



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

NOTICE OF ADOPTED AMENDMENT

July 11, 2008



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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Bend Plan Amendment
DLCD File Number 006-08

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT OR DEADLINE TO APPEAL: July 23, 2008

This amendment was not submitted to DLCD for review prior to adoption. Pursuant to OAR 660-18-060, the Director or any person is eligible to appeal this action to LUBA under ORS 197.830 to 197.845.

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

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

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

<paa>

FORM 2

DLCD NOTICE OF ADOPTION DEPT OF

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

JUL 07 2008

(See reverse side for submittal requirements)

LAND CONSERVATION
AND DEVELOPMENT

Jurisdiction: City of Bend Local File No.: 07-649
(If no number, use none)

Date of Adoption: 6/18/08 Date Mailed: 6/30/08
(Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 6/30/08

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

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

Amend the Bend Urban Area Zoning map and General Plan by changing zoning and plan designation of two parcels of land totaling 3.72 acres from Industrial Light (IL) to Mixed Employment (ME)

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

Same

Plan Map Changed from: IL to ME
Zone Map Changed from: IL to ME
Location: 17-12-28B tax lots 700 + 902 Acres Involved: 3.72
Specify Density: Previous: None New: None
Applicable Statewide Planning Goals: Goal 9 + 1, 12
Was an Exception Adopted? Yes: No:

DLCD File No.:

006-08 (NOA)

Did the Department of Land Conservation and Development receive a notice of Proposed Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing**. Yes: No:
If no, do the Statewide Planning Goals apply. Yes: No:
If no, did The Emergency Circumstances Require immediate adoption. Yes: No:
Affected State or Federal Agencies, Local Governments or Special Districts: None

Local Contact: Debbie Croom Area Code + Phone Number: 541-312-4916
Address: P O Box 431
City: Bend OR Zip Code+4: 97709

ADOPTION SUBMITTAL REQUIREMENTS

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

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:
ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540
2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will 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 copy this form on to 8-1/2x11 green paper only ; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to Larry.French@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

ORDINANCE NO. NS-2097

AN ORDINANCE AMENDING THE BEND URBAN AREA ZONING MAP AND GENERAL PLAN MAP BY CHANGING THE ZONING AND PLAN DESIGNATION OF TWO PARCELS OF LAND TOATLING 3.72 ACRES LOCATED AT THE SOUTHEAST AND SOUTHWEST CORNER OF 4TH STREET AND BUTLER MARKET ROAD FROM IL INDUSTRIAL LIGHT TO ME MIXED EMPLOYMENT.

THE CITY OF BEND ORDAINS AS FOLLOWS:

- Section 1. The Bend City Council held a public hearing to consider the Hearings Officer's findings and record, and found that the Zone Change and Plan Amendment is consistent with the criteria of the Bend Development Code Section 4.6.300 as shown in Exhibit D. The Bend City Council adopts the findings in Exhibit D.
- Section 2. The Bend Urban Area Zoning Map and General Plan map is hereby amended by changing the zoning and plan designation of the properties shown in "Exhibit A" and described in "Exhibit B" from Industrial Light (IL) to Mixed Employment (ME) and subject to the conditions in Exhibit C.

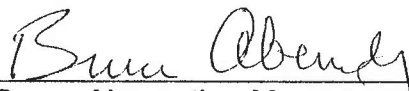
Read for the first time the 4th day of June, 2008.

Read for the second time the 18th day of June, 2008.

Placed upon its passage the 18th day of June, 2008.

YES: 7 NO: 0

Authenticated by the Mayor the 18th day of June, 2008.



Bruce Abernethy, Mayor

ATTEST:



Patricia Stell, City of Bend Recorder



PZ 07-649 Zone Change (IL to ME)



Subject Property

Current Zoning

CC	CL	IL	RM
CG	IG	ME	RS



Imagery acquired March 2004.
Map prepared May 20, 2008.

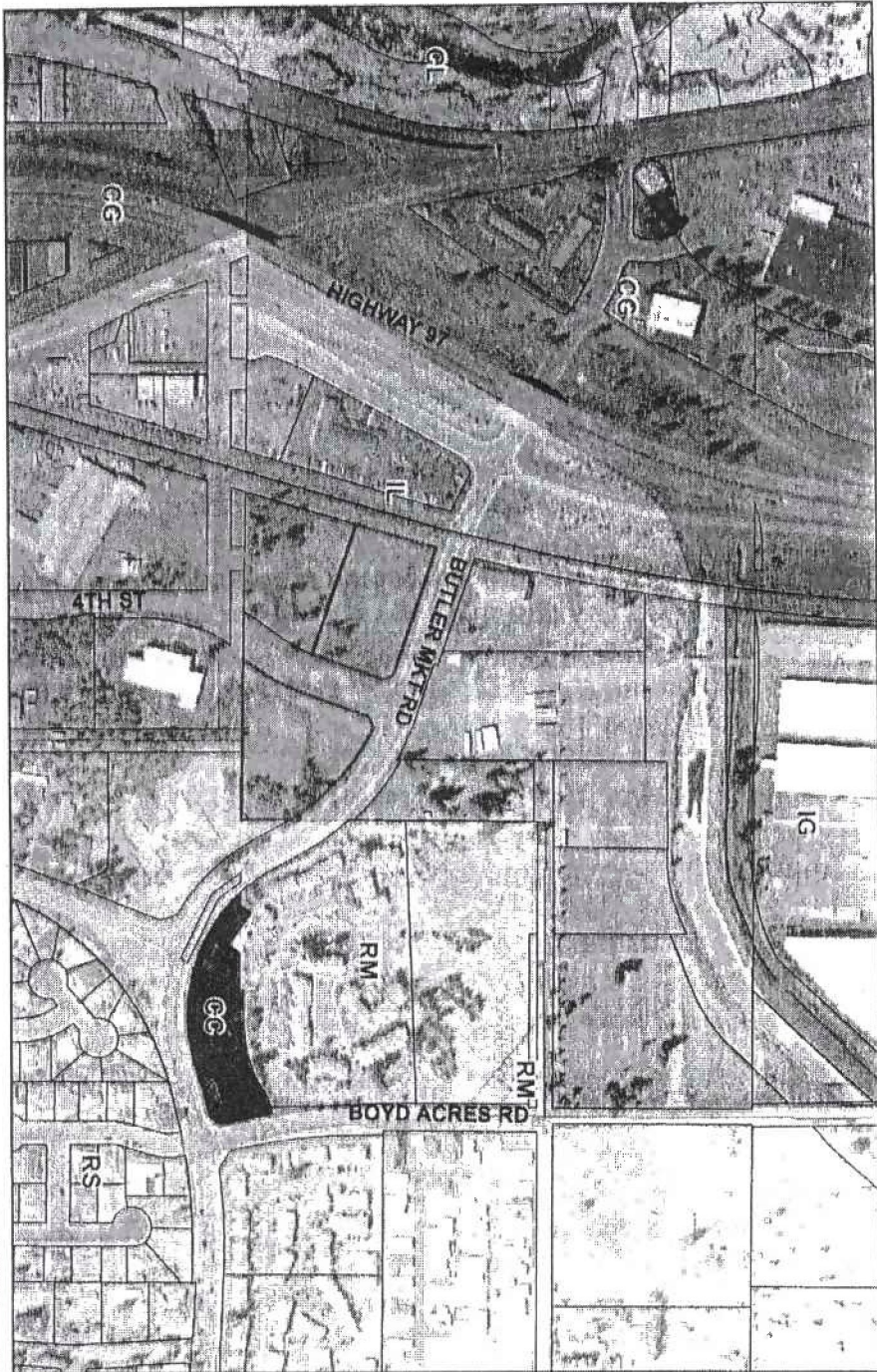
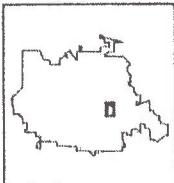


EXHIBIT B
LEGAL DESCRIPTION

All that property being a portion of the Northwest Quarter (NW1/4) of Section 28 Township 17 South, Range 12 East, Willamette Meridian, in the City of Bend, Deschutes County, Oregon, described as follows:

That parcel of land described by deed from Deschutes County To Bend Millwork Systems, Inc., recorded July 8, 1994 in Volume 345, Page 823 of Deschutes County Official Records.

