



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

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www.lcd.state.or.us

NOTICE OF ADOPTED AMENDMENT

August 20, 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 008-06



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: September 4, 2007

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

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

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

Cc: Gloria Gardiner, DLCD Urban Planning Specialist
Mark Radabaugh, DLCD Regional Representative
Wendy Robinson, City Of Bend

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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: **06-021**

Date of Adoption: **8/1/2007**

Date Mailed: **8/13/2007**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: **5/15/2006**

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".

A proposal to change the zoning and plan designation of approximately 9.37 acres from Light Industrial (IL) to Mixed Employment (ME).

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

Plan Map Changed from: **IL**

to: **ME**

Zone Map Changed from: **IL**

to: **ME**

Location: **30, 64 & 86 SW Century Drive, Bend**

Acres Involved: **9**

Specify Density: Previous: **N/A**

New: **N/A**

Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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. 008-06 (15239)

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

Local Contact: **Wendy Robinson**

Phone: (541) 388-5598 Extension:

Address: 710 NW Wall St

Fax Number: 541-693-2189

City: **Bend**

Zip:

E-mail Address: wrobinson@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: webserver.lcd.state.or.us. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing mara.ulloa@state.or.us.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at <http://www.lcd.state.or.us/>. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to mara.ulloa@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

ORDINANCE NO. NS- 2064

AN ORDINANCE AMENDING THE BEND URBAN AREA GENERAL PLAN MAP, AMENDING THE CITY OF BEND ZONING MAP AND AMENDING THE CITY OF BEND ZONING ORDINANCE NO. NS-2016 TO CHANGE APPROXIMATELY 9.37 ACRES OF LAND DESIGNATED AS INDUSTRIAL LIGHT, (IL) TO MIXED EMPLOYMENT, (ME).

WHEREAS, The Bend City Council has held a public hearing, considered the Hearing Officer's findings and record, and has found that there is a public need and benefit for the proposed change; and

WHEREAS, The Bend City Council adopts the Findings and Recommendation found in the Hearings Officer's decision, attached as Exhibit "A", dated February 14, 2007 regarding file PZ-06-21, with the exception of the condition imposed by the Hearings Officer;

WHEREAS, the Bend City Council adopts supplemental findings and modified conditions of approval attached as Exhibit "B";

WHEREAS, the application consists of properties of different size and owned by different entities as shown in EXHIBIT "C";

WHEREAS the redevelopment of the smaller property known as Cascade West Property and described as tax lot 200 on Deschutes County Tax Assessor map 18-12-06A, independent of the larger property will result in a development pattern which is not orderly; and

WHEREAS, the applicant has agreed to the imposition of the modified conditions of approval, whereby different conditions shall be required based on property ownership as indicated below;

1. The Century Center Property, LLC agrees that part of the subject property described as tax lots 100, 300, 301, 400, 500, 904, and 907 on Deschutes County Tax Assessors map 18-12-06A, hereinafter referred to as the "Century Center Property" shall not be sold as separate lots or parcels until such time an application for land division /replat which provides street connectivity to the extent required by the City's Development Code is approved by the City and recorded by the property owner.
2. The City will not issue any building permits for the construction of new buildings on the Century Center Property or issue any development approvals for the reuse of the existing buildings where the total vehicle trips for the site will exceed the existing 144 trip credit, until the provisions of subsection 1 above are met.
3. The Century Center Property, LLC shall construct improvements on the streets fronting the subject property as follows:
 - A. Construct sidewalk and curb on the Century Drive property frontage; and
 - B. Construct curbs and a street with 36' minimum pavement width for Commerce Avenue between Century Drive and Columbia Boulevard; and
 - C. Construct sidewalk and landscape strip the length of the subject property along the Commerce Avenue frontage.

Improvements shall be constructed when the subject property redevelops either by subdivision, replat or through the reuse of the existing buildings where the total vehicle trips for the site will exceed the existing 144 trip credit.

4. The Century Center Property, LLC is hereby credited for the cost of making the off-site street improvements east of the subject property on Commerce Avenue to the intersection of Columbia Boulevard described in Section 3, above in

calculating a reasonable nexus for additional off-site impact mitigation for site development of the Century Center Property.

5. The Century Center Property, LLC is hereby credited with a Vehicle Trip Credit of 144 pm peak hour vehicle trips for the existing use of the subject property in accordance with City Transportation Policy. The City will allocate the available vested trips to development on the site in the sequence in which land use applications are received. A new TIA shall be required for subsequent land use proposals which exceed the Vehicle Trip Credit of 144 trips.
6. The Cascade West Property described as tax lot 200 on Deschutes County Tax Assessor map 18-12-06A; shall submit a development plan establishing a public or private street with public access oriented east / west through the subject property which is aligned with Knoll Avenue across 14th Street to the west, with subsequent redevelopment.
7. The Cascade West Property is hereby credited with a Vehicle Trip Credit of 25 pm peak vehicle trips for the existing use of the subject property in accordance with City Transportation Policy. A new TIA shall be required for subsequent land use proposals which exceed the Vehicle Trip Credit of 25 PM Peak trips.
8. The owner of the Cascade West Property shall sign and record a waiver of remonstrance for right of way improvements on 14th Street fronting the subject property
9. The completion of infrastructure improvements may be required by both the Century Center Property and the Cascade West Property to mitigate impacts to the City's transportation, sewer, water and storm water drainage systems as determined during the development review process.

NOW, THEREFORE, The City of Bend Zoning map is amended by changing the designation of the property shown on "Exhibit C" from Light Industrial (IL) to Mixed Employment (ME); and the Bend Urban Area General Plan map is amended by changing the designation of the property shown on "Exhibit C" from Industrial Light (IL) to Mixed Employment (ME)

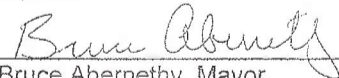
Read for the first time the 18th day of July, 2007.

Read for the second time the 1st day of August, 2007.

Placed upon its passage the 1st day of August, 2007.

Yes: 6 No: 0 Abstain: 0

Authenticated by the Mayor the 1st day of August, 2007.


Bruce Abernethy, Mayor

ATTEST:


Patricia Stell, City of Bend Recorder

DECISION OF CITY OF BEND HEARINGS OFFICER

FILE NUMBER: PZ 06-21

APPLICANT: Century Center Property, LLC
c/o Dave Hill
P.O. Box 825
Bend, Oregon 97709

PROPERTY OWNERS: Century Center Property, LLC
c/o Dave Hill
P.O. Box 825
Bend, Oregon 97709
(Tax Lots 100, 300, 301, 400, 500, 904 and 907)

K & O Holdings, LLC
64 S.W. Century Drive
Bend, Oregon 97702
(Tax Lot 200)

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

REQUEST: The applicant is requesting approval of a plan amendment and zone change from IL to ME for a 9.37-acre parcel located on the east side of Century Drive north of Simpson Avenue in west Bend.

STAFF REVIEWER: Mark Rust, AICP, Associate Planner

HEARING DATES: June 28 and August 15, 2006

RECORD CLOSED: September 26, 2006

I. APPLICABLE STANDARDS AND CRITERIA:

- A. City of Bend Zoning Ordinance, Ordinance No. NS-1178, Chapter 10
1. Section 10-10.4, Definitions
 2. Section 10-10.20, Light Industrial (IL) Zone
 3. Section 10-10.21B, Mixed Employment (ME) Zone
 4. Section 10-10.33, Amendments
- B. City of Bend Ordinance NS-1775, Land Use Review and Procedures Ordinance
1. Section 10-16.1, Introduction and Definitions
 2. Section 10-16.5, Review of Land Use Action Applications
 3. Section 10-16.8, Land Use Action Decision¹
- C. The Bend Area General Plan
- D. Oregon Administrative Rules, Chapter 660,
1. Division 12, Transportation Planning
 - a. OAR 660-012-0060, Plan and Land Use Regulation Amendments
 2. Division 15, State-Wide Planning Goals and Guidelines
 - a. OAR 660-015-000, State-Wide Planning Goals and Guidelines No. 1 Through No. 14
 - b. OAR 660-015-005, State-Wide Planning Goal and Guideline No. 15
 - c. OAR 660-015-010, State-Wide Planning Goals and Guidelines No. 16 Through No. 19

I. FINDINGS OF FACT:

¹ The city adopted a new development code effective August 7, 2006. Because the subject applications were submitted, and the initial public hearing took place, prior to that date the city's former land use procedures ordinance, Ordinance No. NS-1775, applies to these applications.

