



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

AMENDED NOTICE OF ADOPTED AMENDMENT

October 29, 2007

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Bend Plan Amendment
DLCD File Number 001-07



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: November 13, 2007

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

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

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

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

<paa> ya/

FORM 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



Jurisdiction: **City of Bend**

Local file number: **PZ 06-862**

Date of Adoption: **10/17/2007**

Date Mailed: **10/22/2007**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Select one** Date: 10/22/07

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".

An amendment to the City of Bend Zoning Map to change the zoning designation of a parcel of land from Standard Density Residential (RS) to Medium Density Residential (RM) bringing it into conformance with the City of Bend Comprehensive Plan.

Does the Adoption differ from proposal? Please select one

No, it does not.

Plan Map Changed from:

to:

Zone Map Changed from: **RS**

to: **RM**

Location: **Tax Lot 400 on County Assessor's Map 17-12-20A**

Acres Involved: **5.46**

Specify Density: Previous: **2.0 to 7.3**

New: **7.3 to 21.7**

Applicable statewide planning goals:

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

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD file No.

001-07-(15773)

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

Local Contact: **Chris Schmoyer, Associate Planner** Phone: **(541) 693-2115** Extension:
Address: **710 NW Wall Street** Fax Number: **541-388-5519**
City: **Bend** Zip: **97701-** E-mail Address: **cschmoyer@ci.bend.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

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

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

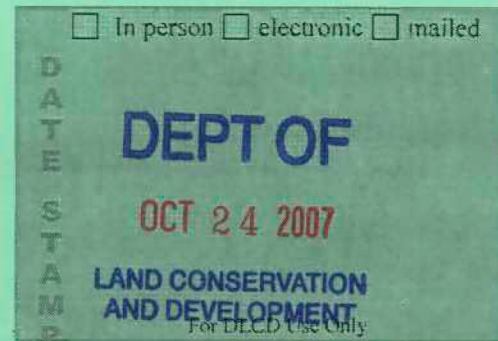
ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540
2. **Electronic Submittals:** At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webservice.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.

FORM 2

DLCD

Notice of Adoption

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PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18



Jurisdiction: **City of Bend**

Local file number: **PZ 06-862**

Date of Adoption: **10/17/2007**

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Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Select one** Date: 10/22/07

- | | |
|--|---|
| <input type="checkbox"/> Comprehensive Plan Text Amendment | <input type="checkbox"/> Comprehensive Plan Map Amendment |
| <input type="checkbox"/> Land Use Regulation Amendment | <input checked="" type="checkbox"/> Zoning Map Amendment |
| <input type="checkbox"/> New Land Use Regulation | <input type="checkbox"/> Other: |

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

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- | | | | | | | | | | | | | | | | | | | |
|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
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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

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

DLCD # 001-07 (15773)

DLCD file No. _____

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

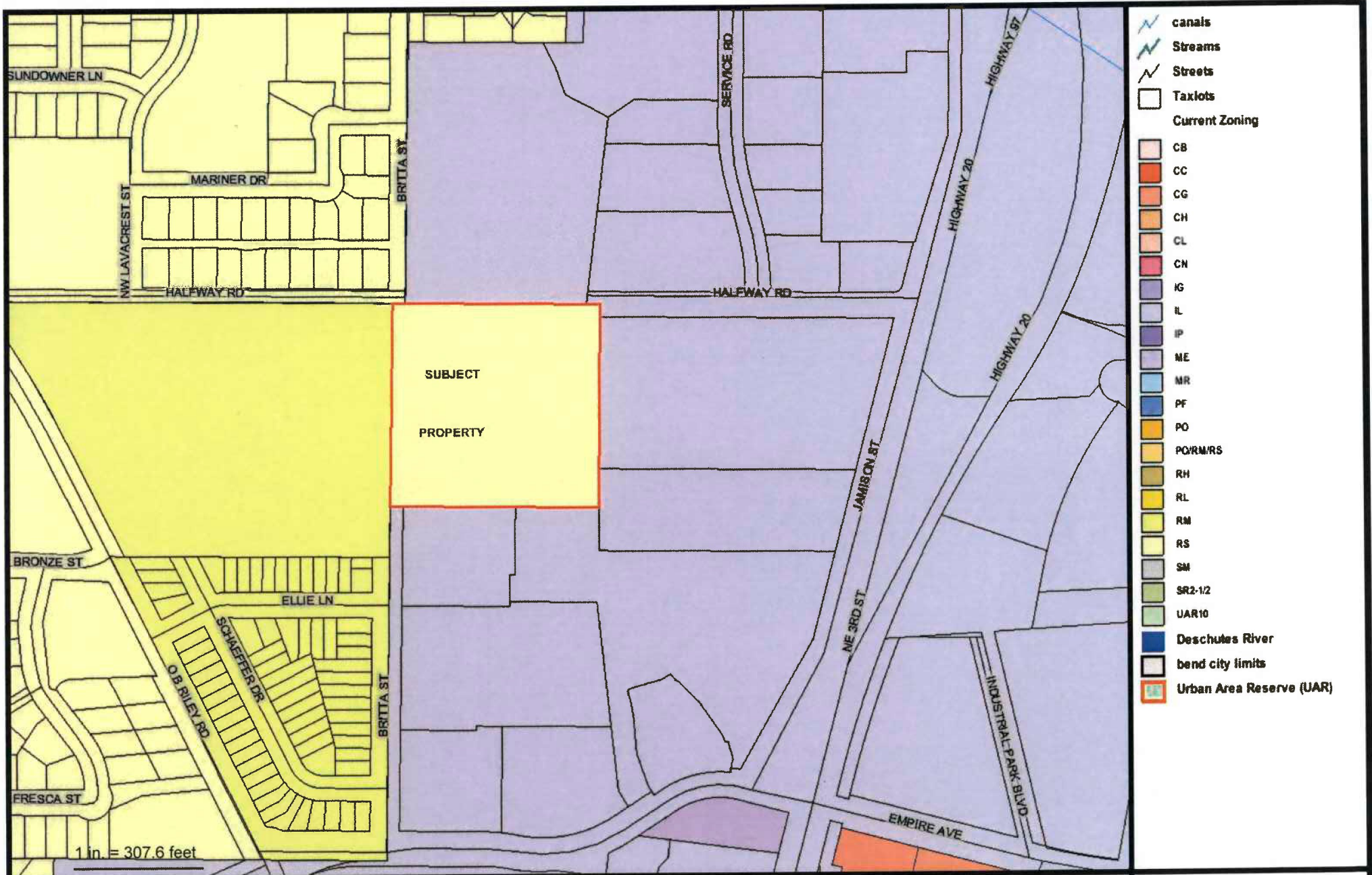
Local Contact: **Chris Schmoyer, Associate Planner** Phone: (541) 693-2115 Extension:
Address: **710 NW Wall Street** Fax Number: **541-388-5519**
City: **Bend** Zip: **97701-** E-mail Address: **cschmoyer@ci.bend.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

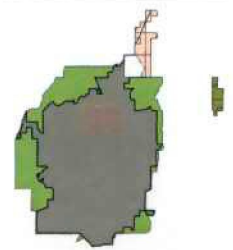
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ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540
2. **Electronic Submittals:** At least **one** hard copy must be sent by mail or in person, but you may also 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**.
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ZONE MAP CHANGE FROM RESIDENTIAL URBAN STANDARD DENSITY (RS) TO RESIDENTIAL URBAN MEDIUM DENSITY (RM)





**Bend City Council
October 17, 2007 Council Meeting**

Issue Summary

Department: Community Development
Staff Member: Chris Schmoyer, Associate Planner

Conduct a second reading for Land Use File PZ 06-862, a proposed zone change for the purpose of amending the City of Bend Zoning Map, Ordinance No. NS-2016, by changing the zoning of 5.46 acres of land on the City of Bend Zoning Map from Residential Urban Standard Density (RS) to Residential Urban Medium Density (RM) in conformance with the Bend Urban Area General Plan. The subject property has an assigned address of 20312 Halfway Road and is located east of Britta Street and south of Halfway Road in Bend. The parcel is further identified as Tax Lot 400 on Deschutes County Assessor's Map 17-12-20A.

Staff Review and Recommendation to Council:

Hearings Officer Karen Green reviewed the applicant's proposal and on September 21, 2007, issued a written decision approving the proposed subdivision of thirteen (13) residential lots, and recommending that the City Council approve the requested Zone Change. Staff recommends that the Council conduct a second reading of an ordinance adopting the proposed zone change, and consider adoption of the Hearings Officer's findings and decision recommending approval of the proposed zone change.

History:

Presented for public hearing:	October 3, 2007
Presented for first reading:	October 3, 2007
Presented for second reading:	October 17, 2007

Background: The original zone change application and tentative plan application for a 55-unit zero-lot-line residential development were submitted on December 19, 2006 and were accepted by the City as complete on January 19, 2007. However, on June 14, 2007, the applicant submitted modified zone change and tentative plan applications for a 13-lot subdivision, which re-started the 120-day review clock. Because the applicant agreed to extend the written record from July 12 through July 19, 2007, under ORS 197.763(6) the 120-day period was tolled for 7 days and now expires on October 19, 2007.

The subject property is located on the north end of Bend and is in an area east of O.B. Riley Road, west of Jamison Road and north of Empire Boulevard. The

subject site abuts Britta Street along its west border and Halfway Road is to the north. No written comments have been received by neighbors regarding this proposal. Surrounding zoning consists of Light Industrial (IL) to the north, east and south, with RM zoning to the west. According to the General Plan map, properties to the north, east and south are designated as Mixed Employment (ME), RM to the west and southwest and RS to the northwest.

Pursuant to the City's Land Use Review and Procedures Ordinance, in order for the Zone Change to be adopted, the City Council must first hold a public hearing and subsequently adopt an ordinance effecting such a change. Building permits cannot be issued until the Zone Change is effective, the final plat approved and site plan/design review obtained.

Discussion of the Issue and Alternatives Explored: The applicant has applied for a zone change from Residential Urban Standard Density (RS) to Residential Urban Medium Density (RM). The change in zoning would bring the approximate 5.46 acre parcel into conformance with its General Plan designation, thereby permitting medium density development in an area that has adequate public infrastructure. The applicant proposes to name the 13-lot residential subdivision "Milan Villas" and states that they intend to develop the new lots with multi-family residential uses, which are permitted in the RM Zone, subject to site plan review.

The Hearings Officer has recommended approval of the proposed zone change. Staff concurs with the Hearings Officer's recommendation based upon the findings and conditions contained in the recommendation. Denial of the requested zone change would prevent the applicant from developing the subject property to its planned density.

Secondary Issues: Hearings Officer Green issued her Findings and Decision on September 21, 2007, approving the Tentative Plan, subject to conditions of approval, and recommending approval of the Zone Change. The 12 day appeal period for this decision ends at 5:00 pm on October 3, 2007, at which time the Tentative Plan approval became final. The 120 day review period ends on October 19, 2007.

Committee Review and Recommendation to Council: There was no committee involvement with the proposed development.

Budgetary Considerations: None.

ORDINANCE NO. NS-2077

AN ORDINANCE AMENDING THE BEND URBAN AREA ZONING MAP BY CHANGING THE ZONING DESIGNATION OF A PARCEL OF LAND TOTALING 5.46 ACRES FROM RESIDENTIAL URBAN STANDARD DENSITY (RS) TO RESIDENTIAL URBAN MEDIUM DENSITY (RM).

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council held a public hearing to consider the Hearings Officer's findings and record, and found that the proposal is consistent with the criteria of the Bend Development Code Section 4.6.300. The Bend City Council adopts the Findings and Decision of the Hearings Officer dated September 21, 2007, file numbers PZ 06-862 and PZ 06-863.

Section 2. The Bend Urban Area Zoning Map is hereby amended by changing the designation of the property shown in "Exhibit A" and described in "Exhibit B" from Residential Urban Standard Density (RS) to Residential Urban Medium Standard Density (RM).

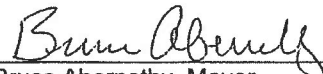
Read for the first time the 3rd day of October, 2007.

Read for the second time the 17th day of October, 2007.

Placed upon its passage the 17th day of October, 2007.

YES: 7 NO: 0

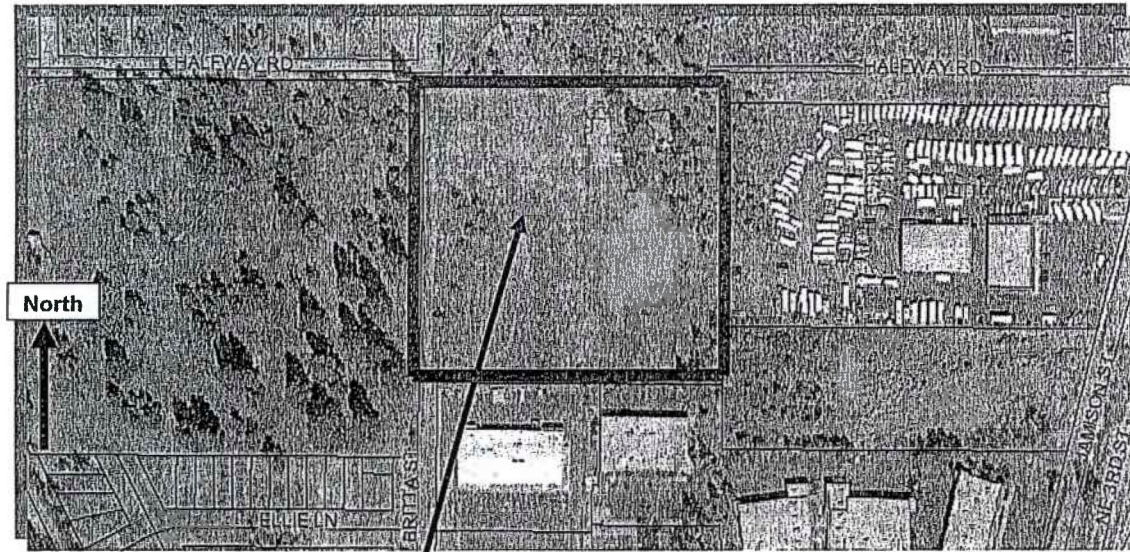
Authenticated by the Mayor the 17th day of October, 2007.


Bruce Abernethy, Mayor

ATTEST:

Patricia Stell, City of Bend Recorder

EXHIBIT A



**Approximate 5.46 acre Subject Site.
Land Use File PZ 06-862, Zone Change
for EMP Milan Villa, LLC (RS to RM).**

EXHIBIT B

A PORTION OF TRACT 4 OF NORWOOD, SAID PARCEL BEING LOCATED IN THE NORTHEAST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER (NE1/4 NE1/4) OF SECTION TWENTY (20), TOWNSHIP SEVENTEEN (17) SOUTH, RANGE TWELVE (12) EAST OF THE WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING OF THE NORTHWEST CORNER OF SAID TRACT 4 OF NORWOOD;
THENCE ALONG THE WEST LINE OF SAID TRACT 4 SOUTH $0^{\circ} 25'16''$ WEST A DISTANCE OF 480.25 FEET; THENCE EAST A DISTANCE OF 497.14 FEET TO A $5/8''$ RE-BAR WITH A PLASTIC CAP MARKED P.L.S. 599 ON THE EAST BOUNDARY OF SAID TRACT 4; THENCE NORTH ALONG THE EAST LINE OF SAID TRACT 4 OF NORWOOD TO THE NORTHEAST CORNER OF SAID TRACT 4; THENCE ALONG THE NORTH LINE NORTH $89^{\circ} 55'44''$ WEST 493.68 FEET TO THE POINT OF BEGINNING.

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

FILE NUMBERS: PZ-06-862, PZ-06-863

APPLICANT: E. Mark Pacheco
19244 Green Lakes Loop
Bend, Oregon 97702

PROPERTY OWNER: EMP Milan Villa, LLC¹
19244 Green Lakes Loop
Bend, Oregon 97702

APPLICANT'S ATTORNEYS: Liz Fancher
Kristen G. Williams
644 N.W. Broadway Street
Bend, Oregon 97701

APPLICANT'S ENGINEER: Tim Weishaupt, P.E.
Sun Country Engineering & Surveying, Inc.
920 S.E. Armour Rd.
Bend, Oregon 97702

REQUEST: The applicant requests approval of a zone change from RS to RM, and tentative plan approval for a 13-lot residential subdivision to be called "Milan Villas" on a 5.46-acre parcel located east of Britta Street and south of Halfway Road in Bend.

STAFF REVIEWER: Chris Schmoyer, Associate Planner

HEARING DATES: February 28 and July 12, 2007

RECORD CLOSED: July 19, 2007

I. APPLICABLE STANDARDS AND CRITERIA:

A. Bend Development Code, Ordinance NS-2016

1. Chapter 2.1, Residential Land Uses

*** Section 2.1.200, Permitted Uses**

¹ At the time the applicant submitted his original applications the subject property was owned by Renee M. Stewart. The property was conveyed to the current owner on January 10, 2007.

