facilities shall be accomplished pursuant to the City's Master Plan. It is anticipated that these improvements will be financed by funds generated from systems development charges, other sewer fund resources or by developers as provided below. The timing of improvements to be constructed by the City will be subject to the availability of City funds to finance them.

Section 2. **Procedure:**

Developers who wish to expand the City's sewer system by constructing collection lines or pumping improvements may do so according to the following procedure:

2.1 Prior City approval will be required.

2.2 An executed agreement between the developer and the City shall be required and shall set forth the development requirements as well as any SDC credit and/or SDC reimbursement, if available.

2.3 All improvements must be constructed according to applicable City standards, rules and regulations, including the City's Master Plan, as determined by the City Engineer.

2.4 All of the cost of such improvements shall be paid by the developer.

2.5 The developer's costs associated with the construction of these qualified public improvements may be eligible for a system

development charge (SDC) credit and/or SDC reimbursement as provided in this policy.

Section 3. **SDC Credit:**

The SDC credit shall be determined first and shall:

3.1 Only be available for qualified public improvements as defined in Oregon Revised Statutes (ORS) 223.304(3)(i.e., improvements that are required as a condition of development and identified in the City's Master Plan).

3.2 Be a credit against only the improvement fee portion of the SDC. The improvement fee portion against which the credit may be applied shall be calculated by using the methodology as it is employed in the City's SDC Ordinance and Resolution. If less than the maximum allowable SDC is charged in the Resolution, the percentage of the maximum allowable SDC used shall also be used to determine that portion of the improvement fee against which the SDC credit can be applied.

e.g., If a developer incurs $100,000 for collection, main lines and pumping improvement costs of which $40,000 is related to qualified improvements, and, if the development has 20 lots and the SDC improvement fee is 60% of the maximum allowable SDC improvement fee of $565.00, or $339.00, the SDC credit would be $6,780.00 (20 * $339.00). If the development included 100 lots the SDC credit would be limited to $24,000 as the SDC improvement fee times the number of lots (100 * $339.00 = $33,900.00) exceeds the qualified costs subject to the SDC credit times the percentage of the maximum allowable SDC improvement fee.

3.3 The amount of the credit shall not exceed the improvement fee as calculated above.

Section 4. **SDC Reimbursement:**

In addition to the SDC credit a developer may be eligible for SDC reimbursement. SDC reimbursement shall be determined as follows:

4.1 The maximum SDC reimbursement shall be limited to the collection lines or pumping improvement costs expended by the developer, as determined by the City Engineer, times the percentage of the

maximum allowable SDC in place at the time of executing an agreement with the City, less any SDC credit related to the improvements. There shall be no SDC reimbursement if the SDC credit exceeds the maximum SDC reimbursement. Qualified costs of collection lines or pumping improvements shall include actual construction costs, including actual expenditures for engineering and/or surveying, and a reasonable allowance for administrative expenditures.

Section 5. **SDC Credit and Reimbursement - Collection and Payment Procedures:**

5.1 SDC credit and SDC reimbursement will be collected and paid as follows:

5.2 The current SDC, as established by the Bend City Council, shall be collected by the City on all building permits issued by the City or with other agreements as applicable. The SDC has two components; an improvement fee for future system improvements and a reimbursement fee for existing or in-progress improvements.

5.3 SDC improvement fees collected by the City shall be paid to developers and retained by the City in accordance with this policy.

5.4 SDC reimbursement fees collected by the City shall be retained by the City to reimburse the City for previous system expenditures, related debt service or future improvements.

Section 6. **Shared / Sole Recovery Areas:**

6.1 The area served or to be served by the City's sewer system will be categorized as either shared recovery area or as sole recovery area. Sole recovery areas shall be determined by the City Engineer and shall include only the developer's property that is to be served by the approved master plan facilities constructed by the developer. Shared recovery area shall include all area served or to be served by the City's sewer system that is not otherwise designated as sole recovery area.

6.2 SDC improvement fees collected from each sole recovery area shall be applied as follows:

6.2..1 SDC credit due the developer of the sole recovery property, until paid.

6.2.2 SDC reimbursement due the developer of the sole recovery property, until paid or until the 10 year recovery period expires.

6.2.3. Once items 1 and 2 are met the sole recovery property shall become shared recovery area.

6.3 SDC improvement fees collected from the shared recovery area shall be applied as follows:

6.3.1 To developers with outstanding SDC credit and SDC reimbursement balances, including the City, in proportion to the outstanding SDC credit and SDC reimbursement balances, at the end of the repayment period, of all developers, including the City, participating in the shared recovery area.

6.4 SDC improvement fees collected and paid to developers from the shared recovery area shall be limited to the amount of SDC credit and/or SDC reimbursement that would not otherwise be collectible from SDC improvement fees within a developer's sole recovery area.

6.5 There shall be no payment made, for either the SDC credit or SDC reimbursement, to the developer from any SDC improvement fee collected within the sole recovery area or shared recovery area until the source, storage or transmission improvements are accepted by the City.

6.6 There shall be no SDC credit or SDC reimbursement paid after 10 years from the date the qualified improvements are accepted by the City.

6.7 A sole recovery area shall become shared recovery area when the developer has been paid the SDC credit and/or SDC reimbursement in full, or the SDC credit is paid in full and the 10 year SDC reimbursement period expires.

Section 7. <u>Payment Schedule:</u>

7.1 Payment of SDC credit and SDC reimbursement amounts shall be payable annually by the City for SDC improvement fees collected by the City from January 1 through December 31 of each year by January 31 of the year following collection by City.

7.2 No interest shall accrue on SDC credit or SDC reimbursement payable to developers.

7.3 There shall be no adjustments made to the amount of any SDC credit or SDC reimbursement amount as a result of inflation.

Section 8. **Assignment of Claims:**

8.1 Claims for SDC credit and SDC reimbursement are personal and may not be assigned without the written consent of City.

Section 9. **Future Changes to Maximum Allowable SDC:**

9.1 Future changes by the City of the maximum allowable SDC or the percentage of the maximum allowable SDC imposed shall neither increase or decrease the SDC credit or SDC reimbursement determined above, however, if the percentage of the maximum allowable SDC is changed, all active public improvement agreements will be reviewed, and if necessary, SDC credit and/or SDC reimbursement amounts to be collected and reimbursed developers from sole and shared recovery areas will be recalculated in accordance with this policy.

Section 10. **City's Obligation to Pay:**

10.1 The City's obligation to pay or apply SDC credit or SDC reimbursement shall be limited to SDC improvement fees actually collected by the City as provided in this policy. City's obligation to pay or apply SDC credit or SDC reimbursement from SDC improvement fees collected shall be further limited to the total of the SDC credit and SDC reimbursement calculated as provided in this policy. Payment of SDC credit and SDC reimbursement shall be subject to prior reimbursement claims which are payable from SDC collections. Persons who receive, or are entitled to claim, SDC credit or SDC reimbursement shall indemnify and hold the City harmless in the event the City is subject to claims by others for SDC credit or SDC reimbursement for the same improvements. City shall have the right to set off the amount of any competing claims for SDC credit or SDC reimbursement against prior claims for the same SDC credit or SDC

reimbursement if in the City's judgment it becomes necessary to do so.

Section 11. Applicability:

11.1 This policy shall apply to all eligible improvements installed and accepted after City Resolution #2064 which established sewer SDCs effective May 6, 1993.

EXHIBIT I

MASTER PLAN FACILITY REIMBURSEMENT AGREEMENT

The **CITY OF BEND**, an Oregon municipal corporation, hereinafter referred to as "CITY" and _____, hereinafter referred to as "DEVELOPER" agree as follows:

DEVELOPER has received, read and understands City's public facility improvement policies which are attached to the Applicable Public Facility Improvement agreement. The terms used in this agreement have the meanings assigned to them by City's policies unless specifically provided otherwise in this agreement. All provisions of the City of Bend's Policies are made a part of this agreement. Developer understands and agrees that City's SDC reimbursement policies may be changed by the Bend City Council and that the amount of the SDCs collected may change. Developer fully accepts any risk of reduced reimbursement (including termination of any reimbursement) that may result from future City Council action.

DEVELOPER shall comply with and meet all requirements specific to this development as stipulated in the City of Bend Land Use Decision and Development Agreement (attached to this agreement and identified as Exhibit *"A"*), including additional conditions for public facility improvements not mentioned above.

DEVELOPER understands and acknowledges if master plan facilities, as defined and approved by the City Engineer, are constructed and ultimately approved by the City, Developer is eligible for a system development charge reimbursement entitlement pursuant to City policy, rules and regulations now in effect and as such policies, rules and regulations may be amended in the future. Future amendments may result in less money being reimbursed than is currently estimated. The estimate of the potential reimbursement is shown on Exhibit "B" and is attached to this agreement. Developer acknowledges that the calculations on Exhibit B are estimates only, based on current policies. This document does not create a contractual obligation requiring the City to reimburse the amount shown on Exhibit B or any other amount. Developer accepts the risk that actual reimbursement amounts may vary from (and may be less than) the estimates on Exhibit B, due to reduced SDC collections or changes in SDC methodology or reimbursement policy.

DEVELOPER must submit actual invoices, receipts and cancelled checks to the City to establish qualified costs. City approval of qualified costs will be required prior to payment to Developer pursuant to City policy.

DEVELOPER agrees that system development charges (SDCs) improvement fees collected from the sole recovery area will be applied as SDC credit or SDC reimbursement due Developer, according to City policy as it may be amended from time to time, commencing from the date of this agreement. SDC improvement fees collected from the sole recovery area prior to the date of this agreement will not be applied as SDC credit or SDC reimbursement due Developer.

DEVELOPER agrees that payment of SDC improvement fees collected by the City and applied as SDC credit and SDC reimbursement due Developer shall begin from the date the qualified improvements are accepted by the City and shall be payable annually by the City pursuant to City policy. No SDC improvement fees shall be paid to Developer prior to qualified improvements being accepted by the City.

No interest shall accrue on SDC credit or SDC reimbursement payable to Developer.

DEVELOPER agrees that there shall be no SDC credit or SDC reimbursement paid after 10 years from the date the qualified improvements are accepted by the City.

DEVELOPER agrees that this agreement constitutes the entire reimbursement agreement for the master plan improvements to be constructed by Developer. Developer is solely responsible for reimbursement to any other developers or other parties for contributions that such other developers or third parties may make to fund Developer's improvements. If Developer receives such contributions from other developers or other parties, Developer will be responsible for determining and administering SDC credits and reimbursements if any, to the other developers or other parties. Developer will indemnify, defend and hold the City harmless from any claims for reimbursement asserted against the City by another person or entity that makes a claim for the same reimbursement money. Developer will not hold the City responsible for determining or administering SDC credits and reimbursements to other developers or other parties for such contributions.

In accordance with Street Policy No. 5, SDC credits and reimbursements shall not be assigned without the written consent of the City.

DEVELOPER agrees that any future or subsequent Master Plan Facility Reimbursement Agreements that Developer enters into with the City will be considered subordinate to this agreement. SDC improvement fees collected from the sole recovery area will be applied first to SDC credits and reimbursements under this agreement, then to SDC credits and reimbursements under subsequent agreements if any.

DEVELOPER agrees that this agreement is subordinated to any previous Master Plan Facility Reimbursement Agreement or any other agreement to reimburse SDCs that the Developer may have entered into with the City. SDC improvement fees collected from the sole recovery area will be applied first to SDC credits and reimbursements under the prior agreement if any, and then to SDC credits and reimbursements under this agreement.

Dated this _____ day of _____, 2007.

Developer

_____

By:

_____

_____
Print Name and Title

CITY OF BEND

_____
Harold A. Anderson, City Manager

REVIEWED BY

_____ _____ _____
Planning Manager Asst. Finance Director Engineering

EXHIBIT J

LICENSE

PUBLIC FACILITY IMPROVEMENT AGREEMENT:

☐ STREET ☐ SEWER ☐ WATER ☐ MASTER PLAN ☐ OTHER

The CITY OF BEND, an Oregon municipal corporation, hereinafter referred to as "CITY" and _____, hereinafter referred to as "DEVELOPER" agree as follows:

1. In this License and Public Facilities Improvement Agreement ("PFIA") is applicable to the construction of _____ _____ in Bend. DEVELOPER represents to CITY that DEVELOPER has all necessary approvals from all persons or entities owning land affected by the construction of _____ _____ _____ in Bend (called "the Improvement(s)") to commence and complete construction of the Improvement(s). DEVELOPER represents that landowners in said area will be notified of project improvement(s) and schedule of activity.

2. CITY and DEVELOPER recognize that a land use decision has been made permitting the Improvement(s) to go forward. This PFIA adds to, but does not supercede any provision of the land use approval.

GENERAL CONDITIONS

1. DEVELOPER has received, read and understands City's public facility improvement policies. The terms used in this agreement have the meanings assigned to them by City's policies unless specifically provided otherwise in this agreement.

   1.1 DEVELOPER desires to construct the Improvement(s) in Bend. DEVELOPER shall be solely responsible for payment of all costs of construction of the Improvement(s).

   1.2 The DEVELOPER and City intend that this agreement shall constitute a covenant running with the land, binding on the DEVELOPER and the DEVELOPER'S heirs, successors, creditors or assigns.

   1.3 DEVELOPER agrees to pay applicable sewer, water and street System Development Charges (SDC's) in accordance with City policies.

PROVISION OF PUBLIC FACILITY IMPROVEMENTS

2. **IMPROVEMENT(S)** shall be supplied only through components constructed by City approved contractor, installed to City Standards and Specifications and owned by City. All facilities shall be installed within public right of ways and easements. City shall provide all approvals under this PFIA in writing, in advance.

2.1 City shall not be deemed to have accepted the Improvement(s) installed by DEVELOPER until City does so in writing and a Maintenance Agreement between the City and DEVELOPER is established.

3.8 DEVELOPER shall promptly pay all charges for City services when due. Charges shall be as prescribed by the appropriate schedule and may be changed from time to time.

2.3 No other use of CITY services or CITY facilities shall be permitted without express written consent of the CITY.

2.4 DEVELOPER, when constructing Improvement(s), shall comply with all applicable governmental laws, rules and regulations including but not limited to CITY ordinances, resolutions and the provisions of City public facility improvement policies as they now exist and as they may be changed from time to time. Any failure to comply with all terms and conditions of this agreement shall entitle CITY to terminate facility improvement services at CITY'S sole discretion.

2.5 DEVELOPER shall submit all construction documents for CITY approval in advance (including plans for signage and traffic flow during construction, if applicable), and DEVELOPER shall not commence construction until CITY has given full approval of all plans.

EXTENSION OF PUBLIC FACILITY IMPROVEMENTS

3. **DEVELOPER** shall comply with the following conditions with regard to the Improvement(s):

3.1 DEVELOPER agrees to perform all work necessary for the construction of the Improvement(s) at DEVELOPER'S sole expense and in accordance with the City's Standards and Specifications, within 120 days from the commencement of physical construction of the Improvement(s) unless extended by City in writing. Regardless of the commencement date of physical construction of the Improvement(s), DEVELOPER agrees to complete all work related to construction of the Improvement(s) within one year of the date of this agreement, or shall be deemed to be in default of DEVELOPER's obligations hereunder. Other events of default shall include: *Insolvency:* Insolvency of Developer; an assignment by Developer for the benefit of creditors; the filing by Developer of a voluntary petition in bankruptcy; an adjudication that Developer is bankrupt or the appointment of a receiver of the properties of Developer and the receiver is not discharged within 30 days; the filing of an involuntary petition of bankruptcy and failure of Developer to secure a dismissal of the petition within 30 days after filing; attachment of or the levying of execution on the leasehold interest and failure of

Developer to secure discharge of the attachment or release of the levy of execution within ten days.

Default in Development: Failure of Developer to actively pursue completion of the Improvement(s) required by the land use approval and this Public Facilities Improvement Agreement/License in the manner reasonably necessary to complete construction of the Improvement(s) within 12 months of the date of execution of the Public Facilities Improvement Agreement/License.

3.2 The person, firm or corporation performing the work shall have construction liability coverage. Coverage shall be in the amount of a one million dollars combined single limit for bodily injury liability and property damage. DEVELOPER shall hold City harmless and indemnify City from any liability of any kind in connection with activities resulting from this agreement. DEVELOPER shall furnish to CITY a certificate evidencing the insurance coverage before physical construction is commenced.

3.3 DEVELOPER agrees to submit to the City a statement of all costs incurred on the project upon completion of the project.

3.4 City will charge appropriate fees for services rendered to DEVELOPER.

3.5 DEVELOPER agrees to obtain an Oregon State Highway, City or County street cut permit prior to any construction in right of ways, if applicable.

3.6 When required by CITY, DEVELOPER agrees to deliver to CITY "AS BUILT" reproducible drawings of the completed work, signed by an Oregon professional engineer prior to acceptance of the work by CITY.

3.7 The total amount due and payable upon signing this agreement is listed on Exhibit "C".

3.8 DEVELOPER hereby grants CITY a license to enter and remain on DEVELOPER's property for the purpose of inspecting public facility Improvement(s) constructed pursuant to this Agreement, including, but not limited to, any water lines, meters, backflow prevention devices, sewer lines, streets, test cocks and other facilities.

ADDITIONAL CONDITIONS

REQUIREMENTS FOR MODIFICATION OF WATER FACILITIES

DEVELOPER agrees to perform all work necessary to install, relocate or modify water service lines with meters and housings if required. Said installations to be completed in accordance with Exhibit "B", and City Standards and Specifications. If any meters are

required, they shall be installed by contractor, must be stamped and registered by CITY Public Works Department prior to installation.

DEVELOPER agrees to perform all work necessary to install on DEVELOPER'S property at a City approved location any necessary backflow prevention device approved by the Oregon State Health Division and the City of Bend Standards and Specifications if required. This device must pass inspection by a certified backflow prevention inspector. DEVELOPER agrees to have test cocks installed on this device as shown in the specifications. DEVELOPER also agrees to comply with the annual requirement for checking the backflow protection valves at DEVELOPER'S expense.

☐ Not required ☐ Double check type ☐ Reduced Pressure Type

FIRE SERVICES: When required, fire services will be included on Exhibit "B", including locations of all fire services and associated backflow devices.

FOR PROVISION OF SEWER FACILITIES

If the Improvement(s) require(s) the construction or relocation of any sewer facility, DEVELOPER shall obtain all necessary permits from the City of Bend Public Works Department.

FOR PROVISION OF STREET FACILITIES

DEVELOPER shall construct all required public and private street Improvement(s) according to the CITY Street Policies, where applicable, and according to the plans and specifications on the engineering documents submitted to CITY for approval before construction of the Improvement(s) commences. DEVELOPER will submit for approval and comply with the provisions of all signage and traffic flow plans submitted to CITY and approved by CITY. DEVELOPER will also comply with all the terms of the land use approval previously granted by CITY. CITY shall review and approve all private street Improvement(s) in accordance with the City of Bend Zoning Ordinance.

LAND USE DECISION REQUIREMENTS

DEVELOPER shall comply with and meet all requirements specific to this development as stipulated in the City of Bend Land Use Decision and/or Development Agreement, including additional conditions for public facility improvements not mentioned above.

BUILDING PERMIT ISSUANCE POLICY

DEVELOPER acknowledges that City policy prohibits release of building permits for new construction requiring a land use permit until all of the required public facility Improvement(s) for the project have been completed, approved by the City, and the one-year warranty (maintenance) period has begun.

DEVELOPER'S OBLIGATION TO COMPLY WITH ALL LAWS, AND TO INDEMNIFY, DEFEND AND HOLD CITY HARMLESS

As a condition of this PFIA, DEVELOPER agrees to be solely responsible for compliance with all state, federal and local laws that pertain to this PFIA and the construction of the Improvement(s). DEVELOPER shall fully indemnify, defend and hold CITY harmless from any and all claims arising or connected to this PFIA, including claims arising from construction of the Improvement(s) and claims that may arise under ORS 279C.800 through 279C.870. DEVELOPER shall comply with any applicable provisions of ORS 279A, 279B and 279C in the advertisement for bids, the request for bids, the contract specifications, the accepted bid, the completion of the contract, and elsewhere in any contract related to fulfillment of the terms of this PFIA.

DEVELOPER TO FURNISH FINANCIAL SECURITY FOR COMPLETION OF WORK

Prior to commencement of work on the Improvement(s), DEVELOPER shall furnish CITY with a bond or other suitable form of security, securing all of DEVELOPER's obligations under this PFIA, including DEVELOPER's obligation to complete the Improvement(s) on schedule and according to CITY's standards and specifications. The bond or other form of security shall also be sufficient to cover any claims that may arise under ORS 279.A, 279B, and 279C.

SYSTEMS DEVELOPMENT FEE REIMBURSEMENT

DEVELOPER understands and acknowledges if master plan facilities, as defined and approved by the City Engineer, are constructed by the applicant and approved by the City, DEVELOPER has the potential for a system development charge reimbursement entitlement pursuant to City policy, rules, regulations and the Master Plan Facility Reimbursement Agreement. DEVELOPER acknowledges that CITY's policies with regard to SDC reimbursement are subject to change at any time, and DEVELOPER fully accepts the risk that reimbursement may be less than as provided by CITY's current policies.

DATED this _____ day of_____, 2004.

DEVELOPER _____

_____

BY: _____

_____

Title: _____

STATE OF OREGON)
)ss
County of Deschutes)

This instrument was acknowledged before me on _____
by _____ as Member of _____.

_____
NOTARY PUBLIC FOR OREGON

CITY

_____
Engineering Division

STATE OF OREGON)
)ss
County of Deschutes)

This instrument was acknowledged before me on _____
by _____ for the City of Bend Engineering Division.

_____
NOTARY PUBLIC FOR OREGON

EXHIBIT "A"

and

EXHIBIT "C"

Engineering Fees		
Grading drainage review submittal $650.00		$ 00
Storm sewer piping fee _____ If x $2.00/ft		$ .00
Drywell, # of drywells _____ x $250.00 per drywell		$.00
Water plan review submittal $650.00		$ .00
Water line fee _____ If x $2.00/ft		$ .00
Fire service/hydrant fee ____ x $250.00 per service/hydrant	$ .00	
Street review submittal$650.00		$ .00
Street fee _____If x $3.00/ft		$.00
Inspections		
Submittal fee $500.00		$.00
Miscellaneous		
Agreement processing fee	$.00	
Recording fee	$.00	
	TOTAL DUE$	

DATE PAID _____ RECEIPT # _ HTE # _____

Exhibit K

Preliminary Cost Estimates of Qualified Costs

10" Gravity Sewer Line - On-Site

Item	Unit	Est. Unit Cost	Est. Total Cost
Drill and Shoot	1081	$10	$10,810
10" Gravity Line (lf)	1081	$60	$64,860
Manholes	6	$2,400	$14,400
		SUBTOTAL	$90,070
Engineering / Surveying	8%		$7,206
Management	3%		$2,702
		TOTAL	$99,978
44% SDC reimbursement (Capacity Increase over 8")			$43,990

12" Gravity Sewer Line - On-Site

Item	Unit	Est. Unit Cost	Est. Total Cost
Drill and Shoot	2473	$10	$24,730
12" Gravity Line (lf)	2473	$63	$155,799
Manholes	14	$2,400	$33,600
		SUBTOTAL	$214,129
Engineering / Surveying	8%		$17,130
Management	3%		$6,424
		TOTAL	$237,683
66% SDC reimbursement (Capacity Increase over 8")			$156,871

6" and 16" Sewer Force Main

Item	Unit	Est. Unit Cost	Est. Total Cost
6" / 16" In Shadow Glen (lf)	1455	$120	$174,600
6" / 16" In Ridgewater II (lf)	1027	$220	$225,940
6" / 16" In Ferguson (lf)	3669	$220	$807,180
Trecnh Patch w/ Traffic Control (sf)	8520	$2.90	$24,708
Manholes	14	$2,600	$36,400
		SUBTOTAL	$1,268,828
Engineering / Surveying	8%		$101,506
Management	3%		$38,065
		TOTAL	$1,408,399
88% SDC reimbursement (Capacity Increase over 6")			$1,239,391

The costs identified above are based upon developer's best faith estimate of material quantities and prices in May 2007, and knowledge of the work to be performed. Some of the work identified above will be done at a future date. The above estimates are estimates only and should not be construed as a 'not to exceed amount', as the future pricing of materials, quantities, and work specifics cannot be known at this time. All improvements performed and submitted for reimbursement related to the project shall be in accordance with the City of Bend Sewer Policy No. 4 and actual invoices identifying the work, quantities and pricing shall be submitted for reimbursement at that time.

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK
2007-49621
$51.00
00572633200700496210030051
09/12/2007 02:20:52 PM
D-IPPS Cnt=1 Stn=25 CLERK
$25.00 $11.00 $10.00 $5.00

ORDINANCE NO. NS-2067

AN ORDINANCE VACATING EASEMENTS THAT LIE WITHIN THE NW ¼ of the SE ¼ of Section 29, Township 17 South, Range 12 East, Willamette Meridian, City of Bend, Deschutes County, Oregon.

