Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2524
Phone: (503) 373-0050
First Floor/Coastal Fax: (503) 378-6033
Second Floor/Director's Office Fax: (503) 378-5518
Third Floor/Measure 37 Fax: (503) 378-5318
Web Address: http://www.oregon.gov/LCD

NOTICE OF ADOPTED AMENDMENT

November 22, 2006

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Bend Plan Amendment
DLCD File Number 007-06

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: December 4, 2006

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE:** **THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist
Mark Radabaugh, DLCD Regional Representative
Cheryl Dix, City of Bend

<paa> ya

FORM 2

D L C D NOTICE OF ADOPTION

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18

(See reverse side for submittal requirements)

Jurisdiction: CITY OF BEND Local File No.: 06-281
(If no number, use none)

Date of Adoption: 11/1/06 (Must be filled in) Date Mailed: 11/13/06 (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 5/4/06

___ Comprehensive Plan Text Amendment
___ Land Use Regulation Amendment
___ New Land Use Regulation
___ Comprehensive Plan Map Amendment
X Zoning Map Amendment
___ Other: _____ (Please Specify Type of Action)

Summarize the adopted amendment. Do not use technical terms. Do not write see Attached.≡

TO CHANGE THE DESIGNATION OF A 3.47 ACRE AREA OF LAND FROM URBAN LOW DENSITY RESIDENTIAL (RL) TO CONVENIENCE COMMERCIAL (CC).

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write same.≡ If you did not give notice for the proposed amendment, write AN/A.≡

SAME

Plan Map Changed from: N/A to _____

Zone Map Changed from: RL to CC

Location: SOUTHWEST CORNER OF INTERSECTION OF 27TH ST. & REED MARKET RD. Acres Involved: 3.47

Specify Density: Previous: 1 DWELLING UNIT PER 30,000 SQ FT. New: N/A

Applicable Statewide Planning Goals: N/A - STATEWIDE PLANNING GOALS WERE ADDRESSED WITH ADOPTION OF THE COMP. PLAN

Was an Exception Adopted? Yes: ____ No: X

DLCD File No.: 007-06 (15217)

Did the Department of Land Conservation and Development **receive** a notice of Proposed Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing**? Yes: ✓ No: ___

If no, do the Statewide Planning Goals apply. Yes: ___ No: ___

If no, did The Emergency Circumstances Require immediate adoption. Yes: ___ No: ___

Affected State or Federal Agencies, Local Governments or Special Districts: Bend Metro Parks & Recreation, Central Oregon Irrigation District

Local Contact: Cheryl Dix Area Code + Phone Number: (541) 388-5527
City of Bend Planning Division

Address: 710 NW Wall St City: Bend, OR

Zip Code+4: 97701 Email Address: cdix@ci.bend.or.us

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision** per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and **TWO (2) Copies** of the Adopted Amendment to:

ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.

3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.

4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.

5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the ANotice of Adoption≅ is sent to DLCD.

6. In addition to sending the ANotice of Adoption≅ to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.

7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to Mara.Ulloa@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

ORDINANCE NO. NS-2029

AN ORDINANCE AMENDING THE CITY OF BEND ZONING ORDINANCE NO. NS-1178 (ZONING MAP), BY CHANGING THE ZONING DESIGNATION OF A PARCEL OF LAND AS SHOWN IN EXHIBIT "A" FROM RL, URBAN LOW DENSITY RESIDENTIAL, TO CC, CONVENIENCE COMMERCIAL.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council has held a public hearing, considered the Hearings Officer's findings and record, and has found that there is a public need and benefit for the proposed change. The Bend City Council adopts the Findings and Recommendation of the Hearings Officer dated September 12, 2006, file number PZ-06-281.

Section 2. Section 7(1) of Ordinance NS-1178 and the Zoning Map of the City of Bend are amended by changing the designation of the property described as Tax Lots 100, 200, 300, 301 and 400 on the Deschutes County Tax Assessor's Map 18-12-10AA described in Exhibit "A" and depicted in Exhibit "B". The change will be from Urban Low Density Residential (RL) to Convenience Commercial (CC).

Read for the first time the 18th day of October, 2006.

Read for the second time the 1st day of November, 2006.

Placed upon its passage the 1st day of November, 2006.

YES: 6 NO: 0

Authenticated by the Mayor the 1st day of November, 2006.

Bruce Abernethy, Mayor Pro Tem

ATTEST:

Kim Meyers, Deputy City Recorder

EXHIBIT A

STEELE PROPERTY
TL *181210* AA *00100, 00200, 00300, 00301* & *00400*

PROPERTY DESCRIPTION

A parcel of land containing 3.46 acres, more or less, located in a portion of the Northeast One-Quarter of the Northeast One-Quarter (NE1/4 NE1/4) of Section 10, Township 18 South, Range 12 East, Willamette Meridian, City of Bend, Deschutes County, Oregon, being more particularly described as follows:

Commencing at the Northeast Corner of said Section 10; thence along the East line of said Section 10, South 00° 20' 50" West a distance of 400.00 feet; thence leaving said East Section line, North 89° 45' 25" West a distance of 40.00 feet to the "True Point Beginning" of this description, being the northeast corner of Lot 7, Block 3 of the plat of Vintage Faire on the westerly 40.00 foot right-of-way line of 27th Street; thence along said plat boundary line the following two courses:

North 89° 45' 25" West a distance of 431.50 feet;
North 00° 18' 48" East a distance of 350.00 feet to said southerly 50.00 foot right-of-way line of Reed Road;

thence along said southerly 50.00 foot right-of-way line, South 89° 45' 25" East a distance of 411.71 feet; thence leaving said southerly 50.00 foot right-of-way line, South 44° 42' 17" East a distance of 28.26 feet to said westerly 40.00 foot right-of-way line of said 27th Street; thence along said westerly 40.00 foot right-of-way line, South 00° 20' 50" West a distance of 330.00 feet to True Point of Beginning, the terminus of this description.

