



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

04/28/2014

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 004-11

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: Wednesday, May 14, 2014

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: Amy Barry, City of Bend  
Gordon Howard, DLCD Urban Planning Specialist

<paa> YA



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

<b>FOR DLCD USE</b>	
File No.:	004-11 (18899)
	[17859]
Received:	4/23/2014

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: Bend

Local file no.: **PZ11-140**

Date of adoption: April 16, 2014

Date sent: 4/22/2014

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): July 15, 2011

No

Is 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:

Local contact (name and title): Wendy Robinson, Senior Planner

Phone: 541-388-5598

E-mail: wrobinson@bendoregon.gov

Street address: 710 NW Wall St

City: Bend

Zip: 97701-

### 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:

**For a change to a comprehensive plan map:**

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

Change from RS	to RM	7.99 acres.	A goal exception was required for this change. <i>NO</i>
Change from change.	to	acres.	A goal exception was required for this
Change from change.	to	acres.	A goal exception was required for this
Change from	to	acres.	A goal exception was required for this change.

Location of affected property (T, R, Sec., TL and address): 181203DD TL 2200, 2300, 2500, 2600, 2700, 3200, 3300, 3401

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:

**For a change to a zoning map:**

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

Change from RS	to RM	Acres: 7.99
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:	Acres added:	Acres removed:
---------------------------	--------------	----------------

Location of affected property (T, R, Sec., TL and address): 181203DD TL 2200, 2300, 2500, 2700, 3200, 3300, 3400, 3401

---

List affected state or federal agencies, local governments and special districts: City of Bend

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.

## ORDINANCE NO. NS-2219

AN ORDINANCE AMENDING THE BEND URBAN AREA GENERAL PLAN DESIGNATION AND ZONING OF 7.99 ACRES OF LAND NORTH OF REED MARKET ROAD BETWEEN PETTIGREW ROAD AND DALY ESTATES DRIVE FROM RESIDENTIAL URBAN STANDARD DENSITY (RS) TO RESIDENTIAL URBAN MEDIUM DENSITY (RM).

### Findings:

- A. On July 15, 2011 the applicant submitted an application with the City for a plan map and zone change for 7.99 acres of land located north of Reed market Road between Pettigrew Road and Daly Estates Drive.
- B. The Hearings Officer held a duly noticed public hearing for the proposal on September 22, 2011. On November 4, 2011, the Hearings Officer issued a decision recommending that Council adopt a Resolution of Intent to Rezone.
- C. The City Council held a duly noticed public hearing on December 7, 2011. Based on the entire record, including all testimony, evidence and the recommendation of the Hearings Officer, the Council unanimously adopted a Resolution of Intent to Rezone, for Type III Plan Amendment and Zone Change for the subject property (File # PZ11-140).
- D. Special conditions were attached to the Resolution of Intent to Rezone that needed to be satisfied prior to the adoption of an ordinance.
- E. On February 3, 2014 the Community Development Department approved a tentative subdivision plan and site development plan to construct a 114-unit apartment complex. The proposed development met the special conditions placed on the Resolution of Intent to Rezone.

Based on these findings,

THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend City Council finds that the requested Plan Amendment and Zone Change has met the special conditions of the Resolution of Intent to Rezone.

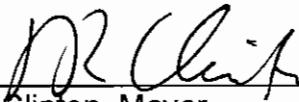
Section 2. The Bend Urban Area General Plan and Zoning Maps are amended by changing the plan designation and zoning of 7.99 acres of land north of Reed Market Road between Pettigrew Road and Daly Estates Drive from Residential Urban Standard Density (RS) to Residential Urban Medium Density (RM) as shown in Exhibit A and described in Exhibit B.

First Reading: April 2, 2014


Second Reading and Adoption by Roll Call Vote: April 16, 2014

YES: Mayor Jim Clinton  
Councilor Jodie Barram  
Councilor Scott Ramsay  
Councilor Victor Chudowsky  
Councilor Doug Knight  
Councilor Sally Russell

