



**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](http://www.lcd.state.or.us)



## NOTICE OF ADOPTED AMENDMENT

10/01/2009

**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 002-08

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. 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:** Wednesday, October 14, 2009

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. 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.

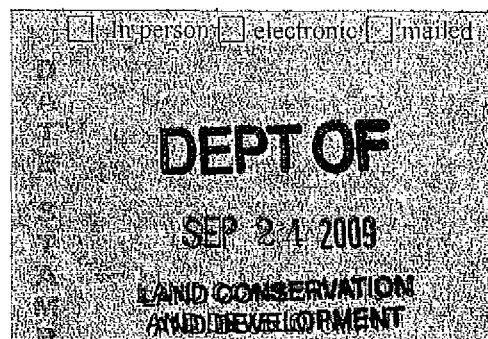
**\*NOTE:** THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

**Cc:** Greg Blackmore, City of Bend  
Gloria Gardiner, DLCD Urban Planning Specialist  
Mark Radabaugh, DLCD Regional Representative

<paa> YA

# 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



Jurisdiction: **City of Bend**

Local file number: **PZ 08-92**

Date of Adoption: **September 16, 2009**

Date Mailed: **September 23, 2009**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Date: **March 3, 2008**

☐ 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".

Development Code text amendment to remove "Church Park" and "park" identifiers from a property in the Northwest Crossing Overlay Zone.

Does the Adoption differ from proposal? Please select one

No.

Plan Map Changed from: **Not Applicable**

to:

Zone Map Changed from: **Not Applicable**

to:

Location: **SW Portion of 2051 NW Shevlin Park Road / west of Newport Hills Drive**

Acres Involved: **2.4**

Specify Density: Previous: **2 - 7.3 units/gross acre** New: **same, 2 - 7.3 units/gross acre**

Applicable statewide planning goals:

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

45-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. 002-08 (16736) [15727]

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

Bend Park and Recreation District

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Local Contact: **Greg Blackmore**

Phone: (541) 693 - 2123 Extension:

Address: **710 NW Wall Street**

Fax Number: **541 - 388 - 5110**

City: **Bend**

Zip: **97701**

E-mail Address: **gblackmore@ci.bend.or.us**

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## **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 Complete Copies (documents and maps) 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. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, or by emailing **[larry.french@state.or.us](mailto:larry.french@state.or.us)**.
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 Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice 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 now access these forms online at **<http://www.lcd.state.or.us/>**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **[larry.french@state.or.us](mailto:larry.french@state.or.us)** - **Attention: Plan Amendment Specialist**.

## ORDINANCE NO. NS-2131

AN ORDINANCE AMENDING THE CITY OF BEND DEVELOPMENT CODE (ORDINANCE NO. NS-2016) BY REMOVING THE TEXT "CHURCH PARK 2.4 ac" AND PARK SHADING FROM FIGURES CONTAINED IN SECTION 2.7.300 OF THE BEND DEVELOPMENT CODE, ADDING USE RESTRICTIONS TO SECTION 2.7.320.B.3, AND ADDING A SPECIAL PARTITIONING REGULATION TO SECTION 2.7.320.

THE CITY OF BEND ORDAINS AS FOLLOWS:

- Section 1. The applicant, Westside Church, initiated a Development Code text amendment request on February 22, 2008.
- Section 2. The application was submitted in accordance with Section 4.1.215 and 4.1.220 of the Bend Development Code. Timely and sufficient notices of two public hearings, pursuant to Section 4.1.820 of the Bend Development Code, have been provided.
- Section 3. On April 18, 2008 and May 13, 2008, the Hearings Officer conducted a public hearing to accept testimony on the request. The Community Development Department Staff notes and recommendation together with the testimony and submittals of the persons testifying at the hearing were considered and are part of the record of the proceeding. On January 27, 2009 the Hearings Officer issued Findings and a Recommendation to the City Council to approve the proposed amendment to the text of the Bend Development Code.
- Section 4. On April 1, 2009 the Bend City Council opened a public hearing, considered the testimony, the record, and the Hearings Officer's Recommendation. The City Council continued the proceeding at the April 20, May 6, May 20, July 1, 2009, and August 5, 2009 meetings.
- Section 5. On August 12, 2009 the City Council reopened the record to allow new evidence and responses thereto to be submitted regarding the remand associated with State Land Use Board of Appeal (LUBA) File # 2009-039, relating to City of Bend File PZ 08-91; the Site Plan, Conditional Use Permit, and Variance permit approval on the subject property.
- Section 6. On September 2, 2009 the City Council found that the request satisfies the applicable approval criteria of Section 4.6.300 of the Bend Development Code. This general finding is supported by the specific finding contained in the Hearings Officer's Recommendation to the City Council dated January 27, 2009, (file PZ 08-92) and the Staff Findings dated August 26, 2009 (File PZ 08-92).
- Section 7. Section 2.7.300 of the Bend Development Code is amended by removing the words "Church Park 2.4 ac" from Figure 2.7.330C, and by amending figures 2.7.320.B; 2.7.320.C; 2.7.320D; 2.7.320E; 2.7.320.F; 2.7.320.L; and 2.7.330C, to delete the park identification shading from the subject property (described in Exhibit C) as detailed in Exhibit A.
- Section 9. Section 2.7.320.B.3 Uses Permitted of the Bend Development Code is amended by adding subsection c, which states, "Notwithstanding 'Subsection a', preschool use and child care facility use shall not be permitted on Tax Lot 311 of Deschutes County Assessor's Map 17-11-36 (more specifically described in Exhibit C of Ordinance NS-2131)", as detailed in Exhibit B.
- Section 10. Section 2.7.320.B.3 Uses Permitted of the Bend Development Code is amended by adding subsection d, which states, "Notwithstanding 'Subsection a', the use of the approximately 100' wide set aside area on

Tax Lot 311 of Deschutes County Assessor's Map 17-11-36 (more specifically described in Exhibit D of Ordinance NS-2131), shall be restricted to the following uses: neighborhood park, single family detached housing, accessory dwellings, Type 1 home occupation, and accessory uses and structures", as detailed in Exhibit B.

Section 11. Section 2.7.320.B Urban Standard Residential Districts [of the Northwest Crossing Overlay Zone] of the Bend Development Code is amended by adding subsection 8 Special Partitioning Regulation, which states, "Notwithstanding other local regulations to the contrary, specifically including but not limited to block length, lot frontage, pedestrian and vehicle access and public improvement requirements, the approximately 100' wide set aside area on Tax Lot 311 of Deschutes County Assessor's Map 17-11-36 (more specifically described in Exhibit D of Ordinance NS-2131) may be partitioned once, without dedicating or extending Newport Hills Drive and without providing street, sidewalk, street tree, stormwater, or utility improvements to Newport Hills Drive, without dedicating a pedestrian easement or walkway across the 100' set aside area and without providing frontage for the lot on a public street. This Special Partitioning Regulation expires on December 31, 2011. Any other division of this land shall comply with all relevant code standards."

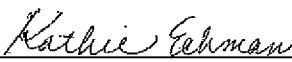
Read for the first time the 2<sup>nd</sup> day of September, 2009.

Read for the second time the 16<sup>th</sup> day of September, 2009.

Placed upon its passage the 16<sup>th</sup> day of September, 2009.

YES: 7                      NO: 0                      ABSTAIN: 0

Authenticated by the Mayor the 16<sup>th</sup> day of September, 2009.

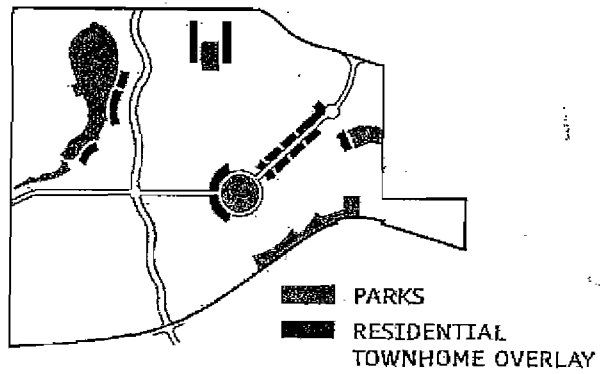
  
Kathie Eckman, Mayor

Attest:

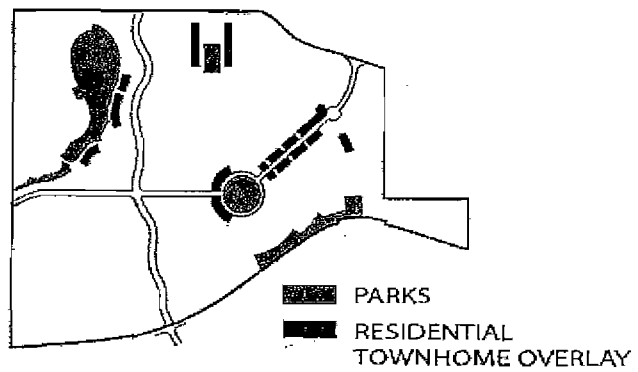
  
Patricia Stell, City Recorder

Exhibit A NS - 2131

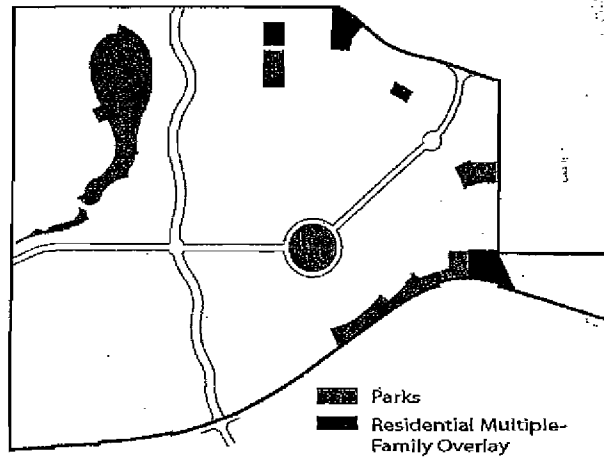
Existing Figure 2.7.320.B  
Residential Townhome Overlay District



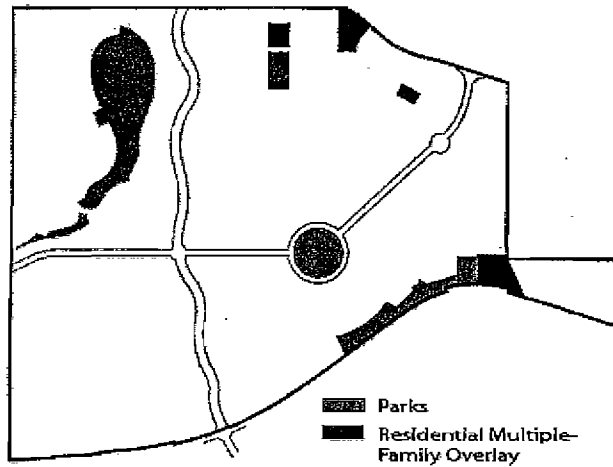
Proposed Figure 2.7.320.B  
Residential Townhome Overlay District



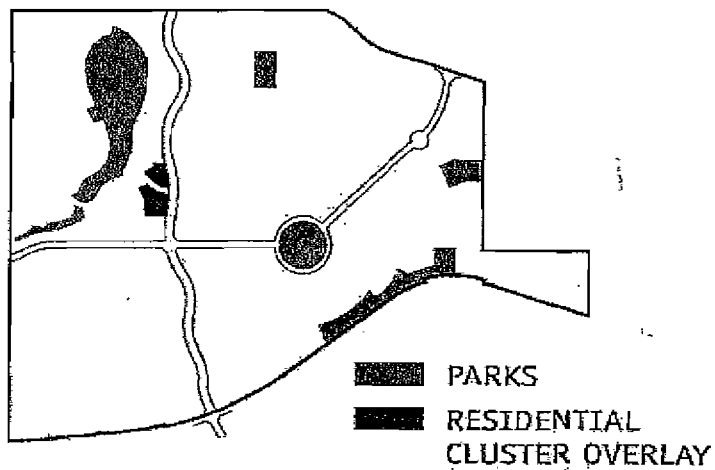
Existing Figure 2.7.320.C  
Residential Multi-Family Overlay District



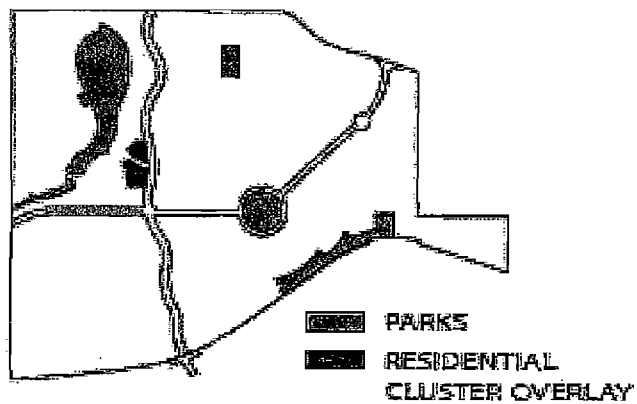
Proposed Figure 2.7.320.C  
Residential Multi-Family Overlay District



Existing Figure 2.7.320.D  
Northwest Crossing Residential Cluster Overlay District

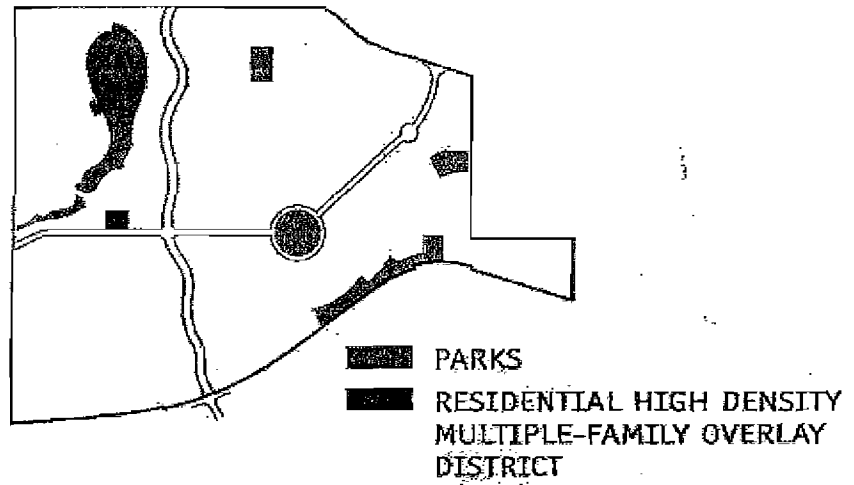


Proposed Figure 2.7.320.D  
Northwest Crossing Residential Cluster Overlay District

