



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

First Floor/Coastal Fax: (503) 378-6033

Second Floor/Director's Office: (503) 378-5518

Web Address: <http://www.oregon.gov/LCD>

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 012-05

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: 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
Heidi Kennedy, City of Bend

<paa> ya/

FORM 2

DLCD NOTICE OF ADOPTION

DEPT OF

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

(See reverse side for submittal requirements)

MAY 01 2006

LAND CONSERVATION
AND DEVELOPMENT

Jurisdiction: CITY OF BEND

Local File No.: PZ 05-704

(If no number, use none)

Date of Adoption 4-19-06

(Must be filled in)

Date Mailed: 04-28-06

(Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 11-08-05

☐ 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.≡

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 AN/A.≡

Same

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

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

Location: North of Hardy Rd in NW Bend Acres Involved: 5.8 Acres

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.: 012-05

(14810)

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: X 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: Bend La Pine School
District, Bend Metro Parks & Recreation, ODOT, Boyd Acres Neighborhood
Assoc.

Local Contact: Heidi Kennedy Area Code + Phone Number: (541) 617 4524

Address: PO Box 431 City: Bend

Zip Code+4: 97709 Email Address: hkennedy@ci.bend.or.us

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 this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the ANotice of Adoption is sent to DLCD.
6. In addition to sending the ANotice 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 Mara.Ulloa@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

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-2006

AN ORDINANCE AMENDING THE CITY OF BEND ZONING ORDINANCE NO. NS-1178, BY CHANGING THE ZONING MAP DESIGNATION OF CERTAIN REAL PROPERTY FROM RESIDENTIAL SUBURBAN LOW DENSITY (SR 2 1/2) ZONE TO URBAN STANDARD DENSITY (RS) ZONE.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council has held a public hearing, considering 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 Decision and Recommendation of the Hearings Officer dated February 17, 2006, File Number PZ-05-703 and 05-704, 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 in Exhibit "A" and depicted on Exhibit "B" from SR 2 1/2, Suburban Low Density Residential to RS, Urban Standard Density Residential. 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 19th day of April, 2006.

YES: 5

NO: 0

Authenticated by the Mayor the 19th day of April, 2006.


Bruce Abernethy, Mayor Pro Tem

ATTEST:

Patricia Stell, City of Bend Recorder

EXHIBIT A

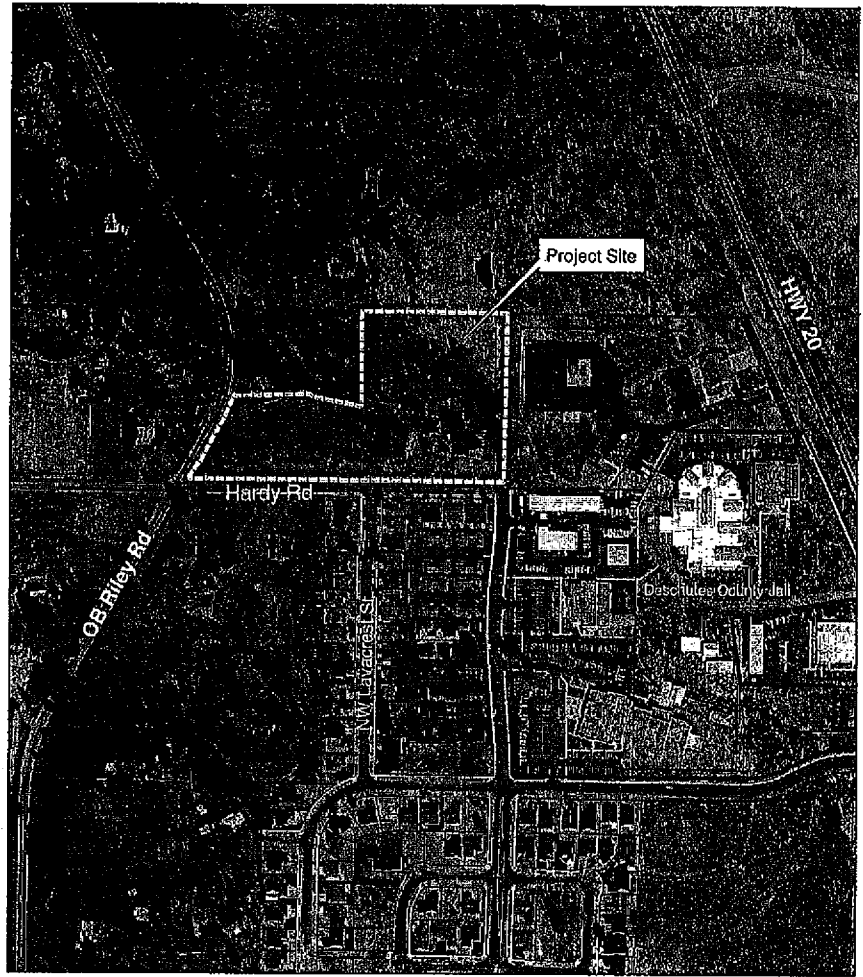
Proposed Tax Lot 100:

Beginning at the Northeast corner of Tract Two (2) of Glen Vista, a subdivision in Deschutes County, Oregon; thence South $0^{\circ}0'33''$ West along said tract boundary 266.74 feet; thence North $73^{\circ}7'40''$ West, 17.55 feet; thence North $77^{\circ}7'14''$ West, 58.27 feet; thence North $81^{\circ}4'10''$ West, 37.06 feet; thence North $57^{\circ}14'33''$ West, 16.06 feet; thence South $89^{\circ}58'33''$ West, 222.97 feet to the West boundary of said tract; thence along said West boundary through a non-tangent curve to the left having a radius of 388.12 feet, an arc length of 238.90 feet, a central angle of $35^{\circ}16'2''$, a chord bearing and distance of North $2^{\circ}35'45''$ West, 235.15 feet to the Northwest corner of said tract; thence South $89^{\circ}4'17''$ East, 357.38 feet to the Point of Beginning.

Proposed Tax Lot 200:


Parcel 1;

Beginning at the Northwest corner of Tract One (1) of Glen Vista, a subdivision in Deschutes County, Oregon; thence South $89^{\circ}54'17''$ East, 369.99 feet to the Northeast corner of said Tract One; thence South $0^{\circ}10'11''$ West, 467.60 feet to the Southeast corner of said Tract One; thence South $89^{\circ}51'47''$ West, 833.39 feet to the Southwest corner of Tract Two (2) of Glen Vista; thence North $29^{\circ}7'15''$ East, 169.08 feet along the West boundary of said Tract Two; thence continuing along said boundary through a tangent curve to the left having a radius of 388.12 feet, an arc length of 95.40 feet, a central angle of $14^{\circ}5'2''$, a chord bearing and distance of North $22^{\circ}4'44''$ East, 95.16 feet; thence North $89^{\circ}58'33''$ East, 222.97 feet; thence South $57^{\circ}14'33''$ East, 16.06 feet; thence South $81^{\circ}4'10''$ East, 37.06 feet; thence South $77^{\circ}7'14''$ East, 58.27 feet; thence South $73^{\circ}7'40''$ East 17.55 feet to the West boundary of said Tract One; thence North $0^{\circ}0'33''$ East along said tract boundary to the Point of Beginning.

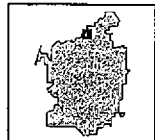


**PZ 05-703, 05-704
Hardy Rd Subdivision**

Aerial photo acquired March 2004

 Bend City Limits

0 250 500 Feet



DECISION BY THE BEND CITY COUNCIL

FILE NUMBER: PZ 05-703 and PZ 05-704

HEARING DATE: March 15, 2006, Public Hearing

APPLICANT: Alterra Investments, LLC
Jason Adams/Ben Hinchliffe
P.O. Box 1349
Bend, OR 97709

PROPERTY OWNERS: Miller, Mikel
Marcum-Miller, Lynn S.
20288 Hardy Road
Bend, OR 97701

Schulzke, Richard A.
63380 O.B. Riley Road
Bend, OR 97702

ENGINEER: Otak, Inc.
Paula M. Mason/Corey Charon
333 SW Upper Terrance Drive
Bend OR 97702

REQUEST: Applicant requests approval of a Zone Change from Suburban Low Density Residential (SR 2 1/2) Zone to Urban Standard Residential (RS) Zone for the 5.8-acre subject property. The applicant is also requesting approval of a 36 lot single family residential subdivision for the subject property.

