ORDINANCE NO. NS-2073

AN ORDINANCE AMENDING THE BEND URBAN AREA GENERAL PLAN MAP BY EXPANDING THE URBAN GROWTH BOUNDARY TO INCLUDE A PARCEL OF LAND TOTALING 18.1 ACRES FOR THE EXPRESS PURPOSE OF CONSTRUCTING AN ELEMENTARY SCHOOL AND DECLARING AN EMERGENCY AND PRESCRIBING AN EFFECTIVE DATE OF OCTOBER 3, 2007. THE PROPERTY IS LOCATED AT THE INTERSECTION OF YEOMAN ROAD AND NE PURCELL BOULEVARD ABUTTING THE BEND PARKS AND RECREATION DISTRICT PINE NURSERY COMMUNITY PARK FACILITY IN NORTHEAST BEND.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend Urban Area Zoning and Plan Map is hereby amended by including the designation of the property shown in "Exhibit A" and described in "Exhibit B".

Section 2. 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 Conclusions of the Hearings Officer dated September 4, 2007, file number PZ 07-284 in support of this ordinance (Exhibit C).

Section 3. This ordinance being necessary for the preservation of public safety and health, an emergency is declared to exist and this ordinance takes effect on October 3, 2007.

Read for the first time the 19th day of September, 2007.

Read for the second time the 3rd day of October, 2007.

Placed upon its passage the 3rd day of October, 2007.

YES: 7 NO: 0

Authenticated by the Mayor the 3rd day of October, 2007.

Bruce Abernethy, Mayor

ATTEST:

Patricia Stell, City of Bend Recorder

EXHIBIT A

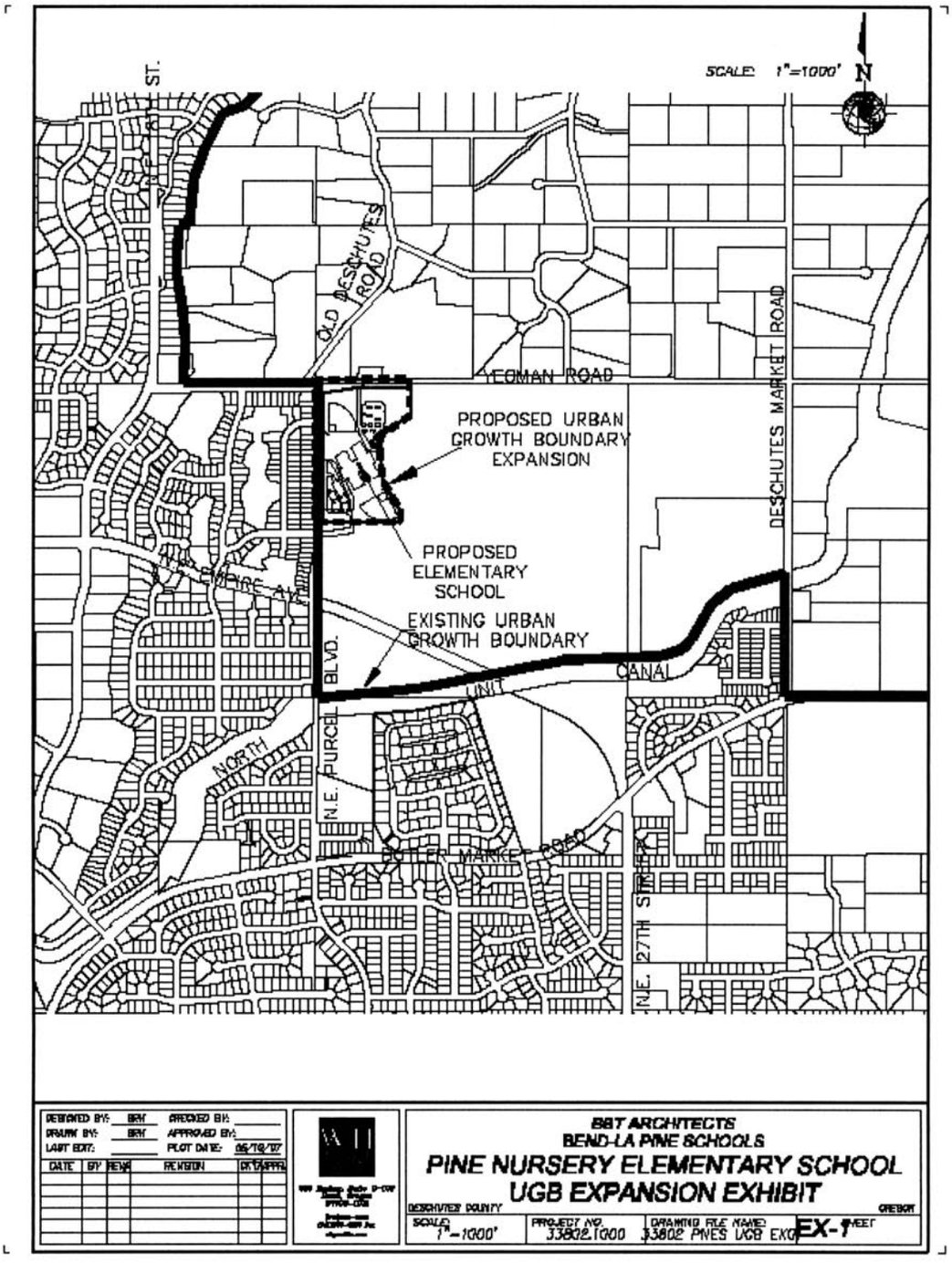

SCALE: 1"=1000'
N
ST.
OLD DESCHUTES ROAD
TEOMAN ROAD
DESCHUTES MARKET ROAD
PROPOSED URBAN GROWTH BOUNDARY EXPANSION
PROPOSED ELEMENTARY SCHOOL
EXISTING URBAN GROWTH BOUNDARY
CANAL
BLVD.
N.E. PURCELL
NORTH UNIT
BUTLER MARKET ROAD
N.E. 27TH STREET
DESIGNED BY: BRY
DRAWN BY: BRY
LAST EDIT:
CHECKED BY:
APPROVED BY:
PLOT DATE: 05/19/17
DATE | BY | REVISION
BBT ARCHITECTS
BEND-LA PINE SCHOOLS
PINE NURSERY ELEMENTARY SCHOOL
UGB EXPANSION EXHIBIT
DESCHUTES COUNTY
OREGON
SCALE: 1"=1000'
PROJECT NO. 33802.1000
DRAWING FILE NAME: 33802 PINES UGB EXH
EX-1
SHEET

EXHIBIT B

A parcel of land located in the Southwest One-quarter of the Southeast One-quarter (SW 1/4of the SE 1/4) of Section 15 and the Northwest One-quarter of the Northeast One-quarter (NW 1/4 of the NE 1/4) of Section 22, Township 17 South, Range 12 East, Willamette Meridian, Deschutes County, Oregon, said parcel being more particularly described as follows:

Beginning at One-quarter corner common to Section 15 and 22, Township 17 South, Range 12 East , Willamette Meridian, Deschutes County, Oregon, thence North 00° 01'38" West, 30.00 feet to a point on the northerly right of way of Yeoman Road, North 89°37'08" East, 790.57 feet; thence leaving said northerly right of way, South 00° 00'00" West 30.00 feet to a point on the line between said Sections 15 and 22; thence continuing South 00°00'00" West 279.96 feet; thence South 55°00'00" West, 301.94 feet; thence South 00°00'00" West 240.87 feet; thence South 12°34'57" East, 158.62 feet; thence South 30°00'00" East, 268.60 feet; thence South 00°00'00" West, 87.84 feet; thence North 90°00'00" West, 711.50 feet to the north-south center line of said Section 22; thence along said center line, North 00°01'38" West, 1164.02 feet to the point of beginning.

Said parcel contains 18.1 acres, more or less

Exhibit C

DECISION AND RECOMMENDATION OF CITY OF BEND HEARINGS OFFICER

PROJECT NUMBER:	PZ 07-284, Urban Growth Boundary Plan Amendment
HEARING DATE:	City of Bend Council Chambers Thursday, June 28, 2007 at 10:00 A.M.
HEARING DATE:	June 28, 2007
HEARINGS OFFICER:	Tim Elliott
APPLICANT:	Bend La Pine School District c/o Bryant Lovlien & Jarvis PC 591 SW Mill View Way Bend, Oregon 97701
PROPERTY OWNER:	Bend Metro Parks and Recreation District 200 Pacific Park Lane Redmond, OR 97701
APPLICANT'S ATTORNEY:	Helen Eastwood Bryant Lovlien & Jarvis PC 591 SW Mill View Way Bend, OR 97701
LOCATION:	The site is located at the northwest corner of the former Pine Nursery site bordered by Yeoman Road on the north and NE Purcell on the west. The site is further identified as Tax Lot 102 on Tax Assessor's Map 17-12-22.
REQUEST:	The applicant requests an amendment to the Bend Urban Area General Plan to expand the Urban Growth Boundary (UGB) to include a 15 acre site for the purpose of constructing an elementary school. Concurrent with this application in accordance with the joint management agreement between the City of Bend and Deschutes County is a plan amendment request and a partition to divide 15 acres from the 143 acre parent parcel owned by the Bend Metro Parks and Recreation District, to be reviewed by Deschutes County.
STAFF REVIEWER:	Brian Harrington, Associate Planner

(541) 693-2118

APPLICABLE CRITERIA:

(1) Bend Code Chapter 10; Bend Development Code, Ordinance NS-2016

- (a) Chapter 2.1; Residential Districts
- (b) Chapter 4.6; Land Use District Map and Text Amendments
- (c) Chapter 4.7; Transportation Analysis

(2) The Bend Area General Plan

(3) Oregon Administrative Rules
Chapter 660-024, Division 24, Urban Growth Boundaries
Chapter 660-012, Division 12, Transportation Planning

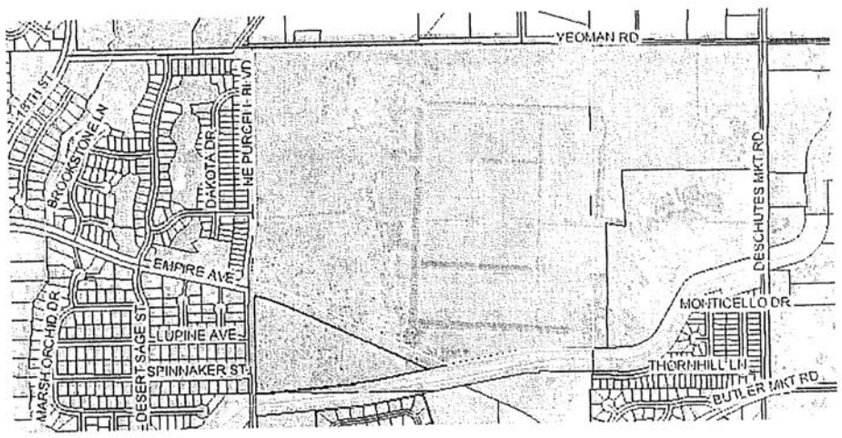
(4) Oregon Revised Statute 197.298

(5) Oregon Statewide Planning Goals 11, 12 and 14

FINDINGS OF FACT:

1. **LOCATION:** The subject property is located at the corner of NE Purcell Blvd and Yeoman Road and further identified on Deschutes County Assessor's Map as 17-12-22, Tax Lot 102.

2. **ZONING:** The property is zoned Urban UAR-10 and designated Urban Area Reserve on the Bend Area General Plan Map. The site is specified below.



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Bend Lapine School District

ORS 197.298 outlines a hierarchy of lands to consider when amending a UGB. The first priority is those lands designated urban reserve under ORS 195.145.

3. **SITE DESCRIPTION & SURROUNDING USES:** The hearings officer is familiar with the site and concurs with staff's description, which generally is as follows: The site contains 15 acres in the northwest corner of the Bend Metro Park and Recreation District's (BMPRD) Pine Nursery community park site. The terrain is fairly level and adjoins an elevated rock outcropping along the east boundary. Vegetation is limited to native grasses, shrubs and juniper trees. The park site will adjoin the property boundaries on the east and south. The southern property boundary will align with the west entrance of the park site across Rock Park Drive along NE Purcell Blvd. Surrounding uses to the west include single family residential development zoned RS (Lava Ridge subdivision). To the north, across Yeoman Road, is rural residential development zoned SR 2 ½ (Bee Tree Subdivision).

4. **PROPOSAL:** The applicant requests a UGB amendment to include 15 acres of land from the Bend Urban Area Reserve to facilitate the construction of an elementary school. No change is proposed to the existing UAR-10 zoning. A concurrent application has been filed with Deschutes Count, along with a partition application to partition the site from the parent parcel.

   The applicant offered the following narrative in support of its proposal:

   "In 2005, Bend La-Pine Schools (the "Applicant"), completed an updated Sites and Facilities Plan ("2005 Sites and Facilities Plan") that identified the need for three new elementary schools by 2010. The 2005 Sites and Facilities Plan is attached as Exhibit 1. The 2005 Sites and Facilities Plan specifically identified the northeast quadrant of the City as an area that needed a new elementary school. Given the scarcity of suitable vacant properties, it has been challenging to acquire school sites in the appropriate locations. The 2005 Sites and Facilities Plan specifically identified the Pine Nursery site as an existing possibility for a school site even though it was outside of the Urban Growth Boundary. In 2005, the Applicant already had an agreement with the Bend Metro Park and Recreation District to acquire the Pine Nursery School Site.

   In 2006, the voters approved school bonds to fund the construction of three new elementary schools (two for the City of Bend and one in La Pine) and expansions and renovations at other schools throughout the District. The City of Bend is in the process of expanding its UGB and the proposed school site is included in the current expansion areas. However, the City of Bend process will not be complete in time for the Applicant to

meet the needs of the rapidly expanding school populations. When the Applicant submitted the Bond to the voters, it was anticipated that the UGB expansion would be completed in time for the Applicant to seek land use approval to construct the necessary schools to be open for fall 2008. Unfortunately, the UGB expansion has taken longer than anticipated. Due to the current overcrowding, the Applicant needs to open the school by the fall of 2008. Accordingly, the Applicant has been working with both the City of Bend and Deschutes County in planning for the new elementary school in advance of the completion of the City's UGB expansion.

Land use actions adjacent to the Bend Urban Growth Boundary in the Urban Area Reserve are governed by a joint management agreement adopted by the City of Bend and Deschutes County on February 24, 1998. This document calls for cooperation between the City of Bend and Deschutes County in planning for the UAR zone. Deschutes County and the City of Bend share responsibility for processing urban growth boundary expansions. Quasi-judicial applications are reviewed by a hearings officer at both the City and the County. Then both the County Commissioners and City Council will hold public hearings and adopt implementing ordinances to enact the UGB expansion. Plan amendments must also be acknowledged by the State of Oregon Department of Land Conservation and Development as complying with applicable state land use laws.

The property is currently zoned UAR-10 which allows for the development of public schools as a conditional use. Applicant is not requesting exemptions from State Land Use Goals. New Oregon Administrative Rules (effective April 5, 2007) and the new Goal 14 for UGB expansions (effective April 2006) are applicable."

5. **PUBLIC NOTICE AND COMMENTS:** The application was submitted on May 17, 2007. On June 7, 2007, the Planning Division sent notice of the request to surrounding owners of record of property as shown on the most recent property tax assessment roll within 250 feet of the property. Transmittals describing the proposal were also sent to inter-office departments and other agencies for comment. The agency comments are contained with9in the file. In addition, notice of the proposed UGB Amendment was sent to the Department of Land Conservation and Development (DLCD) on May 11, 2007.

6. **PUBLIC MEETING:** A public meeting was held on May 10, 2007 for the Pine Nursery Site. The applicant attached a copy of the City's forms regarding public & neighborhood meetings, and a copy of the notice and the list of persons receiving notice. The applicant submitted a letter from the Mountain View Neighborhood Association dated May 16, 2007 that

stated that the Mountain View Neighborhood has no concerns with the proposal.

7. **APPLICATION ACCEPTANCE DATE:** The application was submitted on May 17, 2007. Pursuant to Section 4.1.530(D) of the Bend Code, quasi-judicial comprehensive plan amendments are exempt from the 120 day time limit.

8. **LOT OF RECORD:** The applicant has submitted a partition to Deschutes County to segment 15 acres from the parent parcel. The 15 acre site will be established as a legal lot of record according to current Bend Development Code standards subject to final plat approval of the minor partition.

REVIEW OF APPLICABLE UGB AMENDMENT CRITERIA

Chapter 2.1, Residential Districts

B. Applicability. **This chapter applies to all development in the Urban Area Reserve District (UAR), Residential Suburban Low Density (SR2 ½), Low Density Residential District (RL), Standard Density Residential District (RS), Medium-10 Density Residential District (RM-10), Medium Density Residential District (RM), and High Density Residential District (RH). These Districts are identified on the City's official zoning map. Properties designated within each district that contain additional standards shall comply with the provisions of the applicable District, except as may be modified by this Section. Properties within a designated Historic District shall comply with the provisions of Chapter 10-16 of the Bend Code.**

FINDING: The applicant is proposing to amend the Bend Urban Area Plan (Bend Plan) to expand the UGB to include a 15 acre site for the purpose of constructing an elementary school (Pine Nursery). No zone change is proposed with this application; therefore the applicable zoning is Urban Area Reserve (UAR-10). As such, the proposed elementary school use would be allowed conditionally in the UAR-10 zone. The expansion of the UGB boundary will require future development to comply with the development standards for the UAR-10 zone as listed under Section 2.1 of the Development Code.

Chapter 4.1, Land Use Review and Procedures
4.1.515 Process for Type II or Type III Applications.

A. **Except for comprehensive plan amendments and zone changes and other instances where a hearing is required by state law or by other ordinance provision, the Planning Director may decide upon a Type II application administratively either with prior notice, as prescribed**

under Section 4.1.520 or without prior notice, as prescribed under Section 4.1.525 or may refer the application to the Hearings Body for hearing as a Type III. The Planning Director shall take such action within 45 days of the date the application is accepted or deemed accepted as complete. This time limit may be waived at the option of the applicant.

B. **The Planning Director's choice between or among administrative or hearing procedures to apply to a particular application or determination shall not be an appeal-able decision.**

C. **Quasi-judicial zone change and plan amendment applications shall be reviewed as a Type III and referred to a hearing before the Review Authority.**

FINDING: The applicant has proposed a quasi-judicial plan amendment that has been sent to hearing before the hearings officer and the City Council in compliance with criterion (C) above.

Chapter 4.6 Land Use District Map and Text Amendments

4.6.300 Quasi-Judicial Amendments.

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;**

In response to this criterion, the applicant's burden of proof statement reads in part:

Oregon Statewide Planning Goals

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."

APPLICANT'S RESPONSE: As part of the UGB application process, there will be adequate opportunities for citizen involvement. Public notice will be provided to surrounding area property owners. Public hearings will be conducted both

before a City and County hearings officer and before the City Council and County Commissioners.

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.",

Oregon Statewide Planning Goal 3 "To preserve and maintain agricultural lands." and, Oregon Statewide Planning Goal 4 "Forests"

APPLICANT'S RESPONSE: In accordance with Goal 2, Applicant has proposed an orderly procedure to evaluate the UGB expansion request, and has provided an adequate factual base to enable the City to make a rational decision on the UGB expansion request. OAR 660-024-0020(a) provides that the exception process is not applicable. The proposed property to be included in the UGB expansion is not identified as either agricultural or forest lands.

Oregon Statewide Planning Goal 5: " Open Spaces, Scenic and Historic Areas, and Natural Resources"

APPLICANT'S RESPONSE: Goal 5 resources are listed in the City's acknowledged Comprehensive Plan. There are no known significant Goal 5 resources on the site. The area proposed for the UGB expansion is similar to other sites around the City of Bend with regard to open space, scenic views and other Goal 5 values. Utilizing the selected site as proposed will have no noticeable adverse impact on the amount of regional open space or scenic views available.

Impacts on related resources:

Mineral and Aggregate, and Energy Resources: The Pine Nursery Site has never been zoned for mineral or aggregate resources. Furthermore, there are no known energy resources on the sites such as natural gas, oil, coal or geothermal heat.

Fish and Wildlife Habitat: The Pine Nursery Site has no fish or wetland habitat. Both selected sites are unlikely to contain threatened or endangered species. The Pine Nursery site is already surrounded by development that limits its potential for threatened or endangered species.

Ecologically and Scientifically Significant: Nothing about the selected site separates it from surrounding areas as ecologically or scientifically significant.

Outstanding Scenic Views: Nothing about the site indicates it has a significantly better view than other similar sites that surround the City of Bend.

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Bend Lapine School District

Water areas, wetlands, watersheds, and groundwater resources: There are no wetlands or watersheds within or adjacent to any of the subject site. No watersheds will be affected by the inclusion of the property into the Bend UGB. The site will be served by municipal sewer systems as they are included in the City and will not adversely affect the groundwater due to septic discharge. Other standards and regulations exist that will mitigate any potential threats to existing groundwater quality during development.

Wilderness Areas: The Pine Nursery Site does not meet the definitions of "wilderness areas" as described within the Oregon State Goals and Guidelines. The parcel has been used over the past century and does not contain pristine surroundings or old growth trees.

Historic areas, sites, structures and objects: The Pine Nursery Site has no structures listed on the National Register of Historic Places. No structures or places of historical significance have been determined to exist on or near the property selected.

Cultural areas: The Pine Nursery Site has no known cultural resources.

Oregon Statewide Planning Goal 6: "Air, Water, and Land Resources Quality"

APPLICANT'S RESPONSE: The Applicant is not proposing an exception to compliance with Goal 6. Maintaining or improving the quality of the community's air, water and land resources will be assured through enforcement of state and local regulations. Expansion of the UGB and annexation of the parcels to the City of Bend will ensure connections to City sewer connections. Sewer connectivity has been considered when choosing the parcels and the site will not cause the sewer capacity to be exceeded. Noise levels will not exceed DEQ noise regulations.

Oregon Statewide Planning Goal 7: "Natural Disasters and Hazards"

APPLICANT'S RESPONSE: There are no areas within the site that are subject to flooding or landslide activity. The wildfire hazard for the site is the same as other areas with junipers, pine and native brush to the northeast and west of Bend. By providing adequate water to meet the fire flow requirements for an elementary school, the city will reduce the potential wildfire hazard in this area.

Oregon Statewide Planning Goal 8: "Recreational Needs"

APPLICANT'S RESPONSE: As a side benefit to the development on the site the city anticipates including open space areas in the development of the elementary school sites allow for recreational uses. Also the Applicant has worked with the Bend Metro Park and Recreation District to site the school adjacent to the planned new community park at the old Pine Nursery Site.

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Oregon Statewide Planning Goal 9: "Economy of Development"

APPLICANT'S RESPONSE: The placement of a public elementary school is important to assist in the health, welfare and prosperity of Oregon citizens. The proposed elementary school is necessary because of the economic development occurring in the City of Bend. This development has brought new families to the City of Bend with elementary aged children. The expansion of the UGB is driven by the need to provide quality public education to all children in the community.

Oregon Statewide Planning Goal 10: "Housing"

APPLICANT'S RESPONSE: This expansion of the UGB is limited to the purpose of providing land needed for schools. The City is undergoing its own process of evaluating additional UGB expansions to meet future housing needs. The process for the UGB expansion to meet housing needs is supported by this application.

Oregon Statewide Planning Goal 11: "Public Facilities and Services"

APPLICANT'S RESPONSE: The existing water lines and sewer service adjacent to the site will allow for the efficient and cost effective extension of these needed services to the site. Public facilities and services are adequate to serve the needs of the proposed school.

Oregon Statewide Planning Goal 12: is "To provide and encourage a safe, convenient and economic transportation system."

APPLICANT'S RESPONSE: OAR 660-012 implements Oregon Statewide Planning Goal 12. This administrative rule requires the City to prepare and adopt a Transportation System Plan (TSP) as part of its comprehensive plan. The Bend Urban Area Transportation System Plan was adopted October 11, 2000.

OAR 660-024-0020(d) exempts properties such as those in this Application from the transportation planning rule of OAR 660-012-0060. Exempt properties include properties that are zoned as urbanizable land and that do not allow more vehicle trips than development allowed under prior zoning. Here, the applicable zoning is UAR-10. In UAR-10, public schools are conditionally permitted. Therefore, the prior zoning and any future zoning will allow the same number of vehicle trips. The site will not adversely impact the transportation system.

Oregon Statewide Planning Goal 13: "Energy Conservation"

APPLICANT'S RESPONSE: The location of the proposed elementary school, which is near the student population that it will serve, may reduce energy use by reducing vehicle trips to schools that are more distant from the student's homes.

Students may be able to walk and bike to this neighborhood school. The proposed locations show good potential for walking and biking options.

Oregon Statewide Planning Goal 14: "Urbanization"

APPLICANT'S RESPONSE: This Goal was addressed above.

Oregon Statewide Planning Goals 15-19

APPLICANT'S RESPONSE: These Goals are not applicable to these properties because the properties are not within the Willamette Greenway, estuarine areas, coastal shoreland, beaches and dunes or ocean resources.

FINDING: Staff originally found that the applicant had not adequately addressed Goal 14 (Urbanization) and Goal 12, (Transportation). The applicant has submitted a letter stating that as to Goal 14, addressing orderly and economic provision of public facilities and services, it provided a specific sewer plan, and a "will serve" letter from Avion Water. It has also provided a Transportation Impact Analysis (TIA) and a memorandum from W& H Pacific dated June 21, 2007 addressing in specifics the water systems and sewer flow/system. Based upon these documents and the record, the applicant has demonstrated the ability to provide adequate urban services as required by Goal 14.

The applicant argues that as to goal 12 and OAR 110-012 the TIA reflects that the proposed school does not have any negative impacts on the existing capacity of the surrounding road systems. Yeoman and Purcell Roads will, with a left turn lane on Purcell, prov9ide adequate access to the school site. While these types of mitigation will be addressed in the site plan application, the applicant is correct, it has demonstrated compliant with the planned road system identified in the City's TSP. The applicant has demonstrated compliance with the above criteria and the hearings officer concurs with and adopts the applicant's responses set out above.

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

In response to this criterion, the applicant's burden of proof statement provides:

The relevant portions of the Bend Area General Plan are addressed below.

City of Bend General Plan

Preface
City Goals for Planning in the Urban Reserve

13. The city and county shall retain lands in the Urban Reserve Area in larger lots in order to be compatible with adjoining public lands and deer winter range needs until these areas are needed for urban level uses. . . .

Adequate public facilities are the key to stable urban development. The Goals below provide general guidance for maintaining and improving the level and quality of urban services as growth occurs in Bend. The citizens and elected officials wish:

- *To have public and private utility systems provide adequate levels of service to the public at reasonable cost;*
- *For the city, county, and special districts to cooperate in the provision of adequate urban services in an efficient and timely matter to support urban development;*
- *For new development to pay its fair share of the cost of major facilities needed to support development;*
- *To ensure that public services will not have negative impacts on the environment or the community; and*
- *To locate and operate public buildings and other public facilities to best serve the needs of the residents.*

APPLICANT'S RESPONSE: The subject property is located within the Urban Area Reserve. The property is now needed as a local neighborhood school. Water and sewer are available as described above. Water connections will be made to Avion lines in Purcell and sewage will be pumped to Yeoman. The Applicant is looking ahead to develop schools in an efficient and timely manner to support the adjacent residential developments.

The public services of an elementary school will not have negative impacts on the environment or community but will generally benefit both through reducing traffic and enhancing a sense of community. The school has been carefully designed to best meet the needs of area residents. Additional environmental and community impacts were discussed above.

The siting of the school was determined through a siting research study evaluating the need for new schools within the community. Criteria considered for the siting can be found on page 30 of the 2005 Sites and Facilities Plan. The criteria considered included the following:

> *"high student density, walking access, flat topography, appropriate size approx. 15 acres for prototypical elementary school, low cost for water, sewer, and sidewalk extensions, low site acquisition cost, partnership potential with Bend Metro Park and Recreation District, shape of site promotes efficient use of space, few busy roads surround school, few physical barriers such as canals, railroads, or arterial streets, located in residential zone, adjacent to park or future park."*

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Bend Lapine School District

As discussed above, the site was chosen to meet the above criteria.

Chapter 3, Community Connections Public Education

In October 1997, the school board accepted a school siting study prepared for the district in cooperation with the city and county. This study provides information on enrollment, siting needs, and other factors to help the district determine the type, location, and size of school sites needed during the next 20 years. The school district's estimate of future enrollment levels and school needs is based on the forecast population levels in the urban area and nearby rural lands.

Figure 3-6 shows the 1995 student levels and the forecast enrollment level for the public schools based on the 1997 siting study. It can be seen from the data in this figure that total enrollment in the Bend area public schools is expected to increase about 45 percent by the year 2015. If the population growth and demographic patterns follow the forecasts in the 1997 study, there will be a need for three to five additional elementary schools, two to three new middle schools, and one or two new senior high schools or technical schools in the planning area by 2015. In 1998 local voters approved a $57 million bond levy to help meet the need for more schools. The bond will pay for construction of a new elementary school, a new middle school, a new high school and remodeling Bend High. Identifying the location for new public schools is an important function of the General Plan. The need for new schools is closely related to residential development and housing densities in the community. It is extremely important that schools be located with reference to the development pattern indicated on the General Plan. Elementary schools in particular can have a significant influence on the location or direction of growth in any given area, and will in themselves attract residential development. They should be centrally located in their service area, and spaced in a way that will permit reasonable locations for future schools as the area continues to grow. The city, county and Bend-La Pine school district will use the most recent studies to evaluate ways to ensure the timely development of new schools in the urban area.

. . .

APPLICANT'S RESPONSE: As noted in the General Plan an older siting study found the need for 3-5 new elementary schools by 2015. Growth has increased significantly since the 1997 siting study and the need for new elementary schools is already present. An updated siting study was conducted by the Applicant to identify the specific locations recommended for school development by 2015. Furthermore, as stated in the General Plan "the need for new schools is closely related to residential development and housing densities in the community." This proposed UGB expansion will serve one of the fastest growing segments of the community. The new elementary school will be located near expanding residential areas. The 2005 Sites and Facilities Plan describes the areas

surrounding the proposed school as being areas of significant growth potential. (Page 10 and 11)

> *"Area 206: East of the Deschutes River and North of Butler Market Road to current UGB. This is a large area with a significant number of potential development lots and re-developable acreage. Most development is single-family and some multi-family.*
> *Area 106: North of current UGB east of Deschutes River, West of 27th Street within the District (Lava Ridge Elementary and Sky View Middle School attendance areas). There is a potential for development of additional housing units if this area is included in the UGB and rezoned to allow for urban densities of housing. The Juniper Ridge industrial area occupies 640 acres of this sub-area for future research par/light industrial development. Development of OSU-Cascades campus in this area may also bring additional student housing with low numbers of school-age children."*

Predictions provided in the 2005 School Sites and Facilities Plan also show that there is an expected shortfall of classroom space for approximately 285 students by 2010. The proposed school is consistent with development pattern for provision of urban services. The school is centrally located within the service area identified for a new school. This school will be paid for by an additional bond that was passed to build new schools in 2006. The prototypical school is designed in two phases with an initial 300 student capacity and an ability to grow to a 600 student capacity when the extra capacity is needed. According to the Sites and Facilities Plan the extra capacity may be needed as early as 2015.

School Goals from Chapter 3

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

23. When a majority of a school's expected attendance will reside within the UGB, the Bend La- Pine School District shall make every effort to construct such school(s) within the UGB where students can walk to the school.

24. The city shall require major new developments to reserve land for school purposes in conjunction with the Bend-La Pine School District's adopted plan for the type and location of future facilities.

APPLICANT'S RESPONSE: The Applicant will dedicate and develop Yeoman and Purcell to City standards and provide pedestrian and bike facilities. The proposed schools will serve students both within and outside of the UGB. See attached Exhibit 6 showing the existing student attendance boundaries. As noted there has been a large expansion of students coming in from the

development within the UGB. However, the Applicant also serves students to the west and north of Pine Nursery that are not within the Urban Growth Boundary. The proposed school is centrally located to allow students from both within and outside of the Urban Growth Boundary to be able to walk or ride bicycles to school.

Chapter 8, Public Facilities and Services

Adequate public facilities are the key to stable urban development. The Oregon Statewide Planning Goals below provide general guidance for maintaining and improving the level and quality of urban services as growth occurs in Bend. The citizens and elected officials wish:

- *To have public and private utility systems provide adequate levels of service to the public at reasonable cost;*
- *For the city, county, and special districts to cooperate in the provision of adequate urban services in an efficient and timely matter to support urban development;*
- *For new development to pay its fair share of the cost of major facilities needed to support development;*
- *To ensure that public services will not have negative impacts on the environment or the community; and*
- *To locate and operate public buildings and other public facilities to best serve the needs of the residents.*

APPLICANT'S RESPONSE: Water and sewer are available to the Pine Nursery School Site without the need for significant extensions. Additionally, the site will be served by garbage services, law and safety enforcement once it is brought within the UGB and then is annexed into the City.

FINDING: The hearings officer concurs with the applicant's findings, as did staff, with respect to the school goals cited in Chapter 3 above (goals 22-24). In addition the applicant has demonstrated compliance with the Plan's objective "*to locate and operate public buildings and other public facilities to best serve the needs of the residents.*", as discussed above. Public facilities, services and transportation networks are addressed further below, but much of this a will be addressed with the development application, as agreed by the applicant.

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; and**

FINDING:

In response to this criterion, the applicant's burden of proof statement provides:

The proposed site can be served with adequate public facilities. Sewer and water are available adjacent to the site. The transportation network is adequate and the Applicant will upgrade the street system through vacations and construction of Yeoman and Purcell to City standards in conjunction with the Bend Metro Park and Recreation District. The transportation improvements will be provided concurrently with the development of the property.

The applicant further responded to this criterion, and to comments within the Staff Report, in a June 21, 2007 letter reading:

> *"The UGB criteria require evidence that the site is presently provided with adequate public facilities including transportation networks (Bend Code 4.6.300(B). As described in the Applicant's traffic study, even with the existing widths, Purcell and Yeoman Roads provide adequate transportation to the proposed school site. Furthermore the Applicant will be submitting a site plan in the next few weeks that will demonstrate the improvements planned as part of the development of the site. In response to the Applicant's traffic study, the Applicant plans to construct the recommend 100 foot turn pocket on Purcell. The site plan application will also address pedestrian facilities, safe crossings, road dedications, and the applicant's commitment to work with the Bend Metro Park and Recreation District on the realignment of the intersection of Yeoman and Purcell. The proposed findings prepared by Robin Lewis for the UGB expansion are beyond the scope of the UGB expansion application and criteria. Nothing in the Bend Code requires construction of streets to City of Bend standards as a precondition for a UGB expansion. The issues raised in Robin Lewis's memorandum can be addressed through two additional planning stages that will be required prior to the start of construction. First, as stated above, the Applicant will submit for site plan review. If necessary, conditions of approval can be identified and addressed in the Site Plan decision for the elementary school. Secondly, the issues will be addressed through the annexation agreement process with the City of Bend and the Applicant. In that process, the Applicant and City of Bend will enter an agreement that outlines specific improvements that the Applicant and the City agree are the Applicant's responsibility."*

As noted above the applicant has also now submitted sufficient information addressing Goal 14 and 12 and demonstrating the existence of 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.

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FINDING: Staff originally recommended an Annexation Agreement as a condition of approval for this request. The request for this condition of approval has been withdrawn via a letter form the Community Development Director, Mel Oberst. The City and the applicant have submitted an agreement demonstrating such, which waives the need for any of the proposed conditions, of which there were only three. The City, through Mr. Oberst, finds that the primary issue is the need to provide adequate urban services. The City is convinced that once an urban street is provided the City will have jurisdiction to then require safe design and speed on streets, and the applicant will be required to address Safe Routes to School issues as a matter of law. In this regard the City of Bend and the applicant will work together. The City has carefully stated that it does not endorse the applicant's current Safe Routes to Schools Plan and requests that the hearings officer's decision not endorse such. The hearings officer does not endorse such as unnecessary to this decision, and this issue will be addressed in the applicant's site plan application. The applicant reports additional details concerning the actual provision for public services will also be addressed in the site plan application. The hearings officer is will to remove two of the three conditions, but finds that original condition number three should remain to identify the site.

As noted, the subject property is presently served with adequate public facilities, services and transportation networks to support the use as currently known and for purposes of this application, or the applicant plans to provide these concurrently with development. While the development application is not before the hearings officer, the impacts have been known for the reason that the applicant has submitted to the City its proposed development application. Generally plan amendment applications are concerned with the impact to the existing facilities, services and transportation networks from the inclusion in the UGB and the potential uses and their impacts. It is within the development application that applicant will provide the detail of the proposed development and construction. Any required mitigation of the development impacts will be determined at that stage, as agreed by the applicant.

Streets: Requirements for the provision of new streets, and improvements to the existing street system are addressed and in the applicant's burden of proof and TIA. The applicant proposes improvements to the surrounding transportation system to mitigate the impacts of their development to ensure adequate capacity of the surrounding transportation system with the proposed development. In comment received from the City Transportation Engineering Department, there are several transportation facility improvements that need to be met with regard to Purcell Boulevard, Yeoman Road, alignment with the intersection of Yeoman and Purcell Boulevard, pedestrian crossings of Purcell Boulevard and Yeoman Road, and pick up and drop off traffic that would impact Purcell Boulevard. These issues can be mitigated through the site plan approval process. The hearings officer finds that given that the applicant submitted a traffic analysis addressing all of the relevant criteria in Chapter 4.7, no supplemental burden of

proof is required as suggested by staff before the time of hearing, and that the applicant has satisfied this criterion. The applicant must further address the traffic issues concurrently with the site plan application.

Water: The applicant proposes to provide adequate water service to the site to serve the domestic and fire suppression needs of the development. Avion Water Company serves the site. The applicant has submitted a letter of service from the Avion Water Company dated March 13, 2007 stating their capacity to serve the site.

Sewer: The applicant proposes to provide sewer main extensions to serve the needs of the development. The applicant has submitted information to the City Engineering and Public Works Department to assess sewer capacity/flow based upon the City's standard sewer modeling calculations for the site.

Schools: The applicant is proposing to site an elementary school on the subject property. The applicant has submitted a School Facility plan in support of this application (Exhibit 1).

Parks and Libraries: The subject property is currently owned by the Bend Metro Park and Recreation District. The Pine Nursery Community Park is in the initial stages of development which will provide not only a park facility locally but a community wide facility. Proposed recreational facilities would include recreational trails, soccer fields, tennis courts, basketball courts, multi use fields, picnic shelters play areas and restrooms. The subject property would be within the Bend Public Library Service area.

Fire and Police Protection: Fire and police protection is available for the subject property from the City of Bend. In comment received from the City Fire Department, approval of the development plans shall be obtained from the City Fire Marshall in conjunction with site plan application/approval.

Based upon the information in the record to date, there is adequate capacity within the necessary public facilities and services to serve the site . This finding is made based upon the applicant statement that the provision of public services can and must be addressed concurrently with the site plan.

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.**

In response to this criterion, the applicant's burden of proof statement provides the following:

APPLICANT'S RESPONSE: There has been a change in the neighborhood and community which justifies the requested UGB expansion. There has been substantial residential development throughout the City and in particular this attendance area. The elementary schools in this area are currently over capacity and a school in this location is desperately needed to alleviate overcrowding. The 2005 Sites and Facilities Study anticipates that, by the year 2010, there is an expected elementary school capacity shortfall of approximately 669 students." Pg. 18. Specifically in the attendance area that will be served by the development of this school "there will be approximately 285 more elementary students than elementary school capacity in 2010, growing to a capacity shortfall of 422 students by 2015. Page 19.

The Sites and Facilities Plan recommendation is to build and open half of a 600 student prototypical elementary school (for 300 students in two wings or houses) on the District designated Pine Nursery site by 2010 to provide sufficient capacity for expected enrollments in the Buckingham and Lava Ridge attendance areas. The Committee recommends building the second half of the school for a total of 600 students by 2015 to meet anticipated needs. Page 19.

The Applicant is following the Sites and Facilities Plan and proposes constructing one half of the six hundred student prototypical school by 2008 on the Pine Nursery Site.

FINDING: The applicant has demonstrated that there has been not only a change in circumstances with respect to the growing demand for school facilities within the City of Bend. Section 4.6.600 is further addressed below.

Section 4.4.600 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.

In response to this section, the applicant's burden of proof statement provides the following:

APPLICANT'S RESPONSE: The land being added to the UGB is currently zoned as urbanizable land - UAR-10 (Urban Area Reserve). The zoning for the property allows schools as a conditional use (Deschutes County Code 19.12.030(I) and Bend Code 2.1.200). Therefore, the transportation planning rule 660-12-0060 is not applicable. When the City completes its UGB expansion it will likely rezone the school property to Public Facilities.

FINDING: The applicant states that because the land being added is urbanizable land currently zoned UAR-10, OAR 660-12-0060 is not applicable. The hearings officer concurs in part. The relevant sections of Chapter 4.7, Transportation Analysis, of the Bend Development Code are required to be addressed. However, I find that they have been adequately addressed for purposes of this application. In making this finding the hearings officer relies on the information submitted by the applicant on June 21 and 27, and at the time of the hearing of this matter.

4.7.100 Purpose and Authority.

Purpose. This Chapter is based on sound planning and engineering principles. The City will review land use actions and major roadway projects for potential impacts and to ensure that new development contributes to the orderly development of the Bend Urban Area Transportation System Plan network of roads, bikeways, and pedestrian facilities by:

Establishing policies and procedures for evaluation of land use actions and major roadway projects to protect existing and future operations of roadways;
Establishing service level standards (operations standards) for transportation facilities identified in the Bend Urban Area Transportation System Plan;
Ensuring consistency with the functions, capacities, and service level standards of facilities identified in local and regional transportation system plans and the City of Bend Development Code;
Extending transportation facilities to and through development property;
Ensuring conditions are applied to mitigate the full extent of impacts and protect transportation facilities so that all land use proposals contribute their fair share towards the transportation system plan.

This Chapter also identifies elements that will need to constitute the scope of work for traffic studies used to evaluate major roadway projects.

B. **City's Authority. 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. The City Engineer may at his/her discretion expand the requirements and/or study area if needed to address any issue that comes to light after the initial approval of a scope of work. Certain information may come to light over the course of the analysis that causes the City to require additional analysis to address traffic operations or safety issues that had not been anticipated.**

C. **Applicability. Land use actions will be reviewed for impacts and potential mitigation through a Transportation Impact Study.**

1. Land Use Actions. A Transportation Impact Study (TIS) shall be required for development projects when the land use involves one or more of the following actions:

a. A comprehensive plan map amendment; or

FINDING: The applicant has submitted a Traffic Impact Study prepared by J.U.B. Engineers dated June 8, 2007.

4.7.200 Transportation Impact Study

A. **The Transportation Impact Study shall be prepared under the responsible charge of a professional engineer licensed in Oregon, and qualified to perform such studies.**

The Transportation Impact Study needs to provide sufficient information to the City so that the City can assess the impact to the transportation system, evaluate proposed mitigation measures, and craft reasonable conditions for the proposed land use action. Engineers are reminded of their responsibilities under state law which specifies that they shall at all times recognize that their primary obligation is to protect the safety, health, property and welfare of the public in the performance of their professional duties. These standards provided herein in no way serve as a substitute for the application of sound professional engineering judgment expected to be used by practitioners in the preparation and documentation of transportation analyses.

1. Determination of Scope of Work. It shall be required that the person responsible for preparing the transportation impact analysis, first receive approval from the City Engineer for the scope of work for the report. The scope of work at a minimum shall identify the study area, and the study area intersections as indicated below. Requests for deviation from the provisions of this chapter shall be submitted in writing to the City Engineer.

2. Scope of Work. The Transportation Impact Study Scope of Work shall include these elements:

a. Study Area. The Study area shall include:

i. The existing street infrastructure along the property frontage (i.e. right-of-way, sidewalks, bicycle lanes, medians, driveway aprons);

ii. All driveway access points except single family residential dwellings;

iii. All street connection points to abutting arterials or collectors;

iv. Any intersection with an interchange, or ramp terminal, and any arterial-arterial intersection, arterial-collector intersection or collector-collector intersection, that is within one-mile driving distance of the site and has more than 15 peak hour trips added to any lane group. The driving distance shall be measured from each access point (driveway or street) of the development onto the transportation system.

v. Other transportation facilities required to be studied by the Transportation Planning Rule OAR 660-012-0060.

b. Analysis Period. At a minimum, an operations analysis shall be performed for the weekday p.m. peak hour at the study area intersections. Certain land use applications may also be required to study the a.m. peak hour, the peak hour of the proposed project, the peak hour of a nearby generator (e.g. School arrival/dismissal times), or a weekend peak hour. The peak traffic times to be studied in the Transportation Impact Study shall be determined at the discretion of the City Engineer.

For each of the Study Years, analyses with and without the proposed project shall be provided.

c. Study Years. The intersection operations analysis and traffic forecasts shall include the following study years:

i. Existing conditions (current year); and

ii. Year of completion of each phase; and

iii. Five years beyond final development phase; and

iv. for those projects that involve a zone change, Bend Urban Area General Plan map amendment, or a major roadway infrastructure project an additional study year shall be provided. This study year shall reflect the Transportation Planning Rule OAR 660-012-0060 requirements.

Transportation Planning Rule analysis year shall be either the 15-Year projection of traffic or the traffic projections from the twenty-year period beginning with the date of adoption of the Bend Urban Area Transportation System Plan, whichever

provides the longest projection. These traffic projections, whether for the 15-Year projection or the Bend Urban Area Transportation System Plan planning year, shall be provided by the City Engineer. The Bend Urban Area Transportation System Plan traffic model will be used as a basis for these projections.

d. Exceptions. For a development proposal that results in a net reduction in traffic, the five year estimate analysis period may be deleted at the discretion of the City Engineer.

4.7.300 Analysis Methodology

The analysis methodology described herein shall apply to all required transportation impact analysis including Transportation Impact Studies and Trip Generation Letters.

A. Forecasts and Operations

1. For each of the analysis years defined in Section 4.7.200 above, (except for existing conditions), the traffic forecast and operations analysis shall be prepared for conditions with and without the proposed project. The operations analysis shall be performed in conformance with the Highway Capacity Manual (HCM) or other reference approved by the City Engineer.

2. Traffic counts for the existing conditions analysis shall be no more than one year old dated from the date of land use application. If pertinent transportation system conditions have changed since the count, then new field counts shall be performed.

3. Field counts shall include a minimum of a 2-hour turning movement count for each peak period studied (between 4:00 and 6:00 for p.m. peak hour counts). Additional hours of turning movement counts will be needed to determine compliance with traffic signal warrants, all-way stop warrants or to determine the extent of over-capacity conditions. Counts for other hours will be determined as needed. Counts may need to be seasonally adjusted as required by the City Engineer to reflect peak conditions (i.e. summer peak, ski season/winter peak, or school traffic peak) for the transportation system element being analyzed.

4. The traffic forecasts for the year of completion of each phase shall be calculated to be field counts plus 100 percent of the traffic from the other approved, but not yet constructed developments, plus an annual growth factor which would factor the existing counts up to the analysis year. The City Engineer or designee will supply traffic assignments for other approved, but not yet constructed

development; however, it is the study engineer's responsibility to determine build out status of these developments.

The annual growth factor shall be determined by the City Engineer after considering first ODOT's Transportation Planning Analysis Unit (TPAU) traffic growth rates for the roadway in question, then the City of Bend's traffic growth rates. If no data are available, the annual traffic growth factor shall be 3 percent per year.

5. Trip Distribution. Trip assignments should replicate overall origin/destination patterns in the City. Existing field count turning movement patterns should be used as a guide for trip assignments as appropriate. The assignment should be adjusted to reflect future committed transportation facilities, changes in zoning or development patterns.

6. Intersection Control Type and Roadway Geometry. The operations analysis shall use existing transportation system conditions (control type and roadway geometry). Committed transportation facilities may also be considered in the analyses. Committed transportation facilities means those proposed transportation facilities and infrastructure which are consistent with the acknowledged comprehensive plan and have approved funding for construction in a public facilities plan or the Six-Year Highway or Transportation Improvement Program.

7. Trip Generation. Project generated traffic shall be forecast using average trip generation rates from the latest edition of the publication Trip Generation (ITE) or shall be created from local data (the procedure for collecting such data shall comply with the guidelines in the ITE Trip Generation Handbook). Adjustments such as those applicable for pass-by trips that are well supported by multiple studies in the ITE Trip Generation Handbook may be applied.

For Bend Urban Area General Plan map amendments or zone change applications, the trip generation shall represent the worst case trip generation of the existing and proposed zoning. This accommodates the highest trip generator allowed outright in the zone. However, if General Plan map amendments or zone changes are accompanied by a concurrent site plan application, the trip generation for the site plan may be utilized instead.

C. Transportation Planning Rule Compliance. This section implements the City's Bend Urban Area Transportation System Plan with regard to level of service and operation standards. The Transportation Impact Study provided for a zone change and/or Bend Urban Area General Plan map amendment shall comply with and provide

information on the requirements of the Oregon Administrative Rule section 660-012-060 (TPR) and demonstrate that the proposed land uses are consistent with the identified function, capacity, and performance standards (level of service, volume to capacity ratio and widths) of the facility as defined in the adopted Bend Urban Area Transportation System Plan and the City of Bend Development Code. The operations standards in the City of Bend Development Code implement the policies of the Bend Urban Area Transportation System Plan.

FINDING: These requirements of OAR 660-012-060 do not apply to an Urban Growth Boundary Amendment when land added to the UGB is zoned as urbanizable land, either by retaining the zoning that was assigned prior to inclusion, or by assigning interim zoning that does not allow development that would generate more vehicle trips than allowed by that zoning existing prior to inclusion in the boundary. Therefore, this criterion is met. The applicant has provided sufficient information concerning trip generation.

4.7.400 Approval Criteria

Prior to land use approval, the City must review the applicant's transportation analysis to determine whether or not the proposal will create excessive demand on the public facilities and services required to serve the proposed development. The City will assess the impacts of new development on the transportation system. The key factors used to assess the impacts to the transportation system include, but are not necessarily limited to:

number of trips by all modes associated with the proposal,
turning movement demand by vehicles of various types,
operations analyses results,
location of the project,
safety issues, location of the driveways (evaluated for conflict points and location criteria established in Chapter 3.1; Access, Circulation and Lot Design).

The City Engineer will determine if the development or study area has adequate transportation facilities to support the proposed development based on compliance with the Operations Standards. The City shall also evaluate the crash histories and crash rates provided to identify any queuing issues. Crash rates greater than 1.0 per million entering vehicles and inadequate queue storage may need to be mitigated. Mitigation shall ensure that the transportation facilities are providing adequate capacity and safety concurrent with the development of the property.

Zone changes and Bend Urban Area General Plan map amendments cannot be granted if the Transportation Impact Study shows that the proposed

development would overburden the City's existing or planned transportation facilities now or in the future. The Transportation Impact Study must demonstrate that compliance with the TPR and the operations standards of the City of Bend Development Code can be achieved within the adopted Bend Urban Area Transportation System Plan.

Similarly, major roadway infrastructure projects should not be approved if the Transportation Impact Study shows that the proposed infrastructure projects would overburden the City's existing or planned transportation facilities now or in the future. The Transportation Impact Study must demonstrate that compliance with the TPR and the operations standards of the City of Bend Development Code can be achieved within the adopted Bend Urban Area Transportation System Plan.

A. Transportation System Assessment. This assessment of the transportation system will be used as the basis for requiring mitigation and imposing conditions of approval. Review measures for the transportation system include an evaluation of the existing and proposed transportation system. The applicant shall assess the presence and extent of:

right-of-way dedications,
public utility and access easements,
ADA facilities,
sidewalks, trails, and pedestrian connections,
bike lanes,
turn lanes,
travel lanes,
intersection operations and queuing,
crash rates and crash type/patterns in the vicinity of the proposal, and
access management and circulation.

At a minimum, development proposals shall be required to provide adequate setbacks, create public access and utility easements, and dedicate right of way for roadways and trails to allow construction of the transportation system and facilities in accordance with the Bend Urban Area Transportation System Plan and the City of Bend Development Code. Other exactions and mitigations will be required on a rough proportionality basis.

FINDING: The applicant has stated that the submitted TIA for the Pine Nursery site has addressed adequately the requirements of Chapter 4.7. The TIA reflects that with some mitigation identified therein, the transportation system would function adequately. In comment received from the City Traffic Engineer, improvements will have to be made to bring the transportation network in

conformance with City standards. These improvements will be further addressed and determined at the development stage.

4.7.500 Mitigation Requirements/Conditions of Approval

The transportation impact analyses for each of the study time frames need to show compliance with the operations criteria listed above, or the applicant will be required to mitigate to bring the operations into compliance. Mitigation shall be in compliance with City of Bend Standards and Specifications, the Bend Urban Area Transportation System Plan and the requirements of the Bend Development Code.

FINDING: As stated above in Section 4.6.300 above, the City Transportation Engineer has submitted comment on the transportation facility improvements. These improvements will be addressed upon site plan and conditional use permit approval. The hearings officer agrees with staff in that read together, Sections 4.6.600 and 4.7.100(C)(1)(a) require a level of service analysis to address Chapter 4.7. The applicant has stated that the submitted TIA, dated June 8, 2007 adequately addresses Chapter 4.7. Staff has phrased the issue before the hearings officer as being whether the full complement of approval criteria in Chapter 4.7 needs to be addressed with adequate specificity to conclude that the proposal meets Goal 14 and Goal 12 requirements as set forth in OAR 660-024 below, or can be agreed upon in order to meet these requirements. I find that that the site can meet these requirements and that the specific requirements of necessary improvements to bring urban levels of service to the site will be provided through the site plan approval process.

Compliance with Oregon Statewide Planning Goal 14, "Urbanization"

APPLICANT'S RESPONSE: Statewide Planning Goal 14 provides for "orderly and efficient transition from rural to urban uses". The Goal requires that cities and counties work cooperatively to establish urban growth boundaries and to make any necessary changes to such boundaries. Changes require analysis of need, the "Need Factors" and an analysis of location, the "Locational Factors."

Need Factor
Land Need
(1) Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments; and

(2) Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, <u>schools</u>, parks or open space, or any combination of the need categories in this subsection (2). (emphasis added)

In determining need, local government may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need. Prior to expanding an urban growth boundary, local governments shall demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary.

APPLICANT'S RESPONSE: The City of Bend is currently undergoing an extensive process to identify the land needs to complete its UGB expansion as required by Goal 14 and Oregon State Statutes. This process began in 2005 and will continue through at least the end of 2007. The 20 year population forecast shows a need for additional lands for housing as well as schools. The Applicant's 2005 Sites and Facilities Plan also identified the need for new schools.

The Applicant analyzed anticipated enrollment using growth estimates in the Deschutes County Coordinated Population Forecast of 2005. The Table below from the 2005 Sites and Facilities Plans demonstrates the rapid growth expected in area schools by grade level.

Table 1
Enrollment Forecast for the Bend-La Pine School District by Grade Level (Coordinated Concil Model by PRC)

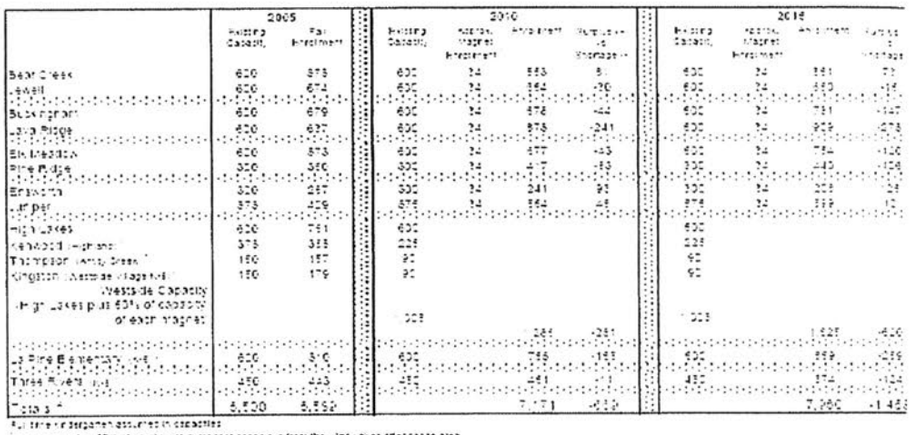
Bend-LaPine District

	1990	1995	2000	2005	2010	2015	2020	2026
K-2	2,208	2,515	2,672	3,173	3,387	3,803	4,419	5,035
3-5	2,208	2,877	3,017	3,267	3,706	4,053	4,824	5,186
6-8	2,223	2,809	3,115	3,298	4,102	4,332	4,930	5,591
9-12	2,652	3,297	4,187	4,811	5,561	6,222	6,527	7,486
Other	20	5	24	26	30	33	26	42
Total	9,310	11,301	12,999	14,775	16,586	18,443	20,427	23,336

Enrollment Forecasts for the Bend-La Pine School District 2005-2026 Planning, 7, 2005, by Dr. Forrest Lyons, Senior Research Associate, Population Research Center

The Applicant next analyzed where the expected growth might occur by reviewing zoning, available vacant lands, and lands being considered for the City of Bend UGB expansion. The highest growth areas were determined to be the northeast and northwest quadrants of the Applicant's attendance area. These areas showed the greatest potential for future residential growth and both areas have since been built out with residences. The anticipated shortages of classroom space by attendance area are shown below in Table 4 from the Sites and Facilities Study.

Table 4:
Elementary School Attendance Area Forecasts by Year (By-residing Forecasts)



The Buckingham and Lava Ridge attendance areas are in the northeast quadrant of Bend. The above table shows that there is an expected increase in attendance, resulting in a shortfall in capacity for approximately 285 students by 2010. By 2015 the shortfall will have grown to approximately 422 students. This area has developed even more rapidly than expected. In order to meet the need, the Applicant needs to open the first phase of a prototypical school by the fall of 2008. The first phase of a prototypical school consists of classroom wings with a capacity for 300 students and the associated offices and gymnasium associated with the school. When school capacity demands, the school is planned to allow for the addition of a second 300 student capacity wing.

Meeting the needs- site selection

APPLICANT'S RESPONSE: To identify potential sites for schools the Applicant looked first at lands it owned or had agreements to acquire. The only existing sites were: the administrative center, currently used for the Applicant's offices; Troy field, a small park adjacent to the Administrative building; a small additional area at High Desert Middle School; and the 6.39 acre transportation yard. None of these sites are located near the need for a new elementary school in the northeastern portion of the city. Also, none of these sites are of adequate size for a prototypical school. The prototypical school is designed to be constructed

in two phases. Initially, the school will be constructed to provide 300 student capacity. Later, two additional classroom wings can be added to create a 600 student school. Approximately 15 acres is optimal for the prototypical school.

At the time of the 2005 Sites and Facilities Plan, the Applicant already had an agreement to acquire this property. Although the property is outside the UGB it was expected that the City's UGB process would bring the site within the UGB before the school needed to be constructed. There were no alternative sites within the study area shown in Exhibit 4 that were of adequate size for the proposed school. Furthermore, the Applicant already had an agreement to acquire this piece of property at no cost. The property met the 2005 Sites and Facilities Plan site criteria which are discussed in more detail below. Since the City's UGB expansion has taken longer than expected, Applicant now must apply to expand the UGB to include this site in order to construct the school for opening in fall of 2008.

Boundary Location Factor

The location of the urban growth boundary and changes to the boundary shall be determined by evaluating alternative boundary locations consistent with ORS 197.298 and with consideration of the following factors:

APPLICANT'S RESPONSE:

(1) Efficient accommodation of identified land needs;

The Applicant carefully considered the location of this school site. The recent development of this portion of the community through the build-out of Lava Ridge and other residential development abutting the UGB has greatly increased the enrollment of the elementary schools that currently serve these areas. The existing elementary schools in the area are inadequate to meet the need. The proposed new community elementary school accommodates the need where it is greatest due to increasing residential development. This also meets the Applicant's goal to provide neighborhood elementary schools that allow students and families to walk or bike to the school. The parcel is already zoned Urban Area Reserve meaning that the parcel has been identified as future urbanizable land and is of first priority under the classification system identified in ORS 197.298. The site abuts the existing UGB on the western boundary at Purcell. The Applicant's student attendance boundary extends beyond the UGB. The new school will serve students in the existing UGB and students outside the UGB. The 2005 Sites and Facilities Plan suggests approximately 150 students from outside the UGB will be served by the proposed school. The existing school boundaries show that portions of the student population will continue to attend this school from outside of the UGB. See attached school attendance boundary map.

(2) Orderly and economic provision of public facilities and services;

Public facilities and services are available to the site. Sewer currently extends to NE Purcell. The Applicant will be able to efficiently connect to the existing sewer facilities in the following manner. The Applicant will construct a private sewage lift station on the school site. This will pump to an existing City of Bend three inch pressure sewer force main within NE Purcell. This forcemain extends southerly and connects to an existing gravity sewer main at the intersection of NE Empire and NE Purcell. The Applicant will also construct a dry line gravity sewer service to NE Yeoman for possible future gravity sewer connections.

Water currently extends to NE Purcell. Applicant will be able to efficiently connect to the existing water facilities in the following manner. The Applicant will connect to an existing Avion Water Company twelve inch water main in NE Purcell. There is adequate fire flow and fire protection service. A "will serve" letter from Avion Water Company is attached to this application as Exhibit 8.

The Applicant has conducted a traffic study and is modifying the traffic study at the request of the City. This revised study will be provided when it is complete. The preliminary analysis of the traffic study concludes that the proposed school will not have an adverse impact on any transportation facilities in the surrounding area. As part of the site development, Applicant will (with the Bend Metro Park and Recreation District) develop Yeoman Road, Purcell and the intersection of Yeoman and Purcell to current City standards. In addition, the Applicant will extend the pedestrian circulation system along its frontages and will connect the on site pedestrian circulation system to the abutting sidewalk and to the proposed park trail system. The site is adequately served with roads, sidewalks and bicycle paths. Purcell has recently been improved on the west side of the street by Lava Ridges, LLC. The site is large enough to accommodate all storm water drainage on site as required by the City of Bend.

The City of Bend only recently developed a public transportation system. Although the proposed school is not on an existing public transportation line it is likely that services will be provided to the school in the future due to its proximity to the community park.

(3) Comparative environmental, energy, economic and social consequences; and

The long-term environmental, economic, social and energy consequences resulting from the development of elementary schools on the proposed sites will be minimal and positive. The urgent need for a new elementary school in the northeast area of the City makes the urban use of this land necessary.

Environmental. The property was used to grow trees for commercial use by the forest service. However, the forest service declared the property surplus and has

conveyed it to meet the park and school needs of the community. The site has been identified by the City as land that should be available for urban development when necessary.

Energy. The Pine Nursery School Site is not known to contain energy resources such as known deposits of oil and natural gas, or geothermal resources. The availability of other potential energy sources, such as wind and solar, are equal on any other property in the surrounding area. The proposed expansion will result in energy conservation by reducing the overall number of vehicle trips. Since the site is in a location where students will be able to walk and bike to school, this will reduce the number of parent drop-off trips. As the residential areas around the site continue to develop, this reduction in trip generation will increase.

Economic. The Applicant obtained the site at no cost. The property is a portion the former Pine Nursery. The forest service declared the property surplus. The legislation stated that approximately 15 acres of property be conveyed to the Applicant at no cost. Accordingly, the economic consequences of using the property for the school site are positive. Furthermore, locating schools near where students live also encourages economic development because parents are interested in living in communities with quality public schools in walking distance from their homes.

Social. The community will benefit from the reduced overcrowding at area schools. Overcrowding generally reduces the quality of education and increases community stress. This new school will provide the necessary capacity for the growing community. The properties on the edges of the existing UGB are expanding quickly and need a school in this area. The rapid expansion prohibits the development of a school within the UGB boundaries because there is no land available. The local community voted to support the development of these new sites. Requiring the Applicant to wait until the City of Bend has completed its UGB expansion process would cause a delay in the construction of a needed school. The community as a whole will benefit from alleviating existing overcrowding.

(4) Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB.

The Pine Nursery School site is not located near agricultural or forest activities. The Pine Nursery site is surrounded on two sides by the community park, on the western side by new residential density development and along the northern side by 2.5 acre residential lots.

FINDING: The hearings officer concurs with the applicant's response and finds that the applicant has demonstrated that the need and boundary factors have been met.

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OAR 660, Division 24 Urban Growth Boundaries
660-024-0000

Purpose and Applicability

(1) The rules in this division clarify procedures and requirements of Goal 14 regarding local government adoption or amendment of an urban growth boundary (UGB).

FINDING: These rules became effective April 5, 2007.

660-024-0020

Adoption or Amendment of a UGB

(1) All statewide goals and related administrative rules are applicable when establishing or amending a UGB, except as follows:

> **(a) The exceptions process in Goal 2 and OAR 660, division 4, is not applicable unless a local government chooses to take an exception to a particular goal requirement, for example, as provided in OAR 660-004-0010(1);**

APPLICANT'S RESPONSE: Applicant is not seeking any goal exception.

> **(b) Goals 3 and 4 are not applicable;**

APPLICANT'S RESPONSE: Goals 3 and 4 are not applicable.

> **(c) Goal 5 and related rules under OAR 660, division 23, apply only in areas added to the UGB, except as required under OAR 660-023-0070 and 660-023-0250;**

APPLICANT'S RESPONSE: There are no Goal 5 resources impacted by the proposed school locations. See further analysis of Goal 5 below.

> **(d) The transportation planning rule requirements under OAR 660-012-0060 need not be applied to a UGB amendment if the land added to the UGB is zoned as urbanizable land, either by retaining the zoning that was assigned prior to inclusion in the boundary or by assigning interim zoning that does not allow development that would generate more vehicle trips than development allowed by the zoning assigned prior to inclusion in the boundary;**

APPLICANT'S RESPONSE: The land being added to the UGB is currently zoned as urbanizable land - UAR-10 (Urban Area Reserve). The zoning for the property allows schools as a conditional use (Deschutes County Code 19.12.030(I) and Bend Code 2.1.200). Therefore the transportation planning rule 660-12-0060 is not applicable. When the City completes its UGB expansion it will likely rezone the school property to Public Facilities.

(e) Goal 15 is not applicable to land added to the UGB unless the land is within the Willamette River Greenway Boundary;

APPLICANT'S RESPONSE: None of the property to be added to the UGB is within the Willamette River Greenway Boundary and therefore Goal 15 is not applicable to this Application.

(f) Goals 16 to 18 are not applicable to land added to the UGB unless the land is within a coastal shorelands boundary;

APPLICANT'S RESPONSE: None of the property to be added is within a coastal shorelands boundary and therefore Goals 16 and 18 are not applicable to this Application.

(g) Goal 19 is not applicable to a UGB amendment.

APPLICANT'S RESPONSE: Goal 19 is not addressed in this Application.

(2) The UGB and amendments to the UGB must be shown on the city and county plan and zone maps at a scale sufficient to determine which particular lots or parcels are included in the UGB. Where a UGB does not follow lot or parcel lines, the map must provide sufficient information to determine the precise UGB location.

APPLICANT'S RESPONSE: The attached UGB expansion map Exhibit 2 shows the property to be added. The map provides sufficient information to determine the precise UGB location. The Applicant will apply for a partition of the existing legal lot to create the subject parcel shown on the map. A legal description will be provided when the Applicant submits the partition application.

660-024-0030

Population Forecasts

(1) Counties must adopt and maintain a coordinated 20-year population forecast for the county and for each urban area within the county consistent with statutory requirements for such forecasts under ORS 195.025 and 195.036. Cities must adopt a 20-year population forecast for

the urban area consistent with the coordinated county forecast, except that a metropolitan service district must adopt and maintain a 20-year population forecast for the area within its jurisdiction. In adopting the coordinated forecast, local governments must follow applicable procedures and requirements in ORS 197.610 to 197.650 and must provide notice to all other local governments in the county. The adopted forecast must be included in the comprehensive plan or in a document referenced by the plan.

APPLICANTS RESPONSE: The City of Bend has adopted a 20 year population forecast and is in the process of considering expansion of the UGB. However, the Applicant's need for new schools necessitates a UGB expansion for the school site in advance of the City process.

660-024-0040

Land Need

. . .

(3) A local government may review and amend the UGB in consideration of one category of land need (for example, housing need) without a simultaneous review and amendment in consideration of other categories of land need (for example, employment need).

APPLICANT'S RESPONSE: The Applicant seeks to amend the UGB in consideration of the need for additional public school facilities. Other categories of land need are being evaluated in the City of Bend's larger evaluation of its UGB and its UGB expansion plan. However, the need for the specific public facilities is immediate and cannot wait for the complete analysis of other land needs. The specific need for new elementary schools was discussed above in detail and is also thoroughly discussed in the 2005 Sites and Facilities Plan. As predicted in the 2005 Sites and Facilities Plan, elementary schools in the northeast quadrant of the City are reaching capacity and some are overcrowded. The public recognized the immediate need for two new elementary schools in the Bend area when it passed a bond measure. At the time there was an expectation that the City would complete its Urban Growth Boundary expansion in time to allow for these elementary schools to be met. However, delays in the UGB expansion process created the current situation which requires that the Applicant request a UGB expansion with the limited consideration of public facilities land for elementary schools.

(4) The determination of 20-year residential land needs for an urban area must be consistent with the adopted 20-year coordinated population forecast for the urban area, and with the requirements for determining housing needs in Goal 10, OAR 660, division 7 or 8, and applicable provisions of ORS 197.295 to 197.314 and 197.475 to 197.490.

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APPLICANT'S RESPONSE: Not applicable.

(6) The determination of 20-year land needs for transportation and public facilities for an urban area must comply with applicable requirements of Goals 11 and 12, rules in OAR 660, divisions 11 and 12, and public facilities requirements in ORS 197.712 and 197.768. The determination of school facility needs must also comply with ORS 195.110 and 197.296 for local governments specified in those statutes.

APPLICANT'S RESPONSE: Relevant portions of Goal 11 and 12 will be addressed in more detail below. ORS 197.712 and 197.768 require an analysis of general public facilities such as sewer and water to be included in the Comprehensive Plans of cities and counties. Both the City of Bend and the Deschutes County Plans include such analysis.

ORS 195.110 (1) (a) A county or city containing a high growth school district shall include as an element of its comprehensive plan a school facility plan prepared by the high growth district in cooperation with the city or county.

(b) A county or city containing a high growth area shall initiate planning activities with a school district to accomplish planning as required under ORS 195.020.

(c) The provisions of paragraph (a) of this subsection do not apply to a city that contains less than 10 percent of the total population of a high growth school district.

(2) As used in this section, "high growth school district" means any school district that has an enrollment of over 5,000 students and had an increase in student enrollment of six percent or more during the three most recent school years, based on certified enrollment numbers submitted to the Department of Education during the first quarter of each new school year.

(3) The school facility plan shall identify school facility needs based on population growth projections and land use designations contained in the city or county comprehensive plan. The plan shall be updated during periodic review and may be updated more frequently by mutual agreement between the school district and the county or city.

APPLICANT'S RESPONSE: The Applicant has not been identified as a "high growth school district". However, the Applicant has adopted the 2005 Sites and Facilities Plan which, in essence, complies with the criteria outlined in ORS 195.110 (3).

FINDING: The hearings officer concurs with the findings adopted in the 2005 Sites and Facilities Plan stated above, applicant's responses to the required criteria. The applicant has provided additional information in response to section (2) above. The information indicates the past four years of first quarter enrollment reports from the Oregon Department of Education show the School District grew from 13,940 in 2003-04 to 15,342 in 2006-07, a total growth of

1,402 students or 10.1% for the three year period. This does not meet the 6% annual growth threshold. In addition, in no single year did the growth reach the 6% benchmark. This criterion is met.

660-024-0050

Land Inventory and Response to Deficiency

(1) When evaluating or amending a UGB, a local government must inventory land inside the UGB to determine whether there is adequate development capacity to accommodate 20-year needs determined in OAR 660-024-0040. For residential land, the buildable land inventory must include vacant and redevelopable land, and be conducted in accordance with OAR 660-007-0045 or 660-008-0010, whichever is applicable, and ORS 197.296 for local governments subject to that statute. For employment land, the inventory must include suitable vacant and developed land designated for industrial or other employment use, and must be conducted in accordance with OAR 660-009-0015(3).

FIDNING: The only need being evaluated by this specific UGB expansion application is the need for public facilities land to site a new elementary school. The Buildable Lands Study was completed in 2005. This study indicates that there is not sufficient land to meet the needs of the community's expected growth. The Buildable Lands Study is attached to the applicant's Burden of Proof as *Exhibit 5.* The residential lands study underway will also address the expected needs for future school sites. The Economic Opportunities Analysis for the City that has been completed states that "Estimates [for k-12 education needs] is included in the 2007 RLS." A draft of the City of Bend's residential lands study report states that there is an expected need of approximately 242 acres of land needed for new school sites between 2005 and 2030. The relevant pages of that draft report are included in *Exhibit 5.*

The need for the new elementary school is evident from the 2005 Sites and Facilities Plan where the expected deficiency in capacity was shown in Table 4 above. The 2005 Sites and Facilities Plan addresses potential sites for new elementary schools and the land need for such schools. According the Sites and Facilities Plan, each new elementary school needs approximately 15 acres of space to allow adequate classroom space, parking, and recreational areas for six hundred students. The applicant states that there are no properties within the existing UGB in the 2005 Sites and Facilities Plan study area that are of adequate size or economically viable for the applicant to acquire. Much of the land within the UGB in the area is already developed with homes and businesses. The applicant finds the proposed site is the most suitable location, taking into account site factors and availability. There hearing officer generally agrees with the applicant and primarily based on the Sites and Facilities Plan finds the criteria to be satisfied.

(5) When land is added to the UGB, the local government must assign appropriate urban plan designations to the added land, consistent with the need determination. The local government must also apply appropriate zoning to the added land consistent with the plan designation, or may maintain the land as urbanizable land either by retaining the zoning that was assigned prior to inclusion in the boundary or by applying other interim zoning that maintains the land's potential for planned urban development until the land is rezoned for the planned urban uses. The requirements of ORS 197.296 regarding planning and zoning also apply when local governments specified in that statute add land to the UGB.

APPLICANT'S RESPONSE: The current zoning of the property as UAR-10 may be maintained because the land is considered urbanizable land and allows the development of public schools as a conditional use. The City of Bend is currently performing the analysis required by ORS 197.296 in order to complete a full UGB expansion. The full analysis of residential housing patterns is not relevant to the analysis of whether there is sufficient room for new elementary schools within the existing UGB. The recent boom of housing development near the outskirts of the City's existing UGB means that there is no land with sufficient acreage to place elementary schools near the students that will attend them without expanding the UGB.

FINDING: The submitted 2005 Facilities and Site Plan Study adequately address these criteria.

660-024-0060

Boundary Location Alternatives Analysis

(1) When considering a UGB amendment, a local government must determine which land to add by evaluating alternative boundary locations. This determination must be consistent with the priority of land specified in ORS 197.298 and the boundary location factors of Goal 14, as follows:

> **(a) Beginning with the highest priority of land available, a local government must determine which land in that priority is suitable to accommodate the need deficiency determined under 660-024-0050.**

FINDING: The property is zoned as urbanizable land, UAR-10, and is therefore the highest priority land available for the City of Bend to consider when expanding the UGB.

> **(b) If the amount of suitable land in the first priority category exceeds the amount necessary to satisfy the need deficiency, a local**

government must apply the location factors of Goal 14 to choose which land in that priority to include in the UGB.

FINDING: Because the applicant is only requesting a limited amount of property to be included in the UGB, there is no excess suitable land in the first priority category.

(2) Notwithstanding OAR 660-024-0050(4) and subsection (1) (c) of this rule, except during periodic review or other legislative review of the UGB, a local government may approve an application under ORS 197.610 to 197.625 for a UGB amendment proposing to add an amount of land less than necessary to satisfy the land need deficiency determined under OAR 660-024-0050(4), provided the amendment complies with all other applicable requirements.

FINDING: The proposed UGB expansion will not meet all the needs for public facilities lands for schools identified in the draft residential land study attached to the applicant's Burden of Proof Statement. The Applicant is proposing to add the minimum amount of land necessary to meet the immediate needs for new elementary schools. Adding less than the amount of land necessary to meet the needs identified in the draft residential lands study is appropriate because the City of Bend is in the process of a full UGB expansion analysis that will result in the appropriate amount of additional public facilities lands being added to the City of Bend. The applicant states that the sole purpose of this Application is to meet the immediate needs of the community to alleviate overcrowding in schools. The applicant states that it is an active participant in the City's overall UGB expansion and will work with the City and County to assure that adequate lands for schools are made available for future school development as part of the City's UGB expansion. Based on these findings, I find the criterion is met.

(3) The boundary location factors of Goal 14 are not independent criteria. When the factors are applied to compare alternative boundary locations and to determine the UGB location, a local government must show that all the factors were considered and balanced.

FINDING: The hearings officer finds that overall the applicant evaluated the proposed school site, alternatives, and considered and balanced the applicable factors. Goal 14 Ahs been addressed. The criterion is met.

(4) In determining alternative land for evaluation under ORS 197.298, "land adjacent to the UGB" is not limited to those lots or parcels that abut the UGB, but also includes land in the vicinity of the UGB that has a reasonable potential to satisfy the identified need deficiency.

FINDING: The proposed site is abutting the UGB. Other properties in the vicinity of the subject property may also satisfy the identified need for schools.

However, the proposed site is preferable to the applicant to other properties for several reasons. First, it is closer to existing public facilities, such as sewer, water and transportation. Second, it is adjacent to the Bend Metro Park & Recreation District regional park. The applicant notes that it works with the Park District in co-locating parks and schools to provide efficiencies and compatible uses. Finally, a major factor was the fact that the applicant will acquire this property at no cost through the federal legislation that acknowledged the growing need for school facilities within this attendance area. The criterion is met.

(5) If a local government has specified characteristics such as parcel size, topography, or proximity that are necessary for land to be suitable for an identified need, the local government may limit its consideration to land that has the specified characteristics when it conducts the boundary location alternatives analysis and applies ORS 197.298.

FINDING: The Applicant has identified specific characteristics which are necessary for sites to be selected for elementary schools in the 2005 School Sites and Facilities Plan. Below is applicant's analysis of how the site fits with those characteristics.

Few busy roads surround the school

The Pine Nursery Elementary School site is bounded to the west by Purcell and to the north by Yeoman Road. Neither road is busy and neither road is an arterial. As the area develops, streets will likely become busier. Accordingly, this site was the preferred alternative.

Few physical barriers such as canals, railroads, or arterial streets

The only canal is located south of the school site on the Bend Metro Park and Recreation District site. The railroad is not near this site and it is not near an arterial.

Located in residential zones

The property is located in an urban area reserve zone and is surrounded on two sides by residential zones. The property to the west is zoned RS and the property to the north has residential 2 ½ acre lots.

Adjacent to park or future park where possible

The property is located adjacent to the proposed Pine Nursery Community Park being developed by the Bend Metro Park and Recreation District.

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High student densities

The rapid development of surrounding properties with residential dwellings will create high student densities near the school. Students will attend the school from areas both within and outside of the existing and expanded UGB.

Good walking access

Recent developments to the west required sidewalks and bike paths to be placed along Purcell. The proposed park that will surround the school will also provide walking trails to allow access to the school site.

Relatively flat topography

The property is of flat topography and will require little grading.

Appropriate size approximately 15 acres

The property is approximately 15 acres in size which will allow for the development of a six hundred student prototypical 600 student elementary school.

Low cost for water, sewer, and sidewalk extensions

Many of the city improvements such as water and sewer have been extended to the site by the developers of the residential properties to the west. The school site will access the water and sewer lines across from Purcell.

At least two vehicular access points

The location of the school property on the corner of Purcell and Yeoman allows for two vehicular access points. The site plan attached as *Exhibit 7* shows two access points.

Lower site acquisition cost

The Applicant acquired the site at no land cost.

Partnership potential with Bend Metro Park and Recreation District

As noted above the Applicant partnered with the Bend Metro Park and Recreation District in order to acquire the parcel. Additionally, a community park will be located adjacent to the school property to the east and south of the proposed elementary school.

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Zoning allows schools

The UAR -10 zone allows public schools as a conditional use. Deschutes County Code 19.12.030(I) and Bend Code 2.1.200.

Shape of site promotes efficient use of site

Even though the shape of the site is irregular, the site accommodates a prototypical 600 student elementary school. This is demonstrated on the attached site plan.

FINDING: The hearings officer concurs with and adopts the above findings. The criterion is met.

(6) The adopted findings for UGB adoption or amendment must describe or map all of the alternative areas evaluated in the boundary location alternatives analysis. If the analysis involves more than one parcel or area within a particular priority category in ORS 197.298 for which circumstances are the same, these parcels or areas may be considered and evaluated as a single group.

FINDING: The record reflects that the applicant considered alternative sites in the 2005 Sites and Facilities Plan. At the time of the 2005 Sites and Facilities Plan the applicant worked with the Bend Metro Park and Recreation District to identify an appropriately sized piece of land on the Bend Metro Park and Recreation District Pine Nursery site. That site was in the vicinity of a demonstrated need for a new elementary school and was the appropriate size. As discussed above the site meets all of the applicant's criteria is also available at no cost to the applicant. Given the size, location and price the site was chosen. The applicant states No alternative sites of adequate size were identified near the area of need in the northeastern quadrant. All of the developable lands had already been purchased by developers who had plans for residential developments and this site was the only suitable site available.

The applicant has made the case made in the submitted Bend La Pine Schools 2005 Sites and Facilities Plan. The criterion is met.

(7) For purposes of Goal 14 Boundary Location Factor 2, "public facilities and services" means water, sanitary sewer, storm water management, and transportation facilities.

FINDING: Water, sewer, storm water management and transportation facilities were addressed above when evaluating Goal 14 Boundary Location Factor 2 and will be addressed further at the time of the development application and issuing of building permits.

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(8) The Goal 14 boundary location determination requires evaluation and comparison of the relative costs, advantages and disadvantages of alternative UGB expansion areas with respect to the provision of public facilities and services needed to urbanize alternative boundary locations. This evaluation and comparison must be conducted in coordination with service providers, including the Oregon Department of Transportation with regard to impacts on the state transportation system. "Coordination" includes timely notice to service providers and the consideration of evaluation methodologies recommended by service providers. The evaluation and comparison must include:

(a) The impacts to existing water, sanitary sewer, storm water and transportation facilities that serve nearby areas already inside the UGB;

APPLICANT'S RESPONSE: As discussed above, water will be provided by Avion and Avion has provided a letter of service that states that a fire flow of 2,250 g.p.m at 20 p.s.i. can be provided to the site. The site is located across from existing sewer facilities. The Applicant's engineer has been working with the City of Bend to hook into the existing sewer system. The City of Bend recently conducted a sewer master plan update and has identified several areas in the City's sewer master plan which need to be upgraded. However, the effect of an elementary school will not overburden the sewer system as all use will be during off peak times. Applicant will be constructing a sewer lift station on the school site and will pump to an existing City of Bend three inch pressure sewer main within NE Purcell. This force main extends southerly and connects to an existing gravity sewer main at the intersection of Empire and Purcell. In addition, the Applicant will be constructing a dry gravity sewer line to Yeoman which will allow for a future gravity sewer connection in conformance with the City's recent sewer master plan. The Applicant has obtained a preliminary traffic study. The preliminary analysis indicates that existing roads will have sufficient capacity to accommodate the proposed school site. The Applicant's traffic engineer is revising the site layout to address comments from City staff. The Applicant will be working with the Bend Metro Park and Recreation to dedicate and upgrade the existing roads of Yeoman and Purcell and to extend the pedestrian circulation to and through the site.

FINDING: As stated previously, the applicant has submitted a TIA and is in the process of addressing further comments from the City Traffic Engineer. In addition, the applicant's engineer has submitted information to the Planning Division and City Engineering and Public Works Departments in order to model the sewer capacity for the site. This criterion is met for purpose of this application.

(b) The capacity of existing public facilities and services to serve areas already inside the UGB as well as areas proposed for addition to the UGB; and

APPLICANT'S RESPONSE: There is existing capacity to serve the areas inside the UGB, as well as, the proposed area for addition to the UGB. Because the Applicant is seeking just a limited amount of property to accommodate its school site, no other areas are proposed for addition to the UGB.

FINDING: Public facilities have been discussed previously above in Chapters 4.6 and 4.7 above. This criterion is met.

(c) The need for new transportation facilities, such as highways and other roadways, interchanges, arterials and collectors, additional travel lanes, other major improvements on existing roadways and, for urban areas of 25,000 or more, the provision of public transit service.

APPLICANT'S RESPONSE: No new major transportation facilities will be required. It is possible that as the City's public transit service expands, this area may be suitable for the addition of a route.

FINDING: According to the Urban Area Roadway System Plan, NE Purcell Blvd. and NE Yeoman Road are designated major collectors. Although, no new major transportation facilities will be required, the existing transportation network is built to rural road standards and will need to be improved to City standards and specifications. Specific obligations with respect to public facility improvements will be required at the time of the development application.

ORS 197.298

197.298 Priority of land to be included within urban growth boundary. (1) In addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary except under the following priorities:

> **(a) First priority is land that is designated urban reserve land under ORS 195.145, rule or metropolitan service district action plan.**

FINDING: The subject property is designated as Urban Area Reserve in the Deschutes County Comprehensive Plan. This area is classified as "first" priority land to be considered for bringing into the urban area.

RECOMMENDATION OF HEARINGS OFFICER:

Based on the above findings, the hearings officer recommends that the approval of the proposed UGB map amendment for the Pine Nursery site subject to the following condition of approval:

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1. The north property boundary of the UGB amendment shall include the north right of way along Yeoman Road that fronts the Pine Nursery School site.

Dated this 4th day of September, 2007

Tim Elliott
City of Bend Hearings Officer

44 –PZ 07-284
Bend Lapine School District

ORDINANCE NO. NS-2074

AN ORDINANCE AMENDING THE BEND URBAN AREA GENERAL PLAN MAP BY EXPANDING THE URBAN GROWTH BOUNDARY TO INCLUDE A PARCEL OF LAND TOTALING 19.86 ACRES FOR THE EXPRESS PURPOSE OF CONSTRUCTING AN ELEMENTARY SCHOOL AND DECLARING AN EMERGENCY AND PRESCRIBING AN EFFECTIVE DATE OF OCTOBER 3, 2007. THE PROPERTY IS LOCATED WEST OF SKYLINER ROAD AND NORTH OF THE INTERSECTION OF SKYLINERS ROAD AND NW SKYLINE RANCH ROAD IN NW BEND.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend Urban Area Zoning and Plan Map is hereby amended by including the designation of the property shown in "Exhibit A" and described in "Exhibit B".