- A. **Location:** The subject property has assigned addresses of 30, 64 and 86 S W Century Drive, Bend, and is further identified as Tax Lots 100, 200, 300, 301, 400, 500, 901, 904, and 907 on Deschutes County Tax Assessor's Map 18-12-06 A. The subject property also is part of the Enterprise Acres Subdivision. The subject property is bordered on the west by 14th Street/Century Drive (hereafter "Century Drive"), a designated minor arterial street, and on the north by Commerce Avenue, a designated local street.
- B. **Zoning and Plan Designation:** The subject property is zoned and designated Light Industrial (IL).
- C. **Site Description:** The subject property is approximately 9.37 acres in size and is generally rectangular in shape with the long axis running parallel with Commerce Avenue. Tax Lots 100, 300, 301, 400, 500, 904 and 907 are developed with the Brightwood wood products manufacturing plant and associated parking areas and lumber yards. Tax Lot 200 is developed with the Cascade West pub and parking lot. Existing vegetation on the site includes a few mature ponderosa pine trees and native shrubs and grass along Century Drive. Access to the Brightwood plant site is from both Century Drive on the west and Commerce Avenue on the north. Access to the Cascade West pub is from Century Drive.
- D. **Surrounding Zoning and Land Uses:** Abutting properties to the north across Commercial Avenue are zoned Urban Standard Density Residential (RS) and are developed primarily with single-family dwellings. To the northwest across Century Drive is property zoned Convenience Commercial (CC) and developed with a convenience store. To the west across Century Drive are properties zoned CC and developed with a variety of commercial uses including restaurants, taverns, retail establishments, several professional offices, and a youth center operated J Bar J Youth Services. Abutting properties to the south are zoned CC and developed with retail uses including a Mail Boxes Etc. and Skjersaa's Ski and Snowboard shop. Property to the east is zoned IL and developed as the Shevlin Center with a variety of light industrial and commercial uses.
- E. **Procedural History:** On October 21 and November 4, 2005 the applicant conducted two neighborhood meetings to discuss its proposal. The record indicates eight members of the public attended the first neighborhood meeting, and no members of the public attended the second meeting. On January 17, 2006 the applicant submitted the subject applications. They were accepted by the city as complete on February 27, 2006. Because the applications include a request for a plan amendment and related zone change, under Section 10-16.5(D) the 120-day period for issuance of a final local land use decision under ORS 227.178 does not apply. The initial public hearing on the applications was held on June 28, 2006. At the hearing, the applicant requested a continuance for the purpose of responding to issues raised in the staff report. At this hearing the Hearings Officer received testimony and evidence and continued the hearing to August 15, 2006. At the continued hearing, the Hearings Officer again received testimony and evidence, left the written evidentiary record open through September 12, 2006, and allowed the applicant through September 19, 2006 to submit final argument. By a letter dated August 24, 2006 the applicant requested a one-week extension of the post-hearing submission schedule to allow city staff adequate time to review and comment on the applicant's proposal. By an order dated August 28, 2006 the Hearings Officer extended the post-hearing schedule by one week. The record closed on September 26, 2006. The Hearings Officer submitted a draft decision to the Planning Division on December 14, 2006.
- F. **Proposal:** The applicant is requesting approval of a plan amendment and zone change from IL to Mixed Employment (ME) in order to develop the subject property with a variety of industrial, commercial and residential uses. The applicant proposes to retain the existing Cascade West pub with redevelopment of the site. The applicant has proposed a concept plan for the subject property that generally identifies the types and locations of proposed uses and the anticipated traffic impacts from those uses. The proposed concept plan does not include the Cascade West pub.
- G. **Public/Private Agency Notice:** The Planning Division sent notice of the applicant's proposal to a number of public and private agencies and received responses from: the City of Bend Engineering Division, Traffic Engineer, Grading/Drainage, Building Division, and Long-range Planning. These comments are set forth verbatim at pages 4-8 of the staff report and/or are included in the record.
- H. **Public Notice and Comments:** The Planning Division mailed individual written notice of the applicant's proposal and the initial and continued public hearings to the owners of record of all property located within 250 feet of the subject property. The record indicates these notices were mailed to 57 property owners. In addition, notice of the initial 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 three letters from the public in response to these notices. In addition, one member of the public testified at the initial public hearing and two members of the public testified at the continued hearing.

III. CONCLUSIONS OF LAW:

LOT-OF-RECORD STATUS

- A. City of Bend Ordinance No. NS-1775, Land Use Permit & Review Procedures
 - 1. Section 10-16.8, Land Use Action Decision
 - * * *
 - (3) Findings as to Legal Lot of Record Status

Each decision shall include a finding that the property subject to the proposed land use action is a legal lot of record as that term is defined in the City of Bend Zoning Ordinance.

FINDINGS: The applicant has requested approval of a plan amendment and zone change from IL to ME. The applicant's burden of proof states the applicant also submitted an application for a lot-of-record verification for the subject property. That application is not before the Hearings Officer. The staff report states, and I agree, that under this section in order to approve the applicant's proposed plan amendment and zone change I must find the subject property consists of at least one legal lot of record. Section 10-10.4 defines "lot of record" as:

A lot held in separate ownership as shown on the records of the County Clerk at the time of the passage of an ordinance or regulation establishing the zone in which the lot is located, legally created pursuant to law at that time.

The applicant argues the subject property in fact consists of eleven legal lots of record. In support of that argument the applicant's burden of proof and supplemental memoranda include detailed analyses of the legal history of the subject property. The staff report states, and the Hearings Officer agrees, that based on that analysis the subject property includes *at the very least* three legal lots consisting of Lots 1, 2 and 3 of Enterprise Acres. I find I need not determine whether or not the subject property includes additional legal lots of record inasmuch as that determination will be made by city staff through the separate lot-of-record verification application.

PLAN AMENDMENT APPROVAL CRITERIA

B. Bend Area General Plan

1. Future Plan Updates (page P-6)

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

* * *

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

FINDINGS: The applicant has requested approval of an amendment of the subject property's plan designation from IL to ME, and filed a plan amendment application. The above-quoted plan provision requires the applicant to demonstrate the proposed plan amendment is justified by "a public need and benefit for the change."

The applicant's burden of proof provides the following justification for the proposed amendment:

"The zone change and plan amendment to ME, Mixed Employment is requested because economic forces, roadway improvements and area development since the property was first zoned IL have made the property unsuited for continued use as a purely industrial site, especially one related to the wood products industry. No other industrial zoned land is found to the north, south or west of the property boundaries of this tract of land.

The Century Drive area has developed over the last decade or so to become a major commercial area. This change has brought more traffic to Century Drive. It has also caused the City to install roundabouts in the area on every major roadway that brings truck traffic to and from the subject property. The small radius roundabouts installed by the City are an impediment to industrial truck traffic.

The industrial use zoning of the property is a reflection of the fact that this property was a part of the Brooks-Scanlon mill property and the fact that the north part of this property was developed with light industrial uses related to the wood products industry and the local mills. A private railroad and a road named Industrial Way built along the railroad right-of-way used to provide convenient truck and rail access to this property. Both allowed businesses on the subject property to ship goods via the railroad and, when the railroad line was abandoned, to use Industrial Way for easy access to Highway 97.

The sawmills have been closed and redeveloped with high-end housing, the Mount Bachelor parking lot, Shevlin Center subdivision, shopping centers and other commercial uses. Wood products now must be transported to Bend to be remanufactured over increasingly crowded urban streets.

Most of the subject property is developed for the industrial use of remanufacturing wood products. The property was once located on the western edge of an industrial area that was related to the wood products industry. Brightwood is now removed from a convenient source of supply and must import wood to Bend on trucks or rail for remanufacturing. In the past, the subject property was located near the Brooks Scanlon and Shevlin Hixon lumber mills where lumber was manufactured for use by companies like Brightwood. It was a part of an industrial area that developed around the wood products industry. The City's lumber mills closed many years ago. The Bend mills closed because of the near exhaustion of area forests by timber companies and the adoption of environmental protections for remaining forests. Most of the industrial area around the nearby mill sites has been redeveloped with offices and other uses that do not support wood products remanufacturing.

The old Brooks Scanlon mill site is now developed with the Mount Bachelor parking lot and bus stop and a Mixed Riverfront development of commercial, residential and office uses. The Shevlin-Hixon mill site is a mixed use development of national chain store shops, a huge multi-plex movie theater, restaurants, offices, a hotel and residences. An amphitheater used for concerts and events is now located on the old mill property. Persons attending concerts at the amphitheater park near the subject property in the Mount Bachelor parking lot and in area neighborhoods and walk to the amphitheater.

The Cascade West Grub & Alehouse was originally a tavern that relied heavily on workers from nearby mills and industrial businesses. Now, area workers from the Shevlin Center are only a small part of the customer base of the tavern as the tavern also serves tourists and local residents who are employed in other parts of the City. The industrial area served by the tavern has shrunk and the number of other residents and tourists has grown rapidly.

The City of Bend plans to adopt a new zoning code in the near future. The code will prohibit offices in the IL zone. This use is currently allowed and viable on the applicant's property. This change will make it difficult for the applicant to obtain new tenants to replace Brightwood when its lease ends. Changed circumstances in the area make it unattractive for Brightwood to remain as a tenant on the property once its lease expires. The City has a documented shortage of commercial land. No new commercial land will be added to rectify the shortage or to allow room for office uses that would locate in industrial zoning districts. Office businesses associated with the service economy of the United States, like call centers, engineering and construction offices or insurance companies, will no longer be able to locate in areas zoned IG or IL.

The approval of the zone change is warranted as mixed use development has proven to be effective in creating attractive and popular areas for business, commerce and living and there is a demand for more land of this type. The supply of available MR-zoned land in the City is being absorbed rapidly. ME-zoned land in Northwest Crossing is also being absorbed quickly. As a result, the City recently rezoned more land in Northwest Crossing from industrial IP zoning to ME zoning. The only other parcel of land found on the zoning map is land that is a part of the Mountain View Mall shopping center property redevelopment project.

The fact that the subject property is located between an established, historic City neighborhood and commercial and industrial development makes it a logical candidate for ME zoning. The ME zoning district will continue to allow for industrial uses as it is primarily an industrial zoning district.

The zone will, however, also allow the property owner to redevelop the northern part of the property with residential and/or office uses that will have a lower impact on the existing neighborhood.

