ORDINANCE NO. NS-2105

AN ORDINANCE AMENDING THE BEND URBAN AREA ZONING MAP AND GENERAL PLAN MAP BY CHANGING THE ZONING AND PLAN DESIGNATION OF THREE PARCELS OF LAND TOATLING 11.04 NET ACRES LOCATED AT THE NORTHEAST CORNER OF SIMPSON AVENUE AND COLUMBIA STREET FROM INDUSTRIAL LIGHT TO 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 Zoning Ordinance (NS-1178) Section 10-10.33 as supported by the specific findings of fact & conclusions of law contained in Exhibit A. The Bend City Council adopts the findings in Exhibit A in support of this ordinance.

Section 2. The Bend Urban Area Zoning Map and General Plan Map is hereby amended by changing the zoning and plan designation of the property described as Parcels 1, 2 and 3 of Partition Plat 2008-6, City of Bend, Deschutes County, Oregon, as shown in Exhibit B, from Industrial Light (IL) to Mixed Employment (ME).

Read for the first time the 17th day of September, 2008.

Read for the second time the 1st day of October, 2008.

Placed upon its passage the 1st day of October, 2008.

YES: 5 NO: 2

Authenticated by the Mayor the 1st day of October, 2008.

Bruce Abernethy, Mayor

ATTEST:

Patricia Stell, City of Bend Recorder

Findings of Fact in Support of Plan Amendment and Zone Change PZ 06-570

REQUEST: The applicant requests approval of a General Plan Map amendment and zone change from IL to ME for a 13-acre parcel located at the northeast corner of the intersection of Simpson Avenue and Columbia Street in Bend.

PUBLIC HEARINGS: July 25 and September 27, 2007

HEARINGS OFFICER RECOMMENDATION: January 25, 2008

PUBLIC HEARINGS: September 3, 2008

I. A. APPLICABLE STANDARDS AND CRITERIA:

a. City of Bend Zoning Ordinance, Ordinance No. NS-1178, Chapter 10

1. Section 10-10.20, Light Industrial (IL) Zone
2. Section 10-10.21B, Mixed Employment (ME) Zone
3. Section 10-10.33, Amendments

B. Applicable Procedures

b. City of Bend Development Code, Ordinance No. NS-2016

1. Chapter 4.1, Land Use Review and Procedures

C. The Bend Area General Plan

D. Oregon Administrative Rules Chapter 660

1. Division 12, Transportation Planning
*** OAR 660-012-060, Plan and Land Use Regulation Amendments**

2. Division 15, Statewide Land Use Planning Goals and Guidelines
- **a. OAR 660-015-000, State-Wide Planning Goals and Guidelines No. 1 Through No. 14**
- **b. OAR 660-015-005, State-Wide Planning Goal and Guideline No. 15**
- **c. OAR 660-015-010, State-Wide Planning Goals and Guidelines No. 16 Through No. 19**

II. FINDINGS OF FACT:

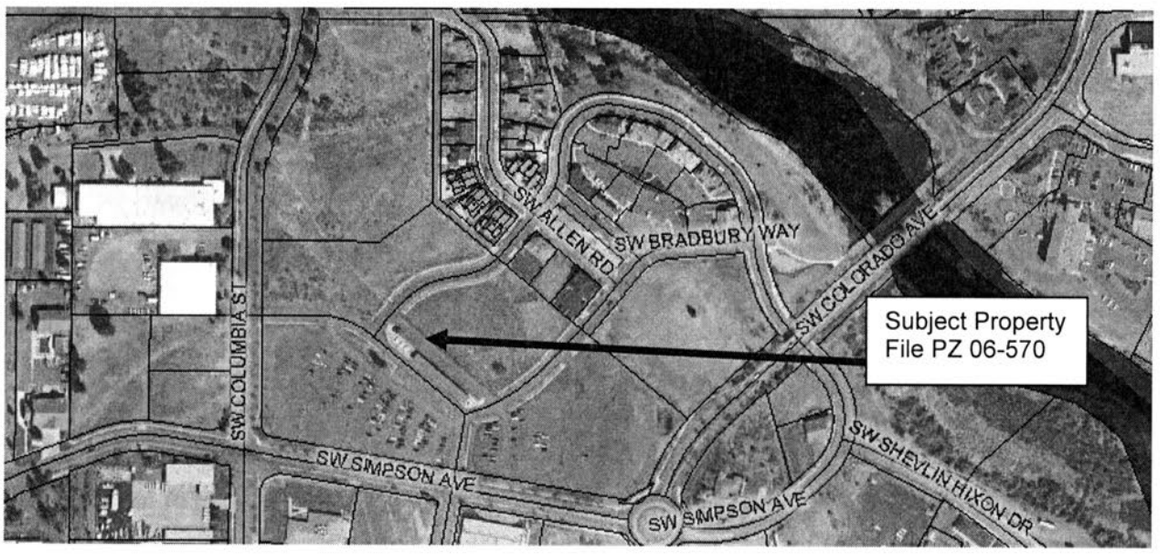
A. Location: The subject property is located at 950 S.W. Simpson Avenue in Bend and is further identified as Tax Lots 1600, 1603 and 1604 on Deschutes County Assessor's Map 18-12-06AA. The property also is identified as Parcels 1, 2 and 3 of Partition Plat 2008-06. The property is located at the northeast corner of the intersection of Simpson Avenue and Columbia Street and is the former site of the Mt. Bachelor Park-and-Ride facility.

B. Zoning and Plan Designation: The subject property is zoned and designated Light Industrial (IL).

C. Site Description: The subject site is approximately 13 gross acres in size, and contains three separate parcels containing 11.04 net acres. The topography of the site is relatively level and is currently developed with the Mt. Bachelor Park-and-Ride facility consisting of a large parking lot with interior access aisles, a rain shelter, outdoor lighting and landscaping. The property abuts Columbia Street (a

designated local street) on the west, Simpson Avenue (a designated minor arterial street) on the south, Colorado Avenue (a designated minor arterial street) on the east, and the Simpson/Colorado Avenue roundabout at the property's southeast corner. The Columbia/Simpson intersection is controlled with a four-way stop. Additionally, Shevlin Hixon and Cyber Drives (each designated local streets) traverse the site. Shevlin Hixon Drive extends eastward from Columbia Street and Cyber Drive extends northward from Simpson Avenue through the site.

D. **Surrounding Zoning and Land Uses:** Land abutting the subject property on the east is zoned Mixed Use Riverfront (MR) and developed with a variety of residential and office uses. Further to the east are the Deschutes River and the Old Mill District on the east side of the river. The closest MR-zoned uses to the subject property are residential. Abutting land to the north is undeveloped but has received city site plan approval for relocation of the existing Mt. Bachelor Park-and-Ride facility (PZ 07-459). Further to the north is land zoned Residential Standard Density (RS) and developed with residential subdivisions. Land to the south across Simpson Avenue and to the west across Columbia Street is zoned IL and developed with a variety of light-industrial uses and office uses permitted conditionally in the IL Zone. Further to the west along Century Drive is land zoned Commercial General (CG) and Commercial Convenience (CC) and developed with a variety of commercial and office uses. An aerial photo of the subject property and surrounding area is set forth immediately below.



D. **Property History:** The applicant's burden of proof sets forth the following history of the subject property:

> *"In the early 1900's, the subject property, located at the intersection of Simpson Avenue and Columbia Street, housed the Shevlin-Hixon timber mill. In the 1940's, rapidly decreasing timber supply became apparent. The Shevlin-Hixon Lumber Company elected to sell their mill and associated property to the Brooks-Scanlon Lumber Company in 1950. The mill officially ceased operation four months after the land sale. For years, the property remained vacant while the Brooks-Scanlon timber mill directly across the Deschutes River maintained operations, officially closing in 1994.*
>
> *In 1979, the City of Bend adopted the Bend Area General Plan, the first general plan for the City. The subject site was given an Industrial designation because of its former use as the Shevlin-Hixon wood mill. In 1994, the former mill property was subdivided into smaller lots for sale. A large portion of the former mill land was developed into Shevlin Center, an office park development directly south of the property. The subject site was included in the Shevlin Center plat completed in 1994 (Parcel 1 of MP-6-94 Partition Plat 1994-49 located in Lot 1 Block 2, Shevlin Center), but was never developed. In recent years the lot has functioned as the Mt.*

Bachelor Park and Ride facility."

E. **Procedural History:** The record indicates the applicant purchased the subject property in August of 2005. On July 27, 2006 the applicant conducted a neighborhood meeting to discuss its proposal. The plan amendment and zone change application was submitted on August 4, 2006. Because the application includes a request for a General Plan map amendment, and the proposed zone change is dependent on approval of the plan amendment, the 120-day period for issuance of a final local land use decision under ORS 227.178 is not applicable to either the plan amendment or zone change.

A public hearing was held on September 27, 2007. The Hearings Officer issued a recommendation of denial on January 25, 2008. Since then the applicant and City staff have met several times to discuss the issues raised by the Hearings Officer's recommendation.

F. **Proposal:** The applicant requests approval of a plan amendment and zone change from IL to ME in order to develop the subject property with a mixed-use development including commercial and offices uses. No specific development proposal was submitted concurrent with these applications. The applicant's burden of proof states this application was submitted because the city's new development code no longer permits office uses in the IL Zone, and because the applicant believes industrial use of the subject property no longer is appropriate in light of the surrounding residential and office uses.

G. **Public/Private Agency Comments:** The Planning Division sent notice of the applicant's proposal to a number of public and private agencies and received responses from: the City of Bend Long Range Planning Division, Public Works (PW) Department-Water, Sewer and Storm Water, Engineering Division, Drainage/Grading, Building Division, Fire Department, and Transportation Engineer; the Deschutes County Environmental Health Division; the Bend Metro Park & Recreation District; the Central Oregon Irrigation District: the Oregon Department of Transportation (ODOT); and PacifiCorp. These comments are included in the record. The following agencies did not respond to the notice: the City of Bend ADA (Americans with Disabilities Act) Coordinator, Property Address Coordinator, and Neighborhood Association Coordinator; the Oregon Department of Environmental Quality (DEQ); the River West and Southern Crossing Neighborhood Associations; and Cascade Disposal. Agency comments are addressed in the findings below.

H. **Public Notice and Comments:** The Planning Division mailed individual written notice of the applicant's proposal and this public hearing to the owners of record of all property located within 250 feet of the subject property. In addition, notice of the initial public hearing was published in the Bend "Bulletin" newspaper, and the subject property was posted with a notice of proposed land use action sign.

I. **Lot of Record:** The subject property is a legal lot of record having been created as Parcels 1, 2 and 3 of Partition Plat 2008-06.

III. CONCLUSIONS OF LAW:

A. SUMMARY

The applicant has requested approval of a plan amendment and zone change from IL to ME in order to establish a mixed-use development on the subject property potentially including light industrial, commercial, office and residential uses. Staff recommends and the Hearings Officer has found that due to the mostly residential and commercial nature of surrounding development, the city's transition away from an industrial-based economy, the development of surrounding industrial land with largely commercial uses,

and the applicant's proposed use limitations and development regulations, re-designating and rezoning the subject property to ME is appropriate considering the types and mixture of uses permitted in the ME Zone.

Traffic generated by mixed-use development on the subject property will impact key transportation facilities on the city's lower west side, and will exceed the capacity of several nearby intersections without significant mitigation measures including acquisition of additional right-of-way and construction of improvements such as new roundabouts. The applicant has proposed to construct and/or pay for some of these mitigation measures. However, the applicant has stated that its site will not be able to bear the cost of all of the requested mitigation. Additionally, the City recognizes that the cost of constructing all of the necessary improvements far exceeds the applicant's proportionate share (based upon the share of increased traffic at the intersections likely to be generated by the applicant's project). Without assurances that all of the intersections could be fully mitigated, the hearings officer found that she had no choice but to recommend denial of the application. To do otherwise would be to violate the Oregon Transportation Planning Rule ("TPR").

Based upon additional study of the affected intersections, the City and the applicant have settled on a proposal that would allow the zone change and plan amendment to move forward while allowing the applicant and the City to comply with the TPR through alternate mitigation measures than originally proposed. The applicant would construct:

(a) a new roundabout at the intersection of Simpson and Columbia;
(b) significant safety and operational enhancements to the eastern leg of the existing roundabout at Simpson and Century:
(c) safety improvements to Simpson between the fire station and the enhanced Simpson/Century roundabout;
(d) safety improvements to the intersection at Simpson and Mt. Washington;
(e) safety improvements to the intersection at Colorado and Columbia; and
(f) a gateway feature on Commerce Street, north of the subject property.

In consideration of the alternate mitigation measures proposed to be constructed by the applicant, the City would agree that the TPR provisions of subsections 2 and 3 are adequately addressed.

B. PRELIMINARY ISSUES

FINDINGS: Opponents raised several issues that do not relate directly to the applicable plan amendment and zone change criteria, and therefore are addressed in these preliminary findings.

a. Timing of Expanded Urban Growth Boundary. Opponent David McGee argued the Hearings Officer should not consider the proposed plan amendment and zone change until the city has completed its current process to consider expansion of its urban growth boundary (UGB). The Hearings Officer concluded that she had no authority to postpone a decision on a quasi-judicial land use application on the basis of a pending legislative process. And in any case, she noted that under ORS 227.178(3) any change in the standards applicable to plan amendments and zone changes that might result from the UGB expansion could not be applied to the applicant's proposal. Therefore, there is no merit to this argument.

b. Lack of Master Development Plan. Opponent David McGee argued the Hearings Officer should not consider the applicant's proposed plan amendment and zone change because it was not accompanied by a master development plan or site plan for ME Zone development on the subject property. There is nothing in the applicable plan amendment and zone change approval criteria that requires the applicant to submit a concurrent development plan, and therefore there is no merit to this argument.

c. Competition with Local Businesses. Opponents Dan and Michelle McGarigle argue the Hearings Officer should not approve the applicant's proposed plan amendment and zone change because businesses developed on the subject property under the proposed ME Zone would unfairly compete with established local, family-

owned small businesses. There is no authority allowing the City to refuse to approve a quasi-judicial plan amendment and zone change application in order to protect existing businesses, and therefore there is no merit to this argument.

d. Preservation of Existing Apple Tree. Opponent Randall Davis argues the applicant's proposed plan amendment and zone change should not be approved unless the applicant is required to preserve a mature Gravenstein apple tree located on the subject property. Again, there is nothing in the applicable plan amendment and zone change approval criteria that allows or requires the City to consider preservation of existing vegetation, and therefore there is no merit to this argument.

e. Re-designation and Rezoning to Residential or Commercial. Opponent C.M. Singer argues the subject property should be re-designated and rezoned to residential or commercial rather than to ME. The City does not have authority to consider proposals other than that presented by the applicant.

PLAN AMENDMENT APPROVAL CRITERIA

B. Bend Area General Plan

1. General Plan Preface

Format of the Plan (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.

FINDINGS: The City has previously held that the comprehensive plan preface does not establish mandatory approval criteria for quasi-judicial land use applications. This interpretation was upheld by LUBA in its decision in *Save Our Skyline v. City of Bend*, 48 Or LUBA 192 (2004). Accordingly, the City finds that the above-quoted language from the plan preface merely indicates plan policies are to be implemented by the city's adopted land use regulations.

Future Plan Updates (Page P-6)

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 <u>public need and benefit for the change</u>.** (Emphasis added.)

FINDINGS: The applicant submitted an application for approval of a quasi-judicial plan amendment 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." The applicant's burden of proof provides the following justification for the proposed amendment:

> *"Due to a change in the area adjacent to the site, the applicant is proposing a Plan Map Amendment and Zone Change of the subject property from Light Industrial (IL) to Mixed Employment (ME).Such a change will benefit the public and satisfy a need for appropriate zoning of the site.*
>
> *An ME designation will allow future development to include land uses that are more compatible with the adjacent high-density residential, single-family residential, office and commercial uses. With the multiple surrounding office developments that have been approved via conditional use permits, together with the neighboring residential and mixed use developments, it is clear that traditional industrial uses are incompatible with the surrounding area. With the adopted code amendments effective as of August 7th, neither office nor service commercial uses will be allowed in the IL zone. Therefore, without the Zone Change, this land is likely to either remain vacant, which is contrary to the City's economic development goals, or be developed consistent with the light industrial zone but inconsistent with the neighborhood. The proposed Zone Change will allow the property to provide a natural transition from the existing light industrial uses and commercial areas to the residential uses.*
>
> *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. 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.

The subject property is no longer suitable for traditional industrial users like warehouse/ distribution, manufacturing and assembly. Potential heavy truck traffic associated with industrial uses will disrupt adjacent uses (especially residential uses) and may overburden the existing roadway system. Rail service is no longer available to the site. Industrial uses result in vacant properties at night, which are undesirable for the adjacent residential users, potentially fostering illegal activity and/or unsafe conditions. With the proposed Plan Map Amendment and Zone Change, the property may develop with high demand job types and retail/commercial services identified in the Economic Lands Study."

In addition, in subsequent submittals the applicant noted that the Hearings Officer previously approved a plan amendment and zone change from IL to ME for a 9.37-acre parcel located west of the subject property on Century Drive (*Century Center*, PZ 06-21) in which the Hearings Officer found there was a 19-acre industrial land surplus after removal of Century Center's 9.37 acres.

The applicant's proposal and arguments in support of it present two principal issues concerning the "public need and benefit" requirement: (1) the impact of the proposed plan amendment on the city's industrial lands inventory; and (2) how to assure that if the subject property is redesignated and rezoned to ME, it is developed with the mixture of uses contemplated in the ME Zone. Each of these issues is addressed separately in the findings below.

1. Industrial Lands Inventory.

Statewide Land Use Planning Goal 9 requires the city provide for "at least an adequate supply of sites of suitable sizes, types, locations, and service levels for a variety of industrial and commercial uses consistent with plan polices." The administrative rules implementing Goal 9 – specifically OAR 660-009-0015 -- require the city to develop an inventory of industrial and other employment lands comprised of "vacant and developed lands within the planning area designated for industrial or other employment uses." In addition, OAR 660-009-010(4) provides:

For a post-acknowledgement plan amendment under OAR chapter 600, division 18, that changes the plan designation of land in excess of two acres within an existing urban growth boundary from an industrial use designation to a non-industrial use designation, or another employment use designation to any other use designation, a city or county must address all applicable planning requirements, and :

(a) Demonstrate that the proposed amendment is consistent with the most recent economic opportunities analysis and the parts of its acknowledged comprehensive plan which address the requirements of this division; or

(b) Amend its comprehensive plan to incorporate the proposed amendment, consistent with the requirements of this division; or

(c) Adopt a combination of the above, consistent with the requirements of this division. (Emphasis added.)

Chapter 6 of the city's comprehensive plan, "The Economy and Lands for Economic Growth," states at page 6-9 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).

In the Hearings Officer's *Century Center* decision, the Hearings Officer made the following findings concerning the impact of that proposed plan amendment and zone change on the city's inventory of industrial lands, which findings were adopted by the council in Ordinance No. NS-2064 implementing the plan amendment and zone change from IL to ME:

> *"The record indicates 2.02 acres of the subject property is included in the city's inventory of available industrial land. For that reason, to comply with the requirement of OAR 660-009-010(4) set forth above, the applicant's representative Jon Skidmore conducted an update of the city's industrial lands inventory. Mr. Skidmore submitted two memoranda dated August 2 and August 15, 2006. The August 2 memo includes Mr. Skidmore's calculations of the amount of industrial land absorbed since July 2004. In arriving at his calculations, Mr. Skidmore used factors including the city's building permit data, tax lot information including valuation, property plan designations and zoning, and the amount of undeveloped and developed acreage on properties. Based on this data, Mr. Skidmore concluded that prior to the city's annexation of Juniper Ridge there was a deficit of 293.2 net acres of industrial land within the Bend UGB. The Juniper Ridge annexation brought a total of 513 acres and approximately 380 net acres of industrial land into the inventory, creating an industrial land surplus of 86.8 net acres. Mr. Skidmore found that 23.4 acres of industrial land were removed from the inventory through approval of a 2004 zone change from Industrial Park (IP) to ME in the 'Northwest Crossing' development (West Bend Property Company, PZ 04-551), and an additional 44.14 net acres were absorbed through development between July 2004 and July 2006. Based on these figures, Mr. Skidmore concluded that as of July 2006 there was a surplus of 19.26 net acres of available industrial land, and consequently a surplus of industrial-zoned land would remain following the removal of either the entire 9.37-acre subject property or the 2.02 acres included in the industrial land inventory.*
>
> *The staff report questioned some of Mr. Skidmore's methodology and conclusions. In response, Mr. Skidmore submitted his August 15 memo which provided more detailed information concerning his methodology and responses to specific comments in the staff report. At the continued public hearing on August 15, 2006, Associate Planner Mark Rust stated that based on Mr. Skidmore's analysis and the data he used to update the city's inventory of available industrial lands, Mr. Skidmore's estimate of an approximate 19-acre industrial land surplus 'is reasonable.'*
>
> *In a document dated September 12, 2006 and entitled 'Revised Supplemental Analysis of Economic Lands Policies and Goal 9,' the applicant's attorney Liz Fancher argues that with annexation of the Juniper Ridge land the city has far more than the 886 gross acres of vacant and developed industrial land the plan is required to identify for the 25-year planning period under OAR 660-009-0015, and that the surplus of industrial land will continue to exist even after removal of either the entire 9.37-acre subject property or just the 2.02 acres of the property included in the city's industrial lands inventory. In other words, the applicant argues the proposed plan amendment from IL to ME will not reduce the city's supply of industrial land below that identified in the comprehensive plan as needed for the 25-year planning period. Ms. Fancher's memo correctly*

[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.

notes that the evidence in the record concerning gross and net industrial acres and absorption rates is not entirely consistent, and therefore the city's industrial land surplus may in fact be greater than the approximately 19 acres calculated by Mr. Skidmore.

The Hearings Officer understands the city is very sensitive to the loss of any industrial-zoned land through its conversion to non-employment uses. However, I concur with the applicant that since the proposed ME plan designation and zoning would allow the subject property to be developed with a mixture of industrial and commercial uses – both 'employment uses' under Goal 9 – and would address the documented shortage of commercial lands, the applicant's proposal is consistent with both Goal 9 and the comprehensive plan's economic development policies.

[3] *The applicant questions inclusion of this acreage in the inventory inasmuch as the entire subject property is developed, including parking lots and lumber yards that are an integral part of the Brightwood plant and therefore are not truly 'available' for other industrial development. Nevertheless, because these 2.02 acres are included in the inventory the Hearings Officer finds the Goal 9 requirements under OAR 660-009-010(4) apply to the proposed plan amendment."* (Emphasis added.)

The record indicates no other industrial-zoned lands in the city have been removed from the industrial lands inventory through re-designation and rezoning since the council approved the *Century Center* plan amendment and zone change. Therefore, based on the above-quoted findings and conclusions in that decision, re-designating and rezoning the subject property from IL to ME would remove 13 acres of land from the city's inventory of industrial lands, leaving a surplus of at least 6 acres of available industrial land in the city's inventory.

2. Plan for Mixed-Use Development.

It appears that future development of the subject property may require submission of a "Master Planned Development Concept Plan" under Section 4.5.300 of the city's new development code. However, the City's former zoning and procedures ordinances does not give the City the authority to condition approval of the proposed plan amendment and zone change on the applicant's submission of such a plan. In order to determine whether the proposed plan amendment will confer a public benefit and be consistent with surrounding uses, the record must include evidence of the types and intensities of uses that would be developed on the subject property under an ME designation and zoning.

In recognition of this fact, and after discussions with city planning and engineering staff, the applicant submitted both a proposed preliminary "conceptual site plan" as part of its TIA, and a set of proposed "performance standards" for development of the subject property under ME zoning.

The applicant proposes voluntary performance standards as follows:

"These specific, measurable restrictions would apply to future development (see attached). These performance standards limit uses and increase development regulations compared to the current standards set forth in the existing ME Zone code. Upon approval of the Plan Map Amendment and Zone Change application, subsequent Site Plan and/or Master Plan applications will be required to conform to the performance standards. The provision of performance standards will allow future development to respond to market conditions at the time of development, while also satisfying Staff's concerns of potentially incompatible development or land uses."

The performance standards provide:

"USE RESTRICTIONS

1. *Temporary housing, which is currently permitted outright in the ME zone, is proposed to be prohibited.*

2. *Auto-dependent Retail Sales and Service uses, which are currently permitted outright in the ME zone, are proposed to be prohibited.*

3. *Auto-oriented Retail Sales and Service uses, which are currently permitted outright in the ME zone, are proposed to be a conditional use.*

4. *Restaurants/Food Services with drive through service, which are currently permitted outright in the ME zone, are proposed to prohibited.*

5. *Entertainment and Recreation uses not enclosed in a building, which are currently permitted outright in the ME zone, are proposed to be a conditional use.*

6. *Hospitals, which are currently permitted outright in the ME zone, are proposed to be conditional uses.*

7. *All industrial uses must be enclosed in a building, though the existing ME zone does not specify whether or not industrial uses must be enclosed in a building.*

8. *Manufacturing and Production, Warehouse, Production Businesses, and Industrial Service uses, which are currently permitted outright in the ME zone, are proposed to be conditional uses as a primary use, and permitted subject to Site Plan/Design Review if proposed as a secondary use.*

DEVELOPMENT STANDARDS

1. *Side yard setbacks are required to add an additional 1 foot for every foot of building over 35 feet in height, when abutting a residential zone. Currently the code does not specify that the additional 1 foot setback for every foot in height over 35 feet is in addition to the base side yard setback of 10 feet. Therefore, the wording of this regulation has been changed to specify that buildings over 35 feet require an additional side yard setback.*

2. *Commercial uses, in addition to industrial uses currently required by the existing ME zone regulations, are required to have an additional 10-foot side/rear buffer if adjacent to the MR zone.*

3. *Drive through or vehicle service areas are not allowed between a building and the required 10-foot front yard landscape setback.*

Although these additional use regulations and development regulations may further restrict development beyond what would otherwise be permitted in the ME zone, the Applicant recognizes that these additional regulations will ensure that future development will be compatible with the site context."

The applicant submitted a table showing uses currently permitted in the ME Zone compared to the applicant's proposed use restrictions and development standards. The applicant proposed that these performance standards be adopted as part of the proposed plan amendment and zone change.

The proposed use restrictions and development regulations will assure development of the subject property would be compatible with surrounding zoning and uses considering the nature and mix of uses. The applicant has demonstrated the proposed plan amendment from IL to ME is justified by meeting a public need for additional

commercial land, and by conferring a public benefit by providing a mixture of additional commercial and office uses on the subject property creating an appropriate transition area between the existing residential, commercial and industrial uses surrounding the subject property.

The performance standards are adopted as a part of the plan amendment and zone change through approval of this application and shall be memorialized through a deed restriction on the subject property.

C. Oregon Administrative Rules (OAR), Chapter 660

1. Division 12, Transportation Planning

a. OAR 660-12-060, Plan and Land Use Regulation Amendments

(1) Where an amendments 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 of 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 [Transportation System Plan] **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:

(a) Adopting measures that demonstrate allowed land uses are consistent with the planned

function, capacity, and performance standards of the transportation facility.

(b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.

(c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.

(d) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.

(e) Providing other measures as a condition of development or through a development agreement or similar funding method, including transportation system management measures, demand management or minor transportation improvements. Local governments shall as part of the amendment specify when measures or improvements provided pursuant to this subsection will be provided.

(3) Notwithstanding sections (1) and (2) of this rule, a local government may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility where:

(a) The facility is already performing below the minimum acceptable performance standard identified in the TSP or comprehensive plan on the date the amendment application is submitted;

(b) In the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule would not be adequate to achieve consistency with the identified function, capacity and performance standard for that facility by the end of the planning period identified in the adopted TSP;

(c) Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures;

(d) The amendment does not involve property located in an interchange area as defined in paragraph (4)(d)(C); and

* * *

(4) Determinations under sections (1)-(3) of this rule shall be coordinated with affected transportation facility and service providers and other affected local governments.

* * *

FINDINGS: The TPR applies to the applicant's proposal because it would amend the city's comprehensive plan and zoning maps, and therefore would constitute an amendment to a land use regulation. To determine compliance with the TPR, the City must answer the following questions:

1. Will the proposed plan amendment and zone change from IL to ME "significantly affect a transportation facility;" and

2. If so, can the City approve the applicant's proposal with adoption of one or more of the measures identified in the TPR?

1. SIGNIFICANTLY AFFECTS A TRANSPORTATION FACILITY

The proposed plan amendment and zone change, in and of themselves, will not generate any traffic. However, re-designating and rezoning the subject property from IL to ME would allow uses generating traffic that could exceed the capacity of affected streets and intersections. For that reason, the City must review the impact on the street system from traffic anticipated to be generated by development of the subject property under a reasonable worst case scenario with ME zoning.

a. Reasonable Worst Case Scenario. As discussed above, the applicant submitted a conceptual development plan to illustrate what it considers a reasonable worst case scenario for uses and trip generation with ME Zone development of the subject property. That plan included a total of 87,500 square feet of developed single-story building space consisting of 50,000 square feet of general office use, 15,000 square feet of medical office use, 5,000 square feet of bank use, and 17,500 square feet of restaurant use.

The applicant's original traffic engineers Sean Morrison and Chris Clemow, and the city's Transportation Engineer Robin Lewis, agree that the reasonable worst case scenario should be based on traffic generated only by uses *permitted outright* in the ME Zone. In his July 10, 2007 traffic impact analysis (TIA), Mr. Morrison predicted that under the reasonable worst case scenario, development on the subject property would generate a total of 279 net new p.m. peak hour trips above the 190 p.m. peak hour trips predicted to be generated by IL development on the subject property.

b. Intersections Analyzed. The applicant's TIA studied the following ten intersections:

- Columbia Street/Commerce Avenue
- Columbia Street/Cyber Drive
- Simpson Avenue/Mt. Washington Drive
- Simpson Avenue/Century Drive
- Simpson Avenue/Columbia Street
- Simpson Avenue/Cyber Drive
- Simpson Avenue/Colorado Street
- Century Drive/Colorado Street
- Columbia Street/Colorado Street
- Century Drive/Reed Market Road.

In her September 19. 2007 memorandum, Ms. Lewis aptly described these intersections as comprising Bend's "lower west side's transportation system." An aerial photo of these

intersections and the area they serve is included in the record as Hearing Exhibit B. This photo shows these ten intersections are located within an area approximately one mile by two miles in size which includes a wide variety of land uses and densities, no signalized intersections, seven roundabouts, and numerous stop-controlled intersections.

d. City's Performance Standards for Intersections. The record indicates the city's intersection performance standards consist of the following (BDC 4.7.400B):

- **two-way stop controlled intersections:** no more than 50 seconds of delay for the critical lane group;
- **all-way stop controlled intersections:** no more than 80 seconds of delay for the critical lane group; and
- **roundabout intersections;** a volume-to-capacity (v/c) ratio of 1.0 or less.[2]

The record indicates the city's minimum acceptable performance standard **for vehicle queuing** at intersections is that the queue does not exceed the available vehicle storage area – i.e., queuing would not block another intersection.

e. Predicted Intersection Function.

The following intersections are not identified as significantly affected:

i) The Columbia Street/Commerce Drive intersection was shown to operate acceptably with and without the proposed plan amendment/zone change increase in trips. Although this intersection is not significantly affected according to the TPR, due to its location on the border between mixed use/industrial zoning and residential zoning, the applicant has proposed to construct a gateway feature at this intersection. This mitigation is further detailed in Section 2 below.

ii) The Columbia Street/Cyber Drive intersection was shown to operate acceptably with and without the proposed plan amendment/zone change increase in trips. This intersection is not significantly affected according to the TPR. No mitigation is warranted or proposed at this intersection.

iii) The Simpson/Cyber Drive intersection was shown in the TIA to not meet the city's performance standards. This two-way stop controlled intersection would have greater than 50 seconds of delay on the stopped approach of Cyber with the addition of traffic generated by ME Zone development of the subject property. However, the level of delay applies to a side street with a local street designation. There are no impacts to Simpson Avenue which is the designated arterial roadway. Cyber is not a significantly affected intersection according to the criteria of the TPR because it is the intersection of a local street that is not identified in the City's TSP. No crash history exists for this intersection and none is anticipated to occur in the future as there are no sight line limitations or other safety deficiencies noted in the TIA. No mitigation is required for this intersection to satisfy compliance with the TPR.

iv) Simpson Avenue/Colorado Avenue intersection analysis, as noted in the Hearings Officer's recommendation, did not meet applicant's "burden of proving the Simpson/Colorado intersection will meet the city's performance standards with the addition of traffic generated by ME Zone development of the subject property." Therefore, the applicant provided a subsequent study by Kittelson & Associates, Inc., as described in that certain Memorandum from Scott Beaird, P.E., dated July 16, 2008, and attached as an exhibit to this document. The subsequent analysis meets the "burden" previously found lacking by the Hearings Officer. The subsequent analysis demonstrates that the Simpson Avenue/Colorado Avenue intersection is forecast to meet the mobility standard under the 2022 Proposed Plan designation. Staff concurs with this subsequent analysis and finds that this intersection is not a significantly affected intersection and no mitigation is required.

---

v) Century Drive/Colorado Street intersection analysis demonstrates that the Century Drive/Colorado Avenue intersection is forecast to meet the mobility standard under the 2022 Proposed Plan designation. Staff concurs with this analysis and finds that this intersection is not a significantly affected intersection and no mitigation is required.

vi) Century Drive/Reed Market Road intersection was projected to exceed the city's acceptable performance standard for roundabouts – a v/c ratio of 1.0 or less -- with or without the addition of traffic generated by ME Zone development of the subject property. However, traffic generated as a result of the proposed plan amendment does not worsen the performance of an existing or planned facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan (the traffic generated by the ME Zone development will not increase the v/c ratio). Staff concurs with this analysis and finds that this intersection is not significantly affected according to the TPR and no mitigation is required.

The TIA, as supplemented by a study done by Kittelson & Associates, Inc. and reviewed by the City transportation engineer predicted the addition of traffic generated from reasonable worst case scenario ME Zone development of the subject property, combined with background traffic and other new traffic predicted to occur by the end of the planning period (2022), would result in four of the ten analyzed intersections functioning below the city's minimum performance standards for operations and/or queuing *without mitigation*. **Therefore, the following four intersections would be "significantly affected" under the TPR:**

- Simpson/Mt. Washington;
- Simpson/Century;
- Simpson/Columbia; and
- Columbia/Colorado.

Each of these four significantly affected intersections are proposed to be mitigated to meet the TPR as discussed below.

2. MITIGATION MEASURES

a. TPR Provisions. Subsection (2) of the TPR provides that where, as here, the proposed plan amendment would "significantly affect" a transportation facility, one or more of the following measures must be implemented to address these effects:

(a) adopt measures that demonstrate allowed land uses are consistent with the performance standards of the transportation facility;

(b) amend the TSP or comprehensive plan to provide transportation facilities, improvements or services that are adequate to support the proposed land uses, including a funding plan or mechanism that assures the facility, improvement, or service will be provided by the end of the planning period;

(c) alter land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes;

(d) amend the TSP to modify the planned function, capacity or performance standards of the transportation facility; and/or

(e) provide other measures as a condition of development or through a development agreement or similar funding method, including transportation system management measures, demand management or minor transportation improvements, and specify when measures or improvements will be provided.

Subsection (3) of the TPR authorizes the city to approve a plan amendment that would significantly affect an existing transportation facility *without assuring that allowed land uses are consistent with the applicable performance standards for that facility* where:

(a) the facility already is performing below the minimum acceptable performance

standards on the date the plan amendment application was submitted;

(b) in the absence of the proposed plan amendment, planned transportation facilities, improvements and services would not be adequate to achieve consistency with the city's minimum performance standards by the end of the planning period; and/or

(c) development resulting from the plan amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures.

b. Proposed Mitigation. The applicant and the City agree to demonstrate compliance with the TPR as specifically addressed below:

COLUMBIA/COLORADO

The TIA found this two-way stop controlled intersection will not meet the city's performance standard for delay with or without the addition of traffic generated by ME Zone development of the subject property in the year 2022. The increased traffic associated with the plan amendment/zone change will worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard and therefore, this intersection would be significantly affected by the plan amendment/zone change to ME. The TIA also noted this intersection has experienced a high crash rate (14 reported accidents in the last 3 years) resulting from drivers' failure to yield at the stop signs.

The applicant originally proposed, and the Hearings Officer recommended, an all-way stop at this intersection. The City engineer, however, finds the all-way stop problematic. Therefore, the applicant and the City engineer further evaluated the intersection. They concluded that the most significant problem at the intersection was safety, which could be mitigated through safety improvements.

The improvements, proposed in accordance with the OAR 660-012-0060(2)(e) would: (i) better delineate the intersection to increase driver awareness on Colorado in advance of the intersection; (ii) increase the intersection sight distance for vehicles at the Columbia Avenue approaches; and (iii) artificially reduce the effective area of the intersection by striping smaller curb radii.

The improvements would include the following:

- Installation of six-foot bike lanes on the east and west approaches from the intersection to the approximate point-of-curvature or point-of-tangent. Addition of bicycle pavement legend.
- Addition of lane extension striping in the bay taper area for the eastbound and westbound left-turn lanes.
- Striping painted corner radii edge lines based on a WB-40 design vehicle.
- Installation of crosswalk markings on the north and south approaches of Columbia Avenue.
- As appropriate, maintain sight visibility for drivers on the Columbia Avenue approaches, using a 45 mph design speed.
- Adjust grade elevations at two catch basins on the west approach of Colorado.

All proposed pavement marking shall be with durable hot laid tape to ensure longevity and durability. The City agrees to accept these improvements as part of the whole mitigation package as described in these findings and the conditions of approval identified below; provided, however, such improvements must be completed prior to the final occupancy of the development approved by the first site plan on the subject property.

The proposed improvements are consistent with OAR 660-012-0060(2)(e) because the applicant's engineer and the City's engineer agree that they will improve the function of the intersection. Additionally, the performance standards effectively alter the land use

designation of the property to reduce demand for automobile travel by preventing some of the most traffic-intensive uses such as drive-thru restaurants, consistent with OAR 660-012-0060(2)(d).

To satisfy the TPR for intersection performance standards, the City has agreed to a one-time modification of the mobility standard at this intersection for this development consistent with OAR 660-012-0060(2)(d).

This mitigation measure as written in the TPR infers that all jurisdictions maintain their performance standards within their Transportation System Plan ("TSP"). However, the mobility standards of the City of Bend's TSP are established in the City of Bend Development Code ("BDC"), which is an Acknowledged functional component of the City's General Plan.

Bend Urban Area Transportation System Plan Transportation and Land Use Implementation Measure 5 states:

> *Bend has identified a set of performance standards that balances operations criteria with financial constraints, safety impacts, quality of living aspects and community values. These operations criteria are included in the City' Development Code and included in this TSP by reference.*

In accordance with the TSP, Section 4.7.400.B of the BDC sets forth the Operations Standards. Section 4.7.100.B of the BDC grants the City Engineer the discretion to modify or waive the contents of Chapter 4.7, including the mobility standards, when "special circumstances dictate such change." In a August 25, 2008, memorandum to Nick Arnis and Colin Stephens, City Engineer Michael Magee agreed that special circumstances warrant the one-time modification of the mobility standard for this intersection. The memorandum reads in part:

> The overall operation and safety of this corridor will be significantly enhanced by the recommended improvements. Although it may be evident that certain distinct criteria may not be met for three intersections [Colorado/Columbia, Simpson/Mt. Washington and Simpson/Century] at particular times of the day, the overall corridor benefits realized by the recommended improvements greatly outweigh these issues.

In the City of Bend, TPR mitigation measure 0060(2)(d) has been locally implemented through the City's Development Code to allow the City Engineer, on a case by case basis, alternate performance standards for intersections. The mitigations proposed at this and the other affected intersections are sufficient to warrant the City's agreement to a one-time modification of the mobility standard at this intersection, which satisfies the TPR for this intersection.

However, in the event that a roundabout is constructed at the intersection prior to Final Occupancy of the development approved by the first site plan on the subject property, such mitigation for this intersection is found to fully satisfy the TPR.

SIMPSON/MT. WASHINGTON

The TIA found this two-way stop controlled intersection is already performing below the minimum acceptable performance standards for delay, and would experience "significant degradation" as measured in the Year 2022 with or without ME Zone development of the subject property. The increased traffic associated with the plan amendment/zone change will worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard and therefore, this intersection would be significantly affected by the plan amendment/zone change to ME. The TIA also found that vehicle queuing lengths on the westbound left-turn leg of the intersection would exceed the available vehicle storage.

The applicant originally proposed construction of a roundabout at this intersection.

However, based upon subsequent conversations between the City and the applicant, the City concluded that it is most appropriate for the applicant to construct certain alternate improvements to this intersection that improve safety, visibility and mobility because of the following:

1. Although the City is concerned about the vehicle functionality of intersections, safety is an equal if not more important concern and the City Engineer agrees that the proposed improvements will improve safety;
2. Allowing the applicant to spend fewer dollars at this intersection frees up funds to complete improvements at additional intersections;
3. A roundabout at this intersection is a priority and the City Engineer believes it is likely to be constructed in the near future by either another applicant or the City.

The improvements, proposed in accordance with the OAR 660-012-0060(2)(e) to be constructed by the applicant at this intersection will further delineate the intersection to increase driver awareness on Mt. Washington in advance of the intersection. They will increase the intersection sight distance for vehicles at the Simpson Avenue approaches.

These specific improvements would be as follows:

- Remove three trees on the east side of the north approach.
- Minor slope regrading within the right-of-way south of the existing fire hydrant.
- Restripe the existing centerline, left-turn lane, and bike lanes on Mt. Washington from approximately Troon Street (north of the intersection) to approximately 300 to 500 feet south of Simpson Avenue.
- Shift crosswalk and stop bar locations on Simpson Avenue toward Mt. Washington approximately 10 feet.
- Relocate existing stop sign on the west approach consistent with crosswalk location.
- As appropriate, maintain sight visibility of existing signs on Mt. Washington, using a 45 mph design speed.
- Install two sets of peripheral transverse pavement markings on the north and south approaches of Mt. Washington in advance of the intersection in conjunction with existing signage.
- Install one set of peripheral transverse pavement markings on the east approach of Simpson Avenue near the existing "stop ahead" sign in advance of the intersection.

All proposed pavement marking shall be with durable hot laid tape to ensure longevity. The City agrees to accept these improvements as part of the whole mitigation package as described in these findings and the conditions of approval identified below; provided, however, such improvements must be completed prior to the final occupancy of the development approved by the first site plan on the subject property

The proposed improvements are consistent with OAR 660-012-0060(2)(e) because the applicant's engineer and the City's engineer agree that they will improve the function of the intersection. Additionally, the performance standards effectively alter the land use designation of the property to reduce demand for automobile travel by preventing some of the most traffic-intensive uses such as drive-thru restaurants, consistent with OAR 660-012-0060(2)(d).

To satisfy the TPR for intersection performance standards, the City has agreed to a one-time modification of the mobility standard at this intersection for this development consistent with OAR 660-012-0060(2)(d).

This mitigation measure as written in the TPR infers that all jurisdictions maintain their performance standards within their Transportation System Plan ("TSP"). However, the mobility standards of the City of Bend's TSP are established in the City of Bend Development Code (BDC), which is an Acknowledged functional component of the City's General Plan.

Bend Urban Area Transportation System Plan Transportation and Land Use Implementation Measure 5 states:

> *Bend has identified a set of performance standards that balances operations criteria with financial constraints, safety impacts, quality of living aspects and community values. These operations criteria are included in the City' Development Code and included in this TSP by reference.*

In accordance with the TSP, Section 4.7.400.B of the BDC sets forth the Operations Standards. Section 4.7.100.B of the BDC grants the City Engineer the discretion to modify or waive the contents of Chapter 4.7, including the mobility standards, when "special circumstances dictate such change." In a August 25, 2008, memorandum to Nick Arnis and Colin Stephens, City Engineer Michael Magee agreed that special circumstances warrant the one-time modification of the mobility standard for this intersection. The memorandum reads in part:

> The overall operation and safety of this corridor will be significantly enhanced by the recommended improvements. Although it may be evident that certain distinct criteria may not be met for three intersections [Colorado/Columbia, Simpson/Mt. Washington and Simpson/Century] at particular times of the day, the overall corridor benefits realized by the recommended improvements greatly outweigh these issues.

In the City of Bend, TPR mitigation measure 0060(2)(d) has been locally implemented through the City's Development Code to allow the City Engineer, on a case by case basis, to allow alternate performance standards for intersections. The mitigations agreed to at this and the other affected intersections are sufficient to warrant the City's agreement to a one-time modification of the mobility standard at this intersection, which satisfies the TPR for this intersection.

However, in the event that a roundabout is constructed at the intersection prior to Final Occupancy of the development approved by the first site plan on the subject property, such mitigation for this intersection is found to fully satisfy the TPR.

SIMPSON/COLUMBIA

This intersection is located at the southwest corner of the subject property. The TIA found this all-way stop controlled intersection will worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standards. Therefore, this intersection was identified as being significantly affected by the increase in traffic associated with the plan amendment/zone change to ME.

The TIA concluded the appropriate mitigation measure would be to construct a single-lane roundabout. The City agreed that a single-lane roundabout is the appropriate mitigation measure. However, the City is concerned about the possibility of vehicle queuing on Simpson west of Columbia that would prevent fire trucks and ambulances from leaving the fire station (located on Simpson approximately 450 feet west of Columbia) and responding to emergencies in a timely manner. Without some assurances that the mitigation would prevent this blockage, the Hearings Officer found that the proposed roundabout did not constitute adequate mitigation and did not satisfy the TPR.

Through the subsequent meetings between the City and the applicant, the parties' transportation engineers have further analyzed the intersection and concluded that the following improvements will help prevent queuing in front of the fire station and thereby assure that the single-lane roundabout at this intersection will satisfy the TPR:

1. Construction of a single lane roundabout at Simpson/Columbia;
2. Delineation of fire station driveway intersection area;
3. Striping of "Do Not Block" area in front of fire station driveway;
4. Installation of "Do Not Block" signage in front of fire station driveway; and

5 Improvements to east leg of Simpson/Century roundabout, as described below.

6. Installation of two 2-inch diameter conduit between Simpson/Century Drive and Simpson/Columbia and within the construction footprint of the proposed roundabout at Simpson/Columbia.

For the foregoing reasons, the City finds that construction of the roundabout and the fire safety improvements described in 1-6 above will mitigate the increased traffic generated by the zone change and plan amendment at this intersection per OAR 660-012-0060(2)(e)..

The City Council further finds that the in order to assure acceptable emergency response time as this area of Bend continues to develop, the City is pursuing the installation of preemptive traffic control devices that will allow emergency vehicles to have priority access to both the Simpson/Columbia and Simpson/Century roundabouts. In the future, developers will be required to participate financially in the installation of this preemptive system if traffic produced by their development affects the performance of these roundabouts.

In order to satisfy the concurrency requirement of the TPR, the City finds that the applicant shall complete construction of the roundabout and items 1-6 not later than prior to the final occupancy of the development approved by the first site plan on the subject property. Subject to the foregoing, the TPR is satisfied.

SIMPSON/CENTURY DRIVE

The Century Drive/Simpson Avenue intersection is forecast to exceed the City's operations criteria of 1.0 for the intersection as a whole as evaluated under the Year 2022 Proposed Plan designation according to the original TIA. The intersection has therefore been identified as significantly affected by the proposed zone change and is therefore subject to mitigation that complies with the TPR.

Due to the elevated volume to capacity ratio projected in Year 2022 with the zone change, there could be significant queuing from this intersection that could extend past and block the fire department's driveway located to the east. The queuing associated with the overcapacity approaches may also affect the fire department's accessibility into and through the roundabout.

The City acknowledges that the applicant's site will not be able to bear the cost of all of the mitigation required of the Transportation Planning Rule. Additionally, the City recognizes that the cost of constructing all of the necessary improvements far exceeds the applicant's proportionate share (based upon the share of increased traffic at the intersections likely to be generated by the applicant's project). The City also acknowledges that the built environment surrounding this intersection constrains the mitigation that can reasonably be accomplished. Therefore, the City's direction to the applicant has been to ensure that their mitigation at this intersection focuses on the potential queuing issues and on the existing truck maneuverability issues.

The applicant has proposed mitigation that directly addresses and fully mitigates the operations concerns of the City. The mitigation includes modifying the splitter island, entry width, and entry radius on the westbound approach. The increased approach and entry width will permit emergency vehicles to bypass queues on the westbound approach by ensuring a minimum 20' travel way between the fire station driveway and the entry at the Century Drive/Simpson Avenue roundabout. This width is consistent with the Bend Fire Department's desired minimum width for emergency response routes. The mitigation also solves the truck maneuvering issues that were evidenced by observation of truck circulation and curb destruction, by widening the entry and exit radii and providing improved truck tracking entering and exiting the roundabout at this approach.

Because truck traffic through this intersection is a high percentage of overall traffic, enhancing truck operations improves capacity at the intersection. As well, the mitigation will improve capacity by smoothing the quality of flow of all vehicles on the westbound

approach and eastbound exit of the roundabout. Increasing capacity will reduce the overall queuing on this approach.

Additional mitigation is proposed by the applicant that will further enhance emergency vehicle access to the corridor and eliminate the effects of queuing due to overcapacity on the westbound approach. The applicant proposes to implement a "Do Not Block" box at the fire station driveway, which would be supplemented by regulatory signs and would prohibit drivers from blocking the fire station driveway. This control feature allows emergency vehicles to exit the fire station and bypass any queues, if present.

The combination of the "Do Not Block" the box at the Fire Station driveway and the widened intersection approach that supports queue bypass at the roundabout would result in improved safety and capacity at the roundabout and improved response times for emergency vehicles.

Additionally, the applicant proposes to install conduit and junction boxes along Simpson Avenue between Century Drive and Columbia Street.. Having this conduit in place will facilitate a long-term preemption system should the City decide such a system is warranted.

In summary, the applicant proposes to:

- Provide a minimum 20-foot (curb face to face) clearance on the westbound approach entry by reducing the splitter island and widening the outside curb, which will allow emergency vehicles to bypass vehicle queues;
- Widen the entry on the westbound approach to allow for large truck turning;
- Reshape left side of the splitter island on the westbound approach;
- Relocate pedestrian ramps and adjust multi-use pathway as needed;
- Relocate existing luminaires and catch basins as needed;
- Implement a "Do Not Block" box at the fire station driveway;
- Install two (2") conduits and appropriate junction boxes within the mitigation construction footprint; and
- Evaluate the Simpson Avenue corridor to identify potential future improvements that could be constructed by the City or others to accommodate future traffic demands.

As described above, and in that certain Memorandum from Kittelson & Associates, Inc., to Robin Lewis dated August 12, 2008 the applicant's engineer explains that the increased entry width and entry radius for the westbound approach to the roundabout will result in smoother entering flow and the potential for an increase in capacity. Perhaps most importantly, the increased approach and entry width will permit emergency vehicles to bypass queues on the westbound approach. The proposed modifications on the westbound approach ensure a minimum of 20' travel way between the fire station driveway and the westbound approach entry at the Century Drive/Simpson Avenue roundabout. This width is consistent with the Uniform Fire Code's 20' width requirements. The "Do Not Block" box at the fire station driveway prohibits drivers from blocking the fire station's entry onto the arterial system. The installation of conduit provides a mechanism to install a future pre-emption system should that be warranted for the roundabouts on either side of the fire station. Staff notes that the City is currently working on a roundabout design manual that includes warrants for traffic control systems at roundabouts as well as designs for traffic control systems at roundabouts.

The applicant's additional analysis for the Simpson Corridor will be performed prior to the completion of the roundabout design changes at Simpson/Century and roundabout design at Simpson/Columbia. The analysis will be used to ensure that the designs optimize accommodations for the emergency service vehicles responding through the corridor, develop a list of additional projects that can be prioritized and accomplished by the City or others as development in the area continues to occur.

The applicant proposes to construct these mitigations listed herein towards compliance with the TPR 660-012-0060(2)(d) "Providing other measures as a condition of development or through a development agreement, ... including transportation system management measures, demand management or minor transportation improvements."

However, the City acknowledges that the proposed mitigation will not provide full compliance with the distinct criteria of volume to capacity ratio at particular times of the day at this intersection. The combined mitigations proposed by the applicant directly mitigate identified deficiencies in the system and therefore, the overall corridor benefits realized by the recommended mitigation greatly outweigh that issue. This has been documented and demonstrated by the submitted record. In order to satisfy the concurrency requirement of the TPR, the City finds that the applicant shall complete construction of the above-described mitigation at Simpson and Century not later than prior to the final occupancy of the development approved by the first site plan on the subject property.

The proposed improvements are consistent with OAR 660-012-0060(2)(e) because the applicant's engineer and the City's engineer agree that they will improve the function of the intersection. Additionally, the performance standards effectively alter the land use designation of the property to reduce demand for automobile travel by preventing some of the most traffic-intensive uses such as drive-thru restaurants, consistent with OAR 660-012-0060(2)(c).

To satisfy the TPR for of intersection performance standards, the City has agreed to a one-time modification of the mobility standard at this intersection for this development consistent with OAR 660-012-0060(2)(d).

This mitigation measure as written in the TPR infers that all jurisdictions maintain their performance standards within their Transportation System Plan ("TSP"). However, the mobility standards of the City of Bend's TSP are established in the City of Bend Development Code (BDC), which is an Acknowledged functional component of the City's General Plan.

Bend Urban Area Transportation System Plan Transportation and Land Use Implementation Measure 5 states:

> *Bend has identified a set of performance standards that balances operations criteria with financial constraints, safety impacts, quality of living aspects and community values. These operations criteria are included in the City' Development Code and included in this TSP by reference.*

In accordance with the TSP, Section 4.7.400.B of the BDC sets forth the Operations Standards. Section 4.7.100.B of the BDC grants the City Engineer the discretion to modify or waive the contents of Chapter 4.7, including the mobility standards, when "special circumstances dictate such change." Therefore, per OAR 660-012-060 (2)(d), the City Engineer agrees to a onetime temporary modification of the mobility standards at Simpson Avenue and Century Drive intersection.

The proposed mitigations by the applicant do not preclude the ability of the City and others to make further contributions to improving the operations of the west side transportation system.

In order to satisfy the concurrency requirement of the TPR, the City finds that the applicant shall complete construction of the above-described mitigation at Simpson and Century prior to the final occupancy of the development approved by the first site plan on the subject property. Based upon the foregoing, the City finds that the mitigation described above will satisfy the TPR under OAR 660-12-060 (2)(c), (2)(d) and (2)(e).

OTHER TRANSPORTATION FACILITY IMPROVEMENTS

The City transportation engineer originally requested that the applicant provide three additional transportation facility mitigation measures: (i) paving Commerce Avenue; (ii) constructing a traffic calming/"gateway" feature on Commerce/Columbia; and (iii) providing bicycle lanes on Colorado Avenue between Simpson and Columbia. The Hearings Officer analyzed each of these requests and concluded that the City could not require the applicant to construct them because to do so would be unconstitutional under *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and its progeny.

Based upon subsequent conversations and analysis by the applicant and City staff and their respective traffic engineers, the applicant has proposed to construct a traffic calming "gateway" feature on Commerce/Columbia that would deemphasize the northbound through movement on Columbia Avenue and provide for reduced speeds entering the neighborhood as follows:

- Install curb extensions on both sides of the north approach of Columbia Avenue while maintaining a 24-foot wide travel way and not impacting existing catch basins.
- Optimize available planting space in curb extension area to allow for landscaping and gateway features.
- Design and construct curb extensions with drainage facilities, landscaping and ADA pedestrian ramps to meet City of Bend Standards and Specifications.

The City finds that where, as here, the applicant has proposed and not objected to construct an improvement, a *Dolan* analysis is unnecessary. Accordingly, construction of the above-described "gateway" feature shall be a condition of approval. The applicant shall complete construction of the foregoing items not later than prior to final approval of the first site plan on the subject property.

SUMMARY AND RECOMMENDATION

Based on the foregoing findings, the City finds that the proposed zone change satisfies the TPR.

2. OAR 660-015-000, 660-015-005, and 660-015-010, Statewide Land Use Planning Goals

Goal 1, Citizen Involvement. The City finds this goal requires that a governing body responsible for adopting a comprehensive plan adopt and publicize a program for citizen involvement that clearly defines the procedures by which the general public will be involved in the on-going land use planning process. The City has established an extensive citizen involvement process to assist it in periodic updates of its plan. Public involvement in the review of this application will be assured by the fact that the City's code requires that a hearing be held regarding the plan amendment and zone change by a land use hearings officer and by the Bend City Council (hereafter "Council"). Mailed public notice was provided for both public hearings before the Hearings Officer and for the public hearing before the Council. As discussed in the Findings of Fact above, the City also provided general public notice of the initial public hearing by publication in the Bend "Bulletin," a newspaper of general circulation in Bend and Deschutes County and by posting the subject property with a notice of proposed land use action sign. For these reasons, we find the applicant's proposed plan amendment is consistent with Goal 1.

Goal 2, Land Use Planning. The City finds this goal requires the City to establish a planning process and policy framework to serve as a basis for all decisions and actions related to the use of land. It also requires that the City assure an adequate factual base for its decisions and actions. The City complies with this requirement by appointing hearings officers to review all plan amendment and zone change requests and to prepare detailed findings regarding the application for review and adoption by the Council. We find the goal exception portion of Goal 2 is not applicable to the subject plan amendment application because no goal exception has been requested or is required. For these reasons, the City finds the proposed plan amendment is consistent with Goal 2.

Goal 3, Agricultural Lands and Goal 4, Forest Lands. The City finds these goals do not apply to the applicant's proposed plan amendment because the subject property is located within an urban growth boundary and is not designated or zoned for agriculture or forest use.

Goal 5, Open Spaces, Scenic and Historic Areas and Natural Resources. The City finds this goal is not applicable to the applicant's proposed plan amendment because the subject property does not include any inventoried Goal 5 resources.

Goal 6, Air, Water and Land Resources Quality. The City finds this goal requires that the City's zoning decisions not degrade air, water and land resources in applicable air

sheds and river basins. The City finds approval of this zone change will not adversely affect natural resources as the subject property is already developed and will be redeveloped with urban uses following approval of the proposed plan amendment and zone change. We find the proposed ME designation and zoning may reduce air pollution by reducing vehicle trip length through mixed-use development.

Goal 7, Areas Subject to Natural Disasters and Hazards. The City finds this goal is not applicable to the proposed plan amendment because the subject property is not a known natural disaster or hazard area. We find that to the extent this goal considers natural hazards outside the subject property, the general volcanic and seismic hazards in the Bend area have, to the extent practical, been taken into account in the City's plan and land use regulations. Therefore, we find the applicant's proposed plan amendment is consistent with this goal.

Goal 8, Recreational Needs. The City finds this goal is not applicable to the proposed plan amendment because the subject property is not identified or planned for recreational uses or for a destination resort.

Goal 9, Economic Development. The City finds that the proposed plan amendment is consistent with this goal because it and the related zone change would allow the subject property to be developed with a mixture of residential, commercial and industrial uses, thereby stimulating and supporting economic development. In addition, as discussed above, the City finds that approval of the proposed plan amendment will not reduce the City's industrial lands inventory below the minimum identified as needed in the 25-year planning period identified in the comprehensive plan. For these reasons, the applicant's proposed plan amendment is consistent with this goal.

Goal 10, Housing. The City finds this goal is not applicable to the proposed plan amendment because neither IL- nor ME-zoned land is included in the City's inventory of residential lands, and therefore the proposed plan amendment will not affect that inventory.

Goal 11, Public Facilities and Services. This goal requires the City to plan and develop land in a timely, orderly and efficient fashion, based upon the availability of public services. As discussed in the findings below, the City has found that all needed public facilities and services are available to and currently serve the subject property. Accordingly, the proposed plan amendment is consistent with this goal.

Goal 12, Transportation. As discussed in the findings above, incorporated by reference herein, the City has found the proposed plan amendment satisfies the requirements of the TPR which implements this goal.

Goal 13, Energy. The City finds this goal requires that land uses be developed and managed so as to maximize the conservation of all forms of energy, based upon sound economic principles. The applicant argues, and the City concurs, that the mixed-use development that would be facilitated by the proposed plan amendment and related zone change will reduce the number of vehicle trips and trip lengths associated with development on the subject property, thereby helping to conserve fossil fuel energy. For these reasons, we find the proposed plan amendment is consistent with this goal.

Goal 14, Urbanization. The City finds the proposed plan amendment is consistent with this goal because it and the related zone change will facilitate urban density development with urban uses on land located within an urban growth boundary.

Goal 15, Willamette River Greenway. The City finds this goal is not applicable because the subject property is not located within the Willamette River Greenway.

Goal 16, Estuarine Resources. The City finds this goal is not applicable because the subject property does not contain an estuary or related wetland.

Goal 17, Coastal Shorelands. The City finds this goal is not applicable because no property in the Bend urban area has coastal shorelands.

Goal 18, Beaches and Dunes. The City finds this goal is not applicable because the subject property does not include beaches or dunes as those terms are used in Goal 18.

Goal 19, Ocean Resources. The City finds this goal is not applicable because the proposed plan amendment and related zone change will not have an impact on ocean resources.

For the foregoing reasons, the City finds that the proposed plan amendment, with the conditions of approval identified below, satisfies all applicable plan amendment approval criteria.

ZONE CHANGE APPROVAL CRITERIA

C. City of Bend Zoning Ordinance, Ordinance No. NS-1178, Chapter 10

1. Section 10.10.33, Standards for Zone Change

Amendments. This ordinance may be amended by changing the boundaries of zones or by changing any other provisions thereof, whenever the public necessity and convenience and the general welfare requires such an amendment. Such a change may be proposed by the City Council on its own motion or by motion of the Planning Commission, or by petition as hereinafter set forth.

(1) Application. An application for amendment by a property owner or his authorized agent shall be filed with the City Planning Director. The application shall be made on the forms provided by the City. Before taking final action on a proposed amendment, the Approval Authority shall hold a public hearing thereon. The Approval Authority shall follow the procedures set forth in the City of Bend's land use procedures for map changes.

FINDINGS: The applicant proposes to develop the subject property with mixed uses permitted in the ME Zone potentially including industrial, commercial, office and residential uses. As discussed above, the applicant's proposed zone change is based in part on the fact that under the city's new development code office uses are not permitted in the ME Zone. The record indicates the application was submitted on a city application form, accompanied by the required application fee and a burden of proof. Before approving the zone change, the Bend City Council held a public hearing.

In previous zone change decisions the City's hearings officers have held the above-underscored language may constitute a mandatory approval criterion for a proposed zone change, requiring an applicant to demonstrate the proposed zone change is required by "the public necessity and convenience and general welfare."

The City finds the proposed zone change would have positive consequences. The proposed zone change and resulting redevelopment would allow development with a mix of uses more compatible with surrounding development than traditional light industrial uses, and would provide a mix of uses that would serve the surrounding residential, commercial and light-industrial development within easy walking and bicycling distance, thereby reducing the need for, and shortening, vehicle trips.

(2) Standards for Zone Change. The burden of proof is upon the one seeking change. The degree of that burden increases proportionately with the degree of impact of the change which is sought. The applicant shall in all cases establish:

A. That the change conforms with the Comprehensive Plan. Specifically, the change is consistent with the Plans intent to promote an orderly pattern and sequence of growth.

FINDINGS: In numerous previous decisions the City's Hearings Officer has held this approval criterion includes three elements: 1) conformance with the comprehensive plan map; 2) conformance with the comprehensive plan text; and 3) consistency with the

plan's intent to promote "an orderly pattern and sequence of growth." Each of these elements is discussed separately in the findings below.

1. Conformance with Comprehensive Plan Map.

The subject property is designated IL on the comprehensive plan map. The applicant has requested approval of a plan amendment from IL to ME. Because the City is approving the applicant's proposed plan amendment, the proposed zone change will conform with the comprehensive plan map.

2. Conformance with Comprehensive Plan Text.

As discussed in detail in the findings above, the City has found the proposed plan amendment from IL to ME is consistent with the applicable plan policies. With respect to the proposed zone change, because the city's comprehensive plan is implemented through its zoning, subdivision and procedures ordinances, the plan does not establish mandatory approval criteria for quasi-judicial land use applications such as the applicant's proposed zone change. We adhere to that holding here.

3. Consistency with the Plan's Intent to Promote an Orderly Pattern and Sequence of Growth.

In numerous previous zone change decisions the City's Hearings Officer has held the phrase "orderly pattern and sequence of growth" contemplates consideration of both the location and timing of urban development. An orderly *pattern* of growth is one that promotes compatible physical relationships between zoning districts and uses, while an orderly *sequence* of growth promotes urban-density development concurrent with the provision of adequate urban services. We adhere to that interpretation here.

a. Orderly Pattern of Growth.

The record indicates the area surrounding the subject property consists of a mix of industrial, commercial and residential zones and uses. Provided that development on the site complies with the performance standards described above, the City finds the requested zone change from IL to ME would facilitate development of the subject property with a similar mixture of residential, commercial, industrial and office uses that would be more compatible with the surrounding neighborhood than traditional industrial uses permitted in the IL Zone, and would provide a transition area between the existing residential and commercial uses to the east and south and the light industrial uses to the west. We find the proposed rezoning will promote an orderly *pattern* of growth with respect to land uses because it would foster proper relationships between zoning districts and uses, and would be consistent with the type of mixed-use urban-density development contemplated in the ME Zone; provided, however, it is developed in conformance with the performance standards described above.

Accordingly, the City finds it appropriate to approve the rezone and condition the zone change ordinance such that compliance with the performance standards is required for all future development on the site.

City staff has expressed some concerns about the lack of a site plan accompanying the zone change application. Specifically, the concern is about compatibility of future development with adjacent residential development. Staff and the applicant discussed these concerns and jointly concluded that they could be alleviated by the imposition of the performance standards.

For these reasons, the City finds that the proposed zone change from IL to ME will promote an orderly *pattern* of growth considering the existing and proposed mixture of land uses, provided development on the site is consistent with the performance standards described above and agreed to by the applicant and the City. Accordingly, the City approves the zone change subject to the performance standards described herein.

b. Orderly Sequence of Growth.

In numerous previous decisions, this Hearings Officer has found an orderly *sequence* of growth is one that promotes urban-density development concurrent with adequate urban infrastructure, including sewer, water, police and fire protection, schools and transportation facilities. Each of these facilities and services is discussed separately in the findings below.

(1) Police Protection. Because the subject property is located within the Bend city limits it will be served by the Bend Police Department, which did not comment on the applicant's proposal. The City finds this lack of comment indicates the department believes it can serve mixed-use development on the subject property.

(2) Fire Protection. Because the subject property is located within the Bend city limits it will be served by the Bend Fire Department, which did not comment on the applicant's proposal. The City finds this lack of comment indicates the department believes it can serve mixed-use development on the subject property.

(3) Sewer and Water. The existing Mt. Bachelor Park-and-Ride facility on the subject property is not served by city sewer service. The record indicates there is city water service to the subject property. The City finds particular sewer and water facility requirements will be addressed at the time approval of a development proposal is requested. However, we find that given the type and density of current development on surrounding land there is no reason to conclude the applicant or its successors cannot provide sewer and water facilities and services that meet the City's standards and specifications for future redevelopment of the property under ME zoning.

(5) Schools. The subject property is located within the boundaries of the Bend-La Pine School District. As discussed above, the proposed zone change to ME would allow a portion of the subject property to be developed with residential uses that could have an impact on schools by adding students. The record does not include comments from the school district. However, the City is aware the school district's typical comments state the district does not take a position on particular development proposals and responds to growth in enrollment through a variety of means, and also recommends that sidewalks be required for student pedestrians.

(6) Parks. The subject property is located within the boundaries of the Bend Metropolitan Park and Recreation District. The proposed zone change to ME would allow a portion of the subject property to be development with residential uses that could have an impact on parks. The City finds that any residences would be subject to park systems development charge (SDC) to support park property acquisition.

(7) Transportation Facilities.. As discussed in detail in the findings above concerning the proposal's compliance with the TPR, the City has found that with the steps agreed to by the City and the conditions of approval set forth below, the zone change will comply with the TPR. For these reasons, incorporated by reference herein, we also find that the applicant's proposed zone change will promote an orderly sequence of growth.

For the foregoing reasons, the City finds the proposed zone change from IL to ME will promote an orderly *sequence* of growth.

B. That the change will not interfere with existing development on, development potential, or value of other land in the vicinity of the proposed action.

FINDINGS: As discussed above, the area surrounding the subject property is characterized by a mixture of residential, commercial and industrial zoning districts, densities and uses, as well as a number of office uses developed on IL-zoned land. The subject property currently is developed with the Mt. Bachelor Park-and-Ride facility. The proposed zone change from IL to ME would allow the subject property to be developed with a broader mixture of uses than is permitted under the new IL Zone provisions (which prohibit office uses) – uses that would be compatible with surrounding uses and would provide an effective transition between the commercial, industrial and residential zoning districts that adjoin the subject property. For these reasons, the City finds the

proposed zone change will not interfere with either existing or potential development on other land in the vicinity.

With respect to impact from the proposed zone change to ME on surrounding property values, the City finds the determination of value impact can be highly subjective. There is no evidence in this record specifically addressing impacts on property values. However, we find there can be little doubt redevelopment of the subject property under ME zoning would have a positive impact on surrounding property values because of the potential mixture of uses consistent with the applicant's performance standards. The staff report notes the trend in the real estate market in the Bend area (until the recent softening of the housing market) has been a steady increase in property values regardless of the location, surrounding zoning or development. The staff report also notes that none of the surrounding property owners who received notice of the applicant's proposal objected to the applicant's proposal on the basis of property value impacts.

For the foregoing reasons, the City finds the proposed zone change from ME to IL will not interfere with existing or potential development, or the value of, land in the vicinity of the subject property, therefore satisfying this criterion.

C. That the change in classification for the subject property is consistent with the purpose and intent of the proposed zone classification.

FINDINGS: The purpose of the ME Zone is set forth in Section 10-10.21B(1) as follows:

> **The zone is designed to provide for a mix of uses such as office, retail, services, light manufacturing and warehousing that offer a variety of employment opportunities in an aesthetic environment and having a minimal impact on surrounding uses.**

The City finds the proposed zone change will be consistent with the purposes of the ME Zone because, as discussed above, the subject property is surrounded by residential, commercial and industrial zones and uses, and these are the types of uses allowed in the ME Zone.

D. That the change will result in the orderly and efficient extension and provision of public services. Also, that the change is consistent with the City of Bend policy for provision of public facilities.

FINDINGS: As discussed in detail in the findings above, the City has found the applicant's proposed zone change from IL to ME will promote an orderly sequence of growth. Based on these findings, incorporated by reference herein, we find the proposed zone change will also satisfy this criterion because it will result in the orderly and efficient extension and provision of public facilities.

E. That there is proof of a change of circumstance or a mistake in the original zoning.

FINDINGS: The applicant does not argue the current IL zoning of the subject property was a mistake. Rather, it argues the proposed zone change to ME is justified by changes of circumstance since the subject property originally was zoned IL. The applicant's burden of proof describes those changes of circumstance as follows:

> *"Significant changes in circumstances have occurred since the original designation of the subject property as IL. These changes include closure of the Shevlin Hixon mill, 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:*
>
> ***Closure of Lumber Mill***

At the time the property was zoned IL, the property and surrounding properties housed timber-dependent industries. At the time, timber-dependent uses benefited from the more suburban location, the proximity to water and railways, and the convenient truck transport system. For over 20 years, however, the lumber mill and associated supporting business have remained closed due to the lack of available timber in the area. The railway is no longer in operation and environmental and other regulations would prevent the transport of logs using the river.

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.

The Bend Area General Plan also declares the need to accommodate these new users as well as the need to change industrial property adjacent to the river into mixed-use land that supports pedestrian circulation:

> *'To support a cost effective and balanced land use and transportation system during the 20-year planning horizon the General Plan provides for…converting 200 acres of industrial land along the river to a more intense mixed-use residential, retail, and employment development within walking distance of downtown and other community amenities.' (Section 1-2 Managing Growth)*

Changing the subject property, which is located adjacent to the MR zone and within walking distance of downtown, to ME provides the flexibility to accommodate these new businesses.

Changes in the Market

The subject property is no longer suited for solely industrial uses. With the pending code amendments that will prohibit commercial uses in the IL zone, 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 in the heart of the City's commercial district. The property is less than one mile from the downtown core and is adjacent to the Mixed Use Riverfront (MR) zone, a 250-acre mixed-use area developed with retail, restaurant, office and residential uses.

Due to the success of the Old Mill District and the proximity to the cultural hub of the City, land values have increased to a point that virtually prohibits the development of the subject property 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, high-density residential, 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 use sales of IL property adjacent to the subject site have yielded up $30 per square foot for industrial zoned land.

In response to the market conditions and demand, approximately 40% of IL zoned properties adjacent to the site have developed with office and commercial uses (see Exhibit G). The majority of existing industrial uses in the adjacent IL zone were developed or purchased years ago, before market forces discouraged such development.

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.

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." (Bold text in original.)

The City agrees that the above-described changes of circumstance justify the proposed zone change from IL to ME, and therefore the applicant's proposal satisfies this criterion.

For the foregoing reasons, the City finds that the applicant's proposed zone change satisfies all applicable zone change approval criteria, subject to the conditions of approval set forth below.

IV. DECISION:

Based on the foregoing Findings of Fact and Conclusions of Law, the City hereby **APPROVES** the applicant's proposed plan amendment and zone change from IL to ME for the subject property, subject to the following conditions of approval:

1. Development of the site shall conform to the following performance standards:

> *"**USE RESTRICTIONS***
>
> *1. Temporary housing, which is currently permitted outright in the ME zone, is prohibited.*
> *2. Auto-dependent Retail Sales and Service uses, which are currently permitted outright in the ME zone, are prohibited.*
> *3. Auto-oriented Retail Sales and Service uses, which are currently permitted outright in the ME zone, require a conditional use permit.*
> *4. Restaurants/Food Services with drive through service, which are currently permitted outright in the ME zone, are prohibited.*
> *5. Entertainment and Recreation uses not enclosed in a building, which are currently permitted outright in the ME zone, require a conditional use permit.*
> *6. Hospitals, which are currently permitted outright in the ME zone, require a conditional use permit.*
> *7. All industrial uses must be enclosed in a building.*
> *8. Manufacturing and Production, Warehouse, Production Businesses, and Industrial Service uses, which are currently permitted outright in the ME zone, require a conditional use permit as a primary use, and permitted subject to Site Plan/Design Review where proposed as a secondary use.*
>
> ***DEVELOPMENT STANDARDS***
> *1. Where abutting a residential district, in addition to the 10 foot base side yard setback, a side yard setback shall increase 1 foot for every foot by which a building exceeds 35 feet in height.*
> *2. Commercial uses, in addition to industrial uses currently required by the existing ME zone regulations, are required to have an additional 10-foot side/rear buffer if adjacent to the MR zone.*
> *3. Drive through or vehicle service areas are not allowed between a building and the required 10-foot front yard landscape setback.*

2. Applicant shall install the following improvements at the intersection of Simpson and Mt. Washington, which improvements shall be completed prior to the final occupancy of the development approved by the first site plan on the subject property :

   a. Remove three trees on the east side of the north approach.
   b. Minor slope regrading within the right-of-way south of the existing fire hydrant.
   c. Restripe the existing centerline, left-turn lane, and bike lanes on Mt. Washington from approximately Troon Street (north of the intersection) to approximately 300 to 500 feet south of Simpson Avenue.
   d. Shift crosswalk and stop bar locations on Simpson Avenue toward Mt. Washington approximately 10 feet.
   e. Relocate existing stop sign on the west approach consistent with crosswalk location.
   f. As appropriate, maintain sight visibility of existing signs on Mt. Washington, using a 45 mph design speed.

g. Install two sets of peripheral transverse pavement markings on the north and south approaches of Mt. Washington in advance of the intersection in conjunction with existing signage.
h. Install one set of peripheral transverse pavement markings on the east approach of Simpson Avenue near the existing "stop ahead" sign in advance of the intersection.

Alternatively, this condition may be satisfied as follows:

If, prior to construction of the improvements described in Condition No. 2, the City notifies the applicant in writing that sufficient funding, including the applicant's financial contribution, as described below, has been procured to construct a roundabout at the intersection of Simpson and Mt. Washington Drive in a timeframe to mitigate for development on the subject property, the applicant shall deposit in a City fund or other acceptable account, a sum equal to the estimated cost of installing the improvements described above (a through h). The deposit shall be made within 30 days of the date of the City's written request. Once the deposit is verified by the City, in writing, this condition for the final occupancy of the development approved by the first site plan on the subject property shall be deemed satisfied.

3. Applicant shall install the following improvements at the intersection of Simpson and Century, which improvements shall be completed prior to the final occupancy of the development approved by the first site plan on the subject property:

a. Provide a minimum 20-foot (curb face to face) clearance on the east approach entry by reducing the splitter island and widening the outside curb, which will allow emergency vehicles to bypass vehicle queues.
b. Widen the entry on the east approach to allow for large truck turning.
c. Reshape left side of the splitter island on the east approach.
d. Relocate pedestrian ramps and adjust multi-use pathway as needed.
e. Relocate existing luminaires and catch basins as needed
f. Implement a "Do Not Block the Box" plan for the Fire Department Driveway on Simpson Avenue;
g. Install two 2-inch diameter conduit and junction boxes on Simpson Avenue between Century Drive and Columbia Street and within the roundabouts within the mitigation construction footprint;
h. Prior to the design of the roundabouts, the applicant will further evaluate the Simpson Avenue corridor to identify potential future improvements that could be constructed by the City or others to accommodate future traffic demand. This evaluation will be conducted in an effort to ensure future improvements are not precluded by the proposed improvements to be completed by the applicant. The evaluation will ensure that the developed designs optimize emergency vehicle response through the corridor

4. Applicant shall install the following improvements at the intersection of Simpson and Columbia, which improvement shall be completed prior to the final occupancy of the development approved by the first site plan on the subject property:

a. Construction of a single lane roundabout at Simpson/Columbia;
b. Delineation of fire station driveway intersection area;
c. Striping of "Do Not Block" area in front of fire station driveway;
d. Installation of "Do Not Block" signage in front of fire station driveway; and
e. Improvements to east leg of Simpson/Century roundabout, as described below.
f. Installation of two 2-inch diameter conduit between Simpson/Century Drive and Simpson/Columbia and at the roundabouts within the mitigation construction footprint.