Section 2. 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 Conclusions of the Hearings Officer dated September 7, 2007, file number PZ 07-298 in support of this ordinance (Exhibit C).

Section 3. This ordinance being necessary for the preservation of public safety and health, an emergency is declared to exist and this ordinance takes effect on October 3, 2007.

Read for the first time the 19th day of September, 2007.

Read for the second time the 3rd day of October, 2007.

Placed upon its passage the 3rd day of October, 2007.

YES: 7 NO: 0

Authenticated by the Mayor the 3rd day of October, 2007.

Bruce Abernethy, Mayor

ATTEST:

Patricia Stell, City of Bend Recorder

EXHIBIT A

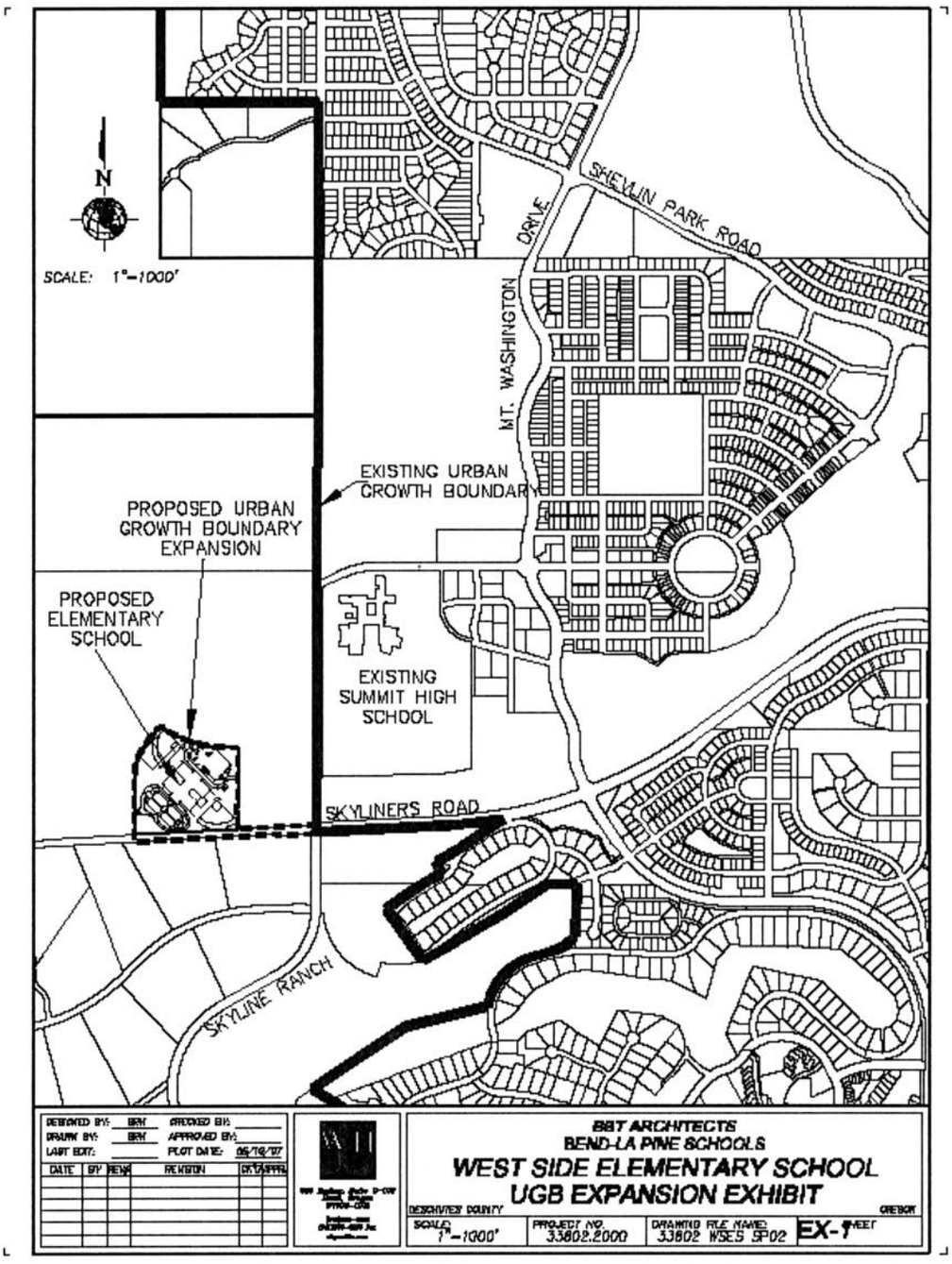

N
SCALE: 1"=1000'
SHEVLIN PARK ROAD
MT. WASHINGTON DRIVE
EXISTING URBAN GROWTH BOUNDARY
PROPOSED URBAN GROWTH BOUNDARY EXPANSION
PROPOSED ELEMENTARY SCHOOL
EXISTING SUMMIT HIGH SCHOOL
SKYLINERS ROAD
SKYLINE RANCH
DESIGNED BY: BRM
DRAWN BY: BRM
LAST EDIT:
CHECKED BY:
APPROVED BY:
PLOT DATE: 05/10/07
DATE | BY | REV# | REVISION | CK'D/APP'D
BBT ARCHITECTS
BEND-LA PINE SCHOOLS
WEST SIDE ELEMENTARY SCHOOL
UGB EXPANSION EXHIBIT
DESCHUTES COUNTY
OREGON
SCALE: 1"=1000'
PROJECT NO. 33802.2000
DRAWING FILE NAME: 33802 WSES SP02
EX-1
SHEET

Exhibit B

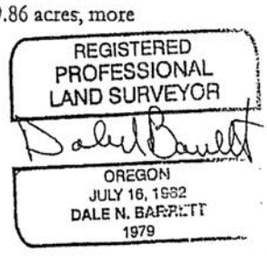
Legal Description
for
Bend LaPine School District
Re: Urban Growth Boundary Annexation

September 19, 2007

Situate in the southeast quarter of Section 35, Township 17 South, Range 11 East, W.M., Deschutes County, Oregon and being described as follows:

Beginning at the intersection of the south right-of-way line of Skyliner Road and the east line of said Section 35, said point being North 0°14'01" East, a distance of 425.06 feet from the southeast corner of said Section 35, a found 3" brass cap, 0.5' below the top of asphalt in a monument box, marked David Evans & Associates 1990 PLS 1068, reset 2003, PLS 1052; thence on the said south right-of-way line the following courses: South 86°58'40" West, a distance of 340.04 feet; thence North 0°15'57" East, a distance of 10.02 feet; thence South 86°58'40" West, a distance of 1,231.68 feet; thence leaving said south right-of-way line North 03°01'20" West a distance of 71.69 feet to the beginning of a tangent 368.03 foot radius curve right; thence on said curve through a central angle of 3°01'52" (long chord bears North 01°30'24" West, 19.47 feet) an arc distance of 19.47 feet to the end thereof; thence, North 0°00'32" East, a distance of 440.93 feet to the beginning of a tangent 545.00 foot radius curve right; thence on said curve through a central angle of 38°27'59" (long chord bears North 19°14'31" East, a distance of 359.06 feet) an arc distance of 365.89 feet to the end thereof; thence North 38°28'31" East a distance of 236.17 feet to the beginning of a non-tangent 860.00 foot radius left (the radius bears North 40°27'55" East); thence on said curve through a central angle of 40°28'27" (long chord bears South 69°45'31" East, a distance of 594.84 feet) an arc distance of 607.38 feet to the end thereof; thence South 89°59'28" East, a distance of 156.68 feet; thence South 0°00'32" West, a distance of 337.80 feet; thence North 89°59'28" West, a distance of 60.00 feet; thence South 0°00'32" West, a distance of 195.13 feet to the beginning of a tangent 11.00 foot radius curve right; thence on said curve through a central angle of 35°46'25" (long chord bears South 17°53'44" West, 6.76 feet) an arc distance of 6.87 feet to the end thereof and the beginning of a tangent 59.53 foot radius curve left; thence on said curve through a central angle of 80°19'06" (long chord bears South 4°36'16" East, 76.79 feet) an arc distance of 83.45 feet tot the end thereof; thence South 0°00'32" West, a distance of 125.51 feet to a point on the north right-of-way line of Skyliner Road; thence North 86°58'40" East on said north right-of-way line, a distance of 650.86 feet to a point on the east line of said Section 35; thence South 0°14'01" West on said east section line, a distance of 70.11 feet to the point of beginning containing 19.86 acres, more or less.

The basis of bearing of this description is the Central Oregon Coordinate System.



RENEWAL DATE: DEC. 31, 07

DECISION AND RECOMMENDATION
OF CITY OF BEND HEARINGS OFFICER

PROJECT NUMBER:	**PZ 07-298**, Urban Growth Boundary Plan Amendment
HEARING DATE:	City of Bend Council Chambers Thursday, June 28, 2007 at 10:00 A.M. 710 NW Wall St, Bend
DATE OF HEARING:	June 28, 2007
HEARINGS OFFICER:	Tim Elliott
APPLICANT:	Bend La Pine School District c/o Bryant Lovlien & Jarvis PC 591 SW Mill View Way Bend, Oregon 97701
PROPERTY OWNER:	Miller Tree Farm LLC 110 NE Greenwood Avenue Bend, OR 97701
APPLICANT'S ATTORNEY:	Sharon Smith Bryant Lovlien & Jarvis PC 591 SW Mill View Way Bend, OR 97701
LOCATION:	The site is located north of SW Skyliner Road and west of Summit High School. The site is further identified as Tax Lot 6201 on Tax Assessor's Map 17-11-00.
REQUEST:	The applicant requests an amendment to the Bend Urban Area General Plan to expand the Urban Growth Boundary to include a 15 acre site for the purpose of constructing an elementary school.
STAFF REVIEWER:	Brian Harrington, Associate Planner (541) 693-2118

APPLICABLE CRITERIA:

(1) Bend Code Chapter 10; Bend Development Code, Ordinance NS-2016

- (a) Chapter 2.1; Residential Districts
- (b) Chapter 4.6; Land Use District Map and Text Amendments

(c) Chapter 4.7; Transportation Analysis

(2) The Bend Area General Plan

(3) Oregon Administrative Rules
Chapter 660-024, Division 24, Urban Growth Boundaries
Chapter 660-012, Division 12, Transportation Planning

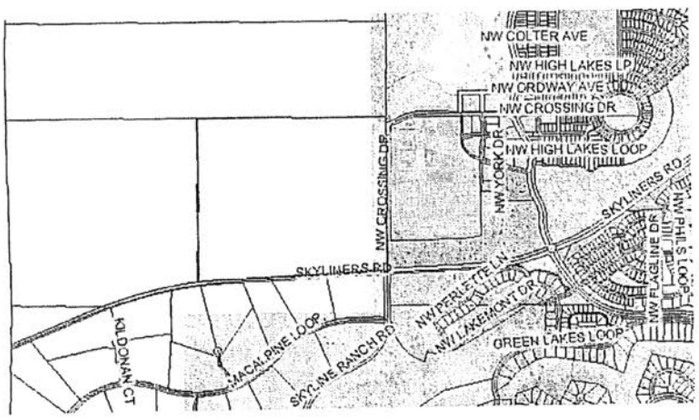
(4) Oregon Revised Statute 197.298

(5) Oregon Statewide Planning Goals 11, 12 and 14

FINDINGS OF FACT:

1. **LOCATION:** The subject site is located at the southeast corner of Skyliners Road approximately 660 feet west of the intersection of Skyliners Road and Skyline Ranch Road. The property is further identified on Deschutes County Assessor's Map as 17-11-00, Tax Lot 6201.

2. **ZONING:** The subject property is zoned Urban Area Reserve UAR-10. The property is designated Urban Area Reserve on the Bend Area General Plan Map.



The site is currently zoned UAR-10, Urban Area Reserve, with a corresponding Bend Area General Plan designation of Urban Reserve. ORS 197.298 outlines a hierarchy of lands to consider when amending a UGB. The first priority is those lands designated urban reserve under ORS 195.145.

3. **SITE DESCRIPTION & SURROUNDING USES:** Staff conducted a site visit on May 21, 2007 and provided the following findings based on observations of the site. The site is undeveloped and relatively flat Vegetation on the site consists of scattered pine trees, native brush, shrubs and grasses. The site is approximately 15 acres in size and approximately square shaped, except for the north and east boundary that follows a proposed curved road alignment.

   The property is surrounded on the north, west and east by undeveloped land zoned UAR-10 owned by Miller Tree Farm, LLC. To the south across Skyliners Road are lands in low density residential use zoned UAR-10, (Highlands at Broken Top).

4. **PROPOSAL:** The applicant has submitted a request for an Urban Growth Boundary (UGB) amendment to include 15 acres of land from the Bend Urban Area Reserve to facilitate the construction of an elementary school. No change is proposed to the existing UAR-10 zoning for the property. A concurrent application has been filed with Deschutes County. The applicant will also file a lot line adjustment application in the County so the parcel will be created before the final UGB adoption. The applicant has submitted a map showing the proposed UGB expansion area which is contained in the file as *Exhibit 2.*

   The subject property is currently included within the UGB expansion area map created by the City of Bend as part of the UGB expansion process

   The applicant offers the following narrative as background to this proposal;

   "In 2005, Bend La-Pine Schools (the "Applicant"), completed an updated Sites and Facilities Plan ("2005 Sites and Facilities Plan") that identified the need for three new elementary schools by 2010. The 2005 Sites and Facilities Plan is attached as Exhibit 1. The 2005 Sites and Facilities Plan specifically identified the northeast quadrant of the City as an area that needed a new elementary school. Given the scarcity of suitable vacant properties, it has been challenging to acquire school sites in the appropriate locations. The 2005 Sites and Facilities Plan specifically identified the Westside Elementary site as an existing possibility for a school site even though it was outside of the Urban Growth Boundary. In

2005, the Applicant already had an agreement with the Bend Metro Park and Recreation District to acquire the Westside Elementary School Site.

In 2006, the voters approved school bonds to fund the construction of three new elementary schools (two for the City of Bend and one in La Pine) and expansions and renovations at other schools throughout the District. The City of Bend is in the process of expanding its UGB and the proposed school site is included in the current expansion areas. However, the City of Bend process will not be complete in time for the Applicant to meet the needs of the rapidly expanding school populations. When the Applicant submitted the Bond to the voters, it was anticipated that the UGB expansion would be completed in time for the Applicant to seek land use approval to construct the necessary schools to be open for fall 2008. Unfortunately, the UGB expansion has taken longer than anticipated. Due to the current overcrowding the Applicant needs to open the school by the fall of 2008. Accordingly, the Applicant has been working with both the City of Bend and Deschutes County in planning for the new elementary school in advance of the completion of the City's UGB expansion.

Land use actions adjacent to the Bend Urban Growth Boundary in the Urban Area Reserve are governed by a joint management agreement adopted by the City of Bend and Deschutes County on February 24, 1998. This document calls for cooperation between the City of Bend and Deschutes County in planning for the UAR zone. Deschutes County and the City of Bend share responsibility for processing urban growth boundary expansions. Quasi-judicial applications are reviewed by a hearings officer at both the City and the County. Then both the County Commissioners and City Council will hold public hearings and adopt implementing ordinances to enact the UGB expansion. Plan amendments must also be acknowledged by the State of Oregon Department of Land Conservation and Development as complying with applicable state land use laws.

The property is currently zoned UAR-10 which allows for the development of public schools as a conditional use. Applicant is not requesting exemptions from State Land Use Goals. New Oregon Administrative Rules (effective April 5, 2007) and the new Goal 14 for UGB expansions (effective April 2006) are applicable."

5. **PUBLIC NOTICE AND COMMENTS:** The application was submitted on May 22, 2007. On June 7, 2007, the City of Bend Planning Division sent notice of the request to surrounding property owners of record as shown on the most recent property tax assessment roll within 250 feet of the subject property. On June 12, 2007, the City of Bend sent a revised notice of a public hearing to correct the time of the hearing. The Planning Division did not receive any response from surrounding property owners.

Transmittals describing the proposal were also sent to inter-office departments and other agencies for comment. The agency comments are contained in the record. In addition, notice of the proposed UGB Amendment was sent to the Department of Land Conservation and Development (DLCD) on May 11, 2007.

6. **PUBLIC MEETING:** A public meeting was held on May 11, 2007 for the Westside Elementary School Site. The applicant included as Exhibit 3 the City's forms regarding public & neighborhood meetings, and a copy of the notice and the list of persons receiving notice.

7. **APPLICATION ACCEPTANCE DATE:** The application for this project was submitted on May 22, 2007. Pursuant to Section 4.1.530(D) of the Bend Code, quasi-judicial comprehensive plan amendments are exempt from the 120 day time limit. The record remained open at the request of the applicant and the Planning Manager, Colin Stephens, until July 28, 2007.

8. **LOT OF RECORD:** The subject site is a portion of a 132 acre parcel owned by Miller Tree Farm LLC. It is considered a legal lot of record pursuant to a plan amendment and zone change application approved by Deschutes County in 1997 (File PA-97-2/ZC-97-2). If approved, the 15 acre site will be established as a legal lot of record according to current Bend Development Code standards, subject to County approval of the lot line adjustment application.

REVIEW OF APPLICABLE UGB AMENDMENT CRITERIA

Chapter 2.1, Residential Districts

B. Applicability. **This chapter applies to all development in the Urban Area Reserve District (UAR), Residential Suburban Low Density (SR2 ½), Low Density Residential District (RL), Standard Density Residential District (RS), Medium-10 Density Residential District (RM-10), Medium Density Residential District (RM), and High Density Residential District (RH). These Districts are identified on the City's official zoning map. Properties designated within each district that contain additional standards shall comply with the provisions of the applicable District, except as may be modified by this Section. Properties within a designated Historic District shall comply with the provisions of Chapter 10-16 of the Bend Code.**

FINDING: The applicant is proposing to amend the Bend Urban Area Plan to expand the Urban Growth Boundary to include a 15 acre site for the purpose of constructing an elementary school (Westside Elementary). No zone change is proposed with this application; therefore the applicable zoning is Urban Area

Reserve (UAR-10). The proposed elementary school would be allowed conditionally in the UAR-10 zone. The expansion of the UGB boundary will require future development to comply with the development standards for the UAR-10 zone as listed under Section 2.1 of the Development Code.

Chapter 4.1, Land Use Review and Procedures

4.1.515 Process for Type II or Type III Applications.

A. Except for comprehensive plan amendments and zone changes and other instances where a hearing is required by state law or by other ordinance provision, the Planning Director may decide upon a Type II application administratively either with prior notice, as prescribed under Section 4.1.520 or without prior notice, as prescribed under Section 4.1.525 or may refer the application to the Hearings Body for hearing as a Type III. The Planning Director shall take such action within 45 days of the date the application is accepted or deemed accepted as complete. This time limit may be waived at the option of the applicant.

B. The Planning Director's choice between or among administrative or hearing procedures to apply to a particular application or determination shall not be an appeal-able decision.

C. Quasi-judicial zone change and plan amendment applications shall be reviewed as a Type III and referred to a hearing before the Review Authority.

FINDING: The applicant has proposed a quasi-judicial plan amendment that will be subject to a hearing before the Hearings Officer and the City Council in compliance with criterion (C) above.

Chapter 4.6 Land Use District Map and Text Amendments

4.6.300 Quasi-Judicial Amendments.

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;

In response to this criterion, the applicant's burden of proof statement reads:

Oregon Statewide Planning Goals

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."

APPLICANT'S RESPONSE: As part of the UGB application process, there will be adequate opportunities for citizen involvement. Public notice will be provided to surrounding area property owners. Public hearings will be conducted both before a City and County hearings officer and before the City Council and County Commissioners.

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."

Oregon Statewide Planning Goal 3 "To preserve and maintain agricultural lands." and, Oregon Statewide Planning Goal 4 "Forests"

APPLICANT'S RESPONSE: In accordance with Goal 2, Applicant has proposed an orderly procedure to evaluate the UGB expansion request, and has provided an adequate factual base to enable the City to make a rational decision on the UGB expansion request. OAR 660-024-0020(a) provides that the exception process is not applicable. The proposed property to be included in the UGB expansion is not identified as either agricultural or forest lands.

Oregon Statewide Planning Goal 5: " Open Spaces, Scenic and Historic Areas, and Natural Resources"

APPLICANT'S RESPONSE: Goal 5 resources are listed in the City's acknowledged Comprehensive Plan. There are no known significant Goal 5 resources on the site. The area proposed for the UGB expansion is similar to other sites around the City of Bend with regard to open space, scenic views and other Goal 5 values. Utilizing the selected site as proposed will have no noticeable adverse impact on the amount of regional open space or scenic views available.

Impacts on related resources:

Mineral and Aggregate, and Energy Resources: The Miller School Site was formerly zoned for mineral or aggregate uses. On June 14, 2005 the surface mining zoning designation was changed to UAR-10 because the mineral resources had been depleted. The mine has been reclaimed and approved for UAR-10 zoning. Furthermore, there are no known energy resources on the sites such as natural gas, oil, coal or geothermal heat.

Fish and Wildlife Habitat: The Westside School Site has no fish or wetland habitat. The Miller School Site has been utilized in the past which decreases the likelihood that any endangered species use the disturbed site as habitat.

Ecologically and Scientifically Significant: Nothing about the selected site separates it from surrounding areas as ecologically or scientifically significant.

Outstanding Scenic Views: Nothing about the site indicates it has a significantly better view than other similar sites that surround the City of Bend.

Water areas, wetlands, watersheds, and groundwater resources: There are no wetlands or watersheds within or adjacent to any of the subject site. No watersheds will be affected by the inclusion of the property into the Bend UGB. The site will be served by municipal sewer systems as they are included in the City and will not adversely affect the groundwater due to septic discharge. Other standards and regulations exist that will mitigate any potential threats to existing groundwater quality during development.

Wilderness Areas: The Westside Elementary Site does not meet the definitions of "wilderness areas" as described within the Oregon State Goals and Guidelines. The parcel has been used over the past century and does not contain pristine surroundings or old growth trees.

Historic areas, sites, structures and objects: The Westside Elementary Site has no structures listed on the National Register of Historic Places. No structures or places of historical significance have been determined to exist on or near the property selected.

Cultural areas: The Westside Elementary Site has no known cultural resources.

Oregon Statewide Planning Goal 6: "Air, Water, and Land Resources Quality"

APPLICANT'S RESPONSE: The Applicant is not proposing an exception to compliance with Goal 6. Maintaining or improving the quality of the community's air, water and land resources will be assured through enforcement of state and local regulations. Expansion of the UGB and annexation of the parcels to the City of Bend will ensure connections to City sewer connections. Sewer connectivity has been considered when choosing the parcels and the site will not cause the sewer capacity to be exceeded. Noise levels will not exceed DEQ noise regulations.

Oregon Statewide Planning Goal 7: "Natural Disasters and Hazards"

APPLICANT'S RESPONSE: There are no areas within the site that are subject to flooding or landslide activity. The wildfire hazard for the site is the same as

other areas with junipers, pine and native brush to the northeast and west of Bend. By providing adequate water to meet the fire flow requirements for an elementary school, the city will reduce the potential wildfire hazard in this area.

Oregon Statewide Planning Goal 8: "Recreational Needs"

APPLICANT'S RESPONSE: As a side benefit to the development on the site the city anticipates including open space areas in the development of the elementary school sites allow for recreational uses.

Oregon Statewide Planning Goal 9: "Economy of Development"

APPLICANT'S RESPONSE: The placement of a public elementary school is important to assist in the health, welfare and prosperity of Oregon citizens. The proposed elementary school is necessary because of the economic development occurring in the City of Bend. This development has brought new families to the City of Bend with elementary aged children. The expansion of the UGB is driven by the need to provide quality public education to all children in the community.

Oregon Statewide Planning Goal 10: "Housing"

APPLICANT'S RESPONSE: This expansion of the UGB is limited to the purpose of providing land needed for schools. The City is undergoing its own process of evaluating additional UGB expansions to meet future housing needs. The process for the UGB expansion to meet housing needs is supported by this application.

Oregon Statewide Planning Goal 11: "Public Facilities and Services"

APPLICANT'S RESPONSE: The existence of water lines on Skyliners Road and a sewer connection at Skyline Ranch Road and Lolo Roads will allow for the efficient and cost effective extension of these needed services to the Miller School Site. Public facilities and services are adequate to serve the needs of the proposed school.

Oregon Statewide Planning Goal 12: is "To provide and encourage a safe, convenient and economic transportation system."

APPLICANT'S RESPONSE: OAR 660-012 implements Oregon Statewide Planning Goal 12. This administrative rule requires the City to prepare and adopt a Transportation System Plan (TSP) as part of its comprehensive plan. The Bend Urban Area Transportation System Plan was adopted October 11, 2000.

OAR 660-024-0020(d) exempts properties such as those in this Application from the transportation planning rule of OAR 660-012-0060. Exempt properties include properties that are zoned as urbanizable land and that do not allow more

vehicle trips than development allowed under prior zoning. Here, the applicable zoning is UAR-10. In UAR-10, public schools are conditionally permitted. Therefore, the prior zoning and any future zoning will allow the same number of vehicle trips. The site will not adversely impact the transportation system.

Oregon Statewide Planning Goal 13: "Energy Conservation"

APPLICANT'S RESPONSE: The location of the proposed elementary school, which is near the students, will serve to reduce energy use by reducing vehicle trips to schools that are more distant from the student's homes. Students may be able to walk and bike to this neighborhood school. The proposed locations show good potential for walking and biking options.

Oregon Statewide Planning Goal 14: "Urbanization"

APPLICANT'S RESPONSE: This Goal was addressed above.

Oregon Statewide Planning Goals 15-19

APPLICANT'S RESPONSE: These Goals are not applicable to these properties because the properties are not within the Willamette Greenway, estuarine areas, coastal shoreland, beaches and dunes or ocean resources.

FINDING: Staff originally found that the applicant had not adequately addressed Goal 14 (Urbanization) and Goal 12, (Transportation). Several concerns were raised by the Engineering Division and Long Range Planning and based upon these concerns, Planning Staff originally recommended denial of the application. The applicant has submitted a letter stating that as to Goal 14, addressing orderly and economic provision of public facilities and services, it is capable of providing adequate services to the site now. This includes water, sewer, and transportation. However, it argues, at least to some extent, that the transportation criteria are not applicable under the UGB application. There is a letter in the file from the Engineering Division clearly stating that the City can provide adequate water supply to the proposed site. That letter further states that the water service is sufficient for both domestic, irrigation and fire suppression needs. The applicant also provided a project overview letter from W&H Pacific date June 27, 2007 which shows that water is adequate to serve the site and that four City water transmission mains exist adjacent to and through the site, or will be relocated to run underneath the actual site by the applicant. The same letter addresses the sewer needs of the site and states that the site will be served by a gravity flow 8" main which flows to the Westside Regional Pump Station. The preliminary site plan includes a plan to extend this 8" main. While the City of Bend Master Collection Master Plan identifies some deficiencies in the system, the applicant states that with planned improvements there will be adequate upsizing of the system and any impacts to the system will be minimized due to the off peak hours of school operation. The applicant essentially argues

that it has met the UGB requirements and the issues concerning the detail of the actual infrastructure will be addressed in the site plan application.

Many issues were raised by the Transportation Engineer regarding the effects on the surrounding road system, the actual road to be used to access the school site, and the preliminary Safe Routes to School Plan provided by the applicant. However, following the time of the hearing of this matter the City of Bend, through its Community Development Director, Mr. Mel Oberst, submitted a letter explaining that the City considers the most important issue to be the ability to provide adequate urban services to the site and indicating its belief that this can be accomplished, withdrawing its recommended denial and requesting a recommendation of approval. In addressing streets, the City is now convinced that once an urban street is provided it will have jurisdiction and will be able to ensure safe design of the streets and control the speed on such streets. This influence and jurisdiction would be exercised at the time of the site plan/development application. The City states that it is confident that it can petition the State to reduce the speed on Skyliners Ranch Road from 55 mph to 40 mph through the urban section, and that it will be able to reduce the speeds in the school zone to 20 mph near the proposed school. However, the City does not endorse the Safe Routes to School Plan now provided by the applicant and the hearing officer does not endorse such.

Based on the above findings, the agreement between the City and the applicant, the applicant has demonstrated the ability to provide adequate urban services as required by Goals 14 and 12 for purposes of this UGB application. The details of how this will be done and any mitigation requirements will be determined at the time of the site plan application. The applicant has demonstrated compliance with the above criteria.

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

In response to this criterion, the applicant's Burden of Proof Statement provides:

The relevant portions of the Bend Area General Plan are addressed below.

City of Bend General Plan

Preface
City Goals for Planning in the Urban Reserve

13. The city and county shall retain lands in the Urban Reserve Area in larger lots in order to be compatible with adjoining public lands and deer winter range needs until these areas are needed for urban level uses. . . .

Adequate public facilities are the key to stable urban development. The Goals below provide general guidance for maintaining and improving the level and quality of urban services as growth occurs in Bend. The citizens and elected officials wish:

- *To have public and private utility systems provide adequate levels of service to the public at reasonable cost;*
- *For the city, county, and special districts to cooperate in the provision of adequate urban services in an efficient and timely matter to support urban development;*
- *For new development to pay its fair share of the cost of major facilities needed to support development;*
- *To ensure that public services will not have negative impacts on the environment or the community; and*
- *To locate and operate public buildings and other public facilities to best serve the needs of the residents.*

APPLICANT'S RESPONSE: The subject property is located within the Urban Area Reserve. The property is now needed as a local neighborhood school. Water and sewer are available. The Applicant is looking ahead to develop schools in an efficient and timely manner to support the adjacent residential developments.

The public services of an elementary school will not have negative impacts on the environment or community but will generally benefit both through reducing traffic and enhancing a sense of community. The school has been carefully designed to best meet the needs of area residents. Additional environmental and community impacts were discussed above.

The siting of the school was determined through a siting research study evaluating the need for new schools within the community. Criteria considered for the siting can be found on page 30 of the 2005 Sites and Facilities Plan. The criteria considered included the following:

> *"high student density, walking access, flat topography, appropriate size approx. 15 acres for prototypical elementary school, low cost for water, sewer, and sidewalk extensions, low site acquisition cost, partnership potential with Bend Metro Park and Recreation District, shape of site promotes efficient use of space, few busy roads surround school, few physical barriers such as canals, railroads, or arterial streets, located in residential zone, adjacent to park or future park."*

As discussed above, the site was chosen to meet the above criteria.

Chapter 3, Community Connections Public Education

In October 1997, the school board accepted a school siting study prepared for the district in cooperation with the city and county. This study provides information on enrollment, siting needs, and other factors to help the district determine the type, location, and size of school sites needed during the next 20 years. The school district's estimate of future enrollment levels and school needs is based on the forecast population levels in the urban area and nearby rural lands.

Figure 3-6 shows the 1995 student levels and the forecast enrollment level for the public schools based on the 1997 siting study. It can be seen from the data in this figure that total enrollment in the Bend area public schools is expected to increase about 45 percent by the year 2015. If the population growth and demographic patterns follow the forecasts in the 1997 study, there will be a need for three to five additional elementary schools, two to three new middle schools, and one or two new senior high schools or technical schools in the planning area by 2015. In 1998 local voters approved a $57 million bond levy to help meet the need for more schools. The bond will pay for construction of a new elementary school, a new middle school, a new high school and remodeling Bend High. Identifying the location for new public schools is an important function of the General Plan. The need for new schools is closely related to residential development and housing densities in the community. It is extremely important that schools be located with reference to the development pattern indicated on the General Plan. Elementary schools in particular can have a significant influence on the location or direction of growth in any given area, and will in themselves attract residential development. They should be centrally located in their service area, and spaced in a way that will permit reasonable locations for future schools as the area continues to grow. The city, county and Bend-La Pine school district will use the most recent studies to evaluate ways to ensure the timely development of new schools in the urban area.

. . .

APPLICANT'S RESPONSE: As noted in the General Plan an older siting study found the need for 3-5 new elementary schools by 2015. Growth has increased significantly since the 1997 siting study and the need for new elementary schools is already present. An updated siting study was conducted by the Applicant to identify the specific locations recommended for school development by 2015. Furthermore, as stated in the General Plan "the need for new schools is closely related to residential development and housing densities in the community." This proposed UGB expansion will serve one of the fastest growing segments of the community. The new elementary school will be located near expanding residential areas. The 2005 Sites and Facilities Plan describes the areas surrounding the proposed school as being areas of significant growth potential. (Page 12)

> *"Area 219 West of Deschutes River in the High Lakes attendance area to current UGB This area includes Northwest Crossing, a planned*

community within which construction of additional single-family dwellings is occurring. There is some potential for up-zoning allowing higher density along potential transit corridors."

Predictions provided in the 2005 School Sites and Facilities Plan also show that there is an expected shortfall of classroom space for approximately 281 students by 2010 and 620 students by 2015. The prototypical school is proposed as a 600 student capacity school.

School Goals from Chapter 3

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

23. When a majority of a school's expected attendance will reside within the UGB, the Bend La- Pine School District shall make every effort to construct such school(s) within the UGB where students can walk to the school.

24. The city shall require major new developments to reserve land for school purposes in conjunction with the Bend-La Pine School District's adopted plan for the type and location of future facilities.

APPLICANT'S RESPONSE: The Applicant will work with the City to determine as part of its site plan application what appropriate development is necessary for the siting of these new schools. The proposed schools will serve students both within and outside of the UGB. See attached map showing attendance areas. As noted there has been a large expansion of students coming in from the development within the city. However, the Applicant also serves students to the west and north of the Miller School Site that are not within the Urban Growth Boundary. The proposed school is centrally located to allow students from both within and outside of the Urban Growth Boundary to be able to walk or ride bicycles to school. Additionally, if the Miller Tree Farm, LLC property is brought within the UGB in the City's UGB process, the LLC will already have reserved land for school purposes as required by Goal 24.

Chapter 8, Public Facilities And Services

Adequate public facilities are the key to stable urban development. The Oregon Statewide Planning Goals below provide general guidance for maintaining and improving the level and quality of urban services as growth occurs in Bend. The citizens and elected officials wish:

- *To have public and private utility systems provide adequate levels of service to the public at reasonable cost;*
- *For the city, county, and special districts to cooperate in the provision of*

adequate urban services in an efficient and timely matter to support urban development;

- *For new development to pay its fair share of the cost of major facilities needed to support development;*
- *To ensure that public services will not have negative impacts on the environment or the community; and*
- *To locate and operate public buildings and other public facilities to best serve the needs of the residents.*

APPLICANT'S RESPONSE: Water and sewer are available to the Westside Elementary School Site without the need for significant extensions. Additionally, the site will be served by garbage services, law and safety enforcement once it is brought within the UGB and then is annexed into the City.

FINDING: The hearings officer concurs with the applicant's findings with respect to the school goals (goals 22-24) cited in Chapter 3 above. In addition, the applicant has demonstrated compliance with the Plan's objective, "*To locate and operate public buildings and other public facilities to best serve the needs of the residents.*" Issues concerning the placement of infrastructure will be addressed in the applicant's site plan application. The applicant has demonstrated the ability to provide adequate services for purposes of this application.

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; and**

In response to this criterion, the applicant's burden of proof statement reads:

APPLICANT'S RESPONSE: The proposed site can be served with adequate public facilities. Sewer and water are available adjacent to the site. The transportation improvements will be provided concurrently with the development of the property.

FINDING: The applicant states that there is sufficient evidence in its burden of proof sufficient to find above criteria satisfied. This issue was addressed above under Section B.1 and those findings are incorporated here. Further, in a letter submitted in response to the concerns of the Engineering Division the applicant submitted a June 21, 2007 reading:

"The UGB criteria require evidence that the site is presently provided with adequate public facilities including transportation networks (Bend Code 4.6.300(B). As described in the Applicant's traffic study, Skyliners Road provide adequate transportation to the proposed school site. Furthermore the Applicant will be submitting a site plan in the next few weeks that will

demonstrate the improvements planned as part of the development of the site. The proposed findings prepared by Robin Lewis for the UGB expansion are beyond the scope of the UGB expansion application and criteria. Nothing in the Bend Code requires construction of streets to City of Bend standards as a precondition for a UGB expansion. The issues raised in Robin Lewis's memorandum can be addressed through two additional planning stages that will be required prior to the start of construction. First, as stated above, the Applicant will submit for site plan review. If necessary, conditions of approval can be identified and addressed in the Site Plan decision for the elementary school. Secondly, the issues will be addressed through the annexation agreement process with the City of Bend and the Applicant. In that process, the Applicant and City of Bend will enter an agreement that outlines specific improvements that the Applicant and the City agree are the Applicant's responsibility."

The hearings officer finds that there is evidence in the record to support the applicant's position and that the details of required urban services and mitigation can be determined at the site plan stage. Further analysis of the specific impacts is set forth below.

Streets: Requirements for the provision of new streets and improvements to the existing street system are addressed in previous findings, and in the applicant's burden of proof and Transportation Impact Analysis. The applicant proposes improvements to the surrounding transportation system to mitigate the impacts of their development to ensure adequate capacity of the surrounding transportation system with the proposed development. In comment received from the City Transportation Engineering Department, there are several transportation facility improvements that need to be met with regard to Skyliners Road and the extension of Lolo Road west to the site. These can be addressed at the site plan stage and the hearings officer agrees. With that said, anticipatory comments now in the record state that Skyliners Road is designated a major collector street on the Bend Urban Area Roadway System Plan Map. In comment stated above from the City Traffic Engineer, Skyliner Road needs dedication of 40' to centerline of Skyliners Road and to include a modified City standard roadway of 36' of pavement that includes curbs, bike lanes, and two travel lanes for the substandard length leading to the site from the existing UGB to the proposed local street connection with Skyliners Road. These are street standards prescribed by the Westside Consortium agreement in 2000.[1] In this manner, the City would have a uniform section on Skyliners Road between Lindsey Court and the School's western boundary. In order to provide adequate urban services to the site, the connecting stem of the UGB amendment along NW Skyliners Road must be wide enough to accommodate full urban services in conformance with the modified street standard as described above.

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[1] Westside Consortium Agreement, Ordinance NS-1757.

Again, these issues can be mitigated through the site plan approval process.

Water: The applicant proposes to provide adequate water service to the site to serve the domestic and fire suppression needs of the development. As stated previously, the evidence demonstrates that domestic, irrigation and fire water services will be adequate and the City Engineer agrees.

Sewer: The applicant proposes to provide sewer main extensions to serve the needs of the development and as noted has provided an overview plan from W&H Pacific on how this is to be done. Mitigation will be required, a fact acknowledged by the applicant. But, adequate sewer can be provided.
Schools: The applicant is proposing to site an elementary school on the subject property. The applicant has submitted a School Facility plan in support of this application (Exhibit 1).

Parks and Libraries: Parks are located to the east approximately ¼ to ½ mile away in the Northwest Crossing Development. A connecting dirt trail from the city to the National Forest lands within a short distance to the west is located on the south side of NW Skyliners Road. The subject property would be within the Bend Public Library Service area.

Fire and Police Protection: Fire and police protection is available for the subject property from the City of Bend. In comment received from the City Fire Department, approval of the future development plans shall be obtained from the City Fire Marshall.

Based upon the information in the record, there is adequate capacity for public facilities and services to serve the site. Details and mitigation can be determined at the site plan stage.

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.**

In response to this criterion, the applicant's burden of proof statement provides:

APPLICANT'S RESPONSE: There has been a change in the neighborhood and community which justifies the requested UGB expansion. There has been substantial residential development throughout the City and in particular this attendance area. The elementary schools in this area are currently over capacity and a school in this location is desperately needed to alleviate overcrowding. The 2005 Sites and Facilities Study anticipates that, by the year 2010, there is an expected elementary school capacity shortfall of approximately 669 students." Pg. 18. Specifically in the attendance area that will be served by the

development of this school "there will be approximately 285 more elementary students than elementary school capacity in 2010, growing to a capacity shortfall of 422 students by 2015. Page 19.

The Sites and Facilities Plan recommendation is to: Acquire sites and build new schools to add capacity for 600 students by 2010 in the form of a new small school/site for 300 students and half of a new prototypical 600 student school/site. If a small school site cannot be secured or if the land and off-site improvements are cost prohibitive compared to other potential sites in the High Lakes attendance area, then the prototypical 600 student school should be completed in its entirety by 2010." Page 21. As discussed above, the growth of the student population in the northwest quadrant exceeded expectations necessitating a 600 student school be built immediately. The Applicant identified the Westside School Property as a location where a prototypical 600 student school could be completed by 2008.

FINDING: The applicant has demonstrated that there has been not only a need but change in circumstances with respect to the growing demand for school facilities within the City of Bend. Section 4.6.600 is further addressed below.

Section 4.4.600 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.

In response to this section, the applicant's burden of proof statement provides the following:

APPLICANTS RESPONSE: The land being added to the UGB is currently zoned as urbanizable land - UAR-10 (Urban Area Reserve). The zoning for the property allows schools as a conditional use (Deschutes County Code 19.12.030(I) and Bend Code 2.1.200). Therefore, the transportation planning rule 660-12-0060 is not applicable. When the City completes its UGB expansion it will likely rezone the school property to Public Facilities.

FINDING: The applicant states that because the land being added is urbanizable land currently zoned UAR-10, OAR 660-12-0060 is not applicable. The hearings officer concurs with this finding in part. However, the relevant sections of Chapter 4.7, Transportation Analysis, of the Bend Development Code need to be addressed, a fact acknowledged by the applicant. This analysis is set out below.

4.7.100 Purpose and Authority.

Purpose. This Chapter is based on sound planning and engineering principles. The City will review land use actions and major roadway projects for potential impacts and to ensure that new development contributes to the orderly development of the Bend Urban Area Transportation System Plan network of roads, bikeways, and pedestrian facilities by:

Establishing policies and procedures for evaluation of land use actions and major roadway projects to protect existing and future operations of roadways;
Establishing service level standards (operations standards) for transportation facilities identified in the Bend Urban Area Transportation System Plan;
Ensuring consistency with the functions, capacities, and service level standards of facilities identified in local and regional transportation system plans and the City of Bend Development Code;
Extending transportation facilities to and through development property;
Ensuring conditions are applied to mitigate the full extent of impacts and protect transportation facilities so that all land use proposals contribute their fair share towards the transportation system plan.

This Chapter also identifies elements that will need to constitute the scope of work for traffic studies used to evaluate major roadway projects.

B. City's Authority. 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. The City Engineer may at his/her discretion expand the requirements and/or study area if needed to address any issue that comes to light after the initial approval of a scope of work. Certain information may come to light over the course of the analysis that causes the City to require additional analysis to address traffic operations or safety issues that had not been anticipated.

C. Applicability. Land use actions will be reviewed for impacts and potential mitigation through a Transportation Impact Study.

1. Land Use Actions. A Transportation Impact Study (TIS) shall be required for development projects when the land use involves one or more of the following actions:

   a. A comprehensive plan map amendment; or

FINDING: The applicant is requesting a UGB plan map amendment which requires a Transportation Impact Study in compliance with Chapter 4.7. The

applicant has submitted a Traffic Impact Study prepared by Kittleson & Associates Inc., dated June 12, 2007. Supplemental information has been submitted by the applicant to address the City Traffic Engineer's comments. Some of the comments have already been set forth above. This criterion is satisfied.

4.7.200 Transportation Impact Study

A. The Transportation Impact Study shall be prepared under the responsible charge of a professional engineer licensed in Oregon, and qualified to perform such studies.

The Transportation Impact Study needs to provide sufficient information to the City so that the City can assess the impact to the transportation system, evaluate proposed mitigation measures, and craft reasonable conditions for the proposed land use action. Engineers are reminded of their responsibilities under state law which specifies that they shall at all times recognize that their primary obligation is to protect the safety, health, property and welfare of the public in the performance of their professional duties. These standards provided herein in no way serve as a substitute for the application of sound professional engineering judgment expected to be used by practitioners in the preparation and documentation of transportation analyses.

1. Determination of Scope of Work. It shall be required that the person responsible for preparing the transportation impact analysis, first receive approval from the City Engineer for the scope of work for the report. The scope of work at a minimum shall identify the study area, and the study area intersections as indicated below. Requests for deviation from the provisions of this chapter shall be submitted in writing to the City Engineer.

2. Scope of Work. The Transportation Impact Study Scope of Work shall include these elements:

a. Study Area. The Study area shall include:

i. The existing street infrastructure along the property frontage (i.e. right-of-way, sidewalks, bicycle lanes, medians, driveway aprons);

ii. All driveway access points except single family residential dwellings;

iii. All street connection points to abutting arterials or collectors;

iv. Any intersection with an interchange, or ramp terminal, and any arterial-arterial intersection, arterial-collector intersection or collector-collector intersection, that is within one-mile driving distance of the site and has more than 15 peak hour trips added to any lane group. The driving distance shall be measured from each access point (driveway or street) of the development onto the transportation system.

v. Other transportation facilities required to be studied by the Transportation Planning Rule OAR 660-012-0060.

b. Analysis Period. At a minimum, an operations analysis shall be performed for the weekday p.m. peak hour at the study area intersections. Certain land use applications may also be required to study the a.m. peak hour, the peak hour of the proposed project, the peak hour of a nearby generator (e.g. School arrival/dismissal times), or a weekend peak hour. The peak traffic times to be studied in the Transportation Impact Study shall be determined at the discretion of the City Engineer.

For each of the Study Years, analyses with and without the proposed project shall be provided.

c. Study Years. The intersection operations analysis and traffic forecasts shall include the following study years:

i. Existing conditions (current year); and

ii. Year of completion of each phase; and

iii. Five years beyond final development phase; and

iv. for those projects that involve a zone change, Bend Urban Area General Plan map amendment, or a major roadway infrastructure project an additional study year shall be provided. This study year shall reflect the Transportation Planning Rule OAR 660-012-0060 requirements.

Transportation Planning Rule analysis year shall be either the 15-Year projection of traffic or the traffic projections from the twenty-year period beginning with the date of adoption of the Bend Urban Area Transportation System Plan, whichever provides the longest projection. These traffic projections, whether for the 15-Year projection or the Bend Urban Area Transportation System Plan planning year, shall be provided by the City Engineer. The Bend Urban Area Transportation System Plan traffic model will be used as a basis for these projections.

d. Exceptions. For a development proposal that results in a net reduction in traffic, the five year estimate analysis period may be deleted at the discretion of the City Engineer.

4.7.300 Analysis Methodology

The analysis methodology described herein shall apply to all required transportation impact analysis including Transportation Impact Studies and Trip Generation Letters.

A. Forecasts and Operations

1. For each of the analysis years defined in Section 4.7.200 above, (except for existing conditions), the traffic forecast and operations analysis shall be prepared for conditions with and without the proposed project. The operations analysis shall be performed in conformance with the Highway Capacity Manual (HCM) or other reference approved by the City Engineer.

2. Traffic counts for the existing conditions analysis shall be no more than one year old dated from the date of land use application. If pertinent transportation system conditions have changed since the count, then new field counts shall be performed.

3. Field counts shall include a minimum of a 2-hour turning movement count for each peak period studied (between 4:00 and 6:00 for p.m. peak hour counts). Additional hours of turning movement counts will be needed to determine compliance with traffic signal warrants, all-way stop warrants or to determine the extent of over-capacity conditions. Counts for other hours will be determined as needed. Counts may need to be seasonally adjusted as required by the City Engineer to reflect peak conditions (i.e. summer peak, ski season/winter peak, or school traffic peak) for the transportation system element being analyzed.

4. The traffic forecasts for the year of completion of each phase shall be calculated to be field counts plus 100 percent of the traffic from the other approved, but not yet constructed developments, plus an annual growth factor which would factor the existing counts up to the analysis year. The City Engineer or designee will supply traffic assignments for other approved, but not yet constructed development; however, it is the study engineer's responsibility to determine build out status of these developments.

The annual growth factor shall be determined by the City Engineer after considering first ODOT's Transportation Planning Analysis Unit (TPAU) traffic growth rates for the roadway in question, then the City of Bend's traffic growth rates. If no data are available, the annual traffic growth factor shall be 3 percent per year.

5. Trip Distribution. Trip assignments should replicate overall origin/destination patterns in the City. Existing field count turning movement patterns should be used as a guide for trip assignments as appropriate. The assignment should be adjusted to reflect future committed transportation facilities, changes in zoning or development patterns.

6. Intersection Control Type and Roadway Geometry. The operations analysis shall use existing transportation system conditions (control type and roadway geometry). Committed transportation facilities may also be considered in the analyses. Committed transportation facilities means those proposed transportation facilities and infrastructure which are consistent with the acknowledged comprehensive plan and have approved funding for construction in a public facilities plan or the Six-Year Highway or Transportation Improvement Program.

7. Trip Generation. Project generated traffic shall be forecast using average trip generation rates from the latest edition of the publication Trip Generation (ITE) or shall be created from local data (the procedure for collecting such data shall comply with the guidelines in the ITE Trip Generation Handbook). Adjustments such as those applicable for pass-by trips that are well supported by multiple studies in the ITE Trip Generation Handbook may be applied.

For Bend Urban Area General Plan map amendments or zone change applications, the trip generation shall represent the worst case trip generation of the existing and proposed zoning. This accommodates the highest trip generator allowed outright in the zone. However, if General Plan map amendments or zone changes are accompanied by a concurrent site plan application, the trip generation for the site plan may be utilized instead.

C. Transportation Planning Rule Compliance. This section implements the City's Bend Urban Area Transportation System Plan with regard to level of service and operation standards. The Transportation Impact Study provided for a zone change and/or Bend Urban Area General Plan map amendment shall comply with and provide information on the requirements of the Oregon Administrative Rule section 660-012-060 (TPR) and demonstrate that the proposed land uses are consistent with the identified function, capacity, and performance standards (level of service, volume to capacity ratio and widths) of the facility as defined in the adopted Bend Urban Area Transportation System Plan and the City of Bend Development Code. The operations standards in the City of Bend Development Code

implement the policies of the Bend Urban Area Transportation System Plan.

FINDING: According to the applicant, the requirements of OAR 660-012-060 do not apply to a UGB Amendment when land added to the UGB is zoned as urbanizable land, either by retaining the zoning that was assigned prior to inclusion in the boundary or by assigning interim zoning that does not allow development that would generate more vehicle trips than development allowed by the zoning assigned prior to the inclusion in the boundary. There will be no change in the zoning proposed for this application. Therefore, this criterion is met. The City Traffic Engineer commented that the Traffic Impact Analysis submitted by Kittleson & Associates is adequate to provide the necessary data to address Chapter 4.7. In further comment dated June 21, 2007, data was submitted that indicates that motorized vehicle trip generation for local school sites exceeds standard averages identified in the ITE manuals. The applicant indicates the school will adopt a Safe Routes to School Plan for the site to help mitigate trip generation rates. State law requires that the applicant consult with the City on this plan. The City does not endorse its current form. This criterion is met.

4.7.400 Approval Criteria

Prior to land use approval, the City must review the applicant's transportation analysis to determine whether or not the proposal will create excessive demand on the public facilities and services required to serve the proposed development. The City will assess the impacts of new development on the transportation system. The key factors used to assess the impacts to the transportation system include, but are not necessarily limited to:

number of trips by all modes associated with the proposal,
turning movement demand by vehicles of various types,
operations analyses results,
location of the project,
safety issues, location of the driveways (evaluated for conflict points and location criteria established in Chapter 3.1; Access, Circulation and Lot Design).

The City Engineer will determine if the development or study area has adequate transportation facilities to support the proposed development based on compliance with the Operations Standards. The City shall also evaluate the crash histories and crash rates provided to identify any queuing issues. Crash rates greater than 1.0 per million entering vehicles and inadequate queue storage may need to be mitigated. Mitigation shall ensure that the transportation facilities are providing adequate capacity and safety concurrent with the development of the property.

Zone changes and Bend Urban Area General Plan map amendments cannot be granted if the Transportation Impact Study shows that the proposed development would overburden the City's existing or planned transportation facilities now or in the future. The Transportation Impact Study must demonstrate that compliance with the TPR and the operations standards of the City of Bend Development Code can be achieved within the adopted Bend Urban Area Transportation System Plan.

Similarly, major roadway infrastructure projects should not be approved if the Transportation Impact Study shows that the proposed infrastructure projects would overburden the City's existing or planned transportation facilities now or in the future. The Transportation Impact Study must demonstrate that compliance with the TPR and the operations standards of the City of Bend Development Code can be achieved within the adopted Bend Urban Area Transportation System Plan.

A. Transportation System Assessment. This assessment of the transportation system will be used as the basis for requiring mitigation and imposing conditions of approval. Review measures for the transportation system include an evaluation of the existing and proposed transportation system. The applicant shall assess the presence and extent of:

right-of-way dedications,
public utility and access easements,
ADA facilities,
sidewalks, trails, and pedestrian connections,
bike lanes,
turn lanes,
travel lanes,
intersection operations and queuing,
crash rates and crash type/patterns in the vicinity of the proposal, and
access management and circulation.

At a minimum, development proposals shall be required to provide adequate setbacks, create public access and utility easements, and dedicate right of way for roadways and trails to allow construction of the transportation system and facilities in accordance with the Bend Urban Area Transportation System Plan and the City of Bend Development Code. Other exactions and mitigations will be required on a rough proportionality basis.

FINDING: The applicant has stated that the submitted TIA for the Westside Elementary site has adequately addressed the requirements of Chapter 4.7. In comment received from the City Traffic Engineer, improvements will have to be made to bring the transportation network in conformance with City standards, but

the applicant's TIA meets the requirements of Chapter 4.7. These improvements will be further addressed at the development stage. Although staff recommended an Annexation Agreement requiring certain mitigation, the Planning Division has formally withdrawn that request and finds that the best place to address mitigation in this instance will be upon site plan application. The criterion is met.

4.7.500 Mitigation Requirements/Conditions of Approval

The transportation impact analyses for each of the study time frames need to show compliance with the operations criteria listed above, or the applicant will be required to mitigate to bring the operations into compliance. Mitigation shall be in compliance with City of Bend Standards and Specifications, the Bend Urban Area Transportation System Plan and the requirements of the Bend Development Code.

FINDING: As stated is Section 4.6.300 above, the City Transportation Engineer has submitted comment on the transportation facility improvements that would be needed to develop the site. These improvements will be required upon site plan and conditional use permit approval. The applicant has stated that the Traffic Impact Analysis, submitted by Kittleson & Associates, dated June 12, 2007 adequately addresses Chapter 4.7 and the Transportation Engineer agrees. The evidence in the record supports a finding that the site can meet these requirements and that the specific requirements of necessary improvements to bring urban levels of service to the site will be provided through the Site Plan approval process.

Compliance with Oregon Statewide Planning Goal 14, "Urbanization"

APPLICANT'S RESPONSE: Statewide Planning Goal 14 provides for "orderly and efficient transition from rural to urban uses". The Goal requires that cities and counties work cooperatively to establish urban growth boundaries and to make any necessary changes to such boundaries. Changes require analysis of need, the "Need Factors" and an analysis of location, the "Locational Factors."

Need Factor
Land Need
(1) Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments; and

(2) Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection (2). (emphasis added)

In determining need, local government may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need. Prior to expanding an urban growth boundary, local governments shall demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary.

APPLICANT'S RESPONSE: The City of Bend is currently undergoing an extensive process to identify the land needs to complete its UGB expansion as required by Goal 14 and Oregon State Statutes. This process began in 2005 and will continue through at least the end of 2007. The 20 year population forecast shows a need for additional lands for housing as well as schools. The Applicant's 2005 Sites and Facilities Plan also identified the need for new schools.

The Applicant analyzed anticipated enrollment using growth estimates in the Deschutes County Coordinated Population Forecast of 2005. The Table below from the 2005 Sites and Facilities Plans demonstrates the rapid growth expected in area schools by grade level.

Table 1
Enrollment Forecast for the Bend-La Pine School District by Grade Level (Coordinated Concur Model by PRC)

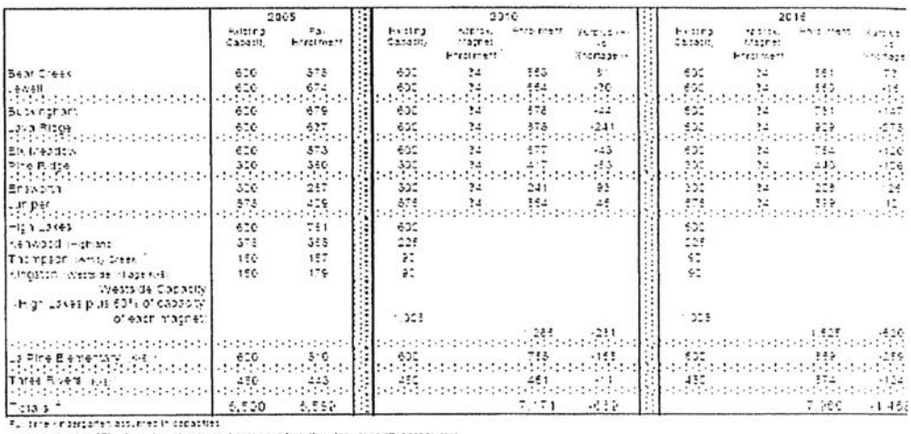
Bend-LaPine District

	1990	1995	2000	2005	2010	2015	2020	2025
K-2	2,208	2,513	2,672	3,173	3,387	3,609	4,419	5,035
3-5	2,209	2,677	3,017	3,267	3,706	4,058	4,624	5,188
6-8	2,223	2,809	3,118	3,298	4,102	4,352	4,820	5,591
9-12	2,652	3,297	4,167	4,811	5,581	6,222	6,527	7,435
Other	20	5	24	26	20	33	36	42
Total	9,310	11,321	12,998	14,775	16,596	18,449	20,427	23,286

Enrollment Forecasts for the Bend-La Pine School District 2004-2025, February 7, 2005, by Dr. Forrest Lyons, Senior Research Associate, Population Research Center

The Applicant next analyzed where the expected growth might occur by reviewing zoning, available vacant lands, and lands being considered for the City of Bend UGB expansion. The highest growth areas were determined to be the northeast and northwest quadrants of the Applicant's attendance area. These areas showed the greatest potential for future residential growth and both areas have since been built out with residences. The anticipated shortages of classroom space by attendance area are shown below in Table 4 from the Sites and Facilities Study.

Table 4:
Elementary School Attendance Area Forecasts by Year (By-residing Forecasts)



	2005		2010				2015			
	Existing Capacity	Est. Enrollment	Existing Capacity	Assumed Magnet Enrollment	Enrollment	Surplus (+) or Shortage (-)	Existing Capacity	Assumed Magnet Enrollment	Enrollment	Surplus (+) or Shortage (-)
Bear Creek	630	578	630	34	565	31	630	34	561	73
Elkhorn	630	674	630	34	664	-30	630	34	680	-116
Buckingham	630	676	630	34	678	-44	630	34	791	-187
Lava Ridge	630	637	630	34	878	-241	630	34	909	-675
Elk Meadow	630	673	630	34	677	-43	630	34	784	-120
Pine Ridge	330	360	330	34	417	-53	330	34	440	-156
Ensworth	330	287	330	34	241	93	330	34	368	-34
Jewel	676	626	676	34	664	-44	676	34	699	-57
High [illegible]	630	751	630				630			
Ponderosa (High and	676	668	226				226			
Thompson (Amity Creek	150	167	90				90			
Kingston (Westside Magnet	150	176	90				90			
Westside Capacity (High [illegible] plus 60% of capacity of each magnet			1,008				1,008			
					886	-251			1,828	-820
La Pine Elementary [illegible]	630	616	630		788	-158	630		886	-256
Three Rivers [illegible]	450	443	450		461	-11	450		574	-124
Totals *	6,530	6,550			7,171	-618			7,960	-1,456

Full time kindergarten assumed in capacities

* = Approximately 60% of enrollment in magnet schools is from the high values attendance area

Magnet capacities at magnet schools in 2010 and 20 [illegible] capacity available for students in the attendance area.

* = La Pine Elementary totals represent [illegible] in 2010 and 20 [illegible]

* = Three Rivers enrollment totals includes 6th graders in 20 [illegible] 2010 and 2015 respectively, estimated by DRB.

* = Enrollments do not include the 70 students enrolled from outside the District, PRAIRIE and home school students

Source: base data by PRC, bylaw and attendance area forecasts produced 10/17/06.

* = Approximate enrollment from attendance areas that is attending a westside magnet school. source: BLRHD

The Buckingham and Lava Ridge attendance areas are in the northeast quadrant of Bend. The above table shows that there is an expected increase in attendance, resulting in a shortfall in capacity for approximately 285 students by 2010. By 2015 the shortfall will have grown to approximately 422 students. This area has developed even more rapidly than expected. In order to meet the need, the Applicant needs to open the first phase of a prototypical school by the fall of 2008. The first phase of a prototypical school consists of classroom wings with a capacity for 300 students and the associated offices and gymnasium associated with the school. When school capacity demands, the school is planned to allow for the addition of a second 300 student capacity wing.

Meeting the needs- site selection

APPLICANT'S RESPONSE: To identify potential sites for schools the Applicant looked first at lands it owned or had agreements to acquire. The only existing sites were: the administrative center, currently used for the Applicant's offices; Troy field, a small park adjacent to the Administrative building; a small additional area at High Desert Middle School; and the 6.39 acre transportation yard. None of these sites are located near the need for a new elementary school in the northeastern portion of the city. Also, none of these sites are of adequate size for a prototypical school. The prototypical school is designed to be constructed

in two phases. Initially, the school will be constructed to provide 300 student capacity. Later, two additional classroom wings can be added to create a 600 student school. Approximately 15 acres is optimal for the prototypical school.

At the time of the 2005 Sites and Facilities Plan, the Applicant already had an agreement to acquire this property. Although the property is outside the UGB it was expected that the City's UGB process would bring the site within the UGB before the school needed to be constructed. There were no alternative sites within the study area shown in Exhibit 4 that were of adequate size for the proposed school. Furthermore, the Applicant already had an agreement to acquire this piece of property at no cost. The property met the 2005 Sites and Facilities Plan site criteria which are discussed in more detail below. Since the City's UGB expansion has taken longer than expected, Applicant now must apply to expand the UGB to include this site in order to construct the school for opening in fall of 2008.

Boundary Location

The location of the urban growth boundary and changes to the boundary shall be determined by evaluating alternative boundary locations consistent with ORS 197.298 and with consideration of the following factors:

(1) Efficient accommodation of identified land needs;
The proposed location of the Miller School Site efficiently accommodates the growing needs of the school district. The Applicant carefully considered the location of its proposed elementary school site based on the need to accommodate the extreme residential growth of the northwestern portion of the City. The recent development in this portion of the community through the build-out of Northwest Crossing and other residential development abutting the UGB has greatly increased the enrollment of the elementary schools that currently serve these areas. The current elementary schools in the area are inadequate to meet the needs of the community. The Miller School Site accommodates the need for new community elementary schools where the need is greatest due to increasing residential development. This meets the Applicant's goal to provide neighborhood elementary schools that allow students and families to walk or bike to the facilities.

The parcel is already zoned Urban Area Reserve meaning that the parcel has been identified as future urbanizable land and is of first priority under the classification system identified in ORS 197.298. With a short cherry stem along Skyliners Road of approximately 660 feet the site abuts the City's existing western UGB boundary.

Furthermore, providing schools at or near the edge of the UGB is efficient because the Applicant's school attendance boundaries extend beyond the

boundaries of the UGB. The new schools will serve students in the existing UGB, in the UGB as it is expanded by the City of Bend and students outside the UGB. The existing school boundaries show that portions of the student population will continue to come to this school from outside of the UGB. See attached school boundary map.

The property is approximately 15 acres allowing adequate space for the placement of a prototypical elementary school. A site that allows for full build-out of a 600 student school encourages efficient accommodation of the school's needs where the Applicant has shown the need for such capacity within 20 years.

(2) Orderly and economic provision of public facilities and services;

The Miller School Site is located near city water because several lines run through the site and also along Skyliners Road. A city of Bend gravity sewer main exists at the intersection of NW Lolo Drive and NW Skyline Ranch Road. The Applicant will extend this main to the proposed elementary school site and will construct a gravity sewer service connection to the building.

Existing water mains exist within Skyliners Road (16" and 36" mains) and within Skyline Ranch Road (24" main). Two older City of Bend water transmission mains (14" and 16") cross the proposed school site and will be relocated by the Applicant. The Applicant will coordinate with the City Water Division for proposed water connections for fire protection and services.

The proposed street improvements include the construction of local standard streets along the north, west, and a portion of the east school site boundaries, and an easterly connection to Skyline Ranch Road. The Applicant is completing a traffic study. The study will address any additional street improvements required but given the low traffic volumes on Skyliners, no additional mitigation measures are expected to be required. The site is large enough to accommodate all storm water drainage issues on site as required by the City of Bend.

The City of Bend only recently developed a public transportation system. Although the proposed school is not on an existing public transportation line it is likely that services will be provided to the school in the future due to its proximity to a large proposed residential development.

(3) Comparative environmental, energy, economic and social consequences; and
The long-term environmental, economic, social and energy consequences resulting from the development of elementary schools on the proposed sites will be minimal and positive. The urgent need for a new elementary school in the northwest area of the City makes the urban use of this land necessary.

Environmental. The site has been identified by the City as land that should be available for urban development when necessary. By locating the school closer to the students who will attend it the planned school will reduce driving and bus traffic.

Energy. The Westside School Site is not known to contain energy resources such as known deposits of oil and natural gas, or geothermal resources. The availability of other potential energy sources, such as wind and solar, are equal on any other property in the surrounding area. The proposed expansion will result in energy conservation by reducing the overall number of vehicle trips. Since the site is in a location where students will be able to walk and bike to school, this will reduce the number of parent drop-off trips. As the residential areas around the site continue to develop, this reduction in trip generation will increase.

Economic. Through an agreement with Miller Tree Farm, LLC, the Applicant is obtaining the site at below market cost. Accordingly, the economic consequences of using the property for the school site are positive. Furthermore, locating schools near where students live also encourages economic development because parents are interested in living in communities with quality public schools in walking distance from their homes.

Social. The community will benefit from the reduced overcrowding at area schools. Overcrowding generally reduces the quality of education and increases community stress. This new school will provide the necessary capacity for the growing community. The properties on the edges of the existing UGB are expanding quickly and need a school in this area. The rapid expansion prohibits the development of a school within the UGB boundaries because there is no land that is available. The local community voted to support the development of these new sites. Requiring the Applicant to wait until the City of Bend has completed its UGB expansion process would cause a delay in the construction of a needed school. The community as a whole will benefit from alleviating existing overcrowding.

(4) Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB.

FINDING: According to planning staff, the Miller Tree Farm, LLC's property in its entirety is approximately 445 acres. The proposed school site is in the southeast portion of that property. Miller Tree Farm, LLC has used this property in the past as a tree farm and has planted pine trees in the vicinity of the school location. Miller Tree Farm, LLC does not plan to harvest the trees that are located on the school site and according to the applicant it has given assurance that activities at the school site will not impact the adjacent tree farm activities.

The hearings officer concurs with the applicant's response. The applicant has demonstrated that the need and boundary factors have been met.

OAR 660, Division 24 Urban Growth Boundaries
660-024-0000

Purpose and Applicability

(1) The rules in this division clarify procedures and requirements of Goal 14 regarding local government adoption or amendment of an urban growth boundary (UGB).

FINDING: These rules became effective April 5, 2007.

660-024-0020

Adoption or Amendment of a UGB

(1) All statewide goals and related administrative rules are applicable when establishing or amending a UGB, except as follows:

> **(a) The exceptions process in Goal 2 and OAR 660, division 4, is not applicable unless a local government chooses to take an exception to a particular goal requirement, for example, as provided in OAR 660-004-0010(1);**

FINDING: Applicant is not seeking any goal exception.

> **(b) Goals 3 and 4 are not applicable;**

FINDING: Goals 3 and 4 are not applicable.

> **(c) Goal 5 and related rules under OAR 660, division 23, apply only in areas added to the UGB, except as required under OAR 660-023-0070 and 660-023-0250;**

FINDING: There are no Goal 5 resources impacted by the proposed school locations.

> **(d) The transportation planning rule requirements under OAR 660-012-0060 need not be applied to a UGB amendment if the land added to the UGB is zoned as urbanizable land, either by retaining the zoning that was assigned prior to inclusion in the boundary or by assigning interim zoning that does not allow development that would generate more vehicle trips than development allowed by the zoning assigned prior to inclusion in the boundary;**

APPLICANT'S RESPONSE: The land being added to the UGB is currently zoned as urbanizable land - UAR-10 (Urban Area Reserve). The zoning for the property allows schools as a conditional use (Deschutes County Code 19.12.030(I) and Bend Code 2.1.200). Therefore the transportation planning rule 660-12-0060 is not applicable. When the City completes its UGB expansion it will likely rezone the school property to Public Facilities.

FINDING: The hearings officer concurs with the applicant's response.

(e) Goal 15 is not applicable to land added to the UGB unless the land is within the Willamette River Greenway Boundary;

FINDING: None of the property to be added to the UGB is within the Willamette River Greenway Boundary and therefore Goal 15 is not applicable to this Application.

(f) Goals 16 to 18 are not applicable to land added to the UGB unless the land is within a coastal shorelands boundary;

FINDING: None of the property to be added is within a coastal shorelands boundary and therefore Goals 16 and 18 are not applicable to this Application.

(g) Goal 19 is not applicable to a UGB amendment.

FINDING: Goal 19 is not addressed in this application.

(2) The UGB and amendments to the UGB must be shown on the city and county plan and zone maps at a scale sufficient to determine which particular lots or parcels are included in the UGB. Where a UGB does not follow lot or parcel lines, the map must provide sufficient information to determine the precise UGB location.

FINDING: The attached UGB expansion map, included as the applicant's *Exhibit 2*, shows the property to be added. The map provides sufficient information to determine the precise UGB location. The applicant will apply to the County for a lot line adjustment of the existing legal lot to create the subject parcel shown on the map. A legal description will be provided when the applicant submits the partition application. This criterion is met.

660-024-0030

Population Forecasts

(1) Counties must adopt and maintain a coordinated 20-year population forecast for the county and for each urban area within the county consistent with statutory requirements for such forecasts under ORS

195.025 and 195.036. Cities must adopt a 20-year population forecast for the urban area consistent with the coordinated county forecast, except that a metropolitan service district must adopt and maintain a 20-year population forecast for the area within its jurisdiction. In adopting the coordinated forecast, local governments must follow applicable procedures and requirements in ORS 197.610 to 197.650 and must provide notice to all other local governments in the county. The adopted forecast must be included in the comprehensive plan or in a document referenced by the plan.

FINDING: The City of Bend has adopted a 20 year population forecast and is in the process of considering expansion of the UGB. However, the applicant's need for new schools necessitates a UGB expansion for the school site in advance of the City process.

660-024-0040

Land Need

. . .

(3) A local government may review and amend the UGB in consideration of one category of land need (for example, housing need) without a simultaneous review and amendment in consideration of other categories of land need (for example, employment need).

APPLICANT'S RESPONSE: The Applicant seeks to amend the UGB in consideration of the need for additional public school facilities. Other categories of land need are being evaluated in the City of Bend's larger evaluation of its UGB and its UGB expansion plan. However, the need for the specific public facilities is immediate and cannot wait for the complete analysis of other land needs. The specific need for new elementary schools was discussed above in detail and is also thoroughly discussed in the 2005 Sites and Facilities Plan. As predicted in the 2005 Sites and Facilities Plan, elementary schools in the northeast quadrant of the City are reaching capacity and some are overcrowded. The public recognized the immediate need for two new elementary schools in the Bend area when it passed a bond measure. At the time there was an expectation that the City would complete its Urban Growth Boundary expansion in time to allow for these elementary schools to be met. However, delays in the UGB expansion process created the current situation which requires that the Applicant request a UGB expansion with the limited consideration of public facilities land for elementary schools.

FINDING: The City may review the present application without considering other properties under these circumstances and on account the demonstrated need as discussed above.

(4) The determination of 20-year residential land needs for an urban area must be consistent with the adopted 20-year coordinated population forecast for the urban area, and with the requirements for determining housing needs in Goal 10, OAR 660, division 7 or 8, and applicable provisions of ORS 197.295 to 197.314 and 197.475 to 197.490.

FINDING: This criterion does not apply.

(6) The determination of 20-year land needs for transportation and public facilities for an urban area must comply with applicable requirements of Goals 11 and 12, rules in OAR 660, divisions 11 and 12, and public facilities requirements in ORS 197.712 and 197.768. The determination of school facility needs must also comply with ORS 195.110 and 197.296 for local governments specified in those statutes.

APPLICANT'S RESPONSE: Relevant portions of Goal 11 and 12 will be addressed in more detail below. ORS 197.712 and 197.768 require an analysis of general public facilities such as sewer and water to be included in the Comprehensive Plans of cities and counties. Both the City of Bend and the Deschutes County Plans include such analysis.

ORS 195.110 (1) (a) A county or city containing a high growth school district shall include as an element of its comprehensive plan a school facility plan prepared by the high growth district in cooperation with the city or county.

(b) A county or city containing a high growth area shall initiate planning activities with a school district to accomplish planning as required under ORS 195.020.

(c) The provisions of paragraph (a) of this subsection do not apply to a city that contains less than 10 percent of the total population of a high growth school district.

(2) As used in this section, "high growth school district" means any school district that has an enrollment of over 5,000 students and had an increase in student enrollment of six percent or more during the three most recent school years, based on certified enrollment numbers submitted to the Department of Education during the first quarter of each new school year.

(3) The school facility plan shall identify school facility needs based on population growth projections and land use designations contained in the city or county comprehensive plan. The plan shall be updated during periodic review and may be updated more frequently by mutual agreement between the school district and the county or city.

APPLICANT'S RESPONSE: The Applicant has not been identified as a "high growth school district". However, the Applicant has adopted the 2005 Sites and Facilities Plan which, in essence, complies with the criteria outlined in ORS 195.110 (3).

FINDING: The hearings officer concurs with the findings in the 2005 Sites and Facilities Plan stated above. The applicant has also provided additional information in response to section (2) above. The information indicates the past four years of first quarter enrollment reports from the Oregon Department of Education show the School District grew from 13,940 in 2003-04 to 15,342 in 2006-07, a total growth of 1,402 students or 10.1% for the three year period. This does not meet the 6% annual growth threshold. In addition, in no single year did the growth reach the 6% benchmark. This criterion is met.

660-024-0050

Land Inventory and Response to Deficiency

(1) When evaluating or amending a UGB, a local government must inventory land inside the UGB to determine whether there is adequate development capacity to accommodate 20-year needs determined in OAR 660-024-0040. For residential land, the buildable land inventory must include vacant and redevelopable land, and be conducted in accordance with OAR 660-007-0045 or 660-008-0010, whichever is applicable, and ORS 197.296 for local governments subject to that statute. For employment land, the inventory must include suitable vacant and developed land designated for industrial or other employment use, and must be conducted in accordance with OAR 660-009-0015(3).

APPLICANT'S RESPONSE: As noted above the only need being evaluated by this specific UGB expansion application is the need for public facilities land to site a new elementary school. The Buildable Lands Study was completed in 2005. This study indicates that there is not sufficient land to meet the needs of the community's expected growth. The Buildable Lands Study is attached as Exhibit 5. The residential lands study underway will also address the expected needs for future school sites. The Economic Opportunities Analysis for the City that has been completed states that "Estimates [for k-12 education needs] is included in the 2007 RLS." See Exhibit 5. A draft of the City of Bend's residential lands study report states that there is an expected need of approximately 242 acres of land needed for new school sites between 2005 and 2030. The relevant pages of that draft report are included in Exhibit 5.

The need for the new elementary school is evident from the 2005 Sites and Facilities Plan where the expected deficiency in capacity was shown in Table 4 above. The 2005 Sites and Facilities Plan discusses potential sites for new elementary schools and the land need for such schools. Each new elementary school needs approximately 15 acres of space to allow adequate classroom space, parking, and recreational areas for six hundred students. There are no properties within the existing UGB in the 2005 Sites and Facilities Plan study area (see Exhibit 4) that are of adequate size or economically viable for the Applicant to acquire. Much of the land within the UGB in the area is already

developed with homes and businesses. The proposed site is the most suitable location taking into account site factors and availability. The Applicant seeks to expand the UGB to construct the needed elementary school on this site.

(5) When land is added to the UGB, the local government must assign appropriate urban plan designations to the added land, consistent with the need determination. The local government must also apply appropriate zoning to the added land consistent with the plan designation, or may maintain the land as urbanizable land either by retaining the zoning that was assigned prior to inclusion in the boundary or by applying other interim zoning that maintains the land's potential for planned urban development until the land is rezoned for the planned urban uses. The requirements of ORS 197.296 regarding planning and zoning also apply when local governments specified in that statute add land to the UGB.

APPLICANT'S RESPONSE: The current zoning of the property as UAR-10 may be maintained because the land is considered urbanizable land and allows the development of public schools as a conditional use. The City of Bend is currently performing the analysis required by ORS 197.296 in order to complete a full UGB expansion. The full analysis of residential housing patterns is not relevant to the analysis of whether there is sufficient room for new elementary schools within the existing UGB. The recent boom of housing development near the outskirts of the City's existing UGB means that there is no land with sufficient acreage to place elementary schools near the students that will attend them without expanding the UGB.

FINDING: The hearings officer finds the submitted 2005 Facilities and Site Plan Study adequately address these criteria.

660-024-0060

Boundary Location Alternatives Analysis

(1) When considering a UGB amendment, a local government must determine which land to add by evaluating alternative boundary locations. This determination must be consistent with the priority of land specified in ORS 197.298 and the boundary location factors of Goal 14, as follows:

> **(a) Beginning with the highest priority of land available, a local government must determine which land in that priority is suitable to accommodate the need deficiency determined under 660-024-0050.**

APPLICANT'S RESPONSE: The Applicant's property is zoned as urbanizable land, UAR-10, and is therefore the highest priority land available for the City of Bend to consider when expanding the UGB.

(b) If the amount of suitable land in the first priority category exceeds the amount necessary to satisfy the need deficiency, a local government must apply the location factors of Goal 14 to choose which land in that priority to include in the UGB.

APPLICANT'S RESPONSE: Because the Applicant is only requesting a limited amount of property to be included in the UGB, there is no excess suitable land in the first priority category.

(2) Notwithstanding OAR 660-024-0050(4) and subsection (1) (c) of this rule, except during periodic review or other legislative review of the UGB, a local government may approve an application under ORS 197.610 to 197.625 for a UGB amendment proposing to add an amount of land less than necessary to satisfy the land need deficiency determined under OAR 660-024-0050(4), provided the amendment complies with all other applicable requirements.

APPLICANT'S RESPONSE: The proposed UGB expansion will not meet all the needs for public facilities lands for schools identified in the draft residential land study attached. In this Application, the Applicant is adding the minimum amount of land necessary to meet the immediate needs for new elementary schools. Adding less than the amount of land necessary to meet the needs identified in the draft residential lands study is appropriate here because the City of Bend is in the process of a full UGB expansion analysis that will result in the appropriate amount of additional public facilities lands being added to the City of Bend. The sole purpose of this Application is to meet the immediate needs of the community to alleviate overcrowding in schools. The Applicant is an active participant in the City's overall UGB expansion and will work with the City and County to assure that adequate lands for schools are made available for future school development as part of the City's UGB expansion.

(3) The boundary location factors of Goal 14 are not independent criteria. When the factors are applied to compare alternative boundary locations and to determine the UGB location, a local government must show that all the factors were considered and balanced.

APPLICANT'S RESPONSE: The boundary location factors of Goal 14 were addressed above. In evaluating the proposed school site, the Applicant considered and balanced the applicable factors.

(4) In determining alternative land for evaluation under ORS 197.298, "land adjacent to the UGB" is not limited to those lots or parcels that abut the UGB, but also includes land in the vicinity of the UGB that has a reasonable potential to satisfy the identified need deficiency.

APPLICANT'S RESPONSE: The Applicant looked beyond lands adjacent to the UGB when it chose land that requires a 660 foot cherry stem to make it "adjacent" to the existing City boundary. However, for the reasons discussed throughout this burden of proof, this parcel of land best meets the needs of the Applicant in the northwest quadrant of the City. It is of the appropriate size in an area of high growth and it is near accessible utility services. Furthermore, the property was available at a reasonable cost to the Applicant.

(5) If a local government has specified characteristics such as parcel size, topography, or proximity that are necessary for land to be suitable for an identified need, the local government may limit its consideration to land that has the specified characteristics when it conducts the boundary location alternatives analysis and applies ORS 197.298.

APPLICANT'S RESPONSE: The Applicant has identified specific characteristics which are necessary for sites to be selected for elementary schools in the 2005 School Sites and Facilities Plan on page 30. Below is an analysis of how the site fits with those characteristics.

Few busy roads surround the school

The roads around the west, north and east of the school site are designed to be local roads. The roads will be constructed by the Applicant and initially there will be little to no traffic other than school traffic on the roads. Skyliners Road is not a high volume road at this location. The Applicant is conducting a traffic study that will confirm that the roads are not high volume roads.

Few physical barriers such as canals, railroads, or arterial streets

There are no canals or railroads by the proposed school site. The nearest arterial street is Mount Washington Drive which is approximately a mile from the entrance of the school.

Located in residential zones

The property is located in a Urban Area Reserve zone. The Urban Area Reserve zone allows residential uses.

Adjacent to park or future park where possible

If the surrounding area property is brought into the UGB through the City of Bend's process, the property owner, Miller Tree Farm, LLC, will likely seek to develop the area as a master planned development. The potential master planned development will include a nearby park. However, even if the surrounding property is not brought within the UGB, the school provides play fields and other recreational activities on site.

High student densities

The rapid development of properties to the east in the Northwest Crossing area has created high student densities near the school. Students will attend the school from areas both within and outside of the existing and expanded UGB. Further development that may occur in the area after the completion of the City's UGB expansion will also increase student densities. Regardless of whether the UGB actually expands, a new elementary school is needed at this location to eliminate the overcrowding at Highlakes Elementary.

Good walking access

The Applicant hopes to work with other property owners in the area to encourage the continuation of the multiuse path on the north side of Skyliners that currently ends at Mount Washington Drive. Additional walking access will be available through sidewalks along the local roads. The property is near expanding residential neighborhoods and as these neighborhoods build out students will be able to walk to the school.

Relatively flat topography

The property is of flat topography and will require little grading.

Appropriate size approximately 15 acres

The property is approximately 15 acres in size and will allow for the development of a six hundred student prototypical elementary school.

Low cost for water, sewer, and sidewalk extensions

Water connections are located in both Skyliners Road and in the actual site itself. The sewer can be accessed from Lolo Drive. The sewer and water lines can be placed in the streets prior to paving the streets to lower costs because the Applicant will be developing the local streets around the school.

At least two vehicular access points

There are two access points for the school. One access point is located on the western side of the property and the other access is located northeastern side of the property. The site plan attached as ***Exhibit 7*** *shows two access points.*

Lower site acquisition cost

The Applicant is acquiring the site at reduced cost because of an agreement with Miller Tree Farm, LLC, the owner of the property.

Partnership potential with Bend Metro Park and Recreation District

The proposed school site does not have partnership potential with the Bend Metro Park and Recreation District.

Zoning allows schools

The UAR -10 zone allows public schools as a conditional use. Deschutes County Code 19.12.030(I) and Bend Code 2.1.200.

Shape of site promotes efficient use of site

The nearly square shape of the site promotes efficient use of the site. The site will accommodate a prototypical 600 student elementary school, as shown on the site plan.

In additional comment from the School District (John Rexford), "there are two reasons why the site is not abutting Skyline Ranch Road. Our elementary school site selection criteria includes the preference for "few busy roads." Translating that into City planning speak, we prefer to site neighborhood elementary schools on local streets, rather than collectors or arterials. The fact that the proposed site is bounded on one side by Skyliners Road (a collector in the TSP) is a compromise. To locate a school at the intersection of two collectors (Skyliners and Skyline Ranch) would potentially create unsafe conditions for students biking and walking to school. In the current location, our safe route to school plan will focus on use of the local streets rather than Skyliners. The second, but related issue, is the proposed location in relation to Summit High School. We want to provide for a small neighborhood buffer between the "noisy, busy" activities of the high school and the quieter operation of a neighborhood elementary school. The Miller Tree Farm shadow plat contemplates residential development consistent with this goal in the area between the two school sites. This reflects the second of our elementary school siting criteria, "in residential zone."

FINDING: Based on the record as whole and the above responses of the applicant, the hearings officer finds there is sufficient information to find the above criteria to be met. With respect to low cost of water, sewer and sidewalk facilities, as noted that the site is located atop the City's main water transmission line and will be required to be relocated, likely along NW Skyliners Road, and reconnected offsite in conformance with the Public Works standards and specifications. In addition, the transportation facility along NW Skyliners Road will need to be improved to full urban standards. There will be substantial infrastructure improvements to accommodate including the site into the Urban Growth Boundary. As noted, with the agreement of the Planning Division, these can be addressed at time of site plan. Also, the conditions of approval are no longer requested by the planning division.

(6) The adopted findings for UGB adoption or amendment must describe or map all of the alternative areas evaluated in the boundary location alternatives analysis. If the analysis involves more than one parcel or area within a particular priority category in ORS 197.298 for which circumstances are the same, these parcels or areas may be considered and evaluated as a single group.

APPLICANT'S RESPONSE: The Applicant considered alternative sites in the 2005 Sites and Facilities Plan. A detailed analysis of these sites with maps showing the locations of the sites is included on pages 4- 8 in the 2005 Sites and Facilities Plan and is summarized here. The Administrative Center currently serves as the Applicant's office building. The site is located downtown and not near new residential development. The building is already used for many additional enrichment programs and is not of adequate size for an elementary school. The building does not have associated room for athletic fields. Troy field located adjacent to the Administrative building is only 0.9 acres in size and elementary schools need approximately 15 acres. The High Desert Middle School Site has a limited area still available for future development. However, this site is located in the southeastern corner of the city and the available area of site does not meet the needs for the school district because it is only about 7 acres. The Yew transportation yard is also in the wrong location and is only 6.39 acres in size. Therefore, none of the parcels that the Applicant owned was located in the area where the school was needed.

As discussed above, the Applicant searched for an available site of approximately 15 acres within the study area shown on Exhibit 4. All the properties within the study area and UGB were developed with residences and businesses or were slated for such development. The only vacant land with potential for a school site was the 445 acre Miller Tree Farm, LLC property outside the existing UGB. Therefore, the Applicant worked with Miller Tree Farm, LLC to identify an appropriately sized piece of land on its property that was in the vicinity of the demonstrated need for a new elementary school and was the appropriate size. Also as discussed above the site met all of the criteria set out by the Applicant. Given the size, location and price the site was chosen. No alternative sites of adequate size were identified in or near the area of need in the northwestern quadrant.

FINDING: The hearings officer concurs with the applicant's response and finds that this criterion is met. This is also based on the Bend La Pine Schools 2005 Sites and Facilities Plan.

