



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

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### NOTICE OF ADOPTED AMENDMENT

October 20, 2006

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Bend Plan Amendment  
DLCD File Number 008-05



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: November 3, 2006**

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

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

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

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

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**FORM 2**

DEPT OF  
DEPT OF  
OCT 16 2006  
6 2006

LAND CONSERVATION  
AND DEVELOPMENT  
AND DEVELOPMENT

**DLCD NOTICE OF ADOPTION**

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

(See reverse side for submittal requirements)

Jurisdiction: City of Bend Local File No.: PZ 05-556  
(If no number, use none)

Date of Adoption: April 19, 2006 Date Mailed: October 13, 2006  
(Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: September 8, 2005

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

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

Amend the Bend Urban Area Zoning Map from SR 2 1/2 (Suburban Low Density Residential) zone to RS (Residential Urban Standard Density).

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

Same

Plan Map Changed from: SR 2 1/2 None to RS

Zone Map Changed from: SR 2 1/2 to RS

Location: West of OB Riley Road in NW Bend Acres Involved: 8.43 ac.

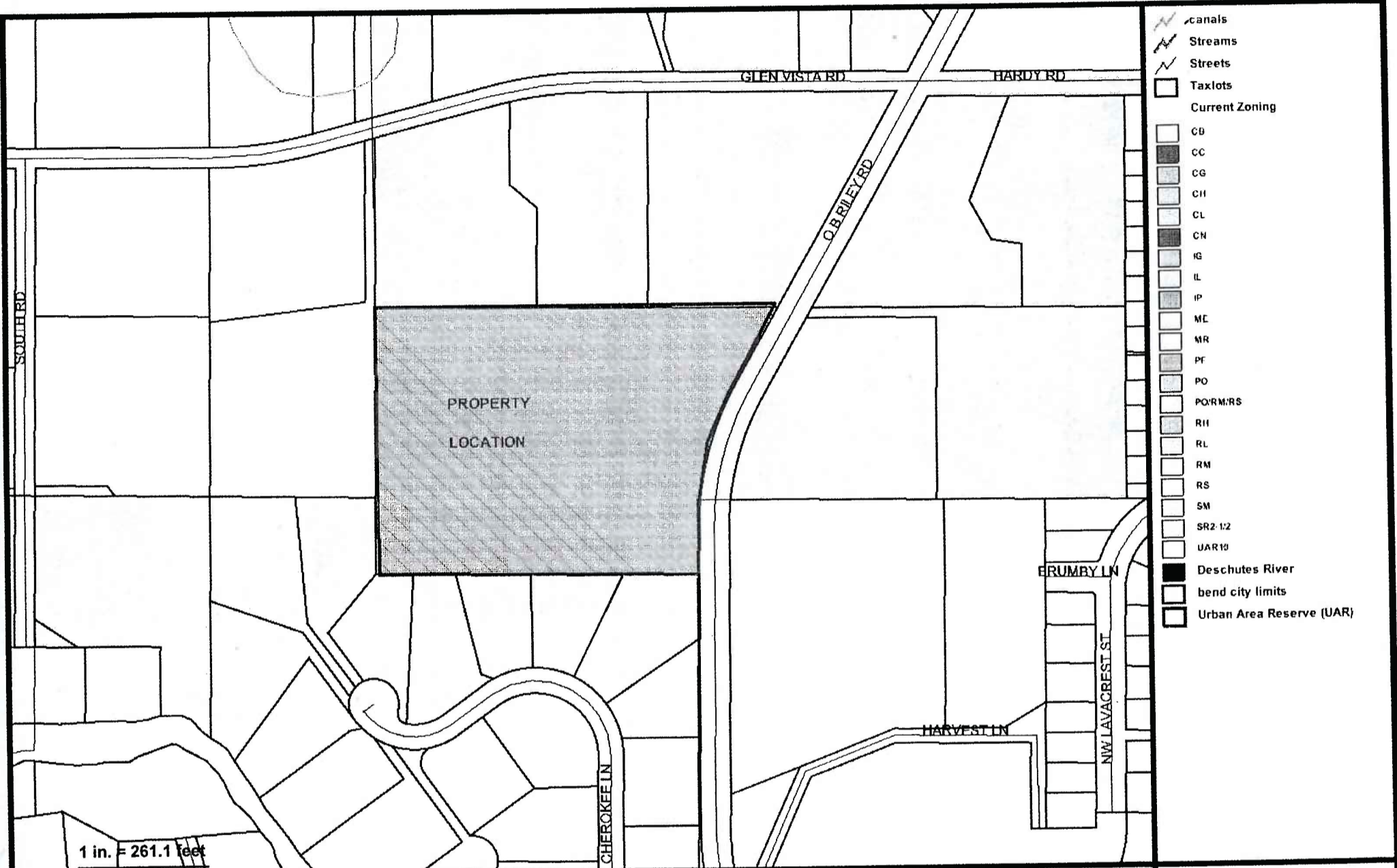
Specify Density: Previous: 2 1/2 acre min. New: 7.3 units per acre max.

Applicable Statewide Planning Goals: Housing

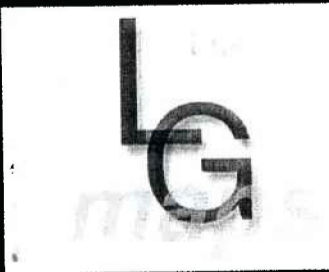
Was an Exception Adopted? Yes: \_\_\_\_\_ No: x

DLCD File No.: 008-05 (14669)

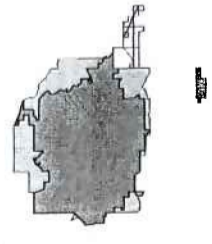




1 in. = 261.1 feet



ZONE CHANGE FROM SR2 1/2 TO RS



Zoning Colors

 CB

 CC


 CG

 CH

 CL

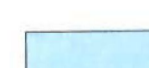
 CN

 IG

 IL

 IP

 ME

 MR

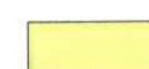
 PF

 PO

 PO/RM/RS

 RH

 RL

 RM

TO →  RS

 SM

FROM →  SR2-1/2

 UAR



Underlined text is added to the draft ordinance that was the subject of a public hearing on March 15, 2006; ~~struckthrough~~ text is deleted from the draft previously distributed in the council packet.

**ORDINANCE NO. NS-2005**

AN ORDINANCE AMENDING THE CITY OF BEND ZONING ORDINANCE NO. NS-1178 (ZONING MAP), BY CHANGING THE ZONING DESIGNATION OF A PARCEL OF LAND FROM SR 2 ½, SUBURBAN LOW DENSITY RESIDENTIAL, TO RS, URBAN STANDARD DENSITY RESIDENTIAL.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council has held a public hearing, considered the Hearings Officer's findings and record, and has found that there is a public need and benefit for the proposed change. The Bend City Council adopts the Findings and Decision of the Hearings Officer dated February 16, 2006 file number PZ-05-556, subject to the additional findings and conditions of approval contained in the document entitled "Decision by the Bend City Council" that was made part of this ordinance by vote of the Bend City Council on March 15, 2006.

Section 2. Section 7(1) of Ordinance NS-1178 and the Zoning Map of the City of Bend are amended by changing the designation of the property described at Tract 16, GLEN VISTA, Deschutes County, Oregon and further identified on Tax Assessor's Map 17-12-17C, Tax Lot 1300 . The change will be from Suburban Low Density Residential (SR 2 ½) to Urban Standard Density Residential (RS). This zone change is subject to the conditions of approval imposed by the Hearings Officer's Decision dated February 16, 2006, as modified by the additional findings and condition of approval contained in the document entitled "Decision by the Bend City Council" that made part of this ordinance by vote of the Bend City Council on March 15, 2006.

Read for the first time the 5th day of April, 2006.

Read for the second time the 19th day of April, 2006.

Placed upon its passage the 19<sup>th</sup> day of April, 2006.

YES: 5

NO: 0

Authenticated by the Mayor the 19<sup>th</sup> day of April, 2006.

  
Bruce Abernethy, Mayor Pro Tem

ATTEST:   
Patricia Stell, City of Bend Recorder

5. In addition to the land use applications in this land use application, there are numerous pending and potential developments along OB Riley Road that, when constructed, will add significantly more vehicle trips.
6. Because the instant land use application will contribute to the increase in vehicle trips that will, when combined with anticipated development, require the improvement of the entire OB Riley Road corridor to city standards for a collector street, a nexus exists between this land use application and the need to improve the OB Riley Road corridor to city standards.
7. Evidence in the record shows that the total cost of improving the OB Riley Road corridor to city standards within the existing city limits will be approximately \$7.1 million.
8. Requiring this applicant to pay the entire cost of improving OB Riley Road within the Bend City Limits to city standards would be more than could be exacted from the applicant under *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed2d 304 (1994). However, each of the pending and potential new developments along the OB Riley Road corridor will benefit from improvement of the entire OB Riley Road corridor, within the city limits, to city standards. Creation of an LID or other form of shared financing that would fairly apportion the costs according to benefits of the road improvements among all new pending and potential development would be roughly proportional to the impact that this land use application will have on the OB Riley Road transportation facility.
9. Evidence in this record shows that a cap of \$5,000 LID assessment per residential lot for the applicant's property would provide an adequately funded LID or other shared financing mechanism to enable the city to construct the necessary improvements to the OB Riley Road corridor in the future.
10. This land use applicant will be a principal beneficiary of the improvement of OB Riley Road to City of Bend standards for collector streets, because residents of this development will be able to use the improvements along the entire OB Riley Road corridor.
11. Creation of a local improvement district (LID) or other method of financing that is proportional to all new users of OB Riley Road is a means to achieve a legitimate governmental interest – the interest in keeping OB Riley Road functioning at a level that is acceptable under existing city standards for collector streets.
12. In calculating the participation in the LID or other financing method for apportioning costs among new development, consideration should be given to any developer that improves any portion of OB Riley Road to city standards, and finances such improvements outside of the LID or other shared financing method, except to the extent that such improvement may have been required by the hearings officer as an exaction under *Dolan v. City of Tigard*.
13. Existing development located on OB Riley Road currently has, in OB Riley Road, a transportation facility that is adequate to the needs of the existing development, defined as houses and other structures with an occupancy permit issued as of the date of this Final Decision. Accordingly, the city finds that the existing development will not benefit to the extent that existing development should be required to participate in the funding of the OB Riley Road improvements, except to the extent that such financing may come from System development Charges, local property taxes, gasoline taxes, shared revenue and other (similar) funds.

**Additional Condition of Approval Regarding LID or Other Shared Financing Method**



EXHIBIT A

WAIVER OF REMONSTRANCE TO  
THE FORMATION OF A LOCAL  
IMPROVEMENT DISTRICT OR OTHER SHARED FINANCING MECHANISM FOR  
IMPROVEMENT OF OB RILEY ROAD TO CITY OF BEND COLLECTOR  
STANDARDS

STATE OF OREGON            )  
  ) ss           File No. PZ 05-556  
County of Deschutes        )

WHEREAS, Rim Rock Riders, hereinafter Owner, seeks approval of a zone change in City of Bend land use file PZ 05-556 for the following described real property located within the Bend city limits, of Deschutes County, Oregon;

Tract 16, GLEN VISTA, Deschutes County, Oregon and further identified on Tax Assessor's Map 17-12-17C, Tax Lot 1300; and

WHEREAS, the City of Bend, has conditioned approval of PZ05-556 on the recording of Owner's Waiver of Remonstrance to the Formation of a Local Improvement District for the completion of said public improvements at some future date, as provided in the City of Bend land use decision dated April \_\_, 2006;

NOW THEREFORE,

1. Owner hereby waives its rights, as provided under Bend City Code, and ORS Sections 223.117, 223.118, 223.389 and ORS 223.391 to have its written or oral objection to a proposed local improvement counted for purposes of determining whether there are, by law, sufficient objections to force the relevant governing body to abandon the proposed improvement, including but not limited to the formation of a local improvement district. Owner, however, does not waive its right to submit written testimony or to appear before the Bend City Council at any public hearing to object or otherwise testify about the whether the assessment against the subject property represents that property's proportionate share of the improvement. Further, Owner does not waive the right to remonstrate against any LID or other financing mechanism that results in an assessment of more than \$5,000 per residential lot. This waiver will not be effective unless the resolution, ordinance or other instrument creating the LID limits the final LID assessment to a maximum of \$5,000 per residential lot.
2. It is the intent of Owner that this Waiver of Remonstrance shall be a condition and covenant that shall run with the land and be binding upon the real property described herein above and shall be binding upon Owner's heirs, executors, assigns and successors.

IN WITNESS WHEREOF, this document is executed this \_\_\_\_\_ of \_\_\_\_\_, 2006.

Rim Rock Riders

By: \_\_\_\_\_  
Title: \_\_\_\_\_

FEB 1 2006

**DECISION OF CITY OF BEND HEARINGS OFFICER**

**FILE NUMBERS:** PZ-05-556 (Zone Change)  
PZ-05-557 (Tentative Plan)

**APPLICANT:** KDV, LLC  
P.O. Box 5014  
Aloha, Oregon 97007

**PROPERTY OWNERS:** Rimrock Riders  
63303 O.B. Riley Road  
Bend, Oregon 97701

**ENGINEER:** Hickman Williams & Associates  
698 N.W. York Ave  
Bend Oregon 97707

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

**REQUEST:** The applicant is requesting approval of a zone change from SR-2-½ to RS, and tentative plan approval for a 32-lot subdivision to be called the Rimrock Riders Subdivision, on an 8.43-acre parcel on the west side of O.B. Riley Road north of Empire Avenue.

