



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

September 10, 2008



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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Medford Plan Amendment
DLCD File Number 010-08

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: September 26, 2008

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

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

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE 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
John Renz, DLCD Regional Representative
Bill Holmstrom, DLCD Transportation Planner
Carly Meske, City of Medford

<paa> ya/

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 electronically mailed

DATE STAMP

RECEIVED ELECTRONICALLY
September 5, 2008
DEPARTMENT OF LAND
CONSERVATION & DEVELOPMENT

For DLCD Use Only

Jurisdiction: **CITY OF MEDFORD**

Local file number: **ZC-08-065**

Date of Adoption: **8/28/2008**

Date Mailed:

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

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".

Consideration of a change of zone from I-G (General Industrial) to C-R (Regional Commercial) of a 0.13 acre piece of property for the purpose of accommodating the reorientation of the previously approved Wal-Mart store (AC-03-182) located on the west side of Center Drive and the east side of South Pacific Highway, approximately 400 feet north of Belknap Road, within a C-R (Regional Commercial) and I-G (General Industrial) zoning district. 371W31A tax lot 1406

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

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

to: **N/A**

Zone Map Changed from: **I-G**

to: **C-H**

Location: **HWY 99 & CENTER DRIVE**

Acres Involved: **0**

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

New: **N/A**

Applicable statewide planning goals:

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

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD file No. 010-08 (16944)

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

CITY OF MEDFORD. OREGON DEPARTMENT OF TRANSPORTATION.

Local Contact: **CARLY MESKE**

Phone: **(541) 774-2380** Extension:

Address: **200 S. IVY STREET, LAUSMANN AN**

Fax Number: **541-774-2564**

City: **MEDFORD** Zip: **97501-**

E-mail Address:

CARLY.MESKE@CITYOFMEDFORD.ORG

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.

Notice of Adoption

In person electronic mailed

DEPT OF

SEP 08 2008

LAND CONSERVATION AND DEVELOPMENT

For DLCD Use Only

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Zone Map Changed from: **I-G**

to: **C-H**

Location: **HWY 99 & CENTER DRIVE**

Acres Involved: **0.13**

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

New: **N/A**

Applicable statewide planning goals:

- | | | | | | | | | | | | | | | | | | | |
|-------------------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|-------------------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
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Yes No

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

DLCD # 010-08 (16944)

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD file No. _____

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

CITY OF MEDFORD. OREGON DEPARTMENT OF TRANSPORTATION.

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Phone: (541) 774-2380 Extension:

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City: **MEDFORD** Zip: **97501-**
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CITY OF MEDFORD

PLANNING DEPARTMENT

August 29, 2008

Wal-Mart Real Estate Business Trust
1301 SE 10th Street
Bentonville AR 72716

RE: FILE NO. ZC-08-065

The Medford Planning Commission at its regular meeting of August 28, 2008, approved the Final Order containing Findings of Fact relating to the approval of the following request: Change of zone from I-G (General Industrial) to C-R (Regional Commercial) of a 0.13 acre piece of property for the purpose of accommodating the reorientation of the previously approved Wal-Mart store (AC-03-182) located on the west side of Center Drive and the east side of South Pacific Highway, approximately 400 feet north of Belknap Road, within a C-R (Regional Commercial) and I-G (General Industrial) zoning district.

This request was granted as per Staff Report dated July 31, 2008.

The final date for filing an appeal is 21 days from the date of the decision. The written appeal and filing fee must be received by the City Recorder no later than 5:00 p.m. on September 18, 2008. Appeals must be filed in the form prescribed, and will be decided based upon Medford Code Sections 10.051-10.056 (copies available).

John W. Hoke
Interim Planning Director

kg

Enclosure: Staff Report/Final Order/Legal Description

cc: Pacland, Sean Mallon, 1505 Westlake Ave N Ste 305, Seattle WA 98109
Affected Agency
Interested Parties

BEFORE THE MEDFORD PLANNING COMMISSION

STATE OF OREGON, CITY OF MEDFORD

IN THE MATTER OF PLANNING COMMISSION FILE)
ZC-08-065 APPLICATION FOR A ZONE CHANGE SUBMITTED) **ORDER**
BY Wal-Mart Real Estate Business Trust)

ORDER granting approval of a request for changing the zoning from I-G (General Industrial) to C-R (Regional Commercial) of a 0.13 acre piece of property for the purpose of accommodating the reorientation of the previously approved Wal-Mart store (AC-03-182) located on the west side of Center Drive and the east side of South Pacific Highway, approximately 400 feet north of Belknap Road, within a C-R (Regional Commercial) and I-G (General Industrial) zoning district.

WHEREAS, the City Planning Commission in the public interest has given consideration to changing the zoning of real property described below from I-G (General Industrial) to C-R (Regional Commercial) of a 0.13 acre piece of property for the purpose of accommodating the reorientation of the previously approved Wal-Mart store (AC-03-182) located on the west side of Center Drive and the east side of South Pacific Highway, approximately 400 feet north of Belknap Road, within a C-R (Regional Commercial) and I-G (General Industrial) zoning district; and

WHEREAS, the City Planning Commission has given notice of, and held, a public hearing, and after considering all the evidence presented hereby adopts the Staff Report dated July 31, 2008, Applicant's Findings – Exhibit "A," and Legal Description – Exhibit "B" attached hereto and hereby incorporated by reference; now, therefore,

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF MEDFORD5, OREGON, that:

The zoning of the following described area within the City of Medford, Oregon:

37 1W 31A Tax Lot 1406

is hereby changed from I-G (General Industrial) to C-R (Regional Commercial) zoning district.

Accepted and approved this 28th day of August, 2008.

CITY OF MEDFORD PLANNING COMMISSION



Planning Commission Chair

ATTEST:



Planning Department Representative



CITY OF MEDFORD

PLANNING DEPARTMENT

REVISED STAFF REPORT

Date: July 31, 2008
To: Planning Commission
From: Kelly Akin, Senior Planner *KA*
By: Carly Meske, Planner II *CM*
Subject: Wal-Mart Zone Change (ZC-08-065)
Wal-Mart Real Estate Business Trust (PACLAND, Agent)

Background

Proposal

Consideration of a change of zone from I-G (General Industrial) to C-R (Regional Commercial) of a 0.13 acre piece of property for the purpose of accommodating the reorientation of the previously approved Wal-Mart store (AC-03-182) located on the west side of Center Drive and the east side of South Pacific Highway, approximately 400 feet north of Belknap Road, within a C-R (Regional Commercial) and I-G (General Industrial) zoning district.

Subject Site Zoning, GLUP Designation and Existing Uses

Zoning District: I-G (General Industrial)
GLUP Map Designation: CM (Commercial)
Current Use: Parking Lot

Surrounding Property Zoning and Uses

North: Zone I-G
Use State of Oregon Armory

South: Zone C-R
Use Vacant

East: Zone C-R
Use Various commercial uses including, but not limited to: a hotel and credit union

West: Zone C-R
Use Stewart Meadows Village PUD (PUD-06-141)

Related Projects

AC-03-182 Wal-Mart (commercial - retail)

Applicable Criteria

Medford Land Development Code Section 10.227 (Exhibit B).

Issues/Analysis

Staff has reviewed the zone change request and found that it meets the approval criteria listed in *Medford Land Development Code* Section 10.227 (Exhibit B).

Traffic

According to the Engineering Division, the proposed zone change will not produce a net increase sufficient to warrant a Traffic Impact Analysis (Exhibit E).

Drainage

As a zone change is not allowable without adequate storm drain facilities, the Engineering Division Memorandum (Exhibit E) requires a report be prepared to illustrate adequate facilities. The report shall be submitted to the City of Medford Engineering Division for review and approval. Such a condition is included.

Open Record

This application was heard at the Planning Commission hearing on July 10, 2008. During public testimony, a request was received to keep the public record open for seven days; therefore, the public hearing was closed, the public record held open for seven days, with deliberation to commence at the August 14, 2008 Planning Commission meeting.

Four letters of written testimony were received during the open record; all letters are herein included as Exhibits L, M, N, and O. Two letters of testimony speak in favor of the proposed zone change, while two speak in opposition. Those letters in favor of the zone change site compliance with the approval criteria, and a desire for a Walmart store at this location. Those letters in opposition speak to the approval criteria and parking.

The applicant submitted a Written Closing Statement and Findings of Fact & Conclusions of Law, herein included as Exhibit P. The closing statement (Exhibit P) explains the necessity of the proposed zone change, responds to those issues

raised by opponents, and provides findings explaining compliance with the applicable approval criteria.

No other issues were identified by staff.

RECOMMENDED ACTION

Direct staff to prepare a Final Order for approval of ZC-08-065 per the Revised Staff Report dated July 31, 2008, including Exhibits A through P.

EXHIBITS

- A-1 Conditions of Approval dated July 29, 2008;
- B Approval Criteria dated June 27, 2008;
- C Applicant's *Findings of Fact and Conclusions of Law* received May 16, 2008;
- D Applicant's *Transportation Planning Rule Analysis* received May 16, 2008;
- E Medford Engineering Division Memorandum received June 18, 2008;
- F Medford Water Commission Staff Memo received June 18, 2008;
- G Medford Fire/Rescue Memorandum received June 18, 2008;
- H Rogue Valley Sewer Services Memorandum received June 18, 2008;
- I Oregon Department of Transportation Notice received June 25, 2008;
- J City of Medford Zoning & General Land Use Maps with site indicated;
- K Jackson County Assessor's Map with site indicated, received May 16, 2008;
- L Written Testimony from *Medford Citizens for Responsible Development*, received July 10, 2008;
- M Written Testimony from Mark W. Schwarff, received July 16, 2008;
- N Written Testimony from Annette Lynn, received July 17, 2008;
- O Written Testimony from Gene Treat, received July 17, 2008;
- P Applicant's Closing Statement and Findings of Fact & Conclusions of Law received July 24, 2008;
Vicinity Map

PLANNING COMMISSION AGENDA:

**JULY 10, 2008
AUGUST 14, 2008**



CITY OF MEDFORD
PLANNING DEPARTMENT

CONDITIONS OF APPROVAL
Exhibit A-1
July 29, 2008

CODE CONDITIONS

1. Prior to issuance of the first building permit, the applicant shall:
 - a. Comply with the Medford Engineering Division Memorandum received June 18, 2008 (Exhibit E); and
 - b. Receive approval of the property line adjustment PLA-08-066.

CITY OF MEDFORD
A-1
FILE 20-08-065



CITY OF MEDFORD

PLANNING DEPARTMENT

APPROVAL CRITERIA EXHIBIT B June 27, 2008

The approving authority (Planning Commission) shall approve a quasi-judicial zone change if it finds that the zone change complies with subsections (1) and (2) below:

- (1) The proposed zone is consistent with the Oregon Transportation Planning Rule (OAR 660) and the General Land Use Plan Map designation. (When the City of Medford's Transportation System Plan (TSP) is adopted, a demonstration of consistency with the acknowledged TSP will assure compliance with the Oregon Transportation Planning Rule.) Where applicable, the proposed zone shall also be consistent with the additional locational standards of the below sections (1)(a), (1)(b), (1)(c), or (1)(d). Where a special area plan requires a specific zone, any conflicting or additional requirements of the plan shall take precedence over the locational criteria below.

