



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

12/10/2012

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Bend Plan Amendment
DLCD File Number 003-12

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: Friday, December 21, 2012

This amendment was submitted to DLCD for review 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 Acknowledgment or 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. **NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.**

Cc: Aaron Henson, City of Bend
Gordon Howard, DLCD Urban Planning Specialist
Karen Swirsky, DLCD Regional Representative

<paa> YA



FORM 2

DLCD

Notice of Adoption

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

DATE STAMP	<input type="checkbox"/> In person <input type="checkbox"/> electronic <input type="checkbox"/> mailed
	DEPT OF
	DEC 03 2012
	LAND CONSERVATION AND DEVELOPMENT For Office Use Only

Jurisdiction: **City of Bend**

Local file number: **PZ-12-0268**

Date of Adoption: **11/6/2012**

Date Mailed: **11/30/2012**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? ☒ Yes ☐ No Date: 8/21/2012

☐ Comprehensive Plan Text Amendment

☐ Comprehensive Plan Map Amendment

☐ Land Use Regulation Amendment

☒ Zoning Map Amendment

☐ New Land Use Regulation

☐ Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

A site specific zone change application for two parcels of land containing 0.32 acres located at the northwest corner of 2nd Street and Irving Avenue from Light Industrial (IL) to Mixed Employment (ME). This site specific zone change brings the zoning of the subject property into conformance with its Bend Area General Plan designation. The Hearings Officer's decision is the City's final action. No separate ordinance is required.

Does the Adoption differ from proposal? No, no explanation is necessary

Plan Map Changed from: **N/A**

to: **N/A**

Zone Map Changed from: **Light Industrial (IL)**

to: **Mixed Employment (ME)**

Location: **180 & 190 NE Irving; 171232AD 5900 & 6000**

Acres Involved: **0**

Specify Density: Previous: **N/A**

New: **N/A**

Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Was an Exception Adopted? ☐ YES ☒ NO

Did DLCD receive a Notice of Proposed Amendment...

35-days prior to first evidentiary hearing?

☒ Yes ☐ No

If no, do the statewide planning goals apply?

☐ Yes ☐ No

If no, did Emergency Circumstances require immediate adoption?

☐ Yes ☐ No

DLCD file No. 003-12 (19369) [17252]

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Bend Fire Department

Local Contact: Aaron Henson, AICP

Phone: (541) 383-4885 Extension:

Address: 710 NW Wall Street

Fax Number: 541-388-5519

City: Bend

Zip: 97701-

E-mail Address: ahenson@ci.bend.or.us

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 5 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s)
per ORS 197.615 and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on light **green paper if available**.
3. Send this Form 2 and one complete paper copy (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information (ORS 197.615).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption (ORS 197.830 to 197.845).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. (ORS 197.615).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

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

9. **Need More Copies?** Please print forms on 8½ -1/2x11 **green paper only if available**. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail plan.amendments@state.or.us.

COMMUNITY DEVELOPMENT
DEPARTMENT
710 WALL STREET
BEND, OR 97701
(541) 388-5580 PHONE
(541) 388-5519 FAX
www.ci.bend.or.us



Notice of Final Adoption

City of Bend Planning Division

Date of Notice: November 30, 2012

Date of Decision: November 6, 2012

Case Number: PZ-12-0268

Applicant: Kelly Development, Inc.

Nature of the Application:

A site specific zone change application for two parcels of land containing 0.32 acres located at the northwest corner of 2nd Street and Irving Avenue from Light Industrial (IL) to Mixed Employment (ME).

Legal Description:

Lots 10 & 11, Block 4, Center Addition to Bend; further identified as 180 & 190 NE Irving Avenue; Tax Lots 5900 & 6000 on Deschutes County Assessor's Map 17-12-32AD.



Decision:

Hearings Officer Sharon Smith approved this site specific zone change application on November 6, 2012. Notice of the Hearings Officer's decision was mailed to all parties to the record on November 6, 2012 and the decision became final on November 27, 2012.

Please Note - Section 4.1.429 of the Bend Development Code states: "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." This site specific zone change brings the zoning of the subject property into conformance with its Bend Area General Plan designation. No separate ordinance is required, and the action taken is a final action.

Questions:

