



BOARD OF COMMISSIONERS

BOARD OF COUNTY COMMISSIONERS MEETING

1:00 PM, MONDAY, SEPTEMBER 18, 2023

Allen Room - Deschutes Services Building - 1300 NW Wall Street - Bend

(541) 388-6570 | www.deschutes.org

AGENDA

MEETING FORMAT: In accordance with Oregon state law, this meeting is open to the public and can be accessed and attended in person or remotely, with the exception of any executive session.

Members of the public may view the meeting in real time via YouTube using this link: <http://bit.ly/3mmlnzy>. To view the meeting via Zoom, see below.

Citizen Input: The public may comment on any topic that is not on the current agenda. Alternatively, comments may be submitted on any topic at any time by emailing citizeninput@deschutes.org or leaving a voice message at 541-385-1734.

When in-person comment from the public is allowed at the meeting, public comment will also be allowed via computer, phone or other virtual means.

Zoom Meeting Information: This meeting may be accessed via Zoom using a phone or computer.

- To join the meeting via Zoom from a computer, use this link: <http://bit.ly/3h3oqD>.
- To join by phone, call 253-215-8782 and enter webinar ID # 899 4635 9970 followed by the passcode 013510.
- If joining by a browser, use the raise hand icon to indicate you would like to provide public comment, if and when allowed. If using a phone, press *6 to indicate you would like to speak and *9 to unmute yourself when you are called on.



Deschutes County encourages persons with disabilities to participate in all programs and activities. This event/location is accessible to people with disabilities. If you need accommodations to make participation possible, call (541) 388-6572 or email brenda.fritsvold@deschutes.org.

Time estimates: The times listed on agenda items are estimates only. Generally, items will be heard in sequential order and items, including public hearings, may be heard before or after their listed times.

CALL TO ORDER

CITIZEN INPUT: Citizen Input may be provided as comment on any topic that is not on the agenda.

Note: In addition to the option of providing in-person comments at the meeting, citizen input comments may be emailed to citizeninput@deschutes.org or you may leave a brief voicemail at 541.385.1734.

AGENDA ITEMS

1. **1:00 PM** Proclamation: National Suicide Prevention Awareness Month
2. **1:10 PM** Department Performance Measures Updates for Q3
3. **1:30 PM** Discussion of Short Term Rentals - Policy Research and Summary Report
4. **2:00 PM** Preparation for Public Hearing: Mountain View Petition to Incorporate
5. **2:15 PM** Discussion of Home Rule

OTHER ITEMS

These can be any items not included on the agenda that the Commissioners wish to discuss as part of the meeting, pursuant to ORS 192.640.

EXECUTIVE SESSION

At any time during the meeting, an executive session could be called to address issues relating to ORS 192.660(2)(e), real property negotiations; ORS 192.660(2)(h), litigation; ORS 192.660(2)(d), labor negotiations; ORS 192.660(2)(b), personnel issues; or other executive session categories.

Executive sessions are closed to the public; however, with few exceptions and under specific guidelines, are open to the media.

6. Executive Session under ORS 192.660 (2) (h) Litigation

ADJOURN



BOARD OF
COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: September 18, 2023

SUBJECT: Proclamation: National Suicide Prevention Awareness Month

RECOMMENDED MOTION:

Read the proclamation declaring the month of September as National Suicide Prevention Month.

BACKGROUND AND POLICY IMPLICATIONS:

In recognition of the Board's designation of September as National Suicide Prevention Awareness Month, staff will provide a brief update of the outreach and awareness occurring during this month and throughout the year, and share information on resources available to the public.

BUDGET IMPACTS:

None

ATTENDANCE:

Caroline Suiter, Mental Health Promotion Strategist
Bethany Kuschel, Suicide Prevention Project Coordinator
Jessica Jacks, Prevention and Health Promotion Program Manager

BEFORE THE BOARD OF COMMISSIONERS OF DESCHUTES COUNTY, OREGON

PROCLAMATION

**RECOGNIZING SEPTEMBER
AS SUICIDE PREVENTION AWARENESS MONTH**

WHEREAS, in the United States, one person dies by suicide every 11 minutes, with over 48,000 deaths every year in our country;

WHEREAS, in Deschutes County, approximately three people die by suicide each month. In Oregon, for youth ages 10 to 24, suicide is the second leading cause of death. Each person's death by suicide affects at least 135 other people, which translates to at least 50% of the US population has known someone who has lost their life to suicide; friends and family members are forever changed by this loss;

WHEREAS, in Deschutes County, roughly 58% of all suicide deaths are by firearm. For youth, 65% of the suicide deaths of those aged 10-17 is by firearm. Both of these trends are higher than the state and national averages;

WHEREAS, many of the people who have died by suicide never received effective behavioral health services for many reasons including the stigma of using behavioral health treatment and the stigma associated with losing a loved one to suicide;

WHEREAS, far too many Deschutes County residents die by suicide each year;

WHEREAS, Deschutes County is dedicated to partnering with local behavioral health and health care organizations, state and local agencies, military/Veterans organizations, educational institutions, and the community at large, to reduce the frequency of suicide attempts and deaths, and the pain for those affected by suicide deaths, through:

1. Recognizing suicide as a significant public health issue in Deschutes County and declaring suicide prevention a countywide priority;
2. Supporting accessible behavioral health services for all areas in our county;

- 3. Helping to de-stigmatize help-seeking behaviors;
- 4. Acknowledging that everyone plays a role in helping to prevent suicide; and
- 5. Encouraging initiatives known to be effective at preventing suicide attempts and death.

NOW THEREFORE, BE IT RESOLVED that the Deschutes County Board of Commissioners do hereby designate the month of September, 2023 and each year thereafter, as “Suicide Prevention Awareness Month” in Deschutes County and urge Deschutes County residents to learn how they can help because *Suicide Prevention Is Everyone’s Business*.

Dated this 11th day of September 2023, by the Deschutes County Board of Commissioners.

Anthony DeBone, Chair

Patti Adair, Vice-Chair

ATTEST:

Recording Secretary

Phil Chang, Commissioner



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: September 18, 2023

SUBJECT: Department Performance Measures Updates for Q3

BACKGROUND AND POLICY IMPLICATIONS:

Three departments have been selected to provide updates on progress made during FY 23 Q3 on selected performance measures that fall under the County Goals and Objectives of Housing Stability and Supply and A Resilient County.

Property Management

Objective: Housing Stability and Supply – Collaborate with partner organizations to provide an adequate supply of short-term and permanent housing and services to address housing insecurity.

Performance Measure: Provide project support and assistance to Oasis Village and other collaborative like-projects.

Value: In Progress

Q3 Update: The Oasis Village team submitted the emergency shelter siting application under HB 2001 to the City of Redmond on June 22, 2023 and was subsequently approved June 23, 2023. Additionally, earlier this spring, the City of Redmond applied to the MAC for funding towards the project and was awarded \$975,000 for utility infrastructure to service the Oasis Village project and adjacent 10-acres and to provide a community building. Property Management in collaboration with County Counsel has been working with the City of Redmond to finalize a Ground Lease for 12-acres in East Redmond that includes +/- 2-acres for Oasis Village. It's anticipated that the Oasis Village initial 15 shelter units will be operational by early January 2024.

Fair & Expo

Objective: A Resilient County – Manage County assets and enhance partnerships that grow and sustain business, tourism, and recreation.

Performance Measure: Attract and retain events that generate more than \$48 million in annual economic impact from Fair & Expo events and facilities and/or 1 million unique attendees to the facility.

Value: In progress

Q3 Update: Fair & Expo has attracted 764,600 unique attendee's to its property in this Fiscal year, with 426,800 of those coming in calendar 2023.

Objective: A Resilient County – Manage County assets and enhance partnerships that grow and sustain business, tourism, and recreation.

Performance Measure: Provide a safe, modern event venue that attracts visitors from across the nation/world annually.

Value: True

Q3 Update: Fair & Expo continues to invest in the Fair & Expo facility to provide a safe and modern venue to all visitors. A HVAC project was recently completed, that coupled with Grant funding finished as a Net 0 project for the County. Recent investments include additional LED lighting upgrades, interior/restroom renovations in Middle/South Sister, and the beginning of a facility wide wireless network installation in partnership with IT.

Road

Objective: A Resilient County – Maintain a safe, efficient and economically sustainable transportation system.

Performance Measure: Sustain Pavement Condition Index (low 80s).

Value: 84

Q3/Q4 Update: The County's overall system-wide PCI for 2022-23 is 84 (out of 100).

Objective: A Resilient County – Maintain a safe, efficient and economically sustainable transportation system.

Performance Measure: Achieve 96% of roads rated good or better (Pavement Condition Index above 70).

Value: 98.2%

Q3/Q4 Update: 98.2% of DC system pavements rated at PCI of 70 or greater.

BUDGET IMPACTS:

No anticipated budget impact.

ATTENDANCE:

- Jen Patterson, Strategic Initiatives Manager
- Kristie Bollinger, Property Manager
- Geoff Hinds, Director, Fair & Expo
- Chris Doty, Director, Road Department



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: September 18, 2023

SUBJECT: Discussion of Short Term Rentals - Policy Research and Summary Report

RECOMMENDED MOTION:

N/A

BACKGROUND AND POLICY IMPLICATIONS:

The Community Development Department was directed to review short term rental (STR) policies and programs. Staff conducted interviews with various agencies and stakeholders to develop a comprehensive overview of issues related to STRs and potential solutions which could be implemented. Rather than make recommendations for a specific program, the report provides options for the Board to consider as it evaluates the impact of STRs within the community.

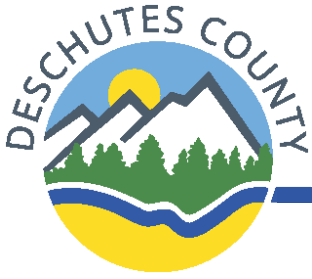
BUDGET IMPACTS:

None

ATTENDANCE:

Kyle Collins, Associate Planner

Peter Gutowsky, Community Development Director



TO: Board of County Commissioners

FROM: Kyle Collins, Associate Planner
Will Groves, Planning Manager
Peter Gutowsky, Community Development Director

DATE: September 12, 2023

SUBJECT: Short Term Rentals - Policy Research and Summary Report

I. EXECUTIVE SUMMARY

The Community Development Department (CDD) was directed to review short term rental (STR) policies and programs. Staff conducted interviews with various agencies and stakeholders to provide a comprehensive overview of issues related to STRs and potential solutions which could be implemented in Deschutes County. The report does not contain recommendations for a specific program, but attempts to provide options for decision makers as they evaluate the impact of STRs within the larger community.

Deschutes County does not currently have land use or regulatory policies for STRs outside of destination resorts. STRs are generally treated as standard dwelling units and must meet requisite safety and wastewater disposal standards. Operators of STRs must register annually and collect an 8% Transient Room Tax (TRT) from occupants. As of September 11, 2023, there are 3,235 total registered STRs in Deschutes County.

Interviews with various jurisdictions revealed a wide range of responses and perspectives regarding STRs. Primary issue areas include licensing & land use, location and density standards, tracking and enforcement, funding and long term management, and legal challenges. Generally, jurisdictions utilize licensing programs and/or land use programs to address STRs. Licensing programs aim to provide an accurate accounting of active units, ensure tax payments, and perform necessary safety reviews. Land use programs establish more formal development and siting criteria for operators looking to establish an STR.

Oregon's statewide land use system limits local jurisdictions' capacity to establish or alter rules within designated resource zones and recent legal cases have effectively prohibited local jurisdictions' ability to allow STRs as an outright use within resource lands. However, jurisdictions

generally have broad latitude to establish land use rules or regulatory programs outside these zones.

Legal issues for jurisdictions looking to establish STR licensing or regulatory programs include pre-existing or nonconforming uses and vested rights claims. The Oregon Department of Land Conservation and Development (DLCD) recommends that the regulatory vehicle for STRs should come through business licensing rather than land use regulations, as the latter may result in unintended consequences and legal challenges.

Finally, decision makers should be aware that the Oregon Land Use Board of Appeals (LUBA) and the Oregon Court of Appeals have recently issued several decisions affecting new land use rules for short-term rentals (STRs) in Clackamas County that may affect any future actions or goals. Additionally details regarding these decisions are covered in later sections.

II. BACKGROUND

The Board of County Commissioners (Board) directed CDD staff to review and evaluate STR issues, policies, and programs across a variety of different jurisdictions. In recent years, STRs have come under increasing scrutiny and interest as communities seek to balance the economic benefits of providing short term accommodations to visitors, while mitigating negative effects that may arise from increased housing costs, increased pressure on infrastructure, and other broad ranging social or environmental effects on impacted areas.

To provide a comprehensive overview of these issues and potential programmatic solutions, staff conducted a series of eleven interviews with agencies and jurisdictions throughout Oregon, and communities outside the state with similar characteristics to Deschutes County. These interviewees come from a broad range of perspectives including City, County, and State land use planning departments, tax collection departments, and members of county staff with direct experience pursuing STRs for personal property. The following sections contain an overview of major themes, issues, and on-going legal challenges for jurisdictions looking to establish regulatory STR programs.

III. CURRENT CONDITIONS

Presently, Deschutes County does not have targeted land use, building safety, or wastewater policies related to STRs outside of specific areas such as master planned destination resorts or resource zones as defined in Oregon Revised Statutes (ORS) 215¹. The current policy is to treat all STRs in the same manner as single-family or multi-family dwelling units as defined in Deschutes County Code (DCC). Under this policy, lawfully established dwelling units can be used as short-term or long-term rentals, provided they meet all necessary fire/life/safety and wastewater disposal standards necessary for residential occupancy.

¹ https://www.oregonlegislature.gov/bills_laws/ors/ors215.html

Additionally, operators of STRs are required to register annually with the Deschutes County Tax Collection Department to ensure payment of Transient Room Taxes (TRTs). TRTs are paid by operators of lodging establishments offering overnight or transient accommodations. Overnight or transient accommodations are defined as units offered for periods of 30 consecutive calendar days or less in unincorporated areas (outside the city limits of Bend, Redmond, Sisters, and La Pine) of Deschutes County.

In July 2018, House Bill (HB) 4120 became effective. HB 4120 makes explicit that all booking intermediaries for transient lodging, including online booking platforms, must remit transient lodging taxes to local governments. As such, third-party booking services for STRs, such as Airbnb or VRBO, provide TRT payments on behalf of property owners, however owners are still required to submit annual registration reports to the County. Registered rentals are required to collect an 8% TRT (based on profits generated) from occupants which is ultimately transferred to Deschutes County along with the required annual reports describing the full scope of rental usage over the previous year.

Registered STRs fluctuate periodically throughout the year and so providing a perfect estimate of units at any given time is challenging. Additionally, given the limitations of tracking all possible instances of property owners advertising STR units across multiple platforms, estimates from the Deschutes County Tax Collector may not reflect a perfect accounting of all STR units.

However, as of September 2023 the following information captures the number of registered STR units in Deschutes County to the best of staff's ability:

- 3,235 total registered STRs
 - This accounts for approximately 9% of the total number of residential dwelling units on the Deschutes County tax roll (34,980 total residential dwelling units)
- 336 registered STRs are located within resource zoned lands (Exclusive Farm Use and Forest)
 - This includes 252 STRs within the Eagle Crest and Juniper Preserve (Pronghorn) destination resorts
- 2,899 registered STRs are located within designated rural residential exception areas or urban reserve zones
- 2,434 registered STRs are located within master planned destination resorts (Eagle Crest, Caldera, Tetherow, and Juniper Preserve) and historic resorts (Sunriver, Black Butte Ranch, and Inn of the 7th Mountain)
 - This accounts for approximately 75% of the total number of registered STRs
- 440 registered STRs are located within the Wildlife Area Combining Zone
- 236 registered STRs have a previous or ongoing code violation or complaint

Additionally, while staff cannot provide exact numbers at this time, a noteworthy portion of property owners looking to register STRs with the County Tax Collector have discovered that many structures have been constructed without the necessary development permits and thus have not received

adequate fire/life/safety review or relevant land use approvals. It is also unclear how many similar uses, such as private campground facilities, may be operating in the County at present and the current TRT registration program is presently focused on uses which explicitly occur within residential dwelling units.

A map illustrating the distribution of currently registered STRs is attached to this report for reference.

IV. INTERVIEW THEMES

The following list summarizes the names, positions, and jurisdictions interviewed by staff in preparation of this report:

- Chris Gracia, Deschutes County Assistant Building Official
- Jennifer Lawrence, Deschutes County Administrative Supervisor
- Judi Hasse, Deschutes County Deputy Tax Collector
- Sheila Pyott, City of Bend Community Development Department
- Lorelei Williams, City of Bend Program Manager
- Onno Husing, Lincoln County Community Development Director
- Sarah Absher, Tillamook County Community Development Director
- Eric Walker, Hood River County Community Development Director
- Martha Fritzie, Clackamas County Community Development Department
- Gordon Howard, Department of Land Conservation and Development (DLCD) Community Services Division Manager
- Angie Brewer, Department of Land Conservation and Development (DLCD) Central Oregon Regional Representative
- Cheryl Cottel, Placer County Community Development Department
- Jasmyn Carr, Placer County Community Development Department
- Ethan Abner, Boulder County Community Planning & Permitting Department

The following are the jurisdictional web pages outlining their respective STR programs:

- [Deschutes County Transient Lodging Tax Program](#)
- [City of Bend STR Program](#)
- [Lincoln County STR Program](#)
- [Tillamook County STR Program](#)
- [Hood River County STR Program](#)
- [Clackamas County STR Program](#)
- [Placer County STR Program](#)
- [Boulder County STR Program](#)

These interviews produced a wide range of responses and perspectives. Some jurisdictions used a more hands off approach to STRs that focused on periodic licensing, fire/life/safety review, and reducing impacts to neighboring property owners from STR users. Other jurisdictions have elected to institute more prescriptive programs focused on land use compatibility, limitations on the total number of STRs allowed in given areas, and further analysis of features such as wastewater disposal

systems established onsite. The following section attempts to highlight policy alignments where jurisdictions identified similar problems and solutions, while also acknowledging that any specific approach is likely to come with differing costs, benefits, and challenges.

Primary issue areas are summarized as follows:

1. Licensing & Land Use
2. Location & Density Standards
3. Tracking & Enforcement
4. Funding & Long Term Management
5. Housing Supply & Affordability Impacts
6. Legal Challenges

The following sections describe these themes in greater detail.

V. LICENSING & LAND USE

Jurisdictions have primarily used two major strategies for handling STRs:

- Licensing Programs
- Land Use Programs

The following section broadly describes the potential benefits and drawbacks of these approaches, but occasional overlap can occur and utilizing one program does not necessarily preclude the other.

Licensing Programs

A majority of jurisdictions interviewed use some form of licensing to track and regulate STRs. Licenses are generally issued by tax collection departments, business registration offices, or public safety departments such as the County Sheriff. All jurisdictions utilizing an STR licensing program do so on annual or semi-annual basis and property owners must recertify licenses to maintain lawful STR uses. This approach typically requires placing STR regulations in the jurisdiction’s municipal or county code, rather than (or in addition to) their development or zoning code. Licensing processes generally do not include notification of surrounding neighbors when an application is submitted. However, several jurisdictions notify nearby neighbors when the license or registration is issued.

At a minimum, most STR license programs are intended to provide the following:

- An accurate accounting of the number of active units within a jurisdiction
- Insurance that operators of STRs are paying relevant taxes and levies, such as Transient Room Tax
- Fire/Life/Safety review of any structures being used as an STR

Several jurisdictions require proof of residency as part of their STR licensing programs. Representatives from these jurisdictions noted significant concern from local citizens regarding

parties from outside the community capitalizing on housing stock in desirable STR locations with attendant effects on housing affordability for full time residents. For example, Hood River County explicitly requires property owners to prove a minimum 30-day residency within the County to establish lawful STRs and Placer County also requires property owners to maintain their primary residence within the county to operate any STR unit.

Additionally, licensing programs often attempt to address some of the primary challenges associated with STR use such as:

- Wastewater management from increased residential water use
- Negative effects on surrounding properties from noise, traffic, and other attendant visitation impacts
- Exclusion of residents from particular areas due to saturation of STRs

For those properties not currently served by centralized wastewater systems such as sewer, several licensing programs require review of existing onsite wastewater disposal systems to ensure they are appropriately sized for the intended STR use. For properties with undersized or failing systems, applicants must provide evidence that a system has been expanded or repaired prior to issuance of a valid STR license. Several jurisdictions use wastewater capacity in addition to bedroom counts as the primary criteria for determining the maximum allowed occupancy in licensed STRs.

A number of jurisdictions also include specific enforcement standards as part of their licensing programs. One of the consistent concerns regarding STR usage is negative impacts to surrounding property owners from visitor noise, traffic increases, trash disposal, and exceeding allowed occupancy limits in STRs. To address these issues, licensing programs often require STR operators to provide and maintain contact information for a local property manager who is available at all times to respond to complaints from neighbors or other members of the public in a timely manner. Surrounding property owners are provided contact information for designated property managers to independently address violations of STR license policies rather than relying on more formal nuisance complaints from law enforcement or similar departments. Failure to maintain a satisfactory property manager or repeated violations can result in penalties, including revocation of STR licenses.

