

# **AGENDA**      **Special NCPRD Business Meeting**

**Tuesday December 3, 2019 - 4:00 PM**  
**BOARD OF COUNTY COMMISSIONERS**

Clackamas County Public Safety Training Center  
12700 SE 82nd Avenue, Clackamas, OR 97015

Beginning Board Order No. 2019-96



**NORTH CLACKAMAS**  
PARKS & RECREATION DISTRICT

## **CALL TO ORDER**

- Roll Call
- Pledge of Allegiance

**I. PUBLIC HEARING** *(The following items will be individually presented by County staff or other appropriate individuals. Persons appearing shall clearly identify themselves and the department or organization they represent. In addition, a synopsis of each item, together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*

### **North Clackamas Parks & Recreation District (NCPRD)**

1. Approval of a Settlement Agreement between the City of Happy Valley and the North Clackamas Parks & Recreation District (NCPRD) (Scott Archer, Director, Jeff Munns, Assistant County Counsel)

**II. CONSENT AGENDA** *(The following Items are considered to be routine, and therefore will not be allotted individual discussion time on the agenda. Many of these items have been discussed by the Board in Work Sessions. The items on the Consent Agenda will be approved in one motion unless a Board member requests, before the vote on the motion, to have an item considered at its regular place on the agenda.)*

1. Approval of a Settlement Agreement between the City of Happy Valley and the North Clackamas Parks & Recreation District (NCPRD)

### **III. COUNTY ADMINISTRATOR UPDATE**

### **IV. COMMISSIONERS COMMUNICATION**

**NOTE: Regularly scheduled Business Meetings are televised and broadcast on the Clackamas County Government Channel. These programs are also accessible through the County's Internet site. DVD copies of regularly scheduled BCC Thursday Business Meetings are available for checkout at the Clackamas County Library in Oak Grove. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel. <https://www.clackamas.us/meetings/bcc/business>**



**OFFICE OF COUNTY COUNSEL**

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

**Stephen L. Madkour**  
 County Counsel

**Kathleen Rastetter**  
**Scott C. Ciecko**  
**Amanda Keller**  
**Nathan K. Boderman**  
**Shawn Lillegren**  
**Jeffrey D. Munns**  
**Andrew R. Naylor**  
**Andrew Narus**  
**Sarah Foreman**  
 Assistants

December 3, 2019

Board of County Commissioners  
 Board of North Clackamas Parks and Recreation District  
 Clackamas County

Members of the Board:

Approval of Settlement Agreement with the  
City of Happy Valley

<b>Purpose/Outcomes</b>	Settlement of all claims between the City of Happy Valley, the North Clackamas Parks and Recreation District, Clackamas County, and the Clackamas County Assessor in cases: 17CV44060, A172539, 18CV30439, and A170792.
<b>Dollar Amount and Fiscal Impact</b>	One time settlement payment of \$14,300,000.00, the loss of approximately \$1.5 million in annual property taxes generated in Happy Valley, and the parks to be transferred as described below.
<b>Funding Source</b>	Funding provided by the North Clackamas Parks and Recreation District.
<b>Duration</b>	Effective immediately if approved. Void if legislation contemplated in Agreement is not enacted. Agreement to be reviewed five years after effective date if legislation enacted.
<b>Previous Board Action</b>	No Previous Board Action on this Settlement Agreement
<b>Counsel Review</b>	This contract has been reviewed by County Counsel on November 25, 2019
<b>Strategic Plan Alignment</b>	Building public trust through good government.
<b>Contact Person</b>	Jeffrey D. Munns, Assistant County Counsel (503) 742-5984
<b>Contract No.</b>	N/A

**BACKGROUND:**

Terms of the settlement include:

- Clackamas County and the City will jointly develop and support legislation in the 2020 Legislative Session that removes Happy Valley from the District.
- If such legislation is adopted, NCPRD will pay the City \$14.3 million in cash, all of which is directly attributable to system development charges (SDCs) that were collected within the City of Happy Valley. Of this \$14.3 million settlement amount, approximately \$9.3 million is remaining cash that, by ordinance, must be spent within NCPRD Zone 3 boundaries. Zone 3 is the NCPRD SDC collection and planning area comprising Happy

Valley and its Urban Growth Management Area (UGMA). The remaining approximately \$5 million will be paid from available Hood View Park sale proceeds. Of these proceeds, \$2 million comes from a contribution made by the City toward the development of Hood View Park. The remaining \$3 million comes from the “district-wide” component of SDCs collected within the City of Happy Valley.

