

BULL MOUNTAIN CONVENING ASSESSMENT

Assessment Report

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Prepared by:

RESOLVE, Inc.
Portland Office
720 S.W. Washington Street
Suite 710
Portland, Oregon 97205
503.228.8350
www.resolve.org

Turner Odell
Senior Mediator

Robert Williams
Facilitator

For the:

Oregon Consensus Program
Hatfield School of Government
Portland State University
670B Urban Center, 506 SW Mill St.
Portland, Oregon 97207
503.725.9070
www.orconsensus.pdx.edu

Elaine Hallmark
Director

**BULL MOUNTAIN
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ASSESSMENT REPORT**

I. Overview and Background

RESOLVE, Inc., is a neutral, private, non-profit group that provides process support to help people address complex environmental and public policy issues. In late November 2005, the Oregon Consensus Program (OCP) of the Hatfield School of Government at Portland State University asked RESOLVE to conduct an independent assessment of issues and concerns related to governance, annexation, the provision of urban services, and other related issues in the unincorporated Bull Mountain area of Washington County, adjacent to the City of Tigard. The OCP is charged by the State legislature to provide neutral services to public bodies and their constituents to assist them in collaborating on public issues. The OCP initiated this convening assessment process as the first step toward providing such services to the City, County, and their constituents as needed.

Prompting the assessment was a continuing set of challenging issues and concerns and a history of differences between the City of Tigard, the Friends of Bull Mountain (a citizen's group of Bull Mountain residents) and other related parties. The City attempted to annex the unincorporated Bull Mountain area in the November 2004 election but failed to win the needed double majority vote. The Friends of Bull Mountain initially contacted OCP in the spring of 2005 to request assistance in resolving the ongoing governance and urban services issues. OCP was subsequently in contact with the City of Tigard and Washington County in an attempt to assemble sufficient funds for a convening and assessment process. Funds did not become available until late 2005 at which point RESOLVE's involvement was initiated.

The goal of the assessment process was (1) to identify issues and concerns, (2) to assess the potential for initiating a collaborative, consensus-based process to address the identified issues and, (3) if feasible, to recommend a process design. This assessment phase was intended first to answer the question of *whether* a collaborative process may be appropriate or useful, and if the answer to the first questions were "yes," to answer the question of *how* the interested parties might move forward with such a process.

RESOLVE conducted a series of interviews with parties representing a range of perspectives related to issues of governance, annexation, urban services, and related issues in the Bull Mountain area. Parties interviewed included elected government officials and staff from the City of Tigard and Washington County as well as residents of the Bull Mountain area, some of whom were members of the Friends of Bull Mountain and some of whom were not. RESOLVE also interviewed other individuals with knowledge of or experience with the issues and concerns about governance, annexation and urban services in the Bull Mountain area. RESOLVE then analyzed the interviews to assess whether there was the opportunity to initiate a collaborative process to address the issues.

RESOLVE's analysis suggests that a collaborative process would not have a substantial likelihood of success at the current time. The analysis also suggests, however, that there may be opportunities in the future where a collaborative process may be useful in helping the parties to resolve any remaining issues and concerns.

II. The Convening Assessment Process

A convening assessment is a method to assess and potentially assist stakeholders in organizing or convening a collaborative process. An assessment provides the opportunity for a neutral third party to help the stakeholders to gather information, learn about each other's interests, better understand the varying perspectives on issues and concerns, test assumptions regarding the anticipated barriers or obstacles, and begin to develop a range of ideas and suggestions for addressing the identified issues and concerns.

In consultation with OCP, RESOLVE crafted a set of interview questions and an initial list of interviewees. The interview list was not intended to include every individual with an interest or information related to Bull Mountain; rather, it was designed to obtain a cross section of the full range of perspectives related to these issues. Additions to the interview list were made based on suggestions from other interviewees. The assessment interview process took place between January and May 2006 with individual, group, phone and/or in-person interviews with the parties and other stakeholders. Interviews were completed with nearly twenty individuals. (See list attached as Appendix 1.)

