



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

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www.lcd.state.or.us

NOTICE OF ADOPTED AMENDMENT

January 10, 2007

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Medford Plan Amendment
DLCD File Number 007-06



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: January 19, 2007

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. 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 DATE SPECIFIED ABOVE.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist
John Renz, DLCD Regional Representative
Matthew Crall, DLCD Transportation Planner
Suzanne Myers, City of Medford

<paa> ya/

PROP 2

DLCD

Notice of Adoption

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

In person electronic mailed

DEPT OF

IAN 03 2007

LAND CONSERVATION
AND DEVELOPMENT

Jurisdiction: **Medford**

Local file number: **CP-06-065**

Date of Adoption: **12/21/2006**

Date Mailed: **12/28/2006**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Select one** Date: 09/01/06

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

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

Consideration of a request for a minor amendment of the Medford Comprehensive Plan changing the General Land Use Plan (GLUP) Map land use designations from Heavy Industrial, General Industrial, and Commercial to Heavy Industrial, General Industrial, Commercial and Service Commercial on 84 acres located generally north of West McAndrews Road, east of the Central Oregon & Pacific Railroad tracks, and west of N. Riverside Avenue and State Highway 99.

Does the Adoption differ from proposal? No, no explanation is necessary

Plan Map Changed from: **HI, GI and CM**

to: **HI, GI, CM and SC**

Zone Map Changed from: **NA**

to: **NA**

Location: **North of W. McAndrews and East of CORP tracks**

Acres Involved: **84**

Specify Density: Previous: **NA**

New: **NA**

Applicable statewide planning goals:

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

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

DLCD # (155 24)
007-06

If no, did Emergency Circumstances require immediate adoption? Yes No

DLCD file No. _____

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

Local Contact: **Suzanne Myers** Phone: (541) 774-2387 Extension: 0
Address: 200 S. Ivy Fax Number: 541-774-2564
City: **Medford, OR** Zip: 97501- E-mail Address: *Suzanne.Myers@cityofMedford.org*

ADOPTION SUBMITTAL REQUIREMENTS

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

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

ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540
2. **Electronic Submittals:** At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: webserver.lcd.state.or.us. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing mara.ulloa@state.or.us.
3. **Please Note:** Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at <http://www.lcd.state.or.us/>. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to mara.ulloa@state.or.us - **ATTENTION: PLAN AMENDMENT SPECIALIST**.

ORDINANCE NO 2006-264

AN ORDINANCE approving, with conditions, a minor amendment of the Medford *Comprehensive Plan* changing the General Land Use Plan (GLUP) Map land use designations from Heavy Industrial, General Industrial, and Commercial to Heavy Industrial, General Industrial, Commercial, and Service Commercial on 84 acres located generally north of West McAndrews Road, east of the Central Oregon & Pacific Railroad tracks, and west of North Pacific Highway (CP-06-065)

THE CITY COUNCIL OF THE CITY OF MEDFORD, OREGON, ORDAINS AS FOLLOWS

Section 1 The minor amendment of the Medford *Comprehensive Plan* changing the General Land Use Plan (GLUP) Map land use designations from Heavy Industrial, General Industrial, and Commercial to Heavy Industrial, General Industrial, Commercial, and Service Commercial on 84 acres located generally north of West McAndrews Road, east of the Central Oregon & Pacific Railroad tracks, and west of North Pacific Highway is approved

Section 2 This minor amendment to the Medford *Comprehensive Plan* is supported by the Findings of Fact and Conclusions of Law included in the Revised City Council Staff Report and exhibits dated November 6, 2006, as updated December 11, 2006, with the Findings of Fact and Conclusions of Law and Supplemental Findings of Fact dated on file in the Planning Department and incorporated herein by reference, and the following conditions of approval which are necessary to meet the criteria for approving this minor amendment to the Medford *Comprehensive Plan*, and to which the property owner has agreed

Conditions of Approval for CP-06-065

Within 30 days of the effective date of the Ordinance adopting the GLUP Map amendment, the property owner shall, prior to recording, submit for approval by the Planning Director after review by the City Attorney, a covenant or covenants to be recorded on the subject properties containing the following stipulations to the Planning Department for review. Upon approval, the property owner shall immediately record the covenant(s) with Jackson County

A copy of this Ordinance shall be an exhibit recorded with each covenant

The conditions of approval set forth in this ordinance can only be changed through a minor comprehensive plan amendment process, now existing or as subsequently enacted

Management details regarding the following conditions of approval shall be administered through an executed Developer's Agreement with the City of Medford. The timing of compliance with the following conditions shall be established as part of the Developer's Agreement which shall be adopted through a land use decision per ORS 94 508

1 Trip Cap

A trip cap is hereby applied that limits vehicular trip generation by development on the subject site to no more than 18,509 ADT and 1,882 P M peak hour trips as a mitigation to ensure that impacts will not reduce transportation facility adequacy below LOS 'D'. A 2% trip reduction for the internal trip capture that is likely to result from the project design and up to an additional 5% deduction for the TDM measures shall be available. To receive more than the 2%, the TDM measures must include trolley service serving all project quadrants with 10 minute headways and capable of capturing 360 passengers per hour. The trolley shall operate in perpetuity, at least Monday through Friday from 7 00 A M to 6 00 P M. The applicant is responsible for monitoring ADT generation by proposed development projects (per the most current edition of the ITE Trip Generation Manual) and reporting to the City of Medford in conjunction with applications. The compliance monitoring system shall be developed as part of the Developer Agreement.

2 Transportation Improvements

The City of Medford Public Works Department memo dated October 25, 2006 (Exhibit K-3) and the Oregon Department of Transportation letters dated October 18 and October 25, 2006 (Exhibits V-1A and V-1B) herein establish the required transportation improvements and conditions. Applicant to provide evidence of compliance with transportation improvement requirements.

3 Transportation Demand Management Plan

(A) Transit Pass for Employees An employee transit pass subsidy shall be provided for at least 5 years for fixed-route transit district passes at no cost to all employees on the subject site who wish to use transit, beginning within two years from the date that the first Certificate of Occupancy is approved by the City for the subject site. After such beginning date, verification of compliance shall be provided to the Planning Director on a yearly basis for five years.

(B) Trolley Service If the additional 5% trip reduction is taken for a trolley, the privately funded fare-free trolley(s) shall service the three quadrants of the subject site beginning within two years from the date that the first Certificate of Occupancy is approved by the City for the building square footage for which the reduction is taken. At a minimum, trolley service shall operate with 10 minute headways and be capable of capturing 360 passengers per hour, at least Monday through Friday from 7 00 A M to 6 00 P M. Trolley service to connect to the Rogue Valley Mall is subject to the permission of the Rogue Valley Mall owners. Applicant shall construct the Exclusive Transit Crossing which traverses North Central Avenue between the Office and Business Parks if the same is approved by the City of Medford.

(C) Off-Street Vehicular Parking Space Reduction/Cap A parking space reduction is hereby approved for the subject site which reduces the required number of off-street vehicular parking spaces by five percent. The reduction distribution shall be approved through the Site Plan Architectural Commission Master Plan approval. This reduction

does not reduce the bicycle parking space requirement, which shall be based on the number of parking spaces normally required by the *Medford Land Development Code*. No more than 120% of the number of off-street vehicular parking spaces normally required shall be supplied.

(D) **McAndrews Multi-Use Path** A concrete multi-use path at least 10 feet in width shall be constructed behind the planter strip along the frontage of McAndrews Road connecting between Court Street and Central Avenue in lieu of the sidewalk. Specific design and location of such path is subject to specifications of the City of Medford Engineering Division and the Site Plan Architectural Commission Master Plan Approval process.

(E) **Transit/Carpool Facilities** Transit and carpool facility improvements in conformance with *Medford Land Development Code* sections 10 807 and 10 808, 10 809 shall be determined through the Site Plan Architecture Commission Master Plan approval and code required subsequent Site Plan and Architectural Review approvals.

(F) **Transportation Management Association** Businesses in Northgate Centre with 50 or more employees shall join a Transportation Management Association if one exists for the Medford area.

4 **Compatibility Restrictive Covenant** A restrictive covenant which restricts property owners and lessees on the subject site from remonstrating with respect to the common and customary industrial manufacturing practices which occur on nearby lands devoted to industry shall be incorporated as deed restrictions on the subject site and as provisions in the leases for future tenants of the subject site. A sample of the language for such a covenant is provided in Exhibit F-F. The Planning Commission voted to recommend including the following changes to Exhibit "F-F" pp 5-6

Third line begins ' *Timber Products Corporation and/or SierraPine Corporation* , delete the words *as forest products businesses*" and insert, " *and any successor industrial users of those sites and/or adjacent industrial property owned by those businesses*" Line 8, which begins " *businesses to any federal, state or local agency so long as the businesses operate in conformance with* , delete *conformance* and change to "*material compliance*" Line 10 begins " *of the businesses* " Add "*Violation of a single day threshold reported in compliance with industry standard practice shall not constitute material non-compliance*"

5 **Northgate Centre Master Plan**
Zoning shall be in effect that permits the land use types indicated in the Master Plan prior to further Master Plan review.

(A) A Northgate Centre Master Plan shall be adopted via Site Plan and Architectural Review pursuant to Class "C" procedures of the *Medford Land Development Code*. The Master Plan shall be approved through such review prior to any further SPAC applications for individual sites or projects within the project boundary. The Master Plan and subsequent

applications shall be in substantial conformance with the Northgate Centre application materials submitted as part of CP-06-065 and ZC-06-066

(B) The following elements, among others, shall be considered during the Site Plan and Architectural Review for inclusion in the Master Plan

- (1) Pedestrian elements to include benches dispersed throughout the site, areas that integrate outdoor commerce and eating with pedestrian space, trolley stops and decorative and functional pavement treatments at key locations of vehicle/pedestrian interaction. Interconnections between the three quadrants of the project shall also be considered to the extent possible under ODOT regulations and restrictions prevailing on the piece of property
- (2) A building façade that contains a public entrance to include the following architectural elements
 - a) A cupola or tower feature on a building corner common to the building façade wall with the public entrance or cupola or tower integrated into the entrance itself
 - b) A minimum percentage of the façade to include masonry work depending upon land use type
 - c) A minimum percentage of the building façade wall having transparent or translucent windows and awnings depending upon land use type
- (3) Methods to address issues covered by the City of Medford proposed "big box Ordinance" for those structures to which the Ordinance would apply
- (4) Exterior Site Lighting
 - a) Lighting in commercial areas to be less than 25 feet in height and of a design similar to that shown in the conceptual lighting plan (Exhibit C, p 13)
 - b) Conventional style lighting to be restricted in industrial areas so that no more than 30 percent of the total illumination may come from conventional commercial/industrial lighting. The balance to be less than 25 feet in height and of a design similar to that shown in the conceptual lighting plan (Exhibit C, p 13)
- (5) Water Features
At least one significant water feature to be included in the Lifestyle Center and Office Park of a design similar to that shown in the conceptual landscape plan details (Exhibit C, p 14)
- (6) Landscaping
 - a) Landscape plans to include landscaped buffer between SierraPine and the Northgate Centre of a design similar to that shown in the conceptual buffer detail plan (Exhibit C, p 12)
 - b) Landscape plans to include street trees, landscaping, and appropriate irrigation installed in the public right-of-way planter strips. If and where planter strips are not required, street trees and appropriate irrigation to be included abutting public right-of-way sidewalks
- (7) Master Signage Plan
A master signage plan, including project entry and directional signs

(8) The following exceptions are noted

- a) The configuration of the Business Park (Exhibit C, p 11) may change to accommodate the specific requirements of potential industrial/business tenants or future owners
- b) The applicant cannot guarantee rail service as contemplated in the Northgate Centre proposal (Exhibit C, p 11) and future plans for Northgate Centre are not required to provide rail service

(C) Development Phasing Plan shall be proposed and approved

The following stipulations of the applicant are accepted and applied as conditions

- 6 **Beall/Highway 99 Improvement** Applicant agrees to stipulate to its proportional share of the cost to improve the intersection of Beall Lane and Highway 99, excluding rail crossing improvements, at such time that the City of Central Point has identified the needed improvements and ascertained the costs. Proportionality shall be determined as a proportion of the amount of traffic projected to pass through this intersection which is related to Northgate Centre in comparison to all other intersection traffic
- 7 **Mc Andrews Sidewalk** Applicant agrees to stipulate to a 100% share of the cost to install a sidewalk beneath the McAndrews Road viaduct and easterly along the southeasterly side of McAndrews Road to its intersection with Court Street provided that the said improvement, including right-of-way acquisition (if needed) can be obtained by the City of Medford
- 8 **Wetlands, Hopkins Canal** Applicant agrees to work cooperatively with the Rogue Valley Irrigation District to accommodate any reasonable concerns or requests made by the district
- 9 **Sanitary Sewer, Domestic Water, Storm Drainage Facilities** Applicant agrees to extend and construct all needed sanitary sewer, domestic water and storm drainage facilities in accordance with the most current adopted facility plans of the City (or other facility providers) and the same will be based upon engineering construction plans prepared by a qualified civil engineer registered in Oregon and approved by the City (or other facility providers). Public facility construction will incorporate the recommendations contained in Appendix E-2 as approved by the City
- 10 **Storm Water** Applicant agrees to incorporate stormwater system design considerations into final engineering for the proposed stormwater facility improvements and carry out these in accordance with the Appendix E-2 analysis, standards and regulations of the City and generally accepted engineering practices
- 11 **Street Vacation** Pursuant to Oregon Revised Statutes ("ORS") 271.130, applicant agrees to take steps to vacate the city streets shown in Appendix F-3
- 12 **Consolidation of Existing Parcels** Applicant agrees to consolidate or adjust as appropriate existing tax lots in Northgate Centre to conform to the approved plans for Northgate Centre

and the requirements of the MLDC, and the same will be accomplished before issuance of any Certificate of Occupancy for buildings in Northgate Centre

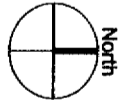
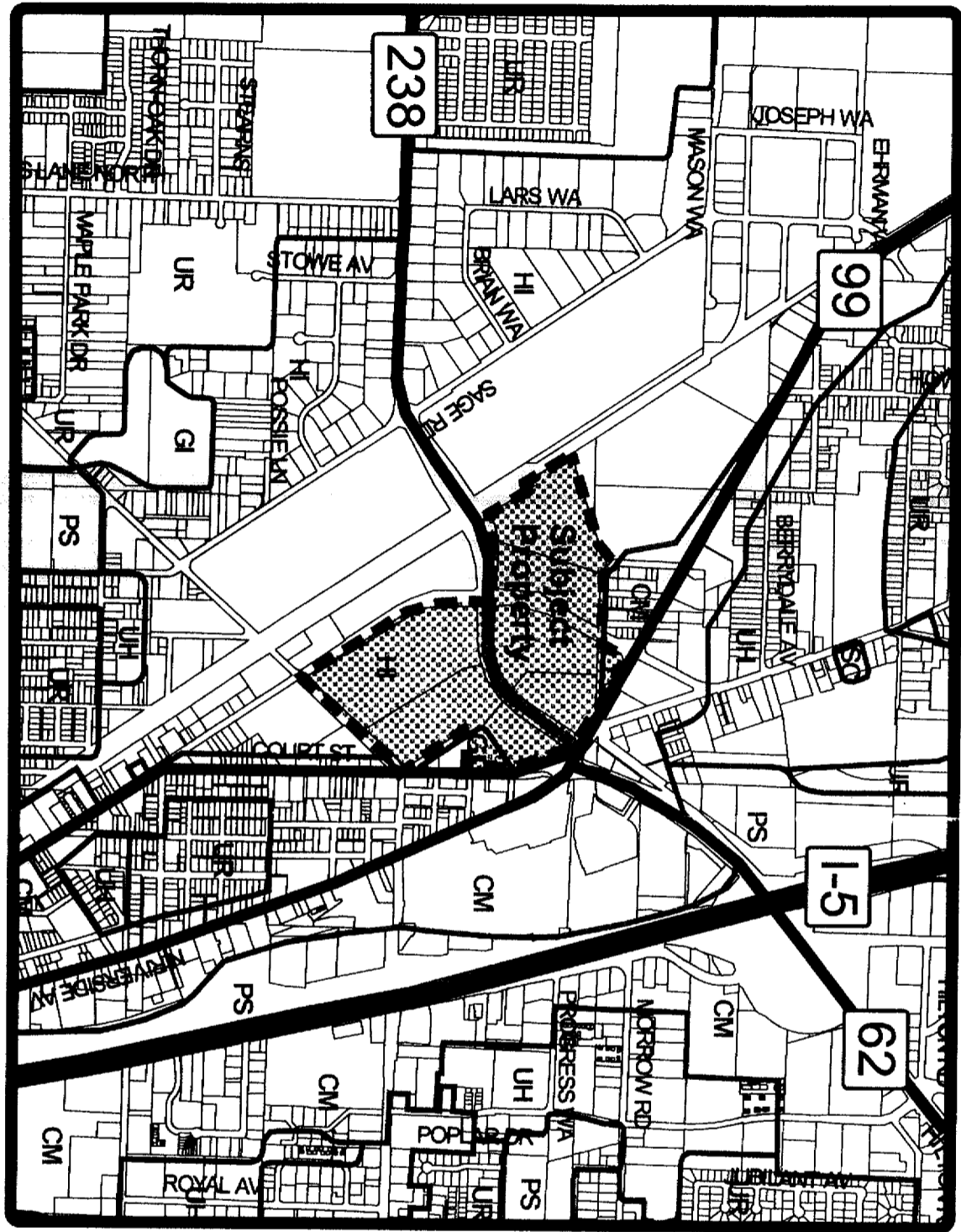
- 13 **Delivery of Rail Service** Applicant agrees to continue reasonable efforts to acquire and supply commuter rail service as anticipated in these land use applications
- 14 **Waste Management** Applicant agrees to establish a comprehensive waste management operations plan in cooperation with Rogue Disposal and Recycling, Inc
- 15 **Berm and Tree Buffer** Applicant agrees to construct and install the berm and landscaping to buffer Sierra Pine from Northgate Centre generally as shown on Exhibit C, pp 2 and 12 and as approved by the Site Plan and Architectural Commission per condition 5 (B)(6) a)

PASSED by the Council and signed by me in authentication of its passage this 21 day of December, 2006

ATTEST Glenda Owens
City Recorder

APPROVED December 21, 2006

Allen White
Mayor
Allen White
Mayor



MEDFORD, OREGON
NORTHGATE CENTER, LLC

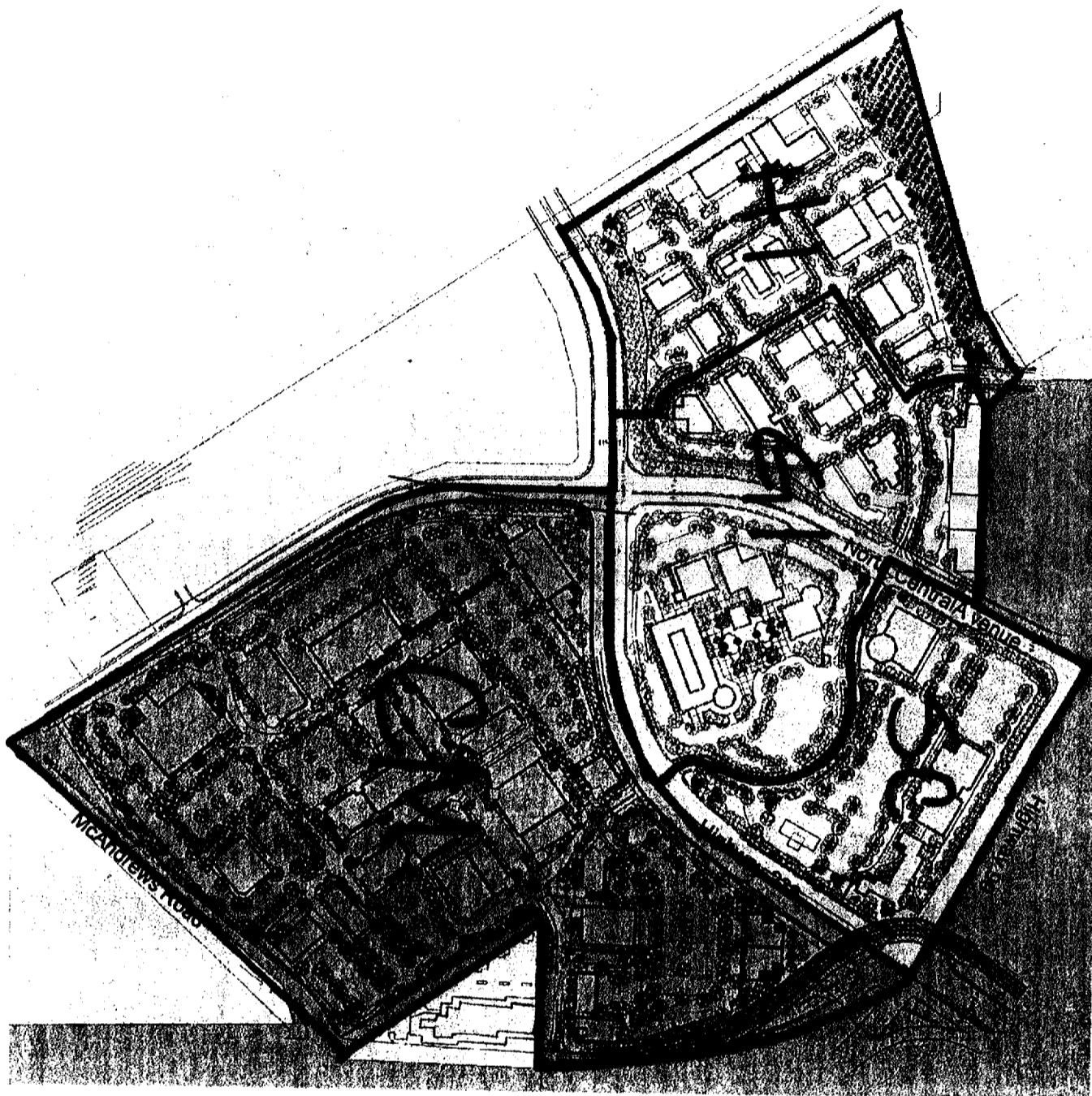
NORTHGATE CENTRE

EXISTING GLUP MAP

Craig A. Stone &
Associates Ltd.

FEBRUARY 2006

Appendix A-1



Service Commercial
SC
 Commercial
CM
 General Industrial
GI
 Heavy Industrial
HI



MEDFORD, OREGON
 NORTHGATE CENTER, LLC

NORTHGATE CENTRE

PROPOSED GLUP MAP
 (Overlaid on Site Plan)

Craig A. Stone &
 Associates Ltd.

FEBRUARY 2008

ALL RIGHTS RESERVED

REVISED CITY COUNCIL STAFF REPORT

File Nos.: CP-06-065

Applicant: Northgate Center, LLC (Craig A. Stone and Associates, Agent)

Request: Consideration of a request for a minor amendment of the Medford Comprehensive Plan changing the General Land Use Plan (GLUP) Map land use designations from Heavy Industrial, General Industrial, and Commercial to Heavy Industrial, General Industrial, Commercial and Service Commercial on 84 acres located generally north of West McAndrews Road, east of the Central Oregon & Pacific Railroad tracks, and west of N. Riverside Avenue and State Highway 99.

BACKGROUND

The subject application is for a proposed commercial and industrial development consisting of a retail (“lifestyle”) center, an office park, and an industrial/business park, collectively called Northgate Centre, which is to be located on 84 acres commonly referred to as the Medco property. City staff, after consultation with the Planning Commission and City Council, authorized the applicant to submit the proposal for a consolidated review of a General Land Use Plan Map (GLUP) amendment and zone change. The applicant has stipulated to a conceptual master plan for the site as a condition of approval. Ultimately, site development will also be approved through Site Plan and Architectural Commission review.

After conducting a public hearing, the Planning Commission made a favorable recommendation to the City Council regarding the GLUP Map change, and approved the zone change, with a condition that it become effective if the City Council approves the GLUP Map change. The proposal includes a conceptual master plan with stipulations and conditions that will be attached to the GLUP Map and Zoning Map. The master plan will be reviewed and approved through Site Plan and Architectural Commission (SPAC) review prior to individual SPAC project reviews.

With respect to future termination or changes to the conditional GLUP Map and zone change approval, the City has the ability to amend the Comprehensive Plan and zoning legislatively upon initiation by either the City Council or Planning Commission. If changes were sought by the property owners, this would require a Comprehensive Plan amendment as well. The applicant has agreed to conditions that monument this concept.

The application materials are contained in three volumes, Exhibits A, B and C to this Staff Report. The application was received March 1, 2006, and the applicant stipulated to a waiver of the mandatory decision-making timeframe in ORS 227.178 to the extent that such provision is applicable to these land use applications.

The subject site occupies three of the four quadrants where State Highways 238, 62, and 99 meet (referred to as "the Big X"). It consists of 18 parcels totaling 84.07 acres, and the adjacent right-of-way totaling 18.50 acres, for a combined total of 102.57 acres. The majority of the parcels currently have the Heavy Industrial (HI) GLUP Map designation, but are zoned County General Industrial (G-I) (Exhibit P).

All of the parcels owned by Northgate Centre LLC are presently vacant with the exception of Tax Lots 4300, 4400, and 4600 which abut Highway 99 east of Table Rock Road. In addition, Tax Lot 700 in Section 24AB contains a Chevron gas station and Tax Lot 900 in Section 24AB contains Pro-Audio where car stereos and other audio/video equipment are sold and installed.

The site abuts land with the Commercial (CM) and Heavy Industrial (HI) GLUP map designations and C-H, C-C and County General Industrial (GI) zoning to the north (Exhibit D). SierraPine, a limited partnership of Sierra Pacific Industries and Timber Products Company, has a Medium Density Fiberboard plant located in this County GI zone. Land with the HI GLUP Map designation and GI zoning abuts the property to the west. To the southwest, one parcel from the subject site, Timber Products Company has a major particle-board and plywood plant, its Southwestern Regional Headquarters.

Immediately to the south, lands are designated Heavy Industrial (HI) and the zoning is Heavy Industrial (I-H), Heavy Commercial (C-H), and Light Industrial (I-L). South of these districts lies the Liberty Park (Beatty-Manzanita) neighborhood, one of the more economically-challenged and ethnically diverse neighborhoods in Medford. To the east, lands are designated General Industrial (GI) and Commercial (CM). They are zoned Community Commercial (C-C) and Regional Commercial (C-R). The Rogue Valley Mall is located in this latter district. The Mall has approximately 635,000 square feet of gross leasable area and 100 stores.

The stipulated Master Plan provides a 417,500 square foot Lifestyle Center (Exhibit F), a 219,300 square foot Office Park (Exhibit G), and a 180,000 square foot Industrial/Business Park (Exhibit H). The project proposes limiting the site's building square footage, which has the effect of a traffic generation "trip cap", in order to address traffic impact concerns about State and City transportation facilities. However, even with the limitation, the application indicates that the project will provide 1,680 new jobs. This represents 16.8 jobs per acre; the average in the Medford UGB per the applicant is 15.2 jobs per acre.

The applicant is requesting to change the General Land Use Plan (GLUP) Map land use designations from Heavy Industrial, General Industrial, and Commercial to Heavy Industrial, General Industrial, Commercial, and Service Commercial, as per the proposed GLUP map (Exhibit E).

CRITERIA FOR GENERAL LAND USE PLAN MAP AMENDMENTS

Section 10.191, Application Form, requires findings which address the following:

- 1. Consistency with applicable Statewide Planning Goals.*
- 2. Consistency with the goals and policies of the Comprehensive Plan.*

3. *Consistency with the applicable provisions of the Land Development Code.*

Section 10.192, Minor Comprehensive Plan Amendment Criteria:

This section refers to the Review and Amendment Section of the Comprehensive Plan text. The Comprehensive Plan text under "Map Designations" states that amendments shall be based on seven (7) factors, three (3) of which are essentially the same as those above from Section 10.191.

1. *A significant change in one or more Goal, Policy, or implementation strategy.*
2. *Demonstrated need for the change to accommodate unpredicted population trends, to satisfy urban housing needs, or to assure adequate employment opportunities.*
3. *The orderly and economic provision of key facilities.*
4. *Maximum efficiency of land uses within the current urbanizable area.*
5. *Environment, energy, economic and social consequences.*
6. *Compatibility of the proposed change with other elements of the City Comprehensive Plan.*
7. *All applicable Statewide Planning Goals.*

Oregon Transportation Planning Rule OAR 660-12-060(1)

Compliance with the Oregon Transportation Planning Rule is also required, in addition to the above criteria, as follows:

Amendments to...acknowledged comprehensive plans,...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.

FINDINGS

The applicant's Findings of Fact and Conclusions of Law, received March 1, 2006, are, by this reference, incorporated and attached hereto as Exhibit A, pp. 85 - 176. A detailed discussion and review of the proposal relative to each of the above cited factors is included in the applicant's findings, which include the requisite discussion of transportation adequacy, including the Transportation Planning Rule (OAR 660-12-060) requirements. All of the criteria will not be repeated here but, instead, some additional comments are included in the discussion which follows.

GENERAL LAND USE PLAN MAP AMENDMENT REVIEW

The three most important issues to consider in determining whether or not to approve the proposed GLUP Map Amendment are: 1) the affect the amendment will have on public facilities, particularly transportation facilities; 2) the affect the amendment will have on the supply of Heavy Industrial, General Industrial, Commercial and Service Commercial land; and, 3) the appropriateness of the site for the Heavy Industrial, General Industrial, Commercial, and Service Commercial land use designations.

1) How will this proposed change affect public facilities, particularly transportation facilities?

The Oregon Transportation Planning Rule (OAR 660-12-060) requires amendments to acknowledged comprehensive plans that significantly affect a transportation facility to assure that allowed land uses are consistent with the identified function, capacity, and level of service of the

facility in question. The applicant proposes to meet this requirement by compliance with the alternative mechanisms set forth in OAR 660-012-0060 (2) (a) through (e).

The City of Medford requires a Traffic Impact Analysis (TIA) when a change in a GLUP Map designation causes the potential for more than 250 additional average daily trips (ADT) to be generated as a result of the proposed change. The applicant has submitted an original and revised TIA for this proposal; the revised version is attached hereto as Exhibits I and J. The Medford Engineering Division is recommending a cap on total ADT using the *ITE Trip Generation Manual* for each quadrant type (shopping center (with a supermarket), office park, business park, and park-and ride). The applicant has indicated that the potential traffic generation based on the proposed zoning ("worst case scenario") would result in a generation of 77,045 ADT and 7,795 P.M. peak trips. The proposed trip cap reduces this to 18,509 ADT and 1,882 P.M. peak trips. This trip cap represents the ADT estimated by the applicant for the project's proposed building square footages (Exhibit I, pg. 34).

Even with the trip cap, the proposal impacts several intersections. Improvements to these intersections, which are required for mitigation, are indicated in the Medford Engineering Division Department memo (Exhibit K-3) and Oregon Department of Transportation letters (Exhibits V-1A and V-1B), which are being imposed as conditions of approval of the GLUP Map amendment.

In addition to the proposed trip cap, the applicant proposes to incorporate Transportation Demand Management (TDM) measures into the approval as a trip reduction plan. The Medford Engineering Division is recommending allowing a 2% trip reduction for the internal trip capture that is likely to result from the project design, and an additional 5% deduction for the TDM measures. Aspects of the trip reduction plan include: a trolley route among the development's quadrants and between the development and the Rogue Valley Mall; the provision of employee transit passes for RVTD buses over a 5-year period; a parking reduction plan (5% reduction in the number of required off-street parking spaces); and design elements/amenities for pedestrian and bicycle modes. Medford's Transportation System Plan (TSP) Implementation Strategy 2-M (2) seeks to encourage alternative modes of transportation through a trip reduction plan to satisfy some parking space requirements. The proposal cannot qualify for the 10% "mixed-use" reduction in trips allowed by the TPR because it does not include a residential component, and, therefore is not considered "mixed use". The proposal also seeks, but does not guarantee, to promote and accommodate commuter rail service between downtown Medford and the site. This, however, is not a condition of the development.

The Oregon Department of Transportation (ODOT) submitted comments regarding potential impacts to state transportation facilities and recommended conditions for impact mitigation (See Exhibit V-1A and V-1B). ODOT finds that without the mitigations, the proposal would have significant adverse impacts to state transportation facilities.

The Medford Water Commission has indicated that it has adequate capacity to serve the development (Exhibit M). No other public facility deficiencies or issues have been identified (Exhibit N).

2) How will this proposed change affect the supply of Heavy Industrial, General Industrial, Commercial, and Service Commercial land in the UGB?

To summarize the effect of the proposed changes, they will result in approximately 85 fewer acres of Heavy Industrial land. Those Heavy Industrial lands will provide:

- 23 additional acres of General Industrial land
- 13 additional acres of Service Commercial land
- 49 additional acres of Commercial land

Industrial

In the aggregate, this redesignation of Industrial lands to Commercial can be justified based on information in the City's Buildable Land Inventory of employment (Industrial and Commercial) land adopted in the October 5, 2006 revision to the Economic Element of the *Medford Comprehensive Plan*. [Note that the application materials make several references to the information in the 1993 Economic Element that was in effect at the time of application. These are no longer applicable.] The Economic Element indicates that Medford will have a 444-acre surplus of industrial land for the 20-year period ending in 2020. The Economic Element also states that this surplus could be applied to alleviate potential market pressures on commercial lands due to a potential shortage of 300 acres. Thus, this proposal would decrease the surplus of Industrial land in the City by redesignating 62 acres of Heavy Industrial land to Service Commercial and Commercial designations.

Per the newly updated Economic Element, p.23, the demand for Heavy Industrial land in Medford appears to be minimal. Medford Heavy Industrial lands are less competitive with respect to price and tax levels, when compared to sites in the White City industrial area, where services are available, land cheaper and taxes lower. The subject site is also less attractive than White City with respect to the ease of moving truck freight. Freight generated in White City can access Interstate-5 via the Seven Oaks Interchange (for northbound freight) and Central Point (for southbound freight), rather than face the congestion at the North Medford Interchange. The subject site has been vacant for over 13 years, suggesting a lack of fit between the zoning and demand factors for land.

Given air quality conditions in the valley, it is fair to question how developable the subject site would be under its existing land use designation and zoning. Regarding the feasibility of locating Heavy Industrial uses on the subject site in the future under existing zoning, the Sierra Nevada Air Quality Group prepared a report for the Northgate Centre LLC (Exhibit O, p.22), which states:

"...depending on the type and size of the industry, the new source would be required to obtain emission offsets and produce a net air quality benefit in the area. As a practical matter, the NSR rule would require that the right to produce emissions would need to be obtained from nearby sources such as Timber Products and Sierra Pine. In our experience, it would be highly unusual for the owners and operators of facilities such as Sierra Pine and Timber Products to be willing to reduce their maximum allowable emissions in order to allow an adjacent facility to site near their property. Therefore, it is unlikely, under the current rules, that siting another significant industrial operation would be feasible on the property owned by Northgate Centre LLC."

A letter received from the Oregon Department of Environmental Quality received November 3, 2006 (Exhibit T-B), reiterates that this area is one of only two where air polluting industries could locate due to the potential availability of emission credits. Existing industrial emitters would have to have to supply the credits for a new business.

The first item in the Conclusion section of the Economic Element states, "*The City of Medford...is experiencing a shift away from industrial development toward service and trade development.*" Staff's historical review of the Economic Element shows that this has been a conclusion since 1994. This proposal reflects that shift.

Commercial

The newly adopted revision to the Economic Element, prepared in conformance with Statewide Planning Goal 9, indicates that the City will experience a 300-acre deficit of Commercial land through 2020. This proposal would provide for an additional 49 acres of Commercial lands, thus decreasing the projected deficit.

Apart from easing the Commercial land deficit, this proposal provides a special commercial site. The site is large and contiguous, close to state highways and Interstate 5, and appropriate for regional commercial uses. The applicant asserts that regional commercial centers require high access to regional transportation facilities, proximity to a major customer base, and clustering among other retailers. The last such large site identified for that purpose was the south Medford "Heitkamp" site, which has since been committed to the development of a regional sports park facility.

This proposal also affects the geographic distribution of Commercial land. According to the applicant's Vacant Commercial Lands map (Exhibit C, p.17), the majority of Medford's vacant commercial lands are located along West Main Street and the southern reaches of State Highway 99. This proposal establishes opportunities for Commercial activities at the confluence of three state highways and near the North Medford Interchange with Interstate 5.

Service Commercial

As the applicant suggests (Exhibit A, p.145), the Economic Element does not identify the need to establish minimum amounts of available Service Commercial land because the uses permitted under the Service Commercial (SC) GLUP map designation (and its corresponding C-S/P zone) are also permitted in various other zones; these permitted uses can infill smaller sites in several other plan designations. SC is often used to provide compatibility with abutting residential uses and this is often done on a case by case basis. Nonetheless, the applicant makes a case for a constrained supply of land in the Service Commercial category, based on high land values per acre for land currently under this GLUP Map designation and a reported high demand for office space.

3) Is this site appropriate for these proposed designations?

The Northgate Centre properties are located in an area with two major industrial facilities, namely, Timber Products and SierraPine. Representatives of these companies have raised concerns about the

compatibility of the proposed Northgate Centre uses with nearby heavy industrial uses, suggesting that the industries generate levels of noise and dust that would be offensive to non-industrial uses.

