

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON**

ORDER NO. 2021-016

Approving the annexation of territory to Dunthorpe-Riverdale Service District.

The Multnomah County Board of Commissioners Finds:

- a. The Dunthorpe-Riverdale Service District ("District") is a county service district organized under ORS Chapter 451 that provides sanitary sewer services in unincorporated Multnomah County and unincorporated Clackamas County.
- b. ORS 198.857 provides a process for annexing a parcel of land to a county service district. Under that statute, as well as ORS 198.725 and 198.705(17), the Multnomah County Board of County Commissioners must determine whether to approve a petition to annex property to the District.
- c. A petitioner filed an annexation petition with the Board to request annexation of a parcel of land, described in Exhibit B, to the District pursuant to procedures set forth in ORS 198.857 and Metro Code 3.09.
- d. The annexation petition was approved and endorsed by the board of the District as required by ORS 198.857(2).
- e. A Staff Report which addressed factors mandated in the Metro Code 3.09 and ORS 198.857 was made public 15 days prior to the Board hearing on the annexation petition as required by the Metro Code. The Staff Report is attached hereto as Exhibit A.
- f. A public hearing was held before the Board on April 1, 2021. In determining whether to approve the annexation petition, the Board considered the local comprehensive plan for the area and any service agreements with local governments as required by ORS 198.857(3), and also considered whether the annexation petition met the criteria laid out in Metro Code 3.09.

The Multnomah County Board of Commissioners Orders:

1. The Findings, Reasons for Decision, and Conclusions listed in Exhibit A are adopted by the Board of County Commissioners and demonstrate that the criteria for annexation have been met.
2. The annexation petition is approved, and the property described and shown on the map in Exhibit B is annexed to the Dunthorpe-Riverdale Service District.
3. The District is authorized to construct, maintain, and operate sewage works for the annexed property.
4. The staff is directed to file this document with the required parties and take all necessary steps to finalize the annexation.

ADOPTED this 1st day of April, 2021.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Deborah Kafoury, Chair

REVIEWED:

JENNY M. MADKOUR, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By

Katherine Thomas, Assistant County Attorney

SUBMITTED BY: Jamie Waltz, Director, Department of Community Services

EXHIBIT A

TO: Multnomah County Board of County Commissioners

FROM: Chet Hagen, Dunthorpe-Riverdale Service District Program Manager

DATE: February 19, 2021

RE: Staff Report on Boundary Change Proposal:
Annexation of Parcel to Dunthorpe-Riverdale Service District
Set For March 25, 2021 Board Hearing

1. Staff Recommendation/Action Requested: Approval of annexation petition
2. Financial Impact to Multnomah County: None
3. Legal Issues: None
4. Link to Current County Policies: None
5. Citizen Participation: Notice of the Multnomah County Board of County Commissioners hearing on the annexation petition consisted of:
1) Publishing notice in the Oregonian;
2) Mailed notice to the petitioner, affected local governments, all property owners within 100 feet of the area to be annexed, and all recognized neighborhood or community organizations whose boundaries include the subject property; and 3) weatherproof posting of the hearing notice on a sign located in the public right-of-way adjacent to the subject property. Notice of this hearing included information on how to provide testimony.
6. Other Government Participation: The Dunthorpe-Riverdale Service District ("District") is a county service district that provides sanitary sewer service in unincorporated Multnomah and Clackamas counties and for which the Multnomah County Board of County Commissioners serves as the governing body ("District Board"). The District Board has approved

and endorsed the annexation petition as is required by statute.

The property proposed to be annexed to the District is located entirely in Clackamas County. However, because Multnomah County is the District's principal county, as defined in ORS 198.705(17), the Multnomah County Board of County Commissioners must decide whether to approve the annexation petition. ORS 198.725.

The property proposed to be annexed is also located within the City of Lake Oswego's ("City") Urban Service Boundary. As discussed below, the City does not object to the annexation, but the City will require the petitioner to sign an amended annexation contract in accordance with the City's Comprehensive Plan.

DUNTHORPE-RIVERDALE SERVICE DISTRICT ANNEXATION PETITION STAFF REPORT

Petitioner: Property Owner – Evan Daigneault

Subject Property: Located on the west edge of S.W. Elk Rock Rd. adjacent to 12870 SW Elk Rock Rd, more particularly: Tax Lot 21E02BA03500, NW 1/4 NW 1/4 Sec. 2, T2S R1E, W.M., Clackamas County, Oregon
(See Exhibit B for full legal description and map)

Petitioner initiated a consent annexation petition under ORS 198.857. The petition meets the requirement for initiation of annexation proceedings set forth in ORS 198.857(2) and Metro Code 3.09.040(A) (lists Metro's minimum requirements for petition). If the Board approves the proposal, the boundary change would become effective on the date described in Metro Code 3.09.060(A)(4).