5. Applicant shall install the following improvements at the intersection of Colorado and Columbia, which improvements shall be completed prior to the final occupancy of the development approved by the first site plan on the subject property:

a. Installation of six-foot bike lanes on the east and west approaches from the intersection to the approximate point-of-curvature or point-of-tangent. Addition of bicycle pavement legend.
b. Addition of lane extension striping in the bay taper area for the eastbound and westbound left-turn lanes.
c. Striping painted corner radii edge lines based on a WB-40 design vehicle.
d. Installation of crosswalk markings on the north and south approaches of Columbia Avenue.
e. As appropriate, maintain sight visibility for drivers on the Columbia Avenue approaches, using a 45 mph design speed.
f. Adjust grade elevations at two catch basins on the west approach of Colorado.

Alternatively, this condition may be satisfied as follows:

If, prior to construction of the improvements described in Condition No. 5, the City notifies the applicant in writing that sufficient funding, including the applicant's financial contribution, as described below, has been procured to construct a roundabout at the intersection of Columbia Avenue and Colorado Avenue in a timeframe to mitigate for development on the subject property, the applicant shall deposit in a City fund or other acceptable account, a sum equal to the estimated cost of installing the improvements described above (a through h). The deposit shall be made within 30 days of the date of the City's written request. Once the deposit is verified by the City, in writing, this condition for the final occupancy of the development approved by the first site plan on the subject property shall be deemed satisfied.

6. Applicant shall install the following improvements at the Columbia/Commerce intersection area, which improvements shall be completed prior to the final occupancy of the development approved by the first site plan on the subject property:

a. Install curb extensions on both sides of the north approach of Columbia Avenue while maintaining a minimum 20-foot wide travel way.
b. Optimize available planting space in curb extension area to allow for landscaping and gateway features.
c. Design and construct curb extensions with drainage facilities, landscaping and ADA pedestrian ramps to meet City of Bend Standards and Specifications.

7. Prior to the second reading of the ordinance redesignating and rezoning the subject property, the Applicant shall record the performance standards and conditions of approval against the deed for each parcel of land of the subject property to alert any future owners of the property of the special performance standards and conditions of approval.



PZ 06-570 Plan Amendment and Zone Change from IL to ME

SUBJECT PROPERTIES

ZONING & PLAN DESIGNATION: CG IL RM CL MR RS

250 125 0 250 500 Feet

Imagery acquired June 2006. Map prepared August 19, 2008.

N

ORDINANCE NO. NS-2106

AN ORDINANCE ESTABLISHING USE OF CRIMINAL RECORD INFORMATION FOR APPLICANTS FOR CITY EMPLOYMENT OR VOLUNTARY PUBLIC SERVICE

Whereas, ORS 181.555, and the Oregon Administrative Rules establish procedures for access to criminal conviction record information possessed by the Oregon State Police Department through The Law Enforcement Data System (LEDS); and

Whereas, ORS 181.555(1) authorizes access to criminal offender information by criminal justice agencies and ORS 181.555(2) authorizes access to criminal offender information by other state and local agencies, and

Whereas, the City of Bend Police Department is a criminal justice agency under state law with access, by agreement with the Oregon State Police, to criminal offender information maintained in LEDS, and

Whereas, OAR 257-010-0025(a) permits a Criminal Justice Agency access to Oregon State Police criminal offender information where such information is required to implement a local ordinance, and

Whereas, the City Council desires to authorize use of the criminal offender information available through LEDS in regard to employee and volunteer background checks so as to preserve the public's confidence in the integrity of the City's employees and to improve efficiency in obtaining and assessing criminal conviction records for applicants to positions of employment or voluntary public service that require certain services, now, therefore,

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. Purpose.

The purpose of this ordinance is to authorize the City of Bend Police Department to access Oregon State Police criminal offender information through the Law Enforcement Data System (LEDS) for applicants seeking to gain employment and/or to volunteer for public service with the City of Bend.

Section 2. Procedure.

The City shall follow the procedure set forth.

(A) An offer of employment to all potential new City employees or appointment of volunteers shall be conditioned on the prior written consent to a check of the applicant's or volunteer's criminal offender information, if any, as shown in the records maintained in the Oregon State Police LEDS system. The written consent form will be signed by the applicant, and will consent that the agency may make a criminal offender record check through the OSP; and will provide written notice from the city that a criminal offender record check may be made through the OSP. The consent form shall include: Notice of the manner in which the individual may be informed of the procedures adopted under ORS 181.555(3) for challenging inaccurate criminal offender information; and notice of the manner in which the individual may become informed of rights, if any, under Title VII of the Civil Rights Act of 1964; and notice that discrimination by an employer on the basis of arrest records alone may violate federal civil rights law and that the individual may obtain further information by contacting the Bureau of Labor and Industries.

(B) The criminal history authorization form will be maintained by the Human Resource Department who will request the check.

(C) The City of Bend Police Department will conduct the check on the perspective employee or volunteer and will report to the Human Resource Department that the record indicates "no criminal record" or "criminal record".

(D) If the applicant's or volunteer's record is reported as "criminal record", the Human Resource Department will in accordance with OAR 257-010-0025, request a written

criminal history report from the Oregon State Police Identification Services Section. The Human Resource Department will make the written criminal history record available to the selecting Department Head for consideration in making the hiring decision.

(E) The written criminal history record on persons that are not hired or appointed as volunteers will be retained in accordance with the Oregon Administrative Rules 166-300-0040 (5) record retention requirements and thereafter will be destroyed by shredding.

(F) An applicant or volunteer who is disqualified from employment or appointment with the City based on the applicant's criminal offender history shall be informed of the basis of the disqualification and may appeal the disqualification only on the grounds that the information is incorrect or that the applicant has been rehabilitated. Any such appeal must be in writing, must state with particularity the grounds for the appeal and must be received by the City no later than seven (7) calendar days from the date of notice to the applicant of disqualification to be considered.

(G) The criminal history record of applicants and volunteers with a criminal history that are hired or appointed will become a part of the confidential personnel file of that employee or volunteer. Access to confidential personnel files is limited to authorized persons who have an official need to access such files as sanctioned by law or regulation.

(H) The application of each person seeking employment or appointment as a volunteer that has a felony criminal history or a history of conviction of a misdemeanor involving moral turpitude or theft, will be closely examined by the selecting official. Each application will be evaluated on a case by case basis, taking into account the applicant's qualifications, the requirements of the particular job or volunteer post applied for and the results of the criminal history check. Factors such as the age of the offender at the time of the offense, the type of offense and subsequent rehabilitation, the public sensitivity of the position under consideration shall be taken into account in evaluating a criminal history report

(I) Hiring an applicant or appointing a volunteer with a criminal history record, will require approval of the selecting Department Head and the approval of the City Manager, after full disclosure and consideration of the criminal history of the applicant. . Nothing in this ordinance shall prevent the City of Bend from denying an employment or volunteer application on a basis other than the criminal history, or lack of such history, of the applicant.

Section 3. Severability.

Invalidity of a section or a part of a section of this Ordinance shall not affect the validity of the remaining section or parts of sections.

Read for the first time the 1st day of October, 2008.

Read for the second time the 15th day of October, 2008.

Placed upon its passage the 15th day of October, 2008.

YES: 6 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 15th day of October, 2008.

Bruce Abernethy, Mayor

ATTEST:

Patricia Stell, City Recorder

ORDINANCE NO. NS-2107

AN ORDINANCE AMENDING THE CITY OF BEND DEVELOPMENT CODE BY CHANGING THE TEXT OF CHAPTERS 1.2, 2.2, & 3.6 TO ALLOW TEMPORARY HOUSING AS A CONDITIONAL USE IN THE CB, CL, & CG ZONES; DECLARING AN EMERGENCY; AND PRESCRIBING AN EFFECTIVE DATE OF NOVEMBER 5, 2008.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council has held a public hearing, considered the testimony, the record, and the Planning Commission's recommendation, and has found that there is a public need and benefit for the proposed text amendments to the City of Bend Development Code. The Bend City Council adopts the Recommendation of the Planning Commission, approved on September 15, 2008, file number PZ 08-309.

Section 2. Chapters 1.2, 2.2, and 3.6 of the City of Bend Development Code (Ordinance NS-2016) are amended by changing the text therein as detailed in "Exhibit A".

Section 3. The Bend City Council adopts the Findings for Development Code Text Amendment, attached as "Exhibit B", as findings in support of this ordinance.

Section 4. This ordinance being necessary for the preservation of public safety and health, an emergency is declared to exist and this ordinance takes effect on November 5, 2008.

Read for the first time the 15th day of October, 2008.

Read for the second time the 5th day of November, 2008.

Placed into effect upon the 5th day of November, 2008.

YES: 6 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 5th day of November, 2008.

Bruce Abernethy, Mayor

Attest:

Kim Meyers, Deputy City Recorder

EXHIBIT "A"

Text in underlined typeface is proposed to be added. Text in ~~strikethrough~~ typeface is proposed to be deleted.

Chapter 1.2 Definitions

Temporary Housing means a permanent facility providing temporary shelter for individuals and/or families who are homeless or in transition. Services may be provided including, but not limited to, accommodations, meals, toilet/bathing facilities, clothing/laundry, case management services and information on or referral to other community resources.

Chapter 2.2 Commercial Districts

2.2.300 Permitted Land Uses

A. Permitted Uses. The land uses listed in Table 2.2.300 are allowed in the Commercial Districts as designated, subject to the provisions of this Chapter. Only land uses that are specifically listed in Table 2.2.300, and land uses that are approved as "similar" to those in Table 2.2.300, may be permitted or conditionally allowed.

Table 2.2.300 - Permitted Land Uses

Land Use	CBD	*CC	CL	CG
Residential				
Existing Residential uses	P	P	P	P
*New Residential uses	P	P	P	P
*Temporary Housing	C	N	C	C
Commercial				
Retail Sales and Service				
- building footprint less than 50,000 square feet	P	P	P	P
- building footprint greater than 50,000 square feet	P	N	P	P
Retail Sales and Service (*auto dependent)	N	C	P	P
Retail Sales and Service (*auto oriented)	C	C	P	P
Restaurants/Food Services				
- with *drive-through 300 sq ft or less	C	C	P	P
- without drive-through	P	P	P	P
Offices and Clinics	P	P	P	P
Production Businesses (*e.g. IT support, Radio/Television Broadcast)*	N	N	C	P
Convention Centers/Meeting Rooms	C	N	P	P
Lodging (hotels, motels, *bed and breakfast inns, *vacation rentals, boarding houses)	P	P	P	P
Hospitals	N	N	P	P
Commercial and Public Parking	P	P	P	P
Commercial Storage				
- enclosed in building and on an upper story	C	P	P	P
- not enclosed in building	N	N	P	P
- enclosed in building on ground floor (i.e., mini-storage)	N	N	C	P
Entertainment and Recreation				
- enclosed in building (*e.g.,* theater, fitness facility)	P	P	P	P
- not enclosed (*e.g.,* amusement)	N	N	C	P
Time Share Units	C	C	C	C
Trailer Park / Campground	N	N	C	C
Mortuary	N	N	P	P
Wholesale Sales (more than 75% of sales are wholesale)	N	N	P	P

Veterinary Clinic (small animal)	C	P	P	P
*Mixed Use (residential with commercial/civic/industrial) Mixed-use developments shall be subject to the use limitations prescribed for the respective individual uses	P	P	P	P
Public and Institutional	**CBD**	***CC**	**CL**	**CG**
Government - point of service (e.g., city hall, library)	P	P	P	P
Government – limited point of service; (e.g., public works yards, vehicle storage etc.)	C	C	C	C
Parks and Open Space	P	P	P	P
Schools -- *pre-school, daycare, and primary, secondary -- colleges, and vocational schools	 P P	 P N	 P P	 P P
*Clubs and Places of Worship	C	C	C	C
Industrial				
*Manufacturing and Production - greater than 5,000 sq. ft. - less than 5,000 sq. ft. with retail outlet	 N P	 N P	 C P	 N P
Warehouse	N	N	P	P
Transportation, Freight and Distribution	N	N	C	P
Industrial Service (*e.g.,* cleaning, repair)	N	N	P	P
Manufactured Home Sales	N	N	C	P
Lumber / Building Supplies	N	N	C	P
*Hydroelectric facilities	C	N	C	C

Key to Permitted Uses

P = Permitted, subject to Chapter 4.1 **N** = Not Permitted; **C** = Conditional Use.

Conditional Uses are subject to Conditional Use permit standards in Chapter 4.4.

* Special Standards for Certain Uses subject to Chapter 3.6

Note: The CC zone limits the size of uses within the zone. See Section 3.6.300(J)

Chapter 3.6 Special Standards for Certain Uses

3.6.200 Residential Uses

O. Temporary Housing.

1. Supervision: On site supervision must be provided at all times. At least one competent adult must be present for every 25 persons utilizing the facility.

2. Loitering: There shall be no loitering at the facility location.

3. Outdoor Activities: All functions associated with a Temporary Housing use, except for children's play areas, outdoor recreation areas, parking and outdoor waiting must take place within the building proposed to house the Temporary Housing use. Outdoor waiting for clients, if any, may not be in the public right-of-way, must be physically separated from the public right-of-way and must be large enough to accommodate the expected number of clients. Waiting shall not take place beyond one hour before the facility opens or more than one hour after it has closed.

4. Development Standards: The development standards for the base zone and any overlay zone shall apply to Temporary Housing uses, unless superseded by standards in this section.

5. Parking: The parking space requirements for Temporary Housing uses shall be 1 space per 500 square feet of gross floor area.

6. Signs: Signs shall comply with all applicable Oregon codes and City of Bend ordinances including, but not limited to the Sign Ordinance and Design Review provisions in this ordinance.

7. Separation: Any proposed Temporary Housing facility must be located at least 1000 feet from any other Temporary Housing facility.

8. Compliance: Any Temporary Housing facility must meet all other applicable requirements of federal, state, and /or local authorities including but not limited to local Fire Department, building and Environmental Health requirements.

3.6.400 Temporary Uses

~~**B. Temporary Housing.**~~

~~1. Supervision: On site supervision must be provided at all times. At least one competent adult must be present for every 25 persons utilizing the facility.~~

~~2. Loitering: There shall be no loitering at the facility location.~~

~~3. Outdoor Activities: All functions associated with a Temporary Housing use, except for children's play areas, outdoor recreation areas, parking and outdoor waiting must take place within the building proposed to house the Temporary Housing use. Outdoor waiting for clients, if any, may not be in the public right-of-way, must be physically separated from the public right-of-way and must be large enough to accommodate the expected number of clients. Waiting shall not take place beyond one hour before the facility opens or more than one hour after it has closed.~~

~~4. Development Standards: The development standards for the base zone and any overlay zone shall apply to Temporary Housing uses, unless superceded by standards in this section.~~

~~5. Parking: The parking space requirements for Temporary Housing uses shall be 1 space per 500 square feet of gross floor area.~~

~~6. Signs: Signs shall comply with all applicable Oregon codes and City of Bend ordinances including, but not limited to the Sign Ordinance and Design Review provisions in this ordinance.~~

~~7. Separation: Any proposed Temporary Housing facility must be located at least 1000 feet from any other Temporary Housing facility.~~

~~8. Compliance: Any Temporary Housing facility must meet all other applicable requirements of federal, state, and /or local authorities including but not limited to local Fire Department, building and Environmental Health requirements.~~

BEND CITY COUNCIL FINDINGS
FOR DEVELOPMENT CODE TEXT AMENDMENT

PROJECT NUMBER: **08-309**

HEARING DATE: Wednesday, October 15, 2008
City of Bend Council Chambers
710 NW Wall Street
Bend, OR 97701

APPLICANT: City of Bend
710 NW Wall Street
Bend, OR 97701

REQUEST: A proposal to amend the text of Chapters 1.2, 2.2, and 3.6 of the Bend Development Code (Ordinance NS-2016).

STAFF: Aaron Henson, AICP, Senior Planner

I. APPLICABLE CRITERIA:

(1) The Bend Area General Plan

(2) Bend Code Chapter 10; City of Bend Development Code, Ordinance NS-2016

(a) Chapter 4.6, Land Use District Map and Text Amendments; Section 4.6.200(B), Criteria for Legislative Amendments

II. APPLICABLE PROCEDURES:

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

(a) Chapter 4.1, Land Use Review and Procedures

II. FINDINGS OF FACT:

1. **PLANNING COMMISSION RECOMMENDATION:** A package of amendments to the text of Chapters 1.2, 2.2, and 3.6 of the City of Bend Development Code (Ordinance NS-2016), which are intended to: 1) re-establish a definition for the term "Temporary Housing"; 2) establish "Temporary Housing" as a conditional use in the CB, CL, and CG zones; and 3) relocate the Special Use Standards for "Temporary Housing".

2. **PUBLIC NOTICE AND COMMENTS:** The Planning Division published notice of the City Council public hearing for the proposed Development Code text amendment in the Bulletin on September 21, 2008 and sent a Measure 56 notice to all affected landowners in the CB, CL, and CG zones on August 19, 2008. Comments received in response to the City's notices are included in the record.

3. **BACKGROUND:** The City of Bend originally adopted a text amendment for "Temporary Housing" in 2003 (City File #PZ 03-88), and the City mailed a Notice of Adoption to the Oregon Department of Land Conservation and Development (DLCD) on May 18, 2005. (DLCD File #005-03). No appeals were filed, and the text amendments became final. When the City repealed Zoning Ordinance No. NS-1178 in 2006 and replaced it with the Development Code, Ordinance No. NS-2016, the Special Standards for Temporary Housing were carried forward, but the City inadvertently omitted the definition for "Temporary Housing" from Chapter 1.2, and the City also inadvertently omitted "Temporary Housing" from the list of permitted uses in Table 2.2.300. Furthermore, the Special Standards for Temporary Housing were mistakenly codified in Section 3.6.400, Temporary Uses, instead of Section 3.6.200, Residential Uses. The proposed text amendment corrects these errors.

III. CONCLUSIONS OF LAW:

CONFORMANCE WITH CITY OF BEND COMMUNITY DEVELOPMENT CODE, CHAPTER 4.6, LAND USE DISTRICT MAP AND TEXT APMENDMENTS

4.6.200 Legislative Amendments.

A. Applicability, Procedure and Authority. Legislative amendments generally involve broad public policy decisions that apply to other than an individual property owner. These include, without limitation, amendments to the text of the comprehensive plan and map, Development Code and changes in the zoning map not directed at a small number of properties. They are reviewed using the Type IV procedure in accordance with Chapter 4.1, Land Use Review and Procedures and shall conform to Section 4.6.600, Transportation Planning Rule Compliance. A Legislative Amendment may be approved or denied.

FINDING: The amendments to the text of the Development Code involve broad public policy rather than an individual property owner. Therefore, the Legislative Amendment Procedures of this section are the appropriate procedures for this review.

B. Criteria for Legislative Amendments. The applicant shall submit a written narrative which explains how the approval criteria will be met. A recommendation or a decision to approve or to deny an application for a Legislative Amendment shall be based on all of the following criteria:

1. The request is consistent with the applicable State land use law;

FINDING: The text amendments for Temporary Housing are consistent with the applicable State land use law. In particular, the proposed amendments will satisfy Goal 1: Citizen Involvement, Goal 2: Land Use Planning, Goal 9: Economy of the State, and Goal 10: Housing.

- Goal 1 will be satisfied through the City's text amendment process that includes a Planning Commission public hearing, followed by a City Council public hearing.

- Goal 2 was reviewed by Planning Division staff for compliance and determined to be consistent with the City's land use policies regarding housing and economic development.

- The intent of Goal 9 is to provide an adequate land supply for economic development and employment growth. Goal 9 is applicable to the proposed text amendment because in theory, the use of land in the CB, CL, and CG zones for Temporary Housing could reduce the supply of commercial property for economic development and employment growth. According to City records, there are approximately 1,784 tax lots in the CB, CL, and CG zones. During the 3 year period between 2003 and 2006 when Zoning Ordinance No. NS-1178 allowed Temporary Housing in the CB, CL, and CG zones, only one new Temporary Housing facility was established within these three commercial zones. In addition, the Development Code currently allows hotels, motels, bed and breakfast inns, vacation rentals, and boarding houses in all commercial districts. These transient accommodation uses are consistent with Goal 9 and are similar to the proposed Temporary Housing use. The City's proposal to re-establish Temporary Housing as an allowed use in these zones is not expected to have a significant impact on the City's land supply for economic development and employment growth. By providing services to help people get back into the workforce, Temporary Housing facilities can also assist the City in its efforts to expand employment growth.

- The intent of Goal 10 is to provide for the housing needs of the citizens of the state. This includes taking steps to provide safe and sanitary housing for individuals and/or families who are homeless or in transition. Temporary Housing facilities in the City of Bend are periodically inspected by the Fire Department and the Building Department to assure that they comply with

applicable fire code and building code requirements. The City of Bend also has Special Use Standards in place for Temporary Housing in order to address compatibility issues.

- The other Statewide Goals 3 through 8 and 11 through 19 were reviewed and are not applicable to this proposal.

Based on the above discussion, the Planning Commission finds that the proposed text amendment to the Development Code complies with the above criterion.

2. The request is consistent with the applicable Bend Area General Plan goals and policies;

FINDINGS: The "goals" established in the general plan express the desires of the residents of Bend as the City progresses into the future. The "goals" are generally carried out through "policies", which are statements of public policy. Staff reviewed the Bend Area General Plan and found only Chapter 5: Housing and Residential Lands, and Chapter 6: The Economy and Lands for Economic Growth to be directly applicable to the proposed text amendments.

Chapter 5 of the Bend Area General Plan includes the following goals:

> "It is a goal of the General Plan to accommodate the varied housing needs of citizens with particular concern for safety, affordability, open space, and a sense of community."

Chapter 5 also recognizes Bend's housing affordability challenges:

> "The growth in Bend's economy will continue to provide enough jobs and higher wages so that most households, especially those middle-age (35-60 years) householders in their peak earning years, will not have a problem affording housing in Bend. In the future, older families and households (the baby-boomer retirees) will be more financially secure than their parents' generation and better able to find affordable housing.
>
> However, even with increasing income levels, many Bend householders and families may have a harder time finding affordable housing. Those persons most likely to have difficulty finding affordable housing are the younger householders and families that typically fall into the lower income levels during their early employment years, and single parent families with children."

Chapter 5 of the General Plan states that the issue of affordable housing must be addressed in a comprehensive manner to provide for the long-term self-sufficiency of low and moderate income households in Bend. Chapter 5 includes numerous strategies to encourage the market to provide affordable housing, and points out that the City and Deschutes County have provided low-cost or free land, grants, and other assistance to local housing groups to help meet the housing needs of the community. But these efforts to promote affordable housing have been unable to prevent homelessness. The Planning Commission finds that the text amendment to allow Temporary Housing in certain commercial zones is consistent with the City's goal to provide for the varied housing needs of its citizens, including homeless individuals and families.

Chapter 6 of the Bend Area General Plan includes the following goals:

> □ have a vital, diverse and sustainable economy, while enhancing the community's overall livability.
>
> □ ensure an adequate supply of appropriately zoned land in Bend to provide for a full range of industrial, commercial, and professional development opportunities.

A subsection of Chapter 6 specifically addresses Commercial Corridor Areas, which include land in the CL and CG zones. This subsection includes the following statement:

> "The city will continue to improve the appearance of the commercial corridors."

Testimony received at the Planning Commission public hearing pointed to the above statement regarding the appearance of commercial corridors, and to Policy #22 in Chapter 6, which states:

> "The city shall strive to retain and enhance desirable existing commercial areas and encourage property owners to rehabilitate or redevelop older commercial areas."

Some of the testimony at the Planning Commission public hearing went on to assert that allowing Temporary Housing facilities in commercial zones contradicts Policy #22 in Chapter 6. This statement is inconsistent with the requirements of the Development Code. Temporary Housing facilities are required to meet the all development standards for the base zone and any applicable overlay zone, unless superseded by the Special Standards for Temporary Housing which address supervision, loitering, outdoor activities, parking, signs, separation from other Temporary Housing facilities, and compliance with all other applicable requirements of federal, state, and/or local authorities. In the case of the Shepherd's House, a Temporary Housing facility which received City approval to move into an existing historic building located in the CL zone on the Division Street corridor which had been vacant for an extended period of time, several upgrades to the site were required by the City and completed by the applicant. These included removing an existing non-conforming pole-mounted sign, repairing and replacing broken outdoor lighting fixtures, providing bicycle parking, and installing landscaping and street trees in the front yard setback. These upgrades have improved the appearance of the Shepherd's House property. Other upgrades have been completed in connection with the Bethlehem Inn, a Temporary Housing facility that moved into an underutilized hotel in the CG zone in the Third Street corridor. For example, a public sewer main was extended to serve the Bethlehem Inn, which is now available to support the needs of other commercial development.

Although testimony was presented claiming that the presence of homeless individuals and Temporary Housing facilities in commercial zones detracts from the marketability of adjacent businesses, the City Council finds that facilitating the efforts of non-profit agencies and faith-based organizations that provide shelter and services for the homeless in commercial zones actually enhances the community's overall livability.

3. The applicant can demonstrate a public need or benefit for the proposed amendment.

FINDING: "Addressing Poverty, Hunger, and Homelessness" is one of the Key Vision Elements of the Bend 2030 Action Plan, which was updated on January 23, 2007. Securing ongoing shelter for homeless families is also identified as an Action Item in the Bend 2030 Action Plan.

Currently, the Development Code allows Temporary Housing as a conditional use in the RL, RS, RM-10, RM, and RH zones. The Development Code also allows Temporary Housing as a secondary use in the ME and PO zones. However, the City's two largest Temporary Housing facilities, Bethlehem Inn and the Shepherd's House, are both located in commercial zones. The proposed text amendments, which will allow Temporary Housing facilities such as the Bethlehem Inn and the Shepherd's House to continue to operate in the CG and CL zones, have a clear public need and benefit.

4.6.500 Record of Amendments.

The City Recorder shall maintain a record of amendments to the text of this Code and the land use districts map in a format convenient for public use.

FINDING: In the event the Development Code text amendment is adopted by ordinance, compliance with this Section will be required.

4.6.600 Transportation Planning Rule Compliance.

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

FINDING: Temporary Housing facilities generate fewer trips than most other permitted uses in the CL, CG, and CB zones because many homeless individuals do not own cars, and use alternative modes of transportation such as walking, public transit, and bicycles. In addition, lodging facilities such as hotels, motels, etc. are currently permitted in all commercial districts. Temporary Housing will not produce more vehicle trips than a currently allowed lodging facility of the same size. Therefore, the proposal to re-establish Temporary Housing as an allowed use in the CL, CG, and CB zones does not significantly affect a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060.

IV. CONCLUSIONS:

Based on the above Findings of Fact and Conclusions of Law, the City Council finds that the proposed Development Code text amendments will meet, with maintenance of a record, all applicable criteria for adoption.

Added text is in underlined typeface;
deleted text is in ~~struckthrough~~ typeface.

ORDINANCE NO. NS-2108

AN ORDINANCE RENEWING THE NON-EXCLUSIVE FRANCHISE FOR QUANTUM COMMUNICATIONS, AN OREGON CORPORATION, TO CONSTRUCT, OPERATE AND MAINTAIN A DATA COMMUNICATIONS SERVICE FACILITY; TO OCCUPY CITY RIGHTS-OF-WAY; AND TO PROVIDE TELECOMMUNICATION SERVICES IN THE CITY OF BEND, OREGON.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. Bend Code Section 11.24 is amended as follows:

Definitions - as used in this ordinance:

1. "City" means City of Bend, Oregon.

2. "Grantee" means Quantum Communications, LLC, the grantee of rights under this franchise, including its successors or assigns.

3. "Council" means the City Council of the City of Bend, Oregon.

4. "Facilities" means the conduits, cables, poles, wires, fixtures, underground lines, and appurtenances thereto, including other technical Facilities necessary for the purpose of providing telecommunication services.

5. "Gross revenues" means all revenues earned by the Grantee in the delivery of goods and services within the City of Bend, and is further defined in Section 9.

6. "Person" means any person, firm, partnership, association, corporation, limited liability company or organization of any kind.

7. "Rights of way" include streets, roads, highway, bridges, alleys, sidewalks, and public utility easements, including the subsurface under and air space over these areas. This definition applies only to the extent of the City's right, title, interest or authority to grant a franchise to occupy and use such areas for siting telecommunications facilities. "Rights of way" excludes other property owned by the City, such as parks or public buildings.

8. "Telecommunications service provider" means any entity that transmits information for hire, in electromagnetic frequency, electronic or optical form, including voice or data, whether or not the transmission medium is owned by the provider itself.

9. "Ultimate consumer" means any entity that obtains telecommunications services transmitted over Grantee's Facilities for its own use by any means, including purchase, lease or direct receipt of such services.

Section 2. Grant of Authority. City grants to Grantee the right and privilege, subject to all City of Bend ordinances, policies, rules and regulations, to construct, install, maintain and operate over, in, on and under the present and future City rights of way of the City of Bend, Facilities necessary for the purpose of providing telecommunication services. This franchise is not exclusive, and City reserves the right to grant a similar privilege to any other Person at any time during the period of this franchise. This grant is further subject to all prior rights, interests, agreements, permits easements or licenses granted by the City, and to the City's right to use the rights of way for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder.

Section 3. Compliance with Laws, Rules and Regulations. The locations and methods of installation and maintenance of all Grantee's Facilities shall be subject at all times to regulation by the City (including City's ordinances and policies on street cuts and use of right-of-way), and all such Facilities shall be so constructed and maintained as to interfere as little as practicable with street or other traffic. Nothing herein however shall be construed to change or modify any applicable Oregon law regarding Grantee's ability to recover costs for any relocation of its Facilities. All of such Facilities shall be installed and at all times maintained by Grantee in accordance with telecommunications industry standards. Grantee shall change the location of

or remove any pole, conduit, structure or Facility within the public right of way when the City determines that the public convenience requires such changes or removal. The expense of said change shall be paid by Grantee

Section 4. Grantee Liability, Indemnification of City and Insurance.

1. Grantee shall at all times conduct its operations under this franchise, including installation, construction or maintenance of its Facilities, in a safe and workmanlike manner so as not to present a danger to the public or City.

2. Grantee shall defend, save harmless and indemnify City from any loss or claim against City on account of or in connection with any activity of Grantee in the construction, operation or maintenance of its Facilities.

3. This franchise shall not be effective until Grantee secures, and shall at all times be conditioned upon Grantee maintaining, a comprehensive liability insurance policy which shall contain the following provisions:

    a. Grantee shall obtain, at Grantee's expense, and keep in effect at all times during the term of this franchise, comprehensive general liability insurance covering bodily injury and property damage in an amount equal to at least two-times the City's tort liability limit, as established by Oregon Law.

    b. Grantee, and its subcontractors, if any, will comply with the Oregon Worker's Compensation Law at all times.

    c. City, its officers, directors, and employees shall be added as additional insured with respect to all policies. All commercial general liability insurance policies will be endorsed to show this additional coverage. Grantee will require that its insurance carrier give the City 30 days' written notice of any change in insurance coverage.

    d. There shall be no cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage without 30 days written notice to City. Any failure to comply with this provision will not affect the insurance coverage provided to City. The 30 days notice of cancellation provision shall be physically endorsed on the policy.

    e. Coverages provided by Grantee must be underwritten by an insurance company deemed acceptable by City. City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating or not authorized to transact business in Oregon.

    f. As evidence of the insurance coverage required by this franchise, Grantee shall furnish a Certificate of Insurance to City. This franchise shall not be in effect until the required certificates have been received and approved by City. The Certificate will specify and document all provisions within this franchise. A renewal certificate will be sent to City 10 days prior to coverage expiration.

4. In the event that City's tort liability limits are raised by law, Grantee shall obtain and maintain insurance in the amount of two-times the City's tort liability limits as they are amended.

Section 5. Performance Bond.

1. Upon the effective date of this franchise, Grantee shall furnish proof of the posting of a performance bond running to City, with good and sufficient surety approved by City, in the penal sum of $150,000, conditioned that Grantee shall well and truly observe, fulfill, and perform each term and condition of this franchise. Grantee shall pay all premiums charged for the bond, and shall keep the bond in full force and effect at all times throughout the term of this franchise, including, if necessary, the time required for removal of all of Grantee's telecommunications system installed in City's right of way. The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without prior written consent by City. The bond shall be reviewed and approved as to form by the City Attorney.

2. During the term of this franchise, Grantee shall file with City a duplicate copy of the bond along with written evidence of payment of the required premiums. However, in no event shall City exercise its rights against the performance bond under Section 5.1 if a bona fide, good faith dispute exists between City and Grantee.

3. Not sooner than October 15, 2011, City may, based upon inflation or other identifiable needs, require the amount of the performance bond and construction bond to be increased after reasonable notice to Grantee.

Section 6. Conditions on Right of Way Occupancy.

1. Use. Grantee shall construct, install, maintain and operate its Facilities in designated City rights of way to the industry standard and City's satisfaction, in compliance with all City ordinances, rules, policies and regulations; and in a manner so as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the streets, alleys or other public ways or places.

2. Restoration. In case of any disturbance of pavement, sidewalk, driveway or other surfacing by Grantee, Grantee shall, at its own cost and expense and in a manner approved by City, replace and restore all paving, sidewalk, driveway, landscaping or surface of any street or alley disturbed. If Grantee fails to make restoration as required, City may cause the repairs to be made at the expense of Grantee.

3. Relocation. Except as provided below, if the removal or relocation of Facilities is caused directly by an identifiable development of property and the removal or relocation of Facilities occurs within the area to be developed, or is made for the convenience of a customer, Grantee may charge the expense of removal or relocation to the developer or customer. Grantee shall be solely responsible for enforcing collection from the developer or customer. City may require Grantee to relocate its Facilities. If the removal or relocation of Facilities results from City's need to provide public Facilities, is a City project, or is otherwise requested by City and is made for the purpose of improving a street to City standards or other improvement for the benefit of the public, Grantee will remove or relocate its Facilities at Grantee's expense within a reasonable time frame after notification by City. In cases of capital improvement projects undertaken by City, Grantee shall convert existing overhead distribution Facilities to underground at Grantee's expense if requested to do so by City. City agrees to comply with provisions of applicable law when requiring such conversion.

4. Placement of Facilities. Grantee shall not place its Facilities where they will interfere with any existing or future City utility, gas, electric or telephone fixture, power, sanitary sewer, storm sewer or water facility. Grantee will consult with City's Public Works Department prior to placement of Facilities, and will comply with all City ordinances, policies, rules and regulations in connection with its placement of Facilities. Whenever all existing electric utilities, cable facilities and telecommunications facilities are located underground with in a public right of way of the City, Grantee must also locate and relocate its facilities underground.

5. Temporary Rearrangement of Facilities. Grantee shall, consistent with City policies, ordinances, rules and regulations, arrange to temporarily raise, lower, or otherwise move its Facilities to permit the moving of buildings or other objects if the Person wishing to move the building or other object makes a reasonable arrangement to reimburse Grantee for its expenses in rearranging its Facilities. Nothing contained in this section shall preclude City from requiring Grantee to move its Facilities at its own expense when public convenience requires the move, as described in Subsections 3 and 4 of this section.

Section 7. Transfer of Franchise. Grantee shall not sell, assign, dispose of, lease or transfer in any manner whatsoever any interest in this franchise or in the Facilities authorized by this franchise, or any part of the Facilities, without prior written approval of City, which consent shall not be unreasonably withheld. The City may impose reasonable conditions on its approval of any transfer, including but not limited to the requirement that the transferee acknowledge in writing and agree to be bound by the terms of this Franchise. City shall have the right to collect from Grantee City's actual administrative costs associated with processing a transfer request, including the cost of ascertaining the financial responsibility of the proposed transferee.

Section 8. City Rights in Franchise.

1. City Supervision and Inspection. City shall have the right to supervise all construction or installation of Grantee's Facilities subject to the provisions of this franchise and make such inspections as it shall find necessary to insure compliance with governing laws, ordinances, rules and regulations.

2. Termination or Abandonment of Franchise. Upon any termination of this franchise, all Facilities installed or used by Grantee shall be removed by Grantee at Grantee's expense and the property upon which the Facilities were used restored by Grantee to the condition it was in before installation except that City or its designee shall have the following options after termination of this franchise:

    a. City or its designee may elect to acquire the Facilities for their fair market value consistent with any applicable law; and

    b. Value shall be determined by an appraiser who is mutually acceptable to City and Grantee. In the event that City and grantee are unable to agree on a single appraiser, then the City and grantee shall each appoint an appraiser, and those two appraisers shall select a third appraiser. The opinion of any two appraisers shall be determinative of the value of the Facilities.

    c. City agrees to provide Grantee with written notice of its intention to acquire Grantee's Facilities pursuant to this section within 120 days after termination of this franchise by City, or City's declaration of Facilities abandonment by Grantee, with the closing of the acquisition to occur as soon thereafter as is practicable.

3. City Connection to Facilities. In addition to City's other rights in this franchise, and so long as Grantee has sufficient capacity on its Facilities that is not being used by a paying customer at that time, City shall have the right to obtain services from Grantee at the Grantee's most favorable rate applicable to those services. Nothing in this subsection shall affect Grantee's obligation to pay franchise fees to the City under Section 9 of this Ordinance.

Section 9. Franchise Fee.

1. Grantee shall pay monthly to City the sum of 3% of Grantee's gross revenues earned in the delivery of services within the corporate limits of the City to parties (including lessees of the Facilities) who are not the ultimate consumers of those services, but who redistribute services to third parties, plus 7% of Grantee's gross revenues earned in the delivery of services within the corporate limits of the City to Ultimate Consumers of those services. Grantee also may at its option deduct uncollectible accounts of customers within the corporate limits of City from these gross revenues. The intention of the parties in charging different fees for telecommunications service providers and ultimate consumers is to prevent any end user from paying a permit or franchise fee to City more than once for the same use of the Facilities, while at the same time charging a fair amount for the use of City's rights of way.

2. The fee required by this section shall be due and payable within 60 days after the end of each applicable calendar month. Any payment not made when due shall bear interest at the rate of 9% per annum, compounded monthly, from the date due until paid.

3. With each payment, Grantee shall furnish City with a written statement, under oath, executed by an officer of Grantee, verifying the amount of gross revenues of Grantee within City for the monthly period covered by payment computed on the basis set out in Subsection 1 of this section.

4. City's acceptance of any payments due under this section shall not be considered a waiver by City of any breach of this franchise.

5. Grantee agrees and covenants that it will not challenge the validity of the franchise fees under this ordinance as long as they do not exceed the maximum amounts established by applicable statutes.

Section 10. Grantee Records and Reports.

1. Grantee shall keep accurate books of financial accounts at an office within the State of Oregon throughout the term of this franchise. Grantee shall produce all books and records directly concerning its gross revenues and other financial information deemed necessary by City for purposes of calculation of the franchise fee for inspection by City, upon no less than 10 days prior written notice, during normal working hours. City may require periodic reports from Grantee relating to its operation within City. City shall have the right during the term of this franchise or within 180 days thereafter to conduct audits of Grantee's records. Such audits shall be undertaken by a qualified person or entity selected by City. The cost of any such audit shall be borne by City, unless the results of any such audit reveal an

underpayment of more than 8% of the franchise fee for the period audited. In the case of such underpayment, the full cost of such audit shall be paid by Grantee. Grantee shall immediately pay the amount of the underpayment as determined by such audit to City together with 12% per annum interest from the date such payment should have been made to the date the payment is actually made.

2. Any audit information obtained by City under these provisions shall be kept confidential to the maximum extent allowed by Oregon law, except that this obligation shall not prevent the City from introducing audit results in any forum where enforcement of the provisions of this franchise is at issue.

Section 11. Permit and Inspection Fees. Nothing in this ordinance shall be construed to limit the right of City to require Grantee to pay reasonable costs incurred by City in connection with the issuance of a franchise or permit, making an inspection, or performing any other service for or in connection with Grantee or its Facilities, whether pursuant to this ordinance or any other ordinance or regulation now in effect or hereafter adopted by City.

Section 12. Enforcement and Termination of Franchise for Violation.

1. Default: Time of payment and performance are of the essence in the franchise. The following shall be events of default:

    a. Default in Payments. The failure of Grantee to pay City when due any amounts required by the franchise and such failure continues for a period of 10 days after the due date.

    b. Default in Other Covenants. The failure of Grantee to perform any of the covenants and conditions required herein to be kept and performed by Grantee, and such failure continues for a period of 30 days after notice from City of such failure. If the same failure occurs within 24 months of the initial notice, City may terminate the franchise without further opportunity to cure.

2. Termination. Upon the occurrence of an event of default, this franchise may be terminated at the option of City by notice in writing to Grantee given within 30 days of the date of default. If this franchise is not terminated by election of City, Grantee shall pay to City the sum of $200 per day for each day the default continues along with any additional damages suffered by City as a result of Grantee's default.

Section 13. Remedies not Exclusive; Waiver. All remedies under this ordinance, including termination of franchise, are cumulative, and recovery or enforcement of one is not a bar to the recovery or enforcement of any other remedy. Remedies contained in this ordinance, including termination of the franchise, are not exclusive and City reserves the right to enforce penal provisions of any ordinance and also use any remedy available to City at law or in equity. Failure to enforce any provision of this ordinance shall not be construed as a waiver of a breach of any other term, condition or obligation of this ordinance.

Section 14. Franchise Term. This franchise is granted for a term of five years beginning on the date on which this franchise ordinance is approved. City agrees to renegotiate in good faith a renewal of this franchise for a similar term if this franchise is not in default at its expiration.

Section 15. Acceptance of Franchise. Within 30 days from the effective date of this ordinance, Grantee shall file with the City Recorder a written unconditional acceptance of this franchise executed by its duly authorized representative and all of its terms and conditions, and if it fails to do so, this ordinance shall be void and of no effect.

Section 16. Severability. If any section, subsection, sentence, clause or portion of this ordinance is for any reason held invalid or rendered 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 or constitutionality of the remaining portion thereof. If for any reason, the franchise fee is invalidated or amended by the act of any court or governmental agency, then the highest reasonable franchise fee allowed by such court or other governmental agency shall be the franchise fee charged by this ordinance.

Section 17. Notices. Any notice required or permitted under this franchise shall be deemed given when received or when deposited with postage prepaid in the United States Mail as registered or certified mail addressed as follows:

TO CITY: Eric King

City Manager
710 NW Wall Street
Bend, OR 97701

TO GRANTEE: Mark Holden
General Manager
Quantum Communications, LLC
PO Box 1748
Redmond, OR 97756

or to such other address as may be specified from time to time by either parties in writing.

Section 18. Interpretation/Jurisdiction. This franchise shall be deemed to have been entered into in Deschutes County, Oregon. Jurisdiction of any dispute shall be in the circuit court of the State of Oregon, and venue shall be in Deschutes County, Oregon. Interpretation of the franchise shall be governed by laws of the State of Oregon.

Read for the first time the 15th day of October, 2008.

Read for the second time this 5th day of November, 2008.

Placed upon its passage this 5th day of November, 2008.

YES: 6 NO: 0

Authenticated by the Mayor this 5th day of November, 2008 .

Bruce Abernethy, MAYOR

ATTEST:

Patricia Stell, City Recorder

Accepted by:

Date: 11/12/08

Quantum Communications, LLC
General Manager.

ORDINANCE NO. NS-2109

AN ORDINANCE AMENDING THE CITY OF BEND ZONING MAP BY CHANGING THE ZONING OF APPROXIMATELY 8 ACRES OF LAND FROM URBAN AREA RESERVE TO INDUSTRIAL LIGHT; DECLARING AN EMERGENCY; AND PRESCRIBING AN EFFECTIVE DATE OF NOVEMBER 19, 2008.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council opened a public hearing on November 5, 2008, considered the Hearings Officer's findings and record, and has found that the zone change satisfies the criteria for approval contained in Section 4.6 of the Bend Development Code.

Section 2. The Bend Area Zoning Map is amended by changing the zoning of the property described as a portion of section 10, Deschutes County Assessor's map 17-12-10, as shown in Exhibit "A" and described in Exhibit "C". The change will be from Urban Area Reserve (UAR) to Industrial Light (IL).

Section 3. The Bend City Council adopts as findings in support of this ordinance the Hearings Officer's findings in her October 22, 2008, decision and recommendation report with a revision to Condition #2. The Hearings Officer's findings are incorporated into the record of these proceedings.

Section 4. This zone change is subject to the conditions of approval contained in Exhibit "B".

Section 5. The City Council declares an emergency in order to provide a stimulus to the local construction industry and employment as the City and Suterra desire to promptly begin construction on and near the area being rezoned, and it is important that this work begin prior to inclement weather. This Ordinance will therefore be effective immediately upon its adoption.

Read for the first time the 5th day of November, 2008.

Read for the second time the 19th day of November, 2008.

Placed upon its passage the 19th day of November, 2008.

YES: 5 NO: 0

Authenticated by the Mayor the 19th day of November, 2008.

Bruce Abernethy, Mayor

ATTEST:

Patricia Stell, City of Bend Recorder

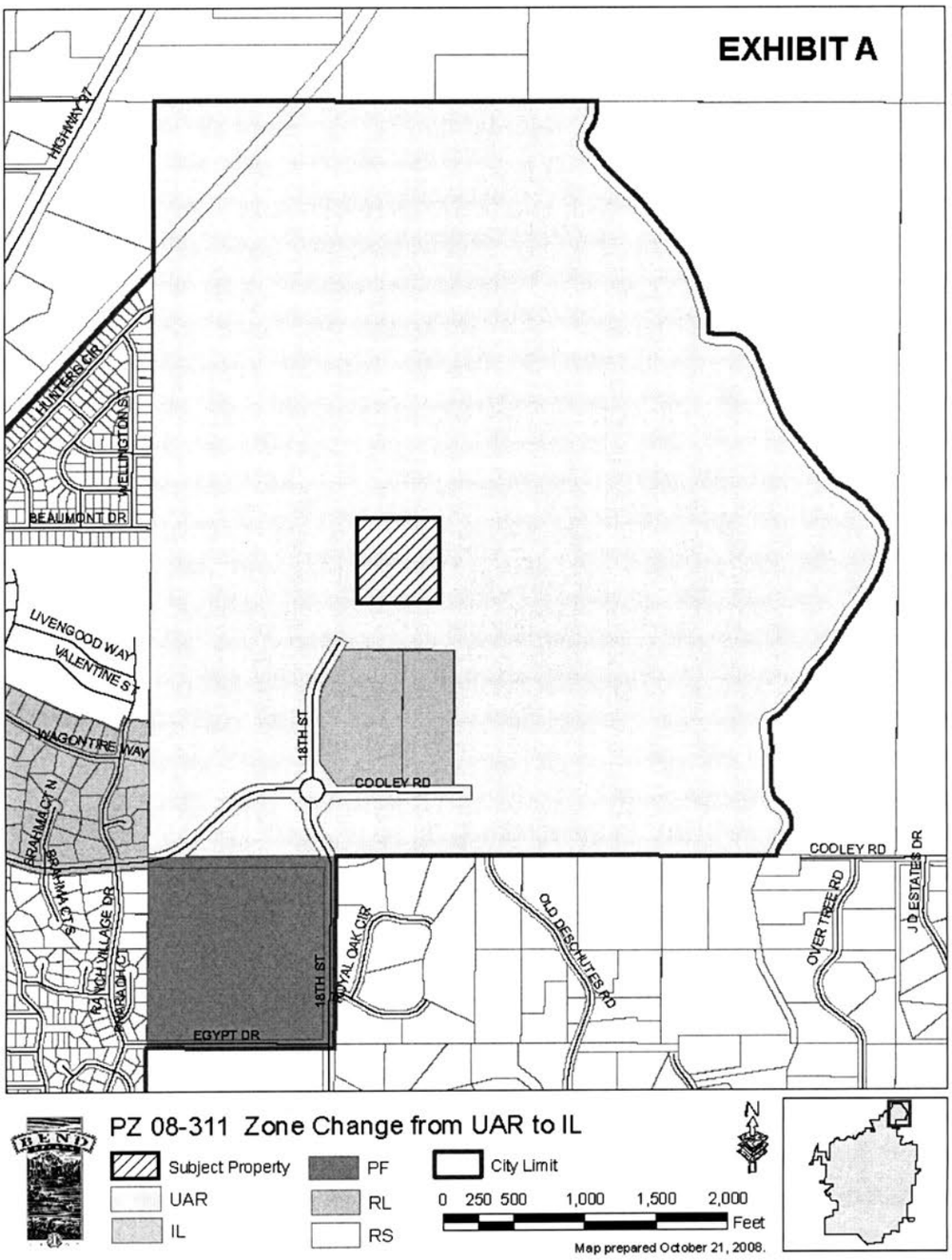

EXHIBIT A
HIGHWAY 97
HUNTERS CIR
WELLINGTON ST
BEAUMONT DR
LIVENGOOD WAY
VALENTINE ST
WAGONTIRE WAY
18TH ST
COOLEY RD
PRAIRIE CT N
PRAIRIE CT S
RANCH VILLAGE DR
PRAIRIE CT
EGYPT DR
ROYAL OAK CIR
OLD DESCHUTES RD
OVER TREE RD
J D ESTATES DR
PZ 08-311 Zone Change from UAR to IL
Subject Property
UAR
IL
PF
RL
RS
City Limit
0 250 500 1,000 1,500 2,000
Feet
Map prepared October 21, 2008.
N

EXHIBIT "B"

CONDITIONS OF APPROVAL:

1. Prior to partition of the property, applicant shall comply with the Master Planned Development requirements of BDC 4.5.400(A) or obtain approval of a Special Planned District for the property.

2. With partition of the property, the applicant shall record a deed restriction that states the following:

"This property is subject to a trip cap imposed as a condition of its zone change to Light Industrial. The subject property shall generate no more than 53 peak trips per day between 4:00 pm and 6:00 pm weekdays and no more than 598 average daily trips. This trip cap may be modified by subsequent land use approval or land use modification approval which is consistent with any agreement between the City of Bend and Oregon Department of Transportation."

LEGAL DESCRIPTION
SUTERRA PARCEL

A PARCEL OF LAND BEING A PORTION OF PARCEL 1, AS SHOWN ON PARTITION PLAT NO. 2007-78, OFFICIAL RECORDS OF DESCHUTES COUNTY, OREGON, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 17 SOUTH, RANGE 12 EAST, WILLAMETTE MERIDIAN, CITY OF BEND, DESCHUTES COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LYING SOUTH 82°00'46" EAST, A DISTANCE OF 1463.74 FEET FROM THE QUARTER CORNER COMMON TO SECTIONS 9 & 10, TOWNSHIP 17 SOUTH, RANGE 12 EAST, WILLMETTE MERIDIAN, MARKED BY A 3 1/2" DIAMETER ALUMINUM CAP STAMPED *PROPERTY CORNER, 1/4, T17S R12E, S9 S10, LS 1081, 1993*;

THENCE, EAST, A DISTANCE OF 580.00 FEET, TO A POINT;

THENCE, SOUTH, A DISTANCE OF 600.00 FEET, TO A POINT;

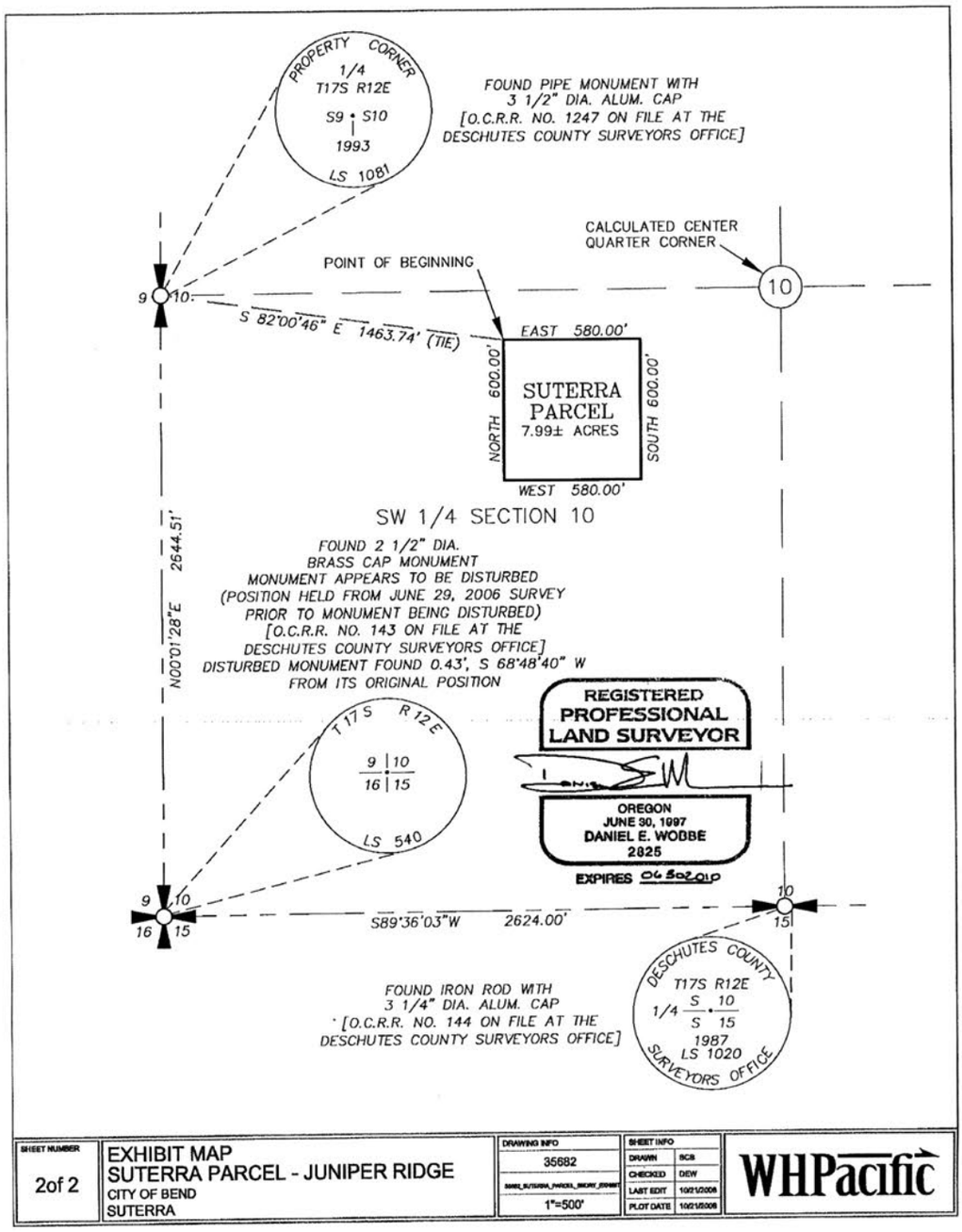
THENCE, WEST, A DISTANCE OF 580.00 FEET, TO A POINT;

THENCE, NORTH, A DISTANCE OF 600.00 FEET, TO THE **POINT OF BEGINNING.**

SAID PARCEL CONTAINING 7.99 ACRES, MORE OR LESS.

BEARINGS ARE BASED ON PARTITION PLAT NO. 2007-78, RECORDED AS CS17585 IN THE DESCHUTES COUNTY SURVEY RECORDS.





SHEET NUMBER		DRAWING INFO	SHEET INFO	
2of 2	EXHIBIT MAP SUTERRA PARCEL - JUNIPER RIDGE CITY OF BEND SUTERRA	35682	DRAWN	SCB
			CHECKED	DEW
		1"=500'	LAST EDIT	10/21/2008
			PLOT DATE	10/21/2008

WHPacific

ORDINANCE NO. NS-2110

AN ORDINANCE AMENDING THE BEND URBAN AREA ZONING MAP BY CHANGING THE ZONING OF A PARCEL OF LAND TOATLING 6.3 ACRES LOCATED AT THE SOUTHEAST CORNER OF POWERS ROAD AND BLAKELY ROAD 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 zone change is consistent with the criteria of the City of Bend Zoning Ordinance, NS-1178, Chapter 10, Section 10-10.33, Amendments. The Bend City Council adopts the findings from the Hearings Officer Findings and Decision dated August 3, 2006, City File No. PZ 06-137.

Section 2. The Bend Urban Area Zoning Map is hereby amended by changing the zoning of the property located at the southeast corner of Powers Road and Blakely Road, as shown in Exhibit A and described in Exhibit B, from Residential Urban Standard Density (RS) to Residential Urban Medium Density (RM).

Read for the first time the 5th day of November, 2008.

Read for the second time the 19th day of November, 2008.

Placed upon its passage the 19th day of November, 2008.

YES: 5 NO: 0

Authenticated by the Mayor the 19th day of November, 2008.

Bruce Abernethy, Mayor

ATTEST:

Patricia Stell, City of Bend Recorder

EXHIBIT A

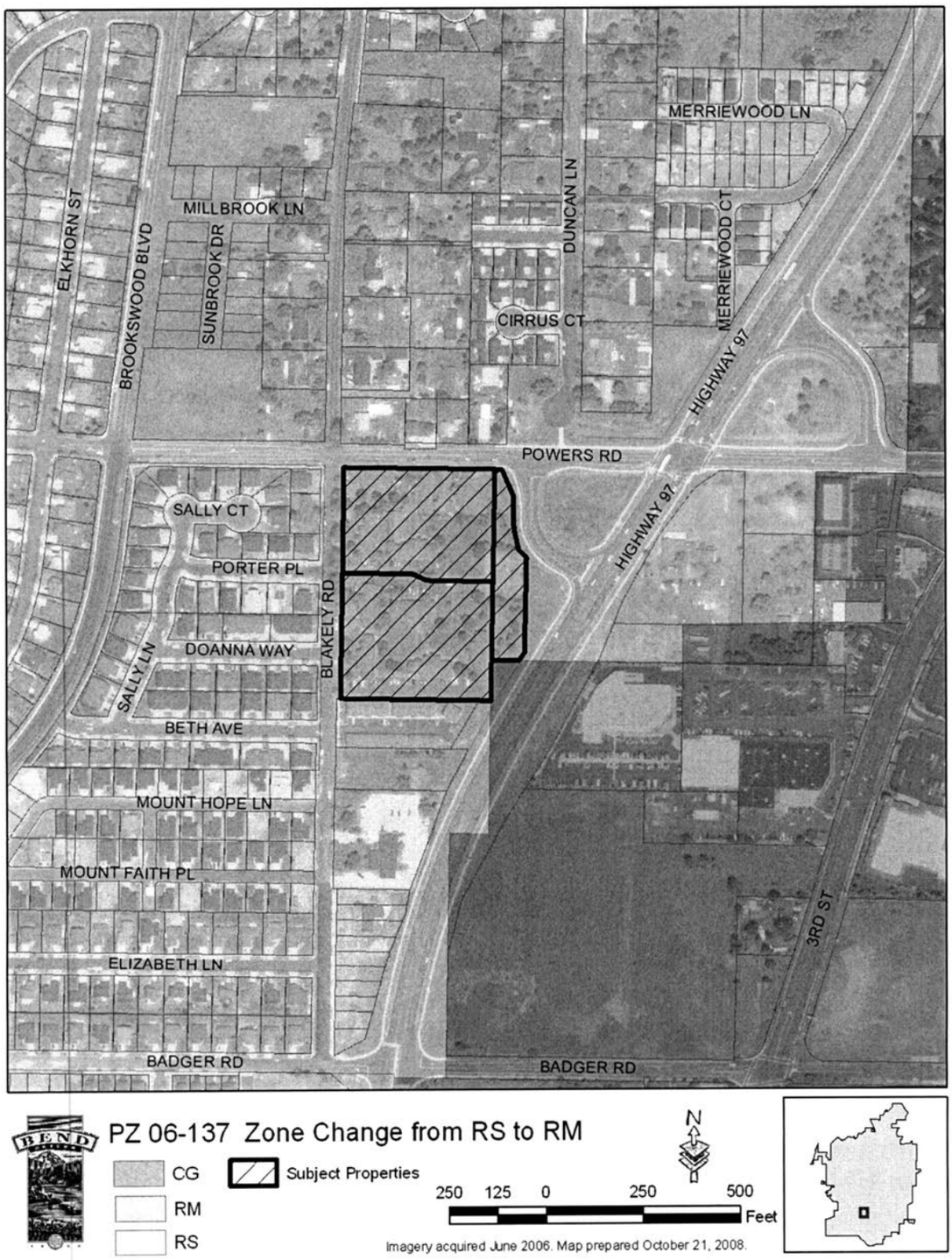

MERRIEWOOD LN
MILLBROOK LN
ELKHORN ST
BROOKSWOOD BLVD
SUNBROOK DR
DUNCAN LN
MERRIEWOOD CT
CIRRUS CT
HIGHWAY 97
POWERS RD
SALLY CT
PORTER PL
DOANNA WAY
SALLY LN
BLAKELY RD
BETH AVE
MOUNT HOPE LN
MOUNT FAITH PL
ELIZABETH LN
BADGER RD
3RD ST
PZ 06-137 Zone Change from RS to RM
CG
RM
RS
Subject Properties
N
250 125 0 250 500
Feet
Imagery acquired June 2006. Map prepared October 21, 2008.

EXHIBIT B

PROPERTY DESCRIPTION

A parcel of land, located in a portion of Tracts 29 & 30, Blakley heights, in the Southwest One-Quarter of Section 8, Township 18 South, Range 12 East, Willamette Meridian, City of Bend, Deschutes County, Oregon being more particularly described as follows:

Beginning at the intersection of the easterly 30-foot right-of-way line of Blakley Road and southerly 35-foot right-of-way line of Powers Road; thence along said southerly right-of-way line, South 89°27'23" East, a distance of 409.12 feet to the westerly right-of-way line of the Bend Parkway; thence along said westerly right-of-way line the following four courses:

South 23°54'58" East, a distance of 71.57 feet;
South 02°21'56" East, a distance of 87.70 feet;
South 13°17'09" East, a distance of 55.92 feet;
South 44°53'24" East, a distance of 26.10 feet to a point on the easterly boundary line of the west 85.41 feet of said Tract 29;

thence along said easterly boundary line, South 00°31'05" West, 244.77 feet to a point on said westerly right-of-way line of the Bend Parkway; thence along said westerly right-of-way line, South 32°29'40" West, 23.44 feet to a point 510.00 feet south of and parallel to the north line of said Tract 29; thence along said parallel line, North 89°27'23" West, 73.00 feet to the boundary line common to said Tracts 29 & 30; thence along said common boundary line, South 00°31'05" West, 103.39 feet; thence leaving said boundary line, North 89°27'23" West, 389.66 feet to said easterly right-of-way line of Blakley Road; thence along said easterly boundary line, North 00°31'05" East, 593.39 feet to the "Point of Beginning", the terminus of this description.

BLANK PAGE

ORDINANCE NUMBER NS-2111

AN ORDINANCE ADOPTING THE WATER PUBLIC FACILITIES PLANS AND THE SEWER PUBLIC FACILITIES PLANS AS AMENDMENTS TO THE PUBLIC FACILITIES ELEMENT OF THE BEND GENERAL PLAN; AND ADOPTING A SEVERABILITY CLAUSE.

WHEREAS, the Preface of the Bend General Plan sets forth procedures for amendments of the General Plan; and

WHEREAS, the General Plan identifies the Public Facilities Plans as elements of the General Plan which form the basis for Public Facilities and Services chapter of the General Plan found in Chapter 8; and

WHEREAS, the Public Facilities Plans serve the goals, objectives and policies of the General Plan by addressing the provision of public facilities and services within the urban growth boundary (UGB), services to areas outside the UGB, locating and managing public facilities and financing public facilities; and

WHEREAS, the current Public Facilities Plans are in need of modification to reflect changes to state law and local public facilities and services needs, and

WHEREAS, following a joint public hearing with the Bend and Deschutes County planning commissions on October 27, 2008, the Bend Planning Commission recommended the draft Public Facilities Plans and General Plan amendments to the Bend City Council; and

WHEREAS, the Bend City Council conducted a joint public hearing on the matter with the Deschutes County Commission on November 24, 2008 and considered the recommendations and evidence and testimony already in the record as well as the evidence and testimony presented at the public hearing held on November 24, 2008, and

WHEREAS, the Bend City Council has deliberated on the evidence and testimony in the record which closed December 1, 2008.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council adopts the Findings in Support of UGB Expansion (Exhibit A) and the Findings in Support of the Amendments to the Public Facilities Plan (Exhibit B), which Findings are supported by the record of these proceedings and are hereby incorporated by reference.

Section 2. The Bend City Council adopts the following Public Facilities Plans as amendments to the Public Facilities Element of the Bend General Plan: the Water Public Facilities Plans and the Sewer Public Facilities Plans, as further referenced in the attached Findings B, along with all supporting components, addenda and supplements. These Plans are attached as Exhibit C and incorporated by reference, and supersede and replace the 1996 Utilities System Master Plan.

Section 3. If any section, subsection, sentence, clause phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by a 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 hereof.

Read for the first time the 22nd day of December, 2008.

Read for the second time the 5th day of January, 2009.

Placed upon its passage the 5th day of January, 2009.

Yes: 6 No: 0

ENACTED this 5th day of January, 2009.

Authenticated by the Mayor on the 5th of January, 2009.

Bruce Abernethy, Mayor, Bend City Council

Attest:

Kim Meyers, Deputy City Recorder

Approved as to Form:

Mary A. Winters, City Attorney

Exhibits A through C to
Ordinance NS-2111 (as referenced)
Provided in Separate Book

BLANK PAGE

ORDINANCE NO. NS-2112

AN ORDINANCE AMENDING THE TEXT AND MAP OF THE BEND AREA GENERAL PLAN AND THE AMENDING THE TEXT AND MAP OF THE TRANSPORTATION SYSTEM PLAN, TO EXPAND THE URBAN GROWTH BOUNDARY TO INCLUDE LAND FOR HOUSING, EMPLOYMENT, AND RELATED USES; AND ADOPTING A SEVERABILITY CLAUSE.

WHEREAS, the Bend City Council initiated a legislative review of the Bend Area General Plan to determine the City's needs for land for housing, employment, and related uses; and

WHEREAS, pursuant to this direction, the City has developed estimates of land need for housing, employment, and related uses based upon the adopted coordinated population forecast, and consistent with public facility and transportation plans; and

WHEREAS, the City has developed an adequate factual base pursuant to Statewide Planning Goal 2 and refined and improved it through an extensive public involvement process lead by the Bend Planning Commission pursuant to Statewide Planning Goal 1; and

WHEREAS, the Bend Planning Commission has recommended amendment of the Urban Growth Boundary to include 5,954 acres of suitable and available land for housing, employment, and related uses, following joint public hearings held with the Deschutes County Planning Commission on October 27, 2008 and October 28, 2008; and

WHEREAS, the City Council held a joint public hearing with the Deschutes County Board of Commissioners to consider these proposed amendments on November 24, 2008.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council adopts the Findings in Support of UGB Expansion in support of this ordinance, which are attached as Exhibit A and incorporated by reference.

Section 2. The Bend Area General Plan map is amended to reflect the expansion of the Bend Urban Growth Boundary, and the new plan designations, as shown in Exhibit B.

Section 3. Chapter 1 of the Bend Area General Plan, Plan Management and Citizen Involvement, is amended as shown in Exhibit C.

Section 4. Chapter 2 of the Bend Area General Plan, Natural Features and Open Spaces, is amended as shown in Exhibit D.

Section 5. Chapter 3 of the Bend Area General Plan, Community Connections, is amended as shown in Exhibit E.

Section 6. The Bend Area General Plan is amended to repeal and replace Chapter 5, Housing and Residential Lands, with Exhibit F.

Section 7. The Bend Area General Plan is amended to repeal and replace Chapter 6, Economy and Lands for Economic Growth, with Exhibit G.

Section 8. Chapter 7 of the Bend Area General Plan, Transportation Systems, is amended as shown in Exhibit H.

Section 9. Chapters 6 and 9 of the Bend Urban Area – Transportation System Plan is amended as shown in Exhibit I.

Section 10. The map of the Bend Urban Area – Roadway System Plan is amended as shown in Exhibit J.

Section 11. Chapter 8 of the Bend Area General Plan, Public Facilities and Services, is amended as shown in Exhibit K.

Section 12. Repeal and Replace Appendices E and F of the Bend Area General Plan with Exhibits L and M, respectively.

Section 13. If any section, subsection, sentence, clause phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by a 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 hereof.

Read for the first time the 22nd day of December, 2008.

Read for the second time the 5th day of January, 2009.

Placed upon its passage the 5th day of January, 2009.

YES: 4 NO: 2

Authenticated by the Mayor the 5th day of January, 2009.

Bruce Abernethy, Mayor

ATTEST:

Kim Meyers, City of Bend Deputy Recorder

Approved as to Form:

Mary A. Winters, City Attorney

Exhibits A through M to
Ordinance NS-2112 (as referenced)
Provided in Separate Book

BLANK PAGE

ORDINANCE NO. NS-2113

AN ORDINANCE AMENDING THE TEXT OF CHAPTER 10.10 OF THE BEND DEVELOPMENT CODE TO IMPLEMENT THE 2008 EXPANSION OF THE BEND URBAN GROWTH BOUNDARY; AND ADOPTING A SEVERABILITY CLAUSE.

WHEREAS, the Bend City Council initiated a legislative review of the Bend Area General Plan to determine the cities needs for land for housing, employment, and related uses; and

WHEREAS, the Bend Planning Commission has recommended amendment of the Urban Growth Boundary, following a joint public hearing held with the Deschutes County Planning Commission on October 27, 2008; and

WHEREAS, the City Council held a joint public hearing with the Deschutes County Board of Commissioners to consider these proposed amendments on November 24, 2008; and

WHEREAS, the City Council has adopted extensive Findings in Support of UGB Expansion and supportive amendments to the text and map of the Bend Area General Plan through Ordinance NS-2112 this same date, which are attached as Exhibit A to that Ordinance and incorporated by reference in support of this Ordinance.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. Chapter 2.1 of the Bend Development Code, Residential Districts, is amended as shown in Exhibit A.

Section 2. Chapter 4.3, Land Divisions and Lot Line Adjustment Procedures, of the Bend Development Code, is amended as shown in Exhibit B.

Section 3. Chapter 4.5, Master Planning and Development Alternatives, of the Bend Development Code, is amended as shown in Exhibit C.

Section 4. If any section, subsection, sentence, clause phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by a 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 hereof.

Read for the first time the 22nd day of December, 2008.

Read for the second time the 5th day of January, 2009.

Placed upon its passage the 5th day of January, 2009.

YES: 4 NO: 2

Authenticated by the Mayor the 5th day of January, 2009.

Bruce Abernethy, Mayor

ATTEST:

Kim Meyers, Deputy City Recorder

Approved as to Form:

Mary A. Winters, City Attorney

EXHIBIT A

Table 2.1.500
Lot Areas and Dimensions in the Residential Districts By Housing Type and Zone

Residential Use	Zone	Lot Area	Lot Width/Depth
Single Family Detached Housing	UAR	Minimum area: 10 acres	Minimum width: 300 ft min. average lot width with a min. street frontage of 150 ft.
	SR 2 ½	Minimum area: 2 ½ acres	Minimum width: 200 ft min. average lot width with a min. street frontage of 200 ft.
	UH-10	Minimum Area: Existing lots – 10 acres (See section 3.6.200 for new lot provisions)	(See section 3.6.200 for new lot provisions)
	UH-2 ½	Minimum Area: Existing Lots – 2 ½ acres (See section 3.6.200 for new lot provisions)	(See section 3.6.200 for new lot provisions)
Residential Use	**Zone**	**Lot Area**	**Lot Width / Depth**
Single Family Detached Housing; Manufactured Homes on Lots; Residential Care Homes and Facilities	RL	Minimum area: 15,000 sq. ft. with approved septic or sewer system	Minimum width: 100 ft. min. average lot width with a min. street frontage of 50 ft except on approved cul-de-sac lot frontage may be reduced to 30 ft. Minimum lot depth: 100 ft
	RS	Minimum area: 4000 sq ft,	Minimum width: 40 feet at front property line, except for flag lots and lots served by private lanes (see Section 4.5.200) Minimum lot depth: 80 ft
	RM-10	Minimum area: 4,000 sq ft	
	RM	Minimum area: 3000 sq ft.	Minimum width: 30 ft. Minimum lot depth: 80 ft
	RH	Minimum area: 2500 sq ft	Minimum lot width: 30ft. Minimum lot depth: 80 ft.
Two and Three Family Housing (duplex / triplex)	UAR	Not Applicable	Not Applicable
	RL	Minimum area: 30,000 sq ft with approved septic or sewer system	Minimum lot width: 100 ft average Minimum lot depth: 100 ft
	RS	Minimum area – duplex: 8000sq ft. Minimum area – triplex: 10,000sq ft.	Minimum width: 40 ft at front property line, except for flag lots and lots served by private lanes. (see 10.10.4.5.200) Minimum lot depth: 80 ft
	RM-10	Minimum area – duplex: 7000 sq ft Minimum area – triplex: 9000 sq ft	
	RM	Minimum area – duplex: 4500 sq ft Minimum area – triplex: 6500 sq ft.	Minimum width: 30 ft
	RH	Minimum area – duplex: 3000 sq ft Minimum area – triplex: 4000 sq ft.	Minimum width: 30ft
Single Family Attached Housing (townhomes)	UAR and RL	Not Applicable	Not Applicable
	RS, RM-10, RM, RH	Minimum area: 2000 sq ft for each unit	Minimum width: 20 ft at front property line, except for flag lots and lots served by private lanes (see 10.10.4.5.200) Minimum lot depth: 80 ft.

Multi-family Housing (more than 3 units)	UAR, RL, RS,	Not Applicable	Not Applicable
	RM-10	Minimum area: 4000 sq ft for each unit	Minimum width: 30 ft at front property line. Minimum lot depth: 80 ft.
	RM	Minimum area: 2500 sq ft for the first unit, 2000 sq ft for each additional unit,	
	RH	Minimum area: 2000 sq ft for the first unit, 1000 sq ft for each additional unit,	

2.1.1100 Urban Holding Districts, UH-10 and UH-2 ½

A. Purpose, Applicability and Location

1. **Purpose.** Urban Holding Districts are intended to preserve large tracts of undeveloped or under-developed land for future urban development prior to re-zoning. The Urban Holding districts promote the livability, stability, safety and improvement of the City of Bend by allowing orderly development only when consistent with the Framework Plan and an approved Master Development Plan where applicable.

2. **Applicability.** This chapter applies to all development in the Urban Holding-10 (UH-10) and Urban Holding-2 ½ (UH-2 ½). These districts are identified on the City's official zoning map.

Table 2.1.1100A
Zone District Characteristics

Zone District	Location and Characteristics
Urban Holding-10 (UH-10)	Urban Holding-10 is a holding zone placed upon the property until urban development occurs. The maximum residential density for the district is one dwelling unit per 10 gross acres with a maximum new lot or parcel size of ½ acre to encourage cluster development on properties 20 acres or greater.
Urban Holding-2 ½ (UH-2 ½)	Urban Holding-2 ½ is a holding zone for urban development. The UH-2 ½ zone reflects areas that were previously zoned SR-2 ½ with an existing Suburban Low Density development pattern and the presence of community water systems. The maximum residential density in the UH-2 ½ district is one dwelling unit per 2 ½ gross acres with a maximum new lot or parcel size of ½ acre to encourage cluster development on properties 5 acres or greater.

B. Permitted Land Use

1. **Permitted Uses.** The land uses listed in Table 2.1A.200 are permitted in the Urban Holding Districts, subject to the provisions of this Chapter. Only land uses that are specifically listed in Table 2.1A.200, land uses that are incidental and subordinate to a permitted use, and land uses that are approved as "similar" to those in Table 2.1A.200, may be permitted.

2. **Determination of Similar Land Use.** Similar use determinations shall be made in conformance with the procedures in Chapter 4.1.1400; Declaratory Ruling.

3. **Existing Uses and Structures.** Uses and structures lawfully established prior to the adoption of this ordinance shall be treated as a permitted use. Expansion or enlargement 25% or less of the above referenced uses or structures that are non-residential, shall be subject to the provisions of Chapter 4.2, Site Development and Design. For expansion or enlargement greater than 25%, Conditional Use approval is required.

Table 2.1.1100B - Permitted Land Uses

Land Use	UH-2 ½	UH- 10
Residential		
Single-family detached housing • New • Existing	 P P	 P P
Adult Foster Homes (5 or fewer residents)	P	P
Adult Day Care	P	P
Family Childcare Home, (16 or fewer children)	P	P
*Home occupation (Type I / Type II)	P/C	P/C
*Accessory Uses and Structures customarily provided in conjunction w/a permitted use.	P	P
***Public and Institutional**		
*Churches and places of worship (Existing)	P	P
*Churches and places of worship (New)	C	C
*Utilities (above ground) and Radio/Television Transmission	C	C
Neighborhood Parks	P	P
Community Parks	C	C
Regional Parks	C	C
Recreational facilities	N	N
Schools (public and private)	C	C
Cemetery/Mausoleum	N	N
***Miscellaneous Uses**		
*Plant Nursery (Existing)	P	P
Farm Use, Agriculture	P	P
Boarding Kennel	C	C
Veterinary Services Small animal (only) Large animal	C C	C C

Key to Districts:
UH-10 = Urban Holding
UH-C = Urban Holding Commercial
UH 2 ½ = Urban Holding 2 ½
UH-I = Urban Holding Industrial

Key to Permitted Uses
P = Permitted; subject to Chapter 4.1; Procedures
N = Not Permitted
C = Conditional Use subject to permit standards in Chapter 4.4.