**PROJECT MANAGER:** Matthew Martin, Associate Planner

**HEARING DATE:** November 22, 2005

**RECORD CLOSED:** December 20, 2005

**I. APPLICABLE STANDARDS AND CRITERIA:**

- A. City of Bend Zoning Ordinance, Ordinance No. NS-1178, Chapter 10**
1. Section 10.10.9C, Suburban Low Density Residential Zone (SR-2 ½ )
  2. Section 10.10.10, Urban Standard Residential Zone (RS)
  3. Section 10.10.33, Amendments
- B. City of Bend Land Division Ordinance, Ordinance No. NS-1786**
1. Article III, Land Division – Application Procedure

Rimrock Riders  
PZ- 05-556, PZ-05-/557



- \* Section 3.040, Phased Tentative Plan
- \* Section 3.050, Approval of Master Development Plan
- \* Section 3.060, Required Findings for Approval

2. Article VI, Design Standards and Improvements

- \* Section 6.010, Compliance Required
- \* Section 6.020, Streets, Sidewalks and Bikeways
- \* Section 6.030, Blocks
- \* Section 6.040, Lots: Size and Shape
- \* Section 6.050, Lots, General Requirements
- \* Section 6.060, General Provisions
- \* Section 6.070, Grading of Lots and Parcels
- \* Section 6.120, Park and Trail Development and Dedication
- \* Section 6.130, Natural Features and Open Space

- C. City of Bend Land Use Review and Procedures Ordinance, Ordinance No. NS-1775
- D. Oregon Administrative Rules, Chapter 660, Division 12, Transportation Planning Rule
  - 1. OAR 660-12-060, Plan and Land Use Regulation Amendments

II. **FINDINGS OF FACT:**

- A. **Location:** The subject property is located 63303 O.B. Riley Road in Bend, and is further identified as Tax Lot 1300 on Deschutes County Assessor's Map 17-12-17C.
- B. **Zoning and Plan Designation:** The subject property is zoned Suburban Low Density Residential (SR-2 ½) and is designated Urban Standard Density (RS) on the Bend Area General Plan Map.
- C. **Site Description:** The subject property is 8.43 acres in size, roughly rectangular in shape, and has varying topography with the center of the property generally lower than the perimeter and including some rock outcrops. Vegetation includes scattered mature ponderosa pine and juniper trees, with denser stands along the perimeter of the property, as well as native brush and grasses. The subject property currently is developed with structures including a barn, outbuildings, and the remnants of a corral that were used by the Rimrock Riders equestrian club, the previous property owner. The applicant proposes to remove these structures. Access to the property is from a driveway off O.B. Riley Road.
- D. **Surrounding Zoning and Land Uses:** To the north and east are properties zoned SR-2 ½ and located in the city limits. To the west is property located outside the city limits and zoned Urban Area Reserve (UAR-10). To the south is property located in the city limits and zoned Low-Density Residential (RL). All of the surrounding properties are

developed with a mixture of rural and suburban residences and small-scale farms.

- E. Procedural History:** The subject zone change and tentative plan applications were submitted on August 23, 2005 and were accepted by the city as complete on September 22, 2005. Therefore, the 120-day period for issuance of a final local land use decision under ORS 227.178 would have expired on January 20, 2006. A public hearing on the applications was held on November 22, 2005. At the hearing, the Hearings Officer disclosed her observations and impressions from a site visit to the subject property and vicinity conducted on the day of the hearing, received testimony and evidence, left the written evidentiary record open through December 13, 2005, and allowed the applicant through December 20, 2005 to submit final argument. Because the applicant agreed to the post-hearing extension of the evidentiary record, under Section 10-16.7(16)(E) of the city's land use procedures ordinance the 120-day period was tolled for the period of the extension. The extended 120-day period would have expired on February 10, 2006. By a letter dated January 30, 2006, the applicant agreed to further extend the 120-day period to expire on March 16, 2006. As of the date of this decision there remain 29 days in the 120-day period.
- F. Proposal:** The applicant requests approval of a zone change for the subject property from SR-2 ½ to Urban Standard Density Residential (RS), and tentative plan approval to develop the subject property with a 32-lot single-family residential subdivision to be called the Rimrock Riders Subdivision. Subdivision density would be 3.8 dwellings per gross acre. Lots would range in size from 5,500 in the interior of the subdivision to 15,905 square feet on the perimeter. The subdivision would have two points of access from O.B. Riley Road. Access to individual subdivision lots would be from four new public subdivision streets and an alley. Sewer and water service would be provided by the City of Bend. The applicant proposes to dedicate right-of-way for, and to improve, the abutting segment of O.B. Riley Road to the city's standards for major collector streets.
- G. Public/Private Agency Notice and Comments:** The Planning Division sent notice of the applicant's proposal to a number of public and private agencies and received responses from: the City of Bend Engineering Division, Traffic Engineer, Grading/Drainage Department, Fire Department, Long-Range Planning, ADA Coordinator, Address Coordinator, and Building Division; Bend Metro Park and Recreation District; Swalley Irrigation District; Bend Broadband; Cascade Natural Gas; PacifiCorp; and Qwest. These comments are set forth verbatim at pages 3-11 of the Staff Report, and/or are included in the record, and are addressed in the findings below.
- H. Public Notice and Comments:** The Planning Division mailed individual written notice of the applicant's proposal and the public hearing to the owners of record of all property located within 250 feet of the subject property. In addition, notice of the public hearing was published in the Bend "Bulletin" newspaper, and the subject property was posted with a notice of proposed land use action sign. As of the date the record in this matter closed, the city had received six letters from the public in response to these notices. In addition, eight members of the public testified at the public hearing. Public comments are included in the record and are addressed in the findings below.



### III. CONCLUSIONS OF LAW:

#### A. Preliminary Issues:

##### 1. Pending Development Code Update.

**FINDINGS:** Opponents argue the applicant's proposed zone change and subdivision should be denied because the city has not completed a pending development code update. The Hearings Officer finds I have no authority to deny these applications, or to delay their consideration, on this basis. The applicant's proposal is subject to the approval criteria applicable at the time the applicant's zone change and subdivision applications were filed.

##### 2. Historic Designation.

**FINDINGS:** Opponents argue the proposed zone change and subdivision should be denied because the subject property, former site of the Rimrock Riders equestrian club, may have been a historic 19<sup>th</sup> century stage stop. The record indicates the subject property is not designated a historic site on the city's Goal 5 inventory of historic resources. At the public hearing Bobbi Elliot, president of Rimrock Riders, the former owner of the subject property, testified that while the existing barn on the subject property is old, it is not eligible for historic designation.<sup>1</sup> Therefore, I find there is no basis to deny the proposed zone change and subdivision based on historic resources.

#### ***ZONE CHANGE CRITERIA***

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

##### 1. Section 10-10.33, Amendments

**This ordinance may be amended by changing the boundaries of zones or by changing any other provisions thereof, whenever the public necessity and convenience and the general welfare requires such an amendment. Such a change may be proposed by the City Commission on its own motion or by motion of the Planning Commission, or by petition as hereinafter set forth.**

**FINDINGS:** Opponents argue the proposed zone change should be denied because there is no public need for additional RS-zoned land. The applicant responded in its November 22, 2005 written submission that the city's residential lands inventory shows there would be a sufficient supply of residential land to meet the city's needs for residential housing over the 20-year planning period *if* all low-density land is rezoned for urban-density development, based on the following analysis:

*"The residential land inventory showed a sufficient supply of residential land in the urban area based on the assumption that larger low-density residential land*

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<sup>1</sup> Assessor's data in the record indicate the barn was built in 1940.

*within the city limits would be upzoned to standard density residential zoning and that sewer service would be extended to serve the entire urban area.*

\* \* \*

*The plan inventory calculated the supply of residential land available for single-family housing based on the density called for by the BAGP [Bend Area General Plan] map. [Citations omitted.]. Based on the BAGP map, the city determined that dwelling would be built, in all single-family zones, including low-density zones, such as the SR 2 ½ and RL Zones, at an average density of 2.9 dwelling units per acre 'provided that large tracts of low and very low density land are redesignated for standard density residential development.' [Citations omitted.]*

*The purpose of upzoning residential lands, as stated in the BAGP, is to ensure sufficient residential development, a sufficient supply of residential land and to make land available for the development of affordable housing. [Citations omitted.]*

\* \* \*

*In 2005, the city released the results of an urban lands study. The study shows that the city lacks an adequate supply of land within its urban growth boundary to meet the city's need for housing for the next 20 years. ORS 197.296 requires the city to provide a 20-year supply of land for needed housing. This study does not have a direct bearing on the current application as the subject property has already been included in the urban growth boundary and has been designated to be available for urban residential development when sewer service is available to serve the property. It does show, however, that the need to rezone lands in the urban growth boundary is very strong as the demand is so high it is clear that an urban growth boundary expansion is needed to provide the state-required supply of land for housing for future Bend residents."(Underscored emphasis in original.)*

The Hearings Officer concurs with the applicant's reasoning and finds that not only is there an identified need for additional land for residential development within the city limits, but the subject property in particular has been identified by the city as appropriate for meeting that need through upzoning and residential subdivision development. For these reasons, I find the applicant has demonstrated the proposed zone change will meet a public need.

- (1) **Application.** An application for amendment by a property owner or his authorized agent shall be filed with the City Planning Director. The application shall be made on the forms provided by the City. Before taking final action on a proposed amendment, the Approval Authority shall hold a public hearing thereon. The Approval Authority shall follow the procedures set forth in the City of Bend's land use procedures for map changes.



**FINDINGS:** The proposed zone change from SR-2 ½ to RS was initiated by the applicant. The record indicates the applicant submitted a zone change application on a form provided by the city. This application will be reviewed pursuant to the applicable provisions of the city's land use procedures ordinance. A public hearing on the proposed zone change was held before the Hearings Officer. In addition, before the proposed zone change can become effective, a second public hearing will be held before the Bend City Council, thus satisfying the requirements of this section.

(2) **Standards for Zone Change.** The burden of proof is upon the one seeking change. The degree of that burden increases proportionately with the degree of impact of the change, which is sought. The applicant shall in all cases establish:

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

**FINDINGS:** The Hearings Officer previously has held this approval criterion includes three elements: 1) conformance with the comprehensive plan map; 2) conformance with the comprehensive plan text; and 3) consistency with the plan's intent to promote "an orderly pattern and sequence of growth." Each of these elements is discussed separately in the findings below.

**1. Conformance with Comprehensive Plan Map.**

The subject property is designated RS on the comprehensive plan map. Therefore, the Hearings Officer finds the proposed zone change to RS is consistent with the plan map.

**2. Conformance with Comprehensive Plan Text.**

The applicant argues approval of the proposed zone change is *required* by two comprehensive plan policies -- Residential Policies 21 and 23 -- which are set forth below.

**Policy 21**

**Densities recommended on the Plan shall be recognized in order to maintain proper relationships between proposed public facilities and services and population distribution. (Bend Area General Plan, p. 5-32.)**

**Policy 23**

**The City shall rezone residential lands to the designated general plan densities when sewer service is available to the area. (Bend Area General Plan, p. 5-32.)**

The applicant and staff note the city's hearings officers have issued a number of decisions with conflicting findings concerning the significance of these two policies. This Hearings Officer has issued a number of decisions addressing applications for zone changes and other land use

approvals in which I have held the city's comprehensive plan policies including Policies 21 and 23 do not constitute mandatory approval criteria for quasi-judicial land use applications, based on the following language in the preface to the general plan at page P-4:<sup>2</sup>

**At the end of each chapter [of the plan] are policies that address issues discussed in the chapter. The policies in the General Plan are statements of public policy, and are used to evaluate any proposed changes to the General Plan. Often these statements are expressed in mandatory fashion using the word "shall." These statements of policy shall be interpreted to recognize that the actual implementation of the policies will be accomplished by land use regulations such as the city's zoning ordinance, subdivision ordinance and the like. The realization of these policies is subject to the practical constraints of the city such as availability of funds and compliance of [sic] all applicable federal and state laws, rules and regulations, and constitutional limitations. (Emphasis added.)**

Some of this Hearings Officer's previous decisions addressing the meaning of this preface language have been appealed to the city council and have been adopted by the council through the adoption of my findings. This occurred most recently in *Shevlin Neighbors* and *Awbrey Towers* (02-508). In the latter case, I held the above-quoted plan preface language means plan policies are not mandatory approval criteria for the conditional use and site plan applications at issue in that case. The city council adopted my findings, and the council's decision was appealed to the Land Use Board of Appeals (LUBA). My interpretation of the above-quoted plan preface language was challenged before LUBA. In its decision in *Save Our Skyline v. City of Bend*, 48 Or LUBA 192 (2004), LUBA stated:

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

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

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<sup>2</sup> E.g., *Shevlin Neighbors* (PZ-05-429, PZ-05-430).



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

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

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

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

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

*BAGP Policies do not apply as approval standards that she was obligated to consider directly in reviewing conditional use permit applications.*

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

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

The applicant's final argument asserts LUBA's decision in *Save Our Skyline* is not relevant to the subject zone change application for the following reasons:

*"The Save Our Skyline decision was rendered in the context of a conditional use ordinance that requires that the use be consistent with the purpose of the comprehensive plan, rather than Plan policies. It creates a binding determination only for conditional use applications regarding the meaning of the ordinance interpreted in that case. It does not dictate how the language of the Plan relates to a zone change application.*

*In the current case, the City's zoning ordinance requires that the zone change conform to the Comprehensive Plan. DCC 10-10.33(2)(a). To conform to the plan, the zoning called for by the Plan map must be applied at the time intended by the Plan. Policies 21 and 23 tell the City when plan map designations are to be applied to land in order to fulfill the City's promise made in 1998 to provide an adequate supply of land for residential development, as required by Goal 10 and the Goal 10 rules. . . . "*

The Hearings Officer agrees with the applicant that LUBA's holding in *Save Our Skyline* was limited to whether the city was required to consider identified plan goals as mandatory conditional use approval criteria. However, I find it is equally clear from the quoted *dicta* that



LUBA supported my interpretation of the language at issue in the city's Plan Preface when it stated the preface assigned a "relatively clear role" to plan policies *in general* – i.e., not to constitute mandatory approval criteria for quasi-judicial land use applications.

As LUBA stated in its decision in *Save Our Skyline*, identifying the relevant approval standards, if any, in the comprehensive plan is "a recurring problem that local governments face in reviewing quasi-judicial permit applications." The city council has adopted conflicting interpretations of the meaning and application of Residential Policies 21 and 23. LUBA has upheld *one* of those interpretations. It is up to the city council to resolve this conflict. If the council believes my interpretation is incorrect, it can address this issue *expressly* in an appeal of this decision.

For the foregoing reasons, the Hearings Officer finds Residential Policies 21 and 23 do not *require* approval of the proposed zone change because they do not constitute mandatory approval criteria for the proposed zone change. At most, they express the city's intent that land within the UGB that is zoned for less-than-urban density should be rezoned to urban density when: (a) city sewer and water service are available; and (b) the applicant has demonstrated the proposed zone change satisfies all applicable zone change approval criteria in the city's zoning ordinance.

