



TOWN OF PAONIA
214 GRAND AVENUE
WEDNESDAY, APRIL 05, 2023
PLANNING COMMISSION MEETING AGENDA 4:00 PM
[HTTPS://US02WEB.ZOOM.US/J/81018144222](https://us02web.zoom.us/j/81018144222)
MEETING ID: 810 1814 4222
ONE TAP MOBILE
17193594580

Roll Call

Approval of Agenda

Approval of Minutes

November 17, 2022

December 7, 2022

Actions and Presentations

- 1.** Introducing Phoenix Rising Resources LLC, Master Plan consultants. Instruction to the Planning Commission regarding roles and responsibilities for supervising Master Plan formation
- 2.** Recommending established Neighborhood Boundaries for Liquor Licensing
- 3.** Discussion and decisions on recommendation to Board of Trustees for the Intergovernmental Agreement with Delta County.

Adjournment

I. RULES OF PROCEDURE

Section 1. Schedule of Meetings. Regular Board of Trustees meetings shall be held on the second and fourth Tuesdays of each month, except on legal holidays, or as re-scheduled or amended and posted on the agenda prior to the scheduled meeting.

Section 2. Officiating Officer. The meetings of the Board of Trustees shall be conducted by the Mayor or, in the Mayor's absence, the Mayor Pro-Tem. The Town Clerk or a designee of the Board shall record the minutes of the meetings.

Section 3. Time of Meetings. Regular meetings of the Board of Trustees shall begin at 6:30 p.m. or as scheduled and posted on the agenda. Board Members shall be called to order by the Mayor. The meetings shall open with the presiding officer leading the Board in the Pledge of Allegiance. The Town Clerk shall then proceed to call the roll, note the absences and announce whether a quorum is present. Regular Meetings are scheduled for three hours, and shall be adjourned at 9:30 p.m., unless a majority of the Board votes in the affirmative to extend the meeting, by a specific amount of time.

Section 4. Schedule of Business. If a quorum is present, the Board of Trustees shall proceed with the business before it, which shall be conducted in the following manner. Note that all provided times are estimated:

- (a) Roll Call - (5 minutes)
- (b) Approval of Agenda - (5 minutes)
- (c) Announcements (5 minutes)
- (d) Recognition of Visitors and Guests (10 minutes)
- (e) Consent Agenda including Approval of Prior Meeting Minutes (10 minutes)
- (f) Mayor's Report (10 minutes)
- (g) Staff Reports: (15 minutes)
 - (1) Town Administrator's Report
 - (2) Public Works Reports
 - (3) Police Report
 - (4) Treasurer Report
- (h) Unfinished Business (45 minutes)
- (i) New Business (45 minutes)
- (j) Disbursements (15 minutes)
- (k) Committee Reports (15 minutes)
- (l) Adjournment

* This schedule of business is subject to change and amendment.

Section 5. Priority and Order of Business. Questions relative to the priority of business and order shall be decided by the Mayor without debate, subject in all cases to an appeal to the Board of Trustees.

Section 6. Conduct of Board Members. Town Board Members shall treat other Board Members and the public in a civil and polite manner and shall comply with the Standards of Conduct for Elected Officials of the Town. Board Members shall address Town Staff and the Mayor by his/her title, other Board Members by the title of Trustee or the appropriate honorific (i.e.: Mr., Mrs. or Ms.), and members of the public by the appropriate honorific. Subject to the Mayor's discretion, Board Members shall be limited to speaking two times when debating an item on the agenda. Making a motion, asking a question or making a suggestion are not counted as speaking in a debate.

Section 7. Presentations to the Board. Items on the agenda presented by individuals, businesses or other organizations shall be given up to 5 minutes to make a presentation. On certain issues, presenters may be given more time, as determined by the Mayor and Town Staff. After the presentation, Trustees shall be given the opportunity to ask questions.

Section 8. Public Comment. After discussion of an agenda item by the Board of Trustees has concluded, the Mayor shall open the floor for comment from members of the public, who shall be allowed the opportunity to comment or ask questions on the agenda item. Each member of the public wishing to address the Town Board shall be recognized by the presiding officer before speaking. Members of the public shall speak from the podium, stating their name, the address of their residence and any group they are representing prior to making comment or asking a question. Comments shall be directed to the Mayor or presiding officer, not to an individual Trustee or Town employee. Comments or questions should be confined to the agenda item or issue(s) under discussion. The speaker should offer factual information and refrain from obscene language and personal attacks.

Section 9. Unacceptable Behavior. Disruptive behavior shall result in expulsion from the meeting.

Section 10. Posting of Rules of Procedure for Paonia Board of Trustees Meetings. These rules of procedure shall be provided in the Town Hall meeting room for each Board of Trustees meeting so that all attendees know how the meeting will be conducted.

II. CONSENT AGENDA

Section 1. Use of Consent Agenda. The Mayor, working with Town Staff, shall place items on the Consent Agenda. By using a Consent Agenda, the Board has consented to the consideration of certain items as a group under one motion. Should a Consent Agenda be used at a meeting, an appropriate amount of discussion time will be allowed to review any item upon request.

Section 2. General Guidelines. Items for consent are those which usually do not require discussion or explanation prior to action by the Board, are non-controversial and/or similar in content, or are those items which have already been discussed or explained and do not require further discussion or explanation. Such agenda items may include ministerial tasks such as, but not limited to, approval of previous meeting minutes, approval of staff reports, addressing routine correspondence, approval of liquor licenses renewals and approval or extension of other Town licenses. Minor changes in the minutes such as non-material Scribner errors may be made without removing the minutes from the Consent Agenda. Should any Trustee feel there is a material error in the minutes, they should request the minutes be removed from the Consent Agenda for Board discussion.

Section 3. Removal of Item from Consent Agenda. One or more items may be removed from the Consent Agenda by a timely request of any Trustee. A request is timely if made prior to the vote on the Consent Agenda. The request does not require a second or a vote by the Board. An item removed from the Consent Agenda will then be discussed and acted on separately either immediately following the consideration of the Consent Agenda or placed later on the agenda, at the discretion of the Board.

III. EXECUTIVE SESSION

Section 1. An executive session may only be called at a regular or special Board meeting where official action may be taken by the Board, not at a work session of the Board. To convene an executive session, the Board shall announce to the public in the open meeting the topic to be discussed in the executive session, including specific citation to the statute authorizing the Board to meet in an executive session and identifying the particular matter to be discussed “in as much detail as possible without compromising the purpose for which the executive session is authorized.” In the event the Board plans to discuss more than one of the authorized topics in the executive session, each should be announced, cited and described. Following the announcement of the intent to convene an executive session, a motion must then be made and seconded. In order to go into executive session, there must be the affirmative vote of two thirds (2/3) of Members of the Board.

Section 2. During executive session, minutes or notes of the deliberations should not be taken. Since meeting minutes are subject to inspection under the Colorado Open Records Act, the keeping of minutes would defeat the private nature of executive session. In addition, the deliberations carried out during executive session should not be discussed outside of that session or with individuals not participating in the session. The contents of an executive session are to remain confidential unless a majority of the Trustees vote to disclose the contents of the executive session.

Section 3. Once the deliberations have taken place in executive session, the Board should reconvene in regular session to take any formal action decided upon during the executive session. If you have questions regarding the wording of the motion or whether any other information should be disclosed on the record, it is essential for you to consult with the Town Attorney on these matters.

IV. SUBJECT TO AMENDMENT

Section 1. Deviations. The Board may deviate from the procedures set forth in this Resolution, if, in its sole discretion, such deviation is necessary under the circumstances.