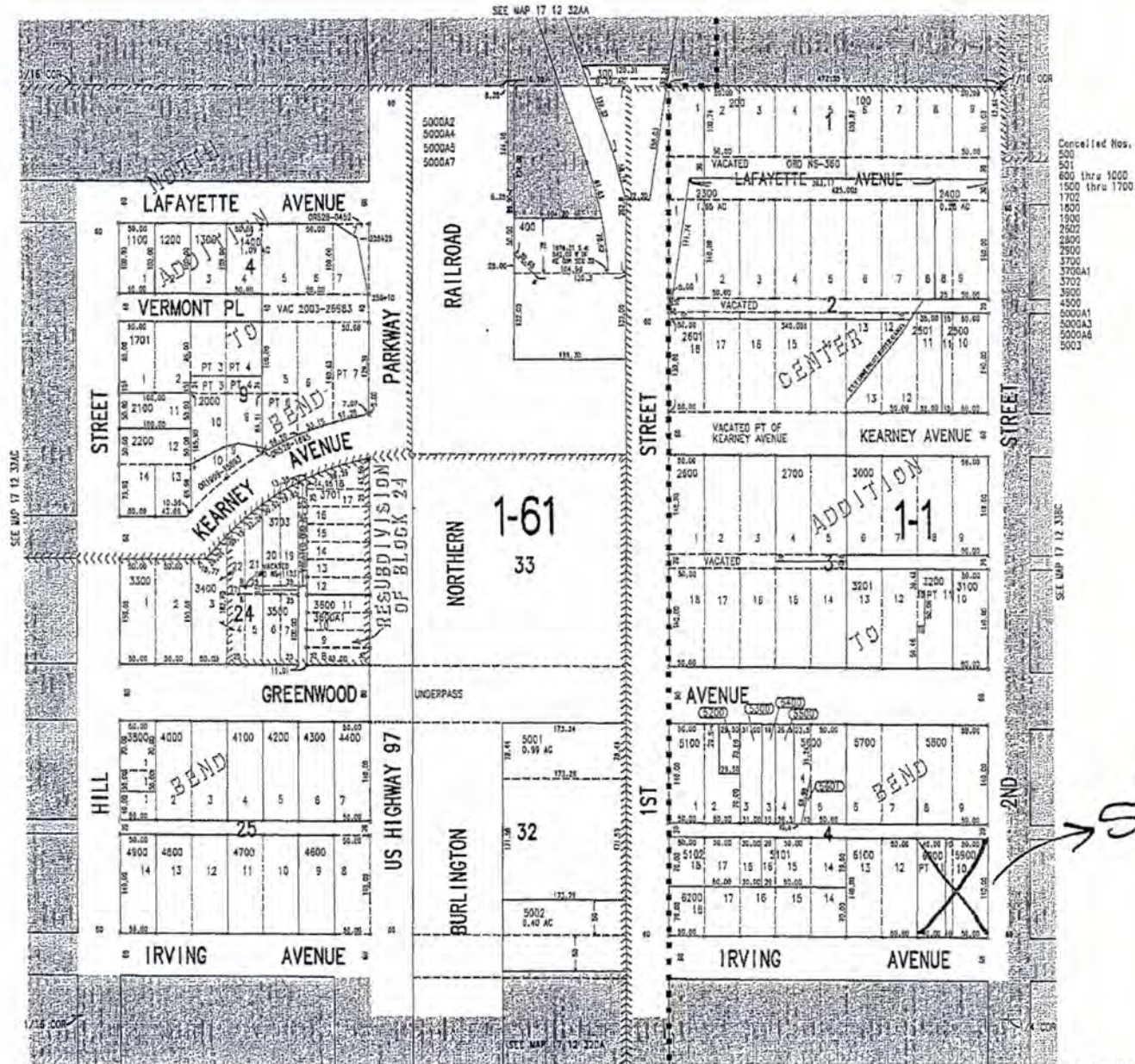
If you have any questions concerning this matter, please contact Aaron Henson by phone at (541) 383-4885 or by e-mail at <ahenson@ci.bend.or.us>.

THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSE ONLY.
REVISED: 10/21/2006

SE1/4 NE1/4 SEC. 32 T.17S. R.12E. W.M.
DESCHUTES COUNTY

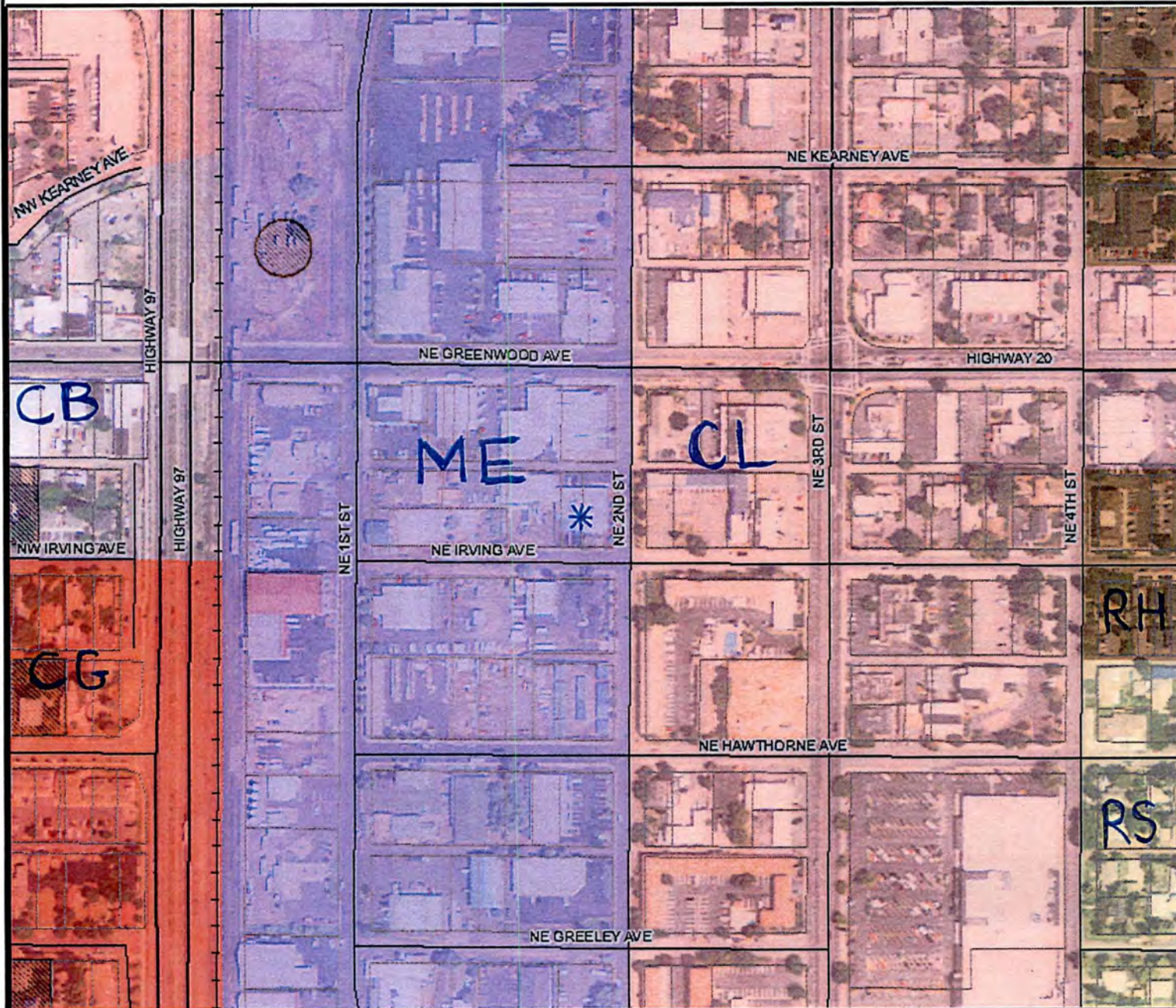
1" = 100'

