



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED AMENDMENT

May 4, 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 009-05

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. This amendment was submitted without text.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: May 19, 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
Wendy Robinson, City of Bend

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D L C D NOTICE OF ADOPTION

DEPT OF

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

MAY 01 2006

(See reverse side for submittal requirements)

LAND CONSERVATION AND DEVELOPMENT

Jurisdiction: CITY OF BEND Local File No.: 05-579 (If no number, use none)

Date of Adoption: APRIL 19, 2006 Date Mailed: APRIL 28, 2006 (Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 9/8/05

Comprehensive Plan Text Amendment Comprehensive Plan Map Amendment

Land Use Regulation Amendment Zoning Map Amendment

New Land Use Regulation Other:

(Please Specify Type of Action)

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

GENERAL PLAN MAP AMENDMENT AND ZONING MAP AMENDMENT TO CHANGE A 4.77 ACRE PARCEL FROM GENERAL INDUSTRIAL (IG) TO MIXED USE RIVERFRONT (MR)

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: IG to MR

Zone Map Changed from: IG to MR

Location: INTERSECTION OF BOND & INDUSTRIAL WAY Acres Involved: 4.77 AC

Specify Density: Previous: NA New: NA

Applicable Statewide Planning Goals:

Was an Exception Adopted? Yes: No: X

DLCD File No.: 009-05 (14670)

Did the Department of Land Conservation and Development receive a notice of Proposed

Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing.** Yes: No:

If no, do the Statewide Planning Goals apply. Yes: No:

If no, did The Emergency Circumstances Require immediate adoption. Yes: No:

Affected State or Federal Agencies, Local Governments or Special Districts: _____

Local Contact: WENDY ROBINSON Area Code + Phone Number: 541 388-5598

Address: 710 NW WALL ST

City: BEND Zip Code+4: 97701

ADOPTION SUBMITTAL REQUIREMENTS

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

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:

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

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the "Notice of Adoption" is sent to DLCD.
6. In addition to sending the "Notice of Adoption" to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only ; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to Larry.French@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

EXHIBIT A

A parcel of land located in the NE ¼ of the NW ¼ of Section 5, Township 18 South, Range 12 East of the Willamette Meridian, City of Bend, Deschutes County, Oregon described as follows:

Lot 3, Block 1 MILL 'A' AREA OF SHEVLIN CENTER SECOND ADDITION

EXCEPTING THEREFROM a portion of said Lot 3 described as follows: Beginning at the Southwest corner of said Lot 3; thence N 0° 30' 46" W, along the West line of said Lot 3, a distance of 44.58 feet; thence leaving the West line of said Lot 3, a distance of 30.53 feet along the arc of a non-tangent 76.00 foot radius curve, concave to the Southwest (the long chord of which bears S 49° 35' 27" E, 30.32 feet); thence 28.12 feet along the arc of a 35.00 foot radius curve concave to the Northeast (the long chord of which bears S 61° 05' 56" E, 27.37 feet); thence S 84° 06' 48" E, 29.00 feet; thence S 85° 59' 10" E, 96.40 feet to the South line of said Lot 3; thence S 89° 20' 26" W along the South line of said Lot 3, a distance of 171.68 feet to the true point of beginning.

TOGETHER WITH a portion of Lot 4, Block 1 MILL 'A' AREA OF SHEVLIN CENTER SECOND ADDITION described as follows: Commencing at the Southwest corner of said Lot 3, also being the Southeast corner of said Lot 4; thence N 0° 03' 46" W, along the East line of said Lot 4, a distance of 44.58 feet to the true point of beginning; thence leaving the East line of said Lot 4, a distance of 1.48 feet along the arc of a non-tangent 76.00 foot radius curve, concave to the Southwest (the long chord of which bears N 61° 39' 18" W, 1.48 feet); thence 14.82 feet along the arc of a 16.00 foot radius curve, concave to the Northeast (the long chord of which bears N 35° 40' 40" W, 14.30 feet); thence N 9° 08' 34" W, 12.60 feet; thence 20.18 feet along the arc of a 35.00 foot radius curve concave to the East (the long chord of which bears N 7° 22' 27" E, 19.90 feet); thence N 5° 10' 06" W, 62.95 feet; thence N 1° 36' 35" W, 61.77 feet; thence N 0° 35' 21" W, 147.59 feet to the North line of said Lot 4; thence N 89° 35' 39" E along the North line of said Lot 4, a distance of 14.54 feet to the Northeast corner thereof; thence S 0° 30' 46" E along the East line of said Lot 4, a distance of 317.55 feet more or less to the true point of beginning.

Containing 4.77 acres more or less.

**FINDINGS AND RECOMMENDATION OF
CITY OF BEND HEARINGS OFFICER**

FILE NUMBER: 05-579

**APPLICANT/
PROPERTY OWNER:** BRC, LLC
c/o Aaron Lafky
P.O. Box 5908
Bend, Oregon 97708

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

**APPLICANT'S
ENGINEERS** Jim Carnahan
Karen Swirsky
David Evans and Associates
709 N.W. Wall Street, Suite 102
Bend, Oregon 97701

Scott Ferguson, PE
Ferguson & Associates, Inc.
925 N.W. Wall Street, Suite C
P.O. Box 1336
Bend, Oregon 97708

REQUEST: The applicant requests approval of a plan amendment and zone change from General Industrial to Mixed-Use Riverfront for a 4.77-acre parcel located at the northeast corner of the intersection of Industrial Way and Bond Street in southwest Bend.

PROJECT MANAGER: Wendy Robinson, Senior Planner

HEARING DATE: November 17, 2005

RECORD CLOSED: November 30, 2005

I. APPLICABLE STANDARDS AND CRITERIA:

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

1. Section 10.10.21A, Mixed-Use Riverfront (MR) Zone
2. Section 10.10.33, Amendments

BRC/Lafky
PZ 05-579

B. City of Bend Land Use Permit & Review Procedures Ordinance, Ordinance No. NS-1775

1. Section 10-16.5, Final Action in Land Use Actions

C. The Bend Area General Plan

D. Oregon Administrative Rules, Chapter 660, Division 12, Transportation Planning Rule

1. OAR 660-15-000, State-Wide Planning Goals and Guidelines

2. OAR 660-12-60, Plan and Land Use Regulation Amendments

II. FINDINGS OF FACT:

A. Location: The subject property is located at the northeast corner of the intersection of Industrial Way and Bond Street, and is further identified as Tax Lot 100 on the Deschutes County Assessor's Map 18-12-05BA.