LOCATION: The subject property is on the north side of Hardy Road, east of O.B. Riley Road and west of the future alignment of Brita Street. The subject property is identified on the Deschutes County Tax Assessor's Map 17-12-17DB, Tax Lot 100, the southern portion of Tax Lot 200; and Tax Map 17-12-17D, Tax Lot 105. A lot line adjustment to separate the northern portion of Tax Lot 200 from the site will be submitted separately.

After consideration of the written materials submitted by the City of Bend Public Works Department, in its letter dated March 15, 2006, and the decision of the hearings officer, the City Council affirms the written decision of the hearings officer as provided herein and as supplemented by the following additional findings and additional condition of approval. The facts stated in the Public Works Engineering Division letter of March 15, 2006 are hereby adopted by the City of Bend.

Any finding of the hearings officer that is inconsistent herewith is modified to be consistent with this decision. All conditions of approval imposed by the hearings officer are affirmed by this decision, to the extent such conditions are consistent herewith. Any condition of approval imposed by the hearings officer inconsistent with this decision is hereby modified to be consistent with this decision.

Additional Findings Regarding Zone Change Approval:

1. OB Riley Road is not currently constructed to City of Bend standards and specifications.

2. The present character of OB Riley Road is essentially rural, and it is lacking curbs, sidewalks, bicycle lanes, turn lanes, medians, drainage systems, site distances, road grades and ROW width necessary to bring it up to city standards.
3. OB Riley Road is expected to experience approximately 15,000 average daily vehicle trips per day, with the buildout of available residential land that will utilize the corridor.
4. OB Riley Road currently handles approximately 2,700 average daily vehicle trips, and is adequate for that intensity of use, but is not adequate to handle up to 15,000 average daily vehicle trips without extensive improvements, to bring it up to city standards for a city collector street in regard to curbs, sidewalks, turn lanes, bike lanes, sight distances, road grades and drainage facilities.
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

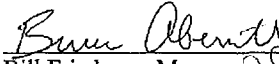
method, except to the extent that such improvement may have been required by the hearings officer as an exaction under *Dolan v. City of Tigard*.

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

1. Applicant shall execute the Waiver of Remonstrance substantially in the form attached hereto as Exhibit A as a condition of approval of the zone change in this land use application.

Dated April ____, 2006



Bill Friedman, Mayor P.D. Tem
Bruce Abernethy

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 05-703 and PZ 05-704
County of Deschutes)

WHEREAS, Mikel Miller, Lynn S. Markum-Miller and Richard A. Schulzke, hereinafter Owners, seeks approval of a zone change in City of Bend land use file PZ 05-703 and PZ 05-704 for the following described real property located within the Bend city limits, of Deschutes County, Oregon;

See: Exhibit A hereto; and

WHEREAS, the City of Bend, has conditioned approval of PZ 05-703 and PZ 05-704 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. Owners hereby waive their 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. Owners, however, do not waive their 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, Owners do 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 Owners 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 Owners' heirs, executors, assigns and successors.

IN WITNESS WHEREOF, this document is executed this ____ of _____, 2006.

Mikel Miller

STATE OF OREGON)
) ss
County of Deschutes:)

I certify that I know or have satisfactory evidence that Mikel Miller is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in this instrument.

DATED this _____ day of _____, 2006

Notary Public for Oregon
My commission expires: _____

Lynn S. Markum-Miller

STATE OF OREGON)
) ss
County of Deschutes:)

I certify that I know or have satisfactory evidence that Lynn S. Markum-Miller is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in this instrument.

DATED this _____ day of _____, 2006

Notary Public for Oregon
My commission expires: _____

Richard A. Schulzke

STATE OF OREGON)
) ss
County of Deschutes:)

I certify that I know or have satisfactory evidence that Richard A. Schulzke is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in this instrument.

DATED this _____ day of _____, 2006

Notary Public for Oregon
My commission expires: _____

ACCEPTANCE BY CITY OF BEND

Accepted: _____
Harold A. Anderson, City Manager

STATE OF OREGON)
)ss
County of Deschutes)

This instrument was acknowledged before me on _____
by _____.

NOTARY PUBLIC FOR OREGON
My Commission Expires: ____



710 WALL STREET
PO BOX 431
BEND, OR 97709
[541] 388-5505 TEL
[541] 388-5519 FAX
WWW.ci.bend.or.us

DATE MAILED: February 17, 2006

APPLICANT: Alterra Investments, LLC
Jason Adams

FILE NUMBER: PZ 05-703 & PZ 05-704

BILL FRIEDMAN
Mayor

BRUCE ABERNETHY
Mayor Pro Tem

JOHN HUMMEL
City Councilor

R. DAVE MALKIN
City Councilor

CHRIS TELFER
City Councilor

LINDA S. JOHNSON
City Councilor

JIM CLINTON
City Councilor

HAROLD A. ANDERSON
City Manager

MARGARET ECHEVESTE
Finance Director

ANDREW JORDAN
Police Chief

LARRY LANGSTON
Fire Chief

PATRICIA STELL
City Recorder

Enclosed is a copy of the Hearings Officer recommendation to City Council and decision regarding the above referenced files. The hearing was held on December 29, 2005, and the Hearings Officer **recommends approval** of the proposed zone change and has **approved** the proposed subdivision tentative plan application as outlined in the enclosed report.

This Decision or the conditions therein, may be appealed by filing a written appeal with the Planning Division within 12 days. The appeal must contain specific grounds relied upon for appeal, and be accompanied by a \$500.00 fee.

If you do not understand something in the Decision of the Hearings Officer, or if you have any other questions, please call our office at 388-5580.

CITY OF BEND COMMUNITY DEVELOPMENT DEPT
PLANNING DIVISION

Enclosure

C Gary Marshall, Fire Department
Michael Magee, Engineering
Robin Lewis, City Transportation Engineer
Planning Commission
Mikel Miller & Lynn Marcum-Miller
Richard Schelzke
Otak-Paula Mason and Corey Charon
Dan Kiesow
Jayson Bowerman
Donna Pearson

**HEARINGS OFFICER'S DECISION AND RECOMMENDATION
TO
CITY COUNCIL**

FILE NUMBER: PZ 05-703 and PZ 05-704

HEARING DATE: Thursday, December 29, 2005 at 7:00 P.M.
City of Bend Council Chambers
710 NW Wall Street

APPLICANT: Alterra Investments, LLC
Jason Adams/Ben Hinchliffe
P.O. Box 1349
Bend, OR 97709

PROPERTY OWNERS: Miller, Mikel
Marcum-Miller, Lynn S.
20288 Hardy Road
Bend, OR 97701

Schulzke, Richard A.
63380 O.B. Riley Road
Bend, OR 97702

ENGINEER: Otak, Inc.
Paula M. Mason/Corey Charon
333 SW Upper Terrance Drive
Bend OR 97702

REQUEST: Applicant requests approval of a Zone Change from Suburban Low Density Residential (SR 2 1/2) Zone to Urban Standard Residential (RS) Zone for the 5.8-acre subject property. The applicant is also requesting approval of a 36 lot single family residential subdivision for the subject property.

LOCATION: The subject property is on the north side of Hardy Road, east of O.B. Riley Road and west of the future alignment of Brita Street. The subject property is identified on the Deschutes County Tax Assessor's Map 17-12-17DB, Tax Lot 100, the southern portion of Tax Lot 200; and Tax Map 17-12-17D, Tax Lot 105. A lot line adjustment to separate the northern portion of Tax Lot 200 from the site will be submitted separately.

