



# Oregon

Theodore R. Kulongoski, Governor

**Department of Land Conservation and Development**

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

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

## NOTICE OF ADOPTED AMENDMENT



October 15, 2008

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Bend Plan Amendment  
DLCD File Number 011-08

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

Appeal Procedures\*

### **DLCD ACKNOWLEDGMENT OR DEADLINE TO APPEAL: October 28, 2008**

This amendment was not submitted to DLCD for review prior to adoption. Pursuant to OAR 660-18-060, the Director or any person is eligible to appeal this action to LUBA under ORS 197.830 to 197.845.

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

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

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

<paa>

PROP **2**

**DLCD**

# Notice of Adoption

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

In person  electronic  mailed

DATE  
OCT 09 2008  
STAMP  
LAND CONSERVATION AND DEVELOPMENT  
For DLCD Use Only

Jurisdiction: **City of Bend**

Local file number: **PZ06-570**

Date of Adoption: **10/1/2008**

Date Mailed: **10/6/2008**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: 9/15/2006

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".  
Redesignate and rezone approximately 11 acres from Industrial Light (IL) to Mixed Employment (ME).

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

Plan Map Changed from: **IL**

to: **ME**

Zone Map Changed from: **IL**

to: **MI**

Location: **South west Corner of Simpson and Columbia**

Acres Involved: **11**

Specify Density: Previous: **0**

New: **No Maximum**

Applicable statewide planning goals:

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

Was an Exception Adopted?  YES  NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes  No

If no, do the statewide planning goals apply?

Yes  No

If no, did Emergency Circumstances require immediate adoption?

Yes  No

011-08 (NOA)

DLCD file No. \_\_\_\_\_

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

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Local Contact: **Colin Stephens**

Phone: (541) 693-2119 Extension:

Address: 710 NW Wall St

Fax Number: 541-388-5519

City: **Bend**

Zip: 97701-

E-mail Address: [cstephens@ci.bend.or.us](mailto:cstephens@ci.bend.or.us)

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## ADOPTION SUBMITTAL REQUIREMENTS

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

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

**ATTENTION: PLAN AMENDMENT SPECIALIST**  
**DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**  
**635 CAPITOL STREET NE, SUITE 150**  
**SALEM, OREGON 97301-2540**
2. **Electronic Submittals:** At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: [webserver.lcd.state.or.us](http://webserver.lcd.state.or.us). To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing [mara.ulloa@state.or.us](mailto:mara.ulloa@state.or.us).
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at <http://www.lcd.state.or.us/>. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to [mara.ulloa@state.or.us](mailto:mara.ulloa@state.or.us) - ATTENTION: PLAN AMENDMENT SPECIALIST.

**ORDINANCE NO. NS-2105**

AN ORDINANCE AMENDING THE BEND URBAN AREA ZONING MAP AND GENERAL PLAN MAP BY CHANGING THE ZONING AND PLAN DESIGNATION OF THREE PARCELS OF LAND TOATLING 11.04 NET ACRES LOCATED AT THE NORTHEAST CORNER OF SIMPSON AVENUE AND COLUMBIA STREET FROM INDUSTRIAL LIGHT TO MIXED EMPLOYMENT.

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council held a public hearing to consider the Hearings Officer's findings and record, and found that the Zone Change and Plan Amendment is consistent with the criteria of the Bend Zoning Ordinance (NS-1178) Section 10-10.33 as supported by the specific findings of fact & conclusions of law contained in Exhibit A. The Bend City Council adopts the findings in Exhibit A in support of this ordinance.

Section 2. The Bend Urban Area Zoning Map and General Plan Map is hereby amended by changing the zoning and plan designation of the property described as Parcels 1, 2 and 3 of Partition Plat 2008-6, City of Bend, Deschutes County, Oregon, as shown in Exhibit B, from Industrial Light (IL) to Mixed Employment (ME).

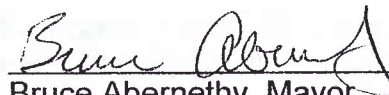
Read for the first time the 17<sup>th</sup> day of September, 2008.

Read for the second time the 1<sup>st</sup> day of October, 2008.

Placed upon its passage the 1st day of October, 2008.

YES: 5                      NO: 2

Authenticated by the Mayor the 1st day of October, 2008.

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

ATTEST:

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

**Findings of Fact in Support of Plan Amendment and Zone Change  
PZ 06-570**

**REQUEST:** The applicant requests approval of a General Plan Map amendment and zone change from IL to ME for a 13-acre parcel located at the northeast corner of the intersection of Simpson Avenue and Columbia Street in Bend.

**PUBLIC HEARINGS:** July 25 and September 27, 2007

**HEARINGS OFFICER  
RECOMMENDATION:** January 25, 2008

**PUBLIC HEARINGS:** September 3, 2008

**I. A. APPLICABLE STANDARDS AND CRITERIA:**

a. **City of Bend Zoning Ordinance, Ordinance No. NS-1178, Chapter 10**

1. **Section 10-10.20, Light Industrial (IL) Zone**
2. **Section 10-10.21B, Mixed Employment (ME) Zone**
3. **Section 10-10.33, Amendments**

**B. Applicable Procedures**

b. **City of Bend Development Code, Ordinance No. NS-2016**

1. **Chapter 4.1, Land Use Review and Procedures**

**C. The Bend Area General Plan**

**D. Oregon Administrative Rules Chapter 660**

1. **Division 12, Transportation Planning**  
**\* OAR 660-012-060, Plan and Land Use Regulation Amendments**
2. **Division 15, Statewide Land Use Planning Goals and Guidelines**
  - a. **OAR 660-015-000, State-Wide Planning Goals and Guidelines No. 1 Through No. 14**
  - b. **OAR 660-015-005, State-Wide Planning Goal and Guideline No. 15**
  - c. **OAR 660-015-010, State-Wide Planning Goals and Guidelines No. 16 Through No. 19**

**II. FINDINGS OF FACT:**

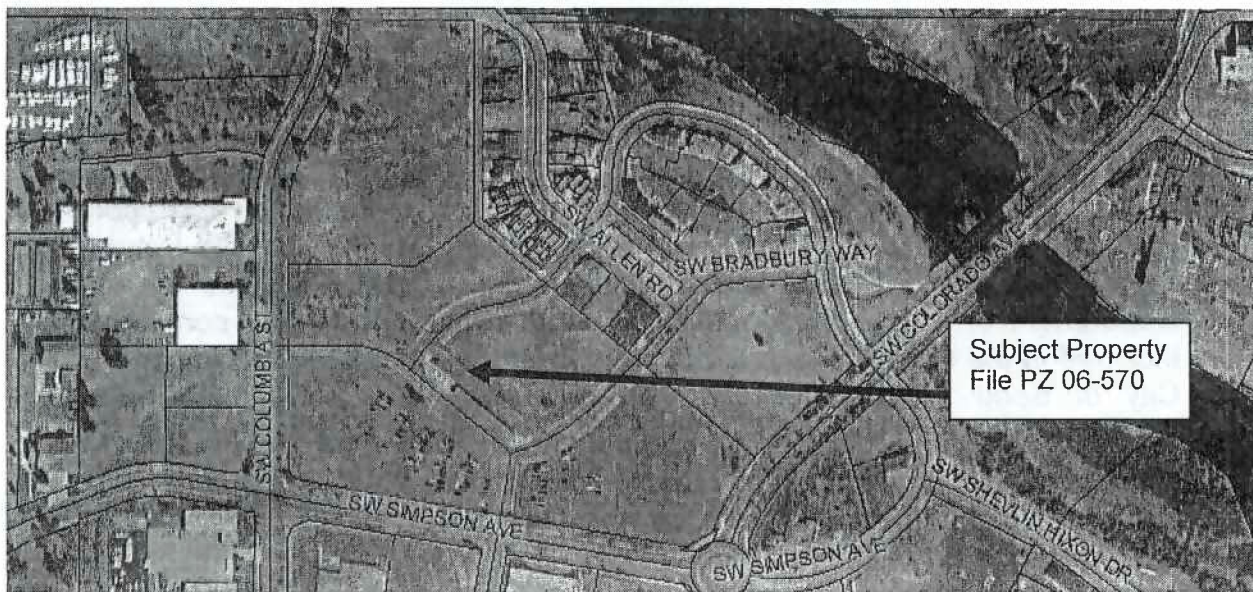
**A. Location:** The subject property is located at 950 S.W. Simpson Avenue in Bend and is further identified as Tax Lots 1600, 1603 and 1604 on Deschutes County Assessor's Map 18-12-06AA. The property also is identified as Parcels 1, 2 and 3 of Partition Plat 2008-06. The property is located at the northeast corner of the intersection of Simpson Avenue and Columbia Street and is the former site of the Mt. Bachelor Park-and-Ride facility.

**B. Zoning and Plan Designation:** The subject property is zoned and designated Light Industrial (IL).

**C. Site Description:** The subject site is approximately 13 gross acres in size, and contains three separate parcels containing 11.04 net acres. The topography of the site is relatively level and is currently developed with the Mt. Bachelor Park-and-Ride facility consisting of a large parking lot with interior access aisles, a rain shelter, outdoor lighting and landscaping. The property abuts Columbia Street (a

designated local street) on the west, Simpson Avenue (a designated minor arterial street) on the south, Colorado Avenue (a designated minor arterial street) on the east, and the Simpson/Colorado Avenue roundabout at the property's southeast corner. The Columbia/Simpson intersection is controlled with a four-way stop. Additionally, Shevlin Hixon and Cyber Drives (each designated local streets) traverse the site. Shevlin Hixon Drive extends eastward from Columbia Street and Cyber Drive extends northward from Simpson Avenue through the site.