THE SUBJECT PROPERTY

The territory that is proposed to be annexed ("subject property" or "affected territory") is located generally on the south edge of the District on the west edge of S.W. Elk Rock Rd. adjacent to 12870 SW Elk Rock Rd, more particularly: Tax Lot 21E02BA03500, NW 1/4 NW 1/4 Sec. 2, T2S R1E, W.M., Clackamas County, Oregon. A full legal description and map of the subject property is attached to this staff report as Exhibit B.

The subject property is inside of Metro's jurisdictional boundary and inside the regional Urban

Growth Boundary (UGB). The subject property is .45 acres, currently has no dwellings, and is valued at \$368,459.00.

The subject property lies entirely within Clackamas County and is covered by an Urban Growth Management Agreement between Clackamas County and the City of Lake Oswego. The agreement acknowledges that areas covered by the agreement can and should ultimately be provided with a full range of services by the City of Lake Oswego and that this should be accomplished through annexation to the City. However, the subject property is not currently contiguous to the City.

The City of Lake Oswego ("City") has established an Urban Service Boundary, and the subject property is within the City's Urban Service Boundary.

The proposed annexation would not result in the withdrawal of the subject property from the legal boundary of any county, city, district whose jurisdictional boundary or adopted urban service area includes any part of the affected territory or who provides any urban service to any portion of the affected territory; Metro; or any other unit of local government, as defined in ORS 190.003, that is a party to any agreement for provision of an urban service to the affected territory.

JURISDICTION

The entire property to be annexed lies within Clackamas County. However, Multnomah County is the "principal county," as defined in ORS 198.705(17), in the District, and the Multnomah County Board of County Commissioners ("County Board") therefore has jurisdiction to determine whether to approve the annexation petition pursuant to ORS 198.725 and 198.857.

REASON FOR ANNEXATION

The petitioner desires sanitary sewer service to serve a proposed new dwelling.

AVAILABILITY OF SERVICES

District sewer services are available to serve the subject property and the dwelling proposed for that property. In particular, the proposed dwelling can be served from a District sewer line that is in an easement directly north of the subject property, adjacent to 12805 SW Elk Rock Rd.

CRITERIA

Oregon Revised Statute Chapter 198 provides that, when determining whether to approve an annexation petition, the County Board shall "consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district." ORS 198.857(4).

A second set of criteria can be found in the Metro Code. To approve a boundary change, the County Board must apply the criteria and consider the factors set forth in the Code Section 3.09.045(D) and (E). To approve a boundary change the County Board must:

- 1) Find that the boundary change is consistent with expressly applicable provisions in:
 - (A) Any applicable urban service agreement adopted pursuant to ORS 195.065;
 - (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 District and any county, city, district whose jurisdictional boundary or adopted urban service area includes any part of the affected territory or who provides any urban service to any portion of the affected territory; Metro; or any other unit of local government, as defined in ORS 190.003, that is a party to any agreement for provision of an urban service to the affected territory;
 - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services;
 - (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.

In addition, the Board must consider whether the annexation petition covers property that lies outside the UGB.

Finally, ORS 197.175 requires that annexation of property to a district be done in accordance with the statewide planning goals.

Staff has addressed the criteria listed above in the attached Findings, Reasons for Decision, and Conclusions.

STAFF RECOMMENDATION.

Based on the study and the proposed Findings, Reasons for Decision, and Conclusions attached hereto, staff recommends that the annexation petition for the subject property, as described in Exhibit B, be **approved**.

