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November 3, 2022

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Annexation CL 22-005 to County Service District No. 1

Purpose/Outcomes	Conduct Public Hearing/Approve Order
Dollar Amount and Fiscal Impact	None
Funding Source	Not Applicable
Duration	Permanent
Previous Board Action	None
Strategic Plan Alignment	Build Public Trust Through Good Government, hold transparent and clear public processes regarding jurisdictional boundaries
Counsel Review	JM 10/19/2022
Procurement Review	No, matter is an annexation not subject to procurement review
Contact Person	Ken Martin, Boundary Change Consultant – 503-222-0955 Jeff Munns, Assistant County Counsel – 503-742-5984
Contract No.	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 county service district and Clackamas County Service District #1 is such a district.

Proposal No. CL 22-005 is a proposed annexation to Clackamas County Service District # 1 (“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/2022-11-03>); 3) Published notice twice in

the Clackamas 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. Also as required by statute (ORS 198.720(1)) the City of Happy Valley has approved this petition.

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.

REASON FOR ANNEXATION

The territory to be annexed contains 13.0 acres, 2 single family dwellings and is evaluated at \$2,099,850.

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."

Clackamas County Service District No. 1 and the City of Happy Valley do have an agreement calling for the District to be the provider of sewers inside the City. The District has entered into an agreement with the Surface Water Management Agency of Clackamas County and the Tri-City Service District to create Water Environment Services, an ORS 190 partnership ("WES") as a collective service provider for all three districts. If annexed into the District, the property would be served by WES under such agreement.

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

¹ A "necessary party" is another governmental entity which includes the same area or provides an urban service to the area.

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. The territory, if annexed into the District, will be served (major transmission and treatment) by Water Environment Services pursuant to that certain ORS 190 Partnership entered into by the District with Clackamas County Service District # 1 and the Surface Water Management Agency of Clackamas County, as amended from time to time.

RECOMMENDATION

Based on the attached Order and Findings, Staff recommends approval of Proposal No. CL-22-005, annexation to Clackamas County Service District # 1.

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

In the Matter of Approving a
Boundary Change Proposal No.
CL 22-005



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 Clackamas County Service District No. 1;

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 November 3, 2022 and that a decision of approval was made on November 3, 2022;

NOW, THEREFORE, IT IS HEREBY ORDERED that Boundary Change Proposal No. CL 22-005 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 Clackamas County Service District No. 1 as of November 3, 2022.

ADOPTED this 3rd day of November, 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. The territory to be annexed contains 13.0 acres, 2 single family dwellings and is evaluated at \$2,099,850.
2. The property owners desire annexation into the District to serve a proposed 44-lot subdivision within the City of Happy Valley.
3. 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.”

Clackamas County Service District No. 1 and the City of Happy Valley do have an agreement calling for the District to be the provider of sewers inside the City. The District has entered into an agreement with the Surface Water Management Agency of Clackamas County and the Tri-City Service District to create Water Environment Services, an ORS 190 partnership (“WES”) as a collective service provider for all three districts. If annexed into the District, the property would be served by WES under such agreement.

4. 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 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 is immediately upon adoption.

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

- (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 Plans as stated in the findings 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.

5. 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.

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

POLICIES

Sanitary Sewage Disposal

* * *

- 6.0 Require sanitary sewerage service agencies to coordinate extension of sanitary services with other key facilities, i.e., water, transportation, and storm drainage systems, which are necessary to serve additional lands.

7. The territory is inside the City of Happy Valley and its land use plan designation/zoning is R-5, Single Family Residential 5,000 square foot lots and MUR-M2, Mixed Use Residential Multifamily.
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. WES, as the service provider for the District, has an 8-inch line 600 south in SE 172nd Avenue that could be extended to serve the property.
10. The area is not within Sunrise Water Authority but the Authority does have an 18-inch waterline 300 feet south in SE 172nd which could serve the property following annexation to the Authority.
11. The area receives police service from the City of Happy Valley which contracts with the Clackamas County Sheriff’s Department for service.
12. The territory is within the Clackamas County R.F.P.D. #1. This service will not be

affected by annexation to the County Service District for sanitary sewers.

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 4 & 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 Board notes the original public facility plan for this area does call for sewer service by the District.
3. ORS 198 requires consideration of the comprehensive plan and any service agreements affecting the area. The Board has reviewed the applicable comprehensive plans (Clackamas County Comprehensive Plan and the Happy Valley Comprehensive Plan) and concludes this proposal complies with them. All other necessary urban services are 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, through Water Environment Services, 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 for Annexation

Those parcels of land conveyed in Clackamas County Deed Records 2018-054246 and 2018-054247 being in the SW ¼ of Section 30, Township 1 South, Range 3 East, of the Willamette Meridian and being within the boundaries of the City of Happy Valley, County of Clackamas, Oregon, and further described as follows:

Beginning at a 5/8 inch iron rod with a red plastic cap marked "Centerline Concept" found at the southwest corner of "Maple Hill Heights" (Plat 1815), Clackamas County Plat Records; thence along said south line of "Maple Hill Heights", and continuing along the south line of that tract of land described in Deeds Recorded as Document No. 2002-076442 and Document No. 2014-044603, Clackamas County Deed Records, South 88°46'12" East, 1152.64 feet to the west right of way line of SE 172nd Avenue, being 30 feet west of the centerline thereof when measured at right angles; thence along the arc of a 316.48 foot radius non-tangent curve to the left (radial line bears South 78°01'18" West), through a central angle of 17°07'21", an arc length of 94.58 feet (chord of which bears South 20°32'22" East 94.23 feet); thence along said west right of way line South 29°06'03" East, 247.03 feet; thence along the arc of a 256.48 foot radius curve to the right, through a central angle of 30°30'00", an arc length of 136.53 feet (chord of which bears South 13°51'03" East, 134.92 feet); thence along said west right of way, South 01°23'57" West 9.58 feet, and being the southeast corner of that tract of land described in Deed recorded as Document No. 2018-054246; thence along the north line of that tract of land described in Deed Recorded as Document No. 2012-071156, Clackamas County Deed Records, and continuing along the north line of those tracts of land described in Deeds recorded as Documents No. 2016-088527, Parcel 1 of 93-57929, and 2018-025509, Clackamas County Deed Records, North 88°43'29" West, 1346.71 feet, to the northwest corner thereof; thence along the west line of the Northwest one-quarter of the Southwest one-quarter of Section 30, North 01°08'17" East, 439.51 feet to the Point of Beginning.



COVER SHEET

- New Agreement/Contract
- Amendment/Change/Extension to _____
- Other Board Order for Annexation

Originating County Department: County Counsel

Other party to contract/agreement: _____

Document Title: Approval of Annexation CL 22-005 to County Service District No. 1

After filing please return to: Jeffrey Munns, Asst. County Counsel

County Admin

Procurement

If applicable, complete the following:

Board Agenda Date/Item Number: _____