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MAY 21, 2021

TO: House Special Subcommittee on Wildfire Recovery

FROM: Chris Hearn (chearn@davishearn.com)
DAVIS HEARN ANDERSON & TURNER, PC (www.davishearn.com)

RE: HB 3126 (Legislator Amendment Request by Rep. Pam Marsh)
WHISPERING PINES' MOBILE HOME PARK TIME LINE
CHARLOTTE ANN WATER DISTRICT ANNEXATION

Dear House Special Subcommittee on Wildfire Recovery,

Our firm represents Steve & Cindy Taylor, owners of Whispering Pines Mobile Home Park in Jackson County. I respectfully submit the following time line and comments in connection with my oral testimony in support of the amendment to HB 3126 proposed by Rep. Pam Marsh.

- Before September 8, 2020: Whispering Pines Mobile Home Village is a 63-home "over 55" park. Established in the 1970s, Whispering Pines lies just south of Medford, within neighboring City of Phoenix's Urban Reserve, but outside its Urban Growth Boundary (UGB). Whispering Pines is served by three domestic water wells. Due to groundwater depletion in the area, Whispering Pines has suffered a decline in both the quality and quantity of its well water serving the park's community.
- September 8, 2020: Alameda fire tears through the Bear Creek/I-5 corridor, burning over 2,500 structures. Whispering Pines loses 46 homes. Two of Whispering Pines' three wells are destroyed by the fire.
- October, 2020: Whispering Pines is left with insufficient water to serve the remaining 17 homes in the Park, and is required to truck in water at an

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approximate cost of \$325 per home per month. This is not sustainable for a mobile home park composed primarily of seniors on a fixed income. Fire victims desiring to move new mobile homes back into Whispering Pines to replace their homes are told the park cannot accommodate them due to lack of domestic water due to the two lost wells and the possibility of groundwater contamination from toxic substances from all the structures burned in the area; and no water in reserve for fire protection. Due to the fire, the nearest mobile home park with any available spaces is over an hour away.

- November, 2020: Whispering Pines owners Steve & Cindy Taylor appear before Charlotte Ann Water District, which surrounds Whispering Pines on three sides and has an available water line within 15 feet of the Whispering Pines property. Charlotte Ann Water District tells the Taylors it is prohibited from extending services or expanding its boundaries to include Whispering Pines without approval from Jackson County Board of Commissioners and the Medford Water Commission (which provides water to CAWD). The Taylors appear before the Jackson County Board of Commissioners and Medford Water Commission. They are advised to retain an attorney due to the complexity of the annexation process.
- December, 2020: After consultation with Jackson County Counsel; City of Phoenix; DLCD; Jackson County Health Department’s Drinking Water Coordinator; Counsel for Charlotte Ann Water District (CAWD); and Counsel for Medford Water Commission (MWC), Whispering Pines pursues a Landowner Petition for Annexation into Charlotte Ann Water District under the process provided in ORS 198.857. A landowner petition for annexation into a water district is a much less onerous process than the alternative “health hazard annexation” process provided by ORS 431.705 - ORS 431.760 (which requires a determination by the Oregon Health Authority following an investigation followed by a contested case hearing process before an administrative law judge).
- A 1995 Urban Growth Management & Policy Agreement (UGBMA) between Jackson County and City of Phoenix prohibits expansion of urban water or sewer services to areas outside a City’s UGB absent a “danger to public health” under the statutory definition provided by ORS 431.705(4).¹

¹ “‘Danger to public health’ means a condition which is conducive to the propagation of communicable or contagious disease-producing organisms and which presents a reasonably clear possibility that the public generally is being exposed to disease-caused physical suffering or