Section 2. Amendment. The Board may amend these Rules of Procedures Policy from time to time.

Town of Paonia



Approval of Minutes

November 17, 2022

December 7, 2022

Town of Paonia



Minutes
Planning Commission Meeting
Town of Paonia, Colorado
November 17, 2022 4 PM

RECORD OF PROCEEDINGS

Roll Call

Monica Foguth
Mary Bachran
Dave Knutson
Lyn Howe

ABSENT:
Steve Clissett

Approval of Agenda

Motion made by Mary Bachran, seconded by Dave Knutson to approve the agenda with the Intergovernmental Agreement Discussion moved to the next meeting.

Motion Carries Unanimously

Approval of Minutes

September 6, 2022

October 5th, 2022

Dave Knutson makes a motion, seconded by Mary Bachran to approve the minutes for September 6, 2022 and October 5th 2022

Motion passes unanimously

New Business

1. Review RFP's to make recommendations to the Board of Trustees

PRR Proposal & Kaart Proposal

Short presentation by Calla Ostrander from Phoenix Rising Resources

Discussion ensued about vision, pricing, hours visioning, interviewing, staff time and flexibility.

Mary Bachran makes a motion, seconded by Lyn Howe, to recommend Phoenix Rising Resources with some price reduction

Motion passes with Dave Knutson abstaining

2. Review Intergovernmental Agreement between Delta County Planning Commission and the Town of Paonia

Moved to next meeting

3. Discussion per JDS Hydro Memo about Post Water Moratorium Plans: Annual number of water taps released; in-town vs. out of town.

Mary Bachran introduces the topic: JDS Hydro requires a plan for the sale of taps once the water moratorium is lifted before they can recommend it be lifted.

Discussion covered: sewer taps, annexation, water taps, number limits, limitations, ADU's, housing needs, residents vs developers, intown v out of town needs, resources available, IGA, water companies and input, GIS mapping,

Dave Knutson leaves the meeting.

Monica Foguth makes a motion, seconded by Lyn Howe, to move this discussion to the next meeting so they can see the potential growth numbers.

Lyn Howe makes a motion to amend the main motion to include looking at zoning and GIS mapping

Motion passes unanimously

Adjournment

Samira Vetter, Secretary

Mary Bachran, Mayor

Minutes
Planning Commission Meeting
Town of Paonia, Colorado
December 07, 2022

RECORD OF PROCEEDINGS

Chair Monica Foguth calls the meeting to order at 4:01pm

Roll Call

PRESENT

Chair Monica Foguth

Commissioner Mary Bachran

Commissioner Steve Clisset

Commissioner Dave Knutson

Commissioner Lyn Howe (joins meeting at 4:05)

Approval of Agenda

Motion made by Commissioner Bachran, Seconded by Commissioner Clisset.

Motion carries unanimously

Unfinished Business

Commissioner Lyn Howe joins the meeting.

Contractor Presentation on school building potential use

Evan Falivene, Matthew Beecher & Martin Goldstein, with Beecher Development provide a Zoom presentation on a school building, 218 Fourth St, potential housing use.

Discussion includes housing assessment, Paonia needs, demographics, affordable housing, local employee housing, Delta County Opportunity Zone, water moratorium & supply, affordable vs attainable, Innovative Housing Planning DOLA grant, intentional communities, different options for pre-fab & stick-built, estimated pricing, for rent or for sale, local contractor and supplies.

Motion made by Commissioner Bachran, Seconded by Commissioner Clisset to move the IGA discussion to the second item of unfinished business.

Motion carries unanimously.

Review Intergovernmental Agreement between Delta County Planning Commission and the Town of Paonia

Presentation about changes in land use code and whether that necessitates changes in the Growth Management area and Urban Growth Boundary.

Discussion includes zoning, service offerings, future vision for the community, water service lines, Price Road, standby taps, Highway 133 corridor, confined animal feed operations, town decisions, county input, annexation, land use code, water ways, careful planning.

Water Tap Discussion with GIS Presentation

Discussion over the number of Standby water taps, 91, (excluding Arc Land Company's taps) that are already obligated and what future tap sales should look like.

Discussion includes keeping new taps along already established lines, priority to dense development, concentrating on dense development over sprawl and trying to protect from wildfire and disturbing wildlife.

Chair Monica Foguth makes a motion, Seconded by Commissioner Knutson, to ask the Interim Town Administrator to make a spreadsheet showing the amount of current standby taps now, in the town limits; the potential number of future taps inside of the town zoning maps and another one showing 20% future growth to be on the next agenda.

Motion carries unanimously.

Discussion includes rescinding taps, time limits, infrastructure vs potential taps and zoning changes could change potential needs.

Adjournment

Meeting Adjourns at 5:41 pm

Samira M Vetter, Secretary

Mary Bachran, Mayor

Town of Paonia

1.



Introducing Phoenix Rising Resources LLC,
Master Plan consultants.

Town of Paonia

2.



Neighborhood Boundaries for Liquor
Licensing

11



Town Board Staff Report

Subject: Resolution for Neighborhood Boundaries for Liquor Licensing

Author: Samira Vetter

Representing: Clerk’s Office

Date: March 14, 2023

Specific request: That the Town’s Local Licensing Authority set a standard ‘neighborhood’ boundary for Liquor Licensing application requirements.

Summary Recommendation

To either provide direction to the Town Attorney about a Resolution for the establishment of Neighborhood Boundaries

-or-

To send the issue to the Planning Commission for a more in-depth discussion and recommendation of neighborhood boundaries based on potential future planning.

Executive Summary

When a business applies for a liquor license, before their public hearing they are required to show the Local Licensing authority the ‘Needs & Desires’ of the neighborhood. This is often done by petition, and it seems that the ‘neighborhood’ is the town limit. Paonia has an ever-evolving business structure and has a community that is forward looking and creative when it comes to building a sustainable economy, so this could be an important distinction to have in the future.

State statute requires that the Local Licensing Authority consider many things including the ‘needs & desires’ of the neighborhood. There is also no definition in the State Statute of ‘neighborhood’ or guidelines to determine those boundaries. However, at the time a complete application is turned in and when a public hearing is scheduled, the Clerk’s office needs to be able to provide a boundary for applicants.

The Intent

As Paonia continues to develop and be surrounded by tourism, food, festivals, vineyards and breweries; having an official ‘neighborhood’ established by Resolution is just good practice. It ensures that everyone has to meet the same standards, all licensees know from the start what their requirements are and it provides a solid base for the Local Licensing Authority/ Board of Trustees to provide consistent and equitable treatment.

Options/Alternatives for Town Board to Consider

I offered a second recommendation of sending the issue to the Planning Commission for a more in-depth discussion and recommendation because while the boundaries could be changed if desired

later, with Master Plan work being done and planning for growth after the water moratorium is lifted, it might be a good time to look at what the business/tourism growth might look like alongside the residential growth.