- D. Surrounding Zoning and Land Uses:** Land abutting the subject property on the east is zoned Mixed Use Riverfront (MR) and developed with a variety of residential and office uses. Further to the east are the Deschutes River and the Old Mill District on the east side of the river. The closest MR-zoned uses to the subject property are residential. Abutting land to the north is undeveloped but has received city site plan approval for relocation of the existing Mt. Bachelor Park-and-Ride facility (PZ 07-459). Further to the north is land zoned Residential Standard Density (RS) and developed with residential subdivisions. Land to the south across Simpson Avenue and to the west across Columbia Street is zoned IL and developed with a variety of light-industrial uses and office uses permitted conditionally in the IL Zone. Further to the west along Century Drive is land zoned Commercial General (CG) and Commercial Convenience (CC) and developed with a variety of commercial and office uses. An aerial photo of the subject property and surrounding area is set forth immediately below.



- D. Property History:** The applicant's burden of proof sets forth the following history of the subject property:

*"In the early 1900's, the subject property, located at the intersection of Simpson Avenue and Columbia Street, housed the Shevlin-Hixon timber mill. In the 1940's, rapidly decreasing timber supply became apparent. The Shevlin-Hixon Lumber Company elected to sell their mill and associated property to the Brooks-Scanlon Lumber Company in 1950. The mill officially ceased operation four months after the land sale. For years, the property remained vacant while the Brooks-Scanlon timber mill directly across the Deschutes River maintained operations, officially closing in 1994.*

*In 1979, the City of Bend adopted the Bend Area General Plan, the first general plan for the City. The subject site was given an Industrial designation because of its former use as the Shevlin-Hixon wood mill. In 1994, the former mill property was subdivided into smaller lots for sale. A large portion of the former mill land was developed into Shevlin Center, an office park development directly south of the property. The subject site was included in the Shevlin Center plat completed in 1994 (Parcel 1 of MP-6-94 Partition Plat 1994-49 located in Lot 1 Block 2, Shevlin Center), but was never developed. In recent years the lot has functioned as the Mt.*

*Bachelor Park and Ride facility.”*

- E. Procedural History:** The record indicates the applicant purchased the subject property in August of 2005. On July 27, 2006 the applicant conducted a neighborhood meeting to discuss its proposal. The plan amendment and zone change application was submitted on August 4, 2006. Because the application includes a request for a General Plan map amendment, and the proposed zone change is dependent on approval of the plan amendment, the 120-day period for issuance of a final local land use decision under ORS 227.178 is not applicable to either the plan amendment or zone change.

A public hearing was held on September 27, 2007. The Hearings Officer issued a recommendation of denial on January 25, 2008. Since then the applicant and City staff have met several times to discuss the issues raised by the Hearings Officer's recommendation.

- F. Proposal:** The applicant requests approval of a plan amendment and zone change from IL to ME in order to develop the subject property with a mixed-use development including commercial and offices uses. No specific development proposal was submitted concurrent with these applications. The applicant's burden of proof states this application was submitted because the city's new development code no longer permits office uses in the IL Zone, and because the applicant believes industrial use of the subject property no longer is appropriate in light of the surrounding residential and office uses.
- G. Public/Private Agency Comments:** The Planning Division sent notice of the applicant's proposal to a number of public and private agencies and received responses from: the City of Bend Long Range Planning Division, Public Works (PW) Department-Water, Sewer and Storm Water, Engineering Division, Drainage/Grading, Building Division, Fire Department, and Transportation Engineer; the Deschutes County Environmental Health Division; the Bend Metro Park & Recreation District; the Central Oregon Irrigation District; the Oregon Department of Transportation (ODOT); and PacifiCorp. These comments are included in the record. The following agencies did not respond to the notice: the City of Bend ADA (Americans with Disabilities Act) Coordinator, Property Address Coordinator, and Neighborhood Association Coordinator; the Oregon Department of Environmental Quality (DEQ); the River West and Southern Crossing Neighborhood Associations; and Cascade Disposal. Agency comments are addressed in the findings below.
- H. Public Notice and Comments:** The Planning Division mailed individual written notice of the applicant's proposal and this public hearing to the owners of record of all property located within 250 feet of the subject property. In addition, notice of the initial public hearing was published in the Bend "Bulletin" newspaper, and the subject property was posted with a notice of proposed land use action sign.
- I. Lot of Record:** The subject property is a legal lot of record having been created as Parcels 1, 2 and 3 of Partition Plat 2008-06.

### **III. CONCLUSIONS OF LAW:**

#### **A. SUMMARY**

The applicant has requested approval of a plan amendment and zone change from IL to ME in order to establish a mixed-use development on the subject property potentially including light industrial, commercial, office and residential uses. Staff recommends and the Hearings Officer has found that due to the mostly residential and commercial nature of surrounding development, the city's transition away from an industrial-based economy, the development of surrounding industrial land with largely commercial uses,

and the applicant's proposed use limitations and development regulations, re-designating and rezoning the subject property to ME is appropriate considering the types and mixture of uses permitted in the ME Zone.

Traffic generated by mixed-use development on the subject property will impact key transportation facilities on the city's lower west side, and will exceed the capacity of several nearby intersections without significant mitigation measures including acquisition of additional right-of-way and construction of improvements such as new roundabouts. The applicant has proposed to construct and/or pay for some of these mitigation measures. However, the applicant has stated that its site will not be able to bear the cost of all of the requested mitigation. Additionally, the City recognizes that the cost of constructing all of the necessary improvements far exceeds the applicant's proportionate share (based upon the share of increased traffic at the intersections likely to be generated by the applicant's project). Without assurances that all of the intersections could be fully mitigated, the hearings officer found that she had no choice but to recommend denial of the application. To do otherwise would be to violate the Oregon Transportation Planning Rule ("TPR").

Based upon additional study of the affected intersections, the City and the applicant have settled on a proposal that would allow the zone change and plan amendment to move forward while allowing the applicant and the City to comply with the TPR through alternate mitigation measures than originally proposed. The applicant would construct:

- (a) a new roundabout at the intersection of Simpson and Columbia;
- (b) significant safety and operational enhancements to the eastern leg of the existing roundabout at Simpson and Century;
- (c) safety improvements to Simpson between the fire station and the enhanced Simpson/Century roundabout;
- (d) safety improvements to the intersection at Simpson and Mt. Washington;
- (e) safety improvements to the intersection at Colorado and Columbia; and
- (f) a gateway feature on Commerce Street, north of the subject property.

In consideration of the alternate mitigation measures proposed to be constructed by the applicant, the City would agree that the TPR provisions of subsections 2 and 3 are adequately addressed.

## **B. PRELIMINARY ISSUES**

**FINDINGS:** Opponents raised several issues that do not relate directly to the applicable plan amendment and zone change criteria, and therefore are addressed in these preliminary findings.

**a. Timing of Expanded Urban Growth Boundary.** Opponent David McGee argued the Hearings Officer should not consider the proposed plan amendment and zone change until the city has completed its current process to consider expansion of its urban growth boundary (UGB). The Hearings Officer concluded that she had no authority to postpone a decision on a quasi-judicial land use application on the basis of a pending legislative process. And in any case, she noted that under ORS 227.178(3) any change in the standards applicable to plan amendments and zone changes that might result from the UGB expansion could not be applied to the applicant's proposal. Therefore, there is no merit to this argument.

**b. Lack of Master Development Plan.** Opponent David McGee argued the Hearings Officer should not consider the applicant's proposed plan amendment and zone change because it was not accompanied by a master development plan or site plan for ME Zone development on the subject property. There is nothing in the applicable plan amendment and zone change approval criteria that requires the applicant to submit a concurrent development plan, and therefore there is no merit to this argument.

**c. Competition with Local Businesses.** Opponents Dan and Michelle McGarigle argue the Hearings Officer should not approve the applicant's proposed plan amendment and zone change because businesses developed on the subject property under the proposed ME Zone would unfairly compete with established local, family-



owned small businesses. There is no authority allowing the City to refuse to approve a quasi-judicial plan amendment and zone change application in order to protect existing businesses, and therefore there is no merit to this argument.

**d. Preservation of Existing Apple Tree.** Opponent Randall Davis argues the applicant's proposed plan amendment and zone change should not be approved unless the applicant is required to preserve a mature Gravenstein apple tree located on the subject property. Again, there is nothing in the applicable plan amendment and zone change approval criteria that allows or requires the City to consider preservation of existing vegetation, and therefore there is no merit to this argument.

**e. Re-designation and Rezoning to Residential or Commercial.** Opponent C.M. Singer argues the subject property should be re-designated and rezoned to residential or commercial rather than to ME. The City does not have authority to consider proposals other than that presented by the applicant.

## **PLAN AMENDMENT APPROVAL CRITERIA**

### **B. Bend Area General Plan**

#### **1. General Plan Preface**

##### **Format of the Plan (Pages P-4 and P-5)**

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

\* \* \*

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

**FINDINGS:** The City has previously held that the comprehensive plan preface does not establish mandatory approval criteria for quasi-judicial land use applications. This interpretation was upheld by LUBA in its decision in *Save Our Skyline v. City of Bend*, 48 Or LUBA 192 (2004). Accordingly, the City finds that the above-quoted language from the plan preface merely indicates plan policies are to be implemented by the city's adopted land use regulations.

