



Oregon  
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development  
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NOTICE OF ADOPTED AMENDMENT

03/05/2014

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Bend Plan Amendment  
DLCD File Number 009-13

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

Appeal Procedures\*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Friday, March 21, 2014

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

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

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

Cc: Heidi Kennedy, City of Bend  
Gordon Howard, DLCD Urban Planning Specialist

<paa> YA



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

<b>FOR DLCD USE</b>	
File No.:	009-13 (20155)
	[17786]
Received: 2/28/2014	

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

Jurisdiction: City of Bend

Local file no.: **PZ-13-0697**

Date of adoption: March 4, 2014

Date sent: 2/28/2014

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

Yes: Date (use the date of last revision if a revised Form 1 was submitted): 12/27/13

No

Is the adopted change different from what was described in the Notice of Proposed Change?    Yes    No

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

No

Local contact (name and title): Heidi Kennedy

Phone: 541-617-4524

E-mail: [hkennedy@bendoregon.gov](mailto:hkennedy@bendoregon.gov)

Street address: 710 NW Wall Street

City: Bend

Zip: 97701-

### PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY

#### **For a change to comprehensive plan text:**

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

Not applicable

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

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

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

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

The subject property is entirely within an urban growth boundary

The subject property is partially within an urban growth boundary

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

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

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

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

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

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

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

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

Change from Light Industrial (IL)	to Mixed Employment (ME)	Acres: 2.21
Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:

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

Overlay zone designation: Not applicable      Acres added:      Acres removed:

Location of affected property (T, R, Sec., TL and address): 63085 N. Highway 97; 17-12-20A0-01701

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List affected state or federal agencies, local governments and special districts: ODOT, Central Orgon Irrigation Distict and Swalley Irrigation Distict

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

Any supplemental information that may be useful to inform DLCD or members of the public of the effect of the actual change

**DECISION OF CITY OF BEND HEARINGS OFFICER**

**FILE NUMBER:** PZ-13-0697

**APPLICANT/**

**PROPERTY OWNER:** Oregon Department of Transportation  
Howard Miller, Facilities Management, Support Services  
63055 N. Highway 97  
Bend Oregon 97701

**APPLICANT'S**

**REPRESENTATIVE:** Les Godowski, Principal  
LGA Architecture  
14630 S.W. 139<sup>th</sup> Avenue  
Tigard, Oregon 97224

**REQUEST:** The applicant requests approval of a zone change from IL to ME for a 2.21-acre parcel located at 63085 N. Highway 97 and currently developed with a DMV facility.

**STAFF REVIEWER:** Heidi Kennedy, AICP, Senior Planner

**HEARING DATE:** January 30, 2014

**RECORD CLOSED:** January 30, 2014

**I. APPLICABLE STANDARDS AND CRITERIA:**

**A. City of Bend Development Code**

**1. Chapter 2.3, Mixed-Use Zoning Districts (ME, MR and PO)**

**\* Section 2.3.200, Permitted Land Uses**

**2. Chapter 2.4, Industrial Zoning Districts (IG, IL)**

**\* Section 2.4.300, Permitted Land Uses**

**3. Chapter 4.1, Land Use Review and Procedures**

**\* Chapter 4.1.400, Type II Limited Land Use and Type III Quasi-Judicial Procedures**

**\* Section 4.1.426, Type III – Quasi-Judicial Procedures**

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

- \* **Section 4.6.300, Quasi-Judicial Amendments**
- \* **Section 4.6.600, Transportation Planning Rule Compliance**

**5. Chapter 4.7, Transportation Analysis**

- \* **Section 4.7.200, Transportation Impact Study**
- \* **Section 4.7.400, Approval Criteria**

**B. Bend Area General Plan**

**C. Oregon Administrative Rules, Division 660, Land Conservation and Development**

- 1. Chapter 660-012-0060, Plan and Land Use Regulation Amendments**
- 2. Chapter 660-015-0000, Statewide Planning Goals and Guidelines**

