



Washington County
Department of Land Use and Transportation
Planning and Development Services
155 N First Ave, Suite 350
Hillsboro, OR 97124

NOTICE OF DECISION OF THE HEARINGS OFFICER

PROCEDURE TYPE: III

CPO: 7 COMMUNITY PLAN:
Sunset West

LAND USE DISTRICT:
Neighborhood Commercial (NC)

PROPERTY DESCRIPTION:
ASSESSOR MAP#: 1N1 19BC
LOT#'S: 500 and 600
SITE SIZE: 1.21 acres
ADDRESS: 18450 NW West Union Road

CASEFILE: L2200199-SU/SU/SU/D(C)/AMP/M

APPLICANT & OWNER:
CJRW LLC / Mr. Bob Barman
P.O. Box 2092
Lake Oswego, OR 97035

APPLICANT'S REPRESENTATIVE:
3J Consulting
Attn: Mercedes Serra
9600 SW Nimbus Avenue, Suite 100
Beaverton, OR 97008

LOCATION: At the southeast corner of the
intersection of NW West Union Road and NW
185th Avenue.

PROPOSED DEVELOPMENT ACTION: Special Use and Development Review approval for a
two story, 4,428 square foot commercial development, "Chevron Market," (Convenience
Market / Gas Pumps / Drive-Thru) served by 4 fueling islands (8 pumps) and 22 parking
spaces, and an Access Management Plan for access to NW West Union Road.

DATE OF DECISION:
January 30, 2023

A summary of the decision of the Hearings Officer and supplemental findings are attached.

This decision may be appealed to the Land Use Board of Appeals (LUBA) by filing a notice of Intent to Appeal with LUBA within 21 days of the date of this decision. Contact your attorney if you have any questions in this regard.

For further information contact the Land Use Board of Appeals at 503-373-1265.

The complete case, including Notice of Decision, Application, Staff Report, Findings and Conclusions, and Conditions of Approval, if any, are available for review at no cost at the Department of Land Use and Transportation. Copies of this material will be provided at reasonable cost.

Notice to Mortgagee, Lien Holder, Vendor or Seller: ORS Chapter 215 requires that if you receive this notice it must promptly be forwarded to the purchaser.

CASEFILE NUMBER: L2200199-SU/SU/SU/D(C)/AMP/M

SUMMARY OF DECISION:

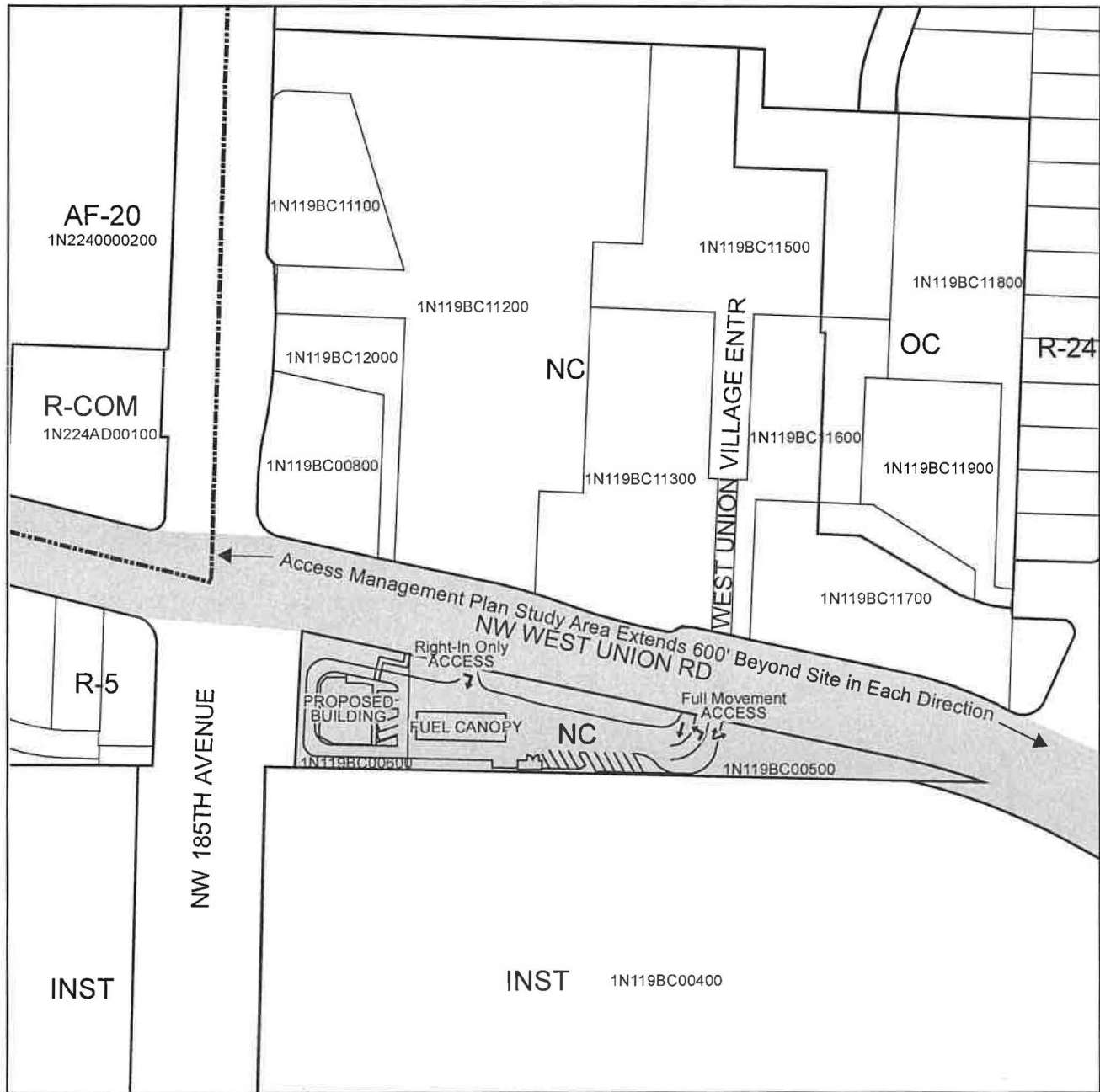
On January 30, 2023, the Washington County Hearings Officer issued a written decision (Attachment 'B') for Special Use and Development Review approval for a two story, 4,428 square foot commercial development, "Chevron Market," (Convenience Market / Gas Pumps / Drive-Thru) served by 4 fueling islands (8 pumps) and 22 parking spaces, and an Access Management Plan for access to NW West Union Road. The development site is located on the east side of NW 185th Avenue and on the south side of NW West Union Road in CPO #7, and is described as Tax Lots 0500 and 0600 Assessor Map 1N1 19BC W.M., Washington County, Oregon. The Hearings Officer's decision is as follows:

ORDER:

The applicant is Approved subject to Conditions of Approval set forth in Attachment B.

Attachments:

- A. Vicinity Map
- B. Hearings Officer's Findings, Conclusion and Order



↑ NORTH
NOT TO SCALE

■ AREA OF CONSIDERATION

SITE & SURROUNDING LAND USE DISTRICTS:

- Neighborhood Commercial District (NC)
- Institutional District (INST)
- Office Commercial District (OC)
- R-5 District (Residential 5 units/acre)
- R-9 District (Residential 9 units/acre)
- R-24 District (Residential 24 units/acre)

REVIEW STANDARDS FROM CURRENT OR APPLICABLE ORDINANCE OR PLAN

- A. Washington County Comprehensive Plan
- B. Applicable Community Plan (See Front of Notice)
- C. Transportation System Plan
- D. Washington County Community Development Code:
 - ARTICLE I, Introduction & General Provisions
 - ARTICLE II, Procedures
 - ARTICLE III, Land Use Districts
 - ARTICLE IV, Development Standards
 - ARTICLE V, Public Facilities and Services
 - ARTICLE VI, Land Divisions & Lot Line Adjustments
 - ARTICLE VII, Public Transportation Facilities
- E. R & O 86-95 Traffic Safety Improvements
- F. ORD. NO. 738, Road Design and Construction Standards
- G. ORD.691-A, 729, 741, 746, 751, 793-A Transp. Development Tax

**BEFORE THE LAND USE HEARINGS OFFICER
OF WASHINGTON COUNTY, OREGON**

In the matter of Special Use and Development Review approval for a commercial development known as Chevron Market, an Access Management Plan, and a Half-Street Exception

Applicant: CJRW LLC/Bob Barman

Applicant's Representative: 3J Consulting, Mercedes Serra

FINAL ORDER

Casefile No. L2200199-SU/SU/SU/D(C)/AMP/M

APPROVED with Conditions

I. Background

The request is for Special Use and Development Review approval for a convenience market with gas pumps and a drive-thru, which will be known as Chevron Market. The development is comprised of a two-story 4,428 square foot commercial development¹, served by 4 fueling islands (2 pumps per fueling island for a total of 8 pumps), 22 parking spaces (8 at the pumps and 14 surface parking spaces), and associated site landscaping.

The other element of this project includes an Access Management Plan (AMP) to allow two accesses to NW West Union Road.

The subject property is located at 18450 NW West Union Road (Tax Lots 1N119BC00500 and 600). The subject site is 1.21 acres and is designated Neighborhood Commercial (NC) on the Sunset West Community Plan. The applicant obtained approval of a Property Line Adjustment (Casefile L1900411-PLA) to consolidate the two tax lots. The approved PLA, survey and deeds are required to be recorded and taxes paid (if any), prior to issuance of Final Approval.

The applicant proposes access to the property via two driveways on NW West Union, for which the applicant requested approval of an Access Management Plan. The first and western-most driveway is proposed as right-in only and is located approximately 210 feet east of NW 185th

¹ 4,428 gross square would generate based on ITE Category 853 about 2,764 new trips (624.20 trips / 1000 square feet of gross floor area = 624.2 x 4.428 = 2,764 new trips).

Avenue. The second driveway is aligned with the commercial driveway serving the Albertson's shopping center on the north side of NW West Union Road. The second driveway is located about 440 feet east of NW 185th Avenue and will be improved to comprise the 4th leg of the signalized intersection.

The applicant also requests approval of an Exception to the Half-Street Improvements required for NW West Union Road pursuant to Section 501-8.2 G.

Letters were received from Clean Water Services, Washington County Building Division and Washington County Engineering, and are in the Record.

Application Submitted:	May 11, 2022
Application Deemed Complete:	July 21, 2022
Public Hearing Date:	October 20, 2022
Continued Hearing Date:	November 17, 2022
120 Day Clock:	January 30, 2023

The applicant agreed to extend the 120-day clock to January 30, 2023.

At the first public hearing on October 20, 2022, the Hearings Officer approved the applicant's request to continue the public hearing to November 17, 2022 at 1:00 pm. Public testimony was also deferred to November 17.

At the end of the continued hearing on November 17, 2022, the Hearings Officer closed the hearing but left the record open for three distinct periods to receive additional testimony and evidence from the parties, and to permit the applicant to present final argument.

Numerous emails and letters were received for this project prior to the hearing, both in support of and opposed to the development. Parties presented additional testimony and evidence at the hearing and during the open record periods. Key concerns with the project as proposed are outlined below.

II. Key Concerns

Key concerns can be summarized loosely as follows:

- Significant potentially negative impacts to the environment, due to location near a wetland,
- Increased vehicle trips creating traffic issues and safety hazards,
- There are other locations north of Highway 26 that are better suited for a gas station that do not have the same critical environmental and traffic considerations as this site,
- There are other more-environmentally friendly commercial uses that should be developed on the property, such as a café/restaurant or convenience market but without a gas station,

- Issues with non-compliance with various code sections including lot of record and lot width, and nonconforming use status, and
- Issues relating to the County's required half-street improvements.

These issues are addressed in this order.

III. Applicable Standards and Affected Jurisdictions

- A. Washington County Comprehensive Plan
- B. Sunset West Community Plan
- C. Washington County Community Development Code:
 - 1. Article II, Procedures:
 - Section 202-2 Type II Procedure
 - Section 202-3 Type III Procedure
 - Section 207-5 Conditions of Approval
 - 2. Article III, Land Use Districts:
 - Section 311 Neighborhood Commercial District (NC)
 - 3. Article IV, Development Standards:
 - Section 403 Applicability
 - Section 404 Master Planning
 - Section 405 Open Space
 - Section 406 Building Siting and Architectural Design
 - Section 407 Landscape Design
 - Section 408 Neighborhood Circulation
 - Section 410 Grading and Drainage
 - Section 411 Screening and Buffering
 - Section 413 Parking and Loading
 - Section 414 Signs
 - Section 415 Lighting
 - Section 416 Utilities
 - Section 417 Irrigation
 - Section 418 Setbacks
 - Section 419 Height
 - Section 421 Flood Plain and Drainage Hazard Area Development
 - Section 422 Significant Natural Resources
 - Section 423 Environmental Performance Standards
 - Section 426 Erosion Control
 - Section 429 Bicycle Parking
 - Section 430 Special Uses
 - Section 430-35 Convenience Groceries

- Section 430-41 Drive-in or Drive-up Establishment
- Section 430-123 Service Stations
- 4. Article V, Public Facilities and Services:
 - Section 501 Public Facility and Service Requirements
 - Section 502 Sidewalk Standards
- D. Ordinance No. 768-A, 783-A, 799-A – Washington County Transportation System Plan
- E. Ordinance No. 793-A - Washington County Transportation Development Tax Ordinance
- F. Ordinance No. 738- Road Design and Construction Standards Uniform Road Improvement Standards
- G. Resolution & Order 86-95 - Determining Traffic Safety Improvements
- H. Resolution and Order No. 19-05 - Erosion Control, Water Quality and Water Quantity, as amended by Resolution and Order No. 19-22

State Highways:	Oregon Department of Transportation
Sewer:	Clean Water Services
Streets:	Washington County Dept. of Land Use and Transportation
Drainage:	Washington County Dept. of Land Use and Transportation
Water Quality & Quantity:	Clean Water Services
Erosion Control:	Clean Water Services
Water:	Tualatin Valley Water District
Fire Protection:	Tualatin Valley Fire & Rescue
Police Protection:	Washington County Sheriff
Schools:	Beaverton School District
Transit:	Tri-Met
Parks:	Tualatin Hills Park & Recreation District

IV. Findings

A. Washington County Comprehensive Framework Plan

There are no specific Framework Plan policies or goals that affect this request that are not implemented by the Community Development Code (“CDC” or “Code”) or the applicable Community Plan. The Framework Plan requires development applications to be in compliance with the Code and the applicable Community Plan. Community plans may contain criteria that apply to development applications. This generally depends upon whether language in a community plan is clearly intended to serve as an approval criterion. It may also depend upon

whether the application constitutes a “limited land use decision” as state law defines that term. The applicability of the Sunset West Community Plan to this application is discussed below.

B. Sunset West Community Plan

The evidence in the record demonstrates the site is within the boundaries of the Sunset West Community Plan (“SWCP”). NW Union Road separates the site from the Bethany Community Plan. The site is not located in an Area of Special Concern. The site is not mapped as containing a Significant Natural or Cultural Resource.² Metro has designated a narrow portion of the southern property as a Title 13 riparian area.

Opponents asserted that other community plans also apply to the application, based on the reference to “community plans” in the preface section of the Framework Plan, as follows:

Once a community plan has been adopted by ordinance, that plan shall become the legally binding statement of County policy within the boundaries of that planning area. Development applications within an adopted community plan area need only show compliance with the community plans, applicable functional plans and development regulations. A demonstration of compliance with the Framework Plan shall have been accomplished by the adoption of a community plan.

The opponents assert that the use of the plural “plans” in the second sentence means applicants must show compliance with one or more of the County’s other community plans, not just the community plan whose boundaries encompass the development site. The Hearings Officer disagrees.

The context of the quoted language shows that community plans exist to implement the broadly applicable policies and strategies in the Framework Plan, while accounting for issues that may be specific and unique to various areas of Washington County. Compliance with an applicable community plan demonstrates compliance with the Framework Plan. If the intent was to require an applicant to comply with all community plans, the County would have had no reason to create community plans in the first place. Rather, the County would have presumably put every policy and strategy in the Framework Plan, regardless of any issues that would be unique to development in a specific area of the County. At the very least, the County would need to unambiguously state its intent to apply an element of one community plan to development on property located in a different community plan.

² See SWCP, Map No. 4.1.

It is the opinion of the Hearings Officer that “plans” is plural either due to a drafting/editing oversight, or to address the theoretical possibility that a given site could be included in the boundaries of more than one community plan. There is no evidence in the record that the property in question is within the boundary of any community plan other than the SWCP. Therefore, the Hearings Officer finds that criteria that may apply within the boundaries of other community plans (including the adjacent Bethany Community Plan) do not apply to this application.³

The project has been reviewed for conformance with the applicable SWCP General Design Elements. Those elements are implemented by the Code. When built in conformance with the Conditions of Approval, the project will be in compliance with the SWCP.

C. Washington County Development Code

1. Article II, Procedures:

202-2 Type II Procedures

202-2.1 Type II land use actions are presumed to be appropriate in the District. They generally involve uses or development for which review criteria are reasonably objective, requiring only limited discretion. Impacts on nearby properties may be associated with these uses which may necessitate imposition of specific conditions of approval to minimize those impacts or ensure compliance with this Code.

The site is being developed as a commercial development with a convenience market (311-3.3), service station (311-3.15), and drive-thru (311-3.5), which are listed as Type II uses in Section 311-3. The “Chevron Market” will consist of a convenience market with gas pumps (as classified

³ In OR1-g, an opponent asserted the application must show compliance with “Design Element” No. 3 of the West Bethany subarea of the Bethany Community Plan. This is not unreasonable. The design element says “[t]he neighborhood commercial site at 185th Avenue/West Union Road shall have its access via West Union Road [and] [t]he vehicle entrance shall be a minimum of 300 feet east of the intersection.” However, it also says that “access shall be coordinated with the existing neighborhood commercial area on the south side of West Union Road and designed to minimize and consolidate vehicle turning movements into both commercial areas.”

The design element expressly refers to *two* separate commercial areas (i.e. “both” commercial areas). The “existing commercial area on the south side of West Union Road” is the subject site. The requirement for access via West Union that is at least 300 feet east of the intersection does not apply to the subject site. Rather, it applies to the *other* neighborhood commercial site that is on the *north* side of West Union. See Bethany Community Plan, Map 3.2 (showing a number of properties north of the subject site with a “neighborhood commercial” designation).

by ITE Code 853)⁴ as it includes a two story 4,428 square foot building served by 4 fueling islands (2 pumps per fueling island for a total of 8 pumps).⁵

202-3 Type III Procedures

202-3.1 *Type III actions involve development or uses which may be approved or denied, thus requiring the exercise of discretion and judgment when applying the development criteria contained in this Code or the applicable Community Plan. Impacts may be significant and the development issues complex. Extensive conditions of approval may be imposed to mitigate impacts or ensure compliance with this Code and the Comprehensive Plan.*

202-3.2 *The following are Type III actions:*

A. Those identified in this Code as Type III;

B. Those not identified or otherwise classified which are determined by the Director to be substantially similar to the uses or development designated as Type III, require the exercise of significant discretion or judgment, involve complex development issues, or which likely will have significant impact. The determination may be challenged on appeal of the decision on the proposed development but is not subject to appeal on its own; and

202-5.4 *Notwithstanding any other provision, and, at no additional cost to the applicant, the Director may choose to process a Type II application under the Type III procedure in order to provide greater notice and opportunity to participate than would otherwise be required, or in order to comply with the time requirements for reviewing development applications in ORS 215.428.*

Pursuant to CDC 202-5.4, County staff elected to process this Type II application through the Type III procedures because of the nature of the proposed uses and the amount of public interest in this application. The application remains a Type II application, however the Hearings Officer makes a decision after holding a hearing according to the Type III procedure.

