



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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Salem, OR 97301-2540

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NOTICE OF ADOPTED AMENDMENT

03/05/2014

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

FROM: Plan Amendment Program Specialist

SUBJECT: Deschutes County Plan Amendment  
DLCD File Number 005-13

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. 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: Thursday, March 20, 2014

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

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

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

Cc: Mathew Martin, Deschutes County  
Jon Jinings, DLCD Community Services Specialist

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

FOR DLCD USE

File No.: 005-13 (20084)  
[17783]  
Received: 2/27/2014

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

Jurisdiction: Deschutes County

Local file no.: **PA-13-4**

Date of adoption: 2/26/14

Date sent: 2/27/2014

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

Yes: Date (use the date of last revision if a revised Form 1 was submitted): 11/8/13

No

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

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

No Change

Local contact (name and title): Matthew Martin

Phone: 541-330-4620

E-mail: matt.martin@deschutes.org

Street address: 117 NE Lafayette Ave

City: Bend

Zip: 97701

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

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

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

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

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

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

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

The subject property is entirely within an urban growth boundary

The subject property is partially within an urban growth boundary

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

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: Urban Area Reserve – Acres: 33.82

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

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

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

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

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

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

Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:

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

Overlay zone designation:	Acres added:	Acres removed:
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Location of affected property (T, R, Sec., TL and address):

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List affected state or federal agencies, local governments and special districts: Deschutes County, City of Bend.

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

Amends Deschutes County Comp. Plan Map by expanding the City of Bend UGB 33.82 acres for new middle school.

## ORDINANCE NO. NS-2213

AN ORDINANCE AMENDING THE BEND URBAN AREA GENERAL PLAN MAP AND TRANSPORTATION SYSTEM PLAN MAPS BY EXPANDING THE URBAN GROWTH BOUNDARY TO INCLUDE A PARCEL OF LAND TOTALING 33 ACRES FOR THE EXPRESS PURPOSE OF CONSTRUCTING A MIDDLE SCHOOL AND DECLARING AN EMERGENCY AND PRESCRIBING AN EFFECTIVE DATE OF FEBRUARY 19, 2014. THE PROPERTY IS LOCATED NORTHWEST OF THE INTERSECTION OF SKYLINERS ROAD AND NW SKYLINE RANCH ROAD.

### Findings

- A. On November 5, 2013, the Bend-La Pine School District initiated a Type III Quasi-judicial amendment to the Bend Area General Plan Map to expand the Urban Growth Boundary (UGB) to include 33 acres of land north of Skyliners Road and west of current UGB boundary for a new Bend-La Pine Middle School site. Included with the UGB expansion is an amendment to the Transportation System Plan (TSP) Maps for the alignment of Skyline Ranch Road and extension of NW Crossing Drive to the west as a collector street.
- B. The Hearings Officer held a duly-noticed public hearing on December 19, 2013, to consider proposed the requested amendments. On January 8, 2014, the Hearings Office issued a recommendation to the City Council to adopt the proposed UGB expansion and TSP Map amendments with conditions of approval that the applicant provide a metes and bounds legal description for the UGB expansion area prior to adoption of an ordinance, and a metes and bounds legal description for dedication of the collector street rights-of way adjacent to the site prior to submittal of a Conditional Use Permit application for development of the middle school.
- C. The Bend City Council held a public hearing on February 5, 2014, to consider the Hearings Officer recommendation.
- D. The requested UGB expansion and TSP Map amendments approved by this Ordinance are consistent with all applicable standards and criteria, including those set forth in Bend Development Code Chapter 4.6, as well as well as Oregon Administrative Rules 660-024 & 660-012; and Oregon Revised Statutes 197.228.

### THE CITY OF BEND ORDAINS AS FOLLOWS:

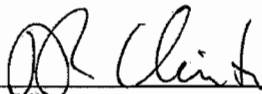
- Section 1. The Bend Area General Plan Map and TSP Maps are amended as shown in Exhibit A and described in Exhibit B.
- Section 2. The City Council adopts the Findings of the Hearings Officer in support of this ordinance as shown in Exhibit C.
- Section 3. This ordinance being necessary for the preservation of public safety and health, an emergency is declared to exist and this ordinance takes effect on February 19, 2014.

First reading: February 5, 2014.

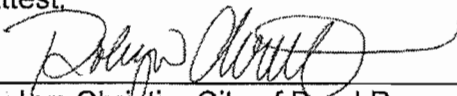
Second reading and adoption by roll call vote: February 19, 2014.

YES: Mayor Jim Clinton  
Councilor Jodie Barram  
Councilor Scott Ramsay  
Councilor Mark Capell  
Councilor Victor Chudowsky  
Councilor Doug Knight  
Councilor Sally Russell

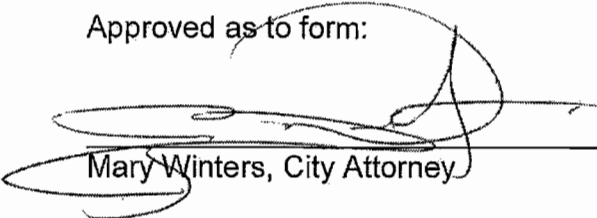
NO: none

  
\_\_\_\_\_  
Jim Clinton, Mayor

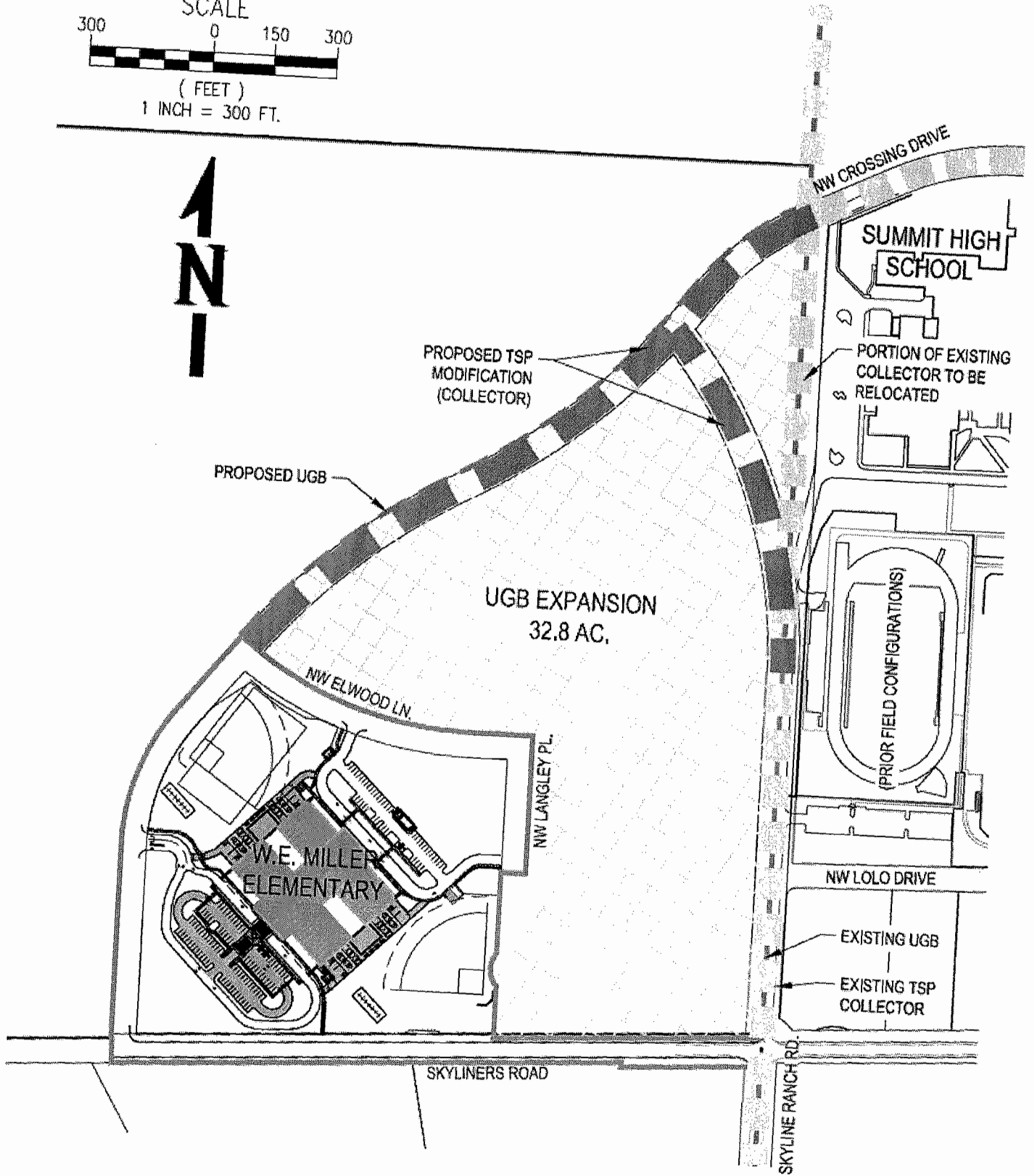
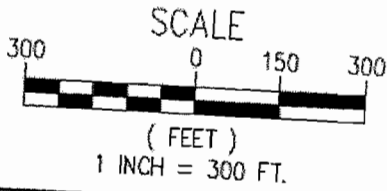
Attest:

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

Approved as to form:

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

# EXHIBIT A



## EXHIBIT B

**A TRACT OF LAND BEING A PORTION OF PARCEL 1, PARTITION PLAT NO. 2007-83, RECORDED DECEMBER 27, 2007 IN CABINET 3, PAGE 545, DESCHUTES COUNTY PARTITION RECORDS, LOCATED IN THE SOUTHEAST ONE-QUARTER (SE1/4) OF SECTION 35, TOWNSHIP 17 SOUTH, RANGE 11 EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

Commencing from a found 2 inch iron pipe marking the northeast corner of said SE1/4; thence along the east line of said SE1/4, South  $0^{\circ}13'54''$  West, 89.09 feet to a point of intersection of the northwesterly right-of-way of *Northwest Crossing Drive* and the westerly right-of-way of *Skyline Ranch Road*, being the **True Point of Beginning**; thence leaving said northwesterly right-of-way of *Northwest Crossing Drive*, continuing along said east line of the SE1/4 and westerly right-of-way of *Skyline Ranch Road*, South  $0^{\circ}13'54''$  West, 2033.55 feet to a point of intersection with the northerly right-of-way of *Skyliners Road*; thence leaving said east line of the SE1/4 and the westerly right-of-way of *Skyline Ranch Road*, along said northerly right-of-way of *Skyliners Road*, South  $86^{\circ}58'33''$  West, 650.89 feet to the southeast corner of Parcel 2 of said Partition Plat No. 2007-83; thence leaving said northerly right-of-way of *Skyliners Road*, along the easterly and northerly boundary of said Parcel 2 of said Partition Plat No. 2007-83 the following five (5) courses and three (3) curves:

North  $0^{\circ}00'25''$  East, 115.50 feet to a point of non-curvature;

thence along the arc of a 59.53 foot radius curve to the right, an arc distance of 83.50 feet, through a central angle of  $80^{\circ}21'52''$  (the chord of which bears North  $04^{\circ}35'19''$  West, 76.82 feet) to a point of reverse curvature;

thence along the arc of a 11.00 foot radius curve to the left, an arc distance of 6.83 feet, through a central angle of  $35^{\circ}34'16''$  (the chord of which bears North  $17^{\circ}47'52''$  East, 6.72 feet) to a point of tangency;

thence North  $0^{\circ}00'25''$  East, 195.13 feet;

thence South  $89^{\circ}59'35''$  East, 60.00 feet;

thence North  $0^{\circ}00'25''$  East, 337.80 feet;

thence North  $89^{\circ}59'35''$  West, 156.68 feet to a point of tangent curvature;

thence along the arc of a 860.00 foot radius curve to the right, an arc distance of 607.39 feet, through a central angle of  $40^{\circ}27'57''$  (the chord of which bears North  $69^{\circ}45'38''$  West, 594.84 feet) to a point of non-tangency;

thence leaving said boundaries of Parcel 2, North  $49^{\circ}21'40''$  West, 5.00 feet to a point of non-tangent curvature; thence along the arc of a 1650.00 foot radius curve to the right, an arc distance of 322.18 feet, through a central angle of  $11^{\circ}11'15''$  (the chord of which bears North  $44^{\circ}04'02''$  East, 321.67 feet) to a point of tangency curvature; thence North  $49^{\circ}39'40''$  East, 1207.09 feet to a point of tangent curvature; thence along the arc of a 836.00 foot radius curve to the right, an arc distance of 211.85 feet, through a central angle of  $14^{\circ}31'09''$  (the chord of which bears North  $56^{\circ}55'14''$  East, 211.28 feet) to the **True Point of Beginning**.

This description contains 33.82 acres, more or less.

Herein bearings are based upon the Central Oregon Coordinate System.

**EXHIBIT C  
FINDINGS IN SUPPORT OF  
UGB EXPANSION AND TSP MAP  
AMENDMENTS PZ 13-0676**

**I. APPLICABLE STANDARDS & CRITERIA:**

**Bend Development Code**

**Chapter 4.1, Development Review and Procedures**

- \* **Section 4.1.427, Site Specific Plan Amendments and Zone Changes**

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

- \* **Section 4.6.300, Quasi-Judicial Amendments**

**Chapter 4.7, Transportation Analysis**

**Bend Area General Plan**

**Deschutes County 2011 Comprehensive Plan**

**Chapter 4, Urban Growth Management**

**Oregon Revised Statutes (ORS)**

**Chapter 195, Local Government Planning Coordination**

- \* **ORS 195.110, School Facilities Plan for Large School Districts**

**Chapter 197, Comprehensive Land Use Planning Coordination**

- \* **ORS 197.296, Factors to Establish Sufficiency of Buildable Lands Within Urban Growth Boundary**

- \* **ORS 197.298, Priority of Lands**

**Oregon Administrative Rules (OAR) Chapter 660, Department of Land Conservation and Development**

**Division 15, Oregon Statewide Planning Goals and Guidelines**

- \* **OAR 660-015-0000, Goals and Guidelines 1 Through 19**

**Division 24, Urban Growth Boundaries**

- \* **OAR 660-024-0000, Purpose and Applicability**
- \* **OAR 660-024-0020, Adoption or Amendment of a UGB**
- \* **OAR 660-024-0030, Population Forecasts**
- \* **OAR 660-024-0040, Land Need**
- \* **OAR 660-024-0050, Land Inventory and Response to Deficiency**
- \* **OAR 660-024-0060, Boundary Location Alternatives Analysis**

**II. PROCEDURAL FINDINGS:**

- A. Location:** The subject property has an assigned address of 19100 Skyliners Road and is located on the north side of Skyliners Road west of Northwest Crossing Drive on the western edge of the Bend Urban Growth Boundary (UGB). The property is further identified as Tax Lot 400 on Deschutes County Assessor's map 17-11-35D.
- B. Zoning and Plan Designation:** The subject property is zoned and designated Urban Area Reserve (UAR10) on the Deschutes County Comprehensive Plan and zoning maps.