B. Zoning and Plan Designation: The subject property is zoned General Industrial (IG) and is designated General Industrial on the Bend Area General Plan map.

C. Site Description: The subject property is 4.77 acres in size and rectangular in shape, has access from both Industrial Way and Bond Street, and abuts Arizona Avenue on the north. The property is almost entirely paved, has very little landscaping, and currently is developed with three buildings, one of which is under construction. The development is called the "Old Mill Marketplace." The largest building has 80,000 square feet, once was used for timber milling and processing, and subsequently was occupied by other industrial uses. In more recent years the building has been partitioned into numerous units to accommodate both light industrial and commercial uses, several of which have received city approval as conditional uses. Uses in the large existing building include: a fitness facility, light manufacturing, retail sales, wholesale sales and distribution, home design, building supply sales and storage, product sales office, transportation dispatch office, and art studio. The smaller, newer building is 6,500 square feet in size, is located at the southwest corner of the subject property, and currently houses offices and a construction business. The third building under construction will be 2,540 square feet in size and is located on the west side of the existing smaller building. The record indicates the property has 151 off-street parking spaces.

D. Surrounding Zoning and Land Uses: The subject property is bounded on three sides by streets. To the south across Industrial Way is the site of the recently demolished Crane Shed historic building on land zoned Mixed Use Riverfront (MR). Across Bond Street to the west is new construction of a mixed use development on land zoned MR. Across Arizona Avenue to the north is a mix of older residences and refurbished mixed use buildings on land zoned General Commercial (CG). To the northeast is land zoned Light Industrial (IL) and developed with a mixture of residential and commercial uses. To the

east and southeast is land zoned IG and developed with general industrial uses and storage.

- E. Procedural History:** In 1995 the Bend City Council (hereafter "council") amended the zoning ordinance to add the MR Zone. The amendment was requested by one of the largest land owners in what now is known as the "Old Mill District" located on the east side of the Deschutes River previously zoned for and occupied by heavy industrial uses including sawmills. The MR Zone was adopted to provide a mechanism to redevelop this industrial land with mixed residential, commercial and industrial uses. The subject property was excluded from the MR Zone as were other mill-related industrial properties.

The applicant purchased the subject property in 1998. At the time, it was fully occupied with uses that ranged from light manufacturing and wholesale distribution to retail sales and services. Some of these uses were authorized through the issuance of conditional use permits. On July 25, 2005 the applicant conducted a neighborhood public meeting to discuss the applicant's intention to seek a plan amendment and zone change. The subject plan amendment and zone change application was submitted on September 2, 2005. By a letter dated September 16, 2005 the city advised the applicant that its application was incomplete and allowed the applicant 30 days to submit the missing information consisting of a list of all existing tenants within the buildings on the subject property. The applicant submitted the requested information on September 30, 2005, and the application was accepted by the city as complete on October 4, 2005. Because the application includes a request for a plan amendment, under Section 10-16.5 of the city's land use procedures ordinance neither the plan amendment nor the dependent zone change is subject to the 120-day period for issuance of a final local land use decision under ORS 227.178. A public hearing on the application was held on November 17, 2005. At the hearing, the Hearings Officer received testimony and evidence, left the written evidentiary record open through November 23, 2005, and allowed the applicant through November 30, 2005 to submit final argument under ORS 197.763.

- F. Proposal:** The applicant is requesting approval of a plan amendment and zone change from IG to MR for the subject property.
- G. Public/Private Agency 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, Fire Department, and Grading and Drainage. These comments are set forth verbatim at pages 4-6 of the staff report and are included in the record.
- 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 no letters from the public in response to these notices. In addition, no members of the public testified at the public hearing.

III. CONCLUSIONS OF LAW:

PLAN AMENDMENT

A. Bend Area General Plan

1. General Plan Preface (Page P-6 and 7)

Future Plan Updates

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

* * *

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

FINDINGS: The applicant submitted a request to change the plan designation of the subject property from IG to MR as authorized in this paragraph. The above underscored language appears to require the applicant to demonstrate a “public need and benefit for” the proposed zone change, and in many previous decisions this Hearings Officer and other hearings officers have applied this language as if it did establish a plan amendment approval criterion.¹ However, in light of a recent decision of the Land Use Board of Appeals (LUBA) addressing provisions of the Bend Area General Plan, I find the legal effect of this language requires re-examination.

In *Save Our Skyline v. City of Bend*, 48 LUBA 129 (2004) (hereafter “SOS”), LUBA held the following language in the city’s general plan preface (Page P-4) means plan policies are not relevant approval criteria for the conditional use application at issue in that case:

At the end of each chapter 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

¹ In several decisions, this Hearings Officer has held plan policies also do not constitute approval criteria for quasi-judicial *zone change* applications.

practical constraints of the city such as availability of funds and compliance of all applicable federal and state laws, rules and regulations, and constitutional limitations. (Emphasis added.)

LUBA stated in pertinent part:

"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.

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.]"(Underscored text appears as italicized emphasized text in original.)

The plan language addressing the applicant's burden of proof for a plan amendment is not a plan

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PZ 05-579

policy. And because it is found in the plan's preamble, and follows the preface language set forth above, arguably it falls into the same category as plan policies for purposes of determining its legal effect, and also does not establish mandatory approval criteria for a plan amendment. However, I am not aware of any other provisions in the city's land use regulations that establish specific approval criteria for plan amendments. In that context, I find the plan preface language stating plan policies "are used to evaluate any proposed changes to the General Plan" takes on greater significance and apparently was intended by the city to set forth the criteria for evaluating proposed plan amendments. For that reason, I find it is appropriate to consider plan policies in determining whether the applicant's proposed plan amendment from IG to MR is consistent with the plan, and will satisfy a public need and confer a public benefit.

PLAN POLICIES

FINDINGS: The staff report identifies the following plan policies as relevant to the proposed plan amendment.

Chapter 1 – Plan Management and Citizen Involvement

Page 1-1 Community Goals

The goals set forth below provide general guidance for improving the character and quality of the Bend area as growth occurs.

- *Neighborhoods – Create and preserve attractive neighborhoods for living.*
- *Natural Beauty and Heritage – Protect and enhance Bend's natural beauty noting especially the trees, rocks, rivers, views, sounds and historic structures.*

The staff report notes that one of the few remaining mill site buildings stands on the subject property and is reminiscent of Bend's historic past. As discussed elsewhere in this decision, the building's historic designation does not assure the preservation of the mill building. However, the staff report states, and the Hearings Officer agrees, that redesignating the subject property to MR will provide viable opportunities for redevelopment within the existing building.

