



OFFICE OF COUNTY COUNSEL

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

Stephen L. Madkour
 County Counsel

July 20, 2023

BCC Agenda Item: _____

Board of County Commissioners
 Clackamas County

Kathleen Rastetter
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. 2023-002 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 Clackamas County and consists of seven tax lots that are either vacant or include industrial structures. The territory consists of approximately 53 acres of industrial, and is valued at \$12,826,739.

REASON FOR ANNEXATION

The property owners desire annexation to provide sanitary sewer service to facilitate development of the site.

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. 2023-002, 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. 2023-002

} 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 July 20, 2023 and that a decision of approval was made on July 20, 2023;

NOW, THEREFORE, IT IS HEREBY ORDERED that Boundary Change Proposal No. 2023-002 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 July 20, 2023.

ADOPTED this 20th day of July, 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. 2023-002 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 contains approximately 53 acres of industrial land, some of which is vacant and some of which includes industrial structures. It is valued at \$12,826,739.
4. The property owner desires sewer service from the District to receive sanitary sewer service for further development of the property. 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.

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:

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

- (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 in SE Jennifer St. west of the intersection with SE 106th Ave. and a line east of the intersection 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
ANNEXATION DESCRIPTION

A TRACT OF LAND AND PORTION OF RIGHT-OF-WAY, LOCATED IN THE NORTH HALF OF SECTION 15, TOWNSHIP 2 SOUTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, CLACKAMAS COUNTY, OREGON, BEING A PORTION OF RIGHT-OF-WAY, AND PORTIONS OF THOSE TRACTS OF LAND DESCRIBED IN DOCUMENT NOS. 2013-084586, 2018-051425 AND 2019-002387, CLACKAMAS COUNTY DEED RECORDS, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRONZE DISK MARKING THE NORTHWEST CORNER OF SAID SECTION 15, THENCE ALONG THE CENTERLINE OF SE JENNIFER STREET, SOUTH 88° 07' 47" EAST, 972.09 FEET TO THE **POINT OF BEGINNING**; THENCE CONTINUING ALONG SAID CENTERLINE, SOUTH 88° 07' 47" EAST, 1143.63 FEET; THENCE SOUTH 87° 54' 23" EAST, 203.09 FEET; THENCE SOUTH 88° 16' 02" EAST, 170.17 