* Subject to special standards as described in Chapter 3.6; Special Standards for Certain Uses

C. Building Setbacks

1. **Purpose.** Building setbacks provide private outdoor living space, building separation for fire protection/security, building maintenance, and sun light and air circulation. The building setback standards encourage placement of residences close to the street for public safety and neighborhood security.

2. **Setback Standards.** The setback is measured from the building façade or structure, to the respective property line. Setbacks for decks and porches are measured from the edge of the deck or porch to the property line. The setback standards, as listed below, apply to primary structures as well as accessory structures. A variance is required in accordance with Chapter 5.1; Variances to modify any setback standard.

3. **Front Yard Setbacks.**

   a. UH-2 ½, and UH-10 Districts: A minimum front yard setback of 20 feet is required for buildings or structures.

   b. Exception - the provisions of Chapter 3.5.300 shall apply for existing and planned streets, which may increase front yard setbacks in order to preserve future rights of way for planned streets.

4. **Rear Yard Setbacks.**

   a. UH-2 ½, and UH-10 Districts: The minimum rear yard setback shall be 20 feet for buildings or structures.

5. **Side Yard Setbacks.**

   a. UH-2 ½ and UH-10 District: The minimum side yard setback shall be 10 feet.

6. **General Setback Exceptions**

   a. Fences and walls within front yards shall comply with the clear vision standards in Section 3.1.400.N.

   b. The following uses are prohibited within all yard setbacks: satellite dishes greater than 18 inches in diameter, heat pumps and other similar objects, unless screened for visual and noise abatement by a solid enclosure 2 feet higher than the object/use being screened. In no instance shall these uses be allowed within the front yard setbacks.

D. Maximum Lot Coverage

1. **Maximum Lot Coverage.** The following maximum lot coverage standards shall apply to all development within the Urban Holding Districts:

Table 2.1.1100D
Residential Lot Coverage

Residential Zone	Lot Coverage
Urban Holding (UH) and Urban Holding-2 ½ (UH-2 ½)	15% on lots 1 acre or larger 35% for lots less than 1 acre

2. **Lot Coverage Defined.** "Lot Coverage" is defined as all areas of a lot or parcel covered by the foundation perimeter of buildings and other structures higher than 18 inches above the finished grade, excluding unenclosed covered porches and uncovered decks up to 5% of the total lot area.

3. **Lot Coverage Compliance.** Compliance with other sections of this code may preclude development of the maximum allowed lot coverage for some land uses.

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

1. **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.

   a. Buildings within the UH-2 ½ and the UH-10 Districts shall be no more than 30 feet in height.

2. **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.

3. **Method of Measurement.** "Building height" is measured as the average 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.

EXHIBIT B

Chapter 4.3.300

G. <u>Land Divisions and property line adjustments within the Urban Holding Districts (UH-2 ½ and UH-10)</u>. The following standards shall apply to all land divisions and property line adjustments within the Urban Holding Districts (UH-2 ½ and UH-10) where development is permitted in conformance with Table 2.1.1100B. New residential development shall not exceed the allowed density of the zone as identified in Table 2.1.1100A.

1. <u>Development Options.</u> In order to preserve the urbanizable land within the Urban Holding zones to the greatest extent practical prior to master planning and/or rezoning, new development involving a land division, partition or property line adjustment shall conform to the following development standard listed below.

   a. New land partitions and subdivisions shall develop as a Cluster Development. "Cluster Development' is defined as a residential development pattern consisting of smaller lots not to exceed ½ acre in size, which abut one another and whereby one single family home is permitted on each lot consistent with the overall maximum density for the area of the original land division. The larger parent parcel is retained for re-development and the overall development after the property is re-zoned. Cluster development will allow for more efficient use of the land and preserve the greatest potential for redevelopment in the future.

   b. New lots and parcels or lots and/or parcels adjusted through property line adjustment in an Urban Holding Zone shall meet the lot requirements below:

Minimum Lot size:	15,000 sq ft.
Maximum Lot size:	½ acre
Minimum lot width:	60 feet
Minimum lot depth:	100 feet

      <u>Example</u>: A 40 acre property in the UH-10 could be subdivided into 4 lots consistent with the allowed density. The Cluster Development provision will require the development of three (3) small lots with a maximum size of ½ acre and the remaining parent parcel. Cluster Development will allow one single family home to be constructed on each lot. The lots would be served with an on-site sewage disposal system.

   c. A "shadow plat" or re-development plan is required prior to approval of the land division.

   d. No further land division can occur on the parent parcel until the property is re-zoned with an urban zoning designation and an approved development plan.

   e. Exceptions:

      i. Properties which are 20 acres or larger and have a Framework Plan designation for future economic use shall be permitted to apply for a two lot partition where the parcel size for one lot is a minimum of 5 acres. No further land division can occur on the parent parcel until the property is re-zoned with an urban zoning designation and an approved development plan.

EXHIBIT C

4.5.500 Master Plan Development within the Urban Holding Districts

A. Master Plan Required. A Master Plan is required as a condition of annexation into the city limits prior to or concurrent with re-zoning.

B. Applicability. This section shall apply to all properties within the Urban Growth Boundary with an Urban Holding designation. A proposal for a master plan shall be required for properties which have a total land area of 10 acres or more, or the aggregate of several assembled properties under the same ownership which total 10 or more acres at the time the UGB is adopted.

C. Purpose. The purpose of Master Planning is to provide:

1. Orderly and efficient development of the City of Bend
2. Compatibility and /or transitions with adjacent developments and the character of the area
3. A complementary mix of uses and activities consistent with the Framework Plan and the City's Housing Needs Analysis and the Economic Opportunities Analysis.
4. An interconnected transportation network both within the master plan area and connecting to existing and planned City streets, routes and trails including bicycle and pedestrian facilities.
5. A range of open space and recreational facilities
6. Public and semi-public facilities and services; including schools and parks
7. Preservation of historic buildings, scenic views and natural resources to the greatest extent possible where applicable
8. Transition or buffers between urban development and rural areas
9. Implementation of the Bend Urban Area General Plan

D. Procedures. Proposals for a master plan shall demonstrate consistency with this section and shall follow the procedures set forth in Section 4.5.300; Master Planed Developments.

E. Designated Master Plan Areas. The City's Framework Plan identifies seven (7) large property holdings as special Master Plan Areas. Within these areas, various required land uses have been specified on the Framework Plan. The master plan shall be developed in a manner that will accommodate the required uses consistent with the Framework Plan.

Areas without a designated master plan area may join together with surrounding properties for master planning purposes. In such instances, the Framework Plan uses may be re-arranged within the aggregated area as long as the ratio of uses identified on the Framework Plan are developed and any unforeseen impacts can be mitigated.

F. Land Use and Design Standards for Master Plans. The proposed uses shall be consistent with the City of Bend "Framework Plan" as illustrated in the Bend Area General Plan as Figure 1-2. The Framework Plan is a planning tool used by the City to guide the future pattern of development and land uses within the UGB for the 20-year planning period. The Framework Plan also demonstrates that the new Urban Growth Boundary can accommodate the identified land needed for residential, commercial and industrial uses. The Framework Plan shows the proportionate size and approximate locations of urban uses, open space and the City's expanded Transportation System Plan within the UGB. Each Master Planned development area shall demonstrate conformance with the Framework Plan and the applicable standards below.

1. New Residential Districts

   a. A mix of housing types and densities within proposed large residential and mixed use developments is encouraged. Where possible, a ratio of 65% detached to 35% attached housing shall be encouraged.

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

   c. Exceptions:

      i. RL Buffers. The west side master plans allow the development of Low Density Residential housing as a transition between wild lands and the Goal 5 Study area which may include Areas of Special Interest. Low density development provides a compatible transition for wildlife protection and to provide for fire fuels reduction to protect against wildfire. The use of RL buffers cannot exceed the acreage size identified for the master plan area. However, the RL buffer can be designed in any configuration necessary to achieve the intended purpose.

2. New Economic Uses– The Framework Plan illustrates areas best suited for economic use as commercial, industrial and mixed use.

   A. Commercial - There are a wide variety and type of commercial designations. The three districts identified on the Framework Plan map are:

      - Convenience Commercial - The smallest commercial district is neighborhood oriented and provides frequent shopping and service commercial uses within ¼ mile of residential neighborhoods. This type of commercial node typically does not exceed 5 acres in size.
      - Limited Commercial - An intermediate commercial district might include both small and more intense service commercial and office uses clustered together between neighborhoods. These areas do not exceed 30 acres in size. They are served by large capacity streets but not solely reliant on street frontage. A mix of uses including high density housing is encouraged as a secondary use above or behind the commercial buildings.
      - General Commercial - The largest commercial district has a regional draw and is reliant on the principle transportation system for access. These areas although predominately an employment center will incorporate high density housing within the building blocks and in stand alone housing projects not to exceed 10% of the total development area. There is no size limit on the General Commercial districts.

   B. Industrial - The industrial districts are categorized as light and general industry. The difference between the two designations is site size requirements and outward impacts to adjoining properties. The overall size of an industrial designation is not mandated.

- Light Industrial – Typically requiring smaller sites, these industrial areas accommodate a variety of uses including light manufacturing, research and development facilities and sometimes heavy commercial.
- General Industrial - There is a need for large sites located in close proximity to supporting smaller sites and a principle transportation system for receiving and transporting goods and materials.
- Mixed Employment – Often viewed as an opportunity for redevelopment, these mixed use areas are a hybrid between commercial and small site industrial uses, the Mixed-employment district works well as transition zone between true commercial and industrial uses. ME designations also can provide a functional transition between a high capacity transportation system and a residential district.

a. New industrial designations are very location sensitive and shall locate to the greatest extent practical within ½ mile of major highways and principal arterials for shipping and receiving good and materials.
b. Where an industrial designation abuts a commercial or residential designation, a transition of development consisting of a mix of commercial, open space and/or residential uses shall be provided.
c. General industrial designations are sited in areas where impacts to adjacent properties can be minimized. A light industrial designation may be used to buffer or insulate the impacts of the General industrial district.

C. Mixed Use - Mixed use development is a blending of industrial, commercial and/or residential uses. A mixed use area shall function primarily as a transition between more intense and less restrictive uses.

a. No more than 65% of one type of use can dominate a mixed use area. The edge of the mixed use zone shall consist primarily of permitted uses allowed within the adjacent or abutting district.
b. Residential units within a mixed use building or development are encouraged and shall not have a density minimum or maximum.
c. Residential uses shall not be the primary use of a mixed use building.
d. Mixed use areas shall contain a minimum public open space area equivalent to 10% of the total mixed use district.

3. New Goal 5 Resources. The Deschutes River, Tumalo Creek drainage corridor and volcanic upland rock features within the expanded UGB may be potential new goal 5 visual resources. A formal Goal 5 analysis will be completed by the City for the expanded UGB. Until such time, areas of significance are not considered buildable. Prior to the completion of the Goal 5 inventory, analysis and ordinance by the city, properties seeking annexation shall conduct a Goal 5 inventory pursuant to OAR 660-023. Where a significant Goal 5 resource is identified, amendments to the Bend Area General Plan and Bend Development Code shall be proposed and adopted, consistent with inventory findings and OAR 660-23, to ensure appropriate protection of the resource, prior to approval of any land use action.

A determination of significance shall be based on the quality, quantity and location of the resource. The Goal 5 analysis will include at a minimum a visual impact assessment, slope analysis, vegetation inventory and wildlife assessment. In addition, the Goal 5 rule requires an analysis of positive and negative economic, social, environmental and energy consequences that could result from a decision to allow, limit or prohibit a

conflicting use. Using the goal 5 analysis information, the City will develop a program that will balance the impacts and determine the appropriate level of protection.

4. Open Space. Open space is a required element of all master planned developments.

    a. A minimum of 10% of the development area shall be designated as usable open space as part of the Master Plan.

        - Passive open space may consist of geological features, treed areas, waterways and areas with significant slopes or areas that are otherwise constrained by environmental factors.
        - Active open space shall be of a size that is adequate for group activities (10,000 sq ft minimum area with a minimum average width of 50 feet)

    b. Open space areas shall include walking or bicycle trails, landscaping and /or natural vegetation preservation and may be developed in conjunction with Bend Metro Park and Recreation District.

        i. Open space used as a compatibility buffer shall consist of a mix of trees, shrubs and ground cover in a manner that provides a visual screen as well as partial auditory buffer where appropriate.

    c. Open space along a canal right of way shall include added width to accommodate public facilities including trails.

    d. Preserve and protect significant rock outcroppings and trees with development where practical.

5. Schools and Parks. Adequate space for planned schools and parks is a requirement of all master planned developments.

    a. Developers will defer to the Bend La Pine School District and the Sites and Facilities Study (as updated) to determine the need for and location of school sites within the master planed area.

    b. Developers will defer to the Bend Metro Park a Recreation District and the Parks, Recreation and Green Spaces Comprehensive Plan (as updated) to determine the need for and location of neighborhood and community park sites and connector trails within the master planned area.

6. General Provisions All development proposals shall address findings related to the following:

    a. Chapter 2, Natural Features and Open Space of the Bend Urban Area General Plan, addressing how the proposed master plan development will assist in meeting the identified needs for open space and natural areas.

    b. Chapter 3, Community Connections of the Bend Urban Area General Plan, addressing how the proposed master plan development will assist in meeting the identified needs for schools and parks.

    c. Chapter 5, Housing and Residential Lands of the Bend Urban Area General Plan, addressing how the proposed master plan development will assist in meeting the identified needs for types and densities of housing at price ranges and rent levels which are commensurate with the financial capabilities of Bend-area households.

d. Chapter 6, Economy and Lands for Economic of the Bend Urban Area General Plan and the Economic Opportunities Analysis for the City of Bend.

G. Special Review Criteria. In order to approve a Master Plan within the Urban Holding Zone, the review authority must find that the proposal is consistent with the following criteria:

1. Whether the proposal is generally consistent with the Framework Plan and Bend Area General Plan in terms of land use/need, density, transportation systems and open space.
2. Whether the proposal is generally suitable for the area in which it is proposed, considering existing and planned neighborhoods, shopping, and employment areas and natural resources and hazards.
3. Whether the proposal is functionally integrated and compatible with existing developed or planned areas.
4. Whether the proposal implements the following elements where applicable:
   a. Land Use Types and Housing Densities. The plan provides a mix of needed commercial and industrial land uses and housing types and densities which meet the projected goals of the Residential Land Needs Analysis and the Economic Land Needs Assessment.
   b. Interconnected Multi-modal System. The plan provides an integrated street network and pedestrian and bicycle friendly system which connects to existing and planned areas.
   c. The proposed open space is commensurate with the proposed residential and economic densities contemplated with the master plan.

BLANK PAGE

ORDINANCE NO. NS-2114

AN ORDINANCE AMENDING THE BEND DEVELOPMENT CODE SECTION 4.1.1310(C) TO ALLOW THE CITY COUNCIL TO AUTHORIZE ADDITIONAL DEVELOPMENT APPROVAL EXTENSIONS IN TIMES OF CITY-WIDE NEED.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1: The City of Bend initiated the application on November 5, 2008. Timely and sufficient notice pursuant to Section 4.1.315 of the Bend Development Code has been provided.

Section 2: On December 8, 2008, the Bend Planning Commission held a public hearing to accept testimony on the request. At the conclusion of the hearing the Commission voted to recommend the proposal be approved by the City Council.

Section 3: The Bend City Council opened a public hearing on December 17, 2008 and continued the hearing to January 21, 2009. On January 21, 2009 the hearing was reopened to accept testimony and consider the Planning Commission's affirmative recommendation. At the conclusion of the hearing, the City Council 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 4.1.1310(C) to read as depicted in Exhibit A.

Read for the first time the 21st day of January, 2009.

Read for the second time the 4th day of February, 2009.

Placed upon its passage the 4th day of February, 2009.

YES: 4 NO: 2

Authenticated by the Mayor the 4th day of February, 2009.

Kathie Eckman

Kathie Eckman, Mayor

ATTEST: Patricia Stell

Patricia Stell, City of Bend Recorder

Exhibit A

Proposed Bend Development Code Text Amendment
(New language is underlined; deleted language is struck-through)

4.1.1310(C) Extensions:

1. The ~~Planning~~ Community Development Director may grant one extension of up to one year for a ~~land use~~ development approval or a phase of a ~~land use~~ development approval, ~~unless the applicable criteria have changed~~, if:
    a. an applicant makes a written request for an extension of the development approval period; and
    b. the request, ~~along with the prescribed fee~~, is submitted to the city prior to the expiration of the approval period.

2. The Community Development Director may grant one or more additional extensions beyond one year if authorized by a City Council resolution which recognizes a city-wide need for an additional limited-duration extension, not to exceed two years. The additional extension may be granted if:
    a. the applicant has exhausted all other extension opportunities; and
    b. the applicant satisfies the submittal requirements of (1)(a) and (b) of this section.

Exhibit B

Findings of Fact
Legislative Code Amendment PZ08-494

ISSUE:
The Bend Development Code (BDC) grants a one year effective period beginning the date a development approval becomes final. BDC section 4.1.1310(C) allows the Community Development Director to grant a one-year extension beyond the initial one year for a total of two years. The proposed addition to the BDC text will allow the City Council to adopt a resolution granting the Community Development Director the authority to approve an additional extension of up to two years if there is a recognized city-wide need.

PROCEDURAL FINDINGS:
The application was initiated November 5, 2008. Notice of proposed amendment was not provided to the Department of Land Conservation and Development (DLCD). ORS 197.610 states that notice is not required when a local government determines that the Statewide Planning Goals do not apply to a particular proposed amendment or new regulation. The length of time a local government allows a development approval to be in effect is set by local policy, not Oregon Revised Statute, Administrative Rule or Statewide Planning Goal. Therefore, under ORS 197.610, no notification to DLCD is required.

Notification of the public hearing before the Bend Planning Commission was printed in the November 16, 2008 edition of the Bend Bulletin. The Planning Commission held a public hearing on December 8, 2008 and voted in favor of recommending approval to the City Council. The City Council held a first reading on January 21, 2009 and a second reading on February 4, 2009.

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;*

Finding: Oregon Revised Statute (ORS) sections 197 and 227 proscribe the processes that local jurisdictions must follow when reviewing development applications. There are established timelines that must be respected when during the discretionary review period for permits, limited land use decisions and zone changes. However, neither the ORS or Oregon Administrative Rules (OAR) provide any limitation on the length of time a planning approval may remain valid. Because there is no direction provided by State land use law, the length of time a permit approval may be extended is left to the local jurisdiction. Because the proposed amendment is consistent with the OAR and ORS, this criterion is satisfied.

Criterion 2: *The request is consistent with the applicable Bend Area General Plan goals and policies;*

Finding: The Bend Area General Plan is a broad policy document that contains policies intended to guide the growth and prosperity of the City. Other than policies regarding development in general and encouraging economic development, the Plan does not provide either specific or general policy direction regarding the length of time a development approval should be extended in times of city-side need. Therefore, the proposed amendment is not inconsistent with this criterion.

Criterion 3: The applicant can demonstrate a public need or benefit for the proposed amendment.

Finding: If development approvals are allowed additional extensions, a developer will be in a position to take advantage of an upturn in the economy, should one occur within the two-year additional extension period, and begin construction of their project relatively quickly. Receiving building permits will be the only permitting obligation prior to construction. This construction activity could help the local economy by providing income opportunities for those not only in the construction trades, but those who benefit from the construction market. If development approvals are allowed to expire, it could be some time before a property owner makes the decision to invest the financial resources necessary to reapply for planning approval. And the planning review can take several months to complete, and longer for complex projects.

Testimony was submitted into the record that another public benefit would be that developers may choose to act on the permit rather than let them expire even though there is a limited market for their development. This would result in the platting of residential subdivisions which would further increase the vacant lot inventory in the city, or result in vacant commercial/industrial lease space. Because there is a public need and benefit, this criterion has been fulfilled.

ORDINANCE NO. NS-2115

AN ORDINANCE AMENDING THE CITY OF BEND URBAN AREA ZONING MAP AND GENERAL PLAN MAP BY CHANGING AN APPROXIMATELY 3.12 ACRES OF LAND ZONING DESIGNATION FROM RESIDENTIAL URBAN STANDARD DENSITY TO COMMERCIAL GENERAL AND THE PLAN DESIGNATION FROM RESIDENTIAL URBAN MEDIUM DENSITY TO COMMERCIAL GENERAL.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council opened a public hearing on February 18, 2009, considered the Hearings Officer's findings and record, and has found that the Plan Amendment and Zone Change satisfy the criteria for approval contained in Section 4.6 of the Bend Development Code.

Section 2. The Bend Area General Plan Map and the City's Zoning Map are amended by changing the Plan Designation and zoning of the property described as Tax Lots 400 and 500, Deschutes County Assessor's map 18-12-08AC, as shown in Exhibit "A" and described in Exhibit "B". The Zoning Designation is amended from Residential Urban Standard Density (RS) to Commercial General (CG) and the Plan Designation is amended from Residential Urban Medium Density (RM) to Commercial General (CG).

Section 3. The Bend City Council adopts as findings in support of this ordinance the Hearings Officer's findings in her December 16, 2008, recommendation. The Hearings Officer's recommendation is attached as Exhibit "C".

Read for the first time the 18th day of February, 2009.

Read for the second time the 4th day of March, 2009.

Placed upon its passage the 4th day of March, 2009.

YES: 7 NO: 0

Authenticated by the Mayor the 4th day of March, 2009.

Kathie Eckman

Kathie Eckman, Mayor

Approved as to form:

Mary Winters, City Attorney

ATTEST:

Patricia Stell

Patricia Stell, City of Bend Recorder

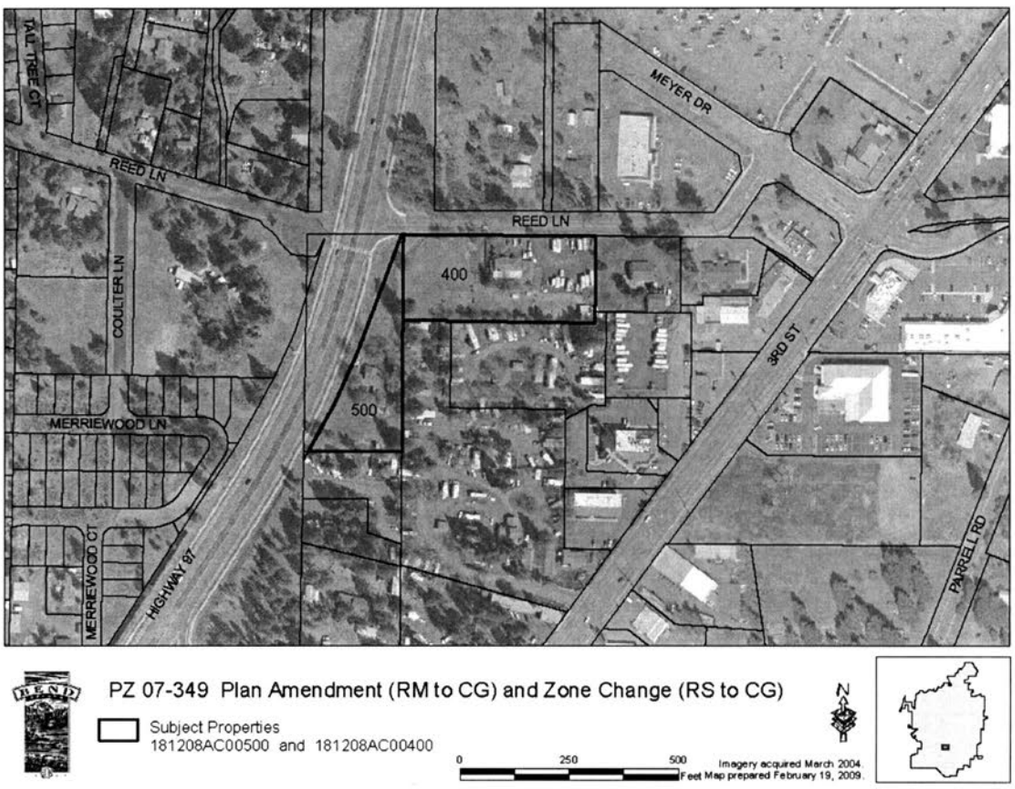


EXHIBIT B

PARCEL A

The North half of Tract Fifteen, REED HIGHWAY ACREAGE, Section 2, Deschutes County, Oregon, EXCEPTING that portion lying West of the East boundary of U.S. Highway 97.

PARCEL B

That part of Tracts Thirteen and Fourteen of REED HIGHWAY ACREAGE, SECTION 2, Deschutes County, Oregon, described as follows:

Beginning at the Northwest corner of Tract 14 and running thence South on the West line of said Tract, a distance of 194.32 feet; thence East at right angles, a distance of 440 feet to a point on the East line of said Tract 13; thence North on the said East line of said Tract 13, a distance of 198 feet, more or less, to the Northeast corner of said Tract 13; thence West on the North line of said Tracts 13 and 14 to the point of beginning.

ORDINANCE NO. NS-2116

AN ORDINANCE AMENDING THE CITY OF BEND ZONING MAP BY CHANGING THE ZONING OF APPROXIMATELY 0.77 ACRES OF LAND FROM RESIDENTIAL URBAN STANDARD DENSITY TO COMMERCIAL GENERAL.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council opened a public hearing on February 18, 2009, considered the Hearings Officer's findings and record, and has found that the zone change satisfies the criteria for approval contained in Section 4.6.300B of the Bend Development Code.

Section 2. The City of Bend Zoning Map is hereby amended by changing the zoning of the property described as Tax Lot 102, Deschutes County Assessor's map 18-12-08AC, as shown in Exhibit "A" and described in Exhibit "B" from Urban Standard Density Residential (RS) to Commercial General (CG).

Section 3. The Bend City Council adopts as findings in support of this ordinance the Hearings Officer's findings in her December 16, 2008, recommendation. The Hearings Officer's recommendation is attached as Exhibit "C".

Read for the first time the 18th day of February, 2009.

Read for the second time the 4th day of March, 2009.

Placed upon its passage the 4th day of March, 2009.

YES: 7 NO: 0

Authenticated by the Mayor the 4th day of March, 2009.

Kathie Eckman

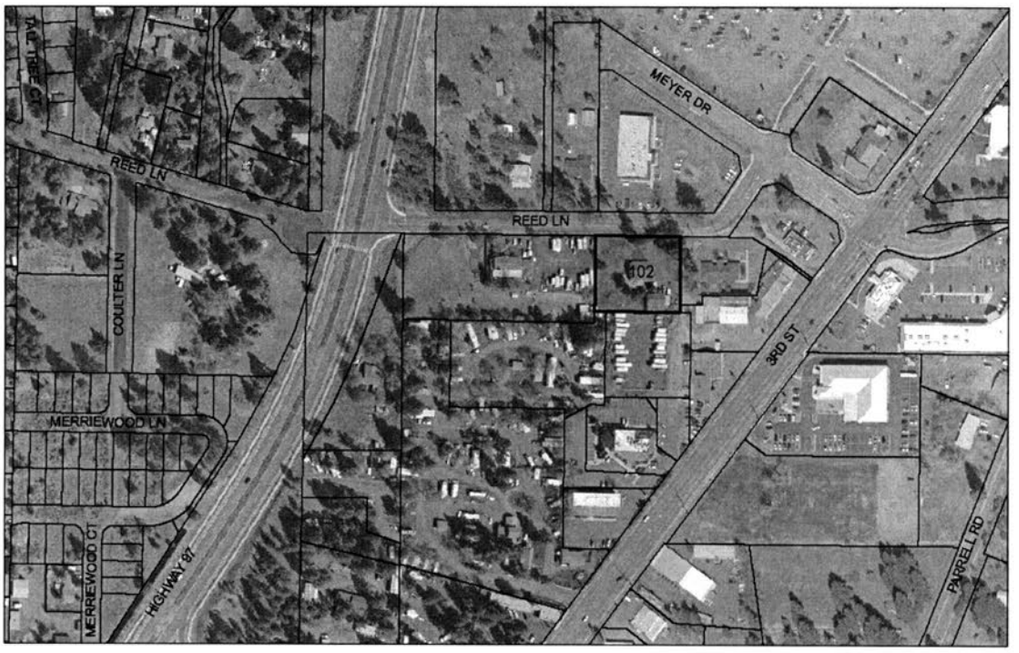
Kathie Eckman, Mayor

Approved as to form:

Mary Winters, City Attorney

ATTEST:

Patricia Stell, City of Bend Recorder



PZ 07-349 Zone Change (RS to CG)

Subject Property
181208AC00102

0 250 500 Feet

Imagery acquired March 2004.
Map prepared January 7, 2009.

EXHIBIT B

A portion of Tract 12, REED HIGHWAY ACREAGE, Section 8, Township 18 South, Range 12, East of the Willamette Meridian, Deschutes County, Oregon, described as follows:

Beginning at the Northwesterly corner of said Tract 12; thence East 195 feet; thence South 172 feet; thence West 195 feet; thence North 172 feet to the point of beginning.

Exhibit C

Ordinance NS-2115
and
Ordinance NS 2116

(See following pages)

Exhibit C

Ordinance NS-2115
and
Ordinance NS 2116

FINDINGS AND RECOMMENDATION OF CITY OF BEND HEARINGS OFFICER

FILE NUMBERS: PZ-07-348 (Type II Site Plan)
PZ-07-349 (Plan Amendment/Zone Change)
PZ-07-350 (Type I Site Plan)
PZ-07-637 (Class C Variance)

APPLICANT/ PROPERTY OWNER: Nase Company, LLC
P.O. Box 3032
Bend, Oregon 97707

APPLICANT'S ATTORNEY: Liz Fancher
644 N.W. Broadway Street
Bend, Oregon 97701

APPLICANT'S ENGINEER: Bussard Williams, LLC
389 S.W. Scalehouse Court, Suite 100
Bend, Oregon 97702

REQUEST:

Tax Lot 102: The applicant is requesting approval of a zone change from RS to CG to match the plan designation (07-349), and site plan approval to convert an existing dwelling to office use (07-350).

Tax Lots 400 and 500: The applicant is requesting a plan amendment and zone change from RS to CG (07-349), and site plan approval to expand the existing RV storage area (07-348).

All Tax Lots: The applicant is requesting an exception to the applicable block length and perimeter standards (07-637).

STAFF REVIEWER: Heidi Kennedy AICP, Senior Planner

HEARING DATE: October 23, 2008

RECORD CLOSED: November 4, 2008

I. APPLICABLE STANDARDS AND CRITERIA

A. Bend Development Code, Ordinance No. NS-2016

1. **Chapter 2.2, Commercial Districts**
2. **Chapter 3.1, Access, Circulation and Lot Design**
3. **Chapter 3.2, Landscaping, Street Trees, Fences and Walls**
4. **Chapter 3.3, Vehicle Parking, Loading and Bicycle Parking**
5. **Chapter 3.4, Public Improvement Standards**
6. **Chapter 3.5, Other Design Standards**
7. **Chapter 4.1, Land Use Review and Procedures**
8. **Chapter 4.2, Site Development and Design Review**
9. **Chapter 4.6, Land Use District Map and Text Amendments**
10. **Chapter 4.7, Transportation Analysis**
11. **Chapter 5.1, Variances**

B. **Bend Urban Area General Plan**

C. **Oregon Administrative Rules (OAR) Chapter 660**

1. **Division 12, Transportation Planning**

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

2. **Division 15, Oregon Statewide Planning Goals**

II. <u>FINDINGS OF FACT:</u>

A. **Location:** The subject property consists of three contiguous tax lots identified as Tax Lots 102, 400 and 500 on Deschutes County Assessor's Map 18-12-08AC. The property abuts Reed Lane and is located in between the Bend Parkway (the "Parkway") and Third Street (Highway 97 Business). Tax Lot 500 abuts the east side of the Parkway. Tax Lots 102 and 400 abut the south side of Reed Lane.

B. **Zoning and Plan Designation:** Tax Lots 400 and 500 are zoned Residential Standard Density (RS) and are designated Residential Medium Density (RS) on the Bend Area General Plan map. Tax Lot 102 is zoned RS and is designated Commercial General (CG) on the Bend Area General Plan map.

C. **Site Description:** The subject property consists of approximately 3.88 acres and is irregular in shape. It is relatively level with a gentle slope down from east to west. Vegetation consists of scattered mature pine trees and native grasses. An overhead power line runs along the property's northern boundary along Reed Lane, a designated local street. Reed Lane connects to Meyer Drive which connects to Third Street, a designated arterial. Reed Lane also provides access to and from the northbound lanes of the Parkway with a right-turn-only limitation and a stop sign at the Parkway. The subject property has no access to the Parkway because it is a designated expressway. Tax Lot 500 abuts the Parkway for its entire length.

Tax Lot 102: Tax Lot 102 is the easternmost tax lot of the three tax lots making up the subject property. It is rectangular in shape, relatively level, and consists of approximately .77 acres. This tax lot is developed with two structures -- a 1,222-square-foot dwelling and a 735-square-foot detached garage – and three paved parking spaces. Vegetation consists of a few mature trees grouped near the tax lot's northeastern corner, one large tree in the front yard along Reed Lane, and a few scattered trees behind the structure. Adjacent to the dwelling is a paved driveway providing access to Reed Lane as well as to the garage and parking spaces.

Tax Lot 400: Tax Lot 400 is roughly rectangular in shape and located west of Tax Lot 102 and consists of approximately 2 acres. It is relatively level and is developed with a dwelling, an attached two-car garage, a paved area in front of the dwelling, and a gravel-surfaced recreational vehicle (RV) storage area. There is a paved driveway providing access to Reed Lane. The dwelling is surrounded by a chain-link fence separating it from the existing RV storage area. There also is a sight-obscuring fence running along the southern boundary of the tax lot separating it from the adjacent Scandia RV and Mobile Home Park. The tax lot also has a number of mature trees.

Tax Lot 500: Tax Lot 500 is roughly triangular in shape with its narrowest dimension – four feet of width – along Reed Lane at its intersection with the Parkway. Tax Lot 500 consists of approximately 1.12 acres and is located south of Tax Lot 400, southwest of Tax Lot 102, and at a slightly lower elevation than these two other tax lots to the northeast and slightly lower than the Parkway to the west. The record indicates that prior to construction of the Parkway, Tax Lot 500 was a part of a 2.5-acre rectangular lot. That lot was bisected by the Parkway right-of-way acquired by the Oregon Department of Transportation (ODOT) through condemnation, and resulted in the creation of three tax lots -- 500, 501 and 502. Tax Lot 500 is developed with a dwelling and unpaved driveway that crosses Tax Lot 400 and provides access to Reed Lane. Without this driveway Tax Lot would not have access to a public street. The property has mature trees grouped around the dwelling and along the western border. No sound barrier exists along the Parkway.

D. **Surrounding Zoning and Land Uses:** The subject property is located at the north end of an area of commercial-zoned land developed with commercial uses and bounded by the Parkway on the west, Reed Lane on the north, Third Street on the east, and Powers Drive on the south. The majority of surrounding land is designated and zoned CG.

North: Reed Lane abuts the subject property to the north. Further to the north across Reed Lane are four parcels, the easternmost of which is owned by ODOT, is approximately .39 acres in size, is vacant and covered with mature trees. Two parcels to the east of the ODOT parcel recently received city approval of a zone change from RS to RM (Residential Medium Density) and CH

(Highway Commercial). The RM-zoned parcel is developed with a 132-unit apartment complex called Eagle's Landing. The CH-zoned parcel has received approval for an office use (PZ-04-483/04-490). Further to the east is a parcel zoned CG and developed with a Pappy's Pizza restaurant. Further to the north across Meyer Drive is the Fred Meyer shopping complex on Third Street.

West: The Parkway and its right-of-way abut the subject property on the west. Land west across the Parkway is zoned residential, developed with residential uses including single- and multi-family dwellings, and separated from the Parkway by a noise buffering wall.

East: Property to the east is zoned CG and is developed with a structure housing a weight-loss business with a paved parking area and a paved driveway providing access to Reed Lane. Further to the east is the George Moreland Plumbing business on land zoned CG.

South: To the south are parcels zoned CG. The abutting property to the south is developed with the Scandia Mobile Home Park and Scandia RV Park owned and managed by the applicant. The record indicates the Scandia RV Park is now the only RV park within the Bend city limits. Parcels east of the RV Park along Third Street are zoned commercial and developed with a variety of commercial uses.

E. **Procedural History:** The subject plan amendment, zone change and site plan applications were filed on June 18, 2007. By a letter dated July 18, 2007, the city advised the applicant that the applications were incomplete, and identified the missing information. The applicant submitted a revised traffic impact analysis, and a public hearing was scheduled for October 25, 2007. However, by a letter dated September 6, 2007 the city again advised the applicant that the applications were incomplete, and the scheduled public hearing was cancelled. By a letter dated December 7, 2007 the applicant requested that the city put the applications "on hold." In late 2007 and early 2008 the applicant submitted the missing information, including revised traffic studies and an application for a variance to the block standards.

A public hearing on the applications was held on October 23, 2008. At the hearing, the Hearings Officer received testimony and evidence, left the written evidentiary record open through October 30, 2008, and allowed the application through November 6, 2008 to submit final argument pursuant to ORS 197.763. The applicant submitted final argument on November 4, 2008 and the record closed on that date. Because the applications include a request for a plan amendment for two of the three tax lots constituting the subject property, and because the proposed zone changes for all three tax lots and the proposed site plans are dependent upon approval of the plan amendment, the Hearings Officer finds the time limitations for completing the applications and for issuing a final local land use decision under ORS 227.178 do not apply.

F. **Proposal:** The applicant requests approval of a zone change from RS to CG for Tax Lot 102 to match its CG plan designation (07-349), and site plan approval to convert the existing dwelling on the tax lot to office use (07-350). The applicant requests approval of a plan amendment and zone change from RS to CG for Tax Lots 400 and 500 (07-349), and site plan approval to expand the existing RV storage area from 55 to 105 spaces (07-348). The applicant also requests an exception to block length and perimeter standards (07-637).

G. **Public/Private Agency Notice:** The Planning Division sent notice of the applicant's proposal to a number of public and private agencies and received responses from: the City of Bend Traffic Engineer, Fire Department, Grading and Drainage, Public Works, Long-range Planning, and Building Department; ODOT; Arnold Irrigation District; and PacifiCorp. These comments are included in the record.

H. **Public Notice and Comments:** The Planning Division mailed individual written notice of the applicant's proposal and the public hearing to the owners of record of all property located within 250 feet of the subject property. In addition, notice of the public hearing was published in the Bend "Bulletin" newspaper, and the subject property was posted with a notice of proposed land use action. As of the date the record in this matter closed, the city had received no comments from the public. No members of the public testified at the public hearing.[1]

I. **Lot of Record:** Both the applicant's burden of proof and the staff report include a detailed analysis of the lot-of-record status of the subject property. The Hearings Officer understands this discussion is included because the city will not consider or approve a proposed land use unless the subject property constitutes at least one legal lot of record. However, I have found nothing in the city's development code that establishes as a prerequisite to approval of a plan amendment, zone change or site plan that the affected property be a legal lot of record. Section 4.6.300 authorizes quasi-judicial amendments to the plan and zoning ordinance for "a single or limited group of *properties*" (emphasis added). Section 4.2.200 requires site plan approval for "all new *uses*, buildings, *outdoor storage* or sales *areas* and parking lots or alterations" (emphasis added). Nevertheless, because the subject property's lot-of-record status was addressed by both the applicant and staff I include the following findings.

Tax Lot 102: The record indicates Tax Lot 102 was found by Deschutes County to be a legal lot of record in 1991 before it was annexed by the city. A copy of the county's lot-of-record determination is included in the record as Exhibit J to the applicant's burden of proof statement, and shows Tax Lot 102 was created by the recording of a deed prior to the effective date of the county's land division

[1] The applicant also sent notice of the required public meeting concerning its application on November 9, 2006 and held the public meeting on November 27, 2006. The record indicates no neighbors or other members of the public attended the meeting.

regulations.

Tax Lot 400: The applicant's burden of proof includes an extensive lot-of-record analysis that shows Tax Lot 400 consists of at least two legal lots of record. This information shows Tax Lot 400 in its current configuration was created by a deed recorded on February 21, 1964 that conveyed the northern part of two separate subdivision lots -- Lots 13 and 14 of Reed Highway Acreage Section 2. This conveyance occurred prior to the effective date of the county's land division regulations. A copy of the deed is included in the record as Exhibit M to the applicant's burden of proof. The applicant's burden of proof states that in the absence of a lawful vacation or replat of that subdivision, under ORS 92.017 the historic lot lines remain, and therefore the 1964 deed had the effect of creating two separate legal lots.

Tax Lot 500: As discussed in the findings above, prior to acquisition of right-of-way for, and construction of, the Parkway Tax Lot 500 consisted of a 2.5-acre parcel. The applicant's burden of proof states the original Tax Lot 500 was created by a 1954 conveyance and was a legal lot of record because the conveyance predated the county's land division regulations. A copy of this deed is included in the record as Exhibit O to the applicant's burden of proof. Construction of the Parkway resulted in the creation of three separate tax lots: Tax Lot 500 (part of the subject property), Tax Lot 501 (part of the Parkway), and Tax Lot 502 (the small portion of the former Tax Lot 500 located west of the Parkway). Tax Lots 500 and 502 remain part of the same lot of record.

The applicant's proposal would apply CG zoning only to Tax Lot 500. The applicant asserts, and the Hearings Officer agrees, that ODOT's failure to obtain partition approval prior to acquiring what is not Tax Lot 501 for public purposes by condemnation did not render the resulting property division that created Tax Lot 501 unlawful. As the applicant notes, right-of-way acquisition that results in the division of a lot is excluded from the partition definition in ORS 92.010(7). As a result, Tax Lots 500 and 502 remain a single legal lot of record divided by the Parkway. Moreover, I also have found nothing in the city's development code that precludes land use approval for a plan amendment, zone change or site plan that would affect only a *part* of a lot of record – i.e., Tax Lot 500 but not Tax Lot 502.

For the foregoing reasons, the Hearings Officer finds the applicant has established that the subject property constitutes at least one legal lot of record.

III. CONCLUSIONS OF LAW:

PLAN AMENDMENT AND ZONE CHANGE STANDARDS

A. Bend Development Code

1. Chapter 4.6, Land Use District Map and Text Amendments

a. **Section 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 procedures, 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 application may be approved, approved with conditions, or denied.**

FINDINGS: The applicant is requesting approval of a quasi-judicial plan amendment for Tax Lot 400 and 500 and a quasi-judicial zone change for Tax Lots 102, 400 and 500. These applications are being processed through a Type III procedure, and the proposal's compliance with the standards in Section 4.6.300 is discussed in the findings immediately below.

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

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

FINDINGS: The statewide planning goals are implemented through the city's comprehensive plan and land use regulations which have been acknowledged by the Land Conservation and Development Commission (LCDC). Therefore the applicant need not demonstrate the proposed zone change conforms with the goals. However, the Hearings Officer finds the applicant must demonstrate the proposed plan amendment for Tax Lots 400 and 500 conforms with the applicable goals, discussed in the findings below.

1. **Goal 1, Citizen Involvement**

FINDINGS: The Hearings Officer finds the applicant's proposal is consistent with this goal because the city has provided opportunities for public comment and involvement in the proposed plan amendment, I held a public hearing on the plan amendment applications, and a public hearing or meeting will be held by the Bend City Council

(council) before the plan amendment and zone change can be approved. Owners of record of property located within 250 feet of the subject property received individual written notice of the proposal and the public hearing, and the public hearing also was noticed through publication in the "Bend Bulletin" newspaper and by posting the subject property.

2. Goal 2, Land Use Planning

FINDINGS: The Hearings Officer finds the applicant's proposal is consistent with this goal because it has been reviewed under the city's comprehensive plan and zoning ordinance, and a public hearing has been conducted in accordance with the city's land use procedures.

3. Goal 3, Agricultural Lands

FINDINGS: The Hearings Officer finds this goal is not applicable because the subject property is not designated or zoned for agriculture.

4. Goal 4, Forest Lands

FINDINGS: The Hearings Officer finds this goal is not applicable because the subject property is not designated for forest use.

5. Goal 5, Open Spaces, Scenic and Historic Area and Natural Resources

FINDINGS: The Hearings Officer finds this goal is not applicable because the subject property does not have any inventoried Goal 5 resources.

6. Goal 6, Air, Water and Land Resources Quality

FINDINGS: The Hearings Officer finds the applicant's proposed plan amendment is consistent with this goal because it will have no effect on water or land resources quality.

7. Goal 7, Areas Subject to Natural Disasters and Hazards

FINDINGS: The Hearings Officer finds this goal is not applicable because the record indicates there are no identified natural disasters or hazards on the subject property.

8. Goal 8, Recreational Needs

FINDINGS: The Hearings Officer finds this goal is not applicable because the applicant does not propose to use the subject property for a destination resort or other recreational uses.

9. Goal 9, Economic Development

FINDINGS: This goal requires the city to provide adequate opportunities for a variety of economic activities, to inventory areas suitable to serve industrial and commercial development, and to include such inventories in the comprehensive plan. As discussed in the findings above, Tax Lot 102 already is designated CG and therefore planned for commercial development. The applicant's proposed plan amendment from RS to CG for Tax Lots 400 and 500 would result in an increase the city's commercial lands inventory by approximately 3.88 acres of land suitable for commercial development. Attached to the applicant's burden of proof as Exhibit H is the city's recent inventory of industrial, commercial and employment lands. This document indicates the city currently lacks the 20-year supply of industrial land required by Oregon Administrative Rules (OAR) 660-009-0025. For these reasons, the Hearings Officer finds the proposed plan amendment is consistent with Goal 9.

10. Goal 10, Housing

FINDINGS: The applicant's burden of proof includes the following discussion of Goal 10:

> *"Goal 10 requires cities to provide a sufficient supply of land for residential use that is suitable for residential development. In the case of cities over 25,000 in population, a twenty year supply of residential land is required during periodic review or during a legislative amendment of the comprehensive plan. ORS 197.296. At other times, including during the review of a quasi-judicial plan amendment, the twenty-year supply requirement does not apply.*
>
> *The City has been working under a grant from DLCD* [Department of Land Conservation and Development] *to complete a number of tasks related to Goal 10. One of the studies that the City has prepared relates to the buildable lands inventory. This buildable lands inventory shows that in the year 2004, the City had 2,070 total vacant acres of RS land and 138 acres of vacant RM land. This information is from the Community Development Department Buildable Lands Inventory, City of Bend Residential Lands Study (June 30, 2005). The conclusion of this study states that the City has approximately 2,297 acres of vacant residential lands within its UGB and most of this land is zoned RS.*
>
> *The City's data shows that an adequate supply of residentially zoned land will exist after approval of this request to meet current housing needs. Additionally, the City plans to add thousands of acres of lands to the urban growth boundary while this application is pending before the City. The UGB expansion will provide a full twenty year supply of residential land. As explained by City of Bend Long Range Planner Brian Shetterly at an open house meeting on April 26, 2007 regarding the planned UGB amendment, the City may include a twenty year supply at that time but no more than a twenty-year supply. That position is consistent with the*

language of ORS 197.296, the law that implements Goal 10 for cities of 25,000 and more residents. In such a regulatory setting, the supply of residential land will fall below the twenty-year supply mark as soon as the inventory is expanded due to ongoing residential development and zone changes and plan amendments.

Rezoning Tax Lot 102 does not affect the City's compliance with Goal 10 because the property is designated for commercial, not residential, uses. Therefore, this land is not accounted for in the City's acknowledged buildable lands inventory. Additionally, this tax lot is zoned RS. As the results of the 2004-2005 residential lands study show, the City has over 2,000 acres of vacant RS zoned lands inside the City's UGB. Rezoning .77 acres will not prevent compliance with Goal 10.

Tax Lots 400 and 500 are designated for residential development as well as zoned for residential development. Although approval of the zone change and plan amendment would rezone and re-designate approximately 3.11 acres of land set aside for residential uses, approval of this application is consistent with Goal 10. Based upon the City's 2004-2005 residential lands study, the City has 138 acres of developable RM lands and over 2,000 acres of RS lands. A rezone of 3.11 acres leaves over 130 acres of RM land and over 2,000 acres of RS land. Thus, following the rezone the City is still in compliance with Goal 10.

Goal 10 requires that the land available for residential uses be suitable for such use. Neither Tax Lot 400 nor Tax Lot 500 is suitable for residential uses. Tax Lot 400 contains a grandfathered, nonconforming RV storage use. The applicant intends to continue and expand that use, a commercial use, beyond the boundaries of use that have been recognized by the City code enforcement officer to include lands it has used in the past for RV storage. Thus, the land is not available for residential development. The use of the property for RV storage is essential to the continued success of the applicant's adjacent Scandia RV Park and Mobile Home park businesses. The applicant does not believe that residential development is not [sic] *appropriate for this property because the property is part of a block of commercially-zoned and developed properties that is separated from nearby residential uses by Reed Lane and the Parkway.*

Tax Lot 500 is not suited for residential uses because it abuts the Parkway and lacks any sound barriers to soften the traffic noise. The east part of Tax Lot 400 is also unsuited to residential use due to noise impacts from the Bend Parkway. The Parkway bisected Tax Lot 500 and created a triangular remainder lot that lacks any access to an adjacent road. The triangular shape of the lot makes development of medium density housing at City-required densities extremely difficult. It makes it impossible for the applicant to set residential development far enough back from the parkway

to avoid harming the health of potential residents.

The applicant believes that the lack of sound protection from the Parkway makes Tax Lot 500 and the east part of Tax Lot 400 particularly undesirable for residential uses. The Parkway is extremely noisy. High levels of noise damage the hearing of humans. It would be prohibitively expensive for the applicant to construct sound barriers like those provided to other residential property in the area. Such barriers would also make the property unattractive to potential tenants as it would block light as well as sound.

The location of Tax Lots 400 and 500 near the Bend Parkway is an unsafe location for children. A person was recently hit and killed while crossing the Parkway a short distance to the north of the subject property.

The parcel to the north of Reed Lane that was approved to be developed with a 132-unit apartment complex, Eagle's Landing, has different characteristics that allowed the use of the subject property for apartments. The south part of Eagle's Landing, is separated from the Parkway by a vacant parcel of land owned by ODOT that is covered by mature trees. Many of the apartment units are set back farther from the Parkway than would be possible for Tax Lot 500 because of the width of Lot 500 and the undeveloped ODOT buffer right-of-way. Also, the units were developed before the City adopted maximum setback requirements that require residences to be constructed within 20 feet of the Parkway right-of-way. The ground level of apartment units on the property to the north of the subject property is located far below the elevation of the Parkway. This reduces sound levels for lower level units and makes it difficult for children to access the travel lanes of the Parkway from their homes."

The Hearings Officer concurs with the applicant's analysis, and based on it finds the proposed plan amendment for Tax Lots 400 and 500 is consistent with Goal 10.

11. Goal 11, Public Facilities and Services

FINDINGS: This goal requires the city to plan and develop an orderly arrangement of public facilities and services for urban and rural development. The Hearings Officer finds the applicant's proposed plan amendment is consistent with this goal because any development on the subject property following its redesignation and zoning to CG will be served by urban infrastructure including water provided by a city water service franchisee, city sewer service, and public streets.

12. Goal 12, Transportation

FINDINGS: This goal is implemented through the Transportation Planning Rule (TPR), discussed in detail in the findings below. For the reasons set forth in those findings,

incorporated by reference herein, the Hearings Officer finds the applicant's proposal is consistent with the TPR and therefore satisfies Goal 12.

13. Goal 13, Energy Conservation

FINDINGS: This goal requires the city to give priority in land use planning to the efficient utilization of energy. The Hearings Officer finds the applicant's proposal is consistent with this goal because it would allow the subject property to be developed with commercial uses within a commercial area between the Parkway and Third Street, and in particular with an expanded RV storage area that would in part serve residents of the Scandia Mobile Home Park. Thus, it would facilitate energy conservation by locating commercial development in general, and the RV storage area in particular, close to existing commercial development and the population it serves.

14. Goal 14, Urbanization

FINDINGS: This goal requires cities and counties to assure their land use planning will provide for the orderly and efficient transition from rural to urban land uses. The Hearings Officer finds this goal is not applicable because the subject property already is located within the Bend city limits and urban growth boundary.

15. Goals 15 through 19

FINDINGS: The Hearings Officer finds these goals are not applicable to this proposal because they address river, ocean, and marine resources not located on or near the subject property.

For the foregoing reasons, the Hearings Officer finds the applicant's proposed plan amendment satisfies this approval criterion.

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

FINDINGS: The applicant proposes to change the plan designation of Tax Lots 400 and 500 from RS to CG, and to change the zone from RS to CG for Tax Lot 102. The applicant and staff have identified a number of plan policies as applicable to the proposed plan amendment and zone change. However, the Hearings Officer finds it is necessary first to determine to what extent these plan policies constitute mandatory approval criteria for this quasi-judicial plan amendment and zone change applications. Whether a plan policy constitutes such a criterion depends not only on the language of the policy but also on the function the plan assigns to the policy. *Von Lubken v. Hood River County*, 104 Or App 683, 689, 803 P2d 750 (1990), *adhered to* 106 Or App 226, *rev den* 311 Or 349 (1991). *Schellenburg v. Polk County*, 21 Or LUBA 425 (1991).

The city's comprehensive plan includes the following language describing its purpose:

> **The comprehensive plan provides the foundation for the planning process by establishing long-range goals and objectives and by providing, through its various elements, an integrated view of future public and private development patterns in the community. It is not the last word, nor is it the first * * *. <u>The comprehensive plan is not the zoning plan</u> * * *. The plan <u>recommends appropriate uses</u> for various areas and attempts to provide a maximum range of choice in the urban area within the limits of community living.** (Plan, page 2; emphasis added.)
>
> **The plan must be implemented if it is to be of value to the community. <u>It requires</u> * * * <u>the administration of appropriate codes and ordinances</u> which influence development * * *. The Comprehensive Plan provides basic guidelines with which the community can chart a course for change * * *.** (Plan, page 3; emphasis added.)
>
> **The Comprehensive Plan policies are based on the established general goals and objectives described in Part III and are supported by adequate findings * * *. The Plan maps and text are intended as <u>a statement of public policy</u> encompassing development objectives of and for the urbanizing area of Sisters * * *.** (Plan, Page 56; emphasis added.)

In several previous decisions this Hearings Officer has found the above-underscored language indicates the plan and its policies were intended only to be recommendations and statements of broad public policy rather than to establish mandatory approval criteria for quasi-judicial land use applications. Nevertheless, I also have found that some plan policies are written in mandatory terms, suggesting they *were* intended to be more than mere recommendations or statements of policy. I have found that in the absence of a clear statement in the plan that its policies are *not* intended to apply to quasi-judicial plan amendment applications, I must examine each plan policy identified by the city and the applicant as applicable in order to determine its applicability. I adhere to those previous holdings here and review the following plan policies identified by the applicant and planning staff.

> <u>Future Plan Updates</u> (Page P-6)
>
> **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. (Emphasis added.)

FINDINGS: The applicant, as an individual, proposes to change the comprehensive plan designation of Tax Lots 400 and 500 from RS to CG and the zoning map classification of the subject property from RS to CG. The applicant also proposes a zone change from RS to CG for Tax Lot 102 to conform the property's zone and plan designation. The Hearings Officer finds the above-quoted plan provision, which is written in mandatory terms, requires the applicant to demonstrate the proposed plan amendment is justified by "a public need and benefit for the change."

The applicant's burden of proof provides the following justification for the proposed amendments:

> *"The City has required the applicant for zone change and plan amendment applications to show a public need and benefit for the change. See Decision and Recommendation of City of Bend Hearings Officer File No. 02-430 (approval of a zone change and plan amendment from RM to CH for property located at 1045 SE Third Street, adjacent to Carerra Motors) (hereinafter referred to as the "Carerra Motors Decision"),* ***Exhibit I****. In the Carerra Motors Decision, Hearings Officer Tim Elliot found that the applicant demonstrated a public need and benefit for the requested zone change and plan amendment to change the subject property from RM to CH because of the shortage of commercial lands within the City, even though the request removed residential lands from the City's residential lands inventory.*
>
> *The applicant can demonstrate a public need and benefit for the requested zone changes and plan amendments in this case for similar reasons. The Carerra Motors decision was made after the City amended its Comprehensive Plan and Goal 9 inventories in 1998, yet the Carerra Motors Decision highlights the then existing shortage of commercial lands compared to the rapid development of commercial properties. The City has expressed concern over the shortage of commercial properties that still exists and the need for commercial lands available to support the expansion and growth of economically viable businesses. Approving this zone change and plan amendment request provides the City with over three acres of additional commercial lands. It provides the public with land needed to support one of the last remaining RV and mobile home parks in the City. New RV parks are not likely to be sited in the City or surrounding rural lands because they must be located in the CL or CG zoning districts and be approved as conditional uses. The high cost of commercial land makes new park projects infeasible for new property owners. The need for RV storage is increasing as the size of residential City lots continues to*

decline. There is no other available commercial land or other appropriately zoned land abutting the Scandia RV Park that can be used to store RVs. The applicant needs additional storage space which is available on Tax Lots 400 and 500 – abutting Scandia RV Park. Furthermore, RV parks attract visitors to the area and the location of the park is well situated and easily accessible via the Parkway or Highway 97 (Business).

The applicant understands that the City has expressed concern over rapid residential growth and expressed a need for more residential lands including RM-zoned lands. The City has recently studied its residential lands inventory and shown that it has an adequate existing supply of RS and RM zoned lands to meet current needs but that additional land is needed to provide a twenty-year supply of land in the urban area. State law does not require the City of Bend to provide a twenty-year supply during a quasi-judicial zone change but that supply is being provided because the City has chosen to expand its urban growth boundary to provide such a supply. As the City is acting to provide a full twenty year supply at this time, the applicant has advised the City Long Range Planning staff of this application so that it can, if it desires, offset lands removed from the residential lands inventory by this application with lands located outside the current UGB.

As in the Carerra Motors case, there is a greater public benefit from approval of this zone change to rezone these properties to commercial lands." (Bold emphasis in original.)

The Hearings Officer concurs with the applicant's analysis, and finds the applicant has demonstrated there is a public need for and benefit from its proposed plan amendment and zone change for Tax Lots 400 and 500 and proposed zone change for Tax Lot 102.

2. CHAPTER 1: PLAN MANAGEMENT AND CITIZEN INVOLVEMENT

Development within the Urban Growth Boundary

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

FINDINGS: The Hearings Officer finds the above-underscored language indicates this plan provision states city policy but does not establish a mandatory approval criterion for plan amendments or zone changes.

3. CHAPTER 6: THE ECONOMY AND LANDS FOR ECONOMIC GROWTH

Commercial Development

a. **Policy 20. The existing pattern of commercial designations shown on the Plan Map along Highway 97 and Highway 20, and along arterial streets such as Newport Avenue, Galveston Avenue, SW 14th Street, 27th Street, and O.B. Riley Road shall not be extended farther along the street corridors.** (Emphasis added.)

FINDINGS: The Hearings Officer finds the above-underscored language, written in mandatory terms, indicates it was intended to apply to proposed plan amendments that could result in the extension of commercial development along the identified transportation facilities. Therefore, I find I must consider this policy in evaluating the applicant's proposed plan amendment from RS to CG for Tax Lots 400 and 500.

The applicant's burden of proof includes the following relevant discussion of this policy's application to its proposed plan amendment.

> *"Tax Lots 102 and 400 adjoin Reed Lane and no other road. Reed Lane is a local street. Tax Lot 500 adjoins the Bend Parkway. The applicant believes that this policy applies to US Highway 97 Business (Third Street) rather than to the Bend Parkway in the area of the subject property for the following reasons:*
>
> *A. The City comprehensive plan's transportation plan map shows Third Street (US Highway 97 Business) as being Highway 97 where Highway 20, Third Street (US Highway 97 Business) and the Bend Parkway intersect at the north end of Bend.*
>
> *B. The City's transportation plan map shows the Bend Parkway, for its entire length, as the Bend Parkway, not as Highway 97.*
>
> *C. The text of the comprehensive plan refers to the Bend Parkway as the 'Bend Parkway.'*
>
> *D. Under the State's classification system and the City's transportation plans, the Bend Parkway is designated an expressway rather than a highway.*
>
> *E. The County Tax Assessor's maps show Third Street as US Highway 97 Business.*
>
> *F. The Carerra Motors property that was rezoned to commercial zoning adjoins the Bend Parkway. The City Council adopted a decision approving the zone change and plan amendment,* ***Exhibit I.*** *In the decision it found that this Plan policy did not apply to that*

land use application, apparently, with the belief that the Parkway is not Highway 97.

G. *The apparent intent of this Plan policy is to prevent the extension of commercial development along Third Street because this street has been subject to strip development. Strip development involves developments on shallow lots that face and take access to the highway or arterial streets. The Parkway is a limited access highway. Strip development has not occurred along the Parkway. All access rights to the Parkway, unlike US Highway 97 Business, were acquired for the subject property by the State Highway Department so that strip development may not occur along the Parkway. It, therefore, is most logical to interpret this policy to apply to US Highway 97 Business rather than the Bend Parkway.*

The applicant also believes that the rezoning of Tax Lot 500 to commercial zoning will not cause commercial designations to extend farther along street corridors. Instead, the zone change proposed in this case will allow the City to even up the boundaries of an existing commercial area to match the boundary created by the Bend Parkway, rather than adding new commercial areas to the ends of an existing strip of commercial land. This plan policy was written to prevent further north-south growth of the commercial zoning that exists along Highway 97 Business or other growth at the ends of commercial areas. A change that allows a widening of an existing commercial area is not the intended target of this plan policy.

In this case, the State of Oregon filed a condemnation action to bisect Tax Lot 500 and to remove it from the residentially-zoned land that adjoined it on its western boundary. The State also took all access to the property making it difficult, if not impossible, for the applicant to develop the property independent of the adjoining commercial property. This left Tax Lot 500 as an isolated residential property divided from other residential lands by the Parkway right-of-way to the west and south, commercial development and zoning to the south and grandfathered commercial use on Tax Lot 400. [Footnote omitted.] *This change of circumstance makes it appropriate to change the zoning and plan designation of this property to fit its new circumstance.*

The applicant also believes that the above circumstances make it appropriate for the City's planning director to find that this policy does not apply to this application and does not need to be addressed by City staff in the staff report. This action is expressly allowed by the approval criterion. This policy does not apply to Tax Lots 102 and 400 as they are located on a local street rather than on an arterial street or one of the identified highways." (Bold emphasis in original.)

The Hearings Officer agrees with the applicant's analysis, and in particular that the city does not consider the Parkway to constitute Highway 97, and therefore this policy is not applicable to the proposed plan amendment for Tax Lot 500 which abuts the Parkway.

b. **Policy 21. No new strip commercial development or extensions of the commercial designations shall be permitted along arterial or collector streets.** (Emphasis added.)

FINDINGS: The Hearings Officer finds the above-underscored language, written in mandatory terms, indicates it was intended to apply to proposed plan amendments that could result in the extension of strip commercial development along the identified transportation facilities. Therefore, I find I must consider this policy in evaluating the applicant's proposed plan amendment. The applicant argues, and I agree, that because the subject property abuts Reed Lane, a designated local street, and the Parkway, a designated expressway, no part of the subject property adjoins an arterial or collector street, and therefore this policy is not applicable to the proposed plan amendment.

c. **Policy 22. The city shall strive to retain and enhance desirable existing commercial areas and encourage property owners' efforts to rehabilitate or redevelop older commercial areas.** (Emphasis added.)

FINDINGS: The Hearings Officer finds the above-underscored language indicates this plan provision states city policy but does not establish a mandatory approval criterion for plan amendments or zone changes.

d. **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.**

e. **Policy 27. Commercial developments that abut residential zones or residential uses shall be subject to special setback and screening provisions.** (Emphasis added.)

FINDINGS: Although these policies include mandatory language, the Hearings Officer finds they are implemented through approval criteria in the city's development code, discussed in the findings below, and therefore do not themselves establish a mandatory approval criterion.

f. **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. (Emphasis added.)

FINDINGS: The Hearings Officer finds the above-underscored language indicates this plan provision states city policy but does not establish a mandatory approval criterion for plan amendments or zone changes.

For the foregoing reasons, the Hearings Officer finds the applicant has demonstrated the proposed plan amendment and zone change satisfy this approval criterion to the extent plan policies establish approval criteria.

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**

FINDINGS: In this Hearings Officer's previous decision in *Three Pines Ridge LLC* (PZ-06-737), I held this criterion replaced former Section 10-10.33(2)(d) of the city's land use regulations that required "the applicant for a zone change to demonstrate it would 'result in the orderly and efficient extension or provisions of public services,'" with a "concurrency" requirement. I also found this criterion requires the applicant to show that either adequate public facilities and services are in place, or they are planned to be in place concurrent with development. I adhere to these holdings here. Affected public facilities and services are addressed in the findings below.

a. Water. The subject property currently receives domestic water from Roats Water System, Inc. (Roats), a city-franchised private water company, from a 12-inch water line located in Reed Lane. The existing buildings on the subject property – three dwellings – will continue to receive Roats water, and the buildings on Tax Lots 400 and 500 will continue to be used for dwellings. The dwelling on Tax Lot 102 would be converted to office use which the Hearings Officer finds would have minimum water demand. In addition, I find the proposed RV storage area on Tax Lots 400 and 500 will have minimal if any water demand. The record includes a "will-serve" letter from Roats stating it can provide water service with a fire flow rate of over 2,000 gallons per minute (gpm) and 20 residual pounds per square inch (psi) for the subject property.[2] Therefore, I find there is and will be adequate water service for existing and proposed development on the subject property.

b. Sewer. The subject property is located in an area of existing commercial development served with city sewer facilities. The record indicates the existing dwellings on the subject property currently are served by on-site septic systems that are adequate to support the existing uses on the subject property, and likely also the proposed

[2] The record also includes "will-serve" letters from Bend Broadband (television and communications), Cascade Natural Gas, PacifiCorp (electric) and Qwest (telephone).

change of use on Tax Lot 102 from residential to office. The Hearings Officer finds that as a condition of site plan approval for the change of use of the dwelling on Tax Lot 102 the applicant will be required to obtain a septic authorization notice from the county for the change of use. The applicant argues, and I agree, that because there is city sewer service in the surrounding area, any future redevelopment of the subject property with other commercial uses will be served by adequate city sewer service.

c. Police and Fire Protection. The subject property is located within the Bend city limits and therefore is and will continue to be served by the Bend Police and Fire Departments. Included in the record as Exhibit T to the applicant's burden of proof is a copy of a letter from the fire department stating the subject property is located within the department's fire protection and ambulance response area.

d. Parks and Schools. The applicant argues, and the Hearings Officer agrees, that the need for parks and schools is directly related to residential development, and because the applicant is requesting approval to redesignate and rezone the subject property to commercial, the applicant's proposal will not add to the need for parks and schools.

e. Streets. The applicant submitted several traffic studies prepared by Ferguson & Associations, including a final traffic study dated July 17, 2008. As discussed in detail in the findings below concerning compliance with the TPR, the Hearings Officer has found the July 2008 traffic study demonstrates the proposed plan amendment and zone change will not exceed the capacity of Reed Lane or other affected streets or intersections, and that existing transportation facilities are adequate to support the existing uses and new uses proposed by the applicant for the subject property, including the change of use of the dwelling on Tax Lot 102 to office use, and the expansion of the existing RV storage area from 55 to 105 spaces.

The applicant has proposed to dedicate five feet of additional right-of-way for the abutting segment of Reed Lane and to construct property-tight sidewalks along the Reed Lane frontage on Tax Lot 102. The applicant has proposed that this sidewalk meander around existing trees in some places. The applicant has not proposed to construct sidewalks along the Reed Lane frontage on Tax Lots 400 and 500 for the reason that impacts from the proposed plan amendment and zone change on these tax lots are minimal and in any case would not generate *foot* traffic along city streets necessitating sidewalks. For the reasons set forth in the findings below concerning sidewalks, I have found no sidewalks are justified or will be required on the segment of Reed Lane abutting Tax Lots 400 and 500.

For the foregoing reasons, the Hearings Officer finds the applicant has demonstrated the proposed plan amendment and zone change satisfy this approval criterion.

4. **Evidence of change in the neighborhood or community or a mistake or inconsistency in the comprehensive plan or land use district map regarding the property that is the subject of the application; and the provisions of Section 4.6.600; Transportation Planning Rule**

Compliance.

FINDINGS:

a. Mistake. The Hearings Officer finds there was no mistake in the original residential plan designation of Tax Lots 400 and 500 and the original residential zoning of Tax Lots 102, 400 and 500.

b. Inconsistency. The Hearings Officer finds there is an inconsistency between the CG plan designation and the RS zoning of Tax Lot 102, and the applicant's proposed zone change would conform the plan designation and zoning. In addition, the applicant proposes to change both the plan designation and zoning of Tax Lots 400 and 500 to CG.

c. Change in Neighborhood or Community. The applicant's burden of proof presents the following argument concerning a change in the neighborhood or community:

> *"There has been a significant change in the neighborhood that justifies the zone change and plan amendment proposed for Tax Lots 400 and 500. The construction of the Bend Parkway in the 1990s divided these lots from a large, contiguous area of residential land that was well-suited to residential development. The majority of this residential area lies to the west of the Parkway. The construction of the Parkway also took about half of Tax Lot 500 and left a narrow triangle of land without any street access. The high volumes of traffic on the Parkway create noise on Tax Lots 400 and 500 that are incompatible with residential development. When the State of Oregon constructed the Bend Parkway they did not provide sound buffering for the subject property. The applicant's family was told that buffering was not needed because it was anticipated that the subject property would be rezoned to commercial zoning.*
>
> *The subject properties are the only privately owned properties located between the Bend Parkway, Third Street, Reed Lane and Powers Road that are not zoned commercial. All of the surrounding properties, with the exception of Tax Lot 403, Map 18-12-08AB, are developed with commercial uses. The Parkway made Tax Lot 500 a triangular-shaped parcel that is difficult to develop with apartment units or houses due to the shallow lot depth of Tax Lot 500 and the yard requirements of the RM zoning district. These factors prevent the north part of Tax Lot 500 from being used for apartments or parking areas in the RM zone.*
>
> *The disappearance of RV parks in and around the City of Bend is a change in circumstances that justifies the requested zone changes and plan amendments. Scandia RV and Mobile Home Park is one of the two remaining RV parks in the City of Bend. At the time the property was first zoned RS, RV parks and mobile home parks were much more abundant in*

and around the City. New land use laws were also adopted to prohibit RV parks that provide hookups from being located on rural lands. This strictly limits the places where parks may be located, making it almost impossible to site a new RV park in Deschutes County."

The Hearings Officer agrees with the applicant that construction of the Parkway adjacent to the subject property and without sound buffering, the bisection of former Tax Lot 500 by the Parkway, and the isolation of the subject property from most other residential development in the area (with the exception the apartment complex across Reed Lane), represent significant changes in the neighborhood and community. I find these changes have rendered the subject property in general, and Tax Lot 500 in particular, unsuitable for residential development, therefore justifying the proposed plan amendment and zone change from residential to commercial. I also find the loss of most of the city's RV parks over the last several years also represents a significant change in the community that makes it desirable to maintain the existing Scandia RV Park and to expand the RV storage area adjacent to it on Tax Lots 400 and 500.

For the foregoing reasons, the Hearings Officer finds the applicant has demonstrated the proposed plan amendment and zone change satisfy this approval criterion.

TRANSPORTATION PLANNING RULE

b. Section 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.

FINDINGS: OAR 660-012-0060, part of the TPR, provides as follows:

(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.

The applicant submitted several traffic studies prepared by Scott Ferguson, P.E., of Ferguson and Associates, analyzing the impacts on affected transportation facilities from the applicant's proposed plan amendment and zone change and potential commercial development. The initial traffic study was submitted in November of 2006. The city's traffic engineer, Robin Lewis, expressed concern that this traffic study did not adequately address or analyze the "reasonable worst-case scenario" for traffic generated by commercial development on each of the three tax lots constituting the subject property with the proposed CG zoning. In response, Mr. Ferguson submitted a revised traffic study in January of 2007 and further revisions in May of 2008. In his September 13, 2007 comments on the applicant's proposal, James Bryant of ODOT stated his agency found the traffic studies to be insufficient to determine potential impacts on the Parkway or to demonstrate the TPR requirements would be satisfied. In addition, Mr. Bryant recommended that the city and ODOT close the Reed Lane access to the Parkway.

Following city staff and ODOT comments, Mr. Ferguson submitted a revised traffic study dated May 2008, and another revised study dated July 17, 2008 (hereafter "final traffic study"). The final traffic study analyzed the potential impact of commercial development on the subject property on Reed Lane and Meyer Drive, as well as four nearby intersections: Third Street/Brosterhous Road, Third Street/Reed Lane, Parkway/Reed Lane, and the site access driveway with Reed Lane. The final traffic study found commercial development under the proposed zone change would increase the amount of vehicle traffic in the area. However, the traffic study concluded as follows:

"The incremental increase in trip generation from changing the existing

zoning was forecast to generate 40 primary external p.m. peak hour trips and 574 primary external daily trips.

All study intersections meet City of Bend operation standards in the year 2023 with the proposed zone change.

A northbound right-turn lane on the Parkway at Reed Lane meets ODOT criterion 1: Vehicular volume in the 2023. Criterion 2: Crash experience and criterion 3: Special cases were not evaluated.

The assessment of the TPR concluded the proposed change in zoning of the site from RS – Residential Urban Standard Density, to CG – Commercial General – would not significantly impact existing or planned transportation facilities. The proposed zone change would not be significant under TPR criteria, as transportation facilities impacted by the proposed zone change are adequate to support the potential increase in trip generation. Since the proposed change would not significantly impact existing or planned transportation facilities, it can be concluded that the requirements of OAR 660-012-0060 are met and no further action would be required."

In comments dated July 22, 2008, Julia Wellner of the city's transportation engineering department stated the applicant's final traffic study provided an adequate "worst-case scenario" analysis, met the requirements of the TPR for traffic studies, and showed compliance with the TPR without any requirement of off-site mitigation.[3]

For the foregoing reasons, and based on the applicant's final traffic study and the city's comments thereon, the Hearings Officer finds the applicant's proposed plan amendment from RS to CG for Tax Lots 400 and 500, and proposed zone change from RS to CG for Tax Lots 102, 400 and 500, will not change the functional classification of an existing or planned transportation facility or change standards implementing a functional classification system. I further find the proposed plan amendment and zone change will not allow land use and 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. Finally, I find the level of potential commercial development on the subject property is so low that it will not worsen the performance of an existing or planned transportation facility. Therefore, I find the applicant's proposal satisfies the TPR.

For the foregoing reasons, the Hearings Officer finds the applicant has demonstrated its proposed plan amendment from RS to CG for Tax Lots 400 and 500, and its proposed zone change from RS to CG for Tax Lots 102, 400 and 500 satisfy all applicable plan amendment and zone change approval criteria.

---

[3] Although the record indicates a copy of the final traffic study was provided to ODOT, the record does not include any comments from ODOT on the final study.

SITE PLAN APPROVAL CRITERIA

2. Chapter 4.2, Site Development and Design Review

a. Section 4.2.200, Site Development Review Applicability and Procedure

A. In all zones, except for a single family unit on one lot, all new uses, buildings, outdoor storage or sales areas and parking lots or alterations shall be subject to the provisions of this section.

Site Development Review approval may not be required where a proposed alteration of an existing building does not exceed 10% or 1000 square feet, whichever is greater, of the original structure unless the Planning Director finds the original structure or proposed alteration does not meet the requirements of this ordinance or other ordinances of the City of Bend. In the residential zones where duplexes and triplexes are allowed, such development may undergo a Type 1 review process if they meet minimum standards as set forth in subsection 3.6.200(H), Duplex and Triplex development.

Existing lawfully developed sites that do not conform to the current site development standards are only required to meet those standards on the portions of the site development affected by the proposed alteration or expansion. Development of such sites shall be in accordance with Section 5.2. (Emphasis added.)

FINDINGS: The applicant has requested approval to convert the existing dwelling on Tax Lot 102 to office use, and to expand the existing RV storage area on Tax Lots 400 and 500 from 55 to 105 spaces. In light of the above-underscored code language, the Hearings Officer finds these proposals require site plan approval under the standards and criteria discussed in the findings below.

B. General Submission Requirements. The applicant shall submit an application in conformance with the provisions of Chapter 4.1, Procedures.

FINDINGS: The applicant submitted an application for site plan review accompanied by a detailed burden of proof and exhibits that the Hearings Officer finds conformed to the requirements of Chapter 4.1.

C. Development Review Information. * * *

FINDINGS: This paragraph requires the applicant to submit with its site plan application detailed information including a site development plan, preliminary grading plan, landscape plan, architectural drawings if applicable, and a traffic impact study. The Hearings Officer finds the applicant's original and revised submissions include the required information.

D. Site Development Approval Criteria. Prior to issuance of building permits, the City shall approve, approve with conditions or disapprove the proposed site development plan. In approving the plan, the City shall find that all provisions of the ordinance are met. The following criteria shall be considered:

1. The proposed land use is permitted by the underlying land use district;

FINDINGS: The applicant requests site plan approval to change the use of the existing dwelling on Tax Lot 102 from residential to office, and to expand the existing RV storage area on Tax Lots 400 and 500 from 55 to 105 spaces. Chapter 2.2 of the development code establishes the commercial districts, and Section 2.2.300 establishes the uses permitted in the CG Zone as follows:

A. Permitted Uses. The land uses listed in Table 2.2.300 are allowed in the Commercial Districts as designated, subject to the provisions of this Chapter. Only land uses that are specifically listed in Table 2.2.300, and land uses that are approved as "similar" to those in Table 2.2.300, may be permitted or conditionally allowed.