- *Appearance of Structures – Ensure that the "built environment" is as attractive as feasible.*

The subject property is fully developed. However, the Hearings Officer finds redesignation and rezoning of the property to MR will assure any new development or expansion of the existing buildings will be subject to design review.

- *Quality Economic Growth – Assure the opportunity for a stable, vital and diverse economy while sustaining its environment / ecological support systems.*

The Hearings Officer finds redesignating and rezoning the property to MR will allow development with a greater variety of uses that will support the surrounding neighborhood and

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PZ 05-579

complement the existing use of the building.

- *Diversity of quality living options – Assure the opportunity for a wide variety of housing and neighborhoods within a community diverse in education, income, employment and recreation opportunities.*

Although the applicant does not propose to develop the subject property with housing, the Hearings Officer finds redesignating and rezoning the property to MR will allow a variety of development opportunities on the property, including the opportunity for housing development whereas housing is not permitted in the General Industrial zone.

- *Transportation Options Appropriate to Bend – Foster transportation systems that provide opportunities for all practical modes to facilitate the livability of neighborhoods and the community.*

The subject property is in close proximity to the downtown and within easy walking distance from the “Old Mill District” and surrounding neighborhoods. As discussed elsewhere in this decision the property is situated adjacent to three major streets which will facilitate the potential for future transit.

- *Public/Civic Involvement – Encourage involvement by all citizens, corporate and individual, to keep the city vital and the Plan an “evolving vision.”*

The Hearings Officer finds the land use process being utilized to review the proposed plan amendment and zone change assures public input during all phases of review.

Page 1-7 & 1-8

Policy #4 New developments shall pay to extend planned sewer, water and transportation facilities to and through the property if the development occurs prior to the scheduled construction of those facilities shown in the capital improvement plan.

Property within the MR Zone is required to develop in conformance with the approved Master Facilities Plan that shows, among other things, building envelopes, parking layout, access, pedestrian amenities, landscape and other common areas. In addition, parcels less than 10 acres in size in the MR Zone that cannot practicably be combined with other properties are subject to site and design review from the Planning Commission. As discussed in the findings below, the applicant argues, and the Hearings Officer concurs, that existing development on the subject property is not subject to the Eastside Master Facilities Plan until it is redesignated and rezoned to MR.

Page 3-1

Chapter 3 – Community Connections

Goals:

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PZ 05-579

- *To encourage the preservation of historic and cultural resources within the urban area;*
- *To foster a sense of historic awareness among the citizens of the community;*

The subject property is developed with one of the original mill site buildings, currently housing a variety of light industrial and non-industrial uses. The Hearings Officer finds redesignating and rezoning the property to MR would provide viable opportunities for redevelopment within the existing building.

Page 3-16 – Historic Sites

- Policy #1 The city shall encourage the preservation, rehabilitation, and reuse of historic structures whenever practical.
- Policy #2 The city will continue to encourage identification and preservation of significant historical and cultural sites.
- Policy #3 The preservation of exterior facades shall be the emphasis of the city's and county's encouragement of historic preservation.

The record indicates that although the subject property is located within an historic district, the older existing structure is not a designated historic resource. Nevertheless, this building provides a link to Bend's historic mill industry. The staff report states, and the Hearings Officer agrees, that redesignating and rezoning the subject property to MR will provide greater opportunity for the applicant to retain and rehabilitate the existing older structure by allowing a broad variety of viable uses that can be housed in the building.

Page 6-2

Chapter 6 – The Economy and Lands for Economic Growth

The intent of the General Plan is to provide the community with sufficient land to meet the city's goal of promoting quality economic growth and assuring a diverse economy. The following goal statements describe the future economic hopes of the community:

- *Have a vital, diverse and sustainable economy, while enhancing the community's overall livability.*
- *Ensure an adequate supply of appropriately zoned land in Bend to provide for a full range of industrial, commercial and professional development opportunities.*
- *Stimulate economic development that will diversify and strengthen economic activity and provide primary and secondary job opportunities for local residents.*
- *Strengthen Bend's position as a regional economic center.*
- *Improve the income levels of Bend residents.*

- *Create commercial areas in outlying sections of the community as neighborhood centers rather than extending the existing strips along major roads.*
- *Encourage more small neighborhood commercial developments and convenience commercial centers to reduce vehicle trips and trip lengths.*

The record indicates the subject property is located in an area that is rapidly developing as a vibrant commercial and mixed-use center. The staff report states, and the Hearings Officer agrees, that the subject property's close proximity to the historic downtown and old Bend neighborhoods makes it much less desirable for heavy industrial uses that once occupied the site. The uses currently occupying the subject property are slowly transitioning from industrial based uses to artisans/retail. For this reason, I find the proposed plan amendment and zone change from IG to MR will allow fully integrated uses that would complement the growing artist community and enhance the livability of the newly developing residential component of this neighborhood.

Pages 6-16 through 6-18

Industrial Development

Policy #1 In order to help meet the long-term need for future industrial development, at least 500 acres of the City-owned property known as Juniper Ridge shall be brought into the Urban Growth Boundary, annexed to the city, and designated on the Bend Urban Area General Plan Map as Industrial Light.

The record indicates that in 2004 the city annexed 513 acres of industrial reserve land into the UGB, thereby expanding the inventory of available industrial land and lessening the demand on existing industrial lands. Although the subject property is zoned IG, only approximately half of the property actually is being employed with uses that could be considered industrial. The staff report states, and the Hearings Officer agrees, that the proposed plan amendment and zone change to MR will not facilitate or create non-conforming industrial uses because the current industrial uses are also allowed in the MR zone.

Policy #4 The city shall work to preserve prime industrial lands for industrial purposes.

The staff report states, and the Hearings Officer agrees, that the subject property can no longer be considered "prime" industrial land. The property surrounding the site has re-developed with commercial and mixed use development. The rail spur that once served the mill sites was removed making the site entirely reliant on truck service. Although new collector and arterial streets have been constructed along the property frontage, access to the site is restricted making it difficult for truck deliveries to the site.

Policy #8 Industrial areas shall be protected from incompatible commercial and residential uses.

The record indicates that aside from the subject property, the only remaining industrial land in the historic mill area is located to the east. The subject property is bordered on the west and

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PZ 05-579

south by other MR zoning and commercial zoning to the north. For these reasons, the Hearings Officer finds redesignating and rezoning the property to MR will have little impact on the adjoining industrial lands, which are served by a private road.