17 12 32AD



17 12 32AD

General Plan Map - Existing and Proposed



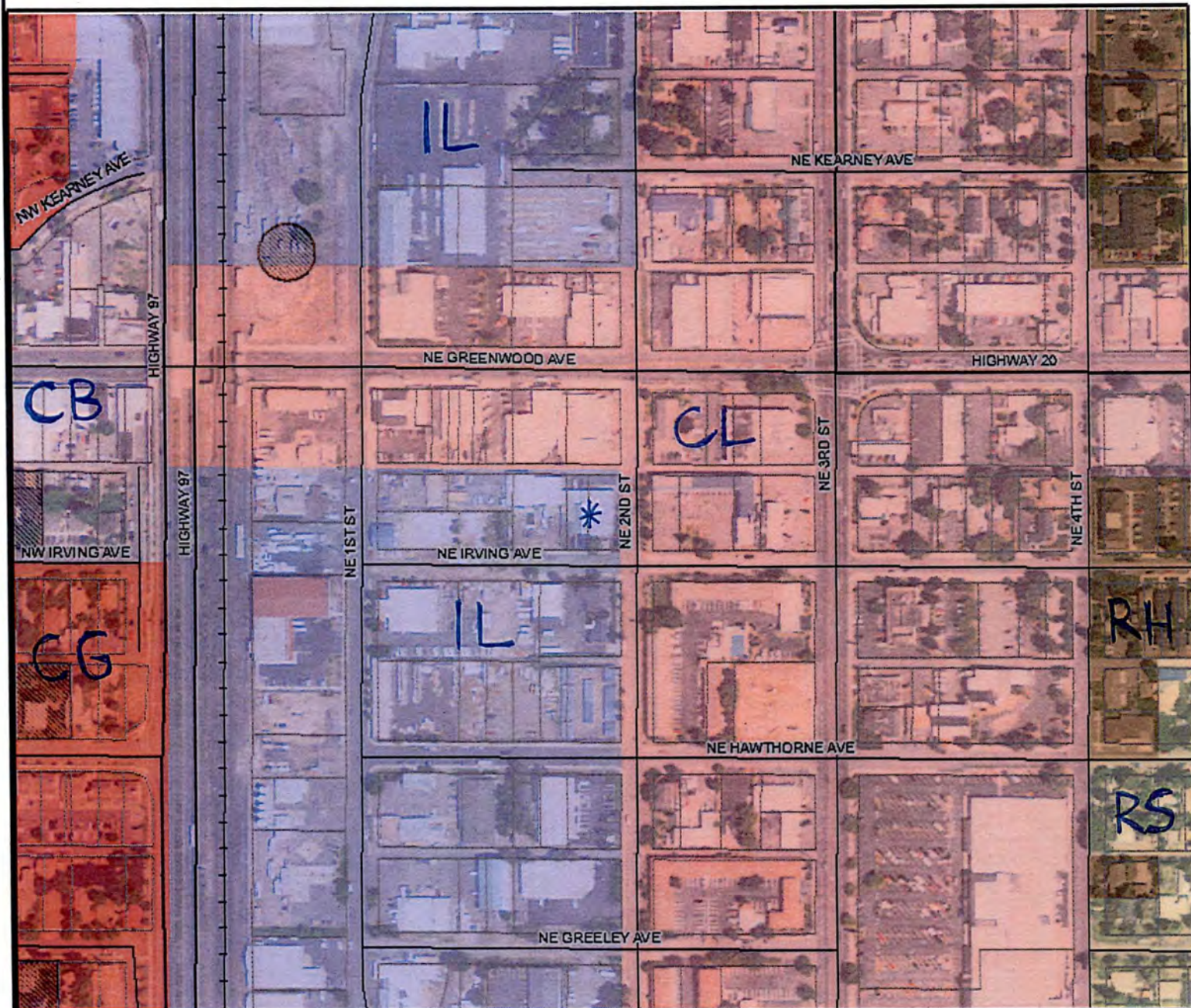
- Tuleids
- Streets
- Streets
- Primary/Highway
- Railroad
- Streams
- Canals
- River
- Parks
- Airport Lease Space
- CITY
- GROUND LEASE
- Airport
- City Limits
- Urban Reserve Area
- Urban Growth Boundary
- ASL - River
- ASL - Upland
- Floodplain
- Special Planned Districts (MDOZ, etc)
- Historic Districts
- Historic Resources
- Comprehensive Plan
- CB
- CC
- CG
- CL
- IG
- IL
- IP
- ME
- MR
- PF
- PO
- POH/MRS
- RH
- RL
- RM
- RS
- SM
- 2005 Imagery
- Red: Band_1
- Green: Band_2
- Blue: Band_3

This map is for reference purposes only. Information was derived from City of Bend and Deschutes County GIS records. Care was taken in the creation of this map, but it is provided "AS IS." Please contact the City of Bend to verify map info or to report errors.

260 ft



Zoning Map - Existing



- Tidelands
- Streets
- Streets
- Primary Highway
- Railroad
- Streams
- Canals
- River
- Parks
- Airport Lease Space
- CITY
- GROUND LEASE
- Airport
- City Limits
- Urban Reserve Area
- Urban Growth Boundary
- ASU - River
- ASU - Upland
- Floodplain
- Special Planned Districts (MCOZ, etc)
- Historic Districts
- Historic Resources
- Zoning
 - CB - Central Business District
 - CC - Commercial Convenience
 - CG - Commercial General
 - CH - Commercial Highway
 - CL - Commercial Limited
 - CN - Commercial Neighborhood
 - IO - Industrial General
 - IL - Industrial Limited
 - IP - Industrial Park
 - ME - Mixed Employment
 - MR - Mixed Riverfront
 - PF - Public Facilities
 - PO - Professional Office
 - PORWARE
 - RH - Residential High Density
 - RL - Residential Low Density
 - RM - Residential Medium Density
 - RS - Residential Standard Density
 - SM - Surface Mining
 - SRQ-12 - Residential Suburban Low Density
 - UAR10 - Urban Area Reserve 10 Acre Min
- 2008 Imagery
 - Red: Band_1
 - Green: Band_2
 - Blue: Band_3

