

## ORDINANCE NO. NS-2310

AN ORDINANCE AMENDING THE BEND ZONING MAP TO CHANGE THE ZONING OF 29.79 ACRES OF PROPERTY FROM STANDARD DENSITY RESIDENTIAL (RS) TO MIXED USE URBAN (MU), 10.44 ACRES FROM LIMITED COMMERCIAL (CL) TO MIXED USE – URBAN (MU) AND 85.61 ACRES FROM SURFACE MINING (SM) TO MIXED USE URBAN. THE PROPERTY IS LOCATED WITHIN THE OREGON STATE UNIVERSITY – CASCADES MASTER PLAN BOUNDARY.

### Findings

- A. On January 2, 2018, Oregon State University – Cascades submitted a Type III Quasi-judicial application for a Zoning Map amendment to change 29.79 acres of property from Standard Density Residential (RS) To Mixed Use Urban (Mu), 10.44 Acres From Limited Commercial (CL) to Mixed Use Urban (MU) and 85.61 acres from Surface Mining (SM) to Mixed Use Urban.
- B. On April 9, 2018, the Planning Commission held a public hearing on the proposed map amendments and issued a recommendation that the City Council adopt an Ordinance to amend the zoning of the subject property to Mixed Use Urban for consistency with the MU Comprehensive Plan designation.
- D. The Bend City Council held a public hearing on May 16, 2018, to consider the Planning Commission recommendation.
- E. The amendments to the Zoning Map approved by this Ordinance meet all applicable Development Code criteria, policies of the Bend Area General Plan, Oregon Statewide Planning Goals, and the Transportation Planning Rule.

### THE CITY OF BEND ORDAINS AS FOLLOWS:

- Section 1. The Bend Zoning Map are amended to change the zoning of 29.79 acres of property from Standard Density Residential (RS) To Mixed Use Urban (Mu), 10.44 Acres From Limited Commercial (CL) to Mixed Use Urban (MU) and 85.61 acres from Surface Mining (SM) to Mixed Use Urban for consistency with the MU Comprehensive Plan designation as depicted within the red boundary in Exhibit A.
- Section 2. The City Council adopts the Findings in support of this ordinance as contained in Exhibit B.

First reading: May 16, 2018.

Second reading and adoption by roll call vote: June 6, 2018.

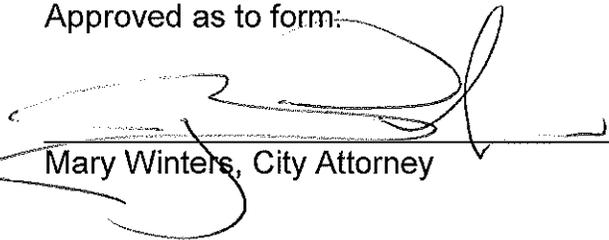
YES: Casey Roats, Mayor  
Sally Russell  
Bruce Abernethy  
Bill Moseley  
Nathan Boddie  
Justin Livingston  
Barb Campbell

  
\_\_\_\_\_  
Casey Roats, Mayor

Attest:

  
\_\_\_\_\_  
Robyn Christie, City of Bend Recorder

Approved as to form:

  
\_\_\_\_\_  
Mary Winters, City Attorney

**Exhibit A: Zoning Map Amendment**



## EXHIBIT B

### ZONE CHANGE FINDINGS



COMMUNITY  
DEVELOPMENT

#### I. APPLICABLE CRITERIA, STANDARDS, AND PROCEDURES:

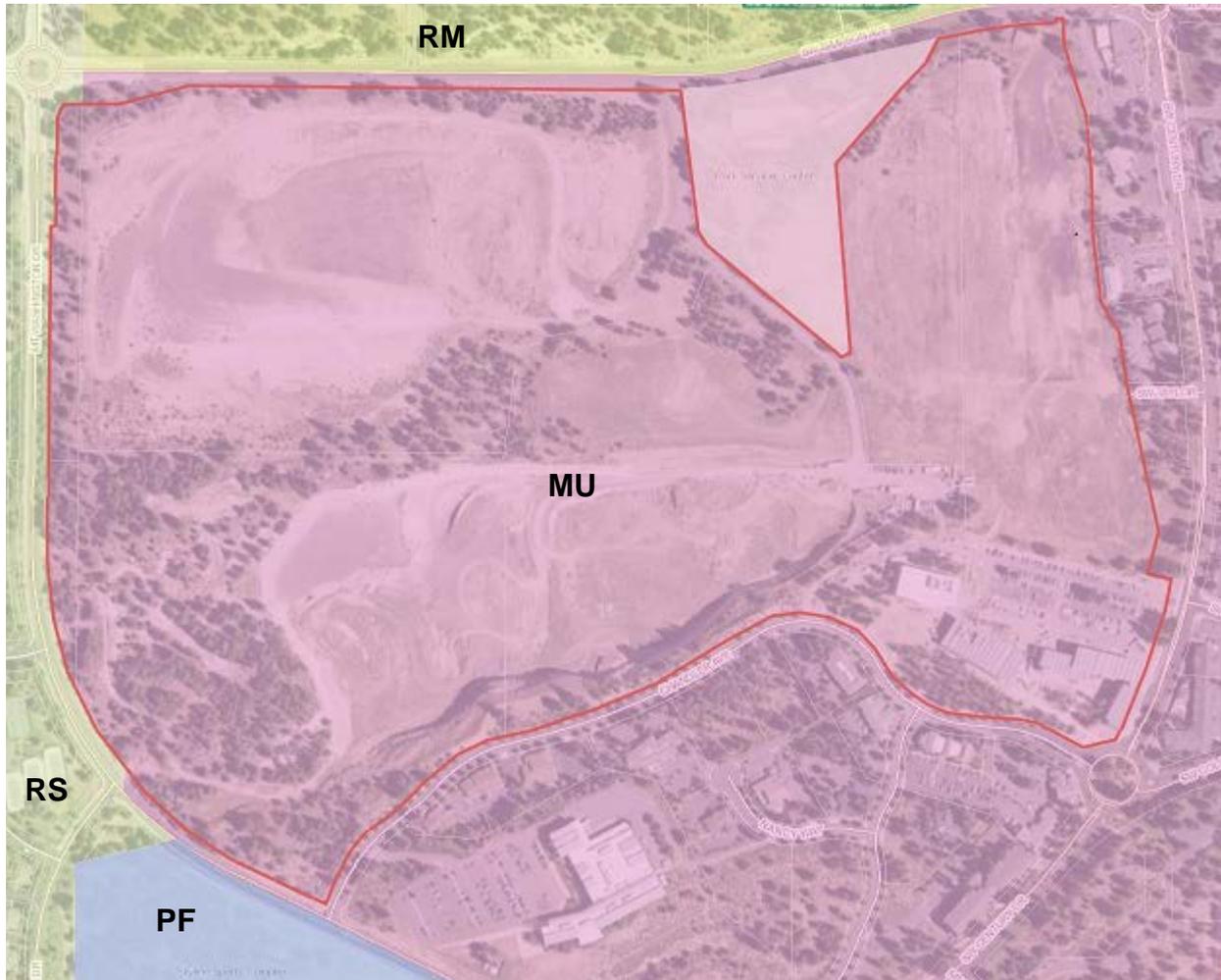
- (1) City of Bend Development Code
  - (a) Chapter 2.3, Mixed-Use Zoning Districts
  - (b) Chapter 2.1, Residential Districts (RS)
  - (c) Chapter 2.2, Commercial Zoning Districts (CL)
  - (d) Chapter 2.5, Surface Mining Zoning District (SM)
  - (e) Chapter 4.1, Development Review and Procedures
  - (f) Chapter 4.6, Land Use District Map and Text Amendments
  - (g) Chapter 4.7, Transportation Analysis
- (2) Bend Comprehensive Plan
- (3) Oregon Administrative Rules
  - (a) Chapter 660-012-0060, Plan and Land Use Regulation Amendments
  - (b) Chapter 660-015-0000, Statewide Planning Goals and Guidelines