⁴ In the open record period, staff clarified that the applicant's preferred ITE category, 945 (11th edition), yields the same trip generation rate as ITE category 853 (10th edition).

⁵ In the NC District, "convenience groceries" are limited to a maximum of 5,000 square feet of gross floor area, regardless of how the floor area is used. Therefore, the gross floor area of the second-floor mezzanine counts towards the 5,000 square foot maximum.

The Code at Section 403-3.1 contains subjective criteria that can justify denials of Type III applications. Subject to exceptions, that section allows a Review Authority to deny “Type III development” if the development: (a) will significantly decrease the value of surrounding property; (b) will unduly conflict with the character of an area not in transition; or (c) will not serve the public interest at the time it is proposed.

However, Section 403-3.4 limits the applicability of the criteria in 403-3.1. Specifically, Section 403-3.4(A) expressly says that 403-3.1 does not apply to “Type I or II applications reviewed at a Type III proceeding.” Because the application is a Type II application, the Code prohibits the Hearings Officer from applying the criteria in Section 403-3.1.

207-5 Conditions of Approval

207-5.1 The Review Authority may impose conditions on any Type II or III development approval. Such conditions shall be designed to protect the public from potential adverse impacts of the proposed use or development or to fulfill an identified need for public services within the impact area of the proposed development. Conditions shall not restrict densities to less than that authorized by the development standards of this Code.

207-5.2 In addition to conditions imposed pursuant to Section 207-5.1, a condition is valid and enforceable when the applicant has:

- A. Requested the condition;*
- B. Consented to the condition in writing or on the record; or*
- C. Established or commenced the development or use (other than a valid nonconforming use) prior to approval; or*
- D. Submitted graphics or other application materials that were reviewed and approved by the Review Authority; the application must substantially comply with the application materials except as modified by the Review Authority.*

Conditions of approval shall be imposed upon an approval by the Hearings Officer to ensure compliance with the standards of the Code and other County regulations and to mitigate for the potential for any adverse development-related impacts to the surrounding area. Conditions of approval, listed in Exhibit 1, are intended to ensure the project is in conformance with applicable approval criteria and comments from other departments and agencies.

2. **Article III, Land Use Districts:**

Section 311 Neighborhood Commercial District (NC)

311-3 Uses Permitted Through a Type II Procedure

The following uses are permitted subject to the specific standards for the use set forth below and in applicable Special Use Sections of Section 430, as well as the general standards for the District, the Development Standards of Article IV and all other applicable standards of the Code. Approval may be further conditioned by the Review Authority pursuant to Section 207-5.

311-3.3 Convenience Groceries, with a maximum gross floor area of five thousand (5000) square feet - Section 430-35.

311-3.5 Drive-In or Drive-up Establishments (includes beverage venders, film sales, locksmith and other similar uses) - Section 430-41.

311-3.15 Service Station - Section 430-123.

The proposed development includes a 4,428 square foot building containing a convenience grocery store (market) with a drive-thru and service station, served by 4 fueling islands (8 pumps) and 22 off-street parking spaces, plus associated vehicular maneuvering areas and site landscaping. The convenience grocery is proposed to consist of two floors, with the first floor containing 3,510 square feet of convenience grocery, while the proposed second floor mezzanine containing 918 square feet for storage. The mezzanine will provide useable [gross] floor area for storage and equipment, and counts towards the cap of 5,000 square feet of gross floor area.

The preliminary plans and building elevations provide a convenience grocery with a maximum gross floor area of less than 5,000 square feet. The final building plans and site plans showing a structure with a maximum floor area of 5,000 square feet are required as a condition of approval.

311-6 Dimensional Requirements

311-6.1 Lot Area:

The minimum lot area shall be eight thousand five hundred (8500) square feet.

Several disputed issues relate to the Code's dimensional requirements for this property. The disputed issues are due to the property being a corner lot and due to its irregular triangular shape. A property line adjustment ("PLA") the County approved in 2020 also factors into the dispute. This section of the order, as well as the section related to CDC Section 440, evaluates these issues.

The development site is approximately 1.21 acres, which is significantly larger than the Code minimum lot area requirement. As noted, County staff previously approved a separate

application for a PLA (Casefile L1900411-PLA), which eliminated a property line on the site and consolidated two lots. Consistent with the Code, the PLA approval requires the applicant to record a new deed and survey of the consolidated lot. At the time of this order, the applicant has not yet recorded these documents. A condition of approval requires recordation of the deed and survey for the PLA prior to Final Approval of this development.

311-6.2 Yard Requirements:

The minimum yard requirements shall be as follows:

A. Twenty (20) foot front yard;

B. Side Yards:

(1) Abutting a Residential or Office Commercial District, the side and rear yard shall be no less than that required by the abutting district;

(2) Except on corner lots and as in one (1) above, there are no required side or rear yards;

(3) On a corner lot, the side or rear yard abutting the street shall be twenty (20) feet; and

C. Twenty (20) foot rear yard; and

D. Additional setbacks may be required as specified in Sections 411 and 418.

As a corner lot, staff found the NW 185th Avenue frontage to be the front lot line, because it is the shortest of the two street frontage dimensions pursuant to Section 106-113.1.⁶ Opponents disputed whether NW 185th is properly considered the front yard and whether the applicant complies with the 20-foot setback requirement. The Hearings Officer concurs with staff that the site's frontage on NW 185th is the front lot line, because it is "the line separating the narrowest frontage from the street right-of-way." Pursuant to CDC 106-113.2, the rear lot line for triangular lots shall be a line 10 feet in length within the lot, parallel to and at the maximum distance from the front lot line. The site's rear lot line is the line opposite NW 185th Avenue where a parallel 10-foot line is established.

The applicant's site plans show a 20-foot street front setback from NW 185th Avenue.⁷ Therefore, the Hearings Officer finds the front yard requirement is met. With the existing

⁶ 106-113.1 **Front Lot Line.** For interior lots, a line separating the lot from the street right-of-way. For corner lots, the line separating the narrowest frontage from the street right-of-way.

⁷ A corner of the fuel canopy will project 20 inches into the front yard setback, which is permitted under CDC Section 418-1.1.

stormwater facility west of the site, the building would be about 60 feet from the sidewalk on NW 185th Avenue. The water quality facility effectively functions as additional front yard setback.

The side yard for this corner lot is the frontage abutting NW Union. The record shows that the applicant is providing a 20-foot setback along the NW Union frontage, and therefore 311-6.2(B)(3) is met. The fuel canopy is located no less than 370 feet from the projected 10-foot rear yard line, and therefore satisfies the 20-foot rear yard setback requirement. Though an interior yard is not required along the southern property line, the proposed building is set back 25 feet from the interior lot line. The Hearings Officer finds the applicant has met the yard requirements in 311-6.2.

311-6.3 Height:

- A. The maximum height for structures shall be thirty-five (35) feet except as modified by other Sections of this Code.*
- B. Normal building appurtenances and projections such as spires, belfries, cupolas, chimneys, ventilators, elevator housings or other structures placed on or extending above roof level may exceed the thirty-five (35) foot building height limit to a maximum height of sixty-five (65) feet.*
- C. The height of telecommunication facilities are regulated by the Permitted Use sections of this Land Use District, Sections 201, 430-1, 430-109 and other applicable provisions of this Code.*

The proposed building and covered awning/canopy over the fueling islands are noted in submitted plans as less than 35 feet in height. The building elevation indicates that the two story structure is less than 28 feet in height and the canopy measures 16 feet – 6 inches in height. Verification of height requirements will occur prior to issuance of the building permits. This standard is met.

311-6.4 Lot Dimensions:

- A. The minimum average lot width shall be 85 feet;*
- B. The minimum average lot depth shall be 85 feet; and*
- C. The minimum lot width at the access point shall be 40 feet.*

Whether this standard is applicable and, if so, whether the application meets the standard was the subject of significant dispute between opponents, staff and the applicant. The opponents argue that the standard applies and demonstrate that the minimum average lot width for the site is well below 85 feet. Therefore, the opponents believe the application fails to satisfy CDC 311-6.4.

The applicant and staff assert that the lot dimension standards do not apply to the application, based on CDC 440-8.1, which governs development on “lots of record” as that term is defined in Section 106-117, and which excuses lots of record from meeting otherwise applicable dimensional standards in a given district.

For urban areas of the County, a lot of record means a “lot or parcel created by a lawful sales contract or deed and of record prior to March 26, 1984, the effective date of this Code.” There is evidence in the record that the two lots were recorded with the County in December 1948. The arguments focus on the 2020 PLA, which will eliminate the property line separating the two lots and consolidate them into one lot. The opponents assert that the 2020 PLA approval eliminates the lot of record status, effectively creating a new lot that must meet the dimensional standards in 311-6.4.

The Hearings Officer is not aware of any case law that has considered this specific issue. Ultimately, the Hearings Officer does not believe that the consolidation of two lots of record into one lot through a PLA eliminates the lot’s status as a lot of record for purposes of CDC 440-8.1.

As staff noted, state law defines a PLA as the “relocation or elimination of all or a portion of the common property line between abutting properties that does not create an additional lot or parcel.” ORS 92.010(12). In addition, there is no language in the Code that states or indicates that consolidating two abutting lots of record results in the consolidated lot losing its status as a lot of record.⁸ As such, the Hearings Officer finds that the lot dimension standards in CDC 311-6.4 do not apply to this site.

3. Article IV, Development Standards:

Section 403

403-3.1 Type III development, except those detailed in Section 403-3.2, may be denied based on the following:

A. The proposed development will have significant adverse impacts on property values in the area;

⁸ An opponent asserted that Section 440 was intended to only apply to and benefit properties containing single family homes. The Hearings Officer assumes the assertion relates to language in CDC 440-1, which describes the County’s intent that Section 440 “allow the owner of a structure used as a single-family dwelling to alter or replace the structure” in certain zones, including the NC zone. The Hearings Officer does not believe this language applies to lot of record determinations under 440-8. At most, it would allow someone whose residential property has been zoned NC to alter or replace a single family home, despite the fact that the NC zone does not permit residential uses outright.

B. The proposed development will unduly conflict with the character of an area not otherwise in transition; or

C. The public interest is not served by permitting the proposed development to occur on the proposed site at the proposed time. Development proposed to serve significant portions of the county may be evaluated for its impacts on the entire area to be served.

With respect to the applicability of CDC 403-3.1, the Hearings Officer refers to the discussion and findings above in Section 202-3.

Section 404 Master Planning

The applicant has submitted materials showing on-site and off-site topography and tax lot lines, as well as roadways in proximity to the site. This information adequately represents the Master Planning requirements of CDC Section 404. See Section 405 and findings under the Sunset West Community Plan regarding the mapped Open Space area on the site. These materials are included in the record.

Section 405 Open Space

Small areas of Title 13 (Riparian areas) are mapped on the development site along the south property line. These mapped riparian lands encompass approximately 10,508 square feet (0.24 acres). The riparian areas are associated with the off-site natural resources of Rock Creek and the associated wetlands/riparian areas located in the Rock Creek Greenway (THPRD park land).

The application included a delineation of the boundaries of the resource as part of an environmental assessment required under Section 422 of the CDC. The applicant proposes to retain a section of the existing Vegetated Corridor along the south property line. This section extends east from the west property line and measures approximately 11 feet wide by 200 feet long and then tapers down to approximately 80 feet by 2 ft – 6 inches; in total, encompassing approximately 2,400 square feet). This area will be fenced off and enhanced per CWS standards. See Figure 5 of the CWS ADDENDUM Service Provider Letter (CWS File Number 21-000384) in Appendix D.

According to the Natural Resource Assessment in Appendix D of the application, permanent encroachment of 8,895 square feet of the Vegetated Corridor will result from the proposed development. The applicant proposes to mitigate impacts to the on-site degraded Title 13 lands and has prepared a mitigation plan consistent with Clean Water Services (CWS) standards, which regulates Vegetated Corridor buffers around wetlands and creek/stream channels, such as those bordering Rock Creek on the THPRD property to the south). Additional mitigation will be

focused in the eastern portion of the site, located east of the eastern-most access; the mitigation area will encompass 10,566 square feet.

Of the approximate 10,566 square feet of on-site Vegetated Corridor mitigation, 6,713 square feet will consist of new Vegetated Corridor, while 3,853 square feet of the existing on-site Vegetated Corridor along the eastern and western sections of the south property line will be enhanced. CWS will oversee the complete implementation of the riparian mitigation plan. As stated previously, the applicant will be required to obtain approval by CWS of a Vegetated Corridor mitigation plan meeting the District standards. Approximately 537 square feet of on-site wetland at the eastern corner of the site will also be enhanced.

In light of the mitigation the applicant will perform and the associated maintenance requirements, Section 405 is met.

Section 406 Building, Siting and Architectural Design

406-1 Review Standards

The Review Authority shall evaluate all building and site plans, including detached dwelling units, for conformance to the following standards:

- 406-1.1 The development is permitted within the primary district;*
- 406-1.2 The development is sited to maintain all minimum setback and lot coverage requirements; and*
- 406-1.3 The development meets the maximum height requirements of the primary district.*

Compliance with these requirements is addressed in the responses to Section 311 above.

406-2 Additional Requirements for Type II and Type III Development

In addition to the requirements of Section 406-1, all Type II and Type III structures and site plans shall:

- 406-2.1 When required by the Uniform Building Code, provide facilities for the disabled pursuant to the Uniform Building Code, edition in effect at this time;*

This development's compliance with the Americans with Disabilities Act will be evaluated by the Building Services Section's review of development permits for the site. This includes the quantity and location of handicapped parking, of which one is proposed near the building entrance.

- 406-2.2 Incorporate design features which reflect or complement the surrounding structural and architectural character through building*

style and materials. Use, in open space or park settings, lines and materials (including plant materials) which blend with the natural features of the site or site background;

The site and surrounding properties have been developed at different times and reflect a variety of land uses: commercial to the north, residential to the east, and parks & open space to the south. There are no notable natural features on the site or in the vicinity. Although there are no specific design features or natural features that the proposed development should complement or reflect, the architectural designs of the structure are generally comparable to the commercial shopping center buildings across NW West Union Road to the north. The design includes the use of cultured stone and brick which is in line with the change of materials found on buildings in the West Union Village development on the north side of NW West Union Road. The west façade and much of the north and south walls are ‘blank’ in that there are few windows or other architectural features. However, the west façade and portions of the north and south walls constitute ‘green walls’ and as such will be covered with landscaping (vines). The landscape plan identifies two different types of vine selected to create the green walls. The Hearings Officer finds that proposed design and use of plant materials satisfy Section 406-2.2.

406-2.3 Renovate or revitalize existing structures identified within the Community Plan;

Prior to this application, a restaurant was removed from the development site, and an existing detached dwelling unit will be removed by the applicant to facilitate the development. Neither structures were/are identified on the Community Plan map as a historic resource nor could either structure practicably be remodeled to serve as the proposed Convenience Grocery and gas pumps with a drive-thru.

406-2.4 Arrange structures and use areas for compatibility with adjacent developments and surrounding land uses, using the following design and siting techniques:

A. Locate and design structures and uses not to obscure or degrade identified scenic views or vistas from adjacent properties and public thoroughfares, considering setbacks, building height, bulk and landscaping;

Staff did not identify any scenic views or vistas that would be obscured or degraded by the proposed development. Opponents argued that the THPRD property to the south is a scenic view and that the four-foot fence that the applicant will construct along the south property line will obscure the view of the THPRD property. Assuming the THPRD property is an “identified scenic view or vista” the Hearings Officer does not believe the fence will obscure or degrade the view. As staff noted, there will be other lines of sight from adjacent properties and areas that the fence will not affect. The convenience grocery is proposed to be located close to the west and

south property lines; thus, views across the site (from the north/NW West Union Road) are possible through the site to the south towards Rock Creek Greenway. In addition, at four feet tall, most people on the subject site would presumably be tall enough to view the THPRD property over the fence, at least when they are relatively close to the fence. The Hearings Officer finds this criterion to be met.

B. Orient major service activity areas (e.g., loading and delivery areas) of the proposed development away from existing dwellings;

There are no existing dwellings on surrounding properties, except for a small subdivision to the west – across NW 185th Avenue – and a residential subdivision to the south beyond the Rock Creek Greenway. The subdivision to the west, across NW 185th Avenue, is located about 145 feet from the development and also screened from the site by a block sound wall; whereas the subdivision to the south is located more than 440 feet from the development site (as measured from roughly the middle of the site). A number of the dwellings to the south across the greenway are further buffered by large mature trees and vegetation along the rear property lines of those lots.

The applicant also proposes to construct a 4 foot sight-obscuring fence along the south property line to provide additional screening and buffering, including minimizing the potential impact from lights from vehicles using the site and residential uses farther to the south. Loading and delivery activities will be screened to the west by the building and the block sound wall (on the west side of NW 185th Avenue) and to the south by the large distance (440 feet plus) and mature landscaping. For these reasons, the Hearings Officer finds that the proposed development will be adequately screened from nearby residences.

C. "Street furniture" such as bus shelters, streetlights, drinking fountains, benches and mailboxes shall be similar in design and materials to the buildings of the development.

None of these features are proposed with this development and they are not otherwise required by the Code. The closest existing bus stop is located on the east side of NW 185th Avenue, just north of the intersection with NW West Union Road. There are no existing bus stops on the site's NW West Union Road frontage.

406-3 Energy Conservation Guidelines

Type II and Type III Developments:

406-3.1 *Where possible, lay out streets and building lots for multi-family, commercial, industrial and institutional developments to allow buildings maximum solar access, using techniques such as:*

A. East-west street direction so that principal building facades will face south;

- B. Make configuration of lots to allow orientation of the front or rear of buildings within twenty (20) degrees of true south in order to maximize potential solar access.*

The narrow north/south dimension of the site constrains the orientation and configuration of the building. Locating the building in the far western portion of the site is necessary in order to site the 4 fueling islands and the fuel tanks as proposed. Additionally, no lots are being created. This standard does not apply.

- 406-3.2 Where possible, design multi-family, commercial, industrial and institutional buildings conducive to energy efficiency and conservation.*

This development's compliance with applicable energy conservation standards will be evaluated by the Building Services Section's review of development permits for the site. The proposal includes solar panels on top of the canopy to help with the proposed development being environmentally sustainable.

