



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED AMENDMENT

11/23/2009

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Bend Plan Amendment
DLCD File Number 005-09

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

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Monday, December 14, 2009

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

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

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

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

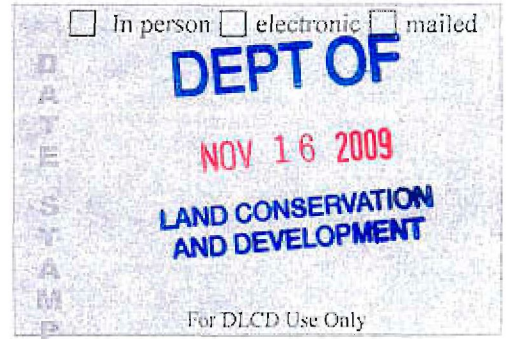
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PROF 2

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 09-183**

Date of Adoption: **11/4/2009**

Date Mailed: **11/12/2006**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: **7/21/2009**

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

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

A Plan Amendment and Zone Change for a 3.6 acre split-zoned property at the northeast corner of the Bond/Wilson roundabout from Industrial General (IG) and Mixed Riverfront (MR) to Mixed Employment (ME)

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

Plan Map Changed from: **IG/MR**

to: **ME**

Zone Map Changed from: **IG/MR**

to: **ME**

Location: **360 Bond Street**

Acres Involved: **3**

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**

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. _____

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

None.

Local Contact: **Amy Barry**

Phone: (541) 693-2114 Extension:

Address: 710 NW Wall Street

Fax Number: 541-388-5519

City: Bend

Zip: 97759-

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.

ORDINANCE NO. NS-2132

AN ORDINANCE AMENDING THE BEND URBAN AREA GENERAL PLAN AND ZONING MAPS BY CHANGING THE PLAN DESIGNATION AND ZONING OF 3.6 ACRES OF LAND AT THE NORTHEAST CORNER OF THE BOND/WILSON ROUNDABOUT FROM INDUSTRIAL GENERAL (IG) AND MIXED RIVERFRONT (MR) TO MIXED EMPLOYMENT (ME).

Findings:

A. On June 26, 2009, Erik Gerding, 360 Bond, LLC, filed an application (PZ 09-183) for a Plan Amendment and Zone Change for 3.6 acres of land at the northeast corner of the Bond/Wilson roundabout, to change the zoning and general plan designation from Industrial General (IG) and Mixed Riverfront (MR) to Mixed Employment (ME).

B. The Hearings Officer held a duly noticed public hearing for the proposal on September 10, 2009. On September 23, 2009, the Hearings Officer issued a decision recommending that Council approve the requested Plan Amendment and Zone Change.

C. The City Council held a duly noticed public hearing on October 21, 2009. Based on the entire record, including all testimony, evidence and the recommendation of the Hearings Officer, the Council concluded that the application meets all criteria for approval and should be granted.

Based on these findings,

THE CITY OF BEND ORDAINS AS FOLLOWS:

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

Section 2. The Bend Urban Area General Plan and Zoning Maps are hereby amended by changing the plan designation and zoning of 3.6 acres of land at the northeast corner of the Bond/Wilson roundabout from Industrial General (IG) and Mixed Riverfront (MR) to Mixed Employment (ME) as shown in Exhibit A.

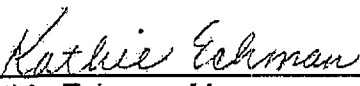
Read for the first time the 21st day of October, 2009.

