

Exhibit C
Summarization of Hearings Officer Recommendation
From City Attorney Mary Winters
Hearing Officer Recommendation

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;

Summary of Hearing Officer Decision (page 6):

The two subjective standards at issue are:

- 1) BDC 4.6.300.B.2 which staff correctly concluded implicates the Preface and Purpose statements of the General Plan requiring the applicant to show a **public need and benefit for the Plan Amendment**¹, and
- 2) BDC 4.6.300.B.4² which requires the applicant to provide evidence of a **change in the neighborhood or community** that justifies the Plan Amendment. [Emphasis added.]

The alternative findings for each of these criteria are discussed more fully in their respective sections later in this decision. For this summary, the Hearings Officer offers reasons why the City Council may wish to depart from the Staff Findings for these two criteria and choose to deny the application.

BDC 4.6.300.B.2

The standard at issue for this criterion comes from language in the General Plan that requires proponents of a Plan Amendment “to demonstrate a public need and benefit for the change.” Note that the standard is two pronged, requiring both a “need” and a “benefit.” This standard is similar to plan amendment criteria in other jurisdictions. However, as the applicant points out in the Third Supplemental Burden of Proof, those other jurisdictions also require the applicant to show that the subject property “best meets” the identified need. That type of nuanced language applicable to the need and benefit analysis is not present in the Bend General Plan. Rules of statutory construction forbid an interpretation that would add the “best meets the need” element into the consideration required by BDC 4.6.300.B.2. ORS 174.010.

What this means is that the General Plan’s “public need and benefit” standard can be interpreted to be a very weak and subjective analysis that becomes nearly meaningless as a standard. If almost any asserted need or benefit will suffice to sustain a finding of approval under this standard, then the standard becomes of little value and the determination will merely blow in the wind subject to other unspoken considerations. More importantly, such an approach virtually forecloses any weighing process that takes account of needs and benefits that may be lost through the map change and focuses only on the potential minor gains of the new map designation. That result would be particularly unfortunate here because the record contains ample evidence, which is essentially uncontroverted, that Troy Field already provides

¹ The code criteria for Quasi-Judicial Amendments to a plan amendment or zone change affecting a single or limited group of properties must be based on the applicant’s ability to satisfy the approval criteria, including: “Approval of the request is consistent with the relevant policies of the Comprehensive Plan that are designated by the Planning Director or designee.”

² “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;”

for multiple highly valued public needs and those benefits are realized over a substantial number of days each year by multiple individuals and groups.

Here, the applicant's identified needs and benefits can be boiled down as follows: 1) Troy Field is no longer needed for school use, 2) the District has identified it as surplus property, and 3) the District feels that fulfilling its fiduciary duty to the District and thereby the students of the District is a sufficient public benefit. While these are laudable objectives, they are remote from the goals of the General Plan and are not tied to a land use purpose. While we may all feel secure in supporting the District because it is a public entity with an important public mission that operates under public scrutiny, the reason the District wants the map amendment is primarily monetary. The District has changed its priorities for the Troy Field and now wishes to liquidate the property. Here, in applying the "public need and benefit" standard, the question that must be asked is whether we would all feel the same sense of security if the applicant were a publically traded company to which some broad benefits to shareholders living in Bend might accrue through the same type of map amendment and subsequent sale and profit from the property. Approving the proposed map amendment by interpreting BDC 4.6.300.B.2 to require only a generalized and modest showing of public need and benefit invites future difficulties in fairly applying this standard.

BDC 4.6.300.B.4

The standard for this criteria requires that the applicant show "Evidence of change in the neighborhood or community" or a mistake or inconsistency. The applicant is not arguing that a mistake or inconsistency is the reason for the map amendment. The applicant's stated reason is that the neighborhood and community have changed because the District's need for Troy Field has changed – mostly because District students no longer directly use the field for school based recreation or exercise.

The Hearings Officer's concern with regard to the application of this criterion is similar to that expressed above. If the term "change" is interpreted too liberally, it could turn an already subjective standard into a meaningless one. At least one opponent argued that to satisfy the standard any analysis should look at the land itself and the surrounding neighborhood from a land use planning perspective. That argument has some merit.

If the term "change" as used in BDC 4.6.300.B.4 is interpreted to allow significant weight to be placed on the "change" in the property owner's desired use of the property, the interpretation risks ignoring the "neighborhood and community" focus of the standard.

The balance of this decision relies heavily on the Staff Report. The "Staff Findings" are the same as in the Staff Report. Where additional findings are necessary, I have included a Hearings Officer's Findings section. If no "Hearings Officer's Findings" section is present, then there was no relevant opposition testimony or evidence present in the record and the Staff Findings are sufficient to support approval.

More Specific Staff and Hearing Officer Findings for Comprehensive Plan Criterion # 2 later in decision (starting at page 15):

STAFF FINDING: This criterion addresses consistency with the policies of the Comprehensive Plan (Bend Area General Plan). As described on Page P-5 of the General Plan Preface, the term “policy” has a specific meaning within the General Plan; a policy is a statement of public policy. The Preface goes on to state, *“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 General Plan establishes a set of policies at the end of each chapter. The policies relevant to the proposal are addressed below.

As described on Page P-7 of the Preface: *“A proposal by an individual, corporation, or public agency to change to the Plan text, land use map, other exhibits, or policies shall be considered as determined by the procedures ordinance. A person or agency proposing a change has the burden to demonstrate a public need and benefit for the change.”*

The applicant notes that the School District is a public entity governed by a publically elected board. The board determined that the subject property does not support the School District’s operations and has declared the property surplus. Furthermore, the School District is in need of financial resources to acquire and construct needed facilities at other locations. Accordingly, a public need exists in funding for needed facilities and a benefit exists in maximizing the value of public resources. The proposed amendment will facilitate the sale of the subject property at a price that maximizes the value of the subject property.

Per BDC 2.6.100.A, the PF Zoning District is intended to provide area for buildings and facilities that are owned and operated by Federal, State, or local governments, public utilities, special districts, or nonprofit organizations that are used to provide governmental or public services. This zone also provides for school sites, public park and recreational facilities, natural areas, trails, wetlands, and similar types of open space owned and managed by a local government or special district.

