

**Paul Schaefer**

**From:** Stephen Shane  
**Sent:** Tuesday, November 22, 2022 8:24 AM  
**To:** Paul Schaefer; Louisa Bruce  
**Subject:** FW: [EXTERNAL] Gas station proposal at West Union and 185th

Morning you two - her comment below - the first one - is a submittal for this first open record period. I'll try and address her questions in another thread

**Stephen Shane | Principal Planner**

Washington County Department of Land Use & Transportation  
 Planning and Development Services | Current Planning  
 155 N First Avenue, Suite 350 MS13 | Hillsboro, OR 97124  
 (503) 846- 8127 direct

*The counter lobby is open Monday, Tuesday and Thursday, 8AM to 4PM.  
 The lobby is closed Wednesday and Friday until further notice.  
 Staff are working in office and remotely throughout the week and are best reached by email.*

**From:** [REDACTED]  
**Sent:** Monday, November 21, 2022 9:25 PM  
**To:** Stephen Shane <Stephen\_Shane@washingtoncountyor.gov>  
**Subject:** Re: [EXTERNAL] Gas station proposal at West Union and 185th

Dear Stephen:

Thank you for the heads up.

Please enter this into the record for consideration! I also am wondering why there is no input from clean water services since they must sign the permit for this project to proceed, though I fail to see how in good faith they can do so. To whom are they accountable, if at all. Is there any oversight of Clean Water Services decisions? Or any disclosure of the scientific data upon which they are relying to make these decisions? To whom do I address these concerns? I have tried and failed to elicit any information from either DEQ or CWS as each governmental entity defers to someone else.... anyone else. This should be an objective process requiring an EIS. Does one exist?

Thank you,

Sincerely,  
 Susan Nolte, DVM

[REDACTED]  
 On Monday, November 21, 2022 at 01:33:12 PM PST, Stephen Shane <[stephen\\_shane@washingtoncountyor.gov](mailto:stephen_shane@washingtoncountyor.gov)> wrote:

Hello Ms. Nolte: your email below was forwarded to me by Long Range Planning. I'm writing to determine if you wanted this email submitted to the record for the case during the open record period that we are currently under or if you only intended it to go to Commissioner Treece for her information and consideration?

Thank you and do let me know.

**Stephen Shane | Principal Planner**

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**From:** [REDACTED]

**Sent:** Thursday, November 17, 2022 10:08 AM

**To:** LUT Planning <[lutplan@washingtoncountyor.gov](mailto:lutplan@washingtoncountyor.gov)>; Pam Treece <[Pam\\_Treece@washingtoncountyor.gov](mailto:Pam_Treece@washingtoncountyor.gov)>

**Subject:** [EXTERNAL] Gas station proposal at West Union and 185th

Dear Commissioners and Staff:

This communication is regarding the proposed gas station at the junction of 185th and West Union directly north of a vast 1000+ wetland wildlife habitat area.

I cannot think of a development less suited to this area.

Firstly it is incumbent upon national, state, and local government entities to address with urgency the issue of global climate change both to minimize impacts and mitigate for changes already occurring. A gas station that essentially promotes fossil fuel consumption is not in keeping with this goal. The number of electric vehicles in the area to be served by this development project is growing rapidly. I, myself, am planning an electric vehicle as my next purchase and use only rechargeable landscaping equipment on my 3/4 acre property. Moreover there are already 4 gasoline stations within a two mile radius and 10 within a 3 mile radius.

Secondly the wetland recreational area immediately adjacent to the proposed site faces increased point source contamination from surface run off due to increased hardscaping. Weather data for our immediate area shows that deluge type precipitation events ("atmospheric river" is now a part of our lexicon) are increasingly common. This means that vegetation buffers and surface water handling cannot be addressed using annual rainfall data. Rainfall accumulation in the arena of 1-3" per 24-48 hours can easily overwhelm water handling capacity. The proposed mitigation of wetland areas placed at the far east end of the plot does nothing for run off occurring along the southern border and reduced buffering in that area exacerbates the effect. Moreover while there has been great emphasis on the integrity of the storage tanks there has been less of a spotlight on other sources of fuel leakage from connecting lines and the pumps themselves (vehicular collision). Some slow leaks resulting from settling ground are not discovered until the fuel tanks are decommissioned and any seismic event given proximity to the wetlands would be disastrous.

Thirdly, I am concerned that at an intersection that already sees a significant number of accidents on a regular basis, sufficient consideration has not been given to safety, especially pedestrian safety given the proximity of walking paths, Westveiw High School, and bus stops. The applicant is not proposing any improvements to address these concerns and the constraints of this site dictate a traffic pattern that invites traffic back ups and collision! Again one more reason why this site is not suited for a gas station.

I hope that the commissioners will examine this proposal critically and act with boldness and foresight to withdraw approval for this ill conceived project.

Sincerely,

Susan Nolte, DVM

[REDACTED]

[REDACTED]

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**INFO:** Washington County email addresses has changed from @co.washington.or.us to @washingtoncountyor.gov. Please update my contact information.

**From:** LUT Development  
**Sent:** Monday, November 21, 2022 8:07 AM  
**To:** Paul Schaefer  
**Subject:** FW: [EXTERNAL] Public Comments - Casefile L2200199

**From:** [REDACTED]  
**Sent:** Sunday, November 20, 2022 4:34 PM  
**To:** LUT Development <LUTDEV@washingtoncountyor.gov>  
**Subject:** [EXTERNAL] Public Comments - Casefile L2200199

November 20, 2022

RE: Opposition to the proposed development at 185th and West Union

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

We have 3 primary concerns with the proposed convenience market, gas station and drive thru at 185th and West Union. Our first concern is the potential environmental impact of a gas station located so close to a wetland. The proposed 40,000 gallons of underground tanks present an ongoing potential threat to vital wetlands in our community. Unintentional petroleum spills and surface runoff pose a clear, but completely avoidable danger to this fragile ecosystem. In addition, underground fuel tanks pose a long term threat to both the ecosystem and ground water. The state of Oregon has clear evidence that underground tanks, even when well maintained, leak. This poses an unacceptable risk within 60ft of the Bethany Lake wetlands.

Secondly, we are concerned by the estimated increase in traffic. The proposed convenience market, gas station and drive-thru is estimated to increase traffic to 2,763 new weekday vehicle trips. East bound traffic is often held at 185th and West Union and any backup within the one way entrance would stop through traffic as well as impede bike travel. We encourage you not to allow the applicant to underestimate the increased traffic in the neighborhood by claiming the traffic will only be pass-by traffic. The potential impact of cars slowing to enter the station will become even more pronounced during winter weather. This intersection located at the bottom of a hill becomes particularly hazardous during heavy rains, ice and snow. This could be reduced but not avoided if the only entrance were located at the existing traffic light of the West Union Village. Additional traffic at the signal will create backups on West Union in all weather but will become more hazardous in poor weather when stopping and starting are impaired.

Finally, the county has established a right of way of 21 feet from the legal center line. Without these right of ways, builders will crowd the road and sidewalks limiting future improvements. The applicant has asked the county to reduce the right of way rules by 16%, which is unacceptable. Right of ways are designed to enable current and future use patterns. This development does not fill a public need that would warrant providing exceptions.

All acknowledge that more development is coming as the urban growth boundary moves. This will further increase traffic on West Union. The proposed development does not adequately address the long term issues nor does it provide a public benefit that is critical to the community which would warrant accepting the challenges that it will propose.

We urge you to deny this proposed development.

Regards,  
Steve and Deann DuFrene  
[REDACTED]

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**Paul Schaefer**

**From:** [REDACTED]  
**Sent:** Tuesday, November 22, 2022 9:58 AM  
**To:** LUT Development  
**Cc:** Paul Schaefer  
**Subject:** [EXTERNAL] L2200199: Chevron near Bethany Lake Public Comment

Dear Washington County:

There were some disturbing comments during the applicant's rebuttal and responses by the county. The applicant claimed that rejection of the application would be in effect a "seizure" of the property by the county. Even worse, the county agreed with that comment. There was no opportunity for a rebuttal of this bogus claim during the meeting.

Rejection of the claim does not prevent the applicant from applying for land use for a more environmentally responsible use.

Please do not reward this lawyer "dirty trick" by accepting his bogus property rights argument. Please respect wildlife and the property rights of the people who live in this neighborhood.

George Cabaniss  
[REDACTED]  
[REDACTED]  
[REDACTED]

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**Paul Schaefer**

**Exhibit OR1-d**

**From:** Jennifer Allen [REDACTED]  
**Sent:** Wednesday, November 23, 2022 9:13 AM  
**To:** LUT Development  
**Cc:** Paul Schaefer  
**Subject:** [EXTERNAL] L2200199: Chevron near Bethany Lake Public Comment

Hello,

I would like to voice my support for this gas station. Everyone is worried about the environmental impact, but forget that we have to drive miles out of our way to get to a gas station furthering our emissions. Living in north Bethany we have 0 options for gas stations within a reasonable distance. I even have a community garden plot in Bethany Lake Park and have no concerns about safety.

Best,  
Jennifer Allen

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**From:** Eric Simantel [REDACTED]  
**Sent:** Wednesday, November 23, 2022 9:45 AM  
**To:** LUT Development  
**Cc:** Paul Schaefer  
**Subject:** [EXTERNAL] L2200199: Chevron near Bethany Lake Public Comment

Hello Washington County!

I feel like all of us are between a rock and a hard place right now. In an overworked environment 4 years ago when the Mad Greek Deli went out of business on the corner of West Union and 185<sup>th</sup> – an opportunistic buyer came in with the intention of putting in a Chevron gas station. The zoning allowed him to do so. As he advanced his plans, Covid hit. Community Meetings that in a 'non-Covid' environment to get feedback that typically would have been held in person – were held over zoom.

I was in a few of the meetings. I'm not sure if you attended – but the attitude of the land owner and his management team of our environmental concerns were dismissive at best.

If one zooms out (pun intended) from this specific situation and simply asks the question "Should someone in 2022, be allowed to build a gas station within 50 feet of an environmentally sensitive wetland"? I think we'd all generally agree that the answer should be "no" – for a variety of reasons.

No gas station is 100% effective at protecting against run off. In 50 years gas stations will be obsolete. Every industry has a business cycle. The state of California is less than 15 years for example will only be selling Battery powered cars. Whether it be in 10 years, 20 years, 50 years, 100 years – at some point this gas station will be out of business. That wetland will still be there. The out of business owner of the gas station will escape responsibility for environmental clean up and protection of the wetland. The systems designed to protect the gas tanks all have an economic life. They won't hold fuel back indefinitely. No system does. It's impossible.

The community is asking you to consider thinking longer term, and not allowing this gas station to be built. Perhaps if we could rewind time, and have known that a gas station was even a possibility to be put in there when the Mad Greek Deli went out of business – we would have asked for zoning laws to be changed before this project started, so the new land owner wouldn't have made the choice to buy this specific plot of land. But alas – here we are. It's not too late though.

As someone who pays property taxes in Washington County – I suggest the county invests in protecting the environment now. This cost to protect the environment NOW is worth it – as I imagine the cost we'll pay down the road will be much higher for the cleanup. I'd rather have Ducks, Beavers, Eagles, and Geese as a neighbor than having 87 Unleaded gasoline.

Sincerely,

Eric Simantel

[REDACTED]  
[REDACTED]  
Portland, OR 97229  
503-504-8389

**Paul Schaefer**

**From:** Brandon Philips [REDACTED]  
**Sent:** Wednesday, November 23, 2022 10:41 AM  
**To:** LUT Development  
**Cc:** Paul Schaefer  
**Subject:** [EXTERNAL] L2200199: Chevron near Bethany Lake Public Comment  
**Attachments:** L2200199 - Brandon Philips - Bethany Lake Chevron Public Comment-5.pdf

Hello Washington County Land Use Staff-

In my attached public comment I make three arguments on why I believe the Chevron near Bethany Lake (L2200199) land use application should be denied. In particular, I believe this application:

- 
- 
- Is
- Counter to the purpose of the Neighborhood Commercial Zoning
- 
- 
- 
- Carries
- Significant Foreclosure Risk and Negative Economic Impact
- 

I would also like to thank a number of organizations for helping me to gather the information for this comment including: Washington County LUT Staff, Washington County Public Records Staff, Oregon DMV Data Staff, Oregon DEQ Underground Storage Tank Program Staff, and EPA Staff.

