

## DECISION OF THE CITY OF BEND HEARINGS OFFICER

**PROJECT NUMBER:** PZ-15-0876

**APPLICANT/  
OWNERS:** Bend-La Pine Schools  
520 NW Wall Street  
Bend, OR 97702

**APPLICANT'S  
REPRESENTATIVE:** Bryant, Lovlien & Jarvis, PC  
Sharon Smith  
591 SW Mill View Way  
Bend, OR 97702

**LOCATION:** Troy Field – 690 NW Bond Street; Tax Map 17-12-32-CA,  
Tax Lot 08900

**REQUEST:** Type III Quasi-Judicial General Plan Map Amendment to  
change the designation of 0.80 acres of property from Public  
Facilities (PF) to Commercial Limited (CL) for consistency  
with the existing zoning designation.

**STAFF REVIEWER:** Amy Barry, AICP, Senior Planner; (541) 693-2114;

**HEARING DATE:** December 16, 2015

**HEARINGS OFFICER:** Ken Helm

### APPLICABLE PROCEDURES AND CRITERIA:

#### Approval Criteria

Bend Development Code (BDC)  
Chapter 4.6, Land Use District Map and Text Amendments  
The Bend Area General Plan  
Oregon Administrative Rules  
Chapter 660-012-060, Plan and Land Use Regulation Amendments  
Chapter 660-015, Division 15, Statewide Planning Goals and Guidelines

#### Applicable Procedures

Chapter 4.1, Land Use Review and Procedures

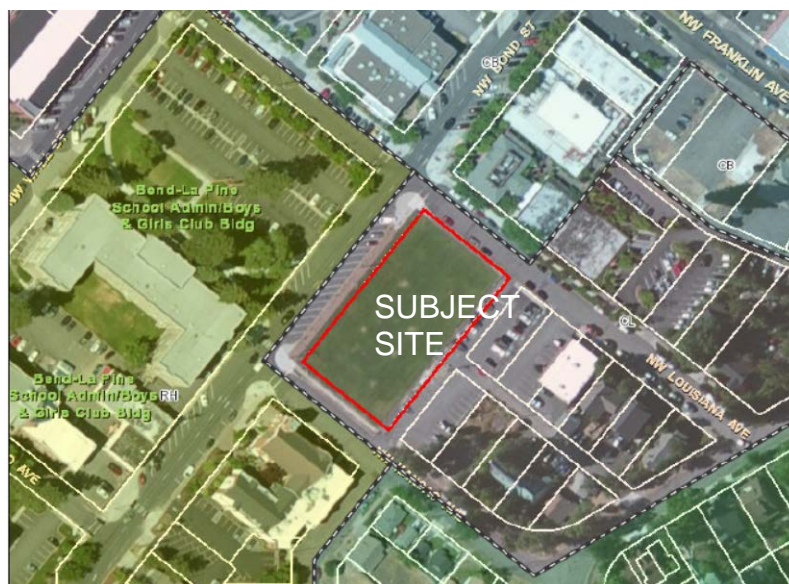
### FINDINGS OF FACT:

- 1. LOCATION:** The subject property (commonly known as "Troy Field") is located at 690 NW Bond Street, on the east side of Bond Street between NW Louisiana and NW Kansas Avenues. The property is also identified as Tax Lot 08900 on Deschutes County Assessor's Map 17-12-32-CA.
- 3. ZONING AND PLAN DESIGNATION:** The subject property is currently zoned Limited Commercial District (CL) and designated Public Facilities (PF) on the Bend Area General Plan.

- 4. HISTORY OF ZONING AND PLAN DESIGNATIONS:** While the City does not have old General Plan and zoning maps for every year, there are copies in the archives from various points in time. The oldest General Plan map available is from 1974. It showed Troy Field, the old high school and parking lot as “Schools.” The 1981 General Plan map likewise shows the field as “Schools.” When the 1998 General Plan and map were adopted by the City Council, all of the public land downtown, including Troy Field, was designated Public Facilities (PF) which they remain today. There was no concurrent zone change when the 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 1947 Zoning Map has all of downtown including Troy Field as Central Commercial. In 1960, the property was shown as R4, which was multi-family, and in 1978 the zoning was RH. On the 1991 map it is shown zoned CL, which it has remained zoned since.

- 5. SITE DESCRIPTION & SURROUNDING USES:** The subject property is surrounded by a mix of residential, commercial, and public uses. To the south and west, properties are zoned High Density Residential (RH), with the Bend-La Pine Administrative offices and parking lot to the west, which are designated PF on the General Plan, and the First United Methodist Church to the south. To the southeast, the zoning is Medium Density Residential (RM), with a General Plan designation of RH, and is developed with primarily single-family dwellings which are also located in the Old Town Historic District. To the east and northeast, properties are zoned Limited Commercial (CL) and also designated CL on the General Plan, and are developed with a parking lot and mix of commercial and residential uses. To the north and northwest, properties are zoned Central Business District (CB) and designated CB, with McMenamins to the north, and Bend City Hall to the northwest.



6. **PROPOSAL:** Type III Quasi-Judicial General Plan Map Amendment to change the designation of 0.80 acres of property from Public Facilities (PF) to Limited Commercial District (CL) for consistency with the existing zoning designation.
7. **PUBLIC NOTICE AND COMMENTS:** On July 28, 2015, the applicant mailed notification to the Neighborhood Association representative and surrounding property owners for a public meeting which was held on August 26, 2015 at the Bend-La Pine Schools Administration Building. The notification and the meeting were completed as prescribed in BDC Section 4.1.215.

