



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



NOTICE OF ADOPTED AMENDMENT

05/29/2012

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 005-11

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: Tuesday, June 12, 2012

This amendment was submitted to DLCD for review 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 Acknowledgment or 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. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Aaron Henson, City of Bend
Gordon Howard, DLCD Urban Planning Specialist
Karen Swirsky, DLCD Regional Representative
Angela Lazarean, DLCD Urban Planner

<paa> YA



FORM **2**

DLCD

Notice of Adoption

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

In person electronic mailed

DATE STAMP

DEPT OF

MAY 23 2012

LAND CONSERVATION AND DEVELOPMENT

For Office Use Only

Jurisdiction: **City of Bend**

Local file number: **PZ 11-179**

Date of Adoption: **5/16/2012**

Date Mailed: **5/22/2012**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: 8/17/2011

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

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

A plan amendment and zone change from Residential Urban High Density (RH) to Mixed Employment (ME) for a 2.83 acre parcel located on the north side of U.S. Hwy 20 at 495 NE Bellevue Drive.

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

Plan Map Changed from: **RH**

to: **ME**

Zone Map Changed from: **RH**

to: **ME**

Location: **495 NE Bellevue; 17-12-35CB 187**

Acres Involved: **2.83**

Specify Density: Previous: **21.7 - 43 u/ac**

New:

Applicable statewide planning goals:

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

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

35-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. 005-11 (18936) [17051]

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

Oregon Department of Transportation

Local Contact: **Aaron Henson, Senior Planner**

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 2 must be received by DLCD no later than 5 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s) per ORS 197.615 and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on light **green paper if available**.
3. **Send this Form 2 and one complete paper copy (documents and maps) of the adopted amendment to the address below.**
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information (ORS 197.615).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption (ORS 197.830 to 197.845).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. (ORS 197.615).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

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

9. **Need More Copies?** Please print forms on **8½ -1/2x11 green paper only if available**. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail **plan.amendments@state.or.us**.

<http://www.oregon.gov/LCD/forms.shtml>

Updated December 30, 2011

ORDINANCE NO. NS-2186

AN ORDINANCE AMENDING THE BEND URBAN AREA GENERAL PLAN MAP AND ZONING OF 2.83 ACRES OF LAND ON THE NORTH SIDE OF U.S. HIGHWAY 20 EAST OF BENSON WAY AND SOUTH OF BELLEVUE DRIVE FROM RESIDENTIAL URBAN HIGH DENSITY (RH) TO MIXED EMPLOYMENT (ME).

Findings:

A. On August 9, 2011, the applicant, Worthington Family Trust, filed an application (PZ 11-179) for a Plan Amendment and Zone Change for 2.83 acres of land on the north side of U.S. Highway 20 east Benson Way and south of Bellevue Drive, to change the zoning and general plan designation from Residential Urban High Density (RH) to Mixed Employment (ME).

B. The Hearings Officer held a duly noticed public hearing for the proposal on October 5, 2011. On October 25, 2011, the Hearings Officer issued a decision recommending that Council approve the requested Plan Amendment and Zone Change.

C. The City Council held a duly noticed public hearing on November 16, 2011. Based on the entire record, including all testimony, evidence and the recommendation of the Hearings Officer, the Council concluded that the application met all criteria for approval. The City Council adopted Resolution of Intent to Rezone No. 2856 on November 16, 2011, subject to two special conditions, in addition to the requirements of Section 4.6.400 of the Bend Development Code. The conditions of Resolution No. 2856 have been satisfied.

Based on these findings,

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council finds that the requested Plan Amendment and Zone Change 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 C.

Section 2. The Bend Urban Area General Plan and Zoning Maps are amended by changing the plan designation and zoning of 2.83 acres of land on the north side of U.S. Highway 20 east of Benson Way and south of Bellevue Drive from Residential Urban High Density (RH) to Mixed Employment (ME) as shown in Exhibit A and described in Exhibit B.


Read for the first time the 2nd day of May, 2012.

Read for the second time the 16th day of May, 2012.

Placed upon its passage the 16th day of May, 2012.

YES: Tom Greene
Scott Ramsay
Mark Capell
Jodie Barram
Jim Clinton
Kathie Eckman
Mayor Jeff Eager

NO: None



Jeff Eager, Mayor
5/18/12

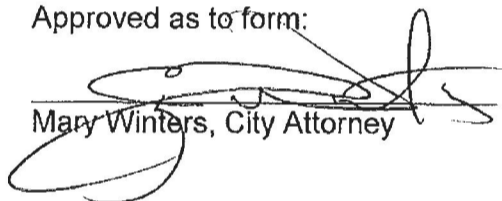
dated

ATTEST:



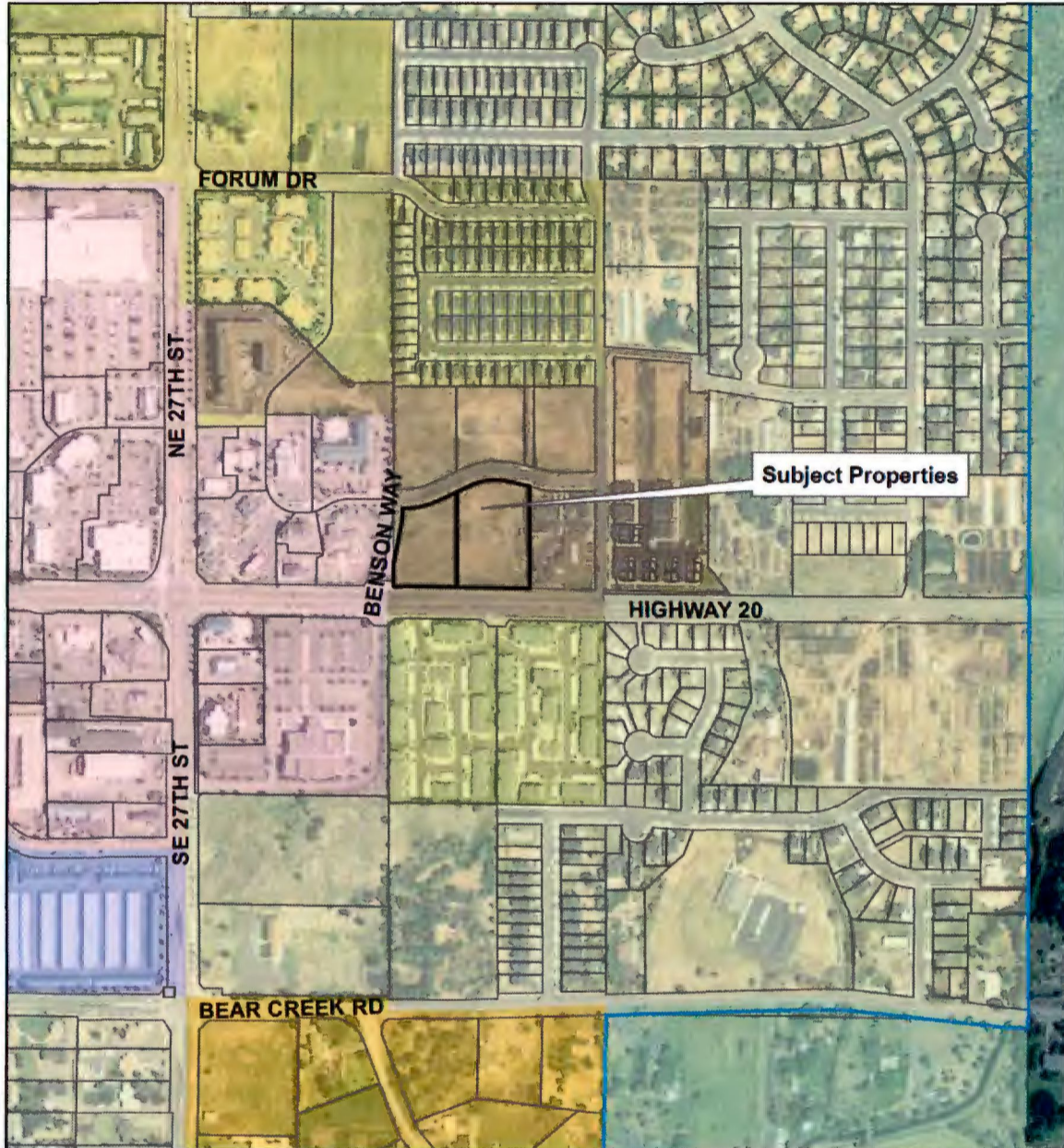
Robyn Christie, City Recorder

Approved as to form:




Mary Winters, City Attorney

EXHIBIT A



PZ 11-179 Plan Amendment and Zone Change from Residential Urban High Density (RH) to Mixed Employment (ME)



Subject Properties
 Bend City Limits

Zoning & Plan Designation
 CL RM UAR10
 ME RS
 RL RH

Imagery acquired June 2009.
 Map prepared October 28, 2011.

0 250 500
 Feet






EXHIBIT B

In Township 17 South, Range 12 East of the Willamette Meridian, Deschutes County, Oregon.

Lots 1 & 2 of Arrowhead, Phases I, II, III & IV as consolidated by City File #PZ 11-229.

INCLUDING THEREWITH the adjacent right of way to the centerline of Bellevue Drive, the adjacent right of way to the centerline of U.S. Highway 20, and that portion of the right of way for Benson Way which is located within the boundaries of Arrowhead, Phases I, II, III & IV.

EXHIBIT C

FINDINGS IN SUPPORT OF PZ 11-179

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

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

FINDING: The Statewide Planning Goals, along with findings of consistency, are listed below.

Goal 1, Citizen Involvement

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

The City's acknowledged citizen involvement program for quasi-judicial amendments is codified in BDC Chapter 4.1. The applicant conducted a neighborhood public meeting on July 20, 2011 and prior notice of the meeting was provided to property owners within 500 feet of the site and to the applicable neighborhood associations. Type III land use applications are noticed pursuant to Section 4.1.400 of the Development Code, which ensures that citizens are informed of the opportunity to participate in a public hearing. The Planning Division file concerning this matter was available for public viewing at least 7 days prior to each public hearing on this matter. The Hearings Officer's initial public hearing was held on October 5, 2011 and the City Council's public hearing was held on November 16, 2011. Goal 1 is met.