### **3. Consistency with the Plan's Intent to Promote an Orderly Pattern and Sequence of Growth.**

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

#### **a. Orderly Pattern of Growth.**

In this Hearings Officer's previous decisions in *Clabaugh* (99-118), *Crosby* (01-295, 01-296), and *Shevlin Neighbors*, I addressed the rezoning to RS from another low-density residential zone -- UAR-10 -- for large tracts of undeveloped property in the vicinity of Shevlin Park and on both sides of Shevlin Park Road. In those decisions, I held rezoning the property would promote an orderly *pattern* of growth because it would foster proper relationships between zoning districts and uses, including surrounding property designated RS but zoned at lower density. I held the proposed zone changes would be consistent with the type of urban-density development contemplated by the city for these RS-designated parcels, thereby promoting an orderly pattern of growth.

The Hearings Officer finds the analysis in the *Clabaugh*, *Crosby* and *Shevlin Neighbors* decisions is equally applicable to the subject property and the surrounding neighborhoods abutting O.B. Riley Road. Shevlin Park Road is a designated arterial street; O.B. Riley Road is a designated major collector street. Parts of both of these streets now are located within the Bend city limits. The land within the city limits along both sides of O.B. Riley Road was redesignated



RS, and thereby planned for urban-density residential development when city sewer service became available. The Staff Report notes there are two relatively new subdivisions east and northeast of the subject property (Chestnut Park Phase 2 and Lavacrest Phase 2) zoned RS and served by city sewer. I concur with staff's observation that these subdivisions represent the beginning of the establishment of a new urban-density pattern of growth along O.B. Riley Road which the applicant's proposed zone change and subdivision would further.

Opponents argue the proposed zone change will not promote an orderly pattern of growth because it will place urban-density development adjacent to low-density "country properties" on land located outside the city limits. Opponents assert higher density residential development should "blend gradually, not abruptly" with existing low density residential development, and that a more appropriate zoning for the subject property which abuts the city limits would be RL. A similar argument was made in *Clabaugh* where opponents to the proposed zone change from UAR-10 to RS asserted land within the Bend city limits should be developed contiguously from the center outward with UAR-10 zoned land developed last, thereby protecting the character of low-density development and undeveloped land outside and at the outer edges of the city limits. I rejected that argument, holding the city's plan policies encouraging "compact development" and discouraging "leapfrog development" do not require contiguous development within the Bend city limits, and that the appropriate analysis is whether the proposed zone change would promote proper relationships between zoning districts and uses and would promote urban-density development concurrent with adequate urban infrastructure. I adhere to that holding here.

Finally, the city has recognized the need to "blend" new urban-density development with existing lower-density development through the adoption of residential compatibility standards, discussed in detail in the findings below. These standards require larger sizes for new subdivision lots that border older subdivision lots developed at lower density. The Hearings Officer has found the applicant's proposed subdivision satisfies these standards.

For the foregoing reasons, the Hearings Officer finds the proposed zone change from SR-2 ½ to RS will promote an orderly *pattern* of growth.

**b. Orderly Sequence of Growth.**

In numerous previous decisions, this Hearings Officer has found an orderly *sequence* of growth is one that promotes urban-density development concurrent with adequate urban infrastructure, including sewer, water, police and fire protection, schools and transportation facilities. Each of these facilities and services is discussed separately in the findings below.

(1) Police and Fire Protection. The subject property is located within the Bend city limits and therefore will be served by the Bend Police and Fire Departments, neither of which objected to the applicant's proposed zone change. Included in the record are detailed comments from both the Engineering Division and the Fire Department concerning water required for fire protection. The Engineering Division's comments state the city can provide adequate water quantity and pressure for fire protection. As discussed in the findings below, the Hearings Officer has found the applicant will be required as a condition of subdivision approval to satisfy all requirements of the fire department.

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(2) Sewer. The applicant proposes to serve subdivision lots with city sewer service through extension of and connection to existing city sewer facilities constructed to serve other new subdivisions. In particular, the applicant proposes to install a gravity sewer system that would convey sewage from each subdivision lot to a public sewer pump station on Tax Lot 8200 located across O.B. Riley Road to the east. The applicant's burden of proof states this pump station was required as a condition of approval for the O.B. Riley Subdivision, and that the pump station would be sized to handle both that subdivision and the applicant's proposed subdivision. In its comments on the applicant's proposal, the Engineering Division stated the applicant should be required as a condition of approval to construct the proposed pump station *on the subject property* in case the O.B. Riley Subdivision is not completed, or is completed after the applicant's proposed subdivision, because the applicant's proposal "cannot be approved based on improvements conditioned by other concurrent development."

The Hearings Officer understands the applicant's desire to avoid duplicating efforts to create the required pump station. However, I agree with the Engineering Division that to assure the pump station is in place to serve the applicant's proposed subdivision I must require that the applicant build it as a condition of approval. Therefore, I find the applicant will be required as a condition of subdivision approval to design and construct all sewer facilities in accordance with the applicable city standards and specifications. And I find the applicant will be required as a condition of approval to construct a pump station on the subject property, plat a separate tract for the pump station and dedicate it to the city, if the pump station required for the O.B. Riley Subdivision is not in place, sized to handle sewage flow from both the O.B. Riley Subdivision and the applicant's proposed subdivision, and functioning and available for connection to the sewer facilities in the subject property at the time the applicant submits its final subdivision plat for approval.

As discussed in the findings below concerning the residential compatibility standards, the proposed lots on the perimeter of the subdivision are required to be at least 15,000 square feet in size to assure compatibility with adjacent low-density subdivision lots. Therefore, if the sewer pump station is placed on one of these lots on a separate tract it will reduce the size of the subdivision lot below the minimum 15,000 square feet. However, as discussed in the findings below, the Hearings Officer has found I can authorize an exception to the residential compatibility standards under these circumstances to allow a smaller perimeter lot to accommodate the required sewer pump station tract.

(3) Water. The applicant proposes to serve subdivision lots with city water service through extension of and connection to existing city water facilities constructed to serve other new subdivisions. The Hearings Officer finds the applicant will be required as a condition of approval to design and construct all water facilities in accordance with the applicable city standards and specifications.

(3) Schools. The subject property is located within the boundaries of the Bend-La Pine School District. The school district did not submit any comments on this application. However, the Hearings Officer is aware the district typically submits comments on proposed subdivisions stating its policy is to anticipate and respond to growth in school enrollment and not to take a position either encouraging or discouraging growth in general, or in support of or opposition to



particular development proposals. Opponents argue the proposed zone change should not be approved because there are no public schools in the area to serve potential subdivision residents. The applicant responds, and I concur, that there is nothing in the city's land use regulations that establishes the proximity of public schools as a zone change approval criterion.

*(4) Transportation Facilities.* The applicant proposes access to the subdivision from O.B. Riley Road, a designated major collector street, via a system of public subdivision streets and an alley that would create a grid street system. The applicant submitted a traffic impact analysis (hereafter "traffic study") dated July 2005 and prepared by Ferguson & Associates, and a supplemental traffic analysis dated November 22, 2005 (hereafter "supplemental traffic analysis") addressing a possible left-turn lane, also prepared by Ferguson & Associates. The traffic study predicts the proposed subdivision will generate a total of 306 average daily vehicle trips (ADTs) of which 32 would occur during the p.m. peak hour (4:00 p.m. to 6:00 p.m. weekdays).

The traffic study analyzed the function of the two subdivision local street intersections with O.B. Riley Road as well as the nearby intersection of O.B. Riley Road and Empire Avenue with the addition of subdivision-generated traffic. The traffic study indicates the city has established in its street policies acceptable levels of service for intersections based on their volume-to-capacity ratio (v/c ratio) – i.e., the intersection's capacity to handle vehicle movements on each leg of the intersection without lengthy delays – and that the maximum acceptable v/c ratio is equal to or less than 1.0. The traffic study concluded both subdivision access points and the Empire/O.B. Riley intersection will function at v/c ratios of .64 or lower with the addition of subdivision-generated traffic.

The applicant has proposed to dedicate additional right-of-way for the abutting segment of O.B. Riley Road to provide a total of 70 feet of right-of-way from the centerline, and to improve the abutting segment of the road to the city's standards and specifications for a three-quarter collector street, including 26 feet of pavement, a six-foot-wide striped bicycle lane, and a curb, five-foot-wide sidewalk, and landscaped strip between the sidewalk and curb on the abutting side of the street. The Hearings Officer finds the applicant will be required as a condition of subdivision approval to dedicate right-of-way for and to improve the abutting segment of O.B. Riley Road and the new subdivision streets and alley in accordance with the applicable city standards and specifications as depicted in the applicant's cross-section drawings, including the drawing for O.B. Riley Road included in the record as Hearing Exhibit 2.

Opponents argue the applicant's traffic study was inadequate because it did not consider traffic impacts from the proposed subdivision on the Empire Avenue/Third Street (Business 97) intersection, and because it did not consider traffic impacts on O.B. Riley Road from potential development of the "Gopher Gulch" property located northwest of the subject property. The applicant responds that the city's Street Policy 6 did not require an analysis of subdivision traffic impacts on the Empire/Third Street intersection because it is located more than a mile from the subject property. The applicant also argues it was not required to analyze potential traffic from "Gopher Gulch" because this property is located well outside the Bend city limits, and it is far from certain when or how this property will be developed, let alone what will be the density of development and traffic impacts. The Hearings Officer agrees with the applicant that its traffic



study included in its analysis all that what was required by Street Policy 6.

Opponents also argue traffic impacts from the proposed subdivision will create safety hazards on O.B. Riley Road without installation of a left-turn lane. That is because O.B. Riley Road curves along the subject property's eastern boundary. However, as discussed in detail in the findings below, the applicant's supplemental traffic analysis concludes left-turn warrants at the subdivision access points with O.B. Riley Road would not be met with the addition of subdivision-generated traffic. Opponents did not rebut this analysis.<sup>3</sup>

Finally, opponent Joshua Shockey, who owns the abutting property to the west, argues the proposed zone change will not promote an orderly sequence of growth because the proposed subdivision does not extend city water and sewer facilities through the subdivision to the western property line where it could be extended onto Mr. Shockey's property in the future. The staff report notes the city's policies require the extension of infrastructure "to-and-through" where there is the potential for urban-density development on adjacent properties. Although Mr. Shockey's property is located outside the Bend city limits and urban growth boundary (UGB), it is designated and zoned urban reserve, signifying the city's intent eventually to annex the property. For this reason, the staff report recommends, and the Hearings Officer agrees, that the applicant will be required as a condition of subdivision approval to extend city water and sewer facilities to the subject property's western boundary within the proposed "D" Street right-of-way.

For the foregoing reasons, and with imposition of the conditions of approval described above, the Hearings Officer finds the applicant's proposal will promote an orderly *sequence* of growth. Therefore, I find the applicant's proposal satisfies this zone change approval criterion.

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

**FINDINGS:** As discussed in the Findings of Fact above, the area surrounding the subject property is characterized by a mixture of plan designations, zoning districts, densities and uses. However, the predominant land use is low-density residential development with some small-scale "hobby farms." The record indicates property to the southeast already has been rezoned to RS to allow urban-density subdivision development, and/or is in the process of being subdivided at RS density. The Hearings Officer finds the proposed zone change from SR-2 ½ to RS will not interfere with existing or potential development on these RS-zoned lands. I also find that the proposed zone change will encourage the rezoning and urban-density development of other land designated RS and zoned SR-2 ½ in the vicinity of the subject property by extending city water and sewer service and providing improvements to O.B. Riley Road.

With respect to nearby parcels zoned UAR-10 and located outside the city limits, the Hearings Officer finds existing development on these parcels currently is limited by its urban reserve designation and zoning, and potential development will be dependent upon subsequent

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<sup>3</sup> However, as discussed in the findings below, the applicant has offered to stripe a northbound left-turn lane at the northern local street/O.B. Riley intersection.

annexation and rezoning to an urban zoning district. However, I find urban-density development of, and extension of city sewer and water service to, the subject property also will facilitate future urban-density development of surrounding land when the city determines to bring it into the city limits and UGB.

Opponents expressed their personal opinions that the applicant's proposed zone change and subdivision will reduce the value of their nearby "country properties." As discussed in the findings above, the RS plan designation of surrounding property within the Bend city limits reflects the city's intent that this land eventually be developed at urban density. Similarly, the Hearings Officer finds the urban reserve plan designation and zoning of nearby properties located outside the city limits reflect the city's and county's intent that these lands be held in reserve for future urban-density development when annexed into the city limits and UGB. In other words, ultimately the highest and best use of the surrounding properties will be for urban-density development consistent with the density of the applicant's proposal.

For the foregoing reasons, the Hearings Officer finds the proposed zone change will not interfere with existing or potential development, or the value of, land in the vicinity of the subject property, therefore satisfying this criterion.

**C. That the change in classification for the subject property is consistent with the purpose and intent of the proposed zone classification.**

**FINDINGS:** The purpose of the SR-2 ½ Zone is set forth in Section 10-10.9C as follows:

- (1) **Purpose. To accommodate existing SR 2 ½ zoned lands within the Urban Growth Boundary until these lands are annexed to the City or until sewer service is available and such lands are rezoned consistent with the planned densities and uses in the Bend Area General Plan.**

The purpose of the RS Zone is set forth in Section 10-10.10 as follows:

- (1) **Purpose. The RS zone is intended to provide for the most common urban residential densities in places where community sewer services are or will be available and to encourage, accommodate, maintain and protect a suitable environment for family living.**

At the outset, the Hearings Officer finds purpose statements generally do not constitute mandatory approval criteria for quasi-judicial land use applications. Rather, at most they provide some guidance in interpreting applicable approval criteria. However, I find the language in Subsection (C) of this section does establish an approval criterion requiring the applicant to demonstrate its proposal is "consistent" with the purpose statement of the proposed RS Zone.

The applicant is requesting approval of a zone change from SR-2 ½ to RS in order to develop the subject property with a 32-lot single-family residential subdivision. The subject property is located within the Bend city limits and UGB and can be served by city sewer service and public



streets. Therefore, the Hearings Officer finds there no longer is any reason to hold the subject property in reserve at low density pending annexation and sewer availability as contemplated by the purpose of the SR-1 ½ Zone.

The density range for the RS Zone established in the Bend Area General Plan is 2.0 to 7.3 dwellings per gross acre. The applicant's proposal to develop the 8.43-acre subject property with a 32-lot single-family residential subdivision would result in a density of 3.8 units per gross acre, well within the RS Zone density range.