The need for industrial use only lands is rapidly diminishing due to the repeal of trade restrictions by the federal government. Businesses that used to manufacture goods in the United States are now manufacturing them overseas. These businesses still require offices in the United States to support their businesses. The MR zoning will allow these former industrial production businesses to find a home in Bend."

The Hearings Officer finds the applicant's proposal and arguments in support of it present two principal issues concerning the "public need and benefit" requirement: (1) the impact of the proposed plan amendment on the city's industrial lands inventory; and (2) whether, and what kind of, a master plan is required to assure the subject property is developed with the mixture of uses contemplated in the ME Zone. Each of these issues is addressed separately in the findings below.

I. Industrial Lands Inventory.

Statewide Land Use Planning Goal 9 requires the city provide for "at least an adequate supply of sites of suitable sizes, types, locations, and service levels for a variety of industrial and commercial uses consistent with plan policies." The administrative rules implementing Goal 9 -- specifically OAR 660-009-0015 -- require the city to develop an inventory of industrial and other employment lands comprised of "vacant and developed lands within the planning area designated for industrial or other employment uses." In addition, OAR 660-009-010(4) provides:

For a post-acknowledgement plan amendment under OAR chapter 600, division 18, that changes the plan designation of land in excess of two acres within an existing urban growth boundary from an

industrial use designation to a non-industrial use designation, or another employment use designation to any other use designation, a city or county must address all applicable planning requirements, and :

- (a) Demonstrate that the proposed amendment is consistent with the most recent economic opportunities analysis and the parts of its acknowledged comprehensive plan which address the requirements of this division; or
- (b) Amend its comprehensive plan to incorporate the proposed amendment, consistent with the requirements of this division; or
- (c) Adopt a combination of the above, consistent with the requirements of this division. (Emphasis added.)

The city's comprehensive plan, at page 6-9, states that during the 25-year planning period (2000-2025) the land needed for industrial uses is 886 acres. Table 6-4 of the plan shows that as of 2000 the city had only 539 of the 886 needed acres of land for industrial development, including 478 acres of industrial-zoned land, 50 acres of land zoned Mixed-Use Riverfront, and 11 acres of ME-zoned land. Consequently, the plan states the city has a deficit of available industrial land consisting of 347 acres as of 2000.² This deficit calculation predates the city's annexation of the Juniper Ridge land in the northeast corner of the Bend urban growth boundary (UGB)

The record indicates 2.02 acres of the subject property is included in the city's inventory of available industrial land.³ For that reason, to comply with the requirement of OAR 660-009-010(4) set forth above, the applicant's representative Jon Skidmore conducted an update of the city's industrial lands inventory. Mr. Skidmore submitted two memoranda dated August 2 and August 15, 2006. The August 2 memo includes Mr. Skidmore's calculations of the amount of industrial land absorbed since July 2004. In arriving at his calculations, Mr. Skidmore used factors including the city's building permit data, tax lot information including valuation, property plan designations and zoning, and the amount of undeveloped and developed acreage on properties. Based on this data, Mr. Skidmore concluded that prior to the city's annexation of Juniper Ridge there was a deficit of 293.2 net acres of industrial land within the Bend UGB. The Juniper Ridge annexation brought a total of 513 acres and approximately 380 net acres of industrial land into the inventory, creating an industrial land surplus of 86.8 net acres. Mr. Skidmore found that 23.4 acres of industrial land were removed from the inventory through approval of a 2004 zone change from Industrial Park (IP) to ME in the "Northwest Crossing" development (*West Bend Property Company*, PZ 04-551), and an additional 44.14 net acres were absorbed through development between July 2004 and July 2006. Based on these figures, Mr. Skidmore concluded that as of July 2006 there was a surplus of 19.26 net acres of available industrial land, and consequently a surplus of industrial-zoned land would remain following the removal of either the entire 9.37-acre subject property or the 2.02 acres included in the industrial land inventory.

The staff report questioned some of Mr. Skidmore's methodology and conclusions. In response, Mr. Skidmore submitted his August 15 memo which provided more detailed information concerning his methodology and responses to specific comments in the staff report. At the continued public hearing on August 15, 2006, Associate Planner Mark Rust stated that based on Mr. Skidmore's analysis and the data he used to update the city's inventory of available industrial lands, Mr. Skidmore's estimate of an approximate 19-acre industrial land surplus "is reasonable."

In a document dated September 12, 2006 and entitled "Revised Supplemental Analysis of Economic Lands Policies and Goal 9," the applicant's attorney Liz Fancher argues that with annexation of the Juniper Ridge land the city has far more than the 886 gross acres of vacant and developed industrial land the plan is required to identify for the 25-year planning period under OAR 660-009-0015, and that the surplus of industrial land will continue to exist even after removal of either the entire 9.37-acre subject property or just the 2.02 acres of the property included in the city's industrial lands inventory. In other words, the applicant argues the proposed plan amendment from IL to ME will not reduce the city's supply of industrial land below that identified in the comprehensive plan as needed for the 25-year planning period. Ms. Fancher's memo correctly notes that the evidence in the record concerning gross and net industrial acres and absorption rates is not entirely consistent, and therefore the city's industrial land surplus may in fact be greater than the approximately 19 acres calculated by Mr. Skidmore.

The Hearings Officer understands the city is very sensitive to the loss of any industrial-zoned land through its conversion to non-employment uses. However, I concur with the applicant that since the proposed ME plan designation and zoning would allow the subject property to be developed with a mixture of industrial and commercial uses – both "employment uses" under Goal 9 – and would address the documented shortage of commercial lands, the applicant's proposal is consistent with both Goal 9 and the comprehensive plan's economic development policies.

2. Master Plan for Mixed-Use Development.

² The plan also shows the 585 acres of available *commercial* land falls short of the identified need for 827 acres of commercial land for a deficit of 242 acres in 2000.

³ The applicant questions inclusion of this acreage in the inventory inasmuch as the entire subject property is developed, including parking lots and lumber yards that are an integral part of the Brightwood plant and therefore are not truly "available" for other industrial development. Nevertheless, because these 2.02 acres are included in the inventory the Hearings Officer finds the Goal 9 requirements under OAR 660-009-010(4) apply to the proposed plan amendment.

Planning staff argued that if the proposed plan amendment and zone change from IL to ME were approved, without a master plan there is no guarantee the subject property will be developed with the mixture of industrial, commercial, office and residential uses contemplated in the plan and zoning ordinance for the ME Zone. Specifically, staff expressed concern that the "highest and best use" for the property might be development exclusively with retail establishments that would not pay a "living wage" and that could generate traffic exceeding the capacity of affected transportation facilities. In addition, staff expressed concern that the subject property could be developed in a piecemeal fashion that could result in poor planning and overtaxing of public facilities. For these reasons, staff recommended the applicant be required as a condition of plan amendment and zone change approval to submit a "Master Planned Development Concept Plan" as required for "Master Planned Developments" under Section 4.5.300 of the city's new development code. The applicant responded that there are no provisions in the city's former zoning or procedures ordinance, and no precedent for, requiring this type of detailed master plan as a condition of approval for a plan amendment or zone change.⁴ In addition, the applicant notes that by definition the master plan required under Section 4.5.300 is for a development that "seeks to change one or more of the development standards contained in this ordinance, the underlying zoning and/or Bend Area General Plan designation," and the applicant is not requesting any such deviations.

It appears from the new development code that future development of the subject property may require submission of a "Master Planned Development Concept Plan." Nevertheless, the Hearings Officer concurs with the applicant that I lack authority under the city's former zoning and procedures ordinances to condition approval of the proposed plan amendment and zone change on the applicant's submission of such a plan. However, I find that in order to determine whether the proposed plan amendment will confer a public benefit as required under the plan amendment approval criterion set forth above, and whether uses permitted under the plan amendment and zone change to ME will exceed the capacity of affected public facilities, the record must include evidence of the types and intensities of uses that would be developed on the subject property under an ME designation and zoning.

In recognition of this fact, the applicant submitted proposed a "concept development plan" for development of the subject property, attached to the September 12, 2006 transportation analysis and transportation "master plan" for the subject property prepared by Group Mackenzie and discussed in the findings below concerning the proposal's compliance with the Transportation Planning Rule (TPR). The applicant described the purpose of the submitted "concept development plan" as follows:

"The purpose of the applicant's concept plan is to commit the applicant to provide a mix of land uses on the subject property, to prohibit and permit certain uses in certain areas of the property and to provide a road development plan. This information is provided to address and resolve staff concerns that the approval of the zone change and plan amendment may not meet a public need and benefit without assurance of a mix of uses and compatible land uses."

The "concept development plan" includes four pages. The first page, labeled "Site Development Assumptions," shows the subject property (except the Cascade West pub) divided into four areas – i.e., "bubble plan." The proposed uses within each "bubble" are identified as "restaurant/bank," "retail/general office," "medical/dental office/general office," and "residential." The total square footage of these uses is identified as 155,000 square feet. The "residential" area is located along most of the property's northern boundary across Commerce Avenue from existing residential development on RS-zoned land. The medical, dental and general office uses are shown as occupying the majority of the property (81,000 square feet) and abutting the eastern and southern property boundaries. The area for retail and general office is located in the center of the site, and the area for restaurant and bank is located along the western property boundary abutting Century Drive. The second page, labeled "Facilities Plan," shows locations for sewer and water lines along Century Drive and Commerce Avenue, five points for future access (three from Commerce Avenue and two from Century Drive), and the direction of storm drainage. The third page, labeled "Landscape Concept Plan," identifies locations for internal site streets connecting to the potential site access points shown on page two of the plan, as well as the locations for various types of introduced landscaping along the internal streets and around the site perimeter. The fourth page, labeled "Site Analysis Plan (Existing Conditions)," shows the location of existing utility easements, buildings, access points, street right-of-way, and surrounding zoning.