Goal 2, Land Use Planning

To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

The Bend Development Code establishes the process, and the General Plan establishes the policy framework, for a decision on the requested Plan Amendment and Zone Change. Specifically, the Planning Division prepares a Staff Report based on established processes and policies, and the Hearings Officer considers the facts, the Staff Report, and other evidence at a public hearing, where written and oral evidence is received. The Hearings Officer then makes a recommendation to the City Council, which conducts a separate public hearing and makes a decision on the application. Goal 2 is met.

Goal 3, Agricultural Lands

Goal 4, Forest Lands

Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces

Goals 3, 4, and 5 are not applicable to this application because the subject property is not zoned for agriculture or forest use and does not contain any inventoried open spaces, scenic areas, historic resources, or natural resources.

Goal 6, Air, Water and Land Resources Quality

Goal 6 is not applicable to this application because the proposed change will have no identified impacts on air, water, or land resources within the meaning of the rule. As part of the Site Plan Review process, the applicant was required to provide evidence of sufficient water supply to the site. Air and water quality are regulated by the Oregon Department of Environmental Quality. The subject property has no unique land resources. To the extent applicable, this goal is met.

Goal 7, Areas Subject to Natural Hazards

Goal 8, Recreational Needs

Goals 7 and 8 are not applicable to this application because the subject property is not within an identified natural hazard area, nor within an area identified for recreational use.

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.

Goal 9 and the implementing rules require local governments to provide an adequate amount of commercial and industrial land within the Urban Growth Boundary (UGB). In Bend, this requirement is accomplished through the designation of adequate commercial, industrial, and mixed employment land in the General Plan. Statewide Land Use Planning Goal 9 requires the City to provide for "at least an adequate supply of sites of suitable sizes, types, locations and service levels for a variety of industrial and commercial uses consistent with plan policies." The administrative rules implementing Goal 9 and specifically OAR 660-009-0015 require the City to develop an inventory of industrial and other employment lands of "vacant and developed lands within the planning area designated for industrial or other employment uses." The City adopted ordinances amending its UGB and General Plan in January 2009 based upon a number of studies and inventories, including an Economic Opportunities Analysis and a Buildable Lands Inventory. Portions of these analyses are in dispute and have been remanded by the State Department of Land Conservation and Development (DLCD). Thus, it is necessary to use the City of Bend's acknowledged General Plan dated December 1998 and its corresponding support documents and Economic Lands Studies, which is addressed below.

The subject property is designated RH on the Bend Area General Plan Map, and the applicant is requesting the City to change the Plan Designation to ME. The General Plan recognizes that changes will occur over time, and its preamble states:

“Bend cannot rest on the economic diversity that existed in the 1990s. The community must work hard to ensure that the local economy continues its pattern of healthy growth, and that new jobs in all wage levels are available for its citizens. Governments, economic development groups, and developers all have a role in retaining, expanding, and recruiting businesses that will serve our needs in the 21st century. The role of the General Plan is to provide an adequate supply of industrial, commercial, and mixed-use land for Bend's economic growth.”

The City has two mixed-use zones - Mixed Employment and Mixed Use Riverfront. Mixed Use Riverfront is specified for the areas near the Deschutes River, and is not appropriate for the applicant's property location. Mixed Employment is an appropriate choice, and is a type of zone that recognizes a mix of light industrial, commercial, and institutional uses.

The City's Development Code States in part:

“The Mixed Employment zone is intended to provide a broad mix of uses that offer a variety of employment opportunities.”

Based upon the policy statements noted above, the applicant's proposal will satisfy the intent of the General Plan and the implementing ordinances in at least two ways:

1. The applicant's proposal includes local investment and construction of a fully funded new brewery business - an expanding industry sector. The activities of the brewery and supplemental programs include an educational link to Oregon State University. The brewery will be another supportive element to the existing “brew culture” in Bend that will encourage tourism and expansion of the existing Bend “Ale Trail” tours. Bend has over 10 breweries now, and according to various documents submitted by the applicant, Bend has started to outpace Portland's beer culture in several ways. Breweries have fostered an expanding segment of the economy for Oregon, much like the wineries in the Willamette Valley. Testimony from the applicant and the Burden of Proof statement demonstrate that Bend is following the same trend with beer.
2. The Mixed Employment zone works well to support the brewery's activities, as it is one of the few zones that can accommodate the full range of uses described in the applicant's proposal. There is only one undeveloped piece of ME zoned land near Highway 20 and 27th Street. However, it is not located with the same advantages as the subject parcel, and the record reflects that it may be committed to a hotel. The ME zone will also serve to provide a good buffer for undeveloped RH lands north of Bellevue Drive.

OAR 660-009-0000 states, in part:

"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."

Division 9 allows the City of Bend to designate mixed-use zones to meet multiple needs, and to amend its General Plan to re-designate additional serviceable land for industrial or other employment use as indicated below.

4) "Locational Factors" means market factors that affect where a particular type of industrial or other employment use will locate. Locational factors include, but are not limited to, proximity to raw materials, supplies, labor, services, markets, or educational institutions; access to transportation and freight facilities and major transportation routes; and workforce factors (e.g., skill level, education, age distribution).