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

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

YES: 6 NO: 0

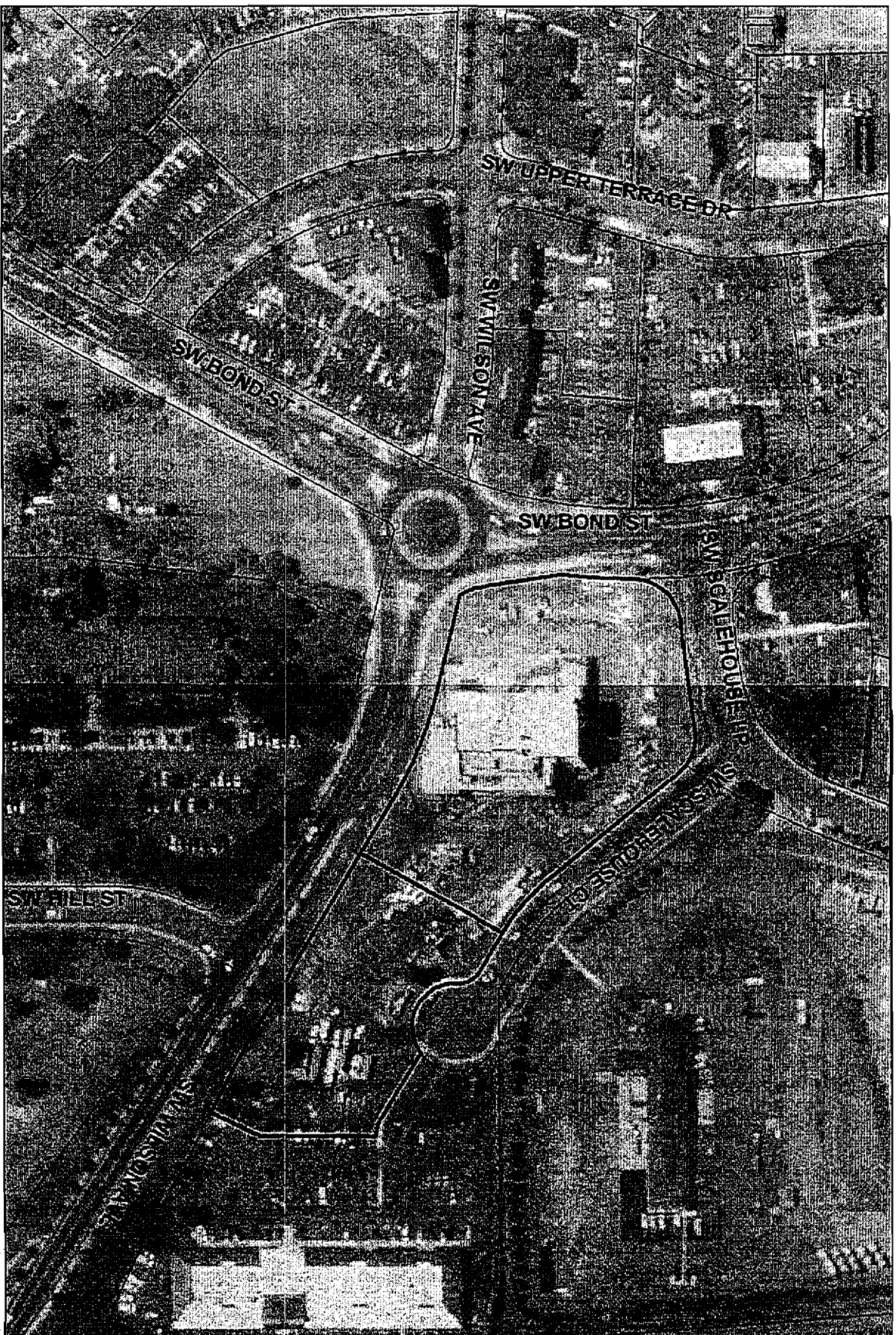
Authenticated by the Mayor the 4th day of November, 2008.



Kathie Eckman, Mayor

ATTEST:





Patricia Stell, City of Bend Recorder



PZ 09-183 Zone Change and Plan Amendment from Industrial General (IG) and Mixed Riverfront (MR) to Mixed Employment (ME).



Zoning/Plan Designation

-  IG
-  MR
-  Subject Properties

Imagery acquired July 2008 Map prepared Oct 8, 2009

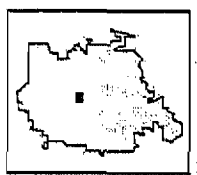


EXHIBIT A

EXHIBIT B

FINDINGS IN SUPPORT OF PZ 09-183

CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE

Chapter 2.3, Mixed Use Districts

Section 2.3.100, Purpose

Table 2.3.200 Permitted Land Uses

FINDINGS: In 2007, the city granted conditional use approval for construction of the existing office building on the IG-zoned portion of the subject property (PZ 07-116). In 2008 the city approved a change-of-use site plan to change up to 10,787 square feet of floor area originally approved for the corporate headquarters/production business uses to general office use (PZ 08-454). In 2009 the applicant submitted another change-of-use site plan application that would allow the remaining portions of the building to be changed to general office (PZ 09-211). Approval of that application is pending approval of this requested plan amendment and zone change. The proposed use of the subject property would be permitted in the ME Zone. Other uses listed in Table 2.3.200 may be permitted on the subject property in the future, but may require a new change-of-use site plan approval and a change-of-occupancy building permit. These, in turn, may require additional analyses of sewer, water, and transportation system impacts.