For these reasons, the Hearings Officer finds the applicant's proposal zone change from SR-2 ½ to RS is consistent with the purpose of the RS Zone.

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

**FINDINGS:** As discussed above, the Hearings Officer has found the proposed zone change will promote an orderly sequence of growth by assuring adequate infrastructure will be provided concurrently with the proposed urban-density development. Based on those findings, incorporated by reference herein, as well as imposition of the conditions of approval described in the above findings, I find the applicant's proposal will satisfy this criterion.

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

**FINDINGS:** The applicant does not argue the subject property's SR-2 ½ zoning was a mistake. Rather, the applicant argues the proposed zone change to RS is justified by a change in circumstances consisting of the redesignation of the subject property to RS and the availability of city sewer service for the property. The applicant's burden of proof notes that when the subject property was zoned SR-2 ½ city sewer service was not available to the property, and therefore a lower density zoning district was required to assure large enough lots to accommodate on-site sewage treatment facilities. The burden of proof and the staff report state, and the Hearings Officer concurs, that these changes in circumstances have been found to justify a number of previous proposed zone changes throughout Bend from lower density zoning districts to RS. I find the circumstances relied upon by the applicant are sufficient to demonstrate a change of circumstances justifying the proposed zone change.

For the foregoing reasons, and with imposition of the conditions of approval described above, the Hearings Officer finds the applicant's proposal satisfies the zone change approval criteria in this section.

- C. Oregon Administrative Rules, Chapter 660, Division 12, Transportation Planning Rule**

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

- (1) **Amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility. This shall be accomplished by either:**
  - (a) **Limiting allowed land uses to be consistent with the planned function, capacity and level of service of the transportation facility;**
  - (b) **Amending the TSP to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division; or**
  - (c) **Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.**
  
- (2) **A plan or land use regulation amendment significantly affects a transportation facility if it:**
  - (a) **Changes the functional classification of an existing or planned transportation facility;**
  - (b) **Changes standards implementing a functional classification plan;**
  - (c) **Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or**
  - (d) **Would reduce the level of service of the facility below the minimum acceptable level identified in the TSP.**

**FINDINGS:** The Hearings Officer finds the provisions of the administrative rule apply to the proposed zone change because it would require an amendment to the city's zoning map which under Section 10-10.7 is a part of the city's zoning ordinance, and therefore the applicant is proposing an amendment to a land use regulation. The remaining issue is whether the proposed zone change from SR-2 ½ to RS will "significantly affect a transportation facility." As discussed in the findings above, the applicant submitted a traffic study and supplemental traffic analysis. The traffic study concluded the three affected intersections on O.B. Riley Road -- the two subdivision access points and Empire Avenue -- would continue to function at acceptable levels of service with the addition of subdivision-generated traffic. For this reason, I find the proposed zone change will not change either the functional classification of, or the standards implementing such classification, for O.B. Riley Road. It will remain a designated major collector street subject to the city's standards and specifications for such streets. On the basis of the applicant's traffic



study which indicates O.B. Riley Road and the affected intersections can handle subdivision-generated traffic, I also find the proposed zone change will not result in types or levels of land use that would be inconsistent with O.B. Riley Road's functional classification as a major collector street. Finally, I agree with the applicant that because the city does not have an acknowledged transportation system plan (TSP), no minimum acceptable level of service has been established *in the TSP* and therefore the standard in Subsection (2)(d) is not applicable.<sup>4</sup>

For the foregoing reasons, the Hearings Officer finds the applicant's proposed zone change will be consistent with the Transportation Planning Rule.

***RS ZONE STANDARDS***

**D. City of Bend Zoning Ordinance, Ordinance No. NS-1178**

**1. Section 10-10.10, Urban Standard Density Residential Zone (RS)**

\* \* \*

**(2) Permitted Uses. The following uses are permitted.**

**(a) Single-Family dwelling.**

**FINDINGS:** The applicant proposes to develop the subject property with a 32-lot residential subdivision for single-family dwellings, a use permitted outright in the RS Zone.

**(4) Height Regulations. No building or structure shall be hereafter erected, enlarged or structurally altered to exceed a height of 30 feet without approval of Conditional Use Permit.**

**FINDINGS:** The applicant has not submitted building elevation drawings with the proposed subdivision dwellings. Therefore, the Hearings Officer finds compliance with the RS Zone height limit will be reviewed at the time of building permit issuance.

**(5) Lot Requirements. The following requirements shall be observed, provided that the approval authority may allow smaller lots of different housing types in a new subdivision or Planned Unit Development (PUD) approved pursuant to this ordinance and consistent with the Comprehensive Plan designations for preservation of areas of significant interest when these lots or house types are internal to the subdivision or PUD.**

**(a) Lot Area: A lot in a subdivision or planned unit development approved after December 2, 1998 shall have a minimum area of 4,000 square feet provided that the overall density does not**

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<sup>4</sup> As noted above, the city has identified acceptable levels of service in its street policies.

**exceed 7.3 dwellings per gross acre. All other lots shall have a minimum area of 6,000 square feet. New lot development is subject to Section 10.10.10(8) below and shall have an overall density range of 2.0-7.3 units per gross acre.**

**FINDINGS:** The proposed subdivision will be approved after December 2, 1998, and therefore the 4,000-square-foot minimum lot size in this section applies. As discussed in the Findings of Fact above, lots in the proposed subdivision would range in size from 5,500 to 15,905 square feet, and the proposed density would be 3.8 dwellings per gross acre. Therefore, the Hearings Officer finds the applicant's proposal satisfies these requirements.

- (b) Lot Width: Lots shall have a minimum width of 60 feet except in subdivisions or Planned Unit Developments, approved after December 2, 1998 where the minimum width is 40 feet.**

**FINDINGS:** The submitted tentative plan shows all proposed subdivision lots are at least 40 feet wide, therefore satisfying this standard.

- (c) Front Yard: The front yard shall be either a minimum of 20 feet except an existing 40 or 50 foot corner may have one front yard of 10 feet, provided the garage or carport is at least 20 feet from the property line, or a minimum of 10 feet from the property line when the following conditions exist:**
- (d) Side Yard. A side yard shall be a minimum of 5 feet and the sum of the two side yards shall be a minimum of 15 feet except that in subdivisions or Planned Unit Developments (PUD's) approved after December 2, 1998, a side yard shall be a minimum of at least 5 feet and the sum of the two side yards shall be a minimum of 10 feet except for zero lot line subdivisions approved pursuant to the City's subdivision ordinance.**
- (e) Rear Yard: The rear yard shall be a minimum of 5 feet.**
- (f) Lot Coverage: Maximum lot coverage by buildings and structures shall be 35 percent of the total lot area.**
- (g) Solar Setback: The solar setback as prescribed in Section 26A.**

**FINDINGS:** The Hearings Officer finds compliance with the minimum setbacks in the RS Zone will be enforced at the time of building permit issuance for each lot. However, I find all proposed subdivision lots are of sufficient size to accommodate single-family dwellings that can satisfy these standards.

- (6) Off-Street Parking. Off-street parking shall be provided as required**



**in Section 24. Off street parking shall be provided as required in Section 24.**

**FINDINGS:** Section 24 of the city's zoning ordinance requires that each single-family dwelling have at least two off-street parking spaces. The Hearings Officer finds the proposed subdivision lots will be large enough to accommodate two off-street parking spaces either in garages or on driveways, therefore satisfying this standard.

**(8) Residential Compatibility Standards. The following standards shall apply to new subdivision lots created after February 20, 2004 and shall be observed:**

**(a) Purpose. The residential compatibility standards in this section are intended to provide added protection to residentially zoned properties and existing neighborhoods from potential impacts sometimes associated with increased residential density development.**

**(b) Applicability. The residential compatibility standards shall apply to all RS zoned development properties that are abutting existing residential lots, excluding lots in the RM and RH zoning districts, that have been legally created through a subdivision plat and have a minimum lot size of 8,000 square feet or greater.**

**FINDINGS:** The proposed subdivision will be created after February 20, 2004. Therefore the applicant's proposal is subject to these standards. The record indicates the parcels abutting the subject property on the west and north were not created as part of a subdivision plat and therefore are not subject to the protection afforded by the residential compatibility standards. The record indicates the six parcels abutting the subject property on the south and southeast were legally created through the platting of the Rim Rock Village Subdivision. All of the abutting lots within this subdivision exceed 8,000 square feet in size. Therefore, the Hearings Officer finds the residential compatibility standards apply to proposed subdivision lots abutting these lots.

**(c) Lot Development Standards.**

**i. No more than two new lots or portions thereof shall adjoin an existing lot boundary.**

**FINDINGS:** The submitted tentative plan shows no more than two proposed lots abut each abutting Rim Rock Village Subdivision lot, therefore satisfying this criterion.

**ii. New lots along an adjoining subdivision boundary where existing lots are 20,000 square feet or greater shall be at least 15,000 square feet in area.**

**FINDINGS:** The record indicates each of the six abutting lots in the Rim Rock Village Subdivision exceeds 20,000 square feet in size. Therefore, this criterion applies to protect those lots. The submitted tentative plan shows all proposed new subdivision lots abutting these large lots are at least 15,000 square feet in size, therefore satisfying this criterion.

(d) **Building Setbacks.** The building setback regulations of the Residential Compatibility Standards shall apply to the side and/or rear yard setbacks of lots that abut the existing development in accordance with the following standards:

- i. **Minimum Rear Yard Setback.** The rear yard setback of the subject property shall be the same as the required rear yard setback of the abutting existing subdivision.
- ii. **Minimum Side Yard Setback.** The side yard setback of the subject property shall be the same as the required side yard setback for the abutting existing subdivision.

**FINDINGS:** The Hearings Officer finds compliance with these minimum setbacks will be verified at the time of building permit issuance.

(e) **Exceptions.**

- i. **When the adjoining existing lot width is greater than 300 feet, the developer may establish a lot pattern along the adjoining subdivision boundary consisting of 15,000 square foot lots with a minimum lot depth of 100 feet. In no instance as described above shall the new development lots be required by this section to exceed 15,000 square feet in size. This exception may result in more than two (2) new lots abutting an existing large subdivision lot.**
- ii. **All lot configurations subject to this section shall conform to the Residential Compatibility Standards or be approved through a hearing process.**
- iii. **Public or private alleys, streets with less than 60-foot right of way, and open space tracts less than 30 feet in width shall not be allowed to abut an existing subdivision boundary as a means of circumventing the compatibility standards provided herein.**
- iv. **When the adjoining existing residential development is bordered by a common open space tract less than 30 feet in width, the new development shall be subject to**



**the Residential Compatibility Standards in Section 10-10.10(8) above.**

**FINDINGS:** As discussed in the findings above, the Hearings Officer has found the applicant will be required as a condition of approval to construct a public sewer pump station on the subject property, located on a separate platted tract dedicated to the city, if the sewer pump station required for the O.B. Riley Subdivision is not in place, functioning and available for connection to the subject property's sewer facilities at the time the applicant submits a final subdivision plat for approval. I find the only proposed subdivision lots large enough to accommodate the required pump station would be those on the western and southern property boundaries that are at least 15,000 square feet in size. All of these lots are only slightly larger than 15,000 square feet. Therefore, it is likely platting and dedicating this separate tract will reduce the size of one of the lots below 15,000 square feet. I find Subsection (8)(e)(2) of the Residential Compatibility Standards authorizes me to grant an exception to the minimum 15,000-square-foot lot size if it is approved "through a hearing process." I find this quoted language contemplates notice and an opportunity for interested parties to be heard on a proposed exception.

The applicant did not request an exception to these standards as part of its zone change or subdivision application, and therefore the parties were not put on notice that an exception might be considered. The applicant did argue during these proceedings that an exception to the residential compatibility standards could be granted for a reduction in the 15,000-square-foot minimum lot size to accommodate the proposed storm drain basin on Lot 1 which the city recommended be placed on a separate platted tract dedicated to the city. However, as discussed in the findings below, the Hearings Officer has found no exception is required for the storm drain feature because proposed Lot 1 does not abut an existing subdivision lot. And whereas the storm drain basin would use the subject property's natural topography and therefore have minimal if any impact on the abutting lot, the sewer pump station structure could have visual and noise impacts on the abutting lower density subdivision lot. Nevertheless, the residential compatibility standards do not address such impacts. Rather, they are focused entirely on density and the number of lots – and dwelling units – that would abut existing low-density lots. The addition of a pump station to one of the 15,000-square-foot lots would not increase the density or the number of dwelling units. Therefore, I find it is appropriate for me to consider an exception to the residential compatibility standards to accommodate a separate platted tract for the sewer pump station. I find the circumstances presented here justify an exception to allow a reduction in the size of one of the 15,000-square-foot lots by the platting of a separate tract on which the sewer pump station would be installed.

For the foregoing reasons, the Hearings Officer finds the applicant's proposal complies with all requirements of the RS Zone, including the residential compatibility standards with the exception for the sewer pump station tract authorized in the findings above.

***SUBDIVISION APPROVAL CRITERIA***

**E. City of Bend Land Division Ordinance, Ordinance No. NS-1786**

Rimrock Riders  
PZ- 05-556, PZ-05-/557  
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**1. Article III, Land Division – Application Procedure**

**a. Section 3.040, Phased Tentative Plan**

**An overall development plan shall be submitted for all development affecting land under the same ownership for which phased development is contemplated. The Review Authority shall review a master development plan at the same time the tentative plan for the first phase of a phased subdivision is reviewed. The phased tentative plan shall include, but not be limited to the informational requirements of 10-10.3.030 of this title, as well as the following elements:**

- 1. Overall development plan, including phase or unit sequence, and the schedule for initiation of improvements and projected completion date.**
- 2. Show compliance with the Bend Area General Plan and implementing land use ordinances and policies.**
- 3. Overall facility development plan, including transportation and utility facilities plans that specify the traffic pattern for motor vehicles, bicycles, and pedestrians, water system plans, sewer system plans and utility plans.**
- 4. Development plans for any common elements or facilities.**
- 5. The Review Authority may require a potential development pattern for streets, bikeways, and access corridors for adjoining lands to be submitted together with the phased tentative plans as part of the overall development plan.**

**FINDINGS:** The Hearings Officer finds these criteria are not applicable because the applicant is proposing to develop the proposed subdivision in a single phase.