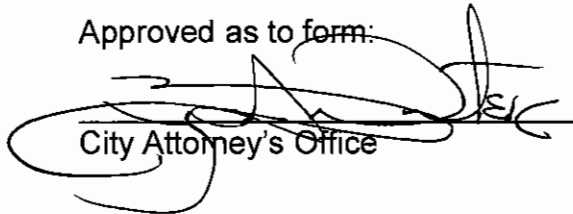
NO: none

  
\_\_\_\_\_  
Jim Clinton, Mayor

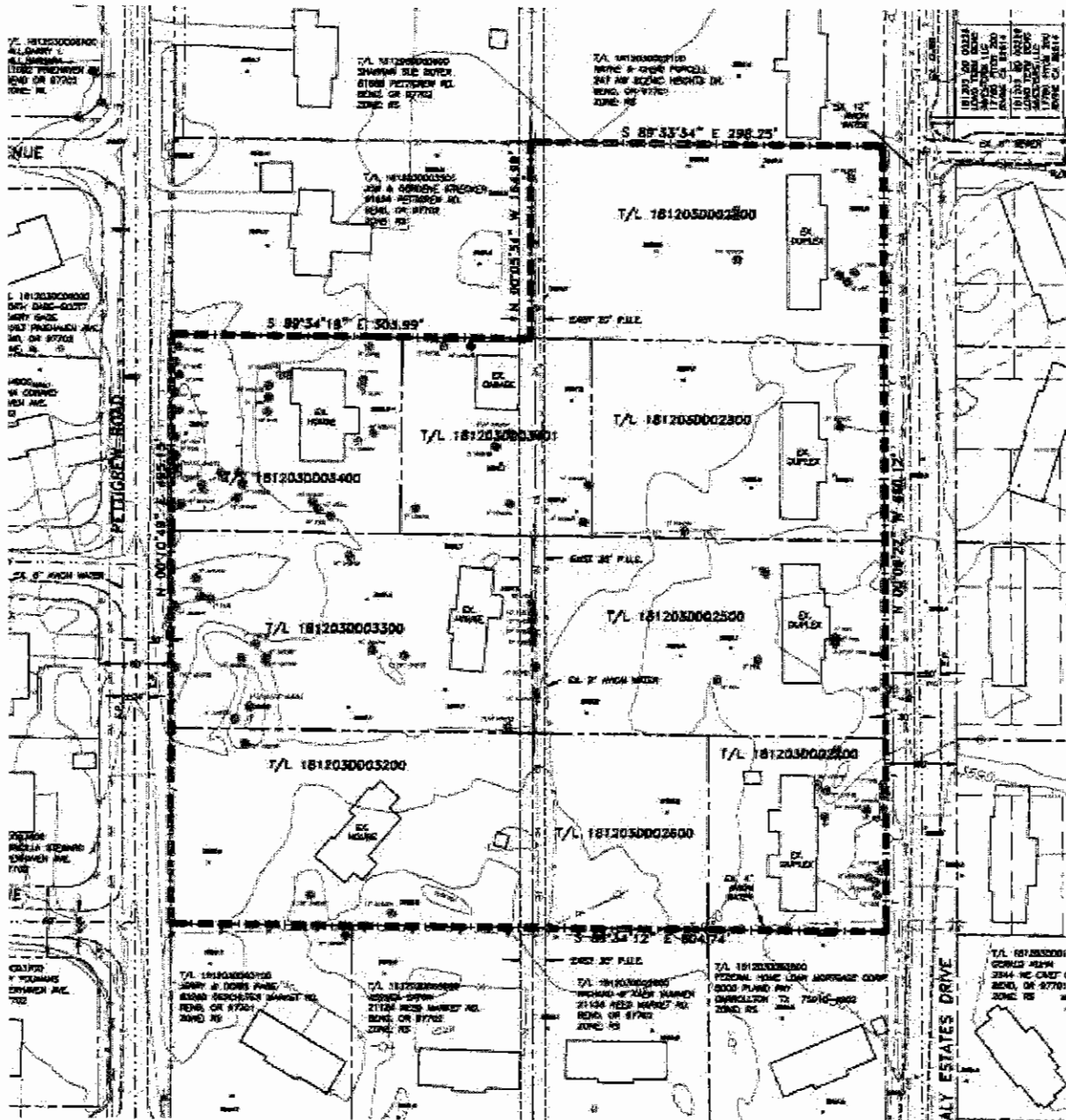
ATTEST:

  
\_\_\_\_\_  
Robyn Christie, City Recorder

Approved as to form:

  
\_\_\_\_\_  
City Attorney's Office

# EXHIBIT A



# EXHIBIT B

Legal description of those lots included in PZ-11-140

LOTS 9-11, BLOCK 1, DALY ESTATES, AND LOTS 17-20, REPLAT OF LOT 14 BLOCK 1 DALY ESTATES, CITY OF BEND, DESCHUTES COUNTY, OREGON.

**FINDINGS AND RECOMMENDATION OF  
CITY OF BEND HEARINGS OFFICER**

**FILE NUMBER:** PZ 11-140

**APPLICANT:** Daly Estates Investments, LLC  
c/o Keith H. Studwell  
21755 Old Red Road  
Bend, Oregon 97702

**PROPERTY OWNER:** Harriet Davisson  
61646 Pettigrew Road  
Bend, Oregon 97702

**APPLICANT'S AGENT:** Deborah McMahon  
DMC Consulting Services LLC  
P.O. Box 902  
Redmond, Oregon 97756

**APPLICANT'S ENGINEER:** Tim Weishaupt, P.E.  
Sun Country Engineering  
920 S.E. Armour Rd.  
Bend, Oregon 97702

**REQUEST:** The applicant requests approval of a plan amendment and zone change from RS to RM for 9 lots in the Daly Estates Subdivision in southeast Bend.

**STAFF REVIEWER:** Amy Barry, AICP, Associate Planner

**HEARING DATE:** September 22, 2011

**RECORD CLOSED:** October 7, 2011

**I. APPLICABLE STANDARDS AND CRITERIA**

**A. Bend Development Code**

**1. Chapter 2.1; Residential Districts**

\* Section 2.1.600, Residential Density

\* Section 2.1.1000, Multi-family Residential Districts (RM, RH)

**2. Chapter 4.1; Land Use Review and Procedures**

- \* Section 4.1.426, Type III – Quasi-Judicial Procedures
- 3. Chapter 4.6; Land Use District Map and Text Amendments
  - \* Section 4.6.300, Quasi-Judicial Amendments
  - \* Section 4.6.400, Intent to Rezone
  - \* Section 4.6.600, Transportation Planning Rule (TPR) Compliance
- 4. Chapter 4.7; Transportation Analysis
  - \* Section 4.7.200, Transportation Impact Study
  - \* Section 4.7.400, Approval Criteria
  - \* Section 4.7.500, Mitigation Requirements/Conditions of Approval
- B. Bend Area General Plan (1998)
- C. Oregon Administrative Rules (OAR), Chapter 660
  - 1. Division 12, Transportation Planning
    - \* OAR 660-012-0060, Plan and Land Use Regulation Amendments
  - 2. Division 15, Statewide Planning Goals and Guidelines
    - \* OAR 660-015-0000, State-Wide Planning Goals and Guidelines #1 Through #14
    - \* OAR 660-015-0005, State-Wide Planning Goal and Guideline #15
    - \* OAR 660-015-0010, State-Wide Planning Goals and Guidelines #16 Through #19

II. **FINDINGS OF FACT:**

- A. **Location:** The subject property consists of nine lots in the Daly Estates Subdivision with the following addresses: 61620, 61632, and 61646 Pettigrew Road; and 61625, 61635, 61647 and 61659 Daly Estates Drive. The property is further identified as Tax Lots 2200, 2300, 2500, 2600, 2700, 3200, 3300, 3400, and 3401 on Deschutes County Assessor's Map 18-12-03DD.
- B. **Zoning and Plan Designation:** The subject property is zoned Residential Urban Standard Density (RS) and designated Residential Urban Standard Density (RS) on the Bend Urban Area General Plan map.
- C. **Site Description:** The subject property is 7.99 acres in size, generally level, and consists of nine lots in the Daly Estates Subdivision. The lots are developed with seven structures including three single-family dwellings and four duplexes. Vacant areas contain scattered Juniper trees and native brush and grasses. The



property is bounded on the west by Pettigrew Road and on the east by Daly Estates Drive. Reed Market Road is located approximately 160 feet to the south.