Section 2.3.300, Development Standards

FINDINGS: The existing office building on the subject property exceeds the maximum building height in the ME Zone. However, the city granted conditional use approval to exceed height limit in the IG Zone (PZ 07-116). The applicant does not propose any increase in that height in conjunction with this plan amendment and zone change application. The existing building height would be a lawful nonconforming use in the proposed ME Zone. Any future modifications to the existing building which exceed the ME Zone height limitation or other applicable development standards would require conditional use approval in accordance with Chapter 5.2.200.

Section 2.3.400, Building Orientation

Section 2.3.500, Architectural Standards

FINDINGS: The record indicates compliance with these sections was reviewed through the applicant's 2007 site plan review for the existing building (PZ 07-116) and the building was found to meet them. Because the proposed plan amendment and zone change will not affect the size or appearance of the existing office building, these criteria are satisfied.

Chapter 4.6, Land Use District Map and Text Amendments

Section 4.6.300, Criteria for 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;

FINDINGS: Compliance with the Statewide Planning Goals is discussed in the findings below.

Goal 1, Citizen Involvement. To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

The city's program to achieve this goal is codified in Chapter 4.1 of the Bend Development Code. The first step for citizen involvement is the public meeting required by Section 4.1.210(B). The record indicates the applicant conducted this meeting on

December 4, 2009. Notice of the meeting was provided to owners of record of property located within 250 of the subject property as well as the Southern Crossing Neighborhood Association. The record indicates no one attended the public meeting or submitted comments in response to the notice of the meeting. Section 4.1.315 of the development code ensures that citizens are informed in four different ways for Type III applications: published notice, posted notice, individual mailed notice and neighborhood association contact. These notices were provided for both the hearing before the Hearings Officer and the City Council hearing.

Goal 2, Land Use Planning. To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

The city's development code establishes the process, and the general plan establishes the policy framework, for a decision on the subject plan amendment and zone change application.

Goal 3, Agricultural Lands

Goal 4, Forest Lands

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

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

Goal 6, Air, Water and Land Resources Quality

Goal 6 is not applicable to the subject plan amendment and zone change application because the proposed change will have no impacts on air, water or land resources.

Goal 7, Areas Subject to Natural Hazards

Goal 8, Recreational Needs

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

Goal 9, Economic Development. To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

Goal 9 and its implementing administrative rules require local governments to provide within the urban growth boundary (UGB) for "at least an adequate supply of sites of suitable sizes, types, locations and service levels for a variety of industrial and commercial uses consistent with plan policies." OAR 660-009-0015 requires the city to develop an inventory of "vacant and developed lands within the planning area designated for industrial or other employment uses." Additionally, OAR 660-009-010(4) provides:

For a post-acknowledgement plan amendment under OAR chapter 660, division 18, that changes the plan designation of land in excess of two acres within an existing urban growth boundary from an industrial use designation to a non-industrial use designation, or an other employment use designation to any other use designation, a city or county must address all applicable planning requirements, and:

(a) Demonstrate that the proposed amendment is consistent with its most recent economic opportunities analysis and the parts of its acknowledged comprehensive plan which address the requirements of this division; or

(b) Amend its comprehensive plan to incorporate the proposed amendment, consistent with the requirements of this division; or

(c) Adopt a combination of the above, consistent with the requirements of this division.

On January 5, 2009 the city adopted a series of ordinances which, among other things, expanded the city's UGB and amended its general plan. In addition, Ordinance No. 2112 adopted as Exhibit "L" the "City of Bend 2008 Economic Opportunities Analysis" ("2008 EOA"). The ordinances adopting the expanded UGB, including Ordinance No. 2112, have not yet been acknowledged by the Land Conservation and Development Commission (LCDC). However, ORS 197.625(3) provides in relevant part as follows:

(a) Prior to its acknowledgment, the adoption of a new comprehensive plan provision or land use regulation or an amendment to a comprehensive plan or land use regulation is effective at the time specified by the local government charter or ordinance and is applicable to land use decisions, expedited land use decisions and limited land use decisions if the amendment was adopted in substantial compliance with ORS 197.610 and 197.615 unless a stay is granted under ORS 197.845.

(b) Any approval of a land use decision, expedited land use decision or limited land use decision subject to an unacknowledged amendment to a comprehensive plan or land use regulation shall include findings of compliance with those land use goals applicable to the amendment.

Under this statute, the city's amendments to its comprehensive plan and UGB are effective and applicable to the subject application. This decision includes findings concerning the statewide land use planning goals applicable to this application. The proposal's compliance with the applicable provisions of the amended comprehensive plan are discussed in the findings below.