REVIEWER: Heidi Kennedy AICP, Senior Planner

HEARINGS OFFICER: Sharon R. Smith

APPLICABLE CRITERIA:

- (1) City of Bend Zoning Ordinance No. NS-1178, Chapter 10
 - (a) 10.10.9C, Suburban Low Density Residential Zone (SR 2 1/2)
 - (b) 10.10.10, Urban Standard Residential Zone (RS)
 - (c) 10.10.33 (2), Standards for Zone Change
- (2) City of Bend Subdivision Ordinance, NS 1786
- (3) City of Bend Land Use Review and Procedures Ordinance, NS-1775
- (4) Bend Area General Plan
- (5) Oregon Administrative Rules 660-12, Transportation Planning Rule

FINDINGS OF FACT:

1. **LOCATION:** The subject property is on the north side of Hardy Road, east of O.B. Riley Road and west of the future alignment of Brita Street. The subject property is identified on the Deschutes County Tax Assessor's Map 17-12-17DB, Tax Lot 100, the southern portion of Tax Lot 200; and Tax Map 17-12-17D, Tax Lot 105.
2. **ZONING:** The subject property is zoned Suburban Low Density Residential (SR 2 1/2) and is designated Urban Standard Density on the Bend Area General Plan Map.
3. **SITE DESCRIPTION AND SURROUNDING LAND USES:** The subject property consists of three parcels, or portions of parcels located on the north side of Hardy Road, east of OB Riley Road. The subject properties are described on Deschutes County Assessor's Map 17-12-17DB as Tax Lots 100 and 200; and Deschutes County Assessor's Map 17-12-17D, Tax Lot 105. The zone change and subdivision will encompass all of Tax Lot 105 and 100 and the south half of Tax Lot 200. An application for a lot line adjustment will be submitted separately. Together, the development site is 5.80 acres. Each lot has an existing single-family dwelling and various outbuildings.

The site is relatively level along the southern portion. This portion of the site has been used as pastureland and the majority of native vegetation

has been removed. The Swalley Irrigation Canal transects the site from the east in a northwest direction. The canal acts as a dividing line between the south area of the site and the northeast area, which includes a large rock outcrop. As shown on the topography map, the outcrop rises 22 feet with an approximate grade change of 11 percent. The outcrop levels off then gradually slopes back to the northeast corner of the property.

4. **PROPOSAL:** The applicant requests approval of a Zone Change from Suburban Low Density Residential (SR 2 1/2) Zone to Urban Standard Residential (RS) Zone for the 5.8-acre subject property. The applicant is also requesting approval of a 36 lot single family residential subdivision for the subject property.
5. **PUBLIC NOTICE AND COMMENTS:** The City of Bend Planning Division sent notices of the request to surrounding owners of record of property as shown on the most recent property tax assessment roll within 250 feet of the subject property. No comments were submitted prior to the hearing regarding the zone change. At the hearing one neighbor testified in support of the zone change and one neighbor testified against.
6. **APPLICATION ACCEPTANCE:** The applications were received on October 28, 2005. The application was accepted for processing on November 27, 2005 and scheduled for a hearing on December 29, 2005. The record remained open until January 24, 2006. Staff and applicant submitted evidence and two neighbors also submitted letters.
7. **LOT OF RECORD:** The properties identified at Tax Lots 100 and 200 on Deschutes County Assessor's map 17-12-17DB are legal lots of record as they both have been issued septic permits from Deschutes County Environmental Health Division when the properties were located in Deschutes County jurisdiction. The properties have since been annexed into the City limits. Tax lot 105 is a strip of land that is located in the future alignment area for the extension of Britta Street and will be required to be dedicated to the City of Bend for road purposes.

CONCLUSIONARY FINDINGS:

CONFORMANCE WITH THE CITY OF BEND ZONING ORDINANCE NS-1178;

CHAPTER 10; 10.10.9D; URBAN LOW DENSITY RESIDENTIAL ZONE OR RL AND CHAPTER 10; 10.10.10; URBAN STANDARD DENSITY RESIDENTIAL ZONE (RS)

Section 9C. Suburban Low Density Residential Zone or SR 2 1/2.

- (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.

Section 10. Urban Standard Residential Zone or RS Zone.

- (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.

FINDING: The subject property is currently zoned Suburban Low Density Residential (SR 2 1/2). The Hearings Officer finds that if the zone change and subdivision are approved, the lots will be served by City services, including sewer, water, fire, school and street transportation/network.

The applicant has also submitted an application for a 36 lot residential subdivision on the subject property on the basis that the zone change will be approved. The Urban Standard Density Residential Zone establishes a residential density range of 2.0 to 7.3 dwellings per gross acre. The proposed 36 lot residential subdivision on approximately 5.8 acres will allow for residential densities of 6.2 dwelling units per acre. The Hearings Officer finds that the proposed subdivision density is consistent with the recommended densities of the RS Zone.

**CONFORMANCE WITH CITY OF BEND ORDINANCE
CHAPTER 10; 10.10.33(2), STANDARDS FOR ZONE CHANGE**

- (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.
 - B. That the change will not interfere with existing development, development potential or value of other land in the vicinity of the proposed action.
 - C. That the change in classification for the subject property is consistent with the purpose and intent of the proposed zone classification.

- D. That the change will result in the orderly and efficient extension or provision of public services. Also, that the change is consistent with the City of Bend policy for provision of public facilities.
- E. That there is proof of a change of circumstance or a mistake in the original zoning.

FINDING: Policy 23 from the comprehensive plan reads as follows: "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. A companion policy, Residential Policy No. 21 reads as follows: "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. Initial comments received from the Engineering Division with regards to sewer connection included several detailed requirements for the design of the extension of sewer facilities to and through the subject property as well as specific design and location requirements for the pump station proposed for this project. The applicant met with Engineering and the issues regarding sewer have been resolved. From the comments received from the City Engineering Division, the Hearings Officer concludes that the City sewer system in general is able to accept the proposed development subject to the specific design requirements listed in this decision and recommendation.

In two past zone change decisions (PZ01-35 and PZ02-25/PZ02-26), it was found that where the proposed zone change is intended to bring the zoning into conformance with the plan designation, Policy 23 should govern. Additionally it was found that the language of Policy 23 is more focused and is expressed in mandatory terms in relation to a specific set of circumstances – where a zone change is proposed to bring the zoning into conformance with the plan and that the zone change itself has no impact on the provision of public services. The zone change will not create any more traffic impact or impact on other public services. It is the later development action that will trigger the impact on public services. It is at the development application stage when it is appropriate to determine the particular mitigation requirements for a development's impact. The Hearings Officer finds that the proposed 36-lot subdivision must still demonstrate through the subdivision approval process that there are adequate public facilities to serve the proposed subdivision.

Based on the information provided with this application and the findings stated herein, the Hearings Officer finds that the applicant's proposal to rezone the subject property to RS meets the plan's intent for locating standard density residential areas where sewer service is available. The Hearings Officer recommends **approval** of the requested zone change from Suburban Low

Density Residential to Urban Standard Residential for the approximately 5.8 acre subject property.

**CONFORMANCE WITH CITY OF BEND ORDINANCE, CHAPTER 10;
10.10.10; URBAN STANDARD DENSITY RESIDENTIAL**

(3) **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.

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

(a) Single-Family dwelling.

FINDING: The submitted tentative plan map and burden of proof report indicates that the proposed use of the subdivision is residential.

(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.

FINDING: No new buildings are proposed with this application. The Hearings Officer finds that there are existing structures on the property that will need to be relocated or removed from the property in order to comply with new setback requirements from the proposed new property lines. According to the submitted existing conditions plan map, the buildings will either be relocated or removed from the property. As a condition of approval, all existing structures on the property must be removed or relocated in order to comply with all minimum setback, lot coverage and clear vision requirements from all new lot lines.

(5) **Lot Requirements.** The following requirements shall be observed:

(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 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.

- (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.

FINDING: The proposed subdivision area was designated Residential Standard Density on the Bend Area General Plan map that was adopted on December 2, 1998. The applicant has applied for a rezone application from Suburban Low Density Residential to Urban Standard Density Residential. The area of the zone change includes approximately 5.8 acres. The proposed lots all exceed the minimum area of 4,000 square feet with an overall density of approximately 6.2 units per acre. In addition, all the lots within the proposed subdivision meet or exceed the minimum required width of 40 feet.

- (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:
- A. The lot is within a subdivision platted after August 6, 1997 and the garage is setback a minimum of 20 feet from the front property line, and
 - B. The lot fronts on a local public or private street.
- (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.

FINDING: No buildings are proposed with this application. The Hearings Officer finds that compliance with criteria c through g will be reviewed during the future building permit review process for development of single-family dwellings on the lots.

- (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.

FINDING: Section 24 requires the provision of a minimum of two off-street parking spaces for each single-family residence. The Hearing Officer finds that the proposed lot sizes are large enough to accommodate the provision of a minimum of two off-street parking spaces as is evidenced by existing similar size lots within Bend that are developed with dwellings that include a double car garage.

(7) Other Required Conditions. See Section 25 applying to Special Uses.