##### **Future Plan Updates (Page P-6)**

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

**six ways:**

\* \* \*

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

**FINDINGS:** The applicant submitted an application for approval of a quasi-judicial plan amendment from IL to ME. The above-quoted plan provision requires the applicant to demonstrate the proposed plan amendment is justified by "a public need and benefit for the change." The applicant's burden of proof provides the following justification for the proposed amendment:

*"Due to a change in the area adjacent to the site, the applicant is proposing a Plan Map Amendment and Zone Change of the subject property from Light Industrial (IL) to Mixed Employment (ME). Such a change will benefit the public and satisfy a need for appropriate zoning of the site.*

*An ME designation will allow future development to include land uses that are more compatible with the adjacent high-density residential, single-family residential, office and commercial uses. With the multiple surrounding office developments that have been approved via conditional use permits, together with the neighboring residential and mixed use developments, it is clear that traditional industrial uses are incompatible with the surrounding area. With the adopted code amendments effective as of August 7th, neither office nor service commercial uses will be allowed in the IL zone. Therefore, without the Zone Change, this land is likely to either remain vacant, which is contrary to the City's economic development goals, or be developed consistent with the light industrial zone but inconsistent with the neighborhood. The proposed Zone Change will allow the property to provide a natural transition from the existing light industrial uses and commercial areas to the residential uses.*

*Findings from the City's Economic Lands Study also support a change in designation to ME. In 2000, the City conducted a three-part analysis of projected land needs for the 20-year plan period. Part I ('Trends, Inventory and Forecast') evaluates the type and amount of land anticipated to satisfy the 20-year demand. Part 1 concludes that '...the highest growth rates, both in percent and number, are in the trade and service sectors,' which will result in a demand for land suited for retail, office, and services uses. Conversely, the study stated that though industrial job types (i.e. manufacturing, warehousing, and wholesale trade) will increase '...at a much slower rate than other jobs. Since job growth will be slower in these fields, the land needs for uses that have historically located in industrial areas will be slower.' The study further notes that traditional industrial job types have been severely affected by changing market forces such as consolidation of corporations, outsourcing of jobs overseas, mechanization of industrial processes, and environmental concerns.*

*Therefore, the entire nature of industrial uses is evolving from heavy manufacturing, assembly, and warehouse operations, to high technology manufacturing and research and development, which require less land for operations and spaces that appear and function more like office developments. The land demand for and job growth for this new type of industrial, or employment user, is projected to significantly increase.*

*Part II of the City's Economic Lands Study, 'Meeting Forecast Needs,' details a strategy to satisfy the anticipated land demand. The study*

Ordinance NS-2105  
Exhibit A

*projects an employment shift to retail and service sectors as the land demand for traditional industrial users declines. A retail and service based economy requires land that meets site requirements of higher wage, service-oriented employers in close proximity to retail, residential and other services. This land type is similar to that required by the new industrial user type. ME zoned land provides the necessary flexibility to respond to the site requirements of these employers.*

*The subject property is no longer suitable for traditional industrial users like warehouse/ distribution, manufacturing and assembly. Potential heavy truck traffic associated with industrial uses will disrupt adjacent uses (especially residential uses) and may overburden the existing roadway system. Rail service is no longer available to the site. Industrial uses result in vacant properties at night, which are undesirable for the adjacent residential users, potentially fostering illegal activity and/or unsafe conditions. With the proposed Plan Map Amendment and Zone Change, the property may develop with high demand job types and retail/commercial services identified in the Economic Lands Study.”*

In addition, in subsequent submittals the applicant noted that the Hearings Officer previously approved a plan amendment and zone change from IL to ME for a 9.37-acre parcel located west of the subject property on Century Drive (*Century Center*, PZ 06-21) in which the Hearings Officer found there was a 19-acre industrial land surplus after removal of Century Center’s 9.37 acres.

The applicant’s proposal and arguments in support of it present two principal issues concerning the “public need and benefit” requirement: (1) the impact of the proposed plan amendment on the city’s industrial lands inventory; and (2) how to assure that if the subject property is redesignated and rezoned to ME, it is developed with the mixture of uses contemplated in the ME Zone. Each of these issues is addressed separately in the findings below.

1. Industrial Lands Inventory.

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

**For a post-acknowledgement plan amendment under OAR chapter 600, division 18, that changes the plan designation of land in excess of two acres within an existing urban growth boundary from an industrial use designation to a non-industrial use designation, or another employment use designation to any other use designation, a city or county must address all applicable planning requirements, and :**

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

Chapter 6 of the city’s comprehensive plan, “The Economy and Lands for Economic Growth,” states at page 6-9 that during the 25-year planning period (2000-2025) the land needed for industrial uses is 886 acres. Table 6-4 of the plan shows that as of

Ordinance NS-2105  
Exhibit A

2000 the city had only 539 of the 886 needed acres of land for industrial development, including 478 acres of industrial-zoned land, 50 acres of land zoned Mixed-Use Riverfront, and 11 acres of ME-zoned land. Consequently, the plan states the city has a deficit of available industrial land consisting of 347 acres as of 2000.<sup>1</sup> This deficit calculation predates the city's annexation of the Juniper Ridge land in the northeast corner of the Bend urban growth boundary (UGB).

In the Hearings Officer's *Century Center* decision, the Hearings Officer made the following findings concerning the impact of that proposed plan amendment and zone change on the city's inventory of industrial lands, which findings were adopted by the council in Ordinance No. NS-2064 implementing the plan amendment and zone change from IL to ME:

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

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

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

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<sup>1</sup> The plan also shows the 585 acres of available commercial land falls short of the identified need for 827 acres of commercial land for a deficit of 242 acres in 2000.

notes that the evidence in the record concerning gross and net industrial acres and absorption rates is not entirely consistent, and therefore the city's industrial land surplus may in fact be greater than the approximately 19 acres calculated by Mr. Skidmore.

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

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

The record indicates no other industrial-zoned lands in the city have been removed from the industrial lands inventory through re-designation and rezoning since the council approved the *Century Center* plan amendment and zone change. Therefore, based on the above-quoted findings and conclusions in that decision, re-designating and rezoning the subject property from IL to ME would remove 13 acres of land from the city's inventory of industrial lands, leaving a surplus of at least 6 acres of available industrial land in the city's inventory.

## 2. Plan for Mixed-Use Development.

It appears that future development of the subject property may require submission of a “Master Planned Development Concept Plan” under Section 4.5.300 of the city's new development code. However, the City's former zoning and procedures ordinances does not give the City the authority to condition approval of the proposed plan amendment and zone change on the applicant's submission of such a plan. In order to determine whether the proposed plan amendment will confer a public benefit and be consistent with surrounding uses, the record must include evidence of the types and intensities of uses that would be developed on the subject property under an ME designation and zoning.

In recognition of this fact, and after discussions with city planning and engineering staff, the applicant submitted both a proposed preliminary “conceptual site plan” as part of its TIA, and a set of proposed “performance standards” for development of the subject property under ME zoning.

The applicant proposes voluntary performance standards as follows:

*“These specific, measurable restrictions would apply to future development (see attached). These performance standards limit uses and increase development regulations compared to the current standards set forth in the existing ME Zone code. Upon approval of the Plan Map Amendment and Zone Change application, subsequent Site Plan and/or Master Plan applications will be required to conform to the performance standards. The provision of performance standards will allow future development to respond to market conditions at the time of development, while also satisfying Staff's concerns of potentially incompatible development or land uses.”*

The performance standards provide:

### **“USE RESTRICTIONS**

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Exhibit A

1. *Temporary housing, which is currently permitted outright in the ME zone, is proposed to be prohibited.*
2. *Auto-dependent Retail Sales and Service uses, which are currently permitted outright in the ME zone, are proposed to be prohibited.*
3. *Auto-oriented Retail Sales and Service uses, which are currently permitted outright in the ME zone, are proposed to be a conditional use.*
4. *Restaurants/Food Services with drive through service, which are currently permitted outright in the ME zone, are proposed to be prohibited.*
5. *Entertainment and Recreation uses not enclosed in a building, which are currently permitted outright in the ME zone, are proposed to be a conditional use.*
6. *Hospitals, which are currently permitted outright in the ME zone, are proposed to be conditional uses.*
7. *All industrial uses must be enclosed in a building, though the existing ME zone does not specify whether or not industrial uses must be enclosed in a building.*
8. *Manufacturing and Production, Warehouse, Production Businesses, and Industrial Service uses, which are currently permitted outright in the ME zone, are proposed to be conditional uses as a primary use, and permitted subject to Site Plan/Design Review if proposed as a secondary use.*

**DEVELOPMENT STANDARDS**

1. *Side yard setbacks are required to add an additional 1 foot for every foot of building over 35 feet in height, when abutting a residential zone. Currently the code does not specify that the additional 1 foot setback for every foot in height over 35 feet is in addition to the base side yard setback of 10 feet. Therefore, the wording of this regulation has been changed to specify that buildings over 35 feet require an additional side yard setback.*
2. *Commercial uses, in addition to industrial uses currently required by the existing ME zone regulations, are required to have an additional 10-foot side/rear buffer if adjacent to the MR zone.*
3. *Drive through or vehicle service areas are not allowed between a building and the required 10-foot front yard landscape setback.*

*Although these additional use regulations and development regulations may further restrict development beyond what would otherwise be permitted in the ME zone, the Applicant recognizes that these additional regulations will ensure that future development will be compatible with the site context."*

The applicant submitted a table showing uses currently permitted in the ME Zone compared to the applicant's proposed use restrictions and development standards. The applicant proposed that these performance standards be adopted as part of the proposed plan amendment and zone change.

The proposed use restrictions and development regulations will assure development of the subject property would be compatible with surrounding zoning and uses considering the nature and mix of uses. The applicant has demonstrated the proposed plan amendment from IL to ME is justified by meeting a public need for additional

commercial land, and by conferring a public benefit by providing a mixture of additional commercial and office uses on the subject property creating an appropriate transition area between the existing residential, commercial and industrial uses surrounding the subject property.

The performance standards are adopted as a part of the plan amendment and zone change through approval of this application and shall be memorialized through a deed restriction on the subject property.

**C. Oregon Administrative Rules (OAR), Chapter 660**

**1. Division 12, Transportation Planning**

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

**(1) Where an amendments 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 of 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 [Transportation System Plan] 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.**

**(2) Where a local government determines that there would be a significant effect, compliance with section (1) shall be accomplished through one or a combination of the following:**

**(a) Adopting measures that demonstrate allowed land uses are consistent with the planned**

- function, capacity, and performance standards of the transportation facility.
- (b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.
  - (c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.
  - (d) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.
  - (e) Providing other measures as a condition of development or through a development agreement or similar funding method, including transportation system management measures, demand management or minor transportation improvements. Local governments shall as part of the amendment specify when measures or improvements provided pursuant to this subsection will be provided.
- (3) Notwithstanding sections (1) and (2) of this rule, a local government may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility where:
- (a) The facility is already performing below the minimum acceptable performance standard identified in the TSP or comprehensive plan on the date the amendment application is submitted;
  - (b) In the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule would not be adequate to achieve consistency with the identified function, capacity and performance standard for that facility by the end of the planning period identified in the adopted TSP;
  - (c) Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures;



- (d) The amendment does not involve property located in an interchange area as defined in paragraph (4)(d)(C); and

\* \* \*

- (4) Determinations under sections (1)-(3) of this rule shall be coordinated with affected transportation facility and service providers and other affected local governments.