The process helped RESOLVE to understand stakeholder interest in finding collaborative solutions to identified issues and to assess the likelihood that a collaborative process could achieve success in resolving the issues.

III. Interests, Issues and Concerns

Interviewees represented a wide range of interests and expressed a diversity of concerns related to annexation, governance, and urban services in the Bull Mountain area. Several of the issues and concerns identified by the interviewees appeared to lie at the heart of the disagreements or differences of opinion among the various parties. Some of these key issues are identified below.

Interviewee Interests

The interviewees represented a cross-section of interests including affected residents; state, regional, county and local government officials with relevant responsibilities; and outside observers with academic or outreach roles with respect to the issues more broadly. These interviewees described a variety of interests relating to urban services and governance in the Bull Mountain area that were both personal and professional in origin. For example, some interviewees had a deep interest in protecting their personal quality of life and the character of their neighborhoods. Others had professional interest in planning and providing for orderly

development of land uses or simply in meeting the needs of their constituents in Bull Mountain neighborhoods, the City of Tigard, Washington County, or the region more broadly. Other interviewees were simply knowledgeable about the issues without having any particular interest related to the issues of concern.

Interviewee Issues and Concerns

Planning, Permitting and Enforcement. One significant set of concerns expressed by interviewees centered on the provision of urban services related to land use, development planning and permitting, and enforcement for the Bull Mountain area. This included concerns related to decisions on the allowable density of residential development on Bull Mountain. A core issue identified by many interviewees was who should control land use decision making in the Bull Mountain area – Tigard, Washington County, or Bull Mountain residents themselves.

Since the Urban Growth Boundary (UGB) was drawn, and more recently in the wake of statewide legislation, the County position with respect to unincorporated urban areas generally has been that such developed areas should be planned and permitted by municipal authorities (not county planners). The county entered into intergovernmental agreements with Tigard beginning in 1997 under which Tigard was responsible for review and approval of development permits and the enforcement of development codes in the unincorporated Bull Mountain area. In brief, this led to concerns over:

- the density of development allowed under the codes applied to Bull Mountain and their consistency with a Bull Mountain community plan completed for the area in the early 1980's;
- the equity of enforcement and implementation of both density requirements and other development related requirements (e.g., requirements related to tree removal and slope restrictions);
- the appropriateness, in general, of vesting land use decision making or enforcement authority in a government entity with no electoral ties to some of the areas or citizens over which it has been given jurisdiction (creating, in the minds of some interviewees, an apparent conflict of interest).

It now appears that Washington County (which does have direct electoral ties with all Bull Mountain residents) will be reassuming authority for development permitting in the Bull Mountain area in July 2006 (when the current intergovernmental agreement expires) pending the outcome of an ongoing effort to incorporate a new City of Bull Mountain.

Other Urban Services. Also of concern to a number of interviewees were issues related to the provision of other urban services. In short, the interviews suggested that some parties seemed to feel that unincorporated Bull Mountain residents were receiving adequate urban services at a reasonable cost while others thought services were either not adequate or were being subsidized by Tigard taxpayers. For example, concerns were expressed over:

- the lack of parks in the Bull Mountain area as well as whether or not unincorporated Bull Mountain residents were using Tigard parks and, if so, whether they were providing a fair share of fiscal support for Tigard parks;

- whether or not unincorporated Bull Mountain residents were using the Tigard library and, if so, whether they were paying a fair share in support of the library;
- whether unincorporated Bull Mountain residents were paying a fair share of the costs for enhanced sheriff's patrol services.

Governance and Annexation. Annexation has been a well debated subject in Oregon over recent years, and was an issue for the Bull Mountain area leading up to a vote on annexation in 2004. According to some interviewees, Tigard, Washington County and others have long contemplated (ever since the UGB was drawn to include unincorporated areas like Bull Mountain) that the Bull Mountain area would ultimately be annexed by Tigard. It was also suggested that annexing the area was an important growth objective for Tigard. However, in a "double majority" vote in November 2004, annexation was voted down by a majority of unincorporated Bull Mountain voters, thereby preventing the proposed annexation of Bull Mountain despite the support of a majority of Tigard voters.