The School District discussed acquisition of the subject property with both the City and the Bend Park and Recreation District (BPRD). BPRD was not interested in acquiring the subject property because it is not located in an area of need for the district and doesn’t meet the district’s size requirements for a neighborhood park. Additionally, the School District was unable to reach terms for the sale of the property with the City. No other public facility needs were identified for the site. Therefore, absent a need for the property as a public facility, there is a need and benefit for the proposed General Plan amendment in order to allow the property to be developable by an entity other than a public agency, in accordance with the current CL zoning.

HEARINGS OFFICER’S FINDING: The Staff Finding above, the December 28, 2015 staff memorandum and the applicant’s Third Supplemental Burden of Proof provide sufficient discussion of the “public need and benefit” to support approval.

HEARINGS OFFICER’S ALTERNATIVE FINDING: The Staff Findings, and the applicant’s three Burden of Proof statements assert multiple reasons that the proposed map amendment would meet a public need and benefit. Those reasons are summed up well in the applicant’s Third Supplemental Burden of Proof:

- Troy Field is surplus property no longer needed for school purposes.
- The District has facility needs to which the funds from sale of Troy Field can be put.
- Proceeds from the sale of Troy Field will reduce the tax burden associated with the District on tax payers.
- The map amendment will harmonize the plan map and the current zoning designation.
- The map amendment does not preclude future development of the Heritage Square concept.
- The change provides 0.8 acres of commercial land to meet the identified 827acre need for such land.
- Commercial use of Troy Field will increase the city's tax base.

Opponents of the proposal argue that the “need” for changing the map designation from PF to CL is primarily to facilitate the sale of the Troy Field for a one time increase in school funding to the District. They state that the District already has property tax levy capabilities and that tool has been an adequate mechanism for providing for schools – evidenced by recent passage of school levies.

Opponents also argued Troy Field is one of the few, if not the only, public open space in the central city that can affordably be rented for public events and community athletics and recreation. They argued that the current usage of the field, as evidenced by the reservation roles of 2014 and 2015, showed that the field is reserved up to 176 days per year for these community uses. They argue this demonstrates a large “public need” for the field to remain designated and used as it is now. For the same reasons, opponents argue that Troy Field represents a significant public benefit as it is currently used and that the public benefit will likely be lost forever if the map amendment is approved.

The standard imposed by the “public need and benefit” analysis in BDC 4.6.300.B.2 and the General Plan are constrained by the purposes of those documents. The two documents are land use planning tools that have their origins in state law as set forth in ORS 197 and 227. Comprehensive planning is required under the Statewide Land Use Planning Goals, and Bend's General Plan represents compliance with those goals. The “purposes” statement in the Preface of the General Plan sets forth the scope of the plan. The General Plan is “a guide for making wise land use decisions....within the Urban Growth Boundary...” In addition, “the basic aim of the General Plan is to organize and coordinate complex inter-relationships between people, land, resources, and facilities to meet the future needs of the citizens and to protect the livability of the community.”

The “public need and benefit” standard is part of the Preface section of the General Plan and is directly linked to the “purpose” statements. Consequently, the meaning of the terms “public need and benefit” must relate to objectives or results that the plan is intended to address. The Public Education section of the General Plan at Chapter 3-12 provides an explanation of how the General Plan intersects with the mission of the Bend – La Pine School District. That section discusses existing schools, and how the city and the General Plan will guide future school siting. There is no guidance or discussion in the General Plan related to school

funding. Thus, the reasonable interpretation of the public need or benefit standard as it applies to schools is limited to consideration of the proper zoning and siting for schools.

Here, the applicant has identified needs and benefits that accrue not primarily to the citizens of Bend, but to all the citizens and students of the entire school District. The “need” for more school funding is a generalized need not directly related to land use or the purposes of the General Plan. It is not a need or benefit related to the zoning or siting of school facilities. The “benefit” asserted by the applicant is similarly generalized in the form of potential tax relief to payers of the taxes apportioned to the District – a significant portion of which live outside the Bend UGB. It is well beyond the scope of the General Plan to approve plan map changes based on monetary benefits to tax payers living outside the city’s UGB. The applicant’s identified “need” and “benefits” are not closely enough related to the land use objectives of the General Plan to suffice as reasons justifying the map amendment.

The “public need and benefit” standard also reasonably requires analysis of the existing allowed uses under the PF designation that could potentially be lost through the map amendment. The record, as described above, amply shows heavy public use – just short of half the days of the year in 2015 if the estimates are correct. The record also contains plausible testimony and evidence of daily passive and active use that requires no formal permission. The sense of fiduciary duty to students identified by the District board members who spoke at the hearing is commendable, but only remotely relevant to demonstrating a need to change the land use designation of Troy Field. Similarly, the contribution of the 0.8 acres to the inventory of needed commercially zoned land in the city is insignificant. The applicant’s proffered public need and benefits are heavily outweighed by the needs met and the benefits presently provided by Troy Field in its PF designation. For all these reasons, the proposal fails to meet the burden of proof required by BDC 4.6.300.B.2.

The Hearings Officer desires to note that if the City Council decides to deny the proposal for the reasons set forth above, such a decision does not mean that Troy Field is necessarily protected and confined to the uses that currently occur there. The PF designation allows many uses that if pursued by the owner would eliminate the open field and the recreational uses that occur there. The example used for the transportation analysis, a DMV center, is just one example. Similarly, Troy Field in its current incarnation might persist for years under the CL designation – so long as the property owner allowed that type of use. Even though the Hearings Officer is unpersuaded by the applicant’s public need and benefit analysis, if the City Council, the community and the District want to preserve Troy Field for its historic uses, much more work needs to be done.

Criterion #4 of BDC 4.6.300.B.4 (starting at page 29).

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.

STAFF FINDING: The oldest General Plan maps available, from 1974 and 1981, showed Troy Field and the old Bend High School as “Schools.” When the 1998 General Plan and map were adopted by the City Council, most land owned by public entities, including Troy Field, was designated Public Facilities (PF). This was done to facilitate development of public facilities, as

such facilities are typically conditional uses in many zones and often require variances to development standards.³

There was no concurrent zone change when the 1998 General Plan was adopted so the zoning on most of these publicly-owned lands is now inconsistent with the PF General Plan designation. For example, Drake Park is zoned Residential Standard (RS), the city-owned parking lots on Brooks Street are zoned CB, most of the County's campus is Commercial Light (CL), Pacific Park is Residential Medium (RM), and the old Reed School is Residential High (RH).