Notice was sent to DLCD on October 29, 2015. On November 5, 2015, the Bend Planning Division mailed notice for the public hearing before the Bend Hearings Officer to all property owners of record within 250 feet of the subject site. Notice of the hearing was also mailed to all persons who provided a name and address on petition forms that were submitted to the City relating to this proposal. Additionally, four *Notice of Proposed Development* posters were posted on the subject site on November 9, 2015, which also listed the hearing date and City staff contact information. Notices were also sent to City Departments and other affected agencies for comment. Various agency comments and recommendations are contained in the project file and were considered in this staff report.

## **CONCLUSIONS OF LAW:**

### **HEARINGS OFFICER'S OVERVIEW OF THE PUBLIC HEARING:**

A public hearing was scheduled for December 3, 2015. Due to an error on the part of the Hearings Officer that hearing had to be rescheduled. The Planning Director opened the hearing and continued it to a date certain. The rescheduled hearing date of December 16, 2015 was communicated to the public and interested participants. The hearing was held on December 16, 2015, at approximately 4:00 p.m. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias or conflicts of interest. The Hearings Officer stated that the only relevant criteria were those identified in the Staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.

Senior Planner Amy Barry provided a brief overview of the application and recommended approval.

The applicant's representative Sharon Smith provided a PowerPoint presentation, a copy of which is in the record. She explained the School District's reasons for identifying Troy Field as surplus property and the desire of the District to generate additional funding for the district through the sale of the subject property. School board members testified in favor of the application stressing the fiduciary duties of the board to seek the sale of surplus property to pay for near future school construction and improvements.

Several individuals testified as neutral parties. Those parties suggested a public private partnership for maintaining some open space and public access by seeking an innovative design for any future commercial building on the site. Some of the testimony focused on the amount of non-profit organization use of the field for activities and events.

Numerous individuals testified in opposition to the proposal. The comments fell into the following categories:

- Troy Field is heavily used for community activities, events and athletic programs. Testimony and evidence was submitted that the field has been reserved for up to 176 times in 2015 for such uses.
- Troy Field is one of the few spaces in Bend that can be rented by non-profit organizations for an affordable price.
- Troy Field is a historic site. Early photos were submitted showing community use and football games. The field qualifies to be on the city's Goal 5 historic resources list.
- The General Plan amendment criteria require a public need to be identified. Opponents argued that the public need must relate to the land itself and not just the property owner's desire to acquire funding. They also argued that the proposed new designation must support a public need.
- Increased negative traffic impacts were asserted. Opponents argued that existing traffic levels connected to the current nature and extent of the use of Troy Field should be compared to the future allowed uses – not the worst case scenario under the Public Facilities designation that the staff examined.
- Opponents argued that the assessed value of the field as it is used and zoned should be used as the basis for comparison on the issue of public need.
- Opponents asserted that a sewer line is located beneath the field and would need to be removed to allow future commercial use.
- Opponents asserted that prior action by DEQ to address soil contamination on a neighboring property, and potentially on an adjacent corner of the field would hinder future commercial use of the site.
- Many opponents asserted that the "Heritage Square" concept plan, which encompasses Troy Field is part of the General Plan and the current proposal contradicts that concept plan.
- Some neighbors argued that notice of the application and hearing should have been given to residents more distant from the field than was provided by the city.

- Several opponents argued that Troy Field qualifies as a Goal 8 resource for open space.
- At least one opponent argued that the proposal is inconsistent with Goal 8 because the field is currently used by an adjacent school for transportation safety training, and because pedestrian and bicycle transportation will be limited by the change in designation.
- Due to the transportation impacts, it was suggested that the proposal would cause a conflict with the environmental protections of Goal 6.
- An inconsistency with Goal 7 was raised due to the loss of recreational opportunities if the field is converted to commercial use. Similarly, loss of the field was alleged to violate Goal 11 because residents would no longer have a place to gather for events for an affordable price.
- Several opponents questioned whether the type of development that the CL zone would allow is the type of infill that the city needs.
- Opponents pointed to other District owned lands in Bend that could be sold without the community impact that would result in the loss of Troy Field.
- It was asserted that sale of the field would violate ORS 271.310.

At the close of the public hearing the parties agreed to an open record period with the following schedule: All parties were given until December 31, 2015, at 4:00 p.m. to submit testimony and evidence on any issue. All parties were given until January 6, 2016 at 4:00 p.m. to submit responsive testimony and evidence. The applicant was given until January 13, 2016 to submit a final argument. With one exception those deadlines were met. Nunzie Gould submitted an e-mail in opposition after 4:00 p.m. on December 31, 2015, and the Hearings Officer did not review that e-mail. The applicant waived final argument. The record closed on January 7, 2016.

### **HEARINGS OFFICER'S SUMMARY OF CONCLUSIONS OF LAW:**

The Hearings Officer wishes to recognize the difficulty of this proposal from a public policy perspective. The proposal involves the needs and duties of the Bend La Pine School District, the needs and duties of the Bend City Council and the needs and desires of the residents of the city, in particular all of the groups and individuals who at one time or the other use Troy Field for activities that can only be described as community benefits.

At the same time, the proposal implicates a land use procedure which is limited in scope, an amendment to the General Plan Map which seeks to change the current Public Facilities designation to Commercial Limited. As the Hearings Officer, I also understand the limited scope of my duties in this Type III procedure. That is primarily to determine if the applicant has provided evidence and sufficient reasons to meet all of

the amendment criteria identified below. If this were a typical Type III decision, the Hearings Officer's decision would be final unless appealed to the City Council. However, BDC 4.1.930 requires General Plan amendments, which this is, to be adopted by ordinance. That triggers review and hearing requirements in front of the City Council. The consequence of that procedural requirement is that the Hearings Officer's decision becomes a recommendation to the City Council.

