



Oregon

Theodore R. Kubongoski, 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



NOTICE OF ADOPTED AMENDMENT

11/23/2009

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Bend Plan Amendment
DLCD File Number 003-09

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

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Friday, December 04, 2009

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 THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc: Aaron Henson, City of Bend
Gloria Gardiner, DLCD Urban Planning Specialist
Mark Radabaugh, Regional Representative
Amanda Putton, DLCD

<paa> YA

Notice of Adoption

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



Jurisdiction: **City of Bend**

Local file number: **PZ 09-166**

Date of Adoption: **November 4, 2009**

Date Mailed: **November 13, 2009**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: **July 14, 2009**

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

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

An amendment to the Bend Area General Plan Map and the Bend Area Zoning Map to reduce the size of an Upland Area of Special Interest (ASI Area 25) by approximately 2.9 acres, from 4.8 acres to 1.9 acres.

Does the Adoption differ from proposal? **Yes, as explained below.**

Originally, the applicant requested the City to reduce the size of ASI Area 25 by approximately 2.3 acres, from 4.8 acres to 2.5 acres. The City Council decided to reduce the size of ASI Area 25 by an additional 0.6 acres.

Plan Map Changed from: **N/A**

to: **N/A**

Zone Map Changed from: **N/A**

to: **N/A**

Location: **West side of Hunnell Road, between Robal and Cooley**

Acres Involved: **2.9 acres**

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

New: **N/A**

Applicable statewide planning goals:

- | | | | | | | | | | | | | | | | | | | |
|-------------------------------------|-------------------------------------|--------------------------|--------------------------|-------------------------------------|-------------------------------------|--------------------------|-------------------------------------|-------------------------------------|--------------------------|-------------------------------------|-------------------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
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Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD file No. 003-09(17690) [15826]

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

Oregon Department of Transportation, Swalley Irrigation District

Local Contact: **Aaron Henson, AICP**

Phone: (541) 383-4885 Extension:

Address: **710 NW Wall Street**

Fax Number: **541-388-5519**

City: **Bend**

Zip: **97701**

E-mail Address: **ahenson@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, or by emailing **larry.french@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 **larry.french@state.or.us** - **Attention: Plan Amendment Specialist**.

Updated March 17, 2009

ORDINANCE NO. NS-2133

AN ORDINANCE AMENDING THE BEND URBAN AREA GENERAL PLAN AND ZONING MAPS BY REMOVING THE UPLAND AREA OF SPECIAL INTEREST (ASI) DESIGNATION FROM PARCEL 2 OF PARTITION PLAT NO. 2007-14 AS ADJUSTED BY LOT LINE ADJUSTMENT #07-483.

Findings:

- A. On June 10, 2009, John Bradley d.b.a. Central Oregon Holdings, LLC, filed an application (PZ 09-166) for a General Plan Map Amendment and Zoning Map Amendment to reduce the size of an Upland Area of Special Interest (ASI Area 25).
- B. The Hearings Officer held a duly noticed public hearing for the proposal on August 18, 2009. On October 5, 2009, the Hearings Officer issued a written recommendation that Council remove the Upland ASI designation from the applicant's property only.
- C. The City Council held a duly noticed public hearing on October 21, 2009. Based on the entire record, including all testimony, evidence and the recommendation of the Hearings Officer, the Council concluded that the application meets all criteria for approval and should be granted.

Based on these findings,

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council held a public hearing to consider the applicant's proposal and the Hearings Officer's findings and recommendation and found that the requested General Plan Map Amendment and Zoning Map Amendment is consistent with the criteria of the Bend Development Code Chapter 4.6. In addition to the findings listed above, the Bend City Council adopts the findings in Exhibit B.

Section 2. The Bend Urban Area General Plan and Zoning Maps are hereby amended by remove the Upland ASI designation from the applicant's property only, as shown in Exhibit A.

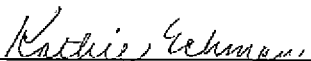
Read for the first time the 21st day of October, 2009.

Read for the second time the 4th day of November, 2009.

Placed upon its passage the 4th day of November, 2009.

YES: 4 NO: 2

Authenticated by the Mayor the 4th day of November, 2009.