Thank You,

Brandon Philips

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Hello Washington County Land Use Staff-

In my attached public comment I make three arguments on why I believe the Chevron near Bethany Lake (L2200199) land use application should be denied. In particular, I believe this application:

- Is Counter to the purpose of the Neighborhood Commercial Zoning
- Carries Significant Foreclosure Risk and Negative Economic Impact

I would also like to thank a number of organizations for helping me to gather the information for this comment including: Washington County LUT Staff, Washington County Public Records Staff, Oregon DMV Data Staff, Oregon DEQ Underground Storage Tank Program Staff, and EPA Staff.

Thank You,

Brandon Philips

## Is Counter to the purpose of Neighborhood Commercial Zoning

The applicant's property is zoned Neighborhood Commercial with the Intent and Purpose from the code 311-1 saying:

*The purpose of the Neighborhood Commercial District is to allow small to medium sized shopping and service facilities and limited office use in Neighborhood Commercial Centers.*

*This District is intended to provide for the shopping and service needs of the immediate urban neighborhood. Neighborhood Commercial locations should be easily accessible by car and foot from neighborhoods in the area. Centers should have minimal negative impact on surrounding residential properties.*

## How can a gas station 80 ft from a wetland have minimal impact?

A major feature of the surrounding residential properties adjacent to this Neighborhood Commercial Center is Rock Creek and Bethany Lake. Residential units in this area derive significant value from these unique community features:

- Bethany Lake: "The Oregon Department of Fish and Wildlife stocks the [Bethany] lake with trout, and fishing is welcome with a valid Oregon fishing license."  
[https://myodfw.com/fishing/species/trout/stocking-schedule?field\\_zone\\_value=All&field\\_waterbody\\_name\\_value\\_1=BETHANY+PD&field\\_planned\\_stocking\\_date\\_value%5Bdate%5D=2021-01-01&field\\_planned\\_stocking\\_date\\_end\\_value%5Bdate%5D=2021-11-30](https://myodfw.com/fishing/species/trout/stocking-schedule?field_zone_value=All&field_waterbody_name_value_1=BETHANY+PD&field_planned_stocking_date_value%5Bdate%5D=2021-01-01&field_planned_stocking_date_end_value%5Bdate%5D=2021-11-30)

- Popular parks: "Further east along the trail is Bethany Meadows Park, one of THPRD's most popular parks." <http://www.thprd.org/parks-and-trails/rock-creek-trail>

The site diagrams, provided in the application, show fuel/gas pumps about 60ft from the border of the Rock Creek wetland and the 40,000 gallon Underground Storage Tanks (UST) are about 80ft away. And the Oregon Department of Environmental Quality (DEQ) UST Program regulates and enforces technical UST requirements, release/leak tracking, financial responsibility (insurance), and operator training ([40 CFR Part 281](#)).

Between October 1st 2020 and September 30th 2021 Oregon DEQ reported 50 Underground Storage Tank releases in their [annual report](#)<sup>1</sup>. For a sense of scale, 50 leaks means 2.8% of the 1,796 regulated Oregon Underground Storage Tank facilities leaked in one year.

And many of the leaks in the DEQ database are not detected until the tank is decommissioned. Also, it is worth understanding from the Oregon DEQ annual report that even if the tank itself is working perfectly USTs also leak from their dispensers, piping, or have spills caused from delivery hardware.

From this data it is clear that the question is not if this station will become an issue over its lifetime but when. And when it does there is no question it will have a substantial negative impact on surrounding residential properties based on the unique community uses of the lake and parks.

Source			Causes													
			Spill		Overfill		Phys/Mech Damage		Corrosion		Install Problem		Other		Unknown	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Tank	20	40%	0	0%	1	2%	1	2%	8	16%	0	0%	0	0%	10	20%
Piping	6	12%	0	0%	0	0%	1	2%	2	4%	0	0%	0	0%	4	8%
Dispenser	4	8%	1	2%	1	2%	1	2%	0	0%	0	0%	0	0%	1	2%
STP	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Delivery Problem	1	2%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	1	2%
Other	16	32%	0	0%	0	0%	0	0%	0	0%	0	0%	4	8%	12	24%
Unknown	3	6%	0	0%	0	0%	0	0%	0	0%	0	0%	1	2%	2	4%
Totals	50	100%	1	2%	2	4%	3	6%	10	20%	0	0%	5	10%	30	50%

# = number, % = percent of total number

Source: Oregon DEQ [annual report](#)

<sup>1</sup> <https://www.oregon.gov/deq/tanks/Documents/USTPublicRecord.pdf>

## Carries Significant Foreclosure Risk and Negative Economic Impact

Washington County, Oregon State, and the US Federal government all have strategic plans to cut consumption of gasoline for passenger vehicles.

If you drive around the Bethany area you will see many residents are making the transition to electric vehicles. And this rapid uptake in EVs will quicken the inevitable insolvency, foreclosure, and taxpayer funded cleanup of gas station infrastructure.

According to Oregon DMV records the 97229 and 97006 zip codes now have seen 3,509 registered electric vehicles<sup>2</sup>. Last October we reported there were 3,134 vehicles. So, we are looking at a 10% increase of 375 electric vehicles in Bethany in one year!

In those two zip codes in 2019 (the best data I could get at the time of this writing) there were 89,694 vehicles so electric vehicles now make up roughly 4% of total vehicles registered in the area.

To put it another way Bethany has nearly 7% of the 52,033 EVs registered in Oregon. And nearly 32% of all EVs in Washington County.

This is all to say that in the coming years and decades there will be less demand for gasoline in Bethany in particular. As a result there will come a time when the station needs to be closed and the underground storage tanks are removed. The EPA requires \$1MM in financial responsibility<sup>3</sup> for operations of less than 100 underground storage tanks (USTs). However, in many cases if a company is insolvent it will likely lead to a lengthy Oregon DEQ-run cost recovery process often does not succeed<sup>4</sup>.

As a concrete example, Washington County foreclosed on a fuel station in 2014 (R399385) and it took significant effort to find a buyer at auction. The buyer in 2022, after years of County effort, was the adjacent property owner who was likely tired of the site turning into an illegal camping and dumping zone due to County neglect.

The site's environmental report, submitted to Oregon DEQ Leaking UST Program Staff in 2017, shows fuel contamination in the soil. Furthermore, Oregon DEQ denied Washington County regulatory closure of the leaking underground storage tank (LUST) case because the tanks have not been removed<sup>5</sup>.

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2

[https://www.oregon.gov/energy/Data-and-Reports/Pages/Oregon-Electric-Vehicle-Dashboard.aspx?utm\\_source=nabgas&utm\\_medium=email&utm\\_campaign=make-a-comment-on-bethany-gas-station-ev-growth](https://www.oregon.gov/energy/Data-and-Reports/Pages/Oregon-Electric-Vehicle-Dashboard.aspx?utm_source=nabgas&utm_medium=email&utm_campaign=make-a-comment-on-bethany-gas-station-ev-growth)

<sup>3</sup> <https://www.epa.gov/sites/default/files/2014-03/documents/dolsens.pdf>

<sup>4</sup> <https://www.postpump.org/gas-station-responsible-parties>

<sup>5</sup>

<https://www.deq.state.or.us/Webdocs/Controls/Output/PdfHandler.ashx?p=acccbca3-d484-4855-836a-c5a>

However, based on information obtained from Eric Clough of DEQ's UST Division and Jeff Schatz, DEQ's LUST Program project manager, DEQ is unlikely to close LUST File No. 34-93- 0195 prior to removal of the existing USTs. While DEQ personnel were unable to reference a particular rule requiring removal of the USTs prior to issuing regulatory closure, in practice DEQ project managers do have some discretion outside of existing regulations.

If Washington County would like to pursue selling the property with the existing USTs in place, it may be prudent to request regulatory closure for LUST File No. 34-93-0195 from DEQ. If DEQ denies the request based on the presence of the steel USTs, it may be possible to require DEQ to provide legal justification for denying the regulatory closure based on the presence of the existing USTs. Alternatively, Washington County can subcontract a licensed UST decommissioning subcontractor to decommission the five USTs on the project site and obtain regulatory closure from DE.

Abandoned service station properties like this do not generate tax revenue, are an ongoing hazard, create unending County management overhead, and are a last choice for redevelopment even with partnerships like EPA Brownfield grants or DEQ Potential Purchaser Agreements. Clearly this inevitable outcome also runs counter to the stated purpose of neighborhood commercial zoning to have "minimal negative impact on surrounding residential properties."

PARCEL NUMBER	MAP/TAX LOT	GENERAL LOCATION	REAL MARKET VALUE	MINIMUM BID	DEPOSIT 20% OF MINIMUM BID	Sold for
31	1S301AB00500 R399385 Site 855	<ul style="list-style-type: none"> <li>• Banks School District</li> <li>• 874 SW Baseline St, Hillsboro</li> <li>• Approximately 1.06 Acre</li> <li>• Previously a gas station w/5 underground storage tanks and car wash bays; DEQ File Number 34-93-0195</li> <li>• Zoned Commercial-General</li> <li>• Foreclosure 2014</li> <li>• Within Metro Urban Growth Boundary</li> <li>• Clean Water Services</li> <li>• Not in Fire District or Park District</li> <li>• Hillsboro School District</li> </ul>	\$736,210	\$520,000	\$104,000	No bids received. Not for sale

Source: [Washington County auction document](#)

## Conclusion

The data shows the inevitable outcomes of this development: a leak and/or foreclosure. And in both scenarios the result will be a significant negative impact on surrounding residential properties in conflict with the Neighborhood Commercial zoning purpose. These negative impacts are a result of this particular use, on this particular property, in this particular neighborhood commercial center.

Thank You,

Brandon Philips [REDACTED]

November 22, 2022

RE: Casefile L2200199, Chevron Gas Station

NOTE: This is an addendum to my letter of comment dated November 10, 2022, see my exhibit F

Why does this application need to comply with the provisions of the Bethany Community Plan (BCP)?

*This application must comply with the provisions of the BCP because it is required by the applicable standards found in the staff report, in the Washington County Comprehensive Framework Plan (CFP), and as demonstrated through historic precedent.*

### **Staff Report for Casefile L2200199**

Listed in Attachment C of the Staff Report for this application are the Applicable Standards—see exhibit A. The Washington County Comprehensive Plan is included first on this list. The Washington County Comprehensive Plan is comprised of (from the listing provided in the CFP—see my exhibit B):

- Comprehensive Framework Plan
- Rural/Natural Resource Plan Element
- Community Plans and Background Documents
- Community Development Code
- Transportation System Plan
- Unified Capital Improvements Program

Although the Sunset West Community Plan (SWCP) is specifically called out in the Applicable Standards, the BCP is a part of the Applicable Standards too because it is a part of the Comprehensive Plan. As part of the Washington County Comprehensive Plan, the BCP standards can't be ignored in the approval of this application.

### **Comprehensive Framework Plan**

Statements in the CFP support the need to include the provisions in the BCP in approval of this application. From page 4 of the CFP, final paragraph—see my exhibit C, "Development applications with an adopted community plan need only show compliance with the community **plans**, applicable functional plans, and development regulations."

The use of singular and plural in this sentence is significant and can't be ignored. An application in a specific community plan (singular) must show compliance with the community plans (plural). In this case, although the application site is located in the SWCP it must also comply with the applicable provisions in all applicable community plans, namely the BCP.

### **Historic Precedent**

The boundaries of the community plans are somewhat fluid with staff historically applying designations in adjacent community plans. This was clearly demonstrated when an entire Neighborhood Commercial area was moved in the 1994 Casefile 94-468 from the Cedar Hills/Cedar Mill Community Plan (CH/CMCP) to the BCP through current planning actions. This change in zoning was cleaned up after-the-fact in 2001 through a Plan Amendment, 01-443-PA.

Another example is found in the Thompson Road subarea of the BCP, Design Element #4, with the required realignment of the Thompson/Saltzman intersection on the boundary between the BCP and the CH/CMCP—see my exhibit D. No mention of this alignment is called out in the CH/CMCP, yet it has been addressed through development actions taking place in the CH/CMCP.