**II. FINDINGS OF FACT:**

- A. Location:** The subject property is located at 63085 North Highway 97 in Bend and is further identified as Tax Lot 1701 on Deschutes County Assessor's map 17-12-20A0. The property also is identified as Parcel 1 of MP-88-12.
- B. Zoning and Plan Designation:** The subject property is zoned Light Industrial (IL) and is designated Mixed Employment (ME) on the Bend Urban Area General Plan map.
- C. Site Description:** The subject property is 2.21 acres in size, level and roughly square in shape, and developed with an existing building housing offices and public facilities of the Driver and Motor Vehicles Services Division (DMV) of the Oregon Department of Transportation (ODOT). The site also has vehicle parking, scattered ponderosa pine trees, and introduced landscaping. Access to the site is from an existing driveway off N.W. Mervin Samples Road on the property's southern boundary.
- D. Surrounding Zoning and Land Uses:** The subject property abuts Highway 97/Highway 20 on its eastern boundary.<sup>1</sup> The property is surrounded by commercial and industrial land and uses. Parcels to the east across Highway 97/Highway 20 are zoned General Commercial (CG) and are developed with a variety of commercial and retail uses. Parcels to the south across Mervin Samples Road also are zoned CG and developed with commercial uses. The abutting property to the north is zoned IL and is developed with ODOT offices. The abutting property to the west also is zoned IL and is developed with ODOT maintenance and service facilities.

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<sup>1</sup> The record indicates Highways 97 and 20 share a right-of-way in the north part of Bend and adjacent to the subject property.

- E. Land Use History:** The record indicates that in 1988 ODOT conveyed the subject property to Deschutes County for development as the Bend Welcome Center. The county and the City of Bend operated the Welcome Center until 2002 when ODOT reacquired the subject property for its own operations. At that time ODOT operated a DMV facility on Emkay Avenue in southwest Bend. In 2009 or 2010 ODOT began discussions with the city about moving the DMV facility to the subject property.<sup>2</sup> The applicant's burden of proof states that during those discussions ODOT asked the city to identify any concerns about use of the subject property for the DMV facility and was advised that the only issue related to counter height compliance with the Americans With Disabilities Act (ADA). Thereafter the DMV facility moved into the building on the subject property. In November of 2011 the city advised ODOT that the DMV facility is not an allowed use in the IL Zone and that ODOT would need to obtain a zone change from IL to ME in order to continue the DMV facility's operation on the subject property.
- F. Procedural History:** ODOT's zone change application was submitted on November 13, 2013 and accepted by the city as complete on that date. Therefore, the 120-period for issuance of a final local land used decision under 227.178 expires on March 20, 2014.<sup>3</sup> A public hearing on the application was held on January 30, 2014. At the hearing, the Hearings Officer received testimony and evidence and the applicant waived the filing of final argument pursuant to ORS 197.763. The record closed at the end of the hearing. As of the date of this decision there remain 35 days in the 120-day period.
- G. Proposal:** The applicant requests approval of a zone change from IL to ME for the subject property in order to make the current DMV facility lawful. The current operation consists of the provision of DMV services consist of vehicle registration and driver licensing, including commercial driver's license (CDL) exams for large vehicle drivers. The burden of proof states that in connection with CDL exams large vehicles park on both the subject property and the abutting ODOT parcel to the west. At the public hearing, DMV's representative testified most customers enter the site from the driveway off Mervin Sampels Road, but that drivers of large vehicles are encouraged to enter the adjacent ODOT site from other driveways and park their vehicles on the ODOT site. No changes to the existing operations are proposed. The applicant's burden of proof states the existing building on the subject property would be occupied by both the DMV service facility and ODOT office uses.
- H. Public/Private Agency Comments:** The Planning Division sent notice of the applicant's proposal to the city's Traffic Engineer Robin Lewis and to the

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<sup>2</sup> The Hearings Officer is aware that during this period ODOT was considering several locations in Bend for its DMV facility, including the subject property, the previous DMV site on Emkay, and within the Brookwood Plaza shopping center in southwest Bend.

<sup>3</sup> The record indicates the applicant submitted a concurrent application for site plan approval. However, that application is not before the Hearings Officer.

Department of Land Conservation and Development (DLCD). The city's traffic engineer submitted comments on the applicant's proposal. The record does not indicate whether DLCD commented.

- I. **Public Notice and Comments:** On November 4, 2013 the applicant held a public meeting on the application. The record indicates no members of the public attended the meeting. The Planning Division mailed individual written notice of the applicant's proposal and the public hearing to the owners of record of all property located within 250 feet of the subject property and to the Boyd Acres Neighborhood Association (BANA). In addition, the subject property was posted with a notice of proposed land use action sign. As of the date the record in this matter closed, the city had received no comments from the public in response to these notices. No members of the public testified at the public hearing.

