



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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Salem, OR 97301-2540

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NOTICE OF ADOPTED AMENDMENT

01/13/2009

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Grants Pass Plan Amendment
DLCD File Number 004-07R

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

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Friday, January 30, 2009

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

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

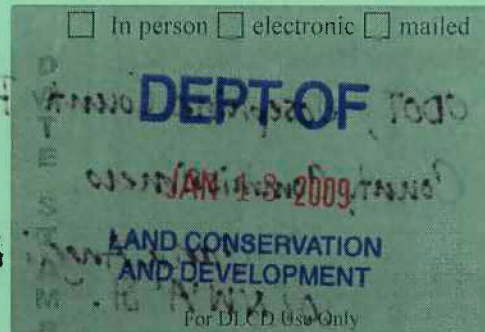
*NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc: Carla Angeli Paladino, City of Grants Pass
Gloria Gardiner, DLCD Urban Planning Specialist
John Renz, DLCD Regional Representative
Tom Hogue, DLCD Policy Analyst
Bill Holmstrom, DLCD Regional Representative

<paa> Y/l

Notice of Adoption

THIS FORM MUST BE MAILED TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER QRS 197.610; OAR CHAPTER 660 - DIVISION 18



Jurisdiction: *Grants Pass*

Local file number: *08-30200012*

Date of Adoption: *Amended Findings 12/17/08*

Date Mailed: *1/9/09*

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Select one** Date: *4/10/08*

☐ 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".

*Comprehensive Plan Map Amendment from industrial to business park,
a Zoning Map Amendment from (I) to (BP) and Development
Agreement #2008-1.*

Does the Adoption differ from proposal? Please select one

No.

Plan Map Changed from: *Industrial*

to: *Business Park*

Zone Map Changed from: *I*

to: *BP*

Location: *111 (125) mill St.*

Acres Involved: *15.5*

Specify Density: Previous: *N/A*

New: *N/A*

Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
☒	☒	☐	☐	☐	☒	☐	☐	☒	☐	☒	☒	☐	☐	☐	☐	☐	☐	☐

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. *004-07-R(16262)*

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

ODOT, Josephine County Planning, Josephine County Public Works, and
County Commissioners.

Local Contact: *Carla Angeli Paladino*

Phone: *(541) 474-6355* Extension: *6417*

Address: *101 NW 'A' St.*

Fax Number: *541 476 9218*

City: *Grants Pass, OR*

Zip: *97526*

E-mail Address: *cangeli@grantspassoregon.gov*

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, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@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 **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

CITY OF GRANTS PASS COMMUNITY DEVELOPMENT DEPARTMENT

REMAND OF LAND USE BOARD OF APPEALS (LUBA) No. 2008-056
Stuart Freedman, Christlin Freedman, and Fire Mountain Gems, Inc. and Holger Sommer
v. City of Grants Pass and Timber Products Co. Limited Partnership
(Timber Products/Mill Street Comprehensive Plan Map Amendment, Zoning Map
Amendment and Development Agreement #2008-1)

Amended City Council – Findings of Fact

Appeal Information:

Procedure Type:	Type IV-A: City Council
Project Number(s):	LUBA No. 2008-056 City file: 08-30200012
Project Type:	Remand from the Land Use Board of Appeals (LUBA)
Applicant:	Timber Products Co., Limited Partnership c/o Erik Vos
Legal Representative:	Micheal Reeder, Arnold Gallagher Saydack Percell Roberts & Potter, P.C.
Date of LUBA Opinion & Order:	September 4, 2008
Date of Remand Hearing:	December 17, 2008
Date of CC Remand Findings:	December 17, 2008

Original Information:

Procedure Type:	Type IV: Planning Commission Recommendation and City Council Decision
Project Number:	07-40200002
Project Type:	Comprehensive Plan Map Amendment, Zone Map Amendment, and Development Agreement
Map & Tax Lots:	36-05-17- D0 TL 1000
Owners:	Timber Products Co., Limited Partnership
Applicant:	Timber Products Co., Limited Partnership c/o Erik Vos
Legal Representative:	Micheal Reeder, Arnold Gallagher Saydack Percell Roberts & Potter, P.C.
Address:	111 (125) Mill Street
Existing Comprehensive Plan Designation:	Industrial
Proposed Comprehensive Plan Designation:	Business Park
Current Zoning:	(I) – Industrial
Proposed Zoning:	(BP) – Business Park
Planner Assigned:	Carla Angeli Paladino

Application Received:	July 12, 2007
Application Complete:	July 13, 2007
Date of UAPC Staff Report:	December 5, 1007
Date of UAPC Hearing:	December 12, 2007 (continued from September 12, 2007, September 26, 2007, October 24, 2007, and November 14, 2007) December 12, 2007 record left open January 9, 2008 PC made a recommendation on the application
UAPC Findings of Fact:	January 23, 2008
Date of City Council Staff Report:	January 29, 2008
Date of City Council Hearing:	March 5, 2008; record left open from February 20, 2008; continued from February 6, 2008
Date of CC Findings of Fact:	March 19, 2008

I. PROPOSAL:

An application for a Comprehensive Plan Map Amendment from Industrial to Business Park and a Zoning Map Amendment from (I) – Industrial to (BP) – Business Park for a fifteen and one half (15.5) acre parcel located off of Mill Street. The Development Agreement #2008-1 was recorded on May 15, 2008.

II. AUTHORITY AND CRITERIA:

Sections 13.5.5 and 13.8.3 of the Comprehensive Plan Policies document provide that joint review by the City Council and Board of County Commissioners shall be required for amendment and revision to Comprehensive Plan findings, goals, policies, and land use maps of the Comprehensive Plan.

The review of the application was in accordance with the procedures of Section 13.8.3 of the Policies document of the Comprehensive Plan, which originally provided for a recommendation hearing by the Urban Area Planning Commission prior to a joint hearing of the City Council and Board of County Commissioners.

However, with adoption of the 1998 Intergovernmental Agreement, this provision requiring a joint hearing is modified with the result that City Council makes the decision, and the County will have automatic party status, as summarized below:

Section III of the 1998 Intergovernmental Agreement (IGA) provides for transfer of authority for provision and management of planning services from the County to the City for the Urbanizing Area. It provides:

The City is hereby vested with the exclusive authority to exercise the County's legislative and quasi-judicial powers, rights, and duties within the Urbanizing Area. ..

Section V of the IGA contains provisions pertaining to notification and appeals for quasi-judicial and legislative decisions within the Urbanizing Area.

For legislative decisions, the IGA provides:

The City agrees to provide written notice of all proposed legislative actions to the County at least 45 days prior to the public hearing at which the action is first considered. The County shall be deemed to have automatic party status regarding all such decisions for the purposes of standing for appeals.

For quasi-judicial decisions, the IGA provides:

The City shall give the County written notice of all land use, limited land use, and expedited land division decisions in the UA in the same manner as required by Oregon Law for adjacent property owners. The County shall be deemed to have automatic party status regarding all such decisions for the purposes of standing for appeals. Quasi-judicial land use and limited land use development decisions made by the City's Director or Hearings Officer or the Urban Area Planning Commission may be appealed according to the City's Land Use Hearing Rules. The City may provide staff support for any administrative or judicial review of decisions regarding the application of Land Use Regulations to land within the UA.

Section 13.8.3 of the Comprehensive Plan Policies document provides that notice shall be as provided in Section 2.060 of the Development Code for a Type IV procedure. Section 13.8.3 (d) (1) further provides that the hearing shall be conducted in accordance with the Legislative Hearing Guidelines of Section 9 of the Development Code. In this case, the hearing was conducted in accordance with the Quasi-Judicial Guidelines of Section 8 of the Development Code. The decision for this application involves reviewing the application by applying pre-existing criteria to concrete facts, and is directed at a closely circumscribed factual situation. The Council hereby finds that this application was appropriately reviewed as a quasi-judicial land use decision.

Therefore, the application was processed through a "Type IV" procedure, with a positive recommendation from the Urban Area Planning Commission and a final decision by City Council. The County has automatic party status for appeals.

The text or map of the Comprehensive Plan may be recommended for amendment and amended provided the criteria in Section 13.5.4 of the Comprehensive Plan Policies document are met.

The Zoning Map may be amended provided the criteria in Section 4.033 of the Development Code are met.

On March 19, 2008, City Council approved the Timber Products application to amend the comprehensive plan and zoning maps from Industrial to Business Park for the 15.5 acre property on Mill Street. The City Council's decision was appealed to LUBA. On September 4, 2008, LUBA issued its final order and opinion, (LUBA No. 2008-056), (the LUBA Decision). LUBA remanded back the City with direction to address two issues.

The amended findings below address the two issues, which relate to 1) the Statewide Planning Goal 9 (Economic Development) and its interpretive rule, OAR 660-009 (the Goal 9 Rules) and 2) a February 28, 2008, letter written by engineer, Michael Weishar

that was included in the record and determined by the LUBA to include new evidence in addition to information permissible with closing argument.

III. APPEAL PROCEDURE:

Section 10.060 provides the City Council's final decision to be appealed to the State Land Use Board of Appeals (LUBA) as provided in state statutes. A notice of intent to appeal must be filed with LUBA within 21 days of the Council's written decision.

IV. PROCEDURE:

- A. An application for Comprehensive Plan Map and Zone Map Amendment was submitted on July 12, 2007. The application was deemed complete on July 13, 2007 and processed in accordance with Section 2.060 of the Development Code.
- B. Notice of the proposed amendment and the September 12, 2007 public hearing was mailed to the Oregon Department of Land Conservation and Development on July 26, 2007 in accordance with ORS 197.610 and OAR Chapter 660-Division 18.
- C. Public notice of the September 12, 2007 public hearing was mailed on August 22, 2007 in accordance with Sections 2.053 and 2.063 of the Development Code.
- D. Public notice of the September 12, 2007 public hearing was published in the newspaper on September 5, 2007 in accordance with Sections 2.053 and 2.063 of the Development Code.

- E. The applicant requested a continuance of the September 12, 2007 hearing until September 26, 2007. The Planning Commission granted the request.
- F. The applicant requested a continuance of the September 26, 2007 hearing until October 24, 2007. The Planning Commission granted the request.
- G. The applicant requested a continuance of the October 24, 2007 hearing until November 14, 2007. The Planning Commission granted the request.
- H. The City requested a continuance of the November 14, 2007 hearing until December 12, 2007. The Planning Commission granted the request.
- I. The Planning Commission held a public hearing to consider the request on December 12, 2007.
- J. Two continuance requests were made at the December 12, 2007 hearing. The Planning Commission granted an extension of the record in accordance with Section 8.038 (2) of the Development Code.
- K. The Planning Commission made a recommendation on the request on January 9, 2008.
- L. The public hearing scheduled for February 6, 2008 was continued at the request of staff until February 20, 2008.
- M. Public notice of the February 20, 2008 City Council public hearing was mailed on February 13, 2008 in accordance with Sections 2.053 and 2.063 of the Development Code.
- N. Public notice of the February 20, 2008 City Council public hearing was published in the newspaper on February 16, 2008 in accordance with Sections 2.053 and 2.063 of the Development Code.
- O. The City Council held a public hearing to consider the request on February 20, 2008.
- P. The public hearing portion of the hearing was closed and the record was left open until February 27, 2008.
- Q. The City Council voted on the applications on March 5, 2008. A roll call vote was taken on March 19, 2008.

V. SUMMARY OF EVIDENCE (with specific findings identified):

- A. The basic facts and criteria regarding this application are contained in the staff report, which is attached as Exhibit "A".
- B. The minutes of the public hearing held by the City Council on February 20, 2008, which are attached as Exhibit "B" summarize the oral testimony presented.
- C. The minutes of the public hearing held by the City Council on March 5, 2008, which are attached as Exhibit "C" summarize the discussion and vote of the review body.

- D. The minutes of the City Council meeting on March 19, 2008, which are attached as Exhibit "D" provide the roll call vote.
- E. The power point presentation from James E. Huber, CD Director on February 20, 2008, is attached as Exhibit "E" and hereby adopted as findings of fact and incorporated herein.
- F. The power point presentation from Micheal Reeder dated February 20, 2008, is attached as Exhibit "F" and hereby adopted as findings of fact and incorporated herein.
- G. The power point presentation from Kimberly Parducci dated February 20, 2008, is attached as Exhibit "G".
- H. An e-mail dated February 20, 2008, from Erik Vos is attached as Exhibit "H".
- I. A letter dated February 20, 2008, from Micheal Reeder is attached as Exhibit "I".
- J. A letter dated February 19, 2008, from Charles Wolfmueller is attached as Exhibit "J".
- K. A letter dated February 19, 2008, from Charles Wolfmueller is attached as Exhibit "K".
- L. A letter dated February 19, 2008, from Charles Wolfmueller is attached as Exhibit "L".
- M. A road status map submitted by the applicant is attached as Exhibit "M".
- N. Appendices to the Economic Opportunity Analysis October 2006 (revised January 2007) from Craig Stone and Associates submitted by the applicant is attached as Exhibit "N".
- O. A letter dated February 27, 2008, from Dean Saxon is attached as Exhibit "O".
- P. A memorandum dated February 27, 2008, from James E. Huber is attached as Exhibit "P".
- Q. A letter dated February 27, 2008, from Gregory Hathaway is attached as Exhibit "Q".
- R. A letter dated February 27, 2008, from Kimberly Parducci is attached as Exhibit "R".
- S. An e-mail dated February 27, 2008, from Gary Still is attached as Exhibit "S".
- T. An e-mail and attachments (E-mail from Lisa Berger, E-mail from Jocelyn Richardson, Letter from Micheal Reeder dated March 3, 2008, which Part "V" (pages 11-17) relating to the Application's compliance with Statewide Planning Goal 9 and its interpretive rule, is hereby adopted as findings of fact and incorporated herein. Letter from Michael Weishar dated February 29, 2008 and an SDC calculation sheet) sent to the City Councilors dated March 4, 2008, is

attached as Exhibit "T", which letter is hereby adopted as findings of fact and incorporated herein.

- U. A hard copy of Tables 21 and 38 from Micheal Reeder's power point presentation are attached as Exhibit "U".
- V. A power point presentation from James E. Huber from March 5, 2008 is attached as Exhibit "V".
- W. A letter from Micheal Reeder dated March 5, 2008 is attached as Exhibit "W" and is hereby adopted as findings of fact and incorporated herein.

VI. FINDINGS OF FACT:

The City Council found that the request meets the criteria contained in Section 13.5.4 of the Comprehensive Community Development Plan Policies and the criteria contained in Section 4.033 of the Development Code based on the reasons stated in the general findings included below in addition to the specific findings identified in Section V above.

VII. GENERAL FINDINGS OF FACT:

A. Characteristics of the Property:

1. Land Use Designation:
 - a. Comprehensive Plan: Industrial
 - b. Zone District: (I)
 - c. Special Purpose District: Redevelopment Agency and Enterprise Zone
2. Size: Approximately 15.50 acres
3. Frontage: Mill Street and Fire Mountain Way
4. Access: Mill Street, Access control line along Fire Mountain Way currently in place
5. Street Classification: Mill Street – Collector
Fire Mountain Way – cul-de-sac local street
6. Existing Public Utilities:
 - Water: Mill Street – 12 & 24 inch
Fire Mountain Way – 8 inch
 - Sewer: Mill Street – 12 inch
Fire Mountain Way – 8 inch
 - Storm: Fire Mountain Way – 24, 18, & 15 inch
48 inch across subject property
7. Topography: Flat

8. Natural Hazards: None identified
9. Natural Resources: None identified
10. Existing Land Use: Vacant, Previously a plywood mill
11. Surrounding Land Uses:

North: Cody's Tavern, River Town Auto and Budget Rent a Car, Grants Pass Shopping Center

South: Central Oregon & Pacific Railroad, 6 Robblee's Truck parts, Copeland Sand & Gravel

East: Fire Mountain Gems

West: Home Away from Home Pet Spa, Mill Street Car Wash

Discussion:

The City has three industrial districts: Industrial, Business Park, and Industrial Park. Each district has a list of permitted uses found in Schedule 12-2 of the Development Code. The table is divided into separate land use types or headings with permitted uses listed under each heading. The table includes an Industrial heading with six uses listed below it. Of the six, only one (1) industrial use (identified as Outdoor Industrial) is permitted in the Industrial zone that is not permitted in the Business Park zone. The definition of outdoor industrial is:

"Those heavier industrial uses that require open air production, processing, and storage of materials. Outdoor industrial uses refer to

- (a) manufacturing, processing, or assembly of semi-finished or finished products from raw materials.
- (b) The retail or wholesale trade in bulk of hazardous materials."

In looking at other permitted uses in both zone districts, the distinct difference between the two zones is the number of permitted uses allowed in the Business Park zone compared to the Industrial zone. In reviewing Schedule 12-2, seventeen (17) different uses are permitted in the Business Park zone that are not permitted in the Industrial zone. These allowed uses include everything from schools and public parks to professional offices and indoor and outdoor retail. Even though the Business Park zone is categorized with the other industrial zones, it is unique because it allows some uses that are distinctly commercial in nature. This combination of allowed uses makes this zone ideal for businesses seeking either industrial or commercial uses.

The most recent use of the subject property was a plywood mill. Currently, the site is vacant as the mill was removed. The surrounding uses adjacent to this site are noted above.

Currently, the zoning pattern to the north is general commercial, directly east is industrial, to the south of the railroad tracks is industrial, and to the west of Mill Street is business park. If a person observes the adjacent streets and properties by car, there is a distinctly different "feel" to the south of the railroad tracks compared to the north. The streets and properties to the south are older, the sites are nonconforming in terms of

landscaping and paving, large amounts of materials are stored outdoors, and heavy trucks are entering and exiting the properties. To the north, some of the buildings are newer, streets are fully constructed, a majority of properties are paved and landscaped and the area is more customer and business oriented.

The applicant has submitted a Traffic Impact Analysis (TIA) conducted by Access Engineering. The Oregon Department of Transportation, City Engineering and Planning, and an independent traffic engineer hired by the City from David Evans and Associates reviewed the traffic impact analysis. The development scenario outlined in the TIA identifies the main use as a 132,000 square foot home improvement store with 40,000 square feet of accessory retail uses on the site.

VIII. FINDINGS OF FACT - CONFORMANCE WITH APPLICABLE CRITERIA:

For amending the findings, goals, policies, and Land Use Map of the Comprehensive Plan, the City Council and Board of County Commissioners shall base their conclusions upon, and adopt findings in consideration of, all of the following criteria.