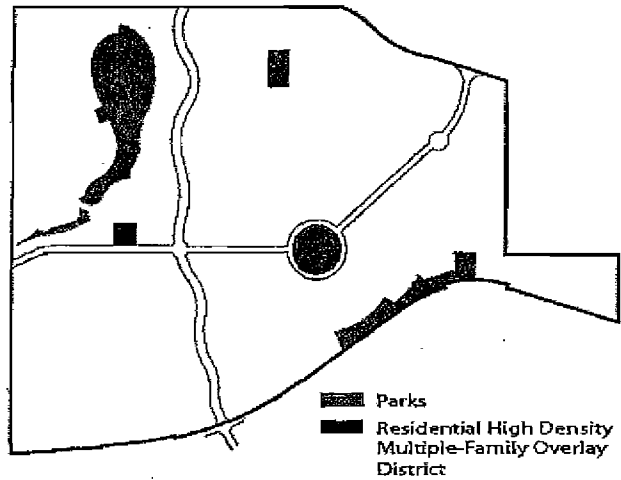




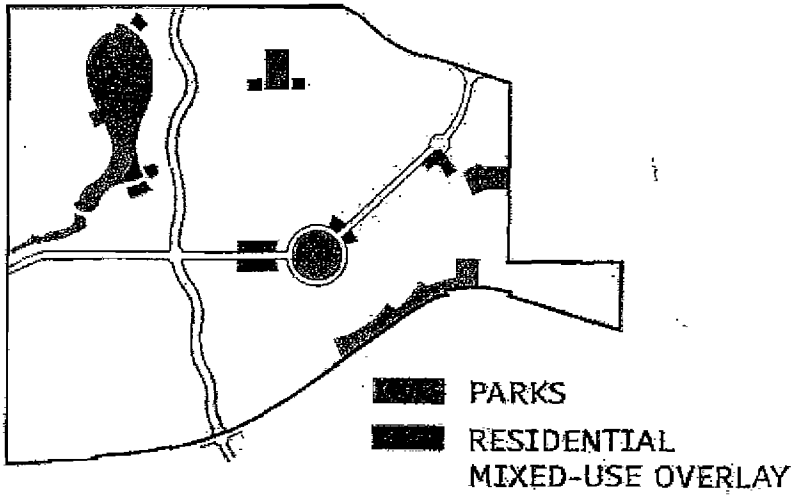
Existing Figure 2.7.320.E  
Residential High Density Multi-family Overlay District



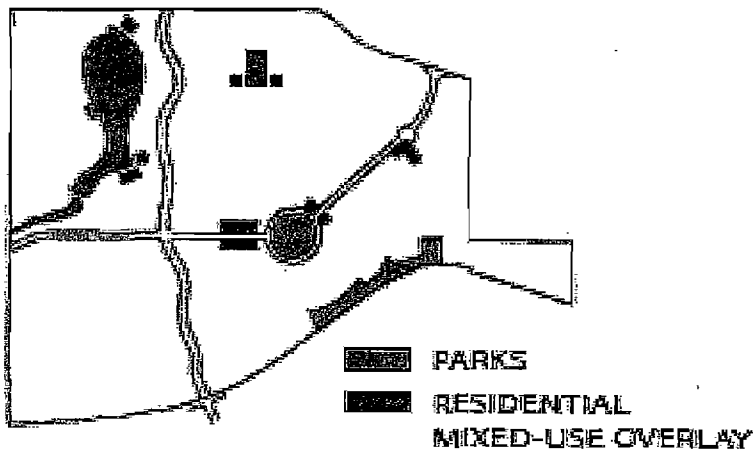
Proposed Figure 2.7.320.E  
Residential High Density Multi-family Overlay District



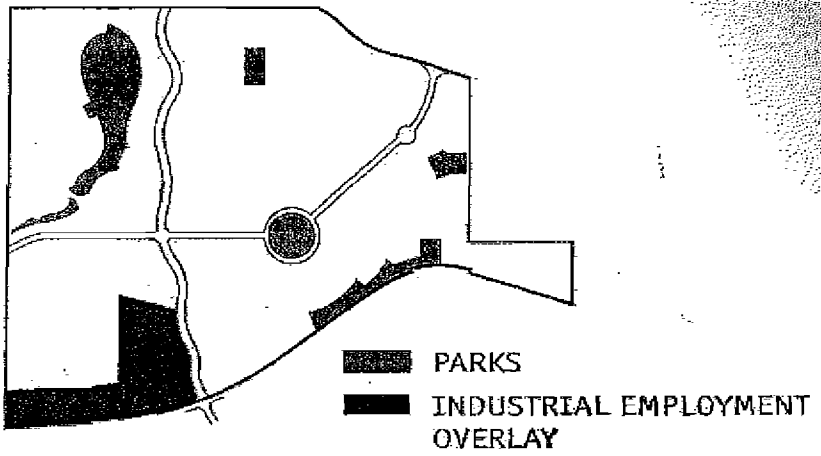
Existing Figure 2.7.320.F  
Residential Mixed-Use Overlay District



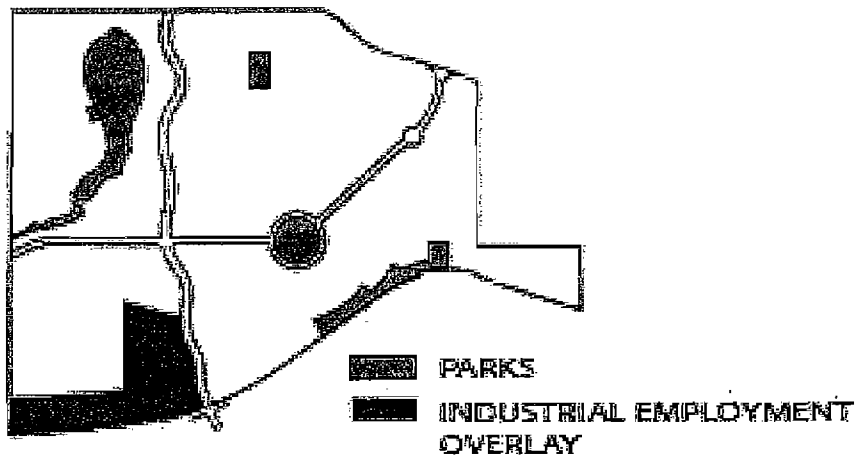
Proposed Figure 2.7.320.F  
Residential Mixed-Use Overlay District



Existing Figure 2.7.320.L  
Industrial Employment Overlay District

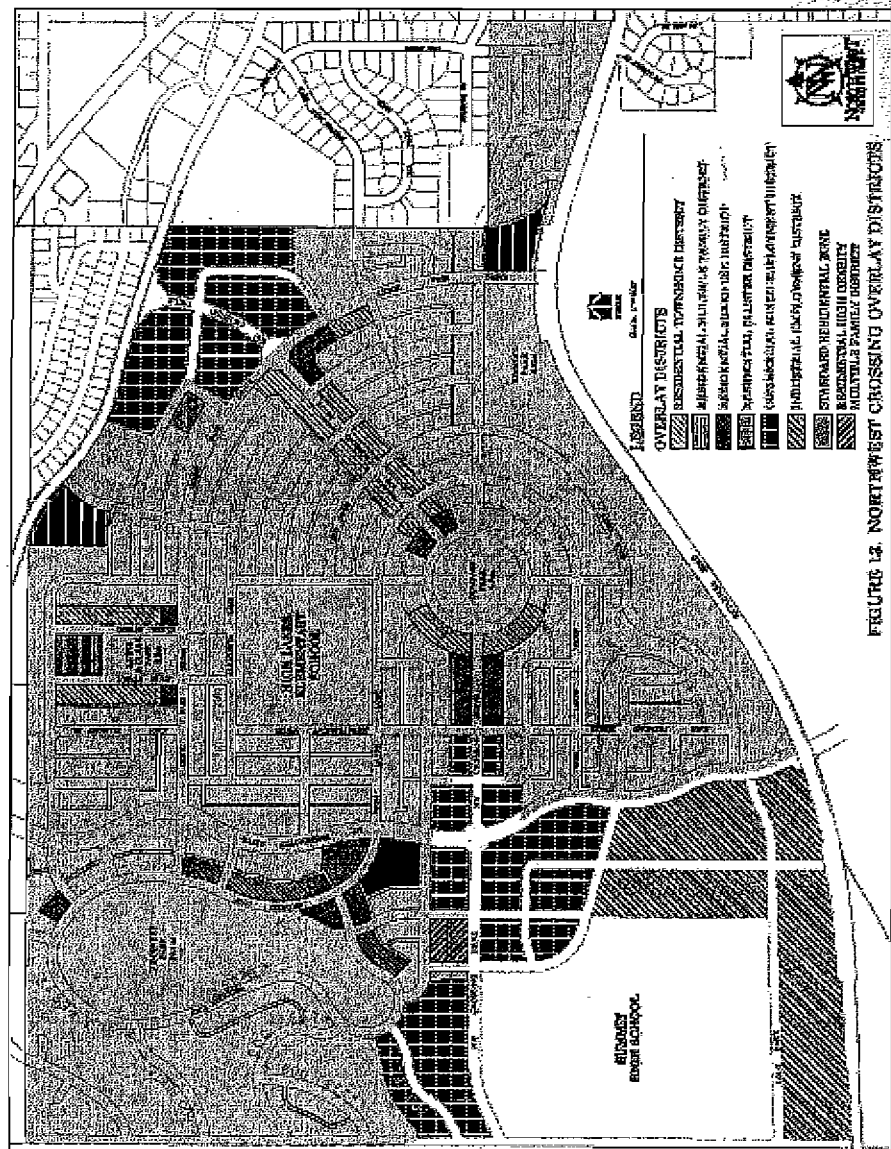


Proposed Figure 2.7.320.F  
Industrial Employment Overlay District



[illegible]

**Proposed Figure 2.7.330.C  
Northwest Crossing Overlay Districts**



## Exhibit B NS-2131

### 2.7.320 Districts

- A. Applicability. The special standards of the NorthWest Crossing overlay districts shall supercede the standards of the underlying zone. Where no special standards are provided, the applicable standards of the underlying zone shall apply.

B. Urban Standard Residential District.

1. Purpose. The purpose of the Urban Standard Residential District is to implement the Urban Standard Residential Zone with flexibility to allow greater lot coverage to accommodate single-family houses on small lots. The Urban Standard Residential District in Northwest Crossing also is the base zone for the Residential Overlay Districts described in Sections B, C, D, E and F.

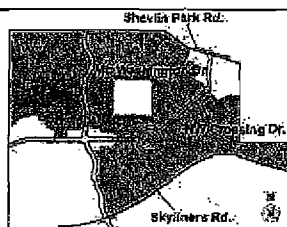


Figure 2.7.320.A  
Urban Standard Residential District

2. Application of Residential Overlay Districts. The standards of the Urban Standard Residential Zone, as provided for in this section, shall apply to the land zoned as Urban Standard Residential. Where a Residential Overlay District is shown, the special standards of the Overlay District shall apply to uses permitted by the Overlay District.
3. Uses Permitted.
- a. All uses permitted in the Urban Standard Residential Zone, except neighborhood commercial uses.
  - b. Duplex on a lot identified as a duplex lot on an approved subdivision plat, subject to RS minimum lot size for a duplex.
  - c. **Notwithstanding subsection a, preschool use and child care facility use shall not be permitted on Tax Lot 311 of Deschutes County Assessor's Map 17-11-36 (more specifically described in Exhibit C of Ordinance NS-2131).**
  - d. **Notwithstanding subsection a, the use of the approximately 100' wide set aside area on Tax Lot 311 of Deschutes County Assessor's Map 17-11-36 (more specifically described in Exhibit D of Ordinance NS-2131) shall be restricted to the following uses: neighborhood park, single family detached housing, accessory dwellings, Type 1 home occupation, accessory uses and structures.**
4. Conditional Uses.
- a. Except for duplexes, which are allowed on identified duplex lots on approved subdivision plats, conditional uses permitted in the underlying Urban Standard Residential Zone are subject to a Conditional Use Permit and the provisions of Chapter 4.4.
5. Height Standards
- a. No building shall be erected, enlarged or structurally altered to exceed 30 feet in height without a Variance.
6. Lot Requirements.
- a. The lot requirements of the RS Zone shall apply to all permitted and conditional uses.
  - b. Setbacks. The setback requirements of the RS Zone shall apply to all permitted and conditional uses.
  - c. Lot Coverage.

- i. On lots 6,000 square feet or greater, the maximum lot coverage for buildings shall be 35 percent.
  - ii. On lots that are less than 6,000 square feet, the maximum lot coverage for buildings shall be 50 percent.
7. Site Plan Review. A duplex located on a lot approved as a duplex lot on an approved subdivision plat is not subject to a site plan review under the provisions of Chapter 4.1, Land Use and Review Procedures.
8. Special Partitioning Regulation. Notwithstanding other local regulations to the contrary, specifically including but not limited to block length, lot frontage, pedestrian and vehicle access and public improvement requirements, the approximately 100' wide set aside area on Tax Lot 311 of Deschutes County Assessor's Map 17-11-36 (more specifically described in Exhibit D of Ordinance NS-2131) may be partitioned once, without dedicating or extending Newport Hills Drive and without providing street, sidewalk, street tree, stormwater, or utility improvements to Newport Hills Drive, without dedicating a pedestrian easement or walkway across the 100' set aside area and without providing frontage for the lot on a public street. This Special Partitioning Regulation expires on December 31, 2011. Any other division of this land shall comply with all relevant code standards.