### III. CONCLUSIONS OF LAW:

#### A. City of Bend Development Code

##### 1. Chapter 4.1.400, Type II and Type III Applications

##### a. Chapter 4.1.400, Type II Limited Land Use and Type III Quasi-Judicial Procedures

##### (1) Section 4.1.426, Type III – Quasi-Judicial Procedures

**Type III decisions are made by the Planning Commission or Hearings Officer after a public hearing following the quasi-judicial hearings procedures of Section 4.1.800.**

**FINDINGS:** The subject zone change request is a Type III quasi-judicial land use application, is being heard by the Hearings Officer, and is being processed in accordance with the hearings procedures in Section 4.1.800.

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

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

**A. Applicability, Procedure and Authority. Quasi-judicial amendments generally refer to a plan amendment or zone change affecting a single or limited group of properties and that involves the application of existing policy to a specific factual setting. Quasi-judicial amendments shall follow the Type III procedure, as governed by Chapter 4.1, Land Use Review and Procedures, using the standards of approval in Section 4.6.300.B, Criteria for Quasi-Judicial Amendments,**



**below. Based on the applicant's ability to satisfy the applicable criteria, the application may be approved, approved with conditions, or denied.**

**FINDINGS:** The applicant's proposal requests approval of a zone change from IL to ME for a specific property. This application is being reviewed by the Hearings Officer pursuant to the procedures for quasi-judicial amendments, and compliance with the applicable approval criteria is discussed in the findings below.

**B. Criteria for Quasi-Judicial Amendments. The applicant shall submit a written narrative which explains how the approval criteria will be met. A recommendation or 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:**

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

**FINDINGS:** The applicant submitted a written narrative, entitled "Written Statement," explaining how the proposal satisfies the applicable approval criteria. The Hearings Officer's decision approving the proposed zone change is based on findings that all applicable approval criteria are met, or with imposition of conditions of approval will be met. Findings on consistency with the statewide planning goals and guidelines are set forth immediately below.

### **Goal 1, Citizen Involvement**

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

The city's acknowledged citizen involvement program for quasi-judicial amendments is codified in Chapter 4.1 of the Bend Development Code (BDC). The first step for citizen involvement is the applicant's public meeting required by Section 4.1.215. As noted in the Findings of Fact above, that meeting was held on November 4, 2013. The record indicates notice of the public meeting was provided to owners of record of all property located within 500 feet of the subject property as well as to the Boyd Acres Neighborhood Association. In addition, individual written notice of the applicant's proposal and the public hearing were provided by the city to the owners of record of all property located within 250 feet of the subject property, and notice of the proposal and public hearing was posted on the subject property. For these reasons, the Hearings Officer finds the applicant's proposal is consistent with Goal 1.

### **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 BDC establishes the process, and the Bend Area General Plan establishes the policy framework, for a decision on the requested zone change. Section 4.1.429 of the BDC provides that the Hearings Officer is the review authority for site-specific zone change requests. The staff report contains staff's written recommendation based on established processes and policies. I have considered the staff report and all other evidence and argument submitted by the applicant and included in the record. My decision is based on findings of fact and conclusions of law. Therefore, I find the applicant's proposal is consistent with Goal 2.

**Goal 3, Agricultural Lands**

**Goal 4, Forest Lands**

The Hearings Officer finds Goal 3 and Goal 4 are not applicable to the applicant's proposal because the subject property does not contain any designated agricultural or forest lands.

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

The Hearings Officer finds Goal 5 is not applicable to the applicant's proposal because the subject property does not contain any inventoried Goal 5 resources such as open spaces, scenic areas, historic resources, or natural resources.

**Goal 6, Air, Water and Land Resources Quality**

The Hearings Officer finds the applicant's proposal is consistent with Goal 6 because the proposed zone change will simply make lawful the existing DMV facility use on the subject property, and consequently the proposal will have no impacts on air, water, or land resources.

**Goal 7, Areas Subject to Natural Hazards**

The Hearings Officer finds Goal 7 is not applicable to the applicant's proposal because the subject property is not within an identified natural hazard area.

**Goal 8, Recreational Needs**

The Hearings Officer finds Goal 8 is not applicable to the applicant's proposal because the subject property is not located within an area identified for recreational use and does not propose any recreational uses.

