

**TO:** Board of County Commissioners

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

**DATE:** September 12, 2023

**SUBJECT:** Short Term Rentals - Policy Research and Summary Report

---

## **I. EXECUTIVE SUMMARY**

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

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

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

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

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

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

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

## **II. BACKGROUND**

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

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

## **III. CURRENT CONDITIONS**

Presently, Deschutes County does not have targeted land use, building safety, or wastewater policies related to STRs outside of specific areas such as master planned destination resorts or resource zones as defined in Oregon Revised Statutes (ORS) 215<sup>1</sup>. The current policy is to treat all STRs in the same manner as single-family or multi-family dwelling units as defined in Deschutes County Code (DCC). Under this policy, lawfully established dwelling units can be used as short-term or long-term rentals, provided they meet all necessary fire/life/safety and wastewater disposal standards necessary for residential occupancy.

---

<sup>1</sup> [https://www.oregonlegislature.gov/bills\\_laws/ors/ors215.html](https://www.oregonlegislature.gov/bills_laws/ors/ors215.html)

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

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

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

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

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

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

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

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

#### **IV. INTERVIEW THEMES**

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

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

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

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

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

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

Primary issue areas are summarized as follows:

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

The following sections describe these themes in greater detail.

## **V. LICENSING & LAND USE**

Jurisdictions have primarily used two major strategies for handling STRs:

- Licensing Programs
- Land Use Programs

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

### **Licensing Programs**

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

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

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

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

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

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

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

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

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

### **Land Use Programs**

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

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

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

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

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

"Home occupation" means an occupation or profession carried on within a dwelling and/or a residential accessory structure by a resident of the dwelling or employees, depending on type pursuant to DCC 18.116.280 and is secondary to the residential use of the dwelling and/or the residential accessory structure<sup>2</sup>

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

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

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

---

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

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

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

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

**VI. LOCATION & DENSITY STANDARDS**

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

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

To address these concerns, many jurisdictions have imposed licensing caps to avoid oversaturation of STRs in areas that are valuable for standard residential use. Limitations range from a blanket cap on the total number of licenses issued to more specific density limitations targeted to individual neighborhoods or geographic regions. It is unclear to staff if licensing limitations based on geographic features or locations constitutes a “land use decision” pursuant to ORS 197.015<sup>3</sup>. If licensing limitations based on geographic characteristics do constitute de facto “land use decisions,”

<sup>3</sup> [https://www.oregonlegislature.gov/bills\\_laws/ors/ors197.html](https://www.oregonlegislature.gov/bills_laws/ors/ors197.html)



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

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

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

## **VII. TRACKING & ENFORCEMENT**

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

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

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

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

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

### **VIII. FUNDING & LONG TERM MANAGEMENT**

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

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

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

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

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

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

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

## **IX. HOUSING SUPPLY & AFFORDABILITY IMPACTS**

As summarized in a report from Washington County, OR<sup>4</sup>, one of the central debates around STRs is the impact on the supply of housing available for long-term renters. Removal of housing from the long-term rental market could lead to an increase in housing costs, which could make long-term rental housing less affordable. The findings of some national studies<sup>5</sup> and studies focused on larger U.S. cities<sup>67</sup> have linked increases in STR listings to increased housing prices and rents. Unfortunately, a majority of studies on these issues have been centered on urban areas and effects on smaller or more rural destinations has been largely overlooked.

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

The ECONorthwest report "Housing Affordability Impacts of Airbnb in Portland,"<sup>8</sup> commissioned by Airbnb, found that at the time of writing:

---

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

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

<sup>6</sup> Stephen Sheppard and Andrew Udell, "Do Airbnb properties affect house prices?," Williams College Department of Economics, Jan. 1, 2018: [https://pdfs.semanticscholar.org/c41a/555192f8b8a63413cfd461f4295b95123e6f.pdf?\\_ga=2.1525041.1044339924.1566438551-620960455.1566438551](https://pdfs.semanticscholar.org/c41a/555192f8b8a63413cfd461f4295b95123e6f.pdf?_ga=2.1525041.1044339924.1566438551-620960455.1566438551)

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

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

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

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

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

## **X. LEGAL CHALLENGES**

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

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

### **Existing Uses, Nonconforming Uses, & Vested Rights**

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

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

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

pursuant to specific standards outlined in ORS 215.130<sup>9</sup>. Nonconforming uses in Deschutes County must be reviewed and approved pursuant to the standards of DCC 18.120.010. These standards identify the process for verifying a non-conforming use, maintaining a nonconforming use, restoring or replacing a nonconforming use, and altering a nonconforming use.