Bend's unemployment rate was 12.1% according to the June 2011 Employment Report published by the Bureau of Labor and Statistics, and the applicant's site is in a location that provides access to labor markets. Large numbers of the City's population reside on the East side. The record demonstrates the site is presently served by all utilities that the brewery may need, including sewer and water capacity. This is a critical consideration because there are serious sewer constraints in several other areas of the City. Locating the brewery on a ready-to-serve site, in a location near large numbers of people, and abutting U.S. Highway 20 (which is a designated Expressway), provides good proximity to raw materials, labor supplies, and markets. This property can quickly accommodate development to create jobs and produce a commodity in the short-term. This is especially important since the local economy has lost so many jobs during the recession and subsequent economic downturn.

The City's General Plan contains Policy 19, which enables modifications to the City's inventory of mixed-use lands, especially when a change is needed to convert existing zoning to mixed-use land:

"19. The City may designate other areas for mixed-use development to encourage a variety of jobs and services close to residential areas."

Policy 19 is a key because the applicant's proposed brewery is a combination of production and service uses in an area that already demonstrates a mix of uses. As discussed in the General Plan's Economic Lands Studies, there are very limited opportunities to establish new industrial areas within the existing UGB due to transportation needs, potential conflicts with adjacent properties, and the reduction in acreage needed for housing that would result from converting residential zones to industrial zones. The subject property has very few conflicts because its development will not exceed the capacity of the transportation system or the City's water and sewer system. It is surrounded by roads, commercial/office uses, and other elements that make the site less desirable for residential uses.

Although the applicant is not seeking industrial zoning, Mixed-Employment is a type of zone that allows a mix of light industrial and commercial uses. The subject property will also serve as a buffer to other residential zones. New employment uses are needed for economic development purposes - even more so, since the Bend economy is in desperate need for more jobs. It is reasonable to expect new areas created for mixed-employment will serve a variety of uses and services, similar to how some of Bend's light industrial areas function today. The proposed brewery is not permitted outright in any of Bend's commercial zones, so the applicant is seeking ME zoning because it is the only zone that will accommodate a brewery and tasting room, and will also provide a buffer between other land uses.

The applicant believes the subject property has the characteristics necessary to be considered one of the "very limited opportunities" for creating new employment lands in the same way the General Plan describes how the City could establish new industrial areas within the existing Urban Growth Boundary. As described above, the applicant's site is ideally suited to an employment land category, and it is a good candidate for creating new employment lands. The features of the property and the proposed use have the employment land characteristics as described below:

- 1) The site can accommodate the proposed brewery development and meet the intent of the Transportation Planning Rule;
- 2) The site and the proposed brewery can be served by City sewer and water now, whereas other areas of the community, particularly the western portion of the City (where nearly all of the existing breweries are located) have some limited sewer capacity;
- 3) The site and the proposed brewery are located to effectively serve as a buffer between residential and other uses;
- 4) The site is available now, in the short-term, for development;
- 5) The site and the proposed brewery are capable of producing more jobs than could be created from its current land use designation of high density residential and jobs of a long term duration;
- 6) The development proposed is not speculative and is proposed to be processed as a Resolution of Intent to Rezone as discussed below;
- 7) The site is near lands that have been recently up-zoned and provide opportunities for unanticipated residential units that exceed those potentially lost by converting the subject property from RH to ME;
- 8) The site has characteristics that make it less desirable for residential development such as being "sandwiched" between existing commercial, office, streets, access ways, and Hwy 20 uses;
- 9) The site suits the specific needs for developing a brewery on the east side of town where no brewery exists now;

10) No other site within the City is available for sale or lease containing a building ready for mixed-employment use with a size commensurate with the needs of the brewery proposal (27,535 sq. ft.).

11) In this poor economic climate, the ability to produce jobs and a viable product is a high priority for the community and a City Council goal.

The City Council finds that the applicant's proposal is consistent with the administrative rule and will provide employment lands consistent with the intent to promote the diversified economy of the urban area. The existing development pattern around the subject property provides for a compatible transition between commercial highway uses along Hwy 20 and 27th Street to the west, commercial/office uses on both sides of the property, and the remaining RH lands to the north. Thus, the applicant's proposal is compatible with its surroundings because it is located in an area that already exhibits a pattern of mixed development.

The applicant is also required to demonstrate that its proposal is consistent with Goal 9, which requires the City to provide adequate opportunities for a variety of economic activities. The City Council finds that the applicant's proposal is consistent with Goal 9 because it would provide additional ME zoned land within the Bend UGB, facilitating a more diverse economy and opportunities for employment, as well as a buffer between commercial and residential uses.

There is only a small amount of vacant ME zoned land located on the east side of Bend. The applicant's proposal will add ME zoning to an area east of the intersection of Hwy 20 and 27th Street where none exists and where jobs are needed. Again, the area around the subject property already exhibits a pattern of mixed development - i.e., commercial, employment, office, and residential - and will also provide a transition between commercial uses and residential uses. The applicant has assured the community that a brewery will be built on the subject property because a building permit for a brewery has been issued.

Goal 10, Housing

Provide for the Housing Needs of the citizens of the State.