#### II. PROCEDURAL FINDINGS:

1. **LOCATION:** The subject properties are located at 1500 SW Chandler Avenue, 1707 SW Simpson Avenue, 1757 SW Simpson Avenue, 19755 Simpson Avenue, 19745 Simpson Avenue, 19795 Simpson Avenue, and 1435 SW Simpson Avenue, in addition to two parcels without assigned addresses (map and Tax Lots 181101D012300, and 181101A004300).
2. **EXISTING ZONING & GENERAL PLAN DESIGNATION:** The subject property is zoned Surface Mining (SM) in the north and south central portion of the subject property, Limited Commercial (CL) in the southeast portion, and Standard Density Residential (RS) in the southwest portion of the subject property, as shown below on the Bend Zoning Map. The property to the east is zoned General Commercial (CG) north of Donovan Way and Limited Commercial (CL) to the south and southeast of the subject property. The property to the west is zoned RS and the property to the north is zoning SM. As shown on the following map, the subject property and the surrounding area to the east and south are designated Mixed-Use Urban (MU) on Bend Comprehensive Plan Map. The properties to the west are designated RS and the properties to the north are designated Medium Density Residential (RM).



## Existing Comprehensive Plan Designation Map



**4. PROPOSAL:** Type III application to change the zoning of the following properties to be consistent with the subject property's existing Mixed-Use Urban (MU) Comprehensive Plan designation:

- Tax Lot 181206C000100: Zone Change from Limited Commercial (CL) to Mixed-Use Urban (MU);
- Tax Lots 181206C002100, 181101D012300, and 181101A004300: Zone Change from Standard Density Residential (RS) to Mixed-Use Urban (MU); and,
- Tax Lots 1812060000111, 181206C002000, 1812060000110, and 181206A000719: Zone Change from Surface Mining (SM) to Mixed-Use Urban (MU)

**5. PUBLIC NOTICE AND COMMENTS:** The applicant held a neighborhood public meeting on November 15, 2017. Notice of this meeting was sent by the applicant to all property owners within 500 feet of the subject property boundary, as well as to representatives of all 13 neighborhood association. The subject property is located within the Century West Neighborhood Association boundary. Members of the

Century West Neighborhood Association were in attendance, but designated representatives anticipated by the applicant to be in attendance were not present. The applicant provided the public comments that were submitted at that meeting and for two weeks prior to that meeting (see submitted Exhibit 23). The applicant also submitted responses to these public comments.

On March 7, 2018, the City mailed a public hearing notice to property owners within 650 feet of the subject property, and representatives of the Century West Neighborhood Association, the abutting River West Neighborhood Association, the abutting Southern Crossing Neighborhood Association, and the Summit West Neighborhood Association. The public hearing is for both this application and the OSU master plan (PZ-18-0004). Only those comments specifically addressing the rezone are addressed in this report. As of the date of this report, the Bend Planning Division received one public comment relating to the rezone.

One public comment letter specifically referencing the requested rezone was submitted prior to the completion of this report. The individual requested that the two narrow parcels abutting Mount Washington be rezoned to Mixed-Use Neighborhood (MN) instead, which requires a lower height limit. The proposal is to rezone the subject property to be consistent with the MU Comprehensive Plan designation; rezoning to MN would not be consistent with the Comprehensive Plan designation. No structures are proposed on these two parcels in the concurrent master plan application (PZ-18-0004). The individual also wanted the property abutting the north side of Simpson Avenue to be retained as open space; this property is owned by Deschutes County and is not part of the proposed rezone.