A similar, but distinct concept to nonconforming uses are vested rights. Generally, vested rights are those rights belonging completely and unconditionally to a person as a property interest which cannot be impaired or taken away (as through retroactive legislation) without the consent of the owner<sup>10</sup>. Vested rights are often identified as unfinished projects that may be rendered unlawful under new land use standards. More specifically, the Oregon Supreme Court has identified several factors that must be considered to determine a property owner's ability to continue construction of any vested right:

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

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

This particular risk was made apparent in Lincoln County where a ballot measure to permanently limit and ultimately ban all STRs was passed by voters in 2021<sup>11</sup>. However, the Land Use Board of Appeals (LUBA) ultimately overturned several aspects of the measure for violating the property rights of owners who were previously operating STRs prior to passage of the new law. Lincoln County officials were ultimately able to establish similar rules under a business licensing system which limited, but did not prohibit STRs, and avoid many of the legal challenges brought as part of the ballot measure. However, the experience in Lincoln County illustrates the potential legal challenges in establishing a regulatory program for STRs within the land use system.

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

---

<sup>9</sup> [https://oregon.public.law/statutes/ors\\_215.130](https://oregon.public.law/statutes/ors_215.130)

<sup>10</sup> <https://www.merriam-webster.com/legal/vested%20right>

<sup>11</sup> <https://www.co.lincoln.or.us/sheriff/page/short-term-rental-licensing>

the Lincoln County example above, policies that rely on land use regulations can result in unintended consequences for local jurisdictions that may include Measure 49<sup>12</sup> compensation requirements should the jurisdictions reconsider or amend adopted land use regulations, additional complications with necessary comprehensive plan findings related to Statewide Goal 10 policies for housing, and subjecting all subsequent decisions and actions to LUBA's jurisdiction as land use decisions. A letter to the City of Klamath Falls from DLCD describing these recommendations is attached here for reference.

### **Compliance with State Statutes**

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

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

### **1000 Friends of Oregon v. Clackamas County**

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

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

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

---

<sup>12</sup> <https://www.oregon.gov/lcd/measure49/pages/index.aspx>

<sup>13</sup> <https://law.justia.com/cases/oregon/court-of-appeals/2022/a177973.html>

