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BEFORE THE BOARD OF COMMISSIONERS FOR THE
COUNTY OF TILLAMOOK, OREGON

In re:

PETITION TO INCORPORATE
OCEANSIDE

Matter No. 851-22-000224-PLNG

Hearing Date: July 13, 2022

**THE CAPES’ SECOND HEARING
BRIEF**

The Capes submit this brief in advance of the second hearing on Petitioners’ Petition for an Order from the County calling an election on the incorporation of the City of Oceanside. For the reasons given in the Capes’ First Hearing Brief and further developed *infra*, the Capes will not benefit from its inclusion within the proposed city. Accordingly, the Capes respectfully requests the County make a final determination excluding the Capes from the boundaries of the proposed city. The Capes has prepared proposed findings for the County to that effect.

The Capes’ request to be excluded from the proposed city is consistent with the position taken by Oregon’s Department of Land Conservation and Development. *See generally* July 6 Hrg. Packet at 29–30 (email from Lisa M. Phipps to Dir. Sarah Absher). DLCD articulated no objection

1 to the Capes' exclusion and made specific statements that such an action would be permissible.

2 Notably, DLCD stated the following:

- 3 (1) Sewer access for the Capes lots (developed or undeveloped) would be
4 grandfathered in regardless of its inclusion within the proposed city.
- 5 (2) The Capes will return to the underlying zoning classification, which means some
6 future projects might also have a non-conforming use aspect.
- 7 (3) The Capes, unlike the other property aggregates with owners seeking exclusion,
8 has the opportunity to join the Netarts community growth boundary.

9 **I. The County—and the voters during an election—must determine whether the Capes
10 will benefit from inclusion within the boundaries of the proposed city.**

11 Petitioners argue that the County's role in reviewing their petition is minimal, checking for
12 procedural regularities and leaving the substance to the voters. And in one sense, Petitioners are
13 correct: the County, in fulfilling its statutory role and in fostering normative democratic values
14 among the polity, should generally refer close or hotly contested incorporation petitions to the
15 voters. But that principle does not apply here. First, the statutory scheme governing incorporations
16 expressly empowers the County to determine, in an exercise of discretion, the boundaries of the
17 proposed city before the question is presented to the voters. Second, in the unique circumstances
18 presented here, the exclusion of the Capes from the incorporation election (with the possibility of
19 annexation at some future point) maximizes the opportunity for groups with ostensibly different
20 desires to meaningfully participate in the democratic process.¹

21
22 ¹ Cf., e.g., Joshua S. Sellers, Erin A. Scharff, Preempting Politics: State Power and Local
23 Democracy, 72 Stan. L. Rev. 1361, 1401 (2020) (describing Charles Tiebout's theory that a diversity of
24 choice fosters pluralism by "reduc[ing] the number of political losers by allowing people to, at least on
issues decided at the local level, sort themselves according to their preferences" (citing Charles M. Tiebout,
A Pure Theory of Local Expenditures, 64 J. Pol. Econ. 416 (1956))).

1 Oregon’s statutory scheme governing the incorporation of new cities allocates the decision
2 between two entities: the County, which is charged with ensuring the procedural regularity of the
3 statutory process (and some limited substantive evaluation of the petition), and the registered
4 voters of the area subject to the incorporation petition, who are charged with deciding the ultimate
5 issue. *See generally* ORS §§ 221.020 – 221.050. The Oregon Supreme Court has confirmed that
6 this division of labor was the intent of the Legislative Assembly and interpreted the statutory
7 scheme accordingly. *See McManus v. Skoko*, 255 Or. 374, 379 (1970) (“There is not the slightest
8 implication of any intent to authorize the county court, on political grounds, to deny the right of
9 150 inhabitants of a particular area to decide by a majority vote whether to incorporate their area
10 as a city.”). The single exception, however, is the County’s control over the boundaries of the
11 proposed city referred to the voters. *See id.* (“[T]he legislative purpose was to give the county
12 courts control over the boundaries of the proposed city[.]”). The statute charges the County, acting
13 through the Board of Commissioners, to exercise “judgment” in determining whether a property
14 should be included within the boundaries. *See* ORS § 221.040(2). Accordingly, the County’s
15 decision to exclude the Capes would take nothing from the voters; rather, such a decision is
16 expressly contemplated. *Cf. id.* at (3)(a) (requiring an order calling for an incorporation election to
17 include “[a] description of the exterior boundaries of the proposed city *as determined by the*
18 *[County]*” (emphasis added)).

19 The history of the unincorporated communities of Oceanside and Netarts—and the location
20 of the Capes within and relative to them—present uniquely compelling circumstances to exclude
21 the Capes. The County should exclude—rather than include—a property on the border of the
22 proposed city where the purported benefits to inclusion are nonexistent or without substance. In
23 other words, here, the County should err on the side of exclusion rather than inclusion. This is
24 because the voters lose nothing by excluding a literal edge case, such as the Capes, from the initial

1 limits of the city. If the decision to exclude was unwise (because some unforeseen benefit did inure
2 to the Capes), there is an oft-used, well-known post hoc remedy—annexation. *See generally* ORS
3 Ch. 222 (statutory scheme controlling annexations to extant cities). Conversely, the withdrawal of
4 property from an incorporated city is procedurally much more cumbersome, mirroring the
5 incorporation procedure, and more significantly, it may only be initiated by the City. *See* ORS
6 § 222.460(2) (“A withdrawal . . . shall be initiated by a resolution of the legislative body of the
7 city.”); *see also id.* at (1) (allowing a city charter to prohibit the withdrawal of any territory from
8 the city).

9 As discussed in the first hearing brief and detailed herein, the Capes will not realize any
10 cognizable “benefit” resulting from its inclusion in the proposed city. The purported benefits that
11 qualify under the statutory scheme, such as the provision of utilities and road maintenance, are not
12 applicable to the Capes. The remaining purported benefits are too insubstantial or too general to
13 qualify. But should the proposed city actually offer some tangible, exclusive benefit—one
14 recognized by the Capes’ owners—the Capes’ location abutting the proposed city will make it a
15 relatively simple process to annex in and receive it.²

16 Because the typical benefits that a newly incorporated city would provide its new residents
17 (*e.g.*, public utilities) are already fully developed, the remainder of the purported benefits, even
18

19 ² In excluding the Capes from the proposed city’s boundaries, the County will consequently
20 maximize democratic pluralism by giving discrete groups of voters the power to make these decisions
21 democratically amongst themselves. If the Capes is improperly included, its fate will be effectively decided
22 by external voters (because even if the Capes’ eligible voters are united in their opposition, they are still
23 outnumbered). The Capes improper inclusion might also cause a reviewing court to invalidate the approval
24 of the incorporation petition at the cost of Petitioners’ (and other favorable voters’) preference for
incorporation. Regardless of the actual outcome, the democratically expressed preference of one group or
the other is subordinated unnecessarily. Conversely, by excluding the Capes and then ordering an
incorporation election, the County can chart a middle path that maximizes voter participation and agency.
The initial incorporation election will reflect the undiluted preference of non-Capes voters will be undiluted,
and a subsequent, post-incorporation annexation of the Capes, in one procedural posture, would reflect only
the preference of the Capes’ owners.

1 assuming they would satisfy the statute, are heavily focused on the downtown core of Oceanside
2 (from which the Capes is most distant). This is not surprising given the existing infrastructure and
3 relatively small size of the proposed city, but it has the effect of localizing all the purported benefits
4 away from the Capes. Perhaps as Oceanside matures, it will expand its capacity for providing
5 benefits beyond the downtown core. If and when that occurs, annexation will be always be an
6 option. The Capes, however, should not—and cannot—be included because the proposed city
7 might, at some ill-defined future point, come up with and possess the capacity to administer some
8 undefined future benefit.

9 *1. The Capes possesses unique characteristics that require it to be excluded from the*
10 *boundaries of the proposed city; the other groups seeking exclusion lack one or*
11 *more of those necessary characteristics.*

12 The uniqueness of the Capes is not limited to its location on the southern edge of the
13 proposed city; it extends to the Capes’ inability to recognize *any* of the purported benefits
14 identified by Petitioners. Four other aggregates of properties of varying cohesiveness are asking³
15 the County to exclude them from the proposed city: (1) Radar Road; (2) Terrasea; (3) Trillium;
16 and (4) Avalon West. *See* July 6 Hrg. Packet at 21 (“Exclusion Map”). In their briefing before the
17 June 26 Hearing, Petitioners identified each of these areas and the benefits they would receive
18 from their inclusion in the proposed city.⁴ Although the Capes disagrees with Petitioners’

19 ³ For convenience, this brief will refer to each aggregate as it is identified in on the Exclusion Map.
20 Except for the Capes, however, no entity representing the interests of the collective (such as a community
21 association) has appeared to object to its inclusion; instead, the objections have come from one or more
22 property owners within the identified areas.