- (c) For zone changes to any commercial zoning district, the following criteria shall be met for the applicable zoning sought: (i) The overall area of the C-N zoning district shall be three (3) acres or less in size and within, or abutting on at least one boundary, residential zoning. In determining the overall area, all abutting property(s) zoned C-N shall be included in the size of the district. (ii) The overall area of the C-C zoning district shall be over three (3) acres in size and shall front upon a collector or arterial street or state highway. In determining the overall area, all abutting property(s) zoned C-C shall be included in the size of the district. (iii) The overall area of the C-R zoning district shall be over three (3) acres in size, shall front upon an arterial street or state highway, and shall be in a centralized location that does not otherwise constitute a neighborhood shopping center or portion thereof. In determining the overall area, all abutting property(s) zoned C-R shall be included in the size of the district. The C-R zone is ordinarily considered to be unsuitable if abutting any residential zones, unless the applicant can show it would be suitable pursuant to (1)(e) below. (iv) The C-H zone shall front upon an arterial street or state highway. The C-H zone may abut the General Industrial (I-G), Light Industrial (I-L), and/or any commercial zone. The C-H zone is ordinarily considered to be unsuitable if abutting any residential and I-H zones, unless the applicant can show it would be suitable pursuant to (1)(e) below.

CITY OF MEDFORD
EXHIBIT B
File # 20-08-65

- (e) For purposes of (1)(c) and (1)(d) above, a zone change may be found to be "suitable" where compliance is demonstrated with one or more of the following criteria: (i) The subject property has been sited on the General Land Use Plan Map with a GLUP Map designation that allows for only one zone; (ii) At least 50% of the subject property's boundaries abut zones that are expressly allowed under the criteria in (1)(c) or (1)(d) above; (iii) At least 50% of the subject property's boundaries abut properties that contain one or more existing uses which are permitted or conditional uses in the zone sought by the applicant, regardless of whether the abutting properties are actually zoned for such existing uses; or (iv) Notwithstanding the definition of "abutting" in MLDC 10.012 and for purposes of determining suitability under Section (1) (e), the subject property is separated from the "unsuitable" zone by a public right-of-way of at least 60 feet in width.
- (2) It shall be demonstrated that Category A urban services and facilities are available or can and will be provided, as described below, to adequately serve the subject property with the permitted uses allowed under the proposed zoning, except as provided in subsection (c) below. The minimum standards for Category A services and facilities are contained in the MLDC and Goal 3, Policy 1 of the Comprehensive Plan "Public Facilities Element."
- (a) Storm drainage, sanitary sewer, and water facilities must already be adequate in condition, capacity, and location to serve the property or be extended or otherwise improved to adequately serve the property at the time of issuance of a building permit for vertical construction.
 - (b) Adequate streets and street capacity must be provided in one of the following ways:
 - (i) Streets which serve the subject property, as defined in Section 10.461(2), presently exist and have adequate capacity; or
 - (ii) Existing and new streets that will serve the subject property will be improved and/or constructed, sufficient to meet the required condition and capacity, at the time building permits for vertical construction are issued; or
 - (iii) If it is determined that a street must be constructed or improved in order to provide adequate capacity for more than one proposed or anticipated development, the Planning Commission may find the street to be adequate when the improvements needed to make the street adequate are fully funded. A street project is deemed to be fully funded when one of the following occurs:
 - (a) The project is in the City's adopted capital improvement plan budget, or is a programmed project in the first two years of the State's current STIP (State Transportation Improvement Plan), or any other public agencies adopted capital improvement plan budget; or
 - (b) When an applicant funds the improvement through a reimbursement district pursuant to the MLDC. The cost of the improvements will be either the actual cost of construction, if constructed by the applicant, or the

estimated cost. The "estimated cost" shall be 125% of a professional engineer's estimated cost that has been approved by the City, including the cost of any right-of-way acquisition. The method described in this paragraph shall not be used if the Public Works Department determines, for reasons of public safety, that the improvement must be constructed prior to issuance of building permits.

- (iv) When a street must be improved under (b)(ii) or (b)(iii) above, the specific street improvement(s) needed to make the street adequate must be identified, and it must be demonstrated by the applicant that the improvement(s) will make the street adequate in condition and capacity.
- (c) In determining the adequacy of Category A facilities, the approving authority (Planning Commission) may evaluate potential impacts based upon the imposition of special development conditions attached to the zone change request. Special development conditions shall be established by deed restriction or covenant, which must be recorded with proof of recordation returned to the Planning Department, and may include, but are not limited to the following:
- (i) Restriction of uses by type or intensity; however, in cases where such a restriction is proposed, the Planning Commission must find that the resulting development pattern will not preclude future development, or intensification of development, on the subject property or adjacent parcels. In no case shall residential densities be approved which do not meet minimum density standards,
 - (ii) Mixed-use, pedestrian-friendly design which qualifies for the trip reduction percentage allowed by the Transportation Planning Rule,
 - (iii) Transportation Demand Management (TDM) measures which can be reasonably quantified, monitored, and enforced, such as mandatory car/van pools.

**Proposed Zone Change
1360 Center Drive**

INTRODUCTION

This Zone Change Application is submitted for the purpose of changing the zoning designation of a small portion of the property, in the amount of 5,689 sf from General Industrial to Regional Commercial for the purpose of accommodating the reorientation of the previously approved Wal-Mart store to provide a view corridor to the store front for northbound traffic on Highway 99. This reorientation will also orient the truck delivery and storage areas away from the frontage along Highway 99. This reorientation cannot occur without the proposed Zone Change from General Industrial to Regional Commercial. The Applicant is also filing a Remand Application for Site Plan and Architectural review that requests City approval of this reorientation. An approval of the Remand Application will be subject to an approval of this zone change request to accommodate the proposed reorientation.

Findings

10.277 Zone Change Criteria

The approving authority (Planning Commission shall approve a quasi-judicial zone change if it finds that the zone change complies with subsections (1) and (2) below:

(1) The proposed zone is consistent with the Oregon Transportation Planning Rule (OAR 660) and the General Land Use Plan Map designation. (When the City of Medford's Transportation System Plan (TSP) is adopted, a demonstration of consistency with the acknowledged TSP will assure compliance with the Oregon Transportation Planning Rule.) Where applicable, the proposed zone shall also be consistent with the additional locational standards of the below sections (1)(a), (1)(b), (1)(c), or (1)(d). Where a special area plan requires a specific zone, any conflicting or additional requirements of the plan shall take precedence over the location criteria below.

The General Land Use Plan Map (GLUP) designation for the subject area is designated as Commercial. A Zone Change to Regional-Commercial would be compatible with the GLUP Map as well as adjacent zoning.

The City of Medford's Transportation System Plan recognizes Highway 99 as a regional highway and Center Drive as a major arterial. Due to the minimal increase in trips potentially generated by the proposed zone change of 5,689 sf, there will not be a significant effect on the transportation system as defined by the Transportation Planning Rule (OAR 660-012-0060) Attached as part of these findings is a technical memorandum from Kittelson Associates dated May 14, 2008 supporting this conclusion.

This requirement is met.

RECEIVED

MAY 16 2008

Planning Dept.

CITY OF MEDFORD
COMMUNITY DEVELOPMENT
C
ZC-08-065

(c) For zone changes to any commercial zoning district, the following criteria shall be met for the applicable zoning sought:

(iii) The overall area of the C-R zoning district shall be over three (3) acres in size, shall front upon an arterial street or state highway, and shall be in a centralized location that does not otherwise constitute a neighborhood shopping center or portion thereof. In determining the overall area, all abutting property(s) zoned C-R shall be included in the size of the district. The C-R zone is ordinarily considered to be unsuitable if abutting any residential zones, unless the applicant can show it would be suitable pursuant to (1)(e) below.

The area to be changed in the amount of 5,689 sf is currently zoned General Industrial (I-G) but located adjacent to Regional Commercial (R-C) zoned parcels. The abutting parcels zoned C-R, comprising the Wal-Mart site of 17.16 acres, exceed the required 3 acre area requirement for the overall C-R district. This area or district fronts both an arterial street and a State highway. Additionally, there are no abutting residential zones, and therefore the proposed C-R zone is considered to be suitable under this criterion.

This requirement is met.

(2) It shall be demonstrated that Category A urban services and facilities are available or can and will be provided, as described below, to adequately serve the subject property with the permitted uses allowed under the proposed zoning, except as provided in subsection (c) below. The minimum standards for Category A services and facilities are contained in the MLDC and Goal 3, Policy 1 of the Comprehensive Plan "Public Facilities Element."

(a) Storm drainage, sanitary sewer, and water facilities must already be adequate in condition, capacity, and location to serve the property or be extended or otherwise improved to adequately serve the property at the time of issuance of a building permit for vertical construction.

The required utilities are located adjacent to the subject area (within Highway 99 and Center Drive and are adequate to serve the property and its intended use). When necessary, the utilities will be extended to service the future development of the Wal-Mart store. The required approvals and permits will be secured prior to construction.

This requirement is met.

(b) Adequate streets and street capacity must be provided in one of the following ways:

(i) Streets which serve the subject property, as defined in Section 10.461(2), presently exist and have adequate capacity; or

The City's Land Development Code recognizes that certain "de minimus" requests to amend the zoning designation of property does not require a Traffic Impact Analysis (TIA) to determine whether adequate streets and street capacity exists to accommodate

the requested change in zone. Specifically, Section 10.461 (3), provides that a TIA is only necessary if the application generates 250 or more net new average daily trips. If the requested zone change does not generate 250 or more net new average daily trips, a TIA is not required to determine if the proposal will significantly impact the street system. The City Public Works Department has determined that the proposed de minimus zone change request does not generate 250 or more net new average daily trips. As a result, pursuant to Section 10.461 (3), a TIA is not required.

This requirement is met.



KITTELSON & ASSOCIATES, INC.

TRANSPORTATION ENGINEERING / PLANNING

610 SW Alder Street, Suite 700, Portland, OR 97205 503.228.5230 503.273.8169

MEMORANDUM

Date: May 14, 2008 **Project #:** 9226

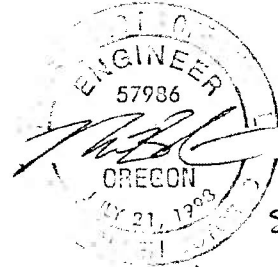
To: Sean Mallon
Pacland
1505 Westlake Avenue N, Suite 305
Seattle, WA 98109

Cc: Greg Hathaway – Davis Wright Tremaine

From: Chris Tiesler & Marc Butorac, P.E., P.T.O.E.

