



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

11/25/2013

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 007-13

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

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Tuesday, December 10, 2013

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

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

*NOTE: The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Aaron Henson, City of Bend
Gordon Howard, DLCD Urban Planning Specialist

Thomas Hogue, DLCD Economic Development Policy Analyst
Gary Fish, DLCD Transportation Planner

<paa> Y



NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

FOR DLCD USE

File No.: 007-13 (19991)
[17680]
Received: 11/19/2013

Local governments are required to send notice of an adopted change to a comprehensive plan or land use regulation **no more than 20 days after the adoption.** (See [OAR 660-018-0040](#)). The rules require that the notice include a completed copy of this form. **This notice form is not for submittal of a completed periodic review task or a plan amendment reviewed in the manner of periodic review.** Use [Form 4](#) for an adopted urban growth boundary including over 50 acres by a city with a population greater than 2,500 within the UGB or an urban growth boundary amendment over 100 acres adopted by a metropolitan service district. Use [Form 5](#) for an adopted urban reserve designation, or amendment to add over 50 acres, by a city with a population greater than 2,500 within the UGB. Use [Form 6](#) with submittal of an adopted periodic review task.

Jurisdiction: City of Bend

Local file no.: **PZ-13-0442**

Date of adoption: 10/31/13 Date sent: 11/19/2013

Was Notice of a Proposed Change (Form 1) submitted to DLCD?

 Yes: Date (use the date of last revision if a revised Form 1 was submitted): 8/30/13 NoIs the adopted change different from what was described in the Notice of Proposed Change? Yes No

If yes, describe how the adoption differs from the proposal:

The adopted zone change from IL to CG excludes the adjacent BNSF railroad right of way.

Local contact (name and title): Aaron Henson, Senior Planner

Phone: 541-383-4885 E-mail: ahenson@bendoregon.gov

Street address: 710 NW Wall Street City: Bend Zip: 97701-2713

PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY

For a change to comprehensive plan text:

Identify the sections of the plan that were added or amended and which statewide planning goals those sections implement, if any:

None.

For a change to a comprehensive plan map:

Identify the former and new map designations and the area affected:

Change from N/A to . acres. A goal exception was required for this change.Change from N/A to . acres. A goal exception was required for this change.Change from N/A to . acres. A goal exception was required for this change.Change from N/A to . acres. A goal exception was required for this change.

Location of affected property (T, R, Sec., TL and address): .

 The subject property is entirely within an urban growth boundary The subject property is partially within an urban growth boundary

If the comprehensive plan map change is a UGB amendment including less than 50 acres and/or by a city with a population less than 2,500 in the urban area, indicate the number of acres of the former rural plan designation, by type, included in the boundary.

| | |
|---|--|
| Exclusive Farm Use – Acres: | Non-resource – Acres: |
| Forest – Acres: | Marginal Lands – Acres: |
| Rural Residential – Acres: | Natural Resource/Coastal/Open Space – Acres: |
| Rural Commercial or Industrial – Acres: | Other: – Acres: |

If the comprehensive plan map change is an urban reserve amendment including less than 50 acres, or establishment or amendment of an urban reserve by a city with a population less than 2,500 in the urban area, indicate the number of acres, by plan designation, included in the boundary.

| | |
|---|--|
| Exclusive Farm Use – Acres: | Non-resource – Acres: |
| Forest – Acres: | Marginal Lands – Acres: |
| Rural Residential – Acres: | Natural Resource/Coastal/Open Space – Acres: |
| Rural Commercial or Industrial – Acres: | Other: – Acres: |

For a change to the text of an ordinance or code:

Identify the sections of the ordinance or code that were added or amended by title and number:

None.

For a change to a zoning map:

Identify the former and new base zone designations and the area affected:

Change from IL to CG. Acres: 12.76

Change from to . Acres:

Change from to . Acres:

Change from to . Acres:

Identify additions to or removal from an overlay zone designation and the area affected:

Overlay zone designation: N/A. Acres added: . Acres removed:

Location of affected property (T, R, Sec., TL and address): 17-12-16B TL 700,703,704,708; 63450 N Hwy 97

List affected state or federal agencies, local governments and special districts: Oregon Dept. of Transportation

Identify supplemental information that is included because it may be useful to inform DLCD or members of the public of the effect of the actual change that has been submitted with this Notice of Adopted Change, if any. If the submittal, including supplementary materials, exceeds 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

None.

NOTICE OF ADOPTED CHANGE – SUBMITTAL INSTRUCTIONS

1. A Notice of Adopted Change must be received by DLCD no later than 20 days after the ordinance(s) implementing the change has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s) as provided in [ORS 197.615](#) and [OAR 660-018-0040](#).