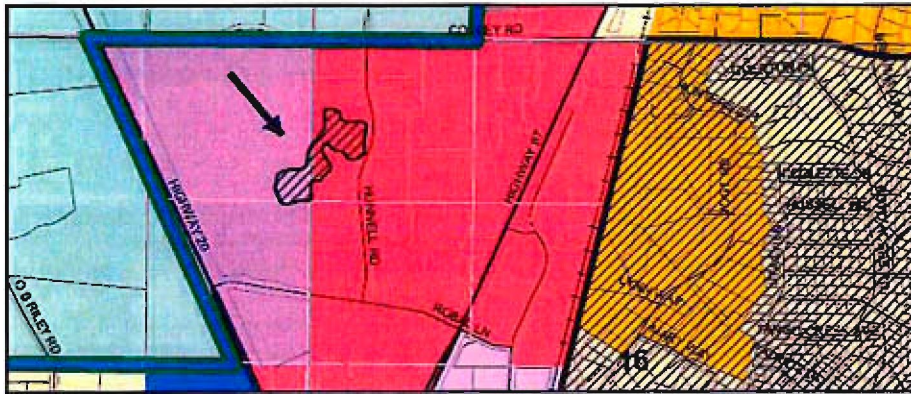


Kathie Eckman, Mayor

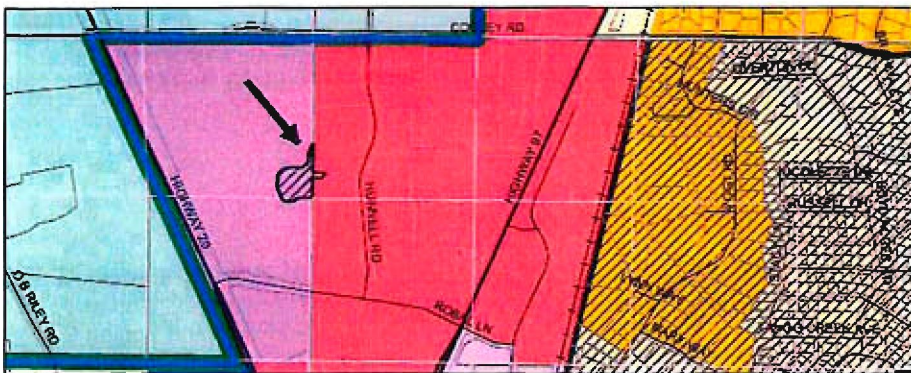
ATTEST:


Patricia Stell, City of Bend Recorder

EXHIBIT A



Existing General Plan Map



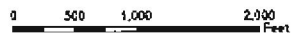
Proposed Amendment to General Plan Map

PZ 09-166 Proposed Change to Bend Urban Area General Plan Map (Upland ASI Modification)

- Upland Areas of Special Interest
- City Limits
- Urban Growth Boundary

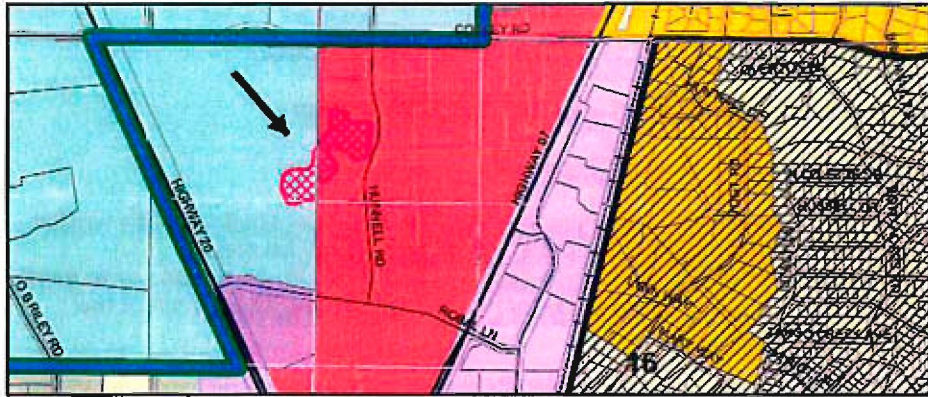
PLAN DESIGNATION:

- CG- COMMERCIAL GENERAL
- IL- INDUSTRIAL LIGHT
- ME- MIXED EMPLOYMENT
- RL- RESIDENTIAL URBAN LOW DENSITY
- RS- RESIDENTIAL URBAN STANDARD DENSITY
- UAR- URBAN AREA RESERVE