**D. Surrounding Zoning and Land Uses:** Surrounding land north of Reed Market Road is zoned RS and developed with single-family dwellings, duplexes and a church. Land south of Reed Market Road is primarily zoned Residential Urban Low Density (RL) and is developed with a church and single-family dwellings on large lots. Farther to the southeast at the southwest corner of the intersection of Reed Market Road and S.E. 27<sup>th</sup> Street is a Commercial Convenience (CC) node currently developed with a single-family dwelling. Farther to the west across Pettigrew Road is land zoned RL and developed primarily with single-family dwellings on large lots.

**E. Procedural History:** The subject application was submitted on July 15, 2011. By an electronic mail message dated August 9, 2011 the applicant requested that the Planning Division not accept the application until it could submit a revised burden of proof addressing comments from city staff on the original burden of proof. The applicant submitted a revised burden of proof on August 23, 2011 and the city accepted the application as complete on that date. Because the application includes a plan amendment it is not subject to the 120-day period for issuance of a final local land use decision under ORS 227.178.

A public hearing on the application was held on September 22, 2011. At the hearing, the Hearings Officer received testimony and evidence, left the written evidentiary record open through October 6, 2011, and allowed the applicant through October 13, 2011 to submit final argument pursuant to ORS 197.763. By an electronic mail message dated October 7, 2011, the applicant waived submission of final argument, and the record closed on that date.

**F. Proposal:** The applicant requests approval of a plan amendment and zone change from RS to RM for the subject property in order to redevelop the property with higher-density housing.

**F. Public/Private Agency Comments:** The Planning Division sent notice of the applicants' proposal to a number of public and private agencies and received responses from: the City of Bend Engineering Division, Long-range Planning, Engineer, and Fire Department; Bend Metro Park and Recreation District; Avion Water Company; CenturyLink; and Cascade Natural Gas. The comments are included in the record.

**G. Public Notice and Comments:** The applicant held a public meeting on April 6, 2011, prior to submitting the subject application. The Planning Division mailed individual written notice of the applicant's proposal and the public hearing to the owners of record of all property located within 250 feet of the subject property, as well as the Larkspur and Old Farm Neighborhood Associations. The record indicates these notices were mailed to the owners of fifty tax lots. In addition,

notice of the public hearing was published in the Bend "Bulletin" newspaper, and the subject property was posted with a notice of proposed land use action sign. As of the date of the record in this matter closed, the Planning Division had not received any letters from the public in response to these notices. One member of the public testified at the public hearing.

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

#### **A. Bend Development Code**

##### **1. Chapter 2.1, Residential Districts**

###### **a. Section 2.1.600, Residential Density**

**A. Residential Density Standard. The following density standards apply to all new developments and subdivisions in all of the Residential Districts. Redevelopment or expansion of existing uses within areas of existing land use patterns shall comply with these standards to the extent practical. The density standards shown in Table 2.1.600 below are intended to assure efficient use of buildable lands and provide for a range of needed housing, in conformance with the General Plan.**

**FINDINGS:** The general plan establishes the maximum RS Zone density at 7.3 dwellings per gross acre. Therefore, the 7.99-acre subject property could accommodate up to 58.32 dwelling units at standard density. The record indicates the applicant previously received subdivision approval to create 41 lots sized for single-family dwellings. With the applicant's proposed plan amendment and zone change from RS to RM, the subject property could be developed with up to 21 dwellings per acre for a total of 167 dwelling units.

At the public hearing the applicant stated it anticipates redeveloping the subject property at a density of 12-14 units per acre, for a total of up to 104 units. In an electronic mail messaged dated April 20, 2011, the applicant's Engineer Tim Weishaupt stated the applicant is considering developing the subject property with "some sort of say '55+, or maybe some level of assisted care housing that would fit into the RM designation." As discussed in the findings below, the Hearings Officer has recommended the applicant's proposal be approved through a resolution of intent to rezone that would include a condition requiring redevelopment of the subject property at a density of no less than 12 units per acre to assure the applicant's proposal will provide the density and type of housing the applicant argues justifies the proposed redesignation and rezoning of the subject property.

##### **2. Chapter 4.6, Land Use District Map and Text Amendments**

a. **Section 4.6.300, Quasi-Judicial Amendments**

- A. **Applicability, Procedure and Authority.** Quasi-judicial amendments generally refer to a plan amendment or zone change affecting a single or limited group of properties and that involves the application of existing policy to a specific factual setting. Quasi-judicial amendments shall follow the Type III procedure, as governed by Chapter 4.1, Land Use Review and Procedures, using the standards of approval in Section 4.6.300 B, Criteria for Quasi-judicial Amendments below. Based on the applicant's ability to satisfy the approval criteria, the application may be approved, approved with conditions, or denied.

**FINDINGS:** The applicant requests approval of a quasi-judicial plan amendment and zone change to change the plan designation and zoning of the subject property from RS to RM. This application is being handled through a Type III procedure and under the standards applicable to quasi-judicial amendments as discussed in the findings below.

- B. **Criteria for Quasi-Judicial Amendments.** The applicant shall submit a written narrative which explains how the approval criteria will be met. A recommendation or a decision to approve, approve with conditions, or to deny an application for a quasi-judicial amendment shall be based on all of the following criteria:

**FINDINGS:** The applicant submitted an application for a quasi-judicial plan amendment and zone change including a burden of proof statement with exhibits addressing the applicable criteria. Compliance with those criteria is addressed in the findings below.