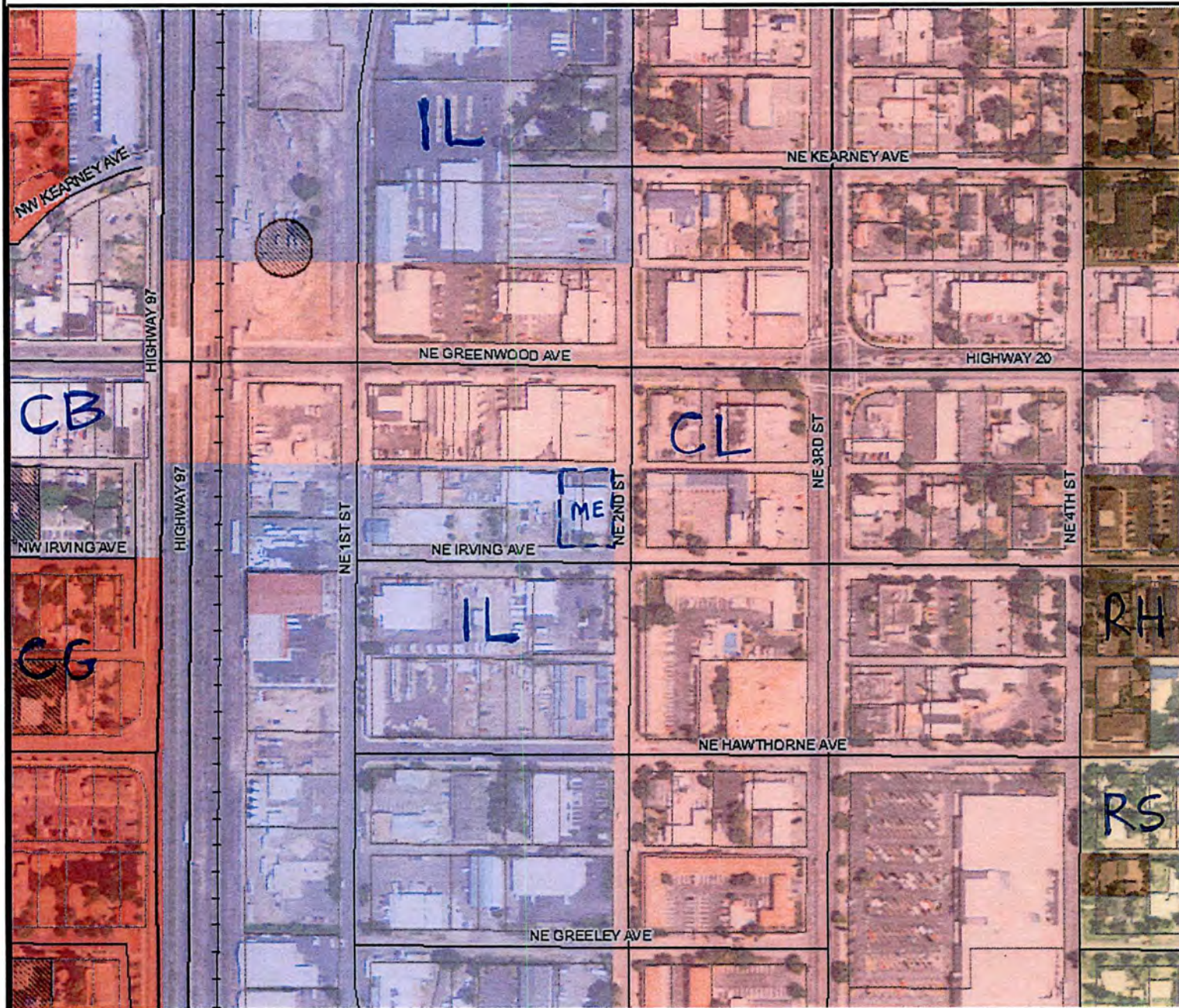


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Zoning Map - Proposed



- Tabled
- Streets
- Streets
- Primary Highway
- Railroad
- Stream
- Canals
- River
- Parks
- Airport Lease Space
- CITY
- GROUND LEASE
- Airport
- City Limits
- Urban Reserve Area
- Urban Growth Boundary
- ABU - River
- ABU - Upland
- Floodplain
- Special Planned Districts (MD02, etc)
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 - IG - Industrial General
 - IL - Industrial Limited
 - IP - Industrial Park
 - ME - Mixed Employment
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260 ft



DATE MAILED: November 6, 2012
APPLICANT: Kelly Development, Inc
FILE NUMBER: PZ 12-268

710 NW WALL STREET
PO BOX 431
BEND, OR 97701
[541] 388-5505 TEL
[541] 385-6676 FAX
BENDOREGON.GOV

Provided is a copy of the Hearings Officer Decision regarding the above referenced file. The hearing was held on October 11, 2012.

If you do not understand something in the Decision of the Hearings Officer, or if you have any other questions, please call our office at 388-5580.

**CITY OF BEND COMMUNITY DEVELOPMENT DEPT
PLANNING DIVISION**

JEFF EAGER
Mayor

JODIE BARRAM
Mayor Pro Tem

TOM GREENE
City Councilor

KATHIE ECKMAN
City Councilor

JIM CLINTON
City Councilor

MARK CAPELL
City Councilor

SCOTT RAMSAY
City Councilor

ERIC KING
City Manager

C

Planning Commission
DMC Consulting Services, Deborah McMahon
Parties to the Record

Via E-Mail:

Colleen Miller
Larry Medina, Fire Marshal
Robin Lewis, Transportation Engineer
Russell Grayson, Engineering
Heidi Lansdowne, Public Works
Jim Bryant, ODOT
Bill Hilton, ODOT
Virgil Breeden

Dennis Coffman
Adele McAfee
Chad Towell
Wendy Edde
Rick Root
Kevin Ramsey
Jackie Saul

THE HEARINGS OFFICER FINDINGS AND DECISION

PROJECT NUMBER: PZ 12-268 (Zone Change)

HEARING DATE: October 11, 2012 at 9:00 a.m.
City of Bend Council Chambers
710 NW Wall St., Bend, Oregon

HEARINGS OFFICER: Sharon Smith

**APPLICANT/
OWNER:** Kelly Development, Inc.
804 NW Alberta Street
Portland, OR 97217

**APPLICANT'S
REPRESENTATIVE:** DMC Consulting Services
c/o Deborah McMahon
60352 Arnold Market Road
Bend, OR 97702

LOCATION: 180 & 190 NE Irving Avenue; Lots 10 & 11, Block 4, Center Addition to Bend; Tax Lots 5900 & 6000 on Deschutes County Assessor's Map 17-12-32AD.