- 406-3.3 Where possible, subject to compliance with applicable review standards, design multi-family developments so structures will not shade the buildable area of urban residential property to the north that is or will be developed with a single family dwelling or a manufactured dwelling in order to protect solar access to these properties.*

This is not applicable because the proposed development is not multi-family residential.

- 406-3.4 Where applicable, compliance with the standards of Section 427-3.*

The standards of Section 427-3 are for creation of residential lots and are not applicable to the proposed development.

406-4 Privacy Guidelines

Type II and Type III Developments, where possible shall:

- 406-4.1 Design entry areas in residential developments to act as an outdoor extension of each dwelling or transition between semi-public and private areas, using such techniques as:*
- A. Changing the level, color, scale, texture or direction of a path; and*
 - B. The use of gates, fences, doors and landscaping.*
- 406-4.2 Design and cluster units to maximize privacy, using such techniques as:*

- A. *Facing main housing areas toward garden areas, open space and exposure to sun; and*
- B. *Placement of buildings to minimize the potential of windows facing directly toward primary living areas of other units/homes.*

These are not applicable because the proposed development is not residential.

406-5 Storage

Provide for storage of articles such as bicycles, barbecues, luggage, outdoor furniture, etc. These areas shall be completely enclosed and easily accessible to dwelling units.

This is not applicable because the proposed development is not residential.

406-6 Mixed Solid Waste and Recyclables Storage Facilities

406-6.1 Minimum Standards Method

The Minimum Standards Method identifies dimensional standards for storage area facilities that are based upon the size and general use category of new or remodeled construction. This method is most appropriate when the specific use of a new or remodeled building is unknown.

The size and location of the storage area(s) shall be indicated on the site plan of any construction subject to this section. Compliance with the general and specific requirements set forth below is verified during the site plan review process.

A. General Requirements:

- (1) *The storage area is based on the predominant use(s) of the building (e.g., residential, office, retail, wholesale/warehouse/manufacturing, educational/institutional, or other). If a building has more than one of the uses listed herein and that use occupies twenty (20) percent or less of the floor area of the building, the floor area occupied by that use shall be counted toward the floor area of the predominant use(s). If a building has more than one of the uses listed herein and that use occupies more than twenty (20) percent of the*

floor area of the building, then the storage area requirement for the entire building shall be the sum of the requirement for the area of each use.

- (2) Storage areas for multiple uses on a single site and single family attached or multi-family buildings may be combined and shared.*
- (3) The specific requirements are based on an assumed storage height of four feet for solid waste/recyclables. Vertical storage higher than four (4) feet but no higher than seven (7) feet may be used to accommodate the same volume of storage in a reduced floor space (potential reduction of forty-three (43) percent of specific requirements). Where vertical or stacked storage is proposed, the site plan shall include drawings to illustrate the layout of the storage area and dimensions of containers.*

B. Specific Requirements

- (2) Non-residential buildings shall provide a minimum storage area of ten (10) square feet plus:*

Retail: Ten (10) square feet/one thousand (1000) feet GFA;

The development is for 4,428 square feet of gross floor area for the convenience store plus 8 fueling pumps. The applicant proposes an enclosure encompassing approximately 204 square feet to serve the proposed commercial development. Pursuant to B. (2) above, a minimum of 54.28 square feet of storage area (10 square feet plus 44.28 [4.43 x 10 square feet per 1,000 GFA] = 54.28 square feet) is required. The proposed enclosure facilities will adequately serve the proposed commercial use. The site design, according to the applicant, allows hauler vehicles to exit the site moving forward (i.e., not backing onto the street in reverse).

The applicant has a Service Provider Letter from Washington County Health & Human Services/Solid Waste & Recycling Program approving the proposed location, design, and sizes of the waste and recycling collection for the proposed development. The applicant included a plan showing the turning movements of garbage and recycling haulers once they access the site from the right-in only access.

Section 407 Landscape Design

407-1 Minimum Landscape Standards

407-1.1 The minimum landscaping area requirements may include landscaping around buildings and in parking and loading areas, outdoor recreational use areas, screening and buffering as required under Section 411, and vegetated stormwater facilities as defined by Section 106-198.1.

407-1.4 Commercial, Industrial and Institutional Districts:

A. For new development, the minimum area required for landscaping shall be fifteen (15) percent of the land area.

The site is 1.21 acres, which requires 7,907 square feet of landscaping per Section 407-1.4 A. The applicant's landscape plan shows that about 20,200 square feet (or 38 %) of the site will have landscaping. The plans for the applicant's final approval are required to maintain conformance with this standard.

407-1.7 The following interior landscaping requirements shall apply to all parking areas for ten (10) or more vehicles:

A. Ten (10) square feet of landscaping per parking space, excluding perimeter landscaping;

B. Landscaped islands shall be a minimum of one hundred twenty (120) square feet.

Fourteen parking spaces are proposed, exclusive of the 8 parking spaces located at the fueling islands, thus requiring 140 square feet of interior landscaping. The applicant's site plan includes two landscaped islands, each island contains a minimum of 120 square feet of interior parking area landscaping. As a result, 240 square feet of interior landscape islands are proposed.

407-4 Landscape Plan

407-5 General Provisions and Guidelines

The applicant's site plan demonstrates compliance with the required application materials and standards of these sections. Detailed landscaping plans will be reviewed as part of the development permits for the project.

407-6 Parking Area Landscaping

- 407-6.1 *The landscaping located within and adjacent to access roads and parking areas shall consist of a mixture of ground covers, shrubs and trees.*
- 407-6.2 *Landscaped areas shall be located to provide shade for parking lots and to create small clusters of parking.*
- 407-6.3 *In addition to pedestrian ways, parking areas and access roads shall be separated from the exterior wall of a structure with landscaping except where loading and access ways exist.*
- 407-6.4 *A minimum five (5) foot landscape strip shall be created along any parking lot boundary, including access roads, except where the use of joint parking or a zero (0) setback is approved.*
- 407-6.5 *Landscape "islands" located within parking areas shall maintain a minimum width and length dimension of five (5) feet (see Section 407-1.6).*
- 407-6.6 *Entryways into parking lots shall be bordered by a minimum five (5) foot wide landscape strip.*
- 407-6.7 *Landscape plans that do not meet the minimum area standard through requirements intended to provide landscaping around buildings and in parking and loading areas, and screening and buffering as required under Section 411, are required to focus landscaping along pedestrian walkways linking on-site building(s) to the street in order to meet the minimum area standard.*

The applicant's site plan demonstrates compliance with the requirements of Sections 406-6.1 through 6.7. This includes appropriate landscaping buffers adjacent to the development's access roads (driveways) and parking areas. The Hearings Officer finds that a reduced (0 feet) landscape strip – in accord with Section 407-6.4 – on a small section of the landscape strip along the south property line is appropriate. The rest of the landscaping will be comprised of enhanced Vegetative Corridor. The reduction is recommended due to the narrowness of the development site. Any potential impacts from the reduction would be mitigated by the landscaping proposed as well as the fact that the entire property to the south consists of natural open space. Further, there are no interior side yard setbacks (along the south property line) so a zero setback is allowed (approved) along the south interior property line.

The Hearings Officer finds that there are no screening and buffering issues between the proposed use and the park land to the south. Although not required, the applicant proposes to construct a 4 foot sight obscuring fence along the south property line. If relocated utility poles will be within

the parking area, plans shall be revised to ensure that the poles are located, at minimum, within curb-protected landscape areas – but not in landscaped areas that impact parking or drive aisles.

407-7 Urban Street Tree Standards

Inside an urban growth boundary, all new structures or land divisions fronting on public or private roadways or access drives, except the construction of a detached dwelling unit on an existing lot, shall be required to plant street trees in accordance with the following standards:

- 407-7.1 *The species of street trees to be planted shall be chosen from the approved list of street trees unless approval of another species is given by the Director through a Type I procedure. Trees shall be selected and appropriately spaced to maximize canopy coverage and provide canopy overlap for shade. Trees shall be installed at an average of one tree per thirty-five (35) feet of lineal road frontage unless the selected species has a wide canopy. In those instances, the spacing of trees may be greater than thirty-five (35) feet provided the spacing will result in canopy overlap.*
- 407-7.2 *Exemption from the street tree requirements may be granted by the Director if existing trees can be used as a substitute. This exemption may be granted through a Type I procedure;*
- 407-7.3 *Street trees shall be installed on public or private property no more than five (5) feet from the designated right-of-way; and*
- 407-7.4 *Street trees shall be a minimum of one and one-half (1 1/2) inches in diameter.*

The applicant stated that the proposed development will include sidewalk improvements along NW West Union Road but that final [street] improvements, including the planting of street trees, will be provided by the county as part of the county's Capital Improvement Project for NW West Union Road. However, according to county staff, the current West Union Road project is only for design of future road improvements and that the designs do not call for extending east of 185th Avenue. The future design work for future improvements will stop short of the intersection with SW 185th Avenue.

Currently, the county does not have any plans to revise West Union Road east of SW 185th Avenue and it is not known when construction west of 185th Avenue will begin. Nevertheless, any street trees shall be planted so that they do not interfere with current or future intersection clear vision requirement.

407-8 Installation and Maintenance

Installation and maintenance of landscaping shall be in conformance with the standards of this section. Ongoing compliance is mandated through conditions of approval.

Section 408 Neighborhood Circulation

408-5 Review Standards for Development on Lands Not Designated on the Community Plan Local Street Connectivity Maps or on Lands Not Designated as a Pedestrian/Bicycle District

The development site is a corner lot, with the entire south property line abutting Rock Creek Greenway (natural open space/Rock Creek and a regional recreational trail). There are no other properties abutting the site that do not already have frontage on the nearest Arterial Street or local streets (and provided access). Given that the site is bordered by park land and Goal 5 resources on the south and all portions of abutting properties abut either NW West Union Road or NW 185th Avenue rights-of-way, there is no reason to evaluate further street or accessway connections through the property.

408-10 Internal Pedestrian Circulation

408-10.1 Number of Pedestrian Connections

- A. All developments that generate fourteen (14) or more additional ADT shall provide a pedestrian connection between the street and the main entrance of the primary structure on the lot. For lots with more than one street frontage, a connection shall be provided to each street. As an alternate for new development on lots with multiple buildings, a pedestrian connection shall be provided between the street and the center of the internal pedestrian network. These requirements do not apply to single family or duplex residential development.*
- B. All developments that generate five hundred (500) or more ADT shall provide:*
 - (1) A connection from the main entrance of the primary structure to within twenty (20) feet of any transit stop located along the frontage of the subject property;*
 - (2) A connection to within twenty (20) feet of any mid-block pedestrian crossing; and*
 - (3) A connection for every two hundred (200) feet of street frontage including connections provided per (1) and (2) above. Connections*

shall be generally spaced to ensure direct access to buildings on the lot for pedestrians accessing the lot from any direction.

- C. *As an alternative to 408-10.1 A. and B. (1-3) above, pedestrian connections shall be provided for new development as part of campus development which connect each building within the campus area and directly connect the building complex to the most appropriate street(s) or pedestrian route(s). More than one (1) pedestrian connection may be required to a particular street or pedestrian route in order to decrease out of direction travel.*

The applicant has included an on-site walkway connecting to the front of the building and the public sidewalk on NW West Union Road. Due to the narrowness of the site, the sidewalk along NW West Union Road effectively serves as an east/west pedestrian connection that provides access to all uses on the site and provides neighborhood connectivity, including the Rock Creek Greenway trail.

Staff found that one connection will likely be adequate. However, staff also recommended that – unless site constraints dictate otherwise – the pedestrian accessway extend due north from the building to provide a shorter and more direct route to the sidewalk on NW West Union Road and ultimately to the intersection of NW 185th Avenue and NW West Union Road. The Hearings Officer agrees that an accessway due north of the building is more direct, and a condition of approval requiring such has been included in Exhibit 1. Alternatively, the applicant could choose to change the angled alignment such that the connection to the sidewalk is closer to the intersection.

- D. *In addition to pedestrian connections required by 408-10.1 A. and 408-10.1 B., connections shall be provided between the proposed development and all off-site pedestrian connections on adjacent properties or streets as required by Sections 408-5 or 408-6.*

There are no off-site pedestrian connections that need to be made to adjacent properties. Further, the Hearings Officer finds that it is not practicable or feasible to require a pedestrian connection to the south. One reason is that the Rock Creek Greenway trail is located more than a football field's length feet to the south and also located south of Rock Creek. The sidewalks on NW 185th Avenue and NW West Union Road provide for adequate circulation, providing access to the Rock Creek Greenway trailheads (to the south and the east).

Section 410 Grading and Drainage

The applicant submitted preliminary details as required by this section, including preliminary grading and drainage plans. Washington County Building Engineers have reviewed the preliminary details and determined the plans meet the requirements of Section 410-1.1. A

Grading Permit meeting the requirements of Section 410 shall be obtained prior to any on-site work and is required to comply with conditions of approval.

Pursuant to Resolution and Order No. 19-05, Clean Water Services (“CWS” or “District”) has the responsibility for review and approval of storm drainage plans as well as erosion control plans. The District has provided service provider letters affirming that storm sewer service is available to the site. The applicant is required to obtain approval from the District for the proposed drainage plan prior to any on-site work.

Opponents expressed concerns related to storm drainage and groundwater management. Because CWS has responsibility for those aspects of the project, issues relating to drainage, groundwater are not approval criteria for this application.

Section 411 SCREENING AND BUFFERING

411-1 Applicability

411-1.1 Screening and Buffering requirements are in addition to the setback requirements in residential and institutional districts and inclusive of the setback requirements in the commercial and industrial districts, as well as the setback requirements and design standards of the transit oriented districts, and shall be provided on the subject site at the time of development.

411-1.2 Screening and Buffering shall apply to all Development permits as determined in Section 411-3 or as determined by the Review Authority.

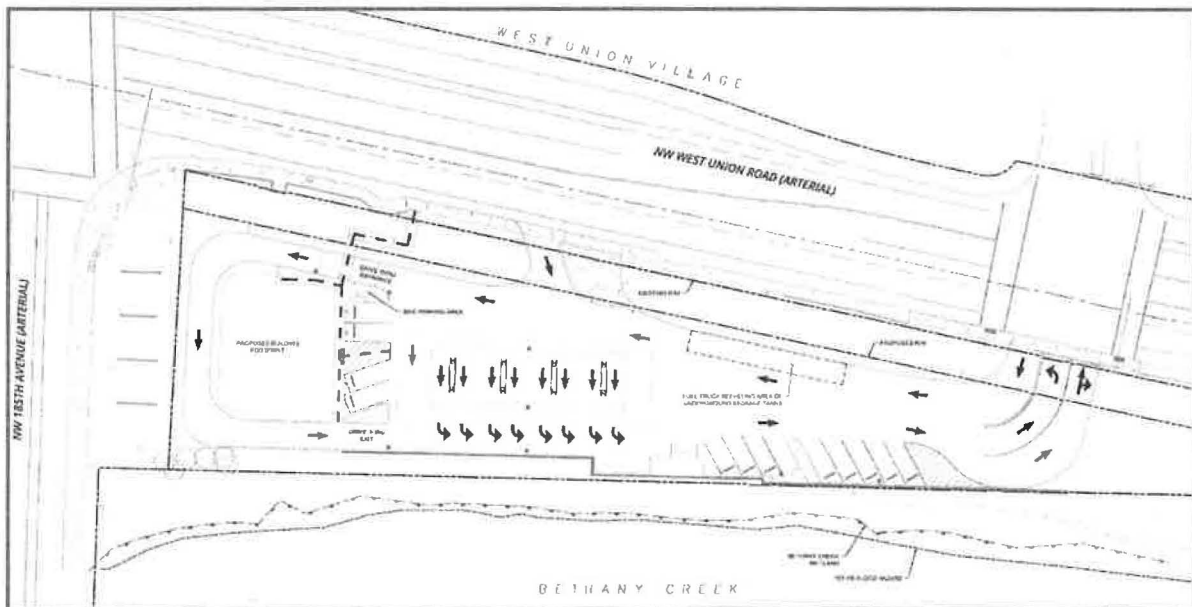
The development site is designated NC and the property to the south is designated Institutional. However, lands to the south consist of wetlands and developed park lands, including a regional trail and open lawn areas. The existing Goal 5 resources on lands to the south of the site provide a substantial buffer between the proposed development and residential lands to the south and east, and as such, the Hearings Officer finds that screening and buffering elements required by Section 411 are not necessary. Specifically, the trail is more than 300 feet from the development site and the abutting open space is heavily vegetated but also contains two major groupings of overhead power transmission lines. Further, Section 411 has not been used to provide block walls or other screening between a development and wetlands and significant natural resources. Instead, the applicant proposes to construct 4 foot sight obscuring fence along the south property line and north of the Vegetated Corridor areas.

Finally, the intent of Section 411 is to provide screening and buffering between different land uses and intensities, such as between different residential densities and between residential and commercial or industrial land uses. The intention rather is not to provide screening and buffering

measures between a particular land use (or particular development) and open space and natural resource areas. And as stated previously, the off-site regional park trail is more than 300 feet from the development site and as such a solid block wall along the south property is not practical or warranted. As noted above, the applicant will construct a sight obscuring fence along the south property line between the building and the eastern access (noting that the fencing will be located on the north boundary of the retained onsite Vegetated Corridor).

Section 413 Parking and Loading

The site design includes both two-way and one-way circulation patterns. Sheet C222 of the submitted plans provides the intended on-site circulation pattern for the development, with traffic arrows indicating the direction of traffic. Vehicles can access the site from one of two accesses:



the western right-in only access, and the full eastern signalized access.

However, the traffic flow from the eastern access is limited to the northern access drive aisle as the southern drive aisle will be used by drivers exiting the fueling stations and the convenience store & drive-thru. The western and southern drive aisle, not including the drive-thru lane, are also one-way directions because they are each less than 24 feet wide; they measure 19 ft – 6 inches (413-3.2). Directional signage (e.g., painted directional arrows) is required to ensure safe vehicular circulation.

413-3.2 The minimum aisle width for two-way traffic and for emergency vehicle operations area is 24 feet. The minimum aisle width for emergency vehicle (one-way traffic) is 15 feet.

The northern drive aisle with the shared use by fueling trucks (traveling east) and customers accessing the fueling stations and the convenience store from the eastern site access (traveling west) is required to be at least 24 feet wide. The northern access serves as the access for fueling tanker trucks as well as garbage and recycling trucks and customers, provides two-way traffic flow and is 24 feet wide. Less than 24 feet would create a narrow choke point, and one that is too close to the right-in only access.