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- January, 2021: City of Phoenix agrees to support Whispering Pines' Petition for Landowner Annexation under ORS 198.857.
- February 11, 2021: Charlotte Ann Water District's Board unanimously approves Whispering Pines' Landowner Petition for Annexation under ORS 198.857, based on the County Health Department's findings; but subject to the required agreement by Medford Water Commission to supply Charlotte Ann Water District with the necessary additional water necessary to serve the Whispering Pines property.
- February 22, 2021: Jackson County Health Department's Drinking Water Program Coordinator provides a letter finding the circumstances at Whispering Pines constitute a "danger to public health" under the definition provided in ORS 431.705(4)(a), and supporting Whispering Pines' Landowner Petition for Annexation into Charlotte Ann Water District under ORS 198.857.
- March 15-16, 2021: Medford Water Commission contacts the Oregon Health Authority, and is told that only the Oregon Health Authority may only make a "danger to public health" determination after following the statutory process provided by ORS 431.705 *et seq.* (although OHA is unaware of any prior annexation application ever being submitted under that statute).
- March 17, 2021: Medford Water Commission decides its policies will only allow MWC to agree to provide the additional water to Charlotte Ann Water District necessary to serve Whispering Pines if Whispering Pines successfully pursues the process provided in ORS 431.705 *et seq.*, which requires:
 - A certified resolution from the Jackson County Board of Commissioners or an order from a county court requesting OHA initiate proceedings to annex Whispering Pines into Charlotte Ann Water District based on an ORS 431.715 "danger to public health" determination.
 - Whispering Pines must first engage an engineer to provide the Board of County Commissioners with a "study" and preliminary plans and

illness, including a condition such as: (a) Impure or inadequate domestic water." ORS 431.705(4)(a).

specifications for the proposed service facilities. *ORS 431.715(3)*.

- The Environmental Quality Commission must review and either approve or deny Whispering Pines' preliminary plans and specifications for the proposed facilities. *ORS 431.720*.
- Upon receipt of a certified copy the resolution from the Board of County Commissioners, OHA has 30 days to schedule a "review and investigation" of the conditions causing a danger to public health. *ORS 431.725(1)*.
- If OHA's preliminary investigation finds "substantial evidence that a danger to public health exists," then OHA issues an order setting the time and place for a contested hearing before an administrative law judge appointed by the Department of Administrative Hearings. *ORS 431.725(1)*.
- OHA shall set the hearing before the administrative law judge not less than 30 days, nor more than 50 days, from the date of the OHA Order. *ORS 431.725(1)*.
- OHA gives notice of the time and place of the hearing by publishing the order and resolution in a newspaper of general circulation within the territory once each week for two successive weeks; and by posting copies of the order in four public places within the territory prior to the hearing. *ORS 431.725(2)*.
- The administrative law judge appointed by the Department of Administrative Hearings conducts a contested case hearing, taking oral and written testimony from any concerned persons or entities. *ORS 431.730(1)*.
- Time frames are then provided for interested persons to request oral argument before the Oregon Health Authority based on the findings of the administrative law judge. *ORS 431.730(2)*.
- The Director of the Oregon Health Authority has authority to find no danger to public health exists, and to summarily terminate the annexation proceedings at any time. *ORS 431.735*.

Conclusion:

- The process and time lines associated with pursuing annexation into a local water district under ORS 431.705 *et seq.* is uncertain and takes months. The statute was adopted in 1975, yet OHA informs us it is unaware of any applicant ever successfully pursuing the cumbersome ORS 431.705 process. No administrative rules, case law, or prior decisions exist to provide guidance to OHA or interested parties concerning the ORS 431 process.
- The ORS 431 process simply fails to provide an expeditious or certain avenue for relief in situations where the danger to public health is caused by a cataclysmic wildfire destroying a community's water system.
- In the wake of a wildfire or other natural disaster, the County Health Department should be permitted to assess the adequacy or impurity of a property's water supply, and the Board of County Commissions and local water providers should permit annexation into a water district without requiring the landowner pursue the unduly long and uncertain annexation process provided by ORS 431.
- Instead, the landowner should be permitted to pursue a landowner petition for annexation under ORS 198.857, supported by a danger to public health determination and annexation recommendation from the County Health Department.
- Please support the Legislator Amendment Request proposed by Rep. Pam Marsh (HB 3126).

Respectfully submitted,
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