



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

NOTICE OF ADOPTED AMENDMENT

August 26, 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 017-07



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

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: September 9, 2008

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

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

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

Cc: Gloria Gardiner, DLCD Urban Planning Specialist
Mark Radabaugh, DLCD Regional Representative
Bill Holmstrom, DLCD Transportation Planner
Amy Barry, City of Bend

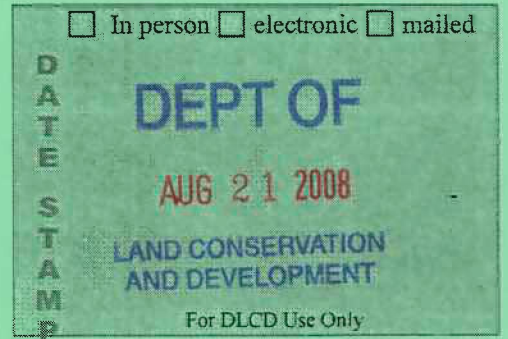
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PROF 2

DLCD

Notice of Adoption

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



Jurisdiction: **City of Bend**

Local file number: **PZ 07-624**

Date of Adoption: **8/6/2008**

Date Mailed: **8/19/2008**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: 12/10/2007

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

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

A Rezone of the 5.63 acre subject site from Industrial Light (IL) to Mixed Employment (ME), in conformance with the Bend Urban Area General Plan.

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

Plan Map Changed from:

to:

Zone Map Changed from: **IL**

to: **ME**

Location: **Northwest corner of Jamison Street and Empire Ave**

Acres Involved: **5**

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

New: **N/A**

Applicable statewide planning goals:

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

DLCD # 017-07 (16580)

DLCD file No. _____

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

ODOT - Reviewed proposed traffic demand management through trip cap by limiting higher trip generating uses on the site. Uses were limited through site plan approval PZ 08-173 and through recorded deed restriction.

Local Contact: **Amy Barry**
Address: **710 NW Wall Street**
City: **Bend**

Zip: **97759-**

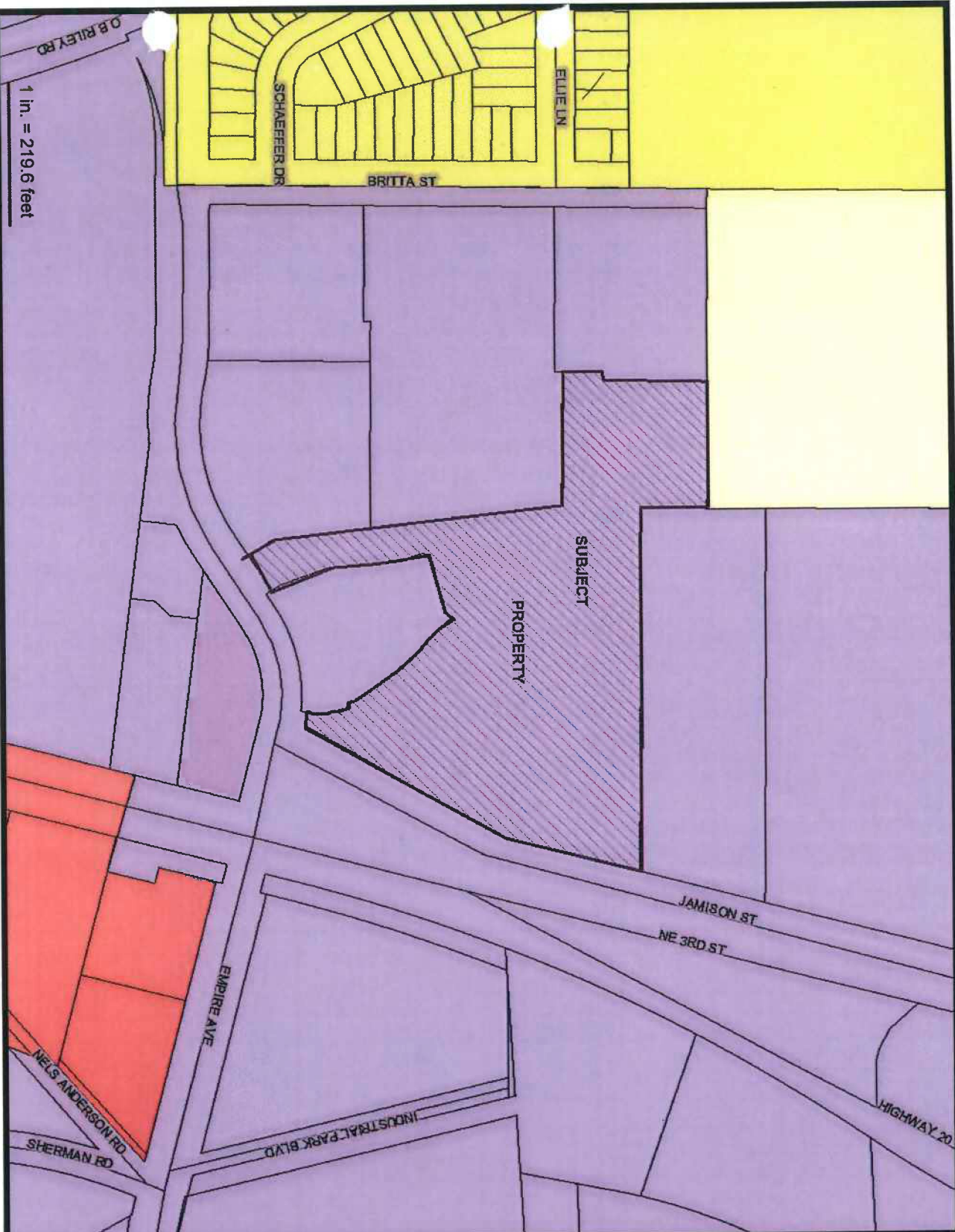
Phone: **(541) 693-2114** Extension:
Fax Number: **541-388-5519**
E-mail Address: **abarry@ci.bend.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