Exhibit C NS - 2131

EXHIBIT "A"

A parcel of land located in the Northeast Quarter (NE ¼) of Section Thirty-six (36), Township Seventeen (17) South, Range Eleven (11) East of the Willamette Meridian, said parcel being more particularly described as follows.

Commencing at a 2-1/2 inch brass cap marking the North 1/16 corner on the East line of said Section 36; thence South 00°08'25" West, along said East line of Section 36, 200.95 feet to the TRUE POINT OF BEGINNING; thence continuing along said East line of Section 36, South 00°08'25" West, 332.63 feet; thence leaving said East line, North 90°00'00" West, 180.14 feet to a point of curvature; thence along the arc of 230.00 foot radius curve to the left, through a central angle of 20°56'39", an arc distance of 84.07 feet (the chord of which bears South 79°31'41" West, 83.61 feet) to a point of non-tangent curvature; thence along the arc of a 1,905.20 foot radius curve to the left, through a central angle of 07°53'58", an arc distance of 262.67 feet (the chord of which bears North 25°58'00" West, 262.46 feet) to a point of non-tangency; thence North 59°32'28" West, 17.97 feet to a point of curvature; thence along the arc of a 290.00 foot radius curve to the left, through a central angle of 29°10'38", an arc distance of 147.68 feet (the chord of which bears North 44°57'09" East, 146.09 feet) to a point of non-tangency; thence South 89°51'35" East, 259.38 feet to the Point of Beginning.

This tract of land contains 2.43 acres, more or less.



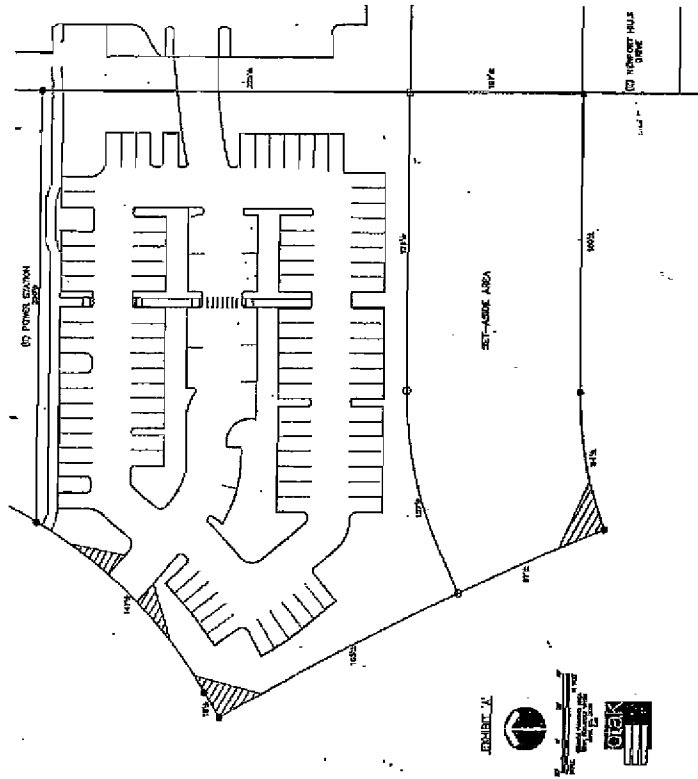
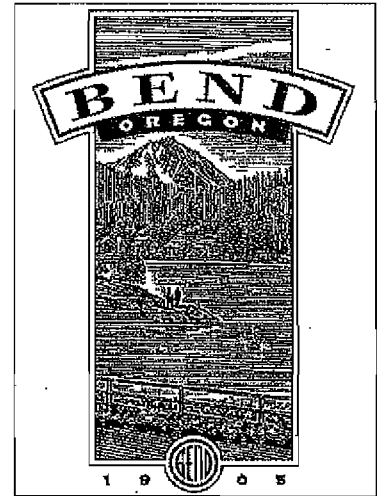


Exhibit D - NS-2131

**FINDINGS AND RECOMMENDATION  
OF THE HEARINGS OFFICER**



**PROJECT  
NUMBER:** PZ 08-92

**HEARINGS  
OFFICER:** Sharon R. Smith

**APPLICANT:** Westside Church  
2051 NW Shevlin Park Road  
Bend, OR 97701

**OWNER:** International Church of the Foursquare Gospel  
1910 W. Sunset Boulevard, Suite 200  
Los Angeles, CA 90026

**APPLICANT'S  
ATTORNEYS:** Liz Fancher  
644 NW Broadway Street  
Bend, OR 97701

**APPLICANT'S  
AGENT:** Otak, Inc.  
Ron Kempe  
333 SW Upper Terrace Drive  
Bend, OR 97702

**LOCATION:** The site is located on the south side of Shevlin Park Road, east of NorthWest Crossing Drive, and west of Newport Hills Drive. Although a separate tax lot, the subject property is located at the southwestern edge of a property that has been assigned an address of 2051 NW Shevlin Park Road (Westside Church property). The property is identified as Tax Lot 311 on the Deschutes County Assessor's Map 17-11-36.

**REQUEST:** The applicant requests that the City of Bend remove the words "Church Park 2.4 ac" from Figure 2.7.330C, NorthWest Crossing Overlay District. The applicant also requests that the figures identified as 2.7.320.B; 2.7.320.C; 2.7.320D; 2.7.320E; 2.7.320.F; 2.7.320.L; and 2.7.330C, be amended to delete the park identification shading from the subject property (17-11-3600-00311).

**STAFF  
REVIEWER:** Greg Blackmore, Associate Planner; (541)693-2123;  
gblackmore@ci.bend.or.us

I. **APPLICABLE PROCEDURES AND CRITERIA:**

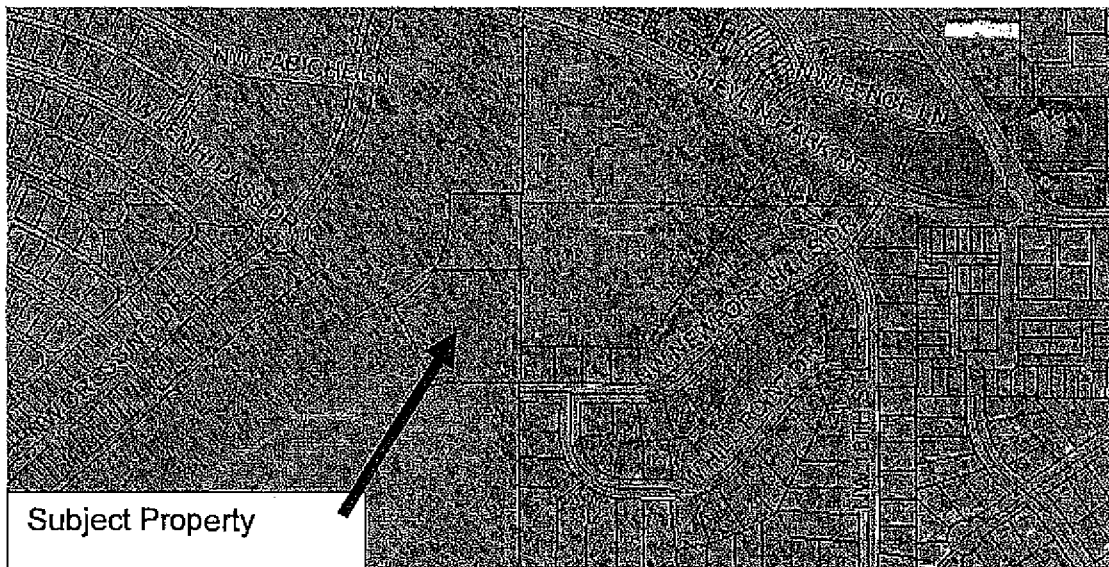
(1) The Bend Area General Plan

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

- (a) Chapter 4.1; Land Use Review and Procedures
- (b) Chapter 4.6; Land Use District Map and Text Amendments

II. **FINDINGS OF FACT:**

1. **LOCATION:** The site is located on the south side of Shevlin Park Road, east of NorthWest Crossing Drive and west of Newport Hills Drive. Although a separate tax lot, the subject property is located at the southwestern edge of a property that has been assigned an address of 2051 NW Shevlin Park Road (Westside Church property). The property is identified as Tax Lot 311 on the Deschutes County Assessor's Map 17-11-36.
2. **ZONE AND PLAN DESIGNATION:** The portion of land to which the proposed Development Code text amendment applies is zoned Residential Urban Standard Density (RS) on the Bend Area Zoning Map and is designated Residential Urban Standard Density (RS) by the Bend Urban Area General Plan map. Furthermore the subject property is identified as being within the NorthWest Crossing Overlay Zone on the Bend Area Zoning Map and the Bend Urban Area General Plan.
3. **SITE DESCRIPTION & SURROUNDING USES:** Staff conducted a site visit on April 9, 2008 and provides the following information based on observations made on the site and submitted application materials. The subject property is generally level with a gentle slope to the north and a more pronounced northeasterly slope along the southwestern property line. The property is treed with Ponderosa Pine and Juniper along the western, northern, and eastern perimeters and contains a gravel area at the center of the property. Newport Hills Drive a local street, with 60 feet of right of way, currently terminates at the southeastern corner of the property.



The surrounding land uses are zoned Commercial Limited (CL) to the north and Residential Urban Standard Density (RS) to the west, south and east. Additionally, the properties to the north, south and east are within the NorthWest Crossing Overlay Zone. Within the NorthWest Crossing Overlay Zone, the properties to the southwest are within a Residential Townhome Overlay District and the properties to the west are within a Residential Mixed-use Overlay District.

The Westside Church has been developed to the east and northeast of the area subject to the proposed Development Code text amendment, and the Newport Hills subdivision has been developed with single family dwellings on the properties to the east and southeast. The commercial and residential properties to the north, west, and south (within the NorthWest Crossing Overlay Zone) have not been developed at this time.

The subject property has not been identified on the Bend Area Zoning Map or Bend Urban Area General Plan Map as an Area of Special Interest, (ASI), it does not contain any irrigation canals, ditches, aboveground pipelines, waterways, railroads, rock outcroppings, wetlands, or natural hazards and is not located within a 100 year floodplain as designated by the Federal Emergency Management Agency (FEMA).

4. **PROPOSAL:** The applicant proposes that the words "Church Park 2.4 ac" be removed from Figure 2.7.330C, NorthWest Crossing Overlay District of the Bend Development Code. The applicant also proposes that the figures identified as 2.7.320.B; 2.7.320.C; 2.7.320D; 2.7.320E; 2.7.320.F; 2.7.320.I; and 2.7.330C, be amended to delete the park identification shading from the subject property (17-11-3600-00311).

6. **LOT OF RECORD STATUS:** The property subject to the proposed land use action consists of a portion of the unit of land that was approved in its current configuration by City of Bend File Number PZ05-680 and is recognized as being part of a legal lot of record, as that term is defined in the Development Code.
7. **PROCEDURE:** The applicant filed a Pre-Submittal Application for a Text Amendment Application in association with a proposal that included Site Plan, Conditional Use Permit, and Variance applications, on December 7, 2007. A Pre-Submittal meeting was held on January 7, 2008, which provided the applicant a checklist of incomplete items. The formal submittal of the Text Amendment Application was submitted on February 22, 2008 and included all information that was identified as being necessary for the Text Amendment review, at the Pre-Submittal Meeting. The application for a Development Code text amendment was formally accepted as a complete application upon submittal, February 22, 2008.

On March 11, 2008, the City of Bend Planning Division sent a "Notice of Public Hearing" of the request to surrounding owners of record of properties, as shown on the most recent property tax assessment roll, within 250 feet of the subject property. Notice of the Public Hearing was also published in the Bend Bulletin on March 16, 2008.

As of the time of writing of the staff report, thirteen (13) public comment letters had been received in response to the "Notice of Public Hearing." The comments received are all from residents within the adjacent Newport Hills subdivision and generally express a concern with potential non-residential development (other than a park) upon the subject property.

A hearing was scheduled for April 18, 2008 at 10:30 a.m. Applicant requested a continuance of that hearing to May 13, 2008. Applicant also requested that the text amendment application be heard at the same time as the related Site Plan, Conditional Use and Variance applications under a consolidated review procedure, pursuant to ORS 227.175(2) and BDC 4.1.885(A)(1). Applicant also agreed to toll the 120-day decision clock of ORS 227.178. Opponents argue that the 120-day clock does not apply to PZ 08-92. The Hearings Officer concurs. PZ 08-92 is a Development Code text amendment. This issue will be addressed in detail below.

The Hearings Officer granted the request for a consolidated review procedure. The initial hearing scheduled April 18, 2008 was held and the record was opened. It was then continued to May 13, 2008 and a consolidated hearing was conducted. There was substantial public testimony at the hearing. At the close of the hearing, the record was left open until June 10, 2008 for additional testimony. The record was left open until June 24, 2008 for rebuttal testimony and applicant had until July 1, 2008 for final legal argument.

Subsequent to the close of the record, applicant requested a revision to the post hearing comment period. The Hearings Officer approved the request and revised the post hearing evidence and argument schedule to provide for submittal of new evidence until July 15, 2008, rebuttal until July 29, 2008 and final argument by applicant on August 5, 2008. Substantial evidence and argument was submitted. During this time, applicant agreed to extend the applicable 120-day clock.