CRITERION (a): Consistency with other findings, goals and policies in the Comprehensive Plan.

City Council Response: **Satisfied.**

The proposal is consistent with the findings, goals, and policies found in Element 8 – Economy and Element 13 – Land Use identified in the Comprehensive Plan.

Element 8 - Economy

Goal: To improve, expand, diversify and stabilize the economic base of the community

Policy 8.1 (d) – by insuring that an adequate quality and quantity of industrial land is available, properly zoned, and serviced.

Policy 8.1 (e) – by protecting existing and planned commercial and industrial areas from the intrusion of incompatible land uses through land use regulation.

The Comprehensive Plan was adopted in 1982 and is a guiding document that addresses different components of the Grants Pass community. The purpose of Element 8 (Economy) examines the basic economic activities that have supported and support the local economy (data dates back to the 1960s and 1970s), evaluates the economic activities that apply in the future, describes several commercial and industrial scenarios for the future including their impacts, and projects commercial and industrial acreage requirements up to year 2000. Following is a brief description of these different components in the plan.

Economic Base Described in the Comprehensive Plan – Trends in the 1960s and 1970s:

- 1) **Lumber and Wood Products** Manufacturing was the major source of income and jobs in the late 1970s.
- 2) **Other manufacturing** jobs such as electronic equipment and Recreational Vehicle manufacturing were also a major source of employment.

- 3) **Tourism** was the third economic base identified.
- 4) **Pensions and Other Transfer Payments** rounded out the top four with a large portion of the population over sixty (60) years old living off of social security benefits or retirement. It also described that people were receiving public assistance due to unemployment.

Description of the Future Outlook of the Economic Base Activities

The lumber and wood products market was identified as still being strong but facing a decline in the 1980s and 1990s. Other light manufacturing opportunities were seen as an expansive market but at the time Grants Pass was seen as having trouble competing with other larger cities and counties to attract these types of companies. Even so, it was believed that new jobs would be added in this industry. Tourism was seen as having some problems because of high gas prices, lack of convention and resort facilities, and distance from other populated cities but that creative ways of adapting to the situations would allow Grants Pass to hold its own. It was forecast that the older, retired population would continue to migrate into the area.

Future Commercial and Industrial Scenarios

Three commercial scenarios were evaluated. Scenario 1 relates to the proposal and will be described below.

Scenario 1: Major commercial growth is channeled to the existing centers of commercial activity, the downtown and the Grants Pass Shopping Center area east of downtown.

This scenario allocated sixty-five (65) percent of the commercial growth for the decade to the downtown and the Grants Pass Shopping Center area. It was anticipated that a department store anchor would locate downtown with other retailers to follow along with possibly a second anchor.

Three industrial scenarios were evaluated.

- 1) Continuation of present trends, with growth accommodated in East Grants Pass and North Grants Pass in and around the Caveman Industrial Park
- 2) More rapid growth that is accommodated in the Redwood Area
- 3) More rapid growth that is accommodated in the Merlin area

Description of the Industrial Base

Based on the economic base activities identified and the discussion in the Comprehensive Plan, a major expansion or new heavy industry will not take place in Grants Pass and that there will be resistance to it. Due to limited land and airshed capacity and people seeking a "superior natural environment" Grants Pass will have difficulty attracting new, heavy industry. It was believed that heavy industry would locate near Medford or somewhere outside the Grants Pass airshed.

There will be continued competition for light manufacturing jobs to come to Grants Pass.

Recent Data

Economic Opportunities Analysis (October 2006; Revised 2007)

An Economic Opportunities Analysis (EOA), prepared by Craig Stone and Associates (the "Stone EOA"), was submitted for a different zone change

application (06-40200004) previously and was reviewed and adopted by the City Council in early 2007 and acknowledged by DLCD as part of the Comprehensive Plan. Section 1 of Ordinance No. 5394, adopted by the City Council on January 17, 2007, and approved by the Mayor on January 24, 2007, states the following: The Comprehensive Plan database is hereby amended to include the Economic Opportunities Analysis attached as Exhibit 31 of the Planning Commission Staff report. The appendices to the EOA were submitted as evidence to the record of these proceedings and are referenced earlier as item "N." under Section V., Summary of Evidence, of these Findings of Fact.

A conclusion of the Stone EOA, a part of the Comprehensive Plan database at the time of this application, is that the industrial land supply is adequate to supply the expected demand (i.e. industrial demand) for 23.2 years and the commercial supply is adequate to supply the expected demand (i.e. commercial demand) for 15.6 years. In short, the analysis indicates the City contains an adequate supply of industrial lands for a period longer than a 20-year planning horizon.

At the time of application, the Stone EOA was the most recently adopted and acknowledged data and is therefore controlling for this Application.

1st Conclusion under Criterion (a):

The proposed zone change from Industrial to Business Park retains the fifteen and one half (15.5) acre site within the industrial inventory. The allowable uses in the Business Park zone are the same as those in the Industrial zone with the exception of only the outdoor industrial use not allowed. In addition, the Business Park zone also allows a range of other commercial and office type uses that are not permitted in the Industrial zone district. The proposed zone is compatible with the other Business Park zoning to the west and the allowed uses are well suited with the uses that already exist in the immediate area.

The Comprehensive Plan provides reasons for allowing this change as noted above. The site is close to downtown and I-5 and has utility services readily available to serve new development. Furthermore, the Stone EOA concludes that the City contains an adequate supply of industrial lands for a period longer than a 20-year planning horizon. In reality however, this conclusion is not relevant to the application at hand because the proposed plan and zone map amendment leave the land within an industrial designation and zone district.

Policy 8.7 (a) – "The City and County will encourage commercial development at major commercial nodes, which includes the East Grants Pass area around the existing Grants Pass Shopping Center, the Redwood Commercial Triangle south of the Rogue River area and the downtown area. The City will also encourage infill commercial and office development along Sixth and Seventh Streets, and in the North City commercial area."

2nd Conclusion under Criterion (a):

The area near the Grants Pass Shopping Center was identified as a viable commercial node that could accommodate future development. The proposed zone change would allow for the construction of a home improvement store and other accessory retail uses that compliment the existing uses in the area.

Element 13 – Land Use

Goal: To provide a vision of the future through maps and policies that shall guide and inform the land use decisions of the present, in such a manner that:

- (d) is responsive to the wishes of the citizens and property owners of the planning area, and
- (e) provides adequate amounts of industrial, commercial, and residential lands to meet growth needs over the planning period.

Policy 13.2.1 Comp Plan Land Use Map:

The Comprehensive Plan Land Use Map shall:

- (a) designate the highest and best land use for all portions of the Urban Growth Boundary area, on a parcel-by-parcel basis.
- (b) guide and direct changes to the Zoning Map
- (c) meet the demonstrated need during the planning period for residential, commercial, industrial, and public lands as determined by the Comprehensive Plan.

13.9.12 North Area Industrial – East City II

"This subarea contains the city's prime blocks of heavy industrial lands, almost all fully serviced, much with excellent rail access, and accessed by the Redwood Highway Spur, convenient to the City's southern freeway exit. Some conversion to commercial uses along "F" Street and the Redwood Spur may be required to meet demand in the East Grants Pass commercial subarea. 37% of the subarea is under utilized or vacant, but much of the under-utilized land is being held for future expansion by existing enterprises."

3rd Conclusion under Criterion (a):

The site is the northwestern-most Industrial site within the industrial zone boundary in this area. A conversion from Industrial to Business Park will allow a mix of both industrial and commercial uses. The development plan proposed for the site favors the commercial allowance that the Business Park provides. However, the proposed zone can accommodate industrial based users in the future if development circumstances changes. The Comprehensive Plan indicates that heavy industrial users may not locate in Grants Pass but that light manufacturing establishments are encouraged to locate here. The Business Park zone supports light manufacturing uses.

The area near the Grants Pass Shopping Center is an evolving area with several new shops and centers including the Parkway Village and Deardorff Corners, and recent additions to the shopping center including Ross Dress for Less and Aaron's. The railroad tracks create a separation between the heavier industrial uses and the northern indoor industrial use (Fire Mountain Gems). The placement of a heavy industrial use next to Fire Mountain Gems and the other surrounding uses may be incompatible for the area. The proposed zone allows for a mix of light industrial and commercial uses that more easily blend into the existing landscape of uses.

The Business Park zone allows for retention of industrial lands, with the allowance of a number of non-industrial uses that can be sited on the property. The Comprehensive Plan supports the addition of light manufacturing business

and identifies the commercial node around the Grants Pass Shopping Center. The Business Park zone can accommodate either light industrial or commercial users.

CRITERION (b): A change in circumstances validated by and supported by the database or proposed changes to the database, which would necessitate a change in findings, goals and policies.

City Council Response: **Satisfied.**

The proposal is in accordance with a change in circumstances that is validated by and supported by the database. The Comprehensive Plan identifies two changes that will occur: 1) heavy industry will unlikely locate in Grants Pass and light manufacturing is a growing market that Grants Pass wants to attract and 2) the subject property is located near a commercial node due to its proximity to the Grants Pass Shopping Center and more commercial uses are likely to occur in the area. The current site allows for heavy industry however, due to its location and the surrounding uses, heavy industry may not be compatible. The Business Park proposal can easily provide for a mix of light manufacturing or commercial uses. Both of the changes in circumstance are supported by the database in the Comprehensive Plan as noted in Criterion (a) and are accommodated by the change in zoning.

The applicant does not propose a change to the database that would require a change to the existing findings, goals, and policies of the Comprehensive Plan. The existing findings, goals, and policies found in the Comprehensive Plan support the change.

CRITERION (c): Applicable planning goals and guidelines of the State of Oregon.

City Council Response: **Satisfied.**

The proposal is consistent with six (6) of the statewide planning goals described below:

Goal 1: Citizen Involvement – “To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.”

The proposal is reviewed and noticed according to the requirements for a Type IV- B procedure. Property owners within two hundred and fifty (250) feet were sent notice of the application. Public notice is posted for both the Planning Commission and City Council hearings in the *Daily Courier*, the local newspaper, on the City of the Grants Pass website, www.grantspassoregon.gov and in the cabinet on the first floor of the City Hall building. Such notification provides the public an opportunity to provide written or oral comments on the matter either before or at the hearings.

The City has an acknowledged Citizen Involvement Program adopted under Resolution 1748 that insures the public can actively engage in the planning process.

Comments received from surrounding property owners are included in the record. Comments and questions submitted are addressed to the best ability of staff.

1st Conclusion under Criterion (c): The City's procedures outlined in the Comprehensive Plan and Development Code pertaining to citizen involvement are being followed. The proposal is consistent with Goal 1 standards and requirements.

Goal 2: Land Use – "To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions."

The Grants Pass *Comprehensive Plan* and *Development Code* outline the planning process to consider a Comprehensive Plan Map Amendment and Zoning Map Amendment. The process requires the application to be heard by both the Planning Commission and City Council. The Planning Commission will review the proposal and provide a formal recommendation that will be considered by the City Council for final decision. Specific criteria have been adopted that relate to the proposal. The review bodies will evaluate the proposal against those criteria in order to make a decision.

2nd Conclusion under Criterion (c): The application is being reviewed through the City's land use process making it consistent with the purpose of statewide Goal 2.

Goal 6: Air, Water, and Land Resources – "To maintain and improve the quality of the air, water, and land resources of the state."

Upon development, the property, regardless of its zoning designation will be subject to all applicable federal, state, and local environmental regulations that affect the natural resources on or surrounding the property. Adherence to regulatory requirements will be followed to the greatest extent possible.

3rd Conclusion from Criterion (c): The property is subject to the applicable regulations that affect the natural resources upon development. The proposal is consistent with Goal 6.

Goal 9: Economic Development – "To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens."

The City has six (6) zone districts distributed evenly between both the commercial and industrial zones that provide opportunities for economic growth within the City limits and urbanizing area. The economy element of the *Comprehensive Plan* provides details on the industrial and commercial outlook for the City. A summary of those goals and policies is described above in Criterion (a). The conclusions made above are based on the information contained in the Comprehensive Plan and are used to support the requested zone change. The zone change is consistent with the goals and policies within that element.

OAR 660-009 does not apply to this case. Oregon Administrative Rule (OAR) 660-009-0010 contains six (6) points. Of the six (6), only two could be argued to be relevant to this proposal:

OAR 660-009-0010 (4) states,

"For a post-acknowledgement plan amendment under OAR chapter 660, 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 an other 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 its 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."

As stated under Section VII above, the current zoning designation (Industrial) and the proposed zoning designation (Business Park) are both industrial zones. The zones are similar because all permitted uses in one zone are allowed in the other with the exception of heavy industrial use not allowed in Business Park. The major difference between the two zones is the allowance of commercial and office type uses in the Business Park zone which are not permitted in the Industrial zone. The City Council finds that OAR 660-009-0010 (4) does not apply because changing the "I" designation to the "BP" designation is not a change to a non-industrial designation.

In the alternative, even if the application could be construed to be a change to a non-industrial designation, the City Council finds that the application meets the Goal 9 Rules because the proposed amendment is consistent with the City's most recent economic opportunities analysis (the Stone EOA) and the parts of the City's acknowledged comprehensive plan which addresses the requirements of this division. (See OAR 660-0090010 (4) (a)).

Additionally, a conclusion of the Stone EOA that was part of the Comprehensive Plan data base at the time of this application is that there is an adequate supply of industrial land, which will meet the expected demand for a little more than 23 years. This is based on the availability of 77 acres of industrial land and a projected absorption of 67 acres over the next 23.2 years. This results in an absorption rate of just under 2.9 acres per year. For purposes of argument, even if the 15.5 acres were found not to be industrial because uses in addition to industrial ones are permitted in the BP zone, 61.5 acres of industrial land still would be available (77 minus 15.5 acres). At an absorption rate of 2.9 industrial acres per year, there is still a 21.2 year supply of industrial land left.

Furthermore, Appendix D of the Stone EOA does not include the subject parcel. Appendix D lists specific properties by tax lot numbers and owners names which represents the 77 acres of net available industrial land. The only Timber Products property listed on Appendix D includes 2.41 acres of net available industrial land and is listed as Tax Lot 360521BB0003000. The subject parcel is Tax Lot 36-05-17-D0 TL 1000. In conclusion, re-designation of the subject property will not reduce either the 27 net available acres zoned Industrial or the 77 net available acres in any of the industrial plan and zoning designations as shown the Stone EOA.

4th Conclusion under Criterion (c): The Proposal complies with statewide planning Goal 9 because the City has an adopted and acknowledged Comprehensive Plan that adequately addresses Goal 9 and the Goal 9 administrative rules. Furthermore, the Goal 9 Rules (Oregon Administrative Rule 660-009) are inapplicable because the proposal is not a proposal to change the subject property from an industrial use designation to a non-industrial use designation. Alternatively, even if the Goal 9 Rules are applicable to this proposal the proposal complies with the Goal 9 Rules because it does not change the Comprehensive Plan and is consistent with the Stone EOA.

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

A public facilities plan is defined as “a support document or documents to a comprehensive plan. The facility plan describes the water, sewer and transportation facilities which are to support the land uses designated in the appropriate acknowledged comprehensive plans within an urban growth boundary containing a population greater than 2,500.”

In terms of water and sewer plans, the City has acknowledged master plans for both of these urban services that are part of the *Comprehensive Plan* and *Grants Pass Development Code*. Both services are adjacent to the subject property and are adequate and available to serve future development of the site.

In regards to transportation facilities, the City has an adopted Master Transportation Plan that describes the City's Level of Service (LOS) standard and outlines planned future improvements.

5th Conclusion under Criterion (c): The City has public facilities in place to adequately serve the property in regards to sewer and water and is consistent with Goal 11 related to those services.

Development of the site under the proposed development scenario impacts six (6) intersections that require mitigation. The improvements for the intersections are not included in the list of capital improvement projects identified in the Master Transportation Plan and therefore do not have an identified funding source. Through the use of a development agreement, the mitigation measures described in the TIA will be installed making the proposal compliant with Goal 11. A detail of the transportation impacts is described under Goal 12.

Goal 12: Transportation – “To provide and encourage a safe, convenient and economic transportation system.”

In accordance with the LUBA Decision, the City re-opened the record to consider new testimony regarding the February 29, 2008, letter from Michael Weishar. No additional testimony or evidence was submitted. As noted earlier in Section V. subsection T., the February 29th Weishar letter is hereby adopted and incorporated herein as findings of fact.

The proposal is subject to the Transportation Planning Rule outlined in OAR 660-012-0060. The applicant submitted two (2) traffic impact analyses plus one (1) addendum to address the traffic impacts of the proposed zoning and future development. The scope of the study was determined by the Oregon Department of Transportation (ODOT) and the City of Grants Pass.

The Transportation and Growth Management Program, a joint program of the Department of Land Conservation and Development, has provided comments on the proposal.

The study analyzes nineteen (19) intersections controlled either by ODOT or the City (a list of those intersections is found on page 5 of the May 31, 2007 Traffic Impact Analysis). Because the city and state evaluate impacts to intersections based on different standards, the study addresses each intersection using the volume to capacity (v/c) ratio used by ODOT and the level of service standard (LOS) used by the City. The minimum level of service standard for the City is LOS "D". All intersections studied had to meet the LOS D standard for the year of opening in 2009. The City's standard was also used for ODOT controlled intersections.

The study compares the worst-case development scenario under the existing Industrial zone district and a specific development plan under the proposed Business Park zone district being a 132,000 square foot home improvement store including 40,000 square foot of accessory retail uses. The total traffic generated during the PM peak hour by each of the zoning scenarios in the year of opening for the entire development in 2009 is provided below:

- "The proposed development and proposed BP zone will generate 441 external trips of which 110 are trips diverted from the nearby arterial streets (Grants Pass Parkway, and "E" and "F" Streets) and 331 are new trips, including 152 inbound to the site and 179 outbound."
- "The worst-case development under the current I zone will generate 209 external trips of which 21 are trips diverted from the nearby arterial streets and 188 are new trips in the area and include 26 inbound trips to the site and 161 outbound."

The study is based on the difference in trips that could be potentially generated under the proposed BP zone and the trips that could be potentially generated under the current I zone.