**C. Site Description:** The subject property consists of approximately 33 acres in the southeast quadrant of a larger parcel owned by Miller Tree Farm LLC. Deschutes County (County) approved a property line adjustment (LL-13-50) to remove the subject property from the larger parcel and to add it to the adjacent parcel owned and operated by Bend-La Pine Schools (“district” or “applicant”) and on which Miller Elementary School is located. The subject property is vacant, slopes moderately down to the northwest, and has a vegetative cover of ponderosa pine and juniper trees and native ground cover. The subject property is bounded on the east by Northwest Crossing Drive, a designated collector street that runs along the current UGB boundary. Skyliners Road, also a designated collector street, abuts the property on the south. The applicant proposes to extend the east/west alignment of Northwest Crossing Drive along the northwest boundary of the subject property with right-of-way to be included in the UGB expansion area.

**D. Surrounding Zoning and Land Uses:** The parcel to the west and north is designated and zoned UAR, located outside the UGB, and currently engaged in forest use. Parcels to the east and south are owned by the district and developed with Miller Elementary School and Summit High School. These parcels are located inside the Bend UGB and are zoned Public Facilities (PF). Parcels farther to the east are located in Northwest Crossing and are developed with mixture of residential and commercial uses. Parcels to the south across Skyliners Road are located in The Highlands at Broken Top and Tetherow Destination Resort and are developed primarily with residential uses. The property to the southwest recently was included in the UGB through a plan amendment and is being developed with a new Unitarian Universalist Fellowship Church.

**E. Procedural History:** In 2005 the Hearings Officer approved a plan amendment from Industrial Reserve to UAR and a zone change from Surface Mining (SM) to UAR-10 for a 133-acre parcel that was part of the Miller Tree Farm and that included the subject property (PA-04-9, ZC-04-7). That approval was based on a finding that the mineral and aggregate resources on the property had been depleted. In 2007 the Hearings Officer approved a plan amendment to expand the Bend UGB to include a 15-acre portion of the Miller Tree Farm parcel rezoned in 2005 for a future elementary school, now known as Miller Elementary (PA-07-7). That approval was based in large part on the district’s 2005 School Facility Plan which showed the need for a new elementary school to serve the population in northwest Bend. The plan amendment was approved by the Deschutes County Board of Commissioners (Board) by Ordinance No. 2007-024, and the property was subsequently annexed to the City.

In 2010 the district completed a new School Facility Plan. The Overview and Recommendations section of the plan is included in the record as Exhibit 1 to the district’s burden of proof. The stated purpose of the 2010 plan was to identify and plan for future facility needs. In 2012 the district completed an update to the 2010 plan to reflect changing needs based on more current data. The 2012 update, included in the record as Exhibit 2 to the applicant’s burden of proof, identifies the need for a new middle school in the northwest part of Bend by the 2017-2018 school year.

In May of 2013 district voters approved a bond measure for the construction of new middle and elementary schools as well as for other construction projects throughout the district’s facilities. The district conducted a search for sites within the UGB that would be adequate for the new elementary and middle schools. The district found a suitable site within the UGB for the elementary school but did not locate any suitable sites within the UGB for the

middle school. Thereafter the district searched for a suitable middle school site outside the UGB. Through that search the district identified the subject property.

The city is in the process of expanding its UGB through a legislative process and included the subject property in its proposed UGB expansion area. The proposed expansion was approved by the Bend City Council (Council) in 2008 but that approval was remanded by LCDC for further work. The record indicates the City does not expect to complete the process on remand until 2016, so the district elected to pursue a quasi-judicial site-specific plan amendment to include the subject property.

The applicant held a public meeting on its proposed UGB amendment on November 4, 2013. The record indicates notice of this meeting was mailed to the owners of fourteen properties. On November 5, 2013 the applicant submitted this application and a companion application to the County. The City accepted this application as complete on December 5, 2013. A joint City-County public hearing on the application was held on December 19, 2013. At the hearing, the Hearings Officer received testimony and evidence and left the written record open through December 26, 2013 to allow the applicant to submit additional evidence. The applicant waived the submission of final argument pursuant to ORS 197.763. The applicant submitted an additional document on December 20, 2013 and the record closed on that date. Because the application requests a plan amendment it is not subject to the 150-day period for issuance of a final local land use decision under ORS 227.178.

- F. Proposal:** The applicant requests approval of an amendment to the City and County comprehensive plans (comprehensive plans) to expand the Bend UGB to include the subject property for a new middle school to serve the population in northwest Bend. The applicant also requests approval of an amendment to the TSP map to realign Skyline Ranch Road through the subject property and to extend Northwest Crossing Drive along the north and west boundaries. Both streets are designated collector streets. A graphic depicting the proposed realignments is included in the record.
- G. Public/Private Agency Notice:** The Planning Division sent notice of the applicant's proposal to several public and private agencies and received responses from: the Bend Fire Department; and the Deschutes County Environmental Health Division and Senior Transportation Planner. Those responses are included in the record. The following agencies did not respond or submitted a "no comment" response: Bend Engineering and Planning Divisions and Department of Public Works; Bend Metro Park and Recreation District; and the Department of Land Conservation and Development (DLCD).
- 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, and the subject property was posted with a notice of land use action sign. The City received no comments from the public. No members of the public testified at the public hearing.
- I. Lot of Record:** The subject property is a legal lot of record having been created as Parcel 1 of Partition Plat 2007-83.

### **III. FINDINGS OF CONFORMANCE WITH APPLICABLE CRITERIA AND PROCEDURES City of Bend Development Code**

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

##### **Section 4.1.427, Site Specific Plan Amendments and Zone Changes**

**Any change initiated by an individual that includes a plan amendment and zone change for specific real property may be accompanied by the appropriate applications for a specific development proposal. Approval of such a plan amendment and zone change accompanied by a specific development proposal may be conditioned upon initiation of the development proposal within a specified time period, at the discretion of the Hearings Body, to ensure no greater intensity of use than that contemplated in the proceeding. Approvals of site-specific plan amendments and zone changes that are not accompanied by applications for a specific development proposal shall be based on evaluation of the highest impact uses authorized in the proposed zone.**

**Because site-specific plan amendments require an alteration of the Bend Area General Plan by action of the City Council, they shall be processed through the Type III quasi-judicial proceeding where the initial Hearings Body makes a recommendation to the City Council for a final decision.**

**FINDINGS:** The applicant submitted this application for an amendment to the general plan to expand the Bend UGB to add an approximate 33-acre parcel in northwest Bend for development of a future middle school, and to amend the TSP map to realign Skyline Ranch Road through the subject property and to extend Northwest Crossing drive to connect with the realigned road. The application is being handled through a Type III quasi-judicial process subject to a hearing before the Hearings Officer and final action by the City Council and the Deschutes County Board of Commissioners.

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

##### **Section 4.6.300 Quasi-Judicial Amendments.**

**B. Criteria for Quasi-Judicial Amendments. The applicant shall submit a written narrative which explains how the approval criteria will be met. A recommendation or a decision to approve, approve with conditions or to deny an application for a quasi-judicial amendment shall be based on all of the following criteria:**

**FINDINGS:** The applicant submitted an original and supplemental burden of proof statements, including several exhibits, which comprise the written narrative explaining how the approval criteria for the proposed UGB expansion will be met.

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

**FINDINGS:** As discussed in the findings below concerning compliance with the Oregon Administrative Rules (administrative rules), incorporated by reference herein, the applicant's proposed UGB amendment is consistent with all applicable statewide planning goals and guidelines.

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

**FINDINGS:** The preface to the City's comprehensive plan states in relevant part as follows:

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

In several previous decisions,<sup>1</sup> the Hearings Officer held the preface to the City's general plan makes clear the plan's goals and policies are aspirational – i.e., phrased in terms of "may" rather than "shall" -- and/or are directed toward actions to be undertaken *by the City* or by the applicant *at the time of development*. Therefore, they are not considered mandatory approval criteria for the applicant's proposed quasi-judicial plan amendment. With few exceptions, addressed immediately below, most of the City's plan policies identified and discussed by the applicant and the City are examples of aspirational statements and/or policies requiring action by the City or action required by the applicant at the time of development. Therefore, with the exceptions addressed below, consistency with the City's comprehensive plan policies is not a mandatory approval criterion for this quasi-judicial plan amendment to expand the UGB.

Policy 4 related to development within the UGB states:

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

The applicant did not submit an application for development approval with the UGB amendment application, and therefore the requirement that new development pay for infrastructure extensions is not yet applicable.

Policy 3 related to public facilities and services states:

***All development within the Urban Growth Boundary shall be sewerred or provide for sewers through a binding sewer service agreement with the city.***

The record indicates City sewer and water service is available to, and has the capacity to serve, the subject property. The extension of existing sewer and water mains and services to the subject property will be a requirement for annexation of the subject property into the City limits.

Policy 40 related to public buildings and facilities states:

***Public buildings and facilities shall be located so as to provide convenient public use and to provide maximum service for the greatest economy. Governmental offices shall locate downtown when practicable. Other governmental facilities,***

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<sup>1</sup> E.g., Unitarian Universalist Fellowship of Central Oregon (PZ-12-422).

***reservoirs, landfills and correctional facilities shall be located in areas with good public access to principal streets.***

As discussed in the findings below concerning compliance with statutes and administrative rules, the applicant chose the subject property for the new middle school in large part because of its proximity to the population to be served in northwest Bend and because the proposed location would allow the middle school to be part of a three-school campus including Miller Elementary School and Summit High School, allowing more efficient use of the district's resources while necessitating fewer vehicle trips and more walking and bicycling by students. For the foregoing reasons, the applicant's proposal is consistent with these plan policies.

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

**FINDINGS:** The record indicates City water and sewer service is available to, and has the capacity to serve, a middle school on the subject property. In addition, the applicant's proposed amendment to the City's TSP map to realign Skyline Ranch Road and to extend Northwest Crossing Drive will allow better street connectivity in light of the existing topography on the subject property. In addition, construction of streets serving the proposed middle school will be a condition of annexation of the subject property to the City limits.

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

**FINDINGS:**

**Mistake or Inconsistency.** There is no evidence of a mistake or inconsistency in the plan designation and zoning of the subject property. A plan amendment and zone change from SM to UAR was previously approved for the portion of the Miller Tree Farm that includes the subject property based on a finding that mineral and aggregate resources on the property had been depleted. The resulting UAR designation and zoning were appropriate considering the property's location outside but adjacent to the UGB.

With respect to the current Skyline Ranch Road alignment, there may have been a mistake in the alignment shown on the City's TSP map because it appears not to have taken into account topography. Rather, the alignment was based on the section line that is also the UGB boundary in this area.

**Change in Neighborhood or Community.** There have been changes in the neighborhood and community that justify the requested UGB expansion to include the subject property. Specifically, the applicant cites the significant residential development throughout the City, and in the northwest part of Bend in particular, that have resulted in increased middle school population and enrollment, overcrowding at Cascade Middle School and the need for a new middle school. As discussed in detail in findings concerning compliance with the statutes and administrative rules, incorporated by reference herein, the applicant has demonstrated the subject property is the best location for siting the new middle school.

With respect to the proposed realignment of Skyline Ranch Road and the extension of the section of Northwest Crossing Drive within the UGB, the same reasons that justify establishment of a new middle school on the subject property also justify the proposed realignment of Skyline Ranch Road in order to facilitate necessary connectivity between streets providing access to the subject property and the surrounding neighborhood.

Finally, the amendments to the TSP map are subject to OAR 660-024-0060(1), the Transportation Planning Rule (TPR). However, as discussed in detail in the findings below concerning compliance with the administrative rules, OAR 660-024-0020(1)(d) states the TPR:

***\* \* \* 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; . . . (Underscored emphasis added.)***

The subject property's UAR designation and zoning would not change from UAR following the property's inclusion in the UGB and therefore this administrative rule provision is applicable. Nevertheless, because the above-underscored language appears to give the City discretion to apply the TPR.

The TPR states in relevant part:

***If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:***

- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);***
- (b) Change standards implementing a functional classification system; or***
- (c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.***
  - (A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;***
  - (B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or***
  - (C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.***

The proposed amendment to the TSP to realign Skyline Ranch Road will not significantly affect any transportation facility. It will not change the functional classification of, or standards applicable to, Skyline Ranch Road or Northwest Crossing Drive new alignment and extension will make the same street connections contemplated in the TSP. The applicant submitted as Exhibit 13 to its burden of proof a letter from Kittleson & Associates, Inc., the applicant's traffic engineer, stating the proposed alignment modifications will maintain the function, purpose, and connectivity previously outlined in the TSP and therefore no additional analysis is required under the TPR.<sup>2</sup> For the foregoing reasons, the applicant's proposal is consistent with all applicable goals and policies in the City's general plan.

## **STATUTES**

### **ORS Chapter 197, Comprehensive Land Use Planning Coordination**

#### **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:** As noted in findings below concerning compliance with the administrative rules, Goal 14 requires the proposed UGB expansion to be consistent with ORS 197.298. The subject property is designated UAR on the County's comprehensive plan map. However, this designation was not established via ORS 195.145 and therefore the property is not "first priority" land. The record indicates the City also does not have any suitable "first priority" land available for the proposed need-specific UGB expansion. Therefore, the subject property is considered "second priority" land which is the highest priority land available. For these reasons, the applicant's proposal satisfies this statute.

#### **ORS 197.296, Factors to Establish Sufficiency of Buildable Lands Within Urban Growth Boundary**

- (1) (a) The provisions of this section apply to metropolitan service district regional framework plans and local government comprehensive plans for lands within the urban growth boundary of a city that is located outside of a metropolitan service district and has a population of 25,000 or more.**
- (b) The Land Conservation and Development Commission may establish a set of factors under which additional cities are subject to the provisions of this section.**

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<sup>2</sup> As noted in the findings below, the County's Senior Transportation planner stated in his comments that no traffic study would be required for the proposed UGB amendment under the County code because the zoning of the subject property will remain UAR-10 when the property is included in the UGB and therefore there would be no change in the uses permitted in the zone.

In establishing the set of factors required under this paragraph, the commission shall consider the size of the city, the rate of population growth of the city or the proximity of the city to another city with a population of 25,000 or more or to a metropolitan service district.

- (2) At periodic review pursuant to ORS 197.628 to 197.651 or at any other legislative review of the comprehensive plan or regional plan that concerns the urban growth boundary and requires the application of a statewide planning goal relating to buildable lands for residential use, a local government shall demonstrate that its comprehensive plan or regional plan provides sufficient buildable lands within the urban growth boundary established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years. The 20-year period shall commence on the date initially scheduled for completion of the periodic or legislative review.

**FINDINGS:** The analysis of the applicant's proposal does not require application of Goal 10 relating to buildable lands for residential use because no residential development is contemplated or proposed by this application, and the analysis is not for the purpose of periodic review. The provisions of OAR 660-024-0040(3), discussed in the findings below, expressly allow an amendment of a UGB in consideration of one category of land need (schools) without simultaneous review and amendment in consideration of other categories of land need.