Part of the evidence submitted by applicant included modification of its Conditional Use and Site Plan in response to concerns raised by opponents. Applicant stated that:

*"If the Hearings Officer decides a modification of the pending application is needed to consider the alternative designs submitted by the application, the applicant requested that the Hearings Officer reopen the record of the consolidated case as allowed by BDC 4.1.895 . . . The applicant agrees to toll the running of the 120-day decision clock during the period the record is reopened."*

The Hearings Officer reopened the record to allow applicant to submit a modification to the Site Plan and Conditional Use applications. Pursuant to BDC 4.1.895(B), the Hearings Officer provided for the following manner of testimony and time limits. The applicant shall submit a modification of the application. Upon receive of the modification, the City shall send notice to all parties of record. The parties shall have 14-days to comment on the modification. The parties shall have one week to provide rebuttal. Applicant shall then have one final week for legal argument, which can be waived.

Applicant submitted a modification on October 2, 2008. On October 9, 2008 a notice of modified applications was sent to all parties of record. The parties had until October 23, 2008 to submit additional evidence and until October 30, 2008 to provide rebuttal. Applicant had until November 6, 2008 for final legal argument. The record closed November 6, 2008.

8. **REFERENCE DOCUMENTS:** Outside of the documents typically relied upon for a land use action review, such as the Development Code, General Plan, and Transportation System Plan, the review of the current proposal also utilized the following publicly available documents:

1. A 2003 Intergovernmental Agreement between the Bend Metropolitan Parks and Recreation District and the City of Bend. *(Copy in the file)*
2. Bend Metropolitan Parks and Recreation District – Comprehensive plan *(Copy available at the following website:*  
[http://www.bendparksandrec.org/Planning\\_\\_Development/Comprehensive\\_Plan/](http://www.bendparksandrec.org/Planning__Development/Comprehensive_Plan/)*)*

3. NorthWest Crossing – Master Development Plan from files PZ 00-307 & PZ 00-388. *(Copy in PZ 00-307 and PZ 00-388 file)*
4. Ordinance No. NS-1782, which added the NorthWest Crossing Overlay District. *(Copy in the file)*

### **III. CONCLUSIONARY FINDINGS:**

#### **CONFORMANCE WITH CITY OF BEND COMMUNITY DEVELOPMENT CODE, CHAPTER 4.1, LAND USE REVIEW AND PROCEDURES**

##### **Chapter 4.1 Land Use Review and Procedures**

##### **4.1.100 Purpose**

This ordinance is enacted to provide a uniform procedure for the grant or denial and processing of applications, approvals and determinations by the City of Bend under the applicable City comprehensive plan, land use regulations, subdivision and partition ordinance, and other ordinances which by their terms incorporate by reference the procedures in this ordinance. This ordinance shall be known as the City of Bend Land Use Review and Procedures Ordinance.

The provisions of this ordinance do not apply to the issuance, suspension, or revocation of any on-site sewage disposal, sign, building, electrical or plumbing permits except as they relate to Planning Division consideration of permitted uses.

Notwithstanding any reference to the contrary, this ordinance shall not apply to applications for land use or development approval for lands lying outside the city limits of the City of Bend. Outside the City limits where authorized by an intergovernmental agreement, the functions of the City Planning Director and City Review Authority identified herein may be exercised by their counterparts in accordance with the respective intergovernmental agreements.

**FINDING:** The current application includes an amendment to the Text of the Bend Development Code, which the procedures of this Chapter are intended to address.

##### **4.1.200 General Provisions**

##### **4.1.210 Pre-application Conference.**

- A. Pre-application Conference.** A pre-application conference with the City of Bend is required for complex applications or for applicants who are unfamiliar with the land use process. The purpose of the conference shall be to acquaint the applicant with the substantive and procedural requirements of the applicable land use ordinances, to provide for an exchange of information regarding applicable requirements of the comprehensive plan, zoning

ordinance or land division ordinance and to identify issues likely to arise in processing an application. The city zoning ordinance may require that a pre-application conference be held for particular types of applications.

**FINDING:** The interrelated nature of the site and proposed improvements meet the definition of a complex application. City records indicate that a Development Issues Meeting (Pre-Application) was held on July 12, 2007, which conforms to the provisions of this section.

**B. Public Meeting...**

**FINDING:** The applicant stated in their Burden of Proof and provided supporting information that a Public Meeting was held in conformance with the provisions of this section; no comments have been received to the contrary. Based upon the information submitted into the record, the Hearings Officer finds that the applicant has complied with the provisions of this Section.

**4.1.215 Application Requirements**

**A. Property Owner.** For the purposes of this section, the term "property owner" shall mean the owner of record or the contract purchaser and does not include a person or organization that holds a security interest.

**B. Applications for development or land use actions shall:**

1. Be submitted by the property owner or a person who has written authorization from the property owner as defined herein to make the application;
2. Be completed on a form prescribed by the city;
3. Include supporting information required by the zoning or land division ordinances and that information necessary to, in the judgment of the Planning Director; demonstrate compliance with applicable criteria;
4. Be accompanied by the appropriate filing fee;
5. Provide proof of ownership in the form of a Deed, or other recorded document; and
6. In the case of applications for a quasi-judicial plan amendment or zone change, may be accompanied by applications for a specific development proposal.
7. Include an affidavit from the applicant attesting that the public meeting required by Section 4.1.210 (B) of this ordinance was conducted in accordance with the provisions listed therein. If the public meeting was arranged and conducted by the applicant, the notification materials listed in Section 4.1.210 (C) (1) (a-c) must also be submitted.

**FINDING:** The application materials include the above noted application requirements. Further, the applicant has requested that the Development Code Text Amendment



Review be consolidated with the associated development proposal PZ 08-91, which is permitted in accordance with Subsection 6 above.

#### **4.1.220 Acceptance of Application.**

- A. Type I, II, and III applications shall not be accepted until the Planning Director has determined that the requirements of Section 4.1.215 of this Chapter have been met and; the application is complete or the application is deemed to be complete under state law. A pre-submittal meeting shall be required for all Type II, III and IV land use applications as defined in Chapter 1.2. The purpose of the pre-submittal meeting is to determine whether the proposed development application is complete prior to acceptance of the application for processing by the City.**

**FINDING:** A pre-submittal meeting was held on January 7, 2008, which conforms to the acceptance requirements of this section.

- B. An application is complete when, in the judgment of the Planning Director, complete information to address all criteria has been provided by the applicant.**

**FINDING:** The application contained all of the information necessary to review the proposal for compliance with applicable approval criteria and thus was accepted as complete upon date of submittal February 22, 2008.

- C. Acceptance of an application as complete shall not preclude a determination at a later date that additional criteria needs to be addressed or a later determination that additional information is needed to adequately address applicable criteria.**

**FINDING:** This procedural requirement remains effective.

#### **4.1.240 Applicable Standards.**

**The standards and criteria applicable to an application shall be the standards and criteria applicable at the time the application was first submitted if the application and requested information, if any, are received within one hundred eighty (180) days of the time the application was first submitted.**

**FINDING:** The standards and criteria applicable to the application when it was first submitted are those being addressed in this recommendation.

#### **4.1.250 Conflicting Procedures.**

**Notwithstanding the provisions of this section, where other provisions of the City of Bend Code or City of Bend ordinances specify procedures with greater opportunity for public notice and comment, those procedures shall apply.**

**FINDING:** The public notification procedures and provisions established in the Bend Development Code have been followed.

#### **4.1.255 Time Computation.**

**Except when otherwise provided, the time within which an act is required to be done shall be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, legal holiday or any day on which the city is not open for business pursuant to a city ordinance, in which case it shall also be excluded.**

**FINDING:** Where applicable, the time computation provisions of this section have been and will be applied.

#### **4.1.260 Lot of Record**

**FINDING:** A lot of Record finding was provided above.

### **4.1.300 LEGISLATIVE PROCEDURES**

#### **4.1.310 Hearing Required**

**No legislative change shall be adopted without review by the Planning Commission or Hearing Officer and a final public hearing before the City Council. Public hearings before the Planning Commission shall be set at the discretion of the Planning Director, unless otherwise required by state law.**

**FINDING:** The proposal includes an amendment to the Text of the Development Code, which is a legislative change and thus requires public hearings before a Hearings Body and the City Council, prior to adoption. The required public hearings will be a requirement, before the Text Amendment will become effective.

#### **4.1.315 Notice**

##### **A. Published Notice.**

- 1. Notice of a Type IV legislative change shall be published in a newspaper of general circulation in the City at least twenty (20) days prior to each public hearing.**

**FINDING:** Notification of the Public Hearing was published in the Bend Bulletin on March 16, 2008, 33 days prior to the April 18, 2008 opening of the initial Public Hearing

before the Hearings Officer; which is in conformance with the Notice procedures established in this section. Additionally, public notification will be provided at least 20 days prior to a Public Hearing before the City Council, in conformance with the procedures of this section.

2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.

B. **Posted Notice.** Notice shall be posted at the discretion of the Planning Director.

C. **Individual Notice.** Individual notice to property owners, as defined in Section 4.1.215(A) of this Chapter, shall be provided in conformance with ORS 227.

D. **Neighborhood Associations.** Notice of Type IV legislative changes shall be mailed to the administrative body of any neighborhood association recognized by the City of Bend, where the legislative change affects any land within the boundary of such neighborhood association.

**FINDING:** The Notice of Public Hearing is included in the record and contains the requirements of this section.

#### **4.1.320 Initiation of a Legislative Change.**

Requests for a plan map or text amendment of the Bend Urban Area General Plan by an individual, corporation, or public agency. A Type IV legislative change may be initiated by application of individuals upon payment of required fees as well as by the City Council or the Planning Commission. Any Type III change initiated by an individual that includes a plan amendment and/or zone change for specific real property may be accompanied by the appropriate applications for a specific development proposal. Approval of such a plan amendment and/or zone change accompanied by a specific development proposal may be conditioned upon initiation of the development proposal within a specified time period, at the discretion of the Hearings Body, to ensure no greater intensity of use than that contemplated in the Type III proceeding. Approvals of Type III plan amendments/and or zone changes that are not accompanied by applications for a specific development proposal shall be based on evaluation of the highest impact uses authorized in the proposed zone.

**FINDING:** The request includes an amendment to the text of the City of Bend Development Code. An amendment to the text of the Development Code is not a plan map or text amendment of the Bend Urban Area General Plan. However, it is an amendment to the Development Code, a zoning ordinance, thus a Legislative Change by definition. Therefore, the Hearings Officer finds the standards of this section to be applicable. The applicant has requested that the Development Code Text Amendment

Application be consolidated with the development proposal PZ 08-91, which this section allows.

**4.1.325 Review Authority.**

**A. The following shall serve as hearings or review body for legislative changes in this order:**

- 1. The Planning Commission or Hearings Officer.**
  - a. For Type III actions the Hearings Officer shall serve as the initial Hearings Body.**
  - b. For Type IV actions the Planning Commission shall serve as the initial Hearings Body.**
- 2. The City Council, subject to Section 4.1.1100 of this ordinance.**

**FINDING:** As detailed in Section 4.6.300, the text amendment involves the application of existing policy to one property and thus is a Quasi-Judicial review, consequently the Hearings Officer is serving as the initial Hearings Body.

**4.1.330 Final Decision.**

**All Legislative changes shall be adopted by ordinance.**

**FINDING:** Although a Quasi-Judicial Amendment (application of existing policy to a specific setting), the Development Code Text Amendment requires a public hearing and adoption by ordinance by the City Council, thus it is a Legislative Change.

**4.1.500 TYPE II OR TYPE III APPLICATIONS**

**Any informal interpretation or determination, or any statement describing the uses to which a property may be put, made outside the declaratory ruling process in accordance with Section 4.1.1400 or outside the process for approval or denial of a Type II or III permit in conformance with Section 4.1.500-900 shall be deemed to be a supposition only. Such informal interpretations, determinations, or statements shall not be deemed to constitute final City action effecting a change in the status of a person's property or conferring any rights, including any reliance rights, on any person.**

**4.1.515 Process for Type II or Type III Applications.**

**A. Except for comprehensive plan amendments and zone changes and other instances where a hearing is required by state law or by other ordinance provision, the Planning Director may decide upon a Type II application administratively either with prior notice, as prescribed under Section 4.1.520 or without prior notice, as prescribed under Section 4.1.525 or may refer the**

application to the Hearings Body for hearing as a Type III. The Planning Director shall take such action within 45 days of the date the application is accepted or deemed accepted as complete. This time limit may be waived at the option of the applicant.

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

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

**FINDING:** The Hearings Officer finds that the proposed Development Code Text Amendment is a Quasi-Judicial Text Amendment, which according to Section 4.1.515.A is a "...other instance where a hearing is required by state law". Further, although technically not a Quasi-judicial zone change or plan amendment, is a quasi-judicial application that should be referred to a hearing before a review authority, according to the procedural requirements of this section.

#### **4.1.530 Final Action in Type II or III Actions.**

D. Applications for the following determinations or approvals are exempt from the 120-day time limit established by this section:

1. Quasi-judicial comprehensive plan amendments;
2. Revocation proceedings;
3. Verification of nonconforming uses;
4. Lot of record determinations;
5. Initiation of approval determinations;
6. Consideration of remanded applications; and
7. Legislative Actions.

**FINDING:** The proposal includes the application of existing policy to a specific factual setting and thus, according to Section 4.6.300, is a Quasi-Judicial Amendment. The final decision on the amendment requires adoption by the City Council, thus is a Legislative Action. Mr. Dewey contends that the proposal is a Quasi-judicial comprehensive plan amendment according to the provisions of this section. Ms. Fancher contends that the proposed Development Code Text Amendment is a zone change. The Hearings Officer finds that, the proposal neither amends the Bend Area General Plan, the General Plan Map, nor the Bend Urban Area Zoning Map, but rather only amends the text of the Development Code. The Hearings Officer finds that the proposal is Development Code Text Amendment only, another instance which requires Legislative Action. Thus it is a Legislative Action according to this section, and consequently is exempt from the 120 day review time limit.

#### **4.1.700 REFINEMENT PLAN REVIEW PROCEDURES**

**FINDING:** The Hearings Officer finds that NorthWest Crossing is identified as an Overlay Zone and it is not an adopted Refinement Plan; thus the procedures of this section are not applicable.