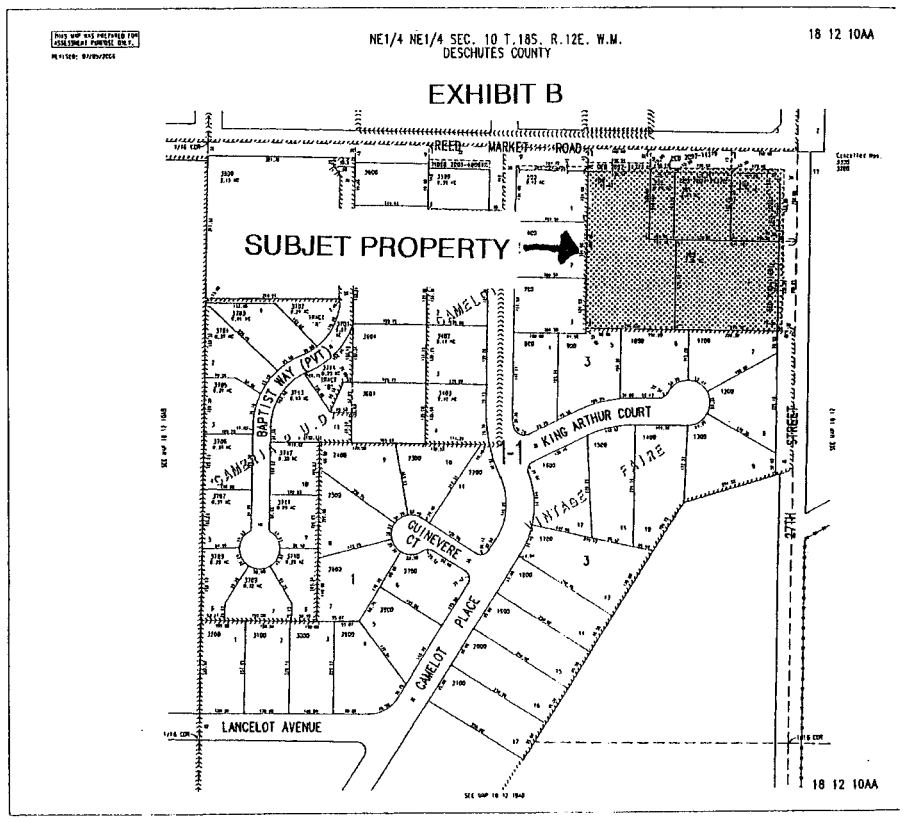
Subject to: All easements, restrictions and rights-of-way of record and those common and apparent on the land.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 19, 1994
DAVID R. WILLIAMS
2686
RENEWAL DATE: 06/30/06

3/26/06

S:\Land Projects\000104-REED MKT-27TH ST\documents\STEELE-PROP.doc
9/20/02


NE1/4 NE1/4 SEC. 10 T.18S. R.12E. W.M.
DESCHUTES COUNTY
18 12 10AA
EXHIBIT B
REED MARKET ROAD
SUBJET PROPERTY
CAMELOT
BAPTIST WAY (PVT)
KING ARTHUR COURT
CAMELOT
QUINEVERE CT
CAMELOT PLACE
LANCELOT AVENUE
27TH STREET
18 12 10AA

Bend City Council
November 1, 2006 Council Meeting

Issue Summary

Department: Community Development
Staff Member: Cheryl Dix, Associate Planner

Consider the second reading of an ordinance to amend the City of Bend Zoning Ordinance No. NS-1178, by changing the designation of a 3.47 acre area of land from Urban Low Density Residential (RL) to Convenience Commercial (CC). The property is located at the southwest corner of the intersection of 27th Street and Reed Market Road and is further identified as tax lots 100, 200, 300, 301 and 400 on the Deschutes County Tax Assessor's Map # 18-12-10AA.

Staff Review and Recommendation to Council:
The City of Bend Hearings Officer has recommended approval of the proposed zone change from RL to CC. Staff concurs with the Hearings Officer's findings and conditions and recommends that the City Council conduct a second reading and approval of the proposed zone change.

History:

Public hearings held by City Council	October 4 & 18, 2006
First reading held by City Council	October 18, 2006
Presented for second reading by City Council:	November 1, 2006

Background:

The applicant has requested a zone change from the existing Urban Low Density Residential (RL) zone to Convenience Commercial (CC) zone in conformance with the Bend Area General Plan designation. The 3.47 acre area of land is located at the southwest corner of the intersection of 27th Street and Reed Market Road and is further identified as tax lots 100, 200, 300, 301 and 400 on the Deschutes County Tax Assessor's Map # 18-12-10AA.

The Hearings Officer held public hearings for this zone change on June 22, 2006 and July 27, 2006. On September 12, 2006, the Hearings Officer issued the Findings and Recommendation to the City Council recommending approval of the zone change. The City Council held Public Hearings on October 4 and October 18, with the First Reading of the ordinance held on October 18, 2006.

Discussion of the Issue:

The applicant's request for a zone change from RL to CC is in accordance with the Bend Urban Area General Plan map designation of CC for the subject property. The General Plan designation of CC was approved by the City Council through adoption of an ordinance in 1999.

The subject property is located in an area that can be served by City sewer and Avion water with main lines available in Reed Market and 27th Street.

No development proposal was submitted with this request for a zone change; however, the applicant has submitted a Traffic Impact Analysis (TIA) performed for a "worst case scenario" for development of a 34,000 square foot supermarket. The analysis demonstrated that convenience commercial centers in general and the applicant's proposed convenience commercial zone in particular, can have a positive impact on the transportation system by reducing vehicle miles on city streets by placing convenience commercial uses closer to residential uses. Additional traffic analysis will be required as part of any future site plan application and traffic will be further addressed at that time.

The Hearings Officer has recommended approval of the proposed zone change from RL to CC and Staff concurs with the Hearings Officer's recommendation.

Secondary Issues:

Public hearings were held before the City Council on October 4 and October 18, 2006 with the first reading held before the Council on October 18, 2006. A second reading and approval of the proposed zone change on November 1, 2006 would be at day 118 in the 120-day timeline.

Budgetary Considerations:

There are no budgetary effects that would result from the zone change.

Staff Review and Recommendation to Council:

The Hearings Officer recommends that City Council approve the proposed zone change and Staff concurs with the Hearings Officer's recommendation. The applicant has demonstrated compliance with all applicable approval criteria for the proposed zone change from RL to CC.

ORDINANCE NO. NS-____

AN ORDINANCE AMENDING THE CITY OF BEND ZONING ORDINANCE NO. NS-1178 (ZONING MAP), BY CHANGING THE ZONING DESIGNATION OF A PARCEL OF LAND AS SHOWN IN EXHIBIT "A" FROM RL, URBAN LOW DENSITY RESIDENTIAL, TO CC, CONVENIENCE COMMERCIAL.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council has held a public hearing, considered the Hearings Officer's findings and record, and has found that there is a public need and benefit for the proposed change. The Bend City Council adopts the Findings and Recommendation of the Hearings Officer dated September 12, 2006, file number PZ-06-281.

Section 2. Section 7(1) of Ordinance NS-1178 and the Zoning Map of the City of Bend are amended by changing the designation of the property described as Tax Lots 100, 200, 300, 301 and 400 on the Deschutes County Tax Assessor's Map 18-12-10AA described in Exhibit "A" and depicted in Exhibit "B". The change will be from Urban Low Density Residential (RL) to Convenience Commercial (CC).

Read for the first time the _____ day of _____, 2006.

Read for the second time the _____ day of _____, 2006.

Placed upon its passage the _____ day of _____, 2006.

YES: NO:

Authenticated by the Mayor the _____ day of _____, 2006.

_____
Bill Friedman, Mayor

ATTEST:

_____
Patricia Stell, City of Bend Recorder

FINDINGS AND RECOMMENDATION OF CITY OF BEND HEARINGS OFFICER

FILE NUMBER: PZ 06-281

APPLICANT: Matthew K. Steele
698 N.W. York Drive
Bend, Oregon 97701

PROPERTY OWNERS: Matthew K. & Janet E. Steele
60346 Arnold Market Road
Bend, Oregon 97702

Scott & Olivia Steele
1020 N.W. Farewell Drive
Bend, Oregon 97701

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

REQUEST: The applicant requests approval of a zone change from RL to CC for a 3.47-acre parcel located at the southwest corner of the intersection of S.E. 27th Street and Reed Market Road in Bend.