The School District did not propose the PF designation and did not have any direct role in its implementation. Where a public entity owned property at the time of the legislative amendment, but had no plans to develop public facilities on the property, the PF designation created an inconsistency with the underlying zoning.

One of the most significant changes in the neighborhood and community is the fact that when the site was originally designated for schools, two schools were in operation across from Troy Field; the old Bend High School which opened in 1925 and was converted to a middle school from 1957 to 1979, and St. Francis School until 2000. These schools used Troy Field for a variety of school related activities; hence the original designation of the land for "Schools". However, the School District is no longer utilizing the fields for school activities on a regular basis, and the field is no longer needed to further the School District's mission.

The applicant contends that the proposed amendment is also supported by a change in the neighborhood or community, as the School District, through its publically elected board, determined that the subject property does not support its operations and deemed the subject property surplus. As the subject property is under contract for sale to a private entity, the PF designation no longer serves its original purpose.

These findings together show evidence of change in the neighborhood or community as well as inconsistency between the comprehensive plan and land use district map regarding the subject property. Therefore, the first part of this criterion is met. The second part of the criterion pertaining to Transportation Planning Rule compliance is addressed below.

HEARINGS OFFICER'S FINDING: The Staff Findings, two staff memoranda dated December 28, 2015 and January 6, 2016 along with the applicant's Third Supplemental Burden of Proof are sufficient to show compliance with BDC 4.6.300.B.4.

HEARINGS OFFICER'S ALTERNATIVE FINDINGS: Compliance with this criterion turns on the correct interpretation of the phrase "change in the neighborhood or community." While a change in the use or circumstance of the subject property can reasonably be part of the analysis it can only be one part of the consideration. The plain reading of the phrase demands a look at the subject property in the context of its neighborhood. For the same reason, in order to give weight to all the terms in the phrase, map amendments cannot be justified by generalized land development trends or economic conditions of the entire city. Such an approach would be inconsistent with assessing changes in the immediate vicinity of the subject property.

³ For example, schools are conditional uses in residential zones and often require variances to height limitations.

The Staff Findings provide a historical overview of how and when Troy Field was designated Public Facilities. Procedurally, the PF designation was imposed on many properties in public ownership regardless of the underlying zoning. That the underlying zoning remains is a historical artifact. However, that the older zoning designation is now inconsistent with the PF comprehensive plan designation is not necessarily a sign of incongruity. It is the comprehensive plan designation that should set the scope of the parcel by parcel zoning for future use, not visa versa. The record shows that Troy Field has been used consistent with the PF designation for decades under the District's direction and care. The applicant does not identify any reason that the property is inherently incapable of continuing to be used in that way under the PF designation.

The applicant makes a not entirely unpersuasive argument that since the school functions of the former Bend High School and Cascade Middle School building have long since ceased, the need for Troy Field as an athletic field connected with student use has also ceased. The District also argues that conditions have changed because it went through the proper process to identify the field as surplus property – a proxy for a finding that the field is not needed for any school related use. Nevertheless, these changes are not “neighborhood or community” changes, they are internal changes related to a single property and about how the District wishes to use Troy Field and its other properties in the vicinity.

Despite the fact that school District students no longer use Troy Field, evidence in the record shows that the field is heavily used by the neighborhood and community as an athletic field for sports and other recreational activities. In terms of assessing “change” it matters little from a land use planning perspective that the kids and adults recreating on Troy Field are “students” of the District. The evidence in the record strongly supports a conclusion that Troy Field is currently being used much as it has been for the past 100 years. The record also shows that the land use pattern in the neighborhood has been fairly stable, with little change in the adjacent residential area and the residents’ use of the field.

The applicant’s proposal relies too heavily on the notion that the neighborhood has changed just because the District’s own plans for the property have changed. The District’s arguments fall short in part because, as a least one opponent argued, the District could seek to dispose of Troy Field under the PF designation instead of the CL designation – albeit maybe for a smaller monetary return. These facts show that the map amendment process is not driven by a change in the neighborhood or community, but fundamentally by the changing desires of the owner. That is not sufficient justification to satisfy BDC 4.6.300.B.4.

ADDITIONAL KEY ISSUES. *The plan amendment must be consistent with the relevant Statewide Planning Goals designated by the Planning Director (BDC 4.6.300(B)(1).*

From the Hearing Officer Decision:

Goals 3, 4, and 5 – STAFF FINDING: These goals are not applicable because the properties do not include any agricultural land, forest land, or inventoried open spaces, scenic areas, historic resources, or natural resources.

Goal 5: (page 11)

Numerous parties argued that Troy Field is a historical site and qualifies as a historic area for purposes of Goal 5. In addition, it was argued that the Oregon Administrative Rules governing Goal 5 provide a process by which a private citizen may petition that a site be added to a city's Goal 5 inventory of historic sites.

Both Staff's supplemental findings dated December 28, 2015 and the applicant's Third Supplemental Burden of Proof correctly explain the process by which individual sites or properties may be added to the city's Goal 5 inventory. The Hearings Officer agrees. The inventory of Goal 5 historic sites is an exercise that occurs as part of acknowledgement or through a post acknowledgement amendment to the General Plan. Those are separate appealable planning proceedings that allow public participation and input. For the City of Bend, those processes are many years if not decades past – as is the time to appeal the inventory. Goal 5 does not contemplate an ad hoc approach to historic preservation. In this case, for reasons that are not relevant in the current proceeding, Troy Field has not been placed on the city's Goal 5 list of significant historic or cultural resources. That list is not subject to change or attack through a map amendment process like the one currently under consideration. The time for appeal of the city's list of significant sites has long since expired. Although well intentioned, the opponents' argument represents an impermissible collateral attack on that Goal 5 inventory. Although the Hearings Officer is sympathetic to the opponents' position that Troy Field has actual historic value, the fact that it is not on the city's current Goal 5 list means that the field is not protected by the General Plan or Goal 5 itself.

The application is consistent with Goal 5.