### **Provisions in the Bethany Community Plan**

When two community plans are divided by a roadway, in which community plan does the roadway belong? Because the functioning of a shared roadway is critical to both community plans, provisions in both community plans addressing shared roadways must be met. In a perfect world, there would be better coordination in drafting community plans with redundancy in such plans. However, until there is unlimited funding available for planning, we must continue to work with our less-than-perfect community plans as guided by the intent of the Applicable Standards, including all elements of the Comprehensive Plan.

In this instance, the BCP designations for West Union Road overlap into the SWCP. As previously established, just because the location for the entrances to the commercial areas is called out only in the BCP, doesn't mean that the provisions can be ignored. Clearly the intent in the BCP is for the entrances on both sides of West Union to be consolidated, aligned and located a minimum of 300 feet from the West Union/185th intersection—see my exhibit E.

**The applicant's request for a right-in entrance located 210 feet from the 185th/West Union intersection does not meet the provisions of the applicable standards in the community plans and must be denied. Perhaps the need for a second entrance to accommodate heavy vehicle maneuverability on this site, zoned for a business to serve the immediate urban neighborhood, is a clear indication that the site is too small for the proposed uses.**

Sincerely,



Mary Manseau

Enclosures: Exhibits A-F

Comprehensive Framework Plan

[https://washcomultimedia.s3.amazonaws.com/CMSBigFiles/Comprehensive+Plan/CFP\\_July\\_2022\\_W](https://washcomultimedia.s3.amazonaws.com/CMSBigFiles/Comprehensive+Plan/CFP_July_2022_W)

Bethany Community Plan

[https://washcomultimedia.s3.amazonaws.com/CMSBigFiles/Bethany\\_Community+Plan+Chapter+1+text+100115.pdf](https://washcomultimedia.s3.amazonaws.com/CMSBigFiles/Bethany_Community+Plan+Chapter+1+text+100115.pdf)

# Attachment C STAFF REPORT

## I. APPLICABLE STANDARDS

- 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 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
      - 430-35 Convenience Groceries
      - 430-41 Drive-in or Drive-up Establishment
      - 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

## II. AFFECTED JURISDICTIONS

- 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 and Quantity: Clean Water Services
- Erosion Control: Clean Water Services
- Water: Tualatin Valley Water District
- Fire Protection: Tualatin Valley Fire & Rescue

exhibit A



## Background for Planning

### Introduction

The Framework Plan has been designed to incorporate current data regarding recent growth trends, growth projections for the future, development patterns, and the character of the supply of vacant buildable land. This database has been supplemented with an awareness of the constraints to and the opportunities for development, which influence the type, rate, and location of development in the county. Examples of such influences are service availability, natural features, regulatory requirements, adopted city plans and community plans and economic limitations.

The discussion that follows highlights the information around which the Comprehensive Framework Plan for the urban area was written; further detail is presented in the Resource Document.

The Comprehensive Framework Plan is one of several elements comprising the Washington County Comprehensive Plan. The other pieces include:

- County Resource Document
- Rural/Natural Resource Plan Element
- Community Plans and Background Documents
- Community Development Code
- Transportation System Plan
- Unified Capital Improvements Program

Exhibit B

## Preface

### The Purpose of the Framework Plan

The Washington County Comprehensive Plan provides the basis for the future growth and development of the county. The Comprehensive Framework Plan is applicable to unincorporated properties inside the Regional Urban Growth Boundary and the Urban Growth Boundaries of Banks, Gaston and North Plains. The Rural/Natural Resource Plan addresses all properties outside of an urban growth boundary.

The Comprehensive Framework Plan (Framework Plan) is intended to reflect the present and future needs of the urban unincorporated properties in Washington County. The Framework Plan contains certain specific standards designed to regulate that growth and development. Those standards are termed "policies and strategies." The terms "policy" and "strategy," are defined in the glossary.

The policies and strategies of the Framework Plan are intended to provide a means to accommodate growth and development in a way that is consistent with the physical and economic limitations, legal requirements, and existing resources of the county. The framework of policies and strategies is based on an analysis of the detailed findings contained in the Resource Document, applicable state and regional law, and a countywide development concept prepared with public input. It is the intent of this Framework Plan to provide a policy framework and factual basis which will guide the preparation of detailed community plans.

The Framework Plan is intended to be the source document that establishes issues of countywide concern and minimum criteria that must be reflected in the community plans and other detailed elements of the Comprehensive Plan. Plan designations and Significant Natural Resource Area designations will be applied by the community plans. Consequently, community plans shall not be inconsistent with this Framework Plan. However, in limited areas there are no community plans because the nearby cities are responsible for comprehensive planning and subsequent urban development of their adjacent urban unincorporated properties. In these areas, the Future Development Areas Map in Policy 41 of this Framework Plan applies the plan designations and Significant Natural Resource Area designations.

It is explicitly recognized that the recently adopted community plans were prepared and adopted in conformance with the statewide planning goals. It is further recognized that the County consistently has applied, and will continue to utilize, the plan designations therein as the demonstration or public need.

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. Proposed amendments to an adopted community plan must be in conformance with the Comprehensive Framework Plan. The Framework Plan may be amended from time to time consistent with applicable law.

*Exhibit C*

## Thompson

Land uses in Thompson reflect low-density residential uses, with the exception of a small amount of medium density proposed at the intersection of 143rd Avenue and Thompson Road. As with the previous areas, flood plain areas and power line easements have been used as buffers between various land use types.

The Neighborhood Commercial area that was originally planned near NW Saltzman and NW Thompson Roads in Area of Special Concern No. 1 of the Cedar Hills - Cedar Mill Community Plan was relocated to this subarea in 1994 through the master plan approval of Casefile 94-468-S/P/V/DHA/W/DFR. However, it was not until 1996 that the neighborhood commercial area began to take shape through the platting of the parent parcel and the establishment of a two-acre parcel for future commercial development through Casefile 96-599-S/P/AMP/HST. The partitioning of the two-acre commercial parcel satisfied Condition of Approval VI.A. of Casefile 94-468, which required the parcel north of Thompson Road to have a two-acre Neighborhood Commercial Center at such time as it was developed. Casefile 99-116-D(C)/SU/MOD/PLA, which approved the development of an 18,518 square foot neighborhood commercial center, established the final boundaries of the Neighborhood Commercial area.

The plan as adopted recommended that Kaiser Road connect with 143rd Avenue to provide a continuous connection between the two roads, reduce turning movements that currently occur and to distribute future traffic away from the Oak Hills area. In 1994, a local improvement district was formed to construct the Kaiser/143<sup>rd</sup> Extension. The new road connection was opened to the public in November of 1996.

Beaverton School District #48 owns and maintains land located at the northwest corner of Thompson and Saltzman Roads on which Findley Elementary is sited. This elementary school opened in 1997.

### Design Elements:

1. The Master Planning-Primary Use or Planned Development procedures and standards shall be required for development on land which includes the Bronson Creek flood plain as a means of protecting the resource while allowing new development consistent with the provisions of the Community Development Code. An exception to this requirement shall be allowed if all of this Significant Natural Resource site is retained as open space. Public dedication of this open space is not required, but is encouraged. A density transfer from the resource area to the buildable portion shall be allowed as specified in the Community Development Code.
2. The power line easement in the western portion of Thompson would provide a connection to the trail system developed in conjunction with Oak Hills. Therefore, for development that occurs adjacent to the power line easement, the opportunity to establish a multi-purpose trail system using the easement shall be considered an important design element in the development review process.
3. Beaverton School District #48 shall consider joint use of school ground facilities with the Tualatin Hills Park and Recreation District to provide active recreational opportunities for the surrounding area.
4. Existing traffic hazards at the intersection of Thompson Road and Saltzman Road will require improvements to this intersection. Since the problem currently exists, steps should be taken prior to new development in the Thompson area to connect the offset design of the intersection and improve traffic flow.

exhibit D

## Subareas

Five general areas within Bethany have been designated as a guide to describe characteristics, design considerations and development concerns. In a number of instances, site-specific design elements have been recommended to apply to future development actions in each of the four areas. In particular, the majority of Central Bethany has been identified as an Area of Special Concern because it is perhaps the most sensitive area in terms of achieving the overall development concept for Bethany. Because of this, design elements have been recommended to apply to future development actions within this area.

The design elements listed for each area in Bethany are intended to augment the development standards and procedures found in the Community Development Code. Future development actions will be expected to respond to both the development standards provided in the Community Development Code and the design elements of the Bethany Community Plan.

### West Bethany

Land uses in this area take advantage of the area's proximity to the Rock Creek Campus of Portland Community College, transportation accessibility provided by 185th Avenue, West Union Road and Springville Road, and the short-term potential for urban services. Accordingly, residential densities in this area reflect more intensive uses and can be characterized as medium-density in nature. The area includes a single neighborhood commercial site - a maximum of two acres - in the northeast quadrant of the intersection of 185th Avenue and West Union Road. This has been provided to serve the limited convenience retail needs of surrounding residents.

The central portion of West Bethany is bisected by the proposed extension of Laidlaw Road. Immediately adjacent to this proposed road are higher density residential uses, located to take advantage of the availability of transit recommended to be present on this segment of Laidlaw Road. Additionally, it is expected that the current transit route on 185th Avenue/Springville Road to the campus will continue, thereby providing West Bethany with high public transit access.

### Design Elements:

1. The Rock Creek flood plain is used as a buffer between varying land uses in West Bethany. Therefore, the flood plain shall be preserved, protected and incorporated into site development plans as set forth in the Community Development Code.
2. Power line easements provide an opportunity to establish a multi-purpose trail system in West Bethany and the opportunity connect with the existing trail system developed within the Rock Creek subdivision to the southwest. For development that occurs adjacent to the power line easements, the opportunity to establish a multi-purpose trail system using the easements shall be considered an important design element in the development review process.
3. The neighborhood commercial site at 185th Avenue/West Union Road shall have its access via West Union Road. This 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 vehicle entrance shall be a minimum of 300 feet east of the intersection.
4. The need for additional collector and neighborhood routes in West Bethany will occur as the area develops. These roads will be built in conjunction with development and should serve as the primary access points to West Union Road, 185th Avenue, and Laidlaw Road. Individual access to the major road system will be strongly discouraged. Access shall be consolidated to as few points as practical.

November 10, 2022

RE: Casefile L2200199, Mad Greek Deli Gas Station

The request for a right-in-only entrance to the gas station must be denied

From the Bethany Community Plan, Chapter 1, page 15, under West Bethany Design Elements, #3:

*The neighborhood commercial site at 185th Avenue/West Union Road shall have its access via West Union Road. This 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 vehicle entrance shall be a minimum of 300 feet east of the intersection.***

The project site is not located in the Bethany Community Plan (BCP) area and is instead in the Sunset West Community Plan (SWCP) area.. Although entrances to the project site are not addressed in the SWCP, the BCP makes it clear that the entrance to the project site must be consolidated with the commercial area to the north and the entrance shall be a minimum of 300 feet from the intersection of 185th Avenue and West Union Road.

Per CDC 106-1.2 The term "**shall**" is always mandatory...

The proposed right-in entrance to this project site, located approximately 210 feet from the West Union/185th intersection, does not meet the provisions of the BCP.

Although CDC 501-8.5C provides for exceptions to the access criteria, it does not provide for an exception to the requirements of the BCP. The proposed right-in entrance to this site is located less than 300 feet from the intersection of 185th Avenue and West Union Road must not be approved because it does not comply with the provisions of the BCP.

Sincerely,



Mary Manseau

220 NW 137th Avenue  
Portland, OR 97228

Exhibit F

**Paul Schaefer**

**Exhibit OR1-h**

**From:** Rakesh Koul [REDACTED]  
**Sent:** Tuesday, November 22, 2022 3:26 PM  
**To:** LUT Development  
**Cc:** Paul Schaefer  
**Subject:** [EXTERNAL] L2200199: Chevron near Bethany Lake Public Comment

Hello,

Rakesh here, resident and homeowner in Bethany.

Three reasons for me why this Chevron near Bethany lake doesn't serve the public interest. These are the most relevant to me and I personally care about, among many other things other residents would have shared on their behalf...

1. the impact of gas storage tanks leaks or a gas spill directly adjacent to a significant wetland. I love the nature in the area. I am a bird photographer so would hate to see any of the wetlands getting negatively impacted.
2. the impact of a busy gas station and a drive through on the student walking route.

And last but not the least...

The limited need for a gas station when so many of the vehicles in 97229 are either fully electric or plug in hybrids. I don't own either of the two. But fully agree with this justification. I would mostly use Costco gasoline and don't see myself ever using this gas station even if one is approved.