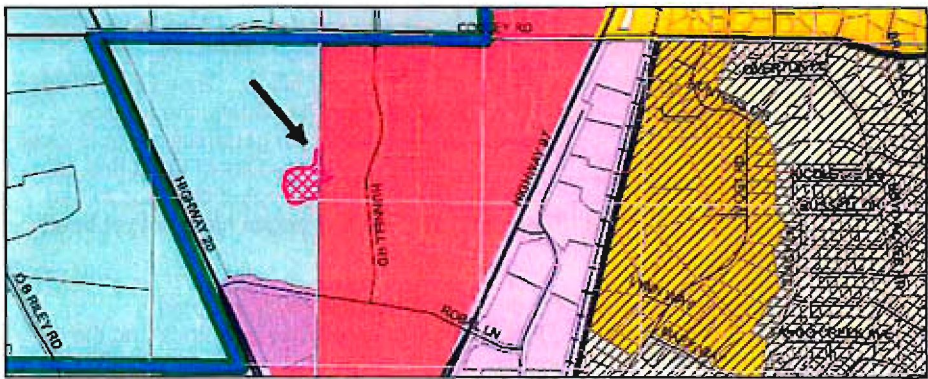


Map prepared by City of Bend, 10/7/2009





Existing Zoning Map



Proposed Amendment to Zoning Map

PZ 09-166 Proposed Change to Bend Urban Area Zoning Map
(Upland ASI Modification)

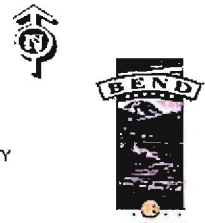


EXHIBIT B

CITY COUNCIL FINDINGS IN SUPPORT OF PZ 09-166

CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE

Chapter 4.6 Land Use District Map and Text Amendments

4.6.300 Quasi-Judicial Amendments.

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: Oregon has 19 Statewide Planning Goals that express the State's land use policies. The City of Bend is required to adopt a comprehensive plan implementing those Statewide Planning Goals that are relevant to the jurisdiction. Once DLCD finds the comprehensive plan consistent with the Statewide Planning Goals, the agency acknowledges the plan. An acknowledged comprehensive plan generally controls local land use decisions made under the jurisdiction of that plan. The City of Bend has an acknowledged Comprehensive Plan. However, the City has adopted changes to the Comprehensive plan as part of the UGB proposal. These changes have not yet been acknowledged by DLCD.

The City Council adopts the following findings based on the newly adopted Comprehensive Plan language as the locally adopted regulation, and finds that the following goals are relevant to both the plan amendment and zone change.

1. Goal 1 – Citizen Involvement.

FINDING: The City provided notice to the owners of record of all properties within 250 feet of the property. A public hearing notice was published in the Bulletin. In addition, a public meeting was held that required the applicant to send notice of the proposal to the Boyd Acres Neighborhood Association and all property owners within 500 feet of the subject property. Public hearings were conducted on August 18 and October 21, 2009.

The City Council finds that the actions taken satisfy Statewide Planning Goal 1.

2. Goal 2 – Land Use Planning.

FINDING: Statewide Planning Goal 2 requires that the City 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 requires that the City assure an adequate factual base for its decisions and actions. The City of Bend has established both a comprehensive plan and development code, which will be used as a basis for making a decision on this plan amendment and zone change application.

3. Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces

FINDING: The Upland Area of Special Interest protects natural resources that have been mapped for protection by the City. The ASI designations implement Goal 5. They do this by adopting a rating system to determine whether properties should be protected in the City's development code. That system is found at BDC 2.7.700 G. The entire ASI, Area 25, was rated in 1999. A copy of that rating sheet is included in the Record. applicant provided information, including a site specific review of the subject property to argue that protection of the originally mapped ASI is no longer merited or in the public interest. The applicant originally requested a reduction of the ASI from 4.8 acres to 2.5 acres. Both Long Range Planning and the Traffic Engineering Department recommend removal of the ASI. The staff planner recommended the ASI be modified as proposed

by the applicant. At the hearing, the applicant stated that although they originally requested only a reduction in the ASI, they would concur with Long Range Planning and City Engineering. The City Council adopts the following findings regarding the rating categories:

EXISTING SITE USE: The existing site use of the ASI was originally rated as a 3. That means that the property falls between the two categories of having 'significant development' and 'minor development' affecting the site. Since 1999 when the property was rated, significant additional development has occurred around the subject property which negatively impacts the site and the value of the ASI. The properties directly to the north, north east, and east have developed with new large commercial uses. The new development in the area reduced the open space value by adding noise, light, traffic, and a commercial business environment to the area. Because it is vacant land surrounded by commercial development, there is a significant impact to this ASI designated area by transient people using it as a campground. For the subject property, the rating should be 0 to reflect the fact that development has occurred that "substantially reduces open space value."