In addition, as discussed in detail in the findings below concerning the proposal's compliance with the TPR, the September 12, 2006 submission from Group Mackenzie includes a discussion of "reasonable" and "absolute" worst case scenarios for trip generation from uses permitted in the ME Zone, as well as a discussion of the lot coverage assumptions on which the traffic generation predictions were made. As discussed below, Group Mackenzie's analysis concludes development of the subject property with 155,000 square feet of the uses identified on the applicant's "concept development plan" would generate fewer p.m. peak hour trips than would be generated by development under the subject property's current IL designation and zoning.

The Hearings Officer finds the applicant's "concept development plan" and supporting traffic analysis from Group Mackenzie clearly demonstrate the subject property can be redeveloped under the proposed ME designation and zoning in a manner that will not exceed the capacity of affected streets, and will reflect and be compatible with the nature of the uses on surrounding land. The remaining question is whether approval of the applicant's proposed plan amendment and zone change should be conditioned on the applicant's compliance with the submitted "concept development plan." By its terms, this plan does not constitute a binding master development plan under Section 4.5.300 of the new development code. And as noted above the applicant may be required to submit such a plan for future development of the subject property. Nevertheless, I find it is appropriate for me to recommend to the city council that it approve the applicant's proposal subject to a condition of approval requiring that the subject property

⁴ The applicant notes the city did not require such master development plan for approval of the recent zone change from IP to ME in the "Northwest Crossing" development.

be developed in a manner consistent with the submitted "concept development plan" in terms of the mixture, distribution and size of uses and predicted traffic generation.

For these reasons, and with imposition of the above-described condition of approval, the Hearings Officer finds the applicant has demonstrated the proposed plan amendment from IL to ME is justified as meeting public needs for additional commercial and residential land, and conferring a public benefit by providing a mixture of additional commercial, office, and residential uses on the subject property thereby creating an appropriate transition area between the existing residential, commercial and industrial uses surrounding the subject property.

PLAN PREFACE (pages P-4 and P-5)

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.

* * *

The Plan text and policies describe several land use categories that provide for the various types of development expected to occur within the urban area during the 20-year planning period. These land use categories are graphically portrayed on the General Plan Map. The major land use categories – residential, commercial, industrial and mixed use – have very specific boundaries that are shown on the General Plan Map. The city and county apply zoning to property based on the General Plan map categories.

In several previous decisions the Hearings Officer has held the comprehensive plan preface does not establish mandatory approval criteria for quasi-judicial land use applications. E.g., *Awbrey Towers* (02-508), *Shevlin Neighbors* (PZ-05-429, PZ-05-430), *Rimrock Riders* (PZ-05-556, PZ-05-557). My interpretation was upheld by LUBA in its decision in *Save Our Skyline v. City of Bend*, 48 Or LUBA 192 (2004). For these reasons, I find the plan preface merely indicates plan policies are to be implemented by the city's adopted land use regulations.

PLAN POLICIES

CHAPTER 1 – PLAN MANAGEMENT AND CITIZEN INVOLVEMENT

Development within the Urban Growth Boundary (Plan, page P 1-7)

5. The city and county will encourage compact development and the integration of land uses within the Urban Growth Boundary to reduce trips, vehicle miles traveled, and facilitate non-automobile travel.

FINDINGS: The applicant argues, and the Hearings Officer concurs, that the proposed plan amendment from IL to ME would allow compact development on the subject property with uses that would encourage walking and reduce vehicle trips and miles traveled. Although the record indicates Century Drive has not been identified in the city's fixed route transit service plan as a transit corridor, the ME Zone is designed to provide a mix of uses that are more consistent with the goals of this plan policy than are most uses permitted in the IL Zone. Therefore I find the applicant's proposal is consistent with this plan policy.

CHAPTER 6: THE ECONOMY AND LANDS FOR ECONOMIC GROWTH POLICIES

4. The City shall work to preserve prime industrial lands for industrial purposes. (Plan, page 6-16)

FINDINGS: Staff and the applicant appear to agree that the subject property does not constitute "prime" industrial land because at 9.37 acres it is relatively small, it no longer is located adjacent to the large mills that once supplied its raw materials, and it now lacks rail service and easy large truck access due to development in the surrounding area. As discussed elsewhere in this decision, the applicant's proposal would allow the subject property to be developed with uses that would be compatible with surrounding residential, commercial and industrial development and that would have adequate access. Therefore, the Hearings Officer finds the applicant's proposal is consistent with this plan policy.

5. The community shall attempt to diversify its industrial base. (Plan, Page 6-16)

FINDINGS: The applicant argues the proposed redesignation of the subject property from IL to ME will allow the subject property to be developed with light industrial uses within a mixed-use development that would be compatible with the surrounding area and would diversify the city's industrial base. The staff report responds that because the ME Zone allows many uses other than industrial uses, without a master plan for the subject property it is not possible to determine whether the applicant's proposal would satisfy this policy. However, as discussed in the findings above, the applicant has submitted a mixed-use development concept plan for the subject property that shows the property will be developed with uses that are compatible with the surrounding neighborhood. Although the "concept development plan" does not specifically show light industrial uses, the Hearings Officer finds they are

permitted in the ME Zone. For this reason, I find the applicant's proposal will be consistent with this plan policy.

6. Industrial areas shall be protected from incompatible commercial and residential uses. (Plan, page 6-17)

FINDINGS: As discussed in the findings below, while it operated the Brightwood plant produced numerous complaints from neighboring residents concerning noise and other emissions. These complaints are not surprising considering the residential, commercial and office uses located in close proximity to the plant. This incompatibility is cited by the applicant as one of the reasons for the proposed redesignation from IL to ME. However, as discussed in the findings above, the abutting property on the east is developed with an industrial use consisting of Nosler Bullets. In his comments on the applicant's proposal Mark Roberts, Nosler's CFO, expressed concern that some uses permitted in the ME Zone such as residential uses would be incompatible with his company's operations. In response to these concerns, the applicant negotiated with Nosler to develop a set of covenants that would be recorded and would limit the types of uses that could be developed on the eastern part of the subject property adjacent to the Nosler facility. In addition, as discussed above the applicant also has submitted a mixed-use development concept plan that identifies the types and areas of uses that would be developed on the subject property under an ME plan designation and zoning, and shows the residential uses would not abut the Nosler property. The Hearings Officer finds that with these protections the applicant's proposal will satisfy this plan policy.

19. The City may designate other areas for mixed use development to encourage a variety of jobs and services close to residential areas. (Plan, page 6-18)

FINDINGS: The Hearings Officer finds this policy expressly authorizes the city to designate areas within the city for mixed-use development. The applicant's proposed plan amendment to ME would allow the subject property to be developed with a mixture of residential, commercial, office and industrial uses providing a variety of jobs close to residential areas on the west side of Bend. Therefore I find the applicant's proposal is consistent with this plan policy.

CHAPTER 7: TRANSPORTATION SYSTEMS

POLICIES

6. The City shall continue to explore mixed-use zoning as one of the land use patterns that will promote fewer vehicle trips and shorter trip lengths.
7. The City should be receptive to innovative development proposals, including zone changes, plan amendments, and text change that promote alternatives to vehicular traffic thus reducing vehicle trips and trip lengths. (Plan, page 7-4)

FINDINGS: As discussed above, the Hearings Officer concurs with the applicant that the proposed plan amendment and zone change will allow the mixed-use development of the subject property and provide a variety of jobs that will allow residents of the west side of Bend to walk or reduce vehicle trip lengths for traveling to work and/or to obtain goods and services. I also concur with the applicant that its proposal will not interfere with the completion of Bend's transportation system. In fact, redevelopment of the subject property will require improvements to the adjacent segment of Commerce Avenue which will improve connectivity within the surrounding neighborhood. For these reasons I find the applicant's proposal will be consistent with this plan policy.

For the foregoing reasons, the Hearings Officer finds the applicant's proposed plan amendment will be consistent with the city's comprehensive plan policies.

C. OAR Chapter 660, Division 12, Transportation Planning

1. OAR 660-12-060, Plan and Land Use Regulation Amendments
 - (1) Amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility. This shall be accomplished by either:
 - (a) Limiting allowed land uses to be consistent with the planned function, capacity and level of service of the transportation facility;
 - (b) Amending the TSP to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division; or
 - (c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.
 - (2) A plan or land use regulation amendment significantly affects a transportation facility if it:
 - (a) Changes the functional classification of an existing or planned transportation facility;
 - (b) Changes standards implementing a functional classification plan;

- (c) Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or
- (d) Would reduce the level of service of the facility below the minimum acceptable level identified in the TSP [Transportation System Plan].

FINDINGS: The Hearings Officer finds the provisions of this administrative rule apply to the proposed plan amendment and zone change because they would require an amendment to the city's comprehensive plan and zoning maps, and therefore the applicant is proposing an amendment to a land use regulation. The remaining issue is whether the proposed plan amendment and zone change from IL to RS will "significantly affect a transportation facility." I find the proposed plan amendment and zone change, in and of themselves, will not generate any traffic. However, redesignation and rezoning of property could allow types of development generating traffic that would exceed the capacity of the city's street system. For that reason, in numerous previous plan amendment and/or zone change decisions I have concluded it is appropriate for me to review the impact on the street system from traffic anticipated to be generated by potential uses under the proposed zoning in a reasonable "worst case" scenario. I find such an analysis is particularly appropriate where, as here, the proposed designation and zoning to ME would allow a wide variety of uses.