Land Use Programs

As an alternative or complement to licensing programs, some jurisdictions have elected to establish formal land use standards governing STRs. In Oregon, pursuant to ORS 197, jurisdictions utilizing land use rules to regulate STRs must establish formal goals and policies within their respective Comprehensive Plans and must also establish specific standards for development review within corresponding zoning code chapters.

There are two primary options for establishing STR regulations through the land use code:

1. Creation and adoption of clear and objective standards
2. Creation and adoption of standards requiring discretion or judgement

Establishing clear and objective standards generally allows a more streamlined review process for any potential applicants. Applicants may receive a formal approval through a ministerial process which avoids the issuance of a formal land use decision and public notices with associated review findings made by Planning Department staff. Alternatively, programs requiring discretion necessitate more thorough review by staff, including a formal land use decision describing the project proposal and how it complies with established land use rules. Many programs of this nature are evaluated through conditional use permits, site plan reviews, or similar assessments. Land use rules requiring discretion are often more costly to implement given additional review obligations from staff and the increased possibility of appeals from parties of interest. However, land use programs requiring discretion do often provide more flexibility for decision makers in reviewing project proposals that may demand additional caution and scrutiny.

Additionally, jurisdictions must also decide if STRs will be controlled through an existing use category within their land use code or if a new category should be established and defined. Several jurisdictions categorize STRs as a "home occupation" subject to the same standards for all residentially based commercial operations. Within the Deschutes County Code for example, home occupations are defined as:

"Home occupation" means an occupation or profession carried on within a dwelling and/or a residential accessory structure by a resident of the dwelling or employees, depending on type pursuant to DCC 18.116.280 and is secondary to the residential use of the dwelling and/or the residential accessory structure²

Home occupations often have regulatory standards associated with the total number of employees, hours of operation, noise, other potential impacts to surrounding properties, and proof of residency for the dwelling in question. It appears that as currently defined, utilizing home occupations as a possible category for STRs within Deschutes County would encounter problems given the requirement that the proposed occupation must be operated by "a resident of the dwelling." In practice, many STRs are used predominately or exclusively by rental visitors and defining STRs as a home occupation would preclude these practices under the current county code.

Several jurisdictions stressed the importance of having clear definitions for "resident" and "dwelling/domicile" when implementing any STR land use regulations. The current Deschutes County definitions for "dwellings" would likely to need to be updated should new standards governing STRs be implemented.

Unless explicitly stated otherwise, land use decisions are typically associated with a specific property rather than a particular property owner. As such, any approved land use decisions will travel with a property until such time as a use is interrupted or abandoned for a designated period of time, a violation occurs which necessitates revocation of an approval, or new state/local land use

²
[https://deschutescounty.municipalcodeonline.com/book?type=ordinances#name=CHAPTER 18.04 TITLE, PURPOSE AND DEFINITIONS](https://deschutescounty.municipalcodeonline.com/book?type=ordinances#name=CHAPTER_18.04_TITLE,_PURPOSE_AND_DEFINITIONS)

rules are established which prohibit a previously allowed use. Certain jurisdictions such as the City of Bend have established STR land use rules which are specific to a particular property owner rather than the property itself. In these cases, approved STR permits expire once the property in question is sold or otherwise changes ownership.

Finally, as discussed in forthcoming sections, Oregon’s state-wide land use system limits local jurisdictions in their capacity to establish or alter rules within resource zones such as the Exclusive Farm Use and Forest Use zones. Recent legal cases have severely limited local jurisdictions’ ability to establish land use programs explicitly allowing STRs within designated resource lands. However, outside these zones, at this time it appears jurisdictions generally have broad latitude to establish specific land use rules tailored to local conditions.

Jurisdiction STR Regulatory Approach			
Jurisdiction	Licensing	Land Use Program	Both
City of Bend			X
Lincoln County	X		
Tillamook County	X		
Hood River County			X
Clackamas County		X	
Placer County			X
Boulder County			X

VI. LOCATION & DENSITY STANDARDS

In addition to broader questions of licensing and land use, nearly all jurisdictions surveyed had some concern regarding the siting and density of STRs. These issues were primarily associated with siting STRs in areas that may have competing or conflicting uses, such as long-term residential neighborhoods. In jurisdictions with high seasonal visitation, Planning Directors and staff noted increasing concerns from community members about housing shortages and displacement of residents due to large numbers of STRs.

STR density is often unevenly distributed throughout a community. Many jurisdictions find that STR usage is concentrated in specific areas, often in places with close access to other amenities such as commercial districts, restaurants, or desirable natural features. However, these same features which make locations desirable to visitors also attract interest from full-time residents, potentially creating conflicts.

To address these concerns, many jurisdictions have imposed licensing caps to avoid oversaturation of STRs in areas that are valuable for standard residential use. Limitations range from a blanket cap on the total number of licenses issued to more specific density limitations targeted to individual neighborhoods or geographic regions. It is unclear to staff if licensing limitations based on geographic features or locations constitutes a “land use decision” pursuant to ORS 197.015³. If licensing limitations based on geographic characteristics do constitute de facto “land use decisions,”

³ https://www.oregonlegislature.gov/bills_laws/ors/ors197.html

jurisdictions maybe encounter legal challenges to implementation without formal inclusion of additional standards within the applicable zoning and land use code. These legal matters should be thoroughly vetted through County Counsel prior to adoption of any administering standards or policies.

Jurisdictions utilizing land use rules to regulate STRs typically must identify zones or other geographic areas in which to allow or disallow STRs. Additionally, some jurisdictions such as the City of Bend have designated concentration limits which prevents new STRs from being established in residential zones within a certain distant of existing STR uses, providing an effective overall cap on the total numbers of STRs. There are less instances of County jurisdictions implementing specific caps or density limitations through the land use code, but certain jurisdictions such as Hood River County have implanted a total cap of one hundred STRs throughout the county.

More complex density or location limitations may be developed, but this often comes at the expense of additional staff resources to review those details when administering the STR program.

VII. TRACKING & ENFORCEMENT

Any STR regulatory system will require additional resources related to tracking and enforcement. In recent years, the infrastructure surrounding STRs has become increasingly distributed with a large portion of property owners marketing and managing STRs through third-party web platforms such as VRBO and Airbnb. These platforms provide easy access to promotional and management tools to nearly any interested party hoping to establish an STR. These platforms generally treat their client's information as a proprietary resource, thereby making efficient tracking of relevant properties more difficult for governmental agencies.

Of the jurisdictions interviewed, nearly all use a software tool to comb through STR listings provided on various online platforms. These results are then used to assess any relevant licensing, tax, or land use information that may be required by the property in question. The Deschutes County Tax Collection Department already uses similar software to track properties hosting STRs and verifying that the relevant TRTs are collected. This type of software is unable to capture all possible platforms promoting and advertising STRs, particularly those that may be managed informally, but most jurisdictions report a high level of accuracy and confidence in the reporting data.

A majority of other jurisdictions use complaint-based enforcement measures to ensure STRs are in compliance with relevant licensing or land use standards such as noise controls, waste disposal, or occupancy limits. However, complaint-based measures present challenges as code complaints may take several days or more to be fully evaluated and verified by jurisdiction staff. As STRs are used for limited periods by design, very often any offending parties may have left the unit by the time additional staff resources have been assigned to a particular complaint. This problem is especially acute on weekends or holidays when complaints may not be received until the following work week.

As noted in previous sections, to counter these issues many jurisdictions require the designation of a property manager either living onsite or in the nearby vicinity that must be available at all times.

These property managers are identified at the time of licensing submittal or renewal and their contact information is provided to all neighboring property owners. Failure to maintain a reliable property manager to respond to complaints can result in revocation of STR licenses or land use approvals.

VIII. FUNDING & LONG TERM MANAGEMENT

Given the increased resources associated with establishing and maintaining an STR licensing program, several jurisdictions specifically noted challenges associated with funding necessary to support increased staffing, particularly increased code compliance staffing. Tillamook County has a very high number of operating STRs and has two separate fees to cover increased operational costs:

1. Permit fee to cover administrative review and fire/life/safety inspections
2. Operator fee which is directed to support work force housing and public safety

As part of the Tillamook County licensing program, each of these two fees are levied annually and provide significant resources to handle both administrative duties and to help offset some of the knock-on effects associated with heavy STR establishment such as displacement of long-term residents. Tillamook County's permit fee is a flat rate for all STRs while the operator fee is specifically tied to the number of allowed occupants within an STR, providing a scaled fee approach for those operators anticipated to have greater impacts.

As a general rule, STRs are also likely to cause negative impacts to wastewater disposal systems and may increase incidents of wastewater system failure. To handle these effects, some jurisdictions such as Lincoln County have imposed additional septic evaluation fees to cover administrative duties and staffing for their respective Environmental Health Departments.

For those jurisdictions which have elected to establish a more thorough regulatory approach through their land use codes, fees are typically imposed for all the necessary land use review activities incurred by staff. Jurisdictions are not consistent in their long term evaluation of STR land use permits. Hood River County requires applicants to reapply for land use permits every two years, while Boulder County simply requires a one-time land use application with periodic renewal of secondary licenses to continue any STR use.

As described in previous sections, most land use decisions issued within Deschutes County travel with a property, not a particular owner. In practice, unless a use is abandoned for an extended duration of time, any approved use can continue onsite under any noted conditions of approval. In contrast, the STR permitting programs within the City of Bend and Placer County require a one-time permit application that is specific to the property owner rather than the property itself. Should periodic review of STR uses within Deschutes County be sought, this would likely require a reevaluation of how relevant STR land use decisions are approved and may warrant explicit time limitations on approved STR uses with options for subsequent review and renewal.

TRTs and other similar taxes allow counties to capture a portion of the income generated by lodging specifically designated for short term visitors to a region. Traditionally, TRTs were associated primarily with hotels, motels, and smaller operations such as bed and breakfasts. However, in recent years TRT payments have also included STRs located within private residential developments as visitors increasingly look to single-family dwellings and similar housing options while traveling. Prior to utilizing these funds for administration purposes, jurisdictions must be aware of any pre-existing funding obligations from existing tax or fee structures. For example, a certain percentage of the City of Bend’s TRT funds must be directed towards tourism promotion, with the remaining funds required to be directed towards public safety and administrative services associated with the STR program. Additionally, money generated by TRT taxes or similar levies may not generate sufficient funding at current levels to cover the administrative duties associated with STR licensing and/or regulatory programs, much less additional costs that may be incurred through code compliance. This funding gap is likely to be particularly acute if levy money is directed towards other mandatory funding obligations.

IX. HOUSING SUPPLY & AFFORDABILITY IMPACTS

As summarized in a report from Washington County, OR⁴, one of the central debates around STRs is the impact on the supply of housing available for long-term renters. Removal of housing from the long-term rental market could lead to an increase in housing costs, which could make long-term rental housing less affordable. The findings of some national studies⁵ and studies focused on larger U.S. cities⁶⁷ have linked increases in STR listings to increased housing prices and rents. Unfortunately, a majority of studies on these issues have been centered on urban areas and effects on smaller or more rural destinations has been largely overlooked.

A central question is whether homeowners who list their homes on an STR platform would otherwise rent them out for longer terms. In a 2016 report, ECONorthwest found that city of Portland homeowners were not likely to do so; and even if they were, many of the homes would be unaffordable to long-term renters making between 60% and 80% of the Portland region’s median family income.

The ECONorthwest report “Housing Affordability Impacts of Airbnb in Portland,”⁸ commissioned by Airbnb, found that at the time of writing:

⁴ <https://www.washingtoncountyor.gov/lut/documents/issue-paper-no-2020-01-short-term-rentals-issues-and-considerations/download?inline>

⁵ Kyle Barron, Edward Kung and Davide Proserpio, “The Effect of Home-Sharing on House Prices and Rents: Evidence from Airbnb,” SSRN, Jan. 22, 2020: <https://ssrn.com/abstract=3006832>

⁶ Stephen Sheppard and Andrew Udell, “Do Airbnb properties affect house prices?,” Williams College Department of Economics, Jan. 1, 2018: https://pdfs.semanticscholar.org/c41a/555192f8b8a63413cfd461f4295b95123e6f.pdf?_ga=2.1525041.1044339924.1566438551-620960455.1566438551

⁷ Roy Samaan, “Airbnb, rising rent, and the housing crisis in Los Angeles,” LAANE, March 2015: <https://www.laane.org/wp-content/uploads/2015/03/AirBnB-Final.pdf>

⁸ Mike Wilkerson et al., “Housing Affordability Impacts of Airbnb in Portland,” ECONorthwest, Sept. 2016: <http://media.oregonlive.com/front-porch/other/PDXAirbnbAffordability.pdf>

- Entire homes rented out full-time (more than 270 nights per year) comprised less than 0.03% of Portland’s housing units.
- Portland had 2,976 Airbnb entire-home listings, which represented 1.1% of Portland’s housing units. The majority of these were rented “infrequently,” with 87% being rented 180 nights or less. Of those, 42% were rented for less than 30 nights per year.
- Few Airbnb listings are permanently on the STR market. The report found that of the active listings in January 2015, only 47% were still active in September 2016 (53% were deactivated).
- Many units created for STR use (for example, accessory dwelling units) will eventually convert to long-term rental use, adding to the city’s total housing stock.

The report concluded that STRs have a negligible impact on housing affordability in Portland. The report asserted that the primary drivers of the housing market and pricing in the Portland region are demand for housing (which is outpacing growth of the housing supply), zoned capacity for new development, land availability and rising construction costs.

Studies on whether STRs lead to higher rents and housing costs have produced conflicting results, with several concluding that STRs are connected with higher rents for long-term rentals. The ECONorthwest report, with a specific focus on the city of Portland, reaches the opposite conclusion. However, given the high volumes of transient visitors to Central Oregon, the Portland specific report may have limited applicability to conditions in Deschutes County, particularly given the appreciably higher percentage of housing stock registered for STR uses locally.

X. LEGAL CHALLENGES

Jurisdictions looking to establish STR licensing or regulatory programs are likely to face several potential legal obstacles and issues. Broadly, the primary legal issues are as follows:

1. Existing Uses, Nonconforming Uses, and Vested Rights
2. Compliance with State Statues

Existing Uses, Nonconforming Uses, & Vested Rights

In layman’s terms, nonconforming uses are activities in operation on a particular property that predate any regulations or standards which might control or prohibit the activity in question. In a more specific sense, the Deschutes County Code defines nonconforming structures and uses as follows:

“Nonconforming structure of use” means a lawful existing structure or use at the time DCC Title 18 or any amendment thereof becomes effective which does not conform to the requirements of the zone in which it is located.

In practice, uses in operation which existed prior to the establishment of any overarching land use regulations are allowed to continue as before, provided they do not increase the scale and scope of the original use. Generally, property owners are allowed to continue or alter a nonconforming use

pursuant to specific standards outlined in ORS 215.130⁹. Nonconforming uses in Deschutes County must be reviewed and approved pursuant to the standards of DCC 18.120.010. These standards identify the process for verifying a non-conforming use, maintaining a nonconforming use, restoring or replacing a nonconforming use, and altering a nonconforming use.

A similar, but distinct concept to nonconforming uses are vested rights. Generally, vested rights are those rights belonging completely and unconditionally to a person as a property interest which cannot be impaired or taken away (as through retroactive legislation) without the consent of the owner¹⁰. Vested rights are often identified as unfinished projects that may be rendered unlawful under new land use standards. More specifically, the Oregon Supreme Court has identified several factors that must be considered to determine a property owner’s ability to continue construction of any vested right:

1. Whether the costs incurred or the amount of construction begun was “substantial”
2. Whether the expenditures were made in good faith
3. Whether the owner had notice of the regulatory amendment in advance of making the expenditures
4. The ultimate cost of the project

These terms are relevant as the establishment of any new licensing or land use program may have the potential to trigger nonconforming use or vested rights claims from property owners already operating an STR. This issue is particularly pertinent for those properties which are currently registered with the Deschutes County Tax Collection Department and have been paying the requisite TRTs. To handle similar issues, many jurisdictions establishing new licensing or land use programs implemented a grace period to allow STRs who can prove previous operations to come into compliance with any new rules. However, it is unclear at this time if this approach would remove all nonconforming use or vested rights risk.

This particular risk was made apparent in Lincoln County where a ballot measure to permanently limit and ultimately ban all STRs was passed by voters in 2021¹¹. However, the Land Use Board of Appeals (LUBA) ultimately overturned several aspects of the measure for violating the property rights of owners who were previously operating STRs prior to passage of the new law. Lincoln County officials were ultimately able to establish similar rules under a business licensing system which limited, but did not prohibit STRs, and avoid many of the legal challenges brought as part of the ballot measure. However, the experience in Lincoln County illustrates the potential legal challenges in establishing a regulatory program for STRs within the land use system.

The Oregon Department of Land Conservation and Development (DLCD) has recently provided guidance to several jurisdictions, including the City of Klamath Falls, looking to adopt STR regulations. DLCD’s guidance suggests that the appropriate vehicle for jurisdictions to address STRs should not come through the land use system, but rather through business licensing. As outlined in

⁹ https://oregon.public.law/statutes/ors_215.130
¹⁰ <https://www.merriam-webster.com/legal/vested%20right>
¹¹ <https://www.co.lincoln.or.us/sheriff/page/short-term-rental-licensing>

the Lincoln County example above, policies that rely on land use regulations can result in unintended consequences for local jurisdictions that may include Measure 49¹² compensation requirements should the jurisdictions reconsider or amend adopted land use regulations, additional complications with necessary comprehensive plan findings related to Statewide Goal 10 policies for housing, and subjecting all subsequent decisions and actions to LUBA’s jurisdiction as land use decisions. A letter to the City of Klamath Falls from DLCD describing these recommendations is attached here for reference.

Compliance with State Statutes

A number of legal challenges have been brought forward in recent months concerning new land use rules for STRs. The two cases most pertinent to this discussion are:

1. *1000 Friends of Oregon v. Clackamas County* (2022)¹³
2. *Tylka v. Clackamas County* (2023)¹⁴

1000 Friends of Oregon v. Clackamas County

The first case (*1000 Friends of Oregon v. Clackamas County*) resulted in a remand of newly proposed land use rules which would have explicitly allowed STRs within all zones throughout the Clackamas County, including designated resource zones such as Exclusive Farm Use and Forest Use zones. These new rules attempted to bring STRs under a land use review system to place limitations on items such as maximum occupancy and sanitation requirements, but was intended to allow a formal pathway for all property owners looking to establish STR uses.

However, these proposed legislative changes were appealed by two separate parties for a lack of compliance with state statutes. Ultimately, the Oregon Court of Appeals remanded the Clackamas County rules citing that STR uses are not expressly identified as an allowed use within Chapter 215 of the Oregon Revised Statutes (ORS) which outlines uses allowed on resource zoned lands. As part of that decision, the Court of Appeals expressly denied the allowance of STRs within resource zoned lands as an allowed use. While tentatively addressed, it is unclear if STR uses might be allowed in resource zoned lands subject to additional standards, such as a home occupation. Staff’s current understanding of this legal decision is that all STR uses operating on resource zoned lands without some type of formal land use approval are in violation of the relevant state statutes and thus are an unlawful use. This would not include resource zoned properties within master planned destination resorts, as those properties are subject to the conditions of each resort’s land use approvals.

Within this same decision, the Court of Appeals makes several arguments throughout the Clackamas County remand discussing the validity of STR uses within all rural residential zones. The Court stops short of rendering a definitive evaluation of whether STRs constitute “residential” uses in the formal sense, but several lines of reasoning seem to suggest that the Court of Appeals is

¹² <https://www.oregon.gov/lcd/measure49/pages/index.aspx>
¹³ <https://law.justia.com/cases/oregon/court-of-appeals/2022/a177973.html>
¹⁴ <https://www.oregon.gov/luba/Docs/Opinions/2023/07-23/23004.pdf>

sympathetic to the interpretation that STRs themselves may not constitute residential uses as they serve a primarily commercial role similar to hotels or motels. While the Court did not definitively establish whether STRs qualify as permitted residential uses, but they did appear sympathetic to the idea that STRs may fall outside the scope of what is traditionally defined as a residential use.

Tylka v. Clackamas County

The second decision (*Tylka v. Clackamas County*) was rendered by LUBA after Clackamas County amended their original STR regulatory proposal to exclude resource zoned lands, but to allow STR uses within a majority of remaining zones, particularly rural residential areas. In addition to specific alterations to the proposed zoning code amendments, the County amended portions of the Clackamas County Comprehensive Plan (CCCP) related to housing affordability and access.

The appellant generally argued that the County failed to adequately consider relevant policies within the CCCP related to housing availability and potential impacts of STRs on housing affordability. In response, the County argued that relevant impacts to housing affordability were indeed considered, citing the number of existing STRs operating outside of city limits and the likelihood that a legal framework to register STRs may increase this amount over time. Specifically, the County noted that approximately 1.5% (~1,000 units) of the existing 62,000 dwelling units in unincorporated Clackamas County were currently utilized as STRs, and no evidence had been presented illustrating how these numbers might increase over time with adoption of a new regulatory program.

Secondly, the County noted that while the CCCP does have policies encouraging the development of low and moderate income housing, it does not specifically identify how this goal should be achieved. The County identified their approach to achieving this goal relies much more heavily on increasing overall levels of diverse residential development to generate a variety of housing options, rather than simply prohibiting potentially conflicting uses such as STRs. Additionally, LUBA noted that Counties are broadly afforded the opportunity to interpret their own goals and policies provided they have a reasonable chance of achieving the identified outcomes. LUBA points out that the standards of ORS 197.829(1) do not require a County’s interpretation of its own goals and policies to be “correct” or the “best or superior” interpretation, but only that the interpretation be plausible given its text and context.