HABITAT VALUE: The habitat value of the property was rated as a 3. That rating means that the property falls between the two categories of 'supports moderate diversity of bird and/or animal life' and 'limited habitat value'.

The presence of an irrigation canal in the western part of the ASI may have resulted in the initial rating. The area immediately adjacent to the canal has natural vegetation that is attractive to wildlife. Only a small portion of the canal is located on the subject property and the little habitat value offered by this area can be protected by canal setbacks and the stringent landscaping standards in the City Code. The Hearings Officer conducted a site visit and found limited bird and animal life on the subject property, likely due to the commercial development in the surrounding area.

Conversely, the majority of the subject property, unlike the canal area of the ASI, is used by transients as a camping ground and has almost no habitat value. The correct rating for the area of the ASI on the subject property, therefore, is a 2. This rating is applied to areas that have "limited habitat value."

TREES AND VEGETATION: The trees and vegetation value of the property was originally rated as a 3. This means the area falls between the rating of having 'some trees and other lower quality vegetation' and having 'little significant vegetation'. At the site visit, the Hearings Officer noted that the vegetation includes some Juniper trees and limited vegetation. However, the Hearings Officer noted no Ponderosa trees and also noted that the site had been denuded due to transient camping use and the grading of the site adjacent to the cell tower. The site should be rated a 2 to reflect the current condition of the site.

NATURAL FEATURES: The City applied a rating of 3 to the ASI in 1999 for natural features because it contained a large rock outcrop that is distinctive in the ASI. The rating description for this specific ASI states that "the Ridge" is the main natural feature of note. This "ridge" is the predominant portion of the ASI that is located on the adjacent property to the west. The City Council finds that the "ridge" is not significantly different from the remainder of the property zoned designated ASI. In fact, the main portion of the "ridge" has already been impacted by the cell tower. The City Council finds the subject property does not have natural features that are distinctive, and therefore should be rated a "2".

EXISTING/ANTICIPATED CONFLICTS WITH ADJACENT LAND USES: The original rating gave the subject property a 3 for conflicts with adjacent land uses. This rating puts the property between the two categories of 'slight conflicts' and 'moderate conflicts'. The rating demonstrates that there is traffic noise on the site as well as impacts from the golf driving range poles. Since the rating of the property in 1999, Hunnell Road has been connected from Robal to Cooley Road. The driving range has been redeveloped with a more intensive use as a car dealership. Additionally, Les Schawb, Sportsman Warehouse, and other commercial uses have been developed in the area. Moreover, this rating requires an analysis of "anticipated" conflicts, which have changed significantly since the ASI designation.

The property to the west is inside the City limits and is zoned Urban Area Reserve (UAR), but designated Mixed Employment (ME), and will likely be rezoned to correspond with that general plan designation. This property will be developed in the future as commercial, office, and a similar mix of uses that are allowed on the subject property. The adjacent property to the west has existing water rights and was irrigated pasture at the time the ASI designation was established. When developed, this irrigated pasture land will no longer exist and will further reduce the viability of the existing ASI on the subject property as a wildlife area. As a result of the above considerations, there is now more traffic noise and severe conflicts with adjacent land uses. The property rating for this criterion should be a 0.

WILDLIFE LINKAGES TO OTHER SITES: In 1999, the City applied a score of 2 to the subject ASI for providing minor wildlife linkages to other sites. It noted that there is some irrigated pasture to the west of the site. This rating was determined prior to Hunnell Road being developed, connecting Robal Road to Cooley Road and prior to the extensive commercial development of the area, both factors which further isolate this ASI from other wildlife areas. The new road connection alone has bisected the wildlife linkage that previously was unobstructed. Based on the new impacts from this bisected link and the commercial development, the rating of 2 for having minor connections should be reduced to a 0 for no connections.

SCENIC RESOURCES: The site received a rating of 3 in 1999 based on the presence of "good Cascade views to the west". The rating also noted that "the ridge with its juniper trees is attractive, but not striking." The significant commercial and transportation infrastructure development in the area has changed the scenic value dramatically. There are views in three directions of surrounding commercial development. Based on the increased impacts from commercial development since the evaluation was conducted, the subject property should have a rating of 2 for limited scenic value.