The IG-zoned portion of the subject property is more than two acres in size, and the MR-zoned portion is less than one acre in size. The Goal 9 administrative rules – OAR 660-009-0010(4) – provide that where a comprehensive plan amendment changes the designation of land in excess of two acres within a UGB from an industrial use designation to a non-industrial use designation, or from another employment use designation to any other use designation, the city must demonstrate that the amendment is consistent with the most recent EOA and its comprehensive plan. The 2008 EOA, a copy of which is included in this record, provides that for purposes of calculating industrial land supply, the ME Zone is treated as an industrial zone (EOA page 108).

The city's decision to treat the ME Zone as an industrial zone for purpose of the EOA and the comprehensive plan was based in large part on the fact that there is considerable overlap between the uses permitted in these two zoning districts. For that reason, re-designating the subject property from IG to ME does not represent a change from an "industrial use designation to a non-industrial use designation" under OAR 660-009-010(4), and therefore the applicant is not required to make findings under that rule. And because the portion of the subject property currently designated MR is less than two acres in size, OAR 660-009-0010(4) also does not apply.

When the city expanded the UGB in 2009, it elected to employ a number of market choice factors in considering how much land to bring into the UGB (Findings in Support of UGB Expansion, pages 51-52). As a result of utilizing these market choice factors, the city determined the current supply of industrial land and mixed-use land within the UGB exceeds the minimum amount needed during the planning period. In other words, currently the city has a surplus of industrial and mixed use lands to meet the needs in the industrial, MR and ME zones within the planning period. Consequently, the applicant's proposed plan amendment and zone change from IG and MR to ME will not result in a deficit of industrial or MR lands within the UGB. For these reasons, the proposed plan amendment and zone change will not interfere with the city's ability to provide an adequate amount of employment lands during the planning period.

Goal 10, Housing. Provide for the Housing Needs of the citizens of the State.

The current IG zoning on the subject property does not allow residential uses, and the existing use of the subject property is not residential. Therefore, the proposed plan amendment and zone change will not remove land from the city's inventory of residential lands. On the contrary, the ME Zone allows a mix of uses including residential uses, although residential uses are not anticipated for this site.

Goal 11, Public Facilities and Services. To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

The subject property currently is served with adequate public facilities and services for the existing and proposed office uses, as discussed in detail in the zone change findings below.

Goal 12 Transportation. To provide and encourage a safe, convenient and economic transportation system.

Goal 12 is implemented through the Transportation Planning Rule in OAR 660-012-0060 (TPR). In addition, Section 4.6.600 of the development code requires that the applicant demonstrate compliance with the TPR, which provides in relevant part:

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

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

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

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

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

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

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

The transportation impact analysis (TIA) dated January 29, 2009, analyzes potential impacts to affected transportation facilities from the proposed plan amendment and zone change and compares vehicle trip generation predictions for uses permitted in the current IG and MR Zones with uses permitted in the proposed ME Zone. The TIA includes Table 3 summarizing these differences and showing that 80,000 square feet of office building space with uses permitted in the ME Zone could generate 1,040 more average daily vehicle trips (ADTs) than 80,000 square feet of office building space with uses permitted in the IG Zone. The TIA concludes this increase in ADTs would be dispersed more or less evenly in all directions, and would not exceed the capacity of affected streets and intersections because of the high level of function of these facilities, including Bond and Wilson and their roundabout intersection for which the applicant granted right-of-way and contributed funds for the costs of roundabout construction. For these reasons, the TIA concluded the proposed plan amendment and zone change would not significantly affect a transportation facility under the TPR.

Goal 13 Energy. To conserve energy.

This goal has minimal applicability to the subject plan amendment and zone change because the uses permitted in the ME Zone are not significantly different from those permitted in the IG and MR Zones and already in place on the subject property. However, the ME Zone does allow for a greater mix of uses, and the subject property's location at the intersection of designated collector and arterial streets may achieve greater efficiency by reducing vehicle trips in the area.

Goal 14 Urbanization. To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

The subject property is located within the Bend city limits and UGB.

Goal 15, Willamette River Greenway

Goal 16, Estuarine Resources

Goal 17, Coastal Shorelands

Goal 18, Beaches and Dunes

Goal 19, Ocean Resources

Goals 15 through 19 are not applicable to the subject plan amendment and zone change application because the subject property does not include any of these features or resources.

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

FINDINGS: The following goals and polices of the general plan are found to be applicable to the subject plan amendment and zone change application.

CHAPTER 1 – PLAN MANAGEMENT AND CITIZEN INVOLVEMENT

Policies

Urbanization of the Incorporated UGB

33. ***New developments shall pay to extend planned sewer, water, and transportation facilities to and through the property if the development occurs prior to the scheduled construction of those facilities shown in the city's capital improvement plan.***

FINDINGS: The subject property is developed with a large office building, parking areas and landscaping. The record indicates that in conjunction with the previous land use approvals for this use the applicant made on-site transportation system improvements and contributed to the cost of constructing the adjacent Bond/Wilson intersection roundabout.