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

**FINDINGS:** The Statewide Land Use Planning Goals are set forth in the Oregon Administrative Rules (OAR) Chapter 660, Division 15, and provide as follows:

**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 Hearings Officer finds the applicant's proposal satisfies this goal because the applicant conducted the required neighborhood meeting before submitting its application, at least two public hearings will be held before the proposed plan amendment and zone change are approved, and the Planning Division has provided, and will provide, notice of those hearings to the owners of record of all property located within 500 feet of the subject property as well as the designated representatives of the

Larkspur and Old Farm Neighborhood Associations.

**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 Hearings Officer finds goal is met because the applicant's proposed plan amendment and zone change have been reviewed under the applicable approval criteria in the city's land use regulations as well as under the administrative rules governing transportation planning. Because this application is for a plan amendment and zone change, I will make a recommendation to the Bend City Council which will conduct a separate public hearing and make a final decision on the application.

**Goal 3, Agricultural Lands.** The Hearings Officer finds this goal is not applicable because the applicant's proposal does not involve land zoned for agriculture.

**Goal 4, Forest Lands.** The Hearings Officer finds this goal is not applicable because the applicant's proposal does not involve land zoned for forest use.

**Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces.** The Hearings Officer finds this goal is not applicable because the subject property does not contain any inventoried open spaces, scenic areas, historic resources, or natural resources.

**Goal 6, Air, Water and Land Resources Quality. To maintain and improve the quality of the air, water and land resources of the state.** The Hearings Officer finds this goal is met because the proposed plan amendment and zone change will have no impact to air, water, and land resources.

**Goal 7, Areas Subject to Natural Hazards.** The Hearings Officer finds this goal is not applicable to the applicant's proposal because the subject property has no identified natural hazards.

**Goal 8, Recreational Needs.** The Hearings Officer finds this goal is not applicable to the applicant's proposal because the subject property is not in 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.** The Hearings Officer finds the applicant's proposal satisfies this goal because it proposes to maintain residential designation and zoning of the subject property and therefore will not reduce the inventory of land available for employment and other economic activities.

**Goal 10, Housing. Provide for the Housing Needs of the citizens of the State.** The Hearings Officer finds the applicant's proposal satisfies this goal because it proposes to maintain residential designation and zoning of the subject property and therefore will not

reduce the inventory of land available to meet the city's housing needs. Rather, the proposal will increase available housing by increasing the allowed density of development. Moreover, I agree with staff and the applicant that the proposal will have minimal impact on the inventory of RS-zoned land inasmuch as the property is only 7.99 acres of the existing 9,611 acres of RS-zoned land, and of the approximately 2,909 acres of vacant an redevelopable land, in the city's UGB according to the city's housing 2005 and 2008 needs analyses used in its recent UGB expansion undertaking.<sup>1</sup>

**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 Hearings Officer finds the applicant's proposal satisfies this goal because all needed public facilities and services are available, and have the capacity, to serve the subject property, including water and sewer service, access to major arterial streets, and emergency services through the City of Bend Fire and Police Departments.

**Goal 12, Transportation. To provide and encourage a safe, convenient and economic transportation system.** Goal 12 is implemented through the Transportation Planning Rule (TPR) established in OAR 660, Division 12. Therefore, compliance with the TPR will assure compliance with Goal 12. As discussed in the findings below, incorporated by reference herein, the Hearings Officer has found the applicant's proposal, with imposition of a condition of approval requiring the applicant to make a financial contribution to the cost of certain transportation facility improvements, will satisfy the TPR.

**Goal 13, Energy Conservation. To conserve energy.** The Hearings Officer finds the applicant's proposal satisfies this goal because it will facilitate increased density of residential development near a major arterial street and transit route, potentially reducing the number and distance of vehicle trips for residents.

**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 Hearings Officer finds the applicant's proposal satisfies this goal because the subject property is located within the city limits and urban growth boundary (UGB) in an area where urban levels of service currently are available.

**Goal 15, Willamette River Greenway.**

**Goal 16, Estuarine Resources.**

---

<sup>1</sup> Although this plan has not yet been acknowledged and was remanded to the city by the Land Conservation and Development Commission (LCDC) for additional work on its buildable lands analysis, at the public hearing Senior Planner Damian Syrnyk of the city's Long-range Planning Department stated, and the Hearings Officer agrees, that the 2005 and 2008 housing needs analysis still provide valid factual information.

**Goal 17, Coastal Shorelands.**

**Goal 18, Beaches and Dunes.**

**Goal 19, Ocean Resources.**

The Hearings Officer finds these goals are not applicable to the applicant's proposal because the subject property does not include any of these features or resources.

For the foregoing reasons, the Hearings Officer finds the applicant's proposal satisfies this approval 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;**

**FINDINGS:** The Hearings Officer finds the applicable comprehensive plan is the 1998 Bend Area General Plan because the record indicates the city's recently adopted revised comprehensive plan has not yet been acknowledged by the Land Conservation and Development Commission (LCDC). In previous decisions, I have held the plan's policies do not constitute mandatory approval criteria for quasi-judicial land use applications because of the following language in the Preface to the plan:

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

The Hearings Officer adheres to that holding here. Nevertheless, because staff has identified several plan policies staff believes are relevant to the applicant's proposed plan amendment and zone change, and because the applicant's proposal will be reviewed by the council, I include the following findings to assist staff and the council.

**CHAPTER 1: PLAN MANAGEMENT AND CITIZEN INVOLVEMENT**

**Managing Growth**

**The transportation – land use connection**

To support a cost effective and balanced land use and transportation system during the 20-year planning horizon the General Plan provides for:

- adding medium density housing around the new commercial centers to support the centers and offer more opportunities for people to live close to services;
- designing more efficient and creative residential developments that also allow for more compact growth, including the use of neighborhood refinement plans to guide such development;
- supporting residential “in-fill” development, while assuring compatibility with existing residential neighborhoods;

**FINDINGS:** The Hearings Officer finds the applicant’s proposal is consistent with this policy it will facilitate higher-density residential development near commercial centers including eventual development on the nearby CC node, as well as near local transit routes.