REQUEST: Type III application for a Zone Change for two parcels of land containing 0.32 acres located at the northwest corner of 2nd Street and Irving Avenue from Light Industrial (IL) to Mixed Employment (ME).

STAFF REVIEWER: Aaron Henson, AICP, Senior Planner

APPLICABLE CRITERIA, STANDARDS, AND PROCEDURES:

- (1) City of Bend Development Code, Ordinance NS-2016
 - (a) Chapter 2.3; Mixed-Use Districts
 - (b) Chapter 2.4; Industrial Districts
 - (c) Chapter 4.1; Land Use Review and Procedures
 - (d) Chapter 4.6; Land Use District Map and Text Amendments
 - (e) Chapter 4.7; Transportation Analysis
- (2) The Bend Area General Plan
- (3) Oregon Administrative Rules
 - (a) Chapter 660-012-060, Plan and Land Use Regulation Amendments
 - (b) Chapter 660-015, Division 15, Statewide Planning Goals and Guidelines

FINDINGS OF FACT:

1. **LOCATION:** The subject property is located at 180 & 190 NE Irving Avenue, one block south of NE Greenwood Avenue and 1 block west of NE 3rd Street. Further described as Lots 10 & 11, Block 4, Center Addition to Bend; Tax Lots 5900 & 6000 on Deschutes County Assessor's Map 17-12-32AD.



2. **EXISTING ZONING & GENERAL PLAN DESIGNATION:** The subject property is zoned Light Industrial (IL) and designated Mixed Employment (ME) on the Bend Urban Area General Plan map.
3. **SITE DESCRIPTION & SURROUNDING USES:** The subject property consists of two lots containing 0.32 acres total. According to the County Assessor's records, Tax Lot 6000 (180 NE Irving) contains a 1,000 square foot building with an 840 square foot machine shed, and Tax Lot 5900 (190 NE Irving) contains a 5,400 square foot building. There is a large double-trunk Western Juniper tree located on the south side of 190 NE Irving, between the building and the street, and four small street trees along NE 2nd Street. Both streets are paved and curbed, and a curb-tight sidewalk exists along Irving Avenue. The alley on the north side of the property is also paved. There are overhead power lines on both sides of Irving Avenue, the north side of the alley, and the east side of 2nd Street. The CL zoned lot to the north contains an existing thrift store at the corner of 2nd Street and Greenwood Avenue. Motel West is located in the CL zone across 2nd Street to the east. Northwest Mechanical Group is located in the IL zone across Irving Avenue to the south, and Oregon Equipment Service Corp. is located on the adjacent property to the west.
4. **PROPOSAL:** Type III application for a Zone Change for two parcels of land containing 0.32 acres located at the northwest corner of 2nd Street and Irving Avenue from Light Industrial (IL) to Mixed Employment (ME).

- 5. PUBLIC NOTICE AND COMMENTS:** Prior to submitting this Zone Change application, the applicant held a public meeting on July 9, 2012. According to the applicant's meeting notes, several questions were raised by those who attended the meeting, such as: "Will the zone change affect my property values? Will the on-site uses change? Are the public services adequate?" On September 19, 2012, the Planning Division sent notice of the public hearing on the proposed Zone Change to surrounding owners of record of property as shown on the most recent property tax assessment roll within 250 feet of the subject property, and to the Orchard District Neighborhood Association (ODNA). As of the date of the staff report, no public comments were received in response to the notice, except for a brief e-mail message from ODNA representative Kathleen Combs on September 24, 2012. Transmittals were also sent via ePlans to other participating agencies for comment. The comments and recommendations that the Planning Division received in response are contained in the project file and have been considered in this Decision. A public hearing was held October 11, 2012. The Applicant's representatives presented testimony. A lessee of the Applicant testified in support. The record was left open until October 19, 2012 for additional written testimony.
- 6. APPLICATION ACCEPTANCE DATE:** The application for this Zone Change was submitted and accepted as complete on August 14, 2012.

APPLICATION OF THE CRITERIA:

CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE

This Zone Change application is a Type III quasi-judicial land use application. All applicable criteria and policies related to the request are addressed in the findings below and the applicant's burden of proof statement. The application follows the procedures identified in BDC Section 4.1.400. In addition, all of the criteria identified in BDC Section 4.6.300 are addressed below.

CHAPTER 4.6, LAND USE DISTRICT MAP AND TEXT AMENDMENTS

4.6.300 QUASI-JUDICIAL AMENDMENTS

B. Criteria for Quasi-Judicial Amendments

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

FINDING: The Statewide Planning Goals, along with findings of consistency, are listed below.

Goal 1, Citizen Involvement

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

The City's acknowledged citizen involvement program for quasi-judicial amendments is codified in BDC Chapter 4.1. The first step for citizen involvement is the public meeting required by BDC Section 4.1.215. As previously noted, the applicant held a public meeting on July 9, 2012. Notice of the meeting was provided to property owners located within 250 feet of the subject property and to the Orchard District Neighborhood Association. Type III land use applications are noticed pursuant to Section 4.1.400 of the Development Code, which ensures that citizens are informed of the opportunity to participate in a public hearing.

Goal 2, Land Use Planning

To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

The Development Code establishes the process, and the General Plan establishes the policy framework, for a decision on the requested Zone Change. Section 4.1.429 of the Development Code states: "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." Staff prepares a written recommendation based on established processes and policies. The Hearings Officer will consider this and other evidence at a public hearing, where written and oral evidence is received, and will then make a decision on the application.

