

REVIEWED  
  
\_\_\_\_\_  
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Denying the Petition for  
Incorporation of the Proposed City of  
Mountain View and Adopting Findings and  
Conclusions and Prescribing an Effective  
Date

\*  
\*

ORDER NO. 2023-037

WHEREAS, a petition for incorporation for a new City of Mountain View was duly filed pursuant to ORS Chapter 221; and

WHEREAS, ORS 221.040(2) provides that upon the filing of a petition for incorporation, the Deschutes County Board of Commissioners shall conduct a public hearing upon the merits of the petition; and

WHEREAS, ORS 197.175(1) makes the Board’s consideration of a petition to incorporate a new city an exercise of County planning and zoning responsibility; and

WHEREAS, ORS 221.040(2) authorizes the Board to alter the boundaries of the proposed city to include all territory that may be benefitted by the formation of the city but must first provide owners and residents of property within such additional territory notice and opportunity to present evidence and argument on the applicable issues; and

WHEREAS, the Board, upon notice duly given, commenced the required public hearing on the proposed petition on September 20, 2023; and

WHEREAS, the Board closed the oral and written record on September 20, 2023, deliberated on the proposal, and voted 3-0 to deny the proposal and adopt staffs findings; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, HEREBY ORDERS as follows:

Section 1. The petition proposing the incorporation of the City of Mountain View is hereby denied.

Section 2. In support of the decision set forth in Section 1 of this order, the Board adopts staffs findings in Exhibit "A" attached hereto and by this reference incorporated herein.

Section 3. That this decision shall become effective on September 28, 2023, the date it shall be mailed to the chief petitioners and other parties to this proceeding.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2023.

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
ANTHONY DEBONE, Chair

\_\_\_\_\_  
PATTI ADAIR, Vice Chair

ATTEST:

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

\_\_\_\_\_  
PHIL CHANG, Commissioner



**EXHIBIT A TO ORDER NO. 2023-037  
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](mailto:Nicole.Mardell@deschutes.org)

**RECORD:** Record items can be viewed and downloaded from:  
[www.deschutes.org/mountainviewincorporation](http://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 incorporate<sup>1</sup>.
- 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

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<sup>1</sup> 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.

water right is unlikely to be obtained due to well declines, and that the area is in the Deschutes Basin Mitigation Zone of Impact.

- 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 incorporate<sup>2</sup>. 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.

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<sup>2</sup> As of August 2023 the County Clerk has record of 77 registered voters in the proposed boundary.  
EXHIBIT A TO ORDER NO. 2023-037



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

*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 benefitted. "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 benefitted 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 benefitted.*

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.*

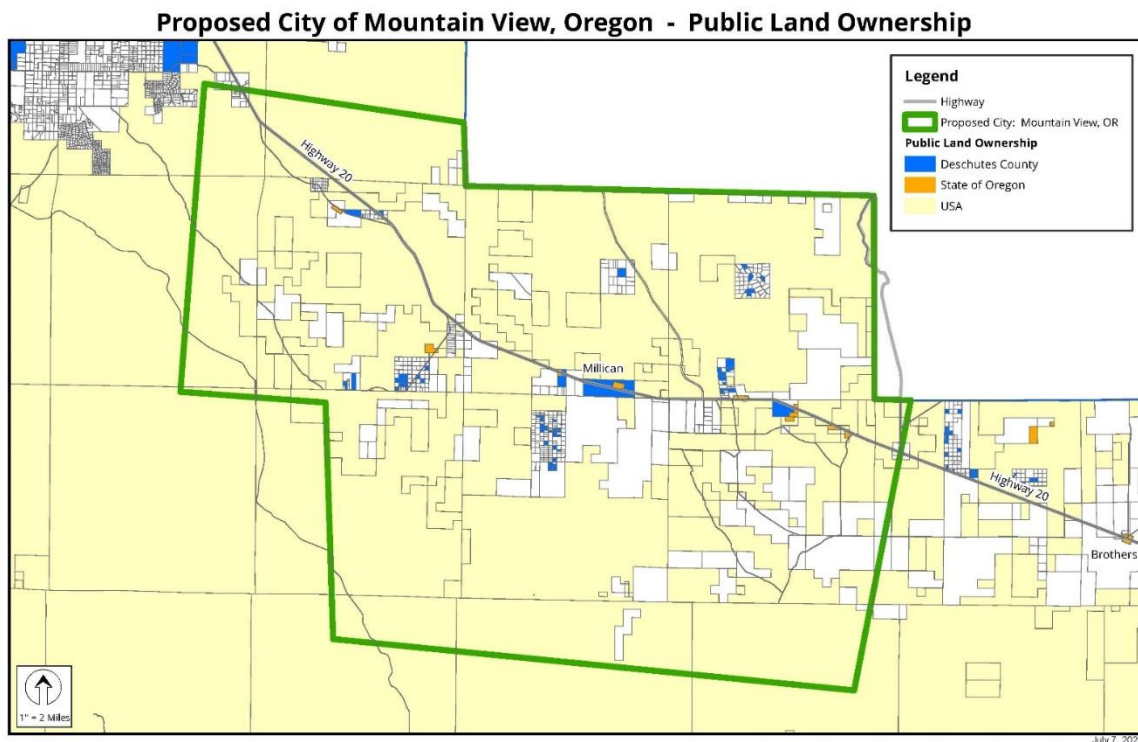
*Natural Resources: The inclusion of BLM land and forest land within the proposed boundary provides an opportunity for the city to actively engage in the conservation and management of these valuable natural resources. Incorporating these lands could enable the city to have a say in their future development 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:**