PUBLIC ACCESS: The area was given a rating of 2, low potential for use, for public access in 1999. It was noted that the site is not very accessible or visible from existing roads, trails, or neighborhoods. Since this evaluation, Hunnell Road has been developed along the easterly boundary of the subject property. This has increased visibility and vehicular access to the property. Unfortunately however, this together with increased commercial development in the area has caused the site to be used as a transient camp, garbage dump, site for drug use, and other undesirable uses. The City Council finds that the correct rating of the subject property is 0 for no potential for public use. The subject property is privately owned and is not near any public parks or open space areas.

TYPE OF WATER PRESENT: The subject ASI was originally rated 1 for presence of water. This rating is applied due to the presence of an irrigation canal along the north western portion of the property. This rating is still accurate.

SUMMARY:

Section 2.7.700 H

A site must have a rating of 20 to qualify for ASI protection. In 1999, the total score for the subject ASI was just 23. Many of the factors that merited a rating of 23 in 1999 have been destroyed or do not exist for the subject property. Based on the revised evaluation above, the total ASI score should be 9. The City's rating system considers property for inclusion in an ASI if it has a rating of 10 for the three criteria: Scenic Resources, Existing Site Use and Natural Features. The City's ASI protection ordinance says that if sites achieve a score of 10 on the three selected criteria, a complete review of all the above criteria is appropriate.

For these three items, the rankings based on existing conditions as discussed above, would score the subject property at 4. Therefore, under the applicable standards the ASI on the subject property would not be designated. Even using the original scoring for these three categories, the score was a 9, which still does not qualify the site for ASI designation. Based on this adopted scoring system, the subject property should be removed from ASI protection.

Although the applicant originally proposed modification rather than removal, the City Council finds that if the site does not qualify under protection, there is no reason to keep a portion of the ASI. The City Council finds that since the ASI no longer qualifies for protection, it should be removed entirely on the subject property. The City Council notes, however, that the remainder of ASI 25 on abutting properties not owned by the applicant are unaffected by this decision.

4. Goal 6 – Air, Water and Land Resources Quality.

FINDING: Goal 6 requires local governments to have comprehensive plans and ordinances consistent with state and federal regulations protecting air, water and land resources. The approval of the requested zone change and plan amendments will not prevent the City from achieving compliance with environmental regulations.

5. Goal 8 – Recreational Needs.

FINDING: The Bend Metropolitan Parks and Recreation District (BMPRD) has planned for the City of Bend's Goal 8 recreational needs. The adopted Areas of Special Interest were not established to provide for the City's recreational needs. Rather, they were created to preserve the natural character of the area, and to protect habitat for wildlife. Therefore, reducing the size of ASI Area 25 will not affect BMPRD's efforts to establish Goal 8 recreational opportunities within the City of Bend.

6. Goal 9 – Economic Development.

FINDING: Statewide Planning Goal 9 requires a local government to inventory areas suitable to serve industrial and commercial development and include such inventories in the City's Comprehensive Plan. This property is zoned and designated for industrial development. The removal of ASI protections will allow the subject property to be used for the use for which it was intended – as a commercial development parcel.

The City Council finds that removing the ASI will enhance the development potential of the property, thereby allowing greater use of the land for economic development purposes.

7. Goal 11 – Public Facilities and Services.

FINDING: Goal 11 is concerned with orderly and efficient provisions of public services. The subject property is located in a developed commercial area where urban services have been provided to serve the area. Thus, approval of this proposal is consistent with Goal 11.

8. Goal 12 – Transportation.

FINDING: Goal 12 is concerned with providing and encouraging a safe, convenient, and economic transportation system. The City's Traffic Engineer agrees with the City's Long Range Planning Division that ASI Area 25 presents access difficulties, based on the City's access management policies, Hunnell Road's designation as an arterial, and the Oregon Department of Transportation's plans for rerouting Hwy 20 and Hwy 97. The City's Traffic Engineer has commented that shared access and cross access easements will be needed to ensure the success and viability of future commercial ventures given the access restrictions to the highway and the arterial street system. Cooley, Robal, and Hunnell Roads will be severely access restricted due to their future heavy volumes and focused roles in handling traffic circulation when the Hwy 97/Hwy 20 refinements occur. Hwy 97 and Hwy 20 will not be usable for access.

