



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

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

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

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

NOTICE OF ADOPTED AMENDMENT

March 9, 2006



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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Phoenix Plan Amendment
DLCD File Number 002-05

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. 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. This adoption was adopted by the City on February 28, 2006, and passed the 21-day appeal period from the date of the adoption.

Appeal Procedures*

DLCD DEADLINE TO APPEAL: Acknowledged under ORS 197.625 and ORS 197.830 (9)

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. Pursuant to ORS 197.625 if no notice of intent to appeal is filed within the 21-day period set out in ORS 197.830 (9), the amendment to the acknowledged comprehensive plan or land use regulation or the new land use regulation shall be considered acknowledged upon the expiration of the 21-day period.

Under ORS 197.830 (9) a notice of intent to appeal a land use decision or limited land use decision shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS ADOPTED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist
John Renz, DLCD Regional Representative
Angela Barry, City of Phoenix

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MAR 03 2006

D L C D NOTICE OF ADOPTION

This form **must be mailed** to DLCD within **5 working days after the final decision**
Per ORS 197.610, OAR Chapter 600 – Division 18

LAND CONSERVATION
AND DEVELOPMENT

(See reverse side for submittal requirements)

Jurisdiction: City of Phoenix

Local File No.: CP05-01, ZO05-02
(If no number, use none)

Date of Adoption: 2/7/2006
(Must be filled in)

Date Mailed: 3/1/2006
(Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 12/8/2005

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other: _____
(Please Specify Type of Action)

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

Applicant seeks approval of a minor comprehensive plan map amendment and zone change to rezone a .96 acre parcel from Commercial Highway to Low Density Residential.

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

Same

Plan Map Changed from: Interchange Business

to: Hillside Residential

Zone Map Changed from: Commercial Highway

to: Low Density Residential

Location: SW of Meadowview at terminus of Breckenridge Acres Involved: .96

Specify Density: Previous: N/A

New: N/A

Applicable Statewide Planning Goals: _____

Was an Exception Adopted? Yes: _____ No: X

DLCD File No.: 002-05 (14868)

Did the Department of Land Conservation and Development receive a notice of Proposed Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing.** Yes: X No: _____

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

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

Affected State or Federal Agencies, Local Governments or Special Districts: DLCD, ODOT, Jackson County

Local Contact: Angela Barry Area Code + Phone Number: 541-535-2050

Address: 510 W. 1st Street City: Phoenix, Oregon

Zip Code + 4: 97535 Email Address: phoenixplanangela@charterinternet.com

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD within **5 working days after the final decision**
Per ORS 197.610, OAR Chapter 600 – Division 18

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

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

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD no 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 copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to Larry.French@state.or.us – **ATTENTION: PLAN AMENDMENT SPECIALIST.**



I, Kathleen S. Beckett, County Clerk for Jackson County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.
Kathleen S. Beckett - County Clerk

ORDINANCE NO. 855

AN ORDINANCE AMENDING THE PHOENIX COMPREHENSIVE PLAN MAP FOR A .96-ACRE SECTION ON THE SOUTH END OF PARCEL 381W10CA TAX LOT 600, CHANGING THE DESIGNATION FROM INTERCHANGE BUSINESS TO RESIDENTIAL HILLSIDE.

WHEREAS, the Phoenix Planning Commission conducted a public hearing on January 23, 2006 on the proposed Comprehensive Plan map amendment that was conducted to give interested parties and opportunity to be heard, and

WHEREAS, the Planning Commission voted to recommend the Comprehensive Plan map amendment to the City Council for approval based upon the findings contained in the Planning Commission Staff Report and Recommendations, including the Findings of Fact submitted by the applicant in support of the Comprehensive Plan amendment, and

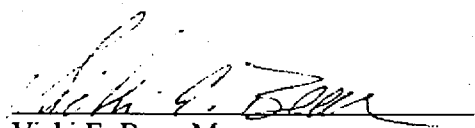
WHEREAS, the City Council held a public hearing on this Comprehensive Plan amendment on February 6, 2006, and after considering the recommendations of staff, the Planning Commission, and public testimony received at the hearing, elected to grant approval to the request for Comprehensive Plan map amendment,

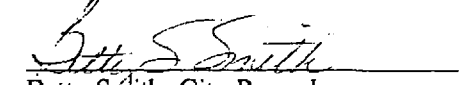
NOW THEREFORE, THE CITY OF PHOENIX ORDAINS AS FOLLOWS:

Section 1: The Comprehensive Plan Designation of the above-described property shall be amended from Interchange Business to Residential Hillside.