**b. Section 3.050, Approval of a Master Development Plan**

**As an alternative to a phased tentative plan, a master development plan may be submitted before submitting a phased tentative plan and shall be subject to the criteria set forth below. The Review Authority may approved, modify, or disapprove the master development plan and shall set forth findings for such decision. The Review Authority may also attach conditions necessary to bring the plan into compliance will all applicable land use ordinances and general plan policies. Any tentative plan submitted concurrently or subsequently for the master plan area shall substantially conform to the master**



**development plan unless approved otherwise by the City.**

**FINDINGS:** The Hearings Officer finds this criterion is not applicable because the applicant is not proposing a master development plan.

**c. Section 3.060, Required Findings for Approval**

**The Review Authority shall not approve a tentative plan for a proposed subdivision or partition unless the Hearings Body finds, in addition to other requirements and standards set forth in this ordinance, that the land division as proposed or modified will satisfy the intent and requirements of this ordinance, and Bend Zoning Ordinance, and be in compliance with the Bend Area General Plan. Such findings shall include the following:**

- 1. No application for subdivision or partition shall be approved unless the following requirements are met:**
  - A. The land division contributes to the orderly development and land use patterns in the area, and provides for the preservation of natural features and resources such as streams, lakes, natural vegetation, special terrain features, and other natural resources to the maximum degree practicable as determined by the City of Bend.**

**FINDINGS:** The Hearings Officer finds this criterion includes two components the applicant must satisfy concerning the proposed subdivision: 1) that it contributes to the orderly development and land use patterns in the area; and 2) that it provides for the preservation of the listed natural features to the maximum degree practicable. Each of these elements is addressed separately in the findings below.

1. Orderly Development and Land Use Patterns. As discussed in detail in the findings above, the Hearings Officer has found the applicant's proposed zone change from SR-2 ½ to RS satisfies the zone change approval criterion requiring the applicant to demonstrate the proposed zone change will promote an "orderly pattern and sequence of growth." Specifically, I have found the proposed density is consistent with the subject property's plan designation and will be similar to other recently-approved subdivisions in the area. I also have found the property can be served by adequate urban services, including city water and sewer, police and fire protection, and an adequate public street system including proposed new subdivision streets and existing streets that will be adequate to handle subdivision-generated traffic. And as discussed in the findings immediately above, I have found the proposed subdivision satisfies the city's residential compatibility standards, including the exception criteria for a reduction in the size of one of the larger lots to accommodate a separate tract for the required sewer pump station. Based on these findings, incorporated by reference herein, I find the proposed subdivision also will satisfy this subdivision approval criterion by contributing to the orderly development and land use patterns

Rimrock Riders  
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in the area.

2. Preservation of Natural Features and Resources. The record indicates there are no streams, lakes, inventoried Goal 5 resources, or designated Areas of Special Interest on the subject property. The record does indicate, and the Hearings Officer's site visit observations confirmed, that the subject property has natural terrain features including varied topography and some rock outcrops, as well as a number of existing mature ponderosa pine and juniper trees primarily located around the perimeter of the subject property. In its comments on the applicant's proposal, the Grading/Drainage Department recommended that the applicant be required as a condition of approval to retain on site 50% of all trees between 8 and 12 inches in diameter at breast height (dbh), and all trees 12 inches dbh and larger. The applicant submitted a detailed tree survey and preservation plan for the subject property that proposes to retain all trees on the site that are not required to be removed for street construction or installation of public facilities and utilities. Opponents argue the applicant should be required to preserve *all* mature trees on the subject property to provide screening between the proposed new dwellings and existing dwellings on larger lots.

The applicant responds that the tree preservation requirements cited by the Grading/Drainage Department cannot form the basis for a condition of subdivision approval because they expressly apply only to "grading and/or clearing activities that are not conducted in conjunction with or are conducted prior to land use action or building permit." (Emphasis added.) The applicant argues the only grading regulations that apply to the proposed subdivision are those found in Section 6.070 of the city's land division ordinance, discussed in the findings below. In addition, the applicant notes the configuration of the proposed subdivision -- which includes a public street along the northern property boundary where there are a number of mature trees -- was required by the city in order to provide a potential public street connection to the abutting properties to the north and west. The applicant placed in the record its original proposed tentative plan with a different street configuration that did not include a street along the northern boundary but that was rejected by the city due to lack of street connectivity. The applicant suggests that if the Hearings Officer concludes the applicant must preserve more existing trees I could approve this earlier tentative plan. Finally, the applicant argues that by definition urban-density subdivision development contemplates significant alterations to existing vegetation in order to develop lots and required infrastructure.

The Hearings Officer understands opponents' desire to retain as many of the large trees on the subject property as possible for screening and for wildlife habitat. And I find the applicant's earlier tentative subdivision plan would have provided greater opportunities for such preservation. I also recognize the need for street connectivity that is provided through a grid system creating opportunities for continuation of streets onto adjacent parcels. And I cannot consider or approve the applicant's previously submitted tentative plan without a modification application.<sup>5</sup> However, I agree with the applicant that by their terms the tree preservation requirements relied upon by the Grading/Drainage Department do not apply to the subject

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<sup>5</sup> Section 10-16.5(8) of the city's land use procedures ordinance prohibits the Hearings Officer from considering significant revisions to pending applications unless and until the applicant submits a modification application.



subdivision application. Finally, I find the applicant's proposal to retain on site all trees not required to be removed for construction of streets or other infrastructure will satisfy this criterion because it will preserve trees to the maximum degree practicable and will allow future owners of the large lots along the southern and western boundaries of the subdivision to retain existing mature trees through careful design and siting of dwellings.

For the foregoing reasons, the Hearings Officer finds the proposed subdivision will contribute to the orderly development and land use patterns in the area, and will provide for the preservation of natural features and resources to the maximum degree practicable, thus satisfying this criterion.

**B. The land division will not create excessive demand on public facilities and services required to serve the development.**

**FINDINGS:** The Hearings Officer finds the proposed subdivision will have impacts on the following public facilities and services, each of which is addressed separately in the findings below.

1. Sewer. The applicant proposes to serve the subdivision by an extension of and connection to existing city sewer mains located in O.B. Riley Road through which sewage would be transported to a public sewer pump station and thereafter to a sewer main in Hardy Road to the north. In its comments on the applicant's proposal, the Engineering Division indicated the applicant's sewer proposal was acceptable with two additions: a) that the applicant be required as a condition of approval to extend the sewer line in the proposed "D" street to the west property line to meet the city's "to-and-through" policy to facilitate future urban development of properties to the north and west; and b) that the applicant plat and dedicate to the city a separate tract for the sewer pump station to be located on the subject property. As discussed in the findings above, incorporated by reference herein, the Hearings Officer finds the applicant will be required as a condition of approval to construct the sewer pump station on the subject property unless a public sewer pump station is installed in the O.B. Riley Subdivision that sized to handle sewage from both that subdivision and the applicant's proposed subdivision, is functioning, and can be connected to sewer facilities on the subject property at the time the applicant submits the final subdivision plat for approval.

Based on these findings, and with imposition of these conditions of approval, I find the applicant's proposed subdivision will not create excessive demand on the city's sewer system.

2. Water. The applicant proposes to serve the subdivision by an extension of and connection to existing city water mains located in O.B. Riley Road. In its comments on the applicant's proposal, the Engineering Division indicated the applicant's domestic water proposal was acceptable if the applicant is required as a condition of approval to extend the water line in the proposed "D" street to the west property line to meet the city's "to-and-through" policy to facilitate future urban development of properties to the north and west.

In its comments on the applicant's proposal, the fire department stated the applicant will be



required to demonstrate the subdivision water system can produce a minimum fire flow of 1,000 gallons per minute at 20 p.s.i. residual pressure, and that fire hydrants will be spaced no further than 500 feet apart. The Engineering Division's comments in the record indicate that if the applicant constructs water facilities in accordance with the applicable city standards and specifications the city can provide domestic water to the property with a fire flow of 1,650 gallons per minute with a residual pressure of 77.27 pounds/square inch, thus exceeding the fire department's minimum requirements. The tentative subdivision plan shows five fire hydrants spaced less than 500 feet apart, therefore satisfy the fire department's requirements.

For the foregoing reasons, and with imposition of the conditions of approval described above, the Hearings Officer finds the applicant's proposal will not create excessive demand on the city's water system.

3. Police Protection. The subject property is located within the Bend city limits and therefore police protection will be provided by the Bend Police Department which did not comment on the applicant's proposal. The Hearings Officer finds the lack of comment indicates the police department does not anticipate any problems serving residents of the proposed subdivision.

4. Fire Protection. Because the subject property is located within the Bend city limits fire protection will be provided by the Bend Fire Department. As discussed in the findings above, the Hearings Officer has found the applicant's proposal can satisfy the fire department's requirements for minimum fire flow and fire hydrant numbers and locations. The fire department also submitted a detailed list of other fire code requirements with which the applicant will be required to comply as a condition of approval.

5. Transportation.

a. Right-of-Way and Improvements. As discussed above, the applicant proposes to provide access to the subdivision lots through a system of local public streets connecting to O.B. Riley Road at two locations. The applicant also proposes to provide access to Lots 27, 28 and 29 with a public alley. The applicant proposes to dedicate 60 feet of right-of-way for all public subdivision streets except "D" Street and 20 feet of right-of-way for the alley. The applicant proposes to improve all of the local streets and the alley in accordance with the applicable city standards and specifications. With the exception of the proposed "D" Street, these improvements would include 28 feet of pavement width, and curbs and 5-foot-wide sidewalks on both sides of the local streets, and 15 feet of pavement width for the alley. The proposed "D" street is located on the northern boundary of the subject property and abuts property zoned SR-2 ½ located within the city limits and currently developed with low-density residences. The applicant proposes to dedicate 40 feet of right-of-way for "D" Street and to construct improvements in accordance with the city's standards and specifications for a three-quarter local street, including 24 feet of pavement width, and a curb and 5-foot-wide sidewalk on the abutting (south) side, with the remainder of the street to be dedicated and improved when the abutting property to the north is developed at urban density.

Finally, the applicant proposes to dedicate additional right-of-way for O.B. Riley Road for a total of 40 feet from the centerline, and to improve the abutting (west) side of the street in accordance



with the city's standards and specifications for a three-quarter major collector street, including 26 feet of pavement width, a six-foot-wide striped bicycle lane, and a curb, 5-foot-wide sidewalk, and landscaped strip between the curb and sidewalk on the abutting (west) side of the street. In her comments on the applicant's proposal, the city's Traffic Engineer Robin Lewis stated:

*"The applicant should be required to construct OB Riley Road to the full TSP Standard (curbs, bike lanes, turn lanes = 52' wide curb to curb) in order to accommodate the general area plan designation. If the applicant were to develop at SR 21/2, they could wait until the City constructed OB Riley Road to this standard."*

The Hearings Officer understands this recommendation to mean the applicant would be required to dedicate right-of-way for and to improve both the abutting (west) side of O.B. Riley Road and the east side. The record indicates O.B. Riley Road currently has 60 feet of right-of-way. Therefore, Ms. Lewis' recommended improvement requirement appears at odds with her recommendation that the applicant dedicate only 40 feet of right-of-way from the centerline for O.B. Riley Road. In any event, I find a requirement that the applicant improve both sides of O.B. Riley Road to full major collector street standards does not meet the test under *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 LEd 2nd 304 (1994) and its progeny that the exaction be roughly proportional to the traffic impact, in light of the relatively low volume of traffic predicted to be generated by the proposed subdivision. The applicant has proposed to dedicate additional right-of-way for, and to improve to the city's standards and specifications for major collector streets, the *abutting* segment of O.B. Riley Road. I find the applicant's proposed dedication and improvements will assure that subdivision-generated traffic does not place an excessive demand on O.B. Riley Road, thus satisfying this criterion.

*b. Left-Turn Lane.* As discussed in the findings above, the applicant's traffic study indicates the three affected intersections on O.B. Riley Road – the two local street entrances to the subdivision and the intersection with Empire Avenue – will function at acceptable levels of service with the addition of subdivision-generated traffic. Nevertheless, both planning staff and Ms. Lewis recommended the applicant be required as a condition of approval to install a left-turn lane at one of the local subdivision street intersections with O.B. Riley Road. In her comments on the applicant's proposal, Ms. Lewis stated:

*"While the applicant is showing that with today's traffic volumes, a left turn lane on OB Riley into their site is not warranted, I find an error in applicant's logic. With a zone change, even up to the comp plan zoning the applicant is required to prove that the planned TSP infrastructure is adequate for the 20 year planning horizon. Year 2020 design volumes for OB Riley Road warrant a left-turn lane to be installed adjacent to the site; Collectors standard cross-section is 3 lanes plus bike lanes. Without the turn lane, citizens will be stopped in the through travel lane with traffic advancing at over the posted 45 mph limit. This poses a safety hazard and field observations indicate that advancing motorists utilize bike lanes and unstable gravel shoulders to pass the stopped vehicle."*

The record indicates there is a curve in O.B. Riley Road along the subject property's eastern



boundary which some opponents have described as a "blind curve." However, the applicant's supplemental traffic analysis states there is adequate sight distance at both proposed local street intersections with O.B. Riley Road to assure safe operation. In addition, the applicant's supplemental traffic analysis indicates the two local street intersections with O.B. Riley Road do not meet warrants for a left-turn lane with the addition of subdivision-generated traffic. The applicant's supplemental traffic analysis argues there is nothing in the city's Street Policy 6 that requires the applicant to construct the improvements to O.B. Riley Road to address the "20 year planning horizon" to which Ms. Lewis referred. The supplemental traffic analysis does state that with the applicant's proposed dedication for O.B. Riley Road there would be sufficient right-of-way for a left-turn lane if one were needed. However, the analysis states:

*"Also, it is not the practice to provide a left-turn lane at all local-street intersections. In the future, as the area becomes more developed, a different location might better serve the area. If a left-turn lane were constructed now, it could preclude future options."*

Notwithstanding this comment, in its post-hearing evidence submitted on December 6, 2005, the applicant offered to stripe a left-turn lane at the northern local subdivision street intersection with O.B. Riley Road. The applicant argues the proposed left-turn lane would be consistent with similar lanes provided in circumstances similar to those presented here, where the major collector or arterial street is only partially dedicated and improved and the proposed subdivision would include right-of-way dedication and improvements to only one side of the street.