34. ***The city will encourage compact development and the integration of land uses within the Urban Growth Boundary to reduce trips, vehicle miles traveled, and facilitate non-automobile travel.***

FINDINGS: This policy by its terms applies to the city and not to an applicant for a quasi-judicial plan amendment and zone change.

37. ***Improvements within the incorporated UGB shall conform to City standards and specifications.***

FINDINGS: As discussed above, the subject property is developed with a large office building, parking areas and landscaping. The city's previous conditional use and site

plan approvals for this use required the applicant to construct and install improvements in compliance with the city's standards and specifications and the applicant has done so.

Citizen Involvement

FINDINGS: This policy by its terms applies to the city and not to an applicant for a quasi-judicial plan amendment and zone change.

CHAPTER 2: NATURAL FEATURES AND OPEN SPACE

Policies

Natural features and open space

- 9. Major rock outcrops, stands of trees, or other prominent natural features identified in the General Plan shall be preserved as a means of retaining the visual character and quality of the community.***
- 10. Natural tree cover shall be retained along streets in all developments to preserve the natural character of Central Oregon within the urban area as the community grows. Native trees may be substituted for required street trees when located within 10-feet of the right of way.***
- 11. All development shall preserve the natural ground cover outside the building footprint and parking area to the greatest extent practicable.***

FINDINGS: The subject property is developed with an office building, parking areas and landscaping. Where practical, the applicant preserved existing mature trees and natural ground cover as part of the site planning and development. There are no rock outcrops on the property.

- 12. The city shall require the preservation of mature trees within each development to the greatest extent practicable.***

FINDINGS: This policy by its terms applies to the city and not to an applicant for a quasi-judicial plan amendment and zone change.

CHAPTER 3: COMMUNITY CONNECTIONS

FINDINGS: The record indicates there are no historical features, cultural amenities, urban trails, park and recreation facilities, or educational facilities identified on or planned for the subject property.

CHAPTER 4: POPULATION AND DEMOGRAPHICS

FINDINGS: This chapter addresses population forecasts and other demographic information, and is not applicable to the applicant's proposal.

CHAPTER 5: HOUSING AND RESIDENTIAL LANDS

FINDINGS: This chapter of the general plan addresses housing needs, and therefore is not applicable to the applicant's proposal.

CHAPTER 6: THE ECONOMY AND LANDS FOR ECONOMIC GROWTH

Applicable Policies:

General Economic Land Policies and Anticipated Land Needs

- 2. The city shall place a higher priority on retaining industrial sites in the city's land base while also providing a variety of commercial sites.***
- 3. The City of Bend shall provide numerous sites in a variety of locations, types, and sizes to meet anticipated and unanticipated economic development***

opportunities. These locations shall be suitable from an economic standpoint and compatible with surrounding land uses.

- 4. The city shall provide at least a 20-year supply of economic, institutional, and associated open space lands to meet anticipated needs during the 20-year planning period as outlined in the 2008 EOA.*
- 5. The city shall seek opportunities to designate additional sites for employment use within the existing urban growth boundary prior to expanding the UGB.*
- 6. The city shall periodically review existing development and use patterns on industrial and commercial lands. The city may consider modifying General Plan and/or Zoning Map designations to make such designations consistent with existing development and use patterns.*

FINDINGS: These policies by their terms apply to the city and not to an applicant for a quasi-judicial plan amendment and zone change. In any case, as discussed in findings elsewhere in this decision, the applicant's proposal will not result in a reduction in the amount of industrial land in the city's inventory and is consistent with the 2008 EOA because it will allow a greater range of office uses as well as a mix of other service commercial uses consistent with the surrounding development pattern that includes a mixture of office, commercial and residential uses.