- NCPRD will also transfer ownership, liability and maintenance of these parks and properties to Happy Valley:
  - Southern Lites Park
  - Village Green Park
  - Ashley Meadows Park
  - Selected parcels in Mt. Talbert Nature Park (those owned by NCPRD and located within City limits)
  - Mt. Scott Creek Trail
  - Hidden Falls Nature Park
- Once the City withdraws from the District, the resulting NCPRD boundaries will remain intact even as Happy Valley annexes more territory in the future. This will ensure that NCPRD does not continue to lose more property tax revenue as the city expands.

Bringing closure to the litigation enables NCPRD more certainty in budgeting and operations and will allow District staff to focus on important projects such as Milwaukie Bay Park, the future of the Concord, Wichita and Clackamas Elementary School sites, and planning for additional parks and facilities in under-served areas of the District.

In addition, NCPRD will no longer be responsible for managing and maintaining the 6 properties being transferred to Happy Valley, which will provide ongoing cost savings to the District.

Finally, this settlement allows the District Advisory Board to move forward in its regular work helping NCPRD meet the needs of the residents.

For Happy Valley, the settlement provides an opportunity to offer local parks services to its residents using funds from a 5-year park levy approved by City voters in 2018.

The settlement will resolve litigation related to a vote by the Happy Valley City Council in June 2017 to leave NCPRD. This vote led to a series of lawsuits and legal rulings, including a Clackamas County Circuit Court decision in December 2018 that the city did not properly withdraw under applicable state law.

The settlement will also resolve litigation related to a decision in a separate case that the District had breached its contract with the City for failing to complete certain projects. In August a Circuit Court jury awarded the City of Happy Valley roughly \$18 million in damages plus \$3 million in interest.

**RECOMMENDATION:**

Staff recommends the Board approve this settlement agreement on behalf of the North Clackamas Parks and Recreation District and on behalf of Clackamas County.

Respectfully submitted,

Jeffrey D. Munns  
Assistant County Counsel

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between Clackamas County, the North Clackamas Parks and Recreation District, the Clackamas County Assessor and the City of Happy Valley. Clackamas County, the North Clackamas Parks and Recreation District and the Clackamas County Assessor may be referred to collectively as the “County;” the North Clackamas Parks and Recreation District may be referred to as “NCPRD” or “District”; the City of Happy Valley may be referred to as the “City.” The County, District and City may be referred to individually as a “Party” or collectively as the “Parties.”

### I. Recitals

Whereas, on June 6, 2017, the City Council (“City Council”) for the City of Happy Valley (“City”) approved Ordinance 522 withdrawing the City from the North Clackamas Parks and Recreation District (“NCPRD” or “District”).

Whereas, on October 9, 2017, the City filed suit against the District in Clackamas County Circuit Court (the “Breach Case”). In the lawsuit, the City alleged that the District breached a 2005 agreement (“Contract”) between the City and the District under which the District was required to build certain park facilities in the City using funds collected by the City and transferred to the District.

Whereas, on October 12, 2018, the court in the Breach Case ruled that the District breached the Contract by failing to provide the park projects.

Whereas, on August 16, 2019, the jury in the Breach Case found that the City was entitled to \$18,078,238 in damages. The court added prejudgment interest to the damage award and on October 11, 2019, general judgment was entered in the City’s favor in the amount of \$21,301,117.

Whereas, on July 18, 2018, Clackamas County (“County”) filed suit against the City in Clackamas County Circuit Court (the “Withdrawal Case”) seeking a determination as to the validity of Ordinance 522. In the lawsuit, the County alleged that Ordinance 522 was not authorized by ORS 222.520 and was therefore invalid.

Whereas, on December 13, 2018, the court ruled that Ordinance 522 was not authorized by ORS 222.520. Therefore, the court found that the ordinance was void *ab initio* and entered judgment in the County’s favor.