Mixed Use Development

Policy #14 Mixed-use development along the river in the old mill sites shall be subject to facility plan, master plan and design review processes to achieve the following purposes:

- Provide a variety of employment opportunities and housing types;
- Foster pedestrian and other non-motor vehicle access within and to the site;
- Ensure compatibility of mixed-use development with the surrounding area and minimize off-site impacts associated with the development;
- Ensure the site planning, access, parking areas and building designs are functionally coordinated and aesthetically pleasing; and
- Improve the natural conditions along the Deschutes River, and to encourage access to and enjoyment of the Deschutes River.

The subject property is served by city water and sewer service. The existing uses within the site currently comply with the goals of the mixed use district. Redesignating and rezoning the subject property to MR will allow the property to develop with a greater variety of uses, some of which will have greater impacts to the city's facility systems. As discussed in the findings below, the Hearings Officer has found development on the property will not be subject to the Eastside Master Facilities Plan unless and until it is rezoned to MR.

Policy #15 Designation of the Mixed Use Riverfront Plan category and corresponding MR zoning along the Deschutes River shall not be used to justify rezoning adjacent properties or neighborhoods to a mixed use or commercial zone.

The applicant has not relied on proximity of the subject property to other MR-zoned land to justify the request for a plan amendment and zone change. Rather, the applicant argues its proposal is supported by other changes of circumstance that have made the subject property less desirable for heavy industrial uses including the loss of rail access and the construction of three major roadways bordering the site.

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

This policy provides the city with the opportunity to re-designate lands like the subject property for mixed use. The subject property is close to existing residential uses within old Bend neighborhoods and will be adjacent to new residential development in the MR Zone. The property can provide a variety of jobs and services for existing and future residents in the area.

Chapter 7 – Transportation Systems

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PZ 05-579

10

The record indicates the city council adopted the city's Transportation System Plan (TSP) on October 11, 2000.² Chapter 7 of the TSP describes the transportation goals, objectives, policies, implementation, benchmarks and funding. The staff report identifies the following goals, objectives and policies as applicable to the applicant's proposal.

Page 7-3 through 7-5

Goal Statement: The goals, objectives and policies of the Transportation Plan provide community assurance that safety, accessibility and mobility will be provided for all users.

Transportation and Land Use

Objectives

- To promote land use patterns that support fewer vehicle trips and shorter trip lengths
- To ensure that future development, including re-development, will not interfere with the completion of Bend's transportation system

The Hearings Officer finds redesignating and rezoning the subject property to MR will encourage a mixed-use land use pattern that will serve the nearby residential uses, and will likely generate fewer vehicle trips than industrial uses allowed in the existing IG zone.

Policies

- #6 The City shall continue to explore mixed use zoning as one of the land use patterns that will promote fewer vehicle trips and shorter trips lengths.
- #7 The City should be receptive to innovative development proposals, including zone changes, plan amendments, and text changes that promote alternatives to vehicular traffic thus reducing vehicle trips and reduced trip lengths.

The staff report states, and the Hearings Officer agrees, that the proposed plan amendment is consistent with these policies because the applicant will be able to future impacts to sewer, water and street facilities caused by redevelopment of the property.

For the foregoing reasons, the Hearings Officer finds the proposed plan amendment is consistent with applicable plan policies, and will meet a public need and provide a public benefit.

B. Oregon Administrative Rules Chapter 660, Division 12, Transportation Planning Rule

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

² The city's TSP is not acknowledged due to an appeal.

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

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

FINDINGS: The Hearings Officer finds the Transportation Planning Rule (TPR) applies to the applicant's proposal because it proposes amendments to a comprehensive plan and a land use regulation. The subject property is bordered on two sides by collector streets (Industrial Way and Bond Street) and on the third side by an arterial street (Arizona Avenue). The Hearings Officer finds the proposed plan amendment and zone change from IG to MR will not change either the functional classification or the standards implementing the functional classification of these three streets. In addition, because the city does not have an acknowledged TSP, I find the city has not adopted minimum acceptable levels of service for purposes of the TPR.³

³ The city has established minimum acceptable levels of service for intersections in its Street Policy 6 which is not a part of the city's acknowledged land use regulations.

The remaining question under the TPR is whether the proposed plan amendment and zone change would allow types or levels of land uses that would result in traffic exceeding the capacity of the affected collector and arterial streets. The Hearings Officer finds the proposed plan amendment and zone change, in and of themselves, will not create traffic impacts. However, as discussed above, the applicant has proposed a plan amendment and zone change to make lawful the types of uses currently developed on the subject property. Likely for that reason, the staff report suggests the analysis under this section of the TPR should take into account *current* traffic levels on adjacent streets to determine whether the proposed plan amendment and zone change would create excessive traffic requiring the types of mitigation described in Section (1) of the TPR.

The staff report states the city does not have current traffic counts for Industrial Way, Bond Street or Arizona Avenue. The most current count for Arizona Avenue shows 5,930 daily vehicle trips in March 2004. The staff report notes the design capacity for designated minor arterial streets ranges from 5,000 to 18,000 trips depending on the level of street improvements. The record shows that the segment of Arizona Avenue abutting the subject property is part of a one-way couplet with Colorado Avenue, is developed with two eastbound traffic lanes and curbs, and is controlled by traffic signals at its intersections with Bond and Wall Streets. Based on these improvements, I find the design capacity of this segment of Arizona Avenue is at the high end of the range. Accordingly, I agree with staff that it is highly unlikely the proposed plan amendment and zone change will affect the functional classification of Arizona Avenue in light of the relatively low traffic counts from 2004.

With respect to Industrial Way and Bond Street, the staff report states the most recent traffic counts are from September 2004 and were conducted on Bond Street north of Wilson within the "Old Mill District." However, it is unclear from this record whether those counts considered Industrial Way as part of Bond Street.⁴ The September 2004 traffic counts showed Bond Street was carrying 8,000 daily vehicle trips at that time. The staff report states the design capacity for a major collector street ranges from 1,500 to 9,000 daily vehicle trips, thus placing Bond Street within the "Old Mill District" very close to its design capacity in 2004. The staff report notes that for purposes of traffic impact analysis the city anticipates an annual traffic growth rate of 3 percent. Using this formula, in the two years since the most recent traffic counts on Bond Street traffic would have increased by 6 percent, or to 8,400 daily vehicle trips, still within available design capacity.