The City's Traffic Engineer has recommended requiring the applicant to dedicate cross access and utility easements as cross access or shared access easements, and to present an access and circulation plan that can be assessed and considered by all abutting properties. The City's Traffic Engineer has further recommended requiring the applicant to dedicate another 10 feet of right-of-way for Hunnell Road, an arterial with 40 feet of right-of-way to centerline, which will eventually require 50 feet of right-of-way

to centerline. The City Council finds that no development is proposed at this time, so the recommendation for shared access and cross access easements is premature.

11. Goal 13 – Energy Conservation.

FINDING: Statewide Planning Goal 13 requires that land and uses developed on the land be managed to maximize the conservation of all forms of energy, based upon sound economic principles. The approval of the proposed plan and zone changes will not affect compliance with Goal 13.

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

APPLICABLE GENERAL PLAN POLICIES:

PREFACE

Future Plan updates

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 shall be considered as determined by the procedures ordinance. A person or agency proposing a change has the burden to demonstrate a public need and benefit for the change.

FINDING: The applicant is proposing to modify the resource overlay designation of the subject property by reducing the area of the ASI on the subject property. The zoning and plan designation on the subject property is CG and will not be changed with this application.

The above-quoted plan language discusses the need for the applicant to demonstrate the proposed plan amendment is justified by "a public need and benefit for the change." The City has found in previous land use decisions¹ that this language does not constitute an approval criterion. The City Council finds that this language is not an approval criterion. To the extent that it is necessary to make findings regarding the public need and benefit for the proposed change, the City Council makes the following finding.

There is a public need and benefit for the requested resource overlay modification in this case in order to allow the subject property to be used as commercial land. The subject property consists of 5.28 acres, with over 600 feet of frontage along Hunnell Road, a minor arterial. The existing [portion of] ASI [Area 25] on the property comprises 2.9 acres, located primarily in the center of the property. The City Council finds that removal of the entire ASI will increase the development potential of the subject property for its intended use.

The City's plan policies regarding the ASI designation makes it clear that the information on ASI designations and natural features shall be updated at least every three years. As discussed more fully herein, the intensive development of commercial big box type stores and transportation infrastructure in this area since the ASI designation has

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¹ PZ 07-388

destroyed many of the features that rated the Area 25 for ASI protection. The information in the record serves the public benefit as the City can update the inventory for the Area 25 ASI.

The City Council finds that removal of the ASI will also potentially provide additional road connectivity at such time as the property is developed.

The City Council makes the following finds with regarding to the General 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.**

FINDING: The site is located within the existing Bend urban area, between the two major transportation corridors to the west and east. This application will integrate higher density employment uses with the transportation corridor and surrounding commercial areas. Proximity to the transportation corridor will encourage trip chaining due to the variety of residential and commercial activities near the corridor.

The proposal is consistent with this plan policy.

CHAPTER 2: NATURAL FEATURES AND OPEN SPACE

GOALS

- to preserve interesting and distinct geologic formations and areas of natural vegetation;**
- to support the coordinated efforts of public agencies, private organizations and individuals to preserve and enhance the area's natural features and open space. BAGP 2-2.**

FINDING: The goals as listed above are the framework plan on which the text and policies within the comprehensive plan are based. The goals as listed above were addressed through the following policies, providing future direction to the City of Bend. As discussed above, the City has put several of the policies into action, adopting an ASI ordinance that provides development standards for properties that contain a recognized ASI. The adoption of the ordinance provides the Planning Division with the ability to administer standards with the development of property. The standards work to implement the policies and goals in chapter 2, maintaining the natural character of the area. The City Council finds that since the ASI no longer meets the criteria for preservation under the code, removing the ASI is still consistent with the Chapter 2 goal.

OVERVIEW

This chapter describes the many types of open space and natural features that add to the quality of life for our residents. * * * Which natural features have some intrinsic value, and how much land should be preserved, are questions that Bend area residents wrestle with as they seek to balance the value of growth and the value of preserving natural areas. BAGP 2-4.

FINDING: The above is an overview of this chapter of the BAGP. It does not provide approval criteria that can be used in the City's review of this application; however, the overview, like purpose statements in the City's zoning ordinance, provide meaning and help to interpret the goals and policies of this chapter. The application of this language to the present proposal demonstrates why the rock outcroppings on the subject property were not meant to be included in the ASI overlay zone and why the BAGP directs the City to modify the ASI overlay zoning on the subject property.

