



# Oregon

Theodore R. Kulongoski, Governor

**Department of Land Conservation and Development**

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

[www.lcd.state.or.us](http://www.lcd.state.or.us)

## NOTICE OF ADOPTED AMENDMENT

May 29, 2007

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Bend Plan Amendment  
DLCD File Number 020-06



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office. This amendment was submitted without a signed ordinance.

Appeal Procedures\*

### **DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: June 13, 2007**

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

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

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

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

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**FORM 2**

**DLCD NOTICE OF ADOPTION DEPT OF**

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

**MAY 24 2007**

(See reverse side for submittal requirements)

**LAND CONSERVATION  
AND DEVELOPMENT**

Jurisdiction: City of Bend Local File No.: P.2.06-809  
(If no number, use none)

Date of Adoption: 5/16/07 Date Mailed: 5/23/07  
(Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 11/21/06

- Comprehensive Plan Text Amendment
- Land Use Regulation Amendment
- New Land Use Regulation
- Comprehensive Plan Map Amendment
- Zoning Map Amendment
- Other: \_\_\_\_\_  
(Please Specify Type of Action)

Summarize the adopted amendment. Do not use technical terms. Do not write see Attached.≡  
Zone change from Urban Reserve to Light Industrial

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

Plan Map Changed from : \_\_\_\_\_ to \_\_\_\_\_

Zone Map Changed from: UAR to IL

Location: North Bend / Juniper Ridge Acres Involved: 20

Specify Density: Previous: 2 New: 0

Applicable Statewide Planning Goals: 9, 12

Was an Exception Adopted? Yes: \_\_\_\_\_ No: X

DLCD File No.: 020-06 (15703)

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

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

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

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

Local Contact: Colin Stephens Area Code + Phone Number: 541-693-2119

Address: 210 NW Wall St. City: Bend

Zip Code+4: 97701 Email Address: cstephins@ci.bend.or.us

### ADOPTION SUBMITTAL REQUIREMENTS

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

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:  
**ATTENTION: PLAN AMENDMENT SPECIALIST**  
**DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**  
**635 CAPITOL STREET NE, SUITE 150**  
**SALEM, OREGON 97301-2540**
2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the ANotice of Adoption is sent to DLCD.
6. In addition to sending the ANotice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to [Mara.Ulloa@state.or.us](mailto:Mara.Ulloa@state.or.us) - ATTENTION: PLAN AMENDMENT SPECIALIST.

**ORDINANCE NO. NS-2050**

AN ORDINANCE AMENDING THE CITY OF BEND ZONING MAP, BY CHANGING THE ZONING OF APPROXIMATELY 20-ACRES OF LAND FROM UAR, URBAN AREA RESERVE, TO IL, INDUSTRIAL LIGHT.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council opened a public hearing on March 21, 2007, continued the hearing to April 4, 2007 to accept additional evidence and rebuttal, considered the Hearings Officer's findings and record, and has found that the zone change satisfies the criteria for approval contained in Section 4.6 of the Bend Development Code.

Section 2. The Bend Area Zoning Map is amended by changing the zoning of the property described as portions of section 10, Deschutes County Assessor's map 17-12-10, as shown in Exhibit "A". The change will be from Urban Area Reserve (UAR) to Industrial Light (IL).

Section 3. The Bend City Council adopts and incorporates into this decision the portion of the Hearings Officer's March 12, 2007, decision (on pages 5-6) that interprets both Table 2.4.300 of the Bend Development Code (BDC) and the definition of "corporate headquarters" of the BDC Chapter 1.2. The City Council adopts as findings in support of this ordinance the Hearings Officer's findings in her March 12, 2007, decision. The Hearings Officer's decision is attached as Exhibit B. The City Council also adopts as additional findings in support of this ordinance the findings attached as Exhibit D. To the extent that any conflict exists between Exhibit D and Exhibit B, Exhibit D shall control.

Section 4. This zone change is subject to the conditions of approval contained in Exhibit "C".

Read for the first time the 4th day of April, 2007.

Read for the second time the 16th day of May, 2007.

Placed upon its passage the 16th day of May, 2007.

YES:

NO:

Authenticated by the Mayor the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Bruce Abernethy, Mayor

ATTEST:

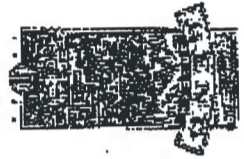
\_\_\_\_\_  
Patricia Stell, City of Bend Recorder

