

Paul Schaefer

From: Alicia Schubert [REDACTED]
Sent: Friday, December 2, 2022 10:48 AM
To: Paul Schaefer
Subject: [EXTERNAL] Opposition to gas station an convenience store on the southeast corner of West Union and 185th

Hello,

I would like to make a comment that I oppose the proposed gas station an convenience store on the southeast corner of West Union and 185th. This is a very small piece of property that is directly next to Bethany Creek. There is too much risk to the creek and the environment if there were any type of spill or leak. We need to keep fuel away from our wetlands.

Thank you,

Alicia Schubert
[REDACTED]
[REDACTED]

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From: Tomas & Masako Jankovsky [REDACTED]
Sent: Friday, December 2, 2022 2:57 PM
To: LUT Development; Paul Schaefer
Subject: [EXTERNAL] L2200199: Chevron near Bethany Lake Public Comment

To: Mr. Schaefer,

In response to the staff's comment which is for hearing testimony of Casefile L2200199-SU/SU/SU/D(C)/AMP/M, New lot created by combining : 1N119BC00500 and 1N119BC00600, is not related to CDC440-8.1., and this new lot does not meet CDC 331-6.4 A, because of the following reasons.

440-8.1 is under the CDC Article IV. CDC 440 starts with the its' " Intent and Purpose". It is obvious that this code is for a nonconforming use for a structure or land which does not conform to the provisions of CDC or Comprehensive Plan. And the structure or land has to be lawfully in existence on the effective date of enactment or amendment of CDC or Comprehensive Plan as you can read in CDC. " Intension and Purpose" of Community Development Article IV, read as follows:

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.

Regarding Section 440-8.1 Lots of record, if you read only this section, it sounds like “lots of record” will work for this new lot. However, it does not apply for this case. If you read all section of 440, it is obvious that this section is applicable for structures or lands which had been already established at the time of CDC effective date of enactment.

Section 440-1 does not apply to this new lot which was created combining two separate lots. Since this new lot was not lawfully in existence on the effective date of enactment of CDC, there was no “lot of record” for this new lot either at the time of application for Casefile : L2200199-SU/SU/SU/D(C)/AMP/M, nor at the time on effective date of enactment of CDC. 440-8 “Lots of record” is not applicable for this case. This 440-8 will work only for the lots that were already “existed” at the enforcement of CDC. “440-8 Lots of record” read as follows:

(It is worth to note that deed for #500 must be residential, not a commercial since it was resident. ***Also, 440-4 applies for this case for both #500 and #600 lots since they were abandoned for years before this new application for Casefile: L1900411-PLA. Referral 440-4 listed below.)

440 Lots of Record 440-8.1

Inside the UGB, 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. **The development shall be subject to the dimensional requirements in existence at the time the lot or parcel was created.** The proposed development shall be subject to all other provisions of this Code unless expressly exempted by this Code.

For lots of record in residential districts inside an urban growth boundary, a single dwelling unit or duplex may be permitted if there were no applicable street frontage standards at the time the lot of record was created and if the lot of record has access with a minimum continuous width of at least 15 feet for the full length of the access.

Such access shall either be direct frontage or by an easement of record or statutory way of necessity.

As per Washington County Case File L1900411-PLA,

Casefile found as : “The subject properties are not all lots of record” (L1900411-PLA, Attachment B: I. FINDINGS OF FACT #C).

Not only these reasons, but “CDC 440-4 Discontinuance or Abandonment” also support our argument. This code does not allow for the nonconforming use of land or structure to be resumed as nonconforming use of land or structure, if the owner abandoned or discontinued for the use more than 1 year. The nonconforming use of land or structure needs to be **resumed with the applicable requirements of this Code at the time of proposed resumption**. This clearly indicates that this article IV is for protecting the existing owner of the nonconforming use at the implementation of CDC/Comprehensive Plan, but the main intension is encouraging the discontinuance of nonconforming uses and structure or changing of nonconforming uses and structures to conforming uses or structures.

(It is worth to note that both lots of #500 and #600 were abandoned for years before the applicant applied to the Washington County to join these two lots to be admitted as NC. The applicant applied for NC for this lot years after CDC implementation. Also, the lot #500 was residential use, not commercial.)

440-4 Discontinuance or Abandonment, read as follow:


440-4 Discontinuance or Abandonment

If a nonconforming use of land or structure is discontinued or abandoned for more than 1 year for any reason except bona fide efforts to market the property or structure, it shall not be resumed unless the resumed use conforms with the applicable requirements of this Code at the time of proposed resumption. Once a nonconforming use has been changed to a conforming use, no structure or land shall be permitted to revert to a nonconforming use. Any future uses shall conform with the applicable requirements of this Code.