Table 2.2.300 - Permitted Land Uses

Land Use	CG
Existing Residential uses	P
Offices and Clinics	P
Commercial Storage	
- not enclosed in building	P

Key to Permitted Uses
P = Permitted, subject to Chapter 4.1

Offices and clinics are uses permitted outright in the CG Zone, and therefore the Hearings Officer finds the applicant's proposed conversion of the existing dwelling on Tax Lot 102 to an office use is permitted outright in the CG Zone.

Tax Lots 400 and 500 are developed with existing dwellings as well as an RV storage

area that is not enclosed in a building. The staff report states the city considers the existing RV storage area to be a use permitted outright in the CG Zone. Nevertheless, in its comments on the applicant's proposal, the city's long-range planning department questioned whether the existing or expanded RV storage area is in fact permitted in the CG Zone inasmuch as Section 2.4.300 of the establishing uses permitted in the industrial zones includes a "commercial" use described as "vehicle, equipment and boat repair, rental, storage, service."

The record includes a copy of an electronic mail message dated September 6, 2007 from former city associate planner Cheryl Dix to the applicant's attorney concerning RV storage areas and stating:

> *"Research of how the City has traditionally treated outdoor RV storage in commercial zones has revealed only enclosed RV storage in the Light Industrial (IL) zone under the 'old' code. The project was a site plan application for 39,730 sq.ft. RV storage buildings on IL zoned land abutting the south side of Reed Market Rd. and the east side of American Lane. (PZ 04-57). I have discussed the results of the research with Colin* [Stephens, the city's Current Planning Manager] *and his response is attached below:*
>
> > *'Sounds like we don't have a pattern to rely upon in making this determination. It is apparent in my read that a stand-alone vehicle storage lot would need to be in the IG or IL because vehicle storage is a listed use. That said, Trailer Park/Campground is a conditional use in the CL and CG. Commercial storage not enclosed in a building is permitted in the CL and CG, so a case could be made that storage of RVs can be allowed as an ancillary use associated with the primary commercial use as a trailer park. The storage would need to be less intensive than the primary use and take up less area. Since this is going to a hearings officer for a recommendation on the plan amendment the hearings officer will need to make a finding that the proposed 'worse case scenario' use of RV storage is in fact an allowable use. That should give us an answer.'"*

The Hearings Officer understands these comments to suggest that because "vehicle * * * storage" is specifically permitted in the IL Zone and RV storage could fall within that use, the proposed expansion of the RV storage area on Tax Lots 400 and 500 would not be allowed in the CG Zone under the more general "commercial storage * * * not enclosed in building" use. The exception would be if the RV storage area were to be considered "ancillary" to the existing Scandia RV Park which as a "trailer park" is permitted conditionally in the CG Zone, and/or were ancillary to an existing "residential" use permitted outright in the CG Zone.

The applicant addressed this issue in its memorandum submitted at the public hearing and included in the record as Hearing Exhibit B. The applicant argues RV storage areas are not prohibited in the CG Zone for the following reasons. First, when the city adopted its current development code which took effect in August of 2006, it intentionally elected to create "broad, inclusive categories of uses permitted in the commercial zones" which would eliminate the need for detailed lists of uses and remove questions about whether allowance of a specific use in one zone would prohibit that use in another zone simply for that reason. Second, provisions governing uses on industrial-zoned land were intentionally written using *narrower* language than that used in other zones because LCDC's order concerning the city's recent periodic review directed the city to limit non-industrial uses in industrial zones. Reading the industrial zone list of uses to require that RV storage areas be located *only* in industrial zones would be contrary to that directive by forcing a "commercial" use onto industrial land. Finally, the applicant argues that in any event, the industrial zone use of "vehicle, equipment and boat repair, rental, storage and service" is not more specifically worded than the "commercial storage * * * not enclosed in building" use permitted in the CG Zone and therefore would not be controlling. Rather, the applicant argues, the industrial zone use is one "that includes general vehicle storage and allows related repair, rental and service."

The Hearings Officer finds that in determining whether a use falls within a particular use category I must first look to the plain language of the ordinance. The permitted use in the CG Zone is "commercial storage * * * not enclosed in building." The term "commercial storage" is not defined in the development code. The ordinary definition of "commercial" is "of commerce or business; made or done for profit." *Webster's New World Dictionary and Thesaurus, Second Edition.* The ordinary definition of "storage" is "a place for * * * storing goods." *Id.* The ordinary definition of "goods" is "movable personal property; merchandise; wares." *Id.* Using these ordinary definitions, I find the permitted use in the CG Zone is a business providing for a fee a place for the outside storage of goods. The record indicates the applicant currently operates an outdoor RV storage area on Tax Lots 400 and 500 through which the applicant rents storage space for RVs and other vehicles to residents of the Scandia Mobile Home and RV Park and others. Therefore, I find both the existing RV storage area and the proposed expansion are uses that clearly fall within this broadly defined outright permitted use in the CG Zone.

The remaining questions are whether outdoor RV storage *also* falls within the industrial zone use of "vehicle, equipment and boat repair, rental, storage, service," and if so, whether that fact means the outside storage of RVs is not permitted in the CG Zone. The Hearings Officer finds that RVs clearly are "vehicles."[4] Although the industrial zone

[4] Chapter 1.2 of the development code defines "recreational vehicle" as follows:

> **Recreational vehicle means a vacation trailer or other units with or without motorized power, which is designed for human occupancy, is to be used temporarily for recreation or emergency purposes, and has the gross floor space of less than 400 square feet. The unit shall be identified as a recreational vehicle by the manufacturer and so licensed.**

use includes vehicle "repair," "rental" and "service," I find there is nothing in the description of that use that reasonably could be read to require that *all* such activities occur with respect to any given "vehicle." Consequently, I find RV storage also could be permitted in the industrial zones under the "vehicle * * * storage" use. Nevertheless, I concur with the applicant's analysis and find there is nothing in the development code that reasonably could be read to *prohibit* RV storage in the commercial zones simply because it also is a permitted use in the industrial zones. Therefore, I find the proposed expansion of the existing RV storage area on Tax Lots 400 and 500 is a use permitted outright in the CG Zone, and for that reason the applicant's proposal satisfies this criterion.

2. The land use, building/yard setback, lot area, lot dimension, density, lot coverage, building height and other applicable standards of the underlying land use district are met;

FINDINGS: The applicant seeks site plan approval for a change of use for the existing dwelling on Tax Lot 102. However, based on the above-underscored language in Section 4.2.200(A), the Hearings Officer finds the change of use is not subject to the setback, dimensional and other standards applicable to new structures in the CG Zone because it is an existing structure. The proposed expansion of the RV storage area from 55 to 105 spaces is an alteration to an existing use subject to site plan approval, and therefore I find it is subject to the standards listed in this paragraph to the extent they are applicable to this particular use. Compliance with these standards is discussed in the findings below.

3. The minimum standards in Section 3.2.200; Landscape Conservation, Section 3.2.300; New Landscaping, 3.2.500; Fences and Walls and Chapter, 3.3; Vehicle and Bicycle Parking are met;

FINDINGS: The Hearings Officer finds the proposed change of use for the dwelling on Tax Lot 102 and the proposed expansion of the RV storage area on Tax Lots 400 and 500 are subject to the standards listed in this paragraph to the extent they are applicable. Compliance with these standards is addressed in the findings below.

4. All applicable building and fire code standards are met.

FINDINGS: The Hearings Officer finds the applicant will be required as a condition of site plan approval to obtain a "change of occupancy" building permit from the city's building department prior to commencing office use of the existing dwelling on Tax Lot 102. I further find compliance with all applicable building safety and fire code provisions will be assured through the building permit and inspection process. The staff report states, and I agree, that because no buildings are proposed in conjunction with the expanded RV storage area on Tax Lots 400 and 500, no building permits are required

for these uses. However, because RVs and other vehicles stored on the subject property are potentially flammable, I find the applicant will be required as a condition of site plan approval to comply with the applicable fire code provisions including an adequate fire apparatus access road.

5. All required public facilities have adequate capacity as determined by the City, to serve the proposed use.

FINDINGS: As discussed in the findings above concerning the proposed plan amendment and zone change, incorporated by reference herein, the Hearings Officer has found the subject property currently is served by adequate public facilities and services, and that these facilities and services will have adequate capacity to serve the proposed uses – i.e., office use of the existing dwelling on Tax Lot 102, and expansion of the RV storage area on Tax Lots 400 and 500.

In accordance with Chapter 4.1, the land use approval shall lapse, and a new application shall be required, if a building permit has not bee issued within one year of Development Review approval, or if development of the site is in violation of the approved plan or other applicable codes.

FINDINGS: The Hearings Officer finds the approvals granted by this decision are subject to the limitations in this paragraph.

(2) Section 2.2.400 Building Standards

(3) Section 2.2.500 Building Setbacks

FINDINGS: Because the dwelling on Tax Lot 102 for which the applicant seeks site plan approval for a change of use is an existing structure, the Hearings Officer finds it is not subject to the building and setback standards applicable to new structures in the CG Zone requiring site plan approval. And as discussed above, no buildings are proposed in conjunction with the expanded RV storage area.

(4) Section 2.2.600 Block Layout and Building Orientation

B. Block Layout Standard.

1. New land divisions and developments shall have a block length consistent with the block length standards established in Chapter 3.1.200; Lot and Block Design.

FINDINGS: The Hearings Officer finds this standard applies to the applicant's proposed change of use to the dwelling on Tax Lot 102 and to the proposed RV storage area

expansion on Tax Lots 400 and 500 because they both are "new * * * developments" subject to site plan review. The applicant does not propose any change to the existing blocks within which the subject property is located. As discussed in the findings below, the existing block length exceeds the city's maximum length standards. For that reason, the applicant has requested approval of an exception to the maximum block length and perimeter standards, and the city required the applicant to submit a variance application in order to evaluate its request for an exception. The applicant argues no variance is required because I have authority to grant an exception to the block length requirement without a variance application. These issues are addressed in the findings below under Section 3.1.200.

2. **Pedestrian walkways shall be provided from the street right-of-way to buildings, as necessary, to ensure reasonably safe, direct, and convenient access to building entrances and off-street parking in conformance with Chapter 3.1; Access, Circulation and Lot Design.**

FINDINGS: The record indicates there is an existing pedestrian walkway from Reed Lane to the front and back entrances to the existing dwelling on Tax Lot 102, and that this walkway will provide a safe, direct and convenient access to the building entrances and off-street parking area. The applicant's proposed site plan for Tax Lot 102 shows the walkway will be improved to isolate it from the access driveway and parking area. The staff report states, and the Hearings Officer concurs, that because the existing dwellings on Tax Lots 400 and 500 are not subject to site plan approval, no pedestrian walkways are required for them.

3. **Provide usable pedestrian space. Usable pedestrian space means a plaza or extra-wide pathway/sidewalk near one or more building entrances. Each development shall provide street trees or planters, space for outdoor seating, canopies or awnings, and on-street parking (in selected areas) to improve the pedestrian environment along internal streets or drives.**

FINDINGS: The record indicates the front entrance of the existing dwelling on Tax Lot 102 abuts an open lawn area, and the rear entrance is adjacent to a patio area that can provide outdoor seating. The applicant's burden of proof states the initial office use for this dwelling would be for a church organization that would have a small number of employees and would not generate more than a minimal amount of pedestrian traffic. The record indicates on-street parking is not allowed on Reed Lane. For these reasons, the applicant argues, and the Hearings Officer concurs, that the existing walkway and open spaces abutting the building entrances are adequate to provide usable pedestrian space.

The applicant argues the requirement of usable pedestrian space does not apply to the proposed RV storage area expansion on Tax Lots 400 and 500 because that use does not attract pedestrians. Rather, the applicant argues the RV storage area would be a

"self-service" facility where RVs either would be towed onto the site by another vehicle, or would be driven to the site and another vehicle would take the owner off the site. The applicant's burden of proof states entry to the RV storage area would be provided through a locked gate for which RV owners would have a gate code. In either case, customers would not typically come to or leave the site on foot. For these reasons, the applicant argues, and the Hearings Officer concurs, that there is not a sufficient nexus between the proposed expansion of the RV storage area and pedestrian traffic to justify the imposition of exaction requiring the construction of usable pedestrian space under the constitutional "takings" analysis in *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed2d 304 (1994). Therefore, I find no usable pedestrian space will be required for the proposed RV storage area expansion.

b. Section 4.2.300, Design Review Applicability and Procedures

A. This section shall apply within all commercial zoning districts including (ME) Mixed Employment, (PO) Professional Office and non-industrial uses within the (IL) Light Industrial and (IG) General Industrial Zones and shall apply to the following building types:

1. Multi-family housing;

2. Public and institutional buildings, except buildings which are not subject to site development review; and

3. Commercial and mixed-use buildings subject to site development review as follows:

a. All new building construction
b. Any exterior modification to existing buildings
c. All new parking lots
d. All storage and display areas
e. All new signage
f. All building expansion greater than 5,000 square feet.

B. Exceptions. The following activities are not subject to Section 4.2.300, Design Review Applicability and Procedures:

1. Maintenance of the exterior of an existing structure * * *.

2. Interior remodeling or new tenant improvements.

3. **Reconstruction of buildings * * *.**

4. **Building expansions not exceeding 25% of the gross square footage of the original building and where the expansion does not exceed 5000 square feet in area.**

5. **Parking lot expansions not exceeding 25% of the gross square footage of the original lot and where the total amount of parking does not exceed the parking allowed by the Zoning Ordinance by 50%.**

6. **Buildings that are listed in the Inventory of Historic Sites * * *.**

FINDINGS: In its supplemental burden of proof, the applicant argues, and the Hearings Officer agrees, that the provisions of Section 4.2.300 do not apply to its proposed expansion of the RV storage area on Tax Lots 400 and 500 because it does not include any buildings as part of the expanded use. The existing dwelling on Tax Lot 102 the applicant proposes to convert to office use does constitute a "commercial building." However, the applicant does not propose to expand the building, modify its exterior or create a new parking lot. For these reasons, I find the applicant's proposed commercial conversion of the dwelling on Tax Lot 102 also is not subject to the provisions of Section 4.2.300.

3. **Chapter 3.1, Access, Circulation and Lot Design**

a. **Section 3.1.200, Lot and Block Design**

Orderly development of neighborhoods requires thoughtful lot layout. The size, width, topography and orientation of lots or parcels shall be appropriate for the location of the land division and for the type of development and use contemplated. New lot development shall be consistent with the lot development provisions herein.

* * *

B. **Street Connectivity and Formation of Blocks Required. In order to promote efficient vehicular and pedestrian circulation along parallel and connecting streets throughout the City, land divisions and site developments shall produce complete blocks bounded by a connecting network of public and/or private streets, in accordance with the following standards:**

1. **Block Length and Perimeter. The block lengths and perimeters shall not exceed the following standards as measured from centerline to centerline of through intersecting streets.**
* * *

c. **660 feet block length and 2640 feet block perimeter for all other Commercial, Industrial and Mixed Employment Districts;**

FINDINGS: The record indicates Reed Lane is approximately 1,000 feet long and includes two contiguous sections. The eastern section connecting to Meyer Drive is oriented roughly north-south and is approximately 300 feet long. The westerly section connecting to the Parkway is oriented roughly east-west and is approximately 700 feet long. The record indicates the block perimeter created by the Parkway, Powers Road, Highway 97 Business (Third Street), Meyer Drive and Reed Lane is 4,368 feet. Therefore, the existing block within which the subject property is located does not conform with these maximum block length and perimeter standards.[5]

d. **Exceptions. An exception may be granted to the maximum block length in conformance with the Class C Variance criteria in Chapter 5.1.400 for Transportation Improvement Requirements. The applicant must demonstrate that the block length cannot be satisfied due to topography, natural features, existing development or other barriers. When a variance is granted, the land division or site plan shall provide blocks divided by one or more walkways or access ways, in conformance with the provisions of Section 3.1.300; Pedestrian Access and Circulation, below. Walkways shall be located to minimize out-of-direction travel by pedestrians and shall be universally designed to accommodate full access to bicyclists and pedestrians alike, regardless of disability.** (Emphasis added.)

FINDINGS: The applicant has requested an exception to the maximum block length and

[5] The record indicates there are several private internal driveways within this block that connect to Third Street, including private access drives within the Scandia Manufactured Home and RV Park. However, none of these driveways constitutes a public street that would break up the block length or perimeter.

perimeter standards. As discussed above, the city required the applicant to submit a variance application in order to evaluate the exception request. The applicant argues no variance application was required, based on findings this Hearings Officer made in my previous decision in *Milan Villas* (PZ-06-862, PZ-06-863). There, the applicant requested an exception to the access spacing standards, pursuant to Section 3.1.400(G)(4), which provides:

> **Access Spacing Exceptions. An exception for access spacing and directional restrictions on City streets may be granted by the City in conformance with Chapter 5.1, Variances.**

In *Milan Villas* I made the following relevant findings:

> *"* * * the Hearings Officer finds the language in this section* [3.1.400(G)(4)] *is not entirely clear with respect to whether the applicant for an access spacing exception is required to submit a separate variance* ***application****. The applicant's modified burden of proof states he was advised by city planning staff that no variance application was required. I find that in the absence of express language requiring the filing of a separate application this is a reasonable interpretation of this section. I find the code language requires the applicant to justify the proposed exception under the variance* ***criteria*** *in Chapter 5.1."* (Bold emphasis italicized in original.)

The Hearings Officer finds the exception language at issue in this application – Section 3.1.200(B)(1)(d) – has wording similar to the language at issue in Section 3.1.400(G)(4), and therefore is similarly unclear with respect to whether a variance application is required. Therefore, I find it is reasonable to interpret the language in Section 3.1.200 (B)(1)(d) in the same way I interpreted the language in Section 3.1.400(G)(4) – i.e., as not requiring a separate variance application in order to evaluate a requested exception. The requested exception's compliance with the applicable variance *criteria* is addressed in the findings below.

1. Qualification for Exception. Section 5.1.400 establishes the standards for Class C variances as follows:

> **B. Class C Variance Criteria. The Class C variance requests are best determined using the specific criteria listed below.**
>
> * * *
>
> **5. Variances to Transportation Improvement Requirements. The City may approve, approve with conditions, or deny a variance to the transportation improvement standards of Chapter 3.4; Public Improvement Standards, based on the criteria for granting variances provided in Subsection 3.4.200 (B);**

Transportation Improvement Standards.

Section 3.4.200(B) provides:

> **Variances to the transportation design guidelines in this Section may be granted by means of a Class C Variance, as governed by Chapter 5.1.400(5), Variance to Transportation Improvement Requirements. A variance may be granted under this provision only if a required improvement is not feasible due to topographic constraints or constraints posed by sensitive lands or the project does not meet the exception standards listed herein.** (Emphasis added.)

The applicant's burden of proof includes the following argument in support of an exception to the block length and perimeter standards:

> "*The applicant's site plan proposes to retain and expand an existing use on Tax Lots 400 and 500. Based upon the City's previous site plan approvals, the applicant does not believe that this section applies to Tax Lots 400 or 500 because this application provides no opportunity for block development, particularly because Tax Lot 500 adjoins the Bend Parkway. The applicant cannot achieve compliance with the block perimeter requirement because it does not own all the land required to build a new north-south oriented street through the middle of the block. A new east-west oriented street across Tax Lot 500 cannot be constructed because access to the Parkway from Tax Lot 500 is prohibited by the law of the State of Oregon and is inconsistent with the City's TSP. A new north-south street would, if extended through the block by future development, create unsafe connections to existing streets that would violate the City's street spacing standards (900' between accesses for arterial or collector streets without access control.).A grid street connection of a properly aligned street (east-west or north-south) to Highway 97 Business would occur at less than a 90 degree angle due to the fact that Highway 97 Business runs from east to west as it heads south in this part of town. A new access to Highway 97 Business would also be located very close to other highway accesses. If a new north-south oriented street is installed and connected to Powers Road (the street would need to be built at an angle rather than with a true north-south orientation), the street would enter Powers Road extremely close to the entrance point to the Bend Parkway northbound and to the intersection of Powers Road and Highway 97 Business. This is a bad location to attempt to make a left turn onto Powers Road to head eastbound.*
>
> ** * * existing development or other barriers to the block length cannot be satisfied. In this case, existing development prevents the proposal from satisfying the block length standard in the CG zone. The existing development factors that prevent compliance with the block length and*

perimeter standard are:

1. *One side of the block is the Bend Parkway. As a legal matter, no additional street connections are permitted to the Parkway.*

2. *The property to the south and east of the subject property is developed as an RV and Manufactured home park. It contains private streets and is a self-contained development.*

3. *The existing block is not designed in compliance with the City's grid policy. The north-south streets that frame the block run on the diagonal. This requires a new north-street to either violate the grid policy's street orientation requirements or to create blocks that more closely resemble triangles than rectangles.*

4. *The City's street access spacing requirements for Highway 97 Business and Powers Road (major collector street) would be violated if a new street connection were provided on either road (900 feet spacing required for arterial and collector roads without medians; 300 feet between roads and driveways).*

5. *The frontage of lots on Reed Lane is just slightly longer than 660 feet. The frontage of the subject property on Reed Lane is only 639 feet. Tax Lot 102 has 195 feet of frontage, Tax Lot 400 has 440 feet of frontage and Tax Lot 500 has 4 feet of frontage.*

6. *The requirement of a new point of access on Reed Lane close to the Bend Parkway would be unsafe and would interfere with access to and from the Parkway.*

7. *Almost all other property in the area has been or is being developed pursuant to prior land use approvals in reliance on the existing street pattern making it infeasible to ever complete a new block in this location of the community.*

8. *The subject property is located in a platted subdivision and the surrounding street system was established with the previous development."*

The Hearings Officer agrees with the applicant's analysis and finds an exception/variance to the block length and perimeter standards in Section 3.1.200(B)(1)(c) is warranted and granted.

2. Compliance with Section 3.1.300. As set forth above, Section 3.1.300(B)(1)(d) states in pertinent part:

When a variance is granted, the land division or site plan shall provide blocks divided by one or more walkways or access ways, in conformance with the provisions of Section 3.1.300; Pedestrian Access and Circulation, below. Walkways shall be located to minimize out-of-direction travel by pedestrians and shall be universally designed to accommodate full access to bicyclists and pedestrians alike, regardless of disability. (Emphasis added.)

Section 3.1.300, Pedestrian Access and Circulation, provides in pertinent part as follows:

B. On-Site Pedestrian Facility Development. For all developments except single family residences, the applicant shall demonstrate how full pedestrian access and circulation is being achieved based on the following development criteria. Accessible pedestrian ways shall:

* * *

2. Connect all parking areas, storage areas, recreational facilities, common areas (as applicable), and adjacent development to the building's entrances and exits.

* * *

4. Connect or stub to adjacent streets and private property, in accordance with the provisions of Section 3.1.400(F); New Lot Development and Section 3.4.200 Transportation Improvements.

FINDINGS: In order to satisfy these criteria the applicant has proposed to provide a reciprocal cross-access easement connecting the subject property with the abutting property to the south which is owned by the applicant and managed as the Scandia Manufactured Home and RV Park. The staff report recommends the location of this easement be a connection from the existing driveway on Reed Lane for Tax Lot 400 straight south to the subject property's southern boundary. At the public hearing, the applicant's attorney expressed a desire to have some flexibility in the location of the easement in order to assure its optimum function.

The Hearings Officer finds the applicant will be required as a condition of site plan approval to execute and record a reciprocal cross-access easement between the subject property and the abutting property to the south -- Tax Lot 301 on Assessor's Map 18-12-08AC. At my request, the applicant included the following proposed language for the condition of approval in its November 4, 2008 final argument:

"The applicant shall record a reciprocal cross-access easement agreement that provides for vehicular access across Tax Lot 400,

Assessor's Map 18-12-08AC (Tax Lot 400) for the benefit of Tax Lot 301, Assessor's Map 18-12-08AC (Tax Lot 301) from Reed Lane to Tax Lot 301. The purpose of the easement is to allow vehicle trips associated with the future development of Tax Lot 301 to reach Reed Lane by crossing Tax Lot 400. The recommended location of the easement would be a connection from the existing driveway on Reed Lane for Tax Lot 400 straight south to the south property line.

The easement shall be substantially similar to the Access Easement recorded at 2008-10823 of the official records of the Deschutes County Clerk and will contain the following provisions:

A. The easement will be written to be effective when Tax Lots 400 and 301 are held in separate ownership. The easement may contain a condition that it will be extinguished if Tax Lots 400 and 301 are redeveloped together by a single owner pursuant to a City land use approval.

B. The easement shall include a provision that requires the owner of Tax Lot 301 to provide reciprocal vehicle access rights to Tax Lots 400 and 500, Assessor's Map 18-12-08AC as a condition of using the cross-access easement over Tax Lot 400.

C. The easement over Tax Lot 400 may be relocated by the owner of Tax Lot 400 provided that the new easement location allows access to Reed Lane in a City of Bend-approved location.

D. Prior to use of a driveway in the cross-access easement, the applicant shall be allowed use for the development as proposed on the approved site plan."

The Hearings Officer finds this proposed language is appropriate and will assure both adequate cross access and the location flexibility the applicant requested. Therefore, I find the applicant will be subject to this condition of approval.

C. Pedestrian Facility Development Standards. On-site pedestrian facilities shall conform to the following standards:

1. On-site pedestrian walkways shall have a minimum width of 5-feet.

2. Pedestrian walkways shall be lighted in conformance with Section 3.5.200, Outdoor Lighting Standards.

FINDINGS: The Hearings Officer finds the applicant will be required as a condition of site plan approval to improve all on-site pedestrian walkways on Tax Lot 102 to a

minimum width of five feet wide and be lighted in conformance with the standards in Section 3.5.200. The staff report recommends the existing pedestrian walkways to the front and rear entrances of the existing building on Tax Lot 102 be improved as necessary to comply with handicap access standards established by the city and the Americans with Disabilities Act (ADA). I find compliance with these handicap access standards will be assured through the process for obtaining a change-of-use building permit for the dwelling on Tax Lot 102.

E. Other Design and Construction Considerations. Public pedestrian facilities shall conform to all of the standards in Subsections 1-4 listed below:

* * *

3. Walkway Surface. Walkway surfaces shall be concrete, asphalt, brick/masonry pavers, or other durable surface that makes a smooth surface texture, and shall conform to ADA requirements. Multi-use paths (i.e., for bicycles and pedestrians) shall be the same materials. (See also, Section 3.4.200 Transportation Improvements for public, multi-use walkway standard.)

FINDINGS: The record indicates the existing pedestrian walkways on Tax Lot 102 are surfaced with asphalt or another durable surface, therefore satisfying this criterion. In addition, as discussed in the findings above, the applicant proposes to construct a concrete, property-tight sidewalk along the south side of the segment of Reed Lane abutting Tax Lot 102 that would meander as necessary to avoid existing mature trees.

b. Section 3.1.400, Vehicular Access Management

* * *

A. Applicability. This section shall apply to all public and private streets within the City and to all properties that abut these streets.

FINDINGS: The Hearings Officer finds this section is applicable to the applicant's proposal because the subject property abuts two public streets – Reed Lane and the Parkway.

C. Traffic Study Requirements. The City or other agency with access jurisdiction shall require a transportation impact analysis as required in Chapter 4.7, Transportation Analysis.

FINDINGS: As discussed in the findings above, the applicant submitted several traffic

studies to comply with these provisions.

D. Conditions of Approval. The City or other agency with access permit jurisdiction may require the closing, consolidation, or relocation of existing curb cuts or other vehicle access points, recording of reciprocal access easements (i.e., for shared driveways and cross access routes), development of a frontage or backage street, installation of traffic control devices, and/or other mitigation measures that comply with the Bend Urban Area Transportation System Plan, the City of Bend Development Code, and are approved by the City Engineer as a condition of granting an access permit or access approval, to ensure the safe and efficient operation of the street and highway system.

FINDINGS: As discussed above, the Hearings Officer has found the applicant will be required as a condition of approval to execute and record a reciprocal cross-access easement with the abutting property to the south.

L. Fire Access and Parking Area Turnaround. A fire equipment access drive shall be provided for any portion of an exterior wall of the first story of a building that is located more than 150 feet from an existing public street or approved fire equipment access drive as measured around the building. Parking areas shall provide adequate aisles or turnaround areas for service and deliver vehicles so that all vehicles may enter the street in a forward manner (except for single-family dwellings and alleys that provide adequate backing width).

FINDINGS: The applicant's revised site plan, dated July 23, 2008, shows the existing dwellings on Tax Lots 102 and 400 are located within 150 feet of Reed Lane, a public street, The site plan shows the existing dwelling on Tax Lot 500 is located slightly more than 150 feet from Reed Lane. However, the site plan shows on Tax Lot 500 a paved fire access road with a hammerhead turnaround adjacent to the dwelling. The Hearings Officer finds the applicant will be required as a condition of approval to construct this fire apparatus access drive and turnaround as depicted on the July 23, 2008 site plan. I find that with imposition of this condition of approval the applicant's proposal will satisfy this criterion.

O. Construction. The following development and maintenance standards shall apply to all driveways and private streets. The City of Bend Standards and Specifications document shall prevail in the case of conflicting rules related to the design and construction

of infrastructure.

1. **Surface Options. Driveways, parking areas, aisles, and turn-arounds may be paved with asphalt, concrete or comparable surfacing or a durable non-paving material (e.g. grass-crete, eco-stone) may be used to reduce surface water runoff, protect water quality, and protect air quality. Gravel shall not be allowed. Paving surfaces shall be subject to review and approval by the City Engineer.**

FINDINGS: The record indicates the existing driveways to the dwellings on Tax Lots 102 and 400 are paved with asphalt, therefore satisfying these standards. The existing surface for the RV storage area is gravel, and the applicant has proposed to continue using gravel surfacing for the existing and expanded RV storage area on Tax Lots 400 and 500. The applicant argues a non-paved surface is justified because unlike regular vehicle parking areas that experience regular daily vehicle traffic, the proposed RV storage area is for long-term storage of vehicles with minimal vehicle traffic. The Hearings Officer concurs with the applicant's argument and finds neither the existing nor expanded RV storage areas will require a paved surface.

4. Chapter 3.2, Landscaping, Street Trees, Fencing and Walls

a. Section 3.2.300 New Landscaping

This section sets standards for and requires landscaping of all development sites that require Site Development Review. This section also requires landscape buffering for parking and maneuvering areas, and buffering between different land use districts. Note: Other landscaping standards are provided within the individual land use districts and in Chapter 3.6; Special Standards for Certain Uses, for specific types of development.

A. Applicability. This section shall apply to all new development in all zones requiring Site Development Review.

B. Landscape Plan Required. A landscape plan is required. All landscape plans shall conform to the requirements in Section 4.2.200(7), Landscape Plan.

FINDINGS: The applicant submitted a "tentative landscape plan" with its burden of proof indicating the general areas in which introduced landscaping would be planted. The applicant has requested that site plan approval be conditioned on its submission of a more detailed landscape plan showing the required landscaping and identifying the plant

materials to be used as well as their locations. Staff supports this request. Therefore, the Hearings Officer finds the applicant will be required as a condition of approval, and prior to obtaining a change-of-use building permit for conversion of the existing dwelling on Tax Lot 102, to submit a detailed landscape plan to the Planning Division. I find that with imposition of this condition the applicant's proposal will satisfy this criterion.

E. Landscape Design Standards. All yards, parking lots and required street tree planter strips shall be landscaped at the time of site development.

* * *

2. <u>Parking areas.</u> A minimum of 10 percent of the total paved area of all parking lot(s), as measured around the perimeter of all parking spaces and maneuvering areas, shall be landscaped. Such landscaping shall consist of an evenly distributed mix of broad-canopied deciduous shade trees with shrubs and/or ground cover plants. "Evenly distributed" means that the trees and other plants are distributed around the parking lot perimeter and between parking bays to provide a partial canopy. At a minimum, one tree per eight (8) parking spaces total shall be planted to create a partial tree canopy over and around the parking area. All parking areas with more than 50 spaces shall include landscape islands with trees to break up the parking area into rows.

FINDINGS: The Hearings Officer finds the proposed change of use of the dwelling on Tax Lot 102 from residential to office is the only aspect of the applicant's proposal that requires a parking lot. As discussed in the findings above, the existing dwellings on Tax Lots 400 and 500 will continue to be used as residences and have the two required off-street parking spaces for single-family dwellings.

As discussed in the findings below concerning parking, the office use in the existing dwelling on Tax Lot 102 requires a total of six off-street parking spaces. The record indicates that three of these required spaces are located in covered areas. In addition, there is an existing 12 inches dbh (diameter at breast height) ponderosa pine tree adjacent to the existing parking area as well as a group of mature trees on the northeast corner of the property, some of which are as large as 40 inches dbh. For these reasons, the Hearings Officer finds the applicant's proposal satisfies this criterion.

3. <u>Landscape Buffering and Screening Required.</u> Landscape buffering and screening area required under the following conditions:

* * *

b. **Parking/Maneuvering Area Adjacent to Building. Where a parking or maneuvering area, or driveway, is adjacent to a building, the area shall be separated from the building by a raised walkway, plaza, or landscaped buffer no less than two feet in width. Raised curbs, bollards, wheel stops, or other design features shall be used to protect buildings from being damaged by vehicles. The use of sidewalks adjacent to a building shall comply with ADA standards.**

FINDINGS: The applicant has proposed, and will be required as a condition of approval, to provide a series of wheel stops for the six parking spaces associated with the new office use in the existing dwelling on Tax Lot 102.

c. **Screening of Mechanical Equipment, Outdoor Storage, Service and Delivery Areas, and Automobile-Oriented Uses. All mechanical equipment, outdoor storage, manufacturing, and service and delivery areas shall be screened to the greatest extent practical from all public streets, residential districts, and housing units on the same site. Screening shall be provided by one or more the following: decorative wall (i.e., masonry or similar quality material as the building), evergreen hedge, non-see through fence, or a similar feature that provides a non-see-through barrier. Walls, fences, and hedges shall comply with the vision clearance requirements and provide for pedestrian circulation, in accordance with Chapter 3.1 – Access, Circulation and Lot Design. (See Section 3.2.500 for other standards related to fences and walls.)**

FINDINGS: The record indicates the existing outdoor RV storage area on Tax Lot 400 is enclosed by a continuous chain-link fence. The applicant has proposed, and will be required as a condition of approval, to provide the screening required by this paragraph by providing a non-see-through barrier such as the addition of vinyl slats to the existing fence. The applicant also proposes, and will be required as a condition of approval, to provide the additional screening for the RV storage area on Tax Lot 500 as depicted on

the July 23, 2008 site plan. The Hearings Officer finds that with imposition of these conditions of approval the applicant's proposal will satisfy this criterion.

b. Section 3.2.400 Street Trees

This section sets standards and requirements for planting trees along all streets for shading, comfort, safety and aesthetic purposes. Street trees shall be planted for all developments that are subject to Site Development Review. Requirements for street tree planting and tree wells are provided herein. Planting along unimproved streets shall be deferred until the construction of curbs and sidewalks. Such deferrals shall be secured with a bond or cash deposit acceptable to the City. Street trees shall conform to the following standards and guidelines:

A. City of Bend Approved Tree List. The City has developed a list of desirable trees for planting along streets in three size classes: low, medium and tall choices of trees shall be limited to the following list. Exceptions may be granted by the Planning Director:

FINDINGS: As discussed in the findings above, the applicant proposes to preserve existing trees adjacent to Reed Lane by meandering the sidewalk abutting the south side of the street along the frontage of Tax Lot 102. In addition, the July 23, 2008 site plan shows a number of additional street trees in approved species to be planted along Reed Lane. The Hearings Officer finds the applicant will be required as a condition of approval to retain and plant street trees as depicted on the July 23, 2008 site plan.

c. Section 3.2.500, Fences and Walls

* * *

A. General Requirements. All fences and walls shall comply with the standards in this Section. The City may require the installation of walls and/or fences as a condition of development approval. Walls built as required landscape buffers shall comply with Section 3.2.300, New Landscaping.

B. Dimensions.

1. The maximum allowable height of fences and walls is 6 feet, as measured from the lowest grade at the base of the wall or fence, with the following exceptions: * * *

FINDINGS: No walls are included in the applicant's proposal. As discussed above, there is an existing chain link fence around the RV storage area the applicant proposes to convert to a sight-obscuring fence through measures such as insertion of vinyl slats. The record indicates this fence is and will be no taller than six feet. In addition, with the dedication of additional right-of-way for the southern half of Reed Lane, the applicant will relocate the existing section of fence along the street to the new location shown on the July 23, 2008 site plan that will comply with the clear vision standards. In addition, the RV storage area The Hearings Officer finds the applicant will be required as a condition of approval to install any new fencing in conformance with this section.

5. Chapter 3.3, Vehicle Parking, Loading and Bicycle Parking

a. Section 3.3.300 Vehicle Parking Standards for On-Site Requirements

The minimum number of required off-street vehicle parking spaces (i.e., parking that is located in parking lots and garages and not in the street right-of-way) shall be determined based on the standards in this Vehicle Parking Standards section.

A. Off-Street Parking Requirements. The number of required off-street vehicle parking spaces shall be determined in accordance with the following standards.

Table 3.3.300

Required Off-Street Vehicle Parking Spaces

Use	Minimum Requirement
Residential	
Single-family, attached or detached housing, including manufactured home on individual lot.	2 parking space per dwelling unit.
Commercial	
Office Use (*including medical and dental offices, clinic and laboratories, alternative health care)*	1 space per 350 square feet of gross floor area

FINDINGS: The applicant proposes to continue the existing single-family residential uses for the existing dwellings on Tax Lots 400 and 500, and to retain at least two off-street parking spaces for each of these dwellings. As discussed in the findings above, the existing dwelling on Tax Lot 500 is located at the end of an existing driveway and a sufficient distance from Reed Lane that it can accommodate the two required off-street parking spaces outside of the dwelling's front yard setback. The Hearings Officer finds no off-street parking spaces are required for the RV storage area.

The record indicates the existing dwelling on Tax Lot 102 that the applicant proposes to convert to office space is 1,222 square feet in size, therefore requiring a minimum of four off-street parking spaces. The July 23, 2008 site plan shows a total of six paved, striped off-street parking spaces on the east side of the structure, including two handicap accessible spaces. Therefore, the Hearings Officer finds the applicant's proposal satisfies this criterion.

b. Section 3.3.600, Bicycle Parking Standards

All uses that are subject to Site Development Review shall provide bicycle parking, in conformance with the following standards, which are evaluated during Site Development Review. This Section does not apply to single-family, two-family, and three-family housing (attached, detached or manufactured housing), home occupations or other developments with fewer than 10 vehicle parking spaces. (Emphasis added.)

FINDINGS: The Hearings Officer finds this section does not apply to the applicant's proposal because no vehicle parking spaces are required for the proposed RV storage area expansion, and as discussed in findings above, only four off-street parking spaces are required for the existing dwelling on Tax Lot 102 when it is converted to office use.

6. Chapter 3.4, Public Improvement Standards

a. Section 3.4.200 Transportation Improvement Standards

A. Development Requirements. No development shall occur unless the development has frontage or approved access to a public or private street, in conformance with the provisions of Chapter 3.1, Access, Circulation and Lot Design, and the following standards are met:

1. Streets within or adjacent to a development shall be improved in accordance with the Bend Urban Area Transportation System Plan(TSP), provisions of this Chapter and other pertinent sections of this Code.

FINDINGS: The applicant has proposed to dedicate an additional five feet of right-of-way along the abutting segment of Reed Lane to create a total of 30 feet of right-of-way from the centerline. The record indicates Reed Lane currently is improved with approximately 24 feet of pavement. As discussed in the findings above, the applicant's final traffic study concluded no off-site street improvements are required as a result of traffic anticipated to be generated by commercial development on the subject property following approval of the proposed plan amendment and zone change. The record also

indicates that when the Eagle's Landing apartment complex located across Reed Lane to the north was approved, the developer was required to install sidewalks and a planter strip on the north side of Reed Lane abutting the development. The applicant has proposed to construct a sidewalk and planter strip along the Reed Lane frontage on Tax Lot 102.

The applicant argues it should not be required to install a sidewalk and planter strip along the segment of Reed Lane abutting Tax Lots 400 and 500 because these improvements are required to serve pedestrians, and neither the existing RV storage area nor the proposed expansion will generate foot traffic. As discussed in the findings above concerning the requirement of usable pedestrian space under Section 2.2.600, the record indicates the RV storage area operates and will continue to operate as a "self-service" facility. Customers would either towed their RVs onto the site by another vehicle, or would drive their RVs to the site, and another vehicle would take the owner off the site. Customers typically would not come to or leave the site on foot. For these reasons, the Hearings Officer found there is not a sufficient nexus between the proposed expansion of the RV storage area and pedestrian traffic to justify the imposition of exaction requiring the construction of usable pedestrian space under the constitutional "takings" analysis in *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed2d 304 (1994). I also find there is not a sufficient nexus between pedestrian traffic and the proposed RV storage expansion to justify an exaction requiring the applicant to install a sidewalk and planter strip along the segment of Reed Lane abutting Tax Lots 400 and 500.

The staff report argues the sidewalk and planter strip exaction along the entire segment of Reed Lane abutting the subject property also is justified because of the additional pedestrian traffic that would be generated by conversion of the existing dwelling on Tax Lot 102 to an office use. The Hearings Officer disagrees. I find there is no basis to conclude that pedestrians traveling to and from the office on Tax Lot 102 would be walking on the segment of Reed Lane abutting Tax Lots 400 and 500 inasmuch as the record indicates the office will be occupied by a business that is separate from, and has no connection with, the RV storage business on Tax Lots 400 and 500.

In its final argument, the applicant requested clarification as to whether the required sidewalk and planter strip along Reed Lane are the only street improvements that would be required for the proposed development, or whether the applicant also is expected to install a curb. The Hearings Officer finds the city's recommended condition of approval does not include installation of a curb, and therefore no curb will be required.

M. Existing Rights-of-Way. Whenever existing rights-of-way adjacent to or within a tract are of less than standard width, additional rights-of-way shall be provided at the time of subdivision or site development, in conformance with Tables A through E in Section 3.4.200, Transportation Improvement Standards, above.

FINDINGS: As discussed above, the applicant has proposed to dedicate an additional five feet of right-of-way for Reed Lane along the subject property's entire northern boundary, for a total of 30 feet of right-of-way from the centerline. The Hearings Officer finds this dedication complies with the city's standards and specifications for local street rights-of-way.

7. Chapter 4.7, Transportation Analysis

a. Section 4.7.400 Approval Criteria

* * *

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.

FINDINGS: As discussed in the findings above concerning compliance with the TPR, the Hearings Officer has found the applicant's final traffic study demonstrates the applicant's proposal will not generate traffic that would overburden existing or planned transportation facilities. Therefore, the Hearings Officer finds the applicant's proposal satisfies this criterion.

IV. DECISION:

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer hereby **RECOMMENDS APPROVAL** of the applicant's proposed plan amendment and zone change to change the plan designation of Tax Lots 400 and 500 from RS to CG and to rezone Tax Lots 102, 400 and 500 from RS to CG, **SUBJECT TO THE FOLLOWING CONDITION OF APPROVAL:**

1. The applicant/owner shall submit to the Planning Division a metes-and-bounds

description of the property subject to the approved plan amendment and zone change.

The Hearings Officer also **APPROVES** the applicant's proposed site plan for a change of use of the dwelling on Tax Lot 102 from residential to office, and for expansion of the existing RV storage area on Tax Lots 400 and 500, **SUBJECT TO THE FOLLOWING CONDITIONS OF APPROVAL:**

2. This approval is based on the applicant's submitted applications and exhibits, site plan dated July 23, 2008, final traffic study dated July 17, 2008, supplemental materials, and written and oral testimony. Any substantial change to the approved plan and development will require a new land use application and approval.

PRIOR TO OBTAINING A BUILDING PERMIT FOR THE CHANGE OF USE OF THE DWELLING ON TAX LOT 102:

3. The applicant/owner shall develop the subject property – Tax Lots 102, 400 and 500 on Deschutes County Assessor's Map 18-12-08AC – as depicted on the July 23, 2008 site plan, except as otherwise specified in this decision and the conditions of approval.

4. The applicant/owner shall submit to the Planning Division a detailed landscape plan complying with Section 3.2.300 of the development code.

5. The applicant/owner shall install a sidewalk and planter strip on the south side of Reed Lane along its frontage with Tax Lot 102 and in conformance with the city's applicable standards and specifications. The sidewalk and planter strip may meander to avoid the need to remove existing trees and/or utilities. The applicant/owner shall retain and plant street trees as depicted on the July 23, 2008 site plan.

6. The applicant/owner shall install and/or improve on-site pedestrian walkways on Tax Lot 102 to a minimum width of five (5) feet and provide lighting in compliance with Section 3.5.200 of the development code. The applicant/owner shall improve the existing pedestrian walkways to the front and rear entrances to the structure on Tax Lot 102 in compliance with city and ADA standards.

7. The applicant/owner shall provide wheel stops for the six parking spaces to be provided for the office use in the existing dwelling on Tax Lot 102.

8. The applicant/owner shall provide a sight-obscuring fence surrounding the RV storage area on Tax Lots 400 and 500.

9. The applicant/owner shall install any new fencing in conformance with Section 3.2.300 of the development code.

10. The applicant/owner shall record with the Deschutes County Clerk a reciprocal cross-access easement agreement that provides for vehicular access across Tax Lot 400, Assessor's Map 18-12-08AC (Tax Lot 400) for the benefit of Tax Lot 301, Assessor's Map 18-12-08AC (Tax Lot 301) from Reed Lane to Tax Lot 301. The purpose of the easement is to allow vehicle trips associated with the future development of Tax Lot 301 to reach Reed Lane by crossing Tax Lot 400. The recommended location of the easement would be a connection from the existing driveway on Reed Lane for Tax Lot 400 straight south to the south property line.

    The easement shall be substantially similar to the Access Easement recorded at 2008-10823 of the official records of the Deschutes County Clerk and will contain the following provisions:

    A. The easement will be written to be effective when Tax Lots 400 and 301 are held in separate ownership. The easement may contain a condition that it will be extinguished if Tax Lots 400 and 301 are redeveloped together by a single owner pursuant to a City land use approval.

    B. The easement shall include a provision that requires the owner of Tax Lot 301 to provide reciprocal vehicle access rights to Tax Lots 400 and 500, Assessor's Map 18-12-08AC as a condition of using the cross-access easement over Tax Lot 400.

    C. The easement over Tax Lot 400 may be relocated by the owner of Tax Lot 400 provided that the new easement location allows access to Reed Lane in a City of Bend-approved location.

    D. Prior to use of a driveway in the cross-access easement, the applicant shall be allowed use for the development as proposed on the approved site plan.

11. The applicant/owner shall remove all irrigation water rights from Tax Lots 102, 400 and 500 in accordance with the regulations of the Arnold Irrigation District.

PRIOR TO CHANGING THE USE OF THE BUILDING ON TAX LOT 102:

12. The applicant/owner shall apply for and obtain a permit from the City of Bend Building Division for the change of use from residential to commercial for the building on Tax Lot 102.

13. The applicant/owner shall comply with all requirements of the Bend Fire Department as set forth in its comments dated August 26, 2008.

PRIOR TO EXPANDINGTHE RV STORAGE AREA ON TAX LOTS 400 AND 500:

14. The applicant/owner shall conduct all grading and clearing activities on Tax Lots

400 and 500 in conformance with the city's grading and clearing ordinance, Ordinance No. NS-1879.

Dated this 16th day of December, 2008.

Mailed this 16TH day of December, 2008.

Karen H. Green

Karen H. Green, City of Bend Hearings Officer

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK
2009-12430
$106.00
00660761200900124300080167
03/26/2009 03:01:39 PM
D-IPPS Cnt=1 Stn=25 CLERK
$80.00 $11.00 $10.00 $5.00

ORDINANCE NS-2117

AN ORDINANCE VACATING A PORTION OF NE ALDEN AVENUE THAT LIES WITHIN THE SOUTHEAST ¼ OF THE SOUTHWEST ¼ OF SECTION 33, TOWNSHIP 17 SOUTH, RANGE 12 EAST, W.M., IN THE CITY OF BEND, DESCHUTES COUNTY, OREGON.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council has held a public hearing, considered the testimony, the record, and the Planning Commission's Recommendation, and has found that the public interest will not be prejudiced by the proposed vacation and that the property should be vacated. The Bend City Council adopts the Planning Commission's Recommendation dated January 28, 2009, file number PZ 08-497.

Section 2. The Bend City Council determines that the portion of street right of way as described in "Exhibit A" located in Bend, Deschutes County is vacated.

Section 3. The Bend City Council adopts the Findings for the petition to vacate a portion of NE Alden Avenue, file number PZ 08-497, attached as "Exhibit B", as findings in support of this ordinance.

Read for the first time the 18th day of February, 2009.

Read for the second time the 4th day of March, 2009.

Placed upon its passage the 4th day of March, 2009.

YES: 7 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 4th day of March, 2009.

Kathie Eckman

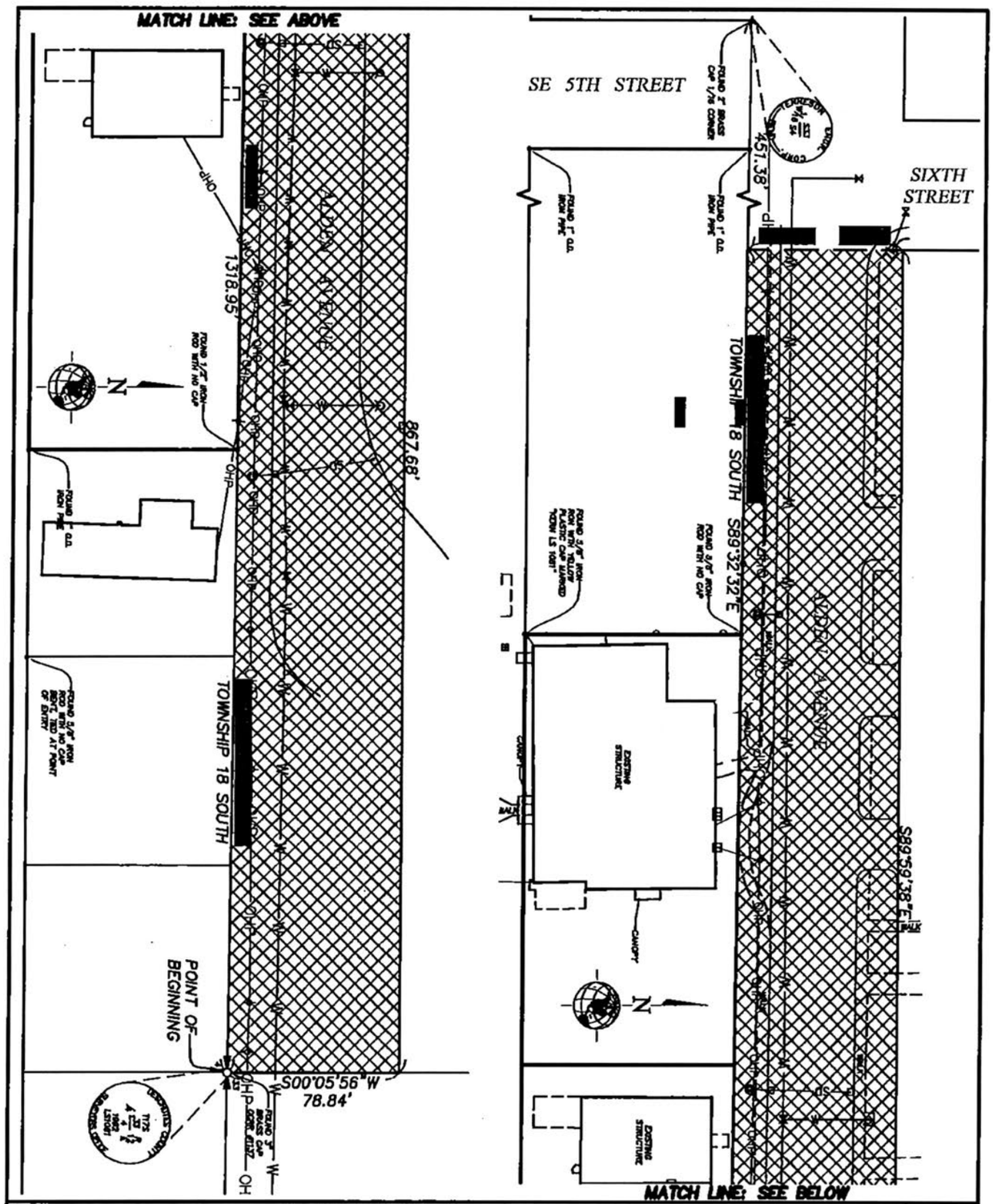
Kathie Eckman, Mayor

Attest:

Patricia Stell, City Recorder

Please record 16 pages Ordinance NS-2117
After recording return to:
City Recorder
City of Bend
710 NW Wall
Bend, OR 97701

Ordinance NS-2117
Exhibits A & B



DRAWN BY:	ANH	CHECKED BY:	SRH
LAST EDIT:	3/4/2009	APPROVED BY:	SRH
		PLOT DATE:	03/04/09

DATE	BY	REV#	REVISION	CK'D	APPR

WHPacific
123 SW Columbia St
Bend, OR 97702
541-388-4255 Fax
541-388-4229
www.whpacific.com

BEND-LAPINE SCHOOLS
ALDEN AVENUE

EXHIBIT 'A'
VACATION EXHIBIT

CITY OF BEND — OREGON

SCALE:	PROJECT NO.	DRAWING FILE NAME:	SHEET
1"=60'	33840	33840-surv-BHTech-VAC	1 of 1

W&H PACIFIC
AN ASCG COMPANY

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

EXHIBIT A

ALDEN AVENUE VACATION

A TRACT OF LAND LOCATED IN THE SOUTHEAST ONE-QUARTER (1/4) OF THE SOUTHWEST ONE-QUARTER (1/4) OF SECTION 33, TOWNSHIP 17 SOUTH, RANGE 12 EAST, WILLAMETTE MERIDIAN, CITY OF BEND, DESCHUTES COUNTY, OREGON BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Beginning at the South one-quarter (1/4) corner of said Section 33, said point falls on the southerly right-of way of Alden Avenue and is marked by a 3 inch brass cap; thence along said southerly right-of-way and South line of said Section 33, North 89°32'32" West, 867.57 feet to a point on the East right-of-way of Sixth Street, said point bears South 89°32'32" East, 451.38 feet from a 2 inch brass cap marking the West one-sixteenth (1/16) corner common to said Section 33 and Section 4, Township 18 South, Range 12 East, Willamette Meridian; thence leaving said southerly right-of-way and said South section line, North, 72.00 feet along said East right-of-way of Sixth Street to a point on the northerly right-of-way of said Alden Avenue; thence along said northerly right-of-way, South 89°59'38" East, 867.68 feet to a point on the East line of the Southwest quarter of said Section 33; thence leaving said northerly right-of-way and continuing along said East line, South 00°05'56" West, 78.84 feet to the point of beginning.

Herein bearings and distances are based upon a Boundary Survey by W&H Pacific, recorded in Deschutes County Surveyor's records as CS17424.

This description contains 1.50 acres, more or less.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

DANIEL E. WOBBE

OREGON
JUNE 09, 1997
DANIEL E. WOBBE
2925
EXPIRES 06/30/2008

EXHIBIT B

BEFORE THE PLANNING COMMISSION
OF THE
CITY OF BEND

RIGHT OF WAY VACATION	(
REQUEST	(
PZ 08-497	(
RECOMMENDATION	(
TO THE CITY COUNCIL	(

NATURE OF THE APPLICATION

A petition to Vacate the Public right of way along a portion of Alden Road adjoining the south end of Bend High School.

1. On November 12, 2008, The Bend La Pine School District initiated the petition for vacation of the right of way which was accepted by the City Council on December 17, 2008.

2. The petition request was presented to the Planning Commission at a Public Hearing on January 26, 2009.

3. On January 26, 2009, the Planning Commission opened the public hearing to accept testimony on the request. At the conclusion of the hearing, the Commission voted to recommend that the Bend City Council approve the petition to vacate a portion of Alden Road right of way. The Community Development Department staff report and recommendation have been considered and is part of the record of this proceeding. There was no public testimony at the hearing

CONCLUSION

On the basis of this record, the requested right of way vacation, PZ 08-497, is consistent with requirements of 10-18 of the Bend Code and ORS 271.080 - .230. This general finding is supported by the specific findings of fact and contained within Staff Report PZ 08-497.

RECOMMENDATION

It is RECOMMENDED by the City of Bend Planning Commission that the requested right of way vacation (PZ 08-497) be approved by the Bend City Council.

This RECOMMENDATION was presented to and approved by the Planning Commission on January 26, 2009.

Nathan R Hovekamp

Planning Commission Chair

Attest
Ayes: 5
Nays: 0
Absent: 2
Abstain: 0

CITY OF BEND PLANNING DEPARTMENT
STAFF RECOMMENDATION TO THE BEND CITY COUNCIL

PROJECT NUMBER: **PZ 08-497**

HEARING DATE: February 18, 2009

APPLICANT/ OWNER: Bend La Pine School District
c/o Bryant Lovlien & Jarvis
PO Box 880
Bend, OR 97709

ENGINEER: W & H Pacific
123 SW Columbia
Bend, OR 97702

LOCATION: Portions of Alden Avenue located on Deschutes County Assessor's Map # 18-12-04BA.

REQUEST: Road right of way vacation for a portion of Alden Avenue.

PROJECT MANAGER: Brian Harrington, Associate Planner
(541) 693-2118; bharrington@ci.bend.or.us

I. APPLICABLE STANDARDS, CRITERIA, AND PROCEDURES:

(1) Bend Code Chapter 10-18; Vacation of Road Rights of Way

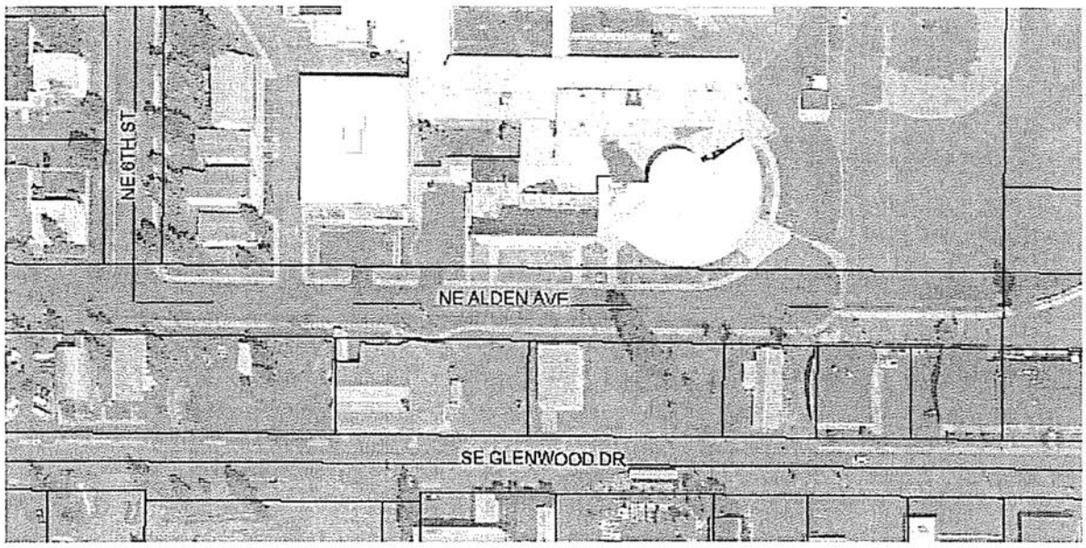
(2) Oregon Revised Statutes, ORS 271.080 – 271.230

II. FINDINGS OF FACT:

1. **LOCATION:** The subject property is located adjoining the south boundary of the Bend High School campus on a portion of Alden Avenue between NE 6th Street and NE 9th Street. There is no tax lot associated with Alden Avenue identified on the Deschutes County Assessor's Map.

2. **ZONING:** The subject property is currently right of way. Upon vacation, the north half will be zoned Standard Residential (RS) and the south half Industrial Light (IL).

3. **SITE DESCRIPTION & SURROUNDING USES:** Staff conducted a site visit on December 12, 2008 and January 8, 2009) and provides the following findings based on observations made on the site.



The subject road right of way contains the portion of Alden Avenue located east of the intersection of NE 6th Street and Alden Avenue to the east end of Alden Avenue terminating in a cul de sac next to the ball field. The road is paved and contains right of way width ranging from approximately 72 to 78 feet. The north side of Alden Avenue contains the Bend High School campus. The south side contains 3 tax lots owned by Bend La Pine School District and four other privately owned lots. Overhead electric and telephone utility lines run along the south side of Alden Avenue. There are City water lines in Alden Avenue. Alden Avenue contains onstreet parking with both sides lined with parked cars at the time of staff site visit. The concrete sidewalk along the south side of Alden Avenue extends east through the cul de sac to NE 9th Street alongside the south ballfield fenceline.

4. **PROPOSAL:** The applicant has proposed to vacate a portion of Alden Avenue adjacent to the Bend High School campus that covers approximately 1.5 acres. According to the applicant, the road vacation will allow the School District to control access and vehicular traffic with a gate across Alden Avenue. The vacation will facilitate the use of utilities to cross Alden Avenue for the new building and the construction of a raised pedestrian walkway to improve pedestrian safety.

The applicant provided the following Exhibits in support of the petition.
1. 1948 Deed for Bend High School
2. Deeds for property purchased by BLPSD south of Alden Avenue.

3. Original vacation application with title report, map of Alden Avenue portion to be vacated, tax map 17-12-33CD and receipt for fees paid.
4. Vacation petition
5. Letter to Surrounding Property Owners.
6. Letter to Utilities and Response from Qwest
7. Northwest Townsite Company's First Addition Plat dated 1912
8. Bend High School Site Plan

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 the notice area required by ORS 271.080. As of the date of the writing of this staff report, no public comments have been received to date.

   The applicant has stated in their burden of proof that notice was sent to all surrounding property owners with a copy of the petition and with 2/3 of the property owners signing the petition, (Exhibit 5). The applicant also submitted notice to all utility providers with Qwest Communications being the only responder (Exhibit 6). The Qwest representative stated that they would require a private easement and provided a copy of a sample document for the record.

6. **AGENCY/UTILITY PROVIDER COMMENTS:** The Planning Division received comments and recommendations from the following departments, divisions and/or agencies. The comments and recommendations received are part of the record and are contained in File No. PZ 08-497. These include the City of Bend Fire Department, Engineering Division, Traffic Engineer and Building Division. None of the utility service providers submitted comment.

III. APPICATION OF THE CRITERIA:

CONFORMANCE WITH CITY OF BEND CODE, CHAPTER 10-18, VACATION OF PUBLIC RIGHTS OF WAY

Section 1 Purpose and Policy.

(a). The purpose of this Section of the Bend Code pertaining to vacation of rights of way shall be to provide persons who propose vacations and to those who must review the proposal with a guideline for review and a method and process of handling vacation petitions.

(b) Vacation of public rights of way are not favored by the City of Bend and a person proposing a vacation has the burden of showing the vacation will serve the public interest.

Applicant's response: The vacation of a portion of Alden Avenue will serve the public interest. The purpose of this vacation is to improve campus security and pedestrian

safety between the vocational/technology classroom building on the south side of Alden Avenue, and the Bend High School campus. Additionally, the vacation will allow utilities to cross Alden Avenue to provide connections between the vocational/technology classroom building and the existing campus. Attached is the site plan for the new vocational/technology classroom (See Exhibit 8).

FINDING: With the provision of public utility and access easements (discussed further below), staff concurs that the public benefit standard can be met.

(c) Vacation of a publicly owned right of way many not be in the public interest if a property owner is financially benefited by the vacation, which comes as the result of the public relinquishing an interest in property, unless the private property owner agrees to pay an assessment to compensate the public for the relinquishment of the property interest. The determination of public interest may include consideration of the nature of the benefited property, such as whether the vacation would benefit a private property owner, or whether it would provide a public benefit, such as a benefit to a charitable organization or a governmental entity.

Applicant's response: Bend La Pine Schools will not benefit financially from the vacation of Alden Avenue because it is a public entity providing a public benefit in the form of a school. The vacation of the portion of Alden Avenue will provide a public benefit to the community by increasing campus and pedestrian safety and allowing the construction of the new vocational/technology classroom building for the community. The community recognized the public benefit of the new vocational/technology classroom building by voting to approve the school bond that included the construction of this building. Other benefits include control of vehicular access onto the BHS campus for security and a raised crossing to improve safe pedestrian crossing. The vacated right of way will allow necessary utility crossing, (i.e. connections to the main campus boiler, public address system and computer networking systems) that will maximize the energy efficiency of the Bend High School campus.

FINDING: Generally, staff concurs with the School Districts response. However, staff has received comment from the City Traffic Engineer and Engineering Division outlining provisions to meet the public benefit standard. These comments are further discussed below in Section 4.

Section 2 Vacation Petitions.

(a) Whenever any person interested in any real property in the City of Bend desires to vacate all or part of any street, avenue, boulevard, alley, plat, public square or other public place, such person may file a petition therefore with the City Recorder setting forth a description of the ground proposed to be vacated, the purpose for which the ground is proposed to be used and the reason for such vacation.

(b) **The person presenting a petition to vacate a public right of way shall deposit with the recorder the sum as prescribed by resolution of the council from which the reorder shall deduct the cost of publishing and posting notices of the proposed vacation and such other expenses as are incurred. In case the actual cost exceeds the amount of the deposit, an additional sum, sufficient to cover such deficiency, shall be collected by the recorder before the vacation is completed. IN case the actual costs are less than the amount deposited, any excess or balance shall balance shall be refunded.**

(c) **The petition and appendages shall contain such information as is required by ORS 271,080 together with:**

(1) A title report verifying ownership of the property abutting the area proposed to be vacated and in the affected area; and

(2) A tax map showing the area proposed to be vacated and the area encompassing the affected area.

(d) **Where the city is the owner of property abutting the area proposed to vacated, the city manager shall have the authority to give consent or withhold consent of the initiating the vacation.**

(e) **In addition to the above procedures, the Bend City Council may initiate a vacation according to the procedures in ORS 271.130.**

FINDING: Staff finds the applicant has provided the requisite application materials and fee pursuant to the submitted Exhibits 1 through 8. The City does not own property abutting the proposed vacated area.

Section 3 Review of Petition at the City Council Level:

(a) **After the petition is received by the City Recorder, the petition shall be placed on the agenda for the next City Council meeting to be received by the city Council.**

(b) **After receipt of the petition by the city Council, the petition shall be forwarded to the Bend Urban Area Planning Commission for consideration and a recommendation on the land use implications of the vacation. The petition shall also be reviewed by city staff for a determination of whether an assessment against the benefited property(s) is appropriate to service the public interest, and if so, the amount of the assessment.**

(c) **Upon receipt of a copy of a petition for vacation, the Planning commission shall notify all affected public utility companies of such petition. Responses from the utility companies shall be included in the Planning Commission's recommendation to council.**

FINDING: The vacation petition was set before the City Council on December 17, 2008 and accepted to be forwarded to the Planning Commission for review. A public hearing was held before the Planning Commission on January 26, 2009. On December 18, 2008, the Planning Division sent notice to the affected utility companies. In addition, the applicant had sent a request for comments to the affected utilities as part of the submitted application materials with the only response being from Qwest (see Exhibit 6).

(d) The recommendation from the Bend Urban Area Planning Commission shall be based upon the criteria outlined in Section 18-3.4 of this chapter.

(e) The Bend Urban Area Planning Commission shall return the petition for vacation to the City Council for a public hearing before the City Council. The Urban Area Planning Commission will also submit a report making recommendations to the City Council regarding the proposed vacation, which report shall focus on the land use issues involved in the vacation decision.

(f) The Planning commission's report shall be provided to the affected owners(s) within 10 days of the Planning commission decision.

(g) After the vacation petition is received, and prior to consideration of the vacation petition by the Bend City Council, staff shall, through consultation with an appraiser, or qualified members of city staff, determine the value of the vacation to the affected property(s). Staff shall notify the affected owner(s) of staff's determination of the value sufficiently in advance of the public hearing conducted by the Bend City Council to allow the affected owner's to obtain their own valuation data. Staff shall meet with the affected owner(s) in advance of the city council's public hearing to attempt to reach mutual agreement as to the value of the benefit to the affected property if the vacation is approved. If staff and the affected Property owner(s) are able to agree on a value to be assessed against the property benefited by the vacation, then the affected property owner(s) shall sign a written acknowledgement that they will not protest the assessment and the agreement shall be presented to the council for its consideration at the public hearing conducted prior to adoption of a vacation ordinance.

Applicant's response: Bend La Pine Schools sets forth below under Section 4 the reasons the property proposed for vacation has no monetary value. The property cannot be used for further construction or development. The width of the proposed vacation approximately 80 feet will not allow for the construction of additional buildings and Bend La Pine Schools needs the portion of Alden Avenue that will be vacated for access to the rear of the main campus buildings and for access to parking areas. The vacated portion of Alden Avenue will also provide required parking spaces for the BHS vocational/technology classroom building. The vacated property will continue to serve a

public benefit by providing security and public safety improvements for the BHS campus. Therefore, no appraisal should be required for the vacation of Alden Avenue.

FINDING: As detailed in the comments submitted by the City Traffic Engineer and Engineering Division and discussion set forth in Section 4, the vacated property will serve a public benefit with conditions. In addition, City Staff and the School District have come to an agreement that a mutually public benefit will be achieved by a trade for School District property to be dedicated for needed right of way along Neff Road. On January 26, 2009 the Planning Commission held a public hearing on the road vacation petition and voted to forward the petition to the City Council with a recommendation of approval. The Planning Commission's recommendation was sent to the affected owner on February 3, 2009 in conformance with criterion (f) above. Staff finds the above criteria are satisfied.

Section 4 Guidelines:

The guidelines set forth here are intended to assist the staff and Council in review of proposed vacations. They are not intended to be exclusive. The City Council, in its sole discretion must still determine whether or not a proposed vacation would prejudice the public interest (ORS 271.120). Staff, the Planning Commission and the City council shall consider the following:

(a) Whether there is a public use of the right of way at the time the proposal is submitted

(b) Whether any reasonable use of the right of way could exist in the future. Reasonable use includes, but is not limited to:

(1) streets;
(2) bike paths;
(3) jogging trails:
(4) drainage areas.

Applicant's response: The portion of Alden Avenue proposed for vacation is not used by the public as a right of way because it does not connect to 9th Street. It is used by Bend La Pine Schools, students, staff and faculty to access BHS. The vacation of Alden Avenue will not eliminate this access but instead will improve campus safety by providing a gate to secure the campus and constructing a raised pedestrian crossing. The eastern portion of Alden Avenue has already been vacated. The only property that takes access from Alden Avenue is Bend La Pine Schools. All other property owners along this portion of Alden Avenue take access to their properties from SE Glenwood Drive. Alden Avenue as it exists is not a through street to 9th Street because the eastern portion of Alden Avenue was previously vacated. Therefore, the section of Alden Avenue proposed for vacation will never provide street access, a bike path, or a jogging trail. Existing storm drains shown within Alden Avenue on the vacation plan will remain undisturbed by the

vacation of Alden Avenue. Alden Avenue will continue to be used for controlled vehicular access to Bend High School but this does not require a public right of way.

FINDING: Chapter 7, Transportation Systems of the Bend Area General Plan gives staff direction in implementing the transportation system plan. With regard to streets, several policies (page 24), express the need to maintain street widths and patterns, maintain connectivity within neighborhoods by a grid of street and pedestrian accessways and allowances for cul de sacs or other street design where warranted by existing development or topographic features. Staff agrees with the applicant's response that Alden Avenue does not provide a through connection to 9th Street for vehicular access. The existing development containing the baseball field prevents this extension now or in the future. Although these policies above address new street development with flexibility due to certain conditions, they contain components to ensure pedestrian access and connectivity that in this case, can be achieved with a public access easement for the pedestrian walkway between SE 6th Street and SE 9th Street.

With regard to bike paths and jogging trails, further policies in the General Plan, (page 14 and 15), state the need to provide sidewalks and trail systems to connect school walking routes, bicycle and pedestrian oriented improvements, maintaining accessways prior to vacating public easements or right of ways, and to encourage the School District, City and Parks District to coordinate access corridors and trail connections.

A 5 foot concrete sidewalk connects the south side Alden Avenue walkway along the south perimeter of the Bend High School baseball field fenceline to SE 9th Street. In comments received from the Traffic Engineering Division, there is public use of the right of way at the time the proposal was submitted. Further, it is reasonable for this use of the right of way to be continued into the future. This public use includes a pedestrian access route between SE 6th Street and SE 9th Street. The route is paved with Portland cement concrete. It is an important circulation route for bicyclists and pedestrians given the incomplete grid and connectivity of the street system in the vicinity. There is no substitute for this route as there are no other street connections that would come close to providing the same level of service and convenience to the biker and pedestrian. It is important to maintain a public access easement over this facility 10 feet in width centered on the facility (5 foot facility). It is also important to expand the public access easement for the approximately 215 linear feet of this route that are located on the School District property east of Alden Avenue. The integrity of the end to end continuity of the route is important between SE 9th and SE 6th Street. Staff would like to ensure through agreement on this vacation that the pedestrian route will be preserved, and that access to the school can be reached from the pedestrian route. In addition, the 10 foot pedestrian easement should be established and legally binding on the property in perpetuity.

By ensuring that the pedestrian route is maintained by an easement, the proposal would be consistent with the General Plan policies 9, 10, 14 and 15 (Bike Trails and Jogging Paths) mentioned above. Therefore, Staff recommends to the City Council that a 10 foot pedestrian easement be incorporated in the conditions of approval.

(c) If utilities are located within the proposed right of way and no other reasonable use could be made of the right of way, the city may vacate the right of way with a reservation for utility easements.

Applicant's response: There are existing utilities within the right of way of Alden Avenue. Pacific Power has overhead power lines that cannot be placed underground as they are large transmission lines. There are several storm drainage easements in Alden Avenue. Storm drainage will not be affected by the vacation of Alden Avenue because Alden Avenue will continue to be used for vehicular access. There are also City of Bend water lines in Alden Avenue. Bend La Pine Schools will grant the City of Bend an easement for the water line. The only (other than the City) utility that responded to the notice regarding the vacation of Alden Avenue was Qwest. Bend La Pine Schools is willing to grant any required easements to Qwest for any Qwest facilities within the vacated portion of Alden Avenue.

FINDING: In comment received by the Engineering Division, there are existing water lines in Alden Avenue. The applicant has indicated in the burden of proof that the School District will grant the City of Bend an easement for the water line and Qwest for their facilities along Alden Avenue. There are also other franchise utilities on the overhead lines besides Qwest. The City Engineering Division recommends as a condition of approval that the applicant prepare, grant and record an exclusive prescriptive easement for the waterline, 20 feet wide centered on the existing water main and including any hydrant extensions. In addition, it is recommended that the petitioner is conditioned to establish and record a public utility easement (PUE) that is 20 feet wide and centered on the overhead lines within Alden Avenue. All costs shall be the responsibility of the petitioner. These easements are necessary to protect the public's interest of that infrastructure and ensure it is not adversely affected by this action. Any future work within the vacated land will be subject to the conditions of that easement. In addition, the Engineering Division has raised the concern of placing new water meters in a newly vacated right of way when other right of way that meets city standards is directly available (SE Glenwood for example). This would set an unwanted precedent. Therefore, the Engineering Division recommends a condition that any new connections to the water main within the resultant easement except those deemed necessary by the Fire Marshall for fire protection shall be prohibited.

The Engineering Division further states that these three items be recommended as conditions of approval. If any of these items are not satisfied, or otherwise opposed by the petitioner, the Public Works would consider Alden Avenue having a declared public use for utilities (public and franchise). Accordingly, as set forth in the applicable code guidelines, the vacation cannot be granted with a recognized public use still in effect. Staff recommends to the City Council that the three items discussed above be incorporated into the conditions of approval.

(d) When determining whether it is in the public interest to make an assessment against property benefited by the vacation, and if so, the amount of such assessment the City Staff and the City Council may consider the means by

which the City of Bend acquired the property interest subject to the vacation petition, including any consideration paid at the time of acquisition, and any factors involved in the proposed vacation that the council deems relevant.

Applicant's response: The prior property owner dedicated the road to the City at no cost. The vacation will serve the public interest, not a private profit making interest. The community approved the School Bond in 2006 to make improvements to schools including the replacement of the existing vocational/technology building with a new vocational/technology classroom building at Bend High School. No abutting property owners use Alden Avenue to access their properties. Instead, all adjoining properties use SE Glenwood Drive for access. The public will benefit if the vacation is granted without assessment.

FINDING: In comment received from the Transportation Engineer, staff notes that the City has interest and would support a trade of the Alden Avenue property for approximately 11,750 square feet of property zoned Public Facility (PF) along Neff Road fronting the Pilot Butte Middle School. This section along Neff Road would consist of a 10 foot dedication to the public between the centerlines of NE Parkridge Drive and NE Eastwood Drive. Both the Transportation Engineering Division and Engineering Division have stated they would support this trade. Based upon discussion between City staff and the School District on January 9, 2008, both parties have agreed in principle that there would be a mutual public benefit to that trade. The School District provided confirmation at the hearing before the Planning Commission on (January 26, 2009), that they would be willing to trade with the City a 10 ft. dedication of land at the Pilot Middle School site along the Neff Road frontage for the portion of NE Alden Avenue vacation. Based upon this confirmation, staff has incorporated the agreement as condition of approval (4) below.

CONFORMANCE WITH OREGON REVISED STATUTES, VACATION; ORS 271.080 – 271.230

ORS 271.140, Title to vacated areas.
The title to the street or other public are vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach the abutting property on such side. If a public square is vacated the title thereto shall vest with in the city.