Based on an operational analysis that studied the existing 2007 conditions, the proposed and current zoning traffic conditions in the projected year of opening in 2009, and the future year in 2029 for all nineteen (19) intersections, twelve (12) intersections failed to meet either the ODOT or City standard in 2009 or the ODOT standard in 2029. Mitigation is required for those intersections that either

fall below the level of service standard for the City or when the proposed zoning exceeds the v/c ratio of the existing zoning. The analysis of these intersections is described on pages 3-6 of the September 12, 2007 traffic study. They include:

- 1) Grants Pass Parkway at Agness Avenue – LOS met (2009)
- 2) Grants Pass Parkway at Terry Lane – LOS met (2009)
- 3) Grants Pass Parkway at Beacon Drive – LOS met (2009)
- 4) Grants Pass Parkway at F Street
- 5) Grants Pass Parkway at M Street -
- 6) Grants Pass Parkway at Rogue River Highway (Northbound) – LOS met (2009)
- 7) Grants Pass Parkway at Rogue River Highway (Southbound) – LOS met (2009)
- 8) Grants Pass Parkway at Jacksonville Highway
- 9) Sixth Street at M Street – LOS met (2009)
- 10) E Street at Mill Street
- 11) F Street at Mill Street
- 12) M Street at Mill Street

Of those twelve (12), six (6) were found to have a significant impact and did not meet the City's level of service standard. The level of service standard was applied to the overall intersection for signalized intersections and to the street approach for unsignalized intersections. Three of the identified intersections are under the jurisdiction of ODOT. They include:

- Grants Pass Parkway at "F" Street
- Grants Pass Parkway at "M" Street
- Grants Pass Parkway at Jacksonville Highway
- "E" Street at Mill Street
- "F" Street at Mill Street
- "M" Street at Mill Street

The City and the ODOT have both analyzed the impacts the proposal has on the transportation system and provided findings related to the Transportation Planning Rule (TPR). ODOT's analysis of the TPR and traffic study are attached. The City finds the following to be true related to the TPR as related to the section on Plan and Land Use Regulation Amendments:

OAR 660-012-0060 (1) requires, *where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:*

- (a) *Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);*
- (b) *Change standards implementing a functional classification system; or*

- (c) *As measured at the end of the planning period identified in the adopted transportation system plan:*
 - (A) *Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;*
 - (B) *Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or*
 - (C) *Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.*

Analysis: The applicant has submitted a traffic impact study to address the effect the proposed zone change and development plan will have on the transportation system. The study initially reviewed nineteen (19) intersections including the Interstate 5 exit 55 ramp terminals. All intersections were reviewed against the State v/c ratio standard and the City's level of service (LOS) standard. If the proposed zoning exceeded the v/c ratio of the existing zoning or the level of service standard was below LOS D, then those intersections were considered significantly impacted by the proposal. Six (6) intersections were found to be significantly impacted that warrant mitigation measures. The six (6) intersections are identified above. Of the six (6), three (3) are on State facilities with four (4) out of the six (6) intersections failing to meet the City level of service standard. The City proposes a Development Agreement be executed with the applicant to provide assurances the mitigation measures for the failing intersections will be installed upon development of the property.

OAR 660-012-0060 (2) requires, *where a local government determines that there would be a significant effect, compliance with section (1) shall be accomplished through one or a combination of the following:*

- (a) *Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.*
- (b) *Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.*
- (c) *Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.*
- (d) *Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.*
- (e) *Providing other measures as a condition of development or through a development agreement or similar funding method, including transportation*

system management measures, demand management or minor transportation improvements. Local governments shall as part of the amendment specify when measures or improvements provided pursuant to this subsection will be provided.

Analysis: The City has determined that the proposal causes a significant impact and has proposed the implementation of a Development Agreement to ensure mitigation measures for the six (6) failing intersections are required and installed. The Development Agreement identifies types of uses such as drive-through restaurants that are restricted from the site so the proposed development does not exceed State or City performance standards.

The proposed mitigation measures for the six (6) intersections include the following improvements:

1. Installation of a traffic signal at "E" Street and Mill Street.
2. Installation of a traffic signal at "F" Street and Mill Street.
3. Installation of a traffic signal at "M" Street and Mill Street.
4. Grants Pass Parkway at "F" Street - Addition of an eastbound lane on "F" Street to allow for dual left-turn lanes onto the Parkway.
5. Grants Pass Parkway at "M" Street – Addition of a second left turn lane on westbound "M" Street to southbound Parkway.
6. Grants Pass Parkway and Highway 238 – Addition of a second left turn lane on southbound Parkway to southbound Highway 238.

The installation of the above improvements shall factor in all financing to design, acquire or pay for acquisition of property for right of way, and build the requirements by the applicant.

The City concurs with ODOT findings regarding the TPR with some discussion about Finding 7. In regards to the Mill and M Street intersection, the applicant, City and ODOT discussed three alternatives to mitigate it. The alternatives looked at included a roundabout, an extension of Mill Street as a connector to M Street and M Street intersecting into it, and a traffic signal. All three options were reviewed and discussed with neither the roundabout nor the Mill Street extension identified as the best alternatives from the City perspective. The City is satisfied with the installation of a traffic signal at this location based on concurrence of the City's traffic consultant on this matter. ODOT's concern about future queue length may warrant a future westbound right turn lane at Mill and M Streets. This improvement can be addressed through an amendment of the Master Transportation Plan or future development of surrounding properties. The applicant is not obligated to provide the westbound right turn lane with the proposal.

6th Conclusion under Criterion (c): The City finds that the proposal meets the Transportation Planning Rule with the implementation of a Development Agreement and to mitigate those intersections that fall below the State and City's performance standards. The plan is in compliance with Goal 12.

Overall Conclusion: Of the nineteen (19) statewide planning goals, the City finds the six (6) goals analyzed above are applicable and are met by the proposal.

The remaining thirteen (13) goals are as follows and are not found to be applicable to the application:

Goal 3 – Agriculture, Goal 4 – Forest, Goal 5 – Natural Resources, Scenic and Historic Areas, Goal 7 – Areas subject to Natural Hazards, Goal 8 – Recreational Needs, Goal 10- Housing, Goal 13 – Energy Conservation, Goal 14 – Urbanization, Goal 15 – Willamette River Greenway, Goal 16 – Estuarine Resources, Goal 17 – Coastal Shorelands, Goal 18 – Beaches and Dunes, and Goal 19 – Ocean Resources. These goals do not relate to the site under review. The site is not designated as agricultural or forest land. The property does not contain any natural resources or natural hazards. The parcel is not identified in the City's Comprehensive Plan as a future recreational area. Housing is not permitted on the property under the existing or proposed zoning designation. The development of the site shall try to implement energy conservation principles regardless of the zoning designation. The site is located in an urbanized area. Goals 15-19 do not relate to Grants Pass.

CRITERION (d): Citizen Review and comment.

City Council Response: Satisfied.

Public notice of the originally scheduled September 12, 2007 Planning Commission hearing was mailed on August 22, 2007 to adjacent properties within two-hundred and fifty (250) feet of the project. A legal notice was posted in the Daily Courier on September 5, 2007 providing the public with a date and time of the proposed hearing. The originally scheduled hearing has been continued four times to a specific date and no new notices have been mailed or posted in the newspaper. Additional notice will be placed in the Daily Courier prior to the City Council hearing in December.

One adjacent neighbor, Fire Mountain Gems, has submitted comments regarding the proposal and has raised concerns regarding the queuing the proposed traffic on "F" Street will cause to the site's existing right-in and right-out entrance. John Replinger, the City's traffic consultant has provided a response to these concerns in his letter dated November 5, 2007.

Fire Mountain Gems submitted additional information on December 6, 2007. Please note that exhibit 24 is an old letter from John Replinger based on the May 31, 2007 traffic study. This letter initiated new traffic data to be provided and evaluated.

Conclusion: The proposal has been properly noticed to surrounding property owners and the community at large. Additional opportunities for public comment are provided for at the scheduled public hearings. The City is in compliance with this criterion.

CRITERION (e): Review and comment from affected governmental units and other agencies.

City Council Response: Satisfied.

Information regarding the proposal was mailed to several affected agencies including the Board of County Commissioners, Josephine County Planning, the Oregon Department of Transportation (ODOT), and the Department of Land Conservation and Development (DLCD).

No comments have been received to date from the Josephine County Board of County Commissioners or County Planning.

The Oregon Department of Transportation (ODOT) has worked closely with City staff and the applicant to review, analyze and provide input regarding the applicant's traffic impact analysis. ODOT has provided their comments concerning the proposal.

The Department of Land Conservation and Development was mailed copies of the original submittal on July 26, 2007. Comments were received from William A. Holmstrom, Transportation Planner with the Transportation & Growth Management Program (a joint program with ODOT and DLCD) regarding the proposal. Mr. Holmstrom was mailed the September 12, 2007 Traffic Impact Analysis and October 10, 2007 Traffic Impact Analysis Addendum on November 1, 2007. An e-mail was sent to the applicant from John Renz and DLCD in regards to the industrial inventory. No new comments have been received to date.

Conclusion: All affected governmental agencies were provided with the necessary paperwork to review the proposal. The City is in compliance with Criterion (e).

CRITERION (f): A demonstration that any additional need for basic urban services (water, sewer, streets, storm drainage, parks, and fire and police protection) is adequately covered by adopted utility plans and service policies, or a proposal for the requisite changes to said utility plans and service policies as a part of the requested Comprehensive Plan amendment.

City Council Response: Satisfied.

The existing basic urban services on or near the site have been outlined in Section IV (Background and Discussion) above. Water and sewer are available as noted in Criterion (c), Goal 11. There is an existing storm drain line that crosses through the property. The existing storm drain plan covers the applicant's responsibilities for storm drainage on and off site. If new storm water regulations are adopted, then future development may be subject to any new standards.

The Master Transportation Plan and Development Code identify the standards for the construction of streets and level of service standards for streets and intersections. The applicant's TIA indicates six (6) intersections are affected by the proposal. The intersections are listed under Criterion (c), Goal 12 above. The Master Transportation Plan does not include these intersections in the list of capital improvement projects outlined for the City. Therefore, a Development

Agreement is proposed between the City and the applicant to ensure mitigation of traffic issues associated with the proposed zone change is provided upon development of the property. The agreement outlines the specific improvements required to be installed by the applicant.

Conclusion: All required urban services related to water, sewer and storm drainage can be provided prior to opening of any future development on the site.

Related to streets and failing intersections noted above, a development agreement is proposed that addresses how impacts will be mitigated.

CRITERION (g): Additional information as required by the review body.

City Council Response: **Satisfied.**

Conclusion: Any additional information needed by the review body will be provided upon request.

CRITERION (h): In lieu of item (b) above, demonstration that the Plan as originally adopted was in error.

City Council Response: **Not Applicable.**

Conclusion: The Comprehensive Plan was not adopted in error. The applicant is not disputing the validity of the Plan.

The Zoning Map may be amended by the review bodies provided that all the following criteria are met.

CRITERION (1): The proposed use, if any is consistent with the proposed Zoning District.

City Council Response: **Satisfied.**

The proposed use is to construct a 132,000 square foot home improvement store and 40,000 square feet of accessory retail uses on the site. The Business Park zone allows such uses as provided in Schedule 12-2 of the Development Code. A home improvement store is permitted in the Business Park zone under the definitions of indoor and outdoor retail trade uses. The types of accessory retail uses proposed have not been specifically identified but would likely also be categorized under the retail trade uses.

The applicant chose the above scenario in an effort to minimize impacts. Other possible uses including a business park development, discount superstore or factory outlet stores ranging in size from 200,000 to 270,000 square feet were not contemplated in the traffic study.

The traffic study points out that uses such as fast-food restaurants, banks, and uses with drive-through windows need to be excluded from allowed uses associated with the 40,000 square feet of accessory uses. The City's traffic consultant points out other high traffic generators such as fast-food restaurants without drive-through windows or convenience stores, which also need to be included on the list when limiting uses on the site. The Development Agreement outlines these restrictions.

Conclusion: The proposed uses are allowed in the Business Park zone with high traffic volume uses to be limited.

CRITERION (2): The proposed Zoning District is consistent with the Comprehensive Plan Land Use Map designation.

City Council Response: **Satisfied based on action taken on the proposed Comprehensive Plan Amendment.**

The applicant has filed for a joint application to change the Zoning Map and the Comprehensive Plan Map to coincide with one another. Upon approval of the Comprehensive Plan Map Amendment, the Zoning Map will also be consistent. Both maps will reflect the Business Park designation.

Conclusion: With approval of the Comprehensive Plan Map Amendment, the Zoning Map will be consistent with the designation.

CRITERION (3): A demonstration that existing or proposed levels of basic urban services can accommodate the proposed or potential development without adverse impact upon the affected service area or without a change to adopted utility plans.

City Council Response: **Satisfied.**

Basic services such as water, sewer, and storm drain can be provided to the site according to existing utility plans.

In terms of street impacts, the submitted traffic study identifies six (6) intersections that will fall below City or ODOT standards with the proposed development. These intersections will be corrected through mitigation. The execution of a Development Agreement is required to ensure these improvements are installed with development of the site according to the proposed plan in the TIA. The Development Agreement has a limited time frame and relates specifically to the development scenario described with the home improvement store and accessory retail uses. Measures are in place to provide for new traffic data if the proposed development is not installed and the proposal changes.

Conclusion: Basic services such as sewer and water can be provided to accommodate the proposed development. Through the execution of a Development Agreement, the City has written assurances that the traffic impacts under the proposed development will be mitigated to meet City standards.

CRITERION (4): A demonstration that the proposed amendment is consistent with the functions, capacities, and performance standards of transportation facilities identified in the Master Transportation Plan.

City Council Response: **Satisfied with conditions.**

The impacts of the proposed zone change and potential development have been described in the submitted traffic studies. For the six (6) intersections identified as falling below standards, a mitigation plan is proposed to upgrade the intersections upon development of the property. The improvements needed are outlined in the Development Agreement proposed between the City and applicant. With the execution of the Development Agreement and installation of improvements the plan will be consistent with the standards in the Master Transportation Plan.

Conclusion: The proposed amendment will be consistent with the standards in the Master Transportation Plan upon installation of improvements to the six (6) failing intersections identified in the TIA.

CRITERION (5): The natural features of the site are conducive to the proposed Zoning District.

City Council Response: **Not Applicable.**

The site is void of any natural features. The site is not located in the steep slope hazard area and the City's existing wetland inventory does not include this site. There are no mature trees exist that would be impacted by future development on the site. The property is conducive to the proposed zoning district in respect to natural features.

Conclusion: The existing features or lack there of are conducive to the proposed Zoning District.

CRITERION (6): The proposed zone is consistent with the requirements of all overlay districts that include the subject property.

City Council Response: **Satisfied.**

The site is located within the Redevelopment Agency and Enterprise Zone districts. The applicant may be eligible for certain incentives that relate to both of these districts (prior to expiration of the districts).

The site is not located in any other specific overlay districts such as wetlands or the steep slope hazard district.

Conclusion: The proposal is consistent with Criterion (6).

CRITERION (7): The timing of the zone change request is appropriate in terms of the efficient provision or upgrading of basic urban services versus the utilization of other buildable lands in similar zoning districts already provided with basic urban services.

City Council Response: **Satisfied.**

The subject property is one of those sites in the existing inventory that can accommodate both industrial and commercial uses with the zone change. The site is located adjacent to basic urban services and the transportation system will be upgraded according to the proposed Development Agreement.

Conclusion: The request for a zone change is appropriate at this location. The existing services adjacent to the site and transportation system upgrades required make this a viable location for the proposal.

CRITERION (8): In the case of rezoning from the Urban Reserve District, that the criteria for conversion are met, as provided in Section 4.034.

City Council Response: **Not Applicable.**

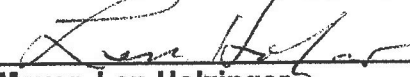
Conclusion: The subject property is not located within the Urban Reserve District therefore this criterion does not apply.

IX. DECISION:

The City Council **APPROVED** the amended findings for the proposed Comprehensive Plan Map amendment from Industrial to Business Park and the proposed Zoning Map amendment from (I) to (BP) as conditioned upon the attached Development Agreement #2008-1.

The vote was 6-0 with Councilors Cummings, Kangas, Patterson, Renfro, Wendle and Richardson in favor and none opposed. Councilors Hyde and Berger were absent.

X. APPROVED BY THE CITY COUNCIL this 17th day of December 2008.



Mayor, Len Holzinger

— ORDINANCE NO. 5435

AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN MAP FROM INDUSTRIAL TO BUSINESS PARK AND THE ZONING MAP FROM I TO BP AND ENTERING INTO DEVELOPMENT AGREEMENT #2008-1 FOR PROPERTY LOCATED AT 111 (125) NE MILL STREET.

WHEREAS:

1. The Comprehensive Plan of the City of Grants Pass was adopted December 15, 1982. The Development Code of the City of Grants Pass was adopted August 17, 1983; and
2. The owner of the subject property has requested the comprehensive plan and zone map amendments.
3. In terms of the physical conditions and characteristics, location, and availability of services, the property is appropriate for the proposed BP zoning designation, subject to certain restrictions and conditions related to protecting the function and capacity of adjacent transportation facilities.
4. The applicable criteria listed in the Comprehensive Plan and the Development Code are met.
5. The applicable provisions of ORS 94.504 through 94.528, governing Development Agreements are met.

NOW, THEREFORE, THE CITY OF GRANTS PASS HEREBY ORDAINS:

Section 1: The Comprehensive Plan Map is hereby amended to include the property identified by Assessor's Map and Tax Lot 36-05-17-D0/ 1000. All of tax lot 1000 and adjacent rights of way, shown in Exhibit "A", to be entirely within the Business Park Comprehensive Plan Map designation; and

Section 2: The Zoning Map is hereby amended to include tax lot 1000 and adjacent rights of way, entirely within the "BP" zoning district, as shown in Exhibit "B".

Section 3: The City hereby adopts Development Agreement #2008-1, attached as Exhibit 1, which stipulates conditions attached to the development of the property as rezoned to Business Park (BP).

ADOPTED by the Council of the City of Grants Pass, Oregon, in regular session, this 19th day of March, 2008.

SUBMITTED to and _____ by the Mayor of the City of Grants Pass, Oregon, this _____ day of March, 2008.

This Ordinance became law pursuant to Chapter V, Section 1(2) of the Grants Pass City Charter.

