



# Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

[www.lcd.state.or.us](http://www.lcd.state.or.us)

## AMENDED NOTICE OF ADOPTED AMENDMENT

October 5, 2007

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Deschutes County Plan Amendment  
DLCD File Number 010-07



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: October 19, 2007**

This amendment was submitted to DLCD for review 45 days 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 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.**

Cc: Doug White, DLCD Community Services Specialist  
Jon Jinings, DLCD Regional Representative  
Mark Radabaugh, DLCD Regional Representative  
Anthony Raguine, Deschutes County

<paa> ya



PROP

# 2 Notice of Adoption

THIS FORM MUST BE MAILED TO DLCD  
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION  
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18



Jurisdiction: Deschutes County Local file number: PA-075  
Date of Adoption: 9-26-07 Date Mailed: \_\_\_\_\_  
Date original Notice of Proposed Amendment was mailed to DLCD: 6-6-07

- |  |  |
|--|--|
| <input type="checkbox"/> Comprehensive Plan Text Amendment | <input checked="" type="checkbox"/> Comprehensive Plan Map Amendment |
| <input type="checkbox"/> Land Use Regulation Amendment     | <input type="checkbox"/> Zoning Map Amendment                        |
| <input type="checkbox"/> New Land Use Regulation           | <input type="checkbox"/> Other: _____                                |

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Bend-La Pine School District request to expand City of Bend UGB to include approximately 18-acres of land for a future elementary school.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "SAME". If you did not give Notice for the Proposed Amendment, write "N/A".

Proposed Amendment requested a 15-acre expansion area. The additional 3 acres of land was necessary to accommodate right-of-way dedications and exposed rock outcroppings on-site.

Plan Map Changed from: No Change to: \_\_\_\_\_

Zone Map Changed from: No Change to: \_\_\_\_\_

Location: T17 R12 S22, portion of tax lot 102 Acres Involved: 18-1

Specify Density: Previous: Same New: \_\_\_\_\_

Applicable Statewide Planning Goals: 14

Was and Exception Adopted?  YES  NO

DLCD File No.: 010-07 (16138)



Did the Department of Land Conservation and Development receive a Notice of Proposed Amendment.....

Forty-five (45) days prior to first evidentiary hearing?  Yes  No

If no, do the statewide planning goals apply?  Yes  No

If no, did Emergency Circumstances require immediate adoption?  Yes  No

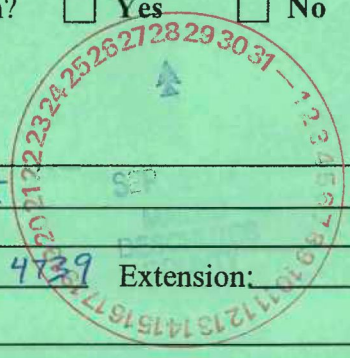
Affected State or Federal Agencies, Local Governments or Special Districts:

City of Bend  
Bend Metro Park & Recreation District

Local Contact: Anthony Ragaine Phone: (541) 617-4739 Extension: \_\_\_\_\_

Address: 117 NW LaFayette Ave City: Bend

Zip Code + 4: 97701 - Email Address: anthonyr@co.deschutes.or.us

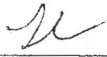



### ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**  
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:  
**ATTENTION: PLAN AMENDMENT SPECIALIST**  
**DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**  
**635 CAPITOL STREET NE, SUITE 150**  
**SALEM, OREGON 97301-2540**
2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.



REVIEWED  LEGAL COUNSEL
REVIEWED  CODE REVIEW COMMITTEE

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 23, the Deschutes	*	
County Comprehensive Plan Map, to Expand the	*	ORDINANCE NO. 2007-023
City of Bend Urban Growth Boundary and Declaring	*	
an Emergency.	*	

WHEREAS, Bend-La Pine School District applied for a Plan Amendment to Title 23 of the Deschutes County Code, the Deschutes County Comprehensive Plan Map, to expand the City of Bend Urban Growth Boundary ("UGB") to include approximately 18 acres of land for a future school; and

WHEREAS, the Deschutes County Hearings Officer held a public hearing on July 31, 2007 and approved the application; and

WHEREAS, because no appeal was filed and the Board of County Commissioners ("Board") did not initiate review of the application, pursuant to Deschutes County Code ("DCC") 22.28.030(B), the Board must approve the plan amendment and UGB expansion; and

WHEREAS, the Board considered this matter at a public meeting on September 26, 2007; and

WHEREAS, Deschutes County Ordinance 2007-23 ordained the Plan Map to be a component of Title 23 and, therefore, any amendment to the Plan Map is an amendment to Title 23; now therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. AMENDMENT. DCC Title 23, the Deschutes County Comprehensive Plan Map is amended to expand the City of Bend UGB to include certain property described in Exhibit "A" and depicted on the map set forth as Exhibit "B" attached and by this reference incorporated herein.

Section 2. FINDINGS. The Board adopts as its findings in support of this decision, the Decision of the Hearings Officer, attached hereto as Exhibit "C" and by this reference incorporated herein.

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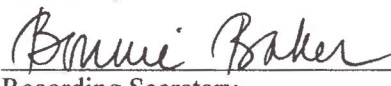
Section 3. EMERGENCY. This Ordinance being necessary for the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

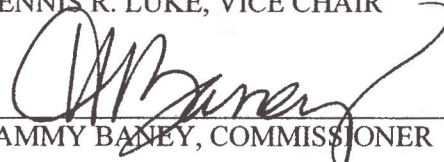
Dated this 26<sup>th</sup> of Sept., 2007

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

  
MICHAEL M. DALY, CHAIR

  
DENNIS R. LUKE, VICE CHAIR

ATTEST:  
  
Recording Secretary

  
TAMMY BANEY, COMMISSIONER

Date of 1<sup>st</sup> Reading: 26<sup>th</sup> day of Sept., 2007.

Date of 2<sup>nd</sup> Reading: 26<sup>th</sup> day of Sept., 2007.

Record of Adoption Vote				
Commissioner	Yes	No	Abstained	Excused
Michael M. Daly	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dennis R. Luke	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tammy Baney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Effective date: 26<sup>th</sup> day of Sept., 2007.

ATTEST:  
  
Recording Secretary



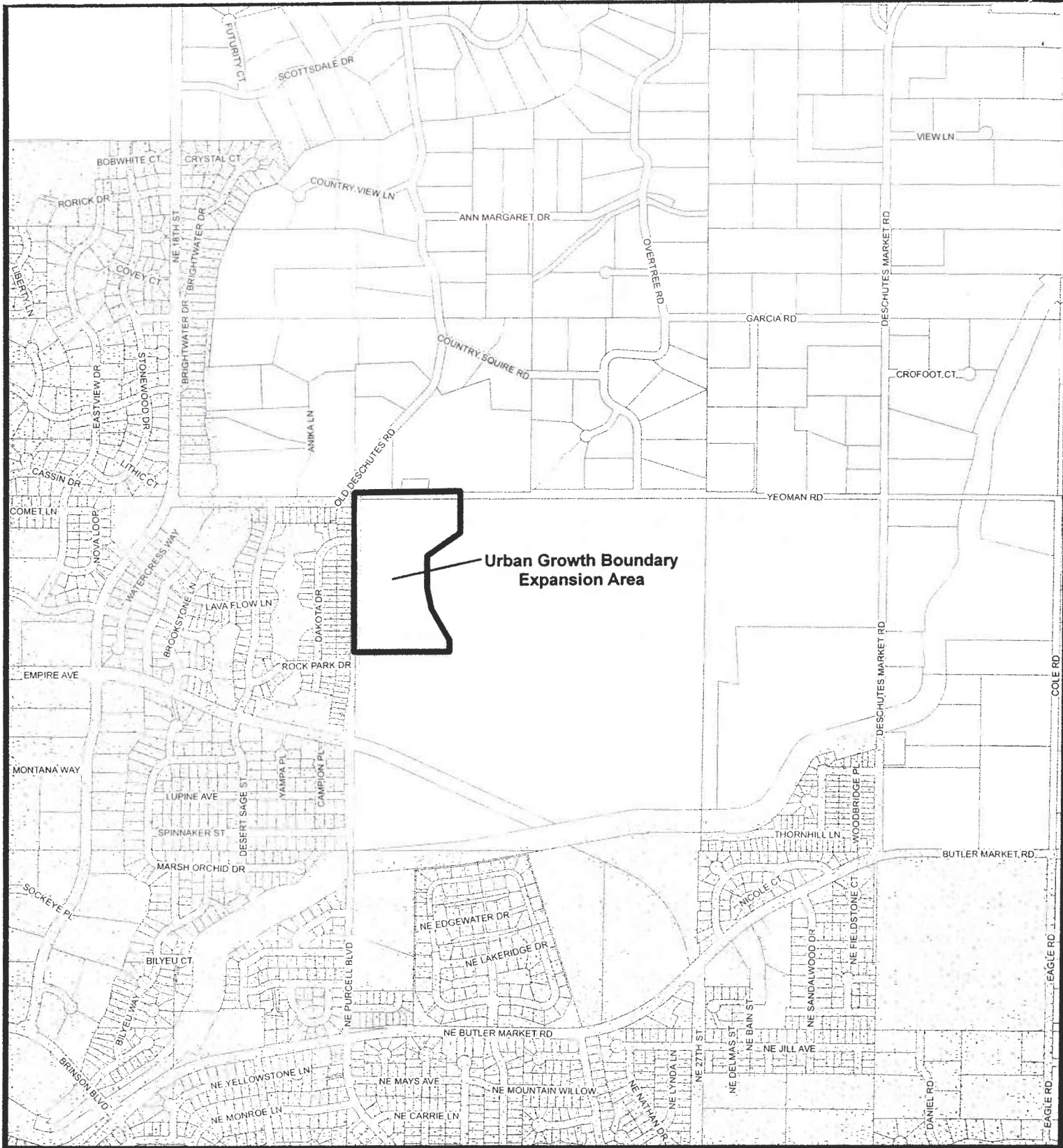
**LEGAL DESCRIPTION  
FOR UGB EXPANSION**