STAFF REVIEWER: Cheryl Dix, Associate Planner

HEARING DATES: June 22 and July 27, 2006

RECORD CLOSED: July 27, 2006

I. APPLICABLE STANDARDS AND CRITERIA:

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

1. Section 10-10.9D, Urban Low Density Residential (RL) Zone

2. Section 10-10.14, Convenience Commercial (CC) Zone

3. Section 10-10.33, Amendments

B. City of Bend Land Use Review and Procedures Ordinance, Ordinance No. NS-1775

1. Section 10-16.7, Land Use Action Hearings

C. **Oregon Administrative Rules Chapter 660, Division, Transportation Planning**

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

II. **FINDINGS OF FACT:**

A. **Location:** The subject property is located at the southwest corner of the intersection of S.E. 27th Street and Reed Market Road in Bend, and is further identified as Tax Lots 100, 200, 300, 301 and 400 on Deschutes County Assessor's Map 18-12-10AA.

B. **Zoning and Plan Designation:** The subject property is zoned Urban Low Density Residential (RL) and is designated Convenience Commercial (CC) on the Bend Area General Plan map.

C. **Site Description:** The subject property is 3.47 acres in size and rectangular in shape. It has frontage on Reed Market Road on the north and on S.E. 27th Street on the east. The property currently is developed with three single-family dwellings on three of the five tax lots comprising the property. The property slopes gently downward to the southwest with no significant rock outcroppings. Vegetation on the two vacant tax lots consists of a few small trees near Reed Market Road and native grasses. The three developed tax lots have introduced landscaping including lawns and deciduous and evergreen trees.

D. **Surrounding Zoning and Land Uses:** To the north across Reed Market Road is land zoned RS (Urban Standard Density Residential) and developed with a mix of single-family and duplex dwellings on large parcels. To the east across S.E. 27th Street is a large undeveloped parcel zoned RS and owned by the Oregon Division of State Lands. To the west and south of the subject property is the "Vintage Faire" Subdivision on land zoned RL and developed with single-family dwellings on large lots. Further to the south are the main Central Oregon Irrigation District (COID) canal and the "Country Sunset" Mobile Home Park. The record indicates both Reed Market Road and S.E. 27th Street are designated minor arterial streets. The intersection of these two streets at the northeast corner of the subject property forms a "T" and is controlled by a traffic signal.

E. **Procedural History:** In 1993, the applicant's predecessor applied to the county for approval of a plan amendment and zone change for the subject property from RL to Neighborhood Commercial (CN) (PA-93-1/ZC-93-1). By decision dated November 17, 1993, former Hearings Officer Ed Fitch denied the application. On October 28, 1998 the applicant submitted applications for a plan amendment and zone change from RL to CC for the subject property (98-309). By a decision issued on March 22, 1999 this Hearings Officer recommended approval of the applicant's request for a plan amendment for the subject property from RL to CC, but recommended denial of the applicant's request for a zone change from RL to CC on the basis that the applicant had not demonstrated Reed Market Road and S.E. 27th Street and their intersection would be adequate to handle traffic generated by commercial development on the subject property. The Bend City Council approved the applicant's proposed plan amendment through adoption of an ordinance. In 2002, the Reed Market Road/S.E. 27th Street intersection was improved

with widening, additional pavement, and the installation of a traffic signal.

On February 9 and March 2, 2006 the applicant held neighborhood meetings on his proposed zone change. April 20, 2006 the applicant submitted this zone change application, and it was accepted by the city as complete on May 22, 2006. Therefore, the 120-day period for issuance of a final local land use decision under ORS 227.178 would have expired on September 18, 2006. A public hearing on the application was scheduled for June 22, 2006. By a letter dated June 12, 2006 the applicant requested a continuance of the hearing in order to respond to issues raised by city staff in the staff report. At the public hearing, the Hearings Officer continued the hearing to July 27, 2006. At the continued public hearing, the Hearings Officer received testimony and evidence and closed the evidentiary record. The applicant waived the filing of final argument pursuant to ORS 197.763 and the record closed on July 27, 2006. Because the applicant requested a continuance of the hearing from June 22 to July 27, 2006, under Section 10-16.7(16) of the city's former land use procedures ordinance the 120-day period was tolled for a period of 36 days and now expires on November 3, 2006.[1] As of the date of this decision there remain 58 days in the 120-day period.

F. **Proposal:** The applicant requests approval of a zone change from RL to CC to conform the subject property's zoning to its plan designation, and to facilitate development of the property with a grocery store. No development application was submitted in conjunction with this zone change application, although the applicant's burden of proof includes a conceptual site plan for a grocery store.

G. **Public/Private Agency Notice:** The Planning Division sent notice of the applicant's proposal to a number of public and private agencies and received responses from: the City of Bend Engineering Division, Grading/Drainage, Long-range Planning, and Traffic Engineer; the Bend-La Pine School District; and COID. These comments are set forth verbatim at pages 3-11 of the staff report and are included in the record. The following agencies did not respond to the notice: the Bend Metropolitan Park and Recreation District.

H. **Public Notice and Comments:** The Planning Division mailed individual written notices of the applicant's proposal and the initial and continued public hearings to the owners of record of all property located within 250 feet of the subject property. In addition, notices of the initial and continued public hearings were published in the Bend "Bulletin" newspaper, and the subject property was posted with a notice of proposed land use action sign. As of the date the record in this matter closed, the city had received one letter from a member of the public in response to these notices, as well as letters from the Larkspur and Old Farm District Neighborhood Associations. In addition, 3 members of the public testified at the public hearings. Public comments are addressed in the findings below.

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[1] The city adopted a new development code including land use hearing procedures that took effect on August 14, 2006. However, because both hearings in this case occurred prior to the effective date of the new development code the provisions of Ordinance No. NS.1775 applied to the hearings.

I. **Lot of Record:** The record includes a letter dated April 5, 2006 from the applicant's attorney evaluating the title and land use history of the five tax lots that comprise the subject property, and concluding the subject property consists of four legal lots of record, consisting of Tax Lots 100, 200, 400 and the combination of Tax Lots 300 and 301.

III. CONCLUSIONS OF LAW:

A. 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 ad convenience and the general welfare requires such an amendment. Such a change may be proposed by the City commission 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 submitted an application for a zone change on a city form. Before the zone change becomes effective, two public hearings on the proposal will have been held – one before the Hearings Officer and one before the Bend City Council (hereafter "council"). The procedures followed in this proceeding are those applicable to zone changes as prescribed in the city's land use procedures ordinance. For these reasons, I find the applicant's proposal satisfies the requirements of this paragraph.

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

FINDINGS: The Hearings Officer finds this approval criterion includes three separate requirements: 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 requirements is discussed separately below.

1. Conformance with the Comprehensive Plan Map.

As discussed in the Findings of Fact above, in 1999 this Hearings Officer issued a decision recommending approval, and the council approved, a plan amendment from RL to CC for the subject property. The applicant's proposed zone change would conform its zoning to its plan designation and therefore would be consistent with the plan map.