**Goal 9, Economic Development**

**To provide adequate opportunities throughout the state for a variety of economic**

**activities vital to the health, welfare, and prosperity of Oregon's citizens.**

Goal 9 and its implementing administrative rules in OAR Chapter 660, Division 9 require the city to provide an adequate supply of commercial and industrial land within its urban growth boundary (UGB). The city has designated economic lands – i.e., commercial, industrial, and mixed employment – within its UGB through the General Plan. The subject property is designated ME on the General Plan map, and the applicant proposes to change the property's zoning from IL to ME to conform with its plan designation and to make lawful the existing DMV use on the property. The ME Zone allows a mix of light industrial, commercial, and institutional uses, including government "point of service" uses such as the DMV facility. For these reasons, the Hearings Officer finds the applicant's proposal is consistent with Goal 9.

**Goal 10: Housing**

**To provide for the housing needs for the citizens of the state.**

The Hearings Officer finds Goal 10 is not applicable to the applicant's proposal because the proposed zone change is for the purpose of making lawful the existing DMV facility on the subject property and not to accommodate needed housing.

**Goal 11, Public Facilities and Services**

**To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.**

The record indicates all necessary public facilities and services are available to and already serve the subject property. The property is surrounded by an established network of streets with nearby access to Highway 97. City water and sanitary sewer service are available through existing infrastructure located in adjacent streets. As discussed in the findings below concerning the proposal's compliance with the Transportation Planning Rule (TPR), the applicant's traffic study demonstrates the existing DMV use presents no transportation capacity issues. Emergency services are available through the city's fire and police departments. Therefore, the Hearings Officer finds the applicant's proposal is consistent with Goal 11.

**Goal 12, Transportation**

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

Goal 12 is implemented through Oregon Administrative Rules (OAR) Chapter 660, Division 12. The TPR, set forth in OAR 660-012-0060, states:

**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**
- (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.**

The applicant submitted a Transportation Impact Study (hereafter "traffic study") as part of its application. The traffic study was prepared by Garth Appanaitis, PE, of DKS and is dated September 12, 2013. In addition, the applicant submitted a memorandum dated August 19, 2013 from Mr. Appanaitis proposing a "trip cap" to support the rezoning of the subject property.

The traffic study predicted the DMV facility and ODOT office use on the subject property would generate 37 new a.m. peak hour trips and 57 new a.m. peak hour trips compared with a general office use of the site. The traffic study then analyzed the capacity and operation of two unsignalized intersections affected by traffic generated by the DMV facility – the intersection of Highway 97/Highway 20 and Mervin Sampels Road and the

intersection of Mervin Sampels Road and the site driveway. The traffic study found these two intersections currently function at acceptable levels of service identified in the city's acknowledged Transportation System Plan (TSP) and will continue to do so with the addition of the new traffic generated by the DMV facility. The traffic study also concluded these intersections would have adequate site distance. However, the traffic study recommended the applicant construct a sidewalk on the site access driveway to connect the DMV facility with the existing sidewalk on Mervin Sampels Road. In her comments on the applicant's proposal, the city's Traffic Engineer Robin Lewis stated the applicant's traffic study "provides a complete assessment."

The August 19, 2013 letter from Garth Appanaitis states it was submitted based on city staff's recommendation that a "trip cap" – i.e., maximum number of vehicle trips -- be imposed on the subject property to assure no significant impact from DMV facility-generated traffic on affected intersections. Mr. Appanaitis recommended a trip cap of 106 p.m. peak hour trips on the basis that this number represents traffic predicted to be generated by a "call center" – a relatively high traffic generating use -- permitted in the IL Zone. Mr. Appanaitis concluded the DMV facility would not generate traffic exceeding the proposed trip cap.

Mr. Appanaitis' memorandum states the city recommended the proposed zone change be conditioned on imposition of the recommended trip cap. At the public hearing, planning staff recommended such a condition be imposed on site plan approval. However, the Hearings Officer finds that to assure the proposed zone change complies with the TPR it is appropriate for me to include the trip cap as a condition of zone change approval.

Based on the applicant's traffic study and supplemental letter, the Hearings Officer finds that with imposition of a condition of approval imposing the applicant's proposed trip cap, the proposed zone change will not significantly affect a transportation facility. The proposal will not reduce the performance of any existing or planned transportation facilities below the performance standards identified in the city's TSP. Therefore, I find the applicant's proposal complies with the TPR.