- * Section 2.1.500, Lot Area and Dimensions
- * Section 2.1.600, Residential Density
- 2. Chapter 3.1, Access, Circulation and Lot Design
 - * Section 3.1.200, Lot and Block Design
 - * Section 3.1.300, Pedestrian Access and Circulation
 - * Section 3.1.400, Vehicular Access Management
- 3. Chapter 3.2, Landscaping, Street Trees, Fences and Walls
 - * Section 3.2.200, Landscape Conservation
- 4. Chapter 3.3, Vehicle Parking, Loading and Bicycle Parking
 - * Section 3.3.300, Vehicle Parking Standards for On-Site Requirements
- 5. Chapter 3.4, Public Improvement Standards
 - * Section 3.4.100, Purpose and Authority
 - * Section 3.4.200, Transportation Improvement Standards
 - * Section 3.4.400, Sanitary Sewer and Water Service Improvements
 - * Section 3.4.500, Storm Drainage Improvements
 - * Section 3.4.600, Utilities
 - * Section 3.4.700, Easements
- 6. Chapter 3.5, Other Design Standards
 - * Section 3.5.300, Special Setbacks
- 7. Chapter 3.6, Special Standards for Certain Uses
 - * Section 3.6.200, Residential Uses
- 8. Chapter 4.1, Land Use Review and Procedures
- 9. Chapter 4.3, Land Division and Lot Line Adjustment Procedures
 - * Section 4.3.300, Approval Process
- 10. Chapter 4.6, Land Use District Map and Text Amendments
 - * Section 4.6.300, Quasi-Judicial Amendments
 - * Section 4.6.600, Transportation Planning Rule Compliance
- 11. Chapter 4.7, Transportation Analysis

- * Section 4.7.100, Purpose and Authority
- * Section 4.7.200, Transportation Impact Study

B. Oregon Administrative Rules (OAR) Chapter 660-12, Transportation Planning

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

II. FINDINGS OF FACT:

- A. Location:** The subject property has an assigned address of 20312 Halfway Road and is located east of Britta Street and south of Halfway Road in Bend. It is further identified as Tax Lot 400 on Deschutes County Assessor's Map 17-12-20A.
- B. Zoning and Plan Designation:** The subject property is zoned Residential Standard Density (RS) and is designated Residential Medium Density (RM) on the Bend Area General Plan map.
- C. Site Description:** The subject property is approximately 5.46 acres in size, roughly rectangular in shape, and is developed with two single-family dwellings that have access from a driveway near the northeast corner of the property. The applicant proposes to remove the dwellings and close the driveway access. The property has relatively level topography with the exception of sections of rock outcropping along the eastern border and near the southwest corner. Vegetation consists of scattered ponderosa pine trees and pasture grasses. The property previously had 4.5 acres of Swalley Irrigation District water rights that have been removed. The property also has a short barb-wire fence and short rock wall running along the northern boundary. Halfway Road intersects with Britta Street at the northwestern corner of the subject property. Halfway Road is undeveloped along the northern boundary of the property and for a distance of about 350 feet east of the property.
- D. Surrounding Zoning and Land Uses:** Property to the north consists of a 6-acre parcel zoned Light Industrial (IL), designated Mixed Employment (ME), and developed with a single-family dwelling. Land to the northwest is developed with the Westerly Estates Subdivision zoned RS and developed with single-family dwellings on urban-sized lots. Land to the west recently was rezoned from RM to RS and approved for development of a 99-unit Planned Unit Development (PUD) called "Tuscany Pines" (PZ-06-85, PZ-05-816). Land to the southwest also recently was rezoned from RS to RM and has been approved for development with a 68-unit zero-lot-line subdivision called "West View." Land to the south is zoned IL, designated ME, and developed with the Empire Corporate Park and the Deschutes Business Center including multiple office buildings and paved parking lots. Land to the east consists of parcels zoned IL and designated ME. One of these parcels is developed with All Seasons RV. The other is vacant.
- E. Procedural History:** The original zone change application and tentative plan application for a 55-unit zero-lot-line residential development were submitted on December 19, 2006 and were accepted by the city as complete on January 19, 2007. Therefore, the 120-day

period for issuance of a final local land use decision under ORS 227.178 would have expired on May 21, 2007. A public hearing on the applications was scheduled for February 28, 2007.

On February 21, 2007 the original staff report was mailed and staff recommended denial of the applicant's proposal. By a letter dated February 26, 2007, the applicant requested that the public hearing be continued in order for the applicant and city planning and engineering staff to resolve the issues raised by the city in the staff report. The applicant agreed to toll the 120-day period for both applications under ORS 227.178 during the period of the continuance. Because the request for a continuance was made after notice of the public hearing was published, the Hearings Officer opened the public hearing on February 28, 2007 to take testimony, and continued the hearing on the record to April 26, 2007.

By a letter dated April 23, 2007, the applicant requested that the April 26, 2007 hearing be continued to July 12, 2007 and again agreed to toll the 120-day period during the period of the continuance. In addition, the applicant submitted alternate revised subdivision plans – for a 13- and 14-lot residential subdivision – and requested that the Hearings Officer determine whether these revisions would constitute a “modification.” By an order dated April 24, 2007, the Hearings Officer found the applicant's alternate proposals constituted a modification and therefore I could not consider them without a modification application and a written agreement from the applicant to restart the 120-day period as of the date of the modification. The Hearings Officer also found the applicant's request for a continuance of the public hearing scheduled for April 26, 2007 was appropriate under the circumstances, and that the scheduled April 26, 2007 public hearing would be opened on that date and continued on the record to a date certain.

At the April 26, 2007 public hearing the Hearings Officer continued the hearing to July 12, 2007. On June 14, 2007 the applicant submitted modified zone change and tentative plan applications for a 13-lot subdivision. Because under Section 8.1400 of the development code the filing of a modification restarts the 120-day period as of the date of the modification, the 120-day period on the modified tentative plan application commenced on June 14, 2007 would have expired on October 12, 2007. On July 5, 2007 the staff report on the modified proposal was mailed and staff recommended approval of the applicant's proposal. At the continued public hearing on July 12, the Hearings Officer received testimony and evidence and left the written evidentiary record open through July 19, 2007. The applicant waived submission of final argument pursuant to ORS 197.763 and the record closed on July 19, 2007. Because the applicant agreed to extend the written record from July 12 through July 19, 2007, under ORS 197.763(6) the 120-day period was tolled for 7 days and now expires on October 19, 2007. As of the date of this decision there remain 29 days in the 120-day period.

- F. Proposal:** The applicant requests approval a zone change from Standard Residential Density (RS) to Medium Residential Density (RM), and tentative plan approval for a 13-lot residential subdivision to be called “Milan Villas” to be developed with multi-family residential uses permitted outright in the RM Zone. Lots would range in size from 6,911

to 21,638 square feet. Lots on the northern subdivision boundary would front on Halfway Road. Other lots would have access from two new subdivision streets – an east-west street called Milan Way and a north-south street called Venice Court. Milan Way would extend from Britta Street at a point directly across from a cul-de-sac in the adjacent Tuscany Pines development east to the eastern property boundary where it would be stubbed off, and Venice Court would extend from Milan Way north to Halfway Road. Seven of the 13 lots would be located north of Milan Way and would have rear alley access from a private alley. The applicant would dedicate right-of-way for and improve the abutting segments of Britta Street and Halfway Road. The subdivision would be served by city water and sewer service. The existing dwellings would be removed.

- G. Public/Private Agency Comments:** The Planning Division sent notice of the applicant's proposal to a number of public and private agencies and received responses from: the City of Bend Public Works Department, Traffic Engineer, Grading/Drainage, Fire Department, Long-range Planning, and Building Division; the Bend Metropolitan Park and Recreation District (park district); the Swalley Irrigation District; the Oregon Department of Transportation (ODOT); and PacifiCorp. These comments are included in the record and are addressed in the findings below.
- H. Public Notice and Comments:** The Planning Division mailed individual written notice of the applicant's proposal and the initial public hearing to the owners of record of all property located within 250 feet of the subject property. In addition, notice of the public hearing was published in the Bend "Bulletin" newspaper, and the subject property was posted with a notice of proposed land use action sign. As of the date the record in this matter closed, the city had received no letters from the public in response to these notices. No members of the public testified at the public hearing.
- J. Lot of Record:** The staff report states the subject property constitutes a legal lot of record having been created as a remainder parcel following the platting of Tract 4 of the Norwood Subdivision and a 1993 minor partition (Partition Plat 1993-15). The applicant's burden of proof states the city's development code does not expressly require that the subject property be a legal lot of record as a prerequisite for the proposed subdivision.

III. CONCLUSIONS OF LAW:

A. City of Bend Development Code, Ordinance NS-2016

ZONE CHANGE

- 1. Chapter 4.6, Land Use District Map and Text Amendments**
 - a. Section 4.6.300, Quasi-Judicial Amendments**
 - A. Applicability, Procedure and Authority. Quasi-judicial amendments generally refer to a plan amendment or zone**

change affecting a single or limited group of properties and that involves the application of existing policy to a specific factual setting. Quasi-judicial amendments shall follow the Type III procedure, as governed by Chapter 4.1, Land Use Review and Procedures using the standards of approval in Section 4.6.300.B, Criteria for Quasi-judicial Amendments below. Based on the applicant's ability to satisfy the approval criteria, the applicant may be approved, approved with conditions, or denied.

FINDINGS: The applicant's proposed zone change from RS to RM is being processed as a Type III land use application.

- B. Criteria for Quasi-Judicial Amendments.** The applicant shall submit a written narrative which explains how the approval criteria will be met. 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:

FINDINGS: The applicant submitted a burden of proof in support of his original zone change and tentative plan applications, and another burden of proof in support of his modified proposal. The Hearings Officer finds these statements explain how the approval criteria for the proposed zone change will be met.

- 1. Approval of the request is consistent with the relevant Statewide Planning Goals that are designated by the Planning Director or designee;**

FINDINGS: The new development code provisions governing quasi-judicial amendments apply to both plan amendments and zone changes. As a result, requirements that traditionally applied only to plan amendments now apply to zone changes. The criterion in Paragraph (B)(1) is an example. While the statewide land use planning goals apply directly to comprehensive plan amendments, it is well established that they generally do not apply directly to zone changes, or other quasi-judicial land use applications, because the goals are assumed to have been implemented through the city's acknowledged comprehensive plan. Nevertheless, the city appears to have chosen to directly apply the statewide goals to quasi-judicial zone change applications.

The remaining question is which statewide goals apply. It is also well settled that the city's land use regulations must clearly identify the applicable standards and criteria in order to give adequate notice to the applicant and interested parties. Section 4.6.300(B)(1) does not identify which of nineteen statewide land use planning goals is applicable, instead leaving that determination to the Planning Director or his designee to be made on an *ad hoc* basis. Such a determination was made in this case through the city's staff report, which identified Goals 1 through 14 as applicable to the proposed zone change. Notification through the staff report certainly is not the most effective means of giving notice of the applicable approval criteria.

Nevertheless, because the applicant did not raise a question about the adequacy of the city's notice of the applicable statewide goals, I find I need not reach this issue.² Compliance with the goals identified in the staff report is addressed below.

Goal 1, Citizen Involvement. The Hearings Officer finds Goal 1 is met because the city's development code assures public participation in this quasi-judicial matter through notice (individual mailed notice, published notice and posted notice), a public hearing before the Hearings Officer, and a public hearing before the Bend City Council (hereafter "council") before the zone change may become effective.

Goal 2, Land Use Planning. The Hearings Officer finds Goal 2 is met because this quasi-judicial zone change application is being processed in accordance with the provisions of the city's development code for quasi-judicial zone changes.

Goal 3, Agricultural Lands. The Hearings Officer finds Goal 3 does not apply to this application because neither the subject property nor surrounding lands are zoned for agriculture.

Goal 4, Forest Lands. The Hearings Officer finds Goal 4 does not apply to this application because neither the subject property nor surrounding lands are zoned for forest use.

Goal 5, Open Space, Scenic and Historic Areas and Natural Resources. The Hearings Officer finds this goal is not applicable to the applicant's proposal because the record indicates there are no inventoried Goal 5 resources on the subject property.

Goal 6, Air, Water and Land Resources Quality. The Hearings Officer finds Goal 6 is met because the subject property is located within the Bend city limits and will be served by city sewer and water service.

Goal 7, Areas Subject to Natural Disasters and Hazards. The Hearings Officer finds Goal 7 is met because the record indicates the subject property is not located in a known natural disaster hazard area.

Goal 8, Recreational Needs. The Hearings Officer finds this goal also is not applicable because the subject property is not designated for recreational or destination resort use.

Goal 9, Economic Development. The Hearings Officer finds Goal 9 does not apply to this application because the proposed zone change from RS to RM will not affect any lands currently zoned for economic, commercial or industrial uses.

Goal 10, Housing. The Hearings Officer finds the applicant's proposed zone change is consistent with Goal 10 because it will allow the subject property to be developed with urban-density residential uses meeting the city's identified housing needs during the planning period.

² This method of notice has been upheld by LUBA when challenged as inadequate. Holland v. City of Cannon Beach, 30 Or LUBA 229, *aff'd* 129 Or App 433, 879 P2d 1313 (1994).

Goal 11, Pubic Facilities and Services. The Hearings Officer finds Goal 11 is met because, as discussed in detail in the findings below, I have found urban-density residential development of the subject property will be served by adequate public facilities and services.

Goal 12, Transportation. The Hearings Officer finds Goal 12 is met because, as discussed in detail in the findings below concerning the proposal's compliance with the Transportation Planning Rule (TPR) which implements Goal 12, I have found the proposed zone change will not significantly affect a transportation facility.

Goal 13, Energy Conservation. The Hearings Officer finds Goal 13 is met because the zone change will allow urban-density development of the subject property with access to dedicated public streets and within walking distance of a transit system stop, facilitating efficient transportation and thereby reducing energy conservation.

Goal 14, Urbanization. The Hearings Officer finds the proposed zone change is consistent with this goal because it will facilitate urban density development with urban uses on land located within an urban growth boundary.

For the foregoing reasons, the Hearings Officer finds the proposed zone change satisfies this amendment approval criterion.

2. **Approval of the request is consistent with the relevant policies of the Comprehensive Plan that are designated by the Planning Director or designee;**

FINDINGS: As is the case with Paragraph (B)(1) discussed above, this paragraph appears to apply to a quasi-judicial zone change an approval criterion traditionally applied only to plan amendments – i.e., compliance with comprehensive plan policies. The extent to which such policies establish mandatory approval criteria for quasi-judicial land use applications is determined by the language of the comprehensive plan itself. Save Our Skyline v. City of Bend, 48 Or LUBA 192 (2004). The city's comprehensive plan preface states in pertinent part:

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

In several previous decisions, this Hearings Officer has held that in light of the above-underscored plan preface language, the city's comprehensive plan does not establish mandatory

approval criteria for quasi-judicial land use applications.³ The applicant requests that I reconsider my previous holdings in light of the new development code language in this section. I decline to do so inasmuch as my interpretation of the above-quoted plan language was upheld by LUBA in its *Save Our Skyline* decision, the city did not amend its comprehensive plan preface when it adopted its new development code, and therefore the preface still defines the role of plan policies as “statements of public policy” that are implemented through the city’s land use regulations. The question, then, is whether there is anything in the language in Section 4.6.300(B)(2) that would compel a different conclusion than the one I reached under very similar language in the former Section 10-10.33(2)(a).⁴ I find there is not. The city could convert plan policies into mandatory approval criteria for quasi-judicial land use applications by amending the above-quoted comprehensive plan preface, and by expressly restating specific plan policy language in its development code approval criteria. However, since the vague reference in Section 4.6.300(B)(2) to “relevant policies . . . designated by the Planning Director or designee” does neither of those things, I find it is not effective in converting plan policies to mandatory approval criteria for quasi-judicial applications.

Assuming for purposes of discussion that Section 4.6.300(B)(2) *does* effectively convert certain comprehensive plan policies to mandatory approval criteria for the proposed quasi-judicial zone change, and inasmuch as the applicant has not challenged the application of this provision on the basis of lack of adequate notice of the applicable approval criteria, the Hearings Officer will address the following plan policies identified and discussed in the staff report.

Chapter 5: Housing and Residential Lands

Policies

Housing Density and Affordability

21. Densities recommended on the Plan shall be recognized in order to maintain proper relationships between proposed public facilities and services and population distribution.

* * *

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

The record indicates both city water and sewer service are available to the subject property

³ E.g., *Awbréy Towers* (02-508), *Shevlin Neighbors* (PZ-05-429, PZ-05-430), *Rimrock Riders* (PZ-05-556, PZ-05-557), *Three Pines* (PZ-06-737), *Coyle* (PZ-07-008).

⁴ Former Section 10-10.33(2)(a) provided:

That the change conforms with the Comprehensive Plan. Specifically, the change is consistent with the plan’s intent to promote an orderly pattern and sequence of growth.

through extension of and connection to existing city sewer and water facilities in the surrounding area. In addition, as discussed in the findings below, the Hearings Officer has found that traffic generated by urban-density residential development of the subject property will not significantly affect a transportation facility. The staff report also notes the city's inventory of residential lands required to meet its identified housing needs during the 20-year planning period was based in part on the expectation that all land located within the Bend UGB with standard-density zoning but a medium-density plan designation like the subject property would be up-zoned to urban medium density to facilitate the type of urban density residential development contemplated in the plan. For these reasons, I find the applicant's proposed zone change is consistent with Housing Policies 21 and 23. Nevertheless, I find the language in Policy 23 stating lower-density lands "shall" be rezoned does not relieve the applicant of his obligation to demonstrate the proposed zone change complies with all applicable amendment criteria in the development code.