The applicant identifies means to minimize potential compatibility conflicts with these industries. These include: 1) not including residential uses in the mix of uses; 2) providing for a landscaped buffer on the west side of the "Lifestyle Center"; 3) maintaining the Heavy Industrial GLUP designation on parcels next to SierraPine; 4) providing a berm (existing) and landscaping improvements for visual separation and vegetative screening at the northwest corner of the Northgate Centre abutting SierraPine to reduce impacts by mill emissions; and, 5) agreeing to deed and lease declarations that preclude remonstrance against impacts associated with existing and future operations of Timber Products and SierraPine (Exhibit F-F, pp. 5-6).

Two policies in the "Economic Element" can be found to be supportive the proposed GLUP Map change:

Policy 3-1: The City of Medford shall designate commercial facilities of a regional nature along freeways and highways, and designate those serving the community near collector and arterial streets.

The Lifestyle Center is intended to attract customers from throughout the broad region of northern California and southern Oregon, thus qualifying as a regional commercial facility. Future customers will have access via the North Medford Interchange with Interstate 5, as well as State Highways 62, 99 and 238.

Policy 3-3: The City of Medford shall encourage cohesive, integrated commercial centers and industrial centers rather than traditional, unrelated, linear development patterns through site development design guidelines.

In this instance, the developer has proposed a Master Plan that integrates a set of diverse centers (office, business and shopping) into an overall design. Each quadrant of development is ordered along certain lines, be they industrial, business or commercial, providing a nested landscape unlike the linear patterns of the past.

CONCLUSION

Changing the designation of these sites from Heavy Industrial, General Industrial, and Commercial to Heavy Industrial, General Industrial, Commercial and Service Commercial will have no significant impact on the overall supply of developable Industrial land. The change will provide more Commercial lands to meet the City's projected 20-year need for additional lands in that designation. The applicant has submitted a Traffic Impact Analysis which indicates that impacts can be mitigated through a trip cap and construction of the improvements indicated in the Engineering Division memo (Exhibit K-3) and ODOT letters (Exhibits V-1A and V-1B). No public facility deficiencies or issues have been identified.

Note that this GLUP amendment is intrinsically based upon the Northgate Centre development concept. To preserve the legal basis for the decision on this GLUP amendment, approval must require future development permits on the properties that are subject to this GLUP Map amendment to demonstrate compliance with the conditions.

ACTION

The Medford Planning Commission, at their meeting of October 26, 2006, voted to forward a recommendation to the City Council for approval of CP-06-065 per the Staff Report dated October 26, 2006 (revised November 6, 2006 to reflect the Planning Commission action) and Exhibits, subject to the conditions. The Planning Commission motion included the recommendation that the Findings of Fact be amended to reflect the changes summarized on Exhibit H-H.

The Medford City Council, at their meeting of December 7, 2006, voted to direct staff to prepare an ordinance approving CP-06-065 per the Revised City Council Staff Report dated December 11, 2006 and Exhibits, subject to the conditions indicated below. Note that all exhibits are on file for inspection in the City of Medford Planning Department.

- Exhibit A - Applicant's submission *Vol.1, Project Description, Analysis, Findings of Fact and Conclusions of Law*, received March 1, 2006
- Exhibit B - Applicant's submission *Vol. 2, Technical Appendices*, received March 1, 2006
- Exhibit C - Applicant's submission *Vol.3, Atlas of Maps and Design Plans*, received March 1, 2006
- Exhibit D - General Land Use Plan (GLUP) Map
- Exhibit E - Proposed GLUP map changes
- Exhibit F - Map of proposed Lifestyle Center
- Exhibit G - Map of proposed Office Park
- Exhibit H - Map of Proposed Business Park
- Exhibit I - Northgate Centre Revised Traffic Impact Analysis for Minor Comprehensive Plan Map Amendment and Zone Change, July 7, 2006
- Exhibit J - Northgate Centre Report Figures Revised Traffic Impact Analysis for Minor Comprehensive Plan Map Amendment and Zone Change, July 7, 2006
- Exhibit K-3 Revised Memo from Medford Public Works Department, October 25, 2006
- Exhibit L - Memo from David Pyles, Development Review, ODOT, October 11, 2006
- Exhibit M - Memo from Medford Water Commission, May 5, 2006
- Exhibit N - Memo re: Northgate Centre – Summary of Preliminary Utility Analysis
- Exhibit O - Sierra Nevada Air Quality Group, LLC, "Evaluation of the Air Quality Impacts of the Proposed Northgate Centre in Medford, Oregon", January, 2006.
- Exhibit P - Current zoning (vicinity) map
- Exhibit Q - Not used in this report.
- Exhibit R - Not used in this report.
- Exhibit S - Letter from Russ Dale, received October 18, 2006
- Exhibit T-A Email from John Becker, ODEQ, received October 18, 2006
- Exhibit T-B Letter from John Becker, ODEQ, received November 3, 2006

- Exhibit U - DVD regarding Northgate Centre from Craig Stone, received October 18, 2006
- Exhibit V-1A Letter from David Pyles, ODOT dated October 18, 2006
- Exhibit V-1B Letter from David Pyles, ODOT dated October 25, 2006
- Exhibit W - Minutes and report from RVMPO Policy Committee re: commuter rail proposal
- Exhibit X - Materials from Timber Products (binder), received October 18, 2006
- Exhibit Y - Materials from Craig Stone re: Grants Pass Timber Products, received Oct. 18, 2006
- Exhibit Z - Email from Troy Hutchins, F.V. Martin Trucking Co., received October 19, 2006
- Exhibit A-A - Email from Edgar Hee, received October 20, 2006
- Exhibit B-B - Letter from seroov beeshveel received October 16, 2006
- Exhibit C-C - Printed Copy of Northgate PowerPoint Presentation of October 18, 2006
- Exhibit D-D - Letter from Erik Vos, received October 25, 2006
- Exhibit E-E - Action Minutes, October 24, 2006, Citizens Planning Advisory Committee
- Exhibit F-F - Northgate Center LLC, Response to New Testimony and Evidence, October 25, 2006
- Exhibit G-G - Johnson & Sherton, P.C., Timber Products post-hearing submittal, October 25, 2006
- Exhibit H-H - Summary of Planning Commission recommended Changes to the Findings of Fact
- Exhibit I-I - Minutes of the October 18, 2006 Planning Commission Meeting
- Exhibit J-J - Minutes of the October 26, 2006 Planning Commission Meeting
- Exhibit K-K - Letter from Susan and Terry Miller, received November 7, 2006
- Exhibit L-L - Letter from Rick Hogue, received November 7, 2006
- Exhibit M-M - Letter from Dan Yeager, received November 14, 2006
- Exhibit N-N - Letter from Tom Humphrey, City of Central Point, dated November 15, 2006
- Exhibit O-O - Memo from Jay Harland dated November 16, 2006, updated Urban Land Analysis
- Exhibit P-P - Letter from Joseph Cortright, Impresa, Inc., dated November 21, 2006
- Exhibit Q-Q - Letter from Craig A. Stone, dated November 27, 2006, regarding air quality
- Exhibit R-R - Letter from Allen Johnson, dated November 27, 2006
- Exhibit S-S - Graphics from Timber Products/SierraPine, dated November 27, 2006
- Exhibit T-T - Memo and DVD video from Erik Vos, dated November 27, 2006
- Exhibit U-U - Letter from Tom Espinosa, received November 22, 2006
- Exhibit V-V - Copy of Timber Products/SierraPine November 16, 2006 City Council presentation
- Exhibit WW - Copy of petition received at November 16, 2006 City Council meeting signed by 95 Timber Products employees
- Exhibit X-X - Email from Sharen Yeager, dated November 12, 2006
- Exhibit Y-Y - Email from Kathie Young, dated November 12, 2006
- Exhibit Z-Z - Letter from Craig Stone, dated December 4, 2006, Final Rebuttal
- Exhibit AAA Letter from Gregory Hathaway, dated December 4, 2006
- Exhibit BBB Memo from Erik Vos, dated December 4, 2006
- Exhibit CCC Letter from Micheal Reeder, dated December 6, 2006
- Exhibit DDD Minutes of the November 16, 2006 City Council Meeting
- Exhibit EEE Minutes of the December 7, 2006 City Council Meeting

Conditions Attached to Approval of CP-06-065

Within 30 days of the effective date of the ordinance adopting the GLUP Map amendment, the property owner shall submit a covenant or covenants (prior to recordation) to be recorded on the subject properties containing the following stipulations to the Planning Department for review. Upon City approval, the covenant shall be recorded by the property owner with Jackson County.

Management details regarding the following conditions of approval shall be administered through an executed Developer's Agreement with the City of Medford. The timing of compliance with the following conditions shall be established as part of the Developer's Agreement, which shall be adopted through a land use decision per ORS 94.508.

1. Trip Cap

A trip cap is hereby applied that limits vehicular trip generation by development on the subject site to no more than 18,509 ADT and 1,882 P.M. peak hour trips as a mitigation to ensure that impacts will not reduce transportation facility adequacy below LOS 'D'. A 2% trip reduction for the internal trip capture that is likely to result from the project design and up to an additional 5% deduction for the TDM measures shall be available. To receive more than the 2%, the TDM measures must include trolley service serving all project quadrants with 10 minute headways and capable of capturing 360 passengers per hour. The trolley shall operate in perpetuity, at least Monday through Friday from 7:00 A.M. to 6:00 P.M. Such a trip cap shall only be altered through an approved Comprehensive Plan General Land Use Plan Map amendment, subsequent to consultation with Medford Public Works Department and ODOT. The applicant is responsible for monitoring ADT generation by proposed development projects (per the most current edition of the ITE Trip Generation Manual) and reporting to the City of Medford in conjunction with applications. The compliance monitoring system shall be developed as part of the Developer Agreement.

2. Transportation Improvements

The City of Medford Public Works Department memo dated October 25, 2006 (Exhibit K-3) and the Oregon Department of Transportation letters dated October 18 and October 25, 2006 (Exhibits V-1A and V-1B) herein establish the required transportation improvements and conditions. Applicant to provide evidence of compliance with transportation improvement requirements.

3. Transportation Demand Management Plan

(A) Transit Pass for Employees. An employee transit pass subsidy shall be provided for at least 5 years for fixed-route transit district passes at no cost to all employees on the subject site who wish to use transit, beginning within two years from the date that the first Certificate of Occupancy is approved by the City for the subject site. After such beginning date, verification of compliance shall be provided to the City of Medford on a yearly basis for five years.

- (B) **Trolley Service.** If the additional 5% trip reduction is taken for a trolley, the privately funded fare-free trolley(s) shall service the three quadrants of the subject site in perpetuity beginning within two years from the date that the first Certificate of Occupancy is approved by the City for the building square footage for which the reduction is taken. At a minimum, trolley service shall operate with 10 minute headways and be capable of capturing 360 passengers per hour, at least Monday through Friday from 7:00 A.M. to 6:00 P.M. Trolley service to connect to the Rogue Valley Mall is subject to the permission of the Rogue Valley Mall owners. Applicant shall construct the Exclusive Transit Crossing which traverses North Central Avenue between the Office and Business Parks if the same is approved by the City of Medford.
- (C) **Off-Street Vehicular Parking Space Reduction/Cap.** A parking space reduction is hereby approved for the subject site which reduces the required number of off-street vehicular parking spaces by five percent. The reduction distribution shall be approved through the Master Plan approval. This reduction does not reduce the bicycle parking space requirement, which shall be based on the number of parking spaces normally required by the *Medford Land Development Code*. No more than 120% of the number of off-street vehicular parking spaces normally required shall be supplied.
- (D) **McAndrews Multi-Use Path.** A concrete multi-use path at least 10 feet in width shall be constructed behind the planter strip along the frontage of McAndrews Road connecting between Court Street and Central Avenue in lieu of the sidewalk. Specific design and location of such path is subject to review and approval of the City of Medford Engineering Division.
- (E) **Transit/Carpool Facilities.** Transit and carpool facility improvements in conformance with *Medford Land Development Code* sections 10.807 and 10.808, 10.809 shall be determined through the Master Plan approval and/or subsequent Site Plan and Architectural Review approvals.
- (F) **Transportation Management Association.** Businesses in Northgate Centre with 50 or more employees shall join a Transportation Management Association if one exists for the Medford area.
4. **Compatibility Restrictive Covenant.** A restrictive covenant which restricts property owners and lessees on the subject site from remonstrating with respect to the common and customary industrial manufacturing practices which occur on nearby lands devoted to industry shall be incorporated as deed restrictions on the subject site and as provisions in the leases for future tenants of the subject site. A sample of the language for such a covenant is provided in Exhibit F-F. The Planning Commission voted to recommend including the following changes to Exhibit "F-F" pp. 5-6:

Third line begins “. . . *Timber Products Corporation and/or SierraPine Corporation*”, delete the words “*as forest products businesses*” and insert, “. . . *and any successor industrial users of those sites and/or adjacent industrial property owned by those businesses*”. Line 8, which begins “. . . *businesses to any federal, state or local agency so long as the businesses operate in conformance with*”, delete “*conformance*” and change to “*material compliance*”. Line 10 begins “. . . *of the businesses.*” Add “*Violation of a single day threshold reported in compliance with industry standard practice shall not constitute material non-compliance*”.

5. Northgate Centre Master Plan

Zoning shall be in effect that permits the land use types indicated in the Master Plan prior to further Master Plan review.

- (A) A Northgate Centre Master Plan shall be adopted via Site Plan and Architectural Review pursuant to Class “C” procedures of the *Medford Land Development Code*. The Master Plan shall be approved through such review prior to any further SPAC applications for individual sites or projects within the project boundary. The Master Plan and subsequent applications shall be in substantial conformance with the Northgate Centre application materials submitted as part of CP-06-065 and ZC-06-066, unless modified by a subsequent GLUP Map amendment.
- (B) The following elements, among others, shall be considered during the Site Plan and Architectural Review for inclusion in the Master Plan:
- (1) Pedestrian elements to include benches dispersed throughout the site, areas that integrate outdoor commerce and eating with pedestrian space, trolley stops and decorative and functional pavement treatments at key locations of vehicle/pedestrian interaction. Interconnections between the three quadrants of the project shall also be considered to the extent possible under ODOT regulations and restrictions prevailing on the piece of property.
 - (2) A building façade that contains a public entrance to include the following architectural elements:
 - a) A cupola or tower feature on a building corner common to the building façade wall with the public entrance or cupola or tower integrated into the entrance itself.
 - b) A minimum percentage of the façade to include masonry work depending upon land use type.
 - c) A minimum percentage of the building façade wall having transparent or translucent windows and awnings depending upon land use type.
 - (3) Methods to address issues covered by the City of Medford proposed “big box ordinance” for those structures to which the ordinance would apply.
 - (4) Exterior Site Lighting
 - a) Lighting in commercial areas to be less than 25 feet in height and of a design similar to that shown in the conceptual lighting plan (Exhibit C, p.13).
 - b) Conventional style lighting to be restricted in industrial areas so that no more than 30 percent of the total illumination may come from

conventional commercial/industrial lighting. The balance to be less than 25 feet in height and of a design similar to that shown in the conceptual lighting plan (Exhibit C, p.13).

(5) Water Features

At least one significant water feature to be included in the Lifestyle Center and Office Park of a design similar to that shown in the conceptual landscape plan details (Exhibit C, p.14).

(6) Landscaping

- a) Landscape plans to include landscaped buffer between SierraPine and the Northgate Centre of a design similar to that shown in the conceptual buffer detail plan (Exhibit C, p.12).
- b) Landscape plans to include street trees, landscaping, and appropriate irrigation installed in the public right-of-way planter strips. If and where planter strips are not required, street trees and appropriate irrigation to be included abutting public right-of-way sidewalks.

(7) Master Signage Plan

A master signage plan, including project entry and directional signs.

(8) The following exceptions are noted:

- a) The configuration of the Business Park (Exhibit C, p.11) may change to accommodate the specific requirements of potential industrial/business tenants or future owners.
- b) The applicant cannot guarantee rail service as contemplated in the Northgate Centre proposal (Exhibit C, p.11) and future plans for Northgate Centre are not required to provide rail service.

(C) Development Phasing Plan shall be proposed and approved.

The following stipulations of the applicant are accepted and applied as conditions:

- 6. **Beall/Highway 99 Improvement.** Applicant agrees to stipulate to its proportional share of the cost to improve the intersection of Beall Lane and Highway 99, excluding rail crossing improvements, at such time that the City of Central Point has identified the needed improvements and ascertained the costs. Proportionality shall be determined as a proportion of the amount of traffic projected to pass through this intersection which is related to Northgate Centre in comparison to all other intersection traffic.
- 7. **Mc Andrews Sidewalk.** Applicant agrees to stipulate to a 100% share of the cost to install a sidewalk beneath the McAndrews Road viaduct and easterly along the southeasterly side of McAndrews Road to its intersection with Court Street provided that the said improvement, including right-of-way acquisition (if needed) can be obtained by the City of Medford.

8. **Wetlands; Hopkins Canal.** Applicant agrees to work cooperatively with the Rogue Valley Irrigation District to accommodate any reasonable concerns or requests made by the district.
9. **Sanitary Sewer, Domestic Water, Storm Drainage Facilities.** Applicant agrees to extend and construct all needed sanitary sewer, domestic water and storm drainage facilities in accordance with the most current adopted facility plans of the City (or other facility providers) and the same will be based upon engineering construction plans prepared by a qualified civil engineer registered in Oregon and approved by the City (or other facility providers). Public facility construction will incorporate the recommendations contained in Appendix E-2 as approved by the City.
10. **Storm Water:** Applicant agrees to incorporate stormwater system design considerations into final engineering for the proposed stormwater facility improvements and carry out these in accordance with the Appendix E-2 analysis, standards and regulations of the City and generally accepted engineering practices.
11. **Street Vacation.** Pursuant to Oregon Revised Statutes ("ORS") 271.130, applicant agrees to take steps to vacate the city streets shown in Appendix F-3.
12. **Consolidation of Existing Parcels.** Applicant agrees to consolidate or adjust as appropriate existing tax lots in Northgate Centre to conform to the approved plans for Northgate Centre and the requirements of the MLDC, and the same will be accomplished before issuance of any Certificate of Occupancy for buildings in Northgate Centre.
13. **Delivery of Rail Service.** Applicant agrees to continue reasonable efforts to acquire and supply commuter rail service as anticipated in these land use applications.
14. **Waste Management.** Applicant agrees to establish a comprehensive waste management operations plan in cooperation with Rogue Disposal and Recycling, Inc.
15. **Berm and Tree Buffer.** Applicant agrees to construct and install the berm and landscaping to buffer Sierra Pine from Northgate Centre generally as shown on Exhibit C, pp. 2 and 12 and as approved by the Site Plan and Architectural Commission per condition 5.(B)(6) a).

CP-06-065

December 11, 2006

Kathy Helmer, Planner IV

Suzanne Myers, A.I.C.P., Senior Planner

**PLANNING COMMISSION AGENDA: October 18, 2006
October 26, 2006**

**CITY COUNCIL AGENDA: November 16, 2006
December 7, 2006
December 21, 2006**

BEFORE THE CITY COUNCIL OF THE CITY OF MEDFORD, OREGON

In the Matter of A Minor Amendment of the)
Medford *Comprehensive Plan* changing the)
General Land Use Plan (GLUP) Map land use)
designations from Heavy Industrial, General)
Industrial, and Commercial to Heavy Industrial,) Planning File CP 06 - 065
General Industrial, Commercial, and Service) Council Ordinance 2006-264
Commercial on 84 acres located generally north of)
West McAndrews Road, east of the Central Oregon)
& Pacific Railroad tracks, and west of North Pacific)
Highway)

SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

At its last regular meeting, Council instructed staff to prepare findings consistent with Council direction approving the above-referenced action, and staff received from applicant Findings of Fact and Conclusions of Law dated December 21, 2006, and staff has reviewed those findings and the findings are consistent with council direction.

In addition to the above-referenced findings, the Council makes these supplemental Findings of Fact and Conclusions of Law.

Issue

Timber Products and Sierra Pine advise that the City will need to incorporate the conditions of this Minor Comprehensive Plan Amendment into the Land Development Code in order to comply with ORS 197.195, the state law on limited land use decisions, so as to be able to enforce the conditions of this GLUP map amendment in future site developments on this property.

Conclusion

The City Council concludes that

- (a) the City does not follow the Limited Land Use Decision process outlined in the ORS 197.195;
- (b) the City's Land Development Code and the procedural and substantive sections regarding the Site Plan and Architectural Commission and approval of applications to that commission have been adopted after submittal and review by the state;
- (c) that the incorporation of comprehensive plan standards into a land development code for purposes of approving limited land use decisions set forth in ORS 197.195 refers to legislative comprehensive plan amendments and not to quasi-judicial comprehensive plan amendments;
- (d) this ordinance and the conditions will be restrictive covenants that run with the land; and
- (d) a developer Agreement Land Use Procedure under ORS 94.504 et seq., will occur before the conditions are implemented.

Therefore, the conditions of this GLUP map amendment do not need to be adopted into the Medford Land Development Code in order to be enforced on the subject property during application and approval of the Master Plan or subsequent Site Plan and Architectural Commission approvals.

Corrections to the Findings

As set forth above, the council adopts the Findings of Fact and Conclusions of Law dated December 21, 2006, subject to the following:

1. Exhibit: Northgate Center Vol. 1, Project Description Analysis Findings of Fact and Conclusions, page 112 section 3.4.10.4 (4) Land Supply Impacts
Strike the last two sentences on that page regarding free-market economics.
2. Finding of Fact and Conclusions of Law Page 2 last paragraph, first sentence, change "Land Use entitlements" to "Plan Authorizations."
3. Finding of Fact and Conclusions of Law, Section 2.1.1, page 4 "**Conclusions of Law:**" [Introduction]
Add: "On this record and limited to these consolidated applications and pursuant to Friends of Applegate Watershed v. Josephine County, 44 Or LUBA 786 (2003) and Rutigliano v. Jackson County, 42 Or LUBA 565 (2002)"
3. Finding of Fact and Conclusions of Law, Section 2.1.1, page 4 (conclusion number 3) end of sentence change
"...lawfully and should be processed concurrently." to
"...lawfully and may be processed concurrently."
4. Finding of Fact and Conclusions of Law, page 40, subparagraph number 1
Strike the third sentence.
5. Finding of Fact and Conclusions of Law, page 41, last paragraph beginning with "Alba Village..."
Strike the third sentence.

Dated this 21st day of December, 2006

**BEFORE THE CITY COUNCIL
FOR THE CITY OF MEDFORD
JACKSON COUNTY, OREGON**

**IN THE MATTER OF AMENDING THE)
COMPREHENSIVE PLAN MAP THAT)
AFFECTS APPROXIMATELY 84 ACRES OF)
LAND LOCATED AT AND AROUND THE)
INTERSECTION OF OREGON HIGHWAY)
238 AND CENTRAL AVENUE INSIDE THE)
CORPORATE LIMITS OF THE CITY OF)
MEDFORD, OREGON)
Applicant: Northgate, LLC)**

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

1 APPLICATIONS and PROJECT DESCRIPTION

1.1 APPLICATIONS; AUTHORIZATIONS SOUGHT

Applicant Northgate LLC has sought approval for contemporaneously filed applications to amend the City of Medford Comprehensive Plan Map (referred to by Medford as the General Land Use Plan Map or GLUP) and Zoning Map in the manner described in below Sections 1.1.1 and 1.1.2. *These Findings of Fact and Conclusions of Law deal exclusively with the Plan Map (GLUP) amendment.*

1.1.1 MINOR GENERAL LAND USE PLAN (GLUP) MAP AMENDMENT

Pursuant to MLDC 10.192, a procedural Class “B” authorization is sought for a minor GLUP Map amendment (*See also Section 2.1.2*) from the existing Heavy Industrial designation to a mix of Heavy Industrial, General Industrial, Service Commercial and Commercial GLUP Map designations, as depicted on Exhibit 7, Atlas p. 19. Pursuant to the enabling language in Medford’s Transportation System Plan (TSP) and consistent with Goal 12, the GLUP Map amendment also requests authorization of a site-specific trip reduction plan to be incorporated into the ordinance authorizing this amendment to the Comprehensive Plan. The trip reduction plan is based on a Transportation Demand Management Plan that consists of a pedestrian and bicycle friendly overall site plan, on-site trolley service, complimentary transit passes for employees, and reduced parking supplies.

1.1.2 ZONING MAP AMENDMENT

Pursuant to MLDC 10.227, a procedural Class “C” plan authorization is sought to change the zoning of the subject property. The MLDC characterizes zone changes as “plan authorizations” which, in this instance, would change the existing County General Industrial (GI) zoning designation to a mix of City zoning districts which include General Industrial (I-G), Light Industrial (I-L), Service Commercial and Professional Office (C-S/P), and Regional Commercial (C-R). The proposed zoning is depicted in Exhibit 7, Atlas p. 20.

1.1.3 OVERVIEW OF PROPOSED NORTHGATE CENTRE PROJECT

This property which occupies three of four quadrants formed by the newly constructed Highway 238 and North Central Avenue, was once home to the Medco lumber mill. Proposed for this property is a project called *Northgate Centre* which comprises 84 acres and features a planned mix of commercial,

Findings of Fact and Conclusions of Law

employment and industrial uses. One quadrant would accommodate *Alba Village*, a collection of retail shopping and dining establishments in a lifestyle center design for stores and restaurants not now in Medford. The second quadrant is planned as *the Office Park at Northgate Centre* and would house a mix of professional and business offices, restaurants and support services in a campus environment. *Northgate's* third quadrant is *the Business Park at Northgate Centre*, a campus planned to accommodate small manufacturing and shipping/warehousing businesses and function as an incubator for business start-ups. The fourth quadrant (one of two fronting the railroad right-of-way) is being planned by others as an industrial subdivision.

The project will be served by extensive pedestrian facilities and free trolley service which will connect *Northgate Centre* to the Rogue Valley Mall by way of Ohio Street. The project proposes to offer complimentary RVTB passes for employees who work at *Northgate Centre* for a period of at least five years. Applicant believes that passenger rail service can be provided to connect *Northgate Centre* to Downtown Medford, with the potential for future expansion to other Rogue Valley destinations.

Detailed traffic analysis shows that this project will produce impacts upon several intersections in Medford, all of which, with minor improvements, can be mitigated to the traffic standards of the City and State. Applicant has agreed to pay for the various minor transportation improvements identified in the Traffic Impact Analysis (Exhibits 95 and 97). ODOT's 1998 Environmental Assessment for the "Big X Project" identified the need for a future "flyover" which would pass over the intersection of Highways 99 and 62, and Applicant has agreed to dedicate sufficient right-of-way for its future construction. *Northgate Centre* is projected to produce more than \$4 million in street systems development charges revenue for the City.

The land use and economic studies show that there the short-term supply of commercial land is constrained, but that there is a relative abundance of industrial land. Changes that allow a portion of this property to be used for retail commercial will partially replace the loss of commercial land that occurred when the City of Medford acquired a large tract of commercial land along South Pacific Highway 99 and set it aside for development as a regional Sports Park. Due to the very stringent air quality standards applied to the southern Oregon area, and Medford's competitive economic disadvantage to White City for heavy industry, the property is has a comparative disadvantage as a supply source for the heavy industrial uses for which the site is presently planned and zoned.

Economic analyses report that *Northgate Centre*, by 2015, will produce 1,800 permanent jobs (over 700 of which are projected to be living wage jobs), \$95 million in annual personal income, \$5 million per year in local property tax revenue (of which roughly \$2 million would be in municipal revenue, and nearly \$14 million in annual State revenue).

Land use entitlements needed for this project involve amendments to Medford's Comprehensive Plan Map (in Medford also known as the GLUP Map) that adds Commercial, General Industrial and Service Commercial designations. In a separate but concurrently filed application, zone changes will place General Industrial, Light Industrial, Service Commercial and Regional Commercial strategically on the property to coincide with and support the accompanying site plan. The property has been designed to minimize and mitigate the impacts, if any, to other nearby lands and the municipal infrastructure. Applicant has stipulated to the site plan to support this integrated commercial-industrial urban redevelopment project. The final project design will undergo future Site Plan and Architectural Review.

2 PROCEDURAL MATTERS RELEVANT SUBSTANTIVE APPROVAL CRITERIA

2.1 PROCEDURAL BACKGROUND

The applications described above were filed and received by the City of Medford on March 1, 2006. The applications were deemed complete when filed. Following public notice in accordance with law, the application for comprehensive plan amendment and zone change was considered by the Medford Planning Commission in a public hearing conducted on October 18, 2006. The record was left open to receive additional evidence and argument and final argument by Applicant in accordance with ORS 197.763. Following the receipt of all evidence and argument, the Planning Commission on October 26, 2006 deliberated to a decision, recommending to the City Council that the GLUP map amendment be approved and, approving with conditions the zone change. Following proper public notice and a public hearing on the matter, the Council considered the GLUP map amendment and approved the same on December 7, 2006. The Council's decision in this matter is based upon the evidence of record and is supported by the findings of fact and conclusions of law herein set forth. Separate Findings of Fact and Conclusions of Law support the Council's approval of the zone change.

2.1.1 CONSOLIDATED APPLICATIONS

Applicant submitted concurrent applications for a minor GLUP Map amendment, and zone change and asks that these be considered and decided concurrently. The legal basis for the city's procedures to process consolidated applications of the types proposed is explained below and is based upon legal analysis prepared by Applicant's attorney, Gregory Hathaway.

MLDC 10.102, explicitly states: "[t]he applicant for a development permit, at the time of application or any time thereafter, may request approval of any one or combination of required plan authorizations as identified on the development permit application." MLDC 10.101 sets forth similar language. The types of plan authorizations are listed in MLDC 10.102 and include Minor Comprehensive Plan Amendments and Zone Changes. Therefore, based on the plain language of the MLDC it is permissible to concurrently consider and decide a Minor Comprehensive Plan (GLUP Map) Amendment at "any time," including in "combination" with a zone change application. Applicant contends that cities throughout Oregon routinely and predominantly consider and act upon consolidated plan amendment and zone change applications.

In *Doumani v. City of Eugene*, 35 Or LUBA 388 (1999), the Land Use Board of Appeals dealt with a similar issue to the one at hand. The City of Eugene rejected an applicant's site review application because it was not signed by the owner. The City argued that although the city code did not require the owner to sign the application, nothing in the code prevented such a requirement, and that the requirement fell under the general authority in the code to prescribe the manner in which the application is submitted. *Id.* at 390. Based largely on principles of statutory construction, the LUBA held that absent specific language in the code authorizing such a requirement, the City's additional requirement exceeded its authority. As in *Doumani*, there is no procedural requirement in the Medford Code or Plan that specifies that Plan amendments must be processed prior to an application for a zone change. Therefore, absent local regulations which require a plan amendment application to proceed separately and conclude before a zone change application can be considered, concurrent applications of the types here proposed is not prohibited as a matter of law.

The MLDC assigns final decision-making authority for zone changes to the Planning Commission and final decision-making authority for plan amendments to the City Council. While it is true that the final

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decision-making authority is different for zone changes and plan amendment plan authorizations, the MLDC expressly provides a procedure for an application that requests both a zone change and minor GLUP Map amendment be processed concurrently. MLDC 10.122 states that the Planning Commission is the approving authority for zone changes and shall act as the advisory agency to the City Council with respect to procedural Class "A" and "B" actions. Procedural Class "A" and "B" actions include both major and minor plan amendments, respectively. In addition, MLDC 10.164 states that the Planning Commission must complete its recommendation with respect to Class "A" actions prior to being scheduled for a public hearing. Therefore, the Planning Commission has considered both applications simultaneously and made a final decision with respect to the zone change (which was appealed) and made a recommendation to the City Council with respect to the plan amendment. The final decision approving the zone change can and has been conditioned to assure ultimate consistency between the GLUP Map and the Zoning Map; MLDC 10.140 expressly delegates authority to the Planning Commission to conditionally approve zone changes.

Conclusions of Law: Based upon the above reasoning, the City Council concludes as follows with respect to procedural requirements:

1. The MLDC specifically states that an applicant for a development permit may apply for any combination of plan authorizations, including both major and minor plan amendments and zone changes.
2. Disjunctive final decision-making authority does not create a procedural flaw that prohibits the Planning Commission from making a final decision to conditionally approve or deny the zone change application and make a preliminary recommendation with respect to a plan amendment application, with the City Council having the authority to review both decisions.
3. Even if the MLDC is found by appellant bodies to be silent on the processing of concurrent applications for a minor GLUP Map amendment and Zone Change, unless there is an explicit procedural requirement that a plan amendment must be processed prior to a zone change, an application for both the zone change and plan amendment can lawfully and should be processed concurrently.

2.1.2 MAJOR OR MINOR GLUP MAP AMENDMENT LEGISLATIVE OR QUASI-JUDICIAL

Potentially at issue is whether the sought GLUP Map amendment is a Major or Minor Amendment and whether it should be dealt with as a legislative enactment or quasi-judicial land use proceeding. The Review and Amendments section of the comprehensive plan provides:

Major Amendments are those land use changes that have widespread and significant impact beyond the immediate area such as quantitative changes producing large volumes of traffic; a qualitative change in the character of the land use itself, such as the conversion of residential to industrial use; or a spatial change that affects large areas or many different ownerships.

Minor Amendments are those which do not have significant effect beyond the immediate area of the change, should be based on special studies or other information which will serve as the factual basis to support the change. The public need and justification for the particular change should be established.

MLDC 10.190 (Application, Minor Comprehensive Plan Amendment) provides:

MLDC 10.190 A minor revision to the Comprehensive Plan is one typically focused on specific individual properties and therefore considered quasi-judicial. Applications for minor Comprehensive Plan amendments shall contain the information as herein required.

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Conclusions of Law: The Review and Amendments section of the Comprehensive Plan has not been amended since the original adoption and acknowledgement of the Comprehensive Plan in the mid 1970's. Thus, adoption and acknowledgement of the above language preceded later court decisions which have refined the distinction and means by which a land use decision is determined to be either major (legislative) or minor (quasi-judicial). For this reason, the above Plan text must be considered in the context of applicable case law. The seminal case law was decided in *Strawberry Hill 4-Wheelers v. Benton County Board of Commissioners*, 287 Or 591, 601 P2d 769 (1979). In this decision, the Oregon Supreme Court held that there are three factors which must be considered in determining whether a local government decision is quasi-judicial in nature:

1. The process is bound to result in a decision.
2. The decision is bound to apply preexisting criteria to concrete facts
3. The action is directed at a closely circumscribed factual situation or a relatively small number of persons.

On these three factors, the Council concludes as follows:

1. Applicant has submitted consolidated land use applications which include an application for a minor GLUP Map amendment. While a Comprehensive Plan amendment, with applications dependent thereto, is not subject to the ordinary statutory decision making timeline, the courts have consistently held that the first factor is satisfied when an application for a comprehensive plan amendment is initiated by one or more property owners within a limited geographic area.
2. There are long-established ("preexisting") approval criteria set forth in MLDC 10.191(2) and in the Review and Amendments section of the comprehensive plan. Moreover, the comprehensive plan Review and Amendments section, in setting forth the differences between major and minor [plan amendments] states in pertinent part that these, " * * * should be based on special studies or other information which will serve as the factual basis to support the change." No text amendments are proposed or required to either the Comprehensive Plan or the Medford Land Development Code. Therefore, the Council concludes that this application will result in the Council applying preexisting criteria to facts established during the proceeding. The Council further concludes that its efforts to distinguish fact from opinion will result in findings of fact which establish the facts as concrete ones.
3. Based upon the evidence in this matter, the Council concludes that its action in this matter is directed at a closely circumscribed factual situation applying to a block of properties that can be circumscribed with a common boundary which includes only the applicants' properties and public rights-of-way. Based upon the evidence, the Council further concludes the application is directed at a relatively small number of persons who are applicants.

Based upon the foregoing conclusions of law, the City Council concludes that this application to amend the GLUP Map is a Minor Amendment thereto which is most properly considered in the context of a quasi-judicial proceeding.