Applicant's response: Title to the vacation portion of Alden Avenue should attach to Bend La Pine School's property, because the vacated area meets the exception described above. Alden Avenue formerly known as Pond Avenue was dedicated on the Northwest Townsite Company's First Addition Plat in 1912. See Exhibit 7. It was dedicated by the prior owner, or, in the words of the code, "dedicated by different person." The fee title to "such area" Alden Avenue, has not been otherwise disposed of

and has remained a dedicated public right of way. Bend La Pine Schools purchased the blocks abutting Alden Avenue including portions of blocks 11 and 12 Northwest Townsite Company's First Addition and constructed Bend High School on this property. See Exhibits 1 and 3. Therefore, the original boundary line should attaché to the northern Bend High School property, Tax Map 17-12-33CD-2600. The intent of this statute is for the property to attach to the property from which it was dedicated.

FINDING: The City Engineering Division stated that because there are two other private property owners that abut the Alden Avenue right of way vacation, a determination needs to be made as to the disposition of the vacated land. Staff finds that these two property owners had signed the submitted petition, (see petitioners Exhibits 4 and 5). In review of the applicant's argument with the statute above and in light of the agreement to trade the vacated land for the Neff road frontage, staff finds the statutory exception is met.

IV. CONCLUSIONS:

Based on the Findings of Fact and Conclusionary Findings included in the record, staff concludes that the proposed right of way vacation of NE Alden Avenue meets the applicable provisions in the Bend Code Chapter 10 -18 and ORS 271.080 - .230

V. RECOMMENDATION:

Staff recommends to the Bend City Council to approve the NE Alden Avenue right of way vacation subject to the following conditions of approval.

Recommended Conditions Prior to Final Approval of Vacation:

1) The petitioner shall prepare, grant and record an exclusive prescriptive easement for the waterline in NE Alden Avenue, 20 feet wide along the watermain including any hydrant extensions. Any new connections to the subject watermain within the vacated land or related easement shall be prohibited except deemed necessary by the Fire Marshall for fire protection.

2) The petitioner shall establish and record a public utility easement centered on the overhead lines that are within NE Alden Avenue.

3) The petitioner shall establish and record a 10 foot public access easement over the pedestrian access route between NE 6th Street and NE 9th Street centered on the facility (pedestrian sidewalk).

4) The petitioner shall trade with the City the NE Alden Right of way for a 10 foot dedication of land to the public abutting the Pilot Butte Middle School along Neff Road. The length shall be determined by mutual agreement between the City and the Bend La Pine School District.

Written by: _____
Brian Harrington, Associate Planner

Reviewed by: _____
Heidi Kennedy, AICP, Senior Planner

ORDINANCE NO. NS-2118

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

WHEREAS, the City Council upon request by various downtown business and property owners, through the Downtown Bend Business Association (DBBA) conducted a public hearing on March 4, 2009 on the question whether to create the DOWNTOWN BEND ECONOMIC IMPROVEMENT DISTRICT (District); and

WHEREAS, the City provided not less than thirty days notice of the March 4, 2009 hearing; and

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

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

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

THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

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

1) The City Council on March 4, 2009 held a public hearing regarding the establishment of an economic improvement district;

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

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

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

5) A preliminary estimate of the probable cost of the activities to be funded pursuant to Section 2 of this Ordinance is approximately $115,000.00 per year, and the proposed formula for apportioning costs is set forth in Section 4 of this Ordinance;

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

Section 2: **Creation of District:**

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

- Flower baskets-every block-spring, summer and fall
- Beautified planters-every block-year around
- Sidewalk snow removal-clear path for customers-District wide
- Sidewalk sweeping and debris removal-year around
- Graffiti removal-on public right of way-year around
- Tree lights
- Holiday Wreaths
- Banners
- Benches
- Trash receptacles-recondition
- Marketing downtown to promote business
- Events-drawing customers to the District-Gallery Walk, Art Hop, Sidewalk Sale, Holiday Tree Lighting, Ladies Night
- Advertising-drawing customers to the District-advertising on radio, tv, print, web and other outlets

Beautification projects and services will be provided equally throughout the District area with every block receiving flowers, every tree with electrical service receiving lights, etc. Maintenance will be performed throughout the entire District area. Capital improvements will be phased in over the life of the District in a geographically equitable manner.

Marketing efforts including events and advertising will be executed to obtain the maximum exposure and benefit for all downtown businesses. These efforts will keep downtown a central gathering place for the community, keep it vibrant and stimulate economic improvement.

The District will be managed by the Executive Director of the DBBA for 40 hours per week paid from District revenues.

The tasks of the Executive Director shall include, but not be limited to:

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

- Create and execute marketing, events and advertising

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

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

Section 4: **Assessment Rate:** The property shall be assessed as follows: $0.15 per square foot per year of real property, which shall not exceed one percent of the real market value of all real property located in the district. The rate will remain the same throughout the term of the District.

Section 5: **Total Assessment:** The initial total assessment each year of the three (3) year term is expected to be approximately $115,000.00 subject to change as the amount of commercial building spaces changes.

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

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

(a) The City Clerk shall promptly mail or personally deliver to property owners within the boundaries of the District, a notice identifying the amount of the proposed assessment for each property, and informing the property owner of a public hearing scheduled for May 6, 2009 during the regular city council meeting at Bend City Hall, at which the property owners may appear to submit written objections (sometimes called remonstrances) to the assessment.

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

(c) After the May 6, 2009 hearing, if the Council decides to impose the assessment, it shall impose the assessment by resolution, determine whether the properties within the District shall bear all or a portion of the costs of the activities to be funded, and approve the amount of assessment on each lot.

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

Read for the first time the 4th day of March, 2009.

Read for the second time the 18th day of March, 2009.

Placed upon its passage the 18th day of March, 2009.

YES: 7 NO: 0 ABSTAIN: 0

Authenticated by the Mayor the 18th day of March, 2009.

Kathie Eckman

Kathie Eckman, Mayor

Attest:

Patricia Stell, City Recorder


4TH
3RD
AWBREY
1ST
2ND
GROVE
DRAKE
DRAKE
GLEN
DOHEMA
PINECREST
VERMONT
LAFAYETTE
KEARNEY
GREENWOOD
WALL
WALL
RIVERSIDE
GASOLINE
OREGON
HARRIMAN
HILL
BROADWAY
HAWTHORNE
MINNESOTA
BOND
GREELEY
FRANKLIN
ST HELENS
IDAHO
STARTS
KANSAS
GEORGIA
SISEMORE
0
215
430
860
Feet
Proposed Downtown Bend
Economic Development District
May, 2009
District Boundary

BLANK PAGE

ORDINANCE NO. NS- 2119

AN ORDINANCE AMENDING ORDINANCE NO. NS- 2084 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 number 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 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 complex. A numerical 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~~ **by the map** on file in the Community Development Department.

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 may be addressed or named if necessary for public safety as deemed by the Community Development Director.

(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);
- (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);
- (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. A property owner may request a change in the name of a street by making an application with the Community Development Department.

The Planning Commission shall 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 be held before the 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 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 18th day of March, 2009.

Read for the second time the 1st day April, 2009.

Placed upon its passage the 1st day of April, 2009.

YES: 7 NO: 0

Authenticated by the Mayor the 1st day of April, 2009.

Kathie Eckman

Kathie Eckman, Mayor

ATTEST:

Patricia S Stell

Patricia Stell, City of Bend Recorder

BLANK PAGE

ORDINANCE NO. NS-2120

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 TOTALING 4.9 ACRES LOCATED AT THE NORTHEAST CORNER OF U.S. HWY 20 AND DALTON STREET FROM RESIDENTIAL URBAN STANDARD DENSITY (RS) TO RESIDENTIAL URBAN HIGH DENSITY (RH).

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council held a public hearing on January 19, 2005 to consider the Hearings Officer's findings and record, and determined that the public health, safety, welfare and convenience would be best served by the Zone Change and Plan Amendment. The Bend City Council adopted Resolution of Intent to Rezone No. 2503 on February 2, 2005, subject to two special conditions, in addition to the requirements of Section 33(6) of Zoning Ordinance No. NS-1178. The conditions of Resolution No. 2503 have been satisfied, and the Bend City Council adopts the findings in "Exhibit A".

Section 3. 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 B" and described in "Exhibit C" from Residential Urban Standard Density (RS) to Residential Urban High Density (RH).

Read for the first time the 18th day of ~~April~~ March KM, 2009.

Read for the second time the 1st day of April, 2009.

Placed upon its passage the 1st day of April, 2009.

YES: 7 NO: 0

Authenticated by the Mayor the 1st day of April, 2009.

Kathie Eckman

Kathie Eckman, Mayor

ATTEST:

Patricia S. Stell

Patricia Stell, City of Bend Recorder

EXHIBIT A

CONCLUSIONARY FINDINGS:

BEND AREA GENERAL PLAN

Future Plan updates

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

- ***Regularly scheduled reviews and updates by the city and county. Every five years, beginning in the year 2000, the city and county will review the population growth, the housing mix and acreage needs, the industrial lands absorption, and the commercial lands absorption against the long-term forecasts in the General Plan. Other issues may also be evaluated during these regular views.***

- ***Preparation of more detailed refinement plans for neighborhoods or geographic areas. As provided for in Oregon land use law, the city or county may prepare more detailed land use and development plans for parts of the urban area that have large vacant or under-utilized parcels. Such refinement plans could address future street patterns and other utility systems, housing density and compatible uses, site and design standards, locations for parks, schools, and open space, and other land use issues.***

- ***Evaluation of land use topics required to be reviewed under the Oregon Land Conservation and Development Commissions periodic review of the General Plan. The state requires all local plans to be updated periodically to comply with applicable new state laws, administrative rules, or to incorporate new data available to the state.***

- ***Other state laws or legislative actions that require changes to the Plan outside of the normal periodic review cycle. The state legislature or the voter referendum/initiative process can require changes to local land use plans within a specific time period.***

- ***City or county response to new issues or changes. Issues that were unforeseen during the development of the plan can arise that have an impact on a particular neighborhood or the whole urban area. The city and county officials can direct staff to amend the Plan to address these issues.***

- ***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 a change has the burden to demonstrate a public need and benefit for the change.**

Finding: The applicants seek to change the plan designation and zoning of the subject property from RS to RH. The request for a plan amendment and zone change is based upon a showing of public need and benefit. The record demonstrates that there are 3 primary public benefits associated with the applicants' proposal. These benefits can be summarized as follows:

- An opportunity for development of high-density housing within a short distance (1/2 mile) to areas developed with commercial and retail services. The proximity of the site to developed commercial and retail businesses will reduce the need for automobile travel and facilitate alternative modes of transportation. The site is also located on a major transportation corridor. Allowing increased residential density in this area is consistent with the creation of a future public transit corridor in an area with an adequate street system and infrastructure.

- A benefit to be gained in allowing more housing units in the form of attached and multi-family housing;

- An opportunity to meet an aspirational goal of the BAGP, Housing and Residential Lands Policy 11, by allowing a wide variety of housing types in locations best suited to each housing type, and;

In addition to providing the above stated public benefits, the record demonstrates a public need for the proposed plan amendment and zone change. The record demonstrates that the City has a very limited supply of RM and RH zoned land. The City planning staff concurs with the need for more land for attached and multi-family housing in Bend.

The applicant provides an extensive analysis of existing land inventories to demonstrate a public need for additional RH land within the Bend UGB. The applicant begins with a reference to Table 13 of the Comprehensive Plan (Plan, p. 5-22), which identifies needed and buildable residential acres in the UGB and the number of acres available to satisfy that need (as of 1995). Based on findings made in two previously approved plan amendment and zone change cases (Nauer Enterprises, LLC, PZ-01-320 and Getz/ Arrowhead PZ-02-404), the applicant shows that the numbers used in Table 13 are no longer accurate. The applicants have demonstrated for the record that the City's database of vacant RM and RH lands includes numerous duplicate entries, large numbers of acres that are zoned neither RM or RH and large numbers of acres physically developed with schools, parks and reserved for common areas in planned communities. The applicant offers evidence (based on a study conducted in Nauer PZ 01-320) that "when all the uses that are no longer vacant or are physically developed with uses which are not likely to change during the 20-year planning period (i.e., schools, parks, common areas) are excluded, the number of vacant RM acres drops to 137.94 acres and vacant RH land drops to 76.67 acres.

The applicants also offer evidence that many of the General Plan's assumptions regarding housing opportunities and higher density development have not been borne out in experience for the following reasons:

- First, a pattern of lower density development in the Bend area has resulted in the actual densities falling below that contemplated in the plan. A 1990 report issued by DLCD entitled Urban Growth Management Study: Bend Case Study, demonstrates that actual residential densities have averaged less than 1.86 units per acres. Urban Growth Management Study, Table A-8, p. A-20. Some residential developments, such as Awbrey Glen and Broken Top have included golf courses; others such as Shevlin Commons, have been approved at lower densities to allow for amenities such as open space.

- Second, because of the area taken up by streets, the densities will always tend to occur at densities below the maximum density allowed. Streets can take up as much as 25% of the total land area of a subdivision.

- Third, the City has designated 60 acres of RM land in the Old Town Historic District south of downtown as a National Historic District, which would tend to discourage redevelopment of the neighborhood of largely single-family homes with increased RM-density development.

- Fourth, community pressures have sometimes precluded areas planned for RM lands from being zoned for such uses. A case cited in point was the failure to provide for additional RM lands around the Brookswood commercial center as part of development approved along Brookswood Boulevard near Elk Meadow.

- Finally, as is detailed further below, much of the RH lands have been developed for medical office use.

The record demonstrates that much of the existing RH zoned lands in the vicinity of St. Charles Medical Center have been developed for non-residential uses, as medical-related office space. This area is now part of a City approved Medical Overlay zone that will work to further decrease the acreage of available RH zoned lands. The purpose of the new City ordinance was to formally recognize what has been occurring for years in the RH lands surrounding St. Charles Medical Center – RH lands in the vicinity of the hospital were being used predominantly for medical office use and associated parking.

The applicants have also supplemented the record with a current GIS map (produced by the Deschutes County GIS staff) showing that there is a current deficit of developable RH and RM zoned lands within the City urban growth boundary. Much of the RH and RM zoned lands indicated in the City's database as vacant lands are not available for housing development or housing development at RH and RM densities because of: (1) existing patterns of development; (2) the fact that land is being held for schools and other public purposes; (3) the commitment of land for parking and other infrastructure committed to other developed land uses; and (4) the designation of residential lands within the Old Town Historic District and the Deschutes River waterway overlay zone.

The applicant also cites Bend's significant and ongoing population growth as a basis for the identified need for additional high density housing units. The record demonstrates that the City's population growth is occurring at a much more rapid rate than anticipated by the comprehensive plan. This was attested to by the City Planning Division in its staff report regarding expansion of the Urban Growth Boundary to include the Juniper Ridge site for industrial use:

> "Since Bend's current comprehensive plan was adopted in 1998, the City's population growth has been much faster than was forecast. (The July 1, 2003 population estimate of 62,900 is only slightly less than the 63,591 that was forecast for the year 2015.) With this rapid population growth, there has been a corresponding acceleration in the rate at which buildable lands for housing have been developed to meet that growth. Although the City's inventory of buildable lands for housing has not been updated since 1998, there is serious doubt that the 20-year land supply for housing required under Goal 10 exists inside the UGB at present. Rezoning any residential lands for industrial use would only exacerbate this problem and likely result in non-compliance with Goal 10." *Juniper Ridge UGB Expansion Staff report* at page 30.

The Hearings Officer finds that the applicant has identified a public need and benefit for the designation of additional RH zoned lands within the urban growth boundary.

GENERAL PLAN - Chapter 5/Housing and Residential Lands

It is a goal of the General Plan to accommodate the varied housing needs of citizens with particular concern for safety, affordability, open space, and a sense of community.

Just as the city and urban area population has had periods of rapid growth, so has the supply of housing grown to keep pace with the population. Bend has had three significant housing booms since it was incorporated in 1905. The first was in 1910-1920 when the big sawmills started up and Bend's population went from 500 to more than 5,000 in a few years. The second housing boom did not come for another 50 years when Central Oregon experienced a large in-migration of retired persons in the 1970s. The third, and biggest, of the housing booms hit the Bend urban area in the 1990s.

Finding: The above-cited plan text requires a showing of the following two elements; 1) the need for housing variation and 2) the need for a variation of housing with relation to the surrounding area.

The Hearings Officer finds that the City needs additional high-density residential lands to meet its projected housing needs. The applicants have demonstrated that the City has small amounts of land zoned RM and RH left in the UGB.

The record demonstrates that the City has a deficiency of land that is zoned for needed multi-family units. The applicants have provided GIS data to show that the City does not have a sufficient inventory of buildable land to meet its stated general plan goal of 328 acres of land for multi-family dwellings. The applicants' data shows that the City has only 130-acres of buildable land that is available for multi-family housing development. The applicants offer data to show that approximately 120 acres of land are zoned RM and less than 10 acres are zoned RH. This demonstrates that additional land is needed to meet the General Plan's stated intent of providing a variation of housing types.

The record demonstrates that the subject property is located in an area where it can accommodate the City's need for a variety of housing types with particular concern for safety, affordability, open space and a sense of community. Commercial and retail areas located to the west of the site are within walking distance and would benefit those who do not own a car. In addition, the site is located near the intersection of two major transportation corridors in the community – Highway 20 and 27th Street -- that are likely to be included in any public transit system routes. (See, e.g., Bend TSP, Figures 13 and 14 with respect to 5-Bus route and 9-Bus route alternatives.) Increased housing densities within walking distance of proposed bus routes would help support a transit system.

The applicants' proposal would promote affordable housing in that the small lot sizes would result in lower land costs and smaller houses, which would allow for home ownership options at a relatively low cost. The multi-family lots would allow for affordable housing for those who are only able to procure housing by renting.

The Hearings Officer finds that the proposed change in plan designation and zoning from RS to RH is consistent with City goals of accommodate the varied housing needs of citizens.

GENERAL PLAN - Chapter 5/Housing and Residential Lands

FUTURE TRENDS AND FORECASTS

> ***attached housing <u>of all types</u>, for both owners and renters, will make up a higher percentage of the housing supply;***
>
> ***<u>as the "baby boomers" move toward retirement after the turn of the century, there will be more demand for smaller homes and probably for yards that need less maintenance...</u>***
>
> ***Attached housing. <u>The percentage of attached housing units primarily duplexes, triplexes, and apartments—needs to be higher than in the</u>***

<u>past</u> to match the needs of younger workers and families, and to provide "transitional" housing for people moving into the area before they buy homes. Attached housing is expected to provide more than one-third of the future housing. Ways the city will plan for more attached housing are:

- ***reducing the minimum lot size in the multifamily zones;***
- ***reducing the amount of land required for second and additional units on a site;***
- ***permitting apartments outright as a secondary use in commercial zones;***
- ***extending sewer lines to parts of the urbanizing area planned for multifamily development;***
- ***<u>adding more than 100 acres of multifamily land around new commercial centers</u>; and adding a third zoning district for multifamily housing.***

<u>Finding:</u> The Hearings Officer finds that the applicants' proposal is consistent with the above referenced plan text because it proposes to change the subject property's plan and zoning designation in a manner that will accommodate high-density residential development.

The above stated General Plan language recognizes a growing need for land that is zoned to accommodate multi-family residential uses. The record clearly reflects a deficiency of land within the UGB that can accommodate needed multi-family housing units. The Hearings Officer finds that the City cannot meet its goal of providing for a variety of needed housing with the current deficiency of buildable RM and RH land in the UGB. The applicants' proposal would further the City's goal of providing a variety of different housing types.

The record demonstrates that much of the land that has been planned for multi-family use in general (and RH zoning in particular) is not being utilized for that purpose. This includes lands within the Old Town Historic District immediately south of downtown, the areas around the hospital and the area around the Brookswood Commercial Center.

The General Plan calls for "adding more than 100 acres of multi-family development near new commercial centers." While the term "new commercial center" is not expressly defined, the applicants' proposal appears consistent with that goal. The subject property lies in close vicinity to the concentration of commercial development surrounding the intersection of Highway 20 and 27th Street that includes the Crossroads commercial area, the Forum Shopping Center, the recently developed Twin Knolls commercial area and the Pilot Butte Theater complex. This area serves as a hub for the commercial needs of a growing eastside community. The proposed change to RH from RS in would allow for development of a more dense residential development in close proximity to the services provided in the adjacent "eastside" commercial center.

Based on the findings above facts, the Hearings Officer finds that there is a demonstrable need for additional RH land. That additional land will create a benefit for the City of Bend and its growing population.

Residential compatibility

1. ***Future Development and local development standards shall recognize and respect the character of the existing area.***

Finding: The Hearings Officer finds that the applicants' proposal meets this criterion because the proposed change in plan designation and zoning will allow for future development that will recognize and respect the character of the existing area. Land to the west is zoned RM and RH and is under development with a residential subdivision and future office buildings. Land to the north and the west is zoned RS. Land due east is vacant or developed with an existing plant nursery. Land to the south (across Highway 20) is zoned RL, Low Density Residential, and sparsely developed with existing residences and structures. Land to the north and northeast is zoned RS and includes developed residential lots in the Mason Estates subdivisions. The applicants have also noted that due west of the site, on the opposite side of the Arrowhead Subdivision, is zoned commercial (CL, Limited Commercial) and developed with a number of retail, office, and service commercial uses.

The land uses occurring in the surrounding area will not be impacted by the increase in density resulting from a change in plan designation and zoning. The proposed change in plan designation and zoning is consistent with a portion of the Arrowhead Subdivision to the west. The record shows the site abuts the RH-zoned portion of Arrowhead along its western boundary. Land due south that is zoned RL is sparsely developed at this time and would not likely be impacted by a more dense residential development to the north given that the property due south of the site abuts Highway 20 and additional RM-zoned land to the west that is being developed with multi-family residential building. The commercial plant nursery properties to the north and east are not likely to be impacted by the proposed change in plan designation and zoning because of the nursery is a commercial venture and does not have operating characteristics that would be impacted by the presence of higher density residential development.

RH zoning would also provide for a buffer from Highway 20 between the highway and the adjacent RS zoned land to the north and northeast. It would also continue the pattern of RH density adjacent to the highway established by the Arrowhead subdivision property to the west.

11. ***Residential areas shall offer a wide variety of housing types in locations best suited to each housing type.***

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

Finding: The Hearings Officer finds that the applicants' proposal is consistent with Policy 11 and Policy 29.

The proposal meets Policy 11 because it proposes a change in residential plan designation and zoning that will allow high-density housing in a location best suited for its type. The proposed development is located adjacent to an arterial road and relatively close to commercial and employment centers along 27th Street. The proposed zoning of RH would also be consistent with the application of RH Zoning to property due west and abutting the site in the Arrowhead Subdivision.

The proposal also meets Policy No. 29 with respect to access to arterial roads and public open space. The applicants' request is to rezone five acres of RS to RH facilitates the development of the high density housing in an area that is bounded by arterials and that is close to a significant commercial and employment center located in the vicinity of 27th St. and Highway 20. The subject property is located in a transition area between commercial uses and single-family residential uses to the north. The proposal will allow the subject property to be developed with attached housing units, providing affordable housing along the Highway 20 and 27th Street commercial corridors and a convenient distance to the commercial uses in those corridors. The subject property is also located nearby one of the community's major employment centers, the St. Charles Medical Center and its associated medical services.

The proposal to rezone the entire five-acre parcel to RH would represent an orderly extension of the RH zoning that was allowed on the Arrowhead subdivision property to the west. The proposed area of RH zoning would extend the band of RH zoning allowed on the Arrowhead property that borders the entire westerly border of the subject property.

Policy 29 requires medium and high-density residential developments to be located where they have good access to public open spaces. The applicant offered supplemental evidence at this public hearing to meet this requirement. The record demonstrates that this proposed high density development is located in an area with relatively good access to public parks and open spaces.

General Plan Policies - Chapter 5/Housing and Residential Lands

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

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

Finding: The Hearings Officer finds the applicants' proposal is consistent with the above stated plan policies to the extent they are applicable to the subject application. There are no existing or planned trails designed to cross the subject property. The City's "Bicycle and Primary Trail System Plan" identifies a bike lane planned for Highway 20, but the proposed plan amendment and zone change will not adversely affect the identified bike lane designation.

The applicants' proposed development plan shows proposed roads would connect with those extending from the Arrowhead Subdivision to the west and with Aurora St to the east. Any further review of block length would occur at the time an application for a land division is proposed.

GENERAL PLAN - Chapter 5/Housing and Residential Lands

Public Utilities and Services.

42. 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.

43. Residential development shall be coordinated with other land use elements and community facilities, which are consistent with projected housing densities.

Finding: The Hearings Officer finds that the applicants' proposal is consistent with the above stated plan policies. The record shows that community water and sewer services can be provided to serve the proposed development at the residential density limitations of the RH zoning district. City water and sewer services (as well electricity, cable, gas, phone, etc) can be extended to the subject property from the Arrowhead subdivision to the west. The record contains "Ready to Serve" letters from various public utility agencies identifying the capacity to serve development of the subject property at the density limitations of the RH zone.

The record also demonstrates that residential development can be coordinated with other land use elements and community facilities consistent with the proposed RH zone densities. The subject property provides adequate opportunities for the extension of the City street system. The property can connect to Highway 20 from Dalton Road (at the western boundary) and has the potential for a public street connections with the Arrowhead subdivision (to the north and west) and Mason Estates (via Aurora Drive to the east). The property also borders Bellevue Drive, a private street connection to the west.

The subject property is located near one of the City's largest commercial and retail centers providing both employment opportunities and the services needed to support residential development. The subject property, zoned for RH development, can provide a safe, healthful, convenient urban living environment that is consistent with the intent of the General Plan and the purpose statement of the RH zone.

Bend Area General Plan

Chapter 7: Transportation Systems
Transportation and Land Use

Objectives: ***To ensure that future development, including redevelopment will not interfere with the completion of Bend's Transportation System.***

Policies:

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

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 trip lengths.***

Finding: The Hearings Officer finds the applicants' proposal to be consistent with the above stated plan policies. As referenced above, the property affords multiple opportunities for connections to the City street system. The property is located on Highway 20 and near the 27th St. corridor, an arterial street. The property has the potential for access to Highway 20 from Dalton Street to the west. It can also connect to Highway 20 through a private street connection (Bellevue Drive) that is linked to Benson Way (located a short distance to the west). The property also has the potential for a public street connections with the Arrowhead subdivision (to the north and west) and Mason Estates (via Aurora Drive to the east). The adjacent Arrowhead subdivision connects to 27th Street at a signalized intersection at Forum Drive and at Grand Way (where a signal is planned to be installed). The subject property can also connect with

Highway 20 to the east through the existing public street system (Aurora Drive to Providence Drive).

The subject property is located near commercial services in the Crossroads and Forum shopping centers to the west at the Highway 20 and 27th Street intersection. In addition to providing commercial services to the residents of the subject property, the commercial establishments provide employment opportunities to the residents. Furthermore, the subject property is located a short distance south on the 27th Street corridor from the St. Charles Medical Center and its associated professional services, which taken together constitute a major employment center for the community.

The Hearings Office finds that the proposal supports alternatives to vehicular traffic in two ways: (1) by locating residential uses within walking distance of commercial and employment centers and (2) by locating high-density residential uses in close proximity to planned public transit routes. High density residential development in this area provides residents with a housing location where it would be possible to function without a vehicle. Given the proximity of the site to both employment opportunities and major commercial and retail areas, it is reasonable to assume that pedestrian activity to and from the site could be a major form of transportation.

CONFORMANCE WITH OREGON ADMINISTRATIVE RULES
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.

Finding: OAR 660-012-0060 (also known as the Transportation Planning Rule, or TPR) applies to both amendments to comprehensive plans and to zone changes (as changes to "land use regulations"). The rule requires that if a proposed plan amendment or zone change is shown to "significantly affect" a transportation facility, that the plan amendment be done in a manner that ensures that the proposed plan amendment can be implemented in a manner that is consistent with the capacity of affected transportation facilities. OAR 660-012-0060(1).

In this instance, the affected transportation facilities include the City street system and Highway 20, a state highway under the jurisdiction of the Oregon Department or Transportation ("ODOT"). Primary access to and from the subject property will be via local City streets. The record demonstrates that the subject property provides adequate opportunities for connections to both state Highway 20 and the City's system of arterials and collectors.

The TPR (OAR 660-012-0060(2)) identifies four circumstances under which a plan or land use regulation amendment will be deemed to have "significantly affected a transportation facility". With respect to paragraphs (2)(a) and (b) cited above, the proposed plan amendment and zone change does not include any proposal to also change the functional classification of a transportation facility or the standards applicable to any affected streets. The classification of the affected streets – Highway 20, 27th Street and the nearby local streets (Bellevue Drive, Benson Drive and Forum Drive) – as set forth in the City's TSP will not be altered.

OAR 660-012-0060(2)(c) states that a proposed plan amendment significantly affects a transportation facility is it 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. OAR 660-012-0060 (2)(d) states a proposed plan or land use regulation amendment significant affects a transportation facility if it would reduce level of service of the facility below the minimum acceptable level identified in the TSP.

The record demonstrates (based on medical office uses, the worst case traffic analysis under new zoning) that the proposal would violate ODOT's capacity standards for the Highway 20/27th Street intersection. Under OAR 660-012-0060(2)(d) this is grounds for a finding that the proposed plan amendment/zone change would significantly affect a traffic facility.

The TPR sets forth four different strategies of addressing such circumstances,

including the option of "limiting allowed land uses to be consistent with the planned function, capacity, and performance standards of the transportation facility. OAR 660-012-0060(1)(a). The TPR requires that local jurisdictions include in their zoning ordinance a process to apply conditions to development proposals to minimize impacts and protect transportation facilities. OAR 660-012-0060(2)(e).

The applicants have not submitted a specific development proposal with their proposed comprehensive plan amendment and zone change application. As a result, their proposal was initially evaluated against the highest potential for traffic impacts in the RH zone. The applicants originally submitted a traffic impact analysis that addressed the impacts of full build out of the site for "medical office" uses. The City Traffic Engineer determined that levels of traffic projected in this initial TIA could not be accommodated and were inconsistent with the standards and requirements of the City's transportation system plan. Similarly, the Oregon Department of Transportation commented that the applicant had projected traffic beyond its stated mobility standards and inconsistent with the above stated criteria.

On September 16, 2004, the applicants submitted a revised traffic impacts analysis that evaluated traffic impacts associated with full build-out of the site as high density residential (and not medical office) development. The revised study demonstrates that development of the subject property for residential uses can be accomplished in a manner that is consistent with the identified function, capacity and identified levels of service of the affected transportation facilities. At the same time, the applicants agreed to accept a mechanism ("Resolution of Intent to Re-zone) that would limit development of the site to the residential uses.

The City Traffic Engineer comments that the applicants' proposal will have an impact on the intersection of Highway 20 and 27th street that can be accommodated by adding additional turn lanes at that intersection (see comments dated September 30, 2004). As a result, the applicant has been asked to make a $1,197.70 proportionate share contribution under City Street Policy 6 for the costs of adding a southbound right turn lane and an eastbound right turn lane to that intersection. This proportionate share contribution shall be incorporated as a condition of approval.

The Hearings Officer finds that, in this instance, land uses can be limited in a manner that is consistent with the planned function, capacity and level of service of the affected transportation facilities. The Hearings Officer recommends that, as a condition of approval, the applicant be limited to developing the site for residential uses and that the applicant make the proportionate share contribution (for the Highway 20/27th Street intersection) identified above.

The City Traffic Engineer has also commented that the applicants should be required to make specified street dedications in connection with the subject application. The Hearings Officer agrees with the applicants that it is not appropriate to require specific dedications of right-of-way at this juncture. The proposed plan amendment and zone change (without a specific development proposal) do not create traffic impacts that justify the required dedications. A future land division and development plan will provide

the opportunity for the City to require the dedications identified by the City Traffic Engineer.

The Hearings Officer finds the applicants' proposal to be consistent with the requirements of the Transportation Planning Rule provided that development is limited to residential uses as specified herein.

CONFORMANCE WITH CITY OF BEND ORDINANCE CHAPTER 10; 10.10.33(2), STANDARDS FOR ZONE CHANGE

A. That the change conforms with the Comprehensive Plan. Specifically, the change is consistent with the Plans intent to promote an orderly pattern and sequence of growth.

Finding: The proposal will result in an orderly pattern and sequence of growth as those terms have been interpreted in previous decisions by the City Hearings Officers. The proposal will promote a compatible physical relationship between zoning districts and uses by providing a transition area or buffer between commercial uses along the Highway 20 transportation corridor and the 27th Street commercial corridor and the existing residential development to the north and northeast of the subject property. There is no significant buffer now between the adjacent commercial uses and the existing RS zoning of the subject parcel.

With its existing RS zoning, the subject property does not have a buffer from the more intensive uses planned for the adjacent property to the west and traffic on Highway 20 to the south. The property is therefore not desirable for single-family development as originally proposed by the plan. The multi-family housing development proposed to front on Highway 20 would provide a logical transition to the less intensive residential uses located further back on the property from Highway 20.

An orderly pattern and sequence of growth also requires that development not outstrip public facilities and services. Sewer and water can be extended to the property line of the subject property by the development of the adjacent Arrowhead subdivision property to the west. In addition, the Arrowhead subdivision is extending two local roads to the edge of the property that can serve the subject property.

The transportation facilities that will serve the property include Forum Road, Bellevue Drive, Benson Way, 27th Street and Hwy 20. Forum and Bellevue Drive are local public roads. Benson Way is a private local road. 27th Street is a designated arterial. Highway 20 is classified as a Statewide Highway and as a Freight Route. The site is directly accessed from Highway 20 via Benson Way and Bellevue and from 27th Street by way of Forum Road and "B" Loop and Grand Way and Bellevue Drive across the Arrowhead subdivision. The applicants' revised traffic study concluded that the predicted worst-case residential traffic from the development can gain access across the Arrowhead subdivision to and from 27th Street at existing intersections that are or are planned to be signalized without the need for off-site mitigation.

With respect to supporting services, the property is located within the Bend City Limits and therefore will be served by the Bend Police and Fire Departments. The new police station is located about 1 ½ miles west of the property off of Highway 20. In addition, the nearest fire station at Hamby Road is located within 1½ miles from the property.

B. That the change will not interfere with existing development on, development potential, or value of other land in the vicinity of the proposed action.

Finding: Land in the area surrounding the subject property is developed with a mixture of commercial and residential development at various densities. Land to the north and northeast is developed with residential uses including an apartment complex and single-family residences. Land to the west is developed with commercial uses along the Highway 20 and 27th Street corridors. Land to the south is developed with a mixture of commercial developments and to the southeast; an apartment complex has been recently approved. To the east, abutting uses include a single family home on a large parcel and a commercial plant nursery is located immediately adjacent to the subject property.

The applicant's proposal will allow residential development at a density greater than that of the residential development located to the east, it will provide a transition area or buffer between those residential properties and the commercial center to the west.

The Hearings Officer finds that the proposed RH zoning is unlikely to "interfere" with the value of surrounding properties. First, the uses allowed on the subject property will be limited to residential or residential-type uses. Such uses do not in and of themselves produce the kinds of impacts that would be expected to lower property values in an urban area. Second, the increased housing density on the site is intended to be and can be arrayed on the site in a manner that would minimize any adverse impacts from the increased density, such as by locating the larger lots that would house the most dense housing in areas away from the RS-zoned properties to the east and north. Moreover, the properties to the east and north are currently used for commercial purposes, so an increase in housing density should not have any impact on the land's value under its current use.

In addition, land values overall in the Bend area have a long history of steady increase. Much of this increase appears to have been driven by high population growth rates, which are expected to continue. In March 2003 the Deschutes County Board of Commissioners adopted a coordinated population forecast for the county and each of its cities, which forecast a 2025 Bend population of 102,750 (compared with a 2003 population of 62,900). Although this coordinated forecast was later repealed, a revised, draft, county-wide forecast includes a 2025 population estimate for Bend of over 107,000. Over the last five years, the total, real market value of taxable property in the City of Bend has increased significantly. For Deschutes County as a whole, there was

an increase of 59.87% during the same period. Although the rate of increase may vary from place to place, there is no reason to expect that the overall upward trend in the Bend area's property values generally, and in the vicinity of the subject property, will not continue.

C. That the change in classification for the subject property is consistent with the purpose and intent of the proposed zone classification.

Section 12. Urban High Density Residential Zone, or RH Zone.

(1) Purpose. This zone is intended to provide for high-density multiple-family developments in locations close to shopping and services, transportation or public open space, and, in appropriate locations to provide a transitional use area between residential areas and other less restrictive zones.

Finding: The Plan further states that "medium and high density residential developments shall be located where they have good access to arterial streets and be near commercial services, employment and public open space to provide the maximum convenience to the highest concentrations of population." Housing and Residential Lands Plan Policy No. 29, p. 5-33.

Applicants' proposal to rezone the property to RH is consistent with the purpose of the RH Zone. As proposed, it will provide for high-density multiple-family development along Highway 20 frontage in an area that is close to shopping (the Forum shopping center and Crossroads to the west), services (Forum shopping center, Crossroads and other establishments at the Highway 20/27 intersection and medical services at St. Charles Medical Center nearby) and transportation facilities (Highway 20 and 27th St. and likely public transit routes). In addition, it will provide for a transition and buffer from the busy Highway 20 corridor to the single-family residential lands located to the north.

D. That the change will result in the orderly and efficient extension of provisions of public services. Also, that the change is consistent with the City of Bend policy for provision of public facilities.

Finding: The proposal will result in the orderly extension of public services and will be consistent with the City's policies for the provision of public facilities. The property can be served by community sewer and water, which have been or are being extended to the west property line by the adjacent Arrowhead subdivision. The property is located within the Bend City Limits and, therefore will be served by the Bend Police and Fire Departments, both of which are located nearby.

The property is also located within the boundaries of the Bend-LaPine School District. In recent years, the School District has been able to secure additional funding to build new school facilities to keep up with growth in the Bend area.

The applicants revised traffic study (dated September 16, 2004) demonstrates that, at worst-case residential densities- the development will not overburden surrounding transportation facilities.

E. That there is proof of a change of circumstance or a mistake in the original zoning.

Finding: The Hearings Officer finds that the applicants have demonstrated proof of the following changes in circumstances which are sufficient to justify the proposed zone change:

- Extension of sewer and water service to this area,

- Absorption of almost all eastside RH zoned lands for mostly medical and office development,

- Development of improved street systems that support higher density development and emergency service traffic – development of new intersection control devices/signals at Neff and 27th, Purcell and HWY 20, Bear Creek and 27th (under construction), and Forum and 27th (under construction).

- A reduced ability to maintain and protect a suitable environment for family living due to the heavy commercial uses adjacent to the subject property

- The addition of a General Plan policy to the Plan stating "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 trip lengths."

In addition, much of the existing RH-zoned land in the vicinity of St. Charles Medical Center has been developed for non-residential uses, as medical related office space. This area is now part of a City approved Medical Overlay zone that will work to further decrease the acreage of available RH zoned lands. The purpose of the City ordinance (NS-1914) was to recognize what had been occurring for years in the RH lands surrounding the hospital. RH zoned lands in that area were developing for medical office and not residential uses.

(6) Resolution of Intent to Rezone. If, from the facts presented and findings and the report and recommendations of the Approval Authority as required by this section, the City Council determines that the public health, safety, welfare and convenience will be best served by a proposed change of zone, the City Council may indicate its general approval in principal of the proposed rezoning by the adoption of a "Resolution of Intent to Rezone." This resolution shall include any conditions, stipulations or limitations, which the City Council may feel necessary to require in the public interest as a prerequisite to final action, including those provisions which the City Council may feel necessary to prevent speculative holding of the property

after rezoning. The fulfillment of all conditions, stipulations and limitations contained in said resolution, on the part of the applicant, shall make such a resolution a binding commitment on the City Council. Such a resolution shall not be used to justify spot zoning, to create unauthorized zoning categories by excluding uses otherwise permitted in the proposed zoning. Upon completion of compliance action by the applicant, the City Council shall by ordinance effect such rezoning. The failure of the applicant to meet any or all conditions, stipulations or limitations contained in the resolution, including the time limit placed in the resolution, shall render the resolution of intent to rezone null and void, unless an extension is granted by the City Council upon recommendation of the Planning Commission.

(a) Content of Site Plan. Where a site plan is required pursuant to Section 23, it shall include location of existing and proposed buildings, structures, accesses, off-street parking and loading spaces and landscaping; topography, existing and proposed; mechanical roof facilities if subject property is so oriented as to become part of the view from adjacent properties; architectural perspective, layout and all elevations drawn without exaggeration except where noted including locations, area and design of signs and all landscaping.

(b) Resolution of Intent Binding. The fulfillment of all conditions, stipulations and limitations contained in the resolution of intent, on the part of the applicant, shall make the resolution binding on the City Council. Upon compliance with the resolution by the applicant, the City Council shall by ordinance effect such reclassification.

(c) Resolution of Intent Void Upon Failure to Comply. The failure of the applicant to substantially meet any or all conditions, stipulations or limitations contained in a resolution of intent, including the time limit placed in the resolution, shall render said resolution null and void, unless an extension is granted by the City Council upon recommendation of the Planning Commission.

Finding: The applicants have justified the proposed plan amendment and zone change based upon a strong showing that the City does not have an adequate supply of RH zone land available for high-density residential uses. The applicants have also evaluated traffic impacts from the subject property based on the assumption that development will be limited to the residential uses permitted in the RH zone. As a result, the Hearings Officer recommends that the City Council utilize its "resolution of intent to re-zone" mechanism to insure that the subject property is developed consistent with the assumptions and requirements of this decision. Development of the subject property should be limited to residential uses as specified in the Hearings Officer's proposed conditions of approval.

CONFORMANCE WITH STATEWIDE PLANNING GOALS

Finding: The Statewide Land Use Planning Goals are set forth below in bold followed by findings addressing how the proposal complies with those goals.

1. **Citizen Involvement.** The proposal complies with this goal as the City's land use process provides for public notice of proposed zone changes and plan amendments. The City has provided notice of the proposal through individual mailed notice, publication and require the applicant to post notice on the subject property. There will be at least two public hearings on the proposal. Furthermore, the applicant conducted a public meeting as required by City ordinance, thereby providing an additional avenue for public involvement.

2. **Land Use Planning.** The proposal complies with this goal. The land use planning process and policy framework will be applied in this application and will be based upon factual information supplied by the applicant.

3. **Agricultural Lands.** The proposed plan amendment and zone change does not affect any lands zoned or designated for agriculture.

4. **Forest Lands.** The proposed plan amendment and zone change does not affect any lands zoned or designated for forest use.

5. **Open Spaces, Scenic and Historic Areas, Natural Resources.** The proposed plan amendment and zone change does not affect any Goal 5 resources.

6. **Air, Water and Land Resources Quality.** The proposal complies with Goal 6. There are no surface water resources that could be impacted by the proposal, and wastewater will be disposed of through the City's permitted wastewater disposal system. This proposal will not lead to increased air pollution, because increased density and intensity of development in an area close by commercial and employment centers will tend to decrease automobile trips.

7. **Areas Subject to Natural Disasters and Hazards.** No natural disaster or hazard areas are identified in the area of the subject property.

8. **Recreational Needs.** This goal does not apply to the subject property as the property is not planned for future park or recreation use and is not being proposed for destination resort use. According to the Bend Area Urban Bicycle and Primary Trail System Plan, there are no existing or proposed trail connections across the subject property.

9. **Economic Development.** The proposal complies with this goal. The plan re-designation to a higher density will result in higher density,

affordable residential development in close proximity to commercial uses and employment.

10. **Housing.** The proposal complies with this goal. The proposal will provide for a variety of housing types and prices in an area well suited to high-density development.

11. **Public Facilities and Services.** The proposal complies with this goal. The subject property is within the UGB and is served with adequate urban facilities and services, including water, sewer, electricity, police and fire.

12. **Transportation.** The proposal complies with this goal as established in addressing compliance with the Transportation Planning Rule.

13. **Energy Conservation.** The proposal complies with Goal 13 in that it will facilitate high-density residential development where adequate infrastructure and access to commercial services and employment already exist.

14. **Urbanization.** The proposal complies with Goal 14 because the subject property is located within an urban growth boundary and will promote urban densities and uses.

Goals 15 through 19 are inapplicable because they relate to river, ocean and estuarine resources which are not located within the area affected by the proposed plan amendment and zone change.

CONCLUSION AND RECOMMENDATION:

Based on the forgoing Findings of Fact and Conclusions of Law, the Hearings Officer concludes the proposed plan amendment and zone change from RS to RH can meet all applicable criteria for approval. The Hearings Officer **recommends approval** subject to a Resolution of Intent to Rezone pursuant to Section 10-10.33 of the Bend Zoning Ordinance and the following **conditions of approval**:

1. Applicants shall be restricted to making a land division application anticipating residential development, and receiving final subdivision plat approval for residential development or final occupancy of multi-family structures with more than four units. The only exception to this shall be for uses that are allowed both in the RS zone and in the RH zone as it exists now and in the future. Any subdivision approval shall be conditioned accordingly.

2. Pursuant to Street Policy 6, applicants shall be required to make a proportionate share contribution of $1,197.70 toward the construction of the right-hand southbound turn lane on 27th Street and the right-hand, southbound turn lane on Highway 20.

This decision becomes final twelve days after the date mailed, unless appealed by a party of interest.

Dated this 15 day of November, 2004

Myles A. Conway
City of Bend Hearings Officer

Mailed this 15TH day of November, 2004

Shannon Levine
City of Bend Planning Technician

EXHIBIT B



PZ 04-338 Plan Amendment and Zone Change (RS to RH)

Subject Property (Former boundary of taxlots 171235CA03000 and 171235CA03700 at time of original land use application in 2004)

EXISTING PLAN DESIGNATION & ZONING:

RH RM RS

Imagery acquired June 2000.
Map prepared March 10, 2005

EXHIBIT C

PARCEL 1:

In Township 17 South, Range 12 East Of The Willamette Meridian, Deschutes County, Oregon

Section Thirty-five (35): A parcel of land in the Northeast One-quarter of the Southwest One-quarter (NE1/4 SW1/4), more particularly described as follows: Beginning at a point in the West line of the said Section subdivision South 0° 45' East 527.6 feet from the Northwest corner of said subdivision and running thence South 0° 45' East along said subdivision 776.3 feet to the North right of way of State Highway, thence Easterly along said right of way line 584 feet to a line parallel to and 740.5 feet West to the North and South centerline of said Section 35; thence North along said parallel line, 570 feet to the South line of a 50 foot roadway; thence North 81° 13' West along said roadway 317.1 feet; thence North 0° 36' West along said roadway 108.2 feet to the end of said road; thence North 85° 47' West 280.1 feet to the place of beginning.

EXCEPTING THEREFROM the East 264.2 feet of the above described tract; and also EXCEPTING THEREFROM that portion of the S.W. corner of said Northeast One-quarter of the Southwest One-quarter (NE1/4SW1/4) described as follows: Beginning at the Southwest corner of the NE1/4SW1/4; thence Northerly along the West boundary of said NE1/4SW1/4 to the undesignated sub-lateral which supplies irrigation water to the Northwest One-quarter of the Southwest One-quarter (NW1/4SW1/4) of Section 35; thence Southeasterly along said undesignated sub-lateral to an intersection with Lateral A-6 of the Central Oregon Irrigation District; thence Southeasterly along said Lateral A-6 to an intersection with the South boundary of the NE1/4SW1/4 of said section; thence Westerly along said South boundary of the NE1/4SW1/4 to the point of beginning.

PARCEL 2:

In Township 17 South, Range 12 East Of The Willamette Meridian, Deschutes County, Oregon

Section Thirty-five (35): That portion of the S.W. corner of said Northeast One-quarter of the Southwest One-quarter (NE1/4SW1/4) described as follows: Beginning at the Southwest corner of the NE1/4SW1/4; thence Northerly along the West boundary of said NE1/4SW1/4 to the undesignated sub-lateral which supplies irrigation water to the Northwest One-quarter of the Southwest One-quarter (NW1/4SW1/4) of Section 35; thence Southeasterly along said undesignated sub-lateral to an intersection with Lateral A-6 of the Central Oregon Irrigation District; thence Southeasterly along said Lateral A-6 to an intersection with the South boundary of the NE1/4SW1/4 of said section; thence Westerly along said South boundary of the NE1/4SW1/4 to the point of beginning.

ORDINANCE NO. NS-2121

AN ORDINANCE AMENDING BEND CODE CHAPTER 6 SECTION 6.345 ESTABLISHING THE PENALTY FOR **VIOLATIONS RELATED TO** ROLLER-SKATING, SKATEBORDING OR USING SLEDS **OR SIMILAR DEVICES** ~~IN THE DOWNTOWN DISTRICT~~

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. Bend Traffic Code Section 6.345 is amended to read:

6.345 Roller-skates, Skateboards, Sleds, etc. No person shall:

(1) Use streets for traveling on downhill skis, toboggans, sleds, or similar devices, except on a designated play street.

(2) Use roller-skates, skateboards, coasters or similar devices in the downtown District as defined in Bend Code 6.910.

(3) Use roller-skates, skateboards or coasters on any streets except to cross at a crosswalk or as authorized by the City.

(4) A violation of any subsection of this section is a Class B civil infraction.

Read for the first time the 18th day of March, 2009.

Read for the second time the 1st day April, 2009.

Placed upon its passage the 1st day of April, 2009.

YES: 6 NO: 1

Authenticated by the Mayor the 1st day of April, 2009.

Kathie Eckman

Kathie Eckman, Mayor

ATTEST:

Patricia Stell

Patricia Stell, City of Bend Recorder

BLANK PAGE

ORDINANCE NO. NS-2122

AN ORDINANCE AMENDING THE CITY OF BEND DEVELOPMENT CODE BY CHANGING THE TEXT OF CHAPTERS 1.1, 1.2, 1.3, 2.0, 3.6, 4.1, AND 4.2 TO CLARIFY DEFINITIONS, ELIMINATE INCONSISTENCIES, AND ENSURE THAT THE CITY'S DEVELOPMENT REVIEW PROCEDURES CONFORM TO STATE LAW AND THE CITY'S CUSTOMER SERVICE OBJECTIVES.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council has held a public hearing, considered the testimony, the record, and the Planning Commission's recommendation, and has found that there is a public need and benefit for the proposed text amendments to the City of Bend Development Code. The Bend City Council adopts the Recommendation of the Planning Commission, approved on March 23, 2009, file number PZ 08-309.

Section 2. Chapters 1.1, 1.2, 1.3, 2.0, 3.6, 4.1, and 4.2 of the City of Bend Development Code (Ordinance NS-2016) are hereby amended by changing the text therein as detailed in "Exhibit A".

Section 3. The Bend City Council adopts the Planning Commission's "Findings for Development Code Text Amendment" as findings in support of this ordinance.

Read for the first time the 20th day of May, 2009.

Read for the second time the 3rd day of June, 2009.

Placed upon its passage the 3rd day of June, 2009.

YES: 6 NO: 1 ABSTAIN: 0

Authenticated by the Mayor the 3rd day of June, 2009.

Mark Capell, Mayor Pro Tem

Attest:

Patricia Stell, City of Bend Recorder

EXHIBIT A

City of Bend
Development Code
Tune-Up Package #1A

City Council – 2nd Reading
June 3, 2009

Prepared by:
City of Bend Planning Division

Note:
Text in underlined typeface is proposed to be added.
Text in ~~strikethrough~~ typeface is proposed to be deleted.
Text in ***Bold Italic*** typeface is staff commentary.
*** Indicates where text from the existing code has been omitted.

Chapter 1.1 General Administration

Sections:

1.1.100	**Severability**
1.1.200	**Compliance and Scope**
1.1.300	**Consistency with Plan and Laws**
1.1.400	**Use of a Development**
1.1.500	**Pre-Existing Approvals**
1.1.600	**Building Permit and Certificate of Occupancy**
1.1.700	**Official Action**
1.1.800	**Fees**
1.1.900	**Miscellaneous Provisions**

***

1.1.200 Compliance and Scope.

A. Compliance with the Provisions in the Development Code. Land and structures may be used, developed by construction, reconstruction, alteration, occupancy, and use, or otherwise, only as this Development Code ("Code") or any amendment thereto permits. No plat shall be recorded or no ~~building~~ permit shall be issued without compliance with the provisions of this Code.

***

C. Most Restrictive Regulations Apply. Where this Code contains conflicting standards, or ~~Where this Code~~ imposes greater restrictions than those imposed or required by other rules or regulations, the most restrictive or that imposing the higher standard shall govern.

***

1.1.300 Consistency with Plan and Laws.

Each development and use application and other procedure initiated under this Code shall be consistent with the adopted comprehensive plan of the City of Bend as implemented by this Code, all applicable local ordinances, state and federal laws and regulations. All provisions of this Code shall be construed in conformity with the adopted Bend Area General Plan.

This ordinance is intended to promote health, safety, welfare and economy by coordinating the complex relationships between people, land, resources and facilities to meet the future needs of the citizens and to protect the livability of the community.

***

1.1.500 Pre-Existing Approvals.

***

B. Subsequent Development Applications. All development proposals and applications received by the Community Development ~~Planning~~ Director after the adoption of this Code shall be subject to review for conformance with the standards under this Code or as otherwise provided by state law.

***

1.1.600 Building Permit and Certificate of Occupancy.

A. Building Permit. A building permit shall not be issued until ~~the Community Development Director has issued~~ a development permit has been issued in accordance with the provisions of Chapter 4.1.900~~; Land Use Action Decisions~~, or the Community Development Director has otherwise found that a development permit is not required.

***

1.1.800 Fees Required.

The City's fees are established by the City Council in the adopted Fees Resolution. Fees shall be required for all applications, appeals and services. Payment of fees shall be made at the time of filing by cash, check, money order, credit card, or other acceptable methods as identified in the adopted Fees Resolution, except that local governmental agencies may supply a purchase order at the time of filing.

1.1.8900 Miscellaneous Provisions.

A. **Intergovernmental Agreements.** Outside the City limits where authorized by an intergovernmental agreement, the functions of the Community Development Director and City Review Authority identified herein ~~may be exercised by their counterparts~~ will be defined in accordance with the respective intergovernmental agreements.

Chapter 1.2 Definitions

***

Affordable Housing means housing that is affordable for households earning up to 100 percent of the area median income (gross), as defined by the Federal Department of Housing and Urban Development, so that the household spends ~~to a certain percentage of the population earning a specified level of income and spending~~ no more than 30 percent of their gross household income on housing related expenses (e.g., rent, mortgage, and essential utilities).

***

Applicant means a person submitting an application; the owner of affected property, or the owner's duly authorized representative. The Community Development Director may require proof of the sufficiency of the representative's authorization by the owner to act as applicant on the owner's behalf.

Application means all materials and information submitted for action authorized under this code and on related administrative forms and checklists.

***

Argument means assertions and analysis by a party regarding the satisfaction or violation of legal standards or policy believed to be relevant to the decision. "Argument" does not include ~~assertion of~~ facts ~~not already in the record~~.

***

Attached means connected to the primary structure with a continuous foundation and attached by common wall with openings that allow for internal access through habitable space to the primary structure.

***

~~**Certified Family Child Care Home** means where child care is offered in the home of the provider to not more than 16 children, including children of the provider, regardless of full-time or part-time status. Certified Family Child Care shall be considered a permitted residential use of the property for zoning purposes. See ORS Chapter 657A for state certification requirements.~~

***

Community Development Director means the Director of the City of Bend Community Development Department or his or her designee. For the purposes of this Ordinance, the terms Community Development Director and Planning Director shall be interchangeable.

***

Development Application, Type I ~~also known as "Development action"~~ means a development application that is reviewed administratively without public notice or an opportunity for parties to comment, unless elevated to a Type II application by the Community Development Director when there is a need to interpret or exercise policy or legal judgment, or to apply discretionary land use standards. Type I applications are identified in Table 1.2.100. A Type I decision includes any ~~review of any permit,~~

authorization or determination that the City of Bend ~~Development Services~~ Community Development Department is requested to issue, give or make that ~~either~~:

1. Is made under land use standards that do not require interpretation or the exercise of policy or legal judgment; or
2. Approves or denies a building permit issued under clear and objective land use standards; or
3. Determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility that is otherwise authorized by and consistent with the comprehensive plan and land use regulations.

~~1. Involves the application of the City zoning ordinance or the City Land Division ordinance and is not a land use action as defined below; or~~
~~2. Involves the application of standards other than those referred to in subsection 1, above.~~

~~For illustrative purposes, the term "development action" includes review of any condominium plat, permit extension, duplex or triplex units under 3,600 square feet where permitted as an outright use, road name change, sidewalk permit, setback determination, and lot coverage determination.~~

Development Application, Type II ~~also known as "Land use permit"~~ means a development application that is reviewed following public notice and an opportunity for parties to comment but without a public hearing, unless elevated to a Type III application by the Community Development Director. Type II applications are identified in Table 1.2.100. ~~any approval of a proposed development of land under the standards in the City zoning ordinances or Land Division ordinances involving the exercise of significant discretion in applying those standards.~~

~~By way of illustration, "land use permit" includes review of conditional use permits, partition, master plan, commercial design review, riverfront design review, site plan, site plan change of use, modification of approval, administrative determination, declaratory ruling, subdivision variance, subdivision, and variance, but does not include Type I actions.~~

Development Application, Type III ~~also known as "Land use action"~~ means a development application where the final decision that is made by the Planning Commission or Hearings Officer after a public hearing following the quasi-judicial procedures required and described in Section 4.1.800. Type III applications are identified in Table 1.2.100. ~~any consideration for approval of a quasi-judicial plan amendment or zone change, any consideration for approval of a land use permit, which requires a public hearing and any consideration of a request for a declaratory ruling (including resolution of any procedural questions raised in any of these actions).~~

Development Application, Type IV ~~also known as a "Legislative change"~~ means a legislative decision that is made after public notice, public hearings, and a recommendation by the Planning Commission to the City Council. Such applications generally involve broad public policy decisions that apply to other than an individual property. Type IV applications are identified in Table 1.2.100. ~~owner. These include, without limitation, amendments to the text of the comprehensive plans, zoning ordinances, or the subdivision or partition ordinance and changes in zoning maps not directed at a small number of properties.~~

Development standards means land use regulations that guide how sites and buildings can be developed. ~~In commercial zones, these~~ These standards deal with allowed uses, building heights, densities, parking, building setbacks, etc.

***

Dwelling, multi-family see "Multi-family housing".

Dwelling, single-family attached housing means ~~two or more~~ single-family dwellings on their own lots or parcels, sharing a ~~with~~ common ~~end-walls~~ side-wall ~~also known as townhomes or rowhouses~~.

Dwelling, single-family detached zero lot line house ~~(see Courtyard Housing)~~ see "Courtyard Housing".

***

Evidence means facts, documents, data or other information offered by a party to demonstrate compliance or noncompliance with the standards believed to be relevant to the decision.

***

Family day care see ~~"child care center / family child care."~~ "Registered or Certified Family Child Care Home / Child Care Facility".

***

~~**Grade (ground level)** means the average elevation of the existing ground elevation at the centers of all walls of a building, walk; the sidewalk elevation nearest the center of the wall shall constitute the ground elevation.~~

***

Land use district ~~means a land use district~~ is the same as a zoning district.

***

Mixed use buildings or developments means a mix of residential and ~~neighborhood~~ commercial uses that are mixed "vertically," meaning that a residential use is developed above the commercial use, or mixed "horizontally," meaning commercial and residential uses both occupy ground floor space. For all mixed use buildings or developments in the commercial districts, commercial/office uses shall occupy at least 20% of the total floor area of the development, or the floor area equivalent to the entire ground floor area of the development, whichever is greater. For all mixed use buildings or developments in the residential districts, commercial/office uses shall occupy no more than 20% of the total floor area of the development, or up to 100% of the ground floor area of the development, provided that at least 40% of the total floor area of the development is residential.

***

Neighborhood Association means an organization that has been formally recognized by council resolution which offers an opportunity for citizens to participate in decision-making for their neighborhood.

***

Party means one who takes part or participates in a ~~land use action~~ Type II, III, or IV application or a legislative action. A party includes any person who has standing. A person can become a party by appearing on the record at a hearing (including appeals) or presenting written evidence in conjunction with an administrative action or hearing, or by being a property owner ~~who's~~ whose property would be burdened by a solar access permit. The City may designate a representative for persons whose participation consists only of signing a petition.

***

~~**Personal services** means a land use where individual customers rather than businesses receive a form of service, i.e., Bank finances, dry cleaning, hair salon, or similar, in return for a form of payment.~~

Personal and professional service uses means businesses such as dry cleaners and cafes that primarily provide services to customers from the immediate surrounding area.

***

Proceeding means the review of a land use action either administratively by the Community Development ~~Planning~~ Director or through the public hearing process by the Hearings Body.

***

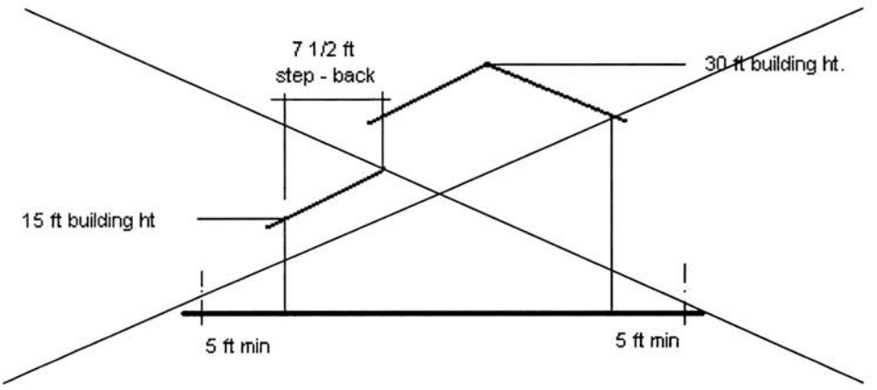
Registered or Certified Family Child Care Home means a location where child care is offered in the home of the provider to not more than 16 children, including children of the provider, regardless of full-time or part-time status. Registered or Certified Family Child Care Homes shall be considered a permitted residential use of the property for zoning purposes. See ORS Chapter 657A for state certification requirements.

***

Setback means the minimum allowable horizontal distance from a given point or line of reference, such as a property line, to the nearest vertical wall or other element of a building or structure as defined herein. Note: Where a public access easement abuts the street in lieu of r.o.w., the interior easement line shall become an assumed property boundary for the ~~puroposes~~ purposes of setbacks.

***

~~Step-back~~ ~~means an additional setback over the first floor of a structure in addition to the minimum yard setback as illustrated below.~~



***

Utilities mean water and sewer facilities, electric, telephone, natural gas, and other services providing for energy or communication needs.

***

Table 1.2.100
Summary of Development Application Types

Development Application	Type I*	Type II*	Type III	Type IV
Change of Use – Site Conforms to All Existing Standards	X			
Condo Plat/Condo Change of Use	X			
Design Review CB Zone – Minor Façade Change	X			
Design Review – Minor Alteration	X			
Final Plat – Partition or Subdivision	X			
Home Occupation Type I (Minor)	X			
Keeping of Farm Animal Permit	X			
Lot of Record Verification	X			
Property Line Adjustment	X			
Site Plan – Mini (ADU, 2nd Dwelling)	X			
Site Plan Minor Alteration	X			
Temporary Use	X			
Vacation Home Rental	X			
Cemetery Subdivision		X		
Change of Use – Site Does Not Conform to All Existing Standards		X		
Conditional Use Permit		X		
Declaratory Ruling- Administrative Decision		X		
Design Review CB Zone – Track 1		X		
Design Review Deschutes River, Administrative		X		
Design Review for New Construction/Major Alterations		X		
Home Occupation Type II (Major)		X		
Partition (Tentative Plan)		X		
Planned Unit Development (PUD) Modification		X		
Residential Compatibility Exception, Administrative		X		
Site Plan Major Alteration		X		
Site Plan New Development		X		
Solar Access Permit		X		
Solar Shade Exemption		X		
Subdivision (Tentative Plan)		X		
Surface Mining Permit		X		
Temporary Permit		X		
Duplex or Triplex Review		X		
Variance (Class A, B, C)		X		
Declaratory Ruling – Hearings Officer or Planning Commission			X	
Design Review CB Zone – Track 2			X	
Deschutes River Design Review – Planning Commission Hearing			X	
Master Development Plan or Special Planned District			X	
MR Zone Review – Facilities or Master			X	
Residential Compatibility Exception, Hearings Officer			X	
River Setback Exception			X	
Zone Change			X	
General Plan Map Amendment				X
General Plan Text Amendment				X
Refinement Plan/Development Agreement per ORS Chapter 94				X
Urban Growth Boundary (UGB) Expansion				X

*Unless elevated by the Community Development Director as authorized in Chapter 4.1.

Chapter 1.3 Enforcement

Sections:

1.3.100 **Provisions of this Code Declared to be Minimum Requirements**
1.3.200 **Violation of Code Prohibited**
1.3.300 **Penalty**

***

1.3.100 Provisions of this Code Declared to be Minimum Requirements.

B. Most Restrictive Requirements Apply. When the requirements of this Code vary from or conflict with other provisions of this Code or with other applicable standards, the most restrictive or ~~that imposing~~ the highest standard shall govern.

***

Chapter 2.0 Land Use District Administration

Sections:

2.0.100 **Classification of Land Use Districts**
2.0.200 **Land Use District Map**
2.0.300 **Determination of Land Use District Boundaries**

***

2.0.200 Land Use District Map

A. Consistency with Zoning Map. The boundaries of each of the land use districts contained within this chapter shall coincide with the land use district boundaries identified on the City's official zoning map, retained by the Community Development Director or designee. Said map by this reference is made a part of this Development Code. A certified print of the adopted zoning map, and any map amendments, shall be maintained by the City. Refinement Plan maps are included in Chapter 2.7, Special Planned Districts.

B. Applicability of Zoning Requirements. Each lot, tract and parcel of land or portion thereof within the land use district boundaries as designated and marked on the zoning map, is classified, zoned and limited to the uses as hereinafter specified and defined for the applicable district classification.

2.0.300 Determination of Land Use District Boundaries

A. Land Use District Map Amendments. All amendments to the City land use district (zoning) map shall be made in accordance with the provisions of Chapter 4.1; Land Use Review and Procedures.

1. Copies of all map amendments shall be dated with the effective date of the ordinance or order adopting the map amendment, and shall be maintained without change, together with the adopting documents, on file at the City; and
2. The City shall make available for public inspection a current copy of the revised zoning map, so that it accurately portrays changes of zone boundaries or classification.

3. Refinement Plans must go through the process described in Chapter 4.1; Land Use Review and Procedures.

***

Chapter 3.6 Special Standards for Certain Uses

Sections:

3.6.100 Purpose
3.6.200 Residential Uses
3.6.300 Non-residential Uses
3.6.400 Temporary Uses

***

3.6.200 Residential Uses

This section supplements the standards contained in Chapter 2.0 and provides standards for the following land uses in order to control the size, scale and compatibility of those uses within the applicable zone ~~all the Residential Districts~~.

***

3.6.300 Non-residential Uses

This section supplements the standards contained in Chapter 2.0 and provides standards for the certain land uses in order to control the scale and compatibility of those uses within the applicable zone ~~commercial districts~~.

***

D. Accessory Uses and Structures. Accessory uses and structures are those of a nature customarily incidental and subordinate to the principal use or structure on the same lot. Typical accessory structures include detached garages, sheds, workshops, green houses and similar structures not intended for habitation by people. (This section does not apply to Accessory Dwellings. *For standards applicable to Accessory Dwellings see subsection 3.6.200.B of this Chapter.*) Accessory uses and structures are allowed subject to Site Development Review for all permitted land uses within the Commercial and Industrial Districts except the CB Zone and are permitted outright in conformance with the provisions of Chapter 2.1. All accessory structures shall obtain a building permit if required and comply with all of the following development standards:

1. Primary use required. An accessory structure or use shall not be allowed on a lot before an allowed primary use is established.

2. Restrictions. A structure shall not be placed over an easement that prohibits such placement. No accessory use or structure shall encroach into the public right-of-way without an approved revocable permit.

3. Compliance with land division standards. The owner may be required to remove an accessory structure as a condition of land division approval when removal of the structure is necessary to comply with setback standards.

4. Floor Area. The maximum floor area of the accessory structure in a residential zoning district shall not exceed 1,500 ~~600~~ square feet or 65% of the total floor area of the primary structure, whichever is less.

5. Building Height. The building height of a detached accessory structure in a residential zoning district on a lot or parcel at least 15,000 square feet in area shall not exceed 25 feet. The building height of a detached accessory structure in a residential zoning district on a lot or parcel less than 15,000 square feet in area shall not exceed 25 feet or the height of the primary structure, whichever is less, ~~as measured in accordance with Section 2.1.700; in no instance shall an accessory structure exceed the height of the primary structure~~ unless approved as a conditional use permit.

6. Setback Standards. Accessory structures shall comply with the setback standards of the underlying zone.

***

Chapter 4.1 ~~Land Use~~ Development Review and Procedures

Sections:

4.1.100	Purpose
4.1.200	General Provisions
~~4.1.300~~	~~Legislative Procedures~~
4.1.3400	Type I Ministerial Procedures
4.1.4500	Type II Limited Land Use and Type III Quasi Judicial ~~Applications~~ Procedures
4.1.5300	Type IV Legislative Procedures
4.1.600	Deschutes River Corridor Design Review Procedures
4.1.700	Refinement Plan ~~Review~~ Procedures
4.1.800	~~Land Use Action~~ Quasi-Judicial Hearings
4.1.900	~~Land Use Action~~ Decisions
4.1.1000	Reconsideration
4.1.1100	Appeals
4.1.1200	Proceedings on Remand
4.1.1300	Limitations on Approvals
4.1.1400	Declaratory Ruling
4.1.1500	Development Agreements

4.1.100 Purpose

This ~~ordinance~~ Chapter ~~is enacted to~~ provides ~~a~~ uniform procedures for the granting or denial ~~and processing~~ of applications~~, approvals~~ and determinations by the City of Bend under the applicable State of Oregon statues and rules, Bend Area General Plan ~~City comprehensive plan~~, Bend Development Code ~~land use regulations, subdivision and partition ordinance~~, and other ordinances which by their terms incorporate by reference the procedures in this Chapter ~~ordinance~~. ~~This ordinance shall be known as the City of Bend Land Use Review and Procedures Ordinance.~~

The provisions of this ~~ordinance~~ Chapter do not apply to the issuance, suspension, or revocation of any on-site sewage disposal, sign, building, electrical or plumbing permits, except as they relate to Planning Division consideration of permitted uses.

~~Notwithstanding any reference to the contrary, this ordinance shall not apply to applications for land use or development approval for lands lying outside the city limits of the City of Bend. Outside the City limits where authorized by an intergovernmental agreement, the functions of the City Planning Director and City Review Authority identified herein may be exercised by their counterparts in accordance with the respective~~ For lands located inside the Bend Urban Growth Boundary, but outside the city limits, the applicability of this Code shall be set forth through intergovernmental agreements.

4.1.200 General Provisions

Sections:

4.1.210	**Pre-application Conference**
4.1.215	**Public Meeting**
4.1.2~~15~~20	**Application Requirements**
4.1.2~~20~~25	**Acceptance of Application**
~~4.1.225~~	**~~Incomplete Applications~~**
~~4.1.230~~	**~~False Statements on Application and Supporting Documents~~**
4.1.235	**Withdrawal of Application**
4.1.240	**Applicable Standards**
4.1.245	**Notice to Public Agencies**
4.1.250	**Conflicting Procedures**
4.1.255	**Time Computation**
4.1.260	**Lot of Record**

4.1.210 Pre-application Conference

~~A. Pre-application Conference.~~ A pre-application conference with the City of Bend is ~~required~~ highly recommended for complex applications or for applicants who are unfamiliar with the land use process. The purpose of the conference shall be to acquaint the applicant with the substantive and procedural requirements of the Development Code ~~applicable land use ordinances, to provide for an exchange of information regarding applicable requirements of the comprehensive plan, zoning ordinance or land division ordinance~~ and to identify issues likely to arise in processing an application. ~~The city zoning ordinance may require that a pre-application conference be held for particular types of applications~~.

4.1.215 Public Meeting

~~B~~A. ~~Public Meeting.~~ The applicant for a ~~Land Use Action for a~~ Bend Area General Plan Map Amendment, Zoning Map Amendment, Conditional Use Permit, Subdivision or Site Plan Review for new development or an alteration/addition to ~~an existing~~ one or more buildings ~~exceeding~~ containing a total of 10,000 square feet or more shall present the proposal at a public meeting prior to submitting the ~~land use~~ respective application to the City Planning Division. The presentation shall be made at either~~,~~ a regular or special meeting with a neighborhood association recognized by the City of Bend whose boundaries the subject property lies within, or a public meeting arranged and conducted by the applicant. The presentation at the public meeting shall include the following:

1. A map depicting the location of the subject property proposed for development.
2. A visual description of the project including a site plan, tentative subdivision plan and elevation drawings of any structures if applicable.
3. A description of the nature of the use including but not limited to, sizes and heights of structures, proposed lot sizes, density, etc.
4. The expected or anticipated impacts from the development.
5. Any mitigation proposed by the applicant to alleviate the expected/anticipated impacts.
6. ~~Provide~~ An opportunity for the public to provide comments. Applicants are encouraged to reconcile as many public concerns as possible prior to submittal of their application.

~~C~~B. Public Meeting Notification. If any part of a proposed new development as referenced in subsection 4.1.21~~0~~5(~~B~~A) ~~above~~ is to be constructed within the boundaries of a recognized neighborhood association of the City of Bend, the applicant shall notify the ~~administrative body~~ designated representative of such association of the presentation. It shall be the responsibility of the applicant to schedule the meeting/presentation and provide adequate notification to the residents of the affected neighborhood of the date, time and location of the meeting/presentation. It shall be the applicant's responsibility to provide the information listed in subsection 4.1.21~~0~~5(~~C~~B) (1) (a - c) below to the ~~administrative body for~~ designated representative of the neighborhood association. Such meeting shall be held no less than 15 days and no more than 45 days from the date that the applicant notifies the ~~administrative body~~ designated representative of the affected neighborhood association. The following provisions shall be applicable to the applicant's obligation to notify the residents of the area affected by the new development application, whether the proposed development is within the boundaries of a recognized neighborhood association or not:

1. The applicant shall send mailed notice of the public meeting to all property owners within 500 feet of the boundaries of the subject property, and, if any part of the subject property is within the boundaries of a neighborhood association recognized by the City of Bend or within 500 feet of any other neighborhood association recognized by the City of Bend, notice shall be sent by Priority Mail with Delivery Confirmation ~~mailed~~ to the ~~administrative body~~ designated representative(s) of such neighborhood association(s). The property owner list shall be compiled from the Deschutes County Tax Assessor's property owner list from the most recent property tax assessment roll. The address for the ~~administrative body~~ designated representative(s) of the affected neighborhood association(s) shall be obtained from the City of Bend. The notice shall be sent a minimum of 15 days prior to the public meeting, and shall include at a minimum:

   a. Date, time and location of the public meeting.
   b. A brief written description of the proposal and proposed use, but with enough specificity so that the project is easily discernable.
   c. The location of the subject property, including address (if applicable), nearest cross streets and any other easily understood geographical reference, and a map (such as a tax assessors map) which depicts the subject property.

4.1.21~~5~~20 Application Requirements

A. Property Owner. For the purposes of this section, the term "property owner" shall mean the owner of record or the contract purchaser and does not include a person or organization that holds a security interest.

B. Applications ~~for development or land use actions~~ shall:

   1. Be submitted by the property owner or a person who has written authorization from the property owner as defined herein to make the application;
   2. Be completed on a form prescribed by the ~~c~~ City;
   3. Include supporting information required by ~~the zoning or land division ordinances~~ this Code and ~~that~~ any other information necessary to, in the judgment of the Community Development ~~Planning~~ Director, demonstrate compliance with applicable criteria;
   4. Be accompanied by the appropriate filing fee as set forth in the adopted Fees Resolution;
   5. Provide proof of ownership in the form of a deed, or other recorded document; and
   6. In the case of applications for a quasi-judicial plan amendment or zone change, may be accompanied by applications for a specific development proposal.
   7. For applications that require a public meeting under Section 4.1.215(A), include a copy of the Delivery Confirmation receipt and ~~Include~~ a Public Meeting Verification of Compliance form signed by ~~an affidavit from~~ the applicant and a representative of the Neighborhood Association(s), attesting to the contents of the materials provided at the meeting ~~that the public meeting required by Section 4.1.210(B) of this ordinance was conducted in accordance with the provisions listed therein~~. If no representatives of the Neighborhood Association(s) are present at the meeting, the applicant may submit a statement to that effect. If the public meeting was arranged and conducted by the applicant, the notification materials listed in Section 4.1.21~~0~~5 (~~C~~B) (1) (a-c) must also be submitted.

C. The following applications are not subject to the ownership requirement set forth in subsection 4.1.21~~5~~20(B)(1) of this section:

   1. Applications submitted by or on behalf of a public entity or public utility having the power of eminent domain with respect to the property subject to the application; or
   2. Applications for development proposals sited on lands owned by the state or the federal government.

4.1.220~~5~~ Acceptance of Application.

A. Completeness. Type I, II, and III applications shall not be accepted as complete until the Community Development ~~Planning~~ Director has determined that the requirements of Section 4.1.21~~5~~20 of this Chapter have been met and the application is complete or the application is deemed to be complete under state law. A ~~pre-submittal meeting~~ Completeness Check Meeting shall be required for all Type II, III and IV land use applications ~~as defined in Chapter 1.2~~ unless exempted by the Community Development Director. The purpose of the ~~pre-submittal meeting~~ Completeness Check Meeting is to determine whether the proposed development application is complete prior to acceptance of the application for processing by the City.

B. An application is complete when, in the judgment of the Community Development ~~Planning~~ Director, complete information to address all criteria has been provided by the applicant.

C. Acceptance of an application as complete shall not preclude a determination at a later date that additional criteria needs to be addressed or a later determination that additional information is needed to adequately address applicable criteria.