\* \* \*

**FINDINGS:** The TPR applies to the applicant's proposal because it would amend the city's comprehensive plan and zoning maps, and therefore would constitute an amendment to a land use regulation. To determine compliance with the TPR, the City must answer the following questions:

1. Will the proposed plan amendment and zone change from IL to ME "significantly affect a transportation facility;" and
2. If so, can the City approve the applicant's proposal with adoption of one or more of the measures identified in the TPR?

#### 1. SIGNIFICANTLY AFFECTS A TRANSPORTATION FACILITY

The proposed plan amendment and zone change, in and of themselves, will not generate any traffic. However, re-designating and rezoning the subject property from IL to ME would allow uses generating traffic that could exceed the capacity of affected streets and intersections. For that reason, the City must review the impact on the street system from traffic anticipated to be generated by development of the subject property under a reasonable worst case scenario with ME zoning.

**a. Reasonable Worst Case Scenario.** As discussed above, the applicant submitted a conceptual development plan to illustrate what it considers a reasonable worst case scenario for uses and trip generation with ME Zone development of the subject property. That plan included a total of 87,500 square feet of developed single-story building space consisting of 50,000 square feet of general office use, 15,000 square feet of medical office use, 5,000 square feet of bank use, and 17,500 square feet of restaurant use.

The applicant's original traffic engineers Sean Morrison and Chris Clemow, and the city's Transportation Engineer Robin Lewis, agree that the reasonable worst case scenario should be based on traffic generated only by uses *permitted outright* in the ME Zone. In his July 10, 2007 traffic impact analysis (TIA), Mr. Morrison predicted that under the reasonable worst case scenario, development on the subject property would generate a total of 279 net new p.m. peak hour trips above the 190 p.m. peak hour trips predicted to be generated by IL development on the subject property.

**b. Intersections Analyzed.** The applicant's TIA studied the following ten intersections:

- Columbia Street/Commerce Avenue
- Columbia Street/Cyber Drive
- Simpson Avenue/Mt. Washington Drive
- Simpson Avenue/Century Drive
- Simpson Avenue/Columbia Street
- Simpson Avenue/Cyber Drive
- Simpson Avenue/Colorado Street
- Century Drive/Colorado Street
- Columbia Street/Colorado Street
- Century Drive/Reed Market Road.

In her September 19, 2007 memorandum, Ms. Lewis aptly described these intersections as comprising Bend's "lower west side's transportation system." An aerial photo of these

intersections and the area they serve is included in the record as Hearing Exhibit B. This photo shows these ten intersections are located within an area approximately one mile by two miles in size which includes a wide variety of land uses and densities, no signalized intersections, seven roundabouts, and numerous stop-controlled intersections.

**d. City's Performance Standards for Intersections.** The record indicates the city's intersection performance standards consist of the following (BDC 4.7.400B):

- **two-way stop controlled intersections:** no more than 50 seconds of delay for the critical lane group;
- **all-way stop controlled intersections:** no more than 80 seconds of delay for the critical lane group; and
- **roundabout intersections;** a volume-to-capacity (v/c) ratio of 1.0 or less.<sup>2</sup>

The record indicates the city's minimum acceptable performance standard for **vehicle queuing** at intersections is that the queue does not exceed the available vehicle storage area – i.e., queuing would not block another intersection.

**e. Predicted Intersection Function.**

The following intersections are not identified as significantly affected:

- i) The Columbia Street/Commerce Drive intersection was shown to operate acceptably with and without the proposed plan amendment/zone change increase in trips. Although this intersection is not significantly affected according to the TPR, due to its location on the border between mixed use/industrial zoning and residential zoning, the applicant has proposed to construct a gateway feature at this intersection. This mitigation is further detailed in Section 2 below.
- ii) The Columbia Street/Cyber Drive intersection was shown to operate acceptably with and without the proposed plan amendment/zone change increase in trips. This intersection is not significantly affected according to the TPR. No mitigation is warranted or proposed at this intersection.
- iii) The Simpson/Cyber Drive intersection was shown in the TIA to not meet the city's performance standards. This two-way stop controlled intersection would have greater than 50 seconds of delay on the stopped approach of Cyber with the addition of traffic generated by ME Zone development of the subject property. However, the level of delay applies to a side street with a local street designation. There are no impacts to Simpson Avenue which is the designated arterial roadway. Cyber is not a significantly affected intersection according to the criteria of the TPR because it is the intersection of a local street that is not identified in the City's TSP. No crash history exists for this intersection and none is anticipated to occur in the future as there are no sight line limitations or other safety deficiencies noted in the TIA. No mitigation is required for this intersection to satisfy compliance with the TPR.
- iv) Simpson Avenue/Colorado Avenue intersection analysis, as noted in the Hearings Officer's recommendation, did not meet applicant's "burden of proving the Simpson/Colorado intersection will meet the city's performance standards with the addition of traffic generated by ME Zone development of the subject property." Therefore, the applicant provided a subsequent study by Kittelson & Associates, Inc., as described in that certain Memorandum from Scott Beaird, P.E., dated July 16, 2008, and attached as an exhibit to this document. The subsequent analysis meets the "burden" previously found lacking by the Hearings Officer. The subsequent analysis demonstrates that the Simpson Avenue/Colorado Avenue intersection is forecast to meet the mobility standard under the 2022 Proposed Plan designation. Staff concurs with this subsequent analysis and finds that this intersection is not a significantly affected intersection and no mitigation is required.

v) Century Drive/Colorado Street intersection analysis demonstrates that the Century Drive/Colorado Avenue intersection is forecast to meet the mobility standard under the 2022 Proposed Plan designation. Staff concurs with this analysis and finds that this intersection is not a significantly affected intersection and no mitigation is required.

vi) Century Drive/Reed Market Road intersection was projected to exceed the city's acceptable performance standard for roundabouts – a v/c ratio of 1.0 or less -- with or without the addition of traffic generated by ME Zone development of the subject property. However, traffic generated as a result of the proposed plan amendment does not worsen the performance of an existing or planned facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan (the traffic generated by the ME Zone development will not increase the v/c ratio). Staff concurs with this analysis and finds that this intersection is not significantly affected according to the TPR and no mitigation is required.

The TIA, as supplemented by a study done by Kittelson & Associates, Inc. and reviewed by the City transportation engineer predicted the addition of traffic generated from reasonable worst case scenario ME Zone development of the subject property, combined with background traffic and other new traffic predicted to occur by the end of the planning period (2022), would result in four of the ten analyzed intersections functioning below the city's minimum performance standards for operations and/or queuing *without mitigation*. **Therefore, the following four intersections would be "significantly affected" under the TPR:**

- Simpson/Mt. Washington;
- Simpson/Century;
- Simpson/Columbia; and
- Columbia/Colorado.

Each of these four significantly affected intersections are proposed to be mitigated to meet the TPR as discussed below.

## 2. MITIGATION MEASURES

**a. TPR Provisions.** Subsection (2) of the TPR provides that where, as here, the proposed plan amendment would "significantly affect" a transportation facility, one or more of the following measures must be implemented to address these effects:

- (a) adopt measures that demonstrate allowed land uses are consistent with the performance standards of the transportation facility;
- (b) amend the TSP or comprehensive plan to provide transportation facilities, improvements or services that are adequate to support the proposed land uses, including a funding plan or mechanism that assures the facility, improvement, or service will be provided by the end of the planning period;
- (c) alter land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes;
- (d) amend the TSP to modify the planned function, capacity or performance standards of the transportation facility; and/or
- (e) provide other measures as a condition of development or through a development agreement or similar funding method, including transportation system management measures, demand management or minor transportation improvements, and specify when measures or improvements will be provided.

Subsection (3) of the TPR authorizes the city to approve a plan amendment that would significantly affect an existing transportation facility *without assuring that allowed land uses are consistent with the applicable performance standards for that facility* where:

- (a) the facility already is performing below the minimum acceptable performance

standards on the date the plan amendment application was submitted;

- (b) in the absence of the proposed plan amendment, planned transportation facilities, improvements and services would not be adequate to achieve consistency with the city's minimum performance standards by the end of the planning period; and/or
- (c) development resulting from the plan amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures.

**b. Proposed Mitigation.** The applicant and the City agree to demonstrate compliance with the TPR as specifically addressed below:

### **COLUMBIA/COLORADO**

The TIA found this two-way stop controlled intersection will not meet the city's performance standard for delay with or without the addition of traffic generated by ME Zone development of the subject property in the year 2022. The increased traffic associated with the plan amendment/zone change will worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard and therefore, this intersection would be significantly affected by the plan amendment/zone change to ME. The TIA also noted this intersection has experienced a high crash rate (14 reported accidents in the last 3 years) resulting from drivers' failure to yield at the stop signs.

The applicant originally proposed, and the Hearings Officer recommended, an all-way stop at this intersection. The City engineer, however, finds the all-way stop problematic. Therefore, the applicant and the City engineer further evaluated the intersection. They concluded that the most significant problem at the intersection was safety, which could be mitigated through safety improvements.

The improvements, proposed in accordance with the OAR 660-012-0060(2)(e) would: (i) better delineate the intersection to increase driver awareness on Colorado in advance of the intersection; (ii) increase the intersection sight distance for vehicles at the Columbia Avenue approaches; and (iii) artificially reduce the effective area of the intersection by striping smaller curb radii.

The improvements would include the following:

- Installation of six-foot bike lanes on the east and west approaches from the intersection to the approximate point-of-curvature or point-of-tangent. Addition of bicycle pavement legend.
- Addition of lane extension striping in the bay taper area for the eastbound and westbound left-turn lanes.
- Striping painted corner radii edge lines based on a WB-40 design vehicle.
- Installation of crosswalk markings on the north and south approaches of Columbia Avenue.
- As appropriate, maintain sight visibility for drivers on the Columbia Avenue approaches, using a 45 mph design speed.
- Adjust grade elevations at two catch basins on the west approach of Colorado.