- 6. APPLICATION ACCEPTANCE DATE:** This Zone Change application was submitted on January 2, 2018 and accepted as complete on February 13, 2018. This application is being reviewed concurrently with a major master plan; per BDC 4.1.430.C.6, major master plans are exempt from the 120-day time limit for final action. Therefore, a final decision on this application will be the same time period as the concurrent major master plan, PZ-18-0004, which is governed by BDC 4.5.100.D.
- 7. PLANNING COMMISSION HEARING:** On April 9, 2018 the Planning Commission held a public hearing and accepted testimony on the zone change request. At the conclusion of the hearing, the commission voted 4 in favor, 1 opposed and 2 absent to recommend that the Council approve the zone change.

### **APPLICATION OF THE CRITERIA:**

#### **CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE**

All applicable criteria and policies related to the request are addressed in the findings below.

#### **CHAPTER 4.1, DEVELOPMENT REVIEW AND PROCEDURES**

#### 4.1.429 Review Authority for Site-Specific Zone Change.

A. The following is the review authority for site-specific zone change requests (Type III process) that bring the zoning into conformance with the Bend Comprehensive Plan.

2. The City Council is the review authority for site-specific zone change requests processed concurrently with a major master plan.

**FINDING:** The applicant requests a site-specific zone change to bring the zoning into conformance with the Mixed Use Urban (MU) designation on the Bend Comprehensive Plan map. The request for a site-specific zone change will be reviewed by the Planning Commission with a recommendation to the City Council, concurrent with the major master plan (PZ-18-0004). The City Council will be the final decision maker on both applications.

#### 4.5.300 Institutional Master Plan

E. **Approval Criteria:** The City may approve, approve with conditions, or deny the proposed institutional master plan application based on meeting all of the following criteria:

9. If the major institutional master plan proposal contains a zone change request to bring the zoning into compliance with the Bend Comprehensive Plan designation, the zone change is subject to the approval criteria of [BDC 4.6.300\(C\)](#).

**FINDING:** See the findings below for compliance with the approval criteria of BDC 4.6.300.C.

### CHAPTER 4.6, LAND USE DISTRICT MAP AND TEXT AMENDMENTS

#### 4.6.300 Quasi-Judicial Amendments

C. **Criteria for Quasi-Judicial Amendments.** The applicant must 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 and application for a quasi-judicial zone change must be based on meeting both of the following criteria.

**Criterion #1.** The amendment will bring the zone map into conformance with the Comprehensive Plan Map;

**FINDING:** The applicant is proposing to change the existing zoning to Mixed-Use Urban (MU) to be consistent with the Comprehensive Plan designation of Mixed-Use Urban (MU) for the subject property. The Comprehensive Plan Map was amended by Ordinance No. 2271 effective in December 2016 as part of Bend's Urban Growth Boundary Expansion. Ordinance No. 2271 further identified the subject property and

