



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING  
2051 KAEN ROAD | OREGON CITY, OR 97045

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July 21, 2022

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of Annexation to Sunrise Water Authority

<b>Purpose/Outcomes</b>	Conduct Public Hearing/Approve Order for CL-21-012
<b>Dollar Amount and Fiscal Impact</b>	None
<b>Funding Source</b>	Not Applicable
<b>Duration</b>	Permanent
<b>Previous Board Action</b>	None
<b>Counsel Review</b>	7/12/2022 Jeffrey Munns
<b>Procurement Review</b>	No. This matter is a consideration of a request to reform as a joint water and sanitary authority from the Sunrise Water Authority
<b>Strategic Plan Alignment</b>	Build Public Trust Through Good Government, hold transparent and clear public processes regarding jurisdictional boundaries
<b>Contact Person</b>	Ken Martin, Boundary Change Consultant – 503-222-0955 Jeffrey Munns, Assistant County Counsel – 503-723-5984
<b>Contract No.</b>	Not Applicable

**BACKGROUND**

The County Board is charged with making boundary change decisions (annexations, withdrawals, etc.) for many types of special districts (water, sanitary sewer, rural fire protection, etc.) within the County. One type of special district over which the Board has jurisdiction is a water authority and Sunrise Water Authority is such a district.

Proposal No. CL 21-012 is a proposed annexation to Sunrise Water Authority (“District”).

State statute and the Metro Code require the Board to hold a public hearing on the proposed annexation. Notice of this hearing invited testimony from any interested party. Notice consisted of: 1) Posting three notices near the territory and one notice near the County hearing room 20 days prior to the hearing; 2) Notice posted online

(<https://www.clackamas.us/meetings/bcc/business/2022-06-23>); 3) Published notice twice in the Clackamas County Review; 4) Mailed notice sent to affected local governments and all property owners within 100 feet of the area to be annexed.

This proposal was initiated by a consent petition of property owners. The petition meets the requirement for initiation set forth in ORS 198.857, ORS 198.750 (section of statute which specifies contents of petition) and Metro Code 3.09.040(a) (lists Metro's minimum requirements for petition). If the Board approves the proposal the boundary change will become effective immediately.

The territory to be annexed is located generally in the eastern part of the District. The territory contains 1.44 acres, is vacant and is valued at \$47,828.

### **REASON FOR ANNEXATION**

The property owner desires water from the Water Authority to serve a proposed 900 square foot ADU on the property. The property owners confirm they have checked with the County and that use is allowed on the property.

### **CRITERIA**

Oregon Revised Statute 198 directs the Board to “consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district.”

Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party<sup>1</sup>; and
3. The proposed effective date of the boundary change.

Service availability is covered in the proposed findings. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date (immediately upon adoption) was noted above.

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<sup>1</sup> A “necessary party” is another governmental entity which includes the same area or provides an urban service to the area.

To approve a boundary change, the reviewing entity [the County Board] must apply the following criteria:

To approve a boundary change the County must:

- (1) Find that the change is consistent with expressly applicable provisions in:
  - (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
  - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
  - (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
  - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
  - (E) Any applicable comprehensive plan;
  - (F) Any applicable concept plan; and
- (2) Consider whether the boundary change would:
  - (A) Promote the timely, orderly and economic provision of public facilities and services;
  - (B) Affect the quality and quantity of urban services; and
  - (C) Eliminate or avoid unnecessary duplication of facilities and services.

There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The proposal is consistent with the Comprehensive Plan as stated in the findings attached in the proposed order. No concept plans cover this area.

Staff has reviewed both the ORS 198 criteria and the Metro Code requirements, and found that the subject property is eligible for annexation to the District. A draft order with proposed findings is attached hereto for the Board's consideration.

## **RECOMMENDATION**

Based on the attached Order and Findings, Staff recommends approval of Proposal No. CL-21-012, annexation to Sunrise Water Authority.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Approving a  
Boundary Change Proposal  
No. CL 21-012



Order No. \_\_\_\_\_

This matter coming before the Board at this time, and it appearing that the owner of all the land in the territory to be annexed has petitioned to annex the territory to Sunrise Water Authority;

It further appearing that this Board is charged with deciding this proposal for a boundary change pursuant to ORS Chapters 198 and Metro Code 3.09; and

It further appearing that staff retained by the County have reviewed the proposed boundary change and issued a report which complies with the requirements of Metro Code 3.09.050(b); and

It further appearing that this matter came before the Board for public hearing on July 21, 2022 and that a decision of approval was made on July 21, 2022;

NOW, THEREFORE, IT IS HEREBY ORDERED that Boundary Change Proposal No. CL 21-012 is approved for the reasons stated in attached Exhibit A and the territory described in Exhibit B and depicted on Exhibit C is annexed to Sunrise Water Authority as of July 21, 2022.