(7) For purposes of Goal 14 Boundary Location Factor 2, "public facilities and services" means water, sanitary sewer, storm water management, and transportation facilities.

APPLICANT'S RESPONSE: Water, sewer, storm water management and transportation facilities were addressed above when evaluating Goal 14 Boundary Location Factor 2.

(8) The Goal 14 boundary location determination requires evaluation and comparison of the relative costs, advantages and disadvantages of alternative UGB expansion areas with respect to the provision of public facilities and services needed to urbanize alternative boundary locations. This evaluation and comparison must be conducted in coordination with service providers, including the Oregon Department of Transportation with regard to impacts on the state transportation system. "Coordination" includes timely notice to service providers and the consideration of evaluation methodologies recommended by service providers. The evaluation and comparison must include:

(a) The impacts to existing water, sanitary sewer, storm water and transportation facilities that serve nearby areas already inside the UGB;

APPLICANT'S RESPONSE: As discussed above water will be provided by connecting to existing city water lines and the Applicant is putting in a gravity flow system to allow sewage to get to the existing sewer lines. The City of Bend recently conducted a sewer master plan update and has identified several areas in the City's sewer master plan which need to be upgraded. However, the effect of a 600 student elementary school will not overburden the sewer system. The school sewage use is all at off peak times. The existing roads that provide service to the site have adequate service capacity to allow for the additional trips generated by a school site. The Applicant is in the process of conducting its traffic study for the Miller School Site. The Applicant expects the traffic study will not identify any additional mitigations necessary except those discussed above, specifically road and sidewalk construction to the site.

FINDING: As stated previously, the applicant has submitted a Traffic Impact Analysis. In addition, the applicant's engineer has submitted information to the City Engineering and Public Works Department in order to model the sewer capacity for the site. These issues, and any mitigation, will be addressed at the time of the site plan application.

(b) The capacity of existing public facilities and services to serve areas already inside the UGB as well as areas proposed for addition to the UGB; and

APPLICANT'S RESPONSE: There is existing capacity to serve the areas inside the UGB, as well as, the proposed area for addition to the UGB. Because the Applicant is seeking just a limited amount of property to accommodate its school site, no other areas are proposed for addition to the UGB.

FINDING: Public facilities have been discussed previously above. Those findings are incorporated and this criterion is met.

(c) The need for new transportation facilities, such as highways and other roadways, interchanges, arterials and collectors, additional travel lanes, other major improvements on existing roadways and, for urban areas of 25,000 or more, the provision of public transit service.

APPLICANT'S RESPONSE: No new major transportation facilities will be required. It is possible that as the City's public transit service expands, this area may be suitable for the addition of a route.

FINDING: According to the Urban Area Roadway System Plan, NW Skyliners Road is designated a major collector. No new major transportation facilities will be required. However, the existing transportation network is built to rural road standards and will need to be improved to City standards and specifications. The specific obligations with respect to public facility improvements will be prescribed in either an Annexation Agreement or at time of site plan. As stated previously, the applicant may be required to connect the stem along NW Skyliners Road to the site wide enough to accommodate full urban services. This criterion is met.

ORS 197.298

197.298 Priority of land to be included within urban growth boundary. (1) In addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary except under the following priorities:

(a) First priority is land that is designated urban reserve land under ORS 195.145, rule or metropolitan service district action plan.

APPLICANT'S RESPONSE: The subject property is designated as Urban Area Reserve in the Deschutes County Comprehensive Plan. This area is classified as "first" priority land to be considered for bringing into the urban area.

FINDING: The hearings officer concurs with adopts the applicant's response. This criterion is met.

DECISION AND RECOMMENDATION:

Based on the above findings and the record as whole, the hearings officer recommends that City Council approve the proposed UGB map amendment for the Westside Elementary site.

Dated this 7th day of September, 2007

Tim Elliott
City of Bend Hearings Officer

PZ 07-298
Bend LaPine School District
45 of 45

ORDINANCE NO. NS-2075

AN ORDINANCE ANNEXING 18.1 ACRES OF LAND LOCATED EAST OF NE PURCELL ROAD, SOUTH OF YEOMAN ROAD INTO THE CITY FOR THE PURPOSE OF BUILDING AN ELEMENTARY SCHOOL, DECLARING AN EMERGENCY AND PRESCRIBING AN EFFECTIVE DATE OF OCTOBER 3, 2007

WHEREAS, ORS 222.125 provides for annexation of real property to cities when 100 percent of the property owners a majority of electors registered in the territory proposed to be annexed consent to said annexation; and

WHEREAS, the City Council finds that 100 percent of property owners within the area to be annexed have filed a statement of consent to this annexation; and

WHEREAS, the City Council has determined that there are no registered electors within the territory; and

WHEREAS, the Council has elected to dispense with submitting the question of the proposed annexation of the described territory to the electors of the City; and

WHEREAS, the Council held a public hearing on September 19, 2007 to enable the public to appear and be heard on the question of annexation;

WHEREAS, notice of the above hearing was published on September 9,2007, in the Bulletin, a newspaper of general circulation in the City of Bend and notices of the hearing were sent to owners of property within 100 feet of the subject territory; and

WHEREAS, the below described territory is contiguous to the City limits of the City of Bend; and

WHEREAS, the subject property was brought into the City's Urban Growth Boundary pursuant to ordinances adopted by the City Council, and by the Deschutes County Board of Commissioners; and

WHEREAS, a portion of the territory is located within the Deschutes County Rural Fire Protection District No. 2, hereinafter referred to as "District"; and

WHEREAS, the City has determined that the portion of the territory to be annexed to the City that is currently located within the District should be withdrawn from the District; now therefore

THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

SECTION 1. That the territory containing 18.1 acres of land, which is described in Exhibit A and depicted on Exhibit B, is hereby declared to be annexed to the City of Bend:

SECTION 2. That the described territory is hereby withdrawn from the Deschutes County Rural Fire District upon the effective date of this ordinance.

SECTION 3. That the City hereby elects to assume those obligations of the District that are specified in ORS 222.520 (2)(b).

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 October 3, 2007.

Read for the first time the 19th day of September, 2007.

Read for the second time the 3rd day of October, 2007.

Placed into effect upon the 3rd day of October, 2007.

YES: 7 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 3rd day of October, 2007.

Bruce Abernethy, Mayor

Attest:

Patricia Stell, City Recorder

EXHIBIT A

Legal Description for
Pine Nursery School Site

A parcel of land located in the Southwest One-quarter of the Southeast One-quarter (SW 1/4of the SE 1/4) of Section 15 and the Northwest One-quarter of the Northeast One-quarter (NW 1/4 of the NE 1/4) of Section 22, Township 17 South, Range 12 East, Willamette Meridian, Deschutes County, Oregon, said parcel being more particularly described as follows:

Beginning at One-quarter corner common to Section 15 and 22, Township 17 South, Range 12 East , Willamette Meridian, Deschutes County, Oregon, thence North 00° 01'38" West, 30.00 feet to a point on the northerly right of way of Yeoman Road, North 89°37'08" East, 790.57 feet; thence leaving said northerly right of way, South 00° 00'00" West 30.00 feet to a point on the line between said Sections 15 and 22; thence continuing South 00°00'00" West 279.96 feet; thence South 55°00'00" West, 301.94 feet; thence South 00°00'00" West 240.87 feet; thence South 12°34'57" East, 158.62 feet; thence South 30°00'00" East, 268.60 feet; thence South 00°00'00" West, 87.84 feet; thence North 90°00'00" West, 711.50 feet to the north-south center line of said Section 22; thence along said center line, North 00°01'38" West, 1164.02 feet to the point of beginning.

Said parcel contains 18.1 acres, more or less

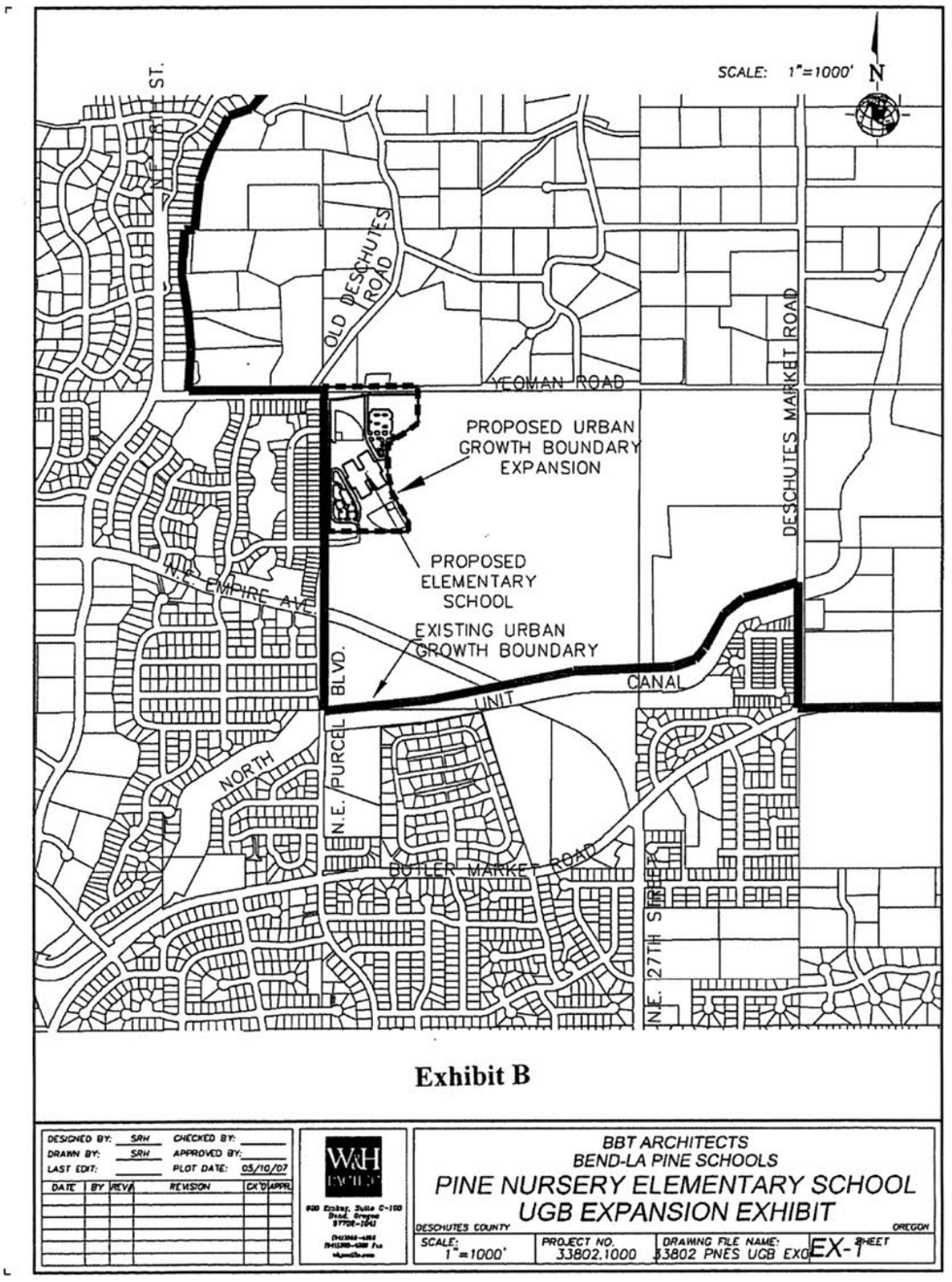


Exhibit B

DESIGNED BY: SRH	CHECKED BY:	BBT ARCHITECTS	
DRAWN BY: SRH	APPROVED BY:	BEND-LA PINE SCHOOLS	
LAST EDIT:	PLOT DATE: 05/10/07	PINE NURSERY ELEMENTARY SCHOOL	
DATE / BY / REV# / REVISION / CK'D/APPR.		UGB EXPANSION EXHIBIT	
		DESCHUTES COUNTY	OREGON
		SCALE: 1"=1000' / PROJECT NO. 33802.1000 / DRAWING FILE NAME: 33802 PNES UGB EXH	SHEET EX-1

ORDINANCE NO. NS-2076

AN ORDINANCE AMENDING THE CITY OF BEND DEVELOPMENT CODE NO. NO. NS-2016 BY CHANGING BY THE GENERAL PLAN DESIGNATION AND BY CHANGING THE ZONING MAP DESIGNATION FOR THE AREA OF SPECIAL INTEREST IDENTIFIED AS AREA OF SPECIAL INTEREST #14

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 August 27, 2007 file number PZ 07-388.

Section 2. The Bend Urban Area General Plan and Bend urban Area Zoning Maps are amended by changing the boundary of ASI #14 by eliminating the portion of the ASI as shown as shown in "Exhibit A" from Lot 29 so that the ASI line does not extend past the North boundary line of Lot 32 North Brinson Business Park Phase I.

.

Read for the first time the 19th day of September, 2007.

Read for the second time the 3rd day of October, 2007.

Placed upon its passage the 3rd day of October, 2007.

YES: 6 NO: 1

Authenticated by the Mayor the 3rd day of October, 2007.

Bruce Abernethy

Bruce Abernethy, Mayor

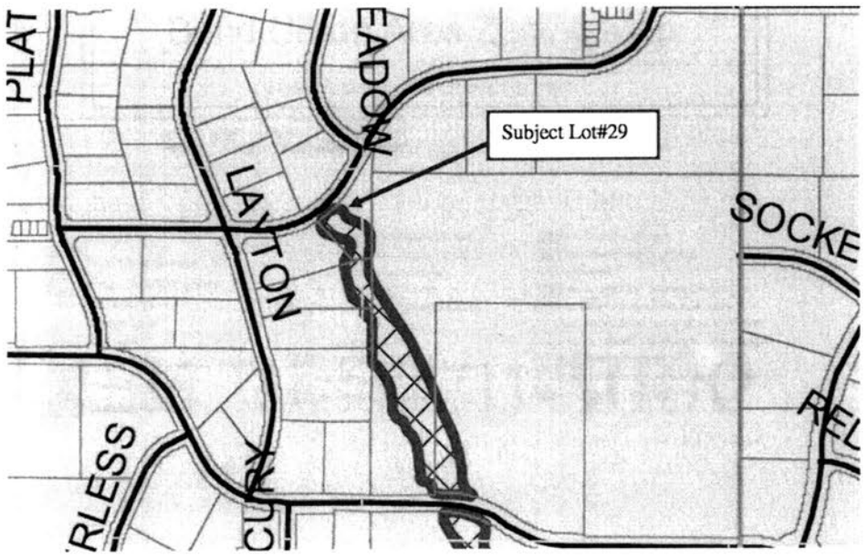
ATTEST:

Patricia S Stell

Patricia Stell, City of Bend Recorder

EXHIBIT A

ASI Zoning Overlay / Light Industrial Zone / North Brinson Business Park



ORDINANCE NO. NS-2077

AN ORDINANCE AMENDING THE BEND URBAN AREA ZONING MAP BY CHANGING THE ZONING DESIGNATION OF A PARCEL OF LAND TOTALING 5.46 ACRES FROM RESIDENTIAL URBAN STANDARD DENSITY (RS) TO RESIDENTIAL URBAN MEDIUM DENSITY (RM).

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 September 21, 2007, file numbers PZ 06-862 and PZ 06-863.

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 Standard Density (RM).

Read for the first time the 3rd day of October, 2007.

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

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

YES: 7 NO: 0

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

Bruce Abernethy, Mayor

ATTEST:

Patricia Stell, City of Bend Recorder

EXHIBIT A



Approximate 5.46 acre Subject Site. Land Use File PZ 06-862, Zone Change for EMP Milan Villa, LLC (RS to RM).

EXHIBIT B

A PORTION OF TRACT 4 OF NORWOOD, SAID PARCEL BEING LOCATED IN THE NORTHEAST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER (NE1/4 NE1/4) OF SECTION TWENTY (20), TOWNSHIP SEVENTEEN (17) SOUTH, RANGE TWELVE (12) EAST OF THE WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING OF THE NORTHWEST CORNER OF SAID TRACT 4 OF NORWOOD; THENCE ALONG THE WEST LINE OF SAID TRACT 4 SOUTH 0° 25'16" WEST A DISTANCE OF 480.25 FEET; THENCE EAST A DISTANCE OF 497.14 FEET TO A 5/8" RE-BAR WITH A PLASTIC CAP MARKED P.L.S. 599 ON THE EAST BOUNDARY OF SAID TRACT 4; THENCE NORTH ALONG THE EAST LINE OF SAID TRACT 4 OF NORWOOD TO THE NORTHEAST CORNER OF SAID TRACT 4; THENCE ALONG THE NORTH LINE NORTH 89° 55'44" WEST 493.68 FEET TO THE POINT OF BEGINNING.

ORDINANCE NO. NS-2078

AN ORDINANCE AMENDING THE BEND URBAN AREA ZONING MAP BY CHANGING THE ZONING DESIGNATION OF A PARCEL OF LAND TOATLING 9.1 ACRES NORTHWEST OF PILOT BUTTE STATE PARK 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 September 13, 2007, file numbers PZ 07-375 and PZ 07-377.

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 3rd day of October, 2007.

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

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

YES: 7 NO: 0

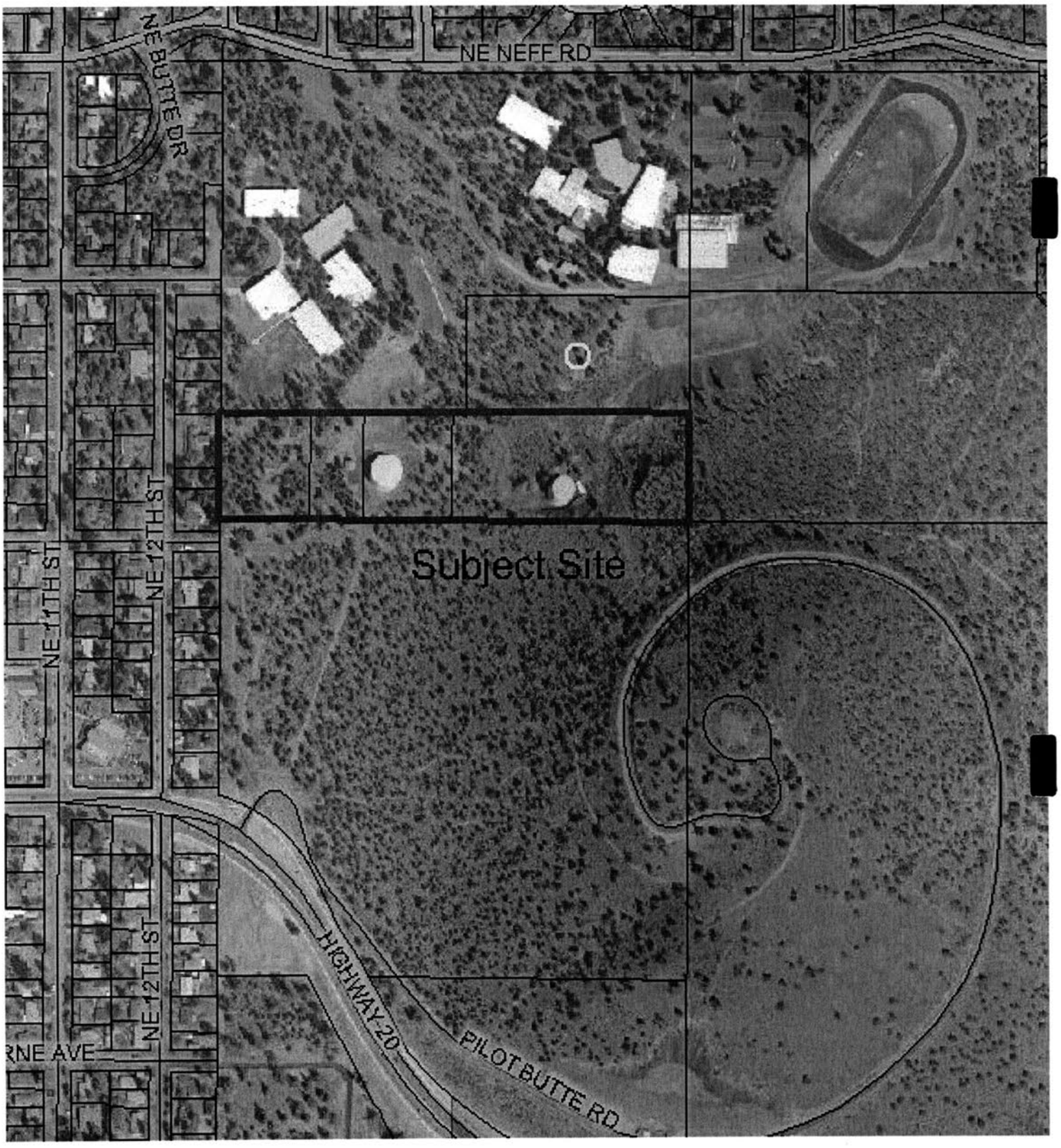
Authenticated by the Mayor the 17th day of October, 2007.

Bruce Abernethy, Mayor

ATTEST:

Patricia Stell, City of Bend Recorder

EXHIBIT A



PZ 07-375 Zone Change for City of Bend Well #4 (RS to PF)

EXHIBIT B

A parcel located in the northeast 1/4 of the northeast 1/4 of Section 33 in Township 17 South and Range 12 East of the Willamette Meridian, City of Bend, Deschutes County, Oregon, as shown on the attached map and fully described as follows:

Beginning at the northeast 1/16 corner of said Section 33; thence North 00°01'44" East 300.00 feet, along the west line of said northeast 1/4 of the northeast 1/4; thence South 89°57'35" East 1318.14 feet to the east line of said Section 33; thence South 00°09'06" East 300.00 feet to the southeast corner of said northeast 1/4 of the northeast 1/4; thence leaving said east line, North 89°57'35" West 1319.09 feet to the point of beginning; contains 9.08 acres.

ORDINANCE NO. NS-2079

AN ORDINANCE VACATING AN EASEMENT THAT LIES WITHIN THE SE ¼ of the NW ¼ of Section 31, 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 October 17th, 2007 by David Evans and Associates, Inc. on behalf of Diamond Built Homes, LLC requesting that the easement described in ordinance ORD NS-1589 be vacated:

SEE EXHIBIT ON ATTACHED ORDINANCE ORD NS-1589

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 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 easement 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 7th day of November, 2007.

Read for the second time the 19th day of November, 2007.

Placed upon its passage the 19th day of November, 2007.

Yes: 6 No: 0

Authenticated by the Mayor the 19th day of November, 2007.

Bruce Abernethy

Bruce Abernethy, Mayor

Attest:

Kim Meyers

~~Patty Stell~~, City Recorder

Kim Meyers Deputy

After recording return to:

Deputy City Recorder
City of Bend
710 NW Wall
Bend OR 97701

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK

2008-01461

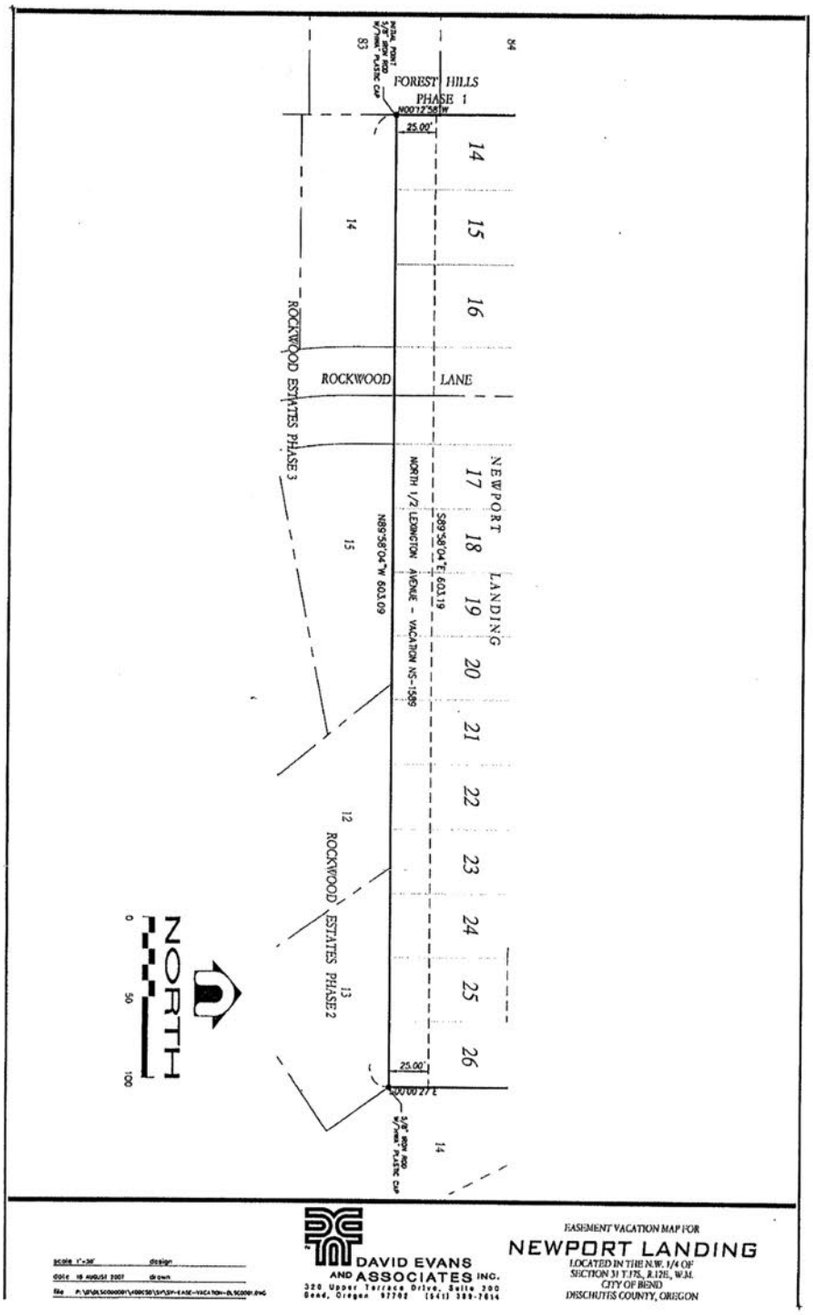
$76.00

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D-IPPS Cnt=1 Stn=23 CLERK
$30.00 $11.00 $10.00 $5.00 $20.00


SE1/4 NW1/4 SEC. 31 T.17S. R.12E. W.M.
DESCHUTES COUNTY
17 12 31BD & INDEX
17-12 31BD & INDEX
SEE MAP 17 12 31BD
SEE MAP 17 12 31BC
SEE MAP 17 12 31AC
SEE MAP 17 12 31BA
SEE MAP 17 12 31CA
SEE MAP 17 12 31BD SUPPLEMENTAL MAP NO. 1
17TH STREET
15TH STREET
SHEVLIN PARK MARKET ROAD
NEWPORT AVENUE
MILWAUKEE AVENUE
KNOXVILLE AVENUE
KNOXVILLE CT
ROCKWOOD LANE
LEXINGTON AVENUE
STANNIUM ROAD
KINGSTON AVENUE
ITHACA AVENUE
JACKSONVILLE AVE
BOULEVARD
ROCKWOOD ESTATES PHASE I
ROCKWOOD ESTATES PHASE IV
PP1993-48


FOREST HILLS
PHASE 1
N00°12'58"W
25.00'
ROCKWOOD LANE
ROCKWOOD ESTATES PHASE 3
ROCKWOOD ESTATES PHASE 2
NEWPORT LANDING
NORTH 1/2 LEXINGTON AVENUE - VACATION NS-1589
N89°58'04"W 603.09
S89°58'04"E 603.19
25.00'
S00°00'27"E
14
15
16
17
18
19
20
21
22
23
24
25
26
12
13
83
84
NORTH
0
50
100
DAVID EVANS AND ASSOCIATES INC.
320 Upper Terrace Drive, Suite 200
Bend, Oregon 97702 (541) 389-7614
EASEMENT VACATION MAP FOR
NEWPORT LANDING
LOCATED IN THE N.W. 1/4 OF
SECTION 31 T.17S., R.12E., W.M.
CITY OF BEND
DESCHUTES COUNTY, OREGON

DAVID EVANS
AND ASSOCIATES INC.

EXHIBIT A

NEWPORT LANDING

Lexington Avenue Vacation

A part of the north 1/2 of Lexington Avenue located in the southeast 1/4 of the northwest 1/4 of Section 31 of Township 17 South and Range 12 East of the Willamette Meridian, City of Bend, Deschutes County, Oregon fully described as follows:

Beginning at a 5/8" iron rod with a yellow plastic cap stamped "HWA" at the northwest corner of Rockwood Estates; thence North 00°12'58" West 25.00 feet, along the east boundary of Forest Hills Phase I, to the north right-of-way of vacated Lexington Avenue; thence leaving said east boundary and following said north right-of-way, South 89°58'04" East 603.19 feet to the west boundary of Lot 14 of Rockwood Estates, Phase II; thence South 00°00'27" East 25.00 feet to a 5/8" iron rod at the common corner to Lots 13 and 14 on the boundary of Rockwood Estates, Phase II; thence North 89°58'04" West 603.09 feet to the point of beginning; contains 15,078 square feet.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 18, 1980
JERRY C. POWELL
1919

RENEWS 12-31-2008

August 17, 2007
P:\D\DBHL00000001\0600INFO\LexingtonVacation.doc

320 Upper Terrace Drive Suite 200 Bend Oregon 97702 Telephone: 541.389.7614 Facsimile: 541.389.7623

93-14151

297 - 2260

ORDINANCE NO. NS-1589

AN ORDINANCE VACATING A PORTION OF NW LEXINGTON AVENUE, CITY OF BEND, DESCHUTES, COUNTY, OREGON.

A petition having been presented to the Bend City Commission on February 3, 1993, requesting that the following described area be vacated:

> A portion of NW LEXINGTON AVENUE lying between Blocks 5, 6, 7, 8, and 9 original Bonne Homme Addition plat, also being that portion of NW LEXINGTON AVENUE from the westerly right-of-way line of NW KNOXVILLE BLVD. running west to the end of the original plat

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 Recorder of the City of Bend having caused a notice of public hearing for vacation of public property describing the above portion of NW LEXINGTON AVENUE right of way 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 Recorder 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 Commission of the City of Bend having fixed the 7th April, 1993, at 7:30 p.m. local time in the City Commission 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 Commission 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 right of way of NW LEXINGTON AVENUE, 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.

Return to: Bend City Recorder
P.O. Box 431
Bend, OR 97709

297 - 2261

Read for the first time the 7th day of April, 1993.

Read for the second time the 21st day of April, 1993.

Placed upon its passage the 21st day of April, 1993.

Yes: 6 No: 1

Authenticated by the Mayor this 21st day of April, 1993.

Mayor

ATTEST:

Recorder-Treasurer

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:

93 MAY -5 AM 10:52

MARY SUE PENHOLLOW
COUNTY CLERK

BY. M Barcks DEPUTY
NO. 93-14151 FEE 10.00
DESCHUTES COUNTY OFFICIAL RECORDS

ORDINANCE NO. NS-2080

AN ORDINANCE VACATING A PUBLIC ALLEY, located in the S ¼ of Section 32, Township 17 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 for $19,636.72

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 19th day of December, 2007.

Placed upon its passage the 19th day of December, 2007.

Yes: 6 No: 0

Authenticated by the Mayor the 19th day of December, 2007.

Bruce Abernethy, Mayor

ATTEST:

Kim Meyers, Deputy City Recorder

After recording return to
Deputy City Recorder
City of Bend
710 NW Wall
Bend OR 97701

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK

2008-01462

$61.00

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01/11/2008 01:19:06 PM

D-IPPS Cnt=1 Stn=23 CLERK
$15.00 $11.00 $10.00 $5.00 $20.00

W&H PACIFIC
AN ASCG COMPANY

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

EXHIBIT A

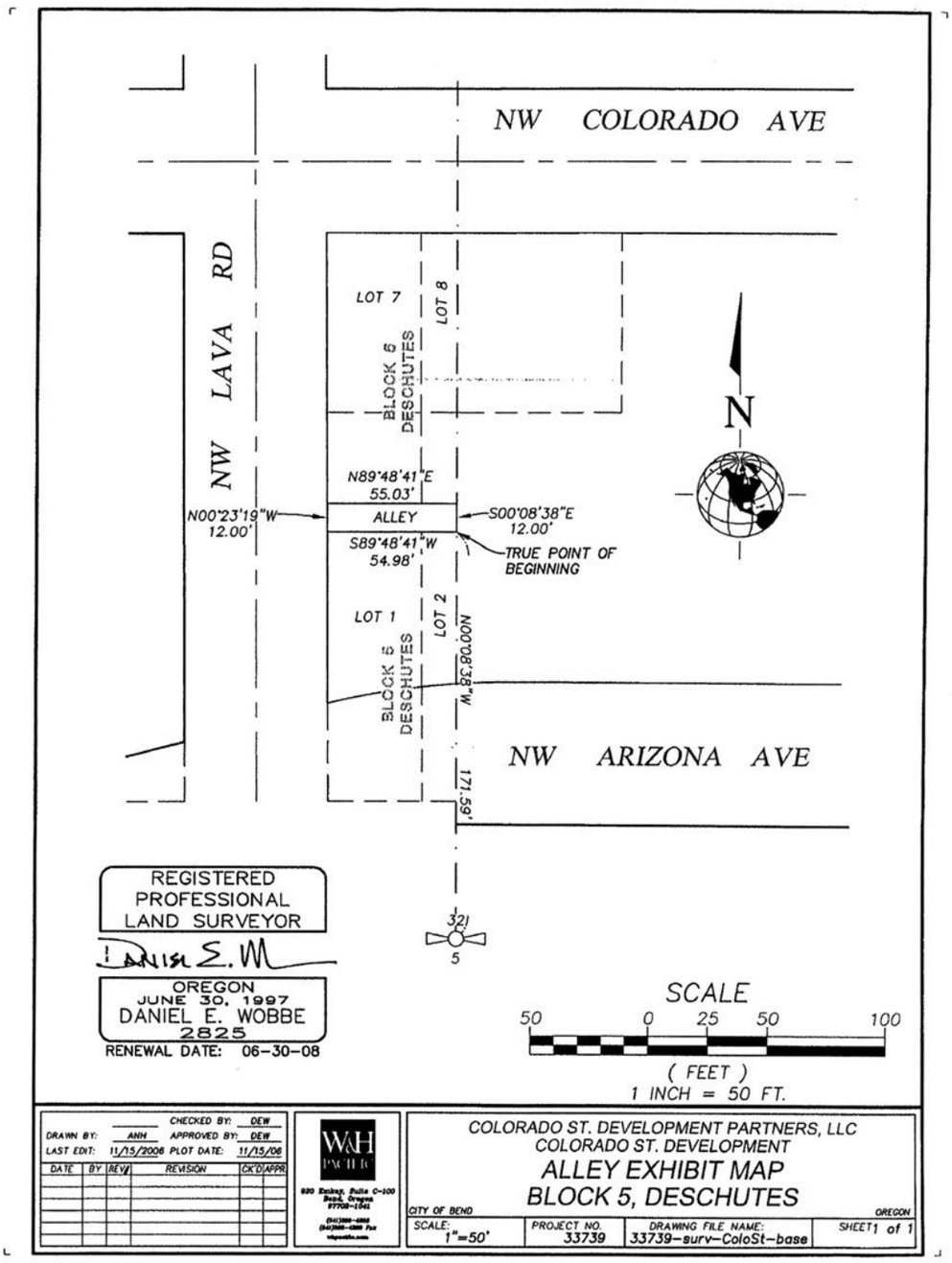
A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 32, TOWNSHIP 17 SOUTH, RANGE 12 EAST, WILLAMETTE MERIDIAN, CITY OF BEND, DESCHUTES COUNTY, OREGON

Beginning at the South ¼ corner of Section 32, Township 17 South, Range 12 East, Willamette Meridian; thence along the eastern boundary of the plat of *Deschutes* recorded in Deschutes County survey records as CS06625, N00°08'38"W, 171.59 feet to the **True Point of Beginning** and the northeast corner of Lot 2, Block 5 of said plat; thence leaving said westerly boundary and along the north lines of Lots 1 and 2 of said block, S89°48'41"W, 54.98 feet to the northwest corner of said Lot 1 and the easterly right-of way of Lava Road; thence leaving said north line and along said easterly right-of-way N00°23'19"W, 12.00 feet to the southwest corner of Lot 7 of said block; thence along the south line of Lot 7 and 8 of said block, N89°48'41"E, 55.03 feet to the southeast corner of said Lot 8 and said easterly boundary of said plat; thence south along said easterly boundary, S00°08'38"E, 12.00 feet to the northeast corner of said Lot 2 and the **True Point of Beginning.**

This description contains 660 square feet more or less.

Herein described bearings are based upon the Deschutes County Grid.




NW COLORADO AVE
NW LAVA RD
LOT 7
LOT 8
BLOCK 6
DESCHUTES
N89°48'41"E
55.03'
N00°23'19"W
12.00'
ALLEY
S00°08'38"E
12.00'
S89°48'41"W
54.98'
TRUE POINT OF BEGINNING
LOT 1
LOT 2
BLOCK 5
DESCHUTES
N00°08'38"W
171.59'
NW ARIZONA AVE
N
REGISTERED
PROFESSIONAL
LAND SURVEYOR
OREGON
JUNE 30, 1997
DANIEL E. WOBBE
2825
RENEWAL DATE: 06-30-08
SCALE
50 0 25 50 100
(FEET)
1 INCH = 50 FT.
DRAWN BY: ANH
CHECKED BY: DEW
LAST EDIT: 11/15/2006
APPROVED BY: DEW
PLOT DATE: 11/15/06
DATE | BY | REV | REVISION | CK'D | APPR
W&H PACIFIC
COLORADO ST. DEVELOPMENT PARTNERS, LLC
COLORADO ST. DEVELOPMENT
ALLEY EXHIBIT MAP
BLOCK 5, DESCHUTES
CITY OF BEND
OREGON
SCALE: 1"=50'
PROJECT NO. 33739
DRAWING FILE NAME: 33739-surv-ColoSt-base
SHEET 1 of 1

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Ordinance NS-2081

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

THE CITY OF BEND ORDAINS AS FOLLOWS:

WHEREAS, the State Legislature during the 2007 Legislative Session adopted HB 2735 which amended the State Mobile Home Park Law in several ways including the authorization for City's with existing ordinance to enforce those ordinances and to amend the ordinances prior to December 26, 2007;

WHEREAS, the City Council desires to amend its current closure ordinance to reflect the changes in state law as a result of HB 2735 and to simplify the closure permit process while protecting the rights of Park Owners and Owner-Tenants of mobile homes within Mobile Home Parks that are being closed.

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, Jefferson, Crook and northern Klamath Counties 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 813-060-0010, 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 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 7.266.

(c) The Payment Plan pursuant to Section 7.268.

(d) Notice pursuant to 7.270.

(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. 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 and tenants by providing a list of all comparable manufactured home parks spaces within ~~the City of Bend and in~~ Deschutes, Crook, Jefferson and northern Klamath ~~County~~ Counties. 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.

D. Section 7.268 -- ~~Relocation~~ Payment Plan

1. A ~~Relocation~~ Payment 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~~ Payment Plan shall provide, at a minimum, for the following:

(a) Units ~~to be~~ That Can Be Relocated -- The Payment Plan for units that can be relocated shall provide for the owner to pay the tenants the amount stipulated by Oregon State Law (ORS 90.505 to 90.840) and:

For each Single Wide Unit an additional $1,000
For each Double Wide Unit an additional $3,000
For each Triple Wide Unit an additional $3,500

These additional amounts shall be 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).

The park owner is not required to provide the additional amount(s) stipulated above to the tenant until such time as the manufactured home unit has been removed from the park.

~~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 – (1)The relocation plan shall identify those manufactured homes that cannot be relocated to a comparable manufactured home park space in Deschutes, Crook, Jefferson and northern Klamath ~~County~~ Counties. 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 greater of the:

The Real market value, per Deschutes County Property Records, of the home as reported on the most recent property tax assessment roll.

OR:

the amount stipulated by Oregon State Law (HB 2735ORS 90.505 to 90.840).

(2)The Owner shall be responsible for the cost of disposal of the mobile home park unit for those units that cannot be relocated.

(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 and shall provide, at a minimum, the amount stipulated by Oregon State Law (ORS 90.505 to 90.840).

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.

(k) 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

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 in Deschutes, Crook, Jefferson and northern Klamath County Counties. or that the owner has agreed to purchase any manufactured home that cannot be relocated as described in Section 7.268.~~ That the payment plan meets the requirements of 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)~~(c) 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

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.

H. 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.

I. Section 7.279 -- Affordable Housing Density Bonus

1. Owners who perform their obligations in sections 7.262 through 7.270 of this Ordinance shall qualify for the Density Bonus Program subject to the additional requirements contained in this Section 7.279.

2. Increased Density. The City ~~intends to~~ has adopted 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~~ permits increased density within the manufactured home park but requires that the Park Owner enter into a development agreement which shall contain the requirements set forth in Section 7.279.~~protecting manufactured home park tenants and expanding affordable housing opportunities.~~ .

(a) Owners shall provide a minimum of 10% of new units in development meeting the affordability requirements of this ordinance.

(b) Affordability requirements. ~~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,~~

(1)The Owner must ~~be affordable and offered~~ offer to qualified tenants who are being displaced and whose units cannot be moved the opportunity to ~~,~~ either ~~for~~ rent or purchase~~, to tenants who are being displaced and whose units cannot be moved~~ one of the affordable units.

(2)The mortgage/rent for these Tenants ~~new mortgage/rent~~ shall not be greater than the higher of:

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

(ii) 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

(iii) 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.

(iv) 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)~~ (c)Any displaced tenant owner shall be assured of affordable transitional housing and the payment of any necessary and reasonable moving expenses for personal property 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 this section 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 7.268. 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)~~ (d)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)~~ (e)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)~~ (f)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 7.292 . 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)~~ (g)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 7.292

(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 7.292.

(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 Neighbor Impact (or designated successor) and shall be utilized, minus administrative costs, to assist a future purchaser of the property. Neighbor Impact will market the property to eligible purchasers as stated in Section 7.292. 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 this section 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.

Read for the first time the 5th day of December, 2007.

Read for the second time the 19th day of December, 2007.

Placed upon its passage the 19th day of December, 2007.

YES: 4 NO: 2

Authenticated by the Mayor the 19th day of December, 2007.

Bruce Abernethy, Mayor

ATTEST:

Kim Meyers, Deputy City Recorder

ORDINANCE NO. NS-2082

AN ORDINANCE AMENDING THE CITY OF BEND DEVELOPMENT CODE NO. NS-2016 IN RESPONSE TO THE DLCD REMAND ORDER NO. 001718

WHEREAS the City has met with representatives of COBA and Palmer Homes, and

WHEREAS, the proposed code text changes derived through mediation with COBA and Palmer Homes satisfy their objections to the Development Code, and

WHEREAS, The proposed code changes satisfy the DLCD Remand Order 001718,

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. Chapter 1.2 is hereby amended to add and or replace as necessary the following definitions:

Building Height means the average maximum vertical height of a building or structure measured at a minimum of three points from *finished grade* along each building elevation. Architectural elements that do not add floor area to a building or structure, such as chimneys, vents, antennae and towers are not considered part of the height of a building or structure.

Grade, Finished means the grade measured within 2 feet from the foundation wall of the building or structure where the elevation of the surface of the ground does not exceed 2 feet above or below the *existing grade*. For sloping sites exceeding 12% slope, the finished grade shall not exceed 4 feet above or below the existing grade unless the finished grade has been set through a grading and or drainage plan approved by the City. The term "finished grade" may also mean *existing grade* when no terrain alteration is proposed. Fill which is not necessary to achieve positive drainage or slope stabilization, or which is otherwise proposed clearly to raise the finished floor elevation(s) for any other purpose, shall not be considered finished grade.

Grade, Existing means the existing condition of the elevation of the ground surface at the time of permit application and which represents (1) the natural grade prior to placement of fill on the site or the excavation or removal of earth from the site, or (2) the manufactured grade following the completion of an approved grading operation including grading approved in conjunction with the subdivision of the site.

Section 2. Chapter 2.1.300(C), (D) and (E) of NS-2016 is hereby amended to read as follows:

C. Front Yard Setbacks.

1. RL, SR 2 ½ and UAR Districts:

   a. A minimum front yard setback of 20 feet is required for buildings or structures, except on corner lots within a platted subdivision, one front yard setback can be 10 feet, provided that the garage is setback a minimum of 20 feet from the front property line.

   b. Exception

      i. An uncovered deck or unenclosed, covered porch with a maximum

floor height of 18 inches may be within 10 feet of the front property line.

2. RS, RM-10, RM, and RH, Districts:

   a. A minimum front yard setback of 10 feet is required provided that the garage is setback a minimum of 20 feet from the front property line.

   b. Garages and carports shall be accessed from alleys where practical, otherwise garages with street access shall be set back a minimum of 20 feet from the front property line. In this instance, the term practical shall mean that there is an existing or platted alley that could be used *"as is"* or improved to provide access.

   c. Exceptions.

      i. An uncovered deck or unenclosed, covered porch not exceeding 18 inches in height may be within 6 feet of the front property line, as long as it does not encroach into a public utility easement.

      ii. When garages on corner lots are accessed from an alley the front setback for the garage side wall may be a minimum of 10 feet from the front property line. In this case, the garage must have at least two windows in the side wall facing the street that are a minimum of 2 feet by 3 feet each. The garage structure must comply with the clear vision standards in Section 3.1.400N.

      iii. Lots with double frontage, the front yards abutting an arterial or collector street shall be a minimum of 20 feet for all structures.

D. Rear Yard Setbacks.

1. RL, SR 2 ½ and UAR Districts: The minimum rear yard setback shall be 20 feet for buildings or structures, except in the RL zone on corner lots within a platted subdivision, the minimum rear yard setback can be 10 feet.

2. RS: The minimum rear yard shall be 5 feet.

3. RM-10, RM and RH Districts :

   a. For single-family detached dwellings, the rear yard setbacks for the RS zone shall apply.
   b. For other buildings or structures – The minimum rear yard setback shall be 5 feet except when abutting the RS zone or an existing single family home, the rear yard setback shall increase ½ ft for each foot by which the building height exceeds 20 ft.

E. Side Yard Setbacks.

1. RL, SR 2 ½ and UAR District: The minimum side yard setback shall be 10 feet.

2. RS Districts: The minimum side yard shall be 5 feet.

   Exception: For development in conformance with the provisions of Chapter 3.6.200(A) for Courtyard Housing, a 3-foot minimum side yard is permitted.

3. RM-10, RM and RH Districts: The minimum side yard setbacks shall be 5 feet, except when abutting the RS zone or an existing single family home, the sum of the side yard setback shall increase ½ ft for each foot by which

the building height exceeds 20 ft, unless otherwise exempted in subsection 2.1.300F below.

Section 3. Table 2.1.300 is hereby amended to read as follows:

	Front	Rear	*Side
UAR	10ft/ 20 ft	20 ft	10 ft
SR 2 ½	10ft/ 20 ft	20 ft	10 ft
RL	10ft /20 ft	10 ft/20 ft	10 ft
RS	10 ft, except garages shall be set back 20 feet.	5 ft minimum;	*3ft /5ft min ;
RM-10, RM and RH	10 ft , except garages shall be setback 20 ft.	5 ft minimum. Rear yard shall increase ½ ft for each foot by which the building height exceeds 20 ft. when abutting the RS zone or existing single family housing.	5 ft minimum. The sum of the side yard shall increase ½ ft for each foot by which the building height exceeds 20 ft. when abutting the RS zone or existing single family housing

Section 4. Chapter 2.1.300(G) is hereby amended to read as follows:

G. Residential Compatibility Standards. The following standards shall apply to new lots or parcels created through either a subdivision and /or partition platted after February 20, 2004:

1. Purpose. The residential compatibility standards in this section are intended to provide added protection to residentially zoned properties and existing neighborhoods from potential impacts sometimes associated with increased residential density development.

2. Applicability. The residential compatibility standards shall apply to all RS zoned development properties that are abutting existing residential property, excluding land in the RM and RH zoning districts, which have a lot size of 8,000 square feet or greater.

3. Lot Development Standards.

   a. No more than two new lots, parcels or portions thereof shall adjoin an existing abutting property boundary.

   b. New lots or parcels or portions there of along an adjoining property boundary where existing properties are 20,000 square feet or greater shall be at least 15,000 square feet in area.

4. Building Setbacks. The building setback regulations of the Residential Compatibility Standards shall apply to the side and/or rear setbacks of lots or parcels or portions there of that abut the existing development in accordance with the following standards:

   a. Minimum Rear Yard Setback. The rear yard setback of the subject property shall be the same as the required rear yard setback of the abutting existing property.

   b. Minimum Side Yard Setback. The side yard setback of the subject property shall be the same as the required side yard setback for the abutting existing property.

5. Interior Lot Development. Where the application of the Residential Compatibility Standards reduces the overall density of a development by requiring large lot development along the perimeter, the developer may use lot averaging to achieve the density of the RS zone. This may result in interior lot sizes that are smaller than 4,000 sq ft. In no instance, shall the proposed development exceed the maximum density of the underlying zone.

6. Exceptions to the Lot Development Standards.

   a. When the adjoining existing property width is greater than 300 feet, the developer may establish a lot pattern along the adjoining property boundary consisting of 15,000 square foot lots or parcels with a minimum lot depth of 100 feet. In no instance as described above, shall the new development lots or parcels be required by this section to exceed 15,000 square feet in size. This exception may result in more than two (2) new lots or parcels abutting an existing large property.

   b. Public or private alleys, streets with less than 60-foot right of way, and open space tracts less than 30 feet in width shall not be allowed to abut an existing property boundary as a means of circumventing the compatibility standards provided herein.

   c. As an exception to 6(b) above, where public or private street alignements are set or are projected to meet the City's transportation grid system, right of way dedication no less than 40 feet in width shall be allowed.

   d. When the adjoining existing residential development is bordered by a common open space tract less than 30 feet in width, the new development shall be subject to the Residential Compatibility Standards in Section 2.1.300 (G).

7. Waiver of the Residential Compatibility Standards. The Residential Compatibility Standards established in 2.1.300(G) shall be waived where one or more of the conditions described in paragraphs (a) through (f) below is shown to exist: .

   a. If an RS zoned development property meets all of the following criteria it may be exempt from the Residential Compatibility Standards.

      i. Existing dwellings on adjacent properties are at least 100 feet from the proposed residential lots or parcels.
      ii. Adjacent properties have potential for redevelopment at median RS density.

   b. When the adjoining existing property is developed with a non-residential use or the adjoining residential use is a higher density than that of the proposed development. For Example: a manufactured home park

   c. When the adjacent property is vacant. For the purpose of this code section, vacant shall mean a property without a residential dwelling.

   d. When developing property is separated from the adjoining properties by an existing irrigation canal with a minimum right of way width of 50 feet

   e. Where the adjoining property has submitted for tentative plat approval

   f. When the developer submits a signed and notarized statement from abutting landowners stating that there are no objections to the applicant's request for an exception to the Residential Compatibility Standards.

Section 5. Chapter 2.1.400 is hereby amended to read as follows:

2.1.400 Building Mass and Scale

1. Floor Area Ratio. Floor Area Ratio shall apply to the following:
   a. All new single family residential construction including building additions on lots 6000 square feet or less in size located in a subdivision platted prior to December 1998;
   b. Existing homes on lots subject to a partition or lot line adjustment that will result in a lot size of 6000 square feet or less;
   c. The perimeter lots of all new single family residential subdivisions that are 6000 sq ft or less in size and are adjacent to a subdivision platted prior to December 1998 where the adjoining lot development has a .5 FAR or less.

2. Building construction may not exceed .50 FAR (50%) of the total lot area. The areas of a building subject to this development standard shall include the following:
   a. Areas within the building footprint considered to be habitable space as defined by the Oregon Structural Specialty Code (OSSC)
   b. garages exceeding 480 sq ft in size on lots 4000 sq ft or greater and garages exceeding 325 feet in size for lots less than 4000 square feet.

3. Exceptions to FAR:
   i. Attached single-family townhomes
   ii. Accessory structures less than 10 ft in height and 200 sq ft in area.
   iii. Unenclosed covered porches and decks are excluded from the calculation.
   iv. Basement or any area below at-grade living space

Section 6. Chapter 2.1.800 is hereby amended to read as follows:

2.1.800 Building Height

The following building height standards are intended to promote land use compatibility and support the principle of neighborhood-scaled design.

A. Standard. The following building heights shall be observed unless a greater height is approved through a variance in conformance with Chapter 10.10.5.1; Variances or approved as part of a Master Planned Development in conformance with Chapter 4.5.

1. Buildings within the UAR, RL, RS, RM-10 and RM Districts shall be no more than 30 feet in height,
2. Buildings within the RM zone on lots created after December 1998 shall be no more than 35 ft in height.
3. Buildings within the RH Districts may be no more than 45 feet in height.

B. Exceptions to Maximum Building Height Standard. Chimneys, bell towers, steeples, roof equipment (including minimum screening necessary to conceal mechanical roof equipment), flagpoles, and similar features that are not intended for human occupancy may be considered exceptions to the maximum building height subject to an application for height variance in accordance with Chapter 5.1.

C. Method of Measurement. "Building height" is measured as the average maximum vertical height of a building or structure measured at a minimum of three points from finished grade along each building elevation. Architectural

elements that do not add floor area to a building or structure, as indicated above in Subsection 2.1.800B are not considered part of the height of a building or structure.

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

Read for the second time the 19th day of December, 2007.

Placed upon its passage the 19th day of December, 2007.

YES: 6 NO: 0

Authenticated by the Mayor the 19th day of December, 2007.

Bruce Abernethy, Mayor

ATTEST:

Kim Meyers, Deputy City Recorder

New language appears in underlined typeface,
Deleted language appears in ~~struckthrough~~ typeface.

ORDINANCE NO. NS-2083

AN ORDINANCE AMENDING BEND CODE SECTION 5.253 (ORDINANCE NO. NS-1854) RELATING TO "DOG OFF LEASH PARKS" AND ELIMINATING SUNSET CLAUSE

Whereas, Section 5.253 of the Bend Code currently allows for dog off leash parks, provided that such parks are fenced in; and

Whereas, A number of citizens of Bend have requested that certain dog off leash parks be established without fencing, due to the cost of constructing the fences,

THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

Section 1. Section 5.253 of the Bend Code is amended to read as follows:

5.253 Dog Leash Exceptions Related to Specific Designated Areas.

(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~~ c) No dog is allowed off-leash unless its owner is within voice- control range of the dog at all times.

(~~e~~ d) 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~~ e) Dog owners must clean up all dog waste promptly after it occurs.

~~(g) This ordinance (Section 5.253) shall remain in effect only until December 31, 2005, at which time it shall automatically expire unless further action is taken by the Bend City Council to renew the ordinance by an affirmative vote of the Council.~~

Read for the first time the 5th day of December, 2007.

Read for the second time the 19th day of December, 2007.

Placed upon its passage the 19th day of December, 2007.

YES: 6 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 19th day of December, 2007.

Bruce Abernethy, Mayor

Attest:

Kim Meyers, Deputy City Recorder

ORDINANCE NO. NS- 2084

AN ORDINANCE AMENDING ORDINANCE NO. NS- 1999 ISSUING STREET NAMES AND HOUSE NUMBERS (BEND CODE SECTION 10-9.1 THROUGH 10-9.12)

The City of Bend Ordains as Follows:

Section 1. Ordinance No. 1999 (Bend Code Sections 10-9.1 through 10-9.12) is repealed and replaced with the following:

Section 10-9.1	Intent
Section 10-9.2	Discussion of Map
Section 10-9.3	Address ***Assignment***
Section 10-9.4	Districts
Section 10-9.5	Numbers
Section 10-9.6	Street Naming Requirements
Section 10-9.7	Size and Placement of Address
Section 10-9.8	Renaming of Streets
Section 10-9.9	Application for New Street Name
Section 10-9.10	Application for Street Name Changes
Section 10-9.11	Definitions
Section 10-9.12	Enforcement

Section 10-9.1 Intent. The intent of this ordinance is to assign street names and address numbers to all properties within the City limits in an orderly manner and to provide for the posting of those assigned numbers. The City of Bend finds that it is necessary for the protection, safety and welfare of the residents of Bend to establish and enforce a systematic address numbering and street naming procedure to facilitate the location of buildings by emergency services and others.

Section 10-9.2 Map. For the purpose of assigning numbers for buildings or premises situated within the corporate limits of the city as such limits exist now or may hereafter be extended, the city is divided into districts as shown by the map on file in the Community Development Department. A map shall be prepared and maintained of the city whereon numbers given to residences, buildings, and premises shall be clearly indicated. This shall be kept up to date with the numbering that takes place.

Section 10-9.3 Address Assignment.

(1) There shall be a minimum of one address assigned per building with individual unit ***or*** suite numbers~~/letters, etc~~. for separate occupancies.

(2) The address shall be assigned based on the street location of the building's main entrance if practicable. For vacant lots, the address shall be assigned based upon the most probable entrance location.

(3) Duplexes, triplexes, ***and*** fourplexes ~~or condominiums~~ shall each be assigned one address ***with a unit/suite number***. Manufactured home parks will be assigned one address for the park with space numbers for each manufactured home.

Larger apartment ***and condominium*** complexes shall be assigned a minimum of one address per ~~building~~ ***complex.*** A numerical ~~or alphabetical~~ suffix system shall be used to differentiate between units, suites, etc. in the complex assigned by the City of Bend that shall meet the specifications of the Oregon Fire Code.

(4) Commercial and industrial complexes shall be assigned at least one address for each building to clearly identify the location of the primary driveway access point. A numerical unit, suite, etc. system may be used to differentiate between occupancies in the buildings assigned by the City of Bend that shall meet the specifications of the Oregon Fire Code.

(5) Addressing any residence, building, or premises at or near the city boundary may be coordinated with Deschutes County and numbers assigned to provide for a smooth transition from city to county addresses. The naming of streets may also be coordinated with the county during preliminary and final subdivision review processes as well as street name changes to avoid duplication of names.

Section 10-9.4 Directional Districts.

(1) The division line between the northeast district and the southeast district and the division line between the northwest and the southwest district shall be the baseline for starting points northerly and southerly. The numbering easterly and westerly shall commence at the division line between the southwest and southeast districts and the division line between northwest and northeast districts, all as shown by the map on file in the Community Development Department. This is based on the beginning point at the intersection of Division Street, Arizona and Alden Avenues or more specifically, at the Township 17S / Township 18S boundary extending out to the city address boundary. All street signs and addresses shall indicate the district in which the street or portion thereof or address indicated is located, which indication of district shall appear as a prefix preceding the name of the street, avenue, or other public way. Abbreviations may be used for this purpose.

(2) The districts into which the city is divided for the purpose of numbering houses, buildings, and premises are as shown on the attached map known as Exhibit A.

Section 10-9.5 Numbers. Both sides of the same street shall be in the same series of numbers whenever practicable and the numbers shall increase sequentially. The address number shall be determined by where the building's main entrance faces a public street or an approved signed private road. ***Public*** alleys ~~will not~~ ***may*** be addressed or named ***if necessary for public safety as deemed by the Community Development Director***. ~~The city will use a 5 digit series of numbers with a district directional for properties annexed into the city from the County.~~

(1) For irregular or short, winding blocks and streets, to which the provisions of this ordinance cannot be literally applied, numbers shall be assigned and placed corresponding to the general direction of the street. Upon determining the general direction of streets applicable in this section, they shall take the number sequencing range of nearby streets running in that determined direction.

(2) Loop streets shall be numbered progressively as if they were a section of the street they originated from. Numbers shall be sequenced according to a north-south or east-west grid, whichever direction is determined and the grid line shall remain the same along the entire street, so long as the street name does not change.

(3) Even numbers shall be assigned to and placed upon the north and east side of the streets and odd numbers upon the south and west side of the streets. In the case where a street changes direction, the odd and even sides shall be assigned to reflect the general direction (north-east or south-west) of the street. Odd and even sides shall remain the same for the entire length of the street, regardless of

changes in direction. A circle street or loop street shall have even numbers on the inside of the circle or loop and odd numbers on the outside.

(4) Where a building or premises has several entrances for use by different occupancies, or in case of a multiple dwelling where permissible, the City of Bend may assign a different unit, suite, etc. number for each occupancy requiring an address that shall meet the specifications of the Oregon Fire Code.

(5) Address numbers assigned to sites with new construction shall be displayed on site when construction begins.

(6) Address numbers that are changed must be displayed within thirty (30) days from the date on which the address becomes effective.

Section 10-9.6 Street Naming Requirements.

(1) All new public and private streets shall be given a name in accordance with the provisions of this ordinance, and as approved by the Community Development Director.

(2) The name shall be limited to a maximum of two (2) words not including the directional or street suffix.

(3) Street names shall be continuous. When a new subdivision puts in a street that connects to an existing street, the existing street name will be continued.

(4) The street name shall not be a duplicate of a street name already in use (unless it is a small court off of that street; see (j) below), even if the suffix (avenue, driveway, etc.) is different unless there is reasonable assurance that those so named street sections will be connected in the future. New streets shall be designated as numbered streets only if they fall on the gridline and there are reasonable assurances that the street will connect with another section of the numbered street. Public and private streets shall be further named as follows:

(a) Continuous north-south streets shall be designated "street".

(b) Continuous east-west streets shall be designated "avenue".

(c) Short or interrupted streets shall be designated "place".

(d) Short or interrupted streets with no outlet shall be designated "court".

(e) Streets that intersect the same street twice at different locations shall be named "loop".

(f) Short or interrupted diagonal streets shall be named "way".

(g) Continuous meandering streets shall be named "drive".

(h) Short or interrupted meandering streets shall be named "lane".

(i) Streets that flow in a circular pattern and intersect the same street at only one location shall be named "circle".

(j) A court that comes off a street at a perpendicular may take that street's name, but with a "court" suffix.

(k) Public alleys shall be named "alley".

(l) All other street names such as "highway", "road", "terrace" may be approved for use by the city in special situations.

Section 10-9.7 Size and Placement of Address. The owner of any residence, building, or place of business, excepting sheds and accessory buildings, within the city shall place in a conspicuous place upon the main entrance ***only and*** clearly visible from the street to which the property is addressed, or at such other place as provided in this ordinance, a number assigned thereto by the Director of Community Development. If access to the property for vehicles is from an alley or the address on the building is not visible to the street where the access is taken, the city may require a monument sign be placed at the street where addressed, that clearly identifies the address to ensure that emergency vehicles will be able to locate the building.

(1) The figures in the numbers shall not be less than four (4) inches (102 mm) high with a minimum stroke width of 0.5 inches (12.7 mm), shall be a contrasting color to the background ***visible both day and night***, shall be Arabic numerals or alphabet letters and shall be affixed permanently in a conspicuous place upon the main entrance ***only and*** clearly visible from the street to which the property is addressed.

(2) The owner or occupant of any residence, building, or place of business, upon complying with the provisions of this section may place, or cause to be placed, upon the street curb in front of said residence, building or place of business the appropriate assigned house or building numbers. This is in addition to the required posting of the address and shall not replace the required placement as stated above.

(3) In the case where the building is not visible from the access road, a monument sign with the address or other approved signage may be required by the city to be placed on the right side of the driveway as you are facing the driveway. This address must be visible from both directions.

(4) Commercial buildings and commercial complexes addressed from a main street and not the driveway access, as determined by the city, shall have adequate signage indicating access. The city may require a monument sign or other approved signage with a site map to be placed at the access to the complex.

(5) Construction sites or buildings under construction shall display a street address number or subdivision w/lot number. These numbers are to be affixed to a sign visible from the street to which the property is addressed.

(6) All numbers shall conform to the provisions of this chapter and shall adhere to standards of design, size and color promulgated by the Community Development Director.

Section 10-9.8 Application for New Street Name. An application to name all new streets within the City of Bend shall be required.

(1) The application shall contain the following information:

- (a) Name of applicant;
- (b) Proposed street name, with two alternative choices;
- (c) Copy of proposed subdivision (11 x17 or smaller) ~~and a pdf file of the plat~~;
- (d) Location of proposed street (include tax map and lot numbers);
- (e) Attach one copy of County Assessor's map showing subject area (11x17 or smaller) ~~and an electronically stored copy of the map~~;
- (f) A vicinity map with north arrow that indicates projected streets that will have future connectivity and any existing streets that may continue.

(2) The application may be submitted by the developer, engineer or other representative.

(3) A fee in the amount prescribed by resolution of the council shall be submitted with application.

Section 10-9.9 Renaming Streets.

(1) Process: The Bend City Council or the Planning Commission may initiate changing the name of any street within the City of Bend. ~~Where the Council initiates such change it shall be referred to the Planning Commission for its recommendation.~~ A property owner may request a change in the name of a street by making an application with the Community Development Department.

~~A public hearing shall be held before the City of Bend Planning Commission on any proposed street name change. Notice of the public hearing shall be given by mail to all property owners and residents abutting the street in question.~~ The Planning Commission shall ~~then~~ make a recommendation to City Council regarding the proposed name change ***addressing each of the criteria in Section 10-9.9(2)***. A public hearing shall ~~then~~ be held before the ~~City of Bend~~ City Council to consider the ***Planning Commission*** recommendation and ordinance changing the name to the proposed name. The new name will become effective thirty (30) days after the ordinance is approved ***for residential properties and ninety (90) days for commercial and industrial properties.***

(2) Criteria for Name Selection When Two Street Names Meet

The following criteria have been established for name selection when two street names meet and shall be considered when renaming an existing street. Whichever name meets the greatest number of the following criteria shall be selected:

- ***(a) Give preference to street segment name change which would require the least number of address corrections.***
- ***(b) Give preference to street name which was platted first.***
- ***(c) Give preference to street segment which is longest.***
- ***(d) Give preference to street segment name that is most appropriate according to the other street names in the area.***
- ***(e) Give preference to street segment name that has a historical name.***
- ***(f) Give preference to street segment name which is most heavily traveled.***
- ***(g) Give preference to street segment name which is on highest street classification.***

Section 10-9.10 Application for Street Name Changes.

(1) The application shall contain the following information:

- (a) Name of applicant;
- (b) Proposed street name, with two alternative choices;
- (c) Reason for request;
- (d) Location of street (include from and to address numbers as well as names of all cross streets; tax map number);
- (e) Attach one copy of County Assessor's map showing subject area (11x17 or smaller), or one copy of the recorded subdivision plat (11 x17 or smaller) and a pdf file of the map and plat;
- (f) List of the names and addresses and zip code of each owner and resident (husband and wife) of all property abutting the street;
- (g) Signature of at least 51 percent of the residents and property owners abutting the street proposed to be changed, signifying they agree with the proposed name change on a petition.
- (h) A vicinity map with north arrow that indicates projected streets that will have future connectivity and any existing streets that may continue.

(2) A fee in the amount prescribed by resolution of the council shall be submitted with application.

(3) The following criteria shall be used in determining whether or not an existing street name shall be changed:

(a) The street name causes confusion and a new name will improve or clarify the identification of the area.

(b) The street name sounds like another street name or is spelled similarly and causes confusion.

(c) Street names that are words other than proper names and are deliberately misspelled to emphasize a pun or other frivolous association with another word or slang term, resulting in confusion will not be allowed.

(d) The street is known by more than one name.

(e) The street is different than the name of the street of which it is a continuation or the street is in more than one section interrupted by topographical barriers.

(4) Person(s) receiving notice of the street name change shall promptly notify affected tenants or other occupants of the ~~proposed~~ ***approved*** name change.

Section 10-9.11 Definitions

(1) **Address:** A unique site location identifier of a parcel or tax lot.

(2) **Address Grid System:** A system of assigning property address numbers with the city limits based on a beginning point at the intersection of Division and Alden Streets or more specifically, at the Township 17 South/Township 18 South boundary extending out to the city address boundary.

(3) Alley: A narrow way primarily for vehicular access to the back or side of properties abutting a street.

(4) **Building:** A building is any structure used or intended for supporting or sheltering any use or occupancy.

(5) **East-west Street:** A street that runs predominantly east and west.

(6) **North-south Street:** A street that runs predominantly north and south.

(7) Public: Facilities that are owned and maintained by the City of Bend.

Section 10-9.12 Enforcement

The Community Development Director may, at his or her sole discretion, approve exceptions to these standards or apply alternate standards on a case-by-case basis based upon the presence of a unique or conflicting circumstance.

(1) It shall be the duty of the City Community Development Director to enforce this ordinance. All departments, officials and public employees of the City of Bend, vested with the duty or authority to issue permits shall conform to the provisions of this ordinance and shall issue no permit, certificate or license for any use, building or purpose which violates or fails to comply with conditions or standards imposed by this ordinance. Any permit, certificate or license issued in conflict with the provisions of this ordinance, intentionally or otherwise, shall be void. Any use of land in violation of this ordinance is declared to be a nuisance.

(2) Penalties for Violation. A violation of the provisions of this ordinance is punishable upon conviction by:

(a) A fine of not more than $500 for each day of violation where the offense is a continuing offense.

(b) A fine of not more than $500 where the offense is not a continuing offense.

(3) Injunctive Relief and Abatement.

(a) The foregoing sanctions shall not be exclusive, and where the public health, safety, morals, or general welfare will be better served thereby, the City Community Development Director may institute such proceedings for injunctive relief against a continuing violation as may be authorized by the statutes of the State of Oregon.

(b) In the discretion of the City of Bend, a violation may be abated as a nuisance as provided in Sections 5.400 through 5.425 of the Bend Code or other applicable provisions of law.

(4) Evidence. In any prosecution for violation of this ordinance, the person listed as owner of the property as shown by the records of the Deschutes County Assessor shall be presumed to be the person who committed the violation. This presumption shall be rebuttable and either the City or the defendant in such prosecution shall have the right to show that the offense was committed by some person other than, or in addition to, an owner or lessee or other persons in possession or control of the premises; but this shall not be construed as relieving a person in possession and control of property from any duty imposed upon him by this ordinance. Where premises on which the violation is committed are commercial or industrial premises on which a sign is situated identifying the commercial or industrial activity conducted thereof, the same shall constitute prima facie evidence that the person whose name is thus displayed is in possession or control of the premises as owner or lessee, but this shall not be construed to relieve from responsibility any agent, manager, employee, owner or other person who actually committed the violation.

Read for the first time the 5th day of December, 2007.

Read for the second time 19th day the December, 2007.

Placed upon its passage the 19th day of December, 2007.

YES: 6 NO: 0 ABSTAIN: 0

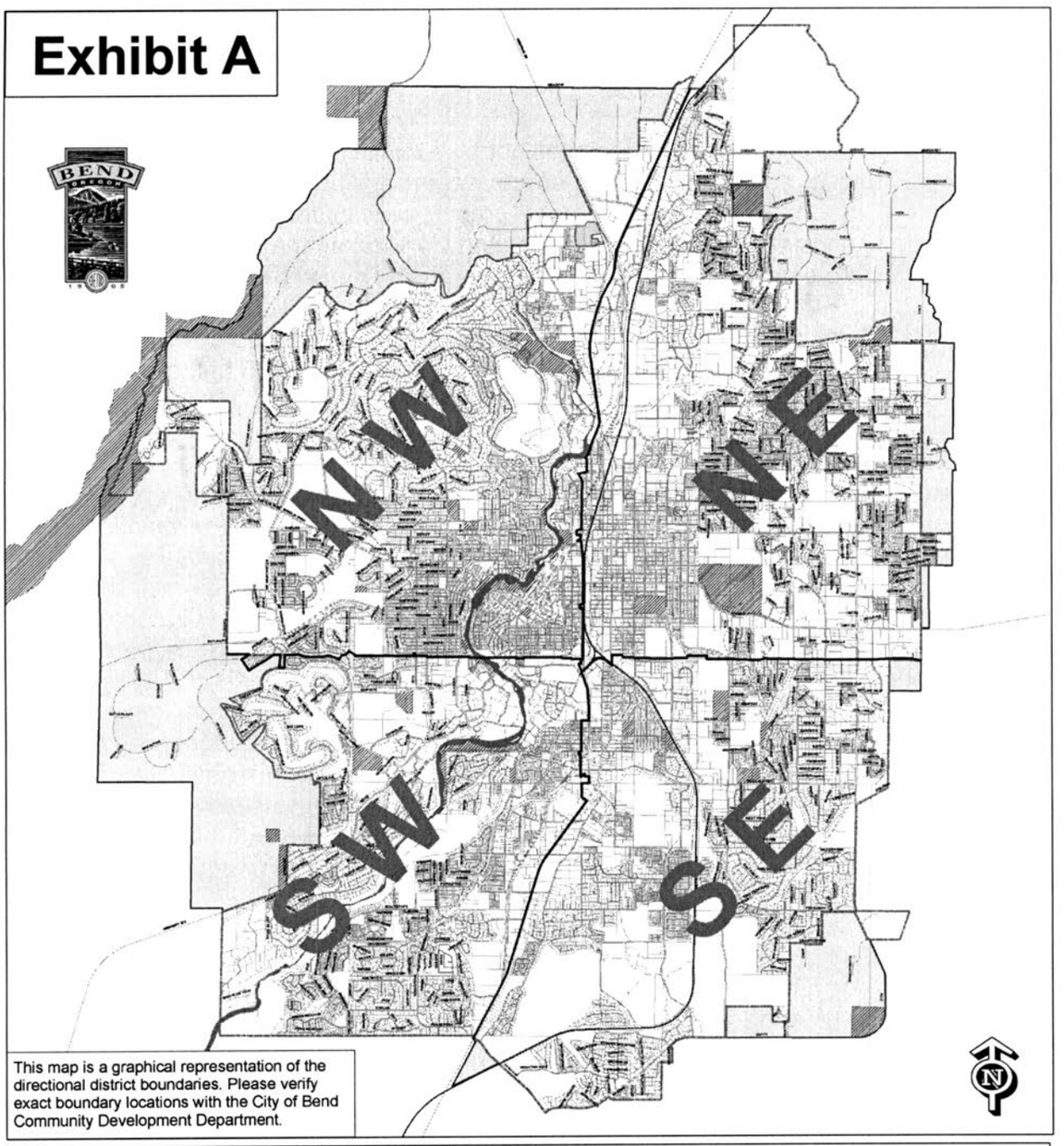
Authenticated by the Mayor 19th day of December, 2007.

Bruce Abernethy, Mayor

Attest:

Kim Meyers, Deputy City Recorder

Exhibit A



Directional Districts

Map Symbols

- Bend Park Properties
- County Taxlots
- Deschutes River
- UGB - Urban Growth Boundary
- UAR - Urban Area Reserve
- Taxlots
- Roads
- Railroad
- City Limits

1 0.5 0 1 Miles

This map is for reference purposes only. The information was derived from Deschutes County G.I.S. and City of Bend land records. Care was taken in the creation of this map, but it is provided "AS IS". Please contact the City of Bend to verify map information or to report any errors.

Map prepared by City of Bend
GIS/Mapping -- Engineering Division
Created 02-01-06 [bc]
v:\arcgis\commdlb\NSEW_Quadrants

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK
2008-06191
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02/12/2008 09:03:41 AM
D-IPPS Cnt=1 Stn=23 CLERK
$15.00 $11.00 $10.00 $5.00

ORDINANCE NO. NS-2085

AN ORDINANCE VACATING A PUBLIC ALLEY, located in the S ¼ of Section 32, Township 17 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 for $19,636.72

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 16th day of January, 2008.

Placed upon its passage the 16th day of January, 2008.

Yes: 7 No: 0

Authenticated by the Mayor the 16th day of January, 2008.

Bruce Abernethy, Mayor

ATTEST:

Kim Meyers, Deputy City Recorder

After recording return to:
Deputy City Recorder
City of Bend
710 NW Wall
Bend, OR 97701

W&H PACIFIC
AN ASCG COMPANY

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

EXHIBIT A

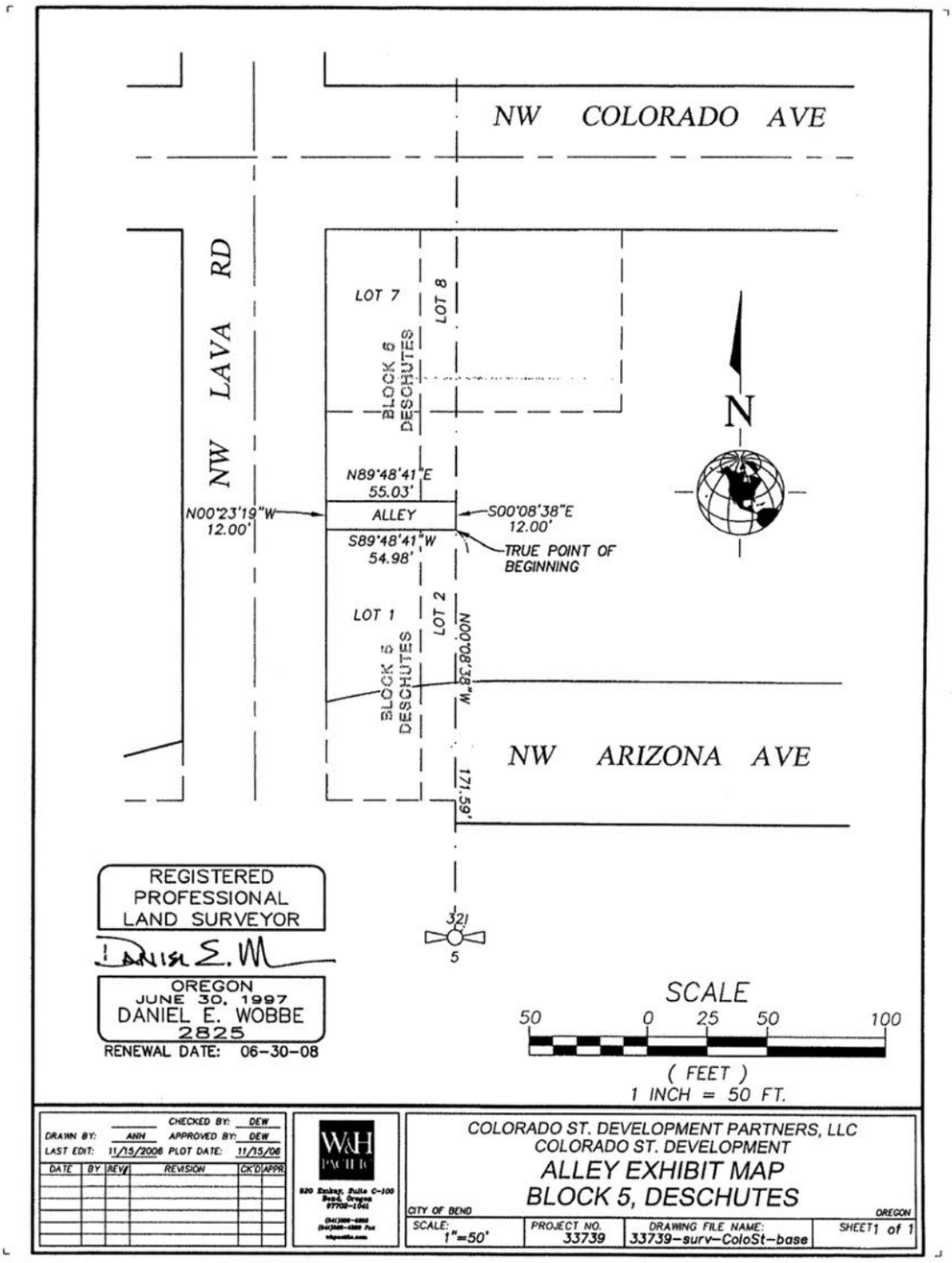
A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 32, TOWNSHIP 17 SOUTH, RANGE 12 EAST, WILLAMETTE MERIDIAN, CITY OF BEND, DESCHUTES COUNTY, OREGON

Beginning at the South ¼ corner of Section 32, Township 17 South, Range 12 East, Willamette Meridian; thence along the eastern boundary of the plat of *Deschutes* recorded in Deschutes County survey records as CS06625, N00°08'38"W, 171.59 feet to the **True Point of Beginning** and the northeast corner of Lot 2, Block 5 of said plat; thence leaving said westerly boundary and along the north lines of Lots 1 and 2 of said block, S89°48'41"W, 54.98 feet to the northwest corner of said Lot 1 and the easterly right-of way of Lava Road; thence leaving said north line and along said easterly right-of-way N00°23'19"W, 12.00 feet to the southwest corner of Lot 7 of said block; thence along the south line of Lot 7 and 8 of said block, N89°48'41"E, 55.03 feet to the southeast corner of said Lot 8 and said easterly boundary of said plat; thence south along said easterly boundary, S00°08'38"E, 12.00 feet to the northeast corner of said Lot 2 and the **True Point of Beginning.**

This description contains 660 square feet more or less.

Herein described bearings are based upon the Deschutes County Grid.




NW COLORADO AVE
NW LAVA RD
LOT 7
LOT 8
BLOCK 6
DESCHUTES
N89°48'41"E
55.03'
N00°23'19"W
12.00'
ALLEY
S00°08'38"E
12.00'
S89°48'41"W
54.98'
TRUE POINT OF
BEGINNING
LOT 1
LOT 2
BLOCK 5
DESCHUTES
N00°08'38"W
171.59'
NW ARIZONA AVE
N
REGISTERED
PROFESSIONAL
LAND SURVEYOR
OREGON
JUNE 30, 1997
DANIEL E. WOBBE
2825
RENEWAL DATE: 06-30-08
SCALE
50 0 25 50 100
(FEET)
1 INCH = 50 FT.
DRAWN BY: ANH
CHECKED BY: DEW
LAST EDIT: 11/15/2006
APPROVED BY: DEW
PLOT DATE: 11/15/06
DATE BY REV REVISION CK'D APPR
COLORADO ST. DEVELOPMENT PARTNERS, LLC
COLORADO ST. DEVELOPMENT
ALLEY EXHIBIT MAP
BLOCK 5, DESCHUTES
CITY OF BEND
OREGON
SCALE: 1"=50'
PROJECT NO. 33739
DRAWING FILE NAME: 33739-surv-ColoSt-base
SHEET 1 of 1

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Underlined text is added;
~~Struckthrough~~ text is deleted

ORDINANCE NO. NS-2086

AN ORDINANCE AMENDING BEND CODE SECTION 6.315 BY CLARIFYING THE METHOD BY WHICH PARKING PENALTIES ARE ESTABLISHED.

THE CITY OF BEND ORDAINS AS FOLLOWS:

PENALTIES

6.315 Parking Penalties.

(1) A violation of sections 6.150 to 6.285 is punishable by the appropriate fee established by the annual City of Bend Fees Resolution.

(2) Disabled/Handicap parking violations are punishable by the amount established by Oregon State Law

~~(1) A violation of sections 6.150 to 6.285 is punishable by:~~

~~Each overtime violation ..... $10.00~~

~~All other parking violations except handicapped parking violations and violations of 6.160 (Parking by Fire Plugs and in Bike Lane) ..... $20.00~~

~~Handicapped parking violations and violations of 6.160 (Paking by Fire Plugs and In a Bike Lane) ..... Amount set by State Law~~

~~(2) If not paid before midnight of the tenth day after issuance of the parking ticket, then the penalty shall be as follows:~~

~~Each overtime violation ..... $30.00~~

~~All other parking violations except handicapped parking and violations of 6.190 (Parking by Fire Plugs and In A Bike Lane) ..... $40.00~~

~~Handicapped parking violations and violations of 6.160.. Amount set by State Law Plus $20.00~~

Read for the first time the 16th day of January, 2008.

Read for the second time the 6th day of February, 2008.

Placed upon its passage the 6th day of February, 2008.

YES: 6 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 6th day of February, 2008.

Bruce Abernethy, Mayor

Attest:

Patricia Stell, City Recorder

ORDINANCE NO. NS-2087

AN ORDINANCE AMENDING THE BEND URBAN AREA ZONING MAP BY CHANGING THE ZONING DESIGNATION OF A PARCEL OF LAND TOTALING 4.26 ACRES 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 Recommendation of the Hearings Officer dated December 27, 2007, file number PZ 07-325, except were revised and approved by the City Council.

Section 2. The Bend Urban Area Zoning Map is hereby amended by changing the designation of the property described and shown in "Exhibit A" from Residential Urban Standard Density (RS) to Public Facilities (PF).

Read for the first time the 16th day of January, 2008.

Read for the second time the 6th day of February, 2008.

Placed upon its passage the 6th day of February, 2008.

YES: 6 NO: 0

Authenticated by the Mayor the 6th day of February, 2008.

Bruce Abernethy, Mayor

ATTEST:

Patricia Stell, City of Bend Recorder

DAVID EVANS
AND ASSOCIATES INC.