Goals 7 and 8: (pages 11-12)

STAFF FINDING: Goals 7 and 8 are not applicable because the subject property is not within an identified natural hazard area or area identified for recreational use on the Bend Area General Plan, Bend Park and Recreation District (BPRD) Comprehensive Plan, or other adopted plans.

HEARINGS OFFICER'S FINDING: Several parties argued that Troy Field is valuable open space for recreation and Goal 8 requires its preservation.

The January 6, 2016 memo from Senior Planner Wendy Robinson explains how the city has approached the provision of recreational areas for Goal 8. That approach essentially has delegated recreation planning to the Bend Metro Parks and Recreation District. The district keeps an inventory of recreation lands and an estimate of areas that will be needed for future recreation area in the city. That inventory is adopted, apparently by reference, into the General Plan. That approach, like the Goal 5 inventory discussed above, has been tested through the acknowledgement process and complies with Goal 8. Troy Field is not included in the district's inventory. The record shows that the reason Troy Field is not part of the inventory is that it does not meet the district's minimum size for a park or recreational area. However, again those reasons are not relevant to this proceeding. Troy Field is not on the inventory that has already been found by the state to be compliant for Goal 8, and that inventory cannot now be challenged or changed through the map amendment process.

To the extent Goal 8 is implicated, the application is consistent with the goal.

CHAPTER 2: NATURAL FEATURES AND OPEN SPACES (pages 19-20)

STAFF FINDING: The subject property is an undeveloped lot and is not designated open space in the General Plan, nor is it identified in the BPRD *Parks, Recreation and Green Spaces Comprehensive Plan* (the “Parks Comp Plan”). The policies in Chapter 2 place much of the obligation for managing natural features and open space on the BPRD. To implement those obligations, the Parks Comp Plan identifies desired levels of service. As stated in the letter from BPRD, the subject property is not identified in the Parks Comp Plan, and development of the subject property will not impact the Park District’s desired levels of service.

While the subject property is in public ownership and has historically been used for recreation, it has never been set aside, designated, or reserved specifically for that purpose. The subject property does not contain any areas of significant interest, significant vegetation, wetlands, or natural wildlife habitat, and is not within the Deschutes River Corridor. Accordingly, the policies in Chapter 2 of the General Plan are not applicable. However, several policies of Chapter 2 are addressed below.

HEARINGS OFFICER’S FINDING: The findings above related to Goal 5 and Goal 8 are equally relevant and are adopted here by this reference. The city has a great deal of discretion as to how to manage its parks, open spaces and recreation areas. The fact that Troy Field has not been identified by BPRD is some evidence of its perceived value as city wide recreational space. Although the Hearings Officer finds that the proposal is consistent with the city’s Natural Features and Open Spaces policies, the evidence of long standing consistent recreational use by a wide variety of users is relevant in that Troy Field is indisputably used as a park by neighborhood residents and more regionally by groups holding events. Troy Field clearly has a niche in providing for the city’s overall recreation and open space needs, officially designated or not.

2 The city and Bend Metro Park and Recreation District shall share the responsibility to inventory, purchase, and manage public open space, and shall be supported in its efforts by the city and county.

STAFF FINDING: The General Plan makes clear that it is the City’s and BPRD’s shared responsibility and obligation to purchase or manage public open space. Nonetheless, the School District provides considerable open space and recreational facilities at its various school sites. While the subject property has historically been used for recreational purposes, it has never been an identified long term intended use of the property. Given other needs, the publically elected School Board determined that it was in the public’s interest to dispose of the surplus property so that proceeds can be applied to more pressing needs. Even without the subject property, the School District will continue to supply the community a substantial amount of open space.

CHAPTER 6: THE ECONOMY AND LANDS FOR ECONOMIC GROWTH (page 23)

STAFF FINDING: This chapter is supported by the 2000 Economic Lands Study which studied regional trends, the inventory of buildable lands, and forecasted future economic lands needs

over a 20 year time horizon. This study did not identify properties designated PF as economic lands in any of the trends, inventory, calculations or forecast. This chapter is not applicable because the amendment will not change the availability of any measured economic lands in Bend, and the proposal will not directly impact economic development other than to facilitate commercial development and employment associated with such development.

The General Plan identified a need for 827 additional acres of Commercial Land based on the 2000 Economic Lands Study. While the property is currently zoned CL, the change of the General Plan designation will add the 0.80 acre site to the commercial land inventory.

The Limited Commercial designation is described in the General Plan as providing locations for a wide range of retail, service, and tourist commercial uses in the community along highways or in new centers. The following policies of the General Plan are relevant to commercial development.

HEARINGS OFFICER'S FINDING: Like the staff findings under Chapter 3 above, the findings for Chapter 6 are legally defensible as written. The only recommendation here is that the City Council give little weight to the fact that changing the designation of Troy Field to CL will add a microscopic amount of commercial land to the city's inventory. Adding 0.8 acres against a need for 827 acres is progress in name only and the Hearings Officer would agree with opponents that such a gain would be insignificant.

Goal 12 Transportation, *"To provide and encourage a safe, convenient and economic transportation system."* (page 14)

STAFF FINDING: Goal 12 is implemented through the Transportation Planning Rule (TPR) and OAR 660-12-0060, in addition to local land use regulations. The proposal includes a TPR analysis and detailed findings are included under BDC 4.6.600 further on in this report. As detailed in the analysis, the anticipated additional trips generated by the proposed amendment will not significantly impact a transportation facility, and therefore will comply with the TPR.

The Bend TSP is implemented through the policies in the General Plan. The proposal is consistent with all of the applicable TSP policies as addressed in the findings in this report. BDC Chapters 4.2 and 4.3 also require that transportation capacity exist or be provided concurrent with new developments or land divisions, ensuring compliance with Goal 12.

HEARINGS OFFICER'S FINDING: Numerous opponents argued that a map amendment would ultimately lead to development which will increase traffic impacts in the area. Alleged congestion and safety problems were raised. Additionally, the staff analysis was criticized for comparing a worst case scenario under the PF designation (a Department of Motor Vehicles facility) with future development allowed under the CL designation, rather than comparing the existing use as a recreational field with future commercial development.