Ultimately, LUBA sided with the County’s arguments given under-developed arguments by the appellant and a general deference to the County in interpreting its own Comprehensive Plan and development code. However, the LUBA decision in this matter has been further appealed to the Court of Appeals and no formal decision has been rendered by the Court at this time.

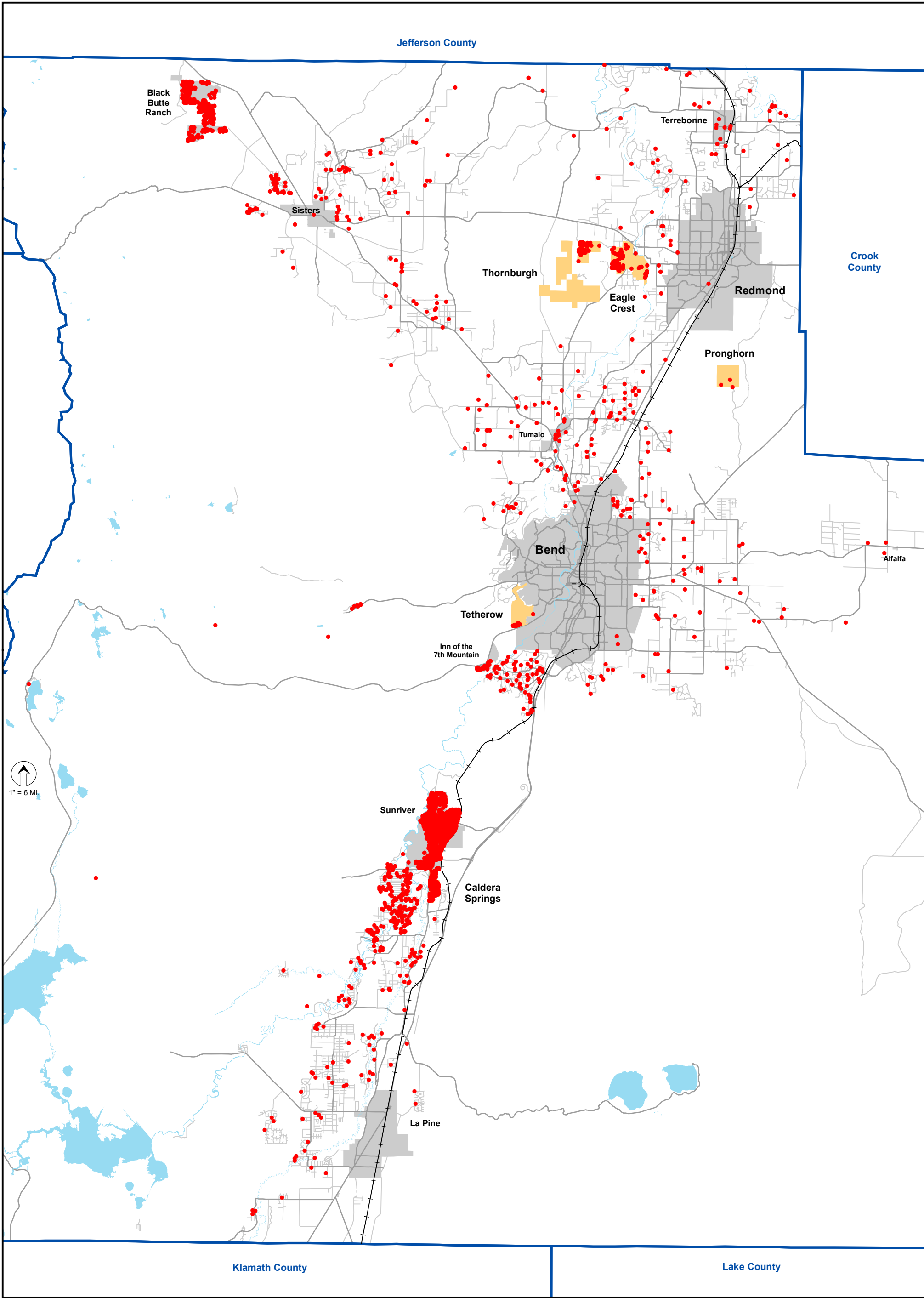
Unresolved Issues

While LUBA affirmed Clackamas County’s amendments to explicitly allow and regulate STRs within non-resource zoned areas, a number of possible arguments are still open to interpretation. As noted previously, the original Court of Appeals decision contained significant discussion regarding the overall validity of STR uses within rural residential zones. Given the Court’s discussion and lines

of reasoning, it is unclear if any or all programs or rules expressly allowing STRs in rural residential zones are vulnerable to future legal challenges under different argumentation. It is possible that jurisdictions could follow the Clackamas County approach and alter the residential portions of their respective comprehensive plans to clearly identify STRs and similar uses as being compatible with the underlying residential goals for these areas. However, this approach could still present unknown legal vulnerability if subject to a formal appeal, particularly given the Court's willingness to entertain arguments surrounding whether STRs truly represent residential uses or fall more explicitly into commercial enterprises.

Attachments

- 1) Maps of Registered Transient Room Tax Accounts in Deschutes County
- 2) DLCDC Letter to Klamath Falls Regarding STRs



Transient Room Tax Account Deschutes County

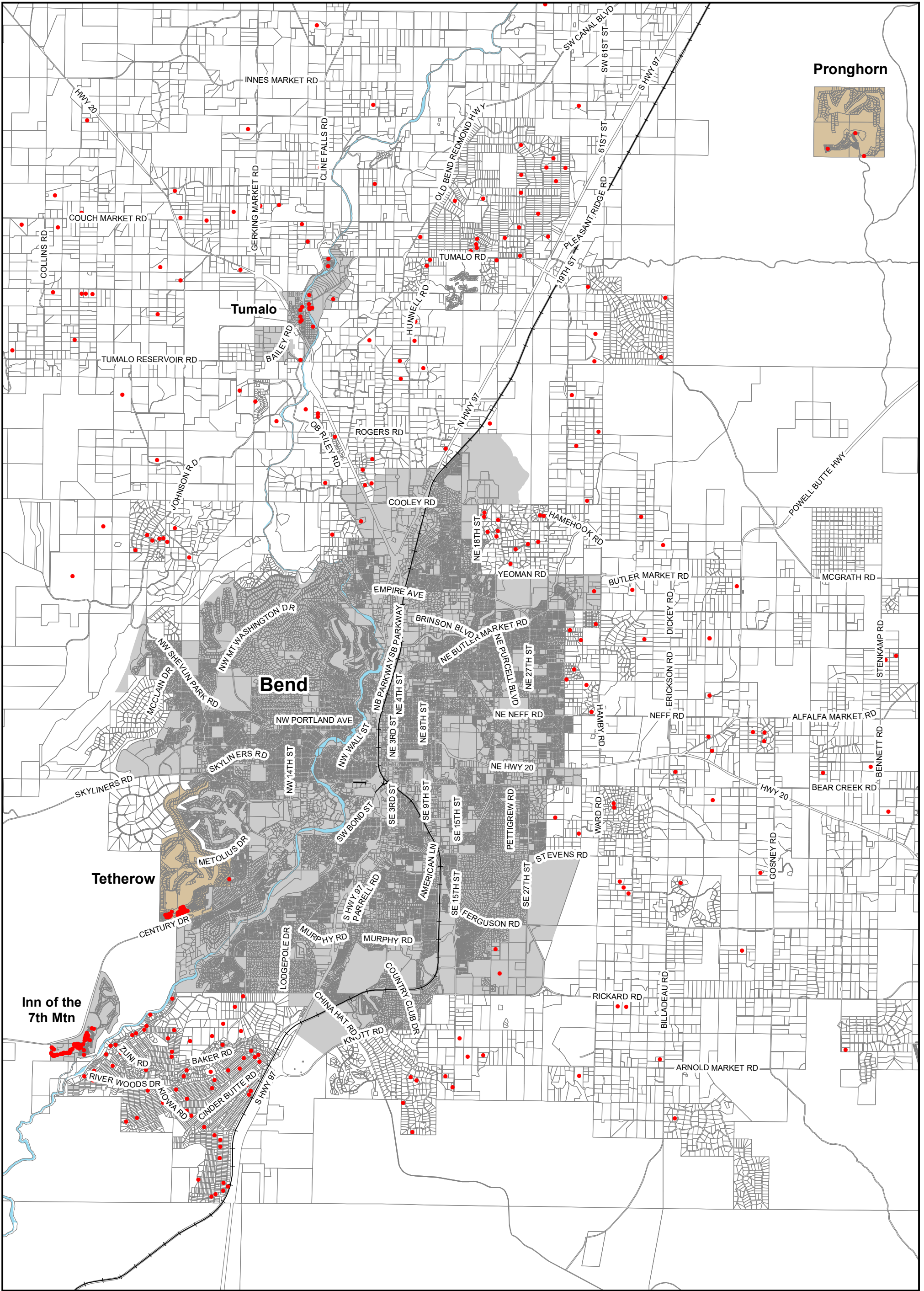
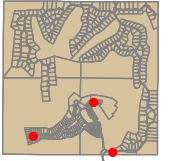
- Transient Room Tax Account
- Destination Resort
- Urban Area



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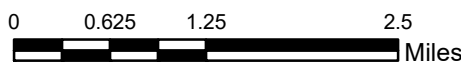
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February 21, 2023



Transient Room Tax Account Bend Area

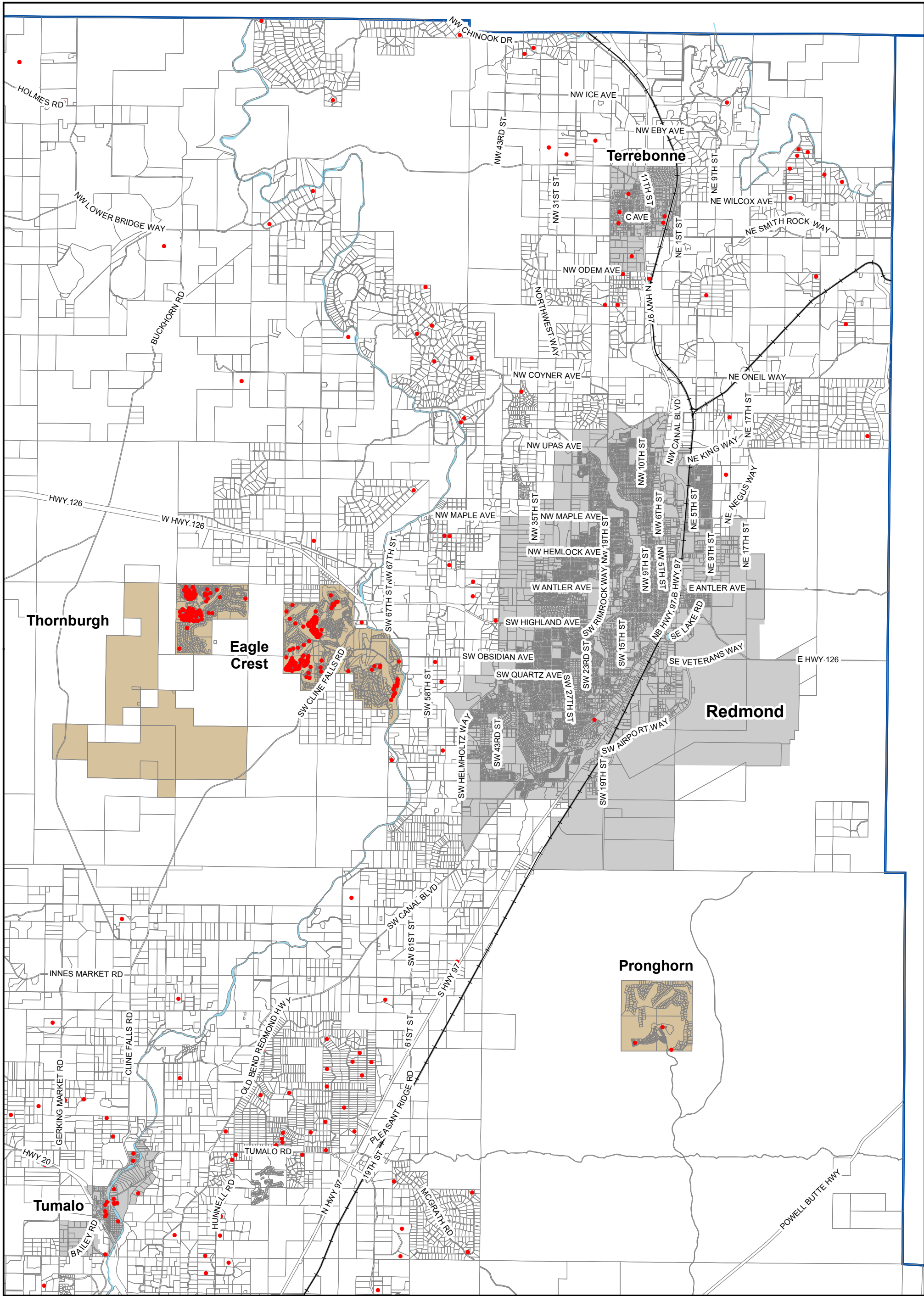
- Transient Room Tax Account
- Destination Resort
- Urban Area



February 21, 2023

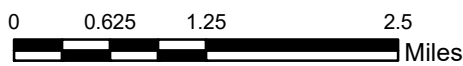
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Transient Room Tax Account Redmond Area

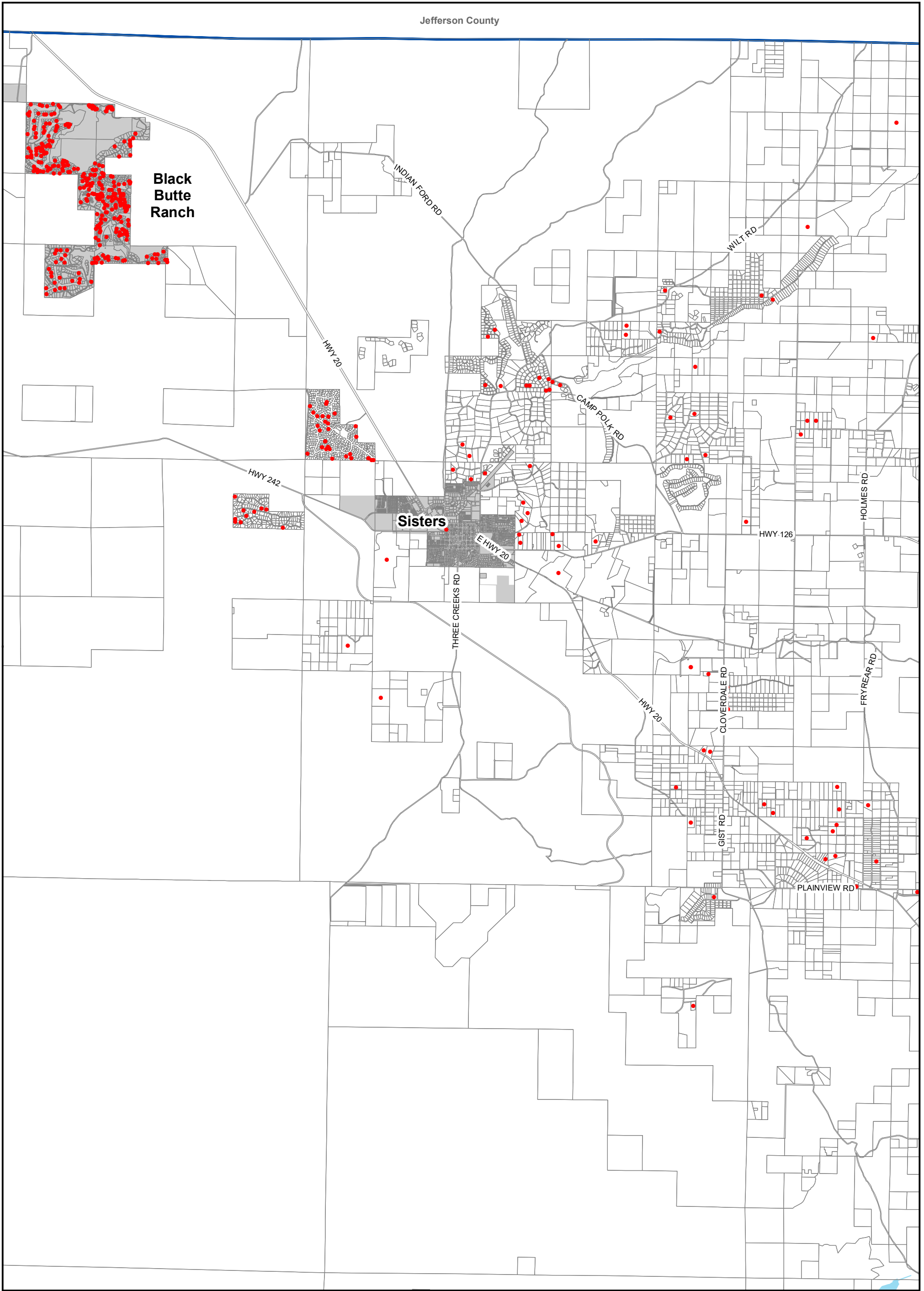
- Transient Room Tax Account
- Destination Resort
- Urban Area



February 21, 2023

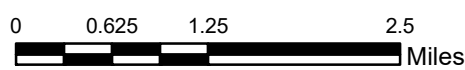
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Transient Room Tax Account Sisters Area

- Transient Room Tax Account
- Destination Resort
- Urban Area

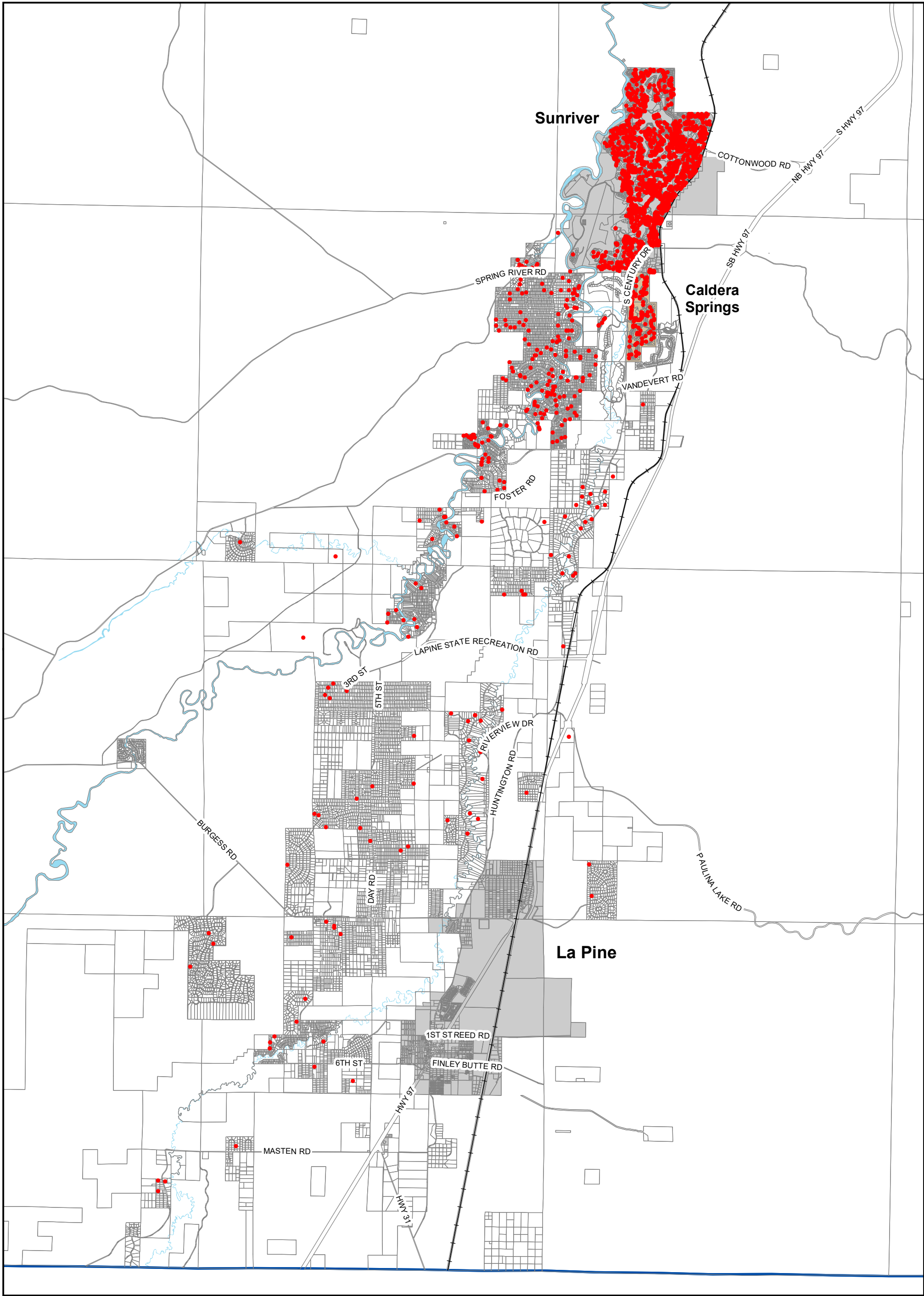


February 21, 2023



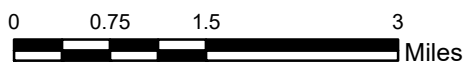
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Transient Room Tax Account South County Area

- Transient Room Tax Account
- Destination Resort
- Urban Area



February 21, 2023



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Oregon

Tina Kotek, Governor

Department of Land Conservation and Development

Director's Office

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: 503-373-0050

Fax: 503-378-5518

www.oregon.gov/LCD

February 27, 2023

City Of Klamath Falls
500 Klamath Avenue
Klamath Falls, OR 97601

RE: DLCD PAPA File No: 001-23



The Department of Land Conservation and Development has been notified that Klamath Falls is in the process of adopting regulations with regard to Short Term Rentals (STRs). The department is concerned that regulation of STRs through land use mechanisms can lead the city into legal liability, and we recommend that the city consider a STR licensing program that does not involve a land use decision.