The job of the Staff in this process is to apply the BDC in a balanced and fair manner, avoiding if possible making ad hoc policy decisions in the process. In my opinion the Staff Report did just that. As a Hearings Officer my duty is foremost to issue a decision that is correct as a matter of law. That task is straight forward where the standards are prescriptive or are clear and objective. Most of the criteria applicable to this application, as identified by Staff, fall into that category. However, the role of the Hearings Officer becomes more difficult where an applicable standard is highly discretionary or subjective in nature. There are at least two standards applicable to this proceeding that fall into that second category. Opponents of the map change identified both of those standards and made relevant arguments directed toward both of them.

The City Council already understands that it possesses a great deal of flexibility in the interpretation of its development code and General Plan under ORS 197.829 and *Siporen v. City of Medford*, \_\_OR\_\_ (2010). The deference owed to such interpretations is even greater when the standard is a subjective one. During the City Council's review of this decision, it will be possible to interpret the two standards discussed below in at least two legally defensible ways – each having a good prospect of earning the deference mandated by ORS 197.829. For that reason, I am offering a twofold set of findings for those two standards, one supporting a finding of approval and an alternative supporting denial. The applicant has met the burden of proof with respect to all the other applicable criteria. Because the proceeding before the City Council will be *de novo*, the City Council will not only have the ability to reject the Hearings Officer's alternative findings, but also the ability to adopt findings of approval or denial that are different from what the Staff or the Hearings Officer have presented here. The bottom line is that if the Council rejects the Staff Findings, and wishes to deny the application on other grounds it is not bound to adopt the alternative findings offered by the Hearings Officer.

That being said, my "recommendation" to the City Council is to DENY the map amendment.

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, and 2) BDC 4.6.300.B.4 which requires the applicant to provide evidence of a change in the neighborhood or community that justifies the Plan Amendment.

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 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.

## **FINDINGS OF CONFORMANCE WITH APPLICABLE CRITERIA AND PROCEDURES**

### **Chapter 4.6 Land Use District Map and Text Amendments**

#### **4.6.100 Purpose.**

**The purpose of this chapter is to provide standards and procedures for legislative and quasi-judicial amendments to this Code, the Bend Area General Plan, the Bend Area General Plan map and the land use district map. These will be referred to as "map and text amendments." Amendments may be necessary from time to time to reflect changing community conditions, needs and desires, to correct mistakes, or to address changes in the law.**

**FINDING:** The proposal is an amendment to the Bend Area General Plan Map to change the designation from PF to CL to match the current zoning of the property.

#### **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 applicant may be approved, approved with conditions, or denied.**

**STAFF FINDING:** The Type III review procedure is applicable because the proposal is a site specific plan amendment, initiated by a single property owner, and can be reviewed by applying existing policy to a specific factual setting. Type III applications follow the



procedures identified in BDC 4.1.400 and are required to conform to the approval criteria detailed in BDC 4.6.300.B.

**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:

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

***OAR 660-009-0010***

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

**FINDING:** OAR 660-009-0010 is not applicable as the proposed General Plan amendment from PF to CL is less than two acres.

***Applicable Statewide Planning Goals:***

**FINDING:** There are 19 Statewide Planning Goals that express Oregon's land use policies. Each local government throughout Oregon must adopt a comprehensive plan to implement these Statewide Planning Goals. The City of Bend has adopted a Comprehensive Plan (the Bend Area General Plan), and as detailed below, the proposed General Plan Map Amendment conforms to all applicable Bend Area General Plan policies. Additionally, the Bend Development Code (BDC), City Standards and Specifications, Bend Code Title 16, *Grading, Excavation, and Stormwater Management*, and the Central Oregon Stormwater Manual (COSM), which are applicable at the time of development review, ensure consistency with certain policies of the General Plan. As documented in the applicant's narrative, the proposal conforms to the approval criteria of the BDC and is consistent with the relevant policies of the General Plan; therefore the proposal is consistent with the relevant Statewide Planning Goals.

City of Bend Planning Staff and the applicant concur that goals 1, 2, 9, 10, 11, and 12 are relevant for discussion in this General Plan Map Amendment. All other goals have been determined to either not apply to this application, or are clearly satisfied through the City's acknowledged comprehensive plan and local land use regulations.

***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."*

Conformance with Goal 1 is achieved through the Bend Area General Plan *Chapter 1 - Citizen Involvement*, and through the implementation procedures that have been adopted in the BDC, and those procedures have been acknowledged by the Land Conservation and Development Commission (LCDC). The BDC contains provisions to ensure an appropriate level of citizen involvement is achieved. The Type III citizen involvement procedures were followed in the review of this application, which ensure consistency with Statewide Planning Goal 1.

The first step for citizen involvement for a Type III application is the public meeting required by BDC Section 4.1.215, which the applicant conducted on August 26, 2015. Notice of the public meeting was mailed by the applicant to owners of record of property located within 500 feet of the subject site, as well as the designated representative of the Old Bend Neighborhood Association.

Public notice for this hearing was conducted in conformance with the Type III notice requirements of BDC 4.1.423-426. Notice of the proposed General Plan Amendment was sent to DLCD on October 29, 2015. On November 5, 2015, the Bend Planning Division mailed notice for the public hearing before the Bend Hearings Officer to all owners of record for properties within 250 feet of the subject site. Notice of the hearing was also mailed to all persons who provided a name and address on the petition forms that were submitted to the City relating to this proposal. Additionally, four Notice of Proposed Land Use Action posters were posted on the subject site on November 9, 2015, which also listed the hearing date and City staff contact information.