EXHIBIT A

BEND TRANSIT CENTER

A parcel located in the southeast 1/4 of the southeast 1/4 of Section 33 in Township 17 South and Range 12 East of the Willamette Meridian, City of Bend, Deschutes County, Oregon as shown on the attached map and fully described as follows:

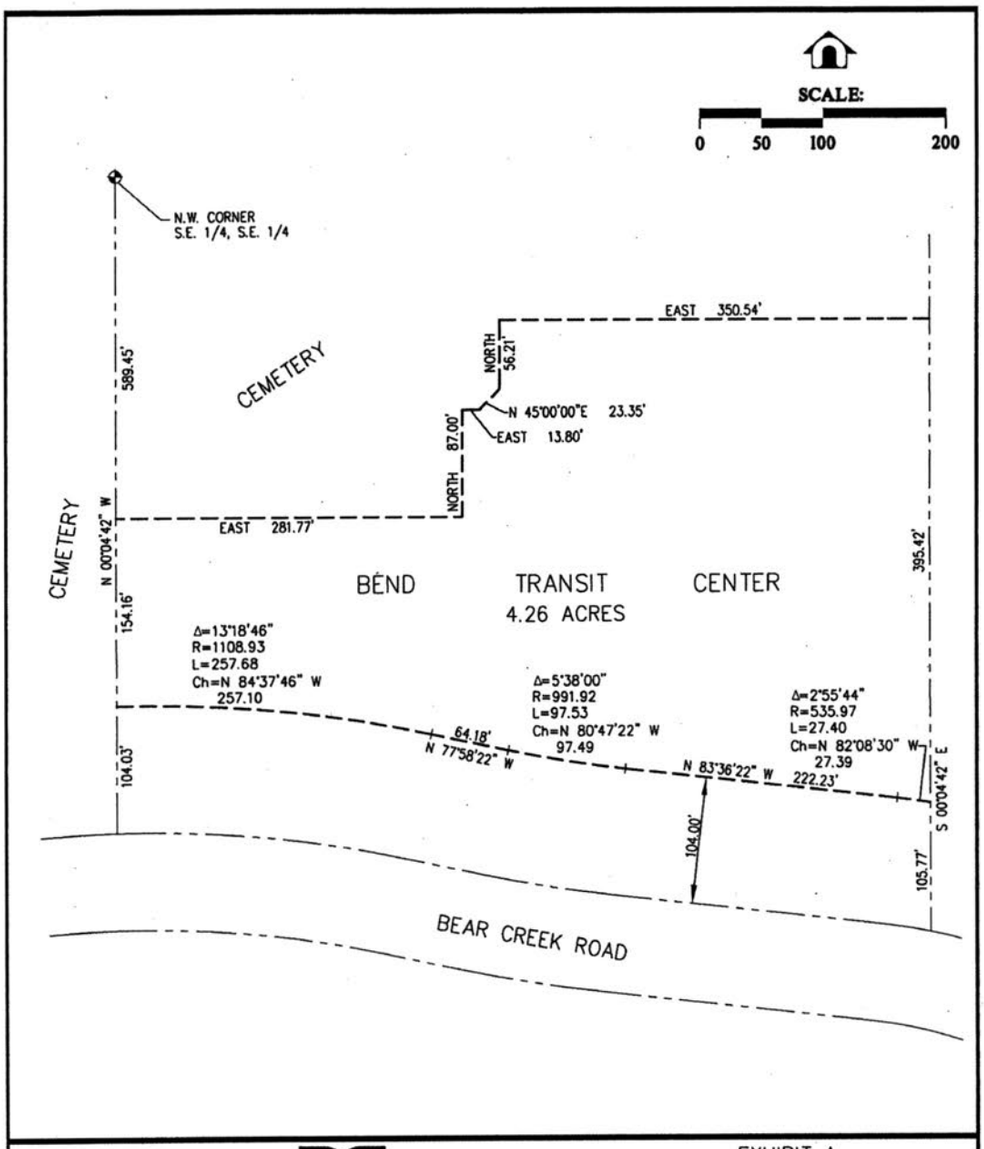
Commencing at the northwest corner of said southeast 1/4 of the southeast 1/4; thence South 00°04'42" East 589.45 feet, along the west line of said southeast 1/4 of the southeast 1/4, to the point of beginning; thence leaving said west line, East 281.77 feet; thence North 87.00 feet; thence East 13.80 feet; thence North 45°00'00" East 23.35 feet; thence North 56.21 feet; thence East 350.54 feet; thence South 00°04'42" East 395.42 feet, to a line lying 104.00 feet north of and parallel to the north right-of-way of Bear Creek Road, when measured at right angles; thence following said parallel line, 27.40 feet along the arc of a 535.97 foot radius curve left (the long chord of which bears North 82°08'30" West 27.39 feet); thence North 83°36'22" West 222.23 feet; thence 97.53 feet along the arc of a 991.92 foot radius curve right (the long chord of which bears North 80°47'22" West 97.49 feet); thence North 77°58'22" West 64.18 feet; thence 257.68 feet along the arc of a 1108.93 foot radius curve left (the long chord of which bears North 84°37'46" West 257.10 feet) to said west line; thence leaving said parallel line, North 00°04'42" West 154.16 feet to the point of beginning, contains 4.26 acres.



RENEWS 12-31-2008

January 4, 2008
P:\H\HSRA00000001\0600INFO\TransitCenterDescription.doc

320 Upper Terrace Drive Suite 200 Bend Oregon 97702 Telephone: 541.389.7614 Facsimile: 541.389.7623



scale 1"=100' design JJD
date 01.03.08 drawn WXS
file

DAVID EVANS AND ASSOCIATES INC.
709 NW Wall Street, Suite 102
Bend, Oregon 97701 (541) 389-7614

P:\HHSRA000000010\0400CAD\SV\SHEETS\Zone change.dwg Jan 04,2008 - 9:48am wxs

EXHIBIT A
ZONE CHANGE EXHIBIT
BEND TRANSIT CENTER
LOCATED IN THE S.E. 1/4 OF THE
S.E. 1/4 SEC. 33, T.17 S., R.12 E., W.M.
DESCHUTES COUNTY, OREGON

Ordinance No. NS-2088

AN ORDINANCE AMENDING THE BEND CITY CODE TO PROHIBIT OPEN BURNING, AND TO REPEAL CERTAIN PROVISIONS OF THE BEND CITY CODE THAT PERMIT OPEN BURNING

THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

SECTION ONE. The following stricken-through Bend City Code Section 5.295 is repealed and replaced by the below highlighted provisions:

5.295 Open Burning Prohibited: (1)Except as authorized by this section, no person shall start or maintain an outdoor fire within the boundaries of the City of Bend for the following purposes:

A. The burning of any refuse, garbage, or other waste products as described in the City of Bend Fire Department Outdoor Burning Regulations;
B. The burning of any yard debris including but not limited to branches, leaves and pine needles;
C. The burning of any construction or demolition waste;
D. Field, ditch or weed burning.

(2) Exception To Prohibition. The following open burning is allowed subject to compliance with the provisions in the most recent fire code as adopted by the City of Bend and the Fire Department's Outdoor Burning Regulations:

A. Fires initiated by the Fire Department for training purposes which are approved by the Oregon Department of Environmental Quality;
B. Campfires, warming fires, cooking fires, outdoor fireplaces, outdoor kiln fires and other approved similar type fires that are not more than 3 feet in diameter.
C. Cooking pits approved by the City of Bend Fire Department;
D. The Fire Chief will specify two ~~weekend~~ days within the month of November for the burning of yard debris on lots of two acres or greater with a valid burning permit issued by the fire department. These days may either be during the same weekend or may be one day on two different weekends within the discretion of the Fire Chief.

(3) A violation of this section is a Class B Civil Infraction.

Read for the first time the 16th day of January, 2008.

Read for the second time the 6th day of February, 2008.

Placed upon its passage the 6th day of February, 2008.

YES: 4 NO: 3 ABSTAIN: 0

Authenticated by the Mayor the 6th day of February, 2008.

Bruce Abernethy, Mayor

Attest:
Patricia Stell, City Recorder

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ORDINANCE NO. NS-2089

AN ORDINANCE AMENDING ORDINANCE NO NS-2074TO INCLUDE 10 ADDITIONAL FEET OF RIGHT OF WAY INSIDE OF THE URBAN GROWTH BOUNDARY, DECLARING AN EMERGENCY AND PRESCRIBING AN EFFECTIVE DATE OF FEBRUARY 6, 2008

WHEREAS, The City Council adopted Ordinance NS -2074 on October 3, 2008 expanding the UGB to build an elementary school north of Skyliners Road; and

WHEREAS, subsequent to the City's adoption of Ordinance 2074, a partition plat was recorded which dedicated 10 additional feet of right of way along the north side of Skyliners Road between the existing city limits and the school site; and

WHEREAS, the annexation is necessary to construct a multi-use path on the north side of Skyliners Road within the additional 10 feet of right of way; and

WHEREAS, on December 31, 2007, Deschutes County adopted an ordinance amending the UGB that included the 10 additional feet of right-of-way; and

WHEREAS, the County and City ordinances must be consistent with each other;

WHEREAS, this is a minor change to Ordinance NS-2074 which affects only public right of way; now therefore

THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

SECTION 1. That Ordinance NS - 2074 be amended to add an additional 10 feet of right-of-way on the north side of Skyliners Road to the City of Bend UGB.

SECTION 2. The UGB as adopted in NS-2074 and the additional right of way are described in Exhibit A and depicted in Exhibit B.

SECTION 2. This ordinance being necessary for the preservation of public safety, health and welfare, an emergency is declared to exist and this ordinance takes effect on February 6, 2008.

Read for the first time the 16th day of January, 2007.

Read for the second time the 6th day of February, 2008.

Placed into effect upon the 6th day of February, 2008.

YES: 7 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 6th day of February, 2008.

Bruce Abernethy, Mayor

Attest:

Patricia Stell, City Recorder

Exhibit A

Legal Description
for
Bend LaPine School District
Re: Urban Growth Boundary Annexation

December 28, 2007

Situate in the southeast quarter of Section 35, Township 17 South, Range 11 East, W.M., Deschutes County, Oregon and being described as follows:

Beginning at the intersection of the south right-of-way line of Skyliner Road and the east line of said Section 35, said point being North 0°14'01" East, a distance of 425.06 feet from the southeast corner of said Section 35, a found 3" brass cap, 0 5' below the top of asphalt in a monument box, marked David Evans & Associates 1990 PLS 1068, reset 2003, PLS 1052; thence on the said south right-of-way line the following courses: South 86°58'40" West, a distance of 340.04 feet; thence North 0°15'57" East, a distance of 10.02 feet; thence South 86°58'40" West, a distance of 1,231.68 feet; thence leaving said south right-of-way line North 03°01'20" West a distance of 71 69 feet to the beginning of a tangent 368.03 foot radius curve right; thence on said curve through a central angle of 3°01'52" (long chord bears North 01°30'24" West, 19 47 feet) an arc distance of 19.47 feet to the end thereof; thence, North 0°00'32" East, a distance of 440.93 feet to the beginning of a tangent 545 00 foot radius curve right; thence on said curve through a central angle of 38°27'59" (long chord bears North 19°14'31" East, a distance of 359.06 feet) an arc distance of 365.89 feet to the end thereof; thence North 38°28'31" East a distance of 236.17 feet to the beginning of a non-tangent 860.00 foot radius left (the radius bears North 40°27'55" East); thence on said curve through a central angle of 40°28'27" (long chord bears South 69°45'31" East, a distance of 594.84 feet) an arc distance of 607 38 feet to the end thereof; thence South 89°59'28" East, a distance of 156.68 feet; thence South 0°00'32" West, a distance of 337 80 feet; thence North 89°59'28" West, a distance of 60 00 feet; thence South 0°00'32" West, a distance of 195.13 feet to the beginning of a tangent 11 00 foot radius curve right; thence on said curve through a central angle of 35°46'25" (long chord bears South 17°53'44" West, 6 76 feet) an arc distance of 6.87 feet to the end thereof and the beginning of a tangent 59.53 foot radius curve left; thence on said curve through a central angle of 80°19'06" (long chord bears South 4°36'16" East, 76.79 feet) an arc distance of 83.45 feet tot the end thereof; thence South 0°00'32" West, a distance of 125.51 feet to a point on the north right-of-way line of Skyliner Road; thence North 86°58'40" East on said north right-of-way line, a distance of 650 86 feet to a point on the east line of said Section 35; thence South 0°14'01" West on said east section line, a distance of 70 11 feet to the point of beginning containing 19.86 acres, more or less.

Together with that 10 foot road dedication of Skyliners Road as dedicated on Partition Plat 2007-83 recorded as instrument 2007-65925 Deschutes County Records.

The basis of bearing of this description is the Central Oregon Coordinate System

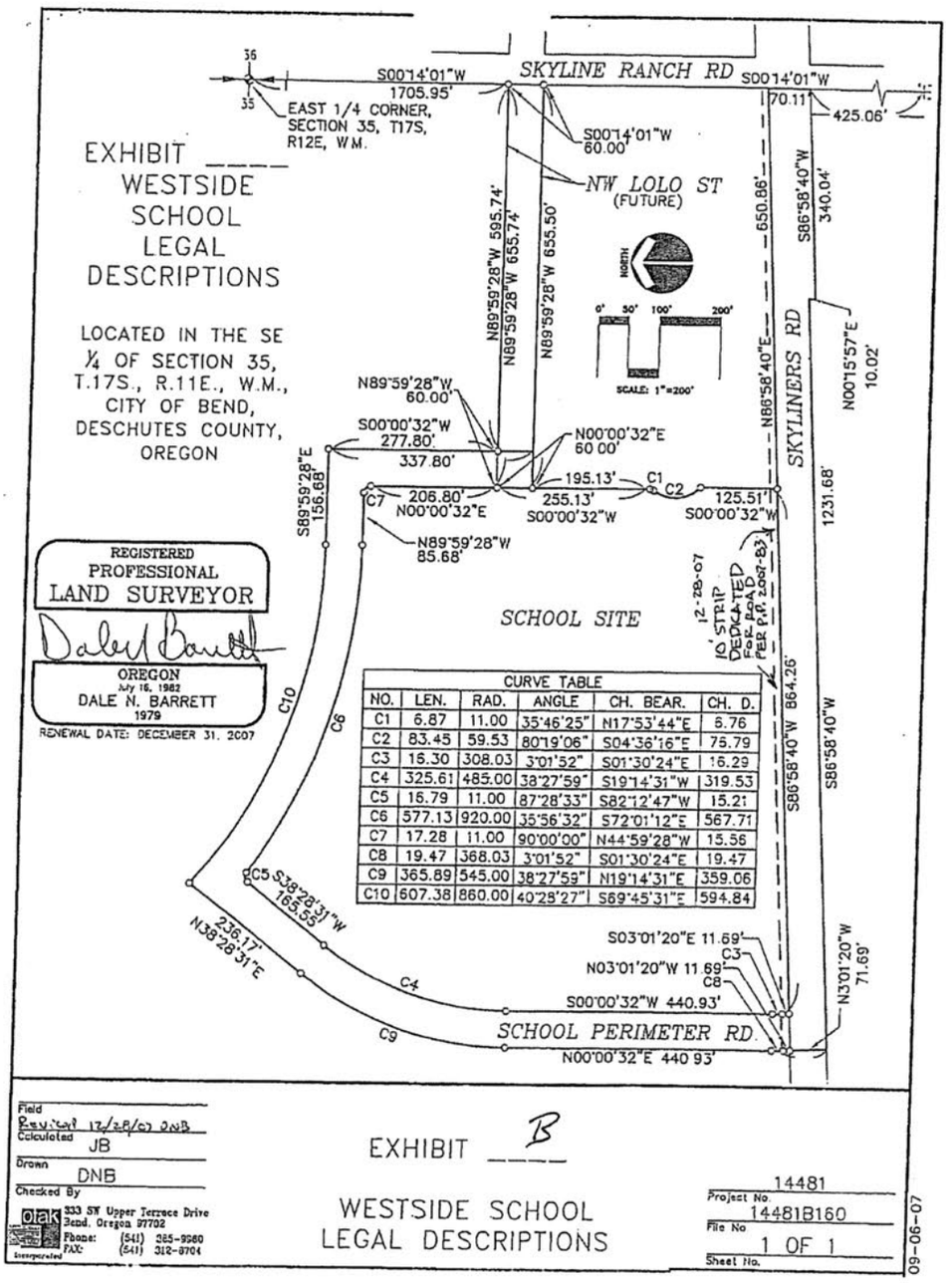
REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 18 1982
DALE N. BARRETT
1979

Y:\project\14400\14481\Survey\Legal\Revised Bend LaPine School Dist UGB Annex legal 9-17-07 doc

RENEWAL DATE: DEC. 31, 09

Exhibit B



NO.	LEN.	RAD.	ANGLE	CH. BEAR.	CH. D.
C1	6.87	11.00	35°46'25"	N17°53'44"E	6.76
C2	83.45	59.53	80°19'06"	S04°36'16"E	76.79
C3	16.30	308.03	3°01'52"	S01°30'24"E	16.29
C4	325.61	485.00	38°27'59"	S19°14'31"W	319.53
C5	16.79	11.00	87°28'33"	S82°12'47"W	15.21
C6	577.13	920.00	35°56'32"	S72°01'12"E	567.71
C7	17.28	11.00	90°00'00"	N44°59'28"W	15.56
C8	19.47	368.03	3°01'52"	S01°30'24"E	19.47
C9	365.89	545.00	38°27'59"	N19°14'31"E	359.06
C10	607.38	860.00	40°28'27"	S69°45'31"E	594.84

Field
Revised 12/28/07 DNB
Calculated JB
Drawn DNB
Checked By

oak Incorporated
333 SW Upper Terrace Drive
Bend, Oregon 97702
Phone: (541) 385-9360
FAX: (541) 312-8704

EXHIBIT B

WESTSIDE SCHOOL LEGAL DESCRIPTIONS

Project No. 14481
File No 14481B160
Sheet No. 1 OF 1

09-06-07

ORDINANCE NO. NS-2090

AN ORDINANCE ANNEXING 19.86 ACRES OF LAND AND 10 ADDITIONAL FEET OF RIGHT OF WAY LOCATED NORTH OF SKYLINERS ROAD, EAST OF SKYLINE RANCH ROAD INTO THE CITY FOR THE PURPOSE OF BUILDING AN ELEMENTARY SCHOOL, DECLARING AN EMERGENCY AND PRESCRIBING AN EFFECTIVE DATE OF February 6, 2008

WHEREAS, ORS 222.125 provides for annexation of real property to cities when 100 percent of the property owners and a majority of electors registered in the territory proposed to be annexed consent to said annexation; and

WHEREAS, the City Council finds that 100 percent of property owners within the area to be annexed have filed a statement of consent to this annexation; and

WHEREAS, the City Council has determined that there are no registered electors within the territory; and

WHEREAS, the Council has elected to dispense with submitting the question of the proposed annexation of the below described territory to the electors of the City; and

WHEREAS, the Council held a public hearing on September 19, 2007 to enable the public to appear and be heard on the question of annexation;

WHEREAS, notice of the above hearing was published on September 9,2007, in the Bulletin, a newspaper of general circulation in the City of Bend and notices of the hearing were sent to owners of property within 100 feet of the subject territory; and

WHEREAS, ten feet of additional right of way was added to Skyliners Road after the first reading; and

WHEREAS, it is in the public benefit to include the additional 10 feet of right of way in the annexation area to construct a multi-use path; and

WHEREAS, the below described territory is contiguous to the City limits of the City of Bend; and

WHEREAS, the subject property was brought into the City's Urban Growth Boundary pursuant to ordinances adopted by the City Council and by the Deschutes County Board of Commissioners; now therefore

THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

SECTION 1. That the territory containing 19.86 acres of land and 10 additional feet of right of way, which is described in Exhibit A and depicted in Exhibit B, is hereby declared to be annexed to the City of Bend:

SECTION 2. This ordinance being necessary for the preservation of public safety, health and welfare, an emergency is declared to exist and this ordinance takes effect on February 6, 2008.

Read for the first time the 16th day of January, 2008.

Read for the second time the 6th day of February, 2008.

Placed into effect upon the 6th day of February, 2008.

YES: 7 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 6th day of February, 2008.

Bruce Abernethy, Mayor

Attest:

Patricia Stell, City Recorder

Exhibit A

Legal Description
for
Bend LaPine School District
Re: Urban Growth Boundary Annexation

December 28, 2007

Situate in the southeast quarter of Section 35, Township 17 South, Range 11 East, W.M., Deschutes County, Oregon and being described as follows:

Beginning at the intersection of the south right-of-way line of Skyliner Road and the east line of said Section 35, said point being North 0°14'01" East, a distance of 425.06 feet from the southeast corner of said Section 35, a found 3" brass cap, 0 5' below the top of asphalt in a monument box, marked David Evans & Associates 1990 PLS 1068, reset 2003, PLS 1052; thence on the said south right-of-way line the following courses: South 86°58'40" West, a distance of 340.04 feet; thence North 0°15'57" East, a distance of 10.02 feet; thence South 86°58'40" West, a distance of 1,231.68 feet; thence leaving said south right-of-way line North 03°01'20" West a distance of 71 69 feet to the beginning of a tangent 368.03 foot radius curve right; thence on said curve through a central angle of 3°01'52" (long chord bears North 01°30'24" West, 19.47 feet) an arc distance of 19.47 feet to the end thereof; thence, North 0°00'32" East, a distance of 440.93 feet to the beginning of a tangent 545 00 foot radius curve right; thence on said curve through a central angle of 38°27'59" (long chord bears North 19°14'31" East, a distance of 359.06 feet) an arc distance of 365.89 feet to the end thereof; thence North 38°28'31" East a distance of 236.17 feet to the beginning of a non-tangent 860.00 foot radius left (the radius bears North 40°27'55" East); thence on said curve through a central angle of 40°28'27" (long chord bears South 69°45'31" East, a distance of 594.84 feet) an arc distance of 607 38 feet to the end thereof; thence South 89°59'28" East, a distance of 156.68 feet; thence South 0°00'32" West, a distance of 337 80 feet; thence North 89°59'28" West, a distance of 60 00 feet; thence South 0°00'32" West, a distance of 195.13 feet to the beginning of a tangent 11 00 foot radius curve right; thence on said curve through a central angle of 35°46'25" (long chord bears South 17°53'44" West, 6 76 feet) an arc distance of 6.87 feet to the end thereof and the beginning of a tangent 59.53 foot radius curve left; thence on said curve through a central angle of 80°19'06" (long chord bears South 4°36'16" East, 76.79 feet) an arc distance of 83.45 feet tot the end thereof; thence South 0°00'32" West, a distance of 125.51 feet to a point on the north right-of-way line of Skyliner Road; thence North 86°58'40" East on said north right-of-way line, a distance of 650 86 feet to a point on the east line of said Section 35; thence South 0°14'01" West on said east section line, a distance of 70 11 feet to the point of beginning containing 19.86 acres, more or less.

Together with that 10 foot road dedication of Skyliners Road as dedicated on Partition Plat 2007-83 recorded as instrument 2007-65925 Deschutes County Records.

The basis of bearing of this description is the Central Oregon Coordinate System

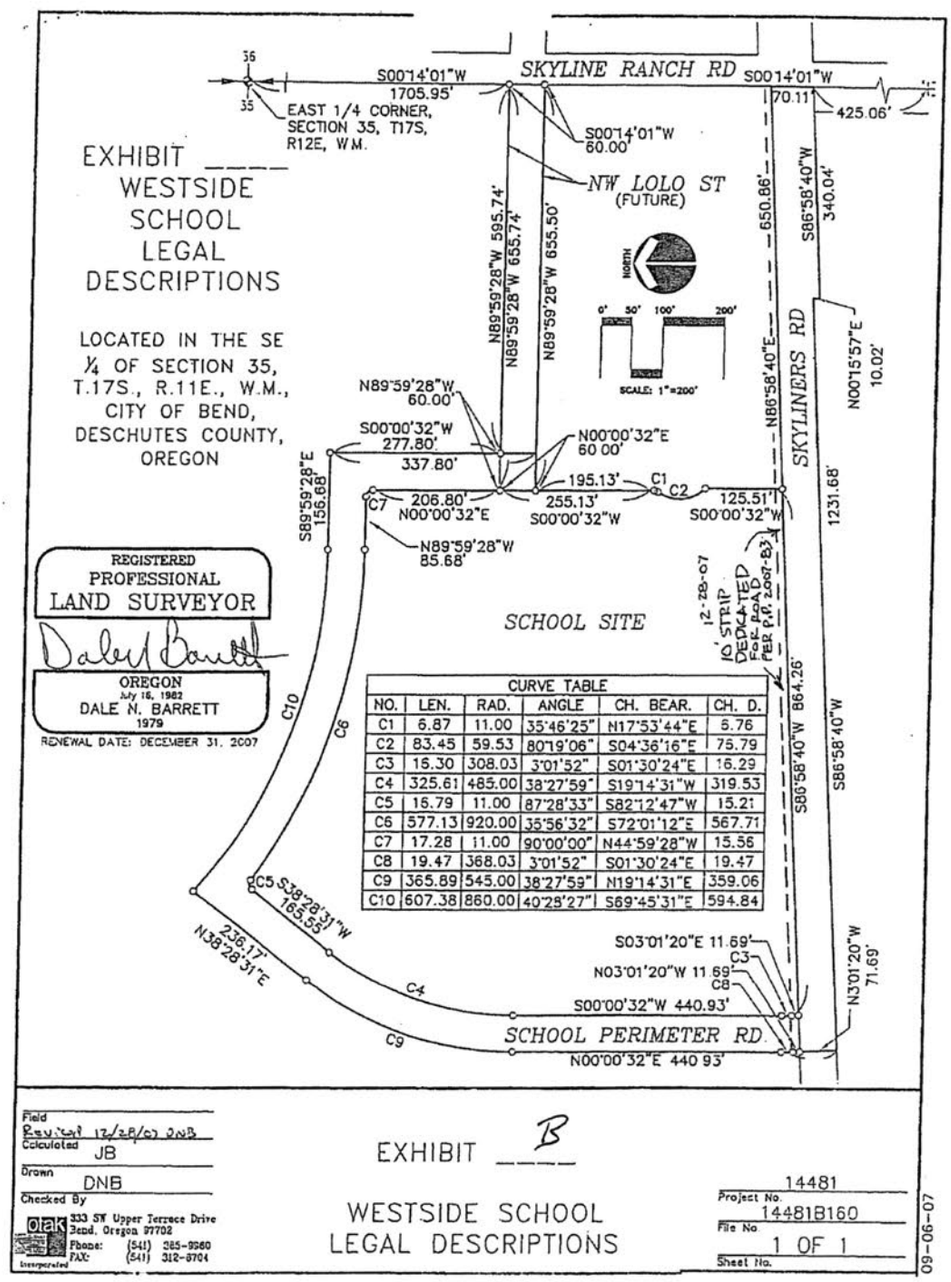
REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 18 1982
DALE N. BARRETT
1979

Y:\project\14400\14481\Survey\Legal\Revised Bend LaPine School Dist UGB Annex legal 9-17-07 doc

RENEWAL DATE: DEC. 31, 09

Exhibit B



CURVE TABLE					
NO.	LEN.	RAD.	ANGLE	CH. BEAR.	CH. D.
C1	6.87	11.00	35°46'25"	N17°53'44"E	6.76
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C8	19.47	368.03	3°01'52"	S01°30'24"E	19.47
C9	365.89	545.00	38°27'59"	N19°14'31"E	359.06
C10	607.38	860.00	40°28'27"	S69°45'31"E	594.84

Field
Revised 12/28/07 DNB
Calculated JB
Drawn DNB
Checked By

Otak Incorporated
333 SW Upper Terrace Drive
Bend, Oregon 97702
Phone: (541) 385-9360
FAX: (541) 312-8704

EXHIBIT B

WESTSIDE SCHOOL
LEGAL DESCRIPTIONS

Project No. 14481
File No. 14481B160
Sheet No. 1 OF 1
09-06-07

Ordinance NS-2091

AN ORDINANCE OF THE CITY OF BEND AMENDING THE Bend City Code Sections 7.260 to 7.279 TO 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 shall read as follows:

A. Section 7.262. Definitions.

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, Jefferson, Crook and northern Klamath Counties 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.

"**Owner-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 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 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 7.266.

(c) The Payment Plan pursuant to Section 7.268.

(d) Notice pursuant to 7.270.

(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. 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 **under this Ordinance**.

(b) The City of Bend will assist the Park Owner and tenants by providing a list of all comparable manufactured home parks spaces within Deschutes, Crook, and Jefferson Counties and northern Klamath 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.

D. Section 7.268 -- Payment Plan

1. A Payment Plan for owner-tenants of the manufactured home park shall be submitted for review and approval as part of the application for a Closure Permit. The Payment Plan shall provide, at a minimum, for the following:

(a) Units That Can Be Relocated – **The Owner shall provide a list of each single-wide, double-wide and triple wide unit that can be relocated and the name and contact information for each unit. The Payment Plan for units that can be relocated shall provide for the owner to pay the tenants the amount stipulated by Oregon State Law (ORS 90.505 to 90.840) and if the Owner utilizes the increased density bonuses provided for in Section 7.279 shall pay the Owner-tenants the following amounts:**

For each Single Wide Unit an additional $1,000
For each Double Wide Unit an additional $3,000
For each Triple Wide Unit an additional $3,500

These additional amounts shall be 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).

The park owner is not required to provide the additional amount(s) stipulated above to the tenant until such time as the manufactured home unit has been removed from the park.

In the event that the Owner does not utilize the density bonus program contained in Section 7.279, the City may pay Owner-tenants these amounts; subject to budgetary authority approved by the City Council prior to the subject fiscal year and subject to Council's right to limit the total amount of payments on an annual basis.

(b) Units that cannot be relocated – **(1)The payment plan shall identify those manufactured homes that cannot be relocated to a comparable manufactured home park space in Deschutes, Crook, Jefferson Counties and northern Klamath County. This list shall include the name and contact information for each Owner-Tenant. In the event that the Owner utilizes the density bonus program contained in Section 7.279, 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 greater of the:**

The Real market value, per Deschutes County Property Records, of the home as reported on the most recent property tax assessment roll.

OR:

the amount stipulated by Oregon State Law (HB 2735ORS 90.505 to 90.840).

(2)The Owner shall be responsible for the cost of disposal of the mobile home park unit for those units that cannot be relocated.

~~(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 and shall provide, at a minimum, the amount stipulated by Oregon State Law (ORS 90.505 to 90.840).~~

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.

(k) 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

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 in Deschutes, Crook, Jefferson and northern Klamath County Counties. or that the owner has agreed to purchase any manufactured home that cannot be relocated as described in Section 7.268.~~ That the payment plan meets the requirements of 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)~~(c) 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 **all** tenants such offers and other information required by law.

G. 7.274 -- Conditions of Approval

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.

H. 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.

I. Section 7.279 -- Affordable Housing Density Bonus

1. Owners who perform their obligations in sections 7.262 through 7.270 of this Ordinance shall qualify for the Density Bonus Program subject to the additional requirements contained in this Section 7.279.

2. Increased Density. The City has adopted amendments to the City's Zoning Ordinance that create a Manufactured Home Park Overlay Zone at locations where existing manufactured home parks are located. Utilization of that Overlay Zone ~~will~~ permits increased density within the manufactured home park but requires that the Park Owner enter into a development agreement which shall contain the requirements set forth in Section 7.279.

(a) **Owners shall provide a minimum of 10% of new units in development meeting the affordability requirements of this ordinance.**

(b) Affordability requirements. ~~**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,**~~

(1)The Owner must ~~**be affordable and offered**~~ offer to qualified tenants who are being displaced and whose units cannot be moved the opportunity to ~~,~~either ~~for~~ rent or purchase~~**, to tenants who are being displaced and whose units cannot be moved**~~ one of the affordable units.

(2)The mortgage/rent for these Tenants ~~**new mortgage/rent**~~ shall not be greater than the higher of:

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

(ii) 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

(iii) 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.

(iv) In addition, **for rental developments,** 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)~~ (c)Any displaced tenant owner shall be assured of affordable transitional housing and the payment of any necessary and reasonable moving expenses for personal property 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 this section 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 7.268. 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)~~ (d)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)~~ (e) 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: **Rent for new units to be occupied by Tenant Owners shall be as stated in Section 7.292. All other rental units required to meet the 10% of total unit requirement will have a rent that shall not exceed 30% of income for a family at 50% of median income per HUD Income Limits for Bend MSA and family size will be based upon unit size as stated in Section 7.292.**

~~(i)~~ (f) 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~~ **50**% of median per HUD Income Limits for Bend MSA and family size will be based upon unit size as stated in Section 7.292 . 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)~~ (g) 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 7.292 **for units that are to be sold to existing owner tenants. All other ownership units required to meet the 10% of total unit requirement will have a sales price whose mortgage that shall not exceed 30% of income for a family at 80% of median income per HUD Income Limits for Bend MSA and family size will be based upon unit size as stated in Section 7.292.**

(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 7.292.

(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 Neighbor Impact (or designated successor) and shall be utilized, minus administrative costs, to assist a future purchaser of the property. Neighbor Impact will market the property to eligible purchasers as stated in Section 7.292. 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 this section above.

(k)The owner shall pay the amounts required by Section 7.268.

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 Inconsistent Provisions.

The provisions of this ordinance shall supersede and repeal any inconsistent provisions in prior Mobile Home Park ordinances adopted by the City Council.

Read for the first time the 6th day of February, 2008.

Read for the second time the 20th day of February, 2008.

Placed upon its passage the 20th day of February, 2008.

YES: 4 NO: 1

Authenticated by the Mayor the 20th day of February, 2007.

Bruce Abernethy, Mayor

ATTEST:

Patricia Stell, City of Bend Recorder

Ordinance No. NS-2092

AN ORDINANCE AMENDING THE BEND CITY CODE TO DESIGNATE WASTE CONNECTIONS INC. TO BE A SOLID WASTE FRANCHISEE IN PLACE OF CASCADE DISPOSAL Inc./ R.A. BROWNRIGG INVESTMENTS, INC

WHEREAS, WASTE CONNECTIONS Inc has acquired the solid waste franchise owned by R.A. Brownrigg Investments (Brownrigg) Inc formerly Cascade Disposal Inc and will provide solid waste disposal service to the area of the City served by Brownrigg;

WHEREAS, WASTE CONNECTIONS has agreed to comply with all of the terms of the City's solid waste franchise as contained in the Bend City Code;

AND, WHEREAS, the City Council desires to amend the pertinent provision of the Bend City Code to reflect this transfer;

THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

SECTION ONE. The following stricken-through text of Bend City Code Section 1-16.6 is hereby repealed and replaced by the below-highlighted provisions:

should be 1-16.6

Section 6. Grant of Exclusive Franchise. There is hereby granted to BEND GARBAGE COMPANY, INC. and **WASTE CONNECTIONS, INC.** ~~CASCADE DISPOSAL, INC.~~, the exclusive right, privilege and franchise to provide service within the City limits as of the date of this Ordinance and any area that may hereafter be annexed to the City and, for that purpose, to utilize the streets of the City. BEND GARBAGE COMPANY, INC., and **WASTE CONNECTIONS, INC.** ~~CASCADE DISPOSAL, INC.~~, will operate within the City in areas described on Exhibit "A," which are subject to change by the Dispute Committee's ruling and Commission approval.

SECTION TWO. The remainder of Bend City Code Chapter 1-16 is not affected by this ordinance.

Read for the first time the 6th day of February, 2008.

Read for the second time the 20th day of February, 2008.

Placed upon its passage the 20th day of February, 2008.

YES: 5 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 20th day of February, 2008.

Bruce Abernethy

Bruce Abernethy, Mayor

Attest:

Patricia S Stell

Patricia Stell, City Recorder

ORDINANCE NO. NS-2093

AN ORDINANCE REPEALING THE CITY'S MEASURE 37 PROCEDURAL ORDINANCE AND REPLACING SECTION 1.950 IN THE BEND CODE WITH A NEW SECTION ENTITLED "REQUIREMENTS AND PROCEDURES FOR FILING AND REVIEWING MEASURE 49 CLAIMS FOR PROPERTY LOCATED, IN WHOLE OR IN PART, INSIDE THE CITY OF BEND URBAN GROWTH BOUNDARY," AND DECLARING AN EMERGENCY

Whereas, on November 2, 2004, the voters of the State of Oregon approved Ballot Measure 37 that amended Oregon Revised Statutes Chapter 197; and

Whereas, on December 1, 2004, the Bend City Council adopted Ordinance No. 1950, establishing Section 1.950 of the Bend Code to provide for review of demands under Measure 37; and

Whereas, on April 20, 2005, the Bend City Council adopted Ordinance No. 1966, thereby amending Section 1.950 of the Bend Code; and

Whereas, on November 6, 2007, the voters of the State of Oregon approved Ballot Measure 49 that amended Oregon Revised Statutes Chapter 197 and effectively repealed Ballot Measure 37; and

Whereas, Ballot Measure 49, which became effective on December 6, 2007, requires that the City process claims made under Measure 37 as well as new claims made under Measure 49;

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. Section 1.950 of the Bend Code is replaced in its entirety as follows:

Section 1.950 REQUIREMENTS AND PROCEDURES FOR FILING AND REVIEWING CLAIMS PROVIDED FOR IN BALLOT MEASURE 49 FOR PROPERTY THAT IS LOCATED, IN WHOLE OR IN PART, INSIDE THE CITY OF BEND URBAN GROWTH BOUNDARY.

1.950(1) Purpose.

The purpose of this section is to adopt a procedure for evaluating claims that are provided for under Ballot Measure 49 including claims that were filed under Measure 37.

1.950(2) Definitions.

For purposes of this Section, the following definitions shall apply:

(A) Appraisal. Means a written statement prepared by a person certified under ORS Chapter 674 or a person registered under ORS Chapter 308.

(B) Claim. Means a written demand for compensation filed under Sections 12 to 14 of Measure 49 and ORS 197.25, as in effect on and after the effective date of Measure 49.

(C) Claimant. Means the person who has filed a claim. The claimant must be a current owner of the property that is the subject of the claim.

(D) Council. Means the Bend City Council.

(E) Department. Means the Community Development Department, or successor entity designated by the Council.

(F) Director. Means the Director of the Community Development Department, or designee, or a successor City official designated by the Council.

(G) Fair Market Value. As defined in Section 21(b) of Measure 49 "the amount of money, in cash, that the property would bring if the property was offered for sale by a person who desires to sell the property but is not obligated to sell the property, and if the property was bought by a person who was willing to buy the property but not obligated to buy the property. The fair market value is the actual value of the property, with all of the property's adaptations to general and special purposes. The fair market value of property does not include any prospective value, speculative value or possible value based upon future expenditures and improvements."

(H) Interest. Means the average interest rate for a one-year United States Government Treasury Bill on December 31 of each year of the period between the date the land use regulation was enacted and the date the claim was filed, compounded annually on January 1 of each year of the period.

(I) Land Use Regulation. Means a provision of a city comprehensive plan, zoning ordinance, land division ordinance, or development code that restricts the residential use of private real property.

(J) Measure 49. Means the measure enacted by the voters on November 6, 2007, which amended Oregon Revised Statutes Chapter 197.

(K) Person. This term includes a public or private entity.

(L) Property. Means the private real property described in a claim and contiguous private real property that is owned by the same owner, whether or not the contiguous property is described in another claim, and that is not property owned by the federal government, an Indian tribe or a public body, as defined in ORS 192.410.

(M) Reduction in Fair Market Value. Means the difference, if any, in the fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after the enactment, plus interest.

(N) Urban Growth Boundary. Has the meaning given that term in ORS 195.060.

(O) Waive or Waiver. Means an action or decision authorizing the claimant to use the property without application of the land use regulation(s) to the extent necessary to offset the reduction in fair market value of the property.

1.950(3) Process for Determining Just Compensation for Measure 37 Claims made on or before June 28, 2007.

The City shall follow the procedure set forth in Ballot Measure 49 to evaluate Measure 37 claims that were filed with the City on or before June 28, 2007. Vested rights claims relating to Measure 37 waivers shall be determined pursuant to a declaratory ruling process and the common law standard for vested rights including the standards contained in 4.1.1315 of the City of Bend Development Code.

1.950(4) Claims for Compensation for Claims regarding Land Use Regulations adopted after January 1, 2007.

(A) Filing. All claims shall be filed with the Director in person or by U.S. Mail. The filing date is the date the claim is received by the City.

(B) Submittal requirements.

(1) Claimant shall file a complete Measure 49 claim form provided by the Department including:

(a) the name and address of each owner and the date when the property was acquired;
(b) the address, if any, and the assessor's map and tax lot number of the property that is the subject of the claim;
(c) a statement of the person's desired use of the property for residential use;
(d) a specific reference to each land use regulation enacted after January 1, 2007 that is alleged to restrict the person's desired use of the property and when the land use regulations were enacted;
(e) the amount of reduction in fair market value alleged for each regulation at issue plus interest;
(f) whether a previous permit was issued for development of the property including a description of the use and the case file number;
(g) whether a claim was filed for the subject property with the state or any other government; and
(h) any other information reasonably related to the review and processing of the claim as required by the Director of the Community Development Department or as provided on the Measure 49 claim form; and
(i) all information required to be submitted by Ballot Measure 49 and subsequent amendments to Measure 49.

(2) Claimant shall also provide:

(a) evidence of the acquisition date of the claimant, including the instrument conveying the property to the claimant and a report from a title company identifying the person in which title is vested and the claimant's acquisition date and describing exceptions and encumbrances to title that are of record;
(b) the written consent of all of the owners if there is more than one owner;
(c) an appraisal showing the fair market value of the property one year before the enactment of each land use regulation and the fair market value of the property one year after the enactment. The actual and reasonable cost of preparing the claim, including the cost of the appraisal, not to exceed $5,000, may be added to the calculation of the reduction in fair market value under this subsection. The appraisal must: (1) be prepared by a person certified under ORS Chapter 674 or a person registered under ORS Chapter 308; (2) comply with the Uniform Standards of Professional Appraisal Practice, as authorized by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and (3) expressly determine the highest and best use of the property at the time the land use regulation was enacted; and
(d) the applicable claim(s) review fee which shall be established by the Bend City Council.

(3) Only one claim for each property may be filed for each land use regulation.

(C) Claim review process. The city shall:

(1) Deny a claim if:

(a) it is not filed within five (5) years from the date the land use regulation was enacted;
(b) an application for a comprehensive plan or zoning amendment is approved for the subject property; or
(c) the highest and best use of the property was not residential at the time the land use regulation was enacted.

(2) determine whether a claim is complete within sixty (60) days after receiving the claim;

(3) notify the claimant of any missing information within sixty (60) days after receiving the claim;

(4) after providing notice of the missing information, deem the application complete if:

(a) the claimant provides the missing information and the required fee; or

(b) the claimant provides a written statement that some or all of the missing information will not be provided and the required fee.

(5) deem the application complete when filed if the city fails to notify the claimant of missing information within sixty (60) days after receiving the claim;

(6) deem the application withdrawn if the claimant fails to provide the missing information or fee or a written statement that some or all of the missing information will not be provided within the time specified in the notice of missing information; and

(7) issue a final determination on a claim within 180 days from the date the claim is deemed complete.

1.950(5) Review and Recommendation.

(A) Claims review process. Upon receipt of a filing, the City shall follow the claims review process under Section 1.950(4).

(B) Review criteria. The Director or his/her designee shall determine whether to recommend approval or denial of the claim based on a demonstration by the owner that:

(1) A city enacted land use regulation enacted after January 1, 2007 and after the property was acquired restricts the person's desired residential use of the property;
(2) The land use regulation has the effect of reducing the fair market value of the property;
(3) The highest and best use of the property at the time the property was acquired is the person's desired use of the property;
(4) The land use regulation is not an exempt land use regulation under the terms of Measure 49;
(5) The time limitations for filing a claim, as specified in Measure 49, have not been exceeded; and
(6) All other requirements of law have been met.

(C) Acquisition date. The date the property was acquired is:

(1) The date the claimant became the owner of the property as shown in the deed records of the county in which the property is located;
(2) If there is more than one claimant for the same property under the same claim and the claimants have different acquisition dates, the acquisition date is the earliest of those dates;
(3) If the claimant is the surviving spouse of a person who was an owner of the property in fee title, the claimant's acquisition date is the date the claimant was married to the deceased spouse or the date the spouse acquired the property, whichever is later. A claimant or a surviving spouse may disclaim relief by using the procedure provided in ORS 105.623 to 105.649; and

(4) If a claimant conveyed the property to another person and reacquired the property, whether by foreclosure or otherwise, the claimant's acquisition date is the date the claimant reacquired ownership of the property.
(5) A default judgment entered after December 2, 2004 does not alter a claimant's acquisition date unless the claimant's acquisition date is after December 2, 2004.

(D) Notice of public hearing and opportunity to comment on Claim. A notice of public hearing and an opportunity to submit written comments on the Claim shall be sent to:

(1) All property owners of record within one hundred (100) feet of the subject property;
(2) The Board of County Commissioners and the recognized city neighborhood association in which the subject property is located; and
(3) The Department of Land Conservation and Development.

The notice shall contain:

(1) the address, if any, and the assessor's map and tax lot number of the property that is the subject of the claim;
(2) a statement of the Claimant's desired use of the property for residential use;
(3) the number of dwellings, lots or parcels sought by the Claimant, as well as the specific regulations alleged to restrict the use of the property;
(4) a statement that the Claim and any information submitted by the Claimant is available at the Department for inspection or copying at cost and the phone number of a City staff contact;
(5) a statement that all persons may submit written comments at or prior to the close of the final public hearing on the claim;
(6) a statement that judicial review of the final determination on the claim is limited to the written evidence and arguments submitted to the city;
(7) a statement that prior to the close of testimony, the claimant may request an additional seven (7) days to respond to new evidence or to submit written evidence and arguments in response to testimony or submittals;
(8) a statement that judicial review is available only for issues that are raised with sufficient specificity to afford the public entity an opportunity to respond; and
(9) any other information as deemed necessary by the Director.

(E) If a claim is deemed complete and not rejected, the Director or his/her designee shall draft a staff report. The staff report will be available at least seven (7) calendar days prior to the hearing addressing:

(1) whether the claim filed is complete; and
(2) a recommendation as to whether and how much to pay in compensation, or, in lieu thereof, a recommendation regarding the number of dwellings and lots that may be approved and the land use regulation(s) that should be waived.

The staff report shall consider such factors as: the amount of compensation at issue; the nature of the proposed use or development, if any; and the impact of the proposed use or development.

1.950(6) Council Review and Decision.

(A) Claim processing. All claims shall be reviewed by the Council consistent with the claims review process provided under this Ordinance. The Council shall issue a final decision after providing notice and a hearing within 180 days from the date the claim is deemed complete.

(B) Notice and hearing. The decision of the Council shall be made after a public hearing conducted in accordance with such procedures as the Council may adopt. At least thirty (30) days written notice shall be provided and the notice shall include such information as set forth in Section 1.950(5)(D).

The Council shall consider all comments received by the conclusion of the hearing and such other information in the record as the City deems relevant and material. The claimant may request an additional seven (7) days to respond to new evidence or to submit final arguments. This request must be made before the close of testimony.

(C) Final decision. The Council may reject the claim, pay compensation, issue a waiver or approve any combination of such remedies. The decision shall otherwise be decided based on the review criteria in Section 1.950(5)(B). The Council may waive some regulations specified in the claim and deny waiver of others. The Council is not limited to those regulations listed in the claim and may impose any conditions of approval that it deems reasonable and appropriate to protect the public interest. Failure to comply with any condition of approval is grounds for revocation of the approval of the compensation for the Claim, grounds for recovering any compensation paid, and grounds for revocation of any other action taken under this Ordinance.

(D) Notice of final decision or rejection of claim. The City shall send a copy of the Council's decision to the claimant. Notice of the Council's final decision shall also be mailed to any person who submitted written evidence or arguments during the comment period, any person entitled to notice of the hearing, and any person who appeared orally or in writing at the public hearing. The notice shall contain a brief description of the waiver, including a listing of all regulations that the Council has decided to not apply and the specific number of dwellings, lots or parcels authorized by the waiver. The notice shall also state that a claim has been, or may need to be, filed with the State, if the Council thinks that a State regulation is implicated.

1.950(7) Burden of Proof and Record.

The claimant shall have the burden of proof on all matters under this Ordinance. The claimant bears sole responsibility for ensuring that the record before the City contains all information and evidence necessary to support the claim. The claimant shall be precluded from submitting information or raising new issues in any subsequent proceeding unless the claimant demonstrates that the information or issue could not reasonably have been entered into the record or raised before the City.

1.950(8) Effect of Waiver.

(A) A decision to waive a land use regulation shall in no way impact any obligation to demonstrate compliance with any regulations not expressly provided for in the decision or to obtain any required approvals or permits.

(B) A use authorized by a waiver has the legal status of a lawful nonconforming use in the same manner as provided under ORS 215.130.

1.950(9) Procedural Error.

No procedural defect in processing a claim shall invalidate any proceeding or decision unless the party alleging the error demonstrates prejudice to a substantial right. Inadvertent failure to provide notice or complete notice shall not be grounds for invalidating a decision.

1.950(10) Recordation of Waiver.

The City must record a memorandum of the final waiver in the deed records for the county.

1.950(11) Reconsideration of Waiver.

The Council may, at its sole discretion, reconsider a decision on a claim if it appears that the decision is inconsistent with a subsequent court ruling, administrative rule or other change in the law relating to Measure 49. The decision to reconsider may be made without notice or hearing; but, the decision on reconsideration shall be made only after notice and opportunity to be heard consistent with the requirements for claim and review provided under this Ordinance. At the conclusion of the process, the Council may affirm, modify, or revoke the earlier decision. If the Council modifies or revokes a decision that resulted in payment of compensation, the Council may institute an action for recovery. If the Council modifies or revokes a decision to modify, remove, or not apply a land use regulation, it shall issue an order setting forth such remedy as it deems appropriate to protect the public interest.

1.950(12) Appeals.

(A) A person that is adversely affected by a final determination under this Ordinance may obtain judicial review of that determination under ORS 34.010 to 43.100. A person is adversely affected if the person is:

(1) an owner of the property that is the subject of the final determination or;
(2) a person who timely submitted written evidence, arguments or comments

(B) Judicial review of a decision under this Ordinance is:

(1) limited to evidence in the record at the time of the final determination; and
(2) available only for issues raised with sufficient specificity to afford an opportunity to respond.

1.950(13) Ex Parte Contacts, Conflict of Interest and Bias.

(A) The following rules govern any challenges to any member of the City Council's participation in the review of Claims:

(1) Any factual information obtained by a member of the City Council outside the information provided by city staff, or outside of the formal written comments process or hearing will be deemed an ex parte contact. Any member of the City Council that has obtained any material factual information through an ex parte contact must declare the content of that contact, and allow any interested party to rebut the substance of that contact. This rule does not apply to contacts between city staff and any member of the City Council.

(2) Whenever a member of the City Council, or any member of their immediate family or household, has a direct financial interest in the outcome of a particular Claim or lives within the area entitled to notice of the Claim, that member of the City Council shall not participate in the deliberation or decision on that application.

(3) All decisions on Claims must be fair, impartial and based on the applicable review standards and the evidence in the record. Any member of the City Council who is unable to render a decision on this basis must refrain from participating in the deliberation or decision on that matter.

1.950(14) Availability of Funds to Pay Demands.

Compensation can only be paid based on the availability and appropriation of funds for this purpose.

1.950(15) Severability.

If any phrase, clause, or other part or parts of this Ordinance is found to be invalid by a court of competent jurisdiction, the remaining phrases, clauses and other part or parts shall remain in full force and effect.

1.950(16) Applicable State Law.

For all Claims filed with the City of Bend, the applicable state law is Measure 49 as amended, modified or clarified by subsequent amendments or regulations adopted by the Oregon State Legislature or Oregon State Administrative Agencies. Any Claim that has not been processed completely under this Ordinance shall be subject to any such amendments, modifications, clarifications or other actions taken at the state level and this Ordinance shall be read in a manner so as not to conflict with such amendments, modifications, clarifications or other actions taken at the state level. This Ordinance is adopted solely to address Claims filed under the authority of those provisions of Measure 49.

Section 2. Emergency Clause and Effective date. This Ordinance, being essential to the preservation of the health, safety, welfare and financial integrity of the city with amendments to Oregon Revised Statutes Chapter 197, from Ballot Measure 49, passed November 6, 2007, effective on December 6, 2007, and it is essential to have a process in place for reviewing Claims under the law, an emergency is hereby declared to exist and this Ordinance shall apply retroactively to December 6, 2007.

Section 3. The current provisions contained in BCC Sections 1.950(1) through (11) which were adopted by Ordinances No. 1950 and 1966 to process claims under Ballot Measure 37 are hereby repealed and entirely replaced by this Ordinance.

Read for the first time the 6th day of February, 2008.

Read for the second time the 20th day of February, 2008.

Placed upon its passage the 20th day of February, 2008.

YES: 5 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 20th day of February, 2008.

Bruce Abernethy, Mayor

ATTEST:

Patricia Stell, City Recorder

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2008-20368

ORDINANCE NO. NS-2094

AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BEND AND COLORADO STREET DEVELOPMENT PARTNERS, LLC FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS FOR THE COLORADO STREET DEVELOPMENT.

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, The attached Development Agreement describes the ways and means for accomplishing the objectives of the Development Agreement; and

WHEREAS, The attached Development Agreement includes documents that are assembled as part of a set of exhibits which support the 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 Agreement; and

WHEREAS, The Bend City Council finds that the Development Agreement listed in Section 1 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 COLORADO STREET DEVELOPMENT PARTNERS, LLC" RELATING TO THE CONSTRUCTION OF PUBLIC IMPROVEMENTS FOR THE COLORADO STREET DEVELOPMENT is hereby approved.

SECTION 2. That the City Manager is authorized to execute each of the Development Agreements referred to in Section 1 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 2nd day of April, 2008.

Read for the second time the 16th day of April, 2008.

Placed upon its passage the16th day of April, 2008.

YES: 5 NO: 0 ABSTAIN: 1

Authenticated by the Mayor the 16th day of April, 2008. .

Bruce Abernethy, Mayor

ATTEST:

Recorder of the City of Bend

Recorded document
2008-20368

DEVELOPMENT AGREEMENT BETWEEN CITY OF BEND AND COLORADO STREET DEVELOPMENT PARTNERS, LLC

This Development Agreement (this "Agreement") is dated as of the __ day of April, 2008 (the "Effective Date"), by and between COLORADO STREET DEVELOPMENT PARTNERS, LLC, an Oregon limited liability company ("Developer"), and THE CITY OF BEND, an Oregon municipal corporation (the "City"). Developer and the City are each hereinafter referred to as a "Party" and collectively as the "Parties."

RECITALS

A. **Purpose of Development Agreement**. The City Hearings Officer conditionally approved applications (PZ 07-310 & 07-311) to develop a mixed use development, including retail and residential uses (the "Project"), on property located south of Colorado, north of Arizona and east of Lava, as more particularly described on Exhibit A (the "Property"). In his decision, the Hearings Officer imposed certain conditions regarding infrastructure improvements that were to be secured by provisions contained in a development agreement. The purpose of this agreement is to implement the requirements of the Hearings Officer Decision regarding the required improvements at the intersection of Highway 97 and Colorado Avenue, and the construction of a segment of Sizemore Avenue between Colorado and Arizona.

B. **Conditions of Approval**. In approving the zone change request, the City Council elected to modify Condition of Approval No. 5 set forth in the Hearings Officer's decision and recommendation. This Development Agreement implements Conditions of Approval 5 (as amended by the City Council) and 7 in the Hearings Officer's decision and recommendation of the Project (PZ 07-310 & 07-311) (together, the "Approval").

Condition 5 of the Hearings Officer's Decision and Recommendation, as amended by the City Council in adoption of Ordinance _____ provides that prior to the rezoning of the property:

"The applicant shall be required to enter into a Development Agreement with the City to insure mitigation of the long term planning period traffic impacts resulting from the proposed zone change as identified in the TIA and the comments from the City of Bend Engineering Department. If the applicant elects to construct the improvements approved pursuant to Site Plan Approval (PZ 07-310) then the mitigation requirements are as follows:

Northbound Parkway Ramps at Colorado – Addition of a westbound right turn lane onto the ramp, signalization of the intersection, and signal interconnect with the rail crossings to the east.

If the applicant or any successor in interest elects to pursue development that is materially different from the development approved pursuant to Site Plan Approval (PZ 07-310) then, prior to any development of the site, and as a part of site plan approval, the applicant shall be required to perform a new transportation impact study consistent with Bend Code Chapter 4.7 and the Transportation Planning Rule to determine whether the above described mitigation shall be modified or eliminated depending upon the traffic generated by the proposed alternate use and the background traffic using the facility at the time of the application for the alternate development proposal.

The TPR analysis shall be in addition to the analysis required by the alternate site plan proposal under the City's concurrency standards.

The development agreement referenced above shall include provisions allowing for the amendment of the development agreement if different transportation mitigation than listed above is required by the alternate development according to the TPR analysis."

Condition 7 of the Hearings Officer's decision requires that prior to the issuance of building permits:

"The driveway access to Colorado and Arizona Avenues are intended to be interim accesses until such time that Sisemore Street is constructed along the east boundary of the site, at which time the two arterial accesses must be eliminated and replaced with one access to Sisemore. The applicant shall provide a cost estimate for the cost of construction of Sisemore and reconstruction of the accesses. A cash deposit shall be paid to cover 120% of the cost of relocated the accesses, and ½ of the cost of construction of Sisemore between Colorado and Arizona Avenues. In lieu of providing said deposit, the applicant may enter into a Development Agreement with the City of Bend that insures funds remain available to complete the Sisemore Street improvements when sufficient right of way is available. The Development Agreement shall further require that the two temporary arterial accesses points be eliminated and replaced with a single Sisemore access upon completion of Sisemore improvements."

C. **Timing of Improvements.** As set forth in the Approval, the improvements to the intersection of the northbound Parkway ramp and Colorado (the "Ramp Mitigation") is not required to be constructed at the time of development of the Project as a requirement of the City's concurrency requirement, but the Ramp Mitigation is necessary to satisfy the requirements of the Oregon Transportation Planning Rule (the "TPR"), and must be constructed on or before March 6, 2023 to satisfy the TPR, as further set forth in the Approval and in this Agreement. Because the Developer does not control the right-of-way for the new segment of Sisemore, it is unclear whether or when the new segment of Sisemore will be constructed.

D. **Statutory Development Agreement.** 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 definitively establish and discharge all of their respective obligations through this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1.0 **Definitions:**

1.1 "**Agreement**" means this Development Agreement between and Developer and the City pursuant to ORS 94.504.

1.2 "**Project**" means the Developer's proposed project as approved by the City (PZ 07-310 & 07-311), that is to be constructed by Developer on the Property.

1.3 **"Ramp Mitigation"** means the improvements more particularly identified on Exhibit B, and which have been determined to be necessary by the Oregon Department of Transportation and the City under the TPR. The parties agree that the traffic signal shall be interconnected with the existing traffic signal at the southbound ramp to the west on Colorado.

1.4 **"Sisemore Improvements"** means the closure of the interim access points on Colorado and Arizona, including the construction of curbs, gutters and sidewalks to match adjacent improvements, and the

construction of a single access point on the new segment of Sisemore. The Sisemore Improvements also include the Developer's obligation to pay for one-half of the costs to construct Sisemore between Colorado and Arizona.

2.0 **Construction of Ramp Mitigation Condition No. 5:** The following provisions shall apply if the Developer elects to construct the Project consistent with the Approval. Should the Approval lapse, or should the Developer elect to construct other improvements on the Property, then consistent with the City Council's revisions to Condition No. 5, the provisions of Section 2.7 below shall apply.

2.1 Unless requested earlier by the City based upon increased traffic or accidents at this location, the Developer shall three years after the signing of this Agreement, and every two years thereafter, prepare an updated warrant analysis addressing the warrants for the development of the construction of the Ramp Mitigation. This analysis shall be submitted after completion to the City's Transportation Engineer and ODOT Region 4 Traffic Engineer. The warrant analysis shall be created according to ODOT's warrant standards, and include at a minimum those warrant criteria listed in Paragraph 2.2.

2.2 The Developer shall commence construction of the Ramp Mitigation on or before the earlier of i) the date that the Developer is notified by the City that the crash rate at the intersection of the northbound parkway ramps and Colorado has exceeded a rate of more than 1.0 crashes per million entering vehicles for a three year period; ii) the date that the Developer is notified by ODOT or the City that signal or volume warrants have been met for the northbound parkway ramps and Colorado intersection; or iii) March 6, 2023. For purposes of this Agreement the term "commence construction" shall mean that the Developer shall submit construction plans for ODOT and City approval and shall thereafter diligently complete construction of the Ramp Mitigation after approval by ODOT and the City. In no event shall the Developer have any obligation to pay for any additional improvements requested or required by ODOT or the City other than the Ramp Mitigation.

2.3 **Compliance with Laws.** In constructing the Ramp Mitigation, the Developer shall comply with all applicable city, state and federal regulations, codes, ordinances and laws. Prior to construction the Developer shall have all construction plans approved by the City and the Oregon Department of Transportation in accordance with all applicable City and State laws, regulations and ordinances. The City and the Developer shall also comply with the parties' respective obligations set forth in Exhibit D.

2.4 **The Developer shall be responsible for the entire cost of the design** and construction of the Ramp Mitigation subject to the sharing of such costs by other developers whose development requires the Ramp Mitigation as outlined in this Paragraph.

2.4.1 **Contribution by Third Parties Prior to Construction.** Should any third party propose a development which would require the developer of such property to construct the Ramp Mitigation, or some portion thereof, and i) such improvements are not required at the time of development, and ii) such improvements are not required until after the Developer is obligated to construct the Ramp Mitigation, then the City shall collect from such third party developers their Proportionate Share of the Ramp Mitigation (the "Ramp Contributions") according to the formula outlined in Paragraph 2.6. The City shall retain the

Ramp Contributions until such time as the Ramp Mitigation is constructed. If the Ramp Mitigation is constructed by the Developer or its successors or assigns, then upon completion of the Ramp Mitigation, the City shall deliver the Ramp Contributions to the Developer as a form of reimbursement. To ensure that future developments pay their proportionate share of the Ramp Mitigation the City agrees and acknowledges that until such time as the Ramp Mitigation is constructed, the City will not permit applicants to rely on the future construction of the Ramp Mitigation as part of any transportation impact analysis until such time as the Ramp Mitigation is actually constructed, or unless the applicant pays its Contribution to the City as provided in this Section 2.4. The express intent of this Section 2.4 is to ensure that third parties pay their Proportionate Share of the Ramp Mitigation costs.

2.4.2 **Contribution by Third Parties After Construction.** Prior to the construction of the Ramp Mitigation by the Developer, at the request of the Developer, the City agrees to cooperate with the Developer in forming a reimbursement district under the then applicable provisions of the Bend Code to provide reimbursement to the Developer for the excess capacity created by the Ramp Mitigation. In addition, after construction of the Ramp Mitigation by the Developer, to the extent permitted by the Bend Code, the City shall collect Proportionate Share contributions from applicants proposing development in the area which will utilizes the excess capacity created by the construction of the Ramp Mitigation.

2.5 **Local Improvement District**. In the event that the Developer fails to perform its obligations under this Agreement, the City may form a local improvement district for the purpose of constructing the Ramp Mitigation. In that regard, the Developer shall execute a "waiver of remonstrances" against the formation of a local improvement district (LID) to fund the design and construction of the Ramp Improvements as described in Exhibit B. In this regard, the Developer hereby waives its rights, as provided under Bend City Code, and ORS Sections 223.117, 223.118, 223.389 and ORS 223.391 to have its written or oral objection to a proposed local improvement counted for purposes of determining whether there are, by law, sufficient objections to force the relevant governing body to abandon the proposed improvement, including but not limited to the formation of a local improvement district. It is the intent of Developer that this waiver of remonstrance shall be a condition and covenant that shall run with the land.

The City will require future development that is subject to the ramp mitigation requirement to participate in a local improvement district to pay for the cost of the ramp mitigation. In that regard, subject future development will be required to execute waivers of remonstrance regarding the formation of a LID. When the warrants are met for the construction of the Ramp Improvements, the City will form the LID which will consist of those properties that have executed "waivers of remonstrances." The LID will allocate the cost of the Ramp Improvements according to the formula contained in Paragraph 2.6.

2.6 **Construction by Third Party:** If, prior to construction of the Ramp Mitigation by the Developer, a third party or the City elect to construct the Ramp Mitigation, or improvements substantially similar to and not materially more expensive than the Ramp Mitigation, and which continue to satisfy the Developer's obligations with respect to the TPR as set forth in the Appraisal, then the Developer shall contribute to the City the Developer's Proportionate Share (as defined below) towards

the construction of the Ramp Mitigation. Upon contribution of the Developer's Proportionate Share to the City, the Developer's obligations under this agreement with respect to the Ramp Mitigation shall be deemed to be satisfied. If construction of the Ramp Mitigation, or alternate improvements to the intersection by a third party result in mitigation that is materially more expensive than would have been provided by the Developer in constructing the Ramp Mitigation, Developer's proportionate share shall be limited to its proportionate share of the costs of the Ramp Mitigation as provided herein. In no event shall the Developer's Proportionate Share under this paragraph exceed that amount which the Developer would be required to expend if the Developer were constructing the Ramp Mitigation. For purposes of this Agreement, the term "Proportionate Share" shall mean the following, as provided in Bend Code 4.7.500(B)(2007):

Proportionate Share = [Trips from each participating property using the intersection as determined by the site plan upon which the development is based / Total trips using this intersection by participating properties] X Estimated Construction Cost. Participating properties are those properties who have submitted a land use application that requires mitigation of the traffic impacts on this intersection.

The numbers of trips for the proportional analysis shall be calculated according to the development approved in the respective land use applications.

2.7 **Alternate Development of Property.** Should the Approval lapse, or should the Developer elect to construct other improvements on the Property other than those set forth in the Approval, then this Section 2.7 shall apply.

2.7.1 **No Development without Site Plan Approval.** Consistent with the City Council's revision to Condition of Approval No. 5 as set forth above, if the Approval should lapse, or should the Developer elect to construct improvements on the Property other than as set forth in the Approvals, then the Developer acknowledges and agrees that no development may take place on the Property, and that no additional traffic shall be generated from the Property, unless and until the Applicant has received Site Plan approval from the City pursuant to the then applicable provisions of the Bend Code. Notwithstanding anything to the contrary in the Bend Code or the TPR, at the time of the Site Plan approval required by this Section 2.7.1, the Developer shall be required to complete a transportation impact analysis consistent with the then applicable substantive provisions of the TPR and the Bend Code. If required at the time of alternate development to comply with the TPR and the City's concurrency requirements, mitigation consistent with the requirements of the TPR and/or the City's concurrency requirements shall be required to ensure that alternate development of the Property, and any potential subsequent redevelopment, does not violate the TPR.

3.0 **SISEMORE CONDITION OF APPROVAL NO. 7**

3.1 **Sisemore Costs; Waiver of Remonstrance**. Prior to the issuance of building permits, the Developer shall pay to the City a lump sum payment equal to 120 % of one-half of the construction costs for Sisemore and 100% of the cost of closing the interim accesses. The payment of these sums shall satisfy the Developer's monetary obligations regarding Condition 7, except that the Developer shall also close the existing accesses referenced in the condition of approval. In

the event that that this segment of Sisemore Street is not built within 15 years after the payment of the funds, the City shall return the funds to the Developer.

3.2 **Closure of Interim Access.** Within 30 days after the completion and opening of the new Sisemore segment between Colorado and Arizona, the Developer shall obtain any approvals necessary from the City for the closure of the interim access points on Colorado and Arizona, and shall thereafter diligently complete construction of a new single access from the property to the new segment of Sisemore. Upon completion of the new access point to Sisemore the Developer shall permanently close the interim access points and shall construct sidewalks, curbs, and gutters to match the existing adjacent improvements on Colorado and Arizona.

4.0 **Construction of Project; Modification of Approval.** The Developer's obligations under this Agreement for the Sisemore Improvements are solely contingent on the Developer's construction of the Project. Should Developer elect not to construct the Project as set forth in the Approvals, or should the Approvals expire prior to construction of the Project, the Developer shall have no obligations to pay the sums identified in Paragraph 3 of this Agreement. Pursuant to Section 2.7, should the Developer elect to construct substitute improvements on the Property pursuant to a new site plan approval, the City may impose a similar condition of approval regarding the Sisemore extension and the closure of any interim access points.

5.0 **Effective Date; Term of Agreement**. This Agreement shall be effective upon adoption of the City Council approving this Agreement pursuant to ORS 94.508. 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.

6.0 **Schedule and Procedure for Compliance Review.** Notwithstanding the warrant analyses required in Paragraph 2.1, commencing on the first anniversary of the Effective Date and, if requested by the City, Developer 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. To the extent any local rule, ordinance, regulation or policy is adopted on a jurisdiction-wide basis that is not, in the reasonable discretion of Developer, inconsistent with the substance, purpose, or conditions of this Agreement, then the local rule, ordinance, regulation or policy shall be applicable.

7.0 **This Agreement Runs with Land; Assignability of Agreement**. This Agreement is intended to and shall run with the land and shall be fully binding upon the Developer, and all future owners of the Property. Pursuant to the Approvals, the Developer intends to construct residential condominiums above the ground floor of the development of the Property. Notwithstanding the fact that this Agreement shall run with the land, this Agreement shall not bind any owner of any individual condominium unit in the development, but shall only bind the fee owner of the real property described on Exhibit A.

This Agreement shall be fully assignable, in whole or in part, by either Party and shall bind and inure to the benefit of the Parties and their respective successors and assigns. Other than with respect to any individual condominium unit, if any portion (other than lot sales to individuals or builders) of the Property is sold, the duties, rights and interests of Developer under this Agreement shall become the duties, rights and responsibilities of the purchaser of the Property.

8.0 **Defaults**

8.1 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 a 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.

8.2 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.

8.3 Upon an event of default by either party, the non-defaulting party may pursue any legal or equitable remedy available to it, including the remedy of specific performance. In addition, should the Developer fail to perform any of its construction obligations as required by this Agreement, after providing the Developer with 30 days' prior written notice, the City may elect to construct such improvements at the sole cost and expense of the Developer. Upon a default, should the City elect to construct the any improvements required to be constructed by the Developer under this Agreement, the Developer shall be responsible for any and all costs associated with the construction of such improvements, which costs and expenses shall become a lien against the Property. The election of the City to construct the any improvements required to be constructed by the Developer shall not preclude the City from pursuing any other legal or equitable remedy available to it. In the event that the Developer defaults the City shall be entitled to recover its attorney fees associated with the establishment of an local improvement district and/or legal action prompted by the Developer's failure to perform.

9.0 **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.

10.0 **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 Developer: Colorado Street Development Partners, LLC
480 San Antonio Road #205

Mountain View, California 94040
Attn: John Gaston

With a copy to: Ball Janik LLP
15 SW Colorado, Suite 3
Bend, Oregon 97702
Attn: Steve Hultberg

If to City: City of Bend
Development Services
710 N.W. Wall
Bend, OR 97701
Attn: Development Services Director

11.0 **Miscellaneous.**

11.1 **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.

11.2 **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.

11.3 **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. To the extent required under Section 2.7 and any subsequent conditions of approval applicable to the Property pursuant to alternate development of the Property under Section 2.7, the parties agree to cooperate and act in good faith in negotiating any amendments to this Agreement as may be necessary to comply with future conditions of approval and the provisions of Section 2.7.

11.4 **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.

11.5 **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.

11.6 **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.

11.7 **Severability**. Subject to Section 13.4, the unenforceability or invalidity of any provisions hereof shall not render any other provision herein contained unenforceable or invalid.

11.8 **Time of Essence**. Time is of the essence of this Agreement.

11.9 **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

Signatures on Next Page

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date set forth in the first paragraph of this Agreement.

"Developer" COLORADO STREET DEVELOPMENT PARTNERS, LLC
an Oregon corporation

By:_____
Name:_____
Title:_____

STATE OF OREGON)
)ss.
COUNTY OF DESCHUTES)

This instrument was acknowledged before me on _____ by _____ as _____ of Colorado Street Development Partners, LLC.

_____
Signature of Notarial Officer
My Commission Expires:_____

"CITY" CITY OF BEND, an Oregon Municipal Corporation

By:_____
Name:_____
Title:_____

STATE OF OREGON)
)ss.
COUNTY OF DESCHUTES)

This instrument was acknowledged before me on _____ by _____ as _____ of the City of Bend.

_____
Signature of Notarial Officer
My Commission Expires:_____

Development Agreement Exhibit A
Property Legal Description

Parcel I:

That part of the Southwest Quarter of the Southeast Quarter (SW ¼ SE ¼) of Section 32, Township 17 South, Range 12 East of the Willamette Meridian, Deschutes County, Oregon, described as follows: Beginning at a point on the West line of the Southeast Quarter (SE ¼) and located from the South Quarter corner of said Section 32, North 48 feet thence North on the West line of said Southeast Quarter (SE ¼) 175.47 feet; thence East 70 feet; thence North 76 feet; thence East 230 feet; thence South 249.98 feet to a point in the North line of the right of way of the Oregon Trunk Railway; thence South 89° 43' West 300 feet to the point of beginning.

EXCEPTING THEREFROM that portion deeded to the City of Bend, a municipal corporation, of the State of Oregon, as described in a Deed recorded November 7, 2002 in Instrument No. 2002-62230 and re-recorded June 27, 2003 in Instrument No. 2003-43430 of Deschutes County Records.

Parcel II:

A tract of land lying and being in the Southwest Quarter of the Southeast Quarter (SW ¼ SE ¼) of Section 32, Township 17 South, Range 12 East of the Willamette Meridian, Deschutes County, Oregon, more particularly described as follows: Beginning at a point on the South line of Colorado Avenue said point being 300 feet East of the West line of said Southeast Quarter (SE ¼) of Section 32; thence South 250 feet more of less to the North line of the right of way of the Oregon Trunk Railway; thence Easterly along the Northerly line of said right of way a distance 290 feet, to a point also being the Southwest corner of that tract of land conveyed to James O. Miller, by instrument recorded November 13, 1948 in Book 88, Page 308, Deed Records; thence North 260 feet, more or less, to a point on the South line of Colorado Avenue, said point also being the Northwest corner of said Miller tract; thence West 290 feet to the point of beginning.

EXCEPTING THEREFROM that portion deeded to the City of Bend, a municipal corporation, of the State of Oregon, as described in a Deed recorded November 7, 2002 in Instrument No. 2002-62230 and re-recorded June 27, 2003 in Instrument No. 2003-43430 of Deschutes County Records.

Parcel III:

Portion of Lots 1 and 2 in Block 5 of DESCHUTES, City of Bend, Deschutes County, Oregon, lying North of NW Arizona Avenue.

Parcel IV:

The South 1/3 of Lots 7 and 8 in Block 5 of DESCHUTES, City of Bend, Deschutes County, Oregon.

Parcel V:

Lots 7 and 8 in Block 5 of DESCHUTES, City of Bend, Deschutes County, Oregon.

EXCEPTING THEREFROM the South 38 feet of said lots.

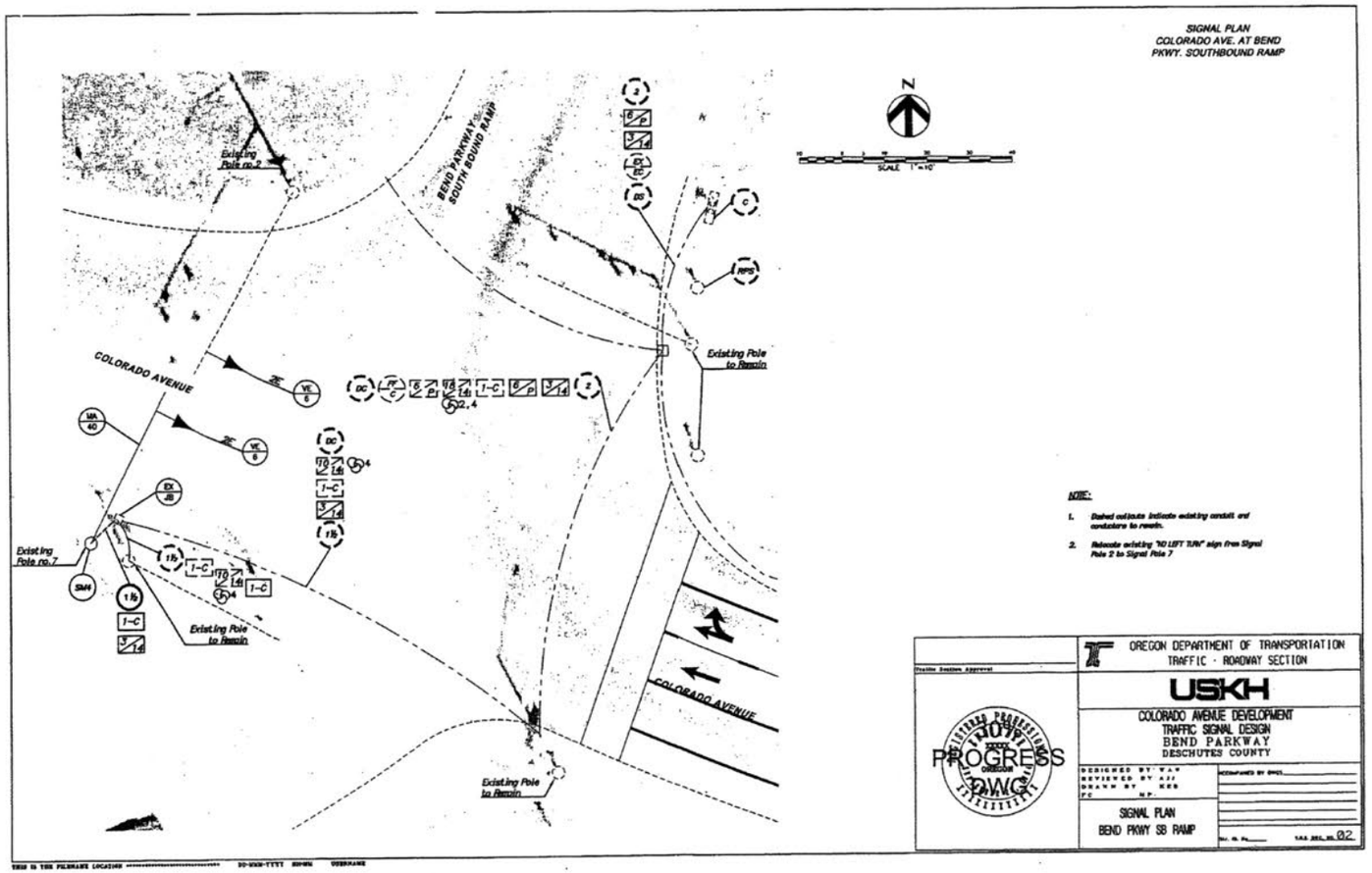
Parcel VI:

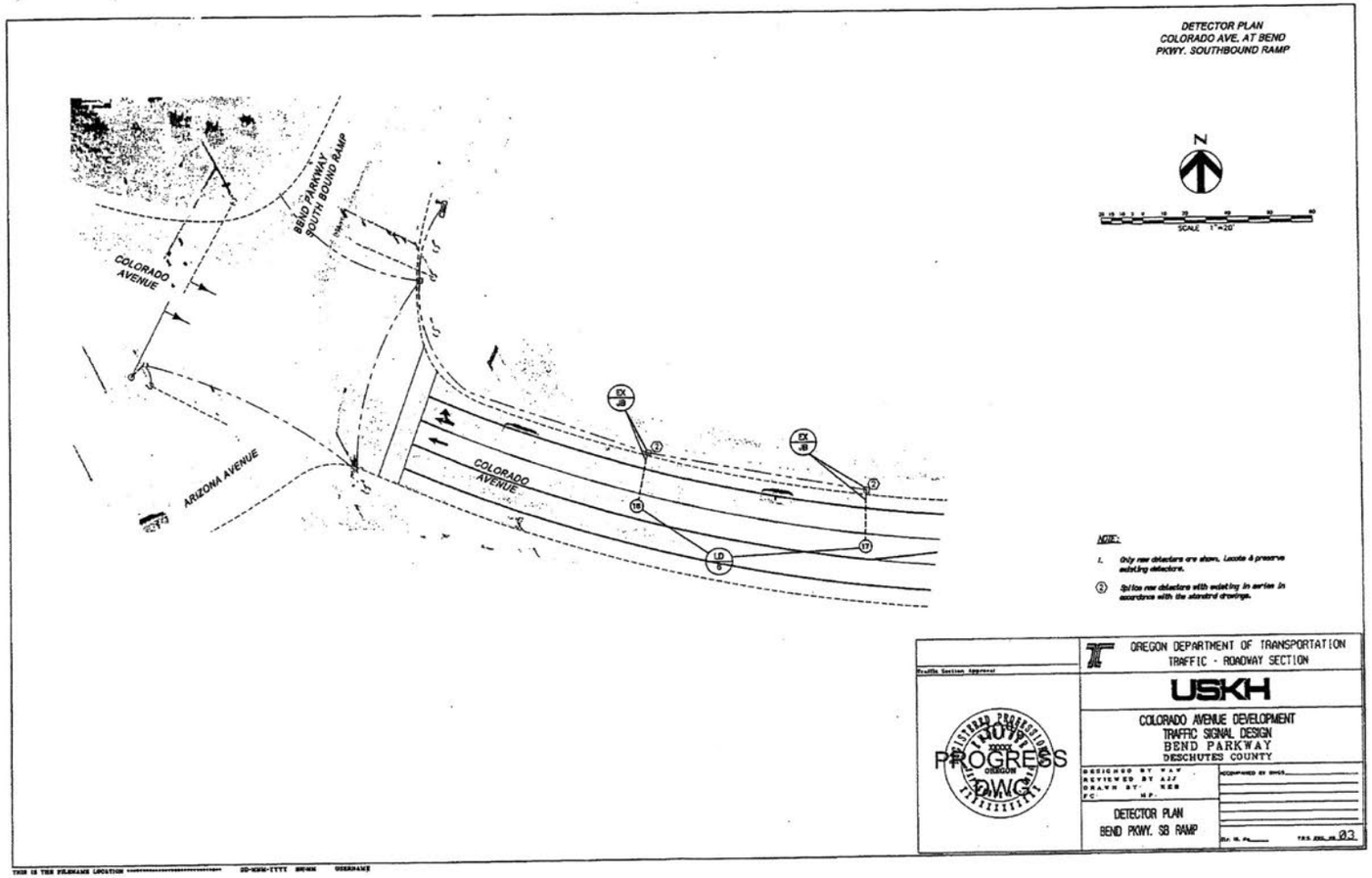
A portion of the Southwest Quarter of the Southeast Quarter (SW ¼ SE ¼) of Section 32, Township 17 South, Range 12 East of the Willamette Meridian, Deschutes County, Oregon, described as follows:

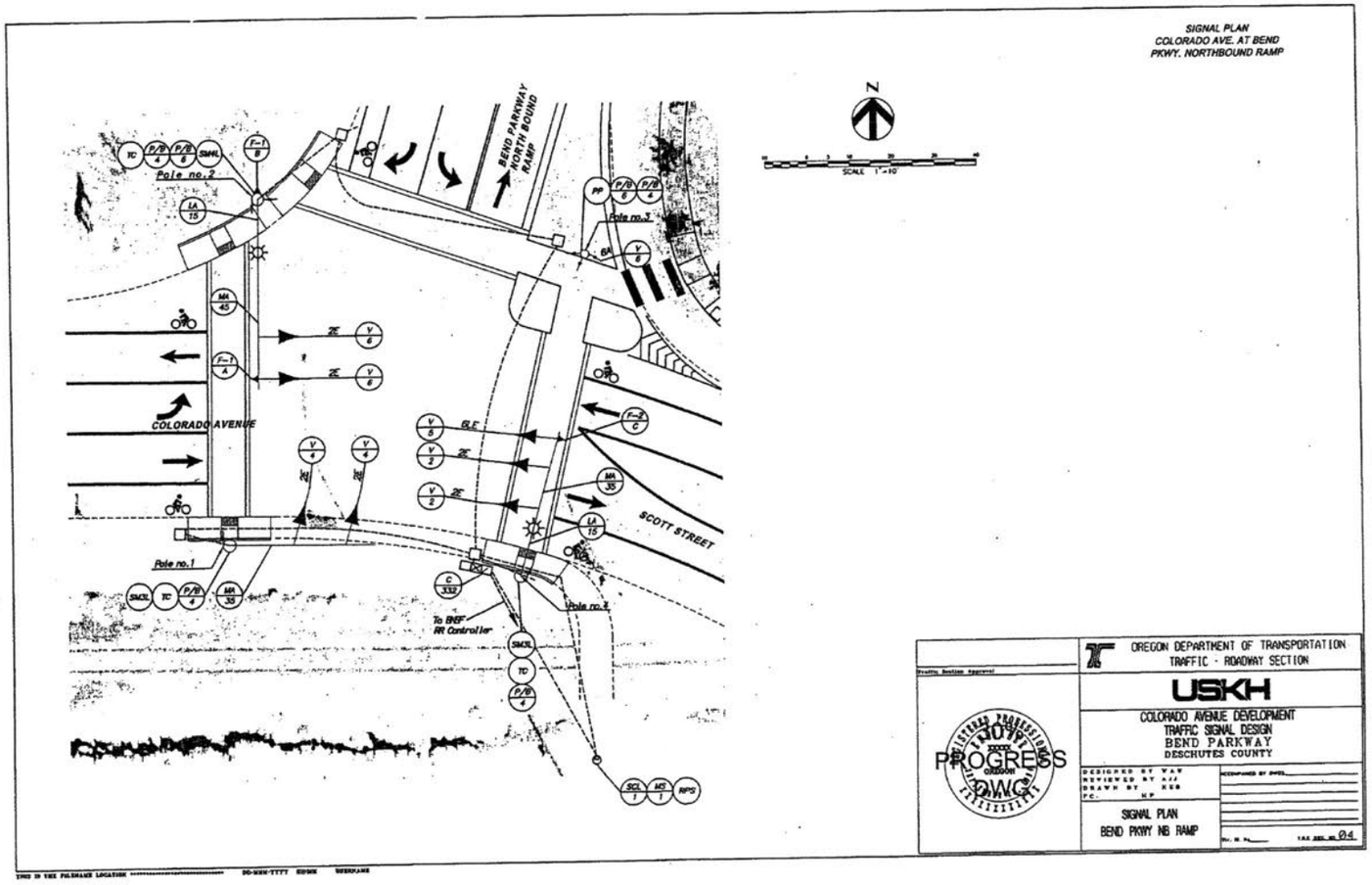
Beginning at the Northeast corner of Lot 8 in Block 5 of DESCHUTES, now a part of the City of Bend, Deschutes County, Oregon; thence East along the South line of Colorado Avenue a distance of 70 feet; thence South at right angles a distance of 76 feet; thence West at right angles a distance of 70 feet to a point on the West line of the Southwest

Quarter of the Southeast Quarter (SW ¼ SE ¼) of said Section 32; thence North along said West line a distance of 76 feet to the point of beginning.