2. A Notice of Adopted Change must be submitted by a local government (city, county, or metropolitan service district). DLCD will not accept a Notice of Adopted Change submitted by an individual or private firm or organization.

3. **Hard-copy submittal:** When submitting a Notice of Adopted Change on paper, via the US Postal Service or hand-delivery, print a completed copy of this Form 2 on light green paper if available. Submit **one copy** of the proposed change, including this form and other required materials to:

Attention: Plan Amendment Specialist
Dept. of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

This form is available here:

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

4. **Electronic submittals** of up to 20MB may be sent via e-mail. Address e-mails to plan.amendments@state.or.us with the subject line “Notice of Adopted Amendment.”

Submittals may also be uploaded to DLCD’s FTP site at http://www.oregon.gov/LCD/Pages/papa_submittal.aspx.

E-mails with attachments that exceed 20MB will not be received, and therefore FTP must be used for these electronic submittals. **The FTP site must be used for all .zip files** regardless of size. The maximum file size for uploading via FTP is 150MB.

Include this Form 2 as the first pages of a combined file or as a separate file.

5. **File format:** When submitting a Notice of Adopted Change via e-mail or FTP, or on a digital disc, attach all materials in one of the following formats: Adobe .pdf (preferred); Microsoft Office (for example, Word .doc or docx or Excel .xls or xlsx); or ESRI .mxd, .gdb, or .mpk. For other file formats, please contact the plan amendment specialist at 503-934-0017 or plan.amendments@state.or.us.

6. **Content:** An administrative rule lists required content of a submittal of an adopted change ([OAR 660-018-0040\(3\)](#)). By completing this form and including the materials listed in the checklist below, the notice will include the required contents.

Where the amendments or new land use regulations, including supplementary materials, exceed 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

7. Remember to notify persons who participated in the local proceedings and requested notice of the final decision. ([ORS 197.615](#))

If you have any questions or would like assistance, please contact your DLCD regional representative or the DLCD Salem office at 503-934-0017 or e-mail plan.amendments@state.or.us.

Notice checklist. Include all that apply:

- Completed Form 2
- A copy of the final decision (including the signed ordinance(s)). This must include city *and* county decisions for UGB and urban reserve adoptions
- The findings and the text of the change to the comprehensive plan or land use regulation
- If a comprehensive plan map or zoning map is created or altered by the proposed change:
 - A map showing the area changed and applicable designations, and
 - Electronic files containing geospatial data showing the area changed, as specified in [OAR 660-018-0040\(5\)](#), if applicable
- Any supplemental information that may be useful to inform DLCD or members of the public of the effect of the actual change

COMMUNITY DEVELOPMENT
DEPARTMENT
710 WALL STREET
BEND, OR 97701
(541) 388-5580 PHONE
(541) 388-5519 FAX
www.bendoregon.gov



Notice of Final Decision

City of Bend Planning Division

Date of Notice: November 19, 2013

Date of Decision: October 30, 2013

Case Number: PZ-13-0442

Applicant: Kelly Development, Inc.

Nature of the Application:

A site specific zone change application for four parcels of land containing 12.76 acres located on Nels Anderson Road from Light Industrial (IL) to Commercial General (CG).

Legal Description:

See attached.



Final Decision:

Hearings Officer Sharon Smith approved this site specific zone change application on October 30, 2013. Notice of the Hearings Officer's decision was mailed to all parties to the record on October 31, 2013 and the decision became final on November 12, 2012.

Please Note - Section 4.1.429 of the Bend Development Code states: "The Hearings Officer shall be the Review Authority for site specific zone change requests which bring the zoning into conformance with the Bend Area General Plan designation." This site specific zone change brings the zoning of the subject property into conformance with its Bend Area General Plan designation. No separate ordinance is required, and the action taken is a final action.

Questions:

If you have any questions concerning this matter, please contact Aaron Henson by phone at (541) 383-4885 or by e-mail at <ahenson@bendoregon.gov>.