Whereas, as a result of the decision in the Withdrawal Case, the City remains part of the District.

Whereas, the City appealed the decision in the Withdrawal Case and the County appealed the decision in the Breach Case. At the time of this Agreement both appeals are pending.

Whereas, the District is governed by the Board of County Commissioners which serves as the Board of Directors (“District Board”) for the District.

Whereas, the Parties agree that it is in the best interest of their respective residents to resolve the litigation on mutually agreeable terms. As such, and in consideration of the mutual promises and obligations set forth below, the City and County have each approved this Agreement.

## **II. Agreement**

Based on the foregoing recitals which are incorporated into the terms of this Agreement, the Parties mutually agree as follows:

### A. Pending Litigation

1. The City Attorney and County Counsel will jointly prepare and timely file such documents as necessary to stay further proceedings in the appeals of the Withdrawal Case and the Breach Case. The stays shall remain in effect until March 31, 2020.
2. In the event the Oregon Legislature enacts the legislation described in Section II.D below, the City Attorney and County Counsel shall jointly prepare and file such documents as necessary to dismiss both appeals within 30 days of the effective date of the legislation.
3. In the event the City receives from the District the funds described in Section II.E below, the City Attorney shall file a satisfaction of judgment in the Breach Case within 14 days of the date the City receives the funds.
4. After such time as the Breach Case and the Withdrawal Case are dismissed and the City files a satisfaction of judgment in the Breach Case, neither party shall take any further judicial or administrative action to contest the matters at issue in either case.
5. In the event the legislation described in Section II.D is not enacted, either the City Attorney or County Counsel, or both, may file with the Court of Appeals such documents as necessary to remove the stay of the Breach Case or the Withdrawal Case, or both, and continue the proceedings on appeal.
6. The City agrees to stay further accrual of post-judgment interest in the Breach Case for the period beginning on the date this Agreement is approved by the Parties and ending on the date the Legislature adjourns *sine die* without enacting the legislation described in Section II.D. If the legislation is not enacted by the date the Legislature adjourns *sine die*, the post-judgment interest shall begin accruing again the following day.

## B. Park Facilities

1. NCPRD will transfer ownership of the following park properties to the City within 60 days of the effective date of legislation described in Section II.D of this Agreement:
  - i. Southern Lites
  - ii. Village Green
  - iii. Ashley Meadows
  - iv. Mt. Talbert Parcels (within the City)
  - v. Mt. Scott Creek Trail
  - vi. Hidden Falls
2. NCPRD shall transfer the parks to the City by quitclaim deed.
3. The City is not subject to any development agreement or other agreement entered into by the County or the District in connection with the parks except as may be set forth in a deed or plat that conveys the park property to the County or the District. The City does not assume liability for any system development charge credits issued by the District prior to the date the parks are transferred to the City.
4. Following transfer of the park properties, the City shall be responsible for all operations, repair and maintenance of the parks.

## C. Future Annexation Into City

1. Following the effective date of this Agreement, when the City annexes property that is located in the District, the City will not withdraw the annexed property from the District.
2. The Parties agree that the District's permanent rate and any subsequent property tax levies will continue to apply to these properties. The Parties further agree that the District may impose and collect its parks system development charge to any development on these properties and that the City will not collect its parks system development charge.
3. The District boundary on the effective date of this Agreement is shown on Exhibit A.
4. The Parties agree to review the terms of this Section II.C at least every five years.