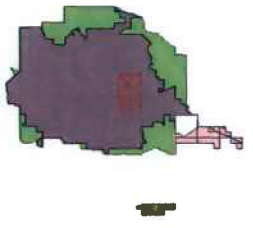
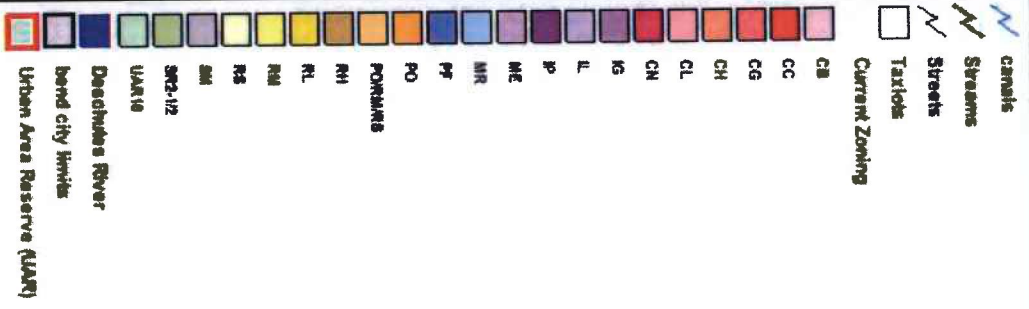
This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

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

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



ZONE CHANGE FROM INDUSTRIAL LIGHT (IL) TO MIXED EMPLOYMENT (ME)



ORDINANCE NO. NS-2101

AN ORDINANCE AMENDING THE BEND URBAN AREA ZONING MAP BY CHANGING THE ZONING OF A PARCEL OF LAND TOATLING 5.36 ACRES LOCATED AT THE NORTHWEST CORNER OF EMPIRE AVENUE AND JAMISON STREET FROM IL INDUSTRIAL LIGHT TO ME 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 is consistent with the criteria of the Bend Development Code Section 4.6.300 as shown in Exhibit B. The Bend City Council adopts the findings in Exhibit B, and conditions of approval in Exhibit C, excerpted from the Findings and Decision of the Hearings Officer dated June 10, 2008, City File Nos. PZ 07-624 and PZ 08-173.