Some interviewees observed that most recent successful annexations have been driven by a need for urban services. In this case, however, interviewees suggested there was less incentive for Bull Mountain residents to support annexation because most services were being provided at a reasonable cost through arrangements with Washington County or other providers or were otherwise available nearby. In short, some interviewees suggested, the vote came down to Bull Mountain residents not wanting to pay additional taxes if they were annexed to Tigard. Debate leading up to the vote, however, was more impassioned and centered around several of the issues and concerns described above. Some parties opposed annexation to Tigard because of these concerns while others suggested that the solution to these concerns was to annex and become involved in local government to make changes.

Although the issue of formal annexation of the entire Bull Mountain area is, for the moment, "off the table," concerns remained over ongoing piecemeal annexations of sections of the Bull Mountain area currently under development. Some interviewees were concerned that in the past Tigard was able to accomplish annexation of individual properties under development during the permitting process. Some were also concerned that piecemeal annexation would continue even after Washington County resumed permitting responsibilities for development occurring near the Tigard city limits.

Missed Opportunities. Some interviewees observed that there may have been missed opportunities in the past to either resolve some of these concerns or to avoid them in first place. For example, it was observed that if unincorporated residents had been more involved when the intergovernmental agreements for urban services were first being forged, there might have been an opportunity to build a more collaborative relationship and thereby to avoid some of the concerns related to how those agreements were implemented with respect to densities and code enforcement. Looking even further back, it was suggested that the destiny of unincorporated areas within the UGB could have been more clearly charted, and a process for achieving the desired result described, when the UGB was first drawn and before many of the unincorporated areas within it were actually developed. More recently, some

interviewees believed that if the various parties had been able to enter into a facilitated collaborative approach earlier (following the annexation vote and before inter-party relationships had declined), there might have been an opportunity to address many of these issues and concerns.

IV. Analysis and Recommendations

RESOLVE has expertise in the assessment, design, and implementation of collaborative processes that provide the greatest opportunity for diverse interests to reach tangible results on complex natural resource and public policy issues. As neutral process experts, RESOLVE and the Oregon Consensus Program do not take positions on the substance of the issues on which we work.

RESOLVE is providing its analysis and recommendations in cooperation with the Oregon Consensus Program. The Oregon Consensus Program is available to work with the parties in making decisions on whether and/or how to move forward with a collaborative approach.

Essential Characteristics

In assessing whether these issues related to governance, annexation, and urban services in the Bull Mountain area are amenable to collaborative resolution, it is important to identify whether the key elements or characteristics are present that are likely to make collaboration productive and successful. In RESOLVE's experience, a consensus-building or agreement-focused process is more likely to succeed if it has the following characteristics:

- Clear Objectives. The parties can agree on the overall objectives for the collaborative process (whether it be an agreement on a course of action, the identification of new options, a joint fact finding on the impacts of various options, improved communication about interests and concerns, or another clearly articulated objective).
- Manageable Issues. The parties can agree on a manageable number of interdependent or related issues. There must also be a sufficiently well developed factual basis on which to hold a meaningful discussion and resolution of the issues.
- Identifiable Representative Parties. The parties interested in or affected by the outcome of the collaboration are readily identifiable, capable of identifying from among themselves participants that can adequately represent all affected interests, and few enough in number to allow for a manageable process. Participants are able to represent and reflect the interests of their constituencies.
- Good Faith Participation. The parties can come to the table with genuine interest in participating in good faith.
- No Preferred Alternative Forum. The parties feel themselves as likely, if not more likely, to achieve their overall goals using a collaborative approach as they would through whatever alternative forums are available to them.