<sup>14</sup> <https://www.oregon.gov/luba/Docs/Opinions/2023/07-23/23004.pdf>

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

### **Tylka v. Clackamas County**

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

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

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

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

### **Unresolved Issues**

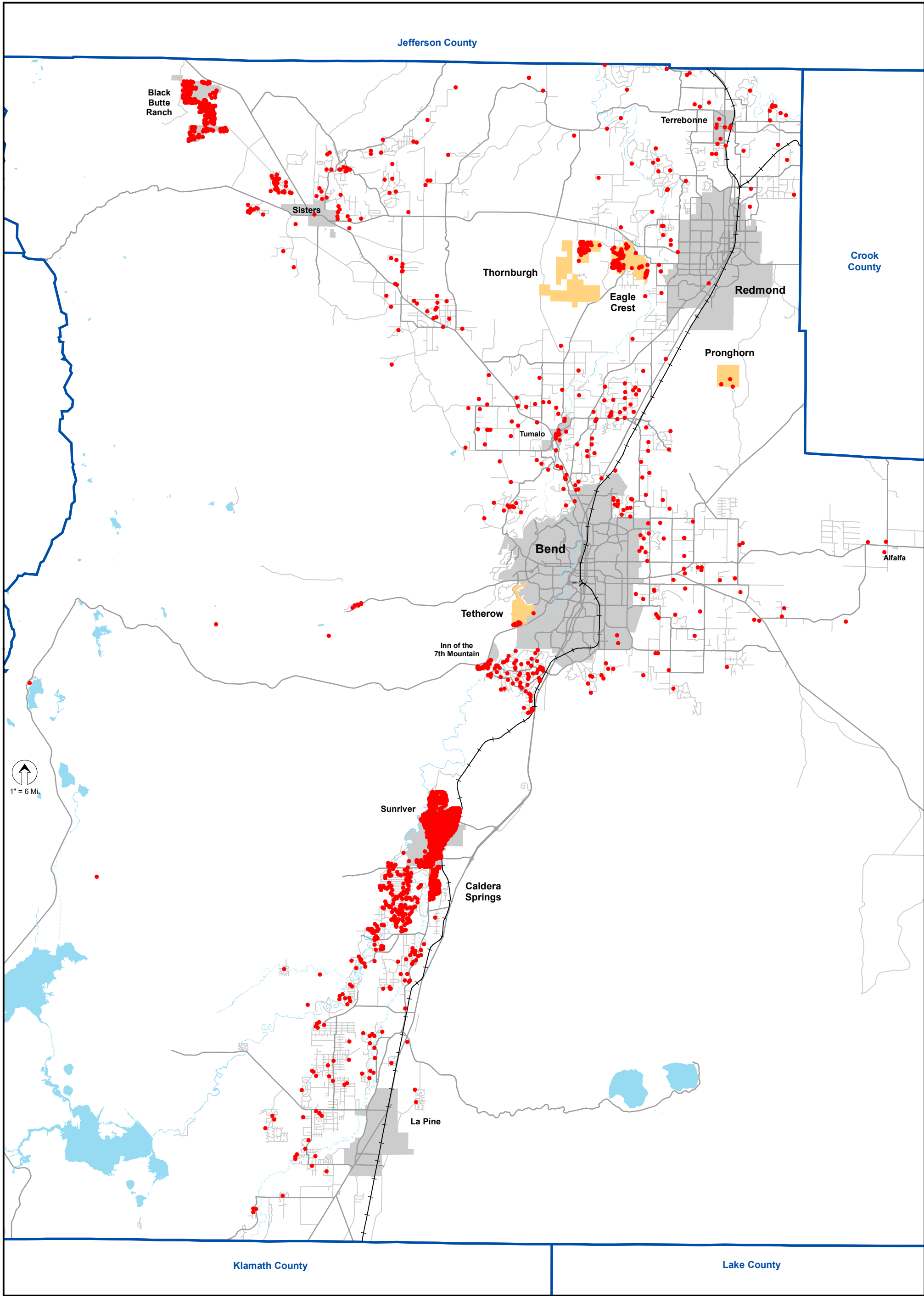
While LUBA affirmed Clackamas County's amendments to explicitly allow and regulate STRs within non-resource zoned areas, a number of possible arguments are still open to interpretation. As noted previously, the original Court of Appeals decision contained significant discussion regarding the overall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