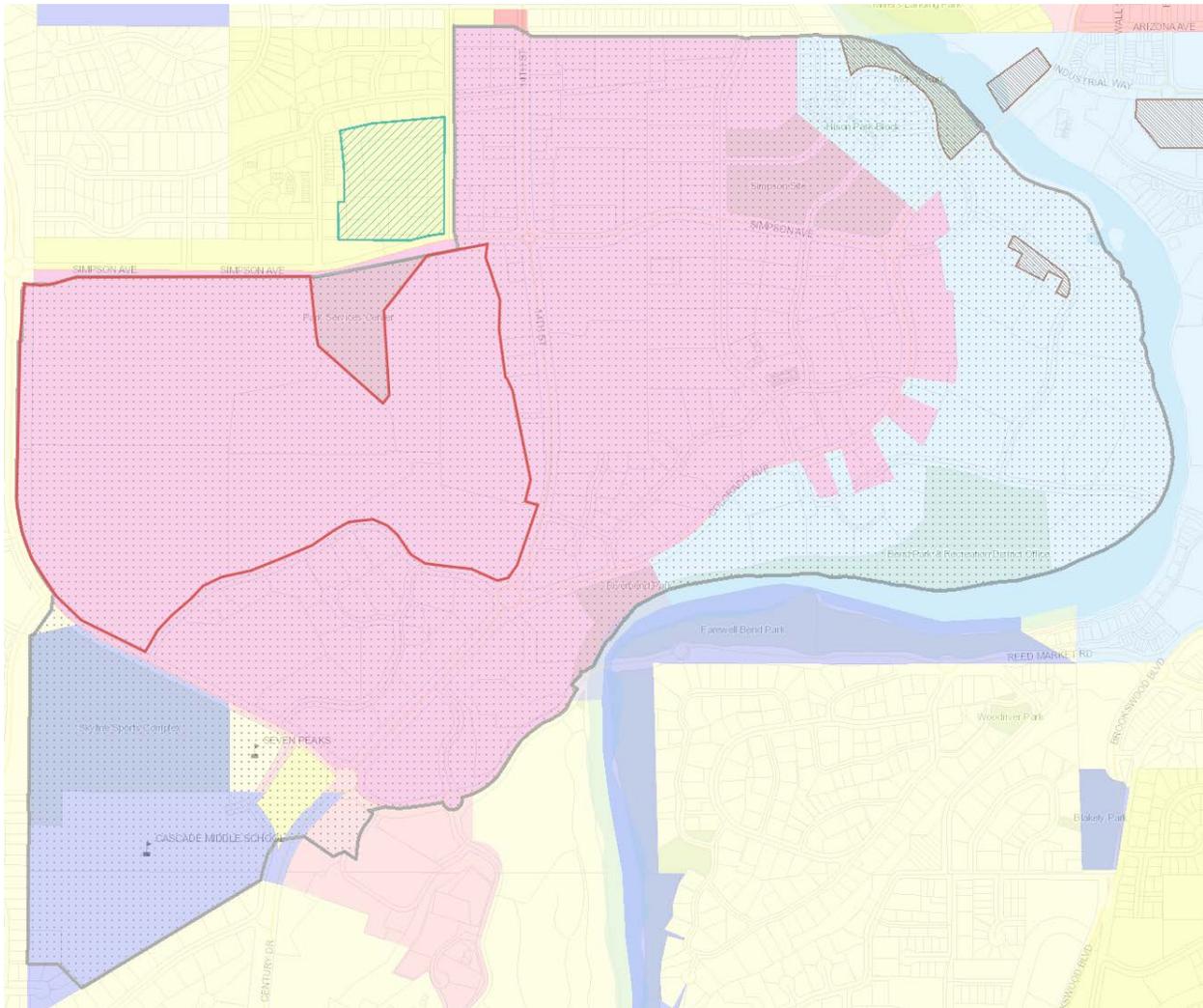
surrounding area as part of the Central Westside/Century Drive Opportunity Area (see figure below).

Per the Findings Report of the Comprehensive Plan adoption ordinance, “In order to ensure that the BDC is implementing the goals and policies of the Plan, the City developed a streamlined approach to allow property owners to obtain a zone change that is consistent with the Plan designation applied to their property. The BDC now includes simplified approval criteria for zone changes that are consistent with the plan designation, focusing on adequate public facilities, and not requiring a showing of compliance with plan policies or statewide planning goals. Analysis of significant effects under the TPR may not be required where the zone will be changed to match the corresponding plan designation, as a result of the TPR analysis (Rem Rec 10994) completed for the UGB expansion. The findings conclude that the proposed changes are consistent with the policies of the Bend Comprehensive Plan and support the plan assumptions for development.”<sup>1</sup>

### **Central West Side / Century Drive Opportunity Area**

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<sup>1</sup> Section 2 of Ordinance 2271, Exhibit A, Findings, 11.5.8 – Simplified Zone Changes.



*Opportunity Area shown encircled in gray with gray dot hatching (GIS map from Figure 11-3 of Comprehensive Plan); subject property encircled in red*

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

Moreover, Comprehensive Plan Policy 11-18 specifically identifies the subject property as the location of a “special site” for a university, with Figure 11-3 identifying the site as the “University” special site. Upon a zone change to Mixed-Use Urban zone, the zone map will be in conformance with the Comprehensive Plan map and will allow for the development of the University as a “special site” in conformance with Policy 11-18 and Figure 11-3.