3. **The property and affected area is presently provided with adequate public facilities, services and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided concurrently with the development of the property; and**

FINDINGS: The Hearings Officer finds this criterion effectively replaces with a "concurrency" requirement the provisions of former Section 10-10.33(2)(d) that required the applicant for a zone change to demonstrate it would "result in the orderly and efficient extension or provision of public services." This new requirement has two alternative components with respect to adequate public facilities and services and transportation networks: (1) that they already are in place; or (2) that they are planned to be in place concurrent with development of the subject property. These components are addressed in the findings below concerning affected public facilities and services and transportation facilities.

1. Police Protection. Because the subject property is located within the Bend city limits it will be served by the Bend Police Department. The police department did not comment on or object to the applicant's proposed zone change.

2. Fire Protection. Because the subject property is located within the Bend city limits it will be served by the Bend Fire Department. In his comments on the applicant's proposal, Dan Derlacki, Fire Inspector for the fire department, stated the applicant should be required as a condition of approval to satisfy the standard requirements of the Uniform Fire Code, including installing fire hydrants in the locations specified by the fire department and no further apart than 500 feet, and providing a minimum fire flow of 1,500 gallons per minute (gpm) with a residual pressure of 20 pounds per square inch (psi). Attached to the applicant's burden of proof as Exhibit I is an engineered fire flow analysis showing the city can provide a fire flow of 2,200 gpm with residual pressure of 73.82 psi, and stating there are existing fire hydrants in Britta Street near the northwest and southwest corners of the subject property. The applicant's modified tentative subdivision plans show the locations of two proposed new fire hydrants at the east end of the abutting segment of Halfway Road and at the east end of the proposed Milan Way. Therefore, I find residential development on the subject property will have adequate fire protection with

imposition of the conditions of approval discussed in the findings below concerning compliance with the subdivision approval criteria.

3. Water. The engineered fire flow analysis discussed in the findings above states there are two existing 8-inch water mains in Britta Street near the northwest and southwest corners of the subject property. The applicant's modified tentative plans proposed installation of a new water 8-inch water main in Britta Street between the two existing water mains as well as new water mains in Milan Way and Venice Court. In its comments on the applicant's proposal, the Engineering Division stated the applicant should be required as a condition of subdivision approval to install a water service line with a water meter and approved backflow device for each new dwelling, to provide the city with full-width exclusive 20-foot-wide utility easements for any water facilities located outside public street rights-of-way, and to demonstrate adequate fire flow. As discussed above, the Hearings Officer has found the applicant has demonstrated there will be adequate fire flow for residential development on the subject property. I further find that with imposition of conditions of subdivision approval requiring the applicant to install the proposed water facilities to the city's standards and specifications, residential development on the subject property will be provided with adequate water.

4. Sewer. As discussed in the Findings of Fact above, much of the area surrounding the subject property on the east side of O.B. Riley Road has been developed, or approved for development, with urban-density residential subdivisions. These subdivisions are served by city sewer service. In his comments on the applicant's original proposal for a 55-lot zero-lot-line subdivision, former Engineering Division Manager Michael Magee stated there are "serious major sewer issues in this area." The record indicates that in February 2007 Mr. Magee met with the applicant's engineer to determine whether and how these issues could be addressed to the city's satisfaction so that urban-density development on the subject property would have adequate sewer service.

In an electronic mail message dated March 30, 2007 Mr. Magee stated the city used a new sewer model to evaluate how input flows from the applicant's original proposal would affect the existing sewer system, and determined there was insufficient capacity in the existing system that must be mitigated in order to handle these additional flows. Mr. Magee recommended the applicant be required as a condition of subdivision approval to construct off-site sewer improvements, including upgrading the existing 10-inch sewer main in Fred Meyer Drive with a 15-inch sewer main, and to upgrade the existing Empire Estates Pump Station located southwest of the subject property to handle the additional sewage flow from the applicant's proposed development. Mr. Magee noted that the developer of the adjacent Tuscan Pines PUD was required to upgrade this pump station to handle sewage flow from that development as a condition of approval, and that the applicant and the Tuscan Pines developer had entered into an agreement to work cooperatively to upgrade this facility. Finally, Mr. Magee stated that due to the critical nature of the existing sewer system deficiencies, the applicant would not be permitted to submit a bond or other form of surety to pay the cost of the required system upgrades. In a June 6, 2007 electronic mail message, Mr. Magee identified the specific sections of sewer main requiring upgrade as MH 67-43-1 to MH 43-7-12 (10-inch to 15-inch) and MH 43-7-12 to MH 66-33-2 (10-inch to 15-inch).

At the July 12, 2007 public hearing, the applicant's engineer Tim Weishaupt testified the applicant would construct the new sewer pipe and upgrade the Empire Estates Pump Station – alone or in conjunction with the Tuscany Pines developer – to assure adequate capacity in the existing pump station to serve the proposed subdivision.

For the foregoing reason, the Hearings Officer finds that with imposition of the conditions of approval recommended by the Engineering Division the applicant will be able to extend and connect to city sewer service and the subject property will have adequate sewer service for the proposed urban-density residential development.

5. Storm Water Drainage. As discussed in the findings above, the applicant originally proposed a 55-unit zero-lot-line subdivision with private subdivision streets, and storm drainage through storm drainage easements along the southern and eastern borders of the subject property. However, the applicant's modified proposal includes public subdivision streets with storm water drainage handled through catch basins within the public street rights-of-way. In its comments on the applicant's proposal, the Engineering Division recommended approval of the applicant's proposed subdivision be subject to several conditions of approval relating to drainage. The Hearings Officer finds that with imposition of these conditions of approval residential development on the subject property will be provided with adequate storm water drainage.

6. Schools. The subject property is located within the boundaries of the Bend-La Pine School District. In his Jun3 22, 2007 comments on the applicant's modified proposal, John Rexford, the school district's Assistant Superintendent for Operations, submitted a letter stating:

"It is the policy of the Bend-La Pine School District to anticipate and respond to growth in enrollment. The school district does not take a position encouraging or discouraging growth. The District is currently operating several schools over capacity in the Bend area

The district maintains and regularly updates a 20 year sites and facilities plan. Facilities needed to house students are identified and funding is sought through periodic capital construction bond elections. In the interim, the district will use temporary classrooms and other measures to accommodate growth.

The district makes the following requests for any development: (1) any new development should have sidewalks on at least both sides of the road in order to accommodate student pedestrians; (2) all roads in developments should be public roads. Alternatively, if development has private roads the district requests a condition of approval include a perpetual easement allowing the School District vehicles to travel across the roads and a damage waiver binding on the owner of the private road that holds the School District harmless for any road damage caused by its vehicles traveling on the road."

The Hearings Officer is aware that in the November 2006 election voters approved a school district bond measure that will provide funding for the construction of several new schools and for repair to and increases in capacity for existing schools. In addition, the applicant proposes to

provide public streets within the subdivision, and to provide sidewalks on both sides of the interior subdivision streets and on the abutting sides of Halfway Road and Britta Street. For these reasons, I find the subject property will have adequate access to school services for residents of dwellings.

7. Parks. The subject property is located within the boundaries of the Bend Metropolitan Park and Recreation District. In his February 5, 2007 comments on the applicant's modified proposal, Steve Jorgensen, Planning Manager for the park district stated in pertinent part:

"The proposed subdivision lies within Neighborhood 1 of the Bend Metro Park and Recreation District Neighborhood Parks Plan (as well as the Bend Urban Area Bicycle and Pedestrian System Plan).

After review, I find that the subdivision is served by the future Harvest Park, which is planned for construction in 2007-08. There are no trail issues associated with the proposal, but I would like to remind you that the success of any Neighborhood Park is directly tied to the ability of local residents to easily and safely access them via walking and biking. Therefore, please consider the sidewalk and local street connectivity from this subdivision to the northwest towards the Harvest Park site. Also be aware that any new residential construction within the subdivision will be subject to the applicable park systems development charge as per Section 6.120(1) of the Bend City Development Code."

As discussed above, the applicant proposes to provide public street access to the subdivision lots and to construct sidewalks on both sides of subdivision interior streets and on the abutting sides of Halfway Road and Britta Street. The proposed road improvements are consistent with the city's grid street requirements, thereby providing connectivity to other public streets in the surrounding area. For these reasons, I find that with the proposed zone change the subject property will provide adequate vehicular and pedestrian access to parks for residents of dwellings.

8. Irrigation Facilities. As discussed in the Findings of Fact above, the subject property previously had 4.5 acres of irrigation water rights administered by the Swalley Irrigation District (irrigation district). In her June 28, 2007 comments on the applicant's proposal, Jan Lee, General Manager for the irrigation district, stated the applicant removed the water rights from the subject property on March 21, 2007. Ms. Lee stated the applicant/property owner had not paid the district for past due assessments and for its administrative review fee for a water rights transfer, and stated the applicant would be required to pay these fees to obtain irrigation district approval of the proposed subdivision plat. Ms. Lee also stated there is an irrigation deliver ditch serving adjacent parcels that goes into the subject property and that must be capped off at the property line. As discussed in the findings below concerning compliance with the subdivision approval criteria, the Hearings Officer has found the applicant will be required as a condition of approval to comply with the irrigation district's requirements prior to filing the final subdivision plat for approval.

9. Transportation Facilities. As discussed above, the subject property is located on the east side of Britta Street and on the south side of the easterly extension of the Halfway Road right-of-way. The record indicates Britta Street is a designated collector street and Halfway Road is a designated local street. In support of his original proposal for a 55-unit, zero-lot-line subdivision, the applicant submitted a traffic impact study (hereafter "traffic study") dated November 2006 and prepared by Sage Engineering Associates, LLC. This traffic study is included in the record as Exhibit E to the applicant's original burden of proof. In support of his modified proposal for a 13-lot subdivision, the applicant submitted another traffic study dated May 2007 prepared by Sage Engineering (hereafter "revised traffic study"). The revised traffic study is included in the record as Exhibit D to the applicant's modified burden of proof.

The revised traffic study assumed the subject property would be developed with either a 13-lot or 14-lot subdivision with up to 75 apartment units. The revised traffic study predicted 75 apartment units would generate 475 average daily vehicles trips (ADTs), of which 42 trips would occur during the p.m. peak hour (4:00 p.m. to 6:00 p.m. weekdays). The revised traffic study analyzed the impact of this projected traffic on the capacity and function of the intersections of Britta Street with Halfway Road and Milan Way in the years 2008, 2013 and 2021. Based on this analysis, the revised traffic study concluded both affected intersections would function at acceptable levels of service with the addition of subdivision-generated traffic and with the intersection improvements proposed to be constructed by the applicant on conjunction with subdivision development. In fact, the traffic study concluded these intersections would continue to function at level of service (LOS) A, the highest level of intersection function. In addition, the revised traffic study found the two study intersections would have adequate sight distance. The Hearings Officer understands the subject property may be developed with multi-family residential uses other than apartments, and that these other uses may generate different amounts of traffic. Nevertheless, I find the type and density of residential uses analyzed in the traffic study is appropriate, and that I can find from the traffic study's conclusions concerning traffic impacts from 75 apartment units that development of the subject property with other types of multi-family residential uses would have similar traffic impacts.

For the foregoing reasons, the Hearings Officer finds adequate public facilities and services -- including water for domestic use and fire flow, sewage disposal, police and fire protection, parks, schools, irrigation and transportation facilities -- currently are available to the subject property and will be available with development of a 13-lot residential subdivision developed with multi-family residential uses. And as discussed in the findings below concerning compliance with the subdivision approval standards, I further find the applicant will be subject to conditions of subdivision approval requiring the applicant to design, construct and install all required urban infrastructure including streets within and adjacent to the subject property to the city's applicable standards and specifications, thus assuring all required facilities and services will be in place concurrent with such development. Therefore I find the applicant's proposed zone change satisfies this criterion.

4. **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**

**Section 4.6.600; Transportation Planning Rule
Compliance.**

FINDINGS:

1. Mistake or Inconsistency. The applicant does not argue there was a mistake in the original RS zoning of the subject property, but argues there is an inconsistency between the RM designation on the plan map and the existing RS zoning. The applicant argues approval of the proposed zone change is justified to conform the zoning to the plan designation.

2. Change in the Neighborhood or Community. The applicant argues, and the Hearings Officer agrees, that the proposed zone change from RS to RM is justified by changes to the neighborhood and community since the property was zoned RS, consisting of the city's 1998 amendment to its comprehensive plan to increase the density of development permitted on the subject property and adjoining land as well as the extension of city sewer service to this part of Bend of low-density properties such as the subject property.

3. Transportation Planning Rule Compliance. Section 4.6.600 of the development code provides as follows:

When a development application includes a proposed comprehensive plan amendment or land use district change, or both, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060.

OAR 660-012-0060, Plan and Land Use Regulation Amendments, provides as follows:

- (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 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.

FINDINGS: The Hearings Officer finds the proposed zone change will not, in and of itself, have any impact on transportation facilities. As discussed in detail in the findings above, the applicant submitted a revised traffic study which predicts that traffic generated by 75 apartment units developed on the subject property would not exceed the capacity of the two study intersections, and that such intersections would continue to function at acceptable levels of service in 2008, 2013 and 2021 – i.e., would not result in levels of travel that are inconsistent with the functional classification of Britta Street and Halfway Road. Based on the revised traffic study, I find the proposed zone change also will not change the functional classification of, or the standards applicable to, Britta Street and Halfway Road. Finally, I have found that as a condition of subdivision approval the applicant will be required to design, construct and install all required transportation facility improvements to the city’s applicable standards and specifications. For these same reasons, incorporated by reference herein, I find the proposed zone change will not “significantly affect a transportation facility,” and therefore is consistent with the TPR.⁵

2. Chapter 4.7, Transportation Analysis

a. Section 4.7.100, Purpose and Authority

* * *

C. Applicability. Land use actions will be reviewed for impacts and potential mitigation through a Transportation Impact Study.

1. Land Use Actions. A Transportation Impact Study

⁵ The applicant argues application of the TPR to the proposed zone change amounts to an unlawful “collateral attack” on the city’s comprehensive plan findings the applicant asserts “conclusively resolved” any questions concerning the adequacy of transportation facilities to handle the increased density of residential development contemplated by the plan when it designated the subject property RM. The Hearings Officer disagrees. As the applicant acknowledges, since the current comprehensive plan was adopted in 1998, the city consistently has required an analysis of compliance with the TPR for all proposed zone changes as required by the TPR.

(TIS) shall be required for development projects when the land use involves one or more of the following actions:

- a. A comprehensive plan map amendment; or
- b. A zone change; or
- c. A land use action that takes access or seeks to take access directly onto an arterial or collector facility or within 300 feet of an interchange, ramp terminal, arterial-arterial intersection, arterial-collector intersection or collector-collector intersection; or
- d. A land use action where the forecast net increase in site traffic volume is greater than 100 Average Daily Trips (ADT).

b. Section 4.7.200 Transportation Impact Study

- A. The Transportation Impact Study shall be prepared under the responsible charge of a professional engineer licensed in Oregon, and qualified to perform such studies.

* * *

c. Section 4.7.400, Approval Criteria

Prior to land use approval, the City must review the applicant's transportation analysis to determine whether or not the proposal will create excessive demand on the public facilities and services required to serve the proposed development. The City will assess the impacts of new development on the transportation system. The key factors used to assess the impacts to the transportation system include, but are not necessarily limited to:

- number of trips by all modes associated with the proposal,
- turning movement demand by vehicles of various types,
- operations analyses results,
- location of the project,
- safety issues, location of the driveways (evaluated for conflict points and location criteria established in Chapter 3.1, Access, Circulation and Lot Design).

* * *

Zone changes and Bend Urban Area General Plan map amendments cannot be granted if the Transportation Impact Study shows that the proposed development would overburden the City's existing or planned transportation facilities now or in the future. The Transportation Impact Study must demonstrate that compliance with the TPR and the operations standards of the City of Bend Development Code can be achieved within the adopted Bend Urban Area System Plan. * * *.

FINDINGS: As discussed in the findings above, the applicant submitted a revised traffic study in support of its modified proposal for a 13-lot residential subdivision. The record indicates the city's Traffic Engineer Robin Lewis found this traffic study satisfies the city's requirements for such studies. The revised traffic study analyzed the transportation system impacts described in this section. As discussed in the findings above, I have found the applicant's traffic study demonstrates that urban-density residential development on the subject property under the proposed RS zoning would not significantly affect a transportation facility under the TPR, that both affected intersections will function at acceptable levels of service in 2008, 2013 and 2021 with the addition of traffic generated by such urban-density residential development, and that adequate transportation facilities therefore are available and will be available with development of the subject property. For these reasons, I find the applicant's proposal satisfies this criterion.