#### D. Legislation

1. The Parties agree to support legislation in the 2020 legislative session that removes the City from the District. The legislation shall be narrowly drafted to withdraw the City from NCPRD. The legislation shall not be drafted to create a method for a city to withdraw from a district that was not annexed to the district pursuant to ORS 198.866 and ORS 198.867.
2. The City Attorney shall coordinate with Legislative Counsel to draft the legislation and shall consult with County Counsel on the draft and any revisions. The County's support for the legislation as described in Section II.D.3 below is expressly conditioned on the County's consent to the form of legislation, which shall not be unreasonably withheld. The Parties further agree that the legislation will include an emergency clause that makes the legislation effective on or before March 31, 2020.
3. The Parties agree that "support" as used in this Section includes at least the following:
  - i. City and County will work with and support their respective lobbyists in developing and lobbying for the passage of the legislation.
  - ii. City and County elected officials and staff will communicate full support of the legislation in public and private written documents and conversations.
  - iii. The City and County will fully support legislation on their respective websites, newsletters, emails, at meetings where the legislation is discussed and with City and County residents.
  - iv. The City and County will work in coordination to secure legislative sponsors for the legislation.
  - v. Both before and during the 2020 legislative session, the City and County will actively lobby for passage of the legislation by expressing full support for the legislation with the Clackamas County legislative delegation, legislative leadership, relevant committee chairs and members, staff, and other members of the legislative assembly as necessary to secure passage of the legislation.
  - vi. Joint written testimony with logos and signatures from both the City and County will be submitted before all committee meetings and floor votes.
  - vii. Elected officials from both the City and County will to the extent practicable provide verbal testimony to all House, Senate and Joint committees.

- viii. County shall seek and make all reasonable efforts to secure support for the legislation from the Association of Oregon Counties and the Special Districts Association of Oregon.
- ix. City shall seek and make all reasonable efforts to secure support for the legislation from the League of Oregon Cities.

E. Payment

1. In the event the legislation described in Section II.D of this Agreement is enacted, the District shall transfer to the City the amount of \$14,300,000 within 30 days of the effective date of the legislation.
2. Within 14 days of the date the City receives the funds, the City will file a satisfaction of judgment in the Breach Case as described in Section II.A above.

F. Approval

1. The Parties agree that the City Council and District Board shall each take formal action to approve or reject this Agreement on or before December 6, 2019.
2. Failure of either Party to approve the Agreement by December 6, 2019, constitutes rejection by that Party and the other Party is released of all obligations under this Agreement as of December 7, 2019.

### **III. Terms and Conditions**

- A. Effective Date and Term. This Agreement becomes effective on the date it is approved by both the City Council and the District Board. This Agreement shall remain in effect until it is terminated by its terms.
- B. Termination. This Agreement may be terminated only by the mutual written consent of both Parties
- C. Modification. This Agreement may be modified only in writing signed by both Parties.
- D. Representations. The Parties each represent that the person(s) signing the Agreement below on behalf of the Party has full authority to do so and by signing that the Agreement has been legally approved by the governing body of the Party.



- E. No Third-Party Beneficiaries. The rights and obligations set forth in this Agreement are intended only for the benefit of the Parties hereto and no third-party beneficiaries are intended or created.
- F. Entire Agreement. This Agreement, the attached exhibits and any document referenced herein constitute the entire Agreement between the Parties on the subject of the Agreement.
- G. Controlling Law; Breach; Remedies.
1. This Agreement is subject to and shall be construed in accordance with the laws of the State of Oregon.
  2. In the event of a breach by either Party, the non-breaching Party must provide written notice of the breach to the breaching party. The breaching Party shall have 30 days from the date of the written notice to cure the breach or take substantial steps toward curing the breach. If the breach is not cured within 30 days or such other time as the parties may agree in writing, the parties may seek all legal remedies available.
  3. In the event legal action is initiated, each Party is responsible for its own fees including legal fees and witness fees.
- H. Time of the Essence. Time is of the essence in this Agreement and the Parties each agree to take any action described herein within the time set forth for that action, if any. For any action that requires preliminary actions or preconditions, the Parties further agree to take all reasonable and necessary steps to complete the preliminary action or meet the precondition in a timely and expedited manner.
- I. Counterparts. This Agreement may be signed in two or more counterparts, each of which shall be deemed as an original and which, when taken together, shall constitute one and the same Agreement.