TOGETHER WITH that parcel of land described by deed recorded May 1, 1997 in Volume 446, Page 1876 of Deschutes County Official Records.

EXCEPTING THEREFROM that portion of said parcel lying North of Butler Market Road (the right of ways of said street are defined in that deed from Bend Millwork Systems, Inc., to Deschutes County, recorded July 8, 1994 in Volume 345, Page 826 of Deschutes County Official Records.

EXHIBIT B

LEGAL DESCRIPTION IN TAX LOT 700

Parcel 1 of Partition Plat 2005-6, Deschutes County, Oregon.

17 12 28BO 00700

EXHIBIT C

CONDITIONS OF APPROVAL

- a. The applicant shall record a deed containing the following development and use restrictions on Tax Lots 700 and 902, prior to the City Council's final reading of the zone change ordinance:

"Uses allowed on the subject property described in Exhibit A attached to this deed shall be restricted to those which generate a primary p.m. peak hour trip rate as defined in the ITE Manual dated March 2001 of equal to or less than twenty seven (27) into the site and forty one (41) out of the site plus p.m. peak hour pass by trips of five (5) into the site and five (5) out of the site. This trip generation cap shall be enforceable by the City of Bend and shall run with the land and be fully binding upon the current and future owners of the property described herein and shall restrict the future development and use of the property by current and future owners of the property. This trip generation cap may be amended and/or released only by a recorded written document which shall be executed by the City of Bend upon a demonstration by the owner of compliance with the Transportation Planning Rule (TPR), OAR 660-012-0060, as may be subsequently amended."

- b. A Change of Use Site Plan review will be required for this property which is currently designated as (Tax Lot 902) by the Deschutes County Tax Assessor and which is more particularly described in Exhibit A to this Deed for any use other than the industrial warehouse use approved in City of Bend, Community Development Department File PZ -05-606. Site Plan review will be required for tax lot 700 prior to any building permits.

EXHIBIT D

HEARINGS OFFICER'S FINDINGS AND DECISION

FILE NUMBER: 07-649

DATE: May 16, 2008

**APPLICANT/
OWNER:** Woodside Development LLC
60025 Ridgeview Drive
Bend, OR 97702

**ATTORNEY &
PLANNING:** Tia M. Lewis &
Mark Rust, AICP
Schwabe Williamson & Wyatt
549 SW Mill View Drive, Suite, 101
Bend OR 97702

ENGINEER: Ferguson & Associates
PO Box 1336
Bend OR 97709

**SUBJECT
PROPERTY:** The subject properties are located on the southeast and southwest corners of Butler Market Road and NE 4th Street in northeast Bend, also described on the Deschutes County Assessor's Map 17-12-28B, Tax Lots 700 and 902.

REQUEST: The request is for a Zone Change and Plan Amendment on two parcels from Light Industrial (IL) to Mixed Employment (ME).

STAFF: Debbie Croom, Associate Planner, 541-312-4916;
dcroom@ci.bend.or.us

HEARING OFFICER: Sharon R. Smith

APPLICABLE CRITERIA:

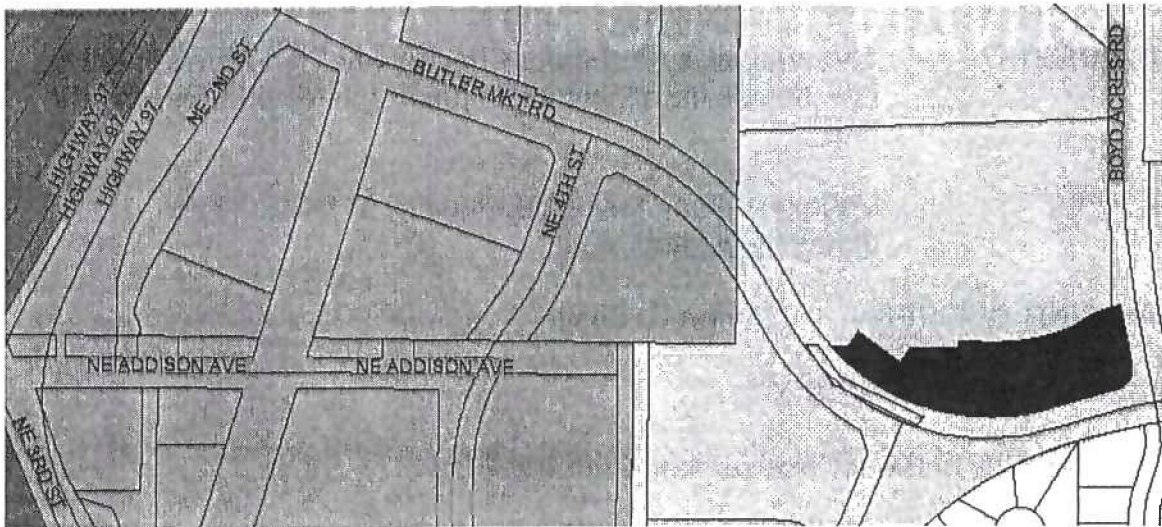
- (1) City of Bend Development Code NS-2016
 - (a) Chapter 2.3; Mixed Use Districts
 - (b) Chapter 2.4; Industrial Districts
 - (c) Chapter 4.1; Land Use Review and Procedures
 - (d) Chapter 4.6; Land Use District Map and Text Amendments
 - (e) Chapter 4.7; Transportation Analysis
- (2) Oregon Administrative Rules 660-012-0060 Plan and Land Use Regulation Amendments
- (3) Oregon Administrative Rules Chapter 660, Division 15, Oregon Statewide Planning Goals
- (4) Bend Urban Area General Plan
- (5) Bend Urban Area Zoning Map

FINDINGS OF FACT:

1. **LOCATION:** The subject properties are located on the southeast and southwest corners of Butler Market Road and NE 4th Street in northeast Bend, also described on the Deschutes County Assessor's Map 17-12-28B, Tax Lots 700 and 902.
2. **ZONING:** The subject property is zoned Industrial Light (IL) and is designated (IL) on the Bend Area General Plan map.
3. **SITE DESCRIPTION & SURROUNDING USES:** Tax lot 700 is 1.71 acres lying on the southwest corner of Butler Market Road and 4th Street. The Burlington Northern Railroad lies along the west boundary of this tax lot. Tax lot 700 is vacant. Butler Market Road lies along the northern property boundary, and 4th Street creates the eastern boundary. The property is bordered on the south by an IL zoned property that is developed with a mix of commercial industrial uses including a retail farm supply store. Across the railroad tracks to the west is an automotive dealership.

Tax lot 902 is 2.01 acres lying on the southeast corner of Butler Market Road and 4th Street. It was recently developed with a 23,400 square foot building, as approved in Administrative Review File No. 05-606. Currently, the existing building is unoccupied.

To the east, northeast and southeast of the subject properties lies a lengthy strip of RM (Residential Medium Density) zoned land developed primarily with multi-family housing, and to the east of this strip lies a Residential Urban Standard Density District, which is developed with single family homes. To the southwest, west and north is the remainder of the Light Industrial District which continues west to the Bend Parkway. This area is developed with a mix of commercial industrial uses including the aforementioned retail farm supply store and auto sales lot.