FEET; THENCE LEAVING SAID CENTERLINE, SOUTH 1° 43' 58" WEST, 30.00 FEET TO THE SOUTHERLY RIGHT-OF-WAY OF SAID SE JENNIFER STREET AND THE NE CORNER OF THAT TRACT OF LAND DESCRIBED IN SAID DOCUMENT NO. 2013-084586; THENCE ALONG THE EASTERLY LINE OF SAID TRACT THE FOLLOWING FIVE (5) COURSES: SOUTH 9° 18' 55" EAST, 431.67 FEET; THENCE NORTH 89° 24' 28" EAST, 43.60 FEET; THENCE SOUTH 9° 31' 45" EAST, 81.81 FEET; THENCE SOUTH 88° 20' 17" EAST, 304.06 FEET; THENCE SOUTH 1° 41' 35" WEST, 363.63 FEET TO THE SOUTHEAST CORNER THEREOF; THENCE ALONG THE SOUTHERLY LINE OF THOSE TRACTS OF LAND DESCRIBED IN SAID DOCUMENT NOS. 2013-084586 AND 2019-002387 THE FOLLOWING FIFTEEN (15) COURSES: SOUTH 59° 33' 01" WEST, 102.70 FEET; THENCE SOUTH 77° 30' 31" WEST, 158.40 FEET; THENCE SOUTH 7° 25' 36" WEST, 65.70 FEET; THENCE NORTH 64° 51' 29" WEST, 75.00 FEET; THENCE SOUTH 79° 11' 31" WEST, 99.50 FEET; THENCE NORTH 78° 29' 29" WEST, 87.29 FEET; THENCE NORTH 88° 34' 29" WEST, 320.88 FEET; THENCE NORTH 83° 14' 56" WEST, 103.56 FEET; THENCE NORTH 75° 35' 56" WEST, 138.42 FEET; THENCE SOUTH 62° 19' 04" WEST, 192.04 FEET; THENCE NORTH 58° 12' 24" WEST, 204.30 FEET; THENCE NORTH 88° 36' 24" WEST, 150.00 FEET; THENCE SOUTH 75° 14' 36" WEST, 57.92 FEET; THENCE NORTH 88° 36' 24" WEST, 323.40 FEET; THENCE SOUTH 69° 13' 36" WEST, 28.50 FEET TO THE EASTERLY LINE OF THAT TRACT OF LAND DESCRIBED IN SAID DOCUMENT NO. 2018-051425, THENCE ALONG SAID EASTERLY LINE AND THE SOUTHERLY EXTENSION THEREOF, SOUTH 1° 23' 36" WEST, 181.03 FEET TO THE THREAD OF THE CLACKAMAS RIVER (BASED ON AERIAL DATA COLLECTED DECEMBER 2021); THENCE ALONG SAID THREAD, SOUTHWESTERLY FOR 966 FEET, MORE OR LESS (THE STRAIGHT-LINE COURSE BEING SOUTH 28° 01' 30" WEST, 898.44 FEET) TO THE SOUTHERLY EXTENSION OF THE WESTERLY RIGHT-OF-WAY LINE OF ROBERT AVENUE (BEING VARIABLE IN WIDTH); THENCE ALONG SAID SOUTHERLY EXTENSION AND WESTERLY RIGHT-OF-WAY LINE, NORTH 1° 49' 49" EAST, 1225.97 FEET TO A POINT OF NON-TANGENT CURVATURE; THENCE CONTINUING ALONG SAID WESTERLY RIGHT-OF-WAY LINE THE FOLLOWING THREE (3) COURSES: ALONG THE ARC OF A 45.00 FOOT RADIUS CURVE CONCAVED EASTERLY, AN ARC DISTANCE OF 75.68 FEET, THROUGH A CENTRAL ANGLE OF 96°21'49" (THE CHORD BEARS NORTH 1°46'03" EAST, 67.07 FEET) TO A POINT OF NON-TANGENCY; THENCE SOUTH 88° 16' 18" EAST, 8.90 FEET; THENCE NORTH 1° 49' 49" EAST, 208.04 FEET TO THE WESTERLY EXTENSION OF THE NORTHERLY LINE OF SAID DOCUMENT NO. 2018-051425; THENCE ALONG SAID WESTERLY EXTENSION AND SAID NORTHERLY LINE, SOUTH 88° 09' 02" EAST, 323.64 FEET; THENCE SOUTH 1° 49' 49" WEST, 249.89 FEET; THENCE SOUTH 88° 02' 29" EAST, 60.75 FEET TO THE WESTERLY LINE OF SAID DOCUMENT NO. 2019-002387;