**[Signatures on Next Page]**

**DATED this 3<sup>rd</sup> day of December, 2019.**

**CITY COUNCIL OF THE CITY OF HAPPY VALLEY**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Recorder

Approved as to form:

\_\_\_\_\_  
City Attorney

**BOARD OF COUNTY COMMISSIONERS**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary

Approved as to form:

\_\_\_\_\_  
County Counsel

**BOARD OF DIRECTORS OF THE  
NORTH CLACKAMAS PARKS AND RECREATION DISTRICT**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary

Approved as to form:

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County Counsel

**CLACKAMAS COUNTY ASSESSOR**

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Assessor

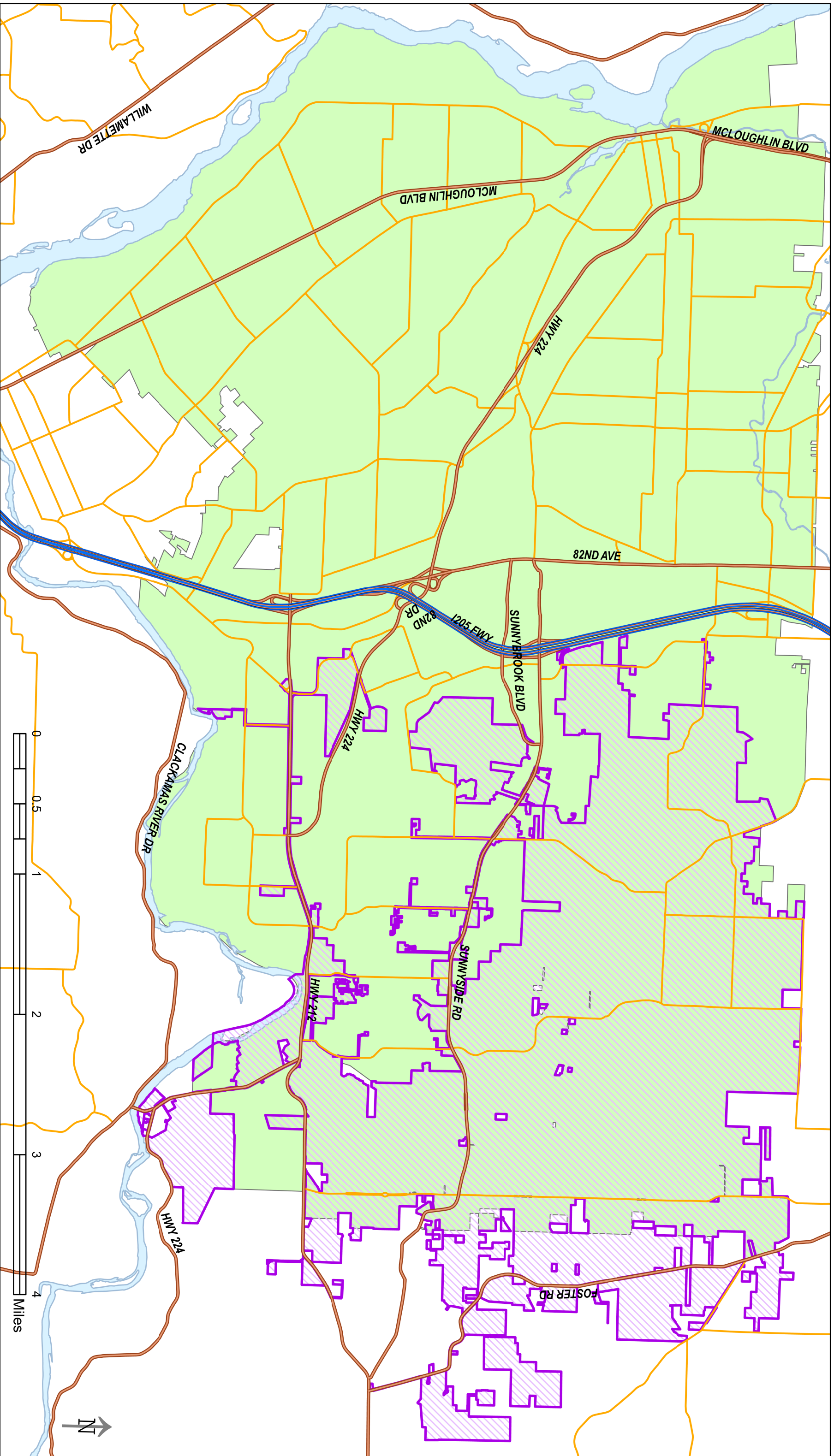
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Recording Secretary

Approved as to form:

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County Counsel



City of Happy Valley - North Clackamas Park and Recreation District Map



- Happy Valley City Limits
- NCPRD Boundary
- 205 Fwy
- Major Arterials
- Minor Arterial