



OFFICE OF COUNTY COUNSEL

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

Stephen L. Madkour
County Counsel

August 17, 2023

BCC Agenda Item: _____

Board of County Commissioners
Clackamas County

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

Members of the Board:

Approval of Annexation to Clackamas County Service District No. 1

Previous Board Action/Review	None		
Performance Clackamas	Build Public Trust Through Good Government		
Counsel Review	Initials: JM	Procurement Review	No
Contact Person	Jeffrey D. Munns	Contact Phone	503-742-5984

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 No. 1 is such a district.

Proposal No. 2023-004 is a proposed annexation to Clackamas County Service District No. 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 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. 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.

The territory to be annexed is in the northern portion of Happy Valley and consists of one tax lot that is improved with an existing retail commercial structure. The territory contains 3.54 acres, and is assessed at \$9,461,621.

REASON FOR ANNEXATION

The property owners desire sewer service to serve existing retail commercial and planned additional structures. The property has been annexed to the City of Happy Valley.

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 sewage treatment and transmission for the City. The District has entered into an agreement with the Surface Water Management Agency of Clackamas County, Clackamas County Service District # 1, and Tri-City County 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 will receive sewerage treatment and transmission from WES under such agreement. Local sewerage collection will continue to be provided by the City.

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

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

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:
 - (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 Tri-City County Service District with Clackamas County Service District No. 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. 2023-004, annexation to Clackamas County Service District No. 1.

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

In the Matter of Approving a
Boundary Change Proposal
No. 2023-004

} 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 August 17, 2023 and that a decision of approval was made on August 17, 2023;

NOW, THEREFORE, IT IS HEREBY ORDERED that Boundary Change Proposal No. 2023-004 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 August 17, 2023

ADOPTED this 17th day of August, 2023.

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. 2023-004 is a proposed annexation to Clackamas County Service District No. 1 (“District”).
2. If the Board approves the proposal the boundary change will become effective immediately.
3. The territory to be annexed is one tax lot that is improved with a existing retail commercial structures. The territory contains 3.54 acres, and is valued at \$9,461,621.
4. The property owner desires sewer service from the District following annexation into the City of Happy Valley. The property owners confirm they have checked with the County and that connection is allowed to 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 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 (immediately upon adoption) was noted in Finding 2 above.

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 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 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 has a sewer line available and located on the property which can serve the property.
10. The property is already in Sunrise Water Authority's service district area and has water service.
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 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 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.

- 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

LEGAL DESCRIPTION

All that part of the following real property lying Southerly and Westerly of Southeast Sunnyside Road. The South 990 feet of the Southwest one-quarter of the Northeast one-quarter of Section 6, Township 2 South, Range 3 East of the Willamette Meridian, in the City of Happy Valley, County of Clackamas and State of Oregon, more particularly described as follows:

BEGINNING at the Northeast corner of Lot 11, Subdivision Plat of Golden Horseshoe Estates, Plat number 1249; thence along the easterly projection of the Northline of said Lot South 89°00'37" East 7.36 feet to the westerly right-of-way line of South East Sunnyside Road, thence along said right-of-way line the following six (6) courses: (1) thence North 07°29'32" West 126.09 feet to a point of non-tangent curvature; (2) thence along the arc of a 487.20 foot radius curve concaved Southwesterly, an arc distance of 58.04 feet, through a central angle of 6°49'34" (the chord bears North 25°20'10" West, 58.01 feet); (3) thence North 28°44'56" West 32.28 feet to a point of curvature; (4) thence along the arc of a 479.00 foot radius curve concaved Southwesterly, an arc distance of 186.50 feet, through a central angle of 22°18'28" (the chord bears North 39°54'09" West, 185.32 feet) to a point of curvature; (5) thence along the arc of a 355.97 foot radius curve concaved Southwesterly, an arc distance of 52.91 feet, through a central angle of 08°30'58" (the chord bears North 55°18'52" West, 52.86 feet); (6) thence North 76°15'20" West 159.43 feet; thence South 54°57'15" West 80.08 feet to the East right-of-way line of Southeast 172nd Avenue (County Road No. 25) (Being 64.76 feet East from the centerline thereof, when measured perpendicular thereto); thence along said right-of-way line South 00°50'57" West 362.24 feet to the westerly extension of the North line of Parcel 1, Partition Plat No. 2012-058; thence along said westerly extension, the North line of said Parcel 1 and the North line of said Lot 11, South 89°00'37" East 437.63 feet POINT OF BEGINNING containing 3.31 Acres more or less.