The Hearings Officer understands staff's and opponents' concerns about safety along the segment of O.B. Riley Road near the subject property. However, I find the evidence in the applicant's supplemental traffic analysis supports a finding that a left-turn lane is not required to assure safety at either local street intersection with the addition of subdivision-generated traffic. Nevertheless, inasmuch as there is sufficient right-of-way to stripe a left-turn lane, and the applicant has offered to do so at the northern subdivision entrance, the applicant will be required as a condition of approval to stripe the left-turn lane in accordance with cross-section drawings attached to the applicant's December 6, 2005 submission. I agree with the applicant that the "D" Street intersection with O.B. Riley Road is the logical location for a left-turn lane inasmuch as "D" Street has the potential to be extended to serve additional land -- and traffic -- to the north and west of the subject property.

*c. Pro-rata Transportation System Improvements.* The staff report states the city's Street Policy 6 requires that, to the extent practical, the applicant should be required to make a pro-rata monetary contribution to the costs of transportation system improvements required in the future as a result of the *cumulative* impact the addition of subdivision-generated traffic will have on the city's overall transportation system. The staff report indicates the applicant's pro-rata share is \$538 based on the following formula:

*"Sum of trips from the project divided by the growth trips (18 ÷ 2444) multiplied by the estimated cost of improvements (x 365,000) = 2688 then multiplied by .2 (20% not covered by SDC's) for a total contribution of \$538."*



The Hearings Officer finds that unlike recommended dedication and improvement of both sides of O.B. Riley Road, this exaction is constitutional because there is a nexus between subdivision-generated traffic and needed improvements to the city's overall transportation system, and the formula used by the city to calculate the applicant's pro-rata share assures the monetary contribution is roughly proportional to the impact from subdivision-generated traffic. Therefore, I find the applicant will be required as a condition of approval to pay this pro-rata contribution.

Based on these findings, and with imposition of the conditions of approval described above, the Hearings Officer finds the proposed subdivision will not create excessive demand on the city's street system.

6. Storm Water Drainage. The applicant proposes to retain all storm water drainage on site through use of a private storm drain system that directs runoff to a storm drain basin to be located on proposed Lot1 within an easement granted to the city. The submitted tentative plan shows the basin would be the lowest area on the subject property. In its comments on the applicant's proposal, the Engineering Division stated the applicant should be required to plat and dedicate to the city a separate tract for the storm drain basin. The applicant responded that it would be willing to plat such a tract if it did not result in the loss of a subdivision lot. Lot 1 is proposed to be 15,001 square feet in size, and therefore removing a portion of it to plat the storm drain basin would reduce its size below 15,000 square feet.

The applicant argues the Hearings Officer could allow an exception to the residential compatibility standards to reduce the size of this lot to accommodate the storm drain basin without creating adverse impacts on adjacent large lots because "the effective size of Lot 1 will remain 15,001 square feet as the storm water area" cannot be developed with a dwelling. However, as discussed in the findings above, I have found the lot abutting proposed Lot 1 is not subject to the residential compatibility standards because it was not created by a subdivision. Therefore I find the applicant can plat a separate tract for the storm drain basin and maintain proposed Lot 1 at the resulting smaller size. It appears from the tentative plan that the reconfiguration of Lot 1 to accommodate a separate tract for the storm drain basin will not reduce its size or dimensions below the minimum 4,000 square feet required in the RS Zone. Therefore, I find the applicant will be required as a condition of approval to plat and dedicate to the city a separate tract for the storm drain basin and a reconfiguration of Lot 1.

In its comments on the applicant's proposal, the Engineering Division also recommended the applicant be required to submit to the division for review and approval a master storm drainage control plan prior to the issuance of any building permits, and to meet a number of additional conditions of approval concerning storm drainage methods. The Hearings Officer finds the applicant will be required as a condition of approval to satisfy these additional requirements.

For the foregoing reasons, and with imposition of the conditions of approval described above, the Hearings Officer finds the proposed subdivision will not create excessive demand on affected public facilities and services, therefore satisfying this subdivision approval criterion.

**C. The land division contributes to the orderly development of the Bend area transportation network**

**of roads, bikeways, and pedestrian facilities and does not conflict with existing access easements within or adjacent to the land division.**

**FINDINGS:** For the reasons set forth in the findings above, incorporated by reference herein, the Hearings Officer finds that with imposition of the transportation-related conditions of approval described above, the applicant's proposal will contribute to the orderly development of the city's transportation network of roads, bikeways and pedestrian facilities. The record indicates there are no existing access easements that would conflict with the applicant's proposal.

**D. Each lot or parcel is suited for the use intended or offered.**

**FINDINGS:** The applicant proposes that each subdivision lot be developed with a single-family dwelling, a use permitted outright in the RS Zone. As discussed above, all lots will be at least 5,500 square feet in size, will be served by city water and sewer service and a system of public streets dedicated and improved in accordance with applicable city standards and specifications. Therefore, the Hearings Officer find the applicant's proposal satisfies this criterion.

**E. An approved water rights division plan.**

**FINDINGS:** In its comments on the applicant's proposal, the Swalley Irrigation District stated there are irrigation water rights and delivery facilities located on subject property. In addition, the irrigation district stated the applicant should be required to satisfy several conditions related to relocating the existing irrigation pipe that runs through the subject property. The Hearings Officer finds that as a condition of subdivision approval the applicant will be required to transfer these water rights off the property prior to filing the final subdivision plat for approval, to comply with all Swalley requirements for protecting irrigation delivery systems on the subject property, and to obtain the signature of an authorized Swalley representative on the final plat. I find that with imposition of this condition of approval the applicant's proposal will satisfy this criterion.

**F. If the land division adjoins an SM or SMR zone, the existence and location of such zone shall be entered on the deed for the lots or parcels created by the land division.**

**FINDINGS:** The Hearings Officer finds this criterion is not applicable because the record indicates the subject property does not adjoin an SM or SMR Zone.

**G. The tentative plan for the proposed subdivision meets the requirements of ORS 92.090.**

**FINDINGS:** The Hearings Officer finds the provisions of ORS 92.090 are implemented through the city's land division ordinance, and therefore if the proposed subdivision complies with the land division ordinance it also will comply with the statute. The proposed subdivision's



compliance with the subdivision approval criteria is discussed throughout this decision. The Hearings Officer finds the applicant will be required as a condition of approval to prepare the final subdivision plat in accordance with the city's land division ordinance and ORS 92.090, and that with imposition of this condition of approval the applicant's proposal will satisfy this criterion.

- H. If the tentative plan is approved with phasing, the final plat for each phase shall be filed in accordance with the applicable provisions of Article IV of this ordinance.**

**FINDINGS:** The Hearings Officer finds this criterion is not applicable because the applicant proposes to develop the subdivision in one phase.

**2. Article VI, Design Standards and Improvements**

**a. Section 6.010, Compliance Required**

**All land divisions shall be in compliance with the design standards set forth in this article and Appendix "A".**

**FINDINGS:** The Hearings Officer finds the applicant will be required as a condition of approval to improve all public facilities in accordance with applicable city standards and specifications.

**b. Section 6.020, Streets, Sidewalks, and Bikeways**

- 1. General. Facilities providing safe and convenient motor vehicle, pedestrian and bicycle access shall be provided within new subdivisions, partitions, and planned unit developments. Where appropriate and reasonable such facilities may be required from new subdivisions, partitions, and planned unit to nearby residential areas, transit stops, and neighborhood activity centers such as parks, schools, and shopping.**

**FINDINGS:** The applicant proposes to serve the subdivision lots with a system of new local public streets, a public alley, sidewalks on both sides of all subdivision streets, and a sidewalk and striped bicycle lane along the abutting (west) side of O.B. Riley. The Hearings Officer finds these proposed facilities will provide safe and convenient access from subdivision homes to the area's street network. The record indicates there are no shopping areas, schools, transit stops or parks in the immediate vicinity of the subject property. Nevertheless, I find the proposed street system improvements will provide an appropriate and reasonable connection to these establishments in accordance with this criterion.

- 2. New Streets. The location, width, and grade of streets shall be considered in their relation to existing and planned streets, topographical conditions, public convenience and safety, and the proposed use of land to be served by the streets. The street**

system shall assure an adequate traffic circulation system with intersection angles, grades, tangents, and curves appropriate for the traffic to be carried considering the terrain. The subdivision shall provide for the continuation of the streets existing in the adjoining subdivision or of their proper projection. Where, in the opinion of the Review Authority, topographic conditions or other physical constraints make such continuation or conformity impractical, exception may be made. In cases where the City has adopted a plan or plat of a neighborhood or area of which the subdivision is a part, the subdivision shall conform to such adopted neighborhood or area plan. All streets shall be improved to City standards with curbs, paving, drainage facilities and medians if required.

**FINDINGS:** As discussed above, the applicant proposes to serve the subdivision lots with four new local streets and an alley dedicated to the city and improved in accordance with the applicable city standards and specifications, therefore satisfying this criterion.

3. **Street Layout and Cul-de-sacs.** The street layout shall be generally in a rectangular grid pattern to provide or continue a network of inter-connecting streets. The subdivision streets shall be oriented on an east/west axis to the greatest extent possible to ensure solar access for lots within the subdivision. The grid pattern may be modified as is physically proper to adapt to topography, natural conditions, or to afford scenic views. Cul-de-sac and dead end streets shall only be permitted when the following conditions are met:
  - A. **One or more of the following conditions prevent a required street connection:**
    - natural slopes of 18% or more where it is not practical to construct streets with grades of 12%; or
    - presence of a wetland or water body which cannot be crossed; or
    - existing development on adjacent property prevents a street connection; and
  - B. **A street which either meets standards for connections and spacing or requires less deviation from standards is not possible; and**
  - C. **Access Corridors are provided consistent with the**



standards for such corridors; and

- D. The cul-de-sac(s) shall be as short as possible and shall not exceed 600 feet in length between the center of the cul-de-sac bulb and the centerline of a through street.**

**FINDINGS:** The submitted tentative plan shows the proposed new subdivision streets create a rectangular grid with two connections to O.B. Riley Road and a potential connection with property to the north and west via an extension of "D" Street. The Hearings Officer finds the proposed street layout is oriented on an east/west axis to the greatest degree practical while providing the necessary connections with existing streets and safe intersection separation. The applicant does not propose any cul-de-sac streets. Therefore, I find the proposed subdivision satisfies this criterion.

- 4. Existing Streets. Wherever streets, adjacent to or within a tract, are of inadequate width to accommodate the increased traffic expected for the subdivision or the City's transportation policies, additional right-of-way shall be provided at the time of the land division by the applicant. During consideration of the tentative plan for the subdivision or partition, the Subdivision Committee shall determine whether improvements to existing streets, adjacent to or within the tract, are required. If so determined, such improvements to adjacent streets shall be required where traffic on said streets shall be directly affected by the proposed subdivision.**

**FINDINGS:** As discussed in the findings above, the applicant has proposed to dedicate additional right-of-way for the abutting segment of O.B. Riley Road to create a total of 40 feet from the centerline, and to improve the street in accordance with the city's standards and specifications for a three-quarter collector street. As also discussed above, the Hearings Officer has found there is no legal basis for me to require the applicant to dedicate right-of-way for and to improve *both* sides of the street as recommended by the city's Traffic Engineer. I find the applicant's proposed dedication and improvements will satisfy this criterion.

- 5. Intersection Angles. Street intersections shall be as near right angles as possible except where topography requires a lesser angle, but in no case shall the acute angle be less than 60 degrees.**

**FINDINGS:** The submitted tentative plan shows all intersections are at right angles as near as possible, therefore satisfying this criterion.

- 6. Alignment. Staggered street alignment shall, whenever practicable, leave a maximum of 200 feet distance between the center lines of the streets, but in no case be less than 125 feet.**

**FINDINGS:** The Hearings Officer finds this criterion is not applicable because the tentative plan does not propose or create any staggered street alignments.

7. **Minimum Right of Way and Roadway Width.** The street right of way and roadway surfacing widths shall be in conformance with the standards and specifications set forth in Appendix "A", "B" and "C".

**FINDINGS:** The applicant has proposed, and will be required as a condition of approval, to dedicate right-of-way for all internal subdivision streets, the alley, and the abutting segment of O.B. Riley Road in accordance with the applicable city standards and specifications and as illustrated in the submitted tentative plan and supporting cross-section drawings.

8. **Reserve Strips.** Reserve strips controlling access to streets shall be required when deemed necessary by the Hearings Body. Deeds to the City for reserve strips shall be filed with the final plat. Reserve strips shall be numbered in sequence beginning with Lot "A".

**FINDINGS:** The Hearings Officer finds this criterion is not applicable because the applicant does not, and is not required to, propose any reserve strips.

9. **Future Extension of Streets.** When necessary to give access to or permit a satisfactory future division of adjoining land, streets shall be extended to the boundary of the subdivision or partition and the resulting dead end streets less than 150 feet in length may be approved without a permanent turnaround.

**FINDINGS:** As discussed above, the city required the applicant to revise its original tentative subdivision plan to include a public street along the northern boundary of the subject property – "D" Street – that would extend to the western property boundary to facilitate a future connection to property to the north and west. Therefore, the Hearings Officer finds the applicant's revised proposal satisfies this criterion.

10. **Frontage Roads.** If a land division abuts or contains an existing or proposed collector or arterial street, the Hearings Body may require frontage roads, reverse frontage lots with suitable depth, screen planting contained in a non-access reservation along the rear or side property line, or other treatment necessary for adequate protection of residential properties and to afford separation of through and local traffic. Provision may be made for emergency access. All frontage roads shall comply with appropriate local road standards.

**FINDINGS:** The subject property abuts O.B. Riley Road, a designated major collector street, along the property's eastern boundary. The staff report recommends, and the applicant has



proposed, to provide a planting screen along the subject property's entire frontage on O.B. Riley Road, and to retain as many existing trees as possible within this area in order to provide protection for the adjacent residential properties. The staff report recommends the applicant be required as a condition of approval to plant street trees within this planting screen spaced no more than 30 feet apart and in accordance with the list of approved tree species included in Section 10-10.23(9) of the zoning ordinance. In addition, staff recommends the applicant be required as a condition of approval to irrigate and continuously maintain any introduced trees. The applicant has proposed, and the Hearings Officer finds the applicant will be required as a condition of approval, to execute and record covenants, conditions and restrictions (CC & R's) to provide a mechanism for continuous maintenance of this planting screen. I find that with imposition of these conditions of approval the applicant's proposal will satisfy this criterion.