**HEARINGS OFFICER'S FINDING:** The public hearing held on December 16, 2016 accommodated all persons who wished to comment on the application. There were no time limits imposed on the length of testimony. No party provided argument or evidence that demonstrated that individuals were not properly notified and did not have a reasonable opportunity to testify. Furthermore, the open record period provided two weeks of time for the public to submit additional written testimony on any issue. This criterion is met.

**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 proposal is to amend the General Plan Map by changing 0.80 acres of land from a PF designation to a CL designation. The proposal is reviewed in accordance with the planning processes and policy framework established in the General Plan and BDC. Because the proposed General Plan Map Amendment will follow the established local planning process, and it will neither alter the process for administration of the Development Code, nor the acknowledged procedural requirements (which ensure a factual base for all decisions), the proposal is therefore consistent with Statewide Planning Goal 2.

**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.

**HEARINGS OFFICER'S FINDING:** 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.

**Goal 6 – STAFF FINDING:** Goal 6 is not applicable because the proposed General Plan Map Amendment will not have any impacts on air, water or land resources. Also, air and water quality are regulated by the Oregon Department of Environmental Quality, outside of the local land use review process.

**HEARINGS OFFICER'S FINDING:** At least one party argued that the proposal is inconsistent with Goal 6. The Hearings Officer agrees with staff, and for the additional reason that as a map amendment, the proposal itself cannot violate or threaten to violate any state or federal environmental protections. The CL zone has been acknowledged to comply with Goal 6. Staff is correct that if future development implicates DEQ rules, then such a process would be required during the development review.

**Goals 7 and 8 – 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.

**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."*

OAR 660-009 implements Goal 9. In Bend, the objectives of Goal 9 and OAR 660-009 are primarily achieved through implementation of the General Plan and local land use regulations. The General Plan designates the subject property as PF and is supported by the 2000 Economic Lands Study. The Economic Lands Study was conducted to evaluate economic lands in Bend; it studied regional trends, the inventory of buildable lands, and forecasts future economic lands needs over a 20 year time horizon. This study did not identify PF land as economic lands in any of the trends, inventory, calculations or forecast. Thus, amending the PF land to CL land will not change the availability of any measured economic lands in Bend, and therefore will not directly impact economic development.

Additionally, OAR 660-009 is not applicable as the proposed General Plan amendment is less than two acres.

*OAR 660-009-0010*

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

**Goal 10, Housing**, *"To provide for the Housing Needs of the citizens of the State".*

Goal 10 ensures that steps are taken, including inventories and plans, to encourage the availability of needed housing units at price ranges and levels that are commensurate with the financial capabilities of Oregon households. The subject property is designated PF and zoned CL, neither of which are primarily residential designations/zones, and is not included in the residential land inventory. Because temporary residences and

residences that are part of a mixed use development are permissible in the CL Zone, the proposed re-designation would allow housing that is not currently allowed under the current plan designation. Therefore, this amendment is consistent with Goal 10.

**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.”*

**STAFF FINDING:** OAR 660-11 implements Goal 11, and notes, “Cities or counties shall develop and adopt a public facility plan for areas within an urban growth boundary containing a population greater than 2,500 persons...” The City of Bend has adopted water, wastewater, and transportation master plans. The Public Facilities Plans (PFPs) detail long-range infrastructure needs, along with a path to completion and financing mechanisms. The BDC ensures that needed public improvements are constructed concurrent with site development, ensuring a timely, orderly and efficient arrangement of public facilities, in a manner consistent with the adopted PFPs.

#### Sewer and Water -

The subject property can be served by existing infrastructure which is located adjacent to the site. The Sewer and Water Master Plans do not include any additional planned facilities though this site, thus paying SDCs and connecting to the existing systems at the time of development (in accordance with Development Code Requirements and City standards) is sufficient to provide timely, orderly, and efficient water facilities.

#### Transportation -

Currently, NW Bond Street adjacent to the site is developed as a city collector street. NW Kansas and Louisiana Avenues are designated as local streets. The Transportation System Plan (TSP) does not identify any additional planned transportation facilities through or near the site. In fact, Bond Street between Greenwood and Franklin Avenues is identified in the General Plan as not authorized for lane expansion. The applicant provided a Transportation Impact Analysis (TIA) which is addressed in detail further on in this report. The TIA shows that the proposed amendment will not have a **significant** impact to the transportation system.

The adopted local land use regulations in the BDC, in conjunction with PFPs, City Standards and Specification and other adopted codes, provide a framework that ensures that a timely, orderly, and efficient arrangement of public facilities and services are achieved concurrent with development. Because there are no planned facilities adjacent to the subject property, additional improvements or right of way dedications are not needed at this time. Ensuring conformance with the BDC at the time of development will provide consistency with Goal 9.

**HEARINGS OFFICER’S FINDING:** Staff is correct that the city’s adopted public facilities plans and TSP adequately anticipate providing utilities, water, sewer and road services to the subject property. The proposed map amendment can be accommodated within those plans.

One comment during the public hearing suggested that Troy Field cannot be developed because there is a sewer line somewhere under the field. Whether there is indeed a sewer line under the field is not relevant to understanding compliance with Goal 11. If such a sewer line is present, under either the PF or CL designation, any future development would need to contemplate how to treat that line. However, that would be an issue for development review rather than a consideration for a map amendment.