The staff findings and those below addressing the TPR, and supplemental information provided by the applicant in a January 6, 2016 memo from Kittelson & Associates, is more than adequate to demonstrate consistency with Goal 12 and the TPR. That evidence amply shows that the city's TSP and road system can accommodate a significantly higher number of vehicles on a daily basis and during peak periods. There is no error in the staff approach to compare a relatively high impact use such as a DMV facility under the existing designation with a hypothetical use under the proposed CL designation.

The Hearings Officer understands the concerns and fears of nearby residents who will likely see some impacts from any more intensive use at Troy Field in the future. However, the standard for consistency with Goal 12 and the TPR is not “no adverse impact.” The testimony offered by opponents was largely speculative and anecdotal. The staff analysis relies on superior expert testimony and evidence. That evidence shows consistency with Goal 12 and the TPR.

(starting at page 31) **4.6.600 Transportation Planning Rule Compliance.**

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

STAFF FINDING: OAR 660-12-0060, referred to as the Transportation Planning Rule (TPR), sets forth criteria for evaluating plan and land use regulation amendments. Table 9 from the applicant’s TIA summarizes the criteria and their applicability to the proposed amendment. As shown in Table 9, there are eleven criteria that apply to Plan and Land Use Regulation Amendments. Of these, Criteria #1 and #4 are applicable to the proposed land use action.

HEARINGS OFFICER’S FINDING: As noted under the findings for Goal 12 above, the staff findings below and supplemental information provided by the applicant are sufficient to comply with the TPR.

Table 9. Summary of Criteria in OAR 660-012-0060

Section	Criteria	Applicable?
1	Describes how to determine if a proposed land use action results in a significant effect.	Yes
2	Describes measures for complying with Criteria #1 where a significant effect is determined.	No
3	Describes measures for complying with Criteria #1 and #2 without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility	No
4	Determinations under Criteria #1, #2, and #3 are coordinated with other local agencies.	Yes
5	Indicates that the presence of a transportation facility shall not be the basis for an exception to allow development on rural lands.	No
6	Indicates that local agencies should credit developments that provide a reduction in trips.	No
7	Outlines requirements for a local street plan, access management plan, or future street plan.	No
8	Defines a mixed-use, pedestrian-friendly neighborhood	No
9	A significant effect may not occur if the rezone is identified on the City’s Comprehensive Plan and assumed in the adopted Transportation System Plan.	No
10	Agencies may consider measures other than vehicular capacity if within an identified multimodal mixed-use area (MMA)	No
11	Allows agencies to override the finding of a significant effect if the application meets the balancing test.	No

OAR 660-12-0060 - Plan and Land Use Regulation Amendments

(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. 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**

STAFF FINDING: The proposed amendment does not (a) change the functional classification of an existing or planned transportation facility and does not (b) change the standards implementing a functional classification of an existing or planned transportation facility. The levels of travel will remain consistent with the functional classification of area facilities.

(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

- (A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;**
- (B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or**
- (C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.**

STAFF FINDING: As demonstrated by the Traffic Impact Analysis (TIA) submitted with this application, the proposed plan amendment does not create a significant effect as the change in trip generation between the existing and proposed designation does not exceed City performance thresholds. Further, all of the study intersections and roadways operate within acceptable operations standards consistent with their functional classification throughout the planning horizon under the existing designation, reasonable worst-case scenario, and maximum worst-case scenario. The specific findings from the analysis are detailed below.

At this time the application does not include a specific plan for the site, but preliminary discussions have identified a hotel as a possible use. The TIA evaluates both a reasonable and maximum worst case scenario under both the existing and proposed designation. The Site Plan Review application process, required prior to development, will require a separate transportation analysis that reviews near-term conditions, access, parking, and other issues specific to the proposed development.

The PF district is intended to provide areas for buildings and facilities owned and operated by Federal, State, or local governments, public utilities, special districts, or nonprofit organizations providing governmental or public services. This zone is typically used for schools, City/County/State government offices, parks and recreational facilities, and natural areas. Outright permitted uses within the PF zone that could be sited on Troy Field include the uses and trip rates shown in Table 1.

Table 1. Summary of Potential Public Facilities Land Uses and Trip Characteristics

Allowable Use	ITE Classification	ITE Land Use Code	Weekday PM Peak Hour Trip Rate
Library	Library	590	7.30 PM Trips per 1,000 SF
City Hall	Government Office Building	730	1.21 PM Trips per 1,000 SF
Meeting/Conference Halls	Lodge/Fraternal Organization	591	4.05 PM Trips per 1,000 SF
Public Schools	Elementary School	520	1.21 PM Trips per 1,000 SF
DMV Office	State Motor Vehicles Department	731	17.09 PM Trips per 1,000 SF

BDC 2.2.200 identifies the purpose of the Limited Commercial District (CL) as providing a wide range of retail, service, and tourist commercial uses in the community along highways or in new commercial centers. This zoning allows restaurants with or without drive-through windows, retail sales and services, offices and clinics, lodging, entertainment, and various government and institutional uses. Outright permitted uses within the CL zoning that could be sited on Troy Field include the uses and trip rates shown in Table 2.

Table 2. Summary of Potential Public Facilities Land Uses and Trip Characteristics

Allowable Use	ITE Classification	ITE Land Use Code	Weekday PM Peak Hour Trip Rate	Effective Trip Rate ³
Library	Library	590	7.30 PM Trips per 1,000 SF	7.30 PM Trips per 1,000 SF
City Hall	Government Office Building	730	1.21 PM Trips per 1,000 SF	1.21 PM Trips per 1,000 SF
Retail Sales and Service	Shopping Center	820	3.71 PM Trips per 1,000 SF	2.45 PM Trips per 1,000 SF
Restaurants/Food Service w/o drive-thru window	High-Turnover (Sit-Down) Restaurant	932	9.85 PM Trips per 1,000 SF	5.61 PM Trips per 1,000 SF
Restaurants/Food Service w/Drive-thru	Fast-Food Restaurant with Drive-Through Window	934	32.65 PM Trips per 1,000 SF	16.65 PM Trips per 1,000 SF
Offices and Clinics	Medical/Dental Office Building	720	3.57 PM Trips per 1,000 SF	3.57 PM Trips per 1,000 SF
DMV Office	State Motor Vehicles Department	731	17.09 PM Trips per 1,000 SF	17.09 PM Trips per 1,000 SF

Per BDC 4.7.300(A)(7): *For Bend Urban Area General Plan Map amendments or zone change applications, the trip generation shall represent the worst case trip generation of the existing and proposed zoning. This accommodates the highest trip generator allowed outright in the zone. However, if General Plan Map amendments or zone changes are accompanied by a concurrent site plan application, the trip generation for the site plan may be utilized instead.*

Worst-Case Trip Generation Scenario

Based on the allowable uses within the two districts, a DMV would be the most intense use allowed within either district. Table 4 provides a comparison of the potential development sizes balancing setbacks, parking, landscaping, and building sizes. Table 5 summarizes the relative difference in trip generation potential between the two scenarios. This shows that the “worst-case trip generation” could be obtained with a two-story DMV within the PF District, or a three-story DMV in the CL District.