A petition having been presented to the Bend City Council on June 6th, 2007 by Jay Audia requesting that the easements described in ordinances OR210-0645, OR2001-1459, and NS-474 be vacated:

SEE EXHIBITS ON ATTACHED ORDINANCES OR210-0645, OR2001-1459, AND NS-474

and stating the purpose for which the described property is proposed to be used and the reason for such vacation; and said petition being duly acknowledged;

The City of Bend having caused a notice of public hearing for vacation of easements to be published in the Bulletin, as provided by ORS 271.110, once each week for two (2) consecutive weeks;

Within five days after the first day of publication of said notice, the City having caused a notice of street vacation to be posted at or near each end of the proposed vacation and in at least two conspicuous places in the proposed vacation area; the first publication and posting of said notice having occurred not less than 14 days prior to the hearing for said proposed vacation;

The City Council of the City of Bend having fixed the 1st day of August, 2007, at 7:00 p.m. local time in the City Council Chambers at 710 NW Wall Street, City of Bend, Oregon, as the time and place for the hearing upon said proceedings and at that time having heard all objections to the proposed vacation; and;

The City Council having determined that the public interest will not be prejudiced by the proposed vacation and that the property should be vacated:

NOW, THEREFORE, THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

That the above described easements located in Bend, Deschutes County, Oregon, be vacated.

The City Recorder shall forthwith cause a certified copy of this ordinance to be filed and recorded in the Office of the County Clerk of Deschutes County, Oregon.

Read for the first time the 1st day of August, 2007.

Read for the second time the 15th day of August, 2007.

Placed upon its passage the 15th day of August, 2007.

Yes: 7 No: 0

Authenticated by the Mayor the 15th day of August, 2007.

Bruce Abernethy, Mayor

Attest:

Patty Steil, City Recorder

After recording return to:
Deputy City Recorder, City of Bend
710 NW Wall, Bend OR 97701

15

CORRECTED COPY

ORDINANCE NO. NS-1506

90-15267

210 - 0645

AN ORDINANCE VACATING A PORTION OF THURSTON AVENUE, RIM WALKWAY, AND THE ALLEY BETWEEN RIVERSIDE ADDITION AND THE REPLAT OF BLOCKS 1 AND 2 RIVERSIDE ADDITION IN THE CITY OF BEND, DESCHUTES COUNTY, OREGON.

THE CITY OF BEND DOES ORDAIN AS FOLLOWS; A petition having been presented to the Bend City Commission requesting that the following described area be vacated:

1. A portion of Thurston Ave., lying within the plat of Riverside: Commencing at the southeast corner of Block 1, Riverside plat; Thence West along the north line of Thurston Ave., 245.87 feet to the point of curvature and the Point of Beginning; Thence along the arc of a 114.13 foot radius curve right, 179.28 ft. (chord bears N45°W, 161.40 ft.); Thence North 45.87 ft. to the north line of the east-west alley in said Block 1; Thence West 60 ft.; Thence South 45.87 ft.; Thence along the arc of a 174.13 foot radius curve left, 164.44 ft. (chord bears S27°03'13"E, 158.40 ft.); Thence along the arc of a 206.93 foot radius non-tangent curve right, 106.76 ft. (chord bears N75°13'11"E, 105.58 ft.) to the Point of Beginning.

2. A portion of the east-west alley in Block 1 Riverside plat described as follows: Beginning at the northwest corner of Lot 16 Block 1 in said plat; a point on the south line of this alley and the east line of Thurston Ave.; Thence East, 160 feet to a point on the lot line between Lots 14 and 15, Block 1; Thence North, 20 feet; Thence West, 160 feet; Thence South, 20 feet to the Point of Beginning.

3. A portion of Rim Walk Way as platted in the Replat of Blocks 1 and 2 Riverside Addition described as follows: Beginning at the southwest corner of Lot 3 Block 1 of said Replat; Thence N5°23'W, 150.49 ft.; Thence N9°22'30"W, 116.64 ft.; Thence N10°27'30"W, 116.77 ft.; Thence N11°27'30"W, 51.93 ft.; Thence N9°01'W, 75.23 ft.; Thence N3°28'W, 27.92 ft. to the northwest corner of Lot 7, Block 1 of said plat; Thence S55°47'W, 16.29 ft. to the westerly side of said Rim Walk Way; Thence S3°28'E, 20.27 ft.; Thence S9°01'E, 76.21 ft.; Thence S11°27'30"E, 52.10 ft.; Thence S10°27'30"E, 116.52 ft.; Thence S9°22'30"E, 116.04 ft.; Thence S5°23'E, 148.67 ft.; Thence East, 14.08 ft. to the Point of Beginning.

and stating the purpose for which the described property is proposed to be used and the reason for such vacation, and the said petition being duly acknowledged; and the City Commission having set a time for formal hearing upon the petition, and the Recorder of the City of Bend having caused the following notice:

NOTICE IS HEREBY GIVEN that vacation proceedings have been initiated by the City Commission of the City of Bend; said vacation proceedings to vacate the following described property:

That portion of Thurston Avenue, Rim Walk Way, and the alley between Riverside Addition and the Replat of Blocks 1 and 2 of Riverside Addition.

The City Commission of the City of Bend have fixed the 7th day of September 1988, at 7:30 P.M. in the City Commission Chambers at 720 NW Wall Street, City of Bend, as the time and place for the hearing upon said proceedings at which time the City Commission will receive and hear all objections to said vacation proceedings.

to be published once each week for four consecutive weeks in the Bulletin, and said recorder having also within 5 days after the first day of the publication of said notice caused a copy of said notice to be posted at or near each end of the proposed vacation and in at least two conspicuous places in the proposed vacation area, and the first publication and posting of said notice having occurred not less than 28 days before the hearing specified for said proposed vacation; and upon the appointed time specified in said notice the hearing having been held, and no objections made, and the City Commission having determined that the public interest will not be prejudiced by the proposed vacation and that the planned unit development should be vacated.

210 - 0646

NOW THEREFORE, IT IS HEREBY ORDERED that the above described property be and the same hereby is vacated by reserving to the City of Bend all public streets, an easement for the existing use, or future installation, construction, maintenance continuation, reconstruction, repair, renewal, replacement, rebuilding and/or enlarging of any sewer, water main, gas main, conduit of any kind, wire, pole, thing or device to be used for any public purpose, and further that nothing contained herein shall cause or require the removal or abandonment of any wire, pole, conduit of any kind or any other facility, support or appurtenance used, or intended to be used for any public utility service, and the right hereby is reserved to the owners thereof, and their successors, to maintain, continue, repair reconstruct, renew, replace, rebuild and enlarge any and all such facilities. This vacation is hereby made a matter of record.

The City Recorder shall forthwith cause a certified copy of this ordinance be be filed and recorded in the Office of the County Clerk of Deschutes County, Oregon.

This ordinance corrects and repeals Ordinance No. NS-1490 passed and approved the 5th Day of April, 1989.

Read for the first time the 21st day of February, 1990.

Read for the second time the 7th day of March, 1990.

Placed upon its passage the 7th day of March, 1990.

Yes: 7 No: 0

Submitted to and approved by the Mayor the 7th day of March, 1990.

Dave K Davis
Mayor

ATTEST:

Recorder-Treasurer of the City of Bend

STATE OF OREGON)
COUNTY OF DESCHUTES) ss.

I, MARY SUE PENHOLLOW, COUNTY CLERK AND RECORDER OF CONVEYANCES, IN AND FOR SAID COUNTY, DO HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS RECORDED THIS DAY:

90 MAY 31 AM 11:51

MARY SUE PENHOLLOW
COUNTY CLERK

BY. _____ DEPUTY

NO. 90-15267 FEE 15

DESCHUTES COUNTY OFFICIAL RECORDS

2001-1459-1

ORDINANCE NO. NS-1765

AN ORDINANCE VACATING AN ALLEY THAT LIES WITHIN NW ¼ OF SE ¼ OF SECTION 29, TOWNSHIP 17 SOUTH, RANGE 12 EAST, W.M., IN THE CITY OF BEND, DESCHUTES COUNTY, OREGON.

A petition having been presented to the Bend City Council on June 7, 2000 requesting that the following described area be vacated:

> The ALLEY abutting and north of lots 11 through 14 in Block 1 of the Riverside Addition to the City of Bend. All located in the NW ¼ of the SE ¼ of Section 29, Township 17 South, Range 12 East, W.M., Deschutes County, Oregon.

and stating the purpose for which the described property is proposed to be used and the reason for such vacation; and said petition being duly acknowledged;

The City of Bend having caused a notice of public hearing for vacation of public property describing the above street right of ways to be published in the Bulletin, as provided by ORS 271.110, once each week for two (2) consecutive weeks;

Within five days after the first day of publication of said notice, the City having caused a notice of street vacation to be posted at or near each end of the proposed vacation and in at least two conspicuous places in the proposed vacation area; the first publication and posting of said notice having occurred not less than 14 days prior to the hearing for said proposed vacation;

The City Council of the City of Bend having fixed the 1st day of November, 2000, at 7:00 p.m. local time in the City Council Chambers at 710 NW Wall Street, City of Bend, Oregon, as the time and place for the hearing upon said proceedings and at that time having heard all objections to the proposed vacation; and;

The City Council having determined that the public interest will not be prejudiced by the proposed vacation and that the property should be vacated:

NOW, THEREFORE, THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

That the above described portion of street right of ways located in Bend, Deschutes County, Oregon, be vacated. Reserving to the City of Bend an easement for the existing use, or future installation, construction, maintenance, continuation, reconstruction, repair, renewal, replacement, rebuilding and/or enlarging of any sewer, water main, gas main, conduit of any kind, wire, pole, thing or device to be used for any public purpose, and further providing that nothing contained herein shall cause or require the removal or abandonment of any wire, pole, conduit of any kind or any other facility, support or appurtenance used or intended to be used for any public utility service, and the right hereby is reserved to the owners thereof, and their successors, to maintain, continue, repair, reconstruct, renew, replace, rebuild and enlarge any and all such facilities.

This vacation is hereby made a matter of record.

The City Recorder shall forthwith cause a certified copy of this ordinance to be filed and recorded in the Office of the County Clerk of Deschutes County, Oregon.

Read for the first time the 15th day of November, 2000.

Read for the second time the 6th day of December, 2000.

Placed upon its passage the 6th day of December, 2000.

Yes: 6 No: 0

Authenticated by the Mayor the 6th day of December, 2000.

Jim Young, Mayor

ATTEST:

Patricia Stell, City Recorder

After Recording, Return to:
City Recorder
710 NW Wall
Bend, OR 97701

Ordinance NS-1765

ORDINANCE NO. NS-474

AN ORDINANCE VACATING ALL THAT PORTION OF THE FOLLOWING DESCRIBED STREET, ALLEY AND PLAT LOCATION DESCRIBED AS FOLLOWS:

That portion of Block One, north of the east-west alley in said Block One, together with all of Block Two, together with Lakeside Place from the north boundary of the alley between Lot One and Lot Sixteen, Block One to the south line of Minor Avenue; and also the north-south alley in Block One from the north line of the east-west alley in Block One to the southerly line of Vail Avenue; together with the alleys in Block Two; and also Vail Avenue from the east line of Lakeside Place to the west line of Harriman Street extended northerly; all of the above blocks, streets and alleys being in the original plat of Riverside as filed in the office of the County Recorder of Crook County, Oregon (said portion of Crook County now being Deschutes County).

WHEREAS the City Commission of the City of Bend heretofore on the fifteenth day of August, 1956, duly and regularly on its own motion under the authority of Section 271.130 O. R. S. initiated vacation proceedings for said above described street, alley and plat vacation, and

WHEREAS the City Commissioners have considered said matter and having determined that the proposed vacation will not materially affect the market value of any abutting property, and

WHEREAS the vacation proceedings appear to be in order and to meet the requirements of law regulating the vacation of street, alleys and plats, and

WHEREAS after due notice as required by law, a public hearing was held at the Commission Chambers in the City Hall in the City of Bend on the third day of October, 1956, at 8:15 p.m. o'clock, at which hearing no objection or remonstrances to such proposed vacation were presented, NOW, THEREFORE

THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

That the following portion of the following described street, alley and plat located in the City of Bend, Deschutes County, State of Oregon more particularly described as:

That portion of Block One, north of the east-west alley in said Block One, together with all of Block Two, together with Lakeside Place from the north boundary of the alley between Lot One, and Lot Sixteen, Block One to the south line of Minor Avenue; and also the north-south alley in Block One from the north line of the east-west alley in said Block One to the southerly line of Vail Avenue; together with the alleys in Block Two; and also Vail Avenue from the east line of Lakeside Place to the west line of Harriman Street extended northerly; all of the above blocks, streets and alleys being in the original plat of Riverside as filed in the office of the County Recorder of Crook County, Oregon,(said portion of Crook County now being Deschutes County);

be and the same is hereby vacated.

Read for the first time October 3, 1956.

Read for the second time October 17, 1956.

Placed upon its passage October 17, 1956.

YEAS: 6 NAYS: 0

Submitted to and approved by the Mayor October 17, 1956.

ATTEST:

Julia S. Johnson
Recorder of the City of Bend

Mayor

NS-474

BLANK PAGE

ORDINANCE NO. NS-2068

AN ORDINANCE AMENDING THE CITY OF BEND DEVELOPMENT CODE (ORDINANCE NO. NS-2016) BY CHANGING THE TEXT OF CHAPTER 1.2, *(Definitions)*, CHAPTER 4.1 *(Land Use Review and Procedures)* AND CHAPTER 4.3 *(Land Division and Lot Line Adjustment Procedures)* OF THE BEND DEVELOPMENT CODE

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council has held a public hearing, considered the testimony, the record, and the Planning Commissions recommendations, and has found that there is a public need and benefit for the proposed amendment. The Bend City Council adopts the Recommendation of the Planning Commission, approved on June 11, 2007, file number PZ 07-186.

Section 2. Chapter 1.2, Chapter 4.1 and Chapter 4.3 of the Bend Development Code (Ordinance NS-2016) are amended by changing the text therein as detailed in "Exhibit A".

Section 3. The Bend City Council adopts the Staff Findings for Planning Commission Recommended Development Code Text Amendment, attached as "Exhibit B", as findings in support of this ordinance.

Read for the first time the 1st day of August, 2007.

Read for the second time the 15th day of August, 2007.

Placed upon its passage the 15th day of August, 2007.

YES: 7 NO: 0

Authenticated by the Mayor the 15th day of August, 2007.

Bruce Abernethy, Mayor

ATTEST:

Patricia Stell, City of Bend Recorder

I. Amendments to Chapter 1.2 Definitions:

**Note – proposed definitions from ORS 92.010*

~~**Lot line adjustment** means the boundary adjustment of no more than two lots or parcels by relocation of a common boundary where an additional lot or parcel is not created or eliminated. Such adjustment shall only be granted in accordance with the provisions of this ordinance.~~

Lot of Record means a ~~lot or parcel~~ **unit of land** held in separate ownership as shown on the records of the Deschutes County Clerk, which conforms to all zoning and subdivision/partition requirements in effect on the date the ~~lot or parcel~~ **unit of land** was created.

Plat ~~means~~ includes a final ~~map, diagram, drawing~~ **subdivision plat,** replat, or ~~other writing containing all descriptions, specifications, locations, dedications, provisions, and information concerning a subdivision~~ **partition plat**. **(92.010(9))**

"Property line" means the division line between two units of land. (ORS 92.010(10))

"Property line adjustment" means the relocation or elimination of a common property line between abutting properties. (ORS 92.010(11))

"Replat" means the act of platting lots, parcels and easements in a recorded subdivision or partition plat to achieve a reconfiguration of the existing subdivision or partition plat or to increase or decrease the number of lots in the subdivision. (92.010(12))

II. Amendments to Section 4.1.200:

4.1.200 General Provisions

Sections:

4.1.210	**Pre-application Conference**
4.1.215	**Application Requirements**
4.1.220	**Acceptance of Application**
4.1.225	**Incomplete Applications**
4.1.230	**False Statements on Application and Supporting Documents**
4.1.235	**Withdrawal of Application**
4.1.240	**Applicable Standards**
4.1.245	**Notice to Public Agencies**
4.1.250	**Conflicting Procedures**
4.1.255	**Time Computation**
4.1.260	**Lot of Record**

4.1.210 Pre-application Conference.

A. Pre-application Conference. A pre-application conference with the City of Bend is required for complex applications or for applicants who are unfamiliar with the land use process. The purpose of the conference shall be to acquaint the applicant with the substantive and procedural requirements of the applicable land use ordinances, to provide for an exchange of information regarding applicable requirements of the comprehensive plan, zoning ordinance or land division ordinance and to identify issues likely to arise in processing an application. The city zoning ordinance may require that a pre-application conference be held for particular types of applications.

B. Public Meeting. The applicant for a Land Use Action for a Bend Area General Plan Map Amendment, Zoning Map Amendment, Conditional Use Permit, Subdivision or, Site Plan Review for new development or an alteration/addition to an existing building exceeding 10,000 square feet shall present the proposal at a public meeting prior to submitting the land use application to the City Planning Division. The presentation shall be made at either, a regular or special meeting with a neighborhood association recognized by the City of Bend whose boundaries the subject property lies within, or a public meeting arranged and conducted by the applicant. The presentation at the public meeting shall include the following:

1. A map depicting the location of the subject property proposed for development.
2. A visual description of the project including a site plan, tentative subdivision plan and elevation drawings of any structures if applicable.
3. A description of the nature of the use including but not limited to, sizes and heights of structures, proposed lot sizes, density, etc.
4. The expected or anticipated impacts from the development.
5. Any mitigation proposed by the applicant to alleviate the expected/anticipated impacts.
6. Provide opportunity for public comments. Applicants are encouraged to reconcile as many public concerns as possible prior to submittal of their application.

C. Public Meeting Notification. If any part of a proposed new development as referenced in subsection 4.1.210(B) above is to be constructed within the boundaries of a recognized neighborhood association of the City of Bend, the applicant shall notify the administrative body of such association of the presentation. It shall be the responsibility of the applicant to schedule the meeting/presentation and provide adequate notification to the residents of the affected neighborhood of the date, time and location of the meeting/presentation. It shall be the applicant's responsibility to provide the information listed in subsection 4.1.210(C) (1) (a - c) below to the administrative body for the neighborhood association. Such meeting shall be held no less than 15 days and no more than 45 days from the date that the applicant notifies the administrative body of the affected neighborhood association. The following provisions shall be applicable to the applicant's obligation to notify the residents of the area affected by the new development application, whether the proposed development is within the boundaries of a recognized neighborhood association or not:

1. The applicant shall send mailed notice of the public meeting to all property owners within 500 feet of the boundaries of the subject property, and, if any part of the subject property is within the boundaries of a neighborhood association recognized by the City of Bend, notice shall be mailed to the administrative body of such neighborhood association. The property owner list shall be compiled from the Deschutes County Tax Assessor's

property owner list from the most recent property tax assessment roll. The address for the administrative body of the affected neighborhood association shall be obtained from the City of Bend. The notice shall be sent a minimum of 15 days prior to the public meeting, and shall include at a minimum:

a. Date, time and location of the public meeting.
b. A brief written description of the proposal and proposed use, but with enough specificity so that the project is easily discernable.
c. The location of the subject property, including address (if applicable), nearest cross streets and any other easily understood geographical reference, and a map (such as a tax assessors map) which depicts the subject property.

4.1.215 Application Requirements

A. Property Owner. For the purposes of this section, the term "property owner" shall mean the owner of record or the contract purchaser and does not include a person or organization that holds a security interest.

B. Applications for development or land use actions shall:

1. Be submitted by the property owner or a person who has written authorization from the property owner as defined herein to make the application;
2. Be completed on a form prescribed by the city;
3. Include supporting information required by the zoning or land division ordinances and that information necessary to, in the judgment of the Planning Director; demonstrate compliance with applicable criteria;
4. Be accompanied by the appropriate filing fee;
5. Provide proof of ownership in the form of a Deed, or other recorded document; and
6. In the case of applications for a quasi-judicial plan amendment or zone change, may be accompanied by applications for a specific development proposal.
7. Include an affidavit from the applicant attesting that the public meeting required by Section 4.1.210 (B) of this ordinance was conducted in accordance with the provisions listed therein. If the public meeting was arranged and conducted by the applicant, the notification materials listed in Section 4.1.210 (C) (1) (a-c) must also be submitted.

C. The following applications are not subject to the ownership requirement set forth in subsection 4.1.215(B)(1) of this section:

1. Applications submitted by or on behalf of a public entity or public utility having the power of eminent domain with respect to the property subject to the application; or
2. Applications for development proposals sited on lands owned by the state or the federal government.

4.1.220 Acceptance of Application.

A. Type I, II, and III applications shall not be accepted until the Planning Director has determined that the requirements of Section 4.1.215 of this Chapter have been met and; the application is complete or the application is deemed to be complete under state law. A pre-submittal meeting shall be required for all Type II, III and IV land use applications as defined in Chapter 1.2. The purpose of the pre-submittal meeting is to determine whether the proposed development application is complete prior to acceptance of the application for processing by the City.

B. An application is complete when, in the judgment of the Planning Director, complete information to address all criteria has been provided by the applicant.

C. Acceptance of an application as complete shall not preclude a determination at a later date that additional criteria needs to be addressed or a later determination that additional information is needed to adequately address applicable criteria.

4.1.225 Incomplete Applications.

A. If an application is incomplete, the Planning Director shall, within thirty (30) days of receipt of the application, notify the applicant in writing of exactly what information is missing. The applicant may amend the application or submit a new application supplying the missing information.

B. The applicant shall have thirty (30) days from the date of notice from the Planning Director to supply the missing information. Additional time, up to 180 days, may be granted upon request of the applicant pursuant to ORS 227.178.

C. If the applicant submits the missing information within the 30-day period specified in subsection (B) above, the application shall be deemed complete upon receipt of the missing information.

D. If an applicant does not submit the missing information within the 30-day period specified in subsection B above, the application may be processed in accordance with Section 4.1.500, Review of Type II or Type III Applications.

4.1.230 False Statements on Application and Supporting Documents.

If the applicant or the applicant's representative or apparent representative makes a misstatement of fact on the application regarding property ownership, authority to submit the application, acreage, or any other fact material to the acceptance or approval of the application, and such misstatement is relied upon by the Review Authority in making a decision whether to accept or approve the application, the Planning Director may upon notice to the applicant and subject to an applicant's right to a hearing, declare the application void.

4.1.235 Withdrawal of Application.

An applicant may withdraw an application in writing at any time prior to the time a land use action decision becomes final. If the land owner is not the applicant, no consent to withdraw the application is needed from the land owner.

4.1.240 Applicable Standards.

The standards and criteria applicable to an application shall be the standards and criteria applicable at the time the application was first submitted if the application and requested information, if any, are received within one hundred eighty (180) days of the time the application was first submitted.

4.1.245 Notice to Public Agencies.

In addition to any notice required by this ordinance, written notice shall be provided to public agencies as prescribed below.

A. Division of State Lands. The city shall notify the Oregon Division of State Lands (DSL) of any application that involves lands that are wholly or partially within areas that are identified as a significant wetland on the city's Local Wetland Inventory. Notice shall be in writing using the DSL Wetland Land Use Notification Form, and shall be sent within five working days of acceptance of a complete application. [See ORS 227.350]

B. Department of Fish and Wildlife. The city shall notify the Oregon Department of Fish and Wildlife (ODFW) in writing of any application for development activities within the riparian corridor. A mitigation recommendation shall be obtained from ODFW. Approval of the proposed development shall include a condition requiring compliance with the ODFW mitigation recommendations. [See OAR 635-415]

C. Parks and Recreation Department. The city shall notify the Oregon Parks and Recreation Department (OPRD) in writing of any application for a proposed change, improvement, or activity within the ¼ mile boundary of either the Upper Deschutes Scenic Waterway or the Middle Deschutes Scenic Waterway. A landowner proposing a change, improvement, or activity within a State Scenic Waterway shall notify OPRD using the form provided by OPRD. The proposed change, improvement, or activity shall not be approved by the city unless either OPRD has given its written approval, or OPRD has not responded within one year from the date of notification. [See OAR 736-40]

D. Other agencies. The city shall notify other public agencies, as appropriate, that have statutory or administrative rule authority to review or issue state permits for local land use actions.

4.1.250 Conflicting Procedures.

Notwithstanding the provisions of this section, where other provisions of the City of Bend Code or City of Bend ordinances specify procedures with greater opportunity for public notice and comment, those procedures shall apply.

4.1.255 Time Computation.

Except when otherwise provided, the time within which an act is required to be done shall be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, legal holiday or any day on which the city is not open for business pursuant to a city ordinance, in which case it shall also be excluded.