### **Goal 13, Energy**

#### **To conserve energy.**

The subject property is located in an area with a broad mix of commercial, retail and light industrial uses. Located adjacent to Highway 97/Third Street, the property has easy access for the public through the existing street network and public transit. Therefore, the Hearings Officer finds the applicant's proposal is consistent with Goal 13 because it will facilitate efficient vehicle trips.

### **Goal 14, Urbanization**

#### **To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth**

**boundaries, to ensure efficient use of land, and to provide for livable communities.**

The Hearings Officer finds the applicant's proposal is consistent with Goal 14 because the subject property is located within the UGB in an area where urban levels of service currently are provided and are adequate to support the existing DMV facility.

**Goals 15 through 19:** The Hearings Officer finds these goals, which address river, ocean, and estuarine resources, are not applicable to the applicant's proposal because the subject property is not located in or adjacent to any such areas or resources.

For the foregoing reasons, the Hearings Officer finds the applicant's proposal is consistent with all applicable statewide planning goals and therefore satisfies this approval criterion.

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

**FINDINGS:** The preface to the city's comprehensive plan states in relevant part:

**At the end of each chapter are policies that address issues discussed in the chapter. The policies in the General Plan are statements of public policy, and are used to evaluate any proposed changes to the General Plan. Often these statements are expressed in mandatory fashion using the word "shall." These statements of policy shall be interpreted to recognize that the actual implementation of the policies will be accomplished by land use regulations such as the city's zoning ordinance, subdivision ordinance, and the like. . . .**

In several previous decisions, this Hearings Officer has held the preface to the city's general plan makes clear the plan's goals and policies are aspirational – i.e., phrased in terms of "may" rather than "shall" -- and/or are directed toward actions to be undertaken *by the city* or by the applicant *at the time of development*.<sup>4</sup> Therefore, I have found the plan's policies cannot be considered mandatory approval criteria for an applicant's proposed quasi-judicial plan amendment. With the exception addressed immediately below, I find the city's plan policies identified and discussed by the applicant and the city are examples of aspirational statements and/or policies requiring action by the city or by the applicant at the time of development. Therefore, I adhere to my previous decisions and find that with the exception addressed below, consistency with the city's comprehensive plan policies is not a mandatory approval criterion for this quasi-judicial zone change application.

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<sup>4</sup> E.g., Bend-La Pine School District (PZ-13-0676); Unitarian Universalist Fellowship of Central Oregon (PZ-12-422).

## Chapter 6: The Economy and Lands for Economic Growth

### Applicable Policies

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

The applicant is requesting a zone change from IL to ME for the 2.21-acre subject property. There is no extension of a commercial "strip" because the subject property is currently developed with an office building occupied by the existing DMV facility and takes access off NW Mervin Samples, a local road.

For the foregoing reasons, the Hearings Officer finds the applicant's proposal satisfies this approval criterion.

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

**FINDINGS:** The subject property and the existing DMV facility currently are served by city water and sewer service, police and fire protection, and transportation facilities. The staff report notes that to ensure the existing facilities will have adequate capacity to serve the DMV use the applicant will be required to obtain site plan review and approval under the city's site development and design review criteria in Chapter 4.2 of the BDC. In addition, as discussed in the findings above concerning compliance with the TPR, the Hearings Officer has found based on the applicant's submitted traffic study that the existing transportation system will be adequate to accommodate traffic generated by the DMV use with implementation of a "trip cap" for the property. For these reasons, the Hearings Officer finds the applicant's proposal complies with this approval criterion.

4. **Evidence of change in the neighborhood or community or a mistake or inconsistency in the comprehensive plan or land use district map regarding the property that is the subject of the application; and the provisions of BDC 4.6.600, Transportation Planning Rule Compliance.**

**FINDINGS:** The Hearings Officer finds this approval criterion has three components, each of which is discussed in the findings below.

**1. Change in Neighborhood or Community.** The applicant's burden of proof suggests there has been a change in the community justifying the proposed zone change because of the increase in Bend's population and the resulting increase in demand on

DMV facilities and services. The Hearings Officer finds this argument is persuasive in justifying the general need for a larger DMV facility, but not for a zone change for *the subject property* in particular.