2.2 EVIDENCE OF RECORD

The following evidence was before the City Council in this matter:

Exhibit

Number Nature of Exhibit

- 1 Application
 - 2 Receipt
 - 3 Sign Posting Form
 - 4 Property Owner Mailing Labels (2 sets) * now attached to #35
 - 5 Volume 1 (Project Description, Analysis, Findings of Fact) + 1 copy
 - 6 Volume 2 (Technical Appendices) (no copy)
 - 7 Volume 3 (Atlas of Maps & Design Plans) (plus 1 copy)
 - 8 Land Development letter
 - 9 Letter to referral agencies/Affected agency notice
 - 10 Letter from Eicher, RRVID, re: Hopkins and Lateral Canal
 - 11 Letter re: TIA to Brian Genovese from Mackprang, received April 17, 2006
 - 12 Medford Water Commission letter with conditions, received May 5, 2006
 - 13 Land Development Agenda
 - 14 Public Works Staff report, received May 9, 2006
 - 15 Fire Department Land Development Report
 - 16 Letter from David Pyles, ODOT to Myers, received May 10, 2006
 - 17 Letter from Mackprang to Sinner Consulting, received July 27, 2006
 - 18 Letter from Barber to Scott, received July 6, 2006
 - 19 Minutes of April 25, 2006 Citizens Planning Advisory Committee Meeting
 - 20 Department of Land Conservation Development 45-day notice
 - 21 Notice of Public Hearing, dated September 22, 2006
 - 22 Memo re: Zone Change, Engineering, dated May 1, 2006
 - 23 Letter to Planning Commission from David Pyles, ODOT, re: CP-06-065 and ZC-06-066, received October 11, 2006
 - 24 Letter to Dan Dorrell, ODOT, from Brian Genovese re: T.I.A., received October 3, 2006
 - 25 Staff Report CP-06-065, received October 11, 2006
 - 26 Staff Report ZC-06-066, received October 11, 2006
 - 27 Letter to Planning Commission from David Pyles, ODOT, re: Northgate CP and ZC, received October 18, 2006
 - 28 Email from Becker, ODEQ, re: Northgate, received October 18, 2006
 - 29 Letter from Russ Dale, re: Northgate, received October 18, 2006
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- 30 Letter from Public Works, re: Northgate revised, received October 17, 2006
- 31 CD-Power Point presentation from Craig Stone, (taped to left hand side of file), received October 18, 2006
- 32 Northgate Power Point, Craig Stone, printout 36 pages, received October 18, 2006
- 33 DVD-Alba Village @ Northgate, received October 18, 2006
- 34 Property owner notice, received September 22, 2006
- 35 Certificate of mailing property owner notice, received September 25, 2006
- 36 Letter to Planning Commission from David Pyles, ODOT. October 18, 2006 revised, received October 19, 2006
- 37 Inter-office memo from Suzanne re: Planning Commission Meeting of October 26, 2006, received October 19, 2006
- 38 Property owner notice and Certificate of Mailing received October 26, 2006 and November 1, 2006
- 39 Letter/email from Sharon Yeager, received October 13, 2006
- 40 Letter/email from Kathie Young, received November 13, 2006
- 41 Revised Findings, received November 9, 2006
- 42 Planning Commission report, received October 26, 2006
- 43 Final Order with all exhibits, received November 9, 2006
- 44 Action Letter, received November 10, 2006
- 45 Certificate Action Letter; received November 15, 2006
- 46 Letter from Central Point, Tom Humphrey dated November 15, 2006, received November 15, 2006
- 47 Letter from Central Point, Tom Humphrey dated August 29, 2006, received November 15, 2006
- 48 Letter from Dan Yeager, received November 14, 2006
- 49 Letter from Beeshveel, received October 16, 2006
- 50 Planning Commission minutes (draft) from October 18, 2006 meeting
- 51 Summary minutes-Rogue Valley MPO, received October 18, 2006
- 52 Information re: Grants Pass Timber Products site, received October 18, 2006
- 53 Timber Products Hearing Book, received October 18, 2006
- 54 Email from Troy Hutchens, received October 19, 2006
- 55 Letter to Planning Commission from Davis Wright Tremaine, received October 19, 2006
- 56 Email from Edgar Hee, received October 20, 2006
- 57 Revised Public Works Memo (superceded), received October 24, 2006
- 58 Letter from Johnson and Sheraton, P.C., received October 25, 2006
- 59 Letter from Craig Stone & Associates, received October 25, 2006

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- 60 Action minutes from Citizens Planning Advisory Committee dated October 24, 2005, received October 25, 2006
- 61 Letter from Erik Vos-Timber Products, received October 25, 2006
- 62 Letter to Planning Commission from ODOT with conditions, received October 25, 2006
- 63 Revised Public Works memo, received October 25, 2006
- 64 Revised Staff Report -- ZC-06-066, received October 26, 2006
- 65 Revised Staff Report-CP-06-066, received October 26, 2006
- 66 Summary of Planning Commission recommended changes to applicant's findings, received October 26, 2006
- 67 Inter-office memo to Planning Commission from Suzanne Myers, received October 26, 2006
- 68 Draft Planning Commission minutes from October 26, 2006 meeting, received October 26, 2006
- 69 Memo to Engineering -- review legal, received November 1, 2006
- 70 Letter to City Council from ODOT dated November 1, 2006, received November 3, 2006
- 71 City Council Staff Report, received November 6, 2006
- 72 Agenda Commentary, received November 16, 2006
- 73 Engineer response re: legal description, received November 16, 2006
- 74 City Council sign-in sheet, received November 16, 2006
- 75 Memo to City Council from Craig Stone, received November 16, 2006
- 76 Memo to City Council from Kathy Helmer, received November 21, 2006
- 77 Letter to City Council from Timber Products with CDROM received November 27, 2006
- 78 Timber Products post-hearing submittal, received November 27, 2006
- 79 Johnson letter to City Council re: Comprehensive Plan Amendment, received November 27, 2006
- 80 Cortright letter to City Council re: Comprehensive Plan Amendment, received November 21, 2006
- 81 Letter-Craig Stone, Transmittal of Evidence attached study "Evaluation of Fugitive Emission Control Plans.." by David Caulkins, received November 27, 2006
- 82 Petition -- 95 Timber Products Employees, received November 16, 2006
- 83 Erik Vos letter to City Council-"Response to Northgate Environmental Consultants..", received December 4, 2006
- 84 Hathaway letter to Huttel-objecting to Timber Products submittal of November 27, 2006, received December 4, 2006
- 85 Reeder's letter to Huttel, re: opening record and exparte, received December 6, 2006
- 86 Craig Stone "Final Rebuttal", received December 4, 2006
- 87 Timber Products City Council presentation, received November 16, 2006
- 88 Letter from Tom Espinosa, received November 22, 2006

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- 89 Letter to City Council from Susan and Terry Miller, received November 7, 2006
- 90 Letter to City Council from Rick Hogue, received November 7, 2006
- 91 Letter to City Council from Kathie Young, received November 13, 2006
- 92 Letter to City Council from Sharon Yaeger, November 13, 2006
- 93 Email string re: Erik Vos email to Craig Stone, received November 30, 2006
- 94 Agenda Item Commentary packet for City Council meeting on December 7, 2006, received December 7, 2006
- 95 Revised Traffic Impact Analysis by JRH Engineering dated July 7, 2006 and received July 25, 2006
- 96 Revised Traffic Impact Analysis Report Figures by JRH Engineering dated July 7, 2006 and received July 25, 2006.
- 97 Revised Traffic Impact Analysis Report Figures by JRH Transportation Engineering dated August 31, 2006

2.3 RELEVANT SUBSTANTIVE APPROVAL CRITERIA

The relevant substantive criteria of the City of Medford and State of Oregon which governs this amendment of comprehensive plan map designations, is contained in the Medford Land Development Code (MLDC), the Review and Amendments section of the Medford Comprehensive Plan and in Oregon Administrative Rules, Chapter 660, Divisions 9 and 12. The various approval standards are recited verbatim below and in Section 4, herein, where each is followed by the conclusions of law and ultimate conclusions of the City Council.

Article II of the City of Medford Land Development Code (MLDC) establishes the local procedural requirements for planning and development reviews. Minor Comprehensive Plan Amendments are categorized as Procedural Class "B" Plan Authorizations pursuant to MLDC 10.102. The City Council is designated as the approving authority pursuant to MLDC 10.111. The Planning Commission's designated role is to act in an advisory capacity pursuant to MLDC 10.122. MLDC 10.191 sets forth the submittal requirements for minor comprehensive plan amendments. Written Findings of Fact and Conclusions of Law which address consistency with these relevant substantive approval criteria are provided hereinbelow in Section 4.

In addition to the procedural requirements outlined in MLDC Article II, local governments are required to forward proposed amendments to an acknowledged comprehensive plan to the Director of the Department of Land Conservation and Development (DLCD) at least 45 days before the first evidentiary hearing on adoption pursuant to Oregon's post-acknowledgment procedures as set forth in ORS 197.610 and OAR 660-018-0020 and this requirement was properly observed.

2.3.1 CITY OF MEDFORD APPROVAL STANDARDS

2.3.1.1 Medford Land Development Code (MLDC)

MLDC 10.190 Application, Minor Comprehensive Plan Amendment.

A minor revision to the Comprehensive Plan is one typically focused on specific individual properties and therefore considered quasi-judicial. Applications for minor Comprehensive Plan amendments shall contain the information as herein required.

MLDC 10.191 Application Form.

An application for a minor Comprehensive Plan amendment shall contain the following items:

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- (1) Vicinity map drawn at a scale of 1" = 1,000' identifying the proposed area to be changed on the General Land Use Map.
- (2) Written findings which address the following:
 - (a) Consistency with applicable Statewide Planning Goals.
 - (b) Consistency with the goals and policies of the Comprehensive Plan.
 - (c) Consistency with the applicable provisions of the Land Development Code.

MLDC 10.192 Minor Comprehensive Plan Amendment Criteria

See the Review and Amendment section of the Comprehensive Plan text.

2.3.1.2 Medford Comprehensive Plan

Review and Amendments Section

Because of the important functional differences among the various Plan components, no common set of criteria can be used to assess all proposed Plan amendments. Below are listed the criteria which must be considered when evaluating proposed amendments to each of the specified Plan components. *While all of the criteria may not apply to each proposed amendment, all must be considered when developing substantive findings supporting final action on the amendment, and those criteria which are applicable must be identified and distinguished from those which are not.* (emphasis added)

Map Designations – Amendments shall be based on the following:

- (1) A significant change in one or more Goal, Policy, or Implementation Strategy.
- (2) Demonstrated need for the change to accommodate unpredicted population trends, to satisfy urban housing needs, or to assure adequate employment opportunities.
- (3) The orderly and economic provision of key public facilities
- (4) Maximum efficiency of land uses within the current urbanizable area.
- (5) Environmental, energy, economic and social consequences.
- (6) Compatibility of the proposed change with other elements of the City Comprehensive Plan.
- (7) All applicable Statewide Planning Goals.

2.3.2 STATE OF OREGON APPROVAL STANDARDS

2.3.2.1 Statewide Planning Goals

GOAL 1: CITIZEN INVOLVEMENT

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process...

GOAL 2: LAND USE PLANNING

To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions...

GOAL 3: AGRICULTURAL LANDS

To preserve and maintain agricultural lands...

GOAL 4: FOREST LANDS

To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture...

GOAL 5: NATURAL RESOURCES, SCENIC AND HISTORIC AREAS, AND OPEN SPACES

To protect natural resources and conserve scenic and historic areas and open spaces...

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GOAL 6: AIR, WATER AND LAND RESOURCES QUALITY

To maintain and improve the quality of the air, water and land resources of the state...

GOAL 7: AREAS SUBJECT TO NATURAL HAZARDS

To protect people and property from natural hazards...

GOAL 8: RECREATIONAL NEEDS

To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts...

GOAL 9: ECONOMIC DEVELOPMENT

To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens...

GOAL 10: HOUSING

To provide for the housing needs of citizens of the state...

GOAL 11: PUBLIC FACILITIES AND SERVICES

To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development...

GOAL 12: TRANSPORTATION

To provide and encourage a safe, convenient and economic transportation system...

GOAL 13: ENERGY CONSERVATION

To conserve energy. Land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles...

GOAL 14: URBANIZATION

To provide for an orderly and efficient transition from rural to urban land use...

2.3.2.2 Oregon Administrative Rules (OAR) Chapter 660, Division 9

Industrial and Commercial Development

660-009-0000 Purpose

The purpose of this division is to aid in achieving the requirements of Goal 9, Economy of the State (OAR 660-015-0000(9)), by implementing the requirements of ORS 197.712(2)(a) – (d). The rule responds to legislative direction to assure that comprehensive plans and land use regulations are updated to provide adequate opportunities for a variety of economic activities throughout the state (ORS 197.712(1)) and to assure that plans are based on available information about state and national economic trends. (ORS 197.717(2)).

660-009-0005 Definitions

- (1) "Department": The Department of Land Conservation and Development.
- (2) "Planning Area": The whole area within an urban growth boundary including unincorporated urban and urbanizable land, except for cities and counties within the Portland, Salem-Keizer and Eugene-Springfield metropolitan urban growth boundaries which shall address the urban areas governed by their respective plans as specified in the urban growth management agreement for the affected area.
- (3) "Locational Factors": Features which affect where a particular type of commercial or industrial operation will locate. Locational factors include but are not limited to: proximity to raw materials, supplies, and services; proximity to markets or educational institutions; access to transportation facilities; labor market factors (e.g., skill level, education, age distribution).
- (4) "Site Requirement": The physical attributes of a site without which a particular type or types of industrial or commercial use cannot reasonably operate. Site requirements may include: a minimum acreage or site configuration, specific types or levels of public facilities and services, or direct access to a particular type of transportation facility such as rail or deep water access).

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- (5) "Suitable": A site is suitable for industrial or commercial use if the site either provides for the site requirements of the proposed use or category of use or can be expected to provide for the site requirements of the proposed use within the planning period.
- (6) "Serviceable": A site is serviceable if:
 - (a) Public facilities, as defined by OAR chapter 660, division 11 currently have adequate capacity to serve development planned for the service area where the site is located or can be upgraded to have adequate capacity within one year; and
 - (b) Public facilities either are currently extended to the site, or can be provided to the site within one year of a user's application for a building permit or request for service extension.
- (7) "Short-Term Element of the Public Facility Plan": means the portion of the public facility plan covering year one through five of the facility plan per OAR 660-011-0005(3).
- (8) Other definitions: For purposes of this division the definitions in ORS 197.015 shall apply.

660-009-0010 Application

- (1) OAR chapter 660, division 9 applies only to comprehensive plans for areas within urban growth boundaries. Additional planning for industrial and commercial development outside urban growth boundaries is not required or restricted by this rule. Plan and ordinance amendments necessary to comply with this rule shall be adopted by affected jurisdictions.
- (2) Comprehensive plans and land use regulations shall be reviewed and amended as necessary to comply with this rule at the time of each periodic review of the plan (ORS 197.712(3)). Jurisdictions which have received a periodic review notice from the Department (pursuant to OAR 660-019-0050) prior to the effective date of this rule shall comply with this rule at their next periodic review unless otherwise directed by the Commission during their first periodic review.
- (3) Jurisdictions may rely on their existing plans to meet the requirements of this rule if they:
 - (a) Review new information about state and national trends and conclude there are no significant changes in economic development opportunities (e.g., a need for sites not presently provided for by the plan); and
 - (b) Document how existing inventories, policies, and implementing measures meet the requirements in OAR 660-009-0015 through 660-009-0025.
- (4) Notwithstanding paragraph (2), above, a jurisdiction which changes its plan designations of lands in excess of two acres to or from commercial or industrial use, pursuant to OAR 660, division 18 (a post acknowledgment plan amendment), must address all applicable planning requirements; and:
 - (a) Demonstrate that the proposed amendment is consistent with the parts of its acknowledged comprehensive plan which address the requirements of this division; or
 - (b) Amend its comprehensive plan to explain the proposed amendment, pursuant to OAR 660-009-0015 through 660-009-0025; or
 - (c) Adopt a combination of the above, consistent with the requirements of this division.
- (5) The effort necessary to comply with OAR 660-009-0015 through 660-009-0025 will vary depending upon the size of the jurisdiction, the detail of previous economic development planning efforts, and the extent of new information on local, state and national trends. A jurisdiction's planning effort is adequate if it uses the best available or readily collectable information to respond to the requirements of this rule.

660-009-0015 Economic Opportunities Analysis

Cities and counties shall review and, as necessary, amend comprehensive plans to provide the information described in sections (1) through (4) of this rule:

- (1) Review of National and State and Local Trends. The economic opportunities analysis shall identify the major categories of industrial and commercial uses that could reasonably be expected to locate or expand in the planning area based on available information about national, state and local trends. A use or category of use could reasonably be expected to locate in the planning area if the area possesses the appropriate locational factors for the use or category of use;

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- (2) Site Requirements. The economic opportunities analysis shall identify the types of sites that are likely to be needed by industrial and commercial uses which might expand or locate in the planning area. Types of sites shall be identified based on the site requirements of expected uses. Local governments should survey existing firms in the planning area to identify the types of sites which may be needed for expansion. Industrial and commercial uses with compatible site requirements should be grouped together into common site categories to simplify identification of site needs and subsequent planning;
- (3) Inventory of Industrial and Commercial Lands. Comprehensive plans for all areas within urban growth boundaries shall include an inventory of vacant and significantly underutilized lands within the planning area which are designated for industrial or commercial use:
 - (a) Contiguous parcels of one to five acres within a discrete plan or zoning district may be inventoried together. If this is done the inventory shall:
 - (A) Indicate the total number of parcels of vacant or significantly underutilized parcels within each plan or zoning district; and
 - (B) Indicate the approximate total acreage and percentage of sites within each plan or zone district which are:
 - (i) Serviceable, and
 - (ii) Free from site constraints.
 - (b) For sites five acres and larger and parcels larger than one acre not inventoried in subsection (a) of this section, the plan shall provide the following information:
 - (A) Mapping showing the location of the site;
 - (B) Size of the site;
 - (C) Availability or proximity of public facilities as defined by OAR chapter 660, division 11 to the site;
 - (D) Site constraints which physically limit developing the site for designated uses. Site constraints include but are not limited to:
 - (i) The site is not serviceable;
 - (ii) Inadequate access to the site; and
 - (iii) Environmental constraints (e.g., floodplain, steep slopes, weak foundation soils).
- (4) Assessment of Community Economic Development Potential. The economic opportunities analysis shall estimate the types and amounts of industrial and commercial development likely to occur in the planning area. The estimate shall be based on information generated in response to sections (1) through (3) of this rule and shall consider the planning area's economic advantages and disadvantages of attracting new or expanded development in general as well as particular types of industrial and commercial uses. Relevant economic advantages and disadvantages to be considered should include but need not be limited to:
 - (a) Location relative to markets;
 - (b) Availability of key transportation facilities;
 - (c) Key public facilities as defined by OAR chapter 660, division 11 and public services;
 - (d) Labor market factors;
 - (e) Materials and energy availability and cost;
 - (f) Necessary support services;
 - (g) Pollution control requirements; or
 - (h) Educational and technical training programs.

660-009-0020 Industrial and Commercial Development Policies

- (1) Comprehensive plans for planning areas subject to this division shall include policies stating the economic development objectives for the planning area.
- (2) For urban areas of over 2,500 in population policies shall be based on the analysis prepared in response to OAR 660-009-0015 and shall provide conclusions about the following:

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- (a) Community Development Objectives. The plan shall state the overall objectives for economic development in the planning area and identify categories or particular types of industrial and commercial uses desired by the community. Plans may include policies to maintain existing categories, types or levels of industrial and commercial uses;
- (b) Commitment to Provide Adequate Sites and Facilities. Consistent with policies adopted to meet subsection (a) of this section, the plan shall include policies committing the city or county to designate an adequate number of sites of suitable sizes, types and locations and ensure necessary public facilities through the public facilities plan for the planning area.

660-009-0025 Designation of Lands for Industrial and Commercial Uses

Measures adequate to implement policies adopted pursuant to OAR 660-009-0020 shall be adopted. Appropriate implementing measures include amendments to plan and zone map designations, land use regulations, and public facility plans:

- (1) Identification of Needed Sites. The plan shall identify the approximate number and acreage of sites needed to accommodate industrial and commercial uses to implement plan policies. The need for sites should be specified in several broad "site categories," (e.g., light industrial, heavy industrial, commercial office, commercial retail, highway commercial, etc.) combining compatible uses with similar site requirements. It is not necessary to provide a different type of site for each industrial or commercial use which may locate in the planning area. Several broad site categories will provide for industrial and commercial uses likely to occur in most planning areas.
- (2) Long-Term Supply of Land. Plans shall designate land suitable to meet the site needs identified in section (1) of this rule. The total acreage of land designated in each site category shall at least equal the projected land needs for each category during the 20-year planning period. Jurisdictions need not designate sites for neighborhood commercial uses in urbanizing areas if they have adopted plan policies which provide clear standards for redesignation of residential land to provide for such uses. Designation of industrial or commercial lands which involve an amendment to the urban growth boundary must meet the requirements of OAR 660-004-0010(1)(c)(B) and 660-004-0018(3)(a).
- (3) Short-Term Supply of Serviceable Sites. If the local government is required to prepare a public facility plan by OAR Chapter 660, Division 11 it shall complete subsections (a) through (c) of this section at the time of periodic review. Requirements of this rule apply only to local government decisions made at the time of periodic review. Subsequent implementation of or amendments to the comprehensive plan or the public facility plan which change the supply of serviceable industrial land are not subject to the requirements of this rule. Local governments shall:
 - (a) Identify serviceable industrial and commercial sites. Decisions about whether or not a site is serviceable shall be made by the affected local government. Local governments are encouraged to develop specific criteria for deciding whether or not a site is "serviceable." Local governments should also consider whether or not extension of facilities is reasonably likely to occur considering the size and type of uses likely to occur and the cost or distance of facility extension;
 - (b) Estimate the amount of serviceable industrial and commercial land likely to be needed during the short-term element of the public facilities plan. Appropriate techniques for estimating land needs include but are not limited to the following:
 - (A) Projections or forecasts based on development trends in the area over previous years; and
 - (B) Deriving a proportionate share of the anticipated 20-year need specified in the comprehensive plan.
 - (c) Review and, if necessary, amend the comprehensive plan and the short-term element of the public facilities plan so that a three-year supply of serviceable sites is scheduled for each year, including the final year, of the short-term element of the public facilities plan. Amendments appropriate to implement this requirement include but are not limited to the following:
 - (A) Changes to the short-term element of the public facilities plan to add or reschedule projects which make more land serviceable;
 - (B) Amendments to the comprehensive plan which redesignate additional serviceable land for industrial or commercial use; and
 - (C) Reconsideration of the planning area's economic development objectives and amendment of plan policies based on public facility limitations.

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- (d) If the local government is unable to meet this requirement it shall identify the specific steps needed to provide expanded public facilities at the earliest possible time.
- (4) Sites for Uses with Special Siting Requirements. Jurisdictions which adopt objectives or policies to provide for specific uses with special site requirements shall adopt policies and land use regulations to provide for the needs of those uses. Special site requirements include but need not be limited to large acreage sites, special site configurations, direct access to transportation facilities, or sensitivity to adjacent land uses, or coastal shoreland sites designated as especially suited for water-dependent use under Goal 17. Policies and land use regulations for these uses shall:
 - (a) Identify sites suitable for the proposed use;
 - (b) Protect sites suitable for the proposed use by limiting land divisions and permissible uses and activities to those which would not interfere with development of the site for the intended use; and
 - (c) Where necessary to protect a site for the intended industrial or commercial use include measures which either prevent or appropriately restrict incompatible uses on adjacent and nearby lands.

2.3.2.3 Oregon Administrative Rules (OAR) Chapter 660, Division 12 - Oregon Transportation Planning Rule

OAR 660-12-060: Plan and Land Use Regulation Amendments

- (1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:
 - (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
 - (b) Change standards implementing a functional classification system; or
 - (c) As measured at the end of the planning period identified in the adopted transportation system plan:
 - (A) Allow land uses or levels of development [which] that would result in types or levels of travel or access [which] that are inconsistent with the functional classification of an existing or planned transportation facility;
 - (B) Reduce the performance of an existing or planned transportation [the] facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or
 - (C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.
- (2) Where a local government determines that there would be a significant effect, compliance with section (1) shall be accomplished through one or a combination of the following:
 - (a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.
 - (b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division. Such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement or service will be provided by the end of the planning period.
 - (c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.
 - (d) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.
 - (e) Providing other measures as a condition of development or through a development agreement or similar funding method, including transportation system management measures, demand management or minor transportation improvements. Local governments shall as part of the amendment specify when measures or improvements provided pursuant to this subsection will be provided.

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- (3) Notwithstanding sections (1) and (2) of this rule, a local government may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility where:
- (a) The facility is already performing below the minimum acceptable performance standard identified in the TSP or comprehensive plan on the date the amendment application is submitted;
 - (b) In the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule would not be adequate to achieve consistency with the identified function, capacity or performance standard for that facility by the end of the planning period identified in the adopted TSP;
 - (c) Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures.;
 - (d) The amendment does not involve property located in an interchange area as defined in paragraph (4)(d)(C); and
 - (e) For affected state highways, ODOT provides a written statement that the proposed funding and timing for the identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation to the performance of the affected state highway. However, if a local government provides the appropriate ODOT regional office with written notice of a proposed amendment in a manner that provides ODOT reasonable opportunity to submit a written statement into the record of the local government proceeding, and ODOT does not provide a written statement, then the local government may proceed with applying subsections (a) through (d) of this section.
- (4) Determinations under sections (1) – (3) of this rule shall be coordinated with affected transportation facility and service providers and other affected local governments.
- (a) In determining whether an amendment has a significant effect on an existing or planned transportation facility under subsection (1)(c) of this rule, local governments shall rely on existing transportation facilities and services and on the planned transportation facilities, improvements and services set forth in subsections (b) and (c) below.
 - (b) Outside of interstate interchange areas, the following are considered planned facilities, improvements and services:
 - (A) Transportation facilities, improvements or services that are funded for construction or implementation in the Statewide Transportation Improvement Program or a locally or regionally adopted transportation improvement program or capital improvement plan or program of a transportation service provider.
 - (B) Transportation facilities, improvements or services that are authorized in a local transportation system plan and for which a funding plan or mechanism is in place or approved. These include, but are not limited to, transportation facilities, improvements or services for which: transportation systems development charge revenues are being collected; a local improvement district or reimbursement district has been established or will be established prior to development; a development agreement has been adopted; or conditions of approval to fund the improvement have been adopted.
 - (C) Transportation facilities, improvements or services in a metropolitan planning organization (MPO) area that are part of the area's federally-approved, financially constrained regional transportation system plan.
 - (D) Improvements to state highways that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when ODOT provides a written statement that the improvements are reasonably likely to be provided by the end of the planning period.
 - (E) Improvements to regional and local roads, streets or other transportation facilities or services that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when the local government(s) or transportation service provider(s) responsible for the facility, improvement or service provides a written statement that the facility, improvement or service is reasonably likely to be provided by the end of the planning period.
 - (c) Within interstate interchange areas, the improvements included in (b)(A)-(C) are considered planned facilities, improvements and services, except where:
 - (A) ODOT provides a written statement that the proposed funding and timing of mitigation measures are sufficient to avoid a significant adverse impact on the Interstate Highway system, then local

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governments may also rely on the improvements identified in paragraphs (b)(D) and (E) of this section; or

- (B) There is an adopted interchange area management plan, then local governments may also rely on the improvements identified in that plan and which are also identified in paragraphs (b)(D) and (E) of this section.
- (d) As used in this section and section (3):
 - (A) Planned interchange means new interchanges and relocation of existing interchanges that are authorized in an adopted transportation system plan or comprehensive plan;
 - (B) Interstate highway means Interstates 5, 82, 84, 105, 205 and 405; and
 - (C) Interstate interchange area means:
 - (1) Property within one-half mile of an existing or planned interchange on an Interstate Highway as measured from the center point of the interchange; or
 - (2) The interchange area as defined in the Interchange Area Management Plan adopted as an amendment to the Oregon Highway Plan.
- (e) For purposes of this section, a written statement provided pursuant to paragraphs (b)(D), (b)(E) or (c)(A) provided by ODOT, a local government or transportation facility provider, as appropriate, shall be conclusive in determining whether a transportation facility, improvement or service is a planned transportation facility, improvement or service. In the absence of a written statement, a local government can only rely upon planned transportation facilities, improvements and services identified in paragraphs (b) (A)-(C) to determine whether there is a significant effect that requires application of the remedies in section (2).

2.3.2.4 Oregon Revised Statutes (ORS)

ORS 197.625 When amendment or new regulation considered acknowledged; application prior to acknowledgment.

- (3) (a) Prior to its acknowledgment, the adoption of a new comprehensive plan provision or land use regulation or an amendment to a comprehensive plan or land use regulation is effective at the time specified by local government charter or ordinance and is applicable to land use decisions, expedited land divisions and limited land use decisions if the amendment was adopted in substantial compliance with ORS 197.610 and 197.615 unless a stay is granted under ORS 197.845.
- (b) Any approval of a land use decision, expedited land division or limited land use decision subject to an unacknowledged amendment to a comprehensive plan or land use regulation shall include findings of compliance with those land use goals applicable to the amendment.
- (c) The issuance of a permit under an effective but unacknowledged comprehensive plan or land use regulation shall not be relied upon to justify retention of improvements so permitted if the comprehensive plan provision or land use regulation does not gain acknowledgment.

3 FINDINGS OF FACT

3.1 MATERIAL FACTS

The City Council herewith incorporates and adopts by reference and as facts, the information and analysis as the principal basis upon which its Conclusions of Law herein are reached as submitted to the record in the following exhibits:

- Exhibit 5, (with the exception of Section 2.3 which was superseded and replaced by Exhibit 75 and the information in Section 2.4 which was superseded and replaced by the revised Transportation Impact Analysis information in Exhibit 95 and 97);
- Exhibit 6, (with the exception of Appendix E-1 which was superseded and replaced by the revised Transportation Impact Analysis information in Exhibit 95 and 97);
- Exhibits 46 and 47;
- Exhibit 59
- Exhibits 62 through 65;
- Exhibit 70;
- Exhibit 75 (replacing Section 2.3 of Volume 1 original submittal — Urban Land Analysis);
- Exhibit 81;
- Exhibit 86;
- Exhibits 95 and 97; revised TIA dated July 7, 2006 (Exhibit 97 was submitted in August 2006 to correct typographical errors and supersede the report figures in the revised Traffic Impact Analysis dated July 7, 2006)

The City Council has reviewed all the evidence in the record and concluded that, where conflicting evidence exists, the above referenced exhibits constitute facts as a sufficient basis for the Council to reasonably reach its Conclusions of Law herein below:

3.1.1 PROPERTY LOCATION, DESCRIPTION, ACREAGE

The *Northgate Centre* project site is located in the area that was impacted by the extension of Highway 238 commonly referred to as the *Big X* in Medford. The project site is located between the railroad tracks and Highway 99/Court Street immediately north of McAndrews Road. An existing General Land Use Plan (GLUP) map is provided at Exhibit 6 Appendix A-1 and an existing zoning vicinity map is provided in Exhibit 6 Appendix A-2.

The subject properties are entirely located within Township 37 South and Range 2 West. The properties are identified on the Jackson County assessment maps as Tax Lots 101, 400, 500, 600, 700, 800, and 900 in Section 24, Tax Lots 500, 700 and 900 in Section 24AB, Tax Lots 3301, 4300, 4400, 4500, 4600, 5500, 5600, and 5700 in Section 13DC. These parcels total approximately 84.07 acres

3.1.2 OWNERSHIP AND AUTHORIZATION; APPLICATIONS

The *Northgate Centre* project is comprised of eighteen tax lots, in the ownership of Northgate, LLC, Colvin Oil Company and Pro Property Investments, LLC. Written Powers of Attorney for Craig A. Stone & Associates, Ltd. (CSA) to function as the owners agent of record for Northgate, LLC and Colvin Oil

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Company is evidenced Exhibit 6 Appendix F-6. The authorized representative of Pro Property Investments, LLC is a signatory on the application form.

3.1.3 TOPOGRAPHY

The property has no significant topographic constraints. Fill slopes pitch away from the Table Rock Road/Central Avenue and Highway 238 intersection. This fill was placed as part of the Highway 238 extension project to provide a grade separated railroad crossing for Highway 238. The balance of the property has limited topographic relief.

3.1.4 GENERAL LAND USE PLAN (GLUP) MAP

The existing Medford GLUP Map designation for the subject property is Heavy Industrial, General Industrial and Commercial. The GLUP designations for the subject property and surrounding area have not changed since the adoption of Medford's comprehensive plan in the mid 1970's. The proposed GLUP Map designations are a mixture of Heavy Industrial, General Industrial, Service Commercial and Commercial. The proposed GLUP Map designations are depicted in Exhibit 7, Atlas p. 19.

3.1.5 ZONING

The subject properties are predominantly zoned General Industrial, a Jackson County zoning district which remained on the property following its annexation to Medford. There is a small area of Community Commercial zoning on Tax Lot 500 in Section 24AB that is approximately 1.7 acres. There is another small area of Community Commercial zoning on Tax Lots 3301, 4300, 4400, 4500, 4600 in Section 13DC that is approximately 1.0 acre. There is also a small area of Heavy Commercial zoning on Tax Lots 5500, 5600, and 5700 in Section 13DC that is approximately 0.15 acres. See, Exhibit 6 Appendix A-2.

The proposed zoning includes a mix of Regional Commercial (C-R), Service Commercial and Professional Office (C-S/P), Light Industrial (I-L), and General Industrial (I-G). A portion of the Lifestyle Center is currently designated Community Commercial (C-C), and therefore the proposed Zone Change for this area to Regional Commercial (C-R) is effectively a lateral change between commercial designations. Jackson County's General Industrial (GI) and Medford's General Industrial (I-G) permit similar types and intensities of permitted and conditional land uses. On December 21, 2006 the City Council will hear an appeal of the Planning Commission's approval of the zone change application.

3.1.6 EXISTING LAND USES ON SUBJECT PROPERTY

All of the parcels owned by Northgate Center LLC are presently vacant with the exception of Tax Lots 4300, 4400, 4500, and 4600 (Old Hungry Woodsman Site). Tax Lot 700 in Section 24AB contains a Chevron gas station. Tax Lot 900 in Section 24AB contains the Pro-Audio building where car stereos and other audio/video equipment is sold and installed.

The proposed land uses include a Lifestyle Center, an Office Park and a Business Park. The Lifestyle Center is expected to include a variety of retail stores and service establishments. The Office Park is expected to include office uses that are permitted in Medford's I-L and C-S/P zoning districts with some limited commercial uses that typically cluster near office parks. The Business Park is designed to function as *flex space* which will support a wide range of light manufacturing and similar land uses that are permitted in Medford's I-L and I-G zones.

3.1.7 SURROUNDING LAND USE

The following land uses surround the subject property:

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3.1.7.1 North

North of the subject property and across Highway 99 are a mix of commercial uses including Wendy's and National Furniture Warehouse. North of the planned Business Park are a cluster of small parcels zoned Heavy Commercial which are held by private owners and state and county governments. These parcels include a mix of commercial and industrial uses. Immediately north of the proposed Business Park is Sierra Pine, a heavy industrial wood products use. To the northwest and across the railroad right-of-way is a large vacant parcel owned by T and L, Inc a company affiliated with Timber Products.

3.1.7.2 West

To the west is a parcel owned by Black Silver, LLC a limited liability company controlled by Batzer Incorporated which is in the process of preparing an industrial development plan for this site. Immediately to the south of the Black Silver, LLC parcel is a parcel owned by T and L, Inc. and is controlled by Timber Products. This parcel contains Timber Products' offices and buildings to support the main production facility located west of the railroad right-of-way. Further west and across the railroad right-of-way, is Timber Products' main production facility. Further to the west are lands zoned I-G and developed with a variety of industrial uses.

3.1.7.3 South

To the southwest and across McAndrews Road are lands zoned I-L. These lands contain Star Auto Body and some vacant lands owned by Central Oregon Pacific Railroad (CORP). To the south are Heavy Industrial lands owned by Naumes, Incorporated and Concrete-Steel Corporation. The Naumes lands support industrial uses associated with its agricultural operations. The Concrete-Steel Corporation parcel is home to Medford Fabrication. To the southeast are Community Commercial (C-C) lands that are highly parcelized and support a variety of commercial and light industrial uses.

3.1.7.4 East

Lands to the east are zoned Community Commercial (C-C) and are highly parcelized. These lands include a assortment of commercial and light industrial uses. Further east are lands zoned Regional Commercial (C-R) and occupied by the Rogue Valley Mall.

3.1.8 PROJECT OPPORTUNITIES

3.1.8.1 Centrally Located Employment Opportunity Sites

Commercial and industrial redevelopments in centrally located areas of Medford provide employment opportunities that efficiently use land because they do not require the extension of public facilities and services into undeveloped areas. The below table identifies the commercial and industrial parcels with at least one vacant acre and where the centroid of the parcel is at least one mile from Medford's Urban Growth Boundary:

Table 22
Non-Peripheral Vacant Commercial and Industrial Lands
 (At Least One Vacant Acre and centroid at least one mile from UGB)
 Source: CSA Land Use Database

Map and Tax Lot	Ownership	Plan Map Designation	Vacant Acres	Percent of Total Vacant Acres	Development Constraint Comments
372W24800	Northgate Center LLC	HI	21.09	28%	Readily Developable
372W24900	Northgate Center LLC	HI	12.21	16%	Readily Developable
372W24400	Northgate Center LLC	HI	10.78	14%	Readily Developable
372W24500	Northgate Center LLC	HI	8.51	11%	Readily Developable
372W24AB500	Northgate Center LLC	HI	6.61	9%	Readily Developable
372W24101	Northgate Center LLC	HI	6.35	8%	Readily Developable
HI Subtotal	Northgate Center LLC	HI	63.55	86%	
371W18A3001	Jackson County	GI	4.89	6%	Limited Access, Very Narrow, in Airport Approach and may be impacted by future HWY 62 expressway
371W18AA2705	Duke John Trustee	GI	1.17	2%	Readily Developable
GI Subtotal	Mixed	GI	6.06	8%	
371W19CB1601	North's Restaurants Inc	CM	1.54	2%	No frontage on a public street and about 1/2 of the parcel is in the floodplain
371W19BD1208	Mill Race LLC	CM	1.13	1%	No frontage on a public street- may have prohibitive access restrictions.
371W19CC100	Leonard Fred N Iii Trustee	CM	1.10	1%	No frontage on a public street and about 1/4 of the parcel is in the floodplain
371W19CB1600	Dunn Douglas G/Carole E	CM	1.01	1%	No frontage on a public street and most all the parcel is in the floodplain
CM Subtotal	Mixed	CM	4.78	6%	

Table Notes:
 HI Heavy Industrial
 GI General Industrial
 CM Commercial

3.1.8.2 Gateway Aesthetics

Northgate Centre is proposed in a prominent location near the North Medford I-5 Interchange adjacent to the intersection of three state highways. The design concepts for *Northgate Centre* were developed to provide an attractive entrance to Medford and an architectural theme that mimics the architecture of Medford's historic sister city, Alba, Italy.

3.1.8.3 Expanded Consumer Choices

The Rogue Valley Mall was established in the mid-1980's. The King Center on Crater Lake Highway 62 was developed in the early 1990's. Since the development of these two major retail areas there has been no substantial new regional commercial projects which have expanded the range of goods and retailers that are not presently in the local and regional marketplace. The expected future tenants of the Lifestyle Center will provide a range of goods that are either not available or are available to a limited extent within the local marketplace.