All proposed pavement marking shall be with durable hot laid tape to ensure longevity and durability. The City agrees to accept these improvements as part of the whole mitigation package as described in these findings and the conditions of approval identified below; provided, however, such improvements must be completed prior to the final occupancy of the development approved by the first site plan on the subject property.

The proposed improvements are consistent with OAR 660-012-0060(2)(e) because the applicant's engineer and the City's engineer agree that they will improve the function of the intersection. Additionally, the performance standards effectively alter the land use

designation of the property to reduce demand for automobile travel by preventing some of the most traffic-intensive uses such as drive-thru restaurants, consistent with OAR 660-012-0060(2)(d).

To satisfy the TPR for intersection performance standards, the City has agreed to a one-time modification of the mobility standard at this intersection for this development consistent with OAR 660-012-0060(2)(d).

This mitigation measure as written in the TPR infers that all jurisdictions maintain their performance standards within their Transportation System Plan ("TSP"). However, the mobility standards of the City of Bend's TSP are established in the City of Bend Development Code ("BDC"), which is an Acknowledged functional component of the City's General Plan.

Bend Urban Area Transportation System Plan Transportation and Land Use Implementation Measure 5 states:

*Bend has identified a set of performance standards that balances operations criteria with financial constraints, safety impacts, quality of living aspects and community values. These operations criteria are included in the City's Development Code and included in this TSP by reference.*

In accordance with the TSP, Section 4.7.400.B of the BDC sets forth the Operations Standards. Section 4.7.100.B of the BDC grants the City Engineer the discretion to modify or waive the contents of Chapter 4.7, including the mobility standards, when "special circumstances dictate such change." In a August 25, 2008, memorandum to Nick Arnis and Colin Stephens, City Engineer Michael Magee agreed that special circumstances warrant the one-time modification of the mobility standard for this intersection. The memorandum reads in part:

The overall operation and safety of this corridor will be significantly enhanced by the recommended improvements. Although it may be evident that certain distinct criteria may not be met for three intersections [Colorado/Columbia, Simpson/Mt. Washington and Simpson/Century] at particular times of the day, the overall corridor benefits realized by the recommended improvements greatly outweigh these issues.

In the City of Bend, TPR mitigation measure 0060(2)(d) has been locally implemented through the City's Development Code to allow the City Engineer, on a case by case basis, alternate performance standards for intersections. The mitigations proposed at this and the other affected intersections are sufficient to warrant the City's agreement to a one-time modification of the mobility standard at this intersection, which satisfies the TPR for this intersection.

However, in the event that a roundabout is constructed at the intersection prior to Final Occupancy of the development approved by the first site plan on the subject property, such mitigation for this intersection is found to fully satisfy the TPR.

### **SIMPSON/MT. WASHINGTON**

The TIA found this two-way stop controlled intersection is already performing below the minimum acceptable performance standards for delay, and would experience "significant degradation" as measured in the Year 2022 with or without ME Zone development of the subject property. The increased traffic associated with the plan amendment/zone change will worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard and therefore, this intersection would be significantly affected by the plan amendment/zone change to ME. The TIA also found that vehicle queuing lengths on the westbound left-turn leg of the intersection would exceed the available vehicle storage.

The applicant originally proposed construction of a roundabout at this intersection.

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Exhibit A

However, based upon subsequent conversations between the City and the applicant, the City concluded that it is most appropriate for the applicant to construct certain alternate improvements to this intersection that improve safety, visibility and mobility because of the following:

1. Although the City is concerned about the vehicle functionality of intersections, safety is an equal if not more important concern and the City Engineer agrees that the proposed improvements will improve safety;
2. Allowing the applicant to spend fewer dollars at this intersection frees up funds to complete improvements at additional intersections;
3. A roundabout at this intersection is a priority and the City Engineer believes it is likely to be constructed in the near future by either another applicant or the City.

The improvements, proposed in accordance with the OAR 660-012-0060(2)(e) to be constructed by the applicant at this intersection will further delineate the intersection to increase driver awareness on Mt. Washington in advance of the intersection. They will increase the intersection sight distance for vehicles at the Simpson Avenue approaches.

These specific improvements would be as follows:

- Remove three trees on the east side of the north approach.
- Minor slope regrading within the right-of-way south of the existing fire hydrant.
- Restripe the existing centerline, left-turn lane, and bike lanes on Mt. Washington from approximately Troon Street (north of the intersection) to approximately 300 to 500 feet south of Simpson Avenue.
- Shift crosswalk and stop bar locations on Simpson Avenue toward Mt. Washington approximately 10 feet.
- Relocate existing stop sign on the west approach consistent with crosswalk location.
- As appropriate, maintain sight visibility of existing signs on Mt. Washington, using a 45 mph design speed.
- Install two sets of peripheral transverse pavement markings on the north and south approaches of Mt. Washington in advance of the intersection in conjunction with existing signage.
- Install one set of peripheral transverse pavement markings on the east approach of Simpson Avenue near the existing "stop ahead" sign in advance of the intersection.

All proposed pavement marking shall be with durable hot laid tape to ensure longevity. The City agrees to accept these improvements as part of the whole mitigation package as described in these findings and the conditions of approval identified below; provided, however, such improvements must be completed prior to the final occupancy of the development approved by the first site plan on the subject property

The proposed improvements are consistent with OAR 660-012-0060(2)(e) because the applicant's engineer and the City's engineer agree that they will improve the function of the intersection. Additionally, the performance standards effectively alter the land use designation of the property to reduce demand for automobile travel by preventing some of the most traffic-intensive uses such as drive-thru restaurants, consistent with OAR 660-012-0060(2)(d).

To satisfy the TPR for intersection performance standards, the City has agreed to a one-time modification of the mobility standard at this intersection for this development consistent with OAR 660-012-0060(2)(d).

This mitigation measure as written in the TPR infers that all jurisdictions maintain their performance standards within their Transportation System Plan ("TSP"). However, the mobility standards of the City of Bend's TSP are established in the City of Bend Development Code (BDC), which is an Acknowledged functional component of the City's General Plan.

Bend Urban Area Transportation System Plan Transportation and Land Use Implementation Measure 5 states:

*Bend has identified a set of performance standards that balances operations criteria with financial constraints, safety impacts, quality of living aspects and community values. These operations criteria are included in the City' Development Code and included in this TSP by reference.*

In accordance with the TSP, Section 4.7.400.B of the BDC sets forth the Operations Standards. Section 4.7.100.B of the BDC grants the City Engineer the discretion to modify or waive the contents of Chapter 4.7, including the mobility standards, when "special circumstances dictate such change." In a August 25, 2008, memorandum to Nick Arnis and Colin Stephens, City Engineer Michael Magee agreed that special circumstances warrant the one-time modification of the mobility standard for this intersection. The memorandum reads in part:

The overall operation and safety of this corridor will be significantly enhanced by the recommended improvements. Although it may be evident that certain distinct criteria may not be met for three intersections [Colorado/Columbia, Simpson/Mt. Washington and Simpson/Century] at particular times of the day, the overall corridor benefits realized by the recommended improvements greatly outweigh these issues.

In the City of Bend, TPR mitigation measure 0060(2)(d) has been locally implemented through the City's Development Code to allow the City Engineer, on a case by case basis, to allow alternate performance standards for intersections. The mitigations agreed to at this and the other affected intersections are sufficient to warrant the City's agreement to a one-time modification of the mobility standard at this intersection, which satisfies the TPR for this intersection.

However, in the event that a roundabout is constructed at the intersection prior to Final Occupancy of the development approved by the first site plan on the subject property, such mitigation for this intersection is found to fully satisfy the TPR.

### **SIMPSON/COLUMBIA**

This intersection is located at the southwest corner of the subject property. The TIA found this all-way stop controlled intersection will worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standards. Therefore, this intersection was identified as being significantly affected by the increase in traffic associated with the plan amendment/zone change to ME.

The TIA concluded the appropriate mitigation measure would be to construct a single-lane roundabout. The City agreed that a single-lane roundabout is the appropriate mitigation measure. However, the City is concerned about the possibility of vehicle queuing on Simpson west of Columbia that would prevent fire trucks and ambulances from leaving the fire station (located on Simpson approximately 450 feet west of Columbia) and responding to emergencies in a timely manner. Without some assurances that the mitigation would prevent this blockage, the Hearings Officer found that the proposed roundabout did not constitute adequate mitigation and did not satisfy the TPR.

Through the subsequent meetings between the City and the applicant, the parties' transportation engineers have further analyzed the intersection and concluded that the following improvements will help prevent queuing in front of the fire station and thereby assure that the single-lane roundabout at this intersection will satisfy the TPR:

1. Construction of a single lane roundabout at Simpson/Columbia;
2. Delineation of fire station driveway intersection area;
3. Striping of "Do Not Block" area in front of fire station driveway;
4. Installation of "Do Not Block" signage in front of fire station driveway; and

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5. Improvements to east leg of Simpson/Century roundabout, as described below.
6. Installation of two 2-inch diameter conduit between Simpson/Century Drive and Simpson/Columbia and within the construction footprint of the proposed roundabout at Simpson/Columbia.

For the foregoing reasons, the City finds that construction of the roundabout and the fire safety improvements described in 1-6 above will mitigate the increased traffic generated by the zone change and plan amendment at this intersection per OAR 660-012-0060(2)(e)..

The City Council further finds that in order to assure acceptable emergency response time as this area of Bend continues to develop, the City is pursuing the installation of preemptive traffic control devices that will allow emergency vehicles to have priority access to both the Simpson/Columbia and Simpson/Century roundabouts. In the future, developers will be required to participate financially in the installation of this preemptive system if traffic produced by their development affects the performance of these roundabouts.

In order to satisfy the concurrency requirement of the TPR, the City finds that the applicant shall complete construction of the roundabout and items 1-6 not later than prior to the final occupancy of the development approved by the first site plan on the subject property. Subject to the foregoing, the TPR is satisfied.