Project: Zone Change Application: Transportation Planning Rule Analysis

Subject: Transportation Planning Rule Analysis



S/14/08

12/31/09

This memorandum summarizes the anticipated traffic impacts associated with the proposed zone change of a small portion of land behind the proposed Wal-Mart development located on Center Drive in Medford, Oregon. Based on the analysis contained in this memorandum, the proposed zone change will not have a significant effect on the transportation system as defined by the Transportation Planning Rule (Oregon Administrative Rule 660-012-0060).

BACKGROUND

The development approval for the Center Drive Wal-Mart site was based in part on the January 2004 *Center Drive Retail Center Transportation Impact Analysis* report prepared by Kittelson & Associates, Inc. Since the original approval, the site plan has been modified, reducing the overall square-footage of the store and reorienting the building to face south. The reorientation of the building has resulted in a small portion (5,689 square-feet) of the northeast corner of the building to extend into land currently zoned *General Industrial*. The proposed zone change seeks to rezone this small piece of land to *Regional Commercial* to match the zoning designation of the remainder of the site.

TRANSPORTATION PLANNING RULE COMPLIANCE

The following section evaluates the compliance of the proposed land use action with the TPR.

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MAY 16 2008

Planning Dept.

EXHIBIT D
2C-08-065

6

Transportation Plan Rule

OAR Section 660-12-0060 of the Transportation Planning Rule (TPR) sets forth the relative criteria for evaluating plan and land use regulation amendments. Table 2 below summarizes the criteria in Section 660-012-0060 and their applicability to the proposed rezone application.

**Table 1
 Summary of Criteria in OAR 660-012-0060**

Section	Criteria	Applicable?
1	Describes how to determine if a proposed land use action results in a significant impact.	See response below
2	Describes measures for complying with Criteria #1 where a significant impact is determined.	No
3	Describes measures for complying with Criteria #1 and #2 without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility	No
4	Determinations under Criteria #1, #2, and #3 are coordinated with other local agencies.	No
5	Indicates that the presence of a transportation facility shall not be the basis for an exception to allow development on rural lands.	No
6	Indicates that local agencies should credit developments that provide a reduction in trips.	No
7	Outlines requirements for a local street plan, access management plan, or future street plan.	No
8	Provides guidelines for mixed-use, pedestrian-friendly neighborhood	No

As noted in Table 2, there are eight criteria that apply to Plan and Land Use Regulation Amendments. Of these, Criterion #1 is applicable to the proposed land use action. The relevant portion of this criterion is provided below in italics with our response shown in standard font.

(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:

Response: The proposed rezone will not change the underlying comprehensive plan designation. The City's Transportation System Plan is based upon the comprehensive plan; therefore, the proposed zone change will not have a significant affect as defined by

the Transportation Planning Rule since the zone change brings the property into compliance with the existing *Commercial* Comprehensive Plan designation.

Based on the findings documented in this section, the proposed zoning amendment to modify the 5,689 square-feet from its current *General Industrial* zoning designation to the proposed *Regional Commercial* zone designation complies with the Transportation Planning Rule and related policies of the Oregon Highway Plan.

CONCLUSION

Based on the results of this analysis, the proposed rezoning of the development will not have a significant effect on the surrounding transportation system as defined by the Transportation Planning Rule (OAR 660-012-0060).

We trust that this memorandum addresses all of your questions and concerns regarding the traffic impacts associated with the proposed zone change amendment. Please call us if you have any questions.

CITY OF MEDFORD
INTER - OFFICE MEMORANDUM

TO: Planning Department
FROM: Engineering Division
SUBJECT: Zone Change Request, File No. ZC-08-065
DATE: June 13, 2008

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JUN 18 2008
PLANNING DEPT.

1. Sanitary Services:

A. Currently serviced by: This site lies within the Rogue Valley Sewer Service area. Contact Rogue Valley Sewer Service for sanitary sewer issues.

2. Streets:

A. Current condition of nearest streets:

Pacific Highway, an existing State Highway is paved with curb and gutter along the frontage of this site.

Center Drive, an existing Major Arterial Street is paved with curb and gutter along the frontage of this site.

B: Who has maintenance responsibilities:

Pacific Highway - Oregon Department of Transportation
Center Drive - City of Medford

C: Traffic analysis including potential impact of nearby and anticipated improvements required:

Land Development Code Section 10.461 governs traffic impact analyses (TIA) required to determine development impacts on the street system. The proposed zone change from City I-G (General Industrial) to City C-R (Regional Commercial), on 0.13 acres has the potential to generate 195 average daily trips (ADT) or produce a net increase of 169 ADT to the transportation system. Based on this and code sections 10.460 and 10.461, a traffic impact analysis (TIA) isn't required.

3. Drainage:

This site lies within the Bear Creek South Drainage Basin. The City's current Drainage Master Plan indicates improvements are required in the downstream storm drainage system to meet current design standards for this basin. As a zone change is not allowable without adequate storm drain facilities, one of the following criteria must be met prior to issuance of a development permit or a building permit:

- a) An engineer registered in the State of Oregon shall prepare a report which includes testing, plans and calculations necessary to demonstrate a controlled storm water release of no more than 0.25 C.F.S. per acre of development for the 10-year storm. The report shall be submitted to the City of Medford Engineering Division for review and approval.



BOARD OF WATER COMMISSIONERS

Staff Memo

TO: Planning Department, City of Medford
FROM: Rodney Grehn P.E., Water Commission Staff Engineer
SUBJECT: ZC-08-065
PROJECT: Consideration of a change of zone from I-G (General Industrial) to C-R (Regional Commercial) of a 0.13 acre piece of property for the purpose of accommodating the reorientation of the previously approved Wal-Mart store (AC-03-182) located on the west side of Center Drive and the east side of South Pacific Highway, approximately 400 feet north of Belknap Road, within a C-R (Regional Commercial) and I-G (General Industrial) zoning districts; Wal-Mart Real Estate Business Trust, Applicant (PACLAND, Agent). Carly Meske, Planner

PARCEL ID: 371W31A TL 1406

DATE: June 17, 2008

I have reviewed the above plan authorization application as requested. Conditions for approval and comments are as follows:

COMMENTS

1. The water facility planning/design/construction process will be done in accordance with the Medford Water Commission (MWC) "Regulations Governing Water Service" and "Standards For Water Facilities/Fire Protection Systems/Backflow Prevention Devices."
2. All parcels/lots of proposed property divisions will be required to have metered water service prior to recordation of final map, unless otherwise arranged with MWC.
3. The MWC system does have adequate capacity to serve this property.
4. MWC-metered water service does not exist to this property.
5. Access to MWC water lines for connection is available. Nearest existing water lines are located in Centr Drive and South Pacific Highway, both water lines are 12" diameter.

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JUN 18 2008

PLANNING DEPT.

CITY OF MEDFORD
EXHIBIT # **F**
File # **ZC-08-065**



City of Medford
 200 S. Ivy Street, Room #257
 Medford, OR 97501
 Phone: 774-2300; Fax: 541-774-2514;
 E-mail www.fire@ci.medford.or.us

RECEIVED
JUN 18 2008
PLANNING DEPT.

LAND DEVELOPMENT REPORT - PLANNING

To: Carly Meske

LD Meeting Date: 06/18/2008

From: Patterson, John

Report Prepared: 06/17/2008

File #: ZC - 08 - 65

Site Name/Description: Wal-Mart store

Consideration of a change of zone from I-G (General Industrial) to C-R (Regional Commercial) of a 0.13 acre piece of property for the purpose of accommodating the reorientation of the previously approved Wal-Mart store (AC-03-182) located on the west side of Center Drive and the east side of South Pacific Highway, approximately 400 feet north of Belknap Road, within a C-R (Regional Commercial) and I-G (General Industrial) zoning districts; Wal-Mart Real Estate Business Trust, Applicant (PACLAND, Agent). Carly Meske, Planner

DESCRIPTION OF CORRECTIONS	REFERENCE
<u>Approved as Submitted</u> Meets Requirement: No Additional Requirements	

Development shall comply with access and water supply requirements in accordance with the Fire Code in affect at the time of development submittal.

Fire apparatus access roads are required to be installed and made servicable prior to the time of construction. Water supply for fire protection is required to be installed and made serviceable prior to the time of vertical combustibile construction.

Specific fire protection systems may be required in accordance with the Oregon Fire Code.

This plan review shall not prevent the correction of errors or violations that are found to exist during construction. This plan review is based on the information provided only.

Design and installation shall meet the Oregon requirements of the IBC, IFC, IMC and NFPA standards.

CITY OF MEDFORD
 EXHIBIT # **16**
 File # **ZC-08-065**



ROGUE VALLEY SEWER SERVICES

Location: 138 West Vilas Road, Central Point, OR • Mailing Address: P.O. Box 3130, Central Point, OR 97502-0005
Tel. (541) 664-6300, Fax (541) 664-7171 • www.RVSS.us

June 9, 2008

City of Medford Planning Department
411 West 8th Street
Medford, Oregon 97501

Re: ZC-08-065 Wal Mart Zone Change (371W31A-1406)

ATTN: Carly

The subject property is currently served by a connection to the 8 inch sewer main on Center Drive. The proposed zone change will not affect these services. There is adequate capacity to serve the proposed use.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl Tappert".

Carl Tappert, PE
District Engineer/Assistant Manager

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JUN 18 2008
PLANNING DEPT

CITY OF MEDFORD
EXHIBIT # **H**
File # **ZC-08-65**

Carly A. Meske

From: PYLES David [David.PYLES@odot.state.or.us]
Sent: Wednesday, June 25, 2008 4:19 PM
To: Carly A. Meske
Cc: FLETCHER David A * ODOT; HUGHES Ronald H * Ron; FITZGERALD William
Subject: ODOT notice acknowledgement: ZC-08-065 (Wal-Mart Supercenter at Center Drive / OR-99)

Carly:

The Oregon Department of Transportation appreciates the opportunity to review the noticed Wal-Mart Real Estate Business Trust request for a change of zone (file no. ZC-08-065) from I-G (General Industrial) to C-R (Regional Commercial) for a 0.13-acre piece of property for the purpose of accommodating the reorientation of the previously approved Wal-Mart store (cross reference city file no. AC-03-182). The subject property is located on the west side of Center Drive and the east side of South Pacific Highway (OR-99), approximately 400 feet north of Belknap Road, and is legally described as Assessor's Map 37-1W-31A, Tax Lot 1406. The applicant proposes two local street accesses to South Pacific Highway. We understand this project is not required to provide a capacity performance traffic impact study pursuant to Section 10.461 of the city's Municipal Code, as the trip generation does not generate 250 or more net new average daily trips. We understand the effect of the proposed zone change is *de minimus*, with respect to public transportation facilities, per the Findings of Fact.