## **2. Mistake or Inconsistency in the Comprehensive Plan or Land Use District Map.**

The applicant argues the proposed zone change is justified by a mistake related to the IL zoning of the subject property. Specifically, the applicant's burden of proof states:

*"It is understood that at some point after December 31, 2010, the City clarified that a DMV office is a point-of-service government facility that is not allowed in IL zoning districts. Instead, these facilities would need to be located in a ME zoning district. At the time that the City clarified the allowed government facilities in an IL zone, an inconsistency developed between the DMV operations on the subject site and the IL zoning district.*

*At a meeting between the City and ODOT in November 2011, the City advised that the existing IL zone did not now allow for the operation of the DMV office and that ODOT would need to submit an application to change the zone to ME in order to continue its operation at the subject site.*

*Given the above, a mistake or inconsistency in the land use district map occurred after Dec. 31, 2010 as a result of the City's clarification of allowed office uses within an IL zoning district. The resulting affect [sic] was to disallow point of service government offices, like the DMV facility, in the IL zone and to allow them in the ME zone. Therefore, this request is to change the zoning district of the subject property to ME (Mixed Employment ) and continue current DMV operations at the site."*  
(Underscored emphasis added.)

The Hearings Officer understands the "clarification" to which the applicant refers is the code interpretation articulated in the December 9, 2011 memorandum, a copy of which is included in the record, from Colin Stephens, the city's Current Planning Manager, to "interested parties" and entitled "Potential DMV Sites in the Light Industrial Zone." The memorandum states:

*"The City understands that the Department of Motor Vehicles (DMV) has identified several locations in Bend in the Light Industrial (IL) zoning district as potential sites to permanently relocate the DMV service center.*

*When the Bend Development Code was adopted in 2006 it included a new 'government point of service' use and listed 'office' as a different use. It also eliminated offices as conditional uses in the IL Zone. Following the 2006 code adoption, and as a result of the controversy surrounding the DMV's plans to relocate to Brookwood Plaza, there was a code amendment that clarified that the DMV is a government point of service use.*



Not all government agencies are point of service uses. An agency may be open to the public and provide public services as a secondary use, but the primary use is an office for the agency. It is a different situation where the primary use is to provide services to a broad spectrum of the public, in which case it is a government point of service use. Examples of government point of service include the library, post office and the DMV. Government agency offices which are not point of service providers are allowed to continue in the IL zone as permitted uses under Section 2.4.200C of the code which reads:

*Existing office uses within an office building lawfully established within an industrial zone prior to the adoption of this ordinance shall be treated as a permitted use.*

However, since the government point of service uses aren't office uses they don't qualify under this exception. The Commercial zoning districts (except Convenience Commercial (CC)), the Mixed Use zoning districts, and the Public Facility zone all permit government point of service uses outright.

Even though it is not currently a permitted use, there is a logical rationale for having the DMV in the IL zone at a legally established office site. The IL zone streets and onsite circulation areas are designed for large vehicles, which is also a need of the DMV. And there are areas in the City that are zoned IL but predominantly developed with office uses so there would be no impact to available industrial land. The city has an ongoing project to update the Development Code section by section. Updates to the non-residential zoning districts are scheduled for the next package that will begin moving forward through the public process within the next several months. This is an issue that could be resolved by adding the DMV as a permitted use in an established office in the IL zone. (Underscored emphasis added.)

The city has not amended the BDC to allow the DMV facility use in the IL Zone. The zone allows "government facilities where the public is generally not received."

The Hearings Officer understands from the evidence in this record that when the applicant discussed possible sites for the DMV facility both the applicant and city staff mistakenly believed it was a government use allowed in the IL Zone. Thereafter – due largely to the controversy surrounding ODOT's selection of Brookwood Plaza as a potential DMV site – the city "corrected" its mistake through its interpretation of "government point-of-service" use to apply to the DMV facility, thereby concluding it is not a use allowed in the IL Zone.

The applicant does not argue, and the Hearings Officer does not find, that there was a mistake in the city's IL zoning of the subject property. Rather, the applicant argues the requested zone change is justified by the city's and the applicant's mistaken

understanding of what uses are allowed in the IL Zone. In numerous previous decisions, the Hearings Officer has held that to justify a plan amendment and/or zone change on the basis of a “mistake” the applicant must demonstrate the property’s original plan designation and/or zoning was incorrect based on factors such as the physical characteristics of the property. I have found that to justify a zone change based on “inconsistency” between the zone plan designation the applicant must demonstrate the zoning district does not match the designation. However, the circumstances presented by the applicant’s zone change proposal do not fit neatly into either of these previous analyses.