The applicant's proposal will result in the removal of 2.83 acres RH designated land within the Bend UGB. However, several circumstances mitigate any loss to the City for housing opportunities. Most importantly, there is an active land use approval for commercial office and medical uses on Lots 1-6 of the Arrowhead Subdivision, which includes the subject property. The approval was obtained for such was granted by applications PZ 04-242, PZ 06-96, and PZ 07-533. These previous applications were approved under the old Zoning Ordinance, when the RH zone allowed offices as a conditionally permitted use, and these existing entitlements do not expire until November 9, 2013. This effectively removed housing opportunities on the subject property. An office building for the Baney Corporation and the Oregon Department of Environmental Quality was recently constructed on the adjacent lot to the east, and a shared access drive was built to accommodate future non-residential uses on the subject property.

The City Council finds that the proposal to convert the land to ME will not adversely affect the City's ability to provide for identified housing needs during the planning period for the following four reasons: (1) there is an active land use approval for commercial office and medical uses on the site; (2) the relatively small size and shallow depth of the subject property make it difficult to develop with apartment uses, and their commensurate amenities; (3) the incompatibility between residential use of the subject property and existing commercial and transportation uses on the adjacent lands; and (4) other nearby properties have been recently up-zoned to more intensive residential zones and can supply a number of unanticipated units to offset those potentially lost by the proposal.

Goal 11, Public Facilities and Services

To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

The record reflects that all needed public facilities and services are available to the subject property. The property is adjacent to a major arterial. Water and sanitary sewer service is available via existing City infrastructure adjacent to the property in Bellevue Drive. Emergency services are available through the City of Bend Fire and Police Departments. The subject property is also located within the Bend LaPine School District. A mixed employment development will not place a strain on police, fire, or school facilities and services because those services have already been anticipated.

Goal 12, Transportation

To provide and encourage a safe, convenient and economic transportation system.

Goal 12 is implemented through the Transportation Planning Rule, OAR 660-12. Additionally, Section 4.6.600 of the Bend Development Code requires the applicant to demonstrate compliance with the TPR (OAR 660-012-0060). The TPR provides:

(1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:

- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);*
- (b) Change standards implementing a functional classification system; or*
- (c) As measured at the end of the planning period identified in the adopted transportation system plan:
 - (A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;**

- (B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or*
- (C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.*

The applicant's Traffic Impact Analysis (TIA) dated July 14, 2011 examines how the study area's transportation system will operate in the year 2030 if the site is developed with the proposed ME zoning. Specifically, it considers traffic conditions assuming a reasonable worst-case development scenario of the subject property under: 1) the existing RH zoning with the existing entitlements for medical and general office uses through November 9, 2013, and 2) the proposed ME zoning with the concurrent site plan application for a proposed brewery. To understand potential zone change impacts, the allowable land uses and densities were reviewed for both scenarios to identify what changes could occur to the transportation system as a result of the proposed land use action. A summary of the existing and proposed development potential of the subject property and the net new weekday p.m. peak hour trip generation potential of the subject property is provided below.

Existing High Density Residential Housing (RH) Zoning

The Bend Development Code allows a range between 21.7 and 43.0 multiple family housing units per gross acre within the Residential Urban High Density (RH) zone. This designation is intended to serve as a transition between other residential zones and less restrictive uses. The RH zoning includes all types of multi-family housing, and allows some limited commercial uses such as child care centers, some ancillary retail uses (such as laundromats, barbershops, or non-auto dependent dining uses), mixed-use buildings, and neighborhood parks as outright permitted uses. In addition to these uses, prior to 2006, the Zoning Ordinance allowed other uses such as general office and medical office uses with a conditional use permit.

As previously noted, the applicant has existing entitlements to construct general office and medical office uses on the subject property through November 9, 2013. Based on review of these land use categories, two scenarios were identified in an effort to identify a reasonable worst-case development scenario under the existing RH zoning: 1) build-out of the site with apartments, and 2) build-out of the site with medical office buildings.

For the first scenario, build-out at the maximum residential density was reviewed (121 units on the 2.83-acre site). The second scenario was assessed based on the floor-area-ratio (FAR) of the adjacent Baney Office Building, which is a two-story building with one-floor of medical office use and a second floor of general office use, resulting in an overall FAR of 0.33. As shown in Tables 4 & 5 of the applicant's TIA, more trips would be generated by a two-story office building (958 average daily trips, and 100 weekday p.m. peak hour trips) than 121 apartment units (856 average daily trips, and 84 weekday p.m. peak hour trips).

Proposed Mixed-Employment (ME) Zoning

The ME zoning allows a variety of employment, residential, and small-scale retail uses. While this zoning could result in a mix of ground floor retail and upper floor medical office space, a concurrent site plan is proposed with the Worthy Brewing Plan Amendment and Zone Change application and the applicant has testified that this is in fact its intended use. For TPR purposes, the applicant's TIA studied a reasonable worst-case scenario consisting of the applicant's long-term build-out scenario, which includes the brewery space and a restaurant.