**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 city’s capital improvement plan.**

**FINDINGS:** The Hearings Officer finds the applicant will be required to extend needed public facilities, including sewer and water facilities to serve future higher-density development o the subject property. I also find that with imposition of conditions of approval concerning transportation facility improvements, the applicant’s proposal will be consistent with this policy.

- 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.**

**FINDINGS:** The Hearings Officer finds the applicant’s proposal is consistent with this policy because it will facilitate higher-density residential development on the subject property close to transit, potentially reducing the number of vehicle trips and miles traveled.

**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.**

**FINDINGS:** The Hearings Officer finds the applicant's proposal is consistent with this policy because the city has provided numerous opportunities for interested parties to participate in this proceeding, including a neighborhood meeting conducted by the applicant, three types of public notice, and two public hearings.

## **CHAPTER 5: HOUSING AND RESIDENTIAL LANDS**

### **Applicable Policies:**

- 1. Future development and local development standards shall recognize and respect the character of existing areas.**

**FINDINGS:** The Hearings Officer finds the applicant's proposal is consistent with this policy because it will facilitate higher-density residential development on the subject property. However, based on the applicant's representations in its burden of proof about the types of future residential development contemplated for the subject property, and because I have recommended the council approve the proposal through a resolution of intent to rezone, discussed in detail in the findings below, I find the future density will not be out of character with existing development in the surrounding area which includes duplexes. Moreover, as the staff report notes, no redevelopment of the subject property can take place until applications for partition(s) and site plan approval have been submitted and approved, at which time the city will evaluate the proposed density and its relationship to the residential character of the area. There already is a variety of housing types already existing in the surrounding area, including single- and two-family dwellings.

- 11. Residential areas shall offer a wide variety of housing types in locations best suited to each housing type.**

**FINDINGS:** The Hearings Officer finds the applicant's proposal is consistent with this policy because it will facilitate redevelopment of the subject property at higher density, providing a greater variety of housing types in the southeast quadrant of the city.

- 12. Rehabilitation or redevelopment of older residential areas shall be encouraged.**

**FINDINGS:** The Hearings Officer finds the applicant's proposal is consistent with this policy because it will facilitate higher density residential redevelopment of the subject property which currently is developed with older single- and two-family dwellings.

- 31. Medium-and high-density residential developments shall be located where they have good access to arterial streets and be near commercial services, employment and public open space to provide**



**the maximum convenience to the highest concentrations of population.**

**FINDINGS:** The Hearings Officer finds the applicant's proposal is consistent with this policy because the subject property is approximately 160 feet from Reed Market Road, a designated arterial, as well as a transit route, and is near both existing commercial services and a CC node located at the southwest corner of Reed Market Road and S.E. 27<sup>th</sup> Street that eventually will be developed with a commercial use. In addition, the record indicates public parks and the Senior Center are located relatively close to the subject property.

## **CHAPTER 7: TRANSPORTATION SYSTEMS**

### **Applicable Policies:**

- 1. Medium and high-density residential development shall be located where they have good access to arterial streets and be near commercial services, employment and public open space to provide the maximum convenience to high concentrations of population.**

**FINDINGS:** As discussed above, the subject property is located in close proximity to Reed Market Road, a designated arterial street, as well as transit, commercial services and parks.

- 2. The City shall continue to use and develop performance standards and guidelines that can reduce vehicle trip lengths and/or promote non-vehicle transportation modes.**

**FINDINGS:** The Hearings Officer finds the applicant's proposal is consistent with this policy because redevelopment of the subject property made possible by the proposed plan amendment and zone change will be subject to the development standards in the city code designed to reduce vehicle trips and miles.

- 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:** The Hearings Officer finds the applicant's proposal is consistent with this policy because it will facilitate higher-density residential development on the subject property that can serve to reduce vehicle trips and miles and encourage use of transit.

## **CHAPTER 8: PUBLIC FACILITIES AND SERVICES**

### **Applicable Policies:**

- 7. Within the urban planning area, public and private water systems shall**

**be consistent with city standards for construction and service capabilities. 8-12**

**FINDINGS:** The Hearings Officer finds the applicant's proposal is consistent with this policy because the subject property is served by Avion, a city franchisee which stated in a letter dated March 29, 2011 that it has the capacity to serve higher-density development on the subject property.

For the foregoing reasons, the Hearings Officer finds the applicant's proposal satisfies this approval 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;**

**FINDINGS:** The Hearings Officer finds the following public facilities and services potentially could be affected by the proposed plan amendment and zone change. Each is discussed separately in the findings below.

**1. Sewer and Water.** As discussed above, the subject property is served by Avion which has stated it has the capacity to provide water service for higher-density residential development on the property. In addition, the record includes a sewer analysis dated May 6, 2011 prepared by the city's Engineering Division that indicates there are no sewer capacity issues for RM-density development of the subject property.

**2. Police and Fire Protection.** The subject property is located within the Bend city limits and therefore is served by the Bend Fire and Police Departments.

**3. Schools.** The subject property is located within the boundaries of the Bend-La Pine School District. The district did not comment on the applicant's proposal. However, the Hearings Officer is aware that in similar situations the district has stated it accommodates growth and development within its boundaries through a variety of measures.

**4. Parks.** The subject property is located within the BMPRD's boundaries. In its April 7, 2011 comments on the applicant's proposal, BMPRD stated there are no trails identified on the subject property, but that if a significant redevelopment of the site occurs it would like to consider developing a two-acre neighborhood park on the subject property. The staff report states, and the Hearings Officer agrees, that a two-acre park would consume 25 percent of the subject property, and therefore a more reasonable and proportionate approach is likely to be for the applicant to pay park systems development charges (SDCs) with redevelopment of the subject property.

**5. Transportation Facilities.** As discussed in the findings below concerning the proposal's compliance with the TPR, incorporated by reference herein, the Hearings Officer has found that with imposition of a condition of approval requiring the applicant to contribute to the cost of improvements to the Pettigrew/Reed Market intersection, which will be impacted by traffic generated by higher-density residential development on the subject property, the applicant's proposed plan amendment and zone change will satisfy the TPR. For those same reasons, I find the proposal also will satisfy this 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 Section 4.6.600; Transportation Planning Rule Compliance.**

**FINDINGS:**

**1. Mistake or Inconsistency.** The applicant does not argue there was a mistake in the original RM designation and zoning of the subject property, and the Hearings Officer finds there was none.