A parcel of land located in the Southwest One-quarter of the Southeast One-quarter (SW 1/4 of the SE 1/4) of Section 15 and the Northwest One-quarter of the Northeast One-quarter (NW1/4 of the NE 1/4) of Section 22, Township 17 South, Range 12 East, Willamette Meridian, Deschutes County, Oregon, said parcel being more particularly described as follows:

Beginning at One-quarter corner common to Sections 15 and 22, Township 17 South, Range 12 East, Willamette Meridian, Deschutes County, Oregon, thence North 00°01'38" West, 30.00 feet to a point on the northerly right of way of Yeoman Road; thence along said northerly right-of-way of Yeoman Road, North 89°37'08" East, 790.57 feet; thence leaving said northerly right-of-way, South 00°00'00" West, 30.00 feet to a point on the line between said Sections 15 and 22; thence continuing South 00°00'00" West, 279.96 feet; thence South 55°00'00" West, 301.94 feet; thence South 00°00'00" West, 240.87 feet; thence South 12°34'57" East, 158.62 feet; thence South 30°00'00" East, 268.60 feet; thence South 00°00'00" West, 87.84 feet; thence North 90°00'00" West, 711.50 feet to the north-south center line of said Section 22; thence along said center line, North 00°01'38" West, 1164.02 feet to the point of beginning.

Said parcel contains 18.1 acres, more or less





**Legend**

-  UGB Expansion Area
-  Urban Growth Boundary



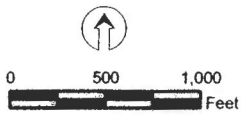
DISCLAIMER: The information on this map was derived from digital databases in Deschutes County, Oregon. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the resulting maps. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, verification of any error will be appreciated.

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**COMPREHENSIVE PLAN MAP**

**File No. PA-07-05**

Exhibit "B"  
to Ordinance 2007-023



September 17, 2007

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

Michael M. Daly, Chair

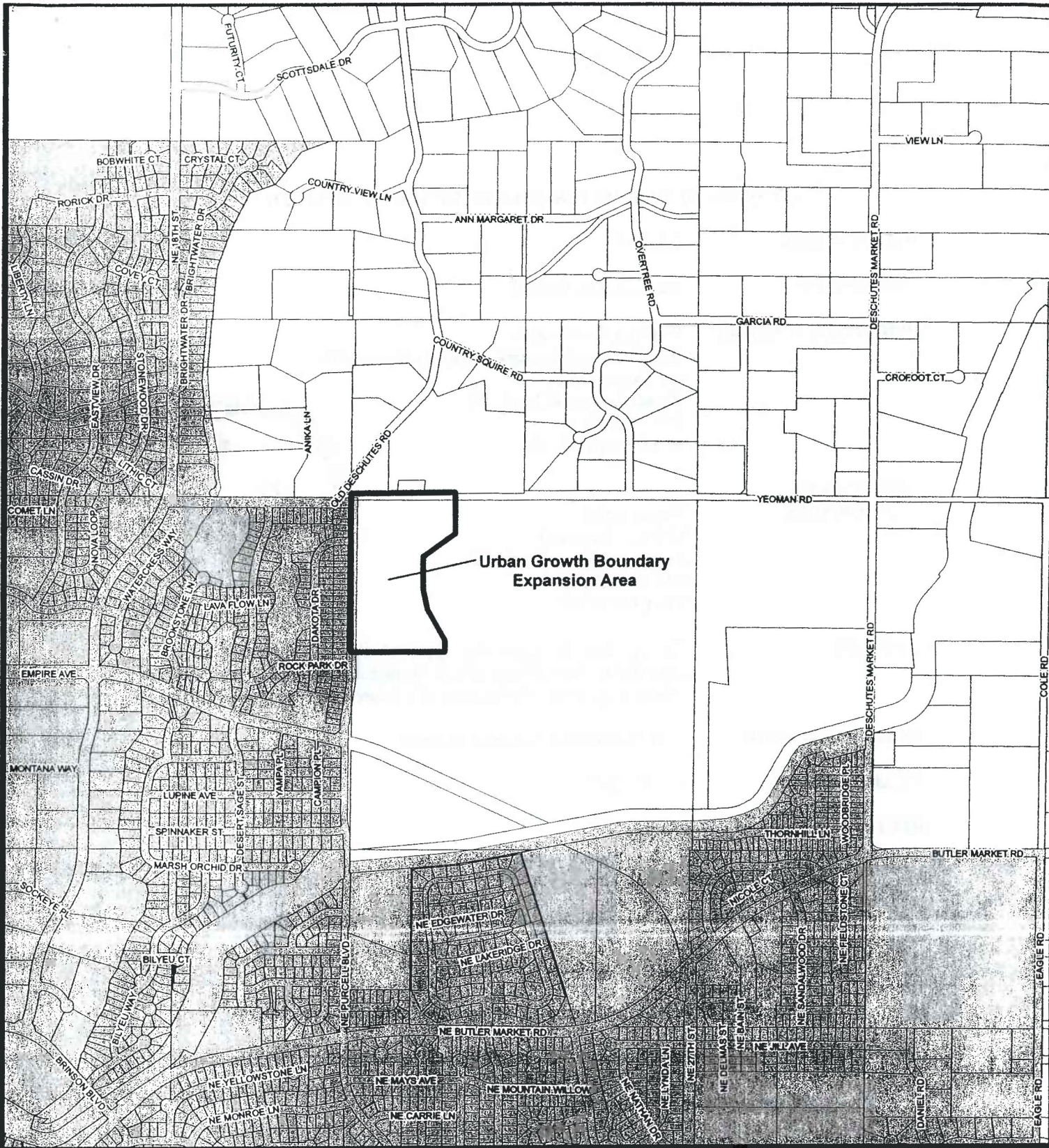
Dennis R. Luke, Vice Chair

Tammy Baney, Commissioner

ATTEST: Recording Secretary

Dated this \_\_\_\_ day of September, 2007  
Effective Date: September \_\_\_\_, 2007





**Legend**

-  UGB Expansion Area
-  Urban Growth Boundary



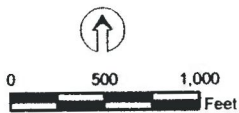
DISCLAIMER:  
The information on this map was derived from digital databases of Deschutes County, Oregon. Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the resulting products. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.

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**COMPREHENSIVE PLAN MAP**

**File No. PA-07-05**

Exhibit "B"  
to Ordinance 2007-023



September 17, 2007

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

Michael M. Daly, Chair

Dennis R. Luke, Vice Chair

Tammy Baney, Commissioner

ATTEST: Recording Secretary

Dated this \_\_\_\_\_ day of September, 2007  
Effective Date: September \_\_\_\_\_, 2007



**DECISION OF DESCHUTES COUNTY HEARINGS OFFICER**

**FILE NUMBER:** PA-07-5  
**APPLICANT:** Bend-La Pine Schools  
**PROPERTY OWNERS:** Bend-La Pine Schools  
Bend Metropolitan Park and Recreation District  
c/o Sharon Smith  
Bryant Lovlien & Jarvis, PC  
P.O. Box 880  
Bend, Oregon, 97709

**APPLICANT'S ATTORNEYS:** Sharon Smith  
Helen L. Eastwood  
Bryant Lovlien & Jarvis, PC  
P.O. Box 880  
Bend, OR 97709



**REQUEST:** The applicant is requesting approval of a plan amendment to expand the City of Bend Urban Growth Boundary to include the subject property for the location of a future elementary school.

**STAFF REVIEWER:** Anthony Raguine, Associate Planner

**HEARING DATE:** July 31, 2007

**RECORD CLOSED:** July 31, 2007

**I. APPLICABLE STANDARDS & CRITERIA:**

**A. Title 22 of the Deschutes County Code, the Development Procedures Ordinance**

**1. Chapter 22.28, Land Use Action Decisions**

**\* Section 22.28.030, Decision on Plan Amendments and Zone Changes**

**B. Title 23 of the Deschutes County Code, the Deschutes County Comprehensive Plan**

**1. Chapter 23.48, Urbanization**

**\* Section 23.48.020, Goals**

**\* Section 23.48.030, Policies**

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2. Chapter 23.68, Public Facilities and Services

\* Section 23.68.020, Policies

B. Bend Area General Plan

1. Chapter 1, Plan Management and Citizen Involvement

2. Chapter 3, Community Connections

3. Chapter 8, Public Facilities and Services

C. Oregon Administrative Rules, Chapter 660

1. Division 15, Statewide Planning Goals and Guidelines

2. Division 24, Urban Growth Boundaries

D. Oregon Revised Statutes

1. ORS Chapter 195, Local Government Planning Coordination

\* ORS 195.110, School Facilities Planning for High Growth School Districts

2. ORS Chapter 197, Comprehensive Land Use Planning Coordination

\* ORS 197.298, Priority of Land to Be Included Within Urban Growth Boundary

II. **FINDINGS OF FACT:**

A. **Location:** The subject property has an assigned address of 631000 Purcell Boulevard, Bend, and is further identified as Tax Lot 102 on Deschutes County Assessor's Map 17-12-22. The property is located at the southeast corner of the intersection of N.E. Purcell Boulevard and N.E. Yeoman Road. The property was partitioned from a larger parcel through a 2007 county partition approval (MP-07-27).