The proposal is consistent with Goal 11.

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

**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.

**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.

**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.”*

**STAFF FINDING:** The subject property is located within the urbanized city limits. Therefore this goal is not relevant to the proposed amendment.

**HEARINGS OFFICER’S FINDING:** At least one party argued that the proposal implicates Goal 14. Staff is correct, the map amendment simply proposes a change in map designation between two urban designations. Goal 14 is not relevant to this proposal.

**Goals 15 through 19** are not applicable because they only pertain to areas in western Oregon.

#### **4.6.300.B Criteria for Quasi-Judicial Amendments. (Continued)**

**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;**

**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.

## **CHAPTER 1 – PLAN MANAGEMENT AND CITIZEN INVOLVEMENT**

### **The transportation ↔ land use connection**

#### **Policies**

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

**STAFF FINDING:** The proposal is an amendment to the General Plan Map and does not include development at this time. It is anticipated that new commercial development will occur on the property at some point in the future, however the timing of the anticipated development is uncertain at this time. Future site development will be required to complete additional analyses to ensure capacity is available concurrent with development. Conformance with applicable BDC standards, reviewed through future development review applications, will therefore ensure consistency 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.***

**STAFF FINDING:** Any development on the subject property will be in-fill development as the subject property is an undeveloped lot in the downtown area. The General Plan expresses a desire to support in-fill development because such development is compact, does not require extension of infrastructure, and reduces trips and vehicle miles traveled. The subject property is currently zoned for a variety of integrated uses that further promote a reduction in trips and vehicle miles traveled. The proposed plan amendment enables development consistent with this General Plan policy and the current zoning of the site.

***8. The city and county will encourage infill and redevelopment of the core area of the city.***

**STAFF FINDING:** The proposed amendment meets this General Plan policy because the subject property is an undeveloped lot in the downtown core area of the City and the proposed amendment allows for its development. As discussed above, such infill development promotes a variety of other General Plan objectives including minimizing infrastructure costs, supporting compact development, and reducing trips and vehicle 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.***

**STAFF FINDING:** In conformance with Chapter 4.1.215 of the Bend Development Code which implements this plan policy, the applicant met with the neighborhood association and interested parties on August 26, 2015. Public notice is also provided by the City, including posted and mailed notice of public hearings before the Hearings Officer and City Council, and posted notice on the site. The mechanisms established and prescribed within the BDC provide an opportunity for all citizens of the area to participate in the planning process.

**CHAPTER 2: NATURAL FEATURES AND OPEN SPACES**

**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.

***8. Natural tree cover should be retained along streets in new developments to retain the natural character of Central Oregon within the urban area as the community grows.***

**STAFF FINDING:** There are no existing trees on the subject site, although there are street trees in the public right of way adjacent to the site. Future development applications will be obligated to comply with City standards for trees and landscaping.

***11. The city and county shall participate with other governments, special districts, non-profit organizations, land trusts, interested businesses, and citizens in protecting open space.***

**STAFF FINDING:** As described above, the property is not designated on any of the City or BPRD plans as open space. However, the School District and the City did negotiate for the City's acquisition of the subject property. Ultimately, the two agencies were unable to reach a deal.

## CHAPTER 3: COMMUNITY CONNECTIONS

**STAFF FINDING:** Chapter 3 addresses Historical Features, Cultural Amenities, Parks and Recreations and Public Education. The property is undeveloped and does not contain any designated historic or cultural amenities, designated or planned parks or trails, is not a school site, and is not otherwise identified in Chapter 3 of the General Plan including on Figure 3-4, “Developed Parks in the Bend Urban Area.” Therefore the policies of this section are not applicable. Nonetheless, certain policies are discussed below:

**HEARINGS OFFICER’S FINDING:** The Hearings Officer can find no legal flaw in the staff findings addressing Chapter 3: Community Connections. Neither does the record show any opposition arguments that would warrant rejecting those findings. However, the Hearings Officer recommends that the City Council avoid placing too great a weight on the conclusions of this section and the recitation of how Troy Field has been left off of all the official planning lists of parks and open spaces. To do so would turn an intentional blind eye to the evidence and testimony that despite lacking official park status, the field has been put to park, open space and community use for over 100 years. That de facto status in the community holds weight in and of itself.

***6. The Bend Metro Park and Recreation District shall identify “park deficient” areas of the community and shall acquire park and open space property in these areas.***

**STAFF FINDING:** Per the letter in the record from BPRD dated October 15, 2015, Troy Field is located in BPRD Service Area 19, which is the smallest of all the service areas at 84.35 acres. Service Area 19 is not identified as an underserved or park deficient area. The inventories performed as part of the BPRD *Parks, Recreation, and Green Spaces Comprehensive Plan* have never included Troy Field as either a park or green space. Therefore, the development of Troy Field would not impact the level of service in Service Area 19 or any adjoining service areas.

As part of the 2011 update to the BPRD Comprehensive Plan, BPRD developed a Neighborhood Park Plan to inventory parks, propose future projects, and identify needs by service area. The Neighborhood Park Plan proposed a neighborhood park in Service Area 19. However, BPRD states that Troy Field is not a suitable candidate for that proposal because it is only 0.8 acres, and the standard for a neighborhood park is 2 to 10 acres in size. Through the current update to the BPRD Comprehensive Plan, BPRD will be reevaluating the feasibility of a neighborhood park in Service Area 19 because of lack of developable land and proximity to other parks including Drake Park, Miller’s Landing, McKay Park, Columbia Park, and Harmon Park. BPRD ultimately elected not to acquire Troy Field when approached by the School District.