3.1.9 PUBLIC FACILITIES AND SERVICES

Applicant engaged expert civil engineer Michael Thornton to express his opinion regarding the condition and capacity of the various public facilities and services that will serve the subject property. Mr. Thornton's expert opinions are expressed in a Memo dated September 1, 2005 and the same is attached as Exhibit 6 Appendix E-2. Based upon this letter and its underlying analysis and documentation maintained by the Medford Public Works Department, Medford Water Commission and other public facilities agencies, the City Council finds the following facts to be true and accurate with respect to the public facilities available to the subject property and surrounding area:

3.1.9.1 Storm Drainage

Existing Conveyance System Information: The subject project site is within the Elk Creek Drainage Basin. With construction of the new portions of Highway 238 through the subject project site, a 72-inch storm drainage line was constructed within the highway right-of-way. The 72-inch line is connected to an 84-inch storm drainage line at Highway 99. The 84-inch line lies within the State of Oregon Drainage Easement and continues north along the northwest side of Highway 238. This improvement allows for the Elk Creek Drainage Basin to discharge into Bear Creek. Additionally, there are 12-inch storm drainage lines within the northern right-of-way of Highway 238, Table Rock Road and Central Avenue through the subject project site. The Table Rock Road and Central Avenue 12-inch lines increase in size to 15-inch lines. A 12-inch storm drainage line exists along a portion of Court Street from its intersection with Highway 99 and Highway 238 and terminating approximately 470 feet from the northeast corner of Tax Lot 500 (37-2W-24AB). A 24-inch storm drainage line lays within the right-of-way of Highway 99 which discharges to the 84-inch line at Highway 238. There are 18-inch storm drain stubs at the north, southwest and southeast corners of the intersection of Highway 238 with Table Rock Road and Central Avenue in addition to various other 12-inch stubs. In Exhibit 6 Appendix E-2, Applicant's expert civil engineer, Michael Thornton determined and expressed his opinion that, "the storm drain is more than adequate to convey storm run-off from the site to Bear Creek during a ten-year frequency rainfall event." The Exhibit 6 Appendix E-2 analysis further identifies six stormwater system design considerations that Applicant has agreed to stipulate to including into the final engineering for the proposed stormwater facility improvements and Applicant will carry out these design considerations in accordance with this analysis and generally accepted engineering practices.

3.1.9.2 Sanitary Sewer

Sanitary Sewer Collection: Sanitary sewer service is provided by Rogue Valley Sewer Service. Tax Lots north of Highway 238 and portions of Tax Lots 900 and 500 south of Highway 238 are within the

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service area of the Rogue Valley Sewer Service (RVSS). There is an 8-inch RVSS line which terminates within Tax Lot 101. This sewer line traverses the subject properties in a westerly direction, south of the Hopkins Canal, to a 10-inch line along the east boundary of the railroad. This sewer line continues to a 36-inch line at Sage and Erhman Way, to a 42-inch line at Beall Lane, and eventually to the 60-inch transmission line which terminates at the treatment plant. Portions of the subject project site south of Highway 238 are within the jurisdiction of the City of Medford. Tax Lots 700 and 800 south of Highway 238 are within the City of Medford service district. There is a 16-inch city sewer line within the right-of-way of Riverside Avenue east of the subject property and a 6-inch sewer line within the right-of-ways of Court and Ohio Streets. In Exhibit 6 Appendix E-2, Applicant's expert civil engineer, Michael Thornton, determined that, "the existing system has adequate in capacity to serve the proposed development."

Sanitary Sewer (Treatment): According to Jim Hill of the Medford Engineering Department, sewage wastewater collected and transported by the Bear Creek Interceptor is treated at the Medford Regional Water Reclamation Plant. Mr. Hill serves as the principal staff person in charge of operations at the regional plant, which is located near Bybee Bridge near the Table Rock Road crossing of the Rogue River. The plant serves the Rogue Valley Sewer Service (RVSS) and the cities of Central Point, Jacksonville, Medford, Phoenix and Eagle Point. A portion of the service charges levied on customers is allocated to treatment costs. The Regional Rate Committee, as established in the September 23, 1985 Regional Sewer Agreement, is authorized to set treatment charges and rates for the regional system. The Regional Rate Committee reviews the charges and rate structures annually, and rate adjustments are made as necessary. Systems development charges are allocated to plant expansion. Monthly service charges levied on customers are allocated to treatment costs, equipment repair and replacement, and plant upgrades to meet changing regulations.

The Vern Thorpe Regional Water Reclamation Facility, more commonly know as the Medford Regional Water Reclamation Facility (RWRf), was built in 1970 by the City of Medford as a regional facility to treat sewage from the cities of Central Point, Jacksonville, Medford, Phoenix, Talent and rural areas of Jackson County served by Rogue Valley Sewer Service (RVSS). The original RWRf capacity was 10 million gallons per day (MGD) average dry weather flow

RWRf capacity was doubled between 1980 and 1990 through several incremental expansions. In 1992 the RWRf was permitted for a 20 mgd average dry weather flow, and 60 mgd wet weather flow. Subsequent to 1992 several more projects have been constructed to improve plant operating reliability, energy efficiency, and biosolids handling capabilities, as well as increase the reliable wet weather flow handling capacity to 80 mgd.

The average daily influent flow for 2004 was 15.7 mgd, an increase from 13.2 mgd in 1988 and 14.1 mgd in 1994. Based upon population forecasting information received from member agencies, RWRf consultant West Yost & Associates projected in its November, 2000 RWRf Facilities Plan that the ultimate population to be served by the regional plant is estimated to be 190,000.

3.1.9.3 Water

Water Distribution: A 20-inch water main traverses the northern boundary of Tax Lots 500, 400 and 101 north of the Hopkins Canal and continues north within the right-of-way of Lynn Avenue. From the easterly boundary of Tax Lot 101 the 20-inch main parallels Highway 238 and continues northeast. There is a 20-inch main from Highway 238 to Ohio Street within the right-of-way of Court Street. From Ohio and continuing south within Court Street to Mc Andrews Road the water main is a 10-inch line. Mc Andrews Road has existing 10, 14 and 16-inch water mains within its right-of-way. There are no water mains within the new portions of Table Rock Road, Central Avenue or Highway 238 that divide the

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subject project site. In Exhibit 6 Appendix E-2, Applicant's expert civil engineer, Michael Thornton, determined that, "the existing facilities are adequate to serve the proposed project."

Water Supply and Treatment: The Medford Water Commission directly serves the City of Medford and smaller communities outside of Medford such as White City. In 2004 the combined population of direct service customers was 117,000. Wholesale customers include the cities of Central Point, Jacksonville, Phoenix, Talent, Eagle Point and four domestic water districts. Wholesale customers have a combined population of approximately 35,600. The daily use per person is approximately 240 gallons.

The Medford Water Commission's principle source of water comes from Big Butte Springs which has a capacity of 25 million gallons per day (mgd) to 35 mgd, however, the transmission facilities and water rights limit the maximum withdrawal from the springs to 26.4 mgd. The Rogue River provides a secondary source of water for the summer months from May through September. Current permits allow the use of up to 65 mgd of natural stream flow water rights out of the Rogue River.

Water from Big Butte Springs flows to Medford via two transmission lines which vary in size from 20 to 30 inches and are constructed of welded steel. The combined capacity of the two transmission lines is 13.2 mgd for a combined daily capacity of 26.4 million gallons. The Rogue River water supply is first treated at the Robert A. Duff Treatment Plant and further distributed to three additional transmission mains. From pumping stations, water is distributed by way of feeder mains, which range in size from 24 to 48 inches and service mains, which range in size from 2 to 24 inches. The primary material used in the construction of pipelines was ductile iron and cast iron. New pipelines are now constructed only of ductile iron.

Water from Big Butte Springs is transported from the springs via an enclosed welded steel transmission line and does not require further treatment prior to distribution. Water from the Rogue River is treated at the Robert A. Duff Treatment Plant. First constructed in 1968 with an original capacity of 15 mgd, the treatment plant underwent improvements in 1997 to ensure efficient operation of the plant under wintertime conditions if so needed. Further improvements including structural, mechanical, electrical, instrumentation and control took place in the 1998 and 1999 fiscal years. Improvements to the filtering system in year 2000 increased the water treatment capacity to 45 mgd.

The average daily water production is 25.8 mgd with peak demands during the summer months of approximately 50 mgd. Current water right permits from Big Butte Springs and the Rogue River allow a combined withdrawal of 91.4 mgd. The limiting factor for water production is the water treatment plant that currently has a capacity to treat 45 mgd. Even with the treatment limitation, the combined water availability is 71.4mgd.

3.1.9.4 Electrical Power

Electrical power is provided by Pacific Power and Light Company. Applicants agent spoke with representatives of Pacific Corporation (who supplies electricity to this site and within the region) who stated that the adequate underground vaults and transformer stations were in place requiring only power lines to be extended in the vaults and connected to the transformers for any proposed development. A 15-foot public utility easement will be required along property road frontage to accommodate underground power lines which will provide direct service to the various buildings in *Northgate Centre*.

3.1.9.5 Natural Gas

Natural Gas service is provided by Avista Utilities. There are 4-inch lines within Mc Andrews Road, Sage Road and Highway 99 at Tax Lots 101 and 500. A high pressure line exists along the east side of the railroad right-of-way.

3.1.9.6 Telecommunications

Based upon information obtained by applicant's agent, telephone service is provided by Qwest (formally US West). There is an existing service cable within Mc Andrews Road. Applicant engaged, Paul Foland, owner of UC Technologies to assess data and information services needs of the project. According to Charter Cable representatives, Charter Cable has fiber optic adjacent to the site on North Pacific Highway (Highway 99) According to Qwest representatives, Mr. Foland determined that no fiber optic line is currently available in the area of the site and there is insufficient copper cabling to serve a development of this size. However, a fiber optic cable can be extended from the main terminal at Jackson Street and Central Avenue. Applicant will stipulate to cost-sharing and coordination with Qwest immediately following the approval of *Northgate Centre* to extend fiber optics to the project if connection to the existing Charter fiber and extension of Qwest telephone lines is determined to be insufficient to meet the bandwidth needs of the project.

3.1.9.7 Transportation

Applicant engaged JRH Transportation Engineering, a professional transportation engineering firm, to conduct a Traffic Impact Analysis (TIA) in accordance with MLDC and ODOT standards and protocol to assess the impacts of the proposed GLUP Map amendment and associated Zone Change on the transportation system. The original TIA submitted with the applications in March 2006 was superseded by a revised/updated TIA dated July 7, 2006 (Exhibits 95 and 97). The analysis details, methodology, and results are provided in the full Transportation Impact Analysis in Exhibits 95 and 97. The TIA was evaluated in detail by ODOT, the Medford Public Works Department and its own expert consultants who were engaged for the express purpose of providing peer review of the traffic implications of the Northgate project. Exhibits 62 and 63 are the responses from ODOT and the Public Works Department which concur with the results of Exhibits 95 and 97 TIA and set forth recommended approval conditions which include needed transportation system improvements as necessary for the Northgate project to be consistent with the transportation regulations of the City of Medford and State of Oregon. The City Council herewith incorporates by reference and adopts Exhibits 95 and 97 in support of this plan amendment application.

3.1.10 POTENTIAL ENVIRONMENTAL, SOCIAL, ENERGY AND ECONOMIC CONSEQUENCES

The potential environmental, social, energy and economic consequences of the proposed GLUP Map amendment and the associated site plan are identified below. The City Council herewith finds the below identified consequences as those that can be reasonably expected from the proposed GLUP Map amendment and development of the associated site plan when considered relative to consequences that could reasonably be expected to result if the site were completely developed under the existing land use designations.

3.1.10.1 Environmental Consequences

The City Council finds that this application contains an Environmental Analysis in Exhibit 5, Section 2.5. The Council herewith incorporates and adopts this analysis and supporting Exhibit 6 Appendices thereto as containing the findings of fact sufficient to identify the following environmental consequences reasonably expected to result from the proposed GLUP Map amendment:

1. **Air Quality:** The substantive potential for adverse air quality impacts from *Northgate Centre* would be derived from increases in mobile source emissions. Applicant's professional air quality analyst, Sierra Nevada Air Quality Group, LLC evaluated the potential air quality impacts from mobile sources resulting from development of the proposed *Northgate Centre*. See, Exhibit 6 Appendix B-1.

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This analysis concluded, “that the projected changes in traffic volumes as a result of the *Northgate Centre* project would not impede [the Region’s] continued attainment of applicable air quality standards. This analysis further concluded that, “any expansion of major sources in the vicinity of *Northgate Centre* would be much more adversely affected by the New Source Review [applicable air quality standards] than any increment of emissions used by the development of *Northgate Centre*.”

2. **Noise:** Heavy Industrial uses tend to be substantially noisier on average than the uses contemplated for *Northgate Centre* and on this basis the noise consequences of the proposed land use changes are not expected to increase the net potential noise generation of the site.
3. **Water Quality:** Applicant has engaged civil engineer Mike Thornton to assess storm water management design for the project in collaboration with project landscape architect Galbraith and Associates. In Exhibit 6 Appendix E-2, Mr. Thornton indicates the stormwater management system can be designed and maintained to assure that storm water leaving the site will be of equal or better quality than is currently leaving the site. The proposed uses present no greater threat to land quality than the existing Heavy Industrial designation which tends to support uses with the highest risks for potential spills and contamination.
4. **Wetlands:** Applicant engaged wetlands expert Phil Scoles of Terra Science, Inc. to evaluate potential wetlands impacts. Mr. Scoles concluded no wetlands will be impacted by the proposed *Northgate Centre* project. See, Exhibit 6 Appendix B-5. Because no wetland are present, there are no identified consequences with the proposed land use change.
5. **Land Quality:** ODEQ has issued two *No Further Action* Letters on the site following clean-up efforts detailed in the Level 1 Environmental Site Assessment. See, Exhibit 6 Appendix B-3. The proposed uses present no greater threat to land quality than the existing Heavy Industrial designation which tends to support uses with the highest risks for potential spills and contamination.

3.1.10.2 Social Consequences

The City Council finds that this application contains a Social Analysis in Exhibit 5, Section 2.6. The Council herewith incorporates and adopts this analysis and supporting Exhibit 6 Appendices thereto as containing the findings of fact sufficient to identify the following social consequences reasonably expected to result from the proposed GLUP Map amendment:

1. **Aesthetics:** Northgate can be expected to improve the aesthetic character of Medford’s commercial and industrial land base in ways that would not be expected if the site were developed under the prevailing land use designations.
2. **Relationship and Interaction with Nearby Land Uses:** Northgate is expected to provide employment and shopping opportunities for residents of nearby neighborhoods. By adding value to the area, Northgate may also support redevelopment and rehabilitation of existing housing stock and neighborhood amenities. Potential exists for some land use conflicts with adjacent industrial uses without mitigation. Applicant has incorporated design mitigations as well as legal instruments to reduce the potential for adverse impacts on adjacent industrial uses and these measures and other factors which address impacts include:
 - A. Northgate Centre was designed without any residential housing in an attempt to be responsive to opponents sensitivities.
 - B. Applicant has agreed to stipulate (and the city has required) that deed restrictions and language in lease agreements (with future non-owner tenants) be imposed upon the owners and future

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lessees of Northgate Centre which require them to acknowledge and accept common and customary industrial uses and practices that occur on the nearby heavy industrial lands. Opponent Timber Product's attorney, Allen Johnson, helped construct the deed/lease agreement language.

- C. Applicant met with representatives of Sierra Pine to design and specify planting materials for the berm and trees shown on the Northgate plans which provide a means to mitigate noise and dust.
- D. Applicant has designed Northgate Centre to place only businesses and industrial next to opponents mills.
- E. Land to the west of the Lifestyle Center component of Northgate Centre (owned by Black Silver, LLC) was planned in concert with Northgate as a mid-intensity industrial subdivision intended to have 32 foot tall buildings which intervene between Timber Products and the Lifestyle Center.
- F. Applicant placed extensive ornamental landscaping between the Lifestyle Center and Timber Products.
- G. Applicant's landscape architect researched and specified trees and other plant materials known to perform best in the mitigation of dust.
- H. Based upon the evidence, prevailing and predominant wind direction is north by northwest, causing wind blown fugitive dust from Timber Products to travel in a direction that will produce no impact upon Northgate Centre. Dust from Sierra Pine
- I. Based upon the report from Applicant's air quality expert, David Calkins (submitted into evidence on November 27, 2006) **pursuant to OAR 340-240-0180, both Timber Products and Sierra Pine are obligated by law to control their own fugitive dust emissions.**
- J. As to noise (contended elsewhere by opponents to constitute a source of impact) Applicant contends that noise emanating from both Timber Products and Sierra Pine is inaudible on the subject property because ambient traffic noise drowns out any noise produced by either timber mill and: 1) in the case of Sierra Pine, there is an existing berm lying between Sierra Pine and Northgate land, and, 2) in the case of Timber Products, due to the existing spatial separation between Timber Products' noise sources and the Northgate property (which will become further attenuated by buildings on Black Silver's property which intervene between Northgate Centre and Timber Products.
- K. It is also relevant and important to note, based upon the testimony of record, that the old Medite/Medco mill was located in closer proximity to the Rogue Valley Mall than Northgate Centre's commercial areas will be located to Timber Products or Sierra Pine. During the public hearing, Applicant's representatives testified that their research of local DEQ records found that over the approximate 10-year period during which the Rogue Valley Mall and Medite/Medco mill were both operated, not a single complaint was lodged with DEQ.
- L. Medford's compatibility standards by way of zoning is set forth in the locational criteria for zone changes in MLDC 10.227 with which the concurrently filed zone change application complies and the same has not been disputed by opponents.
- M. The record also shows that similar facilities owned by Timber Products in the City of Grants Pass are located near retail commercial areas in that community and that opponent Timber Products lodged no objection on the record when new retail facilities were approved nearby and in closer proximity that is Timber Products to Northgate Centre's retail component.

Northgate Centre is expected to both compliment in some ways and compete in other ways, with the revitalization effort in downtown Medford. *Northgate Centre* is expected to compete for certain tenants but compliment overall the existing regional shopping opportunities at the Rogue Valley Mall by re-asserting Medford's position as the region's retail destination. When all adjacent land use

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interests are taken into consideration, Northgate Center is expected to create no greater land use conflicts than would have been expected if the site were developed under the existing land use designations.

3. **Consumer Choice:** *Northgate Centre* is expected to expand consumer choice in the local market place by attracting certain types of retailers that are not in the local market at this time. The expansion of consumer opportunities would not be expected if the site were developed under the existing land use designations.
4. **Employment Opportunities:** *Northgate Centre* is expected to provide employment opportunities for the City's residents at least on par with what would be expected if the existing land use designations were retained. Also see related economic consequences below.
5. **Demographics:** *Northgate Centre* is expected to support population growth in the region and to support a trend toward racial diversity.

3.1.10.3 Energy Consequences

The City Council finds that this application contains an Energy Analysis in Exhibit 5, Section 2.7. The Council herewith incorporates and adopts this analysis and supporting Exhibit 6 Appendices thereto as containing the findings of fact sufficient to identify the following energy consequences reasonably expected to result from the proposed GLUP Map amendment:

1. **Land Use Intensity and Transportation:** *Northgate Centre* is expected to support energy utilization that is at least as efficient as would be expected for uses sited under the existing land use designations by increasing employment density in an area that is served by multiple high capacity transportation corridors.
2. **Construction Techniques:** *Northgate Centre* is expected to employ energy efficient construction and materials in its design to support efficient energy utilization that are not expected to be any less energy efficient than would ordinarily be expected from uses allowed under the existing land use designations.
3. **Waste Management:** *Northgate Centre* will establish comprehensive waste management operations plan in cooperation with Rogue Disposal and Recycling, Inc. and the same will reduce levels of overall waste and support recycling that will not generate substantially more waste than would be typical of use sited under the existing land use designations.
4. **Reuse of Vacant Lands:** The proposed land use designations will redevelop and reuse a centrally located parcel to meet commercial and employment land demand needs by providing uses that are location-sensitive and in an area that is well served by existing infrastructure and with good access to nearby labor markets. For this reason, *Northgate Centre* is expected to result in a land use pattern that will reuse these vacant lands in a manner that is as or more efficient than would ordinarily be expected from development under the existing land use designations.

3.1.10.4 Economic Consequences

The City Council finds that this application contains an Economic Analysis in Exhibit 5, Section 2.2 and an Urban Land Analysis in Exhibit 75, Section 2.3. The Council herewith incorporates and adopts this analysis and supporting Exhibit 6 Appendices thereto as containing the findings of fact sufficient to identify the following economic consequences reasonably expected to result from the proposed GLUP Map amendment:

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1. **Regional Economy:** The analysis prepared by Johnson-Gardener LLC and REMI indicate Northgate Center project will generate approximately 1,660 jobs on-site and an additional 140 jobs in the regional economy, a total of approximately 1,800 new jobs. Heavy industrial uses tend to be land-intensive and generally do not support high employment densities and for this reason the site would be unlikely to support a comparable number of jobs and economic development in the region. Furthermore, the Urban Land Analysis identified why this site is at a comparative disadvantage as a supply source for the uses for which the site is currently planned. For this reason, the site is likely to remain vacant for at least a substantial period in the foreseeable future in which case the opportunity cost of the uses for which demand exists cannot be recaptured.
2. **Market Sectors:** Medford is the regional retail center and *Northgate Centre* represents an opportunity to reassert this position and capture new opportunities for growth in the retail sector, whereas the market sector demand for the now-planned heavy industrial land uses is not strong.
3. **Employment Density:** *Northgate Centre* is projected to be at least as dense and as large an employment center as could be expected if the site developed under the existing zoning.
4. **Land Supply Impacts:** *Northgate Centre* removes land from the Heavy Industrial category where the land is at a comparative disadvantage as a supply source and changes it to a cluster of land use categories where it does exhibit a comparative advantage as a supply source.

4 CONCLUSIONS OF LAW

4.1 PROCEDURAL CONCLUSIONS

The City Council herewith concludes, based upon the evidence submitted and herewith incorporated, that this application has met all substantive City of Medford procedural requirements for the sought plan authorizations.

4.2 COMPREHENSIVE PLAN MAP (GLUP) AMENDMENT

MEDFORD COMPREHENSIVE PLAN

Review and Amendments Section

Because of the important functional differences among the various Plan components, no common set of criteria can be used to assess all proposed Plan amendments. Below are listed the criteria which must be considered when evaluating proposed amendments to each of the specified Plan components. **While all of the criteria may not apply to each proposed amendment, all must be considered when developing substantive findings supporting final action on the amendment, and those criteria which are applicable must be identified and distinguished from those which are not.** (emphasis added)

Conclusions of Law: The Council concludes that the above language is properly construed to mean that not all criteria may apply to any given comprehensive plan amendment application, but all must be considered. The Council further understands that if it finds that some of the criteria do not apply it must explain why.

At the Planning Commission hearing on this matter, Allen Johnson, Attorney for Timber Products provided written legal argument that there is ambiguity in the degree to which the City's comprehensive plan amendment criteria are applicable must be clearly established.

The City Council herewith provides the following Conclusions of Law with respect to Mr. Johnson's concerns regarding the potential uncertainty of what criteria are applicable to plan amendments. The Council Concludes that the reference in the staff report to "factors" rather than "criteria" is overblown. The City of Medford Comprehensive Plan is very clear as to how the criteria for plan amendments is to be applied, and the criteria have been applied in conformance with the method prescribed in the Comprehensive Plan.

Given the discretionary nature in which the Plan dictates the criteria are to be applied, it is understandable that the Staff Report would interchangeably refer to the applicable considerations as factors in one instance and criteria in another. See, October 11, 2006 Staff Report Findings, p. 3. The label placed on the "criteria," however, is not as important as how they are applied. Whether the staff report refers to them as "considerations," "factors," or "criteria," the fact remains that the recommendations in the October 11, 2006 Staff Report are consistent with the Comprehensive Plan.

As discussed in the Comprehensive Plan, and confirmed by the LUBA cases cited by Mr. Johnson, all that is required in the final decision is evidence that all of the criteria have been considered, and for those deemed inapplicable an explanation as to why that decision was reached. The expressed concern regarding the failure to apply certain criteria is misguided, however, because the Staff Report addresses each of the criteria by reference, and includes additional comments with respect to several of the criteria. The Staff Report incorporates by reference the applicant's Findings of Fact and Conclusions of Law contained in the March 1, 2006 submittal. The conclusions of law related to the proposed GLUP Map Amendment, in Section 4.2 of this document, sufficiently address each and every criterion applicable to the amendment

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These criteria are addressed hereinbelow.

Map Designations – Amendments shall be based on the following:

GLUP Amendment Criterion 1

(1) A significant change in one or more Goal, Policy, or Implementation Strategy.

Conclusions of Law: The Council concludes that Criterion 1 applies to this proposed GLUP amendment. The Council further concludes that the GLUP Map designation which covers the subject property and general surrounding area has not changed since the adoption of Medford's first comprehensive plan which was adopted in compliance with the Oregon Statewide Planning Goals. This comprehensive plan was adopted by the City Council in the mid 1970's and was later acknowledged by the Land Conservation and Development Commission. However, the Council concludes, based upon the 2003 Medford Economic Market Analysis prepared by the E.D. Hovee Company (Exhibit 6 Appendix C-1) that the economy of Medford and southern Oregon have changed significantly since initial plan adoption.¹ The plan goals, policies and their related implementation strategies have also changed since adoption of the GLUP Map in the mid 1970's. Moreover, in October 2006, the City incorporated salient portions of the Hovee studies into its plan Economic Element and these represent significant changes in Medford's plan goals and policies. The Council concludes significant changes to plan goals, policies and implementation strategies has occurred since the original GLUP map adoption, such as the Plan Economic Element amendments in 1994, and the Transportation System Plan adoption in 2003.

At the Planning Commission Hearing on this matter, Attorney Allen Johnson objected that there has been no significant change in a Goal, Policy or Implementation Strategy for purposes of demonstrating Compliance with Minor Map Amendment Criterion 1

The City Council concludes that Criterion 1 can have more than one meaning. The City Council rejects Mr. Johnson's objection because the Minor GLUP Map Criterion 1 is a local standard subject to deferential standard of review and it is for the Planning Commission to recommend and the City Council to interpret this standard. The essential component of determining compliance with this criterion is in the determination of a point(s) in time at which changes to Plan Goals, Policies, and Implementation Strategies have occurred relative to the point in time at which the current Plan designation for the property in question was applied as discussed above. Mr. Johnson's objection fails to identify a point in time at which he believes *changes* should be identified, and in any event, the Council concurs with the Applicant that the appropriate time is from the time at which the current GLUP Map Designation was applied. In the case of the Northgate Centre site, there have been many changes to the comprehensive plan since the Heavy Industrial designation was applied to this property and the significance and timing of these amendments are discussed in detail herein below.

¹ The Appendix C-1 Hovee Study reports at p. 1 that:

"Historically, forest products and health services were the primary economic drivers in Medford/Jackson County. However, the forest products industry has contracted through the Pacific Northwest due to changes in industry technology and federal land management policies, i.e. significant restrictions of timber harvests on federal forest lands.

"As the forest products sector has declined, growth in health services have dramatically increased — adding nearly 2,500 jobs over the last decade. Other economic growth sectors in Medford's/Jackson County's economy have included professional services, social services, and retail trade.

"With substantial increases in services and retail trade sectors, Medford/Jackson County is transitioning to a commercial-based economy. This transition is similar to that being faced by numerous other urban areas and smaller communities throughout the Pacific Northwest."

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The Council concludes that following goals, policies and implementation strategies have changed (since adoption of the GLUP Map) and concludes as follows with respect to whether the various changes are significant and how the changes support the proposed GLUP amendment:

Plan Economic Element (Adopted 1994)

Goal 3/Policy 1: The City of Medford shall designate land for commercial facilities of a regional nature along freeways and highways, and designate land for commercial facilities serving the community near collector and arterial streets.

Conclusions of Law (Continued): Pursuant to GLUP Amendment Criterion 2, the Council concludes below that there exists a demonstrated need for additional land to accommodate commercial uses of a regional nature, especially in the northern and central portions of the City. The Council's conclusions of law for GLUP Amendment Criterion 2 are herewith incorporated and adopted. Moreover, the Council concludes that when the need arises to designate land for commercial uses, the city will be guided, with respect to location, by plan Economic Element Goal 3/Policy 1 which requires the designation of regional commercial facilities along freeways and highways and near collector and arterial streets for all other commercial facilities. There is no GLUP designation that distinguishes commercial uses of a regional nature. However, there is a Regional Commercial (C-R) zoning district. In implementing this policy, the Council established approval criteria for zone changes. The zone change criteria includes locational standards for the various zones and MLDC 10.227(1)(c)(iii) contains locational standards for the C-R zone which states in pertinent part:

“(iii) The overall area of the C-R zoning district shall be over three (3) acres in size, shall front upon an arterial street or state highway, * * * .”

The Council concludes that plan Economic Element, Goal 3, Policy 1 is appropriately interpreted to require future regional commercial areas to be located along freeways or highways and the proposed Commercial GLUP Map designation and proposed Regional Commercial (C-R) zone are located upon state highways 238 and 99 in compliance therewith. Moreover, the proposed GLUP Commercial/C-R zone is also located in near proximity to the Rogue Valley Mall and other lands which are now zoned C-R and which comprise the total C-R area, which is adjacent to Interstate 5. See, Exhibit 6 Appendix A-2.

Based upon the Council's findings of fact and conclusions of law for GLUP Amendment Criterion 2, a need exists for additional commercial land in Medford. The proposal now before the Council seeks to establish Commercial and Service Commercial GLUP designations covering portions of the property. The Commercial designation is intended to have applied to it a Regional Commercial (C-R) zoning district and the Service Commercial designation is intended to be zoned Service and Professional Office Commercial (C-S/P) and these zones are assured through this consolidated land use application package which includes both the GLUP Amendment and Zone Change applications.

Based upon the comprehensive plan Public Facilities and Services Element and Transportation System Plan, Oregon Highway 238 traverses the subject property and Oregon Highway 99 adjoins the northerly boundary of the subject property for approximately 2000 feet. The portions of the property traversed by or adjacent to Highways 238 and 99 are those portions proposed for Commercial and Service Commercial GLUP Map designations and these same portions of the property are also adjacent to Central Avenue, designated by the plan Public Facilities and Services Element and Transportation System Plan as an arterial street.

Furthermore, as explained in the plan Economic Element and in Exhibit 6 Appendix C-1 Medford Economic Market Analysis (Hovee 2003), Medford exists as the southern Oregon region's largest incorporated city, employment hub, retail shopping and service trade center. Based upon the Urban Land Analysis in Exhibit 75, Section 2.3, there is virtually no vacant commercial land along Interstate 5 nor any

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state highway or other arterial street which traverses Medford and which has acreage comparable to other portions of Medford that have been zoned Regional Commercial (C-R) in order to capitalize on Medford's regional retail economic advantage². In Hovee's Goal 9 Supplement Document, Hovee states at p. 18:

"Regional Commercial represents a category for which continued strong demand can be expected."

In its discussion of Site Requirements, the plan Economic Element includes the following:

Target Industry Opportunities	Demanded Site Amenities	Supply Conditions
Regional Retail Trade	Regional retail trade uses sites of at least 15 acres and preferably 20 plus acres with excellent visibility from and access to high capacity transportation corridors such as I-5 and Highway 62. These uses usually cluster in large destination centers that attract consumers from a seven county region.	There are very few sites currently designated commercial for this type of end-user. There is a large site south of the Manor that has no access to a high capacity transportation corridor planned in the next 20 years. There are a few smaller sites near the airport that will serve short-term demand. The previous Economic Element identified the Heitkamp site for the City's future regional commercial needs for the time period from 2003 to 2013. This site has since been committed to a regional sports park facility and is no longer available as a regional commercial site. There are a few smaller sites still available in the South Gateway.

Based upon the evidence and express language of the Site Requirements section of the Economic Element of the Comprehensive Plan, the adoption of plan Economic Element Goal 3/Policy 1 after the subject property was designated Heavy Industrial constitutes a significant policy change and the GLUP designation of the subject property as Commercial and Service Commercial is consistent with this adopted policy.

Goal 3/Policy 3: The City of Medford shall encourage cohesive, integrated commercial centers and industrial centers, rather than traditional, unrelated, linear development patterns, through site design guidelines.

Conclusions of Law (Continued): The Council concludes that the adoption of plan Economic Element Goal 3/Policy 3 is significant in that it represents an important departure from "traditional, unrelated, linear development patterns" in favor of development that is represented by "cohesive, integrated commercial centers and industrial centers". Based upon the plans submitted as a condition of the zone change application (which was filed concurrently and consolidated with this GLUP amendment application) the Council concludes that this property has been planned and will be developed as a cohesive, integrated commercial and industrial center that will be linked by public transportation, a common architectural theme and other elements of commonality which the Council concludes is not traditional, unrelated, linear development. The Council further concludes that the development of this property is based upon the city's design guidelines set forth in the MLDC and Transportation System Plan. Therefore, the Council concludes that the adoption of Goal 3/Policy 3 constitutes a significant

² Some vacant land does exist along the I-5 that is owned by the Rogue Valley Manor, but this land currently has no immediate access to I-5 or any other state highway or City major arterial.

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policy change and the GLUP designation of the subject property as Commercial and Service Commercial is consistent with this adopted policy.

Transportation System Plan Goals and Policies (Adopted)

Conclusions of Law (Continued): In 2003, the Council adopted a Transportation System Plan which replaced and updated the city's transportation goals, policies and implementation strategies which before were contained elsewhere in the comprehensive plan. As a part of the comprehensive plan, the Council concludes that adoption of the Transportation System Plan resulted in the adoption of new goals, policies and implementation strategies, as well as changes to existing ones. The Transportation System Plan goals, policies and implementation strategies are contained in Transportation System Plan p. 13-1 through 13-14. The various transportation goals and policies (adopted at least 20 years after adoption of the Heavy Industrial GLUP Map designation for the subject property) are significant. Among the most significant is Transportation System Plan Goal 8 and its related Policy 8-A, which states:

GOAL 8: To maximize the efficiency of Medford's transportation system through effective land use planning.

Policy 8-A: The City of Medford shall facilitate development or redevelopment on sites located where best supported by the overall transportation system that reduces motor vehicle dependency by promoting walking, bicycling and transit use. This includes altering land use patterns through changes to type, density, and design.

Conclusions of Law (Continued): The Council concludes that the adoption of Transportation System Plan Goal 8 and related Policy 8-A is a significant change in its explicit linking of transportation and land use planning. Policy 8-A is also significant in its mandatory directive to facilitate redevelopment in areas where the same is best supported by the overall transportation system [in ways] that reduces motor vehicle use and promotes walking, bicycling and transit use. The Council concludes that the GLUP Amendment (and zone change) applications now before the Council are consistent with Transportation System Plan Goal 8 and Policy 8-A in the following ways:

1. The subject property was once occupied as a timber mill. The property is now proposed to be redeveloped pursuant to the consolidated applications now before the Council, which includes plans offered by Applicant as a condition of the zone change. The plans include facilities and routes which accommodate and thereby promote transit use, walking and bicycling within and between various project components and between this project and the nearby Rogue Valley Mall. The Council also concludes that this project, by facilitating pedestrian, bicycle and transit between it and the Rogue Valley Mall along Ohio Street (which links the subject property to the Rogue Valley Mall) will help facilitate the needed redevelopment of commercial properties along Ohio Street. The Council believes and concludes that the introduction of large numbers of people traveling between the subject property and regional mall by all travel modes, will encourage private investment to capitalize on potential retail trade from shoppers moving from one regional retail center to the other.
2. Policy 8-A specifies that methods to facilitate redevelopment will include, "altering land use patterns through changes to type, density, and design." The Council concludes that amending its GLUP Map and changing zoning districts are the principle tools cities have to alter land use patterns. The Council further concludes that the GLUP amendment and zone change here proposed will change the type of development permitted on the subject property (from exclusively Heavy Industrial to a mixture of retail, office and manufacturing). The Council also concludes, based upon the findings of fact and the economic analysis contained in Exhibit 6, Appendices C-1 through C-6 and the Economic Analysis in Exhibit 5, Section 2.2, that the proposed land use changes will produce a substantial increase in employment densities. As to design, the Council concludes that the proposed design (submitted as a condition of the zone change application) is well thought out and attractive, and will help facilitate redevelopment of the subject property and other nearby lands, particularly those along Ohio Street. The Council believes and concludes that by setting a high design standard on the subject property to go with the high standard which exists at the Rogue Valley Mall, the

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intervening lands located along Ohio Street will be more likely to redevelop to a similar high standard of design in order to capture retail trade by pedestrians, bicyclists and transit riders traveling between the mall and subject property.