23 ⁴ The Capes disputed Petitioners’ conclusions about the benefits it would realize in the Capes’ First
24 Hearing Brief, which it incorporates by reference. At the June 26 hearing, however, Petitioners appeared to
accept the Capes’ arguments and to concede, at least, to the very limited benefits expected from its
inclusion. This concession is consistent with the position taken by Petitioners during the first incorporation
petition. In “Petitioners’ Analysis and Proposed Findings” submitted January 18, 2022, Petitioners argued
they “deemed it improbably that The Capes . . . would realize any of [the proposed] benefits[.]” Ex. 1, Pets.’
Analysis (Jan. 18, 2022) at 13–14 (describing the Capes’ unique characteristics as determinative of the lack

1 definition of and resulting identification of the purported benefits, the Capes concurs that each of
2 the other candidates for exclusion would instead benefit from inclusion. That is because, while
3 each share one or two salient characteristics with the Capes, none possess all of them (or there is
4 no information in the record as to a characteristic).

5 The Capes is served by utilities created by local service district, which districts will remain
6 following incorporation. It is governed by an active homeowner’s association that has been and
7 continues to be responsible for the purported benefits to be offered by Oceanside, including a ban
8 on short-term rentals, employment of a security service, and enforcement of its governing
9 documents. It is a gated community with private, self-maintained roads. Finally, it is sited at the
10 southern-most part of the proposed city, negating the downtown-centric benefits offered by
11 Petitioners.

12 2. *Exclusion of the other property groups from the boundaries of the proposed city*
13 *would constitute “spot zoning,” which is not the case with the exclusion of the*
14 *Capes.*

15 While the Capes’ unique characteristics compel a finding that it will not benefit from
16 inclusion within the proposed city, its location as the southern-most property in the proposed city
17 is determinative. None of the other property aggregates could be excluded without creating a patch-
18 work city, leaving islands of unincorporated communities within the larger city boundary.
19 Exclusion of the Capes, however, just requires moving the proposed city boundary to the Capes’
20 northern property line. *See* Exclusion Map (the revised boundary would appear to be South Ave.
21 NW). Because of its location the County may exclude the Capes from the proposed city boundary

22 _____
23 of benefit). Indeed, given the “clear logic” of the lack of benefit to the Capes, “Petitioners determined it
24 would serve no purpose to force The Capes to pursue a formal objection to the boundary in a hearing.” *Id.*
at 14. Nothing has changed since January 2022, and Petitioners have offered no reason why their cogent
argument for the Capes’ exclusion is now wrong.

1 (and, indeed, is compelled to do so because of the lack of benefit); however, the County cannot
2 similarly exclude (1) Radar Road; (2) Terrasea; (3) Trillium; and (4) Avalon West. In so doing,
3 the County would create discontinuities in the city boundary, which is prohibited as “spot zoning.”

4 A land use decision constitutes impermissible spot zoning when it singles out a property
5 for treatment inconsistent with the surrounding area. *See, e.g., Perkins v. Marion Cnty.*, 252 Or.
6 313, 322 (1968) (“A zoning ordinance ‘which singles out a parcel of land within the limits of a use
7 district and marks it off into a separate district for the benefit of the owner, thereby permitting a
8 use of that parcel inconsistent with the use permitted in the rest of the district, is invalid if it is not
9 in accordance with the comprehensive zoning plan and is merely for private gain.’” (quoting 1
10 Rathkopf, *The Law of Zoning & Planning* 26-3 (3d ed.1966))). “Arbitrary, or ‘spot’, zoning to
11 accommodate the desires of a particular landowner is not only contrary to good zoning practice,
12 but violates the rights of neighboring landowners and is contrary to the intent of the enabling
13 legislation which contemplates planned zoning based upon the welfare of an entire neighborhood.”
14 *Smith v. Washington Cnty.*, 241 Or. 380, 384 (1965). The islands of unincorporated territory that
15 would result from excluding the four other property aggregates are disfavored. Indeed, were they
16 to be excluded, much or all of them could then be forcibly annexed into Oceanside without their
17 owners’ consent. *See generally* ORS § 222.750 (setting out standards for island annexations,
18 requiring only one public hearing and allowing it “without *or without* the consent of any owner”
19 (emphasis added)); *see also Kane v. City of Beaverton*, 202 Or. App. 431, 4135–39 (2005)
20 (affirming the constitutionality of ORS § 222.750 because, *inter alia*, “there is no fundamental
21 right to vote on municipal annexations”). Because the Capes possesses unique characteristics,
22 including its location and function as a community association, the Capes will receive no benefit
23 from its inclusion in the proposed city’s boundaries, and the County should exclude it from
24 consideration. Moreover, because none of the other four property aggregates (Radar Road;

1 Terrasea; Trillium; and Avalon West) possess the Capes' combination of characteristics (or the
2 record is silent as to one or more such characteristics), the Capes is the only property aggregate
3 that the County must (or can) exclude.

4 **II. The County should adopt the interpretation of “benefit” proposed by the Capes.**

5 During the June 26 hearing (and in prior briefing), the Capes argued that the County should
6 interpret the word “benefit” in the incorporation statute to require purported benefits to possess at
7 least two characteristics:

8 (1) There must be a causal link between inclusion with the proposed city and the
9 realized “benefit.” In other words, a “benefit” may not antedate the incorporation
10 of the proposed city or arise independent of its incorporation.

11 (2) The benefit must be, to some degree, realized or appreciated by discrete properties
12 as contrasted with purported benefits that inure to the public generally.

13 These constrain (in a limited sense) the type of “benefit” that qualifies a property for inclusion
14 within a proposed city. The interpretation advanced by Petitioners, however, lacks any such limits.
15 This has the effect of making the “benefit” requirement a nullity; if anything, no matter how
16 attenuated or insubstantial qualifies, the requirement is meaningless.

17 In addition to the arguments made in its first hearing brief, the interpretation offered by the
18 Capes is further supported by a line of cases deciding whether a property is “specially benefited”⁵
19 by an improvement such that the property is subject to a special assessment. Although that term
20 arises from case law, rather than a statute, it is used and applied in a context that is remarkably
21 similar to this and other land use proceedings:

22 _____
23 ⁵ The courts appear to use the term “specially benefited” and “benefited” interchangeably. *Compare*
24 *W. Amusement Co. v. City of Springfield*, 274 Or. 37, 41–43 (1976) (except for once, uses only “benefited”),
with Hutchinson v. City of Corvallis, 134 Or. App. 519, 527 (1995) (uses “specially benefited”).

1 (1) The decision—whether to assess a property because it is specially benefitted—is
2 made in the first instance by a local government. *See W. Amusement Co. v. City of*
3 *Springfield*, 274 Or. 37, 42 (1976).

4 (2) The local government’s decision is a quasi-judicial decision requiring the decision
5 be supported by “findings in support of their decisions that are adequate to permit
6 meaningful judicial review.” *Hutchinson v. City of Corvallis*, 134 Or. App. 519,
7 527 (1995).

8 (3) Courts give a measure of deference to the local government’s decision because
9 “[c]ourts have no more expertise in making this determination than city councils or
10 county commissioners, aided by staffs with at least some expertise.” *W.*
11 *Amusement*, 274 Or. at 41–42.

12 (4) Because of that deference, a reviewing court ensures only that the decision “is
13 supported by substantial evidence.” *Hutchinson*, 134 Or. App. 519, 523 (1995).

14 Each of these characteristics could just as easily describe the present quasi-judicial land use
15 proceeding on the incorporation petition. *See 1000 Friends of Oregon v. Wasco Cnty. Ct.*, 80 Or.
16 App. 532, 537 (1986) (“We hold that the county's action on the incorporation petition was quasi-
17 judicial.”), *rev'd on other grounds*, 304 Or. 76 (1987). A property is “specially benefitted” when
18 “the construction of an improvement add[s] anything to the convenience, accessibility and use of
19 the property as distinguished from benefits arising incidentally out of the improvement and
20 enjoyed by the public generally.” *Hutchinson*, 134 Or. App. at 523–24 (quotations and citation
21 omitted). Accordingly, the County should consider the definition of “benefitted” used by the courts
22 as a strong guidepost as to the correct meaning. Because this definition is consistent with the
23 definition argued by the Capes, the County should adopt the Capes’ proposed interpretation.

1 **III. Conclusion**

2 In sum, the Capes respectfully requests that the County issue an order excluding the Capes
3 from the boundaries of the proposed city of Oceanside because the Capes will receive no benefit
4 from its inclusion.

5
6 Dated this 13th day of July, 2022.