Carl Sniffen 3-26-08
S. K. K. Kris Woodburn, City Attorney
acting

Len Holzinger, Mayor

ATTEST:

David Reever

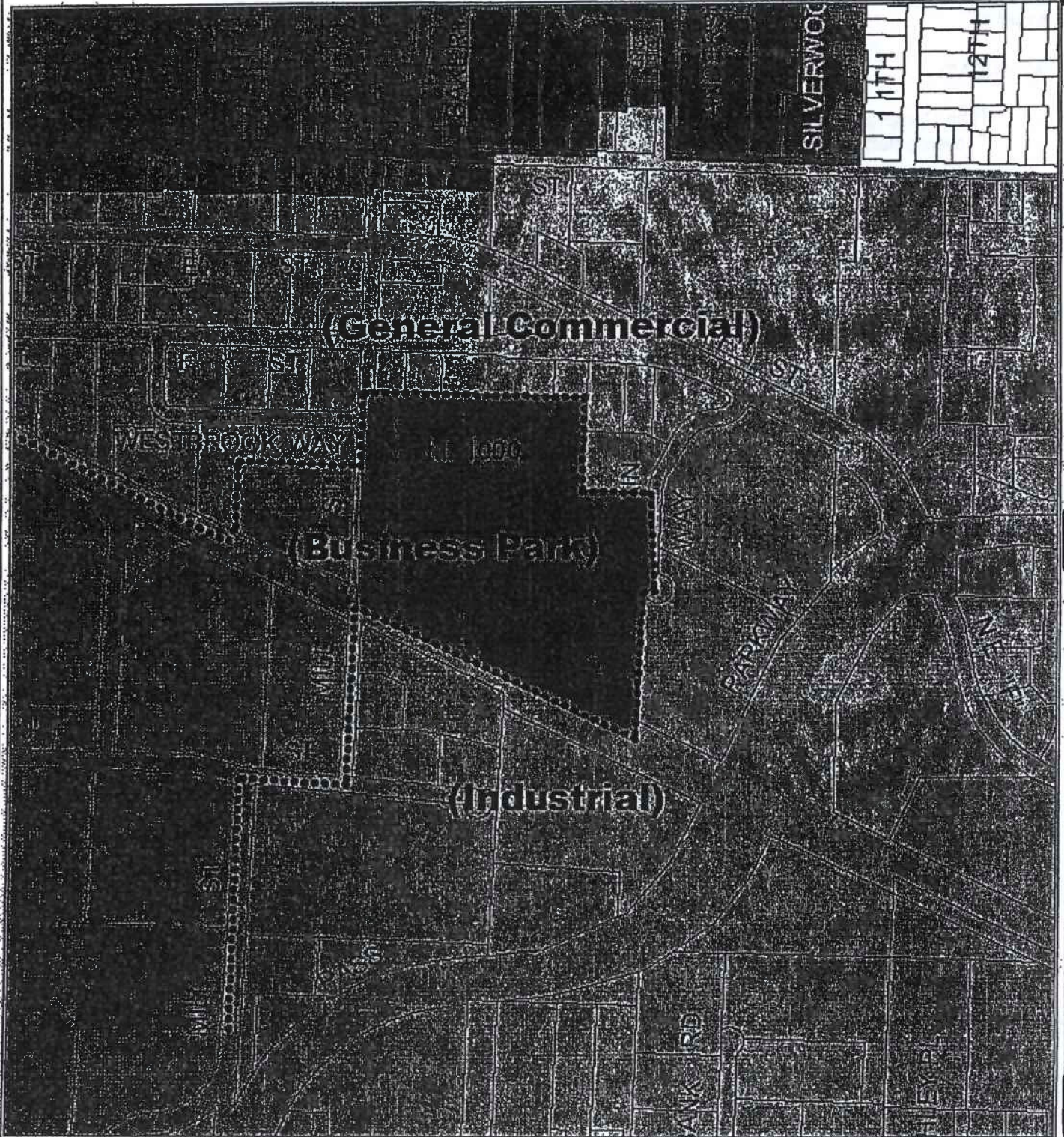
Finance Director

Date submitted to Mayor: 3-20-08

Approved as to Form, *Carl Sniffen acting*
Kris Woodburn, City Attorney CS

Amended Comprehensive Plan Map Designation (Business Park)

36-05-17-D0 TL 1000



400 0 400 800 Feet



EXHIBIT A - to Ordinance

Amended Zoning Map Designation (BP)

36-05-17-D0 TL 1000



MAKING THE DESERT BLOSSOM AGAIN



EXHIBIT B - to Ordinance

DEVELOPMENT AGREEMENT #2008-1

BETWEEN: City of Grants Pass, ("City")
an Oregon municipal corporation

AND: Timber Products Co. Limited Partnership, ("Owner")
an Oregon limited partnership, its successors, assigns
and any other person or entity authorized to develop
or apply for development approval on the Property.

**EFFECTIVE
DATE:** *Insert Date*

RECITALS

A. Owner owns approximately 15.5 acres of real property located in City, more specifically identified in the legal description attached to this Development Agreement ("this Agreement") as *Exhibit A* (the "Property") and as illustrated in *Exhibit B*. The Property has a comprehensive plan map designation of I-Industrial and is zoned I-Industrial.

B. Owner has applied to City for approval of a comprehensive plan map and zoning designation amendment that would change the comprehensive plan and zoning map of the Property from I-Industrial to BP-Business Park for the Property (City file number 07-40200002) (the "Application"). Owner's intended use of the Property is a home improvement store of approximately 132,000 square feet and up to 40,000 square feet of general retail use (the "Proposed Development"). City staff has identified a requirement that Owner, as a condition of the Proposed Development, must construct certain public improvements ("Planned Improvements"), as described in *Exhibit C*, that improve certain transportation facilities to meet both the City's mobility standard and the Oregon Department of Transportation's mobility standards.

C. City has agreed to consider an alternative method of calculating the City's system development charges ("SDCs") for the Proposed Development on the Property in consideration for Owner's agreement to construct the Planned Improvements, as described in *Exhibit C*.

D. A statutory development agreement, pursuant to ORS 94.504 to 94.528, is the appropriate mechanism for City and Owner to enter into an agreement for the Application approval, the construction of the needed public improvements, and to set forth the terms by which City will consider compensating Owner for the added costs of the Planned Improvements beyond what the

DEVELOPMENT AGREEMENT

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Exhibit 1 – to Ordinance

applicant believes is required to mitigate the Proposed Development's transportation impacts under the TPR by recalculating the SDCs to be charged Owner for the Proposed Development.

E. City's SDC ordinance did not contemplate the Proposed Development of the Property as described in Recital B and, therefore, the Planned Improvements were not included in City's most recent Transportation Systems Plan, the Grants Pass Urban Area Master Transportation Plan ("Master Transportation Plan"). One of City's SDC ordinances stated purpose is to impose an equitable share of the public costs of capital improvements upon development. The SDC ordinance specifically authorizes the City to make interpretations of the SDC ordinance. The SDC ordinance also indicates the City may alter the methodology for calculating SDCs for major, special or unique development under Section 3.10.050 (C) of the Municipal Code. Therefore, the City Council may consider the Proposed Development as a major, special and unique project that warrants the review of recalculating the SDCs to be imposed on the Proposed Development.

F. Owner's recent Transportation Impact Analysis ("TIA") demonstrates that the transportation improvements required of Owner will improve failing conditions at several intersections that currently do not meet City mobility standards to a greater extent than warranted by the Proposed Development's impacts to those intersections. Therefore, City Council will consider a reduction of SDCs otherwise payable in an amount equal to the cost of the following off-site transportation system improvements at the following intersections (the "Intersections"):

1. E Street and Mill Street.
2. F Street and Mill Street.
3. Jacksonville Highway and Grants Pass Parkway.

G. The City Council duly noticed and held a public hearing on this agreement on *Insert Date*, at which time the City Council accepted public testimony on the proposed development agreement.

H. At the end of the public hearing, the City Council voted to approve the development agreement as adopted by City Ordinance *Insert Number*.

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AGREEMENT

NOW, THEREFORE, based on the foregoing recitals, the City Council, for City and Owner, hereby agree to the following:

1. **Comprehensive Plan Map and Zoning Designation Amendment Application Approval (07-40200002)**: City hereby approves the Application presented by Owner as reflected in the Findings of Fact, Timber Products Company, Comprehensive Plan Map and Zoning Designation Amendment (07-40200002) attached to this Agreement as *Exhibit D* and incorporated herein by this reference ("Approval"), subject to the following conditions:

a. Development on the Property shall meet all applicable City standards at the time a development application is made, including commercial design standards.

b. If the development of the Property consists of the Proposed Development, improvements listed in *Exhibit C* shall be constructed and funded by the Owner. If any development of the Property consists of something other than the Proposed Development, the Owner shall construct and fund at a minimum the improvements #1 through #5 listed in *Exhibit C* and shall submit a revised Traffic Impact Analysis ("Revised TIA") addressing development of the entire Property. A Revised TIA and any related mitigation requirements shall be approved or rejected in accordance with the City's site review standards and procedures and shall demonstrate continuing consistency with the state Transportation Planning Rule as well as the City's Master Transportation Plan and implementing regulations, including levels of service. Nothing in this subsection shall be construed to limit the requirements pursuant to paragraph 1(e).

c. The following uses are not permitted on the site: fast food restaurants with or without drive-through windows, banks with drive through-windows, or convenience stores. Other high traffic generators, except those mentioned previously, may only be considered for the site upon additional traffic review and assessment by the City.

d. Furthermore, should any portion of the Property be developed, all required improvements pursuant to (1)(b) above shall be constructed prior to the issuance of any certificates of occupancy.

e. If the Proposed Development of the Property conforms to the proposal identified in Owner's TIA, and an application for a site plan or other development approval is submitted within two (2) years of the date of this Agreement, Owner shall not be required to make any additional improvements to the transportation system beyond those listed in *Exhibit C*. If an application for site plan or other development approval is not submitted within two (2)

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years of this agreement, the City has the right to require a new traffic impact study be submitted by the owner/developer of the property for the proposed development.

f. The height of the proposed structures and the permitted uses on the property shall be in accordance with those listed in the Grants Pass Development Code for the Business Park zone district except those uses restricted in this agreement.

2. **Access Control Line:** City agrees to make all reasonable efforts to either (a) remove, or cause to be removed, the access control line running adjacent to the Property along the western portion of Fire Mountain Way, (b) or provide Owner the legal right through some mechanism or process that allows Owner to directly access the Property from Fire Mountain Way in a manner that allows the development of the Property as described in the Application and the Owner's TIA. Owner shall not hold City liable for any damages in the event that this term is unable to be met by City. Should City not be able to remove, or cause to have removed the access control line, or should Owner be prohibited from accessing the Property from Fire Mountain Way for any reason, City shall remove the Property from the Fire Mountain Way Advanced Finance District, and under no circumstances shall the Owner be subject to any contributions to the Advanced Finance District. Should access to Fire Mountain Way be denied for any reason, Owner shall have the ability to bring an action in circuit court for equitable relief.

3. **Alternative Methodology for Calculating SDCs:** Pursuant to the Recital C above and Grants Pass Municipal Code ("GPMC") 3.10.050(C), City agrees to consider and review a proposal for an alternative method of calculating SDCs for the Proposed Development on the Property. This methodology includes reducing SDCs in a specific dollar amount, to be determined at the time of a development application for the increased costs associated with improving the Intersections beyond the requirements of the TPR. The estimated cost to Owner (as estimated by Owner at the time of this agreement) to improve the Intersections above what the Owner believes is required under the TPR is currently \$1,051,000. The estimated transportation SDCs to be assessed by City for the Proposed Development in the absence of this Agreement is likely to be over \$2 million.

4. **Right of Way Acquisition:** City agrees to use its best efforts, including the use of City's power of eminent domain through condemnation, to assist Owner in acquiring all necessary additional property to be used and dedicated as right-of-way for the Improvements #1 - #6 as listed in *Exhibit C* and any other improvements required by site plan review and/or land division which cannot be remedied by on-site modifications. Should City own necessary property to be acquired, City shall dedicate such property as right-of-way at no cost to Owner. All property acquired through City's power of eminent domain through condemnation shall be paid for by the Owner.

5. **Fees and Charges:** Owner shall be responsible for payment of all fees and charges associated with development of the Property in accordance with City ordinances and resolutions, without modification by this Agreement. This Agreement does not restrict Owner's ability to recover costs where permitted by applicable laws of the City of Grants Pass such as

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Exhibit 1 - to Ordinance

SDC credits. City agrees that no other transportation-related dedications, transportation SDCs, transportation assessments and transportation improvement costs, other than what is set out in *Exhibit C* and as may be required by paragraph 1(e), will be imposed on or exacted against Owner on any subsequent site plan, construction plans and any other review applications for development of the Property, provided the Proposed Development conforms to the proposal identified in Owner's TIA. Nothing in this Agreement shall preclude City from granting Owner SDC credits based on the previous use of the Property. Nothing in this Agreement shall limit the City from accepting fees that relate to Senate Bill 1036 (2007), and nothing in this Agreement limits the City from imposing impact fees not related to those transportation-related fees specifically described above.

6. **Schedule and Procedure for Compliance Review.** The submittal of additional land use applications for further development of the Property shall be reviewed according to the City's code and applicable state requirements effective at the time the application(s) is submitted. The review of construction drawings and building plans shall be completed in a reasonable amount of time according to City procedures. Provided an application(s) is submitted for further development of the Property and the application(s) conforms to the City's code, a development permit shall be issued prior to the expiration of the Agreement for the Proposed Development.

7. **Agreement to be Adopted by Ordinance:** This Agreement shall be incorporated and attached to the adopting ordinance that approves the Application for the Comprehensive Plan and Zone Map Amendments.

8. **Effective Date, Term and Modification:** This Agreement shall be effective upon signature by both parties and once the document is recorded with the Josephine County Clerk's Office. The Agreement shall be signed and recorded after the ordinance is effective. The ordinance is effective thirty (30) days after approval from the City Council. The City and Owner have thirty (30) days from the effective date of the ordinance to sign and record the document. The Agreement shall have a duration (term) of fifteen (15) years from the Effective Date. This Agreement may be modified or terminated sooner than fifteen (15) years only upon the written agreement signed by the authorized representatives of both parties (subject to provisions of Section 17 of this Agreement).

9. **Effect when Laws and Rules render compliance impossible.** When changes in regional policy or federal or state laws or rules render compliance with the Agreement impossible, unlawful or inconsistent with such laws, rules or policy the following shall apply:

The City shall consider adoption of amendments to this Agreement or the Development Code consistent with said changes and if adopted by the City, the Parties shall sign amendments to this Agreement that acknowledge conformance to the same.

10. **Assignment and Transfer:** This Agreement shall be fully assignable. This Agreement shall be binding on any future owner/land developer of this property for the full term of the Agreement.

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Exhibit 1 - to Ordinance

11. **Remedies for Breach:** Should either party breach this Agreement, remedies available under Oregon law for breach of contract are available to the parties, including damages and injunctive relief.

12. **Controlling Law and Venue for Disputes:** This Agreement shall be deemed to have been entered into in the State of Oregon and shall be construed and interpreted in accordance with the laws of Oregon. Any litigation or proceedings arising out of or connected with this Agreement shall be heard and decided in Oregon Circuit Court for the County of Josephine.

13. **Waiver of Certain Claims:** The Applicant knows and understands its rights under *Dolan v. City of Tigard*, 512 U.S. 374, 114 S. Ct. 2309 (1994), and by entering into this Agreement hereby waives any requirement that the City demonstrate that the off-site Public Improvements, as detailed in Items #1 through #6 in *Exhibit C*, are roughly proportional to the burden and demands placed upon public transportation facilities by the Proposed Development. The Applicant further waives any cause of action it may have pursuant to the Takings Clause of the Fifth Amendment to the U.S. Constitution or Article 1, Section 18 of the Oregon Constitution. This waiver includes but is not limited to any takings claim premised upon *Dolan* and cases interpreting the legal effect of *Dolan* arising out of the actions described herein and any claim asserting a regulatory taking. For any development other than the Proposed Development, this waiver applies to Items #1 through #5 in *Exhibit C*. Owner waives any right it may have under ORS 197.796 with respect to the conditions set forth in the Grants Pass Urban Area Planning Commission Findings of Fact, dated January 23, 2008 and this Agreement as proposed. Should the City approve the Application and this Agreement with modifications, Owner reserves its rights to appeal any such added or modified condition of approval pursuant to ORS 197.796. Owner further agrees not to challenge the City's mobility standards as they may apply to any other development of the Property which is subject to this Agreement.

14. **No Third Party Beneficiaries:** None of the duties and obligations of the parties to this Agreement shall in any way or in any manner be deemed to create any rights to any person or entity other than the parties hereto, and their successors and assigns, if any.

15. **Entire Agreement:** City and Owner acknowledge and agree that no promises or representations have been made which do not appear written herein and that this Agreement contains the entire agreement of the parties as to this Agreement.

16. **Severability Clause:** The parties to this Agreement agree that if any term, provision, covenant, condition or portion of this Agreement is held to be illegal, invalid, void, voidable or unenforceable, the remainder of the provisions shall remain in full force and effect as a separate contract and shall in no way be affected, impaired or invalidated.

DEVELOPMENT AGREEMENT

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Exhibit 1 – to Ordinance

17. Amendment or Cancellation of Agreement; Enforceability:

a. This Agreement may be amended or cancelled by mutual consent of the parties to the agreement or their successors in interest. The governing body shall amend or cancel a development agreement by adoption of an ordinance declaring cancellation of the agreement or setting forth the amendments to the agreement.

b. Until this Development Agreement is cancelled under this section, the terms of the Development Agreement are enforceable by any party to the Agreement.

[Signatures are on the following page.]

DEVELOPMENT AGREEMENT

T/CD/Planning/Reports/2007/07-40200002_Timber Products
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Exhibit 1 – to Ordinance

IN WITNESS WHEREOF, the parties have executed this Development Agreement in duplicate,
intending that it be effective as of the date it is recorded.

Executed this _____ day of _____ 2008.