**2. Change in Neighborhood or Community.** The applicant's burden of proof identifies several changes in neighborhood or community since the comprehensive plan was adopted in 1998 that it believes justifies the proposed plan amendment and zone change from RS to RM, each of which is addressed separately in the findings below.

a. The 2006 creation and recent funding for expansion of the city's transit service.

The Hearings Officer agrees with the applicant that the city's creation of transit service and recent funding to expand that service constitutes a change in the community that justifies the proposed plan amendment. As discussed above, the subject property is located a short distance from a transit line, providing an alternate means of transportation for residents of RM-density development on the subject property who do not have a vehicle.

b. New employment center development.

The Hearings Officer finds that with the exception of the Old Mill District, which required a plan amendment and zone change to create the new Mixed Riverfront District, the increase in employment centers in the city identified by the applicant was contemplated in 1998 and therefore is not a change in the community justifying the proposed plan amendment and zone change from RS to RM.

c. Population increase.

The record indicates Bend's population has increased dramatically since 1998.

Nevertheless, although the rate of population growth may not have been anticipated in the comprehensive plan, population growth in general was anticipated in the plan. Therefore, the Hearings Officer finds the city's population growth is not a change in community that justifies the applicant's proposal.

d. The need for urban infill at a higher density and in appropriate locations identified through city's UGB expansion project.

The city has recently undertaken an effort to expand its UGB. As part of that effort the city concluded that in light of historic development pattern of lower density in the city limits, to accommodate projected population growth, not only would the UGB have to be expanded, but land within the UGB would need to be redeveloped at greater density through infill projects, particularly to provide a variety of housing types and choices. The Hearings Officer finds that while this historic lower-density development pattern occurred under the 1998 comprehensive plan, the analysis of its consequences represents a change in the community that justifies the applicant's proposed plan amendment and zone change from RS to RM.

e. The lack of and need for RM zoned properties in the southeast quadrant of the city.

Maps in the record show there are no RM-zoned lands in the southeast quadrant of the city. It is not clear why no land was zoned for this density in 1998. In any case, the Hearings Officer finds the lack of RM-zoned land in southeast Bend is not a change in community since the comprehensive plan was adopted.

f. Surrounding neighborhood support for redevelopment at RM density.

The applicant's burden of proof states their neighborhood meeting revealed that property owners to the east and south also wish to redevelop their properties at RM densities. The Hearings Officer finds this local sentiment does not constitute a change in the community justifying the applicant's proposal.

g. Decrease in affordable housing.

The applicant submitted with its burden of proof several exhibits addressing the shortage of affordable housing in Central Oregon, including Exhibit 10, city's 2005 "Housing Needs Analysis," Exhibit 11, the 2006 "Central Oregon Workforce Housing Needs Assessment," Exhibit 12, the city's 2007 "City of Bend Residential Lands Study," and Exhibit 15, a document entitled "Dark Before the Storm: A Picture of Low Income Renters' Housing Needs before the Great Recession from the 2005-2007 American Community Survey." These documents summarize population, income, housing and residential land data and show that before the recent economic downturn there was a need for additional housing – particularly affordable housing – in Bend and Deschutes County.

Exhibit 16 to the applicant's burden of proof, a document entitled "Housing Alliance:

Opening Doors to Opportunity” prepared by the Housing Alliance in Portland, shows the need for affordable housing has increased dramatically with the current recession. In particular, this document shows affordable housing has become less available, resulting in many city residents being challenged to retain ownership of or rent suitable housing, and having to spend an increasing percentage of their wages for housing.

Although the city clearly anticipated in 1998 that there would be a need for additional housing as the city’s population, the Hearings Officer finds the changes in housing availability and affordability with the current recession, documented in the applicant’s exhibits, represents a change in community that justifies the applicant’s proposal that would facilitate RM-density development on the subject property, potentially increasing the inventory of affordable housing in the city.

For the foregoing reasons, the Hearings Officer finds the applicant has demonstrated there have been changes in community – i.e., transit, need for urban infill, and the increased need for affordable housing – that justify its proposed plan amendment and zone change, thereby satisfying this approval criterion.

**b. Section 4.6.600, Transportation Planning Rule (TPR) Compliance**

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

**FINDINGS:** The TPR is set forth in OAR 660-012-0060, Plan and Land Use Regulation Amendments, and provides as follows:

- (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**

**FINDINGS:** The Hearings Officer finds the applicant's proposal will not change the functional classification of any affected transportation facility or change the standards implementing the city's functional classification system. The three affected streets – Reed Market Road, Pettigrew Road, and Daly Estates Drive – will retain their existing classifications as an arterial, major collector and local street, respectively.

- (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.**

**FINDINGS:** In support of its proposal, the applicant submitted Traffic Impact Study dated May, 2011 and prepared by Gary Judd, P.E., of Sage Engineering Associates LLC. This study, attached to the applicant's burden of proof as Exhibit 3 (hereafter "traffic study"), analyzed impacts from development of the subject property at RM density on Reed Market Road and its intersections with Pettigrew Road and Daly Estates Drive through the end of the planning period, determined to be 2030. The study noted that the Pettigrew Road and Daly Estates Drive intersections with Reed Market Road are two-way stop controlled intersections.

The traffic study predicted worst-case scenario RM-density development on the subject property would generate 595 new average daily vehicle trips (ADTs), with 48 of those trips occurring during the p.m. peak hour (4:00 to 6:00 p.m. weekdays). Section 4.7.400(B)(1) of the development code sets forth the minimum acceptable performance standards for two-way stop controlled intersections as an average vehicle delay for the critical land group of 50 seconds or less. The traffic study concluded that through 2017, with or without the addition of this traffic, the Pettigrew Road and Daly Estates Drive intersections would function at acceptable levels of service – i.e., less than 50 seconds of delay, and at Level of Service (LOS) B or C.<sup>2</sup> However, the study concluded that in

---

<sup>2</sup> The LOS performance standard has six levels – LOS A through LOS F – with LOS A representing the highest performance and LOS F representing the lowest intersection performance, characterized by long vehicle queues and delays.