For the foregoing reasons, the Hearings finds the applicant's proposed zone change from RS to RM satisfies or will satisfy all applicable zone change criteria.

RM ZONE STANDARDS

3. Chapter 2.1, Residential Districts

a. Section 2.1.200, Permitted Land Use

- A. Permitted Uses.** The land uses listed in Table 2.1.200 are permitted in the Residential Districts, subject to the provisions of this Chapter. Only land uses that are specifically listed in Table 2.1.200, land uses that are incidental and subordinate to a permitted use and land uses that are approved as "similar" to those in Table 2.1.200 may be permitted.

* * *

Table 2.1.200 – Permitted Land Uses

<u>Land Use</u>	<u>RM</u>
Residential	
Attached Single-Family Townhomes	

Multi-family Housing (more than 3 units)

FINDINGS: The applicant's modified proposal is for a 13-lot residential subdivision to be development with multi-family uses permitted outright in the RM Zone.

b. Section 2.1.300, Building Setbacks

* * *

C. Front Yard Setbacks

* * *

2. RS, RM-10, RM, and RH, Districts:

- a. **A minimum front yard setback of 10 feet and a maximum setback of 20 feet is required.**

FINDINGS: The Hearings Officer finds the proposed lots are of sufficient size to accommodate development of multi-family residential uses meeting the minimum RM Zone front yard setback.

- b. **Garages and carports shall be accessed from alleys where practical, otherwise garages with street access shall be set back 20 feet from the front property line.**

FINDINGS: The modified tentative plan shows garage access from a 20-foot-wide private alley at the rear of the seven lots north of Milan Way and west of Venice Court. The remaining six lots would have garage and driveway access directly from Milan Way or Venice Court. The applicant argues, and the Hearings Officer agrees, that providing rear alley access for the two proposed lots along the eastern property boundary north of Milan Way would be impractical considering the rock outcropping in that area. And I find providing rear alley garage access to the four lots south of Milan Way would not be possible because the alley would require direct access to Britta Street closer than 300 feet from Milan Way which would not be consistent with the city's standards for intersection separation. I further find the proposed lot sizes are large enough to accommodate garages for multi-family dwellings meeting the 20-foot minimum setback. For these reasons, I find the applicant's proposal satisfies this criterion.

c. Exceptions.

* * *

- iii. **Front yards abutting an arterial or collector street shall be 20 feet for all structures with no maximum setback applied.**

FINDINGS: Britta Street is a designated collector street. Proposed 1, 9, 10 and 11 abut Britta Street although only Lot 10 would front on Britta. The applicant's modified burden of proof states all structures on these lots will be set back 20 feet from Britta Street.

D. Rear Yard Setbacks.

* * *

2. **RS and RM-10: The minimum rear yard shall be 5 feet. The rear setback shall step-back ½ ft for each foot by which the building height exceeds 15 feet.**

RM and RH Districts :

- a. **For single family dwellings – the rear yard setbacks for the RS zone shall apply.**

FINDINGS: The Hearings Officer finds the proposed lots will be of sufficient size to accommodate multi-family dwellings meeting the minimum RM Zone rear yard setbacks.

E. Side Yard Setbacks.

* * *

3. **RM and RH Districts: The minimum side yard setbacks shall be 5 feet, except when abutting the RS zone or an existing single family home, the sum of the side yard setback shall increase ½ ft for each foot by which the building height exceeds 20 ft, unless otherwise exempted in subsection 2.1.300F below.**

FINDINGS: The Hearings Officer finds the proposed lots will be of sufficient size to accommodate multi-family dwellings meeting the minimum RM Zone side yard setbacks. I find none of the proposed lots abuts an RS Zone or a lot with a single-family dwelling.

6. **Single-family homes in multi-family zoning districts shall apply the setback standards of the RS zone.**

FINDINGS: The Hearings Officer finds this criterion does not apply because the applicant is not proposing single-family homes.

8. **On site surface water drainage shall be retained on the lot of origin and not trespass onto the public right of way or private property including roof drainage.**

FINDINGS: As discussed in the findings above, the applicant proposes to accommodate storm

water drainage through catch basins located with the public street rights-of-way constructed in accordance with the city's standards and specifications. The Hearings Officer finds these facilities will retain surface water drainage on site.

G. Residential Compatibility Standards. The following standards shall apply to new lots or parcels created through either a subdivision and/or partition platted after February 20, 2004:

* * *

2. Applicability. The residential compatibility standards shall apply to all RS zoned development properties that are abutting existing residential property, excluding land in the RM and RH zoning districts, which have a lot size of 8,000 square feet or greater.

FINDINGS: The Hearings Officer finds the residential compatibility standards in this subsection are not applicable because I have recommended approval of the proposed zone change for the subject property from RS to RM, and the subject property abuts IL-zoned properties to the north, northeast, east and south and RM-zoned property to the west across Britta Street.

c. Section 2.1.500, Lot Area and Dimensions

Lot areas and lot dimension standards for residential uses are listed in Table 2.1.500, below. Exceptions to these standards may be approved subject to Master Planned Development approval (see Chapter 4.5) For other residential uses listed in Table 2.1.200, the lot area and dimensions are subject to the type of residential structure being occupied. Lot development shall be in conformance with Section 2.1.600; Residential Density.

FINDINGS: Under Table 2.1.500, multi-family dwellings require a minimum lot area of 2,500 square feet for the first unit, 2,000 square feet for each additional unit, a minimum width of 30 feet and a minimum depth of 80 feet. Duplexes and triplexes require minimum lots sizes of 4,500 and 6,500 square feet, respectively, with a minimum lot width of 30 feet and no minimum lot depth. The Hearings Officer finds all proposed lots satisfy these standards.

d. Section 2.1.600 Residential Density

A. Residential Density Standard. The following density standards apply to all new developments and subdivisions in all of the Residential Districts. Redevelopment or expansion of existing uses within areas of existing land use patterns shall comply with these standards to the extent practical. The density standards shown in Table 2.1.600 below are intended to ensure efficient use of buildable lands and provide for a range of

needed housing, in conformance with the General Plan.

1. The density standards may be averaged over more than one development phase (i.e., as in a master planned development). Duplex and triplex lots used to comply with the density standard shall be so designated on the final partition or subdivision plat.

FINDINGS: The applicant proposes, and the Hearings Officer finds he will be required as a condition of approval to, show on the final subdivision plat any duplex or triplex lots used to comply with this density standard.

**Table 2.1.600
Residential Densities**

Residential Zone	Density Range	Primary Uses
Medium Density Residential (RM)	7.3– 21.7 units / gross acre	Attached multi-family housing

- C. **Density Calculation.** Maximum housing densities are calculated by multiplying the parcel or lot area, including the area for streets being dedicated, by the applicable density standard. For example, if the total site area is five (5) acres, and the maximum allowable density is 7.3 dwelling units per acre, then a maximum number of 36 units are allowed, regardless of the amount of land area dedicated for public right of way or open space in conjunction with the project.

FINDINGS: The applicant's modified burden of proof states the maximum density permitted on the subject property in the RM Zone would be 118.5 dwelling units. Development of the subject property with 75 multi-family dwelling units as analyzed in the applicant's revised traffic study would result in a density of 13.7 dwelling units per gross acre, well within the RM Zone density range of 7.3 to 21.7 dwelling units per acre.

For the foregoing reasons, the Hearings Officer finds the applicant's proposal satisfies all applicable RM Zone approval criteria.

SUBDIVISION APPROVAL CRITERIA

3. Chapter 4.3, Land Divisions
 - a. Section 4.3.300, Approval Process
 - A. **Phased Tentative Plan.** An overall development plan shall be submitted for all developments affecting land under the same ownership for which phased development is contemplated. The

Review Authority shall review a phased development plan at the same time the tentative plan for the first phase of a phased subdivision is reviewed. The phased development plan shall include, but not be limited to the informational requirements of Section 4.3.200; General Requirements of this ordinance, as well as the following elements:

- B. Approval of a Master Planned Development. As an alternative to a phased tentative plan, a Master Planned Development plan may be submitted in conformance with Chapter 4.5. Any tentative plan submitted subsequently for the Master Planned Development area shall substantially conform to the approved Master Planned Development plan unless approved otherwise by the City.**

FINDINGS: The Hearings Officer finds these criteria are not applicable because the applicant does not propose phased development of the subdivision.

- C. Development Options. If the subject property and the surrounding area is eligible for Mid-block Development, the proposed development plan design shall enable the future development of Midblock Development for the adjoining properties.**

FINDINGS: The applicant and staff note the city's development code does not define the term "Midblock Development." For this reason, the applicant argues this criterion cannot be applied to the proposed subdivision. The staff report states, and the Hearings Officer agrees, that whatever may be the meaning of this term, the applicant is not proposing anything other than a standard subdivision, and therefore this criterion is not applicable.

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

FINDINGS: The applicant argues, and the Hearings Officer concurs, that because the city's comprehensive plan does not establish mandatory approval criteria for a quasi-judicial subdivision application, and because the plan is implemented by the development code compliance with which is discussed throughout this decision, this paragraph does not establish a subdivision approval criterion separate from those set forth and discussed below.

- 1. No application for subdivision or partition shall be**

approved unless the following requirements are met:

- a. **The land division contributes to orderly development and land use patterns in the area, and provides for the preservation of natural features and resources such as streams, lakes, natural vegetation, special terrain features, and other natural resources to the maximum degree practicable as determined by the City of Bend.**

FINDINGS: In numerous previous decisions, the Hearings Officer has held that the “orderly development” requirement in both the city’s former zoning ordinance, Ordinance NS-1178, and the city’s new development code requires the applicant to demonstrate that the proposed development would not exceed the density allowed in the zone and would be consistent with the land use pattern in the surrounding area.⁶ As discussed in the Findings of Fact above, the land surrounding the subject property has a mixture of zoning districts from RS to IL, and land to the west and southwest has been re-zoned RM and developed or approved for development with the Tuscany Pines 99-unit PUD and the 68-unit West View zero-lot-line subdivision. As discussed above, development of the subject property with a 13-lot subdivision with up to 75 apartment units on the 5.46-acre subject property would result in a density of 13.7 dwelling units per acre, well within the density range of 7.3 to 21.7 dwelling units per acre established in the comprehensive plan for the RM Zone.

With respect to the preservation of natural features and resources, the record indicates the subject property has scattered trees along the western and northeastern boundaries, and rock outcrops along the eastern and southwestern boundaries. However, the record indicates these rock outcrops have not been identified as Areas of Special Interest on the city’s plan or zoning map. In its comments on the applicant’s proposal, the Long-range Planning Department stated the applicant should be required to submit a tree preservation plan that demonstrates how trees on the property will be preserved. The applicant’s modified tentative plan identifies the trees to be removed for construction – including a number of trees along the western boundary that would be within the proposed right-of-way for Britta Street – as well as four trees near the northeast corner of the property that would be preserved. Finally, as discussed extensively elsewhere in this decision, I have found adequate city sewer and water service will be available for the proposed residential development and the existing and proposed city streets will be adequate to accommodate traffic generated by the proposed development.

For the foregoing reasons, the Hearings Officer finds the applicant’s proposal satisfies this criterion.

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

⁶ E.g., *Gannon Point* (PZ-06-501, PZ-06-558); *Petrich* (PZ-07-134).

FINDINGS: As discussed in the findings above concerning compliance with the zone change approval criteria, the Hearings Officer has found the applicant has demonstrated his proposed zone change in order to develop the subject property with a 13-lot subdivision with multi-family residential uses will be provided with adequate public facilities, services and transportation network to support the use, or such facilities, services and transportation networks are planned to be provided concurrently with the development of the property. For these same reasons, incorporated by reference herein, I find the applicant's proposed subdivision will not create excessive demand on public facilities and services required to serve the proposed development.

- c. **The land division contributes to the orderly development of the Bend area transportation network of roads, bikeways, and pedestrian facilities, and does not conflict with existing public access easements within or adjacent to the land division.**

FINDINGS: The record indicates there are no public access easements within or adjacent to the subject property with which the proposed subdivision would conflict. The applicant's original proposal included private subdivision streets. However, the modified proposal includes two public subdivision streets – Milan Way and Venice Court. The applicant proposes to dedicate 60 feet of right-of-way for these streets and to improve them to the city's standards and specifications for local public streets including 36 feet of pavement and a curb and five-foot-wide sidewalk on both sides of the street. The applicant also proposes to create a 20-foot-wide private alley to provide rear alley access to the subdivision lots abutting Britta Street and two of the lots abutting Halfway Road. The applicant also proposes to dedicate 30 feet of right-of-way for the segment of Halfway Road from Britta Street to the subject property's eastern boundary, and to improve that street segment to the city's 3/4 local street standards including 24 feet of pavement and a curb and five-foot-wide sidewalk on the abutting (south) side of the street.

The applicant proposes to dedicate right-of-way for the abutting segment of Britta Street to provide a total of 80 feet of right-of-way as required for a collector street. The amount of right-of-way dedication would vary along this street segment because of the varying amounts of right-of-way that have been dedicated by other property owners. The applicant proposes to improve the abutting segment of Britta Street with 52 feet of pavement, and a curb, five-foot-wide sidewalk and striped bicycle lane on the abutting (east) side of the street. The city's traffic engineer Robin Lewis requested that the applicant also install a median on Britta Avenue. However, as discussed in the findings below, the Hearings Officer has found a median is not justified on this segment of Britta. Finally, as discussed in the findings above, the applicant's revised traffic study indicates development of the proposed subdivision with RM-density residential development will not exceed the capacity of affected intersections.

For the foregoing reasons, the Hearings Officer finds that with the right-of-way dedication and improvements proposed by the applicant, the proposed subdivision will contribute to the orderly development of the Bend area transportation network and will not conflict with any public access easements.

d. The proposed land division provides a variety of lot sizes in conformance with the following standards:

i. No more than 50% of the lots are the same size with a size differential of 10% or more except for zero lot line attached housing.

FINDINGS: As discussed in the Findings of Fact above, the proposed subdivision lots range in size from 6,911 to 21,638 square feet. Only three of the lots, proposed Lots 1-4, are the same size. Therefore the Hearings Officer finds the applicant's proposal satisfies this criterion.

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

FINDINGS: The applicant proposes to develop the subdivision lots with multi-family dwelling units permitted outright in the RM Zone. Therefore, the Hearings Officer finds the applicant's proposal satisfies this criterion.

f. An approved water rights division plan.

FINDINGS: The record indicates the applicant has removed 4.5 acres of Swalley irrigation water rights from the subject property. Therefore, the Hearings Officer finds the applicant will not be required to submit an approved water rights. However, as discussed above, I have found the applicant will be required as a condition of approval to comply with other requirements of the irrigation district prior to submitting the final subdivision plat for approval.

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

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

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

FINDINGS: The Hearings Officer finds the provisions of ORS Chapter 92 including ORS 92.090 are implemented through the city's development code, and therefore compliance with the code will assure compliance with ORS Chapter 92 and ORS 92.090.

i. If the tentative plan is approved with phasing, the final plat for each phase shall be filed in accordance with the applicable provisions of

Article IV of this ordinance.

FINDINGS: The Hearings Officer finds this criterion does not apply because the applicant proposes a single-phased subdivision.

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

a. **Placement and availability of utilities.**

FINDINGS: The applicant proposes to extend city sewer and water service to the subject property and place such installations within public street rights-of-way.

b. **Safety from fire, flood, and other natural hazards.**

FINDINGS: The record indicates the subject property is not in flood hazard area or other natural hazard area.

c. **Adequate provision of public facilities and services.**

FINDINGS: As discussed extensively in findings elsewhere in this decision, incorporated by reference herein, the Hearings Officer has found RM-density residential development on the subject property will be served by adequate public facilities and services.

d. **Possible affects on natural, scenic, and historical resources.**

FINDINGS: The Hearings Officer finds this factor is not applicable because the subject property does not contain natural, scenic or historical resources requiring preservation or protection.

e. **Need for onsite or offsite improvements such as, but not limited to, access corridors, pedestrian facilities, and bikeways.**

FINDINGS: As discussed in findings elsewhere in this decision, the applicant will be required as a condition of approval to improve Britta Street from Halfway Road south to the subject property's southern boundary to the city's standards and specifications for collector streets, and to improve Halfway Road from Britta Street to the eastern property boundary, including sidewalks on the abutting sides of the street and a striped bicycle lane on the abutting side of Britta Street. As also discussed above, the applicant's revised traffic study did not recommend any off-site street improvements.

- f. **Need for additional setback, screening, landscaping, and other requirements relative to the protection of adjoining and area land uses.**

FINDINGS: The Hearings Officer finds there is no need for additional setbacks, screening, landscaping or other requirements under this paragraph.

- g. **Conformance with the approved master development plan, master facilities plan and refinement plan.**

FINDINGS: The Hearings Officer finds this criterion is not applicable because the city's master planning and refinement plan criteria do not apply to the subject property or the applicant's proposed development.

4. Chapter 3.1, Access Circulation and Lot Design

a. Section 3.1.200, Lot and Block Design

Orderly development of neighborhoods requires thoughtful lot layout. The size, width, topography and orientation of lots or parcels shall be appropriate for the location of the land division and for the type of development and use contemplated. New lot development shall be consistent with the lot development provisions herein.