## **Chapter 195, Local Government Planning Coordination**

### **ORS 195.110, School Facilities Plan for Large School Districts**

- (1) As used in this section, "large school district" means a school district that has an enrollment of over 2,500 students based on certified enrollment numbers submitted to the Department of Education during the first quarter of each new school year.
- (2) A city or county containing a large school district shall:
  - (a) Include as an element of its comprehensive plan a school facility plan prepared by the district in consultation with the affected city or county.
  - (b) Initiate planning activities with a school district to accomplish planning as required under ORS 195.020.
- (3) The provisions of subsection (2)(a) of this section do not apply to a city or a county that contains less than 10 percent of the total population of the large school district.
- (4) The large school district shall select a representative to meet and confer with a representative of the city or county, as described in subsection (2)(b) of this section, to accomplish the planning required by ORS 195.020 and shall notify the city or county of the selected representative. The city or county shall provide the facilities and set the time for the planning activities. The representatives shall meet at least twice each year, unless all representatives agree in writing to another schedule, and make a written summary of issues discussed and proposed actions.
- (5) (a) The school facility plan must cover a period of at least 10 years and must include, but need not be limited to, the following elements:
  - (A) Population projections by school age group.
  - (B) Identification by the city or county and by the large school district of desirable school sites.
  - (C) Descriptions of physical improvements needed in existing schools to meet the minimum standards of the large school district.



- (D) Financial plans to meet school facility needs, including an analysis of available tools to ensure facility needs are met.**
  - (E) An analysis of:**
    - (i) The alternatives to new school construction and major renovation; and**
    - (ii) Measures to increase the efficient use of school sites including, but not limited to, multiple-story buildings and multipurpose use of sites.**
  - (F) Ten-year capital improvement plans.**
  - (G) Site acquisition schedules and programs.**
  - (b) Based on the elements described in paragraph (a) of this subsection and applicable laws and rules, the school facility plan must also include an analysis of the land required for the 10-year period covered by the plan that is suitable, as a permitted or conditional use, for school facilities inside the urban growth boundary.**
- (6) If a large school district determines that there is an inadequate supply of suitable land for school facilities for the 10-year period covered by the school facility plan, the city or county, or both, and the large school district shall cooperate in identifying land for school facilities and take necessary actions, including, but not limited to, adopting appropriate zoning, aggregating existing lots or parcels in separate ownership, adding one or more sites designated for school facilities to an urban growth boundary, or petitioning a metropolitan service district to add one or more sites designated for school facilities to an urban growth boundary pursuant to applicable law.**
- (7) The school facility plan shall provide for the integration of existing city or county land dedication requirements with the needs of the large school district.**
- (8) The large school district shall:**
- (a) Identify in the school facility plan school facility needs based on population growth projections and land use designations contained in the city or county comprehensive plan; and**
  - (b) Update the school facility plan during periodic review or more frequently by mutual agreement between the large school district and the affected city or county.**
- (9) (a) In the school facility plan, the district school board of a large school district may adopt objective criteria to be used by an affected city or county to determine whether adequate capacity exists to accommodate projected development. Before the adoption of the criteria, the large school district shall confer with the affected cities and counties and agree, to the extent possible, on the appropriate criteria. After a large school district formally adopts criteria for the capacity of school facilities, an affected city or county shall accept those criteria as its own for purposes of evaluating applications for a comprehensive plan amendment or for a residential land use regulation amendment.**
- (b) A city or county shall provide notice to an affected large school district when considering a plan or land use regulation amendment that significantly impacts school capacity. If the large school district requests, the city or county shall implement a coordinated process with the district to identify potential school sites and facilities to address the projected impacts.**
- (10) A school district that is not a large school district may adopt a school facility plan as described in this section in consultation with an affected city or county.**
- (11) The capacity of a school facility is not the basis for a development moratorium under ORS 197.505 to 197.540.**

- (12) This section does not confer any power to a school district to declare a building moratorium.
- (13) A city or county may deny an application for residential development based on a lack of school capacity if:
- (a) The issue is raised by the school district;
  - (b) The lack of school capacity is based on a school facility plan formally adopted under this section; and
  - (c) The city or county has considered options to address school capacity.

**FINDINGS:** The record indicates the applicant has an enrollment of well over 2,500 students and therefore is a large school district under ORS 195.110(1). As discussed above, the applicant completed the requisite School Facility Plan in 2010 and completed an update to the plan in 2012. The analysis in the plan and update determined there is an inadequate supply of suitable land for school facilities for the 10-year period covered by the plan, even when considering re-development of existing properties to add additional floors. Therefore, the City and County can bring a site designated for school use into the UGB pursuant to ORS 195.110(6).

## **ADMINISTRATIVE RULES**

### **OAR Chapter 660, Land Conservation and Development Commission**

#### **Division 15, State-Wide Planning Goals and Guidelines**

#### **OAR 660-015-0000, State-Wide Planning Goals and Guidelines #1 Through #19**

##### **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:** As part of the UGB expansion application process, the City has provided notice of the applicant's proposal to affected public and private agencies and to surrounding property owners. In addition, the City and County held a joint public hearing before the Hearings Officer, and the City Council and County Board of Commissioners will consider the proposed UGB expansion at public hearings/meetings. Therefore, Goal 1 is satisfied.

##### **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 applicant submitted applications for a plan amendment/UGB expansion to the City and County, accompanied by burden of proof statements and supporting documents. In addition, the applicant submitted oral and written testimony at the public hearing. The applicant's materials and testimony provide a sufficient factual base to enable both jurisdictions to make an informed decision regarding the proposed expansion. Therefore, Goal 2 is satisfied.

### **Goal 3: Agricultural Lands**

**To preserve and maintain agricultural lands.**

**Agricultural lands shall be preserved and maintained for farm use consistent with existing and future needs for agriculture products, forest and open space and with the state's agriculture land use policy expressed in ORS 215.243 and 215.700.**

### **Goal 4: Forest 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:** These two goals are not applicable to the applicant's proposal because the subject property is not identified as either agricultural or forest land on the County's comprehensive plan map.

### **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:** Goal 5 resources are identified and inventoried in the County's acknowledged comprehensive plan. The County's plan indicates there are no known Goal 5 resources on the subject property. As discussed in previous findings, the Miller Tree Farm including the subject property previously was identified as having Goal 5 resources consisting of mineral and aggregate resources, but the property was rezoned from Surface Mining (SM) to UAR-10 following the depletion of those resources. Therefore, Goal 5 is satisfied.

### **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 proposed UGB amendment would allow the subject property to be developed with a middle school. With development of the site, the property will be served by City water and sewer services. The community's air, water and land resources will be assured through enforcement of state and local environmental regulations with development of the property as a school. For these reasons, Goal 6 is satisfied.

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

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

**FINDINGS:** There are no areas identified on the subject property that are subject to flooding or landslide activity. The wildfire hazard for the site is the same as other properties in this geographic area. By providing adequate water through the City's municipal water system to meet the fire flow requirements for a middle school the district will be able to reduce the potential wildfire hazard in this area. Therefore, Goal 7 is satisfied.

### **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.**

**FINDINGS:** This goal is not applicable because the district does not propose a destination resort or other recreational facility. Nevertheless, development of the subject property with a middle school will provide public recreational areas and facilities.

**Goal 9: Economy**

**To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare and prosperity of Oregon's citizens**

**FINDINGS:** The proposed middle school is necessary because of the economic development occurring within the City in general, and in the northwest part of the City in particular, which has brought new families with school-age children into this area. The new school will provide employment opportunities for educators and other employees. Therefore, Goal 9 is satisfied.

**Goal 10: Housing**

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

**FINDINGS:** The proposed UGB expansion is for the purpose of providing land for the construction of a new middle school and not to accommodate needed housing. Therefore, this goal is not applicable 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:** Following approval of the proposed UGB expansion and annexation of the subject property into the Bend City limits, the property will be served by extension of existing water lines along Skyliners Road and existing sewer facilities located at the intersection of Skyline Ranch Road and Lolo Road. The subject property is located near the intersection of Skyliners Road and Skyline Ranch Road, both designated collector streets. These utility and street extensions will allow for the efficient and cost effective extension of needed facilities and services. Therefore, Goal 11 is satisfied.

**Goal 12: Transportation**

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

**FINDINGS:** Goal 12 is implemented by the Transportation Planning Rule (TPR) set forth in OAR 660-012-0060. OAR 660-024-0020(d) exempts properties such as the subject property from application of the TPR in a UGB amendment process because the property is zoned as urbanizable land and will remain within the UAR-10 Zone after its inclusion in the Bend UGB. Because public schools are a use permitted conditionally in that zone, development of the property within the UGB will not allow more vehicle trips than development allowed under the current UAR-10 zoning outside the UGB. For the reasons set forth in this paragraph and in the above findings on the TPR, Goal 12 is satisfied.

**Goal 13: Energy Conservation**

**To conserve energy.**

**Land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles.**

**FINDINGS:** Locating a middle school on the subject property will maximize energy conservation because the school would be near the population to be served in the northwest part of Bend, and would be adjacent to Miller Elementary School and Summit High School which will facilitate the reduction of vehicle trips through the creation of a three-school campus located close to the population to be served. Therefore, Goal 13 is satisfied.

#### **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:** The Goal 14 guidelines have several components, each of which is addressed in the findings below.

#### **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**

**FINDINGS:** The City currently is engaged in a legislative UGB expansion process as required by Goal 14. The 20-year population forecast submitted with the City's most recent UGB expansion proposal estimated the City's population would increase by 38,512 persons from a population of 76,551 in 2007 to a population of 115,063 in 2028. Based on its buildable lands analysis which was part of its most recent UGB expansion proposal, the City identified a need for 192 additional acres for school facilities to accommodate this growth.

- (2) Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection (2).**

**FINDINGS:** The applicant's 2012 update to the 2010 School Facility Plan identified a need for a new middle school. The update indicates this need was identified based on an enrollment forecast of 11.62% growth in middle school enrollment between the 2011-2012 and 2015-2016 school years. The applicant analyzed where the expected growth might occur by reviewing zoning, available vacant lands and lands being considered for UGB expansion. The applicant

determined the highest growth area would be the northwest quadrant of the City as this area showed the greatest potential for future residential growth and has experienced continued residential development.

The record indicates the district's current population is served by four middle schools: Cascade, High Desert, Pilot Butte, and Sky View. A map of these schools' boundaries is included in the record as Exhibit 6 to the applicant's burden of proof. Cascade Middle School is the only middle school in the western part of Bend and is located a considerable distance south of the concentrations of residential development in northwest Bend. In addition, the record indicates Cascade Middle School was designed to hold 800 students but currently serves 892 students. The district's facilities plan states that by the 2017-2018 school year Bend area middle schools will be over capacity by approximately 400 students, and the district's policy is to open a new middle school when, in the aggregate, the present middle schools are overcapacity by 400 students. The current middle school enrollment numbers exceed the 2012 projections and therefore the district determined it needs to open a new middle school by the fall of 2015. The proposed middle school would alleviate overcrowding at Cascade Middle School and accommodate anticipated future population and school enrollment growth in northwest Bend.

**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.**

**FINDINGS:** This provision states the *local government* may specify the characteristics necessary for land to be suitable for an identified need. The district identified a number of specific characteristics required for the siting of a middle school that are set forth in the in its 2010 School Facility Plan. These characteristics are appropriate for the City to utilize in the analysis required for the proposed UGB expansion because they consist of objective factors directly related to school siting. The applicant narrative contains the following analysis demonstrating how and why the district believes the subject property satisfies those characteristics.

**Few busy roads surround the school.** The applicant proposes to construct an extension of NW Crosby Drive to Northwest Crossing Drive to the west of the school site. Initially there will be little to no traffic other than school traffic on the road. The extension of Skyline Ranch Road to the east and north will be designed and constructed by the district to collector standards. Skyliners Road is not currently a high volume road at this location. Following development of the new middle school there is likely to be little to no traffic on this road because it will terminate at the northern boundary of the subject property.

**Few physical barriers such as canals, railroads, or arterial streets.** There are no physical barriers to the construction of a middle school on or near the subject property. The topography that prompted the applicant to propose a realignment of Skyline Ranch Road will not create an impediment to construction of the middle school and the nearest designated arterial street is Mt. Washington Drive which is approximately 2,200 feet east of the subject property.

**Located in residential zones.** The subject property is not located in a residential zone but is located near large areas of residential zoning and development to the north, east and south.

**Adjacent to park or future park where possible.** The subject property is not located adjacent to a park. However, the record indicates there are parks in the nearby Northwest Crossing, including Discovery Park which is slated for development in the near future.

**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 Cascade Middle School. Students would attend the school from areas both within and outside the existing and expanded UGB.

**Good walking access.** The subject property is close to a large area of residential development to the east and south. These residential developments have provided sidewalks and bike paths up to Skyline Ranch Road east of the subject property. The applicant's narrative states the applicant will work with other property owners in the area to extend these facilities to the school site in order to provide good walking and bicycle access to the school.

**Relatively flat topography.** The record indicates the property has some sloping topography. However, the applicant's narrative states that architectural plans for the new middle school can incorporate these natural features to minimize grading.

**Appropriate size approximately 25 acres.** The subject property is 33 acres in size as reconfigured through the lot line adjustment approved by the county.

**Low cost for water, sewer, and sidewalk extensions.** City water connections are located in both Skyliners Road and on the subject property. City sewer facilities already exist in Lolo Drive near the subject property. The sewer and water lines can be placed in the streets prior to paving in order to lower costs because the applicant will be developing the streets around the school.

**At least two vehicular access points.** The subject property is accessible from the east from Northwest Crossing Drive and from the south from NW Elwood Drive. The applicant's narrative states additional access points may be added as the applicant develops the adjacent streets around the school.

**Lower site acquisition cost.** The applicant's narrative states the site is being acquired from Miller Tree Farm LLC at a favorable price compared to the cost of alternative parcels within and outside the UGB.

**Partnership potential with Bend Metro Park and Recreation District.** The applicant's narrative states the proposed school site does not have partnership potential with the Bend Metro Park and Recreation District.

**Zoning allows schools.** Under both the City's and county's zoning ordinances, public schools are allowed as a conditional use in the UAR-10 Zone.

**Shape of site promotes efficient use of site.** The applicant's narrative states the shape of the site is efficient in light of topographical constraints. In addition, the property's configuration eliminates any islands between Summit High School and Miller Elementary School, thus facilitating the creation of a contiguous three-school campus allowing for efficient coordination between activities and facilities.

**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.**

**FINDINGS:** The applicant's narrative states it currently owns vacant or excess land within the UGB consisting of Troy field, a small park adjacent to the district's administrative building in downtown Bend, and 6.9 unused acres at Cascade Middle School. Neither of these parcels is large enough to meet the size requirements for a middle school. In addition, the applicant looked at two other vacant properties within the UGB: (1) a parcel owned by the West Bend Property Co.; and (2) a parcel owned by 4-R Equipment. The applicant determined that neither of these parcels reasonably could accommodate the new middle school for several reasons. The West Bend Property Co. parcel is slated for residential development and as a result its acquisition costs would be prohibitive. The 4-R Equipment parcel would require significant and expensive site grading and is near Cascades Middle School so would not be in the right location to serve the target population in northwest Bend. In addition, neither of these parcels would allow for a three-school campus setting.