2030, with or without the addition of RM-density traffic from the subject property, both intersections would function at unacceptable levels of service – i.e., delays of over 50 seconds and Level of Service (LOS) F.<sup>3</sup> Therefore, the applicant's proposal would significantly affect a transportation facility.

- (2) Where a local government determines that there would be a significant effect, compliance with section (1) shall be accomplished through one or a combination of the following:**
  - (a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.**
  - (b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.**
  - (c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.**
  - (d) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.**
  - (e) Providing other measures as a condition of development or through a development agreement or similar funding method, including transportation system management measures, demand management or minor transportation improvements. Local governments shall as part of the amendment specify when measures or improvements provided pursuant to this subsection will be provided.**
- (3) Notwithstanding sections (1) and (2) of this rule, a local government may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land**

---

<sup>3</sup> The traffic study predicted the Daly Estates Road intersection would operate at LOS E in 2030 without traffic from development on the subject property. However, on September 2, 2011 Mr. Judd submitted a revision to his capacity analysis for the intersections that took into account the construction of planned left-turn lanes on Reed Market at both intersections, and based on that information Mr. Judd concluded both intersections would operate at LOS F in 2030 with or without traffic from RM-density development on the subject property.

uses are consistent with the function, capacity and performance standards of the facility where:

- (a) The facility is already performing below the minimum acceptable performance standard identified in the TSP or comprehensive plan on the date the amendment application is submitted;
- (b) In the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule would not be adequate to achieve consistency with the identified function, capacity or performance standard for that facility by the end of the planning period identified in the adopted TSP;
- (c) Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures;

\* \* \*

- (4) Determinations under sections (1)-(3) of this rule shall be coordinated with affected transportation facility and service providers and other affected local governments.
  - (a) In determining whether an amendment has a significant effect on an existing or planned transportation facility under subsection (1)(c) of this rule, local governments shall rely on existing transportation facilities and services and on the planned transportation facilities, improvements and services set forth in subsections (b) and (c) below.
  - (b) Outside of interstate interchange areas, the following are considered planned facilities, improvements and services:
    - (A) Transportation facilities, improvements or services that are funded for construction or implementation in the Statewide Transportation Improvement Program or a locally or regionally adopted transportation improvement program or capital improvement plan or program of a transportation service provider.
    - (B) Transportation facilities, improvements or services that are authorized in a local transportation system plan and



for which a funding plan or mechanism is in place or approved. These include, but are not limited to, transportation facilities, improvements or services for which: transportation systems development charge revenues are being collected; a local improvement district or reimbursement district has been established or will be established prior to development; a development agreement has been adopted; or conditions of approval to fund the improvement have been adopted.

\* \* \*

**FINDINGS:** In a memorandum dated September 14, 2011, Mr. Judd stated in relevant part:

*"In cooperation with Robin Lewis, City Traffic Engineer, a possible solution to the problem at the intersection of Reed Market Road/Pettigrew Road was studied. A roundabout was chosen as the possible solution because the City has plans to construct roundabouts at the intersections of Reed Market Road/S.E. 15<sup>th</sup> Street and Reed Market Road/S.E. 3<sup>rd</sup> Street. The Roundabout Guide suggests that the intersection traffic control methods used on a corridor be all of the same type. In the case of Reed Market Road corridor roundabouts are the City's preferred method of intersection traffic control.*

*Ms. Lewis and I calculated the volume to capacity ratio for a roundabout at the intersection of Reed Market Road/Pettigrew Road in the year 2030. The Highway Capacity Manual methodology was used to calculate the intersection volume to capacity ratio. We calculated a volume to capacity ratio of 0.58 for the intersection.*

*In the year 2030 a roundabout could easily handle the estimated volume of traffic at the intersection of Reed Market Road and Pettigrew Road."*

The Hearings Officer is aware that voters in the City of Bend recently approved a bond measure to construct improvements to Reed Market Road from S.E. Third Street east to S.E. 27<sup>th</sup> Street, including widening the street to three lanes and constructing roundabouts at two intersections. In her September 1, 2011 comments on the applicant's proposal and in her public hearing testimony, the city's Traffic Engineer Robin Lewis stated that the city recommends the applicant be required as a condition of approval to pay its proportionate share contribution to construct a third roundabout, at the Reed Market/Pettigrew. Ms. Lewis explained that a roundabout at that intersection is not on the city's SDC funding list at this time, but is authorized in the city's TSP as an available traffic control device that can be placed at any arterial/collector intersection within the city. Ms. Lewis stated funding that will assure the roundabout will be

constructed by the year 2030 has been established through proportional share contributions from individual properties whose traffic will impact the intersection. Ms. Lewis stated the applicant's proportionate share contribution to the roundabout would be \$19,984.63 based on the following calculations:

- estimated cost of roundabout: \$1,300,000
- existing trips: 1037
- net new trips from RM-density development of the subject property: 20
- planning period trips: 2338
- $1,300,000 * (20 / (2338 - 1037)) = \$19,984.63$ .

At the public hearing, Ms. Lewis testified that the city assumes some traffic at the Reed Market/Daly Estates Drive intersection will shift to the Reed Market/Pettigrew intersection once the roundabout is constructed, and that the function of the Daly Estates Drive intersection will be reviewed again at the time of site plan review for RM-density development of the subject property.