CITY:

OWNER:

City of Grants Pass

Timber Products Company

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

STATE OF OREGON)

STATE OF OREGON)

)ss

)ss

COUNTY OF JOSEPHINE)

COUNTY OF _____)

Signed before me on the ____ day of

Signed before me on the ____ day of

_____.

_____.

By _____

By _____

IN WITNESS WHEREOF I hereto set my
hand and seal on this same date,

IN WITNESS WHEREOF I hereto set my
hand and seal on this same date,

Notary Public for Oregon

Notary Public for Oregon

My Commission Expires _____

My Commission Expires _____

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Exhibit 1 – to Ordinance

EXHIBIT A
Legal Description

EXHIBIT B

Location Map

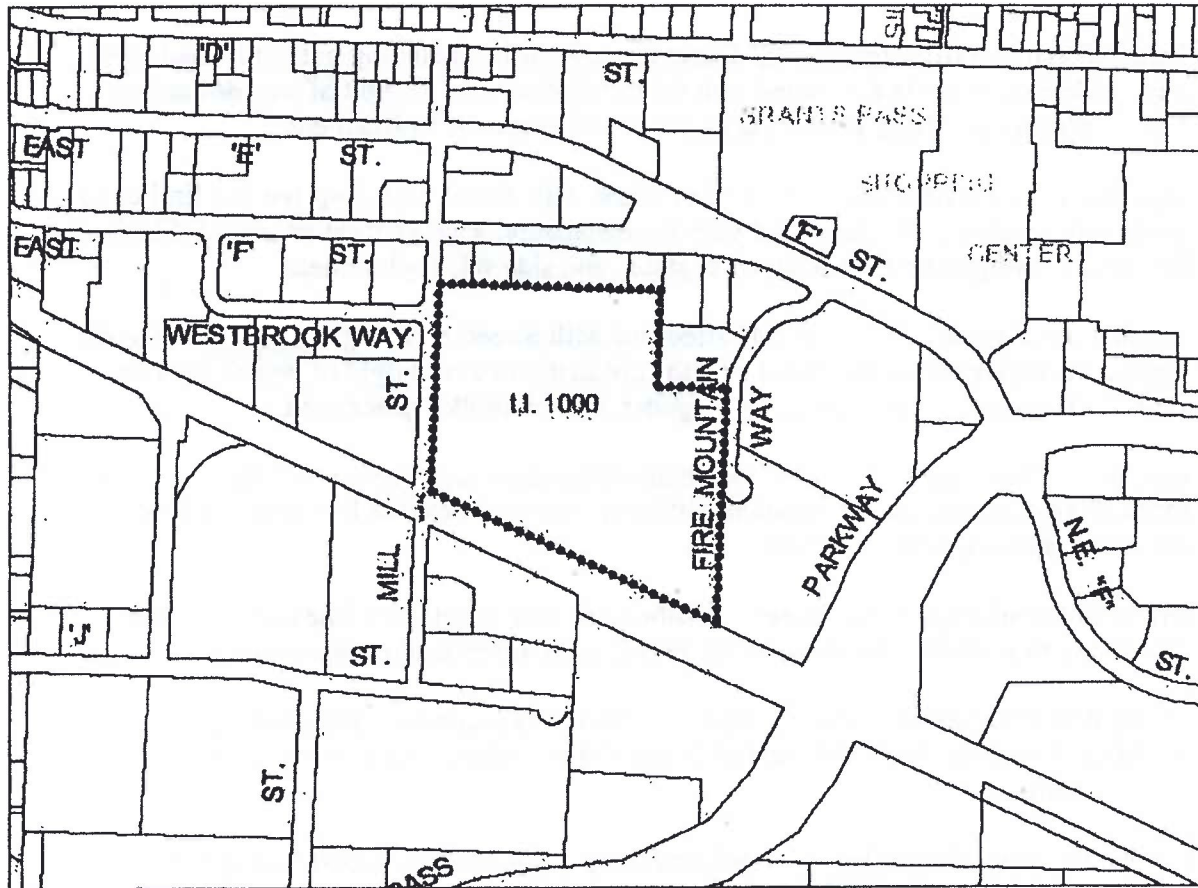


EXHIBIT C

Improvements

1. Installation of a traffic signal at "E" Street and Mill Street including but not limited to all applicable requirements associated with the installation such as right of way dedication, lane width configuration, striping, curb, gutter and sidewalk replacement.
2. Installation of a traffic signal at "F" Street and Mill Street including but not limited to all applicable requirements associated with the installation such as right of way dedication, lane width configuration, striping, curb, gutter, and sidewalk replacement.
3. Installation of a traffic signal at "M" Street and Mill Street including but not limited to all applicable requirements associated with the installation such as right of way dedication, lane width configuration, striping, curb, gutter, and sidewalk replacement.
4. Grants Pass Parkway at "F" Street - Addition of an eastbound lane on "F" Street to allow for dual left-turn lanes and a through/right turn movement onto the Parkway and related acquisitions and/or improvements.
5. Grants Pass Parkway at "M" Street – Addition of a second left turn lane on westbound "M" Street to southbound Parkway and related acquisitions and/or improvements.
6. Grants Pass Parkway and Highway 238 – Addition of a second left turn lane on southbound Parkway to southbound Highway 238 and related acquisitions and/or improvements.
7. Owner is responsible for the usual and customary conditions associated with approval of a site plan review and/or land division on the property pursuant to the Grants Pass Development Code. However, under no circumstances shall the Owner be required to make transportation improvements not identified in the Owner's TIA or a subsequent Owner's TIA, other than those usual and customary street improvements associated with approval of a site plan review and/or land division on the property pursuant to the Grants Pass Development Code. Any subsequent Owner's TIA shall be approved by the City.

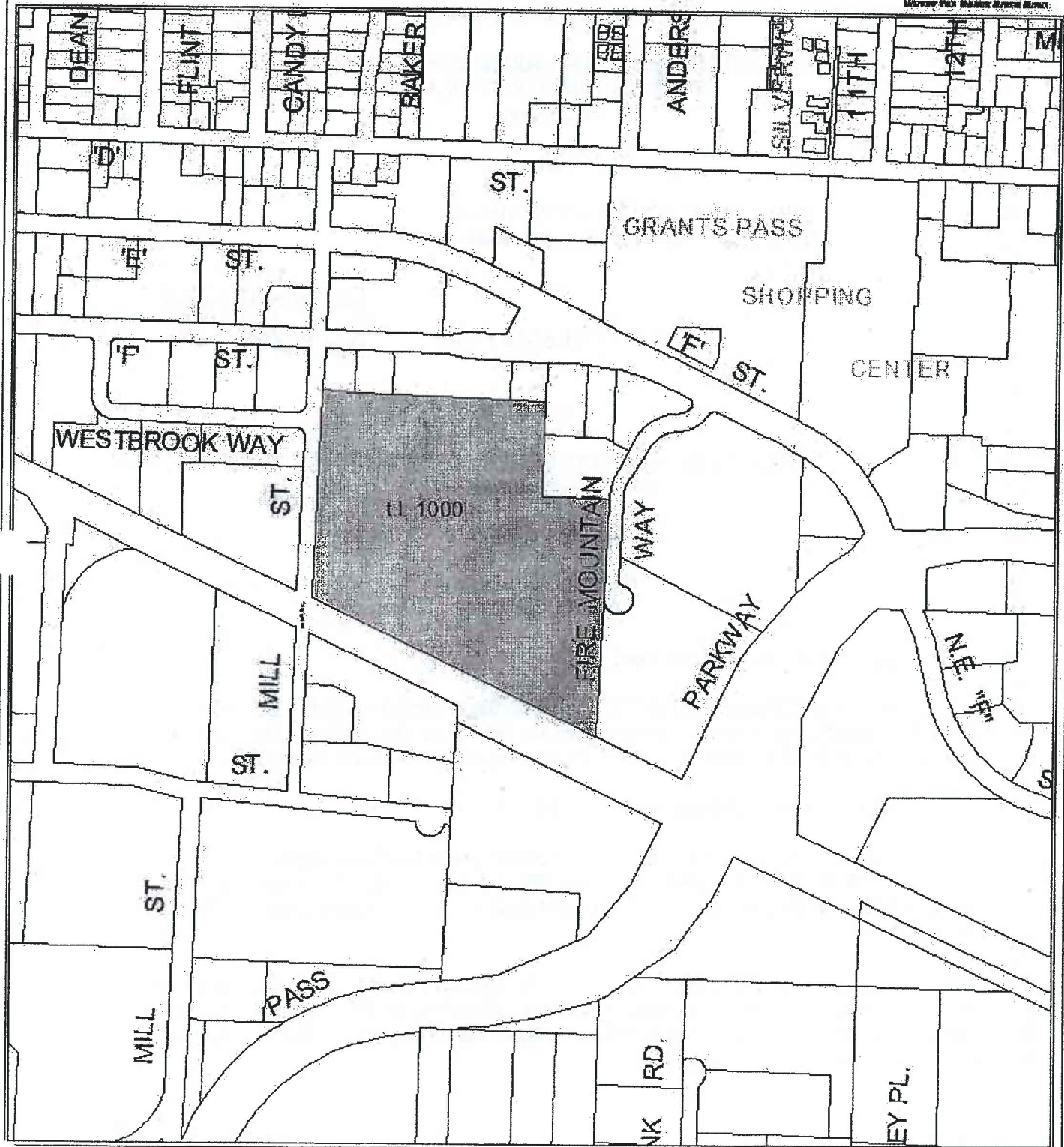
Exhibit D

Findings of Fact

(see attached)

Location Map

36-05-17-D0 TL 1000



400 0 400 800 Feet



BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

SEP04'08 PM 1:05 LUBA

STUART I. FREEDMAN, CHRISTLIN FREEDMAN,
and FIRE MOUNTAIN GEMS, INC.,
Petitioners,

and

HOLGER T. SOMMER,
Intervenor-Petitioner,

vs.

CITY OF GRANTS PASS,
Respondent,

and

TIMBER PRODUCTS CO. LIMITED PARTNERSHIP,
Intervenor-Respondent.

LUBA No. 2008-056

FINAL OPINION
AND ORDER

COPY

Appeal from City of Grants Pass.

Gregory S. Hathaway and Jeff F. Evans, Portland, filed the petition for review and argued on behalf of petitioners. With them on the brief were Davis Wright Tremaine LLP, Michael J. Bird, Frank C. Rote, III and Brown, Hughes, Bird, Rote & Brouhard, LLP.

Holger T. Sommer, Merlin, represented himself.

David F. Doughman, Portland, filed a joint response brief and argued on behalf of respondent. With him on the brief were Beery Elsner & Hammond, LLP, Allen L. Johnson, Johnson & Sherton PC, Micheal M. Reeder and Arnold Gallagher Saydack Percell Roberts & Potter, PC.

Allen L. Johnson, Portland and Micheal M. Reeder, Eugene, filed a joint response brief and argued on behalf of intervenor-respondent. With them on the brief were Johnson & Sherton PC, Arnold Gallagher Saydack Percell Roberts & Potter, PC, David F. Doughman and Beery Elsner & Hammond, LLP.

1 BASSHAM, Board Member; RYAN, Board Chair; HOLSTUN, Board Member,
2 participated in the decision.

3
4 REMANDED

09/04/2008

5
6 You are entitled to judicial review of this Order. Judicial review is governed by the
7 provisions of ORS 197.850.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a city decision that amends the comprehensive plan and zoning
4 map designations for a 15.5 acre parcel.

5 **FACTS**

6 The subject property is a vacant 15.5-acre parcel that carries a comprehensive plan
7 designation of Industrial and a corresponding I zoning designation. Intervenor-respondent
8 Timber Products Co. Limited Partnership (intervenor) applied to the city for a minor
9 comprehensive plan map amendment from Industrial to Business Park (BP), and a
10 corresponding zone change from I to BP, with the intention of developing a Home Depot
11 store. The city has three plan districts categorized as industrial districts: Industrial, Business
12 Park, and Industrial Park. The BP zoning designation is a mixed-use zone that allows most
13 of the industrial uses allowed in the I zone, but also allows a number of non-industrial uses,
14 including retail commercial uses such as the proposed Home Depot.

15 Lands zoned General Commercial (GC) border the property to the north and
16 northwest. Lands zoned BP border the property to the west and southwest. I zoned lands lie
17 to the south and east.

18 The planning commission recommended approval of the proposed amendments. On
19 February 20, 2008, the city council held a public hearing to consider the planning
20 commission's recommendation of approval. At the conclusion of the hearing, the city
21 council held the record open an additional seven days for additional written evidence.
22 Record 29. The evidentiary record regarding the application closed on February 27, 2008.

23 Intervenor submitted its final written legal arguments on March 3, 2008. Attached to
24 intervenor's submittal was a letter dated February 29, 2008, from intervenor's traffic
25 consultant. At the March 19, 2008 public hearing the city council voted to approve the plan
26 and zone map amendments, supported by adopted findings. The city council also adopted

1 and incorporated by reference a portion of the intervenor's final written argument and the
2 February 29, 2008 letter from the traffic consultant. This appeal followed.

3 **FIRST ASSIGNMENT OF ERROR**

4 Grants Pass Comprehensive Plan (GPCP) requires that all comprehensive plan
5 amendments conform to the statewide planning goals. GPCP §13.5.4. Statewide Planning
6 Goal 9 (Economic Development) requires in relevant part that the city "[p]rovide for at least
7 an adequate supply of sites of suitable sizes, types, locations, and service levels for a variety
8 of industrial and commercial uses consistent with plan policies." OAR chapter 660, division
9 9 implements Goal 9. OAR 660-009-0010(2) provides that comprehensive plans and land
10 use regulations shall be reviewed for compliance with the rule at the time of periodic review.
11 However, OAR 660-009-0010(4) specifies that a change in a comprehensive plan designation
12 for more than two acres from an industrial use designation to a non-industrial designation
13 "must address all applicable planning requirements," and further comply with a set of
14 additional, alternative requirements, including a demonstration that "the proposed
15 amendment is consistent with its most recent economic opportunities analysis * * *."¹
16 OAR 660-009-0010(4)(a).

¹ OAR 660-009-0010(4) provides: in pertinent part:

"For a post-acknowledgement plan amendment under OAR chapter 660, 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 an other 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 its 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."

1 The city council adopted findings addressing OAR 660-009-0010(4)(a) and found that
2 the plan amendment from Industrial to Business Park is consistent with a recent
3 EcoNorthwest study of the capacity of the city's urban growth boundary. The EcoNorthwest
4 study indicates that the city will need approximately 1,400 acres of employment land over the
5 20-year period between 2007-2027, with 700 acres needed for retail and service commercial
6 uses and 400 acres needed for industrial uses. The city concluded that the plan amendment
7 from Industrial to Business Park is consistent with that study, because it maintains the
8 property within an industrial plan designation that allows for a range of industrial and
9 commercial uses.

10 The decision notes, however, that the EcoNorthwest study is a draft document that has
11 not been adopted by the city. According to the decision, the most recent city-adopted and
12 acknowledged "economic opportunities analysis" (EOA) (henceforth, the Stone EOA),
13 indicates that the city's urban growth boundary includes a 23.2-year supply of industrial
14 lands. The decision states that the October 2006 Stone EOA "is the most recently adopted
15 and acknowledged data and therefore controlling for this Application." Record 35.

16 Petitioners argue that the city's findings are inadequate to demonstrate the plan
17 amendment is consistent with the city's most recent economic opportunities analysis, as
18 required by OAR 660-009-0010(4). Relatedly, petitioners argue that the city erred in relying
19 on the EcoNorthwest study, an unadopted, unacknowledged source of data, rather than the
20 Stone EOA, the most recent adopted, acknowledged EOA. Further, petitioners argue that the
21 city failed to address the substantive provisions of the Goal 9 rule, at OAR 660-009-0015
22 through 660-009-0030. Finally, petitioners argue that the city's findings fail to demonstrate
23 consistency with the parts of its acknowledged comprehensive plan which address the
24 requirements of the Goal 9 rule, as required by OAR 660-009-0010(4). According to
25 petitioners, any attempt to demonstrate consistency with the Goal 9 portion of the

1 comprehensive plan would be fruitless, because the comprehensive plan is outdated and does
2 not fully comply with the requirements of the Goal 9 rule.

3 Even if the Goal 9 rule does not apply, petitioners argue, the city is nonetheless
4 required to demonstrate that the plan amendment is consistent with the Goal 9 obligation to
5 provide an adequate supply of sites of suitable sizes, types, locations, and service levels for a
6 variety of industrial and commercial uses. *DLCD v. City of Warrenton*, 37 Or LUBA 933
7 (2000). According to petitioners, the challenged amendments effectively reduce the city's
8 supply of industrial land, by redesignating industrial land to a mixed-use plan and zone that
9 allow non-industrial uses such as large-format retail stores. Therefore, petitioners argue,
10 Goal 9 requires that the city demonstrate that the city retains an adequate supply of industrial
11 land, not only with respect to total acreage, but also with regard to size, type, location, and
12 service levels. *Opus Dev. Corp. v. City of Eugene*, 28 Or LUBA 670 (1995) (rezoning
13 industrial land to a mixed use zone that allows both industrial and residential uses requires a
14 demonstration under Goal 9 that the city retains an adequate supply of industrial and
15 commercial lands).

16 Intervenor responds, initially, that petitioners fail to recognize that the city expressly
17 adopted and incorporated into the decision a portion of intervenor's closing argument that
18 addresses Goal 9 compliance. That incorporated portion concludes that (1) OAR 660-009-
19 0010(4) does not apply for several reasons and (2), alternatively, if the rule applies the plan
20 amendment is consistent with the Stone EOA, which indicates that the city has a 23.2-year
21 supply of industrial land within the UGB. With respect to compliance with OAR 660-009-
22 0015 through 660-009-0030, intervenor argues that no issue was raised below regarding these
23 rule provisions, and therefore that issue is waived. ORS 197.763(1). With respect to
24 consistency with the city's comprehensive plan, we understand intervenor to argue that the
25 city properly addressed all applicable plan policies, and that even if the plan is outdated and

1 does not fully comply with the Goal 9 rule, the city is not require to update the entire plan in
2 the context of the present quasi-judicial plan amendment.

3 There are several problems with the purported incorporation of intervenor's closing
4 argument. Under the heading of "Summary of Evidence," the city council's decision lists a
5 number of documents that were submitted into the record. Some of those documents, the
6 decision states, are "hereby adopted and incorporated herein," including Part V of
7 intervenor's closing argument. Record 30. The decision does not state that the documents
8 are adopted as *findings*, and several of the documents adopted and incorporated, including a
9 map and appendices to the Stone EOA, could not possibly function as findings. Later
10 sections of the city council decision explicitly set out the findings that address the applicable
11 criteria, and nothing in those findings refer to intervenor's closing argument or purport to
12 adopt that argument as part of the city's findings.