As discussed in the Findings of Fact above, the subject property is bordered on the west by Century Drive, a designated minor arterial street, and on the north by Commerce Avenue, a designated local street. Primary access to the subject property is from Century Drive. The staff report notes the minor arterial designation is one of the highest street classifications within the city, signifying a street designed and intended to handle large amounts of traffic. In support of its proposal, the applicant submitted three traffic studies:

- a study dated January 11, 2006 performed by Ferguson & Associates and attached to the applicant's burden of proof as Exhibit "C;"
- a study dated August 7, 2006 and performed by Ferguson & Associates; and
- a study dated September 12, 2006 and performed by Group Mackenzie.

Each of these studies is discussed separately in the findings below.

1. January 2006 Ferguson Study. This study analyzed the incremental difference in vehicle trip generation between the existing IL zoning and the proposed ME zoning to determine the impact on the affected transportation facilities in the year 2020. This study found the current uses on the subject property -- Brightwood and the Cascade West pub -- generate 1,276 average daily vehicle trips (ADTs) of which 169 would occur during the p.m. peak hour (4:00 p.m. to 6:00 p.m. weekdays). The study predicted redevelopment of the subject property with uses permitted under an ME plan designation and zoning -- i.e., specialty retail, general office, medical office, light industrial, drive-in bank, and high-turnover (sit-down) restaurant -- would generate 1,627 ADTs of which 170 would occur during the p.m. peak hour. Based on these findings, the study concluded the proposed plan amendment and zone change from IL to ME would not have a significant effect on the affected transportation system because it would result in an increase of only one p.m. peak hour trip over current trip generation from existing uses on the subject property.

2. August 2006 Ferguson Study. This study states it was prepared to respond to comments from the city's traffic engineer Robin Lewis that the January 2006 study did not analyze a reasonable "worst-case" scenario and therefore underestimated the potential density of development under ME zoning and consequently also underestimated traffic generation and impacts on affected transportation facilities. Consequently, this study used more "aggressive" assumptions concerning development density and trip generation under both the current IL zoning and the proposed ME zoning. The August traffic study compared the maximum lot coverage and building footprint and height in the IL and ME Zones, and found the maximum building sizes in the ME and IL Zones would be 816,000 and 1,224,000 square feet, respectively, or a difference of 408,000 square feet. The study also concluded that taking into consideration the amount of parking required for the projected ME Zone uses the maximum usable area on the subject property would reduce the overall maximum building size to 805,000 square feet.

Based on this maximum building size and the projected uses, the traffic study concluded development of the subject property under the proposed ME zoning would generate 672 p.m. peak hour trips. The study went on to state:

"By inspection, this level of trip generation is far in excess of what could be accommodated by the existing street system. As such, a development of this intensity would not be approved under the existing ordinance. As such, we do not believe that this development scenario reflects a 'reasonable' worst case scenario; instead, it is a 'theoretical' worst case scenario"

The August study also analyzed the theoretical maximum development potential for the subject property under its current IL zoning -- i.e., development with a 3-story parking structure with a restaurant on the ground floor -- and concluded such a development would generate 1,400 p.m. peak hour trips, well above the predicted maximum such trips under the proposed ME zoning. Based on this analysis, the traffic study concluded:

" * * even if a significantly higher density were assumed, the IL zone would have a greater trip generation potential than the proposed ME zone. Moreover, if the ME development were constructed in a way that mixed uses were provided (not just a single use) and the design and layout of the site supported mixed use development principles, the ME zone would provide the*

opportunity to reduce the trip generation of new development relative to what would happen if the same uses were provided as stand-alone uses throughout the community.

* * *

After reviewing this information, City Staff has agreed that the ME zoning would not result in a higher trip generation potential than the existing zoning but has asked that the applicant agree to master plan the site. The applicant has agreed to master plan transportation facilities and to provide a mix of uses on the site. If the zone change is approved in such a way that there are assurances that the site would be master planned and not developed piece-meal, the existing policies that are in place would naturally limit the amount of development that could occur on the site. A master planning process for the whole site would also ensure that the transportation system would not be overburdened. Since the site could develop in a piece-meal fashion with the existing zoning and since the existing zoning would allow for a significant amount of development, the proposed rezone (if conditioned as discussed by City Staff) would result in a net improvement in the future transportation system compared to what could happen if no action is taken."

7. September 2006 Group Mackenzie Study. This study states it was prepared specifically to address the standards in the TPR established in OAR 660 Division 12. The study reviewed the assumptions and analysis contained in the two Ferguson traffic studies concerning the "reasonable" and "theoretical" worst case trip generation scenarios, and included an independent analysis of these two scenarios. In addition, as discussed in the findings above, the analysis predicted the maximum trips generated on the subject property under the current IL Zone, and under the proposed ME Zone developed as depicted on the applicant's submitted "concept development plan," at 284 and 225 p.m. peak hour trips, respectively. Based on that analysis, this traffic study concluded:

"The proposed Comprehensive Plan Amendment and Zone change applications are not anticipated to have transportation impacts greater than those contemplated by the current zone designation. Therefore, the proposed land use actions do not significantly affect the transportation facilities and the TPR requirements outlined in Oregon Administrative Rule (OAR) 660-012-0060 are met.

The Comprehensive Plan Amendment and Zone Change applications do not generate trips; therefore, any anticipated improvements and their associated funding mechanisms should not be assessed based on this analysis. Rather, via future development applications and potential conditions of approval for this application, impacts could be assessed based on trip generation resulting from a specific development application."

Based on the findings and conclusions in these three traffic studies, the Hearings Officer finds the proposed plan amendment and zone change will not change the functional classification of or standards applicable to Century Drive or Commerce Avenue. And I find that if the property is developed consistent with the submitted "concept development plan" in terms of the types, distribution and sizes of uses the proposed plan amendment and zone change will not allow types or levels of land uses which would result in levels of travel or access that are inconsistent with the functional classification of these facilities. I further find that since the city does not have an acknowledged TSP the standard in paragraph (2)(d) is not applicable.⁵ For these reasons, I find the applicant's proposed zone change will be consistent with the TPR.

2. OAR 660-015-000, 660-015-005, and 660-015-010, Statewide Land Use Planning Goals

Goal 1, Citizen Involvement. The Hearings Officer finds this goal requires that a governing body responsible for adopting a comprehensive plan adopt and publicize a program for citizen involvement that clearly defines the procedures by which the general public will be involved in the on-going land use planning process. The city has established an extensive citizen involvement process to assist it in periodic updates of its plan. Public involvement in the review of this application will be assured by the fact that the city's code requires that a hearing be held regarding the plan amendment and zone change by a land use hearings officer and by the Bend City Council (hereafter "council"). Mailed public notice was provided for both public hearings before the Hearings Officer and will be provided for the public hearing before the council. As discussed in the Findings of Fact above, the city also provided general public notice of the initial public hearing by publication in the Bend "Bulletin," a newspaper of general circulation in Bend and Deschutes County and by posting the subject property with a notice of proposed land use action sign. For these reasons, I find the applicant's proposed plan amendment is consistent with Goal 1.

Goal 2, Land Use Planning. The Hearings Officer finds this goal requires the city to establish a planning process and policy framework that will serve as a basis for all decisions and actions related to the use of land. It also requires that the city assure an adequate factual base for its decisions and actions. The city complies with this requirement by appointing hearings officers to review all plan amendment and zone change requests and to prepare detailed findings regarding the application for review and adoption by the council. I find the goal exception portion of Goal 2 is not applicable to the subject plan amendment application because no goal exception has been requested or is required. For these reasons, I find the proposed plan amendment is consistent with Goal 2.

Goal 3, Agricultural Lands and Goal 4, Forest Lands. The Hearings Officer finds these goals do not apply to the applicant's proposed plan amendment because the subject property is located within an urban growth boundary and is not designated or zoned for agriculture or forest use.

Goal 5, Open Spaces, Scenic and Historic Areas and Natural Resources. The Hearings Officer finds this goal is not

⁵ The city has identified acceptable levels of service in its street policies.

applicable to the applicant's proposed plan amendment because the subject property does not include any inventoried Goal 5 resources.

Goal 6, Air, Water and Land Resources Quality. The Hearings Officer finds this goal requires that the city's zoning decisions not degrade air, water and land resources in applicable air sheds and river basins. I find approval of this zone change will not adversely affect natural resources as the subject property is already developed and will be redeveloped with urban uses following approval of the proposed plan amendment and zone change. The applicant argues, and I concur, that the proposed ME designation and zoning may reduce air pollution by reducing vehicle trip length through mixed-use development.

Goal 7, Areas Subject to Natural Disasters and Hazards. The Hearings Officer finds this goal is not applicable to the proposed plan amendment because the subject property is not a known natural disaster or hazard area. The applicant argues, and I agree, that to the extent this goal considers natural hazards outside the subject property, the general volcanic and seismic hazards in the Bend area have, to the extent practical, been taken into account in the city's plan and land use regulations. Therefore, I find the applicant's proposed plan amendment is consistent with this goal.

Goal 8, Recreational Needs. The Hearings Officer finds this goal is not applicable to the proposed plan amendment because the subject property is not identified or planned for recreational uses or for a destination resort.