- Adequate Resources and Time. The parties can obtain adequate resources to participate, including technical support, and there is adequate time to conduct a meaningful and well-designed process.
- Action-Forcing Deadline. There is some sort of legislative, administrative or judicial deadline or opportunity, or some other forcing mechanism requiring a decision within the foreseeable future.
- No Delay. The collaborative effort will not cause unreasonable delay.
- Implementation Mechanism. A mechanism exists to implement a consensus agreement, if one is reached.

RESOLVE considered the above elements as it analyzed the interviews and utilized these characteristics to help evaluate the feasibility or utility of a collaborative effort now, in the past, and in the future.

Current Opportunities for Collaboration

Key Characteristics. Many of the prerequisites to a successful collaboration are identifiable in the Bull Mountain controversy. For example, it appears likely that willing parties could identify clear objectives for a collaborative process (e.g., agreement on what entities would provide which urban services for Bull Mountain and how that could be accomplished) and a set of issues that are manageable in number even if challenging to resolve. In addition, there appear to be identifiable parties that are representative of the range of perspectives on the issues and concerns (recognizing that it would be important to ensure that a full range of resident perspectives are in fact represented at the table). There also seemed to be sufficient impetus to keep a resolution process moving forward (even in the absence of some specific action-forcing deadline) and sufficient time to conduct a meaningful process, provided that the parties could agree to pausing their other efforts to achieve their objectives.

However, at the outset of RESOLVE's assessment process, it became clear that, in the opinion of several key parties, the opportunity for any collaborative process to address the issues of concern had passed, at least for the moment. In particular, the interviews revealed that some interviewees were determined to investigate the possibility of incorporating a separate City of Bull Mountain as a vehicle for resolving their concerns and achieving their goals. Similarly, other interviewees expressed an inclination to let the proponents of incorporation pursue their efforts and to see whether Bull Mountain residents in general supported the bid for incorporation and if it would make it to the ballot in an upcoming election.

Consequently, with some of the parties believing that their best result is achievable in a different forum, a key characteristic needed to ensure a likelihood of successful collaboration appears to be absent at this point in time.

Barriers to Collaboration. The interviews revealed other potential barriers to a successful collaborative effort, including a significant history of sharp disagreement among some of the parties. The interviews revealed that as differences of opinion over the issues evolved, the

level of conflict among some of the parties increased and the relationship between the parties was significantly challenged. Some interviewees suggested that for some of the individuals involved, relationships were so damaged that it was difficult to envision any future opportunity to work collaboratively. In light of this history, at the immediate time it is questionable whether all of the parties could participate in a collaborative process in good faith without some significant preliminary efforts at reconciliation. Consequently, there may be some advantage to the current “break” in the debate over these issues that has been afforded by the effort to investigate incorporation. It may be that with some time, all the parties will be more interested in a collaborative approach, depending on how the process proceeds leading up to a vote on incorporation.

Timing. As described above, the interviews suggested that the current timing was not supportive of a collaborative process for a variety of reasons including the availability of an additional forum and the status of the relationship between the parties. The interviews also suggested, however, that there may have been a window of opportunity to bring all the parties to the table and to have initiated some sort of process back in the Spring of 2005. At this point in time, when the OCP was initially approached by the Friends of Bull Mountain and when OCP had additional conversations with the City of Tigard, Washington County and other parties, incorporation was not being actively pursued and the relationships among the parties were not as challenged as they were to become several months later.

The parties and OCP both seem to acknowledge that one significant reason that a collaborative process did not move forward at that time, despite the apparent interest of at least some of the key parties, was the lack of resources readily available to support such a process. Specifically, resources were not available to obtain the assistance of a professional neutral mediator or facilitator to conduct a convening assessment. The OCP had not yet received a legislative appropriation to provide these services, and the parties themselves were too unfamiliar with and skeptical of the implications of contributing to funding an assessment to be willing to do so.

Future Opportunities for Collaboration

While testing the assumption by many that the time was past for any collaborative process, RESOLVE asked interviewees whether they foresaw a need for or value in a potential collaborative process in the future. Interviewees responses were varied, but many recognized several scenarios in which a collaborative process could be valuable.