4. **PROPOSAL:** The applicant is requesting a Plan Amendment and Zone Change from IL, (Light Industrial) to ME, (Mixed Employment).
5. **PUBLIC NOTICE AND COMMENTS:** The City of Bend Planning Division sent notice of the request to surrounding owners of record of property as shown on the most recent property tax assessment roll within 250 feet of the subject property. Two letters in support were submitted, including a letter from the Neighborhood Association. Notices were also sent to City Departments and other affected agencies for their comment.

The City received comments from the Engineering Division, Transportation, Long Range Planning and ODOT. Their comments and recommendations were considered in this Review and Decision and are contained in the project file 07-649.

In addition, notice of the hearing was published in the Bend Bulletin newspaper on April 27, 2008.

6. **APPLICATION ACCEPTANCE DATE:** The application for this project was deemed complete March 13, 2008.
7. **HEARING/RECORD:** A public hearing was held on May 9, 2008. The applicant's representative submitted testimony and evidence into the Record. The Record was left open until 5:00 p.m. on May 9, 2008 to allow the Applicant to submit a proposed condition of approval.

I. CONCLUSIONARY FINDINGS:

**CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE,
CHAPTER 2.3 MIXED USE DISTRICTS (ME,MR AND PO)**

2.3.200 Permitted Land Uses

Commercial	ME	MR	PO
Retail Sales and Service			
<ul style="list-style-type: none"> • Not to exceed 20,000 sq ft gross floor area • not to exceed 20,000 sq ft ground floor per lease space • ground floor only / not to exceed 2500 sq ft for single use / 5000 sq ft for multiple users 	P N N	N P N	NN P
Retail Sales and Service (auto dependent*)	P	N	N
Retail Sales and Service (auto oriented*)	P	N	N
Restaurants/Food Services			N
- with drive-through*	P	N	
- without drive-through	P	P	
Industrial			
Manufacturing and Production			
- greater than 5,000 sq. ft.	P	P	N
- less than 5,000 sq. ft. with retail outlet	P	P	N
Warehouse	P	P	N
Transportation, Freight and Distribution	C	C	N
Production businesses (e.g., IT Support Centers, biotechnology, software/hardware development Broadcast and Production studios/facilities.)	P	P	C
Industrial Service (e.g., cleaning, repair)	P	N	N

FINDING: The proposal does not include a specific use at this time, however the table above lists some of the permitted and conditionally allowed uses for the ME zone. The burden of proof submitted by the applicant mentions some of the above uses.

**CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE,
CHAPTER 2.4 INDUSTRIAL DISTRICTS**

2.4.300 Permitted Uses

Land Use	IG	IL
Industrial		
Light manufacturing, fabrication and repair (e.g., appliances, electronic equipment, printing, furniture, signs and similar goods) with incidental sales associated with a permitted use.	P	P
Heavy manufacturing, assembly, and processing of raw materials and recycling	P	C
Junk yards, automobile wrecking yards, and similar uses	P	N
Research and development facilities	C	P
Wholesale warehousing, storage and distribution	P	P
Fuel distribution	P	C
Production businesses (e.g., IT Support Centers, biotechnology, software/hardware development Broadcast and Production studios/facilities.)	C	P
Wholesale processing uses (e.g., dry cleaning, laundry)	P	P
Food and beverage processing and packaging	P	P

FINDING: The above table lists some of the uses that are currently allowed on the subject properties. The table is included for reference as currently permitted industrial uses are discussed in this review.

CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE, CHAPTER 4.1.920, FINDINGS AS TO LEGAL LOT OF RECORD STATUS.

Each decision shall include a finding that the property subject to the proposed land use action is a legal lot of record as that term is defined in the City of Bend Zoning Ordinance.

FINDING: The property is comprised of two separate legal lots of record. Tax lot 700 was created as Parcel 1 of Partition Plat 2005-6, which was approved by the City of Bend. Tax lot 902 was previously reviewed in Administrative Review No. 05-606, and was confirmed as a legal lot of record at that time. The property was developed in accordance with that approval, and the boundaries of this tax lot have not been altered since that time. The Hearings Officer finds that the property meets the Legal Lot of Record Status.

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

4.1.515 Process for Type II or Type III Applications

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

FINDING: The Hearings Officer conducted a Zone Change and Plan Amendment hearing on May 9, 2008 in accordance with the above requirement.

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

4.6.300 Quasi-Judicial Amendments

A. Applicability, Procedure and Authority. Quasi-judicial amendments generally refer to a plan amendment or zone change affecting a single or limited group of properties and that involves the application of existing policy to a specific factual setting. Quasi-judicial amendments shall follow the Type III procedure, as governed by Chapter 4.1, Land Use Review and Procedures using the standards of approval in Section 4.6.300.B, Criteria for Quasi-judicial Amendments below. Based on the applicant's ability to satisfy the approval criteria, the applicant may be approved, approved with conditions, or denied.

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

FINDING: The Hearings Officer finds the applicant submitted a written narrative addresses the criteria as required for a Plan Amendment and Zone Change and each are discussed below.

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

APPLICANT'S RESONSE:

Goal 1, Citizen Involvement, is "To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process." The City has adopted a program in compliance with this Goal, codified in BDC Chapter 4.1. Quasi-Judicial map and text amendments are reviewed under a Type III procedure, as detailed in BDC Chapter 4.1.515. The first step for citizen involvement is the public meeting required by BDC Chapter 4.1.210B, which took place on November 5, 2007. Notice of the meeting was provided pursuant to BDC Chapter 4.1.210C. No persons attended this meeting. The Neighborhood Association representative contacted the applicant's representative outside of the neighborhood meeting process. There are no concerns by the neighborhood association and they have expressed their support for the proposal.

Type III procedures are also subject to the notice requirements of BDC Chapter 4.1.820, which ensure that citizens are informed in three different ways about the public hearing; individual mailed notice, posted notice on the site, and published notice. The notices inform interested citizens about the hearing and that all interested parties may participate and submit written or verbal testimony.

Goal 2, Land Use Planning, is "To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions." It emphasizes the importance of involving citizens and affected governments, and providing them with the opportunity to review and comment on proposed plan changes.

In this application, notice will be mailed to citizens as per BDC Chapter 4.1.210C, and notice of the hearing will be provided as per BDC Chapter 4.1.820. The City staff will notify the affected governments and the affected departments within the City. All will have the opportunity to submit written comments and to participate in one or more public hearings.

Guideline E.2 suggests that "Minor changes, i.e., those which do not have significant effect beyond the immediate area of the change, should be based on special studies or other information which will serve as the factual basis to

support the change. The public need and justification for the particular change should be established..."

This application includes just 3.72 acres, which is a small percentage of the Light Industrial District. The proposed zone change to the ME (Mixed Employment) designation continues to allow a variety of light industrial uses, therefore, the change does not take the subject property out of the inventory of industrial lands for the City. It includes a special study which analyses the impact of the proposed change on the City transportation system, as well as this narrative which analyzes the myriad of land use criteria and policies. The public need and justification are shown in the applicant's response to the applicable criteria and policies.

Goals 3, 4 and 5 are not applicable because the properties do not include any agricultural land, forest land, or inventoried open spaces, scenic areas, historic resources, or natural resources.

Goal 6 Air, Water and Land Resources Quality, is "To maintain and improve the quality of the air, water and land resources of the state." It requires that air, water and land resources not be degraded. This application proposes a change that will allow a higher density of employment on these properties which are adjacent to a medium density residential district. Regarding air quality, this change will foster a more compact urban form and reduce the number and length of motor vehicle trips for the commute to work.

Regarding water quality, the quality of the Deschutes River watershed is largely dependent on the quantity of available water. The current IL designation allows a variety of water intensive uses, including processing of raw materials, wholesale processing such as large scale laundries, and food and beverage processing. The proposed ME designation does not allow these water intensive uses, and thus will help to conserve the limited water resources of the Deschutes River Basin.