Goal 9, Economic Development. The applicant argues, and the Hearings Officer agrees, that the proposed plan amendment is consistent with this goal because it and the related zone change would allow the subject property to be developed with a mixture of residential, commercial and industrial uses, thereby stimulating and supporting economic development. In addition, as discussed above, the record indicates the city has a documented shortage of commercial lands which the proposed plan amendment will address. Finally, as also discussed above, I have found approval of the proposed plan amendment will not reduce the city's industrial lands inventory below the minimum identified as needed in the 25-year planning period identified in the comprehensive plan. For these reasons, I find the applicant's proposed plan amendment is consistent with this goal.

Goal 10, Housing. The Hearings Officer finds this goal is not applicable to the proposed plan amendment because neither IL- nor ME-zoned land is included in the city's inventory of residential lands, and therefore the proposed plan amendment will not affect that inventory.

Goal 11, Public Facilities and Services. This goal requires the city to plan and develop land in a timely, orderly and efficient fashion, based upon the availability of public services. As discussed in the findings below, the Hearings Officer has found all needed public facilities and services are available to and currently serve the subject property. Therefore, I find the proposed plan amendment is consistent with this goal.

Goal 12, Transportation. As discussed in the findings above, incorporated by reference herein, the Hearings Officer has found the proposed plan amendment is consistent with and satisfies the requirements of the TPR which implements this goal.

Goal 13, Energy. The Hearings Officer finds this goal requires that land uses be developed and managed so as to maximize the conservation of all forms of energy, based upon sound economic principles. The applicant argues, and I concur, that the mixed-use development that would be facilitated by the proposed plan amendment and related zone change will reduce the number of vehicle trips and trip lengths associated with development on the subject property, thereby helping to conserve fossil fuel energy. For these reasons, I find the proposed plan amendment is consistent with this goal.

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

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

Goal 16, Estuarine Resources. The Hearings Officer finds this goal is not applicable because the subject property does not contain an estuary or related wetland.

Goal 17, Coastal Shorelands. The Hearings Officer finds this goal is not applicable because no property in the Bend urban area has coastal shorelands.

Goal 18, Beaches and Dunes. The Hearings Officer finds this goal is not applicable because the subject property does not include beaches or dunes as those terms are used in Goal 18.

Goal 19, Ocean Resources. The Hearings Officer finds this goal is not applicable because the proposed plan amendment and related zone change will not have an impact on ocean resources.

Based on the foregoing findings, the Hearings Officer finds the applicant's proposed plan amendment from IL to RS satisfies all applicable plan amendment approval criteria.

ZONE CHANGE APPROVAL CRITERIA

- E. City of Bend Zoning Ordinance, Ordinance No. NS-1178, Chapter 10
 - 1. Section 10.10.33, Standards for Zone Change

Amendments. This ordinance may be amended by changing the boundaries of zones or by changing any other provisions thereof, whenever the public necessity and convenience and the general welfare requires such an amendment. Such a change may be proposed by the City Council on its own motion or by motion of the Planning Commission, or by petition as hereinafter set forth.

- (1) Application. An application for amendment by a property owner or his authorized agent shall be filed with the City Planning Director. The application shall be made on the forms provided by the City. Before taking final action on a proposed amendment, the Approval Authority shall hold a public hearing thereon. The Approval Authority shall follow the procedures set forth in the City of Bend's land use procedures for map changes. (Emphasis added.)

FINDINGS: The applicant proposes to develop the subject property with a mixed-use development that would include residential, commercial and office uses. The ME Zone also would allow light industrial uses. As discussed above, the applicant wants to include office uses in redevelopment of the property, uses not permitted in the IL Zone under the city's new development code. For these reasons the applicant submitted an application for a zone change from IL to ME. The record indicates the application was submitted on a city application form, accompanied by the required application fee and a burden of proof. Before the approved zone change becomes effective the Bend City Council will hold a public hearing.

The staff report states previous hearings officer decisions have found the above-underscored language constitutes a mandatory approval criterion for a proposed zone change, and therefore requires the applicant to demonstrate the proposed zone change is required by "the public necessity and convenience and general welfare." This Hearings Officer has not always treated this language as a zone change approval criterion, although arguably it could be read to constitute one. Assuming for purpose of discussion that this language constitutes a mandatory approval criterion, the staff report questions whether the applicant's proposal satisfies this criterion because staff believes the proposed zone change would have both positive and negative consequences. On the benefit side, staff notes the proposed zone change and resulting redevelopment would remove from the neighborhood an industrial use that has been incompatible with nearby residences, would allow development with a mix of more compatible uses, and would address a need for more commercial and residential land in the Bend urban area.

On the detriment side, staff argues the applicant's proposal would reduce the potential for family wage industrial jobs in this part of Bend, and would replace those jobs with employment in retail, restaurant, and service commercial businesses of which there already is a "significant supply" on the west side of Bend. In addition, as discussed above staff argues any zone change approval should be conditioned on the applicant submitting a master development plan pursuant to Section 4.5.300 of the city's new development code in order to assure a mix of uses that would leave open the opportunity for some industrial "family wage jobs." As also discussed above, the applicant submitted a "concept development plan" that identifies the types, distribution, and sizes of -- and potential traffic generation from -- a proposed mixture of uses on the subject property permitted under the ME Zone. Based on the applicant's evidence, including the "concept development plan," the Hearings Officer has found the identified benefits from the proposed plan amendment justify its approval because a public need will be met and a public benefit will be conferred. For the same reasons, I find these benefits also justify the proposed zone change. As discussed in detail in the findings above, I have found it is appropriate for me to recommend that the council approve the proposed plan amendment and zone change subject to a condition of approval requiring the applicant to develop the subject property consistent with the submitted "concept development plan" in terms of the types, distribution and sizes of, and traffic generation from, the proposed uses.

- (2) Standards for Zone Change. The burden of proof is upon the one seeking change. The degree of that burden increases proportionately with the degree of impact of the change which is sought. The applicant shall in all cases establish:
 - A. That the change conforms with the Comprehensive Plan. Specifically, the change is consistent with the Plans intent to promote an orderly pattern and sequence of growth.

FINDINGS: In several previous decisions the Hearings Officer has held this approval criterion includes three elements: 1) conformance with the comprehensive plan map; 2) conformance with the comprehensive plan text; and 3) consistency with the plan's intent to promote "an orderly pattern and sequence of growth." Each of these elements is discussed separately in the findings below.

1. Conformance with Comprehensive Plan Map.

The subject property is designated IL on the comprehensive plan map. The applicant has requested approval of a plan amendment from IL to ME, and as discussed in the findings above the Hearings Officer has found the applicant has demonstrated the proposed plan amendment satisfies the applicable approval criteria and has recommended that it be approved subject to a condition of approval requiring the applicant to develop the subject property consistent with the submitted "concept development plan." Therefore, assuming the council approves the plan amendment, the proposed zone change from IL to ME would be consistent with the plan map.

2. Conformance with Comprehensive Plan Text.

As discussed in detail in the findings above, the Hearings Officer has found the proposed plan amendment from IL to ME is consistent with the applicable plan policies. With respect to the proposed zone change, in several previous

decisions I have held that because the city's comprehensive plan is implemented through its zoning, subdivision and procedures ordinances, the plan does not establish mandatory approval criteria for quasi-judicial land use applications such as the applicant's proposed zone change. I adhere to that holding here.

3. Consistency with the Plan's Intent to Promote an Orderly Pattern and Sequence of Growth.

In previous zone change decisions the Hearings Officer has held the phrase "orderly pattern and sequence of growth" contemplates consideration of both the location and timing of urban development. I have concluded an orderly *pattern* of growth is one that promotes compatible physical relationships between zoning districts and uses, while an orderly *sequence* of growth promotes urban-density development concurrent with the provision of adequate urban services. I adhere to that interpretation here.

a. Orderly Pattern of Growth.

The staff report notes the area surrounding the subject property consists of a mix of industrial, commercial and residential zones and uses. The requested zone change from IL to ME would facilitate redevelopment of the subject property with a similar mixture of residential, commercial, industrial and office uses that would be more compatible with the surrounding neighborhood than the existing wood products business and would provide a transition area between the existing residential, commercial and industrial uses on surrounding land. The Hearings Officer finds the proposed rezoning of the subject property will promote an orderly *pattern* of growth because it would foster proper relationships between zoning districts and uses, and would be consistent with the type of mixed-use urban-density development contemplated in the ME Zone. In addition, as discussed in the findings above, the applicant's traffic studies show the subject property can be developed in a manner that generates traffic not exceeding the capacity of affected streets. Finally, as also discussed above, I have recommended the proposed plan amendment and zone change be approved subject to a condition requiring the applicant to develop the subject property consistent with the submitted "concept development plan." For these, I find the proposed zone change from IL to ME will promote an orderly *pattern* of growth.

b. Orderly Sequence of Growth.

In numerous previous decisions, this Hearings Officer has found an orderly *sequence* of growth is one that promotes urban-density development concurrent with adequate urban infrastructure, including sewer, water, police and fire protection, schools and transportation facilities. Each of these facilities and services is discussed separately in the findings below.

(1) Police Protection. Because the subject property is located within the Bend city limits it will be served by the Bend Police Department which did not comment on the applicant's proposal. The Hearings Officer finds this lack of comment indicates the department believes it can serve mixed-use development on the subject property.