3. Policy 8-A requires the Council to “facilitate development or redevelopment on sites located where best supported by the overall transportation system that reduces motor vehicle dependency by promoting walking, bicycling and transit use.” Based upon the Transportation System Plan and Revised Traffic Impact Analysis (Exhibits 95 and 97), the Council concludes that the location of the subject property is the location best supported by the overall transportation system that reduces motor vehicle dependency and promotes the alternative travel modes expressed in Policy 8-A for the following reasons:
 - A. This property is located along or traversed by two high-capacity state highways — Oregon Highways 99 and 238 which have been recently improved to accommodate higher traffic volumes and more efficient motor vehicle travel.
 - B. In addition to state highways, the property is also located adjacent to Central Avenue, a major municipal arterial street which carries high traffic volumes and links this property to Medford’s downtown and travel destinations on the north and south ends of Medford.
 - C. The property is adjacent to the railroad right-of-way which will permit rail utilization for freight movement for the business park component of Northgate and for passenger rail anticipated to link Northgate to Medford’s downtown.
 - D. The property has direct access to Interstate 5 by way of Oregon Highway 238 which connects the subject property to Medford’s north I-5 interchange.
 - E. The property is along existing RVTD transit routes to accommodate bus travel to and from Northgate.
 - F. Applicant has agreed to stipulate to providing trolley service between the three components of *Northgate Centre* — the lifestyle center, office park and business park — and to link these to the Rogue Valley Mall by way of Ohio Street. A key design component (permitting exclusive through movements for trolleys across Central Avenue) will make trolley service more efficient than travel by automobile.
 - G. As illustrated on the proposed development plans, the property is fully served by pedestrian and bicycle routes which connect to similar facilities on nearby public rights-of-way.
 - H. The revised Traffic Impact Analysis (July 2006) — Exhibits 95 and 97 — indicate that, for a new commercial and industrial center projected to generate 1882 peak hour trips, the required transportation improvements and mitigations necessary to meet the City’s and ODOT’s respective performance standards are relatively few and are less extensive than is often required for projects of a smaller scale that are projected to generate fewer trips.
 - I. The proposed GLUP Map revision and accompanying Zone Change is projected to increase employment densities in a location that can reasonably be expected to harmonize with *Northgate Centre*’s multi-modal transportation operations and design to support (and promote) increased use of alternative transportation modes.

Based upon the foregoing findings of fact and conclusions of law, the City Council concludes that the adoption of plan Economic Element Goal 8 and its related Policy 8-A in 1994, represents a significant change that has taken place since Medford applied the Heavy Industrial GLUP Map designation on the property in the 1970’s.

At the Planning Commission hearing on this Matter Eric Vos raised an objection relating to transportation issues that was qualitative in nature. This objection failed to identify the relevant approval standards

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under which the objection was directed. The Council concludes this objection is most relevant to the policy changes related to TSP Goal 8 and Policy 8-A under GLUP Map Approval Criterion 1 discussed hereinabove. These objections are addressed, in turn, hereinbelow within the context of this approval criterion:

During the October 18, 2006 public hearing, Eric Vos argued that the traffic mitigation strategy proposed by the applicant was not realistic because it focused on the quantity of traffic and not the quality of traffic. By quality of traffic Mr. Vos explained that he meant that trucks are not compatible with automobiles. Eric Vos further argued that over 400 trucks a day travel the route and that this would be dangerous to kids and soccer moms.

The Council Concludes the revised Traffic Impact Analysis (Exhibits 95 and 97) does consider the quality of traffic. Level of Service is a measure of traffic quality and it is the adopted mobility standard. Additionally, the revised Traffic Impact Analysis, dated July 7, 2006, does reflect projected truck traffic and assess the impacts of it. Highway 238, Highway 62, I-5 and Highway 99 are arterials and/or state highways. These routes are routes which are designed and built to accommodate a mix of both trucks and automobile traffic. With respect to pedestrians, cyclists, and transit users, the site contains a well connected mix of bicycle and pedestrian improvements and a trolley system to connect the modules of the project. The Council herewith concludes that it has reviewed evidence from Applicant's expert economist, land use planners, and traffic engineers, and found Applicant's evidence to be substantial such that a reasonable person can conclude the proposed land use change supports TSP Goal 8 and Policy 8-A.

Summary Conclusion of Law: Based upon the foregoing findings of fact and conclusions of law, the City Council concludes that it has considered the proposed GLUP Map amendment in the context of GLUP Amendment Criterion 1 and finds this criterion to be applicable. The Council further concludes that the adoption of new goals and policies in the plan Economic Element and the Transportation System Plan which are cited and addressed above are significant and support approval of the GLUP Map amendment as a part of the consolidate applications now before the Council. Therefore, the Council concludes that this GLUP Map amendment is consistent with Criterion 1.

GLUP Amendment Criterion 2

(2) Demonstrated need for the change to accommodate unpredicted population trends, to satisfy urban housing needs, or to assure adequate employment opportunities.

Conclusions of Law: The City Council concludes that Criterion 2 applies to this proposed GLUP amendment. The Council understands Criterion 2 to provide three alternative bases upon which a need must be demonstrated. The Council concludes neither unpredicted population trends nor a satisfaction of urban housing apply in this instance. However, the Council concludes that there is a need for this GLUP change to assure adequate employment opportunities, and this need is underscored by various goals and policies in the comprehensive plan which seek to promote economic development and fact that the Economic Element of the Comprehensive Plan identifies a 300-acre deficit of Commercial Land. The Council interprets the somewhat broad and ambiguous term economic development to include the provision of employment opportunities. The Council further concludes that in Medford, employment is typically provided on lands that are planned and zoned for commercial and/or industrial uses. The evidence here shows that there is a relative shortage of land planned and zoned for commercial uses and a relative abundance of land planned and zoned for industrial use. See, Urban Land Analysis in Exhibit 75, Section 2.3 herein, Exhibit 6 Appendix C-1 Medford Economic Market Analysis (Hovee 2003) and Exhibit 6 Appendix C-3(a) and C-3(b) letters from qualified real estate brokers New and Neville and Cushman-Wakefield. Moreover, evidence in the form of the Exhibit 6 Appendix C-4 Johnson-Gardner Employment Density Memorandum and Exhibit 6 Appendices C-2(a) and C-2(b) REMI Data and

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Analysis show that GLUP redesignation of the property and its utilization proposed as part of the consolidated zone change filing, will result in substantial employment opportunities measured both in absolute terms or in comparison to the levels of potential employment if the GLUP designation remained Heavy Industrial. This evidence demonstrates a need for the proposed GLUP change to assure adequate employment opportunities, consistent with Criterion 2.

At the Planning Commission public hearing, evidence and testimony was provided by objectors to the Northgate Centre project. While most of this testimony did not call out this approval standard, as required by law, the Council concludes that these objections were principally directed at this approval standard and the Council's Conclusions of Law in response to these objections are addressed herein below:

Allen Johnson argued that neither the Hovee studies, Urban Land Analysis, nor the REMI analysis individually, or collectively, demonstrate need for the land use change to assure adequate employment opportunities sufficient to satisfy Minor GLUP Map Amendment Criterion 2.

The Council concludes that, in raising this objection, Mr. Johnson relies on a selection of excerpts from the Hovee study that do not fairly represent the study as a whole.

- Mr. Johnson states on Page 7 of his letter:

"The Hovee report, which has been adopted as part of the updated Economic Element of the Comprehensive Plan, makes it clear that the **real need is for the property to be genuinely unavailable for conversion commercial use**, so that it will no longer make economic sense for the applicant to embargo industrial uses and demand steep commercial prices for the land."

This paragraph seems to refer to the partial quotation given by Mr. Johnson on page 8 of his remarks. As is described below, the two sentences left out of Mr. Johnson's quotation clearly envision the conversion of land from industrial to commercial use. Furthermore, every reference to price, also listed below, clearly envisions the conversion of land from industrial to commercial use annotates...

- On page 8 of Mr. Johnson's letter he uses the following quote from the Hovee report from page 61 section V.(7).

"With commercial development spanning both commercial and industrial land, a limited supply of unconstrained employment land and significant parcelization of vacant industrial land (56% under 5 acres in size), Medford should consider rezoning a portion of its industrial land (parcels under 5 acres in size) to a business park type of zone. This would allow commercial development to continue on a designated portion of industrial lands as well as small scale industrial activity."

"At the same time, action could be taken to **limit commercial development on properties 5 acres or larger. With a very limited supply of large industrial sites, the City of Medford has a growing need to reserve remaining large sites for primarily industrial uses...**" Hovee report 2003, p.61.

What the Hovee report *actually* says is quoted verbatim and *completely* as follows:

"7. **Consider revising zoning designations and land use regulations consistent with an adopted economic development strategy.** With commercial development spanning both commercial and industrial land, a limited supply of unconstrained employment land and significant parcelization of vacant industrial land (56% under 5 acres in size), Medford should consider rezoning a portion of its industrial land (parcels under 5 acres) to a business park type of zone. This would allow commercial development to continue on a designated portion of industrial lands as well as small scale industrial activity."

"At the same time, action could be taken to limit commercial development on properties 5 acres or larger. With a very limited supply of large industrial sites, the City of Medford has a growing need to reserve remaining large sites for

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primarily industrial uses. *Allowing complementary office as a part of the industrial development might be considered given the type of industries for which Medford is competitive, its e-commerce overlay, and industries tending to be comprised of office activities.*"

The last sentence of section V.(7) — *omitted by attorney Johnson* — serves to twist the meaning of the Hovee recommendation. In context, Hovee clearly recommends that the city encourage both industrial and office use with a flexible approach that reflects the needs in Medford. The *partial quote* taken by Mr. Johnson gives the impression that Hovee places the same absolute value on heavy industrial use land as he, while clearly Mr. Hovee does not.

- Mr. Johnson's analysis, including the above excerpts, was taken from the initial 2003 Hovee study. In his analysis, Mr. Johnson deduces that Hovee's identification that there are relatively few large vacant industrial sites leads to an ultimate conclusion that the Hovee study prohibits the conversion of any such sites to commercial use. This conclusion is false and unsupported. The initial 2003 Hovee study only posed some policy questions and provided recommendations for further investigation of the City's industrial and commercial land needs. Mr. Johnson's analysis *ignores* the follow-up study dated December 4, 2004 that builds upon that earlier 2003 study. The 2004 study recommends a changing share demand scenario. It is this recommended demand scenario that was adopted by the City Council on October 5, 2006 (as part of the plan Economic Element) as the demand scenario under which Medford will proceed with additional Goal 9 land base objectives. Under this scenario Hovee provides important guidance to managing the future employment land base by stating:

"Despite its potential advantages, selection of a changing share method poses a clear set of issues and challenges for Medford. Perhaps most significant would be the need to obtain added commercially designated land- likely involving redesignation of some industrial lands. Of particular importance would be the need to select sites for future commercial use that are most likely to be at locations with outstanding access and valued by the market. At the same time, mechanisms to preserve remaining industrial inventory from further commercial encroachment would be warranted."

To begin, the above language is neither a goal nor policy — it is background information. As such, it is not an approval standard and even if it were, it poses no approval standard for the applications considered here. Moreover, the above quoted language contains a challenge — to obtain additional commercial land by changing some industrial land to commercial, while considering mechanisms to preserve remaining industrial lands [following the Industrial to Commercial GLUP map conversion].

The Council concludes in these ways:

1. As to whether the Commercial component of the project has "outstanding access", Applicant contends that the commercial portions of Northgate Centre have access that by nearly any measure, would be considered "outstanding" by reason of the numerous major state highways and city arterial streets which intersect within, adjacent to or near by the subject property.
2. Regarding whether the Commercial component of the project is (or would be) "valued by the market", Applicant contends that due to its outstanding access and near proximity to the Rogue Valley Mall, this property would be and is valued by the market. Applicant's interest and financial risk in planning for and intention to build Northgate Centre is clear and further evidence as to whether this property is valued by the market.
3. Regarding mechanisms that might be employed after converting some Industrial land to Commercial, to preserve the remaining industrial land inventory from further commercial encroachment, Applicant observes that that it has proposed the following measures which it asserts will preserve other nearby industrial lands from conversion:

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- Applicant has offered both deed declarations/restrictions which require the owners and future owners of Northgate Centre to acknowledge and accept common and customary industrial practices that occur on nearby lands devoted to heavy industrial use.
- Similar to the deed declarations/restrictions, Applicant has agreed to stipulate to incorporating similar language into the leases it intends to have with commercial and industrial tenants that are contemplated to occupy buildings within the project.
- Applicant has agreed to stipulate to the construction of a 20 to 30 foot tall berm planted with a combination of coniferous and deciduous trees between Northgate Centre Industrial Business Park and Sierra Pine which will help mitigate windblown dust that emanates from Sierra Pine's uncovered sawdust pile. *See*, Exhibit 7, Atlas p. 12
- Northgate Centre has been designed to locate only business/industrial uses adjacent to the heavy manufacturing operations of Timber Products and Sierra Pine.
- The Alba Village Lifestyle Center is separated from Timber Products by several hundred feet and by the planned Black Silver LLC/Batzer Construction property which is intended as a mid-intensity industrial subdivision upon which are planned industrial buildings that are 32 feet tall.³
- Northgate Centre has extensive landscaping that lie between its component pieces and the industrial lands owned by Timber Products and Sierra Pine.

Moreover, the old Medite/Medco mill was located in closer proximity to the Rogue Valley Mall than Northgate Centre's commercial areas will be located to Timber Products. As we testified during the October 18, 2006 public hearing, we researched DEQ records and found that over the approximate 10-year period during which the Rogue Valley Mall and Medco/Medite mill were both operating, not a single complaint was lodged with DEQ.

The Council understands opponents to argue that they fear commercial and industrial encroachment which might produce the potential for complaints. Opponents also argue that they should be considered an "industrial sanctuary" even though this term has no basis in law. In point of fact, the zone change approval criteria in the MLDC already reflect the city's consideration of this issue in setting forth a hierarchy of zoning districts with objective measures of compatibility. Applicant has no objection should the city later place the lands owned by Opponents under a further industrial sanctuary regulatory schema, but such regulations do not presently exist. Moreover, the methods employed in Northgate Centre (as described in #3 above, show that the proposed project can and will be made compatible in ways required by Medford and Oregon law.

With respect to the Urban Land Analysis and REMI analysis components of this objection, several salient details are overlooked in this objection. This objection relies on statements made as part of the interpretation in Exhibit 5, Section 2.2.1.4 of Applicant's Regional Economic Impacts analysis. The statements relied upon are taken out of context; the language in that section is principally addressing whether the modeling assumptions were reasonable from an economic forecasting standpoint. This language acknowledges that certain assumptions can reasonably be debated from an economic forecasting perspective. Assumptions similar to the ones made in this analysis are unavoidable when considering

³ The plans of Black Silver LLC/Batzer were postponed when representatives for Timber Products appeared during the public hearing to contest its land division. Applicant here believes that the plans for the Black Silver/Batzer parcel will move forward once issues in connection with Northgate Centre are resolved.

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supply side changes to a factor of production in an economic forecast. A sound analysis should identify its assumptions to add meaning to the results.

The Council also concludes that Mr. Johnson ignores two essential points in the Urban Land Analysis for determining the need for a land use change to support adequate employment opportunities.

1. Medford is at a comparative disadvantage, relative to White City, to attract and retain large heavy industrial users. This is why the land values are too high. Mr. Johnson seems to assert that the City of Medford need only wield its magic regulatory price fixing sword of land use regulation and all competitive advantage of this site for its planned use will be restored. The land value analysis in the Urban Lands Analysis is based upon real market assessed values provided by the Jackson County Assessor on a City-wide basis (and the same for the White City analysis). The County assessed values reflect current land use plan map designations and this site is competitively disadvantaged using this measure of price/value. This disadvantage is derived in spite of its current land use designation, which is \$60,000 cheaper per vacant acre on average than the next cheapest employment land GLUP Map category in the City of Medford (*See*, Applicant's Volume 1, Urban Lands Analysis, Table 7). Goal 9 encourages economic analysis and planning be done on a regional basis and to analyze relative competitiveness of both the region and the immediate jurisdiction's planning areas. The fact that White City has a competitive advantage for large industrial users is not necessarily bad for the region's economy as a whole or Medford's economy in particular. This is especially true since the City of Medford itself is still a large industrial land owner in the White City area.
2. The target industry analysis performed by Hovee reflects structural changes in the economy and the Northgate Centre site is well suited for almost all of Medford's Target Industry Opportunities, which includes retail trade as a Tier 1 (Best Position) opportunity. If the site is well suited for a number of land uses that are expected to support adequate employment opportunities, it rests to the City Council to decide if a change is needed for a particular site. The Council's decision on such a matter should and will be based a number of important site specific factors.

Opponent's Economist, Joseph Cortwright, argued the supposed economic benefits of commercial development of this site are greatly overstated in the proponent's economic analysis, and the economic costs of this development are ignored.

During the proceeding Applicant argued in rebuttal (and the Council adopts as its own conclusions) the following responses to various objections raised by opponents:

The detailed argument that follows this general objection first focuses on the assumptions in the modeling analysis that the 'economic development activity is new'. Mr. Cortwright argues this development activity only represents a shift in activity from one alternative location in the region to another. This argument is based on the assumption that Medford will develop all the modeled economic activity whether it occurs at this location or not. Mr. Cortwright's assertions that commercial development, in particular, would simply 'go somewhere else' assumes an adequate available land supply. Mr. Cortwright's earlier analysis, dated October 5, 2006, makes clear that he believes Medford has adequate commercial land to meet its baseline projections. The Medford City Council flatly rejected Mr. Cortwright's opinion on this matter and therefore the Plan Economic Element's projected deficit of 300 acres is prima facie evidence that, without additional commercial land, REMI's baseline projections would not likely be met.

The REMI analysis interpretation describes the modeling effort as additive to the regional economy. Land is a factor of production, so only employed land contributes substantively in economic productivity as a factor thereto. The REMI analysis depicts the contribution to the regional economy as if this site is

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employed as a factor of production and built-out as proposed. No changes to the baseline forecast was made and all other land was assumed to be built-out in a manner that would have had no change on baseline projections. This is an additive modeling approach and was used because this is the most conceptually straightforward way to estimate the contribution of the project.

Mr. Cortright is correct that alternative assumptions could be employed for modeling purposes. Alternative analysis would involve estimating adjustments to the baseline forecast to reflect the degree to which the existing land base and development patterns are adequate to support growth projected in the baseline forecast. The net result of all these changes to the modeling assumptions would be negligible for the results demonstrating the contribution of the project. Instead, these changes would simply adjust the total Gross Regional Product (GRP) baseline projections downward anywhere the land base was determined to be inadequate to support growth in the baseline forecasts. The total baseline projections are not even reported because it is the potential contribution of this project to the regional economy that is most meaningful for a quasi-judicial land use application concerning a specific site.

The second component of the detailed argument in this objection attacks the fundamentals of the REMI model itself. Mr. Cortright finishes this analysis by stating:

“Economic impact analysis is complex and frequently opaque to non-economists. If the people interpreting the results of the REMI model can’t even get the tax revenue impacts right, how can you be at all assured that they have correctly interpreted other more technical issues embedded in the model?”

The REMI analysis estimates that Individual Income Tax revenue is \$3.3 million of the \$13 million total revenue figure. The REMI analysis breaks State tax revenues into 20 different categories. Initial revenue figures were supplemented with evidence showing State and local Tax Revenue categories and estimates for 2015 for all revenue categories. Mr. Cortright’s calculations to discredit the REMI model were flawed because they ignored the various other sources of State Revenue besides individual income taxes. The reported gross revenue impacts of the Northgate project are provided as one measure of economic benefit. To report Individual Income Tax revenue in isolation, as Mr. Cortright seems to suggest, would reflect only a fraction of the revenue increment generated by the project.

Bill Speer, opponent’s commercial Real Estate consultant argued, the Northgate Centre site, located immediately adjacent to active industrial uses is inappropriate for the development of a Lifestyle Center and this site does not have the typical characteristics for a Lifestyle Center.

Alba Village, Northgate Centre’s Lifestyle Center, will be appropriately located at the this regionally accessible site primarily because of its central location and its access to the existing streets and other infrastructure that now services the Rogue Valley Mall and the King Center.⁴ Both aforementioned retail centers border industrial zoning and have proven viable locations for many years. Persons with a modicum of real estate savvy know that locating next to the existing regional mall would be their first choice for a new Lifestyle Centre unless there is no retail demand or is no available land. Here the evidence shows that the demand for commercial is high and its supply is constricted.⁵ The subject site is the obvious location. According to Applicant’s commercial real estate broker, Steven Neville of New & Neville, during the most recent International Conference of Shopping Centers, this site was revealed by showing the video presentation shown the Planning Commission during its October 18, 2006 public hearing. Applicant’s representatives reported that every retailer who viewed the video confirmed this

⁴ The King Center is located on Crater Lake Highway 62 not far from the subject property and exists as a “big box” power center occupied by Costco, Wal-Mart, Lowe’s Hardware, and others.

⁵ The plan Economic Element and Hovee studies both show a 440-acre oversupply of industrial land and (including commercial land set aside for the Medford Sports Park), a similar undersupply of commercial land.

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location as the optimal choice; these retailers did not indicate the proximity of neighboring industrial uses make the site unviable.

Also Mr. Speer's description of a prototypical Lifestyle Center is more restrictive than is commonly understood in the retail industry. In commercial real estate parlance, the term "Lifestyle Center" was developed as a product that would address the demands of the consumer and tenant in a physical plant that was a cross between an open air regional mall and the traditional box power center. The center has evolved into a first-class mid-box anchored center with a pedestrian/village ambiance. The tenant mix is one that clearly reflects the demographics but as one very experienced retailer is quoted as saying, "a Lifestyle center is any center with a PF Chang's and a fountain", referring to the fact that Lifestyle centers come in all shapes and sizes that tend to be tailored (as will this one) to the particular market it seeks to serve.

Moreover, Mr. Speer asserts that a location adjacent to active industrial uses is inappropriate for the development of a lifestyle center. This is partially based on an International Council of Shopping Center (ICSC) publication, which states that lifestyle centers are "most often located near affluent residential neighborhoods". The most important consideration for retail site selection is the trade area it can appeal to. While affluent neighborhoods are positive from a trade area perspective, locating within or adjacent to one of these neighborhoods is certainly not a locational requirement. In the Medford area, the proposed development would be expected to appeal to a trade area from Grants Pass to Yreka, which would include a number of "affluent residential neighborhoods". In general, lifestyle centers of the proposed scale are not immediately surrounded by affluent neighborhoods, which more typically object to the immediate commercial activity.

Bill Speer further argued, that "there are no suitable sites for the Lifestyle Center anchor tenants elsewhere in the neighborhood (application p. 122). This contention ignores the fact that the likeliest Medford location for such retailers would be the Rogue Valley Mall, which could be expanded if and when market conditions would support such development.

The Rogue Valley Mall, like any center, has spatial limitations with its physical plant size and can only accommodate a certain amount of retailers. Steve Neville, Applicant's Real Estate professional has testified to his communication with Blake Bishop, VP Group Director of leasing Oregon, Washington for General Growth, the owner of Rogue Valley Mall, since the inception of our development plans. Mr. Neville has testified that Mr. Bishop's position to be that he concurs that while there will be some cross over that together the developments will be powerful and significantly more effective than if they were apart. The synergy between the regional mall and the life style center presents the perfect opportunity.

Bill Speer, opponent's commercial Real Estate consultant further argued, the Medford metropolitan area is presently over-saturated with retail, based on the analysis of local and statewide statistics. This overhang is now estimated at 400-500,000 square feet of shopping center space, more than the proposed Northgate Centre.

The conclusion reached by Mr. Speers is based upon a Trade Area that is estimated too conservatively at only 200,000 people by limiting the geography solely to the Rogue Valley proper. Applicant's Real Estate Professional Steve Neville's research indicates the trade area for this project is closer to 350,000 people and this discrepancy would more than off-set Mr. Speer's calculated excess.

Secondly, Applicant's consulting economist Jerry Johnson determined Mr. Speer's finding is based on a fundamentally flawed analysis, which compares shopping space per capita measures from the State of Oregon with the Medford MSA as well as the City of Medford. This analysis ignores a number of relevant factors. The first of these is that the State of Oregon has one of the lowest square footage of retail per capita ratios in the United States, a condition largely attributable to a lack of a sales tax. While the Oregon ratio is 17.4 square feet per capita (as opposed to the erroneously reported 12.5 in Mr. Speer's

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memo), the national rate is 20.5 square feet per capita.⁶ Making a simple change to the table in the Speer memo to reflect either the correct State of Oregon data or the more appropriate national rate indicates that the Medford MSA is considerably under-supplied with retail space.

The source provided by Mr. Speer is the CoStar/NRB Shopping Center Census in which the average GLA per Capita reported for Oregon is 17.4. We are uncertain as to why the numbers cited in Mr. Speer's report, 12.5 GLA per Capita, were in such conflict with his stated sources. The conclusions reached using his analysis with the correct GLA per Capita directly contradict Mr. Speer's own conclusions while supporting the adopted E.D. Hovee report.

Bill Speer further argued, the surplus of shopping center space in the region contributes to lackluster performance at the Rogue Valley Mall, whose tenant sales productivity are 20 to 25 percent below regional norms and approval of Northgate Centre will see the Rogue Valley Mall's sales decline by as much as 40 percent and will likely result in business closures, exacerbating current high vacancy levels at the center and weakening the region's primary retail-oriented economic engine.

Steve Neville, Applicant's Real Estate professional has testified that the Rogue Valley Mall's performance has been consistent with a regional mall operating in the existing demographics and, given certain physical constraints of its physical plant, it maintains a stellar tenant roster. Again, General Growth Properties' Management is well aware of this project and has raised no objection to the project in the record. Timber Product's concern for its commercial neighbor raises the question that, if General Growth Properties believed this project was a death sentence for their asset, then a company with six in-house market analysts and \$182 million in 2nd Quarter Funds From Operations would be likely to raise concerns on its own. Northgate Centre and the Mall can and will benefit from each other's mutual success.

Moreover, the resolved discrepancies regarding source data calculations directly rebutted the conclusion by Mr. Speer that ample retail space was available, a finding supported by the Hovee reports adopted by the City and reinforced using Mr. Speer's own analysis. This same finding addresses the remainder of Mr. Speer's report, which is based on a flawed premise that the area is over-supplied with retail space.

During the October 18, 2006 public hearing, Eric Vos argued that the economic analysis presented by Northgate is misleading. He says that impacts are only a shift in the distribution of jobs (around town). The economic analysis done by the applicant is flawed because 1600 retail employees could not possibly represent \$90 million dollars in person income. Mr. Vos said that he did not believe that the employees would make on average, \$56,000 each per year. Eric Vos argues that \$13m in state income tax could not be generated from 1600 employees.

The 'shifting jobs' portion of this objection is essentially the same as the objection made by Mr. Cortright above that asserted the modeled economic analysis does not represent 'new economic activity' but only shifts it from one location to another. Please see this objection and response herein above.

Mr. Vos commits multiple errors in reaching his conclusions that 1,600 retail employees could not possibly represent \$90 million dollars [in 2015] in personal income because it is not likely employees of this project would make on average \$56,000 per year.

- The *project is not 100 percent retail*. Two of the three components of the project are directed at other Target Industry Opportunities that are not retail and would be expected to have much higher salaries and wages than average rates for retail employees.

⁶ National Research Bureau, 2005 CoStar/NRB Shopping Center Census.

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- Mr. Vos is utilizing on-site employment estimates to discredit region-wide personal income figures from REMI. The correct arithmetic should utilize the total region-wide job projections (1,800 jobs) when performing calculations that compare per job income to assess the reasonableness of model results.
- REMI reports total personal income that includes other sources of reported income such as profits and capital gains, so *important sources of income are omitted from Mr. Vos' calculations*. REMI also has an output for Wages and Salary Disbursements which is the more appropriate output for checking the reasonableness of REMI results. REMI projects this output, in round figures, to be approximately \$72 million in 2015. This translates to an average of approximately \$40,000 in wages and salary disbursements, again in round figures (\$72 million divided by 1,800). The \$40,000 figure is in nominal dollars — it is in 2015 dollars.
- The reported Personal Income figure from REMI is in nominal dollars. REMI also has real personal income figures for 2015 that are fixed in 1996 dollars and estimates those to be approximately \$60 million in round figures for 2015. Since 2006 is approximately halfway between 1996 and 2015, the real personal income figure, in 2006 dollars, is approximately \$75 million. Making a similar adjustment to the Wages and Salary Disbursements output (REMI does not provide fixed dollar calculations for this output), results in a “real wages and salary disbursements” figure of approximately \$60 million in rounded 2006 dollars. This translates to average wages and salary disbursements of a little over \$33,000 a year in 2006 dollars.

For the above reasons, the Council Concludes the REMI results are reasonable.

During the October 18, 2006 public hearing, Eric Vos also argued that the region does not require any more commercial land.

The Hovee study projects a deficiency in the supply of commercial land. Mr. Vos may disagree with the findings of the Hovee study, but they have been adopted into the Medford Comprehensive Plan and were prepared by the City's independent consultant — E.D. Hovee Company. Also, this objection is difficult to reconcile with Mr. Vos' objection that commercial speculation on industrial land has driven up the price of industrial land. If there was an adequate supply of commercial land, what benefit would such speculation hope to achieve?

Summary Conclusion of Law: Based upon the foregoing findings of fact and conclusions of law, the City Council concludes that it has considered the proposed GLUP Map amendment in the context of GLUP Amendment Criterion 2 and finds this criterion to be applicable. The Council further concludes redesignation of the property and its utilization proposed as part of the consolidated zone change filing, will result in substantial employment opportunities measured both in absolute terms or in comparison to the levels of potential employment if the GLUP designation remained Heavy Industrial. The City Council concludes it has carefully considered all the evidence for and against the application and herewith relies upon its Comprehensive Plan Economic Element first and foremost, and additionally on the substantial evidence supplied by the Applicant's expert land use planners, economists and Real Estate professionals⁷, in reaching its conclusion that there is demonstrated a need for the proposed GLUP change to assure adequate employment opportunities, consistent with Criterion 2.

⁷ The City Council recognizes testimony and evidence has been submitted by Opponent's Attorney, Commercial Real Estate consultant, and Economist. When the City is faced with conflicting, or potentially conflicting, evidence the Council is entitled to select the evidence it deems valid and substantial for purposes of justifying its decision on the subject application.

GLUP Amendment Criterion 3

(3) The orderly and economic provision of key public facilities

Conclusions of Law: The City Council concludes that Criterion 3 applies to this proposed GLUP amendment but in a somewhat limited way. This GLUP amendment does not have as its purpose or objective the provision of public facilities, although it will result in the delivery of key public facilities improvements. Based upon the findings of fact in above Section 3.1.9 and analyses of public facilities in Exhibit 6, Appendices E-1 through E-3, the City Council concludes as follows:

1. The subject property is located in an older area of Medford which is already supplied with a full range of key public facilities which include: public sanitary sewer and water, urban storm drainage, state and municipal streets and highways, public transportation, police and fire protection, electrical, natural gas and telecommunications utilities. The evidence shows that all key public facilities either now exist or will be assured in sufficient condition and capacity to serve the subject property at the time of development. The requirements for key public facilities can be ascertained for this project in reasonably precise terms because this application has been consolidated with a zone change application to which detailed development plans have been attached and offered as a stipulated condition; the public facility requirements have been determined based upon these development plans.
2. Regarding streets and transportation, the Council concludes that the following components of *Northgate Centre* support the orderly and economic provision of key transportation facilities:
 - A. *Northgate Centre* is well served by high capacity transportation corridors planned and designed for high levels of travel. *Northgate Centre* is less than one half mile from the newly reconstructed I-5 North Medford Interchange. Adjacent and immediately west of Northgate Center is Highway 99. *Northgate Centre* is traversed by Highway 238 and a City arterial street, North Central Avenue. Northgate is also adjacent to a McAndrews Road, another City arterial street. No roadway segments are projected to require additional travel lanes to support *Northgate Centre*, as determined in the Revised Transportation Impact Analysis, dated July 7, 2006.
 - B. *Northgate Centre* is well situated near complimentary uses which permit it to capitalize on the City's existing transportation investments. The Lifestyle Center component of *Northgate Centre* is planned as a regional shopping destination and its location near the Rogue Valley Mall will allow the consolidation of regional shopping trips between these two major regional shopping destinations. The Office Park and Business Park components are well situated between the City Center and the Rogue Valley/Medford International Airport.
 - C. *Northgate Centre* is designed and situated to support alternative transportation. The design includes parking demand elements, transit facilities, as well as bicycle and pedestrian amenities. Its location among other intensive employment uses provide opportunities for increased mode split among the various alternative transportation modes.
 - D. Applicant engaged expert traffic engineers JRH Transportation Engineering, Inc. to assess the impacts of this proposed GLUP amendment based upon plans for the development which are attached to the concurrently filed zone change application. The Revised Transportation Impact Analysis, dated July 7, 2006 (Exhibits 95 and 97) identifies traffic impacts that will result from approval of these consolidated applications. According to the Transportation Impact Analysis, relatively few transportation improvements are required to accommodate the traffic projected to be generated from *Northgate Centre*. Many of the facilities requiring improvements are already

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identified in the Medford Transportation System Plan and/or the Regional Transportation Plan. An improvement is planned for the intersection of McAndrews Road with Biddle Road in the Medford TSP, but the identified improvement is rendered difficult because ODOT no longer plans facility improvements to the I-5 over-crossing at McAndrews Road. A *flyover* improvement for the confluence of Highways 62, 99 and 238 is planned by ODOT in the Regional Transportation Plan. All other intersection improvements necessary to accommodate *Northgate Centre* are minor improvements, as defined in the Transportation Planning Rule.

E. While the financing of transportation improvements is not a land use decision, the project nonetheless includes beneficial transportation financing elements. Applicant is projected to pay Medford street systems development charges in the amount of approximately \$4 million which the Council believes will more than pay for the proportional cost of impacts produced by these applications, 2) Applicant has agreed to fund or build the minor transportation system improvements necessary to accommodate the project, and 3) Applicant has agreed to stipulate to the dedication of right-of-way as a proportional contribution to future construction of the flyover.

3. Overall, the Council finds and concludes that this property is located in a portion of Medford where key public facilities exist or can be provided in an orderly and economic manner.

At the hearing in front of the Planning Commission on this matter, Timber Products consulting economist Joseph Cortright raised an objection concerning the use of transportation facilities to serve Northgate Centre. The objection quoted the Transportation Planning Rule, but did not include any specific analysis of functional classifications or mobility standard compliance and therefore it is difficult to ascertain the approval standard under which this objection is lodged as required by law. However, the Council concludes this objection is most related to the economic provision of key public facilities and the Council thus elects to address this objection herein under this approval criterion:

Mr. Cortright asserted that shifting land from industrial to commercial designations in North Medford will undercut the public investment in transportation facilities deemed critical to the region's and state's economy.

Conclusions of Law: The Council herewith concludes that this objection asserts conclusions from a cost benefit-analysis relating alternative land use scenarios to transportation investments. While a potentially interesting analysis, a cost benefit analyses of this type is somewhat complex and Mr. Cortright's conclusions do not benefit from a cost analysis to which the Applicant or the Council can respond. Moreover, based upon the above findings of fact and conclusions of law under this criterion herein incorporated and adopted, the Council concludes the City of Medford's TSP and the Oregon Highway Plan both contain a series of policy objectives and the Council finds no such policy objectives to which the proposed GLUP Map amendment is in direct conflict. The Council further concludes this land use change may represent a choice among alternative opportunity costs derived from alternative economic development opportunities, but such a policy choice is to be made by the City Council and the Council herewith has elected to amend the GLUP Map as proposed and the Council has full authority to accept and herewith does accept such opportunity costs.

GLUP Amendment Criterion 4

(4) Maximum efficiency of land uses within the current urbanizable area.

Conclusions of Law: The plain language of Criterion 4 requires the City Council to consider whether the proposed GLUP Map amendment will produce a maximum efficiency of "land uses" inside the

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urbanizable area.⁸ The Council finds that the efficiency of land *uses* means something different than the efficient use of the land itself. In the context of a GLUP Map amendment where the contemplated change involves housing (as a land use) — for example, a GLUP change from Medford’s Urban Residential GLUP designation to Urban High Density Residential — this criterion could be used as a basis to justify the higher density of housing permitted in Urban High Density Residential, a means to effect maximum efficiency of land *uses*. However, in the context of changing GLUP Map designations, as here, from one Industrial GLUP designation to another or to a Commercial GLUP designation, the notion of land *use* efficiency has no meaning because the change is not an “apples to apples” comparison, as is the case with housing where one category can be argued to be more efficient than another based upon housing density. Even in changing the GLUP designation from one industrial category to another, there are many potential land *uses* that are permitted and these are difficult or impossible to compare. For example, there are no good ways to measure the comparative efficiency of disparate land uses such as a restaurant to a automotive repair shop. Therefore, the Council finds that it has appropriately considered the language and context of Criterion 4 and concludes that Criterion 4 does not apply to GLUP Map changes where the changes involve only commercial and industrial GLUP Map designations. Therefore, Criterion 4 does not apply to this GLUP Map amendment application.

If upon review, LUBA or the courts were to determine that Criterion 4 does apply, the Council concludes that the term “maximum efficiency of land uses” in the context of a GLUP amendment involving commercial and industrial designations is ambiguous and must be interpreted. Therefore, the Council interprets and alternatively concludes that employment density is the best common denominator that allows a meaningful comparison between one Industrial GLUP designation to another or to a Commercial GLUP designation. Employment density has been analyzed as part of the Economic Analysis contained in Exhibit 5, Section 2.2.2.2 which shows that the *Northgate Centre*, if developed as herein contemplated, would produce employment at a density of approximately 16.8 jobs per acre, which would make it denser than 89 of Medford’s 126 Employment Analysis Zones (EAZs), ranking in the 70th percentile and would have greater total employment than all but four of the total 126 EAZs. Moreover, this EAZ would be the densest of its size because it would be the 111th largest and no EAZ of that size or larger would contain more total employment. Therefore, the Council concludes that this GLUP Map amendment will produce maximum efficiency of land uses within the current urbanizable area, consistent with Criterion 4.