We have no comment on ZC-08-065. The proposed zone change is not anticipated to trigger a "significant affect" per Oregon's Transportation Planning Rule (OAR 660-012-0060). However, we do anticipate submitting comments on the related AC-03-182 site plan review application, to address proposed access to South Pacific Highway. Please enter this correspondence into the project record. Please copy me on the city's final decision.

Thank you for noticing ODOT Development Review. We look forward to working with the city of Medford on future projects. Please contact me at (541) 774-6399, if you have comments, questions or require additional information regarding this correspondence. Thank you.

Sincerely,

David J. Pyles | Development Review Planner III
The ODOT Region 3 / District 8 | 100 Antelope Rd. | White City, OR 97503
☎: (541) 774.6399 | 📠: (541) 774.6349 | ✉: David.Pyles@odot.state.or.us

RECEIVED
JUN 25 2008
PLANNING DEPT.

CITY OF MEDFORD
EXHIBIT **I**
File # **ZC-08-065**

6/25/2008

Zoning Map

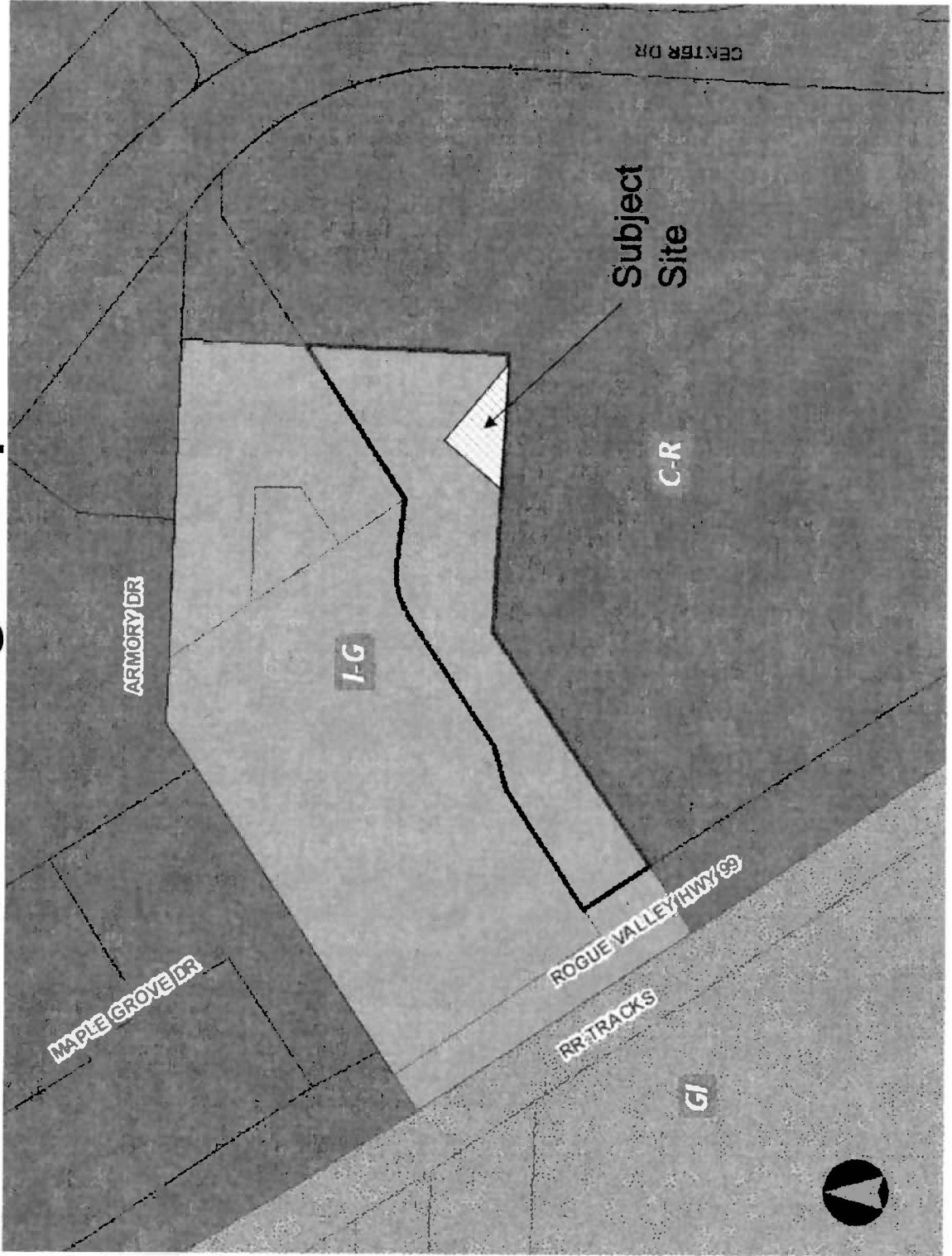
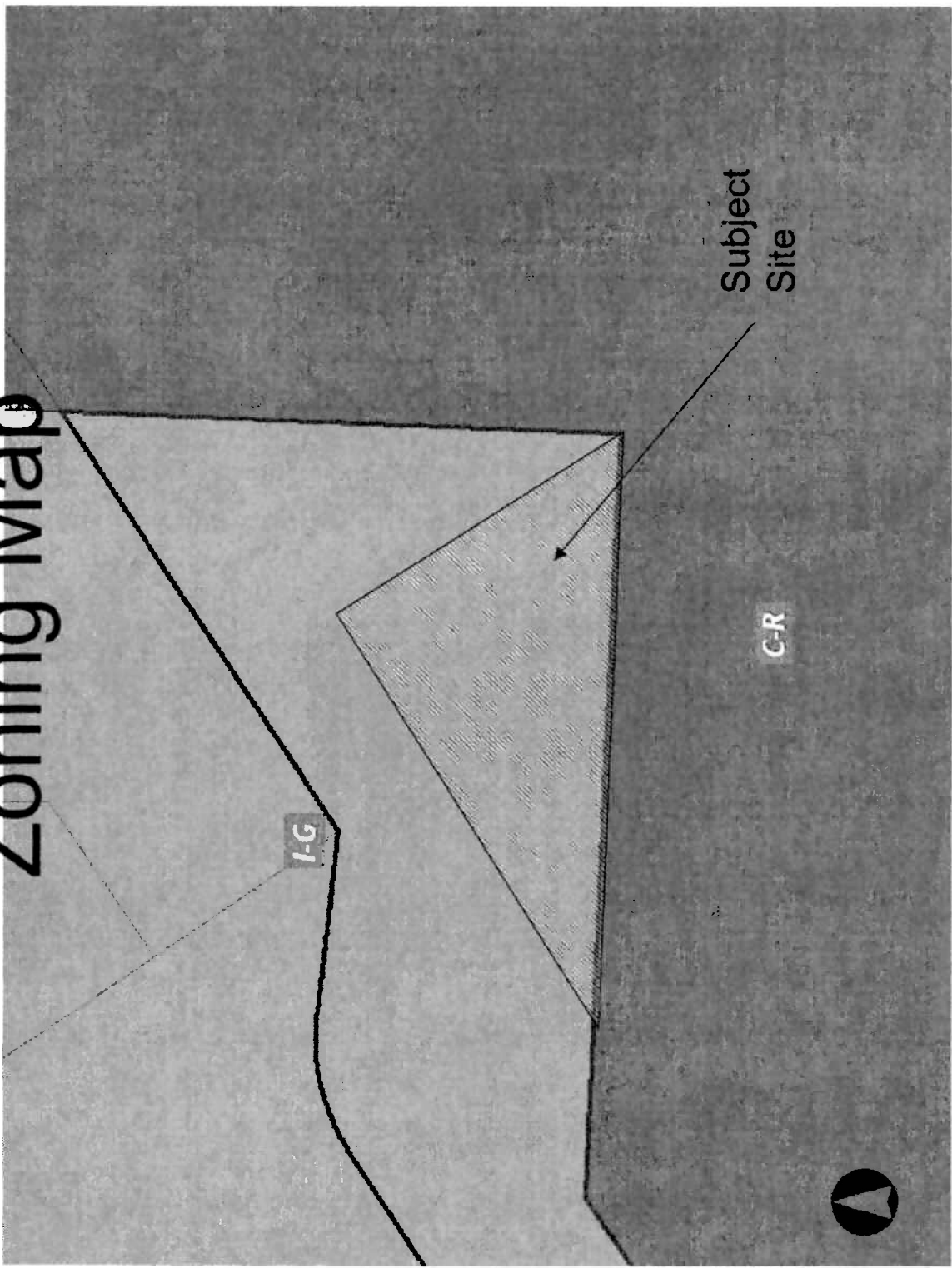


