



OFFICE OF COUNTY COUNSEL

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

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November 14, 2019

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of a Board Order for Boundary Change Proposal CL 19-005**  
**Annexation to Clackamas County Service District No. 1**

<b>Purpose/Outcomes</b>	<i>Conduct Public Hearing/Approve Order</i>
<b>Dollar Amount and Fiscal Impact</b>	<i>N/A</i>
<b>Funding Source</b>	<i>N/A</i>
<b>Duration</b>	<i>Permanent</i>
<b>Previous Board Action</b>	<i>N/A</i>
<b>Strategic Plan Alignment</b>	<i>1. Build Public Trust Through Good Government. 2. Hold transparent and clear public processes regarding jurisdictional boundaries.</i>
<b>Contact Person</b>	<i>Ken Martin, Boundary Change Consultant - 503 222-0955 Nate Boderman, Assistant County Counsel, 503-655-8364</i>
<b>Contract No.</b>	<i>N/A</i>

**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. CL 19-005 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 three notices near the territory and one notice near the County hearing room 20 days prior to the hearing; 2) Published notice twice in the Clackamas County Review; 3) 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 198.855, 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 on the eastern edge of the District. The territory contains 24.76 acres, four single family dwellings and is valued at \$1,280,189.

## **REASON FOR ANNEXATION**

The property owners desire sewer service to serve a commercial subdivision which has been approved for the site by 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 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 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.

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.

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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.

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 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 by Water Environment Services pursuant to that certain ORS 190 Partnership entered into by the District with the Tri-City Service District 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-19-005, annexation to Clackamas County Service District No. 1.

Respectfully submitted,

Nate Boderman  
Assistant County Counsel

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

In the Matter of Approving  
Boundary Change Proposal  
No. CL 19-005



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

**Whereas**, 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; and

**Whereas**, 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

**Whereas**, 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

**Whereas**, It further appearing that this matter came before the Board for public hearing on November 14, 2019 and that a decision of approval was made November 14, 2019.

**NOW THEREFORE, IT IS HEREBY ORDERED** that Boundary Change Proposal No. CL 19-005 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 14, 2019.

DATED this 14<sup>th</sup> day of November, 2019.

**BOARD OF COUNTY COMMISSIONERS**

\_\_\_\_\_  
Chair

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

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

1. The territory to be annexed contains 24.76 acres, four single family dwellings and is valued at \$1,280,189.
2. The property owners desire sewer service to serve a commercial subdivision which has been approved for the site by 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.

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 is immediately upon adoption of the order.

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

To approve a boundary change the County must:

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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.

- (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 7 & 8 below. No concept plans cover this area.

5. 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 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.
8. The territory is inside the City of Happy Valley and has zoning designations of MCC (Mixed Commercial Center) and MUR-M2 (Multi-Family, Medium Density). As noted above the City has approved a commercial subdivision for the site. This will consist of retail commercial spaces, medical office space and senior living.
9. 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.
10. WES, as the service provider for the District, has a sewer lines in SE 172<sup>nd</sup> Avenue and Sunnyside Road which can be extended onto the site.
11. The Sunrise Water Authority has a water line in SE 172<sup>nd</sup> Avenue which will be available to serve the property.
12. The area receives police service from the City of Happy Valley which contracts with the Clackamas County Sheriff's Department for service.
13. 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.
14. The area to be annexed receives parks and recreation service from either the City of Happy Valley or North Clackamas Parks and Recreation 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 4 & 9 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 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, through Water Environment Services, has service available to the area to be annexed as noted in Finding No. 10. 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.



AKS ENGINEERING & FORESTRY, LLC  
12965 SW Herman Road, Suite 100, Tualatin, OR 97062  
P: (503) 563-6151 F: (503) 563-6152

AKS Job #5177

OFFICES IN: TUALATIN, OR - VANCOUVER, WA - KEIZER, OR - BEND, OR

## EXHIBIT B

### Clackamas County Service District No. 1 Annexation Description

Two tracts of land located in the Northeast One-Quarter of Section 6, Township 2 South, Range 3 East, Willamette Meridian, City of Happy Valley, Clackamas County, Oregon, and being more particularly described as follows:

Beginning at the northwesterly corner of Lot 4 of plat "Rachella Acres", Plat No. 1743, Clackamas County Plat Records; thence along the northerly line of said Lot 4, South  $89^{\circ}08'27''$  East 471.14 feet to the northeasterly corner of said Lot 4, also being on the westerly line of Lot 2 of said plat; thence along said westerly line, South  $01^{\circ}01'09''$  West 372.55 feet to the northerly right-of-way line of SE Vogel Road (30.00 feet from centerline); thence along said northerly right-of-way line, North  $89^{\circ}07'01''$  West 461.57 feet; thence continuing along said northerly right-of-way line on a curve to the right with a Radius of 10.00 feet, a Delta of  $90^{\circ}12'30''$ , a Length of 15.74 feet, and a Chord of North  $44^{\circ}00'46''$  West 14.17 feet to the easterly right-of-way line of SE 172nd Avenue (30.00 feet from centerline) and the Clackamas County Service District No. 1 limits line, also being Reference Point 'A'; thence along said easterly right of way line and said Clackamas County Service District No. 1 limits line, North  $01^{\circ}05'29''$  East 362.31 feet to the Point of Beginning.

Together with;

Commencing at Reference Point 'A', also being on the easterly right-of-way line of SE 172nd Avenue (30.00 feet from centerline) and on the Clackamas County Service District No. 1 limits line; thence along said easterly right-of-way line and said Clackamas County Service District No. 1 limits line, South  $01^{\circ}05'29''$  West 70.04 feet to the intersection of said easterly right-of-way line and the southerly right-of-way line of SE Vogel Road (30.00 feet from centerline) and the Point of Beginning; thence along said southerly right-of-way line, South  $89^{\circ}07'01''$  East 617.51 feet to the northwesterly corner of Document Number 2004-106883, Clackamas County Deed Records; thence along the westerly line of said deed, South  $00^{\circ}50'42''$  West 619.47 feet to the southwest corner of said deed; thence along the southerly line of said deed, South  $89^{\circ}10'48''$  East 662.51 feet to the southeasterly corner of said deed; thence along the easterly line of said deed, North  $00^{\circ}50'42''$  East 315.08 feet to the easterly northeasterly corner of said deed, also being on the southerly line of Document Number 2016-026446, Clackamas County Deed Records; thence along said southerly line, South  $89^{\circ}12'00''$  East 15.00 feet to the southeasterly corner of said deed, also being on the easterly line of Document Number 2006-114555, Clackamas County Deed Records; thence along said easterly line, South  $00^{\circ}50'42''$  West 739.95 feet to the northeasterly corner of Document Number 2010-043011, Clackamas County Deed Records; thence along the northerly line of said deed, North  $89^{\circ}10'48''$  West 348.50 feet to the northwesterly corner of said deed, also being on the easterly line of Document Number 2018-075840, Clackamas County Deed Records; thence along said easterly line, South  $00^{\circ}50'42''$  West 250.17 feet to the southeasterly corner of said deed, also being on the south line of said Northeast One-Quarter; thence along said south line, North  $89^{\circ}12'00''$  West 434.94 feet to the centerline of SE Sunnyside Road; thence along said centerline, Northwesterly 713 feet, more or

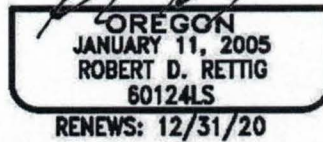
less, to the easterly right-of-way of SE 172nd Avenue (variable width from centerline) and the Clackamas County Service District No. 1 limits line, as created by Order Number 2013-21 (DOR 3-1978-1973) on June 26, 2013; thence along said easterly right-of-way line and said Clackamas County Service District No. 1 limits line, Northerly 826 feet, more or less, to the Point of Beginning.

The above described tracts of land contain 26.06 acres, more or less.