Table 4. Summary of Land Use Scenario Design Parameters

Standard	Public Facilities District	Limited Commercial District
Front Yard Setback	None ⁴	10 Feet
Building Height	35 feet ⁵	55 feet
Parking	1 stall per 350 feet of building area	1 stall per 350 feet of building area
Landscaping	15% of commercial and office	15% of commercial and office
Maximum Scenario	DMV Building 18,850 SF (Two-Story) 54 Parking Stalls FAR: 0.54	DMV Building 21,086 SF (Three-Story) ⁶ 60 Parking Stalls FAR: 0.61

Table 5. Maximum Worst-Case Trip Generation Comparison

Scenario	Land Use	ITE Code	Size (SF)	Daily Trips	Weekday PM Peak Hour		
					Total	In	Out
PF District	State Motor Vehicles Dept.	731	18,850 SF	3,130	322	100	222
CL District	State Motor Vehicles Dept.	731	21,086 SF	3,500	360	112	248
Trip Difference			+2,236 SF	+370	+38	+12	+26

Note: Weekday PM Peak Hour Directional distribution information is not available within the ITE manual and was assumed to be 31% inbound/69% outbound based on data within ITE 733: Government Office Complex.

Reasonable Worst-Case Trip Generation Scenario

A second analysis scenario was prepared to consider the trip generation difference between the two zoning districts based on a typical planning approach that would be provided within a regional plan (such as a Transportation System Plan). Within regional plans, specific uses such as a DMV would not be considered; impacts are generalized by grouping parcels into

Transportation Analysis Zones (TAZs) and forecast impacts based on households and employees (by type). For generalized planning purposes, this scenario was prepared using typical uses that would be assumed:

- PF District: Two-Story Government Office Building
- CL District: Three-Story Mixed-Use Commercial/Office Building

Building estimates were prepared following a similar methodology to what was previously outlined within the maximum worst-case scenario development section of this report, balancing landscaping, setbacks, and parking needs. Table 6 summarizes the resultant trip generation potential for each of the zoning districts.

Table 6. Reasonable Worst-Case Trip Generation Comparison

Scenario	Land Use	ITE Code	Size (SF)	Daily Trips	Weekday PM Peak Hour		
					Total	In	Out
PF District	Government Office Building	730	18,850 SF	208	28	5	23
CL District	High Turnover Sit-Down Restaurant	932	5,903 SF	751 (323)	58 (25)	35 (15)	23 (10)
	Medical Office	720	11,806 SF	427	42	11	31
	Total		17,709 SF	855	75	31	44
Trip Difference			-1,141 SF	+647	+47	+26	+21

As shown in Table 6, use of the reasonable worst-case trip generation scenario provides a higher difference in trips than the maximum worst-case scenario.

Study Area and Performance Standards

Trip assignments for both the maximum worst-case trip generation comparison and the reasonable worst-case trip generation comparison are provided in Figures 2 and 3 of the TIA. As shown in Figures 2 and 3, City of Bend significance thresholds (15 or more peak hour trips in any lane group) are not met at any of the collector and arterial intersections. Accordingly, further capacity analysis is not required for compliance with the BDC. Despite this, an operational analysis was conducted to fully understand system adequacy with both the reasonable and maximum trip generation scenarios due to the difference in the inbound and outbound trip generation split. Applicable intersection performance standards are identified within BDC 4.7.400(B) as follows:

1. *Two-Way Stop Control. Approaches with greater than 100 peak hour trips; average delay for the critical lane group is less than or equal to 50 seconds during the peak hour;*
4. *Signalized Intersection under the Jurisdiction of the City of Bend:*
 - b. *For intersections that are not constructed to the widths and infrastructure elements of the Bend Urban Area Transportation System Plan or other approved master plan and are located within or directly adjoining a historic district or Central Business*

Zone, the volume-to-capacity ratio for the intersection as a whole is less than or equal to 1.0 during the hour directly preceding and following the peak hour.

- c. For intersections that are already constructed to the widths and infrastructure elements of the Bend Urban Area Transportation System Plan or other approved master plan, the operation standard shall be a volume-to-capacity ratio less than or equal to 1.0 for the intersection as a whole during the hour directly preceding and following the peak hour.*

Based on the BDC, there are currently no operational standards for the un-signalized intersections of Bond Street/Louisiana Avenue or Bond Street/Kansas Avenue as both intersections have a minor street approach volume of less than 100 vehicles during the peak hour. The applicable performance standard for the signalized Bond Street/Franklin Avenue and Bond Street/Oregon Avenue intersections is analysis of the hours preceding and following the peak hour. However, because the future forecast travel demand models do not provide these hourly forecast details, this analysis includes peak hour operations only. As such this presents a conservative analysis scenario.

Horizon Year Traffic Operations

Consistent with BDC 4.7.200(2)(b), this analysis assesses the weekday PM peak hour (highest total entering volume between 4:00 and 6:00 PM) in the planning horizon. The year 2028 provides the horizon period for the City's UGB amendment efforts that were subject to the DLCD remand. This forecast period was identified as the appropriate forecast year based on scoping direction from City staff. Growth was also projected to 2030 to directly comply with BDC 4.7.200 which requires a minimum 15year analysis.

Travel demand model data from the Bend MPO was used to assess future traffic conditions. However, the model does not include the local street intersections of Kansas Avenue or Louisiana Avenue, and link volume patterns are not closely reflecting conditions near the Oregon Avenue intersection. Accordingly, the NCHRP Report 255 methods result in declining volumes at Bond Street/Oregon Avenue and a growth rate of only 1.5% annual at Bond Street/Franklin Avenue.