#### **4.1. 900 LAND USE ACTION DECISIONS**

##### **4.1.930 Decision on Plan Amendments and Zone Changes.**

Except as set forth herein, the Hearings Body shall have authority to make decisions on all quasi-judicial zone changes and plan amendments. No Type III or IV plan amendment or zone change shall be effective unless adopted by the City Council.

**FINDING:** The proposal includes a quasi-judicial Development Code Text Amendment, which requires Legislative Action, thus is an exception to the provisions of this section and consequently the Hearings Body does not have the authority to make a decision on the Development Code Text amendment. The Hearings Officer makes a Quasi-judicial determination of its compliance with applicable land use regulations and makes a recommendation to the City Council.

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

##### **4.6.100 Purpose.**

The purpose of this chapter is to provide standards and procedures for legislative and quasi-judicial amendments to this Code, the Bend Area General Plan, the Bend Area General Plan map and the land use district map. These will be referred to as "map and text amendments." Amendments may be necessary from time to time to reflect changing community conditions, needs and desires, to correct mistakes, or to address changes in the law.

**FINDING:** The proposal includes an applicant initiated quasi-judicial amendment to figures contained in the Section 2.7.300 of the Bend Development Code, which the standards, criteria, and procedures of this section are intended to address.

##### **4.6.300 Quasi-Judicial Amendments.**

**A. Applicability, Procedure and Authority.** Quasi-judicial amendments generally refer to a plan amendment or zone change affecting a single or limited group of properties and that involves the application of existing policy to a specific factual setting. Quasi-judicial amendments shall follow the Type III procedure, as governed by Chapter 4.1, Land Use Review and Procedures using the standards of approval in Section 4.6.300.B, Criteria for Quasi-judicial

**Amendments below. Based on the applicant's ability to satisfy the approval criteria, the applicant may be approved, approved with conditions, or denied.**

**FINDING:** The proposal includes amendments to figures 2.7.320.B, 2.7.320.C, 2.7.320.D, 2.7.320.E, 2.7.320.F, 2.7.320.L and 2.7.330.C within the Bend Development Code. The amendment to the figures will collectively remove the text "Church Park 2.4ac" and park identification shading from one single property. The review of this proposal will apply existing policy to the specific factual setting and thus according to the text of this section is a Quasi-Judicial Amendment.

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

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

**FINDING:** A review of the relevant Statewide Planning Goals is provided below.

**OAR 660-015-0000(1) Oregon Statewide Planning 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."***

Conformance with Goal 1 is achieved through Chapter 1 of the Bend Area General Plan and through implementing the procedures established in the Bend Development Code. Chapter 1 of the General Plan identifies the Bend Planning Commission as the official Citizen Involvement Committee for the urban area and the City Council upon recommendation of the Planning Commission adopted the Development Code, which has been acknowledged by the Department of Land Conservation and Development (DLCD). The adopted Development Code contains procedures within the Development Code to ensure citizen involvement.

Section 4.6.300 of the Development Code establishes that Quasi-Judicial Amendments shall follow a Type III procedure as governed by Chapter 4.1 and Section 4.1.815.A establishes that,

*The following shall serve as the Hearings Body in this order:*

- 5. Hearings Officer.*
- 6. Planning Commission, where the Hearings Officer cannot hear the matter due to a conflict of interest, or as otherwise specified by provisions of the City Code.*
- 7. City Council subject to Section 4.1.1100, Appeals.*

Chapter 4.1 and 4.6 of the Development Code collectively require that a Hearings Officer and the City Council both hold public hearings prior to acting on a proposed amendment to the Development Code. A public hearing before a Hearings Officer was held on May 13, 2008 and a public hearing before the City Council public will be held thereafter. The public involvement procedures identified in the Development Code are being followed, which will ensure compliance with Statewide Planning Goal 1.

**OAR 660-015-0000(2) Oregon Statewide Planning 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.”***

Opponents make several arguments regarding Goal 2. First, opponents argue that approval of the application will not comply with the consistency requirement of Goal 2 because it does not show that the text amendment is consistent with the language in the Northwest Crossing Master Plan regarding the Church Park. The Hearings Officer finds that the NorthWest Crossing Master Plan is not part of the City's Comprehensive Plan. The NorthWest Crossing Master Plan itself is not an adopted land use regulation. Accordingly, consistency with the NorthWest Crossing Master Plan is not applicable. Moreover, the Goal 2 consistency requirement does not prohibit changes to land use regulations.

Opponents argue there is no Goal 2 consistency between the applicant's proposed text amendment and Bend's Zoning Code. The Hearings Officer finds that Goal 2 requires land use regulations to be consistent with the City's Comprehensive Plan. However, it does not require consistency between a text amendment and the Purpose Statement for the Townhome Overlay District. The Townhome Overlay District does not apply to the subject property.

Opponents argue that there is no Goal 2 consistency between the text amendment and the zoning code because the purpose of the Townhome Overlay District will be violated if the proposed text changes are approved to remove the “park” designation from the Townhome Overlay District map. Opponents argue that the Townhome Overlay District will no longer adjoin lands designated park and that the purpose statement requires that the Townhome Overlay District be located along collector streets and adjacent to parks or a Multi Family District. The Hearings Officer interprets the language of the purpose of the Townhome Overlay District to mean that the Townhome Overlay District is to be located in any one of the three listed locations along collector streets, adjacent to public parks, or adjacent to a Multi Family District. The Hearings Officer agrees with applicant's argument regarding the plain meaning of the purpose statement. To arrive at the meaning ascribed to the purpose statement argued by the opponents, the word “and” must be added after the word “collector streets” and before the word “adjacent”. The only conjunction used in the sentence is “or”. That word indicates that the purpose of the District is met if any one of the items in the list exists.



The proposal is an amendment to figures within the text of the Development Code. The proposed text amendment is within a Development Code that has been crafted to be consistent with The Bend Area General Plan, a comprehensive plan which has been "acknowledged" by the Oregon Department of Land Conservation and Development (DLCD). The proposed Development Code text amendment impacts a "park" label on a single unit of land. However, the proposed text amendment does not alter the administration of the code or the established requirements which ensure a factual base for all decisions. Consequently the Hearings Officer finds that the proposal complies with Statewide Planning Goal 2.

**OAR 660-015-0000(5) Oregon Statewide Planning Goal 5 – Natural Resources, Scenic and Historic Area, Open Spaces**

***"To protect natural resources and conserve scenic and historic areas and open spaces."***

The property subject to the Development Code text amendment is an RS zoned property that has been labeled "park" within Section 2.7.300 of the Development Code, which was adopted to implement the NorthWest Crossing Master Plan. The subject property has not been identified as a riparian corridor, wetland, wildlife habitat, Federal Wild and Scenic River, State Scenic Waterways, groundwater resources, an Approved Oregon Recreation Trail, a natural area, a wilderness area, a mineral and aggregate resource, an energy sources, or a cultural area. Additionally the City does not maintain the subject property on a current inventory of Historic Resources, Open Space, or Scenic Views and Sites. Based on the above findings the Hearings Officer finds that the proposed Development Code text amendment to remove a "park" label from the subject property does not impact any lands that this Statewide Planning Goal was intended to protect and is thus consistent with this Goal.

**OAR 660-015-0000(8) Oregon Statewide Planning Goal 8 – Recreational Needs**

***"To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts."***

The City has adopted the Bend Area General Plan and the Department of Land Conservation and Development has acknowledged that Plan. Chapter 3 of the General Plan establishes Goals and Policies which address recreational needs within the City of Bend and prescribes responsibilities of both the City and the Bend Metro Parks and Recreation District, via "policies". The relevant policies of the General Plan are addressed below, which documents that the proposed Development Code text amendment is consistent with the General Plan (and the Development Code). The Hearings Officer finds that because the proposal is consistent with the adopted Development Code, and the acknowledged General Plan, it is also consistent with this Statewide Planning Goal.

**OAR 660-015-0000(10) Oregon Statewide Planning Goal 10 – Housing**  
**“To provide for the housing needs of citizens of the state.”**

The Hearings Officer concurs with the applicant's response which states:

*“The subject property was included as a part of the City's Goal 10 inventory of needed housing when the City revised its Comprehensive Plan in 1998. This means that the land was considered available for development with housing and other uses allowed by the RS-zoning district. The proposed amendment will not impact the City's projected housing needs, as the amendment simply removes the “Church-Park” overlay zone, a term that might be read as preventing the property from being used for the housing purposes intended by Goal 10. The amendment retains the RS zone designated for this property, a zoning designation consistent with Goal 10.”*

The applicant proposes a preschool and church use. The Hearings Officer finds that the proposed use will be addressed in an associated Site Plan, Conditional Use, Variance Application (PZ 08-91). The current proposal is for a Development Code text amendment only. The Development Code prescribes uses that are permitted outright and permitted conditionally within a RS zone (consistent with the Statewide Planning Goal noted above) and what may or may not be developed upon the subject property is not pertinent to determining whether the proposed Development Code text amendment is consistent with the Statewide Planning Goal of this section.

Based on the above findings, the Hearings Officer finds that the proposal is consistent with the Statewide Housing Planning Goal.

**OAR 660-015-0000(12) Oregon Statewide Planning Goal 12 – Transportation**  
**“To provide and encourage a safe, convenient and economic transportation system”**

Opponents argue that Goal 12 and OAR 660-012-0060 should be addressed. The Hearings Officer finds that the proposal is to modify Development Code text that does not impose land use restrictions. Accordingly, the Hearings Office finds that the text amendment will not impact or generate additional traffic. The applicant submitted a traffic impact analysis in the event Goal 12 and OAR 660-012-0060 is determined to be applicable. The Hearings Officer makes the following findings if it is determined to be applicable.

The applicant submitted a Traffic Impact Analysis that compared potential trip generation assuming that the “Church Park” label imposes a park only use limitation. The traffic analysis evaluated two scenarios to determine a reasonable worst case scenario. First the assumption that the site could be developed with a recreational community center and second as a ball field based on surveys at the existing Skyline Sports Complex off of Mt. Washington Drive. Opponents argue that it is inappropriate to

compare the use of the 24.4 acre Skyline Sports Complex with what could be developed on the 2.4 acre parcel. The Hearings Officer concurs that comparing a 2.4 acre parcel with the use generated by a 24.4 acre sports complex is not reasonable. However, use of the facility as a recreational community center would be a reasonable assumption. A recreational community center would generate 43 p.m. peak trips and 598 daily trips. This is a greater number than was estimated by the sports complex.

Accordingly, the Hearings Officer finds that the Traffic Impact Analysis was an appropriate measurement of potential impacts. Based on these assumptions, the traffic engineer found that there would be a potential incremental increase between the existing and proposed zoning of 33 p.m. peak hours trips. No higher order intersection would be impacted by more than 15 p.m. peak trips per lane group; therefore no additional level of service analysis would be required under the Bend Code Requirements. The Traffic Engineer concluded that since the proposed change would not significantly impact existing or planned transportation facilities, the requirements of OAR 660-012-0060 are met. The Hearings Officer finds, to the extent Goal 12 is applicable, the requirements of the Goal have been met.

As indicated above the current proposal is for a Development Code text amendment only. The applicant has submitted an associated Site Plan, Conditional Use, Variance Application (PZ 08-91) application. However, possible uses and potential development which may occur upon the site is not pertinent for determining whether the proposed Development Code text amendment is consistent with these Statewide Planning Goals. The Hearings Officer finds that the other Statewide Planning Goals are not applicable to this proposal.

Based on the above discussion addressing the relevant Statewide Planning Goals the Hearing Officer finds that the proposed Development Code text amendment complies with the criteria of this section.

**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 criterion of this section addresses consistency with the policies of the Comprehensive Plan (Bend Area General Plan). As described on Page 5 of the Preface of the Bend Area General Plan, the term "policy" has a specific meaning within the General Plan; a policy is a statement of public policy. The General Plan establishes a set of policies at the end of each chapter. The relevant policies are addressed below.

Additionally Page 5 of the Preface indicates that, "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." Long Range Planning has stated that, "The NW Crossing overlay was proposed and approved with certain interrelated elements that promote livability." Staff concluded that because the policies of the General Plan are

accomplished through the Development Code, and because the Development Code implements the NorthWest Crossing Master Development Plan, including the interrelated element which promotes livability, in addition to the relevant policies of the General Plan, Section 2.7.300 NorthWest Crossing Overlay Zone of the Bend Development Code should be reviewed. The Hearings Office does not concur. The Hearing Officer finds that the plain language of the approval criteria above requires only consistency with the relevant policies of the Comprehensive Plan. However, the Hearings Officer includes the findings of compliance in the event it is determined that they are required.

## **Review of the Policies of the Bend Area General Plan**

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### **Chapter 1 – Plan Management and Citizen Involvement**

#### **Urban Planning Coordination**

- 2. *The city and special districts shall work toward the most efficient and economical method for providing their services within the UGB.***

**FINDING:** The City and the Bend Metropolitan Park and Recreation District ("Park District") have entered into an Intergovernmental Agreement which provides for coordinated planning and urban services between the City and the District. The Intergovernmental Agreement establishes Agreements Concerning Exchange of Information, Planning Roles and Responsibilities, Land Use Ordinances and Actions, Urban Services, Review and Modification of the Agreement and Annexation. Beyond general bureaucratic coordination, this agreement establishes that the Park District is responsible for providing information to the City regarding recreation and park needs (1.b), and that the Park District is responsible long-range park planning (5). With the current application, the applicant has submitted a letter from the Park District which indicates the following:

*"...we have recently completed an updated analysis for our Neighborhood Park Service Area 12, which includes the subject property. We are confident that even with proposed build-out of this service area, we will still meet our target Neighborhood Park acreage goals for Service Area 12, and therefore would not be interested in acquiring the subject property."*

The Bend Area General Plan establishes that the city and special districts shall work toward the most efficient and economical method for providing their services within the UGB. The City and the Park District have entered into an Intergovernmental Agreement which establishes an efficient and economical process which includes the Park District identifying and acquiring park areas. The Park District has clearly noted that the District is not interested in acquiring the subject property as a park. Accordingly, the Hearings Officer finds that the City has coordinated with the District in accordance with the applicable established and prescribed procedures, and that the policy statement of this section of the General Plan has been met.