The land resources of the state are finite, and must be used with maximum efficiency, especially within urban growth boundaries. The current IL designation primarily allows uses which are low density and single story in nature, such as warehouses, boat storage, and contractor storage. The proposed ME designation allows higher density uses which often occur in multilevel buildings, and thereby use the land more efficiently. These uses include retail and offices of various types. The proposed ME designation will use Bend's urban land more efficiently.

Goals 7 and 8 are not applicable because the subject properties are not within an identified natural hazard area, nor within an area identified for recreational use.

Goal 9, Economic Development. is "To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens." It further notes that the comprehensive plan should "take into account the social, environmental, energy, and economic impacts upon the resident population."

The proposed plan amendment is consistent with this goal because it and the related zone change would allow the subject property to be developed with a mixture of commercial and industrial uses, thereby stimulating and supporting economic development. Generally speaking, the uses allowed in the Light Industrial District have a lower employment density than the uses allowed in the Mixed Employment District. For example, the Mixed Employment District allows office, clinics, and retail uses, all of which are prohibited in the Light Industrial District. This location is close to the center of the city and adjacent to a large residential area, is more appropriate for high density employment uses that serve the local residents than low density employment uses that do not. In addition, as

discussed above, the record indicates the city has a documented shortage of commercial lands which the proposed plan amendment will address. Finally, as also discussed above, the proposed plan amendment will not reduce the city's industrial lands inventory below the minimum identified as needed in the 25-year planning period identified in the comprehensive plan.

The proposed change to Mixed Employment will provide more job opportunities for local residents close to where they live. This will have a beneficial effect on the neighborhood and the residential population generally. For these reasons, the proposed plan amendment is consistent with this goal.

Industrial Lands Inventory

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

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

- (a) Demonstrate that the proposed amendment is consistent with the most recent economic opportunities analysis and the parts of its acknowledged comprehensive plan which address the requirements of this division; or**
- (b) Amend its comprehensive plan to incorporate the proposed amendment, consistent with the requirements of this division; or**
- (c) Adopt a combination of the above, consistent with the requirements of this division.**

APPLICANT'S RESPONSE:

The city's comprehensive plan, at page 6-9, states that during the 25-year planning period (2000-2025) the land needed for industrial uses is 886 acres. Table 6-4 of the plan shows that as of 2000 the city had only 539 of the 886 needed acres of land for industrial development, including 478 acres of industrial-zoned land, 50 acres of land zoned Mixed-Use Riverfront, and 11 acres of ME-zoned land. Consequently, the plan states the city has a deficit of available industrial land consisting of 347 acres as of 2000.¹ This deficit calculation predates the city's annexation of the Juniper Ridge land in the northeast corner of the Bend urban growth boundary (UGB).

Findings from the City's Economic Lands Study also support a change in designation to ME. In 2000, the City conducted a three-part analysis of projected land needs for the 20-year plan period. Part I ('Trends, Inventory and Forecast') evaluates the type and amount of land anticipated to satisfy the 20-year demand.

¹ The plan also shows the 585 acres of available commercial land falls short of the identified need for 827 acres of commercial land for a deficit of 242 acres in 2000.

Part 1 concludes that "...the highest growth rates, both in percent and number, are in the trade and service sectors," which will result in a demand for land suited for retail, office, and services uses. Conversely, the study stated that though industrial job types (i.e. manufacturing, warehousing, and wholesale trade) will increase "...at a much slower rate than other jobs. Since job growth will be slower in these fields, the land needs for uses that have historically located in industrial areas will be slower." The study further notes that traditional industrial job types have been severely affected by changing market forces such as consolidation of corporations, outsourcing of jobs overseas, mechanization of industrial processes, and environmental concerns.

Therefore, the entire nature of industrial uses is evolving from heavy manufacturing, assembly, and warehouse operations, to high technology manufacturing and research and development, which require less land for operations and spaces that appear and function more like office developments. The land demand for and job growth for this new type of industrial, or employment user, is projected to significantly increase.

Part II of the City's Economic Lands Study, 'Meeting Forecast Needs,' details a strategy to satisfy the anticipated land demand. The study projects an employment shift to retail and service sectors as the land demand for traditional industrial users declines. A retail and service based economy requires land that meets site requirements of higher wage, service-oriented employers in close proximity to retail, residential and other services. This land type is similar to that required by the new industrial user type. ME zoned land provides the necessary flexibility to respond to the site requirements of these employers.

In the record and decision for City of Bend file #06-21, it was concluded that there was a surplus of at least 19.26 acres of industrial lands within the City of Bend. Additionally it was found that with annexation of the Juniper Ridge land the city has far more than the 886 gross acres of vacant and developed industrial land the plan is required to identify for the 25-year planning period under OAR 660-009-0015, and that the surplus of industrial land will continue to exist and that the evidence in that record concerning gross and net industrial acres and absorption rates is not entirely consistent, and therefore the city's industrial land surplus may in fact be greater than the approximately 19 acres calculated.

More recently an application to change an approximately 13 acre property from IL to ME, City of Bend file number 06-570 has been considered by the City. Even with the approval of this application, there will still be a surplus of industrial land within the City of Bend

Therefore, based on the above findings the proposed plan amendment from IL to ME will not reduce the city's supply of industrial land below that identified in the comprehensive plan as needed for the 25-year planning period.

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

HEARINGS OFFICER'S NOTE: Comments received from the City Long Range Planning Department indicates the applicant should use the 2007 Economic Lands Study. In response to these comments the applicant supplemented the burden of proof with a document dated April 24, 2008 to contain the following information.

The underlined portion of OAR 660-009-010(4) indicates that this section is only applicable if the property is proposed to be taken out of an industrial designation. In this case the ME zoning proposed still allows primarily industrial uses.

In response to the Long Range Planning Department comments, the 2007 EOA (Economic Opportunities Analysis) finds that there is a surplus of Industrial/ME lands in the short term and the long term. Additionally it is found that there is a deficit of commercial zoned lands in both the short term and long term.² The Long Range Planning comments, numbers 5 and 6, reference a deficit in the short term inventory of industrial lands. As indicated, a deficit is not substantiated by the EOA. Additionally, the proposal will not take the subject property out of the industrial lands inventory. It will allow a more flexible range of uses as allowed by the ME zoning to better meet the needs and trends identified in the EOA for employment. Changing the zoning of the subject property from IL to ME allows more commercial uses while maintaining the ability to continue to use the property for industrial uses. This flexibility of allowing commercial uses will help meet the need for more commercially zoned lands as identified.

The developed property, tax lot 902, was originally built for an recreational vehicle sales user. This use was previously an outright permitted use in the IL zone. Since the adoption of the new Development Code in August of 2006, this use is no longer allowed, even conditionally. However, as the EOA finds, the recreational equipment businesses "...have the best chances for success in Bend."³ This industry sector targeting found that the city should concentrate its efforts on retaining and attracting new business in this area. It was found that this type of business has significant growth opportunity, has living wage job potential, and is likely to have sustainable business practices.⁴ In additional support of this type of business, the EOA finds that "Bend has the opportunity to capitalize on the growth expected to take place in the region's hottest industry sectors" including the retail trade and leisure and hospitality industries.⁵ The originally intended use of the existing building on the subject property fits into both of these categories.

Regardless of the ultimate use of the subject properties, the EOA supports the change in the zoning from IL to ME. The EOA finds that the ELS (Economic Lands Study, 2000) cited above and in the original application is still applicable. The EOA states that "The ELS will continue to be a very valuable resource for Bend as the city proceeds with further analysis of employment lands and policy responses", and that "... the ELS can continue to serve as a good model for the current employment lands analysis process."⁶ As stated in the original findings the ELS supports the conversion of the subject property from IL to ME for a number of reasons. The study projects an employment shift to retail and service sectors as the land demand for traditional industrial users declines. A retail and service based economy requires land that meets site requirements of higher wage, service-oriented employers in close proximity to retail, residential and other services. This land type is similar to that required by the new industrial user type. ME zoned land provides the necessary flexibility to respond to the site requirements of these employers.