# JUNIPER RIDGE

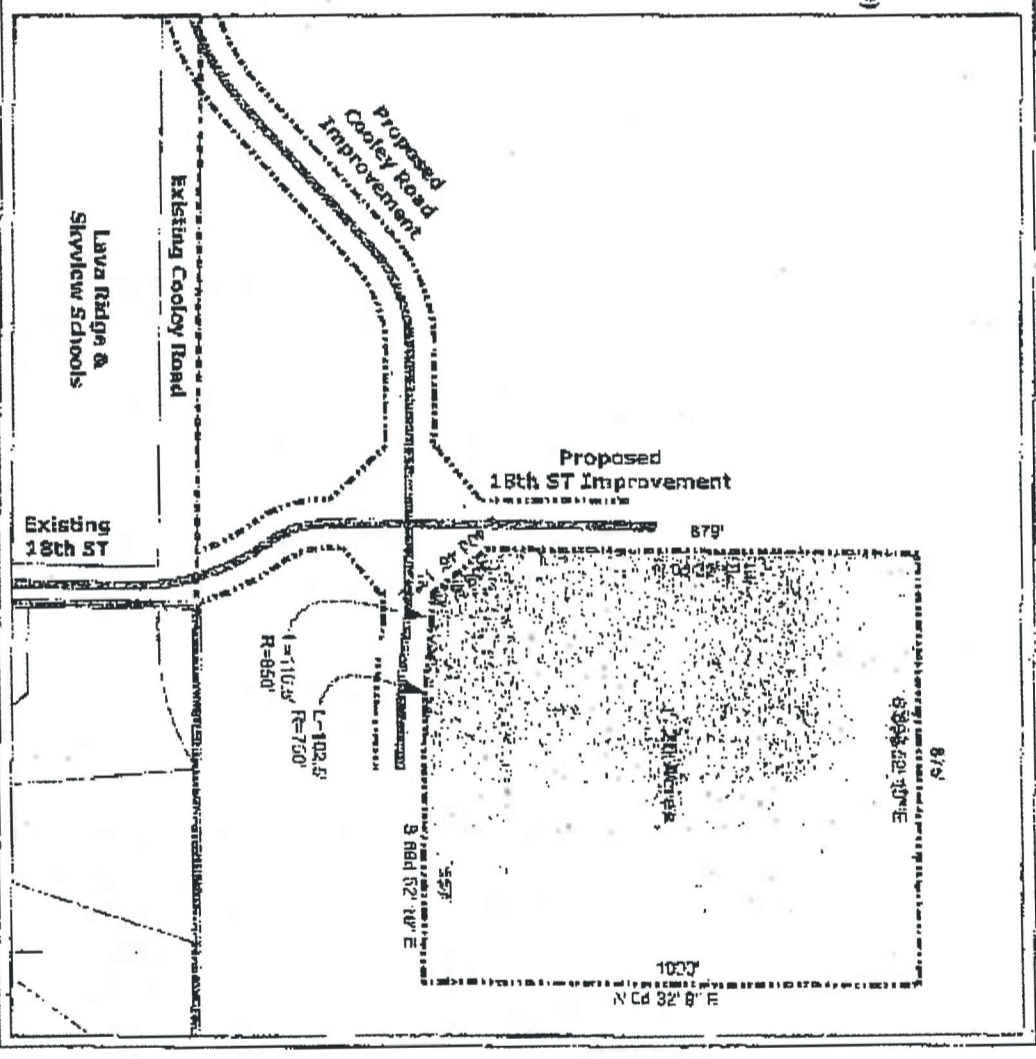
Exhibit: A

City Council Initiated  
 Zone Change  
 From UAR (Urban Area Reserve)  
 To IL (Industrial Light)  
 in Conformance With  
 General Plan Map  
 Designation II.

City of Bond  
 November 15, 2006



**Legend:**  
 Existing Roadway Unit  
 Proposed Roadway Unit  
 Existing Right-of-Way  
 Proposed Right-of-Way  
 Existing Property Lines  
 Proposed Property Lines



**HEARINGS OFFICER'S FINDINGS AND RECOMMENDATION**

**PROJECT NUMBER:** PZ 06-809

**HEARING DATE:** February 13, 2007

**APPLICANT/OWNER:** City of Bend  
710 NW Wall St  
Bend, OR 97701  
(Contact: Jerry Mitchell)

**AGENT:** W&H Pacific, Inc.,  
920 SW Emkay Dr. Suite C-100  
Bend, OR 97702  
(Contact: Kevin Brady, AICP)

**ATTORNEY:** Glenn Klien  
360 east 10<sup>th</sup> Ave, Suite 300  
Eugene, OR 97401

**LOCATION:** The subject property is located northeast of the  
planned realignment of the intersection of Cooley Road and  
18t Avenue, based on the northern extension of 18th  
Street and easterly extension of Cooley Road just to the  
northeast of Lava Ridge Elementary School and Skyview Middle  
School.

All of Section 10 in Township 17 S., Ranch 12 E.,  
City of Bend, Deschutes County, Oregon.

**REQUEST:** The applicant is requesting a Zone Change approval  
for 20 acres from Urban Area Reserve (UAR) to Industrial  
Light (IL). The proposed request is in compliance with the  
General Plan.

The intended use of the subject property, subsequent  
to both Zone Change approval, final Plat approval and  
Site Development Review approval, is for the  
corporate headquarters of Les Schwab Tire Centers,  
which is being relocated to Bend from Prineville, OR.  
Such development will be subject to a limited land use  
decision for Site Plan Review approval and can only  
occur subsequent to approval of the zone change.

**STAFF:** Colin Stephens, Planning Manager

**HEARINGS OFFICER:** Sharon R. Smith

**APPLICABLE CRITERIA:**

- (1) City of Bend Code – Chapter 10-10, Development Code
  - (a) Chapter 1.2, Definitions (Corporate Headquarters)
  - (b) Chapter 2.1, Residential Districts, Urban Area Reserve (UAR) Zone.
  - (c) Chapter 2.4, Industrial Districts, Industrial Light (IL) Zone.
  - (d) Chapter 4.1, Land Use Review and Procedures.
  - (e) Chapter 4.6, Land Use District Map and Text Amendments.
  - (f) Chapter 4.7, Transportation Analysis.
- (2) The Bend Area General Plan
- (3) Oregon Administrative Rules (OAR) 660-12-0021, Statewide Planning Goals 9 and 12

**FINDINGS OF FACT:**

1. **LOCATION:** The subject property is located northeast of the current intersection of Cooley Road and 18th Street. The property is further identified as Section 10 on Deschutes County Assessor's Map #17-12-10.
2. **ZONING:** The entire 20 acres lies within the City of Bend. A portion of the property lies within Deschutes County and the remainder has been annexed into the City of Bend, therefore, the subject property is currently split zoned. The portion within the City of Bend is zoned Urban Area Reserve (UAR). The portion of the property within the City of Bend is designated Industrial Light (IL) on the Bend Area General Plan Map.
3. **SITE DESCRIPTION AND SURROUNDING LAND USES:** The subject property is 20 acres in size, is regular in shape, and is currently completely vacant of development and use. The subject property is vegetated with a mix of mature and immature juniper trees scattered throughout the site. There are some significant rock outcroppings on the subject property. The land abutting the subject property is vacant. However, currently the City of Bend is designing the extension of Cooley Road and 18th Street, including the associated roundabout, which will serve the newly created 20-acre subject parcel.