STRs in small communities require a careful policy mechanism to balance the benefits of economic development with costs to the community such as pressure on the housing market, nuisance, and strain on public services. The department recommends that jurisdictions consider those consequences carefully when designing local policies to regulate STRs.

Department guidance suggests that the regulatory vehicle for cities to address STRs should not come through the land use system, but rather through business licensing. Policies that rely on land use regulations will result in unintended consequences for local jurisdictions that may include Measure 49 compensation requirements should the city reconsider or amend its adopted land use regulations, additional complications with necessary comprehensive plan findings related to Goal 10 - Housing, and subjecting all subsequent decisions and actions to LUBA jurisdiction as land use decisions.

If STR regulations are adopted into local development code they become codified as a land use as defined in 197.015(11). Land use decisions require heightened procedural action including:

- Pre and post adoption notice to DLCD
- Goal findings
- Hearings before the planning commission
- Public notice

The Department recommends that Klamath Falls address STRs through taxation and business licensing, which provide greater latitude for the city, a more delicate policy tool, and an additional source of revenue. Specifically, leveraging the [transient lodging tax](#) allows the city not only to derive revenue, but later to implement specific requirements for the operation of STRs. Department staff can provide additional guidance in the creation of such policies.

Subject or Addressee

Date

Page 2 of 2

Please enter this letter into the record of official proceedings. If you have questions or would like to further discuss anything referenced in this letter, please contact me at thea.chroman@dlcd.oregon.gov.

Best regards,

Thea Chroman

Housing Policy Analyst, Department of Land Conservation and Development



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: September 18, 2023

SUBJECT: Preparation for Public Hearing: Mountain View Petition to Incorporate

RECOMMENDED MOTION:
N/A; work session in preparation for a public hearing.

BACKGROUND AND POLICY IMPLICATIONS:
Staff will conduct a work session with the Board in preparation for a September 20, 2023, public hearing concerning a petition to incorporate the City of Mountain View. The full record is available at the project website: www.deschutes.org/mountainviewincorporation.

BUDGET IMPACTS:
None

ATTENDANCE:
Nicole Mardell, AICP, Senior Planner
Will Groves, Planning Manager
Peter Gutowsky, AICP, Community Development Director
Stephanie Marshall, Assistant Legal Counsel



MEMORANDUM

TO: Deschutes County Board of Commissioners (“Board”)

FROM: Nicole Mardell, AICP, Senior Planner

DATE: September 13, 2023

SUBJECT: Preparation for Public Hearing: Mountain View Petition to Incorporate

Staff will conduct a work session with the Board on September 18, 2023, in preparation for a September 20, 2023, public hearing concerning a petition to incorporate a new city. The full record is available at the project website: www.deschutes.org/mountainviewincorporation. The staff report is included as an attachment to this memo and is also available on the website.

I. BACKGROUND

On February 14, 2023, a Prospective Petition for Incorporation of a City was submitted to the Deschutes County Clerk’s office. The Chief Petitioner, Andrew Aasen, seeks to establish a new city, approximately 265 square miles (169,550 acres) in size, extending west of Diamond T Road to the intersection of Highway 20 and Highway 27¹ as shown in the attached map.

Oregon Revised Statute (ORS) sections 221.005 to 221.106 outline the procedures for incorporation of new cities. Under these rules, an unincorporated area of at least 150 persons can submit a petition to incorporate to the county clerk’s office for consideration by the Board. The Chief Petitioner, Andrew Aasen, collected the required signatures from at least 20 percent of registered voters in the petition boundary, which were certified by the County Clerk on April 28, 2023.

On June 9, 2023, the petitioner submitted the petition application and requested a public hearing. The role of the Board is to hold a public hearing to consider the feasibility of the proposal and if it should move forward to the ballot for a vote².

¹ Note: previous materials cited Highway 27 as George Millican Highway, which is a separate road farther inside the proposed boundary. This has been corrected on the project website and in the staff report.

² Only registered voters within the proposed boundary can vote on the proposal if it is added to the ballot. Property owners who are not registered to vote in the boundary cannot vote but should instead provide testimony during the public hearing process.

Case law and statute outline the following three criteria for the Board’s review.

1. Whether the proposed boundary correctly includes all lands that would be benefited from being in the proposed city;
2. Whether the taxation rate will support the proposed services; and,
3. Whether the proposed city can and will be able to comply with relevant statewide planning goals, County Comprehensive Plan goals and policies, and implementing ordinances.

The first two issues are required by the ORS and the third is related to land use and is required by Oregon Administrative Rule (OAR) and *1000 Friends of Oregon v. Wasco County Court*, 299 Or. 344, 358-60, 67 (1985).

If the Board were to find all three issues are sufficiently supported by the applicant’s analysis and burden of proof, the petitioner could then move forward to a ballot initiative³. At that time, registered voters in the proposed city boundary would vote on official incorporation and formation of a governing body.

II. PROPOSAL AND STAFF REPORT

The applicant’s materials and the entirety of the record are found on the project website: www.deschutes.org/mountainviewincorporation. Attached to this memo is the staff report with findings and recommendations.

III. PUBLIC HEARING PROCESS

During their August 9, 2023⁴, meeting, the Board signed Order 2023-033 establishing the parameters for this public hearing.

Testimony provided during the hearing shall follow the time limits to ensure an orderly and efficient hearing process.

- Petitioner Presentation: 45 minutes
- Agency Comment: 10 minutes per agency
- Public Comment: 3 minutes per individual
- Petitioner rebuttal: 10 minutes

A timer will be used to ensure these time limits are followed. As of the date of this memo, staff anticipates at least 15 individuals to testify during the public comment portion of the hearing.

³ As this is a land use decision, staff notes the Board’s decision is subject to appeal before the Land Use Board of Appeals.

⁴ <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-118>

IV. NEXT STEPS

A public hearing with the Board is scheduled for Wednesday, September 20, 2023 at 9:00 a.m.

ATTACHMENTS:

1. Staff Report
2. Boundary Maps



COMMUNITY DEVELOPMENT

STAFF REPORT

FILE NUMBER: 247-23-000587-TA

HYBRID HEARING: September 20, 2023
Deschutes Services Center
Barnes & Sawyer Rooms
1300 NW Wall Street
Bend, OR 97708
And Via Zoom

PETITIONER Andrew Aasen
27898 Ford Road
Bend, OR 97701

REQUEST: Petition to incorporate the proposed City of Mountain View.

LOCATION: The proposed City of Mountain View extends west at Diamond T Road and ends in the east at the intersection of Highway 20 and 27. It consists of approximately 265 square miles or 169,550 acres.

STAFF CONTACT: Nicole Mardell, AICP, Senior Planner
Phone: 541-317-3157
Email: Nicole.Mardell@deschutes.org

RECORD: Record items can be viewed and downloaded from:
www.deschutes.org/mountainviewincorporation

APPLICABLE CRITERIA

- Oregon Revised Statutes (ORS)
 - Chapter 195, Local Government Planning Coordination
 - Chapter 197.175, Cities’ and counties’ planning responsibilities; rules on incorporations; compliance with goal
 - Chapter 215, County Planning
 - Chapter 221, Incorporation of Cities
- Oregon Administrative Rules (OAR), Chapter 660
 - Division 4 (Goal 2 Exceptions Process)

- Division 6 (Forest Lands)
- Division 8 (Goal 10 Housing)
- Division 9 (Industrial and Commercial Development)
- Division 11 (Public Facilities Planning)
- Division 12 (Transportation Planning)
- Division 14, (Application of the Statewide Planning Goals to Newly Incorporated Cities, Annexation, and Urban Development on Rural Lands)
- Division 15, (Statewide Planning Goals and Guidelines)
- Division 16 (Goal 5)
- Division 33 (Agricultural Land)

McManus v. Skoko, 255 Or. 374, 380 (1970)

1000 Friends of Oregon v. Wasco Co. Court, 62 Or App 75, 659 P2d 1001, rev den 295 Or 399, 614 P2d 1144 (1980)

1000 Friends of Oregon v. Wasco County Court, 299 Or. 344, 358-60, 67 (1985)

Deschutes County Comprehensive Plan. Deschutes County Code Title 23

Deschutes County Code (DCC) Subdivision, Zoning, and Development Procedures Ordinances. Titles 17, 18, 22

I. INTRODUCTION AND BACKGROUND

Introduction

A petition has been filed for the incorporation of a new city in Deschutes County. The Board of County Commissioners (Board) is holding a hearing to determine whether to place the proposed incorporation on the May 2024 ballot per ORS 221.040(3). To determine whether the incorporation should be placed before the voters, the Board must determine:

1. Whether the proposed boundary correctly includes all lands that would be benefited from being in the proposed city.
2. Whether the taxation rate will support the proposed services.
3. Whether the proposed city can and will be able to comply with relevant statewide planning goals, County Comprehensive Plan goals and policies, and implementing ordinances.

The first two issues are required by ORS and the third is related to land use and is required by OAR and *1000 Friends of Oregon v. Wasco County Court*, 299 Or. 344, 358-60, 67 (1985).

Background

1. On February 14, 2023, a prospective petition to incorporate the City of Mountain View was submitted to the Deschutes County Clerk.
2. On April 18, 2023, four signature sheets were filed with the Deschutes County Clerk’s office containing 29 signatures of electors within the boundary of the proposed City of Mountain View.

3. On April 28, 2023, Steve Dennison, Deschutes County Clerk, certified signatures on the petition submitted by Andrew Aasen (Petitioner) for incorporation for the proposed City of Mountain View were verified and that there are over 29 valid signatures.
4. On June 9, 2023, the Petitioner submitted a petition to the Board to incorporate the proposed City of Mountain View and related documents including an *Economic Feasibility Study* for review and consideration at a public hearing.
5. On July 7, 2023, Christopher Bell, Senior Assistant Legal Counsel, mailed a letter to the Petitioner, describing, "while you have provided at least the minimum information for the Board's review of your petition as required by ORS 221.040(2), you have not provided any evidence to demonstrate whether the proposed city can and will comply with the Statewide Land Use Planning Goals once it is incorporated and assumes primary responsibility for comprehensive planning in the area to be incorporated."
6. On July 10, 2023, the Petitioner provided an email response to Mr. Bell's letter and requested the public hearing be scheduled.
7. On July 21, 2023, the Petitioner provided supplemental materials, including a *Statewide Land Use Compliance Plan*.
8. On August 9, 2023 the Board adopted Order 2023-033 accepting a petition and setting a date of September 20, 2023 for a public hearing on the incorporation of the proposed City of Mountain View.
9. Between August 18-20, 2023, the Petitioner emailed additional information to be added to the record. One of these emails included an image of a suggested amendment to the proposed boundary. The image did not include any specific detail on a formal change to the petition, nor additional information such as the number of taxlots impacted by the change. The information reviewed in this staff report is based on the original boundary submitted with the petition for incorporation.
10. The properties subject to the petition extend west at Diamond T Road and end in the east at the intersection of Highway 20 and 27. The property is further described in the Petitioner's *Economic Feasibility Study*.
11. The properties subject to the petition are located in Township 18, Ranges 13 and 14; Township 19, Ranges 13, 14, 15, 16; Township 20, Ranges 13, 14, 15, 16, 17; and Township 21, Ranges 14, 15 and 16.
12. The properties subject to the petition encompass approximately 265 square miles or 169,550 acres, with a Petitioner's estimate of a resident population of approximately 160 +/- residents.

13. Land ownership consists of a 618 taxlots totaling 169,550 acres:

- Federal: 112 taxlots: 127,303 acres
- Private: 437 taxlots: 39,350 acres
- Rights-of-Way: 1,408 acres
- County: 54 taxlots: 1,244 acres
- State: 15 taxlots: 246 acres

14. Rural zoning for the proposed City of Mountain View consists of:

- Exclusive Farm Use / Horse Ridge: 133,889 acres
- Forest Use 1: 28,637 acres
- Surface Mining: 2,838 acres
- Flood Plain: 1,424 acres
- Exclusive Farm Use / Alfalfa: 628 acres
- Open Space & Conservation: 701 acres
- Rural Service Center / Commercial & Mixed Use: 27 acres

15. There are several combining zones that apply to the petition, consisting of:

- Wildlife Area – Deer Winter Range: 267 taxlots, 113,079 acres
- Wildlife Area – Antelope: 474 taxlots, 80,399 acres
- Sage-grouse General: 209 taxlots, 75,631 acres
- Sage-grouse Low Density: 56 taxlots, 10,452 acres
- Sage-grouse Core Area: 9 taxlots, 7,913 acres
- Sensitive Bird & Mammal Habitat, 13 taxlots; 6 sites

II. PUBLIC COMMENTS

Notice of Application was sent to property owners located within the proposed boundary, and within 750 feet of the proposed boundary on August 3, 2023. Notice of Public Hearing was mailed on August 17, 2023, and was physically posted in three locations as required by ORS 221.040(1): in the Deschutes County Service Center near the hearing room, in the Deschutes County Community Development Department foyer bulletin board, and on county owned property adjacent to Highway 20 within the proposed boundary. Notice of Public Hearing was also published in the Bend Bulletin for two consecutive weeks prior to the public hearing (August 23 and August 30, 2023). As of September 13, 2023, thirty-one public comments have been submitted to the record.

Those in opposition (approximately twenty-one) cited the following concerns:

- Allegations that Petitioner misrepresented the purpose of the proposed petition, stated purpose during signature varied but included representation that it would 1) create a rural fire protection

district, 2) would stop the landfill siting process or 3) incorporate only the existing rural community of Millican (2 parcels).

- Allegations that Petitioner’s Code Enforcement circumstance appears to be the basis for the petition to incorporate¹.
- Concern regarding higher cost and taxes associated with incorporation.
- Concern regarding budget feasibility.
- Concern regarding lack of community discussion/consensus on incorporation.
- Concern regarding lack of benefit to incorporation and necessity given low population.
- Concern regarding incompatible uses with city (hunting, target shooting, etc.)
- Concern regarding water availability and infrastructure costs with serving the area.
- Assertion that existing County services and fire protection are adequate.
- Concern regarding wildlife and natural resources.

Those in support (approximately ten) cited general support for the petition.

III. AGENCY COMMENTS

Notice of Application was sent to agencies on August 3, 2023, and Notice of Public Hearing was sent on August 17, 2023. The following agencies submitted comments:

- Oregon Department of Fish and Wildlife: cited concerns relating to mule deer, elk, and Sage-grouse habitat. Noted that the proposal was not adequately mitigating for potential Sage-grouse disturbance.
- Deschutes National Forest Supervisor: Noted that portion of proposal includes National Forest System Land. Lands in a National Forest are federal, subject to Federal legal jurisdiction, and not subject to state or local zoning or taxation.
- Bureau of Land Management, Prineville District, Deschutes Field Office: Noted that 65% of land in boundary is managed by BLM. Raised several concerns regarding areas designated as wilderness, areas of environmental concern, and Greater Sage-grouse habitat. Noted that BLM land is not designated for disposal and not subject to taxation. Also noted that if incorporation occurs, a Mutual Aid Agreement would be necessary for fire protection, of which a requirement is for the new city to have a fire district. Until executed, BLM would be limited in responding to private land ignitions.
- Oregon Water Resources Department: Provided information regarding well depths in the proposed boundary area, noted that well yields in the area are generally quite low and would have difficulty supplying enough water for a municipality. Also noted that quasi-municipal or municipal water right is unlikely to be obtained due to well declines, and that the area is in the Deschutes Basin Mitigation Zone of Impact.

¹ Staff notes the Petitioner was involved with a code compliance case (247-22-000510-CE) that resulted in a voluntary compliance agreement. As this proposal is for an incorporation, and not for a land use application on an individual property, code compliance matters on particular properties are not applicable criteria for this incorporation application.

- League of Oregon Cities: Provided detail on the many aspects of Oregon Law that cities are required to abide by, which include financial and staff resources.
- Deschutes County Road Department: Provided information on current costs of road maintenance and concerns regarding Petitioner’s proposed budget for road maintenance.
- Deschutes County Transportation Planner: Provided information related to current County owned and maintained roads and process for jurisdictional transfer.

IV. INCORPORATION REQUIREMENTS

Incorporation Criteria

ORS Chapter 221 sets out city incorporation procedures and ORS Chapter 197 establishes county land use planning authority and responsibilities.

Role of Board of County Commissioners

ORS 221.040(2) provides that, upon the filing of a petition for incorporation, the county “Court” (Board of Commissioners) shall conduct a public hearing to determine if the proposed incorporation is “feasible” and should move forward to placement on the next election ballot. If the proposal were to move forward to the vote, only registered voters in the proposed boundary could vote to officially incorporate². During the public hearing, any person may appear and provide testimony on the following considerations:

- Proposed City Boundary and Benefit/Lack of Benefit to Properties
- Objections to Granting Petition
- Objections to Formation of Incorporated City
- Objections to Tax Rate
- Reasonable Likelihood that City Can and Will Comply with Statewide Planning Goals, Including Development of a Land Use Program.

The relevant statute and case law identify three formal approval criteria to guide the Board’s decision-making process.

1. Whether to alter the proposed boundaries in order to include all territory that may be benefited or exclude territory that will not be benefitted.
2. The adequacy of the estimated taxation rate to support the proposed services.
3. Whether the incorporation is in compliance with the statewide land use goals.

The County’s authority to approve, reject, or modify the proposal is also established in ORS 221.040(3), which provides,

² As of August 2023 the County Clerk has record of 77 registered voters in the proposed boundary.
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Upon the final hearing of the petition, the Court, if it approves the petition as originally presented or in an altered form, shall provide by order for the holding of an election relating to the incorporation of the proposed city.

If approved or modified, the proposal would move forward to a vote. Staff provides findings to address each of these three criteria.

A. Proposed Boundary and Benefitted Lands

Criteria: The Board must consider whether the properties included within the boundaries of the new city are benefited. "Benefit" is not defined by case law, nor ORS 221.040, rather the ORS states the County Court:

...may alter the boundaries as set forth in the petition to include all territory which may be benefited by being included within the boundaries of the proposed incorporated city...No land shall be included in the proposed city which will not, in the judgment of the county, be benefited.

Staff understands the term "benefit" to mean that the proposed property would see immediate and long-term value and little to no disadvantage from inclusion in a new city boundary.

Petitioner Response: The Petitioner provided the longitude and latitude coordinates for the proposed boundary and noted that the approximate population within the boundary is 160 +/- residents. The Petitioner did not provide any rationale for selection of the properties in the boundary, ownership information, zoning, or current use of properties in the proposed boundary.

In the Petitioner's August 1, 2023 submittal he provides the following to address this criteria.

The proposed boundary of the City of Mountain View have been carefully considered and takes into account key factors that could benefit the community. Here's a summarized analysis of how the proposed boundary seems to align with the community's needs and potential for growth:

Population: With a current population of 160, the proposed boundary seems to include areas that are currently populated and would benefit from being part of the city.

Land Use: Considering that the current land use is primarily Exclusive Farm Use (EFU), the incorporation's comprehensive planning to rezone areas as needed demonstrates a thoughtful approach to accommodating various land uses as the city develops. This can allow for a mix of residential, commercial, and agricultural zones to meet the community's needs.

Services: Since there are currently no services, the incorporation's plan to add services as allowed is a practical step to support the community's growth and development. This approach can ensure that the necessary infrastructure and amenities are put in place to serve the residents effectively.