2. Conformance with the Comprehensive Plan Text.

The staff report discusses the proposed zone change's consistency with a number of comprehensive plan policies and goals concerning convenience commercial areas. However, the Hearings Officer has issued a number of decisions addressing applications for zone changes and other land use approvals in which I have held the city's comprehensive plan policies do not constitute mandatory approval criteria for quasi-judicial land use applications, based on the following language at page P-4 of the preface to the general plan: [2]

> **At the end of each chapter** [of the plan] **are policies that address issues discussed in the chapter. 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 to recognize that the actual implementation of the policies will 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** [sic] **all applicable federal and state laws, rules and regulations, and constitutional limitations.** (Emphasis added.)

Some of the Hearings Officer's previous decisions addressing the meaning of this preface language have been appealed to the city council and have been adopted by the council through the adoption of my findings. (E.g., *Shevlin Neighbors* and *Awbrey Towers*). In the latter case, I held the above-quoted plan preface language means plan policies are not mandatory approval criteria for the conditional use and site plan applications at issue in that case. The city council adopted my findings, and the council's decision was appealed to the Land Use Board of Appeals (LUBA). My interpretation of the above-quoted plan preface language was challenged before LUBA. In its decision in *Save Our Skyline v. City of Bend*, 48 Or LUBA 192 (2004), LUBA stated:

> *"Simply stated, the hearings officer concluded that because BAGP* [Bend Area General Plan] *Policies were not adopted for use as approval criteria in reviewing applications for quasi-judicial land use approval, the cited BAGP Policies and Goals need not be considered in reviewing Awbrey Tower's application for conditional use approval.*
>
> *A recurring problem that local governments face in reviewing quasi-judicial*

[2] E.g., *Shevlin Neighbors* (PZ-05-429, PZ-05-430).

permit applications is identifying the relevant approval standards, if any, in the local government's comprehensive plan. The comprehensive plan is a potential source of standards for review of a quasi-judicial land use permit application, because ORS 197.175(2)(d) expressly provides that where a local government's comprehensive plan and land use regulations have been acknowledged by LCDC [Land Conservation and Development Commission], *the local government is required to 'make land use decisions and limited land use decisions in compliance with the acknowledged plan and land use regulations [.]'* [Citations omitted.] *Many local governments also impose a local requirement that the comprehensive plan be considered in approving a land use permit application. As far as we can tell, the fourth general conditional use criterion at BC* [Bend Code] *10-10.29(3)(d) is such a local requirement.*

As intervenor correctly points out, local and statutory requirements that land use decisions be consistent with the comprehensive plan do not mean that all parts of the comprehensive plan necessarily are approval standards. [Citations omitted.] *Local governments and this Board have frequently considered the text and context of cited parts of comprehensive plans and concluded that the alleged comprehensive plan standard was not an applicable approval standard.* [Citations omitted.] *Even if the comprehensive plan includes provisions that can operate as approval standards, those standards are not necessarily relevant to all quasi-judicial land use permit applications.* [Citations omitted.] *Moreover, even if a plan provision is a relevant standard that must be considered, the plan provision might not constitute a separate mandatory approval criterion, in the sense that it must be separately satisfied, along with any other mandatory approval criteria, before the application can be approved. Instead, that plan provision, even if it constitutes a relevant standard, may represent a required consideration that must be balanced with other relevant considerations.* [Citations omitted.]

Before considering whether particular plan provisions must be applied as approval standards when considering individual land use permit applications, it is appropriate, as the hearings officer did in this case, to consider first whether the comprehensive plan itself expressly assigns a particular role to some or all of the plan's goals and policies. [Citations omitted.] *We review the hearings officer's interpretation of the BAGP to determine if her interpretation is correct.* [Citation omitted.]

As petitioners correctly note, the BAGP text cited by the hearings officer does not say that all BAGP policies are to be used exclusively in the manner suggested by the text. However, the text cited by the hearings officer, viewed in isolation, strongly supports her interpretation. The text quoted by the hearings officer appears in the section of the BAGP Preface entitled 'Format of the Plan.' There is additional text in that same section of the BAGP Preface that appears below the text quoted by the hearings officer, which states:

'These same [BAGP] community policies serve individual property

> *owners and private interest groups as a means of evaluating their individual decisions in light of community objectives. They are able to determine how their individual interests can best be served in a manner that is consistent with the Bend Area General Plan.' BAGP Preface.'*

The above text is not cited by the hearings officer or any of the parties in this appeal, but it can be read to say the BAGP Policies might play some role in evaluating individual development decisions. However, the text refers to the decisions of 'individual property owners and private interest groups' rather than city quasi-judicial permit decisions. Given the relatively clear role the text cited by the hearings officer seems to assign to BAGP Policies, we agree with the hearing's officer's interpretation of that text to support her conclusion that the BAGP Policies do not apply as approval standards that she was obligated to consider directly in reviewing conditional use permit applications.

Turning to the two BAGP Goals cited above, the hearings officer's reasoning for why BAGP Policies do not apply as approval criteria does not directly address the potential applicability of these BAGP Goals. It does not necessarily follow that if BAGP Policies are not potential conditional use approval standards, that the BAGP Goals also are not potential conditional use approval standards. However, it is relatively clear that in the hierarchy established by the BAGP the Goals operate at a higher and even more general level than the BAGP Policies.[Footnote omitted.] *Having adopted text to make it clear that BAGP policies are not be viewed as potential approval criteria for applications for conditional use approval, we believe it is highly unlikely that the city could have intended that BAGP Goals operate as potential approval criteria for such applications. Moreover, even if BAGP Goals could be viewed as potential approval standards, the two BAGP Goals cited by the SOS petitioners are not worded as mandatory requirements. Rather, they are worded as 'aspirational declarations.'* [Citation omitted.]

For the reasons explained above, we do not agree with the SOS petitioner that the city erred in not applying the cited BAGP Goals and Policies as approval standards in this case. It may be that there are other parts of the BAGP that are implicated by BCC 10-10.29(3)(c), but the cited BAGP Goals and Policies are not."(Underscored text appears as italicized emphasized text in original.)

While LUBA's holding in *Save Our Skyline* was limited to whether the city was required to consider identified plan goals as mandatory *conditional use approval* criteria, the Hearings Officer finds it is equally clear from the quoted *dicta* that LUBA supported my interpretation of the language at issue in the city's Plan Preface when it stated the preface assigned a "relatively clear role" to plan policies *in general* – i.e., not to constitute mandatory approval criteria for *any* quasi-judicial land use application.

For the foregoing reasons, the Hearings Officer finds the applicant need not demonstrate the

proposed zone change conforms to the city's comprehensive plan text because such text has not been adopted as part of the zoning ordinance and therefore does not establish mandatory approval criteria for the proposed zone change.