413-3.6 If provided, electric vehicle charging parking spaces, either public or private, shall comply with the following requirements:

- A. Electric vehicle charging parking spaces may substitute for required minimum off-street parking spaces of Section 413-6.1 at a 1:1 ratio.*
- B. A minimum of one electric vehicle charging space shall be ADA compliant.*
- C. Electric vehicle charging parking spaces shall be posted with signage not to exceed 5 square feet in size.*
- D. Electric vehicle charging unit outlets and operable parts shall be no less than 18 inches off the ground if indoors and 24 inches off the ground if outdoors and no higher than 48 inches off the ground to ensure easy access.*

The applicant proposes 2 EV charging spaces, one of which will be ADA compliant. The spaces will be designed and constructed pursuant to Section 413-3.6 A., B., and C.

Off-street parking: The applicant's site plan includes 22 off-street parking spaces. The minimum amount of required parking is based on the following:

413-6.1

<i>USE</i>		<i>MINIMUM NUMBER OF STANDARD OFF-STREET PARKING SPACES PER UNIT OF MEASURE</i>
<i>C. Business and Commercial:</i>		
(2).	<i>Automobile Service Stations</i>	Two for each lubrication, stall rack or pit; and one for each gasoline pump
(14)	<i>Retail stores, except as otherwise specified herein</i>	2.5 for each thousand (1000) square feet of gross area

Proposed Uses:

Convenience Market (4,428 square feet): 11 spaces (2.5 spaces x 4.428 sq. ft. ratio)

Service Station (4 islands & two pumps each): 8 spaces (provided at the pumps)

Total Required: 19 off-street parking spaces.

This results in a requirement for 19 off-street parking spaces for 4,428 square feet of convenience grocery and service station with 4 fueling islands, each with 2 fueling pumps. The site plan provides 22 parking spaces (14 surface parking spaces and 8 parking spaces for the service station located at the fueling islands). The Hearings Officer finds that adequate off-street parking will be provided.

Section 414 Signs

The applicant has proposed specific signage with this development (See Sheets FS-2, FS-3 and FC-1). Future signage shall be processed under a separate permit(s) and will be based on the consolidated lot and dedicated right-of-way. The sign permit application(s) for the pole and ground mounted signs submitted to the county shall include written documentation of support/approval from PGE for location within the 10 foot PUE.

Section 415 Lighting

The proposed development is commercial and lighting is not required per Section 415. However, the applicant has submitted a lighting plan to demonstrate that the proposed lighting will not adversely impact surrounding residential uses. The Hearings Officer finds that the proposed lighting meets the intent of the requirements of Section 415-4.

The applicant proposes four 18 foot pole lights located along the boundaries of the parking/drive aisles to illuminate the drive aisles (two are located along the northern drive aisle boundary between the two accesses, one is located in the southern landscape island between two parking areas, and one is located along the eastern boundary of the drive aisle boundary about 20 feet

north of the south property line), additional lighting underneath the canopy to illuminate the fueling area and 6 wall-mounted sconces on the north, west and south sides of the building.

The applicant provided lighting details and photometrics that satisfy Section 415 with respect to minimizing spillover of lighting onto adjacent parcels. The application materials demonstrate that the lighting has been designed to minimize glare onto adjacent areas. No flickering or flashing lights are proposed or allowed. In addition, the proposed sight obscuring fence along the southern property line is expected to block light from vehicles using the site.

Section 416 Utility Design

- 416-1.1 All utility distribution facilities supplying electric, communication, or similar or associated service, installed in and for the purpose of supplying such service to any development shall be placed underground.*
- 416-1.3 Easements necessary for sewers, water mains, electric lines, or other public utilities shall be provided. The easements will vary according to the need of various utilities. When possible, the easement shall be located on one side of a lot line.*
- 416-1.4 The location, design, installation and maintenance of all utility lines and facilities shall be carried out with minimum, feasible disturbance of soil and site.*

Consistent with CDC Section 416, new utilities must be located underground and associated utility easements provided. Further, in accordance with 416-1.4, disturbance of soil shall be kept to a minimum when installing utilities.

The applicant proposes a 10 foot wider Public Utility Easement (PUE) along West Union. With respect to the width of the PUE and the location of the electrical transmission lines (on West Union) and poles and in particular the height (elevation) of the transmission line, the location/height of the building and canopy do not appear to be problematic. Of relevance are past conversations between County Engineering and PGE staff during the review of the first Chevron development application (L2000057-SU/D(C)/AMP/V/M), where PGE staff indicated that PGE had plans to install new poles on West Union, though staff did not know if this included the east side of NW 185th Avenue. According to these previous communications, PGE indicated that there is a "Flying Tap" at the intersection of 185th and West Union (southwest corner) that is required to run the transmission lines to the North (along 185th Avenue). The Flying Tap needs to be retained as it is integral to the transmission system, which includes a new substation constructed on the north side of Germantown Road, east of 185th Avenue. Further, according to

PGE, these lines need at least 10' to 15' clear from the outermost powerline, which means for this development, that there should be no overhangs (roof, signal poles, etc.) within this area.

For this reason, prior to Final Approval, the applicant shall provide written documentation from PGE approving the building and canopy locations and heights in relationship with the powerlines and poles and the 10 foot PUE. Further, the final plans must ensure that none of the foundations or underground tanks, including any physical containment barriers, are located within the PUE. There shall also be no restrictions or barriers to where new poles will be relocated (in the event that the applicant pays fee in lieu rather than construct the half-street improvements). The future signal pole shall also be designed to accommodate the relocated overhead power lines.

Section 417 Irrigation

The minimum required landscape area for the site exceeds 1,000 square feet. Irrigation is required for the site, and compliance with Section 417 will be verified through the final approval process.

Section 418 Setbacks

418-1 Obstruction in Required Yards

Required yards shall be horizontally unobstructed except as follows:

- 418-1.1 Cornices, eaves, belt courses, sills, canopies, or other similar architectural features (not including bay windows or vertical projections) may extend, or project into a required side yard not more than two (2) inches for each (1) foot of width of such side yard and may extend or project into a required front or rear yard not more than thirty (30) inches. Chimneys may not project into a front or rear yard more than twenty-four (24) inches. Chimneys may project up to twenty-four (24) inches into a side yard setback, but no closer than three (3) feet to a property line.*
- 418-1.2 Open balconies and unenclosed stairways more than thirty (30) inches in height and not covered by a roof or canopy, may extend or project into a required rear yard not more than four (4) feet and such porches may extend into a required front yard not more than thirty (30) inches.*
- 418-1.3 A ground level deck not more than thirty (30) inches in height and not covered by a roof or canopy may be allowed in any yard regardless of the setback requirements.*

418-1.4 A deck more than thirty (30) inches in height, not covered by a roof or canopy, may be allowed in a required rear yard not closer than five (5) feet to the rear property line when the rear yard abuts a designated open space or public non-buildable tract. Such tracts may include flood plains, power line easements, or drainage courses.

See Section 311 above concerning setbacks.

418-2 Additional Setbacks Required for Future Right-of-Way

418-2.1 Where a yard or setback abuts a street having insufficient right-of-way width, the minimum yard or setback requirement shall be increased to accommodate the future right-of-way. The yard or setbacks shall be measured from the centerline of the existing right-of-way. The yard or setback shall be measured from the future edge of right-of-way and allow for half the maximum right-of-way as shown in the following diagram. The maximum right-of-way width shall be determined by the Transportation System Plan, including the Functional Classification Map, the Functional Classification Design Parameters Table and the Lane Numbers Map. The County Engineer may designate an alternative future right-of-way for streets where the area of the right-of-way is not balanced with respect to the current right-of-way centerline.

The TSP calls for 21 feet of additional right-of-way dedication from centerline of NW West Union Road. In the two previous Chevron land use applications (L2000057-SU/D(C)/AMP/V/M and L2100244-SU/SU/D/V/V/AMP/M), the applicant expressed concern with the width of the required dedication and agreed to dedicate 18 feet. The applicant maintained that, according to their consultants, a dedication of 18 feet and not 21 feet was adequate to accommodate the required street improvements. The applicant also proposed at that time a 10 foot wide Public Utility Easement after discussions with Portland General Electric (PGE) as it involves the overhead powerlines along the West Union frontage. The applicant continues to propose a 10 foot wide Public Utility Easement and a dedication of 18 feet on West Union Road.

In Casefiles, L2000057-SU/D(C)/AMP/V/M and L2100244-SU/SU/D/V/V/AMP/M the County Engineer agreed to accept the applicant's proposal to dedicate 18 feet and believed that 18 feet would be adequate to accommodate the required street improvements. According to staff, the County Engineer continues to believe a dedication of 18 feet along West Union Road will be

adequate, plus any additional corner radius at the intersection with SW 185th Avenue, and the 10 foot PUE.

418-4 Fences and Retaining Walls

The setback requirements of this Code are not applicable to the following fence or retaining wall structures (or any combination thereof) except as required by Section 418-3:

- 418-4.1 *A fence, wall (includes retaining wall), screen or lattice work not more than seven (7) feet in height.*
- 418-4.2 *A fence, wall (includes retaining wall), screen or lattice work not more than eight (8) feet in height along a rear, side or front yard which abuts an arterial or limited-access highway.*
- 418-4.3 *A combination fence (not more than six [6] feet in height) and retaining wall structure (not more than four [4] feet in height) located in a side or rear yard (for design standards see Section 419-4).*
- 418-4.4 *Tiered retaining wall structures not exceeding seven (7) feet in height in any required yard. The maximum height measurement includes all tiers located within the yard or setback area. All non-tiered retaining walls located within the yard or setback area shall not exceed a combined total of seven (7) feet in height.*
- 418-4.5 *All retaining wall structures, exceeding seven (7) feet in height, not within a required yard or setback area, on two or more contiguous properties, are exempt from the side yard setback requirement.*
- 418-4.6 *A wall not more than eight (8) feet in height along a side or rear property line as required by Section 411.*
- 418-4.7 *Residential lots or parcels shall maintain a clear vision area with no sight obscuring fence or wall (does not include retaining wall) more than three (3) feet in height, measured from finished grade, within a fifteen (15) by fifteen (15) foot triangle along a driveway. A clear vision area shall be measured from the property line, sidewalk, or*

easement for public travel, whichever is closest to the fence line (for design standards see Figure 2 and Figure 3).

Section 311 establishes setback requirements for the NC District (See Section 311 above).

A short retaining wall is proposed along the south property line. According to the preliminary grading plans, the retaining wall extends the entire length of the property line between 185th Avenue and the eastern access and ranges from 0.3 to 5.1 feet. The retaining wall is less than seven (7) feet in height. The applicant proposes to build a 4 foot sight obscuring fence along the south property line to provide screening from the properties to the south. Pursuant to Section 418-4.3 the combined total of the fence and retaining wall shall not exceed 6 feet for the fence and 4 feet for the retaining wall, if a combined structural system. However, the total combined height is less than the maximum combined height set forth in Section 418-4.3, which is 10 feet. The “reversal” of the height allowances meets the Code standard.

Section 419 Height

In addition to the height restrictions in the primary districts, the following limitations shall apply:

- 419-1 Within twenty (20) feet of another primary district with a lower height restriction, the height restriction of the adjacent district shall apply.*
- 419-2 Beyond the twenty (20) foot area in Section 419-1 above, the height may increase on the subject property at a ratio of one (1) foot of height to one (1) foot of horizontal distance from the adjacent primary district with a lower height limitation, to the maximum height permitted in the primary district.*
- 419-3 A fence, lattice work, screen or wall (includes retaining wall) not more than seven (7) feet in height may be located in any required side, front or rear yard, except as required by Section 418-3 (corner vision). Where a rear, side or front yard abuts an arterial or limited access highway, fence height along the yard may be increased to eight (8) feet. Any fence over six (6) feet in height requires a building permit. Any retaining wall over four (4) feet in height requires a building permit (the height measurement of a retaining wall is from the bottom of footing to the top of the retaining wall).*

- 419-4 *A combination fence and retaining wall structure may be located in a side or rear yard. This structure shall consist of a retaining wall [not more than four (4) feet in height] and a fence [not more than six (6) feet in height]. The fence portion shall be measured from the back-filled or highest side of this structure and may not exceed six (6) feet in height. The non-back-filled or lowest side measurement may not exceed a combined total of ten (10) feet in height. This provision may only be used when there is an existing or proposed grade difference between properties and a retaining wall is required by the Building Official (see Figure 1). This structure is exempt from a structural building permit only when the backfill is level for a proportional horizontal distance to the height of the retaining wall or as approved by the Building Official.*
- 419-5 *Tiered retaining wall structures shall not exceed seven (7) feet in height in any required yard. The maximum height measurement includes all tiers located within the yard or setback area. All non-tiered retaining walls located within the yard or setback area shall not exceed a combined total of seven (7) feet in height.*

Pursuant to above Section 419 any retaining wall over four feet in height requires a building permit. Additionally, the retaining wall shown on the submitted plans is not a tiered wall system.

Section 421 Flood Plain and Drainage Hazard Area Development

The county administers and enforces the State of Oregon Specialty Codes pursuant to the requirement established in ORS 455. The Oregon Specialty Codes contain certain provisions that apply to the design and construction of buildings and structures located in Special Flood Hazard Areas. Therefore, this Section is intended to be administered and enforced in conjunction with the Oregon Specialty Codes.

421-1 Lands Subject to Flood Plain and Drainage Hazard Area Standards

421-1.1 Flood Plain:

The following data sources shall be referenced for purposes of determining lands subject to flood plain standards. In any event, the most restrictive flood boundary information shall be utilized. The maps

referenced herein are on file at the offices of the Washington County Department of Land Use & Transportation.

A. The following maps are adopted by reference:

(1) "Flood Insurance Rate Map, Washington County, Oregon," effective date October 19, 2018 with amendments; and

(2) "Flood Insurance Study for Washington County, Oregon and Incorporated Areas," dated October 19, 2018 with amendments.

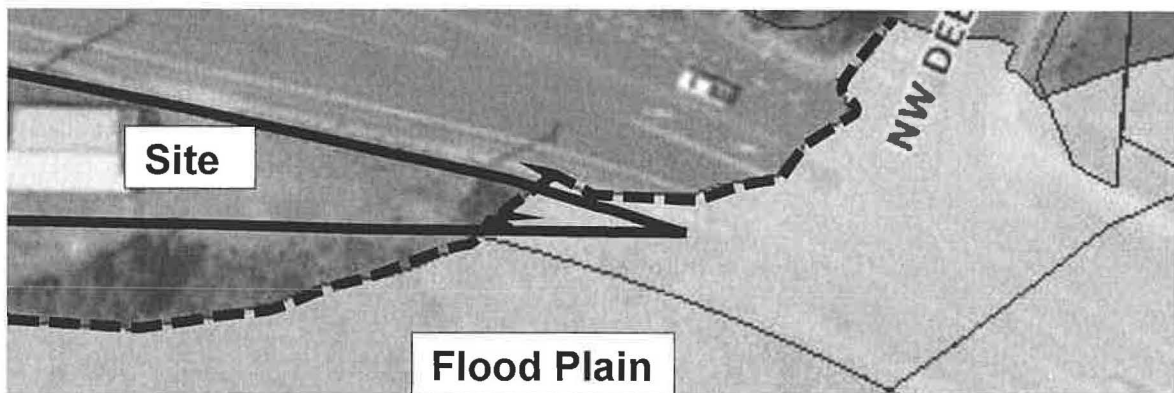
B. Where base flood elevation data has not been provided (approximate A Zone):

(1) "Flood Plain Series, Washington County, Oregon, revision 5/01/1974, 1/03/1978, 1/1981, 5/25/1983 and 12/12/1983" based upon data from the U.S. Army Corps of Engineers.

(2) In addition, the Director shall obtain, review and reasonably utilize any base flood elevation data available from a federal or state source, or hydrologic and hydraulic analysis performed in accordance with standard engineering practice by a licensed professional engineer, in order to administer this Section.

C. In addition to the information sources identified in A. and B. above, the Director may also utilize any other available authoritative flood data, including but not limited to high water marks, photographs of past flooding or historical flood data.

The Flood Plain is located largely off-site to the south on Tax Lot 1N119BC00400, which comprises Rock Creek Greenway owned & maintained by THPRD, with the exception of a narrow portion in the eastern-most quadrant of the site.



None of the proposed development activities are anticipated to occur within the mapped Flood Plain. See the application materials and Attachment D to the staff report concerning additional right-of-way dedication. However, if any construction activities encroach within the Flood Plain, then a Flood Plain alteration permit will be required.

According to the county's Flood Plain Manager, the flood plain elevation at the eastern corner of the site is 175.9 feet (1988 NAVD /Zone AE). Delineation of the Flood Plain by a registered licensed engineer, including the original wet stamp, shall be included with the half-street improvement plans. In the event that the improvements encroach the Flood Plain, then the applicant shall obtain approval of a Flood Plain alteration prior to issuance of the Facility Permit. Additionally, if the registered, licensed engineer finds that any portion of the proposed project is within the FEMA Special Flood Hazard Area (100-Year Floodplain), then a FEMA-issued Elevation Certificate completed and certified by a professional land surveyor documenting the 100-year flood elevation and evidence of field marks of this elevation provided on site shall be submitted to Current Planning prior to any right-of-way disturbances or construction.

421-1.3 Persons seeking to develop within a flood plain or drainage hazard area must do so with the understanding that they and their successors assume the risks and that the risks cannot be eliminated, even with strict compliance with the standards adopted herein. This Section does not imply that lands outside of flood plain or drainage hazard areas, or development permitted within, will be free from flooding or flood damage.

CWS has approved the Vegetated Corridor enhancement and mitigation resulting in the creation of additional Vegetated Corridor and enhancement of existing Vegetated Corridor to good condition. The new Vegetated Corridor is located east of the eastern access. There are three areas of the existing degraded Vegetated Corridor that will be enhanced (See Figure 5 of the AMENDED CWS Service Provider Letter in Appendix D of the application). The Vegetated Corridors are located largely within the Flood Plain and along the south property line.

421-3 Submittal Requirements

In addition to the requirements of Sections 203-4 and 410, an application for a flood plain or drainage hazard area alteration shall contain the following information for the area proposed to be disturbed. This information shall be prepared by a licensed professional engineer and may be submitted with or be made part of a site plan or grading plan for the proposed development.

421-3.1 Recognizing that the scale may be such that the true and accurate flood plain or drainage hazard area boundaries cannot be determined from the maps referenced in Section 421-1.1 and 1.2 alone, all persons seeking a development permit for lands within said areas and within 250 feet of the map boundary of a flood plain or drainage hazard area identified in Section 421-1.1 and 1.2, except as noted below for land divisions and property line adjustments, shall submit with the development permit application:

- A. A delineation of the flood plain and the floodway boundaries, established by a registered engineer or a registered surveyor from the surface elevations for the flood plain based upon maps or other data sources referenced in Section 421-1.1; and*
- B. A delineation of the drainage hazard area and the drainageway, established by a registered engineer or a registered surveyor from surface elevations for the drainage hazard area based upon maps or other data sources referenced in Section 421-1.2. Such delineation shall be based on mean sea level datum and be field located from recognized landmarks.*

- C. *Land divisions and property line adjustments outside the UGB may provide only generalized flood plain information, such as contour maps and aerial photos, which need not be prepared by an engineer. Notwithstanding this provision, for the purpose of implementing the requirements of Section 421-14.7, applicants may be required to submit detailed delineations as specified in 421-3.1 A. and B above.*
- D. *For each of the above, submitted plans shall be accurately drawn and at an appropriate scale that will enable ready identification and understanding of the submitted information. The plans shall include the locations of any existing or proposed property lines, buildings, structures, parking areas, streets, accessways, or other relevant information on the subject property, and within 50 feet of the delineation.*

The applicant has addressed the applicable sections. The applicant delineated the Flood Plain. According to the application, the proposed construction will not impact the Flood Plain. There are no encroachments into or within the Flood Plain. This information is in the record.