~~4.1.225 Incomplete Applications.~~ (*Replaced with 4.1.412*)

~~A. If an application is incomplete, the Planning Director shall, within thirty (30) days of receipt of the application, notify the applicant in writing of exactly what information is missing. The applicant may amend the application or submit a new application supplying the missing information.~~

~~B. The applicant shall have thirty (30) days from the date of notice from the Planning Director to supply the missing information. Additional time, up to 180 days, may be granted upon request of the applicant pursuant to ORS 227.178.~~

~~C. If the applicant submits the missing information within the 30-day period specified in subsection (B) above, the application shall be deemed complete upon receipt of the missing information.~~

~~D. If an applicant does not submit the missing information within the 30-day period specified in subsection B above, the application may be processed in accordance with Section 4.1.500, Review of Type II or Type III Applications.~~

~~4.1.230 False Statements on Application and Supporting Documents.~~

~~If the applicant or the applicant's representative or apparent representative makes a misstatement of fact on the application regarding property ownership, authority to submit the application, acreage, or any other fact material to the acceptance or approval of the application, and such misstatement is relied upon by the Review Authority in making a decision whether to accept or approve the application, the Planning Director may upon notice to the applicant and subject to an applicant's right to a hearing, declare the application void.~~
Revised and moved to Section 4.1.1335, Revocation of Approvals.

4.1.235 Withdrawal of Application.

An applicant may withdraw an application in writing at any time prior to the time a ~~land use action~~ decision becomes final. If the land owner is not the applicant, no consent to withdraw the application is needed from the land owner.

4.1.240 Applicable Standards.

The standards and criteria applicable to an application shall be the standards and criteria applicable at the time the application was first submitted ~~if the application and requested information, if any, are received within one hundred eighty (180) days of the time the application was first submitted~~. ***Provided for in 4.1.412***

4.1.245 Notice to Public Agencies.

In addition to any notice required by this ordinance, written notice shall be provided to public agencies as prescribed below.

A. Division of State Lands. The City shall notify the Oregon Division of State Lands (DSL) of any application that involves lands that are wholly or partially within areas that are identified as a significant wetland on the city's Local Wetland Inventory. Notice shall be in writing using the DSL Wetland Land Use Notification Form, and shall be sent within five working days of acceptance of a complete application. [See ORS 227.350]

B. Department of Fish and Wildlife. The City shall notify the Oregon Department of Fish and Wildlife (ODFW) in writing of any application for development activities within the riparian corridor. A mitigation recommendation shall be obtained from ODFW. Approval of the proposed development shall include a condition requiring compliance with the ODFW mitigation recommendations. [See OAR 635-415]

C. Parks and Recreation Department. The City shall notify the Oregon Parks and Recreation Department (OPRD) in writing of any application for a proposed change, improvement, or

activity within the ¼ mile boundary of either the Upper Deschutes Scenic Waterway or the Middle Deschutes Scenic Waterway. A landowner proposing a change, improvement, or activity within a State Scenic Waterway shall notify OPRD using the form provided by OPRD. The proposed change, improvement, or activity shall not be approved by the city unless either OPRD has given its written approval, or OPRD has not responded within one year from the date of notification. [See OAR 736-40]

D. Other agencies. The City shall notify other public agencies, as appropriate, that have statutory or administrative rule authority to review or issue state permits ~~for~~ associated with local ~~land use actions~~ development applications.

4.1.250 Conflicting Procedures.

Notwithstanding the provisions of this section, where other provisions of the City of Bend Code or City of Bend ordinances specify procedures with greater opportunity for public notice and comment, those procedures shall apply.

4.1.255 Time Computation.

Except when otherwise provided, the time within which an act is required to be done shall be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, legal holiday or any day on which the City is not open for business pursuant to a City ordinance, in which case it shall also be excluded.

4.1.260 Lot of Record

Not all units of land are "lots of record". The City of Bend will not issue any permits on a unit of land until it is determined that it is a lot of record. If a unit of land is not in an approved subdivision or partition, has not been issued a land use permit, or has never been determined to be a lot of record, a declaratory ruling for a lot of record will need to be filed. A Declaratory Ruling will determine if and when a unit of land was created and if it was created in accordance with the law in effect at the time of creation. For units of land created in Deschutes County prior to annexation into the City, the Deschutes County Lot of Record Ordinance shall apply.

A. What is a lot of record? A unit of land held in separate ownership as shown on the records of the Deschutes County Clerk, which conforms to all zoning and subdivision/partition requirements in effect on the date the unit of land was created.

B. What is not a lot of record?

1. A unit of land created solely by a tax lot segregation because of an assessors role change or for the convenience of the assessor;
2. A unit of land created by an intervening section or township line or right of way;
3. A unit of land created by the foreclosure of a security interest.

C. Remedy for parcels found not to be lots of record.

1. In accordance with Chapter 4.3, consolidate the unit of land with a contiguous unit of land that is a determined to be a lot of record. Both units of land must be held in the same ownership as shown on the records of the Deschutes County Clerk.
2. Apply for and obtain approval for a single lot partition in conformance with the ORS 92.177 and Sections 4.3.200, 4.3.300 and 4.3.400.
3. Apply for and obtain approval of a lot of record under ORS 92.176.

[Section 4.1.260 added by Ord NS-2068, adopted August 15, 2007]

4.1.3400 TYPE I MINISTERIAL PROCEDURES

Sections:

4.1.3410 Type I Applications
4.1.3420 Completeness Check
4.1.34205 Type I Decision
4.1.3430 ~~Type I Actions~~ Appeals

4.1.3410 Type I Applications.

A. A Type I application may be handled administratively by the Community Development ~~Planning~~ Director without public notice or hearing because a Type I decision is neither a land use decision nor a limited land use decision under ORS 197.015.

B. The Community Development Director may elevate a Type I application to a Type II application when there is a need to interpret or exercise policy or legal judgment, or to apply discretionary land use standards ~~Planning Director has the discretion to determine that for the purposes of this ordinance a Type I application should be treated as if it were a Type II application~~. The Community Development Director's decision to elevate a Type I application to a Type II application shall not be an appeal-able decision.

4.1.320 Completeness Check.

A. Type I applications shall be subject to the completeness check procedures found in Section 4.1.412.

B. Once accepted as complete, an applicant may place the application on "hold" for a period of no longer than 60 days, which may be extended by the Community Development Director for good cause, up to a total 245 days.

4.1.34205 Decision.

A. Type I applications acted upon without notice or hearing shall be approved or denied by the Community Development ~~Planning~~ Director or his/or her designee ~~within 30 days of the Planning Director's acceptance of the application~~.

B. Notice of a decision shall be provided to the applicant or the applicant's representative.

C. The decision may be appealed by the applicant under Section 4.1.1100~~430~~ of this ordinance.

D. A Type I decision becomes final when no further appeal under this ordinance is available.

4.1.3430 ~~Type I Actions.~~ Appeal.

~~If the authority under which a Type I action is undertaken provides a means of review or appeal of a decision independent from this procedures ordinance, the review or appeal shall be in accordance with the procedures independently provided and not in accordance with this ordinance. If the authority under which a Type I action is reviewed does not provide a means of review or appeal of a decision, then review or~~ Any appeal shall be in accordance with Section 4.1.1100 of this ordinance.

4.1.4500 TYPE II ~~OR~~ AND TYPE III APPLICATIONS

Sections:

4.1.4510	Effect of Determinations Made Outside of Established Processes
4.1.412	Completeness Check
4.1.4515	~~Process for~~ Type II ~~or Type III Applications~~ Application Procedures
4.1.4520	~~Administrative Land Use Decisions with Prior Notice~~ Mailed Notice of Type II Applications
4.1.423	Mailed Notice of Type III Applications
~~4.1.525~~	~~Administrative Decision without Prior Notice~~
4.1.424	Contents of Mailed Notices
4.1.425	Posted Notice of Type II or Type III Applications
4.1.426	Type III - Quasi Judicial Procedures
4.1.427	Site Specific Plan Amendments and Zone Changes
4.1.429	Hearings Officer as Review Authority
4.1.4530	Final Action in Type II or Type III Actions
4.1.4535	Temporary Approval
~~4.1.540~~	~~Supplementation of Application within First 30 Days of Submittal~~
4.1.4545	Modification of Application

4.1.410 Effect of Determinations Made Outside of Established Processes.

Any informal interpretation or determination, or any statement describing the uses to which a property may be put, made outside the declaratory ruling process in accordance with Section 4.1.1400 or outside the process for approval or denial of a Type II or III ~~permit~~ application in conformance with Section 4.1.4500-900 shall be deemed to be a supposition only. Such informal interpretations, determinations, or statements shall not be deemed to constitute final City action effecting a change in the status of a person's property or conferring any rights, including any reliance rights, on any person.

4.1.412 Completeness Check.

A. Except as provided in subsections (C) and (D) below, the City shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals, within 120 days after the application is deemed complete.

B. Except as otherwise provided for through a Completeness Check Meeting, if an application for a permit, limited land use decision or zone change is incomplete, the City shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (A) of this section upon receipt by the City of:

1. All of the missing information;
2. Some of the missing information and written notice from the applicant that no other information will be provided; or
3. Written notice from the applicant that none of the missing information will be provided.

C. On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (B) of this section and has not submitted:

1. All of the missing information;
2. Some of the missing information and written notice that no other information will be provided; or
3. Written notice that none of the missing information will be provided.

D. The 120-day period set in subsection (A) of this section may be extended for a specified period of time at the written request of the applicant. The total of all extensions may not exceed 245 days.

E. Except as provided under the Completeness Check Meeting process, an applicant shall not submit any evidence to supplement its application during the 30 days following submittal of its application, except when requested by the Community Development Director. Any evidence submitted by an applicant in violation of this section will not be considered in determining whether the application is complete and will be returned to the applicant.
Moved from 4.1.540

4.1.415 ~~Process for~~ Type II ~~or Type III Applications~~ Application Procedures.

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.~~ Type II decisions are made by the Community Development Director following public notice and an opportunity for parties to comment but without a public hearing unless the Community Development Director elevates the application to the Hearings Body for hearing as a Type III.

B. The Community Development ~~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~~. ***Moved to 4.1.427***

4.1.420 Mailed Notice of Type II Applications.

A. Notice of Type II applications shall be mailed at least fourteen (14) days prior to the issuance of a decision to persons entitled to notice under Section 4.1.423. Such notice shall include all the information specified under Section 4.1.424 except for the information specified in subsections 7 and 10 of Section 4.1.424(A). Written notice shall be sent by mail to the following persons:

1. The applicant.

2. Owners of record of property as shown on the most recent property tax assessment roll of property located:

   a. Within 250 feet of the property that is the subject of the notice and where any structure being proposed is less than or equal to 50 feet in height. The notice boundary shall increase by 250 feet for every 25-foot increment of structure height above 50 feet.
   b. The applicant shall bear the cost (i.e. mailing, etc.) of any notice.

3. The designated representative(s) of a neighborhood association recognized by the City of Bend, where any property within the notice area specified in subsection 4.1.420(A)(2) is within the boundaries of a recognized neighborhood association.

4. The notice requirements of this section shall be deemed met when the Planning Division can provide an affidavit or other certification that such notice was given.

5. The Community Development Director may increase the minimum notice area up to 400 feet beyond what is otherwise required under subsection 4.1.420(A)(2)(a) above, at his or her sole discretion.

B. Any person may comment in writing on a Type II application within fourteen (14) days from the date notice was mailed or a longer period as specified in the notice.

C. Notice of the Community Development Director's Type II decision and the appeal period shall be mailed to all parties to the record.

D. Any party can appeal a Type II decision in accordance with Section 4.1.1100, Appeals.

4.1.423 Mailed Notice of Type III Applications.

A. Except as otherwise provided for herein, notice of a Type III application shall be mailed at least twenty (20) days prior to the evidentiary hearing for those matters set for one evidentiary hearing, or ten (10) days prior to the first evidentiary hearing where two or more evidentiary hearings are held. Written notice shall be sent by mail to the following persons:

1. The applicant.

2. Owners of record of property as shown on the most recent property tax assessment roll of property located:

   a. Within 250 feet of the property that is the subject of the notice and where any structure being proposed is less than or equal to 50 feet in height. The notice boundary shall increase by 250 feet for every 25-foot increment of structure height above 50 feet.
   b. The applicant shall bear the cost (i.e. mailing, etc.) of any notice.

3. The tenants of a mobile home park when the application is for the rezoning of any part or all of a mobile home park.

4. The designated representative(s) of a neighborhood association recognized by the City of Bend, where any property within the notice area specified in subsection 4.1.423(A)(2) is within the boundaries of a recognized neighborhood association.

~~B. Notwithstanding subsection 4.1.423(A)(2)(a) above, all owners of property and all recognized neighborhood associations within 250 feet of property that is the subject of a plan amendment application or zone change application shall receive mailed notice.~~

B. The notice requirements of this section shall be deemed met when the Planning Division can provide an affidavit or other certification that such notice was given.

C. The Community Development Director may increase the minimum notice area up to 400 feet beyond what is otherwise required under subsection 4.1.423(A)(2)(a) above, at his or her sole discretion.

4.1.424 Contents of Mailed Notices.

A. All mailed notices ~~of a land use action hearing~~ shall:

1. Describe the nature of the applicant's request and the nature of the proposed uses that could be authorized.

2. List the criteria from the ~~zoning ordinance~~ Development Code and the general plan applicable to the application at issue.

3. Set forth the street address or easily understood geographical reference to the subject property.

4. State the date, time and location of any hearing or date by which written comments must be received.

5. State that any person may comment in writing and include a general explanation of the requirements for submission of testimony and the procedures for conduct of testimony, including, but not limited to, a party's right to request a continuance or to have the record held open.

6. If a hearing is to be held, state that any interested person may appear and provide evidence.

7. State that failure to raise an issue in person at a hearing or in writing precludes appeal by that person to the Land Use Board of Appeals (LUBA), and that failure to provide statements or evidence sufficient to afford the decision-maker an opportunity to respond to the issue precludes appeal to LUBA based on that issue.

8. State the name of a city representative to contact and the telephone number where additional information may be obtained.

9. State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost.

10. State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at a reasonable cost.

B. All mailed notices concerning applications necessitating an exception to one of the statewide land use planning goals shall state that a goal exception is proposed and shall summarize the issues in an understandable manner.

4.1.425 Posted Notice of Type II or Type III Applications.

1. Notice of a Type II or III application for which prior notice procedures are required shall be posted on the subject property by the applicant/property owner for at least 10 continuous days prior to any date set for receipt of comments. Such notice shall, where practicable, be visible from any adjacent public way. Failure of applicant/property owner to maintain posting of the sign for 10 continuous days shall not invalidate a land use approval.

2. Posted notice of an application for a utility facility line approval shall be by posting the proposed route at intervals of not less than 500 feet. The notice shall be posted as close as practicable to, and be visible from, any public way in the vicinity of the proposed route.

4.1.426 Type III - Quasi Judicial Procedures.

Type III decisions are made by the Planning Commission or Hearings Officer after a public hearing following the quasi-judicial hearings procedures of Section 4.1.800.

4.1.427 Site Specific Plan Amendments and Zone Changes. ***(Moved from 4.1.320)***

Any ~~Type III~~ change initiated by an individual that includes a plan amendment and/~~or~~ zone change for specific real property may be accompanied by the appropriate applications for a specific development proposal. Approval of such a plan amendment and/~~or~~ zone change accompanied by a specific development proposal may be conditioned upon initiation of the development proposal within a specified time period, at the discretion of the Hearings Body, to ensure no greater intensity of use than that contemplated in the ~~Type III~~ proceeding. Approvals of ~~Type III~~ site specific plan amendments~~/and or zone changes~~ and zone changes that are not accompanied by applications for a specific development proposal shall be based on evaluation of the highest impact uses authorized in the proposed zone.

Because site specific plan amendments require an alteration of the Bend Area General Plan by action of the City Council, they shall be processed through the Type III quasi-judicial proceeding where the initial Hearings Body makes a recommendation to the City Council for a final decision.

4.1.429 Hearings Officer as Review Authority.

The Hearings Officer shall be the Review Authority for site specific zone change requests which bring the zoning into conformance with the Bend Area General Plan designation. Approvals of site specific zone changes that are not accompanied by applications for a specific development proposal shall be based on evaluation of the highest impact uses authorized in the proposed zone.

4.1.4~~5~~30 Final Action in Type II or III Actions.

A. ~~Except as otherwise~~ Where provided by this Code or state statute, the City shall take final action, including consideration of appeals to the council, in Type II or III actions within one hundred twenty (120) days after the application is deemed complete.

~~B. If the applicant refuses or fails to submit missing information within the 30 days specified in Section 4.1.225 of this ordinance, the application shall be deemed complete, for purposes of processing the application, on the 31st day after the application was first submitted, and final action of City Council, if required, shall be taken within one hundred fifty-one (151) days after the application was first received unless otherwise provided.~~ ***Moved to 4.1.412***

B~~C~~. The periods set forth in this section during which a final decision on an application must be made may be extended for a reasonable period of time to a date certain at the written request of the applicant. The total of all extensions cannot exceed 245 days. ***Set by statute.***

C~~D~~. Applications for the following determinations or approvals are exempt from the 120-day time limit established by this section:

1. Quasi-judicial comprehensive plan amendments;
2. Revocation proceedings;
3. Declaratory Rulings; ~~Verification of nonconforming uses;~~
~~4. Lot of record determinations;~~
~~5. Initiation of approval determinations~~;

46. Consideration of remanded applications; and
57. Legislative Actions.

4.1.4535 Temporary Approval.

A. The purpose of temporary land use approval is to allow an applicant in certain hardship or emergency situations to proceed without notice to those ordinarily entitled to notice with a land use action proposed in an application made to the Planning Division before the Division completes its review of the proposed use. In all cases, an applicant receiving temporary approval must obtain final approval on the submitted application pursuant to the procedures specified in this ordinance.

B. Subject to subsection (E) below, the City Council or the Community Development ~~Planning~~ Director may authorize a temporary land use approval, provided all of the following are met:

1. An application for the land use approval has been accepted as complete.
2. A fee for review of the temporary approval has been paid.
3. The applicant has demonstrated good and sufficient cause for such a temporary approval.
4. It appears that the application will be given final approval in substantially the form submitted by the applicant.
5. The applicant accepts each and every risk of loss and damage that may result if the application is denied, and further agrees in writing to hold City, its officers, agents and employees harmless from such loss and damage.
6. The applicant agrees in writing to restore the site to its original condition if the application for the land use approval is denied.
7. The applicant posts a bond or other form of security acceptable to the Review Authority in an amount sufficient to cover the costs of restoration of the site. ~~required by Section 4.1.530 above.~~

C. For the purposes of this section, "good cause" shall include only hardship or emergency situations arising due to factors that, through the exercise of ordinary diligence, the applicant could not have foreseen. "Good cause" does not include an applicant's request for a temporary permit for reasons of convenience only.

D. A temporary use approval shall not be granted for variances, zone changes or plan amendments.

E. The scope of the temporary approval shall be limited to allow the applicant to proceed only with that portion of the proposed use justifying the applicant's claim of hardship or emergency.

F. A temporary use approval shall expire as follows:

1. Six months from the date of approval, if no decision has been reached on the underlying application.
2. On the date the appeal period runs on the decision on the underlying application.
3. On the date that all appeals of the decision on the underlying application are decided and final.

G. A decision to approve a temporary use application is not appealable.

~~**4.1.540 Supplementation of Application within First 30 Days of Submittal.**~~

~~An applicant shall not submit any evidence to supplement its application during the 30 days following submittal of its application, except to respond to a request for additional information made under Section 4.1.225. Any evidence submitted by an applicant in violation of this section will not be considered in determining whether the application is complete and will be returned to the applicant.~~ ***Moved to 4.1.412***

4.1.4545 Modification of Application.

A. An applicant may modify an application at any time during the approval process up until the issuance of an administrative decision, or the close of the record for an application reviewed under a hearings process, subject to the provisions of Section 4.1.412 ~~540~~ and this Chapter.

B. The Review Authority shall not consider any evidence submitted by or on behalf of an applicant that would constitute modification of an application (as that term is defined in Chapter 1.2, Definitions unless the applicant submits an application for a modification, pays

all required modification fees and agrees in writing to restart the 120-day review period ~~time clock~~ as of the date the modification is submitted. The 120-day review period ~~time clock~~ for an application, as modified, may be restarted as many times as there are modifications up to a total of 365 days from the day the application was accepted as complete.

C. The Review Authority may require that the application be re-noticed and additional hearings be held.

D. Up until the day a hearing is opened for receipt of oral testimony, the Community Development ~~Planning~~ Director shall have sole authority to determine whether an applicant's submittal constitutes a modification. After such time, the Hearings Body shall make such determinations. The Review Authority's determination on whether a submittal constitutes a modification shall be appealable only to LUBA and shall be appealable only after a final decision is entered by the City on an application.

4.1.5300 TYPE IV LEGISLATIVE PROCEDURES

Sections:

4.1.505 Type IV Applications
4.1.5310 Hearing Required
4.1.5315 Notice
4.1.5320 Initiation of Legislative Changes
4.1.5325 Review Authority
4.1.5330 Final Decision
4.1.5335 Corrections

4.1.505 Type IV Applications

Legislative decisions are made after public notice, public hearings and a recommendation by the Planning Commission to the City Council. Such applications generally involve broad public policy decisions that apply to other than an individual property.

4.1.5310 Hearing Required

No legislative change shall be adopted without review by the Planning Commission ~~or Hearing Officer~~ and a final public hearing before the City Council. Public hearings before the Planning Commission shall be set at the discretion of the Community Development ~~Planning~~ Director, unless otherwise required by state law.

4.1.5315 Notice

A. Published Notice.

1. Notice of a Type IV legislative change shall be published in a newspaper of general circulation in the City at least twenty (20) days prior to each public hearing.

2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.

B. Posted Notice. Notice shall be posted at the discretion of the Community Development ~~Planning~~ Director.

C. Individual Notice. For site-specific applications, individual notice to property owners, as defined in Section 4.1.2~~15~~20(A) of this Chapter, shall be provided ~~in conformance with ORS 227~~.

D. Neighborhood Associations. Notice of Type IV legislative changes shall be mailed to the designated representative ~~administrative body~~ of any neighborhood association recognized by the City of Bend, where the legislative change affects any land within the boundary of such neighborhood association.

4.1.5320 Initiation of a Legislative Change.

Requests for a plan map or text amendment of the Bend Urban Area General Plan or its implementing documents may be initiated by an individual, corporation, or public agency. ~~A Type IV legislative change may be initiated by application of individuals~~ upon submittal of an application, supporting documentation and payment of required fees. ~~as well as by the~~ The City Council, ~~or the~~ Planning Commission or Community Development Director may also initiate legislative changes. ***Site Specific Plan Amendments moved to 4.1.427***

4.1.5325 Review Authority.

~~A. The following shall serve as hearings or review body for legislative changes in this order:~~

~~1. The Planning Commission or Hearings Officer.~~
~~a. For Type III actions the Hearings Officer shall serve as the initial Hearings Body.~~
~~b. For Type IV actions the Planning Commission shall serve as the initial Hearings Body.~~

~~2. The City Council, subject to Section 4.1.1100 of this ordinance.~~

~~B~~A. Any ~~Type III or~~ Type IV change ~~initiated by the City Council~~ shall be reviewed by the Planning Commission ~~or Hearings Officer~~ prior to action being taken by the City Council.

4.1.5330 Final Decision.

All Legislative changes shall be adopted by ordinance.

4.1.5335 Corrections.

The City's General Plan ~~comprehensive plans~~ and Development Code ~~zoning ordinances~~, ~~subdivision ordinance, and development procedures ordinance~~ may be corrected by order of the City Council to cure editorial and clerical errors. A public Hearing on a corrections order is not required.

4.1.600 DESCHUTES RIVER DESIGN REVIEW PROCEDURES

For all property subject to the Deschutes River Design Review process pursuant to the Bend Development Code ~~City Zoning Ordinance~~, the following procedures shall apply:

A. There shall be two review tracks for Deschutes River Design Review depending on the level and type of activity proposed. Notwithstanding these provisions, the Community Development ~~Planning~~ Director may refer any application to the Planning Commission for approval. The Planning Commission's consideration shall follow the quasi judicial procedures set forth in Section 4.1.800 ~~be subject to land use permit procedures~~

1. Review Track ~~I~~ A: A Type II administrative review shall be performed by the ~~Planning~~ Community Development Director for the following activities:

   a. Minor alterations of 10 percent or less to an existing building facade facing river, including roof.
   b. Changes in window or door placement visible from the river.
   c. Changes in parking locations.
   d. Fill or removal activity within 10 feet of the ordinary high water mark of the Deschutes River.
   e. New construction or additions that is not visible from the river due to topography, vegetation or existing development.

2. Review Track ~~II~~ B: ~~Notwithstanding Section 4.1.815, a~~ A Type III review shall be performed by the Planning Commission for the following activities:

   a. Appeal of a Type II administrative review decision.
   b. New construction and new development.
   c. Master Plan approval for large scale projects.
   d. Variances to an application in conformance with Chapter 5.1, Variances.
   e. Fill and removal activities associated with new development or for creation of fire breaks in association with appropriate fire prevention authorities.

B. ~~Procedures:~~ The applicant shall ~~request approval for a procedure~~ submit an application in writing to the Planning Division on forms provided by the City. The request shall include a site plan containing the relevant components listed in Section 4.2.200 and a description of work and materials that will be used. The Review Authority shall review the request and respond to the applicant in writing of the decision and any conditions placed on the decision.

C. ~~Land Use Permit Procedures: Land Use permit review~~ Track B applications shall be ~~conducted~~ reviewed by the Planning Commission as follows:

1. Notice for ~~land use permit~~ applications shall be as set forth in Section 4.1.~~820~~420, Section 4.1.423, ~~Notice of Hearing or Administrative Action,~~ and Section 4.1.~~825~~424, ~~Contents of Notice~~. The Commission ~~may~~ shall hold a public hearing for any ~~Land Use Action~~ Type III applications. The hearings procedure shall be as set forth in Section 4.1.800, Quasi Judicial ~~Land Use Action~~ Hearings.

2. The Planning Commission shall review the entire project, even if only a portion of the project falls within the Deschutes River Corridor Design Review Combining Zone.

~~2~~3. Appeals of the decision of the Planning Commission shall be to the City Council, subject to the procedures and restrictions set forth in Section 4.1.1100, Appeals.

D. Where the procedures in this section conflict with other provisions of this ordinance with respect to Deschutes River Corridor Design Review, the provisions of this section shall prevail.

4.1.700 REFINEMENT PLAN REVIEW PROCEDURES

A. Refinement Plan Development and Approval Process.

1. Initiation. The process to establish a refinement plan shall be initiated by the City Council. The Planning Commission or interested property owners may submit requests to the City Council to initiate the refinement plan process. If owners request initiation of a refinement plan process, it will be subject to the established application fee. ~~the City Council may require an application fee to cover the cost of creating the plan~~.

2. Public Involvement Plan: The Planning Commission shall approve a public involvement plan which may include the appointment of a ~~Steering Committee. The City Council may appoint a~~ steering committee to guide development of the plan. The steering committee may include persons representing affected property owners, neighbors, city staff, agencies, special districts and the community at large. The role of the steering Committee is advisory to the Planning Commission and the City Council. ***Planning Commission is the City's Citizen Involvement Committee***

B. Refinement Plan Content. At a minimum, a refinement plan shall include the following text and diagrams:

1. Plan Objectives. A narrative shall set forth the goals and objectives of the plan.

2. Site and Context. A map of the site and context shall identify the project area.

3. Land Use Diagram. The land use diagram shall indicate the distribution and location of planned land uses, including open space and parks, within the area covered by the refinement plan.

4. Density. If residential uses are proposed, a narrative shall describe planned residential densities.

5. Facilities ~~Diagram~~ Plan. The facilities ~~diagram~~ plan shall depict the general location and extent of major components of sanitary sewer, water, and other essential facilities proposed to be located within the area covered by the refinement plan and needed to support the land uses described in the plan.

6. Circulation/Transportation ~~Diagram~~ Plan. The circulation ~~diagram~~ plan shall indicate the proposed street pattern for the refinement plan area, including pedestrian pathways and bikeways. Design standards and street cross sections shall be included, if different than normal City standards.

7. Design and Development Standards. If standards differ from normal City standards, design and development standards shall be included in the plan.

C. Criteria. In order to approve a refinement plan, the City Council shall adopt findings demonstrating conformance the criteria set forth in Section 4.6.200.

~~C~~D. ~~Land Use~~ Review. Except as set forth below, the review procedures ~~for Land Use Activity Categories~~ outlined in Chapter 4.1.300; Legislative Procedures, of this code shall apply to the adoption of ~~for all property subject to~~ a Refinement Plan ~~overlay zone~~.

1. Administrative Review. After adoption of a refinement plan, the following activities shall be reviewed ~~either~~ administratively ~~or by a Hearings Body~~.

   a. Type I applications.
   b. Type II~~/III~~ applications conforming to the standards of the refinement plan.
   c. Administrative amendments to the refinement plan.
   d. Minor amendments to the refinement plan.
   e. ~~Lot line~~ Property line adjustments consistent with the refinement plan.
   f. Variances.

2. Planning Commission Review. The Planning Commission shall review the following activities:

   ~~a. Class B or C Variance.~~
   ~~b~~a. ~~Lot line~~ Property line adjustments that are not consistent with the refinement plan.
   b. Type III applications conforming to the standards of the refinement plan.

3. City Council Review. The following activities shall be reviewed by the City Council as either a quasi-judicial or legislative amendment.

   a. Major amendments to the refinement plan.
   b. Appeals of land use decisions.

~~D~~E. Amendments and Adjustments to the Refinement Plan. Amendments to an approved refinement plan are classified as administrative, minor, or major amendments.

1. Administrative Amendments. Administrative amendments ~~may~~ shall be reviewed ~~approved~~ by the Community Development ~~City Planning~~ Director ~~pursuant to development action~~ following the Type I procedures~~,~~ unless elevated to a Type II procedure. Public notice of administrative amendments is not required. Administrative amendments include:

   a. Street, easement, sidewalk, and trail relocations that result in a location change of less than 50 feet from what is depicted on refinement plan diagrams.
   b. Public park relocations that result in a location change of less than 100 feet from what is depicted on refinement plan diagrams.
   c. Increases in the size of public neighborhood parks, provided that transportation connections remain consistent with the refinement plan.
   d. Reductions in the size of public neighborhood parks, provided the reductions are less than 10% of park area depicted on refinement plan diagrams and that the reductions do not result in a park that is less than 20,000 square feet in size.
   e. Changes related to street trees, street furniture, fencing, or signage that was approved as part of the refinement plan.
   f. A change in the facilities ~~utility~~ plan other than what would be necessary for other authorized adjustments.

2. Minor Amendments. A minor amendment to a refinement plan shall be processed as a Type II application. Notice of the pending decision shall be provided to all owners of land within or abutting the Refinement Plan district(s) in question. The ~~Hearings Body~~ Community Development Director's decision shall include findings demonstrating that the change will not affect adversely:

   - the purpose and objectives of the refinement plan,
   - the functioning of the refinement plan, or
   - the coordination of transportation and infrastructure provision to properties within the refinement plan area.

   Minor amendments are those that result in any of the following:

   a. A change in the circulation/transportation plan that requires an identified transportation element to be moved 50 to 100 feet from the location depicted on the refinement plan circulation/transportation diagram.

   b. A change in the circulation/transportation plan that requires a required transportation element including local street, easement, sidewalk or trail to be shifted 50 to 100 feet in any direction from what is depicted on the refinement plan circulation/transportation diagram.

   c. A change in the land use diagram that reduces the size of a public park or facility more than 10%, or moves the location more than 100 feet from the location depicted on the land use diagram.

3. Major Amendment. A major amendment to a refinement plan shall be processed as a comprehensive plan amendment affecting the existing refinement plan. The amendment shall follow either quasi-judicial or legislative procedures and meet plan amendment and zone change criteria. Findings must additionally demonstrate that the change will not affect adversely:

   - the purpose and objectives of the refinement plan,
   - the functioning of the refinement plan, or
   - the coordination of transportation and infrastructure provision to properties within the refinement plan area.

   Major amendments are those that result in any of the following:

a. A change in ~~land use~~ general plan designation boundary or density, unless as part of the original approvals an alternative design was approved outlining acceptable plan designation options (for example, a residential designation may be approved as an alternative use for a park site).

b. A change in the circulation/transportation plan that causes a required transportation element, including a trail, to be added, eliminated or moved more than 100 feet from the location depicted on the refinement plan circulation/transportation diagram.

c. A change in the land use diagram that adds or eliminates a designated public park or facility.

d. A change in development standards, except those set forth as minor or administrative amendments.

4.1.800 ~~LAND USE ACTION~~ QUASI JUDICIAL HEARINGS

page 311

Sections:

4.1.810 Filing of Staff Report for Hearing
4.1.815 Hearings Body
~~**4.1.820 Notice of Hearing or Administrative Action**~~
~~**4.1.825 Contents of Notice**~~
4.1.830 Burden of Proof
4.1.835 Nature of Evidence
4.1.840 Limitation on Oral Presentations
4.1.845 Standing
4.1.850 Record
4.1.855 Disclosure of Ex Parte Contacts
4.1.860 Disclosure of Personal Knowledge
4.1.865 Challenge for Bias, Prejudgment of Personal Interest
4.1.870 Hearings Procedure
4.1.875 Setting the Hearing
4.1.880 Close of the Record
4.1.885 Continuances or Record Extensions
4.1.890 Objections to Jurisdiction, Procedure, Notice or Qualifications
4.1.895 Reopening the record

4.1.810 Filing of Staff Report for Hearing.

A. At the time an application, that in the judgment of the Community Development ~~Planning~~ Director requires a hearing, is deemed complete, a hearing date shall be set.

B. A staff report shall be completed seven days prior to the hearing. If the report is not completed by such time, the hearing shall be held as scheduled, but any party may at the hearing or in writing prior to the hearing request a continuance of the hearing to a date that is at least seven days after the date the initial staff report is complete. ~~Pursuant to Section 4.1.885; Continuances or Record Extensions,~~ The granting of a continuance under these circumstances shall be at the discretion of the Hearings Body.

C. A copy of the staff report shall be mailed to the applicant, shall be made available at a reasonable cost to such other persons who request a copy and shall be filed with the Hearings Body.

D. Notwithstanding subsection 4.1.810(B) above, oral or written modifications and additions to the staff report shall be allowed prior to or at the hearing.

4.1.815 Hearings Body.

A. The following shall serve as the Hearings Body as determined by the Community Development ~~Planning~~ Director:

1. Hearings Officer.
2. Planning Commission, for matters of interpretation of this Code, Appeals of Type II decisions, 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.

~~4.1.820 Notice of Hearing or Administrative Action~~

~~A. Individual Mailed Notice.~~

~~1. Except as otherwise provided for herein, notice of a Type II or III application shall be mailed at least ten (10) days prior to the hearing for those matters set for hearing, or at least fourteen (14) days prior to issuance of a written decision for those matters to be processed administratively with notice. Written notice shall be sent by mail to the following persons:~~

~~a. The applicant.~~

~~b. Owners of record of property as shown on the most recent property tax assessment roll of property located:~~

i. Within 100 feet of the property that is the subject of the notice and where any structure being proposed is less than or equal to 45 feet in height. The notice boundary shall increase by 200 feet for every 15-foot increment of structure height above 45 feet.
ii. The required notice area boundary shall be measured from the opposite side of any street rights of way, rivers, and/or canals adjacent to the subject property from which the notice area originates.
iii. The applicant shall bear the cost (i.e. mailing, etc.) of any increased notice area required by a structure with height in excess of 45 feet.

c. The tenants of a mobile home park when the application is for the rezoning of any part or all of a mobile home park.

d. The administrative body of a neighborhood association recognized by the City of Bend, where any part of the proposed development is within the boundaries of a recognized neighborhood association.

2. Notwithstanding subsection 4.1.820(A)(1)(b)(i) above, all owners of property within 250 feet of property that is the subject of a plan amendment application or zone change application shall receive notice.

3. Mailed notice per ORS 227.160-227-185 shall be provided to all property owners affected by a proposed text or plan amendment.

4. The failure of a property owner to receive mailed notice shall not invalidate any land use approval if the Planning Division can show by affidavit that such notice was given.

5. The Planning Director may increase the minimum notice area required under subsection 4.1.820(A)(1)(b)(i) above, at his or her sole discretion.

B. Posted Notice.

1. Notice of a land use action application for which prior notice procedures are required shall be posted on the subject property by the applicant/property owner for at least 10 continuous days prior to any date set for receipt of comments. Such notice shall, where practicable, be visible from any adjacent public way. Failure of applicant/property owner to maintain posting of the sign for 10 continuous days shall not invalidate a land use approval.
2. Posted notice of an application for a utility facility line approval shall be by posting the proposed route at intervals of not less than 500 feet. The notice shall be posted as close as practicable to, and be visible from, any public way in the vicinity of the proposed route.

C. Published Notice. In addition to notice by mail and posting, notice of an initial hearing shall be published in a newspaper of general circulation in the City at least ten (10) days prior to the hearing.

4.1.825 Contents of Notice.

A. All mailed notices of a land use action hearing shall:

1. Describe the nature of the applicant's request and the nature of the proposed uses that could be authorized.

2. List the criteria from the zoning ordinance and the general plan applicable to the application at issue.

3. Set forth the street address or easily understood geographical reference to the subject property.

4. State the date, time and location of any hearing or date by which written comments must be received.

5. State that any person may comment in writing and include a general explanation of the requirements for submission of testimony and the procedures for conduct of testimony, including, but not limited to, a party's right to request a continuance or to have the record held open.

~~6. If a hearing is to be held, state that any interested person may appear and provide evidence.~~

~~7. State that failure to raise an issue in person at a hearing or in writing precludes appeal by that person to the Land Use Board of Appeals (LUBA), and that failure to provide statements or evidence sufficient to afford the decision-maker an opportunity to respond to the issue precludes appeal to LUBA based on that issue.~~

~~8. State the name of a city representative to contact and the telephone number where additional information may be obtained.~~

~~9. State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost.~~

~~10. State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at a reasonable cost.~~

~~11. All mailed notices shall contain the following statement:~~

~~**ORS. 197 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER.**~~

~~B. All mailed and published notices for hearings shall contain a statement that recipients may request a copy of the staff report at a reasonable cost.~~

~~C. All mailed and published notices concerning applications necessitating an exception to one of the statewide land use planning goals shall state that a goal exception is proposed and shall summarize the issues in an understandable manner.~~

Reorganized, revised, and moved to 4.1.420-425

4.1.830 Burden of Proof.

Throughout all local land use proceedings the burden of proof rests on the applicant.

4.1.835 Nature of Evidence.

All relevant evidence shall be received.

4.1.840 Limitation on Oral Presentations.

The Hearings Body may set reasonable time limits on oral testimony.

4.1.845 Standing.

A. Any interested person may appear and be heard in a ~~land use action~~ Type III hearing, except that in appeals heard on the record, a person must have participated in a previous proceeding on the subject application.

B. Any person appearing on the record at a hearing (including appeals) or presenting written evidence in conjunction with an administrative action or hearing shall have standing and shall be a party. A person whose participation consists only of signing a petition shall not be considered a party.

4.1.850 Record.

A. An audio tape recording of the hearing shall be made.

B. All exhibits presented shall be marked to show the identity of the person offering the exhibit.

C. Exhibits shall be numbered in the order presented, and shall be dated.

D. When exhibits are introduced, the exhibit number or letter shall be read into the record.

E. When a digital storage device such as a compact disc is submitted into the record, a transcript of the contents shall also be submitted.

4.1.855 Disclosure of Ex Parte Contacts.

A. Prior to making a decision, the Hearings Body or any member thereof shall not communicate directly or indirectly with any party or his or her representative in connection with any issue involved in a pending hearing except upon notice and opportunity for all parties to participate. Should such communication - whether written or oral - occur, the Hearings Body member shall:

1. Publicly announce for the record the substance of such communication; and
2. Announce the parties' right to rebut the substance of the ex parte communication during the hearing.
3. Communication between City staff and the Hearings Body shall not be considered to be an ex parte contact.

4.1.860 Disclosure of Personal Knowledge.

A. If the Hearings Body or any member thereof uses personal knowledge acquired outside of the hearing process in rendering a decision, the Hearings Body or member thereof shall state the substance of that knowledge on the record and allow all parties the opportunity to rebut such statement on the record.

B. For the purposes of this section, a site visit by the Hearings Body shall be deemed to fall within this rule. After the site visit has concluded, the Hearings Body must disclose its observations and conclusions gained from the site visit in order to allow for rebuttal by the parties.

4.1.865 Challenge for bias, prejudgment or personal interest.

A. Prior to or at the commencement of a hearing, any party may challenge the qualification of the Hearings Body, or a member thereof, for bias, prejudgment or personal interest. The challenge shall be made on the record and be documented with specific reasons supported by facts. Should qualifications be challenged, the Hearings Body or the member shall disqualify itself, withdraw or make a statement on the record of its capacity to hear. A Planning Commission member with a conflict identified under ORS 197 must disqualify him or herself after disclosure.

4.1.870 Hearings Procedure.

A. A hearing shall be conducted as follows:

1. The Hearings Body shall explain the purpose of the hearing and announce the order of proceedings, including reasonable time limits on presentations by parties.

2. A statement by the Hearings Body regarding pre-hearing contacts, bias, prejudice or personal interest shall be made.

3. Any facts received, noticed or recognized outside of the hearing shall be stated for the record.

4. Challenges to the Hearings Body's qualifications to hear the matter shall be stated and challenges entertained.

~~5. The Hearings Body or his or her designee shall list applicable substantive criteria, explain that testimony and evidence must be directed toward that criteria or other criteria in the comprehensive plan or land use regulations that the person believes to apply to the decision, and that failure to address an issue with sufficient specificity to afford the decision-maker and the parties an opportunity to respond precludes appeal to LUBA based on that issue. The failure of the applicant to raise a constitutional or other issues related to the proposed conditions of approval with sufficient specificity to allow the Hearings Body to respond to the issue precludes the applicant from pursuing an action for damages in circuit court.~~

5. At the commencement of a hearing under a comprehensive plan or land use regulation, the Hearings Body or his or her designee shall make a statement to those in attendance that:

   a. Lists the applicable substantive criteria;
   b. States that testimony, arguments and evidence must be directed toward that criteria or other criteria in the comprehensive plan or land use regulations which the person believes to apply to the decision; and

c. States that failure to raise an issue accompanied by statements or evidence sufficient to afford the Hearings Body and the parties an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue.

6. At the commencement of the initial public hearing, the Hearings Body or his or her designee shall make a statement to the applicant that the failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the local government or its designee to respond to the issue precludes an action for damages in circuit court. An applicant is not required to raise constitutional or other issues relating to proposed conditions of approval unless the conditions of approval are stated with sufficient specificity to enable the applicant to respond to the conditions prior to the close of the final local hearing.

7. An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the City Council, Planning Commission, Hearings Body or Hearings Officer, and the parties an adequate opportunity to respond to each issue.

~~6~~8. Order of presentation:

a. Explanation of procedural requirements
~~a~~b. Open the hearing
c. Statement of pre-hearing contacts, bias, prejudice or personal interest
d. Challenge for bias, prejudgment or personal interest
~~b~~e. Staff report
f. Applicant Testimony
~~c~~g. ~~Proponents' presentation~~ Testimony by those in favor of the application
~~d~~h. ~~Opponents' presentation~~ Testimony by those neutral
i. Testimony by those opposed to the application
~~e~~j. ~~Proponents~~ Applicant rebuttal
~~f~~k. ~~Opponents' rebuttal~~ Rebuttal by those opposed may be allowed at the Hearings Body's discretion
~~g~~l. Staff comment
~~h~~m. Questions from or to the chair may be entertained at any time at the Hearings Body's discretion
~~i~~n. Close the hearing
o. Deliberation
p. Decision

9. In appeal proceedings, the "applicant" is the party who initiated the application which is under appeal. Those person(s) opposed to the application shall testify under the "Testimony by those opposed to the application" portion of the appeal proceeding. Those persons in favor of the application shall testify under the "Testimony by those in favor of the application" portion of the appeal proceeding.

~~7~~10. The record shall be available for public review at the hearing.

~~8. A form of preliminary statement incorporating the provisions of this section is set forth as Appendix A to this Chapter for use by the City Council.~~

4.1.875 Setting the Hearing.

A. After an application is deemed accepted a hearing date shall be set. A hearing date may be changed by the city staff, or the Hearings Body up until the time notice of the hearing is mailed. Once the notice of hearing is mailed any changes in the hearing date shall be processed as a continuance in accordance with Subsection 4.1.885 of this chapter.

B. If an applicant requests that a hearing date be changed, such request shall be granted only if the applicant agrees that the extended time period for the hearing shall not count against the 120-day time limit set forth in ORS 227.178. ~~Section 4.1.530; Final Action in Type II or III Actions, of this ordinance~~.

4.1.880 Close of the Record.

A. Except as set forth herein, the record shall be closed to further testimony or submission of further argument or evidence at the end of the presentations before the Hearings Body.

B. If the hearing is continued or the record is held open under Section 4.1.885, further evidence or testimony shall be taken only in accordance with the provisions of that section.

C. Otherwise, further testimony or evidence will be allowed only if the record is reopened under Section 4.1.895; Reopening the Record, below.

D. An applicant shall be allowed, unless waived, to submit final written arguments in support of its application after the record has closed within such time limits as the Hearings Body shall set. The Hearings Body shall allow applicant at least seven days to submit its argument, which time shall not be counted against the 120-day clock.

4.1.885 Continuances or Record Extensions.

A. Grounds.

1. Prior to or at the ~~date set for an~~ initial hearing, an applicant shall receive a continuance upon any request if accompanied by a corresponding extension of the 120-day review period. ~~clock. If a continuance request is made after the published or mailed notice has been provided by the City, the Hearings Body shall take evidence at the scheduled hearing date from any party wishing to testify at that time after notifying those present of the continuance.~~ If a continuance request is made after the published or mailed notice has been provided by the City, but at least 7 days prior to the hearing, the hearing place shall be posted with notification of cancellation and a revised notice with the new hearing date, place and time shall be mailed to all persons who received the original notification. The applicant shall be responsible for any costs for providing notice of the continuance. If a continuance request is made less than 7 days prior to the hearing, the Hearings Body shall take evidence at the scheduled hearing date from any party wishing to testify at that time after notifying those present of the continuance.

2. Any party is entitled to a continuance of the initial evidentiary hearing or to have the record left open in such a proceeding in the following instances:

   a. Where additional documents or evidence are submitted by any party; or
   b. Upon a party's request made prior to the close of the hearing for time to present additional evidence or testimony.

   For the purposes of subsection 4.1.885(A)(2) above, "additional documents or evidence" shall mean documents or evidence containing new facts or analysis that are submitted after notice of the hearing.

~~3. The grant of a continuance or record extension shall be at the discretion of the Hearings Body.~~

B. Except for continuance requests made under subsection (A)(1) above, the choice between granting a continuance or leaving the record open shall be at the discretion of the Hearings Body. After a choice has been made between leaving the record open ~~and~~ or granting a continuance, the hearing shall be governed thereafter by the provisions that relate to the path chosen.

C. Hearing Continuances.

1. If the Hearings Body grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial hearing.

2. An opportunity shall be provided at the continued hearing for persons to rebut new evidence and testimony received at the continued hearing.

3. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least 7 days to allow submittal of additional written evidence or testimony. Such additional written evidence or testimony shall be limited to evidence or testimony that rebuts the new written evidence or testimony.

D. Leaving record open. If at the conclusion of the hearing the Hearings Body leaves the record open for additional written evidence or testimony, the Hearings Body shall allow for response to written evidence or testimony submitted during the period the record is held open.

E. A continuance or record extension granted under this section shall be subject to the 120-day time limit unless the continuance or extension is requested or otherwise agreed to by the applicant. When the record is left open or a continuance is granted after a request by an applicant, the time period during which the 120-day review period ~~clock~~ is suspended shall include the time period made available to the applicant and any time period given to parties to respond to the applicant's submittal.

4.1.890 Objections to Jurisdiction, Procedure, Notice or Qualifications.

A. Any objections not raised prior to the close of oral testimony are waived. Parties alleging procedural error shall have the burden of proof at LUBA as to whether the error occurred and whether the error has prejudiced the party's substantial rights.

4.1.895 Reopening the Record.

A. The Hearings Body may at its discretion reopen the record, either upon request or on its own initiative. The Hearings Body shall not reopen the record at the request of an applicant unless the applicant has agreed in writing to an extension or a waiver of the 120-day time limit.

B. Procedures.

1. Except as otherwise provided for in this section, the manner of testimony (whether oral or written) and time limits for testimony to be offered upon reopening of the record shall be at the discretion at the Hearings Body.

2. The Hearings Body shall give written notice to the parties that the record is being reopened, stating the reason for reopening the record and how parties can respond. The parties shall be allowed to raise new issues that relate to the new evidence, testimony or criteria for decision-making that apply to the matter at issue.

4.1. 900 ~~LAND USE ACTION~~ TYPE II AND III DECISIONS

Sections:

4.1.910 Decision
4.1.915 Findings as to Application Acceptance Date
4.1.920 Findings as to Legal Lot of Record Status
4.1.925 Notice of Decision
4.1.930 Decision on Plan Amendments and Zone Changes
4.1.935 Reapplication Limited
4.1.940 Proposed Order
4.1.945 Compliance with ORS 227.350
4.1.950 Correction of Clerical Errors

4.1.910 Decision.

A. Approval or denial of a Type II or III application shall be based upon and accompanied by a written statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based upon the criteria standards and facts set forth.

B. Any portion of an application not addressed in a Review Authority's decision shall be deemed to have been denied.

C. A decision on a Type II or III application is not final until the Review Authority issues a written decision, the decision or notice of the decision has been mailed and the appeal period to the next higher Review Authority within the City has run.

D. Unless a temporary use permit has been issued, no building permit shall be issued until a decision is final. Appeal of a final decision to LUBA does not affect the finality of a decision for purposes of issuing building permits. If an applicant elects at his or her own discretion to proceed under a land use action with a pending LUBA appeal, he or she shall proceed only if:

1. The applicant accepts each and every risk of loss and damage that may result if the application is denied, and further agrees in writing to hold City, its officers, agents and employees harmless from such loss and damage.

2. The applicant agrees in writing to restore the site to its original condition if the application for the land use approval is denied.

3. The applicant posts a bond or other form of security acceptable to the Review Authority in an amount sufficient to cover the costs of restoration of the site to its pre-approval condition.

4.1.915 Findings as to Application Acceptance Date.

Each decision shall include findings as to when the proposed Type II or III action application was deemed complete and formally accepted as such by the Community Development ~~Planning~~ Director.

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 Bend Development Code ~~City of Bend Zoning Ordinance~~.

4.1.925 Notice of Decision.

Notice of the ~~A~~ Review Authority's decision shall be in writing and mailed to all parties; however, one person may be designated by the Review Authority to be the recipient of the decision for a group, organization, group of petitioners or similar collection of individual participants.

4.1.930 Decision on Plan Amendments and Zone Changes.

~~Except as set forth herein, the~~ The Hearings ~~Body~~ Officer shall have authority to ~~make decisions on~~ approve or deny ~~all~~ Type III quasi judicial zone changes when the zoning is proposed to be changed to be consistent with the General Plan map. ~~and plan amendments. No Type III or IV~~

~~plan amendment or zone change shall be effective unless adopted~~ Plan amendments shall require adoption by ordinance. Zone changes processed concurrently with plan amendments shall also be adopted by ordinance.

4.1.935 Reapplication Limited.

A. If a specific application is denied on its merits, reapplication for substantially the same proposal may be made at any time after the date of the final decision denying the initial application.

B. Notwithstanding subsection (A) of this above, a final decision bars any reapplication for a nonconforming use verification or for a determination on whether an approval has been initiated, unless the applicant comes forward with new evidence that was not available at the time the decision was made, and which could not, through reasonable diligence, have been discovered by the applicant prior to the decision. A lot of record determination shall be subject to reapplication under subsection (A) above, only if the applicant presents new factual evidence not submitted with the prior application.

4.1.940 Proposed Order.

The Review Authority may request that any prevailing party ~~to~~ draft a set of proposed findings and conclusions.

4.1.945 Compliance with ORS 227.350.

A. Final approval of any activity referred to in ORS 227.350(1) regarding state-identified wetlands must include the notice statements required by ORS 227.350(3).

B. Individual notice to the applicant and the owner of record consistent with ORS 227.350(5) shall be provided, unless notice in the written decision notice satisfies that requirement.

C. Failure of the City to provide notice as required in this section shall not invalidate City approval.

D. This section shall not become operative until the Division of State Lands makes available to the City a copy of the applicable portion of the Statewide Wetland Inventory.

4.1.950 Correction of clerical errors.

Upon its own motion or the motion of a party, the City Council may, subject to any applicable public notice and hearing requirements, enact an ordinance correcting clerical or typographical errors in plan amendment or zone change ordinances and any maps appended thereto implementing decisions of the Review Authority. Such changes shall be entered only if the council is able to make a finding that the decision of the Review Authority, including appendices, is not accurately reflected in the implementing ordinances.

4.1. 1000 RECONSIDERATION

Sections:

4.1.1010 Request for Reconsideration.
4.1.1020 Procedure.
4.1.1030 Limitation on Reconsideration.

4.1.1010 Reconsideration.

A. An applicant may request that the Review Authority's decision be reconsidered as set forth herein. A request for reconsideration shall be accompanied by a fee established by the City and by applicant's written consent that the 120-day review period ~~time clock~~ will not run during the period of the reconsideration and the resulting extended appeal period. The fee will be waived ~~where~~ when, in the opinion of the Community Development ~~Planning~~ Director, the reconsideration is requested to correct a clerical or technical error that is the City's fault.

B. Grounds for reconsideration of an administrative decision are limited to the following instances:

1. The applicant's submission of additional documents or evidence, that merely clarifies or supports the pending application, directed to one or more discreet aspects of the approval. The new information shall not constitute a modification of application as defined herein.

2. Correction of an error in a condition established by the Review Authority where the condition is not supported by the record or is not supported by law;

3. Correction of errors that are technical or clerical in nature.

C. Grounds for reconsideration of the Hearing Body's decision are limited to the following instances where an alleged error substantially affects the rights of the applicant:

1. Correction of an error in a condition established by the Review Authority where the condition is not supported by the record or is not supported by law;

2. Correction of errors that are technical or clerical in nature.

4.1.1020 Procedure.

A. A request for reconsideration shall be filed with the Community Development ~~Planning~~ Director within twelve (12) days of the date the decision was mailed. The request shall identify the condition or issue to be considered and shall specify how the applicant would be adversely affected if the issue were to remain uncorrected.

B. Upon receipt of a request for reconsideration of a Type II ~~Hearings Body's~~ decision, the Community Development Director ~~Planning Director shall notify all parties to the proceeding of the request and allow for a ten-day comment period on the request. At the end of the comment period, the Hearings Body~~ shall determine whether the request for reconsideration has merit. No comment period or prior notice shall be required for an administrative reconsideration.

C. Upon receipt of a request for reconsideration of a Type III decision, the Community Development Director shall notify all parties to the proceeding of the request and allow for a ten-day comment period on the request. In those instances in which the only grounds for reconsideration of a Type III decision are technical or clerical in nature, at the end of the comment period, the Community Development Director shall determine whether the request for reconsideration has merit. In all other instances, at the end of the comment period, the Hearings Body shall determine whether the request for reconsideration has merit.

~~C~~D. The Review Authority shall modify the decision upon a determination that the request has merit and the issue substantially affects the applicant. Notice of the modification shall be sent to all parties to the proceeding. If the Review Authority determines that no modification is warranted, a ~~determination shall issue to that effect~~ denial shall be issued and sent to all parties to the proceeding.

~~D~~E. Filing a request for a reconsideration shall not be a precondition for appealing a decision.

~~E~~F. Filing a request for reconsideration stays the deadline for any party to file an appeal of the Review Authority's decision. A new 12-day appeal period for all parties to the proceeding shall commence upon mailing of a modification or upon mailing a determination that a modification is not warranted. The new 12-day appeal period shall not be calculated as part of the 120-day review period. If an opponent files an appeal and an applicant has requested reconsideration, the opponent's appeal shall be stayed pending disposition of the request for modification. If the decision is not modified, the appeal will be processed in accordance with the procedures set forth in Section 4.1.1100. If the decision is modified, the appellant must, within 12 days of the mailing of the modified decision, file in writing a statement requesting that its appeal be activated or the appeal will be invalidated.

4.1.1030 Limitation on Reconsideration.

No decision shall be reconsidered more than once before the same Review Authority.

4.1.1100 APPEALS

Sections:

4.1.1110 Who May Appeal
4.1.1115 Filing Appeals
4.1.1120 Notice of Appeal
4.1.1125 Determination of Jurisdictional Defects
~~**4.1.1130 Transcript Requirement for Appeals to City Council**~~
4.1.1135 Consolidation of Multiple Appeals
4.1.1140 Scope of Review
4.1.1145 Hearing on Appeal
4.1.1150 Type I Appeals
4.1.1155 Rehearing
4.1.1160 Remands
4.1.1165 Withdrawal of an Appeal

4.1.1110 Who May Appeal.

A. The following may file an appeal:

1. A party; or

~~2. In the case of an appeal of an administrative decision without prior notice, a person entitled to notice, a person adversely affected or aggrieved by the administrative decision, or any other person who has filed comments on the application with the Planning Division; and~~ ***"Decision as notice" is proposed for elimination.***

~~3~~2. A person entitled to notice and to whom no notice was mailed~~; and~~.

B. A person to whom notice is mailed is deemed notified even if notice is not received.

4.1.1115 Filing appeals.

A. To file an appeal, an appellant must file a completed notice of appeal on a form prescribed by the Planning Division and pay an appeal fee.

B. Unless a request for reconsideration has been filed, the notice of appeal and appeal fee must be received ~~at the offices of the City services~~ by the Community Development Department no later than ~~5:00 PM~~ the close of the public counter on the twelfth day following mailing of the decision. If a decision has been modified on reconsideration, an appeal must be filed no later than ~~5:00 PM~~ the close of the public counter on the twelfth day following mailing of the decision as modified. Notices of Appeals shall not be received by facsimile machine or e-mail.

C. In the case of an appeal of an administrative (Type II) decision to a Hearings Officer or to the Planning Commission, the Hearings Body's decision on appeal shall become final 12 days after the decision is mailed. Except that, within 12 days after the decision is mailed, the City Council may, on its own motion and at its discretion, call up the decision of the Hearings Officer or Planning Commission and conduct an on the record review of the decision limited to issues identified in the Council's motion. ***Statutes only require one local public hearing. Council review is discretionary. An appellant may appeal a HO or PC decision directly to LUBA without asking for Council review.***

~~C. If the City Council is the Hearings Body and the council declines review, 75% of the appeal fee will be refunded when City Council does not hear the appeal and when the appellant does not appeal the issue to the Land Use Board of Appeals~~.

D. In the case of an appeal of a Type III decision, the City Council's decision whether to grant review shall be discretionary. If the City Council declines review, the appellant may be entitled to a partial refund in accordance with the city's adopted Fees Resolution.

~~D. The appeal fee shall be paid by cash or check or money order, except that local, state or federal governmental agencies may supply a purchase order at the time of filing.~~

4.1.1120 Notice of Appeal.

A. The Notice of Appeal shall contain:

1. A description of the decision which is being appealed, including the date of decision.

2. A statement describing the interest the person who is appealing has in the decision. Only persons who have proper standing as provided by the law, and who have participated in the decision being appealed (if provision for such participation was provided in the previous proceeding) may appeal the decision. The statement of interest must demonstrate the person's standing and participation.

3. A description of the issues sought to be raised by the appeal; and a statement that the issues were raised during the proceeding that produced the decision being appealed. This description must include the specific criteria relied upon as the basis for the appeal, and an explanation of why the decision has not complied with the standards or requirements of the criteria. The issues raised by the appeal must be stated with sufficient specificity to afford the reviewing authority an opportunity to resolve each issue raised.

4. In the case of ~~an appeal~~ a discretionary appeal request to the City Council, the Notice of Appeal shall include the following additional information to assist the Council in deciding whether to grant discretionary review of the decision being appealed:

   a. How the appeal presents issues that have significant public policy or community wide implications for the City, as opposed to more limited issues which primarily involve the directly affected property or persons involved in the land use decision being appealed.

   b. Why it is necessary or desirable for the City Council to review these issues; and why the issues cannot be adequately and fairly reviewed by the Land Use Board of Appeals.

~~B. If the appeal asks for City Council discretionary review of the decision being appealed, and the person appealing wants to present additional evidence (beyond that already in the record made as part of the decision being appealed), then the Notice of Appeal shall also contain:~~

~~1. A statement summarizing the new evidence and the criteria to which it will relate.~~
~~2. An explanation why the proposed new evidence was not submitted as part of the record made in the decision being appealed. Evidence that is substantially similar to evidence already in the record of the decision being appealed will not be allowed. Evidence that could have been submitted in the record of the decision being appealed will not be allowed unless there is a compelling reason that justifies its presentation as part of the appeal.~~

4.1.1125 Determination of Jurisdictional Defects.

A. Any failure to conform to the requirements of Sections 4.1.1115; Filing Appeals and 4.1.1120; Notice of Appeal, above shall constitute a jurisdictional defect.

B. Determination of jurisdictional defects in an appeal shall be made by the Review Authority to which an appeal has been made.

~~**4.1.1130 Transcript Requirement for Appeals to City Council.**~~

~~A. Except as otherwise provided in this section, appellants shall provide a complete transcript of any hearing appealed from the Hearings Officer or Planning Commission, from audio recordings provided by the City, below.~~

~~B. Appellants shall submit the transcript to the Planning Division no later than the close of the day 5 days prior to the date set for a de novo appeal hearing or, in on-the-record appeals, the date set for receipt of written arguments. Unless excused under this section, an appellant's failure to provide a transcript shall cause the Council to decline to consider the appellant's appeal further and shall, upon notice mailed to the parties, cause the lower Hearings Body's decision to become final.~~

~~C. An appellant shall be excused from providing a complete transcript if appellant was prevented from complying by:~~

~~1. The inability of the Planning Division to supply appellant with an audio recording of the prior proceeding; or~~

~~2. Defects on the audio recording of the prior proceeding that make it not reasonably possible for applicant to supply a transcript. Appellants shall comply to the maximum extent reasonably and practicably possible.~~

4.1.1135 Consolidation of Multiple Appeals.

A. If more than one party files a notice of appeal on a land use action decision, the appeals shall be consolidated and noticed and heard as one proceeding.

B. In instances of multiple appeals where separate appellants have asked for a differing scope of review, any grant of de novo review shall control over a separate request for a more limited review on appeal.

4.1.1140 Scope of Review.

A. Before Hearings Officer or Planning Commission: The review on appeal before the Hearings Officer or Planning Commission shall be de novo.

B. Before the Council:

1. Review of land use decisions by the City Council on appeal shall be discretionary. A decision by the City Council to not grant discretionary review of the appeal shall be the final determination of the City, and the appeal of the decision application shall be to the Land Use Board of Appeals as provided by law. The City Council's decision whether to grant discretionary review shall be made without testimony or argument from persons interested in the appeal~~, except as specifically permitted by the City Council~~.

2. The scope of review for appeals that are granted discretionary review by the City Council shall be:

   a. Restricted to the issues raised in the Notice of Appeal, or as prescribed by the City Council.

   b. Be conducted during an appeal hearing before the City Council on the record made as part of the decision being appealed~~, unless the City Council has permitted the presentation of new evidence as part of the appeal~~.

   ~~c. De novo review if the City Council so chooses.~~

3. The record for discretionary review by the City Council shall include:

   a. The land use application or request which is the subject of the appeal, any staff report, and all written comments, exhibits, or any other materials or information considered by the decision maker in the proceedings that produced the decision being appealed.

   b. A written transcript of all proceedings before the decision maker, or a stipulated written summary of the proceedings submitted by all of the parties to the appeal.

   c. Appellants shall submit the transcript or stipulated written summary of the proceedings to the Planning Division no later than the close of the day 5 days prior to the date set for receipt of written arguments.

   d. An appellant shall be excused from providing a transcript or stipulated written summary of the proceedings if the appellant was prevented from complying by:

      i. The inability of the Planning Division to supply the appellant with an audio recording of the prior proceeding; or

      ii. Defects on the audio recording of the prior proceeding that make it not reasonably possible for the appellant to supply a transcript. Appellants shall comply to the maximum extent reasonably and practicably possible.

4. An appeal hearing before the City Council shall be conducted according to such procedures as the City Council shall prescribe, which may include an opportunity for presentations by the parties to the appeal.

5. Decisions reviewed by the City Council can be affirmed, remanded, reversed, or modified in whole or in part by the City Council.

4.1.1145 Hearing on appeal.

A. The appellant and all other parties to the decision below shall be mailed notice of the hearing on appeal at least ten (10) days prior to any de novo hearing or deadline for submission of written arguments.

B. Except as otherwise provided in this chapter, the appeal shall be heard as provided in Section 4.1.800, Land Use Action Hearings. The applicant shall proceed first in all appeals.

C. The order of Hearings Body shall be as provided in Section 4.1.815; Hearings Body of this ordinance.

D. The record of the proceeding from which appeal is taken shall be a part of the record on appeal.

E. The record for a review on the record shall consist of the following:

1. ~~A written transcript of any prior hearing~~ Minutes and audio recordings of any prior hearing, if available;
2. All written and graphic materials that were part of the record below;
3. The Review Authority's decision appealed from;
4. Written arguments, based upon the record developed below, submitted by any party to the decision;
5. ~~Written comments submitted by the Planning Commission or individual Planning Commissioners, based upon the record developed below; and~~
6. ~~6~~5. A staff report and staff comment based on the record~~:~~; and
7. ~~7~~6. Other information deemed relevant by the Review Authority.

F. ~~No oral evidence, argument or comment other than staff comment based on the record shall be taken.~~ The council shall not consider any new factual information in an "on the record" proceeding. Brief oral argument by the applicant and the appellant on the record may be allowed by the council.

4.1.1150 Type I appeals.

Notice of the hearing date set for appeal shall be sent only to the applicant. Only the applicant, his or her representatives, and his or her witnesses shall be entitled to participate. Continuances shall be at the discretion of the Hearings Body, and the record shall close at the end of the hearing.

4.1.1155 Re-hearing.

Re-hearings shall not be allowed.

4.1.1160 Remands.

Applications shall not be remanded to a lower level Review Authority after appeal, except by City Council as provided in subsection 4.1.1140(5), above.

4.1.1165 Withdrawal of an appeal.

An appeal may be withdrawn in writing by an appellant at any time prior to the rendering of a final decision. Subject to the existence of other appeals on the same application, in such event the appeal proceedings shall terminate as of the date the withdrawal is received. An appeal may be withdrawn under this section regardless of whether other non-filing parties have relied upon the appeal filed by the appellant.

4.1.1200 PROCEEDINGS ON REMAND

Sections:

4.1.1210 Purpose.
4.1.1215 Hearings Body.
4.1.1020 Notice and Hearings Requirements.
4.1.1225 Scope of Proceeding.
4.1.1230 Effect of Reversal.

4.1.1210 Purpose.

This chapter shall govern the procedures to be followed where a decision of the City has been remanded by LUBA or the appellate courts ~~or a decision has been withdrawn by the City following an appeal to LUBA~~.

4.1.1215 Hearings Body.

The ~~Hearings Body~~ Review Authority for a remanded ~~or withdrawn~~ decision shall be the ~~Hearings Body~~ Review Authority from which the appeal to LUBA was taken, except that in voluntary or stipulated remands, the council may decide that it will hear the case on remand. ~~If the remand is to the Hearings Officer, the Hearings Officer's decision may be appealed under this ordinance to the council, subject to the limitations set forth herein.~~

4.1.1220 Notice and Hearings Requirements.

A. The City shall conduct a review ~~hearing~~ on any remanded ~~or withdrawn~~ decision. ~~, t~~ The ~~scope of~~ remand procedure ~~which~~ shall be ~~determined~~ in accordance with the applicable provisions of this section, the LUBA or Appellate Court decision, and applicable state law. Unless state law requires otherwise, only those persons who were parties to the proceedings before the City shall be entitled to notice and be entitled to participate in any hearing on remand.

B. The ~~hearing~~ review procedures shall comply with the minimum requirements of state law and due process for ~~hearings on~~ remand and need comply with the requirements of this Code ~~Section 4.1.800; Land Use Action Hearings~~, only to the extent that such procedures are applicable to remand proceedings under state law.

4.1.1225 Scope of Proceeding.

A. On remand, the ~~Hearings Body~~ Review Authority shall review those issues that LUBA or the Appellate Court required to be addressed. ~~In addition, t~~ The ~~Council~~ Review Authority shall have the discretion to reopen the record in instances in which it deems it to be appropriate.

B. At the ~~Council's~~ Review Authority's discretion, a remanded application ~~for a land use permit~~ may be modified to address issues involved in the remand ~~or withdrawal~~ to the extent that such modifications would not substantially alter the proposal and would not have a significantly greater impact on surrounding neighbors. Any greater modification would require a new application.

C. If additional testimony is required to comply with the remand, parties may raise new, unresolved issues that relate to new evidence directed toward the issue on remand. Other issues that were resolved by LUBA or the Appellate Court or that were not appealed shall be deemed to be waived and may not be reopened.

4.1.1230 Effect of Reversal.

A land use decision reversed by LUBA or the Court of Appeals that results in a final appellate judgment or order of reversal cannot be further heard by the City in the absence of an amended or a new application. Submission of a revised application shall be governed by the time limit set forth in Section 4.1.935; Reapplication Limited.

4.1.1300 LIMITATIONS ON APPROVALS

Sections:

4.1.1310 **Expiration of Approval.**
4.1.1315 **Initiation of Use.**
4.1.1320 **Extensions to Avoid Environmental or Health Hazards.**
4.1.1325 **Modification of Approval.**
4.1.1330 **Transfer of ~~Permit~~ Approval.**
4.1.1335 **Revocation of Approvals.**

4.1.1310 Expiration of Approval.

A. Scope.

1. Except as otherwise provided herein, this section shall apply to and describe the duration of all development approvals ~~of land use permits~~ provided for under this Code. ~~ordinance, the zoning ordinances and the land division ordinance.~~

2. This section does not apply to:

   a. Those determinations made by declaratory ruling, such as verifications of nonconforming uses, lot of record determinations and expiration determinations that involve a determination of the legal status of a property, land use or land use permit rather than whether a particular application for a specific land use meets the applicable standards of the zoning ordinance. Such determinations, whether favorable or not to the applicant or land owner, shall be final unless appealed and shall not be subject to any time limits;

   b. Temporary use permits of all kinds, which shall be governed by applicable ordinance provisions specifying the duration of such permits; or

   c. Quasi-judicial and legislative plan and map amendments.

B. Duration of Approvals.

1. Except as otherwise provided under this Code ~~section or under applicable zoning ordinance provisions~~, a development approval ~~land use permit~~ is void ~~one~~ two years after the date the ~~discretionary~~ decision becomes final if the use approved in the permit is not initiated within that time period.

2. Except as otherwise provided in this Code ~~under applicable ordinance provisions~~, ~~preliminary~~ approval of tentative land division plats ~~or master plans~~ shall be void after ~~one~~ two years from the date of preliminary approval, unless the final plat has been ~~submitted to the Planning Division for final approval within that time period~~ recorded with Deschutes County. ~~unless an~~ A one year extension may be ~~is sought~~ approved by the Community Development Director ~~under this Section or the preliminary plat or master plan approval has been initiated as defined herein.~~ if the applicant can demonstrate sufficient progress to reasonably assure the plat will be recorded at the end of the third year, and if:

   a. An applicant makes a written request for an extension of the development approval period; and
   b. The request is submitted to the city prior to the expiration of the approval period.

3. In the case of a ~~land use~~ development approval authorized under applicable approval criteria to be completed in phases, each phase must be ~~initiated~~ consistent ~~within~~ the time specified in the approval~~, or initiated within one (1) year of completion of the prior phase if no timetable is specified~~. In no case shall the total time period for all phases be greater than five years.

C. Extensions.

1. The Community Development Director may grant one extension of up to one year for a development approval that contained a one year initial duration of approval ~~or a phase of a development approval~~, if:

   a. An applicant makes a written request for an extension of the development approval period; and

b. The request is submitted to the city prior to the expiration of the approval period.

2. The Community Development Director may grant one or more additional extensions ~~beyond one year~~ if authorized by a City Council resolution which recognizes a city-wide need for an additional limited-duration extension, not to exceed two years. The additional extension may be granted if:

   a. The applicant has exhausted all other extension opportunities; ~~and~~

   b. The applicant ~~satisfies the submittal requirements of (1)(a) and (b) of this section~~ makes a written request for an extension of the development approval period; and

   c. The request is submitted to the city prior to the expiration of the approval period.

3. Approval of an extension granted under this section is an administrative decision, and is not a land use decision or a limited land use decision as described in ORS 197.015 or this Code. An extension is not subject to appeal and shall be processed as a Type I application.

~~D. Procedures.~~

~~1. A determination of whether a land use has been initiated shall be processed as a declaratory ruling.~~ ***Moved to Section 4.1.1315(D).***

~~2. Approval of an extension granted under this section is an administrative decision, is not a land use decision described in ORS 197.015 or this ordinance. An extension is not subject to appeal as a land use decision and shall be processed under this ordinance as a development action, except to the extent it is necessary to determine whether the use has been initiated.~~ ***Revised and moved to Section 4.1.1310(C)(3).***

D~~E~~. Effect of Appeals. The time period set forth in subsection B of this section shall be tolled upon filing of an appeal to LUBA, until all appeals are resolved.

4.1.1315 Initiation of Use.

A. For the purposes of this Chapter, development ~~action~~ undertaken under a ~~land use~~ development approval described in Section 4.1.1310; Expiration of Approval, above has been "initiated" if it is determined that:

   1. The proposed use has lawfully occurred;

   2. Substantial construction toward completion of the ~~land use~~ development approval has taken place; or
   3. Where construction is not required by the approval, the conditions of a permit or approval have been substantially exercised and any failure to fully comply with the conditions is not the fault of the applicant.

B. For the purposes of this section, "substantial construction" has occurred when the holder of an ~~land use~~ approval has physically altered the land or structure or changed the use thereof and such alteration or change is directed toward the completion and is sufficient in terms of time, labor or money spent to demonstrate a good faith effort to complete the development.

C. Initiation of use shall not be granted in lieu of a phased approval.

D. A determination of whether a land use has been initiated shall be processed as a declaratory ruling.

4.1.1320 Extensions to Avoid Environmental or Health Hazards.

A. In addition to extensions granted pursuant to subsection 4.1.1310(C) and notwithstanding any other provision of the Bend Code, a one-time extension may be granted to a tentative plat approval and any associated development approvals ~~land use permits~~ regarding the time for final plat approval where conditions of the approval, or extensions thereof, require or can be read to require approvals from other agencies for sewer or water systems and (1) the applicant can show that without such extension or extensions, a health or environmental hazard or risk thereof would continue to exist, be exacerbated or likely would be created and (2) the applicant submits a time frame and plan for meeting the outstanding conditions with

the concurrence of a homeowner's association having an ownership interest in project lands and such concurrence is demonstrated in the application.

B. Such an extension shall be administrative, in writing, and not subject to appeal and shall, subject to the termination provisions of subsection 4.1.1320(C) below, be granted for a time period not to exceed one year.

C. In lieu of submittal of the time frame and plan and concurrence of the homeowner's association with the application, that requirement of Section (A) above may be satisfied by conditioning approval of the extension to require establishment of the agreed-to time frame and plan within the first 60 days of the extension period, which time line and plan shall thereupon be deemed to be a condition of the extension approval.

D. An extension under this section shall be conditioned upon adherence to the time lines and plan proposed in the extension application or as agreed to pursuant to subsection 4.1.1320(C) above.

E. Failure to demonstrate compliance with any extension condition shall, after notice and hearing under this ordinance, result in termination of the extension granted under this section.

4.1.1325 Modification of Approval.

A. An applicant may apply to modify an approval at any time after a period of 60 days has elapsed from the time a development approval ~~land use action~~ approval has become final.

B. Unless otherwise specified in this Code ~~a particular zoning ordinance provision~~, the grounds for filing a modification shall be that a change of circumstances since the issuance of the approval makes it desirable to make changes to the proposal, as approved. A modification shall not be filed as a substitute for an appeal or to apply for a substantially new proposal or one that would have significant additional impacts on surrounding properties.

C. An application to modify an approval shall be directed to one or more discrete aspects of the approval, the modification of which would not amount to approval of a substantially new proposal or one that would have significant additional impacts on surrounding properties. Any proposed modification, as defined in this section, shall be reviewed only under the criteria applicable to that particular aspect of the proposal. Proposals that would modify an approval in a scope greater than allowable as a modification shall be treated as an application for a new proposal.

D. An application for a modification of a Type I approval shall be processed as a Type I application. All other modifications shall be processed as a Type II application unless elevated to a Type III process by the Community Development Director ~~land use action~~.

E. The effect, if any, of a modification upon the original approval time limitation shall be established in the modification decision.

F. For modification of approval of a PUD or Master Planned Subdivision issued prior to the adoption of this ordinance, any proposed modification shall be subject to the criteria in ~~Chapter~~ Section 4.5.300.

4.1.1330 Transfer of ~~Permit~~ Approval.

A. A ~~land use action permit~~ development approval shall be deemed to run with the land and be transferable to applicant's successors in interest.

~~B. The Planning Division may require that an applicant record a notice of land use permit and conditions of approval agreement in the Deschutes County Records. Such an agreement shall set forth a description of the property, describe the permit that has been issued and set forth the conditions of approval. The Planning Director is authorized to sign the notice and agreement on behalf of the City.~~

~~C. The terms of the approval agreement may be enforced against the applicant and any successor in interest.~~

4.1.1335 Revocation of Approvals.

A. ~~Approvals shall be subject to revocation according to standards set forth in the applicable zoning ordinances~~ Proceedings to revoke a development approval shall be initiated by the Community Development Director by giving notice of intent to revoke to the property owner.