Upon finding no suitable middle school sites within the UGB, the applicant searched for parcels outside but near the UGB on the west side of Bend. The district owns a 33.73-acre parcel near Shevlin Park (the "Shevlin Park parcel"). This parcel is the only district-owned property of sufficient size in the northwest quadrant of the City, and therefore the 2012 School Facility Plan update identified the Shevlin Park parcel as the best location for the new middle school. At the time of the 2012 update to the School Facility Plan, the applicant was not aware that the subject property was available. After learning of its availability, the applicant investigated the costs and benefits of pursuing the subject property as compared to the Shevlin Park parcel. The applicant's analysis determined that both properties would require a UGB amendment, but that the Shevlin Park parcel was significantly less suitable for development of a middle school. Its location is much farther from the concentrations of residential development in northwest Bend, thus necessitating increased vehicle miles driven, creating decreased opportunities for alternative forms of transportation, and potentially increasing costs for extending utilities. In addition, the district found significant benefit from the subject property's location next to Miller Elementary School and Summit High School, allowing for development of a contiguous three-school campus where activities and facilities could be coordinated and shared between these institutions.

The district also found the subject property to be more suitable for the new middle school than the Shevlin Park parcel because the subject property was included in the City's previous UGB expansion proposal and is anticipated to be included in any future legislative UGB expansion. Therefore, the applicant reasons, if the subject property were brought into the UGB through a legislative process it is likely to be developed with residential uses, thereby increasing the need for a middle school at this location. Having determined that the subject property would be suitable for the new middle school the district looked at alternative sites outside the UGB to compare with the subject property. That alternative sites analysis is discussed in detail in the findings below under OAR 660-024-0060.

### **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 2012 Update to the 2010 School Facility Plan identified greatly increased school enrollment in the northwest quadrant of Bend and the need for an additional middle school in that area. The applicant attributes this enrollment increase to the build-out of a number of residential subdivisions in the northwest part of Bend. The subject property meets the applicant's need for a new school site both in terms of size and location. A middle school on the subject property adjacent to Miller Elementary School and Summit High School would allow students and families in the nearby neighborhoods to walk or bike to the school.

As discussed in the findings above concerning compliance with ORS 197.298, the UAR-10 zoning of the subject property places it in the "second priority" classification for UGB expansion lands. However, the record indicates this is in fact the highest priority property available for siting the needed new school. The subject property abuts the existing UGB to the east and south. The new school would serve not only students living within the UGB but a number of students living outside the UGB and within the school district's boundaries. These circumstances demonstrate the subject property would allow the efficient accommodation of the identified need for a new middle school, thus satisfying this requirement.

## **(2) Orderly and economic provision of public facilities and services;**

### **FINDINGS:**

**Sewer.** The record indicates there is an existing City gravity sewer main in NW Lolo Drive and Skyline Ranch Road east of the subject property within Northwest Crossing. The applicant extended this sewer main to Miller Elementary School and constructed a gravity sewer service connection. The record indicates there is adequate capacity in these facilities to serve the proposed middle school on the subject property.

**Water.** The record indicates existing 16- and 36-inch City water mains are located in Skyliners Road and a 24-inch water main is located within Skyline Ranch Road east of the subject property. The applicant proposes to coordinate with the City's Water Division for water connections for fire protection and services.

**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 to the City. The police department did not comment on the applicant's proposal, indicating the department has no concerns about providing police protection to a new school on the subject property. After inclusion in the UGB and City limits, fire protection for the middle school would be provided by the Bend Fire Department. In its comments on the applicant's proposal, the Bend Fire Department stated it supports the applicant's proposal and that all fire code requirements will be addressed in the review of applications for land use approval and/or building construction.

**Transportation/Access.** The applicant proposes to improve surrounding streets, including the extension of Northwest Crossing Drive to NW Crosby Drive as a half street improvement and the construction of an extension of Skyline Ranch Road through the subject property to collector standards as specified in the City's design specifications. As discussed in the findings above, as part of the proposed UGB amendment the applicant proposes to change the alignment of Skyline Ranch Road as shown on the City's TSP which currently follows the

section line and UGB boundary. The applicant's narrative states that because of topography north of the subject property could inhibit future extensions of Skyline Ranch Road on its present alignment, the proposed TSP amendment would realign the road to curve west through the subject property to facilitate a more suitable crossing of the topography. The county's TSP will not be affected by this proposed amendment. Any specific road improvements required for development of the middle school will be determined and required during the City's conditional use and site plan review process.

**Other Facilities.** The record indicates telephone, broadband, electricity and natural gas service are available in the area to serve the proposed middle school.

For the foregoing reasons, the proposed UGB expansion for the future middle school and TSP amendments will result in the orderly and economic provision of public facilities and services.

### **(3) Comparative environmental, energy, economic and social consequences;**

#### **FINDINGS:**

**Environmental:** The subject property's topography consists of a moderate slope down to the northwest. The property has a vegetative cover of pine and juniper trees and native brush and grasses. No known rare or endangered species occupy the property, and the property does not possess any natural features such as wetlands, waterways, or rimrock. Inclusion of the subject property within the UGB will allow the new middle school to utilize the City's sewer system rather than relying on an on-site sewage disposal system, which should reduce the risk of adverse environmental consequences associated with sewage disposal.

In 2005 the county rezoned the subject property and part of the surrounding Miller Tree Farm from SM to UAR-10 based on a finding that the mineral and aggregate resources previously on the property had been depleted. Deschutes County Assessor's Records indicate the Miller Tree Farm property contains timber and is receiving forest tax deferral. However, the subject property has limited tree cover and is located in close proximity to existing residential and school development.

Miller Tree Farm LLC, the owner of the subject property, did not comment on the applicant's proposal. However, the applicant's narrative and oral testimony at the public hearing indicates the property owner does not believe the siting of the proposed middle school on the subject property will have negative impacts on forest use on the adjacent property engaged in forest use. The Miller Tree Farm property currently is being managed for thinning for forest health and not for industrial-scale timber production. For these reasons, the applicant's proposed UGB expansion will not have adverse impacts on the environment.

**Energy:** The proposed UGB expansion area is not known to contain energy resources such as known deposits of oil and natural gas or geothermal resources. The availability of other potential energy sources, such as wind and solar, is equal to any other property in the surrounding area. The proposed UGB expansion will result in energy conservation by reducing the overall number of vehicle trips since the property is in a location where students will be able to walk and bike to school. As the residential areas around the site continue to develop, this reduction in trip generation will increase.

**Economic:** The applicant acquired the subject property from Miller Tree Farm LLC at a favorable price compared to other available parcels within and outside the UGB, and therefore the applicant and the Bend community would enjoy positive economic consequences from using the subject property for the proposed middle school. In addition, the middle school would provide employment opportunities.

**Social:** The proposed UGB expansion for the middle school will have positive social consequences by addressing existing and predicted overcrowding at area schools, and by facilitating a three-school campus, thereby improving the quality of education for students and reducing the family and community stress from school overcrowding and multiple vehicle trips to transport different age students.

For the foregoing reasons, the proposed UGB expansion is consistent with consideration of these factors.

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

**FINDINGS:** This factor 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. The subject property is surrounded by land zoned UAR-10 and PF. The record indicates forest uses are occurring on the adjacent land within the Miller Tree Farm but that property is zoned UAR-10. The applicant's proposal is consistent with consideration of these factors.

**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. 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:** The subject property can be efficiently served by public facilities and services.

**Unincorporated Communities**

**FINDINGS:** These provisions of Goal 14 are not applicable to the applicant's proposal 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:** This Goal 14 provision is not applicable to the applicant's proposal because it outlines factors to be considered during a *legislative* process to create or expand a UGB. In addition, as discussed in the findings below, OAR 660-024-0040(3) expressly allows a UGB expansion to address a specific need as is proposed here.

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

## **Division 24, Urban Growth Boundaries**

### **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 City and county applications for a plan amendment to expand the Bend UGB on November 5, 2013, and therefore these rules apply.

### **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:** This rule is not applicable because the applicant is not seeking a goal exception.

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

**FINDINGS:** 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:** Goal 5 is not applicable 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:** As discussed in previous findings, the TPR does not apply to the applicant's proposed UGB expansion because the subject property is zoned UAR-10 and would retain this

zoning after inclusion in the UGB. However, the TPR was addressed for the applicant's proposed amendment to the TSP map alignment of Skyline Ranch Road and NW Crossing Drive. The proposed TSP map amendments comply with the TPR .

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

**FINDINGS:** Goal 15 is not applicable.

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

**FINDINGS:** Goals 16 through 18 are not applicable.

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

**FINDINGS:** 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 tentative UGB expansion map with the application which provided sufficient information from which to determine the UGB location. In addition, the applicant received county approval of a property line adjustment to combine the subject property with the existing Miller Elementary School property. A final map and legal description are contained in Exhibits A and B of the Ordinance.

#### **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.**

**FINDINGS:** This rule contemplates legislative UGB amendments. Nevertheless, the City and county adopted a coordinated population forecast through 2025 in 2004.

#### **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:** This rule contemplates legislative UGB amendments. Subsection (3) of this section, addressed below, expressly allows for need-specific quasi-judicial UGB expansions.

**(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:** This criterion is not applicable because the proposed UGB expansion is not requested as part of a periodic review work program.

**(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 applicant seeks to amend the UGB to accommodate the need for additional public school facilities. Other categories of land need are being evaluated in the City's ongoing larger UGB expansion plan. The applicant chose to pursue a quasi-judicial plan amendment because the need for a new middle school is immediate and the applicant could not wait for the City to complete its legislative UGB expansion analysis of other land needs.

**(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:** This subsection is not applicable because the proposed UGB expansion is not for the purpose of meeting residential land needs.

**(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:** This subsection is not applicable because the requested UGB expansion is based on a specific need for a new middle school and not for employment land.

- (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:** Compliance with Goals 11 and 12 and ORS Chapter 197 was addressed in previous findings.

#### **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 application to address a specific need for land to accommodate a future middle school. The applicant elected to pursue a quasi-judicial plan amendment rather than waiting for completion of the City's ongoing legislative process to amend the Bend UGB. The City's legislative UGB expansion will ensure a 20-year land supply.

- (6) 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.**

**FINDING:** The subject property has a plan designation and zoning of Urban Area Reserve which is not proposed to change with this request.

#### **OAR 660-024-0060, Boundary Location Alternatives Analysis**

- (1) When considering a UGB amendment, a local government 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 designated and zoned UAR. As discussed in previous findings, there is no “first priority” land available for siting the new middle school, and therefore the subject property is classified as “second priority” land under ORS 197.298. However, the subject property is the highest priority land available for the siting of the new middle school. Therefore, the 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:** This subsection expressly authorizes the City and county to expand the Bend UGB to address a specific need with a specific piece of property. The proposed UGB expansion would not satisfy a 20-year need, but the City is engaged in a legislative UGB expansion process that includes an evaluation of land necessary to satisfy the 20-year land need for all land uses.

**(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:** As discussed in previous findings, 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 Bend UGB. The applicant evaluated several alternative sites for the new middle school that the applicant considered to have a reasonable potential to satisfy the need for a new middle school. The applicant demonstrated that among the sites evaluated, the subject property is the most suitable for siting the middle school.

**(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:** Although this provision states the *local government* may specify the characteristics necessary for land to be suitable for an identified need, it is reasonable for the City to consider the characteristics identified by the applicant in its 2010 School Facility Plan for the siting of a new middle school. The applicant’s narrative contains an analysis demonstrating why the



district believes the subject property satisfies those characteristics. That analysis is set forth in findings below.

**(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:** The applicant analyzed a number of properties located both inside and outside the UGB in the northwest part of Bend based on the site characteristics set forth in the 2010 School Facility Plan. Because of the expense to extend water, sewer, and transportation infrastructure to a potential middle school site, all properties that are not within a reasonable distance of existing infrastructure were ruled out. In addition all properties less than 25 acres in size were eliminated. Finally, properties not zoned UAR were eliminated because of the requirement that the applicant focus on the highest priority property available. The remaining properties are identified as follows:

- 3225 N.W. Shevlin Park Road, a 40-acre parcel (Rio Lobo);
- 62600 McClain Drive, a 334-acre parcel (Rio Lobo);
- 62200 Forest Service Road 4606, a 160-acre parcel (Miller Tree Farm);
- Coats Property, a 40-acre parcel (located on Shevlin Park Road adjacent to the applicant's parcel);
- Shevlin Park parcel (owned by the applicant and on Shevlin Park Road);
- West Bend Property Co. (within the UGB);
- 4-R Equipment (within the UGB); and
- the subject property.

A map of these parcels was included in the record as Exhibit 15. Following the public hearing the applicant submitted a supplemental narrative including a matrix showing how each of the eight alternative parcels was evaluated against the identified site characteristics for the new middle school.

The applicant's evaluation can be summarized as follows:

- The Rio Lobo properties are larger than the ideal size and are slated for residential development. As a result, site acquisition costs would be higher. These parcels have limited access and no existing interior roads. These parcels would not allow for a three-school campus setting.
- The portion of the 160-acre Miller Tree Farm parcel that is closest to existing infrastructure -- the southeast portion -- has significant topographical challenges for the siting of a school as the topography is steep and undulating. The more level areas of the parcel are on its western portion and therefore the costs of extending infrastructure would increase dramatically. This parcel also would not allow for a three-school campus setting.
- The Coats and Shevlin Park parcels are distant from concentrations of residential development and the population to be served, and consequently would increase vehicle trips and discourage alternative transportation. These parcels have dense vegetation and removal of the trees would make development more difficult and costly. These parcels also would not allow for a three-school campus setting.

- The West Bend Property Co. parcel is slated for residential development and as a result acquisitions costs would be prohibitive. In addition, this parcel would not allow for a three-school campus setting.
- The 4-R Equipment parcel would require significant and expensive site grading and is near Cascades Middle School so would not be in the right location to serve the target population. In addition, this parcel would not allow for a three-school campus setting.
- The subject property is of adequate but not excessive size, has good access, is close to the population to be served, is close to existing infrastructure, has topography that will not inhibit development of a middle school, can be acquired for a price within the district's budget, and will facilitate the creation of a three-school campus setting.

Based upon the applicant's written and oral testimony, the applicant adequately analyzed alternative sites and justified the selection of the subject property for inclusion in the UGB.

**(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:** As addressed in previous findings, adequate public facilities and services will be available to serve a proposed middle school on the subject property.

**(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:** Water, sewer, and transportation services and facilities are available and will be adequate to serve a new middle school on the subject property with connections and improvements the applicant and/or others will install with development. The applicant will be required at the time of 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:** As discussed in the Goal 14 findings, the City's sewer and water facilities and systems as well as police and fire departments have the capacity to serve a middle school on the subject property.

**(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:** No new major transportation facilities will be required to serve the proposed new middle school. However, construction of new infrastructure and extension of existing infrastructure will be required in conjunction with development of the subject property with a middle school.

For the foregoing reasons, the applicant's proposal complies with all applicable requirements in the administrative rules for expansion of the Bend UGB.