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Petitioners' Analysis and Proposed Findings

Petition for the incorporation of the Unincorporated Community of
Oceanside and the creation of the City of Oceanside
Application No. 851-21-000449-PLN
Hearing Date: January 19, 2022

Submitted January 18, 2022

OCEANSIDE PETITION FOR INCORPORATION PETITIONER'S ANALYSIS AND PROPOSED FINDINGS

I. NATURE OF THIS HEARING

On December 13, 2021, Oceanside residents Jerry Keene and Blake Marvis, sponsored by the group "Oceansiders United," filed a prospective petition and accompanying documentation seeking to incorporate Oceanside as an Oregon "city" pursuant to ORS 221.031(1). The Oceanside Neighborhood Association CAC ("ONA") had formally endorsed the initiative on December 11, 2021, after a thorough investigation and extensive community debate. Petitioners then gathered and submitted signatures in support of the petition, which the County Clerk verified as sufficient on January 4, 2022. The matter now arises before the Tillamook County Board of Commissioners pursuant to ORS 221.040(1), which provides for a public hearing by a "county court" (county commissioners).

II. SCOPE OF THIS HEARING

ORS 221.040(2)¹ describes the matters that the Commissioners are to consider during a hearing on a petition for incorporation. They are:

1. Objections to the granting of the petition;
2. Objections to the formation of the proposed incorporated city;
3. Objections to the estimated rate of taxation set forth in the petition; and

¹ ORS 221.040(2) provides:

"At the time and place fixed for the hearing, or at any time and place at which the hearing may be continued or postponed, any person interested may appear and present oral or written objections to the granting of the petition, the forming of the proposed incorporated city or the estimated rate of taxation set forth in the petition. The court may alter the boundaries as set forth in the petition to include all territory which may be benefited by being included within the boundaries of the proposed incorporated city, but shall not modify boundaries so as to exclude any land which would be benefited by the formation of the proposed city. No land shall be included in the proposed city which will not, in the judgment of the court, be benefited. If the court determines that any land has been improperly omitted from the proposed city and the owner has not appeared at the hearing, it shall continue the hearing and shall order notice given to the nonappearing owner requiring the owner to appear before it and show cause, if any the owner has, why the owner's land should not be included in the proposed city. *** ."

4. Whether to alter the proposed city boundary to include territory which "may be benefited" by being included or to exclude territory which "will not ... be benefited" by being included.

In *1000 Friends of Oregon v. Wasco County*, 299 Or 344, 360 (1985) (hereafter "*1000 Friends*"), the Oregon Supreme Court amplified the statutory inquiry and added this hearing issue to this list:

5. Whether "it is reasonably likely that the newly incorporated city can and will comply with [the Oregon land use] goals once the city assumes primary responsibility for comprehensive planning in the area to be incorporated."

Taken together, these inquiries assign the Commissioners a critical, but limited, gatekeeper role that requires them to examine the petition's process and particulars, but not to litigate the merits of incorporation *per se*. For example, the statute does not require or authorize the Commissioners to determine whether incorporation is generally prudent or appropriate for the residents of Oceanside, or to deny the Petition based on a conflict between incorporation and some contrary county policy. Nor does the statute task the Commissioners with resolving arguments over whether the benefits of incorporation are "worth" the cost of the proposed city tax. Those decisions are reserved to the voters of the proposed city, if and when the Commissioners approves placing the issue of incorporation on the ballot.

The Oregon Supreme Court put it this way:

There is not the slightest implication [in the incorporation statutes or their legislative history] of any intent to authorize the county court, *on political grounds*, to deny the right of 150 inhabitants of a particular area to decide by a majority vote whether to incorporate their area as a city. We are satisfied that if the legislature had intended to give such power to a county court it would have expressed its intention in plain terms.

We agree with the court below that the Board of Commissioners had no right, under the pretext of finding that none of the proposed area would be benefited, to deny the residents of that area the right to vote on incorporation because, in the view of the Commissioners, an additional city in Clackamas County was "not commensurate with good governmental practices and not in the best interest of the general public nor in the general welfare."²

Petitioners will first address the three issues explicitly described by the statute. We will then separately address the land use inquiry appended by the Court in *1000 Friends*.

² *McMamus v. Skoko*, 255 Or 374, 379-80 (1970) (*emphasis added*).

III. ANALYSIS OF STATUTORY OBJECTIONS AND ISSUES

A. Petitioners will assume that the statutory issues are properly raised

Most of the hearing inquiries specified by ORS ~~212~~²²¹040(2) are premised on an assumption that some "interested" person has raised them at the hearing by lodging a relevant objection. For purposes of this analysis, the discussion below assumes that the Commissioners deem it necessary and appropriate to address the pertinent issue based on developments at the hearing.

1. Objections to the granting of the petition

As noted above, the statute does not contemplate that the Commissioners will grant objections to a Petition based merely on a disagreement over its political merits. It follows that the statute must contemplate objections that are more technical in nature, i.e. arguments that the petition was procedurally deficient or noncompliant.

Analysis

Petitioners have complied with all pertinent statutory requirements. On December 13, 2021, they complied with ORS ~~212~~²²¹.031 and ORS ~~212~~²²¹.035 by filing the following documents:

- (1) a completed Form SEL 701 cover sheet ("Prospective Petition for Incorporation of a City") that stated the lead petitioners, the city name, and the proposed permanent tax rate (App-56);
- (2) a map of the required dimensions (App-59); and
- (3) an Economic Feasibility Statement ("EFS") (App-37) that included:
 - (a) a description of the services and functions to be provided by the proposed city;
 - (b) an analysis of the relationship between those services and functions and other existing or needed government services; and
 - (c) proposed first and third year budgets for the new city demonstrating its economic feasibility.

The EFS also complied with ORS 221.031(3)(f) by affirming that incorporation would not entail dissolution of any special districts. On December 14, 2021, after consultation with County Counsel, County Clerk Tassi O'Neil acknowledged submission of a qualifying Petition and authorized the gathering of signatures. (App-57, -58)

On December 29, 2021, Petitioners complied with ORS 221.040(1) by submitting a packet of completed Form SEL 702s ("Petition for Incorporation of a City") bearing 85 signatures. On January 4, 2022, the County Clerk certified that 81 signatures were valid, exceeding the required number of 65 signatures (20% of registered Oceanside voters – see ORS 221.040(1)). (App-60) Accordingly, the Clerk referred the matter for a hearing.

221 On January 4, 2022, the Community Development Department complied with ORS 221.040(1) by arranging for the publishing of two weekly notices and the public posting of three separate notices within the proposed city – each announcing that hearings on the incorporation petition would be held on January 19, 2022, and January 26, 2022. On January 7, 2022, it arranged for the publishing and public posting of amended notices that the hearing was rescheduled for January 26, 2022, February 2, 2022, and February 9, 2021. (App 61)

Proposed Finding

The record supports a finding that Petitioners and county staff complied with the statutory prerequisites for submitting, processing and perfecting the Incorporation Petition in anticipation of a hearing and the scheduling of a public vote.

2. Objections to the "formation" of the proposed incorporated city

Analysis

a. Objections to "formation" include challenges to its economic feasibility

ORS 221.040(2) provides for an incorporation hearing to present objections to the "formation" of a city. As noted above, the Commissioners may not approve generalized political objections to the formation a new city, so it is not clear what type of objections this provision refers to. One clue is that the ORS 221.040(2) explicitly allows objections targeted to two of the three statutory components of an incorporation petition: the *proposed boundary* and the *permanent tax rate*. The third required component – the Economic Feasibility Statement (EFS) - is not mentioned. By process of elimination, and lacking other guidance, Petitioners assume that objections to the "formation" of the proposed city includes objections to the conclusions offered in the EFS.³ If "interested"

³ Another possibility is that this provision refers to objections to the "formation" of a new city that might be lodged by neighboring cities, special districts, relevant boundary commissions or

persons lodge other objections to formation of the city, Petitioners request an opportunity for more specific rebuttal.

b. Challenging feasibility requires more than mere disagreement with the hypothetical projections in the EFS

ORS 221.021(2) and ORS 221.035(2)(c), instruct incorporation petitioners to produce an EFS as an exercise to generally “demonstrate ... the economic feasibility” of the proposed city. Specifically, the EFS must demonstrate that the petitioners have proposed a “permanent rate limit for operating taxes that would generate operating tax revenues sufficient to support an adequate level of municipal services.” To that end, the EFS must include a hypothetical analysis of needed services, estimate their costs and project the “first and third year budgets” for the city.