Existing and Proposed Zoning Net New Trip Generation Comparison

Land Use	Daily Trips	Weekday PM Peak Hour		
		Total	In	Out
Existing RH Zoning	958	100	24	76
Proposed ME Zoning	296	27	15	12
Difference (Proposed – Existing)	-662	-73	-9	-64

Comparison of the existing zoning potential and the applicant's actual proposed use shows that the Worthy Brewing Co. will generate fewer trips (662 average daily trips, and 73 weekday p.m. peak hour trips) than could otherwise occur under the existing zoning. Because the trip generation potential is lower, the zone change will not change the functional classification, degrade the operational performance of transportation facilities, or otherwise create a significant effect on the transportation system.

In order to prevent the proposed Plan Amendment and Rezone from potentially allowing other, more intensive uses on the subject property that could have greater impacts on the City's transportation system or other public facilities and services, the applicant agreed to follow the "Intent to Rezone" process identified in Section 4.6.400 of the Development Code. On November 16, 2011, the City Council adopted a "Resolution of Intent to Rezone" which included a requirement that the applicant/owner of the subject property obtain final Site Plan approval and a building permit for the proposed brewery by November 9, 2013. These requirements have now been met.

Goal 13, Energy

To conserve energy.

The ME zone may improve energy conservation because it will allow for a mix of economic uses along an expressway in a location that is near existing residential and commercial developments. This may reduce the distance in trips for customers and employees, resulting in a reduction in vehicle miles travelled. In addition, the applicant's proposed building will contain active and passive solar energy production, and use modern materials and fixtures to reduce energy use and water demand. The submitted burden of proof states that the applicant will make various efforts to engage in sustainable practices by:

- Sourcing state of the art brewing equipment locally that will recapture "lost" energy for heating of brewing water;
- Focusing on local and sustainable ingredients including Certified Organic materials;
- Building designed by LEED certified local architect Neal Huston & Associates in collaboration with the Energy Trust of Oregon;
- Installing one of the largest solar arrays in Central Oregon;
- Implementing green building technology including: Energy efficient HVAC, skylights, windows and solar tubes as primary light source;
- Installing Central Oregon's first canning line. Aluminum cans take less energy to ship (compared to glass), are more recyclable and are a favorite among outdoor enthusiasts for the ease of transporting;
- Committing to reducing solid waste output to 80% of similar sized breweries; and,
- Recycle brewery waste (spent grains) as cattle feed for local ranchers/farmers. This goal is met.

Goal 14, Urbanization

To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

The subject property lies well within the boundary of the City's UGB in an area where urban levels of service are currently provided. Therefore, this goal is not applicable to the proposed Plan Amendment and Zone Change.

Goal 15, Willamette River Greenway

Goal 16, Estuarine Resources

Goal 17, Coastal Shorelands

Goal 18, Beaches and Dunes

Goal 19, Ocean Resources

Goals 15 through 19 are not applicable to the proposed Plan Amendment and Zone Change application because the subject property does not include any of these features or resources.

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 Bend Area General Plan is the City's Comprehensive Plan. The subject application is consistent with the applicable plan goals and policies as identified below and in the applicant's burden of proof.

CHAPTER 1: PLAN MANAGEMENT AND CITIZEN INVOLVEMENT

Applicable Policies

Development within the Urban Growth Boundary

- 4. 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 city's capital improvement plan. 1-7***
- 5. The city 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. 1-7***

The applicant's proposed use is being built on property already served by City water and sewer. Conformance with requirements for provision of adequate public facilities including streets, sewer, and water to City standards and specifications were evaluated during the Site Plan review process, and Systems Development Charges (SDCs) were collected at the time that building permits were issued. The subject property is surrounded by a variety of commercial and residential uses with good access to streets and transit routes, which will help to reduce vehicle trips and miles traveled as well as facilitating non-automobile travel.

Citizen Involvement

- 16. The city will use other mechanisms, such as, but not limited to, meetings with neighborhood groups, planning commission hearings, design workshops, and public forums, to provide an opportunity for all the citizens of the area to participate in the planning process. 1-8***

The Plan Amendment and Zone Change process includes a pre-application public meeting requirement, as well as public notice and public hearings to ensure adequate opportunity for citizen participation in the planning process. As noted in the applicant's burden of proof and herein, citizens participated in the applicant's public meeting, and were invited to participate in the public hearings on the proposed Plan Amendment and Zone Change.

CHAPTER 5: HOUSING AND RESIDENTIAL LANDS

Applicable Policies

- 4. Private and public nonresidential uses are necessary and should be permitted within residential areas for the convenience and safety of the people. Such facilities shall be compatible with surrounding developments, and their appearance should enhance the area. 5-25***

- 5. Of necessity, nonresidential uses will have to abut residential areas in different parts of the community. In these instances, any nonresidential use shall be subject to special development standards in terms of setbacks, landscaping, sign regulations, and building design. 5-25**

The applicant is constructing a smaller scale “craft brewery”. The brewery will also support educational activities dedicated to the development of improved and more diverse Hop species and brewing process. The design of the building has been reviewed and endorsed by the Neighborhood Associations and many other members of the public. The building will contain solar and other modern devices that help to minimize energy use as described above. The building and site will incorporate concrete, wood, metal, and extensive landscaping. The colors of the building are muted earth tones and will enhance the area. The building has been placed as close to the highway as possible and the height will serve as an effective buffer to help screen noise and the visual effects of traffic on the highway.