Natural Resources: The inclusion of BLM land and forest land within the proposed boundary provides an opportunity for the city to actively engage in the conservation and management of these valuable

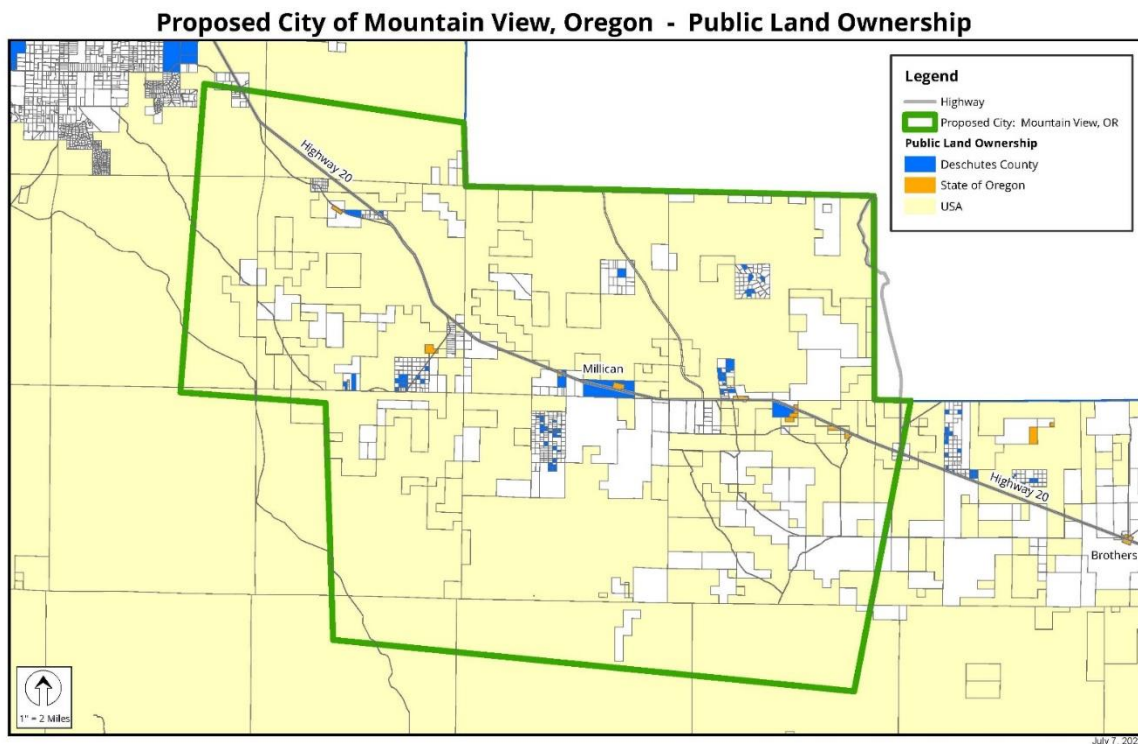
natural resources. Incorporating these lands could enable the city to have a say in their future development and ensure preservation for the benefit of residents.

Community Support: Given that the community wants to incorporate, it suggests a desire for local governance and self-determination. Incorporation can empower the community to make decisions that align with their specific needs and values.

Future Growth: Anticipating future growth from 160 to a maximum of 688 residents demonstrates a realistic projection for expansion. The proposed boundary can accommodate this growth and provide sufficient space for potential development.

Overall the proposed boundary of the City of Mountain View takes into account the community's preferences, potential for growth, and the need to address current and future infrastructure and service requirements. However, it is essential for local officials and planners to conduct a detailed analysis and community engagement to ensure that the boundary aligns with the long-term vision and aspirations of the residents.

Staff Findings:



Boundary Size and Characteristics

The Petitioner for the City of Mountain View is proposing to incorporate an area encompassing 169,550-acres or 265-square miles. Within the proposed City of Mountain View approximately 75% of property is federally owned, 23.2% privately owned, and 1.6% state or county-owned property including existing property in road right-of-way.

The last municipality to successfully incorporate in Oregon was the City of La Pine in 2006. Before La Pine, the last municipality to successfully incorporate was the City of Keizer in 1982.⁴

The City of La Pine consists of 4,500 acres or 7 square-miles. The City of Keizer is approximately 4,713 acres or 7.36 square-miles. The proposed boundary for the City of Mountain View is approximately 37 times the size of other recent incorporation boundaries.

At the time of incorporation, the City of La Pine had approximately 1,000 residents reflecting a population density of approximately 143 residents per square mile. The City of Keizer, at time of incorporation, had a population of approximately 19,650 with a population density of approximately 2,669 residents per square mile. The population density for the City of Mountain View is anticipated to be 0.6 residents per square mile. Staff is concerned that the extremely low population density will provide impassable barriers to implementation of community services typically provided by a city, including creation of community water and wastewater systems, and a contiguous and well-maintained network of City roads.

At the time of incorporation, the City of La Pine encompassed the entire La Pine Urban Unincorporated Community, a designation granted by the state in 1996 due to the historic levels of dense development in the area and creation of the unincorporated community administrative rule (OAR 660-022-0030). This former Urban Unincorporated Community included County designations allowing for residential, commercial, industrial, business park, sewer treatment, and community facility uses. The area also contained an existing rural fire protection district, water and sewer districts, and a park and recreation district. At the time of incorporation, La Pine was able to utilize these existing services and levels of development to support municipal operations. Additionally, adjacent to the city boundary were rural residential exception lands and Bureau of Land Management (BLM) land identified for community expansion, meaning that the land was noted in BLM documents as a candidate for disposal.

In comparison, 94% of the land in the proposed City of Mountain View is resource zoned⁵, which heavily restricts under both state law and the County Code any development aside from uses supporting farm or forestry operations. Adjoining property is also resource zoned and appears to be actively used for farming, ranching, and rangeland uses. Twenty-seven acres or 0.015% of the proposed boundary is zoned as a Rural Service Center to encompass the historic community of Millican. The existing buildings on the property (gas station, post office, and residence) are currently for sale and the commercial buildings are not in use. The buildings are in disrepair, requiring renovation work prior to re-establishing any commercial uses. Remaining lands in the boundary are zoned for Surface Mining (1.6% total area), Flood Plain (0.8%), and Open Space and Conservation (0.4%)

Private and publicly owned lands are intermixed in the boundary, with large tracts of federal land often separating small privately owned properties. Approximately 27 dwellings are currently located within the proposed boundary, although it is unclear from assessor records whether these structures are compliant with state building code regulations and/or County land use regulations. Remaining privately owned lands are largely undeveloped. Federally owned land is used for conservation of sensitive species (Sage-grouse) and recreation, with several areas improved for Off-Highway Vehicle Recreation (OHV), hunting, and hiking. Comments received from the BLM and U.S. Forest Service note that these lands are not

⁴ The City of Damascus incorporated in 2004. However, it disincorporated in 2020.

⁵ Exclusive Farm Use – Horse Ridge Subzone (78%), Exclusive Farm Use – Alfalfa Subzone (0.3%), Forest Use 1 (16%).

designated for disposal and are not eligible for sale, donation, or transfer. Many are being managed for Sage-grouse conservation, a candidate species under consideration of designation under the federal Endangered Species Act.

The area in which the proposed City of Mountain View would be sited currently contains few public services. The Bend Rural Fire Protection District #2 protects a handful of properties on the northwestern edge of the boundary. There are no community water or sewer districts or systems, irrigation districts, nor a park district. The proposed City straddles the Bend-La Pine and Crook County School districts, with the closest school facility being the Brothers K-8 School located outside of the proposed boundary.

Benefitted Lands

ORS 221.040(2) notes *“No land shall be included in the proposed city which will not, in the judgment of the court, be benefitted”*.

"Benefit" is not specifically defined within ORS 221.440(2) however the Petitioner has provided examples of how properties within the proposed city boundary could be "benefitted" by incorporation.

These proposed benefits include:

- Rezoning of lands to allow for residential and commercial uses.
- Local control of road, planning, and building services
- Local control of natural resources
- Local control of fire protection
- Empowerment of residents

The boundary as currently proposed presents significant challenges to private property owners within the boundary seeking development opportunities, federal agencies seeking to meet conservation and land management goals, and adjacent farm and forestry operations in avoiding disruptions to farm and forestry practices. Further discussion of the proposed services and Petitioner’s Economic Feasibility Study is in the next section.

Staff has concerns regarding the necessity of the proposed incorporation. The likelihood of establishing a centralized water or sewer system, necessary for increased commercial and residential development, would prove to be difficult given the large boundary, remote location, and nature of existing uses and ownership within the proposed boundary. Over 75% of land in the proposed boundary is federally owned and will remain under federal ownership and authority if the incorporation were to be successful. This land is designated for conservation and the incorporation of these, and adjacent lands would be detrimental to current operations⁶. Approximately 94% of land in the proposed boundary, including privately owned land, is zoned for resource use. There are active grazing and ranching operations in the area that could be negatively impacted by development patterns and creation of new roads.

Furthermore, the Petitioner states the Urban Growth Boundary (UGB) will most likely encapsulate a one-to-two-mile radius from the Millican Store, leaving approximately 263 square miles of incorporated land

⁶ Staff also notes that these lands would not be subject to taxation by the proposed city.
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subject to county zoning, but under city control.⁷ There is no municipality in Oregon that contains such a discrepancy between its UGB and incorporated boundary (further discussed in the Statewide Planning Goal 14 analysis below). In Oregon, many cities' UGBs and incorporation boundaries are coterminous like La Pine. For those that are not, their UGBs extend beyond their incorporation boundary by several hundred or a few thousand acres like Bend, Redmond, and Sisters. Lastly, it is unclear if the Exclusive Farm Use (EFU), Surface Mine, and Flood Plain zoned taxlots within a one-to-two-mile radius are lawfully established units of land (lots of record) for development purposes, which will remain a statutory requirement, even if lands are incorporated.

Due to the high percentage of federal lands, resource zoned land, and vast area with limited population, staff finds the proposed boundary is an inappropriate size and configuration for incorporation and that the land included in the proposed city will not be benefited. The Petitioner's application materials do not provide a compelling reason for this incorporation, aside from more local control of building and planning processes.

B. Economic Feasibility Study

Criteria: The Board must consider if the proposed tax rate can support the proposed services for the new city.

The Petitioner has provided an *Economic Feasibility Study* that details plans for initial services (years 0-3 following incorporation) and long-range goals (15-30 years following incorporation). Additionally, the Petitioner has provided a fiscal breakdown for year one and year three following incorporation including a proposed budget and projected revenues.

Proposed Services

The Petitioner states that on day 0 following incorporation, the city will develop long range zoning and economic plans, vote on the format of municipal government, post add listings for an assistant city administrator, begin developing a local fire district, and provide road services. The Petitioner has provided minimal detail in the establishment and management of these services. Staff notes that until a city has plans adopted and approved by state agencies, the following services will be required to be provided by the County in the interim: Building, Planning, Onsite Wastewater, 911, Roads, and Law Enforcement. Typically, these services are provided through a joint management agreement with the County and include fees paid by the city to the County for receipt of services.

Proposed Tax Rate

The tax rate for the proposed City of Mountain View is \$2.00 per \$1,000 assessed value and would begin to be collected following an election to incorporate, if successful. The Petitioner, in the *Economic Feasibility Study*, finds that the total real market value of all property in the proposed boundary totals \$35,000,000,

⁷ Unless there was an intergovernmental agreement signed by both the Board and proposed City of Mountain View City Council, the proposed City of Mountain View will be required to adopt and administer County zoning within its incorporation boundary outside a UGB.

with an assessed value of all property as \$15,000,000. The Petitioner estimates an income of approximately \$30,000 to cover city expenses resulting from this tax rate. The Petitioner did not cite a source for these estimates for evaluation by the Board as the fact-finding authority in these proceedings.

For several reasons, staff has concerns with the accuracy of Petitioner’s income estimate. In utilizing County GIS and Assessor data, staff estimates the total assessed value of all property in the boundary (including federal lands, which are not subject to local taxation) as \$10,913,276. Of this, approximately \$2,111,586 is currently being deferred through the state’s farm tax deferral program and would continue to be deferred until a property owner opted out of or discontinued the farm use. This leaves approximately \$8,801,690 in assessed value for all property in the boundary, resulting in \$17,603 in estimated tax revenue to the City in year one. This is roughly 58% of the income estimated by the Petitioner in his materials.

In comparison, the City of La Pine established a tax rate of \$1.98/\$1,000. Per the City of La Pine’s budget, the estimated revenue from this tax rate in 2023 is approximately \$477,330. La Pine’s revenue is approximately 27 times that of the proposed City of Mountain View’s and covers an area that is 37 times smaller. Staff has significant concerns on the City’s proposed budget and the validity of the proposed tax rate.

Shared Revenue Sources

The provided Year 1 budget lists a proposed city income of \$195,110. The budget is required by law to assess the economic feasibility for city formation and to establish the basis for the proposed permanent tax rate. However, it is important to note that the future city council is not bound to adopt these budgets. After its first year of operation, the new city is required to follow Oregon budget law, which among other provisions, requires a budget committee be appointed by lay citizens.

Aside from the proposed tax revenue discussed above, the Petitioner also notes the following government shared income revenue sources in the year 1 budget:

- State Allocated Income - \$10,000
- Federal Allocated Income - \$12,000
- County Income - \$8,474.58
 - \$30,474.58 in Total Government Shared Income

The Petitioner has not provided detail on the source of these government allocated funds, nor the basis for including them in the petition. Absent this information, staff assumes the source of state funds on which Petitioner’s analysis is based relate to Oregon Highway Trust Fund Revenues, Liquor Revenues, Marijuana Tax Revenues, Cigarette Tax Revenues, and 9-1-1 Tax Revenues. Distribution of these funds come with several minimum requirements, with which Petitioner has not established compliance or an ability of the proposed City of Mountain View to comply in order to be immediately eligible to receive funds⁸:

⁸ <https://www.orcities.org/application/files/4116/7423/9902/2023SSRFullReport-Revised.pdf>

Highway Tax, Liquor Revenues, and Cigarette Tax: A city must provide at least four of the following municipal services to be eligible for allocation: fire protection, police protection, sanitary sewers, storm sewers, planning or zoning, utility services, or street construction, maintenance, and lighting. Specific data on the actual allocation of these shared revenue sources are not readily available beyond Highway Tax. Generally, for similarly sized cities, annual liquor revenues average approximately \$3,000 and annual cigarette revenues average \$180.

Several small cities did receive Highway Tax in 2022 that are similar in population size to the proposed City of Mountain View, Jordan (130), Grass Valley (157), and Spray (138), although it is notable that each of these cities do provide at least four municipal services and serve a boundary that is a much smaller geographic area, 2.08, 0.5, and 0.29 square miles respectively.

The City of Mountain View would not be eligible to receive funds from these allocations until 1) the City has collected tax revenues for at least one year and 2) at least four of these municipal services are provided, of which only two (planning and streets) are proposed in the year 0-3 plan. Providing services over the entire proposed boundary would require major funding and staffing allocations, which could prove to be difficult from the Petitioner’s proposed budget. It is also notable that Highway Tax funds shall only be used for highway purposes.

9-1-1 Tax: This tax is allocated to 9-1-1 jurisdictions connected to statewide network and shall only be used for 9-1-1 related purposes. The Petitioner is not proposing to take over these services from Deschutes County 9-1-1, therefore would not be eligible for these funds.

Marijuana Tax: Cities with established marijuana operations are eligible to receive these funds. Distributed based on per capita and number of licensed facilities in the city. Until a marijuana dispensary is established, which would require rezoning of land and connection to utilities, the city would not be eligible. Once established, the estimated income based on a city of this size would be approximately \$215.

Staff is not aware of any federal shared revenue that a city of this size would be eligible for, and assumes this number is likely an overestimation.

Other Income Sources

Aside from state shared income, the city is anticipating the following city income in its Year 1 budget:

- SIN Tax Allocated Per Capita - \$3,188
- Highway/Gas Tax - \$11,448
- Building/Planning - \$20,000
- Grants -\$100,000

Staff interprets the reference to SIN tax, although not defined by Petitioner, as Liquor and Cigarette Revenues and Taxes from the state. As noted above, the Petitioner is likely not eligible for these taxes until 1) the city has collected property taxes for at least one year and 2) at least four municipal services are provided. The Petitioner has not provided any additional information on a separate city tax.

Staff noted the viability of receiving Highway/Gas Tax from the State of Oregon above. The Petitioner has not provided any additional information noting a separate city gas tax.

The County currently provides building and planning services for properties in this area. According to the Petitioner, the proposed City of Mountain View will adopt Deschutes County Community Development Department’s current fee schedule but apply a 60% reduction to land use applications and building permits. Hearings Officer fees will be paid by the city. Last year, Deschutes County CDD processed eleven applications within the petition boundary consisting of:

- Conditional Use Permit
- Extension Requests (2)
- Lot of Record Verifications (4)
- Permit Sign-off for Other Agency
- Property Line Adjustments (2)
- Temporary Use Permit

These fees totaled approximately \$9,500. No building permit applications were received or approved. Utilizing the Petitioner’s approach to building and permitting fees, this same amount would result in \$3,800 of revenue if using the Petitioner’s proposed 60% discounted rate. It is worth noting that revenues associated with building permits are restricted under ORS 455.210 to “administration and enforcement of a building inspection program.” They may not be used for general municipal purposes. It is unclear whether the proposed City of Mountain View intends to contract with the County for building plan review and inspection services only, or all components of a building program including permit application take-in and issuance, record keeping, system maintenance, etc., as Petitioner has provided no information on what the City intends to do with regard to these services.

While it is possible that the City will be able to obtain technical assistance for land use planning to develop its own comprehensive plan and land use regulations from the Department of Land Conservation and Development (DLCD), the Petitioner has not provided evidence in the record that they have the resources or even the appropriate zoning and requisite infrastructure to complete those tasks within four years as required in OAR 660-014-0010(4). While not a requirement for the petition, properties zoned EFU and Forest Use will require exceptions to Goals 2 and 14 if these lands are proposed to be within a UGB. Lands surrounding Millican also contain inventoried wildlife resources which will require an Economic, Environmental, Social, and Energy (ESEE) analysis per OAR Chapter 660, Division 16. Both entail rigorous analysis especially at a scale of 1 to 2 square miles. It does not seem plausible that one City employee can accomplish these responsibilities, let alone oversee other land use planning tasks that include but are not limited to developing a Residential Land Needs Analysis, Housing Needs Assessment, Economic Opportunity Analysis, Transportation System Plan, Goal 14 analysis, water and wastewater plans, natural hazard plans, park and recreation plans, and intergovernmental agreements.

The Petitioner states, “that several small cities have generally contracted with the county, the local council of governments, or a private planning consulting firm to prepare the comprehensive plan. Mountain View will seek assistance from all three.” Contracting services with the County have not been discussed with the Board. With the limited projected resources for the City of Mountain View, it is unclear whether the City could provide compensation to the County for any contracted services, the time period during which County services would be requested to be provided, and the economic impact on the County as a result of considering contracting with the City, either on its own or in conjunction with the local council of governments or a private planning consulting firm.

Last, the Petitioner notes that \$100,000 in grant funds are expected to be awarded in year 1, accounting for over 51% of the proposed city revenues. Petitioner has provided no evidence of any grant

applications, precisely what grants they have or would apply for, or how they would otherwise expect to obtain such funds within the timeframe claimed. Staff questions the feasibility of the City receiving this amount of award funding under the evidence presented in support of the petition, particularly considering the proposed limitation of only one employee to manage all city operations.

The largest anticipated cost in the proposed budget, employee payroll, including benefits is proposed as \$46,724. There is no city recorder, administrative assistant, accounting clerk, or engineer. This one person will be responsible for managing the proposed City of Mountain View with duties that include but are not limited to:

- Administration
- Agendas and Minutes
- Budgeting
- Economic development
- Engineering
- Finance
- Grant writing
- Human resources
- Intergovernmental agreements
- Land use planning
- Parks planning
- Public facility planning
- Risk management
- Road maintenance

Without a detailed burden of proof and supporting evidence, one cannot conclude that the city will find a staff person with a skill set that includes the duties listed above for \$46,724, even if Petitioner could establish some evidence that the City would have the means to sufficiently fund such position.⁹ To the extent an employee is hired, the Petitioner has not identified where city business would be located or convened. Petitioner lists a budget item of \$35,250 as operating expenses, which include a city meeting space, equipment, supplies, legal counsel, insurance, utilities, and League of Oregon Cities. An additional \$20,000 is allocated for city hall; another \$50,000 for a future fire department. As mentioned above, the buildings in Millican are in disrepair. The other rural lands encompassed in the petition are not zoned to allow for office uses. This includes 27 dwellings located in the petition boundary.¹⁰ Office uses are not permissible in lawfully established EFU or Forest dwellings.

Contract legal services are estimated to amount to just \$10,000 for the year. There is no evidence to support a finding that this limited estimate would be sufficient to cover actual legal services, considering the numerous documents that will require legal drafting and review. Supplies and equipment for Year One are estimated at \$2,000 and \$1,000, respectively. Meeting space is estimated at \$16,000. All three figures seem remarkably low and are not supported by evidence. There is no discussion or analysis of the location(s) in which meetings will occur at the low estimated cost of \$16,000. Given the zoning restrictions in the petition boundary, it appears to be impractical and beyond the estimated meeting space budget line item to rent meeting rooms for city operations in Redmond, Bend, or the rural communities of Tumalo and Terrebonne.

⁹ According to the Economic Feasibility Study, the one paid position for Years 1 and 2 will be paid with grant funding. There is no evidence in the record describing the funding source.

¹⁰ Eleven are located in the EFU-Alfalfa area which is located in the northwest corner of the petition boundary. Sixteen are located in the EFU-Horse Ridge area.

The League of Oregon Cities provided a letter into the record detailing the many facets of Oregon Law that cities are required to demonstrate compliance with, including budget, procurement, and labor laws among others. This letter outlines in great detail the amount of financial and staff resources required to maintain legal status as a city, of which the Petitioner does not address in the application materials.

The Petitioner, in his August 1, 2023 supplemental application materials email, states that at a bare minimum - expenses for the new city could be as low as \$17,250 including meeting space, insurance, utilities and LOC dues. Staff finds this estimate to be extremely low given the previous information provided.

In summary, staff finds that the proposed tax rate is insufficient to fund the proposed services based on the provided *Economic Feasibility Statement* and recommends denial.