#### ***SIMPSON/CENTURY DRIVE***

The Century Drive/Simpson Avenue intersection is forecast to exceed the City's operations criteria of 1.0 for the intersection as a whole as evaluated under the Year 2022 Proposed Plan designation according to the original TIA. The intersection has therefore been identified as significantly affected by the proposed zone change and is therefore subject to mitigation that complies with the TPR.

Due to the elevated volume to capacity ratio projected in Year 2022 with the zone change, there could be significant queuing from this intersection that could extend past and block the fire department's driveway located to the east. The queuing associated with the overcapacity approaches may also affect the fire department's accessibility into and through the roundabout.

The City acknowledges that the applicant's site will not be able to bear the cost of all of the mitigation required of the Transportation Planning Rule. Additionally, the City recognizes that the cost of constructing all of the necessary improvements far exceeds the applicant's proportionate share (based upon the share of increased traffic at the intersections likely to be generated by the applicant's project). The City also acknowledges that the built environment surrounding this intersection constrains the mitigation that can reasonably be accomplished. Therefore, the City's direction to the applicant has been to ensure that their mitigation at this intersection focuses on the potential queuing issues and on the existing truck maneuverability issues.

The applicant has proposed mitigation that directly addresses and fully mitigates the operations concerns of the City. The mitigation includes modifying the splitter island, entry width, and entry radius on the westbound approach. The increased approach and entry width will permit emergency vehicles to bypass queues on the westbound approach by ensuring a minimum 20' travel way between the fire station driveway and the entry at the Century Drive/Simpson Avenue roundabout. This width is consistent with the Bend Fire Department's desired minimum width for emergency response routes. The mitigation also solves the truck maneuvering issues that were evidenced by observation of truck circulation and curb destruction, by widening the entry and exit radii and providing improved truck tracking entering and exiting the roundabout at this approach.

Because truck traffic through this intersection is a high percentage of overall traffic, enhancing truck operations improves capacity at the intersection. As well, the mitigation will improve capacity by smoothing the quality of flow of all vehicles on the westbound



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approach and eastbound exit of the roundabout. Increasing capacity will reduce the overall queuing on this approach.

Additional mitigation is proposed by the applicant that will further enhance emergency vehicle access to the corridor and eliminate the effects of queuing due to overcapacity on the westbound approach. The applicant proposes to implement a "Do Not Block" box at the fire station driveway, which would be supplemented by regulatory signs and would prohibit drivers from blocking the fire station driveway. This control feature allows emergency vehicles to exit the fire station and bypass any queues, if present.

The combination of the "Do Not Block" the box at the Fire Station driveway and the widened intersection approach that supports queue bypass at the roundabout would result in improved safety and capacity at the roundabout and improved response times for emergency vehicles.

Additionally, the applicant proposes to install conduit and junction boxes along Simpson Avenue between Century Drive and Columbia Street.. Having this conduit in place will facilitate a long-term preemption system should the City decide such a system is warranted.

In summary, the applicant proposes to:

- Provide a minimum 20-foot (curb face to face) clearance on the westbound approach entry by reducing the splitter island and widening the outside curb, which will allow emergency vehicles to bypass vehicle queues;
- Widen the entry on the westbound approach to allow for large truck turning;
- Reshape left side of the splitter island on the westbound approach;
- Relocate pedestrian ramps and adjust multi-use pathway as needed;
- Relocate existing luminaires and catch basins as needed;
- Implement a "Do Not Block" box at the fire station driveway;
- Install two (2") conduits and appropriate junction boxes within the mitigation construction footprint; and
- Evaluate the Simpson Avenue corridor to identify potential future improvements that could be constructed by the City or others to accommodate future traffic demands.

As described above, and in that certain Memorandum from Kittelson & Associates, Inc., to Robin Lewis dated August 12, 2008 the applicant's engineer explains that the increased entry width and entry radius for the westbound approach to the roundabout will result in smoother entering flow and the potential for an increase in capacity. Perhaps most importantly, the increased approach and entry width will permit emergency vehicles to bypass queues on the westbound approach. The proposed modifications on the westbound approach ensure a minimum of 20' travel way between the fire station driveway and the westbound approach entry at the Century Drive/Simpson Avenue roundabout. This width is consistent with the Uniform Fire Code's 20' width requirements. The "Do Not Block" box at the fire station driveway prohibits drivers from blocking the fire station's entry onto the arterial system. The installation of conduit provides a mechanism to install a future pre-emption system should that be warranted for the roundabouts on either side of the fire station. Staff notes that the City is currently working on a roundabout design manual that includes warrants for traffic control systems at roundabouts as well as designs for traffic control systems at roundabouts.

The applicant's additional analysis for the Simpson Corridor will be performed prior to the completion of the roundabout design changes at Simpson/Century and roundabout design at Simpson/Columbia. The analysis will be used to ensure that the designs optimize accommodations for the emergency service vehicles responding through the corridor, develop a list of additional projects that can be prioritized and accomplished by the City or others as development in the area continues to occur.

The applicant proposes to construct these mitigations listed herein towards compliance with the TPR 660-012-0060(2)(d) "Providing other measures as a condition of development or through a development agreement, ... including transportation system management measures, demand management or minor transportation improvements."

However, the City acknowledges that the proposed mitigation will not provide full compliance with the distinct criteria of volume to capacity ratio at particular times of the day at this intersection. The combined mitigations proposed by the applicant directly mitigate identified deficiencies in the system and therefore, the overall corridor benefits realized by the recommended mitigation greatly outweigh that issue. This has been documented and demonstrated by the submitted record. In order to satisfy the concurrency requirement of the TPR, the City finds that the applicant shall complete construction of the above-described mitigation at Simpson and Century not later than prior to the final occupancy of the development approved by the first site plan on the subject property.

The proposed improvements are consistent with OAR 660-012-0060(2)(e) because the applicant's engineer and the City's engineer agree that they will improve the function of the intersection. Additionally, the performance standards effectively alter the land use designation of the property to reduce demand for automobile travel by preventing some of the most traffic-intensive uses such as drive-thru restaurants, consistent with OAR 660-012-0060(2)(c).

To satisfy the TPR for of intersection performance standards, the City has agreed to a one-time modification of the mobility standard at this intersection for this development consistent with OAR 660-012-0060(2)(d).

This mitigation measure as written in the TPR infers that all jurisdictions maintain their performance standards within their Transportation System Plan ("TSP"). However, the mobility standards of the City of Bend's TSP are established in the City of Bend Development Code (BDC), which is an Acknowledged functional component of the City's General Plan.

Bend Urban Area Transportation System Plan Transportation and Land Use Implementation Measure 5 states:

*Bend has identified a set of performance standards that balances operations criteria with financial constraints, safety impacts, quality of living aspects and community values. These operations criteria are included in the City' Development Code and included in this TSP by reference.*

In accordance with the TSP, Section 4.7.400.B of the BDC sets forth the Operations Standards. Section 4.7.100.B of the BDC grants the City Engineer the discretion to modify or waive the contents of Chapter 4.7, including the mobility standards, when "special circumstances dictate such change." Therefore, per OAR 660-012-060 (2)(d), the City Engineer agrees to a onetime temporary modification of the mobility standards at Simpson Avenue and Century Drive intersection.

The proposed mitigations by the applicant do not preclude the ability of the City and others to make further contributions to improving the operations of the west side transportation system.

In order to satisfy the concurrency requirement of the TPR, the City finds that the applicant shall complete construction of the above-described mitigation at Simpson and Century prior to the final occupancy of the development approved by the first site plan on the subject property. Based upon the foregoing, the City finds that the mitigation described above will satisfy the TPR under OAR 660-12-060 (2)(c), (2)(d) and (2)(e).

#### **OTHER TRANSPORTATION FACILITY IMPROVEMENTS**

The City transportation engineer originally requested that the applicant provide three additional transportation facility mitigation measures: (i) paving Commerce Avenue; (ii) constructing a traffic calming/"gateway" feature on Commerce/Columbia; and (iii) providing bicycle lanes on Colorado Avenue between Simpson and Columbia. The Hearings Officer analyzed each of these requests and concluded that the City could not require the applicant to construct them because to do so would be unconstitutional under *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and its progeny.

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Based upon subsequent conversations and analysis by the applicant and City staff and their respective traffic engineers, the applicant has proposed to construct a traffic calming "gateway" feature on Commerce/Columbia that would deemphasize the northbound through movement on Columbia Avenue and provide for reduced speeds entering the neighborhood as follows:

- Install curb extensions on both sides of the north approach of Columbia Avenue while maintaining a 24-foot wide travel way and not impacting existing catch basins.
- Optimize available planting space in curb extension area to allow for landscaping and gateway features.
- Design and construct curb extensions with drainage facilities, landscaping and ADA pedestrian ramps to meet City of Bend Standards and Specifications.

The City finds that where, as here, the applicant has proposed and not objected to construct an improvement, a *Dolan* analysis is unnecessary. Accordingly, construction of the above-described "gateway" feature shall be a condition of approval. The applicant shall complete construction of the foregoing items not later than prior to final approval of the first site plan on the subject property.

## SUMMARY AND RECOMMENDATION

Based on the foregoing findings, the City finds that the proposed zone change satisfies the TPR.

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

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

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

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

**Goal 5, Open Spaces, Scenic and Historic Areas and Natural Resources.** The City finds this goal is not applicable to the applicant's proposed plan amendment because the subject property does not include any inventoried Goal 5 resources.

**Goal 6, Air, Water and Land Resources Quality.** The City finds this goal requires that the City's zoning decisions not degrade air, water and land resources in applicable air

sheds and river basins. The City finds approval of this zone change will not adversely affect natural resources as the subject property is already developed and will be redeveloped with urban uses following approval of the proposed plan amendment and zone change. We find the proposed ME designation and zoning may reduce air pollution by reducing vehicle trip length through mixed-use development.