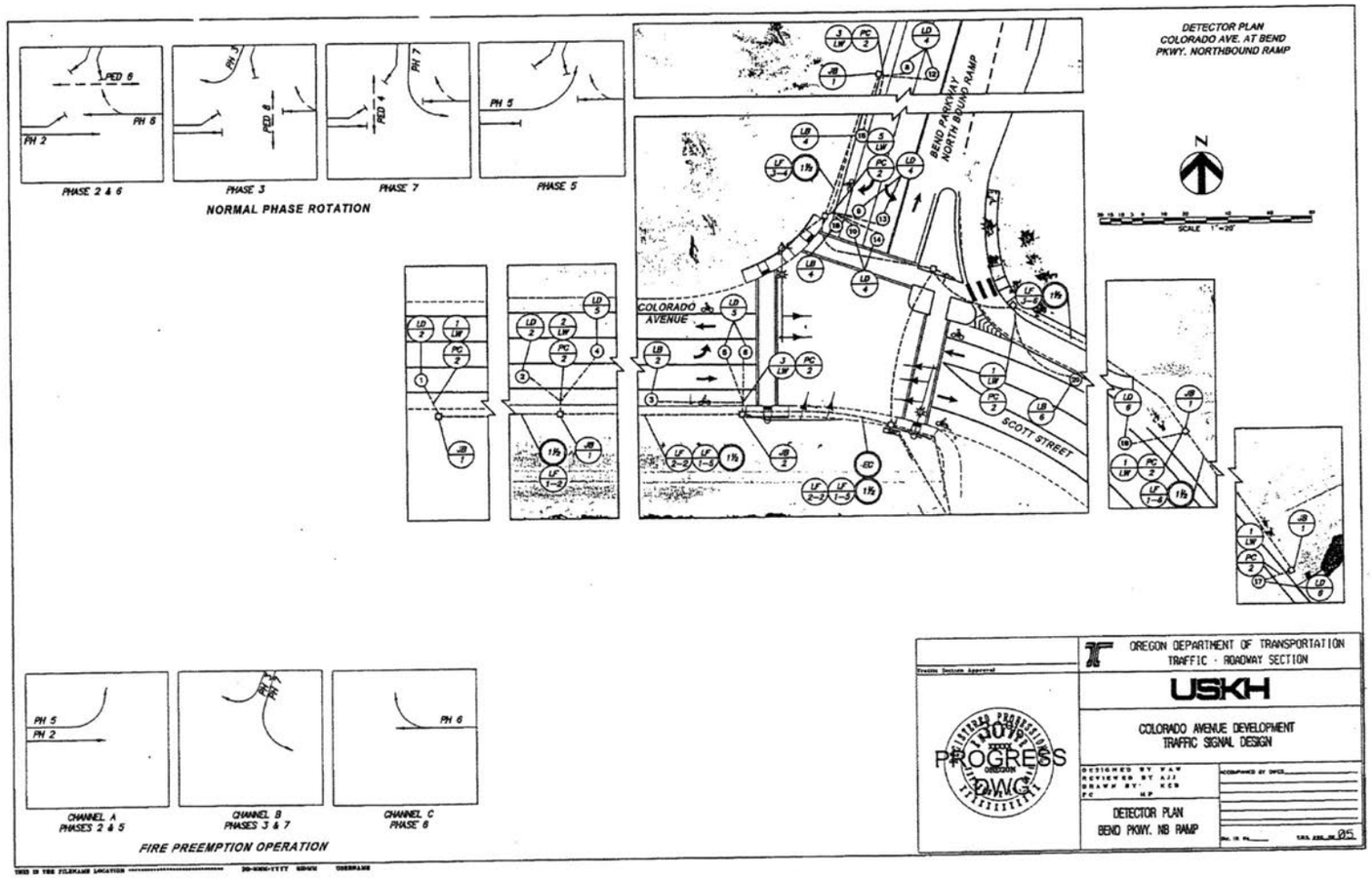
Development Agreement Exhibit B
Ramp
Mitigation


SIGNAL PLAN
COLORADO AVE. AT BEND
PKWY. SOUTHBOUND RAMP
BEND PARKWAY SOUTH BOUND RAMP
Existing Pole no. 2
COLORADO AVENUE
Existing Pole to Remain
Existing Pole no. 7
Existing Pole to Remain
Existing Pole to Remain
COLORADO AVENUE
N
SCALE 1"=10'
NOTE:
1. Dashed notation indicate existing conduit and conductors to remain.
2. Relocate existing "NO LEFT TURN" sign from Signal Pole 2 to Signal Pole 7
OREGON DEPARTMENT OF TRANSPORTATION
TRAFFIC - ROADWAY SECTION
USKH
COLORADO AVENUE DEVELOPMENT
TRAFFIC SIGNAL DESIGN
BEND PARKWAY
DESCHUTES COUNTY
PROGRESS
SIGNAL PLAN
BEND PKWY SB RAMP
02

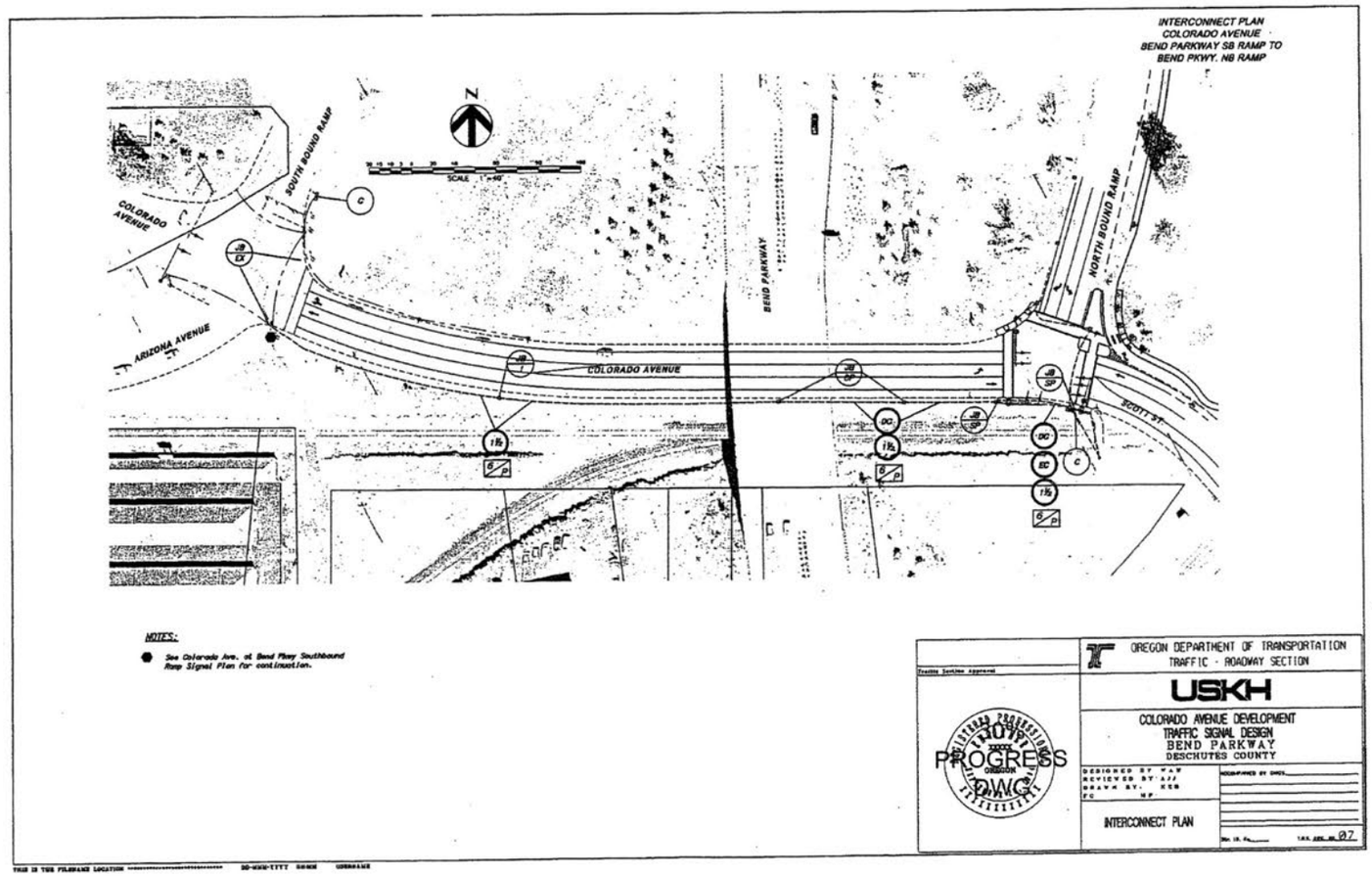

DETECTOR PLAN
COLORADO AVE. AT BEND
PKWY. SOUTHBOUND RAMP
N
SCALE 1"=20'
BEND PARKWAY
SOUTH BOUND RAMP
COLORADO
AVENUE
ARIZONA AVENUE
COLORADO
AVENUE
DX
JB
DX
JB
LD
P
NOTE:
1. Only new detectors are shown. Locate & preserve existing detectors.
2. Splice new detectors with existing in series in accordance with the standard drawings.
OREGON DEPARTMENT OF TRANSPORTATION
TRAFFIC - ROADWAY SECTION
USKH
COLORADO AVENUE DEVELOPMENT
TRAFFIC SIGNAL DESIGN
BEND PARKWAY
DESCHUTES COUNTY
DESIGNED BY: MJV
REVIEWED BY: AJF
DRAWN BY: MJV
P.E.
DETECTOR PLAN
BEND PKWY. SB RAMP
03


SIGNAL PLAN
COLORADO AVE. AT BEND
PKWY. NORTHBOUND RAMP
BEND PARKWAY NORTH BOUND RAMP
COLORADO AVENUE
SCOTT STREET
Pole no.1
Pole no.2
Pole no.3
To BNSF RR Controller
N
SCALE 1"=10'
OREGON DEPARTMENT OF TRANSPORTATION
TRAFFIC - ROADWAY SECTION
USKH
COLORADO AVENUE DEVELOPMENT
TRAFFIC SIGNAL DESIGN
BEND PARKWAY
DESCHUTES COUNTY
SIGNAL PLAN
BEND PKWY NB RAMP

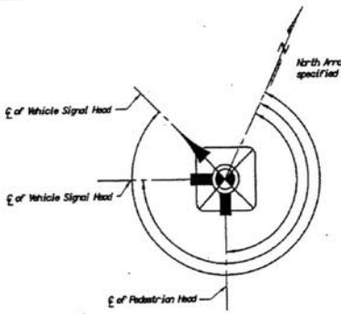
Ordinance NS-2094



RAILROAD PREEMPTION PLAN
COLORADO AVE. AT BEND PKWY. NORTHBOUND RAMP
SCALE IN FEET
NORMAL PHASE ROTATION
SERVE ALL NON-CONFLICTING PHASES (PHASES 3&8)
SIGNAL INDICATION ACTIVE WHEN RAILROAD PREEMPTION INITIATED
SIGNAL INDICATION ACTIVE WHEN PED INHIBIT IS INITIATED
OREGON DEPARTMENT OF TRANSPORTATION
TRAFFIC - ROADWAY SECTION
USKH
COLORADO AVENUE DEVELOPMENT
TRAFFIC SIGNAL DESIGN
BEND PARKWAY
DESCHUTES COUNTY
RAILROAD PREEMPTION PLAN
PROGRESS PRINT
BNRR RR
SCOTT STREET
BEND PARKWAY NORTH BOUND RAMP
COLORADO AVENUE
Preemption Interconnect
Existing RR Controller


INTERCONNECT PLAN
COLORADO AVENUE
BEND PARKWAY SB RAMP TO
BEND PKWY. NB RAMP
N
SCALE 1"=40'
SOUTH BOUND RAMP
COLORADO AVENUE
ARIZONA AVENUE
BEND PARKWAY
NORTH BOUND RAMP
COLORADO AVENUE
SCOTT ST
NOTES:
See Colorado Ave. at Bend Pkwy Southbound Ramp Signal Plan for continuation.
OREGON DEPARTMENT OF TRANSPORTATION
TRAFFIC - ROADWAY SECTION
USKH
COLORADO AVENUE DEVELOPMENT
TRAFFIC SIGNAL DESIGN
BEND PARKWAY
DESCHUTES COUNTY
PROGRESS
DWG
INTERCONNECT PLAN

SIGNAL PLAN DETAILS
BEND PARKWAY AT COLORADO AVE.

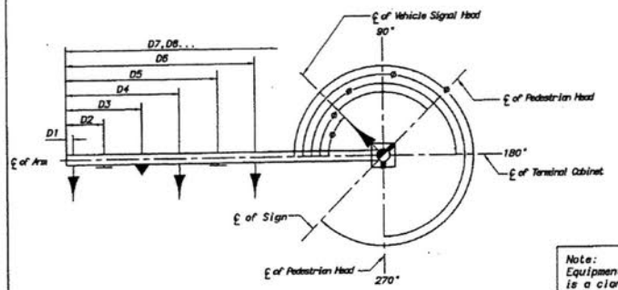


PEDESTRIAN PEDESTAL/VEHICLE PEDISTAL ORIENTATION DIAGRAM

Note:
Equipment shown on orientation diagram is a clarification of distance and angles of equipment that may be located on Pedestrian Pedestal or Vehicle Pedestal.

POLE ENTRANCE CHART

POLE NO.	DWG. NO.	TYPE (SEE TM650 THRU TM653)	EQUIPMENT ON POLE: PED. SIGNAL DEG.	TERM. CABINET DEG.	SIGN DEG.	TRAFFIC SIGNAL DEG.	PHOTO ELEC. DEG.	EQUIPMENT ON MAST ARM (LENGTH IN FEET AND EQUIPMENT TYP): ARM LEN.	D1	D2	D3	D4	D5	D6	D7	D8	FOUNDATION INFORMATION (SEE STD. DWG. TH683): FOUNDATION NUMBER	REQUIRED FOUNDATION DEPTH	LUMINAIRES: ARM LENGTH	ARM DEG.	MOUNT HEIGHT	FIXTURE TYPE	FIXTURE WATT.
1																								
2																								
3																								
4																								
5																								
6																								
7																								
8																								
9																								
10																								



MAST ARM POLE ORIENTATION DIAGRAM

Note:
Equipment shown on orientation diagram is a clarification of distance and angles of equipment that may be located on a Mast Arm or Signal Pole.

SCALE 1"=40

OREGON DEPARTMENT OF TRANSPORTATION
TRAFFIC - ROADWAY SECTION

USKH

COLORADO AVENUE DEVELOPMENT
TRAFFIC SIGNAL DESIGN
BEND PARKWAY
DESCHUTES COUNTY

NOT FOR CONSTRUCTION
PROGRESS
DRWG

DESIGNED BY KAY
REVIEWED BY AJJ
DRAWN BY KEB
P.E. M.P.

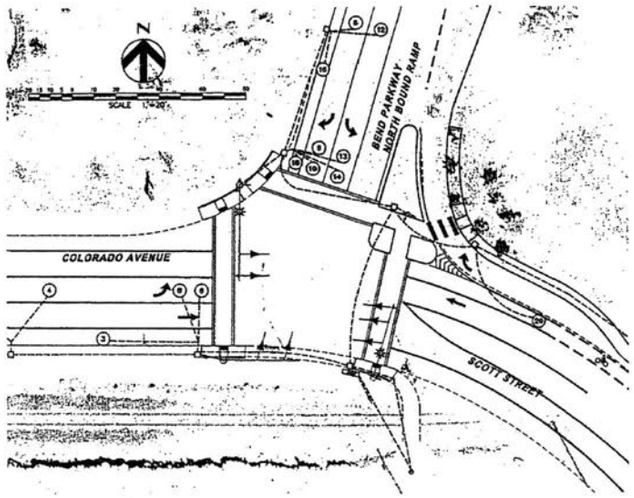
ACCOMPANIED BY SHEET

POLE ENTRANCE CHART

Dr. M. Pe. TAS. REG. No. 08

Ordinance NS-2094

EXISTING UTILITY PLAN
COLORADO AVE. AT BEND
PKWY. NORTHBOUND RAMP



OREGON DEPARTMENT OF TRANSPORTATION
TRAFFIC - ROADWAY SECTION

USKH

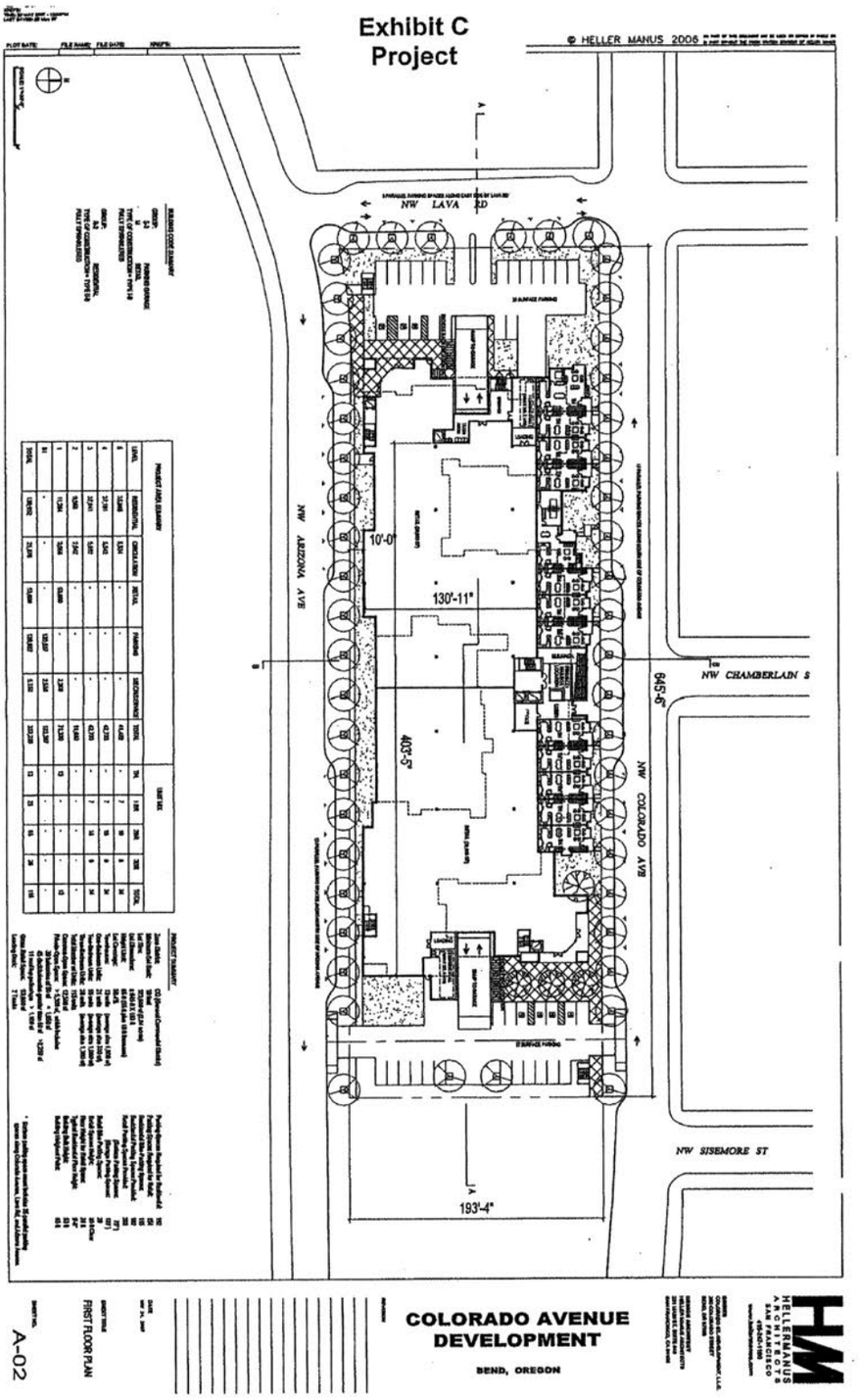
COLORADO AVENUE DEVELOPMENT
TRAFFIC SIGNAL DESIGN
BEND PARKWAY
DESCHUTES COUNTY

DESIGNED BY: W.A.W
REVIEWED BY: A.J.J
DRAWN BY: K.S.B
P.E. W.F.

EXISTING UTILITY PLAN

09

Development Agreement Exhibit C
Project



Development Agreement Exhibit D

Colorado Avenue/NB Parkway Ramp intersection Project Distribution of Duties

City of Bend:

1. Notify applicant when ODOT determination has been made regarding intersection construction warrants.
2. Review submitted designs and plans in a timely fashion.
3. Forward submitted designs and plans in a timely fashion to ODOT.
4. Sign and approve permit applications as needed.
5. Cooperate with Developer on the preparation of documents for repayment in a timely fashion.

Developer:

1. Create final design plans for the intersection of Colorado Avenue/NB Parkway Ramp to ODOT standards and Specifications.
2. Obtain permits.
3. Construct Colorado Avenue/NB Parkway Ramp signal plus right turn lane or contribute applicant's allocated cost to intersection mitigation if mitigation is modified in the future.
4. Coordinate with City on change orders and cost controls.
5. Project management.

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ORDINANCE NO. NS-2095

AN ORDINANCE AMENDING THE BEND URBAN AREA ZONING MAP BY CHANGING THE ZONING OF A PARCEL OF LAND TOATLING 2.47 ACRES LOCATED EAST OF LAVA ROAD BETWEEN COLORADO AND ARIZONA AVENUES FROM IL INDUSTRIAL LIGHT TO CG COMMERCIAL GENERAL.

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 zone change is consistent with the criteria of the Bend Development Code Section 4.6.300 as shown in Exhibit C. The Bend City Council adopts the findings in Exhibit C, excerpted from the Findings and Decision of the Hearings Officer dated February 6, 2008, City File Nos. PZ 07-310 and PZ 07-311 together with the additional findings attached in Exhibit D and the revised condition of approval also set forth in Exhibit D.

Section 2. The Bend Urban Area Zoning Map is hereby amended by changing the zoning of the property shown in "Exhibit A" and described in "Exhibit B" from Industrial Light (IL) to Commercial General (CG).

Section 3. This zoning change is subject to the Development Agreement adopted by Ordinance No. NS-2094.

Read for the first time the 2nd day of April, 2008.

Read for the second time the 16th day of April, 2008.

Placed upon its passage the 16th day of April, 2008.

YES: 5 NO: 0 ABSTAIN: 1

Authenticated by the Mayor the 16th day of April, 2008.

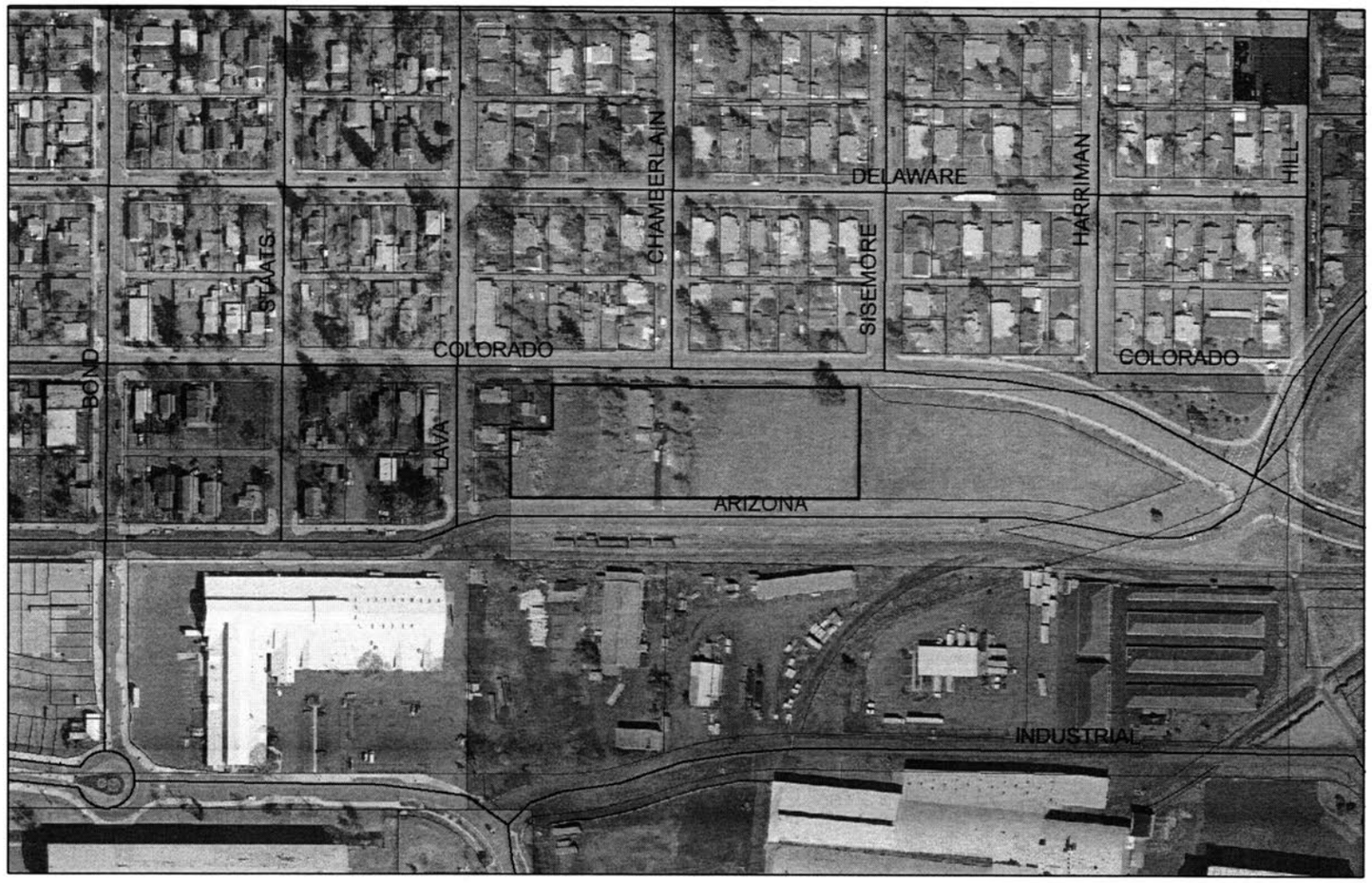
Bruce Abernethy, Mayor

ATTEST:

Patricia Stell, City of Bend Recorder

Ordinance NS-2095

EXHIBIT A



PZ 07-311 Colorado Street Development Zone Change IL to CG

Map prepared February 12, 2008.
Imagery acquired March 2004.

ZONING

CG
CN
IG
IL
MR
RM
Subject Property

0 250 500 Feet

N

EXHIBIT B

LEGAL DESCRIPTION

Parcel I:

That part of the Southwest Quarter of the Southeast Quarter (SW ¼ SE ¼) of Section 32, Township 17 South, Range 12 East of the Willamette Meridian, Deschutes County, Oregon, described as follows: Beginning at a point on the West line of the Southeast Quarter (SE ¼) and located from the South Quarter corner of said Section 32, North 48 feet; thence North on the West line of said Southeast Quarter (SE1/4) 175.47 feet; thence East 70 feet; thence North 76 feet; thence East 230 feet; thence South 249.98 feet to a point in the North line of the right of way of the Oregon Trunk Railway; thence South 89° 43' West 300 feet to the point of beginning.

EXCEPTING THEREFROM that portion deeded to the City of Bend, a municipal corporation, of the State of Oregon, as described in a Deed recorded November 7, 2002 in Instrument No. 2002-62230 and re-recorded June 27, 2003 in Instrument No. 2003-43430 of Deschutes County Records.

Parcel II:

A tract of land lying and being in the Southwest Quarter of the Southeast Quarter (SW ¼ SE ¼) of Section 32, Township 17 South, Range 12 East of the Willamette Meridian, Deschutes County, Oregon, more particularly described as follows: Beginning at a point on the South line of Colorado Avenue said point being 300 feet East of the West line of said Southeast Quarter (SE ¼) of Section 32; thence South 250 feet more of less to the North line of the right of way of the Oregon Trunk Railway; thence Easterly along the Northerly line of said right of way a distance 290 feet, to a point also being the Southwest corner of that tract of land conveyed to James O. Miller, by instrument recorded November 13, 1948 in Book 88, Page 308, Deed Records; thence North 260 feet, more or less, to a point on the South line of Colorado Avenue, said point also being the Northwest corner of said Miller tract; thence West 290 feet to the point of beginning.

EXCEPTING THEREFROM that portion deeded to the City of Bend, a municipal corporation, of the State of Oregon, as described in a Deed recorded November 7, 2002 in Instrument No. 2002-62230 and re-recorded June 27, 2003 in Instrument No. 2003-43430 of Deschutes County Records.

EXHIBIT C

HEARINGS OFFICER FINDINGS FOR ZONE CHANGE

4.6.300 Quasi-Judicial Amendments

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: The applicant addresses the applicable Statewide Planning Goals in their burden of proof. There are 19 Statewide Planning Goals which embody Oregon's land use policies. Each local government throughout Oregon, including the City of Bend, must adopt a comprehensive plan implementing these Statewide Planning Goals. Once LCDC finds the comprehensive plan is consistent with the Statewide Planning Goals, the agency acknowledges the plan. The City of Bend has an acknowledged Comprehensive Plan, and the requested zone change is in conformance with that Comprehensive Plan. Additionally, the Bend Development Code implements the policies of the Comprehensive Plan (Bend Urban Area General Plan). Therefore, by demonstrating conformance with the Development Code, the applicant demonstrates compliance with the Statewide Planning Goals.

The statewide planning goals specifically relevant to the subject application are goals 9 and 12. Statewide Planning Goal 9 states "To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens." OAR 660-009 implements Goal 9. This administrative rule 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 particular, Goal 9 and the implementing rules require local governments to provide an adequate amount of commercial and industrial land within the Urban Growth Boundary. In Bend, this requirement is accomplished through the designation of adequate commercial and industrial land in the General Plan.

In adopting a Commercial designation for the subject property, the City has determined—and through the acknowledgement process the state has concurred—that the designation of the subject property as Commercial under the General Plan satisfies the requirements of Goal 9 to provide adequate commercial industrial land. Consequently, because the underlying property is designated Commercial under the General Plan, the rezoning of the property from IL to CG is consistent with the General Plan as well as Goal 9 and the rules implementing Goal 9.

OAR 660-009-0010(4)—which applies to post acknowledgement *plan amendments* that change *plan* designations from an industrial use designation to another designation—does not apply in this case because the proposal does not change the property's designation under the General Plan. Rather, the zone change is consistent with the Plan Designation. The zone change therefore is consistent with Goal 9.

Statewide Planning Goal 12 provides for the development of a safe, convenient and economic transportation system. OAR 660-012 implements Goal 12. The criteria in Development Code Section 4.7 require analysis of the traffic impacts for both the development and the proposed zone change, and require that those impacts are mitigated. Additionally, Section 4.6.600 requires the applicant to demonstrate compliance with the Transportation Planning Rule (OAR 660-012-0060). These code sections and required transportation system mitigation requirements are addressed further on in this report. By demonstrating compliance with these code sections, the applicant also demonstrates that the application is consistent with Goal 12.

The Hearings Officer finds that compliance with the terms and conditions of this decision demonstrates consistency with the Statewide Planning Goals.

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 Comprehensive Plan for the City of Bend is the Bend Area General Plan. The Preface of the General Plan states that plan policies will be implemented by the City's land use regulations. The majority of the General Plan Policies which are relevant to the proposed zone change application have been codified in the Bend Development Code, and therefore are addressed in findings throughout this decision.

There are few General Plan policies that speak directly to the proposed rezone application, other than the general policy that zoning and implementing ordinances should be consistent with the General Plan designations.

General Plan Chapter 1, Plan Management and Citizen Involvement, includes the following policy:

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 applicant held a neighborhood public meeting prior to submitting their applications, to discuss the proposal with the property owners in the area and solicit input on the proposal. Additionally, Planning staff sent notice of the public hearing time and date for these applications, providing mailed notice to all property owners within 250 feet of the subject site, and posting notice of the hearing in *The Bulletin* at least 10 days prior to the hearing. The applicant also posted notice on the property at the time the application was submitted and prior to the public hearing. The Hearings Officer finds that these efforts to solicit citizen involvement in the review process fulfill this General Plan policy.

General Plan Chapter 6, Economy and Lands for Economic Growth, includes the following policy:

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.

The rezone application is consistent with this policy because the application, together with the site plan review, will allow for commercial development along two arterial streets in an area designated by the General Plan for commercial use. Although access to the arterial streets will utilize left turns, the arterials are one-way couplets such that the left turn movement will be the equivalent of a right turn movement onto a standard two directional arterial street, and no traffic signals are required for the proposed accesses. With the addition of the proposed median along Colorado Street at Sisemore, the access points to the project will provide adequate and safe access to the property.

The General Plan Chapter 7; Transportation Systems, 6.9.1 Transportation and Land Use, includes the following policies which are applicable to the proposed development:

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 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.*

The Hearings Officer finds that the proposed rezone will allow mixed use development as proposed, with medium to high-density residential development on a site with 55,000 square feet of commercial retail services, with access to arterial streets, which helps achieve these goals.

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; and**

FINDING: Section 4.6.300(B)(3) provides that either the subject property be presently provided with adequate public facilities, services and transportation networks to support the use, or the applicant's burden of proof indicates that they plan to provide these concurrently with development. The City can evaluate the impacts based upon the proposed use because the applicant proposes a development application concurrently with this zone change request. Furthermore, the subject property is already designated for CG development on the General Plan. The impact of development was necessarily and actually considered when the Plan was updated in 1998.

Streets: Requirements for improvements to the existing street system are addressed in other findings in this decision, and in the applicant's burden of proof and Transportation Impact Analysis. Improvements to the surrounding transportation system are proposed to mitigate the impacts of the development to ensure adequate capacity of the surrounding transportation system with the proposed development.

Water: The applicant proposes to provide adequate water service to the site to serve the domestic and fire suppression needs of the development. Additional hydrants and/or sprinklering of buildings may be required in order to provide adequate water flows for fire suppression. As a condition of approval, the applicant has been required to provide documentation demonstrating that the City Fire Department has reviewed and approved the proposed water system, prior to approval of construction plans for the proposed infrastructure, and prior to issuance of building permits.

Sewer: The applicant proposes to provide sewer main extensions to serve the needs of the development. As identified in previous findings, a $50,716.25 contribution has been required to address the applicant's proportional share of the cost to provide upgrades to the Drake pump station that are required to address the impact of the development on the City sewer system.

Schools: Comments from the Bend LaPine School District indicate that although the district is currently operating several schools over capacity in the Bend area, it is the policy of the Bend-LaPine School District to anticipate and respond to growth in enrollment. The district does not take a position encouraging or discouraging growth.

Parks and Libraries: No comments were received from the Bend Metro Park and Recreation District. There are no park or trail needs associated with the subject site.

Fire and Police Protection: The property is within the City of Bend and is therefore served by City police and Fire departments.

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 City previously changed the property's General Plan designation to CG, Commercial General, thus the existing IL zoning is not consistent with the current General Plan designation. The proposed zone change will bring the site into compliance with the General Plan designation.

Section 4.4.600 Transportation Planning Rule Compliance

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

FINDING: The applicant is projecting 428 non-pass-by pm peak hour trips from their proposed retail and residential uses (4273 daily trips). With these added trips, there are no near term mitigations required of the site plan - although there are long term mitigations required for compliance with 660-012-0060.

According to 660-012-060 (1) (c) (C) the applicant's added traffic would significantly affect a transportation facility by worsening the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan. The intersection of Colorado at the Parkway's northbound on/off ramp is projected to operate at a v/c ratio of 1.53 in Year 2023 without the project and would worsen with the project. Existing traffic queuing from the eastbound left turn lane queues into the existing Parkway southbound on/off ramps. This queuing is projected to worsen with the applicant's increased traffic. The applicant has proposed mitigation that includes signalizing this intersection and adding a westbound right turn lane. Concept plans for this improvement have been tentatively approved by both the City and ODOT. Signal design and construction will need to include an underground hard wire interconnect between the railroad crossing to the east and the other Parkway ramp signal to the west due to their close proximity and will be vital to ensuring queue interaction does not impair safety. This interconnect will allow coordinated timing and phasing to be implemented. Final approval of the construction plans for this project will need to be approved by the Oregon Department of Transportation as well as the City of Bend Transportation Engineering Division.

According to comments received by ODOT (dated 10/31/07), ODOT and City are in agreement with the applicant's proposed mitigation. With this mitigation, the year 2023 intersection operations are projected to be improved to 0.76 v/c ratio and therefore, the applicant is fully mitigating their impacts in accordance with 660-012-060. According to 660-060-012 (2) (e) the applicant is responsible to provide this mitigation as a condition of development or through a development agreement or similar funding method.

As part of the zone change, the City shall specify when the improvement provided pursuant to this section (660-012-060(2)(e)) shall be implemented. In this case, the improvement will require ODOT approval on the timing and acceptance of the appropriate design. The applicant is proposing to construct this mitigation when it is shown to be warranted by either volume warrants or by an increase in the crash rate to more than 1.0 crashes per million entering vehicles for a 3 year period.

As a condition of approval, the applicant is required to enter into a Development Agreement with the City of Bend that creates a mechanism to insure that the signal improvements identified above (and approved by ODOT) will be fully constructed when applicable signal warrants are met. The Development Agreement must be signed by City Council and the applicant prior to final adoption of the zone change.

Project opponents have provided testimony and evidence arguing that the applicant has not sufficiently analyzed the impact of the proposal on the local street system as required by the transportation planning rule and the criteria above. As is previously discussed, the record demonstrates that the applicant and City have analyzed the impact of the project on the local street system (including Sisemore, Chamberlain and

Lava). The record further demonstrates that all affected local streets continue to operate within applicable capacity standards with full build out of the project.

EXHIBIT D

DEVELOPMENT AGREEMENT BETWEEN CITY OF BEND AND COLORADO STREET DEVELOPMENT PARTNERS, LLC

This Development Agreement (this "Agreement") is dated as of the __ day of April, 2008 (the "Effective Date"), by and between COLORADO STREET DEVELOPMENT PARTNERS, LLC, an Oregon limited liability company ("Developer"), and THE CITY OF BEND, an Oregon municipal corporation (the "City"). Developer and the City are each hereinafter referred to as a "Party" and collectively as the "Parties."

RECITALS

A. **Purpose of Development Agreement**. The City Hearings Officer conditionally approved applications (PZ 07-310 & 07-311) to develop a mixed use development, including retail and residential uses (the "Project"), on property located south of Colorado, north of Arizona and east of Lava, as more particularly described on Exhibit A (the "Property"). In his decision, the Hearings Officer imposed certain conditions regarding infrastructure improvements that were to be secured by provisions contained in a development agreement. The purpose of this agreement is to implement the requirements of the Hearings Officer Decision regarding the required improvements at the intersection of Highway 97 and Colorado Avenue, and the construction of a segment of Sizemore Avenue between Colorado and Arizona.

B. **Conditions of Approval**. In approving the zone change request, the City Council elected to modify Condition of Approval No. 5 set forth in the Hearings Officer's decision and recommendation. This Development Agreement implements Conditions of Approval 5 (as amended by the City Council) and 7 in the Hearings Officer's decision and recommendation of the Project (PZ 07-310 & 07-311) (together, the "Approval").

Condition 5 of the Hearings Officer's Decision and Recommendation, as amended by the City Council in adoption of Ordinance _____ provides that prior to the rezoning of the property:

"The applicant shall be required to enter into a Development Agreement with the City to insure mitigation of the long term planning period traffic impacts resulting from the proposed zone change as identified in the TIA and the comments from the City of Bend Engineering Department. If the applicant elects to construct the improvements approved pursuant to Site Plan Approval (PZ 07-310) then the mitigation requirements are as follows:

Northbound Parkway Ramps at Colorado – Addition of a westbound right turn lane onto the ramp, signalization of the intersection, and signal interconnect with the rail crossings to the east.

If the applicant or any successor in interest elects to pursue development that is materially different from the development approved pursuant to Site Plan Approval (PZ 07-310) then, prior to any development of the site, and as a part of site plan approval, the applicant shall be required to perform a new transportation impact study consistent with Bend Code Chapter 4.7 and the Transportation Planning Rule to determine whether the above described mitigation shall be modified or eliminated depending upon the traffic generated by the proposed alternate use and the background traffic using the facility at the time of the application for the alternate development proposal.

The TPR analysis shall be in addition to the analysis required by the alternate site plan proposal under the City's concurrency standards.

The development agreement referenced above shall include provisions allowing for the amendment of the development agreement if different transportation mitigation than listed above is required by the alternate development according to the TPR analysis."

Condition 7 of the Hearings Officer's decision requires that prior to the issuance of building permits:

"The driveway access to Colorado and Arizona Avenues are intended to be interim accesses until such time that Sisemore Street is constructed along the east boundary of the site, at which time the two arterial accesses must be eliminated and replaced with one access to Sisemore. The applicant shall provide a cost estimate for the cost of construction of Sisemore and reconstruction of the accesses. A cash deposit shall be paid to cover 120% of the cost of relocated the accesses, and ½ of the cost of construction of Sisemore between Colorado and Arizona Avenues. In lieu of providing said deposit, the applicant may enter into a Development Agreement with the City of Bend that insures funds remain available to complete the Sisemore Street improvements when sufficient right of way is available. The Development Agreement shall further require that the two temporary arterial accesses points be eliminated and replaced with a single Sisemore access upon completion of Sisemore improvements."

C. **Timing of Improvements.** As set forth in the Approval, the improvements to the intersection of the northbound Parkway ramp and Colorado (the "Ramp Mitigation") is not required to be constructed at the time of development of the Project as a requirement of the City's concurrency requirement, but the Ramp Mitigation is necessary to satisfy the requirements of the Oregon Transportation Planning Rule (the "TPR"), and must be constructed on or before March 6, 2023 to satisfy the TPR, as further set forth in the Approval and in this Agreement. Because the Developer does not control the right-of-way for the new segment of Sisemore, it is unclear whether or when the new segment of Sisemore will be constructed.

D. **Statutory Development Agreement.** 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 definitively establish and discharge all of their respective obligations through this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1.0 **Definitions:**

1.1 "**Agreement**" means this Development Agreement between and Developer and the City pursuant to ORS 94.504.

1.2 "**Project**" means the Developer's proposed project as approved by the City (PZ 07-310 & 07-311), that is to be constructed by Developer on the Property.

1.3 **"Ramp Mitigation"** means the improvements more particularly identified on Exhibit B, and which have been determined to be necessary by the Oregon Department of Transportation and the City under the TPR. The parties agree that the traffic signal shall be interconnected with the existing traffic signal at the southbound ramp to the west on Colorado.

1.4 **"Sisemore Improvements"** means the closure of the interim access points on Colorado and Arizona, including the construction of curbs, gutters and sidewalks to match adjacent improvements, and the

construction of a single access point on the new segment of Sisemore. The Sisemore Improvements also include the Developer's obligation to pay for one-half of the costs to construct Sisemore between Colorado and Arizona.

2.0 **Construction of Ramp Mitigation Condition No. 5:** The following provisions shall apply if the Developer elects to construct the Project consistent with the Approval. Should the Approval lapse, or should the Developer elect to construct other improvements on the Property, then consistent with the City Council's revisions to Condition No. 5, the provisions of Section 2.7 below shall apply.

2.1 Unless requested earlier by the City based upon increased traffic or accidents at this location, the Developer shall three years after the signing of this Agreement, and every two years thereafter, prepare an updated warrant analysis addressing the warrants for the development of the construction of the Ramp Mitigation. This analysis shall be submitted after completion to the City's Transportation Engineer and ODOT Region 4 Traffic Engineer. The warrant analysis shall be created according to ODOT's warrant standards, and include at a minimum those warrant criteria listed in Paragraph 2.2.

2.2 The Developer shall commence construction of the Ramp Mitigation on or before the earlier of i) the date that the Developer is notified by the City that the crash rate at the intersection of the northbound parkway ramps and Colorado has exceeded a rate of more than 1.0 crashes per million entering vehicles for a three year period; ii) the date that the Developer is notified by ODOT or the City that signal or volume warrants have been met for the northbound parkway ramps and Colorado intersection; or iii) March 6, 2023. For purposes of this Agreement the term "commence construction" shall mean that the Developer shall submit construction plans for ODOT and City approval and shall thereafter diligently complete construction of the Ramp Mitigation after approval by ODOT and the City. In no event shall the Developer have any obligation to pay for any additional improvements requested or required by ODOT or the City other than the Ramp Mitigation.

2.3 **Compliance with Laws.** In constructing the Ramp Mitigation, the Developer shall comply with all applicable city, state and federal regulations, codes, ordinances and laws. Prior to construction the Developer shall have all construction plans approved by the City and the Oregon Department of Transportation in accordance with all applicable City and State laws, regulations and ordinances. The City and the Developer shall also comply with the parties' respective obligations set forth in Exhibit D.

2.4 **The Developer shall be responsible for the entire cost of the design** and construction of the Ramp Mitigation subject to the sharing of such costs by other developers whose development requires the Ramp Mitigation as outlined in this Paragraph.

2.4.1 **Contribution by Third Parties Prior to Construction.** Should any third party propose a development which would require the developer of such property to construct the Ramp Mitigation, or some portion thereof, and i) such improvements are not required at the time of development, and ii) such improvements are not required until after the Developer is obligated to construct the Ramp Mitigation, then the City shall collect from such third party developers their Proportionate Share of the Ramp Mitigation (the "Ramp Contributions") according to the formula outlined in Paragraph 2.6. The City shall retain the

Ramp Contributions until such time as the Ramp Mitigation is constructed. If the Ramp Mitigation is constructed by the Developer or its successors or assigns, then upon completion of the Ramp Mitigation, the City shall deliver the Ramp Contributions to the Developer as a form of reimbursement. To ensure that future developments pay their proportionate share of the Ramp Mitigation the City agrees and acknowledges that until such time as the Ramp Mitigation is constructed, the City will not permit applicants to rely on the future construction of the Ramp Mitigation as part of any transportation impact analysis until such time as the Ramp Mitigation is actually constructed, or unless the applicant pays its Contribution to the City as provided in this Section 2.4. The express intent of this Section 2.4 is to ensure that third parties pay their Proportionate Share of the Ramp Mitigation costs.

2.4.2 **Contribution by Third Parties After Construction.** Prior to the construction of the Ramp Mitigation by the Developer, at the request of the Developer, the City agrees to cooperate with the Developer in forming a reimbursement district under the then applicable provisions of the Bend Code to provide reimbursement to the Developer for the excess capacity created by the Ramp Mitigation. In addition, after construction of the Ramp Mitigation by the Developer, to the extent permitted by the Bend Code, the City shall collect Proportionate Share contributions from applicants proposing development in the area which will utilizes the excess capacity created by the construction of the Ramp Mitigation.

2.5 **Local Improvement District**. In the event that the Developer fails to perform its obligations under this Agreement, the City may form a local improvement district for the purpose of constructing the Ramp Mitigation. In that regard, the Developer shall execute a "waiver of remonstrances" against the formation of a local improvement district (LID) to fund the design and construction of the Ramp Improvements as described in Exhibit B. In this regard, the Developer hereby waives its rights, as provided under Bend City Code, and ORS Sections 223.117, 223.118, 223.389 and ORS 223.391 to have its written or oral objection to a proposed local improvement counted for purposes of determining whether there are, by law, sufficient objections to force the relevant governing body to abandon the proposed improvement, including but not limited to the formation of a local improvement district. It is the intent of Developer that this waiver of remonstrance shall be a condition and covenant that shall run with the land.

The City will require future development that is subject to the ramp mitigation requirement to participate in a local improvement district to pay for the cost of the ramp mitigation. In that regard, subject future development will be required to execute waivers of remonstrance regarding the formation of a LID. When the warrants are met for the construction of the Ramp Improvements, the City will form the LID which will consist of those properties that have executed "waivers of remonstrances." The LID will allocate the cost of the Ramp Improvements according to the formula contained in Paragraph 2.6.

2.6 **Construction by Third Party:** If, prior to construction of the Ramp Mitigation by the Developer, a third party or the City elect to construct the Ramp Mitigation, or improvements substantially similar to and not materially more expensive than the Ramp Mitigation, and which continue to satisfy the Developer's obligations with respect to the TPR as set forth in the Appraisal, then the Developer shall contribute to the City the Developer's Proportionate Share (as defined below) towards

the construction of the Ramp Mitigation. Upon contribution of the Developer's Proportionate Share to the City, the Developer's obligations under this agreement with respect to the Ramp Mitigation shall be deemed to be satisfied. If construction of the Ramp Mitigation, or alternate improvements to the intersection by a third party result in mitigation that is materially more expensive than would have been provided by the Developer in constructing the Ramp Mitigation, Developer's proportionate share shall be limited to its proportionate share of the costs of the Ramp Mitigation as provided herein. In no event shall the Developer's Proportionate Share under this paragraph exceed that amount which the Developer would be required to expend if the Developer were constructing the Ramp Mitigation. For purposes of this Agreement, the term "Proportionate Share" shall mean the following, as provided in Bend Code 4.7.500(B)(2007):

Proportionate Share = [Trips from each participating property using the intersection as determined by the site plan upon which the development is based / Total trips using this intersection by participating properties] X Estimated Construction Cost. Participating properties are those properties who have submitted a land use application that requires mitigation of the traffic impacts on this intersection.

The numbers of trips for the proportional analysis shall be calculated according to the development approved in the respective land use applications.

2.7 **Alternate Development of Property.** Should the Approval lapse, or should the Developer elect to construct other improvements on the Property other than those set forth in the Approval, then this Section 2.7 shall apply.

2.7.1 **No Development without Site Plan Approval.** Consistent with the City Council's revision to Condition of Approval No. 5 as set forth above, if the Approval should lapse, or should the Developer elect to construct improvements on the Property other than as set forth in the Approvals, then the Developer acknowledges and agrees that no development may take place on the Property, and that no additional traffic shall be generated from the Property, unless and until the Applicant has received Site Plan approval from the City pursuant to the then applicable provisions of the Bend Code. Notwithstanding anything to the contrary in the Bend Code or the TPR, at the time of the Site Plan approval required by this Section 2.7.1, the Developer shall be required to complete a transportation impact analysis consistent with the then applicable substantive provisions of the TPR and the Bend Code. If required at the time of alternate development to comply with the TPR and the City's concurrency requirements, mitigation consistent with the requirements of the TPR and/or the City's concurrency requirements shall be required to ensure that alternate development of the Property, and any potential subsequent redevelopment, does not violate the TPR.

3.0 SISEMORE CONDITION OF APPROVAL NO. 7

3.1 **Sisemore Costs; Waiver of Remonstrance**. Prior to the issuance of building permits, the Developer shall pay to the City a lump sum payment equal to 120 % of one-half of the construction costs for Sisemore and 100% of the cost of closing the interim accesses. The payment of these sums shall satisfy the Developer's monetary obligations regarding Condition 7, except that the Developer shall also close the existing accesses referenced in the condition of approval. In

the event that that this segment of Sisemore Street is not built within 15 years after the payment of the funds, the City shall return the funds to the Developer.

3.2 **Closure of Interim Access.** Within 30 days after the completion and opening of the new Sisemore segment between Colorado and Arizona, the Developer shall obtain any approvals necessary from the City for the closure of the interim access points on Colorado and Arizona, and shall thereafter diligently complete construction of a new single access from the property to the new segment of Sisemore. Upon completion of the new access point to Sisemore the Developer shall permanently close the interim access points and shall construct sidewalks, curbs, and gutters to match the existing adjacent improvements on Colorado and Arizona.

4.0 **Construction of Project; Modification of Approval.** The Developer's obligations under this Agreement for the Sisemore Improvements are solely contingent on the Developer's construction of the Project. Should Developer elect not to construct the Project as set forth in the Approvals, or should the Approvals expire prior to construction of the Project, the Developer shall have no obligations to pay the sums identified in Paragraph 3 of this Agreement. Pursuant to Section 2.7, should the Developer elect to construct substitute improvements on the Property pursuant to a new site plan approval, the City may impose a similar condition of approval regarding the Sisemore extension and the closure of any interim access points.

5.0 **Effective Date; Term of Agreement**. This Agreement shall be effective upon adoption of the City Council approving this Agreement pursuant to ORS 94.508. 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.

6.0 **Schedule and Procedure for Compliance Review.** Notwithstanding the warrant analyses required in Paragraph 2.1, commencing on the first anniversary of the Effective Date and, if requested by the City, Developer 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. To the extent any local rule, ordinance, regulation or policy is adopted on a jurisdiction-wide basis that is not, in the reasonable discretion of Developer, inconsistent with the substance, purpose, or conditions of this Agreement, then the local rule, ordinance, regulation or policy shall be applicable.

7.0 **This Agreement Runs with Land; Assignability of Agreement**. This Agreement is intended to and shall run with the land and shall be fully binding upon the Developer, and all future owners of the Property. Pursuant to the Approvals, the Developer intends to construct residential condominiums above the ground floor of the development of the Property. Notwithstanding the fact that this Agreement shall run with the land, this Agreement shall not bind any owner of any individual condominium unit in the development, but shall only bind the fee owner of the real property described on Exhibit A.

This Agreement shall be fully assignable, in whole or in part, by either Party and shall bind and inure to the benefit of the Parties and their respective successors and assigns. Other than with respect to any individual condominium unit, if any portion (other than lot sales to individuals or builders) of the Property is sold, the duties, rights and interests of Developer under this Agreement shall become the duties, rights and responsibilities of the purchaser of the Property.

8.0 **Defaults**

8.1 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 a 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.

8.2 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.

8.3 Upon an event of default by either party, the non-defaulting party may pursue any legal or equitable remedy available to it, including the remedy of specific performance. In addition, should the Developer fail to perform any of its construction obligations as required by this Agreement, after providing the Developer with 30 days' prior written notice, the City may elect to construct such improvements at the sole cost and expense of the Developer. Upon a default, should the City elect to construct the any improvements required to be constructed by the Developer under this Agreement, the Developer shall be responsible for any and all costs associated with the construction of such improvements, which costs and expenses shall become a lien against the Property. The election of the City to construct the any improvements required to be constructed by the Developer shall not preclude the City from pursuing any other legal or equitable remedy available to it. In the event that the Developer defaults the City shall be entitled to recover its attorney fees associated with the establishment of an local improvement district and/or legal action prompted by the Developer's failure to perform.

9.0 **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.

10.0 **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 Developer: Colorado Street Development Partners, LLC
480 San Antonio Road #205

Mountain View, California 94040
Attn: John Gaston

With a copy to: Ball Janik LLP
15 SW Colorado, Suite 3
Bend, Oregon 97702
Attn: Steve Hultberg

If to City: City of Bend
Development Services
710 N.W. Wall
Bend, OR 97701
Attn: Development Services Director

11.0 **Miscellaneous.**

11.1 **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.

11.2 **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.

11.3 **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. To the extent required under Section 2.7 and any subsequent conditions of approval applicable to the Property pursuant to alternate development of the Property under Section 2.7, the parties agree to cooperate and act in good faith in negotiating any amendments to this Agreement as may be necessary to comply with future conditions of approval and the provisions of Section 2.7.

11.4 **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.

11.5 **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.

11.6 **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.

11.7 **Severability**. Subject to Section 13.4, the unenforceability or invalidity of any provisions hereof shall not render any other provision herein contained unenforceable or invalid.

11.8 **Time of Essence**. Time is of the essence of this Agreement.

11.9 **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

Signatures on Next Page

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date set forth in the first paragraph of this Agreement.

"Developer" COLORADO STREET DEVELOPMENT PARTNERS, LLC
an Oregon corporation

By:_____
Name:_____
Title:_____

STATE OF OREGON)
)ss.
COUNTY OF DESCHUTES)

This instrument was acknowledged before me on _____ by _____ as _____ of Colorado Street Development Partners, LLC.

_____
Signature of Notarial Officer
My Commission Expires:_____

"CITY" CITY OF BEND, an Oregon Municipal Corporation

By:_____
Name:_____
Title:_____

STATE OF OREGON)
)ss.
COUNTY OF DESCHUTES)

This instrument was acknowledged before me on _____ by _____ as _____ of the City of Bend.

_____
Signature of Notarial Officer
My Commission Expires:_____

Development Agreement Exhibit A

Property Legal Description

Parcel I:

That part of the Southwest Quarter of the Southeast Quarter (SW ¼ SE ¼) of Section 32, Township 17 South, Range 12 East of the Willamette Meridian, Deschutes County, Oregon, described as follows: Beginning at a point on the West line of the Southeast Quarter (SE ¼) and located from the South Quarter corner of said Section 32, North 48 feet thence North on the West line of said Southeast Quarter (SE ¼) 175.47 feet; thence East 70 feet; thence North 76 feet; thence East 230 feet; thence South 249.98 feet to a point in the North line of the right of way of the Oregon Trunk Railway; thence South 89° 43' West 300 feet to the point of beginning.

EXCEPTING THEREFROM that portion deeded to the City of Bend, a municipal corporation, of the State of Oregon, as described in a Deed recorded November 7, 2002 in Instrument No. 2002-62230 and re-recorded June 27, 2003 in Instrument No. 2003-43430 of Deschutes County Records.

Parcel II:

A tract of land lying and being in the Southwest Quarter of the Southeast Quarter (SW ¼ SE ¼) of Section 32, Township 17 South, Range 12 East of the Willamette Meridian, Deschutes County, Oregon, more particularly described as follows: Beginning at a point on the South line of Colorado Avenue said point being 300 feet East of the West line of said Southeast Quarter (SE ¼) of Section 32; thence South 250 feet more of less to the North line of the right of way of the Oregon Trunk Railway; thence Easterly along the Northerly line of said right of way a distance 290 feet, to a point also being the Southwest corner of that tract of land conveyed to James O. Miller, by instrument recorded November 13, 1948 in Book 88, Page 308, Deed Records; thence North 260 feet, more or less, to a point on the South line of Colorado Avenue, said point also being the Northwest corner of said Miller tract; thence West 290 feet to the point of beginning.

EXCEPTING THEREFROM that portion deeded to the City of Bend, a municipal corporation, of the State of Oregon, as described in a Deed recorded November 7, 2002 in Instrument No. 2002-62230 and re-recorded June 27, 2003 in Instrument No. 2003-43430 of Deschutes County Records.

Parcel III:

Portion of Lots 1 and 2 in Block 5 of DESCHUTES, City of Bend, Deschutes County, Oregon, lying North of NW Arizona Avenue.

Parcel IV:

The South 1/3 of Lots 7 and 8 in Block 5 of DESCHUTES, City of Bend, Deschutes County, Oregon.

Parcel V:

Lots 7 and 8 in Block 5 of DESCHUTES, City of Bend, Deschutes County, Oregon.

EXCEPTING THEREFROM the South 38 feet of said lots.

Parcel VI:

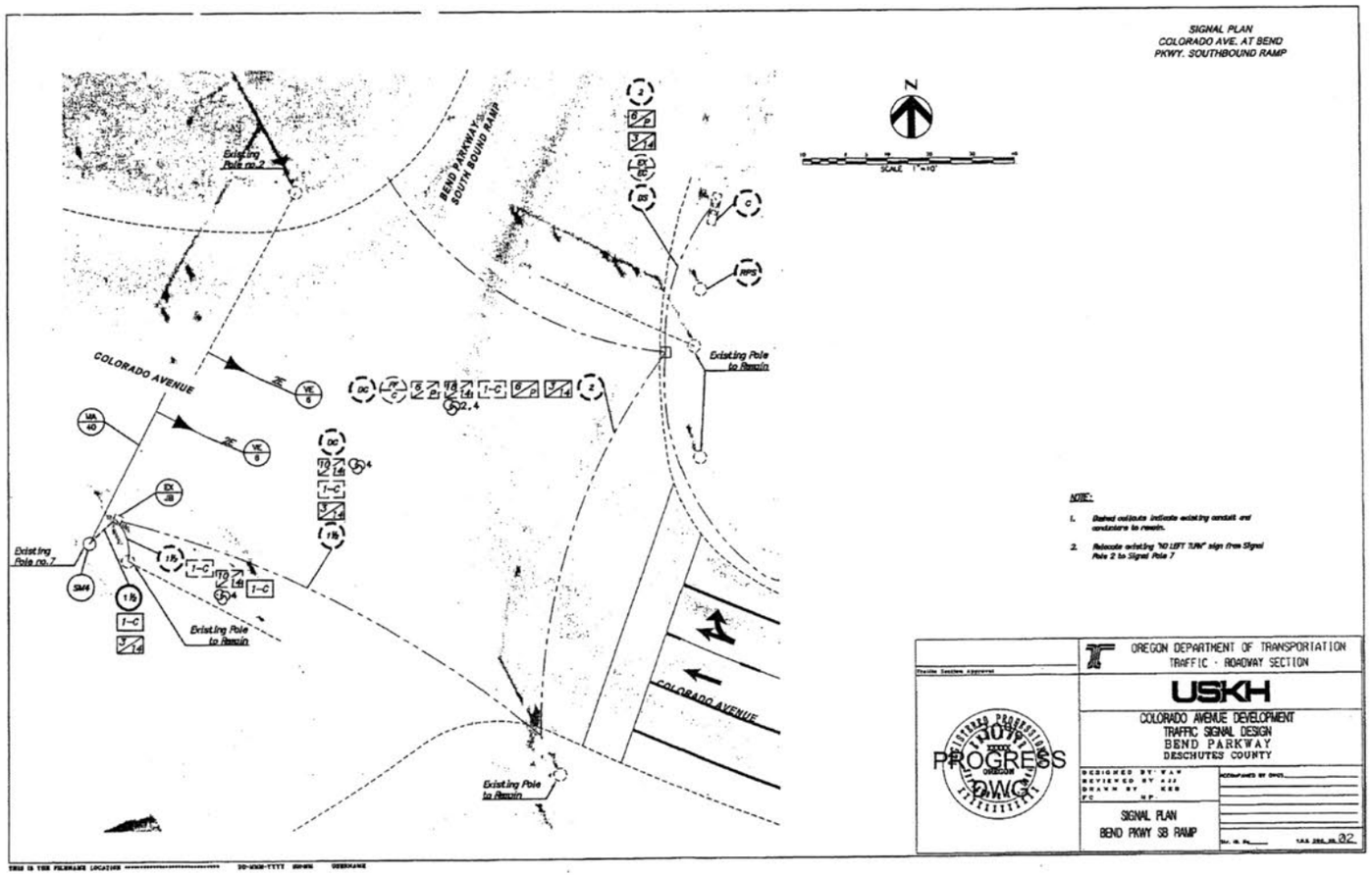
A portion of the Southwest Quarter of the Southeast Quarter (SW ¼ SE ¼) of Section 32, Township 17 South, Range 12 East of the Willamette Meridian, Deschutes County, Oregon, described as follows:

Beginning at the Northeast corner of Lot 8 in Block 5 of DESCHUTES, now a part of the

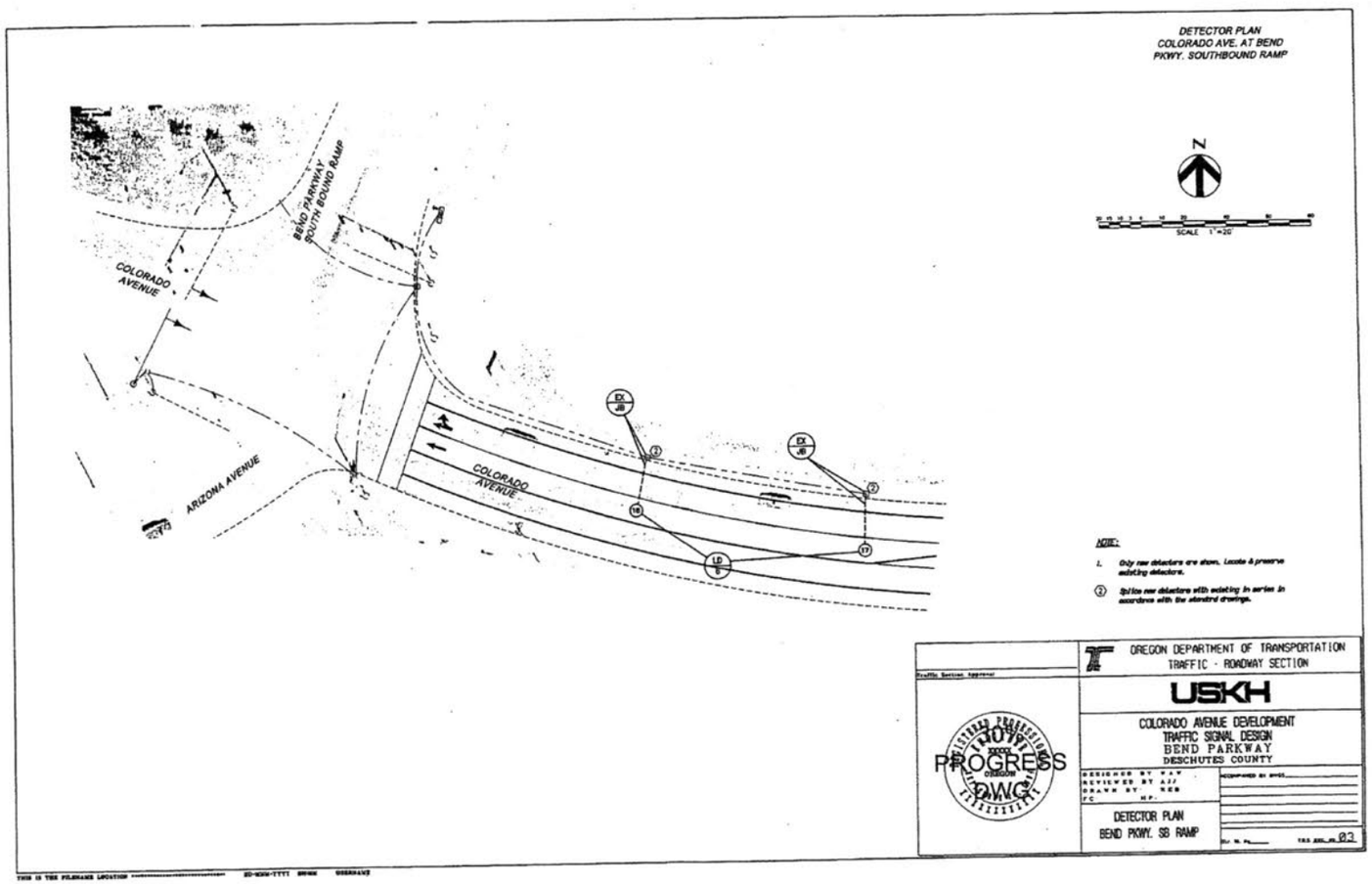
City of Bend, Deschutes County, Oregon; thence East along the South line of Colorado Avenue a distance of 70 feet; thence South at right angles a distance of 76 feet; thence West at right angles a distance of 70 feet to a point on the West line of the Southwest Quarter of the Southeast Quarter (SW ¼ SE ¼) of said Section 32; thence North along said West line a distance of 76 feet to the point of beginning.

Development Agreement Exhibit B
Ramp Mitigation

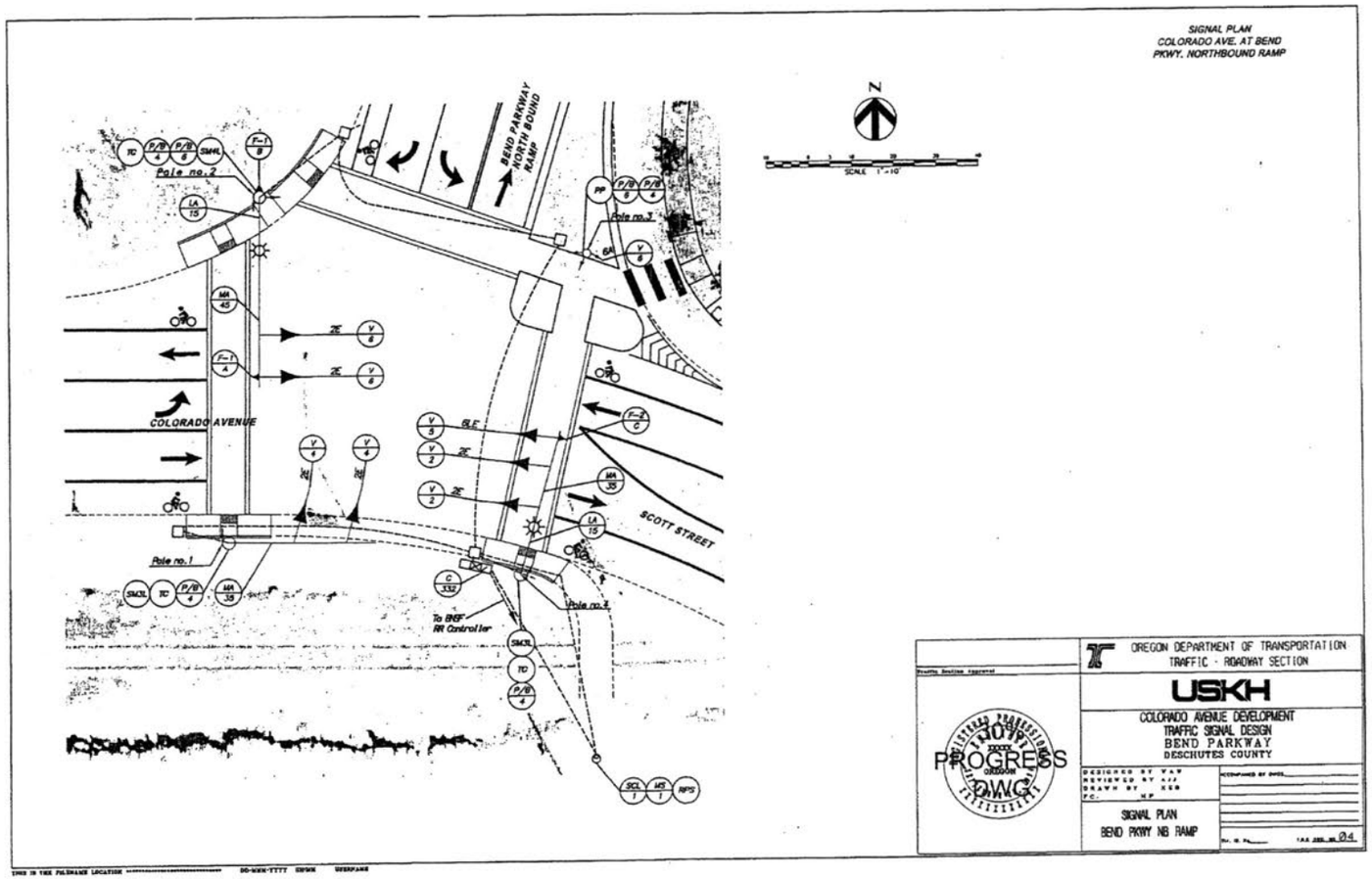
Ordinance NS-2095



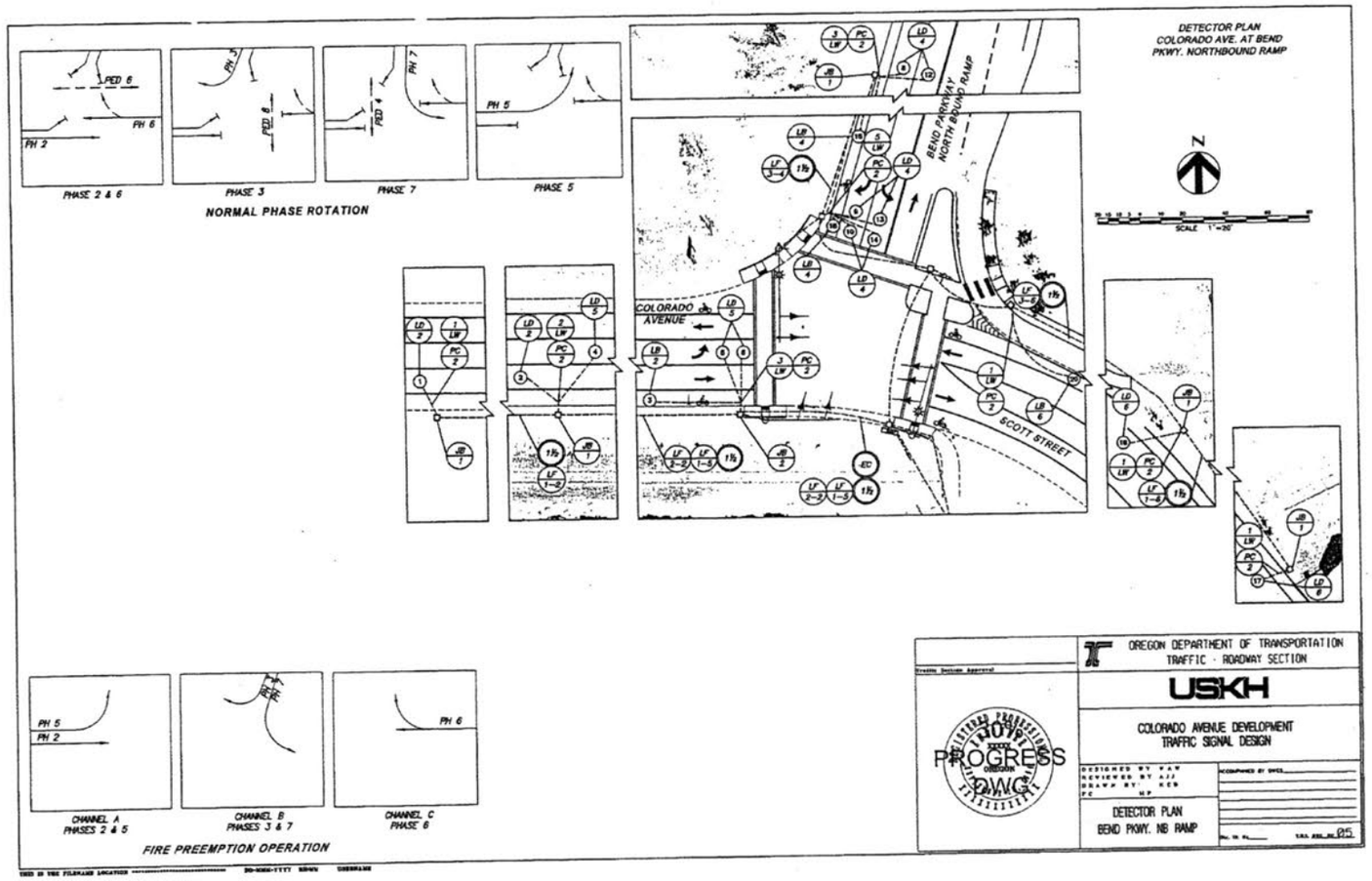
Ordinance NS-2095

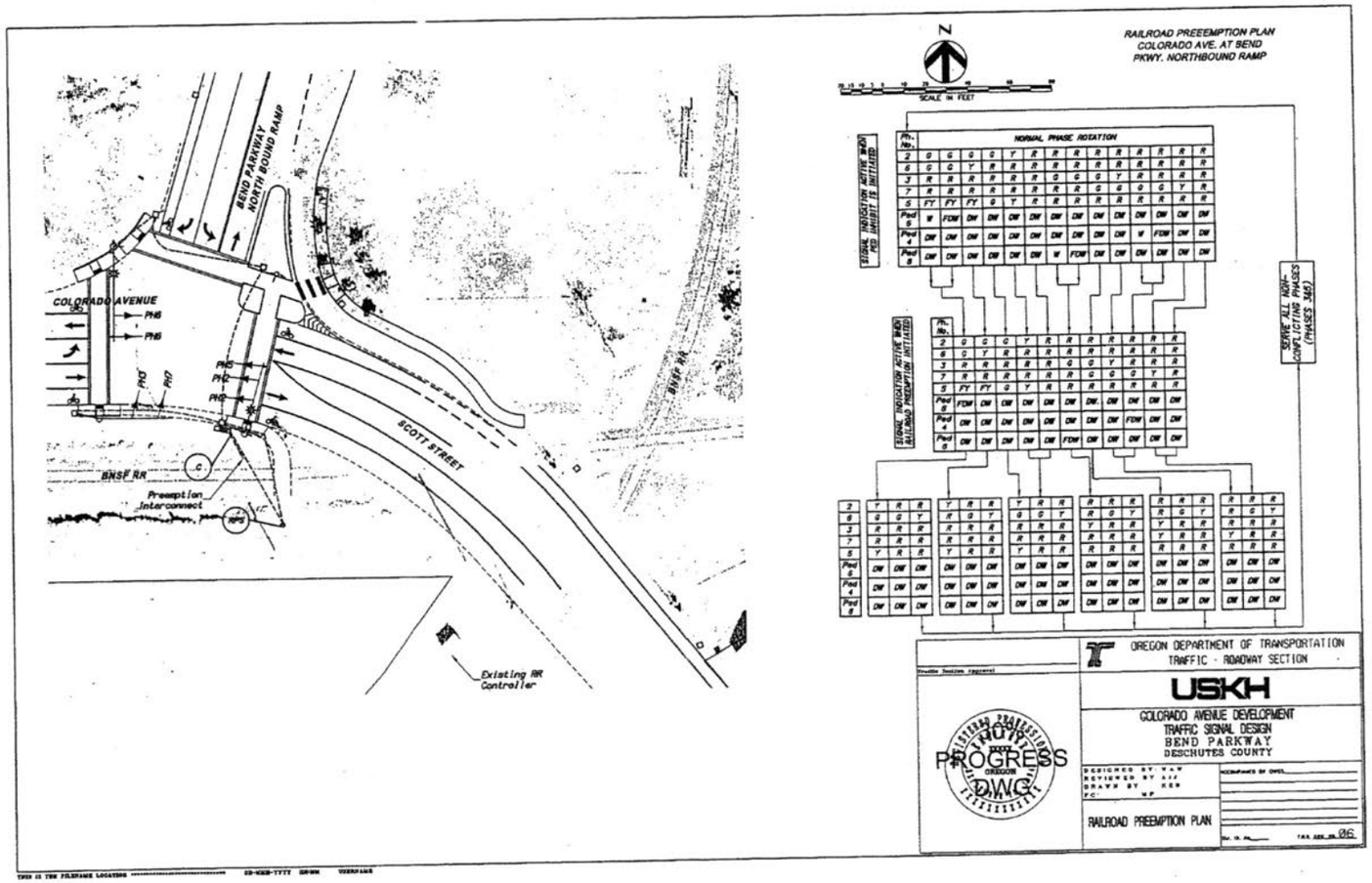


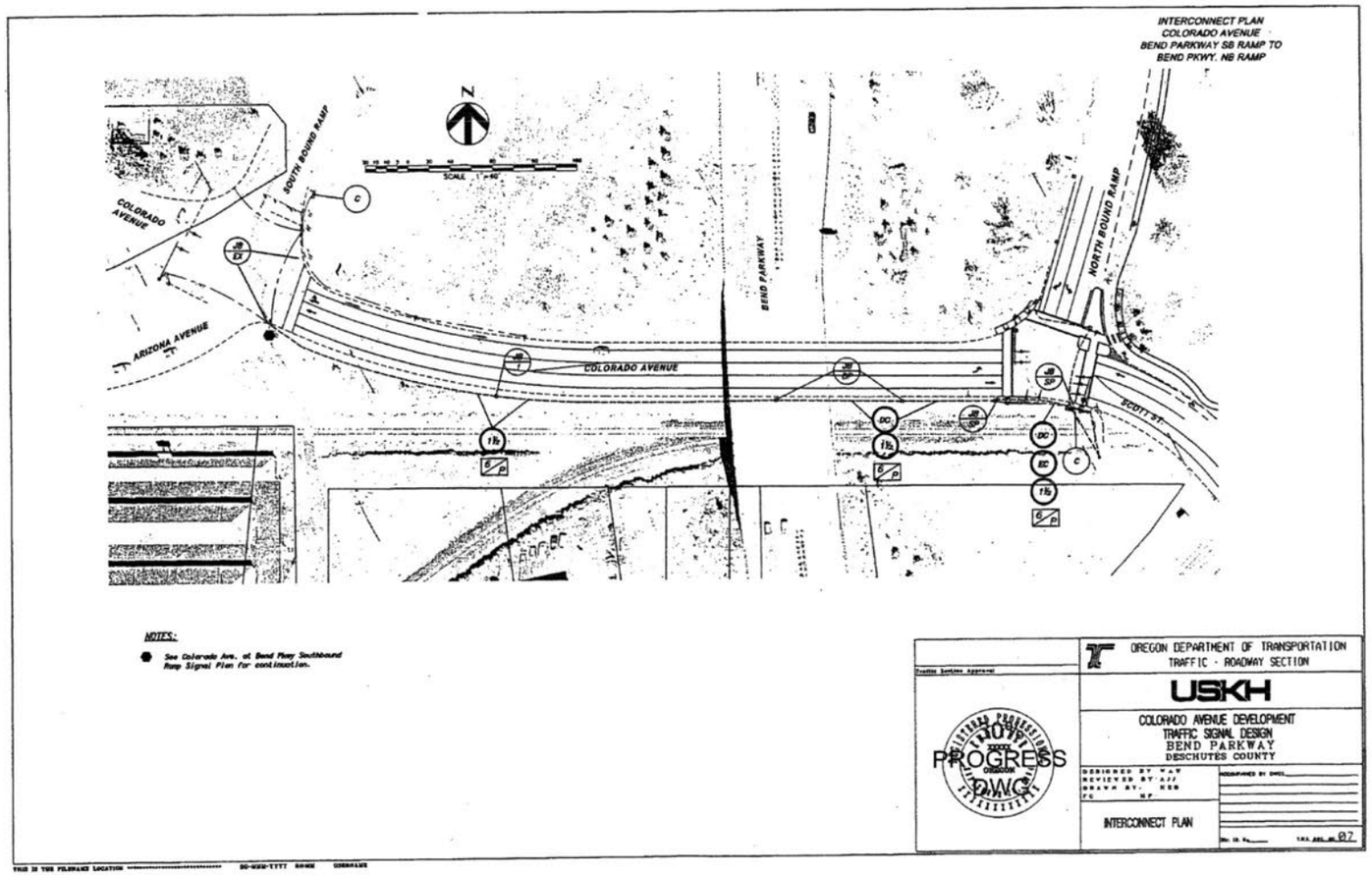
Ordinance NS-2095



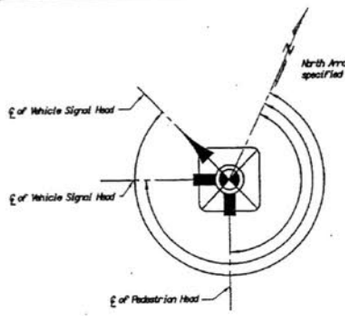
Ordinance NS-2095




RAILROAD PREEMPTION PLAN
COLORADO AVE. AT BEND PKWY. NORTHBOUND RAMP
SCALE IN FEET
NORMAL PHASE ROTATION
SIGNAL INDICATION ACTIVE WHEN PED INHIBIT IS INITIATED
SERVE ALL NON-CONFLICTING PHASES (PHASES 3&7)
COLORADO AVENUE
BEND PARKWAY NORTH BOUND RAMP
SCOTT STREET
BNSF RR
Preemption Interconnect
Existing RR Controller
OREGON DEPARTMENT OF TRANSPORTATION
TRAFFIC - ROADWAY SECTION
USKH
COLORADO AVENUE DEVELOPMENT
TRAFFIC SIGNAL DESIGN
BEND PARKWAY
DESCHUTES COUNTY
RAILROAD PREEMPTION PLAN
NOT PROGRESS DWG


INTERCONNECT PLAN
COLORADO AVENUE
BEND PARKWAY SB RAMP TO
BEND PKWY. NB RAMP
N
SCALE
SOUTH BOUND RAMP
COLORADO AVENUE
ARIZONA AVENUE
BEND PARKWAY
COLORADO AVENUE
NORTH BOUND RAMP
SCOTT ST
NOTES:
See Colorado Ave. at Bend Pkwy Southbound Ramp Signal Plan for continuation.
OREGON DEPARTMENT OF TRANSPORTATION
TRAFFIC - ROADWAY SECTION
USKH
COLORADO AVENUE DEVELOPMENT
TRAFFIC SIGNAL DESIGN
BEND PARKWAY
DESCHUTES COUNTY
INTERCONNECT PLAN

SIGNAL PLAN DETAILS
BEND PARKWAY AT COLORADO AVE.

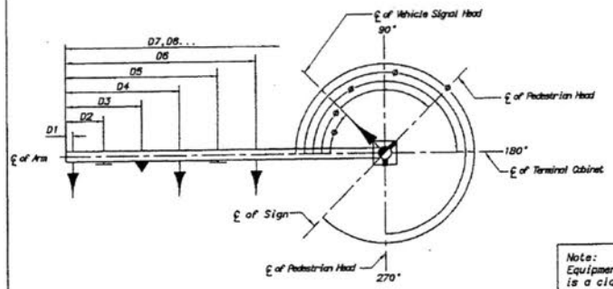


PEDESTRIAN PEDESTAL/VEHICLE PEDISTAL ORIENTATION DIAGRAM

Note:
Equipment shown on orientation diagram is a clarification of distance and angles of equipment that may be located on Pedestrian Pedestal or Vehicle Pedestal.

POLE ENTRANCE CHART

POLE NO.	DWG. NO.	TYPE	EQUIPMENT ON POLE: PED. SIGNAL DES.	TERM. CABINET DES.	SIGN DEG.	TRAFFIC SIGNAL DES.	PHOTO ELEC. CELL	EQUIPMENT ON MAST ARM (LENGTH IN FEET AND EQUIPMENT TYP): ARM LEN.	D1	D2	D3	D4	D5	D6	D7	D8	FOUNDATION (INFORMATION (SEE STD. DWG. TM653): FOUNDATION NUMBER	REQUIRED FOUNDATION DEPTH	LUMINAIRES: ARM LENGTH	ARM DEG.	MOUNT. HEIGHT	TYPE	FIXTURE: TYPE	WATT.
	SEE TM650 THRU TM653																							
1																								
2																								
3																								
4																								
5																								
6																								
7																								
8																								
9																								
10																								



MAST ARM POLE ORIENTATION DIAGRAM

Note:
Equipment shown on orientation diagram is a clarification of distance and angles of equipment that may be located on a Mast Arm or Signal Pole.

SCALE 1"=40

OREGON DEPARTMENT OF TRANSPORTATION
TRAFFIC - ROADWAY SECTION

USKH

COLORADO AVENUE DEVELOPMENT
TRAFFIC SIGNAL DESIGN
BEND PARKWAY
DESCHUTES COUNTY

DESIGNED BY KAF
REVIEWED BY KJS
DRAWN BY KSR
P.E. M.P.