**EXHIBIT A:
FINDINGS, REASONS FOR DECISION, AND CONCLUSIONS**

Based on the staff report and the public hearing, the Multnomah County Board of County Commissioners finds that:

1. Petitioner filed an annexation petition to annex territory described in Exhibit B ("subject property") to the Dunthorpe-Riverdale Service District ("District"). The Petitioner desires sanitary sewer service to serve a proposed new dwelling.
2. The entire subject property lies within Clackamas County. According to Oregon Revised Statute ("ORS") 198.725, when two counties are affected by annexation proceedings, the county board in the "principal county," as defined in ORS 198.705(17), has authority to be the decision maker. Multnomah County is the "principal county" for the Dunthorpe-Riverdale Service District and the Multnomah County Board of County Commissioners ("County Board") therefore has jurisdiction to determine whether to approve the annexation petition for the subject property.
3. The subject property is inside of Metro's jurisdictional boundary and inside the regional Urban Growth Boundary (UGB).
4. The subject property contains .45 acres, no dwellings and is valued at \$368,459.00.
5. The subject property is located entirely within Clackamas County and is zoned R-10, which allows single family dwellings on 10,000 square foot lots. The subject property is .45 acres, or approximately 19,600 square feet. The property contains no existing dwellings and one dwelling is proposed.
6. ORS Chapter 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."
7. To approve a boundary change, the County Board must also apply the criteria and consider the factors set forth in Metro Code Section 3.09.045(D). To approve a boundary change the County Board must:
 - 1) Find that the change is consistent with expressly applicable provisions in:
 - (A) Any applicable urban service agreement adopted pursuant to ORS 195.065;
 - (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 District and any county, city, district whose jurisdictional boundary or adopted

urban service area includes any part of the affected territory or who provides any urban service to any portion of the affected territory; Metro; or any other unit of local government, as defined in ORS 190.003, that is a party to any agreement for provision of an urban service to the affected territory;

(D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services;

(F) 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.

5. To approve a boundary change, the County Board must also apply the criteria and consider the factors set forth in Metro Code Section 3.09.045(E), which provides, "A city may not annex territory that lies outside the [Urban Growth Boundary] UGB, except it may annex a lot or parcel that lies partially within and partially outside the UGB."
6. ORS 197.175 requires that annexation of property to a district be done in accordance with the statewide planning goals.
7. The Land Conservation and Development Commission required each jurisdiction requesting acknowledgement of their comprehensive plan to include in the plan a written statement "setting forth the means by which a plan for management of the unincorporated area within the urban growth boundary will be completed and by which the urban growth boundary may be modified." OAR 660-003-0010(2)(c). This takes the form of urban growth management agreements between cities and counties.
8. The subject property is covered by an Urban Growth Management Agreement between Clackamas County and the City of Lake Oswego. The agreement acknowledges that areas covered by the agreement can and should ultimately be provided with a full range of services by the City of Lake Oswego and that this should be accomplished through annexation to the City. However, the subject property is not currently contiguous to the City.
9. The City of Lake Oswego has established an Urban Service Boundary, and the subject property is within the City's Urban Service Boundary.

10. In light of the Urban Growth Management Agreement and the location of the subject property in the Lake Oswego Urban Service Boundary, the Lake Oswego Comprehensive Plan is the applicable comprehensive plan for the subject property.
11. The Lake Oswego Comprehensive Plan calls for sewer services ultimately to be provided by the City. However, Lake Oswego's Comprehensive Plan allows for interim sewer service to be provided by the District prior to the subject property's annexation to the City.
12. Currently, the subject property is subject to a 2013 Annexation Contract with the City. However, the existing Annexation Contract contemplates connection of the subject property to the City of Portland's sewer system, rather than to the District's sewer system.
13. The City does not oppose annexation of the subject property to the District because the property is not currently contiguous to the City. However, the City's position that it does not oppose annexation of the subject property to the District is dependent on the Petitioner signing an amendment to the 2013 Annexation Contract to reference connection of the subject property to the District's sewer system, and to remove reference to connection to the City of Portland's sewer system. The City's position is based on Lake Oswego Comprehensive Plan Urban Service Boundary and Urban Growth Boundary Policy A-5 (Volume I, part 2, page 167, adopted March 18, 2014), which states:

A-5. Support expansion of an existing service district's boundaries only if:

- a. It can be shown that it is the only feasible way to provide a particular service. City services, rather than district services shall be provided when they are, or can be made available and are adequate;*
 - b. The provision of service is consistent with the City's Public Facility Plan and Comprehensive Plan goals and policies;*
 - c. Annexation agreements are recorded for the property receiving service, to the extent permitted by law; and*
 - d. The service district can maintain an adequate level of service over both the short and long term.*
10. 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 ORS 195 urban service agreements or cooperative planning agreements between the Dunthorpe-Riverdale Service District and other entities.
 11. There is no applicable annexation plan adopted pursuant to ORS 195.205 for the subject property.
 12. There is no concept plan that covers the subject property.