FINDING: No special uses are proposed with this application. Therefore, the Hearings Officer finds that this criterion is not applicable.

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

(a) 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.

FINDING: According to the Deschutes County Assessor's maps, the subject property does not abut any residential lots larger than 8,000 square feet created by a subdivision plat. Therefore, the Hearings Officer finds that this criterion is not applicable.

II. CONFORMANCE WITH THE CITY OF BEND LAND DIVISION ORDINANCE, NS-1786;

ARTICLE III LAND DIVISION – APPLICATION PROCEDURE

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.

FINDING: According to the submitted tentative plan and burden of proof statement, the applicant is proposing the development of the subdivision in two phases and has included the above necessary information on their plans.

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.

FINDING: The applicant is not proposing a master development plan. Therefore, the Hearings Officer finds that this section is not applicable to the proposed project.

CONFORMANCE WITH CITY OF BEND SUBDIVISION ORDINANCE NS-1786, SECTION 3.060, REQUIRED FINDINGS FOR LAND DIVISION APPROVAL

The Review Authority shall not approve a tentative plan for a proposed subdivision or partition unless the Review Authority 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.

FINDING: According to the submitted burden of proof report, *"The proposed subdivision is in keeping with the developing nature of the surrounding area. As noted elsewhere in this Burden of Proof Statement, residential subdivisions currently exist south of the subject property. The property to the north is zoned Urban Area Reserve(UAR) The parcels west and south of the property are designated RS on the BAGP map, so are eligible for RS zoning in the same manner as the subject property.*

The proposal contributes to the orderly extension of streets, sewer, and water facilities by continuing the City's public grid system and by bringing the facilities to and through the subject property to facilitate development of the surrounding parcels.

The subject property lacks streams, lakes, "special" terrain features and other natural resources. It has no inventoried Goal 5 resources. It is not an area of special interest as determined by the City of Bend."

The Hearings Officer finds that the proposed subdivision is in keeping with the developing nature of the nearby area to the south. Residential developments have been approved and constructed in this area over the past few years. The subdivision will also contribute to the orderly extension of sewer and water facilities by bringing the facilities to and through the subject property. In addition, the property lacks identified areas of special interest according to the City of Bend General Plan. In addition, the proposed density of development for this property is approximately 6.2 units per acre, within the range of density allowed in the RS General Plan map designation.

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

FINDING: The Hearings Officer finds that "public facilities" includes infrastructure for sewer, water, roads and storm drainage. "Public services" includes services such as police and fire. An analysis of the proposal on each of these facilities is discussed below:

SEWER:

According to the submitted burden of proof, City of Bend sewer is available to the subject property. City of Bend Engineering Division comments include the

requirement that the applicant submit engineered sewer, water, street and/or Grading/Drainage Plans for public improvements on-site to City Policy and Standards and Specifications. All water and sewer plans that are part of a site plan, or are being constructed outside of a public way, shall include any and all site features of the development, existing or proposed that may affect the City facilities. No building permits will be issued until all City infrastructure is completed, including paved access provided to all fire hydrants and manholes.

In addition, the Engineering Division is requesting that the applicant extend all proposed sewer mains to and through to the northern boundary of their respective right of way for future development. The public sewer shall not be allowed to terminate in locations shown. Sewer shall be installed in the public Right of way per standards and specifications. The applicant shall extend sewer to and through the western boundaries in accordance with Cob standards, specifications and policies. The proposed sewer in the western alley shall not be allowed. The sewer to serve lots 1-5 shall be installed in Ob Riley Road.

Lastly, the applicant originally had shown the gravity sewer system collecting at the Hardy Road pump station. According to the Engineering Division comments, gravity flowing sewer uphill is not common engineering practice. The natural grade of the land is downhill to the west and the gravity main should be extended in that direction to orderly develop land to the west. Extension of the gravity main to the west can serve a vast majority on the Glen Vista Area without creating an undue burden upon City facilities. In addition, Mr. Kiesow, a neighbor, expressed concerns with the sewer plans that included enlarging the temporary pump station. Subsequent to the close of the hearing, during the period of time the record remained open, the applicant, Mr. Kiesow and Engineering Division staff met to resolve the concerns regarding sewer. Applicant submitted a supplemental memorandum providing that two options are available. The first option was to obtain an easement with the adjacent property owner to the west of the existing pump station to allow a 7 foot by 31 foot easement in which a wet well could be located. If the City were to obtain easement control of the existing pump station from Mr. Kiesow, a connection could be made from the existing pump station to the new wet well on the adjacent property with no interference to the existing easement on Mr. Kiesow's property. This wet well could accommodate the existing deficiency on the site and provide for the 36 lots proposed with the applicant's development as well as providing an additional reserve for future development in the immediate area. The second option would be to negotiate with Mr. Kiesow to enlarge the existing easement around the pump station. Mr. Kiesow tentatively agreed to this option, which would allow for the placement of a wet well on his property. This would accomplish the result of allowing additional capacity for the subject 36 lots. Applicant requested that the proposed conditions of approval be modified to allow either option at the discretion of the applicant upon concurrence of the Engineering Division. The Engineering Division also requested a dry sewer line be installed within the

Hardy Road right-of-way to allow for future connectivity to a future regional pump station. It appears that there are at least two alternatives that would satisfy the Engineering Division with respect to sewer adequacy. The Hearings Office finds that the applicant will be required to provide an alternative sewer system acceptable to the Engineering Division. This will be a condition of approval.

WATER:

The Hearings Officer finds that the subdivision is proposed to be served by City Water. Nothing in the record, suggests that this proposal will cause any capacity problems for the city's water system. Comments received from the Engineering Division state that the applicant shall meet the water flow requirements of the Fire Code and all city maintained facilities shall have full width exclusive utility easements at 20 feet for water outside of any right-of-way areas. The applicant has shown the public water main in Britta Street within private property to the east. Engineering has requested that the applicant obtain a 20' exclusive easement for any public utility on private property and all water service lines to the property not being utilized shall be cut at the main and abandoned. These requirements will be made conditions of approval.

The City of Bend Fire Department has commented that a minimum fire flow of 1,000 gallons per minute at 20 p.s.i. residual pressure and fire hydrants will need to be spaced no greater than 500 feet apart. The fire flow requirement is based on Type V-B building construction not to exceed 3,600 square feet. The applicant has submitted a recent fire flow analysis which indicates that 1,567 gallons per minute (GPM) are available to the site with certain water line improvement assumptions. Therefore, the Hearings Officer finds that the minimum fire flow is available to the site. The Hearings Office requires as a condition of approval, all requirements of the Bend Fire Department for fire protection within the proposed subdivision shall be met, including hydrant locations and fire apparatus access roads.

STREETS:

The applicant submitted a transportation site review study addressing the impact of approving the proposed zone change and accompanying development proposal. The traffic analysis was prepared by Ferguson & Associates. The report indicates that the impact of this project will not change the functional classification of or the standards applicable to any affected streets.

Initial comments from Long Range Planning stated that the traffic impact study is incomplete because it does not contain an analysis of year 2020 conditions. However, comments received from the Transportation Planning Division stated that the Traffic Impact Analysis report was adequate as submitted and will require a contribution of \$836.00 to Empire and O.B. Riley as the applicant's pro-rata share of their impacts on these streets. Specifically, Engineering has indicated that the applicant's traffic analysis shows the intersection of Empire and

O.B. Riley Road will fail with existing and approved, but not constructed trips. The City estimates that road improvements at the intersection will cost \$365,000. As in previous, similar subdivision decisions, the City needs to also collect a proportionate share contribution to the intersection of O.B. Riley Road and Empire. A copy of the Engineering Division calculation is available for review as part of City File PZ05-703 and 05-704. The Engineering Division has revealed that the estimated contribution to be \$836. As a condition of approval the applicant shall contribute \$836 for future transportation system improvements. The Hearings Officer finds that this requirement or condition is fully justified as a proportionate exaction of property to mitigate the transportation system impacts caused by the proposed development.

Under *Dolan*, a developer can be required to dedicate property to mitigate the impact of the development. To be constitutional, the required dedication must be roughly proportional to the impact of the development and the City must establish a nexus between the property to be contributed and the impact of development. In practical application, this means that a developer can be required to provide new transportation infrastructure to handle the new vehicle trips that the development would place on the system. The developer's obligation to mitigate impact exists whether the capacity enhancing improvement is immediately needed, or not needed until a later date.