For all these reasons above, this new lot which does not have "Lot of record" should follow CDC 311-6.4. We understand that only the way for this joint lot to be lawful as NC is adjusting the lot size to comply to the CDC 311-6.4 A.

Masako and Tomas Jankovsky

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**Memorandum****Date:** December 2, 2022**From:** Paul Schaefer, Senior Planner **RE:** Casefile L2200199-SU/SU/SU/D(C)/AMP/M – Second Open Record Period Comment

Staff has reviewed comments submitted during the First Open Record and offer the following response:

Community Plan:

The development site is located within the Sunset West Community Plan and is therefore subject to the applicable provisions of that Community Plan. The project has been reviewed for conformance with the applicable Community Plan General Design Elements. The Community Plan is implemented by the Community Development Code. Consequently, when built in conformance with the Recommended Conditions of Approval, the project will be in compliance with the Sunset West Community Plan.

One commentor contends that the provisions of the Bethany Community Plan, specifically pertaining to access limitations apply to the proposed development even though it is located in the Sunset West Community Plan. Design Element #3 of the West Bethany Subarea in the Bethany Community Plan requires that the neighborhood commercial site on the north side of the road be located at least 300 feet east of the intersection with 185th Avenue. The opinion is that because the staff report included the following section, the development application is subject to the Bethany Community Plan:

A. Washington County Comprehensive Framework Plan:

*There are no specific Plan policies or goals that affect this request that are not implemented by the Code or **the Community Plan** (emphasis added). The Framework Plan requires development applications to be in compliance with the Community Development Code and **the applicable Community Plan** (emphasis added). By demonstrating in this report that the request complies with the standards of the Code and **the Community Plan** (emphasis added), this Plan requirement will be satisfied.*

As the findings state, there are no specific policies or goals contained in the Comprehensive Framework Plan that affect this request that are not implemented by the Code or the applicable, singular Community Plan. The Comprehensive Framework Plan requires development applications to be in compliance with the Community Development Code and the applicable Community Plan (again reference to only one Community Plan). By demonstrating in the staff report that the request complies with the standards of the Code and the Sunset West Community Plan this Plan requirement will be satisfied.

Traffic Safety and Access:

Concerns have been expressed with the potential for development impacts on traffic safety. One of the purposes of R&O 86-95 is to ensure safe transportation networks and that

development on county Arterials, such as the proposed Chevron, will not generate traffic safety issues that cannot be mitigated and/or addressed as part of the development. The applicant submitted a required Access Management Plan (AMP) because the two proposed accesses did not satisfy the 600-foot access spacing requirement for Arterials.

County Traffic Engineering staff examined the AMP prepared for the proposed redevelopment. 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. The spacing between the proposed right-in only access and nearest street and driveways to both the east and west is less than the 600 feet required for Arterials. 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" that addresses this issue.

Traffic Engineering concurred with the applicant's traffic report in determining that all intersections within the project impact area will operate adequately with the proposal, 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 certain conditions. See Attachment D1 to the Staff Report.

Other concerns raised during Open Record Period #1 were the ability to have the right-in only access pursuant to Section 501-8.5 B. and further opined that any access spacing exceptions were limited by Section 501-8.5 B. (4) (a). However, Section 501-8.5 B. (4) (a) describes the codified access spacing requirement of 600 feet, and not the exception discussed above. Exception to access criteria are instead set forth in Section 501-8.5 C., as listed below:

C. Exception to Access Criteria

- (1) Alternate points of access may be allowed if an access management plan which maintains the classified function and integrity of the applicable facility is reviewed and approved by the Review Authority after considering the applicant's compliance with this Article.*
- (2) An application for an Access Management Plan shall explain the need for the modification and demonstrate that the modification maintains the classified function and integrity of the facility. References to standards or publications used to prepare the Access Management Application shall be included with the application.*
- (3) An access management plan shall address the safety and operational problems which would be encountered should a modification to the access spacing standards be granted. An access management plan shall be prepared and certified by a traffic or civil engineer registered in the State of Oregon. An access management plan shall at minimum contain the following:*
 - (a) The minimum study area shall include the length of the site's frontage plus the distance of the applicable access spacing standard, as set forth in Section 501-8.5 B., measured from the property lines or access point(s), whichever is greater. For example, a property with 500 feet of frontage on a minor arterial (required 600-foot access spacing standard) shall have a minimum study area which is 1,700 feet in length.*

