

#### Office of County Counsel

PUBLIC SERVICES BUILDING

2051 KAEN ROAD | OREGON CITY, OR 97045

Stephen L. Madkour County Counsel

September 21, 2023

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 to Tri-City Service District**

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 Tri-City Service District is such a district.

Proposal No. 2023-008 is a proposed annexation to Tri-City Service District ("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 (<a href="https://www.clackamas.us/meetings/bcc/business">https://www.clackamas.us/meetings/bcc/business</a>); 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 Oregon City 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 eastern portion of Oregon City and consists of two tax lot that are vacant. The territory contains 35.13 acres, and has an assessed value of \$4,117,478.

#### REASON FOR ANNEXATION

The property owners desire sewer service to serve a 141-unit residential planned unit development subdivision (Serres Farms). The property has been annexed to the City of Oregon City.

#### **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."

Tri-City Service District and Oregon City 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 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

<sup>&</sup>lt;sup>1</sup> A "necessary party" is another governmental entity which includes the same area or provides an urban service to the area.

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:

- Find that the change is consistent with expressly applicable provisions in: (1)
  - (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;
  - Affect the quality and quantity of urban services; and (B)
  - (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

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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. 2023-008, annexation to Tri-City Service District.

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

In the Matter of Approving a Boundary Change Proposal No. 2023-008	Order No			
	pard at this time, and it appearing that the owner ked has petitioned to annex the territory to Tri-			
It further appearing that this Boar poundary change pursuant to ORS Cha	d is charged with deciding this proposal for a pters 198 and Metro Code 3.09; and			
	ined by the County have reviewed the proposed hich complies with the requirements of Metro			
It further appearing that this matter came before the Board for public hearing on September 21, 2023 and that a decision of approval was made on September 21, 2023;				
Proposal No. 2023-008 is approved for t	EBY ORDERED that Boundary Change the reasons stated in attached Exhibit A and escribed on Exhibit C is annexed to Tri-City			
ADOPTED this 21 <sup>st</sup> day of September, 2	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. 2023-008 is a proposed annexation to Tri-City Service District ("District").
- 2. If the Board approves the proposal the boundary change will become effective immediately.
- 3. The territory to be annexed is in the eastern portion of Oregon City and consists of two tax lot that are vacant. The territory contains 35.13 acres, and has an assessed value of \$4,117,478.
- 4. The property owner desires sewer service from the District to following annexation into the City of Oregon City. 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:

- 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 party<sup>1</sup>; 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.

<sup>&</sup>lt;sup>1</sup> 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:

- 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.

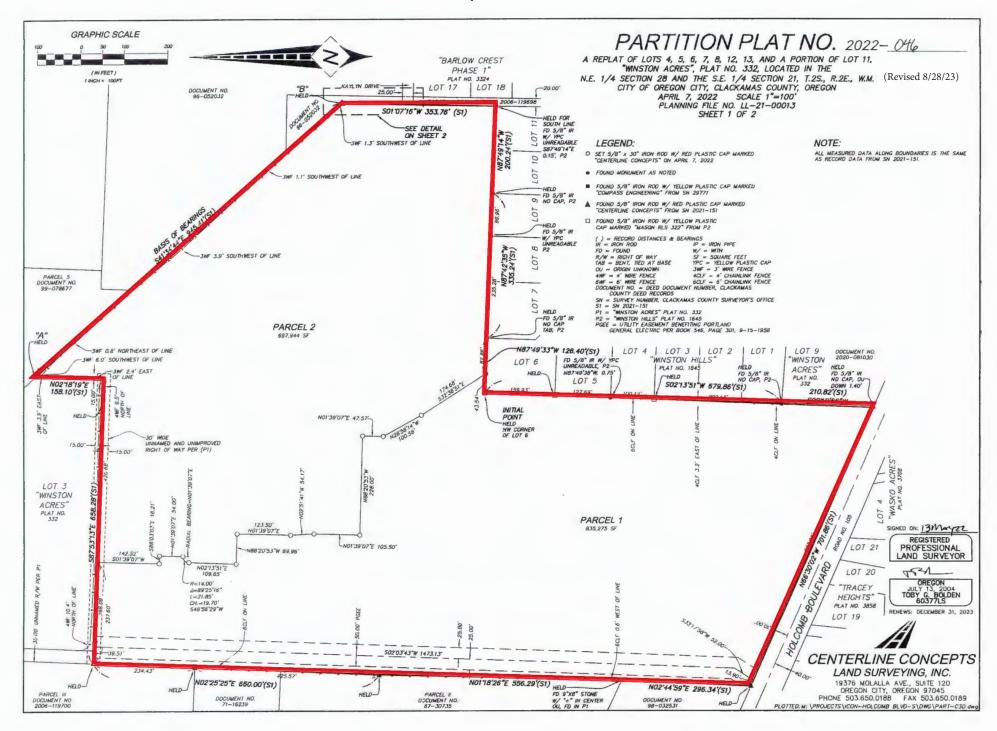
- 9. The District has a sewer line available and located on the property which can serve the property.
- 10. The property is already in Clackamas River Water District service area and has water service.
- 11. The area receives police service from the County Sheriff.
- 12. The territory is within the 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:

- 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.
- 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 C - Tri-City District Annexation (Revised 8/28/23)

#### DECLARATION: NARRATIVE: DECLARATION: KNOW ALL PEOPLE BY THESE PRESENTS THAT SERRES FAMILY H, LLC, AN OREGON LIMITED LIABILITY COMPANY, JULIE A. BULLOCK, DAMIEL S. SERRES, TRUISTEE OF THE OAMEL S. SERRES INJURITED LABILITY COMPANY, THE OWNERS OF THE LAND REPRESENTED ON THE ANNEXED MAP, AND MORE PARTICULARLY DESCRIBED IN THE ANNEXED MAP, AND MORE PARTICULARLY DESCRIBED IN THE ACCOMPANYNING SURVEYOR'S CERTIFICED DO HEREBY DECLARE THE ANNEXED MAP TO BE A CORRECT MAP OF THE PARTITION OF SAID PROPERTY AND HAVE CAUSED THIS PARTITION PLAT TO BE PREPARED AND THE PROPERTY PARTITIONED AS SHOWN IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 32 OF OREGON REVISED STATUTES AND FURTHERMORE DOES NOT CLAIM ANY PROPERTY BEYOND THE BOUNDARY AS SOME NATURES AND FURTHERMORE DOES NOT CLAIM ANY PROPERTY BEYOND THE BOUNDARY AS SOMEN MERCON. THIS PLAT IS SUBJECT TO EASERSTING AND FURTHERMORE DOES OF THE PROPERTY PARTITIONED AS SOME AND FURTHERMORE DOES OF THE PROPERTY PARTITION OF THE PARTITION OF THE PROPERTY PARTITION OF THE PROPERTY PARTITION OF THE PROPERTY PARTITION OF THE PROPERTY PARTITION OF THE PARTITION OF THE PARTITION OF THE PROPERTY PARTITION OF THE PARTI THE PURPOSE OF THIS SURVEY IS TO REPLAT LOTS 4, 5, 6, 7, 8, 12, 13, AND A PORTION OF LOT 11, "MINISTON ACRES" PLAT NO 332 CLACKALAS COUNTY PLAT RECORDS AS DESCRIBED IN DEED RECORDED AS DOCUMENT NO. 2022—012904 AND DESCRIBED AS PARCEL IN DEEDS RECORDED AS DOCUMENTS NO. 2026—119592, 2026—119598, 2021—107220, AND 2021—107221, CLACKAMAS COUNTY DEED RECORDS, IN ACCORDANCE WITH CITY OF OREGON CITY COMMUNITY DEVELOPMENT FILE NO. LL-21—00013. THE PURPOSE OF THIS SURVEY IS TO REPLAT LOTS 4. 5. 6. 7. 8. 12. 13. AND A THE BASIS OF BEARINGS AND BOUNDARY DETERMINATION IS PER SURVEY NO. 2021-151, CLACKAMAS COUNTY SURVEY RECORDS. I HELD SOUTH 4134'44" EAST BETWEEN FOUND MONUMENTS "A" AND "8" FOR BEARING BASIS. SERRES FAMILY H. LLC. AN OREGON LIMITED LIABILITY COMPANY 1. THIS PLAT IS SUBJECT TO THE CONDITIONS OF CITY OF OREGON CITY COMMUNITY DEVELOPMENT FILE NO. LL-21-00D13 VRUSTEE OF THE DANIEL S. SERRES LIVING TRUST ACKNOWLEDGEMENT: STATE OF OF COUNTY OF ( COUNTY OF SERRES FARMS DEVELOPMENT, LLC, AN ORECON LIMITED LIABILITY COMPANY. BY: ICON CONSTRUCTION AND DEVELOPMENT, LLC, AN OREGON LIMITED LIABILITY COMPANY, BY: ICON CONSTRUCTION AND DEVELOPMENT, LLC, AN OREGON LIMITED LIABILITY COMPANY, MEMBER OF SERMES FARMS DEVELOPMENT, LLC, AN OREGON LIMITED LIABILITY COMPANY BY MARK HANDRIS — MANAGING MEMBER OF ICON CONSTRUCTION AND DEVELOPMENT LLC, AN OREGON LIMITED LIABILITY COMPANY. THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON ANALY 17, 2012 BY JULIE A. BULLOCK. NOTARY SIGNA COMMISSION NO.: \_1019997 MY COMMISSION EXPIRES: 12.19.25 OWNER'S CONSENT AFFIDAVIT A PARTITION PLAT CONSENT AFFIDAVIT BY IR OREGON HOLDINGS INC., AN OREGON CORPORATION, MEMBER OF SERRES FARMS DEVELOPMENT, LLC, AN DRECON LUMITED LIABILITY COMPANY, OWNER OF THE SUBJECT PROPERTY, HAS BEEN EXECUTED AND RECORDED AS ACKNOWLEDGEMENT: STATE OF OTOM COUNTY OF CHACKENING) SS DOCUMENT NO. 2022-033154 OF CLACKAMAS COUNTY DEED RECORDS. THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON 12 1022 BY DANIEL S. SERRES, TRUSTEE OF THE DANIEL S. SERRES LIVING TRUST. NOTARY SIG ACKNOWLEDGEMENT: fouce E Jameson STATE OF OFCENOR ) SS COMMISSION NO.: LD! 9997 MY COMMISSION EXPIRES: 12.19.25 THIS INSTRUMENT, WAS ACKNOWLEDGED BEFORE ME DN MAN LE BY MARK HANDRIS, MANAGING MEMBER OF DY MARK HANDRIS, MANAGING MEMBER OF LIC, AN OREGON CONSTRUCTION AND DEVELOPMENT LLC, AN OREGON LIMITED LIABILITY COMPANY, BEING A MEMBER OF ACKNOWLEDGEMENT: STATE OF CHEST COUNTY OF CALLEGUES SS LIMITED LIABILITY COMPANT, BEING A MEMBER C SERRES FARMS DEVELOPMENT, LLC, AN OREGON UMITED LIABILITY COMPANY, ON BEHALF OF SAI COMPANIES THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON WALL IS SERRES. MANAGER OF SERRES FAMILY H, LLC, AN OREGON LIMITED LIABILITY COMPANY. ON BEHALF OF SAID COMPANY. NOTARY\SIGIYATURE COMMISSION NO.: 1019977 JMOE JUNESON MY COMMISSION EXPIRES: 12.17.25 NOTARY PUBLIC - OREGON 1997 COMMISSION NO.: \_\_ MY COMMISSION EXPIRES: 12-19-25 DETAIL KAYLYN DRIVE-25.00" RIGHT OF WAY DEDICATION PER DOCUMENT NO. 97-067810 "B" DOCUMENT NO. 96-052032 HELL S01'07'16"W 353.76