The ELS finds that "As the distinctions between industrial and commercial uses diminish, it would seem a normal progression to have zones that permit a broad mix of commercial and industrial uses."

² See Table 1 on page 4 of the EOA.

³ See page 20 of the EOA under Economic Sector Targeting, and Table 4.

⁴ See page 12 of the EOA under Economic Sector Targeting.

⁵ See page 19 of the EOA under Local Trends.

⁶ See page 11 of the EOA.

FINDING: From the information provided the request from IL to Me will not take the property out of the industrial lands inventory, but will allow a more flexible range of uses. The Hearings Officer finds the EOA supports the change of zoning.

Goal 10, Housing, is not applicable because the properties are not residential lands.

Goal 11, Public Facilities and Services, is "To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development."

This goal requires the city to plan and develop land in a timely, orderly and efficient fashion, based upon the availability of public services. The subject properties are located in a mostly developed area of the City. As discussed in detail below, all needed public facilities and services are available to and currently serve the subject property. The properties have direct access to a minor arterial road. Water and Sanitary sewer service is available via existing city infrastructure adjacent to the properties. Other available urban services include schools, libraries, and emergency services. The best way to ensure an orderly and efficient arrangement of these services is foster a higher density of development close to the central part of Bend, as proposed by this application. The proposed plan amendment is consistent with this goal.

Goal 12 Transportation, is "To provide and encourage a safe, convenient and economic transportation system." Unlike the other applicable goals, Goal 12 is implemented through the detailed Transportation Planning Rule, OAR 660-12. Compliance with this rule is explained below, incorporated by reference herein. The proposed plan amendment is consistent with and satisfies the requirements of the TPR which implements this goal.

Goal 13 Energy, is "To conserve energy." Planning Guideline A.4 is that "Land use planning should, to the maximum extent possible, combine increasing density gradients along high capacity transportation corridors to achieve greater energy efficiency." The subject properties are within a few blocks of both the Bend Parkway and US Highway 97 which are the highest capacity corridors in the area. This goal compels the City to plan for a dense urban form along this corridor, which is partially accomplished by the RM district just east of the subject properties. However, between the RM and the transportation corridor is a low density, light industrial district. The proposed change to ME will increase the development density along the transportation corridor and achieve greater energy efficiency.

Goal 14 Urbanization, is "To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities." These properties are well within the UGB already, and urban services are available. The proposed change will increase employment opportunities because the permitted uses in the ME district generally have a higher employment density than the permitted uses in the IL district.

Similarly, the permitted uses in the ME district generally have a higher density, in terms of lot coverage and floor area ratio, than the permitted uses in the IL district, and thus the ME district promotes more efficient use of land. Adjacent to the east and southeast boundary of the site, a 20 foot wide buffer zone is required to alleviate the incompatibility of industrial uses adjacent to residential uses; this unusually wide buffer is not an efficient use of urban land. The uses permitted in the ME district are not incompatible with the adjacent residential uses, and thus a 20 foot buffer area is not required. As a result, this portion of the land can be used more efficiently. The livability of the community will be

enhanced by the elimination of the inevitable land use conflicts caused by having industrial property adjacent to residential property.

Goals 15 through 19 are not applicable because they only pertain to areas in western Oregon.

FINDING: The Hearings Officer finds the narrative submitted by the applicant shows the request is consistent with the Statewide Land Use Planning Goals in OAR 660-015-000, 660-015-005 and 660-015-101.

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

Bend Area General Plan

- 1. Future Plan Updates (page P-6)**

The General Plan is a document that changes over time to reflect new information and new directions for the future. Amendments of additions to the General Plan text, exhibits, and policies go through a public hearing and review process before being adopted by the governing bodies. Changes and updates can be generated in at least six ways:

* * *

- Changes proposed by individuals or other agencies. At any time an individual, corporation, or public agency can propose a change to the Plan text, land use map, other exhibits, or policies. A person or agency proposing the change has the burden to demonstrate a public need and benefit for the change.**

APPLICANT'S RESPONSE:

The applicant is requesting approval of an amendment of the subject property's plan designation from IL to ME. The above-quoted plan provision requires the applicant to demonstrate the proposed plan amendment is justified by "a public need and benefit for the change."

Public Need and Benefit

The zone change and plan amendment to ME, Mixed Employment is requested because economic forces, roadway improvements and area development since the property was first zoned IL have made the property unsuited for continued use as a purely industrial site.

The subject properties are located in a transitional area between the railroad track and the Bend Parkway, and adjacent to residential development on the east.

The City of Bend's adoption of the new development code now prohibits the use of the developed property for the originally intended use of auto sales as well as other viable uses such as offices in the IL zone. The City has a documented shortage of commercial land. No new commercial land has been added to the City to rectify the shortage created by the new zoning code or to allow room for the previously allowed commercial uses that would locate in industrial zoning districts.

The approval of the amendment is warranted as mixed use development has proven to be effective in creating attractive and popular areas for business, commerce and living and there is a demand for more land of

this type. The supply of available MR-zoned land in the City is being absorbed rapidly. ME-zoned land in Northwest Crossing is also being absorbed quickly. As a result, the City recently rezoned more land in Northwest Crossing from industrial IP zoning to ME zoning and has approved a rezone of IL property along Century Drive at the old Brightwood Mill facility. The only other originally zoned ME parcel of land found on the zoning map is land that is a part of the Mountain View Mall shopping center property redevelopment project. The City is also currently contemplating an application to rezone the Mt. Bachelor parking lot facility to ME.

The fact that the subject property is located between an established residential neighborhood and commercial and industrial development makes it a logical candidate for ME zoning. The ME zoning district will continue to allow for industrial uses.

The ME zone will allow the property owner to use the existing building for the intended purpose for which it was built under the previous IL zoning language, and to develop the vacant property with a mix of uses that will have a lower impact on and directly benefit the adjacent neighborhood.

The need for industrial use only lands is rapidly diminishing due to the repeal of trade restrictions by the federal government. Businesses that used to manufacture goods in the United States are now manufacturing them overseas. These businesses still require offices in the United States to support their businesses. The ME zoning will allow these former industrial production businesses to find a home in Bend.

Additionally, the applicant's proposal and arguments in support of it address the issues concerning the "public need and benefit" requirement: specifically in regard to the impact of the proposed plan amendment on the city's industrial lands inventory;

FINDING: The Hearings Officer concurs with the applicant's statements that the request will provide a benefit to the public.

PLAN PREFACE (pages P-4 and P-5)

The policies in the General Plan are statements of public policy, and are used to evaluate any proposed changes to the General Plan. Often these statements are expressed in mandatory fashion using the word "shall." These statements of policy shall be interpreted that the actual implementation of the policies shall be accomplished by land use regulations such as the city's zoning ordinance, subdivision ordinance and the like. The realization of these policies is subject to the practical constraints of the city such as availability of funds and compliance of all applicable federal and state laws, rules and regulations and constitutional limitations.

*** * ***

The Plan text and policies describe several land use categories that provide for the various types of development expected to occur within the urban area during the 20-year planning period. These land use categories are graphically portrayed on the General Plan Map. The major land use categories – residential, commercial, industrial and mixed use – have very specific boundaries that are shown on the General Plan Map. The city and county apply zoning to property based on the General Plan map categories.