10/1/2019

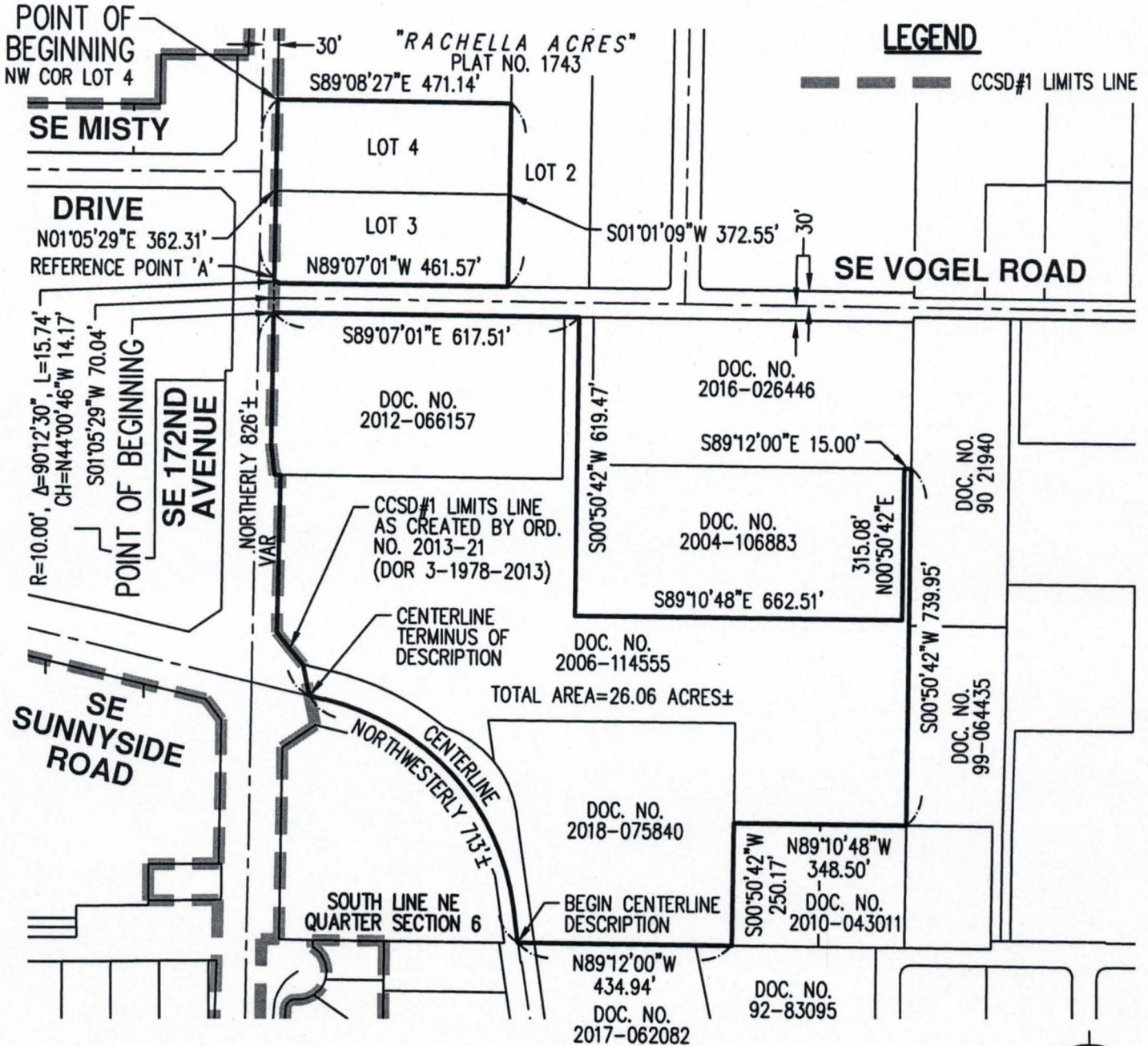


A handwritten signature in black ink, appearing to read 'R. Rettig', written over the top portion of the second stamp.



# EXHIBIT C

TWO TRACTS OF LAND LOCATED IN THE NORTHEAST 1/4 OF SECTION 6,  
TOWNSHIP 2 SOUTH, RANGE 3 EAST, WILLAMETTE MERIDIAN,  
CITY OF HAPPY VALLEY, CLACKAMAS COUNTY, OREGON



10/1/2019

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

## PREPARED FOR

GRAMOR DEVELOPMENT, INC.  
19767 SW 72ND AVENUE, SUITE 100  
TUALATIN, OR 97062

SCALE: 1" = 300 FEET



*RD*

OREGON  
JANUARY 11, 2005  
ROBERT D. RETTIG  
60124LS  
RENEWS: 12/31/20

CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 ANNEXATION MAP		EXHIBIT <b>B</b>
AKS ENGINEERING & FORESTRY, LLC 12965 SW HERMAN RD, STE 100 TUALATIN, OR 97062 P: 503.563.6151 F: 503.563.6152 aks-eng.com		DRWN: WCB CHKD: RDR AKS JOB: 5177