B. **Zoning and Plan Designations:** The subject property is located outside the Bend Urban Growth Boundary (UGB), is designated Urban Area Reserve, and is zoned Urban Area Reserve (UAR-10).

C. **Site Description:** The subject property is approximately 15 acres in size, irregular in shape, generally flat, and undeveloped. Vegetation consists of scattered juniper trees and native brush and grasses. The property is bordered by N.E. Purcell Boulevard on the west, N.E. Yeoman Road on the north, and the Pine Nursery community park on the east

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and south.

- D. Surrounding Zoning and Land Uses:** The subject property is surrounded on the east and south by the Pine Nursery community park owned and managed by the Bend Metropolitan Park and Recreation District (hereafter "park district") and zoned UAR-10. The property to the west is located within the Bend UGB and city limits,<sup>1</sup> is zoned Residential Standard Density (RS) and is developed with dwellings on urban lots. The property to the north is located inside the Bend UGB, is zoned Suburban Low Density Residential (SR-2 ½), and is developed with residential uses on large lots.
- E. Property History:** For decades the parcel of which the subject property is a part, consisting of approximately 185 acres, was operated by the U.S. Forest Service (USFS) as the Bend Pine Nursery. After the USFS decided to close the pine nursery the parcel was determined to be suitable for transfer into private ownership. The U.S. Congress passed the Pine Nursery Conveyance Act in 2004 authorizing the transfer of the property, and by a deed dated December 17, 2004 the entire parcel was conveyed to the park district with a requirement that the park district transfer a portion of the parcel to the Bend-La Pine Schools for a school site.

In 2000 the applicant undertook an evaluation of potential school sites that identified the Pine Nursery site as an appropriate school site. In 2005 the applicant completed an updated school Sites and Facilities Plan (hereafter "SFP") that identified the need for three new elementary schools by 2010, and specifically a new elementary school in the northeast quadrant of Bend. The subject property again was identified as a potential school site. In November 2006, voters within the Bend-La Pine School District approved school bonds to fund the construction of three new elementary schools -- two in Bend and one in La Pine -- as well as expansions and renovations of other district schools. One of the new Bend elementary schools would be sited on the subject property (hereafter "Pine Nursery School"). The other would be sited on Skyliners Road on the west side of Bend (hereafter "West Side Elementary School") which is the subject of a separate plan amendment application (PA-07-7).

In 2006 the City of Bend ("city") and Deschutes County ("county") began a legislative process to expand its UGB and the subject property and the property on which the West Side Elementary School would be sited were included in the area being considered for UGB expansion. The applicant's burden of proof states that when voters approved the bond measure the applicant anticipated that the legislative UGB expansion process would be completed in time for the applicant to seek land use approval and construction permits to construct the two new Bend elementary schools for opening in the fall 2008. However, because the legislative UGB expansion process has taken longer than anticipated and will not be completed in time to open the new Bend schools for the fall of 2008, the applicant elected to make quasi-judicial land use applications to the city and county for UGB expansions to include the subject property and the West Side Elementary School site.

<sup>1</sup> At the present time the Bend city limits and UGB are the same.

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- F. Procedural History:** In February of 1998 the county and city entered into a joint management agreement to handle land use applications, including UGB expansions, for property located within the Urban Area Reserve adjacent to the Bend UGB. Pursuant to this agreement, both the city and county have processed this application as a quasi-judicial land use application. The application was referred to city and county hearings officers, and the hearings officer's decisions will be reviewed at city and county public meetings before adoption of implementing ordinances to effect the UGB expansion.

On May 10, 2007 the applicant conducted a neighborhood meeting to discuss its proposed UGB expansion for the Pine Nursery School. On May 17, 2007 the applicant submitted both city and county land use applications for a plan amendment to expand the Bend UGB to include the subject property. Because the application requests a plan amendment, the 150-day period for issuance of a local land use decision under ORS 215.178 does not apply. A public hearing on the applicant's city plan amendment application was held on June 28, 2007. On July 9, 2007 the applicant submitted a county land use application to partition the subject property from the larger Pine Nursery property. A public hearing on the county plan amendment application was held on July 31, 2007. At the county hearing, the Hearings Officer received testimony and evidence and closed the written evidentiary record. The applicant waived submission of final argument permitted under ORS 197.763. On September 5, 2007 the county issued an administrative decision approving the applicant's requested partition (MP-07-27). On September 10, 2007 a city hearings officer issued a decision approving the applicant's city plan amendment application to expand the Bend UGB to include the subject property for the Pine Nursery School.<sup>2</sup>

- G. Proposal:** The applicant requests a plan amendment to expand the Bend UGB to include the subject property for development of the Pine Nursery School. Following approval of plan amendments by both the county and city, the applicant will be required to obtain city approval to annex the subject property into the Bend city limits. In addition, construction of the Pine Nursery School will require city conditional use and site plan approval.
- H. Public/Private Agency Comments:** The Planning Division sent notice of the applicant's proposal to a number of public agencies. As of the date the record in this matter closed no comments had been received from these agencies. However, the record includes "willing-to-serve" letters from the following utility companies: Avion Water Company, Pacific Power, Bend Broadband, Qwest, and Cascade Natural Gas.
- H. Public Notice and Comments:** 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. In addition, notice of the public hearing was published in the Bend "Bulletin" newspaper, and the subject property was posted with a notice of proposed land use action sign. As of the date the record in this matter

<sup>2</sup> The Hearings Officer understands the Bend City Council will consider an ordinance to adopt the plan amendment at public meetings on September 19 and October 3, 2007.

closed the county had received no comments from the public in response to these notices.

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

In order to approve the applicant's requested expansion of the Bend UGB to establish the Pine Nursery School, the Hearings Officer must find the proposal complies with UGB expansion approval criteria found in statutes, statewide planning goals and guidelines and their implementing administrative rules, the county's and city's comprehensive plans, and the county's land use procedures ordinance. Each of these approval criteria is addressed in the findings below.

#### **A. Statewide Planning Goals and Guidelines (Oregon Administrative Rules Chapter 660, Division 15)**

##### **1. Goal 14**

**FINDINGS:** Goal 14 provides in pertinent part:

**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.**

#### **Urban Growth Boundaries**

**Urban growth boundaries shall be established and maintained by cities, counties and regional governments to provide land for urban development needs and to identify and separate urban and urbanizable land from rural land. Establishment and change of urban growth boundaries shall be a cooperative process among cities, counties and, where applicable, regional governments. An urban growth boundary and amendments to the boundary shall be adopted by all cities within the boundary and by the county or counties within which the boundary is located, consistent with intergovernmental agreements, except for the Metro regional urban growth boundary established pursuant to ORS chapter 268, which shall be adopted or amended by the Metropolitan Service District.**

#### **Land Need**

**Establishment and change of urban growth boundaries shall be based on the following:**

- 1. Demonstrated need to accommodate long-range urban population, consistent with a 20-year population forecast coordinated with affected local governments; and**
- 2. Demonstrated need for housing, employment opportunities, livability or uses**

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**such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection (2).**

**In determining need, local government may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need.**

**Prior to expanding an urban growth boundary, local governments shall demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary.**

***Need for New School***

As discussed in the Findings of Fact above, in 2000 the applicant undertook an evaluation of potential school sites that identified the subject property as an appropriate school site. In 2005 the applicant completed an updated school Sites and Facilities Plan ("SFP") that identified the need for three new elementary schools by 2010, and in particular a new elementary school in the northeast quadrant of Bend. The subject property again was identified as a potential school site. The 2005 SFP, a copy of which is included in the record as Exhibit 1 to the applicant's burden of proof, states the applicant used population growth estimates from the Deschutes County 2000-2025 Coordinated Population Forecast to predict future school district enrollment. The applicant then analyzed where expected enrollment growth might occur by reviewing existing zoning, available vacant lands, and lands being considered for inclusion in the expanded Bend UGB. The SFP determined the highest enrollment growth areas would be in the northeast and northwest quadrants of the school district's attendance area. In addition, the SFP detailed projected enrollment capacity shortfalls, and identified two elementary schools in the northeast quadrant of Bend -- Buckingham and Lava Ridge -- that would have projected capacity shortfalls of approximately 285 students in 2010 and 422 students by 2015. The staff report states, and the Hearings Officer agrees, that this information demonstrates the applicant complied with the factors in Paragraphs (1) and (2) set forth above.