Importantly, however, the only elements of the incorporation petition that take effect upon incorporation are the proposed *boundary* and permanent *tax limit*. See ORS 221.050(5)(a), (b). In contrast, the specifics of the organizational structure and budget allocations in the EFS are deemed *hypothetical projections* without legal effect. This makes sense as a matter of civics because, otherwise, the new City Council would be forced to implement budget priorities and an organizational structure formulated by the unelected Petitioners without public input or oversight. It also means that incorporation opponents who object that forming a new city is not economically feasible must do more than merely disagree with the specific allocations or priorities reflected in the EFS.

c. Petitioners' EFS conclusions are sound and based on exhaustive investigation

While opponents may not ask the Commissioners second-guess the specifics of the EFS projections, they may object that the EFS overall projections fail to demonstrate that incorporation is economically feasible, i.e. reasonably capable of being carried out successfully.⁴ In the event of such a challenge, Petitioners will rely on the information

other institutional entities whose land use planning schemes or economic interests would assertedly be compromised or infringed. Those situations are contemplated and separately addressed in portions of the incorporation statute, such as ORS 221.032, ORS 221.024 and ORS 221.026, but none of those scenarios are implicated by this Petition. Oceanside is already an acknowledged “urbanized” community with an acknowledged community boundary that is located more than 6 miles from the nearest incorporated city (Tillamook). The new city would not infringe any other city’s growth boundary, nor is it subject to the jurisdiction of a boundary commission.

⁴ The statute does not define “feasibility,” but Black’s Law Dictionary defines it to mean “capable of being done, executed, affected or accomplished (*emphasis added*).” The Miriam-

and analysis provided in the EFS (App-37), which referenced and incorporated the exhaustive investigation findings, analysis and resources outlined in the attached *ONA Incorporation Report of ONA Incorporation Task Force* (hereafter "*ONA Incorporation Report*") (App-1). The Executive Summary of that report stated:

"This Task Force was asked to investigate and recommend whether incorporation is a feasible option for Oceanside worthy of community consideration and debate as a way to preserve and enhance the quality of Oceanside's civic life. To do so, the Task Force focused its efforts on three key factors: (1) benefits (services) the "city" of Oceanside might reasonably provide; (2) financial feasibility (costs and revenues), and (3) practical feasibility (community participation). Here is a summary of the Task Force's findings and conclusions:

1. On the issue of feasible benefits, the Task Force concluded that incorporation has the potential to significantly enhance those aspects of civic life that Oceansiders have identified as priorities: road improvements, localized land use planning and visitor management.

2. On the issue of financial feasibility, the Task Force concluded that the availability of more than \$430,000 in revenue from "external sources" (TLT, grants, STR fees) combined with the city's modest staffing needs, would enable the city to function effectively with a city property tax rate of no more than 80 cents per \$1000 of tax-assessed value (generating \$250,000⁵.) Given that this city tax revenue will be matched by a significantly greater amount of external revenue, the Task Force concluded that this could feasibly be considered a prudent investment in Oceanside's civic life.

3. On the issue of community participation, the Task Force concluded Oceansiders' history of involvement and service in previous community initiatives feasibly indicates that Oceansiders will rise to the occasion if they feel their efforts will actually matter to the quality of their civic life.

In sum, when considered as a choice between forming a city or continuing to rely on county officials to preserve and enhance Oceanside's civic life, the Task Force

Webster Online Dictionary similarly defines it to mean "1. capable of being done or carried out, as in a feasible plan; 2. capable of being used or dealt with successfully, 3. reasonable, likely."

⁵ As reflected in the EFS (App-47), this initial city tax revenue estimate was subsequently reduced to approximately \$190,000 after subtracting assessed property values in The Capes when it was excluded from the incorporation proposal. The reduction was offset by additional revenue sources based on data that became available by the time the EFS was drafted.

concluded that incorporation is a feasible option worthy of community consideration and debate." (See App-2, -3)

The *ONA Incorporation Report* was extensively distributed and debated in the Oceanside community upon completion. As discussed in more detail below, its conclusion that "incorporation is a feasible option worth of community consideration and debate" was approved by a 3-to-1 margin in a vote by over 200 verified Oceanside residents and property owners.⁶

Proposed Finding

The Commissioners should find that the EFS amply demonstrates the economic feasibility of incorporating Oceanside as a city.

3. Objections to the estimated rate of taxation set forth in the petition

Analysis

Petitioners again rely on information and analysis presented in the EFS and *ONA Incorporation Report*. The proposed maximum city tax rate of 80 cents (\$.80) per \$1000 in county assessed property value translates to an annual city tax of \$320 for a home assessed at \$400,000 and \$400 for a home assessed at \$500,000. As explained in the EFS budget notes of the EFS (App-47) and the chart below, this tax rate is projected to generate net revenue for the new city of between \$180,000 and \$200,000 annually after the first (partial) revenue year (excluding the assessed value of new construction). When combined with more than \$100,000 in projected TLT funds available for unrestricted use, this results in base general fund revenue of more than \$300,000, and an additional \$300,000 in special fund revenues projected from TLT (tourism-facilities), short term rental operator's dues, short term rental licensing fees, available franchise fees and business taxes, and shared state revenue from taxes on gas, marijuana, cigarettes).

⁶ Petitioners have appended information documenting the public outreach and debate process. See "Oceanside Incorporation Public Process and Data" at App-65 thru App-85.

PROJECTED RESOURCES

	Fiscal Year 2022-23	Fiscal Year 2023-24	Fiscal Year 2024-25
(1) City Tax	144,000	148,000	152,000
(2) Previous Year City Tax		37,000	38,000
(3) Transient Lodging Tax	180,000	300,000	310,000
(4) STR Operator's Fees	40,000	80,000	80,000
(5) STR License Fees	15,000	30,000	30,000
(6) State Revenue Sharing		35,000	35,000
(7) Misc. Fees and Taxes		30,000	30,000
TOTAL	375,000	660,000	675,000

Petitioners submit that in the context of the new city's limited services obligations and ample "external" revenue sources, this city tax rate is reasonable, prudent and "sufficient to support an adequate level of municipal services" pursuant to ORS 221.031(3)(c).

Proposed Finding

The Commissioners should find that the proposed maximum city tax rate of 80 cents (\$.80) per \$1000 of assessed value, when considered in the context of other revenue sources, is sufficient to support an adequate level of municipal services.

4. Whether to alter the proposed city boundary to include territory which "may be benefited" by being included or to exclude territory which "will not...be benefited" by being included

Analysis

a. *What does "benefit" mean, and how is it determined?*

Petitioners anticipate that some Oceanside property owners or groups of owners may appear at the hearing to seek exclusion from the new city based on arguments that their individual properties or neighborhoods will not be sufficiently "benefited" by specific aspects or services in the event of incorporation to justify the imposition of a new tax. Such arguments assume that the Commissioners' determinations regarding a city boundary are comparable to adjudicating land use applications, where the Commissioners weigh evidence to adjudicate specific uses or impacts on individual properties. They

would have the Board approve or disapprove individual segments based on a property-by-property cost v. benefit analysis.

The courts have made it clear that this is not the approach contemplated by the incorporation statute when it comes to reviewing the proposed boundary. Instead, as the court stated in *Millersburg Development Corp. v. Mullen*, 14 Or App 614, 623 (1973) (Supreme Court review denied; disavowed on other grounds), evaluating boundaries for a new city entails a broader analysis:

“[T]he determination of the boundaries of a city [as] a political subdivision of the state transcends the individual interests of each parcel of property proposed to be located therein. It becomes a matter of *general interest in the whole area* a matter of general policy (*emphasis added*).”

Accordingly, the Commissioners should decline to alter the proposed city boundary unless those seeking exclusion offer arguments or evidence that implicates policy considerations *beyond* the benefit to specific homeowners or neighborhoods. Conversely, the Commissioners should also factor the negative impact of *excluding* particular properties or neighborhoods on the “general interest in the whole area,” for example where excluding an area would result in anomalous gaps or illogical carve-outs in the city’s configuration.

b. *How will incorporation benefit the “general interest in the whole area”?*

Identifying the “benefits” of incorporation is complicated by the fact that Petitioners’ predictions and services proposals will not be binding on the new city or its elected representatives. Indeed, should incorporation occur over their objections, those who seek exclusion will *themselves* be part of deciding and shaping such benefits as citizens of the new city.

To manage this conundrum, Petitioners will defer to the opinions expressed in three, representative essays by Oceansiders below – two from full-time residents and one from a part-time resident. They reflect sentiments shared during the flurry of “pro” and “con” comments that the ONA solicited and published in its Newsletter preceding the incorporation vote on December 11, 2021. Collectively, they capture the essence of what Oceansiders *themselves* identified as the benefits of becoming a new city shortly before voting overwhelmingly to endorse incorporation.

