

OSBT Questions on CU Annexation Agreement & SBC Flood Mitigation

10/13/21

1.] Why were changes to the de-annexation clause of the AA not disclosed in the *Summary of Key Changes* document to the 99% draft? (attached) The language which was taken out had been proposed by the city but not given final approval by CU. It was not considered a key change – in order for permits to be issued for the flood project, the city will need land for a floodwall. Not having the language did not change that reality for the flood project.

2.] Did OSMP discuss the changes with CAO, and was CAO made aware the changes countered long-standing staff guidance to multiple OSBTs? Everyone on the negotiating team gave input including CAO and OSMP staff. Negotiation trade-offs were not made by CAO. The team attempted to address the OSBT resolution and past OSBT guidance in as many places as possible.

3. A] The language of the de-annexation clause, in all recent versions, stated that any event triggering a potential City request for de-annexation was at the sole and final discretion of City Council. The land contingency clause, applicable to CU, OSMP, and potentially CDOT lands, did not create any new or additional authority on the matter, it provided City Council an option. Did CAO explain that to City Council? Communication between the CAO and council is privileged. Council members have asked questions on many sections of the agreement. If the City does not obtain permits, city council can request disconnection/de-annexation. If OSBT does not dispose of land for the floodwall, Utilities could pursue a design solution. If no such solution exists (or is too costly) and there is not a disposal of land that is needed for the floodwall, then permits will not be issued, which may result in council requesting de-annexation/disconnection.

3. B] OSBT could interpret the change in question served the purpose of altering the nature and scope of any potential Open Space citizen referendum and limiting the discretion of future Councils. Are those interpretations correct or incorrect? Incorrect – the agreement cannot change the charter.

4.] OSBT/OSMP's environmental review was diminished under other permitting bodies due to this change. OSMP is the controlling land manager and most knowledgeable entity on the habitat impacts of the project. How does that change benefit the City? The primary community benefit is the flood control project. OSBT still has its full authority over any disposal needed for the flood project, and demonstrated control of necessary lands is expected to be a prerequisite for regulatory permit issuance. Therefore, the change could be considered immaterial to community benefits.

5.] At the City Council meeting in which the AA was adopted, Council and CAO discussed both potential Council referred measures requesting Open Space Charter changes, and litigation. Such discussion was taken up prior to Council and OSBT receiving the results of critical environmental analysis, including the underground waterflow analysis which will help determine the probable extent of threatened species displacement. Can OSBT interpret this discussion and its timing in any way other than coming to the conclusion the results of objective environmental analysis will not be considered? Individual council members discussed possible pathways by which the city could resolve

internal differences over the use of city lands as an example of why it might be unreasonable to provide such a direct trigger for de-annexation/disconnection in the agreement. Such hypothetical pathways would be difficult and extreme, providing ample opportunities for considering environmental analyses and impacts. There have been no council requests for action related to any of the hypotheticals discussed at the council meeting in which the AA was adopted.

Litigation may occur because of the pending initiative and expected referendum. If the annexation agreement is found to be void or is repealed by the referendum, then the study envisioned by the IGA would not be required because there would not be annexation. If the annexation agreement remains in place, the city and CU will negotiate an IGA and have the study conducted and the results considered.

6.] Will OSMP and Utilities staff provide a basic flow chart showing the order and prior dependencies of each required permit? The permits for the project can all be pursued concurrently with those having the longest lead time prioritized first. Required permits include: USACE/EPA 404 Individual Permit (including USFWS Consultation), FEMA CLOMR, CDOT Right of Way Permit and Landowner Agreement, Colorado Dam Safety Engineer Design Approval, and City of Boulder wetland and floodplain permits. Utilities staff will be prepared to discuss this in more detail during the December OSBT study session.

7.] Will OSMP staff outline the steps being considered for the IGA (referenced in the AA) which will prevent the degrading of sound and light in the State Natural Area? OSMP staff have not yet developed an approach to negotiating this IGA for preventing disturbance to protect city open space. The need for this would be triggered by CU indicating an intent to construct recreation or event facilities on the annexed property -- which cannot be constructed until the study is completed.

8.] What is the proposed timeline for development of the Inter-Departmental Memorandum of Understanding between OSMP and Utilities that will describe the specific compensation through environmental mitigation that OSMP will receive in exchange for any potential disposal?

The MOU would be prepared as part of the meeting materials presented to the board at the time board action is requested for a disposal according to the normal disposal process. The timing for a disposal request is under review by staff. Considerations as to when to bring a request will be based on the legal environment and design milestones.

Tracked Changes to Section 41. B. (36. B.)

Language removed: "The City will also need the land on which to construct the project" and "or does not have the land upon which the project may be constructed."

41. B - New

Disconnection from the City. Prior to construction, the Project will require approvals from: the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Federal Emergency Management Agency, Colorado Department of Transportation, Colorado State Engineer's Office and City of Boulder. Necessary permits include: USACE/EPA 404 Individual Permit (this include USFWS Consultation), FEMA CLOMR, CDOT Right of Way Permit and Landowner Agreement, Colorado Dam Safety Engineer Design Approval, and City of Boulder wetland and floodplain permits; which the City will use reasonable efforts to obtain. If the City does not receive such approvals by the end of the De-Annexation Period, the City, in its discretion, may require that the University apply and otherwise commence the process to disconnect the Property from the City using the process described in § 31-12-501, C.R.S. et seq. Upon written request by the City to commence the process to disconnect, the University will take action within 30 days to commence and complete the legislative process to disconnect. If so requested by the University, the City will not charge the University for any cost associated with disconnection from the City. For the purposes of this annexation, the City adopts the disconnection procedures § 31-12-501, C.R.S. et seq. which will be the sole and exclusive procedure for disconnection, if the same is requested.

36. B. - Old

- b. Disconnection from the City. Prior to construction, the Project will require approvals from: USACE/EPA 404 Individual Permit (this include USFWS Consultation); FEMA CLOMR; CDOT Right of Way Permit and Landowner Agreement; and Colorado Dam Safety Engineer Design Approval. The City will also need land upon which to construct the Project. If the City does not receive such approvals or does not have land upon which the Project may be constructed by the Three-Year Anniversary of the Effective Date of the annexation ordinance the City, in its discretion, may request that the University apply and otherwise commence the process to disconnect the Property from the City using the process described in § 31-12-501, C.R.S. et seq. If so requested by the University, the City will not charge the University for any cost associated with disconnection from the City. For the purposes of this annexation, the City adopts the disconnection procedures § 31-12-501, C.R.S. et seq.
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