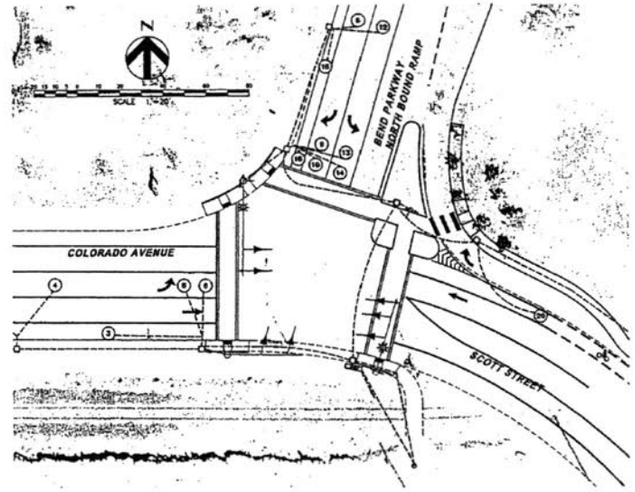
POLE ENTRANCE CHART

Traffic Section Approved

JOHN PROGRESS OREGON

TRAFFIC DWG

EXISTING UTILITY PLAN
COLORADO AVE. AT BEND
PKWY. NORTHBOUND RAMP



OREGON DEPARTMENT OF TRANSPORTATION
TRAFFIC - ROADWAY SECTION

USKH

COLORADO AVENUE DEVELOPMENT
TRAFFIC SIGNAL DESIGN
BEND PARKWAY
DESCHUTES COUNTY

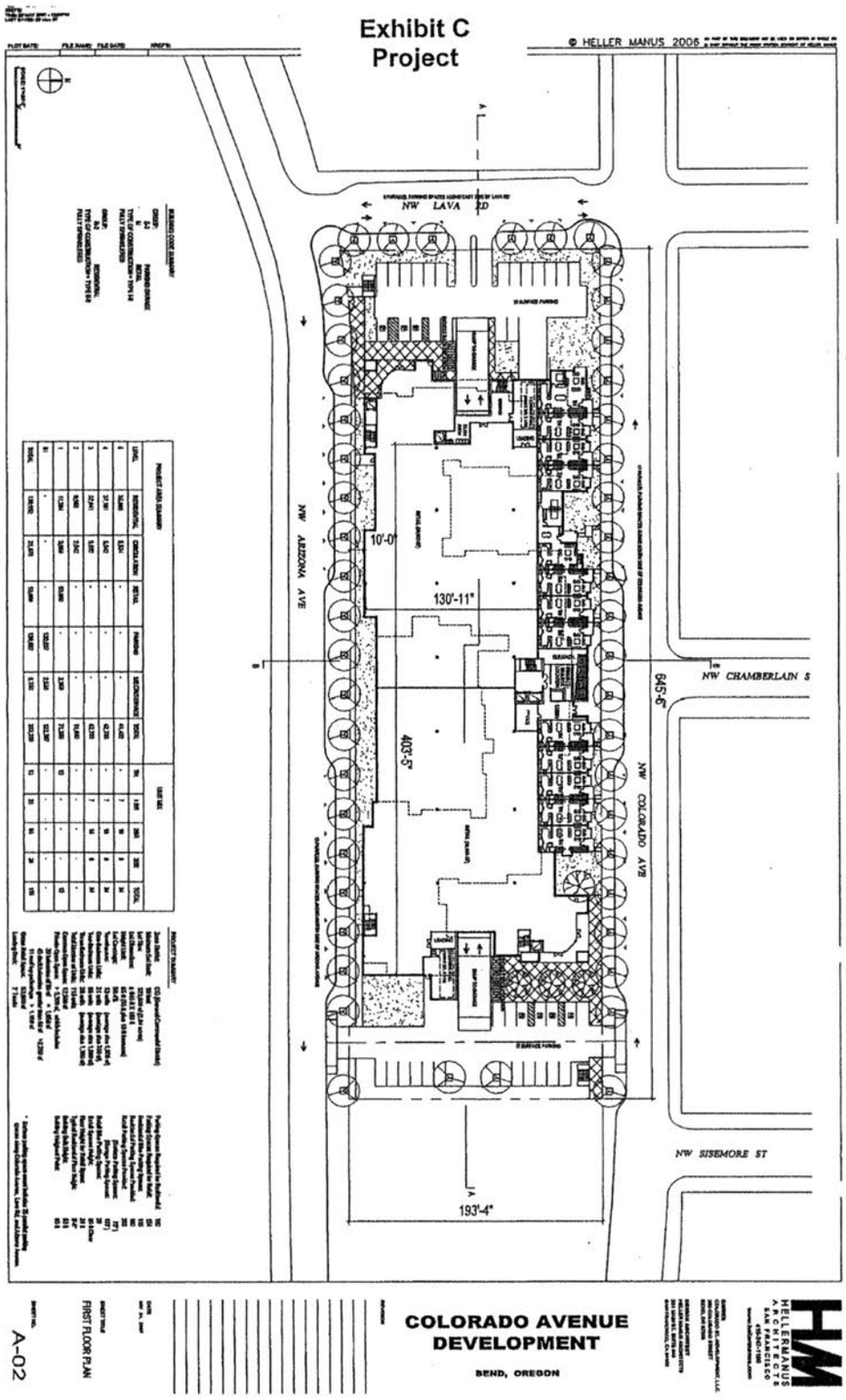
DESIGNED BY: M.A.P.
REVIEWED BY: A.J.F.
DRAWN BY: M.E.R.
P.C. M.P.

EXISTING UTILITY PLAN

PROGRESS DWG

09

Development Agreement Exhibit C
Project



Development Agreement Exhibit D

Colorado Avenue/NB Parkway Ramp intersection Project Distribution of Duties

City of Bend:

1. Notify applicant when ODOT determination has been made regarding intersection construction warrants.
2. Review submitted designs and plans in a timely fashion.
3. Forward submitted designs and plans in a timely fashion to ODOT.
4. Sign and approve permit applications as needed.
5. Cooperate with Developer on the preparation of documents for repayment in a timely fashion.

Developer:

1. Create final design plans for the intersection of Colorado Avenue/NB Parkway Ramp to ODOT standards and Specifications.
2. Obtain permits.
3. Construct Colorado Avenue/NB Parkway Ramp signal plus right turn lane or contribute applicant's allocated cost to intersection mitigation if mitigation is modified in the future.
4. Coordinate with City on change orders and cost controls.
5. Project management.

Ordinance No. NS-2096

AN ORDINANCE AMENDING CHAPTER 9 OF THE BEND CITY CODE TO LIMIT EXPENDITURES FROM THE AFFORDABLE HOUSING FUND AND DEFINING ALLOWABLE ADMINISTRATIVE COSTS THAT CAN BE PAID FROM THE FUND

WHEREAS the Bend City Council adopted an affordable housing fee on June 21, 2006 pursuant to Ordinance No. NS 2012; and

WHEREAS, various important affordable housing projects have been funded or partially funded by the affordable housing fee fund; and

WHEREAS, Council desires to amend Ordinance No. NS 2012 to refine the appropriate uses for the fund;

The Bend City Council ordains as follows:

SECTION 1: A fee of 1/3 of 1% of permit valuation, for all building permits, shall be assessed at time of Building Permit Application.

SECTION 2: Funding received from this source shall be deposited in special revenue fund and only be spent for affordable housing programs and projects evaluated pursuant to the priorities established through the City of Bend Consolidated Plan and administration of the affordable housing programs and projects. ~~Using the existing cost allocation methodology, the administrative costs charged to this fund will not exceed 5 percent.~~ Any loan proceeds from this source shall be returned to the fund. In years where fee collections are sufficient so that less than 10% of the total fee covers permitted administrative expenses as defined in Section 3 of this ordinance, that excess amount, not to exceed 10% of total collected shall be placed in a reserve account to cover future permitted administrative costs with the long term goal of annual administrative costs not to exceed 10% of total annual collected fees. Repaid loan amounts shall not be included assessing administrative cap expenses. Applications for and awarding of this funding shall be done on an annual basis by the City Council and will utilize the City of Bend's Affordable Housing Advisory Committee's recommendations. The fund shall not be used to pay for General Fund programs or other programs not related to the provision of affordable housing and the administration of the City's affordable housing program.

SECTION 3: Permitted expenditures shall include: A. One Full Time Equivalent (FTE) employee shall be authorized for purposes of administration of this program and the Department of Housing and Urban Development *Community Development Block Grant Program (CDBG).* This employee shall be primarily funded by the administrative allowance of the CDBG program. If the federal allocation is not sufficient to meet the entire FTE cost, the remainder shall be provided for by the City of Bend Affordable Housing Fee funds.

B. In addition to the employee specified in Paragraph A above, the following administrative purposes may be paid for from the Affordable Housing Fund:

(1) *General management, oversight and coordination.* Reasonable costs of overall program management, coordination, monitoring, and evaluation. Such costs include, but are not necessarily limited to, necessary expenditures for the following:

(a) Salaries, wages, and related costs of staff for program administration. This may include the entire salary, wages, and related costs allocable to the program of each person whose *primary* responsibilities with regard to the program involve program administration assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes *any* program administration assignments. Program administration includes the following types of assignments:

(i) Providing local officials and citizens with information about the program;
(ii) Preparing program budgets and schedules, and amendments thereto;
(iii) Developing systems for assuring compliance with program requirements;
(iv) Developing interagency agreements and agreements with subrecipients and contractors to carry out program activities;

(v) Monitoring program activities for progress and compliance with program requirements;
(vi) Preparing Issue Summaries, reports and other documents related to the program;
(vii) Coordinating the resolution of audit and monitoring findings;
(viii) Evaluating program results against stated objectives; and
(ix) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described above.
(x) Payment of reasonable administrative costs and carrying charges related to the planning and execution of activities assisted in whole or in part with Affordable Housing Fee funding.

(b) *Travel costs incurred for official business in carrying out the program*;
(c) *Administrative services performed under third party contracts or agreements, including such services as general legal services related to projects funded through this program, accounting services, and audit services*; and
(d) Other costs for goods and services required for administration of the program, including such goods and services as rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance of office space.
(2) *Public information.* The provisions of information and other resources to residents and citizen organizations participating in the planning, implementation, or assessment of activities being assisted with Affordable Housing Fee funds.
(3) *Indirect costs.* Indirect costs may be charged to the Affordable Housing Fee program under the City of Bend Cost Allocation program.

C. Project Costs. Costs related to completion of specific projects shall be allocated to the specific project.

SECTION 4: All funding from this source must be targeted for housing opportunities for residents at or below 80% of median income.

SECTION 5: This ordinance will expire five years from date of implementation unless re-authorized by Council.

SECTION 6: The City Council authorizes a one-time payment of $118,000 to repay the General Fund for costs incurred by affordable housing program during fiscal year 2007-2008.

SECTION 7: This ordinance amends Ordinance NS 2012 by deleting the above "stricken-through" provisions, by adding the above "underlined provisions", and by retaining the remaining provisions that are neither "stricken-through" or "under-lined."

Read for the first time the 21st day of May, 2008.

Read for the second time the 4th day of June, 2008.

Placed upon its passage the 4th day of June, 2008.

YES: 7 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 4th day of June, 2008.

Bruce Abernethy, Mayor

Attest:

Patricia Stell, City Recorder

ORDINANCE NO. NS-2097

AN ORDINANCE AMENDING THE BEND URBAN AREA ZONING MAP AND GENERAL PLAN MAP BY CHANGING THE ZONING AND PLAN DESIGNATION OF TWO PARCELS OF LAND TOATLING 3.72 ACRES LOCATED AT THE SOUTHEAST AND SOUTHWEST CORNER OF 4TH STREET AND BUTLER MARKET ROAD FROM IL INDUSTRIAL LIGHT TO ME MIXED EMPLOYMENT.

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 Zone Change and Plan Amendment is consistent with the criteria of the Bend Development Code Section 4.6.300 as shown in Exhibit D. The Bend City Council adopts the findings in Exhibit D.

Section 2. The Bend Urban Area Zoning Map and General Plan map is hereby amended by changing the zoning and plan designation of the properties shown in "Exhibit A" and described in "Exhibit B" from Industrial Light (IL) to Mixed Employment (ME) and subject to the conditions in Exhibit C.

Read for the first time the 4th day of June, 2008.

Read for the second time the 18th day of June, 2008.

Placed upon its passage the 18th day of June, 2008.

YES: 7 NO: 0

Authenticated by the Mayor the 18th day of June, 2008.

Bruce Abernethy, Mayor

ATTEST:

Patricia Stell, City of Bend Recorder

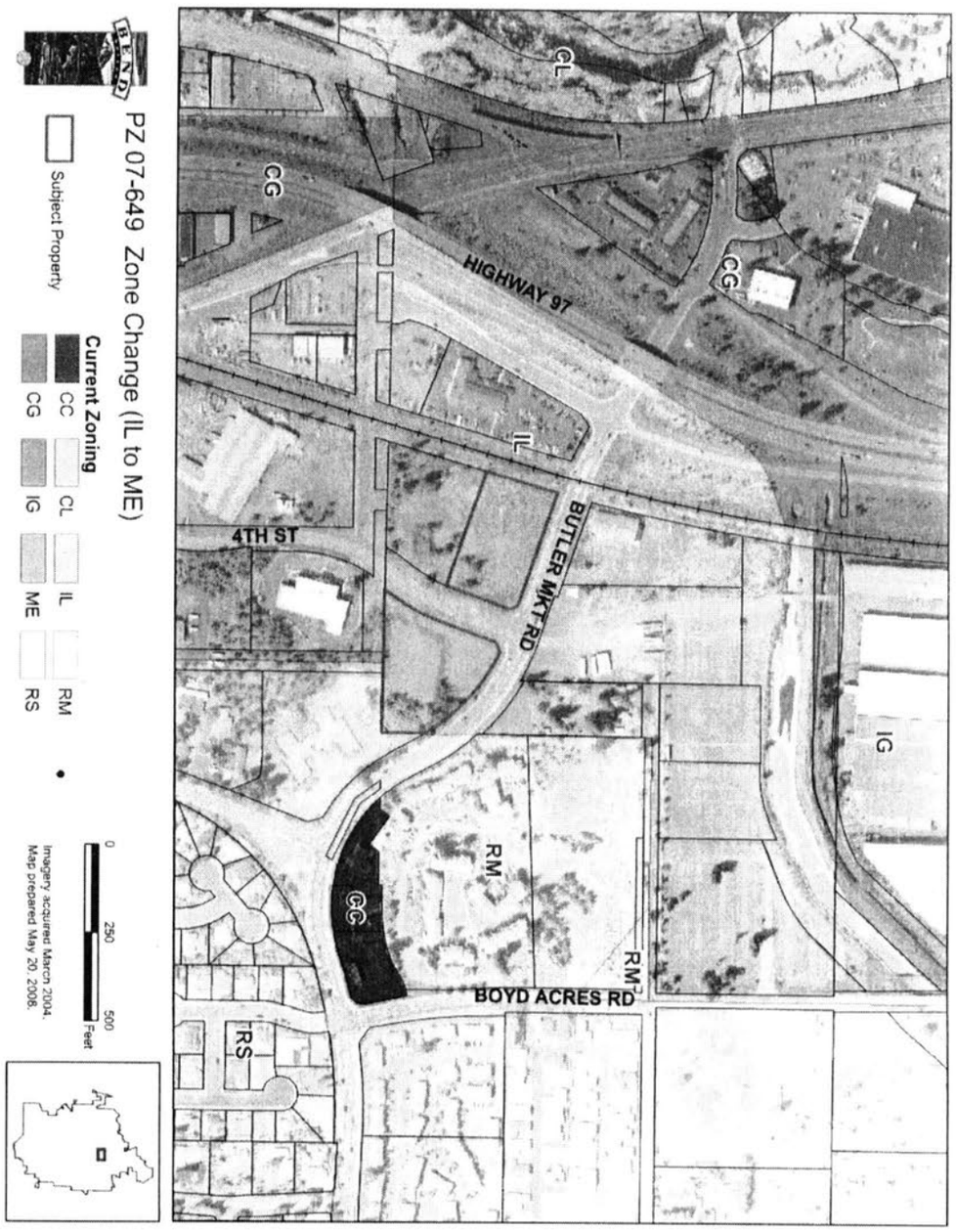

PZ 07-649 Zone Change (IL to ME)
Subject Property
Current Zoning
CC
CG
IG
ME
RS
CL
IL
RM
Imagery acquired March 2004.
Map prepared May 20, 2006.
0
250
500
Feet
CL
CG
HIGHWAY 97
IL
4TH ST
BUTLER MKT RD
IG
RM
CC
RM
BOYD ACRES RD
RS

EXHIBIT B
LEGAL DESCRIPTION

All that property being a portion of the Northwest Quarter (NW1/4) of Section 28 Township 17 South, Range 12 East, Willamette Meridian, in the City of Bend, Deschutes County, Oregon, described as follows:

That parcel of land described by deed from Deschutes County To Bend Millwork Systems, Inc., recorded July 8, 1994 in Volume 345, Page 823 of Deschutes County Official Records.

TOGETHER WITH that parcel of land described by deed recorded May 1, 1997 in Volume 446, Page 1876 of Deschutes County Official Records.

EXCEPTING THEREFROM that portion of said parcel lying North of Butler Market Road (the right of ways of said street are defined in that deed from Bend Millwork Systems, Inc., to Deschutes County, recorded July 8, 1994 in Volume 345, Page 826 of Deschutes County Official Records.

EXHIBIT B

LEGAL DESCRIPTIOIN TAX LOT 700

Parcel 1 of Partition Plat 2005-6, Deschutes County, Oregon.

17 12 28BO 00700

EXHIBIT C

CONDITIONS OF APPROVAL

a. The applicant shall record a deed containing the following development and use restrictions on Tax Lots 700 and 902, prior to the City Council's final reading of the zone change ordinance:

"Uses allowed on the subject property described in Exhibit A attached to this deed shall be restricted to those which generate a primary p.m. peak hour trip rate as defined in the ITE Manual dated March 2001of equal to or less than twenty seven (27) into the site and forty one (41) out of the site plus p.m. peak hour pass by trips of five (5) into the site and five (5) out of the site. This trip generation cap shall be enforceable by the City of Bend and shall run with the land and be fully binding upon the current and future owners of the property described herein and shall restrict the future development and use of the property by current and future owners of the property. This trip generation cap may be amended and/or released only by a recorded written document which shall be executed by the City of Bend upon a demonstration by the owner of compliance with the Transportation Planning Rule (TPR), OAR 660-012-0060, as may be subsequently amended."

b. A Change of Use Site Plan review will be required for this property which is currently designated as (Tax Lot 902) by the Deschutes County Tax Assessor and which is more particularly described in Exhibit A to this Deed for any use other than the industrial warehouse use approved in City of Bend, Community Development Department File PZ -05-606. Site Plan review will be required for tax lot 700 prior to any building permits.

EXHIBIT D

HEARINGS OFFICER'S FINDINGS AND DECISION

FILE NUMBER: **07-649**

DATE: May 16, 2008

APPLICANT/ OWNER: Woodside Development LLC
60025 Ridgeview Drive
Bend, OR 97702

ATTORNEY & PLANNING: Tia M. Lewis &
Mark Rust, AICP
Schwabe Williamson & Wyatt
549 SW Mill View Drive, Suite, 101
Bend OR 97702

ENGINEER: Ferguson & Associates
PO Box 1336
Bend OR 97709

SUBJECT PROPERTY: The subject properties are located on the southeast and southwest corners of Butler Market Road and NE 4th Street in northeast Bend, also described on the Deschutes County Assessor's Map 17-12-28B, Tax Lots 700 and 902.

REQUEST: The request is for a Zone Change and Plan Amendment on two parcels from Light Industrial (IL) to Mixed Employment (ME).

STAFF: Debbie Croom, Associate Planner, 541-312-4916; dcroom@ci.bend.or.us

HEARING OFFICER: Sharon R. Smith

APPLICABLE CRITERIA:

(1) City of Bend Development Code NS-2016

(a) Chapter 2.3; Mixed Use Districts
(b) Chapter 2.4; Industrial Districts

(c) Chapter 4.1; Land Use Review and Procedures
(d) Chapter 4.6; Land Use District Map and Text Amendments
(e) Chapter 4.7; Transportation Analysis

(2) Oregon Administrative Rules 660-012-0060 Plan and Land Use Regulation Amendments

(3) Oregon Administrative Rules Chapter 660, Division 15, Oregon Statewide Planning Goals

(4) Bend Urban Area General Plan

(5) Bend Urban Area Zoning Map

FINDINGS OF FACT:

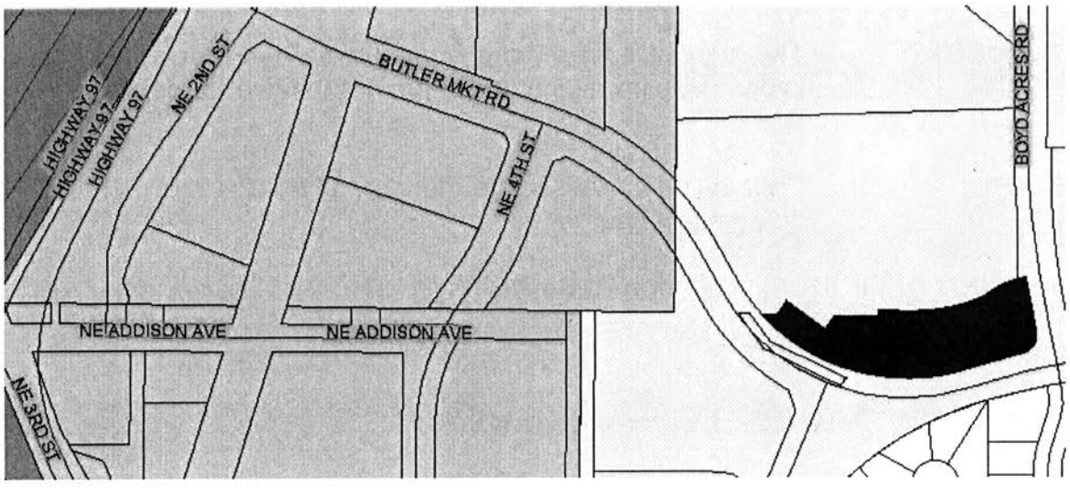
1. **LOCATION:** The subject properties are located on the southeast and southwest corners of Butler Market Road and NE 4th Street in northeast Bend, also described on the Deschutes County Assessor's Map 17-12-28B, Tax Lots 700 and 902.

2. **ZONING:** The subject property is zoned Industrial Light (IL) and is designated (IL) on the Bend Area General Plan map.

3. **SITE DESCRIPTION & SURROUNDING USES:** Tax lot 700 is 1.71 acres lying on the southwest corner of Butler Market Road and 4th Street. The Burlington Northern Railroad lies along the west boundary of this tax lot. Tax lot 700 is vacant. Butler Market Road lies along the northern property boundary, and 4th Street creates the eastern boundary. The property is bordered on the south by an IL zoned property that is developed with a mix of commercial industrial uses including a retail farm supply store. Across the railroad tracks to the west is an automotive dealership.

   Tax lot 902 is 2.01 acres lying on the southeast corner of Butler Market Road and 4th Street. It was recently developed with a 23,400 square foot building, as approved in Administrative Review File No. 05-606. Currently, the existing building in unoccupied.

   To the east, northeast and southeast of the subject properties lies a lengthy strip of RM (Residential Medium Density) zoned land developed primarily with multi-family housing, and to the east of this strip lies a Residential Urban Standard Density District, which is developed with single family homes. To the southwest, west and north is the remainder of the Light Industrial District which continues west to the Bend Parkway. This area is developed with a mix of commercial industrial uses including the aforementioned retail farm supply store and auto sales lot.



4. **PROPOSAL:** The applicant is requesting a Plan Amendment and Zone Change from IL, (Light Industrial) to ME, (Mixed Employment).

5. **PUBLIC NOTICE AND COMMENTS:** The City of Bend Planning Division sent notice of the 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. Two letters in support were submitted, including a letter from the Neighborhood Association. Notices were also sent to City Departments and other affected agencies for their comment.

   The City received comments from the Engineering Division, Transportation, Long Range Planning and ODOT. Their comments and recommendations were considered in this Review and Decision and are contained in the project file 07-649.

In addition, notice of the hearing was published in the Bend Bulletin newspaper on April 27, 2008.

6. **APPLICATION ACCEPTANCE DATE:** The application for this project was deemed complete March 13, 2008.

7. **HEARING/RECORD:** A public hearing was held on May 9, 2008. The applicant's representative submitted testimony and evidence into the Record. The Record was left open until 5:00 p.m. on May 9, 2008 to allow the Applicant to submit a proposed condition of approval.

I. CONCLUSIONARY FINDINGS:

CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE, CHAPTER 2.3 MIXED USE DISTRICTIS (ME,MR AND PO)

2.3.200 Permitted Land Uses

Commercial	ME	MR	PO
Retail Sales and Service • Not to exceed 20,000 sq ft gross floor area • not to exceed 20,000 sq ft ground floor per lease space • ground floor only / not to exceed 2500 sq ft for single use / 5000 sq ft for multiple users	P N N	N P N	NN P
Retail Sales and Service (auto dependent*)	P	N	N
Retail Sales and Service (auto oriented*)	P	N	N
Restaurants/Food Services - with drive-through* - without drive-through	P P	N P	N
Industrial			
Manufacturing and Production - greater than 5,000 sq. ft. - less than 5,000 sq. ft. with retail outlet	P P	P P	N N
Warehouse	P	P	N
Transportation, Freight and Distribution	C	C	N
Production businesses (e.g., IT Support Centers, biotechnology, software/hardware development Broadcast and Production studios/facilities.)	P	P	C
Industrial Service (e.g., cleaning, repair)	P	N	N

FINDING: The proposal does not include a specific use at this time, however the table above lists some of the permitted and conditionally allowed uses for the ME zone. The burden of proof submitted by the applicant mentions some of the above uses.

CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE, CHAPTER 2.4 INDUSTRIAL DISTRICTS

2.4.300 Permitted Uses

Land Use	IG	IL
Industrial		
Light manufacturing, fabrication and repair (*e.g.*, appliances, electronic equipment, printing, furniture, signs and similar goods) with incidental sales associated with a permitted use.	**P**	**P**
Heavy manufacturing, assembly, and processing of raw materials and recycling	**P**	**C**
Junk yards, automobile wrecking yards, and similar uses	**P**	**N**
Research and development facilities	**C**	**P**
Wholesale warehousing, storage and distribution	**P**	**P**
Fuel distribution	**P**	**C**
Production businesses (*e.g.*, IT Support Centers, biotechnology, software/hardware development Broadcast and Production studios/facilities.)	**C**	**P**
Wholesale processing uses (*e.g.*, dry cleaning, laundry)	**P**	**P**
Food and beverage processing and packaging	**P**	**P**

FINDING: The above table lists some of the uses that are currently allowed on the subject properties. The table is included for reference as currently permitted industrial uses are discussed in this review.

CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE, CHAPTER 4.1.920, 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.

FINDING: The property is comprised of two separate legal lots of record. Tax lot 700 was created as Parcel 1 of Partition Plat 2005-6, which was approved by the City of Bend. Tax lot 902 was previously reviewed in Administrative Review No. 05-606, and was confirmed as a legal lot of record at that time. The property was developed in accordance with that approval, and the boundaries of this tax lot have not been altered since that time. The Hearings Officer finds that the property meets the Legal Lot of Record Status.

CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE, CHAPTER 4.1 LAND USE REVIEW AND PROCEDURES

4.1.515 Process for Type II or Type III Applications

C. Quasi-judicial zone change and plan amendment applications shall be reviewed as a Type III and referred to a hearing before the Review Authority.

FINDING: The Hearings Officer conducted a Zone Change and Plan Amendment hearing on May 9, 2008 in accordance with the above requirement.

CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE, CHAPTER 4.6 LAND USE DISTRICT MAP AND TEXT AMENDMENTS

4.6.300 Quasi-Judicial Amendments

A. Applicability, Procedure and Authority. Quasi-judicial amendments generally refer to a plan amendment or zone change affecting a single or limited group of properties and that involves the application of existing policy to a specific factual setting. Quasi-judicial amendments shall follow the Type III procedure, as governed by Chapter 4.1, Land Use Review and Procedures using the standards of approval in Section 4.6.300.B, Criteria for Quasi-judicial Amendments below. Based on the applicant's ability to satisfy the approval criteria, the applicant may be approved, approved with conditions, or denied.

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:

FINDING: The Hearings Officer finds the applicant submitted a written narrative addresses the criteria as required for a Plan Amendment and Zone Change and each are discussed below.

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

APPLICANT'S RESONSE:
***Goal 1**, **Citizen Involvement**, is "To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process." The City has adopted a program in compliance with this Goal, codified in BDC Chapter 4.1. Quasi-Judicial map and text amendments are reviewed under a Type III procedure, as detailed in BDC Chapter 4.1.515. The first step for citizen involvement is the public meeting required by BDC Chapter 4.1.210B, which took place on November 5, 2007. Notice of the meeting was provided pursuant to BDC Chapter 4.1.210C. No persons attended this meeting. The Neighborhood Association representative contacted the applicant's representative outside of the neighborhood meeting process. There are no concerns by the neighborhood association and they have expressed their support for the proposal.*

Type III procedures are also subject to the notice requirements of BDC Chapter 4.1.820, which ensure that citizens are informed in three different ways about the public hearing; individual mailed notice, posted notice on the site, and published notice. The notices inform interested citizens about the hearing and that all interested parties may participate and submit written or verbal testimony.

***Goal 2**, **Land Use Planning**, is "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." It emphasizes the importance of involving citizens and affected governments, and providing them with the opportunity to review and comment on proposed plan changes.*

In this application, notice will be mailed to citizens as per BDC Chapter 4.1.210C, and notice of the hearing will be provided as per BDC Chapter 4.1.820. The City staff will notify the affected governments and the affected departments within the City. All will have the opportunity to submit written comments and to participate in one or more public hearings.

Guideline E.2 suggests that "Minor changes, i.e., those which do not have significant effect beyond the immediate area of the change, should be based on special studies or other information which will serve as the factual basis to

support the change. The public need and justification for the particular change should be established…"

This application includes just 3.72 acres, which is a small percentage of the Light Industrial District. The proposed zone change to the ME (Mixed Employment) designation continues to allow a variety of light industrial uses, therefore, the change does not take the subject property out of the inventory of industrial lands for the City. It includes a special study which analyses the impact of the proposed change on the City transportation system, as well as this narrative which analyzes the myriad of land use criteria and policies. The public need and justification are shown in the applicant's response to the applicable criteria and policies.

***Goals 3, 4 and 5** are not applicable because the properties do not include any agricultural land, forest land, or inventoried open spaces, scenic areas, historic resources, or natural resources.*

***Goal 6 Air, Water and Land Resources Quality,** is "To maintain and improve the quality of the air, water and land resources of the state." It requires that air, water and land resources not be degraded. This application proposes a change that will allow a higher density of employment on these properties which are adjacent to a medium density residential district. Regarding air quality, this change will foster a more compact urban form and reduce the number and length of motor vehicle trips for the commute to work.*

Regarding water quality, the quality of the Deschutes River watershed is largely dependent on the quantity of available water. The current IL designation allows a variety of water intensive uses, including processing of raw materials, wholesale processing such as large scale laundries, and food and beverage processing. The proposed ME designation does not allow these water intensive uses, and thus will help to conserve the limited water resources of the Deschutes River Basin.

The land resources of the state are finite, and must be used with maximum efficiency, especially within urban growth boundaries. The current IL designation primarily allows uses which are low density and single story in nature, such as warehouses, boat storage, and contractor storage. The proposed ME designation allows higher density uses which often occur in multilevel buildings, and thereby use the land more efficiently. These uses include retail and offices of various types. The proposed ME designation will use Bend's urban land more efficiently.

***Goals 7 and 8** are not applicable because the subject properties are not within an identified natural hazard area, nor within an area identified for recreational use.*

***Goal 9, Economic Development.** is "To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens." It further notes that the comprehensive plan should "take into account the social, environmental, energy, and economic impacts upon the resident population."*

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 commercial and industrial uses, thereby stimulating and supporting economic development. Generally speaking, the uses allowed in the Light Industrial District have a lower employment density than the uses allowed in the Mixed Employment District. For example, the Mixed Employment District allows office, clinics, and retail uses, all of which are prohibited in the Light Industrial District. This location is close to the center of the city and adjacent to a large residential area, is more appropriate for high density employment uses that serve the local residents than low density employment uses that do not. 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, 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.

The proposed change to Mixed Employment will provide more job opportunities for local residents close to where they live. This will have a beneficial effect on the neighborhood and the residential population generally. For these reasons, the proposed plan amendment is consistent with this goal.

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.**

APPLICANT'S RESPONSE:
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.[1] This deficit calculation predates the city's annexation of the Juniper Ridge land in the northeast corner of the Bend urban growth boundary (UGB).

Findings from the City's Economic Lands Study also support a change in designation to ME. In 2000, the City conducted a three-part analysis of projected land needs for the 20-year plan period. Part I ('Trends, Inventory and Forecast') evaluates the type and amount of land anticipated to satisfy the 20-year demand.

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[1] 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.

Part 1 concludes that "...the highest growth rates, both in percent and number, are in the trade and service sectors," which will result in a demand for land suited for retail, office, and services uses. Conversely, the study stated that though industrial job types (i.e. manufacturing, warehousing, and wholesale trade) will increase "...at a much slower rate than other jobs. Since job growth will be slower in these fields, the land needs for uses that have historically located in industrial areas will be slower." The study further notes that traditional industrial job types have been severely affected by changing market forces such as consolidation of corporations, outsourcing of jobs overseas, mechanization of industrial processes, and environmental concerns.

Therefore, the entire nature of industrial uses is evolving from heavy manufacturing, assembly, and warehouse operations, to high technology manufacturing and research and development, which require less land for operations and spaces that appear and function more like office developments. The land demand for and job growth for this new type of industrial, or employment user, is projected to significantly increase.

Part II of the City's Economic Lands Study, 'Meeting Forecast Needs,' details a strategy to satisfy the anticipated land demand. The study projects an employment shift to retail and service sectors as the land demand for traditional industrial users declines. A retail and service based economy requires land that meets site requirements of higher wage, service-oriented employers in close proximity to retail, residential and other services. This land type is similar to that required by the new industrial user type. ME zoned land provides the necessary flexibility to respond to the site requirements of these employers.

In the record and decision for City of Bend file #06-21, it was concluded that there was a surplus of at least 19.26 acres of industrial lands within the City of Bend. Additionally it was found 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 and that the evidence in that 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.

More recently an application to change an approximately 13 acre property from IL to ME, City of Bend file number 06-570 has been considered by the City. Even with the approval of this application, there will still be a surplus of industrial land within the City of Bend

Therefore, based on the above findings 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.

The applicant understands the city is very sensitive to the loss of any industrial-zoned land through its conversion to non-employment uses. However, 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.

HEARINGS OFFICER'S NOTE: Comments received from the City Long Range Planning Department indicates the applicant should use the 2007 Economic Lands Study. In response to these comments the applicant supplemented the burden of proof with a document dated April 24, 2008 to contain the following information.

The underlined portion of OAR 660-009-010(4) indicates that this section is only applicable if the property is proposed to be taken out of an industrial designation. In this case the ME zoning proposed still allows primarily industrial uses.

In response to the Long Range Planning Department comments, the 2007 EOA (Economic Opportunities Analysis) finds that there is a surplus of Industrial/ME lands in the short term and the long term. Additionally it is found that there is a deficit of commercial zoned lands in both the short term and long term.[2] The Long Range Planning comments, numbers 5 and 6, reference a deficit in the short term inventory of industrial lands. As indicated, a deficit is not substantiated by the EOA. Additionally, the proposal will not take the subject property out of the industrial lands inventory. It will allow a more flexible range of uses as allowed by the ME zoning to better meet the needs and trends identified in the EOA for employment. Changing the zoning of the subject property from IL to ME allows more commercial uses while maintaining the ability to continue to use the property for industrial uses. This flexibility of allowing commercial uses will help meet the need for more commercially zoned lands as identified.

The developed property, tax lot 902, was originally built for an recreational vehicle sales user. This use was previously an outright permitted use in the IL zone. Since the adoption of the new Development Code in August of 2006, this use is no longer allowed, even conditionally. However, as the EOA finds, the recreational equipment businesses "...have the best chances for success in Bend."[3] This industry sector targeting found that the city should concentrate its efforts on retaining and attracting new business in this area. It was found that this type of business has significant growth opportunity, has living wage job potential, and is likely to have sustainable business practices.[4] In additional support of this type of business, the EOA finds that "Bend has the opportunity to capitalize on the growth expected to take place in the region's hottest industry sectors" including the retail trade and leisure and hospitality industries.[5] The originally intended use of the existing building on the subject property fits into both of these categories.

Regardless of the ultimate use of the subject properties, the EOA supports the change in the zoning from IL to ME. The EOA finds that the ELS (Economic Lands Study, 2000) cited above and in the original application is still applicable. The EOA states that "The ELS will continue to be a very valuable resource for Bend as the city proceeds with further analysis of employment lands and policy responses", and that "... the ELS can continue to serve as a good model for the current employment lands analysis process."[6] As stated in the original findings the ELS supports the conversion of the subject property from IL to ME for a number of reasons. The study projects an employment shift to retail and service sectors as the land demand for traditional industrial users declines. A retail and service based economy requires land that meets site requirements of higher wage, service-oriented employers in close proximity to retail, residential and other services. This land type is similar to that required by the new industrial user type. ME zoned land provides the necessary flexibility to respond to the site requirements of these employers.

The ELS finds that "As the distinctions between industrial and commercial uses diminish, it would seem a normal progression to have zones that permit a broad mix of commercial and industrial uses."

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[2] See Table 1 on page 4 of the EOA.

[3] See page 20 of the EOA under Economic Sector Targeting, and Table 4.

[4] See page 12 of the EOA under Economic Sector Targeting.

[5] See page 19 of the EOA under Local Trends.

[6] See page 11 of the EOA.

FINDING: From the information provided the request from IL to Me will not take the property out of the industrial lands inventory, but will allow a more flexible range of uses. The Hearings Officer finds the EOA supports the change of zoning.

Goal 10, Housing, *is not applicable because the properties are not residential lands.*

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

This goal requires the city to plan and develop land in a timely, orderly and efficient fashion, based upon the availability of public services. The subject properties are located in a mostly developed area of the City. As discussed in detail below, all needed public facilities and services are available to and currently serve the subject property. The properties have direct access to a minor arterial road. Water and Sanitary sewer service is available via existing city infrastructure adjacent to the properties. Other available urban services include schools, libraries, and emergency services. The best way to ensure an orderly and efficient arrangement of these services is foster a higher density of development close to the central part of Bend, as proposed by this application. The proposed plan amendment is consistent with this goal.

Goal 12 Transportation, *is "To provide and encourage a safe, convenient and economic transportation system." Unlike the other applicable goals, Goal 12 is implemented through the detailed Transportation Planning Rule, OAR 660-12. Compliance with this rule is explained below, incorporated by reference herein. The proposed plan amendment is consistent with and satisfies the requirements of the TPR which implements this goal.*

Goal 13 Energy, *is "To conserve energy." Planning Guideline A.4 is that "Land use planning should, to the maximum extent possible, combine increasing density gradients along high*
capacity transportation corridors to achieve greater energy efficiency." The subject properties are within a few blocks of both the Bend Parkway and US Highway 97 which are the highest capacity corridors in the area. This goal compels the City to plan for a dense urban form along this corridor, which is partially accomplished by the RM district just east of the subject properties. However, between the RM and the transportation corridor is a low density, light industrial district. The proposed change to ME will increase the development density along the transportation corridor and achieve greater energy efficiency.

Goal 14 Urbanization, *is "To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities." These properties are well within the UGB already, and urban services are available. The proposed change will increase employment opportunities because the permitted uses in the ME district generally have a higher employment density than the permitted uses in the IL district.*

Similarly, the permitted uses in the ME district generally have a higher density, in terms of lot coverage and floor area ratio, than the permitted uses in the IL district, and thus the ME district promotes more efficient use of land. Adjacent to the east and southeast boundary of the site, a 20 foot wide buffer zone is required to alleviate the incompatibility of industrial uses adjacent to residential uses; this unusually wide buffer is not an efficient use of urban land. The uses permitted in the ME district are not incompatible with the adjacent residential uses, and thus a 20 foot buffer area is not required. As a result, this portion of the land can be used more efficiently. The livability of the community will be

enhanced by the elimination of the inevitable land use conflicts caused by having industrial property adjacent to residential property.

Goals 15 through 19 *are not applicable because they only pertain to areas in western Oregon.*

FINDING: The Hearings Officer finds the narrative submitted by the applicant shows the request is consistent with the Statewide Land Use Planning Goals in OAR 660-015-000, 660-015-005 and 660-015-101.

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

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. A person or agency proposing the change has the burden to demonstrate a public need and benefit for the change.**

APPLICANT'S RESPONSE:
The applicant is requesting approval of an amendment of the subject property's plan designation from IL to ME. 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."

Public Need and Benefit

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.

The subject properties are located in a transitional area between the railroad track and the Bend Parkway, and adjacent to residential development on the east.

The City of Bend's adoption of the new development code now prohibits the use of the developed property for the originally intended use of auto sales as well as other viable uses such as offices in the IL zone. The City has a documented shortage of commercial land. No new commercial land has been added to the City to rectify the shortage created by the new zoning code or to allow room for the previously allowed commercial uses that would locate in industrial zoning districts.

The approval of the amendment 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 and has approved a rezone of IL property along Century Drive at the old Brightwood Mill facility. The only other originally zoned ME 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 City is also currently contemplating an application to rezone the Mt. Bachelor parking lot facility to ME.

The fact that the subject property is located between an established residential 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.

The ME zone will allow the property owner to use the existing building for the intended purpose for which it was built under the previous IL zoning language, and to develop the vacant property with a mix of uses that will have a lower impact on and directly benefit the adjacent 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 ME zoning will allow these former industrial production businesses to find a home in Bend.

Additionally, the applicant's proposal and arguments in support of it address the issues concerning the "public need and benefit" requirement: specifically in regard to the impact of the proposed plan amendment on the city's industrial lands inventory;

FINDING: The Hearings Officer concurs with the applicant's statements that the request will provide a benefit to the public.

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.

APPLICANT'S RESPONSE:

In several previous Hearings Officer decisions it has been held that 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). This interpretation was upheld by LUBA in its decision in Save Our Skyline v. City of Bend, 48 Or LUBA 192 (2004). For these reasons, the plan preface merely indicates plan policies are to be implemented by the city's adopted land use regulations.

GENERAL 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.

APPILCANT'S RESPONSE:

The site is located well within the existing Bend urban area, between the major transportation corridor to the west and a residential area to the east. This application will integrate higher density employment uses with the transportation corridor and residential areas. Proximity to the transportation corridor will encourage trip chaining due to the variety of residential and commercial activities near the corridor. In addition, proximity to the residential area will reduce trips and facilitate non-automobile travel for neighborhood residents who are employed at the subject properties.

The proposal is consistent with this plan policy.

Chapter 6, Goal 2: Ensure an adequate supply of appropriately zoned land in Bend to provide for a full range of industrial, commercial and professional development opportunities.

APPLICANT'S RESPONSE

The subject properties were acquired for commercial industrial use, and tax lot 902 was developed for that purpose. The recent change in the list of permitted uses in the IL district eliminates several commercial uses, which effectively reduces the supply of commercial lands. However, the commercial uses intended by the applicant are allowed in the ME district. Approval of this application will make up some portion of the loss in the City's supply of commercial land cause by the change in the IL zone, while not eliminating the opportunity to provide industrial land uses based on the broad spectrum of uses allowed in the ME zone.

Chapter 6, Policy 4: The city shall work to preserve prime industrial lands for industrial purposes.

APPLICANT'S RESPONSE:

The subject properties total only 3.88 acres. The properties do not constitute "prime" industrial land for a number of reasons. Tax lot 700 is only 1.71 acres, and access is only allowed from 4th Street. As a result, the property is too small to accommodate the turning movements of larger trucks. The prior IL zoning recognized the suitability of the property for non-industrial uses, and the proposed amendment would restore those uses for the property.

Regarding tax lot 902, it was recently developed for non-industrial use and thus is not a prime industrial property, or even a subprime industrial property. Rather, it is a commercial property. This application would allow it to be used for the very uses it was built for, which were previously deemed to be compatible with

surrounding residential, commercial and industrial properties. The City's prime industrial lands will not be affected by this application.

Chapter 6, Policy 5: The community shall attempt to diversify its industrial base.

APPLICANT'S RESPONSE:

Re-designation of the subject property from IL to ME will still allow light industrial uses, and it will also allow other, more diverse employment uses. In the 21st century, diversification of the industrial base includes newer, expanding employment sectors which may not fit within the traditional definitions of industrial uses. For example, a company which sold its goods and services to the timber and wood products industries in prior decades presumably was a traditional blue collar, industrial plant. Today, that company is likely to be selling software to support its industrial plant and products, and may be located in an office building. Diversity, by definition, is inclusionary, and the ME designation reflects that intent by allowing a variety of industrial and related uses.

Chapter 6, Policy 8: Industrial areas shall be protected from incompatible commercial and residential uses.

APPLICANT'S RESPONSE:

This industrial zoned property is adjacent to residential uses to the east, and resolving that fundamental incompatibility is the crux of this application. Tax lot 902 abuts residential uses on two sides, which is why it was recently approved and developed for commercial use.

Until recently, the IL zone allowed a variety of nonindustrial uses, and many nearby properties are developed with commercial uses including a retail farm and home supply store, and an automotive sales business.

While the ME designation would allow residential uses, the applicant is not intending to develop residential uses on the properties, and will execute a covenant to that effect. This assures that approval of this amendment will not result in incompatible land uses.

Chapter 6, Policy 19, The City may designate other areas for mixed use development to encourage a variety of jobs and services close to residential areas.

APPLICANT'S RESPONSE:

This policy provides authority for designation of additional lands for mixed use. The proposed plan amendment will allow commercial development on the subject properties at a higher employment density than allowed by the IL designation. This will occur adjacent to a large residential area. This amendment will place jobs closer to housing and reduce vehicle trip length and promote commuting by bicyclists and pedestrians.

Chapter 7, Policy 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.

APPLICANT'S RESPONSE:

As noted immediately above, the proposed amendment will allow increased employment density because many uses allowed in the ME zone require more employees per acre than the industrial uses currently allowed. This translates into fewer overall vehicle trips and reduced trip length because the properties are adjacent to a large residential area and would reduce the distance for traveling to work and/or to obtain goods and services. Residents in the area will be able to travel shorter distances to work, and some will have the ability to be able to walk to work.

Chapter 7, Policy 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.

APPLICANT'S RESPONSE:

The primary alternatives to vehicle traffic are bicycle and pedestrian trips. To promote these alternatives requires placement of higher density commercial and employment uses close enough to residential areas that customers and employees can ride their bikes or walk to shop and work. This application requests placement of a ME zone adjacent to the residential area, thereby promoting alternatives to vehicle traffic.

It is demonstrated above how the applicable polices will or will continue to be implemented with the proposed amendment.

FINDING: The Hearings Officer concurs with the applicant that the above policies listed in the General Plan are consistent with the request to change the zoning from IL to ME.

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; and**

APPLICANT'S RESPONSE:

Adequate urban infrastructure, including sewer, water, police and fire protection, schools and transportation facilities are provided to support the proposed zone change. Each of these facilities and services is discussed separately in the findings below. In general tax lot 700 is vacant, and public water, sewer and streets are available to support the types of land uses allowed in the ME zone. Tax lot 902 was recently developed for commercial use and does not require additional facilities of any kind. Further discussion of the transportation impacts of this application are described above.

(1) Police Protection. Because the subject property is located within the Bend city limits it will be served by the Bend Police Department.

(2) Fire Protection. Because the subject property is located within the Bend city limits it will be served by the Bend Fire Department which 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 Specific sewer and water facility requirements will be addressed at the time approval of a development proposal. However, given the type and density of current development on the subject property and surrounding properties the sewer and water facilities and services that meet the city's standards and specifications are adequate.

(5) Schools. The subject property is located within the boundaries of the Bend-La Pine School District and can be adequately served by the district.

(6) Parks. The subject property is located within the boundaries of the Bend Metropolitan Park and Recreation District and can be served by the district.

(7) Transportation Facilities. The subject property is bounded on the north by Butler Market Road, and adjacent to 4th Street, both designated arterial streets. As discussed in detail in the findings below concerning the proposal's compliance with the TPR, the submitted traffic study shows how the subject property can be developed with uses permitted in the ME Zone without exceeding the capacity of affected streets. The submitted study includes a reduced demand scenario that identifies the types, and sizes of uses allowed under the proposed ME zoning as well as the predicted trip generation from such uses and densities. The applicant

proposes that the plan amendment and zone change be approved subject to a condition requiring the subject property be developed consistent with the "reduced demand scenario." Based on this condition of approval, the proposed zone change will promote an orderly sequence of growth considering traffic impacts.

Based on the above findings, there are adequate public facilities to serve the properties as contemplated by the proposed zone change from IL to ME.

FINDING: Comments received from the affected agencies submitted comments that the public facilities can accommodate the request with some exceptions to the Transportation facilities which are discussed in detail later in the review. The Hearings Officer finds that all public facilities can accommodate the request with the imposed condition of approval addressing traffic and site plan review listed below.

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.**

APPLICANT'S RESPONSE:
Change in the neighborhood or community

Significant changes in circumstances have occurred since the original designation of the subject property as IL. These changes include an evolving industrial user type, changing market conditions, City adoption of mixed use zoning, changes in the City's transportation system, and, the expansion of the UGB for the Juniper Ridge development:

1.1.1.1 *Changing Nature of Industrial users*

As demonstrated in the City's Economic Land Study (2000), the nature of industrial uses is drastically changing. This can be attributed to the shift of manufacturing and assembly processes overseas, coupled with the rise of specialized industries that are smaller in size, have little or no negative environmental impacts, and rely more on automation. The emerging light industrial user typically functions like and is similar in appearance to research and development, professional office, and service and creative businesses, as opposed to traditional industrial user types. This change has altered an industrial user's site requirements and impacts. The study's employment projections forecast an increase in employment opportunities for the new industrial user type and a decrease in the traditional industrial user type. Therefore, appropriate sites must be available for these employment opportunities that would not typically locate in IL zoning districts, but in locations that provide support services and living opportunities within close proximity.

1.1.1.2 *Changes in the Market*

Due to 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 due to the closure of large industrial uses to the north of the subject property and throughout the Bend area, whose presence created the primary need for industrial zoning and ancillary industrial uses, the subject property is no longer suited for solely industrial uses.

With the code amendments implemented by the City's new Development Code commercial uses in the IL zone are prohibited, only industrial uses will be permitted. Economic forces, however, prevent property in the area from developing with strictly industrial uses.

The area surrounding the subject property has changed significantly since the initial zoning of the site, which was once considered to be on the periphery of town. Growth and development/redevelopment has occurred, and the site is located near the heart of the City's commercial districts. Additionally, the property is adjacent to a large residentially zoned area.

Land values have increased to a point that virtually prohibits the development or use of the subject properties with only industrial uses. Land uses that can capture the lease rates and generate the revenues required to offset the high cost of the land are restricted to office, retail and commercial uses. To further illustrate this conflict, the average price of industrial zoned land in the Portland metropolitan area is approximately $5 per square foot. Recent land sales of IL property in Bend have yielded up $30 per square foot for industrial zoned land.

1.1.1.3 *New Mixed Use Zone Designations*

When the site was designated as IL in 1979, mixed-use zone designations did not exist in the City. Since then, the City has amended its code to include two new mixed use districts, MR (Mixed Use Riverfront) and ME (Mixed Employment), which allow a broad range of commercial and industrial uses. With the change of industrial users to smaller, more specialized industries, the differences between industrial and commercial are decreasing while the demand for mixed-use zoned land is increasing.

Given the significant change in character around the subject site and the demand for mixed use land, the subject property is well suited to be changed to ME. This change would continue to allow some industrial uses in addition to other uses that are in high demand in the surrounding area.

1.1.1.4 *Changes in the Transportation System*

With increased traffic in the Bend area, numerous roundabouts have been installed on major roadways. The small radius of the roundabouts make truck maneuvering difficult and make urban properties, such as the subject site, less desirable for potential industrial users.

The city's construction of numerous transportation system improvements including the Bend Parkway with an off and on ramp at Butler Market, and a round-a-bout on Butler Market at 8th Street generally improve access to the subject property and surrounding properties.

1.1.1.5 *UGB Expansion for Juniper Ridge*

In 2004, the City of Bend expanded its Urban Growth Boundary (UGB) to add over 500 gross acres of industrial land. This provision of new industrial land helps relieve the need for IL zoned land which is unsuitable for industrial development to maintain an IL designation.

Inconsistency in Plan Map

The subject properties are located at the southeast and southwest corners of Butler Market Rd. and NE 4th St. To the east, northeast and southeast lies a lengthy strip of the Residential Medium Density (RM) zoning district, and to the east of this strip is a large Residential Urban Standard Density (RS) zoning district developed with single family homes. To the southwest, west and north is the remainder of the Light Industrial (IL) zoning district which continues west to the Bend Parkway.

There is an inconsistency in the location criteria for the Light Industrial and Mixed Employment Districts at this location,. The purpose of the Industrial Districts in general are to "segregate incompatible industrial development from other districts." BDS 2.4.100. The location criterion for the Light Industrial District is "to provide for heavier commercial and light industrial uses with easy access to collector and arterial streets." BDC 2.4.200. Butler Market Road and NE Fourth Street are minor arterials which fit neatly into this criterion. However, conspicuously absent from this criterion is any reference to residential uses or

districts. As a result, it omits consideration of the very important reality that industrial uses can conflict with other uses.

The purpose of the Mixed Use Districts is to "provide a transition between existing urban environments and both existing and future residential developments." The location criterion for the Mixed Employment District is "to provide a broad mix of uses that offer a variety of employment opportunities. Where Mixed Use Employment Districts occur on the edge of the city, their function is more transitional in nature providing service commercial businesses and supporting residential uses in an aesthetic mixed environment." BDC 2.3.100.

That is, the Mixed Employment District is designed to coexist and be compatible with residential uses; whereas the Light Industrial District is not. Given that the subject properties are adjacent to residential uses, it is more appropriate for them to be designated as a transitional district in order to protect the local residents from incompatible industrial uses. The buffering requirements are helpful but cannot reasonably be expected to sufficiently separate uses that are fundamentally incompatible.

In summary, the subject properties were apparently placed within a Light Industrial District based on their access to minor arterial streets. Their proximity to Urban Medium Density and Standard Urban Density Residential Districts compels a mixed use designation which accommodates the need for transitional uses between the residential area to the east and the industrial and highway areas to the west.

FINDING: The applicant provided evidence of change in the neighborhood and community to support the request. The Hearings Officer finds that the above criterion is met with the supporting documentation from the applicant.

CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE, CHAPTER 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.**

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]**.**

APPLICANT'S RESPONSE: *The current IL designation allows a variety of light industrial uses, including auto-oriented uses like auto care centers, which generate a substantial amount of auto traffic. The requested change to ME would have a significant effect on the existing transportation facilities, because that designation allows uses which generate even more auto traffic than uses allowed under the current IL designation. However, the applicant will achieve compliance with the TPR by placing a trip cap on the properties that will limit the uses and the density of uses on the subject properties in order to reduce the demand for auto travel.*

Some uses allowed in the ME district, such as restaurants and medical offices, generate substantially more auto traffic than any of the uses allowed in the IL district. By prohibiting those uses, the reasonable worst case scenario for future traffic is limited. In addition, the trip cap will limit the density of development on the two properties, which also limits the reasonable worst case scenario for future traffic.

The result of prohibiting some land uses and capping the density and trips associated with the allowed uses is that the reasonable worst case scenario for future traffic is only slightly different than the scenario under the current IL designation.

For a more detailed explanation of transportation issues, please refer to the report of Ferguson & Associates, attached as Exhibit A.

Based on the findings and conclusions in the traffic study, the proposed plan amendment and zone change will not change the functional classification of or standards applicable to 4th Street or Butler Market Road. Additionally if the property is developed consistent with the reduced demand scenario presented in the traffic study in terms of the trip cap that limits the types 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. Since the city does not have an acknowledged TSP the standard in paragraph (2)(d) is not applicable.[7] *Therefore, the proposed plan amendment and zone change will be consistent with the TPR.*

FINDING: Comments received from Long Range Planning, City Transportation and ODOT indicate the proposed request would not meet the Transportation Planning Rule (TPR) criteria as shown in the applicant's original Transportation Impact Statement (TIS). The applicant submitted additional information dated March 4, 2008 which provides a pass-by rate for the sites with the ME zoning. Comments received from the City Transportation Engineer indicate the TIS would

[7] The city has identified acceptable levels of service in its street policies.

meet the TPR as long as the trips are capped for the combination of both sites at 27 in, 41 out and pass-by 5 in and 5 out. This can be accomplished with deed restrictions placed on both sites through a condition of approval which is listed below. The City Transportation comments are as follows:

"For the plan amendment zone change analysis (the TPR analysis), the applicant showed that there would be a "significant affect" according to TPR 660-012-0060 (section 1cC) 'worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.' The intersections with significant impact would include two ODOT intersections (Hwy 20/Butler Market Road, Hwy 20 Parkway Ramps/Butler Market Road) and one City intersection (4th/Butler Market Road).

The applicant is proposing to eliminate this 'significant affect' by capping the trips generated on these two sites to 27 PM Peak Hour Trips in to, and 41 PM Peak Hour trips out of, the sites. These 27 in and 41 out PM Peak Hour trips represent the estimated worst case trip generation that can be generated under the existing IL zoning. These 27 PM Peak Hour Trips in and 41 Peak Hour trips out were identified in Table 3 of the applicant's December 19, 2007 Traffic Impact Analysis.

The applicant has further requested that the sites be allowed some small number of additional trips over and above the worst case for the IL zone (27 in, 41 out) PM Peak Hour trips provided that the additional trips be classified as Pass By trips (meaning they would already be on the system, and should not be considered new trips). The applicant provided pass by trip diagrams labeled Figure A to Figure E in a memorandum dated March 31, 2008. Staff finds that a total of 5 in and 5 out PM Peak Hour Trips pass by trips can be justified given the criteria that the trips should not go through the intersection of 4th & Butler Market as a new trip. Pass by trips shown in Figures A and B require turns from and back into the intersection of 4th & Butler Market and are therefore new to the intersection, and not able to be utilized to maintain zero additional trips through this intersection over those of the existing IL zoning.

Staff agrees that for the purpose of the applicant's TPR analysis, the applicant may cap the trips generated by the new zoning to 27 in and 41 out primary PM Peak Hour trips and 5 in and 5 out pass-by PM Peak Hour trips. This trip cap will be implemented through later submittal of any site plan applications for Tax Lots 17-12-28B 700 and 902 as well as for change of use applications for Tax Lots 17-12-28B 700 and 902. This trip cap is a requirement of the transportation planning rule requirements associated with the plan amendment and zone change for the subject lots and therefore is intended to and shall run with the land and shall be fully binding upon the owner and all future owners of the property.

What needs to be clear, however, is that the applicant is not proposing mitigation for the existing failures on the transportation system and therefore, cannot increase the trip potential of these two sites to above the existing IL zoning. Therefore, this trip cap must be monitored forever as a way to ensure continued compliance with the transportation planning rule requirements. Should the combined trip generation of future site plan submittals and future change of use submittals exceed these numbers of primary and pass by trips (primary: 27 in, 41 out; pass-by 5 in, 5 out), then the owners of the properties shall be required to submit a full transportation planning rule analysis and demonstrate compliance with the transportation planning rule before any site plan application/change of use application can be approved.

Additionally, it is necessary to acknowledge that this trip cap solely applies to the Transportation Planning Rule analysis (PZ 07-649 is solely requesting a plan amendment and zone change), and does not in any way provide the applicant or the property owners an approval to build up to that number of trips on these two

lots. The applicant has not proposed a concurrent site plan application and is not applying for a change of use application at this time. Any and all future site plan applications/change of use applications will be required to submit a traffic impact analysis that demonstrates compliance with the Bend Development Code and mitigates as required by that code. There is no trip credit established for, or available to be used by, the site plan applications/change of use applications based upon the discussions provided herein regarding the transportation planning rule requirements. Any currently failing intersection would be required to be mitigated according to the concurrency requirements in place at the time of the site plan application/change of use application."

Staff recommended the following conditions be imposed if the request is approved:

PROPOSED CONDITION OF APPROVAL: The applicant shall record deed restrictions on tax lot 700 and 902 that cap the trips for future uses to be 27 in, 41 out; pass-by 5 in , 5 out. The applicant shall submit to the Planning Department for review and approval a copy of the proposed language for the deed restriction prior to City Council final approval of the Zone Change and Plan Amendment.

PROPOSED CONDITION OF APPROVAL: A Change of Use Site Plan review will be required for tax lot 902 for any use other than the approved industrial warehouse use. Site Plan review will be required for tax lot 700 prior to any building permits.

FINDING: The Hearings Officer finds that the "trip cap" will effectively reduce the potential traffic impacts from the zone change so that the proposal will not "significantly affect" a transportation facility for purposes of OAR 660-012-060(2). Accordingly, the zone change will comply with the TPR. The Applicant submitted the following proposed condition of approval:

"Uses allowed on the subject property described herein shall be restricted to those which generate a primary p.m. peak hour trip rate of equal to or less than twenty seven (27) into the site and forty one (41) out of the site plus p.m. peak hour pass by trips of five (5) into the site and five (5) out of the site. This trip generation cap shall be enforceable by the City of Bend and shall run with the land and be fully binding upon the current and future owners of the property described herein. This trip generation cap may be amended and/or released only by a recorded written document which shall be executed by the City of Bend upon a demonstration by the owner of compliance with the Transportation Planning Rule (TAR), OAR 660-012-0060, as may be subsequently amended."

CONCLUSION: Based on the above findings the Hearings Officer approves the Zone Change and Plan Amendment from IL to ME as the applicant has demonstrated that there is a public need and benefit to changing the designation of the subject properties. The applicant has demonstrated that the proposed change will be more compatible with the surrounding residential properties. The request can be supported with the existing public facilities if the following conditions are imposed:

a. The applicant shall record the following deed restriction on Tax Lots 700 and 902, prior to the City Council's final reading of the zone change ordinance:

"Uses allowed on the subject property described herein shall be restricted to those which generate a primary p.m. peak hour trip rate of equal to or less than twenty seven (27) into the site and forty one (41) out of the site plus p.m. peak hour pass by trips of five (5) into the site and five (5) out of the site. This trip generation cap shall be enforceable by the City of Bend and shall run with the land and be fully binding upon the current and future owners of the property described herein. This trip generation cap may be amended and/or released only by a recorded written document which shall be executed by the City of Bend

upon a demonstration by the owner of compliance with the Transportation Planning Rule (TAR), OAR 660-012-0060, as may be subsequently amended."

b. A Change of Use Site Plan review will be required for tax lot 902 for any use other than the approved industrial warehouse use. Site Plan review will be required for tax lot 700 prior to any building permits.

Dated this _____ day of May, 2008

_____

Sharon R. Smith, Hearings Officer for the City of Bend

(Additions to the code are **bold and underlined**.
Deletions from the code are shown in ~~strikethrough~~. typeface

ORDINANCE NO. NS-2098

AN ORDINANCE AMENDING BEND CODE CHAPTER 7, SECTION 7.356 TO INCLUDE THE REQUIRMENT THAT VENDORS PARTICIPATING IN SPECIAL EVENTS BE LISTED AND A FEE PAID FOR EACH VENDOR; AND AMENDING SECTION 7.715 TO 7.720 TO EXEMPT SPECIAL EVENT VENDORS FROM BUSINESS LICENSE REQUIREMENTS PROVIDED THAT THE REQUIREMENTS OF SECTION 7.356 (AS AMENDED) ARE MET BY THE SPECIAL EVENT PERMIT HOLDER

WHEREAS, the Bend City Code currently requires independent vendors operating as part of a special event to have a City of Bend Business License; and

WHEREAS, the special event permit holder is also currently required to have a City of Bend Business License; and

WHEREAS, special event vendors have requested an exclusion from the business license requirements on the basis that they are similarly situated with those who qualify under the exemption provisions for independent contractors operating in an office building that has obtained a business license to cover the entire building (Section 7.715 (4)(d)); and

WHEREAS, the Bend City Council finds that the requested exemption recited above should be authorized, provided that a provision in the special event permit requirement be added that requiries the special event permit holder to list each of the special event vendors with contact information for each, and provided that there be an additional $5 fee for each vendor for each day such vendor participates in the special event, up to a $50 maximum per vendor per special event;

NOW, THEREFORE,

THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

Section 1: Bend City Code Section 7.356 is amended as follows.

SPECIAL EVENTS

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. **In addition to the base fee, there will be an additional $5 charge for each vendor participating in the event, per day of participation, unless the vendor holds a City of Bend Business License. The $5 per vendor fee shall be paid at the time the applicant for the special event permit files the permit application, to the extent that the identity of the vendor(s) is known to the applicant, but in no event shall the vendor fee be paid more than 10 days after the event is concluded.** 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, **a list of vendors participating in the event (including contact information for each),** 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 2: Bend City Code Sections 7.715 through 7.720 are amended as follows.

BUSINESS LICENSES

7.715 Definitions. In Bend Code Sections 7.700 to 7.790, a "business" is a trade or business activity activity, regardlesss of the form under which the activity is conducted (such as sole proprietor; partnership; corporation; Subchapter S corporation; limited liability company; limited liability partnership and the like), that is required under the US Internal Revenue Code to file an income tax return. The following additional definitions apply:

(1) "For profit business" means any trade, profession, occupation or pursuit, the purpose of which is to make a profit, whether or not a profit is actually made, as defined by the US Internal Revenue Code, as amended from time to time.

(2) "Non-profit business" means any business that qualifies as a non-profit business under the US Internal Revenue Code, as amended from time to time.

(3) "Public utility" means any business regulated by the Oregon Public Utility Commission or federal agency, such as the Federal Communications Commission, that delivers water, sewer, gas, electric, cable television, cable modem, satellite television, satellite modem, or telecommunications services within the City of Bend.

(4) "Exempt business" means:

(a) Any person transacting and carrying on any business within the City which is exempt from a license fee or tax or regulation by virtue of the US Constitution, laws of the United States, Oregon Constitution, or laws of the State of Oregon;

(b) Churches and governmental agencies;

(c) A service business operated by a person under the age of 18, such as a lawn mowing business, a newspaper delivery business, a lemonade stand, and the like.

(d) Independent contractors (such as medical care providers, beauticians, and the like) that work in an office building or building of a business that has applied for and obtained a business license that covers the entire building are not required to obtain an individual license. Where the owner **or tenant** of the building has not obtained a business license to cover such independent contractor, the independent contractor is required to obtain a license under this ordinance.

(e) Persons selling goods or services exclusively during a permitted special event activity where the sponsor of the event has obtained a Special Event Permit (as required in Bend Code Section 7.350) are not required to obtain a license under this ordinance, but are required to supply their name, contact address, and phone number to the Special Event Permit holder.

7.720 Requirement to Obtain Business License; Pay Application Fee; and Apply for Exemption.

(1) Persons carrying on or transacting any Business, Non-profit Business or Public Utility as defined in section 7.715(1), (2) or (3), where physical business activity is undertaken within the City of Bend, shall be required to apply for and obtain a business license, unless such person is an Exempt Business, or the business is not required to obtain a license under another provision of this ordinance. A business that believes it is exempt from obtaining a business license shall apply for an exemption on a form provided by the city.

(2) Non-profit businesses, as defined in Section 7.715(2) must obtain a license, but shall pay a reduced fee as established by the current City of Bend Fee Resolution.

(3) Where a business is owned by a corporation or operates under a franchise, it shall be the responsibility of the local business manager to obtain the required license.

(4) The following provisions apply to the obligation to obtain a business license:

(a) Any business that conducts physical activities in the City of Bend, whether or not such business operates from a physical structure or location within the City of Bend, is subject to this ordinance. Businesses that have their primary business location outside the City of Bend, but that conduct business activity within the City of Bend (including, but not limited to delivery businesses, repair businesses, and the like) are required to be licensed under this ordinance.

(b) If two or more related businesses are carried on at the same premises by the same owners, one license issued in the name of the business for which the premises is primarily used shall be sufficient for all such activities.

(c) Electronic businesses, including internet businesses with a physical location in the City of Bend, shall be required to be licensed, unless exempt by another provision of this ordinance.

(d) Where:

(1) A business is leased, under concession to, or owned wholly or in part by a different person or persons on the same premises, such business must be separately licensed, unless exempted by this ordinance. (For example, in the case where a business allows a food or other concession to be operated on the premises, and where the concession is owned by a

separate entity, the concession is a separate business activity, requiring a separate license.)

(2) A single business occupies more than one building and the separate building occupancy is an adjunct to the same business activity (such as a retail or wholesale business that operates a warehouse in a building separate from the central business office or retail sales location), then only one license shall be required; but the business license application shall list all buildings where business activity occurs, providing necessary detail as to the activity conducted in each separate building.

(e) For the purpose of this ordinance, no employee of a business whose income is based solely on an hourly, daily, weekly, monthly or annual wage, or salary shall be considered a person transacting and carrying on a business. The intention of this ordinance is that all business license fees assessed by this ordinance shall be borne by the employer or proprietor for the privilege of doing business.

(f) Charitable organizations that have no physical location other than a post office box are not required to obtain a license under this ordinance.

(g) Activities that qualify as hobbies or passive holding of property for investment purposes under the US Internal revenue Code are not required to obtain a license under this ordinance.

(h) **Persons selling goods or services exclusively during a permitted special event activity where the sponsor of the event has obtained a Special Event Permit (as required by Bend Code Section 7.350), which Special Event Permit includes a list of vendors participating in the event and payment of $5 per day per vendor (not to exceed $50 per vendor for each special event), are not required to obtain a license under this ordinance.**

Section 3: The City of Bend Fees Resolution shall be amended upon the effective date of this ordinance to include an additional fee for the Special Event Permit of $5 per vendor per day with a $50 maximum per vendor per special event. The 5 fee shall be waived for any vendor with a current City of Bend Business License.

Read for the first time the 18th day of June, 2008.

Read for the second time this 2nd day of July, 2008.

Placed upon its passage this 2nd day of July, 2008.

YES: 7 NO: 0

Authenticated by the Mayor this 2nd day of July, 2008.

Bruce Abernethy, Mayor

ATTEST:

Patricia S. Stell, City Recorder

Added words are in underlined typeface;
deleted words are in ~~strikethrough~~ typeface.

ORDINANCE NO. NS-2099

AN ORDINANCE AMENDING BEND CODE SECTION 1.520 PERTAINING TO EMERGENCY MANAGEMENT

WHEREAS: The City of Bend, by Resolution No. 2680, adopted the National Incident Management System (NIMS) and Incident Command System (ICS), as required by federal law. The Bend Code pertaining to emergency management therefore needs to be amended to conform to NIMS and ICS.

THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

Section 1. Bend Code Section 1.520 is amended to read as follows:

EMERGENCY MANAGEMENT

1.520 Procedures for Dealing with Emergencies in the City of Bend
(1) The conditions required for the declaration of a state of emergency within the City of Bend shall be as set out in ORS 401.025(4), which provides: " 'Emergency' includes any man-made or natural events or circumstance causing or threatening loss of life, injury to person or property, human suffering or financial loss, and includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous material as defined in ORS 466.605, contamination, utility or transportation emergencies, disease, blight, infestation, crisis influx of migrants unmanageable by the county, civil disturbance, riot, sabotage and war."

(2) A declaration of a state of emergency within the City of Bend may be issued by the City Manager or his/her designee per the established Succession of Authority (hereafter referred to as "City Manager"). ~~The City Manager may issue a directive establishing the city department heads who shall have the authority to declare an emergency, if the City Manager is unavailable at the time the emergency occurs. If an emergency is declared by a department head pursuant to the City Manager's directive, then the City Manager shall resume authority to manage the emergency as soon as the City Manager is available. Any declaration of emergency by the City Manager shall be subject to review for ratification or other action that the City Council deems appropriate at an emergency meeting called as soon as practicable after the declaration of emergency, or if convening an emergency meeting is impracticable, at the next regular meeting of the City Council. A declaration of a state of emergency shall be terminated when the state of emergency ceases to exist~~.

Prior to declaring an emergency, the City Manager will make every reasonable effort to contact City Councilors to inform them of the need to declare an emergency. The City Manager will submit the declaration of emergency to the Deschutes County Emergency Manager for County Commissioner approval. At its next City Council meeting, the Council shall consider ratification of the declaration of emergency with a majority vote.

(3) The City Council ~~may by resolution~~ is responsible for approving an Emergency Operations Policy to establish procedures to prepare for and carry out any activity to prevent, minimize, respond to or recover from an emergency. ~~The resolution may provide for coordination with Deschutes County, the State of Oregon, or any other state or federal agency.~~ The policy will provide for coordination with local, state and federal partners.

(4) The City Manager, on advice from the Incident Commander, shall have the ~~authorization~~ authority to take actions that includes, but ~~is~~ are not limited to, the following measures:

(a) redirect City funds for emergency use and suspend standard City procurement procedures;

(b) establish a curfew which fixes the hours during which all persons other than officially authorized personnel may not be upon the public streets or other public places;

(c) prohibit or limit the number of persons who may gather or congregate upon any public street, public place, or any outdoor place;

(d) barricade streets and prohibit vehicular or pedestrian traffic, or regulate the same on any public street leading to the emergency area for such distance as may be deemed necessary under the circumstances;

(e) evacuate persons;

(f) prohibit the sale of alcoholic beverages;

(g) prohibit or restrict the sale of gasoline or other flammable liquids;

(h) prohibit the sale, carrying, or possession of any weapons or explosives of any kind on public streets, public places, or any outdoor place;

(i) curtail or suspend commercial activity;

(j) turn off water, gas, or electricity;

(k) order such other measures as are necessary for the protection of life or property, or for the recovery from the emergency;

(l) adopt temporary emergency regulations to implement the foregoing powers, as necessary.

(~~4~~ 5) The City Manager shall have the authority, in addition to the authority provided by this ordinance, to carry out the emergency duties or functions as prescribed by the ~~resolution~~ policy establishing procedures to deal with ~~an~~ emergency management.

(~~5~~ 6) No person shall knowingly violate any regulation promulgated pursuant to this ordinance, and imposed in a state of emergency declared under this ordinance. Violation of an emergency regulation shall be a Class A misdemeanor.

(~~6~~ 7) In the event of a conflict between the provisions of this ordinance and any other ordinance of the City of Bend, the provisions of this ordinance shall control.

Read for the first time the 2nd day of July, 2008.

Read for the second time the 16th day of July, 2008.

Placed upon its passage the 16th day of July, 2008.

YES: 6 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 16th day of July, 2008.

Bruce Abernethy

Bruce Abernethy, Mayor

Attest:

Patricia Stell

Patricia Stell, City Recorder

ORDINANCE NO. NS-2100

AN ORDINANCE AMENDING THE CITY OF BEND DEVELOPMENT CODE (ORDINANCE NO. NS-2016) BY CHANGING THE FIGURES CONTAINED IN CHAPTER 2.7 *(Special Planned Districts)* 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 Hearings Officer's Recommendation, and has found that there is a public need and benefit for the proposed map amendments to the City of Bend Development Code. The Bend City Council adopts the Hearings Officer's Recommendation dated June 10, 2008, file number PZ 08-139.

Section 2. Chapter 2.7 of the City of Bend Development Code (Ordinance NS-2016) is amended by changing the figures therein as detailed in "Exhibit A".

Section 3. The Bend City Council adopts the Findings for Development Code Map Amendment, attached as "Exhibit B", as findings in support of this ordinance.

Read for the first time the 2nd day of July, 2008.

Read for the second time the 16th day of July, 2008.

Placed upon its passage the 16th day of July, 2008.

YES: 6 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 16th day of July, 2008.

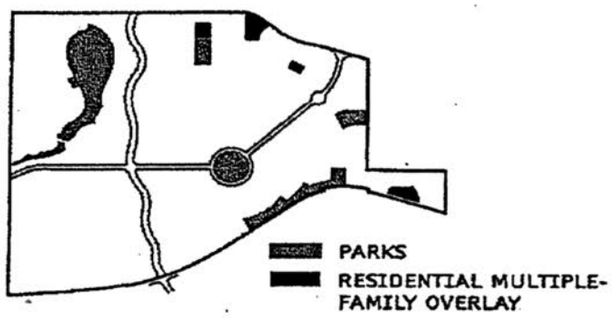
Bruce Abernethy, Mayor

Attest:

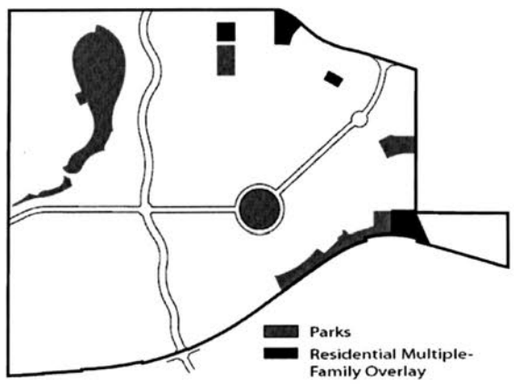
Patricia Stell, City Recorder

EXHIBIT A

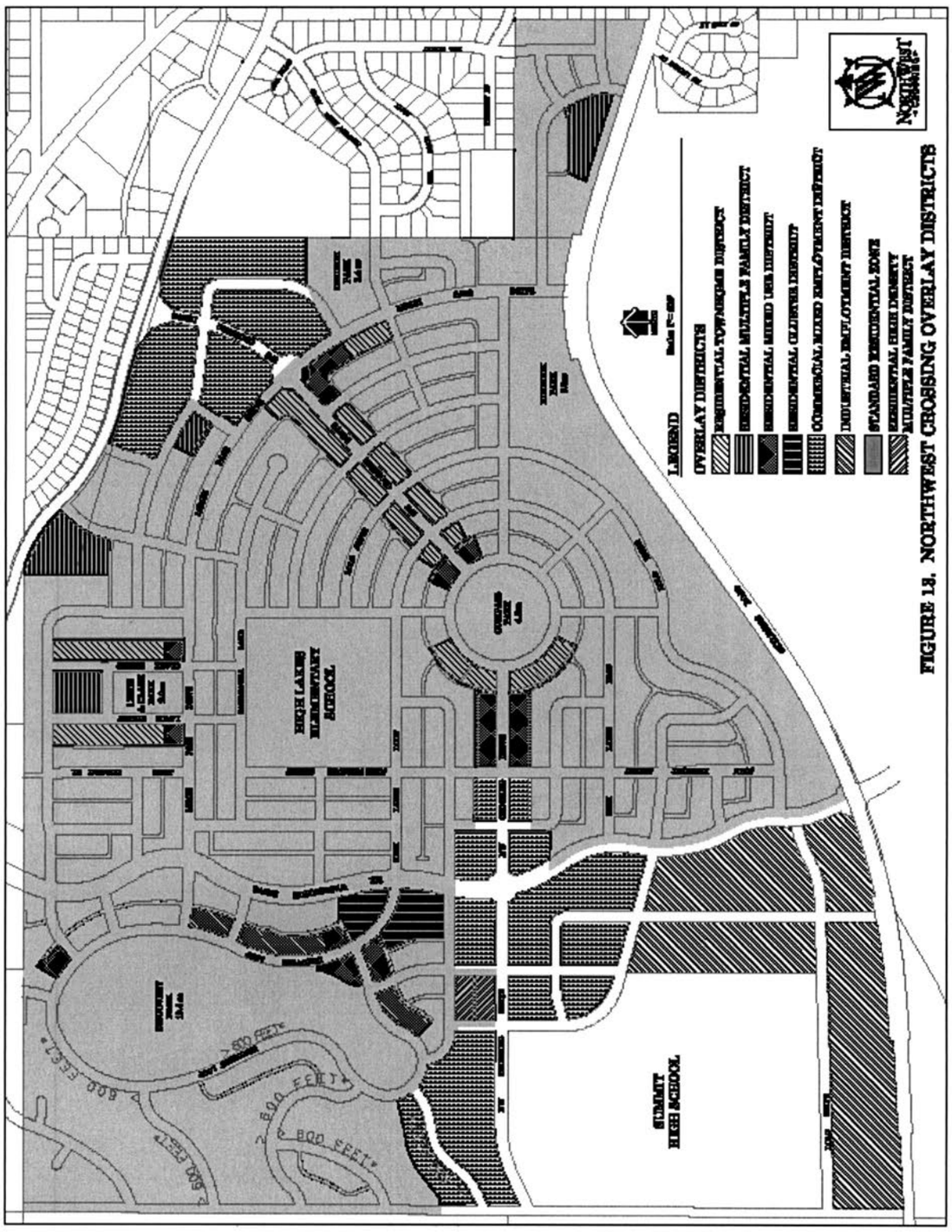
Existing Figure 2.7.320.C
Residential Multi-family District



Proposed Figure 2.7.320.C
Residential Multi-Family District



Existing Figure 2.7.330.C
NorthWest Crossing Overlay Districts



Proposed Figure 2.7.330.C
NorthWest Crossing Overlay Districts

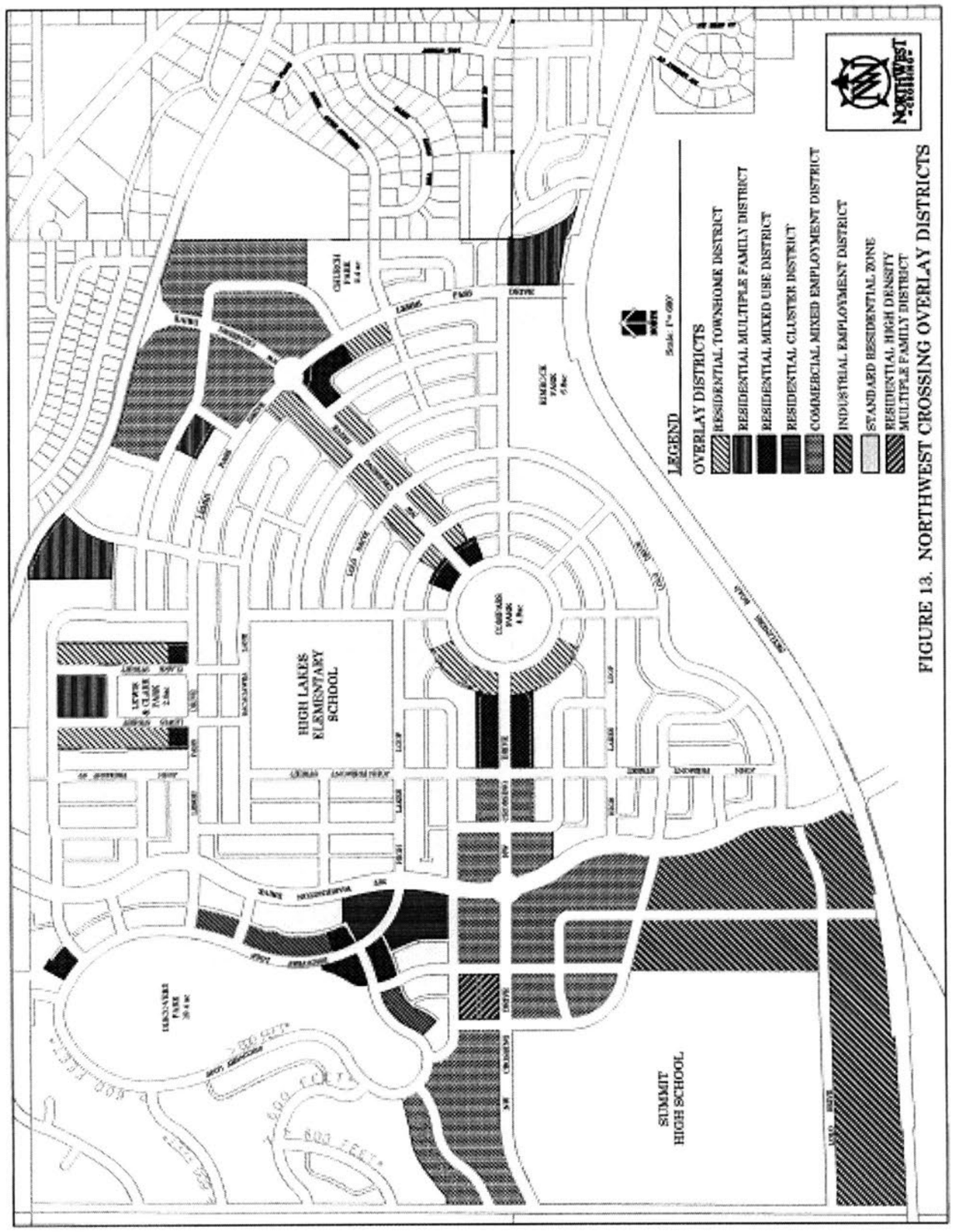


FIGURE 13. NORTHWEST CROSSING OVERLAY DISTRICTS

BEND CITY COUNCIL FINDINGS
FOR DEVELOPMENT CODE MAP AMENDMENT

PROJECT NUMBER: PZ 08-139

HEARING DATE: Wednesday, July 2, 2008
City of Bend Council Chambers
710 NW Wall St., Bend, Oregon

APPLICANT/ OWNER: West Bend Property Co., LLC
2754 NW Crossing Drive, Suite 201
Bend, Oregon 97701

LOCATION: The subject property is located north of Skyliners Road, west of NW 17th Street, adjacent to Sunset View Park; further identified as Tax Lot 100 on Assessor's Map 17-12-31C and a portion of Tax Lot 302 on Assessor's Map 17-11-36.

REQUEST: The applicant is proposing amendments to Figures 2.7.320.C and 2.7.330.C of the Development Code. Specifically, the applicant proposes to relocate the Residential Multiple-family District from the approximate center of the project to the western edge of the project to best utilize the site's topography and planned street layout.

STAFF: Aaron Henson, AICP, Senior Planner

I. APPLICABLE CRITERIA:

(1) City of Bend Development Code, Ordinance No. NS-2016

  (a) Chapter 4.6; Land Use District Map and Text Amendments

(2) Oregon Administrative Rules 660-012-0060, Plan and Land Use Regulation Amendments

(3) Oregon Administrative Rules Chapter 660, Division 15, Oregon Statewide Planning Goals

(4) Bend Urban Area General Plan

II. APPLICABLE STANDARDS:

(1) City of Bend Development Code, Ordinance No. NS-2016

  (a) Chapter 2.7; Special Planned Districts
  (b) Chapter 4.7; Transportation Analysis

III. FINDINGS OF FACT:

1. **HEARINGS OFFICER'S RECOMMENDATION:** The Hearings Officer recommends to the City Council approval of the requested Development Code Text Amendments.

2. **LOCATION:** North of Skyliners Road, west of NW 17th Street, south of Sunset View Park; further identified as Tax Lot 100 on Assessor's Map 17-12-31C and a portion of Tax Lot 302 on Assessor's Map 17-11-36.



2. **ZONING:** The subject property is zoned Residential Urban Standard Density (RS) and designated Residential Urban Standard Density on the Bend Urban Area General Plan map.

3. **SITE DESCRIPTION & SURROUNDING USES:** Staff conducted several site visits and provides the following finding based on observations made at the site and information contained in the applicant's burden of proof. The City Council concurs with the finding.

   The subject property is currently vacant. Its topography is fairly flat at the east end, but it drops off steeply along the northern and western boundaries. The eastern boundary is shared with single-family residential lots, the northern boundary is shared with single-family residential lots and a public park, the western boundary is shared with previously approved phases of NorthWest Crossing, and the south boundary is formed by Skyliners Road. There are numerous juniper and pine trees scattered throughout the site. An existing City of Bend sewer main and two existing City of Bend water mains cross through the property. A Pacific Power overhead transmission line exists along the northern and eastern boundaries.

5. **PUBLIC NOTICE AND COMMENTS:** The Planning Division published notice of the City Council's public hearing for the proposed Development Code Map Amendment in the Bend Bulletin on June 22, 2008 and sent notice to all landowners within 250 feet, the River West Neighborhood Association, and the Summit West Neighborhood Association.

IV. CONCLUSIONARY FINDINGS:

CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE

CHAPTER 2.7, SPECIAL PLANNED DISTRICTS

FINDING: The applicant is proposing changes to Figures 2.7.320.C. and 2.7.330.C of the Development Code. No other changes to Chapter 2.7 are proposed.