Goal 3, Agricultural Lands

Goal 4, Forest Lands

Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces

Goals 3, 4, and 5 are not applicable to this Zone Change application because the subject property is not zoned for agriculture or forest use and does not contain any inventoried open spaces, scenic areas, historic resources, or natural resources.

Goal 6, Air, Water and Land Resources Quality

Goal 6 is not applicable to this Zone Change application because the proposed change will have no impacts on air, water, or land resources. Air and water quality are regulated by the Oregon Department of Environmental Quality. The subject property has no unique land resources.

Goal 7, Areas Subject to Natural Hazards

Goal 8, Recreational Needs

Goals 7 and 8 are not applicable to this Zone Change application because the subject property is not within an identified natural hazard area, nor within an area identified for recreational use.

Goal 9, Economic Development

To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

Goal 9 and the implementing rules require local governments to provide an adequate amount of commercial and industrial land within the Urban Growth Boundary. In Bend, this requirement is accomplished through the designation of adequate commercial, industrial, and mixed employment land in the General Plan. Statewide Land Use Planning Goal 9 requires the City to 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 policies." The administrative rules implementing Goal 9 — specifically OAR 660-009-0015 — require the City to develop an inventory of industrial and other employment lands of "vacant and developed lands within the planning area designated for industrial or other employment uses."

The City adopted ordinances amending its Urban Growth Boundary (UGB) and General Plan in January 2009, based upon a number of studies and inventories, including an Economic Opportunities Analysis and a Buildable Lands Inventory. Portions of these analyses are in dispute and have been remanded by the State Department of Land Conservation and Development (DLCD). Thus, it is necessary to use the City of Bend's acknowledged General Plan dated December 1998 and its corresponding support documents and Economic Lands Studies.

The subject property is already designated Mixed-Employment (ME) on the Bend Area General Plan Map, and the applicant is requesting the City to change the Zoning Designation from Light Industrial (IL) to Mixed-Employment (ME). The General Plan recognizes that changes will occur over time, and its preamble states:

"Bend cannot rest on the economic diversity that existed in the 1990s. The community must work hard to ensure that the local economy continues its pattern of healthy growth, and that new jobs in all wage levels are available for its citizens. Governments, economic development groups, and developers all have a role in retaining, expanding, and recruiting businesses that will serve our needs in the 21st century. The role of the General Plan is to provide an adequate supply of industrial, commercial, and mixed-use land for Bend's economic growth."

The City has two mixed-use zones - Mixed Employment and Mixed Use Riverfront. Mixed Use Riverfront is specified for the area near the Deschutes River, and is not appropriate for the applicant's property location. Mixed Employment is an appropriate choice, and is a type of zone that recognizes a mix of light industrial, commercial, and institutional uses.

The City's Development Code States in part:

"The Mixed Employment zone is intended to provide a broad mix of uses that offer a variety of employment opportunities."

Based upon the policy statements noted above, the applicant's proposal will satisfy the intent of the General Plan and the implementing ordinances by fostering two uses which currently occupy the subject property: the Neil Kelly Company, a remodeling and home improvement business, and Fabulous Finds, a specialty retail store.

OAR 660-009-0000 states, in part:

"Plans do not need to provide a different type of site for each industrial or other employment use. Compatible uses with similar site characteristics may be combined into broad site categories. Several broad site categories will provide for industrial and other employment uses likely to occur in most planning areas. Cities and counties may also designate mixed-use zones to meet multiple needs in a given location."

Division 9 allows the City of Bend to designate mixed-use zones to meet multiple needs, and to amend its General Plan and Zoning Map to re-designate additional serviceable land for industrial or other employment use. In this case, the subject property is already designated Mixed-Employment; rezoning the property from IL to ME will bring its Zoning designation into conformance with the General Plan. The the adjacent properties to the north and the east are zoned Limited Commercial (CL). The Hearings Officer finds that the subject property is located in close proximity to arterial streets, and the site provides a good transition between the commercial corridors on Greenwood Avenue and 3rd Street, and existing industrial uses to the southwest.

The City's General Plan contains Policy 19, which enables modifications to the City's inventory of mixed-use lands, especially when a change is needed to convert existing zoning to mixed-use land:

"19. The City may designate other areas for mixed-use development to encourage a variety of jobs and services close to residential areas."

The subject property is located only two blocks away from residentially zoned properties on the east side of 4th Street. Therefore, it is an appropriate location to encourage mixed-use development that will produce a variety of jobs and services close to residential areas. The Hearings Officer finds that the applicant's proposal is consistent with the administrative rule, and will provide employment lands consistent with promoting the diversified economy of the urban area. The existing development pattern around the subject property provides for a compatible transition between commercial uses along Greenwood Avenue to the north, 3rd Street to the east, and industrial uses to the south and the west. Thus, the applicant's proposal is compatible with its surroundings because it is located in an area that already exhibits a pattern of mixed development.

The applicant is also required to demonstrate that its proposal is consistent with Goal 9, which requires the City to provide adequate opportunities for a variety of economic activities. The Hearings Officer finds that the applicant's proposal is consistent with Goal 9 because it will provide additional Mixed-Employment zoned land within the Bend UGB, facilitating a more diverse economy and opportunities for employment, as well as a buffer between commercial and industrial uses.

Goal 11, Public Facilities and Services

To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

The proposed Zone Change is consistent with the public facilities and services goal that requires the City to plan and develop land in a timely, orderly, and efficient fashion, based upon the availability of public services. All needed public facilities and services are available to the subject property. The property is surrounded by an established network of grid streets, and located near two arterials. Water and sanitary sewer service is available via existing City infrastructure located in the adjacent streets. The applicant's submittal includes an analysis prepared by the applicant's engineer that demonstrates that there are no capacity issues with nearby sewer facilities, and nearby water facilities provide adequate fire flow and residual water pressure. Emergency services are available through the City of Bend Fire and Police Departments. The subject property is also located within the Bend LaPine School District. Mixed employment uses will not place a strain on police, fire, or school facilities and services because those facilities and services are used primarily by residential uses.