Funding Source and Fiscal Impact

None at this time

Attachments

Pages from the Colorado Municipal Leagues 'Liquor & Beer Handbook 2022'

DETERMINING THE “REASONABLE REQUIREMENTS OF THE NEIGHBORHOOD”

Before approving or denying an application for a new license, the local authority must consider, among other factors:

[T]he reasonable requirements of the neighborhood for the type of license for which application has been made, the desires of the adult inhabitants, [and] the number, type, and availability of alcohol beverage outlets located in or near the neighborhood under consideration... except that the reasonable requirements of the neighborhood shall not be considered in the issuance of a club liquor license.¹⁸⁴

Another statute requires the local authority to consider:

[T]he reasonable requirements of the neighborhood, the desires of the adult inhabitants as evidenced by petitions, remonstrances, or otherwise, and all other reasonable restrictions that are or may be placed upon the neighborhood by the local licensing authority.¹⁸⁵

DETERMINING THE BOUNDARIES OF THE “NEIGHBORHOOD”

Key to these considerations, and one of the more difficult problems confronting the local licensing authority, is the method for determining the boundaries of the “neighborhood” to be served by the proposed outlet. No statutory definition of the word “neighborhood” exists, and no statutory guidelines explain how to determine neighborhood boundaries.¹⁸⁶ However, in several cases decided over the years, the Colorado courts have tried to fill this void.

In general, the courts have recognized that the geographic extent of the “neighborhood” will vary from case to case, depending upon individual facts and circumstances.¹⁸⁷ Thus the local licensing authority has considerable discretion in determining neighborhood boundaries, and its determination will not be overturned by the courts unless it is shown to have acted arbitrarily or capriciously or to have abused its discretion.¹⁸⁸ In smaller communities the entire municipality¹⁸⁹ or even the entire municipality and its surrounding suburban area¹⁹⁰ has, at times, been permissibly determined to be a single “neighborhood.” Designated neighborhoods have also been upheld even when they cross municipal boundary lines.¹⁹¹

The courts have, on occasion, used a distance radius as a convenient rule of thumb for the neighborhood.¹⁹² However, courts require that the determination of a neighborhood be based not merely on linear footage but take into account relevant factors such as the nature of the area in which the proposed outlet is to be located (i.e. rural, residential, shopping center),¹⁹³ as well as traffic flow,¹⁹⁴ access roads,¹⁹⁵ and “geography, terrain, and barriers, both God-made and man-made.”¹⁹⁶ Finally, there are some outside limits to what a court will accept as a single “neighborhood,” and if it is described too expansively it may be struck down.¹⁹⁷

If the record is complete and reveals that the local licensing authority has considered the evidence and based its determination of neighborhood boundaries on these types of factors, a court will likely uphold the local authority’s decision on appeal.¹⁹⁸ It should be noted that in order to challenge the authority’s description of the neighborhood in court, the applicant or those opposing the application should have objected to the local authority’s designation of the neighborhood at the licensing hearing and have made their objections part of the record. The authority’s designation of neighborhood boundaries will almost surely survive a court hearing if it is only challenged for the first time during judicial review of the licensing authority’s decision.¹⁹⁹

In reviewing a license application, the local authority should establish the neighborhood boundaries as soon as possible, since many other elements of the application and review process depend on what the board has determined the relevant “neighborhood” to be. Where a local authority could reasonably select more than one area as the relevant neighborhood, an early determination is essential to guide interested parties in the presentation of opinions and information. The local authority may wish to hear substantial evidence at the hearing on the question of the proper boundaries. In small communities where the entire community may be considered “the neighborhood,” or where the relevant neighborhood is otherwise obvious, this early determination should cause few problems.

In order to expedite the process, some local authorities in urban areas make “preliminary rulings” on the boundaries of the neighborhood, which will apply to the hearing unless the applicant or some other interested party presents sufficient evidence that a different definition with different boundaries should be established. If the boundaries are changed during the course of the hearing and the change affects the hearing significantly, the authority may continue the hearing to a specified date to allow the interested parties to obtain and present more appropriate, relevant information and arguments.

DETERMINING THE “NEEDS” OF THE NEIGHBORHOOD

Initially, the license applicant has the burden of making a *prima facie* showing that the reasonable requirements of the neighborhood establish a need for issuance of the particular license.²⁰⁰ Evidence that there is no liquor outlet of a similar classification within a radius of several miles and that there is substantial support for issuance of the license may be dispositive of the issue for the local authority, and a finding that the

¹⁸⁴ § 44-3-312(2)(a).

¹⁸⁵ § 44-3-301(2)(a).

¹⁸⁶ In describing the term “neighborhood,” § 44-3-103(19)(d) adds the modifying term “immediate” [i.e. “immediate neighborhood in which the establishment is located”], but beyond this there is nothing in the C.R.S. to offer any guidance.

¹⁸⁷ See generally, e.g., Bd. of Cnty. Comm’rs of Boulder Cnty. v. Johnson, 460 P.2d 770 (1969); Campbell v. City Council of Montrose, 374 P.2d 348 (1962).

¹⁸⁸ See Bd. of Cnty. Comm’rs of Boulder Cnty. v. Johnson, 460 P.2d at 771; Campbell v. City Council of Montrose, 374 P.2d 348, 351 (1962); see also Potter v. McClearn, 467 P.2d 54, 56 (1970); Lassak v. City Council of Arvada, 423 P.2d 574, 575 (1967); Hicks v. Capra, 416 P.2d 362, 364 (1966).

¹⁸⁹ See generally Norris v. Grimsley, 585 P.2d 925, 926-27 (1978).

¹⁹⁰ Campbell v. City Council of Montrose, 374 P.2d 348, 350-51 (1962).

¹⁹¹ See generally Bd. of Cnty. Comm’rs of Larimer Cnty. v. Bickel, 395 P.2d 208, 209 (1964); Brentwood Liquors v. Schooley, 363 P.2d 670, 670 (1961).

¹⁹² A “distance radius” is some predetermined radius—such as six blocks, ½ mile, five miles (etc.)—that is used to construct a circle on a map around the proposed outlet. See

generally, e.g., AWR Corp. v. Bd. of Cnty. Comm’rs of Morgan Cnty, 391 P.2d 675 (1964); Heinz v. Bauer, 375 P.2d 520, 521 (1962).

¹⁹³ Lassak v. City Council of Arvada, 423 P.2d 574, 575 (1967); Hicks v. Capra, 416 P.2d 362, 364 (1966).

¹⁹⁴ Lassak v. City Council of Arvada, 423 P.2d 574, 575 (1967).

¹⁹⁵ Bd. of Cnty. Comm’rs of Fremont Cnty v. Salardino, 329 P.2d 629, 632 (1957).

¹⁹⁶ Hicks v. Capra, 416 P.2d 362, 364 (1966).

¹⁹⁷ See, e.g., Bolton v. Bd. of Cnty. Comm’rs of Delta Cnty, 432 P.2d 761, 762 (1967) (reversing a county licensing authority’s finding that the “neighborhood” for an application could be defined as the entire county).

¹⁹⁸ See generally Chap. Two - Issuing New Licenses: Judicial review of the local licensing authority’s decision (explaining the process of judicial review generally, and the importance of keeping a complete record).

¹⁹⁹ See Bd. of Cnty. Comm’rs of Adams Cnty. v. Thompson, 448 P.2d 639, 640 (1969); Hicks v. Capra, 416 P.2d 362, 364 (1966).