421-3.2 Existing and proposed topography within the boundaries of the flood area using the following contour intervals:

- A. *For slopes of five percent or less, contour intervals not more than one foot;*
- B. *For slopes greater than five percent and up to and including 10 percent, contour intervals not more than two feet; and*
- C. *For slopes greater than 10 percent, contour intervals not more than five feet.*

The applicant has addressed the applicable sections. This information is in the record.

421-3.3 For applications for Type II and III flood plain or drainage hazard area alterations, documentation which demonstrates compliance with the applicable review standards of Sections 421-7 through 421-14.

The applicant has addressed the applicable sections. As stated previously, no development or encroachments into the Flood Plain are proposed or anticipated at this time. However, requirements to complete half-street improvements to NW West Union Road would be subject to the applicable Flood Plain alteration requirements of Section 421 – if construction activities encroach within the delineated Flood Plain (Base Flood Elevation of 175.9 feet).

421-3.4 Upon demonstration by the Director of no other alternative, applicants shall obtain a Conditional Letter of Map Revision (CLOMR) from FEMA before an encroachment, including fill, new construction, substantial improvement, fences or other development, in the regulatory floodway is permitted that will cause any increase in the base flood elevation. The CLOMR shall be submitted prior to the application being deemed complete.

This section is not applicable. The regulatory floodway associated with Rock Creek is located entirely offsite to the south.

421-5 *Uses and Activities Allowed Through a Type II Procedure*

Unless specifically prohibited in the applicable Community Plan, the Rural/Natural Resource Plan Element, Section 422, or the Clean Water Services' "Design and Construction Standards for Regional water line and Surface Water Management" or its successor, a development permit may be approved in a flood area through a Type II procedure for the following:

The Flood Plain is located almost entirely offsite with the exception of the small area in the eastern portion of the site, which appears to be located within the future dedicated public right-of way (of 18 feet). As stated above, if construction activities encroach within the Flood Plain, then a Flood Plain alteration permit will be required.

421-7 *Development Standards for all Type II and Type III Flood Plain and Drainage Hazard Area Uses or Activities*

The applicant for a proposed flood plain or drainage hazard area development shall demonstrate compliance with the following applicable standards as required by Section 421-3 above:

421-7.1 Development proposed to encroach into a regulatory floodway adopted and designated pursuant to FEMA regulations shall:

- A. Demonstrate through hydrologic and hydraulic analysis, performed in accordance with standard engineering practice by a licensed professional engineer, that the cumulative effect of the proposal, when combined with all other existing and anticipated development within the basin based upon full development of the basin as envisioned in the applicable Community Plan or the Rural/Natural Resource Plan, will not result in any increase in flood levels during the occurrence of the base flood discharge; and*
- B. Comply with all applicable flood hazard reduction provisions of Section 421.*

The proposed development will not impact the base flood plain elevation given that no impacts or encroachments into the Flood Plain are proposed. However, in the event that construction activities do encroach within the Flood Plan, a Flood Plain alteration permit will be required.

421-7.2 Notwithstanding Section 421-7.1, development that would result in an increase in flood levels may be approved if the County, at the sole expense of the applicant, first obtains FEMA approval in accordance with 44 CFR Ch. 1, Part 65 (October 1, 1990 edition, or its successor).

The proposed development will not impact the flood levels given that no impacts or encroachments into the Flood Plain are proposed. However, in the event that construction activities do encroach within the Flood Plan, a Flood Plain alteration permit will be required.

421-7.3 Development proposed on a flood plain site where the development does not encroach into an adopted FEMA regulatory floodway shall demonstrate through hydrologic and hydraulic analysis, performed in accordance with standard engineering practice by a licensed professional engineer, that the cumulative effect of the proposal,

when combined with all other existing and anticipated development within the basin based upon full development of the basin as envisioned in the applicable Community Plan or the Rural/Natural Resource Plan, will not increase flood levels during the occurrence of the base flood discharge more than one foot.

The proposed development will not impact the flood plain because no impacts or encroachments into the Flood Plain are proposed. Further, as noted previously, upon right-of-way dedication, the Flood Plain appears to be located within the right-of-way. However, in the event that construction activities encroach within the Flood Plan, then a Flood Plain alteration permit will be required.

421-7.4 In areas where a regulatory floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within flood areas on the Flood Insurance Rate Map (FIRM), unless it is demonstrated through hydrologic and hydraulic analysis, performed in accordance with standard engineering practice by a licensed professional engineer, that the cumulative effect of the proposal, when combined with all other existing and anticipated development within the basin based upon full development of the basin as envisioned in the applicable Community Plan or the Rural/Natural Resource Plan, will not increase flood levels during the occurrence of the base flood discharge more than one foot.

A regulatory floodway has been designated (and is off-site to the south). The proposed development will not impact the flood plain because no impacts or encroachments into the Flood Plain are proposed. Further, as noted previously, upon right-of-way dedication, the Flood Plain appears to be located entirely within the right-of-way. However, in the event that construction activities encroach within the Flood Plan, then a Flood Plain alteration permit will be required.

421-7.5 Notwithstanding Sections 421-7.3 and 421-7.4, an increase in flood levels in excess of one foot may be approved if the County, at the sole expense of the applicant, first obtains FEMA approval in accordance with 44 CFR Ch. 1, Part 65 (October 1, 1990 edition, or its successor).

An increase in flood levels should not occur because no impacts or encroachments into the Flood Plain are proposed.

421-7.6 Development proposed on a drainage hazard area site shall demonstrate through hydrologic and hydraulic analysis, performed in accordance with standard engineering practice by a licensed professional engineer, that the cumulative effect of the proposal, when combined with all other existing and anticipated development within the basin based upon full development of the basin as envisioned in the applicable Community Plan or the Rural/Natural Resource Plan, will not result in any increase to the drainage hazard area elevation at any point in the community.

Notwithstanding this provision, an increase may be approved if the area in which the rise will occur contains no structures and the owner of such property signs a written acceptance of any increase in the drainage hazard area elevation.

There are no Drainage Hazard Areas within the site boundaries or near the site.

421-7.7 Encroachments into a floodway allowed under Section 421-7.1 shall be designed so as to minimize the risk that the encroachment will catch substantial debris or otherwise significantly impede floodwater flows. Designs may include, but are not limited to, adequate sizing of openings, secured breakaway bridges, diverters or spacing of supports.

The floodway associated with Rock Creek (to the south) is located entirely off-site to the south. Thus, there are also no elements of the proposed development that would encroach into the floodway.

421-7.8 The proposal will not increase the existing velocity of flood flows so as to exceed the erosive velocity limits of soils in the flood area. Energy dissipation devices or other measures to control the mean velocity so as not to cause erosion of the flood area may be used to meet this standard. "Open Channel Hydraulics" by V. T. Chow, McGraw-Hill Book Company, Inc., 1988, is presumed to be the best available reference for maximum permissible velocity. "Hydraulic Engineering Circular No. 14," Hydraulic Design of Energy Dissipators for Culverts and Channels, published by the Federal

Highway Administration, September 1983, is presumed to be the best available reference for the design of energy dissipators.

The project is not anticipated to result in an increase in the velocity of flood flows since no encroachments into the Flood Plain are proposed or anticipated at this time. Additionally, according to the application, the proposed storm drainage management system will release treated stormwater at predevelopment rates (as required by CWS).

421-7.9 All cut and fill shall be structurally sound and designed to minimize erosion. All fill below the flood surface elevation shall be accompanied by an equal amount of cut or storage within the boundary of the development site unless:

According to the applicant and as indicated previously, no encroachments (e.g., grading) are proposed within the Flood Plain at this time.

421-7.10 There is adequate storm drainage behind a dike such as a lift pump or flap gate to drain the flood plain or drainage hazard area behind the dike.

There are no dikes or similar structures proposed.

421-7.11 That the environmental impact of the disturbance or alteration of riparian wildlife and vegetation has been minimized to the extent practicable as required by Section 422. Enhancement of riparian habitats through planting or other such improvements may be required to mitigate adverse effects. Significant features such as natural ponds, large trees and endangered vegetation within the flood area shall be protected when practicable.

See Section 422 below for analysis.

421-7.12 Drainage systems shall be designed and constructed according to the adopted Drainage Master Plan for the area, if one exists.

Clean Water Services is responsible for ensuring adequate storm drainage management, as is mandated by conditions of approval.

421-7.13 Proposed partitions and subdivisions shall minimize flooding by complying with the applicable standards of Sections 410, 421, 426, 605-3.2 and 610-3.1, and Clean Water Services Design and Construction Standards for regional water line and surface water management.

The proposed development is not a land division. Thus, this standard is not applicable. Notwithstanding, the proposed development will adhere to all applicable Code standards concerning grading and erosion control.

421-7.14 Public utilities and facilities in proposed partitions and subdivisions shall be located and constructed in a manner that will minimize flood damage.

The proposed development is not a land division. Thus, this standard is not applicable.

421-7.15 Proposed partitions and subdivisions shall provide adequate drainage to reduce exposure to flood damage by complying with the standards of Section 410 and applicable standards of Section 605-3.2 or 610-3.2, whichever is applicable.

The proposed development is not a land division. Thus, this standard is not applicable. Notwithstanding, the proposed development will provide appropriate drainage measures to reduce possible exposure to causing flood damage.

421-14 General Requirements and Prohibitions

421-14.1 Property owners shall maintain the flood area in such a manner as to prevent reduction of the natural carrying capacity. Maintenance outside of the public right-of-way shall be done by means of hand implements unless a development permit for an alteration is first obtained (lawn mowers are considered hand implements).

The proposed development will not impact the carrying capacity of the flood area because no impacts or encroachments into the Flood Plain are proposed or anticipated. In the event that half-street improvements are located with the Flood Plain, project designs will need to ensure that the flood area and capacity is maintained.

421-14.2 Storage of petroleum products, explosives, herbicides, pesticides, insecticides, poisons, defoliants, fungicides, desiccants, nematocides and rodenticide is prohibited.

The applicant stated that no storage of these items will occur within the Flood Plain. Underground fuel storage tanks will be subject to DEQ regulations and requirements and permitting.

421-14.3 Dumping of solid waste in the flood area is prohibited.

The applicant stated that no dumping will occur within the Flood Plain.

421-14.4 Section 421 is in addition to any and all Federal, State or special district laws and regulations in force at the time of approval of the development permit. Any permits required from a local, state or federal agency shall be obtained prior to any development within the flood area.

The applicant stated that all required permits will be obtained.

421-14.5 The standards and criteria of this Section are cumulative and in addition to any other requirements of this Code. Any more stringent provisions of an applicable Community Plan or the Rural/Natural Resource Plan shall control.

421-14.6 The Review Authority may condition any Type II or III development permit to the extent necessary to avoid any specifically identified deleterious impacts on the natural integrity of the flood area or to wildlife and vegetation within the flood area.

The applicant has submitted a Vegetated Corridor Enhancement and Mitigation plan prepared in accordance with CWS regulations.

421-14.7 In the case of the partitioning or subdivision of land for the location of structures for human occupancy, such site shall provide a building site, which includes the ground under the structure plus a 10-foot setback around all sides of the structure, with a ground elevation at least 1 foot above the flood surface elevation. No partition or

subdivision shall create a lot whose dimensions do not meet this standard.

The proposed development does not include any land division.

421-14.8 There shall be no dumping of fill in a flood area without a flood plain or drainage hazard area alteration permit.

No Flood Plain alteration is proposed at this time.

421-14.9 The applicant shall submit to the Director technical data as set forth in Section 421-14.10 prior to any watercourse alteration that will result in the expansion, relocation or elimination of the special flood hazard area.

No Flood Plain alteration is proposed at this time.

421-14.10 Within 6 months of project completion, an applicant who obtains a CLOMR from FEMA, or whose development alters a watercourse, modifies floodplain boundaries, or Base Flood Elevations shall obtain from FEMA a Letter of Map Revision (LOMR) reflecting the as-built changes to the Flood Insurance Study (FIS) and/or Flood Insurance Rate Map (FIRM).

The proposed development will not impact the Flood Plain elevation given that impacts or encroachments into the Flood Plain are not proposed at this time.

Section 422 Significant Natural Resources

422-1 Intent and Purpose

The intent and purpose of these standards is to permit limited and safe development in areas with significant natural resources, while providing for the identification, protection, enhancement and perpetuation of natural sites, features, objects and organisms within the county, here identified as important for their uniqueness, psychological or scientific value, fish and wildlife habitat, educational opportunities or ecological role.

Development within riparian areas, Water Areas and Wetlands, or Water Areas and Wetlands and Fish and Wildlife Habitat shall comply with applicable state and federal regulatory guidelines.

422-2 Lands Subject to this Section

Those areas identified in the applicable community plan or the Rural/Natural Resource Plan Element as Significant Natural Resources and areas identified as Regionally Significant Fish & Wildlife Habitat on Metro's current Regionally Significant Fish & Wildlife Habitat Inventory Map.

Significant Natural Resources have been classified in the Community Plans or the Rural/Natural Resource Plan Element by the following categories:

- 422-2.1 **Water Areas and Wetlands.** 100-year flood plain, drainage hazard areas and ponds, except those already developed.*
- 422-2.2 **Water Areas and Wetlands and Fish and Wildlife Habitat.** Water areas and wetlands that are also fish and wildlife habitat.*
- 422-2.3 **Wildlife Habitat.** Sensitive habitats identified by the Oregon Department of Fish and Wildlife, the Audubon Society Urban Wildlife Habitat Map, and forested areas coincidental with water areas and wetlands.*
- 422-2.4 **Significant Natural Areas.** Sites of special importance, in their natural condition, for their ecological, scientific, and educational value.*

422-3 Criteria for Development

- 422-3.1 The required master plan and site analysis for a site which includes an identified natural resource shall:
 - A. Identify the location of the natural resource(s), except in areas where a Goal 5 analysis has been completed and a program decision adopted pursuant to OAR 660, Division 23 (effective September 1, 1996);*
 - B. Describe the treatment or proposed alteration, if any. Any alteration proposed pursuant to Section 422-3.1 B. shall be consistent with the program decision for the subject natural resource; and**

C. Apply the design elements of the applicable Community Plan; or the applicable implementing strategies of the Rural/Natural Resource Plan Element, Policy 10, Implementing Strategy E which states:

"Implement the recommendations of the Oregon Department of Fish and Wildlife Habitat Protection Plan for Washington County and to mitigate the effects of development in the Big Game Range within the EFU, EFC and AF-20 land use designations."

422-3.3 *Development within a Riparian Corridor, Water Areas and Wetlands, and Water Areas and Wetlands and Fish and Wildlife Habitat:*

A. No new or expanded alteration of the vegetation or terrain of the Riparian Corridor (as defined in Section 106) or a significant water area or wetland (as identified in the applicable Community Plan or the Rural/Natural Resource Plan) shall be allowed except for the following:

(1) Crossings for streets, roads or other public transportation facilities.

(2) Construction or reconstruction of streets, roads or other public transportation facilities.

(3) Installation or construction of the following utilities: sewer and water lines, electric, communication and signal lines; and gas distribution and transmission lines.

(4) Wildlife viewing areas and recreation or nature trails.

(5) Bank maintenance, restoration or stabilization, including riprapping for erosion control, of a river or other watercourse or body of water provided there is compliance with the requirements of Section 421-4.6. This use is not subject to Section 422-3.5 or Section 422-3.6.

(6) Detached dwellings and accessory structures on a lot of record, provided there is insufficient suitable, existing buildable land area to permit construction outside the riparian corridor, as

defined in Section 106, or a significant water area or wetland (as identified in the applicable Community Plan or the Rural/Natural Resource Plan) and all required local, state or federal permits are obtained.

(7) Where it can be demonstrated, with concurrence of the Clackamas District biologist or other applicable district biologist of the Oregon Department of Fish and Wildlife, that a riparian corridor, Water Areas and Wetlands, or Water Areas and Wetlands and Fish and Wildlife Habitat has been degraded, an enhancement of these areas which conforms to the definition and criteria listed in Section 422-3.4 may be permitted through a Type II procedure.

Enhancement or alteration of a non-degraded portion of these areas is permitted when it is in conjunction with and it is needed to support the enhancement of the degraded area. Where development is proposed that would have negative impacts on these areas it is the county's policy to follow state and federal regulatory guidelines for mitigation proposals.

(8) All activities and uses associated with an expansion or alteration of Barney Reservoir and Henry Hagg Lake/Scoggins Dam; including but not limited to impoundment structures, water diversion and transmission facilities, road construction and related land alterations. Such activities and uses may be permitted through a Type III procedure.

422-3.4 *Enhancement of a degraded riparian corridor, Water Areas and Wetlands, or Water Areas and Wetlands and Fish and Wildlife Habitat permitted by Section 422-3.3 A. (7) shall meet the following:*

A. For the purposes of Section 422-3.3 A. (7) an enhancement is a modification, as a result of which no later than 5 years after completion of the project, the quality and/or quantity of the natural habitats is measurably improved in terms of animal and plant species numbers,

number of habitat types, and/or amount of area devoted to natural habitat.

The applicant has submitted site plan information required by this Section, including a Natural Resource Assessment prepared by Pacific Habitat Services, Inc. There are some areas along the southern property line that are designated with Metro's Title 13 (Riparian Areas). The delineation and assessment and proposed enhancement/mitigation of the degraded Vegetated Corridor is consistent with Clean Water Services standards and addresses Section 422-3.1. This information is in the record. In addition, CWS has issued a service provider letter which satisfies 422-3.4(C)(6).

According to the Natural Resource Assessment a total of approximately 8,895 square feet of permanent Vegetated Corridor encroachment will result from the construction of the proposed development. Additionally there are two small Vegetated Corridor areas that will experience temporary encroachments. The temporary encroachments are the result of sanitary sewer work and will be restored and replanted to good condition with native herbs and shrubs. Impacts to the permanent encroachment will be mitigated through the creation of 6,713 square feet of new Vegetated Corridor in the eastern portion of the site where there is currently no Vegetated Corridor. The new Vegetated Corridor will be planted with native trees and shrubs. Enhancement of these areas will also include the removal of any non-native species by hand.