The first comments are from a retired Oceanside couple who reside in the Camelot area, where feelings on incorporation are decidedly mixed. They wrote:

"We support incorporation for these reasons:

- 1. Oceanside has not received a fair share of the Transient Lodging Tax (TLT) revenue in the 8 years since it started January 1, 2014. We have received few grants from the 70% of our TLT, but Pacific City has received millions. We also have received few road improvements from the 30% of our TLT supposedly being used for roads. The City of Oceanside would decide how to use our TLT money on "tourism" projects that benefit Oceanside as well as tourists (such as bike paths) and which roads in Oceanside need improvement.*
- 2. Oceanside has received a huge influx of tourists from the advertising that Tillamook County Visitor Association has done with our TLT revenue, but Oceanside has received little in the way of support in dealing with the resulting problems of parking, trash, safety, and inconsiderate behavior from Tillamook County in dealing with these problems. The City of Oceanside could use the TLT revenue and revenue from other sources to address these problems.*
- 3. If you're not living next door to a vacation rental, you're lucky and if you do live next door to a vacation rental, we feel your pain. Some renters are invisible and others are your worst nightmare. Tillamook County has done little to address noise, lights, and other nuisance complaints or enforce violations of limitations specified in the license such as the number of vehicles allowed. Oceanside short term rental owners and neighbors could collaborate to design a system for addressing complaints and the City of Oceanside could hire someone to investigate, inspect and enforce the system. Short term rental owners would be involved in Oceanside emergency preparedness.*
- 4. If Oceanside was a city, Oceanside would not have been excluded from the preliminary meeting about the demolition of The Cabins for a new 25 room 3 story hotel and Oceanside wouldn't be waiting on Tillamook County Planning Commission to review the new lighting ordinance and building height calculation ordinance voted on weeks ago. The Oceanside Community Plan would be taken into consideration instead of routinely ignored.*
- 5. As a city Oceanside would be eligible for grants available to Oregon's small cities, such as a street paving grant of \$100,000, emergency preparedness grants and federal infrastructure grants currently in the pipeline.*

Jud Griner & Mary Flock"

The second narrative is from a part-time resident of Oceanside:

"I support incorporation of a City of Oceanside. I have owned a home in the village of Oceanside since 2013 and feel extremely fortunate. Before then, for more than 20 years, I was an annual vacation home renter from Portland. I believe that incorporation will allow the residents of Oceanside a more dispositive voice over the nature of future development and conservation, and preservation issues in Oceanside. I have watched as pandemic, wildfires, and a growing population have brought more visitors to Oceanside. I have watched actual gridlock on our streets during peak summer weekends. I have

watched as new construction becomes larger and larger. I have seen the proposed plans for a 35-foot high hotel in the heart of the "commercial district" that will challenge anyone's idea of what a "village" is and contribute to even more vehicular congestion.

I believe that the proposed city tax rate is manageable and I believe that the proposed City boundaries are logical and include the residents of the new city who would benefit from those future planning efforts. Oceanside is larger than any one street or neighborhood. We live in a very precious and unique area with a national refuge offshore and a state recreational area as our playground. Anyone in the vicinity bears some responsibility for preserving this special place. I support using City tax dollars to hire a lean professional staff to carry out the operational and planning work that very dedicated (and tired) Oceanside Neighborhood Association volunteers have shouldered for years.*

I have concluded that the Tillamook County government does not have the resources to adequately respond to the unique issues facing Oceanside despite good intentions. I believe that an incorporated City of Oceanside will be able to leverage new sources of revenue that will benefit the City and Tillamook County alike. I have watched as it has taken a number of years to coordinate the jurisdictions involved to build a sorely need accessible beach ramp in Oceanside. I have observed variances routinely granted by the county permitting non-conforming structures. I have seen the height restrictions skirted by clever designers. We have witnessed a disproportionate amount of the short term rental tax generated by Oceanside vacation homes distributed to other areas of the county. Forming a City will allow Oceansiders to have a meaningful voice in local issues and to find the way forward on creating affordable housing, maintaining its historic role providing vacation rentals, and planning for the increased use of our beaches in the pandemic and as a vacation destination and home for Oceansiders. Hopefully incorporation will deepen and strengthen our relationship with Tillamook County.

For all of these reasons I support incorporation of a new City of Oceanside.

Leslie Kay

** To the extent that the new tax would be an economic hardship, some seniors and disabled people may qualify for property tax deferral through State of Oregon programs.<https://www.oregon.gov/dor/programs/property/Pages/deferral.aspx>*

This final excerpt is from a letter by a 30-year homeowner in Oceanside:

"Our property taxes are definitely high enough, but I support incorporation because, unlike most taxes, I will see concrete benefits from a city tax that costs me a few hundred dollars a year - benefits that support a "vision" of Oceanside where ...

1. ... the community assumes control of Pacific Avenue and musters the resources to sensibly design how visitors drive and park around the beach access, staying out of village neighborhoods;

2. ... *the community can plan ahead for anticipated growth along Cape Meares Loop Highway to avoid chaotic commercial development and promote housing options that will attract younger residents;*
3. ... *the community that bears the effects of lodging strangers in our neighborhoods actually benefits from the taxes they generate;*
4. ... *a council of local residents writes and enforces the rules governing requests for exceptions to our zoning rules by developers such as Fusion Lodging;*
5. ... *a report of late-night noise, unsafe fireworks, improper parking or an unruly dog prompts a timely and reliable response by a paid community staff person or patroller;*
6. ... *the community has the resources to plan ahead for natural disasters, like tsunamis or wildfires, may leave residents and hundreds of summer or spring break day visitors stranded together for an extended period of time;*
7. ... *local roads in all parts of Oceanside receive scheduled maintained and potholes are filled with days of being reported;*
8. ... *the community has the TLT resources to build tourism-related infrastructure, like trails or paths, that benefit Oceansiders as well as visitors; and*
9. ... *the community provides meaningful and rewarding ways for our accomplished population to offer their skills and experience for the good of our community.*

In short, which 'vision' of a future Oceanside should we choose? Ten years from now, will Oceanside be better off by continuing to rely on County management, or by taking control of our own destiny by uniting as an incorporated City of Oceanside? I hope the answer is as clear to our neighbors as it is to me.

Rob Hoeper"

Necessarily, many of these anticipated "benefits" are aspirational and subject to political, practical and economic considerations as the new city works its way forward. For the purpose of this hearing, however, the issue is not how or whether such benefits will be *realized*, but whether there are areas within the proposed city boundary to which such anticipated benefits would *not extend*. Petitioners contend that incorporation, at least as viewed by the majority of ONA members who support it, will generate broad civic benefits that do not lend themselves to segregation based on neighborhood-by-neighborhood cost-benefit analysis or objections.

d. *Specific boundary issues*

As explained in the EFS, Petitioners originally proposed a city boundary that adhered to the Oceanside Community Boundary, which was adopted as part of the Tillamook County Comprehensive Plan in the 1980s. In so doing, Petitioners were aware that the Commissioners would eventually hold a hearing at which some areas might seek to be excluded from the new city. Because the Oceanside Community Boundary was established in the course of a formal land use acknowledgment process decades ago, Petitioners decided it would be presumptuous and improvident to unilaterally alter it.

Petitioners were also aware that the incorporation statute implicitly discourages gerrymandering the proposed boundary by excluding potentially "benefitted" areas merely because the residents might vote against it.

During the ONA's "Incorporation Conversation" and associated public outreach, however, certain developments persuaded Petitioners to adjust the boundary as follows.

Northern and Eastern Boundaries. After comparing the decades-old map to current development in the area, Petitioners expanded the northern boundary to incorporate the homes subsequently constructed on and near Radar Road. (The homeowners at the northernmost edge of the new boundary support incorporation and embraced this adjustment.) Based on recommendations by the County Assessor's office, Petitioners further adjusted the northern boundary and some sections of the eastern boundary of the Community Boundary to avoid splitting existing tax lots.

The Capes. The *ONA Incorporation Report* concluded that the primary benefits of incorporation for Oceanside would be:

- (1) local control of land use and zoning decisions;
- (2) better road maintenance,
- (3) retention of locally generated TLT revenue, and
- (4) local management of parking and misconduct by visitors.

From the outset, Petitioners deemed it improbable that The Capes residents would realize any of these benefits because:

- (1) The Capes Homeowners' Association already imposes and enforces strict development and design rules stricter than any likely city building standards;
- (2) The Capes residents, through their Association, fund the maintenance of their self-contained road system at a level the new city could not feasibly match;
- (3) The Capes bans short term rentals, rendering city regulation moot, and
- (4) The Capes is an insular, gated community that provides for its own security and internal code enforcement.

Petitioners were also cognizant that The Capes' distance from Oceanside's central village area and its proximity to Netarts amenities would attenuate any intangible benefits it might otherwise enjoy from municipal improvements to Oceanside's central core. Finally, The Capes geographical location and self-contained street configuration allowed for exclusion from the proposal by an administratively simple boundary adjustment. For

these reasons, Petitioners deemed it a near-certainty that the County Commissioners would agree to exclude The Capes from the incorporation effort if its residents expressed a strong and unified request to be excluded at the eventual hearing. As noted above, however, Petitioners initially elected not to unilaterally preempt a decision that the incorporation statutes assign to the County Commissioners.