- (b) *The access management plan shall address the potential safety and operational problems associated with the proposed access point. The access management plan shall review both existing and future access for all properties within the study area as defined above.*
- (c) *The access management plan shall include a comparison of all alternatives examined. At a minimum, the access management plan shall evaluate the proposed modification to the access spacing standard and the impacts of a plan utilizing the county standard for access spacing. Specifically, the access management plan shall identify any impacts on the operations and/or safety of the various alternatives.*
- (d) *The access management plan shall include a list of improvements and recommendations necessary to implement the proposed access modification, specifically addressing all safety and operational concerns identified.*
- (4) *Notice for a proposed access management plan shall include all property owners within the study area defined in 501-8.5 C. (3) (a).*

Pursuant to the need for interim access standards, Staff notes the applicant proposes permanent access, not interim. Therefore, Section 501-8.5 E. is not applicable. The applicant prepared the AMP in accordance with Section 501-8.5 C. which is allowed by this section. Additionally, as stated previously the AMP has been determined to meet the access spacing exception criteria provided certain conditions of approval are met. See Attachment B. to the Staff Report.

Nonconforming Lots of Record and Section 440-8:

Concerns have been expressed with the fact that post-consolidation of two lots of record into a single lot of record should not qualify for development under Section 440-8. Section 440-8 reads as follows:

440-8 Lots of Record

- 440-8.1 Inside the UGB, 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. The development shall be subject to the dimensional requirements in existence at the time the lot or parcel was created. The proposed development shall be subject to all other provisions of this Code unless expressly exempted by this Code.

Objections have been raised with applying Section 440-8 to the consolidated lots of record. The commentor opined that in doing so “*is outside the scope of what is contemplated in CDC Section 440-8 for non-compliant lots of record which would be eligible for development, pursuant to CDC 106-117’s definition.*” Staff contends that the application of Section 440-8 to the consolidated lots of record is within the scope of this section. To this point, Section 440-8 does not specifically prohibit the implementation of this standard to consolidated lots of record. Importantly, the lot consolidation process does not create or establish a new lot or parcel. It simply combines two lots of record into a single lot of record.

Staff notes that the two lots of record currently exist and have yet to be consolidated through the county Surveyor’s Office. The applicant obtained approval for the property line adjustment to consolidate the two lots, but recordation of the approved property line adjustment

has not occurred. Technically the objection to applying Section 440-8 would not be applicable because the two lots of record currently remain two lots of record. However, the two lots of record are approved through a property line adjustment to be consolidated.

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: December 2, 2022

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

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, the record was left open to allow for additional public comments. A question was raised regarding the legal status of the subject property as a lot of record and whether the consolidation of the shared property line (L1900411-PLA) under the County's property line adjustment criteria was in violation of the County's dimensional requirements for the Neighborhood Commercial (NC) zone outlined in CDC 311-6.4.

CDC 440-8.1 provides that "inside the UGB, 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. The development shall be subject to the dimensional requirements in existence at the time the lot or parcel was created. The proposed development shall be subject to all other provisions of this Code unless expressly exempted by this Code."

An urban lot of record, as defined in CDC Section 106 is defined 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. 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."

The subject site was comprised of two tax lots, 1N119BC00500 and 1N119BC00600 which were consolidated under casefile L1900411-PLA. The parcels of land were created through the subdivision survey for Fred Lundahl recorded with the County in December 1948, per survey #3452, which is on record with the County Assessor's Office. The parcels of land were established prior to 1984, therefore they are considered legal lots of record per the definition found in CDC Section 106.



The consolidation of lots or parcels is processed through the County under the property line adjustment criteria found in CDC 605-1. A property line adjustment is defined in CDC 106 as the *'relocation or elimination of all or a portion of the common property line between abutting properties that does not create an additional lot or parcel'*. A property line adjustment is not considered to be a land division.

CDC 605-1.3 provides that the proposed property line adjustment must be found to comply with the applicable provisions of this Code and the applicable Community Plan, including the definition set forth above and the dimensional requirements of the district except as described in Section 605-1.1 B. No property line adjustment shall result in a boundary line that violates the setback standards of the applicable land use district unless a variance to the setback is approved. Property line adjustments shall comply with Section 501-8.5 (Access to county and public roads) except as provided in this subsection. Property line adjustments for parcels or lots which do not meet the sight distance standards of Section 501-8.5 F., (including existing accesses), shall be approved if the parcel or lot's sight distance is not decreased as a result of the property line adjustment.