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



## **Attachments**

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



## Transient Room Tax Account Deschutes County

- Transient Room Tax Account
- Destination Resort
- Urban Area

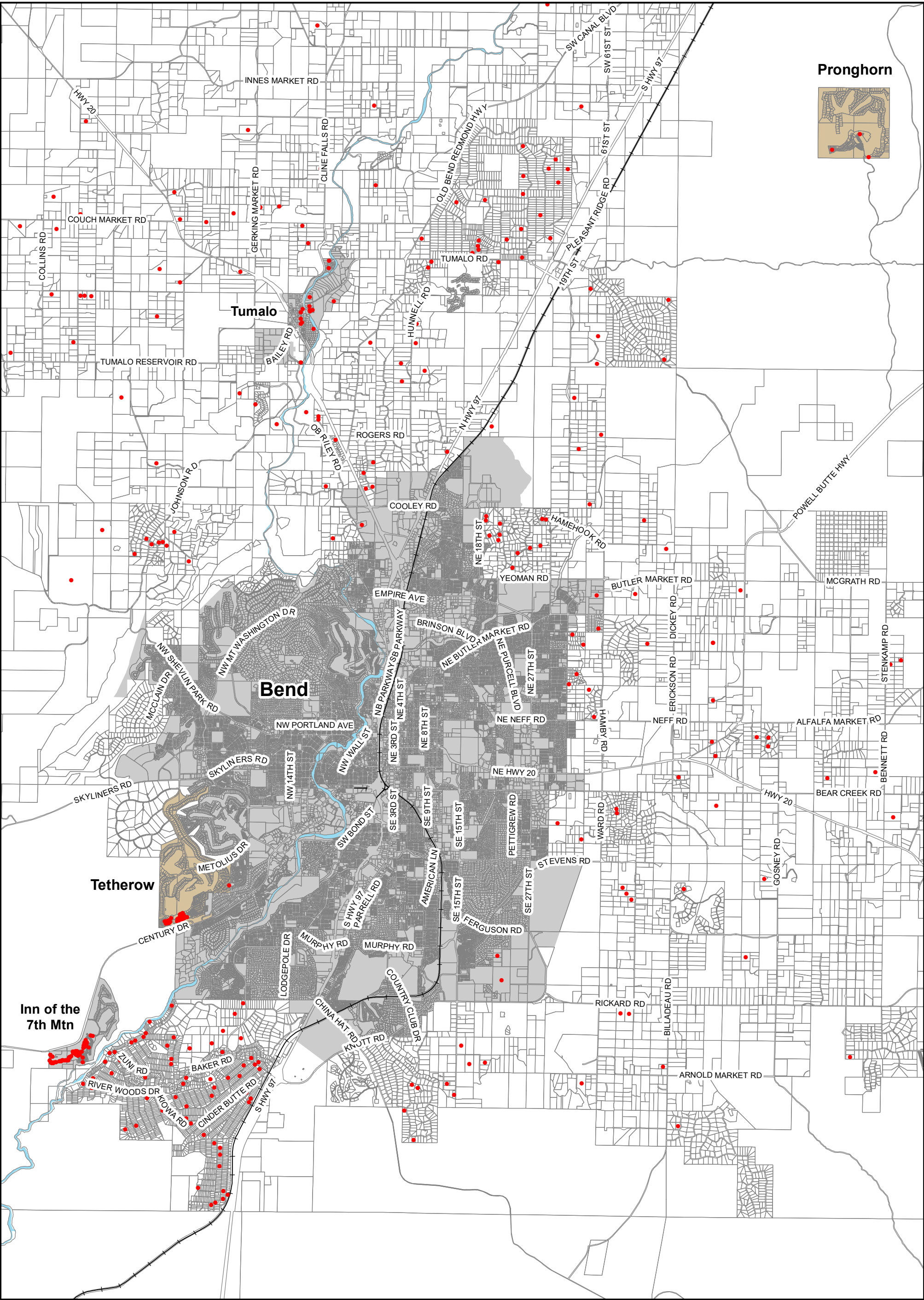
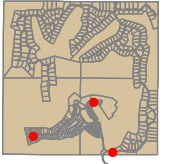


February 21, 2023



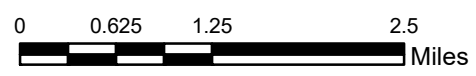
DISCLAIMER:  
The information on this map was derived from digital databases on Deschutes County's G.I.S. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the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