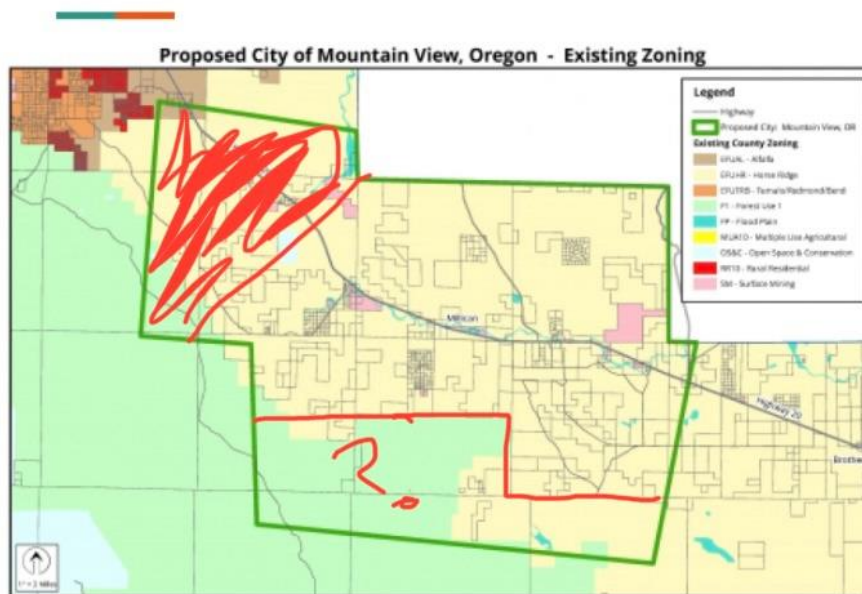


**Boundary Size and Characteristics**

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 boundary appears to be in its proposed size and configuration in order to meet the statutory requirement listed in ORS 221.020, which establishes a minimum requirement of at least 150 residents residing in a boundary to initiate incorporation. In assessing the application materials, it is unclear if this minimum requirement is met. The Petitioner cites “Portland State University Census data” to conclude that approximately 160 residents live within the proposed boundary. This data source does not exist; therefore, staff assumes the Petitioner was intending to cite either the 2020 United States Census data, or Portland State University Population Research Center population estimate data.<sup>3</sup> Staff has reviewed each of these sources and was not able to confirm the Petitioner’s estimated population for the area. In each case, the data set covered a much larger area than the proposed boundary and is difficult to extract the population for this specific boundary. The Petitioner has not demonstrated with substantial evidence in the record that ORS 221.020 is met.

## Boundary



As referenced in the background section, the Petitioner provided an amended boundary map in an email dated August 19, 2023. The map does not provide detail on the proposed boundary change including new coordinates or number of tax lots impacted. The petition cannot be modified at this stage, therefore staff will continue to review the original proposed boundary included in the petition to incorporate.

### **Comparison to Recent Incorporation Proposals**

As there is limited guidance in statute on assessing incorporation boundary applications, staff reviewed materials related to recent successful incorporations. Through this review, staff notes there are significant differences between the proposed City of Mountain View boundaries and recent, successful, efforts. Staff compares and contrasts the proposed City of Mountain View boundary with those of other successful incorporation efforts below.

<sup>3</sup> <https://www.pdx.edu/population-research/sites/g/files/znlidhr3261/files/2022-06/Deschutes.pdf>

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.<sup>4</sup>

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 zoned<sup>5</sup>, 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

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<sup>4</sup> The City of Damascus incorporated in 2004. However, it disincorporated in 2020.

<sup>5</sup> 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 operations<sup>6</sup>. 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

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<sup>6</sup> Staff also notes that these lands would not be subject to taxation by the proposed city.

subject to county zoning, but under city control.<sup>7</sup> 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,

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<sup>7</sup> 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 funds<sup>8</sup>:

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<sup>8</sup> <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.<sup>9</sup> 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.<sup>10</sup> 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.

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<sup>9</sup> 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.

<sup>10</sup> 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.<sup>11</sup> 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*

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<sup>11</sup> <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 exceptions<sup>12</sup> 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**

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<sup>12</sup> 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 in 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 Strategy<sup>5</sup>. 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.<sup>13</sup>

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,

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<sup>13</sup> OAR 660-015-0000(14)

*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**



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