The subject site abuts vacant land. The extension of 18th Street and Cooley Road will provide dedicated right-of-way along the southern and western property boundaries. To the south, Lava Ridge Elementary School and Skyview Middle School are located across Cooley Road. There are also large residential lots to the south with existing residential development. All parcels approximately 1000 feet to the west are zoned Residential Urban Low or Medium Density (RL or RM)



and consist of single-family dwellings and a small mobile home park. The property to the north and east of the subject property is vacant and is currently being analyzed and reviewed under the Juniper Ridge Master Planning process.

**4. PROPOSAL:** The applicant requests approval of a Zone Change from UAR to IL for a portion of the overall property, (20 acres) currently zoned UAR, in order to make this portion of the overall property conform to and be consistent with the Bend Urban Area General Plan and Map. The surrounding property owned by the City of Bend will remain UAR.

The intended use of the subject property, subsequent to both Zone Change approval, Final Plat approval and Site Development Review approval, is for the re-location of the Les Schwab Corporate Headquarters.

**5. PUBLIC NOTICE AND COMMENTS:** On January 9, 2007, the applicant conducted a Public Meeting, as required by 4.1.210.B. The City of Bend Planning Division sent notices of the zone change request to surrounding owners of record of property as shown on the most recent property tax assessment roll within 250 feet of the subject property. No letters or comments were submitted other than comments and evidence from City Staff and the Oregon Department of Transportation (ODOT). A public Hearing was held February 13, 2007. The Applicant presented testimony and evidence at the hearing. No Opposition testified. The Record remained open for additional evidence until March 2, 2007 at 5:00 p.m. The Record remained open until March 9, 2007 for final legal argument. The Record closed on March 9, 2007.

#### **CONCLUSIONARY FINDINGS:**

### **CHAPTER 4.6, LAND USE DISTRICT MAP AND TEXT AMENDMENTS**

#### **Chapter 4.6.300, Quasi-Judicial Amendments**

##### **A. Applicability, Procedure and Authority**

**Quasi-judicial amendments generally refer to a plan amendment or zone change affecting a single or limited group of properties and that involves the application of existing policy as to a specific factual setting. Quasi-judicial amendments shall follow the Type III procedure...**

**FINDING:** The application is considered a Type III Quasi-judicial land use application. The scope of the application includes a 20-acre portion of land currently owned by the City of Bend. This Type III application is subject to the procedures identified in Chapter 4.1.500, Type II and III Applications. In addition, all of the criteria identified in Chapter 4.6.300.B are addressed below.

## **B. Criteria for Quasi-Judicial Amendments**

**The applicant shall submit a written narrative which explains how the approval criteria will be met. A recommendation or a decision to approve, approve with conditions or to deny an application for a quasi-judicial amendment shall be based on all of the following criteria:**

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

**FINDING:** In a memorandum to the Hearings Officer dated February 13, 2007, Colin Stephens stated that two Statewide Planning goals are germane to this request: Goals 9 and 12. The Hearing's Officer finds the zone change is consistent with those goals for the following reasons.

*Goal 9 - Economic Development: To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.*

The administrative rule implementing Goal 9 requires the City to maintain its comprehensive plan and land use regulations so as to provide adequate opportunities for a variety of economic activities. In Bend, the purposes of Goal 9 and OAR 660-009 are achieved, in part, through implementation of the recently approved General Plan amendments, the UGB expansion that included the subject land, and related actions to make the Juniper Ridge site available for industrial development (City File No. PZ 03-565). OAR 660-009-0010(4) provides that, when a city changes its plan designations of lands in excess of two acres to or from commercial or industrial use, pursuant to a post acknowledgment plan amendment, it must demonstrate that the proposed amendment is consistent Goal 9. The City made such a demonstration when it changed the plan designation for the subject site to an industrial designation. The zone change now at issue merely implements that previous plan designation change.

The proposed zone change is one of the necessary steps to make part of the Juniper Ridge site available for industrial development. The City's Economic Lands Study, produced as part of the earlier UGB expansion, identified the need for at least 245 acres of industrial land. This zone change will enable 20 acres of that need to be available for industrial development. The zone change therefore is consistent with Goal 9.

*Goal 12 - Transportation: To provide and encourage a safe, convenient and economic transportation system.*

Goal 12 is implemented through the Transportation Planning Rule (TPR), as defined in Oregon Administrative Rule OAR 660-012-0060. The rule generally requires that where a proposed rezone or a proposed amendment to a comprehensive plan or land use regulation (hereafter referred to as “proposed land use action”) would “significantly affect” a transportation facility, action must be taken to mitigate those significant effects. For the reasons discussed below, the rezone proposed here would “significantly affect” certain facilities and the proposed mitigation complies with the TPR’s mitigation requirements.