## **COUNTY COMPREHENSIVE PLAN**

### **Deschutes County 2011 Comprehensive Plan**

#### **Chapter 4, Urban Growth Management**

##### **Section 4.2, Urbanization Policies**

**Goal 1. Coordinate with cities, special districts and stakeholders to support urban growth boundaries and urban reserve areas that provide an orderly and efficient transition between urban and rural lands.**

**Policy 4.2.1. Participate in the process initiated by cities in Deschutes County to create and/or amend their urban growth boundaries.**

**FINDINGS:** The City and county coordinated in reviewing this UGB expansion application. Affected agencies and departments were notified of the application and notice was provided to the public for the public hearings. Previous findings addressed the orderly and efficient transition between urban and rural lands for this proposal. Therefore, the proposal satisfies the county's comprehensive plan requirements.

## **IV. CONCLUSIONS:**

Based on the above findings, the proposed UGB expansion and TSP Map amendments meet the applicable Bend Development Code criteria. The amendments are consistent with applicable State land use laws, applicable policies of the Bend Urban Area General Plan, and a public need and benefit is demonstrated.

REVIEWED  
*u*  
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County \*  
Code Title 23, the Deschutes County Comprehensive \*  
Plan, to amend the Urban Growth Boundary for the \*  
City of Bend and Declaring an Emergency. \*  
ORDINANCE NO. 2014-005

WHEREAS, the Bend-La Pine School District applied for a Comprehensive Plan Amendment to amend the Urban Growth Boundary for the City of Bend; and

WHEREAS, after a duly notice hearing, on December 19, 2013 the Deschutes County Hearings Officer approved the comprehensive plan map amendment; and

WHEREAS, because no appeal was filed, the Board of County Commissioners (“Board”) did not initiate review of the application and the decision does not require an exception to the goals or concern lands designated for forest or agricultural use, pursuant to DCC 22.28.030(B), the Board must approve the comprehensive plan designation change to include the subject property inside the Urban Growth Boundary for the City of Bend; now, therefore,

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

Section 1. AMENDMENT. the Deschutes County Comprehensive Plan Map is amended to change the plan designation for certain property described in Exhibit “A” and depicted on the map set forth as Exhibit “B”, with both exhibits attached and incorporated by reference herein.

Section 2. AMENDMENT. DCC 23.01.010, Deschutes County Comprehensive Plan is amended to read as described in Exhibit “C”, attached and incorporated by reference herein, with new language underlined and deleted language setforth in ~~striketrough~~.

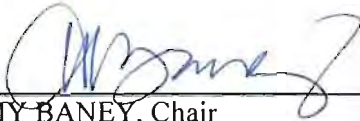
Section 3. FINDINGS. The Board adopts as its findings in support of this decision, the Decision of the Hearings Officer, attached as Exhibit “D” and incorporated by reference herein.

///

Section 4. 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 of February, 2014

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

  
\_\_\_\_\_  
TAMMY BANEY, Chair

- absent -  
\_\_\_\_\_  
ANTHONY DeBONE, Vice Chair

ATTEST:

  
\_\_\_\_\_  
Recording Secretary

  
\_\_\_\_\_  
ALAN UNGER, Commissioner

Date of 1<sup>st</sup> Reading: 26 day of Feb., 2014.

Date of 2<sup>nd</sup> Reading: 26 day of Feb., 2014.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Alan Unger	<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"/>
Anthony DeBone	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> absent

Effective date: 26 day of February, 2014.

EXHIBIT A

A TRACT OF LAND BEING A PORTION OF PARCEL 1, PARTITION PLAT NO. 2007-83,  
RECORDED DECEMBER 27, 2007 IN CABINET 3, PAGE 545, DESCHUTES COUNTY  
PARTITION RECORDS,  
LOCATED IN THE SOUTHEAST ONE-QUARTER (SE1/4) OF SECTION 35, TOWNSHIP 17  
SOUTH,  
RANGE 11 EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON, BEING  
MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Commencing from a found 2 inch iron pipe marking the northeast corner of said SE1/4; thence along the east line of said SE1/4, South  $0^{\circ}13'54''$  West, 89.09 feet to a point of intersection of the northwesterly right-of-way of *Northwest Crossing Drive* and the westerly right-of-way of *Skyline Ranch Road*, being the **True Point of Beginning**; thence leaving said northwesterly right-of-way of *Northwest Crossing Drive*, continuing along said east line of the SE1/4 and westerly right-of-way of *Skyline Ranch Road*, South  $0^{\circ}13'54''$  West, 2033.55 feet to a point of intersection with the northerly right-of-way of *Skyliners Road*; thence leaving said east line of the SE1/4 and the westerly right-of-way of *Skyline Ranch Road*, along said northerly right-of-way of *Skyliners Road*, South  $86^{\circ}58'33''$  West, 650.89 feet to the southeast corner of Parcel 2 of said Partition Plat No. 2007-83; thence leaving said northerly right-of-way of *Skyliners Road*, along the easterly and northerly boundary of said Parcel 2 of said Partition Plat No. 2007-83 the following five (5) courses and three (3) curves:

North  $0^{\circ}00'25''$  East, 115.50 feet to a point of non-curvature;

thence along the arc of a 59.53 foot radius curve to the right, an arc distance of 83.50 feet, through a central angle of  $80^{\circ}21'52''$  (the chord of which bears North  $04^{\circ}35'19''$  West, 76.82 feet) to a point of reverse curvature;

thence along the arc of a 11.00 foot radius curve to the left, an arc distance of 6.83 feet, through a central angle of  $35^{\circ}34'16''$  (the chord of which bears North  $17^{\circ}47'52''$  East, 6.72 feet) to a point of tangency;

thence North  $0^{\circ}00'25''$  East, 195.13 feet;

thence South  $89^{\circ}59'35''$  East, 60.00 feet;

thence North  $0^{\circ}00'25''$  East, 337.80 feet;

thence North  $89^{\circ}59'35''$  West, 156.68 feet to a point of tangent curvature;

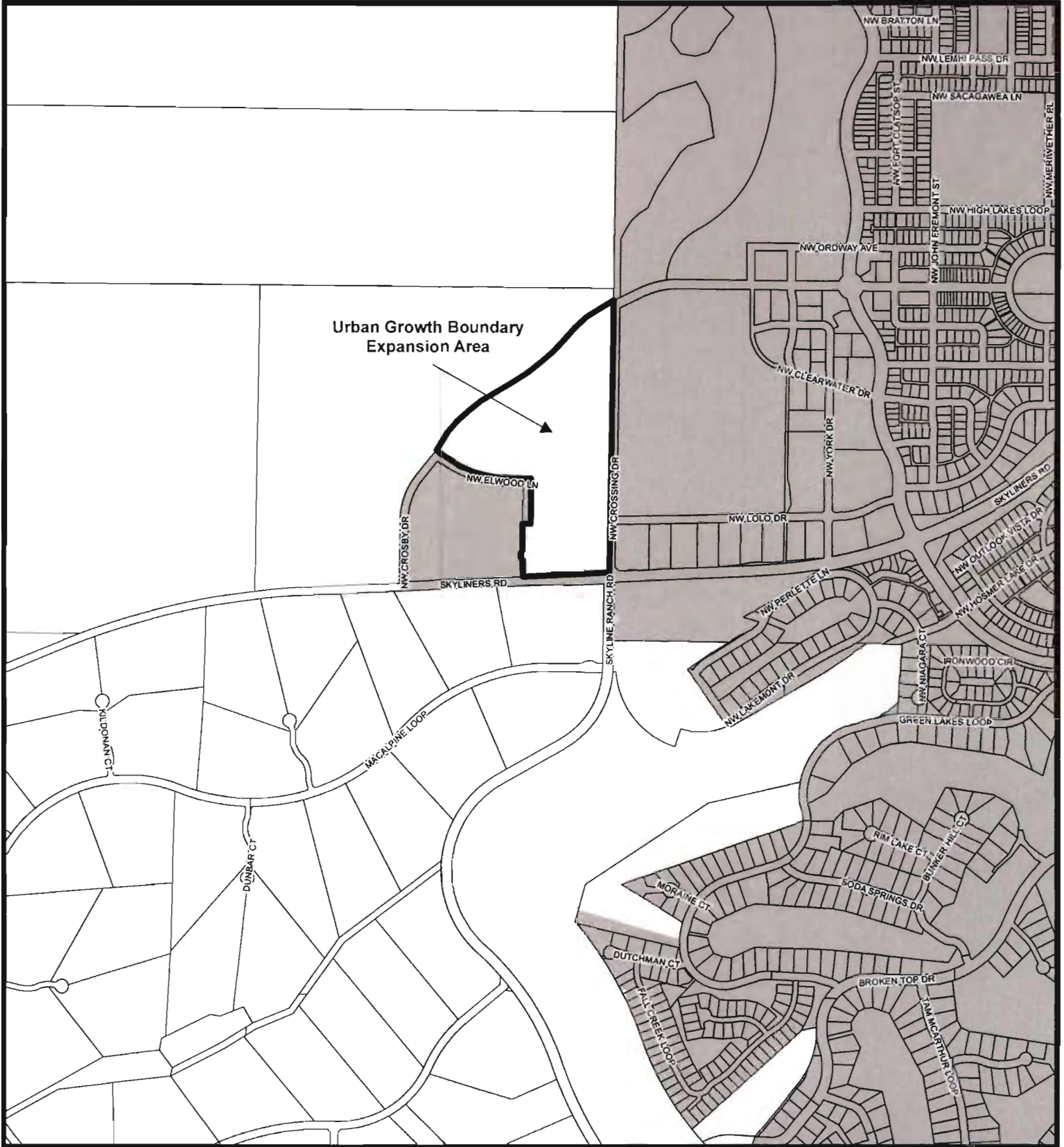
thence along the arc of a 860.00 foot radius curve to the right, an arc distance of 607.39 feet, through a central angle of  $40^{\circ}27'57''$  (the chord of which bears North  $69^{\circ}45'38''$  West, 594.84 feet) to a point of non-tangency;

thence leaving said boundaries of Parcel 2, North 49°21'40" West, 5.00 feet to a point of non-tangent curvature; thence along the arc of a 1650.00 foot radius curve to the right, an arc distance of 322.18

feet, through a central angle of 11°11'15" (the chord of which bears North 44°04'02" East, 321.67 feet) to a point of tangency curvature; thence North 49°39'40" East, 1207.09 feet to a point of tangent curvature; thence along the arc of a 836.00 foot radius curve to the right, an arc distance of 211.85 feet, through a central angle of 14°31'09" (the chord of which bears North 56°55'14" East, 211.28 feet) to the **True Point of Beginning**.

This description contains 33.82 acres, more or less.

Herein bearings are based upon the Central Oregon Coordinate System.





# COMPREHENSIVE PLAN MAP

File No. PA-13-04

Exhibit "B"  
to Ordinance No. 2014-005

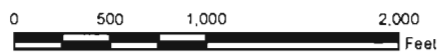
## Legend

-  Proposed UGB Expansion Area
-  City of Bend Urban Growth Boundary



The information on this map was derived from digital databases of Deschutes County, OR. The user assumes all responsibility for errors, omissions, or omissions in the original data or the computerized version. There are no warranties, express or implied, including the warranty of merchantability or fitness for a particular purpose, including any such purpose. However, no liability of any kind will be accepted.

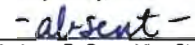
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January 27, 2014

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

  
Tammy Boney, Chair

  
Anthony DeBone, Vice Chair

  
Alan Unger, Commissioner

  
ATTEST: Recording Secretary

Dated this 26 day of February, 2014  
Effective Date: February 26, 2014



## EXHIBIT C

### Chapter 23.01 COMPREHENSIVE PLAN

#### 23.01.010. Introduction.

- A. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2011-003 and found on the Deschutes County Community Development Department website, is incorporated by reference herein.
- B. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2011-027, are incorporated by reference herein.
- C. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-005, are incorporated by reference herein.
- D. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-012, are incorporated by reference herein.
- E. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-016, are incorporated by reference herein.
- F. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-002, are incorporated by reference herein.
- G. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-009, are incorporated by reference herein.
- H. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-012, are incorporated by reference herein.
- I. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-007, are incorporated by reference herein.
- J. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-005, are incorporated by reference herein.

(Ord. 2014-005 §2; Ord. 2013-012 §2, 2013; Ord. 2013-009 §2, 2013; Ord. 2013-007 §1, 2013; Ord. 2013-002 §1, 2013; Ord. 2013-001 §1, 2013; Ord. 2012-016 §1, 2012; Ord. 2012-013 §1, 2012; Ord. 2012-005 §1, 2012; Ord. 2011-027 §1 through 12, 2011; Ord. 2011-017 repealed; Ord. 2011-003 §3, 2011)

Click here to be directed to the Comprehensive Plan (<http://www.deschutes.org/compplan>)

**DECISION OF DESCHUTES COUNTY HEARINGS OFFICER**

**FILE NUMBER:** PA-13-4

**APPLICANT:** Bend-La Pine Schools  
c/o Bryant Lovlien & Jarvis, PC  
591 S.W. Mill View Way  
Bend, Oregon 97701

**PROPERTY OWNER:** Miller Tree Farm, LLC  
110 N.E. Greenwood Avenue  
Bend, Oregon 97701

**APPLICANT'S ATTORNEY:** Sharon R Smith  
Bryant Lovlien & Jarvis, PC  
591 S.W. Mill View Way  
Bend, Oregon 97701

**REQUEST:** The applicant requests approval of a plan amendment to expand the Bend UGB to include a 33-acre parcel on the northwest side of Bend for a future middle school.