APPLICANT'S RESPONSE:

In several previous Hearings Officer decisions it has been held that the comprehensive plan preface does not establish mandatory approval criteria for quasi-judicial land use applications. E.g., Awbrey Towers (02-508), Shevlin Neighbors (PZ-05-429, PZ-05-430), Rimrock Riders (PZ-05-556, PZ-05-557). This interpretation was upheld by LUBA in its decision in Save Our Skyline v. City of Bend, 48 Or LUBA 192 (2004). For these reasons, the plan preface merely indicates plan policies are to be implemented by the city's adopted land use regulations.

GENERAL PLAN POLICIES

CHAPTER 1 – PLAN MANAGEMENT AND CITIZEN INVOLVEMENT

Development within the Urban Growth Boundary (Plan, page P 1-7)

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

APPLICANT'S RESPONSE:

The site is located well within the existing Bend urban area, between the major transportation corridor to the west and a residential area to the east. This application will integrate higher density employment uses with the transportation corridor and residential areas. Proximity to the transportation corridor will encourage trip chaining due to the variety of residential and commercial activities near the corridor. In addition, proximity to the residential area will reduce trips and facilitate non-automobile travel for neighborhood residents who are employed at the subject properties.

The proposal is consistent with this plan policy.

Chapter 6, Goal 2: Ensure an adequate supply of appropriately zoned land in Bend to provide for a full range of industrial, commercial and professional development opportunities.

APPLICANT'S RESPONSE

The subject properties were acquired for commercial industrial use, and tax lot 902 was developed for that purpose. The recent change in the list of permitted uses in the IL district eliminates several commercial uses, which effectively reduces the supply of commercial lands. However, the commercial uses intended by the applicant are allowed in the ME district. Approval of this application will make up some portion of the loss in the City's supply of commercial land cause by the change in the IL zone, while not eliminating the opportunity to provide industrial land uses based on the broad spectrum of uses allowed in the ME zone.

Chapter 6, Policy 4: The city shall work to preserve prime industrial lands for industrial purposes.

APPLICANT'S RESPONSE:

The subject properties total only 3.88 acres. The properties do not constitute "prime" industrial land for a number of reasons. Tax lot 700 is only 1.71 acres, and access is only allowed from 4th Street. As a result, the property is too small to accommodate the turning movements of larger trucks. The prior IL zoning recognized the suitability of the property for non-industrial uses, and the proposed amendment would restore those uses for the property.

Regarding tax lot 902, it was recently developed for non-industrial use and thus is not a prime industrial property, or even a subprime industrial property. Rather, it is a commercial property. This application would allow it to be used for the very uses it was built for, which were previously deemed to be compatible with

surrounding residential, commercial and industrial properties. The City's prime industrial lands will not be affected by this application.

Chapter 6, Policy 5: The community shall attempt to diversify its industrial base.

APPLICANT'S RESPONSE:

Re-designation of the subject property from IL to ME will still allow light industrial uses, and it will also allow other, more diverse employment uses. In the 21st century, diversification of the industrial base includes newer, expanding employment sectors which may not fit within the traditional definitions of industrial uses. For example, a company which sold its goods and services to the timber and wood products industries in prior decades presumably was a traditional blue collar, industrial plant. Today, that company is likely to be selling software to support its industrial plant and products, and may be located in an office building. Diversity, by definition, is inclusionary, and the ME designation reflects that intent by allowing a variety of industrial and related uses.

Chapter 6, Policy 8: Industrial areas shall be protected from incompatible commercial and residential uses.

APPLICANT'S RESPONSE:

This industrial zoned property is adjacent to residential uses to the east, and resolving that fundamental incompatibility is the crux of this application. Tax lot 902 abuts residential uses on two sides, which is why it was recently approved and developed for commercial use.

Until recently, the IL zone allowed a variety of nonindustrial uses, and many nearby properties are developed with commercial uses including a retail farm and home supply store, and an automotive sales business.

While the ME designation would allow residential uses, the applicant is not intending to develop residential uses on the properties, and will execute a covenant to that effect. This assures that approval of this amendment will not result in incompatible land uses.

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

APPLICANT'S RESPONSE:

This policy provides authority for designation of additional lands for mixed use. The proposed plan amendment will allow commercial development on the subject properties at a higher employment density than allowed by the IL designation. This will occur adjacent to a large residential area. This amendment will place jobs closer to housing and reduce vehicle trip length and promote commuting by bicyclists and pedestrians.

Chapter 7, Policy 6: The City shall continue to explore mixed use zoning as one of the land use patterns that will promote fewer vehicle trips and shorter trip lengths.

APPLICANT'S RESPONSE:

As noted immediately above, the proposed amendment will allow increased employment density because many uses allowed in the ME zone require more employees per acre than the industrial uses currently allowed. This translates into fewer overall vehicle trips and reduced trip length because the properties are adjacent to a large residential area and would reduce the distance for traveling to work and/or to obtain goods and services. Residents in the area will be able to travel shorter distances to work, and some will have the ability to be able to walk to work.

Chapter 7, Policy 7: The City should be receptive to innovative development proposals, including zone changes, plan amendments, and

text changes that promote alternatives to vehicular traffic thus reducing vehicle trips and reduced trip lengths.

APPLICANT'S RESPONSE:

The primary alternatives to vehicle traffic are bicycle and pedestrian trips. To promote these alternatives requires placement of higher density commercial and employment uses close enough to residential areas that customers and employees can ride their bikes or walk to shop and work. This application requests placement of a ME zone adjacent to the residential area, thereby promoting alternatives to vehicle traffic.

It is demonstrated above how the applicable policies will or will continue to be implemented with the proposed amendment.

FINDING: The Hearings Officer concurs with the applicant that the above policies listed in the General Plan are consistent with the request to change the zoning from IL to ME.

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

APPLICANT'S RESPONSE:

Adequate urban infrastructure, including sewer, water, police and fire protection, schools and transportation facilities are provided to support the proposed zone change. Each of these facilities and services is discussed separately in the findings below. In general tax lot 700 is vacant, and public water, sewer and streets are available to support the types of land uses allowed in the ME zone. Tax lot 902 was recently developed for commercial use and does not require additional facilities of any kind. Further discussion of the transportation impacts of this application are described above.

(1) Police Protection. Because the subject property is located within the Bend city limits it will be served by the Bend Police Department.

(2) Fire Protection. Because the subject property is located within the Bend city limits it will be served by the Bend Fire Department which will be able to provide fire protection satisfying the requirements of the fire code.

(3) Sewer and Water. The subject property currently is served by city sewer and water. The Specific sewer and water facility requirements will be addressed at the time approval of a development proposal. However, given the type and density of current development on the subject property and surrounding properties the sewer and water facilities and services that meet the city's standards and specifications are adequate.

(5) Schools. The subject property is located within the boundaries of the Bend-La Pine School District and can be adequately served by the district.

(6) Parks. The subject property is located within the boundaries of the Bend Metropolitan Park and Recreation District and can be served by the district.

(7) Transportation Facilities. The subject property is bounded on the north by Butler Market Road, and adjacent to 4th Street, both designated arterial streets. As discussed in detail in the findings below concerning the proposal's compliance with the TPR, the submitted traffic study shows how the subject property can be developed with uses permitted in the ME Zone without exceeding the capacity of affected streets. The submitted study includes a reduced demand scenario that identifies the types, and sizes of uses allowed under the proposed ME zoning as well as the predicted trip generation from such uses and densities. The applicant

proposes that the plan amendment and zone change be approved subject to a condition requiring the subject property be developed consistent with the "reduced demand scenario." Based on this condition of approval, the proposed zone change will promote an orderly sequence of growth considering traffic impacts.

Based on the above findings, there are adequate public facilities to serve the properties as contemplated by the proposed zone change from IL to ME.

FINDING: Comments received from the affected agencies submitted comments that the public facilities can accommodate the request with some exceptions to the Transportation facilities which are discussed in detail later in the review. The Hearings Officer finds that all public facilities can accommodate the request with the imposed condition of approval addressing traffic and site plan review listed below.