*Significant affect – OAR 660-012-0060(1)*

OAR 660-012-0060(1) provides that a proposed land use action “significantly affects” a transportation facility under three different circumstances. The first two circumstances - changing the functional classification of a facility and changing standards implementing a functional classification system - are not applicable to this rezone. The third circumstance is applicable. Paragraph (1)(c) provides that significant effect occurs if the proposed land use action would, **as measured at the end of the planning period:**

- allow land uses or levels of development that would result in travel inconsistent with the functional classification of the transportation facility;
- reduce the performance of a transportation facility below the minimum acceptable performance standard; or
- worsen the performance of a transportation facility that is otherwise projected to perform below the minimum acceptable performance standard.

The record contains a transportation analysis prepared by DKS Associates. In undertaking that analysis, DKS used the year 2022 as the study year for purposes of the TPR. As explained in DKS’ analysis at page 3, the adopted planning horizon for Bend is the year 2020. However, the 1999 Oregon Highway Plan (“OHP”) requires that the future planning horizon be either the local planning horizon (here, 2020), or 15 years from the proposed date of the proposed land use action (here, 2022), whichever is greater. See OHP at 60; and OHP Action 1F.2. Consequently, 2022 is the year used for this part of the transportation analysis.

In undertaking that analysis, DKS also used “corporate headquarters” as the use which represented the worst case scenario for the proposed rezoning of the 20 acres to the IL zone. Such a scenario raises two questions. First, is “corporate headquarters” an authorized use in the IL zone? And second, is “corporate headquarters” the “worst case scenario.” Each will be discussed in turn.

Chapter 1.2 of the Bend Development Code defines “Corporate Headquarters” as follows:

“Corporate Headquarters means a building or portion of a building in which persons are employed in the management or direction of a business consisting of one or more divisions or groups of companies. To be considered a corporate headquarters in an industrial zone, the office shall be directly associated with an industrial use on the same site or meet the applicable employee threshold and site size specified elsewhere in this Code. Corporate headquarters or regional headquarters may be permitted as part of light-manufacturing use. **Corporate and regional headquarters may also stand alone provided the headquarter site is ten acres or more and the use shall have at least 100 or more employees at the time of occupancy.**” (emphasis added.)

This definition states that a corporate headquarters may stand alone, without being directly associated with an industrial use on the same site. Table 2.4.300 identifies permitted uses in industrial zones. That table identifies as a permitted use “Corporate Headquarters/Office when located with a permitted or conditional use.” Table 2.4.300 would seem to conflict with the language contained in Chapter 1.2. However, the two sections can, and should, be read together to mean that a corporate headquarters can be located in an IL zone (a) if it is connected with an industrial use, regardless of the acreage of the headquarter site or the number of employees; or (b) as a stand alone use if the headquarter site is ten acres or more or will have at least 100 employees. The site subject to the rezone is 20 acres in size and anticipated number of employees at time of occupancy is 350. Therefore, with respect to the first question noted above, it is appropriate to use corporate headquarters for the modeling of the transportation impacts.

With respect to the second question, it also is appropriate to use “corporate headquarters” as the worst case scenario. In the February 21, 2007 memorandum from Nick Arnis (Bend Transportation Division Manager), argued that corporate headquarters is, for all practical purposes, the worst case scenario:

“The corporate headquarters selected for TPR analysis represents the “reasonable” worst case scenario for the proposed zone change, as opposed to the absolute worst case scenario. Consistent with planning practice for the City’s Transportation System Plan (TSP), land use planning reflects anticipated densities and land use types around the City, as opposed to maximizing development on every parcel.

“The proposed IL zoning permits several types of industrial, residential, commercial, and public/institutional land use types. Of the permitted land use types that could be used to cover the land for the proposed rezone, the corporate headquarters has the highest potential trip generation rate based on ITE Trip

Generation data (compared to medical/dental laboratories, commercial parking, manufacturing, warehouses, and contractor storage). Other types of development permitted under the IL zoning (e.g., vehicles service and equipment rental) have a higher potential trip generation rate, but would be significantly smaller in nature. Due to the location of the proposed zone change (not adjacent to a highway or major arterial), it is reasonably likely that any commercial service type uses that could be developed would compliment corporate headquarters and would primarily attract trips from the corporate headquarters (instead of attracting trips from the greater Bend area). With this high level of internal site trip capture, these higher trip generating uses would not have a significant impact on trips added to the surrounding roadway network. Therefore, the scenario selected for analysis (20 acres of corporate headquarters) does represent a reasonable worst case scenario for determining impacts to the surrounding transportation system.”

Based on this information, I find that the use of 20 acres of corporate headquarters for purposes of the transportation analysis is appropriate.

DKS' analysis identifies as the transportation facilities that might be impacted by the proposed rezone primarily three facilities: Cooley Road, 18th Street and US 97. The analysis then proceeds to evaluate four intersections for these roads: (1) US 97 at Cooley Road; (2) US 97 at Robal Road; (3) Cooley Road at Boyd Acres Road; and (4) Cooley Road at 18th Street.

(a) US 97 at Cooley Road

US 97 is a state transportation facility, and as such, ODOT established the mobility standard as part of the 1999 Oregon Highway Plan. According to the OHP, US 97 is considered a Statewide Expressway, and because it is located within an MPO, it must operate at a volume to capacity (v/c) ratio equal to or less than 0.80. OHP at 68, Table 6.

In the year 2022, the projected v/c ratio (weekday PM peak hour) based on the existing zoning (i.e., without the proposed rezone) is 0.95. (DKS analysis at 18, Table 5.) Therefore, even without this proposed rezone, this intersection will fail to meet the adopted mobility standard.