4.1.260 Lot of Record

Not all ~~tax lots~~ **units of land** are "lots of record" ~~(legal lots)~~. The City of Bend will not issue any permits on a ~~parcel~~ **unit of land** until it is determined that it is a lot of record. If ~~your~~ **a** ~~parcel~~ **unit of land** is not in an approved subdivision or partition, has not been issued a land use permit, or has never been determined to be a lot of record, ~~you will need to file~~ a declaratory ruling for a lot of record **will need to be filed**. ~~This~~ **A Declaratory Ruling** will determine **if and** when ~~your~~ **a** ~~parcel~~ **unit of land** was created and if it was created in accordance with the law in effect at the time of creation. For ~~lots~~ **units of land** created in Deschutes County prior to annexation into the City, the Deschutes County Lot of Record Ordinance shall apply.

A. **What is a lot of record?** A ~~lot or parcel~~ **unit of land** held in separate ownership as shown on the records of the Deschutes County Clerk, which conforms to all zoning and subdivision/partition requirements in effect on the date the ~~lot or parcel~~ **unit of land** was created.

B. **What is not a lot of record?**

1. A ~~lot or parcel~~ **unit of land** created solely by a tax lot segregation because of an assessors role change or for the convenience of the assessor;
2. A ~~lot or parcel~~ **unit of land** created by an intervening section or township line or right of way;
3. A ~~lot or parcel~~ **unit of land** created by the foreclosure of a security interest.

C. **Remedy for parcels found not to be lots of record.**

1. **In accordance with Chapter 4.3,** consolidate the ~~subject lot or parcel~~ **unit of land** with a contiguous ~~lot or parcel~~ **unit of land** that is a determined to be a lot of record. Both ~~parcels~~ **units of land** must be held in the same ownership as shown on the records of the Deschutes County Clerk.
2. Apply for and obtain approval for a single lot partition in conformance with the ORS 92.177 and Section**s 4.3.200,** 4.3.300 **and 4.3.400** ~~of this Chapter~~.

III. Amendments to Chapter 4.3:

Chapter 4.3 Land Divisions and ~~Lot~~ Property Line Adjustment Procedures

Sections:

4.3.100 Purpose
4.3.200 General Requirements
4.3.300 Approval Process
4.3.400 Submission of Final Plat
4.3.500 ~~Lot~~ Property Line Adjustments
4.3.600 ~~Lot of Record~~

4.3.100 Purpose and Applicability

A. **Purpose.** The purpose of this chapter is to:

1. Provide rules, regulations and standards governing the **review and** approval of subdivisions, partitions and ~~lot~~ **property** line adjustments, as defined below and in Chapter 1.2; Definitions:

   a. Subdivisions are the creation of four or more lots from one parent lot, parcel or tract, within one calendar year.

   b. Partitions are the creation of two or three parcels within one calendar year.

   c. ~~Lot~~ **Property** line adjustments ~~are modifications to lot lines or parcel boundaries that do not result in the creation of new lots~~ **means the relocation or elimination of a common property line between abutting properties**.

   ~~d. Lot consolidation is the combining of two or more lots or parcels into one legal lot or parcel.~~

2. Carry out the City's development pattern, as envisioned by the Bend Area General Plan.

3. Encourage efficient use of land resources, full utilization of urban services, and transportation options;

4. Promote the public health, safety and general welfare through orderly and efficient urbanization;

5. Lessen or avoid traffic congestion, and secure safety from fire, flood, pollution and other dangers;

6. Provide adequate light and air, prevent overcrowding of land, provide open space opportunities, and facilitate adequate provision for transportation, water supply, sewage and drainage; and

7. Encourage the conservation of energy resources.

B. Applicability

Units of land shall only be created or reconfigured in conformance with the standards of this Chapter.

4.3.200 General Requirements

A. **Pre-application Meeting**. Prior to submitting a tentative plan, each applicant or his representative is required to meet with the Planning Division to review the proposal. The intent of this meeting is to advise the applicant of the requirements and standards of this ordinance.

B. **Application Submission.** Any person proposing a land division **or reconfiguration**, or his authorized agent or representative, shall include with an application and filing fee for a land division **or reconfiguration**, a tentative plan prepared by a licensed surveyor or engineer together with improvement plans and other supplementary material as may be required. A

master development plan may also be required in accordance with subsection 4.3.200(C) below. The applicant must submit 15 copies of any plan required together with all required accompanying material to the Planning Division.

C. **Informational Requirements**. The following information shall be shown on the tentative plan or provided in accompanying materials. No tentative plan shall be considered complete unless all such information is provided.

1. General information required:

   a. Proposed **or existing** name of the land division.

   b. Names, addresses and phone numbers of the owner of record, authorized agents or representatives, engineer or surveyor, and any assumed business names filed or to be filed with the Corporation Commission by the applicant.

   c. Date of preparation, true north, scale, and gross area ~~of the proposed subdivision~~.

   d. Appropriate identification of the drawing as a tentative plan ~~for a subdivision~~.

   e. Location and tract designation sufficient to define its location and boundaries, and a legal description of the tract boundaries in relation to existing plats and streets.

   f. Certified copy of the recorded instrument under which the applicant claims an ownership interest, or copy of a land sales contract which binds the applicant in the event of tentative approval.

   g. A Title Report and/or a Subdivision Guarantee prepared within the previous ninety (90) days.

   h. If a tract of land has water rights, the application shall be accompanied by a water rights division plan approved by the irrigation district or other water district holding the water rights, or when there is no such district, by the County Watermaster.

   i. A letter or other written documentation from the Bend Metro Parks and Recreation District which indicates that the applicant has met with the District to discuss the proposed land division **or reconfiguration** and provide the District an opportunity to review the design for options to enhance existing parks and trails, and develop new parks and trails.

   j. If ~~the~~ **a** proposed subdivision contains more than 10 lots, the application shall be accompanied by a computer water analysis prepared by the City of Bend Engineering Division.

2. Existing Conditions. Information concerning existing on-site conditions and conditions within 300 feet of all property included in the proposed land division **or reconfiguration**:

   a. Location, names, and widths of existing improved and unimproved streets and roads, bikeways, and access corridors.

   b. Location of any existing features such as section lines, section corners, city and special district boundary lines, and survey monuments.

   c. Location of existing structures, irrigation canals and ditches, pipelines, waterways, railroads, and any natural features such as rock outcroppings, designated wetlands, wooded areas, and natural hazards.

   d. Location and direction of water courses, and the location of areas subject to flooding and high water tables, including areas lying below the100-year flood elevation as indicated on the most recent Flood Insurance Rate Maps as prepared by the Federal Emergency Management Agency.

   e. Location, width, and use or purpose of any existing easement or right-of-way for utilities, bikeways, and access corridors within and adjacent to the proposed land division **or reconfiguration.**

   f. Existing sanitary and storm sewer lines, water mains, septic facilities, culverts, and other underground and overhead utilities within and adjacent to the proposed land division **or reconfiguration**.

   g. Contour lines related to City datum and having minimum intervals of two feet.

   h. Bend Area General Plan and Zoning Map classification of lands within and adjacent to the proposed land division **or reconfiguration**.

   i. Names and addresses of all property owners within 100 feet of the property.

3. Information concerning proposed land division **or reconfiguration**:

   a. Location, names, width, typical improvements, cross sections, bridges, culverts, approximate grades, curve radii and centerline lengths and reserve strips of all proposed streets, and the relationship to all existing and projected streets within 300 feet.

   b. Location, width, and purpose of all proposed easements or rights-of-way for utilities, bikeways, and access corridors, and relationship to all existing easements and rights-of-way within 300 feet.

   c. Location of at least one permanent bench mark within the **existing or** proposed land division boundary.

   d. Location, approximate area, and dimensions of each lot, ~~or~~ parcel, **or designated unit of land** and proposed lot or parcel numbers.

   e. Location, approximate area, and dimensions of any lot, ~~or~~ parcel, **or unit of land** proposed for public use, the use proposed, and plans for improvements or development thereof.

   f. Proposed use, location, approximate area, and dimensions of any lot, ~~or~~ parcel, **or unit of land** intended for nonresidential use within a residential land division.

   g. Phasing – show phase lines on the tentative plan.

   h. Source, method, and preliminary plans for domestic and other water supplies, sewage disposal, storm water disposal and other drainage facility plans, and all utilities.

   i. Description and location of any proposed common area and community facility.

   j. Proposed deed restrictions including access restrictions or protective covenants if such are proposed to be utilized.

   k. Statement from each utility company proposed to serve the proposed land division **or reconfiguration** stating that each such company is able and willing to serve the proposed subdivision as set forth in the tentative plan, and the conditions and estimated costs of such service. Each utility purveyor shall be noted on the tentative plan.

   l. Proposed fire protection system for the land division **or reconfiguration**, including fire hydrant locations and sizes of water mains.

   m. Solar Access. Provide a statement relative to the solar access to be provided by the subdivision plan.

4. Future Subdivision. Where a tract is proposed to be divided into parcels, ~~or~~ lots, **or units of land** of an acre or more, the Review Authority may require an arrangement of parcels, ~~or~~ lots, **units of land** and streets such as to permit future subdivision in conformity to the street requirements and other requirements contained in this ordinance.

4.3.300 Approval Process

A. Phased Tentative Plan. An overall development plan shall be submitted for all developments affecting land under the same ownership for which phased development is contemplated. The Review Authority shall review a phased development plan at the same time the tentative plan for the first phase of a phased subdivision is reviewed. The phased development plan shall include, but not be limited to the informational requirements of Section 4.3.200; General Requirements of this ordinance, as well as the following elements:

1. Overall development plan, including phase or unit sequence, and the schedule for initiation of improvements and projected completion date.

2. Show compliance with the Bend Area General Plan and implementing land use ordinances and policies.

3. Overall facility development plan, including transportation and utility facilities plans that specify the traffic pattern plan for motor vehicles, bicycles, and pedestrians, water system plans, sewer system plans and utility plans.

4. Development plans for any common elements or facilities.

5. The Review Authority may require a potential development pattern for streets, bikeways, and access corridors for adjoining lands to be submitted together with the phased tentative plan as part of the overall development plan.

B. Approval of a Master Planned Development. As an alternative to a phased tentative plan, a Master Planned Development plan may be submitted in conformance with Chapter 4.5. Any tentative plan submitted subsequently for the Master Planned Development area shall substantially conform to the approved Master Planned Development plan unless approved otherwise by the City.

C. Development Options. If the subject property and the surrounding area is eligible for Mid-block Development, the proposed development plan design shall enable the future development of Mid-block Development for the adjoining properties.

D. Required Findings For Land Division or Reconfiguration Approval. The Review Authority shall not approve a tentative plan for a proposed ~~subdivision or partition~~ **land division or reconfiguration** unless the Review Authority finds, in addition to other requirements and standards set forth in this ordinance, that the land division **or reconfiguration** as proposed or modified will satisfy the intent and requirements of this ordinance, and Bend Zoning Ordinance, and be in compliance with the Bend Area General Plan. Such findings shall include the following:

1. No application for **a new or reconfigured** subdivision or partition shall be approved unless the following requirements are met:

   a. The land division contributes to orderly development and land use patterns in the area, and provides for the preservation of natural features and resources such as streams, lakes, natural vegetation, special terrain features, and other natural resources to the maximum degree practicable as determined by the City of Bend.

   b. The land division **or reconfiguration** will not create excessive demand on public facilities and services required to serve the development.

   c. The land division **or reconfiguration** contributes to the orderly development of the Bend area transportation network of roads, bikeways, and pedestrian facilities, and does not conflict with existing public access easements within or adjacent to the land division.

   d. The proposed land division **or reconfiguration** provides a variety of lot sizes in conformance with the following standards:
      i. No more than 50% of the lots are the same size with a size differential of 10% or more except for zero lot line attached housing.

   e. Each lot**,** ~~or~~ parcel**, or designated unit of land** is suited for the use intended or offered.

   f.. An approved water rights division plan.

   g. If the land division **or reconfiguration** adjoins an SM or SMR zone, the existence and location of such zone shall be entered on the deed for the lots or parcels created by the land division **or reconfiguration**.

   h. The tentative plan for the proposed subdivision meets the requirements of ORS 92.090.

   i. If the tentative plan is approved with phasing, the final plat for each phase shall be filed in accordance with the applicable provisions of Article IV of this ordinance.

2. The Review Authority shall deny an application for partitioning when it appears the partitioning is part of a plan or scheme to create more than three (3) parcels without going through subdivision, or is part of a development pattern having the effect of creating more than three (3) parcels without subdividing.

3. Additional Factors to be Considered. In addition to the requirements set forth in subsections one (1) and (2) of this section, the following additional factors shall be considered by the Review Authority when appropriate:

   a. Placement and availability of utilities.
   b. Safety from fire, flood, and other natural hazards.
   c. Adequate provision of public facilities and services.
   d. Possible affects on natural, scenic, and historical resources.
   e. Need for onsite or offsite improvements such as, but not limited to, access corridors, pedestrian facilities, and bikeways.

f. Need for additional setback, screening, landscaping, and other requirements relative to the protection of adjoining and area land uses.
g. Conformance with the approved master development plan, master facilities plan and refinement plan.

E. Supplemental Improvement Requirements For Partitions.

1. In the approval of a land partition, the Review Authority may require as a condition of approval any improvements that may be required for a subdivision under the provisions of this ordinance. All roads in partitions shall be dedicated to the public without reservation or restriction.

2. Easement Access. The Review Authority may require the applicant to improve an easement access serving two or more parcels according to the City's street standards.

F. Special Partitioning Regulations.

1. The partitioning of a tract of land in which not more than one (1) parcel is created and transferred to a public or semi-public agency for the purpose of a road, railroad, electric substation, park, trail or canal right-of-way may be approved by the Review Authority without proceeding through the land division process as outlined in this ordinance without proceeding through the tentative plan review process as specified in this ordinance. Such tracts may be smaller than the minimum lot and/or parcel size allowed in the zone in which the tract is located without need for variance.

4.3.400 Submission of the Final Plat

A. Filing Time Period Requirements. Except as provided for herein, the applicant shall prepare and submit to the City, a final plat that is substantially in conformance with the tentative plan as approved.

B. Submission of Final Plats ~~for Phased Development~~.

1. If a tentative plan is approved for a single phased development, the final plat shall be filed within one (1) year of the approval date for the tentative plan.

~~1.~~ **2.** If a tentative plan is approved for phased development, the final plat for the first phase shall be filed within one (1) year of the approval date for the tentative plan.

~~2.~~ **3.** The final plats for any subsequent phase shall be filed within three (3) years of the approved date for the tentative plan, unless a longer period of time is allowed through the tentative plan approval process.

~~3.~~ **4.** If the applicant fails to file a final plat, the tentative plan for those phases shall become null and void.

C. Form of Final Plat. The final plat shall be submitted in the form prescribed by state statute and this ordinance. All plats and other writings or dedications made a part of such plats offered for recording shall be made in conformance with state statute, upon material that is 18 inches by 24 inches, suitable for binding and copying, have such characteristics of strength and permanency as may be required by the City. The plan shall be of such a scale, and the indication of the approvals thereof and of the dedication and affidavit of the surveyor, shall be of such size or type as will be clearly legible, but no part shall come nearer any edge of the sheet than one inch. The plat may contain as many sheets as necessary, but a fact sheet and index page shall be included for plats of two or more sheets.

D. Requirements of Survey and Plat of Land Division or Reconfiguration. Any final subdivision plat submitted shall meet the survey and monumentation requirements of the applicable Oregon Revised Statutes.

E. Information on Plat. In addition to the requirements of the tentative plan approval or otherwise required by law, the following information shall be shown on the plat:

1. Name of subdivision or partition.

2. Name of owner, applicant, and engineer or surveyor.

3. The date, scale, north point, legend, controlling topography such as bluffs, creeks and other bodies of water, and existing highways and railroads.

4. Legal description of the tract boundaries.

5. Reference points of existing surveys, identified, related to the plat by distances and bearings, and reference to a field book or map as follows:

   a. Stakes, monuments, or other evidences found in the ground and used to determine the boundaries of the subdivision.
   b. Adjoining corners of adjoining subdivision.
   c. Other monuments found or established in making the survey or required to be installed by provisions of this ordinance.
   d. The exact location and width of rights-of-way and easements intercepting the boundary of the tract.

6. Tract boundary lines, and street rights-of-way and center lines, with dimensions, bearing or deflecting angles, radii, arcs, points of curvature and tangent bearings. Normal high water lines for any creek, bay, or other body of water. Tract boundaries and street bearings shall be shown to the nearest 0.01 feet. No ditto marks shall be used.

7. Streets. The width of the streets being dedicated and the curve data shall be based on the street center line. In addition to the center line dimensions, the radius and central angle shall be indicated together with the long chord distance and bearing.

8. Easements. Easements shall be noted by fine dotted lines, clearly identified and, if already of record, their recorded reference. If an easement is not of record, a statement of the easement shall be given. The width of the easement, its length and bearing, and sufficient ties to locate the easement with respect to the subdivision shall be shown. If the easement is being dedicated by the map, it shall be properly referenced in the owner's certificates of dedication.

9. Lot **and Parcel** Numbers. Lot **and parcel** numbers beginning with the number "1" and numbered consecutively.

10. Public Lands. Public lands, including strips and easements shall be clearly marked to distinguish it from lots intended for sale.

11. Access Restrictions. Limitations on rights of access to and from streets, lots, and other parcels of land.

12. Area. The area of each lot, **parcel or unit of land**, if larger than one acre, to the nearest hundredth of an acre; and the area of each lot, **parcel or unit of land** less than one acre, to the nearest square foot.

13. Certificates and Signatures. The following certificates and signatures are required and shall be combined where appropriate:
    a. A signature by each party having any record title interest in the land, consenting to the preparation and recording of the plat.
    b. The seal and signature of the surveyor responsible for the survey and final map.
    c. The signature of the County Surveyor.
    d. The signature of the County Tax Assessor.
    e. The signature of the County Tax Collector.
    f. A signature of an authorized representative of the irrigation district, where applicable. All plans, plats or replats of land divisions located within the boundaries of an irrigation district, drainage district, water control district, district improvement company, or similar service district shall be submitted to the board of directors of the district or company and its approval thereof shall be indicated thereon by the board before City approval of such plan, plat, or replat of any subdivision. Except, that if the applicant is unable to obtain action or approval of any district or company within 45 days, the applicant shall notify the governing body in writing and thereafter the governing body shall serve notice on that district or company by certified mail advising the district or company that any objections to the plan, plat, or replat must be filed in writing with the governing body within 20 days. Failure of the district or company to respond shall be considered an approval of such plan, plat, or replat.
    g. The signature of the City Engineer.
    h. The signature of the City Planning Director.
    i. A signature of approval by the Board of County Commissioners.
    j. Other certificates or signatures that may be required by state regulations.

F. Supplemental Information with Plat. The following data, if applicable, shall accompany the plat.

1. Title Report. A preliminary title or subdivision guarantee report issued by a title insurance company in the name of the owner of the land, showing all parties whose consent is necessary and their interest in the premises; such report shall show evidence of a clear and marketable title and shall have been prepared within 30 days prior to submitting the final plat for review.

2. Survey Data Sheets. Sheets and drawings shall contain the following information:

   a. Traverse data including the coordinates of the boundary of the subdivision and ties to section corners and donation land claim corners, and showing the error of closure, if any. A survey control work sheet may be substituted for this item.

   b. The computation of distances, angles, and courses shown on the plat.

   c. Ties to existing monuments, proposed monuments, adjacent subdivisions, street corners, and state highway stationing.

3. Deed Restrictions. A copy of any deed restrictions applicable to the subdivision **or partition**.

4. Homeowner's Association. A copy of any homeowner's association agreements proposed or required for the subdivision.

5. Dedications. A copy of any dedication requiring separate documents with specific reference to parks, playgrounds, etc.

6. Taxes. A list of all taxes and assessments on the tract which have become a lien on the land subdivided.

7. Improvements. If grading, street improvements, sidewalks, pedestrian access corridors, bikeways, sewer or water facilities are required as a condition of approval of the final plat, the following shall be required to be submitted with final plat:

   a. Improvement Plan in accordance with Chapter 3.4; Public Improvement Standards of this ordinance.
   b. Plans and profiles of sanitary sewers, location of manholes, and drainage system.
   c. Plans and profiles of the water distribution system showing pipe sizes and location of valves and fire hydrants.
   d. Specifications for the construction of all utilities.
   e. Grading plans and specifications as required for areas other than streets and ways.
   f. Planting plans and specifications for street trees and other plantings in public areas.
   g. Plans for improvements, design factors, or other provisions for fire protection or fire hazard reduction.

8. Subdivision Adjoining SM or SMR Zones. Any final plat of which adjoins an SM or SMR zone must clearly show where such zone is located in relation to the subdivision boundaries.

9. Condominium Plats. Any final plat for a condominium shall be accompanied by a copy of the condominium declaration.

G. Technical Review of Plat

1. Ordinance Check. Upon receipt by the Planning Division, the plat and other data shall be reviewed by the Review Authority to determine that the land division as shown is substantially the same as it appeared on the approved tentative plan, and for compliance with provisions of this ordinance and other applicable laws.

2. Field Check. The City Engineer and Planning Director or their designated representatives may make such checks in the field as are desirable to verify that the map is sufficiently correct. The Engineer or Planning Director, or representatives thereof, may enter the property for this purpose.

3. Reimbursement. Expenses incurred by the City Engineer in the technical plat review shall be reimbursed by the applicant prior to final approval of the plat.

H. Conditions of Plat Approval.

1. The Review Authority shall determine whether ~~it~~ **the final plat** conforms with the approved tentative plan and with these regulations. If the Review Authority does not

approve the plat, ~~it~~ **the Review Authority** shall advise the applicant of the changes or additions that must be made and shall afford ~~him~~ the applicant a**n** opportunity to make corrections. If the Review Authority determines that the plat conforms to all requirements ~~it~~ **the Review Authority** shall recommend approval, provided supplemental documents and provisions for required improvements are satisfactory.

2. No plat of a proposed land division **or reconfiguration** shall be approved unless:

   a. Streets and roads for public use are to be dedicated without any reservation or restriction.
   b. Streets and roads held for private use and indicated on the tentative plan have been approved by the City.
   c. The plat contains provisions for dedication to the public of all streets, roads, bikeways, access corridors, parks, sewage disposal, and water supply system, if made a condition of the approval of the tentative plan.
   d. Explanations of all common improvements required as conditions of approval of the tentative plan shall be recorded and referenced on the plat.
   e. If the land division adjoins an SM or SMR zone, the existence and location of such zone shall be entered on the deeds for all lots or parcels created by the land division.

3. No plat of a land division **or reconfiguration** shall be approved unless the developer has either constructed and had accepted by the City the required improvements or the developer has executed an improvement agreement pursuant to the provisions of Section (E) above. If the developer chooses to construct the improvements, he shall also file with the City a warranty bond executed by a surety company to cover the one (1) year warranty periods following acceptance by the City. Said bond shall be in the amount of twelve (12%) percent of the value of the improvements.

I. Improvement Agreement

1. The developer may, in lieu of completion of the required improvements and repair to existing streets and facilities, request the City to approve an agreement between himself and the City specifying the schedule by which the required improvements and repairs shall be completed. Provided, however, any schedule of improvements agreed to shall not exceed one (1) year from the date the final plat is recorded. The agreement shall also provide the follow information:

   a. A list of all the contractors who will construct or complete the improvements and repairs required, and the cost of the project.
   b. That the City may call upon the security filed to construct or complete the improvements and repairs if the schedule of improvements is not adhered to.
   c. That the City shall recover the full cost and expense of any work performed by the City to complete construction of the improvements and repairs, including, but not limited to, attorneys' and engineering fees.
   d. That a warranty period for such improvements shall be in effect for one (1) year following the completion and acceptance of the improvements. A form of surety shall be deposited with the City following acceptance of the improvements. Said form of surety shall be in the amount of twelve (12) percent of the value of the improvements and shall be for a minimum time period of eighteen (18) months.
   e. That building permits will not be issued for construction on any lot or parcel within the land division until such time as all required improvements are completed, unless otherwise authorized by the City.

2. The City may reject an agreement authorized by this section for any reason the City deems sufficient.

J. Bond or Cash Deposit.

1. The developer shall file, with any agreement specified in Section (I) above, to assure his full and faithful performance thereof, one of the following:

   a. A surety bond executed by a surety company authorized to transact business in the State of Oregon in a form approved by the City Attorney.
   b. A cash deposit in a City account at an approved lending institution.
   c. An irrevocable standby letter of credit from a federally insured banking institution or savings & loan operating in Oregon that unconditionally promises to pay the funds pledged upon demand by the City. Such obligation must be unaffected by the financial status of the person who has obtained the letter of credit.
   d. An "Assurance Provider" arrangement between the developer, the City and a federally insured financial institution which assures the City that funds to complete the

performance of the developer's improvement agreement will be provided by the federally insured financial institution to the City in the event the developer does not complete performance of the improvement agreement. The form of the Assurance Provider arrangement, and the federally insured financial institution must be satisfactory to the City.

2. Such assurance of full and faithful performance shall be for 120% of the cost of the improvements and repairs as determined by the City.

