



OFFICE OF COUNTY COUNSEL

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February 22, 2024

BCC Agenda Item: _____

Board of County Commissioners
Clackamas County

Members of the Board:

Scott C. Ciecko
Amanda Keller
Shawn Lillegren
Jeffrey D. Munns
Andrew R. Naylor
Andrew Narus
Sarah Foreman
Hong Huynh
Caleb Huegel
Assistants

Approval of Annexation 2023-010 to Sunrise Water Authority

Previous Board Action/Review	None		
Performance Clackamas	Build Public Trust Through Good Government		
Counsel Review	Initials: HH	Procurement Review	No
Contact Person	Hong Huynh	Contact Phone	503-742-5398

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 county service district and the Sunrise Water Authority is such a district.

Proposal No. 2023-010 is a proposed annexation to the 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 a notice 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>); 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.

As required by statute the Board of the District has endorsed the proposed annexation.

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 in unincorporated Clackamas County, and is also within Metro boundary and the urban growth boundary. It is in the Damascus area and consists of one tax lot that is unimproved. A future single family residence is planned for the property. The territory contains 3 acres, and is valued at \$110,364.

REASON FOR ANNEXATION

The property owners desire water service to serve a planned single family residence.

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 party¹; 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.

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:

¹ 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 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. The territory, if annexed into the District, will receive water services from the District.

RECOMMENDATION

Based on the attached Order and Findings, Staff recommends approval of Proposal No. 2023-010, annexation to the 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. 2023-010

} 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 the 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 February 22, 2024 and that a decision of approval was made on February 22, 2024;

NOW, THEREFORE, IT IS HEREBY ORDERED that Boundary Change Proposal No. 2023-010 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 the Sunrise Water Authority as of February 22, 2024.

ADOPTED this 22nd day of February, 2024.

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. 2023-010 is a proposed annexation to the Sunrise Water Authority (“District”).
2. If the Board approves the proposal the boundary change will become effective immediately.
3. The territory to be annexed is in unincorporated Clackamas County, in the Damascus area and consists of one tax lot that is unimproved. A future single family residence is planned for the property. The territory contains 3 acres, and is valued at \$110,364.
4. The property owner desires water service from the District.
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:

- a. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
- b. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party¹; and
- c. 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:

¹ 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 County must:

- a. 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
- b. 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:

Sanitary Sewage Treatment Policies

* * *

- 7.A.8 Prohibit new on-site sewage disposal systems within Urban Growth Boundaries except for:
 - 7.A.8.1 A lot of record outside of a sewage service district, legally recorded prior to January 31, 1980; or
 - 7.A.8.2 Parcels of ten acres or larger in Future Urban areas inside the Metro Urban Growth Boundary (UGB); or
 - 7.A.8.3 Outside the Metro UGB on lots that conform to the minimum lot size of the zone; or
 - 7.A.8.4 Parcels inside a sewage service district having unique topographic or other natural features that make sewer extension impractical as determined on a case by case basis by the sewer service provider.
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 District provides potable water services to the surrounding area. The District has a main water line, located in the public right of way, that is 10 feet in front of the territory to be annexed that can serve the property.

10. The territory to be annexed is outside a sanitary and stormwater service district. Pursuant to Clackamas County permit no. SE025223, it will have an onsite septic system.
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 District.

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 District 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 is consistent 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 District has service available to the area to be annexed as noted in Finding No. 9. The Board concludes this annexation is timely, the District has an adequate quantity and quality of services available and that the services are not duplicative.
5. 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
LEGAL DESCRIPTION**

A tract of land situated in the Southwest one-quarter of the Southeast one-quarter of Section 32, Township 1 South, Range 3 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, being more particularly described as follows:

Commencing at the South one-quarter of said Section 32; thence North 88°43'00" East, along the South line thereof, a distance of 245.00 feet to the Southeast corner of that certain tract of land conveyed to Frederick H. Whitfield, et ux, by Deed recorded March 18, 1970 by Recorder's Fee No. 70-5104, Deed Records, said County; thence North 0°01'00" East, along the East line thereof (and its Northerly extension) a distance of 235.00 feet to the Northwest corner of that certain tract of land conveyed to Frederick H. Whitfield, et ux, by Contract recorded July 19, 1974 by Recorder's Fee No. 74-20278, Deed Records, said County, and the point of beginning of the tract of land herein to be described, thence North 88°19'00" East, along the North line thereof a distance of 415.07 feet to the Northeast corner of said Fee No. 74-20278; thence North 0°01'00" West, along the Northerly extension of the East line thereof, a distance of 282.10 feet to the Southeast corner of that certain tract of land conveyed to Jerry D. Juve, et ux, by Contract recorded on August 14, 1974 by Recorder's Fee No. 74-22934, Deed Records, said County; thence South 88°43'00" West, along the South line thereof, a distance of 311.14 feet to the Southwest corner of said Juve Tract; thence South 57°54'05" West a distance of 175.64 feet to the Northeast corner of that certain tract of land conveyed to Robert A. Rykken, et ux, by Deed recorded July 29, 1963, in Book 625, Page 546, Deed Records, said County; thence South 0°01'00" East, along the East line therefrom, a distance of 100.00 feet to the Southeast corner of said Rykken Tract; thence South 88°43'00" West, along the South line thereof, a distance of 170.00 feet to a point in the East right of way line of Winston Road (County Road No. 448 - 60.00 feet wide); thence South 0°01'00" East, along said East right of way line, a distance of 50.00 feet to the Northwest corner of that certain tract of land conveyed to Richard P. Manuel, by Deed recorded May 31, 1978 by Recorder's Fee No. 78-23049, Deed Records, said County; thence North 88°43'00" East, along the North line thereof, a distance of 215.00 feet to the Northeast corner of said Manuel Tract; thence South 0°01'00" East, along the East line thereof, a distance of 45.00 feet to the point of beginning.