In the year 2022, the projected v/c ratio based on the proposed rezone is 0.96. (DKS analysis at 19, Table 6.) Therefore, with the proposed rezone in place and without any mitigation, the projected traffic volumes increase the v/c ratio from 0.95 to 0.96, resulting in a slight degradation of the intersection. Consequently, the proposed rezone “significantly affects” this intersection as that phrase is used in the TPR.

(b) US 97 at Robal Road

As noted above, the mobility standard for US 97 is a v/c ratio equal to or less than 0.80. Table 5 of DKS' analysis shows that based on the existing zoning, in 2022 the v/c ratio for this intersection will be the same as for US 97 at Cooley Road: i.e., 0.95. Therefore, this intersection, even without the proposed rezone, is projected to fail to meet the standard.

With the rezone in place, the projected v/c ratio increases from 0.95 to 0.97. (DKS analysis at 19, Table 6.) Thus, absent any mitigation, the proposed rezone would slightly worsen the operation of the intersection. Consequently, without mitigation, the proposed rezone "significantly affects" this intersection as that phrase is used in the TPR.

(c) Cooley Road at Boyd Acres Road

The City of Bend has established operational standards for roads and intersections in Bend. Those standards which used to be found in Street Policy No. 6 B are now located in the new Bend Code, at 4.7.400.B. The standards are based on the type of intersection control that is used at a given intersection. The intersection of Cooley Road and Boyd Acres Road is controlled by a two-way stop. Under 4.7.400.B.1., the standard for a two-way stop control normally is an average delay that is less than or equal to 50 seconds during the Peak Hour. This intersection is projected to fail to meet the 50 second delay standard with or without the rezone, based on the City's mobility standards.

The City Engineer, by letter dated February 23, 2007, stated that he waived the city's mobility standard for purposes of this rezone application. Section 4.7.100.B provides that the City Engineer may modify or waive requirements of Chapter 4.7. The Hearings Officer questions whether this section appropriately or effectively grants the unfettered discretion to waive any land use criteria. Such absolute discretion may not comply with state land use Goals 1 and 2. Moreover, any waiver authority may not be used to override the TPR. These issues were not raised at the hearing. However to the extent that the waiver by the City Engineer is that, for the purposes of the re-zone application, the appropriate Traffic Impact analysis is compliance with the TPR, the Hearing's Officer finds that the TPR standards are applicable to this re-zone. As explained in the City Engineer's letter, the Cooley Road/Boyd Acres Road intersection, along with the other intersections in the Cooley Road corridor, is being evaluated and will be improved as part of a much bigger transportation analysis. Improvements to the Cooley Road/Boyd Acres Road intersection need to be coordinated with and take into account the other changes in the Cooley Road corridor and the US97 & US20 refinement plan projects. As stated by the City Engineer, the effect would only be temporary. The Hearings Officer finds that the Cooley Road Corridor Improvement Study and the U97 and US 20 Refinement Plan project provides adequate support for the City Engineer's deferral of the application of the city standards contained in Bend Code 4.7. The city intersections will not be impacted by the re-zone. Compliance with the City

mobility standards may be appropriately deferred until site plan application. However, the Hearing's Officer does not find that the City Engineer has waived compliance with Bend Code 4.7 for future applications on this property.

(d) Cooley Road at 18th Street

As noted above, the City has established operational standards based on the type of intersection control. Although Cooley Road and 18th Street is only a corner with no north or east approaches, it is proposed to be constructed as a roundabout in the future. Section 4.7.400.B.3. establishes the mobility standard for roundabouts as a v/c ratio that is less than or equal to 1.0 during the Peak Hour.

Table 5 of DKS' analysis identifies the projected v/c ratio for the year 2022 based on the existing zoning as 0.27. The projected v/c ratio for the year 2022 based on the rezone is 0.33. Because the projected v/c ratio is less than 1.0, there is no significant effect.

(e) Summary

In summary, the proposed rezone has a significant effect on the intersections of US 97 at Cooley Road and US 97 at Robal Road. The proposed rezone does not have a significant effect on the intersection of Cooley Road at 18th Street, however, based on the deferral of compliance with the City's mobility standards by the City Engineer. Accordingly, the Hearings Officer finds that the mitigation may be deferred to the time of development of the property. The proposed rezone does not have a significant effect on the intersection of Cooley road at Boyd Acres Road.

Mitigation under the TPR – OAR 660-012-0060(2) and (3)

OAR 660-012-0060(1) requires that where a proposed land use action would significantly affect a transportation facility, a local government must "put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with" the applicable mobility standards. Notwithstanding that requirement, however, section (3) states that a local government "may approve an amendment that would significantly affect an existing transportation facility without assuring that allowed land uses are consistent with the . . . . performance standards of the facility" if the requirements of subsections (3)(a) - (e) are met.

The proposed rezone is projected to significantly affect the two US 97 intersections by reducing the v/c ratios from 0.95 to 0.96 for one intersection and to 0.97 for the other intersection. The mobility standard for those intersections is a v/c ratio of 0.80. In the absence of section (3), section (2) of the rule would

require mitigation to ensure that allowed uses are consistent with applicable mobility standards, i.e., a v/c ratio to 0.80. For the reasons explained below, however, section (3) of the rule is applicable and the City need only ensure that mitigation is sufficient so that conditions are not worsened. In other words, mitigation is necessary to ensure that the projected v/c ratio is equal to or less than 0.95. The proposed mitigation is described in the Recommendation section of DKS' analysis on page 20.