3. If the developer fails to carry out the provisions of the agreement, the City shall call upon the bond, or letter of credit or cash deposit or Assurance Provider arrangement to finance any cost or expenses resulting from said failure. If the amount of the deposit, letter of credit or bond or Assurance Provider arrangement exceeds the cost and expense incurred by completing the improvements, the City shall release the remainder. If the amount of the deposit, letter of credit or bond or Assurance Provider arrangement is less than the cost and expense incurred by the City for the improvements and repairs, the developer shall be liable to the City for the difference.

K. Final Plat Approval. After the final plat has been checked and approved as provided in this article, and when all signatures appear thereon, except those of the Planning Director, County Clerk, and Board of County Commissioners, the Planning Director shall certify the final plat and submit it to the Board of County Commissioners for final approval.

L. Filing of Plat.

1. No plat shall have any force or effect until the same has been finally approved by the Board of County Commissioners. No title to any property described in any offer of dedication shall pass until the final plat has been filed.

2. **Within 60 days of City approval** the ~~Planning Director or his representative~~ applicant shall file the approved final plat, including an exact copy thereof as described in subsection four (4) of this section, with the County Clerk.

3. No plat shall be filed unless all ad valorem taxes and all special assessments fees or other charges required by law to be placed upon the tax roll, which have become a lien upon the land division or which will become a lien during the calendar year, have been paid.

4. The applicant shall also submit with the final plat an exact photo mylar copy thereof. The engineer or surveyor who made the plat shall make an affidavit to indicate that the photocopy or tracing is an exact copy of the plat. The copy shall be filed with the County Recorder and shall be certified to him to be an exact copy and then shall be filed in the archives of the County, and be preserved by filing without folding. The applicant shall provide copies to the County Assessor, County Sanitarian, City Engineer, City Planning Division, and appropriate postal and fire protection agencies. One original exact copy shall be filed with the City Engineer.

M. Errors in the Final Plat. If an error in the final plat is discovered after the plat has been filed with the County Clerk, said error shall be corrected by the filing of a correction plat which shall be submitted in the same manner as a final plat.

N. Notice of Filing of Final Plat. The applicant shall provide notice of the filing of the final plat to all parties who participated in the land use proceedings leading up to the filing of the final plat.

4.3.500 ~~Lot~~ Property Line Adjustments

A. Applicability ~~of Regulations~~

~~1. The boundary adjustment of no more than two lots or parcels by relocation of a common boundary where an additional lot or parcel is not created or eliminated shall only be granted in accordance with the provisions of this ordinance.~~

1. The relocation or elimination of a common property line between abutting properties may be granted in accordance with the provisions of this section. The Property Line Adjustment provisions of this section shall not apply to:

a. A property line adjustment that affects more than two abutting units of land.

b. **A property line adjustment that adjusts a property which was approved and/or created as open space, common area, park, private road, or other specifically required and/or designated unit of land.**

B. Filing Procedures and Requirements.

1. Any person proposing a ~~Lot~~ **Property** Line Adjustment shall prepare and submit two (2) copies of the documents hereinafter described, in accordance with the prescribed procedures and the appropriate filing fee, to the Planning Division.

2. An application for a ~~Lot~~ **Property** Line Adjustment shall be accompanied by the following materials:

   a. A scale drawing prepared by a licensed surveyor or engineer showing the existing ~~lot~~ **property** lines, the proposed ~~lot~~ **property** lines, existing water, sewer and utility lines, and the footprint of all existing structures with setbacks to the existing and proposed ~~lot~~ **property** lines noted.
   b. Legal descriptions for the existing ~~lots or parcels~~ **properties** and for the ~~lots or parcels~~ **properties** as adjusted.
   c. A copy of the current property tax status from the County Tax Assessor. All taxes must be paid in full.
   d. A copy of the deed or other recorded instrument that signifies ownership of the affected ~~lots or parcels~~ **properties**.
   e. If the ~~lots or parcels~~ **properties** are not served by the City sewer system, provide documentation from the County Environmental Health Division which indicates that the proposed adjustment will be in compliance with all applicable requirements for sanitary septic systems when such systems exist on the ~~lots or parcels~~ **properties** affected by the adjustment.

C. Requirements for Tentative Approval.

1. No application for ~~lot~~ **property** line adjustment shall be approved unless the following standards are met:

   a. The adjustment does not result in ~~lot or parcel~~ **property** sizes that are less than those established by the underlying zoning designation.
   b. Nonconforming ~~lots or parcels~~ **properties** that are less than the minimum size established for the zone shall not be further reduced in size.
   c. Existing structures shall not be made nonconforming with regard to setbacks, lot coverage or other requirements of the underlying zone, or this ordinance.
   d. Existing water and sewer service lines to the adjusted ~~lots or parcels~~ **properties** shall be in conformance with current City standards or shall be constructed to conform with current City standards.
   e. Existing sanitary septic systems on the adjusted lots or parcels shall meet all requirements of the County Environmental Health Division.
   f. The ~~two lots or parcels subject to the proposed boundary line adjustment shall not be subject to any other pending lot line adjustment applications with other lots or parcels.~~

D. Requirements for Final Approval.

1. In order to obtain final approval of a ~~lot~~ **property** line adjustment, the following requirements shall be completed within one (1) year of the tentative approval:

   a. New deeds or other instrument conveying ownership containing the legal descriptions for the adjusted ~~parcels~~ **properties** shall be recorded with the County Clerk.
   b. A survey drawing containing the stamp and signature of a licensed surveyor or engineer shall be recorded with the County Surveyor.
   c. All property taxes on the adjusted ~~parcels~~ **properties** shall be paid in full.
   d. Verification of acceptance of water and sewer line construction to the adjusted ~~lots or parcels~~ **properties** by the City Engineering Division.
   e. The applicant shall provide notice of the filing of the final plat to all parties who participated in the land use proceedings leading up to the filing of the final plat.

4.3.600 Lot of Record

Not all tax lots are "lots of record" (legal lots **or parcels**). The City of Bend will not issue any permits on a **lot or** parcel until it is determined that it is a lot of record. If your **lot or** parcel is not in an approved subdivision or partition, has not been issued a land use permit, or has never been determined to be a lot of record, you will need to file a declaratory ruling for a lot of record. This will determine when your **lot or** parcel was created and if it was created in accordance with the law in effect at the time of creation. For lots **or parcels** created in Deschutes County prior to annexation into the City, the Deschutes County Lot of Record Ordinance shall apply.

D. What is a lot of record? A lot or parcel held in separate ownership as shown on the records of the Deschutes County Clerk, which conforms to all zoning and subdivision/partition requirements in effect on the date the lot or parcel was created.

E. What is not a lot of record?

1. A lot or parcel created solely by a tax lot segregation because of an assessors role change or for the convenience of the assessor;
2. A lot or parcel created by an intervening section or township line or right of way;
3. A lot or parcel created by the foreclosure of a security interest.

F. Remedy for parcels found not to be lots of record.

1. Consolidate the subject lot or parcel with a contiguous lot or parcel that is a determined to be a lot of record. Both parcels must be held in the same ownership as shown on the records of the Deschutes County Clerk.
2. Apply for and obtain approval for a single lot partition in conformance with the ORS 92.177 and Section 4.3.300 of this ordinance

CITY OF BEND PLANNING DIVISION
STAFF FINDINGS FOR PLANNING COMMISSION RECOMMENDED DEVELOPMENT CODE TEXT AMENDMENT

PROJECT NUMBER: **07-186**

DATE MAILED: **July 20, 2007**

PLANNING COMMISSION HEARING DATES: Monday, May 14, 2007
Monday June 11, 2007

CITY COUNCIL HEARING DATE: Wednesday, August 1, 2007
City of Bend Council Chambers
710 NW Wall Street
Bend, OR

APPLICANT: City of Bend
710 NW Wall Street
Bend, Oregon 97701

REQUEST: Consider a Planning Commission recommendation to amend the text of Chapter 1.2, Chapter 4.1 and Chapter 4.3 of the Bend Development Code (Ordinance NS-2016).

STAFF REVIEWER: Greg Blackmore, Associate Planner, 541-693-2123; gblackmore@ci.bend.or.us

I. APPLICABLE CRITERIA:

(1) The Bend Area General Plan

(2) Bend Code Chapter 10; City of Bend Development Code, Ordinance NS-2016

(a) Chapter 4.1; Land Use Review and Procedures
(b) Chapter 4.6; Land Use District Map and Text Amendments

II. FINDINGS OF FACT:

1. **PLANNING COMMISSION RECOMMENDATION:** An amendment the text of Chapter 1.2, Chapter 4.1 and Chapter 4.3 of the Bend Development Code (Ordinance NS-2016), which is intended to clarify the procedures for property reconfigurations and specify the applicability of "property line adjustment" procedures within the Bend Development Code. The entirety of the recommended text amendment is attached as Exhibit A.

2. **PUBLIC NOTICE AND COMMENTS:** The City of Bend Planning Division published Notice of the Public Hearings for the proposed Development Code text amendment in the Bend Bulletin on Sunday April 22, 2007 and July 12, 2007 and sent notice to all Neighborhood Associations recognized by the City of Bend on April 20, 2007 and July 3, 2007. In association with the Planning Commission public hearings, the City received comments from one individual, and prior to the City Council Hearing, as of the writing of this report, no public comments have been received.

   Various agencies were also sent notices. The Planning Division received comments and recommendations from the following departments, divisions and/or agencies.

The comments and recommendations received are part of the record and are contained in PZ File # 07-186.

III. CONCLUSIONARY FINDINGS:

CONFORMANCE WITH CITY OF BEND COMMUNITY DEVELOPMENT CODE, CHAPTER 4.6, LAND USE DISTRICT MAP AND TEXT APMENDMENTS

4.6.100 Purpose.

The purpose of this chapter is to provide standards and procedures for legislative and quasi-judicial amendments to this Code, the Bend Area General Plan, the Bend Area General Plan map and the land use district map. These will be referred to as "map and text amendments." Amendments may be necessary from time to time to reflect changing community conditions, needs and desires, to correct mistakes, or to address changes in the law.

FINDING: As detailed in Section 4.6.200(B) below, the Development Code text amendment as recommended by the Planning Commission addresses a change in state law and clarify procedures that were mistakenly imprecisely drafted in the Bend Development Code, both of which are consistent with the purpose of this Chapter.

4.6.200 Legislative Amendments.

A. Applicability, Procedure and Authority. Legislative amendments generally involve broad public policy decisions that apply to other than an individual property owner. These include, without limitation, amendments to the text of the comprehensive plan and map, Development Code and changes in the zoning map not directed at a small number of properties. They are reviewed using the Type IV procedure in accordance with Chapter 4.1, Land Use Review and Procedures and shall conform to Section 4.6.600, Transportation Planning Rule Compliance. A Legislative Amendment may be approved or denied.

FINDING: The Planning Commission recommended amendment is to the text of the Bend Development Code and consequently is a decision involving broad public policy rather than an individual property owner; therefore the Legislative Amendment Procedures of this section are the appropriate procedures from which to review the recommendation.

B. Criteria for Legislative Amendments. The applicant shall submit a written narrative which explains how the approval criteria will be met. A recommendation or a decision to approve or to deny an application for a Legislative Amendment shall be based on all of the following criteria:

1. The request is consistent with the applicable State land use law;

FINDING: Applicable State land use laws include Oregon Revised Statutes (ORS) Chapter 92 Subdivisions and Partitions along with Oregon Administrative Rules (OAR) 660-015-0000 – Oregon's Statewide Planning Goals & Guidelines. A review of the applicable state land use laws are detailed below.

ORS – Chapter 92 Subdivisions and Partitions.
Property reconfigurations are subject to the State land use laws identified in ORS Chapter 92, which establishes the statutory requirements for subdivisions, partitions, replats, and property line adjustments. ORS 92.190(3) states, "The governing body of a city or county may use procedures other than replatting procedures in ORS 92.180 and 92.185 to adjust property lines as described in ORS 92.010(11), as long as those procedures include the recording, with the county clerk, of conveyances conforming to the approved property line adjustment as surveyed in accordance with ORS 92.060(7). "

In both Article V of the repealed Land Division Ordinance (NS-1786) and Section 4.3.500 of the adopted Bend Development Code (NS-2016), the City of Bend has

utilized the authority granted in ORS 92.190(3) to establish "Lot Line Adjustment" procedures which generally institute that no more than two lots or parcels (emphasis added) can be adjusted by the relocation of a common boundary line where an additional lot or parcel is not created or eliminated (emphasis added).

The current language of ORS 92.010(11) states, "'Property line adjustment' means the relocation or elimination of a common property line between abutting properties." ORS 92.010 was amended in June 2005, at which time the current statutory definition for "property line adjustment" was established; this statutory amendment is documented in Chapter 399 - Oregon Laws 2005. The amended ORS definition of June 2005 clearly adds statutory language that allows for the elimination (in addition to the relocation) of a common property line between abutting properties.

Because the amended ORS 92.010 definition of "property line adjustment" means the relocation or elimination of a common property line between abutting properties, ORS 92.190(3) consequently grants the City the authority to establish procedures which include the relocation ***or elimination*** of a common ***property line*** between abutting properties, for all "Property Line Adjustments." The text amendment as recommended by the Planning Commission will implement the authority granted to the City by ORS 92.190(3) in certain for certain property lines permitted under ORS Chapter 92 and further clarify the procedures all other property reconfigurations and or replats, in conformance with the Replatting requirements established in ORS 92.180-92.190.

Based on the above discussion, staff finds that the recommended Development Code text amendment conforms to ORS Chapter 92.

OAR 660-015-0000(1)Oregon Statewide Planning Goal 1
"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 through Chapter 1 of the Bend Area General Plan and through implementing the Development Code. Chapter 1 of the General Plan identifies the Bend Planning Commission as the official Citizen Involvement Committee for the urban area.

Chapter 4.1 and 4.6 of the Development Code together require that the Planning Commission and the City Council both hold public hearings prior to acting on a proposed amendment to the Development Code. A Planning Commission public hearing was held on May 14, 2007 and June 11, 2007. A City Council public hearing on this proposed amendment will be held on August 1, 2007. Implementation of the public involvement procedures identified in the Development Code has been followed, which ensures compliance with Goal 1.

OAR 660-015-0000(2)Oregon Statewide Planning Goal 2
"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."

The Planning Commission recommended amendment clarifies scope and procedures associated with property reconfigurations. The recommended text amendment is within a Development Code that has been crafted to be consistent with The Bend Area General Plan, a comprehensive plan which has been "acknowledged" by the Oregon Department of Land Conservation and Development (DLCD). ORS 197.015(1) establishes that, "'Acknowledgment' means a commission order that certifies that a comprehensive plan and land use regulations, land use regulation or plan or regulation amendment complies with the goals..." ; consequently the Bend Area General Plan is consistent with OAR 660-015-0000(2) Oregon Statewide Planning Goal 2. Additionally, although portions of the NS-2016, the Bend Development Code (adopted July 5, 2006), are under remand, the other portions have been "acknowledged" by the Oregon Department of Land Conservation and Development (DLCD), which is clarified in a January 19, 2007 Letter to the City from DLCD. The specific sections of the Development Code subject to the recommended text amendment, have not specifically

been identified as a remand items, and consequently have been "acknowledged" by DLCD. The Planning Commission recommended Development Code text amendment clarifies procedures for property reconfigurations, however the proposed text amendment does not alter the administration of the code or the factual base that the resulting decisions will be based upon, consequently the staff finds that the Planning Commission recommended Development Code text amendment complies with Goal 2.

The other Statewide Planning Goals were reviewed and determined to not be applicable to this proposal. Based on the above discussion addressing ORS Chapter 92 and the Applicable Statewide Planning Goals & Guidelines #1 and #2 staff finds that the Planning Commission recommended Development Code text amendment complies with the criteria of this section.

2. The request is consistent with the applicable Bend Area General Plan goals and policies;

FINDINGS: The "goals" established in the general plan express the desires of the residents of Bend as the City progresses into the future. The "goals" are generally carried out through "policies", which are statements of public policy. Staff reviewed the Comprehensive Plan and found only Chapter 1 to be directly applicable to the proposed text amendment.

Chapter 1 of the Bend Area General Plan includes the following goal:

- *Public/Civic Involvement* — Encourage involvement by all citizens, corporate and individual, to keep the city vital and the Plan an "evolving vision".

The Public/Civic Involvement Goal has been established as statements of public policy as follows:

Citizen Involvement

15. The city shall continue to use advisory committees in their planning process, members of which are selected by an open process, and who are widely representative of the community.

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.

Chapter 4.1 and 4.6 of the Development Code together require that the Planning Commission and the City Council both hold public hearings prior to acting on amendments to the text of the Development Code. The Planning Commission public hearing on this amendment was held on May 14, 2007 and June 11, 2007. A City Council public hearing on the amendment will be held on August 1, 2007. Implementation of the public involvement procedures identified in the Development Code will ensure compliance with the Citizen Involvement Goals and Policies of the Bend Area General Plan.

Based on the findings stated above, staff concludes that the recommended text amendment is consistent with the applicable Bend Area General Plan goals and policies.

3. The applicant can demonstrate a public need or benefit for the proposed amendment.

FINDING: Although Section 4.3.100 of the Development Code notes that the Purpose of Chapter 4.3 includes:

1. Provide[ing] rules, regulations and standards governing the approval of subdivisions, partitions and lot line adjustments, as defined below and in Chapter 1.2; Definitions:

c. Lot line adjustments are modifications to lot lines or parcel boundaries that do not result in the creation of new lots.

d. Lot consolidation is the combining of two or more lots or parcels into one legal lot or parcel.

The text contained in Chapter 4.3 (or otherwise in the Development Code) does not provide procedures for property reconfigurations and/or (replat, property line adjustment, or otherwise) for a property line adjustment that eliminates a property line. The requirements, processes, and procedures within the chapters of the Development Code have generally been constructed to carry out the purpose statements of the Development Code and the purpose statements generally address a public need or benefit. Therefore the Planning Commission recommended text amendment, which would clarify the procedures that could carry out the stated purpose of Chapter 4.3, has a clear public need and/or benefit.

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...

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 principal of the proposed rezoning by the adoption of a "Resolution of Intent to Rezone"...

FINDING: The Planning Commission recommended amendment is to the text of the Bend Development Code. The recommendation is a decision involving broad public policy rather than of an individual property owner and does not include any zone changes; therefore the Legislative Amendment Procedures of Section 4.6.200 are the appropriate procedures and criteria from which to review the submitted application and the criteria of these sections are not applicable.

4.6.500 Record of Amendments.

The City Recorder shall maintain a record of amendments to the text of this Code and the land use districts map in a format convenient for public use.

FINDING: In the event the Development Code text amendment is adopted by ordinance, compliance with this Section will be required.

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 Planning Commission recommendation is for a text amendment to the Bend Development Code; it is not a comprehensive plan amendment or a land use district change, therefore the criteria of this section is not applicable.

IV. CONCLUSIONS:

Based on the above Findings of Fact and Conclusionary Findings, staff finds the Planning Commission recommended Development Code text amendment can meet, with maintenance of a record, all applicable criteria of the Development Code.

V. RECOMMENDATION:

Staff recommends that the City Council conduct a second reading and adopt the amendment to the text of Chapter 1.2, Chapter 4.1 and Chapter 4.3 of the Bend Development Code.

BLANK PAGE

ORDINANCE NO. NS-2069

AN ORDINANCE ADOPTING A REVISED WASTEWATER PRETREATMENT PROGRAM BY REPEALING AND REPLACING BEND CODE SECTIONS 4.400 THROUGH 4.490

THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

Section 1. Bend Code Sections 4.400 through 4.490 are hereby repealed and replaced with the following:

TABLE OF CONTENTS

CHAPTER 1 - GENERAL PROVISIONS 4
1.1 Purpose and Policy 4
1.2 Administration 4
1.3 Definitions 4
1.4 Abbreviations 10

CHAPTER 2 - GENERAL REQUIREMENTS 11
2.1 Prohibited Discharge Standards 11
2.2 Federal Categorical Pretreatment Standards 13
2.3 State Requirements 13
2.4 Local Limits 13
2.5 City of Bend's Right of Revision 13
2.6 Special Agreement 13
2.7 Dilution 14
2.8 Pretreatment Facilities 14
2.9 Deadline for Compliance with Applicable Pretreatment Requirement 14
2.10 Additional Pretreatment 14
2.11 Slug Control and Accidental Spill Prevention Plans 15
2.12 Septic Tank Wastes 16

CHAPTER 3 - WASTEWATER DISCHARGE PERMITS 17
3.1 Wastewater Discharge Permitting: Existing SIU 17
3.2 Wastewater Discharge Permitting: New Source and New User 17
3.3 Wastewater Discharge Permitting: Extrajurisdictional Users 17
3.4 Wastewater Discharge Permit Application Contents 17
3.5 Signatory and Certification Requirement 19
3.6 Wastewater Discharge Authorization 20
3.7 Wastewater Discharge Permit Decisions 20
3.8 Wastewater Discharge Permit Contents 20
3.9 Wastewater Discharge Permit Appeals 21
3.10 Wastewater Discharge Permit Duration 22
3.11 Wastewater Discharge Permit Modification 22
3.12 Wastewater Discharge Permit Transfer 22

3.13 Wastewater Discharge Permit Revocation 23
3.14 Wastewater Discharge Permit Reissuance 23

CHAPTER 4 - REPORTING REQUIREMENTS 24
4.1 Baseline Monitoring Reports 24
4.2 Final Compliance Report (Initial Compliance Report) 25
4.3 Periodic Compliance Report 25
4.4 Compliance schedules for meeting applicable pretreatment standards 27
4.5 Notification of Significant Production Changes 27
4.6 Hazardous Waste Notification 27
4.7 Notice of potential problems, including accidental spills and slug loads 28
4.8 Non-Compliance Reporting 28
4.9 Notification of changed discharge 28
4.10 Reports from Unpermitted Users 28
4.11 Record Keeping 28
4.12 Annual Certification by NSCIU and NDCIU 29

CHAPTER 5 - SAMPLING AND ANALYTICAL REQUIREMENTS 29
5.1 Sampling Requirements for Users 29
5.2 Analytical Requirements 29
5.3 City of Bend Monitoring of User's Wastewater 31

CHAPTER 6 - COMPLIANCE MONITORING 31
6.1 Inspection and Sampling 31
6.2 Monitoring Facilities 31
6.3 Search Warrants 32
6.4 Vandalism 32

CHAPTER 7 - CONFIDENTIAL INFORMATION 32

CHAPTER 8 - PUBLICATION OF USERS IN SIGNIFICANT NON-COMPLIANCE 33

CHAPTER 9 - ADMINISTRATIVE ENFORCEMENT REMEDIES 34
9.1 Notification of Violation 34
9.2 Consent Orders 34
9.3 Show Cause Hearing 34
9.4 Compliance Orders 34
9.5 Cease and Desist Orders 35
9.6 Emergency Suspensions 35
9.7 Termination of Discharge (Non-Emergency) 35

CHAPTER 10 - JUDICIAL ENFORCEMENT REMEDIES 36
10.1 Administrative Fines 36
10.2 Injunctive Relief 36
10.3 Civil Penalties 37
10.4 Criminal Prosecution 37
10.5 Remedies Non-exclusive 38

CHAPTER 11 - SUPPLEMENTAL ENFORCEMENT ACTION 38
11.1 Performance Bonds 38
11.2 Liability Insurance 38
11.3 Water Supply Severance 38
11.4 Public Nuisances 39
11.5 Informant Rewards 39
11.6 Contractor Listing 39

CHAPTER 12 - AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS 39
12.1 Upset 39
12.2 Prohibited Discharge Standards 40
12.3 Bypass 41

CHAPTER 13 - WASTEWATER TREATMENT RATES 42

CHAPTER 14 - MISCELLANEOUS PROVISIONS 42
14.1 Pretreatment Charges and Fees 42
14.2 Severability 42
14.3 Conflicts 42

CHAPTER 15 - EFFECTIVE DATE 43

CHAPTER 1 - GENERAL PROVISIONS

4.410

1.1 Purpose and Policy

This ordinance sets forth uniform requirements for users of the Publicly Owned Treatment Works (POTW) for the City of Bend and enables the City of Bend to comply with all applicable State and Federal laws, including the Clean Water Act (33 USC 1251 et seq.) and the General Pretreatment Regulations (40 CFR Part 403). The objectives of this ordinance are:

A. To prevent the introduction of pollutants into the POTW that will interfere with the operation of the POTW;

B. To prevent the introduction of pollutants into the POTW which will pass through the POTW, inadequately treated, into receiving waters or otherwise be incompatible with the POTW;

C. To ensure that the quality of the wastewater treatment plant sludge is maintained at a level which allows its use and disposal in compliance with applicable statutes and regulations;

D. To protect POTW personnel who may be affected by wastewater and sludge in the course of their employment and to protect the general public; and

E. To improve the opportunity to recycle and reclaim wastewater and biosolids from the POTW.

This ordinance shall apply to all users of the POTW. The ordinance authorizes the issuance of wastewater discharge permits; authorizes monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

1.2 Administration

Except as otherwise provided herein the Director of Public Works shall administer, implement, and enforce the provisions of this ordinance. Any powers granted to or duties imposed upon the Director of Public Works may be delegated by the Director of Public Works to other City of Bend personnel.