***12. When it is consistent with the needs identified in the Park and Recreation District’s Comprehensive Management and Development Plan, park land may be acquired from a willing developer during the land subdivision process.***

**STAFF FINDING:** Figure 7.2 of the Parks Comp Plan does not identify the property, or anywhere else in the downtown area, as a need for acquisition. Although the 2011 BPRD Neighborhood Parks Plan identifies a proposed park in the Old Bend Neighborhood, as noted in the letter from BPRD, they are reevaluating the feasibility of a neighborhood park in Service Area 19 because of lack of developable land (of adequate size of 2 – 10 acres) and the proximity to other parks including Drake Park, Miller's Landing, McKay Park, Columbia Park, and Harmon Park. BPRD elected not to acquire Troy Field when approached by the School District.

***14. The city shall support efforts by the Park and Recreation District and Bend-La Pine School District to jointly develop school-park sites to meet neighborhood park and school recreation needs.***

**STAFF FINDING:** As indicated by Figures 7.2 and 7.3 of the BPRD Comp Plan, the subject property is not identified as a need for acquisition as a park. While BPRD has proposed developing a neighborhood park in the Old Bend neighborhood, such a park has not been identified as a “need” for the agency and the subject property does not meet minimum size requirements for a neighborhood park. The School District indicates that the site is not suitable for a school.

***15. The Park and Recreation District shall strive to develop neighborhood parks or community parks within a convenient distance of every residence in the community.***

**STAFF FINDING:** The BPRD Comp plan does not identify a need to acquire a neighborhood park in the downtown/Old Bend area as the area is already served with Drake Park, Harmon Park, Columbia Park, McKay Park, Pioneer Park, Miller's Landing Park, and Pacific Park. Additionally, the subject property does not meet the two acre size requirement for a neighborhood park as identified in the Parks Comp Plan.

***16. Sites for small neighborhood parks are not shown on the Land Use Plan Map, but the city shall encourage private or public parties to develop small neighborhood parks.***

**STAFF FINDING:** The School District discussed acquisition of the subject property with both the City and BPRD. BPRD did not express an interest in the subject property because it is not located in an area of need and doesn't meet the size requirements for a neighborhood park. The School District negotiated with the City, but was unable to reach terms. By engaging in these negotiations, this policy is satisfied.

***17. The city shall refer to the park district, for its review and recommendations, all development proposals that include or are adjacent to existing or proposed parks or trails.***

**STAFF FINDING:** The subject property does not include and is not adjacent to existing or proposed parks or trails. Nonetheless, the School District discussed the proposal with BPRD prior to submitting this application. BPRD provided comments to the record indicating that they were not interested in acquiring the property and that the property does not meet their criteria for a neighborhood park.

## **CHAPTER 4: POPULATION AND DEMOGRAPHICS**

**STAFF FINDING:** This section addresses population history, growth, age distribution, persons per household, education, income levels, and population forecasts and demographics. Within this chapter there are two policies related to population forecasts and data updates, neither of which apply to this proposal.

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

**STAFF FINDING:** The subject property is not zoned or designated for housing or residential uses although residential uses are allowed for temporary housing or as part of a mixed use development. Residential uses are not allowed within the PF Zone. The proposed amendment does not affect the potential for residential development on the subject property or the supply of housing and residential lands within the City at large. Rather, the proposed amendment facilitates development of the subject property, which may include residential uses as part of a mixed use development. Therefore, this chapter is not applicable.

## **CHAPTER 6: THE ECONOMY AND LANDS FOR ECONOMIC GROWTH**

**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.

***20. The existing pattern of commercial designations shown on the Plan Map along Highway 97 and Highway 20, and along arterial streets such as Newport Avenue, Galveston Avenue, SW 14<sup>th</sup> Street, 27<sup>th</sup> Street, and O.B. Riley Road shall not be extended farther along the street corridors.***

**STAFF FINDING:** The subject site is not located in any of the areas identified above as restricted for expansion.

***21. No new strip commercial development or extensions of the commercial designations shall be permitted along arterial or collector streets.***

**STAFF FINDING:** Page 6-11 of the General Plan notes; “New commercial areas should be designed as centers rather than as an extension of the existing commercial strips. New Limited Commercial centers that are developed away from the state highway system should have uses that support local needs, rather than the needs of tourists or motorists passing through the community.”

The intent of this policy is to discourage strip type development and support development of neighborhood center style commercial areas, principally for the outer areas of the City. The subject property is centrally located and part of a commercial center contiguous with the Central Business District and other surrounding CL land. This area does not exhibit the characteristics of strip commercial development and would not constitute an extension or expansion of a commercial strip. Rather, it is part of an existing commercial area.

***23. Zoning for commercial centers other than those shown on the Plan Map shall meet the location and size standards in the Plan text in addition to the Plan amendment and/or zone change criteria.***

**STAFF FINDING:** As noted, the site is currently zoned CL, and surrounded to the north and east by CL land, and to the northwest by CBD land. Therefore, the subject site is in an existing commercial center. The General Plan Map amendment is proposed to match the current zoning, as there is not an identified need for the site as a public facility. As noted in previous findings, the subject site is not located in any of the areas identified as restricted for expansion.

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

**STAFF FINDING:** As stated above, the site is in an area designated for commercial development, and is currently zoned CL. Although the site is not adjacent to an arterial or highway, Bond Street adjacent to the site is a designated collector street. The site has frontage on two existing local streets and an alley that can provide adequate and safe access with future development. Access to the site will be analyzed with future development for conformance with City access standards that restrict direct access to collector and arterial streets.