EXHIBIT A

LEGAL DESCRIPTION

A parcel of land containing 17.5 acres, more or less, located in a portion of Section 16, Township 17 South, Range 12 East, Willamette Meridian, City of Bend, Deschutes County, Oregon, being more particular described as follows:

Beginning at the northeast corner of those lands described in Bargain and Sale Deed recorded in Vol. 2007, Pg. 18495, Deschutes County Official Records, said point also being a point on the westerly right of way line of the Oregon Trunk Railroad; thence along said westerly right of way line South $13^{\circ}47'23''$ West a distance of 485.00 feet to the northeast corner of Parcel 3 as shown on Major Partition 81-18; thence continuing along said westerly right of way line South $13^{\circ}47'23''$ West a distance of 541.56 feet to the southeast corner of said Parcel 3; thence leaving said westerly right of way line along the south line of said Parcel 3 North $89^{\circ}56'17''$ West a distance of 321.16 feet to the centerline of Nels Anderson Road as described in Warranty Deed recorded in Vol. 2003, Pg. 70376, Deschutes County Official Records; thence along said centerline North $02^{\circ}55'40''$ East a distance of 162.90 feet to the centerline of Robal Lane; thence along the centerline of Robal Lane the following two (2) courses and one (1) curve:

North $86^{\circ}35'43''$ West a distance of 122.66 feet;
62.00 feet along the arc of a tangent curve to the right with a radius of 170.00 feet, the chord of which bears North $76^{\circ}08'48''$ West for a distance of 61.66 feet;
North $65^{\circ}41'53''$ West a distance of 217.07 feet to the easterly right of way line of The Dalles – California Highway (U.S. 97);

thence continuing North $65^{\circ}41'53''$ West a distance of 130.00 feet to the westerly right of way line of The Dalles – California Highway (U.S. 97); thence along said westerly right of way line, North $24^{\circ}18'45''$ East a distance of 889.65 feet; thence leaving said westerly right of way line, South $65^{\circ}41'15''$ East a distance of 137.64 feet; thence 153.11 feet along the arc of a tangent curve to the left with a radius of 164.04 feet, the chord of which bears North $87^{\circ}34'24''$ East for a distance of 147.61 feet; thence North $60^{\circ}50'03''$ East a distance of 45.75 feet; thence South $43^{\circ}23'45''$ East a distance of 123.51 feet to a point on the easterly right of way line of Nels Anderson Road, said point also being an angle point along the northerly boundary of said lands described in Vol. 2007, Pg. 18495; thence along said northerly boundary the following three (3) courses:

South $43^{\circ}23'45''$ East a distance of 86.08 feet;
North $24^{\circ}18'57''$ East a distance of 94.74 feet;
South $76^{\circ}12'37''$ East a distance of 199.76 feet to the Point of Beginning, the terminus of this description.

Subject to: All easements, restrictions and right-of-ways of record and those common and apparent on the land.

See drawing marked Exhibit "B" and hereby made a part of this description.

REGISTERED
PROFESSIONAL
LAND SURVEYOR



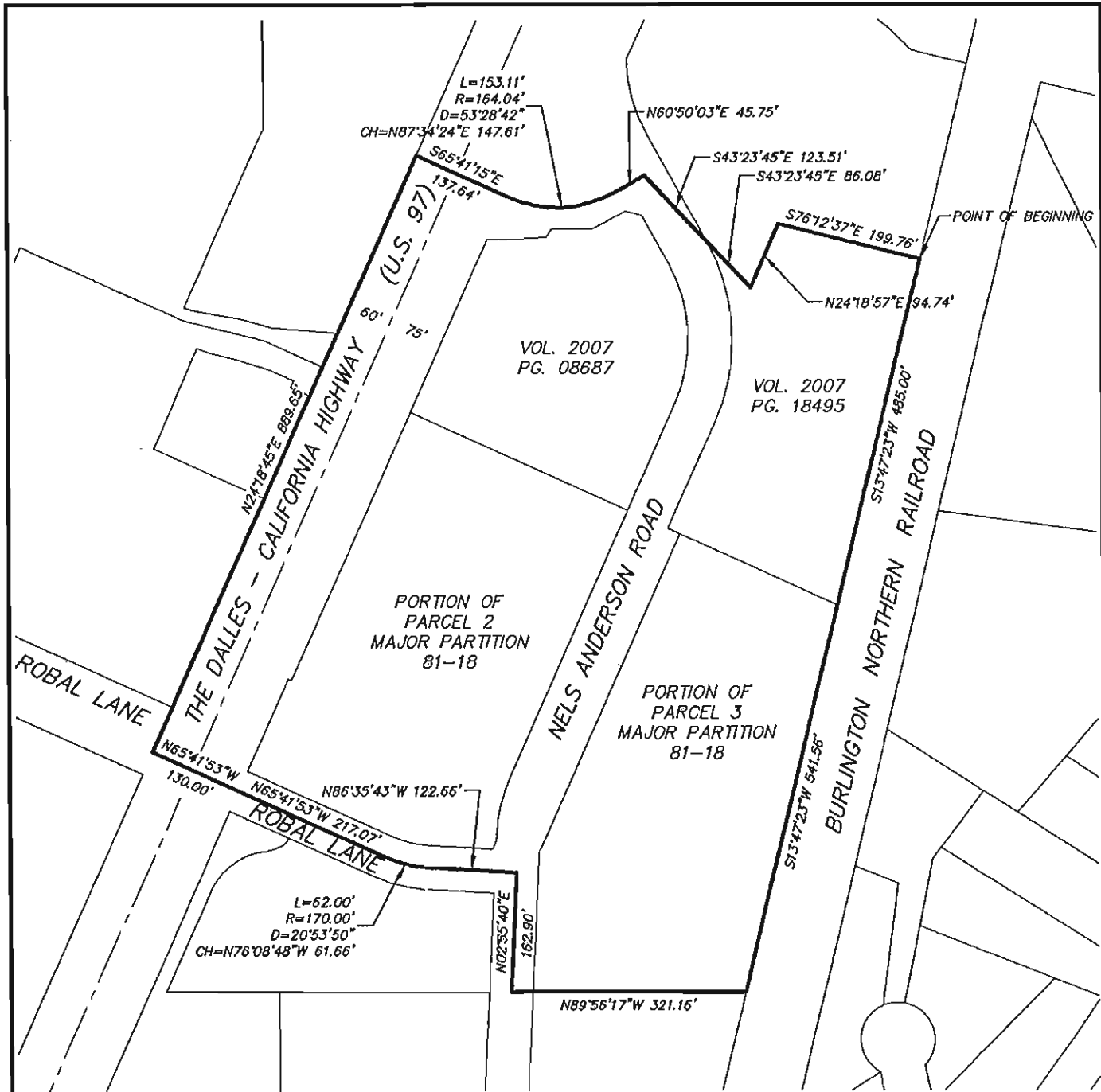
OREGON
JULY 19, 1994
DAVID R. WILLIAMS
2686