Dolan analyzed the constitutionality of a dedication of real property to mitigate the impact of the development. In this case, the city is proposing that the developer contribute cash. Cases have treated both kinds of exactions the same, finding that an exaction of either a possessory form or property (such as real property) or a non-possessory form of property (such as money) are both constitutionally permissible, so long as the *Dolan* requirements of nexus and rough proportionality are satisfied.

As a condition of approval, based on the findings above, as well as the conditions of approval, the Hearings Officer finds that the proposed road system for the development will not create an excessive demand on the street system or create traffic safety hazards, but will have impacts all the same. Therefore, this contribution be shall made a condition of approval.

Several additional comments from Engineering and Transportation Engineering addressed the design of all new alleys, local proposed streets and the improvements to existing streets abutting the subdivision and arguments on why the requested changes are necessary to meet minimum City standards. The detailed requirements are listed below.

Alley Improvements

Specifically, Engineering has requested that the applicant improve alleys in compliance with Table "B" of the development code and shall comply with the Clear Vision Ordinance. Show clear vision areas on plan. Transportation

Engineering has requested the applicant add at alley C and alley D and also at alley A. Private alleys shall be no less than 20' in width and have no greater than 10% centerline grades. All private alleys shall have public access easements granted over them and be extended to the northern property boundaries for future development. Alley "A" shall be extended to the northern boundary for use on future front loading homes to the north. Applicant objected to the extension of Alley B to the north beyond the north boundary of the proposed lot line adjustment due to extreme topography and the desire to preserve a Ponderosa tree. The Hearings Officer finds that the goal to preserve the tree and accommodate the topography justifies the lack of extension of Alley B north of the north boundary of the lot line adjustment. Accordingly, Alley B will be extended to the north boundary, but will not be required to be extended to the north end of Lot 36. All the proposed lots within the subdivision will include alley access except lots 32 through 36. The Hearings Officer finds that as proposed, alleys identified as "A", "C" and "D" will provide for ingress and egress that does not include dead end design or require people to try and turn around in alley in order to exit the alley. The Hearings Officer finds that the future redevelopment of the property to the north will also include restricted access to O.B. Riley Road and require alley access to provide vehicle access to any future lots abutting O.B. Riley Road. Therefore, the Engineering request to extend Alley "A" to the north boundary is necessary for the orderly development or future redevelopment to the north. This shall be made a condition of approval.

O.B. Riley and Hardy Road Improvements

According to the Bend Urban Area Roadway System Plan, O.B. Riley Road is a designated major collector. The Hearings Officer finds that the Applicant shall improve property frontage along OB Riley road to current COB collector standards. Engineering has indicated that the proposed OB Riley street section is substandard and shall not be allowed. Improvements include curbs placed 26' from centerline, AC widening, sidewalk placed property tight, drainage control and off site tapers. Applicant has shown public water main installed in OB Riley road. Engineering has stated that the applicant shall overlay OB Riley road to cover all main and service trench cuts and dedicate additional right of way as needed at the intersection of Hardy and OB Riley for sidewalk improvements.

Transportation Engineering comments have listed the requirement to provide a median across Hardy Rd unless the applicant can submit proof into record that the intersection meets AASHTO intersection sight distance for 45mph or 85% speed (whichever is greater). Note this also forces a change to Glen Vista but it is apparent they also do not have adequate sight lines. A speed order exists for O.B. Riley Rd in vicinity of Hardy Rd for 45mph however the traffic speed is high in this area. Transportation Engineering has stated that an advisory speed should not be used to establish whether an intersection meets AASHTO standards for intersection sight distance. Applicant should be made to use the

45mph posted speed or the 85% speed whichever is greater, to assess whether Hardy or O.B. Riley has adequate sight distance.

Transportation Engineering believes that the applicant does Not have adequate sight distance at Hardy Ln and O.B. Riley Rd for lefts out (Hardy westbound to O.B. Riley southbound) or for a stopped left in vehicle (southbound O.B. Riley does not have adequate stopping sight distance). Given this; Hardy Rd should have right in right out turn restrictions constructed by the applicant and they must show a viable route out of the neighborhood. Perhaps at Halfway Rd or applicant could improve sight lines. Either must meet with City of Bend Engineering approval. As a condition of approval, all proposed local public and collector streets shall be constructed in conformance with Table "A" of the development code and shall include medians along Collector Street frontages and curb extensions on the opposing side of Hardy road.

Engineering has indicated that Hardy road currently has 34' of pavement with curbs along both sides and that the applicant shall not modify the existing cross-section of hardy road as proposed. The existing street was designed for the emergency vehicles entering and existing the County Sheriff, State patrol, and Cob Fire complexes. The applicant shall install sidewalks property tight along the frontage for Hardy road. Applicant shall overlay Hardy road to cover trench cuts after construction of proposed utilities and provide sidewalks along lot frontages in accordance with City standards and specifications, sidewalks to be installed property tight. In addition, all public rights of way shall be dedicated free and clear of any encumbrances. All existing easements shall be modified or quitclaimed prior to the dedication of public right of way.

Finally, it appears the existing dwelling (to be LLA) takes access via the proposed subdivision. It should be a condition of approval (for the subdivision and LLA) that the applicant take access to the proposed local right of way of street "A" and not take access to OB Riley Road. The Hearings Officer finds that this will promote safety and restrict access to O.B. Riley Road, a designated collector as required in the City of Bend traffic policies. In addition, the applicant shall be required to formalize the proposed lot line adjustment prior to final plan approval of the subdivision.

Britta Street Improvements

Additional Engineering comments indicate that the centerline alignment of Britta street onsite and to the south appear to be misaligned. Engineering has stated that the proposed Britta street section is substandard and shall not be allowed. The applicant shall establish the centerline of Britta street from the intersection of Poe Sholes (nearest full improvement) through the northern property boundary. The applicant shall dedicate right of way as necessary to align the street within the horizontal constraints of the standards and specifications. The property to the east (City of Bend Fire Department training center) was required do dedicate

40' of right of way with a previous land use action. The right of way was never dedicated for reasons unapparent. The applicant is showing a public street on an access easement, this shall not be allowed and the applicant shall obtain necessary right of way for the proposed improvements and shall improve Britta Street full width to current COB collector standards in accordance with Table "A" of the development code. Since these comments were received from Engineering, an e-mail response from the Fire District indicated that District is in the process of dedicating the right of way as originally required with their previous decision with the assistance of the applicant. As a condition of approval that the applicant shall be required to establish the centerline of Britta Street from the intersection of Poe Sholes (nearest full improvement) through to the northern property boundary and shall improve the extension of Britta Street to full width City of Bend collector standards in accordance with Table "A", including landscaped median and bike lanes, sidewalk abutting the subject property and drainage facilities.

The Hearings Officer finds that the applicant's traffic analysis and supplemental information, as well as the City's Engineering and Transportation Engineer comments, indicate that with the proposed development the surrounding street system will function at an acceptable level of service with the recommended conditions of approval.

POLICE AND FIRE PROTECTION:

This property is within the Bend City limits and therefore is served by the Bend Police and Fire Departments.

SCHOOLS:

The Hearing officer finds that in November 2001, the voters in the Bend-La Pine School District passed a bond measure to fund new school facilities. Based on this information, the Hearings Officer finds that adequate school facilities will be provided for the school children of the future proposed subdivision.

- 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.**

FINDING: The Hearings Officer finds that the proposed subdivision contributes to the orderly development of the Bend area transportation network by extending streets and walkways through the development. The proposed "Hardy Road Development" subdivision will extend streets and sidewalks from Hardy Road and Britta Street to proposed lots. According to the submitted tentative plan map, pedestrian sidewalks will be provided along two sides of all internal streets

in accordance with City of Bend standards. Development standards for roads abutting the proposed subdivision have been addressed above. In addition, according to the submitted burden of proof statement, the proposed development will not conflict with existing public access easements within or adjacent to the land division.

Based on the above findings, the information submitted by the applicant including the proposed improvements, the Hearings Officer finds that the applicant can meet these criteria for providing orderly development of the Bend area transportation network of roads, bikeways, and pedestrian facilities.

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

FINDING: The Hearings Officer finds that each lot complies with the pertinent section and requirements of the Zoning Ordinance for RS uses. In addition, there are not topographical conditions that would prevent any of the resulting parcels from being used for the intended purpose.