²⁰⁰ Nat’l Convenience Stores v. Englewood, 110, 556 P.2d 476, 477 (1976); Tavella v. Eppinger, P.2d 314, 315 (Colo. 1963); Jennings v. Hoskinson, 382 P.2d 807, 809 (1963); Bd. of Cnty. Comm’rs of Adams Cnty. v. Nat’l Tea Co., 367 P.2d 909, 911 (1962).

requirements of the neighborhood are already met under such conditions may be found to be arbitrary as a matter of law.²⁰¹ Additionally, once the applicant has presented a *prima facie* case that the reasonable requirements for the neighborhood are not being met, the mere existence of other outlets nearby may be an inadequate basis upon which to deny a license.²⁰² The key question, according to the Colorado Supreme Court in *Canjar v. Huerta*, is whether “the needs of the neighborhood with respect to the type of beverage authorized to be sold are being met by existing licenses.”²⁰³ Under this test, when determining the needs of the neighborhood for a beer and wine license application, the licensing authority may consider the existence of all beer and wine licenses, hotel and restaurant licenses, vintner’s restaurant licenses, and tavern licenses located in the defined neighborhood, since all may sell beer and wine for consumption on the premises.²⁰⁴

The corollary to this rule is that if there are a number of licensed outlets in the area, then the applicant has the burden of showing that they are somehow inadequate to serve the needs of the neighborhood.²⁰⁵ Petitions signed for or against the application by residents of the affected neighborhood also present some evidence of the requirements of the neighborhood,²⁰⁶ although the sheer number of persons signing will not be determinative of the issue.²⁰⁷

Other types of evidence showing the needs of the neighborhood might include (for instance) neighborhood population and traffic counts on nearby streets,²⁰⁸ as well as convenience of access, hours of operation, frequency of customer requests, and numbers of similar outlets in the neighborhood.²⁰⁹ Survey data may also be submitted in support of an application. The licensing authority, however, must view any statistical data submitted in a consistent manner; it cannot both accept and reject the methodology used or find the data both significant and insignificant because of the results produced.²¹⁰ For example, a licensing authority cannot base a denial of a license on the views of a vocal minority which are opposed to the license, while ignoring the majority of respondents who favor it.²¹¹

NUMBER, TYPE, AND AVAILABILITY OF LIQUOR OUTLETS LOCATED IN OR NEAR THE NEIGHBORHOOD

This criterion is closely related to the “requirements of the neighborhood” standard, since the availability or lack of similar liquor outlets in the area is some evidence of the needs of the neighborhood. The lack of any other licensed establishment in the area to be served by the proposed outlet obviously provides strong support in a *prima facie* showing of need for the license.

A fermented malt beverage “package” outlet is not considered a “similar liquor outlet” to one which will sell fermented malt beverages by the drink.²¹² Also, the number and location of liquor outlets is not controlling when deciding whether a fermented malt beverage license should be granted.²¹³ It also seems logical to assume that the existence of, for example, restaurant licenses within the designated neighborhood of an applicant’s proposed retail liquor store would not be entitled to the same weight as would the existence of other retail liquor store licenses in the neighborhood.

In any event, the record of the hearing on any new license application should clearly reflect the fact that the local authority considered the existence or lack of liquor outlets located in or near the defined neighborhood, the weight attached to the existence of the outlets, and the reasons for assigning such weight.²¹⁴ The Colorado Court of Appeals has ruled that existence of other liquor outlets, by themselves, is a legally insufficient basis for denying an application.²¹⁵ However, a record containing such information enhances the likelihood that the local authority’s decisions will be upheld upon review.

Consideration of the “number, type, and availability” of other liquor outlets has been a longstanding feature of the Liquor Code. However, in 1997 the General Assembly amended the code to specifically provide that a retail liquor store or tavern license could be denied if it would result in an “undue concentration” of such licenses in a particular area.²¹⁶ The degree to which this new provision actually affords licensing authorities additional discretion to deny license applications has not yet been specifically addressed by the courts.

CONSIDERATIONS REGARDING “UNDUE CONCENTRATION”

Where a licensee applies for a second hotel and restaurant or vintner’s restaurant license the local authority must consider the effects on local competition, and must deny the application if approval would have the effect of restraining competition.²¹⁷ Furthermore, for retail liquor store and tavern licenses only, the local licensing authority may consider whether the license “would result in or add to an undue concentration of the same class of license and, as a result, require the use of additional law enforcement resources,” and may deny a license on that basis.²¹⁸ In defining “undue concentration,” the local board may consider (1) the ratio of license type to population statewide as compared to the neighborhood, (2) the ratio of license type to population in the municipality or county as a whole as compared to the census tract or census division in question, and (3) the distance between the applicant’s premises and other premises holding the same license.²¹⁹ The local authority may also consider any published data concerning the concentration of licenses and its effect on the need for local law enforcement, and testimony by law enforcement officials with the responsibility for the area in which the applicant premises are located.²²⁰

Because the statutory language does not lend itself to precise definition, and because the Liquor Code contains no explanation of many of the above quoted phrases, court rulings must be examined to understand better the meaning of these statutory standards.²²¹

201 See, e.g., *Wadlow v. Hartman*, 551 P.2d 201, 201 (1976) (citations omitted); *Anderson v. Spencer*, 426 P.2d 970, 974 (1967).

202 *Southland Corp. v. City of Westminster*, 746 P.2d 1353, 1355 (Colo. App. 1987), citing *Nat’l Convenience Stores v. Englewood*, 556 P.2d 476, 477 (“The mere existence of other outlets in the neighborhood, although a factor to be considered by the licensing authority, is not in itself a sufficient ground for denying a license.”).

203 *Canjar v. Huerta*, 566 P.2d 1071, 1073 (1977) (emphasis added).

204 *Canjar v. Huerta*, 566 P.2d 1071, 1073 (1977).

205 See, e.g., *Tavella v. Eppinger*, 383 P.2d 314, 315 (Colo. 1963); *Jennings v. Hoskinson*, 382 P.2d 807, 809 (1963).

206 *Bd. of Cnty. Comm’rs of Adams Cnty. v. Nat’l Tea Co.*, 367 P.2d 909, 911 (1962); *Brass Monkey, Inc. v. Louisville City Council*, 870 P.2d 636, 641 (Colo. App. 1994).

207 See *Vigil v. Burress*, 404 P.2d 147, 148 (1965) (explaining that “the number of persons signing for or against a license is not wholly determinative of either the reasonable requirements or the desires of the neighborhood.”).

208 See *Nat’l Convenience Stores v. Englewood*, 556 P.2d 476, 477 (1976).

209 See generally *Nat’l Convenience Stores v. Englewood*, 556 P.2d 476, 477 (1976); *Southland Corp. v. City of Westminster*, 746 P.2d 1353, 1354 (Colo. App. 1987).

210 *Brass Monkey, Inc. v. Louisville City Council*, 870 P.2d 636, 641 (Colo. App. 1994) (finding

the denial of an application arbitrary and capricious where the council relied on twenty-six percent surveyed opposition, but found the corresponding seventy-four percent favorable opinion from the same survey insignificant due to the small survey sample size).

211 *Brass Monkey, Inc. v. Louisville City Council*, 870 P.2d 636, 641 (Colo. App. 1994).

212 *Kerr v. Bd. of Cnty. Comm’rs*, 460 P.2d 235, 237 (1969); *Bd. of Cnty. Comm’rs of Adams Cnty. v. Nat’l Tea Co.*, P.2d 909, 911 (1962).

213 See *Hirsch v. Bd. of Tr.*, 370 P.2d 760, 761 (1962).

214 *Brass Monkey, Inc. v. Louisville City Council*, 870 P.2d 636, 641 (Colo. App. 1994).

215 *Brass Monkey, Inc. v. Louisville City Council*, 870 P.2d 636, 641 (Colo. App. 1994).

216 § 44-3-301(2)(b); *Liquor Reg. § 47-301*.

217 § 44-3-301(2)(a).

218 § 44-3-301(2)(b).

219 *Liquor Reg. §§ 47-301(A)(1)-47-301(A)(3)*.