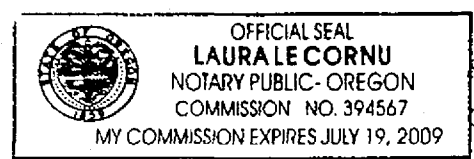
Section 2: This Comprehensive Plan map amendment shall become effective 30 days from the date of City Council approval.

PASSED and adopted by the City Council and signed by me in authentication thereof this 6th day of February 2006.

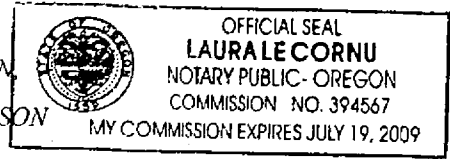

Vicki E. Bear, Mayor

ATTEST:

Betty Smith, City Recorder

STATE OF OREGON,
COUNTY OF JACKSON

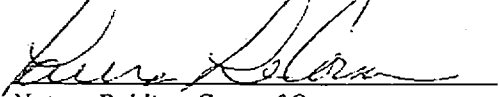


STATE OF OREGON,
COUNTY OF JACKSON




This instrument was acknowledged before me on this
6th day of February, 2006

by Vicki E. Bear as Mayor of City of Phoenix


Notary Public - State of Oregon

This instrument was acknowledged before me on this
6th day of February, 2006

by Betty Smith as City Recorder of City of Phoenix


Notary Public - State of Oregon



I, Kathleen S. Beckett, County Clerk for Jackson County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.
Kathleen S. Beckett - County Clerk

ORDINANCE NO. 856

AN ORDINANCE AMENDING THE PHOENIX LAND USE DISTRICT MAP FOR A .96-ACRE SECTION ON THE SOUTH END OF PARCEL 381W10CA TAX LOT 600, REZONING THE PROPERTY FROM COMMERCIAL HIGHWAY TO LOW DENSITY RESIDENTIAL.

WHEREAS, the Phoenix Planning Commission conducted a public hearing on January 23, 2006 on the proposed rezoning that was conducted to give interested parties and opportunity to be heard, and

WHEREAS, the Planning Commission voted to recommend the rezoning to the City Council for approval based upon the findings contained in the Planning Commission Staff Report and Recommendations, including the Findings of Fact submitted by the applicant in support of the rezoning, and

WHEREAS, the City Council held a public hearing on this request to rezone on February 6, 2006, and after considering the recommendations of staff, the Planning Commission, and public testimony received at the hearing, elected to grant approval to the request for rezoning,

NOW THEREFORE, THE CITY OF PHOENIX ORDAINS AS FOLLOWS:

Section 1: The zoning of the above-described property shall be amended from Commercial Highway, C-H to Low Density Residential, R-1.

Section 2: This rezoning shall become effective 30 days from the date of City Council approval.

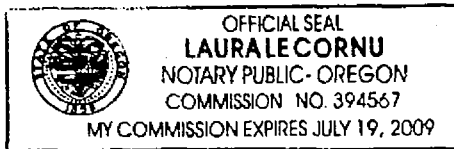
PASSED and adopted by the City Council and signed by me in authentication thereof this 6th day of February 2006.

ATTEST:

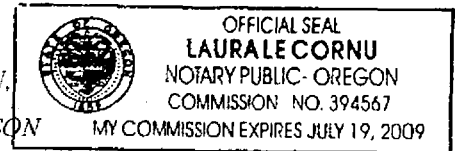
Vicki E. Bear, Mayor

Betty Smith, City Recorder

STATE OF OREGON,
COUNTY OF JACKSON



STATE OF OREGON,
COUNTY OF JACKSON

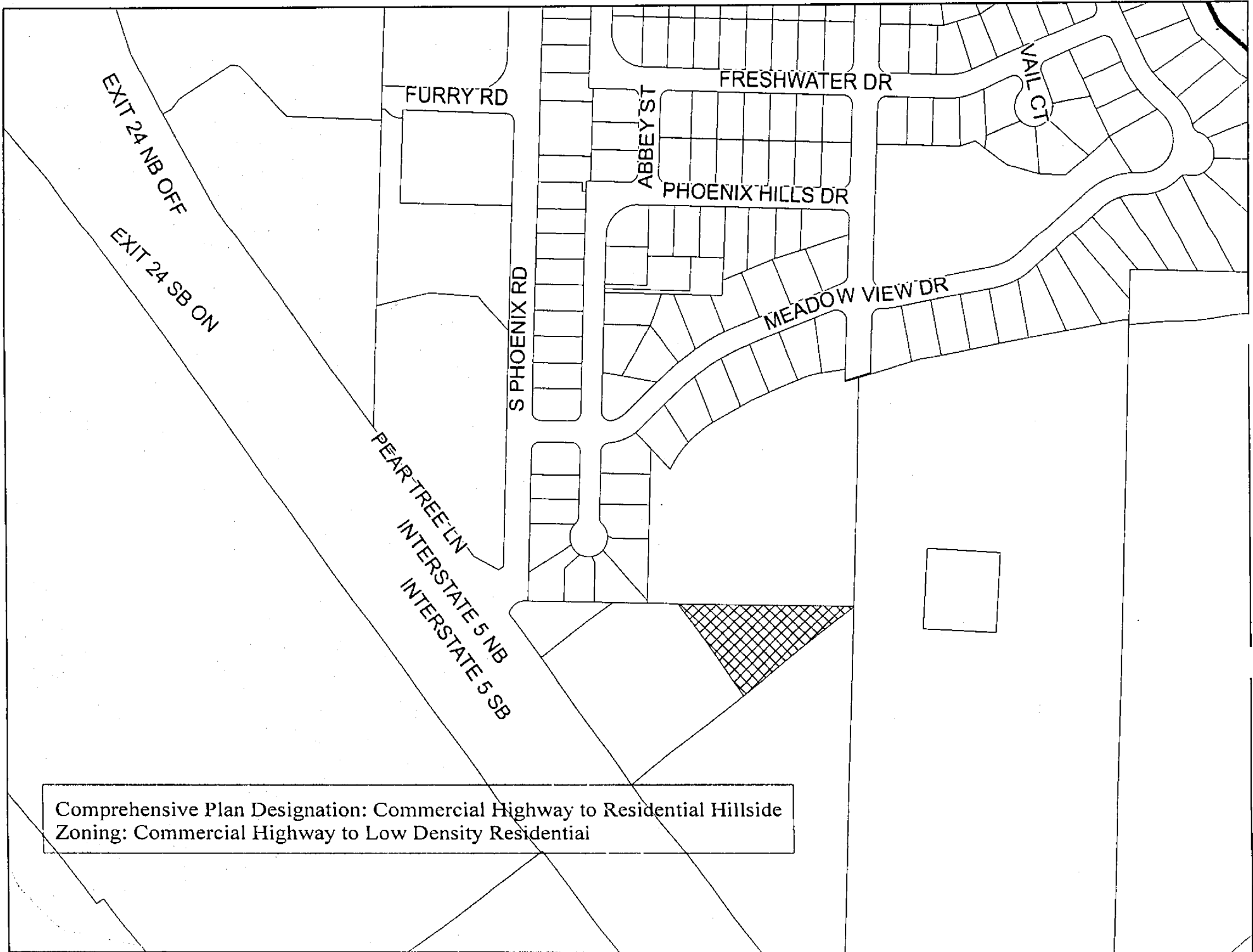


This instrument was acknowledged before me on this
6th day of February, 2006
by Vicki E. Bear as Mayor of City of Phoenix

Notary Public - State of Oregon

This instrument was acknowledged before me on this
6th day of February, 2006
by Betty Smith as City Recorder of City of Phoenix