This above statement shows that overlay zones, such as the ASI overlay, attempt to create balance between preserving the natural character of Bend and allowing development. This balance allows development to occur in certain areas of the City and results in the removal and/or disturbance of some of the area's natural features while identifying other areas that are worthy of preservation at the expense of the development. To make that determination, the City uses a rating system embodied in Chapter 2.7.700, Sections G and H of the Development Code. The application of that rating system to the subject property addressed above shows that the proposed modification is consistent with the above purpose to protect significant features while allowing compatible development. The surrounding area has developed with intensive commercial and transportation infrastructure in a way that isolates the ASI from trails or natural habitat migration corridors. The intensive commercial development impacts the scenic views and open space values. As a result, the subject property is used as a homeless camp due to its easy access, lack of visibility at night, vacancy and lack of activity after commercial business hours. As discussed, the area available for development on the subject property not covered by the ASI is too small and oddly configured to support the commercial uses allowed in this zone. The present proposal protects the significant natural resource feature, the ridge, and the habitat value located along the canal, but allows development of the portion of the ASI area heavily impacted by the development of intensive commercial and transportation infrastructure. This balance is exactly the type of integration between growth and preservation of natural features the BAGP describes for the ASI areas.

"Areas of Special Interest" are designated on the Land Use Map because they have features typical of Central Oregon, or represent important wildlife areas. * The smaller, scattered Areas of Special Interest on the Plan Map *** are not specifically inventoried with respect to size, quality, or importance. *** Because these Areas of Special Interest are small and the scale of the Plan Map is large, the indication on the Map represents the approximate location of the area. More detailed contour maps have been developed and the sites inventoried to determine the specific boundaries of the Areas of Special Interest.**

Keeping these features relatively intact will help retain the natural character of Central Oregon as the community grows. BAGP 2-5.

FINDING: Neither the zoning map, nor the BAGP map are a detailed contour map. No detailed contour maps have been officially adopted by the City. Thus, the BAGP map and the zoning map show only the approximate location of the ASI overlay zone. However, contour maps are used by the Planning Division in order to provide a clearer understanding of the ASI boundary.

As indicated in the development code the ASI boundary is determined by several factors topography, significant trees etc. The final determination for the ASI boundary is one that would be made in conjunction with a land use application or building permit.

POLICIES

Natural features and open space policies

- 1. The City and Bend Metro Parks and Recreation will inventory and maintain a list of natural features and open space lands that are important to the community.**

FINDING: As discussed above, the City has taken action to satisfy the criterion by adopting an ASI ordinance, which included designation of several ASI's. For the reasons discussed throughout this application, the ASI should not be inventoried as a natural feature or open space on the subject property.

- 5. Beginning no later than 1999 and every three years thereafter, the Bend City Council or its designee shall hold public hearings to receive information identifying Areas of Special Interest and natural features. The city and county shall use this information to update and clarify the designation of Areas of Special Interest and natural features on the Plan Map.**

FINDING: This policy makes it clear that the designation of ASI's and the mapping is intended to be inventoried at least every three years and ultimately revised over time. It has been almost eight years since the City addressed this issue in a legislative forum. Therefore, a reevaluation of the boundaries of ASI Area 25 is appropriate.

- 7. Major rock outcrops, stands of trees, or other prominent natural features identified in the General Plan shall be preserved as a means of retaining the visual character and quality of the community.**

FINDING: The subject property does not contain a "major rock outcrop." The subject property, also, does not include a major stand of trees. As discussed above, areas of significant features are determined by a scoring system that was established by the ASI ordinance. Based on the scoring system the property would not qualify as an ASI any longer.

CHAPTER 6. THE ECONOMY AND LANDS FOR ECONOMIC GROWTH

POLICIES

General Economic Land Policies and Anticipated Land Needs

- 6. The city shall periodically review existing development and use patterns on industrial and commercial lands. The city may consider modifying General Plan and/or Zoning Map designations to make such designations consistent with existing development and use patterns.**

FINDING: The subject property is zoned for commercial use. Based on existing development and use patterns in the vicinity of ASI Area 25, the ASI is no longer appropriate for preservation. Removal of the ASI will facilitate development on the subject property that is consistent with the surrounding commercial area.