CHAPTER 7: TRANSPORTATION SYSTEMS

6.9.1 TRANSPORTATION AND LAND USE

POLICIES

- 3. The City shall consider facility needs for long-range transportation system corridor improvements for all modes, during the review of subdivisions, partitions, and individual site applications.*
- 6. The City shall implement mixed use zoning as one of the land use strategies to promote fewer vehicle trips and shorter trip lengths.*
- 7. The City shall be receptive to innovative development proposals, including zone changes, plan amendments, and text changes that promote alternatives to vehicular traffic and demonstrably reduce vehicle trips and trip lengths.*

6.9.3 TRANSPORTATION DEMAND MANAGEMENT

- 3. The City shall work with businesses, with more than 25 employees, to develop and implement a transportation demand management plan. These plans shall be designed to reduce peak hour traffic volumes by establishing trip reduction targets over five years.*

6.9.4 PEDESTRIAN AND BICYCLE SYSTEMS

- 5. The City shall develop safe and convenient bicycle and pedestrian circulation to major activity centers, including the downtown, schools, shopping areas and parks. East-west access to the downtown area needs particular emphasis across major obstacles, such as 3rd Street, the Bend Parkway and the railroad.*
- 6. The City shall facilitate easy and safe bicycle and pedestrian crossings of major collector and arterial streets. Intersections shall be designed to include pedestrian refuges or islands, curb extensions and other elements where needed for pedestrian safety. Also, bike lanes shall be extended to meet intersection crosswalks.*

FINDINGS: These policies by their terms apply to the city, or are aspirational only, and therefore apply to the city, not to an applicant, for a quasi-judicial plan amendment and zone change.

7. *Bike lanes shall be included on all new and reconstructed arterials and major collectors, except where bikeways are authorized by the TSP.1 Bike lanes shall also be provided when practical on local streets within commercial and industrial areas.1 Bike lanes shall be added to existing arterial and major collector streets on a prioritized schedule. Specific effort shall be made to fill the gaps in the on-street bikeway system. An appropriate means of pedestrian and bicyclist signal actuation should be provided at all new or upgraded traffic signal installations.*
8. *Property-tight (setback) sidewalks shall be required on both sides of all new streets except where extreme slopes, severe topographical constraints, or special circumstances exist.*
9. *Landscape areas shall separate the edge of pavement and sidewalks on new and reconstructed roads to allow for water quality treatment and storage of snow.*
10. *Sidewalks shall be added to all existing arterial and collector streets to fill the gaps in the pedestrian system.*
13. *Bicycle and pedestrian facilities shall be designed and constructed to minimize conflicts between transportation modes.*
16. *Bicycle parking facilities shall be provided at all new multifamily residential, commercial, industrial, recreational, and institutional facilities, major transit stops, all transit stations and park and ride lots. The City shall support a "Bikes on Transit" program and work to increase the number of bicyclists using transit when the transit system is established.*
25. *Bicycle safety shall be promoted by providing striped bike lanes on arterial and collector streets. Bike lanes shall be free of hazardous obstacles such as sewer manhole covers, other utility covers and storm water grates.*

FINDINGS: The subject property is developed with a large office building, parking areas and landscaping. The features and elements of that development were reviewed and approved through the previous conditional use and site plan review proceedings. The applicant is not proposing any change to the existing development in conjunction with this application for a plan amendment and zone change. Therefore, these policies are not applicable to the applicant's proposal.

6.9.5 PUBLIC TRANSPORTATION SYSTEM

FINDINGS: This policy by its terms applies to the city and not to an application for a quasi-judicial plan amendment and zone change.

6.9.6 STREET SYSTEM

General:

1. *Streets shall be located, designed and constructed to meet their planned function and provide space for adequate planting strips, storm water retention and treatment, snow storage, sidewalks, motor vehicle travel and bike lanes (where appropriate). Specific effort should be made to improve and enhance east-west circulation patterns for all modes of travel throughout the community.*
5. *New development shall be supported by traffic impact analysis to assess these impacts and to help determine transportation system needs.*

FINDINGS: The surrounding streets were designed and improved in connection with the existing office development on the subject property and were found to comply with the city's standards and specifications. The applicant submitted a TIA as part of this plan amendment and zone change application, and the TIA states no additional

transportation facility improvements are required as a result of the proposed plan amendment and zone change.

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

FINDINGS: This policy by its terms applies to the city and not to an applicant for a quasi-judicial plan amendment and zone change.

CHAPTER 8: PUBLIC FACILITIES AND SERVICES

POLICIES

Storm sewer

15. *All public and private stormwater facilities shall be designed and operated in accordance with the City's Stormwater Master Plan and shall meet appropriate drainage quantity and quality requirements including, but not limited to, the requirements in the City's National Pollutant Discharge Elimination System MS4 Stormwater Permit, integrated Stormwater Management Plan, WPCF Underground Injection Control Permit and any applicable Total Maximum Daily Load requirements.*

17. *Low impact site designs shall be a required part of all new and re-development.*

19. *Development shall, to the extent practicable, contain and treat storm drainage on-site.*

20. *The use of disposal systems shall be coordinated with the Oregon Department of Environmental Quality and Water Resources Department to protect ground water and surface water quality.*

FINDINGS: The record indicates stormwater facilities for development of the subject property were reviewed for compliance with the above requirements prior to issuance of building permits following the city's approval of a conditional use permit and site plan review. As a result, the existing development on the subject property contains all stormwater on site and in approved facilities. The applicant's proposed plan amendment and zone change will have no affect on stormwater management on the subject property.