The applicant argues the proposed plan amendment and zone change would not accelerate the background rate of increase in traffic because the uses permitted outright and conditionally in the existing IG Zone are similar to those permitted in the proposed MR Zone. Staff responds that many of the uses permitted in the IG Zone require conditional use approval which allows traffic impacts to be addressed on a case-by-case basis. Nevertheless, the staff report concludes that given the historic growth at intersections within the "Old Mill District," and considering the types of uses that would be permitted on the subject property with the proposed MR Zone, the proposed plan amendment and zone change from IG to MR will not create traffic levels

⁴ Before Bond Street was extended between Industrial Way and Arizona Avenue along the subject property's eastern boundary, it turned into and effectively "became" Industrial Way.

inconsistent with the functional classification of Bond Street and Industrial Way. As discussed in detail in the findings below concerning the impact of the proposed zone change on affected public facilities, the Hearings Officer has found the applicant's traffic study demonstrates the proposed zone change to MR will not generate traffic exceeding the capacity of all affected streets.

Based on the above findings, the Hearings Officer finds the applicant's proposed plan amendment and zone change will be consistent with the TPR.

C. Oregon Administrative Rules Chapter 660, Division 15, State-Wide Planning Goals and Guidelines

1. **OAR 660-15-000, State-Wide Planning Goals and Guidelines No. 1 Through No. 14**
2. **OAR 660-15-005, State-Wide Planning Goals and Guidelines No. 15**
3. **OAR 660-15-010, State-Wide Planning Goals and Guidelines No. 15 Through No. 19**

FINDINGS: At the outset, the Hearings Officer notes the city's comprehensive plan has been acknowledged as consistent with the statewide planning goals and guidelines. Therefore, I find that if the proposed plan amendment and zone change are consistent with the acknowledged plan they also will be consistent with the statewide planning goals. Nevertheless, I include the following findings concerning compliance with the statewide goals:

Goal 1, Citizen Involvement. The Hearings Officer finds this goal has been met because the city has provided notice of the applicant's proposal and the public hearing through individual mailed notice to surrounding property owners, publication in the Bend "Bulletin" newspaper, and by posting the subject property with a notice of proposed land use action sign, all in accordance with the city's land use procedures ordinance.

Goal 2, Land Use Planning. The Hearings Officer finds this goal will be met because at least two public hearings will be held prior to the proposed comprehensive plan and zoning ordinance amendments taking effect – one before the Hearings Officer and one before the city council.

Goal 3, Agricultural Lands. The Hearings Officer finds this goal does not apply because the subject property is not located in an agricultural zone.

Goal 4, Forest Lands. The Hearings Officer finds this goal does not apply because the subject property is not located in a forest zone.

Goal 5, Open Spaces, Scenic and Historic Areas and Natural Resources. The Hearings Officer finds the subject property does not contain any open spaces, scenic areas or natural resources included in the city's Goal 5 inventories and requiring protection. The record indicates the subject property along with other properties within the "Old Mill District" is included in the

city's inventory of historic sites because of the historic location of sawmills. However, the staff report notes this listing does not require preservation of the existing older structure on the property, or any particular use of the property, and therefore the proposed plan amendment from IG to MR will not affect the inventory of historic sites or the applicant's ability to utilize the property.

Goal 6, Air, Water and Land Resources Quality. The Hearings Officer finds the proposed plan amendment will not have any impact on the quality of air, water and land resources.

Goal 7, Areas Subject to Natural Disasters and Hazards. The Hearings Officer finds this goal is not applicable because no known natural disasters or hazards have been identified on or near the subject property.

Goal 8, Recreational Needs. The Hearings Officer finds this goal does not apply because the subject property is not designated or planned for future park or recreational use or destination resort use.

Goal 9, Economic Development. The Hearings Officer finds the applicant's proposal will satisfy this goal because the proposed plan amendment and zone change will allow continued commercial use of the property, providing economic benefits in the community.

Goal 10, Housing. The Hearings Officer finds this goal is not applicable because the city does not consider land in the MR Zone to be part of its inventory of residential lands.

Goal 11, Public Facilities and Services. The Hearings Officer finds the applicant's proposal will satisfy this goal because all required public facilities and services are available and adequate to serve the subject property.

Goal 12, Transportation. As discussed in the findings above, the Hearings Officer has found the applicant's proposal complies with the TPR which implements this goal. Therefore, I find the applicant's proposal will satisfy this goal.

Goal 13, Energy Conservation. The Hearings Officer finds the applicant's proposal will be consistent with this goal, which requires that land uses be managed so as to maximize the conservation of all forms of energy, because it will allow mixed use development that typically creates more efficient use of land and resources by reducing vehicle trips and trip lengths, helping to conserve fossil fuels.

Goal 14, Urbanization. The Hearings Officer finds the applicant's proposal is consistent with this goal because the proposed MR designation and zoning will allow urban density development with urban uses on land located within an urban growth boundary.

Goal 15, Willamette River Greenway. The Hearings Officer finds this goal is not applicable because the subject property is not located within Willamette River Greenway.

Goal 16, Estuarine Resources. The Hearings Officer finds this goal is not applicable because

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PZ 05-579

the subject property is not a part of, and does not contain, an estuary or wetland.

Goal 17, Coastal Shorelands. The Hearings Officer finds this goal is not applicable because the subject property does not contain any coastal shorelands.

Goal 18, Beaches and Dunes. The Hearings Officer finds this goal is not applicable because the subject property does not contain any beaches or dunes.

ZONE CHANGE

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 hereinafter set forth. (Emphasis added.)

FINDINGS: As discussed in the findings above, the Hearings Officer has found the language in the comprehensive plan preface stating the applicant has the burden of demonstrating “a public need and benefit for the change” does not constitute mandatory approval criteria for the proposed plan amendment. However, I find the above-underscored language *does* establish a mandatory approval criterion for the proposed zone change, and it requires the applicant to demonstrate the proposed zone change is required by “the public necessity and convenience and the general welfare.” The applicant’s burden of proof states the proposed zone change is justified by the following a public needs and benefits.

1. Preserving Industrial-zoned Land for Industrial Uses. The applicant argues the city’s development code seeks to preserve industrial zoned land for industrial uses, and the proposed new development code may actually restrict new office uses in the industrial zones in order to carry out this intent. Since the subject property has not been developed with general industrial uses in some time and now is largely developed with commercial uses including offices and retail, rezoning the property from IG to MR will allow it to be developed consistent with the intent of the development codes.

2. Suitability for Industrial Use. The applicant argues that given the existing network of improved streets that virtually surrounds the subject property, including two designated collector streets (Industrial Way and Bond Street) and one minor arterial (Arizona Avenue) with restricted access, the property now has very limited capacity for industrial development and therefore is no longer suitable for industrial development.