Following a vote on incorporation, there may be additional opportunities for collaboration regardless of whether the proposal to incorporate is approved or fails. If the bid for incorporation were to succeed, there may be a need for the parties, including the new city, Tigard, and Washington County as well as the various urban service providers, to reach agreement on various aspects of their new, post-incorporation relationship. If the bid for incorporation fails, the parties may find themselves in a situation where the issues regarding annexation and the provision of urban services that were the subject of disagreement before

the vote remain to be resolved. At that point, some or all of the parties may feel that a viable alternative to resolve these issues is a collaborative process.

In the very near future, before a vote and as the effort to incorporate moves forward, it is also conceivable that there may be a need for interactions among the parties to resolve issues relating to the incorporation process (e.g., boundaries of a new city or the disposition of current intergovernmental agreements). If the parties have to meet prior to an election to resolve issues related to incorporation, the use of a structured collaborative process may have some value to the parties.

V. Conclusion

It appears that unless there are some narrow issues that could benefit from collaborative action leading up to a vote on incorporation, there is not currently an opportunity to move forward with a collaborative process. For at least the next several months, several key elements for a successful collaboration appear to be missing, including the willing, good faith participation of all the key parties and the absence of a preferred alternative forum. It does appear that there may be opportunities in the future, following a vote either for or against incorporation, when a collaborative process may have value in helping these parties resolve issues or concerns related to governance, annexation and urban services in the Bull Mountain area.

Through the assessment process, RESOLVE and OCP gathered considerable additional information related to the history of these issues and the perspectives of the various parties as to their nature and potential resolution. While not currently relevant here given that a process is not likely to move forward at this time, this information may be useful in the future to help the parties and a third party neutral mediator or facilitator set the stage for a successful collaborative effort to resolve these issues in the Bull Mountain area. OCP remains available to the parties as a resource to help them evaluate the need for and potential success of a future collaborative effort.

RESOLVE and OCP also gathered information that may prove useful in helping other communities tackle similar issues related to governance, annexation, and urban services in unincorporated urban areas. As noted above, however, a lack of quickly available resources to support a collaborative effort may have resulted here in a lost opportunity to address these issues in a more timely and collaborative manner. The experience with the Bull Mountain area suggests the importance of having readily available resources to support timely neutral third party assistance to residents and jurisdictions involved in disagreements over governance and urban services in unincorporated urban areas.

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ATTACHMENT 1

List of Interviewees and Other Contacts

RESOLVE contacted and interviewed the following individuals in the process of preparing this report:

City of Tigard Government

- Craig Dirksen, Mayor
- Liz Newton, Assistant to the City Manager
- Nick Wilson, City Councilor
- Sally Harding, City Councilor

Washington County Government

- Tom Brian, Chair, Board of Commissioners
- Roy Rogers, County Commissioner
- Ellen Conley, Senior Deputy County Administrator
- Joanne Rice, Planner

Metro

- Carl Hosticka, Metro Councilor

Friends of Bull Mountain

- Lisa Hamilton-Treick
- Julie Russell
- Richard A. Franzke
- Keshmira McVey

Other Interviewees

- Katie Keane, Tigard/Bull Mountain Resident
- Ethan Seltzer, Professor of Urban Studies and Planning, PSU
- Patt Opdyke, Citizen Involvement Coordinator, OSU Extension Washington County
- Jerry Krummel, Oregon State Representative

RESOLVE also contacted, or attempted to contact, the following individuals who either declined to be interviewed, suggested an alternative, or did not respond to our inquiries:

- Craig Prosser, Tigard City Manager
- Tom Coffee, Interim Director, Tigard Community Development Department
- Charlie Cameron, Washington County Administrator (retired)
- Teddi Duling, Tigard/Bull Mountain Resident
- Beverly Froude, Tigard/Bull Mountain Resident
- Barbara Sherman, Tigard/Bull Mountain Resident