23. *The City shall require stormwater protection measures for all new development and redevelopment proposals during the planning, project review, and permitting processes.*

FINDINGS: This policy by its terms applies to the city and not to an applicant for a quasi-judicial plan amendment and zone change.

Chapter 9 - Community Appearance

FINDINGS: This chapter primarily pertains to goals and policies for adopting standards and criteria which will enhance the appearance of the community and in general does not apply to applications for plan amendments and zone changes. However, the design review criteria for the ME Zone are more stringent than those of the current IG Zone on the subject property. Moreover, the development on the subject property was reviewed for compliance with the commercial design review criteria and standards as part of the previous site plan review.

Chapter 10 - Natural Forces

FINDINGS: This chapter sets goals and policies to guide future studies and the development of future standards and criteria. Therefore, these goals and policies are not applicable to the applicant's proposed plan amendment and zone change.

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;

FINDINGS: The subject property is presently provided with adequate public facilities, service and transportation networks to support the use as described below. .

1. Police Protection. The subject property is located within the Bend city limits and is served by the Bend Police Department.

2. Fire Protection. The subject property is located within the Bend city limits and is served by the Bend Fire Department. The record includes a fire flow analysis memorandum from the city's Engineering Division indicating there is adequate water flow for fire protection on the subject property.

3. Sewer and Water. The subject property currently is served by city sewer and water infrastructure and service that were improved and connected to the subject property as part of its previous development with the existing office building. The record includes a letter dated August 10, 2009 from the applicant's engineer, Terry Angle with Angle Consulting Engineering LLC, who conducted a wastewater system analysis for the applicant. Mr. Angle stated a change in use of the existing office building to general office use would not increase sanitary sewer flow, and likely would generate less flow than some permitted uses in the IG Zone. Future uses of the subject property that could generate greater sewer and/or water impact would require a new sewer and water analysis in conjunction with a new site plan change-of-use review.

4. Schools. The subject property is located within the boundaries of the Bend-La Pine School District. The proposed plan amendment and zone change will have no impact on school facilities and services because the subject property is developed with office uses.

4. Parks. The subject property is located within the boundaries of the Bend Metropolitan Park and Recreation District. The record indicates there are no parks planned in the general vicinity of the subject property, although there are several parks along the Deschutes River that are within walking distance of the subject property.

5. Transportation Facilities. The applicant submitted a TIA that concludes the proposed change in plan designation and zoning from IG and MR to ME will not significantly affect a transportation facility.

6. Stormwater Runoff. Stormwater runoff systems were addressed in the previous conditional use and site plan approvals, and there is an approved stormwater system in place on the subject property. The proposed plan amendment and zone change will not have any effect on stormwater runoff.

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.

1. Mistake or Inconsistency with Comprehensive Plan.

FINDINGS: The IG and MR zoning of the subject property was not a mistake. The current zoning is consistent with the current plan designations on the property.

2. Change in the Neighborhood or Community.

FINDINGS: The applicant's burden of proof noted that the Old Mill District previously was a large industrial site with several sawmills. With the city's adoption of the MR Zone, the Old Mill district was developed with uses permitted in the MR Zone, and now the surrounding area is characterized by office, retail, and residential uses, with very few remaining industrial uses. The demand for office and retail space has grown as the city's population has grown and land suitable for office development has become scarce, resulting in a transition from industrial to non-industrial uses in the surrounding area.

At the public hearing in this matter, the Hearings Officer questioned whether the changes in the Old Mill District identified and relied upon by the applicant in support of its proposed plan amendment and zone change are merely those planned and contemplated with adoption of the MR Zone and redevelopment of former industrial lands. The applicant's attorney Steven Hultberg responded that two additional changes justify the applicant's proposal. First, Mr. Hultberg noted that when the city adopted amendments to its comprehensive plan and zoning ordinance in 2006 it imposed new restrictions on office uses in the IG Zone, limiting such uses to corporate headquarters/offices where co-located with a permitted or conditional use. Under the previous IG Zone provisions general office uses were conditional uses. Mr. Hultberg stated the applicant purchased the subject property with the intent of developing it with general office uses but was not able to do so before the code change. Second, Mr. Hultberg noted the city's 2008 EOA recognizes areas within the UGB that are in transition from industrial to non-industrial uses, including the Old Mill District.