13 That lack of clarity is compounded by the fact that the city council's decision takes
14 the position that OAR 660-009-0010(4) applies, and adopts findings addressing the rule. As
15 noted, Part V of intervenor's closing argument initially takes the position that the rule does
16 not apply at all. The two positions are not expressed as alternatives, and neither the decision
17 nor the closing argument attempts to reconcile them. Thus, even assuming the city intended
18 to adopt Part V of the closing argument as findings, the findings as a whole appear to be in
19 conflict on that point. For lack of a better alternative, we will assume for purposes of this
20 opinion that the city council's position is correct, and that the challenged plan amendment
21 triggers the application of OAR 660-009-0010(4).

22 We generally agree with petitioners that, assuming OAR 660-009-0010(4) applies, the
23 city must demonstrate consistency with the Stone EOA, the most recently adopted EOA, and
24 cannot satisfy the rule based on the unadopted, draft EcoNorthwest study. *See D. S. Parklane*
25 *Development, Inc. v. Metro*, 165 Or App 1, 994 P2d 1205 (2000) (Metro erred in relying on a
26 draft analysis of urban growth boundary capacity instead of a study incorporated into Metro's

1 acknowledged plan); *1000 Friends of Oregon v. City of Dundee*, 203 Or App 207, 124 P3d
2 1249 (2005) (city errs in relying on a final, unadopted study of housing inventory rather than
3 the inventory in the city's acknowledged comprehensive plan). We also agree with
4 petitioners that, even if OAR 660-009-0010(4) is not triggered by the plan amendment, the
5 city must nonetheless demonstrate that the amendment is consistent with Goal 9 itself.

6 With respect to compliance with OAR 660-009-0015 through 660-009-0030,
7 petitioners do not respond to intervenor's waiver argument, and therefore that issue is
8 waived. With respect to petitioners' argument that the city cannot find that the plan
9 amendment is consistent with the parts of its acknowledged comprehensive plan which
10 address the requirements of the Goal 9 rule, because the comprehensive plan is outdated and
11 does not fully comply with the Goal 9 rule, we agree with intervenor that petitioners have not
12 demonstrated that the city is required to update its comprehensive plan Goal 9 element in the
13 context of the present quasi-judicial plan amendment.

14 As noted, intervenor's closing argument does conclude, in the alternative, that the
15 plan amendment is consistent with the Stone EOA, and therefore satisfies that element of
16 OAR 660-009-0010(4). The closing argument also separately addresses Goal 9, and argues
17 that, based on the Stone EOA, the plan amendment is consistent with the Goal 9 obligation to
18 "provide for at least an adequate supply of sites of suitable sizes, types, locations, and service
19 levels for a variety of industrial and commercial uses * * *." Thus, assuming Part V of the
20 closing argument is part of the city's findings, it might well rectify the two principal errors
21 that petitioners identify: the failure to rely on the Stone EOA and the failure to address Goal
22 9 itself. Petitioners do not challenge that portion of the closing argument; however, as
23 discussed above, it is not clear that the city council incorporated the closing argument as part
24 of its findings.

25 As discussed below, we remand the decision under the second assignment of error for
26 the city to rectify a procedural error. Given that disposition, we conclude that it is also

1 appropriate to sustain the first assignment of error in part and remand the decision to the city
2 to clarify whether Part V of the closing argument is adopted and incorporated into the
3 decision as part of the city's findings. If the city adopts Part V of the closing argument as
4 findings, it should reconcile any conflicts between the city council findings and the closing
5 argument. In addition, or in the alternative, the city may adopt any other findings it deems
6 necessary.

7 The first assignment of error is sustained, in part.

8 **SECOND ASSIGNMENT OF ERROR**

9 On February 20, 2008 the city council held the public hearing for the application. At
10 the hearing the city council voted to keep the record open for an additional seven days to
11 submit new written testimony to respond to questions and concerns at the hearing. Record
12 156. The evidentiary record was closed on February 27, 2008. Petitioners' transportation
13 engineer, Mike Weishar, submitted a letter dated February 29, 2008, which was accepted into
14 the record and, in fact, incorporated into the city's decision. The stated purpose of the letter
15 was to respond to "the presentation delivered by Southern Oregon Transportation
16 Engineering at the February 20, 2008 City Council Meeting." Record 93.

17 Petitioners contend that the Weishar letter includes new evidence submitted after the
18 evidentiary record closed, and that the city erred in accepting and relying upon the document.
19 ORS 197.763(6)(e).² Petitioners argue that the procedural error prejudiced their substantial

² ORS 197.763(6)(e) provides:

"Unless waived by the applicant, the local government shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, *but shall not include any new evidence.*" (emphasis added).

ORS 197.763(9)(b) defines "Evidence" to mean "facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision." (emphasis added.)

1 rights because the city council relied on the contents of the letter without giving petitioners an
2 opportunity to respond.

3 Intervenor responds that petitioners have not demonstrated that the Weishar letter
4 includes new evidence or, if so, that the letter had any effect on the city's decision. *See City*
5 *of Damascus v. Metro*, 51 Or LUBA 210, 228 (2006) (to show prejudicial error, petitioners
6 must demonstrate that the local government accepted new evidence after the close of the
7 evidentiary record, and "offer some substantial reason to believe the [new evidence] had
8 some effect on the ultimate decision.") Intervenor argues that the letter was attached to
9 intervenor's final argument, which the city adopted and incorporated by reference as findings,
10 which indicates that the city believed that the letter constituted argument that could be
11 adopted as findings, not new evidence. According to intervenor, the expressed intent of the
12 letter is to rebut assertions made by the opponents' traffic expert at the February 20, 2008
13 hearing. In doing so, intervenor argues, the Weishar letter simply cites to evidence that was
14 already in the record.

15 We agree with petitioner that the Weishar letter includes "new evidence," and
16 therefore the city was required to either (1) reopen the record to allow other participants an
17 opportunity to respond to the new evidence; or (2) reject the new evidence as untimely. *Wal-*
18 *Mart Stores, Inc v. City of Oregon City*, 50 Or LUBA 87 (2005) (citing *ODOT v. City of*
19 *Mosier*, 36 Or LUBA 666, 683 (1999), and *Brome v. City of Corvallis*, 36 Or LUBA 225,
20 234-35, *aff'd sub nom Schwerdt v. City of Corvallis*, 163 Or App 211, 987 P2d 1243 (1999)).
21 Under ORS 197.763(6)(e) and the parallel Grants Pass Development Code § 8.038(4), the
22 city council may consider final written legal argument when making its final decision.
23 However, a local government may not consider new evidence, as part of legal arguments
24 submitted under the applicable codes, without providing an opportunity for rebuttal. *Oregon*
25 *Department of Transportation v. City of Eugene*, 38 Or LUBA 814 (2000). The Weishar
26 letter specifically states that Weishar is responding to the opponents' traffic expert, and

1 includes a point by point evidentiary rebuttal. It also responds to two questions raised by city
2 councilors at the February 20, 2008 hearing. Even if we assume that all of the underlying
3 facts, documents, and data cited in the Weishar letter are derived from the TIA or otherwise
4 found elsewhere in the existing record, something intervenor has not established, Weishar's
5 ultimate conclusions constitute new "other information" referenced in ORS 197.763(9)(b), in
6 the form of new expert testimony. We note that the city held the record open an additional
7 seven days, until February 27, 2008, to allow evidentiary rebuttals to testimony submitted at
8 the February 20, 2008 hearing. The Weishar letter is dated February 29, 2008, and the letter
9 appears to be, on its face, an evidentiary rebuttal to testimony submitted at the hearing,
10 apparently intended for submission during the open record period. For whatever reason, the
11 Weishar letter was not submitted during the open record period, and intervenor's attorney
12 apparently chose to submit it as an attachment to the applicant's closing argument. Under
13 these circumstances, the Weishar letter is reasonably viewed as "new evidence" and the act of
14 attaching it to the closing argument does not convert the letter into "argument." Further,
15 there is no doubt that the Weishar letter had an affect on the decision, as the city expressly
16 adopted the letter and incorporated it into the decision.

17 Petitioners were given no opportunity to respond to the Weishar letter. The city's
18 acceptance of the Weishar letter, without reopening the record to allow petitioners an
19 opportunity to respond to the new expert testimony it included, prejudices petitioners'
20 substantial rights, and requires remand to open the evidentiary record and allow an
21 opportunity for rebuttal.

22 Where LUBA sustains a procedural assignment or error that requires remand to re-
23 open the evidentiary record and that will probably require adoption of additional findings,
24 LUBA does not proceed further to address other assignments of error that challenge the
25 existing record and findings.

26 The second assignment of error is sustained.

1 **THIRD ASSIGNMENT OF ERROR**

2 The third assignment of error challenges the city's findings that the plan and zoning
3 amendments comply with the transportation planning rule and related city regulations with
4 respect to impacts on nearby transportation facilities. However, because the decision must be
5 remanded for additional evidentiary proceedings and adoption of new or revised findings
6 with respect to transportation, it would be premature to resolve the transportation issues
7 raised in the third assignment of error based on the existing record and findings. Therefore,
8 we do not reach the third assignment of error.

9 The city's decision is remanded.

Certificate of Mailing

I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 2008-056 on September 4, 2008, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

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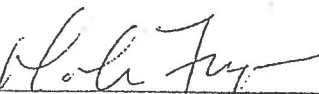
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MICHAEL M. REEDER

March 3, 2008

VIA EMAIL ONLY

The Honorable Len Holzinger and Members of the City Council
c/o Ms. Carla Angeli Paladino, Senior Planner
101 NW "A" Street
Grants Pass, Oregon 97526

Re: Final Argument for Timber Products Company Plan/Zone Change Application
City File No. 07-40220002

Dear Mayor Holzinger and Members of the City Council:

I represent Timber Products Company (the "Applicant"), the applicant for the Comprehensive Plan Map Amendment and Zoning Map Amendment (the "Application"), City File No. 07-40220002. The purpose of this letter is to provide you with the Applicant's final written argument in support of the Application pursuant to ORS 197.163(6)(e) and Grants Pass Development Code ("GPDC") Section 8.038(4). Specifically, this letter is an effort to clearly articulate why the Application should be approved with the proposed development agreement, including a reduction of transportation systems development charges ("SDCs"), equal to the increased costs associated with improving the City's transportation facilities beyond the requirements of the state Transportation Planning Rule ("TPR"). Please see the attached letter from Mike Weishar of Access Engineering as part of our final written argument.

This letter is organized into six parts: Part I is the explanation for why the City should approve the Applicant's request for a reduction in transportation SDCs, Part II is the Applicant's response to Council members' comments and questions from the February 20th hearing, Part III is the Applicant's response and rebuttal to general public testimony received prior to and at the February 20th hearing, Part IV is the Applicant's response to evidence and argument submitted up to 5 p.m. on February 27, 2008, when the record closed to all other parties, Part V is a specific response to Mr. Wolfmueller's letter dated February 19, 2008, which raised issues regarding Goal Nine, and Part VI is the Applicant's conclusion.

Part I: Transportation SDC Recalculation Request and the New LOS "D" Standard Interpretation

The Applicant's first concern regards the request for a recalculation of the transportation SDCs. This LOS D Standard Interpretation is truly a unique and challengeable standard. The Applicant's position regarding this request was clearly explained both in my letter to Mr. Frasher dated February 20, 2008, and during my oral presentation to you on February 20, 2008. However, since then, it has been suggested that the Applicant's request for a reduction in transportation SDCs is, or could be considered, a "sweetheart deal" to the Applicant.¹ For example, Mr. Huber's February 27th memorandum states that a reason against granting the recalculation request is that of public perception—that if granted, it may appear that the City is "being too generous and is giving a competitive advantage to a larger business, perhaps at the expense of a smaller business..." If there is such an appearance, it is a false one.

Additionally, mere appearances are not reason to deny the request; you are elected to make difficult decisions that will benefit the City and the community. Approving the Applicant's request will certainly do so.² To be clear, the request for reducing the SDCs is not a favor to the Applicant; it is a direct result of the City's new interpretation of Article 27 of the GPDC which, as explained below, the Applicant believes, imposes an unconstitutional requirement upon the Applicant to improve the City's general transportation facilities beyond the proposed project's impacts. The City's new LOS D Standard Interpretation is truly unique, and we believe challengeable "standard." Prior to *Memo 55*, I am unaware³ of the City requiring any applicant for any project to improve⁴ already failing intersections if the applicant was able to mitigate⁵ the project's degradation. In effect, since August 28, 2006, the City has imposed a new, substantive requirement that is not only unfair, but its legality is being challenged by another applicant at the Land Use Board of Appeals ("LUBA"). However, in an effort to move forward with the Application, the Applicant proposed a solution: the Applicant agrees to meet or exceed the new LOS D Standard Interpretation, with its significant additional cost (the current

¹ See Item #1 in the letter from Dean Saxon dated February 27, 2008, and in the Memorandum from James E. Huber also dated February 27, 2008, pages 2-3.

² See Slides 25-27 of the Applicant's PowerPoint slideshow handout presented to you at the February 20th hearing for a brief synopsis of the tangible benefits to the City and the community with the proposed use.

³ The record for this Application does not identify any applications prior to the publication of *Memo 55* in 2006 that required an applicant to improve intersections beyond the project's mitigation to meet the LOS D standard.

⁴ The terms "improve" and "mitigate" have distinct meanings. Throughout the Applicant's testimony, I use the term "mitigate" to mean that the Applicant will construct transportation infrastructure or facilities (sometimes referred to as "improvements") such as additional street pavement and right of way, traffic signals, restriping lanes, etc., in order to meet the state Transportation Planning Rule (TPR)—i.e. no net impact to the City's transportation facilities. This is the requirement under state law and under every other Oregon jurisdiction of which I am aware. I use the term "improvement" specifically to describe the construction of transportation infrastructure or facilities such as additional street pavement and right of way and the installation of traffic signals in order to meet the City's additional (and illegal) LOS D Standard Interpretation.

⁵ See footnote 4 above.

estimate is \$1.1 million) in exchange for a reduction of the project transportation SDCs in an amount equal to the cost associated with meeting the LOS D Standard. It is important to understand that the Applicant is not requesting a reduction in transportation SDCs for improving intersections beyond the project's predicted degradation for all intersections to be mitigated and improved, but only for three intersections (Grants Pass Parkway and Jacksonville Highway, E Street and Mill Street and F Street and Mill Street) that would require little or no mitigation under the TPR. In other words, for three of the six intersections to be mitigated or improved (F Street and Grants Pass Parkway, M Street and Mill Street, and M Street and Grants Pass Parkway), the Applicant is not seeking SDC reductions for improvements beyond the project's predicted degradation.

Mr. Huber's memorandum also states: "Also, the City has certain standards it desires to maintain, such as Level of Service of streets and intersections. While it may be unfortunate to the developer that he will be fixing 'pre-existing' problems, it is his choice to locate in this community and the timing of the location here is also his choice. The argument goes that if the developer does not want to fix the City's infrastructure, then he should wait until the City fixes it before locating here. In reality, sometimes an improvement necessarily does go beyond the impact due to the nature of the improvement itself, which may be the only one available to address the problem." Huber Memo, February 27th, Page 3. Each of these statements requires correction or clarification. I will do so below:

- *"Also, the City has certain standards it desires to maintain, such as Level of Service of streets and intersections."*

This statement erroneously assumes that the standards set forth in Article 27 and the MTP (defined later) that establish a level of service standard D for streets and intersections requires an applicant to improve those intersections when they are already failing. The text of Article 27 and the MTP does not place the burden on an applicant; it merely established a minimum performance standard. In other words, the LOS D Standard is not a criterion of approval. Second, even if the code and the MTP could be interpreted to so require an applicant to make an improvement to an already failing intersection, such a requirement would be unconstitutional under *Dolan v. City of Tigard*, 512 US 687 (1994). The mere desire of the City to maintain LOS D for all of its intersections does not justify placing this burden on the back of the developer, regardless of how big or small the developer. The majority in *Dolan* emphasized this point a second time when they stated "A strong public desire to improve the public condition [will not] warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." *Id.*, citing *Pennsylvania Coal Co. v. Mahon*, 260 US 393, 413 (1922).

- *"It may be unfortunate to the developer that he will be fixing 'pre-existing' problems, it is his choice to locate in this community and the timing of the location here is also his choice."*

First, the developer pays its "fair share" by contributing to the City's general infrastructure through SDCs. The stated purpose of the SDC ordinance is to "reimburse the rate payers for the capacity of systems developed to serve the growth of the community and to

impose an equitable share of the public costs of capital improvements upon the developments that create the need or consume provided capacity." Grants Pass Municipal Code ("GPMC") Section 3.10.020, emphasis added. Second, as far as the Applicant can tell, no other jurisdiction in Oregon requires an applicant to fix pre-existing problems. This line of thinking will continue to inhibit job creation and development in Grants Pass (re Will West project). It may be "unfortunate" to the developer, but it is also unfortunate to the City and its citizens, including the Applicant, a family wage employer with strong ties to the City. This statement is eerily similar to the argument that failed with the United States Supreme Court in *Dolan* and has been rejected by lower courts and LUBA since. Under *Dolan*, the City must show that the required exaction be roughly proportional to the extent of the project's impact. Requiring the Applicant to improve three intersections beyond the project's degradation when no mitigation or very minimal mitigation would otherwise be required is certainly a violation of *Dolan*.

- *"The argument goes that if the developer does not want to fix the City's infrastructure, then he should wait until the City fixes it before locating here."*

The Applicant understands that the City greatly desires to fix failing intersections, and rightly so. However, it is not really a matter of whether the developer "*wants*" to fix the City's infrastructure, but whether the developer *should* be required to fix the City's infrastructure even after paying its fair share of SDCs. SDCs are intended to fix failing intersections. Secondly, the City risks pricing out development, big and small (re Will West and Horizon Gardens projects) if it continues to require that an applicant fix already failing intersections *and* pay for the entire amount of transportation SDCs.