--Rakesh Koul

15420 NW Westbrook Way Portland Oregon 97229  
503 304 1100

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**Paul Schaefer**

**From:** Marilyn Bramwell [REDACTED]  
**Sent:** Friday, November 25, 2022 3:43 PM  
**To:** LUT Development  
**Cc:** Paul Schaefer  
**Subject:** [EXTERNAL] L2200199: Chevron near Bethany Lake Public Comment

I know I probably can't bring up anything that hasn't already been mentioned, but I can't believe this has been an issue for approximately three years. If nothing else, I can admit that the developers are certainly tenacious. I think it has become fairly obvious that a gas station and convenience store are neither wanted nor needed in this neighborhood. People have been very good about explaining all of the environmental issues a gas station affects, not to mention the changes in the habitat of our wildlife.

Obviously, the intersection is very busy. I live just one block away on the lake, and I go through that intersection every day. It's very tricky for students, and for people with their dogs and kids. We just don't need more congestion.

I think you have been informed about why we don't want this development, but it's also apparent that you don't care. Seems to be just a financial investment, with no regard for the neighborhood.

I think it's up to you to convince this neighborhood of how this development would enhance our lives. We have enough gas stations, and most of us use the ones who are associated with Albertsons and Safeway to retrieve our points. No one, to my knowledge, has linked the new station with those establishments. As for the convenience store, Albertsons is right across the street and is the spot for after school kids walking home from the high school, and Community College students coming off the hill. It also has a Starbucks, so no need for a coffee location.

No one has mentioned what other businesses might occupy your proposed building.

That might make a difference. Just for now, my vote is no, but I know I don't get to vote against corporate America — but I can boycott.

You just haven't convinced us yet. Sincerely, Marilyn Bramwell Neighborhood resident and consumer.

Sent from my iPad

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**Paul Schaefer**

**Exhibit OR1-j**

**From:** Mary Manseau [REDACTED]  
**Sent:** Friday, November 25, 2022 1:01 PM  
**To:** Paul Schaefer  
**Subject:** [EXTERNAL] Casefile 2200199, Chevron Station at the Mad Greek Deli site

Hi Paul,

Please enter the CDC definition of "Access" into the record for casefile 2200199:

From the Washington County Community Development Code Definitions CDC 106[-3, access is clearly defined as both leaving OR entering a parcel:

**Access.** The right to cross between public and private property, allowing pedestrians and vehicles to leave or enter property.

Thanks,  
Mary Manseau  
5230 N

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Paul Schaefer

Exhibit OR1-k

**From:** Justin DeMello [REDACTED]  
**Sent:** Friday, November 25, 2022 11:33 AM  
**To:** Paul Schaefer; brandon@nabgas.com; Ashley DeMello via Google News; LUT Development  
**Subject:** [EXTERNAL] Re: West Union Chevron

Dear Paul Schaefer and WashCo Staff,

Regarding the proposed second access violating the 600' spacing requirement, I'd like to reiterate that 501.8.5.B prohibits direct access to an arterial period. Exceptions may be made, but they are subject to 501.8.5.B.4(a). Therefore the second access is a violation of the code. If the applicant is seeking relief under 501.8.5.E, then the requirements of the Interim Access provisions need to be applied. However, it should be noted that the parcel can physically accommodate the spacing requirements, it is only the unusual fueling truck access requirements of this particular development proposal which fail to meet the standards.

At the last hearing, the applicant's representative challenged the applicability of 501.8.5.B. They stated that the code refers to "Access to Public Roads" and is therefore not applicable to the second driveway because, being right-in only, it solely provides access from the road. This argument is linguistic sleight of hand and should be rejected. The requirements, being found in the development code and not the road standards, are written from the perspective of the subject site, not the transportation network. Therefore, it is entirely natural that they would speak of the site's access to the street. However, it is referring to the site's access, not the direction of vehicle travel on any specific driveway. This is in harmony with the common use of the preposition 'to' in the English language. For example, we speak of access to affordable housing and access to health care. However, no reasonable person would interpret that to mean a person can go to an apartment building or doctor's office, but not leave. This common sense interpretation is also supported by the code itself. There is no language anywhere specifying that the access standards are applicable only to egress movements. If that was the intent there would be, by necessity, a complementary section addressing Access from Public Roads. No such section exists. Finally, the applicant's representative's interpretation would mean that there is no standard whatsoever governing the placement of ingress-only driveways, or certain one-way streets for that matter, thereby allowing driveways anywhere, even directly adjacent to or inside arterial/arterial intersections. This is obviously not the intent of the code and should probably go without saying, but since the applicant's representative raised the point I feel obliged to rebut it.

I'd also like to point out the traffic safety implications of the proposed construction access and the associated heavy construction traffic at the same location. If approved, I would very genuinely ask that more than usual care be taken to prevent trackout of the construction entrance riprap (or large gravel) into the roadway by construction traffic.

Finally, the maximum commercial curb tight driveway width according to the County Road Standards (Std. Drg. No. 1030) is 40'. The site plans available show the primary driveway at 43' and the second access, though not dimensioned, appears to also exceed the maximum.

Thanks!  
Justin

On Wed, Nov 2, 2022 at 11:41 PM Justin DeMello [REDACTED] > wrote:  
Dear Paul Schaefer,

I'm writing to object to the current gas station application for similar reasons as many of my neighbors have already expressed regarding protection of the adjacent natural resources, lack of demand from the immediate neighborhood, and the general short-sightedness of the investment. However, I would also like to point out several points from the Staff Report which appear, at least to me, to be in violation of the Washington County Community Development Code.

In regards to the yard requirements found in 311-62, staff supports a five foot setback whereas the code clearly calls for a twenty foot setback. The rationale offered for the variance is that "the water quality facility effectively functions as the front yard." However, this interpretation is expressly in conflict with the definition found in 106-221, which defines Yard (Setback) as follows: "An open space on a lot or parcel which is unoccupied or unobstructed by buildings or other structures from the ground upward, except by landscaping or vegetation or as provided in Section 418 or other sections of this Code. Required yards shall be measured from the property line, sidewalk, or easement for public travel, whichever is closest to the building line of the lot or parcel a building will be constructed on, except as provided otherwise by the primary district. See Figure 106-3 below." Both the text and Figure 106-3 clearly define that whichever property line, sidewalk, or easement is closest to the proposed building shall be used as the basis of the measurement. In fact, Figure 106-3 shows a sidewalk but very clearly uses the property line as the basis of the setback. Therefore, on what basis does staff arbitrarily apply a different standard by using the back of sidewalk as the basis of the setback and effectively allow the applicant to locate the building 15 feet closer to the west property line than the code prescribes?

In regards to the scenic views requirements found in 406-2.4, I respectfully disagree with staff's determination that "there are no identified scenic views that would be obscured or degraded by the proposed development." Specifically, the rationale provided concerning the sight obscuring fence proposed along the south property line is self-contradicting. The fence is provided as screening of the eyesore gas station from the residential uses to the south, as well as from trail users. However, the preceding paragraph, in contradiction, states, "views across the sight (from the north/NW West Union) are possible through the sight to the south towards Rock Creek Greenway." The fence cannot be sight obscuring from one side but not the other. If it screens the eyesore from the south, it will obscure the scenic view of the natural areas from the north.

Finally, the proposed driveway accesses, both on an Arterial and both well short of the 600 foot minimum required from the intersection, are unsafe and are a clear violation of the letter and intent of multiple provisions of 501-85B(4) reproduced below.:

#### *(4) Arterials*

*Direct access to arterial roads shall be from collector or other arterial streets. Exceptions for local streets and private accesses may be allowed through a Type II process when collector access is found to be unavailable and impracticable by the Director. New Arterial Street alignments identified in the TSP may be adjusted within the subject property, as approved by the County Engineer. Access to arterials shall comply with the following standards:*

#### *(a) Arterials*

*Direct access to an arterial will be permitted provided that Point 'A' of such access is more than 600 feet from any intersection Point 'A' or other access to that Minor Arterial (Point 'C').*

*(b)Principal Arterials*

*Principal Arterials shall be designed and developed as limited access facilities. Access to a Principal Arterial is subject to approval by ODOT through the State's Access Management Policy and its implementing measures. Access to Tualatin Valley Highway, between SW 170th and SW 209th Avenues, is subject to the provisions of the TV Highway Access Management Plan contained in the Aloha-Reedville-Cooper Mountain Community Plan.*

*(c)On sites where direct access may be provided to more than one Arterial or Principal Arterial only one such access shall be granted.*

The access management plan (Kittelson memo dated October 15, 2019) only addresses trip generation and does not address, as required, the "safety and operational problems which would be encountered should a modification to the access spacing standards be granted." Specifically, it omits crash data and safety implications of the proposed substandard access spacing at the adjacent Arterial-Arterial intersection, which is within the minimum study area. Additionally, it fails to address the safety implications at the existing signalized driveway, nor does it consider the effects on the required merge movement east of the development. That merge, immediately west of the RRFB, is already dangerous. None of these safety and operational problems are considered in the access management plan and the approval does not seem in line with the application of 501-85B(4) on other proposed developments.

Thanks for your consideration!  
Justin DeMello

Sent from [Mail](#) for Windows

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**From:** Sallie Fogarty [REDACTED]  
**Sent:** Friday, November 25, 2022 11:01 AM  
**To:** LUT Development  
**Cc:** Paul Schaefer  
**Subject:** [EXTERNAL] L2200199: Chevron near Bethany Lake Public Comment

Our first objection to the creation of the Chevron gas station to be erected at the corner of West Union and 185th streets is it will cause destruction of and disruption to the wetlands and the wildlife. It is such a blessing to have the wetlands and wildlife in our area. A gas station poses possible harm and destruction of this wonderful part of our lives. We have no need for the station to be built there. We have survived very well finding gas other places. I am truly worried for the foot traffic on 185th, especially high schoolers. Cars zipping in and out cause potential risks. 185th carries massive traffic especially with the houses being built just north of the intersection. The gas station would just add to the pandemonium. The neon lights and noise would be a disruption to the nearby houses. It certainly would not be welcomed by most of its neighbors. Thank you for listening. Please consider these reasons very carefully.  
Sallie Fogarty

Sent from my iPhone

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**Paul Schaefer**

**From:** Mike Sargetakis <mike@sargetakis.com>  
**Sent:** Thursday, November 24, 2022 5:49 PM  
**To:** Stephen Shane  
**Cc:** Louisa Bruce; Maitreyee Sinha; Paul Schaefer  
**Subject:** Re: [EXTERNAL] Opportunity to testify on L2200199-SU/SU/D(C)/AMP/M (chevron)  
**Attachments:** NABGAS Supp Comment.pdf

Louisa, Stephen, Maitreyee, and Paul-

Attached for inclusion in the Record is the attached Supplemental Comment, submitted on behalf of Neighbors Against Bethany Gas. This comment is intended to supplement the prior comment, submitted on November 17, 2022 and provide responses to issues raised during the Hearing. Please let me know if you have any questions or concerns about this comment.

Thank you  
Mike Sargetakis  
*Attorney for NABGAS*

On Thu, Nov 17, 2022 at 11:18 AM Stephen Shane <[Stephen\\_Shane@washingtoncountyor.gov](mailto:Stephen_Shane@washingtoncountyor.gov)> wrote:

Received Mike and thank you – we'll make sure you have opportunity to testify.

The record will be held open for a minimum of seven days and I'm fairly confident the Ho will go the full comment period of 7/7//7.

**Stephen Shane | Principal Planner**

*Washington County Department of Land Use & Transportation  
Planning and Development Services | Current Planning  
155 N First Avenue, Suite 350 MS13 | Hillsboro, OR 97124  
(503) 846- 8127 direct*

*The counter lobby is open Monday, Tuesday and Thursday, 8AM to 4PM.*

*The lobby is closed Wednesday and Friday until further notice.*

*Staff are working in office and remotely throughout the week and are best reached by email.*

---

**From:** Mike Sargetakis <mike@sargetakis.com>

**Sent:** Thursday, November 17, 2022 11:08 AM

**To:** Louisa Bruce <Louisa\_Bruce@washingtoncountyor.gov>; Stephen Shane

<Stephen\_Shane@washingtoncountyor.gov>; Maitreyee Sinha <Maitreyee\_Sinha@washingtoncountyor.gov>; Paul Schaefer <Paul\_Schaefer@washingtoncountyor.gov>

**Subject:** [EXTERNAL] Opportunity to testify on L2200199-SU/SU/D(C)/AMP/M (chevron)

Hi Louisa, Stephen, Maitreyee, and Paul-

My apologies for the late request, I did not see that this hearing was actually included in the agenda until quite late today.