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

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

**Goal 9, Economic Development.** The City finds that the proposed plan amendment is consistent with this goal because it and the related zone change would allow the subject property to be developed with a mixture of residential, commercial and industrial uses, thereby stimulating and supporting economic development. In addition, as discussed above, the City finds that approval of the proposed plan amendment will not reduce the City's industrial lands inventory below the minimum identified as needed in the 25-year planning period identified in the comprehensive plan. For these reasons, the applicant's proposed plan amendment is consistent with this goal.

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

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

**Goal 12, Transportation.** As discussed in the findings above, incorporated by reference herein, the City has found the proposed plan amendment satisfies the requirements of the TPR which implements this goal.

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

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

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

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

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

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

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

**For the foregoing reasons, the City finds that the proposed plan amendment, with the conditions of approval identified below, satisfies all applicable plan amendment approval criteria.**

**ZONE CHANGE APPROVAL CRITERIA**

**C. City of Bend Zoning Ordinance, Ordinance No. NS-1178, Chapter 10**

**1. Section 10.10.33, Standards for Zone Change**

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

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

**FINDINGS:** The applicant proposes to develop the subject property with mixed uses permitted in the ME Zone potentially including industrial, commercial, office and residential uses. As discussed above, the applicant's proposed zone change is based in part on the fact that under the city's new development code office uses are not permitted in the ME Zone. The record indicates the application was submitted on a city application form, accompanied by the required application fee and a burden of proof. Before approving the zone change, the Bend City Council held a public hearing.

In previous zone change decisions the City's hearings officers have held the above-underscored language may constitute a mandatory approval criterion for a proposed zone change, requiring an applicant to demonstrate the proposed zone change is required by "the public necessity and convenience and general welfare."

The City finds the proposed zone change would have positive consequences. The proposed zone change and resulting redevelopment would allow development with a mix of uses more compatible with surrounding development than traditional light industrial uses, and would provide a mix of uses that would serve the surrounding residential, commercial and light-industrial development within easy walking and bicycling distance, thereby reducing the need for, and shortening, vehicle trips.

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

**FINDINGS:** In numerous previous decisions the City's Hearings Officer has held this approval criterion includes three elements: 1) conformance with the comprehensive plan map; 2) conformance with the comprehensive plan text; and 3) consistency with the

plan's intent to promote "an orderly pattern and sequence of growth." Each of these elements is discussed separately in the findings below.

**1. Conformance with Comprehensive Plan Map.**

The subject property is designated IL on the comprehensive plan map. The applicant has requested approval of a plan amendment from IL to ME. Because the City is approving the applicant's proposed plan amendment, the proposed zone change will conform with the comprehensive plan map.

**2. Conformance with Comprehensive Plan Text.**

As discussed in detail in the findings above, the City has found the proposed plan amendment from IL to ME is consistent with the applicable plan policies. With respect to the proposed zone change, because the city's comprehensive plan is implemented through its zoning, subdivision and procedures ordinances, the plan does not establish mandatory approval criteria for quasi-judicial land use applications such as the applicant's proposed zone change. We adhere to that holding here.

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

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

**a. Orderly Pattern of Growth.**

The record indicates the area surrounding the subject property consists of a mix of industrial, commercial and residential zones and uses. Provided that development on the site complies with the performance standards described above, the City finds the requested zone change from IL to ME would facilitate development of the subject property with a similar mixture of residential, commercial, industrial and office uses that would be more compatible with the surrounding neighborhood than traditional industrial uses permitted in the IL Zone, and would provide a transition area between the existing residential and commercial uses to the east and south and the light industrial uses to the west. We find the proposed rezoning will promote an orderly *pattern* of growth with respect to land uses because it would foster proper relationships between zoning districts and uses, and would be consistent with the type of mixed-use urban-density development contemplated in the ME Zone; provided, however, it is developed in conformance with the performance standards described above.

Accordingly, the City finds it appropriate to approve the rezone and condition the zone change ordinance such that compliance with the performance standards is required for all future development on the site.

City staff has expressed some concerns about the lack of a site plan accompanying the zone change application. Specifically, the concern is about compatibility of future development with adjacent residential development. Staff and the applicant discussed these concerns and jointly concluded that they could be alleviated by the imposition of the performance standards.

For these reasons, the City finds that the proposed zone change from IL to ME will promote an orderly *pattern* of growth considering the existing and proposed mixture of land uses, provided development on the site is consistent with the performance standards described above and agreed to by the applicant and the City. Accordingly, the City approves the zone change subject to the performance standards described herein.

**b. Orderly Sequence of Growth.**

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

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

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

(3) Sewer and Water. The existing Mt. Bachelor Park-and-Ride facility on the subject property is not served by city sewer service. The record indicates there is city water service to the subject property. The City finds particular sewer and water facility requirements will be addressed at the time approval of a development proposal is requested. However, we find that given the type and density of current development on surrounding land there is no reason to conclude the applicant or its successors cannot provide sewer and water facilities and services that meet the City's standards and specifications for future redevelopment of the property under ME zoning.

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

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

(7) Transportation Facilities. As discussed in detail in the findings above concerning the proposal's compliance with the TPR, the City has found that with the steps agreed to by the City and the conditions of approval set forth below, the zone change will comply with the TPR. For these reasons, incorporated by reference herein, we also find that the applicant's proposed zone change will promote an orderly sequence of growth.

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

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

**FINDINGS:** As discussed above, the area surrounding the subject property is characterized by a mixture of residential, commercial and industrial zoning districts, densities and uses, as well as a number of office uses developed on IL-zoned land. The subject property currently is developed with the Mt. Bachelor Park-and-Ride facility. The proposed zone change from IL to ME would allow the subject property to be developed with a broader mixture of uses than is permitted under the new IL Zone provisions (which prohibit office uses) – uses that would be compatible with surrounding uses and would provide an effective transition between the commercial, industrial and residential zoning districts that adjoin the subject property. For these reasons, the City finds the

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proposed zone change will not interfere with either existing or potential development on other land in the vicinity.

With respect to impact from the proposed zone change to ME on surrounding property values, the City finds the determination of value impact can be highly subjective. There is no evidence in this record specifically addressing impacts on property values. However, we find there can be little doubt redevelopment of the subject property under ME zoning would have a positive impact on surrounding property values because of the potential mixture of uses consistent with the applicant's performance standards. The staff report notes the trend in the real estate market in the Bend area (until the recent softening of the housing market) has been a steady increase in property values regardless of the location, surrounding zoning or development. The staff report also notes that none of the surrounding property owners who received notice of the applicant's proposal objected to the applicant's proposal on the basis of property value impacts.

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

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

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

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

The City finds the proposed zone change will be consistent with the purposes of the ME Zone because, as discussed above, the subject property is surrounded by residential, commercial and industrial zones and uses, and these are the types of uses allowed in the ME Zone.

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

**FINDINGS:** As discussed in detail in the findings above, the City has found the applicant's proposed zone change from IL to ME will promote an orderly sequence of growth. Based on these findings, incorporated by reference herein, we find the proposed zone change will also satisfy this criterion because it will result in the orderly and efficient extension and provision of public facilities.

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

**FINDINGS:** The applicant does not argue the current IL zoning of the subject property was a mistake. Rather, it argues the proposed zone change to ME is justified by changes of circumstance since the subject property originally was zoned IL. The applicant's burden of proof describes those changes of circumstance as follows:

*"Significant changes in circumstances have occurred since the original designation of the subject property as IL. These changes include closure of the Shevlin Hixon mill, an evolving industrial user type, changing market conditions, City adoption of mixed use zoning, changes in the City's transportation system, and, the expansion of the UGB for the Juniper Ridge development:*

**Closure of Lumber Mill**



*At the time the property was zoned IL, the property and surrounding properties housed timber-dependent industries. At the time, timber-dependent uses benefited from the more suburban location, the proximity to water and railways, and the convenient truck transport system. For over 20 years, however, the lumber mill and associated supporting business have remained closed due to the lack of available timber in the area. The railway is no longer in operation and environmental and other regulations would prevent the transport of logs using the river.*

### **Changing Nature of Industrial users**

*As demonstrated in the City's Economic Land Study (2000), the nature of industrial uses is drastically changing. This can be attributed to the shift of manufacturing and assembly processes overseas, coupled with the rise of specialized industries that are smaller in size, have little or no negative environmental impacts, and rely more on automation. The emerging light industrial user typically functions like and is similar in appearance to research and development, professional office, and service and creative businesses, as opposed to traditional industrial user types. This change has altered an industrial user's site requirements and impacts. The study's employment projections forecast an increase in employment opportunities for the new industrial user type and a decrease in the traditional industrial user type. Therefore, appropriate sites must be available for these employment opportunities that would not typically locate in IL zoning districts, but in locations that provide support services and living opportunities within close proximity.*

*The Bend Area General Plan also declares the need to accommodate these new users as well as the need to change industrial property adjacent to the river into mixed-use land that supports pedestrian circulation:*

*'To support a cost effective and balanced land use and transportation system during the 20-year planning horizon the General Plan provides for...converting 200 acres of industrial land along the river to a more intense mixed-use residential, retail, and employment development within walking distance of downtown and other community amenities.'* (Section 1-2 Managing Growth)

*Changing the subject property, which is located adjacent to the MR zone and within walking distance of downtown, to ME provides the flexibility to accommodate these new businesses.*

### **Changes in the Market**

*The subject property is no longer suited for solely industrial uses. With the pending code amendments that will prohibit commercial uses in the IL zone, only industrial uses will be permitted. Economic forces, however, prevent property in the area from developing with strictly industrial uses.*

*The area surrounding the subject property has changed significantly since the initial zoning of the site, which was once considered to be on the periphery of town. Growth and development/redevelopment has occurred, and the site is located in the heart of the City's commercial district. The property is less than one mile from the downtown core and is adjacent to the Mixed Use Riverfront (MR) zone, a 250-acre mixed-use area developed with retail, restaurant, office and residential uses.*

*Due to the success of the Old Mill District and the proximity to the cultural hub of the City, land values have increased to a point that virtually prohibits the development of the subject property with only industrial uses.*