Data contained within the Bend Metropolitan Transportation Plan (MTP) cite 1.8% annual population growth between 2015 and 2028, with a slightly lower Vehicle Miles Traveled increase of 1.5% annually. Based on review of the reasonableness of the travel demand forecasts and the MTP projections a conservative 2.0% annual growth rate was applied throughout the study area intersections as part of this analysis.

Existing weekday PM peak hour traffic counts were obtained to calibrate the future travel demand models to the existing turning movement patterns. Review of these counts, conducted on September 15, 2015, showed a peak hour northbound travel volume on Bond Street of approximately 730 vehicles along the site frontage. The counts also showed hourly pedestrian crossing volumes ranging from 45 at the Bond Street/Kansas Avenue intersection to 302 at Franklin Avenue and 389 at Oregon Avenue. The existing peak hour vehicle turning movements are illustrated in TIA Figure 4.

Year 2028 Intersection Operational Conditions

Analysis of year 2028 operational conditions during the weekday PM peak hour at the study intersections is summarized in TIA Figure 5 for the various zoning districts and trip generation scenarios. This analysis shows that all of the study intersections operate acceptably during the peak hour long-term in their current configuration in all scenarios. Therefore, there is no significant effect associated with incremental traffic increase from the proposed amendment.

Year 2028 Roadway Adequacy

Forecasted segment volumes were reviewed to ensure that roadways surrounding the site will continue to operate consistent with their designated functional classification. While the City of Bend does not have specific volume thresholds, guidelines within Table 12 of the TSP (Street Functional Classification System) provides general guidance for Average Daily Traffic (ADT) ranges. Table 7 summarizes each of the roadway facilities, their designations, forecast year 2028 ADT estimated from peak hour volumes, and the typical ADT range for the specific functional classification.

Table 7. Estimated Roadway Segment Volumes

Roadway	Functional Classification	Forecast ADT ¹	Typical ADT Range	Acceptable?
Bond Street	Major Collector S of Franklin, Minor Arterial north	9,000	5,000 to 18,000	Yes
Oregon Avenue	Major Collector	5,000	1,500 to 9,000	Yes
Franklin Avenue	Minor Arterial	14,000	5,000 to 18,000	Yes
Louisiana Avenue	Local Street	1,300	<1,500	Yes
Kansas Avenue	Local Street	900	<1,500	Yes

¹Based on the minor change between the reasonable and maximum scenarios ADT estimates adequately reflect either scenario.

Year 2030 Horizon Analysis

To comply with the horizon analysis requirements within BDC 4.7.200, a 2030 analysis was also conducted by extending the growth anticipated to 2028 an additional two years, meeting the minimum 15-year horizon. This analysis continued to show that all of the study intersections continue to operate acceptably in 2030.

Safety Review

The purpose of Statewide Planning Goal 12 (Transportation) is to “provide and encourage a safe, convenient, and economic transportation system.” In order to promote a safe roadway network, a detailed review of crash histories surrounding Troy Field was conducted. This included review of historical crash data obtained through police and DMV reports as recorded in ODOT’s crash database along with field review of the intersections.

Historical Crash Review

Crashes required for reporting include incidents that involve at least one motor vehicle, result in property damage exceeding \$1,500, or any level of participant injury. The ODOT database contains both City and ODOT crash records. Review of historical crashes within the most recent five years available within the crash database (January 2009 through December 2013) identified very few crashes adjacent to Troy Field. As required by the BDC, intersection crash rates are summarized in Table 8. The City does not have an adopted standard for crash rates, but crash rates higher than 1.0 crash per million entering vehicles are generally considered to be an indicator of geometric or other infrastructure deficiencies. All of the crash rates at the study intersections were less than this level, and the TIA notes that none of the intersections were identified for mitigation within recent City wide safety priority studies.

Table 8. Intersection Crash Rates.

Intersection	Total No. of Crashes (5 Years)	Est. Annual Total Entering Vehicles	Annual Crashes Per Million Entering Vehicles	Crash Rate <1.0?
Bond Street/ Oregon Avenue	4	3.97 MEV	0.20	Yes
Bond Street/ Franklin Avenue	21	6.43 MEV	0.65	Yes
Bond Street/ Louisiana Avenue	3	3.10 MEV	0.19	Yes
Bond Street/ Kansas Avenue	1	2.73 MEV	0.07	Yes

While the overall crash rates comply with City requirements (no more than 1.0 crash per million entering vehicles), further review, including development of turning movement diagrams and field review, was conducted to identify trends in crash characteristics and whether geometric or engineering improvements could help to further reduce the severity or frequency of crashes.

Bond Street/Oregon Avenue Intersection

The crash records show four crashes at the signalized Oregon Avenue intersection with Bond Street, with two of those that appear to be related to adjacent parking maneuvers and not the intersection. Of the remaining crashes, one involved a sideswipe crash in the northbound direction along Bond Street, and the other was a turning movement collision. Based on the limited crash data no issues or crash patterns were identified.

The City is currently considering removal of the traffic signal at this intersection as part of a pe2009 through December 2013) identified very few crashes adjacent to Troy Field. As required by the BDC, intersection crash rates are summarized in Table 8. The City does not have an adopted standard for crash rates, but crash rates higher than 1.0 crash per million entering vehicles are generally considered to be an indicator of geometric or other infrastructure deficiencies. All of the crash rates at the study intersections were less than this level, and the TIA notes that none of the intersections were identified for mitigation within recent City wide safety priority studies.

The crash records identified 21 crashes over the past five years within 300 feet of the intersection. The crash patterns show a declining trend since their peak in 2011, as shown in Figure 6. The intersection changes with the Riverside Boulevard improvements in 2014 are not reflected in the crash data.