To the extent 422-3.6 is applicable, the Hearings Officer finds that the proposed project will not seriously interfere with the preservation of the Title 13 Riparian areas. This is due in large part to the fact that so much of the Vegetated Corridor is in a degraded condition, which has been acknowledged by CWS. This is also due in part to the applicant's proposal to enhance 3,853 square feet of degraded on-site Vegetated Corridor and create 6,713 square feet of Vegetated Corridor. In total the project will result in the enhancement and creation of 10,566 square feet of contiguous Vegetated Corridor to good condition, which includes the removal of non-native invasive plant species. 537 square feet of existing wetland will also be enhanced.

Compliance with and implementation of the CWS-approved Vegetated Corridor enhancement and Vegetated Corridor creation satisfies Section 422 by minimizing impacts to the greatest extent practical and by mitigating impacts to the on-site degraded Vegetated Corridor. For these reasons, the Hearings Officer finds that the project as proposed and as described in the application satisfies Section 422.

Section 423 Environmental Performance Standards

423-2 New Uses

Development after the effective date of this Code shall observe the following requirements:

- 423-2.1 *When federal, state and local standards apply, the most restrictive shall govern.*
- 423-2.2 *Prior to issuance of a development permit or certificate of occupancy, the Director may require:*
- A. Evidence that mandatory federal, state and local permits have been or will be obtained.*
 - B. Information demonstrating that the proposed development complies with applicable standards set forth in this Section. This information may be required as a report of findings prepared by qualified engineers or other technical consultants.*

All applicable federal, state, and local permits shall be obtained (e.g., CWS, Site Development Permit and Erosion Control Permit, County, Grading Permit, DEQ, Underground Storage Tank Permit (Oregon's Underground Storage Tank Program is part of the DEQ's Land Quality Division.)

The proposed gas station will be subject to significantly greater environmental review than most other commercial uses that could be developed on this site. For instance, gas stations (fueling pumps) are subject to permitting requirements from the Oregon Department of Environmental Quality (DEQ). Each of the proposed uses without the gas pumps could be developed on the site.

The Oregon Department of Environmental Quality issues an annual operating certificate for gas stations with the understanding that the underground storage tank (UST) permittee (applicant) will operate in accordance with the conditions and requirements outlined in Oregon Administrative Rule (OAR) 340-150-0163. DEQ approvals/permits are required in addition to county land use approval. Further, Oregon's Underground Storage Tank (UST) Program, which is under DEQ's Land Quality Division, deals with matters related to *"tank registration and operating certificates; installation, operation and removal of UST's; cleanup of soil and groundwater contamination from petroleum leaks; training of system operators; financial liability protection for future leaks, licensing of contractors working on UST's and enforcement of state UST rules."* As it pertains to environmental quality involving underground tanks, Oregon tank owners and permittees as well as the public benefit by having a single set of state requirements enforced, thus eliminating duplicative state and federal requirements.

Clean Water Services also ensures that the proposed development will comply with the District's design and construction standards concerning storm water management & treatment and sanitary sewer conveyance. DEQ and CWS requirements, in particular, are designed and anticipated to protect against adverse environmental impacts from the service station at this location. Finally, the possibility that the tanks may leak in the future does not constitute a denial criteria for the proposed Type II land use, nor does the Community Development Code, including the Special Use standards of Section 430-123, regulate service stations based on the potential for environmental impacts.

423-3 Measurements

Accurate and representative measurements, as necessary, shall be made according to accepted engineering practice. Measurements shall be made at or anywhere outside the property lines of the property from which an emission is generated.

All required measurements shall be made according to accepted engineering practices in compliance with the CDC requirements and of those entities/agencies issuing the permits.

423-4 Air Quality

All development shall comply with the State Department of Environmental Quality Air Quality Standards.

The State Department of Environmental Quality (DEQ) standards pertaining to air quality apply to all land uses. No unusual air quality problems are anticipated as a result of the proposed development.

423-5 Odor

All development shall comply with the State Department of Environmental Quality Standards pertaining to odor.

The Hearings Officer anticipates that none of the uses proposed for the site are associated with the release of odorous gases past the property line. Fueling pumps are not expected to cause odor impacts beyond the property lines. In addition, the underground fuel storage tanks require approval and maintenance through DEQ's Underground Storage Tank Program. The State regulates the permitting and monitoring of underground storage tanks, such as fuel tanks.

423-6 Noise

All development shall comply with the State Department of Environmental Quality Standards relating to noise. Demonstration of compliance may be required by the Review Authority.

423-7 Vibration

No development shall generate ground vibration which is perceptible by the Director beyond the property line of origin without use of instruments. Ground vibrations caused by motor vehicles, trains, aircraft, or temporary construction work are exempt from strict application of these standards, but good faith efforts to control such vibrations shall be made by the originator.

No unusual problems with noise or vibration are anticipated with the proposed development is completed. The development would be subject to the Washington County Noise Ordinance at all times. Noise complaints are processed by Washington County Health and Human Services / Solid Waste and Recycling Program during regular business hours.

423-8 Heat and Glare

Heat and glare shall be limited as follows:

423-8.1 *Except for exterior lighting, operations producing heat or glare shall be conducted entirely within an enclosed building.*

423-8.2 *Exterior lighting shall be directed entirely away from adjacent properties.*

The Hearings Officer does not find that heat and/or glare-causing activities will be undertaken on-site.

423-9 Storage

423-9.1 *All materials, including wastes, shall be stored and all grounds maintained in a manner which will not attract or aid the propagation of insects or rodents or create a health hazard.*

423-9.2 *No open storage of materials and equipment shall be permitted unless contained by a site obscuring fence or landscaped screening.*

Storage of materials (for sale product merchandise) will occur inside the building. None of the merchandise is expected to attract or aid the propagation of insects or rodents or create a health hazard such that appropriate control measures common to retail grocery stores are not able to address.

423-9.4 *Storage of Hazardous Materials*

Developments which store hazardous materials must comply with State standards, OAR Chapter 340 Division 63, and the Federal standards, 40 CFR Part 262 and 264 and shall demonstrate such compliance. All hazardous materials must be stored above ground. Transport of and disposal of such materials shall be in conformance with all applicable

local, State and Federal regulations with such compliance demonstrated.

As addressed previously, the underground storage tanks require approval and monitoring by DEQ. Transport of and disposal of hazardous materials shall be in conformance with all applicable local, State, and Federal regulations, with such compliance demonstrated.

423-10 Drainage and Waste Water

All development shall comply with the State Department of Environmental Quality Water Quality Standards for all runoff, drainage and waste water.

Compliance with this standard will be evaluated as part of County Grading Permit review. The applicant is required to provide evidence from the State DEQ that the Underground Storage Tank Permit has been obtained. CWS must also approve the final stormwater facility design as part of its Site Development Permitting process before construction of the facility can commence.

423-11 Adequate Water Supply

All development shall be required to have an adequate water supply. Adequacy shall include:

423-11.1 Adequate supply for the use prior to issuance of a building permit (see Section 501-5.1, Critical Services).

The applicant proposes to install the necessary water line(s) served by the water district.

423-12 Radioactive Materials

The handling and storage of radioactive materials, the discharge of radioactive materials into air or water, and the disposal of radioactive waste in connection with all uses shall be in conformance with all applicable local, State, and Federal regulations with such compliance demonstrated.

423-13 Toxic or Noxious Matter

All development shall comply with the State Department of Environmental Quality standards pertaining to omission of toxic or noxious matter and such compliance shall be demonstrated.

The Hearings Officer does not find that radioactive, toxic or noxious materials will be made or disposed of on-site.

Section 426 Erosion Control

Section 426 requires erosion control measures in the Tualatin River and Oswego Lake sub-basins during construction to control and limit soil erosion. Section 426-5.2 allows the erosion control plan submission and review to be deferred until the time of any on-site work or construction.

Therefore, the applicant is required to submit an erosion control plan consistent with the requirements of Section 426 prior to any physical change or construction on the site.

The applicant is required to submit a final erosion control plan to Clean Water Services for their approval prior to any on-site or off-site work (including work within the right-of-way) or construction. These approvals are made conditions of approval.

Section 429 Bicycle Parking

429-6 Number of Bicycle Parking Spaces Required

The minimum number of bicycle parking spaces required for long-term use is specified by land use category and shall be in accordance with Table A. The minimum number of bicycle parking spaces required for short-term use is specified by land use category and shall be in accordance with Table B.

The applicant proposes 4 bicycle parking spaces. Pursuant to Section 429-6, Tables A (Long Term) and B (Short Term), a total of 4 bicycle parking spaces are required.

TABLE A

<i>USE</i>		MINIMUM NUMBER OF BICYCLE PARKING SPACES PER UNIT OF MEASURE (WHICHEVER IS GREATER)
<i>429-6.3 Business and Commercial</i>		
<i>D.</i>	<i>Retail stores, except as otherwise specified herein</i>	<i>Two (2) spaces, or one (1) space for each fifty (50) employees on maximum working shift</i>

Convenience Grocery: 2 Long Term Bicycle Parking Spaces

TABLE B

MINIMUM REQUIRED SHORT-TERM BICYCLE PARKING SPACES

<i>USE</i>		MINIMUM NUMBER OF BICYCLE PARKING SPACES PER UNIT OF MEASURE (WHICHEVER IS GREATER)
<i>429-6.8 Business and Commercial:</i>		
<i>G.</i>	<i>Retail stores, except as otherwise specified herein</i>	<i>Two (2) spaces, or one (1) space for each fifty (50) employees on maximum working shift</i>

Convenience Grocery: 2 Short Term Bicycle Parking Spaces

Total Required: 4 bicycle parking spaces

The Hearings Officer finds that the proposed bicycle racks will adequately serve the short and long term needs with locations and design that meets the standards of Section 429-7 through 11.

429-7 Bicycle Parking Location

A. Short-term:

Short-term parking must be located on site and within 50 feet of a well-used building entrance. In those instances where motor vehicle parking is adjacent to a use (such as a convenience market), short-term parking must be located within 30 feet from the entrance. Bicycle parking must have direct access to public right-of-way, existing and proposed bikeways and the main entrance of the principal use. With the permission of the Director, short-term parking may be located in the public right-of-way. Where no short-term bicycle parking is required, long-term parking spaces shall be made available for short-term bicycle parking.

All other parking requirements identified in Subsections 429-7 C., 1-4 shall also be met for short-term parking.

Based on the evidence in the record, it is feasible for the applicant to locate the bicycle parking in accordance with this criterion for the four required bicycle parking spaces. The applicant shall identify on revised plans four spaces in accordance with this section.

Section 430 Special Uses

430-35 Convenience Grocery

A convenience grocery store is one which sells frequently purchased foods and sundries to residents of an immediate area and/or to the traveling public.

Convenience grocery stores may be permitted subject to the following:

The applicant requests Special Use approval for "Chevron Market," (Convenience Market with Gas Pumps and a Drive-Thru) consisting of a 4,296 square foot building (3,510 square foot ground floor/building footprint) and 918 square foot mezzanine, including 4 fueling islands with 8 total pumps. The proposed total gross floor area complies with the maximum 5,000 square feet

of gross floor area permitted in the NC District. Convenience Groceries are limited to a maximum gross floor area of 5,000 square feet pursuant to Section 311-3.3.

As stated above, the second floor mezzanine encompasses 918 square feet of floor area that counts towards the maximum gross floor area limit of 5,000. The term “gross floor area” as used in Section 311-3.3 includes all floor area, including floor area contained in storage rooms, equipment rooms and rooms/areas supporting mechanical/electrical systems, including HVAC systems. The second floor mezzanine factors into TDT calculations further demonstrating the consideration of this area as useable floor area.

430-35.1 Entrances and Exits:

A. Access shall be determined based upon a site inspection which considers the following:

- (1) Site Size;*
- (2) Road Classification;*
- (3) Sight distance and allowed m.p.h.; and*
- (4) Adjacent development.*

B. Consolidation of access with adjoining uses shall be encouraged.

Access is limited to NW West Union Road. As a triangular-shaped corner lot bound by two street sides (to the west and north) and park land (comprised mostly with natural resources) there are no other options to provide vehicular access to the site. Moreover, access to NW 185th Avenue is not allowed due to access spacing restrictions, nor is it feasible due to the presence of the water quality facility. See Section 501-8.5 below and Attachment D (Transportation Report) of the Staff report for further detail. The Hearings Officer incorporates the findings and conclusions in Attachment D and D1 into this order as his own.

430-35.2 In consideration of possible negative impact on nearby residential uses, lighting, sign illumination, height and hours of operation may be restricted through the development review process.

The application included a photometric plan which demonstrates that lighting has been designed to minimize light impacts on surrounding residential uses, the closest of which are approximately 145 feet away from the site. This criterion is met.

430-41 - Drive-in or Drive-up Establishment

Any establishment or portion of an establishment designed and operated to serve a patron while seated in an automobile (not including drive-in theaters).

430-41.1 Entrances and Exits:

A. Access shall be determined based upon a site inspection which considers the following:

(1) Site size;

(2) Road Classification;

(3) Sight distance and allowed m.p.h.;

(4) Adjacent development.

B. Consolidation of access with adjoining uses shall be encouraged; and

C. Driveway entrances and exits shall be clearly marked.

Access is limited to NW West Union Road as access to NW 185th Avenue is not possible, and access to the south is not practicable due to environmental constraints.

430-41.2 *Drive-in facilities located in the parking lot or part of a larger commercial center shall not have separate access points to the street and shall utilize the center's access points;*

All three commercial uses will share the same access to NW West Union.

430-41.3 Lighting, sign illumination and height, and hours of operation may be restricted through the development review process to insure compatibility within the Office Commercial District; and

The development site is not designated Office Commercial District, but the application included a Site Photometrics Plan (Sheet E1.0) demonstrating that lighting has been designed to minimize impacts on surrounding residential uses. Additionally, according to the application, the proposed pole mounted sign will not be illuminated.

430-123 Service Station and/or Car Wash

A commercial establishment primarily involved with sales and services of motor fuels. In addition, the following may occur: supplying goods and services generally required in the operation and maintenance of automotive vehicles, including sales of petroleum products, sale and servicing of tires, batteries, automotive accessories and replacement items; car washing and lubricating services; the performance of minor automotive maintenance and repair, and the supplying of other incidental customer services and products. No merchandise or incidental items, including prizes or premiums, shall be displayed outside an enclosed building. Major automotive repairs, painting and fender work are excluded. Service Stations and car washes are subject to the following:

The applicant requests Special Use approval for a service station served by 4 fueling islands (8 pumps) to be constructed on the development site supported by 22 off-street parking spaces and site landscaping. The service station business element will be integrated with the Convenience Grocery. Customers can pay at the pump or inside the store. Customers can purchase goods while getting gas or diesel, separately from a fuel purchase, or at the drive-thru.

430-123.1 Entrances and Exits

D. Access shall be determined based upon a site inspection which considers:

- (1) Site size;*
- (2) Road classification;*

(3) *Sight distance and allowed m.p.h.; and*

(4) *Adjacent development.*

E. Consolidation of access with adjoining uses shall be encouraged, particularly when the proposed driveway is within 10 feet of the side property line.

Access is limited to NW West Union Road as access to NW 185th Avenue is not possible, and access to the south is not practicable due to environmental constraints. The main access is located near the east property line and constitutes the 4th leg of a signalized intersection. The second access is located almost half-way between 185th Avenue and the signalized intersection discussed above. The second access is also designed as a right-in only access and is located at the best location to accommodate large fuel trucks (to enter the site).

430-123.2 Lighting, sign illumination, height and hours of operation may be restricted through the development review process in consideration of possible negative impact on nearby residential uses.

Currently none of the restrictions listed in this section are necessary.

430-123.3 No display of merchandise outside the building except small items such as oil, windshield wiper blades and tires (limited to one rack of 20).

A Condition of Approval has been made to ensure compliance.

430-123.4 No outside storage or sale of vehicles is permitted for more than 24 hours per vehicle.

A Condition of Approval has been made to ensure compliance.

4. Article V, Public Facilities and Services:

Section 501 Public Facility and Service Requirements

501-2 Application of the Public Facility and Service Standards Inside a UGB

Application of the Public Facility and Service Standards (Section 501-1 through 501-12) shall apply to the Urban Unincorporated Area as follows:

501-2.2 To all new construction of structures or expansion of an existing structure, except for construction of a single (one [1] only) detached dwelling unit or duplex on an approved duplex lot (Section 430-13.3), or other structures which meet all of the following:

- A. Contains two thousand (2000) square feet or less;*
- B. Does not, in itself, generate more than fourteen (14) vehicle trips per day, as defined by the Institute of Traffic Engineers, Trip Generation Information Report;*
- C. Contains no plumbing fixtures, or has less than twelve (12) additional fixtures attached to an existing, approved septic system or public sewer; and*
- D. Does not pose any unique public health or safety issues.*

Article V is applicable to the proposed development per Section 501-2.2 in that it generates more than 14 ADT and will include a 4,428 square foot commercial development (gas pumps/convenience market/drive-thru) served by 4 fueling islands (8 pumps). The proposed use will generate a net increase of 1,375.56 ADT to 1,559.52 ADT. Analysis relating to this calculation is found below.

501-3 Application of the Public Facility and Service Standards for Multiple Actions

There are no future or phased development actions for this site that would make it appropriate to delay application of Article V. As such, all requirements of Article V for this site are being evaluated with this subdivision and property line adjustment application.

501-4 Deferral of Public Facility and Service Standards

The applicant has not proposed to defer the public facility and service standards that are applicable to this proposal.

501-5 Exemptions from Public Facility and Service Standards of Section 501-2

The proposed development is not exempt from Section 501-2. Therefore, the provisions of this section are applicable. The applicant has not requested an exemption in accord with Section 501-2.

501-6 Exceptions for Critical and Essential Services

The applicant has requested an exception to Critical or Essential Services for this development for half-street improvements.

501-6.1 Development proposals that cannot ensure critical and essential services other than those required by Sections 501-8.1 B. (4) or 501-8.2 G. [Half-street improvements] within the required time frames shall be denied unless all of the following findings can be made:

B. The approval of the development application will not substantially interfere with the ability to later provide the particular inadequate facility(ies) or service(s) to anticipated uses in the vicinity of the subject property;

The Hearings Officer finds that approval of the exception request would not interfere with the ability to provide half street improvements in the future, provided that adequate right-of-way is dedicated and that the building and canopy are located far enough to the south to accommodate the required half-street improvements.

However, the Hearings Officer finds that the applicant has the ability to provide half street improvements at this time, and that half-street improvements are roughly proportional to the trips generated by the development. According to the Transportation Plan, the required right-of-way – as measured from the legal centerline - is 21 feet. The applicant proposes 18 feet of ROW dedication plus a 10 foot PUE (this reduced right-of-way dedication is acceptable to the County Engineer). Attachment D of the Staff Reports sets forth analysis regarding required right-of-way.

C. The approval of the development application without the assurance of the particular inadequate facility(ies) and service(s) will not cause a danger to the public or residents in the vicinity of the subject property; and

The Hearings Officer finds that approval of the half-street improvement exception could pose potential unsafe conditions to the traveling public. The proposed development will generate 2,763.96 new weekday vehicle trips per ITE Category 853. The nearest service stations are a mile away south on NW 185th Avenue and a mile and a half to the west. It is anticipated that the proposed use at this location will be heavily frequented by motorists in the Bethany/North Bethany areas needing to fuel their vehicles. This increase in new trips would be best served and made safer by the completion of half-street improvements along NW West Union Road.