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*Land uses that can capture the lease rates and generate the revenues required to offset the high cost of the land are restricted to office, high-density residential, retail and commercial uses. To further illustrate this conflict, the average price of industrial zoned land in the Portland metropolitan area is approximately \$5 per square foot. Recent land use sales of IL property adjacent to the subject site have yielded up \$30 per square foot for industrial zoned land.*

*In response to the market conditions and demand, approximately 40% of IL zoned properties adjacent to the site have developed with office and commercial uses (see Exhibit G). The majority of existing industrial uses in the adjacent IL zone were developed or purchased years ago, before market forces discouraged such development.*

**New Mixed Use Zone Designations**

*When the site was designated as IL in 1979, mixed-use zone designations did not exist in the City. Since then, the City has amended its code to include two new mixed use districts, MR (Mixed Use Riverfront) and ME (Mixed Employment), which allow a broad range of commercial and industrial uses. With the change of industrial users to smaller, more specialized industries, the differences between industrial and commercial are decreasing while the demand for mixed-use zoned land is increasing.*

*Given the significant change in character around the subject site and the demand for mixed use land, the subject property is well suited to be changed to ME. This change would continue to allow some industrial uses in addition to other uses that are in high demand in the surrounding area.*

**UGB Expansion for Juniper Ridge**

*In 2004, the City of Bend expanded its Urban Growth Boundary (UGB) to add over 500 gross acres of industrial land. This provision of new industrial land helps relieve the need for IL zoned land which is unsuitable for industrial development to maintain an IL designation.” (Bold text in original.)*

The City agrees that the above-described changes of circumstance justify the proposed zone change from IL to ME, and therefore the applicant’s proposal satisfies this criterion.

**For the foregoing reasons, the City finds that the applicant’s proposed zone change satisfies all applicable zone change approval criteria, subject to the conditions of approval set forth below.**

**IV. DECISION:**

Based on the foregoing Findings of Fact and Conclusions of Law, the City hereby **APPROVES** the applicant's proposed plan amendment and zone change from IL to ME for the subject property, subject to the following conditions of approval:

1. Development of the site shall conform to the following performance standards:

***"USE RESTRICTIONS***

1. *Temporary housing, which is currently permitted outright in the ME zone, is prohibited.*
2. *Auto-dependent Retail Sales and Service uses, which are currently permitted outright in the ME zone, are prohibited.*
3. *Auto-oriented Retail Sales and Service uses, which are currently permitted outright in the ME zone, require a conditional use permit.*
4. *Restaurants/Food Services with drive through service, which are currently permitted outright in the ME zone, are prohibited.*
5. *Entertainment and Recreation uses not enclosed in a building, which are currently permitted outright in the ME zone, require a conditional use permit.*
6. *Hospitals, which are currently permitted outright in the ME zone, require a conditional use permit.*
7. *All industrial uses must be enclosed in a building.*
8. *Manufacturing and Production, Warehouse, Production Businesses, and Industrial Service uses, which are currently permitted outright in the ME zone, require a conditional use permit as a primary use, and permitted subject to Site Plan/Design Review where proposed as a secondary use.*

***DEVELOPMENT STANDARDS***

1. *Where abutting a residential district, in addition to the 10 foot base side yard setback, a side yard setback shall increase 1 foot for every foot by which a building exceeds 35 feet in height.*
  2. *Commercial uses, in addition to industrial uses currently required by the existing ME zone regulations, are required to have an additional 10-foot side/rear buffer if adjacent to the MR zone.*
  3. *Drive through or vehicle service areas are not allowed between a building and the required 10-foot front yard landscape setback.*
2. Applicant shall install the following improvements at the intersection of Simpson and Mt. Washington, which improvements shall be completed prior to the final occupancy of the development approved by the first site plan on the subject property:
    - a. Remove three trees on the east side of the north approach.
    - b. Minor slope regrading within the right-of-way south of the existing fire hydrant.
    - c. Restripe the existing centerline, left-turn lane, and bike lanes on Mt. Washington from approximately Troon Street (north of the intersection) to approximately 300 to 500 feet south of Simpson Avenue.
    - d. Shift crosswalk and stop bar locations on Simpson Avenue toward Mt. Washington approximately 10 feet.
    - e. Relocate existing stop sign on the west approach consistent with crosswalk location.
    - f. As appropriate, maintain sight visibility of existing signs on Mt. Washington, using a 45 mph design speed.

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Exhibit A

- g. Install two sets of peripheral transverse pavement markings on the north and south approaches of Mt. Washington in advance of the intersection in conjunction with existing signage.
- h. Install one set of peripheral transverse pavement markings on the east approach of Simpson Avenue near the existing "stop ahead" sign in advance of the intersection.

Alternatively, this condition may be satisfied as follows:

If, prior to construction of the improvements described in Condition No. 2, the City notifies the applicant in writing that sufficient funding, including the applicant's financial contribution, as described below, has been procured to construct a roundabout at the intersection of Simpson and Mt. Washington Drive in a timeframe to mitigate for development on the subject property, the applicant shall deposit in a City fund or other acceptable account, a sum equal to the estimated cost of installing the improvements described above (a through h). The deposit shall be made within 30 days of the date of the City's written request. Once the deposit is verified by the City, in writing, this condition for the final occupancy of the development approved by the first site plan on the subject property shall be deemed satisfied.

3. Applicant shall install the following improvements at the intersection of Simpson and Century, which improvements shall be completed prior to the final occupancy of the development approved by the first site plan on the subject property:
  - a. Provide a minimum 20-foot (curb face to face) clearance on the east approach entry by reducing the splitter island and widening the outside curb, which will allow emergency vehicles to bypass vehicle queues.
  - b. Widen the entry on the east approach to allow for large truck turning.
  - c. Reshape left side of the splitter island on the east approach.
  - d. Relocate pedestrian ramps and adjust multi-use pathway as needed.
  - e. Relocate existing luminaires and catch basins as needed
  - f. Implement a "Do Not Block the Box" plan for the Fire Department Driveway on Simpson Avenue;
  - g. Install two 2-inch diameter conduit and junction boxes on Simpson Avenue between Century Drive and Columbia Street and within the roundabouts within the mitigation construction footprint;
  - h. Prior to the design of the roundabouts, the applicant will further evaluate the Simpson Avenue corridor to identify potential future improvements that could be constructed by the City or others to accommodate future traffic demand. This evaluation will be conducted in an effort to ensure future improvements are not precluded by the proposed improvements to be completed by the applicant. The evaluation will ensure that the developed designs optimize emergency vehicle response through the corridor
4. Applicant shall install the following improvements at the intersection of Simpson and Columbia, which improvement shall be completed prior to the final occupancy of the development approved by the first site plan on the subject property:
  - a. Construction of a single lane roundabout at Simpson/Columbia;
  - b. Delineation of fire station driveway intersection area;
  - c. Striping of "Do Not Block" area in front of fire station driveway;
  - d. Installation of "Do Not Block" signage in front of fire station driveway; and
  - e. Improvements to east leg of Simpson/Century roundabout, as described below.
  - f. Installation of two 2-inch diameter conduit between Simpson/Century Drive and Simpson/Columbia and at the roundabouts within the mitigation construction footprint.
5. Applicant shall install the following improvements at the intersection of Colorado and Columbia, which improvements shall be completed prior to the final occupancy of the development approved by the first site plan on the subject property:

- a. Installation of six-foot bike lanes on the east and west approaches from the intersection to the approximate point-of-curvature or point-of-tangent. Addition of bicycle pavement legend.
- b. Addition of lane extension striping in the bay taper area for the eastbound and westbound left-turn lanes.
- c. Striping painted corner radii edge lines based on a WB-40 design vehicle.
- d. Installation of crosswalk markings on the north and south approaches of Columbia Avenue.
- e. As appropriate, maintain sight visibility for drivers on the Columbia Avenue approaches, using a 45 mph design speed.
- f. Adjust grade elevations at two catch basins on the west approach of Colorado.

Alternatively, this condition may be satisfied as follows:

If, prior to construction of the improvements described in Condition No. 5, the City notifies the applicant in writing that sufficient funding, including the applicant's financial contribution, as described below, has been procured to construct a roundabout at the intersection of Columbia Avenue and Colorado Avenue in a timeframe to mitigate for development on the subject property, the applicant shall deposit in a City fund or other acceptable account, a sum equal to the estimated cost of installing the improvements described above (a through h). The deposit shall be made within 30 days of the date of the City's written request. Once the deposit is verified by the City, in writing, this condition for the final occupancy of the development approved by the first site plan on the subject property shall be deemed satisfied.

6. Applicant shall install the following improvements at the Columbia/Commerce intersection area, which improvements shall be completed prior to the final occupancy of the development approved by the first site plan on the subject property:

- a. Install curb extensions on both sides of the north approach of Columbia Avenue while maintaining a minimum 20-foot wide travel way.
- b. Optimize available planting space in curb extension area to allow for landscaping and gateway features.
- c. Design and construct curb extensions with drainage facilities, landscaping and ADA pedestrian ramps to meet City of Bend Standards and Specifications.

7. Prior to the second reading of the ordinance redesignating and rezoning the subject property, the Applicant shall record the performance standards and conditions of approval against the deed for each parcel of land of the subject property to alert any future owners of the property of the special performance standards and conditions of approval.

Ordinance NS-2105  
Exhibit B



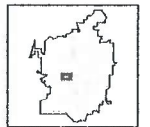
PZ 06-570 Plan Amendment and Zone Change from IL to ME

 SUBJECT PROPERTIES

ZONING & PLAN DESIGNATION:

- |  |  |  |
|--|--|--|
|  CG |  IL |  RM |
|  CL |  MR |  RS |

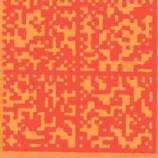
250 125 0 250 500 Feet



Imagery acquired June 2006. Map prepared August 19, 2008.



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MAILED FROM ZIP CODE 97701



**CITY OF BEND  
COMMUNITY DEVELOPMENT DEPARTMENT**

710 NW WALL STREET  
BEND, OR 97701

TO:

DLCD  
Attn: Plan Amendment Specialist  
635 Capitol St NE, Ste 150  
Salem, OR 97301-2540