I would like to testify, briefly, if possible on this matter today. I should not need more than 2 minutes. Otherwise, please add the attached letter to the Record.

Thank you,

Mike Sargetakis

*Attorney for Neighbors Against Bethany Gas*

---

**Mike Sargetakis** (he/him)

Attorney | Law Office of Mike Sargetakis

**735 SW 1st Ave., 2nd Floor**

**Portland, OR 97204**  
tel. (971) 808-1495

[mike@sargetakis.com](mailto:mike@sargetakis.com)

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OREGON TRIAL ATTORNEY  
STATE & FEDERAL COURT

**MIKE SARGETAKIS**  
LAW OFFICE OF  
MIKE SARGETAKIS, LLC  
735 SW FIRST AVE, 2<sup>ND</sup> FL  
PORTLAND, OR 97204

MIKE@SARGETAKIS.COM  
(971) 808-1495

November 24, 2022

Washington Department of Land Use and Transportation  
Planning and Development  
Current Planning Section  
ATTN: Paul Schaefer, Senior Planner, Paul\_Schaefer@co.washington.or.us;  
David Doughman, Hearings Officer  
Project No.: L2200199-SU/SU/D(C)/AMP/M

**VIA ELECTRONIC MAIL ONLY**

Dear Mr. Schaefer and Mr. Doughman:

These supplemental comments are provided on behalf of Friends of Bethany Lake and Neighbors Against Bethany Lake Gas Station (collectively, NABGAS), a coalition of neighbors and concerned residents advocating for protection of Bethany Lake and its associated ecosystem, a livable community, and an exuberantly sustainable future.

These are supplemental comments on application project L2200199-SU/SU/D(C)/AMP/M, for the proposed Chevron Gas Station at 18300 & 18450 West Union by Robert Barman, West Union Chevron Extra Mile, and J3 Consulting, Inc. These comments supplement the previously-submitted comment dated November 17, 2022, and are intended to address issues raised during the Hearing on that day.

**Lot of Record, and Lot Width Minimum**

In the hearing, following testimony from counsel for NABGAS, counsel for the applicant cited CDC 440-8 for the notion that the land at issue lot is a “lot of record,” and therefore it is exempt from the dimensional requirements. 440-8 provides that “development which complies with all other standards of this Code shall be permitted on a lot of record, as defined in Section 106, regardless of whether the proposed development complies with the dimensional standards of the District...” CDC 106-117 defines a Lot of Record “all urban districts[, as] Any 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.” (emphasis added)

This application proposes to combine two non-conforming lots, to create a **new** (also non-conforming) lot. This is outside the scope of what is contemplated in CDC 440-8 for non-compliant lots of record which would be eligible for development, pursuant to CDC 106-117’s



definition. Because the applicant proposes to create a new lot, for a new use, this permit cannot issue unless a finding can be made about average lot width and depth.

### **New information, concessions, and completeness**

NABGAS is concerned that concessions made during the Applicant's rebuttal during the Hearing fall outside the scope of the application as deemed complete—for instance the applicant's concession regarding bicycle parking—which must be shown on the site plan to be in compliance, along with other concerns raised by the community but outside the scope of the original application. If the Hearings Officer approves an application which does not comply with the code, notwithstanding any Conditions attached thereto, the approval would be in violation of the law.

To the extent that these concessions are verbal only, and are not captured in the application as deemed complete, the applicant should be required to re-submit its application in a format which demonstrates compliance with the Code, and a new hearing on the new application should be held so that findings can be made which demonstrate full compliance.

### **Traffic impacts**

The applicant's off-the-cuff traffic analysis should not be seen as persuasive here. New to the presentation was the argument made at the hearing that the traffic analysis suddenly does not lead to triggering the half-street improvement exception requirements under the code.

Here, the applicant has used outdated traffic numbers, and relied on an undocumented verbal description of traffic from the prior owner of a business on one lot at issue here—a business which has been closed for upwards of a decade—and then doubling-down on the “lack” of an impact by zeroing-out the supposed impacts which are “already accounted for in the system.” This cannot be grounds for a valid finding, because the traffic impact analysis was done *after* these businesses were closed. The applicant seeks to avoid taking responsibility for traffic impacts it will create, by citing traffic which was not in existence at the time of their analysis.

The condition is based exclusively on the foreseeable traffic impacts projected by J3's own traffic impact analysis (when taken on whole, rather than using the “net” accounting method proposed during the hearing.) The half-street improvement condition is designed to address exactly the problem that the applicant here would create.

To reiterate the point: if the applicant does not wish to pay for or build the road capacity which is necessary for safe circulation around their proposed development (which is necessary *because of* the impacts from that proposed development), and seeks instead to rely on an unfunded plan for the County to build those improvements, the applicant can simply wait until the County actually completes those improvements before it applies for a building permit.

### **Conclusion**

NABGAS renews the comments made in its prior comment dated November 17, 2022, and further requests that the Hearings Officer do three things: 1) Deny the application to the extent that the lot, created after the date noted in CDC 106-117 is not in compliance with minimum lot dimensions; 2) return this application to the Applicant with a denial of the half-street improvement exception request; and, 3) require compliance with *all* relevant applicable

code sections, including bicycle parking, landscaping, lighting, circulation, setbacks, height, design, drainage, and all other standards noted in the staff report.



Mike Sargetakis  
Law Office of Mike Sargetakis, LLC  
735 SW 1<sup>st</sup> Ave, 2<sup>nd</sup> Floor  
Portland, OR 97204  
[mike@sargetakis.com](mailto:mike@sargetakis.com)  
971-808-1495  
*Attorney for NABGAS*

Dear Mr. Schaefer,

I'd like to add these comments to my testimony provided at the November 17, 2022 Hearing in reference to statements made by 3J Consulting during that Hearing.

I've referenced the timing of these statements based on the recording made available to us. Thank you for that. 3J comments are in blue text.

First is the Applicant's rationale for an exemption to pay his share of half street improvements.

Mercedes Serra said:

- 1) 25:40: " ... *this dedication will allow for the eventual full buildup of West Union Road as part of the planned capital improvement of the County*"
- 2)
- 3) 25:56 " ... *NW West Union Road has been identified as that capital improvement project by the County* "

To my knowledge, there is no capital improvement project either on the books now or planned, at least nothing available to the public. That specific project needs to be identified. I would request the specific details of the project to which they are referring.

I support Staff's position that the Applicant must pay for half-street improvements.

Secondly, regarding traffic studies, Ms. Cerra states ( approx. 1:30:05 ) that "the applicant has provided a traffic impact analysis" which shows that the project "can support the generated traffic" and that vehicular "queuing onto West Union was explicitly considered ".

The 2019 study admitted that westbound traffic on West Union often backed up at Deerfield but claimed that wasn't a problem because the queue clears up quickly. residents refuted the word "quickly".

Vehicle stacking inside the West Union shopping center was alluded to in Hearing testimony. Cars enter West Union Village Drive from any of three directions : NW West Union Rd , NW 185th or Deerfield Dr. There is a 4-way stop at the northwest side of Starbucks (quite near the proposed 4-way signal) which already creates stacking when cars are waiting for the drive thru entry.

The 4-way signal proposed by Applicant has the potential to block West Union if signals change while vehicles are "stuck" in that intersection. Both directions of West Union flow would be impeded as well as turning movements from 185th because of no space to move. This makes for angry drivers who endanger themselves and others including pedestrians and cyclists. I'd like to mention that the Rock Creek community

frequents the Shopping Center by foot and bicycle regularly since THHPRD pathway is ideal to get there. It should be noted that all residents south of West Union or west of 185th need to cross these major road(s). And importantly, Rock Creek Elementary and Westview High students need to be protected as they cross en route to and from school.

1:30:34 : "The Mad Greek trip characteristics were determined by talking to the owner/operator of the restaurant"

Garnering information by this method may not be solid nor reliable. I question its use in making determinations.

At 1:31:15 : " the traffic was collected pre-pandemic and avoided periods of abnormality including spring break and holidays"

However, a letter dated November 8, 2019, from Kittelson & Associates to Stacy Shetler, County Engineer/Division Manager, includes the footnote:

***It should be noted that Portland Community College had not yet begun its fall term when the turning movement counts were collected on September 12, 2019***

I didn't have time to get any statistics from PCC Rock Creek but according to their website, enrollment is at 20,000 this year. Of course they are all not drivers but obviously there is an impact that hasn't been addressed.

Discounting PCC trips, the opening of Starbucks, and the significant growth in Bethany since 2019 renders the 2019 traffic study inaccurate. A new study needs to be done taking all factors into account to ensure that community residents and children have protection crossing these roads; roads used on a regular basis because of their proximity to both Rock Creek Elementary and Westview High, the Rock Creek Trail, and the West Union shopping center which contains restaurants and services the community values.

Thank you.

Tanya Rosencrance

[REDACTED ADDRESS]

**Paul Schaefer**

**Exhibit OR1-o**

**From:** LUT Development  
**Sent:** Wednesday, November 23, 2022 3:59 PM  
**To:** Paul Schaefer  
**Subject:** FW: [EXTERNAL] land use #L2200199 comment

**From:** N DeBolt Robertson [REDACTED]  
**Sent:** Wednesday, November 23, 2022 9:43 AM  
**To:** LUT Development <LUTDEV@washingtoncountyor.gov>  
**Subject:** [EXTERNAL] land use #L2200199 comment

I would like to adamantly dismay and dissuade the again proposed site of the corner of West Union and 185th for this planned gas station and market. The proposed development is far too costly, negatively impactful on local traffic and businesses and residences; it is also far too volatile as so near to the wetland and migratory bird patterns; it is also not necessary with ample similar businesses in short range. It also sets up an even more slippery slope regarding the UGB that should be continued to be preserved.

thank you.

nicola robertson

West Slope, Portland

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**From:** Tomas Jankovsky [REDACTED]  
**Sent:** Friday, November 25, 2022 11:23 AM  
**To:** LUT Development; Paul Schaefer  
**Subject:** [EXTERNAL] L2200199: Chevron near Bethany Lake Public Comment  
**Attachments:** Calculation.pdf

To Senior Planner, Mr. Paul Schaefer  
Washington County Department of Land Use and Transportation

We attended the Land use hearing on Tuesday, November 17th for Casefile No. L2200199-SU/SU/D(C)/AMP/M

First, we would like to mention our mistake on the number regarding to the minimum average lot width provided during the hearing.

I, Masako Jankovsky, mentioned that the minimum average lot width for this property is around 63 feet, but I was looking at a different number at that time, and it was wrong.

Actually, this lot's average minimum width is about 65'.11" or 75'.38" according to the document that was provided by County report, and applicant's agent 3J in 2021.

( \*\*\* We will attach the calculation we did in this email as reference. Attached document #1)

As I mentioned at the hearing, we still believe this lot does not meet "CDC 311-6.4 A" when we follow all the definition below, and based on calculation that we did.

We also believe that : Lot of record" under CDC 440-8/ 440-8.1 is not related to this matter.

CDC

106-1.2

The term " Shall" is always mandatory and the word" may" is permissive.

106-113.2

Rear Lot Line. The line which divides one lot from another opposite from the front line. For irregular or triangular lots, the rear lot line shall be a line 10 feet in length, within the lot, parallel to and at the maximum distance from the front lot line.

A four-sided irregular lot is one in which a side lot line and rear lot line form an interior angle of at least 134 degrees.

106-119

Lot Depth. The perpendicular distance measured from the midpoint of the front lot line to the midpoint of the opposite lot line. See Figure No.1.

106-121

Lot Width. The horizontal distance between the side lot lines measured at right angles to the lot depth at a point midway between the front and rear lot lines. See Figure No.1

#### 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.

The applicant's attorney and applicant's agent mentioned "CDC 440-8" on this matter during the last hearing at the end. Their argument was because of this 440-8/ 440-8.1: " Lot of Records", above the argument would not comply for this case.