ADOPTED this 21<sup>st</sup> day of July, 2022.

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
Tootie Smith, Chair

\_\_\_\_\_  
Anthony Mayernik, Recording Secretary

## FINDINGS

Based on the study and the public hearing the Board found:

1. Proposal No. CL 21-012 is a proposed annexation to Sunrise Water Authority (“District”).
2. If the Board approves the proposal the boundary change will become effective immediately.
3. The territory to be annexed contains 1.44 acres, is vacant and is valued at \$47,828.
4. The property owner desires water from the Water Authority to serve a proposed 900 square foot ADU on the property. The property owners confirm they have checked with the County and that use is allowed on the property.
5. Oregon Revised Statute 198 directs the Board to “consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district.”

Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party<sup>1</sup>; and
3. The proposed effective date of the boundary change.

Service availability is covered in the findings below. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date (immediately upon adoption) was noted in Finding 2 above.

To approve a boundary change, the reviewing entity [the County Board] must apply the following criteria:

To approve a boundary change the County must:

- (1) Find that the change is consistent with expressly applicable provisions in:

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<sup>1</sup> A “necessary party” is another governmental entity which includes the same area or provides an urban service to the area.

- (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
  - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
  - (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
  - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
  - (E) Any applicable comprehensive plan;
  - (F) Any applicable concept plan; and
- (2) Consider whether the boundary change would:
- (A) Promote the timely, orderly and economic provision of public facilities and services;
  - (B) Affect the quality and quantity of urban services; and
  - (C) Eliminate or avoid unnecessary duplication of facilities and services.

There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The proposal is consistent with the Comprehensive Plan as stated in the Finding 7 below. No concept plans cover this area.

Staff has reviewed both the ORS 198 criteria and the Metro Code requirements, and found that the subject property is eligible for annexation to the District.

6. This territory is inside of Metro's jurisdictional boundary and inside the regional Urban Growth Boundary (UGB).

The law that requires Metro to adopt criteria for boundary changes specifically states that Metro shall “. . . ensure that a boundary change is in compliance with the Metro regional framework plan as defined in ORS 197.015 and cooperative agreements and urban service agreements adopted pursuant to ORS chapter 195.” ORS 197.015 says “Metro regional framework plan means the regional framework plan required by the 1992 Metro Charter or its separate components.” The Regional Framework Plan was reviewed and found not to contain specific criteria applicable to boundary changes.

There are two adopted regional functional plans, the Urban Growth Management Functional Plan and the Regional Transportation Plan, which were examined and found not to contain any directly applicable standards and criteria for boundary changes.

7. The PUBLIC FACILITIES AND SERVICES Element of the County Comprehensive Plan contains the following Goal:

POLICIES

Water

\* \* \*

- 15.0 Require water purveyors in urban areas to coordinate the extension of water services with other key facilities, i.e., transportation, sanitary sewers, and storm drainage facilities, necessary to serve additional lands.
8. ORS 195 requires agreements between providers of urban services. Urban services are defined as: sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit. These agreements are to specify which governmental entity will provide which service to which area in the long term. The counties are responsible for facilitating the creation of these agreements. There are no urban service agreements under ORS 195 relative to sewer service in this area of Clackamas County.
  9. The Sunrise Water Authority has a water line available in SE 222<sup>nd</sup> Drive which can serve the property.
  10. Sewer service is not available in this area.
  11. The area receives police service from the County Sheriff.
  12. The territory is within the Clackamas County R.F.P.D. #1. This service will not be affected by annexation to the Water Authority.

## CONCLUSIONS AND REASONS FOR DECISION

Based on the Findings, the Board determined:

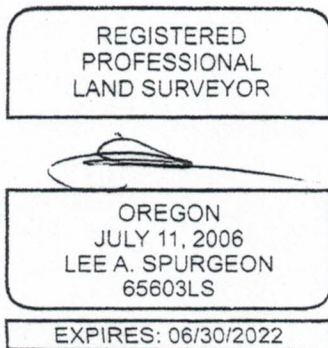
1. The Metro Code requires the boundary change decision to be consistent with expressly applicable provisions in any urban service provider agreements, cooperative agreements and annexation plans adopted pursuant to ORS 195. As noted in Findings 5 & 8 there are no such agreements or plans in place in this area. The Board concludes that its decision is not inconsistent with any such agreements and plans.
2. The Metro Code calls for consistency between the Board decision and any "applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services." The area is served by the Sunrise Water Authority and no other entity has the capability of serving this site.
3. ORS 198 requires consideration of the comprehensive plan and any service agreements affecting the area. The Board has reviewed the applicable comprehensive plan (Clackamas County's Comprehensive Plan) and concludes this proposal complies with it. All other necessary urban services can be made available.
4. The Board considered the timing & phasing of public facilities to this area, the quantity and quality of services available and the potential for duplication of services. The Water Authority has service available to the area to be annexed as noted in Finding No. 9. The Board concludes this annexation is timely, the Authority has an adequate quantity and quality of services available and that the services are not duplicative.
  - a. The Metro Code at 3.09.050 (B) (2) requires a determination of whether the boundary change will cause withdrawal of the territory from the boundary of any necessary party. An examination of this issue found that no such withdrawals would be caused by approval of this annexation.