13. The Dunthorpe-Riverdale Service District is a separate governmental entity, which has as its governing body the Multnomah County Board of County Commissioners. The District provides collector sanitary sewer service in the Dunthorpe-Riverdale portion of Multnomah and Clackamas Counties and is the only entity with sewer lines in the area of the subject property. Through an agreement with the City of Portland, sewage from the District is treated at the City's Tryon Creek regional sewage treatment plant. While previously staffed and run by County employees, the District infrastructure is now maintained by the City of Portland through a contract. The proposed dwelling can be served from a District line that is in an easement directly north of the property to be annexed, adjacent to 12805 SW Elk Rock Rd.
14. The subject property receives water service from the Palatine Hill Water District.
15. The subject property is within the Riverdale Rural Fire Protection District.
16. The subject property is served by the Clackamas County Sheriff.
17. Other services are provided generally by Clackamas County and the City of Lake Oswego.

Based on findings, the Multnomah County Board of County Commissioners concludes that:

1. Metro Code 3.09.045(D)(1)(a) requires that any District boundary change be consistent with expressly applicable provisions of urban service agreements adopted pursuant to ORS 195.065. ORS 198.857 requires consideration of any service agreement between a local government and the District. The District is not a party to an urban service agreement. Therefore, these provisions are inapplicable, or if applicable, no inconsistencies exist.
2. Metro Code 3.09.045(D)(1)(b) requires that any District boundary change be consistent with expressly applicable provisions of any applicable annexation plan adopted pursuant to ORS 195.205. No City of Lake Oswego ("City") or District annexation plan covers the subject property. Therefore, this provision is inapplicable, or if applicable, no inconsistencies exist.
3. Metro Code 3.09.045(D)(1)(c) requires the County to find that the boundary change is consistent with any applicable cooperative planning agreement adopted pursuant to ORS 195.020(2) between the District and a necessary party, as defined in Metro Code 3.09.020(J). The District is not a party to a cooperative planning agreement under ORS 195. Therefore, this provision is inapplicable, or if applicable, no inconsistencies exist.
4. Metro Code 3.09.045(D)(1)(d) calls for consistency between the boundary change and any expressly applicable provisions contained in any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services. The City's Public Facility Plan provides for connection of the subject property to the District sewer system. Therefore, the proposed annexation is consistent with the applicable

public facility plan.

5. Metro Code 3.09.045(D)(1)(e) calls for consistency of the boundary change with expressly applicable provisions in any applicable comprehensive land use plans. ORS 198.857 requires consideration of the applicable comprehensive plan. ORS 197.175 requires that annexation of property to the District be done in accordance with the statewide planning goals. The Lake Oswego Comprehensive Plan was adopted pursuant to the statewide planning goals and therefore consistency of the annexation with the Lake Oswego Comprehensive Plan demonstrates consistency with the statewide planning goals. The Lake Oswego Comprehensive Plan calls for sewer services ultimately to be provided by the City. However, Lake Oswego's Comprehensive Plan allows for interim sewer service to be provided by the District prior to the subject property's annexation to the City, and the proposed annexation therefore is consistent with the Comprehensive Plan. In addition, the annexation petition is consistent with Lake Oswego Comprehensive Plan Urban Service Boundary and Urban Growth Boundary Policy A-5 (Volume I, part 2, page 167, adopted March 18, 2014). As noted in Finding 11, the Comprehensive Plan allows annexation of the subject property to the District because the petitioner has agreed to eventual annexation to the City through execution of an annexation contract, which the petitioner has agreed to amend to reflect the connection to the District's sewer system.
6. Metro Code 3.09.045(D)(1)(f) requires consideration of any applicable concept plan. There is no concept plan that covers the subject property. This provision therefore is inapplicable or no inconsistencies exist.
7. Metro Code 3.09.045(D)(2)(a) requires consideration of whether the boundary change would "[p]romote the timely, orderly and economic provision of public facilities and services." The District already provides service to the areas surrounding the subject property. As a result, connection to the District's sewer facilities will be more efficient, both economically and in terms of timing, than extending other possible sewer connections. The Board therefore concludes that annexation promotes the timely, orderly and economic provision of this service.
8. Metro Code 3.09.045(D)(2)(b) calls for consideration of whether the boundary change will affect the quality and quantity of urban services. Given the size of the District, this one-lot annexation will have little or no impact on the District's ability to provide services. Therefore, the boundary change would not significantly affect the quality or quantity of urban services.
9. Metro 3.09.045(D)(2)(c) requires consideration of whether the boundary change would "Eliminate or avoid unnecessary duplication of facilities or services." Annexation legitimizes service provision by the District, which is the only entity with sewer lines in the area. Therefore, provision of these services by another entity would result in unnecessary duplication of facilities and services in the area.
10. Based on the foregoing Findings, Reasons for Decision, and Conclusions, the Board concludes that the annexation petition meets the necessary criteria for approval.