Section 2. The Bend Urban Area Zoning Map is hereby amended by changing the zoning of the property described as Parcel 1, Partition Plat No. 1993-15, City of Bend, Deschutes County, Oregon, as shown in Exhibit A, from Industrial Light (IL) to Mixed Employment (ME).

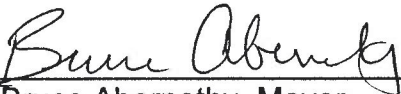
Read for the first time the 2nd day of July, 2008.

Read for the second time the 6th day of August, 2008.

Placed upon its passage the 6th day of August, 2008.

YES: 7 NO: 0

Authenticated by the Mayor the 6th day of August, 2008.



Bruce Abernethy, Mayor

ATTEST:



Patricia Stell, City of Bend Recorder

EXHIBIT A



PZ 07-624 Zone Change from IL to ME

- | | | | |
|---|------------------|---|----|
|  | Subject Property |  | IL |
|  | ME |  | RM |
|  | CG |  | RS |



Imagery acquired June 2006. Map prepared June 16, 2008.

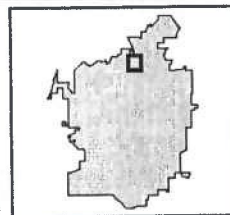


EXHIBIT B

HEARINGS OFFICER FINDINGS FOR ZONE CHANGE

4.6.300 Quasi-Judicial Amendments

B. Criteria for Quasi-Judicial Amendments.

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

FINDING: There are 19 Statewide Planning Goals which express Oregon's land use policies. Each local government throughout Oregon, including the City of Bend, must adopt a comprehensive plan implementing these Statewide Planning Goals. Once LCDC finds the comprehensive plan is consistent with the Statewide Planning Goals, the agency acknowledges the plan. The City of Bend has an acknowledged Comprehensive Plan, and the requested Zone Change is in conformance with that Comprehensive Plan. Additionally, the Bend Development Code implements the policies of the Comprehensive Plan (Bend Urban Area General Plan). Therefore, by demonstrating conformance with the Development Code, the applicant demonstrates compliance with the Statewide Planning Goals.

Planning staff determined that of these 19 Statewide Planning goals, the relevant goals are 9 and 12 and the Hearings Officer concurs.

Statewide Planning Goal 9 states, "To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens." OAR 660-009 implements Goal 9. This administrative rule requires the City to maintain its comprehensive plan and land use regulations so as to provide adequate opportunities for a variety of economic activities. In particular, Goal 9 and the implementing rules require local governments to provide an adequate amount of commercial and industrial land within the Urban Growth Boundary. In Bend, this requirement is accomplished through the designation of adequate commercial and industrial land in the General Plan.

In adopting a Mixed Employment designation for the subject property, the City has determined—and through the acknowledgement process the state has concurred—that the designation of the subject property as Mixed Employment under the General Plan satisfies the requirements of Goal 9 to provide adequate commercial and industrial land. Consequently, because the underlying property is designated Mixed Employment under the General Plan, the rezoning of the property from IL to ME is consistent with the General Plan as well as Goal 9 and the rules implementing Goal 9.

Statewide Planning Goal 12 states, "To provide and encourage a safe, convenient and economic transportation system." OAR 660-012 implements Goal 12. The criteria in Development Code Section 4.7 require analysis of the traffic impacts for both the development and the proposed Zone Change, and require that those impacts are mitigated. Additionally, Section 4.6.600 requires the applicant to demonstrate compliance with the Transportation Planning Rule (OAR 660-012-0060). These code sections and required transportation system mitigation requirements are addressed further on in this report. By demonstrating compliance with these code sections, the applicant also demonstrates that the application is consistent with Goal 12.

The Hearings Officer concurs with the findings in the applicant's burden of proof which demonstrate consistency with the Statewide Planning Goals.