The Hearings Officer finds it is far from clear that the subject property’s IL zoning is *inconsistent* with its ME plan designation. That is because under the Bend Area General Plan both IL- and ME-zoned lands are included in the city’s buildable lands inventory as land for industrial development. Table 6-4 of the plan states that of the 107 acres of land zoned ME as of 2000, 11 acres are considered land for industrial development. In addition, Table 6-6 of the plan states ME-designated land consists of “mixed light industrial and commercial uses in areas that already exhibit a pattern of mixed development.”

With respect to the “mistake” prong of this approval criterion, the Hearings Officer finds the threshold question is whether it is reasonable to interpret the term “mistake” in the context of this approval criterion to include the circumstances presented here. The ordinary definition of “mistake” includes “to understand or perceive wrongly; an idea, answer, etc., that is wrong; error or blunder.” *Webster’s New World Dictionary and Thesaurus, Second Edition*. Clearly the applicant understood or perceived wrongly that the DMV facility was a permitted use on the subject property. However, in the context of this approval criterion, which clearly limits the circumstances under which a zone change can be approved, I find the incorrect understanding or perception cannot be *solely* the applicant’s. Otherwise any property owner who in good faith establishes an unpermitted use could claim entitlement to a zone change on that basis.

That is not the case here. The record indicates the city also misunderstood the nature of the uses allowed in the IL Zone and gave the applicant the wrong answer when the applicant inquired as to potential issues with the DMV facility on the subject property.<sup>5</sup> Although this is a close question, the Hearings Officer finds that under the unique circumstances presented in this case it is appropriate to interpret the term “mistake” in the context of this approval criterion to include the situation where the city misunderstood and misinterpreted the scope of the uses permitted in the subject property’s zone.

**3. TPR Compliance.** As discussed in the findings above, the Hearings Officer has found that with imposition of a condition of approval imposing a trip cap the applicant’s

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<sup>5</sup> The city does not dispute the applicant’s version of events leading to establishment of the DMV facility on the subject property. And Mr. Stephens’ memorandum suggests it was “logical” to conclude the DMV facility would be allowed in the IL Zone considering its particular site and operating characteristics.

proposal complies with the TPR.

**IV. DECISION:**

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer hereby **APPROVES** the applicant's request to rezone the subject property from Light Industrial (IL) to Mixed Employment (ME), **SUBJECT TO THE FOLLOWING CONDITIONS OF APPROVAL:**

1. This approval is based on the applicant's submitted application, burden of proof, traffic study, supplemental materials, and written and oral testimony. Any substantial change to this approval other than changes required by this decision will require a new land use application and approval.
2. This approval is subject to imposition of a trip cap of 106 p.m. peak hour trips as described by the applicant's engineer Garth Appanaitis in his August 19, 2013 memorandum.
3. The applicant/owner shall submit to the Planning Division an accurate metes-and-bounds legal description of the property to be rezoned.
4. The applicant/owner shall obtain site and design review and approval from the City of Bend.

Dated this 14<sup>th</sup> of February, 2014.

Mailed this 19<sup>th</sup> of February, 2014.

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

**THIS DECISION BECOMES FINAL TWELVE DAYS AFTER MAILING UNLESS  
TIMELY APPEALED.**



**DATE MAILED: February 19, 2014**

**APPLICANT: Oregon Department of Transportation**

**FILE NUMBER: PZ -13-0697**

710 NW WALL STREET  
PO BOX 431  
BEND, OR 97701  
[541] 388-5505 TEL  
[541] 385-6676 FAX  
BENDOREGON.GOV

The City of Bend Planning Division has reviewed the above referenced file. The request is **approved**, as outlined in the attached report, and is subject to all conditions of approval.

This decision may be appealed by filing a notice of appeal with the Planning Division within 12 days. The notice of appeal must be accompanied by the appropriate fee and contain the items listed in Section 4.1.1120 of the Bend Development Code.

JIM CLINTON  
*Mayor*

JODIE BARRAM  
*Mayor Pro Tem*

VICTOR CHUDOWSKY  
*City Councilor*

DOUG KNIGHT  
*City Councilor*

SALLY RUSSELL  
*City Councilor*

MARK CAPELL  
*City Councilor*

SCOTT RAMSAY  
*City Councilor*

ERIC KING  
*City Manager*

The duration of approval is found in the enclosed Review and Decision.