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

APPLICANT'S RESPONSE:

Change in the neighborhood or community

Significant changes in circumstances have occurred since the original designation of the subject property as IL. These changes include an evolving industrial user type, changing market conditions, City adoption of mixed use zoning, changes in the City's transportation system, and, the expansion of the UGB for the Juniper Ridge development:

1.1.1.1 Changing Nature of Industrial users

As demonstrated in the City's Economic Land Study (2000), the nature of industrial uses is drastically changing. This can be attributed to the shift of manufacturing and assembly processes overseas, coupled with the rise of specialized industries that are smaller in size, have little or no negative environmental impacts, and rely more on automation. The emerging light industrial user typically functions like and is similar in appearance to research and development, professional office, and service and creative businesses, as opposed to traditional industrial user types. This change has altered an industrial user's site requirements and impacts. The study's employment projections forecast an increase in employment opportunities for the new industrial user type and a decrease in the traditional industrial user type. Therefore, appropriate sites must be available for these employment opportunities that would not typically locate in IL zoning districts, but in locations that provide support services and living opportunities within close proximity.

1.1.1.2 Changes in the Market

Due to the dramatic reduction in heavy manufacturing and industrial uses in the region and in Bend as the result of changes to the global marketplace, and a shift in the local economic base from heavy reliance on resource extraction and industrial uses to professional, service and high-tech businesses that typically do not require industrial zoning; and due to the closure of large industrial uses to the north of the subject property and throughout the Bend area, whose presence created the primary need for industrial zoning and ancillary industrial uses, the subject property is no longer suited for solely industrial uses.

With the code amendments implemented by the City's new Development Code commercial uses in the IL zone are prohibited, only industrial uses will be permitted. Economic forces, however, prevent property in the area from developing with strictly industrial uses.

The area surrounding the subject property has changed significantly since the initial zoning of the site, which was once considered to be on the periphery of town. Growth and development/redevelopment has occurred, and the site is located near the heart of the City's commercial districts. Additionally, the property is adjacent to a large residentially zoned area.

Land values have increased to a point that virtually prohibits the development or use of the subject properties with only industrial uses. Land uses that can capture the lease rates and generate the revenues required to offset the high cost of the land are restricted to office, retail and commercial uses. To further illustrate this conflict, the average price of industrial zoned land in the Portland metropolitan area is approximately \$5 per square foot. Recent land sales of IL property in Bend have yielded up \$30 per square foot for industrial zoned land.

1.1.1.3 New Mixed Use Zone Designations

When the site was designated as IL in 1979, mixed-use zone designations did not exist in the City. Since then, the City has amended its code to include two new mixed use districts, MR (Mixed Use Riverfront) and ME (Mixed Employment), which allow a broad range of commercial and industrial uses. With the change of industrial users to smaller, more specialized industries, the differences between industrial and commercial are decreasing while the demand for mixed-use zoned land is increasing.

Given the significant change in character around the subject site and the demand for mixed use land, the subject property is well suited to be changed to ME. This change would continue to allow some industrial uses in addition to other uses that are in high demand in the surrounding area.

1.1.1.4 Changes in the Transportation System

With increased traffic in the Bend area, numerous roundabouts have been installed on major roadways. The small radius of the roundabouts make truck maneuvering difficult and make urban properties, such as the subject site, less desirable for potential industrial users.

The city's construction of numerous transportation system improvements including the Bend Parkway with an off and on ramp at Butler Market, and a round-a-bout on Butler Market at 8th Street generally improve access to the subject property and surrounding properties.

1.1.1.5 UGB Expansion for Juniper Ridge

In 2004, the City of Bend expanded its Urban Growth Boundary (UGB) to add over 500 gross acres of industrial land. This provision of new industrial land helps relieve the need for IL zoned land which is unsuitable for industrial development to maintain an IL designation.

Inconsistency in Plan Map

The subject properties are located at the southeast and southwest corners of Butler Market Rd. and NE 4th St. To the east, northeast and southeast lies a lengthy strip of the Residential Medium Density (RM) zoning district, and to the east of this strip is a large Residential Urban Standard Density (RS) zoning district developed with single family homes. To the southwest, west and north is the remainder of the Light Industrial (IL) zoning district which continues west to the Bend Parkway.

There is an inconsistency in the location criteria for the Light Industrial and Mixed Employment Districts at this location. The purpose of the Industrial Districts in general are to "segregate incompatible industrial development from other districts." BDS 2.4.100. The location criterion for the Light Industrial District is "to provide for heavier commercial and light industrial uses with easy access to collector and arterial streets." BDC 2.4.200. Butler Market Road and NE Fourth Street are minor arterials which fit neatly into this criterion. However, conspicuously absent from this criterion is any reference to residential uses or

districts. As a result, it omits consideration of the very important reality that industrial uses can conflict with other uses.

The purpose of the Mixed Use Districts is to "provide a transition between existing urban environments and both existing and future residential developments." The location criterion for the Mixed Employment District is "to provide a broad mix of uses that offer a variety of employment opportunities. Where Mixed Use Employment Districts occur on the edge of the city, their function is more transitional in nature providing service commercial businesses and supporting residential uses in an aesthetic mixed environment." BDC 2.3.100.

That is, the Mixed Employment District is designed to coexist and be compatible with residential uses; whereas the Light Industrial District is not. Given that the subject properties are adjacent to residential uses, it is more appropriate for them to be designated as a transitional district in order to protect the local residents from incompatible industrial uses. The buffering requirements are helpful but cannot reasonably be expected to sufficiently separate uses that are fundamentally incompatible.

In summary, the subject properties were apparently placed within a Light Industrial District based on their access to minor arterial streets. Their proximity to Urban Medium Density and Standard Urban Density Residential Districts compels a mixed use designation which accommodates the need for transitional uses between the residential area to the east and the industrial and highway areas to the west.

FINDING: The applicant provided evidence of change in the neighborhood and community to support the request. The Hearings Officer finds that the above criterion is met with the supporting documentation from the applicant.

CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE, CHAPTER 4.6.600, TRANSPORTATION PLANNING RULE COMPLIANCE

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

OAR Chapter 660, Division 12, Transportation Planning

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

- (1) Amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility. This shall be accomplished by either:**
 - (a) Limiting allowed land uses to be consistent with the planned function, capacity and level of service of the transportation facility;**
 - (b) Amending the TSP to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division; or**
 - (c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.**

- (2) A plan or land use regulation amendment significantly affects a transportation facility if it:
- (a) Changes the functional classification of an existing or planned transportation facility;
 - (b) Changes standards implementing a functional classification plan;
 - (c) Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or
 - (d) Would reduce the level of service of the facility below the minimum acceptable level identified in the TSP [Transportation System Plan].

APPLICANT'S RESPONSE: *The current IL designation allows a variety of light industrial uses, including auto-oriented uses like auto care centers, which generate a substantial amount of auto traffic. The requested change to ME would have a significant effect on the existing transportation facilities, because that designation allows uses which generate even more auto traffic than uses allowed under the current IL designation. However, the applicant will achieve compliance with the TPR by placing a trip cap on the properties that will limit the uses and the density of uses on the subject properties in order to reduce the demand for auto travel.*

Some uses allowed in the ME district, such as restaurants and medical offices, generate substantially more auto traffic than any of the uses allowed in the IL district. By prohibiting those uses, the reasonable worst case scenario for future traffic is limited. In addition, the trip cap will limit the density of development on the two properties, which also limits the reasonable worst case scenario for future traffic.

The result of prohibiting some land uses and capping the density and trips associated with the allowed uses is that the reasonable worst case scenario for future traffic is only slightly different than the scenario under the current IL designation.