### **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.***

**FINDING:** The review of the proposed Development Code text amendment has been and will continue to be processed in accordance with the public notification procedures prescribed within the Development Code, including public notification (with an opportunity to comment) of a public hearing before a Hearings Officer and public notification (with an opportunity to comment) of a public hearing before the City Council. The Hearings Officer finds that the mechanisms that have been established and prescribed within the Development Code to provide an opportunity for all citizens of the area to participate in the planning process will be accomplished and the policy of this section met.

### ***Chapter 2 – Natural Features and Open Space***

#### **Natural features and open space**

- 1. *The city and Bend Metro Park and Recreation District will inventory and maintain a list of natural features and open space lands that are important to the community.***

**FINDING:** The subject property is not identified by the City as being within the Deschutes River Corridor, as an Area of Special, as a designated riparian area or wetland, or as any other land that has been inventoried as containing natural features or open space important to the community. The Park District did not indicate that the property was part of any natural feature or open space inventory as important to the community, maintained by the District. Based on the above findings, the Hearings Officer finds that the proposed Development Code text amendment will not impact any natural features or open spaces that have been inventoried by the City or the District as being important to the community and thus is consistent with this policy.

- 2. *The city and Bend Metro Park and Recreation District shall share the responsibility to inventory, purchase, and manage public open space, and shall be supported in its efforts by the city and county.***

- 12. *The City shall develop flexible subdivision and development standards that make it easier for developers to provide open space within a neighborhood.***

- 15. *The Bend Metro Park and Recreation District shall designate areas in parks with significant natural values as undeveloped, managed open spaces for***

***natural habitat, educational, aesthetic and passive recreational use, and provide opportunities for trails, observation platforms, boardwalks, and interpretive signage.***

***17. Bend Metro Park and Recreation District shall acquire park sites and open space lands where possible to establish pedestrian, bikeway and greenway linkages between parks, open spaces, neighborhoods, and schools.***

**FINDING:** Opponents argue that the proposed text amendment does not comply with Policy 12, but does not articulate how Policy 12 is not met. The Hearings Officer finds that the text amendment will not alter any subdivision or development standards and therefore will not impact the ability of developers to provide open space within a neighborhood. The policy directs the City to adopt code provisions that remove obstacles to the creation of open space. It does not require private open space development. The Hearings Officer finds that the text amendment is consistent with this policy.

The text amendment is also consistent with Policies 15 and 17. The subject property is labeled as a park within figures of the text of the Development Code, but is neither identified as such on the Bend Area General Plan Map nor the District's Comprehensive Plan Map and is not identified as an area inventoried for open space, park, or trails on any City or District land inventories. Additionally, neither the City nor the District has indicated any desire to purchase or manage the subject property as a park or open space. The Hearings Officer finds that the Development Code with the proposed text amendments will remain consistent with these policies.

### ***Chapter 3 – Community Connections***

#### ***Parks and recreation facilities***

- 5. The Bend Metro Park and Recreation District, with the support of the city and county, shall ensure an equitable distribution of parks and open spaces throughout the District's jurisdiction.***
- 6. The Bend Metro Park and Recreation District shall identify "park deficient" areas of the community and shall acquire park and open space property in these areas.***
- 12. When it is consistent with the needs identified in the Park and Recreation District's Comprehensive Management and Development Plan, park land may be acquired from a willing developer during the land subdivision process.***
- 15. The Park and Recreation District shall strive to develop neighborhood parks or community parks within a convenient distance of every residence in the community.***

**FINDING:** The subject property is not identified as a planned park or open space within the District's Comprehensive Plan and given the letter submitted by the District it is clear that the surrounding area is not a "park deficient area." Based on the above findings the Hearings Officer finds that the Development Code with the proposed text amendment remains consistent with these policies.

**16. *Sites for small neighborhood parks are not shown on the Land Use Plan Map, but the city shall encourage private or public parties to develop small neighborhood parks.***

**FINDING:** Opponents argue that the fact that the Bend Metropolitan Park & Recreation District does not want to develop this site as a park is irrelevant since not all parks have to be under the Park District's jurisdiction. Opponents argue that the plan policies emphasis the development by private or public parties of small neighborhood parks and the removal of the park designation from the text would be inconsistent with this policy. The Hearings Officer finds that Policy 16 requires the City: "encourage" the development of small neighborhood parks. It, however, does not require private developers to provide parks, nor does it prohibit the modification of the code text to remove a park label from the NorthWest Crossing overlay zone text.

The current text of the Development Code was intended to implement the NorthWest Crossing Master Plan<sup>1</sup>. As noted by Long Range Planning, "The NW Crossing overlay was proposed and approved with certain interrelated elements that promote livability." The Master Plan does include a Pedestrian Bicycle Circulation and Parks Plan which identifies the subject property as Church Park, however as indicated in a letter by Hamilton and Kim Brown the Master Plan (pp. 22) also describes the Church Park as follows:

*This park is located adjacent to the West Side Church. The church is interested in developing this park with ball fields for its youth group activities. This park is also located to serve the adjacent neighborhood and commercial area. Church Park is subject to financing and final agreements between West Side Church and West Bend Property Company, LLC. If the West Side Church does not proceed with the park acquisition and development, then the land will be developed with residential uses.*

Thus the NorthWest Crossing Master Plan itself, which the text of the Development Code is intended to implement, is not definitive regarding to the ultimate development plan for the subject property; it clearly leaves open the possibility for development with residential uses.

The Westside Church has decided not to proceed with the park development, which appears to be one possible outcome prescribed in the Master Plan, which the Development Code is intended to implement. The current finding is focused on the extent to which the Development Code encourages a private party to develop a specific

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<sup>1</sup> See Ordinance NS-1782 / IV. Text Amendment to the City of Bend Zoning Ordinance NS-1178  
PZ 08-92  
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neighborhood park and the extent to which the current proposed Development Code text amendment impacts that encouragement. A further review of Section 2.7.300 NorthWest Crossing Overlay Zone of the Development Code will be addressed below, which will detail the interrelated elements which promote livability including any required neighborhood parks.

Upon a review of the decision making process for the NorthWest Crossing Overlay Zone text amendment (PZ 00-307 & PZ 00-388) staff was unable to identify any discussions or limitations that were placed upon the subject property, explicitly restricting the use to anything other than those uses identified in the Master Plan (a park or residential use). Thus because the policy statement of this section indicates that the City shall encourage private or public parties to develop small neighborhood parks, and because this stated encouragement can only become a requirement insofar as prescribed in the Development Code or a Land Use Decision, the Hearings Officer finds that the removal of the park label is consistent with the previously approved land use decisions (PZ 00-307 and PZ 00-388) which are implemented through the current text of the Development Code and thus the Development Code with the proposed text amendments will remain consistent with the above policy statement.

## ***Chapter 5 – Housing and Residential Lands***

### **Housing density and affordability**

- 21. Densities recommended on the Plan shall be recognized in order to maintain proper relationships between proposed public facilities and services and population distribution.**

**FINDING:** The subject property is located within the RS zone. The General Plan recommends and the Development Code implements a density range of 2.0 -7.3 units per gross acre within this zone. While Section 2.7.300 – NorthWest Crossing Overlay Zone of the Development Code does not explicitly establish density restrictions upon properties zoned Urban Standard Residential (as it does with some other overlay zones) the Master Plan itself (pp.15) establishes an overall planned density for NorthWest Crossing and planned densities for various districts. As detailed on page 15 of the Master Plan, the subject property is within District 10, which has a Modified Acreage of 47.6 acres and plans for 268 residential units, resulting in a Modified Gross Density of 5.6 units per acre. Removing the park label from the subject property, without increasing the planned number of dwelling units in this district, would result in the Modified Gross Acreage being increased by 2.4 acres, to 50 acres, resulting in a decreased Modified Gross Density for District 10 of 5.36 units per acre. The impact of the removal of the park label, without increasing the planned number of dwelling units upon the subject property, would increase the overall NorthWest Crossing Modified Gross Residential Acres by 2.4 acres, from 265.1 to 267.5 and decrease the total Modified Gross Density from 5.1 to 4.94 units per acre.



Assuming the 2.4 acre property were developed to the maximum density permitted within the RS Zone, 7.3 units per acre, the Planned Maximum Residential Units would increase by 18, resulting in a Planned Gross Density of 5.52 and a Planned Modified Gross Density of 5.72 in District 10 and a Planned Gross Density of 4.4 and a Planned Modified Gross Density of 5.2 for NorthWest Crossing overall.

Based on the above findings, the Hearings Officer finds that with the proposed Development Code text amendment, the planned residential density within District 10 individually and in NorthWest Crossing overall will be well within the range recommended in the General Plan and implemented through the Development Code and thus in conformance with the policy statement of this section.

**Transportation connectivity**

- 31. *Medium and high density developments shall be located where they have good access to arterial streets and be near commercial services, employment.***

**FINDING:** Opponents argue that it is inconsistent with this policy to have the park label removed where it was expressly located to serve medium density residential development.

The subject property is zoned RS, as are the nearby Residential Townhome Overlay and Residential Mixed Use Overlay Districts. The overlay zoning districts are within the NorthWest Crossing Master Plan densities, which meet the RS zoning district standards and allow for a range of uses, including all of those permitted in the RS Zone.

Accordingly, the Hearings Officer finds that the Residential Townhome Overlay District is not a medium or high density zoning district. Even if the Residential Townhome Overlay District were considered medium density housing, it is still near public open space. It is near Compass Park, Sunset Butte Park and the future planned location for Rimrock Natural Area Park. The Hearings Officer finds that the removal of the park label will be in compliance with Policy 31.

- 35. *Schools and parks may be distributed throughout the residential sections of the community, and every dwelling unit in the area should be within convenient distance of a school or a park.***

**FINDING:** As detailed in a review of policy 2 of Chapter 1, the City and Park District have entered into an Intergovernmental Agreement regarding maintenance of natural features and open spaces and the Park District is generally responsible for providing information to the City regarding park needs and long range park planning. The Park District has provided a letter stating that with the proposed build-out of the area of Neighborhood Park Service Area 12 (within which the subject property is located), that the District's Neighborhood Park acreage goals will be met, without the subject property

being included as a park. The District's Comprehensive Plan provides the following standards for Neighborhood Parks<sup>2</sup>:

### **NEIGHBORHOOD PARK STANDARDS**

#### **Purpose:**

- *To provide a location for the recreation needs of a surrounding residential neighborhood.*
- *To provide a location for informal play for neighborhood children and adults.*
- *To provide opportunities for social gatherings, both formal and informal, that will promote a sense of neighborhood and community.*
- *To provide green open space for a surrounding neighborhood.*

#### **Service Area:**

*Should serve distinct neighborhood areas.*

#### **Guidelines:**

*Distance: 1/4 to 1/2 mile radius*

*Service Population: 2,000 to 5,000*

#### **Specific Area:**

*As delineated by pedestrian access barriers such as unimproved on-grade crossings of arterial streets or railroad tracks, un-bridged irrigation canals or reaches of the Deschutes River, and other physical barriers. Barriers posed by on-grade crossings of arterial streets may be mitigated with roundabouts or other pedestrian friendly crossing designs. Neighborhood Park service areas are documented on the Neighborhood Park Plan map.*

#### **Size Guidelines:**

*1 to 2 acres per 1,000 population.*

*2 to 10 acres per site.*

#### **Location Criteria:**

- *Located as central as possible to the neighborhood which it serves.*
- *Conveniently accessible within 10-15 minutes on foot.*
- *Located along bikeway and trail connections.*
- *Located on at least two public roadways.*
- *Locating adjacent to an elementary school may provide for a greater array of services and may reduce space requirements.*

Based upon the Neighborhood Park standards, the letter received from the Park District, and the Intergovernmental Agreement between the City and the Park District, the

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<sup>2</sup> Bend Metro Parks and Recreation District – Parks, Recreation and Green Spaces Comprehensive Plan, pp. 7.20  
PZ 08-92  
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Hearings Officer finds that the Development Code with the proposed text amendment will be consistent with the policy statement of this section and maintain that every dwelling unit in the area be within convenient distance of a school or a park.

## ***Chapter 7 Transportation Systems***

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

**FINDING:** Opponents argue it is not consistent with the purpose of the Townhome Overlay District to remove any street or park connection with a townhome. The Hearings Officer disagrees. This policy applies to medium and high density residential development. The Townhome District is not a medium or high density residential development. Moreover, even if it were, the policy requires such developments be near open space. Even if the subject property is not developed with a park, the Townhome Overlay District is still near other open spaces as is described above under Chapter 5, Policy 31.

Based on the on the above findings the Hearings Officer finds that the Development Code with the proposed text amendment will remain consistent with the relevant policies of the Bend Area General Plan.