V. LAND USE REQUIREMENTS

Criteria: The Board must determine whether the proposed city can and will be able to comply with relevant statewide planning goals, County Comprehensive Plan goals and policies, and implementing ordinances.

Application of the Statewide Planning Goals and the County Comprehensive Plan

Oregon’s land use statutes, as interpreted by Oregon’s appellate courts, define the responsibility of the county governing body in this proceeding, and, by extension, the nature and scope of the application of various state and local standards and criteria. ORS 197.175(1) explicitly makes county consideration of a petition to incorporate a new city an exercise of county planning and zoning responsibility. The statute requires that:

Cities and Counties shall exercise their planning and zoning responsibilities including, but not limited to, a city or special district boundary change which shall mean the annexation of unincorporated territory by a city, the incorporation of a new city, and the formation or change of organization of or annexation to any special district ... in accordance with ORS Chapters 196 and 197 and the goals approved under ORS Chapters 196 and 197.

ORS 195.025 assigns to county governing bodies the responsibility to coordinate land use planning within their jurisdictions, as follows:

In addition to the responsibilities stated in ORS 197.175, each county, through its governing body, shall be responsible for coordinating all planning activities affecting land uses within the county, including planning activities of the county, cities, special districts, and state agencies, to assure an integrated comprehensive plan for the entire area of the county....

Application of Statewide Planning Goals to Incorporation Petitions

The Oregon Supreme Court has provided useful guidance as to how the goals are to be applied to proposed city incorporations. In Part III. of its decision in the *1000 Friends of Oregon v. Wasco County*

Court, 299 Or. 344, 358-60, 67 (1985) incorporation case, the Supreme Court explained that:

The legislature deemed a county's decision in connection with a proposed incorporation a land use decision which must accord with 'the goals', without exception. We take this general mandate to mean that to the extent a county can conduct a meaningful inquiry as to all 19 goals, it must do so. A county's responsibility at the time it considers a petition for an incorporation election is no greater with respect to Goal 14 (urbanization goal) than with respect to the other goals. It is to determine the compatibility of incorporation and its consequences with the criteria stated in the goal.

Incorporation will transfer to the city actual planning authority for some of the land presently within the county's planning authority. Some of the consequences of incorporation may foreseeably affect land that remains the county's responsibility. The county cannot expect the proponents of incorporation to present a concrete or even a tentative comprehensive plan before the election, and we do not believe that the legislature intended this, although proponents may wish to offer their own ideas for a plan in making their record for approval of the proposed incorporation. The county can, however, expect that the proponents present evidence of the purposes sought to be achieved by incorporation insofar as they bear on future land use, such as the kind of municipal services that the city is expected to provide and the projections about future population and tax base that these purposes assume or necessarily imply. The realism of the purposes and projections and the probable consequences for land use are, of course, open to challenge.

Although this task that ORS 197.175 assigns the counties may not be easy, there is no doubt that the legislature assigned it. We believe that it can be given a practical interpretation...

The seven establishment factors of Goal 14 are designed to be considered in conjunction with the actual drawing of a proposed UGB. Nonetheless, under the test stated in Part II. of this opinion, a county can determine whether it is reasonably likely that the newly incorporated city can and will consider and address the Goal 14 factors when the city eventually draws a proposed UGB, and whether it is reasonably likely that the city can and will ensure that future urbanization is appropriate and not incompatible with Goal 14 and the other goals.

In Part II. of its decision, referred to in the above paragraph, the Court said:

The goals are designed to be applied during a local government's preparation of a comprehensive plan, a process in which a county court's actions with regard to an incorporation petition are not normally a part. As a result, a county's consideration of the goals incident to an incorporation petition differs from a city's or county's application of the goals during the planning process in which specific uses are proposed for specific parcels of land.

... A county discharges its planning and zoning responsibilities with regard to whether a proposed incorporation is in accordance with the goals if the county is satisfied that after a successful incorporation election it is reasonably likely that the newly incorporated city can

and will comply with the goals once the city assumes primary responsibility for comprehensive planning in the area to be incorporated. The county's determination must be supported in the record like any other county land use decision." 1000 Friends of Oregon v. Wasco County Court, 299 Or 344, 360, 367-68, 703 P2d 207 (1985).

The Supreme Court interprets the statutory obligation of the county to exercise its planning and zoning authority concerning incorporations in accordance with statewide planning goals to be imposed directly and specifically by ORS 197.175 so that it continues even after the acknowledgement of the county's comprehensive plan.

Application of the County Comprehensive Plan to Incorporation Petitions

ORS 197.175(1) also requires counties to assure that land use decisions, including decisions approving, modifying, or denying petitions for incorporation, comply with applicable provisions of comprehensive plans and land use ordinances. The Deschutes County Comprehensive Plan implements the statewide planning goals. Like the statewide planning goals, the Comprehensive Plan's goals and policies apply with varying degrees of specificity to the proposed incorporation.

The County is responsible for processing the petition for incorporation as a land use decision in accordance with its comprehensive plan. It is direct and immediate. In addition, Deschutes County must analyze how the proposed city will comply with the County's comprehensive plan pending adoption of the City's own plan and implementing ordinances. ORS 215.130(2) provides that a county's comprehensive plan and implementing ordinances shall continue to apply to land inside a newly incorporated city unless and until the city provides otherwise. However, ORS 197.175 imposes upon a newly incorporated city a separate obligation to comply with statewide planning goals and to make land use decisions in accordance with statewide goals "...if its [the city's] comprehensive plan and land use regulations have not been acknowledged by the commission." The same statute requires cities to adopt comprehensive plans and implementing ordinances.

Based upon these statutes, a newly incorporated city must make land use decisions from the outset in accordance with both the statewide planning goals and with the county's comprehensive plan and implementing ordinances. Therefore, in order for the Board to approve an incorporation petition, the evidence in the record must support findings that: (1) the proposed city can and will comply with both sets of regulations from the outset; and (2) the proposed city can and will adopt, secure acknowledgement, and competently implement its own comprehensive land use plan and implementing ordinances within the time period allowed by the statute.

The evidence in the record must also support findings that the city can and will continue to comply with the County Comprehensive Plan and implementing regulations or that the city can and will be able to adopt and implement its own plan and implementing regulations in a manner consistent with the statewide planning goals that will apply directly to the city's planning and zoning process. This requirement effectively brings the statewide planning goals in through the comprehensive plan and requires the same analysis of goal issues as described in the Wasco case, quoted above.

If the proposed incorporation is found to be inconsistent with the comprehensive plan or applicable zoning ordinances, then the petition will have to be denied or an appropriate plan amendment or land use regulation amendment will have to be adopted in conjunction with any approval.

Petitioner response:

The Petitioner, in his August 1, 2023, supplemental application materials email provides the following response to this criterion.

The proposed incorporation seeks to align with and fully adhere to Oregon's statewide planning goals, prioritizing responsible and sustainable growth that preserves natural resources, supports agricultural and forest lands, and fosters a vibrant and inclusive community. As a newly formed city, we are committed to utilizing the 4-year period provided by the state to develop a comprehensive land use plan in close collaboration with the county and relevant state departments. This process will prioritize citizen involvement, engaging the community's diverse voices to ensure that their interests and needs are incorporated into the decision-making.

We have meticulously met all the necessary requirements to incorporate, ensuring that the proposed boundary correctly includes all lands that would benefit from being part of the proposed city. The taxation rate has been thoughtfully designed to support the proposed services, providing a sustainable financial foundation.

Our incorporation proposal diligently adheres to the requirements set forth in the Oregon Administrative Rules (OAR) and draws lessons from the case of 1000 Friends of Oregon v. Wasco County Court, 299 Or. 344, 358-60, 67 (1985), learning from past experiences to avoid any mistakes in our planning process.

Given the state's requirement of no municipal services until a 2,500 population threshold is achieved, our comprehensive plan may initially be relatively simple. However, we are committed to building a well-thought-out plan that sets the groundwork for future growth while prioritizing essential services as our population reaches the threshold.

By upholding Oregon's statewide planning goals, meeting incorporation requirements, and involving the community throughout the process, our incorporation aims to create a well-balanced and resilient community that fosters economic development, environmental stewardship, and an enhanced quality of life for all residents, now and in the future.

Staff Findings:

A. Compliance with Statewide Planning Goals

Aside from the general information provided above, the Petitioner provides several references to compliance with statewide land use planning goals in the application materials. The Petitioner states in their *Statewide Land Use Compliance Plan* in their July 21, 2023, supplemental materials, that most of the statewide planning goals are accompanied by guidelines. Staff notes that to the contrary, many are administered by OARs which include specific legal requirements. The Petitioner frequently references

DLCD’s website to Oregon’s Statewide Land Use Planning Goals.¹¹ Petitioner’s citations are not a substitute for, and do not constitute substantial evidence.

Goal 1 – Citizen Involvement

In the application materials, Petitioner quotes excerpts from DLCD’s website devoted to Goal 1. He states that the proposed City of Mountain View will develop a committee for citizen involvement to monitor and encourage public participation in planning with help from DLCD. The Petitioner then states a Citizen Involvement Advisory Committee will advise the Land Conservation and Development Commission.

There is no discussion or analysis by the Petitioner whether the incorporation proposal represents a citizen-driven effort nor any discussion or analysis of future plans to incorporate Goal 1 into future city decision making. Deschutes County is not aware of community meetings or workshops held to discuss city goals, services, and boundaries, or governance studies. It is unclear how the proposed City of Mountain View will engage residents if incorporated in such an expansive geographic area. There is no discussion of technology or a web presence. For the La Pine incorporation effort for example, a political action group created a website that contained frequently asked questions, a map of the proposed boundaries, and a statement of purpose. It is not clear how the creation of a comprehensive plan for the proposed City of Mountain View, including required public involvement, would be funded. As stated previously, staff questions the availability of a central meeting place for the community, which could pose challenges to public hearings and citizen participation in city related matters.

Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View could complete its responsibilities for compliance with Goal 1.

Goal 2 – Land Use Planning

Oregon Planning Goal 2 requires each local government in Oregon to adopt and implement a comprehensive land use plan and zoning regulations. These plans are required to have a factual base to inform the plan and demonstrate compliance with each applicable state planning goal.

The Petitioner, in his July 10, 2023, supplemental email, suggests the following path to adopt a comprehensive plan following incorporation:

The council should officially ask the LCDC county coordinator and field representative to begin the development of comprehensive planning work program and grant application. The county coordinator and the area’s field representative from the Oregon Department of Land Conservation and Development (DLCD) will assist the city in developing a suggested work program - after incorporating. Information gathered for the feasibility study should provide much of the base data for the comprehensive plan and should be shared with the DLCD to assist in determining what tasks still need doing. The work program will be reviewed by the DLCD, and a mutually accepted compliance schedule (work program) will be

¹¹ <https://www.oregon.gov/lcd/OP/Pages/Goals.aspx>
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developed. Historically, the program has provided funds for a portion of the planning effort. Small cities have generally contracted with the county, the local council of governments, or a private planning consulting firm to prepare the comprehensive plan.

Staff is concerned about the connection between this effort and the Petitioner’s proposed budget. As noted previously, staff’s analysis of the information submitted by the Petitioner results in significantly lower anticipated city income and revenue streams than that projected by the Petitioner. As such, it appears doubtful that the city will have financial resources to complete a comprehensive plan creation process. Although DLCD does offer grant programs to assist with these tasks, the new city will likely require planning consultation services, which is not listed in the proposed budget.

Staff also notes the complexity involved with incorporating a city in an area that is comprised largely of resource lands. The Petitioner is obligated to demonstrate whether the proposal on its face can comply with the statewide planning goals and/or whether it is feasible for the new city to develop a comprehensive plan and implementing ordinances that meets the Goals within four years of incorporation. Consideration largely rests on whether exceptions¹² will have to be taken in order to rezone land for urban uses. The proposed boundary consists of lands zoned EFU, Forest Use, Surface Mine, Open Space & Conservation, Flood Plain, and Rural Service Center. There are no existing exception zoned lands such as Rural Residential or Multiple Use Agricultural, that exist in other areas of Deschutes County. If incorporated, the City of Mountain View will be required to take exceptions to Statewide Planning Goals 2 and 14 for redesignation of farmland and for redesignation of land from rural to urban scale uses. The Petitioner contemplates a UGB of 1 to 2 square miles. Unfortunately, the Petitioner has provided no evidence in the record that it is plausible to develop findings justifying an exception for up to 1,280 acres of EFU and/or Forest Use zoned land.

The Bureau of Land Management, Prineville District, Deschutes Field office submitted a letter to the record noting that BLM land within the boundary is not available for disposal or community expansion, meaning that the land is not eligible for donation, sale or transfer and will remain under BLM management. This land is also not eligible for taxation. With over 75% of land in the boundary designated as federal land, staff has concerns regarding the functionality of the city and urban growth boundary, and feasibility for urban level development. With small parcels of private land intermixed with large tracts of public land, development of roads and utilities to serve private development at an urban level would be extremely difficult.

Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View could complete its responsibilities for compliance with Goal 2.

Goal 3 Agricultural Lands

¹² An exception is a decision to exclude certain land from requirements of one or more applicable state goals (commonly relating to Goal 3 – Agricultural Land, Goal 4 – Forest Land, and Goal 14 – Urbanization).

In *1000 Friends vs. Wasco County*, the Oregon Supreme Court found that a County can only look to land within the area proposed for incorporation when identifying the predominant soil capability classifications for the purpose of identifying agricultural lands.

In the application materials, the Petitioner quotes excerpts from DLCD’s website devoted to Goal 3. The petitioner in his *Statewide Land Use Compliance Plan* notes:

Mountain View will be sure to comply and designate EFU zones within its boundaries as necessary.

The proposed boundary includes 134,517 acres (EFU-Alfalfa: 628 acres, EFU-Horse Ridge: 133,88 acres) of land planned and zoned for agricultural use under Goal 3 in the County Comprehensive Plan. The crop profiles for these subzones as described the Deschutes County Comprehensive Plan are irrigated hay and pasture (EFU-Alfalfa) and rangeland grazing (EFU-Horse Ridge). The act of incorporation *per se*, does not affect agricultural land. The land remains planned and zoned for agricultural use until such time as the City of Mountain View adopts a Comprehensive Plan and rezones the land for other uses in compliance with the statewide planning goals. Impacts to EFU land would not occur until they are included within a UGB.

The Petitioner, in the application materials, describes a UGB consisting of 1 to 2 square miles centered around the Rural Service Center Millican. Most of those lands are currently zoned EFU. The City of Mountain View will be required to demonstrate that EFU lands are needed for development to include them in the UGB. There may be some *perceived* impacts to EFU lands included within city boundaries due to the fact that, in most cities, EFU lands are not included within city boundaries. Cities are established primarily to provide urban infrastructure, urban levels of service, and local governance. There may be potential impacts to farm practices, real or perceived, due to future urbanization.

However, the Petitioner has not demonstrated why city boundaries are being proposed or are necessary in this particular area of the county, which is overwhelmingly zoned EFU. Outside of the Rural Service Center of Millican, which is currently vacant and in need of major repair, there is no development history, pattern, or urban infrastructure that dictate a governance solution for a municipality. Staff finds no demonstration that this land is not fit for farming purposes and should be reclassified for another use.

Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View could complete its responsibilities in compliance with Goal 3.

Goal 4 – Forest Lands

In the application materials, the Petitioner quotes excerpts from DLCD’s website devoted to Goal 4 and states there is no plan to change the use of any forest or BLM land within City limits.

The proposed boundary includes 28,637 acres of land planned and zoned for forest use under Goal 4 in the County Comprehensive Plan. Most of this land is owned and governed by the federal

government. It includes the Pine Mountain Observatory. Similar to the analysis for agricultural lands, the incorporation *per se*, does not affect forest land. The land remains planned and zoned for forest use until such time as the City of Mountain View adopts a Comprehensive Plan and rezones the land for other uses in compliance with the statewide planning goals. Impacts to forest land would not occur until they are included within a UGB. There may be some *perceived* impacts to forest lands included within city boundaries due to the fact that, in most cities, forest lands are not included within city boundaries. Cities are established primarily to provide urban infrastructure, urban levels of service, and local governance. There may be potential impacts to forest practices, real or perceived, due to future urbanization.

The Petitioner has not demonstrated why city boundaries are being proposed for or necessary in this particular area of the county which contains significant forest zoned property. Outside of the Rural Service Center of Millican, which is vacant and in need of major repair, there is no development history, pattern, or urban infrastructure that dictate a governance solution for a municipality. Staff finds no demonstration that this land is not fit for forest purposes and should be reclassified for another use.

Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View could complete its responsibilities in compliance with Goal 4.

Goal 5 – Open Spaces, Historic, Scenic and Natural Resources

The petition for incorporation contains several acknowledged wildlife inventories pertaining to Sage-grouse (93,996 acres), Sensitive Bird & Mammal Habitat (6 sites), Antelope (80,399 acres), and Deer Winter Range (113,079 acres). As it pertains to Goal 5, there are also 2,838 acres zoned Surface Mine, 701 acres zoned Open Space & Conservation and 1,424 acres zoned Flood Plain. These comprehensive plan designations and regulations remain in place until the City adopts its own. However, upon incorporation, the City will be required to produce an ESEE analysis per OAR Chapter 660, Division 16.

In the Petitioner’s *Statewide Land Use Compliance Plan* provided in the July 21, 2023, submittal, the Petitioner states the following:

Mountain View will in short review land uses allowed on or near each resource site that might have a negative impact on the resource. It will then decide on a level of protection appropriate for each resource site and adopt codes to put policies into effect. This will be implemented by following State rules for implementing Goal 5 that have been adopted and amended over the years. As stated above for goal 4- there are no current plans to change the use of forest or BLM lands now or within the next 25 years.

Oregon Department of Fish and Wildlife provided comments expressing concern with the Petitioner’s proposal:

The proposed area of Mountain View is located within biological elk and mule deer winter range and essential pronghorn habitat. These areas are designated as category 2 habitat as defined

by the ODFW Fish and Wildlife Habitat Mitigation Policy. Under the mitigation policy, it is the policy of ODFW to recommend mitigation for unavoidable impacts to wildlife habitat. The mitigation goal, if impacts are unavoidable, is no net loss of either habitat quantity or quality and to provide a net benefit of habitat quantity or quality through reliable in-kind and in-proximity mitigation. As proposed, this application does not meet these criteria. Any future development in the proposed city would be subject to these standards.

The Petitioner's *Economic Feasibility Study* references Sage-grouse habitat specifically:

Mountain View should develop a rehabilitation program with ODFW to restore populations of the Greater Sage-grouse. Hatching centers and breeding programs are among possible solutions to combat declining populations. Working with SE counties in Oregon may be a solution for sourcing fertile eggs.

In response, Oregon Department of Fish and Wildlife provided the following:

In addition, the proposed city boundaries overlap greater Sage-grouse core habitat and low-density habitat (including both the existing 2011 Greater Sage-grouse Conservation Assessment and Strategy for Oregon definition, and the draft 2023 core habitat and low-density habitat boundaries). As described under ODFW's Greater Sage-grouse Conservation Strategy for Oregon mitigation policy, adverse direct and indirect impacts on Sage-grouse and Sage-grouse core and low-density habitats must be mitigated by the developer. The application cites potential to establish a greater Sage-grouse rehabilitation and breeding facility to 'restore populations' of Sage-grouse. A rehabilitation and breeding facility in Deschutes County is not an idea supported by ODFW, and not adequate mitigative measures. As proposed, this application does not meet mitigation criteria.

The dominant habitat type within the proposed area is sagebrush habitat, which is described as a "Strategy Habitat" in the Oregon Conservation Strategy⁵. The reduced quality and quantity of this habitat type across Central Oregon influences many wildlife species including other "Strategy Species" such as the ferruginous hawk, loggerhead shrike, sagebrush sparrow, Brewer's sparrow, northern sagebrush lizard, Washington ground squirrel, and pygmy rabbit. Despite the natural resource considerations included in this proposal, increased development associated with the incorporation of Mountain View will have a net negative effect on the habitat values provided by sagebrush and the wildlife that depend on this habitat type.

ODFW goes on to recommend that the County ensure there is a compensatory mitigation plan to address County-recognized Goal 5 habitats as well as ODFW defined Category 2 habitats prior to approval of the petition.

Similarly, the BLM states in their letter that they maintain a disturbance cap of 3% not to exceed a 1% increase each decade on development on BLM land within the boundary. New infrastructure, roads, and energy development fall within this cap. The Petitioner has not addressed how the city will manage these disturbance caps on both federal and private lands.

The Petitioner does not address with substantial evidence in the record the responsibility and analysis that come with developing a Goal 5 inventory for wildlife, open space, or scenic resources. There is no documentation or detailed analysis of Deschutes County's acknowledged Goal 5 inventories, of which the city would be required to implement.

Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View could complete its responsibilities in compliance with Goal 5.

Goal 6 – Air Water and Land Resources Quality

The Petitioner's *Statewide Land Use Compliance Plan* for Goal 6 states:

*the proposed City of Mountain View will consider protection of air, water and land resources from pollution and pollutants when developing comprehensive plans...
As advised by the current watermaster for Mountain View – current private well use shall continue to be the primary water source for citizens, as allowed under the state water use law – meeting single lot exemptions (15,000 gallons). No ordinances or state laws are in effect to prohibit new wells for new homes under this exemption, and for personal water consumption use. This plan of action will be sufficient until a larger population is present (2,500 or greater).*

The Assistant Watermaster for the Upper Deschutes Basin provided a letter into the record on September 8, 2023.