## **CHAPTER 7: TRANSPORTATION SYSTEMS**

### **6.9.1      *Transportation and Land Use***

- 6. *The City shall continue to explore mixed use zoning as one of the land use patterns that will promote fewer vehicle trips and shorter trip lengths.***
- 9. *The City should be receptive to innovative development proposals, including zone changes, plan amendments and text changes that promote alternatives to vehicular traffic thus reducing vehicle trips and reduced trip lengths.***

**STAFF FINDING:** As compared to the PF designation, the CL designation allows for a wider variety of uses including mixed use developments featuring both commercial and residential uses in the same structure. The proposed amendment may promote fewer vehicle trips and shorter trip lengths as additional services, and potentially housing, on the subject property could provide greater opportunity for adjacent residents to meet all their needs in the downtown area thereby avoiding trips to more distant commercial areas. Additionally, the site is located adjacent to the downtown, with nearby shopping, restaurants, and parks within walking distance to support potential uses such as lodging.

**HEARINGS OFFICER'S FINDING:** As noted under the findings for Goal 12 above, the staff findings and supplemental information provided by the applicant are sufficient to comply with the TPR. Those findings are adopted here by reference.

### **6.9.2      *Transportation System Management***

- 1. *The City shall adopt land use regulations to limit the location and number of driveways and access points, and other access management strategies on all major collector and arterial streets.***

**STAFF FINDING:** This policy is carried out through standards adopted in the BDC and implemented at the time of land division or site development. The site is adequately served by the existing transportation network, which will allow access to be provided in a manner that is consistent with the BDC. Future development will be required to meet the standards that have been adopted to implement this policy.

### **6.9.6      *Street System***

- 6. *Access control shall be part of the design standards for major collectors, arterials, principal arterials and expressways to ensure that adequate public safety and future traffic carrying capacity are maintained while at the same time preserving appropriate access to existing development and providing for appropriate access for future development.***

**STAFF FINDING:** The standards adopted in the BDC implement and ensure compliance with these access, design, and connectivity related policies. Future development will be required to meet the BDC standards which implement these policies.

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

### ***Sanitary Sewer Facilities and Systems***

- 1. The city shall encourage development of serviced land prior to unserviced land or require the extension of sewer lines as part of any development within the UGB.***
- 2. All development within the Urban Growth Boundary shall be sewerred or provide for sewers through a binding sewer service agreement with the city.***

### ***Water Facilities and Systems***

- 16. Within the urban planning area, public and private water systems shall be consistent with City Standards and Specifications for construction and service capabilities.***

**STAFF FINDING:** The BDC implements this policy by requiring sewer and water main extensions and/or services to be constructed to serve all development. The property is surrounded by a network of City of Bend sewer and water facilities, with sewer and water services stubbed to serve the property. Provision of water and sewer system infrastructure will be further addressed with future development applications.

### ***Storm Drainage Facilities and Systems***

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

**STAFF FINDING:** Applications for new development are routed to the DEQ for review and comment as part of the review process. Additionally, developers are required to provide DEQ Documentation for storm water management plan, UIC decommissioning, and/or UIC Rule Authorization if applicable at the time of development. Upon completion of improvements, the applicant's Engineer of Record is required to provide a statement that all grading/clearing and drainage improvements were constructed in accordance with the approved plans and DEQ requirements. These requirements ensure consistency with this policy.

- 24. All public and private stormwater facilities shall be designed and operated in accordance with the City's Stormwater Master Plan and shall meet appropriate drainage quantity and quality requirements, including, but not limited to, the requirements of the City's National Pollutant Discharge Elimination System (NPDES) MS4 Stormwater Permit, Integrated Stormwater Management Plan, WPCF UIC Permit and any applicable Total Maximum Daily Load requirements (TDML) requirements. Underground injection and surface discharges to the Deschutes River or Tumalo Creek shall only be approved when other alternatives, such as retention basins or***

*bioinfiltration swales, are not reasonably available. Low impact site designs shall be a required part of all new development and redevelopment projects.*

- 27. The City shall implement and enforce requirements for an erosion and sediment control program for public and private construction and post-construction activities.*
- 28. All developments shall evaluate the potential of a land parcel to detain excess stormwater runoff and require incorporation of appropriate controls, for example through the use of detention facilities to address quantity, flow, and quality concerns.*
- 34. As part of site approval, or as a condition on tentative maps, as necessary, the City shall require permanent stormwater pollution control site design or treatment measures or systems and an ongoing method of maintenance over the life of the project.*
- 35. The City shall minimize particulate matter pollution through controls over new and redevelopment (including erosion and sediment controls on grading, quarrying, vegetation removal, construction, and demolition), industrial processes, parking lots and other activities that pose a threat to water quality.*
- 36. The City shall require the following stormwater protection measures for all new development and redevelopment proposals during the planning, project review, and permitting processes:*
  - Submit geotechnical site assessments when dry wells or other infiltration or injection systems are proposed.*
  - Avoid conversion of areas particularly susceptible to erosion and sediment loss (e.g., steep slopes) or establish development guidance that identifies these areas and protects them from erosion and sediment loss.*
  - Retain natural drainage channels in their natural state to prevent undue erosion of banks or beds, and preserve or restore areas that provide water quality or quantity benefits and/or are necessary to maintain riparian and aquatic biota.*
  - Promote site development that limits impacts on, and protects the natural integrity of topography, drainage systems, and water bodies.*
  - Promote integration of stormwater quality protection into construction and post-construction activities at all development and redevelopment sites.*

**STAFF FINDING:** The BDC, City Standards and Specifications, Bend Code Title 16 *Grading, Excavation, and Stormwater Management*, and the COSM ensure consistency with these policies. With future development of the site, a grading and drainage plan is required to be submitted in conformance with the standards of these codes, thereby ensuring consistency with these policies. As a standard condition of development

approval, developers are required to execute and record a Stormwater Maintenance Agreement, per the requirements of Bend Code Title 16 and the COSM which further ensures consistency with these policies.