Notary Public - State of Oregon

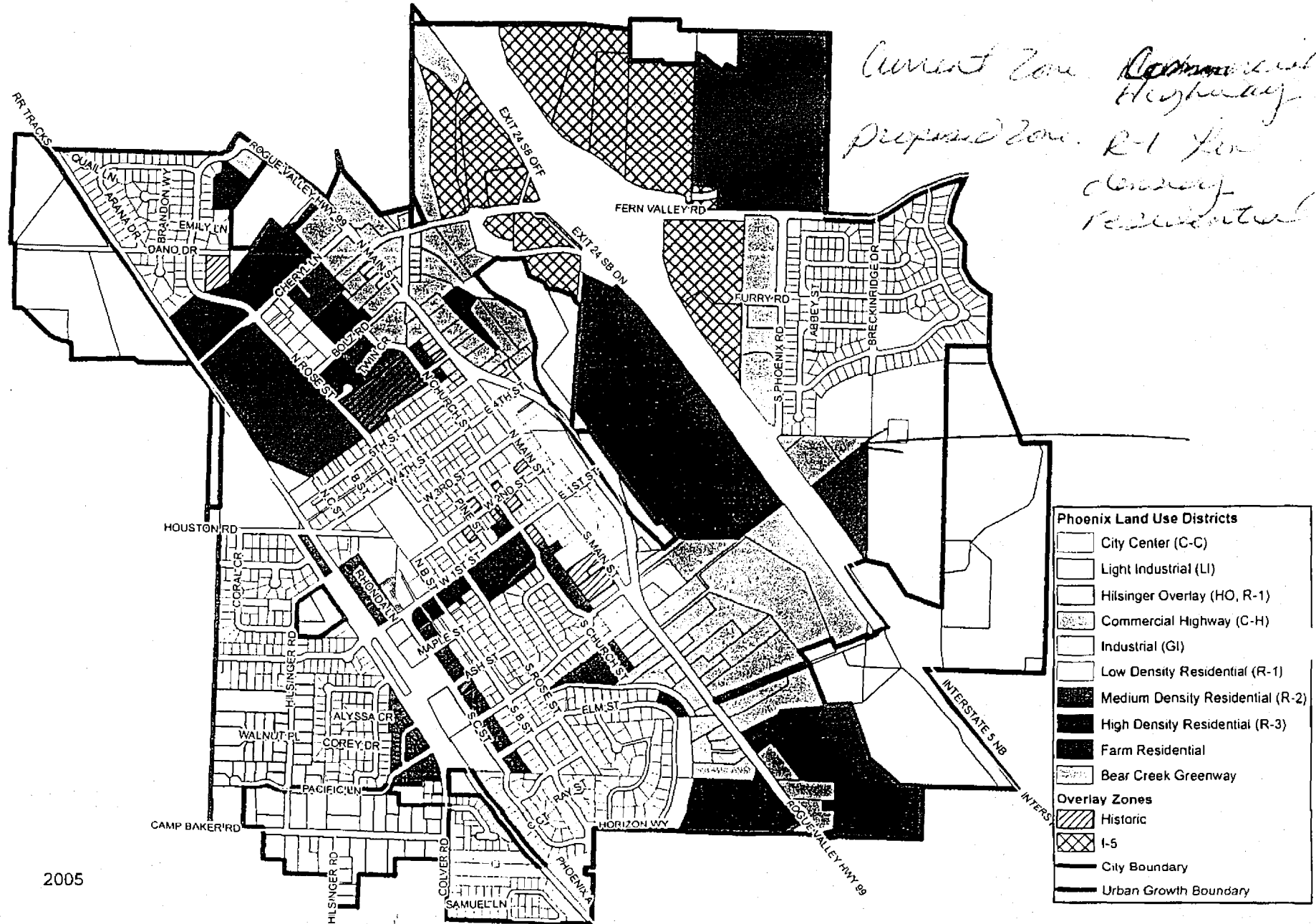


Comprehensive Plan Designation: Commercial Highway to Residential Hillside
Zoning: Commercial Highway to Low Density Residential