1.3 Definitions

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this ordinance, shall have the meanings hereinafter designated.

1. Act or "the Act". The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251 et seq.

2.Applicable Pretreatment Standards. For any specified pollutant, City of Bend prohibitive standards, City of Bend specific pretreatment standards (local limits), State of Oregon pretreatment standards, or EPA's Categorical Pretreatment Standards (when effective), whichever standard is appropriate or most stringent.

3.Approval Authority. Oregon Department of Environmental Quality

4.Authorized Representative of the User.

1) By a responsible corporate officer, if the Industrial User submitting the reports required by paragraphs (b), (d), and (e) of this Chapter is a corporation. For the purpose

of this paragraph, a responsible corporate officer means:

(i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or

(ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively;

(3) If the user is a Federal, State, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or his/her designee.

(4) The individuals described in paragraphs 1 through 3 above may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the City of Bend.

5. Best Management Practice(s) (BMPs). A schedule of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Chapter2.1 (A) & (B) of this Ordinance. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage

6. Biochemical Oxygen Demand (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20° Celsius, usually expressed as a concentration [milligrams per liter (mg/l)]

7. Bio-solids Solid or semisolid material obtained from treated wastewater, often used as fertilizer.

8. Categorical Pretreatment Standard or Categorical Standard. Any regulation containing pollutant discharge limits promulgated by the U.S. EPA in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. 1317) which applies to a specific category of users and which appears in 40 CFR Chapter I, Subchapter N, Parts 405-471.

9. Categorical User. A user regulated by one of EPA's Categorical Pretreatment Standards.

10. Chemical Oxygen Demand. A test to measure the amount of oxygen consumed where the oxygen is derived from chemicals.

11. Color. The optical density at the visual wave length of maximum absorption, relative to distilled water. One-hundred percent (100%) transmittance is equivalent to zero (0.0) optical density.

12. Composite Sample. The sample resulting from the combination of individual

wastewater samples taken at selected intervals based on an increment of either flow or time.

13. Cooling Water/Non-Contact Cooling Water. Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product. Cooling water may be generated from any use, such as air conditioning, heat exchangers, cooling or refrigeration to which the only pollutant added is heat.

14. Department of Environmental Quality (DEQ). The Oregon Department of Environmental Quality (DEQ) is a regulatory agency whose job is to protect the quality of Oregon's Environment. DEQ is responsible for protecting and enhancing Oregon's water and air quality, for cleaning up spills and releases of hazardous materials, and for managing the proper disposal of hazardous and solid wastes.

15. Director of Public Works. The person designated by the City of Bend to supervise the operation of the POTW, and who is charged with certain duties and responsibilities by this ordinance, or a duly authorized representative.

16. Domestic User (Residential User). Any waste discharger who contributes, causes, or allows the contribution of wastewater into the City of Bend POTW that is of a similar volume and/or chemical make-up to that of a residential dwelling unit. Discharges from a residential dwelling unit typically include up to 80 gallons per capita per day, 0.2 pounds of BOD per capita per day, and 0.17 pounds of TSS per capita per day.

17. Environmental Protection Agency (EPA). The U.S. Environmental Protection Agency or, where appropriate, the Director of the Region 10 Office of Water, or other duly authorized official of said agency.

18. Existing Source. A categorical industrial user, the construction or operation of whose facility commenced prior to the publication by EPA of proposed categorical pretreatment standards, which would be applicable to such source if and when the standard is thereafter promulgated in accordance with Section 307 of the Act.

19. Existing User. Any non-categorical user which was discharging wastewater prior to the effective date of this ordinance.

20. Grab Sample. A sample which is taken from a waste stream on a one-time basis without regard to the flow in the waste stream and without consideration of time.

21. Indirect Discharge or Discharge. Any liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW. The discharge into the POTW is normally by means of pipes, conduits, pumping stations, force mains, constructed drainage ditches, surface water intercepting ditches, and all constructed devices and appliances appurtenant thereto.

22. Interference. A discharge which alone or in conjunction with a discharge or discharges from other sources, either: (1) inhibits or disrupts the POTW, its treatment processes or operations; (2) inhibits or disrupts its sludge processes, use or disposal; or (3) is a cause of a violation of the City of Bend's WPCF permit or of the prevention of biosolids use or disposal in compliance with any of the following statutory/ regulatory provisions or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act; the Solid Waste Disposal Act (SWDA), including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA);

any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SWDA; the Clean Air Act; the Toxic Substances Control Act; [and the Marine Protection, Research, and Sanctuaries Act].

23. Maximum Allowable Discharge Limit. The maximum concentration or mass loading of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event

24. Medical Wastes. Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

25. NAICS CODES (North American Industry Classification System Codes). New industry classification that replaces the current SIC.

26. New Source.

(1) Any building, structure, facility, or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed categorical pretreatment standards under Section 307 (c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

(a) The building, structure, facility, or installation is constructed at a site at which no other source is located; or

(b) The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(c) The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

(2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of Chapter (1) (b) or (c) above but otherwise alters, replaces, or adds to existing process or production equipment.

(3) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

(a) Begun, or caused to begin as part of a continuous on-site construction program

(i) any placement, assembly, or installation of facilities or equipment; or

(ii) significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(b) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design

studies do not constitute a contractual obligation under this paragraph.

27. New User. A "new user" is a user that is not regulated under federal categorical pretreatment standards but that applies to the City of Bend for a new building permit or occupies an existing building and plans to commence discharge of wastewater to the City of Bend's collection system after the effective date of this ordinance. Any person that buys an existing facility that is discharging non-domestic wastewater will be considered an "existing user" if no significant changes are made in the manufacturing operation.

28. Pass Through. A discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the City of Bend's WPCF permit. This includes an increase in the magnitude or duration of a violation.

29. Permittee: A person or user issued a wastewater discharge permit by The City of Bend.

30. Person. Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all Federal, State, or local governmental entities.

31. pH. A measure of the acidity or alkalinity of a substance, expressed in standard units.

32. Pollutant. Any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, agricultural and industrial wastes, and the characteristics of the wastewater [i.e., pH, temperature, TSS, turbidity, color, BOD, Chemical Oxygen Demand (COD), toxicity, or odor].

33. Pretreatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to (or in lieu of) introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means (except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard).

34. Pretreatment Requirement. Any substantive or procedural requirement related to pretreatment imposed on a user, other than a pretreatment standard.

35. Pretreatment Standards or Standards. Prohibited discharge standards, categorical pretreatment standards, and local limits established by the City of Bend/POTW.

36. Prohibited Discharge Standards or Prohibited Discharges. Absolute prohibitions against the discharge of certain substances, which appear in Sections 2.1 (A) and (B) of this ordinance.

37. Publicly Owned Treatment Works (POTW). A "treatment works," as defined by Section 212 of the Act (33 U.S.C. 1292) which is owned by the City of Bend. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances which convey wastewater to a treatment plant. The term also means the

City of Bend.

38. Septic Tank Waste. Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks, trucked waste and waste tanks.

39. Sewage. Human excrement and gray water (household showers, dishwashing operations, etc.) that is plumbed directly to the City of Bend sewer system.

40. Sewer. Any pipe, conduit ditch, or other device used to collect and transport sewage from the generating source.

41. Shall, May. "Shall" is mandatory, "may" is permissive.

42. Significant Industrial User.

(1) A user subject to categorical pretreatment standards; or

A user that:

(a) Discharges an average of 25,000 GPD or more of process wastewater to the POTW (excluding sanitary, non-contact cooling, and boiler blowdown wastewater); or

(b) Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

(c) Is designated as such by the City of Bend on the basis that it has a reasonable potential for adversely affecting the POTWs operation or for violating any pretreatment standard or requirement.

(2) A Significant Industrial User is an Industrial User subject to Categorical Pretreatment Standards under 40 CFR, 403.6 and 40 CFR Chapter I, subchapter N, however, the Control Authority may determine that an Industrial User subject to categorical Pretreatment Standards under § 403.6 and 40 CFR chapter I, subchapter N is a Non-Significant Categorical Industrial User rather than a Significant Industrial User on a finding that the Industrial User never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met:

(i) the Industrial User, prior to Control Authority's finding, has consistently complied with all applicable categorical Pretreatment Standards and Requirements;

(ii) the Industrial User annually submits the certification statement required in § 403.12(q) together with any additional information necessary to support the certification statement; and

(iii) the Industrial User never discharges any untreated concentrated wastewater.

(3) Upon a finding that a user meeting the criteria in Subchapter (1) has no reasonable potential for adversely affecting the POTWs operation or for violating any applicable pretreatment standard or requirement, the City of Bend may at any time, on its own initiative or in response to a petition received from a user and in accordance with procedures established according to 40 CFR 403.8(f)(6)] determine that such user should not be considered a significant industrial user.

43. Significant Noncompliance(SNC). Significant noncompliance is defined in full in Chapter 8 of this ordinance.

44. Sludge. Semisolid material such as the type precipitated by sewage treatment.

45. Slug Control Plan-40 CFR 403.8 (B)(6)(iv). Requirements to control Slug

Discharges, which include development of a compliance schedule for installation of technology required to meet Pretreatment Standards and submission of all notices and reports.

46. Slug Load. Any discharge at a flow rate or concentration which could cause a violation of the discharge standards in Chapter 2.1 through 2.4 of this ordinance or any discharge of a non-routine, episodic nature, including but not limited to, an accidental spill or a non-customary batch discharge.

47. Standard Industrial Classification (SIC) Code. A classification pursuant to the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.

48. Storm Water. Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

49. Total Suspended Solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering.

50. Treatment Plant Effluent. The discharge from the POTW into waters of the United States.

51. User or Industrial User. A source of a direct or indirect discharge to the sanitary sewer regulated under Section b), (c), or (d) of the Act. The source shall not include "domestic user" as defined herein.

52. Wastewater. Liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.

53. Wastewater Discharge Permit An authorization or equivalent control mechanism issued by the City of Bend to users discharging wastewater to the POTW. The permit or control mechanism may contain appropriate pretreatment standards and requirements as set forth in this ordinance.

54. Wastewater Treatment Plant or Treatment Plant. That portion of the POTW which is designed to provide treatment of municipal sewage and industrial waste. The use of the singular shall be construed to include the plural and the plural shall include the singular as indicated by the context of its use.

1.4 Abbreviations

The following abbreviations shall have the designated meanings:

BOD - Biochemical Oxygen Demand

CFR - Code of Federal Regulations

COD - Chemical Oxygen Demand

DEQ – Department of Environmental Quality

EPA - U.S. Environmental Protection Agency

GPD - gallons per day

l - liter

LEL - Lower Explosive Limit

mg - milligrams

mg/l - milligrams per liter

NPDES - National Pollutant Discharge Elimination System

O&M - Operation and Maintenance

POTW - Publicly Owned Treatment Works
RCRA - Resource Conservation and Recovery Act
SIC - Standard Industrial Classifications
SLUG CONTROL PLAN-Requirement to control slug discharges
SWDA - Solid Waste Disposal Act (42 U.S.C. 6901, et seq.)
TSS - Total Suspended Solids
USC - United States Code
WPCF- Water Pollution Control Facility

CHAPTER 2 - GENERAL REQUIREMENTS

2.1 Prohibited Discharge Standards 4.415

A. **General Prohibitions:** No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other National, State, or local pretreatment standards or requirements.

B. **Specific Prohibitions:** No user shall introduce or cause to be introduced into the POTW or the collections system the following pollutants, substances, or wastewater:

1) Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed-cup flash point of less than 140°F (60°C) using the test methods specified in 40 CFR §261.21;
2) Wastewater having a pH less than 6.0 or more than 10.0, or otherwise causing corrosive structural damage to the POTW or equipment;
3) Solid or viscous substances in amounts which will cause obstruction of the flow in or to the POTW resulting in interference [but in no case solids greater than one half inch [½"] or one and one quarter centimeters [1.25 cm] in any dimension;
4) Pollutants, including oxygen-demanding pollutants (BOD, COD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW;
5) Wastewater having a temperature which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 77°F (25°C) unless the Approval Authority, upon the request of the POTW, approves alternate temperature limits not to exceed 125 degrees;
6) Petroleum oil, non-biodegradable cutting oil, products of mineral oil origin, or synthetic oils in amounts that will cause interference or pass through.
7) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW or collection system in a quantity that may cause acute worker health and safety problems;
8) Trucked or hauled pollutants, except at discharge points designated by the City of Bend.
9) Noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public

nuisance or a hazard to life or health, or to prevent entry into the sewers for maintenance or repair;

10) Wastewater which imparts color which cannot be removed by the treatment Process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent. Color (in combination with turbidity) shall not cause the treatment plant effluent to reduce the depth of the compensation point for photosynthetic activity by more than ten percent (10%) from the seasonably established norm for aquatic life;

11) Wastewater containing any radioactive wastes or isotopes.

12) Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, non-contact cooling water, and unpolluted wastewater, unless specifically authorized in writing by the Water Reclamation Manager and the Director of Public Works;

13) Any sludges, screenings, or other residues from the pretreatment of industrial wastes or from industrial processes;

14) Medical wastes, except as specifically authorized by the Water Reclamation Manager and the Director of Public Works;

15) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test;

16) Detergents, surface-active agents, or other substances which may cause excessive foaming in the POTW or collection system;

17) Any liquid, solids, or gases which by reason of their nature or quantity are or may be sufficient, either alone or by interaction with other substances, to cause fire or explosion or be injurious in any other way to the POTW or to the operation of the POTW. At no time shall two (2) successive readings on an explosion meter, at the point of discharge into the system (or at any point in the system), be more than five (5%) percent nor any single reading over ten (10%) percent of the lower explosive limit (LEL) of the meter.

18) Grease, animal renderings or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dusts, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastics, gasoline, tar asphalt residues, petroleum products, residues from refining or processing of fuel or lubricating oil, mud, glass grinding or polishing wastes.

19) Any substance which will cause the POTW to violate its WPCF and/or other disposal or discharge permits system permits.

20) Any wastewater, which in the opinion of the Water Reclamation Manager or the Director of Public Works can cause harm either to the sewers, sewage treatment process, or equipment; have an adverse effect on the ground water or receiving waters; or can otherwise endanger life, limb, public property, or constitute a nuisance.

21) The contents of any tank or other vessel owned or used by any person in the business of collecting or pumping sewage, effluent, septic tank waste, or other wastewater unless said person has first obtained testing and approval as may be

generally required by the City of Bend and paid all fees assessed for the privilege of said discharge.

22) Any hazardous wastes as defined in rules published by the State of Oregon or in 40 CFR Part 261.

23) Persistent pesticides and/or pesticides regulated by the Federal Insecticide Fungicide Rodenticide Act (FIFRA)

24) Sewage sludge, except in accordance with the City of Bend's WPCF permit.

Pollutants, substances, or wastewater prohibited by this Chapter shall not be processed or stored in such a manner that they could be discharged to the POTW.

2.2 Federal Categorical Pretreatment Standards

The National categorical pretreatment standards as amended and promulgated by EPA pursuant to the Act and as found at 40 CFR Chapter I, Subchapter N, Parts 405-471 and amendments hereto, are hereby incorporated and shall be enforceable under this ordinance.

2.3 State Requirements

State requirements and limitations on discharges to the POTW shall be met by all users which are subject to such standards in any instance in which they are more stringent than federal requirements and limitations or those in this ordinance or in other applicable ordinances.

2.4 Local Limits

In addition to categorical pretreatment standards referenced in other portions of this ordinance, no significant industrial user (SIU) shall discharge wastewater containing pollutants into the system in excess of limitations specified in its wastewater discharge permit or any other limits established by the City of Bend. The City of Bend may establish and revise from time to time standards for specific restricted substances. These standards shall be developed in accordance with 40 CFR Section 403.5 and shall implement the objectives of this Ordinance. These standards, including Best Management Practices (BMPs) are only applicable to significant industrial users.__Standards established in accordance with this Chapter will be deemed pretreatment standards for the purposes of Section 307(d) of the Clean Water Act. Wherever a discharger is subject to both categorical pretreatment standards and a local limit for a given pollutant, the more stringent limit or applicable pretreatment standard shall apply.

The City may also develop Best Management Practices (BMPs) to implement permit specific and local limits for industrial users. Such BMPs shall be considered local limits and Pretreatment Standards for the purposes of this Part and section 307(d) of the Act.

Mass Limits

The city of Bend may impose mass limitations in addition to (or in place of) concentration-based limitations.

2.5 City of Bend's Right of Revision

The City of Bend reserves the right to establish, by ordinance, resolution or in wastewater discharge permits, more stringent standards or requirements on discharges to the POTW.

2.6 Special Agreement

The City of Bend reserves the right to enter into special agreements with users setting out special terms under which they may discharge to the POTW. However, users may request a net/gross adjustment to a categorical standard in accordance with 40 CFR § 403.15. They may also request a variance from the categorical pretreatment standard from the Approval

Authority in accordance with 40 CFR § 403.13. In no case will a special agreement waive compliance with a categorical pretreatment standard, federal pretreatment requirement, and City of Bend Sewer Use Ordinance.

2.7 Dilution

No user shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with an applicable pretreatment standard or requirement unless expressly authorized by an applicable pretreatment standard or requirement. The Director of Public Works may impose mass limitations on users which may be using dilution to meet applicable pretreatment standards or requirements or in other cases when the imposition of mass limitations is appropriate.

2.8 Pretreatment Facilities

Users shall provide necessary wastewater treatment as required to comply with this ordinance and shall achieve compliance with all applicable pretreatment standards and requirements set out in this ordinance within the time limitations specified by the EPA, the State, or the Director of Public Works, whichever is more stringent. Any facilities required to pretreat wastewater to a level acceptable to the City of Bend shall be provided, operated, and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the City of Bend Water Reclamation Division, Industrial Pretreatment Coordinator for review and shall be accepted in writing to by the City of Bend Water Reclamation Division before construction of the facility. The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an acceptable discharge to the City of Bend under the provisions of this ordinance.

2.9 Deadline for Compliance with Applicable Pretreatment Requirements

Compliance by existing sources covered by Categorical Pretreatment Standards shall be within 3 years of the date the Standard is effective unless a shorter compliance time is specified in the appropriate Standard. The City of Bend shall establish a final compliance deadline date for any existing user not covered by Categorical Pretreatment Standards or for any categorical user when the local limits for said user are more restrictive than the federal Categorical Pretreatment Standards.

New source and new users are required to comply with applicable pretreatment standards within the shortest feasible time, not to exceed 90 days from the beginning of discharge. New Sources and new users shall install, have in operating condition, and shall start up all pollution control equipment required to meet applicable pretreatment standards before beginning to discharge.

Any wastewater discharge permit issued to a categorical user shall not contain a compliance date beyond any deadline date established in EPA's Categorical Pretreatment Standards. Any other existing user or a categorical user that must comply with a more stringent local limit which is in non-compliance with any local limits shall be provided with a compliance schedule placed in an industrial wastewater permit to insure compliance within the shortest time feasible.

2.10 Additional Pretreatment Measures

A. Whenever deemed necessary, the Director of Public Works may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge,

separate sewage waste streams from industrial waste streams, and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this ordinance.

B. Each user discharging into the POTW greater than twenty five thousand (25,000) gallons per day or greater than five percent (5%) of the average daily flow into the POTW, whichever is less, shall install and maintain, on its property and at its expense, a suitable storage and flow-control facility to insure equalization of flow over a twenty four-(24)hour period. The facility shall have a capacity for at least fifty percent (50%) of the daily discharge volume and shall be equipped with alarms and a rate of discharge controller, the regulation of which shall be directed by the Director of Public Works. A wastewater discharge permit may be issued solely for flow equalization.

C. Grease, oil, and sand interceptors shall be provided when, in the opinion of the Director of Public Works, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand, except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the Director of Public Works and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the user at their expense. All Records for inspections, cleaning and repair must be maintained and readily available for review by City of Bend staff. Records should include third party cleaning manifests.

D. Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

2.11 <u>Slug Control Plan</u>

A. General provisions. All users, as required by the Director, shall provide protection from accidental or intentional discharges of materials, which may interfere with or cause pass through to the POTW, by developing and implementing a slug control plan. Facilities necessary to prevent the discharge of prohibited or restricted substances shall be provided and maintained at the user's cost and expense. A plan showing facilities and operating procedures to provide this protection shall be submitted to the City for review and approval before implementation of the plan. Review and approval of such plans and operating procedures by the City shall not relieve the user from the responsibility to modify its facility as necessary to meet the requirements of this chapter. The plan shall be posted and available for inspection at the facility during normal business hours. SIUs must notify the POTW immediately of any changes at their facilities, not already addressed in their slug control plan or other slug control requirements, which may affect the potential for a Slug Discharge.

B. Specific provisions. The Director may require any user to develop, submit for approval, and implement such a plan. The need and requirement for a plan shall also be included in the users Wastewater Discharge Permit.

C. A slug control plan shall address, at a minimum, the following:

1. Description of discharge practices, including non-routine batch discharges;

2. Description of stored chemicals;

3. Procedures for immediately notifying the POTW of any accidental or slug discharge, as required by Chapter 4. 7of this chapter; and

4. Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

D. Users shall notify the City of Bend Water Reclamation Facility immediately after the occurrence of a slug or accidental discharge of substances regulated by this Ordinance. The notification shall include location of discharge, date and time thereof, type of waste, concentration and volume, and corrective actions. Any affected user shall be liable for any expense, loss, or damage to the POTW, in addition to the amount of any fines imposed on the City of Bend on account thereof under state or federal law.

E. Within five (5) days following an accidental discharge, the user shall submit to the Industrial Pretreatment Department a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, fish kills, or any other damage to person or property nor shall such notification relieve the user of any fines, civil penalties, or other liability which may be imposed by this Ordinance or other applicable law.

F. Signs shall be permanently posted in conspicuous places on the user's premises advising employees whom to call in the event of a slug or accidental discharge. Employers shall instruct all employees who may cause or discover such a discharge with respect to emergency notification procedures.

2.12 <u>Septic Tank Wastes</u>

A. Septic tank waste may be introduced into the POTW only at a designated receiving structure within the treatment plant area, and at such times as are established by the Director of Public Works. Such wastes shall not violate this Chapter of the ordinance or any other requirements established or adopted by the City of Bend. Wastewater discharge licenses for individual vehicles to use such facilities shall be issued by the Department of Environmental Quality. Licenses must be current, up to date, in good standing, and have obtained testing and approval by the City of Bend before discharge will be allowed.

B. Septic tank waste haulers may only discharge loads at locations specifically designated by the Director of Public Works. The Director of Public Works may require the hauler to provide a waste analysis of any load prior to discharge.

C. Septic tank waste haulers must provide a City of Bend waste-tracking form for every load. This form shall include, at a minimum, the name and address of the waste hauler, license number, truck identification, sources of waste, and volume and characteristics of waste.

CHAPTER 3 - WASTEWATER DISCHARGE PERMITS REQUIREMENTS

No significant industrial user (SIU) shall discharge wastewater into the POTW without first applying for and obtaining a wastewater discharge permit from the Director of Public Works. Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this ordinance and subjects the wastewater discharge permittee to the sanctions set forth in this ordinance. Obtaining a wastewater discharge permit does not relieve a permittee of its obligation to comply with all Federal and State pretreatment standards or requirements or with any other requirements of Federal, State, and local law.

The Director of Public Works may require other users, including trucked waste, to obtain wastewater discharge permits (as necessary) to carry out the purposes of this ordinance.

3.1 Wastewater Discharge Permitting: Existing SIU 4.430

Any SIU that was discharging wastewater into the POTW prior to the effective date of this ordinance and that wishes to continue such discharges in the future shall, within sixty (60) days after notification by the Director of Public Works submit a permit application to the City of Bend in accordance with Chapter3.4 of this ordinance and shall not cause or allow discharges to the POTW to continue after one hundred eighty (180) days after the effective date of this ordinance except in accordance with a wastewater discharge permit issued by the Director of Public Works.

3.2 Wastewater Discharge Permitting: New Source and New User

At least ninety (90) days prior to the anticipated start-up, any new source, which is a source that becomes a user subsequent to the proposal of an applicable categorical pretreatment standard that is later promulgated, and any new user considered by the City of Bend to fit the definition of SIU shall apply for a wastewater discharge permit and will be required to submit to the City of Bend at least the information listed in paragraphs (A)-(E) of Chapter 3.4. A new source or new user cannot discharge without first receiving a wastewater discharge permit from the City of Bend. New sources and new users shall also be required to include in their application information on the method of pretreatment they intend to use to meet applicable pretreatment standards. New Sources and new users shall give estimates of the information requested in paragraphs (D) and (E) of Chapter3.4.

3.3 Wastewater Discharge Permitting: Extrajurisdictional Users

Any existing user who is located beyond the City of Bend limits and who is required to obtain a wastewater discharge permit shall submit a wastewater discharge permit application as outlined in Chapter 3.1. New Source and new users who are located beyond the City of Bend limits and who are required to obtain a wastewater discharge permit shall comply with Chapter 3.2.