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

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

a. Orderly Pattern of Growth

As discussed in the Findings of Fact above, the Hearings Officer previously recommended approval of, and the council approved, a plan amendment from RL to CC for the subject property to designate it as one of the convenience commercial "nodes" identified on the comprehensive plan map for the east side of Bend. Although as discussed above the city's comprehensive plan policies concerning convenience commercial development do not constitute mandatory approval criteria for the proposed zone change, such policies and the supporting plan narrative do reflect the city's intent with respect to where and how such areas should be developed. For example, the following statements are found at page 6-14 of Chapter 6 of the plan, "The Economy and Lands for Economic Growth:"

> **<u>Convenience Commercial</u> 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 * * *.**

The subject property is located at the intersection of two arterial streets and is 3.47 acres in size. The record indicates the area surrounding the subject property is developing at urban density

within a mixture of zoning districts and uses, including a number of new urban-density residential subdivisions that have increased the population of this part of Bend. The record indicates the closest commercial areas are located north around the intersection of S.E. 27th Street and Highway 20, and west at the intersection of Reed Market Road and S.E. 15th Street. No commercial areas are located south of this neighborhood. The existing commercial areas are not within easy walking distance for many residents in the surrounding area. For these reasons, the Hearings Officer finds the applicant's proposed zone change from RL to CC would promote an orderly pattern of growth by facilitating convenience commercial development on property that is in a preferred location and that will serve the emerging population in this part of Bend.

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 below.

(1) Sewer. The record indicates city sewer mains are located in Reed Market Road and S.E. 27th Street. The record also indicates that in conjunction with improvements to the Reed Market Road/S.E. 27th Street intersection two 3-inch pressure sewer services were stubbed to the subject property. Therefore city sewer facilities are available for connection to the subject property. For this reason, the Hearings Officer finds property can be served by city sewer service.

(2) Water. The record indicates the subject property is located within the Avion Water Company service area and that there is a 12-inch Avion water main in S.E. 27th Street and an 8-inch Avion water main in Reed Market Road and S.E. 27th Street, including a 10-inch water main in Reed Market Road that is stubbed onto the subject property and that also supplies a fire hydrant.[3] For this reason, the Hearings Officer finds the property can receive domestic water through connection to Avion's facilities.

(3) Police and Fire Protection. Because the subject property is located within the Bend city limits it will be served by the Bend Police and Fire Departments. The police department did not comment on the applicant's proposal, indicating its belief it can provide services to the subject property. In its comments on the applicant's proposal, the fire department stated any development on the property would be subject to a detailed list of fire code requirements including minimum fire flows and fire apparatus access. For these reasons, the Hearings Officer finds the subject property can be served by the city's police and fire departments. I further find compliance with fire code provisions will be required as conditions of approval for future commercial development on the property.

(4) Schools. The subject property is located within the boundaries of the Bend-La Pine School District. In its comments on the applicant's proposal, the school district stated it does not take a position encouraging or discouraging growth. In any event, the Hearings Officer finds the

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[3] Avion Water Company is a water service company franchised by the City of Bend with an assigned service area.

applicant's proposed zone change from RL to CC will not facilitate residential development that would have impacts on school capacity.

(5) Transportation Facilities. As discussed in the Findings of Fact above, in 1999 the Hearings Officer denied the applicant's request for approval of a zone change from RL to CC on the basis of inadequate transportation facilities. My 1999 decision included the following findings:

> *"The applicant submitted two traffic impact studies, one dated October, 1998, for the original proposal involving only 2.01 acres and a convenience store, and a revised study dated January, 1999, involving 3.68 acres and a 35,000-square-foot neighborhood grocery store. In addition, the applicant submitted several supplements to these studies addressing driveway locations, access issues and signalization. The revised traffic study concluded development of the subject property with a 35,000-square-foot grocery store and several smaller retail stores would create a "worst-case scenario" for traffic impacts.*
>
> *In September of 1998, the applicant conducted a 24-hour traffic count at the 27th Street/Reed Market intersection. The traffic count showed a total of 24,435 vehicle trips on 27th Street, almost equally distributed between northbound and southbound trips, and 7,475 vehicle trips on Reed Market Road. The traffic count also showed a total of 2,243 left-turns from Reed Market onto 27th Street and 1,355 left turns from 27th onto Reed Market. The 1999 traffic study concluded the intersection currently operates at Level of Service (LOS) F* [footnote omitted] *for the left-turn movements from Reed Market onto 27th Street, with vehicles experiencing an average delay of 110 seconds waiting to make the turn during peak traffic periods. The length of this delay was confirmed by the testimony of Faith Seals, a neighborhood resident who stated she often waits two or three minutes to turn left from Reed Market to 27th Street at 7:15 a.m. All other movements at the intersection are functioning at LOS B.*
>
> *The 1999 study predicts a 35,000-square-foot grocery store on the subject property would generate 3,902 average daily vehicle trips (ADTs) of which 403 would be p.m. peak hour trips (between 4:15 p.m. and 5:15 p.m. weekdays). With the addition of these trips the intersection will continue to function at LOS F, but the delay would increase to 200 seconds for left turns from Reed Market onto 27th Street* [footnote omitted]. *The traffic study concluded a traffic signal is warranted at the intersection under current traffic conditions. The study noted the recently-amended comprehensive plan calls for the eventual improvement of 27th Street from its current two lanes to a five-lane major arterial with a traffic signal. Finally, the traffic study concludes that with these planned improvements, all movements at the intersection would function at LOS B until 2016, at which point the level of service would drop to LOS C.*
>
> *The Hearings Officer finds from this evidence that the 27th Street/Reed Market Road intersection is failing under current traffic conditions and will require significant improvements to function at acceptable levels of service even without*

commercial development on the subject property. However, the addition of traffic generated by commercial development on the property will dramatically reduce the function of the intersection. Therefore, I cannot find the applicant's proposal will 'provide a safe and coordinated transportation and circulation system' if commercial development on the subject property precedes these improvements.

At the public hearing, staff stated installation of a signal at the 27th Street/Reed Market intersection is in the city's five-year capital improvement plan, meaning it should occur by 2003. For this reason, in a supplemental Staff Report dated January 27, 1999, Staff recommended approval of the applicant's proposed plan amendment and zone change with conditions requiring the applicant to: 1) sign a street dedication agreement with the city agreeing to dedicated sufficient right-of-way for the intersection improvements to Reed Market Road and 27th Street; and 2) agree to delay development of the property until such time as the full right-of-way at the intersection is secured for a future traffic signal and street widening. The applicant has indicated his general agreement with these conditions.

The Hearings Officer has not previously been asked to condition approval of a plan amendment and zone change on delaying site development until necessary street improvements are completed. I find no express authority in the city's procedures ordinance for the imposition of such a condition. However, I concur with the applicant that it is reasonable to infer I have such authority from the provisions of Section 10-16.9(9) of the city's land use procedures ordinance which gives the city council authority in plan amendment and zone change applications 'to attach certain development or use conditions in accordance with the relevant provisions of city ordinances.' Accordingly, I find approval of the proposed plan amendment will be conditioned as recommended by staff to assure commercial development of the subject property does not precede necessary street and intersection improvements."

In support of the applicant's 2006 zone change application, the applicant submitted a traffic impact analysis (traffic study) dated April 2006 and prepared by Lancaster Engineering. The traffic study again assumed the subject property would be developed with a grocery store – this time a 34,000-square-foot store. The traffic study predicted such a store would generate 2,224 average daily trips (ADTs) (3,476 total trips minus 1,252 "pass-by" trips),[4] of which 355 trips would occur during the p.m. peak hour (4:30 to 6:30 p.m. weekdays). The applicant's traffic study analyzed the two existing site access driveways and the following five area intersections:

- Reed Market Road and S.E. 15th Street (to the west);
- Reed Market Road and Pettigrew Road (to the south);
- Reed Market Road and S.E. 27th Street (adjacent);
- S.E. 27th Street and Ferguson Road (to the south); and
- S.E. 27th Street and Bear Creek Road (to the north).