3. Demand for Retail and Commercial Space. The applicant argues that as traditional industrial uses relocate out of the “Old Mill District” to other more appropriate -- “industrial friendly” --

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PZ 05-579

16

sites, there is greater demand for retail/commercial space and uses in the district, some of which are not allowed in the IG Zone. The applicant states that “many of the newer tenants occupying space within the subject property have located without” city land use review and are not permitted in the IG Zone. The applicant acknowledges the proposed zone change to MR would benefit the applicant by allowing retail sales as a permitted use and by allowing the applicant “to fill the vacancies within the existing building with tenants that are similar to adjacent uses.” However, the applicant argues the public would benefit equally from the proposed zone change because it would bring the existing non-conforming uses into compliance in a location that is well suited to commercial retail uses.

4. Elimination of “Split Zone.” The record indicates the subject property includes a small area along its western frontage on Bond Street that currently is zoned MR. The applicant argues the city’s development regulations disfavor split zones, and the proposed zone change from IG to MR would remove this split zone.

The Hearings Officer finds that although each of the public needs/benefits identified by the applicant as being met by the proposed zone change certainly will provide the applicant with a direct economic benefit, these reasons also support a finding that the public would be served by rezoning the subject property to reflect its more recent development with non-industrial uses. In particular, I find there is no public benefit in maintaining the industrial plan designation and zoning on the subject property when clearly it is not being employed, and likely will not be employed in the future, with industrial uses. In fact it may create a misleading picture of the amount and nature of industrial-zoned land suitable and available for industrial development. For these reasons, I find the applicant has demonstrated the proposed zone change is justified by a public need for, and convenience and benefit from, the proposed zone change from IG to MR

- (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 record indicates the applicant submitted an application for a plan amendment and zone change on a city form and accompanied by the required fee. This application is being handled pursuant to the provisions of the city’s land use procedures ordinance. A public hearing was held before the Hearings Officer, and another public hearing will be held before the city council before the proposed zone change becomes effective. Therefore, I find the applicant’s proposal satisfies this criterion.

- (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 with the Comprehensive Plan. Specifically, the change is consistent with the plan's intent to promote an orderly pattern and sequence of growth.**

FINDINGS: The Hearings Officer finds this approval criterion contains three components: 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 components is addressed in the findings below.

1. Conformance with the Comprehensive Plan Map. The proposed zone change from IG to MR will not be consistent with the existing IG plan designation. However, as discussed in the findings above, the applicant has requested approval of a plan amendment from IG to MR, and the Hearings Officer has found the plan amendment can be approved. Therefore, I find the proposed zone change from IG to MR will be consistent with the new MR plan designation, therefore satisfying this criterion.

2. Conformance with the Comprehensive Plan Text. As also discussed in the findings above, the Hearings Officer has found here, and in numerous previous decisions, that the city's comprehensive plan policies do not constitute mandatory approval criteria for quasi-judicial land use applications including zone changes. Therefore, I find the applicant is not required to demonstrate the proposed zone change from IG to MR is consistent with the text of the comprehensive plan.

3. Consistency With the Plan's Intent to Promote an Orderly Pattern and Sequence of Development. 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, and discuss each of these components in the findings below.

a. Orderly Pattern of Growth.

The record indicates the area surrounding the subject property consists of a broad mixture of industrial and commercial uses in the MR, CG and IG Zones. Most of the development to the north, west and south of the subject property is similar to that developed on the subject property and consists of a wide variety of light industrial, commercial, retail and office uses similar to those developed on the subject property. For this reason, the Hearings Officer finds the proposed zone change from IG to MR will promote an orderly pattern of growth considering existing physical relationships between zoning districts and uses.

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, parks 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 or expressed concerns about the applicant's proposed zone change. Included in the record are detailed comments from the Fire Department concerning fire protection and water required for such protection.

(2) Sewer. The subject property is served by city sewer service. The record indicates there is an existing 10-inch city sewer line located in Arizona Avenue, an 8-inch sewer line located along the property's eastern boundary, and an 8-inch sewer line located in Industrial Way west of Bond Street. Service to the existing buildings on the property is provided by the 8-inch pipe located in Industrial Way and the 8-inch pipe located along the eastern property boundary. In its initial comments on the applicant's proposal, the Engineering Division noted the area in which the property is located is served by the Drake Sewer Pump Station, and that this pump station currently is "over capacity." The Engineering Division expressed concern that full buildout of the subject property with mixed-use zoning could generate significantly larger sewer flows than uses in industrial zones, thereby potentially creating an undue burden on the pump station. For this reason, the staff report recommended the applicant be required to amend the city's Eastside Master Facilities Plan to account for any changes to sewage flows caused by development of MR-zone uses on the subject property. In response, the applicant argued the "Master Facilities Plan" is a part of the MR Zone and is triggered by new development, and therefore the applicant cannot be required to amend the plan *prior to approval of the proposed zone change to MR.*

In a memorandum dated November 22, 2005, Scott Gillespie of the Engineering Division stated that based on information provided by the applicant's engineer the division had concluded sewage flow from MR-zone development of the subject property was taken into consideration with development of the Eastside Master Plan, and that the capacity of the Drake Pump Station should be evaluated with any future development application for the subject property. In a memorandum dated November 22, 2005, planner Wendy Robinson stated the Planning Division was satisfied with the applicant's argument concerning the capacity of the Drake Pump Station and the appropriate means to address it. For this reason, and based on this record, the Hearings Officer finds the proposed zone change will promote an orderly sequence of growth considering sewage disposal.

(3) Water. The subject property is served by city water service. The record indicates there is a 16-inch water line that transitions to a 12-inch water line within the adjacent Arizona Avenue right-of-way, a 12-inch ductile iron water line in Industrial Way, and a 12-inch ductile iron water line along the eastern property boundary. Water service to the buildings on the subject property is provided by the water lines located in Industrial Way and along the eastern boundary of the subject property. The record indicates three fire hydrants are located within the existing public street rights-of-way abutting the subject property. The Engineering Division did not express any concerns about the availability and capacity of water to serve uses on the subject property under MR zoning. Therefore, the Hearings Officer finds the applicant's proposal will promote an orderly sequence of growth considering water.

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PZ 05-579

(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 finds the proposed zone change will not have any effect on school services or capacity since the subject property is and will continue to be developed with non-residential uses and will not directly increase the school-age population.

(4) Parks. The subject property is located within the boundaries of the Bend Metro Park and Recreation District. The park district did not comment on this application. The Hearings Officer finds the proposed zone change will not have any effect on park services because the applicant is not proposing any residential development that would increase the city's population or park usage.