However, our understanding is that CDC Article 4-440 is for the code to protect single family dwellings which were/are affected by this CDC implementation when it was adopted in 1984. 440-8.1 has the word "Lot of record". This " Lot of record" on this section meant the record which had been before this CDC was implemented. This means that article 4-440/ 440-8.1 is not related to this casefile, because this lot was combined two separate lots into one, and approved as NC by county staff in 2019 ( Casefile : L1900411-PLA , accepted on 11/28/2019 ).

This Casefile did not happen before the effective date of CDC on March 26, 1984. ( \*\*\* Reference Attached as document #2 )

One lot was a restaurant which started business on this lot before CDC came up . The another lot was a resident. And this combined lot tampering down significantly to east side. It did/does not meet "the minimum average lot width" as NC under condition of these two lots were combined. Regardless of this fact, the lot was accepted by county staff as NC in 2019.

So our question here is why this new lot was accepted by county staff as NC at this application of Casefile : L1900411-PLA when it does not meet the CDC 311-6.4.

And is this application still OK to be proceed without any amendment when we know that the lot size does not meet on the Commercial Development Code of Washington County?

For this reason, we strongly request the county staff to re-assess the lot dimension : The minimum average lot width to confirm if this lot meet the dimension size to CDC.

We also believe the applicant should not depend on the County's future planning: "Capital plan" to do the half road improvement. The "Capital Plan" on this segment on West Union Rd has not been implemented, or even financially funded at this time ( according to the county report for this casefile). Actually, we noticed the significant traffic decrease at the segment of 185th and Laidlaw/ Bethany Rd on West Union Rd during the pandemic between 2020 and 2021. All the neighbor company's working condition got changed, and it is noticeable that the traffic flow had changed on this segment on West Union even at this post pandemic time in 2022. This Capital

plan itself might not be adequate to be adopted. Thus, there is no reason that the applicant can depend on this capital plan to do “ the half road improvement ”. ( Developed countries started to create new IT industry businesses to support their own countries’ needs, and this will directly impact on our neighbor’s Big IT businesses. And that will affect to our neighbors’ residential demographics on north-east of West Union Rd in the near future. )

We are also concerned about the accuracy of the traffic report provided by applicant. This is, again, because of the significant traffic decrease between 185th and Laidlaw/Bethany Rd on West Union Rd.

We believe it needs up-dated data for the accuracy.

We also found out that the traffic number estimation is not calculated accurately because of the fact of this crossroads formation. This crossroads of 185th and West Union Rd is not regular crossing which is also creating the odd shape of this proposed property which was sited on county/applicant report. Two Conners are obtuse, and the others are acute angles. The car traveling to north on 185th to east on West Union has to slow down much more than we do at regular conners. That is not included in the current calculations at all. It is not clear how the calculation on the report works to this location, especially this business’s entrance will be pretty close from the corner of 185th. It is also noticeable that the traffic flow diagram for this new plan ( Civil Plan C222 and C824) indicates some traffic jam in the lot or possibly at the entrance on West Union Rd, too.

So taking account of all facts, the traffic survey which was done in 2019 does not project the traffic number/flow of present/future of West Union Road between 185th / Laidlaw to Bethany Rd.

Another concern is the fact that we could not find the “Capital Plan” on the County’s Website, yet the applicant had mentioned it from the first application in 2019. And that brings us to another question. Why does the applicant include this “ Capital Plan” in his planning? When and how did the applicant get this idea / information of “ Half road improvement : Capital Plan” on the segment between 185th and Laidlaw/Bethany Rd by County?

Another question is how accurate the traffic/customer number that the former restaurant: Mad Greek created during the time of their operation on the report. We live off from West Union, not far from Mad Greek for over 20 years. And we were driving in front of this shop everyday. However, we never saw significant traffic number that the Mad Greek created like report says. We assume that it was because of the tight parking lot size, and the restaurant’s entrance location which was too close to 185th and West Union crossing. It was not convenient to go in and out by car. It will be nice to see the actual traffic or customer number that can be proved by the documentation to see for the realistic traffic comparison. We also believe that it is hard to depend on the general restaurant/ fast food restaurant’s traffic statistics for comparison to this lot due to the odd shaped property, and the limited access points/ parking size to get into this business’ parking lot.



Also, when county staff accept of the easement on “ Right-of-way” measurement on the distance from centerline from 21 feet to 18 feet, we do not find any good reasons for this adjustment. The scale of three feet for this case seems significant gap for the safety for this spot. Can we get any written reason/explanation to prove the county staff’s decision on this easement for the safety?

Lastly, we found one document from “Park and Recreation” that says this site will be “ inadequate” to serve in the applicant’s application report. The Park and Recreation noted that it is because Park and Recreation can not clean the dumping garbage or mess created by the customer from this new business. And we do not see the response from the applicant regarding this issue on the report. What we see is the 4 feet high fence to prevent the light/sounds hazards to the South side neighbors. The 4 feet high fence will not prevent the dumping garbage at all. Actually it even creates worse situation to trigger dumping trash over this short fence by their customers. And this short fence makes it harder to pick up the mess in the natural area/ wetland which is the South side adjacent area to this proposed lot. We believe that the applicant needs to consider this fact, and prevent the dumping more effective way as this applicant always emphasizing “ green concept” of his businesses. Applicant should also be responsible to clean all the dumping created by their customers. To do so, we believe they should have a documentation that prove their responsibility to keep the South side Park & Recreation’s property clean at all time.

Thank you so much for reading, and we will be appreciated if we can get these questions answered. We will attach the calculation for the lot size below.

Tomas and Masako Jankovsky

#1 Calculation of “The minimum average lot width “

#2 CDC 440

**440 - NONCONFORMING USES AND STRUCTURES**

**modified**

**440-1**

### **Intent and Purpose**

A nonconforming use is a structure or use of land which does not conform to the provisions of this Code or Comprehensive Plan, lawfully in existence on the effective date of enactment or amendment of this Code or Comprehensive Plan. It is the intent of this Section to allow and

regulate existing uses and structures that were lawfully established and are not now in conformance with the applicable regulations of this Code.

The purpose of this Section is to generally encourage the discontinuance of nonconforming uses and structures or changing of nonconforming uses and structures to conforming or more conforming uses or structures. However, it is not the purpose of this Section to force all nonconforming uses or structures to be eliminated or brought into conformance with existing standards, or to discourage the continued nonconforming use of land for single-family dwellings. Except in industrial, institutional, and commercial districts other than Neighborhood Commercial (NC), it is the intent of this Section to allow the owner of a structure used as a single-family dwelling to alter or replace the structure consistent with state law, LCDC administrative rules and the applicable provisions of this Code.

Nonconforming uses that have a lesser impact on the immediate area have fewer restrictions than nonconforming uses with greater impacts. Nonconforming commercial and industrial uses in residential and farm or forest districts have more rigorous review criteria than these uses have in commercial and industrial districts in order to protect the livability and character of residential and farm or forest districts. In contrast, nonconforming single dwelling units in residential and farm or forest districts have fewer review standards because residential uses are permitted in these districts and these uses do not represent a major disruption to the immediate area. The intent of this Section in reviewing alterations to nonconforming single dwelling units in the EFU, EFC and AF-20 Districts is to review only those things that adversely affect resource based activities which are the basis for the use restrictions in these districts. See Section 430-145.9 for additional information on wineries and associated activities at wineries that may be nonconforming.

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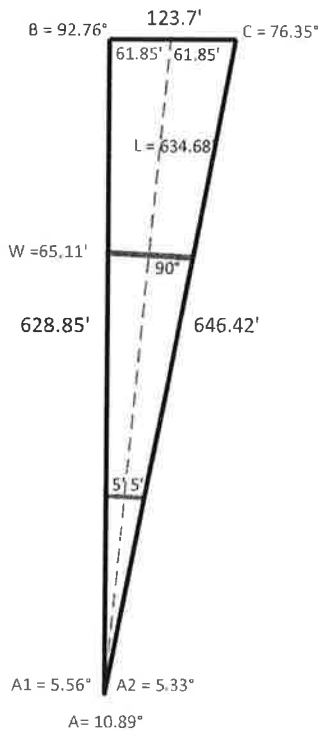
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Property Size (From 3J Application):

North - South = 123.7'

East - West South = 646.42'

East - West North = 628.85'



#### Calculation

##### Angle A:

$$\cos A = (628.85^2 + 646.42^2 - 123.7^2) / 2(628.85)(646.42) = 0.982$$

$$A = \cos^{-1}(0.982) = 10.89^\circ$$

##### Angle C:

$$\cos B = (646.42^2 + 123.7^2 - 628.85^2) / 2(123.7)(646.42) = 0.236$$

$$B = \cos^{-1}(0.236) = 76.35^\circ$$

##### Angle B:

$$180^\circ - 10.89^\circ - 76.35^\circ = 92.76^\circ$$

##### Length of dividing line:

$$L = \sqrt{(628.85^2 + 61.85^2 - 2(61.85)(628.85)(\cos 92.76^\circ))} = 634.68$$

##### Angle A1 & A2:

$$\cos A1 = (628.85^2 + 634.68^2 - 61.85^2) / 2(628.85)(634.68) = 0.995$$

$$A1 = \cos^{-1}(0.995) = 5.56^\circ$$

$$A2 = 10.89^\circ - 5.56^\circ = 5.33^\circ$$

##### Distance of 10' line from A:

$$L1 = (5 \sin 92.76^\circ) / \sin 5.56^\circ = 51.55'$$

##### Distance of Width line from front line (Halfway point):

$$L2 = (634.68' - 51.55') / 2 = 291.57'$$

##### Width of the Lot:

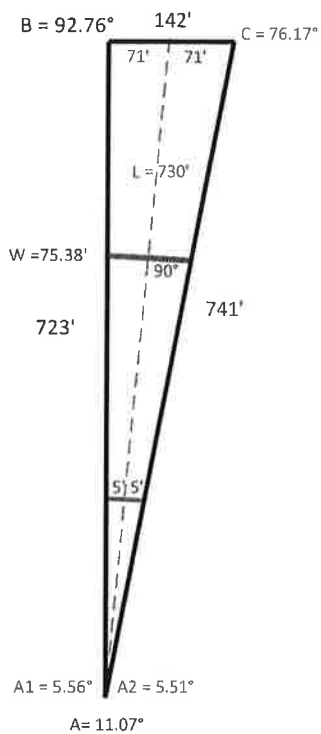
$$W1 = (291.57' + 51.55')(\sin 5.56^\circ) / \sin 90^\circ = 33.24'$$

$$W2 = (291.57' + 51.55')(\sin 5.33^\circ) / \sin 90^\circ = 31.87'$$

$$W = 33.24' + 31.87' = 65.11' < 85'$$

Does not meet CDC Section 311-6.4 Minimum Average Lot Width

Property Size (Staff Report):  
 North - South = 142'  
 East - West South = 723'  
 West - South Corner = 92.76°  
 (Angle derived in Front 123.7 feet)



#### Calculation

##### East - West North:

$$L = \sqrt{(723^2 + 71^2 - (2(71)(723)(\cos 92.76^\circ)))} = 741$$

##### Angle A:

$$\cos A = (723^2 + 740^2 - 142^2) / (2(723)(740)) = 0.981$$

$$A = \cos^{-1}(0.981) = 11.07^\circ$$

##### Angle C:

$$180^\circ - 11.07^\circ - 92.76^\circ = 76.17^\circ$$

##### Length of dividing line:

$$L = \sqrt{(723^2 + 71^2 - (2(71)(723)(\cos 92.76^\circ)))} = 730$$

##### Angle A1 & A2:

$$\cos A1 = (723^2 + 730^2 - 71^2) / (2(730)(723)) = 0.995$$

$$A1 = \cos^{-1}(0.995) = 5.56^\circ$$

$$A2 = 11.07^\circ - 5.56^\circ = 5.51^\circ$$

##### Distance of 10' line from A:

$$L1 = (5 \sin 92.76^\circ) / \sin 5.56^\circ = 51.55'$$

##### Distance of Width line from front line (Halfway point):

$$L2 = (730' - 51.55') / 2 = 339.23'$$

##### Width of the Lot:

$$W1 = (339.23' + 51.55')(\sin 5.56^\circ) / \sin 90^\circ = 37.86'$$

$$W2 = (339.23' + 51.55')(\sin 5.51^\circ) / \sin 90^\circ = 37.52'$$

$$\text{Width} = 37.86' + 37.52' = 75.38' < 85'$$

Does not meet CDC Section 311-6.4 Minimum Average Lot Width

**MEMORANDUM**

To: Mr. David Doughman  
Washington County Land Use Hearings Officer  
Washington County Land Use and Transportation Department  
Washington County Public Services Building  
155 N First Avenue, Suite 350, Suite 350; M/S 14  
Hillsboro, OR 97124

From: Mercedes  
*Senior Planner*

Date: November 23, 2022

Project: West Union Chevron  
File Number: L2200199-SU/SU/SU/D(C)/AMP/M

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3J Consulting represents CJRW, LLC in matters related to the West Union Chevron and Extra Mile Market (L2200199-SU/SU/SU/D(C)/AMP/M). During the public hearing held on November 17, 2022, there were several questions raised relating to the site's frontage and yard requirements. Given the site's unusual shape and configuration, this letter has been prepared to clarify the site's frontages and yard setbacks as defined by the Washington County Community Development Code (CDC).