**STAFF REVIEWER:** Matthew Martin, AICP, Associate Planner

**HEARING DATE:** December 19, 2013

**RECORD CLOSED:** December 20, 2013

**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 2011 Comprehensive Plan**  
1. Chapter 4, Urban Growth Management  
\* Section 4.2, Urbanization Policies

**C. Bend Area General Plan**

**D. Oregon Revised Statutes**  
1. Chapter 195, Local Government Planning Coordination  
\* ORS 195.110, School Facilities Plan for Large School Districts  
2. Chapter 197, Comprehensive Land Use Planning Coordination  
\* ORS 197.296, Factors to Establish Sufficiency of Buildable Lands Within Urban Growth Boundary  
\* ORS 197.298, Priority of Lands

- E. **Oregon Administrative Rules (OAR) Chapter 660, Department of Land Conservation and Development**
  - 1. **Division 15, Oregon Statewide Planning Goals and Guidelines**
    - \* OAR 660-015-0000, Goals and Guidelines 1 Through 19
  - 2. **Division 24, Urban Growth Boundaries**
    - \* OAR 660-024-0000, Purpose and Applicability
    - \* OAR 660-024-0020, Adoption or Amendment of a UGB
    - \* OAR 660-024-0030, Population Forecasts
    - \* OAR 660-024-0040, Land Need
    - \* OAR 660-024-0050, Land Inventory and Response to Deficiency
    - \* OAR 660-024-0060, Boundary Location Alternatives Analysis

II. **FINDINGS OF FACT:**

- A. **Location:** The subject property has an assigned address of 19100 Skyliners Road and is located on the north side of Skyliners Road west of Northwest Crossing Drive on the western edge of the Bend Urban Growth Boundary (UGB). The property is further identified as Tax Lot 400 on Deschutes County Assessor's map 17-11-35D.
- B. **Zoning and Plan Designation:** The subject property is zoned and designated Urban Area Reserve (UAR10) on the Deschutes County Comprehensive Plan and zoning map.
- C. **Site Description:** The subject property consists of approximately 33 acres in the southeast quadrant of a larger parcel owned by Miller Tree Farm LLC. The county approved a property line adjustment (LL-13-50) to remove the subject property from the larger parcel and to add it to the adjacent parcel owned and operated by Bend-La Pine Schools ("district" or "applicant") and on which Miller Elementary School is located. The subject property is vacant, slopes moderately down to the northwest, and has a vegetative cover of ponderosa pine and juniper trees and native ground cover. The subject property is bounded on the east by Northwest Crossing Drive, a designated collector street along the current UGB boundary. Skyliners Road, also a designated collector street, abuts the property to the south. The applicant proposes to extend the east/west alignment of Northwest Crossing Drive along the northwest boundary of the subject property with right-of-way to be included in the UGB expansion area.
- D. **Surrounding Zoning and Land Uses:** The parcel to the west and north is designated and zoned UAR, located outside the UGB, and currently engaged in forest use. Parcels to the east and south are owned by the district and are developed with Miller Elementary School and Summit High School. These parcels are located inside the Bend UGB and are zoned Public Facilities (PF). Parcels farther to the east are located in Northwest Crossing and are developed with mixture of residential and commercial uses. Parcels to the south across Skyliners Road are located in The Highlands at Broken Top and Tetherow Destination Resort and are developed primarily with residential uses. The property to the southwest was recently included in the UGB and is currently being developed with a new Unitarian Universalist Fellowship Church.
- E. **Procedural History:** In 2005 this Hearings Officer approved a plan amendment from Industrial Reserve to UAR and a zone change from Surface Mining (SM) to UAR-10 for a 133-acre parcel that was part of the Miller Tree Farm and included the subject property (PA-04-9, ZC-04-7). That approval was based on a finding that the mineral and

aggregate resources on the property had been depleted. In 2007 this Hearings Officer approved a plan amendment to expand the Bend UGB to include a 15-acre portion of the Miller Tree Farm parcel rezoned in 2005 for a future elementary school, now known as Miller Elementary (PA-07-7). That approval was based in large part on the district's 2005 School Facility Plan which showed the need for a new elementary school to serve the population in northwest Bend. The plan amendment was approved by the Deschutes County Board of Commissioners (board) by Ordinance No. 2007-024, and the property was subsequently annexed to the city.

In 2010 the district completed a new School Facility Plan. The Overview and Recommendations section of the plan is included in the record as Exhibit 1 to the district's burden of proof. The purpose of the 2010 plan was to identify and plan for future facility needs. In 2012 the district completed an update to the 2010 plan to reflect changing needs based on more current data. The 2012 update, included in the record as Exhibit 2 to the district's burden of proof, identifies the need for a new middle school in the northwest part of Bend by the 2017-2018 school year.

In May of 2013 district voters approved a bond measure for the construction of a new middle school and a new elementary school as well as for other construction projects throughout the district's facilities. The district conducted a search for sites within the UGB that would be adequate for the new elementary and middle schools. The district found a suitable site within the UGB for the elementary school but did not locate any suitable sites within the UGB for the middle school. Thereafter the district searched for a suitable middle school site outside the UGB. Through that search the district identified the subject property.

The city is in the process of expanding its UGB through a legislative process and included the subject property in its proposed UGB expansion area. The proposed expansion was approved by the Bend City Council (council) in 2008 but that approval was remanded by the Land Conservation and Development Commission (LCDC) for further work. The record indicates the city does not expect to complete the remand process until 2016. As a result the district elected to pursue a quasi-judicial site-specific plan amendment to include the subject property.

The applicant held a public meeting on its proposed UGB amendment on November 4, 2013. The record indicates notice of this meeting was mailed to the owners of fourteen properties. On November 5, 2013 the applicant submitted this application and a companion application to the city. The county accepted this application as complete on December 5, 2013. A joint city-county public hearing on the application was held on December 19, 2013. At the hearing, the Hearings Officer received testimony and evidence and left the written record open through December 26, 2013 to allow the applicant to submit additional evidence. The applicant waived the submission of final argument pursuant to ORS 197.763. The applicant submitted an additional document on December 20, 2013 and the record closed on that date. Because the application requests a plan amendment it is not subject to the 150-day period for issuance of a final local land use decision under ORS 215.478.

- F. Proposal:** The applicant requests approval of an amendment to the county's and city's comprehensive plans to expand the Bend UGB to include the subject property for a new middle school to serve the population in northwest Bend. The applicant also requests approval of an amendment to the city's Transportation System Plan (TSP) to realign the

segment of Skyline Ranch Road that would run through the subject property and to extend Northwest Crossing Drive along the north and west boundaries of the subject property to connect with the new Skyline Ranch Road alignment. However, Because these alignments are not part of the county's TSP they are not addressed in this decision.

- G. Public/Private Agency Notice:** The Planning Division sent notice of the applicant's proposal to a number of public and private agencies and received responses from: the Deschutes County Environmental Health Division and Senior Transportation Planner; and the Bend Fire Department. Those responses are set forth verbatim at pages 3-4 of the staff report and are included in the record. The following agencies did not respond or submitted a "no comment" response: the Deschutes County Building Safety Division, Property Address Coordinator and Road Department; the Bend Engineering and Planning Divisions and Department of Public Works; Bend Metro Park and Recreation District; and the Department of Land Conservation and Development (DLCDD).
- 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 land use action sign. As of the date the record in this matter closed, the county had received no comments from the public. No members of the public testified at the public hearing.
- I. Lot of Record:** The subject property is a legal lot of record having been created as Parcel 1 of Partition Plat 2007-83.

**III. CONCLUSIONS OF LAW:**

**COUNTY CODE**

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

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

**a. Section 22.28.030, Decision on Plan Amendments and Zone Changes**

\* \* \*

- 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:** Land use actions adjacent to the Bend UGB and within the UAR Zone are governed by a 1998 joint management agreement adopted by the city and county. The agreement provides that the city and county will cooperate in planning for the UAR Zone and in processing UGB expansions. Under the agreement, quasi-judicial applications are reviewed by a hearings

officer at both the city and county and the review can be conducted jointly. Pursuant to Section 22.28.030, if a proposed UGB expansion is approved by the hearings officer and the decision is not appealed, the board adopts the decision and implementing ordinances to enact the UGB expansion. The city's code requires that approval of a quasi-judicial UGB amendment be effected by an ordinance approved by the council at a public meeting. In addition, a UGB amendment must be acknowledged by LCDC.

In order to approve the requested UGB amendment the Hearings Officer must find that the proposal complies with the applicable approval criteria in state statutes and administrative rules including the statewide land use planning goals and guidelines, the county's and city's comprehensive plans, and the county's land use procedures ordinance. Compliance with the applicable approval criteria is discussed in the findings below.

## **STATUTES**

### **B. Oregon Revised Statutes (ORS)**

#### **1. Chapter 197, Comprehensive Land Use Planning Coordination**

##### **a. 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:** As noted in findings below concerning compliance with the administrative rules, Goal 14 requires the proposed UGB expansion to be consistent with ORS 197.298. The subject property is designated UAR on the county's comprehensive plan map. However, this designation was not established via ORS 195.145 and therefore is not "first priority" land. The record indicates the city also does not have any "first priority" land available for the proposed need-specific UGB expansion. Therefore, the subject property is considered "second priority" land which is the highest priority land available. For these reasons, the Hearings Officer finds the applicant's proposal satisfies the requirements of this statute.

##### **b. ORS 197.296, Factors to Establish Sufficiency of Buildable Lands Within Urban Growth Boundary**

- (1) (a) The provisions of this section apply to metropolitan service district regional framework plans and local government comprehensive plans for lands within the urban growth boundary of a city that is located outside of a metropolitan service district and has a population of 25,000 or more.
- (b) The Land Conservation and Development Commission may establish a set of factors under which additional cities are subject to the provisions of this section. In establishing the set of factors required under this paragraph, the commission shall consider the size of the city, the rate of population growth of the city or the proximity of the city to another city with a population of 25,000 or more or to a metropolitan service district.
- (2) At periodic review pursuant to ORS 197.628 to 197.651 or at any other legislative review of the comprehensive plan or regional plan that concerns the urban growth boundary and requires the application of a statewide planning goal relating to buildable lands for residential use, a local government shall demonstrate that its comprehensive plan or regional plan provides sufficient buildable lands within the urban growth boundary established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years. The 20-year period shall commence on the date initially scheduled for completion of the periodic or legislative review.  
\* \* \*

**FINDINGS:** The Hearings Officer finds analysis of the applicant's proposal does not require application of Goal 10 relating to buildable lands for residential use because no residential development is contemplated or proposed by this application and the analysis is not for the purpose of periodic review. The provisions of OAR 660-024-0040(3), discussed in the findings below, expressly allow a UGB amendment in consideration of one category of land need (public facilities) without simultaneous review and amendment in consideration of other categories of land need (e.g., housing/residential use).

## 2. Chapter 195, Local Government Planning Coordination

### a. ORS 195.110, School Facilities Plan for Large School Districts

- (1) As used in this section, "large school district" means a school district that has an enrollment of over 2,500 students based on certified enrollment numbers submitted to the Department of Education during the first quarter of each new school year.
- (2) A city or county containing a large school district shall:

- (a) Include as an element of its comprehensive plan a school facility plan prepared by the district in consultation with the affected city or county.
  - (b) Initiate planning activities with a school district to accomplish planning as required under ORS 195.020.
- (3) The provisions of subsection (2)(a) of this section do not apply to a city or a county that contains less than 10 percent of the total population of the large school district.
- (4) The large school district shall select a representative to meet and confer with a representative of the city or county, as described in subsection (2)(b) of this section, to accomplish the planning required by ORS 195.020 and shall notify the city or county of the selected representative. The city or county shall provide the facilities and set the time for the planning activities. The representatives shall meet at least twice each year, unless all representatives agree in writing to another schedule, and make a written summary of issues discussed and proposed actions.
- (5) (a) The school facility plan must cover a period of at least 10 years and must include, but need not be limited to, the following elements:
  - (A) Population projections by school age group.
  - (B) Identification by the city or county and by the large school district of desirable school sites.
  - (C) Descriptions of physical improvements needed in existing schools to meet the minimum standards of the large school district.
  - (D) Financial plans to meet school facility needs, including an analysis of available tools to ensure facility needs are met.
  - (E) An analysis of:
    - (i) The alternatives to new school construction and major renovation; and
    - (ii) Measures to increase the efficient use of school sites including, but not limited to, multiple-story buildings and multipurpose use of sites.
  - (F) Ten-year capital improvement plans.



- (G) Site acquisition schedules and programs.**

  - (b) Based on the elements described in paragraph (a) of this subsection and applicable laws and rules, the school facility plan must also include an analysis of the land required for the 10-year period covered by the plan that is suitable, as a permitted or conditional use, for school facilities inside the urban growth boundary.**
- (6) If a large school district determines that there is an inadequate supply of suitable land for school facilities for the 10-year period covered by the school facility plan, the city or county, or both, and the large school district shall cooperate in identifying land for school facilities and take necessary actions, including, but not limited to, adopting appropriate zoning, aggregating existing lots or parcels in separate ownership, adding one or more sites designated for school facilities to an urban growth boundary, or petitioning a metropolitan service district to add one or more sites designated for school facilities to an urban growth boundary pursuant to applicable law.**
- (7) The school facility plan shall provide for the integration of existing city or county land dedication requirements with the needs of the large school district.**
- (8) The large school district shall:**

  - (a) Identify in the school facility plan school facility needs based on population growth projections and land use designations contained in the city or county comprehensive plan; and**
  - (b) Update the school facility plan during periodic review or more frequently by mutual agreement between the large school district and the affected city or county.**
- (9) (a) In the school facility plan, the district school board of a large school district may adopt objective criteria to be used by an affected city or county to determine whether adequate capacity exists to accommodate projected development. Before the adoption of the criteria, the large school district shall confer with the affected cities and counties and agree, to the extent possible, on the appropriate criteria. After a large school district formally adopts criteria for the capacity of school facilities, an affected city or county shall accept those criteria as its own for purposes of evaluating applications for a comprehensive plan amendment or for a residential land use regulation amendment.**

- (b) A city or county shall provide notice to an affected large school district when considering a plan or land use regulation amendment that significantly impacts school capacity. If the large school district requests, the city or county shall implement a coordinated process with the district to identify potential school sites and facilities to address the projected impacts.
- (10) A school district that is not a large school district may adopt a school facility plan as described in this section in consultation with an affected city or county.
- (11) The capacity of a school facility is not the basis for a development moratorium under ORS 197.505 to 197.540.
- (12) This section does not confer any power to a school district to declare a building moratorium.
- (13) A city or county may deny an application for residential development based on a lack of school capacity if:
  - (a) The issue is raised by the school district;
  - (b) The lack of school capacity is based on a school facility plan formally adopted under this section; and
  - (c) The city or county has considered options to address school capacity.

**FINDINGS:** The record indicates the applicant has an enrollment of well over 2,500 students and therefore the applicant is a large school district under ORS 195.110(1). As discussed in the Findings of Fact above, the applicant completed the requisite School Facility Plan in 2010 and completed an update to the plan in 2012. The record indicates the analysis in the plan and update determined there is an inadequate supply of suitable land for school facilities for the 10-year period covered by the plan, even when considering re-development of existing properties to add additional floors. Therefore, the county can bring a site designated for school use into the UGB pursuant to ORS 195.110(6).

**ADMINISTRATIVE RULES**

- C. Oregon Administrative Rules (OAR) Chapter 660, Land Conservation and Development Commission
  - 1. Division 15, State-Wide Planning Goals and Guidelines
    - a. OAR 660-015-0000, State-Wide Planning Goals and Guidelines #1 Through #19

### **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:** As part of the UGB expansion application process, the county has provided notice of the applicant's proposal to affected public and private agencies and to surrounding property owners. In addition, the county and city held a joint public hearing before the Hearings Officer, and the board and council will consider the proposed UGB expansion at public hearings/meetings. Therefore, the Hearings Officer finds Goal 1 is satisfied.

### **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 applicant submitted county and city applications for a plan amendment/UGB expansion accompanied by original and supplement burden of proof statements and supporting documents. In addition, the applicant submitted oral and written testimony at the public hearing. The Hearings Officer finds the applicant's materials and testimony provide a sufficient factual base to enable both jurisdictions to make an informed decision regarding the proposed expansion. Therefore, I find Goal 2 is satisfied.

### **Goal 3: Agricultural Lands**

**To preserve and maintain agricultural lands.**

**Agricultural lands shall be preserved and maintained for farm use consistent with existing and future needs for agriculture products, forest and open space and with the state's agriculture land use policy expressed in ORS 215.243 and 215.700.**

### **Goal 4: Forest 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 these two goals are not applicable to the applicant's proposal because the subject property is not identified as either agricultural or forest land on the county comprehensive plan map.

### **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:** Goal 5 resources are identified and inventoried in the county's acknowledged comprehensive plan. The plan shows there are no known Goal 5 resources on the subject

property. As discussed in the Findings of Fact above, the Miller Tree Farm including the subject property previously was identified as having Goal 5 resources consisting of mineral and aggregate resources. However, the property was rezoned from Surface Mining (SM) to UAR-10 following the depletion of those resources. Therefore, the Hearings Officer finds Goal 5 is satisfied.