RENEWAL DATE: 06/30/08

10/16/13

October 16, 2013

S:\Land Projects\131008-Pape Zone Change\docs\zone change legal.doc



REGISTERED
PROFESSIONAL
LAND SURVEYOR

David R. Williams

OREGON
JULY 19, 1994
DAVID R. WILLIAMS
2686

RENEWAL DATE: 06/30/14

10/16/13



1" = 200'

HWA
HICKMAN, WILLIAMS & ASSOCIATES, INC.
42730 O.E. REEF ROAD, SUITE 100
TILLAMOOK, OREGON 97141
PHONE: 503.841.9351 FAX: 503.841.5414

EXHIBIT B - ZONE CHANGE

13100B-ZONE CHANGE.DWG

SHEET

1/1

SCALE: 1" = 200'

DRAWN BY: PGC

DATE: 10/16/2013

THE HEARINGS OFFICER FINDINGS AND DECISION

PROJECT NUMBER: PZ-13-0442 (Zone Change)

HEARING DATE: October 9, 2013 at 9:30 a.m.
City of Bend Council Chambers
710 NW Wall St., Bend, Oregon

HEARINGS OFFICER: Sharon Smith

**APPLICANT/
OWNER:** Papé Properties Inc.
c/o Robert Reicke, President
P.O. Box 407
Eugene, OR 97740

**APPLICANT'S
REPRESENTATIVE:** Blackmore Planning & Development Services
c/o Greg Blackmore
19454 Sunshine Way
Bend, OR 97702

LOCATION: 63450 N Hwy 97; Tax Lots 700, 703, 704 & 708 on
Deschutes County Assessor's Map 17-12-16B.

REQUEST: Type III application for a Zone Change for four parcels of
land containing 12.76 acres located on Nels Anderson Road
from Light Industrial (IL) to Commercial General (CG).

STAFF REVIEWER: Aaron Henson, AICP, Senior Planner
541-383-4885, ahenson@bendoregon.gov

APPLICABLE CRITERIA, STANDARDS, AND PROCEDURES:

- (1) City of Bend Development Code
 - (a) Chapter 2.2, Commercial Districts
 - (b) Chapter 2.4, Industrial Districts
 - (c) Chapter 4.1, Land Use Review and Procedures
 - (d) Chapter 4.6, Land Use District Map and Text Amendments
 - (e) Chapter 4.7, Transportation Analysis
- (2) The Bend Area General Plan
- (3) Oregon Administrative Rules
 - (a) Chapter 660-012-0060, Plan and Land Use Regulation Amendments
 - (b) Chapter 660-015-0000, Statewide Planning Goals and Guidelines

FINDINGS OF FACT:

1. **LOCATION:** The subject property is located on the east side of Highway 97, between Robal Lane and Chavre Way. It is bisected by Nels Anderson Road, and next to the BNSF railroad tracks to the east.