Land Use Districts

\$2.00

*Current zone Commercial Highway
 Proposed zone R-1 Low Density Residential*



2005

Comprehensive Plan

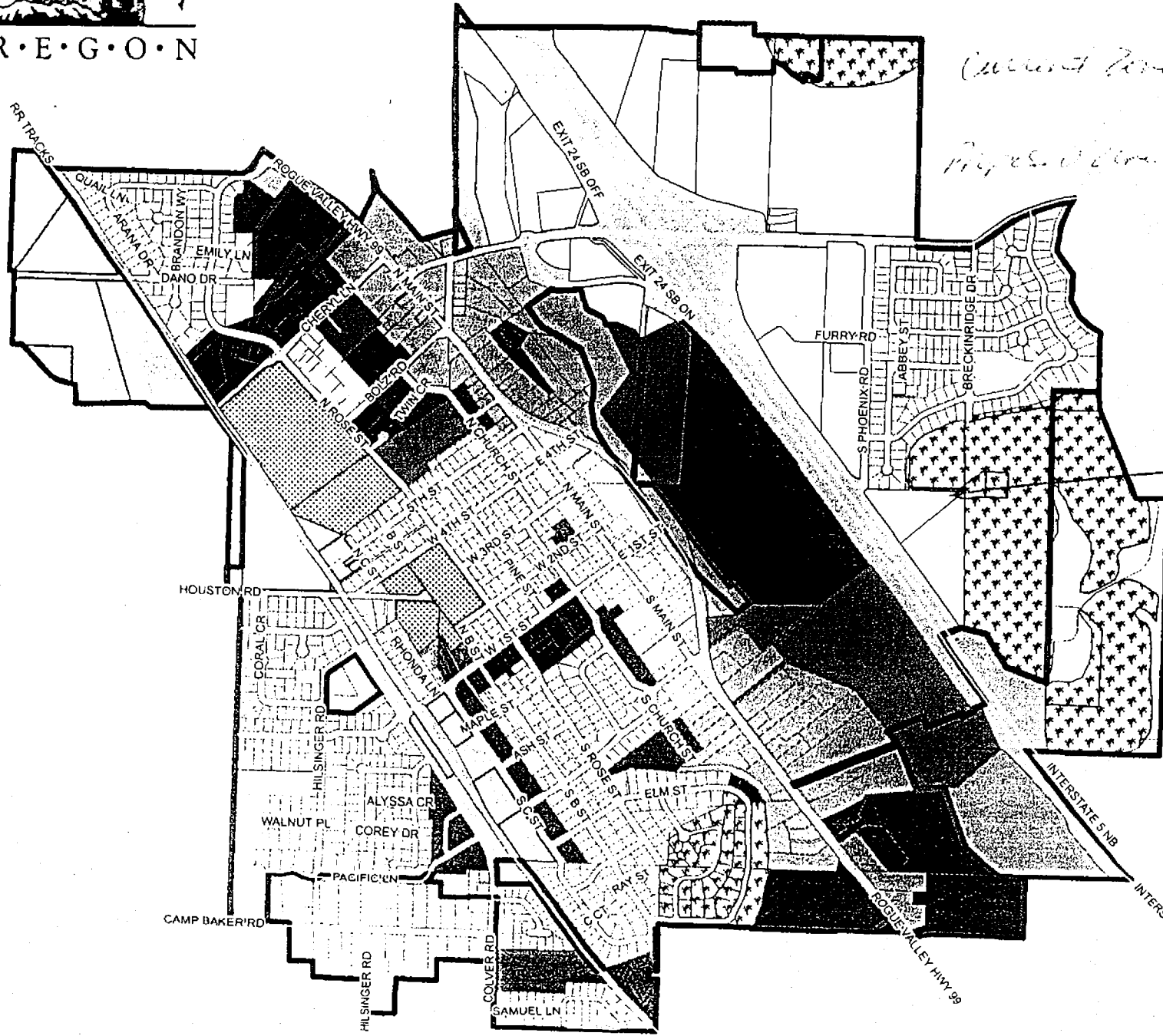
\$2.00

*Current Zone Utilization
 District
 Proposed Utilization
 District*

FERN VALLEY RD

Comprehensive Plan Designation

	Bear Creek Greenway
	City Center District
	Commercial
	High Density Residential
	Industrial
	Interchange Business
	Low Density Residential
	Medium Density Residential
	Park & Open Space
	Public
	Railroad
	Residential Employment
	Residential Hillside
	Road
	Schools
	City Boundary
	Urban Growth Boundary



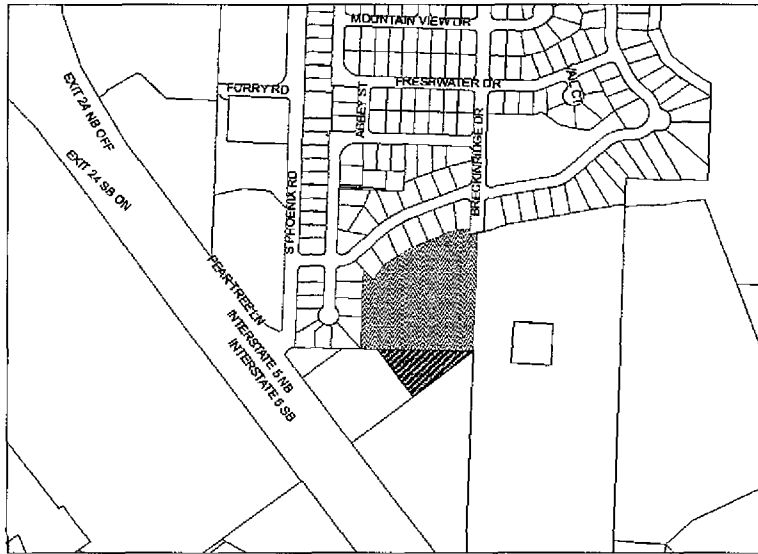


CITY COUNCIL STAFF REPORT AND RECOMMENDATIONS

FILE NUMBERS: CP05-01, ZO05-02

APPLICANT: Cota Homes LLC

LOCATION: SW of Meadowview at terminus of Breckenridge, 381W10CA TL600 as depicted in the map below.