Following the public hearing, Mr. Hultberg submitted a letter dated September 17, 2009 further addressing this approval criterion. Each of the four neighborhood/community changes identified by the applicant in Mr. Hultberg's September 17, 2009 letter is addressed in the findings below.

(a) Split Zoning. The subject property was platted as part of the Upper Terrace Phase II Subdivision after the MR Zone was adopted in 1995. The subject property's two subdivision lots became split-zoned as a result of this platting. The applicant also asserts the concurrent improvements to adjacent streets had the effect of leaving only a small portion of the subject property zoned MR and the majority zoned IG. The applicant argues the alleged lack of coordination between the subdivision platting and infrastructure and the designation of the MR Zone boundaries created a change in the neighborhood justifying the proposed plan amendment and zone change. The Hearings Officer disagreed, finding that when the plat for the Upper Terrace Phase II Subdivision was approved, the city and the former owner of the subdivision necessarily understood the relationship between the MR and IG Zone boundaries and the lot lines within the subdivision plat, and had the city believed the resulting split zoning would prevent appropriate development within the subdivision, it would have denied subdivision approval.

(b) Office Development in Area.

(c) Shift from Manufacturing to Service Industry. The applicant notes the city's 2008 EOA states the city's once-dominant natural resource and manufacturing base continues to make up a smaller and less crucial part of the city's economy, while professional and business services, educational and health services, retail trade and leisure and hospitality industries will comprise a larger part of the economy. The applicant argues this change is particularly evident in the city's historic industrial areas such as the Old Mill District, noting the EOA states at page 65:

"Bend has seen such redevelopment take place at the Old Mill District and to some degree in downtown; as other truly 'vintage' districts become obsolete, it may be appropriate to encourage their redevelopment."

The applicant also argues that office uses "almost entirely surround the subject property" as a result of development of the Old Mill District and the MR Zone primarily with non-industrial uses, including the headquarters office of the Hooker Creek Construction Materials business on nearby IG-zoned land. It appears from this record that Hooker Creek's business is the only true general industrial use that remains in the Old Mill District, although there are several other IG-zoned parcels on the east side of the district near the Bend Parkway (U.S. Highway 97) that are developed with lighter industrial uses. The applicant also notes that there is considerable overlap in the uses permitted in the IG and ME Zones -- so much so that the city treated ME-zoned land as "industrial" land for purposes of its 2008 UGB amendment and EOA. The applicant argues the city-wide change from a manufacturing economic base to a more professional service base, recognized by the 2008 EOA and illustrated by the change in the neighborhood surrounding the subject property within the Old Mill District, constitutes a change in the neighborhood or community that justifies the proposed plan amendment and zone change.

The Hearings Officer agreed that the land on the easternmost side of the Old Mill district, including parcels surrounding the subject property, has lost virtually all of its industrial character due to the disappearance of industrial uses and conversion of such lands to non-industrial uses like office buildings. Therefore, these changes are sufficient to justify the proposed plan amendment and zone change to ME to better reflect the nature of the neighborhood.

(d) Development of ODS Building. The applicant argued that conversion of the subject property from an industrial site to a vacant parcel and then to a large office building is a change to the neighborhood warranting the proposed plan amendment and zone change. The Hearings Officer disagreed, noting that while there may be circumstances where it is appropriate to consider *the subject property* as the "neighborhood and community" for purposes of this approval criterion, this situation is not one of them. The applicant developed the subject property pursuant to the existing MR and IG Zone provisions, and may modify the uses within the office building under those same provisions.

Although not all of the applicant's reasoning for this criterion were found to be acceptable or relevant, the applicant demonstrated that a sufficient change has occurred in the neighborhood surrounding the subject property to justify the proposed plan amendment and zone change from MR and IG to ME.

3. Compliance with Provisions of Section 4.6.600 and TPR.

FINDINGS: Section 4.6.600 provides as follows:

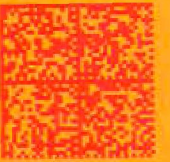
When a development application includes a proposed comprehensive plan amendment or land use district change, or both, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060.

The text of the TPR is set forth in previous findings. The applicant's TIA shows the proposed plan amendment and zone change will not significantly affect a transportation facility and will not require changes to the functional classification of existing or planned transportation facilities, or a change to the standards implementing the comprehensive plan. Based on the applicant's TIA, the proposed plan amendment and zone change is consistent with, and satisfies the requirements of, the TPR.

CITY OF BEND
COMMUNITY DEVELOPMENT DEPARTMENT
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