The Council also concludes, based upon the Urban Land Analysis in Exhibit 75, Section 2.3, that the existing short-term supply of commercial land is somewhat constrained in the aggregate. The Council further concludes, based upon the Commercial and Industrial Land Supply and Demand Conditions Summary in Exhibit 75, Section 2.3.4.6, that the short-term supply of commercial land in central portions of Medford is highly constrained.⁹ Based upon the Urban Land, Transportation and Environmental analyses herein presented, the Council concludes that the subject property has unique characteristics that limit its potential for exclusive or large scale heavy industrial redevelopment, and that if left with the present Heavy Industrial GLUP Map designation, the property may and is likely not to be utilized for any significant development whatsoever within the planning horizon. Conversely, the City Council concludes that these same characteristics, in combination with the land uses herein proposed, are expected to result in a land use pattern that the Council concludes will be efficient and will readily support new employment opportunities on this site within the planning horizon. Accordingly, the Council concludes that the sought GLUP Map designations and the resulting land uses (as shown on development plans attached to the consolidated zone change application) constitute a maximum efficiency of land uses within the current urbanizable area.

⁸ Urbanizable lands are lands within the urban growth boundary which are necessary and suitable for future urban uses, can be served by urban services and facilities and are needed for the expansion of an urban area.

⁹ By *highly constrained supply in central portions of the City*, the Council means that there is less than 10 acres of vacant commercial land that is within and more than a mile from the UGB.

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Furthermore, the Council concludes that any decisions it is called upon to make involving GLUP Map designations (and the development that would result from such changes) must be balanced by the limitations and constraints of the public facilities and services which serve the land or area proposed to be changed. In this instance, the Council has concluded, pursuant to Zone Change Criterion 4, that all required public facilities and services are sufficient in ways required by the comprehensive plan and MLDC, and are or can be made available to serve this property. However, based upon the Revised Traffic Impact Analysis (July 7, 2006) (Exhibits 95 and 97) the Council also concludes that the proposed *Northgate Centre* land uses approach the maximum demand for public facilities, that can be reasonably accommodated. More specifically, a greater intensity of land uses on this property would exceed the city's ability to supply urban streets and street capacity consistent with Medford's acknowledged comprehensive plan including its Transportation System Plan and the street capacity limitations set forth in the Oregon Highway Plan and Oregon Transportation Planning Rule. Therefore and accordingly, the Council concludes that the sought GLUP Map designations and the resulting land use pattern (as per the development plans attached to the consolidated zone change application) is a more efficient land use pattern than presently exists within the current urbanizable area and has produced a maximum efficiency of land uses within the current urbanizable area.

Based upon the foregoing findings of fact and conclusions of law, the City Council concludes that the application is consistent with the requirements of Criterion 4 because it does not apply to this application or, alternatively, because the proposed GLUP Map designations will produce a maximum efficiency of land uses within the current urbanizable area.

GLUP Amendment Criterion 5

(5) Environmental, energy, economic and social consequences.

Environmental Consequences: The City Council herewith incorporates and adopts the Environmental Analysis in Exhibit 5, Section 2.5, the findings of fact in above Section 3.1.10 and the environmental analyses and information in Exhibit 6, Appendix B. Based upon this evidence which the Council deems to be substantial, it concludes that the potential environmental consequences of the proposed land use changes have been properly evaluated. In performing its role to evaluate the potential environmental consequences, the Council concludes the proposed GLUP Map amendment will not result in environmental consequences more adverse than would otherwise be expected if some of the sought land uses and land use categories were displaced elsewhere in the City of Medford and the existing General Industrial GLUP Map designation was retained.

Economic Consequences: The findings of fact in above Section 3.1.10 identify potential economic consequences, based upon the Economic, Urban Lands, and Historical analyses herein presented and which are herewith incorporated and adopted. See, Exhibit 75, Section 2.3 and Exhibit 5, Sections 2.2 and 2.1 respectively. In performing its role to evaluate potential consequences, the City Council concludes that the potential for positive economic consequences are higher for the proposed GLUP Map designations when compared to retention of the existing planned heavy industrial land uses; this is concluded to be true for both the regional economy in general and for the City of Medford and its economy specifically because the subject property is likely to remain vacant if made to stay in a Heavy Industrial GLUP Map designation and retain its existing general industrial county zoning.

Social Consequences: Based upon the Social Analysis in Exhibit 5, Section 2.6 which is herewith incorporated and adopted, the City Council concludes that the proposed Comprehensive Plan amendment is likely to result in positive social affects for the City of Medford.

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With the approval of these applications, residents of the Liberty Park Neighborhood (some of whom will likely be employed at Northgate) will enjoy the free transit pass and the same would result in energy and vehicle maintenance savings. Aside from providing an opportunity for individuals to work near their home, the Council concludes that *Northgate Centre* will supply shopping, dining and other amenities in near proximity to the Liberty Park Neighborhood. The proposed project is also likely to increase property values and personal wealth for Liberty Park neighborhood homeowners and businesses.

Northgate Centre will provide McLoughlin Neighborhood residents with the opportunity to access an attractive pedestrian friendly retail and commerce center. *Northgate Centre* will supply to the McLoughlin Neighborhood the same benefits afforded the Liberty Park Neighborhood. Additionally, with the youthful demographic changes occurring in the McLoughlin Neighborhood, the Council concludes that *Northgate Centre* will attract employers in the Office Park and Business Park components that will provide job opportunities for these younger residents. Residents of the McLoughlin Neighborhood have expressed a desire for increased economic activity in surrounding areas to bolster revitalization efforts in their neighborhood. However, the desire for increased economic activity is tempered by the potential for negative impacts from "big-box" development which has been prevalent in Medford in recent years (but which is not proposed in *Northgate Centre*). The Council concludes that *Northgate Centre* represents a proper balance of these competing economic interests and social goals.

In general, *Northgate Centre* is not expected to compete in significant ways with existing businesses in this area. There are no suitable sites for the Lifestyle Center anchor tenants elsewhere in the neighborhood. The Northgate site may represent an opportunity for some small retail and industrial businesses to expand into a facility with more visibility and larger market area. *Northgate Centre* is expected to contain a grocery store within the local market area. This may induce price competition with smaller stores in the Jackson Street corridor. This price competition would be a mixed impact for the neighborhood benefiting residents with expanded consumer choice within walking distance, but challenging these existing establishments.

Through the Neighborhood Planning Process, residents have expressed keen interest in increasing alternative transportation options. The Northgate Concept includes many elements that support this goal. Proposed design elements of *Northgate Centre* include a sidewalk connection from the Santos Center. This infrastructure improvement will make grocery store access either by foot or bike more attractive. Currently the closest retail center on the Westside is the Jackson Creek Center at the Intersection of Ross Lane and Main Street. This center is not far from the McLoughlin neighborhood, but pedestrian and bicycle connectivity is substandard. Also, the trolley and transit components of *Northgate Centre* can lead to changes in people's attitudes toward the effective and convenient use of public transportation.

Due to the large size of the residential population of the Ross Neighborhood, *Northgate Centre* will serve the residents as an alternative to shopping found along Ross Lane. The close and central location of *Northgate Centre* will be attractive to those interested in utilizing the alternative transportation modes that this project will provide.

Energy Consequences: The City Council herewith incorporates and adopts the findings of fact in above Section 3.1.10.3 and the Energy Analysis in Exhibit 5, Section 2.7 which identify potential energy consequences and benefits of the proposed land use changes. In evaluating the potential energy consequences, the Council concludes that the proposed land uses will substantially increase land use intensities in a centrally located area that is sited at the convergence of multiple high capacity transportation corridors and that these site characteristics can be expected to result in more efficient energy utilization than would otherwise be expected if some of the sought land uses and land use

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categories were randomly displaced elsewhere in the City of Medford and the existing land use designations on the subject property were retained.

GLUP Amendment Criterion 6

(6) Compatibility of the proposed change with other elements of the City Comprehensive Plan.

and

MLDC 10.191(2)(b): Consistency with the goals and policies of the Comprehensive Plan.

Conclusions of Law: The City Council herewith incorporates and adopts its findings of fact and conclusions of law, set forth hereinbelow in the Section entitled: *City of Medford Comprehensive Plan Goals and Policies* and based thereupon, the Council concludes that it has carefully and appropriately considered the various comprehensive plan elements and the respective goals and policies which, by their language and context were intended to function as decisional criteria for GLUP Map amendments. Based upon its consideration of these, the Council concludes that the proposed GLUP Map amendment is compatible with all other applicable elements of the comprehensive plan and, pursuant to MLDC 10.191(2)(b), the proposed GLUP Map amendment is consistent with the plan's applicable goals and policies.

GLUP Amendment Criterion 7

(7) All applicable Statewide Planning Goals.

and

MLDC 10.191(2)(a): Consistency with applicable Statewide Planning Goals.

Conclusions of Law: The Council herewith incorporates and adopts the findings of fact the conclusions of law with respect to each goal that is set forth in Section 4.2.2 herein. The City of Medford has an acknowledged Comprehensive Plan and Land Development Code. The City Council concludes that the sought plan amendment is consistent with all substantive provisions of the Medford Comprehensive Plan and Land Development Code other than those for which an amendment is sought.. Therefore, the Council concludes that this application is consistent with all applicable Statewide Planning Goals.

4.2.1 CITY OF MEDFORD COMPREHENSIVE PLAN GOALS AND POLICIES

The City Council has carefully reviewed all goals and policies in the comprehensive plan to ascertain which of these operate as approval standards for GLUP Map amendments pursuant to the Review and Amendments section of the plan and similar standards in MLDC 10.191(2). The Council finds that only the plan goals and policies cited and addressed below and those specific Medford Transportation System Plan goals and policies addressed in the Conclusions of Law under Transportation Planning (herewith incorporated and adopted) operate as independent approval standards for GLUP Map amendments and all others do not. The Council further holds that no responsive findings are required when local government policies are expressed not as regulatory requirements, but as aspirational objectives. *See, Ellison v. Clackamas County*, 28 Or LUBA 521, 525 (1995); *Wissusik v. Yamhill County*, 20 Or LUBA 246, 254-55 (1990); *McCoy v. Tillamook County*, 14 Or LUBA 108, 118 (1985). That a decision does not adequately address aspirational policies or that the record does not contain evidentiary support for findings of compliance with these policies, provides no basis for reversal or remand of the challenged decision. *See, Bennett v. City of Dallas*, 17 Or LUBA 450, aff'd > 96 Or App 645 (1989).

Environmental Element

Natural Resources – Water Quality, Wetlands, and Wildlife Habitat

[Goal 5] Policy 5 B (3): Require the use of natural waterways for storm drainage wherever possible, to decrease flow speed and increase filtering prior to runoff entering a primary waterway.

Conclusions of Law: Based upon the evidence, the Council concludes that no natural waterways exist within the boundaries of the subject property that could be used for storm drainage.¹⁰ According to the evidence (See, Exhibit 6 Appendix E-2, a memorandum from Applicant's expert civil engineer, Michael Thornton) storm waters emanating on the property will be collected, detained and discharged into an existing 76-inch storm drain which runs approximately parallel to Highway 238 before ultimately discharging into nearby Bear Creek. The Council concludes that the ultimate discharge of on-site storm waters to Bear Creek is consistent with the provisions of above Policy 5 B (3) for which compliance exists.

Economic Element

[Goal 2] Policy 1: Maintain at least a five-year supply of commercial land within the city that is currently served or readily serviceable with a full range of urban public facilities and services.

Conclusions of Law: Based upon the Urban Land Analysis in Exhibit 75, Section 2.3, the City Council concludes:

1. The existing short-term supply of commercial land is somewhat constrained in the aggregate. The Urban Land Analysis in Exhibit 75, Section 2.3 and the plan Economic Element at p. 27 identify that there are special site requirements needed for commercial facilities serving a regional market area. The plan Economic Element at p. 27-28 states: "The large site near South Stage Road will be needed in the following 10 to 20 years * * *."¹¹ As discussed in the Urban Land Analysis, that site, consisting of more than 100 acres, has since been acquired by the City of Medford and is now under development as a public park. No other land has since been identified or designated Commercial on the GLUP Map which would replace this large block of land. While some land has been converted from other GLUP Map designations to Commercial since adoption of the Economic Element, such lands are comparatively small, in diverse locations, and do not qualify as commercial land of a regional nature consistent with the requirements of Economic Element Goal 3, Policy 1 which states:

"Designate commercial facilities of a regional nature along freeways and highways, and designate those serving the community near collector and arterial streets."

2. The supply of commercial land in central portions of Medford and in areas well suited for commercial utilization (as explained in the Urban Land Analysis) is highly constrained.
3. There exists a relative abundance of industrial land, particularly Heavy Industrial land, for which the evidence in the Urban Land Analysis, based upon land price, shows there is little demand. Evaluation of Air Quality Impacts of the Proposed *Northgate Centre* (Exhibit 6 Appendix B-1) explains that the very stringent air quality standards for New Source Review (NSR) permits which apply to new point-source emitters within the Bear Creek Valley Air Quality Maintenance Area make it, "unlikely, under

¹⁰ Within the meaning of this policy, the Council does not construe natural waterways to include irrigation canals, because irrigation canals are man-made and engineered for a specific purpose that is not storm water conveyance and/or management.

¹¹ The plan Economic Element was adopted in 1994. Therefore, the 10 to 20 year period is years 2004 through 2014.

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the current rules, that siting another significant industrial operation would be feasible on the property owned by Northgate Center LLC.”¹² The findings in Exhibit 6 Appendix B-1 are consistent with the conclusions contained in the plan Economic Element which at p. 45 states:

“The major constraints on economic development in the city are: (1) the inability of the valley’s airshed to tolerate additional pollution, (2) the over-burdened street system, (3) the increasing number of unemployed persons with job skills that do not match those required by new employers, and (4) the relatively expensive industrial land in Medford compared to that in other cities in Oregon.”

4. The Council concludes that Economic Element Goal 2, Policy 1 requires the city to, “maintain *at least* a five-year supply of commercial land within the city that is currently served or readily serviceable with a full range of urban public facilities and services.” (emphasis added) While the Council does not know precisely what quantitatively constitutes a five-year supply of commercial land, it also concludes that Economic Element Goal 2, Policy 1 does not say or imply that no more than a five-year supply can be provided. Based upon the evidence that the commercial supply is constrained, the Council concludes that it is necessary and appropriate to make additional commercial land available and the same is accomplished by the GLUP Map amendment here proposed.

Based upon the foregoing findings of fact and conclusions of law, the City Council concludes that approval of this application will help to ensure the maintenance of at least a five-year supply of commercial land. The Council also concludes, based upon Exhibit 6, Appendices E-1 through E-3 and the findings of fact in above Section 3.1.9 that portions of the subject property intended to have a Commercial GLUP Map designation are currently served or readily serviceable with a full range of urban public facilities and services. Therefore, the Council concludes that this GLUP Map amendment is consistent with the requirements of Economic Element Goal 2, Policy 1.

[Goal 3] Policy 1: Designate commercial facilities of a regional nature along freeways and highways, designate those serving the community near collector and arterial streets.

Conclusions of Law: The Council concludes the sought commercial GLUP Map designation is intended to and will support commercial facilities of a regional nature. A reading of the policy points up ambiguity with respect to: 1) use of the term “freeways” which suggests there are multiple freeways in Medford, and 2) whether future commercial facilities of a regional nature must be located along both “freeways and highways” or whether a location along either a freeway or highway is sufficient to establish compliance with the policy. Regarding the first issue of ambiguity, the Council holds that use of the term freeways is a typographical error as it is obvious and widely known that there exists and has existed only one freeway in Medford and southern Oregon — Interstate 5. As to whether future regional commercial facilities must be located along both “freeways and highways,” the Council concludes that to comply with this policy, it not necessary for commercial land to be located along both a freeway[s] and highway to comply with the policy; location along either is sufficient to establish compliance. The semantic logic of the first clause in Goal 3 Policy 1 is similar to the following illustrative sentence:

“Always eat ripe apples and oranges.”

The logical structure of the illustrative sentence is such that it could be interpreted to be an instruction to always eat apples and oranges that are ripe or it could be interpreted as an instruction that eating ripe apples also requires one to eat ripe oranges. Where the ultimate meaning of a sentence is ambiguous due to this type of logical formulation, as is the case in the first clause in Goal 3, Policy 1, the meaning of the sentence is ascertained through the context of the language. The context of Goal 3, Policy 1 is the

¹² The federal and state air quality rules which apply within the Bear Creek Valley Air Quality Maintenance Area are the most stringent in Oregon and among the most stringent anywhere in the United States.

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background text of the Comprehensive Plan. Support for the Council's interpretation that it is not necessary for commercial land to be located along both a freeway[s] and highway to comply with the policy is found in plan Economic Element at p. 27 which underpins Goal 3/Policy 1 and states:

"Large nodes commercial land along a freeway or highway are necessary, and most appropriate, for the regional commercial development expected in a regional commercial center such as Medford". (emphasis added)

Moreover, there is no GLUP designation that distinguishes commercial uses of a regional nature; regional commercial land uses are accommodated in Medford's Regional Commercial (C-R) zone which corresponds to the Commercial GLUP Map designation, a designation which also corresponds to various other commercial zones including, Community Commercial (C-C), Neighborhood Commercial (C-N) and Heavy Commercial (C-H). In implementing this policy, the Council established approval criteria for zone changes. The zone change criteria includes locational standards for the various zones and MLDC 10.227(1)(c)(iii) contains locational standards for the C-R zone which states in pertinent part:

"(iii) The overall area of the C-R zoning district shall be over three (3) acres in size, shall front upon an arterial street or state highway, * * *."

The Council concludes that plan Economic Element, Goal 3, Policy 1 is appropriately interpreted to require future regional commercial areas to be located along freeways or highways and the proposed Commercial GLUP Map designation and proposed Regional Commercial (C-R) zone are located upon state highways 238 and 99 in compliance therewith. Moreover, the proposed GLUP Commercial/C-R zone is also located in near proximity to the Rogue Valley Mall and other lands which are now zoned C-R and which comprise the total C-R area, which is adjacent to Interstate 5. See, Exhibit 7, Atlas p. 20 and Exhibit 6 Appendix A-2.

Based upon the foregoing resolution of ambiguities and interpretation, the Council concludes that the proposed GLUP Map amendment application is consistent with plan Economic Element Goal 3, Policy 1.

Public Facilities Element General Section

Goal 2: To assure that land use plan designations and the development approval process remain consistent with the ability to provide adequate levels of essential public facilities and services.

Policy 2-A: [Limited Service Area Language Omitted] "Timely provision of essential urban facilities and services" shall mean that such services can be provided in adequate condition and capacity prior to or concurrent with development of the subject area. "Essential urban facilities and services" shall mean sanitary sewers, water systems, stormwater management facilities, and transportation facilities. A determination of minimum adequate service levels for essential urban facilities and services shall be based on the following:

Sanitary Sewers: Sufficient to serve any proposed development consistent with the General Land Use Plan (GLUP) map designation. Sanitary sewer facilities shall be considered adequate if they are consistent with the adopted sewer plan document, as interpreted by the City Engineer.

Domestic Water: Sufficient to serve any proposed development with a permanent urban domestic water system capable of supplying minimum pressure and volume for projected domestic and fire control needs consistent with the General Land Use Plan (GLUP) designation. Water facilities shall be considered adequate if they are consistent with the adopted water system plan document as determined by the Water Commission Manager.

Storm Drainage Facilities: Sufficient to serve any proposed development consistent with the General Land Use Plan GLUP Map designation. Stormwater management facilities shall be considered adequate if they are consistent with the adopted drainage plan document, as interpreted by the City Engineer.

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Conclusions of Law: The City Council herewith incorporates and adopts the facilities analyses performed by Applicant's expert civil engineer, Michael Thornton of Thornton Engineering, Inc. as contained in Exhibit 6, Appendix E-2, the findings of fact above set forth in the Sections 3.1.9.1 through 3.1.9.3, Applicant's stipulations in Exhibit 5, Section 1.3 (made conditions of approval) and the written testimony of the Medford Public Works Department and based upon this substantial evidence the Council concludes:

1. **Sanitary Sewers:** Sanitary sewer service to the property can and will be supplied at adequate levels and in a timely way to serve this proposed development consistent with the proposed GLUP Map designations. The Council further finds that the delivery of sanitary sewer service to the property is consistent with the adopted plans of Rogue Valley Sanitary Sewer (RVSS), the agency which provides sanitary sewer service to the subject property.
2. **Domestic Water:** Domestic water service to the property can and will be supplied to the property at levels and in a timely way that are adequate, sufficient and timely and will supply minimum pressure and volume for projected domestic and fire control needs consistent with the General Land Use Plan (GLUP) designation and consistent with the most current adopted water system plan document and the same has been determined by Medford Water Commission Engineer, Eric Johnson, as designee of the Medford Water Commission Manager.
3. **Storm Drainage Facilities:** Storm drainage facilities can and will be supplied at adequate levels and in a timely way to serve this proposed development consistent with the proposed GLUP Map designations and consistent with the most current adopted storm drainage facility plan document (the City of Medford Stormwater Management Plan) as interpreted by the City Engineer.

Based upon the foregoing findings of fact and conclusions of law, the City Council concludes that the application is consistent with the requirements of plan Public Facilities and Services Element Goal 2, Policy 2-A.

**General Land Use Plan Element
GLUP Map Designations**

Service Commercial. This designation permits offices, medical facilities, and other limited service oriented businesses as well as residential development under certain circumstances. This designation may be located adjacent to residential designations. The corresponding zoning district permitted in this designation is the C-S/P (Service Commercial and Professional Office) zone which is intended to be customer oriented, while limiting the number of retail uses.

Conclusions of Law: The eastern half of the center module of *Northgate Centre* is proposed as Service Commercial. See, Exhibit 7, Atlas p. 19. The City Council concludes the area proposed for Service Commercial is consistent with the above plan designation description for Service Commercial in the comprehensive plan.

Commercial. This designation permits the largest spectrum of commercial development as well as residential development under certain circumstances. The C-N (Neighborhood Commercial), C-C (Community Commercial), C-R (Regional Commercial) and C-H (Heavy Commercial) zoning districts are permitted in this designation.

The most appropriate zoning district for each site designated Commercial shall be determined based on the following:

The C-N zone provides land for the development of small integrated commercial centers servicing the frequent and daily convenience requirements and service needs of adjacent to residential neighborhoods. The C-N zone shall be located in commercial designations which are under three acres in size and are within residential neighborhoods.

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The C-C zone provides land for the development of commercial facilities servicing a shopping needs of the local community. The C-C zone shall be located on collector and arterial roadways and cohesive, integrated shopping facilities shall be encouraged.

The C-R zone provides land for the development of those service and commercial uses which serve shoppers from the surrounding region as well as from the local community. The C-R zone shall be located in areas served by adequate regional and local street systems to avoid the impact of regional traffic using neighborhood streets.

The C-H zone is primarily intended to accommodate existing heavy commercial development along roadways. The C-H zone shall be located near industrial zones and away from zones permitting residential, retail commercial, and general office uses.

Conclusions of Law: The south module of *Northgate Centre* is proposed as Commercial. The sought zoning district is Regional Commercial because the Lifestyle Center is expected to serve shoppers from the surrounding region as well as the local community.¹³ The City Council concludes the Commercial GLUP Map designation for the south module of *Northgate Centre* is consistent with the designation description in the comprehensive plan.

General Industrial. This designation permits the I-L (Light Industrial) and the I-G (General Industrial) zoning districts. The most appropriate zoning district for each site designated General Industrial shall be determined based on the following:

The I-L zone is intended for office uses and light manufacturing. The I-L zoning district is suitable for areas near residential and commercial properties.

The I-G zone provides land for industrial uses in which production and processing activities involve a degree of noise, vibration, air pollution, radiation, glare, and fire and explosive hazards. The I-G zoning district is suitable for areas near the heavy commercial and the heavy industrial zoning districts due to the higher intensity of uses permitted in this zone.

Conclusions of Law: The General Industrial GLUP Map designation is proposed for the southwest half of the center module (office park) of *Northgate Centre* and the east half of the west module (business park). The sought zoning district for this plan designation is Light Industrial (I-L). The City Council concludes the contemplated zoning district is consistent with the General Industrial GLUP Map designation's description in the comprehensive plan.

Heavy Industrial. This designation permits uses with a large amount of noise, vibration, air pollution, or other nuisance. It permits the I-G (General Industrial) and I-H (Heavy Industrial) zoning districts. The most appropriate zoning district for each site designated Heavy Industrial shall be determined based on the following:

The I-G zone provides land for industrial uses in which production and processing activities involve a degree of noise, vibration, air pollution, radiation, glare, and fire and explosive hazards. The I-G zoning district is suitable for areas near the heavy commercial and heavy industrial zoning districts due to the higher intensity uses permitted in this zone.

Conclusions of Law: The west half of the west module (business park) of *Northgate Centre* will remain in the Heavy Industrial GLUP Map designation, and the City Council concludes that retention of this GLUP Map designation will remain consistent with the Comprehensive Plan description of the Heavy Industrial plan map designation.

Goal 1: To maintain and update the City of Medford General Land Use Plan Map.

Policy 1-A: The City of Medford General Land Use Plan Map shall be reviewed at least every five years, and may be amended whenever it is determined that a change is warranted. Amendment criteria are contained in the *Review and Amendment* section of the *Comprehensive Plan*, and procedural requirements are contained in "Article II" of the

¹³ A small portion of the Lifestyle Center is zoned Community Commercial. No Changes to this district are proposed, but the requested plan amendment will align the zoning designation with the GLUP Map.

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"Land Development Code"

Conclusions of Law: Based upon the language and context of above Goal 1, Policy 1-A, the City Council concludes that neither operate as relevant substantive criteria that govern either GLUP Map amendments or zone change applications. Based upon the Urban Land Analysis in Exhibit 75, Section 2.3 and findings of fact, the City Council also concludes that no comprehensive review of the GLUP Map has been adopted since the last inventory of Commercial and Industrial lands in 1993, although the Council has begun this review by its initiation of the analysis contained in the Medford Economic Market Analysis in Exhibit 6 Appendix C-1 and the Commercial and Industrial Land Supply Goal 9 Supplement in Exhibit 6 Appendix C-6 Hovee. Moreover, the evidence in this application supports the Council's conclusion that amendments to the GLUP Map, as proposed at this time, are appropriate and warranted.

In addition to the above Conclusions of Law, the Council herewith responds to the following objections raised by Allen Johnson as to the applicability of certain policies not hereinabove identified as approval criterion for the subject application:

Mr. Johnson argued the proposed amendment violates Economic Element Policy 2.3 as it existed prior to October 5, 2006

Conclusions of Law: Plan Economic Element Policy 2.3, as it existed prior to October 5, 2006, based upon it's the Council's procedural findings of fact and conclusions of law the Council Concludes the portion of this policy raised by Mr. Johnson is no longer applicable. Moreover, the Council concludes that the language contained in that policy, "Endeavor to maintain the existing supply of industrial land..." was clearly aspirational in language and context and is not therefore applicable as an approval criterion to the subject application under Bennett vs. the City of Dallas even if the language were not deleted from the Comprehensive Plan as part of the October 2006 updates to the Economic Element.

Mr. Johnson also notes that Policy 2.4 states, "Limit the commercial uses allowed in industrial zones" and Mr. Johnson appears to argue that the express language of this policy somehow precludes the proposed GLUP Map Amendments.

Conclusions of Law: By its plain and unambiguous language, this Policy has no relevance as a criterion to this quasi-judicial proceeding. Applicant does not seek any amendments (to the MLDC) that would allow uses in the industrially zoned components of this project that would not also be allowed elsewhere in the City where the same zoning applies. The quasi-judicial application before the City concerns the appropriateness of amending the land use designations for a portion of the site from Industrial to Commercial. The application before the City is a land use mapping question and the City Council can and will decide if a change is appropriate based on the approval criteria and plan polices that relate to appropriate locations for the land use designations requested, such as plan Economic Element Goal 3 Policy 1. If the Council approves the map amendments, then allowed uses must be consistent with the City's adopted and acknowledged zoning regulations as implemented by and through the MLDC and the same are consistent with Goal 9 by operation of its acknowledged zoning regulations.

GLUP Amendment Criterion 8

MLDC 10.191(2)(c): Consistency with the applicable provisions of the Land Development Code.

Conclusions of Law: The City Council has examined the Land Development Code (MLDC) and concludes that its only provisions which relate to GLUP Map amendments are the provisions of 10.191 which provide:

Findings of Fact and Conclusions of Law

10.191 Application Form

An application for a minor Comprehensive Plan amendment shall contain the following items:

- (1) Vicinity map drawn at a scale of 1" = 1,000' identifying the proposed area to be changed on the General Land Use Map.
- (2) Written findings which address the following:
 - (a) Consistency with applicable Statewide Planning Goals.
 - (b) Consistency with the goals and policies of the Comprehensive Plan.
 - (c) Consistency with the applicable provisions of the Land Development Code.

On the above provisions of MLDC 10.191 the Council concludes as follows:

1. With respect to MLDC 10.191 (1) the Council concludes that the various maps and plans contained in the Exhibit 7, Atlas for *Northgate Centre* well exceed and are sufficient to serve as the vicinity map required therein.
2. Regarding MLDC 10.191 (2) the Council concludes that this application includes findings and analysis contained in the submittal for *Northgate Centre* which address all of the relevant substantive approval criteria of Medford and the State of Oregon, including the provisions of MLDC 10.191 (2) (a) through (c). In support thereof, the Council herewith incorporates and adopts its findings of fact and conclusions of law in Section 4.2.2 herein which address the Statewide Planning Goals and below Sections 4.2.1 and 4.2.4 which address the goals and policies of the comprehensive plan (including the Transportation System Plan).
3. These findings of fact and conclusions of law address above MLDC 10.191 (2) (c).

Based upon the foregoing findings of fact and conclusions of law, the City Council concludes that this application is consistent with the requirements of Criterion GLUP Amendment Criterion 8.

4.2.2 STATEWIDE PLANNING GOALS

Addressing the below Statewide Planning Goals is a requirement for amending the GLUP map. Moreover, pursuant to ORS 197.625 (3) (b), a demonstration of compliance with the Statewide Planning Goals is also required where (as here) the GLUP map amendment has not been acknowledged before the zone change is to be approved. Therefore, the below conclusions of law of the City Council, while specific to the GLUP map amendment, are also the conclusions of law demonstrating that the zone change is consistent with the Statewide Planning Goals because the sought zoning districts are those that implement the proposed GLUP map designations in accordance with the City's acknowledged Comprehensive Plan and Land Development Code.

GOAL 1: CITIZEN INVOLVEMENT

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process...

Conclusions of Law: The City Council concludes that compliance with statutory and MLDC requirements for processing quasi-judicial land use applications will properly assure compliance with Goal 1 to the extent it applies to this quasi-judicial land use application.

Opponent Allen Johnson raised an objection regarding Goal 1 as follows:

Findings of Fact and Conclusions of Law

Mr Johnson expressed written concern that the City's Goal 1 process (Citizen Involvement and Intergovernmental Coordination) is inadequate based on the, "tight scheduling of these amendments."

Mr. Johnson has also questioned whether the proposed timeframe provides an adequate opportunity for citizen involvement and intergovernmental coordination. The state land use statutes and the corresponding City of Medford Comprehensive Plan and Development Code, which have been acknowledged to be in compliance with the Statewide Planning Goals, provide predetermined timeframes that ensure adequate opportunities for citizen involvement and intergovernmental coordination in the City's review of a quasi-judicial proceeding. The proposed timeline for the Northgate application complies with both the state statutes and Medford Development Code as applicable.

With respect to the Planning Commission hearing, ORS 197.763(6)(a-e) provides that the seven day continuance and the ensuing response times are required for the "initial evidentiary hearing." Therefore, because the Planning Commission is the initial evidentiary hearing, there is no need for any additional continuance before the City Council. The applicant can also waive their right to provide a written closing statement which allows the applicant to exchange the last written word for a more streamlined process. In addition, consistent with the Development Code, the proposed timeline allows the full 21 day appeal period provided by the City of Medford, and is consistent with the directive that the City Council appeal hearing must be set for the next regular City Council meeting that is not less than 14 days from the date the appeal is filed, if an appeal of the zone change is timely filed.

The Council ultimately concludes it has complied with all relevant procedural requirements of the MLDC and the same are acknowledged as being both necessary and sufficient to demonstrate compliance with Goal 1 as the same is applicable to quasi-judicial proceedings.

GOAL 2: LAND USE PLANNING

To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions...

Conclusions of Law: The City of Medford has a Comprehensive Plan, implemented through the Medford Land Development Code, which are both acknowledged by the State of Oregon through the Land Conservation and Development Commission (LCDC) as being in compliance with the requirements of Goal 2. The Council further concludes the demonstration of compliance with the balance of the City's Comprehensive Plan, MLDC and applicable provisions of the Statewide Planning Goals and the requirements thereof also establish consistency with Goal 2.

GOAL 3: AGRICULTURAL LANDS

To preserve and maintain agricultural lands...

Conclusions of Law: The City Council concludes the subject properties are located not nearer than 0.75 miles from the urban growth boundary and, therefore, will have no significant impact upon the preservation or maintenance of agricultural lands and Goal 3 is concluded to be inapplicable.

GOAL 4: FOREST LANDS

To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture...

Conclusions of Law: The City Council concludes the subject properties are located not nearer than 0.75 miles from the urban growth boundary and, therefore, will have no significant impact upon the conservation or maintenance of forest lands and Goal 4 is concluded to be inapplicable.

Findings of Fact and Conclusions of Law

GOAL 5: NATURAL RESOURCES, SCENIC AND HISTORIC AREAS, AND OPEN SPACES

To protect natural resources and conserve scenic and historic areas and open spaces...

Conclusions of Law: The City Council concludes the subject property is not subject to any Goal 5 protections and will not create or worsen a conflicting use for any known or protected Goal 5 resource.

GOAL 6: AIR, WATER AND LAND RESOURCES QUALITY

To maintain and improve the quality of the air, water and land resources of the state...

Conclusions of Law: In *Marcott Holdings, Inc. v. City of Tigard*, 30 Or LUBA 101 (1995) LUBA held that Goal 6 is limited by its terms to discharges from future development itself. It [Goal 6] does not apply to all discharges that may occur as a result of the development, such as additional emissions from vehicles going to and from a development site. The *Northgate Centre* project proposes to alter plan map and zoning district designations. A site plan is incorporated into the project that provides a general development schema, but specific uses are unknown at this time. Where specific uses are not proposed, Goal 6 only requires substantial evidence sufficient for a reasonable person to conclude that the proposed land use changes can reasonably be expected to comply with applicable environmental standards.

The Medford Comprehensive Plan states that the existing Heavy Industrial designation, “permits uses with a large amount of noise, vibration, air pollution, or other nuisance.” Applicant asserts that the list of permitted uses allowed in the General Industrial and Heavy Industrial zoning districts (the corresponding zones under the city’s Heavy Industrial GLUP Map designation) include uses with the highest levels of waste process discharges of any uses allowed under the MLDC. Applicant also asserts that many of the uses planned for Heavy Industrial areas can be reasonably expected to require DEQ permits for air and/or water contaminant discharges and can reasonably be expected to generate high volumes of sewage discharge and the production of solid and hazardous wastes.

The proposed GLUP Map amendment will result in zone changes and, ultimately, land use changes that will replace the potential heavy industrial uses with uses such as retail trade, offices and smaller business park uses that the Council believes and concludes will produce less waste process discharges including less sewage waste, lower volumes of solid and hazardous wastes and produce lower levels of on-site air contaminant discharges when compared to the planned intensive industrial uses. For this reason, the City Council can and does reasonably conclude that all waste and process discharges of this type from future development under the proposed GLUP Map designations and the land uses likely to result therefrom, to be less than the waste and process discharges that would result from future development under the existing Heavy Industrial GLUP Map designation. The City Council further concludes that, based upon the evidence provided by applicant’s expert professional civil engineer (Exhibit 6, Appendices E-2 and E-3) and expert air quality consultant (Exhibit 6 Appendix B-1) if future development occurs in accordance with the *Northgate Centre* concept plans, all applicable air contaminant discharges and storm water discharge standards can feasibly be met and will not violate or threaten to violate applicable state or federal environmental quality statutes, rules and standards for storm water discharge and/or non-point source emissions resulting from projected traffic. The Council has adopted the *Northgate Centre* plans as a condition of the consolidated zone change application and has required this development to be in substantial conformance with these plans. Therefore, the Council concludes that this GLUP amendment is consistent with the requirements of Statewide Planning Goal 6.

GOAL 7: AREAS SUBJECT TO NATURAL HAZARDS

To protect people and property from natural hazards...

Conclusions of Law: The City Council concludes that Medford’s acknowledged comprehensive plan does not identify any natural hazards to which this property is subject. The Council further concludes that

Findings of Fact and Conclusions of Law

the sought GLUP Map amendment will not subject the potential development nor the citizens of Medford to unacceptable levels of risk from any natural hazards.

GOAL 8: RECREATIONAL NEEDS

To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts...

Conclusions of Law: The City Council concludes the existing Comprehensive Plan Map designation is Heavy Industrial which is not intended to serve recreational needs and that the sought GLUP Map amendment will not harm or diminish local, regional or state recreational opportunities in any appreciable way.

GOAL 9: ECONOMIC DEVELOPMENT

To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens...

Conclusions of Law: The City Council herewith incorporates and adopts the Economic Analysis, Urban Land Analysis, and Environmental Analysis in Exhibit 75, Section 2.3 and Exhibit 5, Sections 2.2 and 2.5 respectively. The Council concludes Goal 9 requires the air, water and land carrying capacities to be considered when assessing appropriate lands for economic development. The Council concludes that air capacities of the Northgate site do not lend themselves to customary uses under the currently planned Heavy Industrial designation due to excessive mitigation requirements. The Council further concludes that Northgate Centre is expected to contribute significantly to the region's economy based on the projected construction valuations and a diverse array of future employment. The Council further concludes that adopted administrative rule that implements Goal 9 (OAR Chapter 660, Division 009) and the conclusions of law provided hereinbelow establish consistency with this administrative rule and Goal 9 on which it is based. Therefore, this application is consistent with Goal 9.