**Lot Dimensions and Frontage on a Corner Lot**

The subject site consists of two tax lots, 1N119BC00500 and 1N119BC00600 which have been consolidated under casefile L1900411-PLA pending recording of the final plat. The attached "Notice of Decision and Staff Report for Casefile L1900411-PLA" demonstrates that the "proposed lot configuration meets the dimensional and lot area requirement of the NC Districts."

The site is considered a corner lot with frontage on both NW West Union Road and NW 185<sup>th</sup> Avenue. Frontage, per CDC 106-93 is defined as the portion of a lot or parcel which abuts a street or road. The frontage directly adjacent to the property along NW 185<sup>th</sup> Avenue includes a stormwater treatment facility which is located within the right-of-way and is therefore considered frontage.

**Establishing Front Yard, Rear Yard and Side Yard**

The front lot line on a corner lot is defined in CDC 106-113.1 as the line separating the narrowest frontage from the street right-of-way. The site's frontage on NW 185<sup>th</sup> Avenue is approximately 123 feet, while the site's frontage on NW West Union Road is approximately 654 feet. Per CDC 106-113.1, the site's front lot line is the frontage abutting NW 185<sup>th</sup> Avenue. CDC 106-113.2 establishes that the rear lot line is the line which divides one lot from another opposite from the front lot line. In the case of triangular lots, the rear lot line 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 185<sup>th</sup> Avenue where a parallel 10-foot line is established.





A yard setback is defined as an open space on lot or parcel which is unoccupied or unobstructed by buildings or other structures from the ground upward. On a corner lot in the NC zone, the front yard, rear yard, and the side yard abutting the street have a minimum yard requirement of 20 feet per CDC 311-6.2. There is no interior side yard on a corner lot where the development does not abut a Residential or Office Commercial District per CDC 311-6.2(B).

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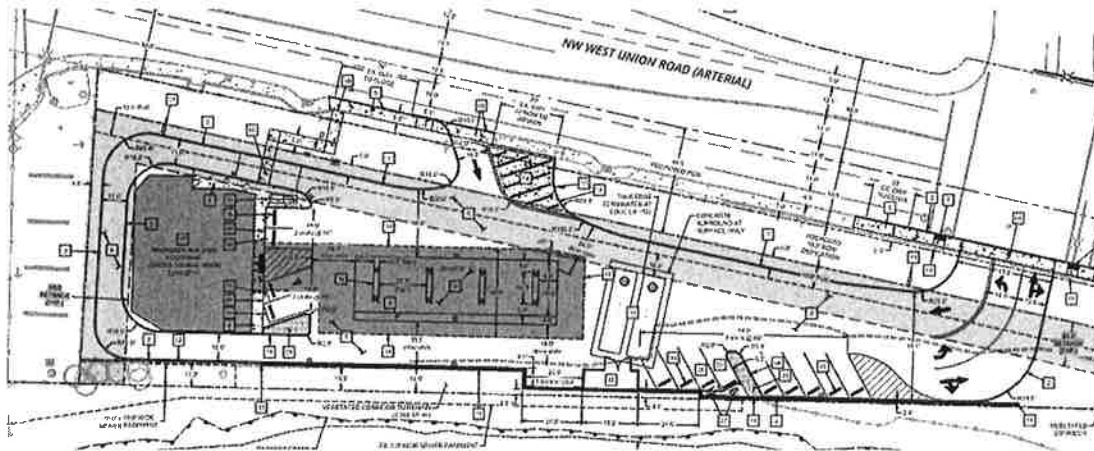


Figure 2: Front and Street Yard Setbacks

Attachment:  
Washington County Staff Report L1900411-PLA

**WASHINGTON COUNTY**

Dept. of Land Use & Transportation  
Current Planning Services  
155 N. 1st Avenue, #350-13  
Hillsboro, OR 97124  
Ph. (503) 846-8761 Fax (503) 846-2908  
<http://www.co.washington.or.us>

**NOTICE OF DECISION  
& STAFF REPORT****PROCEDURE TYPE: I****CPO: 7****COMMUNITY PLAN:** Sunset-West**PROPERTY DESCRIPTION:****ASSESSOR MAP NO.:** 1N1 19BC**TAX LOT NO's:** 500 and 600**SITE SIZE:** 0.86 acres & 0.35 acres**ADDRESSES:** Tax lot 500: 18300 NW West Union Road; Tax lot 600: 18450 NW West Union Road**LAND USE DISTRICT(S):**NC (Neighborhood Commercial)**CASEFILE:** L1900411-PLA**APPLICANT:**West Union Chevron, Inc., DBA West Union ChevronAttn: Robert BarmanPO Box 2092Lake Oswego, OR 97035**APPLICANT'S REPRESENTATIVE:**3J Consulting, Inc.Attn: Mercedes Smith9600 SW Nimbus Avenue, Suite 100Beaverton, OR 97008**PROPERTY OWNER OF TAX LOTS 500 & 600:**CJRW LLCPO Box 2092Lake Oswego, OR 97035**LOCATION:** On the south side of NW West Union Road, approximately 40 feet east of its intersection NW 185<sup>th</sup> Avenue.**PROPOSED DEVELOPMENT ACTION:** Property Line Adjustment in the NC District to consolidate two tax lots.**DECISION:**Approval ✓

Denial \_\_\_\_\_

Signature Tom HarryDate 2/19/20Tom Harry, Principal Planner, Current Planning*Staff: Maitreyee Sinha 503-846-3835***Attachments:**

- A. Summary of Code Requirements
- B. Staff Report
- C. Site Plan

**Appeal Information:** Approval or denial of this request or any conditions may be appealed if a written appeal is filed with the Washington County Department of Land Use and Transportation within twelve (12) days of the date this notice is provided. A motion for reconsideration may be filed within seven (7) days of the date this notice was provided. This decision will be final if no appeal is filed by the due date and a motion for reconsideration is not granted by the review authority. For further information about an appeal, contact the Appeal Secretary at 503-846-8134.

**APPEAL PERIOD:** Date mailed: 2-20-20 to 4:00 pm on 3-3-20 (Appeal Due Date).



## ATTACHMENT A-Summary of Code Requirements

### I. SUMMARY OF CODE REQUIREMENTS:

- A. A common property line that is relocated through a property line adjustment shall be surveyed and monumented unless the parcels are greater than (10) acres. It is the property owner's responsibility to have this completed.
- B. If any easement(s) exist along the property lines, they are to be adjusted and shall be vacated and rededicated along the new property lines. It is the property owner's responsibility to have this completed.
- C. All property line adjustments shall be executed by deed and must comply with ORS Chapter 92. It is the property owner's responsibility to have this completed.
- D. New deeds reflecting the property line adjustment **must** be recorded within FOUR (4) years of the approval date shown on this document or a request for an extension must be filed prior to the expiration date, or the approval will expire. It is the property owner's responsibility to complete the deed recordation or the request for an extension.

### II. ADDITIONAL INFORMATION:

- A. Approval of the property line adjustment application DOES NOT adjust the property lines. The deeds and record of survey must be recorded to finalize the adjustment. This is the responsibility of the property owner.
- B. In order to map the property line adjustments, all property taxes must be paid in full on all properties.
- C. When preparing the deeds for the property line adjustment, the names should match existing deeds.
- D. If there is a mortgage, you may wish to notify the mortgage holder. They may require a loan modification or release.
- E. Contact Assessment & Taxation Cartography (503-846-8871) for assistance with deed recordation.

**ATTACHMENT B – STAFF REPORT****I. FINDINGS OF FACT:**

- ☒ A. The applicant has submitted the information required for property line adjustment as listed in Section 605-1 of the Code.
- ☒ B. The proposed property line adjustment is permitted in the NC Districts through the Type I procedure.
- ☐ C. The subject properties are all lots of record.
- ☒ D. The proposed lot configuration meets the dimensional and lot area requirement of the NC Districts.
- ☐ E. The existing structures on the lots will meet the district's minimum required setbacks after the proposed boundary adjustment.

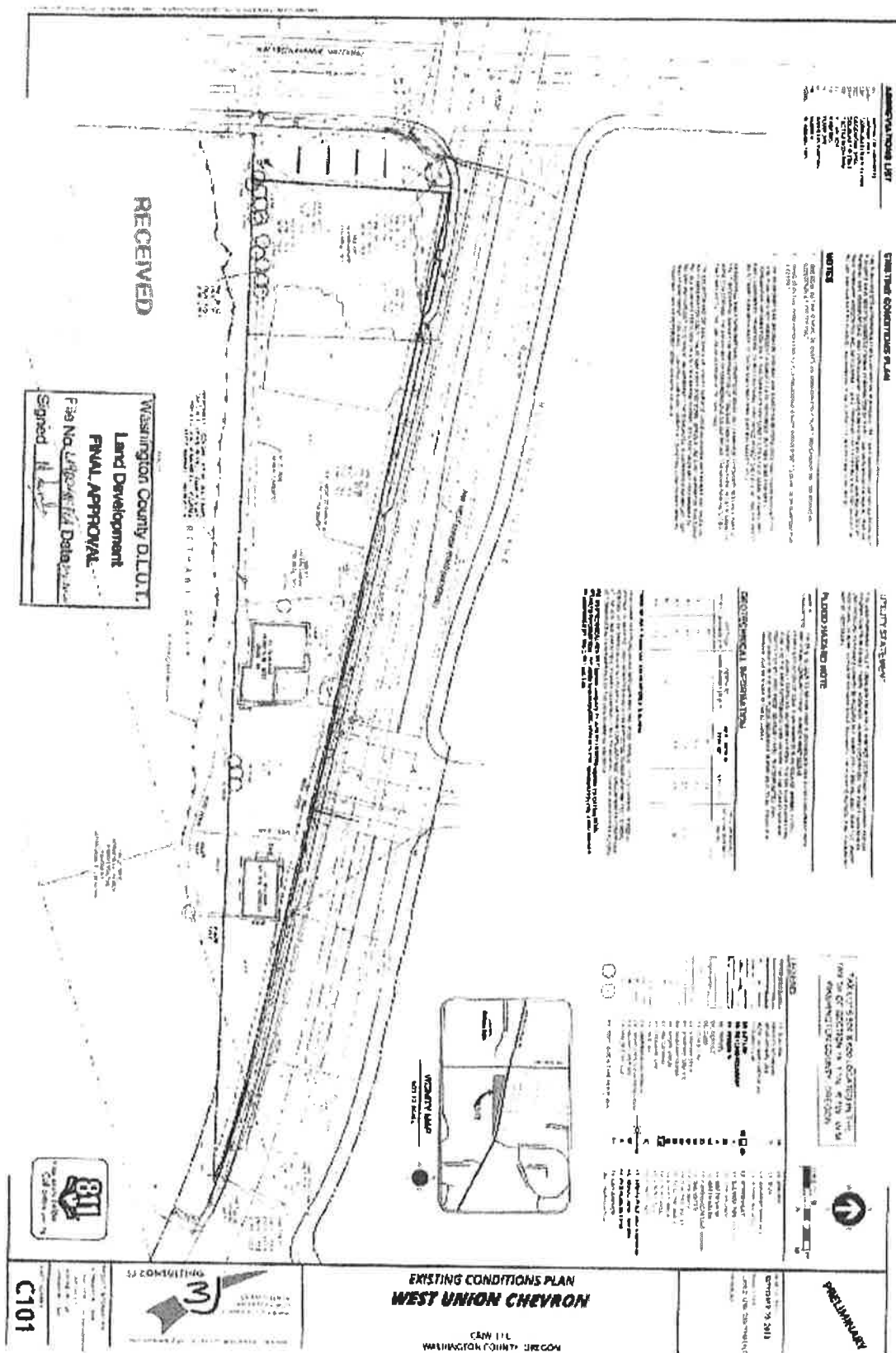
Tax lot 600 is currently vacant. Tax lot 500 supports an old residence and a detached garage; both are unoccupied. According to the applicant neither structure is currently habitable and both will be removed/demolished in the future. While the proposed reconfiguration will not affect any setbacks, any new development will have to comply with the setback standards specified in Section 311 of the Code.