[4] The traffic study describes "pass-by" trips as vehicles that were already passing by the site for other reasons but will stop to patronize the store.

The traffic study noted that in 2002 the city improved the Reed Market Road/S.E. 27th Street intersection including: (a) widening 27th Street to three lanes to 1,000 feet north and south of the subject property; (b) widening Reed Market Road to four lanes to 1,000 feet west of the subject property; (3) installing curbs, sidewalks and medians; (d) installing a traffic signal; (e) widening the bridge on 27th Street over the nearby COID main canal; and (f) relocating the overhead power, telephone and cable lines. The applicant participated in these improvements by dedicating right-of-way, relocating the property access driveways on Reed Market Road and 27th Street as far from the intersection as possible, and abandoning a third driveway. Copies of the deeds dedicating right-of-way are included in the record as attachments to the applicant's July 12, 2006 written submission.

The traffic study concluded all five street intersections and the two property access driveways will operate at acceptable levels of service with the addition of traffic generated by the grocery store at buildout in 2008 and in 2013, and therefore no off-site mitigation would be required. The analysis also concluded that the presence of a market on the subject property likely would alter traffic patterns in the area by diverting many residents in surrounding neighborhoods to the subject property rather than to more distant commercial development. The applicant's burden of proof includes a "trip length analysis" demonstrating that convenience commercial centers in general, and the applicant's proposed convenience commercial zone in particular, can have a positive impact on affected transportation systems by reducing vehicle miles on city streets through placement of convenience commercial uses closer to residential uses. For these reasons, the Hearings Officer finds that unlike the situation presented in 1999 when I denied the proposed zone change from RL to CC for the subject property, the affected transportation facilities now can accommodate traffic generated by a 34,000-square-foot grocery store, the "worst-case scenario" for traffic generation.[5]

For the foregoing reasons, the Hearings Officer finds the applicant's proposed zone change from RL to CC would promote an orderly sequence of growth by facilitating commercial development that will not exceed the capacity of affected public facilities and services.

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

FINDINGS: As discussed above, the area surrounding the subject property contains a mixture of plan designations, zoning, densities and uses. The staff report states, and the Hearings Officer concurs, that the applicant's proposed zone change from RL to CC will not interfere with

[5] In her initial comments on the applicant's proposal, the city's Traffic Engineer Robin Lewis requested that the applicant be required as a condition of approval to pay a pro-rata monetary contribution toward the cost of improving four of the intersections analyzed in the applicant's traffic study. In subsequent comments, Ms. Lewis stated she was withdrawing her request on the basis that the city now is charging 100 percent of the systems development charges (SDCs) authorized for street improvements. The Hearings Officer is aware that as of the date of this decision the city's policy with respect to the pro-rata monetary contribution was to require it regardless of the amount of SDCs assessed. However, I find I need not determine whether and to what extent the applicant can be required to make such a contribution as a land use exaction because I find such a condition of approval is not justified for a zone change.

existing or potential development of the surrounding area. To the contrary, I find the presence of a convenience commercial node on the subject property will enhance development by providing a closer, more convenient location for area residents to shop.

With respect to potential impacts on property valuation in the surrounding area, the applicant submitted a report dated February 28, 2006 prepared by the Bancroft Appraisal Company. The report analyzed property values in five neighborhoods before and after development of adjacent commercial uses. The report concluded residential property backing directly onto commercial uses showed no measurable difference in selling price or marketing periods, and that residential properties adjacent to commercial zones are subject to the same market forces experienced by other residential properties, including price appreciation.

As discussed in the Findings of Fact above, the city received only one letter from the public commenting on the applicant's proposal and that letter expressed support. In addition, the city received comment letters from two area neighborhood associations which did not oppose the proposed zone change and ultimate commercial development. These letters identified issues of importance to neighborhood residents, including traffic impacts and particular grocery store site plan considerations such as access and areas for truck unloading, but did not express concern about property devaluation. The Hearings Officer finds these site plan issues will be addressed at the time the applicant submits land use applications for commercial development on the subject property. Attached to the applicant's burden of proof are the results of a "preferred services survey" conducted to determine the types of commercial services area residents would prefer on the subject property. The vast majority of the returned surveys indicated support for commercial development in general, and approximately 21 percent indicated a preference for a grocery store on the subject property. I find the results of these surveys, coupled with the lack of neighborhood concerns or opposition based on property values, supports the conclusions in the applicant's valuation study.

For the foregoing reasons, the Hearings Officer finds the proposed zone change from RL to CC will not interfere with existing development potential, or value of other land in the vicinity of the subject property, thus 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: Section 10-10.14 (1) states the purpose of the CC Zone as follows:

> **This zone is intended to provide locations for a relatively wide range of small businesses and services which fit into the residential development pattern as a convenience to residents in that part of the City and to recognize existing uses of this type within the City. New centers of this type are intended to be limited in size to not more than four acres of contiguous land and to be located and developed in a manner consistent with the General Plan.**

The applicant is requesting approval of a zone change from RL to CC in order to develop the

3.47-acre subject property with a grocery store for the convenience of residents of surrounding neighborhoods. As discussed above, the subject property will be served by city sewer service and Avion water service through extension of and connection to existing sewer and water facilities, and also will be served by transportation facilities dedicated and improved to the city's applicable standards and specifications. The staff report notes, and the Hearings Officer agrees, that separation between commercial uses on the subject property and adjacent residential uses will be accomplished through site plan review for a specific commercial development proposal. For these reasons, I find the applicant's proposed zone change is consistent with the purpose and intent of the CC Zone.

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

FINDINGS: As discussed in detail in the findings above, the Hearings Officer has found the proposed zone change from RL to CC will promote an orderly sequence of growth by facilitating commercial development of the subject property that will be served by adequate urban infrastructure, including sewer and water service, police and fire protection, and transportation facilities. For the reasons set forth in those findings, incorporated by reference herein, I also find the proposed zone change will result in the orderly and efficient extension and provision of these public services, and will be consistent with the city's policies for provision of public facilities.

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

FINDINGS:

1. Mistake. The applicant does not argue that the subject property's RL zoning was a mistake, and the Hearings Officer finds there was no mistake in the original zoning.

2. Change of Circumstances. The applicant argues the proposed zone change from RL to CC is justified by a number of changes in circumstance. In this Hearings Officer's 1999 decision approving the plan amendment from RL to CC, I made the following pertinent findings:

> *"In the early 1990's the city became aware that a number of septic systems in the UGB were failing and determined it could provide sewer service to the entire UGB. The city amended its sewer master plan to provide sewer service to the entire UGB. The city and county amended the Bend Urban Area General Plan, and the county amended its subdivision ordinance, to prohibit subdivisions in the unincorporated UGB without connection to sewer. As a result of these changes it became economically infeasible to develop large-lot subdivisions in the RL Zone because of the significant expense of installing individual sewer connections to large lots. The Hearings Officer is aware that for this reason since 1993 many vacant RL-zoned parcels in the unincorporated UGB have been redesignated and rezoned to RS through both legislative and quasi-judicial land use proceedings.*

These changes reflect the city's and county's intent that vacant lands within the unincorporated UGB, including the subject property, ultimately be developed at urban densities with urban services.