CDC 605-1.1-B provides that property line adjustments shall be processed through a Type I procedure, unless otherwise specified in this Code, provided that the following conditions are met:

- Both properties meet or exceed the minimum lot or parcel size for the applicable district; or
- Equal land areas are exchanged; or
- For properties entirely outside the boundary of a city, one or both of the abutting properties are smaller than the minimum lot or parcel size for the applicable district before the property line adjustment and, after the adjustment, one is as large as or larger than the minimum lot or parcel size for the applicable district; or
- For properties entirely outside the boundary of a city, both abutting properties are smaller than the minimum lot or parcel size for the applicable district before and after the property line adjustment.

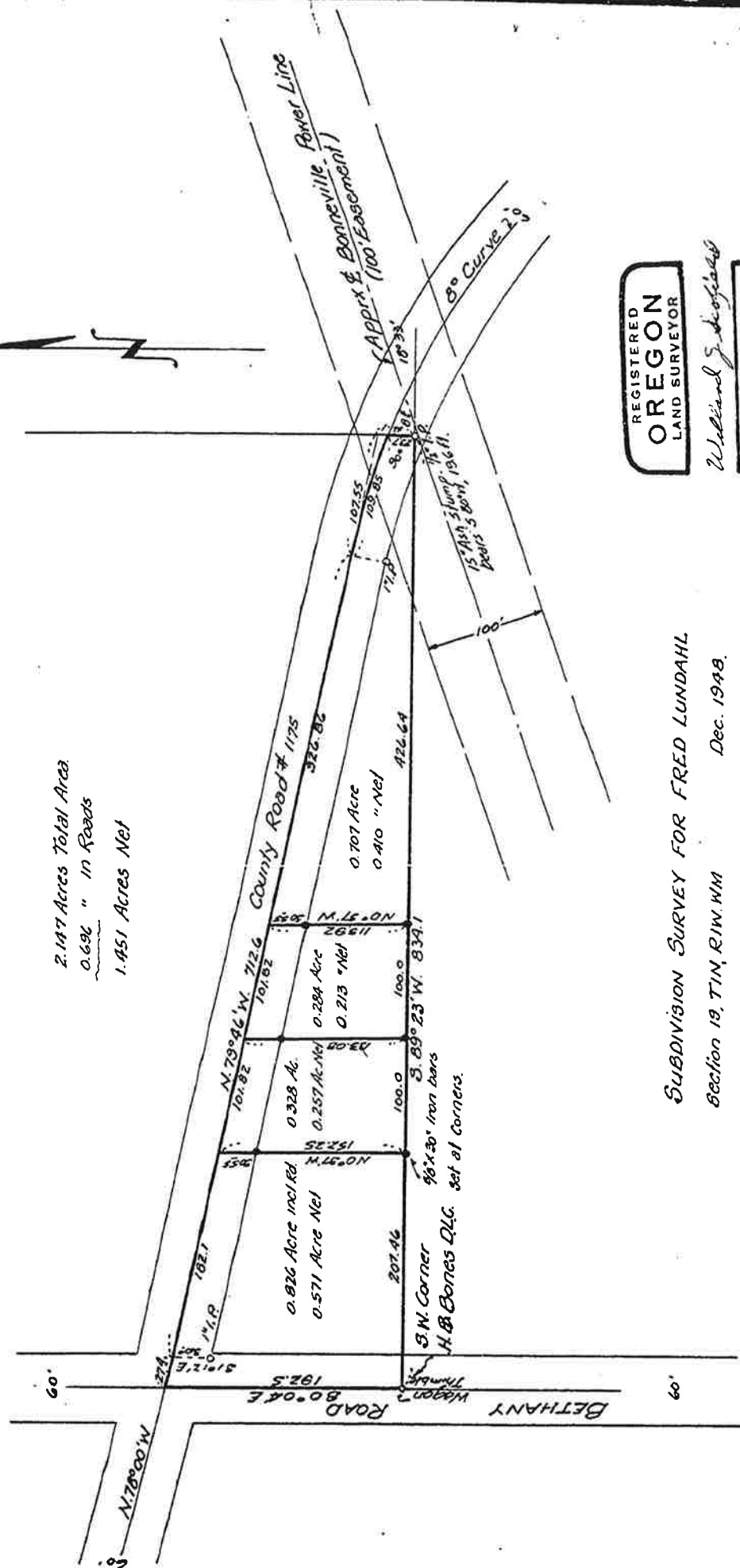
The two parcels prior to consolidation were approximately 14,185 square feet and 38,360 square feet in area. The NC zone has a minimum lot size of 8,500 square feet. The consolidation of the two parcels does not create a parcel which does not meet the minimum lot size requirements of the applicable zone. The parcels prior to consolidation did not comply with the current underlying dimensional requirements of the NC zone, specifically the average lot width requirement of 85 feet. The existing did not bring the existing lots further into non-compliance. All setback requirements of the underlying zone have been met in the proposed development.