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

FINDING: The Comprehensive Plan for the City of Bend is the Bend Area General Plan. The Preface of the General Plan states that plan policies will be implemented by the City's land use regulations. The majority of the General Plan Policies which are relevant to the proposed Zone Change application have been codified in the Bend Development Code, and therefore are addressed in findings throughout this report.

There are few General Plan policies that speak directly to the proposed rezone application, other than the general policy that zoning and implementing ordinances should be consistent with the General Plan designations.

General Plan Chapter 1, Plan Management and Citizen Involvement, includes the following policy:

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

The applicant held a neighborhood public meeting prior to submitting its applications, to discuss the proposal with the property owners in the area and solicit input on the proposal. Additionally, Planning staff sent notice of the public hearing time and date for these applications, provided mailed notice to all property owners within 250 feet of the subject site, and published notice of the hearing in The Bulletin at least 10 days prior to the hearing. A hearing was held May 22, 2008. The Hearings Officer finds that these efforts to solicit citizen involvement in the review process fulfill this General Plan policy.

General Plan Chapter 6, Economy and Lands for Economic Growth, includes the following policy for Industrial development:

17. The area west of Highway 97 North and north of Empire Avenue, as shown on the General Plan Map, shall have a mixed-use designation for industrial and commercial development. Properties in this area shall take access from the frontage road or other internal roads that are shown on the transportation plan. Because of the high visibility of these properties, they shall be subject to design review standards.

As previously stated, the subject site is designated Mixed Employment on the Bend Urban Area General Plan map, consistent with the above General Plan policy. The proposed Zone Change will bring this goal to fruition, matching the zoning of the property to its General Plan designation. No changes will be made to the existing accesses for the site which have been evaluated in the applicant's TIA and found to be adequate.

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

FINDING: Generally Zone Change applications are concerned with the impact to the existing facilities, services, and transportation networks from the change in zoning designation and the potential uses available in a different zone. The City can evaluate the impacts because the subject property is already developed and occupied with a mix of commercial and office uses. Furthermore, the applicant submitted a Site Plan Change of Use application concurrently with this Zone Change request to limit trip generation impacts from the proposed Zone Change.

Streets: The subject property abuts Empire Avenue, an arterial street, and Jamison, a local frontage road. Per the trip cap proposed with the applicant's Change of Use, no significant increases in traffic volumes will result from the proposal.

Water and sewer: The site is currently served with water and sewer and there is adequate capacity to serve the existing and proposed uses.

Schools: The project will have no impact upon the Bend LaPine School District.

Parks and Libraries: The project will have no impact on parks or library services.

Fire and Police Protection: Fire and police protection is available for the subject property from the City of Bend.

- 4. Evidence of change in the neighborhood or community or a mistake or inconsistency in the comprehensive plan or land use district map**

regarding the property that is the subject of the application; and the provisions of Section 4.6.600; Transportation Planning Rule Compliance.

FINDING: As stated in previous findings, there is an inconsistency between the Comprehensive Plan designation and the zoning map. The subject property is zoned IL, but the Comprehensive Plan designates this property ME. Approval of this Zone Change will bring the zoning of the property into conformance with its Comprehensive Plan designation.

Section 4.4.600 Transportation Planning Rule Compliance.

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

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

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

(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

(b) Change standards implementing a functional classification system; or

(c) As measured at the end of the planning period identified in the adopted transportation system plan:

(A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or

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

(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:

(c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.

FINDING: The TIA prepared by Ferguson & Associates addresses the traffic impacts of the existing uses including a worst-case scenario of future development as ME zoned uses. The TIA shows that some higher trip generating uses permitted in the ME zone could have significant impacts to the surrounding transportation system. Therefore, a reduced-demand scenario based on existing development was included in the applicant's burden of proof and TIA that would limit the land uses on the site.

Both the Transportation Planning Rule (TPR) and City Development Code allow limiting permitted land uses and transportation demand management measures as acceptable traffic mitigation alternatives.

The applicant's TIA states that if occupancy were at tenant capacity, including an additional building as could be allowed based on the number of existing parking spaces and open area on the site, the site would generate an estimated 96 p.m. peak hour trips.