1.4' WEST OF LINE

PARCEL 2

# PARTITION PLAT NO. 2022-046

A REPLAT OF LOTS 4, 5, 6, 7, 8, 12, 13, AND A PORTION OF LOT 11, "WINSTON ACRES", PLAT NO. 332, LOCATED IN THE

(Revised 8/28/23)

N.E. 1/4 SECTION 28 AND THE S.E. 1/4 SECTION 21, T.2S., R.2E., W.M. CITY OF OREGON CITY, CLACKAMAS COUNTY, OREGON

APRIL 7, 2022 PLANNING FILE NO. LL-21-00013 SHEET 2 OF 2

#### SURVEYOR'S CERTIFICATE:

I, TOBY G. BOLDEN, HEREBY CERTIFY THAT I HAVE CORRECTLY SURVEYED AND MARKED WITH PROPER MONUMENTS, THE LAND REPRESENTED ON THE ATTACHED PARTITION MAP, SAID LAND BEING DESCRIBED AS FOLLOWS:

A REPLAT OF LOTS 4, 5, 6, 7, 8, 12, 13, AND A PORTION OF LOT 11, "MINSTON ACRES", PLAT NO. 332, CLACKAMAS COUNTY PLAT RECORDS, LOCATED IN THE NE. 1/4 OF SECTION 28 AND THE S.E. 1/4 OF SECTION 21, T.2S. R.ZE., W.M., CITY OF OREGON CITY, CLACKAMAS COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIECE AS FOLLOWS:

APPROVALS:

APPROVED THIS 26 DAY OF May 2022

APPROVED THIS 26 DAY OF 1 ASE 2022

APPROVED THIS 8TH DAY OF 1 ASE 2022

CLACKAMAS COUNTY ASSESSOR AND TAX COLLECTOR

CLACKAMAS COUNTY SURVEYOR

BY: DEPUTY Jay Migh

STATE OF OREGON )
) SS
COUNTY OF CLACKAMAS )

I DO HEREBY CERTIFY THAT THE ATTACHED PARTITION PLAT WAS RECEIVED FOR RECORD ON THE 9th DAY OF JUNE 2022 AT 11:25 O'CLOCK 4....

AS PARTITION PLAT NO. 2022-046

DOCUMENT NO. 2022 - 0.331.5.5

SHERRY HALL. CLACKAMAS COUNTY CLERK

r. Melina Taylor

#### LEGEND:

▲ FOUND 5/8" IRON ROD W/ RED PLASTIC CAP MARKED "CENTERLINE CONCEPTS" FROM \$N 2021-151

DOCUMENT NO. = DEED DOCUMENT NUMBER, CLACKAMAS CDUNTY DEED RECORDS

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 13, 2004
TOBY G. BOLDEN
60377LS

CONTAINING 1,533,165 SOUARE FEET.



FORE OF CURB-

1.5' WEST OF LINE



19376 MOLALLA AVE., SUITE 120 OREGON CITY, OREGON 97045 PHONE 503.650.0188 FAX 503.650.0189

PLOTTED: M: \PROJECTS\ICON-HOLCOMB BLVD-S\DWG\PART-C3D.dwg