Other changes to the area surrounding the subject property have made its development at urban density feasible. In 1993 a city sewer main was installed in 27th Street south to Ferguson Road to provide sewer to the High Desert Middle School. The subject property can connect to this sewer main. In addition, in 1989 Avion Water Company, which provides domestic water to this part of the UGB through a city franchise, installed water mains in 27th Street and Reed Market Road adjacent to the subject property. The subject property now has available to it both sewer and water service.

Changes also have occurred to the transportation facilities serving the subject property. The Hearings Officer finds these changes make the subject property no longer suitable for low-density residential development. In 1995 the Oregon Department of Transportation (ODOT) constructed an interchange at the intersection of Baker Road and Highway 97 south of Bend. In addition, ODOT installed signage near the interchange identifying Knott Road, which connects Highway 97 and 27th Street south of the subject property, as the route to St. Charles Medical Center and Mountain View High School located north of the property on or near 27th Street. I find the new interchange and signage have had the effect of encouraging motorists to use S.E. 27th Street as the main north-south route through the east side of the Bend UGB and as an alternative route from Highway 97 to Highway 20. The applicant's traffic impact studies show traffic on S.E. 27th Street has increased significantly since these improvements were made and has caused the 27th Street/Reed Market Road intersection to operate at unacceptable levels of service during peak traffic periods.

The record indicates more changes are in store for the area surrounding the subject property. As noted above, the city council apparently redesignated to RS some of the RL-designated property in the vicinity of the subject property, bringing this property one step closer to urban-density development. The city recently widened Reed Market at its intersections with Highway 97 and Division Street approximately two miles west of the subject property. The city plans to extend Reed Market west of Division Street to connect with the Bend Parkway and to a future new Deschutes River crossing. The Hearings Officer finds that with these connections Reed Market will become the major east-west route across the southern part of Bend. The Staff Report and the applicant's traffic studies indicate that the city plans to widen 27th Street at Reed Market from two to five lanes and to install a traffic signal at the intersection. The Staff Report indicates installation of the signal is planned for 2003 or sooner.

The Hearings Officer concurs with the applicant that the changes described above are significant and were not contemplated when the subject property was designated and zoned RL in 1979. I find these changes make the subject

property's RL designation and zoning no longer appropriate. The availability of sewer and water service, combined with the existing and anticipated high traffic levels on 27th Street, Reed Market Road and their intersection, justify redesignating and rezoning the subject property for more dense urban development.

The question presented by the applicant's proposal is whether these changed conditions justify a redesignation and rezoning to convenience commercial. The applicant argues they do because the area surrounding the subject property is in transition from its current low-density, quasi-rural character to urban-density development contemplated for the UGB, and the resulting population and traffic growth will create a need for more commercial services in the area. The applicant argues the subject property is at a location contemplated by the comprehensive plan for convenience commercial zoning since it is at the intersection of two arterial streets within a residential neighborhood.

As discussed above, opponents argue nothing has changed since commercial zoning was rejected for the subject property in 1993. They argue the area surrounding the subject property remains a quiet residential neighborhood in which most lots already are developed and are not likely to be redeveloped at urban-density in the foreseeable future. While opponents acknowledge traffic has increased significantly at the 27th Street/Reed Market intersection, they argue allowing commercial development on the subject property will only exacerbate congestion.

While the Hearings Officer understands opponents' desire to see the subject property remain in its current status or develop with large-lot dwellings, that type of development is not realistic for vacant or underdeveloped property at the corner of a busy urban intersection. I would have no hesitation concluding the changed conditions justify redesignating the subject property for higher-density residential development like that surrounding the recently-signalized intersection of 27th Street and Neff Road approximately two miles north of the subject property. Higher-density residential development would increase density while retaining the residential character of the neighborhood and providing a buffer between existing low-density residences and the 27th Street/Reed Market Road intersection. It also could generate significantly fewer vehicle trips than commercial development.

On the other hand, as traffic at the 27th Street/Reed Market Road intersection increases with connection to the Bend Parkway, the subject property may become less desirable for any type of residential development. And I concur with the applicant that this part of the Bend UGB is underdeveloped and inevitably will have much higher density than it does now. The applicant submitted a map of the area surrounding the subject property (Hearing Exhibit 1) showing the existing development pattern. Much of the land to the south and southeast of the subject property is fully developed with large-lot subdivisions and I agree with opponents

that it is unlikely these lots will redevelop at higher density in the foreseeable future. However, areas to the northwest, north, northeast and east of the subject property within the UGB are not fully developed and generally are at least one acre in size. The Hearings Officer finds it is very likely these parcels will develop or redevelop at urban density since city sewer is now available to them, they are large enough for redevelopment and they have much higher value for urban-density development. Such development will increase the population and demands for commercial services in this part of the Bend UGB.

The Hearings Officer finds the appropriate zoning for the subject property is a relatively close question. However, on balance I am persuaded the nature and degree of the changes that have occurred and will occur in the area surrounding the subject property justify redesignating the subject property to commercial rather than higher-density residential."

The Hearings Officer finds that since this decision was issued, a number of significant infrastructure improvements have been made that have facilitated significant urban-density growth in Bend in general, and in the southeast part of Bend where the subject property is located in particular. Reed Market Road has become the main east-west arterial street in the south part of Bend, connecting with Mt. Washington Drive, an arterial street on the west side of Bend, through construction of the Bill Healy Memorial Bridge across the Deschutes River. As discussed in detail in the findings above concerning adequacy of infrastructure, the intersection of Reed Market Road and S.E. 27th Street has been improved with the addition of travel lanes and the installation of a traffic signal. City sewer service has been extended along S.E. 27th Street south of Highway 20, and numerous urban-density residential subdivisions have been approved and developed in the area surrounding the subject property.

For the foregoing reasons, the Hearings Officer finds the proposed zone change from RL to CC is justified by the above-described changes of circumstance since the subject property was originally zoned RL, and therefore the applicant's proposal satisfies this criterion.

B. Oregon Administrative Rules, Chapter 660, Division 12, Transportation Planning

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

(1) Amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility. This shall be accomplished by either:

(a) Limiting allowed land uses to be consistent with the planned function, capacity and level of service of the transportation facility;

(b) Amending the TSP to provide transportation facilities

adequate to support the proposed land uses consistent with the requirements of this division; or

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

(2) A plan or land use regulation amendment significantly affects a transportation facility if it:

(a) Changes the functional classification of an existing or planned transportation facility;

(b) Changes standards implementing a functional classification plan;

(c) Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or

(d) Would reduce the level of service of the facility below the minimum acceptable level identified in the TSP [Transportation System Plan].