Staff agreed in concept to a deduction for pass-by trips to be factored into the TIA. However, staff disagreed with the methodology utilized to reduce total number of development trips added to the transportation system. Comments from the City Transportation Engineer indicate that some of the trips shown and deducted as "pass-by" on Figures 2, 3, and 4 of the TIA addendum (traveling north/south on Hwy 97/Hwy 20/3rd St.) divert onto Jamison Street or Empire Avenue to reach the site and therefore should be considered diverted link trips, not pass-by trips. However, staff accepted that there are 10 potential pass-by p.m. peak trips shown in Figures 5 and 6, permitted in addition to 96 trips estimated under the current IL zoning, for a total of 106 p.m. peak hour trips which can be utilized by this development without further significant impact to the transportation system.

Staff further noted that while the pass-by reduction discussed above is overstated, the traffic study also overestimates total trip generation (before pass-by deduction), by assuming 100% of the development to be occupied by specialty retail uses. The applicant has indicated a desire to include many of the uses which generally fall in the ITE category of *Office Park* (750) which have a much lower p.m. peak hour trip generation rate than *Specialty Retail* (814) uses.

Staff estimated that up to 20,000 square feet of gross floor area could be occupied with specialty retail uses, with the remaining 34,829 square feet occupied with Office Park uses, while remaining within a trip cap of 106 p.m. peak hour trips per day. Uses within the development would be limited to those listed in the modified Table 2.3.200 found on pages 9-10 in the Burden of Proof Addendum dated April 21, 2008, including a limit of 5,000 square feet per of gross floor area per specialty retail tenant. (20,000 sq ft of specialty retail at 2.7/1,000 p.m. peak = 54 p.m. peak hour trips and 34,829 at office park at 1.5/1,000 p.m. peak = 52 p.m. peak hour trips, for a total of 106 total p.m. peak hour trips.) The Hearings Officer concurs with Staff's conclusions.

Therefore, in order to ensure that the proposed Zone Change will not have a significant impact on the surrounding transportation facilities, the Hearings Officer recommends that a condition of approval be added to limit the trip generation for the site to 106 p.m. peak hour trips, and the maximum amount of specialty retail uses on this site to 20,000 gross square feet total and 5,000 square feet per tenant, and all other uses to those identified in the table on pages 9 and 10 of the applicant's burden of proof for the Site Plan Change of Use, attached hereto and incorporated herein.

EXHIBIT C

ZONE CHANGE CONDITIONS OF APPROVAL

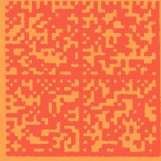
1. Approval of this Zone Change is based upon the trip cap of 106 p.m. peak hour trips to the site. Future uses at this site must comply with the conditions of approval for Site Plan Change of Use (PZ 08-173).
2. If the applicant or any successor in interest elects to pursue approval of development or uses that will exceed the above trip cap then, as a part of site plan approval, the applicant shall be required to perform a new transportation impact study consistent with Bend Code Chapter 4.7 and the Transportation Planning Rule to determine whether additional transportation system mitigation is required. The TPR analysis shall be in addition to the analysis required by the alternate site plan proposal under the City's concurrency standards.
3. The applicant shall record a deed restriction on the subject property, with the language contained in Exhibit D, which references conditions of approval for City of Bend File Nos. PZ 07-624 and PZ 08-173 limiting uses permitted on the site based on pm peak hour trip generation.

EXHIBIT D

Language for Deed Notice

SUBJECT TO the following development limitations:

Uses allowed on the subject property described in Exhibit A are limited by the conditions of approval for City of Bend File Nos. PZ 07-624 and PZ 08-173 which limit uses permitted on the site based on pm peak hour trip generation. If the applicant or any successor in interest elects to pursue approval of development or uses that will exceed the trip cap then, as a part of site plan approval, or modification of the above referenced site plan approval, the applicant shall be required to perform a new transportation impact study consistent with Bend Code Chapter 4.7 and the Transportation Planning Rule to determine whether additional transportation system mitigation is required. The TPR analysis shall be in addition to the analysis required by the alternate site plan proposal under the City's concurrency standards.



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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