It was in this context, that Petitioners received and considered communications from The Capes HOA Board in late November and early December 2021 indicating that nearly 100% of the respondents they surveyed held a strong opinion that they would not enjoy the asserted "benefits" from Oceanside's incorporation and sought to be excluded. (See Letter from The Capes HOA at App-86.) Based on this formal request and the clear logic of the situation as outlined above, Petitioners determined it would serve no purpose to force The Capes to pursue a formal objection to the boundary in a hearing. Accordingly, they had the map redrawn to exclude The Capes development from the Petition map.

Perhaps inevitably, this led protests by some individuals that Petitioners should similarly exclude their neighborhoods or properties. Petitioners declined such requests and recommended that they make their case to the Commissioners. They did so based not only on the considerations discussed above, but also because the factors listed below rendered exclusion a much closer question:

- (1) the proximity of the neighborhoods to the central village and its amenities;
- (2) the likelihood that such neighborhoods would enjoy at least some of the benefits of incorporation;
- (3) the illogical gaps or distortion that would result from configuring the boundary to exclude them;
- (4) the absence of contractual development constraints and other HOA benefits rendering city benefits moot;
- (5) the lack of any formal request or organized survey results by an entity representing the neighborhood, and/or
- (6) the mixed opinions about the benefit of incorporation reflected in ONA surveys and feedback.

In summary, Petitioners are unaware of requests by residents of any nearby area to be included within the proposed city boundary. While Petitioners are aware of prospective requests to be excluded from the boundary by individual residents or homeowners in some neighborhoods, we are unaware of objections grounded in sufficiently broad *policy* considerations to warrant a decision by the Commissioners to alter the proposed city boundary.

Proposed Finding

The Commissioners should find that the record lacks objections or evidence of sufficient policy significance to warrant a legislative alteration of the proposed Oceanside city boundary, either to include or exclude new territories.

IV. ANALYSIS OF “LIKELY” COMPLIANCE WITH LAND USE GOALS

A. The courts require the Commissioners to generally find that it is “reasonably likely” that an incorporated Oceanside can and will comply with Oregon land use goals

In *1000 Friends v. Wasco County*, the Oregon Supreme Court ruled that the incorporation hearing order must include a finding that the proposed incorporation is “in accordance with” Oregon’s land use goals. The Court emphasized, however, that this determination “differs” from adjudicating whether a proposed Comprehensive Plan actually complies with those goals – since no Plan will be formulated unless and until incorporation occurs.⁸ Instead, the review entails “some meaningful degree of foresight” about the proposed city’s “likely” willingness and ability to comply with the land use goals after incorporation:

“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 (underscoring added).”

The Court further stated:

“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 these bear on future land use, such as the kind of municipal services that the city is expected to provide and the

⁸ DLCD’s administrative rules codify this requirement in OAR 660-14-0010(4), which allots no more than four years from incorporation to obtain acknowledgement of their Comprehensive Plan and associated ordinances, or to obtain an approved extension of time.

projections about future population and tax base that these purposes assume or necessarily imply.

Petitioners submit that they have generally satisfied this requirement in the analysis preceding this section, as supplemented by the EFS and the *ONA Incorporation Report*. In particular, Petitioners reiterate that the special districts which are expected to provide essential services associated with the prospective city have already confirmed their capacity to accommodate the 10% growth in residential structures anticipated from the newly approved 60-lot residential subdivision. That should suffice for the limited findings required from this hearing, given the US Census report that Oceanside's population has remained essentially unchanged over the past decade.

Petitioners also rely on the enclosed memorandum summarizing a videoconference that the ONA Task Force's "Legal" team (including both Chief Petitioners) solicited with DLCD officials Lisa Phipps, DLCD North Coast Regional Representative, and Jim Jinings DLCD Community Service Specialist. Jinings was the DLCD official assigned to work with La Pine, Oregon, during its process of formulating a Comprehensive Plan after its successful incorporation vote in 2006. Phipps is the local DLCD contact who, along with Jinings, would provide advice and resources during the same process for Oceanside. During that discussion, the DLCD officials offered a broad outline of the process, general description of how the Land Use Goals apply to it, a commitment to offer ongoing advice and tentative assurances that financial resources will be available to help the new city cover necessary legal expenses and studies. Since this conference, Petitioners have continued to apprise Phipps and Jinings of their progress and sought advice for specific land use issues that arose along the way. That outreach effort further supports a finding that Petitioners are not only aware of the land use obligations incumbent upon a new city, but also willing and able to take the steps necessary to meet them.

B. Analysis of likely and willing compliance with specific land use goals

Petitioners appreciate that an incorporated Oceanside will be required to formulate and obtain acknowledgment of its own Comprehensive Plan and associated ordinances in accordance with Oregon's 19 Land Use Goals. They also understand that the territory within the new city boundary falls almost entirely within the Oceanside Community Boundary, which was encompassed by the Tillamook County Comprehensive Plan approved in 1981.⁹ That Plan and the associated process pre-positions Oceanside as an

⁹ To assist with this aspect of their hearing presentation, Petitioners consulted with Sarah Absher, Tillamook County Director of Community Development, and DLCD official Lisa Phipps, who graciously offered historical and technical insights into how the Goals will apply to Oceanside as an existing, urbanized unincorporated area regarding which the County has already taken acknowledged exceptions in its own Comprehensive Plan. (We note that securing such

urbanized unincorporated community with sewer, water, fire and other established services. As a result, many of the necessary classifications, inventories and exceptions necessary to formulate the city plan were already accomplished during the county Plan formulation and acknowledgment process. With this in mind, Petitioners offer the following discussion of the individual Goals, including their implications for Oceanside's future planning process and information indicating its readiness and ability to comply with them.

Statewide Planning Goal 1 - Citizen Involvement: Summary: Goal 1 calls for "the opportunity for citizens to be involved in all phases of the planning process." It requires each city and county to have a citizen involvement program containing six components specified in the goal.¹⁰ It also requires local governments to have a committee for citizen involvement (CCI) to monitor and encourage public participation in planning.

Regarding Oceanside's likely compliance with this Goal, past is definitely prologue. Few communities in the county, if not the state, boast a documented history of organized and widespread community involvement in local planning efforts comparable to what has been accomplished over the years the Oceanside Neighborhood Association (ONA). Oceanside had already formed the ONA to facilitate such efforts well before Tillamook County formalized its own process for designating advisory committees in unincorporated communities. The ONA compiled its first "Oceanside Community Plan" as far back as 1996, mustering local funding for a survey of all community property owners to identify and prioritize their community goals and then express them in a policy statement organized around the Land Use Goals. Twice since then (2010 and 2018), the ONA has publicized, mustered and orchestrated community input for revisions and updates to the Community Plan, including submission for approval by the Community Development Department, the Planning Commission and the Board of County Commissioners.

In between such updates, the ONA has also effectively engaged volunteers for numerous special research projects and reports related to specific planning and livability issues, such as short-term rental regulation, membership voting reforms, emergency

consultation further reflects the new city's awareness and readiness to comply with the Goals once incorporated.)

¹⁰ These components are:

- Opportunities for widespread public involvement;
- Effective two-way communication with the public;
- The ability for the public to be involved in all phases of the planning process;
- Making technical information easy to understand;
- Feedback mechanisms for policy-makers to respond to public input; and
- Adequate financial support for public involvement efforts.

preparedness, building height standards, and exterior lighting. In terms of financing, the Oceanside community formed the "Oceanside Protection Society" two decades ago. It is a 501(c)(3) community foundation with the mission to preserve livability and foster community spirit. Over the years it has engaged in community fundraising and the dissemination of local grants to the ONA, the Oceanside Community Club and individuals organizing projects, such as a radon gas test kit lending program, an upgraded community bulletin board, garbage collection at the State Park Wayside and assistance with funding the Oceanside Centennial celebration scheduled in July 2022.

Last but not least, the ONA embarked upon an unprecedented and effective campaign to muster community awareness and involvement in debate and deliberations leading to the decision by its Members to formally endorse this incorporation process.¹¹ During those discussions, ONA members on both sides of the issue voiced a clear imperative that the ONA must continue its role as a focus for expression of the community's goals to any newly incorporated City Council.

Statewide Planning Goal 2 - The Land Use Plan: Summary: Goal 2 outlines the basic procedures of Oregon's statewide planning program and describes the development of Tillamook County's Comprehensive Plan including justification for identifying exception areas.