- 31. Medium-and high-density residential developments shall be located where they have good access to arterial streets and be near commercial services, employment and public open space to provide the maximum convenience to the highest concentrations of population. 5-28**

This policy appears to apply only to RM and RH residential developments, not that which is proposed here. It also does not define what constitutes "good access" and seems to apply to the “highest concentrations” of population found in residential developments of RM and RH zoning. The City Council finds that it is not applicable. Nevertheless, the subject property directly abuts Hwy 20 and is surrounded by streets or access ways as already identified.

CHAPTER 6: THE ECONOMY AND LANDS FOR ECONOMIC GROWTH

Applicable Policies

- 19. The City may designate other areas for mixed use development to encourage a variety of jobs and services close to residential areas. 6-15**

The applicant proposes a mixed-use designation of ME, Mixed-Employment on 2.83 acres of land currently zoned RH, but “entitled” by way of previous Land Use Approvals to be developed with medical/office uses. The brewery and restaurant, combined with the educational component of Hop research, and a tasting room, will provide and encourage a variety of jobs and services close to residential areas.

- 20. The existing pattern of commercial designations shown on the Plan Map along Highway 97 and Highway 20, and along arterial streets such as Newport Avenue, Galveston Avenue, SW 14th Street, 27th Street, and O.B. Riley Road shall not be extended farther along the street corridors. 6-16**

This policy speaks to the pattern of commercial development shown on the Plan Map, not the existing type of development. As such, the City Council finds that it is specific to the actual “commercial” designations. Those are such zones as Commercial General or

Commercial Limited. The applicant's request is for an ME designation and not a commercial designation. The City Council finds that this policy is not offended by the proposal and is satisfied.

21. No new strip commercial development or extensions of the commercial designations shall be permitted along arterial or collector streets. 6-16

The applicant's proposal is for an ME designation and not commercial. It is also to facilitate the development of the entire site with a brewery, tasting room, and Hop research area. The site abuts Hwy 20, a designated Expressway, which is a higher classification on the City's TSP map. There is no extension of a "strip", to the extent its meaning is ascertainable, because the closest commercial zoning is at Crossroads Plaza, which is developed as a center, separate from the site. According to Staff, there is not strip-style commercial development to extend. Also, the proposed brewery does not take direct access from the highway. Rather, it takes access off of Bellevue Drive thus avoiding the prime characteristic of strip development – direct access off of an arterial or collector. For these reasons, the City Council finds the policy is satisfied.

CHAPTER 7: TRANSPORTATION SYSTEMS

Applicable Goals

Environmental:

Design transportation improvements to preserve air and water quality, minimize noise impacts, and encourage energy conservation. 7-4

Livability:

Design and locate transportation facilities to be sensitive to protecting the livability of the community. 7-4

The surrounding transportation system improvements are already designed and on-site improvements are addressed with the Site Plan application. Directly, except with regard to intensity of use, which is established by the Development Code, there is little the applicant here can do to protect water or air quality. However, the current RH zoning designation of the applicant's property could result in multi-family dwelling units being developed on Hwy 20 and other roadways and would allow a much greater number of daily vehicle trips, not conducive to minimizing the subject impacts or energy conversation, or, arguably, livability of the community. In contrast, the proposed brewery would help block the noise and visual impacts from the highway, and commercial uses beyond the subject site, reduce vehicle trips, etc. The Development Code also requires mixed-use developments to create sufficient pedestrian walkways to promote pedestrian access. The record indicates there are sidewalks and bicycle lanes on Hwy 20 and many pedestrian facilities on or near the property. The subject property is also located near transit lines, thereby facilitating travel access by other means than motor vehicles, such as by bus. Under these circumstances, the City Council finds these goals are met.

Safety:

Design and construct the transportation system to enhance travel safety for all modes.

The surrounding transportation system is already built. The Oregon Department of Transportation (ODOT) has taken note of the City's concern with pedestrians crossing Hwy 20, and ODOT shares that concern. ODOT has further testified that they would support a pedestrian road safety audit to determine the best way to safely convey pedestrians across Hwy 20 in the vicinity of the proposed brewery. Staff agreed that a pedestrian road safety audit may be warranted for the segment of Hwy 20 between 27th Street and Dalton Street. However, Staff found that this is not something that should be borne by the developer of the last vacant parcel with frontage along this urban expressway. Staff also found that a safety audit is probably needed whether the subject property is rezoned ME, or retains its existing RH zoning designation. But there was no attempt to show a rational nexus between this development and the proposed study or suggested improvements, and there was no demonstration of rough proportionality. Staff also found that if the subject property were to be developed with apartment units under the existing zoning, it is likely that pedestrians from the subject property would want to cross Hwy 20 to visit the theater, or to visit friends in the apartments located east of the theater, or other commercial uses south of Hwy 20.

The applicant is requesting a Plan Amendment and Zone Change to facilitate the construction of a brewery with a tasting room, and there are no policies in the City's General Plan that specifically require the applicant to submit a pedestrian road safety audit, just because the subject property is adjacent to an existing expressway without nearby signalized pedestrian crossings. ODOT's Interim Planning Manager for Region 4 verbally informed the City that ODOT previously collected funds for the construction of a median in Hwy 20 east of 27th Street in order to mitigate traffic impacts from the apartments on the south side of Hwy 20, and it may be possible for ODOT to include pedestrian crossing safety improvements on Hwy 20 as part of their future construction project. The City Council finds that there is no basis to require the applicant to conduct a road safety audit or to construct the transportation system improvements suggested by the City's Transportation Engineer. The goal is met.