EXHIBIT # 413
2008-05

Zoning Map



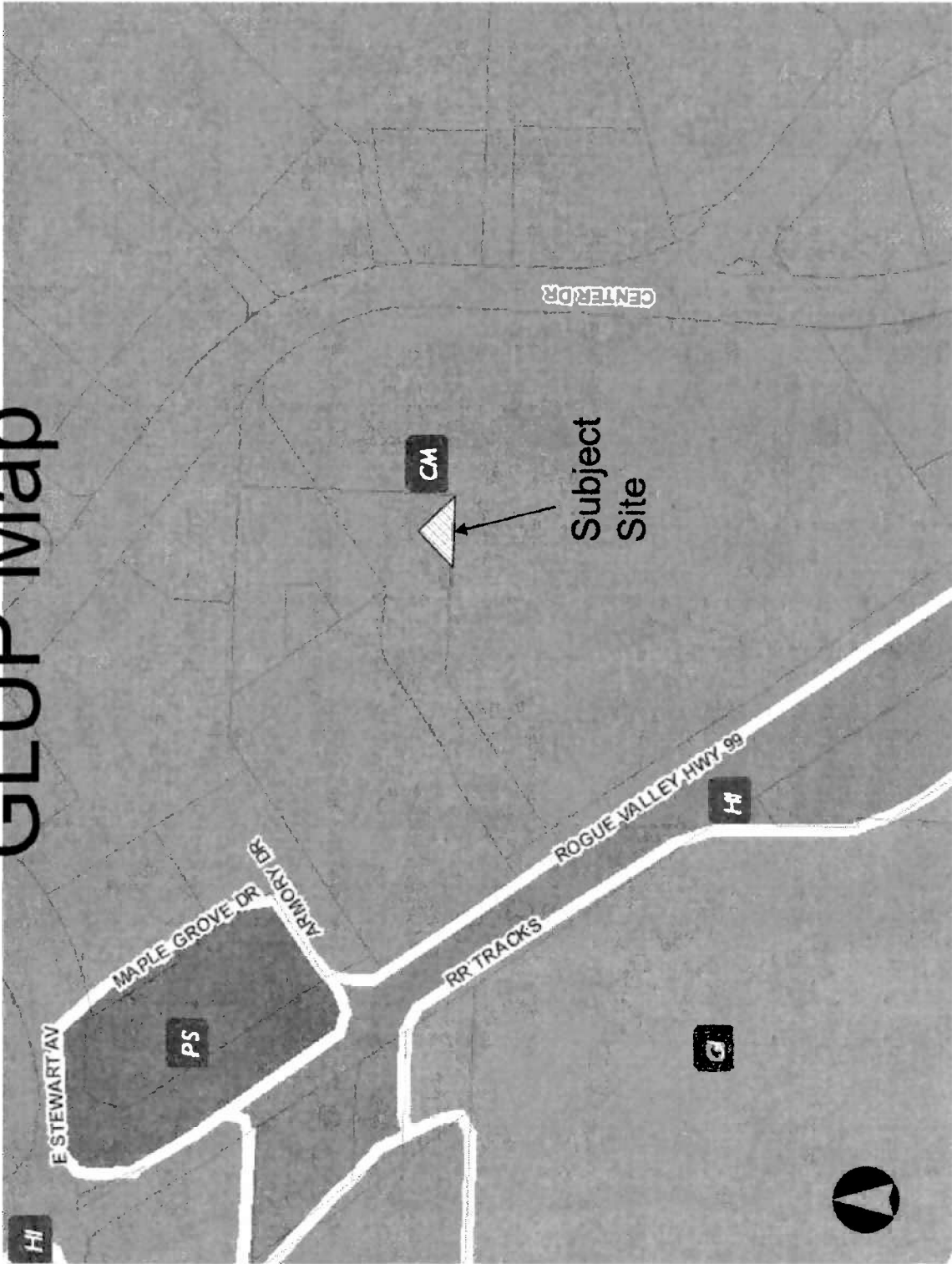
Subject Site

C-R

I-G

CITY OF MOBILE, ALA.
EXHIBIT # JK 2/3
File # 20-08-65

GLUP Map



CITY OF MEDFORD
EXHIBIT # 20-08-165
File # 20-08-165

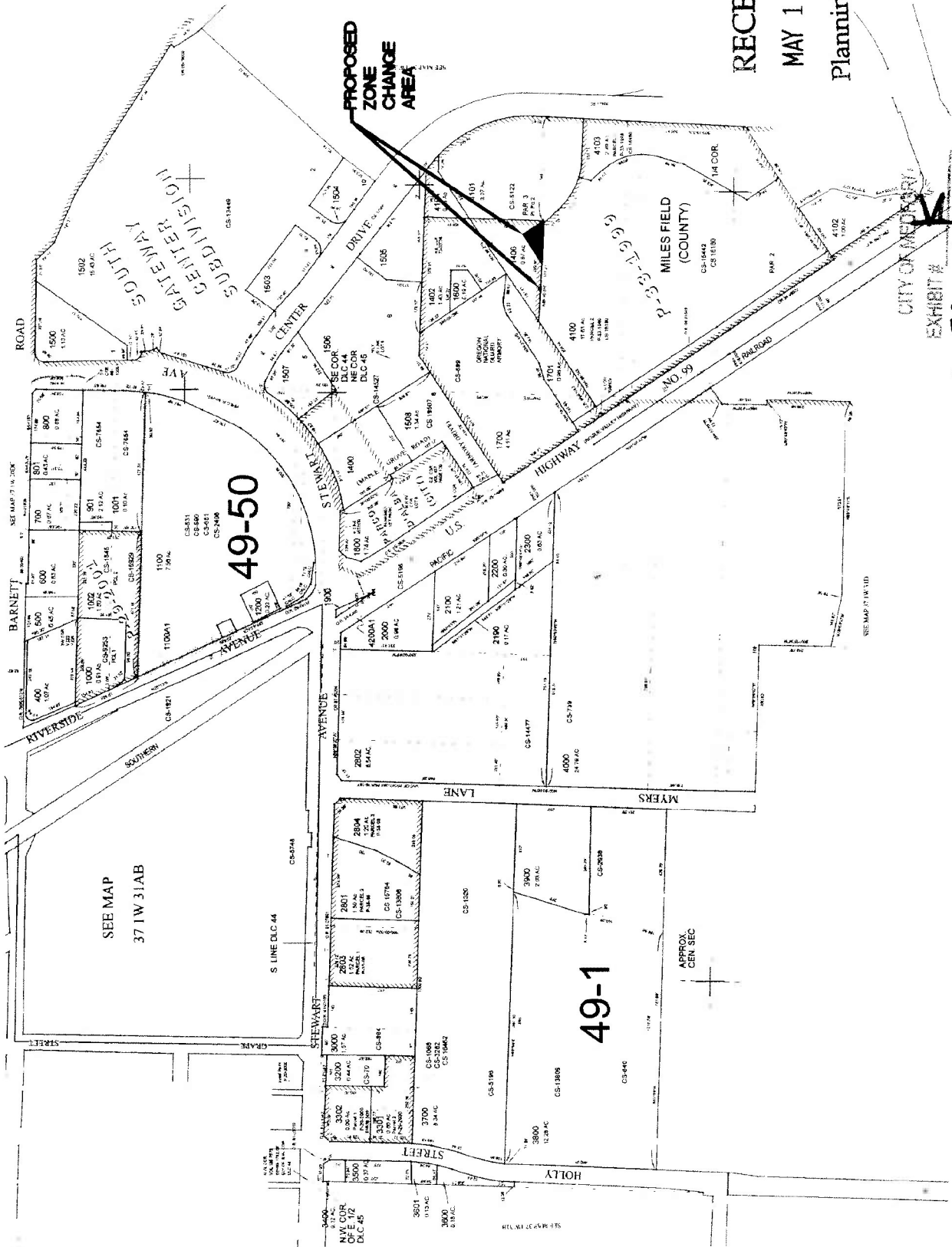
37 1W 31A
MEDFORD

N.E. 1/4, SEC. 31, T.37S., R.1W., W.M.
JACKSON COUNTY

1" = 200'

FOR ASSESSMENT AND
TAXATION ONLY

CASE/SECTION
LOT NUMBERS
2008 ASSESSED (12/31/08)
400833
0808A1



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MAY 16 2008
Planning Dept.

37 1W 31A
MEDFORD

DATE CONFERRED MAY 16 2008
REV. NOVEMBER 08 2007

CITY OF MEDFORD
EXHIBIT # **4**
File # **ZC-08-065**

To: The Medford Planning Commission
From: Medford Citizens For Responsible Development
Date: 10 July, 2008
Re: Wal-Mart application file: ZC-08-065

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JUL 10 2008
PLANNING DEPT.

1. Notice – Citizens for Responsible Development did not receive notice. We only learned this afternoon of this hearing. We request continuance of 14 days to consider the application and the staff report.

2. Applicants have not addressed the City's Zone change criteria.

10.227(1)(e) - criteria for approving change adjacent to other zones. Applicant has not demonstrated that the property is suitable for a zone change according to the criteria set forth.

10.227(2) - urban services must be available now - not in the future. No demonstration that urban services are available. Applicant must demonstrate this now not later or through the imposition of conditions.

10.227(2)(b) – There has been no demonstration that streets are of adequate capacity to handle new load from Wal-Mart – The applicant and city can't just cut up the projected peak loads and allocate only a portion to this parcel. Again, capacity must be demonstrated now.

10.227(2)(c) There is no demonstration that new peak loads for utilities and streets can be managed through imposition of conditions.

3. Traffic Impact

10.227(2) requires that the following code sections be addressed:

10.461 applies and this property must be considered along with the primary application AC-03-182. The city has never adequately explained or produced findings that explain why this section does not apply to this application or related applications.

10.462 applies - there has been no analysis or determination that Level D service exists or will be maintained in connection with this application. The de minimus impact concept is not responsive to this criteria.

4. Public and Private Utilities

To satisfy 10.227(2) the applicant must demonstrate that the zone change can meet the public and private utility requirements in the code:

10.485 - Storm sewers

10.490 - Sanitary sewers

10.555 - Private underground facilities.

They have not done this.

CITY OF MEDFORD
EXHIBIT # 1
File # ZC-08-065

5. This zone change application really amounts to a modification of the main application and should be processed along with the review of that application before the SPAC. The zone change is premature absent a determination by the city the proposed Wal-Mart will require the rezoning. Otherwise there is no "use" associated with this parking area. Parking alone does not appear to be a permitted use in the CR zone - unless it is associated with another permitted use.

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JUL 16 2008

PLANNING DEPT.

From: MARK W SCHARFF [mailto:deadroque@msn.com]
Posted At: Wednesday, July 16, 2008 5:41 AM
Posted To: Department Email
Conversation: Wal-Mart
Subject: Wal-Mart

To Whom it May Concern:

My name is Mark W. Scharff and I am a homeowner at 240 Charlotte Ann Road, which is approx. 1/4 mile from the proposed site of the next Wal Mart. I find it irresponsible, and unacceptable that the planning commission is not at the least requiring a traffic analysis at this site, and in the best interest of Medford requiring a business impact study. There have been some major changes since the time of Wal Marts original application, the stress of having to deal with a major traffic intersection that will be the main arterial from I-5. Our neighborhood is a quiet neighborhood, and we are all concerned about the traffic generated by the new freeway interchange, but to consider adding a Wal Mart to an area that has a multitude of stores, the Armory, major industry, car lots, residential, sports fields, and golf courses (there are 3 right in this area alone) is an inexcusable action and should not be allowed to go forth. Wal Mart has plenty of areas that would welcome them, but this is not one of them. Wal Mart sucks jobs away from responsible business, pays little attention to its neighbors, supports the trade imbalance, and is a union busting business. I don't want a Wal Mart in our neighborhood, I don't need a Wal Mart, and I will protest a Wal Mart in my neighborhood. I sincerely hope that the commission is not being enticed by monetary gain from the taxes that should be paid by Wal Mart, that is a small price for them to pay when you consider the negative effect Wal Mart will have on the surrounding community.

Sincerely, Mark W. Scharff
240 Charlotte Ann Road
Medford, OR 97501
(541)245-1146
deadroque@msn.com

CITY OF MEDFORD
EXHIBIT # M
File # ZC-08-065

Carly A. Meske

From: Annette Lynn [annette.lynn@gmail.com]
Posted At: Thursday, July 17, 2008 1:41 PM
Conversation: In HIGH FAVOR of Walmart
Posted To: Department Email
Subject: In HIGH FAVOR of Walmart

RECEIVED
JUL 17 2008
PLANNING DEPT.

To whom it may concern;

My husband and I are in strong favor of the zoning change for the new proposed super walmart in south Medford.

When i was 16 years old, i instigated a service project to paint the Ashton City Pool. I gathered friends to participate and called the nearest walmart--45 minutes away--to find out if i could get the proper paint there. Walmart told me they would be happy to assist my service project and supply the paint free of charge. It takes a lot to impress a teenager, but walmart did just that by caring about the only city amenity in a town of 1,000 people.