***Characteristics of Land Needed for New School***

In determining the characteristics of the land needed to meet the above-described school needs, the applicant concluded that a minimum of 15 acres is needed for a "prototypical" elementary school -- i.e., one that designed to be constructed in two phases, providing an initial 300-student capacity and capable of expansion to accommodate 600 students. The SFP analyzed potential school sites of this size consisting of lands the applicant already owned or had agreements to acquire, and concluded the only existing district-owned sites would not be adequate. These included: (1) the district's Administrative Center in downtown Bend currently used for the applicant's offices; (2) Troy Field, a small park adjacent to the applicant's Administrative Center; (3) a small unused area at High Desert Middle School in southeast Bend; and (4) the applicant's 6.39-acre transportation yard on which school buses are housed and serviced. At the time of the 2005 SFP, the applicant already had an agreement to acquire a 15-acre portion of the Pine Nursery site which, as discussed above, the applicant expected to be included within the

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planned legislative UGB expansion. The Pine Nursery site meets the applicant's size requirements for a prototypical elementary school and is located in the northeast quadrant of Bend in which the need for a new elementary school was identified in the SFP.

The 2005 SFP also involved the identification of potential school sites not owned or in the process of being acquired by the applicant. These potential sites are reflected on the Siting Study Map included in the SFP. The 2005 Siting Study Map identified one 17-acre parcel within the Bend UGB and in the northeast quadrant of Bend across N.E. 27<sup>th</sup> Street from Mountain View High School (Tax Lot 400 on Assessor's map 17-12-26B). However, the record indicates this parcel has been developed with the St. Francis parochial school. The SFP indicates all other potential school sites at least 15 acres in size identified on the Siting Study Map are located outside the UGB like the subject property, but are not adjacent to the UGB.

The staff report states, and the Hearings Officer agrees, that this information demonstrates the identified need for a new elementary school in the northeast quadrant of Bend cannot reasonably be accommodated on land already inside the urban growth boundary.

#### **Boundary Location**

**The location of the urban growth boundary and changes to the boundary shall be determined by evaluating alternative boundary locations consistent with ORS 197.298 and with consideration of the following factors:**

**1. Efficient accommodation of identified land needs;**

**FINDINGS:** The applicant's 2005 SFP identified greatly increased school enrollment in the northeast quadrant of Bend and the need for an additional elementary school in that area. The applicant attributes this enrollment increase to the build-out of a number of residential subdivisions in the northeast part of the UGB. The subject property meets the applicant's need for a new school site both in terms of size and location, accommodating the prototypical elementary school in a location that would allow students and families in the neighborhood to walk or bike to the school. As discussed in the findings below concerning the requirements of ORS 197.298, the UAR-10 zoning of the subject property places it in the "second priority" classification for UGB expansion lands. However, the site abuts the existing UGB on its western boundary. And the applicant notes the new school would serve not only students living within the UGB but as many as 150 students living outside the UGB but within the school district's boundaries. The staff report states, and the Hearings Officer agrees, that these circumstances demonstrate the subject property would allow the efficient accommodation of the identified need for a new elementary school, thus satisfying this requirement.

**2. Orderly and economic provision of public facilities and services;**

**FINDINGS:**

**Sewer.** City sewer facilities currently exist in N.E. Purcell Boulevard adjacent to the subject

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property. The applicant's burden of proof states connection to the city's sewer system for the Pine Nursery School would be achieved by the applicant's construction of a private sewage lift station on the school site that would pump sewage to the city's existing 3-inch pressure sewer force main within Purcell Boulevard, which in turn connects to an existing city gravity sewer main at the intersection of Purcell Boulevard and N.E. Empire Avenue to the south. The applicant also would construct a dry gravity sewer line north to N.E. Yeoman Road for possible future gravity sewer connection. The staff report states the city reviewed the applicant's sewer proposal and stated the applicant's sewer analysis and proposal correlates well with the city's information and assumptions.

**Water.** The record indicates an existing city water main also extends to N.E. Purcell Boulevard. However, the applicant proposes to obtain water from Avion Water Company, one of the city's franchise water providers. A "willing-to-serve" letter from the company is included in the record as Exhibit 8 to the applicant's burden of proof. The burden of proof states connection to Avion's water system for the Pine Nursery School would be achieved by the applicant's connection to the existing 12-inch Avion water main in N.E. Purcell Boulevard.

**Police and Fire Protection.** Police service currently is provided to the subject property by the Deschutes County Sheriff but would be provided by the Bend Police Department following inclusion of the subject property within the Bend UGB and annexation into the city. The police department did not comment on the applicant's proposal, and the Hearings Officer finds this lack of comment indicates the department has no concerns about providing police protection to a new school on the subject property. The applicant asserts, and I agree, that given the subject property's proximity to the Bend city limits and to a large area of residential development, fire protection from the Bend Fire Department also would be available to the school.

**Transportation/Access.** The subject property abuts the intersection of two dedicated and improved public streets – N.E. Purcell Boulevard and Yeoman Road – which can provide access to a school on the site. As discussed in the findings below concerning the Transportation Planning Rule (TPR), the Hearings Officer has found the applicant's proposed plan amendment to expand the Bend UGB to include the subject property for development of the Pine Nursery School will not significantly affect a transportation facility as long as planned street dedications and improvements in the surrounding area are completed and operational. The staff report states, and I agree, that any specific road improvements required for development of the Pine Nursery School will be determined and required during the city's conditional use and site plan review.

**Other Facilities.** Several private utility providers submitted "willing-to-serve" letters indicating telephone, broadband, electricity and natural gas service are available to serve the Pine Nursery School

For the foregoing reasons, the Hearings Officer finds the applicant's proposed UGB expansion for the Pine Nursery School will result in the orderly and economic provision of public facilities and services.

**3. Comparative environmental, energy, economic and social consequences;**

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**FINDINGS:**

**Environmental:** The subject property is relatively level with scattered juniper trees and native brush and grasses. No known rare or endangered species occupy the property, and the property does not possess any significant natural features such as wetlands, waterways, or rimrock. The staff report states, and the Hearings Officer agrees, that for these reasons the applicant's proposed UGB expansion for the Pine Nursery School will not have adverse impacts on the environment.

**Energy:** The Pine Nursery site generally, and the subject property in particular, are not known to contain any energy resources. The subject property is located adjacent to the Bend UGB and near large areas of residential development which would allow neighborhood children and their families to walk or bike to the school, thus reducing energy consumption through reduced vehicle use. The staff report states, and the Hearings Officer agrees, that for these reasons the applicant's proposed UGB expansion for the Pine Nursery School will not have adverse impacts on energy resources and in fact will have positive impacts by reducing energy consumption.

**Economic:** The applicant's burden of proof states the applicant acquired the subject property from the park district at no cost, and therefore there would be positive economic consequences for the applicant and the Bend community from using the subject property for the Pine Nursery School. In addition, the Pine Nursery School would provide employment opportunities that likely would increase with future expansion of the school. The staff report states, and the Hearings Officer agrees, that for these reasons the applicant's proposed UGB expansion for the Pine Nursery School will have a positive economic impacts.

**Social:** The applicant's burden of proof states, and the Hearings Officer agrees, that the proposed UGB expansion for the Pine Nursery School will have positive social consequences by addressing existing and predicted overcrowding at area schools, thereby improving the quality of education for students and reducing the family and community stress from school overcrowding.

For the foregoing reasons, the Hearings Officer finds the applicant's proposal will have neutral or positive environmental, energy, economic and social consequences, thus satisfying this requirement.

**4. Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB.**

**FINDINGS:** The Hearings Officer finds this requirement is not applicable to the applicant's proposal because the subject property is not located near agricultural or forest activities on farm and forest land outside the Bend UGB.

**Urbanizable Land**

**Land within urban growth boundaries shall be considered available for urban development consistent with plans for the provision of urban facilities and services.**

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**Comprehensive plans and implementing measures shall manage the use and division of urbanizable land to maintain its potential for planned urban development until appropriate public facilities and services are available or planned.**

**FINDINGS:** As discussed in the findings above, the Hearings Officer has found the subject property can be efficiently served by public facilities and services. For these same reasons, I find this requirement is satisfied by the applicant's proposal.

**Unincorporated Communities**

**Single-Family Dwellings in Exception Areas**

**Rural Industrial Development**

**FINDINGS:** The Hearings Officer finds these provisions of Goal 14 are not applicable to the applicant's proposed UGB expansion because the subject property is not located within an unincorporated community and does not include either single-family dwellings or rural industrial development.

**Guidelines**

**FINDINGS:** The staff report states, and the Hearing Officer agrees, that this Goal 14 provision is not applicable to the applicant's proposed UGB expansion because it outlines factors to be considered during a *legislative* rather than a quasi-judicial process to create an initial UGB and to expand an existing UGB. In addition, as staff correctly notes, OAR 660-024-0040(3) – discussed in the findings below, expressly allows a UGB expansion to address a specific need as is proposed here.

**2. Other Goals**

**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.**

**FINDINGS:** The Hearings Officer finds the applicant's proposal is consistent with Goal 1 because as part of the UGB expansion process public notice will be provided by both the city and county to all affected agencies and surrounding property owners. Additionally, both the city and county will hold public hearings before a hearings officer, as well as public meetings before the city and county governing bodies before the proposed UGB expansion is adopted.

**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.**

**FINDINGS:** The Hearings Officer finds the applicant's proposal is consistent with Goal 2 because the applicant has submitted applications to both the city and county to expand the Bend UGB. In addition, as of the date of this decision the city had begun the process of approving the proposed expansion, and I have found the proposed expansion satisfies all applicable county approval criteria. Therefore, both the city and county will be able to make an informed decision regarding the proposed UGB expansion.

**Goal 3: Agricultural Lands; Goal 4: Forest Lands**

**To preserve and maintain agricultural lands.**

**To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.**

**FINDINGS:** The Hearings Officer finds Goals 3 and 4 are not applicable to the applicant's proposed UGB expansion because the subject property is not located on land designated or zoned for farm or forest use.