Attachment:
County Survey #3452



MA. - 00

11



REGISTERED
OREGON
LAND SURVEYOR

William J. Dickson

JAN. 1. 1945
Willard J. Scofield
114

SUBDIVISION SURVEY FOR FRED LUNDAHL

Section 19, TIN, RIW, WM

Scale 1 in. = 100 ft.

Technical Memorandum

December 2, 2022

Project# 21539.0

To: David Doughman, Hearings Officer

Washington County

155 N. First Avenue, STE 350

Hillsboro, OR 97124



From:

CC: Robert Barman, Mercedes Serra

Case File L2200199-SU/SU/SU/D(C)/AMP/M:

RE:

Response to Public Comments on Transportation

This memo responds to transportation-related comments that were entered into the record on November 22nd and associated with Public Hearing for Case File L2200199-SU/SU/SU/D(C)/AMP/M

1. Susan Nolte, DVM: 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.

Response: A traffic engineering analysis conducted by Kittelson & Associates, Inc. and affirmed by Washington County staff determined that there are no traffic safety deficiencies within the project impact area.

2. Steve and Deann DuFrene: 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.

Response: Queuing analysis of the right-in-only driveway has been completed and determined the probability of a backup of the type described in this comment during the highest weekday hour (pm peak hour) to be 0.1 percent. In other words, the probability of a backup as described in this comment is negligible.

3. Justin DeMello: 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.

Response: The default position of the CDC is that private access points to arterials are not permitted for individual properties. Exceptions are allowed under 501.8.5.B.4a for spacing of at least 600 feet. However, the access spacing between the proposed right-in access on NW West Union Road and existing street/access does not meet the access spacing standard. Therefore, the relevant provision which allows the proposed access points is not 501.8.5.B.4a, but rather CDC 501.8.5.C(1), which provides as follows:

"(1) Alternate points of access may be allowed if an access management plan which maintains the classified function and integrity of the applicable facility is reviewed and approved by the Review Authority after considering the applicant's compliance with this Article."

Thus, Mr. DeMello is incorrect that one or both proposed connections are barred as a matter of law; rather, the CDC reserves discretion to the Review Authority in instances such as this, where there is no available access to a non-arterial and where the property lacks the frontage length to meet the spacing standard. Also, this provision does not restrict the access design to a single connection with an arterial: it plainly allows "alternate points [plural] of access" with an approved access management plan.

The traffic impact analysis concludes that the proposed development will not have significant impacts on the surrounding street network, and the Application includes a proposed Access Management Plan. The proposed Access Management Plan has been certified by a registered engineer in the State of Oregon. The County's Traffic Engineer has concluded that "the proposed right-in access and the new south leg at the existing West Union Road/Albertson's entrance signal can be approved subject to [several] conditions", all of which have been satisfactorily addressed by the proposed development.

4. Justin DeMello: *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.*

Response: Please see the earlier response to Comment 3.

5. Justin DeMello: *There is no language anywhere specifying that the access standards are applicable only to egress movements.*

Response: Please see the earlier response to Comment 3.

6. Tanya Rosencranz: *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"*

Response: The 95th percentile westbound through queues are projected to be 425 feet during the weekday morning peak hour and go past the NW Deerfield Way intersection. Field observations and analysis results revealed that this condition also occurs under both existing and future background conditions and is not significantly

7. Tanya Rosencranz: *The 4-way signal proposed by Applicant has the potential to block West Union if signals change while vehicles are "stuck" in that intersection*

Response: The existing traffic signal will be modified to allow for protected-permitted phasing, which will enhance the safety and operational characteristics of the intersection as both turn volumes and opposing through movements at this intersection increase. It was also determined that the intersection will operate well below the County's minimum level-of-service threshold during both weekday morning and weekday evening peak hour periods.

8. Tomas and Masako Jakovsky: *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.*

Response: The estimates of daily and peak-hour vehicle trips generated by the Mad Greek Deli were developed through a combination of a) trip generating characteristics data for similar land uses contained in ITE's Trip Generation Manual: 11th Edition; and b) extensive and multiple conversations with the owners/operators of the Mad Greek Deli regarding the restaurant's customer profile and typical weekday operating conditions.

9. Tomas and Masako Jakovsky: *[W]hen 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?*

Response: The right-of-way dedication associated with this proposed development was determined by both the applicant's engineers and County engineers to be sufficient to meet Washington County road design standards when the site frontage is upgraded to a five-lane cross section.