- *"In reality, sometimes an improvement necessarily does go beyond the impact due to the nature of the improvement itself, which may be the only one available to address the problem."*

It is true that a developer's proposed mitigation will often create "improvement" beyond the project's impact. However, state law requires that the developer be credited the amount of the improvement beyond the project's impact when such facility is identified in the local government's SDC project eligible list. In this case, none of the six intersections to be mitigated or improved are SDC credit eligible. Furthermore, as will be discussed below, three of the six intersections will require improvement to meet the City's LOS D Standard Interpretation when no mitigation would be required under the TPR for one intersection, and only very little mitigation would be required for two intersections (at a cost of less than \$40,000). In other words, for three of the six intersections, mitigation measures are available (but for the City's additional LOS D required improvements).

In short, below is a list of reasons the requested reduction in transportation SDCs should be granted:

- To offset the significant additional cost to meet the LOS D Standard Interpretation, which is a new interpretation—all other projects prior to *Memo 55* were not subject to this standard.

- Of the six intersections to be mitigated or improved, five will fail and will continue to worsen (i.e. operating at a level of service E or F) without the project by at least 2009. None of the six intersections are currently listed in the City's outdated Master Transportation Plan ("MTP") as projects eligible for SDC credits. These six intersections should all be identified in the MTP.
- The SDC ordinance specifically authorizes the City Manager to approve "alternate fee calculations" "whenever the impacts of individual developments present special or unique situations such that the calculated fee is disproportionate to the actual impact of the development." GPMC 3.10.050(C), emphasis added. The City Manager has the authority to grant the Applicant's request without direction from the City Council. However, the Applicant and City staff felt that this decision was best made by the City Council. The SDC ordinance already contemplates situations where a recalculation may be merited.
- Rather than being special treatment to the Applicant, granting this request is treating the Applicant with fairness. Furthermore, with an executed development agreement, even if the current LUBA challenge to the City's LOS D Standard Interpretation is successful, the City would still receive the benefits of the project, as well as significant improvements to the City's transportation facilities.
- With the plan/zone change from I, Industrial; to BP, Business Park, the City will collect more SDCs because the MTP did not contemplate a significant contribution from the subject property because it was developed at the time and because it contemplated Industrial generators. This means that, even with the transportation SDC reductions, the remaining transportation SDCs will still be substantial and will be a "windfall" to the City.
- The proposed development is one of very few entities that can afford to make the expensive improvements to the City's transportation facilities. Small businesses are left to wait until either the City makes the improvements or until an entity such as a Home Depot makes the improvements.
- The City's transportation SDCs are the third highest reported in the State of Oregon, more than twice the state average.

The transportation SDC recalculation request is absolutely discretionary on the part of the City Council. The Applicant believes that the City Council has at least five options in considering this request (listed in order of what the Applicant believes is both fair and justified). To be clear, the Applicant will agree with any of these five options:

Option #1: The City may approve the Application with the proposed development agreement as currently drafted, except with our proposed reduction in transportation SDCs as an amendment to the proposed development agreement. This is the cleanest, easiest, and the Applicant believes, the most fair and equitable outcome for all parties concerned.

Option #2: The City may direct the City Manager, pursuant to GPMC Section 3.10.050(C), to negotiate and determine the SDC reduction, if any, that the City Manager, in his sole discretion, deems is an appropriate amount.

Option #3: The City may approve the Application with the proposed development agreement, and in order to give the City certainty with regard to the SDC recalculation amount, impose a specific dollar cap on the proposed SDC reductions in an amount solely determined by the City Council.

Option #4: The City may approve the Application with the proposed development agreement and defer a decision on the SDC recalculation request until such time the City deems more appropriate.

Option #5: The City may approve the Application with the proposed development agreement without granting the request for the SDC recalculation.

In summary, it is difficult to conceive of an application that would merit an alternative method of calculation more than this one.

Part II: Council Questions during the February 20, 2008 Hearing

Councilor Berger

- *"What is the main difference between GC and BP?"*

According to GPDC Section 12.222, the purpose of the General Commercial district is to provide for all commercial and professional uses. The Applicant is not requesting the GC zone. The purpose of the Business Park District as stated in GPDC Section 12.321 is to provide a mixed-use zone for light industrial and commercial uses. The proposed use meets this purpose. The GC zone does not allow for any industrial uses while the BP zone allows all industrial uses, except for outdoor industrial uses.

- *"How is Home Depot an Industrial use?"*

Schedule 12.2 of the GPDC lists permitted uses by type and zoning designation. A Home Improvement Store falls under Trade, Retail Indoor, Retail Outdoor and Wholesale, all of which are permitted in the Business Park zone, an Industrial zoning designation. As stated in my oral presentation, a home improvement center is really a "hybrid" use: commercial/retail use for the general public, do-it-yourselfers, and industrial use for the professional contractors, much like a lumber yard.

- *"How will street lights help when those streets seem to need wider radius and realignment? How did the 12 intersections get narrowed down to 6?"*

See the attached letter from Mike Weishar of Access Engineering and the February 26, 2008 letter from the City's transportation engineering consultant, John Replinger.

Councilor Kangas

- *"How will the amount of SDC recalculation be handled, will it be a percentage?"*

The memorandum dated February 27, 2008 from Jim Huber accurately answers this question. The Applicant's request is that the City reduce the transportation SDCs in the amount equal to the additional cost incurred to comply with the City's LOS D Standard interpretation, which at this time is estimated to be \$1.1 million. The current estimated transportation SDCs to be charged the Applicant or its successor (i.e. Home Depot) is \$2.6 million.⁶ This means that the City would still collect approximately \$1.5 million in transportation SDCs with the requested recalculation (in addition to the full payment of non-transportation SDCs).

- *"If SDC's are not re-calculated (lowered) will the deal with Home Depot fall through?"*

This is an unknown. The Applicant believes that the deal with Home Depot is in risk of falling through should this recalculation not be granted. Again, it is important to understand that the LOS D Standard Interpretation that is driving this request was not known by the Applicant or Home Depot until *after* the Application was filed with the City. Therefore, this additional cost was not contemplated by either party.

- *"What is a family wage job?"*

The term family wage generally is meant to indicate a wage that provides the ability for the wage earner to support the basic needs of a family. This wage varies from community to community and from state to state. As stated at the City Council Hearing, the assumed family wage at Home Depot is \$14/hour plus benefits. It is anticipated that the majority of the 150 newly created jobs will be family wage.

Councilor Renfro

- *"Is there any language in the Development Agreement regarding amount of the SDC recalculation?"*

The precise language of the proposed development agreement is found in Section 3, "Alternative Methodology for Calculating SDCs."

Councilor Richardson

- *"The City's Engineer (Replinger) states that Mill will carry 15% of the traffic, why this number because it seems low?"*

⁶ See Jim Huber's February 27, 2008 memorandum, page 1.

- *"Questions about the stacking issue with Parkway and M and Mill and M, will signal timing take care of this?"*
- *"Can't this timing only be controlled at Mill and M?"*

See the attached letter from Mike Weishar of Access Engineering and the February 26, 2008 letter from the City's transportation engineering consultant, John Replinger.

Part III: Public Testimony Submitted Prior to or at the February 20, 2008 Hearing

Letter from Terry Stegemiller

- *Size of semi-trucks cannot safely maneuver intersections of Mill at E and F and the Parkway at M, apparent lack of research by applicant.*
- *Need for an additional right turn lane on M Street now instead of later.*
- *Addition of signals on Mill at E and F will exasperate truck turning situation.*

See the attached letter from Mike Weishar of Access Engineering and the February 26, 2008 letter from the City's transportation engineering consultant, John Replinger.

- *It appears no fee was collected at the time of application of zone change,,if not, why not?*

All required fees were paid by the Applicant. If Mr. Stegemiller is referring to SDCs, the City does not collect SDCs until the time of development.

- *Does the 132,000 sf and 40,000 sf include the outdoor retail are typical with Home Depot?*

The application includes 40,000 square feet of retail.

- *The development should have to comply with the pending "Architectural Standards Ordinance."*

At the time of the Site Plan Review application, the developer will have to comply with whatever standards are in effect at the time.

- *Why would the City want to take this "I" land base away?*

The Applicant is requesting a change from one industrial use designation to another. There is no change in the Industrial lands database. The current I designation is not the highest and best land use designation because heavy, outdoor industrial uses are generally not compatible with commercial and retail uses. It is well understood that no heavy industrial user would seriously consider this property.

- *Approving this zone change sets up a precedence [sic] for Mr. Copeland to request his property to be changed continuing erosion of "I" zoned land.*

The Applicant has no control over what other property owners in the area may or may not apply for. A new applicant would have to go through the same review process and meet all applicable criteria. However, this conclusion is not well founded because the Copeland property

is surrounded by BP and I designated properties. Approval of this Application will not change this fact.

- *The development agreement has not limited usage to 441 peak trips as recommended by ODOT.*

The Traffic Impact Analysis is the controlling document regarding peak hour trips. The development agreement refers to the Traffic Impact Analysis. ODOT engineers and planners have vigorously analyzed the Applicant's TIA and have concurred with the scope, assumptions, analysis, conclusions, and proposed mitigation of the Applicant's TIA.

Letter from Ginny Stegemiller

- *Why make exceptions for an out of town developer to come in, not paying their fair share of SDC fees etc., as we have all had to pay, AND saturate the market with an additional 42,000 sf of unnecessary retail space?*

The Applicant is requesting a recalculation of the SDC fees to be reimbursed for only those improvements required by the City's LOS D Standard Interpretation. The Applicant is greatly improving intersections within the City that are already failing. Ms. Stegemiller did not submit any evidence into the record showing that any other developer has improved intersections to meet the LOS D Standard Interpretation. Other developers may have paid "their fair share" in SDCs, but those same developers were not also saddled with an additional cost to meet the City's LOS D Standard Interpretation. The Applicant is requesting an additional 40,000 [not 42,000] sf of retail space, they will most likely construct the space when they are confident they have buyers or tenants to fill it. The draft ECONorthwest report shows a large deficiency in commercial land in Grants Pass. This retail space will help satisfy that unmet demand.

Holger Summer

- *Concerned about SDC recalculation; feels this is a new request that was not discussed at the Planning Commission meeting.*

The Applicant stated at both the Urban Area Planning Commission hearing and at the City Council hearing that it would be requesting relief from the SDCs of the City Council.

Kimberly Parducci – Southern Oregon Transportation Engineering, LLC

See the attached letter from Mike Weishar of Access Engineering and the February 26, 2008 letter from the City's transportation engineering consultant, John Replinger.

Greg Hathaway

- *Spoke on behalf of Fire Mountain Gems. Stated that they are not in opposition to the development; however, they would like the following additional language on the first*

page of the development agreement: "with the accesses as shown on the site plan submitted with the application."

The Applicant submitted a conceptual site plan for the Traffic Impact Analysis. The actual site plan will be reviewed at the time of application for Site Plan Review. The Applicant's traffic engineer, Mike Weishar of Access Engineering, has stated that the mitigation and improvement proposed will not change due to a change in the number of access points since the overall trip distribution will not change. The Applicant strongly opposes Mr. Hathaway's request. No party, including Mr. Hathaway, presented any evidence that would conclude otherwise. Therefore, Mr. Hathaway's request should not only be denied, but any attempt to impose such a condition of approval will likely be challenged.

Dean Saxon

- *Mr. Saxon stated that the proposed development did not meet several City Council goals, mainly to manage growth responsibly, to maintain a sense of hometown, to promote Economic Development with an emphasis on small development and to create quality jobs. Mr. Saxon also claimed that the largest employer in Grants Pass is small business.*

The City Council goals are not criteria for approval in a quasi-judicial matter such as this. Therefore, the majority of Mr. Saxon's testimony is irrelevant. However, Mr. Saxon's concerns have already been thoroughly addressed by the Applicant in the findings submitted as part of the Application, by the staff reports to the Urban Area Planning Commission and the City Council, and in the findings of the Urban Area Planning Commission. We believe the Applicant's proposal meets the City Council goals of providing responsible growth and economic development. Much like "family wage jobs," the term "hometown" is quite subjective. However, the creation of 150 new jobs that will most likely be filled by local citizens who will likely spend much of their income on local businesses certainly promotes the hometown character of Grants Pass. It should be noted that other large retail employers are already located in Grants Pass (Wal-Mart, Fred Meyer, Sears, etc.).

Barbara Gonzales

- *Ms. Gonzales stated that Home Depot would take away employees from local businesses, and it is detrimental to existing businesses already providing jobs.*

Ms. Gonzales cites no data and provides no evidence for this bare conclusion. However, the Applicant has provided evidence from a well respected economic consultant, E.D. Hovee & Company that forecasted that by 2008, approximately \$71 million of direct sales revenue will be lost to other communities for home improvement goods and services annually, with an additional indirect loss of revenue for other good and services. If a Home Depot is located in Grants Pass, it would likely recover only 55% of the lost revenue, leaving tens of millions of dollars annually for other local businesses. This does not include the indirect sales based on the multiplier effect of such sales revenue capture. If Ms. Gonzales is suggesting that employees from local businesses will leave to work at a Home Depot, the Applicant does not view this fact as a negative outcome, especially in light of the fact that Josephine County has a significantly higher unemployment rate than the state.

Part IV: Evidence Submitted into the Record between February 21st and February 27th, 2008

Memorandum from James E. Huber (with attachments) dated February 27, 2008

Other than as expressed above, the Applicant agrees generally with Mr. Huber.

Letter from Greg Hathaway dated February 27, 2008

The Applicant submitted a conceptual site plan for the Traffic Impact Analysis. The actual site plan will be reviewed at the time of application for Site Plan Review. The Applicant's traffic engineer, Mike Weishar of Access Engineering, has stated that the mitigation and improvement proposed will not change due to a change in the number of access points because the overall trip distribution will not change. The Applicant strongly opposes Mr. Hathaway's request.

Letter from Southern Oregon Transportation Engineering, Inc. dated February 27, 2008

See the attached letter from Mike Weishar of Access Engineering and the February 26, 2008 letter from the City's transportation engineering consultant, John Replinger.

Letter from Dean Saxon dated February 27, 2008

Please see the Applicant's response to Mr. Saxon's testimony above. The Applicant has no further comment.

Part V: Response to Mr. Wolfmueller's Letter dated February 19, 2008, regarding Goal 9

The Applicant requests that this section (Part V) be included as part of the findings of approval should this Application be approved by the City Council.

In a letter dated February 19, 2008, and received by the City on February 20, 2008, Mr. Wolfmueller of Fire Mountain Gem and Beads ("FMG") raises the following issues related to the state Land Conservation and Development Commission ("LCDC") statewide Economic Development Goal ("Goal Nine"), and LCDC's Goal Nine Interpretive Rule:

1. Compliance with the Goal Nine Interpretive Rule

LCDC's Goal Nine Interpretive Rule, OAR Chapter 660, Division Nine, is, with one exception, applicable only at the time of periodic review and is not applicable to decisions like the proposed quasi-judicial plan/zone amendments, which are known as "PAPA's," short for Post-Acknowledgment Plan (and zoning ordinance) Amendments.

Contrary to the letter from FMG, the proposed decision is not within the exception to the general rule that the Goal Nine rule applies only at the time of Periodic Review.

The exception to the general rule is set forth at OAR 660-009-0010(4), which provides as follows, with the key language in bold:

“(4) For a post-acknowledgement plan amendment under OAR 660, 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 an other 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 its 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.”

FMG argues that:

“Although the Industrial and Business Park zones are both categorized as industrial zones, the proposed rezoning results in a change ‘from an industrial use designation to a non-industrial use designation.’ OAR 660-009-0010. OAR 660-009-0005(3) defines ‘Industrial Use’ as

“employment activities generating income from the production, handling or distribution of goods. Industrial uses include, but are not limited to: manufacturing, assembly; fabrication; processing; storage; logistics; warehousing; importation; distribution and transshipment; and research and development.”

“Because the BP zone allows for the proposed retail sales of home improvement products, a proposed change from the I zone to the BP zone is a change from an industrial use designation to a non-industrial use designation, and must comply with the OAR planning requirements. The applicant has provided no substantial evidence to the contrary.”

FMG is incorrect for several reasons:

First, FMG addresses only the proposed change in zoning designations, not the change in plan designations, which is the subject of the rule.

Second, the rule concerns changes from one kind of “designation” to another, not the particular use contemplated for the subject property. If the LCDC had wanted the exception to apply to any conversion of more than two acres from an industrial land use designation to any other land use designation for the purpose of allowing non-industrial uses, LCDC could easily

have said so. See ORS 174.010 and *Bauer v. City of Portland*, 47 Or LUBA 459 (2004) (“... [W]hen determining legislative intent, we are not to insert what has been omitted or omit what has been inserted.”). ORS 174.010.

Third, FMG's argument is an impermissible collateral attack on the City's acknowledged comprehensive plan and zoning ordinances. As FMG correctly recognizes, the City's Industrial and Business Park zones are acknowledged industrial zones that implement corresponding industrial plan designations in the City's comprehensive plan. These industrial zones and plan designations have both been acknowledged by LCDC as complying with LCDC's Goal Nine. LCDC Compliance Acknowledgment Order 85-ACK-167, November 15, 1985. After acknowledgment, local land use decisions are to be made in compliance with acknowledged plans and zoning ordinances and statewide goals cease to apply directly. ORS 197.175(2)(c) and (d). See *Friends of Neabeack Hill v. City of Philomath*, 139 Or App 39, 46 (1996).

Fourth, FMG incorrectly assumes that any zone or plan designation that allows non-industrial uses as well as industrial uses is not an “industrial use designation” within the meaning of the rule.

LCDC's Goal Nine rule defines “industrial use” and “employment use,” but it does not define “industrial use designation.” In the absence of a clear definition that says otherwise, this term must be read to describe acknowledged industrial land use plan designations.

LCDC's interpretive rule cannot be read to implicitly “deacknowledge” the industrial plan designations and zoning ordinances of Grants Pass and every other Oregon city whose industrial lands designations allow uses that are not “industrial uses” within the meaning of the rule. If LCDC meant its rule to disestablish every acknowledged industrial plan and zone designation across the State of Oregon that does not meet some undefined new standard of purity or predominance of industrial uses, it could have said so. It did not, and no court is going to read between the lines to support such a potentially sweeping disestablishment of Oregon cities' hard-won local acknowledgment and periodic review orders.

Fifth, the City's acknowledged Industrial and BP plan designations and zoning districts qualify as “industrial use designations” within the meaning of the rule because they allow as outright permitted uses all or substantially all of the “industrial uses” identified in the rule's definition of “Industrial Use,” which is quoted above. As the Planning Commission correctly found:

“The City has three industrial districts: Industrial, Business Park, and Industrial Park. Each district has a list of permitted uses found in Schedule 12-2 of the Development Code. The table is divided into separate land use types or headings with permitted uses listed under each heading. The table includes an industrial heading with six uses listed below it. Of the six, only one (1) industrial use (identified as Outdoor Industrial) is permitted in the Industrial zone that is not permitted in the Business Park zone. . .”