Section (3) of OAR 660-012-0060 states a local government may approve a proposed land use action that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with performance standards if five conditions are met:

- The facility is already performing below the minimum acceptable performance standard identified in the TSP or comprehensive plan on the date the amendment application is submitted. [OAR 660-012-0060(3)(a)]

Table 3 of DKS' analysis (page 10) identifies the existing performance of the two US 97 intersections. The current v/c ratio for US 97/Cooley Road is 0.95. The current v/c ratio for US 97/Robal Road is 0.84. ODOT's standard is a v/c ratio of less than or equal to 0.80. Both of these intersections are performing below the minimum acceptable performance standard today.

- In the absence of the amendment, planned transportation facilities and improvements would not be adequate to achieve consistency with the performance standard by the end of the planning period. [OAR 660-012-0060(3)(b)]

Table 5 of DKS' analysis identifies the projected v/c ratios for the two US 97 intersections based on the existing zoning (i.e., in the absence of the proposed rezone). Those projections for the year 2022 take into account the transportation improvements that are currently planned and assumed to be in place by the year 2022 (those improvements are identified on page 13 of DKS' analysis). With those planned improvements in place, and based on the existing zoning, DKS is projecting that the v/c ratios for both US 97 intersections are 0.95, which would not meet ODOT's 0.80 standard.

- Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures [OAR 660-012-0060(3)(c)]



DKS' analysis identified mitigation to address the projected degradation resulting from the proposed rezone. The recommended mitigation includes the following:

Conduct a detailed traffic analysis and preliminary design of improvements of US 97 at Cooley Road. This may include realignment of US 97 to the west and construction of a jug handle configuration.

Construct improvements at US 97 at Cooley road as determined by the detailed analysis. To mitigate impacts of the proposed rezone, include capacity equivalent to constructing a northbound right turn lane on US 97 at the intersection with Cooley road to supplement the currently planned reasonably funded improvements at this intersection.

Construct a westbound right turn lane on Robal toad at the intersection with US 97 and modify the westbound approach to include a separate left turn lane, a shared through left lane and a separate right turn lane.

Applicant will be required to comply with the proposed mitigation at the time of development of the property.

The amendment does not involve property located in an interchange area as defined in paragraph (4) (d) (C) of the OAR 660-012-0060. [OAR 660-012-0060(3) (d)]

The Juniper Ridge property is not located in an interchange area.

- For affected state highways, ODOT provides a written statement that the proposed funding and timing for the identified mitigation improvements are sufficient to avoid further degradation. [OAR 660-012-0060(3)(e)]

In ODOT's February 20th supplemental comment, ODOT states that the proposed mitigation meets the standard of "not making it worse," or in other words, avoids further degradation.

Based on the above analysis, the proposed rezone satisfies the requirements of the TPR, on the condition that the Applicant participates in the proposed mitigation.

#### **BEND DEVELOPMENT CODE SECTION 4.6.300(B) 2.**

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

**FINDING:** The Planning Director identified the following policies from the Bend General Plan as relevant policies to the proposed zone change: Chapter 1, Policy 4; Chapter 6, Policy 1; and Chapter 6, Policy 4. In addition, the Planning

Director identified the Bend General Plan Map as a controlling portion of the Plan. The proposed zone change is consistent with the referenced policies for the reasons stated below. Further, the zone change is necessary to conform the site's zoning to the Bend General Plan Map designation for the site.

*Chapter 1, Policy 4 (Development within the UGB): New developments shall pay to extend planned sewer, water, and transportation facilities to and through the property if the development occurs prior to the scheduled construction of those facilities shown in the capital improvement plan.*

The record shows that sewer, water and transportation facilities to serve the site are being planned and will be extended to serve the property prior to development of the site with urban uses. The applicant will propose a specific development proposal after the zone change request has been approved. Based on the proximity of the site to existing public facilities (See applicant's site plan), only minor extensions of the City of Bend sewer and water facilities will be necessary to serve that proposal. This is supported by the City Engineering Division through their "Will Serve Letter" (See Public Works Will Serve Letter, Exhibit F to the application), and by the February 23, 2007 supplemental memo from Ken Fuller. Adequate sewer and water capacity is available within the existing City of Bend system adjacent to Juniper Ridge to accommodate development that can occur on the site under the requested IL zoning. With respect to transportation facilities, the findings made above under Statewide Planning Goal 12, and below under BDC §4.7.400 are incorporated here by this reference.

*Chapter 6, Policy 1 (Industrial Development): In order to help meet the long-term need for future industrial development, at least 500 acres of the City-owned property known as Juniper Ridge shall be brought into the Urban Growth Boundary, annexed to the city, and designated on the Bend Urban Area General Plan Map as Industrial Light.*

This policy was implemented in 2004 when the subject site was brought into the UGB, annexed to the city and designated consistent with the policy. The proposed zone change furthers the intent of the policy by advancing the ability to develop the site to help meet the long-term need for future industrial developments.

*Chapter 6, Policy 4 (Industrial Development): The city shall work to preserve prime industrial lands for industrial purposes.*

The city has identified the subject site as crucial in its efforts to meet its long-term employment needs. Under current zoning, the property could be developed with housing (one residential dwelling per 10 acres). By rezoning the property from UAR to IL, the city is preserving the property for industrial use.

*Bend General Plan Map.*

The Bend General Plan Map designates the subject site as Industrial Light (IL). The current zoning for the site, Urban Area Reserve (UAR), is inconsistent with the Plan Map. The change in zoning on the site, from UAR to the Industrial Light (IL) zone, will result in a zoning classification that will bring the approximately 20-acre site into conformance with the Bend Urban Area General Map. In fact, the impacts to the subject property and the City as a whole if the site's zoning is not brought into conformance with the General Plan would indeed create a greater burden financially and functionally as the plan to allow the site to develop under IL designation could not be realized.