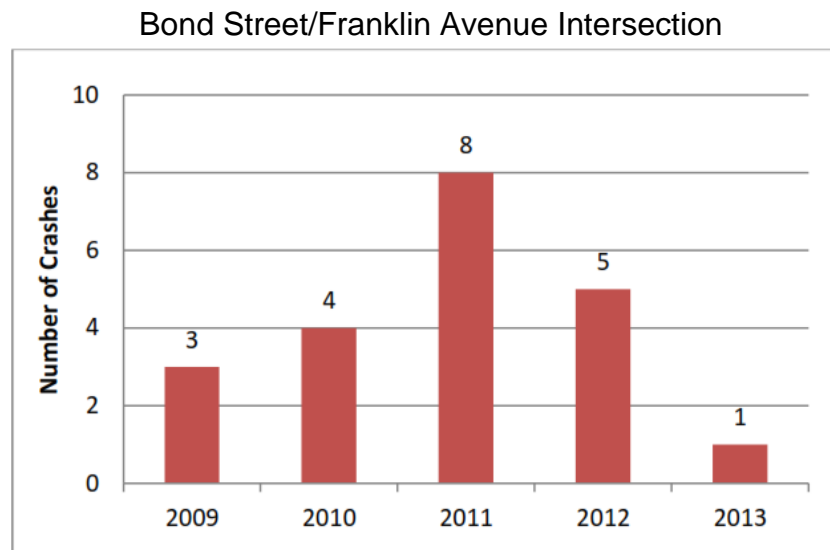


Figure 6. Franklin Avenue/Bond Street crashes per year.

Review of the crash characteristics identified the following:

- Crashes were relatively uniform seasonally.
- Friday had the highest number of crashes (6)
- The intersection experienced a broad range of collision types, including two crashes that involved pedestrians and two associated with parked motor vehicles.
- Of the 21 crashes 11 resulted in some level of injury to a total of 12 persons, including one incapacitating injury. There were 31 uninjured persons involved in the crashes.
- Weather and road conditions were largely clear, dry, and occurred in daylight conditions.
- One of the crashes was reported to be associated with drug use.
- From the available data the vast majority of drivers involved in crashes (32 of 35) were Oregon residents within 25 miles of home.

It was noted that the majority of crashes involved motorists traveling in the northbound and eastbound directions. Based on field review, the applicant's transportation engineer noted that on the eastbound approach the signal heads can blend in with evergreen trees behind the signal heads, and in the northbound direction the signal heads are most apparent from the right travel lane but not directly situated over the left lane. Accordingly, it was recommended that reflective signal borders be installed on all signal heads at the intersection to better highlight the signal to approaching motorists. It was also recommended that when the signal is replaced in the future, new mast arms should be extended over the center of the left lane to further improve visibility and better align the signal heads with northbound motorists. These visibility treatments would help to address 11 of the reported crashes; the majority of the remaining crashes were associated with lower severity parking/backing maneuvers.

The two pedestrian crashes were also reviewed to understand the contributing factors.

- The first crash occurred on Friday, November 4, 2011 at 4:00 PM in clear and dry conditions. The crash records show that the crash occurred within the eastern crosswalk and resulted in serious (incapacitating) injuries. The crash records show that the 82-year old male driver failed to yield the right-of-way to the pedestrian while turning right to head east on Franklin Boulevard.
- The second reported pedestrian crash occurred on Friday, February 10, 2012 at 10:00 PM during wet and foggy conditions. The crash occurred approximately 100 feet west of the Bond Street/Franklin Boulevard intersection along Franklin Avenue when the pedestrian was crossing mid-block that was struck by a westbound passenger car. The records are unclear and indicate that the 16-year old pedestrian was in the roadway shoulder but at-fault for making an illegal mid-block crossing.

Reviewing the areas where these two crashes occurred, it appears that the associated issues were not related to the geometric design. No other patterns or mitigation measures were identified at the intersection.

The TIA notes that based on discussions with ODOT staff, there are plans to replace the signal controller at this intersection with a more modern controller. With the installation of vehicle detection and an improved controller the signal could operate with vehicle-actuated control. ODOT is also considering a leading pedestrian phase which would allow pedestrians to begin their crossing before vehicles, which provides higher pedestrian yielding compliance.

Bond Street/Louisiana Avenue Intersection

There were three reported crashes in this intersection vicinity that occurred in 2009, 2010, and 2011. None of the crashes resulted in any level of injury.

Bond Street/Kansas Avenue Intersection

The single crash that occurred near this intersection was due to an improper lane change along Bond Street and not associated with the intersection. The crashes were identified as an improper turn, proceeding through the stop sign without stopping, and a turning crash. None of the crashes resulted in any level of injury and there was no pattern identified.

Intersection Sight Distance

Intersection sight distance was reviewed at the Bond Street and Lava Road intersections with Louisiana Avenue and Kansas Avenue to further ensure appropriate visibility is provided toward cyclists, pedestrians, and vehicles at the primary transportation system connections. Additional sight distance measurements will be required as part of future site plan applications when the specific access locations are known. As depicted in TIA Figures 8 through 11, on-street parking, street furniture, and vegetation can limit or obstruct views of approaching motorists. However, this is common throughout the low-speed downtown environment and helps to maintain a low speed travel environment consistent with the 20 mph posted speed on Bond Street. Curb bulb-outs allow motorists to pull forward of the stop bar to obtain a clear view beyond parked cars.

STAFF FINDINGS AND RECOMMENDATIONS WITH FUTURE DEVELOPMENT

The proposed General Plan Amendment meets the requirements of OAR 660-12-0060 (TPR) and BDC Chapter 4.7 *Transportation Analysis*. No specific mitigation was found to be warranted with the proposed amendment. However, the applicant's Transportation Engineer identified specific mitigation measures to be explored with future development as listed below. An additional site-specific transportation analysis will be required as part of a future Site Plan Review application that addresses access, parking, sight lines, and the specific trip generation characteristics when a development plan is proposed.

- An east/west pedestrian crossing along the south side of the Bond Street/Louisiana Avenue intersection should be explored as part of future site development; to potentially include curb bulb-outs, accessible ramps, and a striped crosswalk.
- Reflectorized signal backplates should be installed at the Bond Street/Franklin Avenue intersection. This may be done as part of upcoming signal controller and detection improvements to address historical crash patterns at the intersection.

Goal 13 Energy, "To conserve energy."

HEARINGS OFFICER'S FINDING: At least one participant argued that changing the map designation of Troy Field will lead to increased energy use and, therefore, will be inconsistent with Goal 13. That argument misunderstands Goal 13 to require some sort of no net increase in energy use. That is not the objective of Goal 13.