11. **Streets Adjacent to Railroads, Freeways and Parkways.** When the area to be subdivided adjoins or contains a railroad, freeway, or parkway, provision may be required for a street approximately parallel to and on each side of such right of way at a distance suitable for use of the land between the street and railroad, freeway, or parkway. In the case of a railroad, there shall be a land strip of not less than 25 feet in width adjacent and along the railroad right of way for screen planting between the railroad right of way and residential property. If the intervening property between such parallel streets and a freeway or a parkway is less than 80 feet in width, such intervening property shall be dedicated to park or thoroughfare use. The intersections of such parallel streets, where they intersect with streets that cross a railroad, shall be determined with due consideration at cross streets of a minimum distance required for approach grades to a future grade separation and right of way widths of the cross street.

**FINDINGS:** The Hearings Officer finds this criterion is not applicable because the subject property does not adjoin or contain a railroad, freeway, or parkway.

12. **Continuation of Streets.** Subdivision streets, which constitute the continuation of streets in contiguous territory, shall be aligned so that their centerlines coincide. Where straight-line continuations are not possible, such centerlines shall be continued as curves. These streets or the continuation of streets in contiguous territory may be required by the Hearings Body where such continuation is necessary to maintain the function of the street or desirable existing pattern of development of streets and blocks in the surrounding area. Where solar orientation would not be possible if the street area continued, a new pattern may be started that is solar oriented.

**FINDINGS:** The record indicates none of the proposed new local subdivision streets constitutes

a continuation of existing streets, and therefore the Hearings Officer finds this criterion is not applicable.

13. **Street Names.** Except for extension of existing streets, no street name shall be used which will duplicate or be confused with the name of an existing street in a nearby city or in the County. Street names and numbers shall conform to the established pattern in the City and shall be subject to the approval of the Fire Department.

**FINDINGS:** The Hearings Officer finds the applicant will be required as a condition of approval and prior to submitting the final subdivision plat for approval to obtain approval of all subdivision street names from the Deschutes County and City of Bend Property Address Coordinators and to show the approved street names on the final plat.

14. **Sidewalks.** Sidewalks shall be installed at the property line. The Review Authority may allow a sidewalk to meander between the property line and street curb to avoid rock outcroppings, trees, steep side slopes or to provide variety where there is a wide planter strip, or to connect with adjoining sidewalks. Sidewalks are required to be installed on both sides of a public street and in any special pedestrian way within the subdivision except that in the case of collectors, arterial, cul-de-sacs, industrial districts, or in steep terrain, the Hearings Body may approve a subdivision with a sidewalk on one side only. When reasonable and appropriate the Hearings Body shall consider alternate pedestrian facilities or access corridors. The construction of off-site sidewalks may be required along routes to existing school and parks sites.

**FINDINGS:** The submitted tentative plan shows all sidewalks on subdivision streets and on the abutting side of O.B. Riley Road will be installed property line tight, therefore satisfying this criterion.

15. **Bikeways.** If appropriate to the extension of a system of bikeways, existing or planned, the Review Authority may require the installation of separate bicycle lanes within local streets and/or separate bikeways in addition to the requirements of Tables "A", "B" and "C".

**FINDINGS:** The staff report states the Bend Urban Area Bicycle and Trail System Plan map shows an existing bicycle lane along O.B. Riley Road. The applicant has proposed, and will be required as a condition of approval, to improve the abutting (west) side of O.B. Riley Road to include a striped six-foot-wide bicycle lane. With imposition of this condition of approval the Hearings Officer finds the applicant's proposal will satisfy this criterion.



**c. Section 6.030, Blocks**

- 1. General. The length, width, and shape of blocks shall accommodate the need for adequate building site size and street width and shall be compatible with the limitations of the topography.**

**FINDINGS:** The Hearings Officer finds the shape and configuration of the proposed subdivision blocks will accommodate single-family dwellings as well as all required street and alley widths, therefore satisfying this criterion.

- 2. Size. No block shall be longer than 1,200 feet between the centerline of through cross streets except in residential subdivisions where no block shall be longer than 600 feet between centerline of through cross streets and where street location is restricted by natural topography, wetlands or other bodies of water.**

**FINDINGS:** The submitted tentative plan shows no block exceeds 600 feet in length between the centerlines of through cross streets.

- 3. Connecting access corridors. Where appropriate at cul-de-sacs, dead end streets, or along blocks more than 600 feet in length, pedestrian and bicycle access corridors shall be provided to minimize travel distance between subdivisions, parks, schools and collector and arterial streets. Access corridors shall be located to provide a reasonably direct connection between likely pedestrian destinations. A reasonably direct connection is a route, which minimizes out of direction travel for people likely to use the connection considering terrain, safety and likely destination. The Hearings Body may determine based on evidence in the record that construction of a separate access corridor is inappropriate or impracticable. Such evidence may include but is not limited to:**

- A. When the nature of abutting existing development makes construction of an Access Corridor impracticable.**
- B. When the access corridor would cross a natural area with significant natural habitat and construction would be incompatible with protection of natural values.**
- C. When the access corridor would cross topography where slopes exceed 30% or where path grades would exceed 18% slope; or**

- D. When a cul-de-sac or dead end street abuts rural resource land at the urban growth boundary except where the adjoining land is designated as an urban reserve area.**

**FINDINGS:** The Hearings Officer finds this criterion is not applicable because all block lengths are less than 600 feet and the applicant does not propose any cul-de-sacs or dead-end streets.

**4. Easements.**

- A. Utility Easements. When necessary, easements shall be provided along property lines for the placement of utilities. Such utilities may include but are not limited to electric power, communication facilities, street lighting, sewer lines, water lines, gas lines, television cable or drainage facilities. Such easements shall be labeled "Utility Easement" on the tentative plan and final plat; they shall be a minimum of 10 feet in width and centered on lot lines where possible.**

**FINDINGS:** The Hearings Officer finds the applicant will be required as a condition of approval to provide utility easements labeled as such on the final subdivision plat for all utility facilities for which such easements are required.

- B. Drainage. If a tract is traversed by a water course such as a drainage way, channel, stream or irrigation canal there shall be provided a stormwater easement or drainage right-of-way conforming substantially with the lines of the water course or in such further width as will be adequate for the purpose.**

**FINDINGS:** The record indicates there are no natural water courses on the subject property. However, as discussed in the findings above, the record indicates there are Swalley irrigation water delivery facilities on the subject property. The submitted site plan shows the applicant proposes to relocate the existing piped irrigation lines on the subject property. The applicant will be required as a condition of approval to grant an easement to the irrigation district for these relocated facilities. The Hearings Officer finds no storm water easement is required for these irrigation facilities.

**d. Section 6.040, Lots: Size and Shape**

**The size, width, and orientation of lots shall be appropriate for the location of the land division and for the type of development and use contemplated, and shall be consistent with the lot size provisions of the zoning ordinance, with the following requirements:**



1. **In areas not to be served by a public sewer, minimum lot and parcel sizes shall permit compliance with the requirements of the Department of Environmental Quality and County Sanitarian, and shall be sufficient to permit adequate sewage disposal. Any problems posed by soil structure and water table as related to sewage disposal by septic tank shall be addressed and resolved in the applicant's initial plan.**

**FINDINGS:** The Hearings Officer finds this criterion is not applicable because the proposed subdivision will be served by city sewer service.

2. **Where property is zoned and planned for business or industrial use, other widths and areas may be permitted by Hearings Body. Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.**

**FINDINGS:** The Hearings Officer finds this criterion is not applicable because the subject property is not zoned for business or industrial use.

3. **In steep terrain, increased lot sizes may be required to avoid excessive cuts, fills, and steep driveways.**

**FINDINGS:** The Hearings Officer finds this criterion is not applicable because the subject property does not have steep terrain.

4. **On tracts containing water courses or rock outcroppings, increased lot or parcel sizes may be required to allow adequate room for development and protection of the topographical feature.**

**FINDINGS:** As discussed above, the subject property does not include any natural water courses. There are scattered rock outcrops on the subject property, primarily along the southern and eastern boundaries where the proposed lots are over 15,000 square feet in size to meet the city's residential compatibility standards. The Hearings Officer finds these increased lot sizes also will allow adequate room for the development of single-family dwellings while protecting the rock outcrops to the extent practical.

**e. Section 6.050, Lots, General Requirements**

1. **Frontage. Each lot shall abut upon a street or an officially approved way other than an alley for a minimum width required for lots or parcels in the zone, except for lots or parcels fronting on the bulb of a cul-de-sac, where the minimum frontage shall be 30 feet, and for lots in a zero lot-**

**line subdivision, where the minimum frontage shall be 20 feet. In zones where a minimum width is not specified, the minimum frontage requirement shall be 50 feet.**

**FINDINGS:** The submitted tentative plan shows all proposed subdivision lots have at least 50 feet of frontage on subdivision streets.<sup>6</sup>

2. **All side lot or parcel lines shall be at right angles to street lines or radial to curved streets wherever practical.**

**FINDINGS:** The submitted tentative plan shows all side lot lines are perpendicular to subdivision streets or radial to curved subdivision streets, therefore satisfying this criterion.

3. **Through lots or parcels shall be avoided except where they are essential to provide separation of residential development from major street or adjacent nonresidential activities, or to overcome specific disadvantages of topography and orientation. A planting screen easement of at least 10 feet in width and across which there shall be no right of access may be required along the lines of lots abutting such traffic artery or other incompatible use.**

**FINDINGS:** The submitted tentative plan shows Lots 26, 27, 28, and 29 will have frontage on both the proposed public alley and O.B. Riley Road. In addition, Lots 26 and 32 will have frontage on both O.B. Riley Road and one of the subdivision streets. As discussed above, the Hearings Officer has found that as a condition of approval the applicant will be required to provide a planting screen along the subject property's entire frontage on O.B. Riley Road. The applicant also will be required as a condition of approval to include existing mature trees in the planting screen to the extent practical, and/or to plant introduced trees chosen from the city's approved list of tree species in Section 10-10.23(9) of the zoning ordinance and spaced no more than 30 feet apart, and to irrigate and continuously maintain the trees. I find that with imposition of these conditions of approval the applicant's proposal will satisfy this approval criterion.

4. **Corner lots or parcels shall be five feet more in width than the minimum lot width allowed in the underlying zone.**

**FINDINGS:** The RS Zone establishes a minimum lot width of 40 feet. The submitted tentative plan shows Lots 1, 8, 13, 14, 19, 20, 25, 26, and 32 will be corner lots, and that all of these lots will be at least 55 feet wide, thereby satisfying this criterion.

5. **Solar Access Performance Standard. As much solar access as feasible shall be provided each lot or parcel in every new**

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<sup>6</sup> Proposed Lots 26, 27, 28, 29 and 32 have frontage on O.B. Riley Road. However, these lots will be required to take access from one of the subdivision streets (Lots 26 and 32) or the alley (Lots 27, 28 and 29) because direct access to a collector street is prohibited.



**subdivision, considering topography, development pattern, and existing vegetation.**

**FINDINGS:** As discussed above, the tentative plan shows an internal street system that creates a rectangular grid with two subdivision streets running east-west and two subdivision streets and the alley running north-south. The Hearings Officer finds the proposed subdivision configuration will orient as many lots as possible on east/west streets thus maximizing solar access. Compliance with the city's solar access performance standards will be verified at the time of building permit issuance.

- 6. Underground Utilities. All permanent utility service to lots in a subdivision shall be provided from underground facilities. The subdivider or partitioner shall be responsible for complying with requirements of this section, and shall:**
  - A. Make all necessary arrangements with the utility companies and other persons or corporations affected by the installation of such underground utilities and facilities in accordance with rules and regulations of the Public Utility Commission of the State of Oregon.**
  - B. All underground utilities and public facilities installed in streets shall be constructed prior to the surfacing of such streets.**

**FINDINGS:** The applicant proposes to install all new utilities underground. The Hearings Officer finds that as a condition of approval the applicant will be required to do so, and to comply with the requirements of this section.

**f. Section 6.060, General Provisions**

- 1. Lighting. The subdivider or partitioner shall install streetlights, including underground wiring and a base for any proposed ornamental streetlights, in accordance with the City street light plan. Locations of the wiring and any base shall be approved by the City in coordination with the affected utility company.**

**FINDINGS:** The applicant did not propose any streetlights in the subdivision. The Hearings Officer finds that as a condition of approval the applicant will be required to provide street lights in the numbers and at the locations required by the city's standards and specifications, and with light fixtures that are shielded and downcast to assure no light shines onto adjacent properties.

- 2. Fire Hazards. Wherever possible, a minimum of two points of access to the subdivision shall be provided to provide assured access for emergency vehicles and ease resident evacuation.**

**FINDINGS:** The submitted tentative plan shows two points of access to the subdivision from O.B. Riley Road, thus satisfying this criterion.

3. **Street Tree Planting.** Street tree planting plans, if proposed, for a subdivision shall be submitted to the Planning Director and receive approval before the planting is begun.

**FINDINGS:** As discussed above, the Hearings Officer has found the applicant will be required as a condition of approval to install a planting screen along the subject property's entire frontage on O.B. Riley Road that will include existing trees to the extent practical, and introduced trees as necessary, selected from the city's list of approved street tree species, spaced at least 30 feet apart, and irrigated and continuously maintained.

4. **Water/Sewer.** All subdivisions shall provide water and sewer lines constructed to City standards and specifications approved by the City Engineer. All lots shall be served from the City of Bend water system or by water systems acceptable to the City. Water mains and services lines shall be installed prior to the curbing and paving of new streets in all new subdivisions.

**FINDINGS:** The applicant proposes to serve subdivision lots with city water and sewer service through the extension of and connection to existing sewer and water mains. The applicant will be required as a condition of approval to install all sewer and water facilities to the applicable city standards and specifications. And as discussed in the findings above, the applicant will be required to install a public sewer pump station on the subject property if the sewer pump station required for the nearby O.B. Riley Subdivision is not in place, of adequate size, and available for connection to sewer facilities in the applicant's proposed subdivision at the time the applicant submits the final subdivision plat for approval.