501-6.3 Development proposals that cannot ensure improvements required by Sections 501-8.1 B. (4) or 501-8.2 G. [Half-street improvements] within the required time frames shall be denied unless the Review Authority determines that the findings required under Sections 501-6.1 B. and C. plus the findings required by at least one of Sections 501-6.3 A. through C. below can be made.

A. Within five hundred (500) feet of the subject site (not including the subject site), measured in each direction along the frontage road, but not beyond the nearest intersecting Collector or Arterial road:

(1) No similar frontage improvements exist on the same side of the street as the subject site; and

There are similar frontage improvements on the same side of the street between the intersection of NW West Union Road and NW Kahneeta Drive. Improvements including sidewalks, curbs and storm drainage exist within 500 feet of the development site. The improvements were completed for the Rock Creek No. 10 residential subdivision in the late 1970s. The improvements extend from the intersection with NW Kahneeta Drive improvements to the Rock Creek Trail mid-block crossing. Outside of these improvements there are no other similar improvements.

(2) Seventy-five (75) percent or more of the parcels fronting on the same side as the subject site cannot be divided based on the allowed minimum lot size or density requirements of the applicable land use district(s).

There are three properties to the east located within 500 feet of the development site; two are owned by the Park District and are maintained as park and other open space and the other a developed residential lot. The larger of the two properties is encumbered with natural resources and the Flood Plain associated with Rock Creek and is designated Institutional. Consequently, the Institutional lands possess no residential capacity. Therefore, the criteria pertaining to residential density is not applicable to the larger Institutional parcel. The smaller parcel is an open space (0.7 acre in size) too small for redevelopment with residential uses but is designated R-5 Residential. The residential lot currently supports a single family dwelling unit. There appears to be a relatively large, unencumbered area of the Institutional parcel located outside of the site's unbuildable areas (i.e., Flood Plain, Goal 5 Resources and powerline easements) that could support residential development if THPRD sought a plan amendment to change the land use designation from Institutional to residential or that would support park improvements if further developed by the park district.

The Hearings Officers finds that the half-street improvement exception may satisfy Section 501-6.1 B. but does not satisfy Section 501-6.1 C. Further, the Hearings Officer finds that the half-street improvement exception does not satisfy Section 501-6.3 A.

Additional Information:

- According to staff, the County does not have a capital road project in the design stage, nor does the county have a funded road project for the section of NW West Union Road east of NW 185th Avenue. There is a proposed project to look

at the design for the future road segment of NW West Union Road west of NW 185th Avenue, but the design project stops short of the intersection with NW 185th Avenue. No design work is planned for West Union Road east of NW 185^h Avenue. Therefore, there are no half-street improvements currently planned to be constructed as part of a county-funded road project in the foreseeable future for West Union east of 185th Avenue (**Section 501-6.3 B.**).

B. The subject improvements will be constructed as part of a planned and funded public road improvement project scheduled to begin construction within twelve (12) months of the proposed development's approval date.

The Hearings Officer finds the required half-street improvements (of about 723 feet) would be roughly proportional to the impacts resulting from the proposed Convenience Grocery and Service station.⁹ For comparison, a net increase in 1,559.52 additional trips would be the equivalent of a 165-lot detached single family residential subdivision. So a net increase of 1,559.52 additional trips would be comparable to a large residential subdivision but in a much smaller area. The new net increase in trips also represents about a 13% increase in trips on West Union (based on the 2019 traffic count), whereas the proposed development would generate 2,763.96 gross new trips (Scenario B). Further, a new net increase of 2,763.96 trips would represent about a 23% increase in trips on West Union (based on the 2019 traffic count).

The Hearings Officer has considered the applicant's argument that pass-by trips should be removed from the County's proportionality determination. Ultimately, the Hearings Officer is not persuaded by this argument. First, there does not appear to be any Oregon cases that have held that pass-by trips may not be considered in a proportionality determination, and the applicant does not cite to one. Second, the trip estimates used in the determination rely on those in the ITE Trip Generation Manual. As staff noted, the County has historically relied on the ITE as a clear set of standards applicable to a wide variety of uses. Many appellate cases, in Oregon and elsewhere, involve disputes over traffic impacts, and ITE estimates are often the basis for the calculations subject to dispute. Therefore, it is reasonable for local governments to rely on the trip generation figures in the ITE as a common denominator to evaluate development, estimate impacts and determine whether certain conditions are roughly proportional to those impacts. Third, it appears that the applicant's AMP depends upon the improvements.

501-7 Levels of Public Facilities and Services

The applicant has provided documentation and service provider letters consistent with the definitions and procedures listed in this section.

⁹ As noted above, the Hearings Officer incorporates the findings and conclusions of the transportation report, Attachments D and D1 of the staff report, as his own.

501-8 Standards for Development

501-8.1 Critical Services

- A. An applicant for development shall provide documentation from the appropriate non-County service provider that adequate water, sewer and fire protection can be provided to the proposed development prior to occupancy. The documentation shall be no more than ninety (90) days old.*

The applicant has provided service provider letters from Clean Water Services, Tualatin Valley Water District, and Tualatin Valley Fire & Rescue, all of which were dated within 90 days of the date the application was submitted.

- B. No development shall be approved without an adequate level of access to the proposed development in place or assured at the time of occupancy, with "adequate" defined for critical road services as:*

Findings for the requirements under this Section are located in Attachment D to the Staff Report, and are incorporated herein by reference.

- C. No development shall be approved without adequate drainage as prescribed by the County Drainage Master Plan or the adopted Drainage Ordinance or Resolution and Order, and adequate provisions for stormwater, surface water and water quality management as required by the Clean Water Services' "Design and Construction Standards for Sanitary Sewer and Surface Water Management" or its successor.*

The applicant has provided documentation from Clean Water Services, and conditions of approval have been made requiring the development to be reviewed by Clean Water Services for compliance with Resolution & Order 19-05 - Erosion Control, Water Quality, and Water Quantity.

- D. No development shall be approved on property that is located outside of the Washington County Urban Road Maintenance District. The subject property shall be annexed into this district prior to being granted final approval of a development application. For applications where both preliminary and final approval are not required, the property shall annex into the district prior to being granted preliminary approval.*

As noted in Attachment D to the Staff Report (Transportation Report), the property is in the Urban Road Maintenance District.

E. For development in a Transit Oriented District, or development outside a Transit Oriented District but adjacent to a designated Special Area street, a nine (9) foot pedestrian/utility easement shall be recorded adjacent to frontage on a Special Area Neighborhood Route or Special Area Commercial street. A ten (10) foot pedestrian/utility easement shall be recorded adjacent to a Special Area Local street. If the required sidewalk width is greater than the sidewalk/utility easement, additional sidewalk easements shall be recorded to the outside edge of the required sidewalk.

The site is not in a Transit Oriented District or adjacent to a Special Area street. The standards of this section are not applicable.

501-8.2 Essential Services

A. Service Provider Documentation

The applicant has provided service provider letters from districts and agencies that provide services defined as Essential in Article V. All of the services provider letters indicate that the identified services can be provided for the development.

B. Adequate Level of Arterial and Collector Roads

Findings for the requirements under this Section are located in Attachment D of the Staff Report (Transportation Report) and incorporated herein by reference.

C. Street Lighting

For all new Local, Neighborhood Route, Collector and Arterial streets, and half-street improvements an applicant shall provide street lighting consistent with County engineering standards and procedures and the requirements of the electrical utility company providing service to the area. The applicant shall ensure the construction, maintenance and power costs of street light facilities through the annexation and petition for service to an existing County service district for lighting or other funding method approved by the County Engineer.

County staff will review street lighting for the proposed development for compliance with the County Road Design and Construction Standards. Lighting review, compliance with the County requirements, and funding for construction, maintenance, and operation of any required street lighting are set forth in conditions of approval.

- D. Applicants shall be required to dedicate or reserve appropriate right-of-way for the planned transit corridor if it is determined in the development review process that the County has the funds available to pay for the land to be acquired or the applicant chooses to receive the density bonus provided in Section 375-13.2.*

The subject site is not in a Transit Oriented district and no right-of-way for a transit corridor is needed.

- E. Gravel roads are unacceptable for development within the Urban Growth Boundary and they shall be improved in accordance with the Washington County Transportation Plan and Road Design and Construction Standards, including the installation of street lights consistent with County engineering standards and procedures and the requirements of the electrical utility company providing service to the area. The applicant shall ensure the construction, maintenance and power costs of street light facilities through the annexation and petition for service to an existing County service district for lighting or other funding method approved by the County Engineer.*

The site does not have gravel roads along its frontage.

- F. Future alignments of Collectors or Arterials as designated on the Transportation Plan or an adopted study, lying within or adjacent to the development's boundary shall be constructed in accordance with the Washington County Transportation Plan and Road Design and Construction Standards.*
- G. A half-street improvement shall be constructed along the site's frontage of existing Collector and Arterial roads which abut the site and are not improved in accordance with the Washington County Transportation Plan and Road Design and Construction Standards.*

NW 185th Avenue and NW West Union Road are Arterial Streets adjacent to the site. Requirements regarding half-street improvements are described in Attachment D of the Staff Report (Transportation Report), and are incorporated herein by reference.

- H. For development in a Transit Oriented District, a nine (9) foot pedestrian/utility easement shall be recorded adjacent to frontage on a Special Area Collector street. If the required sidewalk width is greater than this sidewalk/utility easement, additional sidewalk*

easements shall be recorded to the outside edge of the required sidewalk.

The subject site is not in a Transit Oriented District.

- I. Where off-site road improvements are otherwise required as a condition of development approval, they shall include facilities accommodating convenient pedestrian and bicycle travel, including bicycle ways along Arterials and Collectors. The level of pedestrian and bicycle improvement shall be determined by the Review Authority, based upon the impact of the proposed development.*

Findings for the requirements under this Section are located in Attachment D of the Staff Report (Transportation Report) and are incorporated herein by reference.

- J. When a development site includes frontage on a roadway that is identified as a 'Boulevard' or 'Street' on the Regional Street Design Overlay Map in the Transportation Plan, the Director shall determine if additional right-of-way, set backs, easements or right-of-way reservations are required so that implementation of Regional Street Design Guidelines will not be precluded.*

The subject site does not have frontage on a roadway with either of these designations on the Regional Street Design Overlay Map in the Transportation Plan.

- K. Law Enforcement Services*

No development shall be approved on property that is located outside of the Washington County Enhanced Sheriff's Patrol District. The subject property shall be annexed into the district prior to being granted final approval of a development application. For applications where both preliminary and final approval are not required, the property shall annex into the district prior to being granted preliminary approval.

The subject site is in the Washington County Enhanced Sheriff's Patrol District.

501-8.3 Desirable Services

- A. Pedestrian walkways, off-street trails and pathways and bicycle facilities*

The subject site does not require any pedestrian walkways, trails, or facilities per Section 408, Tualatin Hills Parks & Recreation District, or the Transportation System Plan – with the noted

exception of a pedestrian connection (from the building to NW West Union Road sidewalks) pursuant to Section 408-10.

B. Park and recreation facilities

The subject site is currently within the Tualatin Hills Parks & Recreation District.

501-8.4 Dedication of Right-of-Way

The Transportation Plan requires a total of 51 feet from legal centerline for NW West Union Road, which is a County Arterial designated as an Enhanced Major Street Bikeway. 30 feet of right-of-way exists along the NW West Union Road frontage. As described in Attachment D of the Staff Report, the County Engineer accepts a reduced setback from 21 feet to 18 feet.

501-8.5 Access to County and Public Roads

All developments shall have legal access to a public road. Except for interim access as provided in Section 501-8.5 E. (Interim Access), access onto any public road in the unincorporated or incorporated urban area shall be permitted only upon issuance of an access permit upon demonstration of compliance with the provisions of the county road standards and the standards of Section 501.

The proposed development fronts NW 185th Avenue, a county Arterial. No access is proposed or practicable due to the presence of the water quality facility as well we the fact that any access would be too close to the intersection and in conflict with the north-bound dedicated right-turn lane.

The proposed development also fronts NW West Union Road. The applicant requests approval of an Access Management Plan for two accesses: the western-most access as a right-in-only access and the eastern-most access as the fourth leg of an existing signalized intersection. An AMP is required due to the arterial access spacing requirements of 600 feet. Findings for the requirements under this Section are in Attachment D to the Staff Report (Transportation Report) and are incorporated by reference.

Opponents questioned whether the Code allows for applicant's proposed access, and asserted that it is prohibited pursuant to 501-8.5(B)(4)(a). In light of the AMP request, the Hearings Officer believes the access proposed is permitted under 501-8.5(C)(1), and that the section allows for more than one point of access given the use of the plural "points" of access with an approved AMP.

501-8.6 Methods to Assure Facilities and Services

Findings for the requirements under this Section are in Attachment D to the Staff Report (Transportation Report) and are incorporated by reference.

Section 502 Sidewalk Standards

502-1 Intent, Purpose, Application, Authority, Requirement

502-1.4 Sidewalks shall be required to be constructed prior to occupancy for the following development in the unincorporated areas of Washington County within an urban growth boundary:

A. All development that is subject to the Public Facility and Service Standards as required by Section 501-2, except for:

(1) Private streets for four (4) or fewer dwelling units pursuant to Section 409-3.3 A. (1), (2), and (4 - 7); and

(2) Residential development that meets the exemption criteria in Section 502-14; or

The proposal is subject to Section 501, per the applicability standard in Section 501-2. Sidewalks constructed at ultimate location and grade are required. Specific sidewalk requirements for this proposal are in Attachment D to the Staff Report (Transportation Report) and are incorporated by reference.

D. Ordinance No. 768-A, 783-A, 799-A – Washington County Transportation System Plan:

The findings and recommendations for transportation standards are found in the Transportation Report and are incorporated as findings herein.

E. Ordinance No. 793-A; Washington County Transportation Development Tax Ordinance:

The Transportation Development Tax (TDT) is required of all new development and constitutes an assurance to satisfy a development's requirement to provide additional capacity to major collectors and arterial streets needed for development. This fee is based on the number of daily trips a site generates and is due at issuance of a building permit unless deferred to building occupancy.

F. Ordinance No. 738 - Road Design and Construction Standards:

The findings and recommendations for transportation standards are found in the Transportation Report and are incorporated as findings herein.

G. Resolution and Order No. 86-95 – Determining Traffic Safety Improvements

The findings and recommendations for transportation standards are found in the Transportation Report, Attachments D. and D1, and are hereby incorporated as findings. No off-site improvements are necessary to satisfy R&O 86-95 except as what may be necessary to provide safe site access (e.g., adequate sight distance, adequate sight access illumination at NW West Union Road) as determined by Traffic Engineering to ensure that the approved AMP will provide safe access.

H. R & O No. 19-05 regarding Erosion Control, Water Quality and Water Quantity:

Resolution and Order 19-05, as amended by Resolution and Order 19-05, contains adopted standards and regulations for Clean Water Services (The District) review and approval of erosion control measures.

V. Summary and Conclusion

The required findings have been made for all of the applicable Code sections. When implemented in accordance with the Conditions of Approval as attached, and the approved final plans, the project will be in compliance with the Community Development Code and the Community Plan.

The Hearings Officer **approves** the request for Special Use and Development Review approval for the proposed development, and an Access Management Plan for access to NW West Union Road, subject to the Conditions of Approval attached as Exhibit 1 to this Order.

The Hearings Officer **denies** the applicant's request for a Half-Street Exception pursuant to the analysis provided in this order.

It is so ordered, this 30th day of January, 2023.



David F. Doughman
Washington County Land Use Hearings Officer

EXHIBIT 1
CONDITIONS OF APPROVAL
WEST UNION CHEVRON
CASEFILE NO. L2200199-SU/SU/SU/D(C)/AMP/M

I. PRIOR TO COMMENCING ANY ON-SITE IMPROVEMENTS, INCLUDING GRADING, EXCAVATION AND/OR FILL ACTIVITIES THE APPLICANT SHALL:

A. Submit to Building Services Division (503-846-3470) for review and approval:

1. A Grading Permit application. The application shall include detailed plans as required under CDC Section 410-1.2, as well as submittal requirements noted under CDC Section 410-2.1 and 410-2.2 of the Community Development Code.
2. A site utility permit may be required for all private work.
3. Site specific geotechnical engineering report with recommendations for the development of the site is required. The report should be stamped and signed (electronic signature accepted) by an Oregon registered engineer.
4. Provide driveway/drive aisles/parking lot structural details on the plans per site specific geotechnical engineering recommendations.
5. Provide drainage analysis report stamped by a civil engineer that shows that the additional impervious areas as a result of this proposed work will not impact the surrounding properties negatively per **WCC 14.12.310**.

B. A Clean Water Services (CWS) Site Development Permit must be obtained. Application for CWS Site Development Permit must be in accordance with the requirements of the Design and Construction Standards, Resolution and Order No. 19-5 as amended by R&O 19-22 (CWS Standards), or prior standards as meeting the implementation policy of R&O 18-28, and is to include:

1. Compliance with all CWS Standards.
2. Detailed grading and erosion control plan. An Erosion Control Permit will be required. Area of Disturbance must be clearly identified on submitted construction plans. If site area and any offsite improvements required for this development exceed one-acre of disturbance; project will require a 1200-CN Erosion Control Permit.
3. A drainage report including a downstream drainage analysis meeting the requirements of R&O 19-5, Section 2.04.2.m will be required. If downstream storm conveyance does not have the capacity to convey the volume during a 25-year, 24-hour storm event, the applicant is responsible for mitigating the flow as provided in the above-named design standards.
4. Detailed plans showing the development having direct access by gravity to public storm and sanitary sewer.

5. Plans showing storm service requirements to the site. If private lot LIDA systems proposed, must comply with the current CWS Standards and Washington County Plumbing Standards.
6. Any offsite sanitary or storm sewer improvements identified as part of this development may require additional offsite street improvements/restorations. All transportation-related infrastructure, (including but not limited to roadway surfaces and base material) influenced by sanitary or storm sewer improvements, shall be restored to original or better condition.
7. Provisions for water quality in accordance with the requirements of the above-named design standards. Water Quality is required for all new development and redevelopment areas per R&O 19-5 Section 4.04. Access shall be provided for maintenance of facility per R&O 19-5, Section 4.07.6.
8. Show all existing and proposed easements on plans. Any required storm sewer, sanitary sewer, and water quality related easements must be granted to Clean Water Services.
9. Application may require additional permitting and plan review from CWS Source Control Program. For any questions or additional information, please contact Source Control at (503) 681-5175.
10. Applicant shall comply with the conditions as set forth in the Service Provider Letter No. 21-000384, dated June 14, 2022.
11. Clean Water Services shall require an easement over the Vegetated Corridor conveying storm and surface water management to Clean Water Services that would prevent the owner of the Vegetated Corridor from activities and uses inconsistent with the purpose of the corridor and any easements therein.
12. Detailed plans showing the sensitive area and corridor delineated, along with restoration and enhancement of the corridor.
13. If there is any activity within the sensitive area, the applicant shall gain authorization for the project from the Oregon Department of State Lands (DSL) and US Army Corps of Engineers (USACE). The applicant shall provide Clean Water Services or its designee with copies of all DSL and USACE project authorization permits.
14. Any proposed offsite construction activities will require an update to the current Service Provider Letter for this project.