G. An approved water rights division plan.

FINDING: According to the submitted application and a letter from Swalley Irrigation District, there are water rights or canals on the subject property. All water rights on the subject property will be transferred prior to recording the final plat.

H. 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.

FINDING: According to the Bend Urban Area zoning map, the subject property does not adjoin a SM or SMR zone.

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

FINDING: Oregon Revised Statute 92.090 sets forth the requirements for tentative plan and final plat procedures. These requirements are incorporated into the City of Bend Subdivision Ordinance, No. NS-1786, Article III. The applicant is required to prepare the final subdivision plat in accordance with the City Subdivision and ORS 92.090 to meet this criterion. Conformance with these requirements will be checked as part of the final plat review process. By meeting these requirements, as well as the conditions of approval for this decision, this criterion will be satisfied.

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.

FINDING: Two phases are proposed with this application. Therefore, this will be a condition of approval.

- 2. The review Authority shall deny an application for partitioning when it appears the partitioning is part of a plan or scheme to create more than three (3) parcels without going through a subdivision, or is part of a development pattern having the effect of creating more than three (3) parcels without subdividing.**

FINDING: The Hearings Officer finds that this is not applicable to the proposed subdivision.

- 3. Additional Factors to be Considered. In addition to the requirements set forth in subsections one (1) and (2) of this section, the following additional factors shall be considered by the Review Authority when appropriate.**

- A. Placement and availability of utilities.**
- B. Safety from fire, flood and other natural hazards.**
- C. Adequate provision of public facilities and services.**
- D. Possible affects on natural, scenic and historical resources.**
- E. Need for on-site or off-site improvements such as, but not limited to, access corridors, pedestrian facilities, and bikeways.**
- F. Need for additional setback, screening, landscaping and other requirements relative to the protection of adjoining and area land uses.**
- G. Conformance with the approved master development plan, master facilities plan and refinement plan.**

FINDING: The Hearings Officer finds that a number of the factors listed above have been addressed under the findings in subsection one (1) above.

CONFORMANCE WITH ARTICLE VI, DESIGN STANDARDS AND IMPROVEMENTS

SECTION 6.010 Compliance required. All land divisions shall be in compliance with the design standards set forth in this article and Appendix "A" which is attached hereto and incorporated by reference.

FINDING: Specific street standards and requirements have been addressed above.

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.**

FINDING: The applicant is proposing new streets and alleys throughout the subdivision and sidewalks within the development.

In addition, the Hearings Officer finds that the proposed streets will provide safe and convenient access from subdivision homes to the area's street network and bicycle lanes. There are no shopping areas immediately adjacent to the subject property. The Hearings Officer finds that the proposed infrastructure will provide appropriate and reasonable connection to nearby residential areas and potential future transit stops along O.B. Riley Road. Therefore, the Hearings Officer finds that this criterion will be satisfied.

- 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. ...**

FINDING: The proposed tentative plan incorporates new streets throughout the subdivision. Additionally, street connections are provided to existing stub roads in adjacent subdivisions and the proposed street widths are consistent with the City of Bend Development Standards and Specifications. If approved, a condition of approval shall require all new streets be constructed to City Standards and Specifications including paving, curbs and drainage facilities.

- 3. Street Layout and Cul-de-sacs. Residential local streets shall be developed whenever practicable to increase connectivity within and between neighborhoods. The street layout shall be generally in a rectangular grid pattern to provide or continue a network of inter-connecting streets. Streets shall be oriented on an east/west axis to the greatest extent possible to ensure solar access for lots within the**

land division. The grid pattern may be modified to adopt to topography and natural conditions. 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.

FINDING: There are no classic cul-de-sacs proposed with this application. Comments from the Long Range Planning Division stated that the new streets are required to align east/west to provide maximum solar benefit to the new homes. Comments received from the applicant indicate that the streets are oriented on a north/south axis due to the topography of the site. The Hearings Officer finds that there is an existing ridge in the northwest area of the property. The applicant has indicated that the grid pattern has been slightly modified to adapt to topography and natural conditions, particularly the rock outcropping in the northeast portion of the site. Therefore, the Hearings Officer finds that given the topography of the site, the proposed orientation of the streets complies with 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 shall be

required as a condition of approval of the tentative plan. Improvements to adjacent streets shall be required where traffic on said streets shall be directly affected by the proposed subdivision.

FINDING: According to the submitted application, *"As part of the subject development, the applicant is proposing to dedicate ten feet of additional right of way along the frontage of OB Riley Road and widen the right-of-way in accordance with City of Bend standards and policies. The applicant is proposing to dedicate 40 feet from the east property boundary for half-street improvements to Britta Road, a major collector. The applicant is proposing to dedicate ten feet of additional right of way along the north half of Hardy Road, adjacent to the property. All roads will be improved to City standards."*

Based on these findings, the Hearings Officer finds that this criterion will be satisfied.

- 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 80 degrees.

FINDING: The applicant has submitted a tentative plan map that depicts all street intersections as near right angles as possible. Therefore, the Hearings Officer finds this criterion will be met.

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

FINDING: According to the submitted application, *"NW Lava Crest Road intersects NW Hardy Road from the south at about midpoint between streets A and B. In order to achieve minimum densities, two north-south streets are needed, reducing the intersection offset with Lava Crest Road to less than 200 feet. However, the centerline of the proposed roadways for Streets A and B are no less than 125 feet from the centerline of NW Lava Crest Road on the south side of Hardy Road."*

Based on the above findings, the Hearings Officer finds that this criterion will be satisfied.

- 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".

FINDING: According to the submitted application, the proposed local road design will comply with this criterion.

8. **Reserve Strips.** Reserve strips controlling access to streets shall be required when deemed necessary by the Review Authority. Reserve strips which prohibit or control vehicular access shall be filed with the final plat. Reserve strips shall be numbered in sequence beginning with Lot "A".

FINDING: No reserve strips are proposed with this application and the Hearings Officer finds that no reserve strips are necessary with this proposed subdivision.

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.

FINDING: According to the submitted application, all street rights of way within the proposed subdivision extend to the parcel boundaries to provide for future extensions. Therefore, the Hearings Officer finds that this criterion will be satisfied.

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, double 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.

FINDING: Frontage roads are not proposed with this application. Therefore, Hearings Officer finds that it is not applicable to the proposed subdivision.

11. **Streets Adjacent to Railroads, Freeways and Parkways.** When parallel streets intersect with streets crossing a railroad or controlled access expressway where grade separation is contemplated, consideration of the design requirements for the grade separated crossing shall be taken into consideration when determining the location of the street intersection.

FINDING: According to the Bend Urban Area Transportation Plan map, the subject property does not adjoin or contain a railroad, freeway, or parkway. Therefore, the Hearings Officer finds that this criterion is not applicable.

- 12. Continuation of Streets.** 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 Review Authority 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.

FINDING: As discussed above, the street within the proposed subdivision is designed to help facilitate the grid system to the greatest extent practicable. Details on the street and alley alignments have been addressed previously.

- 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.

FINDING: The applicant will be required to coordinate new street names with the Deschutes County Property Address Coordinator and the City of Bend Property Address Coordinator. As a condition of any approval, prior to final plat approval, the applicant shall submit written documentation from the Coordinators to the City Planning Division indicating that the proposed street name has been approved and the approved street name shown 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 a subdivision except that in the case of collectors, arterial, cul-de-sacs, industrial districts, or in steep terrain, the Review Authority 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.

FINDING: According to the submitted application, *"Sidewalks will be installed along both sides of all streets within the boundaries of the proposed subdivision, and will be separated from the curb and adjacent to the property line. Sidewalks*

will also be constructed "property tight" to the residential lots on the east side of OB Riley Road, the north side of Hardy Road, and on the west side of Britta Street."

Based on the above proposal, the Hearings Officer finds that this criterion will be satisfied.

- 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".

FINDING: According to the Bend Urban Area – Bicycle and Trail System Plan map, there is a planned bike lane route to be located along the extension of Britta Street. The Hearings Officer finds that the bike lanes are included within the urban street right of way for Britta Street and will be required to be included in street improvements along Britta Street.

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.