2. **EXISTING ZONING & GENERAL PLAN DESIGNATION:** The subject property is zoned Light Industrial (IL) and designated Commercial General (CG) on the Bend Urban Area General Plan map.
3. **SITE DESCRIPTION & SURROUNDING USES:** The subject property consists of four lots containing 12.76 acres total. All four lots are vacant except for a billboard on the northwest corner of Tax Lot 704. There is a small cluster of Western Juniper trees located near the southwest corner of Tax Lot 700, and approximately a dozen Western Juniper trees located near the northwest corner on Tax Lot 704, just south of the billboard. There are overhead power lines running along the east side of Tax Lots 700 & 703, adjacent to the railroad tracks. A separate power line branches off to the west, serving the billboard.

The surrounding roadways (Robal Lane, Nels Anderson Road, and Chavre Way) are all curbed, paved streets, but Chavre Way is missing sidewalks. There are no sidewalks along the subject property's frontage on Highway 97, either.

The IL zoned property to the north contains Big Country RV. The CG zoned property across Highway 97 to the west contains the Bend Center, which includes such tenants as Target, Home Depot, Mattress Gallery, Wholesale Sports, Olive Garden, and Panda Express. The IL zoned property to the south contains several building supply businesses. The RL zoned property across the railroad tracks to the east contains single-family dwellings in the Lava Ridge Refinement Plan Area.

- 4. PROPOSAL:** Type III application for a Zone Change for four parcels of land containing 12.76 acres located on Nels Anderson Road from Light Industrial (IL) to Commercial General (CG).
- 5. PUBLIC NOTICE AND COMMENTS:** Prior to submitting this Zone Change application, the applicant held a public meeting on July 16, 2013. According to the applicant's meeting notes, those who attended the meeting raised concerns about traffic impacts, pedestrian access across the railroad tracks, what types of future uses might locate on the subject property, the future Highway 97 re-route project, and the Highway 97 expressway designation. On September 10, 2013, the Planning Division sent notice of the public hearing on the proposed Zone Change to surrounding owners of record of property within 250 feet of the subject property as shown on the most recent property tax assessment roll, and to the Boyd Acres Neighborhood Association (BANA). As of the date of the public hearing, no public comments were received in response to the notice. Transmittals were also sent via ePlans to other participating agencies for comment. The comments and recommendations that the Planning Division received in response are contained in the project file and were considered in this decision.
- 6. APPLICATION ACCEPTANCE DATE:** The application for this Zone Change was submitted on August 12, 2013. Upon receipt of the required application fees on August 21, 2013, the application was formally accepted as complete. A hearing was held October 9, 2013 and the record was left open until October 16, 2013 for the Applicant to submit a revised legal description based upon a GIS shape file that the City has provided to the applicant. This revised legal description will be the property subject to the re-zone. Applicant provided testimony and evidence at the hearing. No other public comment was submitted.

APPLICATION OF THE CRITERIA :

CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE

This Zone Change application is a Type III quasi-judicial land use application. All applicable criteria and policies related to the request are addressed in the findings below and the applicant's burden of proof statement. The application follows the procedures identified in BDC Section 4.1.400. In addition, all of the criteria identified in BDC Section 4.6.300 are addressed below.

CHAPTER 4.6, LAND USE DISTRICT MAP AND TEXT AMENDMENTS

4.6.300 QUASI-JUDICIAL AMENDMENTS

B. Criteria for Quasi-Judicial Amendments

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

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

Goal 1, Citizen Involvement

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

The City's acknowledged citizen involvement program for quasi-judicial amendments is codified in BDC Chapter 4.1. The first step for citizen involvement is the public meeting required by BDC 4.1.215. As previously noted, the applicant held a public meeting on July 16, 2013. Notice of the public meeting was provided to property owners located within 500 feet of the subject property and to the Boyd Acres Neighborhood Association. Type III land use applications are also noticed by the City pursuant to BDC 4.1.400, which ensures that citizens are informed of the opportunity to participate in a public 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 Development Code establishes the process, and the General Plan establishes the policy framework, for a decision on the requested Zone Change. BDC 4.1.429 states, "The Hearings Officer shall be the Review Authority for site specific zone change requests which bring the zoning into conformance with the Bend Area General Plan designation." Staff prepares a written recommendation based on established processes and policies. The Hearings Officer will consider this and other evidence at a public hearing, where written and oral evidence is received, and will then make a decision on the 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 to this Zone Change application because the subject property is not zoned for agriculture or forest use and does not contain any inventoried open spaces, scenic areas, historic resources, or natural resources.