A. General Requirements for Lots and Parcels

- 1. **In areas not served by public sewer, the minimum lot and parcel sizes may be larger than specified in the zoning district in order to comply with the requirements of the Department of Environmental Quality and the County Environmental Health Division and shall be of sufficient size to permit adequate sewage disposal. Any problems posed by soil structure and water table as related to sewage disposal by septic tank shall be addressed and resolved in the applicant's initial plan.**

FINDINGS: The Hearings Officer finds this criterion is not applicable because the proposed subdivision would be served by city sewer and water services.

- 2. **Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.**

FINDINGS: The Hearings Officer finds this criterion is not applicable because the applicant is not proposing commercial or industrial uses.

3. **In steep terrain, increased lot or parcel sizes may be required to avoid excessive cuts, fills and steep driveways.**
4. **On tracts containing water courses or rock outcroppings, increased lot or parcel sizes may be required to allow adequate room for development and protection of the topographic or natural feature.**

FINDINGS: The record indicates there are no water courses on the subject property. However, as discussed in the findings above, the eastern boundary of the subject property has rock outcrops and somewhat steeper terrain. The proposed subdivision includes relatively large lots – 9,067, 15,507 and 21,638 square feet -- on the eastern subdivision boundary to account for these terrain features. Therefore the Hearings Officer finds the applicant's proposal satisfies this criterion.

5. **Each lot or parcel shall abut upon a street other than an alley for the minimum width required for lots or parcels in the zone, except for lots or parcels fronting on the bulb of a cul-de-sac, where the minimum frontage shall be 30 feet, approved flag lots, and for lots in zero-lot-line developments, where the minimum frontage shall be 20 feet. In zones where a minimum lot width is not specified, the minimum frontage requirement shall be 50 feet.**

FINDINGS: The Hearings Officer finds all proposed lots will abut a public street for at least 30 feet, the minimum lot width for multi-family dwellings in the RM Zone.

6. **All side lot or parcel lines shall be at right angles to the street lines or radial to curved streets for at least ½ the lot depth wherever practical.**

FINDINGS: The Hearings Officer finds all side lot lines satisfy this criterion.

7. **Double frontage or through lots and parcels shall be prohibited except where they are essential to provide separation of residential development from major streets or adjacent nonresidential activities, or to overcome specific disadvantages of topography and orientation.**

FINDINGS: The Hearings Officer finds this criterion is not applicable because no double frontage or through lots are proposed.

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

FINDINGS: The Hearings Officer finds the eight proposed corner lots are at least 80 feet wide, therefore satisfying this standard.

9. **Solar Access. As much solar access as feasible shall be provided each lot in every new subdivision, considering topography, development pattern and existing vegetation. New subdivision development shall orient streets east/west to maximize solar access where practical.**

FINDINGS: As discussed in the findings above, the Hearings Officer has recommended approval of the applicant's proposed zone change from RS to RM. Section 3.5.400(D)(3)(b) exempts from the city's solar access all lots in the RM Zone "except where the north lot line abuts an RS, RL, SR 2½, or UAR-10 zone." The record indicates the north lot line of the subject property abuts land zoned IL. Therefore I find the applicant's proposal is exempt from the solar access standards. Nevertheless, I find proposed subdivision provides as much solar access as feasible considering the location and orientation of Britta Street and Halfway Road, the configuration of the subject property, existing development patterns in the surrounding area, and the city's requirement of only a single subdivision street connection with Britta Street in order to meet its minimum intersection spacing requirements. In addition, Milan Way, an east-west street, will extend from Britta Street east to the subject property's eastern boundary, and Venice Court, a north-south street, will provide access to only four lots.

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

FINDINGS: The Hearings Officer finds the applicant will be required as a condition of approval to install all utilities underground and to comply with the other requirements of this subsection.

B. Street Connectivity and Formation of Blocks Required. In order to promote efficient vehicular and pedestrian circulation along parallel and connecting streets throughout the City, land divisions and site developments shall produce complete blocks bounded by a connecting network of public and/or private streets, in accordance with the following standards:

1. Block Length and Perimeter. The block lengths and perimeters shall not exceed the following standards as measured from centerline to centerline of through intersecting streets.

a. 660 feet block length and 2,000 feet block perimeter in all Residential zones;

FINDINGS: The Hearings Officer finds the proposed blocks satisfy this criterion. The staff report and applicant state, and I concur, that because the land to the north, east and south of the subject property is not located in a residential zone, such land is not subject to the block perimeter requirement.

2. New street connections to arterials and collectors shall be governed by those requirements in Section 3.1.400; Vehicular Access Management.

FINDINGS: The proposed subdivision's compliance with the requirements of Section 3.1.400 is discussed in the findings below.

3. New developments shall construct planned streets (arterials and collectors) and construct and extend local streets in their proper projection to maintain the function of the street and provide the desirable accessible pattern of orderly development of streets and blocks.

FINDINGS: The applicant proposes to dedicate adequate right-of-way for improvements to the abutting segments of Britta Street and Halfway Road so they will connect with the segments of these streets in the surrounding area in their proper projections.

b. Section 3.1.300, Pedestrian Access and Circulation

A. Purpose. To ensure safe, accessible, direct and convenient pedestrian circulation by developing an off-street system of trails and pedestrian ways in addition to the public sidewalks throughout the City. The pedestrian and circulation system shall implement the Bend Urban Area Transportation System Plan and General Plan goals and policies.

B. On-Site Pedestrian Facility Development. For all developments except single family residences, the applicant shall demonstrate how full pedestrian access and circulation is being achieved based on the following development criteria. Accessible pedestrian ways shall:

* * *

C. Pedestrian Facility Development Standards. On-site pedestrian facilities shall conform to the following standards:

* * *

FINDINGS: The staff report states, and the Hearings Officer agrees, that these criteria are applicable at the time of site plan review when specific plans and designs for buildings, parking areas, sidewalks and pedestrian pathways have been proposed and can be reviewed for compliance with these criteria.

D. Public Pedestrian System Development

1. Sidewalks. Developments subject to site development review or tentative plan review may be required construction of off-site sidewalks along routes to schools and parksites.

FINDINGS: The applicant has proposed to construct sidewalks on both sides of interior subdivision streets as well as on the abutting sides of Britta Street and Halfway Road. The record indicates there are no nearby routes to schools or park sites that require off-site sidewalk construction.

2. Trails. Developments subject to site development review or tentative plan review and having a trail alignment designated on the City of Bend Urban Area Bicycle and Primary Trail System Plan shall be required to dedicate either right-of way or an access easement to the public for a primary or connector trail as a condition of site development approval or a land division as outlined below.

FINDINGS: According to the Bicycle and Primary Trail System Plan Map no trail is planned on the subject property. In addition, as discussed in the findings above, the park district did not identify any trail issues with the subject property. However, because Britta Street is a designated collector, the applicant will be required as a condition of approval to provide a striped bicycle lane on the abutting side of the street.

E. Other Design and Construction Considerations. Public

pedestrian facilities shall conform to all of the standards in Subsections 1-4 listed below:

1. **Vehicle/walkway Separation.** Where walkways are parallel and adjacent to a driveway or street (public or private), they shall be raised six inches and curbed, or separated from the driveway/street by a five-foot minimum landscaped strip. Special designs may be permitted if this five-foot separation cannot be achieved.

FINDINGS: The modified tentative plan shows 5-foot-wide concrete sidewalks on both sides of the interior subdivision streets and on the abutting sides of Britta Street and Halfway Road that are raised 4 inches above the road surface and separated from the travel lane by a 12-inch curb. As discussed in the findings above, the Hearings Officer has found the applicant will be required as a condition of approval to construct a 6-foot-wide sidewalk on the east side of Britta Street. With imposition of this condition of approval, I find the applicant's proposal satisfies this criterion.

c. Section 3.1.400, Vehicular Access Management

- A. **Applicability.** This section shall apply to all public and private streets within the City and to all properties that abut these streets.
- B. **Approval of Access Required.** Access shall comply with the following procedures:
 1. **Permission to access City streets** shall be subject to review and approval by the City Engineer based on the standards contained in this Chapter, the provisions of Chapter 3.4 Public Improvement Standards, and where applicable, any pertinent access management agreements between ODOT and the City. Access will be evaluated and determined as a component of the land use decision process and constructed as detailed in the review and decision of the land use.
 2. **Permits for access to State highways** shall be subject to review and approval by the Oregon Department of Transportation (ODOT), except when ODOT has delegated this responsibility to the City or Deschutes County. In that case, the City or County shall determine whether access is granted based on ODOT adopted standards.

3. **Permits for access to County highways shall be subject to review and approval by Deschutes County, except where the County has delegated this responsibility to the City, in which case the City shall determine whether access is granted based on their adopted standards.**

FINDINGS: The applicant is not proposing access onto any state or county highways. The applicant will be required as a condition of approval to obtain approval from the city for access to city streets.

- C. **Traffic Study Requirements. The City or other agency with access jurisdiction shall require a transportation impact analysis as required in Chapter 4.7 Transportation Analysis.**

FINDINGS: As discussed in the findings above, the applicant submitted a traffic study in support of its modified proposal, and the city's traffic engineer found this study satisfies the city's requirements for such studies.

- D. **Conditions of Approval. The City or other agency with access permit jurisdiction may require the closing, consolidation, or relocation of existing curb cuts or other vehicle access points, recording of reciprocal access easements (i.e., for shared driveways and cross access routes), development of frontage or backage streets, installation of traffic control devices, and/or other mitigation measures that comply with the Bend Urban Area Transportation System Plan, the City of Bend Development Code, and are approved by the City Engineer as a condition of granting an access permit or access approval, to ensure the safe and efficient operation of the street and highway system.**

FINDINGS: As discussed in the findings above, the applicant's revised traffic study did not recommend any off-site street or intersection improvements. The applicant does propose, and will be required as a condition of approval, to close the existing driveway to the existing dwellings. For these reasons, the Hearings Officer finds no additional condition of approval regarding access is required.

- E. **Access Requirements.**

1. **Access Options. When vehicle access is required for development (i.e., for off-street parking, delivery, service, drive-through facilities, etc.), access shall be provided by one of the following methods as determined by the City Engineer, unless one method is specifically required by this ordinance.**

* * *

FINDINGS: The staff report states, and the Hearings Officer agrees, that this criterion is not applicable to the applicant's proposed subdivision because it applies to development on existing lots, and because Subsection (F), discussed below, is applicable to land divisions.

F. New Lot Development. New lots created through land division that have frontage onto an arterial or collector street shall provide alternative options for access as indicated below:

1. **Residential lots shall be required to provide alley access to the individual lots fronting onto the arterial or collector.**
2. **Exception to residential alleys: If due to physical or topographical constraints, the Planning Director may determine that an alley is impractical. In this situation, double frontage lots may be permitted.**

FINDINGS: As discussed in the findings above, the applicant has proposed access from a 20-foot-wide private alley for the seven lots abutting Britta Street and Halfway Road north of Milan Way and west of Venice Court. The remaining six lots would have garage and driveway access from either Milan Way or Venice Court. The Hearings Officer has found that providing alley garage access for the two lots along the eastern property boundary would be impractical considering the rock outcropping in that area, and that providing alley garage access to the four lots south of Milan Way would be prohibited because it would require direct access from the alley to Britta Street too close to the intersection with Milan Way. For these reasons, I find the applicant's proposal satisfies this criterion.

4. **The subdivision shall also provide for local street grid connections to the arterial and collector street as designated in this Chapter of the City of Bend Development Code.**

FINDINGS: The proposed subdivision plat shows Milan Way, a local street, connecting with Britta Street at the point where the Tuscany Pines development to the west has proposed a cul-de-sac and where a future street connection could be provided. It also shows both Milan Way and Halfway Road extending to the eastern property boundary where they would be stubbed off to provide for future street connections to the east. However, as discussed in the findings above, the proposed location of the Britta Street/Milan Way intersection requires approval of an exception to the street access spacing requirements.

G. Access Spacing. * * *

* * *

Driveway access spacing onto roadways under the jurisdiction of the City shall be regulated by the following standards, unless otherwise approved by the City Engineer:

- 1. Driveway Spacing:**
 - a. Local Streets shall be ten feet (10') minimum spacing as measured from edge of driveway to edge of driveway.**

FINDINGS: The staff report states, and the Hearings Officer concurs, that compliance with these driveway spacing standards will be evaluated at the time of site plan review when specific building and driveway locations are identified. However, I find the proposed lots are of adequate width to provide driveways meeting this driveway spacing standard.

- 2. Spacing between Driveways and Intersections:**

FINDINGS: The staff report states, and the Hearings Officer agrees, that compliance with these spacing requirements also will be evaluated at the time of site plan review, but that the proposed lots are of sufficient size to accommodate development meeting these spacing standards.

- 3. Access to Arterial and Collector Roadways. Access to arterials and collectors is permitted provided the intersection or driveway can be constructed to comply with the City of Bend Standards and Specifications, as well as all of the requirements of this Chapter of the Bend Development Code. Overall, full access intersections or driveways are allowed every 900 feet on arterials and collectors, while limited access intersections or driveways on arterials and collectors are allowed every 300 feet. Exceptions may be granted as discussed below.**
- 4. Access Spacing Exceptions. An exception for access spacing and directional restrictions on City streets may be granted by the City in conformance with Chapter 5.1, Variances. (Emphasis added.)**

FINDINGS: The modified subdivision plat proposes a full-access intersection between Britta Street, a designated collector street, and Milan Way, a designated local street, approximately 370 feet south of the intersection of Britta Street and Halfway Road. Therefore, the applicant has requested an exception to the access spacing requirements that allows full access intersections only every 900 feet. The above-underscored language requires the applicant to justify the proposed exception "in conformance with Chapter 5.1, Variances."

The Hearings Officer finds there are two threshold issues that must be addressed. First, as

discussed in the findings below, the city's traffic engineer Robin Lewis initially recommended that the applicant be required to construct a median along the segment of Britta Street between Halfway Road and the subject property's southern boundary. Construction of this median would eliminate the need for an exception to the access space requirements because the median would limit vehicular ingress/egress for the subdivision to right-in, right-out and therefore would convert the Britta Street/Milan Way intersection from a full-access intersection to a limited-access intersection. However, as discussed in the findings below concerning the median, I have found a median is not justified on this segment of Britta Street. Therefore, the proposed Britta Street/Milan Way intersection would continue to function as a full-access intersection.

Second, the Hearings Officer finds the language in this section is not entirely clear with respect to whether the applicant for an access spacing exception is required to submit a separate variance *application*. The applicant's modified burden of proof states he was advised by city planning staff that no variance application was required. I find that in the absence of express language requiring the filing of a separate application this is a reasonable interpretation of this section. I find the code language requires the applicant to justify the proposed exception under the variance *criteria* in Chapter 5.1. Compliance with those criteria is discussed in the findings below.

Section 5.1.400(B) establishes the criteria for Class C variances including variances to vehicular access and circulation standards as follows:

1. **Variance to Vehicular Access and Circulation Standards. Where vehicular access and circulation cannot be reasonably designed to conform to Code standards within a particular parcel, shared access with an adjoining property shall be considered. If shared access in conjunction with another parcel is not feasible, the City may grant a variance to the access requirements after finding all of the following:**
 - a. **There is not adequate physical space for shared access, or the owners of abutting properties do not agree to execute a joint access easement;**

FINDINGS: The applicant argues, and the Hearings Officer agrees, that the sharing of subdivision access with the adjoining property to the south – Tax Lot 407 -- would not result in compliance with the 900-foot spacing standard. That is because this tax lot is not wide enough to create a total property length of 900 feet. In addition, the applicant notes the existing street pattern on the west side of Britta Street does not meet the 900-foot spacing standard. For these reasons, I find the applicant's proposed exception satisfies this criterion.

- b. **There are no other alternative access points on the street in question or from another street, alley or access-way;**

FINDINGS: The applicant argues that there are no other alternative access points on Britta Street other than the access proposed on the north end of the subject property at Halfway Road. That access, alone, is not sufficient to allow the applicant to create a grid street pattern on the subject property. The applicant also argues that if the proposed full access to Britta Street at Milan Way were not allowed, the applicant would be required to create three dead-end and/or loop roads or two cul-de-sac streets, and neither approach would create a grid street system. For

these reasons, the Hearings Officer finds the applicant's proposed exception satisfies this criterion.

c. The access separation requirements cannot be met;

FINDINGS: The applicant argues the 900-foot access separation standard cannot be met on the subject property because it has only approximately 450 feet of frontage on Britta Street. And as discussed above, shared access with the abutting property to the south would not achieve a 900-foot separation because the two properties together would have only 650 feet of Britta Street frontage. The applicant also notes the existing street system was created with approximately 300 feet of access spacing on Britta Street for its entire length between Halfway Road and Empire Avenue. For these reasons, the Hearings Officer finds the applicant's proposed exception satisfies this criterion.

d. The request is the minimum variation required providing adequate access;

FINDINGS: The applicant argues, and the Hearings Officer agrees, that the requested exception is the minimum variation needed to provide adequate access to the proposed subdivision inasmuch as only one access from Britta Street is proposed, and it is proposed at a point where access to Britta Street is or can be created from the Tuscan Pines PUD. Therefore, I find the applicant's proposed exception satisfies this criterion.

e. The approved access or access approved with conditions will result in a safe access; and

FINDINGS: The applicant argues, and the Hearings Officer agrees, that the level of traffic anticipated on Britta Street in general, and projected to be generated by the proposed subdivision in particular, will be relatively low for a collector street, and that the proposed access location from Milan Way is the safest and most logical street connection to Britta for the subdivision. Therefore, I find the applicant's proposed exception satisfies this criterion.

f. The vision clearance requirements of Chapter 3.1 will be met.