#### **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 proposed UGB amendment would allow the subject property to be developed with a middle school. The record indicates that upon approval of the proposed UGB expansion and annexation of the subject property into the Bend city limits the property will be served by city water and sewer service. The record also indicates the city believes it has the capacity to provide water and sewer service to the property. The staff report states, and the Hearings Officer concurs, that the community's air, water and land resources will be assured through enforcement of state and local environmental regulations with development of the property. For these reasons, I find Goal 6 is satisfied.

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

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

**FINDINGS:** There are no areas identified on the subject property that are subject to flooding or landslide activity. The wildfire hazard for the site is the same as that for other properties in this geographic area. The Hearings Officer finds that by providing adequate water through the city's municipal water system to meet the fire flow requirements for a middle school the district will be able to reduce the potential wildfire hazard in this area. Therefore, I find Goal 7 is satisfied.

#### **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.**

**FINDINGS:** The Hearings Officer finds this goal is not applicable because the district does not propose a destination resort or other recreational facility. Nevertheless, the staff report states, and I agree, that development of the subject property with a middle school will provide public recreational areas and facilities on school property.

#### **Goal 9: Economy**

**To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare and prosperity of Oregon's citizens**

**FINDINGS:** The applicant's burden of proof states the proposed middle school is necessary because of the economic development occurring within the city in general, and in the northwest part of the city in particular, that has brought new families with school-age children into this area. In addition, the Hearings Officer finds the new school will provide employment opportunities for educators and other employees. Therefore, I find Goal 9 is satisfied.

## **Goal 10: Housing**

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

**FINDINGS:** The proposed UGB expansion is for the purpose of providing land needed for the construction of a new middle school and not to accommodate needed housing. Therefore, the Hearings Officer finds this goal is not applicable 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:** The record indicates that following approval of the proposed UGB expansion and annexation of the subject property into the Bend city limits, the property will be served by extension of existing city water lines along Skyliners Road and existing city sewer facilities located at the intersection of Skyline Ranch Road and Lolo Road. The city believes it has the capacity to provide water and sewer service to a middle school on the subject property. The subject property is located near the intersection of Skyliners Road and Skyline Ranch Road, both designated collector streets. The staff report states, and the Hearings Officer agrees, that these extensions will allow for the efficient and cost effective extension of needed facilities and services. Therefore, I find Goal 11 is satisfied.

## **Goal 12: Transportation**

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

**FINDINGS:** Goal 12 is implemented by the Transportation Planning Rule (TPR) set forth in OAR 660-012-0060. However, as discussed in the findings below, OAR 660-024-0020(d) exempts properties such as the subject property from application of the TPR because the property is zoned as urbanizable land. Because the subject property will remain within the UAR-10 Zone after its inclusion in the Bend UGB, and public schools are a use permitted conditionally in that zone, development of the property within the UGB will not allow more vehicle trips than development allowed under the current UAR-10 zoning outside the UGB. For these reasons, the Hearings Officer finds Goal 12 is satisfied.<sup>1</sup>

## **Goal 13: Energy Conservation**

**To conserve energy.**

**Land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles.**

**FINDINGS:** The Hearings Officer finds locating a middle school on the subject property will maximize energy conservation because the school would be near the population to be served in the northwest part of Bend, and would be adjacent to Miller Elementary School and Summit

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<sup>1</sup> In his comments on the applicant's proposal, Senior Transportation Planner Peter Russell stated that under Section 17.16.115(C)(4)(a) of the county code, no traffic analysis is required for any use that will generate less than 50 new weekday trips, and inasmuch as the amendment to the UGB will not on its own generate any additional traffic, no traffic study is required.

High School which will facilitate the reduction of vehicle trips through the creation of a three-school campus close to the population to be served. Therefore, I find Goal 13 is satisfied.

#### **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:** The Goal 14 guidelines have several components, each of which is addressed in the findings below.

#### **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 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.**

**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. (Underscored emphasis added.)**

## **FINDINGS:**

- (1) Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments.**

As discussed in the Findings of Fact above, the city currently is engaged in a legislative UGB expansion process as required by Goal 14. The record indicates the 20-year population forecast submitted with the city's most recent UGB expansion proposal estimated the city's population would increase by 38,512 persons from a population of 76,551 in 2007 to a population of 115,063 in 2028. Based on its buildable lands analysis which was part of its most recent UGB expansion proposal, the city identified a need for 192 additional acres for school facilities to accommodate this growth.

- (2) Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection (2).** (Underscored emphasis added.)

As also discussed above, the applicant's 2012 update to the 2010 School Facility Plan identified a need for a new middle school. The update indicates this need was identified based on a forecast of 11.62% growth in middle school enrollment between the 2011-2012 and 2015-2016 school years. The applicant's burden of proof states it analyzed where the expected growth might occur by reviewing zoning, available vacant lands and lands being considered for UGB expansion. Based on this information, the applicant determined the highest growth area would be the northwest quadrant of the city as this area showed the greatest potential for future residential growth and has experienced continued residential development.

The record indicates the district's current population is served by four middle schools: Cascade, High Desert, Pilot Butte, and Sky View. A boundary map for these schools is included in the record as Exhibit 6 to the applicant's burden of proof. Cascade Middle School is the only middle school in the western part of Bend and is located a considerable distance south of the concentrations of residential development in northwest Bend. In addition, the record indicates Cascade Middle School was designed to hold 800 students but currently serves 892 students.

The district's 2012 update to its 2010 School Facility Plan indicates that by the 2017-2018 school year Bend area middle schools will be over capacity by approximately 400 students, and the district's policy is to open a new middle school when, in the aggregate, the present middle schools are overcapacity by 400 students. The applicant's burden of proof states current middle school enrollment numbers exceed the 2012 projections and therefore the district determined it needs to open a new middle school by the fall of 2015. The proposed middle school would alleviate overcrowding at Cascade Middle School and accommodate anticipated future growth in northwest Bend.

**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.**

This provision states the *local government* may specify the characteristics necessary for land to be suitable for a particular need. The district identified a number of specific characteristics required for the siting of a middle school that are set forth in the in its 2010 School Facility Plan. The Hearings Officer finds these characteristics are appropriate for the county to utilize in the analysis required for the proposed UGB expansion because they consist of objective factors directly related to meeting the school siting need. The applicant's burden of proof contains the following analysis demonstrating how and why the district believes the subject property meets those characteristics.

**Few busy roads surround the school.** The applicant proposes to construct an extension of N.W. Crosby Drive to Northwest Crossing Drive to the west of the school site. Initially there will be little to no traffic other than school traffic on the road. The extension of Skyline Ranch Road to the east and north will be designed and constructed by the district to collector street standards. Skyliners Road is not a high volume road at this location. In addition, at least initially there will be little to no traffic on this road because it will terminate at the northern boundary of the subject property.

**Few physical barriers such as canals, railroads, or arterial streets.** There are no physical barriers to the development of the middle school on or near the subject property. The applicant's burden of proof states the topography necessitating a realignment of Skyline Ranch Road is not such that it would impede construction of school facilities on the site. And the nearest designated arterial street is Mt. Washington Drive which is approximately 2,200 feet east of the subject property.

**Located in residential zones.** The subject property is not located in a residential zone but is located near large areas of residential zoning and development to the east and south.

**Adjacent to park or future park where possible.** The subject property is not located adjacent to a park. However, the record indicates there are parks in the nearby Northwest Crossing.

**High student densities.** The rapid development of surrounding residential properties has created high student densities on the west side of Bend and near the school, as evidenced by the current overcrowding at Cascade Middle School. 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 east and south. These residential developments have provided sidewalks and bike paths up to Skyline Ranch Road east of the subject property. The applicant's burden of proof states the applicant will work with other property owners in the area to extend these facilities to the school site in order to provide good walking and bicycle access to the school.

**Relatively flat topography.** The record indicates the property has some sloping topography. However, the applicant's burden of proof states architectural plans can incorporate these natural features to minimize grading.

**Appropriate size approximately 25 acres.** The subject property is approximately 33 acres in size as reconfigured through the lot line adjustment approved by the county.

**Low cost for water, sewer, and sidewalk extensions.** City water facilities to which the subject property can be connected are located in both Skyliners Road and on the subject property. City sewer facilities already exist in Lolo Drive near the subject property and can be extended



thereto. The sewer and water lines can be placed in the streets prior to paving in order to lower costs because the applicant will be developing the streets around the school.

**At least two vehicular access points.** The subject property is accessible from the east from Northwest Crossing Drive and from the south from N.W. Elwood Drive. The applicant's burden of proof states additional access points may be added as the applicant develops the adjacent streets around the school.

**Lower site acquisition cost.** The applicant's burden of proof states the site is being acquired from Miller Tree Farm LLC at a favorable price compared to the cost of other available parcels within and outside the UGB.

**Partnership potential with Bend Metro Park and Recreation District.** The applicant's burden of proof states the proposed school site does not have partnership potential with the Bend Metro Park and Recreation District.

**Zoning allows schools.** Under both the county's and city's zoning ordinances, public schools are allowed as a conditional use in the UAR-10 Zone.

**Shape of site promotes efficient use of site.** The applicant's burden of proof states the shape of the site will allow efficient use for a middle school because there is room on the site to construct school facilities and streets consistent with topographical constraints. In addition, the property's configuration eliminates any islands between Summit High School and Miller Elementary School, thus facilitating the creation of a contiguous three-school campus allowing for efficient coordination between activities and facilities.

**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.**

The applicant's burden of proof states it currently owns vacant or excess land within the UGB consisting of Troy field, a small park adjacent to the district's administrative building in downtown Bend, and 6.9 unused acres at Cascade Middle School. Neither of these parcels is large enough to meet the size requirements for a middle school. In addition, the applicant's burden of proof states it looked at two other vacant properties within the UGB: (1) a parcel owned by the West Bend Property Co.; and (2) a parcel owned by 4-R Equipment. The applicant determined that neither of these parcels reasonably could accommodate the new middle school for several reasons. The West Bend Property Co. parcel is slated for residential development and as a result acquisition costs would be prohibitive. The 4-R Equipment parcel would require significant and expensive site grading and is near Cascades Middle School so would not be in the right location to serve the target population in northwest Bend. In addition, neither of these parcels would allow for a three-school campus setting.

Upon finding no suitable middle school sites within the UGB, the applicant searched for parcels outside but near the UGB on the west side of Bend. The district owns a 33.73-acre parcel near Shevlin Park (the "Shevlin Park parcel"). This parcel is the only district-owned property of sufficient size in the northwest quadrant of the city, and therefore the 2012 School Facility Plan update identified the Shevlin Park parcel as the best location for the new middle school.

The applicant's burden of proof states that at the time of the 2012 update to the School Facility Plan, the applicant was not aware that the subject property was available and that after learning

of its availability the applicant investigated the costs and benefits of pursuing the subject property as compared to the Shevlin Park parcel. The applicant's analysis determined that both properties would require a UGB amendment, but that the Shevlin Park parcel was significantly less suitable for development of a middle school. That is because of its location much farther from the concentrations of residential development in northwest Bend, thus necessitating increased vehicle miles driven, causing decreased opportunities for alternative forms of transportation, and potentially increasing costs for extending utilities. In addition, the district found significant benefit from the subject property's location next to Miller Elementary School and Summit High School, allowing for development of a contiguous three-school campus where activities and facilities could be coordinated and shared among these institutions.

The applicant's burden of proof also states the district found the subject property to be more suitable for the new middle school than the Shevlin Park parcel because the subject property was included in the city's previous UGB expansion proposal and is anticipated to be included in any future legislative UGB expansion. Therefore, the applicant reasons, if the subject property were brought into the UGB through a legislative process, it is likely to be developed with residential uses, thereby increasing the need for a middle school at this location. The district also looked at other sites outside the UGB to compare with the subject property. That alternative sites analysis is discussed in detail in the findings below under OAR 660-024-0060.

### **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 2012 Update to the 2010 School Facility Plan identified greatly increased school enrollment in the northwest quadrant of Bend and the need for an additional middle school in that area. The applicant attributes this enrollment increase to the buildout of a number of residential subdivisions in the northwest part of Bend. The subject property meets the applicant's need for a new school site both in terms of size and location. A middle school on the subject property adjacent to Miller Elementary School and Summit High School would allow students and families in the nearby neighborhoods to walk or bike to the school.

As discussed in the findings above concerning compliance with ORS 197.298, the UAR-10 zoning of the subject property places it in the "second priority" classification for UGB expansion lands. However, the record indicates this is in fact the highest priority property available for siting the needed new school. The subject property abuts the existing UGB to the east and south. The new school would serve both students living within and outside the UGB within the district's boundaries. The Hearings Officer finds these circumstances demonstrate the subject property would allow the efficient accommodation of the identified need for a new middle school, thus satisfying this requirement.

**(2) Orderly and economic provision of public facilities and services;**

**FINDINGS:**

**Sewer.** The record indicates there is an existing city gravity sewer main in N.W. Lolo Drive and Skyline Ranch Road east of the subject property within Northwest Crossing. The applicant

extended this sewer main to Miller Elementary School and constructed a gravity sewer service connection for the school. The record indicates there is adequate capacity in these facilities to serve the proposed middle school on the subject property.

**Water.** The record indicates existing 16- and 36-inch city water mains are located in Skyliners Road and a 24-inch water main is located within Skyline Ranch Road east of the subject property. The applicant proposes to coordinate with the city's Water Division for water connections for water service and fire protection.

**Police and Fire Protection.** Police protection 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 to the city. The police department did not comment on the applicant's proposal, indicating the department has no concerns about providing police protection to a new school on the subject property. After inclusion in the UGB and city limits, fire protection for the middle school would be provided by the Bend Fire Department. In its comments on the applicant's proposal, the Bend Fire Department stated it supports the applicants' proposal and that all fire code requirements will be addressed in the review of applications for land use approval and/or building construction.

**Transportation/Access.** The applicant proposes to improve surrounding streets, including the extension of Northwest Crossing Drive to N.W. Crosby Drive as a half street improvement and the construction of an extension of Skyline Ranch Road through the subject property to collector standards as specified in the city's street specifications. As discussed in the findings above, as part of the proposed UGB amendment the applicant proposes to realign the extension of Skyline Ranch Road from the alignment shown on the city's TSP which currently shows the road following the section line and the boundary between the subject property and Summit High School. The applicant's burden of proof states that because of topography north of the subject property that likely will inhibit future extensions of Skyline Ranch Road on its present alignment, the proposed TSP amendment would realign the road to curve west through the subject property to facilitate a more suitable crossing of the topography. As noted in the findings above, the county's TSP will not be affected by this proposed amendment. Any specific road improvements required for development of the middle school will be determined and required during the city's conditional use and site plan review process.

**Other Facilities.** The record indicates telephone, broadband, electricity and natural gas service are available in the area to serve the proposed middle school, and for that reason the Hearings Officer finds these facilities also will be available to a middle school on the subject property.