**EXHIBIT B**  
**Annexation Description**  
**Revised 3/30/22**

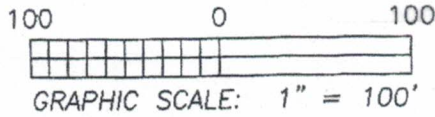
A portion of that land described in Document No. 2020-089502, Clackamas County Deed Records, situated in the southeast one-quarter of Section 33, Township 1 South, Range 3 East of the Willamette Meridian, Clackamas County, Oregon, and more particularly described as follows:

BEGINNING at a five-eighths inch diameter iron rod found at the most northerly northeast corner of Lot 1, ALMAN ADDITION, Clackamas County Deed Records said iron rod being the True Point of Beginning; THENCE South 89°14'25" West along the north line of said plat of Alman Addition, 168.44 feet to a five-eighths inch diameter by 30 inch long iron rod with a yellow plastic cap marked 'TOWNSHIP SURVEYS' at the southwest corner of that tract of land described in Document No. 2019-045096, Clackamas County Deed Records; THENCE North 0°51'04" East along the west line of said Document No. 2019-045096 tract, 277.48 feet to a five-eighths inch diameter by 30 inch long iron rod with a yellow plastic cap marked 'TOWNSHIP SURVEYS' at the northwest corner thereof; THENCE North 89°19'30" East along the north line of said Document No. 2019-045096 tract 92.70 feet a five-eighths inch diameter by 30 inch long iron rod with a yellow plastic cap marked 'TOWNSHIP SURVEYS'; THENCE South 0°51'04" West, 176.93 feet to a five-eighths inch diameter iron rod with a yellow plastic cap marked "TOWNSHIP SURVEYS" at the southwest corner of that tract of land described in Document No. 93-61056, Clackamas County Deed Records; THENCE North 89°19'30" East along the south line of said Document No. 93-61056 tract, 244.99 feet to a five-eighths inch diameter iron rod with a yellow plastic cap marked "TOWNSHIP SURVEYS" on the west right-of-way line of S.E. 222<sup>nd</sup> Drive; THENCE South 0°51'04" West along the west right-of-way line of S.E. 222<sup>nd</sup> Drive, 100.04 feet to the northeast corner of that tract of land described by Deed Document No. 2017-055103, Clackamas County Deed Records; Thence South 89°14'25" West along the north line of said Deed Document No. 2017-055103 tract, 169.35 feet to the True Point of Beginning.



**EXHIBIT C**

Revised 4/19/22



● = 5/8" IRON ROD WITH  
A YELLOW PLASTIC CAP  
MARKED 'TOWNSHIP SURVEYS'

NORTHWEST CORNER OF  
DEED DOCUMENT  
NO. 2019-045096

DEED DOCUMENT  
NO. 76-11870

SOUTHWEST CORNER OF  
DEED DOCUMENT  
NO. 2019-045096

DEED DOCUMENT  
NO. 93-61056

NORTHEAST CORNER OF  
DEED DOCUMENT  
NO. 2017-055103

TRUE POINT OF BEGINNING  
5/8" IRON ROD AT THE  
MOST NORTHERLY NORTHEAST CORNER  
OF LOT 1, ALMAN ADDITION

**ALMAN**

**ADDITION**

**LOT 1**

SCALE: 1" = 100'

60' **SE LAGENE STREET**

60'

100.04'  
S0°51'04"W

SE 222ND DRIVE

S0°51'04"W  
200.00'

DEED DOCUMENT  
NO. 2017-055103

S89°14'49"W  
170.00'

N1°02'19"E  
200.00'

168.44'  
S89°14'25"W

169.35'  
S89°14'25"W

60'

60'

SE ¼ Sec. 33, T1S R3E, W.M. Clackamas Co. OR

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
JULY 11, 2006  
LEE A. SPURGEON  
65603LS

EXPIRES 6/30/22

CLIENT: SCOTT HOLMES

DATE: FEBRUARY 15, 2022

SITE:

12011 SE 222ND DR.  
DAMASCUS, OR

SCALE: 1" = 100'

JOB NUMBER: 20-7373

TOWNSHIP LAND SURVEYS  
1415 WASHINGTON STREET, OREGON CITY, OR 97045  
(503)-656-4915