REQUESTS: The applicant seeks approval of a minor comprehensive plan map amendment changing the designation from Interchange Business to Residential Hillside and a zone change to rezone a .96-acre section on the south end of the parcel from Commercial Highway to Low Density Residential.

DATE OF PLANNING COMMISSION HEARING: January 23, 2006

DATE OF CITY COUNCIL HEARING: February 6, 2006

I. PROJECT INFORMATION:

A. Surrounding Land Uses:

North: R-1, Low Density Residential, developed

South: C-H, Commercial Highway, partially vacant, partially under construction

East: county, vacant, Comp Plan Designation Residential

West: R-1, Low Density Residential, developed

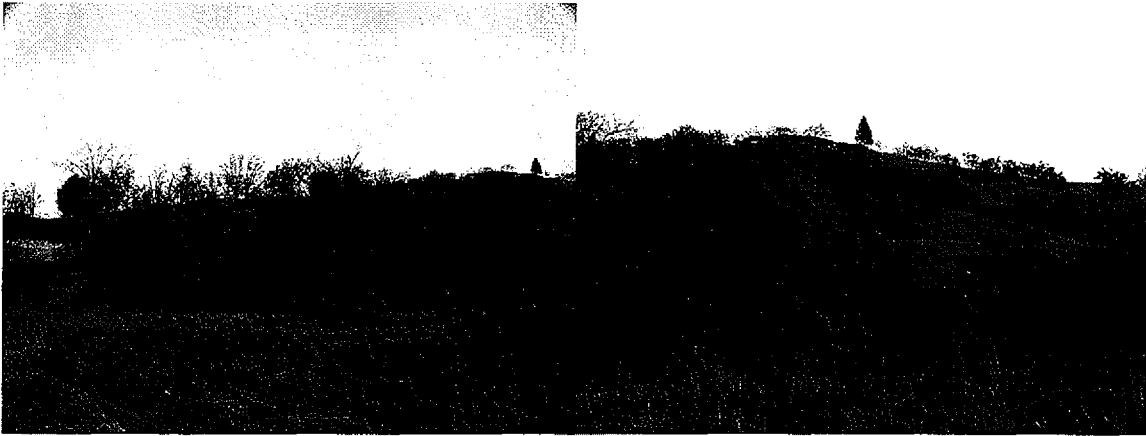
B. Comprehensive Plan Land Use Designation: I-B, Interchange Business

C. Property Zoning: C-H, Commercial Highway

D. Prior Related Land Use Decisions: PUD05-02/SUB05-03 for development of the subject property was scheduled for public hearing on January 23, 2006. This hearing has been continued to March 13.

II. DETAILED PROJECT DESCRIPTION:

The site is currently in its natural state, and has not previously been developed. It is a hillside area, overlooking commercial property and I-5. The southerly portion of the parcel was originally part of the Commercial lot to the south. Because it is relatively steep, it was less suitable for commercial use than the front portion of the lot, and it was sold to the applicant. It became part of the current tax lot through a lot line adjustment, and the applicant now seeks a Comprehensive Plan Amendment and Rezoning to include this portion of the lot in a residential PUD.



III. COMPLIANCE WITH DEVELOPMENT CODE/COMPREHENSIVE PLAN:

The Phoenix Land Development Code requires that the rezoning meet the criteria for a map amendment. This amendment will fall under the requirements for Quasi-judicial amendments because it involves the application of the criteria to a specific development application.

4.7.3.B Criteria for Quasi-Judicial Amendments. A recommendation or a decision to approve, approve with conditions or to deny an application for a quasi-judicial amendment shall be based on the following criteria:

- 1. Demonstration of compliance with all applicable comprehensive plan policies and map designations. Where this criterion cannot be met, a comprehensive plan amendment shall be a prerequisite to approval;*
- 2. Demonstration of compliance with all applicable standards and criteria of this Code, and other applicable implementing ordinances;*
- 3. Evidence of change in the neighborhood or community or a mistake or inconsistency in the comprehensive plan or land use district map regarding the property that is the subject of the application; and the provisions of Chapter 4.7.6 – Transportation Planning Rule Compliance, as applicable.*

The Council could make the finding that the application meets Criteria 1 and Criteria 2 based on the attached findings of fact, submitted by the applicant. Because the steep terrain on this portion of the lot would make it difficult to develop commercially, staff feels that a finding could be made that criteria number 3 has also been met. Additionally, ODOT's comments reflect that they have no transportation issues with this map amendment since the change in use should lessen the transportation impact.