The Council further concludes that the Target Industry Opportunities in the 2003 Hovee Study have not been challenged in any meaningful way in this proceeding and the same have now been adopted into the Comprehensive Plan Economic Element. Based upon these undisputed Target Industry Opportunities, the Council concludes, as follows, regarding the effects of the proposed amendments for adequate supply conditions under Statewide Planning Goal 9:

1. Impacts of the GLUP Map amendment to increase the supply of the proposed land uses for the following categories of land uses:
 - a. The Economic Opportunities Analysis identifies retail as a target industry opportunity for the City of Medford and identifies a short-fall of commercial land. The Hovee Goal 9 Supplement projects strong demand for regional retail uses and the land use inventory information identifies a deficiency of sites for regional commercial uses. The proposed amendment will add a well situated site to meet this demand. There may continue to be unmet demand under this land use category. The proposed land use change is not expected to render any existing regional commercial site unusable, whether built or vacant, so the assumptions regarding city-wide inventories commercial land generally and regional commercial land specifically will not be changed.
 - b. The Economic Opportunities Analysis identifies a number of uses that demand office space as target industry opportunities. The Urban Land Analysis provides substantial evidence that land constraints for lands that demand office space is constrained. The Office Park module of Northgate Centre will serve this demand. There may continue to be unmet demand in this land use category. The proposed land use change is not

Findings of Fact and Conclusions of Law

expected to render any existing office park sites unusable, whether built or vacant, so the assumptions regarding city-wide inventories of lands for office uses will not be changed.

- c. The Economic Opportunities Analysis identifies a number of uses that tend to demand industrial space in a Business Park-type setting. The Urban Land Analysis provides substantial evidence that land constraints for lands that demand higher-amenity industrial space is somewhat constrained. The Business Park module of Northgate Centre will serve this demand. There may continue to be unmet demand in this land use category. The proposed land use change is not expected to render any existing business park sites unusable, whether built or vacant, so the assumptions regarding city-wide inventories of lands for business park type development will not be changed.
2. Impacts of the GLUP amendment to reduce the supply of Heavy Industrial land must also be addressed. The Economic Opportunities Analysis identifies very few uses that are expected to demand heavy industrial lands. As such, this category of land uses represents a category for which the City's responsibilities under Goal 9, pursuant to its Economic Opportunities Analysis, is limited to providing sites for existing uses and potential expansion of such sites. Timber Products and Sierra Pine are the only heavy industrial users in the area and they control a 60 acre parcel that could be used to serve expansion needs of these users. The proposed amendments will not change the land use regulations applicable to these properties that would prevent their continued use or prevent expansion. Goal 9 expressly provides that communities should evaluate comparative advantages regionally and it is permissible to meet Goal 9 objectives based upon regional economic considerations. The Economic Element of the plan as well as the Urban Land Analysis notes that White City is likely to be the competitive supply source for such users, so compliance with Goal 9 inventory requirements for heavy industrial uses can be met regionally.

GOAL 10: HOUSING

To provide for the housing needs of citizens of the state...

Conclusions of Law: The City Council concludes the neither the existing Heavy Industrial GLUP Map designation nor any designations proposed to replace it on the subject property will contribute in any way to Medford's land supply for needed housing. Therefore, Goal 10 is concluded to be inapplicable to this GLUP Map amendment application.

GOAL 11: PUBLIC FACILITIES AND SERVICES

To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development...

Conclusions of Law: Based upon the findings of fact and evidence in Exhibit 6 Appendix E, the City Council concludes that the proposals in these applications are consistent with Medford's various community public facility plans and with all other relevant substantive provisions of Goal 11.

GOAL 12: TRANSPORTATION

To provide and encourage a safe, convenient and economic transportation system...

Conclusions of Law: The City Council herewith incorporates and adopts its findings of fact and conclusions of law for all matters related to public facilities and services and transportation and concludes, based thereupon, that this application is consistent with the requirements of Goal 12.

GOAL 13: ENERGY CONSERVATION

To conserve energy. Land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles...

Conclusions of Law: The City Council concludes that heavy industrial uses are generally among the most energy consumptive of all land use categories due to energy consumed in manufacturing processes and fuel consumed by employees for transportation to and from work. However, because of the existing air quality constraints (Exhibit 6 Appendix B-1) and land value economics (Exhibit 75, Section 2.3), it is unlikely that the subject property would ever be used for heavy industry. Therefore, the potential for adverse energy consumption consequences from the existing Heavy Industrial land use designation is low due to market forces rather than land use regulations. However, *the do nothing so there will be no impact rationale* is site specific and if the uses contemplated for *Northgate Centre* are instead dispersed throughout the Rogue River Valley (rather than consolidated on the site as proposed) the consequence of this action will be greater energy consumption measured on a regional basis. As explained in the findings of fact regarding Environmental Consequences, the greater potential impacts produced by dispersing the various commercial, office and industrial uses to different and more outlying locations (rather than consolidating them as here proposed) will adversely affect energy consumption (and the environment) by increasing vehicle miles traveled (VMT) by people seeking to obtain the goods and services from a dispersed collection of commercial and employment uses/sources in comparison to locating them together on a single site which is: 1) centrally located in Medford, and 2) near or adjacent to existing regional shopping and employment centers.

Moreover, the intense cluster of retail and employment uses here proposed, provides opportunities for VMT-reducing strategies, including the proposed trolley and employee transit passes. Under the assumption that there will be demand on a regional basis for heavy industrial use for which this land would have had a competitive advantage as a supply source, an alternative replacement site would then be necessary. Displacement of a Heavy Industrial use to another location in the City of Medford, in the unlikely event such a displacement would actually occur, would be expected to have minimal net energy consequences as there are no known conditions that make this site substantially more energy efficient than potential alternative sites in the City specifically or the southern Oregon region generally. Therefore, the Council concludes that this GLUP Map amendment is consistent with Goal 13.

GOAL 14: URBANIZATION

To provide for an orderly and efficient transition from rural to urban land use...

Conclusions of Law: The City Council concludes that Goal 14 is inapplicable in that it deals with the establishment and change of urban growth boundaries (UGB) and neither is proposed as part of these jointly filed applications. However, the Council also concludes that the sought GLUP Map amendment will result in an intensive redevelopment and use of urban land that is already within Medford's corporate limits and UGB. The intensive utilization of urban land to supply (in this instance) employment opportunities and retail shopping, in a central portion of the city, will have the positive effect of forestalling the time before Medford will be required to amend its UGB to supply additional land for retail trade and to supply employment opportunities.

4.2.3 LAND CONSERVATION AND DEVELOPMENT COMMISSION ADMINISTRATIVE RULES

**4.2.3.1 Oregon Administrative Rules
Chapter 660, Division 9 - Industrial And Commercial Development**

Findings of Fact and Conclusions of Law

The City Council below addresses the substantive criteria in OAR Chapter 660, Division 009 (Industrial and Commercial Development) which are relevant and applicable to these applications.¹⁴ The term “this rule” as used in the below conclusions of law means OAR 660-009.

OAR 660-009-0010

Application

- (1) OAR chapter 660, division 9 applies only to comprehensive plans for areas within urban growth boundaries. Additional planning for industrial and commercial development outside urban growth boundaries is not required or restricted by this rule. Plan and ordinance amendments necessary to comply with this rule shall be adopted by affected jurisdictions.

Conclusions of Law: The City Council concludes the subject property is within the acknowledged City of Medford Urban Growth boundary. Therefore, OAR Chapter 660, Division 9 (“this rule”) applies to this GLUP Map amendment. As noted in the below conclusions of law (and as evidenced in the Final Order for this matter) the City Council has amended the Medford Comprehensive Plan as necessary to comply with the relevant provisions of this rule which the Council deems necessary pursuant to above OAR 660-009-0010 (1).

- (3) Jurisdictions may rely on their existing plans to meet the requirements of this rule if they:
 - (a) Review new information about state and national trends and conclude there are no significant changes in economic development opportunities (e.g., a need for sites not presently provided for by the plan); and
 - (b) Document how existing inventories, policies, and implementing measures meet the requirements in OAR 660-009-0015 through 660-009-0025.

Conclusions of Law: The City Council concludes that above OAR 660-009-0010 (3) does not operate as independent approval criteria for quasi-judicial plan or zoning amendments which, as here, are initiated by private parties as post acknowledgment plan amendments. Instead, above OAR 660-009-0010 (3) governs and applies only to periodic review plan updates and the processes associated therewith. This conclusion is supported by the fact that OAR 660-009-0010 (3) existed before the adoption of OAR 660-009-0010 (4) in 2001, which clearly applies to quasi-judicial post acknowledgment plan amendments (that affect commercial and industrial lands over two acres).

- (4) Notwithstanding paragraph (2), above, a jurisdiction which changes its plan designations of lands in excess of two acres to or from commercial or industrial use, pursuant to OAR 660, division 18 (a post acknowledgment plan amendment), must address all applicable planning requirements; and:
 - (a) Demonstrate that the proposed amendment is consistent with the parts of its acknowledged comprehensive plan which address the requirements of this division; or
 - (b) Amend its comprehensive plan to explain the proposed amendment, pursuant to OAR 660-009-0015 through 660-009-0025; or
 - (c) Adopt a combination of the above, consistent with the requirements of this division.

¹⁴ In some instances, the Council has cited a provision only for the purpose of explaining why it is not applicable to the pending applications.

Findings of Fact and Conclusions of Law

Conclusions of Law: By its clear and unambiguous language and the nature of this application, the Council concludes that OAR 660-009-0010(4) applies to this post acknowledgment plan amendment. The Council also concludes that it adopted the existing plan Economic Element through a complete review after the effective date of this rule. That review resulted in a plan Economic Element that addressed the applicable requirements of this rule and the same has been acknowledged by the State of Oregon.¹⁵ The Council further concludes that in October 2006, the City of Medford updated its Economic Element to adopt new inventory information and revised site requirements information. Based upon the same, the Council herewith concludes as follows with respect to demonstration of compliance pursuant to the alternative tests in OAR 660-009-0010 (4) (a) and (b) for plan amendments, the Council under Subsection (c) concludes as follows for both Subsections (a) and (b):

1. With respect to OAR 660-009-0010 (4) (a), the City Council herewith incorporates and adopts the findings of fact in Section 3 and the Urban Land Analysis in Exhibit 75, Section 2.3 as being adequate to support the Council's conclusions of law pursuant to OAR 660-009-0015 through 660-009-0025 (inclusive) and based thereupon, the Council concludes it is demonstrated that this proposed amendment is consistent with relevant goals, policies and background of the plan Economic Element and these are the parts of Medford's comprehensive plan which address this rule and the requirements of Statewide Planning Goal 9.¹⁶ The Council recognizes the new inventory information and revised site requirements are on appeal to LUBA, but that acknowledgement of those updates will occur as a result of resolution of such appeals and the City can and will rely on such amendments to demonstrate compliance with this rule. Therefore, this application is consistent with OAR 660-009-0010 (4) (a) and the Council so holds as its overarching conclusions of law for this rule.
2. The Council believes the purpose of this rule is to facilitate compliance with Statewide Planning Goal 9 by assuring that comprehensive plans (and implementing ordinances) include an analysis of the community's economic patterns, potentialities, strengths and deficiencies as they relate to state and national trends, contain policies concerning the economic development opportunities, ensure a suitable and adequate supply of industrial and commercial sites and uses, and provide for compatible uses on or near sites zoned for industrial and commercial uses.¹⁷ Therefore, in the event judicial

¹⁵ The Economic Element in total was adopted by Medford Ordinance No. 7631. The Conclusions of Law adopted by the City Council to address Goal 9 in support of its adoption of this ordinance state: "This amendment will bring the City's 'Economic Element' of the Comprehensive Plan into conformance with the OAR [660] Division 9. It is, therefore, in compliance with the stated goal."

¹⁶ The relevant goals and policies of the plan Economic Element are those which by their language and context are intended by the Council to operate as approval standards for plan amendments pursuant to *Bennett v. City of Dallas, supra*.

¹⁷ Goal 9 states:

To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

Comprehensive plans and policies shall contribute to a stable and healthy economy in all regions of the state. Such plans shall be based on inventories of areas suitable for increased economic growth and activity after taking into consideration the health of the current economic base; materials and energy availability and cost; labor market factors; educational and technical training programs; availability of key public facilities; necessary support facilities; current market forces; location relative to markets; availability of renewable and non-renewable resources; availability of land; and pollution control requirements.

Comprehensive plans for urban areas shall:

1. Include an analysis of the community's economic patterns, potentialities, strengths, and deficiencies as they relate to state and national trends;
2. Contain policies concerning the economic development opportunities in the community;
3. Provide for at least an adequate supply of sites of suitable sizes, types, locations, and service levels for a variety of industrial and commercial uses consistent with plan policies;
4. Limit uses on or near sites zoned for specific industrial and commercial uses to those which are compatible with proposed uses.

Findings of Fact and Conclusions of Law

review were to determine that compliance with Division 9 could not be satisfied solely on the basis of compliance through OAR 660-009-0010 (4)(a), the Council elects to further explain this amendment — pursuant to OAR 660-009-0010 (4)(b) —with the following supplemental analyses and the Council concludes that these adequately explain the proposed amendment pursuant to OAR 660-009-0015 through OAR 660-009-0025. Therefore, the Council incorporates and adopts into the Comprehensive Plan the following, as background information sufficient to explain this and only this GLUP Map amendment, as follows:

- The findings of fact and conclusions of law herein which address Goal 9 and this rule.
- The Economic Market Analysis by E.D. Hovee and Company which analyzes Medford’s economic patterns, potentialities, strengths and deficiencies as they relate to state and national trends, which is in Exhibit 6 Appendix C-1.
- The Medford Commercial and Industrial Land Study, Goal 9 Supplement by E.D. Hovee and Company which is in Exhibit 6 Appendix C-6.
- The review and analysis of Medford’s economic patterns, potentialities, strengths and deficiencies as they relate to state and national trends by applicant’s consulting economist, Johnson-Gardner in Exhibit 6, Appendices C-4 and C-5.
- The site requirements analysis in Exhibit 75, Sections 2.3.3 through 2.3.5 and herein that examines the suitability of the subject property for those target economic opportunities identified in the Exhibit 6, Appendix C-1 Hovee Economic Market Analysis.
- Updates to commercial and industrial land supply inventories since the adoption of the Economic Element in 1994 as set forth in 2.3 herein and Exhibit 6 Appendix A-5 which supports the need for the proposed amendment in order to provide for at least an adequate supply of sites of suitable sizes, types, locations and service levels for industrial and commercial uses consistent with plan policies.
- The Urban Land Analysis contained in Exhibit 75, Section 2.3 herein.

The Council concludes that the above analyses properly explains how the GLUP Map amendment proposed herein will serve the City’s Goal 9 planning by advancing its plan policies regarding economic development objectives and commitments to supply adequate facilities and sites. The Council further concludes the above analysis demonstrates that the proposed GLUP Map amendment will, in no way, prevent the City from meeting the objectives and responsibilities of Goal 9 and its implementing rule, Division 9 herein.

3. Based upon the foregoing findings of fact and conclusions of law and amendments by reference to the plan Economic Element, the City Council concludes that the application is consistent with the requirements of OAR Subsections 660-009-010 (4) (a) and (b) independently and collectively. Therefore, this GLUP Map amendment is concluded to be consistent with OAR 660-009-010 (4).

- (5) The effort necessary to comply with OAR 660-009-0015 through 660-009-0025 will vary depending upon the size of the jurisdiction, the detail of previous economic development planning efforts, and the extent of new information on local, state and national trends. A jurisdiction’s planning effort is adequate if it uses the best available or readily collectable information to respond to the requirements of this rule.

Conclusions of Law: The Council herewith concludes that the language and context of this subsection applies to periodic review planning actions initiated by local jurisdictions to comply with this rule and does not apply to quasi-judicial proceedings initiated by private parties as a post acknowledgment plan amendment. The applicability of this rule to post acknowledgment plan amendments for changes to comprehensive plan map designation is specifically governed by above OAR 600-009-0010 (4). The Council believes this conclusion is further supported by the fact that above OAR 600-009-0010 (5) existed prior to the adoption of OAR 600-009-0010 (4) in 2001 which then explicitly applied only to periodic review processes when originally adopted.

OAR 660-009-0015

Economic Opportunities Analysis

Cities and counties shall review and, as necessary, amend comprehensive plans to provide the information described in sections (1) through (4) of this rule:

- (1) Review of National and State and Local Trends. The economic opportunities analysis shall identify the major categories of industrial and commercial uses that could reasonably be expected to locate or expand in the planning area based on available information about national, state and local trends. A use or category of use could reasonably be expected to locate in the planning area if the area possesses the appropriate locational factors for the use or category of use;

Conclusions of Law: The City Council concludes as follows with respect to above OAR 660-009-0015(1):

1. The plan Economic Element contains a review of national, state and local trends and identifies twenty-five target industry opportunities that, based thereupon, could reasonably be expected to locate or expand in Medford pursuant to OAR 660-009-0015(1).

This application includes an Employment Density Memorandum by applicant's consulting economist Johnson-Gardner in Exhibit 6 Appendix C-4 as an additional and updated review of national, state and local trends.

The Council concludes that the evidence in these two sources is adequate in all ways and supports this proposed plan map amendment because the proposed GLUP Map designations (and their corresponding zones — as herewith sought — and the uses permitted under each as set forth in the MLDC) correspond with and respond to the identified economic opportunities while the existing Heavy Industrial GLUP Map designation does not. Moreover, based upon the evidence, the Council concludes that to the extent additional Heavy Industrial lands are needed, there exists an ample supply within Medford and, in its more likely location, in unincorporated White City.

2. Based upon the foregoing findings of fact and conclusions of law, the Council concludes that this application is consistent with the requirements of OAR 660-009-0015(1).

- (2) Site Requirements. The economic opportunities analysis shall identify the types of sites that are likely to be needed by industrial and commercial uses which might expand or locate in the planning area. Types of sites shall be identified based on the site requirements of expected uses. Local governments should survey existing firms in the planning area to identify the types of sites which may be needed for expansion. Industrial and commercial uses with compatible site requirements should be grouped together into common site categories to simplify identification of site needs and subsequent planning;

Findings of Fact and Conclusions of Law

Conclusions of Law: The City Council concludes as follows with respect to above OAR 660-009-0015(2):

1. The plan Economic Element pages 15 through 23 contain an analysis of site requirements for the various identified industrial and commercial uses which might expand or locate in the planning area. The analysis was undertaken to be and is consistent with 660-009-0015(2). The Council also gives substantial weight to the written and oral testimony of applicant (which the Council finds is *prima facie* evidence) that goes to why and how the subject property is well suited to provide for the uses and types of uses proposed to occupy *Northgate Centre* because this evidence also speaks directly to the required identification of commercial and industrial uses intended to locate in Medford; market demand as evidenced here serves as no better measure of compliance with the first two sentences of 660-009-0015(2).
2. Exhibit 75, Section 2.3.5 of the Urban Lands Analysis is herewith incorporated and adopted. The Council concludes that this analysis is adequate to represent the detailed site characteristics analysis required by the rule to identify expected commercial and industrial land uses. Among these are uses and categories of uses which are expected to occupy the *Northgate Centre* — Retail and Services in the Lifestyle Center, Offices, Restaurants and Services in the Office Park and Manufacturing and Offices in the Business Park. The Council further concludes from the evidence, including the project design plans in the Exhibit 7, Atlas, that *Northgate Centre* has been designed to specifically accommodate those particular uses. Therefore, the Council concludes in context of this application, that there has been a proper analysis which deals with the identification of the types of sites needed in the future which has been based upon the site requirements of expected uses and their respective site requirements.
3. As to the provisions which states, “local governments should survey existing firms in the planning area to identify the types of sites which may be needed for expansion”, the Council concludes that such survey work was properly undertaken in the Medford Economic Market Analysis by Medford’s consulting economist E.D. Hovee Company in Exhibit 6 Appendix C-1 and the same is herewith incorporated and adopted. If it is argued that the survey of existing firms in Exhibit 6 Appendix C-1 was somehow inadequate, the Council also concludes that the language used to raise the issue of a survey of existing firms, is stated in permissive not mandatory terms. Therefore a survey of existing firms is not required and is certainly not required by a private applicant as the rule explicitly makes this the responsibility of local government.
4. The last sentence of OAR 660-009-0015(2) is set forth in permissive rather than mandatory terms. However, as to this recommendation, the Council concludes the Plan Economic Element pages 15- 23 includes an analysis of target industry opportunities by GLUP Map Designation and this analysis groups target industry opportunities that have similar site requirements into common site categories.
5. Based upon the foregoing findings of fact and conclusions of law, the City Council concludes that the application is consistent with 660-009-0015(2).

During the proceedings, evidence and testimony was provided by Timber Product’s consulting economist. While this testimony did not call out this approval standard, as required by law, the Council concludes that these objections were principally directed at this approval standard and the Council’s Conclusions of Law in response to these objections are addressed herein below:

Findings of Fact and Conclusions of Law

During the proceedings, Joseph Cortright asserted that the analysis of industrial land availability ignores the key role of traded sector industry land generally, and the particular importance of well-served, shovel-ready large parcels in particular.

The initial paragraph of this concern properly states that Statewide Planning Goal 9 requires cities to prepare land use plans that assure the availability of suitable sites for the types of industries the City expects to receive. Goal 9 requires that cities do the same for commercial lands. Mr. Cortright's emphasis on industrial, land intensive uses is not reflected in Goal 9, which requires that cities anticipate the types of sites which may be required by future employers without favoring any industry or type of use over any other.

Mr. Cortright provides no analysis or argument that would render the E.D. Hovee methodology, analysis, and conclusions regarding his identification of Medford's Target Industry Opportunities unsound. Moreover, these target industry opportunities are similar in nature to those identified in the previous Economic Element (pre-October 2006). If the target industry opportunities identified are reasonable from an economic opportunities standpoint, then it stands to reason that an ensuing analysis of the land base would be responsive to the industry sectors identified and the Council concludes Goal 9 requires the same.

Many of the target industry opportunities identified by Hovee and adopted into the plan Economic Element could be fairly characterized in many instances as traded sector industries¹⁸ such as: Instruments, Communications, Lumber and Wood, Printing and Publishing, and Electronic Equipment. Correspondingly, the Hovee study, and the other proposed amendments to the Comprehensive Plan, place emphasis on the need to assure adequate land supplies for those traded sector industries that are likely to locate in the City of Medford due to its comparative advantage. This has been Medford's past practice and it has served the City well since the last Economic Element was thoroughly reviewed in 1993-94. Over these last twelve years, the Council concludes Medford has seen growth in the manufacturing sector while State and National manufacturing employment has declined. For these reasons, the assertion that the Hovee analysis ignores the importance of traded sector industries is unfounded.

While the Hovee analysis is responsive to the importance of traded sector industry generally, the emphasis on the need to provide numerous well-served, shovel-ready large industrial parcels is incongruent with the conclusions of the target industry opportunities analysis and neglects substantive planning considerations, including:

1. Among the 25 target industry opportunities identified, Lumber and Wood is the only industrial category that would typically be expected to seek a large site within the City's UGB. In Medford's Urban Growth Boundary, Timber Products and Boise Cascade are the predominant companies in this industry and both have large shovel-ready sites upon which they could expand if the need arises. Additional potential sites exist or could be obtained with reasonable effort in White City for other firms wishing to penetrate the market in this industrial category.
2. Statewide Planning Goal 14 requires efficient use of urban land. Maintaining large tracts of the urban land base in employment categories for which minimal demand is projected does not serve the interest of Goal 14 or Goal 9.
3. On a Statewide basis Medford has many comparative disadvantages for large scale heavy industry including inconvenient access to a deep water port, absence of a Class 1 railroad, and air

¹⁸ Traded Sector Industry is an amorphous term without a concrete definition underpinned by economic theory. As used here, it is essentially analogous to basic sector industry as such term is typically used in classical economics.

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quality standards that substantially limit the type and scope of industrial facilities that can be located in the airshed.

Within the greater Rogue Valley region, Medford has the comparative disadvantage of higher taxes and more expensive land when compared to unincorporated industrial areas such as White City.

Mr. Cortright further argues that the Hovee analysis and detailed supplemental evidence in the Northgate Centre application substantially overstates the demand for commercial land.

Embedded in this overarching objection are a series of six issues identified and addressed below:

1. Issues 1 and 4 relate to the estimated employment densities used by the Hovee report to determine the demand for land. Mr. Cortright asserts that no source is provided for these densities and that they are unreasonable and inconsistent with estimates used elsewhere in the State. This assertion is based upon a citation to a study performed by ECONorthwest for suburban Portland. Mr. Cortright's own source acknowledges that suburban Portland should not be expected to have the same employment density as Medford, Oregon. The employment densities used by E.D. Hovee are consistent with those estimated by ECONorthwest for Medford in ECONorthwest's estimate for commercial employment density in its' Economic Opportunities Analysis for the Bear Creek Valley Regional Problem Solving Project, May 2006, pg. 4-11. All of the estimates used in the Hovee report are within acceptable parameters published by DLCDC. See, the *Industrial and other Employment Lands Analysis—Basic Guidebook, 2003* published by DLCDC. Applicant's consulting economist Jerry Johnson, in association with ECONorthwest, completed an evaluation of the economics of density for Metro in the Portland metropolitan area. This work directly addressed the substantive reasons why densities vary in alternative markets, and the Hovee work reflects the conclusions of this report.
2. Issues 2, 3 and 5 are all interrelated and in fact deal with land supply and not demand. Mr. Cortright presents alternatives to the methodology used in the Hovee report for estimating the supply of available employment lands, both industrial and commercial. None of the alternative methods presented by Mr. Cortright are methodological requirements of OAR 660-009. Moreover, all three of these issues imply that a rigorous analysis of all the potential redevelopment of the City's employment land base must be conducted as part of this amendment; this implication is inconsistent with OAR 660-009-0015(3) which directs an inventory of only vacant and significantly underutilized lands within the planning area. 'Significantly underutilized' is not a defined term in the Rule, but a reasonable person can conclude that, from a Goal 9 standpoint, any land substantively employed in a *going concern* is not significantly underutilized. As such, a hypothetical analysis of redevelopment potential is a policy exploration the City could undertake, but not one that is required where the Hovee study has done a reasonable job of identifying vacant and significantly underutilized land.

The assertion in Issue 2 that the City is somehow "abdicating its responsibility" by assuming current densities is presumptuous, and appears to reflect a fundamental misunderstanding of development economics. Density patterns may be limited or encouraged by planning-related actions, but the financial characteristics of development largely drive achievable densities. While Mr. Cortright correctly notes that it is marginal density that is important, he offers no substantive evidence that marginal density will vary significantly from average density, nor in what direction. Auto dealers were cited by Mr. Cortright as an example of a relatively low density employment use, which is also a growth industry in Jackson County that supports the Region's only Fortune 500 company.

The commercial density of 20 persons per acre is questioned, and Mr. Cortright cites a range of between 20 and 50 employees generated by ECONorthwest to note that this assumption is at the low end of the range. While potentially at the low end of the range, it is nonetheless within the range and has been

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determined by DLCD staff to be reasonable in its correspondence on the City's October 2006 Economic Element inventory update. The Damascus Boring Concept plan is cited as an example, with assumed employment densities of 50 employees per acre. According to Mr Johnson, the Portland metropolitan area's concept planning areas have seen no significant development to-date, an important indication that the density and use assumptions not market supportable.

Mr. Cortright asserts that the Northgate Centre site is prime industrial land for which there are few, if any, similar alternatives in the City of Medford and implies on this basis that the entire site must remain heavy industrial.

On a comprehensive planning level, the City of Medford has and should perform its employment land inventory analysis for a variety of target industry opportunities within its UGB and should not limit this analysis only to City limits. Mr. Cortright ignores the large parcel owned by his client in the same general area that could be made and marketed as a shovel-ready industrial site at any time Timber Products wished. Similarly, Boise Cascade has a very large similarly situated parcel further to the north up Highway 99.¹⁹ Mr. Cortright's emphasis on lands within City limits only is not typical Goal 9 planning and the Goal 9 rule expressly applies to lands within UGB's and not strictly within municipal corporate boundaries. Moreover, Mr. Cortright continues to ignore White City as the location where large heavy industrial facilities are most likely to locate and that land use plans are encouraged under Goal 9 to consider such factors.

Mr. Cortright's analysis, similar to all other testimony received from opponents to-date, treats the Northgate Centre site as a single site and generally ignores the Business Park and Office Park components of the project. A simple review of the maps indicates Northgate Centre is three separate sites planned together. The only portion of the site with rail access is to remain industrial. Whether this portion of the site is certified as "shovel-ready" under Oregon's certification program is not a criterion for the subject application. That said, the plain fact is that the subject application will apply City industrial zoning districts to this portion of the project and make it readily developable for industrial uses and will be marketed for such uses. The middle component of Northgate Centre is an office park. The Goal 9 rule makes no real distinction as to whether office park development is necessarily treated as industrial vs. commercial, and no such distinction is necessary since there is general agreement that many types of basic sector employment demand office space and that many of the Target Industry Opportunities identified by Hovee (as incorporated into Medford's Economic Element) demand office space. The end result of all this is that two of the three "large-vacant-centrally located-shovel ready" components of Northgate Centre are expressly targeted as a supply source for basic sector industry. Timber Product's fundamental complaint appears to be that the planned uses are not ugly enough, it will not pollute enough, and is too quiet to be compatible with Timber Products.

Lastly, with respect to the Alba Village Lifestyle Center, Mr. Cortright discusses the qualitative needs analysis that must be done for industrial sites and then concludes that where the outcome is arguably positive, the land can only be used for industrial purposes and the City may not consider any alternative uses that might serve alternative Goal 9 objectives. There is nothing in Goal 9 or OAR 600-009 that requires such a predetermined priority schema and no analysis, evidence or argument is provided that could reasonably be construed to mandate such a schema. In the case of Alba Village, this unique retail center meets all the various qualitative measures for a regional shopping center prescribed by the Economic Element and the locational standards contained in MLDC 10.227 and on this basis it is at the City Council's discretion to decide whether the Alba Village concept is an appropriate employment of

¹⁹ During the Planning Commission public hearing of October 28, 2006, Craig Stone testified and submitted evidence showing the large vacant Heavy Industrial parcels owned by Timber Products and Boise Cascade Corporation having approximately 60 and 100 acres respectively.

Findings of Fact and Conclusions of Law

this site for the City to meet its commercial Goal 9 objectives for regional shopping, which is a sector for which the December 2004 Hovee study projects strong demand.

Summary Conclusion of Law: Based upon the foregoing findings of fact and conclusions of law, the City Council concludes that it has considered the proposed GLUP Map amendment in the context of OAR 660-009-0015 and finds this criterion to be applicable. The Council further concludes redesignation of the property and its utilization proposed as part of the consolidated zone change filing, includes a proper and thorough analysis of site requirements and that the proposed GLUP Map amendments can reasonably be expected to serve the City's Target Industry Opportunities as the same are identified in the Economic Element of the Comprehensive Plan. The City Council concludes it has carefully considered all the evidence for and against the application and herewith relies upon its Comprehensive Plan Economic Element first and foremost, and additionally on the substantial evidence supplied by the Applicant's expert land use planners, economists and Real Estate professionals²⁰, in reaching its conclusion that there is demonstrated a need for the proposed GLUP change to assure adequate employment opportunities, consistent with OAR 660 Division 9.

- (3) Inventory of Industrial and Commercial Lands. Comprehensive plans for all areas within urban growth boundaries shall include an inventory of vacant and significantly underutilized lands within the planning area which are designated for industrial or commercial use:
 - (a) Contiguous parcels of one to five acres within a discrete plan or zoning district may be inventoried together. If this is done the inventory shall:
 - (A) Indicate the total number of parcels of vacant or significantly underutilized parcels within each plan or zoning district; and
 - (B) Indicate the approximate total acreage and percentage of sites within each plan or zone district which are:
 - (i) Serviceable, and
 - (ii) Free from site constraints.
 - (b) For sites five acres and larger and parcels larger than one acre not inventoried in subsection (a) of this section, the plan shall provide the following information:
 - (A) Mapping showing the location of the site;
 - (B) Size of the site;
 - (C) Availability or proximity of public facilities as defined by OAR chapter 660, division 11 to the site;
 - (D) Site constraints which physically limit developing the site for designated uses. Site constraints include but are not limited to:
 - (i) The site is not serviceable;
 - (ii) Inadequate access to the site; and
 - (iii) Environmental constraints (e.g., floodplain, steep slopes, weak foundation soils).

²⁰ The City Council recognizes testimony and evidence has been submitted by Opponent's Attorney, Commercial Real Estate consultant, and Economist. When the City is faced with conflicting, or potentially conflicting, evidence the Council is entitled to select the evidence it deems valid and substantial for purposes of justifying its decision on the subject application.

Conclusions of Law: The City Council concludes as follows with respect to OAR 660-009-0015(3):

1. The Hovee Medford Commercial and Industrial Land Study, Goal 9 Supplement (Exhibit 6 Appendix C-6) analyzed the commercial and industrial land supply for Medford on a citywide aggregate scale; the Goal 9 Supplement analyzed the need for commercial and industrial land and the supplies of these lands. This study recommended a *Changing Share* method for comparing land demand versus supply; the *Changing Share* method was adopted into the Economic Element by the City Council and the same identifies a 300 acre deficit of commercial lands.
2. The City Council also concludes that the *Urban Land Analysis* herein, includes an inventory of all parcels with one acre or more of vacant land. The *Urban Land Analysis* details the following land supply characteristics sufficient to meet the requirements of this rule:
 - The Commercial Lands Comparison Map (Exhibit 7, Atlas p. 17) and Industrial Lands Comparison Map (Atlas p. 18) identify lands designated on the GLUP Map as Commercial and Industrial and the portions of those lands that are vacant, pursuant to the documented methodology.
 - The lands are mapped by assessors tax lot and the size of each site is reported on the basis of the size of the tax lot and percent of the tax lot that is vacant.
 - The Council concludes that, except for the large commercial parcels located adjacent to Interstate 5 and south of the Rogue Valley Manor in south Medford, the balance of the commercial lands are serviced or can be serviced by public facilities and services because the same exist in near proximity.
 - The Council concludes that some industrial lands northeast of the airport are access-constrained. The Council otherwise concludes the vacant industrial lands one acre or larger are serviced or can be serviced by public facilities and services because the same exist in near proximity.
 - The *Urban Land Analysis* contains a detailed methodological discussion of the means by which vacant and underutilized parcels were identified, including an evaluation of site constraints. All sites are mapped and all sites one acre or larger are reported.
 - The *Urban Land Analysis* reports acreage changes for sites one acre or larger to the land supply by GLUP Map designation and MATS Cell since the last update to the Economic Element in 1994. These changes are accompanied by brief discussions of major events within each MATS Cell that altered the land supply characteristics.
 - The *Urban Land Analysis* includes detailed analysis of vacant land in the central portion of the City.
3. The Hovee Market Analysis (Exhibit 6 Appendix C-1), Hovee Goal 9 Supplement (Exhibit 6 Appendix C-6) and the *Urban Land Analysis* in Exhibit 75, Section 2.3, are all herewith incorporated by reference and adopted by the Council as background information for purpose of explaining this GLUP Map amendment. Therefore, based thereon and upon the foregoing findings of fact and conclusions of law, the City Council concludes that the commercial and industrial land inventory information here in evidence, is sufficient in all ways to permit a proper evaluation of this GLUP Map amendment. On these bases, the Council concludes that the requirements of OAR 660-009-0015(3) have been and are satisfied.

Findings of Fact and Conclusions of Law

- (4) Assessment of Community Economic Development Potential. The economic opportunities analysis shall estimate the types and amounts of industrial and commercial development likely to occur in the planning area. The estimate shall be based on information generated in response to sections (1) through (3) of this rule and shall consider the planning area's economic advantages and disadvantages of attracting new or expanded development in general as well as particular types of industrial and commercial uses. Relevant economic advantages and disadvantages to be considered should include but need not be limited to:
- (a) Location relative to markets;
 - (b) Availability of key transportation facilities;
 - (c) Key public facilities as defined by OAR chapter 660, division 11 and public services;
 - (d) Labor market factors;
 - (e) Materials and energy availability and cost;
 - (f) Necessary support services;
 - (g) Pollution control requirements; or
 - (h) Educational and technical training programs.

Conclusions of Law: The City Council concludes that the plan Economic Element contains a proper assessment of community economic development potential consistent with this rule. The City Council further concludes that the summary of the Assessment of Community Economic Development Potential contained in the plan Economic Element is substantially salient and an update to this component of the economic opportunities analysis is not necessary to decide the proposed GLUP Map amendment consistent with Goal 9 and this rule. Therefore and based upon the foregoing findings of fact and conclusions of law, the Council concludes that this application is consistent with the requirements of OAR 660-009-0015(4).

660-009-0020

Industrial and Commercial Development Policies

- (1) Comprehensive plans for planning areas subject to this division shall include policies stating the economic development objectives for the planning area.