FINDINGS: The Hearings Officer finds the applicant will be required to satisfy the city's clear vision requirements as a condition of approval I find there is nothing about the location or configuration of the Britta Street/Milan Way intersection that would prevent it from meeting these standards. Therefore, I find the applicant's proposed exception satisfies this criterion.

For the foregoing reasons, the Hearings Officer finds the applicant's proposed exception to the 900-foot full-access intersection spacing standard satisfies all applicable variance criteria and therefore can be approved.

J. Shared Access. The number of driveway and private street intersections with public streets shall be minimized by the use of shared driveways with adjoining lots where feasible. The

City may require shared driveways as a condition of land division or site design review for traffic safety and access management purposes in accordance with the following standards:

* * *

FINDINGS: The applicant proposes that all subdivision lots have access from public streets and/or a private alley. The applicant has proposed three public street intersections – Milan Way/Britta Street, Milan Way/Venice Court, and Venice Court/Halfway Road. The applicant argues, and the Hearings Officer agrees, that this is the minimum number of intersections needed to serve this development.

- K. Driveway Openings. Driveway openings (or curb cuts) shall be the minimum width necessary to provide the required number of vehicle travel lanes (10 feet minimum width for each travel lane).**

FINDINGS: The staff report states, and the Hearings Officer concurs, that assuming two-way travel lanes the minimum driveway opening would be 20 feet wide. I find the proposed lots are of sufficient size to accommodate this driveway opening width.

- M. Vertical Clearances. Driveways, private streets, aisles, turn-around areas and ramps shall have a minimum vertical clearance of 13' 6" for their entire length and width.**
- N. Clear Vision Areas. Clear vision areas are established to ensure that obstructions do not infringe on the sight lines needed by motorists, pedestrians, bicyclists and others approaching potential conflict points at intersections**
- O. Construction. The following development and maintenance standards shall apply to all driveways and private streets. The City of Bend Standards and Specifications document shall prevail in the case of conflicting rules related to the design and construction of infrastructure.**

FINDINGS: The Hearings Officer finds the applicant will be required as a condition of approval to construct all streets within and abutting the subdivision to satisfy the standards in these paragraphs.

4. Chapter 3.2.200, Landscaping, Street Trees, Fences and Walls

a. Section 3.2.200, Landscape Conservation

Landscape Conservation prevents the indiscriminate removal of

significant trees and other vegetation, including vegetation associated with streams, wetlands and other protected natural resource areas. This section cross-references Chapters 2.7.600 and 2.7.700, which regulates development of areas of special interest.

The purpose of this Section is to incorporate significant native vegetation into the landscapes of development. The use of existing mature, native vegetation within developments is a preferred alternative to removal of vegetation and re-planting. Mature landscaping provides summer shade and wind breaks, allows for water conservation due to larger plants having established root systems, and assists with erosion control within disturbed construction sites.

A. Applicability. The standards in this section shall apply to all development sites containing significant vegetation, as defined below, except for residential development on Residential District lots that were created through a subdivision or partition plat filed with Deschutes County prior to the effective date of this Code.

FINDINGS: The applicant's proposed subdivision will be created through a subdivision plat filed after the effective date of the landscape conservation requirements of this section, so it appears the proposed subdivision is subject to them. However, the applicant's burden of proof argues these provisions are applicable to site plan review because it uses the term "development site" rather than land division, suggesting it is tied to a particular development. The applicant asserts this argument also is supported by the stated purpose of these standards which is "to incorporate significant native vegetation into the landscapes of development." The Hearings Officer finds merit to this argument. Chapter 1.2 defines "development" as:

*** * * all improvements on a site, including buildings, placement or replacement of manufactured or other structures, parking and loading areas, landscaping, paved or graveled areas, grading, and areas devoted to exterior display, storage, or activities. Development includes improved open areas such as plazas and walkways, but does not include natural geologic forms or landscapes. For the purpose of flood standards, development shall also mean any man-made change to improved or unimproved real estate, including but not limited to mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard. (Emphasis added.)**

For these reasons, the staff report concurs with the applicant that the language of this provision is far from clear in establishing at what point in the land use process its requirements apply. However, staff correctly observes that while these requirements clearly would apply at the time of site plan review, trees subject to these protections likely would have been removed during preparation of the subject property for subdivision development. For this reason, the Hearings

Officer finds it is appropriate to apply the standards in this section to the proposed subdivision.

- B. Significant Vegetation.** “Significant vegetation” means individual trees with a specific trunk diameter as measured four feet above the ground (known as DBH, “diameter at breast height”), shall be inventoried during the site design process and protected during construction unless otherwise approved for removal through the site plan review process. For the purpose of this section, deciduous trees measuring 6” or greater and coniferous trees measuring 10” or greater shall be considered significant vegetation.

FINDINGS: Although the applicant argues the standards in this section are not applicable to the proposed subdivision, the applicant notes that the modified tentative plan shows the location of individual trees on the subject property that meet the above size parameters. According to the tentative plan, the property contains: (1) 6 pine (coniferous) trees, 5 of which are ten inches or greater dbh; and (2) 27 juniper trees (considered coniferous for purposes of this definition), 11 of which are sited along the west property line and within the proposed Britta Road right-of-way, and 3 of which are 10 inches or greater dbh. The Hearings Officer finds this information qualifies as an inventory of “significant vegetation” on the subject property.

- C. Mapping and Protection Required.** A Tree Protection Plan shall be prepared and submitted with the development application. Significant vegetation shall be inventoried and mapped as required by Chapter 4.2; Site Design Review and Chapter 2.7.600, Water Overlay Zone and 2.7.700, Upland Areas of Special Interest. Trees shall be mapped individually and identified by species and size (DBH). A “protection” area shall be defined around the edge of all branches (drip-line) of each tree (drip lines may overlap between trees) or stand of trees. The City also may require an inventory, survey, or assessment prepared by a qualified professional when necessary to determine tree health, vegetation boundaries, building setbacks, and other protection or mitigation requirements. (Emphasis added.)

FINDINGS: The applicant argues, and the Hearings Officer agrees, that the above-underscored language makes clear this requirement applies at the time of site plan review and not to subdivision approval.

- D. Protection Standards.** Significant trees identified as meeting the criteria in Section B above shall be retained unless approved by the City to be removed for development. Preservation shall be considered impracticable when it would prevent development of public streets, public utilities, needed housing or land uses permitted by the applicable land use

district. The term “prevent” in this standard means that the development cannot be designed to avoid the significant tree(s). An inability to achieve maximum permitted density by complying with this subsection shall not in itself be considered to prevent development. Building envelopes commensurate with the lot coverage standard of the zone shall be depicted on the Tree Protection Plan. Trees outside the envelope shall be protected unless they prevent development. In instances where applying exceptions to certain development standards would make tree preservation practical, the City may allow one or more of the following exceptions to the development standards when individual trees with a DBH of 24-inches or larger or stands of trees that are in good health as determined by a qualified professional, are preserved by a proposed development with an approved tree preservation plan:

- reductions of setbacks up to 25%
- reduction of required on site parking up to 10%
- increased lot coverage up to 15%
- reduced landscape coverage up to 5%

FINDINGS: Because this section does not expressly tie the required vegetation protection to a development action, the Hearings Officer finds it is applicable to the proposed subdivision. As discussed above, the modified tentative plan shows the subject property contains only 8 trees that qualify as “significant vegetation” under Paragraph (B). The plan proposes to preserve and protect six of those trees – three pines and three junipers – located in the northeast quadrant of the subject property. The remaining trees are located in or immediately adjacent to the proposed Britta Street right-of-way, or in the center of Lot 10 where a multi-family residential building would be constructed. For these reasons, I find preservation of these other trees would be impracticable because it would prevent development of public streets and needed housing. I find the applicant will be required as a condition of approval to retain and protect the six trees identified for preservation.

1. **Protection of Significant Trees.** The applicant must submit a Tree Protection Plan on a site plan map, drawn to scale that includes the following provisions where appropriate: * * * (Emphasis added.)

FINDINGS: The applicant argues, and the Hearings Officer agrees, that the above-underscored language signifies this requirement applies at the time of site plan review. Therefore, I find it does not apply to the proposed subdivision.

For the foregoing reasons, and with imposition of the above-described condition of approval, the Hearings Officer finds the applicant’s proposal satisfies the criteria in this section to the degree they are applicable to subdivisions.

5. Chapter 3.3, Vehicle Parking, Loading and Bicycle Parking

a. Section 3.3.300, Vehicle Parking Standards for On-Site Requirements

The minimum number of required off-street vehicle parking spaces (i.e., parking that is located in parking lots and garages and not in the street right-of-way) shall be determined based on the standards in this Vehicle Parking Standards section.

A. Off-Street Parking Requirements. The number of required off-street vehicle parking spaces shall be determined in accordance with the following standards. Off-street parking spaces may include spaces in garages, carports, parking lots, and/or driveways if vehicles are not parked in a vehicle travel lane (including emergency or fire access lanes).

Table 3.3.300
Required Off-Street Vehicle Parking Spaces

Use	Minimum Requirement
Residential	
Two and three-family housing (duplex and triplex)	2 spaces per dwelling unit
Multi-family housing	Studio units or 1-bedroom units less than 500 sq. ft. – 1 space/unit
	1-bedroom unit 500 sq. ft. or larger – 1 space/unit
	2-bedroom units – 1.5 spaces per unit
	3-or more bedroom units – 2 spaces/unit

FINDINGS: The staff report states, and the Hearings Officer agrees, that compliance with the standards in this table will be evaluated at the time of site plan review and/or building permit review. However, I find the proposed lots will be of sufficient size to accommodate duplex, triplex and multi-family buildings providing the minimum required off-street parking spaces.

B. Credit for On Street Parking. The amount of off-street parking required may be reduced by one off-street parking space for every on-street parking space abutting the development, up to 50 percent of the requirement, except for uses within the CB Zone. On-street parking shall follow the established or approved configuration of existing on-street parking, except that angled parking may be allowed for some streets, where

permitted by City, ODOT and/or County standards. Parking credit can only be granted for developments with frontage on streets that allow parking on both sides in accordance with Chapter 3.1, Access, Circulation and Lot Design.

FINDINGS: The modified tentative plan shows the interior subdivision streets will have 36 feet of pavement and therefore credit for on-street parking is available to the applicant. The Hearings Officer finds compliance with the credit provisions in this paragraph also will be evaluated at the time of site plan and/or building permit review.

6. Chapter 3.4, Public Improvement Standards

a. Section 3.4.100, Purpose and Authority

- A. Purpose.** The purpose of this Chapter is to provide requirements for design and construction of public and private infrastructure including: Transportation facilities; sewer, water and other utilities; and drainage features and activities. One of the primary purposes of this Chapter is to provide standards for attractive and safe streets that can accommodate vehicle traffic from planned growth, and provide a range of transportation options, including options for driving, walking, bicycling, transit and other transportation modes. This Chapter is intended to guide development through the implementation of the City of Bend Standards and Specifications.
- B. City's Authority.** The City Engineer may, at his/her discretion, modify or waive the required content of this chapter when in his/her judgment special circumstances dictate such change, pursuant to Section 3.4.100(C), below.
- C. When Standards Apply.** Unless otherwise provided, the standard specifications construction, reconstruction or repair of transportation facilities, utilities and other public improvements within the City shall conform to this Chapter. No development shall occur unless the public improvements related to development comply with the public facility requirements established in this Chapter, unless specifically exempt or otherwise specified by a land use review and/or condition of approval from a land use action

FINDINGS: The Hearings Officer finds the applicant will be required as a condition of approval to construct all public facilities and improvements to the city's applicable standards and specifications.

b. Section 3.4.200, Transportation Improvement Standards

A. Development Requirements. No development shall occur unless the development has frontage or approved access to a public or private street, in conformance with the provisions of Chapter 3.1, Access, Circulation and Lot Design, and the following standards are met:

1. Streets within or adjacent to a development shall be improved in accordance with the Bend Urban Area Transportation System Plan (TSP), provisions of this Chapter and other pertinent sections of this Code.
2. Development of new streets, and additional street width or improvements planned as a portion of an existing street, shall be improved in accordance with this Section, and public streets shall be dedicated to the applicable City, county or state jurisdiction.
3. All new and/or existing streets and alleys shall be paved per the City of Bend Standards and Specifications document.

FINDINGS: As discussed in detail in findings elsewhere in this decision, the Hearings Officer has found the applicant will be required as a condition of approval to improve the public streets abutting and within the proposed subdivision as well as the proposed private alley to the city's applicable standards and specifications for such facilities.

B. Variances. Variances to the transportation design guidelines in this Section may be granted by means of a Class C Variance, as governed by Chapter 5.1.400(5), Variance to Transportation Improvement Requirements. A variance may be granted under this provision only if a required improvement is not feasible due to topographic constraints or constraints posed by sensitive lands or the project does not meet the exception standards listed herein.

FINDINGS: The Hearings Officer finds this criterion is not applicable because the applicant has not requested any variances.

C. Creation of Rights-of-Way for Streets and Related Purposes. Streets shall be created through the approval and recording of a final subdivision or partition plat; except the City may approve the creation of a Public Right-of-Way by acceptance of a deed, where no plat will be recorded, and provided that the street is deemed essential for the purpose of implementing

the Bend Urban Area Transportation System Plan, and the deeded right-of-way conforms to this Code. All deeds of dedication shall be in a form prescribed by the City and shall name "the public" as grantee.

FINDINGS: The applicant proposes, and will be required as a condition of approval, to dedicate right-of-way for the interior subdivision streets as well as for the abutting segments of Britta Street and Halfway Road on the final plat.

- D. Creation of Vehicular Access Easements.** The City may require a vehicular access easement established by deed when the easement is necessary to provide for vehicular access and circulation in conformance with Chapter 3.1, Access, Circulation and Lot Design. Access easements shall be created and maintained in accordance with the Uniform Fire Code Section 10.207 and City of Bend Standards and Specifications.

FINDINGS: The applicant has proposed, and the Hearings Officer finds the applicant will be required as a condition of approval, to provide vehicular access easements over the proposed private alleys to assure city, emergency, utility and other vehicles may use these alleys.

- E. Street Location, Width and Grade.** Except as noted below, the location, width and grade of all streets shall conform to the City of Bend Standard and Specifications document, the provisions of this Chapter and an approved street plan or subdivision plat. Street location, width and grade shall be determined in relation to existing and planned streets, topographic conditions, public convenience and safety, and in appropriate relation to the proposed use of the land to be served by such streets.

1. Street grades shall be designed and/or constructed as approved by the City Engineer in accordance with the design standards in Tables A through E in Section 3.4.200, Transportation Improvement Standards.

FINDINGS: As discussed in the findings above, the subject property is relatively level with the exception of rock outcroppings on the eastern property boundary. The applicant's proposed street designs are shown on the modified tentative plan. The Hearings Officer finds the applicant will be required as a condition of approval, and prior to submitting the final subdivision plat for approval, to submit to the Engineering Division for its review and approval engineered design and construction plans for all public streets and the private alleys.

2. Where the location of a street is not shown in an existing street plan in conformance with Section

3.4.200.I, Future Street Plan and Extension of Streets, the location of streets in a development shall either:

- a. Provide for the continuation and connection of existing streets in the surrounding areas, conforming to the street standards of this Chapter, or
- b. Where it is impractical to connect with existing street patterns because of topographical constraints or where the existing built environment precludes future street connections, the applicant shall conform to a street plan approved by the Review Authority. Such a plan shall be based on the type of land use to be served, the volume of traffic, the capacity of adjoining streets and the need for public convenience and safety.

FINDINGS: As discussed above, the modified tentative plan shows Britta Street and Halfway Road will be dedicated and improved for their entire frontage along the subject property to provide for the continuation and connection of these street segments to existing streets in the surrounding area. The applicant also has proposed to extend Halfway Road and Milan Way to the eastern subdivision boundary where they will be stubbed off to provide future street connections with property to the east. Therefore, the Hearings Officer finds the applicant's proposal satisfies this criterion.