Goal 12, Transportation

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

Goal 12 is implemented through the Transportation Planning Rule, OAR 660-12. Additionally, Section 4.6.600 of the Bend Development Code requires the applicant to demonstrate compliance with the TPR (OAR 660-012-0060). The TPR provides:

(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.*

Based on an analysis prepared by the applicant's engineer, the existing uses of the subject property generate in the range of 5.5 weekday p.m. peak hour trips (0.46 per employee for the Neil Kelly showroom and offices, and 0.46 per 1,000 square feet for the roughly 2,000 square feet of floor area occupied by Fabulous Finds). The ITE trip generation rate for "general light industrial" is 0.98 per thousand square feet, which would contribute 5.3 weekday p.m. peak hour trips to the transportation system. The subject property is already developed, and no changes to the existing uses are proposed. The Hearings Officer finds that the requested zone change, which affects 0.32 acres of land, will not significantly affect the City's transportation facilities because it will not 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 the adjacent streets or surrounding transportation system. The requested zone change also will not reduce the performance of any existing or planned transportation facilities below the performance standards identified in the Transportation System Plan (TSP) or the Bend Area General Plan, and it will not worsen the performance of any existing or planned transportation facility that is projected to perform below the minimum acceptable performance standards in the TSP or the General Plan. Therefore, the requested zone change complies with the TPR.

Goal 13, Energy

To conserve energy.

The ME zone may improve energy conservation because it will allow for a mix of economic uses in an area with an existing network of grid streets, which is also served by public transit.

Goal 14, Urbanization

To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

The subject property lies well within the boundary of the City's UGB in an area where urban levels of service are currently provided. Therefore, this goal is not applicable to the proposed Plan Amendment and Zone Change.

Goal 15, Willamette River Greenway
Goal 16, Estuarine Resources
Goal 17, Coastal Shorelands
Goal 18, Beaches and Dunes
Goal 19, Ocean Resources

Goals 15 through 19 are not applicable to the proposed Zone Change application because the subject property does not include any of these features or resources.

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;

FINDING: The Bend Area General Plan is the City's Comprehensive Plan. The subject application is consistent with the applicable plan goals and policies as identified below and in the applicant's burden of proof.

CHAPTER 1: PLAN MANAGEMENT AND CITIZEN INVOLVEMENT

Applicable Policies

Development within the Urban Growth Boundary

- 4. New developments shall pay to extend planned sewer, water, and transportation facilities to and through the property if the development occurs prior to the scheduled construction of those facilities shown in the city's capital improvement plan. 1-7**
- 5. The city will encourage compact development and the integration of land uses within the Urban Growth Boundary to reduce trips, vehicle miles traveled, and facilitate non-automobile travel. 1-7**

The applicant's property is already developed and served by City water and sewer. Conformance with requirements for provision of adequate public facilities including streets, sewer, and water to City standards and specifications are evaluated through the City's Site Plan Review or Minimum Development Standards (MDS) process when any change of use or building expansion is proposed, and Systems Development Charges (SDCs) are assessed when any building permits are issued. The subject property is surrounded by a variety of commercial and industrial uses with good access to streets and transit routes, which will help to reduce vehicle miles traveled (VMT) and facilitate non-automobile travel.

Citizen Involvement

- 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. 1-8**

The Zone Change process includes a pre-application public meeting requirement, as well as public notice and public hearings to ensure adequate opportunity for citizen participation in the planning process. As noted in the applicant's burden of proof, citizens participated in the applicant's public meeting, and citizens have also been invited to participate in a public hearing on the proposed Zone Change.

CHAPTER 6: THE ECONOMY AND LANDS FOR ECONOMIC GROWTH

Applicable Policies

19. The City may designate other areas for mixed use development to encourage a variety of jobs and services close to residential areas. 6-15

The applicant is requesting Mixed-Employment (ME) zoning for 0.32 acres of land currently zoned IL, Light Industrial. Both zoning designations encourage a variety of jobs and services close to residential areas and as previously noted the requested zone change will bring the subject property's zoning into conformance with its General Plan designation. Furthermore, the existing development pattern and the proposed ME zone provides a compatible transition between existing commercial uses to the north and the east, and existing industrial uses to the south and the west.

21. No new strip commercial development or extensions of the commercial designations shall be permitted along arterial or collector streets. 6-16

The applicant's proposal is for Mixed-Employment zoning. There is no extension of a "strip" because the subject property is not located on Greenwood Avenue or 3rd Street. Rather, it takes access off of Irving Avenue and 2nd Street, thus avoiding the prime characteristic of strip development – direct access off of an arterial or collector.

The applicant's proposal will allow a greater range of employment uses consistent with the surrounding development pattern that includes a mixture of commercial and industrial uses. Providing flexibility, efficiency, and higher utilization of the current inventory of sites within the existing UGB will also meet the intent of the above City policies. The subject property is part of a large area that is already designated Mixed-Employment on the Bend Urban Area General Plan.

CHAPTER 7: TRANSPORTATION SYSTEMS

Applicable Policies

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 surrounding properties include a mix of commercial, mixed employment, and industrial uses. The subject property is located only one block away from transit routes on Greenwood Avenue and 3rd Street, and only two blocks away from the residential

area east of 4th Street. It is well located to reduce vehicle trip lengths and promote walking, bicycling, and public transit.

CHAPTER 8: PUBLIC FACILITIES AND SERVICES

Applicable Policies

- 1. The city shall encourage development of serviced land prior to unserved land or require the extension of sewer lines as part of any development within the UGB. 8-12***

- 7. Within the urban planning area, public and private water systems shall be consistent with city standards for construction and service capabilities. 8-12***

The public utility systems adjacent to the subject property have adequate capacity for Mixed Employment uses, including the existing remodeling and home improvement business, and the existing specialty retail store.

Other Applicable General Plan Provisions:

The preface of the Bend Area General Plan states: "The zoning for land within the urban planning area must be consistent with the designated land use categories in the General Plan." (P-4) It further states, "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." (P-6)

- Criterion #3. The property and affected area is presently provided with adequate public facilities, services and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided concurrently with the development of the property;**

FINDING: The public facilities and services potentially affected by ME redevelopment on the subject property include sewer, water, police and fire protection, schools, parks, and transportation facilities. These facilities and services are discussed in the findings below.