B. The Community Development Director may revoke a development approval for the following reasons:

1. The conditions or terms of development approval are violated; or
2. The project is not in substantial conformance with the approved plans or decision; or
3. The applicant or the applicant's representative made a material misstatement of fact in the application or supporting documents and such misstatement was relied upon by the Review Authority in making its decision whether to accept or approve the application.

~~B~~C. Revocations shall be processed as a Type II declaratory ruling under this ordinance. ~~Section 4.1.515; Process for Type II or III Applications notwithstanding, a public hearing shall be held in all revocation proceedings.~~

4.1.1400 DECLARATORY RULING

Sections:

4.1.1410 Availability of Declaratory Ruling
4.1.1415 Persons Who May Apply
4.1.1420 Procedures
4.1.1425 Effect of Declaratory Ruling
~~**4.1.1430 Interpretation**~~

4.1.1410 Availability of Declaratory Ruling.

A. Subject to the other provisions of this section, there shall be available for the City's ~~comprehensive plans~~ General Plan and this Code ~~zoning ordinances~~, ~~the subdivision and partition ordinance and this ordinance~~ a process for:

1. Interpreting a provision of ~~a comprehensive plan~~ the General Plan or implementing ordinances (and other documents incorporated by reference) in which there is doubt or a dispute as to its meaning or application;

2. Interpreting a provision or limitation ~~in~~ of a development approval ~~land use permit~~ issued by the City ~~or quasi-judicial plan amendment or zone change~~ in which there is doubt or a dispute as to its meaning or application;

3. Determining whether an approval has been initiated or considering the revocation of a previously issued development approval. ~~land use permit, quasi-judicial plan amendment or zone change;~~

4. Determining the validity and scope of a nonconforming use; and

5. Lot of Record

6. ~~Determination of other similar status situations under a comprehensive plan, zoning ordinance or land division ordinance that do not constitute the approval or denial of an application for a permit.~~

Such a determination or interpretation shall be known as a "declaratory ruling" and shall be processed in accordance with this chapter. In all cases, as part of making a determination or interpretation the Community Development ~~Planning~~ Director (where appropriate) or Hearings Body (where appropriate) shall have the authority to declare the rights and obligations of persons affected by the ruling.

B. A declaratory ruling shall be available only in instances involving a fact-specific controversy and to resolve and determine the particular rights and obligations of particular parties to the controversy. Declaratory proceedings shall not be used to grant an advisory opinion on a specific quasi-judicial ~~land use~~ development application. Declaratory proceedings shall not be used as a substitute for seeking an amendment of general applicability to a legislative enactment.

C. Declaratory rulings shall not be used as a substitute for an appeal of a decision ~~in a land use action~~ or for a modification of an approval. In the case of a ruling on a City development approval, ~~land use action~~ a declaratory ruling shall not be available until 60 days after a decision ~~in the land use action~~ is final.

D. The Community Development ~~Planning~~ Director may refuse to accept and the Hearings ~~Officer~~ Body may deny an application for a declaratory ruling if:

1. The Community Development ~~Planning~~ Director or Hearings ~~Officer~~ Body determines that the question presented can be decided in conjunction with approving or denying a pending ~~land use action~~ application or if in the Community Development ~~Planning~~ Director or Hearings ~~Officer~~ Body's judgment the requested determination should be made as part of a decision on a development application ~~for a quasi-judicial plan amendment or zone change or a land use permit~~ not yet filed; or

2. The Community Development ~~Planning~~ Director or Hearings ~~Officer~~ Body determines that there is an enforcement case pending in circuit court in which the same issue necessarily will be decided as to the applicant and the applicant failed to file the request for a declaratory ruling within two weeks after being cited or served with a compliant.

The Community Development ~~Planning~~ Director or Hearings ~~Officer~~ Body's determination to not accept or to deny an application under this section shall be the City's final decision.

4.1.1415 Persons Who May Apply.

A. Subsection 4.1.215(B); Application Requirements notwithstanding, the following persons may initiate a declaratory ruling under this chapter:

1. The owner of a property requesting a declaratory ruling relating to the use of the owner's property;

2. In cases where the request is to interpret a previously issued ~~quasi-judicial plan amendment, zone change or land use permit~~ development approval, the holder of the ~~permit~~ approval; or

3. In all cases arising under Section 4.1.1410; Availability of Declaratory Ruling, the Community Development ~~Planning~~ Director.

No other person shall be entitled to initiate a declaratory ruling.

B. A request for a declaratory ruling shall be initiated by filing an application with the Planning Division and, except for applications initiated by the Community Development ~~Planning~~ Director, shall be accompanied by such fees as have been set by the Planning Division. Each application for a declaratory ruling shall include the precise question on which a ruling is sought. The application shall set forth whatever facts are relevant and necessary for making the determination and such other information as may be required by the Planning Division.

4.1.1420 Procedures.

~~Except as set forth in this chapter or in applicable provisions of a zoning ordinance, the procedures for making declaratory rulings shall be the same as set forth in this ordinance for land use actions. Where the Planning Division is the applicant, the Planning Division shall bear the same burden that applicants generally bear in pursuing a land use action.~~ Declaratory rulings shall be processed as either a Type II or Type III application.

4.1.1425 Effect of declaratory ruling.

A. A declaratory ruling shall be conclusive on the subject of the ruling and bind the parties thereto as to the determination made.

B. Section 4.1.935, Reapplication Limited, notwithstanding, and except as specifically allowed therein, parties to a declaratory ruling shall not be entitled to reapply for a declaratory ruling on the same question.

C. Except when a declaratory ruling is made by the City Council, the ruling shall not constitute a final policy of the City of Bend.

~~**4.1.1430 Interpretation.**~~

~~Interpretations made under this chapter shall not have the effect of amending the interpreted language. Interpretation shall be made only of language that is ambiguous either on its face or in its application. Any interpretation of a provision of the comprehensive plan or other land use ordinance shall consider applicable provisions of the comprehensive plan and the purpose and intent of this Code the ordinance as applied to the particular section in question.~~

4.1.1500 DEVELOPMENT AGREEMENTS

Sections:

4.1.1510 Purpose.
4.1.1520 Applicability.
4.1.1530 Initiation.
4.1.1540 Negotiations.
4.1.1550 Adoption.
4.1.1560 Hearings Body.

~~A. Purpose.~~

4.1.1510 Purpose.

The purpose of this section is to clarify the authority and procedures for City Council consideration of Development Agreements authorized by Oregon Revised Statute (ORS) 94 outside the land use process.

~~B. Applicability.~~

4.1.1520 Applicability.

The City Council may establish a Development Agreement between the City and any person having a legal or equitable interest in real property for the development of that property. Development Agreements that do not include a "~~land use decision~~" development application are not governed by the City's ~~land use ordinances~~ Development Code, and may be established in any manner deemed appropriate by the Council, consistent with the Council's authority under the City's Charter. Development Agreements that contain a ~~legislative or quasi-judicial land use decision or request a final decision on a "land use action"~~ development application are governed by this section. The following include but are not limited to situations that may require a Development Agreement as described by this section:

~~1~~A. Multiple party or partnership situations

~~2~~B. Large infrastructure requirements

~~3~~C. Timing issues

4D. Litigation

~~5~~E. Urban Renewal

~~C. Initiation.~~

4.1.1530 Initiation.

Development Agreements governed by this section may be initiated by the Council on its own motion or in response to a request by city staff, following consultation with any person having a legal or equitable interest in the property that is the subject of the proposed Development Agreement. Neither city staff nor the Council are required to proceed with consideration of a request for a Development Agreement.

~~D. Negotiations.~~

4.1.1540 Negotiations.

Negotiations between the parties to a Development Agreement shall commence upon a request by the City Council to identified City staff to establish a Memorandum of Understanding (MOU) regarding the anticipated scope of the Development Agreement.

~~E. Adoption.~~

4.1.1550 Adoption.

The provisions of ORS 94.504 – 94.528 shall be followed in the adoption of a Development Agreement under this section. Once a preliminary agreement is reached between the parties, the owner or owners of the property that is the subject of the Development Agreement shall submit an application to the Community Development ~~Planning~~ Director for adoption of the

Development Agreement and for any development application ~~land use decisions~~ requested in connection with the Development Agreement.

~~F. Hearings Body.~~

4.1.1560 Hearings Body.

Notwithstanding any other provision of this Code to the contrary, the City Council shall be the Hearings Body for a Development Agreement ~~and any land use actions requested as part of, or pursuant to, a Development Agreement subject to this section~~. The Council may appoint a Hearings Officer or the Planning Commission to serve as the Hearings Body for specific development applications ~~land use decisions~~ associated with a proposed Development Agreement, prior to the final decision on the Development Agreement as a whole. In that event, the Council shall establish a schedule for such decisions, and shall consider, but shall not be bound by, such decisions.

~~APPENDIX~~

~~PRELIMINARY STATEMENT IN LAND USE ACTION HEARINGS OR APPEALS BEFORE THE COUNCIL~~

~~Introduction~~

~~This is a hearing on (insert application type and number).~~

~~Applicant requested (set forth what the applications are and what is being requested.)~~

~~(If an appeal) These applications were previously considered by the (Planning Director). [or, if Hearings Officer or Planning Commission after a public hearing held on (insert date). Evidence and testimony were received at that hearing.] The (Planning Director, Hearings Officer or Planning Commission) (denied/approved) the applicant's requests.~~

~~Burden of Proof and Applicable Criteria~~

~~The applicant has the burden of proving that he/she is entitled to the land use approval sought. The standards applicable to the application(s) before us are as follows: (list applicable criteria)~~

~~Hearings Procedure~~

~~The procedures applicable to this hearing provide that the (Hearings Body) will hear testimony, receive evidence and consider the testimony, evidence and information submitted into the record on appeal as well as that evidence constituting the record in the prior proceeding. The record as developed to this point is available for public review at this hearing.~~

~~Testimony and evidence at this hearing must be directed toward the criteria set forth in the notice of this hearing and listed in this statement. Testimony may be directed to any other criteria in the comprehensive land use plan of the City or land use regulations which any person believes apply to this decision.~~

~~Failure on the part of any person to raise an issue with sufficient specificity to afford the (Hearings Body) and parties to this proceeding an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals on that issue.~~

~~The failure of the applicant to raise a constitutional or other issues related to the proposed conditions of approval with sufficient specificity to allow the Hearings Body to respond to the issue precludes the applicant from pursuing an action for damages in circuit court.~~

~~Order of Presentation~~

~~The hearing will be conducted in the following order. The staff will give a report of the prior proceedings and the issues raised by the applications on appeal. The applicant will then have an opportunity to make a presentation and offer testimony and evidence. Opponents will then be given a chance to make a presentation. After both proponents and opponents have made a presentation, the proponents will be allowed to make a rebuttal presentation. At the Hearings Body's discretion, opponents may be recognized for a rebuttal presentation. At the conclusion of this hearing, the staff will be afforded an opportunity to make any closing comments. The Hearings Body may limit the time period for presentations.~~

~~Questions to and from the Hearings Body may be entertained at any time at the Hearings Body's discretion. Cross-examination of witnesses will not be allowed. However, if any person wishes a question be asked of any person during that person's presentation, please direct such question to the Hearings Body after being recognized. The Hearings Body is free to decide whether or not to ask such questions of the witness.~~

~~Pre-hearing Contacts~~

~~I will now direct a question to the other members of the Hearings Body. If any member of the Hearings Body, including myself, has had any pre-hearing contacts, now is the time to state the substances of those pre-hearing contacts so that all persons present at this hearing can be fully advised of the nature and context of those contacts and with whom contact was made. Are there any contacts that need be disclosed?~~

~~At this time, do any members of the Hearings Body need to set forth the substance of any ex parte observations or facts of which this body should take notice concerning this appeal?~~

~~Any person in the audience has the right during the hearings process to rebut the substance of any communication or observation that has been placed in the record.~~

~~Challenges for Bias, Prejudgment, or Personal Interest~~

~~Any party prior to the commencement of the hearing may challenge the qualifications of the Hearings Body or any member thereof of bias, prejudgment or personal interest. This challenge must be documented with specific reasons supported by facts.~~

~~I will accept challenges now.~~

~~Should any Hearings Body member be challenged, the member may disqualify himself or herself, withdraw from the hearing or make a statement on the record of their capacity to hear the appeal.~~

~~(Hearing no challenges, I shall proceed.)~~

Chapter 4.2 Site Development and Design Review

Sections:

4.2.100 Purpose
4.1.200 Site Development Review Applicability and Procedures
4.2.300 Site Design Review Applicability and Procedures
4.2.400 Bonding and Assurances
4.2.500 Development in Accordance with Permit Approval

***

4.2.200 Site Development Review Applicability and Procedure.

D. **Site Development Approval Criteria**. Prior to issuance of building permits, the City shall approve, approve with conditions or disapprove the proposed site development plan. In approving the plan, the City shall find that all provisions of the ordinance are met. The following criteria shall be considered:

1. The proposed land use is permitted by the underlying land use district;

2. The land use, building/yard setback, lot area, lot dimension, density, lot coverage, building height and other applicable standards of the underlying land use district are met;

3. The minimum standards in Section 3.2.200; Landscape Conservation, Section 3.2.300; New Landscaping, 3.2.500; Fences and Walls and Chapter, 3.3; Vehicle and Bicycle Parking are met;

4. All applicable building and fire code standards are met.

5. All required public facilities have adequate capacity as determined by the City, to serve the proposed use.

In accordance with Chapter 4.1, the land use approval shall lapse, and a new application shall be required, if a building permit has not been issued within the duration ~~one year~~ of Development Review approval, or if development of the site is in violation of the approved plan or other applicable codes.

***

EXHIBIT B

BEND PLANNING COMMISSION FINDINGS FOR DEVELOPMENT CODE TEXT AMENDMENT

PROJECT NUMBER: **08-308**

INITIAL PUBLIC HEARING DATE: December 8, 2008

APPLICANT: City of Bend
710 NW Wall Street
Bend, OR 97701

PROPOSAL: A package of amendments to the text of Chapters 1.1, 1.2, 1.3, 2.0, 3.6, 4.1 & 4.2 of the Bend Development Code (Ord. No. NS-2016), which are intended to clarify definitions, eliminate inconsistencies, and ensure that the City of Bend's development review procedures conform to state law and the City's customer service objectives.

STAFF: Aaron Henson, AICP, Senior Planner
Colin Stephens, AICP, Current Planning Manager

I. APPLICABLE CRITERIA, STANDARDS & PROCEDURES:

APPLICABLE CRITERIA:

Bend Development Code, Section 4.6.200(B), Criteria for Legislative Amendments; Bend Area General Plan; Oregon's Statewide Planning Goals

APPLICABLE PROCEDURES:

Bend Development Code, Chapter 4.1, Land Use Review and Procedures

II. PROCEDURAL FINDINGS:

PUBLIC NOTICE AND COMMENTS:

The Bend Planning Division published notice of the Planning Commission public hearing for the proposed Development Code text amendments in the Bend Bulletin on November 16, 2008. The Commission conducted a public hearing to accept testimony on the request on December 8, 2008. The hearing was continued to January 26, 2009 and the written record was left open through February 2, 2009. Deliberations were conducted on March 9, 2009 and concluded on March 23, 2009. Testimony and comments received by the Commission are included in the record.

CONFORMANCE WITH CITY OF BEND COMMUNITY DEVELOPMENT CODE, CHAPTER 4.6, LAND USE DISTRICT MAP AND TEXT APMENDMENTS

4.6.200 Legislative Amendments.

A. Applicability, Procedure and Authority. Legislative amendments generally involve broad public policy decisions that apply to other than an individual property owner. These include, without limitation, amendments to the text of the comprehensive plan and map, Development Code and changes in the zoning map not directed at a small number of properties. They are reviewed using the Type IV procedure in accordance with Chapter 4.1, Land Use Review and Procedures and shall conform to Section 4.6.600, Transportation Planning Rule Compliance. A Legislative Amendment may be approved or denied.

FINDING: The recommended amendments to the text of the Development Code involve broad public policy rather than an individual property owner. Therefore, the Legislative Amendment Procedures of this section are the appropriate procedures for review.

III. APPLICATION OF THE CRITERIA:

B. Criteria for Legislative Amendments. The applicant shall submit a written narrative which explains how the approval criteria will be met. A recommendation or a decision to approve or to deny an application for a Legislative Amendment shall be based on all of the following criteria:

1. The request is consistent with the applicable State land use law;

FINDING: The proposed amendments to the General Administration, Definitions, Enforcement, Land Use District Administration, Special Standards for Certain Uses and Development Review and Procedures sections of the Development Code are consistent with applicable State land use laws. In particular, the proposed amendments will satisfy Goal 1, Citizen Involvement, and Goal 2, Land Use Planning.

- Goal 1 will be satisfied through the City's text amendment process, which includes a Planning Commission public hearing followed by a City Council public hearing.
- Goal 2 requires all implementation ordinances such as the Development Code to be reviewed and, as needed, revised on a periodic cycle to take into account changing public policies and circumstances.
- Statewide Goals 3 through 19 were reviewed and are not applicable to this proposal.

Based on the above discussion, the Planning Commission finds that the proposed text amendments to the Development Code comply with the above criterion.

2. The request is consistent with the applicable Bend Area General Plan goals and policies;

FINDINGS: The "goals" established in the general plan express the desires of the residents of Bend as the City progresses into the future. The "goals" are generally carried out through "policies", which are statements of public policy. The Planning Commission reviewed the Comprehensive Plan and found only Chapter 1 to be directly applicable to the proposed text amendments.

Chapter 1 of the Bend Area General Plan includes the following goal:

- *Public/Civic Involvement* – Encourage involvement by all citizens, corporate and individual, to keep the city vital and the Plan an "evolving vision".
- *Implementing Consistent Ordinances* – Implement the plan through effective, clear and consistent ordinances and language that reflect the intent of the vision.

Chapter 1 also includes the following public policies:

15. The city shall continue to use advisory committees in their planning process, members of which are selected by an open process, and who are widely representative of the community.
16. The city will use other mechanisms, such as, but not limited to, meetings with neighborhood groups, planning commission hearings, design workshops, and public forums, to provide an opportunity for all the citizens of the area to participate in the planning process.

Chapters 4.1 and 4.6 of the Development Code together require the Planning Commission and the City Council to hold public hearings prior to acting on amendments to the text of the Development Code. Prior to any public hearings, the proposed text amendments were posted on the City's website, and the public was invited to submit written comments on the draft amendments. On July 21, 2008, the City's Customer Service Task Force also met with Planning Division staff to review and discuss the proposed text amendments. The Planning Commission's initial public hearing was held on December 8, 2008. The hearing was continued to January 26, 2009 and the record was left open through February 2, 2009. The Planning Commission's deliberations were conducted on March 9, 2009 and concluded on March 23, 2009. A City Council public hearing on the proposed amendments will be held in 2009. Implementation of the public involvement procedures identified in the Development Code will ensure compliance with the Citizen Involvement Goals and Policies of the General Plan.

Based on the findings stated above, the Planning Commission concludes that the proposed text amendments are consistent with the applicable General Plan goals and policies.

3. **The applicant can demonstrate a public need or benefit for the proposed amendment.**

FINDING: There is a public need and benefit for clear and consistent development regulations and review procedures that conform to state law and the City's customer service objectives.

4.6.500 Record of Amendments.

The City Recorder shall maintain a record of amendments to the text of this Code and the land use districts map in a format convenient for public use.

FINDING: At such time as the Development Code text amendments are adopted by ordinance, compliance with this Section will be required.

4.6.600 Transportation Planning Rule Compliance.

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

FINDING: The Planning Commission recommendation is for a text amendment to the Bend Development Code, a functional component of the comprehensive plan. The City staff have analyzed the proposed text amendments and have found that none of the changes would cause a "significant effect" under ORS 660-012-0060.

IV. CONCLUSIONS:

Based on the above Findings of Fact and Conclusions of Law, the Planning Commission finds that the proposed Development Code text amendments can meet, with maintenance of a record, all applicable criteria for adoption.

ORDINANCE NO. NS-2123

AN ORDINANCE AMENDING THE BEND URBAN AREA GENERAL PLAN CHAPTER 3 TO ADD THE NELS AND LILLIAN ANDERSEN HOUSE AS A HISTORIC STRUCTURE TO THE CITY'S INVENTORY.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council has held a public hearing, considered the Deschutes County Historical Landmarks Commission recommendation and public record in this matter, and has found that there is a public need and benefit for the proposed change in the Bend Area General Plan Chapter 3. The Bend City Council adopts the Recommendation and Findings report of the Deschutes County Landmarks Commission dated, April 17, 2008 file number PZ 08-61.

Section 2. Chapter 3 of the Bend Area General Plan shall be modified to add the following structure to the Table 3-1 Inventory of Historic Sites in the Bend Urban Area.

Historic Structure	Location
Nels and Lillian Andersen House	**63160 Nels Anderson Road**

Read for the first time the 1st day of July, 2009.

Read for the second time the 15th day of July, 2009.

Placed upon its passage the 15th day of July, 2009.

YES: 7 NO: 0

Authenticated by the Mayor the 15th day of July, 2009.

Kathie Eckman

Kathie Eckman, Mayor

ATTEST:

Patricia S Stell

Patricia Stell, City of Bend Recorder

Words that are ~~struckthrough~~ are deleted from existing code; words that are <u>underlined</u> are added to existing code.

ORDINANCE NO. NS-2124

AN ORDINANCE REPEALING ORDINANCE NO NS-1813, AND AMENDING THE CITY OF BEND BUSINESS CODE (ORDINANCE NS-1375) TO MORE CLOSELY CONFORM TO OREGON STATE STATUTE 320.300

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. Bend Code, Chapter Seven, Section 7.005 through Section 7.018 is hereby amended to read:

TRANSIENT ROOM TAX

7.005 <u>Title</u>. Section 7.010 to 7.042 shall be known as the Transient Room Tax Code of the City of Bend.

7.010 <u>Definitions</u>. Except where the context otherwise requires, the definitions given in this section govern the construction of this Code.

(1) "Accrual Accounting" means the operator enters the rent due from a transient on his records when the rent is earned whether or not it is paid.

(2) "Cash Accounting" means the operator does not enter the rent due from a transient on his records until rent is paid.

(3) "City Council" means the City Council of the City of Bend, Oregon.

~~(4) "Hotel" means any structure, or any portion of any structure which is occupied or intended or designed for transient occupancy for thirty (30) days or less, for dwelling, lodging, or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private dormitory, fraternity, sorority, public or private club, space in mobile home or trailer parks, or similar structure or portions thereof so occupied, provided such occupancy is for less than a thirty (30) day period.~~

(5) "Occupancy" means the use or possession, or the right to the use or possession for lodging or sleeping purposes of any room or rooms in <u>transient lodging</u> ~~a hotel~~, or space in a mobile home or trailer park or portion thereof.

(6) "Operator" means the person who is proprietor of the <u>transient lodging</u> ~~hotel~~ in any capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this code and shall have the same duties and liabilities as his principal. Compliance with the provisions of this code by either the principal or the managing agent shall be considered to be compliance by both.

(7) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate or other group or combination acting as a unit.

(8) "Rent" means the consideration charged, whether or not received by the operator, for the occupancy of space in <u>transient lodging</u> ~~a hotel~~ valued in money, goods, labor, credits, property, or other consideration valued in money, without any deduction.

~~(9) "Rent Package Plan" means the consideration charged for both food and rent where~~

~~a single rate is made for the total of both.~~

(10) "Tax Administrator" means the ~~City Treasurer~~ Finance Director of the City of Bend.

(11) "Tax" means either the tax payable by the transient, or the aggregate amount of taxes due from an operator during the period for which he is required to report his collections.

(12) "Transient" means any individual who exercises occupancy or is entitled to occupancy in transient lodging ~~a hotel~~ for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. The day a transient checks out of the transient lodging ~~hotel~~ shall not be included in determining the thirty-day period if the transient is not charged rent for that day by the operator. Any such individual so occupying space in transient lodging ~~a hotel~~ shall be deemed to be a transient until the period of thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy.

(13) "Transient lodging" means:

a) Hotel, motel and inn dwelling units that are used for temporary overnight human occupancy;
b) Spaces used for parking recreational vehicles or erecting tents during periods of human occupancy; or
c) Houses, cabins, condominiums, apartment units or other dwelling units, or portions of any of these dwelling units that are used for temporary human occupancy.

[Section 7.010(9) amended by Ord. No. NS-1455 passed March 18, 1987]
[Section 7.010(10) amended by Ord. No. NS-1615 passed May 18, 1994]

7.012 Tax Imposed. For the privilege of occupancy in any transient lodging ~~hotel~~, on and after the effective date of this code, each transient shall pay a tax in the amount then in effect under subsections (1), (2), and (3) of this Section. The tax constitutes a debt owed by the transient to the city, which is extinguished only by payment to the operator or to the city. The transient shall pay the tax to the operator of the transient lodging ~~hotel~~ at the time the rent is paid. The operator shall enter the tax on his records when rent is collected if the operator keeps his records on the cash accounting basis. If rent is paid in installments a proportionate share of the tax shall be paid by the transient to the operator with each installment. If for any reason the tax due is not paid to the operator of the transient lodging ~~hotel~~, the Tax Administrator may require that such tax shall be paid directly to the city. In all cases the rent paid or charged for occupancy shall exclude the separate sale of any goods, services and commodities, other than the furnishing of rooms, accommodations, and parking space in mobile home parks or trailer parks. ~~When rent is charged under a rent package plan, as defined in Bend Code 7.010 (9), an allowance of ten dollars ($10.00) per person per meal or forty percent (40%) of the rent package plan price, whichever is less, may be deducted in the determination of the transient room tax under this code.~~

(1) During the period of January 1, 2002 through June 30, 2002, the tax amount shall be 8% of the rent charged by the operator.
(2) During the period of July 1, 2002 through June 30, 2003, the tax amount shall be 8½% of the rent charged by the operator.
(3) Beginning on July 1, 2003, and subsequent thereto, the tax amount shall be 9% of the rent charged by the operator.

[Section 7.012 amended by Ord. No. NS-1455 passed March 18, 1987]
[Section 7.012 amended by Ord. No. NS-1466 passed December 2, 1987]
[Section 7.012 amended by Ord. No. NS-1796 passed August 15, 2001]
[Section 7.012 amended by Ord. No. NS-1813, passed January 19, 2002]

7.014 Collection of Tax by Operator: Rules for Collection:

(1) Every operator renting rooms in this city, the occupancy of which is not exempted under the terms of this code, shall collect a tax from the occupant. The tax collected or accrued by the operator constitutes a debt owed by the operator to the city.

(2) In all cases of credit or deferred payment of rent, the payment of tax to the operator may be deferred until the rent is paid, and the operator shall not be liable for the tax until credits are paid or deferred payments are made.

(3) The Tax Administrator shall enforce provisions of this code and shall have the power to adopt rules and regulation not inconsistent with this code as may be necessary to aid in the enforcement.

~~(4) For rent collected on portions of a dollar, the first one cent ($.01) of tax shall be collected on five cents ($.05) through seventeen cents ($.17), inclusive; and the second one cent ($.01) of tax on eighteen cents ($.18) through twenty-seven cents ($.27); the third one cent ($.01) of tax on twenty-eight cents ($.28) through thirty-eight cents ($.38); the fourth one cent of tax on thirty-nine cents ($.39) through forty-nine cents ($.49); the fifth one cent of tax on fifty cents ($.50) through sixty cents ($.60); the sixth one cent ($.01) of tax on sixty-one cents ($.61) through seventy-one cents ($.71); the seventh one cent ($.01) of tax on seventy-two ($.72) through eight-two ($.82); the eighth one cent ($.01) of tax on eighty-three ($.83) through ninety-three cents ($.93); the ninth one cent ($.01) of tax on ninety-four cents ($.94) through the next one dollar and four cents $1.04) of rent.~~

[Section 7.014 amended by Ordinance No. NS-1466 passed December 2, 1987]
[Section 7.014 amended by Ord. No. NS-1796 passed August 15, 2001]

7.016 Operator's Duties. Each operator shall collect the tax imposed by this code at the same time as the rent is collected from every transient. The amount of tax shall be separately stated upon the operator's records, and any receipt rendered by the operator. No operator of transient lodging ~~a hotel~~ shall advertise that the tax or any part of the tax will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, when added, any part will be refunded, except in the manner provided by this code.

7.018 Exemptions. No tax imposed under this code shall be imposed upon:

~~(1) Any occupant for more than thirty (30) successive calendar days. A person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient.~~

~~(2) Any occupant whose rent is of a value less than $2.00 per day.~~

~~(3) An employee of the federal government, while on federal business, whose room is procured and paid for directly by the federal government, through a purchase order or other form of procurement and with a government check. If the federal employee pays for a room personally, the employee is not exempt and the tax must be paid, even if the employee is in Bend on federal business.~~

~~(4) Any occupant whose rent is paid for a hospital room or to a medical clinic, convalescent home or home for aged people.~~

~~(5) Any occupant whose rent is paid by a Deschutes United Way agency as a charitable assistance to the occupant.~~

(1) An employee of the federal government while on federal business;

(2) A dwelling unit in a hospital, health care facility, long term care facility or any other residential facility that is licensed, registered or certified by the Department of Human Services;

(3) A dwelling unit in a facility providing treatment for drug or alcohol abuse or providing mental health treatment;

(4) A dwelling unit that is available for public lodging for fewer than 30 days per year (e.g., a hunting lodge that is only open one month during the year):

(5) A dwelling unit, the consideration for which is funded through a contract with a government agency and the purpose of which is to provide emergency or temporary shelter;

(6) A dwelling unit at a nonprofit youth or church camp, nonprofit conference

center or other nonprofit facility; or

(7) A dwelling unit that is leased or otherwise occupied by the same person for a consecutive period of 30 days or more during the year. The requirements of this subsection are satisfied even if the physical dwelling unit changes during the consecutive period, if:

a) All dwelling units occupied are within the same facility; and

b) The person paying consideration for the transient lodging is the same person throughout the consecutive period.

[7.018 (3) amended by Ord. No. NS-1418, passed August 21, 1985]
[7.018 (3) deleted by Ord. No. NS-1455, passed March 18, 1987]
[7.018.(3) added by Ord. No. NS-1547, passed September 4, 1991]

Read for the first time the 3rd day of June 2009.

Read for the second time the 15th day of July 2009.

Placed upon its passage the 15th day of July, 2009.

YES: 4 NO: 3

Authenticated by the Mayor the 15th of July, 2009

Kathie Eckman

Kathie Eckman, Mayor

ATTEST:

Patti S. Stell

Patricia Stell, City of Bend Recorder

Ordinance No. NS-2125

AN ORDINANCE AMENDING THE BEND CITY CODE CHAPTER 5.295 SECTION (2) (D) TO ELIMINATE THIS SECTION OF THE CODE WHICH WILL TO PROHIBIT OPEN DEBRIS BURNING WITHIN THE MONTH OF NOVEMBER FOR PROPERTY OWNERS UNLESS OTHERWISE APPROVED IN SECTION (2) A-C.

Recitals:

A. Section 5.295 of the Bend Code prohibits open burning subject to a few exceptions, including an exception allowing burning of yard debris lots greater than two acres in size on two weekend days in November as authorized by the Fire Chief. This ordinance is intended to eliminate that exception because of the air quality concerns associated with any burning of yard debris.

B. The prohibition on burning of yard debris in the code is not intended to apply to forest practices on forestland authorized under the Oregon Forest Practices Act (ORS 527.610 to 526.730) and implementing regulations. Forestland includes only lands on which trees are grown for harvest, and does not include yards on residential properties.

THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

SECTION ONE. The following ~~stricken-through~~ text from Bend City Code Section 5.295 (2) (D) is repealed.

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~~ **four** ~~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~~ **two** ~~day~~**s** ~~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 15th day of July, 2009.

Read for the second time the 5th day of August, 2009.

Placed upon its passage the 5th day of August, 2009.

YES: 4 NO: 3 ABSTAIN: 0

Authenticated by the Mayor the 5th day of August, 2009.

Kathie Eckman

Kathie Eckman, Mayor

Attest: Patricia S Stell

Patricia Stell, City Recorder

ORDINANCE NO. NS-2126

AN ORDINANCE AMENDING THE BEND DEVELOPMENT CODE TO CREATE THE CENTRAL OREGON COMMUNITY COLLEGE (COCC) SPECIAL PLANNED DISTRICT.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council held a public hearing to consider the Planning Commission's findings and recommendation and found that the requested Development Code amendment is consistent with the criteria of the Bend Development Code Chapter 4.6 as shown in Exhibit B. The Bend City Council adopts the findings in Exhibit B.

Section 2. The Bend Development Code is hereby amended by adding Section 2.7.1000 Central Oregon Community College (COCC) - Special Planned District/Overlay Zone as shown in Exhibit A.

Read for the first time the 15th day of July, 2009.

Read for the second time the 5th day of August, 2009.

Placed upon its passage the 5th day of August, 2009.

YES: 6 NO: 0 ABSTAIN: 1

Authenticated by the Mayor the 5th40 day of August, 2009.

Kathie Eckman

Kathie Eckman, Mayor

ATTEST:

Patricia S Stell

Patricia Stell, City of Bend Recorder

EXHIBIT A

2.7.1000 Central Oregon Community College (COCC)- Special Planned District/Overlay Zone

Sections:

2.7.1001 Purpose
2.7.1002 Definitions
2.7.1003 Applicability
2.7.1004 Permitted and Conditional Land Uses
2.7.1005 Parking
2.7.1006 Access and Circulation
2.7.1007 Transportation
2.7.1008 Development Not Requiring Site Plan Approval
2.7.1009 Natural Resource Plan

2.7.1001 Purpose

The purpose of the Central Oregon Community College Special Planned District/Overlay Zone ("District") is to implement the Public Facilities (PF) General Plan designation at the Awbrey Butte campus of the Central Oregon Community College ("COCC" or "College"). The District is designed to foster an innovative mixed-use area of academic, social, residential, retail and commercial uses/activities that are accessible to students, faculty, and staff and located on lands owned by the College. The District will create a variety of different academic, social, recreational, and commercial amenities that will serve the needs of the surrounding community. The development of College owned lands within the District boundaries will provide the College with a source of financial revenue that will be utilized to provide additional educational opportunities for the benefit of the community and facilitate the long-term growth and viability of the campus.

The standards of the District implement the PF General Plan designation in a manner that will:

- Promote the long-term health, vitality, and growth of the College by strengthening the on-campus living/learning opportunities through careful development and management of the Awbrey Butte Campus.
- Provide for a financially stable college campus environment serving the educational and vocational needs of the Central Oregon community.
- Encourage coordination between the College and the City of Bend, especially in the area of land use planning and review for campus development.
- Accommodate planned Awbrey Butte Campus growth including but not limited to development of: educational, vocational, and mixed-use facilities on lands owned by the College; uses and/or structures associated with research programs; and, uses and/or structures associated with lifelong learning, basic skill development, and university transfer education.
- Ensure the compatibility of campus development with surrounding areas by allowing uses and outdoor spaces that promote interdisciplinary opportunities and the shared opportunities of study, housing, dining, services, entertaining, and sports.
- Ensure the adequacy of the public facilities and infrastructure that are needed to serve development within the boundaries of the District.
- Create additional opportunities/flexibility for COCC to develop relationships with private enterprise for the benefit of the College, its students and the community.
- Provide for zoning and land use regulations that allow COCC to rapidly respond to opportunities and changing needs in the college environment.
- Create zoning and land use regulations that allow COCC to utilize its Awbrey Butte Campus landholdings to generate revenues for the benefit of the campus, its students, and the Central Oregon community.
- Develop a fully serviced campus environment that reflects an inward focus on learning and an outward focus on community.

2.7.1002 Definitions

The following definitions apply to uses, building types and standards that are specified in the Central Oregon Community College (COCC) - Special Planned District/Overlay Zone.

Campus includes all of the lands owned by the College within the boundaries of its Awbrey Butte Campus as depicted on the attached Figure 1.

Core Campus Area includes all of the land depicted as the "Core Campus Area" on the attached Figure 2.

Campus Village Area includes all of the land depicted as the "Campus Village Area" on the attached Figure 2.

Special Planned District Boundary is depicted on Figures 2 and 3.

Transportation Demand Management Techniques ("TDM") is a general term that describes various measures, strategies and policies that the College has and can implement to improve performance of transportation facilities and to reduce need for additional road capacity. Methods may include but are not limited to the use of alternative modes, ride-sharing and vanpool programs, and trip-reduction ordinances.

2.7.1003 Applicability

The special standards of the Central Oregon Community College- Special Planned District/Overlay Zone implement the Public Facilities (PF) General Plan designation on lands owned by the Central Oregon Community College and zoned Public Facilities within the "Special Planned District Boundary" as depicted on Figures 2 and 3. Where no special standards are provided, the applicable standards of the underlying zone shall apply.

2.7.1004 Permitted and Conditional Land Uses

Table 2.7.1000 below outlines those land uses that are "Permitted Outright" and that are permitted as "Conditional Uses" within the boundaries of the Special Planned District/Overlay Zone. The table specifies different land use standards for the areas designated as the "Core Campus Area" and "Campus Village Area" as designated on Figure 2. The Core Campus Area is intended to provide for more traditional College, educational and ancillary uses. The Campus Village Area designation allows a mix of educational, vocational, residential, service and commercial uses that can serve, complement and enhance opportunities in the educational core. The Campus Village Area is intended to provide development standards that are consistent with other integrated and highly successful academic institutions around the state and country.

Table 2.7. 1000 – Permitted and Conditional Land Uses

Land Use		
Residential Uses	**Core Campus Area**	**Campus Village Area**
Single-family detached housing	**C***	**P**
Single-family courtyard housing	**C***	**P**
Attached Single-family Townhomes	**C***	**P**
Two-and three-family housing (duplex and triplex)	**P***	**P**
Multi-family housing (more than 3 units)	**P***	**P**
Residence Halls	**P***	**P**
Overnight lodging	**P***	**P**
Child Day Care Facility	**P***	**P**
Adult Day Care	**P***	**P**
Residential Care Facility (6 or more residents)	**C***	**P**
Accessory uses and structures, including dwellings	**P***	**P**
Public, Institutional and General Uses		
All uses permitted in the Public Facilities (PF) Zoning District	**P***	**P**

Educational, vocational and related research buildings and/or facilities	P	P
Meeting and conference facilities	P*	P
Entertainment related facilities	P*	P
Roads, pathways and transportation systems whether public or privately owned.	P	P
Light industrial uses	P*	C*
Repair services	P*	P*
Communication and/or broadcasting facilities, production studio transmission facilities and necessary or supporting structures.	P*	P
Utility facilities and transmission towers	C	C
Parks, playgrounds, play fields, athletic facilities, sports complexes, recreational facilities, trails, natural areas, open spaces (without night lighting or amplified sound)	P*	P
Places of worship	P*	C
Service and Commercial Uses		
Retail, commercial and service uses that are open to the public and available to serve students, faculty, employees and other persons associated with the College[1].	P*	P
Office Uses	P*	P
Food services, personal and professional services, and student shopping opportunities.	P*	P
Culinary Institute and all related and accessory uses including, but not limited to any hospitality related service operated in connection with the Culinary Institute.	P*	P
Credit unions, banks and financial service institutions that are open to public use and available to serve students, faculty, employees and other persons associated with the College	P*	P
Medical offices, health and wellness clinics that are open to public use and available to serve students, faculty, employees and other persons associated with the College	P*	P
Related Uses		
Outdoor athletic, recreational or entertainment related facilities with night lighting and/or amplified sound systems.	C*	C*
Accessory uses and buildings customarily used to support a permitted use or an approved conditional use, including parking lots/parking areas and service roads needed to serve permitted or conditional uses.	P	P
Outdoor storage provided such storage is setback at least 25-feet from the Campus boundary.	P*	P
Buildings containing a mix of uses permissible in this District.	P*	P

[1] No single retail user may exceed 20,000 square feet on the first floor.

Other Uses		
Government offices and facilities (including but not limited to: administration, public safety, utilities, and similar uses)	P*	P
Diagnostic testing, counseling and administrative offices. Meeting, office and administrative facilities for non-profit, philanthropic, and public community service programs.	P*	P
The conversion of buildings or structures from office, commercial or retail use to classroom space or other College or educational purposes.	NA	P
Temporary activities and sales such as Christmas trees, benefit sales and activities, and other holiday products.	P	P
Arts and Crafts Studios	P*	P
Accessory and secondary uses that traditionally occur on college campuses.	P*	P

Key to Permitted Uses
P = Uses Permitted Outright
C = Conditional Uses subject to the standards outlined in Chapter 4.4.
N = Not Permitted
* Use shall primarily serve College students, faculty, staff, and/or employees or the intended use is associated with College activities and/or programs, or the use is accessory to a permitted use.
NA = Not applicable

Table 2.7. 1002 B – Development Standards

Development Standards	Core Campus	Campus Village
Lot Dimensions	None	
Front, Side, and Rear Yard Setback	None, except when abutting a residential zone. A 100' setback is required abutting Residential zoned property (excluding rights of way) along the external boundary of the Campus.	None, except when adjacent to a residential zone. Where a residential structure abuts a lot in a Residential zone, the yard setbacks shall be the same as the setbacks of the abutting Residential zone. Non-residential buildings, parking areas, drives, and private roads shall be setback a minimum of 25 feet from the boundary where it abuts a residential zone.
Building Height	70 feet provided building is setback a minimum of 100 feet from the Campus boundary where the boundary line abuts a residential zoning district. Building height shall not exceed 50-feet if developed within 100 feet of the Campus boundary where the boundary line abuts a residential zoning district.	60 feet provided building is setback a minimum of 100 feet from the Campus boundary where the boundary line abuts a residential zoning district. Building height shall not exceed 50-feet if developed within 100 feet of the Campus boundary where the boundary line abuts a residential zoning district.
Lot Coverage	No minimum or maximum requirement	
Architectural Design Standards	All buildings within 100 feet of the Campus boundary where the boundary line abuts a residential zoning district are subject to the applicable design standards of Chapter 2.1.900-1000. All other buildings are required to use architectural features such as: windows, pedestrian entrances, building offsets, projections, detailing, and, change in materials or similar features to break up and articulate large building walls greater than 80 linear feet in length. A minimum of 15% of the horizontal building façade and a minimum of 10% of all other horizontal building elevations shall contain a variety of architectural features.	
Building Entrances	Recessed entries, canopies, and/or similar features shall be used at the entries to buildings in order to create a pedestrian-scale	
Landscape Requirements	Due to the large size of the Campus, the landscaping standards of Chapter 3 shall only apply to an area that is measured 25 feet beyond the perimeter of the footprint of proposed new development sites for buildings and/or parking lots.	

Landscape Buffer Requirement	A 25' landscape preservation buffer is required abutting streets along the external boundary of the Campus. A 100' landscape preservation buffer is required abutting Residential zoned property (excluding rights of way) along the external Campus boundary of the Core Campus Area.

2.7.1005 Parking

In accordance with Table 3.3.300, a Parking Management Plan shall be formulated for the Core Campus Area and updated with each subsequent Site Plan application. The Campus Village Area may be included in this plan or parking in the Campus Village Area may be provided based on other uses in Table 3.3.300. The Parking Management Plan shall also address the bicycle parking requirements of section 3.3.600.

2.7.1006 Access and Circulation

The attached Figure 4 illustrates the location of existing buildings, structures, roadways and trails within the boundaries of the District and provides a conceptual depiction of future development areas and planned access corridors within the Core Campus Area and Campus Village Area. Figure 4 provides a depiction of some of the planned roadways and trail corridors within the District. Roadways and roadway connections shall be in general conformance with Figure 4 with the final location of roads and roadway connections shall be established through the Site Plan review process.

Due to the unique nature and use of the College property, including the steep topography of the site and existing natural features and open space, the access corridors, trail connections and block lengths have been designed in a manner that is intended to provide connectivity while minimizing conflicts between the established transportation system and existing surrounding neighborhoods. This access and circulation plan provides an interconnected transportation system consistent with the intent of Section 3.1. Therefore, Figure 4 supersedes the block length and block perimeter requirements of Section 3.1.

2.7.1007 Transportation

Core Campus uses shall be permitted in both the Core Campus area and Campus Village area without a limit on the number of overall trips. Core Campus uses "students" as the independent variable in trip generation calculations.
Campus Village uses shall be permitted in the Campus Village area shall be subject to a trip threshold established as a condition of zone change approval (Ordinance NS-2127).

Trip reducing mitigation measures, including but not limited to a coordinated TDM plan, may be evaluated and credited in connection with each site plan application. In accordance with Chapter 4.2, applications for development of Campus Village and Core Campus uses must demonstrate that transportation facilities have adequate capacity to serve the proposed use.

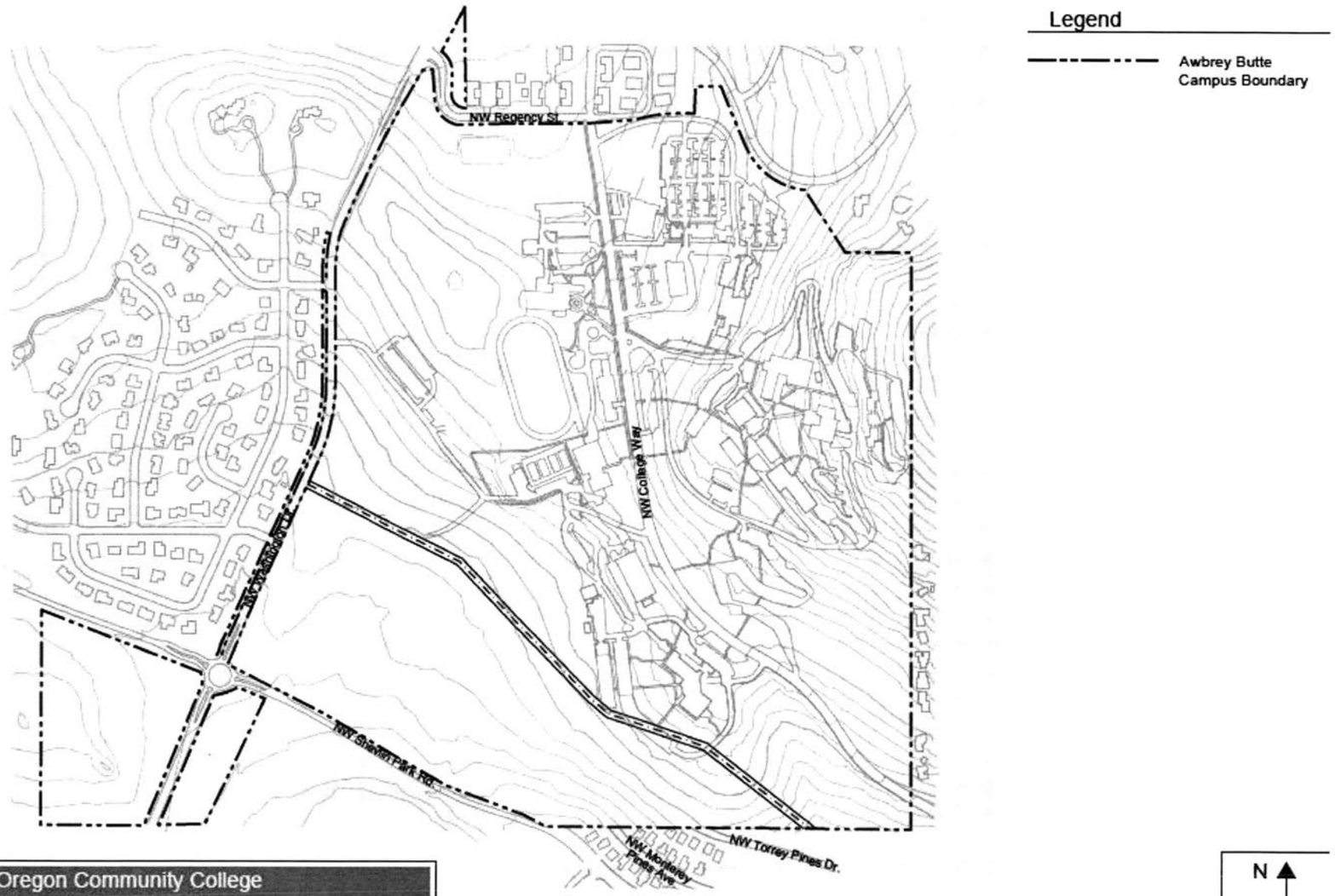
2.7.1008 Development Not Requiring Site Plan Approval

Given the size and integrated nature of the Campus, the College shall not be required to obtain Site Plan approval for any of the following development actions which are considered to have little or no impact on the public or surrounding properties:

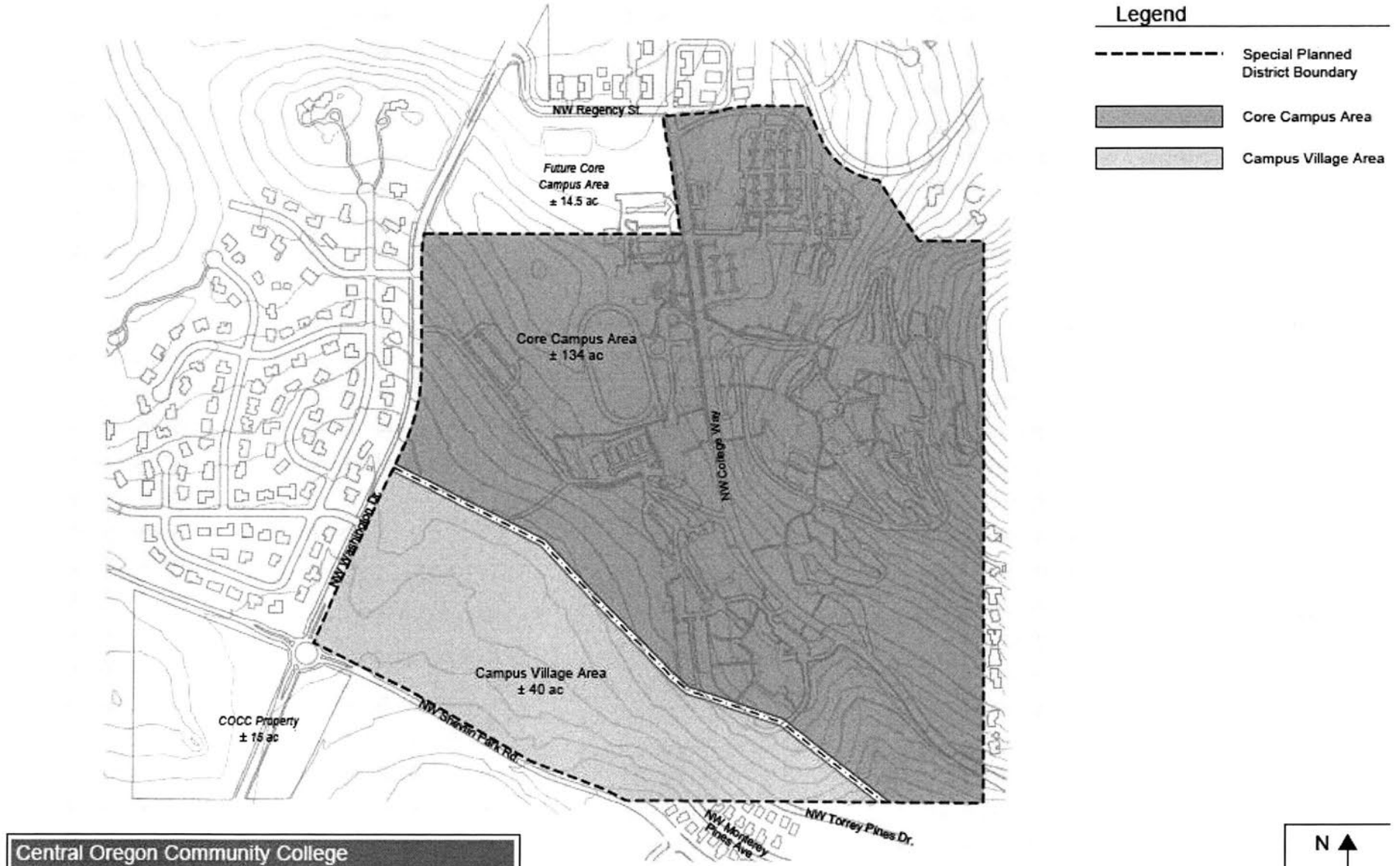
- Private roadway and/or driveway connections not shown in Figure 4 and which are not associated with a specific building proposal or approved site plan and do not intersect with a public roadway
- the construction and/or extension of sidewalks and trails
- the placement and/or extension of utilities
- installation of pedestrian and bicycle facilities

2.7.1009 Natural Resource Plan

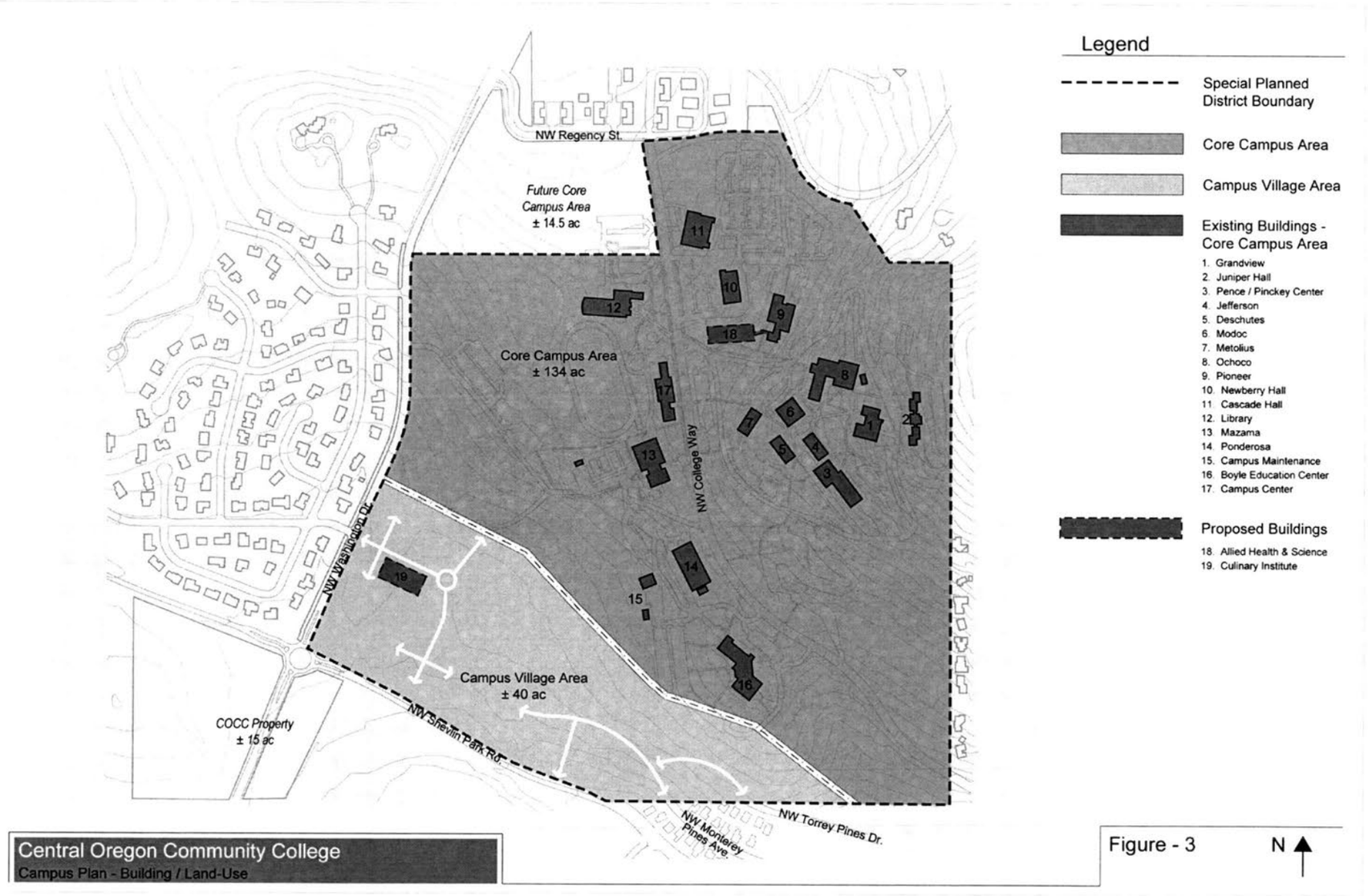
In conformance with the landscape conservation requirements of Chapter 3.2, an inventory of significant vegetation shall be submitted along with a preservation plan for each Site Plan application. The natural resource inventory shall include all significant vegetation by size (DBH) and species, as well as rock outcroppings, with two-foot contours shown.

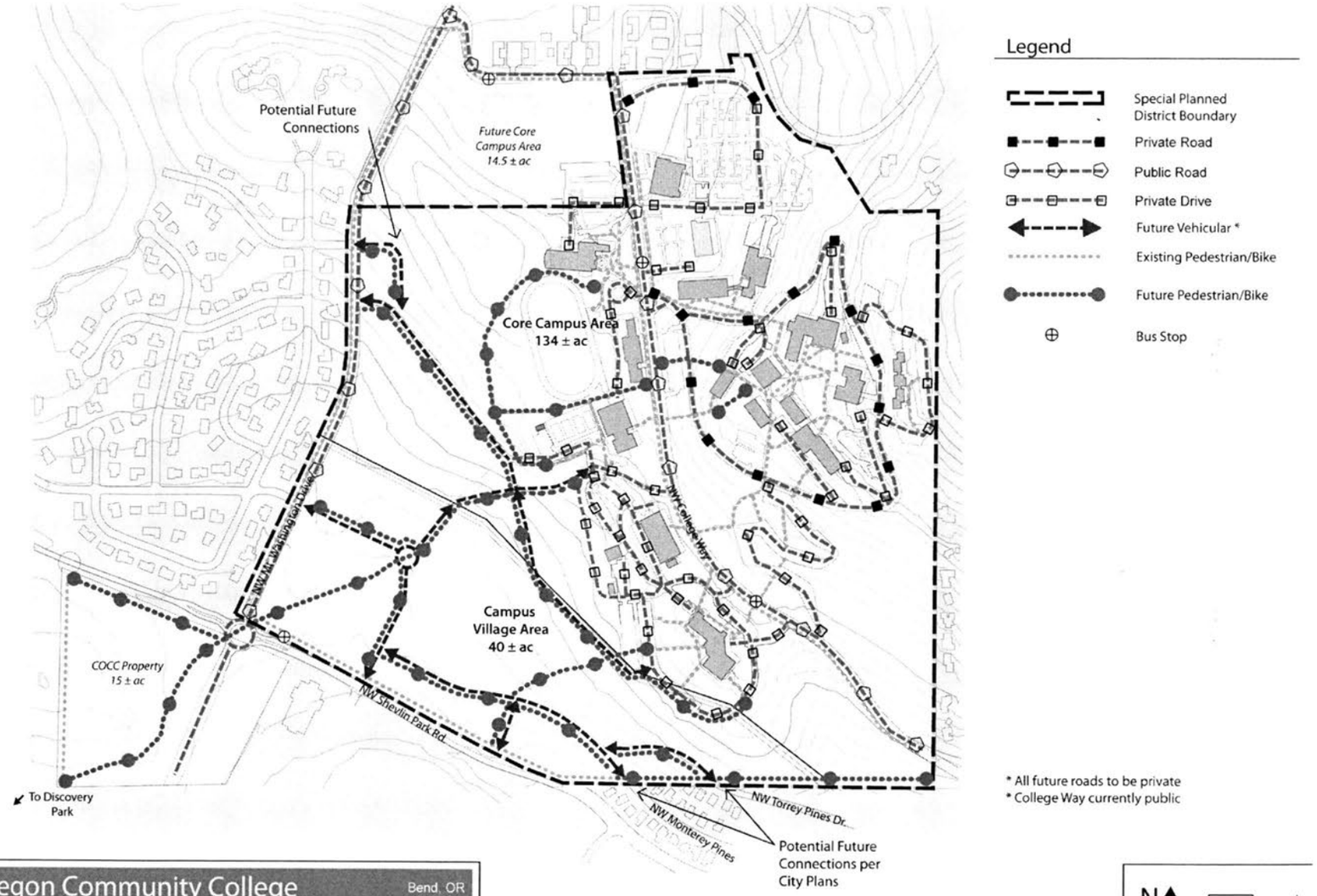


Central Oregon Community College
Figure 1 - Awbrey Butte Campus Boundary



Central Oregon Community College
Figure 2 - Special Planned District Boundary


NW Regency St.
Future Core Campus Area ± 14.5 ac
Core Campus Area ± 134 ac
Campus Village Area ± 40 ac
COCC Property ± 15 ac
NW College Way
NW Shevlin Park Rd.
NW Torrey Pines Dr.
NW Monterey Pines Ave.
Legend
Special Planned District Boundary
Core Campus Area
Campus Village Area
Existing Buildings - Core Campus Area
1. Grandview
2. Juniper Hall
3. Pence / Pinckey Center
4. Jefferson
5. Deschutes
6. Modoc
7. Metolius
8. Ochoco
9. Pioneer
10. Newberry Hall
11. Cascade Hall
12. Library
13. Mazama
14. Ponderosa
15. Campus Maintenance
16. Boyle Education Center
17. Campus Center
Proposed Buildings
18. Allied Health & Science
19. Culinary Institute
Central Oregon Community College
Campus Plan - Building / Land-Use
Figure - 3
N



Central Oregon Community College — Bend, OR
Campus Plan - Conceptual Circulation — 05.29.09

Exhibit - 4

EXHIBIT B

FINDINGS IN SUPPORT OF PZ 09-40

CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE

CHAPTER 2.7 SPECIAL PLANNED DISTRICTS

2.7.100 Purpose

Special Planned Districts describe in more detail the type of development planned for a specific area than is typically found in a comprehensive plan, zone map, or public facilities plan. The area covered by a plan can include multiple parcels and landowners, or a single large parcel.

FINDING: This Chapter outlines the purpose of Special Planned Districts and contains Sections for each Special Plan District with the standards adopted for each district. The applicant proposes adding a new Special Plan District for Central Oregon Community College. The following findings address the characteristics of Special Planned Districts as outlined in the purpose statement above.

• Designation of site-specific land uses (e.g., for individual parcels);

The General Plan and Development Code do not provide detail about the types of uses and activities commonly found on college campuses or mixed-use campus environments. COCC's proposal to create a Special Planned District serves to provide greater detail about the current educational uses that occur on the campus today and the types of uses common to a mixed-use campus environment. Thus, the Special Planned District will serve to provide more detail about the type of development contemplated for the College over the long term. COCC provides educational programs, services and activities on what amounts to a single large parcel of land.

• Design standards specific to a geographic area;

The COCC site contains existing educational buildings and structures with varied topography, vegetation, and steep slopes. The site and the proposed uses will be designed to accommodate the topography and unique site features. The Campus Village will include a greater portion of the mixed-use structures while the Campus Core will include a greater concentration of educational uses and student amenities. However, the advantages of mixing uses and developing mixed-use structures may occur throughout the campus area as defined in the proposed Special Planned District text.

• Detailed description of public facilities needed to serve development;

The College submitted a series of public facilities analyses that evaluate the available capacity and adequacy of the public utility system. City staff concurred with the findings in the analyses and adequate capacity is available to support the zone change and proposed uses. Conceptual maps denoting the location of potential transportation connections are contained in the record. These serve to generally locate existing and proposed public/private streets, driveways, trails and other features. It is expected that refinements will occur to these conceptual maps as the College expands over time.

• A plan adopted through a consensus-based process involving the property owners;

Neighborhood meetings and ongoing dialogue with students, staff, and property owners were conducted prior to the submittal of the application. Comments received from the neighborhood meeting are part of the record and were considered by the college when developing the mixed-use campus approach. A public hearing on the proposal was held before the Planning Commission and City Council which surrounding property owners attended and participated in.

• Streamlined development review for projects that are part of the plan;

The COCC Special Planned District will streamline review processes by eliminating the need for Conditional Use Permit approval for uses which typically occur on college campuses but which require a Conditional Use Permit in residential zones. The plan also provides a

conceptual plan for future street and pedestrian connections throughout the campus which takes into account topography, natural features and existing surrounding development and street connections, rather than relying on the block length and block perimeter requirements of Section 3.1.200.

• May include intergovernmental agreements and complimentary zoning for sites that cross jurisdictional boundaries (e.g., between city and county).

The subject property and the Bend COCC campus are within the jurisdiction of the City of Bend and do not cross jurisdictional boundaries.

A Special Planned District usually focuses on some unique feature of the site, such as natural resources, economic activity, or desired neighborhood character. Special Planned Districts may be used for large undeveloped areas, or partially developed areas with potential for infill and redevelopment.

The COCC campus is a unique feature within the Bend community given its purpose, location, and urban setting. This application and proposal will help COCC develop the tools necessary to expand into a mixed use campus while refining the type of uses that can be developed within the boundary of the campus.

Special Planned Districts differ from Master Planned Developments (Chapter 4.5) in that there is no required phasing or timeframe for development, and an application for future development (i.e.,subdivision and/or site plan) need not accompany the application for Special Planned District approval.

COCC is not proposing a specific phasing plan or timeframe for development of any particular use. Funding and other financial limitations often guide the development timing of college facilities.

However, all land use applications for property within the Plan are required to comply with the planned area policies and regulations as well as the development standards for the underlying zone.

The proposal and the Special Planned District text will guide the development of uses on the COCC campus. The Special Planned District serves to implement the purpose of the PF, Public Facilities Zone and provides a greater level of detail given the unique features common to mixed-use college campuses. Thus, compliance with the Bend Comprehensive Plan is achieved through the additional zoning detail provided by the proposed Special Planned District. All future development will be required to go through the Site Plan Review and approval process per Chapter 4.2, at which time the impacts of each specific development request will be reviewed for compliance with all applicable Development Code Standards and Criteria.

CHAPTER 3.1, ACCESS, CIRCULATION, AND LOT DESIGN

3.1.200 Lot and Block Design

B. Street Connectivity and Formation of Blocks Required.

FINDING: The Special Planned District text contains an exhibit (Figure 4) that provides a general and conceptual depiction of the system of roadways, pathways and access corridors that will serve future development of the Core Campus and Campus Village areas.

Chapter 2.7 of the City Development Code allows a Special Planned District to establish specific and overriding development standards based on the unique features of the site, natural resources, economic activity and neighborhood character. COCC has proposed conceptual access corridors, trail connections and block lengths that are dictated by the unique nature of the College property, the steep topography of the site and the desire to preserve existing natural features. Access corridors, trail connections and block lengths have been developed in a manner that is intended to provide for the interconnection between the designated Core Campus and Campus Village areas and the surrounding neighborhoods. Along collector and arterial roadways (Mt. Washington Drive and Shevlin Park/Newport), the applicant has created access connections that align with the pattern of surrounding

development and minimize conflicts with the established residential neighborhoods that surround the College.

Based on the factors set forth above, the applicant's conceptual access and circulation plan (Figure 4) ensures safe and efficient access to the subject property and provides for the circulation of pedestrians and vehicles through an interconnected transportation system, consistent with the intent of Section 3.1.100 of the City Development Code. The road and trail corridors depicted on Figure 4 are conceptual in nature and final road and trail locations will be analyzed and fixed in connection with future development applications. In addition, the timing of designated road and trail improvements will be determined through the Site Plan process when specific road and trail corridor improvements are necessary to support a specific future development project.

CHAPTER 4.6, LAND USE DISTRICT MAP AND TEXT AMENDMENTS

FINDING: This application has both legislative and quasi-judicial characteristics. The proposed zone change and text amendment involve broad public policy determinations that have implications on a City, regional and state wide basis. The application will impact the future growth, development and management of a publicly owned educational institution that provides services and benefits to the entire region. As such, the proposal can be characterized as a legislative amendment under Section 4.6.200. At the same time, the application will establish development standards and criteria that impact a specific group of properties that are owned and managed by the College. The application of these standards to a limited group of properties and a specific factual setting is consistent with the standards for a quasi-judicial amendment as provided in Section 4.6.300 of the Bend Development Code. As a result of its unique status, the applicant agreed to apply the more restrictive criteria of a quasi-judicial amendment as specified in Section 4.6.300. However, in recognition of the significant public policy implications associated with this proposal, the application is being processed as a legislative proceeding pursuant to Section 4.1.320.

4.6.300 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: *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. Legislative amendments to the zoning map and zoning text are reviewed under a Type IV procedure, as detailed in BDC Chapter 4.1.300. The public meeting required by BDC Chapter 4.1.210B, took place on January 21, 2009. Notice of the meeting was provided pursuant to BDC Chapter 4.1.210C. Public notice was also provided for the public hearing before the Planning Commission and City Council in conformance with the requirements of BDC Chapter 4.1.315, which ensure that citizens are informed in four different ways about the public hearing; published notice, posted notice, individual mailed notice and neighborhood association contact.

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." A public hearing was held before the Planning Commission on June 22, 2009 and the City Council on July 15, 2009. Findings of conformance with all applicable policies and review criteria are contained in this document.

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 is not applicable because the proposed zone change will not have any impacts to air, water, and land Resources Quality.

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 applicant's proposal will facilitate the long term operation, growth and expansion of educational opportunities on the lands owned by COCC. The educational and vocational services offered by COCC at its Awbrey Butte Campus site provide students with skills, training and education that are vital to the economic health and welfare of the Central Oregon community.

The City's General Plan Map contains a Commercial Convenience designation located on the subject property. This designation is consistent with the applicant's proposal to place the mixed use Campus Village in a core area of the City that is immediately accessible to the students, faculty and staff of COCC, providing economic opportunities to the College, the City, and areas surrounding the campus.

The record indicates the City has a documented shortage of economic opportunity lands which the proposed zone change and text amendment will partially address. The proposal will allow the development of smaller scale commercial uses in an area that is in close proximity to the College's educational core area. The integration of service and commercial uses into the campus environment will limit off-site vehicle trips and thereby assist in preserving the capacity of the City's system of transportation infrastructure.

Goal 10, Housing, is to "Provide for the Housing Needs of the citizens of the State". While the COCC Campus is currently zoned for standard density residential uses, it has been developed as a center for educational and related uses since the 1960's. The district text provides for the development of a variety of housing types in the area designated as the Campus Village and the Core Campus Area. Multi-family residential units, residence halls, and student/faculty housing areas will be allowed as outright permitted uses in both areas.

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." The subject property is bounded by designated collector and arterial roadways to the south and west. Primary access to the College is provided by NW College Way (the southern portion of which is designated as a Major Collector roadway) that runs from NW Shevlin Park Road to the center of campus, connecting to Mt. Washington Drive at the northern campus boundary. The existing campus is served by City sewer, water and transportation infrastructure. Any new or future development within the boundaries of the subject property will be served through an extension of such services. The applicant's proposal will result in the orderly and efficient use of existing City services and facilities.

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 addressed further on and 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." The resulting mix of service, residential and educational uses allowed in the Campus Village area will keep students, faculty and staff on campus and reduce vehicle trips to the site as well as unnecessary out of direction travel. The proposal will also provide for the more efficient use of College owned lands thereby conserving energy for the benefit of the City and its residents. The proposed zone change and text amendment will increase development densities along an existing transportation corridor and thereby 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." As noted above, the existing COCC campus has long operated in this core area of the City where urban levels of services are provided. The proposed zone change and text amendment will facilitate higher density "in fill" development in an area devoted to higher education and learning. The mixed use nature of the subject proposal will increase educational, vocational and employment opportunities within a core area of the City. The applicant's proposal is expected to result in additional jobs in a central area served by City services.

Goals 15 through 19 are not applicable because they only pertain to areas in western Oregon.

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

FINDING: The Bend Area General Plan is the City's Comprehensive Plan. The proposed Zone Change from Residential Urban Standard Density (RS) to Public Facilities (PF) with the COCC Special Planned District Overlay Zone is consistent with the relevant policies of the General Plan as described in the applicant's burden of proof and the findings below.

CHAPTER 1 – PLAN MANAGEMENT AND CITIZEN INVOLVEMENT

The transportation ↔land use connection (Plan Goals, page 1-2)

To support a cost effective and balanced land use and transportation system during the 20-year planning horizon the General plan provides for:

- ***designating several small commercial centers throughout the community to offer convenient shopping and services within walking distance or short driving distance of neighborhoods.***

As noted in previous findings, and as shown in Figure 4, COCC will improve street connections and pedestrian corridors as development occurs, to provide additional connections between the College and surrounding neighborhoods. Moreover, the development of the mixed use Campus Village will provide more services for students and faculty on campus, thereby reducing unnecessary out of direction travel.

The General Plan contains a commercial convenience site designation on the subject property. The mixed use Campus Village area is within a short walking distance of Campus educational offerings and several surrounding neighborhoods. The applicant anticipates the development of trail corridors and pedestrian connections that will link the College, its mixed use offerings and the adjacent residential neighborhoods. The development of the commercial site designation on the subject property satisfies the requirements of this goal.

Policies

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

The proposed "Campus Village" area will facilitate the development of a mix of commercial and service uses that are aligned with the more traditional educational and vocational programs within the Core Campus area. Consistent with the requirements of this goal, the mixed use area will result in fewer off-campus vehicle trips by students, faculty and staff. A measurable portion of current off-site travel will be replaced by internal (and non motorized) trips as the Campus Village mixed use area develops. This area will also provide commercial amenities that are within walking distance to the developed residential neighborhoods that surround the campus.

COCC currently utilizes several measures to reduce vehicle trips for campus users, including partnering with Commute Options to encourage carpooling and alternative modes of transportation, providing campus shuttle service in conjunction with the City BAT bus system, and providing a system of pedestrian and bicycle walkways and paths which connect buildings and facilities throughout the campus.

COCC is in the process of identifying additional near-term and long-term transportation demand management (TDM) strategies to further reduce travel demands. The development and expansion of TDM measures will serve to reduce the impact of future development on transportation infrastructure, consistent with the policies of the General Plan.COCC continues to refine and expand these programs, and will continue to do so with the proposed Special Planned District.

CHAPTER 2: NATURAL FEATURES AND OPEN SPACE

To help ensure Bend's livability, the following additional goals should be implemented to provide long-term protection of open space and natural features:

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

Policies

8. ***Natural tree cover should be retained along streets in new developments to retain the natural character of Central Oregon within the urban area as the community grows.***

The creation and enhancement of an integrated and interconnected trail system is a fundamental component of the applicant's future development plans for the College. Additionally, COCC strives to retain the natural character of the area, removing vegetation only where necessary to site buildings and supporting facilities, and working with the existing topography where practical.

The Planning Commission also recognized the importance of preservation of the existing trees, topography, rock outcroppings and other natural features found throughout the site, particularly along the Mt. Washington Drive and Shevlin Park Road corridors. The Planning Commission recommended a condition of approval requiring a 25 foot landscape preservation buffer along these two arterial streets, as well as a 100 foot landscape preservation buffer adjacent to the existing residential zones at the perimeter of the Core Campus. Additionally, the Planning Commission recommended condition of approval included the requirement that the applicant prepare a natural resource plan in connection with individual site plan applications. These recommendations were incorporated into the final version of the special planned district text.

CHAPTER 3: COMMUNITY CONNECTIONS

The goals below provide direction only for those topics that may be affected by land use planning:

- ***Expand the number and variety of cultural and artistic venues held downtown and elsewhere in the community.***

The applicant indicates that the proposal is designed in part to facilitate the development of a new facility for the culinary arts. This planned educational and vocational program will include a state of the art culinary facility that will attract students, faculty and visitors from around the state and region. COCC anticipates the operation of a wide range of programs from this facility that will expand cultural opportunities throughout the Central Oregon community.

- ***Provide quality green spaces, natural areas and recreation sites through public and private park land throughout the community.***

COCC's Awbrey Butte Campus currently includes quality green spaces, natural areas, recreation sites and park space. The applicant anticipates the preservation and enhancement of natural areas and green spaces in its future development plans.

- ***Coordinate the development of future park and school sites to serve the expanding urban area population.***

The campus is centrally located in an area that is readily accessible to City residents. The zone change and text amendment will provide for the development of additional college related facilities to serve the growing demand for higher education in the community.

PUBLIC EDUCATION

The sections below describe the existing and planned public education facilities in the urban area.

Central Oregon Community College is the state's oldest two-year college, having been created in 1949. Located on the west slope of Awbrey Butte, the 200 acre campus features a 102 student residence hall, a 38,000 volume college/community library, a 300-seat performing arts center, and several lecture halls. The college has a long-standing policy to encourage community use of its buildings and facilities.

The college enrolls about 3,200 full-time and part-time students each term, plus another 3,000 to 4,000 community education students taking non-credit courses. Degrees offered by COCC include the Associate of Arts degree, the Associate of Science degree, and the Associate of Applied Science degree covering several technical and professional fields. The college serves more than just the Bend area, and its instructional programs extend to a 10,000 square mile service area through a network of community centers in Christmas Valley, La Pine, Madras, Prineville, Redmond, Sisters, and Warm Springs.

In a cooperative arrangement with public and private colleges and universities, the Central Oregon University Center at COCC offers both bachelor's and master's degrees in Bend through traveling professors and video computer. Because of the great interest in the region for a local college that offers bachelor's and master's degrees, the college board and members of the community have set a goal to expand Central Oregon Community College into a fully accredited four year college.

The numbers listed above are from the adoption of the General Plan in 1998. Updated enrollment figures are contained in the application materials in the file. However, this section is of note in that it recognizes that the college is an asset to the community and anticipates that the college will continue to grow in future years.

Policies

Urban Trails

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

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

Figure 4 of the proposed COCC Special Planned Area identifies existing and future pedestrian and bicycle facilities on and adjacent to the COCC campus. This figure also shows future connections to the urban trails identified on the Bend Urban Area Bicycle and Pedestrian System Plan which is part of the Transportation System Plan (TSP). In general, the urban trail runs along the south boundary of the site and portions of this trail will be required to be improved as development in the Campus Village area occurs.