220 *Liquor Reg. §§ 47-301(A)(4); 47-301(A)(5)*.

221 Because the cases decided under the Colorado Beer Code in this area are based on the same considerations as those decided under the Liquor Code, both types of cases are included in the following discussion.

Town of Paonia

3.



Intergovernmental Agreement with Delta
County Decisions and Recommendations to
the Board of Trustees

**GROWTH MANAGEMENT AGREEMENT
BETWEEN THE COUNTY OF DELTA AND THE CITY/TOWN OF ___, COLORADO
COOPERATING WITH RESPECT TO LAND USE PLANNING AND RELATED
SERVICES FOR THE UNINCORPORATED AREA AROUND THE MUNICIPAL
BOUNDARY**

THIS AGREEMENT is entered into between the City/Town of ___ (“CITY/TOWN”) and the County of Delta (“COUNTY”), collectively “PARTIES”, effective ___, 2022.

WHEREAS, the CITY/TOWN previously entered into a Growth Management Agreement effective ___; and

WHEREAS, COUNTY has adopted land use regulations that apply to properties located outside of the municipal boundaries (unincorporated areas); and

WHEREAS, CITY/TOWN has adopted land use regulations that apply to properties located within their municipal boundary; and

WHEREAS, PARTIES agree that joint planning areas should be established to encourage development in and near municipalities where adequate infrastructure is available and services can be efficiently provided; and

WHEREAS, PARTIES encourage future development that optimizes access to existing infrastructure and public services where there is capacity that does not strain the providers; and

WHEREAS, PARTIES wish to cooperate to provide for the efficient management and administration of development in the areas around the CITY/TOWN by defining a Growth Management Area based on present and future availability of municipal services; and

WHEREAS, PARTIES desire to identify locations and create standards for future development where adequate water, public infrastructure and services are in place or can be feasibly expanded; and

WHEREAS, PARTIES intend to coordinate planning efforts, especially in designated growth areas, in order to create greater consistency and mutual support among jurisdictions specifically to ensure coordination and communication occurs related to economic development, transportation, land use, residential, commercial and industrial development; and

WHEREAS, pursuant to Section 29-20-105, C.R.S., as amended, PARTIES have negotiated an agreement with the intention of cooperating with respect to land use planning and related services in the area around the CITY/TOWN, and to ensure that basic infrastructure standards for easements, roads, and utilities in this area are consistent with CITY/TOWN standards.

NOW THEREFORE, AND IN CONSIDERATION of the mutual covenants and conditions set forth herein, PARTIES agree as follows:

A. Generally:

1. This Agreement shall supersede the Growth Management Agreement with respect to land use planning entered into by the PARTIES effective ____.
2. This Agreement shall commence upon the execution by both governing bodies signatory hereto, and shall automatically renew at the end of one year and each year thereafter unless terminated by either party upon sixty (60) days written notice to the other party or by the execution of a new Agreement.
3. PARTIES agree to keep each other informed of their planning efforts, to adopt such resolutions or ordinances as will affect this agreement, and will enter into additional Intergovernmental Agreements to accomplish the purposes thereof (e.g., road maintenance).
4. PARTIES agree to meet at least annually discuss the effectiveness of this agreement and their joint planning efforts. The course of review shall inquire into the extent of compliance with this Agreement and the consistency with the applicable Master/Comprehensive Plans adopted by PARTIES, and will determine whether any modifications to this Agreement need to be accomplished.

B. Definitions: For purposes of this Agreement:

1. Growth Management Area (GMA) means an area within the Urban Growth Boundary where the municipality can and will consider extending services in preparation for possible annexation within the next ten (10) years.
2. Intergovernmental Agreement (IGA) means a Growth Management Agreement with respect to land use planning and related services for the unincorporated area around the municipal boundary.
3. Urban Growth Boundary (UGB) means properties located within a 3-mile distance measured from a municipality's border, setting geographical limits for sprawling development and preserving rural land uses.

C. Growth Management Area and Urban Growth Boundary:

1. PARTIES agree to plan for future growth within the GMA such that projects conform with municipal standards as much as possible upon annexation.
2. UGB and GMA boundaries shall be mapped using GIS such that the data can be used in conjunction with other parcel-based maps (e.g., zoning maps) to help identify parcels subject to this IGA. Said map is attached hereto and incorporated herein by reference as **Exhibit A**.
3. CITY/TOWN agrees to consult COUNTY in establishing, and amending, a GMA/UGB map.
 - a. PARTIES agree to coordinate and identify edges for CITY/TOWN growth with an emphasis on protecting prime agricultural lands within the GMA.
 - b. COUNTY shall not approve urban density within the GMA without consent of the CITY/TOWN.

- c. COUNTY shall zone properties consistent with protecting agricultural lands and respecting urban edges.
 - d. COUNTY Land Use Code includes an Urban Growth Area (UGA) Overlay to reflect where CITY/TOWN services are, or can be, available and where PARTIES agree urban development (higher density, commercial/industrial center) could be appropriate.
4. A GMA/UGB map can be amended without amendment to this IGA upon mutual consent of the Board of County Commissioners and the CITY/TOWN Council/Board.
 5. COUNTY agrees to require a pre-annexation agreement for projects within the GMA as transition to possible future annexation, including but not limited to; connection to CITY/TOWN services and infrastructure, application of building codes, zoning, and road maintenance.

D. Annexation:

1. CITY/TOWN shall keep COUNTY informed of its annexation requests and plans.
2. CITY/TOWN agrees to annex parcels or blocks of parcels that are contiguous with the existing CITY/TOWN boundary where the property is served by public water and sewer. Parcels owned by the CITY/TOWN for municipal services do not need to be contiguous.
3. CITY/TOWN shall annex enclaves and partly surrounded lands in accordance with C.R.S. Section 31-12-106 prior to other annexations.
4. If a project is located within an enclave, CITY/TOWN shall provide services (water, sewer, power) and annex the subject property.
5. Annexation shall be designed to avoid split-jurisdiction of road rights-of-way. When a CITY/TOWN plans to annex property, CITY/TOWN shall refer the proposal to COUNTY for a minimum 14-day review and comment period relative to the adjacent road right-of-way. Prior to annexation, CITY/TOWN shall either agree to annex the full width of all adjacent road right-of-way, including any portions of roadway connecting to the property being annexed that were not previously annexed, or enter into a mutually agreed Road Maintenance Agreement with COUNTY.

E. Zoning:

1. COUNTY shall coordinate with CITY/TOWN on zoning/rezoning of property located within the GMA.
2. CITY/TOWN shall coordinate with COUNTY on zoning of property as part of a pre-annexation agreement.
3. A property owner applying for a Rezoning within the GMA will be required to consult with the CITY/TOWN as to the ability to annex.

F. Subdivision:

1. All subdivision (minor plat, preliminary plat, replat) requests to COUNTY within the CITY/TOWN's GMA shall be referred to the municipality to process the request (see Section 8 below).