PRIOR TO SEWER CONNECTION PERMIT ISSUANCE

1. **The above noted improvements must be completed to CWS satisfaction.**
 2. **The as-constructed drawings (as-builts), or a bond guaranteeing the as-builts, shall be submitted and accepted by CWS.**
- C. Submit to Land Development Services (Project Planner Paul Schaefer, 503-846-3832):**

1. Submit a completed FEMA-issued Elevation Certificate certified by a professional land surveyor documenting the 100-year flood elevation and evidence of field marks of this elevation provided on site (**prior to any right-of-way disturbances or construction**) if any portion of the proposed project is found to be within the FEMA Special Flood Hazard Area (100-Year Floodplain / Base Flood Elevation 175.9 feet [1988 NAV]). No structures are allowed within this area without additional review.
2. Copies of all applicable Underground Storage Tank Permits and Certifications issued by Oregon DEQ.
3. As applicable, documentation from the Fire Marshal demonstrating compliance with TVF&R Permit 2022-0048.

II. PRIOR TO FINAL APPROVAL (WITHIN FOUR YEARS OF OBTAINING PRELIMINARY APPROVAL):

A. The following documents shall be executed (Contact John Kidd, Survey Division, 503-846-7932):

1. Dedication of right-of-way for **NW 185th Avenue** to a County Arterial standard designation to provide adequate corner radius and pedestrian/utility easements, as approved by the County Engineer.
2. Dedication of right-of-way for **NW West Union Road** to a County Arterial standard designation to provide a total of 18 feet of right-of-way from legal centerline, including adequate corner radius and pedestrian/utility easements, as approved by the County Engineer as applicable to provide 48 feet from centerline.
3. A ten (10) foot Public Utility Easement along NW West Union Road.
4. Vehicular access restrictions along the entire frontage of NW 185th Avenue.
5. Vehicular access restrictions along the entire frontage of NW West Union Road, except at the approved location(s).

B. Submit to Current Planning Services, Public Assurance Staff (503-846-3842):

1. Completed "Design Option" form.
2. \$39,000 Administration Deposit.

***NOTE:** The Administration Deposit is a cost-recovery account used to pay for County services provided to the developer, including plan review and approval, field inspections, as-built approval, and project administration. The Administration Deposit amount noted above is an estimate of what it will cost to provide these services. If, during the course of the project, the Administration Deposit account is running low, additional funds will be*

*requested to cover the estimated time left on the project (at then-current rates per the adopted Washington County Fee Schedule). If there are any unspent funds at project close out, they will be refunded to the applicant. **PLEASE NOTE:** Any point of contact with County staff can be a chargeable cost. If project plans are not complete or do not comply with County standards and codes, costs will be higher. There is a charge to cover the cost of every field inspection. Costs for enforcement actions will also be charged to the applicant.*

3. Once items (1) and (2) above have been received and processed, you will receive an invitation to the County's Electronic Plan Review (EPR) system, ProjectDox. Please follow the instructions in the e-mail regarding uploading plans and documents properly. In short: (a) Upload plans into the "Plans" folder, and (b) Upload documents into the "Document" folder; reference Washington County Road Engineering Plan Submittal Checklist, preliminary completeness verification matrix, for a complete list of required documents.

Upon final compliance review you will receive an e-mail with final instructions; i.e. download, print and sign the engineers seal for final plan approval.

The engineering plans will need to address the following public improvements (see II. E. below):

- a. Complete **NW West Union Road** half-street improvements to a county Arterial (A-1) standard with the Enhanced Major Street Bikeway designation to include but not limited to the following: paving, sidewalk, planter strip, curb and gutter, ADA ramps, street trees, signing, illumination, utility re-location, bike lane, and drainage and two commercial driveways. Improvements required for the two accesses are further described below:
 - i. Construct the right-in only access to restrict the access as right-in only approximately 300 feet east of NW 185th Avenue. *The current design does not provide enough of a design constraint to prevent west-bound traffic from turning left into the site from the right-turn only access. Traffic Engineering will need to approve the right-in only access design prior to issuance of the Facility Permit or other access permit authorizing construction of the right-in only access.*
 - ii. Construct the new eastern driveway directly opposite the entrance to the West Union Village Shopping Center and construct the south leg of the existing West Union Road/Albertsons signal with two outbound lanes (one left turn lane and one shared through/right turn lane) and one inbound lane. Coordinate with Washington County, design and construct the new added traffic signal for the proposed access and modify the existing traffic signal as needed.

- iii. Install protected-plus-permitted left turn phasing capacity for the EB-to-NB left turn movement at the West Union Village Drive/West Union Road intersection prior to the issuance of certificate of the building occupancy.
- iv. Upgrade the existing traffic signal and pedestrian actuation, at the entrance to accommodate the new four-legged intersection. Complete intersection improvements including, but not limited to, sidewalk, ADA ramps and crosswalks.
- b. Proposed improvements shall align with the ultimate improvements west of NW 185th Ave, designed by Washington County Department of Land Use & Transportation – Capital Project Management Division.
- c. Upgrade the existing traffic signal and pedestrian actuation at the NW West Union/185th Avenue intersection to accommodate the new road section.
- d. Provide adequate illumination at the proposed right-in access on NW West Union Road. Direct technical questions concerning this condition or the current Roadway Illumination Standards to Traffic Engineering, at (503) 846-7950.
- e. All other existing accesses shall be closed.
- f. Repair/replacement of any damaged/broken sidewalk panels on NW 185th Avenue, as applicable.
- g. Construct sidewalk to connect to the existing sidewalks located east of the site fronting Tax Lot 1N119BC00400. The application materials stated that the applicant agreed to complete the off-site sidewalk section to fill the sidewalk gap.
- h. Relocate utilities that are in conflict with street improvements.

NOTE: These improvements shall be constructed in accordance with the requirements of the Washington County Uniform Road Improvement Design Standards and Roadway Illumination Standards.

Direct technical questions concerning street lighting or the current Roadway Illumination Standards to the Traffic Engineering Division at 503-846-7950.

These improvements shall be completed and accepted by the County prior to final building inspection approval or occupancy, unless otherwise specified in the Public Improvement Contract.

4. Engineer's construction cost estimate (to be submitted with final set of approved plans for public facility improvements).
5. Geotech/Pavement report prepared and signed by a licensed Oregon engineer supporting the roadway sections.
6. Relocate utilities that are in conflict with street improvements.
7. Provide a Pavement Report prepared by a Professional Engineer. The report will include recommendations for new full depth pavement and/or pavement repair for existing roadway sections affected by the project. The report shall include but is not limited to the following recommendations: Existing pavement condition analysis, Grind and Inlay/Overlay, pavement repair, "Wet Weather" pavement construction, ESAL calculations, AASHTO pavement design calculations, soil classification, modulus and laboratory test results. Contact Rob Saxton at Rob_Saxton@co.washington.or.us prior to field investigation.

C. Obtain Departmental approval, provide financial assurance and obtain a Facility Permit for construction of the public improvements listed in Conditions II.B.

NOTE: The Public Assurances staff of Current Planning Services will send the required forms to the applicant's representative after submittal and approval of the public improvement plans.

D. As applicable, ensure the maintenance and power costs of streetlight facilities through the petition for service and formation of a Service District for Lighting (SDL) assessment area or other funding method approved by the County. This requirement must be satisfied prior to plat recordation or acceptance of the public improvements.

NOTE: Contact Administrative Services, 503-846-3679. The formation process takes approximately 4 to 6 weeks. You must also establish a job with PGE by contacting 503-323-6700.

E. As an alternative to completing Conditions of Approval II.B., C., and D., the applicant can complete Conditions of Approval II.E., F., and G. Submit to Current Planning Services, Public Assurance Staff (503-846-3842):

1. Completed "Design Option" form.
2. \$39,000 Administration Deposit.

NOTE: The Administration Deposit is a cost-recovery account used to pay for County services provided to the developer, including plan review and approval, field inspections, as-built approval, and project administration. The Administration Deposit amount noted above is an estimate of what it will cost to provide these services. If, during the course of the project, the Administration Deposit account is running low, additional funds will be

*requested to cover the estimated time left on the project (at then-current rates per the adopted Washington County Fee Schedule). If there are any unspent funds at project close out, they will be refunded to the applicant. **PLEASE NOTE:** Any point of contact with County staff can be a chargeable cost. If project plans are not complete or do not comply with County standards and codes, costs will be higher. There is a charge to cover the cost of every field inspection. Costs for enforcement actions will also be charged to the applicant.*

3. Once items (1) and (2) above have been received and processed, you will receive an invitation to the County's Electronic Plan Review (EPR) system, ProjectDox. Please follow the instructions in the e-mail regarding uploading plans and documents properly. In short: (a) Upload plans into the "Plans" folder, and (b) Upload documents into the "Document" folder; reference Washington County Road Engineering Plan Submittal Checklist, preliminary completeness verification matrix, for a complete list of required documents.

Upon final compliance review you will receive an e-mail with final instructions; i.e. download, print and sign the engineers seal for final plan approval.

The engineering plans will need to address the following public improvements:

- a. Remove the existing curb & sidewalk and install a commercial driveway directly across the entrance to the West Union Village Shopping Mall. Construct the south leg of the existing West Union Road/Albertsons signal with two outbound lanes (one left turn lane and one shared through/right turn lane) and one inbound lane. Coordinate with Washington County, design and construct the new added traffic signal for the proposed access and modify the existing traffic signal as needed.
- b. Upgrade the existing traffic signal and pedestrian actuation, at the entrance to accommodate the new four-legged intersection. Complete intersection improvements including, but not limited to, sidewalk, ADA ramps and crosswalks.
- c. Remove the existing curb & sidewalk and install a right-in only commercial driveway approximately 300 feet east of NW 185th Ave. *Traffic Engineering will need to approve the right-in only access design prior to issuance of the Facility Permit or other access permit authorizing construction of the right-in only access.*
- d. Evaluate and replace any missing, broken, damaged, sub-standard, or non-compliant ADA sidewalk, ramps, and driveways per the direction of the County. Also evaluate the existing pavement and

provide necessary repair/reconstruction to the street centerline as described in item 5 below.

- e. Upgrade the existing ramps at the southeast corner of the NW West Union/NW 185th Avenue intersection to current ADA standards. *At the option of the applicant, construct non-contiguous ADA ramps at the other 3 corners of the intersection to ADA standards. This option is TDT creditable.*
- f. Design ultimate half-street improvements described in Condition II.B.3. above for future construction of the improvements by Washington County.
- g. Apply the design to compute a cost estimate for construction of the ultimate improvements including relocation and removal of existing facilities.
- h. Apply ODOT, RS Means or other numbers that reflect prevailing wages in calculation of the cost estimate for a fee-in-lieu to be paid to the County and pay the county-approved fee-in-lieu.
- i. Install protected-plus-permitted left turn phasing capacity for the EB-to-NB left turn movement at the West Union Village Drive/West Union Road intersection prior to the issuance of certificate of the building occupancy.
- j. Provide adequate illumination at the proposed right-in access on NW West Union Road. Direct technical questions concerning this condition or the current Roadway Illumination Standards to Traffic Engineering, at (503) 846-7950.
- k. All other existing accesses shall be closed.
- l. Construct sidewalk to connect to the existing sidewalks located east of the site fronting Tax Lot 1N119BC00400. Noting that the application materials stated that the applicant agreed to complete the off-site sidewalk section to fill the sidewalk gap.

NOTE: These improvements shall be constructed in accordance with the requirements of the Washington County Uniform Road Improvement Design Standards and Roadway Illumination Standards.

Direct technical questions concerning street lighting or the current Roadway Illumination Standards to the Traffic Engineering Division at 503-846-7950.

These improvements shall be completed and accepted by the County prior to final building inspection approval or occupancy, unless otherwise specified in the Public Improvement Contract.

3. Engineer's construction cost estimate (to be submitted with final set of approved plans for public facility improvements).
4. Geotech/Pavement report prepared and signed by a licensed Oregon engineer supporting the roadway sections.
5. Provide a Pavement Report prepared by a Professional Engineer. The report will include recommendations as applicable for new full depth pavement and/or pavement repair for existing roadway sections affected by the project. The report shall include but is not limited to the following recommendations: Existing pavement condition analysis, Grind and Inlay/Overlay, pavement repair, "Wet Weather" pavement construction, ESAL calculations, AASHTO pavement design calculations, soil classification, modulus and laboratory test results. Contact Rob Saxton at Rob_Saxton@co.washington.or.us prior to field investigation.

F. Obtain Departmental approval, provide financial assurance, including payment of fee-in-lieu, and obtain a Facility Permit for construction of the public improvements listed in Conditions II.E.

NOTE: The Public Assurances staff of Current Planning Services will send the required forms to the applicant's representative after submittal and approval of the public improvement plans.

G. As applicable, ensure the maintenance and power costs of streetlight facilities through the petition for service and formation of a Service District for Lighting (SDL) assessment area or other funding method approved by the County. This requirement must be satisfied prior to plat recordation or acceptance of the public improvements.

NOTE: Contact Administrative Services, 503-846-3679. The formation process takes approximately 4 to 6 weeks. You must also establish a job with PGE by contacting 503-323-6700.

H. Submit to Land Development Services (Project Planner Paul Schaefer, 503-846-3832), for review and approval:

1. Final Approval form (Type I procedure).

NOTE: The final approval application shall contain complete evidence that all Conditions of Approval to occur prior to final approval have been met.

2. Final Approval fee.
3. Final plans and project details showing:
 - a. Substantial conformance with plans stamped "preliminary approval" in the casefile.

Final site plans shall continue to reflect the following: Building plans and elevations providing a maximum of 5,000 square feet of gross floor area.

This includes the total of the ground/main floor and the second-floor mezzanine floor area.

- b. Fueling station designs calling for fueling hoses & nozzles with the capability of reaching both sides of the fuel pump, thereby allowing vehicles to refuel on either side of the fuel island. *Noting that such design measures have been utilized at other local gas stations to help facilitate vehicle circulation which is critical given the proximity of fueling islands to the western-most site access.*
 - c. Revise the southern fence and retaining wall combined heights to comply with Section 419-4 (i.e., max 4 foot retaining wall and max 6-foot fence).
 - d. Written documentation from PGE approving the building and canopy locations and heights in relationship with the powerlines and poles in order to assure that adequate radial separation will be maintained between the overhead transmission lines and all structures and the new 4th signal. Contact PGE Services Coordination Department at 503-323-6700.
 - e. Final plans that shall ensure that none of the foundations, underground tanks, including any physical containment barriers, are located within the PUE. (Noting that there shall also be no restrictions or barriers to where new poles will be relocated [in the event that the applicant pays fee in lieu rather than construct the half-street improvements]. The new signal pole shall also be designed to accommodate the relocated overhead power lines.)
 - f. Directional signage (e.g., painted directional arrows) to ensure safe vehicular circulation. See Section 413 of the Staff Report.
 - g. Design and construct the two proposed EV charging spaces, one of which will be ADA compliant, pursuant to Section 413-3.6 A., B., and C.
 - h. Design and construct a pedestrian accessway to extend due north from the building to the sidewalk on NW West Union Road, or demonstrate that site conditions materially prevent the construction of that accessway.
4. Copies of the new recorded deed and survey demonstrating that the approved Property line Adjustment (L1900411-PLA) has been recorded and all taxes have been paid implementing the approved Property Line Adjustment and provide evidence that the lots have been consolidated.
 5. A delineation of the Flood Plain to include the engineer's original signature and wet stamp prior to issuance of the Facility Permit to the applicant for construction of the public improvements. Noting, that the applicant shall obtain approval of a Flood Plain Alteration permit if improvements encroach with the delineated Flood Plain. *See Condition of Approval I.C. above.*

III. PRIOR TO SUBMITTAL OF A BUILDING PERMIT(S):

- A. Obtain Final Approval, as required above.**

IV. PRIOR TO THE ISSUANCE OF A BUILDING PERMIT(S):

- A. Pay System Development Charges as applicable.

NOTE: Transportation Development Tax shall be required as determined by Ordinance #793-A.

- B. Submit with building plans and elevations to Building Services (503) 846-3470, site development plans consistent with the final plans approved by Land Development Staff.

V. PRIOR TO BUILDING OCCUPANCY AND/OR FINAL BUILDING INSPECTION APPROVAL:

- A. All public improvements shall be completed and accepted by the County (Conditions of Approval II.B.3.), **OR**

All public improvements shall be completed and accepted by the County (Conditions of Approval II.E.3.)

- B. All facilities and improvements required by Clean Water Services shall be completed and approved by the District, including implementation of the Vegetated Corridor enhancement and mitigation plan prepared by PHS, Inc.
- C. Final inspection and sign off by the Fire Marshal demonstrating compliance with TVF&R Permit 2022-0048.
- D. Provide Final Certification of Sight Distance at the access to NW West Union Road to confirm adequate intersection sight distance has been achieved. Certification must be prepared by a licensed Oregon professional engineer in accordance with CDC 501-8.5 F.
- E. Contact the Project Planner (Paul Schaefer, 503-846-3832) to schedule a site inspection to verify that all improvements have been installed including, but not limited to landscaping, including street trees, bicycle parking and 2 EV charging stations, garbage & recycling enclosure, traffic circulation signs/painted traffic arrows and lighting consistent with these Conditions of Approval and the plans stamped, "Final Approval." *Please provide at least 48 hour notice before date site visit is requested.*

VI. ADDITIONAL CONDITIONS:

- A. Adequate sight distance shall be continuously maintained by the property owner(s) at any access to a public road serving the subject site. This may require the property owner(s) to periodically remove obstructing vegetation from the road right of way (and on site).
- B. This development shall be constructed in accordance with the conditions of this decision, the approved final plans and the standards of the Community Development Code (Section 207-5).
- C. All conditions of approval shall be binding upon all heirs, successors and assigns (Section 207 5).
- D. Transferability of this Development Permit shall be in accordance with Section 201-8.

- E. No display of merchandise outside the building except small items such as oil, windshield wiper blades and tires (limited to one rack of 20).**
- F. No outside storage or sale of vehicles is permitted for more than 24 hours per vehicle.**
- G. Maintain current permits and certifications issued by Oregon DEQ for the underground fuel storage tanks.**
- H. Comply with all Oregon DEQ standards and receive any necessary Oregon DEQ approvals regarding the handling, storage or disposal of all hazardous materials, radioactive materials, or other materials or substances subject to Oregon DEQ's regulatory authority.**