### **Bend Development Code Section 2.7.300 – NorthWest Crossing Overlay Zone**

#### **2.7.300 NorthWest Crossing Overlay Zone**

##### **Sections:**

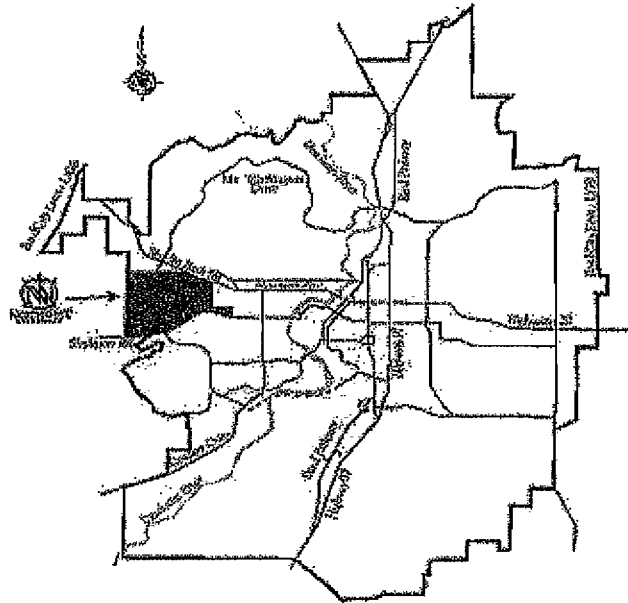
- 2.7.310 Definitions**
- 2.7.320 Districts**
- 2.7.330 NorthWest Crossing Special Street Standards**

**The purpose of the NorthWest Crossing Overlay Zone is to implement the NorthWest Crossing Master Development Plan and the Bend Urban Area General Plan policies regarding the NorthWest Crossing property, and to create overlay zoning standards for the residential, commercial and industrial districts within the NorthWest Crossing Master Development Plan boundaries. The overlay zone standards will:**

- **Provide a variety of employment opportunities and housing types**

- Locate higher density housing adjacent to collector and arterial streets of public parks<sup>3</sup>
- Create opportunities for community commercial and small scale businesses in selected locations to foster a mixed-use residential neighborhood.
- Promote pedestrian and other multi-modal transportation options.
- Ensure compatibility of uses within the development and with the surrounding area.
- Create an interconnected system of streets with standards appropriate to the intensity and type of adjacent use.
- Create safe and attractive streetscapes that will meet emergency access requirements and enhance pedestrian and bicycle access.

Figure 2.7.300  
NorthWest Crossing Overlay Zone



**FINDING:** As stated above, the Hearings Officer does not find that consistency with the NorthWest Crossing Overlay Zone is required. However, in the event it is determined that consistency with the overlay zone is required, the Hearings Officer provides the following findings.

This section provides a stated purpose of the NorthWest Crossing Overlay Zone. As related to the current proposal, bullet point number three indicates that a portion of the stated purpose of the NorthWest Crossing Overlay Zone is to locate higher density housing adjacent to collector streets, arterial streets, or public parks. The result of the

<sup>3</sup> Upon review of the PZ 00-307 and PZ 00-388 staff found that the "of" of this sentence was originally drafted as "or" and thus interpreted the "of" as being a typographical error. The Hearings Officer concurs.

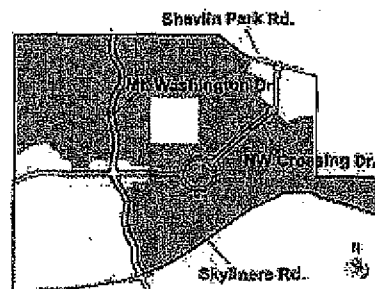
proposed text amendment will remove a park use restriction upon a property that is located adjacent to a property with a Residential Townhome Overlay to the southwest and Residential Mixed-use Overlay to the west. Between the subject property and the adjacent Townhome and Residential Mixed-use Overlay Zones is a planned collector street (identified as such within the NorthWest Crossing Master Plan, Section 2.7.300 – NorthWest Crossing Overlay Zone of the Development Code, and the adopted City of Bend Transportation System Plan) named Lehmi Pass Drive. Because the purpose statement indicates that higher density residential uses are intended to be located adjacent to arterial streets, collector streets, or parks and further because even with the removal of the park designation the adjacent properties (with higher density overlays) will remain located adjacent to one of these three elements (a collector street), the Hearings Officer concludes that the text amendment removing the park identification is consistent with the stated purpose of this section.

## 2.7.320 Districts

**A. Applicability.** The special standards of the NorthWest Crossing overlay districts shall supercede the standards of the underlying zone. Where no special standards are provided, the applicable standards of the underlying zone shall apply.

### **B. Urban Standard Residential District.**

- 1. Purpose.** The purpose of the Urban Standard Residential District is to implement the Urban Standard Residential Zone with flexibility to allow greater lot coverage to accommodate single-family houses on small lots. The Urban Standard Residential District in NorthWest Crossing also is the base zone for the Residential Overlay Districts described in Sections B, C, D, E and F.

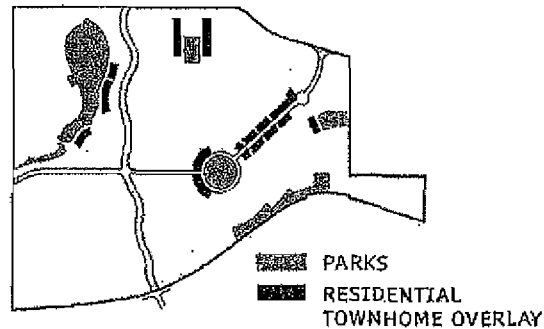


**Figure 2.7.320.A**  
**Urban Standard Residential District**

**FINDING:** Unlike some of the other higher density residential overlay districts, neither the stated purpose nor the development standards of this section establish a intended proximity to a park or other development element such as arterial street, collector street, or commercial area, thus the proposed Development Code text amendment which would eliminate park identifications upon the subject property would not impact the stated purpose of this section of the Development Code.

### C. Residential Townhome Overlay District.

1. **Purpose.** The purpose of the Townhome Overlay District is to permit townhomes along collector streets, adjacent to public parks or a Multiple-Family District. The Townhome District will allow a diversity of housing types and a mix of residential density within NorthWest Crossing.



**Figure 2.7.320.B**  
**Residential Townhome Overlay District**

**FINDING:** Figure 2.7.320.B identifies areas of the Residential Townhome Overlay District. This Overlay District is spread throughout the NorthWest Crossing Overlay Zone and is located near parks, collector streets, and the Multiple-family districts. All of the areas of the Residential Townhome Overlay District are located adjacent to another Multiple-family or mixed use overlay district. Furthermore some of the areas of the Residential Townhome Overlay District are adjacent to a park area only, some to a collector street only, and some to both a park and a collector street. The majority of the areas of the Residential Townhome Overlay District are adjacent to just one of the park/collector street development elements. The area of the Residential Townhome Overlay District near the subject property is currently adjacent to an area identified as a park (Church Park) and the planned collector street of Lehmi Pass Drive. The proposed Development Code text amendment, by removing the park label from the subject property, would result in the Residential Townhome Overlay District being adjacent to the collector street but not a park. This is consistent with other areas of the Residential Townhome Overlay District and thus consistent with the stated purpose of this section.

### E. NorthWest Crossing Residential Cluster Overlay District.

1. The purpose of this section is to provide a housing type that responds to changing household sizes and ages (e.g. retirees, small families, single person households) and provides opportunities for ownership of small, detached dwelling units within the NorthWest Crossing neighborhood. The Residential Cluster Overlay Zone supports the following principles:



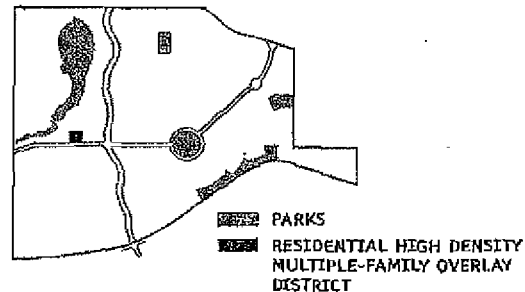
**Figure 2.7.320D**  
**NorthWest Crossing**  
**Residential Cluster Housing**  
**Overlay**

- Encourages the creation of more usable open space for residents of the development through flexibility in density and lot standards;
- Supports the growth management goal of more efficient use of urban residential land;
- Provides development standards to ensure compatibility with surrounding land uses; and
- Creates a small area of higher density residential development within the RS zone with detached dwellings and private and shared open space.

**FINDING:** Unlike some of the other residential overlay districts, neither the stated purpose nor the development standards of this section establish an intended proximity to a park or other development element (i.e. park, arterial street, collector street, commercial area, etc.), furthermore there is no Residential Cluster Overlay District in close proximity to the subject property, thus the Hearings Officer finds that the proposed Development Code text amendment which would eliminate a park label from the subject property would not impact this section of the Development Code.

#### **F. Residential High Density Multiple-family Overlay District**

1. **Purpose.** The Residential High Density Multiple-family Overlay District is applied in specific locations adjacent to arterial or collector streets, public parks or commercial areas. The purpose is to provide a diversity of housing types in the Urban Standard Residential Zone at the edges of single-family neighborhoods and to locate higher density housing adjacent to commercial services and open space.

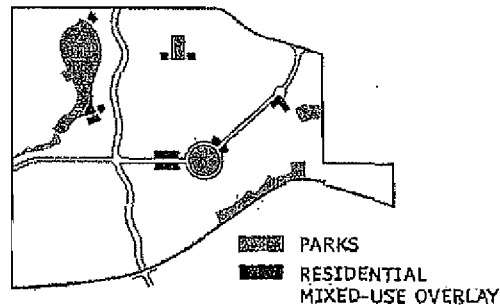


**Figure 2.7.320E**  
**Residential High Density Multi-family Overlay**

**FINDING:** There is only one area of Residential High Density Multiple-family Overlay District within the NorthWest Crossing Overlay Zone and it has a stated purpose of being located near, arterial or collector streets, public parks, or commercial areas. The proposed Development Code text amendment to remove a park label from a property that is not within close proximity to the Residential High Density Multiple-family Overlay District, will not impact this District's proximity to the adjacent streets, parks and commercial area, and thus the Hearings Officer finds, will not impact this section of the code.

**G. Residential Mixed-use Overlay District**

1. **Purpose.** The Residential Mixed-use Overlay District is applied in locations adjacent to collector streets or public parks to allow higher density residential uses, live/work housing and community commercial uses in the Urban Standard Residential Zone. The purpose is to create small areas of mixed-use at specific locations within the neighborhood.

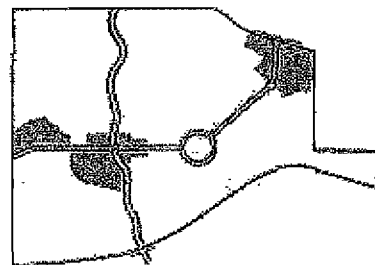


**Figure 2.7.320.F**  
**Residential Mixed-Use Overlay**

**FINDING:** Figure 2.7.320.F identifies areas of the Residential Mixed-use Overlay District. This Overlay District is spread throughout the NorthWest Crossing Overlay Zone and is located in proximity to parks or collector streets. The areas of the Residential Mixed-use Overlay District are located adjacent a park area only, to a collector street only and some to both a park and collector streets. The majority of the areas of the Residential Mixed-use Overlay District are adjacent to just one of the specified development elements (collector street or park). The area of the Residential Mixed-use Overlay District near the subject property is currently adjacent to a park and the planned collector street of Lehmi Pass Drive, thus adjacent to two of the necessary development elements. The proposed Development Code text amendment, removing the park label from the subject property, would decrease the number of specified development elements to which this one area of the Residential Mixed-use Overlay District is adjacent. However this area would still be adjacent to a collector street, which is consistent with other areas of the Residential Mixed-use Overlay District and consistent with the stated purpose of this section.

**H. Commercial/Mixed Employment Overlay District**

1. **Purpose.** The purpose of this District is to allow a special front yard setback that is not permitted in the underlying Commercial Limited and Mixed Employment Zones and to create parking districts. The purpose of the parking districts is to allow minimum parking needs to be met in common, shared, off-site parking lots. The special setback and parking districts will create



**Figure 2.7.320.K**  
**Commercial / Mixed Employment District**

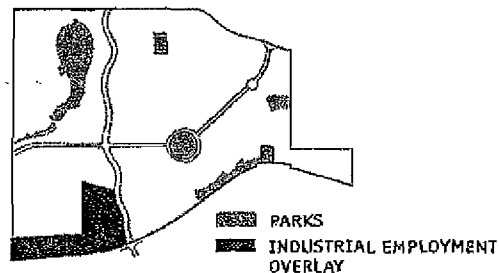


a pedestrian friendly, main-street environment.

**FINDING:** The subject property is adjacent to Commercial/Mixed Employment Overlay District, however the stated purpose of this section does not address the proximity to parks, streets, and higher density residential uses, but rather only addresses front yard setbacks and off-street parking lots. The proposed Development Code text amendment removing the park identification from the subject property on figures within Section 2.7.300 will not impact this section of the Code.

#### I. Industrial Employment Overlay District

1. **Purpose.** The purpose of the Industrial Employment Overlay District is to provide for research or development of materials, methods, or products, and compatible light manufacturing, in a park-like.



**Figure 2.7.320.L  
Industrial Employment  
Overlay District**

**FINDING:** The subject property is not adjacent to Industrial Employment Overlay District, and furthermore the stated purpose of this section does not consider or address the proximity to parks, streets, and higher density residential uses, but rather uses only. The proposed Development Code text amendment removing the park identification from the subject property on figures within Section 2.7.300 will not impact this section of the Code.

#### **2.7.330      NorthWest Crossing Special Street Standards**

- A. Figure 2.7.330(A) depicts the street type, tentative street location and alignment in NorthWest Crossing. Table B defines the standards to correspond to the street type shown in Figure 2.7.330(A). The precise street alignment shall be determined as tentative subdivision plans are submitted and approved. The NorthWest Crossing Street Type Plan, Figure 2.7.330(A), and the NorthWest Crossing Street Standards, Table 2.7.330(B), shall be applied to the NorthWest Crossing development as illustrated except when an alternate standard is permitted under this Section or through the tentative plan approval process.
- B. Any city street standard adopted after the effective date of this chapter, which permits a lesser street standard may be applied to NorthWest Crossing in conformance with the provisions of the new standard.
- C. **Clear Vision Area.** At local/local, stop controlled street intersections, the clear vision areas shall consist of a triangular area two sides of which are lot lines

measured from the corner intersection on the street lot lines for a distance of 20 feet.