My husband and I moved to Medford 6 months ago. When we evaluated the change of state, we looked for several of the usual retailers and thought that walmart would be a given. When we got here we were both surprised there was not a super center in sight or a Sam's Club--both of which were cores to our way of life. In our last location, there was a super walmart 5 miles to the north and a superwalmart 10 miles to our south. I never observed traffic conflicts or community outrage at these stores. I am grateful to walmart for inventing true one-stop shopping.

My husband and i purchased a home on the south west side, and love it dearly. The major thing the south side lacks however is a low price box store. I do not accept the current Fred Meyer for this category because their prices are too high on all items except clearances tables.

I urge the planning commission to give walmart every green light possible. I applaud your request for the upscale exterior. I wish the planning commission would allow them to put a jumbo sized store because in these economic conditions, i can only afford walmart prices! I realize that Medford is not influenced by a sales tax revenue that walmart would bring in. I also realize that walmart is the #3 corporate giver and when you add the Walton family to those numbers, they give more than Bill Gates. Our community could use store like that. Our community appreciates corporate giving. Yes i realize that we have mini walmarts in costco's parking lot and Talent, but this would be good development in South Medford. A small walmart is like riding in coach on delta--ultimately you get there. A supercenter is like having riding on the corporate jet.

Pleaseeeeee--ignore the citizen organization united in speaking louder than the majority. I think the majority don't mind or would be pleased with the addition.

Sincerely,
Jeff and Annette Lynn
8013614376 cell

CITY OF MEDFORD
EXHIBIT # N
File # ZC-08-065

Carly A. Meske

From: Sarah K. Sousa
Sent: Thursday, July 17, 2008 8:00 AM
To: Carly A. Meske
Subject: FW: Walmart in Southgate.

-----Original Message-----

From: Cheryl A. Adams
Sent: Thursday, July 17, 2008 7:58 AM
To: Nancy H. Abrahamson; Sarah K. Sousa
Subject: FW: Walmart in Southgate.

RECEIVED
JUL 17 2008
PLANNING DEPT.

Cheryl Adams
City of Medford Planning Department
Office Administrator

-----Original Message-----

From: Gene Treat [mailto:gtreat@charter.net] Posted At: Wednesday, July 16, 2008 8:40 PM Posted To: Department Email
Conversation: Walmart in Southgate.
Subject: Walmart in Southgate.

Members of the City Planning Commission;

Wal-Mart made a good faith purchase of property with the stated intention of building a Super Center Store thereon. They advertised this, loud and long, and have jumped through the endless hoops required. Your own rules do not require an additional traffic study for this deminimis zone change unless it will generate an additional 250 vehicle trips daily. Wal-Mart has demonstrated that only a minor addition of 169 vehicle trips will be generated by this change. Don't you think that it is time for you to listen to the voices of the People who are anxiously awaiting construction of this much needed addition to our City, instead of giving so much weight to the special interest groups who are throwing their weight around?

Give Wal-Mart the green light and let the new Store be built

Gene J. Treat.

CITY OF MEDFORD
EXHIBIT #
File # 20-08-065

BEFORE THE PLANNING COMMISSION
FOR
THE CITY OF MEDFORD OREGON

RECEIVED

JUL 24 2008

PLANNING DEPT.

Consideration of a change of zone from I-G (General Industrial) to C-R (Regional Commercial) for 5,689 square feet of property for the purpose of accommodating the reorientation of the previously approved Wal-Mart store (AC-03-182)

Applicant: Wal-Mart Real Estate Business Trust (PACLAND, Agent).

WAL-MART'S
WRITTEN CLOSING
STATEMENT

ZC-08-065

I. INTRODUCTION

The proposed zone change from I-G (General Industrial) to C-R (Regional Commercial) (the "Application") is necessary to facilitate the reorientation of a previously approved Wal-Mart store. Wal-Mart (the "Applicant") chose to reorient the store in response to feedback received from City decision-makers and staff, as well as concerned citizens, that the storefront should face south so as to be visible to those driving north on Highway 99. To accomplish this reorientation, Wal-Mart has proposed to reduce the size of the previously approved store by approximately 30,000 square feet. This zone change request is necessary since a small portion of the reoriented building (5,689 sq. ft.) is located within the I-G zone. Wal-Mart has submitted a revised site plan (AC-03-182) to the Site Plan and Architectural Commission ("SPAC") depicting this reorientation. SPAC tentatively approved the revised site plan on July 18, 2008 and conditioned its approval on the Planning Commission's approval of this zone change request.

Because the current General Land Use Plan Map (GLUP) designation is C-R, the zone change has the added benefit of reconciling the existing inconsistency between the zoning map and GLUP map designations.

The evidence in the record strongly supports the recommendation of approval contained in the June 27, 2008 Staff Report (the "Staff Report"). The Staff Report concludes that the Applicant has demonstrated that all of the applicable criteria have been satisfied. Notwithstanding staff's recommendation and conclusions, Medford Citizens for Responsible Development ("MCRD") has asserted that several criteria have not been satisfied. What follows is the Applicant's response to MCRD's assertions, and a demonstration that all of the applicable criteria have been satisfied.

II. RESPONSE TO LAND USE ISSUES RAISED BY OPPONENTS

The Medford Citizens for Responsible Development provided a memorandum dated July 10, 2008 (the "MCRD Memorandum") in which they asserted that several criteria had not been satisfied. Although this opposition is curious given that MCRD was one of the voices requesting reorientation, more importantly, the assertions are incorrect. In fact, all the criteria have been satisfied, as discussed below.

A. Medford Municipal Code Section 10.227(1)(e)

The assertion by MCRD that the Applicant failed to demonstrate compliance with Medford Municipal Code (MMC) 10.227(1)(e) is inconsistent with the MMC and unfounded. MMC 10.227(1)(c) provides that the C-R zone is generally considered to be unsuitable to abut either a residential or I-H zone. If the proposed zone change abuts either of these zones, however, the applicant may demonstrate suitability through

compliance with the criteria located in MMC 10.227(1)(e). In this situation, the proposed C-R zone would not abut either a residential or I-H zone. Therefore, the criteria in MMC 10.227(1)(e) do not apply.

B. Medford Municipal Code Section 10.227(2)

The MCRD Memorandum asserts that pursuant to MMC 10.227(2) urban services must be available now rather than the Applicant demonstrating that urban services will be available prior to commencing the use for which the zone change is sought. This assertion is inconsistent with what the code requires. MMC 10.227(2) requires a demonstration that “urban services and facilities are available or *can and will be provided*” (emphasis added). There is no requirement that all public facilities be available at the time of the application. This argument is further bolstered by MMC 10.227(2)(a), which specifically provides that storm drainage, sanitary sewer, and water facilities must “adequately serve the property at the time of issuance of a building permit for vertical construction.” The code specifically contemplates that adequate public facilities and services can be made a condition of approval to be satisfied prior to receiving a building permit.

Even if the applicant were required to demonstrate that all public facilities and services are available and adequate to serve the property, the evidence in the record supports that conclusion. As specified in the Application narrative, all necessary utilities are adequate to serve the property and are located adjacent to the property. When appropriate, those utilities will be extended to serve the property. A June 17, 2008 memo from the Board of Water Commissioners, attached as Exhibit F to the Staff

Report, confirms that there is adequate capacity and availability of water to serve the site. Likewise, a letter from Rogue Valley Sewer Services, dated June 9, 2008, and attached as Exhibit H to the Staff Report, confirms that sewer service is available and adequate to serve the proposed use. Finally, e-mail correspondence from Doug Burroughs, City of Medford Engineer, dated July 8, 2008, indicates that based on a preliminary review, the storm drainage plan appeared to be acceptable. There is absolutely no basis for MCRD's assertion that the application has not demonstrated compliance with MMC 10.227(2).

C. Medford Municipal Code Section 10.227(2)(b)

The MCRD Memorandum erroneously asserts that there has been no demonstration of adequate streets and street capacity as required by MMC 10.227(b). MMC 10.461(3) provides that a TIA is required only when the requested zone change has the potential of generating more than 250 net average daily trips (ADT). As determined by the City of Medford Engineering Division in a memo dated June 13, 2008, and attached as Exhibit E to the Staff Report, the proposed zone change has the potential of generating a net increase of no more than 169 ADT. Because the 250 ADT threshold is not met, no TIA is required to evaluate the impacts to the transportation system. Therefore, due to the minimal impact created by the additional traffic, existing streets provide adequate capacity to accommodate the zone change.

D. Medford Municipal Code Section 10.227(2)(c)

Contrary to the assertions contained in the MCRD Memorandum, no conditions are necessary in order to determine the adequacy of urban facilities and services. The

Applicant demonstrated that adequate facilities and services exist without special development conditions, and thus there is no need for additional conditions. As discussed in Section B above, all urban facilities and services are available and adequate to serve the proposed commercial zone.

E. Medford Municipal Code Section 10.461 and 10.462

MMC 10.461 specifies that a TIA is required when a proposed application has the potential of generating more than 250 ADT. As discussed in Section C above, this zone change application does not meet that threshold. Therefore, based on the plain language of MMC 10.461, a TIA is not required for this application.

The MCRD Memo seems to argue that the ADT calculation for this zone change request should include the trips from the site plan application that is currently under review by SPAC, as referred to above. This argument is not supported by the facts nor the applicable criteria surrounding these two distinct applications. SPAC is reviewing modifications to a site plan for a Wal-Mart store that has already been approved, and which is subject to certain applicable legal criteria. The zone change request is subject to its own set of applicable legal criteria, including MMC 10.461 (3) that does not require a TIA if the application does not generate more than 250 ADT (as is the case here).

MMC 10.462 states that development is not permitted whenever level of service is determined to be below level D for arterials and collectors. The only manner in which to determine level of service is through the TIA. Because a TIA is not required in this case, level of service was not calculated and MMC 10.462 is therefore not implicated. The requirement of providing a TIA is a prerequisite to the need to

determine whether the level of service is adequate. It is implied within MMC 10.461(3) that unless the project has the potential of generating in excess of 250 ADT, the impacts to the transportation system are minimal enough that a TIA is not required.

F. The applicant must demonstrate that the zone change can meet the public and private utility requirements in the code.

MCRD asserts that the Applicant has not demonstrated that the zone change can meet the public and private utility requirements in MMC. As discussed in Section B above, all public and private utilities will be provided consistent with the code requirements. The respective City utility departments have evaluated the application and determined that adequate facilities are available. The public improvement standards contained in MMC 10.485, 10.490, and 10.555 will be enforced at the time building permits are issued as permitted by the code.

G. MCRD asserts that the zone change should be processed by SPAC in conjunction with the site plan application.

MMC 10.227 states that the Planning Commission is the approving authority for a quasi-judicial zone change. Consistent with the Code, the Applicant has submitted this application to the Planning Commission for approval. Although this zone change will facilitate the orientation of the Wal-Mart store currently under review by SPAC, the City code contemplates independent processes as detailed in MMC 10.225 and 10.285. The site plan review and approval may be conditioned on zone change approval, but consistent with the Code, SPAC has no jurisdiction to review and approve zone change applications.