N:\Custom\County\CDD\Planning\Munirevs



### Transient Room Tax Account Bend Area

- Transient Room Tax Account
- Destination Resort
- Urban Area

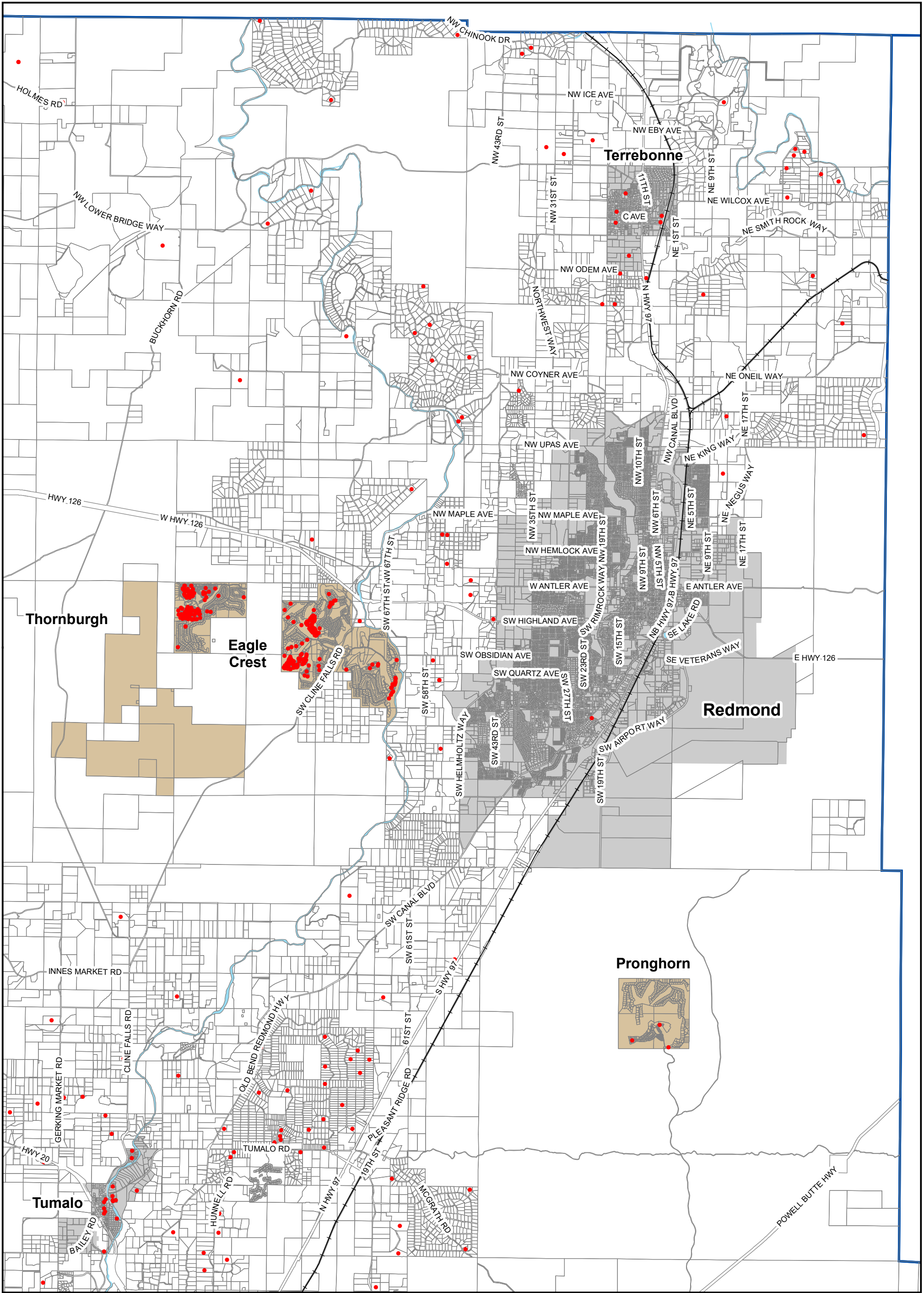


February 21, 2023

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