CHAPTER 4.6, LAND USE DISTRICT MAP AND TEXT AMENDMENTS

4.6.300 Quasi-Judicial Amendments

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: There are 19 Statewide Planning Goals which express Oregon's land use policies. Each local government throughout Oregon, including the City of Bend, must adopt a comprehensive plan implementing these Statewide Planning Goals. Once LCDC finds the comprehensive plan is consistent with the Statewide Planning Goals, the agency acknowledges the plan.

The City of Bend has an acknowledged Comprehensive Plan, and the requested Development Code Map Amendment is in conformance with that Comprehensive Plan. Additionally, the Development Code implements the policies of the Comprehensive Plan (Bend Urban Area General Plan). Therefore, by demonstrating conformance with the Development Code, the applicant demonstrates compliance with the Statewide Planning Goals.

Planning staff determined that of these 19 Statewide Planning goals, the relevant goals are 10, 11, 12, and 14, as follows and the City Council concurs:

Goal 10: Housing

The proposed amendment will not impact the City's projected housing needs, as the amendment simply relocates a roughly 2 acre portion of the multi-family overlay district within the subject property to a location that is at least equally if not better situated to accommodate that type of development. The District Regulating Plan included in the original Master Development Plan for NorthWest Crossing (PZ 00-307) shows that the subject portion of the multi-family overlay district was shown to be 1.74 acres in size. Based on the tentative plan for NorthWest Crossing Phases 21-23, the relocated multi-family overlay district (Lot 803) will contain 1.97 acres.

Goal 11: Pubic Facilities and Services

The proposed amendment will accommodate high density residential development that can be served by the necessary public facilities and services, i.e., sanitary sewer, water, storm drainage, police, fire, schools, parks, etc. These facilities and services appear available and adequate to serve the proposed multi-family overlay district and are discussed in more detail under criterion no. 3 below.

Goal 12: Transportation

The purpose of Goal 12 is to provide and encourage a safe, convenient, and economic transportation system. A Transportation Impact Study has been conducted as required by Chapter 4.7, Transportation Analysis, of the Development Code. The results of the study show that the applicant's proposal to relocate the multi-family overlay district does not significantly affect a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060. The proposed amendments will not result in any changes that would hinder provision of a safe, convenient and economic street system serving local travel needs for motorists, pedestrians, and bicyclists.

Goal 14: Urbanization

The proposed amendments will provide for an orderly and efficient transition of undeveloped urban land to development in accordance within an approved master plan. This will accommodate an urban population within the urban growth boundary, will ensure the efficient use of land, and will provide for a livable community as intended by Goal 14.

The City Council concurs with the findings in the applicant's burden of proof which demonstrate consistency with the Statewide Planning Goals.

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 proposed map amendments are neutral in terms of compliance with the Comprehensive Plan. The relocation of a portion of the multiple family overlay district within the subject property is of no real consequence to overarching Plan policies, as an approximately equal amount of land will be available for multi-family residential use as would be available before the proposed amendment, thus having no measurable effect on densities or available residential land.

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; and**

FINDING: Full urban services are available to the subject property pursuant to the NorthWest Crossing master plan. Public infrastructure consists of water, sewer, transportation facilities, emergency services (fire and police), and schools. The City's policy for the provision of the public facilities is expressed in the Bend Urban Area General Plan, the Development Code, and the City's capital improvement plan and public facility master plans. The proposed zone change is consistent with the City of Bend policies for the extension of public services, as described in the Bend Urban Area General Plan.

"New development is directed to areas where infrastructure is available or where new development shall pay the cost of providing urban services if it occurs ahead of planned capital improvement projects." (p. 7-9).

"City facilities may be constructed earlier than planned by an owner/developer choosing to develop an area prior to the scheduled extension or expansion of facilities by the city." (p. 8-4).

"The city shall encourage the development of serviced land prior to unserviced land or require the extension of sewer lines as part of any development within the UGB." (p. 8-13).

Water/Sewer: In this language and in previously cited provisions, the Bend Urban Area General Plan makes it clear that urban levels of development must wait until sewer and water service is available or made available by the developer, but that once these services are available, the land should be rezoned to Plan densities. Water and sewer are available to the subject property, and the City has agreed that these facilities have the capacity to serve the project. As a result, approval of the proposed map amendment is consistent with General Plan policies that govern the extension of public facilities.

Streets: The subject property is located adjacent to Skyliners Road, an arterial street. This street provides access to the rest of Bend. Systems Development Charges (SDC's) will be collected and expended to improve the City's entire street network. The NorthWest Crossing project has already mitigated its impacts on the City Street system through its participation in the Westside Developer's Consortium, which was responsible for the construction of significant street infrastructure improvements throughout the west side of Bend.

The applicant has provided a "debit letter" traffic study prepared by Kittelson & Associates, Inc. dated May 16, 2007 that verifies that the impact of the proposed development of the subject property on the area street network is within the impacts contemplated in the original consortium traffic study. The original consortium study shows that the street network has the capacity to handle the increase in traffic caused by the development of NorthWest Crossing along with the expected increase in background traffic and consortium-related traffic.

Schools: The property is located within the Bend La Pine School District and is served by existing elementary and high schools that were incorporated into and developed as part of the NorthWest Crossing master plan. Cascade Middle School is located within close proximity on the west side of Bend. The school district currently runs buses on

Skyliners Road and Mt. Washington Drive. The property is located within walking and bicycling distance of the High Lakes Elementary and Summit High Schools.

Developing the property at reasonable urban densities will reduce the tax burden of paying for new schools on individual properties within the school district by spreading the costs of new school bonds and operating levies over a greater number of properties.

Parks and Library: Parks and library services are funded by *ad valorem* property taxes. The development of the subject property will expand the area's tax base, spreading the cost of funding park and library construction and operation over more homes. In 1995, Deschutes County voters approved the construction of a new library in downtown Bend to serve the Bend urban area. Homes constructed on the subject property will be assessed a parks development fee to support further park property acquisition and to maintain existing parks. NorthWest Crossing has already constructed two public parks in addition to the open space and path in Rimrock Park along Skyliners Road. In addition, Sunset View Park is immediately north of the subject property.

Fire and Police Protection: Fire and police protection is available for the subject property from the City of Bend. It is more cost-efficient for the City to provide these services to an urban area than a rural residential area. The applicant will install fire hydrants that provide "fire flows" of water at pressures specified by the Uniform Fire Code, as adopted by the City of Bend. Emergency service access will be improved through the addition of paved roads, with several paved accesses to the site. The proposed development will also adopt CC&R's which require construction of homes to incorporate fire retardant materials for roofs and siding and will require maintenance of landscaping to reduce fuel build up in this forested area.

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 NorthWest Crossing Master Plan (File #PZ 00-307) was approved in November of 2000, with adoption of a new "overlay" zone into the City of Bend's zoning ordinance. This adoption of new code provisions was a new approach to master planning at the time, with master plans typically regulated through a land use approval document. It is anticipated that as a multi-phased mixed use development project like NorthWest Crossing develops out and matures, that changes in market conditions, lessons learned from previous phases, and more refined analysis of site conditions will lead to the need for modifications to the original plan.

In this instance, the precise location of the multi-family overlay district is indicated on Figure 2.7.320.C as being adjacent to Skyliners Road in the approximate east-west center of the phase. Further site analysis and refinement to the roadway system plan indicate that the original location depicted on Figure 2.7.320.C is not optimal, and the proposed location further to the west is better suited to multi-family uses.

Pursuant to Section 2.7.320.D, the purpose of the multiple-family overlay district is as follows:

1. *Purpose. The Residential Multiple-family Overlay District is applied in specific locations adjacent to arterial or collector streets, public parks or commercial areas. The purpose is to provide a diversity of housing types in the Urban Standard Residential Zone at the edges of single-family neighborhoods and to locate higher density housing adjacent to commercial services and open space.*

The proposed relocation of the multi-family overlay district better satisfies the locational considerations for such sites than does the existing location because it is adjacent to both an arterial (Skyliners Road) and a collector (Lemhi Pass) street, as well as Sunset View Park to the north. The proposed location also represents an edge condition in the narrowest portion of the "panhandle" between single-family residential areas to both the east and west, an existing park to the north, and an existing arterial street to the south.

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: A Transportation Impact Study has been conducted per Chapter 4.7, Transportation Analysis, of the Development Code. The results of the study show that the applicant's proposal to relocate the multi-family overlay district does not significantly affect a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060.

V. CONCLUSIONS:

Based on the above Findings of Fact and Conclusionary Findings, the City Council finds the Development Code Map Amendment meets all applicable criteria and standards.

ORDINANCE NO. NS-2101

AN ORDINANCE AMENDING THE BEND URBAN AREA ZONING MAP BY CHANGING THE ZONING OF A PARCEL OF LAND TOATLING 5.36 ACRES LOCATED AT THE NORTHWEST CORNER OF EMPIRE AVENUE AND JAMISON STREET FROM IL INDUSTRIAL LIGHT TO ME MIXED EMPLOYMENT.

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 zone change is consistent with the criteria of the Bend Development Code Section 4.6.300 as shown in Exhibit B. The Bend City Council adopts the findings in Exhibit B, and conditions of approval in Exhibit C, excerpted from the Findings and Decision of the Hearings Officer dated June 10, 2008, City File Nos. PZ 07-624 and PZ 08-173.

Section 2. The Bend Urban Area Zoning Map is hereby amended by changing the zoning of the property described as Parcel 1, Partition Plat No. 1993-15, City of Bend, Deschutes County, Oregon, as shown in Exhibit A, from Industrial Light (IL) to Mixed Employment (ME).

Read for the first time the 2nd day of July, 2008.

Read for the second time the 6th day of August, 2008.

Placed upon its passage the 6th day of August, 2008.

YES: 7 NO: 0

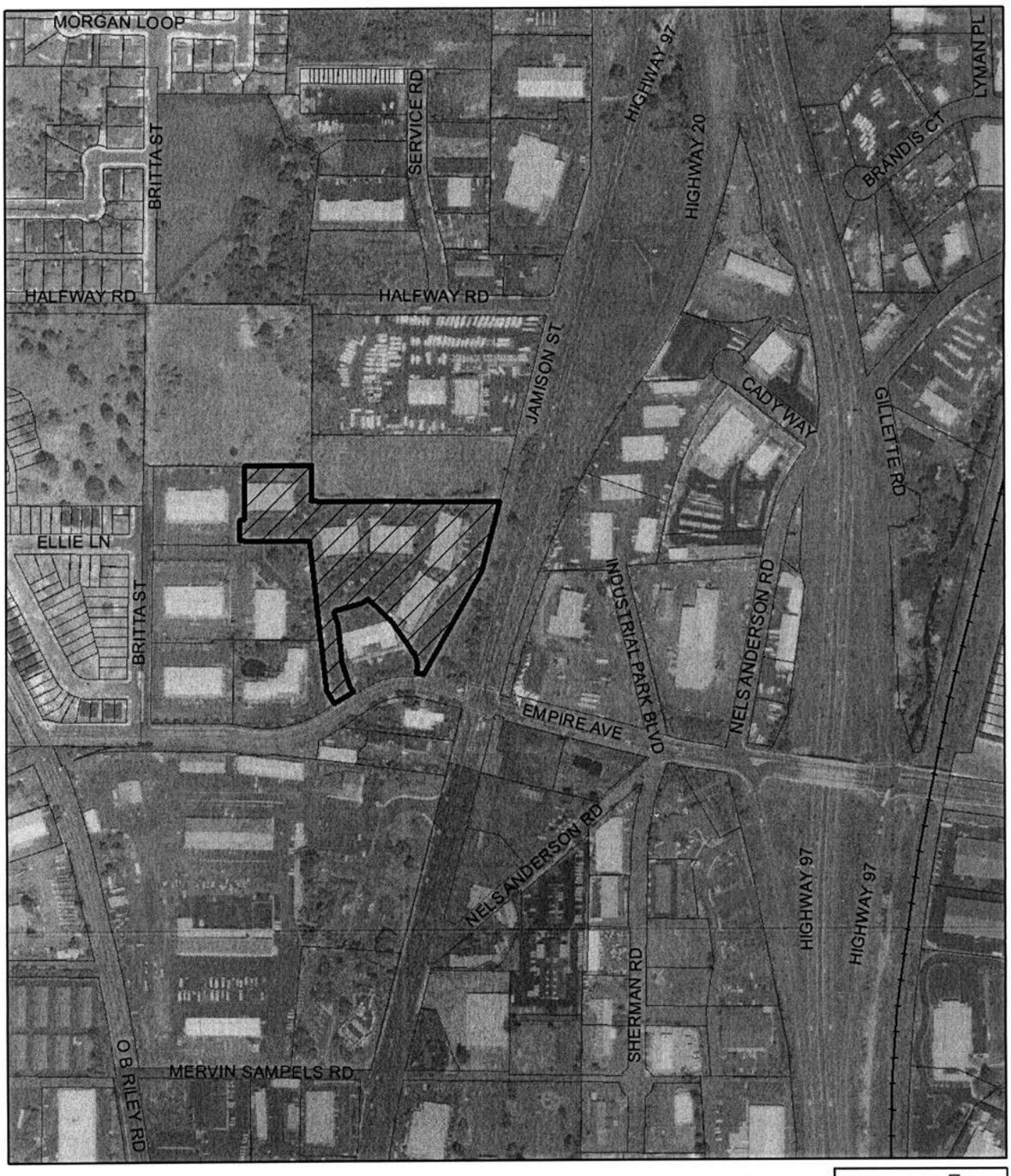
Authenticated by the Mayor the 6th day of August, 2008.

Bruce Abernethy, Mayor

ATTEST:

Patricia Stell, City of Bend Recorder

EXHIBIT A



PZ 07-624 Zone Change from IL to ME

Subject Property
ME
CG
IL
RM
RS

N

250 125 0 250 500 Feet

Imagery acquired June 2006. Map prepared June 16, 2008.

EXHIBIT B

HEARINGS OFFICER FINDINGS FOR ZONE CHANGE

4.6.300 Quasi-Judicial Amendments

B. Criteria for Quasi-Judicial Amendments.

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

FINDING: There are 19 Statewide Planning Goals which express Oregon's land use policies. Each local government throughout Oregon, including the City of Bend, must adopt a comprehensive plan implementing these Statewide Planning Goals. Once LCDC finds the comprehensive plan is consistent with the Statewide Planning Goals, the agency acknowledges the plan. The City of Bend has an acknowledged Comprehensive Plan, and the requested Zone Change is in conformance with that Comprehensive Plan. Additionally, the Bend Development Code implements the policies of the Comprehensive Plan (Bend Urban Area General Plan). Therefore, by demonstrating conformance with the Development Code, the applicant demonstrates compliance with the Statewide Planning Goals.

Planning staff determined that of these 19 Statewide Planning goals, the relevant goals are 9 and 12 and the Hearings Officer concurs.

Statewide Planning Goal 9 states, "To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens." OAR 660-009 implements Goal 9. This administrative rule 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 particular, Goal 9 and the implementing rules require local governments to provide an adequate amount of commercial and industrial land within the Urban Growth Boundary. In Bend, this requirement is accomplished through the designation of adequate commercial and industrial land in the General Plan.

In adopting a Mixed Employment designation for the subject property, the City has determined—and through the acknowledgement process the state has concurred—that the designation of the subject property as Mixed Employment under the General Plan satisfies the requirements of Goal 9 to provide adequate commercial and industrial land. Consequently, because the underlying property is designated Mixed Employment under the General Plan, the rezoning of the property from IL to ME is consistent with the General Plan as well as Goal 9 and the rules implementing Goal 9.

Statewide Planning Goal 12 states, "To provide and encourage a safe, convenient and economic transportation system." OAR 660-012 implements Goal 12. The criteria in Development Code Section 4.7 require analysis of the traffic impacts for both the development and the proposed Zone Change, and require that those impacts are mitigated. Additionally, Section 4.6.600 requires the applicant to demonstrate compliance with the Transportation Planning Rule (OAR 660-012-0060). These code sections and required transportation system mitigation requirements are addressed further on in this report. By demonstrating compliance with these code sections, the applicant also demonstrates that the application is consistent with Goal 12.

The Hearings Officer concurs with the findings in the applicant's burden of proof which demonstrate consistency with the Statewide Planning Goals.

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 Comprehensive Plan for the City of Bend is the Bend Area General Plan. The Preface of the General Plan states that plan policies will be implemented by the City's land use regulations. The majority of the General Plan Policies which are relevant to the proposed Zone Change application have been codified in the Bend Development Code, and therefore are addressed in findings throughout this report.

There are few General Plan policies that speak directly to the proposed rezone application, other than the general policy that zoning and implementing ordinances should be consistent with the General Plan designations.

General Plan Chapter 1, Plan Management and Citizen Involvement, includes the following policy:

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 applicant held a neighborhood public meeting prior to submitting its applications, to discuss the proposal with the property owners in the area and solicit input on the proposal. Additionally, Planning staff sent notice of the public hearing time and date for these applications, provided mailed notice to all property owners within 250 feet of the subject site, and published notice of the hearing in The Bulletin at least 10 days prior to the hearing. A hearing was held May 22, 2008. The Hearings Officer finds that these efforts to solicit citizen involvement in the review process fulfill this General Plan policy.

General Plan Chapter 6, Economy and Lands for Economic Growth, includes the following policy for Industrial development:

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.*

As previously stated, the subject site is designated Mixed Employment on the Bend Urban Area General Plan map, consistent with the above General Plan policy. The proposed Zone Change will bring this goal to fruition, matching the zoning of the property to its General Plan designation. No changes will be made to the existing accesses for the site which have been evaluated in the applicant's TIA and found to be adequate.

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; and

FINDING: Generally Zone Change applications are concerned with the impact to the existing facilities, services, and transportation networks from the change in zoning designation and the potential uses available in a different zone. The City can evaluate the impacts because the subject property is already developed and occupied with a mix of commercial and office uses. Furthermore, the applicant submitted a Site Plan Change of Use application concurrently with this Zone Change request to limit trip generation impacts from the proposed Zone Change.

Streets: The subject property abuts Empire Avenue, an arterial street, and Jamison, a local frontage road. Per the trip cap proposed with the applicant's Change of Use, no significant increases in traffic volumes will result from the proposal.

Water and sewer: The site is currently served with water and sewer and there is adequate capacity to serve the existing and proposed uses.

Schools: The project will have no impact upon the Bend LaPine School District.

Parks and Libraries: The project will have no impact on parks or library services.

Fire and Police Protection: Fire and police protection is available for the subject property from the City of Bend.

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: As stated in previous findings, there is an inconsistency between the Comprehensive Plan designation and the zoning map. The subject property is zoned IL, but the Comprehensive Plan designates this property ME. Approval of this Zone Change will bring the zoning of the property into conformance with its Comprehensive Plan designation.

Section 4.4.600 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.

OAR 660-12-060, Plan and Land Use Regulation Amendments.

(1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:

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

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

(c) As measured at the end of the planning period identified in the adopted transportation system plan:

(A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or

(C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

(2) Where a local government determines that there would be a significant effect, compliance with section (1) shall be accomplished through one or a combination of the following:

(c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.

FINDING: The TIA prepared by Ferguson & Associates addresses the traffic impacts of the existing uses including a worst-case scenario of future development as ME zoned uses. The TIA shows that some higher trip generating uses permitted in the ME zone could have significant impacts to the surrounding transportation system. Therefore, a reduced-demand scenario based on existing development was included in the applicant's burden of proof and TIA that would limit the land uses on the site.

Both the Transportation Planning Rule (TPR) and City Development Code allow limiting permitted land uses and transportation demand management measures as acceptable traffic mitigation alternatives.

The applicant's TIA states that if occupancy were at tenant capacity, including an additional building as could be allowed based on the number of existing parking spaces and open area on the site, the site would generate an estimated 96 p.m. peak hour trips.

Staff agreed in concept to a deduction for pass-by trips to be factored into the TIA. However, staff disagreed with the methodology utilized to reduce total number of development trips added to the transportation system. Comments from the City Transportation Engineer indicate that some of the trips shown and deducted as "pass-by" on Figures 2, 3, and 4 of the TIA addendum (traveling north/south on Hwy 97/Hwy 20/3rd St.) divert onto Jamison Street or Empire Avenue to reach the site and therefore should be considered diverted link trips, not pass-by trips. However, staff accepted that there are 10 potential pass-by p.m. peak trips shown in Figures 5 and 6, permitted in addition to 96 trips estimated under the current IL zoning, for a total of 106 p.m. peak hour trips which can be utilized by this development without further significant impact to the transportation system.

Staff further noted that while the pass-by reduction discussed above is overstated, the traffic study also overestimates total trip generation (before pass-by deduction), by assuming 100% of the development to be occupied by specialty retail uses. The applicant has indicated a desire to include many of the uses which generally fall in the ITE category of *Office Park* (750) which have a much lower p.m. peak hour trip generation rate than *Specialty Retail* (814) uses.

Staff estimated that up to 20,000 square feet of gross floor area could be occupied with specialty retail uses, with the remaining 34,829 square feet occupied with Office Park uses, while remaining within a trip cap of 106 p.m. peak hour trips per day. Uses within the development would be limited to those listed in the modified Table 2.3.200 found on pages 9-10 in the Burden of Proof Addendum dated April 21, 2008, including a limit of 5,000 square feet per of gross floor area per specialty retail tenant. (20,000 sq ft of specialty retail at 2.7/1,000 p.m. peak = 54 p.m. peak hour trips and 34,829 at office park at 1.5/1,000 p.m. peak = 52 p.m. peak hour trips, for a total of 106 total p.m. peak hour trips.) The Hearings Officer concurs with Staff's conclusions.

Therefore, in order to ensure that the proposed Zone Change will not have a significant impact on the surrounding transportation facilities, the Hearings Officer recommends that a condition of approval be added to limit the trip generation for the site to 106 p.m. peak hour trips, and the maximum amount of specialty retail uses on this site to 20,000 gross square feet total and 5,000 square feet per tenant, and all other uses to those identified in the table on pages 9 and 10 of the applicant's burden of proof for the Site Plan Change of Use, attached hereto and incorporated herein.

EXHIBIT C

ZONE CHANGE CONDITIONS OF APPROVAL

1. Approval of this Zone Change is based upon the trip cap of 106 p.m. peak hour trips to the site. Future uses at this site must comply with the conditions of approval for Site Plan Change of Use (PZ 08-173).

2. If the applicant or any successor in interest elects to pursue approval of development or uses that will exceed the above trip cap then, as a part of site plan approval, the applicant shall be required to perform a new transportation impact study consistent with Bend Code Chapter 4.7 and the Transportation Planning Rule to determine whether additional transportation system mitigation is required. The TPR analysis shall be in addition to the analysis required by the alternate site plan proposal under the City's concurrency standards.

3. The applicant shall record a deed restriction on the subject property, with the language contained in Exhibit D, which references conditions of approval for City of Bend File Nos. PZ 07-624 and PZ 08-173 limiting uses permitted on the site based on pm peak hour trip generation.

EXHIBIT D

Language for Deed Notice

SUBJECT TO the following development limitations:

Uses allowed on the subject property described in Exhibit A are limited by the conditions of approval for City of Bend File Nos. PZ 07-624 and PZ 08-173 which limit uses permitted on the site based on pm peak hour trip generation. If the applicant or any successor in interest elects to pursue approval of development or uses that will exceed the trip cap then, as a part of site plan approval, or modification of the above referenced site plan approval, the applicant shall be required to perform a new transportation impact study consistent with Bend Code Chapter 4.7 and the Transportation Planning Rule to determine whether additional transportation system mitigation is required. The TPR analysis shall be in addition to the analysis required by the alternate site plan proposal under the City's concurrency standards.

ORDINANCE NO. NS- 2102

AN ORDINANCE INSTITUTING A CROSS CONNECTION CONTROL PROGRAM FOR WATER SYSTEMS

Whereas: Cross connections on water systems, if not properly protected with backflow prevention devices, constitute a threat to the public health, safety and welfare, and

Whereas: Chapter 333, Division 61, of the Oregon Administrative Rules, provide that it is the responsibility of the City of Bend to protect the public water system from pollution and contamination by instituting and enforcing a cross connection control program,

The City of Bend Ordains as Follows:

Section 1. The Bend Code is Amended by adding new sections 3.300 through 3.420 to read as follows:

3.300 PURPOSE

The purpose of this Ordinance is to protect the water supply and distribution system of the City of Bend from contamination or pollution due to any existing or potential cross connections and to comply with Oregon Law, including statutes, Oregon Administrative Rules, and Appellate Court decisions. If the provisions of this ordinance appear to be in conflict with other provisions of law regulating the same subject, then the provision that provides the greater protection to the public health, safety and welfare shall control.

3.305 DEFINITIONS

For the purposes of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning. If a word or term used in this Ordinance is not contained in the following list, its definition, or other technical terms used, shall have the meanings or definitions listed in the Oregon Administrative Rules, Chapter 333, or the most recent edition of the *Manual of Cross Connection Control* published by the Foundation for Cross Connection Control and Hydraulic Research, University of Southern California ("USC").

(1) "APPROVED BACKFLOW PREVENTION ASSEMBLY" or "BACKFLOW ASSEMBLY" or "ASSEMBLY" means an assembly to counteract backpressure and/or prevent back-siphonage. This assembly must appear on the list of approved assemblies issued by the Oregon Department of Human Services - Health Services.

(2) "AUXILIARY SUPPLY" means any water source or system other than the City of Bend Water System.

(3) "BACKFLOW" means the flow in the direction opposite to the normal flow or the introduction of any foreign liquids, gases, or substances into the water system of the City of Bend.

(4) "CERTIFIED BACKFLOW ASSEMBLY TESTER" shall mean a person who has successfully completed and maintains all requirements as established by the Department of Human Services - Health Services to be a Tester in the state of Oregon.

(5) "CERTIFIED CROSS CONNECTION CONTROL SPECIALIST" shall mean a person who has successfully completed and maintains all requirements as established by the Department of Human Services - Health Services to be a Specialist in the state of Oregon.

(6) "CITY" shall mean the City of Bend.

(7) "CITY WATER SYSTEM" shall refer to and mean the City of Bend Water System, which shall include wells, treatment mechanisms or processes, pumping stations, reservoirs, supply trunk or feeder lines, service lines, meters and all other appurtenances, device lines and items necessary to the operation of the system and to supply water service to individual property or premises and shall include the City of Bend's potable water with which the system is supplied.

(8) "CONTAMINATION" means the entry into or presence in a public water supply system of any substance which may be deleterious to health and/or quality of the water.

(9) "CROSS CONNECTION" means any physical arrangement where a potable water supply is connected, directly or indirectly, with any other non-drinkable water system or auxiliary system, sewer, drain conduit, swimming pool, storage reservoir, plumbing fixture, swamp coolers or any other device which contains, or may contain, contaminated water, sewage or other liquid of unknown or unsafe quality which may be capable of imparting contamination to the public water system as a result of backflow. Bypass arrangements, jumper connections, removable sections, swivel or changeover devices or other temporary or permanent devices through which or because of which backflow may occur, are considered to be cross connections.

(10) "DEGREE OF HAZARD" means the NON-HEALTH HAZARD or HEALTH HAZARD or HIGH HAZARD classification that shall be assigned to all actual or potential cross connections.

(11) "DHS" means Department of Human Services - Health Services.

(12) "DOUBLE CHECK VALVE BACKFLOW PREVENTION ASSEMBLY", "DOUBLE CHECK ASSEMBLY", "DOUBLE CHECK" or "DCVA" means an assembly which consists of two (2) independently-operating check valves which are spring-loaded or weighted. The assembly comes complete with a resilient seated shut-off valve on each side of the checks, as well as test cocks to test the checks for tightness.

(13) "DOUBLE CHECK DETECTOR ASSEMBLY" or "DCDA" means an assembly which consists of two independently operating check valves which are spring-loaded or weighted. The assembly comes complete with a shut-off valve on each side of the checks, as well as test cocks to test the checks for tightness. It shall also be provided with a factory bypass arrangement with a meter and a minimum of an approved double check assembly.

(14) "HEALTH HAZARD" means an actual or potential threat of contamination of a physical, chemical or biological nature to the public potable water system or the consumer's potable water system that would be a danger to health.

(15) "MANAGER" shall mean Water Utility Manager or his/her designee.

(16) "MOBILE UNITS" shall mean units that are temporary in nature, connecting to the water system through a legally-permitted hydrant, hose bib, or other appurtenance of a permanent nature that is part of the City of Bend's water system or a permanent water service to a premise. Examples can include but are not limited to the following: water trucks, pesticide applicator vehicles, chemical mixing units or tanks, waste hauler's trucks or units, sewer cleaning equipment, carpet or steam cleaning equipment other than homeowner use, rock quarry or asphalt/concrete batch plants or any other mobile equipment or vessel that poses a threat of backflow in the City of Bend Water System. Uses that are excluded from this definition are recreational vehicles at assigned sites or parked in accordance with other City of Bend policies pertaining to recreational vehicles and homeowner devices that are used by the property owner in accordance with other provisions of this, or other, City of Bend policies pertaining to provision of water service to a premise.

(17) "NON-HEALTH HAZARD" shall mean the classification assigned to an actual or potential cross connection that could allow a substance that may be objectionable, but not hazardous to one's health, to backflow into the potable water supply.

(18) "OAR" shall mean Oregon Administrative Rule.

(19) "PERSON(S)" shall mean a natural person (individual), corporation, company, city, partnership, firm, limited liability company, joint venture company or city, and other such entity.

(20) "POINT OF USE ISOLATION" means the appropriate backflow prevention within the consumer's water system at or near the point at which the actual or potential cross connection exists.

(21) "POLLUTION HAZARD" means an actual or potential threat to the physical properties of the water system or the potability of the public or the consumer's potable water system, but which would not constitute a health or system hazard, as defined. The maximum intensity of pollution to which the potable water system could be degraded under this definition would cause minor damage to the system or its appurtenances.

(22) "PREMISES" means any piece of property to which water service is provided, including, but not limited to, all improvements, mobile structures and other structures located upon it.

(23) "PREMISES ISOLATION" means the appropriate backflow prevention at the service connection between the public water system and the premises. This location will be at or near the property line and downstream from the service connection meter.

(24) "REDUCED PRESSURE PRINCIPLE BACKFLOW PREVENTION ASSEMBLY" or "REDUCED PRESSURE PRINCIPLE ASSEMBLY" or "RP ASSEMBLY" shall mean an assembly containing two independently-acting approved check valves together with a hydraulically-operated, mechanically-independent pressure differential relief valve located between the check valves, and at the same time, below the first check valve. The assembly shall include properly located test cocks and two tightly closing shut-off valves.

(25) "REDUCED PRESSURE DETECTOR ASSEMBLY" or "RPDA" shall mean an approved assembly consisting of two approved reduced pressure backflow assemblies, set in parallel, equipped with a meter on the bypass line to detect small amounts of water leakage or use. The assembly should include properly-located test cocks and two tightly closing shut off valves.

(26) RESIDENT" means a person or persons living within the area(s) served by the City of Bend Water System.

(27) "RETROFITTING" means to furnish a service connection with parts or equipment made available after the time of construction or assembly installation.

(28) "SPECIALIST" means a Department of Human Services - Health Services certified cross connection Specialist, either employed with the City of Bend or under contract to the City of Bend.

(29) "SUBMERGED HEADS" means irrigation sprinkling or delivery devices that are located below the surface of the landscaped area in which they are installed.

(30) "THERMAL EXPANSION" means the pressure created by the expansion of heated water.

3.310 APPLICATION AND RESPONSIBILITIES

This Ordinance applies throughout the City of Bend Water System and to every premises and property served by the City of Bend Water System. It applies to all premises, regardless of date of connection to the City of Bend Water System. Every owner, occupant or person in control of any concerned premises is responsible for the terms and provisions contained in this Ordinance.

3.315 CROSS CONNECTIONS REGULATED

(1) No cross connections shall be created, installed, used or maintained within the area(s) served by the City of Bend Water System, except in accordance with this Ordinance.

(2) The Specialist shall carry out or cause surveys to be carried out to determine if any actual or potential cross connection exists. If deemed necessary, an assembly commensurate with the degree of hazard will be installed at the service connection.

(3) The owner, occupant or person in control of any given premises is responsible for all cross connection control within the premises.

(4) All premises found on Table 32 referenced in OAR 333-061-0070 (in effect at the time of adoption of this ordinance and as amended) shall install a Reduced Pressure Backflow Assembly at the service connection in accordance with this Ordinance.

(5) It is the responsibility of the property owner/occupant to purchase, install, test, repair and maintain all backflow assemblies.

(6) If there is a change in ownership of any and all property within the City's service area, it shall be the responsibility of the new owner to determine that all assemblies are in compliance with this Ordinance.

3.320 BACKFLOW PREVENTION ASSEMBLY REQUIREMENTS

A Specialist employed by or under contract with the City of Bend, shall determine the type of backflow assemblies to be installed within the City of Bend's Water System. All assemblies shall be installed at the service connection unless it is determined by the Specialist and approved by the Manager that it should be installed at the point of use. An approved assembly shall be required in each of the following circumstances, but the Specialist's authority is in no way limited to the following circumstances:

(1) In the case of any premises where there is any material dangerous to health which is handled in such a fashion as to permit entry into potable water system, the potable water system shall be protected by an approved air gap separation or an approved reduced pressure principle backflow prevention assembly.

(2) When the nature and extent of any activity at a premise, or the materials used in connection with any activity at premises, or materials stored at a premise, could contaminate or pollute the potable water supply.

(3) When a premise has one (1) or more cross connections, as that term is defined in Section 1.

(4) When internal cross connections are present which are not correctable.

(5) When intricate plumbing arrangements are present making it impractical to ascertain whether cross connections exist.

(6) When the premise has a repeated history of cross connections being established or re-established.

(7) When entry to the premises is restricted so that surveys for cross connections cannot be made with sufficient frequency to assure cross connections do not exist.

(8) When materials are being used such that, if backflow should occur, a health hazard could result.

(9) When an appropriate cross connection survey report form has not been filed with the City of Bend Manager.

(10) Any and all used-water return systems.

(11) If a point-of-use assembly has not been tested or repaired as required by this Ordinance, the installation of a reduced pressure principle assembly will be required at the service connection.

(12) There is piping or equipment for conveying liquids other than potable City of Bend water and that piping or other equipment is under pressure and installed and operated in a manner that could cause a cross connection.

(13) When installation of an approved backflow prevention assembly is deemed by a Specialist to be necessary to accomplish the purpose of this Ordinance.

(14) The use of any type of chemical spray attachment connected to the premises plumbing, including garden hose fertilizers and pesticide applicators, is not allowed within the City of Bend's Water System without proper protection from the potential of backflow occurring.

(15) The use of any type of radiator flush kits attached to the premises plumbing is not allowed within the City of Bend's Water System without proper protection from backflow occurring.

(16) Wherever reclaimed water or ditch water is used on premises.

(17) When there is a premise with an auxiliary water supply which is interconnected to the City of Bend Water Service or supply system.

3.325 NEW CONSTRUCTION

(1) On all new non-residential construction, an approved backflow assembly shall be installed at the service connection. The type of the assembly will be commensurate with the degree of hazard as determined by a Specialist.

(2) When a building is constructed on commercial premises, and the end use of the building is not determined or could change, a reduced pressure principle backflow prevention assembly shall be installed at the service connection to provide protection of the public water supply in the event of the most hazardous use of the building.

3.330 RETROFITTING

Retrofitting shall be required at all service connections where an actual or potential cross connection exists, and wherever else the Manager or Specialist deems retrofitting necessary to comply with the OAR and this Ordinance.

3.335 IRRIGATION SYSTEMS

All irrigation systems shall be protected according to plumbing code regulations. In the event any system is equipped with an injector system, a reduced pressure principle assembly will be required.

3.340 THERMAL EXPANSION

If a closed system has been created by the installation of a backflow prevention assembly, or other appurtenances, it is the responsibility of the property owner, the occupant, or person in control of the property to eliminate the possibility of damage from thermal expansion in accordance with the Plumbing Code.

3.345 MOBILE UNITS

Any mobile unit or apparatus, as defined in Section 1 Subsection (16) of this Ordinance, which uses the water from any premises within the City of Bend Water System, shall first obtain a permit from the City of Bend and be inspected to assure an approved air gap or reduced pressure principle assembly is installed on the unit.

3.350 INSTALLATION REQUIREMENTS

All backflow prevention assembly installations shall follow the requirements as stipulated by the City of Bend and current OAR Chapter 333, Division 061.

If the premise isolation assembly is allowed to be installed at an alternate location, the City of Bend must have access to the assembly. No connections can be made between the meter and the backflow assembly.

The type of backflow prevention assembly required shall be commensurate with the degree of hazard that exists and must, at all times, meet the standards of the Department of Human Services - Health Services. All backflow prevention assemblies required under this section shall be of a type and model approved by the DHS.

3.355 PRESSURE LOSS

Any decrease in water pressure caused by the installation of a backflow assembly shall not be the responsibility of the City of Bend.

3.360 FIRE SYSTEMS

An approved double check detector assembly shall be the minimum protection on all new fire sprinkler systems using piping material that is not approved for potable water use, and/or that does not provide for periodic flow-through. A reduced pressure principle detector assembly must be installed, if any solution other than potable water can be introduced into the sprinkler system. Retrofitting on fire sprinkler systems will be required in each of the following circumstances:

(a) Where improper maintenance has occurred.

(b) On all high hazard systems;

(c) Wherever a Manager or Specialist deems necessary; and

(d) Wherever required by the OAR.

In the event an assembly is installed on a designated lateral, a detector assembly commensurate with the degree of hazard will be required.

3.365 TEMPORARY METERS AND HYDRANT VALVES

Backflow protection will be required on all temporary meters and hydrant valves before any use. The type of assembly will be commensurate with the degree of hazard and will be determined on a case-by-case basis by a City of Bend Manager or Specialist.

3.370 PLUMBING CODE

As a condition of water service, customers shall install, maintain, and operate their piping and plumbing systems in accordance with the current Uniform Plumbing Code, or as amended. If there is a conflict between this Ordinance and the Plumbing Code, the one that provides the greater protection to the public health, safety or welfare shall control.

3.375 RIGHT-OF-WAY ENCROACHMENT

All backflow assemblies must be installed in accordance with the Right-of-Way Encroachment stipulated by the City's "Right of Way" Encroachment Document.

3.380 ACCESS TO PREMISES

Authorized personnel of the City of Bend, with proper identification and sufficient notice, shall have access during reasonable hours to all parts of a premise and within the structure to which water is supplied. However, if any owner, occupant or person in control refuses authorized personnel access to a premise, or to the interior of a structure, during these hours for inspection, a reduced pressure principle assembly must be installed at the service connection to that premise.

3.385 ANNUAL TESTING AND REPAIRS

All backflow prevention assemblies installed within the area(s) served by the City of Bend shall be tested immediately upon installation, and at least annually thereafter by a certified backflow assembly tester. All such assemblies found not functioning properly shall be promptly repaired or replaced at the expense of the owner, occupant or person in control of the premises. In the event an assembly is moved, repaired or replaced it must be retested immediately.

All repairs on backflow assemblies within the City of Bend service area must be performed according to all State and other applicable regulations.

3.390 MAINTENANCE OF ASSEMBLIES

Backflow prevention assemblies shall be maintained, tested and repaired in accordance with the requirements set out in this Ordinance, the OAR and all applicable State agency regulations. The assembly owner is responsible for protecting their assembly from freezing, vandalism or other damage.

In the event an assembly is not properly tested and repaired, the City of Bend will have the assembly tested and repaired and apply all costs associated with this to the water bill of the assembly owner or person responsible for the water bill for the premises.

3.395 RESPONSIBILITIES OF BACKFLOW PREVENTION ASSEMBLY TESTERS

(1) All backflow assembly testers operating within the City of Bend Water System service area shall be certified in accordance with all applicable regulations of the DHS.

(2) Persons certified as backflow assembly testers shall agree to abide by all requirements of the United States Occupational Safety and Health Administration ("OSHA") and Oregon Occupational Safety and Health Administration ("OR-OSHA").

(3) It is the responsibility of backflow assembly testers to submit records of all backflow assembly test repairs to the City of Bend within 10 days of completing the test.

3.400 COSTS OF COMPLIANCE

All costs associated with purchase, installation, surveys, testing, replacement, maintenance, parts and repairs of the backflow prevention assembly, and all costs associated with enforcement of this document, are the financial responsibility of the property owner, occupant, or other person in control of the premises.

3.405 RECOVERY OF COSTS

Any water customer violating any of the provisions of this Ordinance and who causes damage to or impairs the City of Bend's Water System, including, but not limited to, allowing contamination, pollution, any other solution or used water to enter the City of Bend's Water System, shall be liable to the City of Bend for any expense, loss or damage caused by such violation. The City of Bend shall collect from the violator the cost incurred by the City of Bend for any cleaning, purifying, repair or replacement work or any other expenses caused by the violation. Refusal to pay the assessed costs shall constitute a violation of this Ordinance and shall result in the termination of service.

All cost associated with any disconnect or reconnect fees resulting from the enforcement of this Ordinance are the sole responsibility of the water utility account holder and/or owner of the premises.

3.410 TERMINATION OF SERVICE

Failure on the part of any owner, occupant or person in control of the premises to install a required assembly, have it tested annually and/or to discontinue the use of all cross connections and to physically separate cross connections in accordance with this Ordinance is sufficient cause for the discontinuance of public water service to the premises pursuant to Oregon Administrative Rule chapter 333-061-0070, or as amended. In the case of an extreme emergency or where an immediate threat to life or public health is found to exist, discontinuance or termination of public water service to the premises shall be immediate.

The City of Bend may, at the property owner's expense, install a reduced pressure assembly at the meter. Testing, maintenance and repair of the assembly will be the responsibility of the property owner.

3.415 FALSIFYING INFORMATION

Any person who knowingly makes any false statement, representation, record, report or other document filed or required to be maintained pursuant to this Ordinance, or who falsifies, tampers with, or knowingly renders inaccurate any backflow assembly, device or method required under this Ordinance shall be subject to civil and/or criminal penalties provided by state law.

3.420 CONSTITUTIONALITY AND SAVING CLAUSE

Should any provision, section, sentence, clause or phrase of this Ordinance, or the application of same to any person or set of circumstances, are for any reason held to be unconstitutional, void, invalid, or for any reason unenforceable, the validity of the remaining portions of this Ordinance, or its application to other persons or circumstances, shall not be affected; thereby, it being the intent of the City of Bend System in adopting and approving this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision, or regulation.

Read for the first time the 16th day of July, 2008.

Read for the second time the 6th day of August, 2008.

Placed upon its passage the 6th day of August, 2008.

YES: 7 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 6th day of August, 2008.

Bruce Abernethy, Mayor

Attest:

Patricia Stell, City Recorder

ORDINANCE NO. NS-2103

AN ORDINANCE AMENDING THE BEND DEVELOPMENT CODE SECTION 4.1.815 TO ALLOW THE PLANNING COMMISSION TO HEAR INTERPRETATIONS AND APPEALS IN CERTAIN CIRCUMSTANCES

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1: The City of Bend initiated the application on November 2, 2007. Timely and sufficient notice pursuant to Section 4.1.315 of the Bend Development Code has been provided.

Section 2: On January 14, 2008, the Bend Planning Commission held a public hearing to accept testimony on the request. At the conclusion of the hearing they voted to recommend the proposed amendment be approved by the City Council.

Section 3: The Bend City Council opened a public hearing on July 16, 2008, to accept evidence and consider the Planning Commission's affirmative recommendation and has found that the Text Amendment satisfies the criteria for approval contained at Section 4.6.200 of the Bend Development Code.

Section 4. On the basis of the evidence contained in the record and the findings contained in Exhibit B, the Bend Development Code is hereby amended by changing the text of Section 4.1.815 to read as depicted in Exhibit A.

Read for the first time the 16th day of July, 2008.

Read for the second time the 6th day of August, 2008.

Placed upon its passage the 6th day of August, 2008.

YES: 7 NO: 0

Authenticated by the Mayor the 6th day of August, 2008.

Bruce Abernethy, Mayor

ATTEST:

Patricia Stell, City of Bend Recorder

Exhibit A

4.1.815 Hearings Body

A. The following shall serve as the Hearings Body ~~in this order~~ as determined by the Planning Director:
   1. Hearings Officer
   2. Planning Commission, for matters of interpretation of this Code, Appeals of Type II decisions, ~~or~~ where the Hearings Officer cannot hear the matter due to a conflict of interest , or as otherwise specified by provisions of City Code.
   3. City Council subject to Section 4.1.1100, Appeals.

Exhibit B

Findings of Fact
Legislative Code Amendment PZ07-590

Issue: Bend Development Code section 4.1.815 lists the hearings bodies and states that, unless otherwise directed by the Code, that they shall serve in numeric order. The Hearings Officer is listed as number one and the Commission is listed as number two. Under this structure, an appeal of the Planning Director's administrative decision is to a hearing before the Hearings Officer.

Background: Many of the City's planning applications are classified by the City as Type II applications. These are traditionally processed by the City of Bend administratively as permits or limited land use decisions. This means owners of property within 100 feet of the proposed development are notified and invited to participate as parties. Oregon Revised Statute (ORS) section 227.175 provides for an opportunity for a local hearing on appeal of a permit processed as a Type II.

The proposed Code language gives the Planning Director the discretion to designate the Planning Commission as the hearings body for such appeals.

The new language will also allow the Commission to hear matters of interpretation of the Code, such as a Declaratory Ruling. The ability to do so was expressed by the Commission at their November 19, 2007 work session.

Procedural Findings:
The application was initiated November 2, 2007. Notice of proposed amendment was provided to the Department of Land Conservation and Development (DLCD) on November 2, 2007. Notification of the public hearing before the Bend Planning Commission was printed in the December 30, 2007 edition of the Bend Bulletin. The Planning Commission held a public hearing on January 14, 2008 and voted in favor of recommending approval to the City Council. The City Council held a first reading on July 16, 2008 and a second reading on August 6, 2008.

Criteria of Approval:
The criteria applied to legislative plan amendments are found within the Bend Development Code (BDS) Chapter 5, Section 4.6.200. The criteria are:

1. *The request is consistent with the applicable State land use law;*

2. *The request 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.*

Application of the Criteria:

Criterion 1: ***The request is consistent with the applicable State land use law;***

Findings: State land use law flows from the 19 Statewide Planning Goals which are implemented through the Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR). The Goals are broad policy statements which do not provide direction on specific procedural options such as the one before the Commission. Goals 1 and 2, Citizen Involvement and Land Use Planning are the only Goals germane to this request.

Rules for planning processes and public involvement are implemented at the State level for permits and zone changes in ORS section 227. ORS 227.175 (1) allows a property owner to apply to the Hearings Officer or other person as the City Council designates for a permit or zone change. In Bend, the City Council has, through Chapter 4.1 of the

BDC, designated the Planning Director as the "other" such person. 227.175(10)(a)(A) allows the Planning Director to issue a permit without a hearing if the Director gives notice of the hearing and provides an affected person the ability to file an appeal. 227.175(10)(D) states that the appeal of a decision made without a hearing by the Planning Director shall be to the Hearings Officer, Planning Commission or governing body. Since the proposed language allows the Planning Commission to be a hearings body, it is consistent with these portions of the ORS.

The remaining 17 Statewide Planning Goals do not apply to this request. Staff are unaware of any other ORS or OAR provisions that apply to this request.

Criterion 2: ***The request is consistent with the applicable Bend Area General Plan goals and policies;***

Findings:

Like the Goals, the Bend Area General Plan is a broad policy document that contains policies intended to guide the growth and prosperity of the City. Chapter 1 of the Plan is the General Plan's component of the City's Acknowledged compliance with Goal 1. Chapter 1, Policy 16 is the only policy that is relevant to this proposal. It states:

The city will use mechanisms, such as but not limited to, meetings with neighborhood groups, planning commission hearings, design workshops, and pubic forums to provide an opportunity for the citizens of the area to participate in the planning process.

Because the proposed Code amendment expands the opportunity for the Planning Commission to hold public hearings and to interpret the Development Code, it is consistent with this General Plan policy. There are no other General Plan policies that apply to the proposal; therefore, Criterion 2 is fulfilled.

1. *The applicant can demonstrate a public need or benefit for the proposed amendment.*

Findings: Because the appeal fee for permits is statutorily capped at $250, the actual cost of a hearing before the Hearings Officer presents a fiscal challenge for the Planning Fund. By allowing the Commission to hear appeals where no deposit for the Hearings Officer is collected, the expenditure of significant public funds can be eliminated. Because saving public funds is a public benefit, Criterion 3 is met.

It is a public benefit to allow the Planning Commission to interpret the Development Code. The Commission participated in the legislative crafting of the Code language. The Commissioners are, therefore, aware of the public intent of the text, where a Hearings Officer does not have this legislative history to rely upon. The public will benefit because the Code can be interpreted the way the drafters of the document intended. Therefore, Criterion 3 is again satisfied.

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK

2008-37523

$246.00

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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 NS-2104

AN ORDINANCE OF THE BEND CITY COUNCIL MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO AND APPROVING THE MURPHY CROSSING URBAN RENEWAL PLAN

WHEREAS, the Bend Urban Renewal Agency ("BURA"), as the duly authorized and acting urban renewal agency of the City of Bend, Oregon, is proposing to undertake certain redevelopment activities in a designated area within the City of Bend pursuant to ORS Chapter 457; and

WHEREAS, BURA, pursuant to the requirements of ORS 457.085(1) and (2), has prepared the Murphy Crossing Urban Renewal Plan, dated August 20, 2008 which is attached to this Ordinance as Exhibit A, and incorporated herein by this reference ("Plan"). The Plan authorizes the redevelopment activities, including the acquisition and disposition of property described therein, within the Murphy Crossing Urban Renewal Area (the "Area"); and

WHEREAS, BURA has caused the preparation of a report accompanying the Plan ("Report"), dated August 20, 2008, as required by ORS 457.085(3) which is attached to this Ordinance as Exhibit B and incorporated herein by this reference; and

WHEREAS, the Plan and the Report were forwarded to the City of Bend Planning Commission for recommendation and the Planning Commission considered the Plan and Report on July 14, 2008 and recommended that City Council adopt the Plan; and

WHEREAS, the Plan and the Report were forwarded on June 27, 2008 to the governing body of each taxing district affected by the Plan, and BURA has consulted and conferred with said districts; and

WHEREAS, on July 14, 2008 BURA met with the Board of Commissioners of Deschutes County to review the Plan, including proposed maximum indebtedness for the Plan; and

WHEREAS, BURA has received a recommendation from the Deschutes County Board of Commissioners that the Council take into account the impact of the tax increment financing of the Plan on public safety functions and potential mitigation measures; and

WHEREAS, on July 15, 2008, the City caused notice of the hearing to be held before the City Council on the Plan for the Murphy Crossing Urban Renewal Area, including the required statements of ORS 457.120(3), to be mailed to postal patrons within the City of Bend; and

WHEREAS, on August 6, 2008 the City Council held a public hearing to review and consider the Plan, the Report, the recommendation of the Planning Commission, recommendations of affected taxing districts and the public testimony received on that date, and does by this Ordinance desire to approve the Plan;

WHEREAS, BURA has received a recommendation from the Deschutes County Rural Fire Protection District #2 that the Council take into account the impact of the tax increment financing of the Plan on the City of Bend's ability to fund emergency services and consider alternative sources of funding for the urban renewal projects in the Plan.

WHEREAS, the City Council hereby determines and finds that the Plan complies with all requirements of ORS Chapter 457 and the specific criteria of 457.095(1) through (7), in that, based on the information provided in the Report, the recommendation of the Planning Commission, the recommendations of affected taxing districts and the public testimony before the City Council;

THE CITY OF BEND MAKES THE FOLLOWING STATUTORILY REQUIRED FINDINGS:

1. The area designated in the Plan as the Area meets the statutory definition of "blight", as defined by ORS 457.010(1) and is eligible for inclusion within the Plan because of conditions described in the Report, including the lack of adequate access and utilities which contribute to the underdevelopment of property within the Area,.

2. The rehabilitation and redevelopment described in the Plan to be undertaken by BURA is necessary to protect the public health, safety and welfare of the City because absent the completion of urban renewal projects, the Area will fail to contribute its fair share of property tax

After recording return to City Recorder, 710 NW Wall, Bend, OR 97701

revenues to support City services and will fail to develop and/or redevelop according the goals of the City's Comprehensive Plan.

3. The Plan conforms to the Bend Comprehensive Plan and provides an outline for accomplishing the projects described in the Plan, as more fully described in the Plan.

4. Provision will be made to house displaced persons within their financial means in accordance with applicable federal and state law and, except in the relocation of elderly or disabled individuals, without displacing on priority lists persons already waiting for existing federally subsidized housing.

5. The acquisition of real property provided for in the Plan is necessary for the development of public facilities in the Area and for the development of adequate streets and utilities, as more fully described in Section II of the Report.

6. Adoption and carrying out the Plan is economically sound and feasible in that eligible projects and activities will be funded by urban renewal tax revenues derived from a division of taxes pursuant to section 1c, Article IX of the Oregon Constitution and ORS 457.440 and other available funding as more fully described in Section VIII of the Report; and

7. The City shall assume and complete any activities prescribed it by the Plan.

NOW THEREFORE, THE COUNCIL OF THE CITY OF BEND HEREBY ORDAINS THAT:

Section 1. The City Council accepts the written recommendations of Deschutes County as follows: The Plan provides for transportation improvements that allow for better access by public safety service providers in the Urban Renewal Area. The impact of the tax increment financing of the Plan in terms of permanent rate property tax revenues foregone will be mitigated to the extent possible during implementation of the Plan by means of completing Plan projects efficiently and in a timely manner.

The City Council accepts the written recommendations of the Deschutes County Rural Fire Protection District as follows: The City of Bend has considered the impact of the Plan upon the City's General Fund revenues and the demand for services and finds that overall, adoption of the Plan is in the public interest, because at its completion the Plan will result in greater and more stable property tax revenues. The City is also intending to use several alternative sources of funding in combination with tax increment financing to pay for the urban renewal projects in the Plan.

Section 2. The Murphy Crossing Urban Renewal Plan is hereby approved, adopted, and incorporated herein by reference, based upon review and consideration by the City Council of the Report, the recommendations of the Planning Commission, each of which is hereby accepted, and the public testimony in the record.

Section 3. The City Recorder shall forward forthwith to BURA a copy of this Ordinance.

Section 4. BURA shall thereafter cause a copy of the Plan to be recorded in the Records of Deschutes County, Oregon.

Section 5. The City Recorder, in accordance with ORS 457.115, shall publish notice of the adoption of the Ordinance approving the Plan, including the provisions of ORS 457.135, in the Bend Bulletin no later than four days following adoption of this Ordinance.

Attachments: Exhibit A –Plan, Exhibit B-Report, Exhibit C-Legal Description

Read for the first time the 6th day of August, 2008.

Read for the second time the 20th day of August, 2008.

Placed upon its passage the 20th day of August, 2008.

YES: 6 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 20th day of August, 2008.

Bruce Abernethy, Mayor

Attest:

Patricia Stell, City Recorder

Ordinance NS-2104
Exhibit A

MURPHY CROSSING URBAN RENEWAL PLAN

City of Bend

DATE

LIST OF PARTICIPANTS

Mayor: Bruce Abernethy

City Council/Urban Renewal Agency:

Bruce Abernethy
Mark Capell
Bill Friedman
Chris Telfer
Jim Clinton
Peter Gramlich
Linda Johnson

Planning Commission:

Cliff Walkey
Jodie Barram
Kevin Keillor
Patrick Oliver
Nathan Hovekamp
Steve Miller
Donald Senecal

City Staff liaison:

Eric King, City Manager

John R. Russell, Director, Urban Renewal/Economic Development
Jerry Mitchell, Development Manager, Urban Renewal/Economic Development
Terri Shepherd, Office Specialist, Urban Renewal/Economic Development
Wendy Robinson, Senior Planner, Community Development Department
Nick Arnis, Transportation Engineering Manager, Public Works Department
Michael Magee, City Engineer, Public Works Department
Jude Fulghum, Geographic Information Systems Specialist, Public Works Department

Oregon Department of Transportation Liaison:
Gary Farnsworth, Local Area Manager

Consultant Team:

Tashman Johnson LLC
Elaine Howard Consulting LLC
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I. INTRODUCTION

The Murphy Crossing Urban Renewal Plan (the "Plan") is the culmination of years of study of the Murphy Crossing area, where access and circulation have been negatively affected by the location and configuration of the Bend Parkway. In the summer of 2001, the South Bend Parkway Refinement Study was started to explore future options for replacing the at-grade intersections in the area. This project looked specifically at the safety and function of the Bend Parkway. The purpose of the refinement study was to help develop a detailed improvement and management plan for the southern section of the Bend Parkway from Powers Road to Bend's southern urban growth boundary. In 2003, the Oregon Transportation Commission (OTC) and the City of Bend selected Alternative H-Modified with Option 1 for the South Parkway Refinement. This alternative came with several conditions that needed to be satisfied prior to implementing the H-Modified Design. The conditions were:

- Select alignment for realigned Murphy Road to extend west to Brookswood Boulevard
- Select alignment for frontage road west of Parkway to connect Powers Road to Ponderosa Street
- Identify timing of right-in, right-out only for Poderosa/China Hat/Highway 97
- Identify improvements needed on Powers Road between Third Street and Brookswood Boulevard
- Identify improvements needed on Brookswood Boulevard from Murphy Road to Powers Road
- Identify improvements needed on Parrell Road between Powers Road and China Hat Road and
- Select alignment for frontage road from Ponderosa Street south to Baker Road.

To meet those conditions, in March 2005, the City of Bend accepted a Transportation and Growth Management (TGM) Quick Response Grant for Murphy Crossing. Over a three month period, significant public input was sought through stakeholder and property owner interviews and public meetings. A preferred design alternative emerged from this public process. The preferred plan proposed a local street plan consistent with the OTC conditions and a land use plan that required new zoning designations within the study area. Based on the preferred alternative plan that came out of the study, the City Council authorized staff to proceed with the initiation and adoption of a refinement plan for the Murphy Crossing area in August of 2005. The Murphy Crossing Refinement Plan was adopted by the City Council in November of 2006.

The Murphy Crossing Urban Renewal Plan implements the decisions made through these years of study of the area. The Plan contains goals, objectives and projects for the development of the Murphy Crossing Urban Renewal Area ("Area"). The Area, shown in Figure 1, consists of approximately 230 acres of land in the vicinity of the southern convergence of the Bend Parkway and Southeast 3rd Street. The south westerly portion of the Area encompasses the Murphy Crossing Refinement Plan area

and the north easterly portion includes part of the Southeast 3rd Street commercial corridor.

The overall purpose of the Plan is to use tax increment financing to overcome obstacles to proper development of the Area by assisting with the funding of access and utility improvements, including the overcrossing of the Bend Parkway at Murphy Road and a system of local streets. Tax increment financing (see Section VII) generally means that the property taxes resulting from growth in property value within the Area can be used to finance improvement projects and programs in the Area.

The Plan will be administered by the Bend Urban Renewal Agency ("Agency") which has been established by the City Council of the City of Bend. Major changes to the Plan, if necessary, must be approved by the City Council. The Plan is accompanied by an Urban Renewal Report ("Report") that contains additional information.

The Plan is funded through borrowings. The amount Plan anticipates issuing the debt within the limits of the maximum indebtedness in twenty five years. The maximum amount of indebtedness (amount of tax increment financing for projects and programs) that may be issued for the Plan is $52,600,000. Repayment of the debt is anticipated to take until FY 2033/2034 a period of 25 years.

II. GOALS AND OBJECTIVES

The goals of the Plan represent its basic intents and purposes. Accompanying each goal are objectives, which generally describe how the Agency intends to achieve the goals. The urban renewal projects identified in Chapter IV of the Plan are the specific means of meeting the objectives.

Goal 1: *ECONOMY*

Convert underutilized land into productive developments that will provide jobs, housing and business to the Bend area.

Objectives:

1A: Provide a variety of employment opportunities and housing types.

1B: Work with property owners to promote beneficial development of properties within the Area.

1C: Provide a commercial revitalization loan fund for the improvement of existing business properties within the Area.

1D: Provide an affordable housing assistance program to help stimulate affordable housing within the Area.

1D: Increase the supply of developed commercial, mixed use and residential land within the City of Bend, thereby maximizing the use of buildable lands within the UGB.

Goal 2: ***LAND USE***

Help implement adopted plans to create an efficient and cohesive mixed-use development in the Area.

Objectives:

2A: Support the location of new residential uses adjacent to the existing neighborhoods.

2B: Support the creation of opportunities for large-scale retail uses as well as community commercial and small scale businesses in selected locations to foster a mixed-use district.

2C: Support ensuring the compatibility of uses within the Area and within the surrounding neighborhoods and allowing a mixture of complementary land uses that may include housing, retail, offices, commercial services, and civic uses to create economic and social vitality and to encourage the linkage of vehicle trips.

2D: Make investments that promote efficient use of land and public services.

2E: Support the accommodation of a range of housing needs, including owner occupied and rental housing.

Goal 3: ***TRAFFIC AND TRANSPORTATION***

Implement transportation improvements that will increase efficient access and circulation to and from the area and mitigate traffic impacts resulting from new development.

Objectives:

3A: Create an interconnected system of streets following City standards appropriate to the intensity and type of adjacent use.

3B: Create safe and attractive streetscapes that will meet City emergency access requirements and enhance pedestrian and bicycle access.

3C: Provide sidewalks and streetscape improvements that promote multimodal usage, access and safety.

3D: Provide intersection and highway improvements for efficient traffic flow and safety.

3E: Construct street improvements as consistent with City and State standards.

3F: Reduce reliance on the automobile for neighborhood travel and provide options for walking and bicycling.

3G: Provide direct and convenient access to schools, parks and neighborhood services.

Goal 4: ***PUBLIC UTILITIES***

Improve the public utilities within the Area.

Objectives:

4A: Provide additional capacity for the sewer system through the development of the master-planned Southeast Sewer Interceptor.

4B: Upgrade the existing sewer system to accommodate projected increased flows.

4C: Upgrade regional storage and transmission facilities of water systems.

Goal 5*:* ***PARKS***

Develop a public park in the Area.

Objectives:

5A: Create a park to serve residents and workers in the community.

5B: Provide informal gathering places for the community.

Goal 6: ***ENHANCE THE PEDESTRIAN ENVIRONMENT ON STREETS***

Create a streetscape environment that is safe and attractive for pedestrians and bicyclists.

Objectives:

6A: Develop street improvements with features that promote pedestrian and other multi-modal transportation options.

6B: Develop a system of streetscape improvements that create a continuous and consistent pedestrian environment throughout the Area.

6C: Increase pedestrian safety and encourage more street level pedestrian activity in the Area. Create safer pedestrian crossings.

6D: Soften building edges, camouflage vacant lots and surface parking lots and create a safer and more attractive pedestrian environment.

Goal 7: ***PROMOTE A MIX OF RETAIL AND COMMERCIAL USES ORIENTED TO PEDESTRIANS***

Promote development of a mix of service and office uses that benefit from and enhance the Area's pedestrian environment.

Objectives:

7A: Encourage use and patronage of Area businesses by developing an inviting pedestrian environment.

7B: Encourage upgrading of existing businesses with an objective of orientation toward pedestrian activity.

7C: Encourage new development which caters to a pedestrian oriented environment.

Goal 8: ***PUBLIC-CITIZEN INVOLVEMENT - ENCOURAGE INVOLVEMENT BY ALL CITIZENS, CORPORATE AND INDIVIDUAL TO KEEP THE CITY VITAL***

Involve the public, both corporate and individual in the adoption and administration of the Plan.

Objectives:

8A: Meet with neighborhood groups to both give an understanding of tax increment financing and to gain their input on proposed projects.

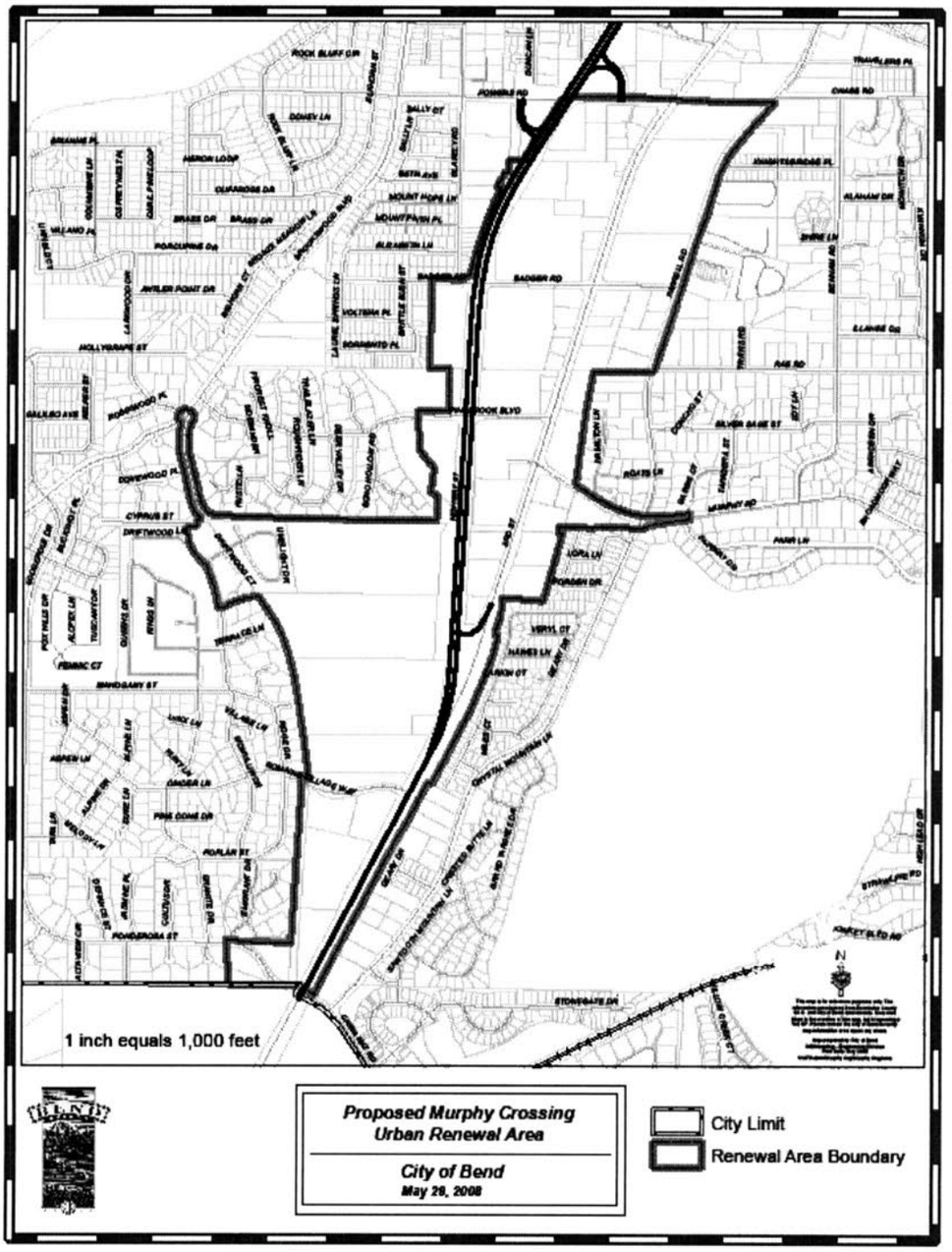
8B: Allow opportunity for public testimony throughout the consideration of the adoption of the Plan, and the consideration of any amendments to the Plan.

8C: Periodically consult with stakeholders and report to the Urban Renewal Agency for the ongoing administration of the plan.

II. MAP AND LEGAL DESCRIPTION OF URBAN RENEWAL AREA

Figure 1 shows the Area boundaries. The legal description of the Area is attached as Appendix A.

Figure 1. Area Boundaries



III. OUTLINE OF MAJOR URBAN RENEWAL PROJECT ACTIVITIES

An outline of major urban renewal project activities is as follows:

- Transportation improvements to increase circulation from, to and within the Area.
- Preliminary engineering study for future transportation improvements.
- Provision of sanitary sewer to the Area to allow for development.
- Upgrading of the water infrastructure in the Area.
- Assistance in construction of a public park to serve the Area.
- Streetscape improvements along 3rd Street.
- Affordable Housing Assistance Program.
- Commercial Revitalization Loan Program.

IV. URBAN RENEWAL PROJECTS

Urban renewal projects authorized by the Plan consist of (a) public improvements that are described below, and (b) the implementation of financing programs to encourage private investment in the Area. Public improvements authorized under the Plan include transportation, water, and sanitary sewer infrastructure projects. Except for the priority of the Transportation Improvements (Section IV.A below), the actual scope, budget and priorities for public improvement projects will be decided by the Agency as it administers the Plan.

Transportation improvements will upgrade and expand existing roadways to increase access into, out of and within the Area, facilitate the development of vacant lands, accommodate increased levels of traffic as future development occurs, and provide for safety. To promote neighborhood livability and increase multimodal connectivity, transportation projects may include sidewalks and streetscape improvements. To prepare for future transportation projects in the Area, preliminary engineering studies may be conducted. Water and sanitary sewer improvements will prepare the Area for future development.

As shown in the Report, urban renewal funds may be combined with existing and future sources of funding to pay for project costs.

The projects under transportation improvements are listed in priority and phasing order.

A. Transportation Improvements

1. Local Streets West of Bend Parkway

The local streets west of the Bend Parkway include Murphy Road from the overpass (see project 2 below) west to the Brookswood

Road roundabout and a new street from the central roundabout north to Murphy Road.

2. *Murphy Overcrossing of Parkway*

   This includes an overpass on Murphy Road and a realignment of Murphy Road east of Parkway and a new street from Ponderosa Road north to the central roundabout.

3. *Frontage Road(s)*

   This improvement includes construction of Frontage Road from Murphy Road north to Pinebrook Road and from Pinebrook Road north to Badger Road.

4. *Parkway Improvements*

   Parkway improvements include a 3rd Street flyover ramp (a ramp which goes over the top of the Parkway), a southbound off ramp and a northbound on ramp

5. *3rd Street Corridor Improvements*

   a. 3rd Street improvements from Pinebrook Road to Powers Road consist of streetscape improvements including sidewalks, landscaping, parking bays, median treatments and street lighting.

   b. Intersection improvements at 3rd Street and Powers Road and streetscape improvements including street lighting, sidewalks, bike lanes, landscape strips.

   c. Intersection improvements at Powers/Parrell/Chase roads and improvements to the street connections to city standards from Chase Road to Brosterhous Road.

   d. Improvements to Parrell Road from Chase Road to Murray Road to modernize Parrell Road and meet city standards.

6. *Murphy Road Overcrossing*

   a. The Murphy Road overcrossing from Brosterhous Road to 15th Street consists of constructing a three lane bridge over the Burlington Northern Santa Fe Railroad tracks including a roundabout intersection improvement at Brosterhous Road and 15th Street.

B. **Sewer Improvements**

1. Provide additional capacity for the sewer system through the development of the master-planned Southeast Sewer Interceptor.

2. Upgrade the existing sewer system to accommodate projected increased flows.

C. Water System Improvements

1. Upgrade regional storage and transmission facilities of Avion Water Company including a 16-18 inch transmission main from Avion's existing reservoir to the urban renewal area.

2. Upgrade the facilities of Roats Water Company. This upgrade will be facilitated by the upgrade to Avion's line as Roat's line is interconnected.

D. Park Development

1. Provide assistance with the construction costs for the development of a neighborhood park in the Area.

E. Affordable Housing Assistance Program

1. Establish a loan/grant fund for assistance in the development of affordable housing. Specific programs and rules and regulations for the administration of loan/grant funds will be developed, with public input, to ensure that urban renewal funds are used properly and for the agreed upon purposes. The adoption and amendment of such programs, rules and regulations shall not be considered changes to the Plan.

F. Commercial Revitalization Loan Program

1. Establish a loan program for the improvement of existing business properties within the Area. A specific program and rules and regulations for the administration of loan funds will be developed, with public input, to ensure that urban renewal funds are used properly and for the agreed upon purposes. The adoption and amendment of such programs, rules and regulations shall not be considered changes to the Plan.

V. PROPERTY ACQUISITION AND DISPOSITION

The Plan authorizes the acquisition and disposition of property as described in this section. Property includes any and all interests in property, including fee simple ownership, lease, easements, licenses or other rights to use.

A. Property Acquisition for Public Improvements

The Agency may acquire any property within the Area for the public improvement projects undertaken pursuant to the Plan by all legal means, including use of eminent domain, without amendment to the Plan. Acquisition procedures will comply with applicable state or federal law. In all cases, good faith negotiations for such acquisition must occur prior to institution of eminent domain procedures. The exact property description and schedule for acquisition of land for a public improvement project will be determined based on the timing of the construction of the public improvement. Approval of an acquisition by the City or Agency, as the case may be, will automatically incorporate the subject property into this Plan as a "property to be acquired."

B. Property Acquisition – From Willing Sellers

The Plan authorizes the Agency acquisition of any interest in property within the Area that the Agency finds is necessary to support private redevelopment, but only in those cases where the property owner wishes to convey such interest to the Agency. The Plan does not authorize the Agency to use the power of eminent domain to acquire property from a private party to transfer property to another private party for private redevelopment.

C. Land Disposition

The Agency will dispose of property acquired for a public improvement project by conveyance to the appropriate public agency responsible for construction and/or maintenance of the public improvement. The Agency may retain such property during construction of the public improvement. The schedule for disposition of land for a public improvement project will be consistent with the timing of the commencement or completion of construction of the public improvement, .

The Agency may dispose of property acquired under Subsection B of this Section V by conveying any interest in property. The schedule for disposition of land acquired under Subsection B of this Section V will be determined by the Agency when the Agency determines the acquisition is necessary pursuant to Section V.B above. These determinations may be made by Resolution of the Agency.

Property shall be conveyed at its fair reuse value. Fair reuse value is the value, whether expressed in terms of rental or capital price, at which the urban renewal agency in its discretion determines such land should be made available in order that it may be developed, redeveloped, cleared, conserved or rehabilitated for the purposes specified in such plan. Because fair reuse value reflects limitations

on use of the property to those purposes specified in the Plan, the value may be lower than the property's fair market value.

Where land is sold or leased, the purchaser or lessee must agree to use the land for the purposes designated in the Plan and to begin and complete the building of its improvements within a period of time that the Agency determines is reasonable.

VI. RELOCATION METHODS

When the Agency acquires occupied property under the Plan, residential or commercial occupants of such property shall be offered relocation assistance as required under applicable state or federal law. Prior to any acquisition, the Agency shall adopt rules and regulations as necessary for the administration of relocation assistance.

VII. TAX INCREMENT FINANCING OF PLAN

Tax increment financing consists of using annual tax increment revenues to make payments on loans, usually in the form of tax increment bonds. The proceeds of the bonds are used to finance the urban renewal projects authorized in the Plan. Bonds may be either long-term or short-term.

Tax increment revenues equal most of the annual property taxes imposed on the cumulative *increase* in assessed value within an urban renewal area over the total assessed value at the time an urban renewal plan is adopted. [Under current law, the property taxes for general obligation ("GO") bonds and local option levies approved after October 6, 2001 are not part of the tax increment revenues.]

A. General Description of the Proposed Financing Methods

The Plan will be financed using a combination of revenue sources. These include:

- Tax increment revenues;
- Advances, loans, grants and any other form of financial assistance from the Federal, State or local governments or other public body;
- Loans, grants, dedications or other contributions from private developers and property owners, including but not limited to assessment districts; and
- Any other public or private source.

Revenues obtained by the Agency will be used to pay or repay the costs, expenses, advancements and indebtedness incurred in (1) planning or undertaking project activities, or (2) otherwise exercising any of the powers granted by ORS Chapter 457 in connection with the implementation of this Plan.

B. Tax Increment Financing and Maximum Indebtedness

The Plan may be financed, in whole or in part, by tax increment revenues allocated to the Agency as provided in ORS Chapter 457. The ad valorem taxes, if any, levied by a taxing district in which all or a portion of the Area is located, shall be divided as provided in Section 1c, Article IX of the Oregon Constitution, and ORS 457.440. Amounts collected pursuant to ORS 457.440 shall be deposited into the unsegregated tax collections account and distributed to the Agency based upon the distribution schedule established under ORS 311.390.

The maximum amount of indebtedness that may be issued or incurred under the Plan, based upon good faith estimates of the scope and costs of projects in the Plan and the schedule for their completion is Fifty Two Million Six Hundred Thousand Dollars ($52,600,000). This amount is the principal of such indebtedness and does not include interest or indebtedness incurred to refund or refinance existing indebtedness.

C. Prior Indebtedness

Any indebtedness permitted by law and incurred by the Agency or the City of Bend in connection with the preparation of this Plan or prior planning efforts that support the preparation or implementation related to this Plan may be repaid from tax increment revenues from the Area when and if such funds are available.

VIII. FUTURE AMENDMENTS TO PLAN

The Plan may be amended as described in this section.

A. Substantial Amendments

Substantial Amendments are solely amendments:

- Adding land to the urban renewal area, except for an addition of land that totals not more than one percent of the existing area of the urban renewal area; or
- Increasing the maximum amount of indebtedness that can be issued or incurred under the Plan.

Substantial Amendments, in accordance with ORS 457.085(2)(i), shall require the same notice, hearing and approval procedure required of the original Plan under ORS 457.095, including public involvement, consultation with taxing districts, presentation to the Planning Commission and adoption by the City Council by non-emergency ordinance after a hearing. Notice of such hearing is provided to individuals or households within the City of Bend as required by ORS 457.120. Notice of adoption of a Substantial Amendment shall be provided in accordance with ORS 457.095 and .115.

B. Council Approved Amendments

Council Approved amendments consist solely of amendments which result in:

- Material changes to the goals and objectives of the Plan; or
- Addition or expansion of a project that is materially different from projects previously authorized in the Plan.

Council Approved amendments require approval by the Agency by resolution and by the City Council by ordinance.

C. Minor Amendments

Minor Amendments are amendments that are not Substantial or Council Approved Amendments in scope. Minor Amendments require approval by the Agency by resolution.

D. Amendments to the Bend General Plan and/or Bend Development Code

Amendments to the Bend General Plan and/or Bend Development Code that affect the Urban Renewal Plan and/or the Urban Renewal Area shall be incorporated automatically within the Urban Renewal Plan without any separate action required by the Agency or the City Council.

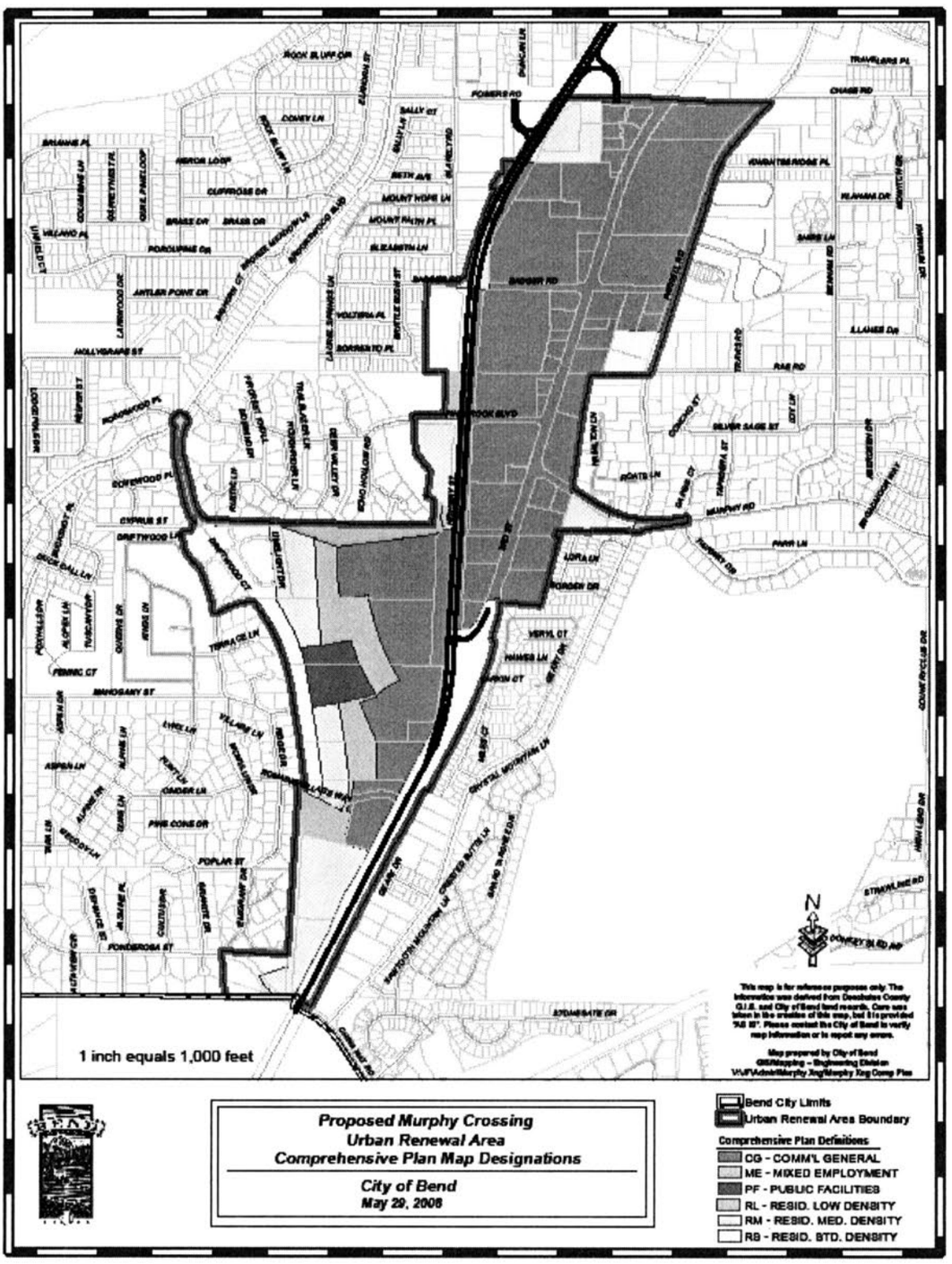
IX. RELATIONSHIP TO LOCAL OBJECTIVES

The Plan relates to local planning and development objectives contained within the City of Bend's Comprehensive Plan, Development Code, Vision 2030 Strategic Plan, and Transportation System Plan. The following section describes the purpose and intent of these plans, the particular goals and policies within each planning document that the proposed Plan relates to and an explanation of how the Plan relates to these goals and policies.

A. Bend Area General Plan (Comprehensive Plan)

The Bend Area General Plan (General Plan) is the City's comprehensive plan. It is a guide for making land use decisions regarding future development within the Urban Growth Boundary and the Urban Reserve area. The General Plan's goals and policies provide a framework for decisions that are consistent with the physical characteristics, goals, and resources of the community. The basic aim of the General Plan is to organize and coordinate complex interrelationships between people, land, resources, and facilities to meet the future needs of the citizens and to protect the livability of the community. The General Plan consists of a General Plan text and a map. The General Plan map designates the parcels in the Murphy Crossing Urban Renewal Area as Urban Low Density Residential (RL), Urban Standard Density Residential (RS), Urban Medium Density Residential (RM), Mixed Employment (ME), Public Facilities (PF) and General Commercial (CG). The Plan is consistent with the General Plan Map. See Figure 2 General Plan and Zoning Designations of Proposed Murphy Crossing Urban Renewal Area.

Figure 2. Bend General Plan and Zoning Designations of Proposed Murphy Crossing Urban Renewal Area



1. Conformance with the General Plan Map

The Plan relates to and is in conformance with the General Plan map. The proposed projects are all in compliance with the General Plan Map.

2. Conformance with the General Plan Text

The General Plan Text consists of information, exhibits, goals and policies. The city adopted an updated comprehensive plan in December of 1998.

At the end of each chapter are policies that address issues discussed in the chapter. The General Plan sets forth general goals and policies to help guide future growth. Below are the plan goals and policies which are applicable to this urban renewal plan.

Chapter 1 – Plan Management and Citizen Involvement

Community Goals / Page 1-1

The goals set forth below provide guidance for improving the character and quality of the Bend area as growth occurs.

• Neighborhoods – Create and preserve attractive neighborhoods for living.

The Plan relates to and complies with the standards set forth in the General Plan.

• Natural Beauty and Heritage – Protect and enhance Bend's natural beauty noting especially the trees, rocks, rivers, views, sounds and historic structures.

The creation of a park within the Area will help to protect and enhance Bend's natural beauty.

• Quality Economic Growth – Assure the opportunity for a stable, vital and diverse economy while sustaining its environment / ecological support systems.

The Plan provides for improvements which will encourage economic growth for the Area.

• Diversity of quality living options – Assure the opportunity for a wide variety of housing and neighborhoods within a community diverse in education, income, employment and recreation opportunities.

The Plan relates to and will comply with the established zoning mix, which will allow a variety of single family, multi- family apartments and condominium housing in close proximity to recreational activities. The Affordable Housing Assistance Program will help stimulate the development of this housing.

• 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 street system layout for the Area provides easy circulation in all directions including connections to the state highway system. The east/west sidewalk system will connect to the city's planned trail system to provide easy access to the river trails. Bicycle lanes will be provided on the Murphy Road overcrossing ensuring safe access to 3rd Street.

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

The Plan provides opportunity for public comment and input. In addition, the Murphy Crossing Refinement Plan was a very public process which began in 2005 with the plan adopted in August of 2006. The Refinement Plan laid the framework for the activities to be undertaken in the Plan.

Policies / Page 1-7 and 1-8

Policy #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.

New development will comply with this Section of the General Plan. If new development occurs prior to the scheduled construction of those facilities in the Capital Improvement Plan, new development will pay for the extensions.

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

The Plan relates to these standards. The section of the Area west of the Parkway is an underdeveloped area of the community that is ripe for re-development. This portion of the Area will provide increased density in support of the General Commercial and Mixed Employment uses. Residents in the surrounding neighborhoods will be able to walk to the new service commercial uses rather than drive into the 3rd Street corridor for their day-to-day needs. Inclusion of the land east of the Parkway will encourage dense development, reducing car trips and facilitating non-automobile travel.

Policy #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.

The Plan envisions the use periodic consultation with stakeholders for the Area, especially in relation to proposed Plan amendments.

Chapter 2 – Natural Features and Open Space

Goals / Page 2-1 and 2-2

Although the following goals clearly are intended to apply to the 1978 identified Areas of Special Interest, it is equally important to preserve stands of trees and rock features on large development parcels where practical. The following goals will help ensure the livability of Bend.

- To preserve interesting and distinct geologic formations and areas of natural vegetation;
- To shape the urban development and provide visual relief from developed land;
- To soften the appearance of street corridors with planter and median strips; to encourage environmental awareness so that citizens will become stewards of our natural areas; and
- To support the coordinated efforts of public agencies, private organizations and individuals to preserve and enhance the area's natural features and open space.