3.4 Wastewater Discharge Permit Application Contents

All users required to obtain a wastewater discharge permit must submit, at a minimum, the following information. Categorical users submitting the following information shall have complied with 40 CFR §403.12(b).

A. **Identifying information.** The user shall submit the name and address of the facility including the name of the operator and owners;

B. **Permits.** The user shall submit a list of all environmental control permits held by or for the facility;

C. **Description of operations.** The user shall submit a brief description of the nature,

average rate of production, and Standard Industrial Classification of the operation(s) carried out by such Industrial User, including a list of all raw materials and chemicals used or stored at the facility which are or could accidentally or intentionally be discharged to the POTW; number and type of employees; hours of operation; each product produced by type, amount, process or processes, and rate of production; type and amount of raw materials processed (average and maximum per day) and the time and duration of discharges. This description should also include a schematic process diagram which indicates points of discharge to the POTW from the regulated or manufacturing processes; site plans; floor plans; mechanical and plumbing plans; and details to show all sewers, sewer connections, inspection manholes, sampling chambers and appurtances by size, location and elevation.

D. **Flow Measurement.**

(1) **Categorical User:**

The user shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

(i) Regulated or manufacturing process streams; and

(ii) Other streams as necessary to allow use of the combined wastestream formula [40 CFR §403.6(e)].

(2) **Non-Categorical User**

The user shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

(i) Total process flow, wastewater treatment plant flow, total plant flow or individual manufacturing process flow as required by the Director of Public Works. The City of Bend may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

E. **Measurements of pollutants**.

(1) **Categorical User:**

(i) The user shall identify the applicable pretreatment standards for each regulated or manufacturing process.

(ii) In addition, the user shall submit the results of sampling and analysis identifying the nature and concentration (or mass where required by the Categorical Pretreatment Standard or as required by the City of Bend) of regulated pollutants (including standards contained in Sections 2.1 through 2.4, as appropriate) in the discharge from each regulated or manufacturing process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations. In cases where the Standard requires compliance with a Best Management Practice or pollution prevention alternative, the User shall submit documentation as required by the City of Bend or the applicable Standards to determine compliance with the Standard. Sampling performed shall conform to sampling and analytical procedures outlined in Chapter 5.

(iii) The user shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.

(iv) Where an alternate concentration or mass limit has been calculated in

accordance with 40 CFR §403.6(e) for a categorical user, this adjusted limit along with supporting data shall be submitted as part of the application.

(2) **Non-Categorical Significant Industrial User (SIU)**

(i) The user shall identify the applicable pretreatment standards for its wastewater discharge.

(ii) In addition, the user shall submit the results of sampling and analysis identifying the nature and concentration in the discharge (or mass where required by the City of Bend) of regulated pollutants contained in Sections 2.1 through 2.4, as appropriate. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations and shall conform to sampling and analytical procedures outlined in Chapter 5.

(iii) The user shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.

F. **Certification.** The user shall submit a statement, worded as specified in Chapter 3.5, which has been reviewed by an authorized representative of the user, and certified by a qualified professional, indicating whether the applicable Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O & M) and/or additional pretreatment is required for the user to meet the applicable Pretreatment Standards and Requirements.

G. **Compliance Schedule.** If additional pretreatment and/or O & M will be required to meet the applicable Pretreatment Standards, the user shall submit the shortest schedule by which the user will provide such additional pretreatment and/or O & M. The user's schedule shall conform to the requirements of Chapter 4.4. The completion date in this schedule shall not be later than the compliance date established pursuant to Chapter 2.9 of this Ordinance.

(1) Where the user's categorical Pretreatment Standard has been modified by a removal allowance (40 CFR §403.7), the combined waste stream formula (40 CFR §403.6(e)), and/or a Fundamentally Different Factors variance (40 CFR §403.13) at the time the user submits the report required by this paragraph, the information required by paragraphs (F) and (G) of this Chapter shall pertain to the modified limits.

(2) If the categorical Pretreatment Standard is modified by a removal allowance (40 CFR §403.7), the combined waste stream formula (40 CFR §403.6(e)), and/or a Fundamentally Different Factors variance (40 CFR §403.13) after the user submits the report required by paragraphs (F) and (G) of this section, then a report containing modified information shall be submitted by the user within 60 days after the new limit is approved.

H. **Submittal of Information.** The user shall submit any other information as may be deemed necessary by the Director of Public Works and/ or the Water Reclamation Manager to evaluate the wastewater discharge permit application. Incomplete or inaccurate applications will not be processed and will be returned to the user for revision.

3.5 Signatory and Certification Requirement

All wastewater discharge permit applications and user reports must be signed by an authorized representative of the user and contain the following certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

3.6. Wastewater Discharge Authorizations

The City of Bend may use alternate control mechanisms to control wastewater being discharged into the City's sewer system. These control mechanisms may include Best Management Practice (BMP) or a General Control Permit.

3.7 Wastewater Discharge Permit Decisions

The Director of Public Works will evaluate the data furnished by the user and may require additional information. Within sixty (60) days of receipt of a complete wastewater discharge permit application, the Director of Public Works will determine whether or not to issue a wastewater discharge permit. Upon a determination to issue, the permit shall be issued within sixty (60) days of full evaluation and acceptance of the data furnished. The Director of Public Works may deny any application for a wastewater discharge permit.

3.8 Wastewater Discharge Permit Contents

Wastewater discharge permits shall include such conditions as are reasonably deemed necessary by the Director of Public Works to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW.

A. Wastewater discharge permits must contain the following conditions:

(1) A statement that indicates wastewater discharge permit duration, which in no event shall exceed five (5) years;

(2) A statement that the wastewater discharge permit is non-transferable without prior notification to and approval from the City of Bend, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;

(3) Effluent limits, including Best Management Practices, based on applicable pretreatment standards and requirements, including any special State requirements;

(4) Self monitoring, sampling, reporting, notification, submittal of technical reports, compliance schedules, and record-keeping requirements. These requirements shall include an identification of pollutants to be monitored (including the process for seeking a waiver for a pollutant neither present nor expected to be present in the Discharge in accordance with § 403.12(e)(2), or a specific waived pollutant in the case of an individual control mechanism), sampling location, sampling frequency, and sample type based on Federal, State, and local law;

(5) Requirement for immediate notification to the City of Bend where self-monitoring results indicate non-compliance;

(6) Requirement to report a bypass or upset of a pretreatment facility;

(7) Requirements to control slug discharges, if determined by the City to be necessary.

(8) Requirement to report immediately to the City of Bend all discharges, and facility changes, including slug loadings, that could cause problems to the POTW;

(9) Requirement for the SIU who reports non-compliance to repeat the sampling and analysis and submit results to the City of Bend within thirty (30) days after becoming aware of the violation.

(10) A statement of applicable civil, criminal, and administrative penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule.

B. Wastewater discharge permits may contain, but need not be limited to, the following conditions:

(1) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;

(2) Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;

(3) Requirements for the development and implementation of spill/slug control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or routine discharges;

(4) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;

(5) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW;

(6) Requirements for installation and maintenance of inspection and sampling facilities and equipment;

(7) A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State pretreatment standards, including those which become effective during the term of the wastewater discharge permit;

(8) Other conditions as deemed appropriate by the Director of Public Works to ensure compliance with this ordinance, and State and Federal laws, rules, and regulations.

3.9 Wastewater Discharge Permit Appeals Any person, including the user, may petition the City of Bend to reconsider the terms of a wastewater discharge permit or the denial of a wastewater discharge permit within thirty (30) days of its issuance or denial. A wastewater discharge permit or notice of denial of such permit shall contain notice of the petition for review procedures that a person may follow to obtain administrative review of the permit decision.

A. Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.

B. A petition for review shall be in writing and served either in person or by certified mail to the City of Bend Industrial Pretreatment Coordinator. In its petition, the appealing party must specify the name and address of the person filing the petition for review, the wastewater discharge permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the wastewater discharge permit.

C. The effectiveness of the wastewater discharge permit shall not be stayed pending the appeal.

D. The City of Bend Industrial Pretreatment Coordinator or designee shall conduct a hearing to determine the merits of the petition. Prior to the hearing, the person conducting the hearing shall notify the petitioner of the time and place of the hearing, and that the petitioner will have the opportunity to present evidence and make

statements in support of the appeal. The person conducting the hearing shall have the sole discretion to determine the amount of time allowed for the appeal hearing. The person conducting the hearing may rely on any relevant evidence provided by city staff, or obtained by any other reasonable means. The decision on the hearing shall be in writing. If the City of Bend fails to make a determination on the petition within thirty (30) days, the petition shall be deemed to be denied, and the permit denial or permit conditions appealed from shall be the final decision of the City of Bend.

E. The decision on the petition for review is the final decision of the City of Bend. The final decision may only be challenged under the Writ of Review provisions of Oregon Law, currently ORS 34.102.

3.10 Wastewater Discharge Permit Duration

Wastewater discharge permits shall be issued for a specified time period, not to exceed five (5) years. A wastewater discharge permit may be issued for a period less than five (5) years, at the discretion of the Director of Public Works. Each wastewater discharge permit will indicate a specific date upon which it will expire.

3.11 Wastewater Discharge Permit Modification

The Director of Public Works may modify the wastewater discharge permit for good cause including, but not limited to, the following:

A. To incorporate any new or revised Federal, State, or local pretreatment standards or requirements;

B. To address significant alterations or additions to the user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance;

C. A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;

D. Information indicating that the permitted discharge poses a threat to the City of Bend's POTW, City of Bend personnel, or the receiving waters;

E. Violation of any terms or conditions of the wastewater discharge permit

F. Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required report;

G. Revision of categorical pretreatment standards pursuant to 40 CFR §403.13;

H. To correct typographical or other errors in the wastewater discharge permit; or

I. To reflect a transfer of the facility ownership and/or operation to a new owner/operator.

3.12 Wastewater Discharge Permit Transfer

Wastewater discharge permits may be reassigned or transferred to a new owner and/or operator only if the permittee gives at least ninety (90) days advance notice to the Director of Public Works and the Director of Public Works approves the wastewater discharge permit transfer. The notice to the Director of Public Works must include a written certification by the new owner and/or operator which:

A. States that the new owner and/or operator have no immediate intent to change the facility's operations and processes;

B. Identifies the specific date on which the transfer is to occur; and

C. Assumes full responsibility for complying with the existing wastewater discharge

permit beginning on the date of the transfer.

Failure to provide advance notice of a transfer renders the wastewater discharge permit void as of the date of facility transfer.

Provided that the notice required above occurred and that there were no significant changes to the manufacturing operation or wastewater discharge, the new owner will be considered an existing user and will be covered by the existing limits and requirements in the previous owner's permit.

3.13 Wastewater Discharge Permit Revocation

Wastewater discharge permits may be revoked for, but not limited to, the following reasons:

A. Failure to notify the City of Bend of significant changes to the wastewater prior to the changed discharge;

B. Failure to provide prior notification to the City of Bend of changed conditions;

C. Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;

D. Falsifying self-monitoring reports;

E. Tampering with monitoring equipment;

F. Refusing to allow the City of Bend timely access to the facility premises and records;

G. Failure to meet discharge limitations;

H. Failure to pay fines;

I. Failure to pay sewer charges;

J. Failure to meet compliance schedules;

K. Failure to complete a wastewater survey or the wastewater discharge permit application;

L. Failure to provide advance notice of the transfer of a permitted facility; or

M. If the City of Bend has to invoke its emergency provision as cited in Chapter 9.7 of the Ordinance.

N. Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or this ordinance.

Wastewater discharge permits shall be voidable upon cessation of operations or transfer of business ownership. All wastewater discharge permits issued to a particular user are void upon the issuance of a new wastewater discharge permit to that user.

3.14 Wastewater Discharge Permit Reissuance

A user who is required to have a wastewater discharge permit shall apply for wastewater discharge permit reissuance by submitting a complete wastewater discharge permit application, in accordance with Chapter3.4 of this ordinance, a minimum of ninety (90) days prior to the expiration of the user's existing wastewater discharge permit. A user whose existing wastewater discharge permit has expired and who has submitted its re-application in the time period specified herein shall be deemed to have an effective wastewater discharge permit until the City of Bend issues or denies the new wastewater discharge permit. A user whose existing wastewater discharge permit has expired and who failed to submit its re-application in the time period specified herein will be deemed to be discharging without a wastewater discharge permit.

CHAPTER 4 - REPORTING REQUIREMENTS

4.445 **4.1 Baseline Monitoring Reports**

A. Within either one hundred and eighty (180) days after the effective date of a categorical pretreatment standard or the final administrative decision on a category determination under 40 CFR §403.6(a)(4) (whichever is later) existing categorical users currently discharging to or scheduled to discharge to the POTW, shall be required to submit to the City of Bend a report which contains the information listed in paragraph B, below. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall be required to submit to the City of Bend a report which contains the information listed in paragraph B, below. A new source shall also be required to report the method of pretreatment it intends to use to meet applicable categorical standards. A new source shall also give estimates of its anticipated flow and quantity of pollutants discharged.

B. Users described above shall submit the information set forth below.

(1) **Identifying Information.** The name and address of the facility, including the name of the operator and owner.

(2) **Environmental Permits.** A list of any environmental control permits held by or for the facility.

(3) **Description of Operations.** A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.

(4) **Flow Measurement.** Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined waste stream formula set out in 40 CFR 403.6(e).

(5) **Measurement of Pollutants.**

(a) The categorical pretreatment standards applicable to each regulated process.

(b) The results of sampling and analysis identifying the nature and concentration (and/or mass, where required by the standard or by the City of Bend) of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long term average concentrations (or mass, where required) shall be reported. The sample shall be representative of daily operations. In cases where the Standard requires compliance with a Best Management Practice or pollution prevention alternative, the User shall submit documentation as required by the Control Authority or the applicable Pretreatment Standard necessary to determine the compliance status of the User.

-(c) Sampling must be performed in accordance with procedures set out in Chapter 5 of this ordinance.

(6) **Certification.** A statement, reviewed by the user's authorized representative and certified by a qualified professional, indicating whether pretreatment

standards are being met on a consistent basis, and, if not, whether additional Operation and Maintenance (O&M) and/or additional pretreatment, is required to meet the pretreatment standards and requirements.

(7) **Compliance Schedule.** If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this Chapter must meet the requirements set out in Chapter4.4 of this ordinance.

(8) **Signature and Certification**. All baseline monitoring reports must be signed and certified in accordance with Chapter 3.5 of this ordinance.

4.2 Final Compliance Report

A. Within ninety (90) days following the date for final compliance of an existing Significant Industrial User with applicable pretreatment standards and requirements set forth in this ordinance, in federal categorical standards, or in a wastewater discharge permit, or, in the case of a new source or a new user considered by the City of Bend to fit the definition of SIU, within 90 days following commencement of the introduction of wastewater into the POTW, the affected user shall submit to the City of Bend a report containing the information outlined in Paragraph (D)-(F) of Chapter 3.4.

B. For users subject to equivalent mass or concentration limits established by the City of Bend in accordance with procedures established in 40 CFR §403.6 (c), this report shall contain a reasonable measure of the user's long term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period.

4.3 Periodic Compliance Report

A. Any user that is required to have an industrial waste discharge permit and performs self-monitoring shall submit to the City of Bend during the months of June and December, unless the City has determined that the self-monitoring may be reduced to report no less frequently than once a year, or unless required more frequently in the Pretreatment Standard or by the DEQ, a report indicating the nature of the effluent over the previous reporting period. The frequency of monitoring shall be as prescribed within the industrial waste discharge permit. A reporting form will be provided by the City of Bend. At a minimum, users shall sample their discharge at least twice per year, unless required less frequently as described above. In cases where a local limit requires compliance with a Best Management Practice or pollution prevention alternative, the User must submit documentation required by City to determine the compliance status of the User.

B. Periodic Compliance Reports are to be postmarked or received by the Industrial Pretreatment Department ~~by~~ on or before the 15th of the month following the conclusion of the reporting period.

C. The report shall include a record of the concentrations (and mass if specified in the wastewater discharge permit) of the pollutants listed in the wastewater discharge permit that were measured and a record of all flow measurements (average and

maximum) taken at the designated sampling locations and shall also include any additional information required by this ordinance or the wastewater discharge permit. Production data shall be reported if required by the wastewater discharge permit. Both daily maximum and average concentration (or mass, where required) shall be reported. If a user sampled and analyzed more frequently than what was required by the City of Bend or by this ordinance, using methodologies in 40 CFR Part 136, it must submit all results of sampling and analysis of the discharge during the reporting period. All laboratory reports providing data for organic and metal parameters shall include the following information: sampling date, sample location, date of analysis, parameter name, CAS number, analytical method/ number, method detection limit (MDL), laboratory practical quantitation limit (PQL), reporting units, and concentration detected. Analytical results from samples sent to a contracted laboratory must have information on the chain of custody, the analytical method, QA/QC results, and documentation of accreditation for the parameter.

D. The City may authorize the Industrial User subject to a categorical Pretreatment Standard to forego sampling of a pollutant regulated by a categorical Pretreatment Standard if the Industrial User has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the Discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the Industrial User.

E. Any user subject to equivalent mass or concentration limits established by the City of Bend or by unit production limits specified in the applicable categorical standards shall report production data as outlined in Chapter 4.2 (B).

F. If the City of Bend calculated limits to factor out dilution flows or non-regulated flows, the user will be responsible for providing flows from the regulated process flows, dilution flows and non-regulated flows.

G. Flows shall be reported on the basis of actual measurement, provided, however, that the City of Bend may accept reports of average and maximum flows estimated by verifiable techniques if the City of Bend determines that an actual measurement is not feasible.

H. Discharges sampled shall be representative of the user's daily operations and samples shall be taken in accordance with the requirements specified in Chapter 5. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (or pollution prevention alternative), the User shall submit documentation required by the City or the Pretreatment Standard necessary to determine the compliance status of the User.

I. The City of Bend may require reporting by users that are not required to have an industrial wastewater discharge permit if information or data is needed to establish a sewer charge, determine the treatability of the effluent, or determine any other factor which is related to the operation and maintenance of the sewer system.

J. The City of Bend may require self-monitoring by the user or, if requested by the user, may agree to perform the periodic compliance monitoring needed to prepare the periodic compliance report required under this section. If the City of Bend agrees to perform such periodic compliance monitoring, it may charge the user for such monitoring, based upon the costs incurred by the City of Bend for the sampling and

analyses. The user may be charged for the cost of resampling by the City of Bend in the event of a violation or violations. Any such charges shall be added to the normal sewer charge and shall be payable as part of the sewer bills. The City of Bend is under no obligation to perform periodic compliance monitoring for a user.

4.4 Compliance schedules for meeting applicable pretreatment standards

A. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.).

B. No increment referred to in paragraph (A) of this Chapter shall exceed 9 months.

C. Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the City of Bend including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the user to return the construction to the schedule established. In no event shall more than 9 months elapse between such progress reports.

4.5 Notification of Significant Production Changes

Any user operating under a wastewater discharge permit incorporating equivalent mass or concentration limits shall notify the City of Bend within two (2) business days after the user has a reasonable basis to know that the production level will significantly change within the next calendar month.

4.6 Hazardous Waste Notification

Any user that is discharging more than 15 kilograms of hazardous wastes as defined in 40 CFR 261 (listed or characteristic wastes) in a calendar month or any facility discharging any amount of acutely hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e) is required to provide a one time notification in writing to the City of Bend, to the EPA Region 10 Office of Waste and Chemicals Management Director, and to the Department of Environmental Quality. Any existing user exempt from this notification shall comply with the requirements contained herein within 30 days of becoming aware of a discharge of 15 kilograms of hazardous wastes in a calendar month or any discharge of acutely hazardous wastes to the City of Bend sewer system.

Such notification shall include:

A. The name of the hazardous waste as set forth in 40 CFR Part 261,

B. The EPA Hazardous waste number; and

C. The type of discharge (continuous, batch, or other).

D. If an industrial user discharges more than 100 kilograms of such waste per calendar month to the sewer system, the notification shall also contain the following information to the extent it is known or readily available to the industrial user:

(1) an identification of the hazardous constituents contained in the wastes,

(2) an estimation of the mass and concentration of such constituents in the wastestreams discharged during that calendar month, and

(3) an estimation of the mass of constituents in the wastestreams expected to be

discharged during the following 12 months.

These notification requirements do not apply to pollutants already reported under the self-monitoring requirements.

Whenever the EPA publishes final rules identifying additional hazardous wastes or new characteristics of hazardous waste, a user shall notify the City of Bend of the discharge of such a substance within ninety (90) days of the effective date of such regulations.

In the case of any notification made under this paragraph, an industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

4.7 Notice of potential problems, including accidental spills, slug loads

Any user shall notify the City of Bend immediately of all discharges and changes at the facility that could cause adverse impacts to the POTW, including any slug loads, as defined in Chapter1.3. The notification shall include the concentration and volume and corrective action. Steps being taken to reduce any adverse impact should also be noted during the notification. Any user who discharges a slug load of pollutants shall be liable for any expense, loss, or damage to the POTW, in addition to the amount of any fines imposed on the City of Bend under state or federal law.

4.8 Non-Compliance Reporting

If sampling performed by a user indicates a violation, the user shall notify the City of Bend within 24 hours of becoming aware of the violation. The user shall also repeat the sampling within five (5) days and submit the results of the repeat analysis to the City of Bend within thirty (30) days after becoming aware of the violation, except the user is not required to resample if:

A. The City of Bend performs sampling at the user at a frequency of at least once per month, or

B. The City of Bend performs sampling at the user between the time when the user performs its initial sampling and the time when the user receives the results of this sampling.

4.9 Notification of changed discharge

All users shall promptly notify the City of Bend in advance of any substantial change in the volume or any change in character of pollutants in their discharge, including significant manufacturing process changes, pretreatment modifications, and the listed or characteristic hazardous wastes for which the user has submitted initial notification under 40 CFR 403.12 (p). Substantial change is defined to mean a change of ten percent (10%) or more in discharge volume.

4.10 Reports from Unpermitted Users

All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the City of Bend as the Director of Public Works may require.

4.11 Record Keeping

Users subject to the reporting requirements of this ordinance, including documentation associated with Best Management Practices, shall retain and make available for inspection and copying all records of information obtained pursuant to any monitoring activities required by this ordinance and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact place, method, and time of sampling and the name of the person(s) taking the samples; the

dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least five (5) years. This period shall be automatically extended for the duration of any litigation concerning the user or POTW, or where the user has been specifically notified of a longer retention period by the Director of Public Works.

4.12 Annual certification by *Non-Significant Categorical Industrial Users (NSCIU) and Non-Discharging Categorical Industrial Users (NDCIU).*

A facility determined to be Non-Significant Categorical Industrial User pursuant to Chapter1.3 (42) must annually submit the following certification statement, signed in accordance with the signatory requirements in § 403.12(l). This certification must accompany an alternative report required by the City of Bend:

Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical Pretreatment Standards under 40 CFR ____, I certify that, to the best of my knowledge and belief that during the period from _____, _____ to _____, _____ [months, days, year]:

(a) The facility described as _____ [facility name] met the definition of a non-significant categorical Industrial User as described in Chapter1.3 (42); (b) the facility compiled with all applicable Pretreatment Standards and requirements during this reporting period; and (c) the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period. This compliance certification is based upon information provided elsewhere in this document.

(b) **Non-discharging Categorical Industrial User-** Based on my inquiry of the person_or persons directly responsible for managing compliance with the categorical Pretreatment Standards under 40 CFR ____, I certify that, to the best of my knowledge and belief that during the period from _____, _____ to _____, _____ [months, days, year] (a) The facility described as _____ [facility name] met the definition of a non-discharging categorical Industrial User as described in Chapter1.3 (42); (b) the facility compiled with all applicable Pretreatment Standards and requirements during this reporting period; and (c) the facility never discharged categorical wastewater on any given day during this reporting period. This compliance certification is based upon information provided elsewhere in this document

CHAPTER 5 - SAMPLING AND ANALYTICAL REQUIREMENTS

5.1 General Sampling and Analysis 4.457

Sampling and Analytical Requirements:

All sample preservation procedures, container materials, maximum allowable holding times and analytical techniques to be submitted as part of any application or report required by this division shall be performed in accordance with the procedures and techniques specified in 40 CFR Part 136. Alternatively, a contractor with the required protocols listed in an approved comprehensive Quality Assurance Plan may sample and analyze according to the protocols specified in that document.

5.2 Sampling and Analytical Requirements for Industrial Users

A. For sampling required in support of Baseline Monitoring Reports (BMR) and ninety (90) day compliance reports a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the City may authorize a lower minimum. For the reports required by Periodic Compliance Reports, the City shall require the number of grab samples necessary to assess and assure compliance by Industrial Users with Applicable Pretreatment Standards and Requirements.