FINDINGS: As discussed in the findings above, the proposed zone change from RL to CC will not, in and of itself, have any impacts on area transportation facilities. However, as also discussed above, the Hearings Officer has found that where, as here, the applicant did not submit a concurrent development proposal but indicated his intent to develop the subject property with a 34,000-square-foot grocery store, it is appropriate to evaluate the potential traffic impacts from such development on affected streets and intersections. The question under this administrative rule is whether such commercial development will "significantly affect a transportation facility" under paragraphs (a) through (d) of Subsection 2. As discussed in detail in the findings above, the applicant submitted a traffic study that concluded the 2,224 ADTs and 355 p.m. peak hour trips predicted to be generated by a 34,000-square-foot grocery store on the subject property would not exceed the capacity of any affected intersections either at store buildout in 2008 or in 2013. For these same reasons, I find the proposed zone change also will not "significantly affect a transportation facility."

As discussed in the findings above, both Reed Market Road and S.E. 27th Street are classified as arterial streets. Based on the applicant's submitted traffic study, the Hearings Officer finds traffic predicted to be generated by a 34,000-square-foot grocery store on the subject property will not change either the functional classification of or standards for Reed Market Road and S.E. 27th Street. I also find predicted grocery store traffic will not result in levels of traffic inconsistent with the functional classification of these streets, which are intended to handle traffic volumes from 5,000 to 30,000 ADTs, depending on whether the street is a minor or major arterial. Finally, I find that because the city's TSP has not been acknowledged by the Land Conservation

and Development Commission, the standard in paragraph (d) is not applicable.

For the foregoing reasons, the Hearings Officer finds the applicant's proposed zone change from RL to CC for the subject property is consistent with the Transportation Planning Rule.

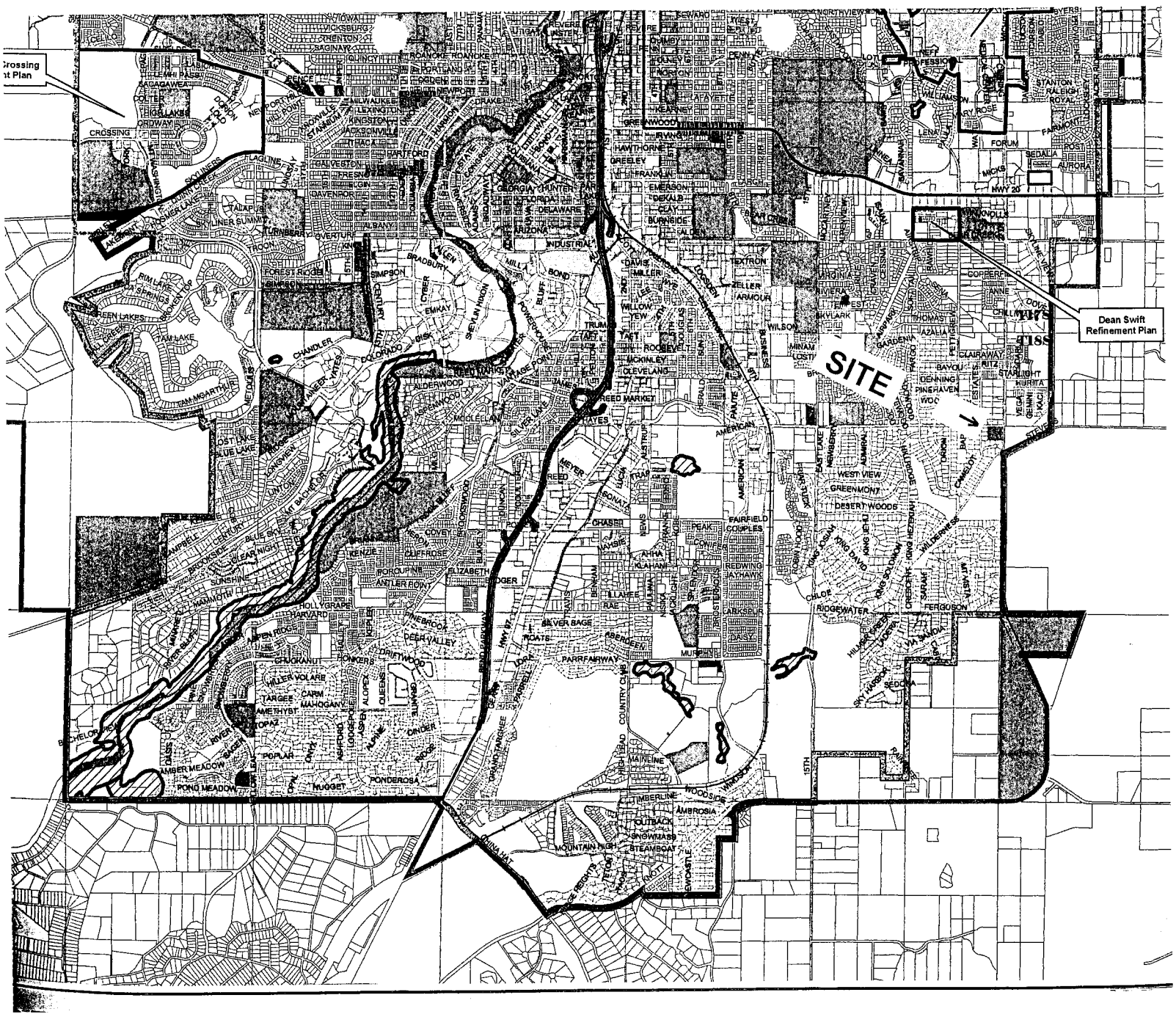
IV. DECISION:

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer hereby **RECOMMENDS APPROVAL** of the applicant's proposed zone change from RL to CC.

Dated this 6th day of September, 2006.

Mailed this 12th day of September, 2006.

Karen H. Green, City of Bend Hearings Officer



BEND URBAN AREA GENERAL PLAN

LEGEND

- City Limits
- Section Lines
- Railroads
- Urban Growth Boundary
- Parkway
- Areas of Special Interest
- Refinement Areas
- Urban Area Reserve
- Future Park
- Commercial Convenience
- CB- CENTRAL BUSINESS DISTRICT
- CC- COMMERCIAL CONVENIENCE
- CG- COMMERCIAL GENERAL
- CH- COMMERCIAL HIGHWAY
- CL- COMMERCIAL LIMITED
- IG- INDUSTRIAL GENERAL
- IL- INDUSTRIAL LIGHT
- IP- INDUSTRIAL PARK
- ME- MIXED EMPLOYMENT
- MR- MIXED RIVERFRONT
- PF- PUBLIC FACILITIES
- PO- PROFESSIONAL OFFICE
- PO/RM/RS
- RH- RESIDENTIAL URBAN HIGH DENSITY
- RL- RESIDENTIAL URBAN LOW DENSITY
- RM- RESIDENTIAL URBAN MEDIUM DENSITY
- RS- RESIDENTIAL URBAN STANDARD DENSITY
- SM- SURFACE MINING
- UAR- URBAN AREA RESERVE

N

0 1,300 2,600 5,200 Feet

DISCLAIMER: The information on this map was derived from digital databases on Deschutes County's G.I.S. and City of Bend land records. Care was taken in the creation of this map, but it is provided "AS IS". There are no warranties, express or implied, including the warranty or merchantability or fitness for a particular purpose, accompanying this product.

Map prepared by City of Bend
Print Date: April 2006
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