Schedule 12-2, which is part of the City's acknowledged zoning ordinance, prominently

and clearly classifies the Industrial and Business Park districts as Industrial, not as Commercial or Residential.

Both the I and IP plan and zoning designations are "industrial use designations" within the meaning of the Goal Nine rule not only because they are acknowledged as such, but also because both designations allow a wide range of "industrial uses" as defined in the rule. A change from one to the other is therefore a "change" from one industrial use designation to another industrial use designation.

Sixth, if the fact that the BP zone allows non-industrial uses as well as industrial uses outright made it a "non-industrial use designation" within the meaning of the Goal Nine rule, then the I zone would also be a "non-industrial use designation," because the I zone also allows a wide range of non-industrial uses as outright permitted uses. In that case, a change from I to BP would not be a change from an industrial use designation, and the 2-acre rule would not apply. As can be seen from Schedule 12-2, all three of the City's acknowledged Industrial zoning districts (I, IP, and BP) exclude substantially all residential uses, but all three also allow a number of uses that are not "industrial uses" as that term is defined in LCDC's rule. Uses allowed outright in all three industrial zones include home occupations, intensive and nonintensive agriculture, transient quarters, residential homes, athletic clubs, day care, all kinds of major and minor public facilities, and a wide range of temporary uses. These zones have been acknowledged by LCDC as being consistent with their underlying acknowledged plan designations as well as with the Goal Nine rule.

Finally, even if the subject plan/zone change did involve conversion of more than two acres from an industrial use designation to a non-industrial use designation, it would comply with the Goal Nine rule, which requires that a city, in addition to addressing all other applicable planning requirements, shall

"(A) Demonstrate that the proposed amendment is consistent with its most recent economic opportunities analysis and 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."

FMG contends that the City's "most recent economic opportunities analysis" is the Economic Opportunities Analysis (EOA) prepared by FMG's land use consultant, Craig Stone & Associates, and adopted by the City "as part of its Comprehensive Plan on January 17, 2007." Ordinance 5394 amends the City's comprehensive plan and zoning maps to redesignate 12.84 acres of land from I-Industrial to R-1-8 Low-Density Residential. In so doing, unlike the subject proposal, the application subject to the Stone EOA converted more than two acres of land from an acknowledged industrial use designation to an acknowledged non-industrial use

designation (Residential). In support of the change, the ordinance also amends "[t]he Comprehensive Plan database . . . to include the Economic Opportunities Analysis."

Ordinance 5394 adopts the following findings, based upon the Stone Economic Opportunities Analysis:

"The applicant has submitted an Economic Opportunities Analysis (EOA) as required by Goal Nine to ensure a sufficient supply of employment lands will be available within the UGB over a 20-year span. The applicant proposes this EOA be added to the database. This analysis includes a study of lands available for development within Grants Pass and indicates a 4.7 year supply of low-density residential land within the UGB and a 23.2 year supply of industrial land."

* * * *

"The applicant has submitted an EOA that meets the requirements of Goal 9 and indicates a sufficient supply of industrial land remains available for future needs."

The Stone EOA is in the record. It determines, as the Council found, that the City's "industrial land supply is adequate to supply the expected demand for 23.2 years and the commercial land supply is adequate to supply the expected demand for 15.6 years." Stone EOA, p. 2. In making this calculation the EOA recognizes that, consistent with the City's acknowledged plan and zoning ordinances, both the I and BP designations are industrial. EOA Table 2, Summary of Available Lands by Zoning Designation. The EOA determines that, at the time of adoption, there were 77 net available acres of industrial land, of which 27 were zoned I-Industrial, 40 were zoned BP-Business Park, and 10 were zoned IP-Industrial Park. The EOA states that in determining net "available lands," the consultant excluded "constrained lands," including lands with slopes over 25%, public lands, wetlands, and vacant industrial lands with no permanent structures if they were currently in use for wood products yards, wrecking and salvage yards, stone and clay products, golf courses, warehouse/manufacturing, parking, miscellaneous industrial use, log decks, van storage, industrial yards, and "Industrial Flex Buildings (parcels with)." EOA, p. 9.

Appendix D to the Stone EOA was omitted from the excerpts submitted by FMG. The Applicant has supplied the missing pieces of the Stone EOA, including Appendix D.

FMG's omission is significant, for the following reasons:

Appendix D lists by tax lot numbers and owners names the specific properties making up the 77 acres of net "available" industrial land resulting from the screening process. Ordinance 5394 identifies the parcel redesignated from Industrial to Residential as "12.84 acres of Tax Lot 36-05-06-00/1400." Appendix D of the Stone EOA does not include that parcel number so Ordinance 5394 must not have reduced the net available 77 acres of all industrial lands or the net available 27 acres of lands designated I.

Even more significant for this decision, Appendix D does not list the parcels affected by the Application. The only Timber Products property listed on Appendix D includes 2.41 acres of net available industrial land and is listed as Tax Lot 360521BB0003000. The Timber Products property which is the subject of the Application is Tax Lot 36-05-17-D0 TL 1000. Therefore, redesignation of the subject property will not reduce either the 27 net available acres zoned Industrial or the 77 net available acres in any of the industrial plan and zoning designations as shown on the EOA.

In sum, when the entirety of the Stone EOA is considered instead of the selected parts of the EOA submitted with the FMG letter, it is clear that there is no violation of the Goal Nine rule even under FMG's interpretation of that rule and its application.

2. Compliance with Goal Nine

As shown above, the subject plan/zone change will result in no reduction of the City's acknowledged 20-plus-year supplies of "net available lands" in acknowledged Industrial plan and zoning designations, considered either as a group or individually. With no quantitative reduction in those portions of the City's inventories that have been identified as available and sufficient to meet the City's needs over the next 20 years, there is no need under Goal Nine or the Goal Nine rule to consider the qualitative questions. The Stone EOS is now part of the City's acknowledged inventory and establishes that the City continues to have "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." Moreover, the Applicant has submitted evidence concerning those issues and the Planning Commission has correctly found that the subject property will not prevent the City from meeting those qualitative standards.

Specifically, the Applicant has submitted evidence, including the Hovee report and the ECONorthwest report, showing that, as the planning commission has correctly found:

"The area near the Grants Pass Shopping Center is an evolving area with several new shops and centers including the Parkway Village and Deardorff Corners, and recent additions to the shopping center include Ross Dress for Less and Aaron's. The railroad tracks create a separation between the heavier industrial uses and the northern indoor industrial use (Fire Mountain Gems). The placement of a heavy industrial use next to Fire Mountain Gems and the other surrounding uses may be incompatible for the area."

This conclusion is reinforced by the maps and photographs of the area in the record, as well as by the testimony of the Applicant's representatives and the input received by the Applicant from neighbors, most of whom wanted no heavy industrial uses.

Finally, as all of the above reports and the City's acknowledged comprehensive plan confirm, the City's need for traditional heavy industrial uses that need railroad access and isolation from incompatible uses is in decline relative to other industrial and non-industrial employment uses.

3. Conclusion to Goal Nine Issues

For the reasons given above, the Goal Nine rule is inapplicable and, even if it were applicable, the proposed plan and zone changes do not violate the rule. Moreover, the record, including the Stone, Hovee, and ECONorthwest reports, clearly supports a finding that the proposed redesignation will not leave the City without an adequate supply of sites of suitable sizes, types, locations and service levels for uses of the kind for which the subject property is currently zoned.

Part VI: Conclusion

Thank you for your thoughtful consideration of the Application and development agreement. We respectfully request approval with the associated transportation SDC reductions as requested.

Very truly yours,

/S/Micheal M. Reeder

Micheal M. Reeder

Attachments: Letter dated February 29, 2008 from Mike Weishar, Access Engineering

cc: Client
David W. Frasher, City Manager
James E. Huber, Planning Director
Kris Woodburn, City Attorney

N:\P - TYP Associates, Inc. 11628\Grants Pass Old Mill Site-38\Rezone\Correspondence\Final Argument 030308.doc



Access Engineering LLC

February 29, 2008

Grants Pass City Council
City of Grants Pass Planning Division
101 Northwest "A" Street
Grants Pass, OR 97526

134 E. 1st Ave, Suite 2

Eugene, Oregon 97401

Phone & Fax

541-485-3215

info@accesseng.com

RE: Response to Southern Oregon Transportation Engineering's Presentation Materials
and Other Traffic Issues at the February 20, 2008 City Council Meeting.

Honorable Mayor and Councilors;

I would like to take this opportunity to respond first to the presentation delivered by Southern Oregon Transportation Engineering at the February 20, 2008 City Council Meeting. In particular I would like to respond to the four conclusions presented.

Conclusion 1. Fire Mountain Way is not going to serve as a secondary access to the site. At a minimum it will serve as an equal access.

This assertion is not backed up by any factual data. It is based on speculation that more traffic will use the Grants Pass Pkwy at "F" Street intersection than shown in the Traffic Impact Analysis (TIA). As stated on page 19 of the TIA, the trip distribution and assignments were based on three components; the distribution of households (from census data), the distribution of commercial and employment centers, and trips from outside the city. The site is centrally located and generates traffic in all directions. The largest of the three components of generated trips is from households, the vast majority of which are located north, west, and south of the site. A total of 23 % of all trips were routed through the Grants Pass Pkwy at "F" Street intersection and Fire Mountain Way: 15% to and from I-5, 3% to and from commercial centers to the east, and 5% of household trips to and from the south. The trip assignments were reviewed by all reviewing agencies (the City Engineer and Planning staff, the ODOT Region and District Traffic Engineers and Planners, and the City's independent Traffic Engineer, John Replinger). The access is called secondary only because it will handle less traffic than the Mill Street access. It does not mean that it is of secondary importance.

Conclusion 2. More than 22% of project trips from the proposed zone change will use the intersection of "F" Street and Grants Pass Pkwy. to access the site.

This assertion is also not backed up by any factual data while the trip distribution in the TIA was agreed to by all reviewing agencies before any analysis was done. The assertion is that more drivers will choose Fire Mountain Way over Mill Street to reach Grants Pass Pkwy. The presentation used the following rationale: the distance to Grants Pass Pkwy. via Fire Mountain Way is 1435 feet while the distance to Grants Pass Pkwy. via Mill Street is 3100 feet. But those distances don't lead to the same place on Grants Pass Pkwy. The distance stated for the Fire Mountain Way route ends at the "F" Street while the distance for the Mill Street route ends at "M" Street. There are 3360 feet between "F" Street and "M" Street on the Parkway.

Transportation Engineering

Traffic Design

Trip Generation

Access Management

Traffic Counts

To compare these two routes for trips to and from the south, vehicles would travel that additional distance to use Fire Mountain Way: $1435 + 3360 = 4795$ feet versus the 3100 feet via Mill Street. In addition to the extra distance using Fire Mountain Way, there are two traffic signals on that route compared to one traffic signal using Mill Street. This data directly contradicts the presentation's assertion that the shortest and fastest route is through Fire Mountain Way.

Conclusion 3. As a result of 1) and 2), the proposed mitigation for the intersection of "F" Street and Grants Pass Pkwy. is not adequate to meet the City's level of service "D" standard.

Conclusion 4. Additional mitigation is necessary at the intersection of "F" Street and Grants Pass Pkwy. to meet the level of service "D" standard...

Since both conclusions 1) and 2) are erroneous, it follows that these two conclusions are also erroneous. The TIA clearly shows that the level of service standard "D" standard is met. All reviewing agencies, each concerned that their facilities will not be degraded beyond their mobility standards, have agreed to and approved this mitigation. These same issues were first raised in Ms. Parducci's letter of February 27, 2008.

Next there were several traffic related questions raised by Councilors and others during the meeting that deserve a more detailed response:

Councilor Berger asked:

1. How did the 12 intersections get narrowed down to 6?
2. How will street lights help when those streets seem to need wider radius and realignment?

1. The TIA found that 12 intersections either failed to meet the ODOT or City mobility standard in 2009 or failed the ODOT standard in 2029. The City standard applies to the year the site will open, 2009, and ODOT's Transportation Planning Rule (TPR) applies to the year of opening and the horizon year, 2029. The TPR states that if an intersection is failing a standard under both the proposed zoning and the current zoning then mitigation for the proposed zoning is only required to bring the intersection back to the mobility level of the current zoning. Three of the intersections (Grants Pass Pkwy. at Agness and Beacon and 6th Street at "M" Street) failed the ODOT standard in both years, however the impact of the proposed development was the same as the impact of an industrial use that could develop under the current zoning, therefore no mitigation was required by the TPR. Since these intersections operated at LOS "D" in 2009 they met the City's standard and no mitigation is required. The other three intersections (Grants Pass Pkwy. at Terry, Rogue River Hwy. NB, and Rogue River Hwy. SB) met the ODOT and City standards in 2009 but failed the ODOT standard in 2029. Once again the impact of the proposed development was the same as the impact of an industrial use that could develop under the current zoning, therefore no mitigation was required by the TPR.

2. Traffic signals were the mitigation needed to satisfy the City's LOS "D" standard at the Mill Street intersections at "E", "F", and "M" Streets. Since this TIA is a planning document for plan amendment and zone change purposes, it is not meant to provide construction-ready mitigation improvements. Not all design details of the intersection improvements can be known at that time. The City through its site review and public improvement plan processes, as well as ODOT's review of its intersection designs, will have ample opportunity to review and require that the improvements will both meet the mobility

standards and all other construction standards which would include accommodation of the turning movements of vehicles that would be using the intersection, proper alignment of the intersection approaches, etc.

Councilor Richardson asked:

1. *Will signal timing take care of the potential stacking issue at M and the Parkway and M and Mill?*
2. *Can this timing only be controlled at M and Mill?*
3. *Will the intersection of M and Mill be improved beyond installing a traffic signal?*

1. Yes, the City's contracted traffic engineer John Replinger and I believe that signal timing at Mill and "M" Street will take care of the potential stacking issues for westbound traffic on "M" Street. There are several timing techniques that can be applied that will favor westbound traffic and minimize their queues. Provide more green time to that direction, always returning to westbound green when gaps occur on Mill Street, providing longer extensions of green for "M" Street, and other technical measures. In fact, in our discussions with ODOT, they agreed that the analysis showed that the planned mitigation will work but their concern was that conditions may change in the future. As a result, ODOT has requested a fail safe agreement that if conditions change because of additional developments or other reasons that the City provide for a future additional right turn lane for westbound traffic either as a mitigation for a future development or through an update of the City's Transportation System Plan.

2. Yes, ODOT has stated that the signal at Grants Pass Pkwy. at "M" Street will be timed to maintain traffic flow on the Parkway.

3. Through the public improvement plans review process, the City can ensure that improvements are made to accommodate truck traffic that will use the intersection.

Mr. Stegmiller in his January 30, 2008 letter also expressed concern regarding truck movements on Mill Street at "E" and "F" Streets and at the Parkway and "M" Street.

Again, the improvements at these intersections will be part of the public improvement plans review process where the City can ensure that truck traffic can be safely accommodated. I would like to point out that the previous mill operation shipped on the average between 35-50 trucks per day during the week. Home Depot has indicated their volume would be far less than that and they primarily ship during off-peak hours (night, etc).

Sincerely,

Michael Weishar, PE
Access Engineering LLC



Expires 6/30/08

Express

FedEx® US Airbill

8682 0523 6539

Sender's FedEx Account Number
119109

Sender's Name
Carla Angel Paladino

Phone

Company
Grants Pass

Address
101 W A St

City
Grants Pass

State OR ZIP 97506

Internal Billing Reference

Client's Name
Dunsmuir Special

Phone

Client's Address
635 Capital St NE, Ste 150

City
Dunsmuir

State
CA

ZIP
95934

Dept./Floor/Suite/Room

435 RIT 11/08
97301
OR-US
PDX

TRK# 8682 0523 6539
0200

86 SLEA



emp # 2014180 09JAN09 18 28

0200 FedEx Retrieval Copy

4a Express Package Service

1 ☐ FedEx Priority Overnight
Next business morning, Friday
shipments will be delivered on Monday
unless SAT/USDAY Delivery is selected.

2 ☐ FedEx 2Day
Second business day, Thursday
shipments will be delivered on Monday
unless SAT/USDAY Delivery is selected.

3 ☐ FedEx Express Saver
Second business day, Thursday
shipments will be delivered on Monday
unless SAT/USDAY Delivery is selected.

4b Express Freight Service

7 ☐ FedEx 1Day Freight
Next business day, Friday
shipments will be delivered on Monday
unless SAT/USDAY Delivery is selected.

8 ☐ FedEx 2Day Freight
Second business day, Thursday
shipments will be delivered on Monday
unless SAT/USDAY Delivery is selected.

9 ☐ FedEx 3Day Freight
Third business day, Saturday
shipments will be delivered on Monday
unless SAT/USDAY Delivery is selected.

5 Packaging

1 ☐ FedEx Envelope
Includes FedEx Small Pak,
FedEx Large Pak, and FedEx Sturdy Pak.

2 ☐ FedEx Pak
Includes FedEx Small Pak,
FedEx Large Pak, and FedEx Sturdy Pak.

3 ☐ FedEx Box

4 ☐ FedEx Tube

1 ☐ Other

6 Special Handling

1 ☐ SAT/USDAY Delivery
Not available for:
FedEx Standard Overnight, Express
Saver, or FedEx 3Day Freight.

2 ☐ HOLD Weekday at FedEx Location
Not available for:
FedEx Standard Overnight, Express
Saver, or FedEx 3Day Freight.

3 ☐ HOLD Saturday at FedEx Location
Available ONLY for FedEx Priority
Overnight and FedEx 2Day
to select locations.

4 ☐ Dry Ice
Dry ice, UN 1845

5 ☐ Cargo Aircraft Only

6 ☐ Declared value limit: \$500

7 Payment Bill to:

1 ☐ Sender
Account No. in
Section 1 will
be billed.

2 ☐ Recipient

3 ☐ Third Party

4 ☒ Credit Card

5 ☐ Cash/Check

Obtain Recip
Acct No.

This pouch is resealable.

fedex.com 1800.GoFedEx 1800.463.3339

For FedEx Express® Shipments 0