F. Minimum Rights-of-Way and Street Sections. Street rights-of-way and improvements shall be the widths defined in Street Improvement Standards Tables A through E below. Additional right of way may be required at intersections of local streets with major collectors or arterial streets. The following tables and attached notes describe street improvement standards as follows:

- a. **Table A: Improvement Standards for Dedicated Public Roadways in Residential Zones**

Table A: Improvement Standards for Dedicated Public Roadways in Residential Zones (UAR, RL, RS, RM-10, RM AND RH)

Street Classification	Minimum Right of Way	Minimum Pavement Width	Minimum Planter Strip	Max Grade (3)	Sidewalks Both Sides	Bike Lanes

Major Collector	80'	56'	6'	8%	6'	Yes
Local Street						
RM or RH	60'	36'	6'	10%	6'	No
Alley	20'	20'	None	10%	None	No

FINDINGS: The applicant proposes to dedicate 40 feet of right-of-way along the southern end of the subject property, and nearly 80 feet of right-of-way for the remaining segment of Britta Street abutting the subject property, to create a total of 80 feet of right-of-way including the right-of-way dedication for this street provided by others such as the adjacent Tuscan Pines PUD. The applicant proposes to dedicate 60 feet of right-of-way for the interior subdivision streets – Milan Way and Venice Court – and to plat a 20-foot-wide private alley to be paved. Finally, the applicant proposes to dedicate 30 feet of right-of-way for the abutting segment of Halfway Road to allow improvements to this road segment to align with the existing portion of Halfway Road to the west of the subject property. With respect to improvements, the applicant proposes to improve Milan Way and Venice Court with 36 feet of pavement and a curb and 5-foot-wide sidewalk on both sides of the streets.

The applicant proposes to improve the abutting segment of Halfway Road to the city's 3/4 street standards for local streets, including 24 feet of pavement and a curb and 5-foot-wide sidewalk on the abutting (south) side of the street. The applicant proposes to improve the abutting segment of Britta Street with 52 feet of pavement and a curb, 5-foot-wide sidewalk, and striped bicycle lane on the abutting (east) side of the street. The standards in Table A require 56 feet of pavement and a 6-foot-wide sidewalk for collector streets. At the public hearing, the city's traffic engineer Robin Lewis stated that the existing segment of Britta Street to the south of the subject property has 52 feet of pavement and therefore she would be comfortable with the applicant's proposed pavement width matching the other fully improved segment of Britta Street. For that reason, the Hearings Officer finds the applicant will be required to provide only 52 feet of pavement on Britta Street. However, I find the applicant will be required to construct a 6-foot-wide sidewalk on the east side of Britta. I find that with the exception I have approved for pavement width on Britta, these right-of-way dedications and improvements will satisfy the standards in this section.

G. Traffic Controls

1. **Traffic signals/roundabouts shall be required and installed in accordance with Chapter 4.7, Traffic Impact Analysis, with development when traffic control warrants are met, in conformance with the Highway Capacity Manual and Manual of Uniform Traffic Control Devices. Traffic signal/roundabout design shall be approved by City Engineer. The developer's financial responsibility and the timing of improvements shall be included as a condition of development approval.**

FINDINGS: Neither the applicant's revised traffic study nor the city's traffic engineer
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recommended off-site street improvements. Therefore, the Hearings Officer finds this criterion is not applicable.

2. **Traffic controls on roads under State jurisdiction shall be determined by the Oregon Department of Transportation.**

FINDINGS: The Hearings Officer finds this criterion is not applicable.

H. Medians. The use of landscaped medians improve community appearance, helps maintain system mobility and reduces the effects of wide street widths to all modes of travel. Medians will be landscaped with water efficient plant materials unless otherwise indicated below.

1. **At intersections where left turn pockets are constructed, the 16-foot wide median will transition to an 11-foot wide left turn lane with a five-foot pedestrian refuge median separating the left turn lane from oncoming traffic. Intersections and access must comply with Chapter 3.1, Access, Circulation and Lot Design.**
2. **A lesser median standard may be approved by the City Engineer under the following conditions:**
 - a. **A 12-foot landscape median may be approved if pedestrian refuges are not required because adequately spaced offset intersections safely accommodate pedestrian crossings at the 12-foot median opposite a 12 foot turn pocket.**
 - b. **A 6-foot landscaped median may be approved where the 20-year projected average daily traffic (ADT) volumes are less than 5000 and where pedestrian refuge is required.**
 - c. **Collector streets with no medians may be approved if 20-year projected ADT volumes are less than 5000 and no pedestrian crossing safety issues are identified.**

* * *

FINDINGS: Britta Street is a designated collector street. As discussed in findings elsewhere in this decision, Britta Street currently has and is predicted to have relatively low traffic volumes for a collector street. In fact, the applicant's traffic engineer, Gary Judd of Sage Engineering,

stated in an electronic mail message included in the record as an exhibit to the applicant's modified burden of proof, that the 20-year projected ADT volume for Britta Street would be 2,410 – well below 5,000 ADTs. Nevertheless, the city's traffic engineer Robin Lewis recommended the applicant be required to install a landscaped median on the segment of Britta Street from Halfway Road to the north side of the right-of-way for Ellie Lane which the record indicates is located over 200 feet south of the subject property's southern boundary. The purposes of this median would be to limit subdivision ingress/egress to right-in/right-out only, and to provide a pedestrian refuge. However, at the public hearing, Ms. Lewis stated that she would have no problem with a full access intersection for Britta Street at Milan Way. The applicant argued, and the Hearings Officer agrees, that under the constitutional due process analysis in *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 LEd 2nd 304 (1994) and its progeny, requiring construction of an *off-site* median would not be roughly proportional to the projected traffic impacts from the proposed subdivision.

The Hearings Officer finds the remaining question is whether Paragraphs (2)(b) and (c) of this section require the abutting segment of Britta Street to have a median where the street is projected to have far fewer than 5,000 ADTs over the 20-year planning period. As discussed in the findings above, I have found the applicant will be permitted to improve the abutting segment of Britta Street with 52 feet of pavement. Ms. Lewis testified at the public hearing that a street as wide as 56 feet could be daunting for pedestrians attempting to cross the street. I find a 52-foot-wide street is likely to have a similar effect. However, the record indicates that Britta Street is likely to remain a relatively low-traffic collector street, and therefore I am not persuaded that a median is needed to address an identified pedestrian crossing safety issue. Moreover, the applicant's engineer Tim Weishaupt testified at the public hearing that construction of a median could create design problems for the Britta Street/Halfway Road intersection because two legs of this intersection would consist of half streets. He also questioned the efficacy of terminating the median at or near the subject property's southern boundary. For these reasons, I find it is appropriate to approve the applicant's proposed improvements to Britta Street – i.e., without a median – under this section, and therefore no median will be required.

I. Future Street Plan and Extension of Streets.

* * *

2. **When no adopted street plan exists for the site, a future street plan shall be filed by the applicant in conjunction with an application for a subdivision, in order to facilitate orderly development of the street system. The plan shall show the pattern of existing and proposed future streets from the boundaries of the proposed land division and shall include other parcels within not less than 400 feet of the site boundaries, and other developed streets or public rights-of-way or natural barriers surrounding and adjacent to the proposed land division. The street plan is not binding; rather it is intended to show potential future street extensions with**

future development.

3. **Streets shall be extended to the boundary lines of the parcel or tract to be developed, when the Review Authority determines that the extension is necessary to give street access to, or permit a satisfactory future division of, adjoining land. The point where the streets temporarily end shall conform to a-c, below:**
 - a. **These extended streets or street stubs to adjoining properties are not considered to be cul-de-sacs, since they are intended to continue as through streets when the adjoining property is developed.**
 - b. **A City approved barricade shall be constructed at the end of the street by the subdivider and shall not be removed until authorized by the City or other applicable agency with jurisdiction over the street. The Review Authority may also require signs that indicate the location of a future road connection.**
 - c. **Temporary turnarounds (e.g., hammerhead or bulb-shaped configuration) shall be constructed for stub streets over 150 feet in length.**

FINDINGS: As discussed in the findings above, the applicant proposes to dedicate right-of-way for and to improve the abutting segment of Halfway Road from its intersection with Britta Street to the subject property's eastern boundary where it would be stubbed off to provide future street connections to the east. The applicant also has proposed to extend Milan Way to the eastern property boundary where it would be stubbed off to provide future street connections. The Hearings Officer finds the applicant will be required as a condition of approval to construct a barrier at the eastern terminus of Halfway Road and Milan Way, but will not have to construct a turnaround at the eastern end of either street because the segment of these streets east of Venice Court does not exceed 150 feet. For these reasons, and with imposition of this condition of approval, the Hearings Officer finds the applicant's proposal satisfies these criteria.

4. **Construction of partial width streets shall not be permitted, except as approved by the City Engineer. A residential partial street improvement may be approved only at the outer boundaries of a subdivision where the street is required by other land use requirement and it is likely that adjacent underdeveloped property of residential zoning will complete the street construction.**

The following limitations shall apply:

- a. Partial street improvements are only allowed where the final street design is 32 feet or wider, parking both sides.
- b. Partial street improvements are not allowed where the property line is the UGB or City Limits.
- c. "No parking" signs meeting MUTCD standards shall be installed on both sides of the street and removed only when the roadway is completed to 32 foot width or wider.

FINDINGS: As discussed above, the applicant proposes to construct partial street improvements on the abutting segment of Halfway Road because the applicant can dedicate only 30 feet of right-of-way for this street and development of the abutting property to the north will be required to obtain the additional 30 feet of right-of-way required for full street improvements. The applicant argues, and the Hearings Officer agrees, that partial street improvements are allowed under these circumstances, and the record indicates the city's traffic engineer Robin Lewis approved the partial improvements. Therefore, I find the applicant's proposal satisfies this criterion.

J. Street Alignment and Connections.

1. Staggering of streets making "T" intersections at collectors and arterials shall be located to conform with the spacing standards contained in the Bend Urban Area Transportation System Plan and Chapter 3.1, Access, Circulation and Lot Design.
2. Spacing between local/local street intersections shall conform to the spacing standards contained in the City's Standards and Specifications document and Chapter 3.1, Access, Circulation and Lot Design. This standard applies to four-way and three-way (off-set) intersections. Offset local street alignments shall be at least 125 feet distance between the center line of the streets.

FINDINGS: The proposed subdivision's compliance with the standards in Chapter 3.1 is addressed in the findings above.

3. All local and collector streets that abut a development site shall be extended within the site to provide through

circulation, unless prevented by environmental or topographical constraints, existing development patterns or compliance with other standards in this code. This exception applies only when it is not possible to redesign or reconfigure the street pattern to provide required extensions. Land is considered topographically constrained if the slope is greater than 15% for a distance of 250 feet or more. In the case of environmental or topographical constraints, the mere presence of a constraint is not sufficient to show that a street connection is not possible. The applicant must show why the environmental or topographic constraint precludes a street connection.

FINDINGS: As discussed in the findings above, the applicant has proposed to extend Halfway Road and Milan Way to the eastern subdivision boundary, and to dedicate right-of-way for and to improve the abutting segment of Britta Street so that it aligns and connects with the existing street segments to the north and south. Therefore, the Hearings Officer finds the applicant's proposal satisfies this criterion.

4. Proposed streets or street extensions shall be located to provide access to existing or planned commercial services and other neighborhood facilities, such as schools, shopping areas and parks.

FINDINGS: The Hearings Officer finds this criterion is not applicable because the subject property is not near to any of the above developments.

5. In order to promote efficient vehicular and pedestrian circulation throughout the City, the design of subdivisions and alignment of new streets shall conform to the standards in Chapter 3.1, Access, Circulation and Lot Design.

FINDINGS: The proposed subdivision's compliance with Chapter 3.1 is addressed in the findings above.

- K. Sidewalks, Planter Strips, Bicycle Lanes. Sidewalks, planter strips, and bicycle lanes shall be installed in conformance with the applicable provisions of the Bend Urban Area Transportation System Plan; the General Plan, City of Bend Standards and Specifications and the following standards:

1. The planter strip distance is measured from the face of the curb to the inside edge of the sidewalk.

2. Sidewalks shall be separated from the street by a planter strip and placed at the property line, where practicable, or as otherwise directed by the City Engineer.
3. In areas with high pedestrian volumes, the City Engineer may approve a minimum 10 foot wide sidewalk, curb tight, with street trees in tree wells and/or landscape planters.

FINDINGS: The modified tentative plan shows the standard 5-foot-wide sidewalks on both sides of the interior subdivision streets and on the abutting sides of Britta Street and Halfway Road. As discussed above, the Hearings Officer has found the applicant will be required as a condition of approval to construct a 6-foot-wide sidewalk on the east side of Britta Street. I find the subject property will not be an area of high pedestrian volumes and therefore 10-foot sidewalks would not be required. The applicant's burden of proof states planter strips will be provided where required by the city.

4. Bicycle lanes shall be constructed on all collector and arterial streets unless otherwise designated.

FINDINGS: As discussed above, the applicant will be required as a condition of approval to stripe a bicycle lane on the east side of Britta Street.

6. In no instance shall the planter strip be wider than 7-feet at the intersection. This may require the sidewalk to taper from the property line alignment to within 7-feet of the curb.

FINDINGS: The applicant's burden of proof states any planter strips will not exceed a width of seven feet.

- L. **Intersection Angles.** Streets shall be laid out so as to intersect at an angle as near to a right angle as practicable, except where topography requires a lesser angle. In no case shall the centerline angle be less than 80°. In addition, the following standards shall apply:
 1. Street design shall provide a minimum of 50 feet of centerline tangent past the intersecting right of-way unless a lesser distance is approved by the City Engineer.
 2. Intersections that are not at right angles shall have a minimum corner radius of 20 feet along the right-of-way lines of the acute angle.
2. Intersections that are not at right angles shall have a

minimum corner radius of 20 feet along the right-of-way lines of the acute angle.

- 3. Right-of-way lines at intersections with arterial streets shall have a corner radius of not less than 30 feet.**

FINDINGS: The Hearings Officer finds the modified tentative plan shows all intersections within and adjacent to the proposed subdivision satisfy the standards in this section.

- M. Existing Rights-of-Way. Whenever existing rights-of-way adjacent to or within a tract are of less than standard width, additional rights-of-way shall be provided at the time of subdivision or site development, in conformance with Tables A through E in Section 3.4.200, Transportation Improvement Standards, above.**

FINDINGS: As discussed in the findings above, the applicant proposes to dedicate additional right-of-way for the abutting segments of Britta Street and Halfway Road, therefore satisfying this criterion.

- N. Cul-de-sacs. A cul-de-sac street shall only be used when the applicant demonstrates that environmental or topographical constraints, existing development patterns, or compliance with other standards in this code preclude street extension and through circulation.**

* * *

FINDINGS: The Hearings Officer finds this criterion is not applicable because the applicant does not propose any cul-de-sac streets.

- O. Grades and Curves. Grades shall not exceed those shown in Tables A through E in Chapter 3.4.200, Transportation Improvement Standards, unless approved through a Variance in accordance with Chapter 5.1.**

* * *

FINDINGS: The modified tentative plan shows no curved streets. As discussed in the findings above, the terrain on the eastern boundary of the subject property includes rock outcroppings. The applicant's burden of proof states that with respect to the segments of Halfway Road and Milan Way along the eastern property boundary the applicant either will construct these street segments in compliance with the requirements of Section 3.4.200 or obtain approval of a variance to the standards under Chapter 5.1.

- P. Curbs, Curb Cuts, Ramps, and Driveway Approaches.**

Concrete curbs, curb cuts, curb ramps, bicycle ramps and driveway approaches shall be constructed in accordance with Chapter 3.1, Access, Circulation and Lot Design, City of Bend Standards and Specifications and the following standards:

1. Curb exposure shall be per City Standards and Specifications.
2. There shall be no curbs on alleys unless otherwise approved by the City Engineer.
3. Curb extensions at local residential street intersections are optional. If provided, the minimum width between the curb extensions shall be 24-feet. Curb extensions shall not be used on streets with bike lanes.

FINDINGS: The Hearings Officer finds the applicant will be required as a condition of approval to design and construct all curbs, curb cuts, ramps and driveway approaches in accordance with the standards in Chapter 3.1 and this section.

- Q. Street Adjacent to Railroad Right-of-Way.** Whenever the proposed development contains or is adjacent to a railroad right-of-way, a street approximately parallel to and on each side of such right-of-way at a distance suitable for the appropriate use of the land shall be created. New railroad crossings and modifications to existing crossings are subject to review and approval by the Oregon Department of Transportation and the rail service provider.

FINDINGS: The Hearings Officer finds this criterion is not applicable because the subject property is not adjacent to a railroad right-of-way.

- R. Development Adjoining Arterial Streets.** Where a development adjoins or is crossed by an existing or proposed arterial street, the development design shall provide access to/from the arterial consistent with Chapter 3.1, Access, Circulation and Lot Design and City of Bend Standards and Specifications.

FINDINGS: The Hearings Officer finds this criterion is not applicable because the subject property does not adjoin and is not crossed by an arterial street.

- S. Alleys, Public or Private.** Alleys shall conform to the standards in Tables A through E in Section 3.4.200, Transportation Improvement Standards. While alley intersections and sharp changes in alignment shall be avoided, the corners of necessary alley /alley intersections shall have a radius of not less than 12 feet, except where fire department access is required, the inside

radius shall not be less than 30 feet. Right of way dedication for public alleys, or roadway dedication for private alleys will be increased to match the pavement width.