VI. RECOMMENDATION:

The Planning Commission held a public hearing on January 23, 2006, and recommends approval of the Comprehensive Plan Change and Zone Change. Staff recommends approval of the Comprehensive Plan Change and Zone Change.

V

**MINOR PLAN AMENDMENT
AND MINOR ZONE CHANGE
CONCLUSIONS OF LAW**

PHOENIX LAND DEVELOPMENT CODE

Chapter 4.7 Land Use District Map and Text Amendments

4.7.3 – Quasi-Judicial Amendments

Criteria for Quasi-Judicial Amendments. A recommendation or a decision to approve, approve with conditions or to deny an application for a quasi-judicial amendment shall be based on all of the following criteria:

1. Demonstration of compliance with all applicable comprehensive plan policies and map designations. Where this criterion cannot be met, a comprehensive plan amendment shall be a prerequisite to approval;

Conclusions of Law: With respect to the *minor* Comprehensive Plan Map amendment, the Council Concludes a Comprehensive Plan Map amendment is herein requested so that the concurrent zone change request will be consistent with the Comprehensive Plan Map and that such Zone Change decision will be rendered following a decision by the Council on the requested Comprehensive Plan Map amendment. The fact that the criterion cited in PLDO 4.7.3 requires a comprehensive plan map amendment to be consistent with the goals and policies of the Comprehensive Plan does not automatically transform all plan goals and policies into decisional criteria. *See, Bennett v. City of Dallas*, 17 Or LUBA 450, aff'd 96 Or App 645 (1989). A determination of whether particular plan goals and policies are approval criteria must be based on the language used in the goals and policies and the context in which they appear. The City of Phoenix concludes that the applicant has identified those Comprehensive Plan policies that function as approval criteria for the requested Comprehensive Plan Map amendment as the same may be appropriately construed pursuant to *Bennett v. City of Dallas* and compliance with the same is demonstrated below and incorporated herein.

With respect to the *minor* Zoning Map amendment, the Council Concludes this Zone Change will be consistent with the comprehensive plan when the minor map amendment herein requested is approved. Applicant has offered to stipulate to a condition of approval for the zone change that will assure consistency between the zoning map and the comprehensive plan map in the event of an appeal. The Land Use Element of the Phoenix Comprehensive Plan does not prescribe specific zoning districts to implement the Plan Map Designations, as is the case with most jurisdictions, but rather includes a broad discussion of the appropriate development patterns for each designation *See*, Exhibit 9. In this instance, applicant is requesting a Residential Hillside Plan Map designation similar to that applied to similarly situated lands in the area and the City of Phoenix has elsewhere consistently applied the Low Density (R-1) zoning district to Residential Hillside lands as the district most appropriate to implement the development

and Zoning Map amendment to better carry-out the overall land use pattern of the area.

[Comprehensive Plan Policies that operate as approval criteria for the Comprehensive Plan Map amendment as a subset of criteria⁶ number 1 above]

Economic

Goal 4 Designate lands within the I-5 interchanged area to provided services and goods for the traveling public as well as business locations serving the community and the region.

Policy 4.2 Within the Fern Valley Road Interchange area (including all lands east of Bear Creek Bridge within the UGB) and annexation, zone change, or change of existing uses which is expected to significantly increase travel demand in the interchange area must be predicated upon facts (supported by specific traffic studies) and findings that sufficient capacity exist or will be available upon completion of funded improvement(s) to satisfy the proposed development's ravel demand (including background traffic) concurrent with its opening.

Conclusions of Law: The City Council herein adopts and incorporates applicants' Findings of Fact and pursuant to the potential trip generation as a result of the proposed land use district changes and concurrent PUD request and based thereupon concludes the proposed Plan amendment and Zone change will not significantly increase travel demand and thus does not require a detailed traffic study.

Natural Resource

General Policy

Policy 1 The City of Phoenix shall require all new developments and land uses to comply with State and Federal environmental quality statutes, rules, and regulations.