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

**To protect natural resources and conserve scenic and historic areas and open spaces.**

**FINDINGS:** The Hearings Officer finds the applicant's proposal is consistent with Goal 5 because the record indicates there are no inventoried Goal 5 resources on the subject property, and the proposed UGB expansion will have no impacts on such resources on surrounding land because the subject property abuts developed residential areas and a community park.

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

**To maintain and improve the quality of the air, water, and land resources of the state.**

**FINDINGS:** The Hearings Officer finds the applicant's proposed UGB expansion is consistent with Goal 6 because maintaining or improving the quality of the community's air, water and land resources would be assured through enforcement of state and local regulations at the time development of the Pine Nursery School is evaluated by the city under the applicable conditional use and site plan approval criteria.

**Goal 7: Areas Subject to Natural Disasters and Hazards**

**To protect people and property from natural disasters and hazards.**

**FINDINGS:** The Hearings Officer finds the applicant's proposed UGB expansion is consistent with Goal 7 because the record indicates there are no areas within the subject property that are identified as natural hazard areas. The applicant's burden of proof also states, and I agree, that the natural hazard of wildfire would be reduced by including the subject property in the UGB and developing it with a new school which would be provided with adequate water to meet the minimum fire flow requirements for protection of an elementary school.

**Goal 8: Recreational Needs**

**To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.**

**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 10: Housing**

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

**FINDINGS:** The applicant's burden of proof asserts, and the Hearings Officer agrees, that in light of the relatively small size of the subject property and specific need addressed by the proposed UGB expansion, Goals 8, 9, and 10 do not apply to the applicant's proposal.

**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.**

**FINDINGS:** As discussed in the Goal 14 findings above, the Hearings Officer has found the subject property can be served by adequate public facilities and services for a new elementary school. For these same reasons, I find the applicant's proposed UGB expansion is consistent with Goal 11.

**Goal 12: Transportation**

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

**FINDINGS:** Goal 12 is implemented by the TPR found in OAR 660-012. Generally speaking,

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applicants for plan amendments must demonstrate compliance with the TPR. However, OAR 660-024-0020(d) provides in pertinent part:

**The transportation planning rule requirements under OAR 660-012-0060 need not be applied to a UGB amendment if the land added to the UGB is zoned as urbanizable land, either by retaining the zoning that was assigned prior to inclusion in the boundary or by assigning interim zoning that does not allow development that would generate more vehicle trips than development allowed by the zoning assigned prior to inclusion in the boundary; \* \* \*. (Emphasis added.)**

As discussed in the Findings of Fact above, the subject property is zoned UAR-10. The proposed UGB expansion to include the subject property would not change its zoning. For this reason, the staff report states, and the Hearings Officer agrees, that the applicant is not required to demonstrate compliance with the TPR.

**Goal 13: Energy Conservation**

**To conserve energy.**

**FINDINGS:** As discussed in the Goal 14 findings above, the Hearings Officer has found the applicant's proposed UGB expansion would have positive impacts on energy conservation by providing a new elementary school within walking and biking distance of a large area of residential development. For these same reasons, I find the applicant's proposal is consistent with Goal 13.

**Goal 14: Urbanization**

**To provide for orderly and efficient transition from rural to urban use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.**

**FINDINGS:** As discussed in the Goal 14 findings above, incorporated by reference herein, the Hearings Officer has found the applicant's proposed UGB expansion is consistent with Goal 14.

**Goal 15: Willamette River Greenway**

**Goal 16: Estuarine Resources**

**Goal 17: Coastal Shorelands**

**Goal 18: Beaches and Dunes**

**Goal 19: Ocean Resources**

**FINDINGS:** The Hearings Officer finds Goals 15 through 19 do not apply to the applicant's

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proposed UGB expansion because the subject property is not located within any of the areas addressed by these goals.

For the foregoing reasons, the Hearings Officer finds the applicant's proposed UGB expansion is consistent with the applicable statewide land use planning goals.

**B. Oregon Revised Statutes**

**1. ORS 197.298, Priority of land to be included within urban growth boundary.**

**(1) In addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary except under the following priorities:**

**(a) First priority is land that is designated urban reserve land under ORS 195.145, rule or metropolitan service district action plan.**

**(b) If land under paragraph (a) of this subsection is inadequate to accommodate the amount of land needed, second priority is land adjacent to an urban growth boundary that is identified in an acknowledged comprehensive plan as an exception area or nonresource land. Second priority may include resource land that is completely surrounded by exception areas unless such resource land is high-value farmland as described in ORS 215.710.**

**FINDINGS:** The subject property is designated as Urban Area Reserve in the county's comprehensive plan. However, the applicant's burden of proof notes that these UAR lands were not designated as such pursuant to ORS 195.145, but instead were designated prior to implementation of ORS Chapter 195. Therefore, the Hearings Officer finds the city does not have any "first priority" lands as defined in Subsection (1)(a) of this statute that are available for the applicant's proposed need-specific UGB expansion, and the subject property is considered "second priority" land which is the highest priority land available. For these reasons, I find the applicant's proposal satisfies the requirements of ORS 197.298.

**2. ORS 195.110, School Facilities Planning for High Growth School Districts**

**(1) (a) A county or city containing a high growth school district shall include as an element of its comprehensive plan a school facility plan prepared by the high growth district in cooperation with the city or county.**

**(b) A county or city containing a high growth area shall initiate planning activities with a school district to accomplish**



planning as required under ORS 195.020.

- (c) The provisions of paragraph (a) of this subsection do not apply to a city that contains less than 10 percent of the total population of a high growth school district.
- (2) As used in this section, "high growth school district" means any school district that has an enrollment of over 5,000 students and had an increase in student enrollment of six percent or more during the three most recent school years, based on certified enrollment numbers submitted to the Department of Education during the first quarter of each new school year.
- (3) The school facility plan shall identify school facility needs based on population growth projections and land use designations contained in the city or county comprehensive plan. The plan shall be updated during periodic review and may be updated more frequently by mutual agreement between the school district and the county or city.

**FINDINGS:** The applicant's 2005 SFP shows the Bend-La Pine School District had an enrollment of over 13,000 students in each of the three years prior to 2005, with a percent of growth high of 2.96 percent. Therefore, the Hearings Officer finds the district does not constitute a "high growth school district" as defined in this statute.

**C. Oregon Administrative Rules**

**1. OAR 660-024, Urban Growth Boundaries**

**a. OAR 660-024-0000, Purpose and Applicability**

- 1. The rules in this division clarify procedures and requirements of Goal 14 regarding local government adoption or amendment of an urban growth boundary (UGB).

\* \* \*

- 3. The rules in this division are effective April 5, 2007, except as follows:

- (a) A local government may choose to apply this division prior to April 5, 2007;
- (b) A local government may choose to not apply this division to a plan amendment concerning the evaluation or amendment of a UGB, regardless of the date of that

amendment, if the local government initiated the evaluation or amendment of the UGB prior to April 5, 2007; \* \* \*.

**FINDINGS:** These rules became effective April 5, 2007. The applicant submitted its county application for a plan amendment to expand the Bend UGB on May 17, 2007, and therefore, these rules apply.

**b. OAR 660-024-0020, Adoption or Amendment of a UGB**

**(1) All statewide goals and related administrative rules are applicable when establishing or amending a UGB, except as follows:**

**(a) The exceptions process in Goal 2 and OAR 660, division 4, is not applicable unless a local government chooses to take an exception to a particular goal requirement, for example, as provided in OAR 660-004-0010(1);**

**FINDINGS:** The Hearings Officer finds this rule is not applicable because the applicant is not seeking a goal exception.

**(b) Goals 3 and 4 are not applicable;**

**FINDINGS:** The Hearings Officer has found Goals 3 and 4 are not applicable.

**(c) Goal 5 and related rules under OAR 660, division 23, apply only in areas added to the UGB, except as required under OAR 660-023-0070 and 660-023-0250;**

**FINDINGS:** As discussed in the findings above, the Hearings Officer has found Goal 5 is not applicable to the applicant's proposal because there are no inventoried Goal 5 resources on the subject property or on surrounding property.

**(d) The transportation planning rule requirements under OAR 660-012-0060 need not be applied to a UGB amendment if the land added to the UGB is zoned as urbanizable land, either by retaining the zoning that was assigned prior to inclusion in the boundary or by assigning interim zoning that does not allow development that would generate more vehicle trips than development allowed by the zoning assigned prior to inclusion in the boundary;**

**FINDINGS:** The Hearings Officer finds the TPR does not apply to the applicant's proposed

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UGB expansion because the subject property is zoned UAR-10 and would retain this zoning after inclusion into the UGB.

- (e) **Goal 15 is not applicable to land added to the UGB unless the land is within the Willamette River Greenway Boundary;**

**FINDINGS:** As discussed in the findings above, the Hearings Officer has found Goal 15 is not applicable to the applicant's proposed UGB expansion because the subject property is not within the Willamette River Greenway Boundary.

- (f) **Goals 16 to 18 are not applicable to land added to the UGB unless the land is within a coastal shorelands boundary;**

**FINDINGS:** As discussed in the findings above, the Hearings Officer has found Goals 16 through 18 are not applicable to the applicant's proposed UGB expansion because the subject property is not within a coastal shorelands boundary.