CHAPTER 4: POPULATION AND DEMOGRAPHICS

A major goal of the land use planning process is to ensure that there is sufficient land within the urban growth boundary for housing, for business and industry, for public services such as parks and schools, and an adequate transportation system to serve those needs.

COCC is currently experiencing significant growth and an unprecedented demand for educational services. The proposed zone change and text amendment will provide the College with an opportunity to grow its existing facilities to meet the rising level of demand as well as address the need for additional service uses within the campus consistent with the goals of the General Plan. The anticipated facilities will be located within an area of the City that has been planned and developed for higher education facilities and commercial services.

CHAPTER 5: HOUSING AND RESIDENTIAL LANDS

Goals:

Accommodate the varied housing needs of citizens with particular concern for safety, affordability, open space, and a sense of community.

The Special Planned District text will allow for a mix of housing types that are needed for future development of the campus. Multi-family housing units, residence halls and student housing are allowed in both the Campus Village and Core Campus Areas. The text and associated campus plan also provide the opportunity to develop single family housing units in areas compatible with surrounding properties.

Neighborhood transportation linkages shall provide ways to move about the community, and also create a positive community image through design elements that provide for safe and attractive neighborhoods.

Figure 4 shows existing and future street and pedestrian and bicycle pathway connections through the campus and connecting to the existing facilities surrounding the campus. Bus and shuttle routes and stops are also shown. Future development within the boundaries of the campus will contain appropriate transportation links with the public road system, trail system, bus system, and surrounding neighborhoods.

Policies:

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

The college has been located on this site since the 1960's, and has continued to expand throughout the years. Existing development has retained much of the native trees, vegetation, and topography, utilizing them to buffer development on the campus. The proposed Special Planned Area text includes requirements for maintaining and enhancing these natural buffers and respecting the character of existing areas through consideration of future street connections and where possible, locating future housing near existing housing to provide transition zones.

The Planning Commission expanded upon the need for preservation of existing natural buffers along the Mt. Washington Drive and Shevlin Park Road corridors, as well as adjacent to the existing residential zones at the perimeter of the Core Campus area. The Planning Commission recommended conditions of approval requiring natural resource preservation plans and landscape preservation buffers were incorporated into the final version of the special planned district text.

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.***

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.***

Allowing expansion of the College within the Core Campus area, as well as the addition of the proposed Campus Village mixed use area, will provide for non-residential uses within an area surrounded by residential uses, providing added convenience to surrounding neighborhoods, along with dedicated pedestrian and bicycle pathways for added safety. Buffer requirements, special setbacks, and design standards in the proposed COCC Special Planned Area text will help ensure compatibility with surrounding residential developments and enhancement of the area.

20. ***Hillside areas shall be given special consideration in site design by both the developer and local regulations. Building sites, streets, and other improvements shall be designed and permitted in a manner that will minimize excessive cuts and fills and other erosion-producing changes.***

The proposed future street connections in Figure 4 take into account existing surrounding development and street patterns as well as topography. Although individual block lengths and block perimeters may not meet those required in Section 3.1.200(B) of the development code, the proposed connections meet the intent of promoting efficient vehicular and pedestrian circulation along parallel and connecting streets, while preserving topography and the natural features of the site and considering existing surrounding neighborhoods and street connections.

35. ***Schools and parks may be distributed throughout the residential sections of the community, and every dwelling unit in the area should be within a convenient distance of a school or park.***

COCC's Awbrey Butte Campus is centrally located in an area that abuts developed residential neighborhoods. The residential properties that abut the campus will have multi-modal access,

including a system of pedestrian and bicycle paths, to a wide range of amenities available at the College.

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

The COCC plan anticipates further development and enhancement of the system of trails and pedestrian walkways that currently serve the campus. The College intends to connect its internal trail system to off-site walkways and non-motorized transportation corridors over the life of the College.

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

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

COCC will continue to develop and expand the existing system of trails, pedestrian ways, and bike trails within the campus to provide integrated links to the system of trails and pedestrian paths that are external to the campus. Existing and future proposed trail and path connections are shown in Figure 4 of the proposed COCC Special Planned Area.

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

Future proposed street connections are limited by topography, existing natural features such as rock outcroppings and mature trees, and existing surrounding development and street connections. For these reasons, some of the future block lengths shown on Figure 4 exceed 600 feet. However, additional future streets and pedestrian/bicycle accessway connections are shown at appropriate locations and spacing to provide sufficient additional connectivity.

CHAPTER 6: THE ECONOMY AND LANDS FOR ECONOMIC GROWTH

The following goal statements describe the future economic hopes of the community and serve as the foundation for policy statements in this chapter.

- ***Ensure an adequate supply of appropriately zoned land in Bend to provide for a full range of industrial, commercial and professional development opportunities.***

The subject property has long been planned and developed for educational uses in connection with COCC. The proposal will bring zoning of the subject property into conformance with the General Plan designation and create implementing rules for the PF Zone that are designed to provide for the long term operation and development of COCC lands. The Bend Area General Plan Map contemplates the development of a "convenience commercial" node within the boundaries of the Awbrey Butte Campus. The applicant's proposal will consolidate this area of commercial activity within the proposed Campus Village area, where commercial services will be available to serve the needs of the College and surrounding properties.

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

The flexibility provided by this zoning district will allow the College to develop a wide range of educational and vocational programs that will ultimately strengthen and diversify economic activity in Bend and the region.

- ***Strengthen Bend's position as a regional economic center.***

The future growth and development of COCC (together with affiliated programs offered by Oregon State University) will provide additional economic and cultural opportunities that strengthen Bend's position as a regional economic center. The COCC district boundaries currently encompass a large area that includes all of Deschutes, Jefferson and Crook Counties, together with the northern portion of Klamath and Lake Counties. The district also

includes the Warm Springs Indian Reservation in Jefferson and Wasco Counties. The myriad of programs offered by COCC are also open to students who have previously resided outside of the district and the state. As a result, the college draws students to the Bend area and strengthens the City's position as a regional economic center.

- ***Create Commercial areas in outlying sections of the community as neighborhood centers rather than extending the existing strips along major roads.***

The Campus Village area will allow for the creation of a neighborhood commercial center in an area where it is needed to serve the College and the surrounding neighborhoods. As previously noted, the General Plan contemplates the development of a commercial node within the boundaries of the College.

- ***Encourage more small neighborhood commercial developments and convenience centers to reduce vehicle trips and trip lengths.***

The mixed use Campus Village area will facilitate commercial and service uses in an area where they are easily accessible to students, faculty, staff, and the surrounding neighborhood, reducing vehicle trips and trip lengths consistent with this plan goal.

Commercial Center Areas

Part of the land needed for commercial development will be met by new small commercial centers or stores as generally designated on the Plan Map. These centers are intended to support residential neighborhoods and reduce vehicle trips or trip lengths by providing commercial uses near or within developing residential areas. These new centers could be on one parcel, or several parcels within a limited geographic area like the commercial area on Newport Avenue, and should have several of the characteristics listed below that avoid the problems and appearance of "strip commercial" developments:

- ***buildings closer to the sidewalk***
- ***limited vehicle access points***
- ***shared parking facilities***
- ***parking distributed around buildings***
- ***walkways for pedestrian access***
- ***uses that serve the neighborhood***
- ***smaller monument signs***
- ***buildings on site in scale with each other***

Convenience Commercial areas are intended to provide for the frequent shopping or service needs of nearby residential areas. They will consist principally of a relatively wide range of small retail and service uses, the largest of which would be a grocery store. Uses such as a grocery store, drugstore, small bakery, specialty shops, and offices would be typical of these areas.

It is expected that new convenience commercial areas will develop to serve the emerging and future residential areas, and will particularly benefit the rapidly growing portions of the urban area. New convenience commercial areas reduce the need for residents to drive to the existing strip commercial areas for all their shopping or service needs.

Convenience Commercial areas should occur as centers on one or more properties together in a block or across the street from each other, rather than as commercial strips. Convenience centers should be located on arterial or collector streets, preferably at or near an intersection with another similar street, and have a site size up to five acres. In order that convenience centers remain oriented toward serving nearby residential areas and do not expand to serve much larger parts of the community, commercial building floor areas should be limited to 35,000 to 55,000 square feet. The building design and site design should be compatible with the surrounding neighborhood. They should be spaced from one to one and one-half miles apart, and new locations should be based on a market study or other analysis that shows there is an adequate residential base or other conditions to support the uses.

The area encompassed by the proposed COCC Special Planned District includes a commercial convenience node as shown on the General Plan Map. The proposed Campus Village area incorporates a mix of college uses and service commercial and office uses intended to serve both the college and its surrounding neighborhoods, and is located adjacent

to the intersection of two arterial streets. The Special Planned District text includes many of the design elements and uses listed above, including development of a Parking Management plan which will utilize shared parking throughout the campus, with shuttles and pedestrian and bicycle facilities to minimize vehicle trips throughout the campus area.

Policies

Mixed Use Development

19. The City may designate other areas for mixed use development to encourage a variety of jobs and services close to residential areas.

The proposed zone change and text amendment will facilitate a mix of service and commercial uses in a central location where they can efficiently serve the needs to the College and the surrounding community. The development of a mixed use campus environment will provide opportunities for additional jobs and vocational opportunities in close proximity to established residential neighborhoods.

Commercial Development

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.

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

The proposed Special Planned District includes landscape preservation buffers and additional setback requirements adjacent to residential uses as well as building design elements as required above. As mentioned in previous findings, the final version of the Special Planned District text incorporates the Planning Commissions recommendations for preservation of existing natural buffers along the Mt. Washington Drive and Shevlin Park Road corridors, as well as adjacent to the existing residential zones at the perimeter of the Core Campus area.

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 site is bounded by Shevlin Park Road to the south and Mt. Washington Drive to the west, both of which are designated arterial streets. Figure 4 of the COCC Special Planned District shows limited future street connections to these arterial streets. These future street connections will provide access to future development so that direct access to arterials will be avoided.

CHAPTER 7: TRANSPORTATION SYSTEMS

GOALS

5.0.1.2 Transportation Plan Goals
Mobility and Balance:

- ***Develop a transportation system that serves all modes of travel and reduces the reliance on the automobile.***

The College has a history of developing and implementing a significant number of TDM measures that support the use of alternative modes of travel and reduce reliance on the automobile. The applicant will integrate the Core Campus and Campus Village areas through a system of shared parking lots, roads, trails, and bus service that will serve alternative modes of travel and reduce reliance on vehicle travel consistent with this goal.

Efficiency:

- ***Address traffic congestion and problem areas by evaluating the broadest range of transportation solutions.***

The mixed use Campus Village area will provide amenities that are currently located off campus, reducing the need for off-site vehicle trips by students, faculty and staff of the College. The applicant will also develop an integrated system of roads and trails designed to reduce congestion consistent with this goal. In connection with future development within both the Core Campus and Campus Village areas, the applicant will also evaluate how different TDM measures can be implemented to increase the capacity of transportation infrastructure and to reduce vehicle miles traveled.

- ***Coordinate and design transportation improvements to assure the expenditure of resources in the most cost-effective manner.***

The most cost effective approach is to maximize existing roadway capacity and to improve existing TDM programs to reduce impacts to the transportation system. This goal will be addressed through the College's ongoing evaluation of transportation infrastructure and continuing development of a TDM program.

- ***Encourage the coordination of transportation modes and land use patterns that maximize efficiency and minimize number and length of all trips.***

The creation of a mixed use college campus along with an integrated system of shared parking lots, shuttle service, and pedestrian and bicycle facilities will maximize efficiency and reduce vehicle trips and trip lengths consistent with this plan goal.

Environmental:

- ***Minimize the adverse impacts to the natural features when making transportation improvements for any mode.***

Livability:

- ***Design and locate transportation facilities to protect the livability of the community.11***

The future street and pedestrian/bicycle path connections shown in Figure 4 provide adequate connectivity throughout the campus and out to the community, taking into account topography, natural features, and existing development patterns to minimize adverse impacts.

POLICIES

6.9.1 TRANSPORTATION AND LAND USE

6. The City shall implement mixed use zoning as one of the land use strategies to promote fewer vehicle trips and shorter trip lengths.

The mixed use Campus Village area will facilitate development of commercial and service uses in an area where they are easily accessible to students, faculty, staff and the surrounding neighborhood, thereby reducing vehicle trips and trip lengths. In addition, the development of a fully integrated college environment will create additional job opportunities in an area surrounded by established residential uses, thereby providing opportunities to work closer to home for many neighbors.

7. The City shall be receptive to innovative development proposals, including zone changes, plan amendments, and text changes that promote alternatives to vehicular traffic and demonstrably reduce vehicle trips and trip lengths.

The Special Planned District will facilitate the development of a mixed use, pedestrian friendly environment that promotes alternative modes of transportation which will reduce existing and future vehicle trips and trip lengths. The College will develop road and trail connections that fully integrate the Core Campus and Campus Village areas with the surrounding community.

6.9.3 TRANSPORTATION DEMAND MANAGEMENT

3. ***The City shall work with businesses, with more than 25 employees, to develop and implement a transportation demand management plan. These plans shall be designed to reduce peak hour traffic volumes by establishing trip reduction targets over five years.***
4. ***The City and County shall work with business groups, schools, the Park District and other governmental agencies to develop and implement transportation demand management programs.***

COCC has implemented a number of TDM measures over the years that currently serve to reduce vehicle travel and preserve the capacity on the City road system. The TDM measures implemented to date include partnering with Commute Options, development and operation of an internal bus/shuttle system, an extensive system of pedestrian walkways and path, and the development of alternative (off peak-hour) class and event schedules. The college is in the process of identifying additional near-term and long-term TDM strategies to further reduce impacts on transportation infrastructure, consistent with the policies of the General Plan.

6. ***The City shall manage and regulate parking by:***

   a) ***Establishing programs to lower parking demand in commercial and business districts citywide by providing preferential parking for carpoolers, encouraging mass transit use, encouraging shuttle systems from external parking lots, and maintaining an adequate supply of strategically placed bike parking facilities.***

   b) ***Requiring business groups and employers to develop parking management strategies that support reduced roadway system demand during the peak motor vehicle travel times.***

The text for the Special Planned District includes a requirement that COCC develop a Parking Management Plan for both motor vehicles and bicycles, which will be required to be updated with subsequent Site Plan applications in accordance with Table 3.3.300 of the Development Code. Section 3.3.300(D) of the Development Code allows reductions in parking requirements for developments which incorporate vehicle trip reducing design standards such as provision of designated carpool/vanpool parking, provision of and lockers for bicycle commuters, provision of additional covered, secured bicycle parking racks, and provision of transit facilities and amenities.

6.9.4 PEDESTRIAN AND BICYCLE SYSTEMS

3. ***The City and Park District shall work together to acquire, develop and maintain the primary trails designated on the Bend Urban Area - Bicycle and Pedestrian System Plan – TSP: Map Exhibit B. New development shall be required to construct and dedicate Primary Trails for public use according to this plan. The alignments depicted are general in nature and shall be located according to criteria defined in TSP Section 6.3.1.3.6 these trails, and future trail additions, shall support the need for non-motorized travel in the community.***

There is a Primary Trail shown on the Bend Urban Area - Bicycle and Pedestrian System Plan which is located along the south boundary of the subject site. This trail is also shown on Figure 4 of the proposed COCC Special Planned District. This section of Primary Trail will be required to be constructed and dedicated as development occurs in the Campus Village portion of the campus adjacent to this trail.

CHAPTER 8: PUBLIC FACILITIES AND SERVICES

The goals below provide general guidance for maintaining and improving the level and quality of urban services as growth occurs in Bend.

- ***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;***

- ***To locate and operate public buildings and other public facilities to best serve the needs of the residents.***

Site Plan review is required for all new development. As additional development occurs on the campus, updated sewer, water, and transportation impact analyses will be required to be provided. All new development is required to mitigate any impacts to public facilities concurrently with development. Additionally, system development charges (SDCs) are required to be paid prior to issuance of building permits for all new development. As stated in previous findings, allowing a mix of uses on the campus will better serve the needs of students, faculty, and the surrounding neighborhoods, reducing the need to travel off-site and thereby reducing vehicle trips out into the community.

POLICIES

Storm sewer

10. Dry wells, landscaping, retention ponds or storm drains shall be used for surface drainage control.

12. Due to the lack of a defined drainage pattern for most of the urban area, development shall contain storm drainage on-site.

Per the memo submitted by the applicant's engineer (Bussard Engineering, May 26, 2009) the applicant will meet or exceed City of Bend design standards for on-site stormwater retention. Plans will be prepared with each Site Plan application for all new development and will utilize best management practices, including the use of bio-swales, stormwater retention ponds, and other approved stormwater management measures.

Public buildings

19. Public buildings and facilities should be located so as to provide convenient public use and to provide maximum service for the greatest economy. Governmental offices should locate downtown when practicable. Other governmental facilities, reservoirs, landfills and correctional facilities should be located in areas with good public access to principal streets.

The College is a public facility located within the City of Bend. The College enjoys good public access from existing arterial streets and the City transportation system has been designed to manage transportation needs for the College, General Plan designations, and surrounding area. The College facilities are also enjoyed by many nearby citizens who use the existing open spaces, trails, and other public facilities provided on campus. The proposal to provide a mix of educational and commercial service uses will further encourage convenient public uses consistent with COCC's objectives.

(Section 4.6.300(B) Criteria for Quasi-Judicial Amendments continued below.)

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;

Adequate urban infrastructure, including sewer, water, police and fire protection, schools and transportation facilities are provided to support the proposed zone change and text amendment. Each of these facilities and services is discussed separately in the findings below. COCC's Awbrey Butte campus has long operated as a community college served by existing City infrastructure.

Police Protection. The subject property is located within the Bend City limits and is served by the Bend Police Department.

Fire Protection. The subject property is located within the Bend City limits and is served by the Bend Fire Department.

Sewer and Water. The subject property is currently served by City sewer and water infrastructure. The record contains a *Preliminary Water Facility and Sewer Impact Assessment,* (prepared by Bussard Engineering and dated May 5, 2009) that evaluates sewer

and water needs associated with the subject application and related development, and a Memorandum (dated May 20, 2009) from City Engineer Michael Magee that was prepared in response to applicant's sewer and water analysis. The record identifies the infrastructure that is currently available to serve development and the longer term needs to support full build-out of the site. The specific sewer and water facility requirements that are needed to serve specific development proposals within the Special Planned District will be addressed in connection with future site plan applications. As a result, the record demonstrates that the campus is presently provided with adequate public facilities to support the planned uses and any additional needed facilities can be provided concurrently with future development applications.

Schools. The subject property is located within the boundaries of the Bend-La Pine School District and can be adequately served by the district.

Parks. The subject property is located within the boundaries of the Bend Metropolitan Park and Recreation District and can be served by the district. In addition, the campus currently contains large areas of open space that are utilized in connection with the operation of the College. Given the steep topography of the site, the applicant anticipates the retention of significant open space areas and recreational amenities as the campus continues to develop.

Transportation Facilities. The subject property is bounded by designated arterial roadways to the south and west. Primary access to the College is provided by NW College Way (a designated Major Collector roadway) that runs from NW Shevlin Park Road to the center of campus, connecting to Mt. Washington Drive to the northeast. The anticipated future development of the campus is expected to create additional road connections to both NW Shevlin Park Road and Mt Washington Drive, in the general locations depicted on Figures 3 and 4 of the Special Planned District/Overlay Zone. Compliance with the Transportation Planning Rule is discussed further on in this report. All future development will require Site Plan approval which requires a Transportation Impact Analysis (TIA) demonstrating compliance with Chapter 4.7 of the Development Code. Any impacts to the transportation system identified in subsequent TIAs will be required to be mitigated concurrently with development.

Stormwater Runoff. The College will meet or exceed City of Bend design standards for the retention of storm water in connection with individual future Site Plan applications. Best management practices will be implemented (including bio-swales, storm water retention ponds and other approved storm water measures) and constructed in connection with any future development at the site. Storm water runoff associated with future development will be retained on site and no additional impact will be placed on the existing City storm water infrastructure.

Based on the above findings, there are adequate public facilities to serve the properties as contemplated by the proposed zone change and text amendment.

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.

Significant changes have occurred since the subject property was initially zoned for residential uses and the General Plan designated an area of the College for commercial development. In 1962, an initial 140-acre tract of land was donated for the purpose of establishing COCC's main campus. Additional donations and acquisitions have been consolidated to establish what is now called COCC's Awbrey Butte Campus. Construction of the first educational buildings began in 1963 with the first three buildings (Ochoco, Modoc and Deschutes) being completed in the spring of 1964. In 1965, the Jefferson and Metolius buildings were constructed along with the Grandview Student Union. The following two years saw completion of the Juniper Residence Hall, the Pinckney Center for the Performing Arts and the College's original library. The Mazama and Ponderosa Halls were complete in 1971. Pioneer Hall was built in 1976. The Boyle Education Center opened in 1989. COCC's Bookstore and Printing and Mail Services building was completed in 1993. In 1999, the current library was completed and Modoc Hall was remodeled. The campus's newest building, Cascades Hall, which houses Oregon State University, opened in the fall of 2002.

Today, the approximately 201 acre campus site includes 21 buildings with more than 400,000 square feet of space. All of the existing development has been completed under the existing

residential zoning designation. The Bend Development Code provides that schools are a conditional use in all of the City's residential zoning districts. As a result, most of the developed structures and associated amenities have been developed under the conditional criteria of the code.

The Bend Area General Plan designates a large portion of the Awbrey Butte campus as (PF) Public Facilities. The rules of the PF Zoning district govern a very wide variety of publicly owned lands and structures, including public offices, the County Courthouse, public parks, the County jail, the Deschutes County landfill, public schools and other associated public facilities. Public colleges and universities are listed as a permitted use in the PF Zone. With this application, COCC seeks to create a specific set of rules and standards to govern the future growth and development of the College. To that end, the applicant has proposed an amendment to Section 2.7 of the Development Code to create the Central Oregon Community College (COCC) Special Planned District/Overlay Zone. The Special Planned District defines the specific uses allowed within the boundaries of the district and the standards governing their future development. The standards of the proposed district have been designed to foster an innovative mixed-use area of academic, social, residential, retail and commercial uses that are accessible to students, faculty and staff on lands owned and managed by the College. The District will facilitate the continued growth and development of educational programs within the core area of the campus while providing additional opportunities to develop vocational programs, supporting services and mixed use development on College owned lands for the benefit of the College, its students, faculty, staff and the surrounding residential communities.

The applicant's proposal will bring the campus zoning into compliance with its General Plan designations and create the specific rules that are needed to provide for the orderly development of this public institution.

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.

Current Text of OAR 660-12-0060, Plan and Land Use Regulation Amendments is attached with the Exhibit A Traffic Study

The transportation impact analysis dated January 14, 2009, along with the supplemental build out scenarios dated May 1, 2009 provided by Kittelson & Associates, Inc. demonstrate compliance with the Transportation Planning Rule. This analysis shows that there is no net gain in transportation impacts associated with the proposed zone change and text amendment compared to a reasonable build out scenario under the existing residential zoning. The analysis demonstrates that the proposed zone change will not require changes to the functional classification of existing or planned transportation facilities, will not require a change to the standards implementing the comprehensive plan, and will not significantly affect a transportation facility as measured at the end of the planning period identified in the adopted transportation system plan (TSP).

Core Campus Area

The approximately 135-acre "Core Campus" area is developed with a variety of educational and related land uses. The Bend Area General Plan expressly recognizes COCC's Awbrey Butte Campus as a public educational institution. *See Section 3-16, Community Connections.* The General Plan further recognizes the need for additional higher educational services in the region and the College's intent to expand the services offered from its existing campus facilities. The record demonstrates a significant and growing public investment in the educational structures and related infrastructure in this location. The Core Campus area contains over 21 educational buildings with over 400,000 square feet of floor space. The Core Campus area also contains developed recreational and sports facilities, areas of open space, roadways, trail corridors, parking areas and supporting infrastructure.

The proposed zone change and Special Planned District text will facilitate the continued growth and expansion of educational uses in the Core Campus area. However, a change in zone will not result in additional or more intensive development beyond what is currently allowed under the existing RS zoning designation. Future growth in the core campus area

will be governed by the need for public educational services in the region and the financial resources that are available to the College in future years.

The record demonstrates that it is appropriate to evaluate future transportation impacts for the Core Campus area based on the anticipated growth in student enrollment. The Core Campus area is designed to address student needs and related public educational uses and it is not reasonable to project future growth based on a simplistic analysis of available land. Therefore, potential trip generation from a community college is more appropriately related to the number of students enrolled in the institution and not the size or square footage of campus buildings and facilities. The applicant submitted enrollment data that demonstrates changes in college enrollment over the course of the last ten years. This data demonstrates that enrollment will increase or decline in any given year based on complex factors that are related to population trends and other economic and non-economic factors. The record shows a significant increase in enrollment for the 2008-09 academic year (14.7% increase) based in significant part on the poor economic conditions and high unemployment numbers in the region. Past trends suggest this number will decline with improved economic conditions. Based on the analysis enrollment data, it is reasonable to assume a one percent annual growth in campus enrollment from year 2008 through a year 2024 planning horizon.

From a TPR perspective, the proposed zone change will not create additional impacts on City transportation infrastructure. The educational facilities needed to accommodate campus growth within the applicable planning horizon can currently be developed as conditional uses under the existing zoning. Consequently, the proposed zone change for the Core Campus area will not significantly affect an existing or planned transportation facility under OAR 660-12-0060(1).

Campus Village Area

The approximately 40.8 acre area designated as Campus Village is currently undeveloped and has an existing RS zoning designation. The applicant anticipates developing the Campus Village area with a mix of educational and supporting uses as proposed in the COCC Special Planned District/Overlay Zone. Based on the analysis provided, the proposed zone change for the Campus Village area will not significantly affect an existing or planned transportation facility under OAR 660-12-0060(1).

Under the current zoning scenario, the RS zone could support up to 298 residential dwelling units in the Campus Village Area. Using a standard ITE trip generation rate, development at this density would result in 301 weekday PM peak hour trips on the transportation system. This residential trip generation analysis is equivalent to approximately 195,500 square feet of office and commercial development.
The record contains a letter from Kittelson & Associates, Inc. (May 1, 2009) that details reasonable worst case development projections for the Campus Village area under five, ten, fifteen, and fifty year time frames, through and beyond the relevant planning horizon. In the short term, development in the Campus Village area will be significantly constrained by economic factors and the limited financial resources that are available to the College. Over the longer term (15 to 50 year projections), development opportunities are expected to improve, although the intensity of development in this area will be significantly constrained by the needs of the campus environment. COCC anticipates approximately 28,000 square feet of office/commercial uses and 15 residential units in the Campus Village area over fifteen years, in addition to on-going student enrollment growth. Additionally, COCC expects to develop a built environment that contains large common areas and open spaces with trails and pedestrian connections that are conducive to a mixed-use campus environment. Over time, as the intensity of development increases in the Campus Village area, COCC will convert commercially developed buildings into additional classroom space as needed, consistent with its mission of providing regional educational services.

The applicant's burden of proof acknowledges that the table of "permitted" and "conditional" uses authorized in the Campus Village area could ultimately result in traffic impacts beyond the 301 "pm/peak hour" threshold that has been analyzed in connection with the proposed zone change. However, based on the factors identified above, it is unlikely that the intensity of development in this area will reach that threshold within the applicable fifteen year planning horizon or even beyond. If there is a change in these assumptions and more intensive development does occur, there are a variety of different options that the College may pursue to reduce the impact of office and commercial development on transportation infrastructure.

The development of a "mixed-use, pedestrian friendly center and neighborhood" (as such term is defined in OAR 660-12-0060(6) and (8) in the Campus Village area provides COCC with an opportunity to utilize the mixed use incentives established under the Transportation Planning Rule. Vehicle impacts on the surrounding infrastructure can also be reduced with the construction of additional internal connections (both vehicular and pedestrian connections) between the Core Campus and the Campus Village areas. The integration of educational and commercial areas within the campus can be expected to reduce automobile travel by students, faculty and staff of the College who would otherwise travel off campus for many of the amenities that will be provided in the Campus Village area. The level and impact of such a trip reduction will vary depending upon the specific mix of services and connections to be offered in the Campus Village area and can be re-evaluated with future Site Plan applications as development occurs.

Additional trip reductions may be achieved through the implementation and/or extension of TDM strategies implemented by the College. The College currently implements a number of measures that reduce single occupant vehicle travel, as outlined in TIA and burden of proof. Should the College need to seek additional transportation system capacity, the applicant can work with the City to implement a formal TDM plan to reduce campus trip impacts.

In summary, under the current RS zoning, the Campus Village area could have generated 301 weekday PM peak hour trips if developed at a maximum RS zone density. Therefore, because of the methodology employed in the transportation analysis, this number is set as a trip threshold for the purposes of ensuring validity with the TPR analysis. Core Campus uses in both the Core Campus area and Campus Village area with 'students' as the independent variable in trip generation calculations will not be subject to the trip cap as they are based on projected student enrollment which is the same under either the current or proposed zoning. However, Campus Village uses permitted in the Campus Village area shall be subject to the 301 PM peak hour trip threshold, which shall be established as a condition of zone change approval.

Trip reducing mitigation measures including the implementation of a coordinated TDM plan may be evaluated at each site plan application. In accordance with Chapter 4.2, all Site Plan applications for new development must demonstrate that transportation facilities have adequate capacity to serve the proposed use.

IV. CONCLUSIONS:

Based on the above Findings of Fact and Conclusions of Law, the City Council finds that the proposed Zone Change from RS to PF and proposed COCC Special Planned District text, with the recommended conditions of approval noted herein, meet all applicable Development Code criteria, policies of the Bend Urban Area General Plan, Oregon Statewide Planning Goals, and the Transportation Planning Rule.

ORDINANCE NO. NS-2127

AN ORDINANCE AMENDING THE BEND URBAN AREA ZONING MAP BY CHANGING THE ZONING OF THE 175 ACRE COCC AWBREY BUTTE CAMPUS FROM RESIDENTIAL URBAN STANDARD DENSITY TO PUBLIC FACILITIES WITH THE COCC SPECIAL PLANNED DISTRICT OVERLAY ZONE.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council held a public hearing to consider the Planning Commission's findings and recommendation and found that the requested Zone Change is consistent with the criteria of the Bend Development Code Chapter 4.6 as shown in Exhibit B. The Bend City Council adopts the findings in Exhibit B, and condition of approval in Exhibit C.

Section 2. The Bend Urban Area Zoning Map is hereby amended by changing the zoning of the property shown in Exhibit A from Residential Urban Standard Density (RS) to Public Facilities (PF) with the Central Oregon Community College (COCC) Special Planned District Overlay Zone.

Read for the first time the 15th day of July, 2009.

Read for the second time the 5th day of August, 2009.

Placed upon its passage the 5th day of August, 2009.

YES: 6 NO: 0 ABSTAIN: 1

Authenticated by the Mayor the 5th day of August, 2009.

Kathie Eckman

Kathie Eckman, Mayor

ATTEST:

Patricia S Stell

Patricia Stell, City of Bend Recorder

EXHIBIT A

RS
NW Summit Dr
NW College Way
NW Regency St
RM
Sheylin Park Rd
RM
RH
Mt Washington Dr
RS
N
Proposed COCC
Special Planned
District Overlay Zone
PZ 09-40 Zone Change from Residential Urban Standard Density (RS)
to Public Facilities (PF) and creation of the Central Oregon Community
College (COCC) Special Planned District Overlay Zone
0
0.125
0.25
Miles
Imagery acquired July 2008. Map prepared July 7, 2009.

EXHIBIT B

FINDINGS IN SUPPORT OF PZ 09-40

CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE

CHAPTER 2.7 SPECIAL PLANNED DISTRICTS

2.7.100 Purpose

Special Planned Districts describe in more detail the type of development planned for a specific area than is typically found in a comprehensive plan, zone map, or public facilities plan. The area covered by a plan can include multiple parcels and landowners, or a single large parcel.

FINDING: This Chapter outlines the purpose of Special Planned Districts and contains Sections for each Special Plan District with the standards adopted for each district. The applicant proposes adding a new Special Plan District for Central Oregon Community College. The following findings address the characteristics of Special Planned Districts as outlined in the purpose statement above.

• Designation of site-specific land uses (e.g., for individual parcels);

The General Plan and Development Code do not provide detail about the types of uses and activities commonly found on college campuses or mixed-use campus environments. COCC's proposal to create a Special Planned District serves to provide greater detail about the current educational uses that occur on the campus today and the types of uses common to a mixed-use campus environment. Thus, the Special Planned District will serve to provide more detail about the type of development contemplated for the College over the long term. COCC provides educational programs, services and activities on what amounts to a single large parcel of land.

• Design standards specific to a geographic area;

The COCC site contains existing educational buildings and structures with varied topography, vegetation, and steep slopes. The site and the proposed uses will be designed to accommodate the topography and unique site features. The Campus Village will include a greater portion of the mixed-use structures while the Campus Core will include a greater concentration of educational uses and student amenities. However, the advantages of mixing uses and developing mixed-use structures may occur throughout the campus area as defined in the proposed Special Planned District text.

• Detailed description of public facilities needed to serve development;

The College submitted a series of public facilities analyses that evaluate the available capacity and adequacy of the public utility system. City staff concurred with the findings in the analyses and adequate capacity is available to support the zone change and proposed uses. Conceptual maps denoting the location of potential transportation connections are contained in the record. These serve to generally locate existing and proposed public/private streets, driveways, trails and other features. It is expected that refinements will occur to these conceptual maps as the College expands over time.

• A plan adopted through a consensus-based process involving the property owners;

Neighborhood meetings and ongoing dialogue with students, staff, and property owners were conducted prior to the submittal of the application. Comments received from the neighborhood meeting are part of the record and were considered by the college when developing the mixed-use campus approach. A public hearing on the proposal was held before the Planning Commission and City Council which surrounding property owners attended and participated in.

• Streamlined development review for projects that are part of the plan;

The COCC Special Planned District will streamline review processes by eliminating the need for Conditional Use Permit approval for uses which typically occur on college campuses but which require a Conditional Use Permit in residential zones. The plan also provides a

conceptual plan for future street and pedestrian connections throughout the campus which takes into account topography, natural features and existing surrounding development and street connections, rather than relying on the block length and block perimeter requirements of Section 3.1.200.

• May include intergovernmental agreements and complimentary zoning for sites that cross jurisdictional boundaries (e.g., between city and county).

The subject property and the Bend COCC campus are within the jurisdiction of the City of Bend and do not cross jurisdictional boundaries.

A Special Planned District usually focuses on some unique feature of the site, such as natural resources, economic activity, or desired neighborhood character. Special Planned Districts may be used for large undeveloped areas, or partially developed areas with potential for infill and redevelopment.

The COCC campus is a unique feature within the Bend community given its purpose, location, and urban setting. This application and proposal will help COCC develop the tools necessary to expand into a mixed use campus while refining the type of uses that can be developed within the boundary of the campus.

Special Planned Districts differ from Master Planned Developments (Chapter 4.5) in that there is no required phasing or timeframe for development, and an application for future development (i.e.,subdivision and/or site plan) need not accompany the application for Special Planned District approval.

COCC is not proposing a specific phasing plan or timeframe for development of any particular use. Funding and other financial limitations often guide the development timing of college facilities.

However, all land use applications for property within the Plan are required to comply with the planned area policies and regulations as well as the development standards for the underlying zone.

The proposal and the Special Planned District text will guide the development of uses on the COCC campus. The Special Planned District serves to implement the purpose of the PF, Public Facilities Zone and provides a greater level of detail given the unique features common to mixed-use college campuses. Thus, compliance with the Bend Comprehensive Plan is achieved through the additional zoning detail provided by the proposed Special Planned District. All future development will be required to go through the Site Plan Review and approval process per Chapter 4.2, at which time the impacts of each specific development request will be reviewed for compliance with all applicable Development Code Standards and Criteria.

CHAPTER 3.1, ACCESS, CIRCULATION, AND LOT DESIGN

3.1.200 Lot and Block Design

B. Street Connectivity and Formation of Blocks Required.

FINDING: The Special Planned District text contains an exhibit (Figure 4) that provides a general and conceptual depiction of the system of roadways, pathways and access corridors that will serve future development of the Core Campus and Campus Village areas.

Chapter 2.7 of the City Development Code allows a Special Planned District to establish specific and overriding development standards based on the unique features of the site, natural resources, economic activity and neighborhood character. COCC has proposed conceptual access corridors, trail connections and block lengths that are dictated by the unique nature of the College property, the steep topography of the site and the desire to preserve existing natural features. Access corridors, trail connections and block lengths have been developed in a manner that is intended to provide for the interconnection between the designated Core Campus and Campus Village areas and the surrounding neighborhoods. Along collector and arterial roadways (Mt. Washington Drive and Shevlin Park/Newport), the applicant has created access connections that align with the pattern of surrounding

development and minimize conflicts with the established residential neighborhoods that surround the College.

Based on the factors set forth above, the applicant's conceptual access and circulation plan (Figure 4) ensures safe and efficient access to the subject property and provides for the circulation of pedestrians and vehicles through an interconnected transportation system, consistent with the intent of Section 3.1.100 of the City Development Code. The road and trail corridors depicted on Figure 4 are conceptual in nature and final road and trail locations will be analyzed and fixed in connection with future development applications. In addition, the timing of designated road and trail improvements will be determined through the Site Plan process when specific road and trail corridor improvements are necessary to support a specific future development project.

CHAPTER 4.6, LAND USE DISTRICT MAP AND TEXT AMENDMENTS

FINDING: This application has both legislative and quasi-judicial characteristics. The proposed zone change and text amendment involve broad public policy determinations that have implications on a City, regional and state wide basis. The application will impact the future growth, development and management of a publicly owned educational institution that provides services and benefits to the entire region. As such, the proposal can be characterized as a legislative amendment under Section 4.6.200. At the same time, the application will establish development standards and criteria that impact a specific group of properties that are owned and managed by the College. The application of these standards to a limited group of properties and a specific factual setting is consistent with the standards for a quasi-judicial amendment as provided in Section 4.6.300 of the Bend Development Code. As a result of its unique status, the applicant agreed to apply the more restrictive criteria of a quasi-judicial amendment as specified in Section 4.6.300. However, in recognition of the significant public policy implications associated with this proposal, the application is being processed as a legislative proceeding pursuant to Section 4.1.320.

4.6.300 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: *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. Legislative amendments to the zoning map and zoning text are reviewed under a Type IV procedure, as detailed in BDC Chapter 4.1.300. The public meeting required by BDC Chapter 4.1.210B, took place on January 21, 2009. Notice of the meeting was provided pursuant to BDC Chapter 4.1.210C. Public notice was also provided for the public hearing before the Planning Commission and City Council in conformance with the requirements of BDC Chapter 4.1.315, which ensure that citizens are informed in four different ways about the public hearing; published notice, posted notice, individual mailed notice and neighborhood association contact.

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." A public hearing was held before the Planning Commission on June 22, 2009 and the City Council on July 15, 2009. Findings of conformance with all applicable policies and review criteria are contained in this document.

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 is not applicable because the proposed zone change will not have any impacts to air, water, and land Resources Quality.

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 applicant's proposal will facilitate the long term operation, growth and expansion of educational opportunities on the lands owned by COCC. The educational and vocational services offered by COCC at its Awbrey Butte Campus site provide students with skills, training and education that are vital to the economic health and welfare of the Central Oregon community.

The City's General Plan Map contains a Commercial Convenience designation located on the subject property. This designation is consistent with the applicant's proposal to place the mixed use Campus Village in a core area of the City that is immediately accessible to the students, faculty and staff of COCC, providing economic opportunities to the College, the City, and areas surrounding the campus.

The record indicates the City has a documented shortage of economic opportunity lands which the proposed zone change and text amendment will partially address. The proposal will allow the development of smaller scale commercial uses in an area that is in close proximity to the College's educational core area. The integration of service and commercial uses into the campus environment will limit off-site vehicle trips and thereby assist in preserving the capacity of the City's system of transportation infrastructure.

Goal 10, Housing, is to "Provide for the Housing Needs of the citizens of the State". While the COCC Campus is currently zoned for standard density residential uses, it has been developed as a center for educational and related uses since the 1960's. The district text provides for the development of a variety of housing types in the area designated as the Campus Village and the Core Campus Area. Multi-family residential units, residence halls, and student/faculty housing areas will be allowed as outright permitted uses in both areas.

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." The subject property is bounded by designated collector and arterial roadways to the south and west. Primary access to the College is provided by NW College Way (the southern portion of which is designated as a Major Collector roadway) that runs from NW Shevlin Park Road to the center of campus, connecting to Mt. Washington Drive at the northern campus boundary. The existing campus is served by City sewer, water and transportation infrastructure. Any new or future development within the boundaries of the subject property will be served through an extension of such services. The applicant's proposal will result in the orderly and efficient use of existing City services and facilities.

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 addressed further on and 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." The resulting mix of service, residential and educational uses allowed in the Campus Village area will keep students, faculty and staff on campus and reduce vehicle trips to the site as well as unnecessary out of direction travel. The proposal will also provide for the more efficient use of College owned lands thereby conserving energy for the benefit of the City and its residents. The proposed zone change and text amendment will increase development densities along an existing transportation corridor and thereby 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." As noted above, the existing COCC campus has long operated in this core area of the City where urban levels of services are provided. The proposed zone change and text amendment will facilitate higher density "in fill" development in an area devoted to higher education and learning. The mixed use nature of the subject proposal will increase educational, vocational and employment opportunities within a core area of the City. The applicant's proposal is expected to result in additional jobs in a central area served by City services.

Goals 15 through 19 are not applicable because they only pertain to areas in western Oregon.

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

FINDING: The Bend Area General Plan is the City's Comprehensive Plan. The proposed Zone Change from Residential Urban Standard Density (RS) to Public Facilities (PF) with the COCC Special Planned District Overlay Zone is consistent with the relevant policies of the General Plan as described in the applicant's burden of proof and the findings below.

CHAPTER 1 – PLAN MANAGEMENT AND CITIZEN INVOLVEMENT

The transportation ↔land use connection (Plan Goals, page 1-2)

To support a cost effective and balanced land use and transportation system during the 20-year planning horizon the General plan provides for:

- ***designating several small commercial centers throughout the community to offer convenient shopping and services within walking distance or short driving distance of neighborhoods.***

As noted in previous findings, and as shown in Figure 4, COCC will improve street connections and pedestrian corridors as development occurs, to provide additional connections between the College and surrounding neighborhoods. Moreover, the development of the mixed use Campus Village will provide more services for students and faculty on campus, thereby reducing unnecessary out of direction travel.

The General Plan contains a commercial convenience site designation on the subject property. The mixed use Campus Village area is within a short walking distance of Campus educational offerings and several surrounding neighborhoods. The applicant anticipates the development of trail corridors and pedestrian connections that will link the College, its mixed use offerings and the adjacent residential neighborhoods. The development of the commercial site designation on the subject property satisfies the requirements of this goal.

Policies

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

The proposed "Campus Village" area will facilitate the development of a mix of commercial and service uses that are aligned with the more traditional educational and vocational programs within the Core Campus area. Consistent with the requirements of this goal, the mixed use area will result in fewer off-campus vehicle trips by students, faculty and staff. A measurable portion of current off-site travel will be replaced by internal (and non motorized) trips as the Campus Village mixed use area develops. This area will also provide commercial amenities that are within walking distance to the developed residential neighborhoods that surround the campus.

COCC currently utilizes several measures to reduce vehicle trips for campus users, including partnering with Commute Options to encourage carpooling and alternative modes of transportation, providing campus shuttle service in conjunction with the City BAT bus system, and providing a system of pedestrian and bicycle walkways and paths which connect buildings and facilities throughout the campus.

COCC is in the process of identifying additional near-term and long-term transportation demand management (TDM) strategies to further reduce travel demands. The development and expansion of TDM measures will serve to reduce the impact of future development on transportation infrastructure, consistent with the policies of the General Plan.COCC continues to refine and expand these programs, and will continue to do so with the proposed Special Planned District.

CHAPTER 2: NATURAL FEATURES AND OPEN SPACE

To help ensure Bend's livability, the following additional goals should be implemented to provide long-term protection of open space and natural features:

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

Policies

8. ***Natural tree cover should be retained along streets in new developments to retain the natural character of Central Oregon within the urban area as the community grows.***

The creation and enhancement of an integrated and interconnected trail system is a fundamental component of the applicant's future development plans for the College. Additionally, COCC strives to retain the natural character of the area, removing vegetation only where necessary to site buildings and supporting facilities, and working with the existing topography where practical.

The Planning Commission also recognized the importance of preservation of the existing trees, topography, rock outcroppings and other natural features found throughout the site, particularly along the Mt. Washington Drive and Shevlin Park Road corridors. The Planning Commission recommended a condition of approval requiring a 25 foot landscape preservation buffer along these two arterial streets, as well as a 100 foot landscape preservation buffer adjacent to the existing residential zones at the perimeter of the Core Campus. Additionally, the Planning Commission recommended condition of approval included the requirement that the applicant prepare a natural resource plan in connection with individual site plan applications. These recommendations were incorporated into the final version of the special planned district text.

CHAPTER 3: COMMUNITY CONNECTIONS

The goals below provide direction only for those topics that may be affected by land use planning:

- ***Expand the number and variety of cultural and artistic venues held downtown and elsewhere in the community.***

The applicant indicates that the proposal is designed in part to facilitate the development of a new facility for the culinary arts. This planned educational and vocational program will include a state of the art culinary facility that will attract students, faculty and visitors from around the state and region. COCC anticipates the operation of a wide range of programs from this facility that will expand cultural opportunities throughout the Central Oregon community.

- ***Provide quality green spaces, natural areas and recreation sites through public and private park land throughout the community.***

COCC's Awbrey Butte Campus currently includes quality green spaces, natural areas, recreation sites and park space. The applicant anticipates the preservation and enhancement of natural areas and green spaces in its future development plans.

- ***Coordinate the development of future park and school sites to serve the expanding urban area population.***

The campus is centrally located in an area that is readily accessible to City residents. The zone change and text amendment will provide for the development of additional college related facilities to serve the growing demand for higher education in the community.

PUBLIC EDUCATION

The sections below describe the existing and planned public education facilities in the urban area.

Central Oregon Community College is the state's oldest two-year college, having been created in 1949. Located on the west slope of Awbrey Butte, the 200 acre campus features a 102 student residence hall, a 38,000 volume college/community library, a 300-seat performing arts center, and several lecture halls. The college has a long-standing policy to encourage community use of its buildings and facilities.

The college enrolls about 3,200 full-time and part-time students each term, plus another 3,000 to 4,000 community education students taking non-credit courses. Degrees offered by COCC include the Associate of Arts degree, the Associate of Science degree, and the Associate of Applied Science degree covering several technical and professional fields. The college serves more than just the Bend area, and its instructional programs extend to a 10,000 square mile service area through a network of community centers in Christmas Valley, La Pine, Madras, Prineville, Redmond, Sisters, and Warm Springs.

In a cooperative arrangement with public and private colleges and universities, the Central Oregon University Center at COCC offers both bachelor's and master's degrees in Bend through traveling professors and video computer. Because of the great interest in the region for a local college that offers bachelor's and master's degrees, the college board and members of the community have set a goal to expand Central Oregon Community College into a fully accredited four year college.

The numbers listed above are from the adoption of the General Plan in 1998. Updated enrollment figures are contained in the application materials in the file. However, this section is of note in that it recognizes that the college is an asset to the community and anticipates that the college will continue to grow in future years.

Policies

Urban Trails

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

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

Figure 4 of the proposed COCC Special Planned Area identifies existing and future pedestrian and bicycle facilities on and adjacent to the COCC campus. This figure also shows future connections to the urban trails identified on the Bend Urban Area Bicycle and Pedestrian System Plan which is part of the Transportation System Plan (TSP). In general, the urban trail runs along the south boundary of the site and portions of this trail will be required to be improved as development in the Campus Village area occurs.

CHAPTER 4: POPULATION AND DEMOGRAPHICS

A major goal of the land use planning process is to ensure that there is sufficient land within the urban growth boundary for housing, for business and industry, for public services such as parks and schools, and an adequate transportation system to serve those needs.

COCC is currently experiencing significant growth and an unprecedented demand for educational services. The proposed zone change and text amendment will provide the College with an opportunity to grow its existing facilities to meet the rising level of demand as well as address the need for additional service uses within the campus consistent with the goals of the General Plan. The anticipated facilities will be located within an area of the City that has been planned and developed for higher education facilities and commercial services.

CHAPTER 5: HOUSING AND RESIDENTIAL LANDS

Goals:

Accommodate the varied housing needs of citizens with particular concern for safety, affordability, open space, and a sense of community.

The Special Planned District text will allow for a mix of housing types that are needed for future development of the campus. Multi-family housing units, residence halls and student housing are allowed in both the Campus Village and Core Campus Areas. The text and associated campus plan also provide the opportunity to develop single family housing units in areas compatible with surrounding properties.

Neighborhood transportation linkages shall provide ways to move about the community, and also create a positive community image through design elements that provide for safe and attractive neighborhoods.

Figure 4 shows existing and future street and pedestrian and bicycle pathway connections through the campus and connecting to the existing facilities surrounding the campus. Bus and shuttle routes and stops are also shown. Future development within the boundaries of the campus will contain appropriate transportation links with the public road system, trail system, bus system, and surrounding neighborhoods.

Policies:

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

The college has been located on this site since the 1960's, and has continued to expand throughout the years. Existing development has retained much of the native trees, vegetation, and topography, utilizing them to buffer development on the campus. The proposed Special Planned Area text includes requirements for maintaining and enhancing these natural buffers and respecting the character of existing areas through consideration of future street connections and where possible, locating future housing near existing housing to provide transition zones.

The Planning Commission expanded upon the need for preservation of existing natural buffers along the Mt. Washington Drive and Shevlin Park Road corridors, as well as adjacent to the existing residential zones at the perimeter of the Core Campus area. The Planning Commission recommended conditions of approval requiring natural resource preservation plans and landscape preservation buffers were incorporated into the final version of the special planned district text.

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.***

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.***

Allowing expansion of the College within the Core Campus area, as well as the addition of the proposed Campus Village mixed use area, will provide for non-residential uses within an area surrounded by residential uses, providing added convenience to surrounding neighborhoods, along with dedicated pedestrian and bicycle pathways for added safety. Buffer requirements, special setbacks, and design standards in the proposed COCC Special Planned Area text will help ensure compatibility with surrounding residential developments and enhancement of the area.

20. ***Hillside areas shall be given special consideration in site design by both the developer and local regulations. Building sites, streets, and other improvements shall be designed and permitted in a manner that will minimize excessive cuts and fills and other erosion-producing changes.***

The proposed future street connections in Figure 4 take into account existing surrounding development and street patterns as well as topography. Although individual block lengths and block perimeters may not meet those required in Section 3.1.200(B) of the development code, the proposed connections meet the intent of promoting efficient vehicular and pedestrian circulation along parallel and connecting streets, while preserving topography and the natural features of the site and considering existing surrounding neighborhoods and street connections.

35. ***Schools and parks may be distributed throughout the residential sections of the community, and every dwelling unit in the area should be within a convenient distance of a school or park.***

COCC's Awbrey Butte Campus is centrally located in an area that abuts developed residential neighborhoods. The residential properties that abut the campus will have multi-modal access,

including a system of pedestrian and bicycle paths, to a wide range of amenities available at the College.

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

The COCC plan anticipates further development and enhancement of the system of trails and pedestrian walkways that currently serve the campus. The College intends to connect its internal trail system to off-site walkways and non-motorized transportation corridors over the life of the College.

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

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

COCC will continue to develop and expand the existing system of trails, pedestrian ways, and bike trails within the campus to provide integrated links to the system of trails and pedestrian paths that are external to the campus. Existing and future proposed trail and path connections are shown in Figure 4 of the proposed COCC Special Planned Area.

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

Future proposed street connections are limited by topography, existing natural features such as rock outcroppings and mature trees, and existing surrounding development and street connections. For these reasons, some of the future block lengths shown on Figure 4 exceed 600 feet. However, additional future streets and pedestrian/bicycle accessway connections are shown at appropriate locations and spacing to provide sufficient additional connectivity.

CHAPTER 6: THE ECONOMY AND LANDS FOR ECONOMIC GROWTH

The following goal statements describe the future economic hopes of the community and serve as the foundation for policy statements in this chapter.

- ***Ensure an adequate supply of appropriately zoned land in Bend to provide for a full range of industrial, commercial and professional development opportunities.***

The subject property has long been planned and developed for educational uses in connection with COCC. The proposal will bring zoning of the subject property into conformance with the General Plan designation and create implementing rules for the PF Zone that are designed to provide for the long term operation and development of COCC lands. The Bend Area General Plan Map contemplates the development of a "convenience commercial" node within the boundaries of the Awbrey Butte Campus. The applicant's proposal will consolidate this area of commercial activity within the proposed Campus Village area, where commercial services will be available to serve the needs of the College and surrounding properties.

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

The flexibility provided by this zoning district will allow the College to develop a wide range of educational and vocational programs that will ultimately strengthen and diversify economic activity in Bend and the region.

- ***Strengthen Bend's position as a regional economic center.***

The future growth and development of COCC (together with affiliated programs offered by Oregon State University) will provide additional economic and cultural opportunities that strengthen Bend's position as a regional economic center. The COCC district boundaries currently encompass a large area that includes all of Deschutes, Jefferson and Crook Counties, together with the northern portion of Klamath and Lake Counties. The district also

includes the Warm Springs Indian Reservation in Jefferson and Wasco Counties. The myriad of programs offered by COCC are also open to students who have previously resided outside of the district and the state. As a result, the college draws students to the Bend area and strengthens the City's position as a regional economic center.

- ***Create Commercial areas in outlying sections of the community as neighborhood centers rather than extending the existing strips along major roads.***

The Campus Village area will allow for the creation of a neighborhood commercial center in an area where it is needed to serve the College and the surrounding neighborhoods. As previously noted, the General Plan contemplates the development of a commercial node within the boundaries of the College.

- ***Encourage more small neighborhood commercial developments and convenience centers to reduce vehicle trips and trip lengths.***

The mixed use Campus Village area will facilitate commercial and service uses in an area where they are easily accessible to students, faculty, staff, and the surrounding neighborhood, reducing vehicle trips and trip lengths consistent with this plan goal.

Commercial Center Areas

Part of the land needed for commercial development will be met by new small commercial centers or stores as generally designated on the Plan Map. These centers are intended to support residential neighborhoods and reduce vehicle trips or trip lengths by providing commercial uses near or within developing residential areas. These new centers could be on one parcel, or several parcels within a limited geographic area like the commercial area on Newport Avenue, and should have several of the characteristics listed below that avoid the problems and appearance of "strip commercial" developments:

- ***buildings closer to the sidewalk***
- ***limited vehicle access points***
- ***shared parking facilities***
- ***parking distributed around buildings***
- ***walkways for pedestrian access***
- ***uses that serve the neighborhood***
- ***smaller monument signs***
- ***buildings on site in scale with each other***

Convenience Commercial areas are intended to provide for the frequent shopping or service needs of nearby residential areas. They will consist principally of a relatively wide range of small retail and service uses, the largest of which would be a grocery store. Uses such as a grocery store, drugstore, small bakery, specialty shops, and offices would be typical of these areas.

It is expected that new convenience commercial areas will develop to serve the emerging and future residential areas, and will particularly benefit the rapidly growing portions of the urban area. New convenience commercial areas reduce the need for residents to drive to the existing strip commercial areas for all their shopping or service needs.

Convenience Commercial areas should occur as centers on one or more properties together in a block or across the street from each other, rather than as commercial strips. Convenience centers should be located on arterial or collector streets, preferably at or near an intersection with another similar street, and have a site size up to five acres. In order that convenience centers remain oriented toward serving nearby residential areas and do not expand to serve much larger parts of the community, commercial building floor areas should be limited to 35,000 to 55,000 square feet. The building design and site design should be compatible with the surrounding neighborhood. They should be spaced from one to one and one-half miles apart, and new locations should be based on a market study or other analysis that shows there is an adequate residential base or other conditions to support the uses.

The area encompassed by the proposed COCC Special Planned District includes a commercial convenience node as shown on the General Plan Map. The proposed Campus Village area incorporates a mix of college uses and service commercial and office uses intended to serve both the college and its surrounding neighborhoods, and is located adjacent

to the intersection of two arterial streets. The Special Planned District text includes many of the design elements and uses listed above, including development of a Parking Management plan which will utilize shared parking throughout the campus, with shuttles and pedestrian and bicycle facilities to minimize vehicle trips throughout the campus area.

Policies

Mixed Use Development

19. The City may designate other areas for mixed use development to encourage a variety of jobs and services close to residential areas.

The proposed zone change and text amendment will facilitate a mix of service and commercial uses in a central location where they can efficiently serve the needs to the College and the surrounding community. The development of a mixed use campus environment will provide opportunities for additional jobs and vocational opportunities in close proximity to established residential neighborhoods.

Commercial Development

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.

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

The proposed Special Planned District includes landscape preservation buffers and additional setback requirements adjacent to residential uses as well as building design elements as required above. As mentioned in previous findings, the final version of the Special Planned District text incorporates the Planning Commissions recommendations for preservation of existing natural buffers along the Mt. Washington Drive and Shevlin Park Road corridors, as well as adjacent to the existing residential zones at the perimeter of the Core Campus area.

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 site is bounded by Shevlin Park Road to the south and Mt. Washington Drive to the west, both of which are designated arterial streets. Figure 4 of the COCC Special Planned District shows limited future street connections to these arterial streets. These future street connections will provide access to future development so that direct access to arterials will be avoided.

CHAPTER 7: TRANSPORTATION SYSTEMS

GOALS

5.0.1.2 Transportation Plan Goals
Mobility and Balance:

- ***Develop a transportation system that serves all modes of travel and reduces the reliance on the automobile.***

The College has a history of developing and implementing a significant number of TDM measures that support the use of alternative modes of travel and reduce reliance on the automobile. The applicant will integrate the Core Campus and Campus Village areas through a system of shared parking lots, roads, trails, and bus service that will serve alternative modes of travel and reduce reliance on vehicle travel consistent with this goal.

Efficiency:

- ***Address traffic congestion and problem areas by evaluating the broadest range of transportation solutions.***

The mixed use Campus Village area will provide amenities that are currently located off campus, reducing the need for off-site vehicle trips by students, faculty and staff of the College. The applicant will also develop an integrated system of roads and trails designed to reduce congestion consistent with this goal. In connection with future development within both the Core Campus and Campus Village areas, the applicant will also evaluate how different TDM measures can be implemented to increase the capacity of transportation infrastructure and to reduce vehicle miles traveled.

- ***Coordinate and design transportation improvements to assure the expenditure of resources in the most cost-effective manner.***

The most cost effective approach is to maximize existing roadway capacity and to improve existing TDM programs to reduce impacts to the transportation system. This goal will be addressed through the College's ongoing evaluation of transportation infrastructure and continuing development of a TDM program.

- ***Encourage the coordination of transportation modes and land use patterns that maximize efficiency and minimize number and length of all trips.***

The creation of a mixed use college campus along with an integrated system of shared parking lots, shuttle service, and pedestrian and bicycle facilities will maximize efficiency and reduce vehicle trips and trip lengths consistent with this plan goal.

Environmental:

- ***Minimize the adverse impacts to the natural features when making transportation improvements for any mode.***

Livability:

- ***Design and locate transportation facilities to protect the livability of the community.11***

The future street and pedestrian/bicycle path connections shown in Figure 4 provide adequate connectivity throughout the campus and out to the community, taking into account topography, natural features, and existing development patterns to minimize adverse impacts.

POLICIES

6.9.1 TRANSPORTATION AND LAND USE

6. The City shall implement mixed use zoning as one of the land use strategies to promote fewer vehicle trips and shorter trip lengths.

The mixed use Campus Village area will facilitate development of commercial and service uses in an area where they are easily accessible to students, faculty, staff and the surrounding neighborhood, thereby reducing vehicle trips and trip lengths. In addition, the development of a fully integrated college environment will create additional job opportunities in an area surrounded by established residential uses, thereby providing opportunities to work closer to home for many neighbors.

7. The City shall be receptive to innovative development proposals, including zone changes, plan amendments, and text changes that promote alternatives to vehicular traffic and demonstrably reduce vehicle trips and trip lengths.

The Special Planned District will facilitate the development of a mixed use, pedestrian friendly environment that promotes alternative modes of transportation which will reduce existing and future vehicle trips and trip lengths. The College will develop road and trail connections that fully integrate the Core Campus and Campus Village areas with the surrounding community.

6.9.3 TRANSPORTATION DEMAND MANAGEMENT

3. ***The City shall work with businesses, with more than 25 employees, to develop and implement a transportation demand management plan. These plans shall be designed to reduce peak hour traffic volumes by establishing trip reduction targets over five years.***
4. ***The City and County shall work with business groups, schools, the Park District and other governmental agencies to develop and implement transportation demand management programs.***

COCC has implemented a number of TDM measures over the years that currently serve to reduce vehicle travel and preserve the capacity on the City road system. The TDM measures implemented to date include partnering with Commute Options, development and operation of an internal bus/shuttle system, an extensive system of pedestrian walkways and path, and the development of alternative (off peak-hour) class and event schedules. The college is in the process of identifying additional near-term and long-term TDM strategies to further reduce impacts on transportation infrastructure, consistent with the policies of the General Plan.

6. ***The City shall manage and regulate parking by:***

   a) ***Establishing programs to lower parking demand in commercial and business districts citywide by providing preferential parking for carpoolers, encouraging mass transit use, encouraging shuttle systems from external parking lots, and maintaining an adequate supply of strategically placed bike parking facilities.***

   b) ***Requiring business groups and employers to develop parking management strategies that support reduced roadway system demand during the peak motor vehicle travel times.***

The text for the Special Planned District includes a requirement that COCC develop a Parking Management Plan for both motor vehicles and bicycles, which will be required to be updated with subsequent Site Plan applications in accordance with Table 3.3.300 of the Development Code. Section 3.3.300(D) of the Development Code allows reductions in parking requirements for developments which incorporate vehicle trip reducing design standards such as provision of designated carpool/vanpool parking, provision of and lockers for bicycle commuters, provision of additional covered, secured bicycle parking racks, and provision of transit facilities and amenities.

6.9.4 PEDESTRIAN AND BICYCLE SYSTEMS

3. ***The City and Park District shall work together to acquire, develop and maintain the primary trails designated on the Bend Urban Area - Bicycle and Pedestrian System Plan – TSP: Map Exhibit B. New development shall be required to construct and dedicate Primary Trails for public use according to this plan. The alignments depicted are general in nature and shall be located according to criteria defined in TSP Section 6.3.1.3.6 these trails, and future trail additions, shall support the need for non-motorized travel in the community.***

There is a Primary Trail shown on the Bend Urban Area - Bicycle and Pedestrian System Plan which is located along the south boundary of the subject site. This trail is also shown on Figure 4 of the proposed COCC Special Planned District. This section of Primary Trail will be required to be constructed and dedicated as development occurs in the Campus Village portion of the campus adjacent to this trail.

CHAPTER 8: PUBLIC FACILITIES AND SERVICES

The goals below provide general guidance for maintaining and improving the level and quality of urban services as growth occurs in Bend.

- ***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;***

- ***To locate and operate public buildings and other public facilities to best serve the needs of the residents.***

Site Plan review is required for all new development. As additional development occurs on the campus, updated sewer, water, and transportation impact analyses will be required to be provided. All new development is required to mitigate any impacts to public facilities concurrently with development. Additionally, system development charges (SDCs) are required to be paid prior to issuance of building permits for all new development. As stated in previous findings, allowing a mix of uses on the campus will better serve the needs of students, faculty, and the surrounding neighborhoods, reducing the need to travel off-site and thereby reducing vehicle trips out into the community.

POLICIES

Storm sewer

10. Dry wells, landscaping, retention ponds or storm drains shall be used for surface drainage control.

12. Due to the lack of a defined drainage pattern for most of the urban area, development shall contain storm drainage on-site.

Per the memo submitted by the applicant's engineer (Bussard Engineering, May 26, 2009) the applicant will meet or exceed City of Bend design standards for on-site stormwater retention. Plans will be prepared with each Site Plan application for all new development and will utilize best management practices, including the use of bio-swales, stormwater retention ponds, and other approved stormwater management measures.

Public buildings

19. Public buildings and facilities should be located so as to provide convenient public use and to provide maximum service for the greatest economy. Governmental offices should locate downtown when practicable. Other governmental facilities, reservoirs, landfills and correctional facilities should be located in areas with good public access to principal streets.

The College is a public facility located within the City of Bend. The College enjoys good public access from existing arterial streets and the City transportation system has been designed to manage transportation needs for the College, General Plan designations, and surrounding area. The College facilities are also enjoyed by many nearby citizens who use the existing open spaces, trails, and other public facilities provided on campus. The proposal to provide a mix of educational and commercial service uses will further encourage convenient public uses consistent with COCC's objectives.

(Section 4.6.300(B) Criteria for Quasi-Judicial Amendments continued below.)

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;

Adequate urban infrastructure, including sewer, water, police and fire protection, schools and transportation facilities are provided to support the proposed zone change and text amendment. Each of these facilities and services is discussed separately in the findings below. COCC's Awbrey Butte campus has long operated as a community college served by existing City infrastructure.

Police Protection. The subject property is located within the Bend City limits and is served by the Bend Police Department.

Fire Protection. The subject property is located within the Bend City limits and is served by the Bend Fire Department.

Sewer and Water. The subject property is currently served by City sewer and water infrastructure. The record contains a *Preliminary Water Facility and Sewer Impact Assessment,* (prepared by Bussard Engineering and dated May 5, 2009) that evaluates sewer

and water needs associated with the subject application and related development, and a Memorandum (dated May 20, 2009) from City Engineer Michael Magee that was prepared in response to applicant's sewer and water analysis. The record identifies the infrastructure that is currently available to serve development and the longer term needs to support full build-out of the site. The specific sewer and water facility requirements that are needed to serve specific development proposals within the Special Planned District will be addressed in connection with future site plan applications. As a result, the record demonstrates that the campus is presently provided with adequate public facilities to support the planned uses and any additional needed facilities can be provided concurrently with future development applications.

Schools. The subject property is located within the boundaries of the Bend-La Pine School District and can be adequately served by the district.

Parks. The subject property is located within the boundaries of the Bend Metropolitan Park and Recreation District and can be served by the district. In addition, the campus currently contains large areas of open space that are utilized in connection with the operation of the College. Given the steep topography of the site, the applicant anticipates the retention of significant open space areas and recreational amenities as the campus continues to develop.

Transportation Facilities. The subject property is bounded by designated arterial roadways to the south and west. Primary access to the College is provided by NW College Way (a designated Major Collector roadway) that runs from NW Shevlin Park Road to the center of campus, connecting to Mt. Washington Drive to the northeast. The anticipated future development of the campus is expected to create additional road connections to both NW Shevlin Park Road and Mt Washington Drive, in the general locations depicted on Figures 3 and 4 of the Special Planned District/Overlay Zone. Compliance with the Transportation Planning Rule is discussed further on in this report. All future development will require Site Plan approval which requires a Transportation Impact Analysis (TIA) demonstrating compliance with Chapter 4.7 of the Development Code. Any impacts to the transportation system identified in subsequent TIAs will be required to be mitigated concurrently with development.

Stormwater Runoff. The College will meet or exceed City of Bend design standards for the retention of storm water in connection with individual future Site Plan applications. Best management practices will be implemented (including bio-swales, storm water retention ponds and other approved storm water measures) and constructed in connection with any future development at the site. Storm water runoff associated with future development will be retained on site and no additional impact will be placed on the existing City storm water infrastructure.

Based on the above findings, there are adequate public facilities to serve the properties as contemplated by the proposed zone change and text amendment.

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.

Significant changes have occurred since the subject property was initially zoned for residential uses and the General Plan designated an area of the College for commercial development. In 1962, an initial 140-acre tract of land was donated for the purpose of establishing COCC's main campus. Additional donations and acquisitions have been consolidated to establish what is now called COCC's Awbrey Butte Campus. Construction of the first educational buildings began in 1963 with the first three buildings (Ochoco, Modoc and Deschutes) being completed in the spring of 1964. In 1965, the Jefferson and Metolius buildings were constructed along with the Grandview Student Union. The following two years saw completion of the Juniper Residence Hall, the Pinckney Center for the Performing Arts and the College's original library. The Mazama and Ponderosa Halls were complete in 1971. Pioneer Hall was built in 1976. The Boyle Education Center opened in 1989. COCC's Bookstore and Printing and Mail Services building was completed in 1993. In 1999, the current library was completed and Modoc Hall was remodeled. The campus's newest building, Cascades Hall, which houses Oregon State University, opened in the fall of 2002.

Today, the approximately 201 acre campus site includes 21 buildings with more than 400,000 square feet of space. All of the existing development has been completed under the existing

residential zoning designation. The Bend Development Code provides that schools are a conditional use in all of the City's residential zoning districts. As a result, most of the developed structures and associated amenities have been developed under the conditional criteria of the code.

The Bend Area General Plan designates a large portion of the Awbrey Butte campus as (PF) Public Facilities. The rules of the PF Zoning district govern a very wide variety of publicly owned lands and structures, including public offices, the County Courthouse, public parks, the County jail, the Deschutes County landfill, public schools and other associated public facilities. Public colleges and universities are listed as a permitted use in the PF Zone. With this application, COCC seeks to create a specific set of rules and standards to govern the future growth and development of the College. To that end, the applicant has proposed an amendment to Section 2.7 of the Development Code to create the Central Oregon Community College (COCC) Special Planned District/Overlay Zone. The Special Planned District defines the specific uses allowed within the boundaries of the district and the standards governing their future development. The standards of the proposed district have been designed to foster an innovative mixed-use area of academic, social, residential, retail and commercial uses that are accessible to students, faculty and staff on lands owned and managed by the College. The District will facilitate the continued growth and development of educational programs within the core area of the campus while providing additional opportunities to develop vocational programs, supporting services and mixed use development on College owned lands for the benefit of the College, its students, faculty, staff and the surrounding residential communities.

The applicant's proposal will bring the campus zoning into compliance with its General Plan designations and create the specific rules that are needed to provide for the orderly development of this public institution.

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.

Current Text of OAR 660-12-0060, Plan and Land Use Regulation Amendments is attached with the Exhibit A Traffic Study

The transportation impact analysis dated January 14, 2009, along with the supplemental build out scenarios dated May 1, 2009 provided by Kittelson & Associates, Inc. demonstrate compliance with the Transportation Planning Rule. This analysis shows that there is no net gain in transportation impacts associated with the proposed zone change and text amendment compared to a reasonable build out scenario under the existing residential zoning. The analysis demonstrates that the proposed zone change will not require changes to the functional classification of existing or planned transportation facilities, will not require a change to the standards implementing the comprehensive plan, and will not significantly affect a transportation facility as measured at the end of the planning period identified in the adopted transportation system plan (TSP).

Core Campus Area

The approximately 135-acre "Core Campus" area is developed with a variety of educational and related land uses. The Bend Area General Plan expressly recognizes COCC's Awbrey Butte Campus as a public educational institution. *See Section 3-16, Community Connections.* The General Plan further recognizes the need for additional higher educational services in the region and the College's intent to expand the services offered from its existing campus facilities. The record demonstrates a significant and growing public investment in the educational structures and related infrastructure in this location. The Core Campus area contains over 21 educational buildings with over 400,000 square feet of floor space. The Core Campus area also contains developed recreational and sports facilities, areas of open space, roadways, trail corridors, parking areas and supporting infrastructure.

The proposed zone change and Special Planned District text will facilitate the continued growth and expansion of educational uses in the Core Campus area. However, a change in zone will not result in additional or more intensive development beyond what is currently allowed under the existing RS zoning designation. Future growth in the core campus area

will be governed by the need for public educational services in the region and the financial resources that are available to the College in future years.

The record demonstrates that it is appropriate to evaluate future transportation impacts for the Core Campus area based on the anticipated growth in student enrollment. The Core Campus area is designed to address student needs and related public educational uses and it is not reasonable to project future growth based on a simplistic analysis of available land. Therefore, potential trip generation from a community college is more appropriately related to the number of students enrolled in the institution and not the size or square footage of campus buildings and facilities. The applicant submitted enrollment data that demonstrates changes in college enrollment over the course of the last ten years. This data demonstrates that enrollment will increase or decline in any given year based on complex factors that are related to population trends and other economic and non-economic factors. The record shows a significant increase in enrollment for the 2008-09 academic year (14.7% increase) based in significant part on the poor economic conditions and high unemployment numbers in the region. Past trends suggest this number will decline with improved economic conditions. Based on the analysis enrollment data, it is reasonable to assume a one percent annual growth in campus enrollment from year 2008 through a year 2024 planning horizon.

From a TPR perspective, the proposed zone change will not create additional impacts on City transportation infrastructure. The educational facilities needed to accommodate campus growth within the applicable planning horizon can currently be developed as conditional uses under the existing zoning. Consequently, the proposed zone change for the Core Campus area will not significantly affect an existing or planned transportation facility under OAR 660-12-0060(1).

Campus Village Area

The approximately 40.8 acre area designated as Campus Village is currently undeveloped and has an existing RS zoning designation. The applicant anticipates developing the Campus Village area with a mix of educational and supporting uses as proposed in the COCC Special Planned District/Overlay Zone. Based on the analysis provided, the proposed zone change for the Campus Village area will not significantly affect an existing or planned transportation facility under OAR 660-12-0060(1).

Under the current zoning scenario, the RS zone could support up to 298 residential dwelling units in the Campus Village Area. Using a standard ITE trip generation rate, development at this density would result in 301 weekday PM peak hour trips on the transportation system. This residential trip generation analysis is equivalent to approximately 195,500 square feet of office and commercial development.
The record contains a letter from Kittelson & Associates, Inc. (May 1, 2009) that details reasonable worst case development projections for the Campus Village area under five, ten, fifteen, and fifty year time frames, through and beyond the relevant planning horizon. In the short term, development in the Campus Village area will be significantly constrained by economic factors and the limited financial resources that are available to the College. Over the longer term (15 to 50 year projections), development opportunities are expected to improve, although the intensity of development in this area will be significantly constrained by the needs of the campus environment. COCC anticipates approximately 28,000 square feet of office/commercial uses and 15 residential units in the Campus Village area over fifteen years, in addition to on-going student enrollment growth. Additionally, COCC expects to develop a built environment that contains large common areas and open spaces with trails and pedestrian connections that are conducive to a mixed-use campus environment. Over time, as the intensity of development increases in the Campus Village area, COCC will convert commercially developed buildings into additional classroom space as needed, consistent with its mission of providing regional educational services.

The applicant's burden of proof acknowledges that the table of "permitted" and "conditional" uses authorized in the Campus Village area could ultimately result in traffic impacts beyond the 301 "pm/peak hour" threshold that has been analyzed in connection with the proposed zone change. However, based on the factors identified above, it is unlikely that the intensity of development in this area will reach that threshold within the applicable fifteen year planning horizon or even beyond. If there is a change in these assumptions and more intensive development does occur, there are a variety of different options that the College may pursue to reduce the impact of office and commercial development on transportation infrastructure.

The development of a "mixed-use, pedestrian friendly center and neighborhood" (as such term is defined in OAR 660-12-0060(6) and (8) in the Campus Village area provides COCC with an opportunity to utilize the mixed use incentives established under the Transportation Planning Rule. Vehicle impacts on the surrounding infrastructure can also be reduced with the construction of additional internal connections (both vehicular and pedestrian connections) between the Core Campus and the Campus Village areas. The integration of educational and commercial areas within the campus can be expected to reduce automobile travel by students, faculty and staff of the College who would otherwise travel off campus for many of the amenities that will be provided in the Campus Village area. The level and impact of such a trip reduction will vary depending upon the specific mix of services and connections to be offered in the Campus Village area and can be re-evaluated with future Site Plan applications as development occurs.

Additional trip reductions may be achieved through the implementation and/or extension of TDM strategies implemented by the College. The College currently implements a number of measures that reduce single occupant vehicle travel, as outlined in TIA and burden of proof. Should the College need to seek additional transportation system capacity, the applicant can work with the City to implement a formal TDM plan to reduce campus trip impacts.

In summary, under the current RS zoning, the Campus Village area could have generated 301 weekday PM peak hour trips if developed at a maximum RS zone density. Therefore, because of the methodology employed in the transportation analysis, this number is set as a trip threshold for the purposes of ensuring validity with the TPR analysis. Core Campus uses in both the Core Campus area and Campus Village area with 'students' as the independent variable in trip generation calculations will not be subject to the trip cap as they are based on projected student enrollment which is the same under either the current or proposed zoning. However, Campus Village uses permitted in the Campus Village area shall be subject to the 301 PM peak hour trip threshold, which shall be established as a condition of zone change approval.

Trip reducing mitigation measures including the implementation of a coordinated TDM plan may be evaluated at each site plan application. In accordance with Chapter 4.2, all Site Plan applications for new development must demonstrate that transportation facilities have adequate capacity to serve the proposed use.

IV. CONCLUSIONS:

Based on the above Findings of Fact and Conclusions of Law, the City Council finds that the proposed Zone Change from RS to PF and proposed COCC Special Planned District text, with the recommended conditions of approval noted herein, meet all applicable Development Code criteria, policies of the Bend Urban Area General Plan, Oregon Statewide Planning Goals, and the Transportation Planning Rule.

EXHIBIT C

ZONE CHANGE CONDITION OF APPROVAL

1. Campus Village uses shall produce no more than 301 PM peak hour trips. This shall be known as the trip threshold. Trips produced for each approved site plan review application for Campus Village uses (not including Core Campus uses in the Campus Village area) shall be deducted from the 301 PM peak hour trip threshold. Once the cumulative number of Campus Village use trips reaches the trip threshold, no additional Campus Village uses shall be permitted. The trip threshold may be increased or eliminated upon amendment of this Condition of Approval through the Modification of Application process in accordance with BDC 4.1.1325 which will require a demonstration that the impacts of any additional trips will be consistent with the methodology and requirements of the TPR.