2. If the CITY/TOWN declines to process the request, COUNTY will process the request, subject to the following:
 - a. The request complies with COUNTY zoning. COUNTY will, at a minimum, apply a one (1) acre minimum density standard for any subdivision within the GMA, unless otherwise approved by the CITY/TOWN.
 - b. Adequate fire protection, water supply, and sewer services are available.
3. Where COUNTY moves forward with review and approval of a subdivision within the CITY/TOWN's GMA, PARTIES agree that infrastructure (curb, gutter, sidewalk, stormwater, etc.) should be extended within reason and without leaving gaps. Generally:
 - a. If CITY/TOWN infrastructure DOES exist adjacent to the project boundary, COUNTY will require constructing (extending) infrastructure that meets applicable CITY/TOWN standards.
 - b. If CITY/TOWN infrastructure DOES NOT exist adjacent to the project boundary, COUNTY will require dedication of right-of-way sufficient to accommodate all CITY/TOWN standards, for future construction.
4. For Subdivision applications within the GMA that cannot meet annexation requirements, a pre-annexation agreement between the CITY/TOWN and property owners shall be executed that outlines how and when municipal services/infrastructure will be made available as well as terms for annexation when statutory requirements are met PRIOR to COUNTY approval of the application.

G. Land Use:

1. A property owner applying for a Limited Use or Conditional Use within the GMA will be required to consult with the CITY/TOWN as to the ability to annex (see Section 8 below).
2. For all Limited Use and Conditional Use applications where annexation is not feasible or water/sewer are not necessary:
 - a. A referral shall be sent to the CITY/TOWN per the Referral Process.
 - b. CITY/TOWN comments regarding building heights, setbacks, traffic, or other impacts to the CITY/TOWN shall be addressed prior to approval.
 - c. CITY/TOWN comments shall be consistent with CITY/TOWN requirements for similar type uses.
3. COUNTY shall not permit any new Medium or Large Animal Feeding Operations within one-half (1/2) mile of the CITY/TOWN boundary regardless of the underlying zoning.

H. Referral Process:

1. COUNTY shall refer all discretionary permit applications (Minor Plat, Preliminary Plat, Limited Use, Conditional Use, Rezone) located within the UGB to the applicable CITY/TOWN. Where the 3-mile radius (UGB) overlaps more than one municipality, COUNTY shall include all applicable jurisdictions in the referral process.
2. COUNTY shall inform CITY/TOWN about a project application as part of the **pre-application** stage in the County's land use review process:

- a. PARTIES will determine who shall serve as the “Lead Agency” to process the application versus a “Review Agency” and if the project shall be subject to annexation or a pre-annexation agreement. CITY/TOWN shall assume Lead to process projects within enclaves.
 - b. COUNTY shall invite the applicable CITY/TOWN to attend the pre-application meeting which is to identify applicable review procedures (by COUNTY or CITY/TOWN) and potential issues before an application is filed.
 - c. Where COUNTY determines that a pre-application meeting is not required, COUNTY shall afford CITY/TOWN an opportunity to either request a pre-application meeting, or to simply provide comments as part of the initial review.
 - d. CITY/TOWN is encouraged to inform COUNTY of municipal requirements that will be requested so they can be included in the letter sent with application instructions.
3. If a project is located in the GMA and requires services (water, sewer, power) from the CITY/TOWN:
- a. COUNTY shall refer applications to CITY/TOWN first to determine if the CITY/TOWN can and will serve the project. The **pre-application** referral shall serve as a right-of-first-refusal for the CITY/TOWN relative to providing services:
 - i. COUNTY shall not permit projects using cisterns or wells for domestic water within any mapped GMA, unless there is no other water service available and the applicable water purveyor agrees to an alternative system within their service area.
 - ii. Septic systems shall not be allowed for sewage treatment except for lots greater than one (1) acre, exclusive of easements. Connection to CITY/TOWN sewer is required if the property boundary is within 400 feet of an existing sewer main, as measured from the closest point and/or where the CITY/TOWN capital improvement plan includes sewer expansion.
 - iii. The purveyor may require an agreement by the property owner to require connection to their system and removal of the alternative system when service becomes available.
 - b. CITY/TOWN shall inform COUNTY in writing if the property requires annexation or a pre-annexation agreement. If annexation is required, COUNTY shall not issue/approve any permit until/unless a pre-annexation agreement has been fully executed.
4. Once an application is deemed complete, COUNTY shall route the application to CITY/TOWN for review and comment through the **Agency Referral** stage in the County’s land use review process. COUNTY shall address all comments submitted by the CITY/TOWN either by amending the application, or responding why no change was required. Failure of a CITY/TOWN to respond within the prescribed referral period is interpreted as consent to the contents of the application.

I. Impact Fees:

- 1. County projects pay County impact fees, and shall not be subject to CITY/TOWN impact fees.
- 2. CITY/TOWN projects pay applicable CITY/TOWN impact fees, and shall not be subject to COUNTY impact fees.

J. Other: In addition to the common points applicable to all PARTIES, the following points are applicable specific to an individual CITY/TOWN:

- 1. City of Delta
 - a. Highway 92 Overlay District; Building Permits
 - b. Highway 50 Overlay District; Design Guidelines
 - c. Airport service without annexation and no landscaping requirements
- 2. Town of Paonia
 - a. Highway 133 Corridor Plan; Planning Areas A & B