- If the proposed city plans to have water/sewer infrastructure the following should be considered:*
- *In the western extent of the project area, well depths are 900-1100 feet deep with static wells near 800 feet below land surface. In the central and eastern project extents, well depths are 400-600 feet deep with static water levels near 450 feet below land surface. OWRD well log database shows several drillings resulting in dry wells.*
 - *Well yields in the proposed area are generally quite low (median yield = 15 gpm) and would have difficulty supplying enough water for a municipality.*
 - *The nearest observation wells have declined persistently since at least the mid-1990s. Because of these declines and the low estimated well yields, a quasi-municipal or municipal water right in the proposed boundary is unlikely.*
 - *The proposed area falls within the Deschutes Basin mitigation zone of impact. Water right application from this area would need to acquire mitigation credits to offset any new water right uses. Mitigation credits in this region are limited.*

The information from Oregon Water Resources Department outlines the practical limitations to water availability in the proposed boundary area, which in turn will impact the type and scale of development allowed within the boundary. The Petitioner has not provided information regarding plans for municipal water service, although OWRD notes that acquisition of municipal water rights

are unlikely. Additionally, OWRD notes that drilling for individual wells could be extremely costly and may not provide enough yield to support urban levels of development.

One purpose of incorporation is to establish urban levels of services, which ultimately requires urban density. Relying on domestic wells and onsite wastewater treatments systems necessitates a land use pattern of at least 1 acre or larger lots or parcels due to state setback requirements from the well to the septic system, drainfield, and reserve area.

The Petitioner has not provided sufficient information to the management of water and wastewater within the proposed city. OWRD shared information noting challenges to use of individual wells as well as acquisition of municipal or quasi-municipal water rights. The zoning of the area is not conducive to establishment of community water and wastewater systems.

Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View could complete its responsibilities in compliance with Goal 6.

Goal 7 – Areas Subject to Natural Disasters and Hazards

The Petitioner’s *Statewide Land Use Compliance Plan* for Goal 7 states,

Mountain View will address natural hazards in our comprehensive land use plan. This will be accomplished by adopting a natural hazard inventory and supporting plans and policies. A limited amount of planning grant money is available through DLCD to help communities address these planning needs and will be applied for.

There is a Federal Emergency Management Agency flood hazard area within the proposed petition boundary. This flood hazard area is regulated by the County through its Flood Plain zoning. The city will have to develop and maintain regulations to meet federal requirements in order to receive federal flood insurance. The Petitioner has not demonstrated it is feasible for the proposed city to do so.

Wildfire hazard is extreme in rural Deschutes County. Lands within the petition boundary are unprotected. There is no rural fire protection district serving this area. In the *Economic Feasibility Study*, the Petitioner identifies \$50,000 for a future fire station. However, there is no analysis or proposed timeline for establishing a fire district or fire station, nor any evidence for a determination of whether it is plausible to establish one. By its own admission, the Petitioner states,

the lack of a fire district puts local residents in harm’s way and creates a situation that does not adequately serve the needs of the new city residents.

The Bureau of Land Management, in their September 19, 2023, letter, discuss the process for a mutual aid agreement for fire protection.

Dr. Aasen indicates that much of the needed infrastructure and services will continue to be provided by existing sources for several years or more, and that developing a local fire district may not occur for up to 10 years. For the BLM to develop a Mutual Aid Agreement (Agreement) through a Memoranda of Understanding to partner with Mountain View in wildfire suppression, Mountain View will have to establish a fire department. The minimum standard would be a state-approved rangeland fire protection association, which is made up of willing landowners who meet standards for training and equipment (engines, water tenders, radios, and personal protective equipment) and adequate liability insurance. Without this Agreement, suppression costs for wildfires that originate on private land within the incorporated area would be the responsibility of Mountain View. In addition, without this Agreement, the BLM would be limited in responding to private land ignitions.

Staff notes that the establishment of a city requires a Mutual Aid Agreement with the BLM and a fire department as part of this agreement, to ensure ongoing fire protection on private land in the unincorporated area. The Petitioner’s *Economic Feasibility Statement* list this service as being provided between years 0-10. This timeline for service, in combination with the limited tax revenue, would lead to a significant gap in fire protection for private property owners if the city were to incorporate.

Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View could complete its responsibilities in compliance with Goal 7.

Goal 8 – Recreational Needs

The Petitioner’s *Statewide Land Use Compliance Plan* for Goal 8 states,

Mountain View will plan for the recreation needs of our residents and visitors. Our goal will place a priority on non-motorized forms of recreation, and recreation areas that service high-density populations with limited transportation options and limited financial resources. Mountain View will also place a priority on recreation areas that are free or available at a low cost to the public.

In the Petitioner’s *Economic Feasibility Analysis*, parks and recreation services are listed as a long-range goal (15-30 years) for the city. The city has not accounted for the creation of a parks district or provided any detail on parks maintenance or acquisition in the proposed budget. The proposed City of Mountain View is also not within a boundary of a park and recreation district. Staff is concerned that the reference to this Goal 8 requirement a “long-range goal” means that the Petitioner will not be able to meet the intent of Goal 8 within the first four years of operation as a city.

Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View could complete its responsibilities in compliance with Goal 8.

Goal 9 – Economic Development

The Petitioners' *Statewide Land Use Compliance Plan* states the following:

Mountain View and all local governments should have a working inventory of areas suitable for economic growth that can be provided with public services. These inventories primarily focus on planning for major industrial and commercial developments, and having a ready supply of land appropriately zoned and located for those opportunities and local investments. As with all areas of the comprehensive plan, the amount of land planned for economic development will be adequate for a 20-year supply. The economic development plans formed by Mountain View will use one or more market incentives to encourage the type of development the new city would like to see, as mentioned in the petition- with a goal of creating a green community that can be showcased throughout the United States. A few possible initiatives may include tax incentives or disincentives, land use controls, or preferential assessment.

Aside from this information, the petition contains no economic strategic plan or demographic profile. With the exception of the Rural Service Center of Millican, which is currently vacant and in need of major repair, there are no lands in the petition boundary currently planned and zoned for industrial, commercial or mixed uses. The complication of a Goal exception to rezone existing EFU and potentially Forest zoned land could also create barriers to providing a sufficient land base for employment.

Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View could complete its responsibilities in compliance with Goal 9.

Goal 10 – Housing

The Petitioner offers a general summary of Goal 10 and acknowledges in the Petitioner's *Statewide Land Use Compliance Plan* and *Economic Feasibility Study* that future residential uses will rely on domestic wells and onsite wastewater systems. Additionally, the Petitioner states,

Lots that are generally suited and developed with residential size restrictions will be converted to residential lots of record (5-40 acres). Lots should not be reduced to less than 5 acres to conform with ODFW regulations and best practices for development in the Wildlife combining zone and Sage-grouse habitat. Large lots (100+ Acres) that have not had farm tax deferral status, or farming operations (within the last 5 years) will be considered for future residential, commercial, and industrial development. Future and existing lot dimensions will have a five acre or larger minimum size requirement.

Goal 10 specifies that each city must plan for and accommodate needed housing types including for multifamily. It requires each city to verify population projections, prepare buildable land inventories, project future land needs, and plan and zone enough buildable land to meet those forecasts. Rural exception lands or water or sewer districts do not exist within the proposed petition area. It is unclear if the existing EFU, Surface Mine, and Flood Plain zoned taxlots within a one-to-two-mile square mile of Millican are lawfully established units of land (lots of record) for development purposes. This is the area the Petitioner contemplates for a UGB. Petitioner's submittals do not include any figures or analysis regarding population projections, buildable land

inventories, projected future land needs to support planning and zoning for adequate buildable land in the proposed City.

Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View could complete its responsibilities in compliance with Goal 10. There is no evidence that the City will provide adequate land for a full range of housing types at urban densities for residents at various income levels.

Goal 11 – Public Facilities

In response to this goal, the Petitioner quotes excerpts from DLCD’s website devoted to Goal 11 and offers the following in his *Statewide Land Use Compliance Plan*

Mountain View acknowledges that each city with a population greater than 2,500 is required to create a public facilities plan that meets its current and long-range needs. If a county is home to an unincorporated community, the county too must develop and adopt a community public facility plan that regulates facilities and services. A city with an urban growth boundary (UGB) cannot include, as part of its public facilities plan, the intent to serve areas beyond the UGB, except in very specific and limited circumstances. Within an urban growth boundary, public facilities should be in greater supply in areas planned for higher densities, and available at appropriate levels of service throughout the city. Outside an urban growth boundary, public facilities should not, as a matter of practice, be provided. For example, public sewer service is only allowed outside of a UGB to alleviate an existing health hazard, and public water service is only allowed if it is not used as justification to increase existing levels of allowed rural development. Examples of this would be areas zoned for "rural residential" use. The city's public facilities plan should plan for provision of public services to "urbanizable" areas, lands that are within the city's UGB but don't have public facilities available to them yet.

Goal 11 speaks to a variety of public facilities and services to manage the needs of residents. The petition boundary contains no water, sewer, or fire protection district. The Deschutes County Sheriff’s Office provides law enforcement services to the unincorporated area. The Bend-La Pine School District and Crook County School District serve the proposed City of Mountain View. The *Economic Feasibility Study’s* long-term goals identify a local fire district (0-10 years) and the establishment of a municipal water service, sewage disposal, garbage disposal and collection, parks and recreation, library services, local school district and transportation, and elderly and low-income housing assistance within 15-30 years.

Goal 11 requires the proposed City of Mountain View to develop a “timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.” It requires the new city to determine its needs for facilities and services based on development plans and population projections and assure that needed facilities and services are available in advance of or concurrent with development. Staff is concerned that the lack of budget and staff resources will lead to significant service gaps for community members within the boundary.

Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View could complete its responsibilities in compliance with Goal 11.

Goal 12 – Transportation

The Petitioner quotes excerpts from DLCD’s website devoted to Goal 12 and states in the *Statewide Land Use Compliance Plan* that a Transportation System Plan is not required until “the population threshold is achieved”.

There is no analysis of existing modes of transportation, transportation facilities, the Transportation System Plan (TSP) or transportation studies that have been completed for the area. Additionally, the existing infrastructure in the boundary includes a complex network of County, State, and Federally managed rights of way. The proposed City of Mountain View will be required to develop a TSP in compliance with OAR 660-12, the Transportation Planning rule (TPR). The TPR applies differently to UGBs greater than 25,000 than those with less than 25,000, but in all respects, the TSP must be consistent with land use. Staff is concerned about staff and financial resources to complete this highly technical work.

In regard to maintenance, the *Economic Feasibility Study* states “city roads will begin improvements year 0 of city incorporation.” The Petitioner provides a tentative budget for road maintenance but does not detail plans on acquiring equipment or personnel to conduct the maintenance. A comment from the County Engineer notes:

The actual cost of \$262,146 per year (present value) to operate and maintain the County roads within the proposed city boundary at current service levels far exceeds the Year One \$31,448 and Year Three \$52,134.88 streets operations and maintenance costs proposed by the Petitioners in their economic feasibility analysis.

Staff is concerned that the Petitioner has underestimated the cost and staff resources required to maintain County roads (not including Highways or Federal roads) in the boundary and if incorporated, lack of maintenance could lead to serious public health and safety concerns.

Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View could complete its responsibilities in compliance with Goal 12.

Goal 13 – Energy

The Petitioner quotes excerpts from DLCD’s website devoted to Goal 13. The *Economic Feasibility Study* states,

Within the long-range plan, utilities should be considered in a manner that fits harmoniously within the natural surroundings. Sustainable development of energy sources will take priority. Examples: Solar, Geothermal, Wind, and other technological advances.

Water studies and sources will take priority, ensuring domestic populations do not harm ecosystems or re fill capacity. Rain and snow water collection, along with greywater reuse systems will be key to success in this region for long term sustainability. Green building methods should always be considered to ensure the impact from development is limited in scope. This will also set a precedent for the region. Lifetime of development projects should strive for buildings and residences that can be maintained sustainably. Along with affordable building and housing development fees, Mountain View will strive to be a community leader in developing with nature. This means living sustainably with the local animals and requiring greenspace (BLM) and residential landscaping fit the needs of the local ecology. Dark Skies initiatives should continue in collaboration with the Pine Mountain Observatory. This means the city will not develop or implement street lights.

It is not clear from the proposed budget if and how these types of programs will be funded. Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View could complete its responsibilities in compliance with Goal 13.

Goal 14 - Urbanization

In *1000 Friends of Oregon v. Wasco County Court*, 299 Or. 344, 358-60, 67 (1985) the Oregon Supreme Court determined that a County is not required to adopt a Goal 2, part II, exception to Goal 14 in order to approve a petition for incorporation. Land within a newly incorporated area shall retain the same County Comprehensive Plan and Zoning designations as was existing, until the new City adopts their Urban Growth Boundary, along with their own plans and designations.

To comply with Goal 14, the Supreme Court noted that proponents of the petition must provide evidence of the purposes sought to be achieved by the incorporation, as it pertains to the future of land use, such as the kind of municipal services the city is expected to provide, tax, and population projections.

The Petitioner quotes excerpts from DLCD’s website devoted to Goal 14. The *Statewide Land Use Compliance Plan* states the following:

Like every incorporated city in the state, Mountain View will develop a UGB. The UGB will be designated in the city's comprehensive plan. The land is inside a UGB, will be considered urbanizable. When designating an urban growth boundary, Mountain View city will plan to include a twenty year supply of land for housing, employment, industry, open space and recreational needs. The UGB will also provide plans for transition from urban to rural land uses, to avoid conflicts. Within the UGB, Mountain View once at or above the 2,500 population threshold; will create a transportation system plan and public utility plan. And lastly, our comprehensive plan will encourage efficient use of the land, to provide for a more livable, walkable, and sustainably built community.

The proposed incorporation has no immediate effect on Goal 14. However, Goal 14, along with Goal 2 are significant because they require the proposed City of Mountain View to establish a UGB. Goals 2 and 14 are evaluated together due to the fact that any resource lands being considered for a UGB will require an exception. The proposed City of Mountain View will be required to

demonstrate its need for urbanizable land coupled with an analysis of Deschutes County’s twenty-year population projections. When the City establishes its UGB it will have to consider the land need factors of Goal 14, which requires efficient accommodation of identified land needs, an orderly and economic provision of public facilities, comparative ESEE analysis, and compatibility of proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB.¹³

The petition for incorporation proposes an unusual situation where the city boundary will be significantly larger than the UGB. The Petitioner states the UGB will most likely encapsulate a one-to-two-mile radius from the Millican Store, leaving approximately 263 square miles of incorporated land subject to county zoning, but city control. There is no municipality in Oregon that contains such a discrepancy between its UGB and incorporated boundary. Outside of the Rural Service Center of Millican, there is no development history, pattern, or urban infrastructure. The proposed City of Mountain View contains no rural residential exception lands or utility or service districts.

Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View could complete its responsibilities in compliance with Goal 14, most notably in compliance with location factors of Goal 14 and the priority scheme of ORS 197.298. It is not reasonable to expect that it is feasible for the new city to propose a UGB that ensures that future urbanization is appropriate and not incompatible with Goal 14 and the other statewide planning goals based on the lack of evidence in the record, the rural character of the area and the lack of urban infrastructure.

In summary, staff finds that the Petitioner has not provided sufficient information to demonstrate that the City can reasonably comply with Statewide Planning Goals following incorporation and recommends denial.

B. Deschutes County Comprehensive Plan

The Petitioner did not provide findings addressing the Deschutes County Comprehensive Plan. Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View can or will be able to comply with the Deschutes County Comprehensive Plan.

C. Deschutes County Implementing Ordinances

The Petitioner did not provide findings on Deschutes County Code Title 17 (Subdivisions) or Title 18 (County Zoning). The new city will be required to implement these regulations until they adopt and receive acknowledgment from the state for their own implementing regulations The Petitioner describes a Year 0-3 plan that mentions,

¹³ OAR 660-015-0000(14)
File No. 247-23-000587-TA

The City of Mountain View will develop long range zoning and economic plans to ensure the residents of the area have equal and adequate opportunities to develop, grow, and sustain the economic welfare of the area. This will start immediately (day 0) upon incorporation.

It is not clear from the proposed budget how this work will be funded or how the city will implement the County Comprehensive Plan and implementing ordinances until the city adopts its own plan and regulations.

Based on the lack of evidence in the record, the Petitioner has not demonstrated that the proposed City of Mountain View can or will be able to comply with the Deschutes County implementing ordinances.

VI. CONCLUSION & NEXT STEPS

Conclusions

As noted above, in order to approve the petition for incorporation, the Board must find that the record supports findings by the Board that:

1. The proposed boundary correctly includes all lands that would be benefited from being in the proposed city.
2. The taxation rate will support the proposed services.
3. The proposed city can and will be able to comply with relevant statewide planning goals, County Comprehensive Plan goals and policies, and implementing ordinances.

Staff finds that the Petitioner has not demonstrated with substantial evidence in the record that a minimum of 150 residents live in the proposed incorporation boundary, which is required per ORS 221.020.

Staff finds that the configuration of the proposed boundary includes primarily (75% federal owned land) that will not be benefitted from being in a proposed city. Staff finds the configuration of the boundary, in which private land is interspersed among large tracts of publicly owned land, poses significant challenges to promote orderly and efficient urban scale development. Land within the 265-square mile boundary is currently used for farming, ranching, and conservation of sensitive species such as Sage-grouse, elk, antelope, and mule deer. There is no development history, pattern, or urban infrastructure that dictate a governance solution for a municipality within the proposed incorporation boundary, or the area at large. Therefore staff finds that the benefit of incorporation and inclusion of property in the proposed boundary has not been adequately demonstrated.

Staff finds that the proposed taxation rate will not support the proposed services. The Petitioner’s *Economic Feasibility Statement* includes insufficient and incorrect information regarding potential city income and revenue sources. The tax revenue has been miscalculated by the Petitioner and will only account for approximately \$17,608 in the first year compared to the amount of \$30,000 (a difference of 42%) as stated in the Petitioner’s materials. The tax rate for the proposed City of Mountain View will not

cover the cost of creating, operating, and maintaining a city of approximately 160 residents, spanning 265 square miles regardless of whether it contains a UGB of one-to-two square miles. This amount does not cover the cost of any expense category, let alone the anticipated total expenses of \$183,923 in year one.

Staff finds that the Petitioner has not provided sufficient information to determine if the city can and will be able to comply with relevant statewide planning goals, County Comprehensive Plan goals and policies, and implementing ordinances. It is not feasible for the city to meet any of the statewide planning goals though the establishment of a UGB within four years as required in OAR 660-014-0010(4). Based on existing zoning, a UGB would require exceptions to Goals 2 and 14. The incorporated city outside of the UGB would include resource and Goal 5 land that would have to be zoned similarly to the existing County zones to meet the statewide planning goals and be consistent with the County Comprehensive Plan. The Petitioner has not demonstrated that it is reasonably likely that the newly incorporated city can and will comply with the goals once the city assumes primary responsibility for comprehensive planning in the area to be incorporated. Lastly, there is no evidence in the record that the proposed City of Mountain View can and will continue to comply with the Deschutes County Comprehensive Plan and implementing regulations or that the city can and will be able to adopt and implement its own plan and implementing regulations in a manner consistent with the statewide planning goals that will apply directly to the city's planning and zoning process.

For all the foregoing reasons set forth in this Staff Report, staff recommends denial of the proposed petition to incorporate the City of Mountain View.

Next Steps


At the conclusion of the public hearing, the Board can choose one of the following options:

- Continue the hearing to a date and time certain;
- Close the oral portion of the hearing and leave the written record open to a date and time certain;
- Close the hearing and commence deliberations; or
- Close the hearing and schedule deliberations for a date and time to be determined.