**D. Performance Standards for Local Residential Street "B":**

- 1. Average daily traffic volumes on the local "B" street does not exceed 300 ADT.**
- 2. The street is connected to a grid street pattern at both block ends.**
- 3. Blocks shall have dedicated public alley access constructed to City standards.**
- 4. "No Parking" zones are established 55 feet from the centerline of intersecting local streets.**
- 5. For block lengths exceeding 300 feet, "No Parking" zones shall be established on both sides of the street spaced no greater than 250 feet apart. The "No Parking" zones shall be a minimum of 30 feet in length.**

**FINDING:** The proposed Development Code text amendment does not include any new uses or developments and does not propose to alter any street type, location, or alignment, thus the standards of this section will not be altered by the proposed Development Code text amendment.

Based on the above findings, the Hearings Officer finds that, if required, the proposed Development Code Text Amendment is consistent with the stated purpose of the NorthWest Crossing Overlay Zone as a whole and with each of the Overlay Zoning Districts of the NorthWest Crossing Overlay Zone.

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

**FINDING:** The Hearings Officer finds that the text amendment will not create any greater demand on transportation networks. As will be discussed in further detail below, the Hearings Officer finds that the "park" map text and the NorthWest Crossing Overlay District regulations do not restrict the use of the subject property to park use only. The change is to correct a mistake in the code language. However, the applicant submitted a Traffic Impact Analysis with its site plan and design review application file PZ 08-91, which has been consolidated with this text amendment application. The applicant has provided evidence to show that with appropriate conditions of approval, there will be adequate public facilities, services and transportation networks to support the proposed use. Detailed findings regarding the adequacy of public facilities to serve the proposal are in the Decision of File PZ 08-91, as modified by the Modification of Application.

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

**FINDING:** The Hearings Officer finds that there has been a change in the neighborhood or community and a mistake or inconsistency in the land use district map regarding the property. A review of the facts regarding the adoption of the NorthWest Crossing Overlay Zone is instructive to show the series of events which can be identified as mistakes which has resulted in an inconsistency between the text of the NorthWest Crossing Overlay Zone and the land use district map for the subject property. The history also shows the change in the neighborhood or community which also justifies the text amendment.

On July 7, 2007, Westbend Property Company, LLC ("Westbend") applied for a zone change and plan amendment to create an overlay zoning for NorthWest Crossing. Westbend developed the NorthWest Crossing Master Plan, which was used by Westbend and the City of Bend to develop the overlay district to implement the NorthWest Crossing Master Plan. The NorthWest Crossing Master Plan provides the following information regarding the "Church Park":

*"This park is located adjacent to the Westside Church. The Church is interested in developing this park with ball fields for its youth group activities. This park is also located to serve the adjacent neighborhood and commercial area. Church Park is subject to financing and final agreements between Westside Church and Westbend Property, LLC. If the Westside Church does not proceed with park acquisition and development, then the land will be developed with residential uses."*

The Bend City Council adopted the NorthWest Crossing Overlay Zoning Ordinance and Zoning Maps on May 2, 2001. The NorthWest Crossing Master Plan was not formally adopted as a part of the ordinance. The text of the zoning ordinance includes maps that are the subject of this text amendment. These maps include labels of "park" and "Church Park 2.4 ac". However, the ordinance contains no language or text expressing limitations on the use of the RS Zoned property that is the subject of this application. Nor, does the zoning ordinance contain a park overlay zone that would limit the use of the property to park use. It is apparent from this lack, that there was a mistake made when the NorthWest Crossing Master Development Plan was implemented through the City adoption of the NorthWest Crossing Overlay Zoning Ordinance and Zoning Maps. This has created an inconsistency between the land use district map for the subject property which shows it as RS and the text in the NorthWest Crossing Overlay District map with the label "church" or "Church Park 2.4 ac".

It is not clear whether the mistake was that Westbend and City intended to require the subject property to be developed with a "Church Park" or "park", or whether the labels in the ordinance of Church Park or park were mistakenly included. The Hearings Officer finds that is more likely that the later is the case because there was no overlay district language adopted for a park overlay zone and because of the stated uncertainty regarding the whether the subject property would be sold to the Church and developed as either a park or with residential uses.

Subsequent events also lead to the likelihood that the mistake was in including the labels. On May 4, 2005 the City of Bend adopted amendments to the NorthWest Crossing Zoning Ordinance and Districts which removed the labels "park" and "Church Park 2.4 ac" from the text. On December 20, 2005, Westbend sold 2.43 acres to the Church. At that time, the City's zoning text maps did not contain the "Church Park 2.4 ac" or "park" labels.

January 13, 2006, the City of Bend approved development which included 5 residential dwelling lots on property labeled "Church Park 2.4 ac". On June 15, 2006, the City of Bend staff provided a memo to City Council that the Bend Development Code update would include changes to NorthWest Crossing. It is likely that those amendments would have been the amendments adopted May 4, 2005. However, on July 5, 2006 the City of Bend adopted a modified development code which included and replaced the "Church Park 2.4 ac" and "park" labels on the zoning text maps, instead of the maps adopted by the City in May of 2005.

The Hearings Officer finds these series of events illustrate a series of mistakes, or at a minimum, a series of changes in the community with regard to the text that is the subject of this application.

Applicant made several arguments to support its assertion that the words "park" and "Church Park 2.4 ac" found on the maps of the overlay district text are illustrative and not regulatory. The Hearings Officer concurs and finds that the arguments also support the conclusion that the labels were mistakenly included. Those arguments are as follows:

*A. The map includes the "Church Park" text, BDC Figure 2.7.330C, is the overlay zoning map for NorthWest Crossing. It shows where NorthWest Crossing overlay zones are located. The map legend lists each and every overlay district. The legend does not list "Church Park" as an overlay zone.*

*B. BDC figure 2.7.330C, NorthWest Crossing Overlay Districts map, applies a Standard Residential Zone overlay designation, not a park overlay designation, to the Church property.*

*C. The NorthWest Crossing Special Planned District contains no overlay zones for parks or for a "Church Park". The District applies special zoning regulations by overlay zoning. The absence of an overlay zone for areas labeled "park" or "Church Park" indicates that the labels are illustrative rather than regulatory.*

*D. Similar labels on BDC Figure 2.4.330C do not create zoning restrictions. Similar labels are applied to both schools and streets without creating a special overlay zone. For instance, a "High Lakes Elementary School" label is provided on land in the Standard Residential Zone overlay. That label, like the "Church Park 2.4 ac" label, does not create a special overlay zone for the property. For instance, the map does not bind*

*the school district to use the school as an elementary school rather than as an upper level magnet school.*

*E. The Overlay District Map fails to show what part of the at least 3.4 acres Standard Density Residential area between Newport Hills Drive, Lemhi Pass Drive and an unnamed street is to be "Church Park 2.4 ac." It is impossible to tell from the Figure 2.7.330C overlay zone map what 2.4 acre part of the 3.4 acre area<sup>(4)</sup> is labeled "Church Park 2.4 ac." If a Church Park overlay zones was being applied by this map, a more precise delineation would have been provided. Without any delineation of park boundaries within the RS overlay zone, this map is too unclear to be used as a zoning map<sup>(5)</sup>.*

*F. The illustrative map shows "parks" do not apply to the Standard Residential District. The maps illustrate the text of other overlay zones in NorthWest Crossing."*

(4.) This area includes land owned by West Bend Property Company, LLC and the Westside Church's parent church. The church-owned part of the area is approximately 2.41 acres in size. The West Bend Property Company LLC portion of this area appears, from the tentative plan for NorthWest Crossing, to be about one acre in size.

(5.) An unadopted NorthWest Crossing Master Plan map shows that the park area was intended to be located in the southern part of the RS-overlay area located north of Newport Hills Drive. However, that map was not adopted by the City and does not regulate the use of land in NorthWest Crossing. Based on this map, it is the applicant's belief that the north one acre of its property is not affected by the "Church Park 2.4 ac." Label.

The Hearings Officer finds that because the proposal is not a comprehensive plan amendment or land use district change, it does not significantly affect a transportation facility and the provisions of Section 4.6.600 do not apply.

Based on the above discussion the Hearings Officer finds that the proposed Development Code Text Amendment conforms to the criteria of this section.

#### **4.6.400 Intent to Rezone**

**A. If the City Council determines that the public health and welfare and convenience will best be served by a proposed change of the zone, the City Council may indicate its general approval in principal of the proposed rezoning by the adoption of a "Resolution of Intent to Rezone"...**

**FINDING:** The proposed amendment is to the text of the Bend Development Code and does not include a change of zone, therefore the criteria of this section is not applicable.

#### **4.6.500 Record of Amendments.**

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

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

#### **4.6.600 Transportation Planning Rule Compliance.**

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

**FINDING:** The proposal is for a text amendment to the Bend Development Code; it is not a comprehensive plan amendment or a land use district change, and it does not significantly affect a transportation facility. Therefore, the criteria of this section is not applicable. However, to the extent that it is determined that the TPR compliance is required, the Hearings Officer finds that based on the Traffic Impact Analysis submitted by the applicant, the proposal will not significantly affect a transportation facility.

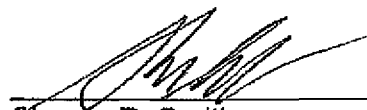
#### **IV. CONCLUSIONS:**

Based on the above Findings of Fact and Conclusionary Findings, the Hearings Officer finds the proposed Development Code text amendment can meet, with required public hearings and maintenance of a record, all applicable criteria of the Development Code.

#### **V. RECOMMENDATION:**

The Hearings Officer recommends, to the City Council, adoption of the proposed Development Code text amendment.

Dated this 27<sup>th</sup> day of January, 2009.



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Sharon R. Smith  
Hearings Officer for the City of Bend

**CITY OF BEND PLANNING DIVISION  
STAFF SUPPLEMENTAL FINDINGS AND RECOMMENDATION**



**PROJECT NUMBER:** PZ 08-92

**HEARING DATE:** September 2, 2009, 7:00 pm  
City of Bend Council Chambers  
710 NW Wall Street  
Bend, OR 97701

**DATE MAILED:** August 26, 2009

**HEARINGS BODY:** City Council

**APPLICANT:** Westside Church  
2051 NW Shevlin Park Road  
Bend, OR 97701

**OWNER:** International Church of the Foursquare Gospel  
1910 W. Sunset Boulevard, Suite 200  
Los Angeles, CA 90026

**APPLICANT'S ATTORNEYS:** Liz Fancher  
644 NW Broadway Street  
Bend, OR 97701

**APPLICANT'S AGENT:** Otak, Inc.  
Ron Kempe  
333 SW Upper Terrace Drive  
Bend, OR 97702

**LOCATION:** The site is located on the south side of Shevlin Park Road, east of Northwest Crossing Drive, and west of Newport Hills Drive. Although a separate tax lot, the subject property is located at the southwestern edge of a property that has been assigned an address of 2051 NW Shevlin Park Road (Westside Church property). The property is identified as Tax Lot 311 on the Deschutes County Assessor's Map 17-11-36.

**REQUEST:** The applicant requests that the City of Bend remove the words "Church Park 2.4 ac" from Figure 2.7.330C, NorthWest Crossing Overlay District. The applicant also requests that the figures identified as 2.7.320.B; 2.7.320.C; 2.7.320D; 2.7.320E; 2.7.320.F;

2.7.320.L; and 2.7.330C, be amended to delete the park identification shading from the subject property (17-11-3600-00311).

**STAFF** Greg Blackmore, Associate Planner; (541)693-2123;  
**REVIEWER:** gblackmore@ci.bend.or.us

**I. APPLICABLE PROCEDURES:**

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

(a) Chapter 4.1; Land Use Review and Procedures

**4.1.895 Reopening the Record.**

**A. The Hearings Body may at its discretion reopen the record, either upon request or on its own initiative. The Hearings Body shall not reopen the record at the request of an applicant unless the applicant has agreed in writing to an extension or a waiver of the 120-day time limit.**

**FINDING:** At its August 5, 2009 regular meeting, the City Council decided that upon a remand from the State Land Use Board of Appeals (LUBA) regarding development on the property (associated with City File PZ 08-91 / 08-449), the record for this text amendment would be reopened to allow the remand and responses thereto to be entered as new evidence.

**B. Procedures.**

**1. Except as otherwise provided for in this section, the manner of testimony (whether oral or written) and time limits for testimony to be offered upon reopening of the record shall be at the discretion at the Hearings Body.**

**FINDING:** The Council indicated that oral and written testimony would be accepted prior to the close of the record at the September 2, 2009 public hearing proceeding.

**2. The Hearings Body shall give written notice to the parties that the record is being reopened, stating the reason for reopening the record and how parties can respond. The parties shall be allowed to raise new issues that relate to the new evidence, testimony or criteria for decision-making that apply to the matter at issue.**

**FINDING:** At the direction of the City Council, on August 12, 2009 notice that the record was being reopened was sent to all parties to the record.



## **II. RECOMMENDATION**

Staff had originally concurred with the Hearings Officer's findings and recommendation, and continues to do so herein.

Subsequent to the April 1, 2009 public hearing, and in response to comments received in opposition to the proposal, the Church has proposed specific use restrictions upon the subject property. The final proposed use restrictions are the result of mediation between the Church and the Newport Hills Homeowners Association. Additionally, mediation between the Church and the Homeowners Association resulted in the mutual desire for the possible transfer the set-aside to the Homeowners Association and for development thereupon to be a park. However, if the Homeowners Association purchase and development as a park aspiration is not feasible, the Church and the Homeowners Association acknowledge that development of the set-aside area for other specific uses would be acceptable.

In response to the revised proposal, resulting from the mediated effort between the Church and the Homeowners Association, Staff recommends adoption of an ordinance, that clarifies the proposed mediated use restrictions on the property, and allows a special partitioning regulation, which would allow for the transfer of the set aside area, without requiring costly infrastructure improvements at time of land division.



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MAILED FROM ZIP CODE 97701

**CITY OF BEND  
COMMUNITY DEVELOPMENT DEPARTMENT**

710 NW WALL STREET  
BEND, OR 97701

TO:

Attn: Plan Amendment Specialist  
Dept. of Land Conservation & Dev  
635 Capitol St NE Ste 150  
Salem OR 97301-2540