PETITION OF LAND OWNER(S)
FOR A DISTRICT ANNEXATION

PETITION FOR ANNEXATION TO THE: Dunthorpe-Riverdale Service District, a district organized under ORS 451. This petition is filed pursuant to ORS 198.705 to 198.955, and specifically ORS 198.857.

TO: The Board of County Commissioners of Multnomah County

We request that the Board of Commissioners undertake annexation proceedings pursuant to ORS 198. The undersigned land owner(s) in the uninhabited territory proposed to be annexed as described in Exhibit A, hereby petition for a change of organization, and give our consent to, annexation of the area to the Dunthorpe-Riverdale Service District to construct, maintain and operate sewage works.

Other affected districts (if any), and the principal Act of each are: N/A

The affected counties are: Multnomah and Clackamas County

The proposed annexation is subject to the following terms and conditions (if any):

Petitioners will coordinate to amend the current Annexation Contract with the City of Lake Oswego.

The Multnomah County Board of Commissioners has jurisdiction to act on this petition pursuant to ORS 198.857, 198.725, and 198.705(17), and Metro Code 3.09.040(A)(1)

The Property Owners of 0.45 acres in Clackamas County are:

Evan Daigneault

Chet Hagen, Program Manager

Print Name

Certified by: Print Name

6435 SW Parkhill Way, Portland, OR 97239

Mailing Address

Certified by: Signature

Signature

2/18/2021

Date Signed

There are no electors within the affected territory.

Petition to Annex into Dunthorpe-Riverdale Service District Endorsed by:

Deborah Kopyny

Multnomah County Chair acting as District Board Chair

The property to be annexed is described as follows:
See Exhibit A for description and map of the affected territory

PROPERTY DESCRIPTION

January 21, 2021
NWS Project No. 2232
Annexation Area

A tract of land being a portion of Lot 6, Elk Rock Villas, located in the northwest one-quarter of Section 2, Township 2 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, being more particularly described as follows:

Beginning at the northwest corner of Parcel 2 of Partition Plat No. 2009-59, said point being on the west boundary of said Lot 6 and the easterly right-of-way line of State Highway No. 43; thence along said easterly right-of-way line, North 08°41'30" East a distance of 117.66 feet to an angle point thereon; thence continuing along said easterly right-of-way line, 90.07 feet through the arc of a non-tangent 2251.45 foot radius circular curve to the right, said curve having a central angle of 02°17'32", a chord bearing of North 21°05'14" East and a chord length of 90.06 feet to a point of tangency thereon; thence continuing along said easterly right-of-way line, North 22°14'00" East a distance of 12.54 feet to its intersection with the northerly line of said Lot 6; thence along the northerly line of said Lot 6, South 66°14'30" East a distance of 86.97 feet to its intersection with the westerly right-of-way line of Elk Rock Road, said point being 7.50 feet westerly of the centerline thereof, when measured at right angles; thence along said westerly right-of-way line, 78.65 feet through the arc of a non-tangent 157.50 foot radius circular curve to the left, said curve having a central angle of 28°36'42", a chord bearing of South 14°03'51" West and a chord length of 77.84 feet to a point of reverse curvature; thence 99.48 feet through the arc of a 142.50 foot radius circular curve to the right, said curve having a central angle of 40°00'00", a chord bearing of South 19°45'30" West and a chord length of 97.48 feet to a point of reverse curvature; thence 42.72 feet through the arc of a 157.50 foot radius circular curve to the left, said curve having a central angle of 15°32'33", a chord bearing of South 31°59'13" West and a chord length of 42.59 feet to the northeast corner of said Parcel 2; thence along the northerly line of said Parcel 2, North 66°14'30" West a distance of 65.67 feet to the Point of Beginning.

Said described tract of land contains 19,435 square feet, more or less.

Bearings are based Oregon Department of Transportation right-of-way map 2B-26-16.