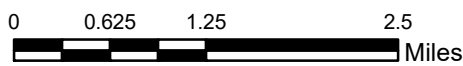
N:\Custom\County\CDD\Planning\Munirevs





## Transient Room Tax Account Redmond Area

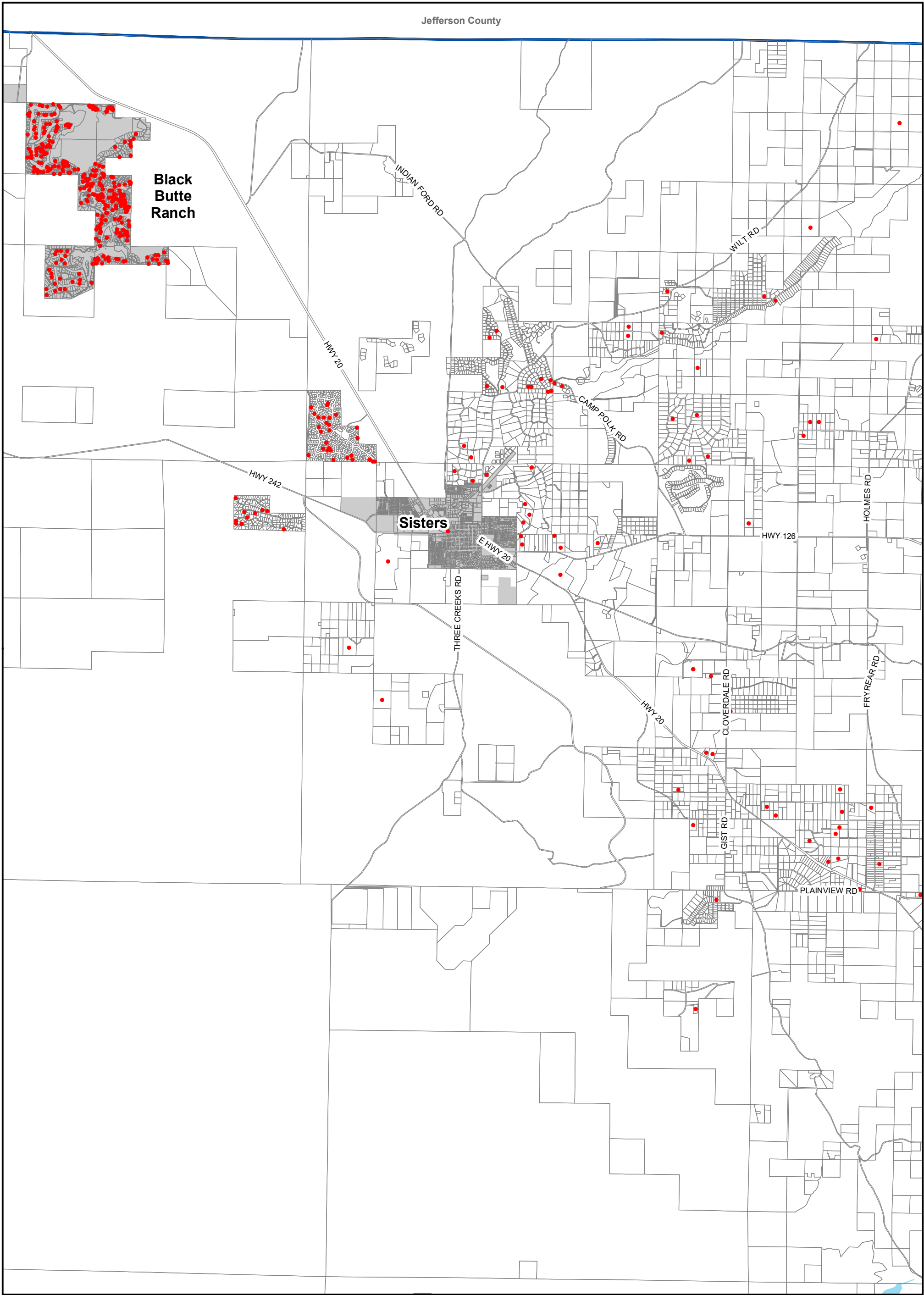
- Transient Room Tax Account
- Destination Resort
- Urban Area