(4) Transportation Facilities. The subject property has access from Industrial Way and Bond Street, both designated collector streets. The staff report notes that for many years Industrial Way was a private street that provided internal circulation to the surrounding mill uses. However, when the "Old Mill District" began to develop and the general public began using Industrial Way, the city requested that the abutting property owners dedicate Industrial Way to the public. The street was dedicated, designated a collector street and improved to collector street standards within the "Old Mill District."

The applicant submitted a traffic impact analysis (hereafter "traffic study") dated September 1, 2005 and prepared by Ferguson & Associates, a traffic engineering firm. The traffic study noted that available parking space on the subject property is the limiting factor in determining the nature and density of development on the subject property, and therefore certain higher trip-generating uses could not be sited on the property. The traffic study predicted the amount of traffic that would be generated under three separate "worst case" scenarios, each of which is discussed separately in the findings below. The traffic study used the Institute for Transportation Engineers (ITE) Trip Generation Manual codes for various uses to predict traffic generation for each scenario.

(a) *Existing IG zoning with no additional conditional uses*. The traffic study predicted development under the current IG zoning would generate 926 average daily vehicle trips (ADTs), with 118 of those trips occurring during the p.m. peak hour.⁵

(b) *Existing IG zoning with additional conditional uses*. The traffic study predicted development under the current IG zoning with the addition of two new conditional uses – a restaurant and a bank – would generate 140 p.m. peak hour trips.

(c) *Proposed MR zoning*. The traffic study predicted development under the proposed MR zoning with the addition of two new conditional uses – a restaurant and bank – would generate 149 p.m. peak hour trips.

The traffic study summarized these scenarios by predicting that with the most conservative

⁵ In places the traffic study incorrectly identifies the current zoning of the subject property is IL – Light Industrial – rather than IG.

forecast, rezoning the subject property from IG to MR would produce 31 additional p.m. peak hour trips above the “worst case scenario” with IG zoning. However, the applicant’s traffic engineer concluded it is not reasonable to assume the proposed MR zoning would result in more trip generation because of the significant limitations on available parking space. The staff report notes that based on this conclusion the applicant’s traffic study did not provide any intersection impact analysis on the assumption that no new trips would be generated. The staff report also responded that because of the nature of uses permitted in the MR Zone, it is theoretically possible to add vehicle trips by adding uses that could operate *during different hours* and share parking such as a daytime office and a nighttime restaurant. Finally, staff argues the applicant should be required to amend the Eastside Master Facilities Plan to account for the additional traffic that would be generated by MR development on the subject property.

The Hearings Officer understands staff’s concerns. However, I find that time shifting of uses likely would not result in additional *p.m. peak hour traffic* because, for example, new trips added by a restaurant would occur after the p.m. peak hour. And for the reasons set forth in the findings above, I find the applicant cannot be required to amend the Eastside Master Facilities Plan prior to obtaining approval of the proposed zone change because the master plan is part of the MR Zone and would not be applicable before the proposed zone change takes effect. However, I find that after the requested zone change is approved by the city council, the applicant will be required under Section 10-10.21A(4) to submit to the city a Master Development Plan for the subject property. Therefore, I find that to assure uses occurring on the subject property following approval of the zone change to MR will not produce traffic exceeding the capacity of affected streets and intersections, the applicant will be required as a condition of approval to submit a Master Development Plan to the Planning Division, and to obtain change of use site plan approval for any new uses on the subject property.

For the foregoing reasons, and with imposition of the condition of approval described above, the Hearings Officer finds the applicant’s proposal will promote both an orderly pattern and 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 above, much of the area surrounding the subject property already is developed or has received land use approval for future development. The staff report states, and the Hearings Officer agrees, that as a consequence the existing development potential is easier to evaluate in this area than for other areas of the city. The staff report notes the “Old Mill District” and the “Mill Quarter” areas are rapidly becoming desirable locations for a variety of commercial and office uses and high-end residential housing. The record indicates new residential housing is under construction nearby, and the city has received applications for additional residential development in the area surrounding the subject property.

The staff report states, and the Hearings Officer agrees, that the proposed zone change to MR would support the nearby residential development by authorizing needed services and potential

BRC/Lafky

PZ 05-579

jobs for nearby residents. In contrast, I find the existing IG zoning would have an adverse impact on the future residential development due to the potential for heavy truck traffic, noise and possible shift work. The staff report notes that if the proposed zone change were denied, and the subject property retained its IG zoning, the property could be negatively impacted by the loss of the heavier industrial tenants that are typically found in IG zones and that are incompatible with the emerging residential environment. The staff report also notes a similar potential conflict could occur with the adjacent IG-zoned property and development to the east of the subject property if the proposed zone change to MR were to be approved. However, the staff report asserts, and I agree, that this potential conflict could be minimized by the fact that the subject property is, and will continue to be, developed with light industrial and commercial uses rather than with residential uses. In addition, the record indicates the adjoining IG-zoned property is owned by the applicant who is in a position to control the types of uses on that property, thereby limiting potential negative impacts.

For the foregoing reasons, the Hearings Officer finds the applicant has demonstrated the proposed zone change from IG to MR will satisfy 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 MR Zone is set forth in Section 10-10.21A as follows:

- (1) **Purpose. The purpose of this zone is to implement the General Plan policies for the creative redevelopment of mill site properties adjacent to the Deschutes River. It is intended to allow for a mix of uses that:**
 - (a) **Provide a variety of employment opportunities and housing types;**
 - (b) **Foster pedestrian and other non-motor vehicle activity;**
 - (c) **Ensure functionally coordinated, aesthetically pleasing and cohesive site planning and design;**
 - (d) **Ensure compatibility of mixed-use developments with the surrounding area and minimize off-site impacts associated with the development; and**
 - (e) **Encourage access to, and enjoyment of, the Deschutes River.**

In this Hearings Officer's recent decision in *Unicel* (PZ 05-659), I held zoning district purpose statements generally do not establish mandatory approval criteria for quasi-judicial land use applications. However, I find Section 10-10.33(2)(a) does establish an approval criterion requiring that the proposed zone change be "consistent" with the zoning district purpose statement. Although the subject property is not adjacent to the Deschutes River, the record indicates it is part of the historic mill site and is connected to the river corridor by pedestrian

walkways and public sidewalks. The staff report states, and I concur, that the proposed zone change from IG to MR is consistent with the purpose of the MR Zone because it will further support the compatibility of mixed-use development within the surrounding area and will provide a variety of employment opportunities for nearby residents. Therefore, I find the applicant's proposal satisfies this criterion.