VI. CONCLUSION

The Applicant respectfully requests the Planning Commission adopt the recommendation in the Staff Report and approve the proposed zone change. The motivation of MCRD in opposing this application is questionable given the fact that the same group was previously in favor of the reorientation. Questionable motives aside, the issues raised by the MCRD Memo are not supported by the Code or the evidence in the record. The Applicant has addressed every issue that has been raised and has demonstrated that either there is no merit in the issues as a matter of law or that there is substantial evidence supporting a conclusion that the Applicant has satisfactorily addressed each issue and met its burden of proof.

We respectfully request the Planning Commission adopt the Staff Report recommendation and the proposed Findings of Fact and Conclusions of Law attached to this Written Closing Statement.

Thank you for your consideration.

DATED: July 24, 2008.

Respectfully submitted,
DAVIS WRIGHT TREMAINE

By: 

Gregory S. Hathaway, OSB #73124
Jeff N. Evans, OSB #03587
Attorneys for Applicant

**BEFORE THE PLANNING COMMISSION
FOR THE CITY OF MEDFORD
JACKSON COUNTY, OREGON**

IN THE MATTER OF A ZONE CHANGE THAT) AFFECTS A 0.13 ACRE PIECE OF LAND FOR) THE PURPOSE OF ACCOMMODATING THE) REORIENTATION OF THE PREVIOUSLY) APPROVED WAL-MART STORE)	FINDINGS OF FACT AND CONCLUSIONS OF LAW
Applicant: Wal-Mart Real Estate) Business Trust)	

1 APPLICATIONS and PROJECT DESCRIPTION

1.1 AUTHORIZATIONS SOUGHT BY APPLICANT

Applicant Wal-Mart Real Estate Business Trust seeks approval to amend the City of Medford Zoning Map to change the zoning of a 0.13 acre piece of property from I-G (General Industrial) to C-R (Regional Commercial). The zone change is intended to accommodate the reorientation of the previously approved Wal-Mart store (AC-03-182) located on the west side of Center Drive and the east side of South Pacific Highway, approximately 400 feet north of Belknap Road.

1.2 OVERVIEW OF THE PROPOSED PROJECT

The proposed zone change is intended to accommodate the reorientation of the previously approved Wal-Mart store. The Applicant has submitted a revised site plan (AC-03-182) to the Site Plan and Architectural Commission ("SPAC") depicting this reorientation. SPAC tentatively approved the revised site plan on July 18, 2008 and conditioned its approval on the approval of this zone change request. At the time of writing these findings, SPAC was scheduled to consider the final approval of AC-03-182) at its meeting of August 1, 2008.

2 FINDINGS OF FACT

2.1 PROCEDURAL BACKGROUND

The zone change application was filed and received by the City of Medford on May 16, 2008. The application was deemed complete when filed. City of Medford Planning Staff prepared a Staff Report, dated June 27, 2008, which recommended approval of the zone change. Following public notice in accordance with the law, the application

was considered by the Medford Planning Commission in a public hearing on July 10, 2008. The record was left open to receive additional evidence and argument and final argument by Applicant in accordance with ORS 197.763.

2.2 PROPERTY LOCATION, DESCRIPTION, ACREAGE

The property at issue is 0.13 acres in size and is currently zoned I-G. The existing General Land Use Plan Map designation is CM (Commercial). The property is currently undeveloped, but is a small portion of the property proposed to be developed as a Wal-Mart store. The property is located between South Pacific Highway (Highway 99) and Center Drive with an on-ramp to I-5 currently under construction southeast of the property. The surrounding area is generally developed with commercial uses, including retail stores, restaurants, and hotels. The area immediately north of the property is occupied by the National Guard Armory. The property directly to the south is the proposed future home of the Wal-Mart store. The area to the east includes various commercial uses including a hotel and credit union. Stewart Meadows Village PUD is located west of the property, on the opposite side of Highway 99.

2.3 PUBLIC FACILITIES AND SERVICES

2.3.1 STORM DRAINAGE

The Applicant submitted a Preliminary Storm Drainage Memorandum for the adjacent retail development, which will include the subject property. In an e-mail, dated July 8, 2008, City of Medford Engineering Staff indicated that the design approach was acceptable. The memorandum proposes to treat and detain storm water on site before releasing the water into the City's storm drainage system in Center Drive consistent with the release rate prescribed in the City's code.

2.3.2 SANITARY SEWER

Sanitary sewer service is provided by Rogue Valley Sewer Service. The property is within the service area of the Rogue Valley Sewer Service (RVSS). As discussed in a letter from RVSS, dated June 9, 2008, the property is served by a connection to the 8 inch sewer main under Center Drive. The proposed zone change will not affect sewer service, and there is adequate capacity to serve the proposed use.

2.3.3 WATER

In a memorandum dated June 17, 2008, the Medford Water Commission stated that there exists 12" diameter water lines in both Center Drive and Highway 99. Access to these water lines is available and will provide adequate capacity to serve the subject property.

2.3.4 TRANSPORTATION

As determined by City Staff in a memorandum dated June 13, 2008, the proposed zone change has the potential to generate 195 average daily trips (ADT) or produce a net

increase of 169 ADT to the transportation system. Based on the code requirements in MMC 10.460 and 10.461, the net increase in ADT is not significant enough to trigger the need to conduct a traffic impact analysis (TIA). Because no TIA is required, the existing street system is deemed sufficient to handle the minimal impact created by the proposed zone change. The impact generated by the associated retail development will be evaluated as part of the site plan review process.

3 CONCLUSIONS OF LAW

3.1 PROCEDURAL CONCLUSIONS

The Planning Commission concludes, based upon the evidence in the record, that this application has satisfied all applicable City of Medford requirements for the proposed zone change.

3.2 CITY OF MEDFORD ZONE CHANGE APPROVAL CRITERIA

10.227 Zone Change Criteria

The approving authority (Planning Commission) shall approve a quasi-judicial zone change if it finds that the zone change complies with subsections (1) and (2) below:

Zone Change Criterion 1

- (1) The proposed zone is consistent with the Oregon Transportation Planning Rule (OAR 660) and the General Land Use Plan Map designation. (When the City of Medford's Transportation System Plan (TSP) is adopted, a demonstration of consistency with the acknowledged TSP will assure compliance with the Oregon Transportation Planning Rule.) Where applicable, the proposed zone shall also be consistent with the additional locational standards of the below sections (1)(a), (1)(b), (1)(c), or (1)(d). Where a special area plan requires a specific zone, any conflicting or additional requirements of the plan shall take precedence over the locational criteria below.

The Planning Commission concludes as follows with respect to Zone Change Criterion 1:

1. The Oregon Transportation Planning Rule (OAR chapter 660, rule 660-012-0060) specifies that 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 implement certain measures to mitigate the significant affect. In this case, the Applicant is not proposing an amendment to a functional plan, acknowledged comprehensive plan or a land use regulation. The acknowledged comprehensive plan already designates the property as commercial use, and thus no plan amendment is needed. Therefore, the proposed zone is consistent with the Oregon Transportation Planning

Rule. An email from David J. Pyles of the Oregon Department of Transportation, dated June 25, 2008, concludes that "...the proposed zone change is not anticipated to trigger a "significant affect per Oregon's Transportation Planning Rule...".

2. With respect to consistency with the General Land Use Plan (GLUP) Map, the underlying GLUP Map designation is CM (Commercial). Therefore, this zone change is entirely consistent with the GLUP Map designation, and serves to reconcile an existing inconsistency between the zoning map and the GLUP Map.

Zone Change Criterion 2

- (c) For zone changes to any commercial zoning district, the following criteria shall be met for the applicable zoning sought: (i) The overall area of the C-N zoning district shall be three (3) acres or less in size and within, or abutting on at least one boundary, residential zoning. In determining the overall area, all abutting property(s) zoned C-N shall be included in the size of the district. (ii) The overall area of the C-C zoning district shall be over three (3) acres in size and shall front upon a collector or arterial street or state highway. In determining the overall area, all abutting property(s) zoned C-C shall be included in the size of the district. (iii) The overall area of the C-R zoning district shall be over three (3) acres in size, shall front upon an arterial street or state highway, and shall be in a centralized location that does not otherwise constitute a neighborhood shopping center or portion thereof. In determining the overall area, all abutting property(s) zoned C-R shall be included in the size of the district. The C-R zone is ordinarily considered to be unsuitable if abutting any residential zones, unless the applicant can show it would be suitable pursuant to (1)(e) below. (iv) The C-H zone shall front upon an arterial street or state highway. The C-H zone may abut the General Industrial (I-G), Light Industrial (I-L), and/or any commercial zone. The C-H zone is ordinarily considered to be unsuitable if abutting any residential and I-H zones, unless the applicant can show it would be suitable pursuant to (1)(e) below.

The Planning Commission concludes that this criterion has been satisfied. The 5,689 square foot area to be changed, in addition to the abutting property zoned C-R, including the 17.16 acre Wal-Mart site, exceed the required 3 acre overall area requirement. The area fronts on both an arterial street (Center Drive) as well as a state highway (Highway 99). The C-R zoned area is in a centralized location amongst other commercial developments, including nearby retailers, restaurants, and lodging facilities, and the proposed use does not constitute a neighborhood shopping center. While the C-R zone may be unsuitable if abutting any residential zones, there are no residential zones abutting the C-R zone. The C-R zone is appropriate for this location.

Inapplicable Criterion

The Planning Commission concludes that MMC 10.227(1)(a), (b), (d), and (e) are not applicable to this application. MMC 10.227(1)(a), (b), and (d) apply to zone changes to zones other than the C-R zone proposed in this application. MMC 10.227(1)(e) only applies if the proposed zone is ordinarily considered to be unsuitable under the standards in (1)(c) or (1)(d). In this case the C-R zone does not abut a residential zone, and thus MMC 10.227(1)(e) is not applicable.

Zone Change Criterion 3

(2) It shall be demonstrated that Category A urban services and facilities are available or can and will be provided, as described below, to adequately serve the subject property with the permitted uses allowed under the proposed zoning, except as provided in subsection (c) below. The minimum standards for Category A services and facilities are contained in the MLDC and Goal 3, Policy 1 of the Comprehensive Plan "Public Facilities Element."

(a) Storm drainage, sanitary sewer, and water facilities must already be adequate in condition, capacity, and location to serve the property or be extended or otherwise improved to adequately serve the property at the time of issuance of a building permit for vertical construction.