FINDING: The submitted tentative plan indicates that the lots will range in size from 4,400 square feet to 7,576 square feet. The Hearings Officer finds that the proposed grid street connections will accommodate optimum building site placement and required street widths. The Hearings Officer finds that the proposed lots are roughly rectangular in shape and are of a size and width that comply with minimum RS zone lot requirements standards. Therefore, the Hearings Officer finds that this criterion will be satisfied.

- 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.

FINDING: Based on the submitted tentative plan, there are no full blocks incorporated into this proposal. As shown on the tentative plan map, all future blocks can comply with the above criterion. Therefore, the Hearings Officer finds that this criterion will be satisfied.

- 4. 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.

FINDING: Based on the submitted tentative plan, there are no proposed cul-de-sacs. In addition, the block length does not exceed 600 feet within the subdivision. Therefore, the Hearings Officer finds that an access corridor will not be necessary.

5. Easements.

- A. **Utility Easements.** When necessary, easements shall be provided along property lines for the placement of utilities...

FINDING: According to the submitted tentative plan, utility easement shall be placed within public easements along and within the streets as required by the City or utility purveyors. Therefore, the Hearings Officer finds that this criterion will be satisfied.

- E. **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 storm water 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.

FINDING: There is not a natural watercourse that traverses the property. According to the application, the drainage traversing the site will be piped as part of this development. An access and maintenance easement for the irrigation

system will be shown on the final plat as required by the irrigation district. Therefore, the Hearings Officer finds that this criterion will be satisfied.

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.

FINDING: The applicant is proposing to extend sewer to the subject property. Therefore, the Hearings Officer finds that the proposed development is in an area that can be served by public sewer.

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.

FINDING: According to the Bend Urban Area Zoning Map, the subject property is zoned for residential use. Therefore, the Hearings Officer finds that this criterion is not applicable.

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

FINDING: The Hearings Officer finds that the terrain of the subject property in portions of the proposed subdivision is relatively steep. According to the applicant, to compensate and provide buildable areas without excessive cuts, fills, or steep driveways, all lots in the northeast area of the property are on average at least 25 percent larger than the 4,000 square foot minimum required in the RS Zone.

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.

FINDING: The Hearings Officer finds that this property does not contain natural watercourses such as the Deschutes River or rock outcroppings. Accordingly, the Hearings Officer finds that increased lot sizes are not necessary.

SECTION 6.050 LOTS AND PARCELS, 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.

FINDING: According to the submitted tentative plan map, all lots in this project exceed the minimum width requirement of 40 feet on streets. Therefore, the Hearings Officer finds that this criterion will be satisfied.

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

FINDING: The Hearings Officer finds from the submitted tentative plan, that all side lot lines are radial or perpendicular wherever practicable.

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.**

FINDING: There are no through lots proposed in the subdivision. There are six corner lots proposed within the subdivision. As shown on the tentative plan, none of the proposed lots will take direct vehicular access to O.B. Riley Road or Britta Road. Lots 1 through 5 are not through lots and as such must be oriented towards and addressed off O.B. Riley Road and not the alley. Therefore, the Hearings Officer finds that this criterion will be satisfied.

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

FINDING: The Urban Standard Density Residential zone requires a lot width of 40 feet. All of the proposed corner lots have frontage along a public street that

exceed the standard listed in the Urban Standard Density Residential Zone by at least 5 feet. Therefore, the Hearings Officer finds that this requirement will be met.

5. **Solar Access Performance Standard. As much solar access as feasible shall be provided each lot or parcel in every new subdivision, considering topography, development pattern, and existing vegetation.**

FINDING: The City has the authority to grant exemptions to solar setback standards in "any area or zone which taller buildings are planned." As a matter of policy, the City finds that in general, it is likely that taller buildings will be built on smaller residential lots as the City encourages increased densities.

6. **Underground Utilities. All permanent utility service to lots or parcels shall be provided from underground facilities. The subdivider or partitioner shall be responsible for complying with requirements of this section, ...**

FINDING: According to the application, all new permanent and relocated utilities will be installed underground. This requirement shall be made a condition of approval.

SECTION 6.060 GENERAL PROVISIONS.

1. **Lighting. The subdivider or partitioner shall install street lights, 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.**

FINDING: According to the submitted application, underground wiring and a based for street lights will be provided within the street. The Hearings Officer shall require as a condition of any approval that the applicant be required to provide a street lights in accordance with City standards.

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.**

FINDING: The proposed residential subdivision will have more than two points of access, either by street or alley to Hardy Road. Therefore, the Hearings Officer finds that this criterion will be satisfied.

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.

FINDING: The applicant is not proposing to plant street trees. Therefore, the Hearings Officer finds that this criterion is not applicable.

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.

FINDING: As discussed earlier in this report, the applicant is proposing to extend both City sewer and water through the site. Comments received from the City Engineering Division indicate that extension of services is reasonable subject to specific design requirements.

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 petitioner, 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.

FINDING: Site excavation can have an adverse impact on adjacent properties. The applicant shall be required to submit a revised grading and tree preservation plan that does not include blasting and excavating the entire northeast section of the property but restricting excavation to what is necessary for roads and alleys and preserving as many trees as possible along new proposed property lines and within setback areas. This proposed requirement is discussed in detail below with regards to preservation of significant features on the property.

According to the submitted application, construction plans for all grading shown on the tentative plan shall be submitted to the City of Bend Engineering Division for review and approval prior to construction. This requirement will be made a condition of approval.

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 land owner 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.

...

FINDING: The City of Bend Urban Area Bicycle and Primary Trail System Plan does not call for a trail to be established on the subject property. Therefore, trail development on the property is not required. In addition, according to a Bend Metro Parks and Recreation District boundary map, the subject property is located within the District.

A letter received from Paula Lowery with Bruce Ronning of Bend Metro Parks and Recreation District (BMP&RD) indicates that the District does not recommend a park site within the subdivision.

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 ...

FINDING: According to the Bend Urban Area General Plan, there are no identified areas of special interest on the subject property. Therefore, the Hearings Officer finds that this criterion is not applicable to the subject property.

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.

FINDING: Based on a site to the property, there is a significant rock outcropping area on the property that includes a scattering of trees within the area. The Hearings Officer finds that this rock outcropping is a significant feature of the site. The applicant shall not be allowed to blast and excavate the entire area but restrict excavation except as necessary for roads and alleys. This would help to possibly preserve some of the homesites and trees on the property. The submitted tree protection and removal plan calls for removing all trees in the northeast section of the project. After the close of the Hearing, applicant met with the planning department to discuss grading and tree removal in this area. Applicant submitted a memorandum agreeing that grading and tree removal will be limited to rights-of-way, alleys and utility improvement areas. As required by the Engineering Division, future grading and clearing will be reviewed on a lot by lot basis by City staff during the time of individual lot development. As a condition of approval, the applicant shall be required to submit a revised grading and tree preservation plan that does not include blasting and excavating the entire northeast section of the property but restricting excavation to what is necessary for roads and alleys and preserving as many trees as possible along new proposed property lines and within setback areas.

7. Natural tree cover shall be preserved along streets, both within and along dedicated street right-of-way, to the maximum extent practicable. Streets, sidewalks and other public services and utilities constructed within the rights-of-way may meander within the public right-of-way to allow preservation of trees as deemed appropriate by the City of Bend Engineer.

FINDING: According to the submitted application, the applicant will attempt to preserve tree cover throughout the property to the extent practicable by locating them along common lot lines and in setback areas. However, the Hearings Officer finds that it will be difficult if not impracticable to retain trees within and

along the dedicated street right-of-ways and to allow for efficient urban development and street and utility trench requirements. It is City policy to allow for meandering sidewalks where possible to save trees. Review of sidewalk design and tree preservation shall be reviewed as part of the Engineering Division review of street and sidewalk plans if this subdivision and zone change is approved.

VII. OREGON ADMINISTRATIVE RULES, CHAPTER 660-12,
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.**

FINDING: According to the submitted burden of proof report, *"Attached in Appendix E is a TIA prepared by Ferguson & Associates addressing the traffic impacts of the proposed 36-lot subdivision including a worst-case scenario development at RS densities. With respect to paragraphs (2) (a) and (b) cited*

above, the traffic study demonstrates that the proposal will not change the functional classification of or the standards applicable to any affected streets. Included in the TIA is an addendum which shows the traffic impacts were analyzed with 36 lots; the original study identified 35 lots. The affected streets will continue to function as classified."