DESCHUTES COUNTY PLANNING DIVISION



Written by: Nicole Mardell, AICP, Senior Planner



Reviewed by: Will Groves, Planning Manager



Reviewed by: Peter Gutowsky, Community Development Director



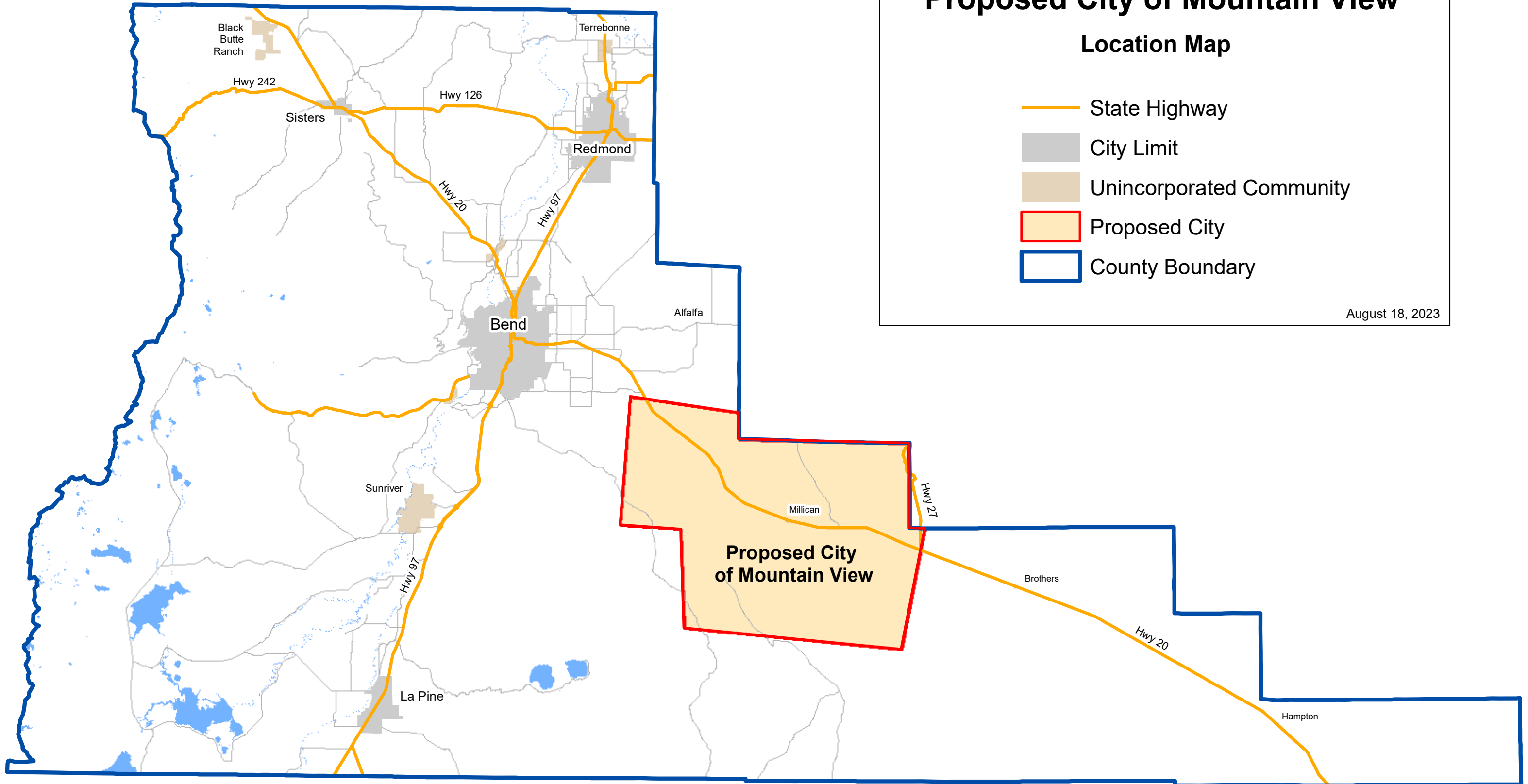
1" = 6.5 Mi.

Proposed City of Mountain View

Location Map

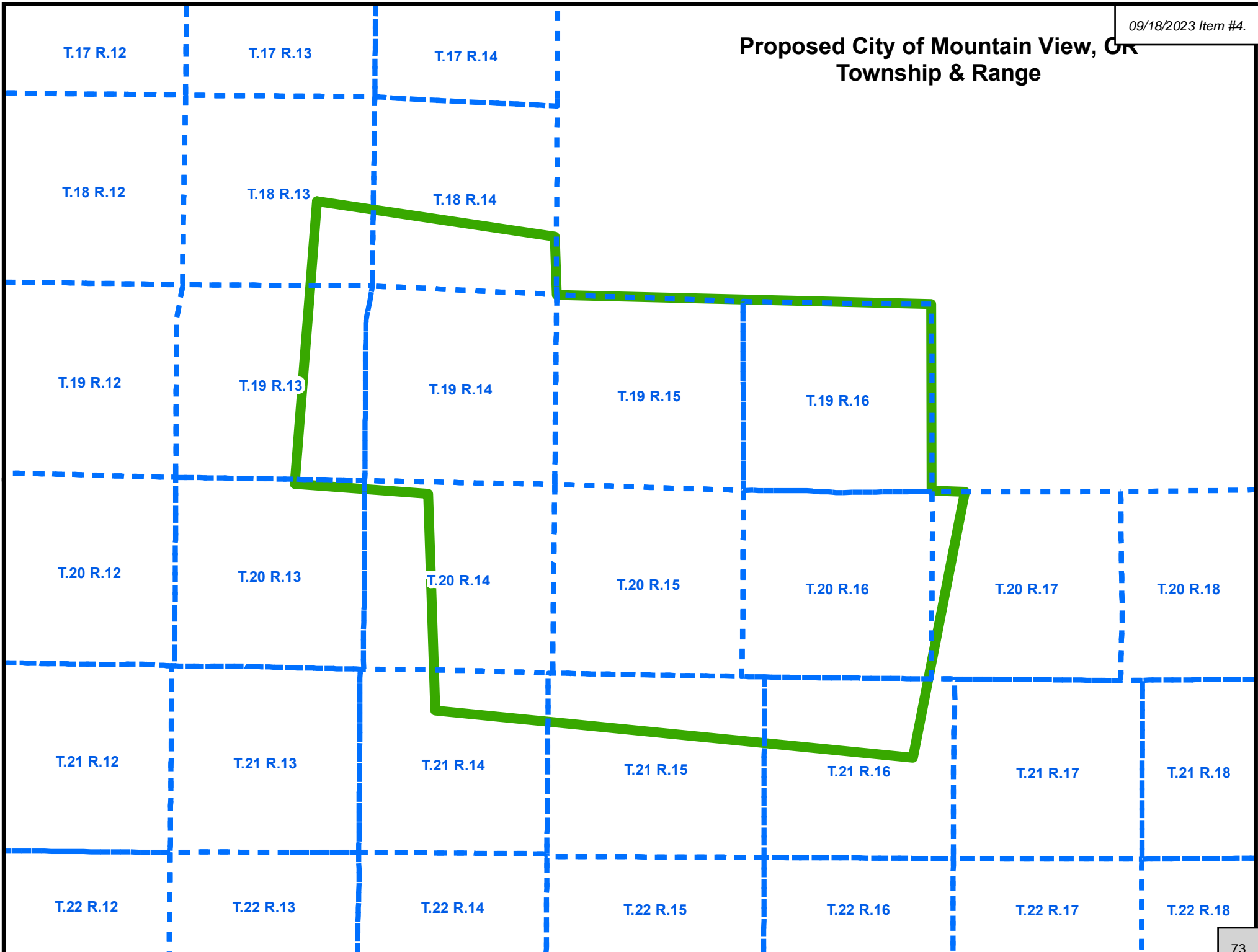
-  State Highway
-  City Limit
-  Unincorporated Community
-  Proposed City
-  County Boundary

August 18, 2023

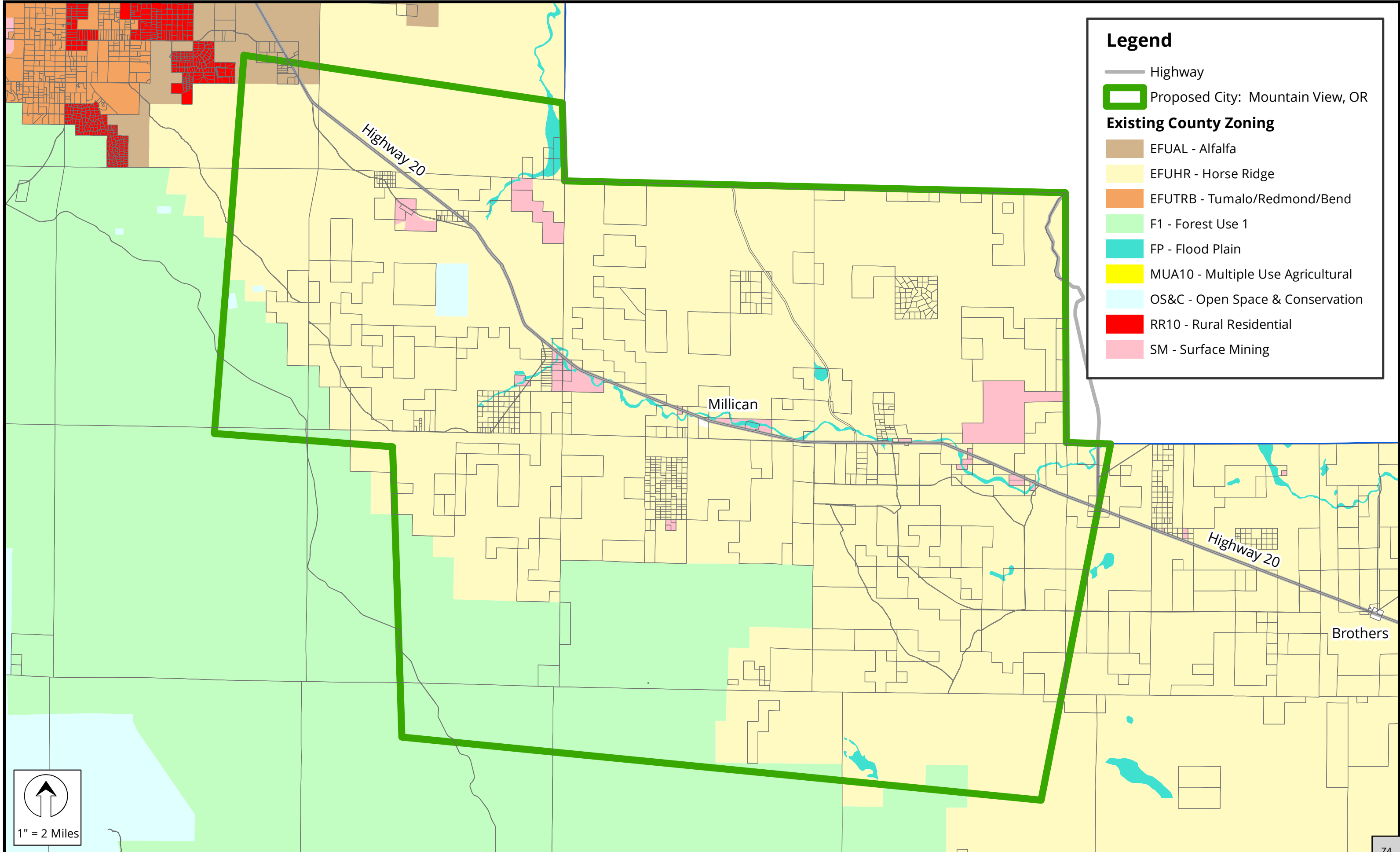


Proposed City of Mountain View

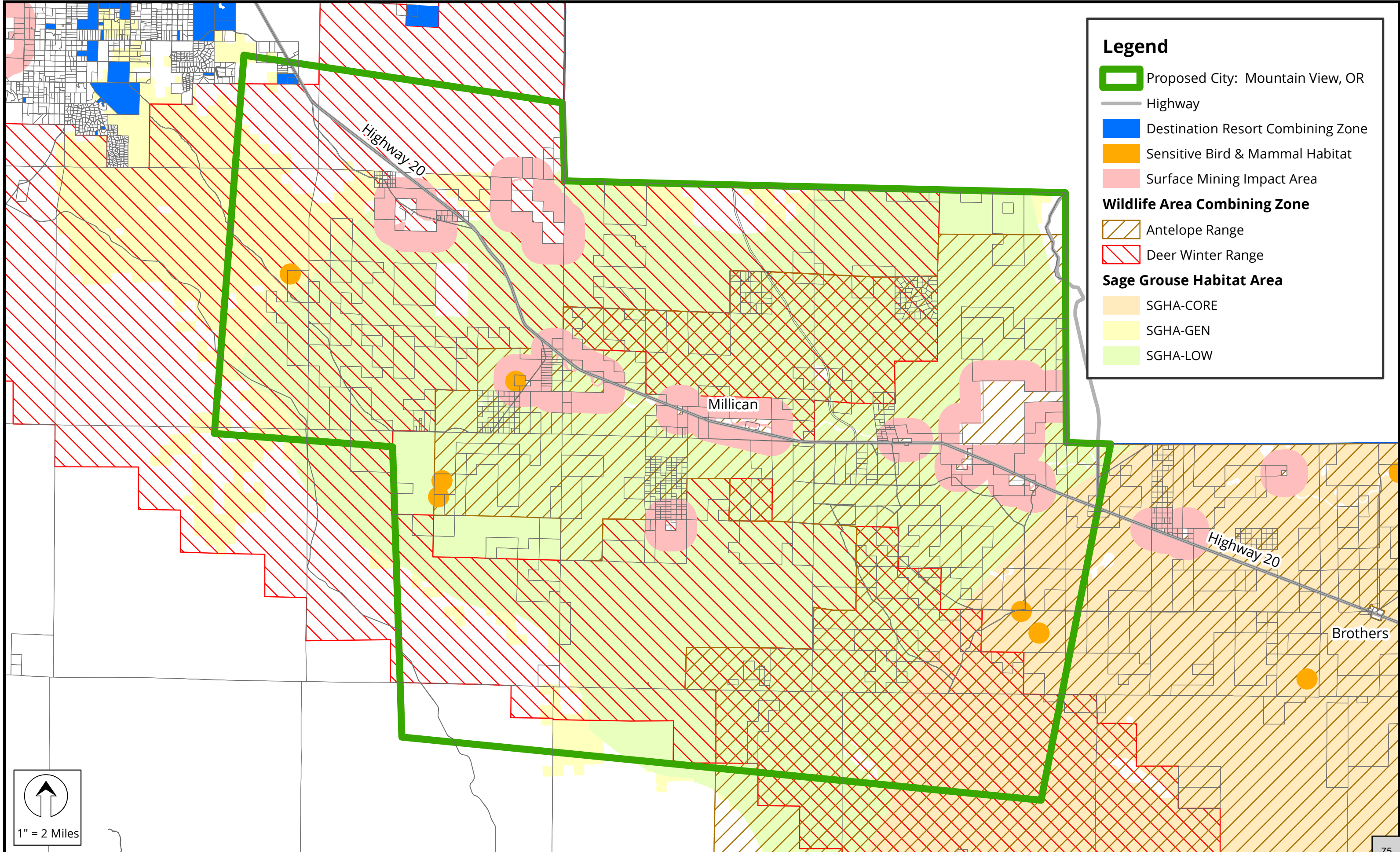
Proposed City of Mountain View, OR Township & Range



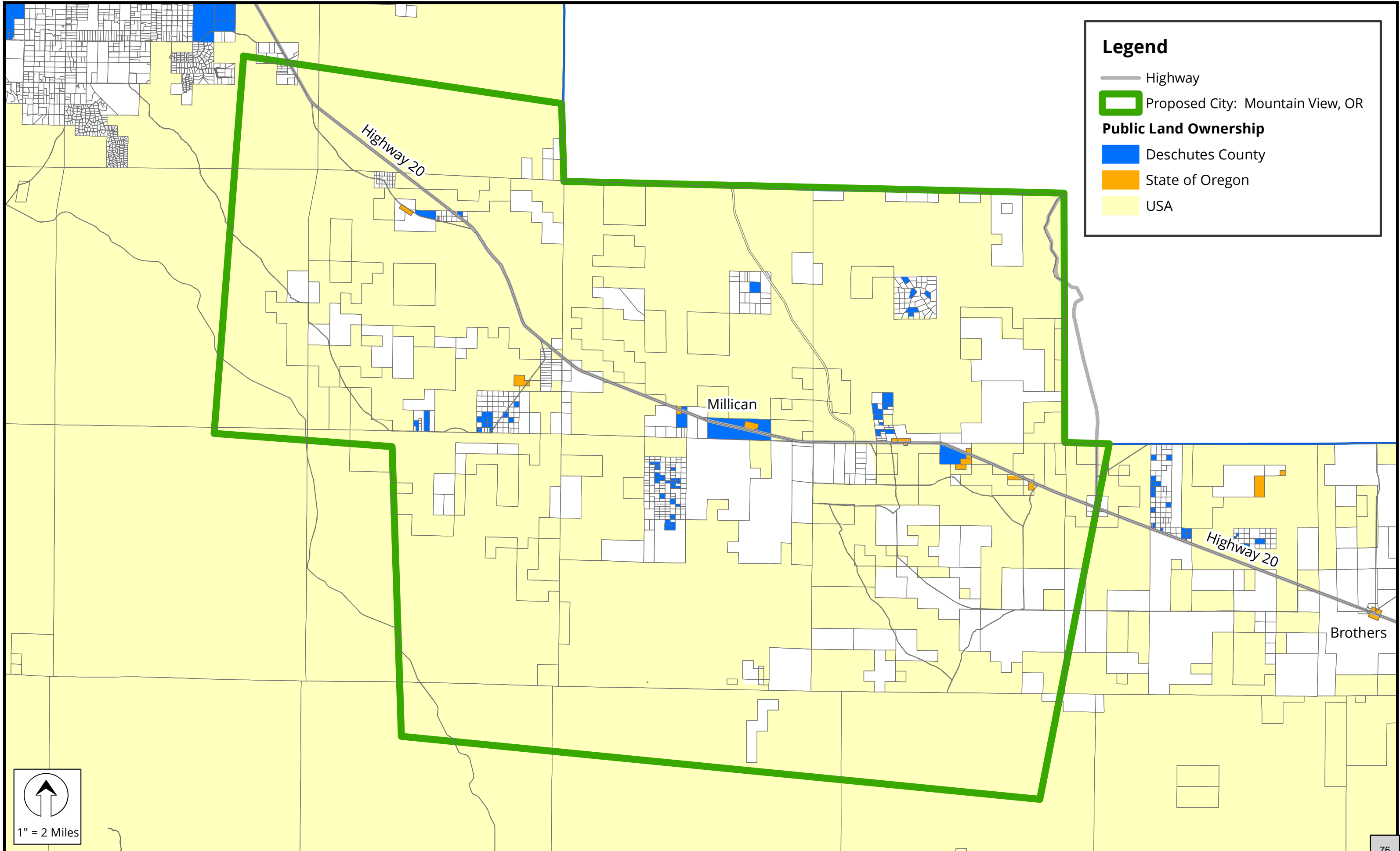
Proposed City of Mountain View, Oregon - Existing Zoning



Proposed City of Mountain View, Oregon - Combining Zones



Proposed City of Mountain View, Oregon - Public Land Ownership





BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: September 18, 2023

SUBJECT: Discussion of Home Rule

RECOMMENDED ACTION:

Direction from the Board is sought with respect to further, if any, action.

BACKGROUND AND POLICY IMPLICATIONS:

Last December, Commissioner Chang expressed interest in exploring Home Rule. Staff provides the below as an overview of the process:

Initiation of Process: BOCC Resolution submitted to the County Clerk, or Petition signed by sufficient number of electors (approx. 8800 necessary)

Clerk: If BOCC Resolution, Clerk gives written notice to persons authorized to make appointments to the Charter Committee; If Petition, Clerk verifies signatures and if sufficient number of signatures, certifies same to the BOCC and provides written notice to persons authorized to make appointments to the Charter Committee

Appointments to Charter Committee: BOCC appoints 4 members; State Senators and State Representatives representing the County appoint 4 members; BOCC appointees and State Senator/Rep appointees appoint 1 member

Charter Committee Members: -Must be electors of County; -No member of appointing authority may be a member of Charter Committee; -Within 80 days of appointment the Charter Committee members meet to organize and adopt rules for operation of the Charter Committee; -Public is permitted to attend all Charter Committee Meetings; -Members serve without pay; -County obligated to pay expenses of Charter Committee and to provide office space and assistance of County staff

Proposed Charter: -Charter Committee must hold at least 1 public hearing to allow public review and comment on the proposed Charter; -Charter Committee must submit its proposed Charter to the Clerk at least 90 days prior to the election at which the proposed Charter is to be voted on.

BUDGET IMPACTS:

Uncertain.

ATTENDANCE:

Admin

Legal



COUNTY LEGAL

Christopher Bell, Sr. Assistant Legal Counsel
 John E. Laherty, Sr. Assistant Legal Counsel
 Stephanie Marshall, Assistant Legal Counsel
 Kimberly Riley, Assistant Legal Counsel

David Doyle, Legal Counsel

Staff Report

TO: Board of Commissioners
 FROM: Dave Doyle
 DATE: September 7, 2023
 RE: Increasing the Number of Commissioner Positions

Previously Commissioner Chang noted interest in exploring Home Rule. County Legal provided an overview of the Home Rule process as required by ORS 203.710 - 810.

More recently Commissioner Chang inquired whether other processes exist for increasing the number of Commissioner positions. That answer is "yes." See ORS 203.035.

In 2007 Clackamas County referred a measure to the voters to increase the number of Commissioner positions from 3 to 5. The measure also provided that the five commissioner positions, all elected on a county-wide basis, would be designated by number, and that Position 1 would serve as the Chair.

Deschutes County currently has three Commissioner positions. Position 1 is held by Commissioner DeBone. Position 2 is held by Commissioner Chang. Position 3 is held by Commissioner Adair.

If at least two Commissioners are inclined, the BOCC could refer a measure, to increase the Commission from 3 to 5 positions, to the May 2024 primary election. If the Commissioners are not inclined to make that referral, the electors could utilize the initiative petition process (i.e. non-partisan measure) to place a measure before the electors at a future election.

Consistent with input from the County Clerk, County Legal identifies two paths forward:

- (1) If the matter was to be placed on the May 2024 primary election, and if approved, the two new positions would appear on the May 2026 primary election, to begin terms of office in January 2027. One position would be a 4-year term, the other would initially be a 2-year term (necessary in order to avoid having 4 positions up for election at the same time).

Page 2

- (2) If the matter is placed on the May 2024 primary election, **and** if the two new positions are also on the May 2024 primary election, the terms of office would begin in January 2025. Both positions would be 4-year terms.