**Criterion #2. The property and affected area is presently provided with adequate public facilities, services and transportation networks to support the use, or such facilities, service and transportation**

**networks are planned to be provided concurrently with the development of the property.**

**FINDING:** See the findings below regarding public facilities, including transportation, and public services that will support the proposed uses in the master plan.

**Public Facilities:** The Bend Development Code defines “public facilities” as “infrastructure improvements including but not limited to water lines, sewer lines, streets, curbs, sidewalks, trails and related facilities that are owned and maintained by the City of Bend.”

**Water and Sewer:** Exhibit 5 includes the applicant’s sewer and water studies, together with the City’s response to those studies. The reports and the City’s responses (SWA 17-5655) demonstrate that the sewer and water lines and related services are adequate and water and sewer capacity is sufficient for the proposed uses under the master plan.

**Transportation:** The applicant’s Traffic Impact Analysis (TIA) identifies the on-site and off-site transportation networks in the immediate vicinity as required by BDC Chapter 4.7. All deficiencies were noted and improvements identified in the TIA to either connect to the existing system or make improvements to the system to remedy identified deficiencies. The required mitigation measures are outlined in the City’s Traffic Analysis Memo (BP-17-5592 TRFA). With the improvements to the transportation system outlined in the City’s memo, the affected area of the zone change application will be provided with adequate “streets, curbs, sidewalks, trails and related facilities.” The City has not identified any other public facilities other than those addressed above that the applicant is required to address in its response to BDC 4.6.300(C)(1). The mitigation measures in the City’s memo are outlined by phase concurrent with the impacts of development.

**Public Services:** “Public services” as defined as “those services that are inherent necessities to support development within the urban growth boundary. These include but are not limited to schools, parks, libraries, and emergency services.”

Exhibit 14 of the application includes the applicant’s correspondence with the Bend Metro Parks and Recreation District (BPRD) and the Bend La Pine Schools, together with their responses. As the correspondence indicates, neither district identified a need for a school or park facility on-site or identified any program needs that would be impacted by campus development.

**Parks:** The applicant submitted a letter from the Bend Parks and Recreation District (Exhibit 14, Pages 2-3) that states there is no need for a neighborhood park within the subject property. There is an opportunity to partner with the Bend Metro Parks and Recreation District with respect to the fitness facility located adjacent to the Recreation District and in close proximity to parking and student housing. Although there are no present commitments from either party, the applicant’s overall design and traffic impact study provide an opportunity for a future partnership. In addition to potential on-site partnerships, the subject property is wholly within the Bend Park and Recreation District. The BPRD’s Comprehensive Plan ensures that park capacity is provided

throughout the BPRD's service district. These needs are met through park System Development Charges (SDCs), which will be payable by OSU-Cascades at the time of development of campus housing. The combination of the BPRD Comprehensive Plan and its collection of SDCs ensures that park needs can be met and that OSU-Cascades will contribute towards park development in the area and on a City-wide basis. Finally, in connection with the adoption of the expanded Bend Urban Growth Boundary (UGB), the City concluded that the overall UGB program (including infill rezoning and expansions areas) would provide an adequate amount of land for park uses.

**Schools:** The applicant submitted a letter from the Bend-LaPine School District (Exhibit 14, Page 1) that indicates the district's support for the submitted master plan. The district letter did not identify any need for school facilities within the subject property or otherwise identify any conflict with the school district's School Facility Plan. The Bend-La Pine School District regularly completes Facilities Plans that ensure capacity is provided throughout the District service area. The most recent Facilities Assessment was completed in 2016 (Exhibit 26 of the application) and that study utilized densities established in the City of Bend Comprehensive Plan to forecast capacity needs. The proposal will make the property consistent with the density of the Comprehensive Plan, thus, through its regular planning efforts the School District has planned for schools that are adequate to accommodate development on the property at the allowed densities of the proposed zone.