- ☒ F. The proposed property line adjustment meets the access standards of Section 409.
- ☒ G. The request is in compliance with previous land use actions which have been approved on the subject properties.
- ☒ H. The request complies with the property line adjustment review standards of Sections 605-1 of the Code.
- ☒ I. The request complies with the standards of the Sunset-West Community Plan.
- ☒ J. The Washington County Surveyor has determined a Survey is required to be submitted for this Property Line Adjustment.
- ☒ K. Other: A property line adjustment is the relocation or consolidation of a common boundary line between two or more abutting properties where an additional lot or parcel is not created.

The property line adjustment is a consolidation proposed between tax lots 500 & 600 that will result in a single tax lot measuring 1.21 acres.

**II. CONCLUSION:**

Information submitted by the applicant demonstrates that the request complies with the applicable regulations of the Community Development Code and the Community Plan. Based upon the findings, final approval of this request is granted subject to the Summary of Code Requirements in Attachment A.



# Technical Memorandum

November 22, 2022

Project# 21539.0

To: David Doughman, Hearings Officer  
Washington County  
155 N. First Avenue, STE 350  
Hillsboro, OR 97124

From: Wayne Kittelson

CC: Robert Barman, Mercedes Serra

**RE: Case File L2200199-SU/SU/SU/D(C)/AMP/M:  
Vehicle Stacking and Determination of Road Impact**

This memo addresses two traffic-related issues that were raised during the Public Hearing for Case File L2200199-SU/SU/SU/D(C)/AMP/M:

- Possible vehicle stacking issues associated with the proposed right-turn-in access drive on NW West Union Road; and
- Determination of rough proportionality with respect to road impact and County staff's condition requiring half-street frontage improvements.

## Vehicle Stacking at the Proposed Right-Turn-In Access Drive

The probability of a vehicle queue extending beyond the entrance to the proposed right-turn-in driveway during the highest weekday hour (i.e., the weekday evening peak hour) is estimated to be 0.1%. This result is well below the 5% threshold that is typically used for determining storage length requirements for turn lanes in highway design projects.

The above estimate is calculated based on the expected trip generation rate for the gas station/convenience store combination with the following reasonably conservative assumptions:

- 1) All vehicle arrivals are randomly distributed through the weekday evening peak hour.
- 2) The average time for vehicle fueling (beginning with the time of pull-up to the pump and ending with departure from the pump) is five minutes.
- 3) The average service times at each of the eight fueling positions is exponentially distributed.
- 4) 15% of the arrivals are destined solely for the convenience store and will make no fuel purchases; this assumption is consistent with the past and ongoing experience of the owner/operator at other similar locations.
- 5) 65% of the arrivals will approach from the west, and all of these will use the right-turn-in lane. This assumption reflects the current distribution of traffic on NW West



Union Road during the weekday evening peak hour, and conservatively overestimates the percentage of westbound traffic that will use the proposed right-turn-in driveway.

- 6) Two vehicles can stack on-site without creating a queue that extends into NW West Union Road.

In summary, the potential for site-generated vehicles to generate a queue at the right-turn-in driveway that extends into NW West Union Road is negligible.

### **Determination of Rough Proportionality with Respect to Road Impact**

1. Washington County bears the burden of proof to demonstrate rough proportionality before it can require a private property owner to pay for half-street frontage improvements.
2. Washington County has established clear criteria in WCDC 501-8.8(C) for determining when a proposed development has a meaningful impact on the adjacent road:

*A development shall be determined to impact a roadway or intersection and benefit from improvements if the road or intersection meets any of the following criteria:*

- (1) The estimated traffic to be generated by the development exceeds ten (10) percent of the existing Average Daily Traffic.*
  - (2) "In Process" traffic volumes result in the facilities operating below Level of Service "E" for more than twenty (20) minutes of one peak hour and the proposed development's traffic will be five (5) percent or greater of total "In Process" traffic.*
  - (3) Pavement structure, pavement surface, vertical or horizontal alignments or drainage do not meet county standards.*
3. The County's method for determining the traffic generated by the development is erroneous because it treats pass-by trips to the site as if they have a net additional effect on the roadway. In fact, pass-by trips have no additional effect on the safety or operational characteristics of any roadway beyond the access drive they use. County staff concur with this conclusion by stating, "pass-by trips are not new trips on the overall County roadway system...A stop to get gasoline as part of commuting to or from work is an example of a pass-by trip".
  4. After pass-by trips are excluded, the net additional weekday traffic generated by the proposed development constitutes less than 10% of the Average Daily Traffic abutting the proposed development as defined by Washington County staff.

5. No in-process traffic has been identified by Washington County staff for inclusion in this analysis, and the intersection of West Union Village Drive/West Union Road does not operate below Level of Service "E" during the weekday peak hour.
6. Existing pavement structure, pavement surface, vertical/horizontal alignments and drainage meet County standards.

In summary and specifically as a result of 1) through 6) above, it is concluded that the proposed development will not have a meaningful impact on NW West Union Road and therefore should not be conditioned to pay for frontage improvements.

*Memorandum***Date:** November 23, 2022**From:** Paul Schaefer, Senior Planner **RE:** Casefile L2200199-SU/SU/SU/D(C)/AMP/M – First Open Record Period Comment

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Staff has reviewed the testimony presented at the hearing and offer the following comments:

***Transportation:***

The applicant asserts that trip generation assessment should be reduced to account for the relatively high percentage of pass-by trips associated with the proposed use. Pass-by trips are not new trips on the overall County roadway system but are instead stops made as part of a trip for another purpose. Staff does not believe it is appropriate to account for pass-by trips for purpose of analyzing rough proportionality and has historically not done so for purposes of trip generation analysis. Staff's long-held position is that the ITE Trip Generation Manual is a clear and objective standard, by use type, which estimates the number of vehicle trips going to and from the actual site and that the applicant needs to ensure that frontage is improved to safely handle those trips for all modes of transportation. The proposed development will generate trips as estimated by the ITE Trip Generation Manual whether there are existing pass-by trips or not. Furthermore, the applicant proposes to operate the business 24-hours a day, which will result in even more site-generated trips than would be expected from many other development uses with limited hours.

Pass-by trips are factored into TDT rates, which informs the County's approach to ensuring overall roadway capacity over time. Staff notes that the applicant can get TDT credits for required frontage improvements to help offset development costs.

The transportation report included two net trip scenarios. Scenario A assumed a method for the proposed use that yields a lower estimate, while Scenario B assumed a method for the proposed use that yields a higher estimate. The 10<sup>th</sup> Edition ITE Trip Generation Manual for ITE Category 853 was used in this analysis. The scenarios have been updated using the 11<sup>th</sup> Edition ITE Trip Generation Manual (for the proposed uses) using ITE Category 945 as used by the applicant's transportation consultant (Exhibit PH-9). After comparing ITE Category 853 in the 10<sup>th</sup> Edition with the ITE Category 945 in the 11<sup>th</sup> Edition, the most notable finding is that the ITE trip generation rate based on gross floor area for Category 853 (624.20 trips per 1,000 gross square feet) is the same ITE trip generation rate based on gross floor area for Category 945 (624.20 trips per 1,000 gross square feet). In Scenario B, the proposed 4,428 square foot convenience store will generate the same total of new trips under both 10<sup>th</sup> Edition Category 853 and 11<sup>th</sup> Edition Category 945.

In addition, under Scenario B, 2,763.96 new trips would generate about a 22.5% increase over the 2019 Traffic Counts on West Union (12,267); while the net generation of 1,559.52 new trips would generate about a 12.7% increase over 2019 Traffic Counts on West Union (12,267). Consequently, staff finds that half-street improvements are roughly proportional based on trips generated by the proposed development (Scenario B). Notwithstanding, staff recommends that

**Potential Traffic Flow Impacts at the Proposed Right-in Only Access:**

The expected traffic flow at the pumps has vehicles accessing the pumps from the north (closest to the right-in only access from NW West Union Road). Concerns were expressed with the possibility of queuing of vehicles at the pumps causing overflow into the right-of-way, due to the perceived short stacking distance for vehicles waiting to access the pump. Reversing the flow to/through the pumps from the south would abate this concern as any back up of vehicles waiting to fuel up would be south and east of the fueling stations – and not on West Union Road. Additionally, in the event that the right-in only access is evaluated in the future by the County Engineer and determined to no longer be operating safely and the applicant is unable to retain a safe functioning access, the county would have the ability to further restrict the access (i.e., close the access).

**Hours of Operation:**

The applicant proposes to operate the businesses 24 hours a day. In the Neighborhood Commercial (NC) District, neither of the 3 proposed uses (convenience grocery, gas station, and drive-thru) are subject to limited hours of operation. Twenty-four (24) hour-a-day operation is allowed in the NC District.

**Bicycle Parking (Section 429):**

The applicant proposes short-term and long-term bicycle parking within 30 feet of the main building entrance. Section 429-7 regulates short and long-term bicycle parking as follows:

**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 shall be located within 30 feet from the entrance. Bicycle parking shall 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.*

**B. Long-term:**

*Long-term parking shall be located in a secure well lighted area no farther from a well-used building entrance than the nearest long-term motor vehicle parking space [with the exception of disabled parking or clustered parking allowed consistent with 429-7 C. (1)]. Bicycle parking may also be provided inside a well-marked area within a building in a secure and accessible location. Outside bicycle parking facilities shall have direct access to public right-of-way and existing and proposed bikeways. All other parking requirements identified in Subsection 429-7 C. (1 - 4) shall also be met for long-term parking.*

The proposed short term bicycle parking located within 30 feet of the main building entrance satisfies Section 429-7. Long term bicycle parking, which will be used by employees, can be accommodated on the 2<sup>nd</sup> floor mezzanine consistent with Section 429-7 B.



the applicant be provided the option to either pay fee-in-lieu or construct the half-street improvements.

**Validity of the Access Management Plan (AMP):**

Traffic Engineering staff examined the AMP prepared for the proposed redevelopment of the property located on the south-east corner of NW West Union Road and NW 185th Avenue. The site will be redeveloped into a gas station with a convenience store consisting of eight fueling positions. Access is proposed via a right-in only access along NW West Union Road and a newly constructed south leg of the existing West Union/Albertsons entrance traffic signal. NW West Union Road is classified as an arterial by Washington County with a required minimum access spacing of 600 feet. The spacing between the proposed right-in only access and nearest street and driveways to both the east and west is less than 600 feet. Therefore, the access spacing on NW West Union Road falls below the county access spacing requirement. The AMP submitted by the applicant is intended to fulfill the requirements of Washington County CDC Section 501-8.5 C "Exception to Access Criteria".

Traffic Engineering found that the report determined that all intersections within the project impact area will operate adequately, and that within the project impact area there are no traffic safety deficiencies. Additionally, the intersection sight distance at both proposed access locations on NW West Union Road meet county requirements. As a result, Traffic Engineering concluded that the proposed right-in access and the new south leg at the existing West Union Road/Albertsons entrance signal can be approved subject to the following traffic conditions:

1. *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.*
2. *Construct the right-in access to restrict the access as right-in only.*
3. *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.*
4. *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.*

**Lot Dimension Requirements:**

Tax Lots 1N119BC00600 and 1N119BC00500 are both Lots of Record as defined by Section 106-117, which reads as follows:

***Lot of Record, Urban.*** *Applicable to all urban districts. Any 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. A lot of record does not authorize development of a lot or parcel which does not comply with the requirements of a "parcel" as defined by ORS 215.*

Each lot was created by deed and is of record before March 26, 1984. Therefore, pursuant to Section 440-8.1 the proposed development is not subject to the dimensional standards of the Neighborhood District (Section 311).