During the community meetings and debate on incorporation, Oceansiders repeatedly noted that incorporation would trigger a legal obligation to formulate a city Comprehensive Use Plan and Urban Growth Boundary. As noted above Petitioners already commenced an outreach and research effort in anticipation of that requirement by consulting expert DLCD representatives, such as Lisa Phipps and Jim Jinings. Given Oceanside's quarter-century of public involvement and familiarity with formulating Community Plans based on the Land Use Goals, there is no reason to doubt the readiness and ability of the community to comply with this Goal.

Statewide Planning Goal 3 - Agricultural Lands: Summary: Goal 3 defines "agricultural lands." It then requires counties to inventory such lands and to "preserve and maintain" them through farm zoning. Details on the uses allowed in farm zones are found in ORS Chapter 215 and in Oregon Administrative Rules, Chapter 660, Division 33.

Oceanside's readiness to comply with Goal 3 in its eventual city Comprehensive Plan is not relevant because an exception to Goal 3 was already taken for territory within the proposed city boundary during the process of compiling and obtaining acknowledgement of the Tillamook County Comprehensive Plan.

Statewide Planning Goal 4 - Forest Lands: Summary: This goal defines forest lands and requires counties to inventory them and adopt policies and ordinances that will "conserve forest lands for forest uses."

¹¹ Petitioners have chronicled this process in App-65 thru App-86.

Oceanside's readiness to comply with Goal 4 in its eventual city Comprehensive Plan is not relevant because, during the process of preparing and obtaining acknowledgement of the Tillamook County Comprehensive Plan, an exception to Goal 4 was already taken for territory within the proposed City boundary.

Statewide Planning Goal 5 - Natural Resources: Summary: The purpose of Goal 5 is to protect natural resources, and conserve scenic and historic areas and open space. Goal 5 covers more than a dozen natural and cultural resources such as wildlife habitats and wetlands. It establishes a process for each resource to be inventoried and evaluated. If a resource or site is found to be significant, a local government has three policy choices: preserve the resource, allow proposed uses that conflict with it, or strike some sort of a balance between the resource and the uses that would conflict with it.

Petitioners have secured a commitment from the Tillamook County Community Development to assist in inventorying Goal 5-protected areas within the proposed city boundary that were previously identified in the Tillamook County Comprehensive Plan. They envision that such areas will be incorporated during the development of the city Comprehensive Plan, a process that will also enable identification and inclusion of additional, significant areas or resources.

Statewide Planning Goal 6 - Air, Water and Land Resources Quality: Summary: This goal requires local comprehensive plans and implementing measures to be consistent with state and federal regulations on matters such as groundwater pollution and noise control in the new city.

Oceansiders will need no urging to incorporate air, water and land conservation measures in its land use planning policies or Comprehensive Plan. Such concerns have already been identified and prioritized in each iteration of Oceanside's Community Plans over the decades, including their pioneering emphasis on preserving natural vegetation, "dark sky" initiatives and wildlife protection. It is also worth remembering that Oceanside's new city government will enjoy access to and support by its existing sewer and water districts, which already bear a responsibility to be aware of and ensure compliance with pertinent federal and state regulations governing water quality. Petitioners are also aware that stormwater management will become a pressing issue in the event that incorporation proponents are correct in predicting that road repair and maintenance will be a top city priority. Finally, Petitioners also note that Oceansiders have long demanded and supported local recycling programs made available by countywide programs and our private waste collectors.

Statewide Planning Goal 7 - Hazards: Summary: Goal 7 deals with development in places subject to natural hazards such as wildfires, tsunamis, floods or landslides. It requires that jurisdictions apply "appropriate safeguards" (floodplain zoning, for example) when planning for development there. In Oceanside, the purpose of addressing hazards is not meant to restrict properties from development, but to institute policies concerning potential problems, so they can be considered before financial losses and possible injury which may be avoided by the application of the policies formulated in the Comprehensive Plan.

ONA leaders are already engaged in assisting with outreach efforts by Tillamook County to update its hazard planning by inventorying natural hazards and updating associated ordinances. That process will incorporate and capitalize on updated DOGAMI maps and studies, which included Oceanside. Petitioners anticipate that Oceanside city leaders and staff will capitalize on such involvement by taking advantage of the information and resources gleaned during the county's process to inform the formulation of its own development standards in compliance with Goal 7 guidelines. Petitioners note that when county officials held meetings to highlight gaps in its hazard communications system in the summer of 2021, ONA leaders rushed to consult local and county emergency officials, design a Wildfire Evacuation Advisory for electronic distribution and disseminate it to hundreds of recipients via its electronic newsletter list. Such concern for hazard planning is unlikely to be abandoned or slighted in the new city's planning processes.

Statewide Planning Goal 8 - Recreation: Summary: This goal calls for each community to evaluate its areas and facilities for recreation and develop plans to deal with the projected demand for them. It also sets forth detailed standards for expedited siting of destination resorts. In Tillamook County, the main issue surrounding recreation is that of quantity, location and orientation. This Goal element recognizes that the tourism sector of the County's economy is rapidly growing and some feel tourism places too large a burden on local public facilities and services.

Tillamook County inventoried recreational resources in the Oceanside area when formulating its own Comprehensive Plan. Such amenities are hardly difficult to find as Oceanside's entire community is centered on the State Park owned beaches that make up its front yard. The new city will be able to incorporate and build upon that inventory. It will also certainly preserve the "Park Zone" reflected in Oceanside's current zoning ordinances.

Statewide Planning Goal 9 - Population and Economy: Summary: Goal 9 calls for diversification and improvement of the economy. It asks cities to inventory commercial and industrial lands, project future needs for such lands, and plan and zone enough land to meet those needs.

Oceanside's population and commercial locations are historically stable, and its existing zones already reflect diversity in allowing for residential, commercial and recreational (park) uses. Given its setting, surrounded by natural areas and features that are intensively regulated for environmental protection, it is unlikely that industrial or heavy commercial development will be sought or viable. On the other hand, those same attributes have engendered quasi-commercial activity in the form of 120 short term rentals in an area of less than one square mile, located in residential zones. Besides supporting a micro-economy in the form of cleaning and management services, these rentals do and will continue to draw customers to businesses that serve county visitors outside the proposed city. The new city is also expected to continue the ONA's focused efforts to invite upgraded broadband service, which would allow for further diversity in the form of entrepreneurial home-based businesses.

Statewide Planning Goal 10 - Housing: Summary: This goal specifies that jurisdictions must plan for and accommodate needed housing types, such as multifamily housing. It requires an inventory of buildable residential lands, projection of future needs for such lands, and actions of planning and zoning enough buildable land to meet those needs. It also prohibits local plans from discriminating against needed housing.

Petitioners and the Oceanside community are aware that its eventual Comprehensive Plan must include planning policies for diversified housing to meet its needs. In fact, such diversity is desired by the community. During incorporation discussions, a number of Oceansiders cited the opportunities a new city might explore to diversify its population by enabling more families with children. In addition, while current building standards already allow for duplexes as a conditional use, Petitioners anticipate that the new city will also explore creative ways to allow ADUs in a way that is consistent with community standards and priorities.

Statewide Planning Goal 11 - Public Services: Summary: Goal 11 calls for efficient planning of public services such as sewers, water, law enforcement, and fire protection. The goal's central concept is that public services should to be planned in accordance with a community's needs and capacities rather than be forced to respond to development as it occurs. In unincorporated communities outside urban growth boundaries counties may approve uses, public facilities and services more intensive than allowed on rural lands by Goal 11 and 14, either by exception to those goals, or as provided by commission rules which ensure such uses do not adversely affect agricultural and forest operations and interfere with the efficient functioning of urban growth boundaries. governments and special districts are required "to plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development."

Services and facilities relevant to Goal 11 include public schools, transportation, water supply, sewage disposal, solid waste disposal, police protection, fire protection, planning, zoning and subdivision control, energy service, and communications services. As outlined in the EFS and *ONA Incorporation Report*, the proposed city will continue to be served by existing special districts and county agencies or programs with independent funding. They provide water, sewer, fire protection, police protection, education and solid waste management to Oceanside and, in some cases, to the community of Netarts. Goals expressed by proponents during incorporation discussions emphasized that incorporation would enable additional and/or improved services by bringing on local planning staff, contracting for more intensive road maintenance, and funding a system that supplements the county's public safety services with a system for civil enforcement of building and conduct codes to better address issues like visitor misconduct and parking violations. Petitioners anticipate that planning and building services will continue to be provided by county staff during the interim between the incorporation vote and the establishment of city services.

Statewide Planning Goal 12 - Transportation: Summary: The goal aims to provide "a safe, convenient and economic transportation system." It asks for communities to address the needs of the "transportation disadvantaged." Policies outlined in this Goal element of the Tillamook County Comprehensive Plan require the County to protect the function, operation and safety of existing and planned roadways as identified in the County's Transportation Plan, consider land use impacts on existing or planned transportation facilities in all land use decisions, plan for multi-modal networks, and coordinate transportation planning efforts with other jurisdictions to assure adequate connections to streets and transportation systems between incorporated and unincorporated areas.