**Public Buildings and Facilities**

***44. Public buildings and facilities shall be located so as to provide convenient public use and to provide maximum service for the greatest economy. Governmental offices shall locate downtown when practicable. Other governmental facilities, reservoirs, landfills and correctional facilities shall be located in areas with good public access to principal streets.***

**STAFF FINDING:** The applicant notes that the School District administrative offices are currently located in the downtown area. The School District has determined the subject property does not support its operations and has deemed the subject property surplus. The applicant finds that the School District has no obligation under this policy, but nonetheless contacted other public entities regarding potential acquisition of the properties. No public entity presented an offer suitable to the School District to purchase the subject property for public use. There are a variety of existing governmental offices within the downtown core, including the School District Administrative offices, City Hall, the main branch of the Deschutes Library, and a post office which fulfill the intent of this policy.

**CHAPTER 9: COMMUNITY APPEARANCE**

**STAFF FINDING:** Chapter 9 addresses the appearance of the community and promotes better designs for all types of development. Chapter 9 is implemented through BDC design standards required to be met at the time of development, which will ensure consistency with this policy.

**CHAPTER 10: NATURAL FORCES**

**STAFF FINDING:** Chapter 10 addresses air quality, noise issues, energy conservation, natural hazards and steep slopes. The proposed amendment will not impact any of these elements. BDC criteria and standards implement the policies in this chapter and will be required to be addressed through the review processes required with future development applications.

***(Section 4.6.300(B) Criteria for Quasi-Judicial Amendments continued below.)***

**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;**

**STAFF FINDING:** The property is within the incorporated area of the City of Bend. The City's police and fire departments are required to provide services within the City limits and the services they provide are adequate and will not need to be increased as a result of the proposed plan amendment. Fire hydrants and emergency vehicle access will

need to be provided with development to ensure adequate fire flows and consistency with the Uniform Fire Code. There are existing sewer, water, and streets adjacent to the site, available to serve future development. Sewer, water, and transportation system analyses will be required at the time of development to ensure that there is adequate capacity to serve the proposed use. Any deficiencies in capacity will be required to be mitigated by the developer concurrently with the development of the property.

**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.**

**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.<sup>1</sup>

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.

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<sup>1</sup> For example, schools are conditional uses in residential zones and often require variances to height limitations.

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.

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.

***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 <sup>3</sup>
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 <sup>4</sup>	10 Feet
Building Height	35 feet <sup>5</sup>	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) <sup>6</sup> 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 <sup>1</sup>	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

<sup>1</sup>Based 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 pedestrian safety project. It is not yet known what specific signing and striping treatments would occur with this change in traffic control, but conversion to stop control along Oregon Avenue with pedestrian crossing enhancements would be anticipated. Based on the heavy volume of pedestrians crossing at this intersection it is noted that pedestrian delays are increased by the traffic signal as opposed to the nearby un-

signalized intersections along the corridor that exhibit very high pedestrian yielding rates by motorists. Further review of this intersection will occur as part of a separate project effort.

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.

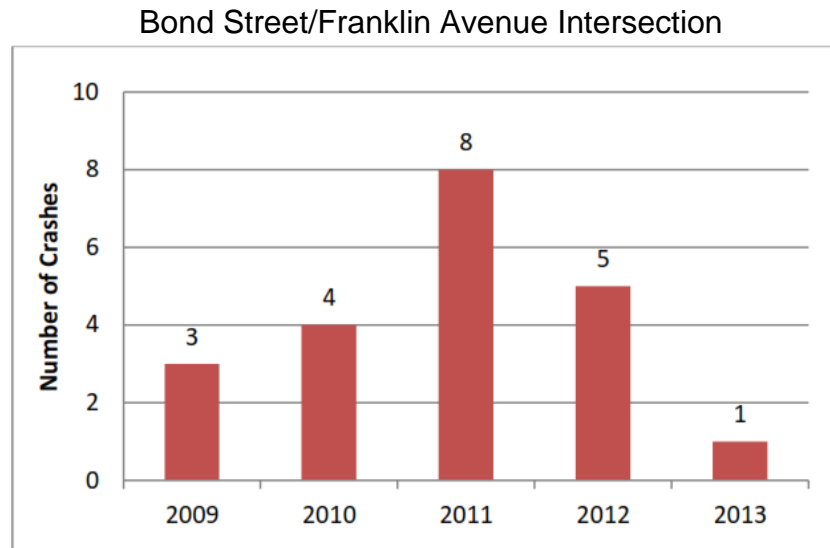


Figure 6. Franklin Avenue/Bond Street crashes per year.

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 recommend 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.

## **CONCLUSION:**

The proposal can be approved based on the Staff Findings as described earlier in this decision. However, the Hearings Officer recommends that the City Council **DENY** the proposed General Plan Map Amendment from Public Facilities to Commercial Limited based on the Hearings Officer's Alternative Findings for BDC 4.6.300.B.2 and BDC 4.6.300.B.4.

Signed this 29th day of January, 2016.



Mailed this \_\_, day of January, 2016.