At the public hearing, opponent Duane Stewart who lives near the subject property testified that he believes the Reed Market/Pettigrew intersection already is failing because it is heavily used by motorists as an alternative to S.E. 27<sup>th</sup> Street, and that the average vehicle speed exceeds the posted and safe speeds. In response, Ms. Lewis stated that as a designated major collector street, Pettigrew Road is intended to carry significant traffic as part of the grid street system in that part of the city. Table 7-1 of the Bend Area General Plan, "Street Functional Classification System, Typical Characteristics," shows the projected daily traffic volume on a major collector street such as Pettigrew Road is 1,500 to 9,000 ADTs. The applicant's traffic study states traffic counts at the Reed Market/Pettigrew intersection in March 2011 were 1,037 vehicles during the p.m. peak hour. In an electronic mail message dated September 23, 2011, Mr. Judd stated his March traffic counts showed 5,100 ADTs on Pettigrew Road with an average speed of 42 mph. Although this speed likely is higher than the optimum safe speed, I find the ADTs on Pettigrew Road are well within the expected capacity of a major collector street.

Based on the foregoing discussion, the Hearings Officer finds the applicant's proposed plan amendment and zone change will satisfy the TPR with imposition of a condition of approval requiring the applicant to pay to the city the amount of \$19,984.63 which represents the applicant's proportionate share of the cost of construction of a roundabout at the intersection of Pettigrew Road and Reed Market Road. I find that with this roundabout in place by the end of the planning period (2030), the intersection's performance will satisfy the city's minimum standards set forth in the development code and the TSP with the addition of RM-density development on the subject property.

**c. Section 4.6.400 Intent to Rezone**

**A. If the City Council determines that the public health and welfare and convenience will best be served by a**

proposed change of the zone, the City Council may indicate its general approval in principal of the proposed rezoning by the adoption of a “Resolution of Intent to Rezone”. This resolution shall include any conditions, stipulations, or limitations, which the City Council may feel necessary to require in the public interest as a prerequisite to final action, including those provisions which the City Council may feel necessary to prevent speculative holding of the property after rezoning. The fulfillment of all conditions, stipulations and limitations contained in said resolution, on the part of the applicant, shall make such a resolution a binding commitment on the City Council. Such a resolution shall not be used to justify spot zoning, to create unauthorized zoning categories by excluding uses otherwise permitted in the proposed zoning.

1. **Content of Site Plan.** Where a site plan is required pursuant to this ordinance, it shall include the location of existing and proposed buildings, structures, accesses, off-street parking, loading spaces and landscaping; topography, existing and proposed; mechanical roof facilities, architectural perspective, layout and all elevations drawn to scale including location, area and design of signs and all landscaping.
2. **Resolution of Intent Binding.** The fulfillment of all conditions, stipulations and limitations contained in the resolution of intent, on the part of the applicant, shall make the resolution binding on the City Council. Upon compliance with the resolution by the applicant, the City Council shall by ordinance effect such reclassification.
3. **Resolution of Intent Void Upon Failure to Comply.** The failure of the applicant to substantially meet any or all conditions, stipulations or limitations contained in a resolution of intent, including the time limit placed in the resolution, shall render said resolution null and void, unless an extension is granted by the City Council upon recommendation of the Planning Commission.

**FINDINGS:** The Hearings Officer has found that with imposition of a condition of approval concerning transportation facility improvements the applicant’s proposed plan

amendment and zone change will satisfy all applicable approval criteria. However, the staff report states, and I agree, that because the applicant did not submit a development proposal concurrently with the plan amendment and zone change applications, and made certain representations about the density and type of development it contemplates for the subject property, it is appropriate for me to recommend to the city council that the applicant's proposal be approved through a resolution of intent to rezone. This resolution will protect the public interest by assuring that all prerequisites to final approval are fulfilled and prevent speculative holding of the subject property after rezoning. I find the resolution should include provisions addressing timing and density of development as well as transportation facility improvements.

#### **IV. DECISION:**

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer hereby **RECOMMENDS** that the city council approval the applicant's proposal through a resolution of intent to rezone that would change the general plan designation and zoning of the subject property from RS to RM upon satisfaction of the following requirements:

#### **PRIOR TO ADOPTION OF ORDINANCE APPROVING PLAN AMENDMENT AND ZONE CHANGE:**

1. The applicant/owner shall apply for and obtain site plan and/or land division approval for the subject property from the city. Such applications shall include housing types other than single-family dwellings, and shall have a density no less than twelve (12) dwelling units per acre.
2. The applicant/owner shall pay to the City of Bend the sum of \$19,984.63 (nineteen thousand nine hundred eighty-four dollars and sixty-three cents) representing the applicant's proportionate share of the cost of constructing a roundabout at the intersection of Pettigrew Road and Reed Market Road.
3. The applicant/owner shall execute a written agreement with the city, in a form acceptable to the city, whereby the applicant/owner agrees to construct a sidewalk on the east side of Pettigrew Road and bike lanes on both sides of Pettigrew Road, both improvements beginning at the north boundary of the subject property and extending south to Reed Market Road. The timing of construction of these improvements shall be determined by the city in conjunction with site plan and/or land division approval for the subject property.

#### **ORDINANCE APPROVING PLAN AMENDMENT AND ZONE CHANGE:**

4. If/when the requirements in Conditions 1 through 3 of this decision are completed, an ordinance shall be adopted by the Bend City Council changing the plan designation and zoning of the subject property from RS to RM.

**FOLLOWING ORDINANCE ADOPTION:**

5. The applicant/owner shall not file a final plat and/or apply for building permits for development of the subject property at RM-density until the Bend City Council has adopted an ordinance changing the plan designation and zoning of the property from RS to RM.

**AT ALL TIMES:**

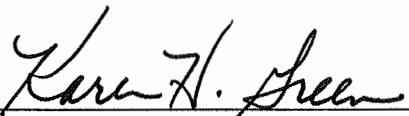
6. The requirements imposed on the applicant/owner by this decision are binding on the applicant and on all future owners of the subject property.

**DURATION OF APPROVAL:**

7. All requirements imposed through this decision shall be completed within five years of the date of the Resolution of Intent to Rezone, or the Resolution of Intent to Rezone shall be void.

Dated this 4th day of November, 2011.

Mailed this 4th day of November, 2011.

  
\_\_\_\_\_  
Karen H. Green, City of Bend Hearings Officer