February 21, 2023

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

N:\Custom\County\CDD\Planning\Munirevs

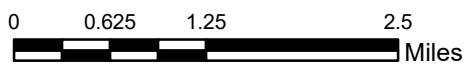


### Transient Room Tax Account Sisters Area

• Transient Room Tax Account

Destination Resort

Urban Area



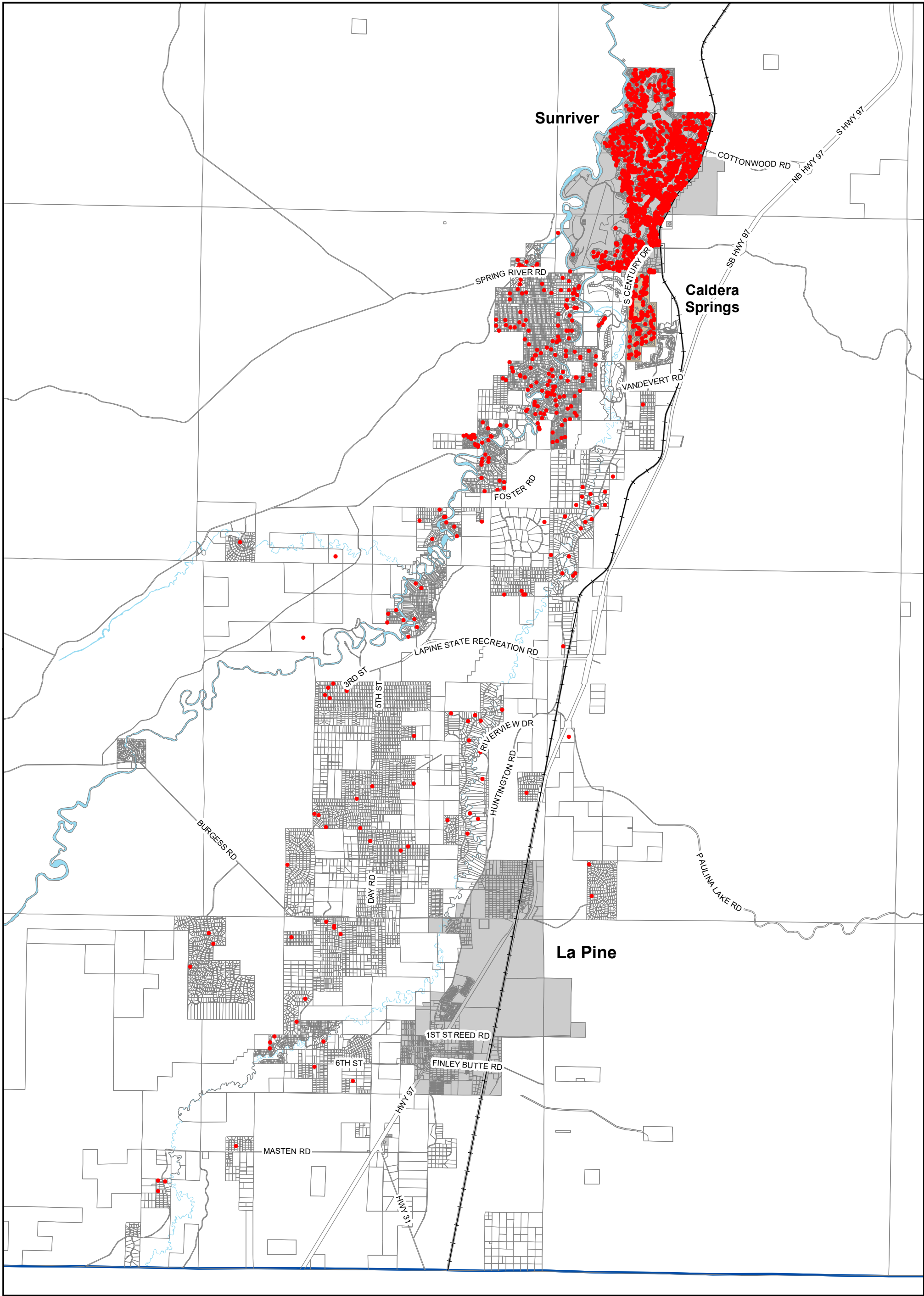
February 21, 2023



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

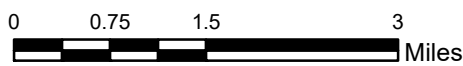
N:\Custom\County\CDD\Planning\Munirevs





### Transient Room Tax Account South County Area

- Transient Room Tax Account
- Destination Resort
- Urban Area



February 21, 2023



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

N:\Custom\County\CDD\Planning\Munirevs



# Oregon

Tina Kotek, Governor

Department of Land Conservation and Development

Director's Office

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: 503-373-0050

Fax: 503-378-5518

[www.oregon.gov/LCD](http://www.oregon.gov/LCD)

February 27, 2023

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

RE: DLCD PAPA File No: 001-23



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

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

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

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

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

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

Subject or Addressee

Date

Page 2 of 2

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

Best regards,

Thea Chroman

Housing Policy Analyst, Department of Land Conservation and Development