Conclusions of Law: Applicant can feasibly and will be required to obtain any State and Federal permits to comply with environmental quality statues, rules and regulations where such regulations are determined to be applicable by the agency with regulatory authority.

Community Noise

Policy 1 The City will require all new residential or other "noise sensitive" developments to meet State and Federal noise standards through site designer orientation, noise insulation, barriers, or other measures.

Conclusions of Law: State and Federal noise standards are implemented through the uniform building code and applicant expects the new residential units will be sufficiently quite to meet any standards applicable State and/or Federal requirements to the extent such regulations are applicable.

Hazard Reduction *The following policies are directed primarily toward the identified "potential" hazards of flooding and steep slopes within the Phoenix UGB:*

⁶ These criteria are identified, pursuant to Bennett vs City of Dallas, as the Comprehensive Plan provisions that by their language and context operate as a subset of approval criteria under this general criterion.

demand in the interchange area must be accompanied by at least a conceptual land use plan and detailed traffic study as prepared by a licensed traffic engineer that evaluates the traffic impact the proposed use of the site will have on the traffic in the area. The traffic study shall also identify traffic mitigation measures that are intended to minimize the traffic impacts the development of the site will have on the area. The mitigation measures shall become conditions of land use approval as determined applicable by the City and shall be constructed concurrent with development of the site, or in the case of Transportation Demand Management strategies, the programs shall be implemented concurrent with the projects opening.

Conclusions of Law: The City Council herein adopts and incorporates applicants' Findings of Fact and pursuant to the potential trip generation as a result of the proposed land use district changes and concurrent PUD request and based thereupon concludes the proposed Plan amendment and Zone change will not significantly increase travel demand and thus does not require a detailed traffic study.

Housing

Goal 1 To provide, promote, and facilitate as appropriate the provision of housing consistent with the needs and financial capabilities of the City's residents.

Policy 1.2.a The Plan shall provide for an increasing incidence of home ownership through designation of sufficient lands and at appropriate plan/zone designations, to provide for 65% home ownership by 2016.

Conclusions of Law: The City Council concludes that while land use planning in and of itself cannot assure home ownership rates, the requested land use changes will add lands that were ill-suited to commercial development to the residential lands base and therefore increase opportunities for home ownership.

Policy 1.2.b The City shall provide an overall minimum lot size of 6,000 square feet per dwelling within the R-1 zone but allow lots to be as small as 4,500 square feet within Planned Unit Developments containing public and private open space and when consistent with the residential design standards.

Conclusions of Law: The City Council concludes the lot sizes within the R-1 zoning district are implemented by the recently adopted land development ordinance and that development under the proposed Plan Map and Zoning district designations can feasibly comply with the requirements of the code. The Council further concludes that the PUD and Land Division request combined in this application for plan map amendment and zone change demonstrates the same in accordance with the Findings of Fact and Conclusions of Law herein and the demonstration of standards compliance in Exhibit 2.

Land Use

Goal 1 Foster sound community growth and development through effective management of public land use policy.

Policy 1.1.2 The Planning Commission and City Council shall only accept applications for minor amendments to the Comprehensive Plan in April and October of each year. Actual scheduling of public hearings is at the discretion of the Planning Director.

The term "minor amendment" shall have the following meaning: Minor changes, i.e., those which do not have significant effect beyond the immediate area of the change. The public need, justification for the particular change, and its conformity with Statewide Planning Goals

to similarly situated lands in the area and the City of Phoenix has elsewhere consistently applied the Low Density (R-1) zoning district to Residential Hillside lands as the district most appropriate to implement the development patterns described under this Comprehensive Plan Map designation. Based upon this consistent application, the Council concludes the requested Zoning Map Amendment is consistent with the requested Comprehensive Plan Map designation.

OREGON TRANSPORTATION PLANNING RULE
Oregon Administrative Rules Chapter 660, Division 12

660-012-0060 Plan and Land Use Regulation Amendments

SECTION 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:
- (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 2 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 herein adopts and incorporates applicant's Findings of Fact and pursuant to the potential trip generation as a result of the proposed land use district changes and concurrent PUD request and based thereupon concludes the proposed Plan Amendment and Zone Change will not result in increased travel demand when compared to the demands generated from the commercial land use for which the lands are currently planned and zoned. In accordance with this conclusion, the City Council concludes the following:

- The proposed land use changes will not change the functional classification of an existing or planned transportation facility.
- No changes to standards implementing the functional classification system are necessary or requested.