**Police and Fire Protection:** The subject property is within the City of Bend and is therefore served by the City Police and Fire Departments. There is a Bend Fire Station (West Side Station) approximately 3/4 mile from the center of the subject property, locate on SW Simpson Avenue across from Safeway. Fire hydrants are and will be located throughout the campus and along the perimeter of the campus consistent with the Oregon Fire Code. Fire flow calculations, as shown in the Utility Availability Memo SWA 17-5655 (Exhibit 5 submitted with the application), demonstrate that there is an adequate supply and pressure to serve the affected property.

In addition to being served by the City of Bend Police Department, the applicant submitted OSU-Cascades' Public Safety plan (Exhibit 21), which outlines the additional steps that the University will take on the campus to provide an additional level of public safety. Together, the City's police and the University's public safety officers, as further described in the Public Safety Plan in Exhibit 21, assure that there will be adequate police protection for the campus.

#### **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.**

Because the subject proposal includes a zone change to the City's Mixed-Use Urban zone, the application is subject to compliance with the Oregon Transportation Planning Rule (OAR 660-012-0060) (the "TPR"). In very general terms, the TPR requires the City

to determine whether the zone change will “significantly affect” a transportation facility in one or more ways.

Additionally, because an element of the current proposal is to adopt the new OSU Cascades Special Planned District as part of the Bend Development Code, which is a functional element of the Comprehensive Plan, the TPR likewise applies. The 2016 expansion of the Urban Growth Boundary included a post-acknowledgement plan amendment (PAPA) that changed the comprehensive plan designation of the OSU-Cascades property to the City’s new Mixed-Use comprehensive plan designation. In connection with this PAPA, the City undertook the “significant affects” determination under OAR 660-012-0060 and, with exceptions not relevant to the OSU-Cascades site, found that the PAPA would not significantly affect any transportation facility within the meaning of OAR 660-012-0060(1).. Pursuant to OAR 660-012- 0060(9), the City concludes that this zone change does not “significantly affect an existing or planned” transportation facility.

OAR 660-012-0060(9) provides:

- (9) Notwithstanding section (1) of this rule, a local government may find that an amendment to a zoning map does not significantly affect an existing or planned transportation facility if all of the following requirements are met.*
  - (a) The proposed zoning is consistent with the existing comprehensive plan map designation and the amendment does not change the comprehensive plan map;*
  - (b) The local government has an acknowledged TSP and the proposed zoning is consistent with the TSP; and*
  - (c) The area subject to the zoning map amendment was not exempted from this rule at the time of an urban growth boundary amendment as permitted in OAR 660-024-0020(1)(d), or the area was exempted from this rule but the local government has a subsequently acknowledged TSP amendment that accounted for urbanization of the area.*

With respect to the zone change application, all of the factors in OAR 660-012-0060(9) apply and the City concludes that the zone change does not “significantly affect an existing or planned transportation facility.” Regarding subsection (a), the proposed Mixed-Use Urban zone is consistent with the Comprehensive Plan map designation and the PAPA does not change the Comprehensive Plan map. Exhibit 24 is the City’s current Comprehensive Plan map and it provides that the OSU-Cascades property carries the Mixed-Use Urban comprehensive plan designation. As noted above, Comprehensive Plan Policy 11-18 specifically identifies the subject property as the location of a “special site” for a university and is identified as an “opportunity area” in Figure 11-3 of the Comprehensive Plan, as an area slated for both mixed use and higher education purposes.