Goal 6, Air, Water and Land Resources Quality

Goal 6 is not applicable to this Zone Change application because the proposed change will have no impacts on air, water, or land resources. Air and water quality are regulated by the Oregon Department of Environmental Quality. The subject property has no unique land resources.

Goal 7, Areas Subject to Natural Hazards

Goal 8, Recreational Needs

Goals 7 and 8 are not applicable to this 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 the implementing rules require local governments to provide an adequate amount of commercial and industrial land within the Urban Growth Boundary. In Bend, this requirement is accomplished through the designation of adequate commercial, industrial, and mixed employment land in the General Plan. Statewide Land Use Planning Goal 9 requires the City to provide for "at least an adequate supply of sites of suitable sizes, types, locations and service levels for a variety of industrial and commercial uses consistent with plan policies." The administrative rules implementing Goal 9 — specifically OAR 660-009-0015 — require the City to develop an inventory of industrial and other employment lands of "vacant and developed lands within the planning area designated for industrial or other employment uses."

The City adopted ordinances amending its Urban Growth Boundary (UGB) and General Plan in January 2009, based upon a number of studies and inventories, including an Economic Opportunities Analysis and a Buildable Lands Inventory. Portions of these analyses are in dispute and have been remanded by the State Department of Land Conservation and Development (DLCD). Thus, it is necessary to use the City of Bend's acknowledged General Plan dated December 1998 and its corresponding support documents and Economic Lands Studies. The Hearings Officer takes official notice of that Study and incorporates it by reference in this findings and decision.

The subject property is already designated General Commercial (CG) on the Bend Area General Plan Map, and the applicant is requesting the City to change the Zoning Designation from Light Industrial (IL) to General Commercial (CG). The General Plan recognizes that changes will occur over time, and its preamble states:

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

The City has four commercial zones – General Commercial (CG), Limited Commercial (CL), Convenience Commercial (CC), and the Central Business District (CB). The lands across Highway 97 to the west are zoned CG, and the adjacent lands to the north have a CG Plan Designation. The CG zone allows for the widest wide range of commercial and retail uses. Therefore, the requested Zone Change is consistent with the goal of providing opportunities for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens. The applicant's proposal is consistent with Goal 9 because it will provide additional commercially zoned land within Bend's existing UGB, facilitating a more diverse economy and opportunities for employment located close to existing residential neighborhoods.

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 proposed Zone Change is consistent with the public facilities and services goal that requires the City to plan and develop land in a timely, orderly, and efficient fashion, based upon the availability of public services. All needed public facilities and services are available to the subject property. The property is surrounded by an established network of streets, with access to an expressway. Water and sanitary sewer service is available via existing City infrastructure located in the adjacent streets. The applicant understands that at the time of development, the City will require an analysis confirming that there are no capacity issues with nearby water and sewer facilities. Emergency services are available through the City of Bend Fire and Police Departments. The subject property is also located within the Bend LaPine School District. Commercial uses will not place a strain on police, fire, or school facilities and services because those facilities and services are used primarily by residential uses.

Goal 12, Transportation

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

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

(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule.

(9) Notwithstanding section (1) of this rule, a local government may find that an amendment to a zoning map does not significantly affect an existing or planned transportation facility if all of the following requirements are met.

(a) The proposed zoning is consistent with the existing comprehensive plan map designation and the amendment does not change the comprehensive plan map;

(b) The local government has an acknowledged TSP and the proposed zoning is consistent with the TSP; and

(c) The area subject to the zoning map amendment was not exempted from this rule at the time of an urban growth boundary amendment as permitted in OAR 660-024-0020(1)(d), or the area was exempted from this rule but the local government has a subsequently acknowledged TSP amendment that accounted for urbanization of the area.

As previously noted, the proposed CG zoning is consistent with the subject property's existing General Plan designation, and the requested amendment does not change the General Plan map. The proposed CG zoning is consistent with the General Plan Map and the Transportation System Plan Map, which were included as Exhibits B and C of Resolution No. 2247 dated November 18, 1998. The TSP was acknowledged by the Department of Land Conservation and Development (DLCD) on September 5, 2013, and the area subject to this zoning map amendment was not exempted from the TPR at the time of a UGB amendment as permitted in OAR 660-024-0020(1)(d). Therefore, the requested zone change complies with Goal 12 and the TPR.

Goal 13, Energy

To conserve energy.

The CG zone may improve energy conservation because it will allow for a mix of economic uses in an area with an existing network of streets, which is also served by public transit.