(2) Fire Protection. Because the subject property is located within the Bend city limits it will be served by the Bend Fire Department. The record indicates a local fire station is located very close to the subject property near the intersection of Century Drive and Simpson Avenue. Because the applicant has not proposed a particular development the fire department did not comment on the applicant's proposal. However, the Hearings Officer is aware the department's typical comments address adequate water pressure to meet minimum fire flows, adequate fire hydrants, and adequate access for emergency vehicles. Because the subject property currently is developed with a wood products use and is surrounded by a variety of urban uses, I find the applicant will be able to provide fire protection satisfying the requirements of the fire code.

(3) Sewer and Water. The subject property currently is served by city sewer and water. The Hearings Officer finds particular sewer and water facility requirements will be addressed at the time approval of a development proposal is requested. However, I find that given the type and density of current development on the subject property and surrounding properties there is no reason to believe the applicant or its successors cannot provide sewer and water facilities and services that meet the city's standards and specifications.

(5) Schools. The subject property is located within the boundaries of the Bend-La Pine School District. As discussed above, the proposed zone change to ME would allow a portion of the subject property to be developed with residential uses that could have an impact on schools by adding students. The record does not include comments from the school district. However, the Hearings Officer is aware the school district's typical comments state the district does not take a position on particular development proposals and responds to growth in enrollment through a variety of means, and also recommends that sidewalks be required for student pedestrians.

(6) Parks. The subject property is located within the boundaries of the Bend Metropolitan Park and Recreation District. The proposed zone change to ME would allow a portion of the subject property to be development with residential uses that could have an impact on parks. The Hearings Officer finds that any residences would be subject to park systems development charge (SDC) to support park property acquisition.

(7) Transportation Facilities. The subject property is bounded on the west by Century Drive, a designated arterial street, and on the north by Commerce Avenue, a designated local street. As discussed in detail in the findings above concerning the proposal's compliance with the TPR, the applicant's traffic studies show the subject property can be developed with uses permitted in the ME Zone without exceeding the capacity of affected streets. The applicant submitted a "concept development plan" that identifies the types, distribution and sizes of proposed uses to be developed on the subject property under the proposed ME zoning as well as the predicted trip generation from such uses and densities. The Hearings Officer has recommended the proposed plan amendment and zone change be approved subject to a condition requiring the applicant to develop the subject property consistent with the "concept development plan." For these reasons, and with imposition of this condition of approval, I find the proposed zone

change will promote an orderly sequence of growth considering traffic impacts.

For the foregoing reasons, the Hearings Officer finds the proposed zone change from IL to ME will promote an orderly *sequence* of growth.

B. That the change will not interfere with existing development on, development potential, or value of other land in the vicinity of the proposed action.

FINDINGS: As discussed above, the area surrounding the subject property is characterized by a mixture of residential, commercial and industrial zoning districts, densities and uses, as well as a number of office uses. The subject property currently is developed with an industrial use and a restaurant. As discussed in the findings above, operation of the existing wood products plant has created conflicts with nearby residential uses. The proposed zone change to ME would allow the portion of the subject property developed with the industrial use to be redeveloped with a broader mixture of residential, commercial, industrial and office uses than currently is permitted in the IL Zone, including uses that would be more compatible with surrounding uses and would provide an effective transition between the commercial, industrial and residential zoning districts that adjoin the subject property. In addition, redevelopment of the subject property likely would require improvement to the abutting segment of Commerce Avenue, providing greater street connectivity in this area. For these reasons, the Hearings Officer finds the proposed zone change will not interfere with either existing or potential development on other land in the vicinity.

With respect to impact from the proposed zone change to ME on surrounding property values, the Hearings Officer finds the determination of value impact can be highly subjective. The staff report states, and I agree, that although there is no evidence in this record specifically addressing impacts on property values, there is little doubt that redevelopment of the subject property under ME zoning would have a positive impact on surrounding property values because of the potential mixture of uses consistent with the applicant's submitted "concept development plan." The staff report also notes that of the surrounding property who received notice of the applicant's proposal, only two had negative comments – Nosler, Inc. and Merrill Holdings. The record indicates that Nosler's concerns about compatibility of ME Zone uses with its bullet manufacturing business have been addressed by the private covenants proposed by the applicant. The other property owner, O.J. Merrill of Merrill Holdings, submitted a lengthy letter attacking the character of the applicant's representative Dave Hill, and expressing frustration that the adjacent Merrill Holdings property was not included in the applicant's redevelopment proposal. However, at the continued public hearing Mr. Hill testified that Mr. Merrill no longer opposed the applicant's proposal. In addition, attached to the applicant's September 12, 2006 submission are statements signed by 65 nearby property owners, including Mr. Merrill, supporting the applicant's proposal to redesignate and rezone the subject property.

For the foregoing reasons, the Hearings Officer finds the proposed zone change from ME to IL will not interfere with existing or potential development, or the value of, land in the vicinity of the subject property, therefore satisfying this criterion.

C. That the change in classification for the subject property is consistent with the purpose and intent of the proposed zone classification.

FINDINGS: The purpose of the ME Zone is set forth in Section 10-10.21B(1) as follows:

The zone is designed to provide for a mix of uses such as office, retail, services, light manufacturing and warehousing that offer a variety of employment opportunities in an aesthetic environment and having a minimal impact on surrounding uses.

The Hearings Officer finds the proposed zone change will be consistent with the purposes of the ME Zone. As discussed above, the subject property is surrounded by residential, commercial and industrial zones and uses. The applicant's burden of proof states, and I agree, that these uses are exactly the types of uses allowed outright or conditionally in the ME Zone.

D. That the change will result in the orderly and efficient extension and provision of public services. Also, that the change is consistent with the City of Bend policy for provision of public facilities.

FINDINGS: As discussed in detail in the findings above, the Hearings Officer has found the applicant's proposed zone change from IL to ME will promote an orderly sequence of growth because necessary and adequate public facilities and services are available to the subject property, and because redevelopment of the subject property with uses permitted in the ME Zone, and consistent with the submitted "concept development plan," will not exceed the capacity of affected transportation facilities. Based on these findings, incorporated by reference herein, I find the proposed zone change also will satisfy this criterion because it will result in the orderly and efficient extension and provision of public facilities.

E. That there is proof of a change of circumstance or a mistake in the original zoning.

FINDINGS: The applicant does not argue the current IL zoning of the subject property was a mistake. Rather, the applicant argues the proposed zone change to ME is justified by changes of circumstance that have occurred since the subject property originally was zoned IL. The applicant's burden of proof includes the following brief history of the subject property:

"The subject property was zoned and planned for General Industrial use at the time of the adoption of the Bend Area General Plan around 1979 to match the industrial use of the property. At that time, the primary uses in the area were industrial and residential uses. Some tourist commercial establishments, such as ski shops, were located along Century Drive but much of the commercial land in the area was vacant. After 1979, the last of the area lumber mills was closed due to a lack of harvestable timber in Oregon and the Pacific Northwest. Following mill closure, the former mill properties were subdivided and redeveloped with an office park (Shevlin Center) and mixed use development on both sides of the Deschutes River.

In 1995, the City of Bend adopted the Mixed-Riverfront zoning district and applied it to most of the former Shevlin-Hixon mill site. The primary rationale for the change was that the location of the property adjacent to the Deschutes River and in the center of the City of Bend was not the appropriate location for the heavy industrial uses allowed by the IG zoning district. The river was a key part of the historic lumber mill operations as logs were floated to the mill in the Deschutes River. The river does not, however, serve a similar role for any other heavy industrial use.

In 1998, the City of Bend and Deschutes County made major amendments to the Bend Area General Plan map. In 2000, the City adopted a Transportation System Plan in October 2000. The Land Conservation and Development Commission, however, declined to acknowledge the TSP. As the TSP was adopted under periodic review procedures set forth in ORS 197.628 through ORS 197.644, rather than ORS 197.610 through ORS 197.625, the TSP is not yet effective. ORS 197.625.

Two major shopping centers have been developed on formerly vacant land a short distance of the subject property within the last ten years on the east side of Century Drive. One center includes Ray's Market grocery store, Subway, a bank, McDonald's, a veterinarian and other stores. The other major shopping center is the Century Park shopping center. It contains Safeway, Blockbuster Video and a Starbucks store. A bank is also being constructed in this center. In about the same period of time, land on the west side of Century Drive has been developed with a series of commercial buildings with multiple commercial tenants."

The applicant's burden of proof goes on to identify the specific changes of circumstance on which it relies to justify the proposed zone change from IL to ME as follows:

- the city's 2004 annexation of 513 gross acres and 380 net acres of industrial land (Juniper Ridge) into the UGB, thereby eliminating the shortage of inventoried industrial land;
- the city's adoption of mixed-use zones such as the ME Zone to allow and encourage mixed-use development;
- the city's construction of numerous transportation system improvements on the west side of Bend, generally improving access to the subject property and surrounding properties, but making more difficult access for large trucks used in Brightwood mill operations due to the installation of single-lane roundabouts;
- the dramatic reduction in heavy manufacturing and industrial uses in the region and in Bend as the result of changes to the global marketplace, and a shift in the local economic base from heavy reliance on resource extraction and industrial uses to professional, service and high-tech businesses that typically do not require industrial zoning; and
- the closure of the Brightwood mill and all other mills in the Bend area, whose presence created the primary need for industrial zoning.

The Hearings Officer agrees that the changes of circumstance cited by the applicant justify the proposed zone change from IL to ME. Therefore I find the applicant's proposal satisfies this criterion.

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

IV. DECISION:

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer hereby **RECOMMENDS APPROVAL** of the applicant's proposed plan amendment and zone change, **SUBJECT TO THE FOLLOWING CONDITION OF APPROVAL:**

- i. The subject property shall be developed in a manner that is consistent in terms of the mixture, distribution, and size of uses and the predicted traffic generation with the "concept development plan" submitted by the applicant and attached to the September 12, 2006 Group Mackenzie traffic analysis.