Regarding subsection (b), the UGB process included a TSP amendment to incorporate the Comprehensive Plan amendments. Section 12 of Ordinance 2271, Exhibit L, of the UGB Amendment adoption package contains Amendments to Appendix C of the Bend Comprehensive Plan – Transportation System Plan. The 2016 amendment to the TSP states on page 1 of Chapter 9:

*“This chapter of the Bend Transportation Systems Plan (TSP) includes the amendments necessary to address the requirements of Oregon Administrative Rule 660-12, known as the Transportation Planning Rule (TPR), for the 2016 expansion of the Urban Growth Boundary (UGB).”*

The entire UGB package, including the 2016 TSP amendments have been acknowledged. More importantly, the TSP amendments specifically recognize that the OSU-Cascades property will be developed with a 4-year university and associated mixed use development. Specifically, Figure 9.1 of the 2016 TSP identifies the subject property as the “Central West Site / Century Drive Opportunity Area.” Further, the TSP describes “Opportunity Areas” as “areas within the City boundary that were identified as having a strong potential for redevelopment because of proximity to transit, employment, and commercial areas. These areas received new mixed use Comprehensive Plan land use designations (and in some cases zoning) as part of the 2016 UGB.”

Further, the 2016 TSP expressly provides that the 2016 TSP amendments were necessary, in part, to identify “projects need to serve the UGB Opportunity Areas and expansion areas.” 2016 TSP Amendments, Section 9.1.2

Lastly, with respect to subsection (c), the area subject to the zoning map amendment was not exempted from TPR analysis rule at the time of an urban growth boundary amendment as permitted in OAR 660-024-0020(1)(d), nor was the area was exempted from TPR analysis but later included. As stated above, the City’s TPR analysis in connection with the adoption of the Opportunity Areas specifically analyzed the Opportunity Areas identified the “TSP project [that] support the UGB Opportunity Areas[.]” 2016 TSP Amendments, Section 9.5.2.

Consequently, for purposes of this zone change, the City concludes that the amendment will not significantly affect an existing or planned transportation facility under OAR 660-012-0060(9).

The City also concludes that the adoption of the OSU-Cascades Special Planned District will not “significantly affect” an existing or planned transportation facility. The OSU-Cascades Special Planned District is an overlay zone that implements the OSU-Cascade Master Plan. Uses in the OSU-Cascades Special Planned District do not differ in any way from those allowed in the underlying zone. Consequently, because no new uses are permitted and the development standards within the district have not been modified in a manner which would permit development (and corresponding transportation impacts) in excess of what is permitted in the Mixed-Use Urban zone, the adoption of the district will have no impact on the transportation system. Through the adoption of the OSU-Cascades Special Planned District, the City will be limiting uses

and development densities to those identified in the Master Plan. Under the Mixed-Use Urban zone the property could be developed with a myriad of traffic intensive uses and densities in excess of what is proposed as part of the OSU-Cascades Special Planned District. Consequently, through the adoption of the district the City will see a reduction in development potential and a corresponding reduction in potential transportation impacts.

OAR 660-012-0060(1) provides, in part:

*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);*

**FINDING:** The adoption of the OSU-Cascades Special Planned District will have no impact on nor will it result in the change of the functional classification of an existing or planned transportation facility. Again, where the adoption of the district will result in no additional transportation impacts above and beyond what is permitted in the Mixed-Use Urban zone (and will likely result in few trips on the system), there is no impact to the functional classification.

*(b) Change standards implementing a functional classification system; or*

**FINDING:** The adoption of the OSU-Cascades Special Planned District will not change any standard implementing a functional classification system.

*(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.*

**FINDING:** The adoption of the OSU-Cascades Special Planned District will not result in additional transportation impacts over what is permitted in the Mixed-Use Urban zone.

Again, given that the OSU-Cascades Master Plan results in a development that is less dense and limits the development potential to certain areas and development densities, the resulting development will necessarily have fewer transportation impacts than would development of the overall site at the densities allowed in the Mixed-Use Urban zone. Given that the worst-case scenario is that the OSU-Cascades Special Planned District will have no additional trips over and above what is permitted in the Mixed-Use Urban zone, the City concludes that the adoption of the district will not result in any of the effects listed in paragraphs (A) through (C) above.

## **CONCLUSIONS:**

Based on the findings in this report, the proposed Zone Change from RS, SM and CL to MU meets all applicable Development Code criteria, policies of the Bend Area Comprehensive Plan, Oregon Statewide Planning Goals and the Transportation Planning Rule.