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

**(3) Comparative environmental, energy, economic and social consequences;**

**FINDINGS:**

**Environmental:** The subject property's topography consists of a moderate slope down to the northwest. The property has a vegetative cover of pine and juniper trees and native brush and grasses. No known rare or endangered species occupy the property, and the property does not possess any natural features such as wetlands, waterways, or rimrock. Inclusion of the subject property within the UGB will allow the new middle school to utilize the city's sewer system rather

than relying on an on-site sewage disposal system, which should reduce the risk of adverse environmental consequences associated with sewage disposal.

As discussed in the Findings of Fact above, in 2005 the county rezoned the subject property and part of the surrounding Miller Tree Farm from SM to UAR-10 based on a finding that the mineral and aggregate resources on the property had been depleted. Deschutes County Assessor's Records indicate the Miller Tree Farm property contains timber and is receiving forest tax deferral. However, the subject property has limited tree cover and is located in close proximity to existing residential and school development.

Miller Tree Farm LLC, the owner of the subject property, did not submit written or oral comments on the applicant's proposal. However, the applicant's burden of proof as well as its oral testimony at the public hearing stated the property owner does not believe the siting of the proposed middle school on the subject property will have negative impacts on forest use on the adjacent property engaged in forest use. That is because the Miller Tree Farm property currently is being managed for thinning for forest health and not for industrial-scale timber production. For these reasons, the Hearings Officer finds the applicant's proposed UGB expansion will not have adverse impacts on the environment.

**Energy:** The proposed UGB expansion area is not known to contain energy resources such as known deposits of oil and natural gas or geothermal resources. The availability of other potential energy sources, such as wind and solar, is equal to any other property in the surrounding area. As discussed in findings elsewhere in this decision, the Hearings Officer has found the proposed UGB expansion will result in energy conservation by reducing the overall number of vehicle trips since the property is in a location where students will be able to walk and bike to three schools. The staff report states, and I agree, that as the residential areas around the site continue to develop this reduction in trip generation will increase.

**Economic:** The applicant's burden of proof states the applicant acquired the subject property from Miller Tree Farm LLC at a favorable price compared to other available parcels within and outside the UGB, and therefore the applicant and the Bend community would enjoy positive economic consequences from using the subject property for the proposed middle school. In addition, the middle school would provide employment opportunities.

**Social:** The applicant's burden of proof states, and the Hearings Officer agrees, the proposed UGB expansion for the middle school will have positive social consequences by addressing existing and predicted overcrowding at area schools, and by facilitating a three-school campus, thereby improving the quality of education for students and reducing the family and community stress from school overcrowding and multiple vehicle trips to transport different age students.

For the foregoing reasons, the Hearings Officer finds the applicant's proposed UGB expansion is consistent with consideration of these factors.

**(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 factor 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. The subject property is surrounded by land zoned UAR-10 and PF. The record indicates forest uses are occurring on the adjacent land within the Miller Tree Farm but that property is zoned UAR-10.

For the foregoing reasons, the Hearings Officer finds the applicant's proposal is consistent with consideration of these factors.

### **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. 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. Therefore, 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 proposal 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 Hearings Officer finds this Goal 14 provision is not applicable to the applicant's proposal because it outlines factors to be considered during a *legislative* process to create or expand a UGB. In addition, as discussed in the findings below, OAR 660-024-0040(3) expressly allows a UGB expansion to address a specific need as is proposed here.

For the foregoing reasons, the Hearings Officer finds Goal 14 is satisfied by the applicant's proposed UGB amendment.

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

## **2. Division 24, 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 applications for a plan amendment to expand the Bend UGB on November 5, 2013, 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:** 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 that 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 UGB expansion because the subject property is zoned UAR-10 and would retain this zoning after inclusion in 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:** 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:** 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:** Goal 19 is not applicable to the applicant's proposal.

**(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 3 to its original burden of proof that shows the property to be added to the UGB. The Hearings Officer finds this map provides sufficient information from which to determine the UGB location. In addition, as discussed in the Findings of Fact above, the applicant received county approval of a property line adjustment to combine the subject property with the existing Miller Elementary School property. Finally, the Hearings Officer finds 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.**

**FINDINGS:** The record indicates the county adopted a coordinated population forecast through 2025 on September 8, 2004 through Ordinance No. 2004-12. The record indicates the city adopted the same forecast.

**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 Hearings Officer finds this rule contemplates legislative UGB amendments. And as discussed in the findings below, Subsection (3) of this section expressly allows for need-specific quasi-judicial UGB expansions such as the one requested by the applicant.

- (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 is not applicable because the applicant's proposed UGB expansion is not being requested as part of a periodic review work program.

- (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 applicant seeks to amend the UGB to accommodate the need for additional public school facilities. Other categories of land need are being evaluated in the city's ongoing legislative process to expand the UGB. The applicant chose to pursue a quasi-judicial plan amendment because the need for a new middle school is immediate and the applicant could not wait for the city to complete its legislative UGB expansion analysis of other land needs.



- (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 subsection is not applicable because the applicant's proposed UGB expansion is not for the purpose of meeting residential land needs.

- (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 subsection is not applicable to the applicant's proposal because the requested UGB expansion is based on, and designed to address, a specific need for a new middle school and not for employment land.

- (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 proposal's compliance with Goals 11 and 12 and the provisions of ORS Chapter 197 is addressed in the findings above.

**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 application to address a specific need for land to accommodate a future middle school. The applicant elected to pursue a quasi-judicial plan amendment rather than waiting for completion of the city's ongoing legislative process to amend the Bend UGB. The latter process is designed to ensure a 20-year land supply.

- (6) **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:** The subject property has a plan designation and zoning of Urban Area Reserve and that designation and 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 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 designated and zoned UAR. As discussed in the findings above, there is no "first priority" land available for siting the new middle school, and therefore the subject property is classified as "second priority" land under ORS 197.298. However, the subject property is the highest priority land available for the siting of the new middle school. Therefore, the Hearings Officer finds 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:** This subsection expressly authorizes the county and city to expand the Bend UGB to address a specific need with a specific piece of property. The proposed UGB expansion would not satisfy a 20-year need, but the city's ongoing legislative UGB expansion process will do so by evaluating what is necessary to satisfy the 20-year land need for all land uses.

- (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 the boundary location factors of Goal 14 is addressed in the findings above. As discussed in those findings, incorporated by reference herein, the Hearings Officer as found the applicant 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 Bend UGB. As discussed in the findings above, the applicant evaluated several alternative sites the applicant considered to have a reasonable potential to satisfy the need for a new middle school. Those parcels included the subject property and the Shevlin Park parcel which the district owns and that also abuts the Bend UGB. As discussed in findings elsewhere in this decision, the Hearings Officer has found the applicant demonstrated that among the alternative sites evaluated the subject property is the most suitable property for the middle school.

- (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 in the findings above, the Hearings Officer has found it is reasonable for the county to consider and apply the characteristics identified by the applicant in its 2010 School Facility Plan for the siting of a new middle school. The applicant's burden of proof contains an analysis demonstrating how and why the district believes the subject property satisfies those characteristics, and does so better than any of the alternative sites considered. That analysis and my evaluation of it are set forth in the findings immediately below and are incorporated by reference herein.

- (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:** The applicant's burden of proof and supplemental materials indicate the applicant analyzed a number of properties located both inside and outside of the UGB in the northwest part of Bend based on the site characteristics set forth in the 2010 School Facility Plan and discussed in the findings above. The burden of proof states that because of the expense to extend water, sewer, and transportation infrastructure to a potential middle school site, all properties that are not within a reasonable distance of existing infrastructure were ruled out. In addition all properties less than 25 acres in size were eliminated. Finally, properties not zoned UAR were eliminated because of the requirement that the applicant focus on the highest priority property available. The remaining properties evaluated by the applicant are identified as follows:

- 3225 N.W. Shevlin Park Road, a 40-acre parcel (Rio Lobo);
- 62600 McClain Drive, a 334-acre parcel (Rio Lobo);
- 62200 Forest Service Road 4606, a 160-acre parcel (Miller Tree Farm);
- Coats Property, a 40-acre parcel (located on Shevlin Park Road adjacent to the applicant's parcel);
- Shevlin Park parcel (owned by the applicant and on Shevlin Park Road);
- West Bend Property Co. (within the UGB);
- 4-R Equipment (within the UGB); and
- the subject property.

A map of these parcels is included in the record as Exhibit 15 to the applicant's Burden of Proof. Following the public hearing the applicant submitted a supplemental burden of proof including a matrix showing how each of these eight parcels was evaluated against the identified site characteristics for the new middle school.

The applicant's evaluation can be summarized as follows:

- The Rio Lobo properties are larger than the ideal size and are slated for residential development. As a result, acquisition costs would be higher. These parcels have limited access and no existing interior roads. These parcels would not allow for a three-school campus setting.
- The portion of the 160-acre Miller Tree Farm parcel closest to existing infrastructure -- the southeast portion -- has significant barriers to the siting of a school as the topography is steep and undulating. The more level areas of the parcel are on its western portion and therefore the costs of extending infrastructure would increase dramatically. This parcel also would not allow for a three-school campus setting.
- The Coats and Shevlin Park parcels are distant from concentrations of residential development and the population to be served, and consequently would increase vehicle trips and discourage alternative transportation. These parcels have dense vegetation

and removal of the trees would make development more difficult and costly. These parcels also would not allow for a three-school campus setting.

- The West Bend Property Co. parcel is slated for residential development and as a result its acquisition costs would be prohibitive. In addition, this parcel would not allow for a three-school campus setting.
- The 4-R Equipment parcel would require significant and expensive site grading and is near Cascades Middle School so it would not be in the right location to serve the target population in northwest Bend. This parcel also would not allow for a three-school campus setting.
- The subject property is of adequate but not excessive size, has good access, is close to the population to be served, is close to existing infrastructure, has topography that will not inhibit development of a middle school, can be acquired for a price within the district's budget, and will facilitate the creation of a three-school campus setting.

Based upon the applicant's original and supplemental burdens of proof and its written and oral testimony, the Hearings Officer finds the applicant adequately analyzed alternate sites and justified the selection of the subject property for inclusion in the Bend UGB.

- (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 proposal's compliance with the provisions of Goal 14 requiring adequate 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 services will be available to the proposed middle school on the subject property.

- (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 Goal 14 findings above, incorporated by reference herein, the Hearings Officer finds that water, sewer, and transportation services and facilities are available and will be adequate to serve a new middle school on the subject property with connections and improvements the applicant and/or others will install. With respect to storm water, I am aware

that 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:** As discussed in the Goal 14 findings above, incorporated by reference herein, the Hearings Officer finds the city's sewer and water facilities and systems as well as police and fire departments have the capacity to serve a middle school on the subject property.

- (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:** The county's and city's road departments did not comment on the applicant's proposal. As discussed in the findings above, the county's Senior Transportation Planner stated the applicant is not required to submit a traffic study because the proposed UGB amendment would not change the subject property's zoning and the number of vehicle trips that could be generated by uses permitted in the UAR-10 Zone. For these reasons, the Hearings Officer finds no new major transportation facilities will be required to serve the proposed new middle school. However, the staff report states, and I agree, that construction of new infrastructure and extension of existing infrastructure will be required in conjunction with development of the subject property with a middle school. The staff report also notes that as the city's public transit service expands the subject property may be suitable for the addition of a transit route.

For the foregoing reasons, the Hearings Officer finds the applicant's proposal complies with all applicable requirements in the administrative rules for expansion of the Bend UGB.

#### **COUNTY COMPREHENSIVE PLAN**

#### **D. Title 23 of the Deschutes County Code, the Deschutes County 2011 Comprehensive Plan**

##### **1. Chapter 4, Urban Growth Management**

##### **a. Section 4.2, Urbanization Policies**

- 1. Goal 1. Coordinate with cities, special districts and stakeholders to support urban growth boundaries and urban reserve areas that provide an orderly and efficient transition between urban and rural lands.**
- 2. Policy 4.2.1. Participate in the process initiated by cities in Deschutes County to create and/or amend their urban growth boundaries.**

**FINDINGS:** The county has coordinated with the city in reviewing this UGB expansion application. Affected agencies and departments have been notified of the application and notice

has been given to the public. Findings to address the orderly and efficient transition between urban and rural lands are found throughout this decision. Therefore, the Hearings Officer finds the applicant's proposal satisfies these comprehensive plan requirements.

**BEND AREA GENERAL PLAN**

**E. Bend Area General Plan**

**FINDINGS:** Section 4.6.300 of the city's development code, governing quasi-judicial plan amendments, provides in relevant part:

**B. Criteria for Quasi-Judicial Amendments.** The applicant shall submit a written narrative which explains how the approval criteria will be met. A recommendation or a decision to approve, approve with conditions or to deny an application for a quasi-judicial amendment shall be based on all of the following criteria:

\* \* \*

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

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

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

In several previous decisions,<sup>2</sup> this Hearings Officer has held the preface to the city's comprehensive plan makes clear the plan's goals and policies generally do not constitute mandatory approval criteria for plan amendments because they are aspirational – i.e., phrased in terms of "may" rather than "shall" -- and/or directed toward actions to be undertaken *by the city* or by the applicant *at the time of development*. The applicant's burden of proof addresses a number of city plan goals and policies identified by city staff. However, with few exceptions, most of these goals and policies are examples of aspirational statements and/or policies requiring action by the city or action required by the applicant at the time of development. Therefore, I adhere to my previous decisions and find that with the exceptions addressed below, consistency with the city's comprehensive plan policies is not a mandatory approval criterion for this quasi-judicial plan amendment to expand the UGB.

Policy 4 related to development within the UGB states:

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<sup>2</sup> E.g., Unitarian Universalist Fellowship of Central Oregon (PA-12-6).

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

The applicant did not submit an application for development approval with the UGB amendment application, and therefore the Hearings Officer finds the requirement that new development pay for infrastructure extensions is not yet applicable.

Policy 3 related to public facilities and services states:

**All development within the Urban Growth Boundary shall be sewerred or provide for sewers through a binding sewer service agreement with the city.**

The record indicates city sewer and water service is available to, and has the capacity to serve, the subject property. The county's and city's staff reports state extension of existing sewer and water mains and services to the subject property will be a requirement for annexation of the subject property into the city limits.

Policy 40 related to public buildings and facilities states:

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

As discussed in detail in the findings above concerning compliance with statutes and administrative rules, the applicant chose the subject property for the new middle school in large part because of its proximity to the population to be served in northwest Bend and because the proposed location would allow the middle school to be part of a three-school campus including Miller Elementary School and Summit High School. This proximity will allow more efficient use of the district's resources while also necessitating fewer vehicle trips and allowing more students to walk or bike to school.

For the foregoing reasons, the Hearings Officer finds the applicant's proposal is consistent with applicable goals and policies in the city's general plan.

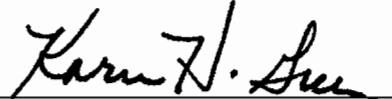
#### **IV. DECISION:**

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

1. The applicant/owner shall submit to the Planning Division a written metes and bounds description of the property to be included in the Bend Urban Growth Boundary prior to final approval of the plan amendment by the Deschutes County Board of Commissioners.

Dated this 9<sup>th</sup> day of January, 2014.

Mailed this 9th day of January, 2014.

  
Karen H. Green, Hearings Officer