"The proposed project will generate an estimated 36 p.m. peak hour trips and 335 daily trips. The study intersections include Empire Avenue and OB Riley Road; OB Riley Road and Hardy Road; and Site Access at Hardy Road. The study shows all intersections meet City of Bend operation standards."

"In previous land use decisions, the City Hearings Officers have found that paragraph (2) (d) does not apply because the City's TSP does not identify levels of service. The minimum levels of service are established in the City's street policies, which were not adopted as a part of the City's TSP. However, as shown in the traffic study, the proposal will not reduce levels of service at any affected intersection below the acceptable level identified in the City's street policies."

"With regard to paragraph (2) (c), the traffic study submitted demonstrates that the additional traffic generated at maximum, worst-case development at standard density residential will not exceed the capacity of the affected streets or intersections."

The Hearings Officer finds that the Applicant submitted a Transportation Impact Study prepared by Ferguson & Associates addressing the traffic impacts of the proposed subdivision. With respect to paragraphs (2)(a) and (b) cited above, the traffic study demonstrates that the proposal will not change the functional classification of or the standards applicable to any affected streets. The affected streets including O.B. Riley Road – will continue to function as classified as demonstrated by the Applicant's traffic study submitted herewith. As shown in the traffic study submitted herewith, the proposal will not reduce levels of service at any affected intersection below the acceptable level identified in the City's street policies.

THE HEARINGS OFFICER'S RECOMMENDATION:

The Hearings Body has no authority to take final action on a zone change. Only the City Council can give final approval to such a request. Therefore, regarding the zone change request, the Hearings Officer's "decision" is set forth as a recommendation to the City Council only. Based on the above Findings and Conclusionary Findings, the Hearings Officer recommends **approval** of the proposed zone change without conditions. As to the subdivision tentative plan, the Hearings Officer's findings and decision constitutes a decision that needs no Council approval, unless appealed.

With regards to the proposed subdivision tentative plan, the Hearings Officer **approves** the tentative subdivision plans subject to approval of the zone change by the City Council and subject to the following conditions of approval:

1. Approval is based on the submitted plans, and the improvements and physical conditions depicted thereon. Any substantial alteration to those plans, other than those that may be required by this decision, will require a new application. Any public improvements proposed by the applicant on the submitted plan or other submitted documents have been relied upon in granting approval, and are hereby required as a condition of subdivision approval.
2. Prior to final plat approval, engineered plans for the respective street, water, sewer facility improvements, and grading, storm and master drainage facilities for the subdivision shall be submitted in a single submittal to the City Engineering Division and City Development Services division for review and approval prior to filing the final plat for the subdivision. All new streets shall be constructed to City Standards and Specifications including paving, curbs and drainage facilities. Prior to issuance of any building permits for each phase, all City infrastructures shall be completed, including paved access to all fire hydrants and manholes in that phase. Construction plans for all grading shown on the tentative plan shall be submitted to the City of Bend Engineering Division for review and approval prior to construction. All city maintained facilities shall have full width exclusive utility easements at 20 feet for water and sewer outside of any right-of-way areas and all sewer and water service lines to the property not being utilized shall be cut at the main and abandoned.

The applicant shall extend all proposed sewer mains to and through to the northern and western boundaries of their respective right of way for future development. Sewer shall be installed in the public Right of way per standards and specifications. The proposed sewer in the western alley shall not be allowed. Applicant shall coordinate with the Engineering Division to provide sewer per city standards and policies and in conformance with the Sewer Master Plan. Any proposal to utilize the existing Hardy Road pump station on an interim basis shall be accompanied by a "dry" gravity sewer main in Hardy Road extending to the property limits following the natural down hill grade to the west, to be utilized upon future completion of the regional pump station.

Private alleys shall be no less than 20' in width and have no greater than 10% centerline grades. All private alleys shall have public access easements granted over them and be extended to the northern property boundaries for future development. Alley "A" shall extend to the northern

boundary for use on future front loading homes to the north. Alley B shall extend to the north property line of Lot 14.

Establish the centerline of Britta Street from the intersection of Poe Sholes (nearest full improvement) through to the northern property boundary and shall improve the extension of Britta Street to full width City of Bend collector standards in accordance with Table "A", including landscaped median and bike lanes, sidewalk abutting the subject property and drainage facilities.

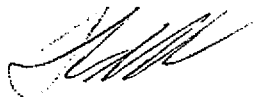
The Applicant shall improve property frontage along OB Riley road to current COB collector standards and overlay OB Riley road to cover all main and service trench cuts and dedicate additional right of way as needed at the intersection of Hardy and OB Riley for sidewalk improvements. Provide a median across Hardy Rd unless the applicant can submit proof into record that the intersection meets AASHTO intersection sight distance for 45mph or 85% speed (whichever is greater. The Applicant should be made to use the 45mph posted speed or the 85% speed whichever is greater, to assess whether Hardy or O.B. Riley has adequate sight distance. Transportation Engineering believes that the applicant does Not have adequate sight distance at Hardy Ln and O.B. Riley Rd for lefts out (Hardy westbound to O.B. Riley southbound) or for a stopped left in vehicle (southbound O.B. Riley does not have adequate stopping sight distance). Given this; Hardy Rd should have right in right out turn restrictions constructed by the applicant and they must show a viable route out of the neighborhood. Perhaps at Halfway Rd or applicant could improve sight lines. Either must meet with City of Bend Engineering approval. All proposed local public and collector streets shall be constructed in conformance with Table "A" of the development code and shall include medians along Collector Street frontages and curb extensions on the opposing side of Hardy road. The applicant shall install sidewalks property tight along the frontage for Hardy road and overlay Hardy road to cover trench cuts after construction of proposed utilities and provide sidewalks along lot frontages in accordance with City standards and specifications, sidewalks to be installed property tight. In addition, all public rights of way shall be dedicated free and clear of any encumbrances. All existing easements shall be modified or quitclaimed prior to the dedication of public right of way.

The existing dwelling shall be required to take access to the proposed local right of way of street "A" and not take access to OB Riley Road. In addition, the applicant shall be required to formalize the proposed lot line adjustment prior to final plan approval of the subdivision.

3. All existing structures on the property shall be removed or relocated in order to comply with all minimum setback, lot coverage and clear vision requirements from all new lot lines.
4. All requirements of the Bend Fire Department within the subdivision shall be met, including hydrant locations and fire apparatus access roads.
5. Provide street lights in accordance the City standards.
6. Provide underground utility services, including water, sewer, electric, and telephone and television cable to each lot.
7. The new streets within the subdivision shall have a unique name approved by the Deschutes County and City of Bend Property Address Coordinator. Documentation from the Deschutes County and City of Bend Property Address Coordinator, which indicates that the street name has been approved, shall be submitted to the City of Bend Planning Division prior to final plat approval.
8. Provide a subdivision guarantee report prior to final plat approval.
9. Submit closure sheets with the final plat.
10. Show individual lot sizes on the final plat.
11. Comply with the requirements of ORS 92.090 for preparation of the final plat.
12. Prepare the final plat in accordance with the City subdivision ordinance, NS-1786.
13. Hours of site work operations and building construction shall take place only from 7 A.M. to 6 P.M. Monday through Saturday.
14. Any new signs will require a sign permit. The owner or contractor shall contact Kim Voos with Development Services for requirements at 388-5530
15. Lots 1 through 5 are not through lots and as such must be oriented towards and addressed off O.B. Riley Road and not the alley.
16. Grading and tree removal on Lots 22 - 29 and 33 - 36 shall be reviewed on a lot by lot basis by city staff at the time of individual lot development. Grading and tree removal will be allowed to construct roads, alleys and utilities.

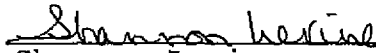
The applicant shall meet all conditions of this approval and submit an application for final plat review within one year for Phase 1 following the date this decision becomes final, or obtain an extension of time pursuant to the City of Bend Ordinance NS-1775, or this approval shall be void. The applicant shall submit an application for final plat review within two years for Phase 2 following the date this decision becomes final, or obtain an extension of time pursuant to the City of Bend Ordinance NS-1775, or this approval shall be void. The final plat for each respective phase shall be recorded within one year of submittal of the final plat review application.

Dated this 17th day of February, 2006



SHARON R. SMITH
Hearings Office for the City of Bend

Dated this 17th day of February, 2006



Shannon Levine
Planning Technician
City of Bend
Community Development Division