FINDINGS: The modified tentative plan proposes a 20-foot-wide private alley providing alley access to proposed Lots 7-13. The alley would connect with Milan Way on the south and Venice Court on the east, and would have a modified hammerhead where it curves to the east. The modified tentative plan shows the radius of the alley corner/hammerhead is at least 12 feet. As discussed in the findings above, the Hearings Officer has found the applicant will be required as a condition of approval to create a public access easement over this alley to allow city, emergency, utility and other vehicles to use this alley. For these reasons, I find the applicant's proposal satisfies this criterion.

T. Private Streets. Private streets shall connect with public streets to complete the City's transportation system grid where practical.

FINDINGS: The Hearings Officer finds this criterion is not applicable because the applicant does not propose any private subdivision streets.

U. Street Names. All street names shall be approved by Review Authority. No street name shall be used that will duplicate or be confused with the names of existing streets in Deschutes County, except for extensions of existing streets. Street names, signs and numbers shall conform to the established pattern in the surrounding area, except as requested by emergency service providers and shall comply with City of Bend Standards and Specifications.

FINDINGS: The Hearings Officer finds the applicant will be required as a condition of approval to obtain approval of the proposed new subdivision street names from the city's and county's property address coordinators before submitting the final subdivision plat for approval.

V. Survey Monuments. Upon completion of a street improvement and prior to acceptance by the City, it shall be the responsibility of the developer's registered professional land surveyor to provide certification to the City that all boundary and interior monuments shall be re-established and protected.

FINDINGS: The Hearings Officer finds the applicant will be required to comply with the survey monument requirement as a condition of approval.

W. Street Signs. The City, county or state with jurisdiction shall install all signs for traffic control. The cost of signs required for new development, including stop signs and any other roadway signs, shall be the responsibility of the developers and shall be installed as part of the street system developed and

approved through the land use process. Street name signs shall be installed by developers at all street intersections per City of Bend Standards and Specifications.

FINDINGS: The applicant will be required as a condition of approval to cover the cost of all street signs required for the subdivision in accordance with this section.

- X. **Street Light Standards.** Streetlights shall be installed in accordance with City of Bend Standards and Specifications. Where a private street intersects a public street, a street light shall be installed.

FINDINGS: The applicant will be required as a condition of approval to install street lights at the street intersections within and adjacent to the proposed subdivision in accordance with the city's applicable standards and specifications.

b. **Section 3.4.400, Sanitary Sewer and Water Service Improvements**

- A. **Sewers and Water Mains Required.** Sanitary sewers and water mains shall be installed to serve each new development and to connect developments to existing mains in accordance with the City's construction specifications as described in the City of Bend Standards and Specifications document and the applicable General Plan policies.
- B. **Sewer and Water Plan Approval.** Construction of sewer and water improvements shall not commence until the City Engineer has approved all sanitary sewer and water plans in conformance with City of Bend Standards and Specifications.

FINDINGS: As discussed in detail in the findings above, the applicant has proposed to serve the subdivision lots with city sewer and water service, and will be required as conditions of approval to extend and connect to existing sewer and water facilities in the surrounding area, and to upgrade off-site sewer facilities including upgrades to sewer pipes in Fred Meyer Drive and the Empire Estates Pump Station. With imposition of these conditions of approval the Hearings Officer finds the applicant's proposal will satisfy this criterion.

- C. **Master Planned Improvements.** Proposed sewer and water systems shall be sized to accommodate additional development within the area as projected by the Water and Sewer Master Plan. The developer may be entitled to system development charge credits and reimbursement for the Master Planned improvements.

FINDINGS: The Hearings Officer finds the applicant will be required as a condition of approval to construct all sewer and water lines in accordance with the city's sewer and water master plans

and applicable standards and specifications.

c. Section 3.4.500, Storm Drainage Improvements

- A. Storm Drainage Improvements Required. Storm Drainage facilities shall be depicted on City approved engineered construction drawings and installed to serve each new development in accordance with applicable City construction specifications as described in the City of Bend Standards and Specifications and the Grading/Clearing Ordinance NS-1879.**

FINDINGS: As discussed in the findings above, the applicant proposes to handle storm drainage through installation of catch basins within the public street rights-of-way. The Hearings Officer finds the applicant will be required as a condition of approval to submit to the Engineering Division for its review and approval, and prior to submitting the final subdivision plat for approval, engineered plans for storm water drainage demonstrating compliance with these standards.

d. Section 3.4.600, Utilities

- A. Underground Utilities. All utility lines including, but not limited to, those required for electric, communication, lighting and cable television services and related facilities, shall be placed underground, except for surface mounted transformers, surface mounted connection boxes and meter cabinets, temporary utility service facilities during construction, and high capacity electric lines operating at 50,000 volts or above, which may be placed above ground.**

The following additional standards apply to all development, in order to facilitate underground placement of utilities:

- 1. The developer shall make all necessary arrangements with the serving utility to provide the underground services. All above ground equipment shall not obstruct clear vision areas and safe intersection sight distance for vehicular traffic in conformance with Chapter 3.1, Access, Circulation and Lot Design.**
- 2. The City reserves the right to approve the location of all surface mounted facilities.**
- 3. All underground utilities, including sanitary sewers and storm drains installed in streets by the developer, shall be constructed prior to the surfacing of the streets.**

4. **Stubs for service connections shall be long enough to avoid disturbing street improvements when service connections are made.**

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

- B. **Easements. Easements shall be provided and recorded for all underground utility facilities where required by the City.**

FINDINGS: In their "willing-to-serve" letters included in the record, the affected utility companies did not specifically request utility easements. However, the Hearings Officer finds that as a condition of approval the applicant will be required to provide any utility easements required by these companies, and to show them on the final subdivision plat.

- e. **Section 3.4.700, Easements**

- A. **Requirement. Easements for sewer facilities, storm drainage, water facilities, street facilities, electric lines or other public/private utilities shall be dedicated on a final plat, or provided for in the deed restrictions.**
- B. **Provision. The developer or applicant shall make arrangements with the City, the applicable district and each utility franchise for the provision and dedication of utility easements necessary to provide full services to the development.**
- C. **Standard Width. The City's standard width for exclusive public main line utility easements shall be 20 feet, unless otherwise specified by the utility company, applicable district, or City Engineer.**

FINDINGS: The Hearings Officer finds the applicant will be required as a condition of approval to provide all easements required for public facilities and services and utilities, to show all required easements on the final subdivision plat, and to provide 20-foot-wide easements for city sewer and water mains located outside public street rights-of-way.

7. **Chapter 3.5, Other Design Standards**

- a. **Section 3.5.300, Special Setbacks**

- A. **Purpose. The purpose of this section is to ensure that adequate right of way will be available for the appropriate street improvements as the city grows and that there will be no conflicts with the built environment.**

- B. Applicability.** The following special setback standards shall be applied to any lot or parcel that abuts an arterial, collector or local street, in addition to the minimum setback required by the underlying zoning district.

Special Setback Standards

Street Classification	Additional Setback from Centerline of Street
Local Street	30 feet
Collector	40 feet

FINDINGS: Britta Street is a designated collector street, and therefore all buildings must be set back at least 40 feet from the centerline of this street. In addition, all buildings must be set back at least 30 feet from the centerline of Halfway Road, Milan Way and Venice Court, all local streets. The Hearings Officer finds compliance with these setbacks will be verified at the time of site plan and/or building permit review. However, I find the proposed subdivision lots will be of sufficient size to accommodate multi-family dwelling buildings satisfying these minimum street setbacks.

8. Chapter 3.6, Special Standards for Certain Uses

a. Section 3.6.200, Residential Uses

This section supplements the standards contained in Chapter 2.0 and provides standards for the following land uses in order to control the size, scale and compatibility of those uses within all the Residential Districts:

* * *

- H. Duplex and Triplex Development.** Duplex and triplex development shall comply with the following standards. The standards are intended to control development scale, and minimize impacts associated with design compatibility.

1. The side yard setbacks shall be as required in Chapter 2.1.300, Building Setbacks for the appropriate zoning district.
2. Front and rear yard setbacks shall be as required in Chapter 2.1.300, Building Setbacks for the appropriate zoning district.

* * *

FINDINGS: The applicant's modified proposal contemplates development of the proposed subdivision with multi-family uses permitted outright in the RM Zone including duplex and triplex development. The Hearings Officer finds the proposed subdivision lots will be of sufficient size to accommodate duplex and triplex buildings meeting the minimum setbacks in this section. I further find compliance with the standards in this section will be evaluated at the time of site plan and/or building permit review.

IV. DECISION:

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer hereby:

- **RECOMMENDS APPROVAL** of the applicant's proposed zone change from RS to RM for the subject property; and
- **APPROVES** the applicant's proposed 13-lot residential subdivision **SUBJECT TO THE FOLLOWING CONDITIONS OF APPROVAL:**
 1. This approval is based on the applicant's modified tentative plat submitted June 14, 2007 for a 13-lot subdivision, included in the record as Hearing Exhibit B, and improvements and physical conditions depicted thereon, the applicant's tentative plan and zone change burden of proof statements, traffic studies and supplemental materials, and the applicants' written and oral testimony. Any public improvements proposed by the applicants on the tentative plan and/or supplemental documents have been relied upon in granting this approval, and are hereby required as conditions of subdivision approval. Any substantial change to the approved plan, other than those required by this decision, will require a new land use application and approval.

PRIOR TO SUBMITTING THE FINAL PLAT FOR APPROVAL:

2. The applicant/owner shall submit to the Engineering Division for review and approval engineered plans for all water, sewer, and public street facilities. The plans shall show any city-maintained facilities located outside public street rights-of-way within full-width exclusive 20-foot-wide easements.
3. The applicant/owner shall submit to the Engineering Division for review and approval a master storm drainage control plan for impervious surfaces, showing storm drainage contained on-site or routed to an approved drainage facility, and a temporary drainage control plan to be in place during construction. If drywells are proposed within public rights-of-way the applicants shall provide to the Engineering Division copies of Department of Environmental Quality (DEQ) drywell registration forms.
4. The applicant/owner shall comply with all requirements of the Bend Fire Department for fire protection within the subdivision, including fire flow at a minimum of 1,500 gpm with 20 psi residual pressure, hydrant locations, fire apparatus access roads, and installation of fire sprinkler systems in all buildings where such systems are required. The applicant shall provide to the Planning Division written documentation from the fire

department that it has approved the final construction drawings.

5. The applicant/owner shall provide individual sewer service by installing sewer lines to each subdivision lot. In addition, as off-site mitigation for the project impacts to the city sewer system, the applicant/owner shall replace the existing 10-inch PVC sewer mainline from the intersection of Boyd Acres and Fred Meyer Road between manhole 67-43-1 and manhole 43-7-12, and between manhole 43-7-12 and 66-33-2 with a 15-inch PVC mainline in the location and at the same depth as the existing 10-inch mainline. As a part of this replacement, the existing 10-inch mainline will need to remain active, requiring a temporary bypass of pumping system to be in place during the actual installation. The applicant/owner also shall upgrade the Empire Estates Pump Station so that it has the capacity to handle sewage flow from the subdivision.
6. The applicant/owner shall provide domestic water service by installing water lines to each subdivision lot and water mains connecting to the existing city water system mains. The applicant/owner shall provide a water meter and approved backflow device on each water line.
7. The applicant/owner shall obtain approval of all subdivision street names from the Deschutes County and City of Bend Property Address Coordinators and submit documentation of that approval to the Planning Division.
8. The applicant/owner shall comply with all requirements of the Swalley Irrigation District and obtain the signature of a representative of the irrigation district on the final subdivision plat.
9. The applicant/owner shall dedicate the following street right-of-way:
 - a. **Britta Street:** Sufficient additional right-of-way for a total of eighty (80) feet of right-of-way for the segment of the street between Halfway Road and the subject property's southern boundary.
 - b. **Halfway Road:** Thirty (30) feet of right-of-way from the centerline for the segment of the street abutting the subject property's northern boundary.
 - c. **Milan Way and Venice Court:** Sixty (60) feet of right-of-way.
10. The applicant/owner shall construct the following street improvements:
 - a. **Britta Street:** Improve to the city's standards and specifications for a major collector street, including concrete curb and six-foot-wide sidewalk on the east side, and a striped 6-foot-wide bike lane on the east side, off-site tapers as required, and pedestrian ramps meeting ADA requirements at intersections; however, pavement width may be 52 feet and no median is required.
 - b. **Halfway Road:** Improve to the city's standards and specifications for a 3/4 local

street, including 24 feet of pavement, concrete curb and five-foot-wide sidewalk on the south side, off-site tapers as required, pedestrian ramps meeting ADA requirements at intersections, and a barrier at the eastern terminus.

- c. **Milan Way and Venice Court:** Improve to the city's standards and specifications for full local streets, including 36 feet of pavement, concrete curb and five-foot-wide sidewalk on both sides, and pedestrian ramps meeting ADA requirements at intersections. The applicant/owner shall construct a barrier at the eastern terminus of Milan Way.
- d. **Private Alley:** Improve to the city's standards and specifications for alleys, including 20 feet of pavement.

- 11. The applicant/owner shall obtain approval from the city for access to city streets.
- 12. The applicant/owner shall provide vehicular access easements over all private alleys.
- 13. The applicant/owner shall remove the existing dwellings and shall obtain all necessary permits for removal or demolition from the City of Bend Building Division.
- 14. The applicant/owner shall abandon any existing septic system(s) on the subject property in accordance with all applicable DEQ and Deschutes County Environmental Health Department rules and regulations.
- 15. The applicant/owner shall close the existing driveway.
- 16. The applicant/owner shall place all new subdivision utilities underground, coordinate such placement with the affected utility providers, and install all underground utilities prior to surfacing subdivision streets.
- 17. The applicant/owner shall sign a Public Facilities Improvement Agreement prior to the construction of any public facilities.

WITH OR ON THE FINAL SUBDIVISION PLAT:

- 18. The applicant/owner shall prepare the plat in accordance with the requirements of ORS 92.090 and the city's land division regulations.
- 19. The applicant/owner shall include the following information on the final subdivision plat:
 - a. any lots that have been or will be filled and graded;
 - b. individual lot sizes;
 - c. all easements including any drainage easements;

- d. a statement of water rights as required by ORS 92.120 and the signature of an authorized representative of Swalley Irrigation District; and
 - f. any duplex or triplex lots.
20. Provide title report or subdivision guarantee report prepared within the previous 90 days from the date of final plat submittal.
21. The applicant/owner shall submit closure sheets with the final plat.

PRIOR TO ISSUANCE OF ANY BUILDING PERMIT FOR SUBDIVISION STRUCTURES:

22. The Empire Estates Pump Station shall be sized to handle sewage flow from the subdivision and shall be operational.
23. The applicant/owner shall complete construction and installation of all city infrastructure including paved access provided to all fire hydrants and manholes, and installation of fire hydrant(s) to meet the 500-foot maximum spacing requirement or submit to the Planning Division written verification from the Fire Marshall that the fire hydrant spacing is satisfactory.
24. The applicant/owner shall install streetlights at all street intersections at locations specified by the city and in coordination with PacifiCorp.
25. The applicant/owner shall pay the city's costs for all street signs required for the subdivision.

DURING CONSTRUCTION OF SUBDIVISION INFRASTRUCTURE:

26. The applicant/owner shall protect all trees identified for preservation on the modified tentative plan through the use of construction fencing around each tree with the location of the fencing calculated by the rule of one foot outward from the tree trunk for every inch of dbh, and such other protection mechanisms as may be recommended by the Planning Division.

AT ALL TIMES:

27. The applicant/owner shall maintain all clear vision areas at street and driveway intersections free from all obstructions including fences and walls.
28. The applicant/owner shall maintain all surface drainage on site.

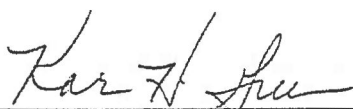
DURATION OF APPROVAL:

29. The applicant/owner shall meet all conditions of this approval and submit an application

for final plat within one (1) year of the date this decision becomes final, or shall obtain an extension of time from the city pursuant to the city's applicable development code provision.

Dated this 21st day of September, 2007.

Mailed this 21st day of September, 2007.



Karen H. Green, City of Bend Hearings Officer

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

EXHIBIT B

A PORTION OF TRACT 4 OF NORWOOD, SAID PARCEL BEING LOCATED IN THE NORTHEAST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER (NE1/4 NE1/4) OF SECTION TWENTY (20), TOWNSHIP SEVENTEEN (17) SOUTH, RANGE TWELVE (12) EAST OF THE WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING OF THE NORTHWEST CORNER OF SAID TRACT 4 OF NORWOOD; THENCE ALONG THE WEST LINE OF SAID TRACT 4 SOUTH $0^{\circ} 25'16''$ WEST A DISTANCE OF 480.25 FEET; THENCE EAST A DISTANCE OF 497.14 FEET TO A $5/8''$ RE-BAR WITH A PLASTIC CAP MARKED P.L.S. 599 ON THE EAST BOUNDARY OF SAID TRACT 4; THENCE NORTH ALONG THE EAST LINE OF SAID TRACT 4 OF NORWOOD TO THE NORTHEAST CORNER OF SAID TRACT 4; THENCE ALONG THE NORTH LINE NORTH $89^{\circ} 55'44''$ WEST 493.68 FEET TO THE POINT OF BEGINNING.