Goal 14, Urbanization

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

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

Goal 15, Willamette River Greenway

Goal 16, Estuarine Resources

Goal 17, Coastal Shorelands

Goal 18, Beaches and Dunes

Goal 19, Ocean Resources

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

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

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

CHAPTER 1: PLAN MANAGEMENT AND CITIZEN INVOLVEMENT

Applicable Policies

Development within the Urban Growth Boundary

- 4. New developments shall pay to extend planned sewer, water, and transportation facilities to and through the property if the development occurs prior to the scheduled construction of those facilities shown in the capital improvement plan. 1-7***
- 5. The city and county will encourage compact development and the integration of land uses within the Urban Growth Boundary to reduce trips, vehicle miles traveled, and facilitate non-automobile travel. 1-7***

The applicant's undeveloped property is already served by City water, sewer, and transportation facilities which extend to and through the site. Compliance with the City's requirements for adequate public facilities are evaluated through the Site Plan Review or Minimum Development Standards (MDS) process when any change of use or future development is proposed, and Systems Development Charges (SDCs) are assessed when any building permits are issued. The subject property is surrounded by a variety of commercial and industrial uses with good access to streets and transit routes, which will help to reduce vehicle miles traveled (VMT) and facilitate non-automobile travel.

6. The city and county will encourage infill and redevelopment of the core area of the city. 1-7

Although the applicant's current proposal does not include any development at this time, the zone change is a necessary step to entitle the property and ultimately develop it in a manner that is consistent with the General Plan. Therefore, approval of the requested zone change will contribute towards meeting this policy.

Citizen Involvement

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

The Zone Change process requires a public meeting prior to submitting an application, as well as notice from the City and a public hearing before a Hearings Officer in order to ensure adequate opportunity for citizen participation in the planning process. Citizens participated in the applicant's public meeting, and citizens have also been invited to attend a public hearing on the proposed Zoning Map amendment. Therefore, the requested Zone Change complies with this policy.

CHAPTER 6: THE ECONOMY AND LANDS FOR ECONOMIC GROWTH

Applicable Policies

22. The city shall strive to retain and enhance desirable existing commercial areas and encourage property owners' efforts to rehabilitate or redevelop older commercial areas. 6-16

The subject property is located in close proximity to a desirable commercial area, and it is already designated as General Commercial on the General Plan. Changing the Zoning of the subject property to conform to its General Plan designation is a step toward allowing commercial use, which should enhance the existing commercial area. Therefore, approving the zone change would be consistent with this policy.

24. All commercial developments shall be subject to special development standards relating to setbacks, landscaping, physical buffers, screening, access, signs, building heights, parking areas, and design review. 6-16

27. Commercial developments that abut residential zones or residential uses shall be subject to special setback and screening provisions. 6-16

This proposal is for a zone change, and does not include any development at this time. The two policies listed above are carried out through the procedures that have been adopted into the Bend Development Code. The applicant understands that any future commercial development will need to comply with the standards and criteria of the Development Code, which will ensure consistency with these policies.

31. It is the intent of the Plan to allow commercial development adjacent to arterial streets and highways in areas designated for commercial development, provided that the developments access onto frontage roads or interior roads, and that access onto the highway or arterial will be limited. Points of access will be encouraged that provide for adequate and safe entrances and exits, and that favor right turns and merging over the use of traffic signals. 6-16

This policy is implemented by the access standards of the adopted Development Code, which are applied when new access is proposed or concurrently with site development. The proposal includes a zone change, but it does not include any new access points or site development at this time. The site is a commercial site, it is adjacent to an existing expressway, and it has an interior local frontage street that serves the property. Given that there are plenty of access options within the City's existing transportation network, the proposed zone change would not restrict future development from conforming to this policy through the standards in the adopted Development Code.

CHAPTER 7: TRANSPORTATION SYSTEMS

Applicable Policies

6.9.2 Transportation System Management

3. The City and State shall implement transportation system management measures to increase safety, reduce traffic congestion to improve the function of arterial and collector streets, and protect the function of all travel modes. 7-7

The City's transportation system management measures are embodied within the Transportation System Plan. The proposed zone change is consistent with the adopted plan, thus the proposal is consistent with this policy. That said, Highway 97 is highly congested during peak hours. Traffic flow is worsening, with drivers having to wait longer at signals. Travel delays on Highway 97 are expected to worsen with future growth. Severe injury and fatal crashes are also increasing on Highway 97, and the intersections of Highway 97 at Robal Road and Highway 97 at Cooley Road have more accidents than other similar intersections in the state. Therefore, the "US 97 Bend North Corridor" project is currently being conducted by the Oregon Department of Transportation (ODOT) and the Federal Highway Administration (FHWA). The purpose of this project is to provide practically designed solutions to improve safety and mobility for trucks and automobiles on Highway 97 between the Deschutes Market Road/Tumalo Junction interchange and Empire Avenue interchange. ODOT has recommended a "preferred alternative" for addressing these issues, and a draft environmental impact study (EIS) has been completed. However, the City's TSP has not been amended yet to incorporate the proposed transportation system changes identified in the preferred alternative, and the final EIS will not be released until 2014. The Hearings Officer finds that the US 97 Bend North Corridor project is not applicable to this findings and decision because it has not been included in the City of Bend's TSP.