REGISTERED PROFESSIONAL LAND SURVEYOR

OREGON JUNE 13, 2008 CHRISTOFER C. SHERBY 74508PLS
RENEWS 06/30/24

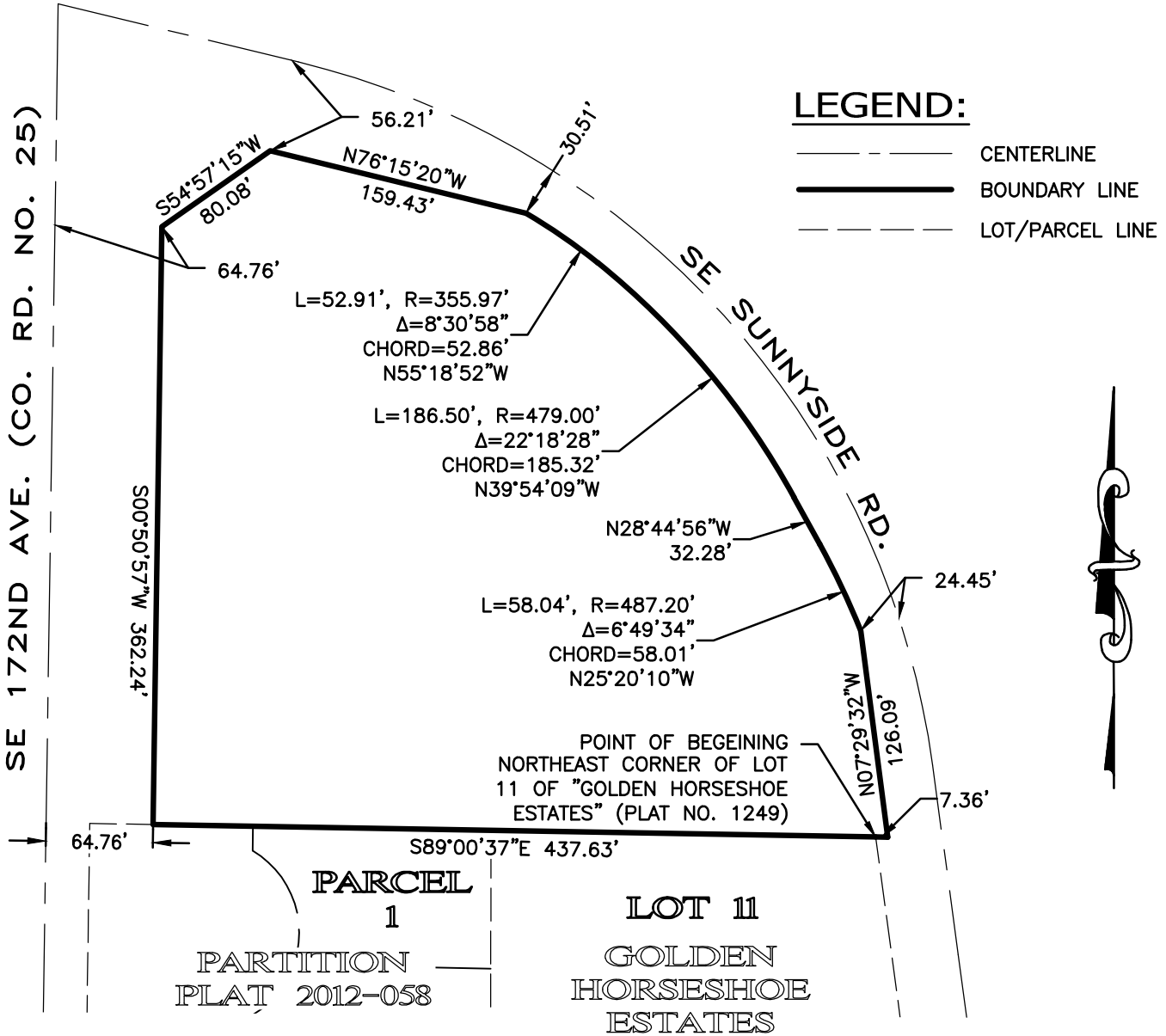
EXHIBIT C

WES LEGAL DESCRIPTION

LOCATED IN THE
NORTHEAST QUARTER OF SECTION 6
T.2S.,R.3E,

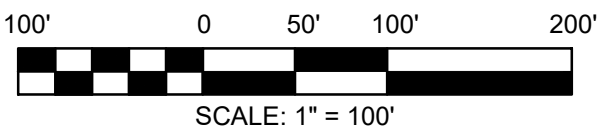
OF THE
WILLAMETTE MERIDIAN

CITY OF HAPPY VALLEY, CLACKAMAS COUNTY, OREGON



LEGEND:

- CENTERLINE
- BOUNDARY LINE
- LOT/PARCEL LINE



REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JUNE 13, 2008
CHRISTOFER C. SHERBY
74508PLS

S&F Land Services

PORTLAND. VANCOUVER. BEND. SEASIDE
4858 SW SCHOLLS FERRY RD.
SITE A, PORTLAND, OR 97225
(503) 345-0328

REVISED 5/31/2023

RENEWS 6/30/24