- (g) **Goal 19 is not applicable to a UGB amendment.**

**FINDINGS:** The Hearings Officer finds Goal 19 is not applicable.

- (2) **The UGB and amendments to the UGB must be shown on the city and county plan and zone maps at a scale sufficient to determine which particular lots or parcels are included in the UGB. Where a UGB does not follow lot or parcel lines, the map must provide sufficient information to determine the precise UGB location.**

**FINDINGS:** The applicant submitted a UGB expansion map included in the record as Exhibit 2 to the applicant's burden of proof that shows the property to be added to the UGB. The staff report states, and the Hearings Officer agrees, that this map provides sufficient information to determine the precise UGB location. In addition, as discussed in the Findings of Fact above, the applicant has received county approval for a partition to separate the subject property from the larger Pine Nursery site (MP-07-22). Finally, I find approval of the applicant's proposed UGB expansion will be subject to a condition of approval requiring the applicant to submit to the county a metes and bounds description of the property to be included in the Bend UGB.

**c. Section 660-024-0030, Population Forecasts**

- (1) **Counties must adopt and maintain a coordinated 20-year population forecast for the county and for each urban area within the county consistent with statutory requirements for such forecasts under ORS 195.025 and 195.036. Cities must**

adopt a 20-year population forecast for the urban area consistent with the coordinated county forecast, except that a metropolitan service district must adopt and maintain a 20-year population forecast for the area within its jurisdiction. In adopting the coordinated forecast, local governments must follow applicable procedures and requirements in ORS 197.610 to 197.650 and must provide notice to all other local governments in the county. The adopted forecast must be included in the comprehensive plan or in a document referenced by the plan.

d. Section 660-024-0040, Land Need

- (1) The UGB must be based on the adopted 20-year population forecast for the urban area described in OAR 660-024-0030, and must provide for needed housing, employment and other urban uses such as public facilities, streets and roads, schools, parks and open space over the 20-year planning period consistent with the land need requirements of Goal 14 and this rule. The 20-year need determinations are estimates which, although based on the best available information and methodologies, should not be held to an unreasonably high level of precision.

**FINDINGS:** The record indicates the county adopted a coordinated population forecast through 2025 on September 8, 2004 by Ordinance 2004-12 and the city adopted the same forecast. The applicant's burden of proof states its 2005 SFP utilized this forecast in determining need for new and expanded schools. As discussed in the findings above, the city and county currently are undertaking a legislative process to evaluate all of the above-referenced needs as part a larger UGB expansion plan. The applicant anticipated that this process would be completed in time for it to obtain land use approval and building permits in order to commence construction of the new Pine Nursery school for opening in the fall of 2008. Because the legislative process has taken longer than the applicant anticipated, the applicant chose instead to apply for this quasi-judicial, need-specific UGB expansion.

- (2) If the UGB analysis or amendment is conducted as part of a periodic review work program, the 20-year planning period must commence on the date initially scheduled for completion of the appropriate work task. If the UGB analysis or amendment is conducted as a post-acknowledgement plan amendment under ORS 197.610 to 197.625, the 20-year planning period must commence either:

**FINDINGS:** The Hearings Officer finds this criterion does not apply because the applicant's proposed UGB expansion is not being requested as part of a periodic review work program.

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- (3) A local government may review and amend the UGB in consideration of one category of land need (for example, housing need) without a simultaneous review and amendment in consideration of other categories of land need (for example, employment need).

**FINDINGS:** The Hearings Officer finds this paragraph authorizes the specific need-based UGB expansion for which the applicant is seeking county and city approval.

- (4) The determination of 20-year residential land needs for an urban area must be consistent with the adopted 20-year coordinated population forecast for the urban area, and with the requirements for determining housing needs in Goal 10, OAR 660, division 7 or 8, and applicable provisions of ORS 197.295 to 197.314 and 197.475 to 197.490.

**FINDINGS:** The Hearings Officer finds this criterion does not apply because the applicant's proposed UGB expansion is based on, and proposed to address, a specific need for a new elementary school in the northeast quadrant of Bend.

- (5) Except for a metropolitan service district described in ORS 197.015(14), the determination of 20-year employment land need for an urban area must comply with applicable requirements of Goal 9 and OAR 660, division 9, and must include a determination of the need for a short-term supply of land for employment uses consistent with OAR 660-009-0025. Employment land need may be based on an estimate of job growth over the planning period; local government must provide a reasonable justification for the job growth estimate but Goal 14 does not require that job growth estimates necessarily be proportional to population growth.

**FINDINGS:** The Hearings Officer finds this criterion does not apply because the applicant's proposed UGB expansion is based on, and proposed to address, a specific need for a new elementary school in the northeast quadrant of Bend.

- (6) The determination of 20-year land needs for transportation and public facilities for an urban area must comply with applicable requirements of Goals 11 and 12, rules in OAR 660, divisions 11 and 12, and public facilities requirements in ORS 197.712 and 197.768. The determination of school facility needs must also comply with ORS 195.110 and 197.296 for local governments specified in those statutes.

**FINDINGS:** The proposed UGB expansion's consistency with Goals 11 and 12 is addressed in

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findings above. ORS 197.712 and 197.768 require an analysis of general public facilities such as sewer and water to be included in the comprehensive plans of cities and counties. The staff report states, and the Hearings Officer agrees, that both the city and county comprehensive plans include the required analyses.

**e. OAR 660-024-0050, Land Inventory and Response to Deficiency**

- (1) **When evaluating or amending a UGB, a local government must inventory land inside the UGB to determine whether there is adequate development capacity to accommodate 20-year needs determined in OAR 660-024-0040. For residential land, the buildable land inventory must include vacant and redevelopable land, and be conducted in accordance with OAR 660-007-0045 or 660-008-0010, whichever is applicable, and ORS 197.296 for local governments subject to that statute. For employment land, the inventory must include suitable vacant and developed land designated for industrial or other employment use, and must be conducted in accordance with OAR 660-009-0015(3).**

**FINDINGS:** The applicant submitted this UGB expansion application for the purpose of addressing a specific need for land within the UGB to accommodate the Pine Nursery School. The applicant elected to pursue a quasi-judicial plan amendment rather than waiting for completion of the ongoing city/county legislative process to amend the Bend UGB. The latter process will ensure a 20-year land supply.

- (5) **When land is added to the UGB, the local government must assign appropriate urban plan designations to the added land, consistent with the need determination. The local government must also apply appropriate zoning to the added land consistent with the plan designation, or may maintain the land as urbanizable land either by retaining the zoning that was assigned prior to inclusion in the boundary or by applying other interim zoning that maintains the land's potential for planned urban development until the land is rezoned for the planned urban uses. The requirements of ORS 197.296 regarding planning and zoning also apply when local governments specified in that statute add land to the UGB.**

**FINDINGS:** As discussed above, the subject property is zoned UAR-10 and that zoning will not change after the property is included in the Bend UGB.

**f. OAR 660-024-0060, Boundary Location Alternatives Analysis**

- (1) **When considering a UGB amendment, a local government**

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must determine which land to add by evaluating alternative boundary locations. This determination must be consistent with the priority of land specified in ORS 197.298 and the boundary location factors of Goal 14, as follows:

- (a) Beginning with the highest priority of land available, a local government must determine which land in that priority is suitable to accommodate the need deficiency determined under 660-024-0050.
- (b) If the amount of suitable land in the first priority category exceeds the amount necessary to satisfy the need deficiency, a local government must apply the location factors of Goal 14 to choose which land in that priority to include in the UGB.

**FINDINGS:** The subject property is in a designated exception area and is zoned UAR-10. As discussed above, it is classified as "second priority" land under ORS 197.298 but nevertheless is the highest priority land available for consideration when expanding the UGB to accommodate the Pine Nursery School. The Hearings Officer finds there is no suitable land in the "first priority" classification. Therefore I find the applicant's proposal satisfies these requirements.

- (2) Notwithstanding OAR 660-024-0050(4) and subsection (1)(c) of this rule, except during periodic review or other legislative review of the UGB, a local government may approve an application under ORS 197.610 to 197.625 for a UGB amendment proposing to add an amount of land less than necessary to satisfy the land need deficiency determined under OAR 660-024-0050(4), provided the amendment complies with all other applicable requirements.

**FINDINGS:** The Hearings Officer finds this subsection authorizes the city and county to expand the Bend UGB to address a specific need with a specific piece of property as proposed by the applicant. The proposed UGB expansion would not satisfy a 20-year need, but as discussed above the city and county are undertaking a legislative UGB expansion process including an evaluation of the land necessary to satisfy the 20-year land need.

- (3) The boundary location factors of Goal 14 are not independent criteria. When the factors are applied to compare alternative boundary locations and to determine the UGB location, a local government must show that all the factors were considered and balanced.

**FINDINGS:** The proposal's compliance with boundary location factors in Goal 14 is addressed in the findings below. As discussed above, the Hearings Officer has found the applicant has

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demonstrated the proposed UGB expansion satisfies all applicable requirements of Goal 14.

- (4) **In determining alternative land for evaluation under ORS 197.298, "land adjacent to the UGB" is not limited to those lots or parcels that abut the UGB, but also includes land in the vicinity of the UGB that has a reasonable potential to satisfy the identified need deficiency.**

**FINDINGS:** The subject property abuts the UGB. The applicant's burden of proof states, and the Hearings Officer agrees, that although other properties in the vicinity of the subject property would have a reasonable potential to satisfy the identified need for schools, the subject property is preferable to those other properties for several reasons. First, the subject property is closer to existing public facilities such as sewer, water and transportation. Second, it is adjacent to the Pine Nursery community park, allowing the proposed Pine Nursery School to be located in close proximity to a park. Third, the applicant acquired the subject property at no cost through federal legislation. Finally, as discussed above, the subject property is the highest priority land available under ORS 197.298.