As outlined in the EFS, Oceanside is one of the communities currently served by the Tillamook County Transportation District, which participates in the "NW Connector" program as part of the Northwest Oregon Transit Alliance. It currently maintains three round trip routes between Oceanside and the Tillamook Transit Center, where connections may be made to Portland and coastal communities to the north and south. In addition, Oceanside residents are eligible for on-demand service from the District's Dial-A-Ride Service. Both services abide by federal and state accessibility requirements. Petitioners do not anticipate that incorporation will affect the availability of this service, just as it does not affect current service to other incorporated communities.

Statewide Planning Goal 13 - Energy Conservation: Summary: Goal 13 declares that "land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles." Planning for energy conservation and opportunities to promote the installation of renewable energy systems are discussed in this Goal element of a Comprehensive Plan.

Oceanside's population consists primarily of active or retired professionals who are already oriented to and supportive of energy conservation measures, consistent with local priorities and standards. For example, in 2018, after public input and hearings, the ONA successfully sought BOCC approval of local ordinances that both contemplate and regulate the installation of "alternative energy" devices such as windmills and solar collectors. In addition, as noted above, Oceanside residents have historically been heavy users and supporters of recycling services offered by the county and under the local franchise agreement with City Sanitary Service. Petitioners anticipate that the new city will continue to reflect the interest in alternative energy availability and management.

Statewide Planning Goal 14 - Urbanization: Summary: This goal requires cities to estimate future growth and needs for land and then plan and zone enough land to meet those needs. It calls for each city to establish an "urban growth boundary" (UGB) to "identify and separate urbanizable land from rural land." It specifies seven factors that must be considered in drawing up a UGB. It also lists four criteria to be applied when undeveloped land within a UGB is to be converted to urban uses.

Oceanside's readiness to comply with Goal 14 in its eventual city Comprehensive Plan is of limited relevance because, during the process of preparing and obtaining acknowledgement of the Tillamook County Comprehensive Plan, an exception to Goal 14 was already taken for territory within Oceanside's Community Boundary. That said, Petitioners are aware that incorporation will entail the development of a new

Comprehensive Plan and Urban Growth Boundary that builds on previous efforts, reflects the seven "factors" specified in Goal 14 and accommodates infrastructure reflecting updated projections of the area's growth projections and resulting needs. As noted previously, Petitioners have already alerted local DLCD representative of this, and they have responded with assurances of assistance.

Petitioners anticipate that the assumption of planning and zoning responsibilities by local officials, informed by local input, will promote more orderly and efficient development in areas that are the natural target of future growth by permitting a more detailed and nuanced analysis of the area's development potential and limitations than is currently available at the county level.

Statewide Planning Goal 15 - Willamette River Greenway. Goal 15 is focused on the Willamette River, and applies to cities and counties along the river. The Willamette River Greenway is a corridor of water and land in which development is planned and built with recognition of the unique qualities of the Willamette River.

Goal 15 does not apply to Oceanside's planning needs or obligations.

Statewide Planning Goal 16 - Estuarine Resources: Summary: This goal requires local governments to classify Oregon's 22 major estuaries in four categories: natural, conservation, shallow-draft development, and deep-draft development. It then describes types of land uses and activities that are permissible in those "management units." Five estuaries are inventoried and described in this element of the Tillamook County Comprehensive Plan, the Nehalem Estuary, Tillamook Estuary, Netarts Estuary, Sandlake Estuary and Nestucca Estuary.

Petitioners are unaware of estuarine resources within the proposed city boundary that would implicate Goal 16.

Statewide Planning Goal 17 - Shorelands: Summary: The goal defines a planning area bounded by the ocean beaches on the west and the coast highway (State Route 101) on the east. It specifies how certain types of land and resources there are to be managed: major marshes, for example, are to be protected. Sites best suited for unique coastal land uses (port facilities, for example) are reserved for "water-dependent" or "water related" uses. Coastal Shorelands inventoried in Tillamook County as described in this element are Nehalem Estuary Shorelands, Tillamook Estuary Shorelands, Netarts Estuary Shorelands, Sandlake Estuary Shorelands, and Nestucca Estuary Shorelands.

Petitioners have secured a commitment from the Tillamook County Community Development to assist in inventorying and/or confirming previous exceptions to Goal 17-protected areas within the proposed city boundary that were taken and acknowledged in the Tillamook County Comprehensive Plan. They envision that such areas will be folded into the new city Comprehensive Plan, a process that will also enable identification and inclusion of additional, significant areas or resources.

Statewide Planning Goal 18 - Beaches and Dunes: Summary: Goal 18 sets planning standards for development on various types of dunes. It prohibits residential development on beaches and active

foredunes, but allows some other types of development if they meet key criteria. The goal also deals with dune grading, groundwater drawdown in dunal aquifers, and the breaching of foredunes. Categories of dunes within Oceanside must be described in the plan along with discussion of areas are also inventoried within this element which allow for residential, industrial and commercial uses in dune areas that would otherwise be prohibited.

Oceanside's readiness to comply with Goal 18 in its eventual city Comprehensive Plan is of limited relevance because, during the process of preparing and obtaining acknowledgement of the Tillamook County Comprehensive Plan, an exception to Goal 18 was already taken and acknowledged for all Goal 18-protected areas within the proposed City boundary. They envision that such areas will be incorporated during the development of the city Comprehensive Plan.

Statewide Planning Goal 19 - Ocean Resources: Summary: Goal 19 aims "to conserve the long-term values, benefits, and natural resources of the nearshore ocean and the continental shelf." It involves with matters such as dumping of dredge spoils and discharging of waste products into the open sea. Goal 19's main requirements are for state agencies rather than cities and counties.

While Goal 19 applies mainly to state agencies, the policy it reflects aligns closely with Oceanside's traditional community priorities and interests, as reflected in the succession of Oceanside Community Plans that have emphasized conservation and the protection of wildlife, local vegetation and scenic amenities. To the extent necessary, Petitioners anticipate that local authorities in the new city will readily work with DLCD to formulate and incorporate policies that align with Goal 19 priorities. Indeed, Oceanside will probably insist on being consulted and involved in initiatives such as updating the Territorial Sea Plan.

Proposed Finding

The record supports a finding that it is reasonably likely that the newly incorporated city of Oceanside can and will comply with the goals once the city assumes primary responsibility for comprehensive planning in the area to be incorporated.

V. CONCLUSION

Since its founding 100 years ago, Oceanside has grown from a collection of vacation cabins into an urbanized community with a stable population, a cohesive civic identity and an effective community apparatus for identifying and pursuing common goals. Incorporation is the natural next step in its evolution as a community – endorsed by a clear majority of roughly 200 community stakeholders after one of the most extensive local information campaigns ever assembled in the county, if not the state.

A. Request for Order

Based on the information presented in this Analysis, the Economic Feasibility Statement and the *ONA Incorporation Report*, Petitioners respectfully request an Order reflecting the appropriate analysis and findings. It should also instruct the County Clerk, County Assessor and County Surveyor to complete the tasks necessary in a timely fashion sufficient to place the question of incorporating Oceanside, Oregon, including the approved boundary, legal description and permanent tax limit of \$.80 per \$1000 on the ballot for the Primary Election on May 17, 2022.

B. Form of Order

In the event the Commissioners decide to grant the Incorporation Petition, ORS 221.040(3) specifies the elements to be included or addressed in their Order, as follows:

“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. The order calling the election shall fix the date of the election on the date of the next primary election or general election that is not sooner than the 90th day after the date of the order. The order shall contain:

- (a) A description of the exterior boundaries of the proposed city as determined by the court. The description shall be a metes and bounds or legal description prepared by the county surveyor or county assessor. The description prepared under this paragraph shall accurately describe the exterior boundaries of the proposed city as indicated on the map filed under ORS 221.031 (Petition to incorporate) (3) unless those boundaries were altered by the county court, in which case the description shall accurately describe the boundaries as altered;
- (b) A provision requiring the county official in charge of elections to include on the ballot for the election a description of the boundaries of the proposed city using streets and other generally recognized features and a statement of the proposed permanent rate limit for operating taxes included in the petition for incorporation of the proposed city as required by ORS 221.031 (Petition to incorporate), which statement shall comply with the requirements of ORS 250.035 (Form of ballot titles for state and local measures); and
- (c) The date on which the election will be held in the proposed city.”

Petitioners appreciate the time and effort that county staff and the Commissioners themselves have devoted to accommodating this unusual and historic incorporation effort.

Respectfully submitted,

Jerry Keene

Blake Marvis

Chief Petitioners
Oceansiders United