Applicable Policies

- 2. The City shall continue to use and develop performance standards and guidelines that can reduce vehicle trip lengths and/or promote non-vehicle transportation modes. 7-5***

- 6. The City shall implement mixed use zoning as one of the land use strategies to promote fewer vehicle trips and shorter trip lengths.***

The ME zoning will promote fewer vehicle trips and the subject property is located reasonably close to a public transit route with bus stops on 27th Street and Hwy 20. Other commercial is also within walking distance. This policy is met.

7. The City shall be receptive to innovative development proposals, including zone changes, plan amendments, and text changes that promote alternatives to vehicular traffic and demonstrably reduce vehicle trips and trip lengths. 7-5

Designating the subject property to ME will allow the types of mixed-use employment on the subject property contemplated by this plan policy. There are no breweries with tasting rooms or Hop development/educational areas on the east side of the City. The applicant's proposal is unique and an interesting addition to the eastern part of the community. The brewery will create a variety of jobs for locals in all stages of development, construction, and operation. A variety of housing types and residential zones will continue to be available to the community from other nearby residentially zoned areas.

There are no other breweries on the east side of the community, and a large portion of the population is on the east side. People who previously drove to the west side to visit a brewery will be able to experience a craft brewery on the east side. This locational factor will likely reduce vehicle trips and trip lengths. This factor is supported by the close proximity of existing residential areas and documentation submitted by the applicant showing that the east side has a large population.

As already addressed vehicle trips will be less under the proposed ME zoning than the existing RH zoning.

CHAPTER 8: PUBLIC FACILITIES AND SERVICES

Applicable Policies

1. The city shall encourage development of serviced land prior to unserviced land or require the extension of sewer lines as part of any development within the UGB. 8-12

7. Within the urban planning area, public and private water systems shall be consistent with city standards for construction and service capabilities. 8-12

The public utility systems adjacent to the subject property have adequate capacity for additional Mixed Employment development. The submitted fire flow analysis states that the estimated water supply is 3,500 gallons per minute. The submitted sewer analysis states that no capacity limitations were identified.

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: The public facilities and services potentially affected by ME development on the subject property include sewer, water, police and fire protection, schools, parks, and transportation facilities. These facilities and services are discussed in the findings below.

1. Sewer and Water. The submittal shows that the properties surrounding the subject property currently are served by city water and sewer facilities. As discussed above, the submittal includes analyses by the City's Engineering Division showing there are no capacity issues with nearby sewer facilities, and nearby water facilities provide adequate fire flow and residual water pressure.
 2. Police & Fire Protection. The subject property is located within the City limits and is served by the Bend Police Department and the Bend Fire Department.
 3. Schools. The subject property is located within the boundaries of the Bend-La Pine School District. The district accommodates growth and development within its boundaries through a variety of measures. The applicant's proposal to change the subject property's plan designation and zoning from residential to ME will reduce the impact on the district by reducing the amount of housing on the subject property.
 4. Parks. The subject property is located within the boundaries of the Bend Metro Park and Recreation District. The closest park is Providence Park to the north.
 5. Transportation Facilities. The subject property abuts Hwy 20, a State Highway and designated Expressway. The property also abuts two other local streets, which creates three frontages - plus, the property fronts onto a paved access easement shared with the Baney Corporate Headquarters and DEQ Offices. The proposed Plan Amendment and Zone Change are also consistent with the TPR because development on the subject property is currently limited by a City approved trip cap that contains enough trips to support the proposed use. The transportation facilities will be adequate to accommodate ME development on the subject property.
- 4. Evidence of change in the neighborhood or community or a mistake or inconsistency in the comprehensive plan or land use district map regarding the property that is the subject of the application; and the provisions of Section 4.6.600; Transportation Planning Rule Compliance.**

FINDINGS:

Change in Neighborhood or Community.

In 2006, the City changed the RH zoning regulations to prohibit office complexes except for those that were lawfully permitted prior to the adoption of the new code. That is the case here. The subject property has an active land use permit for an office complex. Although the code has changed, the community has expected that the subject property would be something other than residential for many years. The subject property was designed and originally approved for non-residential uses, especially near the highway. One office building has already been built (Baney Building). The subject property abuts a shared access easement that was developed for non-residential uses. The City Council finds that there have been changes in the neighborhood and community within the meaning of the criterion.

CONCLUSIONS:

The City Council finds that the proposed Plan Amendment and Zone Change (from RH to ME) meets all applicable Development Code criteria, policies of the Bend Urban Area General Plan, Oregon Statewide Planning Goals, and the Transportation Planning Rule.



CITY OF BEND
COMMUNITY DEVELOPMENT DEPARTMENT
710 NW WALL STREET
BEND, OR 97701

TO: *PLAN AMENDMENT SPECIALIST*
DEPT. OF LAND CONSERVATION & DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OR 97301-2540

DEPT OF

MAY 23 2012

LAND CONSERVATION
AND DEVELOPMENT