**BEND DEVELOPMENT CODE SECTION 4.6.300(B)3.**

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

**FINDING:** Public facilities, services and transportation networks to support future uses on the site are planned to be provided concurrently with the development of the property.

As part of the City's designation of the property to IL during the Urban Growth Boundary expansion and annexation, provision of public facilities, services and transportation networks was considered. The proposed zone change request will contribute to a logical sequence of growth with sensible extension of such facilities, services and networks in the area consistent with the Bend Urban Area General Plan and Map.

This zone change will promote and support the orderly and efficient extension of public services in the area by accommodating efficient analysis and planning for future needs in the area and granting potentially needed access to such services. Currently, with the present zoning anomaly, provisions for extension, expansion, access to public services could be hampered and complicated.

The requested zone change contemplates the future need for, or a request of, additional public services. The site will need to be served by roads, water, sewer, and storm drainage, as well as service of police and fire, schools and parks. In addition to addressing adequacy of services during the zone change process, future development will undergo additional review requirements through the required Site Development and Design Review process. Any potential impacts to public services will be considered during this later, review process. Therefore, the City has adequate protection regarding adequacy of public services and will have ample opportunity for agency comment as well.

Public Facilities and Services: The applicant will propose a specific development proposal after the zone change request has been approved. Only minor extensions of the City of Bend sewer and water facilities will be necessary to serve that proposal. This is supported by the City Engineering Division through their "Will Serve Letter" (See Public Works Will Serve Letter, Exhibit F to the application). Adequate sewer and water capacity is available within the existing City of Bend system adjacent to Juniper Ridge to accommodate development that can occur on the site under the requested IL zoning.

Transportation Network: Regarding transportation impacts, the applicant submitted a Transportation Site Review study prepared by DKS & Associates, Inc (see Transportation analysis, Exhibit D to application). Findings made above under Statewide Planning Goal 12, and below under BDC §4.7.400 are incorporated here by this reference.

**BEND DEVELOPMENT CODE SECTION 4.6.300(B)4.**

**Evidence of change in the neighborhood or community or a mistake or inconsistency in the comprehensive plan or land use district map regarding the property that is the subject of the application; and the provisions of Section 4.6.600; Transportation Planning Rule Compliance.**

**FINDING:** The requested zone change is based on a change in the neighborhood/ community. Since the subject parcel was originally zoned UAR, a number of circumstances have changed:

- a) The subject site, along with all adjoining and contiguous lots and parcels, have been incorporated into the City of Bend city limits.
- b) The comprehensive land use plan has been amended and updated. For some time, the subject property has been designated IL, not UAR.
- c) Master planning for the area is occurring and continues to occur, indicating that if the site/parcel remains UAR, it is contrary the comprehensive plan and the zoning of surrounding and contiguous parcels of land that are being master planned for uses commensurate with IL zoning.

In conclusion, there has been a change in circumstances since the original UAR zoning was applied to the property, with the most noteworthy change being the incorporation of the site into the City of Bend city limits.

**BEND DEVELOPMENT CODE SECTION 4.6.300(B)4.**

**The provisions of [BDC] Section 4.6.600 ("When a development application includes a proposed . . . land use district change. . . the proposal shall be reviewed to determine whether it significantly affects a transportation**

facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060.”)

**FINDING:** The application is consistent with BDC §4.6.600. Findings made above under Statewide Planning Goal 12, and below under BDC §4.7.400 are incorporated here by this reference.

**BEND DEVELOPMENT CODE SECTION 4.6.300(B)4. Transportation Planning Rule Compliance.**

**FINDING:** The application is consistent with the Transportation Planning Rule. Findings made above under Statewide Planning Goal 12, and below under BDC §4.7.400 are incorporated here by this reference.

**BEND DEVELOPMENT CODE 4.7.400. Transportation Impact Study Approval Criteria. (Required per BDC §4.7.100(C)1.)**

**FINDING:** Chapter 4.7 of the Bend Code provides that land use actions should be reviewed to ensure that new development contributes to the orderly development of the transportation network in Bend. Section 4.7.100 seeks to implement that goal by requiring the preparation of a transportation impact study (section 4.7.200), which is similar, but not identical, to the analysis required by the TPR. The approval criteria for a transportation impact study, contained in section 4.7.400, are likewise very similar to the TPR requirements.

As noted above, section 4.7.100B. provides that the “City Engineer may, at his/her discretion, modify or waive the required content of this chapter when in his/her judgment, special circumstances dictate such change.” By letter dated February 23rd, the City Engineer provided reasons why it is appropriate to waive several provisions of chapter 4.7, including the mobility standard for the two-way stops that otherwise would have applied to the Cooley Road/Boyd Acres Road intersection. As is discussed above, the Hearings Officer questions whether this section appropriately or effectively grants the unfettered discretion to waive any land use criteria. Such absolute discretion may not comply with state land use Goals 1 and 2. Moreover, any waiver authority may not be used to override the TPR. These issues were not raised at the hearing. However to the extent that the waiver by the City Engineer is that, for the purposes of the re-zone application, the appropriate Traffic Impact analysis is compliance with the TPR, the Hearing’s Officer finds that the TPR standards are applicable to this re-zone. The Hearings Officer finds that the Cooley Road Corridor Improvement Study and the U97 and US 20 Refinement Plan project provides adequate support for the City Engineer’s deferral of the application of the city standards contained in Bend Code 4.7. The city intersections will not be impacted by the re-zone. Compliance with the City mobility standards may be appropriately deferred until site plan application. However, the Hearing’s Officer does not find that the City

Engineer has waived compliance with Bend Code 4.7 for future applications on this property.