CITY/TOWN

By: _____
Mayor

Date: _____

Attest: _____
City/Town Clerk

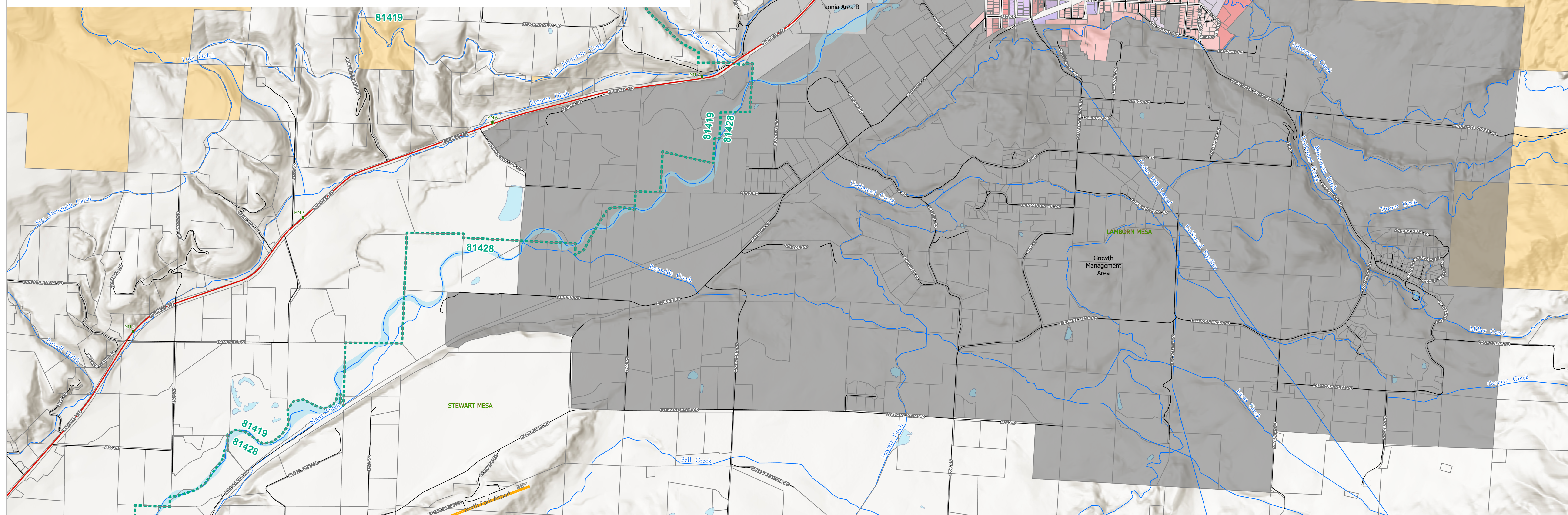
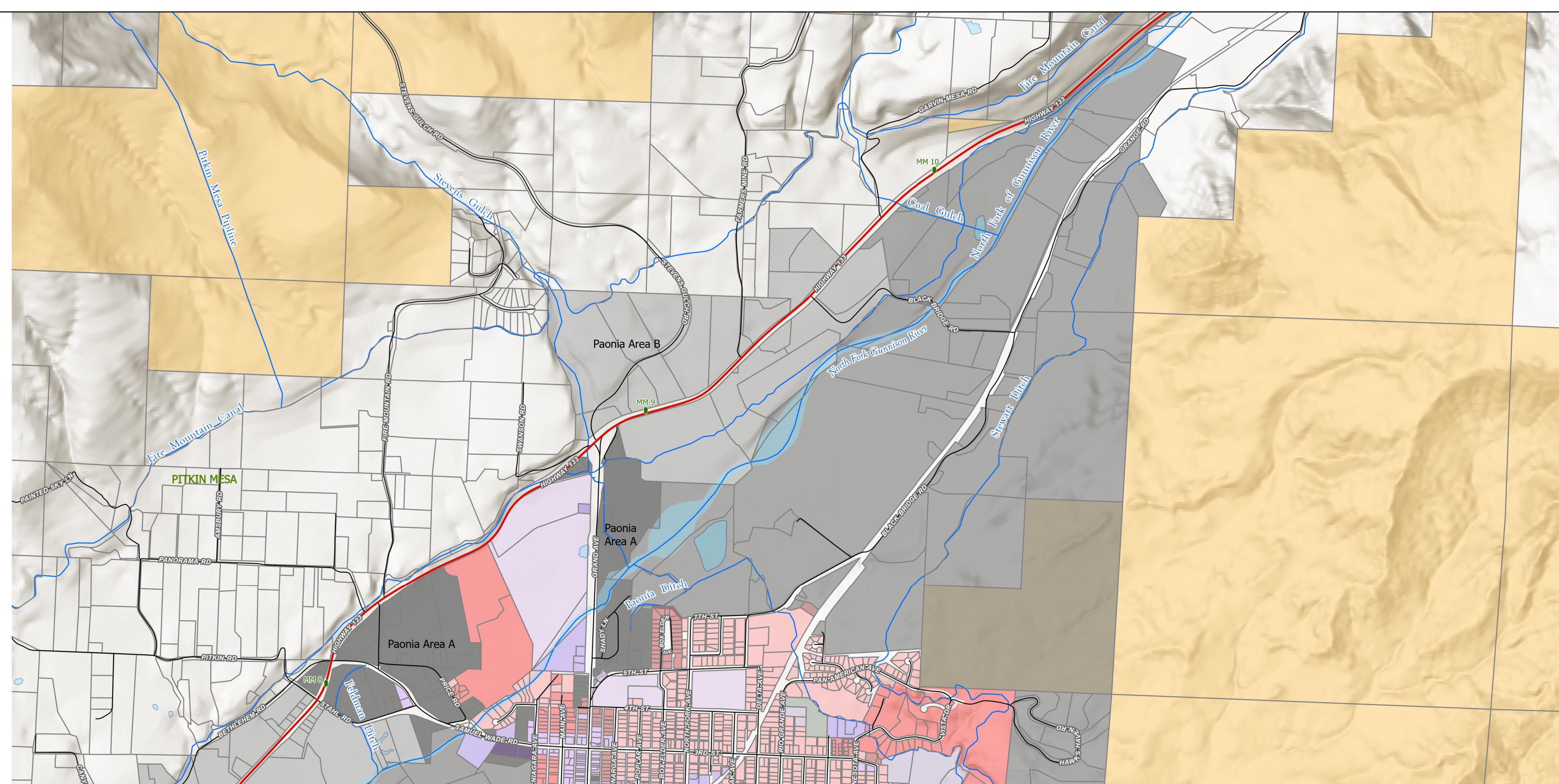
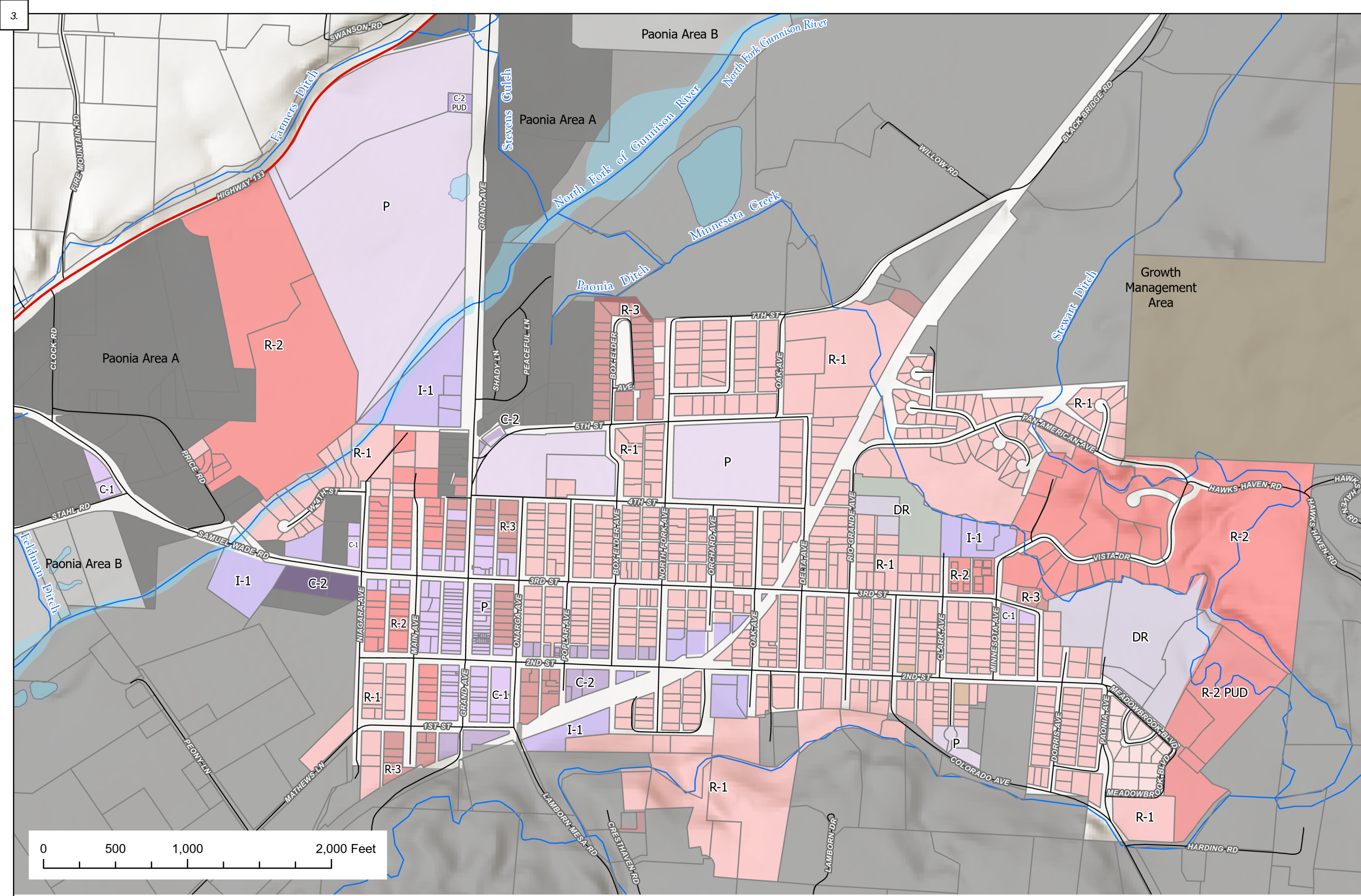
DELTA COUNTY