The Director of Public Works shall require the number of grab samples necessary to assess and assure compliance by Industrial Users with Applicable Pretreatment Standards and Requirements. The Director of Public Works will determine on a case-by-case whether the user will be able to composite the individual grab samples. For all other pollutants, 24-hour composite samples must be obtained through flow or time-proportional composite sampling techniques depending on circumstances. The City of Bend may waive flow-proportional composite sampling for any user that demonstrates that flow-proportional composite sampling is infeasible. Where time-proportional composite sampling or grab sampling is authorized by the Control Authority, the samples must be representative of the discharge and the decision to allow the alternative sampling must be documented in the Industrial User file for that facility or facilities. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: For cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil & grease the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the City, as appropriate.

I In such cases, samples may be obtained through time-proportional composite sampling techniques or through a minimum of four (4) grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged.

B. Samples shall be taken immediately downstream from pretreatment facilities if such exist, immediately downstream from the regulated or manufacturing process if no pretreatment exists, or at a location determined by the City of Bend and specified in the user's wastewater discharge permit. For categorical users, if other wastewaters are mixed with the regulated wastewater prior to pretreatment, the user shall measure the flows and concentrations necessary to allow use of the combined waste stream formula of 40 CFR §403.6(e) in order to evaluate compliance with the Applicable Categorical Pretreatment Standards. For other SIUs, for which the City of Bend has adjusted its local limits to factor out dilution flows, the user shall measure the flows and concentrations necessary to evaluate compliance with the adjusted pretreatment standard(s). In cases where a local limit requires compliance with a Best Management Practice or pollution prevention alternative, the User must submit documentation required by the City to determine the compliance status of the User

C. All sample results shall indicate the time, date and place of sampling and methods of analysis and shall certify that the waste stream sampled is representative of

normal work cycles and expected pollutant discharges from the user. If a user sampled and analyzed more frequently than required in its wastewater discharge permit, using methodologies in 40 CFR Part 136, it must submit all results of sampling and analysis of the discharge as part of its self-monitoring report.

Analytical Requirements

All pollutant analyses, including sampling techniques, shall be performed in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses

must be performed in accordance with procedures approved by the EPA.

5.3 City of Bend Monitoring of User's Wastewater

The City of Bend will follow the same procedures as outlined in Section 5.1 and Section 5.2 when performing sampling.

CHAPTER 6 - COMPLIANCE MONITORING

6.1 Inspection and Sampling 4.460

The City of Bend shall have the right to enter the facilities of any user to ascertain whether the purpose of this ordinance and any wastewater discharge permit or order issued hereunder is being met and whether the user is complying with all requirements thereof. Users shall allow the Director of Public Works or the designated representative ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

A. Where a user has security measures in force which require proper identification and clearance before entry into its premises, the user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the Director of Public Works will be permitted to enter without delay for the purposes of performing specific responsibilities.

B. The Director of Public Works shall have the right to set up on the user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations.

C. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user at the written or verbal request of the Director of Public Works and shall not be replaced. The costs of clearing such access shall be borne by the user.

D. Unreasonable delays in allowing the Director of Public Works access to the user's premises shall be a violation of this ordinance.

6.2 Monitoring Facilities

Each user shall provide and operate at its own expense a monitoring facility (including installation of a wastewater sample port), to allow inspection, sampling, continuous monitoring and flow measurements of each sewer discharge to the City of Bend in all commercial/ industrial areas. Each monitoring facility shall be situated on the user's premises, except, where such a location would be impractical or cause undue hardship on the user, the City of Bend may concur with the facility being constructed in the public street or sidewalk area, providing that the facility is located so that it will not be obstructed by landscaping or parked vehicles. The Director of

Public Works, whenever applicable, may require the construction and maintenance of sampling facilities at other locations (for example, at the end of a manufacturing line or a wastewater treatment system).

There shall be ample room in or near such sampling facility to allow accurate sampling and preparation of samples for analysis. The facility, including the sampling and measuring equipment, shall be maintained at all times in a safe and proper operating condition at the expense of the user.

The Director of Public Works may require the user to install monitoring equipment as necessary. All monitoring facilities shall be constructed and maintained in accordance with all applicable local construction standards and specifications.

All devices used to measure wastewater flow and quality shall be calibrated to ensure their accuracy.

6.3 Search Warrants

If the Director of Public Works, or delegated representative, have been refused access to a building, structure or property, or any part thereof and is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect as part of a routine inspection program of the City of Bend designed to verify compliance with this ordinance or any wastewater discharge permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the Director of Public Works shall seek issuance of a search and/or seizure warrant from the Bend Municipal Court. Such warrant shall be served at reasonable hours by the Director of Public Works in the company of a uniformed police officer of the City of Bend.

6.4 Vandalism

No person shall willfully or negligently break, damage, destroy, uncover, deface, tamper with, or prevent access to any structure, appurtenance or equipment, or other part of the POTW. Any person found in violation of this requirement shall be subject to the sanctions set out in this ordinance.

4.465

CHAPTER 7 - CONFIDENTIAL INFORMATION

Information and data on a user obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and from City of Bend inspection and sampling activities shall be available to the public without restriction, unless the user specifically requests and is able to demonstrate to the satisfaction of the City of Bend that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets under applicable State law. When requested and demonstrated by the user furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, except when disclosure is required by the Oregon Public Records Law (ORS 192.410 – 192.505). Information shall be made available immediately upon request to governmental agencies for uses related to the WPCF permit or pretreatment program and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other "effluent data" will not be recognized as confidential information.

CHAPTER 8 - PUBLICATION OF USERS IN SIGNIFICANT NON-COMPLIANCE

4.468

The City of Bend shall publish annually, pursuant to 40 CFR, 403.8 (D) (viii) in a newspaper(s) of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW, a list of the industrial users which, during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements. For the purposes of this provision, a significant industrial user or any Industrial User which violates paragraphs (C), (D), or (H) of this section is in significant noncompliance if its violation meets one or more of the following criteria:

A. Chronic violations of wastewater discharge limits, defined here as those in which 66% or more of wastewater measurements taken during a six (6-)month period (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous limits, as defined by 40 CFR 403.3(l) ;

B. Technical Review Criteria (TRC) violations, defined here as those in which 33% or more of wastewater measurements taken for each pollutant parameter during a six-(6) month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR 403.3(l) multiplied by the applicable criteria [1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH];

C. Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative standard)that the City of Bend believes has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of City of Bend personnel or the general public);

D. Any discharge of pollutants that have caused imminent endangerment to the public or to the environment, or have resulted in the City of Bend's exercise of its emergency authority to halt or prevent such a discharge;

E. Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;

F. Failure to provide within 45 days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;

G. Failure to accurately report non-compliance; or

H. Any other violation(s), which may include a violation of Best Management Practices, which the City of Bend determines will adversely affect the operation or implementation of the local pretreatment program.

CHAPTER 9 - ADMINISTRATIVE ENFORCEMENT REMEDIES

4.470

9.1 Notification of Violation

When the Director of Public Works finds that a user has violated or continues to violate any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, in addition to other remedies provided by this ordinance, the Director of Public Works may serve upon that user a written Notice of Violation via certified letter. Within five (5) days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the Director of Public Works. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this Chapter shall limit the authority of the City of Bend to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

9.2 Consent Orders

The Director of Public Works may enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for non-compliance. Such documents will include specific action to be taken by the user to correct the non-compliance within a time period specified by the document.

Such documents shall have the same force and effect as the administrative orders issued pursuant to Sections 9.4 and 9.5 of this ordinance and shall be judicially enforceable. Use of a consent Order shall not be a bar against, or prerequisite for, taking any other action against the user.

9.3 Show Cause Hearing

The Director of Public Works may, in addition to other remedies provided by this ordinance, order [via a certified letter] a user which has violated or continues to violate any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, to appear before the Director of Public Works and show cause why the proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the user. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.

9.4 Compliance Orders

When the Director of Public Works finds that a user has violated or continues to violate any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Director of Public Works may, in addition to other remedies provided by this ordinance, issue an order to the user responsible for the discharge directing that the user come into compliance within a time specified in the order. If the user does not come into compliance within the time specified in the order, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders may also contain other requirements to

address the non-compliance, including additional self-monitoring, and management practices designed to minimize the amount of pollutants discharged to the sewer. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the user.

9.5 Cease and Desist Orders

When the Director of Public Works finds that a user has violated (or continues to violate) any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the Director of Public Works may, in addition to other remedies provided by this ordinance, issue an order to the user directing it to cease and desist all such violations and directing the user to:

A. Immediately comply with all requirements; and

B. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.

9.6 Emergency Suspensions

The Director of Public Works may immediately suspend a user's discharge permit (after informal notice to the user) whenever such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. The Director of Public Works may also immediately suspend a user's discharge permit (after notice and opportunity to respond) that threatens to interfere with the operation of the POTW or which presents or may present an endangerment to the environment.

A. Any user notified of a suspension of its discharge permit shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the Director of Public Works shall take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The Director of Public Works shall allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the City of Bend that the period of endangerment has passed, unless the termination proceedings in Chapter 9.7 of this ordinance are initiated against the user.

B. A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the Director of Public Works prior to the date of any show cause or termination hearing under Sections 9.3 and 9.7 of this ordinance.

Nothing in this Chapter shall be interpreted as requiring a hearing prior to any emergency suspension under this section.

9.7 Termination of Discharge Permit (Non-Emergency)

In addition to the provisions in Chapter 3.13 of this ordinance, any user that violates the following conditions is subject to discharge permit termination:

A. Violation of wastewater discharge permit conditions;

B. Failure to accurately report the wastewater constituents and characteristics of its discharge;

C. Failure to report significant changes in operations or wastewater volume, constituents and characteristics prior to discharge;

D. Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring or sampling; or

E. Violation of the pretreatment standards in Chapter 2 of this ordinance.

Such user will be notified of the proposed termination of its discharge permit and be offered an opportunity to show cause under Chapter 9.3 of this ordinance why the proposed action should not be taken. Exercise of this option by the City of Bend shall not be a bar to, or a prerequisite for, taking any other action against the user.

CHAPTER 10 - JUDICIAL ENFORCEMENT REMEDIES

4.480

10.1 Administrative Fines

A. When the Director of Public Works finds that a user has violated or continues to violate any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Director of Public Works may fine such user in an amount not to exceed, $6250

Such fines may be assessed on a per violation, per day basis. In the case of monthly or other long term average discharge limits, fines shall be assessed for each day during the period of violation.

B. Users desiring to dispute such fines must file a written request for the Director of Public Works to reconsider the fine along with full payment of the fine amount within thirty (30) days of being notified of the fine. Where a request has merit, the Director of Public Works shall convene a hearing on the matter within sixty (60) days of receiving the request from the user. In the event the user's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the user. The City of Bend may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.

C. Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the user.

10.2 Injunctive Relief

When the Director of Public Works finds that a user has violated (or continues to violate) any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the Director of Public Works may petition the Circuit Court for Deschutes County through the City of Bend's Attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this ordinance on activities of the user. The City of Bend may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a

prerequisite for, taking any other action against a user.

10.3 Civil Penalties

A. A user which has violated or continues to violate any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall be guilty of an unclassified civil infraction, and liable to the City of Bend for a maximum civil penalty of $2500 per violation, for each day the violation persists. Enforcement procedures shall be as provided in Bend Code Sections 1.700 through 1.736, except that the maximum fines shall be as established by this section, and not by Chapter 1.732. The Director of Public Works or his/her designee shall be authorized to initiate violation procedures pursuant to Bend Code Sections 1.700 through 1.736. In a proceeding under this section, the City of Bend shall not be required to prove that the user has acted intentionally, knowingly or willfully. The City shall be required to prove that the violation occurred, but the user's mental state shall not be an element of proving the violation.

B. The Director of Public Works may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the City of Bend.

C. In determining the amount of civil liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.

D. Initiation of a civil infraction proceeding shall not be a bar against, or a prerequisite for, taking any other action against a user.

10.4 Criminal Prosecution

A. A user which has intentionally, willfully or knowingly violated any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall, upon conviction, be guilty of a Class A misdemeanor, punishable by a fine of not more than $6,250 per violation, per day, or imprisonment for not more than one year, or both.

B. A user which has intentionally, willfully or knowingly introduced any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a Class A misdemeanor and be subject to a penalty of not more than $6,250 and/or be subject to imprisonment for one year. This penalty shall be in addition to any other cause of action for personal injury or property damage available under State law. Nothing in this ordinance precludes prosecution under other criminal statutes, including statutes pertaining to damage to public utilities or injury to property or persons.

C. A user which knowingly made any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this ordinance, wastewater discharge permit, or order issued hereunder, or who falsified, tampered with, or knowingly rendered inaccurate any monitoring device or method required under this ordinance shall be guilty of a Class A misdemeanor, and upon conviction, be punished by a fine of not more than $6,250 per violation per day, or imprisonment for not more than one year, or both.

D. If the user is a corporation, the penalty provisions of ORS 161.655 shall be applicable. An employee, officer or agent of a corporation that commits a misdemeanor under this Chapter may be prosecuted in that person's individual capacity, and, upon conviction, be personally subject to the penalties provided under Chapter 10.3 of this ordinance, if the person committed the offense intentionally, knowingly or willfully, notwithstanding that the permit may be issued in the name of a corporation.

10.5 Remedies Non-exclusive

The provisions in Sections 8 through 11 of this ordinance are not exclusive remedies. The City of Bend reserves the right to take any, all, or any combination of these actions against a non-compliant user. Enforcement in response to pretreatment violations will generally be in accordance with the City of Bend's enforcement response plan. However, the City of Bend reserves the right to take other action against any user when the circumstances warrant. Further, the City of Bend is empowered to take more than one enforcement action against any non-compliant user. These actions may be taken concurrently.

CHAPTER 11 - SUPPLEMENTAL ENFORCEMENT ACTION

4.485

11.1 Performance Bonds

The Director of Public Works may decline to issue or reissue a wastewater discharge permit to any user which has failed to comply with any provision of this ordinance, a previous wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement unless such user first files a satisfactory bond, payable to the City of Bend, in a sum not to exceed a value determined by the Director of Public Works to be necessary to achieve consistent compliance.

11.2 Liability Insurance

The Director of Public Works may decline to issue or reissue a wastewater discharge permit to any user which has failed to comply with any provision of this ordinance, a previous wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, unless the user first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.

11.3 Water Supply Severance

Whenever a user has violated or continues to violate any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, water service to the user may be severed. Service will only recommence, at the user's expense, after it has satisfactorily demonstrated its ability to comply. The user shall be required to reimburse the City of Bend for expenses incurred for disconnect of services. Any person, including the user, may petition the City of Bend to reconsider the terms of water supply severance within thirty (30) days of its issuance or denial. A wastewater discharge permit or notice of denial of such permit shall contain notice of the petition for review procedures that a person may follow to obtain administrative review of the permit decision.

A. Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.

B. A petition for review shall be in writing and served either in person or by certified mail on the Bend City Manager. In its petition, the appealing party must specify the

name and address of the person filing the petition for review, the reasons for this objection

C. The City Manager or designee shall conduct a hearing to determine the merits of the petition. Prior to the hearing, the person conducting the hearing shall notify the petitioner of the time and place of the hearing, and that the petitioner will have the opportunity to present evidence and make statements in support of the appeal. The person conducting the hearing shall have the sole discretion to determine the amount of time allowed for the appeal hearing. The person conducting the hearing may rely on any relevant evidence provided by city staff, or obtained by any other reasonable means. The decision on the hearing shall be in writing. If the City of Bend fails to make a determination on the petition within thirty (30) days, the petition shall be deemed to be denied, and the permit denial or permit conditions appealed from shall be the final decision of the City of Bend.

D. The decision on the petition for review is the final decision of the City of Bend. The final decision may only be challenged under the Writ of Review provisions of Oregon Law, currently ORS 34.102.

11.4 Public Nuisances

A violation of any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, is hereby declared a public nuisance and shall be corrected or abated as directed by the Director of Public Works pursuant to Bend Code Sections 5.400 through 5.425. Any person(s) creating a public nuisance shall be subject to the provisions of the City of Bend Code 5.400 through 5.425 governing such nuisances, including reimbursing the City of Bend for any costs incurred in removing, abating, or remedying said nuisance.

11.5 Informant Rewards

The Director of Public Works may pay up to 100 percent (100%) of the collected fine or penalty to the informant, if collected in Bend Municipal Court, subject to reduction by the amount of any assessments required by state law. However, a single reward payment may not exceed one thousand dollars $1,000.

11.6 Contractor Listing

Users which have not achieved compliance with applicable pretreatment standards and requirements are not eligible to receive a contractual award for the sale of goods or services to the City of Bend. Existing contracts for the sale of goods or services to the City of Bend held by a user found to be in significant non-compliance with pretreatment standards or requirements may be terminated at the discretion of the City of Bend.

CHAPTER 12 - AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS

4.492

12.1 Upset

A. For the purposes of this section, "upset" means an exceptional incident in which there is unintentional and temporary non-compliance with applicable pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include non-compliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive

maintenance, or careless or improper operation.

B. An upset shall constitute an affirmative defense to an action brought under Chapter 10 of this ordinance for non-compliance with applicable pretreatment standards if the requirements of paragraph C of this Chapter are met. The affirmative defense of "upset" shall not be applicable to enforcement actions under any provision of this ordinance other than those provided in Chapter 10, although facts indicating that an upset occurred may be considered in determining the appropriate remedy under enforcement proceedings other than those provided in Chapter 10 of this ordinance.

C. A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and the user can identify the cause(s) of the upset;

(2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and

(3) The user has submitted the following information to the POTW and treatment plant operator within twenty four (24) hours of becoming aware of the upset [if this information is provided orally, a written submission must be provided within five (5) days]:

(a) A description of the indirect discharge and cause of non-compliance;

(b) The period of non-compliance, including exact dates and times or, if not corrected, the anticipated time the non-compliance is expected to continue; and

(c) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the non-compliance.

D. In any enforcement proceeding under Chapter 10 of this ordinance, the user seeking to establish the occurrence of an upset shall have the burden of proof.

E. Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for non-compliance with applicable pretreatment standards under Chapter 10 of this ordinance.

F. Users shall control production of all discharges to the extent necessary to maintain compliance with applicable pretreatment standards upon reduction, loss, or failure of their treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

12.2 <u>Prohibited Discharge Standards</u>

A user shall have an affirmative defense to an enforcement action brought against it for non-compliance with the prohibitions in Chapter 2.1 A and B(3) through (7) if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either: (a) a local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or (b) no local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the City of Bend was regularly in compliance with its WPCF permit, and in the case of interference, was

in compliance with applicable sludge use or disposal requirements.

12.3 Bypass

A. For the purposes of this section,

(1) "Bypass" means the intentional diversion of wastestreams from any portion of a user's treatment facility.

(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

B. A user may allow any bypass to occur which does not cause applicable pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (C) and (D) of this section.

C. Notice of Bypass

(1) If a user knows in advance of the need for a bypass, it shall submit prior notice to the POTW at least ten (10) days before the date of the bypass, if possible.

(2) A user shall submit oral notice to the City of Bend of an unanticipated bypass that exceeds applicable pretreatment standards within twenty four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the bypass. The POTW may waive the written report on a case-by-case basis if the oral report has been received within twenty four (24) hours.

D. Bypass Conditions

(1) Bypass is prohibited, and the POTW may take an enforcement action against a user for a bypass, unless

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(c) The user submitted notices as required under paragraph (C) of this section.

(2) The POTW may approve an anticipated bypass, after considering its adverse effects, if the POTW determines that it will meet the three conditions listed in paragraph (D)(1) of this section.

4.495

CHAPTER 13 - WASTEWATER TREATMENT RATES-(Reserved.)

CHAPTER 14 - MISCELLANEOUS PROVISIONS

4.496

14.1 Pretreatment Charges and Fees

The City of Bend may adopt reasonable fees for reimbursement of costs of setting up and operating the City of Bend's Pretreatment Program which may include:

A. Fees for wastewater discharge permit applications including the cost of processing such applications;

B. Fees for monitoring, inspection, and surveillance procedures including the cost of collection and analyzing a user's discharge, and reviewing monitoring reports submitted by users;

C. Fees for reviewing and responding to accidental discharge procedures and construction;

D. Fees for filing appeals; and

E. Other fees as the City of Bend may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by this ordinance and are separate from all other fees, fines, and penalties chargeable by the City of Bend; and

F. Fees are established by the City of Bend Fees Resolution, as it may be amended from time to time.

14.2 Severability

If any provision of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall continue in full force and effect.

14.3 Conflicts

All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this ordinance are hereby repealed to the extent of the inconsistency or conflict.

Section 2. Authority of City Recorder to Codify. The City Recorder is hereby authorized to re-number the sections of this ordinance to be consistent with the Bend Code.

4.499

Section 3: Declaration of Emergency and Effective Date

This ordinance, being necessary for the immediate protection of the health, welfare and safety of the citizens of Bend, shall be in full force and effect immediately following its passage.

Read for the first time the 15th day of August, 2007.

Read for the second time the 5th day of September, 2007.

Placed upon its passage the 5th day of September, 2007.

YES: 7 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 5th day of September, 2007.

Bruce Abernethy

Bruce Abernethy, Mayor

Attest:

Patricia S Stell

Patricia Stell, City Recorder

BLANK PAGE

ORDINANCE NO. NS-2070

AN ORDINANCE AMENDING THE BEND CODE BY ADDING A NEW SECTION 5.387 DEALING WITH GRAFFITI NUISANCE PROPERTY

Whereas, graffiti results in visual pollution and is a public nuisance, and

Whereas, graffiti is detrimental to the health, safety and welfare of the community in that it leads to urban blight; encourages gang activity; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property, and

Whereas, graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that is inconsistent with the City's property maintenance goals and aesthetic standards, and

Whereas, it is the purpose of this ordinance to provide a program to encourage the prompt removal of graffiti from walls, pavement, structures and other improvements on both public and private property, therefore

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1: The Bend Code is amended by adding a new section 5.387 relating to abatement of graffiti nuisance property.

5.387 Graffiti Nuisance Property

1. Definitions:

1.1. Abate means to remove Graffiti from public view.

1.2. Graffiti means any unauthorized markings of paint, ink, chalk, dye or other similar substance which is visible from premises open to the public, and that have been placed upon any real or personal property such as buildings, fences, structures, or the unauthorized etching or scratching of such described surfaces where the markings are visible from premises open to the public, such as public rights of way or other publicly owned property.

1.3. Graffiti Nuisance Property means property to which graffiti has been applied, if the graffiti is visible from any public right of way, from any other public or private property or from any premises open to the public, and if the graffiti has not been abated within 14 days of written notification of its existence.

1.4. Occupant means any person, tenant, sub-lessee, successor, or assignee that has control of the property.

1.5. Owner means any person, agent, firm, or corporation having a legal or equitable interest in a property. Owner includes, but is not limited to:

1.5.1 A mortgagee in possession in whom is vested;

1.5.1.1 All or part of the legal title to the property; or

1.5.1.2 All or part of the beneficial ownership and a right to present use and enjoyment of the premises: or

1.5.2 An occupant who can control what occurs on that property.

1.6. Property means any real property including land and that which is affixed, incidental or appurtenant to land, including but not limited to any premises, house, building, fence, or items of machinery, drop boxes, waste containers, utility poles and vaults, and post office collection boxes.

1.7. Unauthorized means without consent of the owner, occupant or responsible party.

2. Procedure:

2.1 The Bend Police Department shall maintain a system for members of the public to report incidence of graffiti they observe on public and private property.

2.2 The owner or occupant of any property in the City shall remove any graffiti from such property within 14 days of the graffiti's appearance.

2.3 When the Chief of Police or Designee believes in good faith that property within the City of Bend has become graffiti nuisance property, he/she shall:

2.3.1 Notify the owner(s) of record and/or occupant in writing, via first class mail service, that the property has been determined to be graffiti nuisance property.

2.3.2 The notice shall contain the following information:

2.3.2.1 The street address and a legal description sufficient for identification of the property.

2.3.2.2 A statement that the Chief of Police or Designee has found the property to be graffiti nuisance property with a concise description of the conditions leading to his/her findings.

2.3.2.3 An information sheet identifying any graffiti removal assistance programs available through the City or private contactors.

2.3.2.4 A statement that the owner and/or occupant shall have the opportunity to respond to the notice, within 15 days from the date of the notice, describing what steps the owner has taken or will take to remedy the graffiti nuisance on the property.

2.4 If the graffiti can not be removed due to inclement weather then a waiver of the time restrictions may be authorized by the Chief of Police or Designee.

2.5 If the owner or person in control of the property fails to remove the graffiti from their property as provided in this ordinance, such person, firm, corporation or other entity shall be in violation of this ordinance.

2.6 Violation of this ordinance is a class "B" civil infraction. Each day after the initial citation is issued may be considered a separate violation. In addition, any person, firm, corporation or other entity not complying with this ordinance shall be subject to the abatement procedures provided in Bend Code section 5.400 -5.425

Read for the first time the 15th day of August, 2007.

Read for the second time the 5th day of September, 2007.

Placed upon its passage the 5th day of September, 2007.

YES: 7 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 5th day of September, 2007.