(b) Adequate streets and street capacity must be provided in one of the following ways:

(i) Streets which serve the subject property, as defined in Section 10.461(2), presently exist and have adequate capacity; or

(ii) Existing and new streets that will serve the subject property will be improved and/or constructed, sufficient to meet the required condition and capacity, at the time building permits for vertical construction are issued; or

(iii) If it is determined that a street must be constructed or improved in order to provide adequate capacity for more than one proposed or anticipated development, the Planning Commission may find the street to be adequate when the improvements needed to make the street adequate are fully funded. A street project is deemed to be fully funded when one of the following occurs:

(a) the project is in the City's adopted capital improvement plan budget, or is a programmed project in the first two years of the State's current

STIP (State Transportation Improvement Plan), or any other public agencies adopted capital improvement plan budget; or

(b) when an applicant funds the improvement through a reimbursement district pursuant to the MLDC. The cost of the improvements will be either the actual cost of construction, if constructed by the applicant, or the estimated cost. The "estimated cost" shall be 125% of a professional engineer's estimated cost that has been approved by the City, including the cost of any right-of-way acquisition. The method described in this paragraph shall not be used if the Public Works Department determines, for reasons of public safety, that the improvement must be constructed prior to issuance of building permits.

(iv) When a street must be improved under (b)(ii) or (b)(iii) above, the specific street improvement(s) needed to make the street adequate must be identified, and it must be demonstrated by the applicant that the improvement(s) will make the street adequate in condition and capacity.

(c) In determining the adequacy of Category A facilities, the approving authority (Planning Commission) may evaluate potential impacts based upon the imposition of special development conditions attached to the zone change request. Special development conditions shall be established by deed restriction of covenant, which must be recorded with proof of recordation returned to the Planning Department, and may include, but are not limited to the following:

(i) Restriction of uses by type or intensity; however, in cases where such a restriction is proposed, the Planning Commission must find that the resulting development pattern will not preclude future development, or intensification of development, on the subject property or adjacent parcels. In no case shall residential densities be approved which do not meet minimum density standards,

(ii) Mixed-use, pedestrian-friendly design which qualifies for the trip reduction percentage allowed by the Transportation Planning Rule,

(iii) Transportation Demand Management (TDM) measures which can be reasonably quantified, monitored, and enforced, such as mandatory car/van pools.

The Planning Commission concludes that the Applicant has sufficiently demonstrated that Category A urban services and facilities (storm drainage, sanitary sewer and water facilities) are available and can and will be provided to adequately serve the subject property with the permitted uses allowed under the C-R zone. This conclusion is based on the evidence contained in Section 2.3 above.

With respect to the adequacy of streets and street capacity, it is concluded that the streets which serve the subject property presently exist and have adequate capacity to serve the property under the new zoning designation. The Public Works Department, in its June 13, 2008 memorandum determined that the impacts of this zone change are not substantial. This determination was made based on the applicability provision of MMC 10.41(3). Because the potential impact created by this zone change is inconsequential, the existing streets have adequate capacity to carry the few additional cars potentially generated by this zone change.

4 OBJECTIONS

The Medford Citizens for Responsible Development submitted a memorandum, dated July 10, 2008, opposing the Application. The issues raised in that memorandum were specifically addressed in the Applicant's Closing Argument, dated July 24, 2008. The Planning Commission has carefully examined the issues/objections presented orally and in writing by opponents and the responses thereto by representatives of the Applicant. The Planning Commission finds the Applicant's responses to be persuasive and as such adopts and incorporates the Applicant's Closing Argument as part of this decision.

5 DECISION; CONDITIONS

Based upon the foregoing findings of fact and conclusions of law, the Planning Commission concludes that the proposed zone change has been substantiated under each of the applicable criteria of the City of Medford. Therefore, the application to amend the zoning map is hereby APPROVED.

Dated: August 14, 2008

Vicinity Map

- UGB
- City Limits

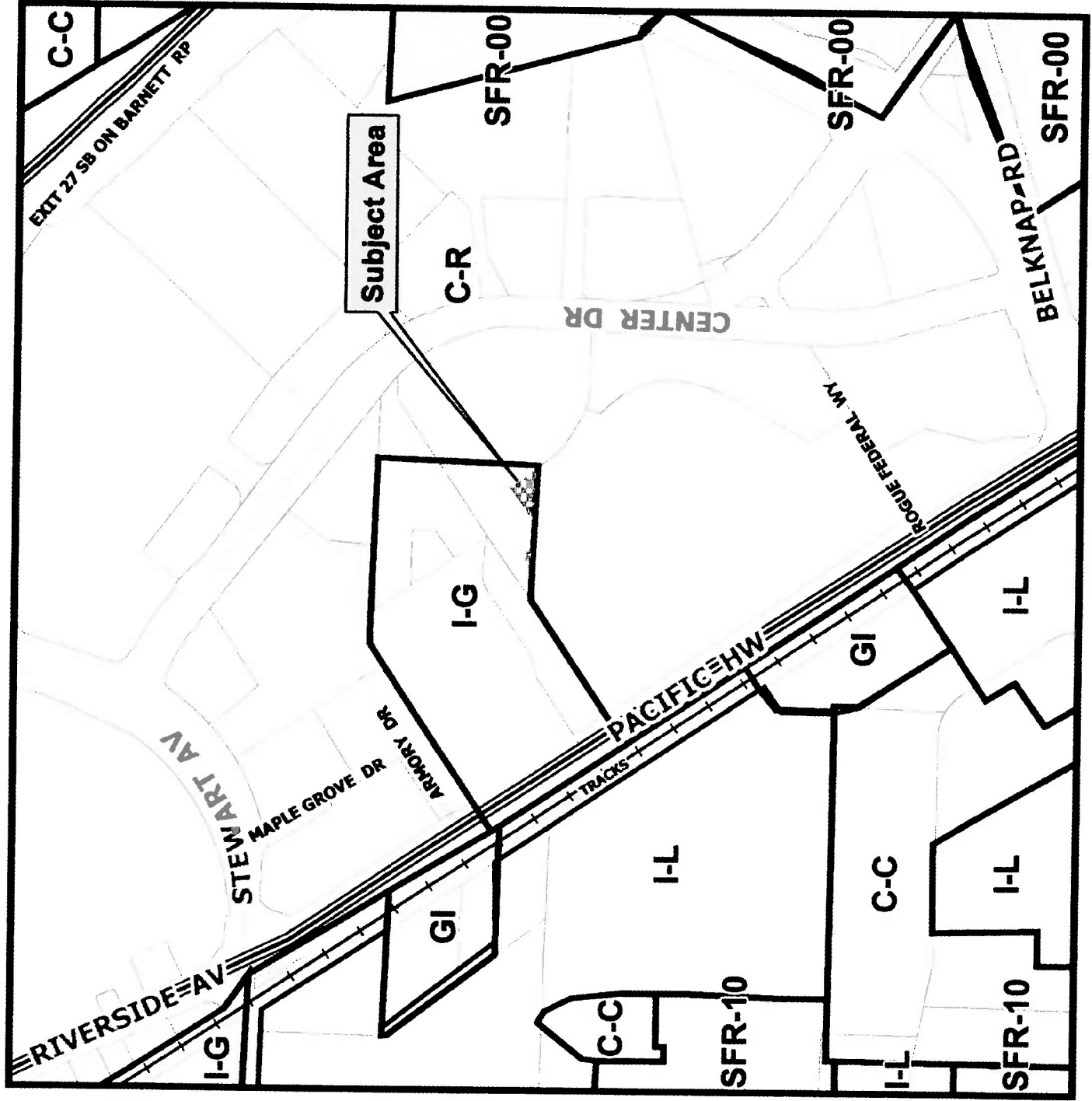
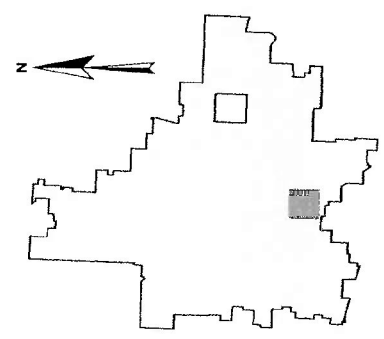
OVERLAY

- Airport Approach
- Airport Radar
- Central Business
- Exclusive Agricultural
- Freeway
- Historic Outline
- Limited Industrial
- Limited Service
- Planned Development
- Southeast

FILE NUMBER:
ZC-08-065

APPLICANT:
Wal-Mart Real
Estate Business Trust

MAP: 371W31A
TL: 1406



Commencing at a point for the Southwest corner of Parcel No. 3 of Partition Plat recorded July 23, 1997 as Partition Plat No. P-51-1997 of "Record of Partition Plats" in Jackson County, Oregon, and filed as Survey No. 15442 in the Office of the Jackson County Surveyor, said point being on the Northerly boundary of Parcel No. 2 of said Partition Plat; thence South 89°48'21" West (Record South 89°46'51" West) along said Northerly boundary, 226.14 feet to the **POINT OF BEGINNING**; thence continue South 89°48'21" West (Record South 89°46'51" West) along said boundary, 22.71 feet; thence North 54°56'27" East leaving said boundary, 18.63 feet; thence South 35°03'33" East 12.98 feet to the POINT OF BEGINNING. Containing 121 square feet, more or less.

Douglas C. McMahan
L.S. 1913 – Oregon
Expires 12/31/08
Hoffbuhr & Associates, Inc.

PLA – Westerly Area of Tax Lot 1406 being added to Tax Lot 4100
May 7, 2008
(08-062)
(paclandW1406to4100.dcm)

ZC-08-065
Legal Description

BEGINNING at a point for the Southwest corner of Parcel No. 3 of Partition Plat recorded July 23, 1997 as Partition Plat No. P-51-1997 of "Record of Partition Plats" in Jackson County, Oregon, and filed as Survey No. 15442 in the Office of the Jackson County Surveyor, said point being on the Northerly boundary of Parcel No. 2 of said Partition Plat; thence South 89°48'21" West (Record South 89°46'51" West) along said Northerly boundary, 152.10 feet; thence leaving said boundary North 54°56'27" East 126.46 feet; thence South 35°03'33" East 84.57 feet to a point on the Westerly boundary of the aforementioned Parcel No. 3 of Partition Plat No. P-51-1997; thence South 00°11'45" East (Record South 00°13'15" East) along said boundary, 2.90 feet to the POINT OF BEGINNING. Containing 5,568 square feet, more or less.

Douglas C. McMahan
L.S. 1913 – Oregon
Expires 12/31/08
Hoffbuhr & Associates, Inc.

PLA – Easterly Area of Tax Lot 1406 being added to Tax Lot 4100
May 7, 2008
(08-062)
(pacland1406to4100.dcm)

RECEIVED

MAY 16 2008

Planning Dept.

2C-08-065
Legal Description

CERTIFIED MAIL™



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\$07.260
Mailed From: 97501
US POSTAGE

Hasler



RETURN RECEIPT
REQUESTED

PLAN AMENDMENT SPECIALIST
DEPT. OF LAND CONSERVATION
AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540

NT