By: _____
Chair, Board of County Commissioners

Date: _____

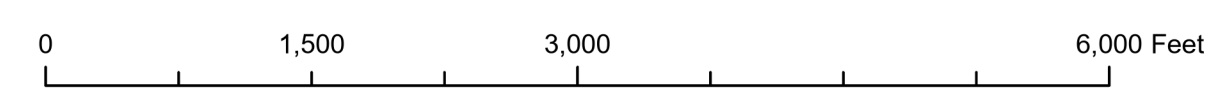
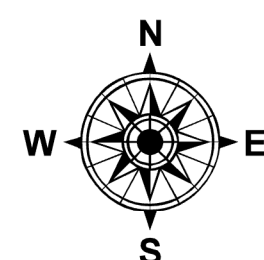
Attest: _____
County Clerk

DRAFT



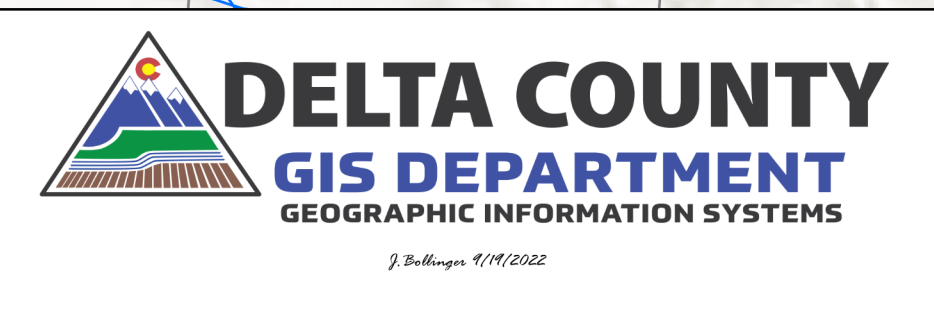
Town of Paonia Growth Management Area

GIS Disclaimer:
This GIS map data is not a legal document or a survey instrument; Delta County assumes no responsibility for any use of the map data or any loss from using the map data. The data is provided on an "as is" basis with no guarantee to be spatially accurate, complete or current. Due to the dynamic nature of data, some inconsistencies will exist.

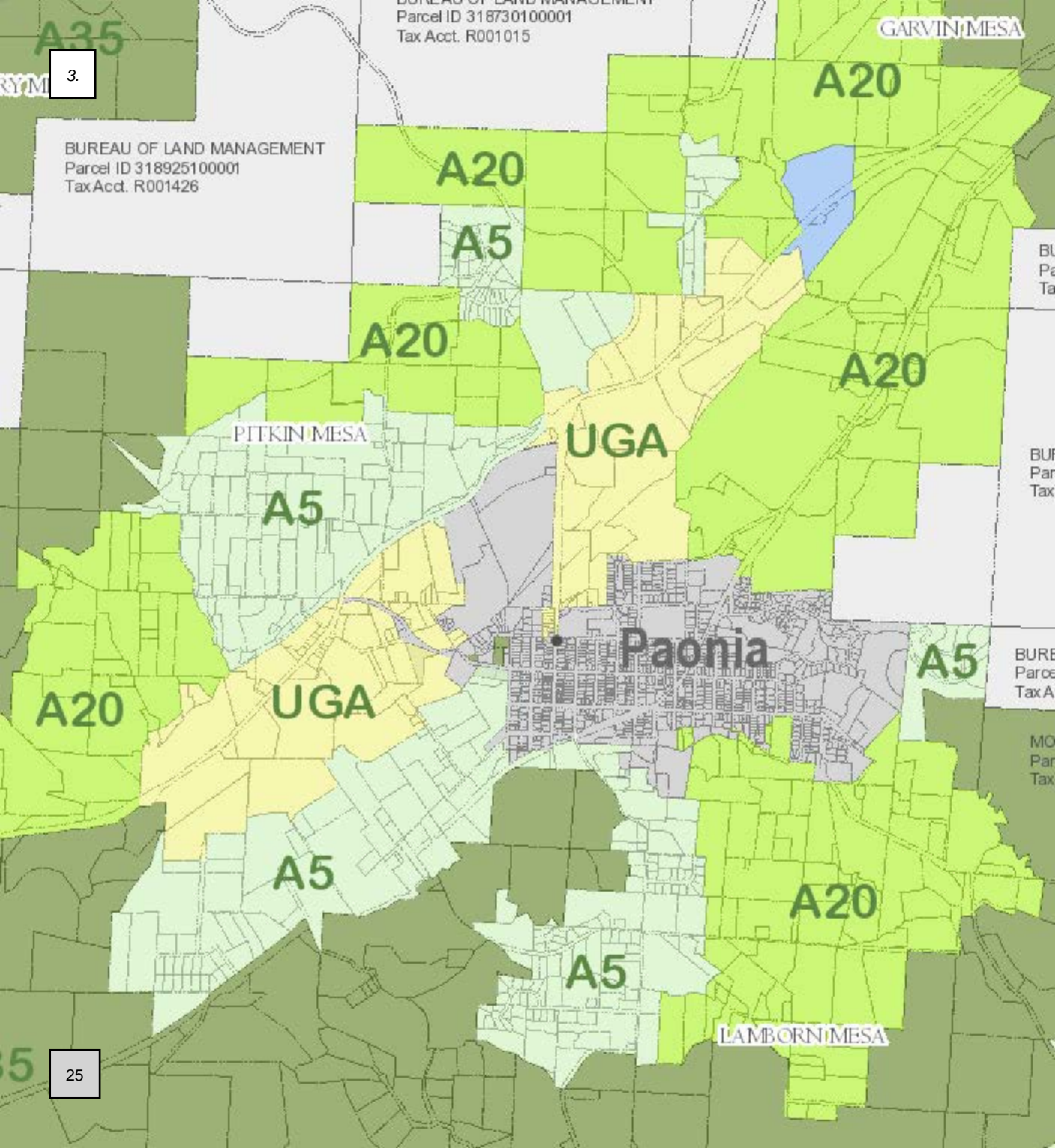


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- Highways
 - Road
 - Rivers Streams Ditches
 - Gunnison River
 - Lakes
 - Parcel Boundary
 - Zip Codes
- Government Land**
 - BLM
 - USFS
 - Town of Paonia GMA**
 - HWY 133 Plan A
 - Growth Management Area
 - HWY 133 Plan B
- Town Zoning**
 - C-1 Core Commercial
 - C-2 Commercial / Mixed Use
 - C-2 PUD
 - DR Developing Resource
 - I-1 Light Industrial
 - P
 - R-1 PUD Residential 1 PUD
 - R-1 Residential 1
 - R-2 Residential 2
 - R-2 PUD Residential 2 PUD
 - R-3 Residential 3



3/20/2024



BUREAU OF LAND MANAGEMENT
Parcel ID 318730100001
Tax Acct. R001015

GARVIN MESA

3.

BUREAU OF LAND MANAGEMENT
Parcel ID 318925100001
Tax Acct. R001426

A20

A20

A5

A20

A20

PITKIN MESA

UGA

A5

Paonia

A5

A20

UGA

A5

A20

A5

LAMBORN MESA

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