Bruce Abernethy, Mayor

Attest:

Patricia Stell, City Recorder

ORDINANCE NO. NS-2071

AN ORDINANCE TO AMEND THE CITY OF BEND DEVELOPMENT CODE AND ZONING MAP, ORDINANCE NO. NS-2016 BY ADDING SECTION 2.7.900, THE SUN RANCH MASTER DEVELOPMENT PLAN TO THE DEVELOPMENT CODE CHAPTER 2.7, SPECIAL PLANNED DISTRICTS, AND CHANGING THE ZONING DESIGNATION OF A PARCEL OF LAND TOATLING 19.91 ACRES EAST OF ALSTRUP ROAD, SOUTH OF THE COID CANAL FROM RS RESIDENTIAL URBAN STANDARD DENSITY TO RM RESIDENTIAL URBAN MEDIUM DENSITY.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council has held a public hearing, considered the testimony, the record, and the Hearings Officer decision, and has found that there is a public need and benefit for the proposed Master Development Plan and zone change. The Bend City Council adopts the Hearings Officer Findings and Decision, dated July 27, 2007 file number PZ 06-749, PZ 06-751, and PZ 07-228.

Section 2. The Bend Urban Area Zoning Map is hereby amended by changing the designation of the property shown in "Exhibit A" and described in "Exhibit B" from Residential Urban Standard Density (RS) to Residential Urban Medium Density (RM) and identifying the boundary of the Sun Ranch Master Development Plan overlay.

Section 3. The Bend Development Code, Ordinance NS-2016, is hereby amended by adding Section 2.7.900, Sun Ranch Master Development Plan as shown in "Exhibit C" to the Development Code Chapter 2.7, Special Planned Districts.

Read for the first time the 15th day of August, 2007.

also table 2.0.100

Read for the second time the 5th day of September, 2007.

Placed upon its passage the 5th day of September, 2007.

YES: 7 NO: 0

Authenticated by the Mayor the 5th day of September, 2007.

Bruce Abernethy

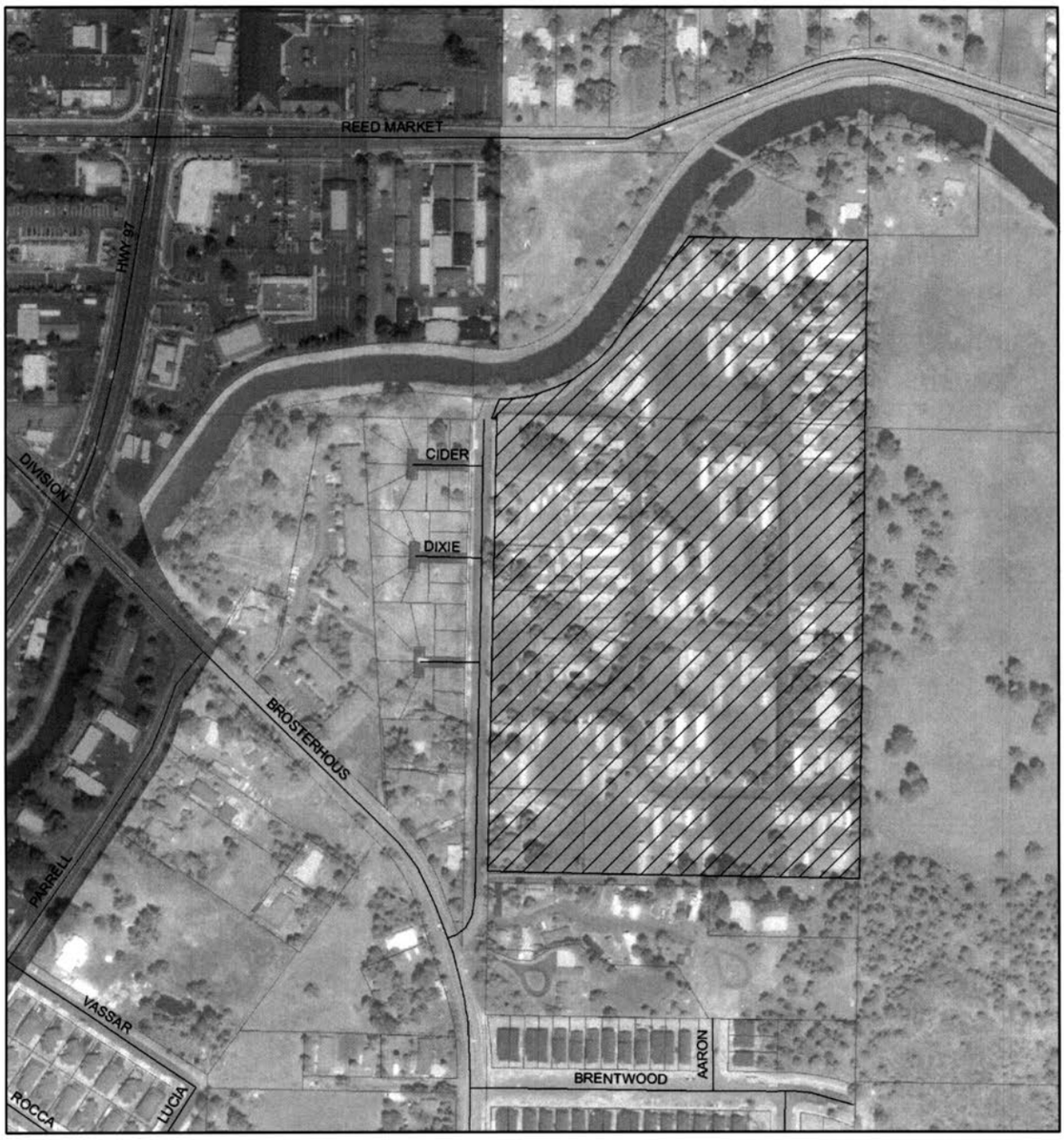
Bruce Abernethy, Mayor

ATTEST:

Patricia Stell

Patricia Stell, City Recorder

EXHIBIT A



PZ 07-228 Sun Ranch Master Plan & Zone Change (RS to RM)

Master Plan Boundary

Zoning

RS RH

RM CG

0 250 500 Feet

Map prepared by City of Bend, 8/7/2007.
Aerial imagery acquired June 2006.

N

EXHIBIT B

Tracts 12, 13, and 14, plat of "Carroll Acres" (unrecorded) and other property, located in the SW one-quarter of Section 4 and the NW one-quarter of Section 9, Township 18 South, Range 12 East, Willamette Meridian, Deschutes County, Oregon, being more particularly described as follow:

BEGINNING at a found 1 1/2" iron pipe marking the common West 1/16 corner of Sections 4 & 9 also being the NE corner of said Tract 14; Thence North 00° 02' 38" West, 380.00 feet; Thence North 89° 57' 13" West, 360.36 feet; Thence South 33° 57' 52" West, 235.54 feet to a point of 300.00 foot radius curve to the right; Thence along said curve to the right (The center of which bears North 56° 02' 08" West, 300.00 feet) through a central angle of 61° 00' 00" an arc distance of 319.40 feet (the chord of which bears South 64° 27' 52" West, 304.52 feet); Thence North 85° 02' 08" West, 24.09 feet; Thence South 00° 38' 52" West, 45.73 feet; Thence South 89° 16' 29" East, 50.00 feet; Thence South 00° 38' 52" West, 911.71 feet; Thence South 89° 23' 00" East, 742.64 feet; Thence North 00° 34' 57" East, 910.31 feet to said **POINT OF BEGINNING**.

This description is for a master plan zone change only. It is not intended to be used in the transfer of real property.

EXHIBIT C

2.7.~~900~~ 950 Sun Ranch Master Development Plan

Sections:

2.7.~~910~~ 60 Purpose
2.7.~~920~~ 70 Sun Ranch Development Standards

2.7.~~910~~ 60 Purpose

The purpose of this section is to implement the Sun Ranch Master Development Plan and the Bend Urban Area General Plan policies regarding the Sun Ranch property. In addition, the Master Development Plan creates overlay development standards that will supersede the development standards of the underlying RM, Residential Medium Density district within the plan boundaries.

2.7.~~920~~ 70 Sun Ranch Special Development Standards

A. Applicability

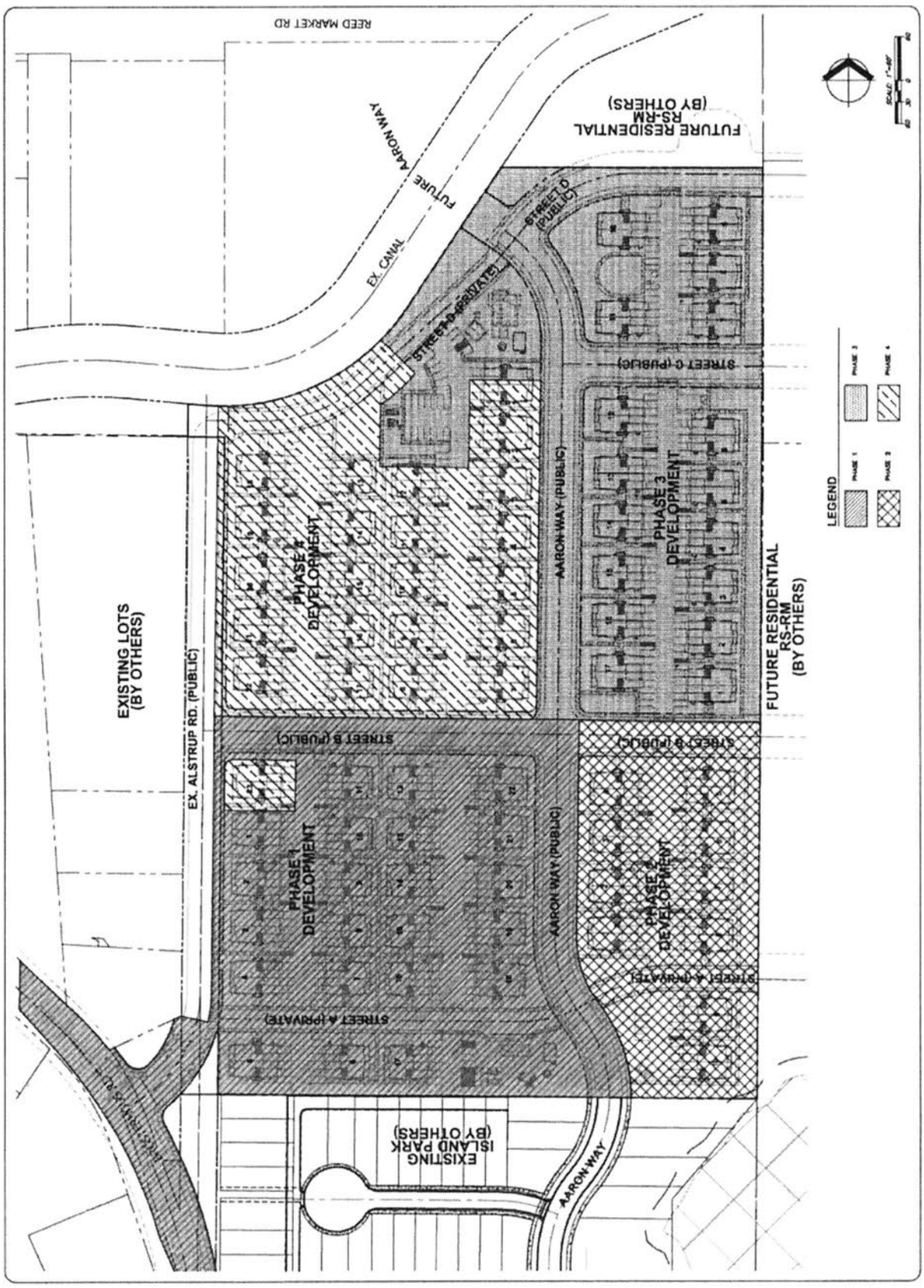
The standards provided for the Sun Ranch Master Development Plan area shall be the applicable standards of the RM Residential Medium Density district, except those standards expressly stated below which are specific to the Sun Ranch Development.

B. Special Development Standards

1. Lot Area: Multi-family residences shall not be required to provide a minimum lot area.

2. Building Height: Multi-family residential buildings within the Sun Ranch Development boundaries may be up to 42 feet in height as measured from natural grade to the highest roof peak.

Figure 2.7.920 A
Phasing Plan and Street Layout



ORDINANCE NO. NS-2072

AN ORDINANCE AMENDING THE CITY OF BEND DEVELOPMENT CODE (ORDINANCE NO. NS-2016) BY CHANGING THE TEXT OF CHAPTER 1.2, *(Definitions)* AND CHAPTER 2.7 *(Special Planned Districts)* OF THE BEND DEVELOPMENT CODE AND DECLARING AN EMERGENCY AND PRESCRIBING AN EFFECTIVE DATE OF SEPTEMBER 28, 2007.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council has held a public hearing, considered the testimony, the record, and the Planning Commission's recommendation, and has found that there is a public need and benefit for the proposed text amendments to the City of Bend Development Code. The Bend City Council adopts the Recommendation of the Planning Commission, approved on August 13, 2007, file number PZ 07-383.

Section 2. Chapter 1.2 and Chapter 2.7 of the City of Bend Development Code (Ordinance NS-2016) are amended by changing the text therein as detailed in "Exhibit A".

Section 3. The Bend City Council adopts the Staff Findings for Recommended Development Code Text Amendment, attached as "Exhibit B", as findings in support of this ordinance.

Section 4. This ordinance being necessary for the preservation of public safety and health, an emergency is declared to exist and this ordinance takes effect on September 28, 2007.

Read for the first time the 5th day of September, 2007.

Read for the second time the 19th day of September, 2007.

Placed into effect upon the 28th day of September, 2007.

YES: 6 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 19th day of September, 2007.

Bruce Abernethy, Mayor

Attest:

Kim Meyers, Deputy City Recorder

Text in underlined typeface is added;
Text in ~~struckthrough~~ typeface is deleted.

Chapter 1.2 Definitions

Appeal means to make a formal challenge to an official decision.

Basement means any area of the building having its floor subgrade (below ground level) on all sides.

Critical facility means, for the purpose of flood standards, a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools, nursing homes, hospitals, police, fire and emergency response installations, and installations which produce, use or store hazardous materials or hazardous waste.

Elevated building means, for flood insurance purposes, a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

Floor, lowest habitable means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest habitable floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

Manufactured home means (for land use purposes) a portable single family residence constructed after 1976 that conforms to the Manufactured Housing Construction and Safety Standards Code of the US Dept. of Housing and Urban Development but is not regulated by the Oregon State Structural Specialty Code and Fire Life Safety Regulations, and is intended for permanent occupancy. See Chapter 2.1. For flood plain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. ~~For insurance purposes the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.~~

New construction means structures for which the "start of construction" commenced on or after the effective date of this ordinance.

Recreational vehicle means, for flood plain management purposes, a vehicle which is:

1. Built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Start of construction includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

(1) Before the improvement or repair is started; or

(2) If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

(1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
(2) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

Chapter 2.7 Special Planned Districts

Chapter 2.7.600 Waterway Overlay Zone (WOZ)

2.7.640 Flood Plain Combining Zone

A. Purpose. It is the purpose of this zone to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

1. To protect human life and health;
2. To minimize expenditure of public money and costly flood control projects;
3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. To minimize prolonged business interruptions;
5. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
6. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazards so as to minimize future flood blight areas;
7. To ensure that potential buyers are notified that property is in an area of special flood hazard; and,
8. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

B. Application of FP Zone.

1. The FP Combining Zone shall apply to the areas identified on the Flood Insurance Rate Map (FIRM), as special flood hazard areas inundated by 100-year flood and floodway areas. The FIA Flood Insurance Study for ~~Bend~~ "Deschutes County, Oregon and Incorporated Areas" and the FIRM map dated September 28, 2007 are hereby adopted and by this reference included herein. The Flood Insurance Study is on file at the Planning Division. The A and AE zones shown on the FIRM map are hereby zoned FP.

2. The Planning Director is hereby appointed to administer and implement the Flood Plain Combining Zone by granting or denying development permit applications in accordance with its provisions. Duties and responsibilities of the Planning Director shall include, but not be limited to:

   a. Review all development permits to determine that the permit requirements of this ordinance have been satisfied.
   b. Review all development permits to determine that all necessary permits have been obtained from those Federal, State, or local governmental agencies from which prior approval is required.
   c. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Section M.1 are met.
   d. Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). A person contesting the

location of the special flood hazard boundary shall be given an opportunity to seek a declaratory ruling or to appeal the interpretation as provided in Chapter 4.1.

~~2.~~ 3. When base flood elevation data has not been provided on the FIRM, the Planning Director shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, State or other source, in order to administer this section.

~~3.~~ 4. Information to be Obtained and Maintained.

a. Where base flood elevation data is provided through the Flood Insurance Study, FIRM, or required as in Subsection B~~(2)~~(3), above, verify and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.

b. For all new or substantially improved floodproofed structures, verify and record the actual elevation (in relation to mean sea level) ~~of the structure's lowest floor~~ to which the structure was floodproofed~~. Obtain~~ and maintain the floodproofing certifications required in Section G.2, below.

C. Warning and Disclaimer of Liability. The degree of flood protection required by this Section is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Bend, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this ordinance or any administrative decision made hereunder.

D. Alteration of Watercourses.

1. Prior to any alteration or relocation of a watercourse, notice of the proposed alteration shall be given to affected, adjacent communities and appropriate state agencies such as the Department of Land Conservation and Development and the State Department of Water Resources~~, and~~. The Planning Director shall also submit evidence of such notification to the Federal Insurance Administration.

2. The applicant shall maintain the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

E. Permit for Use or Development in an FP Zone. No development shall occur in an FP zone unless a permit has been received for the work. Except for improvement of an existing structure which is less than substantial, as determined by the City, no permit shall be issued unless the work will be reasonably safe from flooding, otherwise complies with this ordinance, and all necessary state, federal, and local permits will be obtained as a condition of approval on any permit in an FP zone. The following information shall be submitted with the permit application:

1. The location of the property with reference to channel stations and flood profile elevations.

2. The existing topography and proposed grading plan for the property. Contour intervals shall not be more than one-foot for ground slopes up to five percent and, for areas immediately adjacent to a stream, two-foot for ground slopes between five and ten percent, and five-foot for greater slopes.

3. The location of existing and proposed diking or revetments, if any.

4. Review of Building Permits. Where elevation data is not available either through the Flood Insurance Study, FIRM, or from another authoritative source, applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above the highest adjacent grade in these zones may result in higher flood insurance rates.

F. Structural Elevation Data Required.

1. A building permit application for substantial improvement to an existing structure or for a new structure within an FP zone shall contain the following data referenced to mean sea level:

    a. The level of the lowest habitable floor and of any basement floor whether or not intended to be habitable. This information shall be submitted on FEMA Form 81-31.
    b. The level to which the structure is to be floodproofed, if applicable.

2. A statement which notes whether the structure contains a basement.

3. The information required by this subsection shall be maintained in the files of the Building Department with the subject building permit.

G. Regulation of Structures in an FP Zone.

1. Residential Construction.

    a. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated a minimum of 1 foot above base flood elevation.

    b. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

        i. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

        ii. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

        iii. The bottom of all openings shall be no higher than one foot above grade.

        ~~iv. Nonresidential Construction. New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation; or, together with attendant utility and sanitary facilities, shall:~~

2. Nonresidential Construction. New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

    a. Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;

    b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

    c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the City's Building Official.

    d. Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in Section G (1)(b) above.

    e. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g. a building constructed to the base flood level will be rated as one foot below that level).

3. Crawlspace Construction. Below-grade crawlspaces are allowed subject to the following standards as found in FEMA Technical Bulletin 11-01, Crawlspace Construction for Buildings Located in Special Flood Hazard Areas:

    a. The building must be designed and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Hydrostatic loads and the effects of buoyancy can usually be addressed through the required openings stated in Section b. below. Because of hydrodynamic loads, crawlspace construction is not allowed in areas with flood velocities greater than five (5) feet per second unless the design is

reviewed by a qualified design professional, such as a registered architect or professional engineer. Other types of foundations are recommended for these areas.

b. The crawlspace is an enclosed area below the base flood elevation (BFE) and, as such, must have openings that equalize hydrostatic pressures by allowing the automatic entry and exit of floodwaters. The bottom of each flood vent opening can be no more than one (1) foot above the lowest adjacent exterior grade.

c. Portions of the building below the BFE must be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawlspace used to elevate the building, but also any joists, insulation, or other materials that extend below the BFE. The recommended construction practice is to elevate the bottom of joists and all insulation above BFE.

d. Any building utility systems within the crawlspace must be elevated above BFE or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions. Ductwork, in particular, must either be placed above the BFE or sealed from floodwaters.

e. The interior grade of a crawlspace below the BFE must not be more than two (2) feet below the lowest adjacent exterior grade.

f. The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall must not exceed four (4) feet at any point. The height limitation is the maximum allowable unsupported wall height according to the engineering analyses and building code requirements for flood hazard areas.

g. There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event. The type of drainage system will vary because of the site gradient and other drainage characteristics, such as soil types. Possible options include natural drainage through porous, well-drained soils and drainage systems such as perforated pipes, drainage tiles or gravel or crushed stone drainage by gravity or mechanical means.

h. The velocity of floodwaters at the site should not exceed five (5) feet per second for any crawlspace. For velocities in excess of five (5) feet per second, other foundation types should be used.

~~3.~~ 4. Manufactured Homes. All manufactured homes to be placed or substantially improved within Zones ~~A1-30,~~ AH or AE shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is ~~at or~~ a minimum of 1 foot above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section I(2) below.

5. Recreational Vehicles. Recreational vehicles placed on sites are required to either:

a. Be on the site for fewer than 180 consecutive days,

b. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or

c. Meet the requirements of G.3. above and the elevation and anchoring requirements for manufactured homes.

H. Construction Materials and Methods.

1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

3. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

I. **Anchoring.**

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

2. All manufactured homes must likewise be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).

J. **Land Development Standards in a Flood Hazard Area.**

1. In addition to the terms of Subsections J and K of this section, a subdivision or other land development, including all utility facilities, within an FP zone shall be designed, located and constructed to minimize flood damage, including special provisions for adequate drainage to reduce exposure to flood hazards.

2. A land development which will alter or relocate a watercourse shall be designed, constructed and maintained to retain the flood-carrying capacity of the watercourse.

3. ~~A proposed land development of greater than either 50 lots or 5 acres shall include data showing the base flood elevation.~~ Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (whichever is less).

K. **Manufactured Home Development Standards.**

1. All manufactured homes to be placed or substantially improved within Zones ~~A1-30,~~ AH, and AE shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is ~~at or~~ a minimum of one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section I(2) above.

2. The placement of a manufactured home in the floodway is prohibited.

L. **Utilities Standards in a Flood Hazard Area.**

1. A public utility or facility associated with a land development within a FP zone shall be designed, located and constructed to minimize or eliminate flood damage and to avoid raising the water elevation in a regulatory floodway.

2. Any new or replacement water supply system shall be designed, located and constructed to minimize or eliminate infiltration of floodwaters into the system.

3. Any new or replacement sewerage system shall be designed, located and constructed to minimize or eliminate infiltration of floodwaters into the system and discharge from the system into the flood waters.

M. **Floodways.** Located within areas of special flood hazard established in Section B(1), Application of FP Zone, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

1. Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional civil engineer ~~or architect~~ is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

2. If Subsection (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section G, Regulations of Structures in an FP Zone.

N. **Before Regulatory Floodway.** In areas where a regulatory floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zone AE on the community's FIRM, unless it is demonstrated

that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

O. **Critical Facilities.** Construction of new critical facilities shall be, to the extent possible, located outside the limits of the Special Flood Hazard Area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

~~N.~~ **P. Technical Variances.** A technical variance from the requirements of Section 2.7.640, Flood Plain Combining Zone, may be granted by the Hearings Body for new construction and for improvements to existing structures which could not otherwise be authorized, provided the construction or improvements are to be erected or installed on a parcel of land one-half acre or less in size, contiguous to or more or less surrounded by lots with existing structures constructed below the minimum floor elevation established for flood protection purposes. A parcel of land in excess of the
one-half acre in single ownership on the effective date of this ordinance is not excluded from the granting of a technical variance, but the burden of proof required for issuing the variance increases as the size of the property under single ownership increases, and the variance shall be granted only if required to equalize circumstances, considering previously developed land adjacent to the parcel for which a variance is sought.

~~O.~~ **Q. Historic Variance.** A variance for historic preservation may be granted for the reconstruction, rehabilitation or restoration of a structure listed on the National Register of Historic Places or the State Inventory of Historic Places.

~~P.~~ **R. Other Variances.** All other variance applications shall be considered according to the terms of Chapter 5.1 of this ordinance.

1. Applicants for a variance shall include with their application the following information:
   a. The location of the property with reference to channel station and flood profile elevation.
   b. The existing topography and proposed grading plan for the property. Contour intervals shall not be more than one foot for ground slopes up to five percent and for areas immediately adjacent to a stream, two feet for ground slopes between five and ten percent, and five feet for greater slopes.
   c. The location of existing and proposed diking or revetments if any.