Conclusions of Law: The Council concludes the proposed GLUP amendment is quasi-judicial in nature but amendments to or the adoption of new plan policies (such as described in the rule) are legislative enactments. Therefore, the Council concludes that OAR 660-009-0020 by its language and context are not intended to operate as approval standards for quasi-judicial GLUP Map amendments. Moreover, the Council reiterates that the existing plan Economic Element was adopted after the effective date of the Goal 9 rule and that the plan Economic Element includes policies which set forth the economic development objectives for the planning area, consistent with the requirements of this rule, and the same were acknowledged by LCDC. The Council concludes the amendments to policies made as part of the October 2006 inventory update are minor in nature and do not constitute a significant change in development objectives for the planning area. The Council finds that it is unnecessary to establish new policies for the subject property because the requested GLUP Map designation is consistent in all ways with the Goals and Policies of the Comprehensive Plan and development will be governed by the land development regulations of the City which are within the MLDC and the Council deems these to be adequate. Based upon the foregoing findings of fact and conclusions of law, the City Council concludes that this application is consistent with the requirements of OAR 660-009-0020(1).

Findings of Fact and Conclusions of Law

- (2) For urban areas of over 2,500 in population policies shall be based on the analysis prepared in response to OAR 660-009-0015 and shall provide conclusions about the following:
 - (a) Community Development Objectives. The plan shall state the overall objectives for economic development in the planning area and identify categories or particular types of industrial and commercial uses desired by the community. Plans may include policies to maintain existing categories, types or levels of industrial and commercial uses;
 - (b) Commitment to Provide Adequate Sites and Facilities. Consistent with policies adopted to meet subsection (a) of this section, the plan shall include policies committing the city or county to designate an adequate number of sites of suitable sizes, types and locations and ensure necessary public facilities through the public facilities plan for the planning area.

Conclusions of Law: The Council, consistent with its conclusions of law above for other provisions of this rule, concludes that the sought GLUP amendment is quasi-judicial in nature and amendments to policies described above in OAR 660-0090-0020(a) are legislative in nature. The Council further concludes, pursuant to the Council's overarching Conclusion of Law under OAR 660-0090-0010(4) herein adopted and incorporated, that a proposed quasi-judicial GLUP Map amendment such as is proposed here can be approved where substantial findings, based upon substantial evidence in the record, demonstrate the proposed changes are consistent with the existing parts of the comprehensive plan. The Council concludes that these plan parts are the goals and policies contained in the plan Economic Element. In accordance with this overarching conclusion of law, the Council herewith incorporates and adopts its conclusions of law pursuant to GLUP Map amendment criterion 6 wherein consistency with City's adopted comprehensive plan policies that function as approval criteria for GLUP Map amendments is demonstrated.

660-009-0025

Designation of Lands for Industrial and Commercial Uses

Measures adequate to implement policies adopted pursuant to OAR 660-009-0020 shall be adopted. Appropriate implementing measures include amendments to plan and zone map designations, land use regulations, and public facility plans:

- (1) Identification of Needed Sites. The plan shall identify the approximate number and acreage of sites needed to accommodate industrial and commercial uses to implement plan policies. The need for sites should be specified in several broad "site categories," (e.g., light industrial, heavy industrial, commercial office, commercial retail, highway commercial, etc.) combining compatible uses with similar site requirements. It is not necessary to provide a different type of site for each industrial or commercial use which may locate in the planning area. Several broad site categories will provide for industrial and commercial uses likely to occur in most planning areas.

Conclusions of Law: The City Council concludes the fundamental requirement of OAR 660-009-0025(1) is to identify needed sites to implement plan policies. The Council concludes the updated Economic Element (October 2006) and its background document (Hovee Goal 9 Supplement) identified the approximate acreage of sites needed to accommodate industrial and commercial uses to implement its Economic Element plan policies. The Council concludes the updated Economic Element (October 2006) and its background document (Hovee Goal 9 Supplement) included discussion and analysis of supply conditions that collectively constitute an identification of the approximate number of sites needed to accommodate industrial and commercial uses to implement its Economic Element plan policies.

In the context of a quasi-judicial proceeding which changes plan designations of lands in excess of two acres to or from commercial or industrial use, pursuant to OAR 660, division 18 (a post acknowledgment plan amendment), the Council concludes OAR 660-009-0025(1) only requires an assessment of the amendments impacts on the supply of needed sites and determine these impacts to be at least acceptable.

Findings of Fact and Conclusions of Law

With respect to the proposed GLUP Map amendment's impacts upon the Economic Element's identification of needed sites, the Council concludes the proposed amendments will increase the supply of needed sites and will not result in the elimination of needed sites based upon the following conclusions of law:

1. **Service Commercial.** The proposed GLUP Map amendment adds approximately 11 acres of Service Commercial land. The plan Economic Element does not identify the need to establish minimum amounts of available Service Commercial land because, as the plan explains, the uses permitted under the Service Commercial GLUP Map designation (and its corresponding C-S/P zone) are also permitted in various other zones; these permitted uses can infill smaller sites in several other plan designations, and the Service Commercial uses can often redevelop sites in other map designations and zones.²¹ The Council concludes that updated inventory information in Exhibit 75, Section 2.3.4 indicates a constrained supply of land in the Service Commercial category despite the fact that the plan does not establish a minimum amount of land needed for the Service Commercial GLUP Map designation. Updated inventory factors that support this conclusion include:
 - A. High land values per acre for both developed and vacant lands under this GLUP Map designation (*See*, ANOVA and Bonferroni statistics for the City of Medford in the *Urban Land Analysis* in Exhibit 75, Section 2.3). Service Commercial land has a statistically higher land value per vacant acre than for any other GLUP Map designation including Commercial (parcels with at least one vacant acre).
 - B. The Johnson-Gardner report prepared by applicant's consulting economist estimates the demand for office space land to be almost 70 acres between 2004 and 2024 under a high growth scenario.
 - C. Recognition in the *Medford Commercial and Industrial Land Supply Goal 9 Supplement* prepared by E.D. Hovee (Exhibit 6 Appendix C-6) that there is a need in the City for some larger business park type development patterns such as is proposed for the center (Office Park) module of *Northgate Centre* which includes the proposed Service Commercial lands.
2. **Commercial.** The proposed GLUP Map amendment will add approximately 41.5 acres of Commercial land as part of this application and as contemplated in the accompanying master plan as a regional commercial center. The Council concludes the Hovee Goal 9 Supplement, states "[regional commercial] represents a use category for which continued strong demand can be expected" and that the Site Requirements section of the Economic Element identifies supply constraints for regional commercial sites. Based thereupon, the Council concludes one component of the aggregate deficit of 300 acres of commercial land over the planning horizon is derived from inadequate regional commercial land supplies and the Council herewith concludes that the proposed GLUP Map amendments will serve as a new regional commercial node that appropriately addresses the deficit identified in the Comprehensive Plan.
3. **General Industrial.** The Council Concludes that the proposed GLUP Map amendment will add approximately 17.6 acres of General Industrial land. The plan Economic Element does not identify the need for additional General Industrial land. However, the Economic Element also does not recommend that supplies be reduced or limited. In point of fact, plan Economic Element Page 46, [Goal 2] Policy 3 states:

"Expedite the designation of additional industrial land when it is an appropriate location for a specific industry."

²¹ For example, general offices is a permitted use in Medford's Community Commercial (C-C) and Light Industrial (I-L) zones.

Findings of Fact and Conclusions of Law

While the language of Policy 3 is aspirational (and is therefore not an approval standard) it also states in clear and unambiguous terms, “the designation of additional industrial land when it is an appropriate location for a specific industry.” The Council concludes that the subject property is an appropriate location for the small scale/incubator types of industrial uses contemplated for the Northgate Business Park portion of the subject property. The Council concludes that the subject property is appropriate [for General Industrial] because of its near proximity to other industrial areas with established industrial businesses and to office and retail portions of the subject property which can and is likely to supply needed support services.

The Council concludes that the *Urban Land Analysis* (Exhibit 75, Section 2.3) identifies that the supply of higher amenity “business park” style industrial areas is somewhat constrained. The City Council herewith incorporates and adopts the Exhibit 75, Section 2.3.5 of the *Urban Land Analysis*, as the detailed site characteristics analysis sufficient to relate the General Industrial lands in the *Northgate Centre* project to those economic opportunities identified in the Medford Economic Market Analysis (Hovee 2003) in Exhibit 6 Appendix C-1 for the City of Medford. Based upon Exhibit 75, Section 2.3.5 of the *Urban Land Analysis*, the Council concludes the added General Industrial land will support Medford’s competitive position to attract, retain and expand many of the target industry opportunities identified in the Hovee Market Analysis (Exhibit 6 Appendix C-1) and the Medford Comprehensive Plan.

4. **Heavy Industrial.** The Council concludes the proposed GLUP Map amendments will *reduce* the amount of Heavy Industrial by approximately 69 acres. The Council concludes the plan Economic Element does not identify the need to preserve large industrial sites for large heavy industrial development. The Council further concludes the plan Economic Element recognizes that Medford is at a comparative *disadvantage* to supply land for uses requiring large heavy industrial sites, because heavy industry, seeking to locate in Jackson County, tend to locate nearby in unincorporated White City. Land in White City is less expensive, has lower property taxes, less stringent regulatory development standards and neighboring lands are already occupied with similar (and therefore compatible) heavy industrial uses and activities. The Council also herewith incorporates and adopts the *Urban Land Analysis* (Exhibit 75, Section 2.3) wherein similar conclusions are reached that Medford’s comparative *disadvantage* to supply sites for large heavy industrial uses still prevails. Finally, the City Council concludes that reducing (by 69 acres) land covered by the Heavy Industrial GLUP Map designation, will not have a deleterious effect for this GLUP Map designation where few if any sites are expected to be needed, based upon the Hovee Commercial and Industrial Land Supply Goal 9 Supplement (Exhibit 6 Appendix C-6) where the study states, “Heavy Industrial - is identified by the Planning Commission as providing more than an adequate supply of land, with the added expectation that the City will not attract significant new heavy industrial uses in the future.”
5. Based upon the foregoing findings of fact and conclusions of law, the City Council concludes that this application is consistent with the requirements of OAR 660-009-0025 (1).

- (2) Long-Term Supply of Land. Plans shall designate land suitable to meet the site needs identified in section (1) of this rule. The total acreage of land designated in each site category shall at least equal the projected land needs for each category during the 20-year planning period. Jurisdictions need not designate sites for neighborhood commercial uses in urbanizing areas if they have adopted plan policies which provide clear standards for redesignation of residential land to provide for such uses. Designation of industrial or commercial lands which involve an amendment to the urban growth boundary must meet the requirements of OAR 660-004-0010(1)(c)(B) and 660-004-0018(3)(a).

Findings of Fact and Conclusions of Law

Conclusions of Law: With respect to long-term land supplies for the four employment land use categories identified in the plan Economic Element, the City Council concludes the proposed GLUP Map amendments will not adversely affect long-term supplies within these four categories based upon the following:

1. **Service Commercial.** The proposed GLUP Map amendment adds approximately 11 acres of Service Commercial. Despite the fact that the Economic Element does not make an explicit land supply needs projection for this category, several factors indicate that demand for Service Commercial land is and will remain strong. Therefore, the Council concludes that additional land supply in this category will not be detrimental. The Council also concludes that updated land inventory information here in evidence indicates a constrained supply in the Service Commercial category despite the fact that the plan does not establish a minimum amount of land needed for this category. *See, Exhibit 75, Section 2.3.4.* Updated inventory factors that support this conclusion include:
 - A. High land values per acre for both developed and vacant lands under this GLUP Map designation. *See, ANOVA and Bonferroni statistics for Medford in the Urban Land Analysis in Exhibit 75, Section 2.3.* Service Commercial land has a statistically higher land value per vacant acre than for any other GLUP Map designation, including Commercial (for parcels with at least one vacant acre).
 - B. The Johnson-Gardner report prepared by applicant's consulting economist estimates demand for office space land to be almost 70 acres between 2004 and 2024 under a high growth scenario.
 - C. Recognition in the *Medford Commercial and Industrial Land Supply Goal 9 Supplement* prepared by E.D. Hovee (Exhibit 6 Appendix C-6) that there is a need in the City for some larger business park type development patterns such as is proposed for the center (Office Park) module of *Northgate Centre* which includes the proposed Service Commercial lands.
2. **Commercial-**The proposed GLUP Map amendment adds approximately 41.5 acres of Commercial land as part of this application and as contemplated in the accompanying master plan as a regional commercial center. Based upon the *Urban Land Analysis* (Exhibit 75, Section 2.3) and Hovee Commercial and Industrial Land Supply Goal 9 Supplement (Exhibit 6 Appendix C-6) both of which are herewith incorporated and adopted, the Council concludes that both studies identify commercial land shortages over the 20-year planning horizon in the aggregate and determine there is a need to designate additional Commercial land.
3. **General Industrial-**The Council concludes the proposed GLUP Map amendment will add approximately 17.6 acres of General Industrial land. Based upon the *Urban Land Analysis* (Exhibit 75, Section 2.3) and Hovee Commercial and Industrial Land Supply Goal 9 Supplement (Exhibit 6 Appendix C-6) both of which are herewith incorporated and adopted, the Council concludes that both studies indicate industrial land supplies are at least sufficient in the short term and depending on industrial land focus, may also be sufficient in the aggregate for the 20-year planning horizon. However, both studies also recognize the need for more sophisticated business park style industrial development patterns. The Council concludes, based upon the master plan which accompanies this application, that the approval of this application will result in a satisfaction of market demand by delivering a business park style industrial development that the Council finds to be a more sophisticated industrial design than what now exists in the Medford marketplace.
4. **Heavy Industrial-** The Council concludes the proposed GLUP Map amendments will *reduce* the amount of Heavy Industrial by approximately 69 acres. Based upon the *Urban Land Analysis* (Exhibit 75, Section 2.3) and Hovee Commercial and Industrial Land Supply Goal 9 Supplement

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(Exhibit 6 Appendix C-6) both of which are herewith incorporated and adopted, the Council concludes that both studies identify sufficient industrial land supplies in the short-term and depending on industrial land focus, the supplies may also be adequate in the aggregate for the 20-year planning horizon. Neither the plan Economic Element, Hovee Commercial and Industrial Land Supply Goal 9 Supplement, nor the *Urban Land Analysis* identifies a deficiency of industrial land to site heavy industrial uses. Moreover (and as above explained in the conclusions of law for OAR 660-009-0025 (1) for Heavy Industrial which are herewith incorporated and adopted) Medford is at a competitive disadvantage in the accommodation of heavy industrial uses which tend, for the reasons hereinabove explained, to locate in nearby unincorporated White City.

Based upon the foregoing findings of fact and conclusions of law, the Council ultimately concludes that this proposed GLUP Map amendment is consistent with OAR 660-009-0025 (2) because the rule does not preclude re-designation of one category of employment land to another where there are projected shortages in both categories and because both the *Urban Land Analysis* (Exhibit 75, Section 2.3) and the Hovee Commercial and Industrial Land Supply Goal 9 Supplement (Exhibit 6 Appendix C-6) indicate that any 20-year land supply shortages that may exist for industrial land are substantially *less* acute than for commercial lands.

- (3) Short-Term Supply of Serviceable Sites. If the local government is required to prepare a public facility plan by OAR Chapter 660, Division 11 it shall complete subsections (a) through (c) of this section at the time of periodic review. Requirements of this rule apply only to local government decisions made at the time of periodic review. Subsequent implementation of or amendments to the comprehensive plan or the public facility plan which change the supply of serviceable industrial land are not subject to the requirements of this rule. Local governments shall:
- (a) Identify serviceable industrial and commercial sites. Decisions about whether or not a site is serviceable shall be made by the affected local government. Local governments are encouraged to develop specific criteria for deciding whether or not a site is "serviceable." Local governments should also consider whether or not extension of facilities is reasonably likely to occur considering the size and type of uses likely to occur and the cost or distance of facility extension;
 - (b) Estimate the amount of serviceable industrial and commercial land likely to be needed during the short-term element of the public facilities plan. Appropriate techniques for estimating land needs include but are not limited to the following:
 - (A) Projections or forecasts based on development trends in the area over previous years; and
 - (B) Deriving a proportionate share of the anticipated 20-year need specified in the comprehensive plan.
 - (c) Review and, if necessary, amend the comprehensive plan and the short-term element of the public facilities plan so that a three-year supply of serviceable sites is scheduled for each year, including the final year, of the short-term element of the public facilities plan. Amendments appropriate to implement this requirement include but are not limited to the following:
 - (A) Changes to the short-term element of the public facilities plan to add or reschedule projects which make more land serviceable;
 - (B) Amendments to the comprehensive plan which redesignate additional serviceable land for industrial or commercial use; and
 - (C) Reconsideration of the planning area's economic development objectives and amendment of plan policies based on public facility limitations.
 - (d) If the local government is unable to meet this requirement it shall identify the specific steps needed to provide expanded public facilities at the earliest possible time.

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Conclusions of Law: The City Council concludes that the clear and unambiguous language of this rule states that OAR 660-009-0025 (3) only applies at the time of periodic review. Therefore, this criterion is concluded to be inapplicable to this application which seeks the approval of a post acknowledgment plan amendment.

- (4) Sites for Uses with Special Siting Requirements. Jurisdictions which adopt objectives or policies to provide for specific uses with special site requirements shall adopt policies and land use regulations to provide for the needs of those uses. Special site requirements include but need not be limited to large acreage sites, special site configurations, direct access to transportation facilities, or sensitivity to adjacent land uses, or coastal shoreland sites designated as especially suited for water-dependent use under Goal 17. Policies and land use regulations for these uses shall:
- (a) Identify sites suitable for the proposed use;
 - (b) Protect sites suitable for the proposed use by limiting land divisions and permissible uses and activities to those which would not interfere with development of the site for the intended use; and
 - (c) Where necessary to protect a site for the intended industrial or commercial use include measures which either prevent or appropriately restrict incompatible uses on adjacent and nearby lands.

Conclusions of Law: The City Council concludes that the goals, policies and implementation strategies contained in the plan Economic Element do not explicitly adopt objectives or policies that by their plain language are directed to provide for specific uses with special site requirements. The Council further concludes that it has not adopted policies and land use regulations for specific uses that are directed at requiring compliance with (a) and/or (b) and/or (c) above. Therefore, the Council concludes there are no applicable planning requirements pursuant to OAR 660-009-0025 (4) which are applicable to this GLUP Map amendment application.

4.2.4 TRANSPORTATION PLANNING

The following conclusions of law related to Transportation Planning and the various state and local regulations thereof, are predicated upon the revised Traffic Impact Analysis, dated July 7, 2006 (Exhibits 95 and 97) submitted to the record in these proceedings.

Moreover, the Council observes that the Oregon Transportation Planning Rule uses the term "performance standard" to refer to the operational standards for its various transportation facilities while the Oregon Highway Plan uses the term "mobility standard". The Council concludes that the terms "performance standard" and "mobility standard" are synonymous and where one term is used the other is also applicable.

The City Council addresses below the requirements of the Oregon Transportation Planning Rule as set forth in OAR Chapter 660, Division 12.

**4.2.4.1 Oregon Administrative Rules
Chapter 660, Division 12
Oregon Transportation Planning Rule**

660-012-0060 Plan and Land Use Regulation Amendments

660-012-0060 (1)

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

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

Conclusions of Law: The City Council herewith incorporates by reference and adopts the July 7, 2006 Traffic Impact Analysis (Exhibits 95 and 97) and the findings of fact and conclusions of law pursuant to OAR 660-012-0060(2). The Council further incorporates and adopts all of the evidence contained in Exhibits 95 and 97 which was prepared by Applicant's registered professional traffic engineer James Hanks and his firm JRH Engineering, Inc., in which the various measures pursuant to OAR 660-012-0060(2) are addressed in detail. Based upon these adopted measures and the corresponding revised Traffic Impact Analysis (Exhibits 95 and 97) the Council concludes as follows:

1. OAR 660-012-0060 (1) (a). Applicant's expert traffic engineer performed a roadway segment analysis as part of the Traffic Impact Analysis (Exhibits 95 and 97) in which Applicant's expert traffic engineer found that the proposed GLUP Map amendment and corresponding zone change will not change the functional classification of any existing or planned transportation facility and the Council concludes this to be the case.
2. OAR 660-012-0060 (1) (b). The proposed GLUP Map amendment and corresponding zone change does not request, nor will it change, standards implementing a functional classification system consistent with OAR 660-012-0060 (1) (b).
3. OAR 660-012-0060 (1) (c) (A). Applicant's expert traffic engineer performed a roadway segment analysis as part of the revised Traffic Impact Analysis (Exhibits 95 and 97), in which it was concluded that the proposed GLUP Map amendment and corresponding zone change will not, as measured at the end of the planning period, allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of any existing or planned transportation facility consistent with OAR 660-012-0060 (1) (c) (A).
4. OAR 660-012-0060 (1) (c) (B). Applicant's expert traffic engineer analyzed the transportation system performance in 2025 and identified four intersections (Highway 99 with Table Rock Road, Lynn Street with Highway 99²², Highway 62 at the Southbound Ramp, and Highway 238 at Central Avenue) where traffic performance would be reduced below the applicable mobility standard absent application of any of the measures provided in OAR 660-012-0060(2). Applicant has proposed and agreed to stipulate to minor transportation improvements with which, as provided in the revised Traffic Impact Analysis (Exhibits 95 and 97), Applicant's expert traffic engineer concluded the proposed GLUP Map amendment and corresponding zone change will not, as measured at the end of

²² See Conclusions of Law under the Oregon Highway Plan as to the applicability of the ODOT performance standards to this intersection.

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the planning period, reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the Medford Transportation System Plan or Medford Comprehensive Plan. Therefore, the Council concludes that the approval of these applications are consistent with OAR 660-012-0060 (1) (c) (B).

5. OAR 660-012-0060 (1) (c) (C). In the revised Traffic Impact Analysis (Exhibits 95 and 97), Applicant's expert traffic engineer analyzed the transportation system performance in 2025 and identified six intersections where performance is projected to exceed the applicable performance standards with or without the *Northgate Centre* project. Two of these intersections are the Highway 62 at I-5 Northbound Ramp and Highway 62 at Poplar Drive and the analysis found that the operation of this facility will not be worsened as a result of *Northgate Centre*. The other four intersections were Highway 238 and North Ross Lane, Highway 238 with Sage Road, and McAndrews Road at Biddle Road, and Highway 238/Highway 62 at Highway 99. The minor transportation improvements proposed (and to which Applicant has agreed to stipulate) will assure that the performance of these three intersections will not be worsened as a result of the *Northgate Centre*, as measured at the end of the planning horizon. With the addition of the proposed minor improvements to these three intersections, the Council concludes that, based upon the Traffic Impact Analysis (Exhibits 95 and 97), the proposed GLUP Map amendment and corresponding zone change will not worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the adopted performance standard. Therefore, the Council concludes that the approval of these applications are consistent with OAR 660-012-0060 (1) (c) (C).
6. Based upon the foregoing findings of fact and conclusions of law, the Council concludes, with the proposed measures provided in OAR 660-012-0060 (2) and based upon written concurrence of ODOT and the City of Medford Public Works, the City of Medford has assured that the allowed land uses will be consistent with the identified function, capacity and performance standards of all transportation facilities where impacts are projected to be substantial and correspondingly concludes the ultimate land uses (for this project) in combination with planned and minor transportation improvements, will not significantly affect any planned or existing transportation facility. Therefore, these applications are consistent in all ways with OAR 660-012-0060(1).

In addition to the Council's overarching conclusions of law hereinabove pursuant to OAR 660-012-0060(1), the Council also notes that objections were raised by traffic engineer Michael Weishar, PE from Access Engineering and while these objections did not cite directly to TPR, the Council believes this section is the most relevant approval standard under which these objections were raised and the Council elects to address them herein:

Mr. Weishar expressed concern that the trip capture of the Trolley is overestimated in the TIA.

Conclusions of Law: The Council concludes, in this instance, it has conflicting evidence, from duly qualified experts. Applicant's expert traffic engineer responded that the unique nature of the proposed Trolley makes it difficult to accurately predict ridership. The Trolley is planned to circulate on ten (10) minute headways. This means that a Trolley will pass by every location on the route six times during the peak hour. There are four trip legs on the proposed transit route which have the potential to reduce external trips. They are Business/Office Park to Northgate Commercial Center; Northgate Commercial Center to Rogue Valley Mall/Transit Transfer Station; Rogue Valley Mall back to the Northgate Commercial Center; and Northgate Commercial Center back to the Business/Office Park. If only 10 passengers, on average, ride each leg, during the PM peak hour, there would be a reduction of 240 trips from the surrounding road system. This is over nine percent (9%) of the 2,580 total trips from the site before any adjustment for pass-by trips. After pass-by trips are removed, this would amount to approximately eleven percent (11%) of the total. Under these conditions it would be reasonable to assume

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a ten percent (10%) trip reduction resulting from the Trolley system. In this instance ODOT and City of Medford Public works are also experts. Medford Public Works and ODOT are in concurrence that 2% of the reduction applied by JRH are in their analysis was justifiable due strictly to the mix of uses and that an additional 5% can reasonably be expected from the Transportation Demand Management (TDM) measures as proposed. Based upon the range of evidence provided by duly qualified experts, the Council ultimately concludes it will rely on the expert testimony of Medford Public Works and ODOT and provide a combined 7% reduction of the base ITE trip generation for the trolley and other TDM measures and the Applicant's expert has concurred this is within a reasonable of expected benefits from the trolley and other TDM Measures.

Mr. Weishar raised a concern that the Trolley traffic may conflict with freight traffic.

Conclusions of Law: The City Council concludes it has conflicting evidence on this matter, but that Applicant's expert Traffic Engineer, Medford Public Works and ODOT are all experts who have agreed the Trolley system can operate in conformance with applicable safety standards.

The Council further concludes that it is feasible that specific trolley design concepts can be distilled to properly engineered treatments and based thereupon the Council elects rely on the expert opinions and supporting evidence of JRH Transportation Engineering, ODOT and Medford Public Works. Based upon the same, the Council concludes the attached conditions of approval requiring that both ODOT and the City of Medford approve any trolley crossing will be sufficient to assure the design of this feature meets basic safety standards for all vehicles using the system.

660-012-0060 (2)

- (2) Where a local government determines that there would be a significant effect, compliance with section (1) shall be accomplished through one or a combination of the following:
- (a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.
 - (b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division. Such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement or service will be provided by the end of the planning period.
 - (c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes
 - (d) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.
 - (e) Providing other measures as a condition of development or through a development agreement or similar funding method, including transportation system management measures, demand management or minor transportation improvements. Local governments shall as part of the amendment specify when measures or improvements provided pursuant to this subsection will be provided.

Conclusions of Law: The City Council concludes that Applicant has agreed to stipulate to a combination of measures, pursuant to the above OAR 660-012-0060 (2) to assure that the allowed land uses are consistent with the identified function, capacity and performance standards of transportation facilities in the study area. The various measures (as set forth in the Exhibits 95 and 97 revised TIA) and others, were recommended as conditions by the Medford Public Works Department in Exhibit 63 and by ODOT in

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Exhibit 62 and applicant raised no objection to these and the same were made conditions attached to this approval (and to approval of the contemporaneously filed plan map amendment).

1. The GLUP Map amendment and associated zone change is accompanied by a site plan upon which the Traffic Impact Analysis was based. Applicant has agreed to stipulate that the building square-footages shown on the detailed site plans (Exhibit 7, Atlas p. 5, 8 and 11) by land use designation will not be exceeded in the actual development of the subject property. This mechanism demonstrates that the allowed land uses will be and are consistent with the planned function, capacity, and performance standards of any transportation facility by virtue of compliance with the alternative mechanisms set forth in OAR 660-012-0060 (2) (a) through (e).
2. As condition(s) attached to the approval of these applications, Applicant has agreed to stipulate to fund the following various transportation improvements identified as needed in the Traffic Impact Analysis (Exhibits 95 and 97).²³
 - **Highway 99 at Table Rock Road:** The addition of a minor transportation improvement for this intersection will improve the v/c to meet the ODOT mobility standard in 2025. The proposed mitigation would add a dedicated right-turn lane at the southeast approach and optimize the signal timing to take advantage of this improvement. This improvement is located entirely within existing right-of-way and on property owned and controlled by Northgate Center LLC. With the addition of the minor transportation improvement this intersection is projected to operate at a v/c of 0.90. Thus, the proposed minor transportation improvement will assure the operation of this intersection will meet the ODOT performance standard.
 - **Highway 238 at Sage Road:** With the addition of an exclusive northbound right turn lane, the intersection is projected to operate at a v/c of 0.89. With the addition of a separate southbound right-turn lane, the intersection is projected to operate at a v/c of 0.93. According to analysis by Thornton Engineering, the southbound right-turn lane can be accomplished without the need for additional right-of-way. Thus, whichever minor improvement ODOT selects, the proposed minor transportation improvement will assure the operation of this intersection will not be further degraded, which is otherwise projected to exceed the mobility standard of 0.90 in 2025.
 - **Highway 238 at Ross Lane:** A signal warrant analysis was performed and it found that this intersection meets the signal warrant criteria for Warrant 3, peak hour, for the PM peak hour. The eventual need for this signal was identified in the original Highway 238 extension project. Applicant proposes and will install a traffic signal at the time of development and with this minor transportation improvement the intersection meets the ODOT mobility standard for Year 2025 conditions.
 - **Highway 238 at Lynn Street:** A signal warrant analysis was performed. The intersection meets the MUTCD signal warrant criteria for Warrant 3, peak hour, for the PM peak hour. With signalization, the intersection meets the ODOT mobility standard. Although the addition of a signal at this location would provide a controlled all-way access point to the Business Park section of the Northgate development west of Central Avenue, it also would provide a safe ingress and egress point for the existing properties along the south side of Highway 99 west of Central Avenue, which is a benefit to the operational efficiency of the State corridor. Additional analysis was conducted to consider the effects of right-in/right-out only, and no access to the development from Highway 99 at Lynn Street. Both of the restricted access alternatives require a

²³ Except for the proposed Flyover, all transportation improvements herein agreed to by Applicant are deemed by the City Council to be *minor* under the meaning of *minor* in OAR 660-012.

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redistribution of the trips to and from the site, but neither alternative requires additional mitigation to meet performance standards. In general, the signalized intersection alternative is preferred because it provides the greatest overall benefit to the system.

- **McAndrews Road at Biddle Road:** Several mitigation scenarios were studied to improve the LOS of the intersection. The first scenario includes the addition of a northbound right-turn lane. The second scenario includes the addition of a third southbound thru lane. The third scenario includes the addition of a second southbound right-turn lane. The addition of any of the three scenarios will improve the performance to meet the City of Medford's mobility standard; scenarios two and three would not require the acquisition of new right-of-way.
 - **Highway 62 at I-5 Southbound Ramp:** With the edition of an additional ramp approach lane to create dual-lefts, a through right and a right-turn only lane the intersection is projected to operate at the mobility standard of 0.85. This improvement would not require additional right-of-way.
 - **Highway 238/Highway62 at Highway 99:** With the edition of a second right-turn lane at the southwest bound approach, the intersection is project to operate at a v/c of 0.98 which is better than the projected no-build condition of 0.99. This improvement would not require additional right-of-way.
 - **Highway 238 at Central Avenue:** This intersection exceeds performance standards for the analysis without serpentine left-turns into the Lifestyle Center and Office Park from Highway 238, because the site circulation under this access scenario must distribute substantially more traffic through this intersection. For this reason, applicant proposes serpentine left-turns into the Lifestyle Center and Office Park from Highway 238 to assure the ODOT mobility standard of v/c 0.90 is maintained for this project; with this improvement the intersection is projected to operate with a v/c of 0.84. This access improvement will be developer-funded and constructed, pursuant to stipulations offered in this land use application which have been made conditions of approval.
3. Based upon the foregoing findings of fact and conclusions of law and technical concurrence by ODOT and City of Medford Public Works Department, the City Council concludes that the applications are consistent with the requirements of OAR 660-012-0060 (2).

660-012-0060 (3)

- (3) Notwithstanding sections (1) and (2) of this rule, a local government may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility where:
- (a) The facility is already performing below the minimum acceptable performance standard identified in the TSP or comprehensive plan on the date the amendment application is submitted;
 - (b) In the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule would not be adequate to achieve consistency with the identified function, capacity or performance standard for that facility by the end of the planning period identified in the adopted TSP;
 - (c) Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures.;
 - (d) The amendment does not involve property located in an interchange area as defined in paragraph (4)(d)(C); and

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- (e) For affected state highways, ODOT provides a written statement that the proposed funding and timing for the identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation to the performance of the affected state highway. However, if a local government provides the appropriate ODOT regional office with written notice of a proposed amendment in a manner that provides ODOT reasonable opportunity to submit a written statement into the record of the local government proceeding, and ODOT does not provide a written statement, then the local government may proceed with applying subsections (a) through (d) of this section.

Conclusions of Law: The City Council concludes the proposed land use applications do not seek any amendment that will significantly affect a transportation facility without assuring that the proposed land uses are consistent with the function, capacity and performance standards of all affected transportation facilities, in accordance with OAR 660-012-0060 (3). Therefore, the Council concludes that these applications are consistent in all respects with OAR 660-012-0060 (3).

660-012-0060 (4)

- (4) Determinations under sections (1) – (3) of this rule shall be coordinated with affected transportation facility and service providers and other affected local governments.
 - (a) In determining whether an amendment has a significant effect on an existing or planned transportation facility under subsection (1)(c) of this rule, local governments shall rely on existing transportation facilities and services and on the planned transportation facilities, improvements and services set forth in subsections (b) and (c) below.
 - (b) Outside of interstate interchange areas, the following are considered planned facilities, improvements and services:
 - (A) Transportation facilities, improvements or services that are funded for construction or implementation in the Statewide Transportation Improvement Program or a locally or regionally adopted transportation improvement program or capital improvement plan or program of a transportation service provider.
 - (B) Transportation facilities, improvements or services that are authorized in a local transportation system plan and for which a funding plan or mechanism is in place or approved. These include, but are not limited to, transportation facilities, improvements or services for which: transportation systems development charge revenues are being collected; a local improvement district or reimbursement district has been established or will be established prior to development; a development agreement has been adopted; or conditions of approval to fund the improvement have been adopted.
 - (C) Transportation facilities, improvements or services in a metropolitan planning organization (MPO) area that are part of the area's federally-approved, financially constrained regional transportation system plan.
 - (D) Improvements to state highways that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when ODOT provides a written statement that the improvements are reasonably likely to be provided by the end of the planning period.
 - (E) Improvements to regional and local roads, streets or other transportation facilities or services that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when the local government(s) or transportation service provider(s) responsible for the facility, improvement or service provides a written statement that the facility, improvement or service is reasonably likely to be provided by the end of the planning period.
 - (c) Within interstate interchange areas, the improvements included in (b) (A)-(C) are considered planned facilities, improvements and services, except where:
 - (A) ODOT provides a written statement that the proposed funding and timing of mitigation measures are sufficient to avoid a significant adverse impact on the Interstate Highway system, then local

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governments may also rely on the improvements identified in paragraphs (b)(D) and (E) of this section;
or

- (B) There is an adopted interchange area management plan, then local governments may also rely on the improvements identified in that plan and which are also identified in paragraphs (b)(D) and (E) of this section.

Conclusions of Law: The City Council concludes that a portion of the subject property is located outside an interstate interchange area and could therefore potentially rely on OAR 660-012-0060 (4) (b) (A) through (E). However, the City Council concludes this distinction has no practical effect on the revised Traffic Impact Analysis (July 2006), which, along with the Transportation Impact Summary herein, are incorporated by reference and adopted and which demonstrate compliance with OAR 660-012-0060 (1). The City Council concludes that, aside from the minor transportation improvements expressly allowed under OAR 660-012-0060 (2) (e), the only planned transportation project upon which the transportation impact analysis relies is a *flyover* improvement from the Highway 62 westbound approach to southbound Highway 99.

The Council further concludes that, while the intersection of Beall Lane and Highway 99 is under the jurisdiction of the City of Central Point and is outside the Medford UGB, Medford has coordinated with Central Point and Applicant's agreement to contribute proportionally to improvements to this intersection is sufficient to satisfy the coordination requirements of OAR 660-012-0060(4) and the City of Central Point has not indicated otherwise.

Because the only *planned* project upon which the demonstration of compliance with OAR 660-012-0060 (1) is reliant falls under OAR 660-012-0060 (b) (A) through (C), the fact that some parcels subject to this land use application are within and others outside an interchange area is without practical effect for the purpose of demonstrating compliance with the relevant substantive approval criteria in OAR 660-012-0060 (1). The Council concludes that OAR 660-012-0060 (4) (b) and (c) provide that OAR 660-012-0060 (4) (b) (A) through (C) may be relied upon regardless of location (in relation to an interchange area) for the purposes of demonstrating whether the proposed GLUP Map amendment and corresponding zone change will significantly effect a transportation facility, given application of the various measures pursuant to OAR 660-012-0060 (2).

Based upon the evidence and above conclusions of law, the City Council concludes that the application relies exclusively on Transportation System Plan and Regional Transportation Plan's planned projects in accordance with the requirements of OAR 660-012-0060 (4).

In addition to the Council's overarching conclusions of law hereinabove pursuant to OAR 660-012-0060(4), the Council also notes that objections were raised by traffic engineer Michael Weishar, PE from Access Engineering and while these objections did not cite directly to TPR, the Council believes this section is the most relevant approval standard under which these objections were raised and the Council elects to address them herein:

Michael Weishar raised a concern that if the 'flyover' is not made a condition of approval the transportation system in this area will not function adequately.

Conclusion of Law: The Council concludes the flyover is not a condition of approval as the revised Traffic Impact Analysis dated July 7, 2006 shows that with the addition of a minor transportation improvement to build westbound Hwy 62 to northbound Hwy 99 dual-right turns, the intersection will operate through the planning horizon and will operate better than the is otherwise projected without the project which satisfies the test in OAR 660-012-0060(1). This minor transportation improvement is a condition of approval. Moreover, it should be noted that the flyover project is contained in the Regional