- (5) **If a local government has specified characteristics such as parcel size, topography, or proximity that are necessary for land to be suitable for an identified need, the local government may limit its consideration to land that has the specified characteristics when it conducts the boundary location alternatives analysis and applies ORS 197.298.**

**FINDINGS:** As discussed above, the applicant identified specific land characteristics require for the siting of a prototypical elementary school set forth in the 2005 SFP. The following analysis shows how the subject property satisfies those characteristics.

**Few busy roads surround the school.** The subject property is bounded on the west by N.E. Purcell Boulevard and on the north by N.W. Yeoman Road, both classified as collector streets. While the record indicates these streets currently are not exceptionally busy, they may become more so as this part of Bend develops. Nevertheless, the applicant argues that the subject property remains the preferred alternative site.

**Few physical barriers such as canals, railroads, or arterial streets.** The record indicates a North Unit irrigation canal is located south of the subject property on the southern boundary of the Pine Nursery community park site. The subject property is not near a railroad or arterial street.

**Located in residential zones.** The subject property is not located in a residential zone, but is surrounded by residential zoning and development on the west (zoned RS) and on the north (zoned SR-2 ½).

**Adjacent to park or future park where possible.** The subject property is located adjacent to

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the Pine Nursery community park being developed by the park district.

**High student densities.** The rapid development of surrounding residential properties has created high student densities near the school, as evidenced by the current overcrowding at Buckingham and Lava Ridge Elementary Schools. Students would attend the school from areas both within and outside of the existing and expanded UGB.

**Good walking access.** The subject property is close to a large area of residential development to the west and north. The applicant's burden of proof states these residential developments along Purcell have provided sidewalks and bike paths that will provide good walking and bicycle access to the Pine Nursery School. In addition, the adjacent Pine Nursery community park will have pedestrian paths and trails.

**Relatively flat topography.** The record indicates the subject property is relatively level.

**At least 15 acres in size.** The subject property is approximately 15 acres in size.

**Low cost for water, sewer, and sidewalk extensions.** As discussed in the findings above, city sewer facilities and Avion water facilities are located in N.E. Purcell Boulevard and can be extended to serve the Pine Nursery School. In addition, residential developments along and near Purcell Boulevard have installed sidewalks.

**At least two vehicular access points.** The subject property's location at the intersection of N.E. Purcell Boulevard and N.E. Yeoman Road will allow the creation of at least two points of access.

**Lower site acquisition cost.** The applicant obtained the subject property from the park district at no cost.

**Partnership potential with Bend Metro Park and Recreation District.** The applicant obtained the subject property from the park district, and the subject property is surrounded on two sides by the Pine Nursery community park owned and managed by the park district.

**Zoning allows schools.** Public schools are allowed conditionally in the UAR-10 Zone under both the county and city zoning ordinances.

**Shape of site promotes efficient use.** The record includes a proposed school site plan that demonstrates the school and related facilities can be sited on the subject property notwithstanding its irregular shape.

- (6) **The adopted findings for UGB adoption or amendment must describe or map all of the alternative areas evaluated in the boundary location alternatives analysis. If the analysis involves more than one parcel or area within a particular priority category in ORS 197.298 for which circumstances are the same, these parcels or areas may be considered and evaluated**

as a single group.

**FINDINGS:** As discussed above, the applicant's 2005 SFP identified and evaluated alternative sites for a new elementary school in the northeast quadrant of Bend. Although the 2005 SFP and Siting Study Map identified other sites that could satisfy the identified need, none of the alternative sites would have the benefit of low cost, proximity to park land, easy access to city sewer and Avion water, and proximity to the existing UGB that the subject property possesses. As noted above, only one other site in the northeast quadrant of Bend was identified that had sufficient size and other necessary characteristics, but that site is developed with the St. Francis parochial school. For these reasons, the Hearings Officer finds the applicant's proposal satisfies the requirements of the subsection.

- (7) **For purposes of Goal 14 Boundary Location Factor 2, "public facilities and services" means water, sanitary sewer, storm water management, and transportation facilities.**

**FINDINGS:** The adequacy of public facilities and services is discussed in the Goal 14 findings above. Based on those findings, incorporated by reference herein, the Hearings Officer finds adequate public facilities and service will be available to the Pine Nursery School.

- (8) **The Goal 14 boundary location determination requires evaluation and comparison of the relative costs, advantages and disadvantages of alternative UGB expansion areas with respect to the provision of public facilities and services needed to urbanize alternative boundary locations. This evaluation and comparison must be conducted in coordination with service providers, including the Oregon Department of Transportation with regard to impacts on the state transportation system. "Coordination" includes timely notice to service providers and the consideration of evaluation methodologies recommended by service providers. The evaluation and comparison must include:**

- (a) **The impacts to existing water, sanitary sewer, storm water and transportation facilities that serve nearby areas already inside the UGB;**

**FINDINGS:** As discussed in the findings above, incorporated by reference herein, the Hearings Officer has found water, sewer, and transportation services and facilities are available and will be adequate to serve a new elementary school on the subject property with connections and improvements the applicant and/or others will install. With respect to storm water, I find the applicant will be required at the time of school development to comply with the city's storm water master plan.

- (b) **The capacity of existing public facilities and services to**



serve areas already inside the UGB as well as areas proposed for addition to the UGB; and

**FINDINGS:** The record indicates there is existing public facility capacity to serve areas inside the UGB as well as the subject property located outside and proposed for inclusion within the UGB.

- (c) **The need for new transportation facilities, such as highways and other roadways, interchanges, arterials and collectors, additional travel lanes, other major improvements on existing roadways and, for urban areas of 25,000 or more, the provision of public transit service.**

**FINDINGS:** In support of its proposal the applicant submitted a preliminary traffic impact analysis (hereafter "traffic study") for the proposed Pine Nursery School, dated June 2007 and prepared by J-U-B Engineers. The traffic study analyzed traffic impacts from the proposed school in the years 2008 and 2015 on the surrounding transportation network including three nearby intersections:

- N.E. Purcell Boulevard/N.E. Empire Avenue;
- N.E. Purcell Boulevard/N.E. Yeoman Road; and
- N.E. Yeoman Road/Deschutes Market Road.

The traffic study concluded that all affected intersections currently function at acceptable levels of service, and that with the addition of traffic generated by the Pine Nursery School the affected intersections would continue to operate at acceptable levels of service assuming planned street and intersection improvements are completed, including the city's planned extension of Empire Avenue east to N.E. 27<sup>th</sup> Street. The traffic study also concluded all affected intersections, including the intersections of the school entrance driveways and public streets, would have adequate sight distance to allow safe intersection operations. Based on the applicant's traffic study, the Hearings Officer finds the applicant's proposed UGB expansion satisfies the requirements of this subsection.

For the foregoing reasons, the Hearings Officer finds the applicant's proposed UGB expansion satisfies all applicable administrative rule provisions.

**D. Deschutes County Code**

**1. Title 22, the Development Procedures Ordinance**

**a. Chapter 22.28, Land Use Action Decisions**

**(1) Section 22.28.030, Decision on Plan Amendments and Zone Changes**

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\* \* \*

- B. In considering all quasi-judicial zone changes and those quasi-judicial plan amendments on which the Hearings Officer has authority to make a decision, the Board of County Commissioners shall, in the absence of an appeal or review initiated by the Board, adopt the Hearings Officer's decision. No argument or further testimony will be taken by the Board.**

**FINDINGS:** The Hearings Officer finds my decision will be considered by the Deschutes County Board of Commissioners at a public meeting at which my decision will be adopted in the absence of an appeal or review initiated by the board.

**2. Title 23, the Deschutes County Comprehensive Plan**

**a. Chapter 23.48, Urbanization**

**(1) Section 23.48.020, Goals**

**FINDINGS:** At the outset, the Hearings Officer finds the goals and policies in the plan are largely aspirational and directed at actions to be taken *by the county*, and therefore it is questionable to what extent they can be considered approval criteria for the applicant's proposed quasi-judicial plan amendment to expand the Bend UGB to include the subject property. Nevertheless, because both the applicant and staff have addressed these goals I include the following findings.

- 1. To provide for an orderly and efficient transition from rural to urban lands.**

**FINDINGS:** The subject property abuts the Bend UGB and is designated Urban Area Reserve and zoned UAR-10. This designation and zoning indicate this property already has been identified by the city and county as appropriate for consideration first in the event of an identified need for more urbanized lands. As discussed in the findings above, the Hearings Officer has found the subject property can be served by adequate public facilities and services and is surrounded by existing residential development and the Pine Nursery community park. Therefore, I find the applicant's proposal is consistent with this policy.

- 2. To assure that planning and implementation of plans in the urban areas are consistent with the best interest of both urban and urbanizing area residents.**

**FINDINGS:** The applicant's proposed UGB expansion would allow the establishment of a new elementary school to meet the identified need to reduce crowding in existing elementary schools in the northeast quadrant of Bend. The school will serve families and students living both within

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the UGB and outside the UGB in an area that is "urbanizing." Siting the new school on the subject property would allow students and families in the neighborhood to walk and bike to the school. For these reasons, the Hearings Officer finds the applicant's proposal is consistent with this policy.