CHAPTER 8: PUBLIC FACILITIES AND SERVICES

Applicable Policies

- 1. The city shall encourage development of serviced land prior to unserviced land or require the extension of sewer lines as part of any development within the UGB. 8-18**

The subject property is within the Urban Growth Boundary and is served by a 3 inch pressure main line. Therefore, this policy encourages the entitlement and future development of this site prior to the development of unserviced land.

- 12. Within the urban planning area, public and private water systems shall be consistent with city standards for construction and service capabilities. 8-19**

The subject property is surrounded by a network of City water facilities. This public water system was constructed in accordance with City standards. If and when future development occurs, the Bend Development Code will require additional analysis to ensure the existing facilities have the capacity to serve the type of development that is proposed. The adopted City regulations will ensure that this policy is met.

Other Applicable General Plan Provisions:

The preface of the Bend Area General Plan states: "The zoning for land within the urban planning area must be consistent with the designated land use categories in the General Plan." (P-4) It further states, "The major land use categories – residential, commercial, industrial, and mixed-use – have very specific boundaries that are shown on the General Plan Map. The city and county apply zoning to property based on the General Plan Map categories." (P-6)

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

FINDING: The public facilities and services potentially affected by future commercial development on the subject property include sewer, water, police and fire protection services, and transportation facilities. The property is currently served by a network of sewer, water, and transportation facilities that were constructed in conformance with City Standards and which conform to the adopted Public Facilities Plans. The Public Facilities Plans and the TSP anticipated that the land uses would be those designated in the General Plan (CG for the subject property). Furthermore, to ensure the built public facilities have adequate capacity to serve actual development, prior to issuance of any building permits for development, the Bend Development Code requires a land division approval and/or site development approval. BDC Chapter 4.3 states that no application for a new land division shall be approved unless it can be determined that the land division will not create excessive demand on public facilities and services

required to serve the development. Furthermore, the Site Development and Design Review criteria in BDC Chapter 4.2 establish that all required public facilities must have adequate capacity, as determined by the City, to serve the proposed use. Accordingly, the Hearings Officer finds that the Applicant meets the second part of the criteria that the “facilities, services, and transportation networks are planned to be provided concurrently with the development of the property.”

The combination of the built facilities, the public facilities plans, and the public facility improvement requirements of the Bend Development Code ensure conformance with this approval criterion. Because nothing in the zone change proposal would prevent the future site development from connecting to these systems (or future proposed systems) in a manner that would provide adequate capacity, the requested zone change conforms to this approval criterion.

Criterion #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 BDC 4.6.600, Transportation Planning Rule Compliance.

FINDINGS:

1. Mistake or Inconsistency. The applicant does not argue there was a mistake in the original General Plan designation or Zoning of the subject property. However, the General Plan Map and Zoning Map are inconsistent with one another. Approval of this application corrects that inconsistency.

2. Transportation Planning Rule Compliance. Compliance with the Transportation Planning Rule (TPR) has been previously covered in the Goal 12 discussion above.

3. Other Legal Justification for the Requested Zone Change.

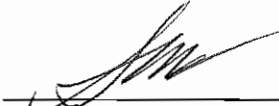
The applicant is requesting the City to bring the zoning of the subject property into conformance with its General Plan designation. The Oregon Supreme Court has ruled that “a comprehensive plan is the controlling land use planning instrument for a city. Upon passage of a comprehensive plan a city assumes a responsibility to effectuate that plan and conform prior conflicting zoning ordinances to it.” *Baker v. City of Milwaukee*, 271 Or 500, 533 P2d 772 (1975).

CONCLUSIONS:

The Hearings Officer finds that the proposed Zone Change from IL to CG meets all applicable Development Code criteria, policies of the Bend Urban Area General Plan, Oregon Statewide Planning Goals, and the Transportation Planning Rule.

DECISION:

The Hearings Officer approves the request to rezone the subject property from IL to CG.



Sharon R. Smith, Hearings Officer

Date: October 30, 2013

Mailed: October 31, 2013