**g. Section 6.070, Grading of Lots and Parcels**

**Grading of lots and parcels shall conform to the following standards unless physical conditions demonstrate the practicality of other standards. Such grading shall be in conformance with the applicable provisions of the Uniform Building Code, Chapter 33, and any other City of Bend provisions pertaining to grading.**

1. **Cut slope ratios shall not exceed one foot vertically to one-half foot horizontally.**
2. **Fill slope ratios shall not exceed one foot vertically to two feet horizontally.**
3. **The composition of soil or fill and the characteristics of lots and parcels made usable by fill shall be suitable for the purpose intended.**



4. **When filling or grading is contemplated by the subdivider or partitioner, he shall submit plans showing existing and finished grades for the approval of the City Engineer and Building Official. In reviewing these plans, the City Engineer and Building Official shall consider the need for drainage and the effect of filling on adjacent property. Grading shall be finished in such a manner as not to create steep banks or unsightly areas to adjacent property.**

**FINDINGS:** In its comments on the applicant's proposal, the Grading/Drainage Department recommended the applicant be required as a condition of approval to submit a detailed grading/drainage plan for approval prior to issuance of any building permits. The Hearings Officer finds Subsection (4) of this section provides such a plan is required "when filling or grading is contemplated by the subdivider." The applicant's burden of proof states the *applicant* does not propose any filling or grading. Therefore, the Hearings Officer finds no grading plan is required. However, I find that if the applicant should determine that filling or grading is required, the applicant will be required as a condition of approval to submit to the Engineering Division a grading plan prior to submitting the final subdivision plat for approval that demonstrates all requirements of this section will be satisfied.

**h. Section 6.120, Park and Trail Development and Dedication**

1. **All lots or parcels that are developed with residential structures shall pay an applicable system development charge for park development as provided for under Bend Code Sections 1.900-932 and ORS 223.297-314. The amount of the system development charge shall be pursuant to a City of Bend Resolution adopted under the aforementioned Code. The system development charge shall be payable at the time of issuance of the building permit.**
2. **No subdivision or partition of land lying within the Bend Urban Growth Boundary, but outside the boundaries of the Bend Metro Park and District, shall be approved unless the landowner has signed an annexation agreement with the Bend Metro Parks and Recreation District.**
3. **Trails. Applicants for a land division may be required to dedicate either right-of-way or an access easement to the public for a primary or connector trail as condition of a land division to the extent allowed by law as outlined below.**
4. **Primary Trails. All applicants for a land division on lands having a trail alignment designated on the City of Bend Urban Area Bicycle and Primary Trail System Plan are required, to the extent allowed by law, to dedicate public right-of-way or**

grant a public access easement for a primary trail. Such trails shall be in the alignment shown on the Plan to the greatest degree practicable unless, with consideration of recommendations from the Bend Metro Park and Recreation District, an alternate alignment is deemed acceptable and approved by the City of Bend through the tentative plan review process.

5. **Connector Trails.** All applicants for a land division shall, to the extent provided by law, dedicate public right-of-way or grant a public access easement for bicycle and pedestrian corridors from sidewalks, streets and other bicycle and pedestrian amenities, both public and private, to Primary Trails pursuant to Section 10-13.6.030(3).
6. **Primary and Connector Trail Dedication and Construction.** To the extent allowed by law, Primary and Connector Trail alignments shall be dedicated and constructed by the developer to the standards listed below:
  - A. **Primary Trails** shall have a minimum public right-of-way or public access easement width of 10 feet and a minimum improved trail width of 10 feet, unless, with consideration of recommendations from the Bend Metro Park and Recreation District, an alternate width is deemed acceptable and approved by the City of Bend through the tentative plan review process. Primary Trails shall be improved as depicted on the Bend Urban Area Trail System Surface Plan Map in conjunction with the land division, unless, with consideration of recommendations from the Bend Metro Park and Recreation District, an alternate construction standard and construction phasing schedule is deemed acceptable and approved by the City of Bend through the tentative plan review process.
  - B. **Connector Trails** shall have a minimum right-of-way width of 10 feet and a minimum improved trail width of 5 feet. Connector Trails shall be improved with an all-weather, impervious surface such as concrete, asphalt, etc. Improvement of Connector Trails to a lesser standard shall be at the discretion of the City of Bend and shall be approved through the tentative plan review process.

**FINDINGS:** The subject property is located within the Bend city limits and within the

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boundaries of the Bend Metro Park and Recreation District (hereafter “park district”). The record indicates the city’s Urban Area Bicycle and Primary Trail System Plan does not identify any trails on the subject property. In its comments on the applicant’s proposal, the park district stated the proposed subdivision would be served by Harvest Neighborhood Park located east of O.B. Riley Road on N.W. Morgan Loop. For these reasons, the Hearings Officer finds the applicant will not be required to dedicate any land for park or trail development. However, park systems development charges (SDC’s) will be assessed at the time a building permit is issued for each subdivision lot.

**i. Section 6.130, Natural Features and Open Space**

**In order to promote livability through the preservation of natural features and vegetation, and the development of public or private open spaces, no subdivisions shall be approved unless the following requirements are met:**

- 1. Areas of Special Interest as identified on the Bend Urban Area General Plan Map shall be preserved to the maximum extent practicable so as to maintain the integrity of the feature. Such areas shall be incorporated as open space within the subdivision.**

**FINDINGS:** The record indicates there are no identified areas of special interest on the subject property. Therefore, the Hearings Officer finds this criterion is not applicable.

- 2. As a means of retaining the natural character and visual quality of the community, significant rock outcrops, stands of native trees or other permanent natural features shall be maintained to the maximum extent practicable.**

**FINDINGS:** The staff report states the subject property does not contain any significant natural features identified as needing protection under Goal 5. As discussed in the findings above, the principal natural features on the subject property are a few rock outcrops and a significant number of mature ponderosa pine and juniper trees, most of which are located around the perimeter of the subject property. It is not clear what is contemplated by the ordinance language “significant rock outcrops” or whether the rock outcrops on the subject property would be considered “significant.”

The submitted tentative plan shows a subdivision street along the northern property boundary which will require removal of the mature trees along the property’s northern boundary. However, as also discussed above, the relatively large size of the proposed subdivision parcels on the southern and western boundaries of the subject property (at least 15,000 square feet) should make it possible for single-family dwellings to be built on those lots while retaining some of the rock outcrops and mature trees. For these reasons, the Hearings Officer finds the proposed tentative plan anticipates that existing rock outcrops and mature trees will be maintained to the maximum extent practicable considering development constraints with RS-density development

and existing site conditions.

**IV. DECISION:**

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer hereby **APPROVES** the applicant's proposed zone change from SR 2 ½ to RS, and **APPROVES** the applicant's proposed tentative subdivision plan, **SUBJECT TO THE FOLLOWING CONDITIONS OF APPROVAL:**

1. This approval is based on the submitted tentative plan, burden of proof statements, and supplemental material submitted by the applicant and included in the record. Any substantial alterations to the approved plan, other than those required by this decision, will require a new land use application and approval.

**PRIOR TO SUBMITTING THE FINAL PLAT FOR APPROVAL:**

2. The applicant/owner shall submit to the Engineering Division engineered plans for the public street, sewer, and water facility improvements.
3. The applicant/owner shall construct all sewer facilities in accordance with the applicable city standards and specifications, including but not limited to the following:
  - a. extend the sewer line in the proposed "D" street to the west property line to meet the city's "to-and-through" policy;
  - b. construct a public sewer pump station on a separate platted tract dedicated to the City of Bend, if the pump station required for the O.B. Riley Subdivision is not in place, sized to handle sewage flow from both the O.B. Riley Subdivision and the applicant's proposed subdivision, functioning and available for connection to the sewer facilities in the subject property at the time the applicant submits its final subdivision plat for approval;
  - c. cut at the main and abandon all sewer service lines to the property not being utilized; and
  - d. extend sewer mains at minimum grade to facilitate future gravity sewer connections.
4. The applicant/owner shall construct all water facilities in accordance with the applicable city standards and specifications, including but not limited to the following:
  - a. extend the water line in the proposed "D" street to the west property line to meet the city's "to-and-through" policy;
  - b. cut at the main and abandon all water service lines to the property not being utilized; and



- c. install a water meter with an approved backflow prevention device for each lot, with a type of backflow assembly approved by the City of Bend.
5. The applicant/owner shall retain on site those trees identified for preservation on the submitted tree preservation plan. The applicant/owner shall protect during construction all trees identified for preservation.
6. The applicant/owner shall obtain demolition permits for all structures to be removed from the subject property prior to their removal.
7. The applicant/owner shall place all utilities underground.
8. The applicant/owner shall obtain approval of the names of all new subdivision streets from the Deschutes County and City of Bend Property Address Coordinators, and shall submit to the Planning Division written documentation from the property address coordinators that the street names have been approved.
9. The applicant/owner shall satisfy all requirements of the Bend Fire Department for fire protection, and shall install fire hydrants in the numbers and at the locations specified by the fire department.
10. The applicant/owner shall transfer all water rights off the subject property, shall relocate the Swalley Irrigation District irrigation facilities as indicated on the submitted tentative plan, comply with all Swalley Irrigation District requirements for protecting irrigation delivery systems on the subject property, and grant easements to the irrigation district for all relocated irrigation facilities.
11. The applicant/owner shall provide a subdivision guarantee report.
12. The applicant/owner shall pay the sum of \$538 (five hundred and thirty-eight dollars) as its proportionate share of the cost of future intersection improvements.
13. If the applicant/owner determines that filling or grading is required, the applicant/owner shall submit to the Engineering Division an engineered grading plan.
14. The applicant/owner shall provide the following dedications to the City of Bend:
  - a. 60 (sixty) feet of right-of-way for "A," "B," and "C" Streets;
  - b. 40 (forty) feet of right-of-way for "D" Street;
  - c. 20 (twenty) feet of right-of-way for the public alley;
  - d. sufficient right-of-way to provide 40 (forty) feet from the centerline for the abutting (west) side of O.B. Riley Road;

- e. a separate tract for the storm drain basin shown on proposed Lot 1 on the submitted tentative plan;
  - f. a separate tract for the public sewer pump station if required to be installed on the subject property; and
  - g. any required reconfiguration of Lot 1 to accommodate the storm drain basin tract, and any required reconfiguration of another lot to accommodate the public sewer pump station tract if required to be installed.
15. The applicant/owner shall construct the following public street and alley improvements as depicted on the cross-section drawings on the submitted tentative plan:
- a. "A," "B," and "C" Streets: 28 feet of pavement width, curbs and five-foot-wide sidewalks on both sides of the streets;
  - b. "D" Street: 24 feet of pavement width, curb and five-foot-wide sidewalk on the abutting (south) side of the street;
  - c. Alley: 15 feet of pavement width; and
  - d. O.B. Riley Road: 26 feet of pavement width, and six-foot-wide striped bicycle lane in accordance with the cross-section drawings attached to the applicant's December 6, 2005 submission, five-foot-wide sidewalk, curb, and planting screen within the planting strip in the street right-of-way or on subdivision lots on the abutting (west) side of the street.
16. In addition to the improvements required in Condition 12 above, the applicant/owner shall install the following improvements in compliance with applicable city standards and specifications:
- a. standard curb returns;
  - b. replace any substandard or damaged curbs or sidewalks;
  - c. handicap ramps at all intersections; and
  - d. driveway aprons.
17. The applicant/owner shall provide to the Engineering Division signed water and sewer agreements.
18. The applicant/owner shall place all city-maintained facilities within 20-foot-wide exclusive utility easements outside of any rights-of-way.
19. The applicant/owner shall submit to the Engineering Division a master storm drainage



control plan for proposed impervious surfaces showing storm drainage contained on-site or routed to the proposed storm drain basin, and including the following information:

- a. a temporary drainage control plan to be in place during construction;
- b. a description of erosion control, re-vegetation and/or stabilization following final grading;
- c. written documentation from a registered professional engineer that the storm water management system has been designed and installed in accordance with Oregon Department of Environmental Quality (DEQ) and City of Bend approved design requirements;
- d. subsurface drainage measures to control water seepage impacts on neighboring properties;
- e. pre-closure approval for drill holes if any exist on the subject property;
- f. drainage calculations for the storm drain basin;
- g. storm drain basin cross-section drawings and pipe out-fall detail;
- h. detailed information for the storm drainage system including inverts and rims for all catch basins and storm manholes; and
- i. for any drywells in the public right of way, a complete copy of the fully completed DEQ drywell registration forms.

20. The applicant/owner install the storm drain basin in accordance with engineered drawings submitted to and approved by the Engineering Division.

**PRIOR TO ISSUANCE OF ANY BUILDING PERMIT:**

21. The applicant/owner shall complete all required infrastructure including paved access to all fire hydrants and manholes.
22. The applicant/owner shall install a planting screen along the subject property's entire frontage on O.B. Riley Road, in the planting strip in the right-of-way or on subdivision lots. The planting screen shall include existing trees to the extent practical as well as introduced trees with spacing no more than 30 feet apart. Introduced trees shall be from the city's list of approved species.

**WITH OR ON THE FINAL PLAT:**

23. The applicant/owner shall prepare the final subdivision plat in compliance with the requirements of ORS 92.090 and the city's land division ordinance, Ordinance No. NS-

1786.

24. The applicant/owner shall include on the final plat:
- a. any lots that will include fill material;
  - b. all required clear vision areas on the final plat;
  - c. the signature of a representative of the Swalley Irrigation District;
  - d. individual lot sizes;
  - e. all slope easements;
  - f. any natural or existing drainage routes;
  - g. all drainage easements;
  - h. the location of a separate dedicated tract for the storm drain basin;
  - i. if required to be installed, the location of a separate dedicated tract for the public sewer pump station;
  - j. a statement that no direct access to O.B. Riley Road shall be allowed from Lots 26, 27, 28, 29 and 32; and
  - k. utility easements labeled as such for all utility facilities for which such easements are required.
25. The applicant/owner shall submit closure sheets.
26. The applicant/owner shall execute and record covenants, conditions and restrictions (CC & R's) providing for ongoing and continuance maintenance of the planting screen, including irrigation.
27. The applicant/owner shall install streetlights in the number and at the locations specified by the City of Bend Public Works Department and the electric utility company serving the area, and shall install light fixtures that are shielded and downcast to assure no light shines onto adjacent properties.
28. The applicant/owner shall file the final plat for the proposed subdivision within one (1) year of the date the zone change receives final approval, or obtain an extension of time pursuant to the City of Bend Land Use Review and Procedures Ordinance.

**AT ALL TIMES:**

Rimrock Riders  
PZ- 05-556, PZ-05-/557  
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29. The applicant/owner shall maintain all surface drainage on site.

Dated this 15<sup>th</sup> day of February, 2006.

Mailed this 16<sup>th</sup> day of February, 2006.



Karen H. Green, City of Bend Hearings Officer

**THIS DECISION BECOMES FINAL TWELVE DAYS AFTER MAILING UNLESS  
TIMELY APPEALED.**