



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 the Clackamas River Water District**

|                                     |  |                           |              |
|-------------------------------------|--|---------------------------|--------------|
| <b>Previous Board Action/Review</b> | None                                       |                           |              |
| <b>Performance Clackamas</b>        | Build Public Trust Through Good Government |                           |              |
| <b>Counsel Review</b>               | Initials: JM                               | <b>Procurement Review</b> | No           |
| <b>Contact Person</b>               | Jeffrey D. Munns                           | <b>Contact Phone</b>      | 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 the Clackamas River Water District is such a district.

Proposal No. 2023-001 is a proposed annexation to the Clackamas River Water 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 (<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.

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 located at 17085 S. Killdeer Rd. and consists of one tax lot that is improved with an existing single-family home, driveway, and out buildings. The territory contains 3.78 acres, an occupied residence, and is valued at \$139,450.

## **REASON FOR ANNEXATION**

The property owners desire domestic water service to replace an on-site water supply (well).

## **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 River Water is the water provider in the area where the petitioner's property is located. The Clackamas County Comprehensive plan provides:

- 7.B.1 Develop a Countywide program for domestic water source development.
- 7.B.2 Require all public water purveyors to design the extension of water facilities at levels consistent with the land use element of the Comprehensive Plan. Capacity suitable for fire protection needs to be included.
- 7.B.3 Require water purveyors in urban areas to coordinate the extension of water services with other key facilities, i.e., transportation, sanitary sewers, and storm drainage facilities, necessary to serve additional lands.
- 7.B.4 Encourage development in urban areas where adequate urban water facilities already exist.
- 7.B.5 Require water service purveyors to provide water services for non-urban areas at levels appropriate for non-urban use.
- 7.B.6 Coordinate the review of development applications with the appropriate water service provider to ensure that approval is not granted in the absence of adequate water facilities or a mechanism to provide them concurrently with development.

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

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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.

- (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 (water) by the Clackamas River Water District.

### **RECOMMENDATION**

Based on the attached Order and Findings, Staff recommends approval of Proposal No. 2023-001, annexation to the Clackamas River Water District.

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

In the Matter of Approving a  
Boundary Change Proposal  
No. 2023-001



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 the Clackamas River Water District;

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. 2023-001 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 the Clackamas River Water District as of July 20, 2023.

ADOPTED this 20<sup>th</sup> day of July, 2023.

BOARD OF COUNTY COMMISSIONERS

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Tootie Smith, Chair

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Anthony Mayernik, Recording Secretary

## FINDINGS

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

1. Proposal No. 2023-001 is a proposed annexation to the Clackamas River Water District (“District”).
2. If the Board approves the proposal the boundary change will become effective immediately.
3. The territory to be annexed contains 3.78 acres, is occupied and is valued at \$139,450.
4. The property owner desires service from the District to provide domestic water service to replace an on-site water supply (well). 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 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 (immediately upon adoption) was noted in Finding 2

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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.

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 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:
  - 7.B.1 Develop a Countywide program for domestic water source development.
  - 7.B.2 Require all public water purveyors to design the extension of water facilities at levels consistent with the land use element of the Comprehensive Plan. Capacity suitable for fire protection needs to be included.
  - 7.B.3 Require water purveyors in urban areas to coordinate the extension of water services with other key facilities, i.e., transportation, sanitary sewers, and storm drainage facilities, necessary to serve additional lands.
  - 7.B.4 Encourage development in urban areas where adequate urban water facilities already exist.
  - 7.B.5 Require water service purveyors to provide water services for non-urban areas at levels appropriate for non-urban use.
  - 7.B.6 Coordinate the review of development applications with the appropriate water service provider to ensure that approval is not granted in the absence of adequate water facilities or a mechanism to provide them concurrently with development.
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 water service in this area of Clackamas County.

9. The District has a water line available in S. Killdeer Rd. which can serve the property.
10. The area receives police service from the County Sheriff.
11. 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 to Clackamas River Water District Description

A parcel of land In the West one-half of the Northwest one-quarter of Section 24, Township 3 South, Range 2 East, of the Willamette Meridian, in Clackamas County, Oregon, described as follows:

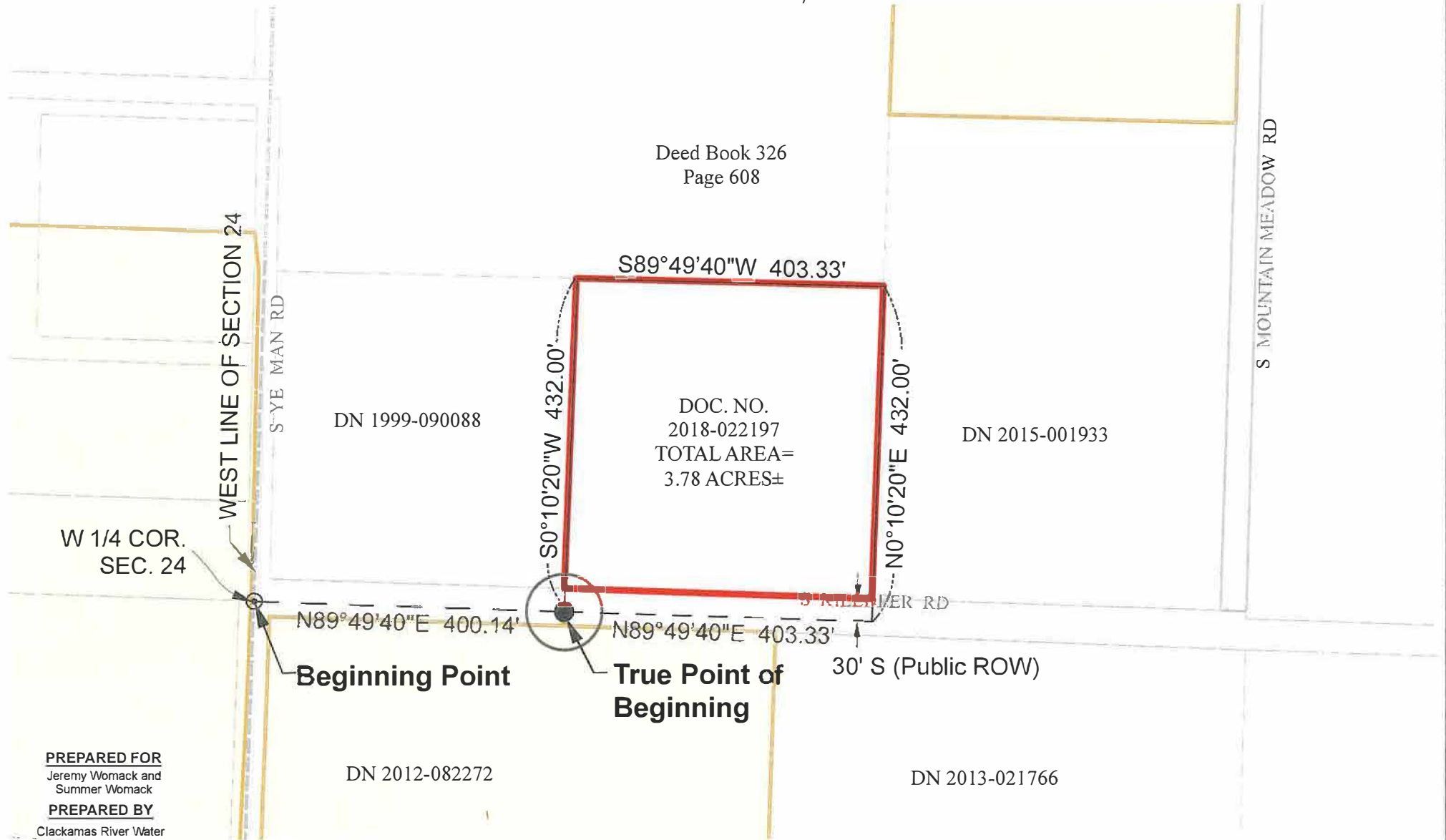
Beginning at a 3/4 inch iron pipe found at the West one-quarter corner of Section 24, Township 3 South, Range 2 East of the Willamette Meridian; thence North 89°49'40" East along the East-West center of Section line, 400.14 feet to the true point of beginning; thence continuing North 89°49'40" East along the center of Section line, 403.33 feet to the Southerly extension of the East line of that parcel conveyed to Willis A. Nicholson by Deed recorded May 27, 1944, in Book 326, Page 608, Deed records; thence North 0°10'20" East along the East line of said tract, 432.00 feet; thence South 89°49'40" West parallel with the center of Section line, 403.33 feet to a point; thence South 0°10'20" West 432.0 feet to the true point of beginning.

Except the South 30 feet which is included in a public road.

# EXHIBIT C

Res. No. 03-2023

ANNEXATION TO CLACKAMAS RIVER WATER DISTRICT  
A TRACT OF LAND LOCATED IN THE NORTHWEST 1/4  
OF SECTION 24, TOWNSHIP 3 SOUTH, RANGE 2 EAST, WILLAMETTE MERIDIAN,  
CLACKAMAS COUNTY, OREGON



PREPARED FOR  
Jeremy Womack and  
Summer Womack  
PREPARED BY  
Clackamas River Water

- Legend
- Tax Lot
  - Parcel Boundary
  - District Boundary
  - PLSS Section Line
  - Subdivisions

1:2,160



Revision: 3/20/23