3. **To retain and enhance the character and quality of the urban areas as growth occurs. To recognize and respect the unusual natural beauty and character of the area.**

**FINDINGS:** The Hearings Officer finds the applicant's proposal will enhance the quality of the urban area by allowing the establishment of the Pine Nursery School to serve students and families in the surrounding residential areas both within and outside the Bend UGB. In addition, locating the new school on the subject property would take advantage of the adjacent Pine Nursery community park and the natural beauty of this area. Development of the new school will be subject to city conditional use and site plan review to assure compliance with the city's development standards.

4. **To provide a sound basis for urbanization by establishing proper relationships between residential, commercial, industrial and open land uses; fostering intergovernmental cooperation; and providing an efficient transportation system.**

**FINDINGS:** As discussed above, the proposed UGB expansion is being considered and processed pursuant to a 1998 city/county intergovernmental agreement governing development within the Urban Area Reserve generally, and UGB expansion in particular. The Hearings Officer finds the applicant's proposal will establish proper relationships between residential and open space uses by facilitating the construction of a new elementary school surrounded by residential development and a community park. In addition, as discussed in the findings above, I have found affected transportation facilities will function at acceptable levels of service with the addition of traffic generated by the Pine Nursery School with completion of certain planned street improvements. For these reasons, I find the applicant's proposal is consistent with this goal.

5. **To retain and enhance desirable existing areas and to revitalize, rehabilitate and redevelop less desirable existing areas; to encourage and promote innovations in development techniques in order to obtain maximum livability and excellence in planning and design for development.**

**FINDINGS:** The applicant's burden of proof states, and the Hearings Officer agrees, that the applicant's proposal will enhance the existing area surrounding the subject property by facilitating construction of a needed new elementary school, and for the same reason will assure maximum livability in the surrounding area. Therefore I find the applicant's proposal is

consistent with this goal.

**b. Chapter 23.68, Public Facilities and Services**

**(1) Section 23.68.020, Policies**

\* \* \*

**5. Schools.**

a. In light of existing problems with providing school facilities all new development shall be reviewed for its impact on the schools. Substantial expansion of school bus routes shall be discouraged, and the County shall require the dedication of adequate land for new schools required to meet the needs generated by major new developments. In addition, the County shall consider designating appropriate County lands for school sites.

b. Plans for schools shall consider the policies within the Oregon State Standards:

**Minimum Enrollment Site (acres)**

Elementary School	550	10
Intermediate School	800	20
Senior High Schools	1300	30

c. School districts shall cooperate with other affected agencies for efficient construction of recreation facilities (i.e., bike paths) and other public facilities.

d. School district boundaries should be regularly reviewed to best serve County residents.

**FINDINGS:** The applicant's 2005 SFP identified needs for new and expanded schools throughout the school district and evaluated a variety of potential sites. The subject property was identified as suitable and the best site for a new prototypical elementary school in the northeast quadrant of Bend. The Hearings Officer finds the applicant's proposal also satisfies the policies for school siting set forth above, in that it is at least 10 acres in size and its selection reflects cooperation and coordination with the park district. I further find the applicant will be required to cooperate with affected agencies for the efficient construction of recreation facilities and other

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public facilities and services.

**E. City of Bend General Plan**

**FINDINGS:** As discussed above in the findings concerning the county's comprehensive plan, the Hearings Officer finds the goals and policies in the city's plan generally are aspirational and directed toward actions to be undertaken *by the city*, and therefore it is questionable to what extent they can be considered to constitute approval criteria for the applicant's proposed quasi-judicial plan amendment to expand the Bend UGB to include the subject property. Nevertheless, because both the applicant and staff have addressed these goals and policies I include the following findings:

**1. Chapter 1, Plan Management and Citizen Involvement**

**POLICIES** (Page 1-7)

**Development Within the Urban Growth Boundary**

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

**FINDINGS:** The Hearings Officer finds inclusion of the subject property within the Bend UGB will allow compact development by providing a new elementary school within walking and biking distance of surrounding residential neighborhoods. In addition, as discussed above, the applicant will be required at the time of development to extend and connect to necessary public facilities and services.

**Planning in the Urban Reserve**

13. The city and county shall retain lands in the Urban Reserve Area in larger lots in order to be compatible with adjoining public lands and deer winter range needs until these areas are needed for urban level uses.

**FINDINGS:** The subject property originally was part of the much larger USFS Pine Nursery site. The applicant recently obtained county approval of a partition to separate the subject property from the larger parcel that is being developed with the Pine Nursery community park. As discussed above, the applicant has requested approval of a plan amendment to expand the Bend UGB to include the subject property to address a site-specific need for a new urban-level

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use – i.e., a new elementary school in the northeast quadrant of the city.

**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 citizens of the area to participate in the planning process.

**FINDINGS:** As part of this quasi-judicial plan amendment process, public notice has been provided by the city and county to affected agencies and surrounding area property owners. In addition, this matter was heard by the Hearings Officer in a public hearing, and the Deschutes County Board of Commissioners will consider my decision at a public meeting.

2. **Chapter 3, Community Connections**

**PUBLIC EDUCATION**

**The Bend – La Pine School District**

\* \* \*

In October 1997, the school board accepted a school siting study prepared for the district in cooperation with the city and county. This study provides information on enrollment, siting needs, and other factors to help the district determine the type, location, and size of school sites needed during the next 20 years.

The school district's estimate of future enrollment levels and school needs is based on the forecast population levels in the urban area and nearby rural lands. Figure 8 shows the 1995 student levels and the forecast enrollment level for the public schools based on the 1997 siting study. It can be seen from the data in this figure that total enrollment in the Bend area public schools is expected to increase about 45 percent by the year 2015.

If the population growth and demographic patterns follow the forecasts in the 1997 study, there will be a need for three to five additional elementary schools, two to three new middle schools, and one or two new senior high schools or technical schools in the planning area by 2015. In 1998 local voters approved a \$57 million bond levy to help meet the need for more schools. The bond will pay for construction of a new elementary school, a new middle school, a new high school and remodeling Bend High.

Identifying the location for new public schools is an important function of the General Plan. The need for new schools is closely related to residential



development and housing densities in the community. It is extremely important that schools be located with reference to the development pattern indicated on the General Plan.

Elementary schools in particular can have a significant influence on the location or direction of growth in any given area, and will in themselves attract residential development. They should be centrally located in their service area, and spaced in a way that will permit reasonable locations for future schools as the area continues to grow. The city, county and Bend-La Pine school district will use the most recent studies to evaluate ways to ensure the timely development of new schools in the urban area.

**FINDINGS:** The city's general plan cites an older school district siting study showing the need for 3-5 new elementary schools by 2015. As discussed above, the applicant's 2005 SFP has updated that information, shown a significant increase in school enrollment growth since the 1997 siting study, and identifies the need for two new elementary schools in Bend. The applicant's proposed UGB expansion would permit the construction of one of these schools – the Pine Nursery School – in a location close to residential development in one of the fastest growing segments of the community. In addition, the Hearings Officer has found the proposed Pine Nursery School location is consistent with current and anticipated development of urban public facilities and services, including sewer, water and transportation facilities.

#### **POLICIES**

##### **Schools**

22. The Bend-La Pine School District shall participate in providing necessary street, pedestrian, and bike facilities adjacent to the school sites as new schools are erected.
23. When a majority of a school's expected attendance will reside within the UGB, the Bend La-Pine School District shall make every effort to construct such school(s) within the UGB where students can walk to the school.

**FINDINGS:** The applicant will be required to participate in providing necessary public facilities and services at the time of city conditional use and site plan review for the Pine Nursery School. As discussed above, the proposed new school would serve students both within and outside of the UGB, and at a location to which students can walk and bike.

#### **3. Chapter 8, Public Facilities and Services**

##### **GOALS**

**Adequate public facilities are the key to stable urban development. The**

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Oregon Statewide Planning Goals below provide general guidance for maintaining and improving the level and quality of urban services as growth occurs in Bend. The citizens and elected officials wish:

- To have public and private utility systems provide adequate levels of service to the public at reasonable cost;
- For the city, county, and special districts to cooperate in the provision of adequate urban services in an efficient and timely matter to support urban development;
- For new development to pay its fair share of the cost of major facilities needed to support development;
- To ensure that public services will not have negative impacts on the environment or the community; and
- To locate and operate public buildings and other public facilities to best serve the needs of the residents.

**FINDINGS:** As discussed above, city sewer service and Avion water service are available to the subject property to serve the Pine Nursery School following inclusion of the subject property within the Bend UGB. In addition, the subject property would be served by city police and fire protection services as well as all necessary private utility services.

**IV. DECISION:**

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer hereby **APPROVES** the applicant's proposed plan amendment to expand the Bend Urban Growth Boundary to include the subject property, **SUBJECT TO THE FOLLOWING CONDITION OF APPROVAL:**

1. Prior to the hearing before the Deschutes County Board of Commissioners to consider approval of the proposed plan amendment, the applicant/owners shall submit to the Planning Division a metes and bounds description of, and surveyed acreage calculation for, the property subject to the plan amendment.

Dated this 12<sup>th</sup> day of September, 2007.

Mailed this 13<sup>th</sup> day of September, 2007.

  
Karen H. Green, Hearings Officer

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