Dated this _____ day of February, 2007

Mailed this _____ day of February, 2007.

Karen H. Green, City of Bend Hearings Officer

**SUPPLEMENTAL FINDINGS AND
MODIFICATION OF CONDITIONS**

FILE NUMBER: PZ 06-21

APPLICANT: Century Center Property, LLC
c/o Dave Hill
P.O. Box 825
Bend, Oregon 97709

PROPERTY OWNERS: Century Center Property, LLC
c/o Dave Hill
P.O. Box 825
Bend, Oregon 97709
(Tax Lots 100, 300, 301, 400, 500, 904 and 907)

K & O Holdings, LLC
64 S.W. Century Drive
Bend, Oregon 97702
(Tax Lot 200)

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

REQUEST: The applicant is requesting approval of a plan amendment and zone change from IL to ME for a 9.37-acre area of land located on the east side of Century Drive north of Simpson Avenue in west Bend.

PURPOSE OF THE SUPPLEMENTAL FINDINGS: The City agrees with the Hearings Officer's recommendation to approve of the applicants proposed zone change and plan amendment from Light Industrial to Mixed Employment. However, these supplemental findings are intended to identify areas of concern that were not adequately addressed by the Hearing Officer's report. The City feels that the applicant's ability to meet some of the approval criteria could be strengthened through the application of conditions as addressed below.

(2) Standards for Zone Change. The burden of proof is upon the one seeking change. The degree of that burden increases proportionately with the degree of impact of the change which is sought. The applicant shall in all cases establish:

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

The Hearings Officer finds the proposed rezoning of the subject property will promote an orderly *pattern* of growth because it would foster proper relationships between zoning districts and uses, and would be consistent with the type of mixed-use urban-density development contemplated in the ME Zone. In addition, the Hearings Officer has recommended the proposed plan amendment and zone change be approved subject to a condition requiring the applicant to develop the subject property consistent with the submitted "concept development plan." and finds that the proposed zone change from IL to ME will promote an orderly *pattern* of growth.

Due to the broad variety of uses permitted in the Mixed Employment Zone the City initially sought a Master Plan for the area as a means of identifying the proposed uses and impacts without approving a site plan. However the City questions the validity and benefit of the "concept master plan" referred to in the Hearing Officer's recommendation. This plan was introduced late in the process and was not fully vetted through a public process. In addition, the concept plan is very sketchy and does not provide adequate information for determining the impacts of the proposal. There is concern from the City that the actual impacts to the nearby neighborhoods have not been and cannot be analyzed.

The approval criteria for a zone change ask two questions; 1) ability to promote an orderly pattern of growth and 2) the ability to promote an orderly sequence of growth. A concern raised by the City with regard to *orderly sequence of growth* is the manner in which the recognized legal lots could be sold and/or developed. Some of the identified "legal" lots do not meet the definition of a lot by today's standards. The City discussed this concern with the applicant. As a condition of approval, the applicant, Century Center Property, LLC agrees that part of the subject property described as tax lots 100, 300, 301, 400, 500, 904, and 907 on Deschutes County Tax Assessors map 18-12-06A, hereinafter referred to as the "Century Center Property" shall not be sold as separate lots or parcels until such time an application for land division / replat which provides street connectivity to the extent required by the City's Development Code is approved by the City and recorded by the property owner. This additional condition reinforces the applicant's ability to meet the criteria for orderly development, therefore justifying the recommendation for approval.

D. That the change will result in the orderly and efficient extension and provision of

public services. Also, that the change is consistent with the City of Bend policy for provision of public facilities.

Similar to the concerns raised above with regard to promoting an orderly sequence of growth is the provision of public facilities, specifically the construction of needed street improvements. The subject property is located in an area of town where substandard streets exist. Commerce Avenue remains a gravel street today despite the frequent use by the adjoining neighborhood and local businesses. As a matter of safety, both Commerce Avenue and Century Drive need to be improved to City standards prior to any reuse of the existing buildings with more intense uses. Again, the City has discussed this issue with the property owner. As a condition of approval, The Century Center Property, LLC shall construct improvements on the streets fronting the subject property as follows:

- D. Construct sidewalk and curb on the Century Drive property frontage, and
- E. Construct curbs and a street with a 36' minimum pavement width for Commerce Avenue between Century Drive and Columbia Boulevard; and
- F. Construct sidewalk and landscape strip the length of the subject property along the Commerce Avenue frontage.

Street improvements shall be constructed when the subject property redevelops either by subdivision, replat or through the reuse of the existing buildings where the total vehicle trips for the site will exceed the existing 144 trip credit.

Additional conditions which strengthen the arguments of orderly development include:

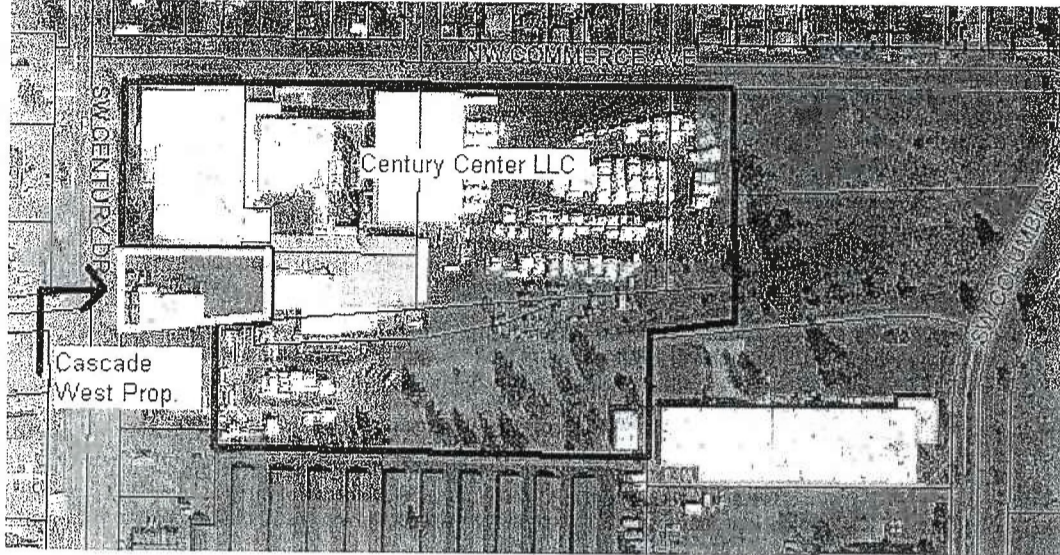
1. The City will not issue any building permits for the construction of new buildings on the Century Center Property or issue any development approvals for the re-use of the existing buildings where the total vehicle trips for the site will exceed the existing 144 trip credit, until the provisions of subsection 1 above are met.
2. The Century Center Property, LLC is hereby credited for the cost of making the off-site street improvements east of the subject property on Commerce Avenue to the intersection of Columbia Boulevard described in Section 3, above in calculating a reasonable nexus for additional off-site impact mitigation for site development of the Century Center Property.
3. The Century Center Property, LLC is hereby credited with a Vehicle Trip Credit of 144 pm peak hour vehicle trips for the existing use of the subject property in accordance with City Transportation Policy. The City will allocate the available vested trips to development on the site in the sequence in which land use applications are received. A new TIA shall be required for subsequent land use proposals which exceed the Vehicle Trip Credit of 144 trips.

The proposed zone change and plan amendment applies to properties under two different ownerships. This raises a separate, but similar issue with regard to orderly development and sequence of growth. The majority of the property is held by Century Center Property, while a single property identified as tax lot 200 on Deschutes County Assessors map 18-12-06A is held by Cascade West Property. The Cascade West Property is developed with a viable business use and is integral in achieving local street connectivity through the site. The City has concern with granting approval of the zone change and plan amendment for this property without any guarantee for orderly street connectivity. Through separate conditions of approval specific to the Cascade West Property, the City can be guaranteed an orderly pattern of growth and provision of public facilities. Conditions that are specific to the Cascade West Property include:

1. The Cascade West Property described as tax lot 200 on Deschutes County Tax Assessor map 18-12-06A, shall submit a development plan establishing a public or private street with public access oriented east / west through the subject property which is aligned with Knoll Avenue across 14th Street to the west, with subsequent redevelopment.
2. The Cascade West Property is hereby credited with a Vehicle Trip Credit of 25 pm peak vehicle trips for the existing use of the subject property in accordance with City Transportation Policy. A new TIA shall be required for subsequent land use proposals which exceed the Vehicle Trip Credit of 25 PM Peak trips.
3. The owner of the Cascade West Property shall sign and record a waiver of remonstrance for right of way improvements on 14th Street fronting the subject property
4. The completion of infrastructure improvements may be required by both the Century Center Property and the Cascade West Property to mitigate impacts to the City's transportation, sewer, water and storm water drainage systems as determined during the development review process.

Certainty for the planning and construction of these needed street improvements within a built up area of town adds further justification of the proposals ability to meet the approval criteria for orderly pattern and sequence of growth and the provision of public facilities.

EXHIBIT "C"



Century Center, LLC consists of tax lots 100, 300, 301, 400, 500, 904, and 907 on Deschutes County Tax Assessor Map 18-12-06A.

Cascade West Property consists of tax lot 200 on Deschutes County Tax Assessor Map 18-12-06A.