The Plan will provide assistance in developing infrastructure which will provide incentives for development of vacant land with considerable existing tree cover of ponderosa pine and juniper and small rock outcroppings. They are not protected as areas of special interest.

Policy #17. The Bend Metro Park and Recreation District shall acquire park sites and open space lands where possible to establish pedestrian, bikeway and greenway linkages between parks, open spaces, neighborhoods and schools.

The Area contains a four acre park site that has been identified by the Bend Metro Park Recreation District as a future park site that will meet the needs of the Area and will comply with the Parks Master Plan. A portion of the park improvements may be funded through the Plan.

Chapter 3 – Community Connections

Goals / Page 3-1

The topics in this chapter deal with history, culture, parks and recreation, and public education. The following goals are applicable to the proposed Plan area.

- To expand the number and variety of cultural and artistic venues held downtown and elsewhere in the community.

- To provide quality green spaces, natural areas and recreation sites through public and private park land throughout the community; and
- To coordinate the development of future park and school sites to serve the expanding urban area population.

The Murphy Crossing District will be a new lifestyle center in the southwest quadrant of town and will attract new community events including arts and entertainment. As stated above, the proposed Plan may assist in the funding of improvements for a 4 acre park in the Area. This site has been coordinated with the Bend Metro Park and Recreation District. The park will serve the existing neighborhood as well as the new multi-family / commercial neighborhood.

Chapter 5 - Housing and Residential Lands

A common theme repeated by the citizens of Bend is the overwhelming desire to keep our neighborhoods livable. It is a goal of the General Plan to provide a variety of housing types to meet the needs of citizens with particular concern for safety, affordability, open space and sense of community. A well planned transportation system that connects our neighborhoods to schools, parks, shopping and employment is an important factor in building and maintaining a sense of community.

The proposed Plan provides a transition of uses placing the more intense commercial uses adjacent to the Bend Parkway. A variety of local road connections link the existing and planned residents to the commercial service area and planned park.

Policy #1. Future development and local development standards shall recognize and respect the character of existing areas.

Policy #3. The development of infill areas may, as an alternative to the standard subdivision review process, proceed through a public involvement process that would allow the maximum flexibility of design and provide for neighborhood participation.

Policy #4. Private and public nonresidential uses are necessary and should be permitted within residential areas for the convenience and safety of the people. Such facilities shall be compatible with surrounding developments, and their appearance should enhance the area.

Policy #5. Of necessity, nonresidential uses will have to abut residential areas in different parts of the community. In these instances, any nonresidential use shall be subject to special development standards in terms of setbacks, landscaping, sign regulations and building design.

Policy #11. Residential areas shall offer a wide variety of housing types in locations best suited to each housing type.

The Area is an ideal location to provide a variety of housing types that will complement the emerging commercial development. The Area will include sites for new service commercial uses and future transit corridors. A new commercial center will provide needed service in close proximity to existing residential neighborhoods. The adopted Murphy Crossing Refinement Plan places the higher density residential near the commercial development to the east while providing transitional densities to the west between the existing neighborhood and the future development. These features are consistent with the General Plan policies on housing and residential lands. This Plan has projects which will provide for infrastructure which will encourage the development of residential neighborhoods. The Plan relates to and conforms with this section of the General Plan.

Policy # 24. Accessory dwellings to a single-family home may be allowed in new subdivisions or Planned Unit Developments, provided that the maximum General Plan density is not exceeded.

Policy #27. When new commercial centers are created in developing residential areas, the city and county may allow up to 20 acres of medium-density residential housing within one-eighth of a mile of the commercial center.

Policy #28. Existing low-density residential areas that are adjacent to commercial or mixed-use development at the commercial corridor may be re-designated for medium-density development.

The development plans for the Area will be required to comply with these policies.

Policy #29. 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 the highest concentration of population.

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

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

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

The Plan provides a street circulation system that links the existing neighborhood with the new commercial district and provides safe pedestrian connections to the

developing commercial services. The added street connectivity also provides enhanced pedestrian access to nearby parks and trails.

Policy # 44. All residential areas shall be provided with community water and sewer services and other facilities necessary for safe, healthful, convenient urban living consistent with the density of development.

Policy #45. Residential development shall be coordinated with other land use elements and community facilities, which are consistent with projected housing densities.

Policy #46. Electric power, telephone, and cable TV distribution and service lines shall be located underground in new developments. Efforts shall be made to place existing utility lines underground in established residential areas.

The Area is already served by community water and sewer. As the undeveloped portion of the Area develops, City sewer service will be extended. Water service is provided by private water companies. There is an existing facilities plan for the Murphy Crossing Refinement Plan area. Other essential utilities such as electricity, telephone and gas are also available. The Plan relates to and complies with this section of the General Plan.

Chapter 6 - The Economy and Lands for Economic Growth

Bend's continued growth has put a burden on the existing commercial districts to provide adequate lands for new jobs and services. Sufficient land is needed to promote quality economic growth and assurance of a diverse economy.

Policy #22. The city shall strive to retain and enhance desirable existing commercial areas and encourage property owner's efforts to rehabilitate or redevelop older commercial areas.

Policy #24. All commercial developments shall be subject to special development standards relating to setbacks, landscaping, physical buffers, screening, access, signs, building heights, parking areas, and design review.

Policy #27. Commercial developments that abut residential zones or residential uses shall be subject to special setback and screening provisions.

Policy #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 Streets.

Policy #31. It is the intent of the [General] 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 exists, and that favor right turns and merging over the use of traffic signals.

The basis of the Murphy Crossing Refinement Plan was to identify and resolve transportation related design issues in the South Parkway area. All access to and from any Murphy Crossing development will be via internal and parallel facilities. The Plan's supports commercial development opportunities along 3rd with street and intersection improvements Street supports this section of the General Plan.

Chapter 7 – Transportation Systems

Goals:

- 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.
- Address traffic congestion and problem areas by evaluating the broadest range of transportation solutions.
- Coordinate and design transportation improvements to assure the expenditure of resources in the most cost-effective manner.
- Encourage the development of land use patterns that provide efficient, compact use of land, and facilitate a reduced number and length of trips.
- Implement transportation improvements to foster economic development and business vitality.
- Design and locate transportation facilities to be sensitive to protecting the livability of the community.
- Design and construct the transportation system to enhance travel safety for all modes.

The Plan implements the Murphy Crossing Refinement Plan which took into account the Transportation Goals of the General Plan. The proposed public improvement projects address transportation deficiencies in the Area and follow the recommendations of the adopted Murphy Crossing Refinement Plan. The land to the east of the Murphy Crossing Area will be developed with the above goals as guiding principals.

Transportation and Land Use Policies:

Policy #1. 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 high concentrations of population.

The proposed projects within the Area facilitate the development of a street network. This network will encourage the development of medium and high density residential units which will have access to arterial streets and be near commercial services, employment and open space.

Policy #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.

The proposed public improvement projects within the Area will help facilitate the development of mixed use zoning parcels.

Pedestrian and Bicycle Systems:

Policy #6. Bike lanes shall be included on all new and reconstructed arterials and major collectors, except where bikeways are authorized by the Transportation Systems Plan. Bike lanes shall also be provided when practical on local streets within commercial and industrial areas.

Bike lanes will be included on all new Minor Arterials and Major Collectors in the Area that are built as projects under the Plan.

Policy #7. Property tight sidewalks shall be included on both sides of all new streets except where extreme slopes, severe topographical constraints, or special circumstances exist. Landscape strips shall separate curbs and sidewalks on new and reconstructed roads. Sidewalks shall be added to all existing arterial and collector streets to fill the gaps in the pedestrian system.

The Plan relates to this section of the General Plan and the specifications in the Murphy Crossing Refinement Plan. The construction of roads in the Area will include these features as required in the Murphy Crossing Refinement Plan.

Street System:

Policy #1. Streets shall be located, designed and constructed to meet their planned function and provide space for adequate planting strips, sidewalks, motor vehicle travel and bike lanes (where appropriate). Specific effort should be made to improve and enhance east-west circulation patterns for all modes of travel throughout the community.

The Plan relates to this section by ensuring that the streets are located, designed and constructed to meet their planned function and provide space for

adequate planting strips, sidewalks, motor vehicle travel and bike lanes (where appropriate).

Policy #25. Landscaped medians should be included on all arterial streets, except where right-of-way acquisition is not possible, that incorporate left-turn refuge lanes at controlled intervals to improve community appearance, maintain system mobility and to reduce the adverse affects of wide street widths to all types of travel. On streets with multiple vehicle lanes and wide curb radii, pedestrian refuge islands shall be constructed to minimize street crossing distances.

The proposed special roadway cross section standards for Murphy Road in the Murphy Crossing Refinement Plan include landscaped medians that incorporate left-turn refuge lanes. Streets built as projects under the Plan will be built to these standards.

Policy #26. Frontage roads shall be provided parallel to arterial streets, as illustrated on the Bend Urban Area Roadway System Plan Map, or as determined necessary by the City or State, to maintain an acceptable level of safety and carrying capacity on the arterial street system.

The Plan provides for construction of a frontage road, which will be classified as a major collector, on the west side of the Bend Parkway between Powers Road and Baker Road, all as provided in the adopted Murphy Crossing Refinement Plan .

Chapter 8 – Public Facilities

Goals 8.1

Adequate public facilities are the key to stable urban development. The goals below provide general guidance for maintaining and improving the level and quality of urban services as growth occurs in Bend. The citizens and elected officials wish:

- To have public and private utility systems provide adequate levels of service to the public at reasonable cost;
- For the city, county, and special districts to cooperate in the provision of adequate urban services in an efficient and timely manner to support urban development;
- For new development to pay its fair share of the cost of major facilities needed to support development;
- To ensure that public services will not have negative impacts on the environment or the community; and

- To locate and operate public buildings and other public facilities to best serve the needs of the residents.

The Plan envisions new development primarily in the Murphy Crossing Refinement Area. The Murphy Crossing Refinement Plan Area is within two private water service areas.

The north half of the site is served by Roats Water System and the south is served by Avion. Both service providers have franchise agreements with the City for operation inside the city limits. The City's franchise agreement requires that new water line construction and other system improvements meet city fire flow requirements and other standards for delivery. To comply with this requirement, meet the forecasted demand, prevent any degradation in service to existing customers and serve large commercial customers in the urban renewal area, Avion Water Company will need to construct a new water transmission main from their existing reservoir, north beside US 97 to the south end of the urban renewal area. The new water main also will allow the Roats water system to meet the city's requirement in the north part of the urban renewal area, since the two systems are interconnected. The Plan includes funding for assistance to complete this construction.

Several years ago the City constructed a mainline sewer through the north half of the Murphy Crossing Refinement Plan area in order to eliminate a failing septic system in Romaine Village. The mainline system is a gravity sewer. The City Engineering Division prepared a Master Sewer Plan for Murphy Crossing. All areas of the Murphy Crossing Refinement Plan area can be served with gravity sewer as indicated in the Murphy Crossing Refinement Plan.

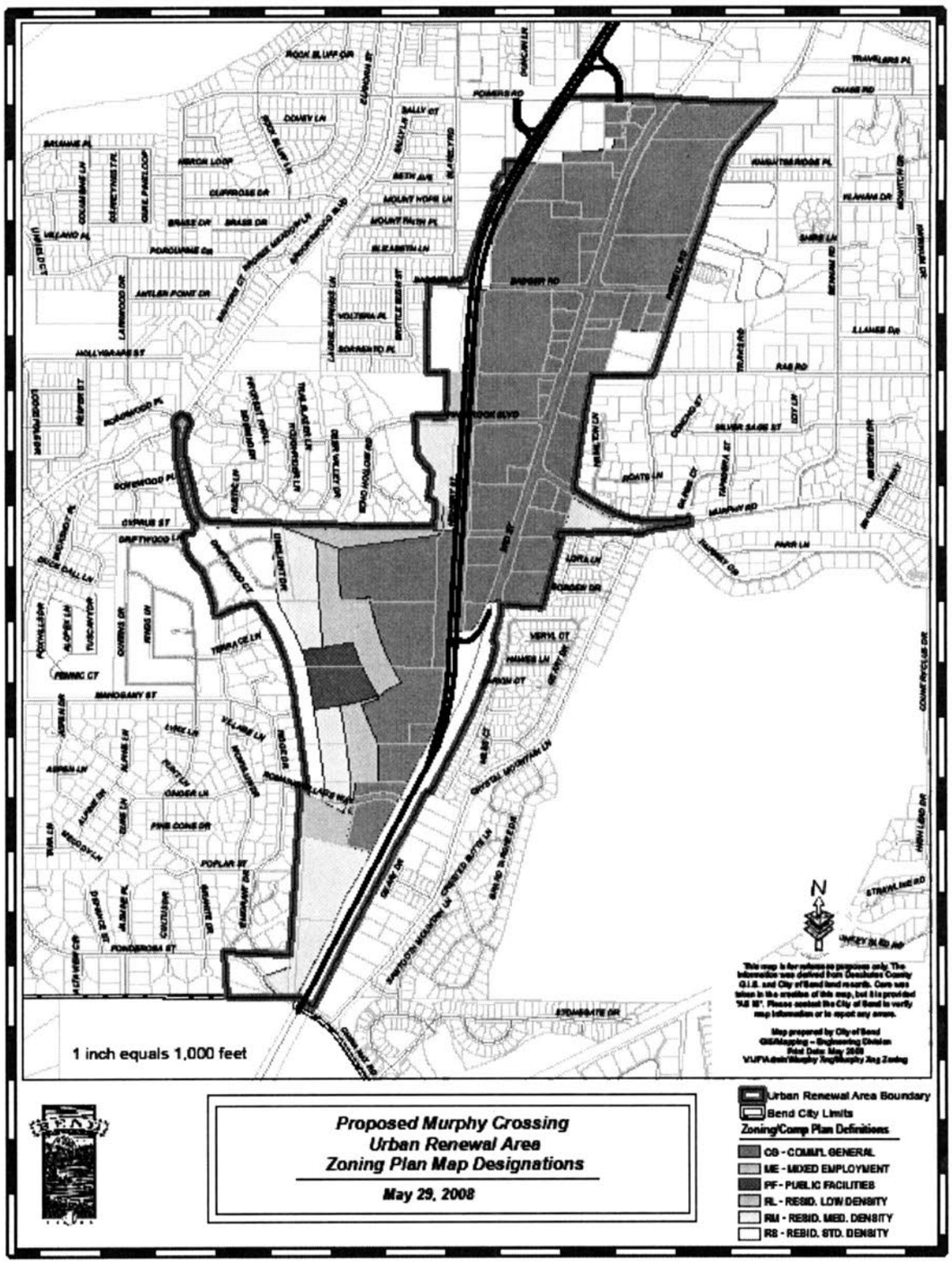
Financing of improvements in the Area will be a combination of financing methods potentially including but not limited to tax increment financing, systems development charges and local improvement districts. These methods require developers to share in the cost of the included major facilities.

The Plan relates to this section of the Bend General Plan by providing sewer and water improvements.

B. Bend Development Code

The City of Bend Development Code establishes zoning districts to control land use throughout the city and regulates development standards within these established use districts. The proposed Area includes a large portion of sprawling commercial development in the north, and a large section of multi-zoned vacant land in the south. Specifically, the proposed Area contains General Commercial, Mixed Employment, Public Facilities, Residential Low Density, Residential Medium Density and Residential Standard Density zones.

Figure 3. Zoning



Murphy Crossing Refinement Plan Overlay:

General Commercial (CG): This district is the main district in the area east of the Parkway. It is also located primarily between the Bend Parkway and the north/south frontage road. The General Commercial District provides for a mix of commercial uses with large site requirements and smaller-scale service commercial uses that can provide a pedestrian-oriented street frontage.

The proposed Plan is consistent with the general objectives and specific development standards prescribed for this zoning district. The Plan will help facilitate development of the properties within this zone by providing required public improvements.

Mixed Use (Mixed Employment) (ME): The Mixed Employment District is applied to areas of Murphy Crossing adjacent to primary commercial streets, to provide opportunities for a variety of smaller-scale, pedestrian-oriented commercial uses located in ground floor street frontages, with residential uses and offices above. Residential units may be located on the ground floor when adjacent to other multi-family housing. The residential density for the residential component of mixed-use projects shall not exceed 21.7 units per gross acre.

The proposed Plan is consistent with the general objectives and specific development standards prescribed for this zoning district. The Plan will help facilitate development of the properties within this zone by providng required public improvements.

Public Facilities/Open/Park Space (PF): The Public Facilities Zone is intended to provide for facilities owned and operated by public entities. Such facilities include but are not limited to schools, parks, libraries, and police and fire stations.

The proposed Plan is consistent with the general objectives and specific development standards prescribed for this zoning district. The Plan proposes assistance for park development.

Multifamily Residential (Residential Medium Density) (RM): The Multifamily Residential overlay located within the central plan area provides a transition between the new standard density single family homes and the more intense commercial development along the easterly portion of the refinement plan area. The density range within the central core shall be 10 to 21.7 units per gross acre. Multifamily Residential development is also located at the north and south ends of the Area along the Parkway. The density range within these areas shall be 7.3 to 15 units per gross acre.

The proposed Plan is consistent with the general objectives and specific development standards prescribed for this zoning district. The development of a street network within the area will help encourage residential development.

Single Family (Residential Standard Density) (RS): In the west portion of the Area, this zoning is located along the western boundary of the refinement plan area and predominately north of Romaine Village Way. This area provides a transition between the existing Low Density Residential (RL) housing and the new Murphy Crossing development. The minimum lot size within the RS zone will be 6000 sq ft. with a minimum lot depth of 100 feet when lots abut existing RL development. Homes may be clustered or attached as zero lot line to provide maximum preservation of existing trees.

In the east portion of the Area, there is a small area of RS zoning just north of Rae Road and another area south of Powers Road east of the Parkway.

Single Family Low Density Residential (RL): This zoning is located primarily in the west portion of the Area, just north of Pinebrook Boulevard and just south of the northern boundary on the west side. The RL district consists of large urban residential lots that are served with a community water system and DEQ permitted community or municipal sewer systems. The residential density range in this district is 1.1 to 2.2 dwelling units per gross acre.

The proposed Plan is consistent with the general objectives and specific development standards prescribed for the RS and RL zoning districts. The development of a street network within the Area will help encourage residential development west of the Parkway. Development plans do not interfere with the RS zoned properties on the east side of the Parkway. The Plan will relate to and comply with the standards developed in the Murphy Crossing Refinement Plan for the RS and RL zoning districts.

Remainder of Area Zoning (Outside of Murphy Crossing Refinement Plan Area):

Low Density Residential: The Low Density Residential District consists of large urban residential lots that are served with a community water system and DEQ permitted community or municipal sewer systems. The residential density range in this district is 1.1 to 2.2 dwelling units per gross acre.

The proposed Plan is consistent with the general objectives and specific development standards prescribed for this zoning district. The

development of a street network within the Area will help encourage residential development.

Standard Density Residential: The Standard Density Residential District is intended to provide opportunities for a wide variety of residential housing types at the most common residential densities in places where community sewer and water services are available. The residential density range in this district is 2.0 to 7.3 dwelling units per gross acre.

The proposed Plan is consistent with the general objectives and specific development standards prescribed for this zoning district. The development of a street network within the Area will help encourage residential development.

Medium Density Residential: The Medium Density Residential District is intended to provide primarily for the development of multiple family residential housing in areas where sewer and water service are available. The residential density range in the District is 7.3 to 21.7 units per gross acre and shall provide a transitional use area between other residential districts and other less restrictive areas.

The proposed Plan is consistent with the general objectives and specific development standards prescribed for this zoning district. The development of a street network within the Area will help encourage residential development.

General Commercial District: The Convenience Commercial District is adjacent and connected to the residential district(s) it is intended to serve. Convenience Commercial uses are larger in scale and area than neighborhood commercial uses and provide for frequent shopping and service needs of nearby residents. New Convenience Commercial nodes shall develop as commercial centers rather than a commercial strip and be limited in size up to 5 acres.

The proposed Plan is consistent with the general objectives and specific development standards prescribed for this zoning district. In the area east of the Parkway, loan assistance may be able to provide upgrading of properties within the Area.

Each of these districts contain specific development standards, intended to promote site planning and design that consider the natural environment, maintain the required dimensional standards while promoting energy conservation, privacy, safe and efficient parking areas, and improve the general living environment and economic life of a development.

The proposed Plan is consistent with the general objectives and specific development standards prescribed for each of these zoning districts. The Plan will support the development of underdeveloped commercial mixed-use and residential land, thereby providing employment and housing opportunities, which will in turn encourage full utilization of adjacent parcels.

C. Transportation System Plan

The purpose of the Bend Urban Area Transportation System Plan (TSP) is to help guide the development of a transportation system that will meet the forecast needs of the Bend community. This plan provides policy and a plan framework that will enable Bend to design a balanced transportation system for the near-term and the next twenty years. Strategies for planning and implementing a wide range of transportation components are addressed in the TSP including automobile, public transportation, bicycle and pedestrian travel.

The TSP classifications for the roads within the area are:

Expressway:	Bend Parkway
Principal Arterial:	Highway 97 / 3rd Street
Minor Arterial:	Brookswood Boulevard Murphy Road
Major Collector:	Ponderosa Street Lodgepole Drive Parrell Road Powers Road New Collector in the Murphy Crossing Refinement Plan
Local:	New local streets in the Murphy Crossing Refinement Plan area

The Plan supports and implements the components of the Transportation Systems Plan. The Plan proposes to construct the street infrastructure necessary for the development of the Area.

The section of the TSP which relates specifically to the Area is on page 109 of the Bend General Plan, which includes the TSP, under the heading: Expressway Descriptions: The Bend Parkway. (see following section)

D. South Bend Parkway Refinement Study and Murphy Crossing Refinement Plan

In the summer of 2001, the South Bend Parkway Refinement Study was started to explore future options for replacing the at-grade intersections. The purpose of the refinement study was to help develop a detailed improvement and management plan for the southern section of the Bend Parkway from Powers

Road to Bend's southern urban growth boundary. The South Bend Parkway Refinement Study encompassed City of Bend and State of Oregon transportation facilities. The study area extended from just north of Powers Road to just south of the Baker Road interchange with US Highway 97. The study area also extended from Brookswood Boulevard on the west to Parrell Road on the east. A joint Oregon Department of Transportation (ODOT) and City of Bend project development team evaluated thirteen long-term alternatives, including a no-build, for the study. Of the twelve build alternatives, three were selected (Alternatives A, H and H-Modified) by the project development team to forward as alternatives to be further analyzed. All of the build alternatives included these features:

- Construct an interchange at Powers Road;
- Close the Badger Road connection to the Parkway;
- Restrict or close the Pinebrook Boulevard connection;
- Murphy Road realigned to the south and connected to Brookswood Boulevard;
- Ponderosa Street / China Hat Road intersection converted to right-in/right-out with acceleration lanes;
- New Roundabout at the intersection of Brookswood Bouleveard and the extension of Murphy Road; and
- Powers Road widened to four lanes between Brookswood Boulevard and 3rd Street.

The recommended alternative was H-Modified with Option 1, and includes the features listed above, plus the following:

- Directional fly-over from southbound 3rd Street to southbound US Highway 97;
- Southbound off-ramp from the Bend Parkway to the frontage road; and
- Northbound loop on-ramp from 3rd Street to the Bend Parkway

In 2003, following years of public meetings, the OTC and the City of Bend selected Alternative H-Modified with Option 1 for the South Parkway Refinement. The selection of this alternative came with several conditions that needed to be satisfied prior to implementing the plan. Below are the conditions:

- Select the alignment for the realigned Murphy Road to extend west to Brookswood Boulevard;
- Select the alignment for the frontage road west of the Parkway to connect Powers Road to Ponderosa Drive;

- Identify the timing of the right-in/right-out configuration for Ponderosa Drive / China Hat Road and US Highway 97;
- Identify the improvements needed on Powers Road between 3rd Street and Brookswood Boulevard;
- Identify the improvements needed on Brookswood Boulevard from Murphy Road to Powers Road;
- Identify the improvements needed on Parrell Road between Powers Road and China Hat Road; and
- Select the alignment for the frontage road from Ponderosa Drive south to Baker Road.

To meet those conditions, in March 2005, the City of Bend initiated the Murphy Crossing Refinement Plan. Over a three month period of time, extensive public input was received including stakeholder and property owner interviews and two public meetings. From this public process a preferred design alternative emerged. The preferred plan proposed a local street plan consistent with the OTC conditions and a land use plan required new zoning designations within the study area. Based on the preferred alternative plan that came out of the Murphy Crossing Refinement Plan, the City Council authorized staff to proceed with the initiation and adoption of a refinement plan for the Murphy Crossing area in August 2005. Several adjoining properties expressed interest in becoming part of the refinement plan area. These properties complemented the refinement plan area and were incorporated into the plan. Staff proposed to create a refinement plan overlay for approximately 102.75 acres. The plan included a Zoning Map and General Plan Map amendments to re-designate the existing Urban Low Density Residential (RL), Urban Standard Density Residential (RS) and Highway Commercial (CH) zoning to Urban Standard Density Residential (RS), Urban Medium Density Residential (RM), Mixed Employment (ME) and General Commercial (CG). The proposal also required a Text Amendment to the Zoning Ordinance to add the new Murphy Crossing Refinement Plan, an amendment to the City's Transportation System Plan text and the Transportation System Plan Map to locate the Murphy Road over-crossing alignment and the frontage road alignment.

The Murphy Crossing Refinement Plan was adopted by City Council on November 15, 2006.

Concurrent with the Murphy Crossing project is a project led by ODOT called the Interchange Area Management Plan (IAMP). The State will adopt a management plan for the south end of the Bend Parkway that will accommodate the land uses designated in the Murphy Crossing Refinement Plan. As part of the IAMP, access within the planned area will be evaluated to determine if capacity and function will affect the level of service of the Bend Parkway. Ultimately the Murphy Crossing Refinement Plan will be acknowledged by the OTC in conjunction with the IAMP.

The City also has completed the Murphy Road Corridor Plan, which was accepted by City Council in November 2007 and recommends a three lane cross-section from Parrell to Brosterhaus with medians and roundabouts at the major intersections. Council also recommended a bridge over the railroad from Brosterhaus to 15th St. with a roundabout at 15th St.

Murphy Road from Third Street west to Brookswood Boulevard is an 80 foot section. This street will have two travel lanes divided by a 12 foot partially landscaped median with turn pockets. The north side will have a 5 foot sidewalk that meanders through a landscaped strip. The south side will have a 12 foot urban sidewalk with street trees placed in tree wells. Bike lanes will be located on both sides of the road.

The Plan relates to the components of the TSP in the Bend General Plan, the South Bend Parkway Refinement Study, the Murphy Crossing Refinement Plan the Interchange Area Management Plan and the Murphy Road Corridor Study by implementing those documents. The Plan proposes to assist in the facilitation of the construction of the street infrastructure necessary for the development of the Area, providing employment and housing opportunities and services for the residents of Bend.

APPENDIX A: LEGAL DESCRIPTION

DESCRIPTION

Legal description will be inserted prior to City Council Hearing.

Ordinance NS-2104
Exhibit B

REPORT ACCOMPANYING THE MURPHY CROSSING URBAN RENEWAL PLAN

City of Bend
July 14, 2008

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REPORT ON PROPOSED
MURPHY CROSSING URBAN RENEWAL PLAN

I. INTRODUCTION

The Murphy Crossing Urban Renewal Report (the "Report") contains background information and project details for the Murphy Crossing Urban Renewal Plan (the "Plan"). The Report is not a legal part of the Plan but is intended to provide public information and a basis for the findings made by the City Council as part of its approval of the Plan.

The Report provides the information required in ORS 457.085(3). The format of the Report is based on this statute.

II. EXISTING PHYSICAL AND ECONOMIC CONDITIONS AND IMPACT ON MUNICIPAL SERVICES

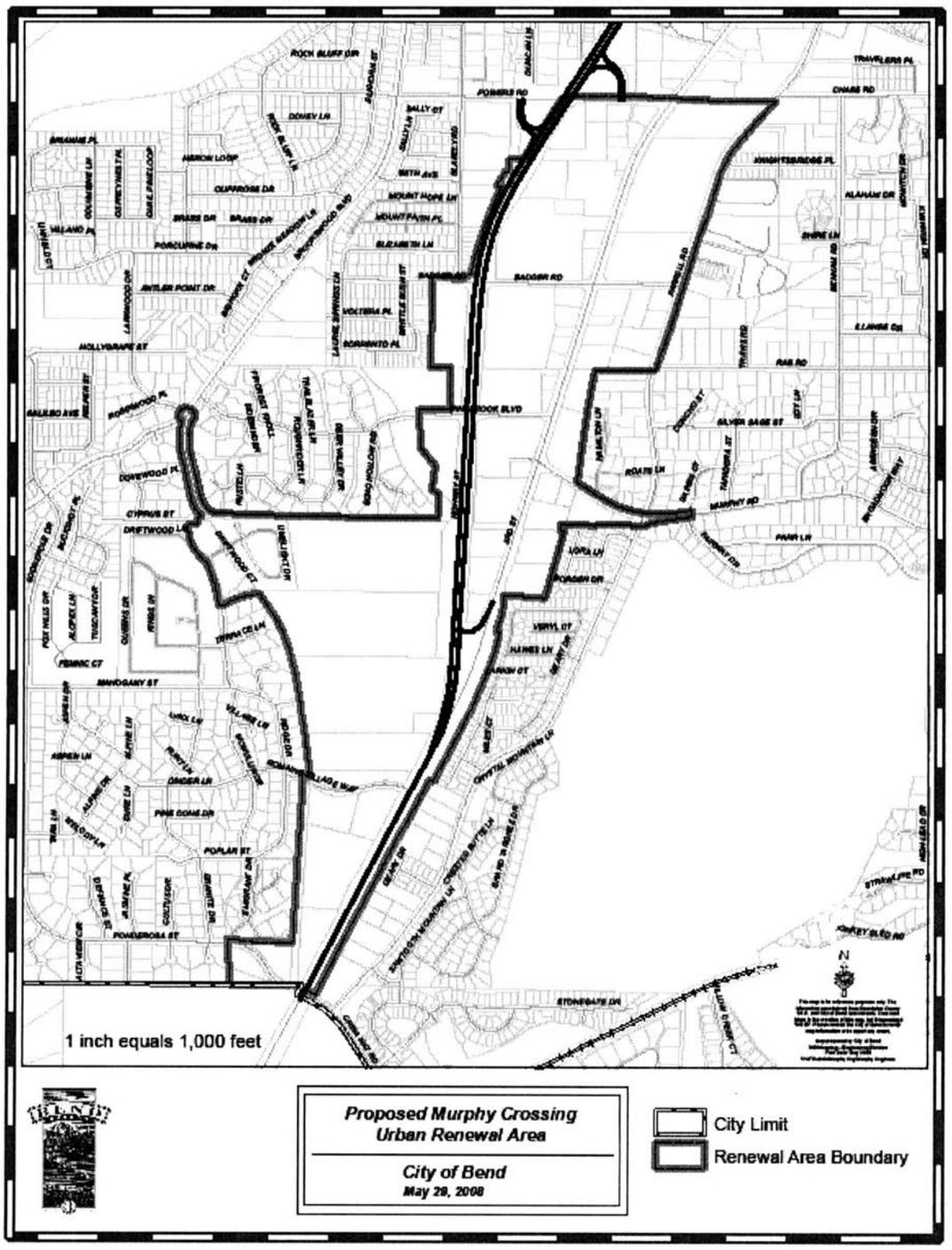
This section of the Report describes existing conditions within the Murphy Crossing Urban Renewal Area (the "Area"), documenting the occurrence of "blighted areas" as defined by ORS 457.010(1).

A. Physical Conditions

1. Land Use

The Area, shown in Figure 1 below, contains approximately 238 acres, including public right-of-way (ROW). It includes 73 individual properties. All of the Area is inside Bend city limits and within the Urban Growth Boundary.

Figure 1. Murphy Crossing Boundary



The street classifications of roads within the Area are:

Expressway:

The Area is served by one major transportation corridor, the Bend Parkway which runs north and south through the area and is designated in the Transportation Systems Plan (TSP) as an Expressway.

Principal Arterial:

Highway 97 / Third Street is designated as a Principal Arterial.

Major Collector:

The Major Collectors are Parrell Road, Lodgepole Drive and Ponderosa Street and a proposed major collector through the Area.

Minor Arterial:

Brookswood Boulevard is a Minor Arterial. There is also a proposed Minor Arterial on a western portion of Murphy Road.

Local Roads:

Transportation within the Area is conducted along local roads.

An analysis of property classification data from Deschutes County's 2007-08 Assessment and Taxation database was used to determine the land use designation of parcels in the Area. The largest portion (56.87 percent) of the Area is classified as Commercial General use, as shown in Table 1, "Existing Land Use (FY 2007-08)".

Table 1. Existing Land Use of Area (FY 2007-2008)

Land Use	# Lots	Acreage	% of Total (Acres)
Vacant Land: Residential	1	0.70	0.33%
Vacant Land: Potential Dividable	5	14.14	6.66%
Vacant Land: State	1	1.68	0.79%
Vacant Land: Church	1	0.83	0.39%
Improved: Potential Dividable	4	11.95	5.63%
Vacant Land: Commercial	10	60.60	28.54%
Commercial Improved	32	60.15	28.33%
Mobile Home Park	4	13.86	6.53%
Public Property	7	11.51	5.42%
Residential Improved	1	0.36	0.17%
Improvement Only	4	34.41	16.21%
Misc.	3	2.11	0.99%
Total	73	212.31	100.00%

Source: Bend GIS from Deschutes County Assess

2. Zoning

As illustrated in Table 2 and Figure 1, 101.24 acres (47.68 percent) of the Area is in commercial general use. About 2.75 acres (1.30 percent) is mixed employment and

46.73 acres (22.00 percent) is zoned for some type of residential use. Some of the parcels have a variety of zoning districts attributed to them.

Table 2. Existing Zoning of Area

Zone	# Lots	Acreage	% of Total (Acres)
General Commercial (CG)	47	101.24	47.68%
CG/ME/PF/RM/RS*	2	34.56	16.28%
CG/ME/RM	1	17.64	8.31%
CG/ME/RM/RS	2	9.39	4.42%
Mixed Employment (ME)	1	2.75	1.30%
Residential Medium Density (RM)	5	15.89	7.48%
RM/RS	2	5.99	2.82%
Residential Standard Density (RS)	12	24.02	11.31%
Residential Low Density (RL)	1	0.83	0.39%
Total	73	212.31	100.00%

Source: Bend GIS
* PF: Public Facilities

Figure 2. Murphy Crossing Urban Renewal Area Zoning

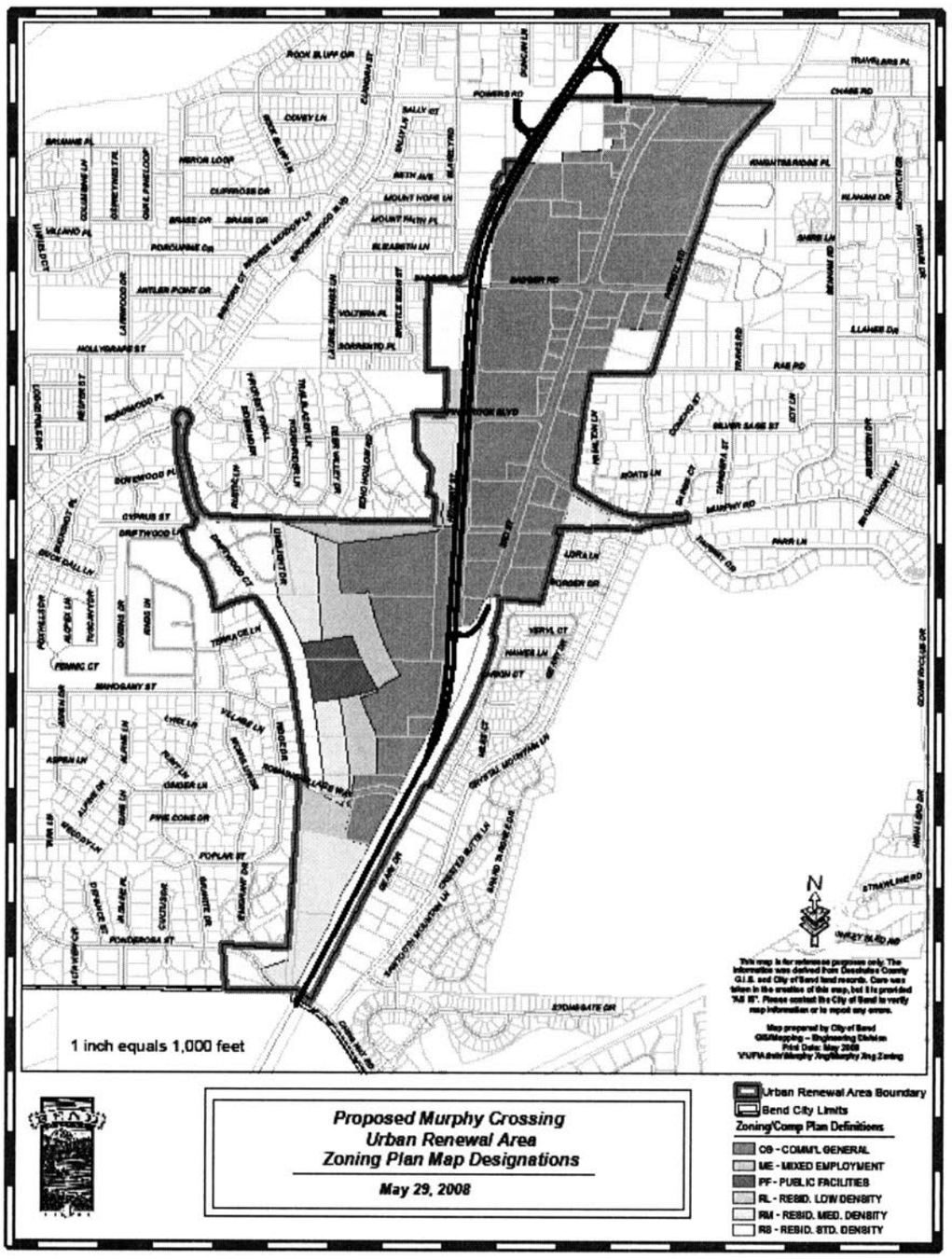
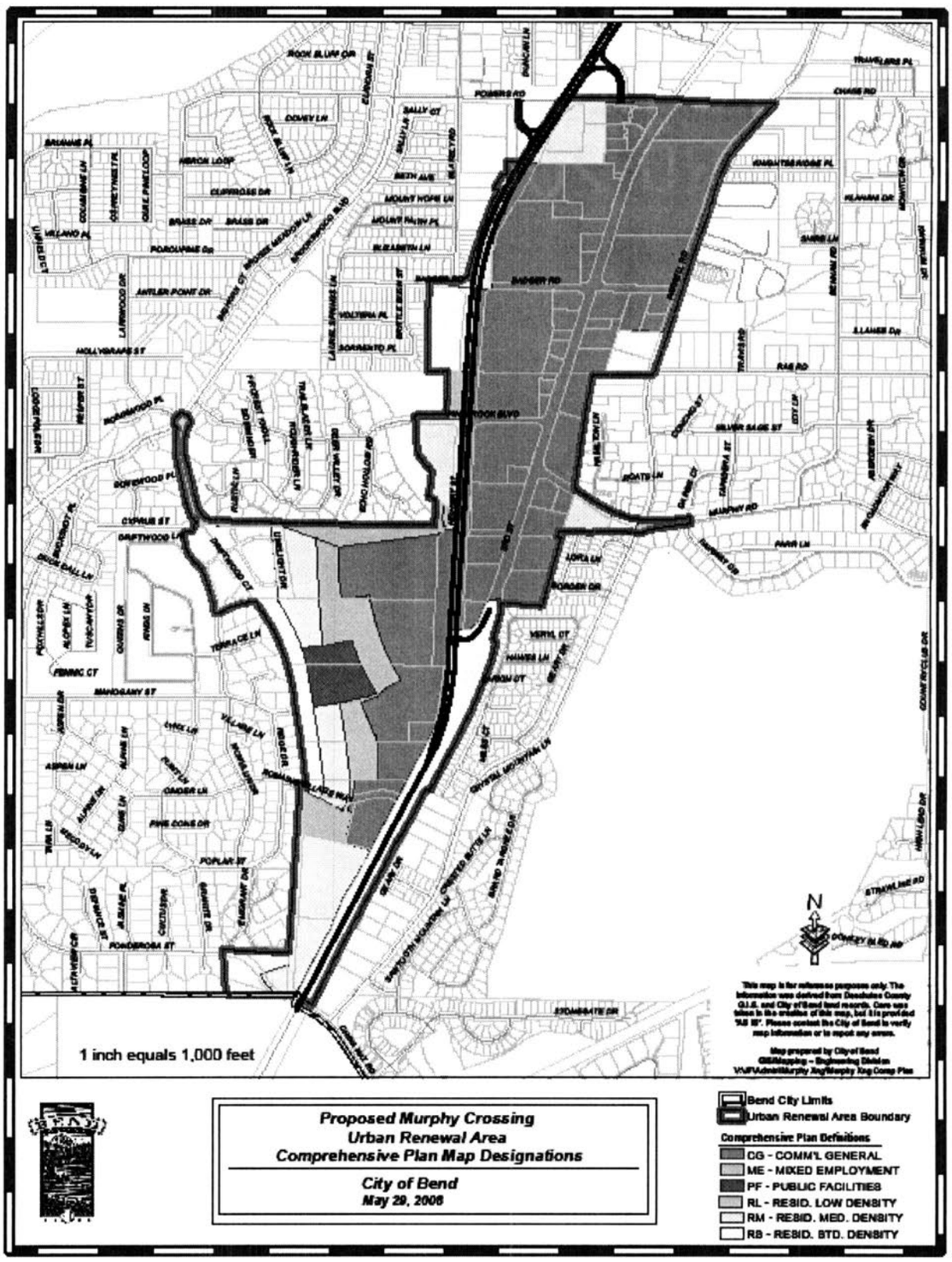


Figure 3. Murphy Crossing Urban Renewal Area Comprehensive Plan



B. Infrastructure

REPORT ON PROPOSED
MURPHY CROSSING URBAN RENEWAL PLAN

1. Transportation

Lands in the URA west of the Bend Parkway / US 97 are undeveloped and have virtually no access from either the Parkway or the existing local street system. Lands in the URA east of the Parkway are served by Third Street.

Prior to construction of the Parkway earlier in this decade, US 97, the regional arterial between California and Washington, followed Third Street through the Bend urban area. Consequently, the Third Street corridor developed with highway oriented commercial uses.

With the diversion of regional traffic to the Parkway, Third Street now functions as a local arterial. However, existing roadway improvements remain more suited to high-speed, high-volume regional traffic than to pedestrian-oriented, neighborhood-serving uses.

The transportation system existing within the Area is inadequate to meet the demands which will result from development of the Area.

2. Water, Sewer and Storm Drainage Facilities

Currently, the Area lacks adequate water, sewer and storm drainage facilities to support higher-intensity industrial uses consistent with the City's Comprehensive Plan.

The URA west of the Bend Parkway is undeveloped. It is assumed that construction of a local wastewater collection system in this area will be funded from a source other than urban renewal, such as a local improvement district.

The URA east of the Parkway, in the Third Street corridor, has complete sewer infrastructure.

Water service is provided by Avion Water Company and Roats Water Company.

The water, sewer and storm drainage facilities within the Area are inadequate to meet the demands which will result from development of the Area.

3. Parks and Open Space

There is one four acre proposed park in the Area. It is located west of Limelight Drive.

4. Public Spaces

Other than the parks above, there are no other public spaces in the area.

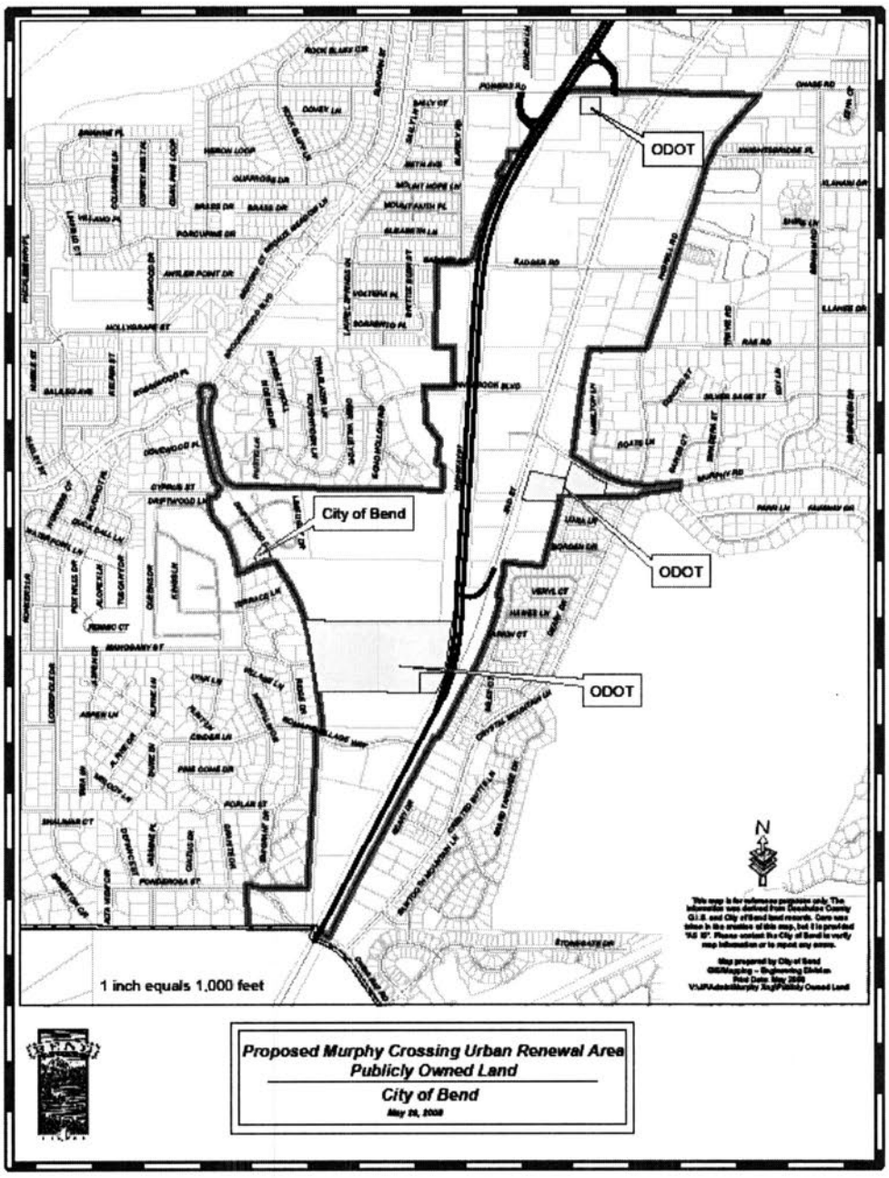
5. Public Parking

There is no public parking in the area.

6. Public Buildings/Public Property

The City of Bend owns a small parcel off of Driftwood Court. The Oregon Department of Transportation owns three parcels, as shown in Figure 4. There are no projects proposed for any of these parcels.

Figure 4. Publicly Owned Property



C. Social Conditions

Currently, the Area contains only 6 residential dwellings. Therefore social conditions are not a significant aspect of the Area and are not examined in detail.

D. Economic Conditions

1. Taxable Value of Property within the Area

The estimated total assessed value of the Area, including all real, personal, personal manufactured and utility properties, is $66,271,530 or 0.9 percent of Bend's total assessed value. The 2007-08 total assessed value of the City of Bend is $7,221,670,912.

2. Building to Land Value Ratio

An analysis of property values can be used to evaluate the economic condition of real estate investments in a given area. The relationship of a property's improvement value (the value of buildings and other improvements to the property) to its land value is generally an accurate indicator of the condition of real estate investments. This relationship is referred to as the "Improvement to Land Ratio" or "I:L". The values used are real market values. In urban renewal areas, the I:L may be used to measure the intensity of development or the extent to which an area has achieved its short- and long-term development objectives.

Table 3 below, "Improvement to Land Ratio," shows the improvement to land ratios for properties within the study area. As the table shows, 102.52 acres or around 48 percent of the Area is vacant. Approximately 90 percent of the study area has less than a 1.5:1 improvement value; the I:L ratios for improved properties in the urban renewal study area are very low. The I:L for fully improved property in this area would range from over 5.0 for the 3rd Street Corridor to over 12.0 for the Murphy Crossing Refinement Plan area.

Table 3. I:L Ratio of Taxable Parcels in Proposed Area

I:L Ratio	Parcels	Acres	% of Total (Acres)
No Improvements	26	102.52	48.29%
0.0 - 0.5	17	34.34	16.18%
0.5 - 1.0	16	25.88	12.19%
1.0 - 1.5	9	28.24	13.30%
1.5 - 2.0	4	12.12	5.71%
2.0 - 2.5	0	0.00	0.00%
2.5 - 3.0	0	0.00	0.00%
3.0 - 4.0	1	9.20	4.33%
4.0 - 5.0	0	0.00	0.00%
>5.0	0	0.00	0.00%
Total	*73*	*212.30*	*100.00%*

E. Impact on Municipal Services

The fiscal impact of tax increment financing on taxing districts that levy taxes within the Area ("affected taxing districts") is described in section IX of this Report. This subsection discusses the fiscal impacts resulting from potential increases in demand for municipal services.

Increases in commercial, mixed employment and residential occupancies within the Area will generally result in higher demand for fire, life safety and public safety services. The increased occupancies within the Area will also increase the demand for water, sewer and storm drainage services.

These impacts will be offset by the funding from the Plan for an improved transportation network within the area, increased public infrastructure including water and sewer and storm drainage which will provide incentives for developing sites which will create employment opportunities for the citizens of Bend.

The Plan also proposes improvements to the public park within the Area, which will help offset increased municipal services.

III. REASONS FOR SELECTION OF EACH URBAN RENEWAL AREA IN THE PLAN

There is one urban renewal area in the Plan and it was selected to improve and prevent the future occurrence of blighted areas as defined in ORS 457.010(1).

IV. THE RELATIONSHIP BETWEEN URBAN RENEWAL PROJECTS AND THE EXISTING CONDITIONS IN THE URBAN RENEWAL AREA

This section describes the relationship between the urban renewal projects called for in the Plan and conditions generally that were described in Section II of this Report and more particularly described below.

There are existing deficiencies in all urban infrastructure needs in the Murphy Crossing Urban Renewal Area. Deficiencies include inadequate transportation improvements, water, sewer and storm water facilities.

A. Transportation Improvements

1. Phase 1. Local Streets west of Bend Parkway

   The local streets west of the Bend Parkway include Murphy Road from the overpass west to the Brookswood Boulevard roundabout and a new street from the central roundabout north to Murphy Road.

   Relationship to Existing Conditions

   These streets do not presently exist. The transportation network is inadequate in relationship to anticipated future development activity.

2. Phase 2. Murphy Overcrossing of Parkway

   This includes an overpass on Murphy Road and a realignment of Murphy Road east of Parkway and a new street from Ponderosa Street north to the central roundabout.

   Relationship to Existing Conditions

   The overpass on Murphy Road does not exist. Murphy Road is not presently in the alignment east of Bend Parkway which will be necessary to tie into the overcrossing. The proposed new street does not exist. The transportation network is inadequate in relationship to anticipated future development activity.

3. Phase 3. Frontage Roads

   This improvement includes construction of Frontage Road from Murphy Road north to Pinebrook Blvd. and from Pinebrook Blvd. north to Badger Road.

Relationship to Existing Conditions

This section of road does not exist. The transportation network is inadequate in relationship to anticipated future development activity.

4. Phase 4. Parkway Improvements

Parkway improvements include a Third Street flyover ramp, a southbound off ramp and a northbound on ramp.

Relationship to Existing Conditions

One portion of this interchange presently exists: North bound 97 off ramp to Third Street.

The remainder of the proposed improvements do not exist. The transportation network is inadequate in relationship to anticipated future development activity.

5. Phase 5. Third Street Corridor Improvements

a. Third Street improvements from Pinebrook Blvd. to Powers Road include streetscape improvements such as sidewalks, landscaping, parking bays, median treatments and street lighting.

Relationship to Existing Conditions

Third Street is presently an auto-oriented street without sufficient pedestrian related improvements. There are no street trees, the sidewalks are narrow and incomplete, there is no pedestrian level lighting, and no streetscape improvements. The transportation network is inadequate in relationship to anticipated future development activity.

b. Intersection improvements at Third Street and Powers Road, streetscape improvements including street lighting, sidewalks, bike lanes, landscape strips.

Relationship to Existing Conditions

The intersection at Third Street and Powers Road is presently a high-speed auto-oriented intersection, and will be improved to a pedestrian scale intersection. Third Street is presently an auto-oriented street without sufficient pedestrian related improvements. The transportation network is inadequate in relationship to anticipated future development activity.

c. Intersection improvements at Powers Road /Parrell Road /Chase Road and improving the street connections to city standards from Chase Road to Brosterhouse Road.

Relationship to Existing Conditions

Most of the existing improvements are to a rural standard and need to be brought up to an urban standard. The transportation network is inadequate in relationship to anticipated future development activity.

d. Improvements from Parrell Road from Chase Road to Murray Road to modernize Parrell Road to bring it up to city standards.

Relationship to Existing Conditions

Most of the existing improvements are to a rural standard and need to be brought up to an urban standard. The transportation network is inadequate in relationship to anticipated future development activity.

6. Murphy Road overcrossing Brosterhous Road to 15th Street

A three lane bridge from Brosterhous Road to 15th Street intersection will be constructed. The project includes roundabout intersection improvements at Brosterhous Road and 15th Street.

Relationship to Existing Conditions

Murphy Road in this location does not presently exist. This overcrossing does not exist nor does the roundabout intersection at Brosterhous Road and 15th Street. It is estimated by the Bend Transportation Department that 25 percent of the traffic for this improvement will be generated by development in the Area. The transportation network is inadequate in relationship to anticipated future development activity.

Balancing transportation needs will be a critical component for providing safe and accessible routes for trucks, automobiles, bicyclists and pedestrians as the Area's commercial, residential and mixed employment development intensifies. Figure 5 shows the proposed transportation network.

Figure 5. Proposed Transportation Network

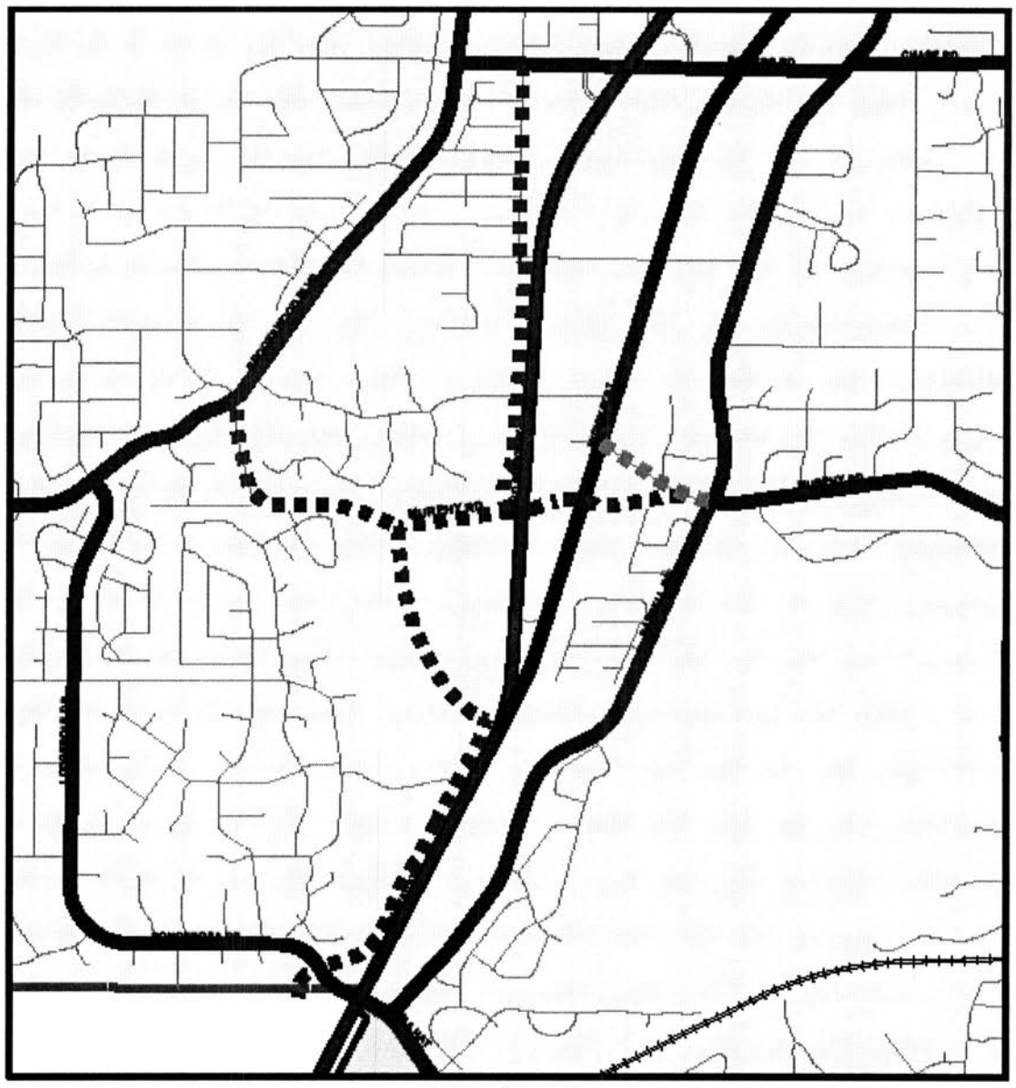


EXHIBIT B
PROPOSED BEND URBAN AREA TRANSPORTATION PLAN AMENDMENTS



B. Sewer Improvements

1. Provide additional capacity for the sewer system through the development of the master-planned Southeast Sewer Interceptor.
2. Upgrade the existing sewer system to accommodate projected increased flows.

Relationship to Existing Conditions

The Southeast Sewer Interceptor is in the master plan, but not yet constructed. The existing sewer system is comprised of a small diameter pipe which will need to be upgraded or supplemented by larger diameter transmission mains in anticipation of increased usage. The sewer facilities are inadequate in relationship to anticipated future development activity.

C. Water Improvements

1. Upgrade the regional storage and transmission facilities of Avion Water Company. Construct a 16-18 inch water transmission main from Avion's existing reservoir to the Area.
2. Upgrade the regional storage and transmission facilities of Roats Water Company. This upgrade will be facilitated by the upgrade to Avion's line as Roat's line is interconnected.

Relationship to Existing Conditions

The 16-18 inch water transmission main does not exist. The existing system is inadequate in relationship to anticipated future development activity.

D. Park Development

1. Provide partial funding to assist in the development of a four acre park in the Area. Provide additional funding to develop a pathway from the park.

Relationship to Existing Conditions

The park is now vacant land which has not been developed as a park. The park facilities in the Area are insufficient to serve anticipated future development. There is no pathway and the existing pedestrian facilities are inadequate to serve anticipated future development.

E. Affordable Housing Assistance

1. Establish an affordable housing assistance fund. The fund will be established by the Agency upon adoption of the Plan.

   Relationship to Existing Conditions

   There is no affordable housing assistance fund for this area. The funding for affordable housing assistance in the Area is inadequate.

F. Commercial Revitalization Loan Program

1. Establish a commercial revitalization loan program. The fund will be established by the Agency upon adoption of the Plan.

   Relationship to Existing Conditions

   There is no commercial revitalization loan program for this area. The funding for commercial loan revitalization assistance in the Area is inadequate.

V. THE ESTIMATED TOTAL COST OF EACH PROJECT AND THE SOURCES OF MONEYS TO PAY SUCH COSTS

Table 4 below shows the estimated total cost of each project and the estimated sources of funds to address such costs, with all figures in year of expenditure dollars. This analysis is based on known projects at the time of preparation of the Plan and does not include projects authorized by the Plan, but unknown at this time.

Table 4. Estimated Project Expenditures and Revenues (In Year of Expenditure Dollars)

Transportation Improvements	UR Funds	Other Funds
Phase 1. Local streets west of Parkway		
Murphy overpass west to Brookswood roundabout	0	5,400,000
New street from central roundabout north to Murphy	0	6,500,000
SUBTOTAL	**0**	**11,900,000**
Phase 2. Murphy overcrossing of Parkway		
Murphy overpass	1,000,000	7,800,000
Murphy realignment east of Parkway	1,600,000	
New street from Ponderosa north to central roundabout	3,400,000	
SUBTOTAL	**6,000,000**	**7,800,000**
Phase 3. Frontage roads		
Frontage road from Murphy north to Pinebrook	1,200,000	
Frontage road from Pinebrook north to Badger	1,900,000	
SUBTOTAL	**3,100,000**	
Phase 4. Parkway improvements		
Third Street flyover ramp	4,500,000	
Southbound off-ramp	1,600,000	
Northbound on-ramp	1,100,000	
SUBTOTAL	**7,200,000**	
TOTAL Phases 1-4, local street connectivity & Parkway improvements	**16,300,000**	**19,700,000**
Phase 5. Third Street corridor improvements		
Third Street boulevard improvements, Pinebrook to Powers (sidewalks, landscaping, parking bays, median treatments, street lighting)	6,000,000	1,000,000
Powers Road, Parkway to Parrell (intersection improvements at Third / Powers, street lighting, sidewalks, bike lanes, landscape strips)	3,000,000	2,000,000
Powers / Chase improvements (intersection improvement at Powers / Parrell / Chase, street connection to City standards from Chase to Brosterhous)	4,000,000	2,000,000
Parrell Road, Chase to Murphy (modernize to City standards)	7,000,000	2,000,000
SUBTOTAL THIRD STREET	**20,000,000**	**7,000,000**
Phase 6. Murphy Road overcrossing Brosterhous to 15th (25% to Area)	**3,250,000**	**9,750,000**
TOTAL TRANSPORTATION IMPROVEMENTS	**39,550,000**	**36,450,000**

Sewer Improvements		
Southeast Sewer Interceptor	3,400,000	
Upgrades to existing sewer system	400,000	
Total Sewer	3,800,000	
Water Improvements: 75% of costs	637,500	212,500
Total Sewer and Water	**4,437,500**	**212,500**
Park Improvements: new park development	425,000	
Trail system to park	60,000	
Affordable Housing Assistance	1,150,000	
Commercial Revitalization Loan Program	1,150,000	
Total Other Projects	**2,785,000**	**0**
Administration @approx 10%	**5,227,500**	**0**
TOTAL Project Costs	**$52,000,000**	**36,662,500**

VI. THE ANTICIPATED COMPLETION DATE FOR EACH PROJECT

Projects will be ongoing and accomplished in increments. Estimated phasing is shown in the project chart above. Project implementation dates are, in many projects, tied to a Cooperative Improvement Agreement with the State of Oregon.

VII. THE ESTIMATED AMOUNT OF TAX INCREMENT REVENUES REQUIRED AND THE ANTICIPATED YEAR IN WHICH INDEBTEDNESS WILL BE RETIRED

Table 5 shows the yearly tax increment revenues and their allocation to loan repayments, reimbursements, debt service and debt service reserve funds. It is anticipated that all debt will be retired by the end of FY 2033/2034. The total amount of tax increment revenues required to service debt is $ 59,091,853.

Table 5. Tax Increment Revenues, Debt Service and Debt Service Reserves

FY Ending June 30	2010	2011	2012	2013	2014	2015
Beginning Balance	0	393,535	474,140	474,140	474,140	1,143,896
Tax Increment Revenues	467,675	575,573	896,596	982,603	1,301,364	1,399,972
Interest	0	7,871	9,483	9,483	9,483	22,878
From Bond Proceeds	300,000				400,000	
Total	767,675	976,978	1,380,219	1,466,226	2,184,987	2,566,745
FY Ending June 30	2010	2011	2012	2013	2014	2015
Debt Service by Year						
Bond 1	374,140	374,140	374,140	374,140	374,140	374,140
Bond 2					666,951	666,951
Bond 3						
Total Long Term Debt Service	374,140	374,140	374,140	374,140	1,041,092	1,041,092
Reserve	374,140	374,140	374,140	374,140	1,041,092	1,041,092
Short Term	0	128,698	531,939	617,945	0	384,562
Balance	19,395	100,000	100,000	100,000	102,804	100,000

Table 5. Tax Increment Revenues, Debt Service and Debt Service Reserves, continued.

FY Ending June 30	2016	2017	2018	2019	2020	2021	2022
Beginning Balance	1,141,092	1,141,092	1,141,092	1,799,707	1,803,175	1,803,175	1,803,175
Tax Increment Revenues	1,740,612	1,852,826	2,128,969	2,253,447	2,338,859	2,426,620	2,516,794
Interest	22,822	22,822	22,822	35,994	36,063	36,063	36,063
From Bond Proceeds			210,000				
Total	2,904,526	3,016,739	3,502,882	4,089,148	4,178,097	4,265,858	4,356,033
FY Ending June 30	2016	2017	2018	2019	2020	2021	2022
Debt Service by Year							
Bond 1	374,140	374,140	374,140	374,140	374,140	374,140	374,140
Bond 2	666,951	666,951	666,951	666,951	666,951	666,951	666,951
Bond 3			662,083	662,083	662,083	662,083	662,083
Total Long Term Debt Service	1,041,092	1,041,092	1,703,175	1,703,175	1,703,175	1,703,175	1,703,175
Reserve	1,041,092	1,041,092	1,703,175	1,703,175	1,703,175	1,703,175	1,703,175
Short Term	722,343	834,556	0	582,799	671,748	759,509	849,683
Balance	100,000	100,000	96,532	100,000	100,000	100,000	100,000

Table 5. Tax Increment Revenues, Debt Service and Debt Service Reserves, continued.

FY Ending June 30	2023	2024	2025	2026	2027	2028	2029
Beginning Balance	1,803,175	1,803,175	1,429,035	1,429,035	1,429,035	1,429,035	762,083
Tax Increment Revenues	2,609,448	2,704,650	2,802,470	2,902,981	3,006,255	3,112,369	3,221,401
Interest	36,063	36,063	28,581	28,581	28,581	28,581	15,242
From Bond Proceeds							
Total	4,448,687	4,543,889	4,260,086	4,360,596	4,463,870	4,569,984	3,998,726
FY Ending June 30	2023	2024	2025	2026	2027	2028	2029
Debt Service by Year							
Bond 1	374,140	374,140					
Bond 2	666,951	666,951	666,951	666,951	666,951	666,951	
Bond 3	662,083	662,083	662,083	662,083	662,083	662,083	662,083
Total Long Term Debt Service	1,703,175	1,703,175	1,329,035	1,329,035	1,329,035	1,329,035	662,083
Reserve	1,703,175	1,329,035	1,329,035	1,329,035	1,329,035	662,083	662,083
Short Term	942,337	1,411,679	1,502,016	1,602,527	1,705,801	2,478,866	2,574,560
Balance	100,000	100,000	100,000	100,000	100,000	100,000	100,000

Table 5. Tax Increment Revenues, Debt Service and Debt Service Reserves, continued.

FY Ending June 30	2030	2031	2032	2033	2034
Beginning Balance	762,083	762,083	762,083	100,000	100,000
Tax Increment Revenues	3,333,432	3,448,544	3,566,821	3,688,350	3,813,222
Interest	15,242	15,242	15,242	2,000	2,000
From Bond Proceeds					
Total	4,110,757	4,225,869	4,344,146	3,790,350	3,915,222
FY Ending June 30	2030	2031	2032	2033	2034
Debt Service by Year					
Bond 1					
Bond 2					
Bond 3	662,083	662,083	662,083		
Total Long Term Debt Service	662,083	662,083	662,083		
Reserve	662,083	662,083	0	0	
Short Term	2,686,590	2,801,702	3,582,062	3,690,350	3,815,222
Balance	100,000	100,000	100,000	100,000	100,000

VIII. FINANCIAL ANALYSIS OF THE PLAN

The estimated tax increment revenues of $59,091,853 are based on projections of the assessed value of development within the Area and payment of fees. The projections use the same development assumptions used in the Murphy Crossing Refinement Plan plus a certain amount of development in the 3rd Street corridor.

Table 6 shows the projected incremental assessed value, projected tax rates that would produce tax increment revenues, and the annual tax increment revenues (not adjusted for undercollection, penalties and interest). These, in turn, provide the basis for the projections in Table 5.

Table 6. Projected Incremental Assessed Value, Tax Rates and Tax Increment Revenues

FY Ending June 30	2008	2009	2010	2011	2012	2013
Prior Year Total Assessed Value	70,000,000	70,000,000	71,050,000	105,450,948	115,259,478	143,625,683
Appreciation Percentage		1.50%	1.50%	2.75%	2.75%	2.75%
Appreciation Value	0	1,050,000	1,065,750	2,899,901	3,169,636	3,949,706
Assessed Value of New Development	0	0	33,335,198	6,908,629	25,196,569	3,112,871
Total Assessed Value	70,000,000	71,050,000	105,450,948	115,259,478	143,625,683	150,688,260
Frozen Base Assessed Value	70,000,000	70,000,000	70,000,000	70,000,000	70,000,000	70,000,000
Incremental Assessed Value		1,050,000	35,450,948	45,259,478	73,625,683	80,688,260
Tax Rate	14.8865	14.3865	13.8865	13.3865	12.8187	12.8187
Tax Inc Revenues			492,290	605,866	943,786	1,034,319
Collected @						
95%			467,675	575,573	896,596	982,603

FY Ending June 30	2014	2015	2016	2017	2018	2019
Prior Year Total Assessed Value	150,688,260	176,863,975	184,961,287	212,933,653	222,148,242	244,824,240
Appreciation Percentage	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%
Appreciation Value	4,143,927	4,863,759	5,086,435	5,855,675	6,109,077	6,732,667
Assessed Value of New Development	22,031,788	3,233,552	22,885,931	3,358,913	16,566,922	3,489,133
Total Assessed Value	176,863,975	184,961,287	212,933,653	222,148,242	244,824,240	255,046,040
Frozen Base Assessed Value	70,000,000	70,000,000	70,000,000	70,000,000	70,000,000	70,000,000
Incremental Assessed Value	106,863,975	114,961,287	142,933,653	152,148,242	174,824,240	185,046,040
Tax Rate	12.8187	12.8187	12.8187	12.8187	12.8187	12.8187
Tax Inc Revenues	1,369,857	1,473,654	1,832,224	1,950,343	2,241,019	2,372,050
Collected @						
95%	1,301,364	1,399,972	1,740,612	1,852,826	2,128,969	2,253,447

Table 6: Projected Incremental Assessed Value, Tax Rates and Tax Increment Revenues, continued.

FY Ending June 30	2020	2021	2022	2023	2024	2025
Prior Year Total Assessed Value	255,046,040	262,059,807	269,266,451	276,671,279	284,279,739	292,097,432
Appreciation Percentage	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%
Appreciation Value	7,013,766	7,206,645	7,404,827	7,608,460	7,817,693	8,032,679
Assessed Value of New Development	0	0	0	0	0	0
Total Assessed Value	262,059,807	269,266,451	276,671,279	284,279,739	292,097,432	300,130,111
Frozen Base Assessed Value	70,000,000	70,000,000	70,000,000	70,000,000	70,000,000	70,000,000
Incremental Assessed Value	192,059,807	199,266,451	206,671,279	214,279,739	222,097,432	230,130,111
Tax Rate	12.8187	12.8187	12.8187	12.8187	12.8187	12.8187
Tax Inc Revenues	2,461,957	2,554,337	2,649,257	2,746,788	2,847,000	2,949,969
Collected @						
95%	2,338,859	2,426,620	2,516,794	2,609,448	2,704,650	2,802,470

FY Ending June 30	2026	2027	2028	2029	2030	2031
Prior Year Total Assessed Value	300,130,111	308,383,689	316,864,240	325,578,007	334,531,402	343,731,016
Appreciation Percentage	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%
Appreciation Value	8,253,578	8,480,551	8,713,767	8,953,395	9,199,614	9,452,603
Assessed Value of New Development	0	0	0	0	0	0
Total Assessed Value	308,383,689	316,864,240	325,578,007	334,531,402	343,731,016	353,183,619
Frozen Base Assessed Value	70,000,000	70,000,000	70,000,000	70,000,000	70,000,000	70,000,000
Incremental Assessed Value	238,383,689	246,864,240	255,578,007	264,531,402	273,731,016	283,183,619
Tax Rate	12.8187	12.8187	12.8187	12.8187	12.8187	12.8187
Tax Inc Revenues	3,055,769	3,164,479	3,276,178	3,390,949	3,508,876	3,630,046
Collected @						
95%	2,902,981	3,006,255	3,112,369	3,221,401	3,333,432	3,448,544

Table 6: Projected Incremental Assessed Value, Tax Rates and Tax Increment Revenues, continued.

FY Ending June 30	2032	2033	2034
Prior Year Total Assessed Value	353,183,619	362,896,168	372,875,813
Appreciation Percentage	2.75%	2.75%	2.75%
Appreciation Value	9,712,550	9,979,645	10,254,085
Assessed Value of New Development	0	0	0
Total Assessed Value	362,896,168	372,875,813	383,129,898
Frozen Base Assessed Value	70,000,000	70,000,000	70,000,000
Incremental Assessed Value	292,896,168	302,875,813	313,129,898
Tax Rate	12.8187	12.8187	12.8187
Tax Inc Revenues	3,754,548	3,882,474	4,013,918
Collected @			
95%	3,566,821	3,688,350	3,813,222

IX. IMPACT OF THE TAX INCREMENT FINANCING, BOTH UNTIL AND AFTER THE INDEBTEDNESS IS REPAID, UPON ALL ENTITIES LEVYING TAXES UPON PROPERTY IN THE URBAN RENEWAL AREA

The impact of tax increment financing on overlapping taxing districts consists primarily of the property tax revenues foregone on permanent rate levies as applied to the growth in assessed value.

The tables below show no impacts on the Bend Public Schools School District or the Educational Service District. Under current school funding law, property tax revenues are combined with State School Fund revenues to achieve per-student funding targets. Under this system, property taxes foregone are replaced with State School Fund revenues.

Table 7. Projected Impact on Taxing District Permanent Rate Levies During Use of Tax Increment Financing

Present Value Revenues Foregone	Total	Annual
DESCHUTES COUNTY	2,994,712	119,788
SHERIFF (INCORP)	2,225,594	89,024
COUNTY LIBRARY	1,288,502	51,540
COUNTY EXTENSION/4H	52,477	2,099
911	379,054	15,162
CITY OF BEND	6,567,844	262,714
BEND METRO PARKS & RECREATION	3,422,729	136,909
C O C C	1,453,430	58,137

The average impact of foregone revenues as a percentage of the total permanent rate levy of each taxing district is shown in Table 8 below.

Table 8: Average Annual Revenues Foregone as Percent of Levy

Present Value Revenues Foregone	FY 07/08 Permanent Rate Levy	Percent of 07/08 Levy Foregone
DESCHUTES COUNTY	19,913,846	0.6%
SHERIFF (INCORP)	14,799,463	0.6%
COUNTY LIBRARY	8,568,110	0.6%
COUNTY EXTENSION/4H	348,956	0.6%
911	2,520,582	0.6%
CITY OF BEND	20,245,954	1.3%
BEND METRO PARKS & RECREATION	10,788,310	1.3%
C O C C	9,664,828	0.6%

Table 9 shows in the increase in permanent rate levy revenues that would occur after termination of the tax increment financing in FY 2034. By FY 2042/2043, revenues added to the permanent rate levies would exceed the revenues foregone during the use of tax increment financing.

Table 9. Additional Revenues Obtained After Termination of Tax Increment Financing

Present Value Revenues Gained Through FY 2043	
DESCHUTES COUNTY	3,325,516
SHERIFF (INCORP)	2,471,439
COUNTY LIBRARY	1,430,833
COUNTY EXTENSION/4H	58,274
911	420,925
CITY OF BEND	7,293,346
BEND METRO PARK & RECREATION	3,800,813
C O C C	1,613,980

X. RELOCATION REPORT

There are no businesses or residents to be relocated.

XI. COMPLIANCE WITH STATUTORY LIMITS ON ASSESSED VALUE AND SIZE OF URBAN RENEWAL AREA

State law limits the percentage of both a municipality's total assessed value and the total land area that can be contained in an urban renewal area at the time of its establishment to 15% for municipalities over 50,000 in population. As noted above, the estimated total assessed value of the Area, including all real, personal, personal manufactured and utility properties is $66,271,530 or 0.9 percent of the City of Bend's total assessed value. The estimated total acreage of the Area is 238 acres including public right of way. The other Urban Renewal Areas already in existence in Bend contain 937 acres. The City of Bend is 21,278 acres. Therefore, 5.52 percent of the acreage in the City would be in urban renewal areas, and 1.78 percent of the assessed value of the City would be in urban renewal areas. This is well below the statutory limitation of 15.00 percent.

Table 10. Area and Assessed Value Calculations

Urban Renewal Area	Frozen Base Assessed Value	Acres
Murphy Crossing Urban Renewal Area	$66,271,530	238
Central Bend Urban Renewal Area	$48,487,501	236
Juniper Ridge	$13,753,000	701
Total	$128,512,031	1175
Total Acreage, City of Bend		21,278
Total Assessed Value City of Bend Less Incremental Assessed Value in Urban Renewal Areas	$7,221,670,912	
Percent of Bend AV in Urban Renewal Areas	1.78%	
Percent of Bend Area in Urban Renewal Area		5.52%

Exhibit C to Ordinance NS-2104

(Exhibit A to Plan)

City of Bend
Murphy Crossing Urban Renewal Area
August, 2008

Legal Description – Urban Renewal Area

A tract of land situated in Sections 8, 17, and 18, Township 18 South, Range 12 East of the Willamette Meridian, Deschutes County, Oregon, said tract being more particularly described as follows:

BEGINNING at the Southeast corner of Lot 32, Badger Crossing Phases I and II, in the Southwest quarter of said Section 8;

1. Thence Northerly along the East line of Badger Crossing Phases I and II and its Northerly extension 766 feet, more or less, to the South line of High Desert Village, said South line being also the North right-of-way line of Badger Road;
2. Thence Easterly along said South Line to the Southeast corner of Lot 15, High Desert Village;
3. Thence Southeasterly in a straight line, crossing Blakely Road, to the Southwest corner of Lot 1, Blakley South;
4. Thence Northeasterly along the Southerly line of said Lot 1, 91.41 feet, more or less, to the Southeast corner thereof, said corner being on the Westerly right-of-way line of Bend Parkway;
5. Thence Northeasterly along the Easterly line of Blakley South and said Westerly right-of-way line to the Northeast corner of Lot 9, Blakley South;
6. Thence continuing Northeasterly along the Westerly right-of-way line of Bend Parkway to a point on the South line of that tract of land described in Statutory Bargain and Sale Deed recorded as Document 2007-15330 in the records of Deschutes County, said point lying a perpendicular distance of 75.00 feet Westerly of the centerline of Bend Parkway Unit 3C, as shown on Sheet 15 of Deschutes County Survey CS 14250;
7. Thence continuing Northeasterly, parallel with and 75.00 feet Northwesterly of said centerline, to the North right-of-way line of Powers Road, platted as 30.00 feet wide in the plat of Blakley Heights;
8. Thence Easterly along said right-of-way line and its Easterly extension to the Easterly right-of-way line of Parrell Road;
9. Thence Southwesterly along said Easterly right-of-way line to the Westerly extension of the North line of Lot 1, South Briar;
10. Thence, continuing along said Easterly right-of-way line, Easterly along said extension 11.91 feet, more or less, to the Northwest corner of said Lot 1;

11. Thence Southwesterly along the Westerly line of said Lot 1, the Westerly line of Knightsbridge Place, and the Westerly line of Lot 35, South Briar to the Southwest corner of said Lot 35;

12. Thence Westerly along the Westerly extension of the South line of said Lot 35, 10.50 feet, more or less;

13. Thence, continuing Southwesterly along the Easterly right-of-way line of Parrell Road (being also the West line of Tract 11, Ward's Tracts), 335 feet, more or less, to the Southwest corner of said Tract 11;

14. Thence, continuing Southwesterly along the Easterly right-of-way line of Parrell Road to its intersection with the South right-of-way line of Rae Road, being a point on the South line of Section 8, T.18S., R.12E., W.M.;

15. Thence Westerly along said South section line to the Northeast corner of that tract of land described in Statutory Warranty Deed recorded as Document 88-26635 in the records of Deschutes County;

16. Thence Southwesterly along the Easterly line of said tract 972.31 feet, more or less, to the North right-of-way line of Murphy Road (formerly Hamilton Road);

17. Thence proceeding Southeasterly, Easterly, and Northeasterly along said North right-of-way line to the Northerly extension of the Easterly right-of-way line of Fairway Drive;

18. Thence Southeasterly along said Northerly extension 60 feet, more or less, to the intersection of the Easterly right-of-way line of Fairway Drive and the Southerly right-of-way line of Murphy Road;

19. Thence Southwesterly along the Southerly right-of-way line of Murphy Road to its intersection with the North line of the SW 1/4 of the NE 1/4 of Section 17, T.18S., R.12 E., W.M., said intersection being on the Northwesterly line of Lot 1, Block 3, Wildwood Park;

20. Thence Westerly along the North line of the SW 1/4 of the NE 1/4 of said Section 17, and continuing Westerly along the North line of the SE 1/4 of the NW 1/4 of said Section 17 to the Northwest corner of Lot 21, South Village;

21. Thence Southwesterly along the Westerly line of South Village to the Southwest corner thereof, said Southwest corner being on the North line of Golfside Park P.U.D.;

22. Thence Westerly along said North line to the Northwest corner of Lot 18, Golfside Park P.U.D., said corner being on the Easterly right-of-way line of US Highway 97 Business (3rd Street);

23. Thence Southwesterly along the Westerly line of Golfside Park P.U.D. and the Westerly line of South Deerfield Park to the most Westerly corner of Lot 32, South Deerfield Park;

24. Thence, continuing along the Southeasterly right-of-way line of US Highway 97, Northwesterly to an angle point and thence Southwesterly to the Northerly right-of-way line of China Hat Road;

Exhibit C to Ordinance NS-2104

(Exhibit A to Plan)

25. Thence Northwesterly in a straight line to the intersection of the South line of Section 18, T.18S., R.12E., W.M. and the Westerly right-of-way line of The Dalles - California Highway (US Hwy 97);

26. Thence Westerly along the South line of said Section 18 to the Southeast corner of Lot 2, Block 1, Goldenrain;

27. Thence Northerly along the East line of Goldenrain 323.71 feet, more or less, to the Northeast corner of Lot I, Block 1, Goldenrain, said corner being on the South right-of-way line of Ponderosa Street;

28. Thence Northerly in a straight line across Ponderosa Street to the Southwest corner of Frontier West, said corner being on the North right-of-way line of Ponderosa Street;

29. Thence Easterly along said right-of-way line to its intersection with the South Line of Lot 1, Block 1, Frontier West;

30. Thence Easterly along said South line, and continuing along the South line of Frontier West 324.42 feet, more or less, to the Southeast corner of Frontier West;

31. Thence Northeasterly along the East line of Frontier West, and continuing along the East line of Romaine Village Unit 3, to the North right-of-way line of Romaine Village Way as surveyed in CS 09651, Deschutes County Survey Records;

32. Thence Southeasterly along said right-of-way line 69.09 feet, more or less, to the Southeast corner of that Lot Line Adjustment as surveyed in CS 09651, Deschutes County Survey Records, said Southeast corner being on the East line of the Old Brooks Scanlon Logging Road;

33. Thence Northerly along said East line, being the East line of the tracts surveyed in said CS 09651, and continuing along the East line of Mahogany Street and the East line of Block 12, Romaine Village Unit 6 to the Northeast corner of Lot 18, said Block 12;

34. Thence Southwesterly along the North line of said Lot 18, 140.72 feet, more or less, to the Northwest corner thereof, said corner being on a curve to the right of radius 45.00 feet on the right-of-way line of Crystal Lane;

35. Thence along said curve and said right-of-way line 67.05 feet, more or less, to the point of tangency and the Northeast corner of Lot 16, Block 12, Romaine Village Unit 6;

36. Thence Southwesterly along the Northerly line of said Lot 16 and its Southwesterly extension to the West right-of-way line of Driftwood Lane;

37. Thence Northerly and Northwesterly along said west right-of-way line to a point lying due South of the beginning of the East cul-de-sac curve (radius = 50 feet) on the South right-of-way line of Cyprus Street;

38. Thence due North to the beginning of said cul-de-sac curve;

39. Thence, proceeding to the left along said curve and said South right-of-way line to the South line of Lot 15, Block 4, Larkwood Estates;

40. Thence Easterly along said South line to the Southeast corner of said Lot 15;

41. Thence Northerly along the East line of Larkwood Estates to the most Northerly corner of Lot 1, said Block 4;

42. Thence Northwesterly in a straight line across Brookswood Boulevard to the most Easterly corner of Lot 13, Block 1, Larkwood Estates;

43. Thence Northeasterly in a straight line across Larkwood Drive to the most Southerly corner of Lot 5, Block 2, Larkwood Estates;

44. Thence Southeasterly in a straight line across Brookswood Boulevard to an angle point in the West line of Block 9, Pinebrook Phase III, said angle point lying 144.38 feet (platted distance) Southwesterly from the Southerly right-of-way line of Pinebrook Boulevard;

45. Thence Southerly along the Westerly line of Pinebrook Phase III to the Southwest corner thereof;

46. Thence Easterly along the South line of Pinebrook Phase III, and continuing along the South line of Pinebrook Phase II to the Southerly extension of the East line of Lot 6, Block 8, Pinebrook Phase II;

47. Thence Northerly along said Southerly extension and said East line and along the northerly extension of said East line to a point on the most Easterly line of Pinebrook Phase II, being also the most Easterly line of Norman H. Symons Park;

48. Thence Northerly along said most Easterly line and its Northerly extension to the North right-of-way line of Pinebrook Boulevard, as platted in Pinebrook Phase I;

49. Thence Easterly along said North right-of-way line to the Southeast corner of that tract of land designated as Parcel 1 in deed recorded as Document 95-40651 in the records of Deschutes County;

50. Thence Northerly along the East line of said tract to the Northeast corner thereof and the South line of Section 8, T.18S., R.12E., W.M.;

51. Thence Westerly along said South line to the Southeast corner of Lot 32, Badger Crossing Phases I and II and the **POINT OF BEGINNING.**

REGISTERED
PROFESSIONAL
LAND SURVEYOR

John V. Thatcher

OREGON
JULY 19, 1994
JOHN V. THATCHER
2681

RENEWS: 7/01/10
SIGNED: 8-15-08

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