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

FINDING:

- (1) **Police Protection.** Because the subject property is located within the Bend city limits it will be served by the Bend Police Department.
- (2) **Fire Protection.** Because the subject property is located within the Bend city limits it will be served by the Bend Fire Department which 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 specific sewer and water facility requirements will be addressed at the time approval of a development proposal. However, given the type and density of current development on the subject property and surrounding properties the sewer and water facilities and services that meet the city's standards and specifications are adequate.
- (5) **Schools.** The subject property is located within the boundaries of the Bend-La Pine School District and can be adequately served by the district.
- (6) **Parks.** The subject property is located within the boundaries of the Bend Metropolitan Park and Recreation District and can be served by the district.
- (7) **Transportation Facilities.** The subject property is bounded on the east by Hunnell Road, a minor arterial. Additionally the property is located between Cooley Road to the north and Robal Road to the south, both of these roads are minor arterials.

This criterion assumes that a change in use is being proposed by the zone change and plan amendment to a use that was not contemplated by the comprehensive plan and zoning ordinance. The criterion is intended to assure that new demands imposed by the new use can be accommodated by public facilities. In this case, the City's facilities plans assumed that this property would be developed with commercial uses. As a result, the removal of the ASI will have no impact on the assumptions used to develop the facilities plans or on public facilities. The property already has full utilities to the lot. Approval of this application does not change the base zoning classification of this property or the underlying comprehensive plan designation of it and, therefore, does not affect the public facilities, services and transportation networks needed to support a commercial use of the property. Also, all needed public facilities have been provided when the surrounding properties were developed. The subject property has been zoned for commercial use prior to its annexation into the City. When the City annexed this property and prepared the 1998 Comprehensive Plan, the adequacy of public facilities, services and transportation networks to support commercial use on this property was evaluated. This proposal does not change the level of services necessary to supply the subject property once development is proposed.

Impacts on public facilities, services, and transportation networks will be reviewed and the need for any mitigation will be evaluated at the time that a development application is submitted.

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: This application can be approved because there is evidence of a change in the neighborhood or community surrounding the subject property such that the subject property should not be extensively encumbered by the existing ASI overlay designation. Changes in the neighborhood or community include:

1. Hunnell Road has been developed along the eastern edge of the property.
2. Adoption of General Plan amendments for the new Urban Growth Boundary.
3. Adoption of the 2008 Economic Opportunities Analysis finding a need for more employment lands. These findings include ways to more efficiently utilize the land within the existing city limits.
4. Redevelopment of the adjacent driving range with a commercial automobile dealership.

COMPLIANCE WITH THE TRANSPORTATION PLANNING RULE.

Section 4.6.300(B)(4) of the Development Code states that approval of a quasi-judicial plan amendment or zone change application shall be subject to the provisions of Section 4.6.600; Transportation Planning Rule Compliance.

Section 4.6.600 Transportation Planning Rule Compliance.

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

FINDING: This proposal does not have any affect on compliance with the Transportation Planning Rule as the City's TSP plan assumes that 100% of the property will be developed with commercial uses. In 1998, the City of Bend updated its General Plan. At that time, it determined that the planned development shown on the comprehensive plan map would comply with OAR 660-012-0060, the TPR. As a result, the change will not have any impact [on] plan assumptions regarding traffic and will not have any affect on the City's transportation system not accounted for in the City's TSP and comprehensive plan. As a result, the change requested will, as a legal matter, have no impact on the transportation facilities.

OAR 660-009-0025

Designation of Lands for Industrial and Other Employment Uses

Cities and counties must adopt measures adequate to implement policies adopted pursuant to OAR 660-009-0020. Appropriate implementing measures include amendments to plan and zone map designations, land use regulations, public facility plans, and transportation system plans.


- (1) Identification of Needed Sites.** The plan must identify the approximate number, acreage and site characteristics of sites needed to accommodate industrial and other employment uses to implement plan policies. Plans do not need to provide a different type of site for each industrial or other employment use. Compatible uses with similar site characteristics may be combined into broad site categories. Several broad site categories will provide for industrial and other employment uses likely to occur in most planning areas. Cities and counties may also designate mixed-use zones to meet multiple needs in a given location.
- (2) Total Land Supply.** Plans must designate serviceable land suitable to meet the site needs identified in section (1) of this rule. Except as provided for in section (5) of this rule, the total acreage of land designated must at least equal the total projected land needs for each industrial or other employment use category identified in the plan during the 20-year planning period.

FINDING: The removal of the ASI restrictions from the subject property will allow the property to develop with commercial uses, as intended by this Goal 9 rule. Based on the above changes, the applicant has demonstrated that the proposed amendment is justified.



COMMUNITY DEVELOPMENT DEPARTMENT
CITY OF BEND
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