THENCE ALONG SAID WESTERLY LINE, NORTH 01°23'36" EAST 756.07 FEET TO THE **POINT OF BEGINNING.**

CONTAINS 2,251,787 SQ FT, OR 51.649 ACRES, MORE OR LESS.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

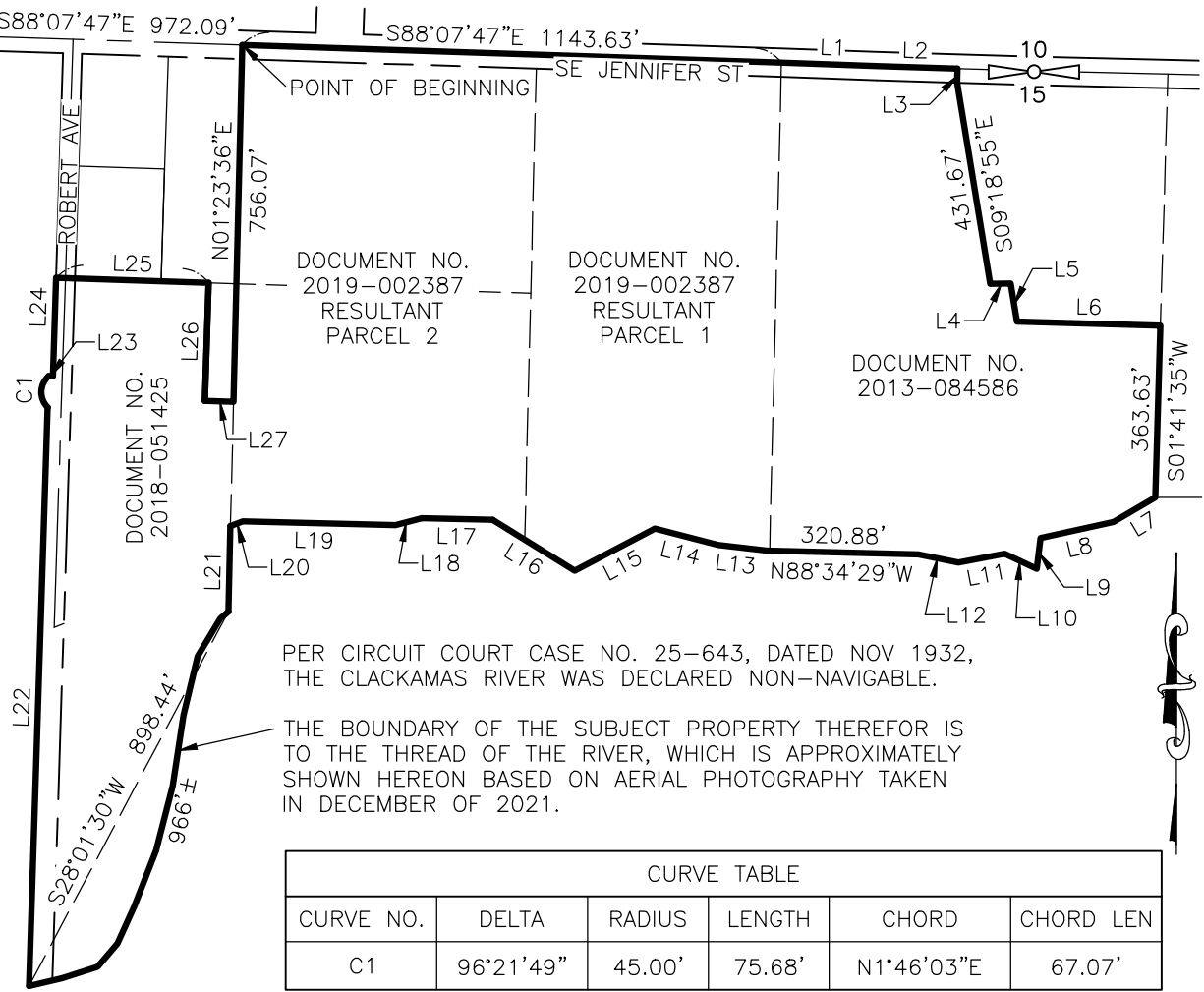
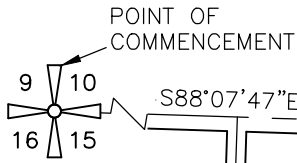
Benjamin Dubin

OREGON
NOVEMBER 29, 2011
BENJAMIN R. DUBIN
84344LS

RENEWS 12/31/23

EXHIBIT C ANNEXATION DESCRIPTION

LOCATED IN THE NORTH HALF OF SECTION 15, TOWNSHIP 2
SOUTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN,
CLACKAMAS COUNTY, OREGON



LEGEND:



AREA OF ANNEXATION DESCRIPTION
2,251,787 SQUARE FEET OR 51.649 ACRES, MORE OR LESS

CURVE TABLE					
CURVE NO.	DELTA	RADIUS	LENGTH	CHORD	CHORD LEN
C1	96°21'49"	45.00'	75.68'	N1°46'03"E	67.07'

LINE TABLE		
LINE #	BEARING	DISTANCE
L1	S87°54'23"E	203.09'
L2	S88°16'02"E	170.17'
L3	S1°43'58"W	30.00'
L4	N89°24'28"E	43.60'
L5	S9°31'45"E	81.81'
L6	S88°20'17"E	304.06'
L7	S59°33'01"W	102.70'
L8	S77°30'31"W	158.40'
L9	S7°25'36"W	65.70'
L10	N64°51'29"W	75.00'

LINE TABLE		
LINE #	BEARING	DISTANCE
L11	S79°11'31"W	99.50'
L12	N78°29'29"W	87.29'
L13	N83°14'56"W	103.56'
L14	N75°35'56"W	138.42'
L15	S62°19'04"W	192.04'
L16	N58°12'24"W	204.30'
L17	N88°36'24"W	150.00'
L18	S75°14'36"W	57.92'
L19	N88°36'24"W	323.40'
L20	S69°13'36"W	28.50'

LINE TABLE		
LINE #	BEARING	DISTANCE
L21	S1°23'36"W	181.03'
L22	N1°49'49"E	1225.97'
L23	S88°16'18"E	8.90'
L24	N1°49'49"E	208.04'
L25	S88°09'02"E	323.64'
L26	S1°49'49"W	249.89'
L27	S88°02'29"E	60.75'

S&F LAND SERVICES

Date: 04/06/2023
Proj No: 2101473

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