In addition, the City Engineer waived the provisions of chapter 4.7 that exceed the requirements of the TPR. The City Engineer noted that DKS' transportation analysis was prepared to satisfy the requirements of the TPR, and that in light of the other transportation studies being undertaken that cover the Cooley Road corridor and the US97 & US20 refinement plan area, it was not necessary to duplicate those efforts with an additional analysis at this time that addressed every aspect of chapter 4.7. Based on the analysis above demonstrating compliance with the requirements of the TPR, the rezone application also complies with chapter 4.7.

**RECOMMENDATION:** Based on the Findings of Fact and Conclusions of Law, the Hearings Officer recommends to City Council APPROVAL OF THE ZONE CHANGE, on the following Conditions:

1. Applicant shall comply with the requirements of Bend Code chapter 4.7 at the time of site plan application.
2. Applicant shall comply with the following mitigation proposed in the traffic study at the time of site plan application:
  - a. At the time of site plan application, conduct a detailed traffic analysis and preliminary design of improvements of US 97 at Cooley Road. This may include realignment of US 97 to the west and construction of a jug handle configuration.
  - b. Based on the detailed analysis and agreement with ODOT on timing, construct improvements at US 97 at Cooley road as determined by the detailed analysis. To mitigate impacts of the proposed rezone, include capacity equivalent to constructing a northbound right turn lane on US 97 at the intersection with Cooley road to supplement the currently planned reasonably funded improvements at this intersection.
  - c. Based on the detailed analysis and agreement with ODOT on timing, construct a westbound right turn lane on Robal road at the intersection with US 97 and modify the westbound approach to include a separate left turn lane, a shared through left lane and a separate right turn lane.

DATED this 15th day of March, 2007

## **Exhibit C**

### Conditions of Zone Change Approval (PZ06-809)

1. The property shall be used for corporate headquarters.
2. Trips generated by development on the rezoned acreage shall be limited to 325 peak hour trips.
3. Prior to issuance of certification of final occupancy for a corporate headquarters building, the following improvements must be constructed:
  - a. a northbound right turn lane on US 97 at the intersection with Cooley Road; and
  - b. a westbound right turn lane on Robal Road at the intersection of Robal Road and US 97.

## **Exhibit D**

### **Supplemental Findings Juniper Ridge Zone Change (PZ06 809)**

The following findings are intended to supplement the findings forwarded by the hearings official. To the extent that the following findings conflict with the findings of the hearings official, these supplemental findings shall control.

#### **Mitigation under the TPR – OAR 660-012-0060(3)**

OAR 660-012-0060(3)(c): Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation.

#### **Finding:**

The development that will occur as a result of this rezone is construction of the Les Schwab corporate headquarters. The corporate headquarters is both a “reasonable worst case scenario,” as found by the hearings officer, and an “actual worst case scenario” in light of a new condition of approval that requires the property to be used for corporate headquarters. In order to mitigate the impacts from that use, the city will construct a northbound right-turn lane at US97/Cooley Road, and a westbound right-turn lane at US97/Robal Road. That mitigation, and its completion prior to occupancy, also is now a condition of approval.

At the time that the corporate headquarters would be occupied, the volume to capacity (“v/c”) ratio for US 97/Cooley Road is predicted to be 1.05 without the rezone; 1.10 with the rezone; and 1.02 with the mitigation discussed above (addition of right-turn lanes). For US 97/Robal Road, the v/c ratio is predicted to be 0.91 without the rezone; 0.92 with the rezone; and 0.87 with the mitigation.

With the mitigation in place, the current v/c ratio for one intersection of 1.05 would drop to 1.02, and the current v/c for the other intersection of 0.91 would drop to 0.87. In other words, with this mitigation, the development will mitigate the impacts of the development in a manner that avoids further degradation.

#### **Study Area**

#### **Finding:**

The applicant analyzed the potential transportation impacts in a certain area. That analysis was attacked based on an assertion that the wrong study area was used. The



primary basis for that attack was that the study area was different than the area used for an analysis that was performed for a proposed Wal-Mart. The study area chosen for this rezone was based on the requirements of Bend Code, which requires a study area of 1-mile from the site. It is unreasonable, in addition to not being required by the code, to use the same study area as used in Wal-Mart's analysis. The proposed Wal-Mart store was in a different location, and was expected to generate 1,188 peak hour trips, as compared to 324 peak hour trips for this proposed rezone. In light of those differences, it makes no sense to use the same study area.

### **Mitigation is Feasible**

#### Finding:

The proposed right-turn lanes at US97/Cooley and US97/Robal correct for the impacts resulting from this development. Without the mitigation measures or the rezone, the v/c ratio for US 97/Cooley Road today is 1.05, and with the mitigation and rezone it is reduced to 1.02. For US 97/Robal Road, without the mitigation measures or the rezone, the v/c ratio is 0.91, and with the mitigation and rezone, it is reduced to 0.87. That analysis demonstrates that the mitigation will work.

Funding is available for the projects. The Juniper Ridge Urban Renewal Plan anticipates more than \$35 million of expenditure for road improvements for this area including specifically US 97 intersections.

The City can acquire the right of way needed for the improvements. To the extent that the City does not presently own all of the right-of-way needed, the City has condemnation powers that can ensure that the City obtains that right-of-way.

**BDC §4.6.300(B)3. The property and affected area is presently provided with adequate public facilities, services and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided concurrently with the development of the property.**

#### Finding:

Opponents argued that there was no demonstration that the transportation component of this criterion was not met. The findings above with respect to the mitigation likewise demonstrate that improvements to the transportation network will be provided concurrently with the development of the property in order to ensure that the transportation network is adequate.