- 1. Sewer and Water.** The submittal shows that the properties surrounding the subject property currently are served by city water and sewer facilities. Based on comments submitted by the City's Engineering Division, there are no capacity issues with nearby sewer facilities, and nearby water facilities provide adequate fire flow and residual water pressure.
- 2. Police & Fire Protection.** The subject property is located within the Bend city limits and is served by the Bend Police Department and the Bend Fire Department. The

Fire Department commented that the approval of land uses within industrial areas that are not an allowed industrial use (and therefore may be incompatible with other surrounding industrial occupancies or zoning) could compromise future industrial land use for storage of substances that are regulated by the Fire Code and local fire safety ordinances. Otherwise, the Fire Department has no concerns with the requested zone change.

3. Schools. The subject property is located within the boundaries of the Bend-La Pine School District. The district accommodates growth and development within its boundaries through a variety of measures. The applicant's proposal to change the subject property's zoning from residential to ME should not affect the School District.
4. Parks. The subject property is located within the boundaries of the Bend Park and Recreation District. The closest park is Juniper Park to the east.
5. Transportation Network. The subject property is located at the northwest corner of Irving Avenue and 2nd Street. Both streets are classified as local streets. They are paved and curbed, and there is an existing sidewalk along Irving Avenue. But there is no curb ramp at the intersection, and no sidewalk along 2nd Street. The subject property is located one block from Greenwood Avenue, which is a minor arterial, and one block from 3rd Street, which is a principal arterial. In the staff report prepared before the hearing, Staff had found that the City's existing transportation system would be adequate to accommodate mixed employment uses. However, at the hearing, Staff raised the issue that the lack of a sidewalk along 2nd street raised a concern that the pedestrian transportation system was not adequate. Staff stated that he thought that the issue would be handled at the site plan or Minimum Development Standards (MDS) review phase of development. Applicant allowed the retail use in a portion of the building apparently unaware that the property was zoned IL relying on a mistake on the assessor's website that showed the property zoned commercial. The retail use is not an allowed use in the IL zone. No code enforcement complaint has been initiated. Rather, the applicant has submitted this zone change request to resolve the issue. Applicant did not submit a site plan application, change of use or MDS application for the retail use. Staff asserts that an application for MDS review is required for the change of use to retail. Applicant argues that it is exempt from MDS review. The issue of whether MDS review is required for the change of use to retail is not before the Hearings Officer. The application is only for a Zone Change to ME and the Hearings Officer makes no determination whether MDS review is required.

The question is whether "The property and affected area is presently provided with adequate ... transportation networks to support the use..." (Emphasis added).

Staff raised a concern that the transportation system is not adequate because there are no sidewalks along 2nd street and the change to ME could bring about more pedestrian traffic. Staff was concerned that the lack of sidewalk could harm pedestrian safety and that the sidewalk should be constructed to address this issue. However, staff noted that the "no parking" on one side of the road did provide visibility and some better safety. Moreover, there is very little vehicle and pedestrian

traffic on the road. There are landscape trees that would likely need to be removed and a mailbox fixture that would need to be moved to construct a sidewalk.

Applicant argues that the sidewalk could cost at least \$20,000 and this is not roughly proportional to the impact created by the retail use, particularly since the trip generation numbers for the current use is 5.5 P.M. peak trips and the trip generation rate in the ITE manual for General Light Industrial would estimate 5.3 P.M. peak trips for the site. Staff did not provide any calculation of rough proportionality for the requested exaction. Applicant also argued that the "transportation system" is adequate and the zone change process is not the appropriate time to demand exactions. In furtherance of that argument, applicant stated that the long range planning staff said that the city is considering a legislative zone change for this central area so that the zone matches the Comprehensive Plan and the city would not undertake or require property owners to install sidewalks or otherwise improve properties to current standards if they do not meet them. Applicant argued that the appropriate time for bringing the site to current standards is when the property is redeveloped and that the building is adequate for the existing uses.

The Hearings Officer finds that a zone change can be an appropriate time to require upgrades to the site, if the zone change increases impacts so that the "transportation networks" are no longer adequate to support the use. However, in this case the evidence shows that the impacts are less than one P.M. peak trip. There is no evidence that the "transportation network" is inadequate. The abutting streets are not over-capacity. The traffic volumes are low and there is no evidence that the increase in traffic, vehicular or pedestrian, will cause the transportation network to become inadequate. If the uses change, then the City would have the opportunity to re-evaluate the adequacy of the transportation network and other public facilities. For these reasons the Hearings Officer finds that a condition requiring the construction of a sidewalk is not warranted.

The Hearings Officer finds City's existing transportation system will be adequate to accommodate mixed employment uses on the subject property, and the requested zone change will not significantly affect the City's existing transportation facilities.

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:

1. Mistake or Inconsistency. The applicant does not argue there was a mistake in the original General Plan designation or Zoning of the subject property for IL and ME uses. However, the General Plan Map and Zoning Map are inconsistent with one another. Approval of this application corrects that inconsistency.

Other Legal Justification for the Requested Zone Change

The applicant is requesting the City to bring the zoning of the subject property into conformance with its General Plan designation. The Oregon Supreme Court has ruled that "a comprehensive plan is the controlling land use planning instrument for a city. Upon passage of a comprehensive plan a city assumes a responsibility to effectuate that plan and conform prior conflicting zoning ordinances to it." Baker v. City of Milwaukee, 271 Or 500, 533 P2d 772 (1975).

CONCLUSIONS:

The Hearings Officer finds that the proposed Zone Change from IL to ME meets all applicable Development Code criteria, policies of the Bend Urban Area General Plan, Oregon Statewide Planning Goals, and the Transportation Planning Rule.

DECISION:

The Hearings Officer approves the request to rezone the subject property from IL to ME.



Sharon R Smith, Hearings Officer

Date: November 6, 2012

Mailed: November 6, 2012



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LAND CONSERVATION
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**CITY OF BEND
COMMUNITY DEVELOPMENT DEPARTMENT**

710 NW WALL STREET
BEND, OR 97701

TO:

DLCD
Attn: Plan Amendment Specialist
635 Capitol St. NE, Ste 150
Salem OR 97301-2540