If you have any questions, please call our office at 388-5580.

**CITY OF BEND  
PLANNING DIVISION**

c Planning Commission

Via E-Mail:  
Colleen Miller  
Larry Medina, Fire Marshal  
Robin Lewis, Transportation Engineer



CERTIFICATE OF NOTICE BY MAIL

FILE NO: PZ 13-0697

APPLICANT/OWNER: OR Dept. of Transportation

DOCUMENT MAILED: Review of Decision

LOOKUP DISTANCE: 250 FEET OTHER \_\_\_\_\_

I certify that on the 19<sup>th</sup> day of Feb., 2014, the attached notice/report, dated Feb 19<sup>th</sup>, 2014, was mailed by first class mail, postage prepaid, to the person(s) and address (es) set forth on the attached list.

DATED this 19<sup>th</sup> day of Feb, 2014.

Development Services Planning Technician

By: Nana B. Amey

710 NW WALL STREET  
PO BOX 431  
BEND, OR 97701  
[541] 388-5505 TEL  
[541] 385-6676 FAX  
BENDOREGON.GOV

JIM CLINTON  
Mayor

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MARK CAPELL  
City Councilor

SCOTT RAMSAY  
City Councilor

ERIC KING  
City Manager

Planning Commission	
Howard Miller	
Via Email:	
Robin Lewis	
Larry Medina	
Coleen Miller	

## Sara Connolly

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**To:** Larry Medina; Robin Lewis; Colleen Miller  
**Subject:** Land Use Decision; PZ 13-0698; 63085 N Hwy 97; 17-12-20A0, Tax Lots 1701; Zone Change from IL to ME

The application can be viewed electronically in ePlans. Simply log into the ePlans website at:

<https://eplans.ci.bend.or.us/ProjectDox/>

Username: "[publicviewer@bendoregon.gov](mailto:publicviewer@bendoregon.gov)"

Password: "public"


Then search for PZ-13-0698 to view the applicant's plans and other documents.

Sara Connolly  
Permit Technician  
Building Safety Division  
Community Development Department  
City of Bend Oregon  
(541) 388-5532  
[sconnolly@bendoregon.gov](mailto:sconnolly@bendoregon.gov)



Imagery acquired March 2013. Map Prepared February 2014.

### PZ 13-697 Zone Change from Light Industrial (IL) to Mixed Employment (ME)

 ME- Mixed Employment

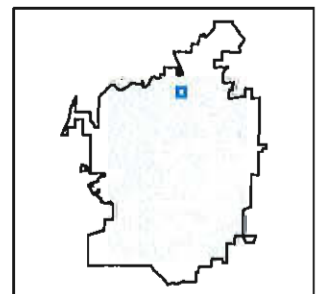
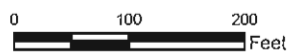


EXHIBIT A  
Legal Description of Welcome Center  
63085 N. Highway 97  
Bend, OR 97701

Also Identified as Deschutes County Assessor's map #17 12 20A, tax lot 1701.

A 2.21 acre parcel of land located in the SE ¼ NE ¼ of Section 20 in Township 17 South and Range 12 East of the Willamette Meridian, Deschutes County, Oregon, being more fully described as follows:

Commencing at an axle marking the Southwest corner of said SE ¼ NE ¼, said point being the Northwest corner of Tract 10 Norwood; thence North 00° 21' 39" East 359.08 feet to the Southwest corner of Norwood Tract 9; thence South 89° 33' 54" East 455.04 feet along the South line of said Tract 9 to a 5/8" iron rod and the point of beginning; and running thence North 05° 04' 55" East a distance of 370.41 feet to a 5/8" iron rod; thence South 86° 00' 00" East 293.67 feet to a 5/8" iron rod on the Westerly right-of-way of U.S. Highway 97; thence South 14° 04' 22" West 256.31 feet to PC 748+17.7; thence 104.35 feet along the arc of a 2914.79 foot radius curve left (the long chord of which bears South 12° 59' 19" West 104.34 feet) to a 5/8" iron rod on the South line of said Tract 9; thence leaving said Westerly right-of-way North 89° 33' 54" West 240.00 feet to the point of beginning.

**INCLUDING THEREWITH** the adjacent right of way to the centerline of Mervin Samples Road and the adjacent right of way to the centerline of U.S. Highway 20.