- (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 in detail in the findings above, incorporated by reference herein, the Hearings Officer has found the applicant's proposal will promote both the orderly pattern and sequence of growth. For these same reasons, I find the applicant's proposal will result in the orderly and efficient extension and provision of public services and will be consistent with the city's policies for providing public services.

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

FINDINGS:

1. Mistake. The applicant does not argue the proposed zone change is justified by a mistake in the subject property's original IG zoning, and the Hearings Officer finds there is no evidence in this record there was a mistake.

2. Change of Circumstances. The applicant argues the proposed zone change from IG to MR is justified by the following changes of circumstance since the subject property originally was zoned IG.

- First, the city adopted the MR Zone in 1995. The zone allowed the "Old Mill District" to develop and become a very popular destination.
- Second, the street system adjacent to the "Old Mill District" has been improved to the city's street standards, and these improvements have changed the subject property in significant ways. For example, the railroad spur that once served the mill district was removed to facilitate the improvements to Arizona Avenue as part of the Colorado/Arizona couplet. As a result, Arizona Avenue, once a dirt road, now is a two lane one-way street with curbs and sidewalks. In addition, Bond Street was improved to provide a connection between Industrial Way and downtown, also bisecting the subject property. And these transportation improvements increased traffic volumes along all streets adjacent to the subject property, making heavy truck traffic undesirable in the surrounding area.
- Third, industrial development and employment in general, and sawmills in particular, are no longer as influential in Bend's economy as they were when the subject property was

zoned IG. As a result, Bend's industrial-zoned lands are being utilized for uses ranging from light manufacturing to retail and office uses.

- Finally, the city recently annexed into the city's urban growth boundary (UGB) 513 acres of property designated for industrial development, making it possible to remove the IG designation from the subject property while still providing adequate land for future industrial development.

The Hearings Officer finds each of these changes of circumstances represents changes that could not have been anticipated at the time the subject property was zoned IG, and that justify the proposed zone change from IG to MR. Therefore, I find the applicant's proposal satisfies this criterion.

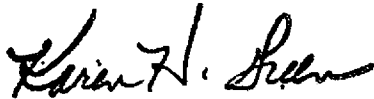
IV. DECISION:

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer hereby **RECOMMENDS APPROVAL** of the proposed plan amendment and zone change from General Industrial to Mixed Use Riverfront for the subject property, **SUBJECT TO THE FOLLOWING RECOMMENDED CONDITION OF ZONE CHANGE APPROVAL:**

1. The applicant/owner shall submit to the Planning Division a Master Development Plan for the subject property, and shall obtain change of use site plan approval for any new uses on the subject property.

Dated this 21st day of March, 2006.

Mailed this 21st day of March, 2006.



Karen H. Green, City of Bend Hearings Officer

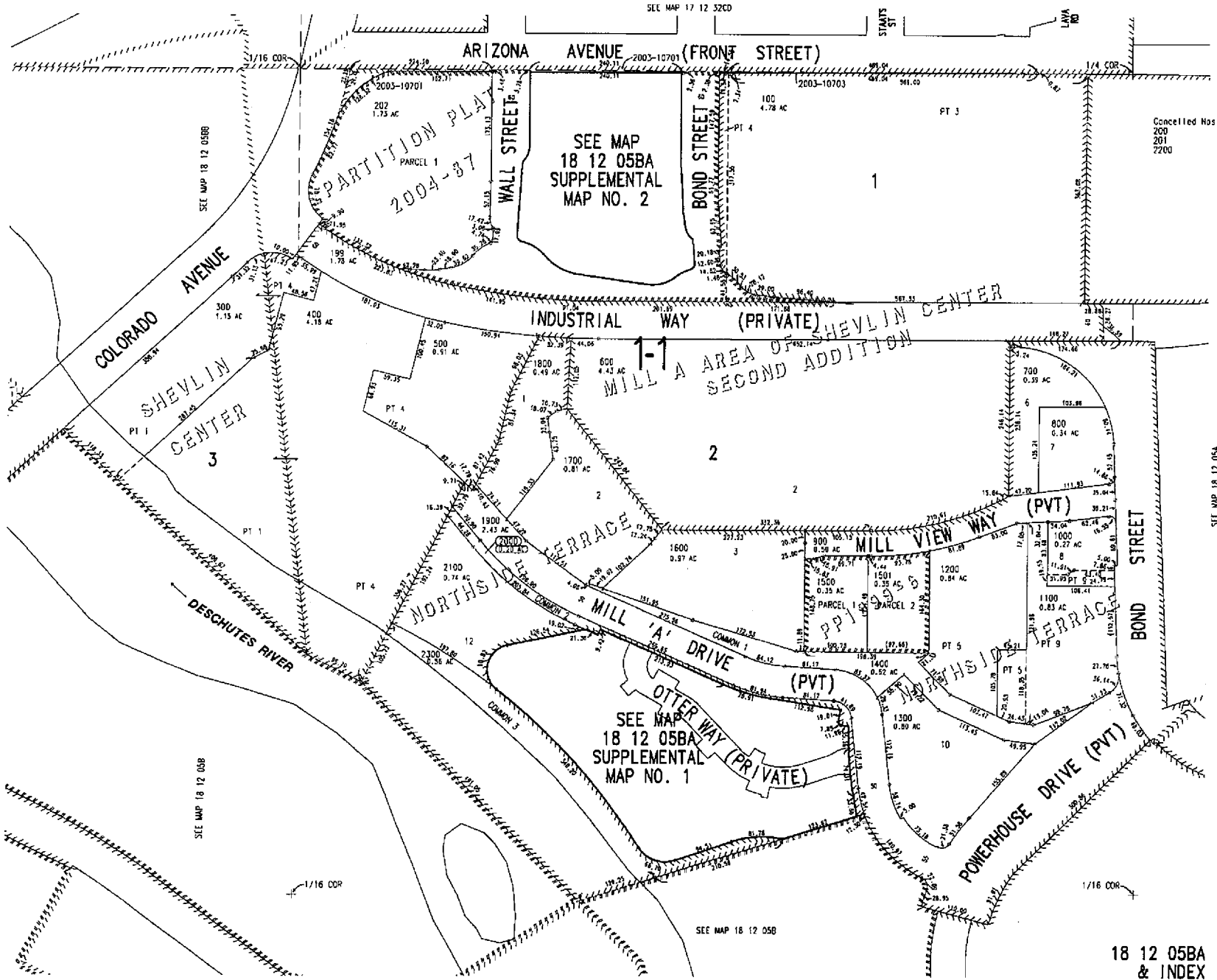
THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSE ONLY.

REVISED: 08/17/2005

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& INDEX

1" = 100'



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