For a more detailed explanation of transportation issues, please refer to the report of Ferguson & Associates, attached as Exhibit A.

Based on the findings and conclusions in the traffic study, the proposed plan amendment and zone change will not change the functional classification of or standards applicable to 4th Street or Butler Market Road. Additionally if the property is developed consistent with the reduced demand scenario presented in the traffic study in terms of the trip cap that limits the types and sizes of uses the proposed plan amendment and zone change will not allow types or levels of land uses which would result in levels of travel or access that are inconsistent with the functional classification of these facilities. Since the city does not have an acknowledged TSP the standard in paragraph (2)(d) is not applicable.⁷ Therefore, the proposed plan amendment and zone change will be consistent with the TPR.

FINDING: Comments received from Long Range Planning, City Transportation and ODOT indicate the proposed request would not meet the Transportation Planning Rule (TPR) criteria as shown in the applicant's original Transportation Impact Statement (TIS). The applicant submitted additional information dated March 4, 2008 which provides a pass-by rate for the sites with the ME zoning. Comments received from the City Transportation Engineer indicate the TIS would

⁷ The city has identified acceptable levels of service in its street policies.

meet the TPR as long as the trips are capped for the combination of both sites at 27 in, 41 out and pass-by 5 in and 5 out. This can be accomplished with deed restrictions placed on both sites through a condition of approval which is listed below. The City Transportation comments are as follows:

"For the plan amendment zone change analysis (the TPR analysis), the applicant showed that there would be a "significant affect" according to TPR 660-012-0060 (section 1cC) 'worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.' The intersections with significant impact would include two ODOT intersections (Hwy 20/Butler Market Road, Hwy 20 Parkway Ramps/Butler Market Road) and one City intersection (4th/Butler Market Road).

The applicant is proposing to eliminate this 'significant affect' by capping the trips generated on these two sites to 27 PM Peak Hour Trips in to, and 41 PM Peak Hour trips out of, the sites. These 27 in and 41 out PM Peak Hour trips represent the estimated worst case trip generation that can be generated under the existing IL zoning. These 27 PM Peak Hour Trips in and 41 Peak Hour trips out were identified in Table 3 of the applicant's December 19, 2007 Traffic Impact Analysis.

The applicant has further requested that the sites be allowed some small number of additional trips over and above the worst case for the IL zone (27 in, 41 out) PM Peak Hour trips provided that the additional trips be classified as Pass By trips (meaning they would already be on the system, and should not be considered new trips). The applicant provided pass by trip diagrams labeled Figure A to Figure E in a memorandum dated March 31, 2008. Staff finds that a total of 5 in and 5 out PM Peak Hour Trips pass by trips can be justified given the criteria that the trips should not go through the intersection of 4th & Butler Market as a new trip. Pass by trips shown in Figures A and B require turns from and back into the intersection of 4th & Butler Market and are therefore new to the intersection, and not able to be utilized to maintain zero additional trips through this intersection over those of the existing IL zoning.

Staff agrees that for the purpose of the applicant's TPR analysis, the applicant may cap the trips generated by the new zoning to 27 in and 41 out primary PM Peak Hour trips and 5 in and 5 out pass-by PM Peak Hour trips. This trip cap will be implemented through later submittal of any site plan applications for Tax Lots 17-12-28B 700 and 902 as well as for change of use applications for Tax Lots 17-12-28B 700 and 902. This trip cap is a requirement of the transportation planning rule requirements associated with the plan amendment and zone change for the subject lots and therefore is intended to and shall run with the land and shall be fully binding upon the owner and all future owners of the property.

What needs to be clear, however, is that the applicant is not proposing mitigation for the existing failures on the transportation system and therefore, cannot increase the trip potential of these two sites to above the existing IL zoning. Therefore, this trip cap must be monitored forever as a way to ensure continued compliance with the transportation planning rule requirements. Should the combined trip generation of future site plan submittals and future change of use submittals exceed these numbers of primary and pass by trips (primary: 27 in, 41 out; pass-by 5 in, 5 out), then the owners of the properties shall be required to submit a full transportation planning rule analysis and demonstrate compliance with the transportation planning rule before any site plan application/change of use application can be approved.

Additionally, it is necessary to acknowledge that this trip cap solely applies to the Transportation Planning Rule analysis (PZ 07-649 is solely requesting a plan amendment and zone change), and does not in any way provide the applicant or the property owners an approval to build up to that number of trips on these two

lots. The applicant has not proposed a concurrent site plan application and is not applying for a change of use application at this time. Any and all future site plan applications/change of use applications will be required to submit a traffic impact analysis that demonstrates compliance with the Bend Development Code and mitigates as required by that code. There is no trip credit established for, or available to be used by, the site plan applications/change of use applications based upon the discussions provided herein regarding the transportation planning rule requirements. Any currently failing intersection would be required to be mitigated according to the concurrency requirements in place at the time of the site plan application/change of use application."

Staff recommended the following conditions be imposed if the request is approved:

PROPOSED CONDITION OF APPROVAL: The applicant shall record deed restrictions on tax lot 700 and 902 that cap the trips for future uses to be 27 in, 41 out; pass-by 5 in , 5 out. The applicant shall submit to the Planning Department for review and approval a copy of the proposed language for the deed restriction prior to City Council final approval of the Zone Change and Plan Amendment.

PROPOSED CONDITION OF APPROVAL: A Change of Use Site Plan review will be required for tax lot 902 for any use other than the approved industrial warehouse use. Site Plan review will be required for tax lot 700 prior to any building permits.

FINDING: The Hearings Officer finds that the "trip cap" will effectively reduce the potential traffic impacts from the zone change so that the proposal will not "significantly affect" a transportation facility for purposes of OAR 660-012-060(2). Accordingly, the zone change will comply with the TPR. The Applicant submitted the following proposed condition of approval:

"Uses allowed on the subject property described herein shall be restricted to those which generate a primary p.m. peak hour trip rate of equal to or less than twenty seven (27) into the site and forty one (41) out of the site plus p.m. peak hour pass by trips of five (5) into the site and five (5) out of the site. This trip generation cap shall be enforceable by the City of Bend and shall run with the land and be fully binding upon the current and future owners of the property described herein. This trip generation cap may be amended and/or released only by a recorded written document which shall be executed by the City of Bend upon a demonstration by the owner of compliance with the Transportation Planning Rule (TAR), OAR 660-012-0060, as may be subsequently amended."

CONCLUSION: Based on the above findings the Hearings Officer approves the Zone Change and Plan Amendment from IL to ME as the applicant has demonstrated that there is a public need and benefit to changing the designation of the subject properties. The applicant has demonstrated that the proposed change will be more compatible with the surrounding residential properties. The request can be supported with the existing public facilities if the following conditions are imposed:

a. The applicant shall record the following deed restriction on Tax Lots 700 and 902, prior to the City Council's final reading of the zone change ordinance:

"Uses allowed on the subject property described herein shall be restricted to those which generate a primary p.m. peak hour trip rate of equal to or less than twenty seven (27) into the site and forty one (41) out of the site plus p.m. peak hour pass by trips of five (5) into the site and five (5) out of the site. This trip generation cap shall be enforceable by the City of Bend and shall run with the land and be fully binding upon the current and future owners of the property described herein. This trip generation cap may be amended and/or released only by a recorded written document which shall be executed by the City of Bend

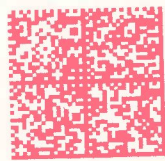
upon a demonstration by the owner of compliance with the Transportation Planning Rule (TAR), OAR 660-012-0060, as may be subsequently amended.”

b. A Change of Use Site Plan review will be required for tax lot 902 for any use other than the approved industrial warehouse use. Site Plan review will be required for tax lot 700 prior to any building permits.

Dated this _____ day of May, 2008

Sharon R. Smith, Hearings Officer for the City of Bend

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