Schwabe

February 13, 2024

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VIA E-MAIL

Washington County Hearings Officer
Department of Land Use and Transportation
155 N 1st Avenue, #350-13
Hillsboro, OR 97124

RE: In-N-Out Burger
Remand Case File L2200066-SU/D/PLA/PLA (LUBA No. 2022-083)

Dear Hearings Officer:

This firm represents In-N-Out Burger (the "Applicant") in the above-referenced casefile (the "Application"). On October 27, 2023, LUBA issued its final opinion and order in *In-N-Out Burger v. Washington County*, __ Or LUBA __ (LUBA No. 2022-083, slip op) (attached hereto as Exhibit A), remanding the Hearings Officer's denial of the Application. On December 27, 2023 the Applicant timely initiated remand of the same. This letter outlines the Applicant's legal arguments on remand, and is based on the substantial evidence already in the record. For the following reasons, the Applicant respectfully requests the Hearings Officer approve the Application.

I. BACKGROUND AND SCOPE OF LUBA REMAND

In July of 2021, the Applicant submitted a Type III application for Special Use and Development Review and two Property Line Adjustments for an approximately 3,885 sq. ft. eating and drinking establishment with a drive-thru window located on Beaverton Hillsdale Highway. The proposed drive-thru restaurant is located on a 2.24-acre parcel located at 10535 and 10565 SW Beaverton Hillsdale Highway (the "Property"). The majority of the Property is zoned Community Business District ("CBD"), while the northeast and northwest corners of the site are zoned Office Commercial ("OC"). The proposed restaurant and its drive-thru queuing are located entirely within the CBD zone. After an initial hearing and extended open record period, the Washington County Hearings Officer (the "Hearings Officer") denied the Application due to LUBA's zone crossing doctrine. The Applicant appealed the denial to LUBA, in part, because the Hearings Officer's denial did not address the existing legally non-conforming zone crossing and accessory parking servicing an existing drive-thru restaurant on the Property.

In remanding the Hearings Officer's decision, LUBA agreed with the Applicant, specifically finding as follows:

> "Whether the OC zone restrictions are inapplicable to the subject property because petitioner held a nonconforming use right was a relevant issue that petitioner raised during the proceedings before the hearings officer. We conclude that the hearings officer was required to make findings as to whether there was a legal nonconforming use to conduct the proposed activities in the OC zone, what, if any, the extent of that use is, and explain the basis for that finding."
>
> "The hearings officer found that the traffic demand evidence in the record supported the conclusion that petitioner would store vehicles on the property and we see no reason why the hearings officer could not consider that evidence. We agree with petitioner, however, that the hearings officer was required to respond to petitioner's argument that this could be permitted as an alteration of a nonconforming use. […] The hearings officer must address petitioner's argument that its use in the OC zone may be allowed in this proceeding as an alteration of a nonconforming use."
>
> "Petitioner's fourth assignment of error is that the hearings officer's finding 'that the temporary use of the OC-zone portion of the Property cannot be approved by the Director is not supported by an adequate interpretation of the CDC, is not supported by evidence, and such a finding is plainly inadequate.'
>
> […]
>
> "We agree with petitioner that the hearings officer did not identify language in the CDC supporting its conclusion that multiple temporary permits or extensions of temporary permits are not permissible or requiring a finding that the temporary activity will end within one year."

In-N-Out Burger, __ Or LUBA __ (LUBA No. 2022-083, slip op at 21–22, 26–27).

LUBA's above conclusions are based on arguments and evidence presented by the Applicant before the Hearings Officer in the attached Exhibit B (August 9, 2022 letter to Hearings Officer) and Exhibit C (August 23, 2022 Letter to Hearings Officer). The Applicant additionally sets forth its argument below, explaining why the Application should be approved.

Finally, the Applicant maintains that its arguments below concern issues related to the question of non-conforming uses and particularly, whether the Application would require zone crossing that is or is not considered a non-conforming use. While the Applicant believes that this falls within the scope of LUBA's remand on this issue, local governments may nonetheless expand the scope of a remand hearing beyond the scope of the remand as necessary. *CCCOG v. Columbia County*, 44 Or LUBA 438, 444 (2003).

II. IN-N-OUT HAS ESTABLISHED A NON-CONFORMING USE FOR ITS PROPOSED USES WITHIN THE OC ZONE

As to the question of non-conforming uses, the Hearings Officer appeared to parse the scope of the prohibited use extremely finely. The Applicant notes that the Hearings Officer seemingly agreed that the Applicant had established the legal non-conforming use on the site (characterized as vehicle parking and maneuvering of the OC zone). The Hearings Officer found, however, that the "excess drive-thru queuing," was beyond the scope of the non-conforming use, noting that "there is no evidence that the existing restaurants ever generated extra drive-thru queuing that extended into the OC zoned portions of the site." See Hearings Officer Final Order pp. 19–20. However, the Hearings Officer never responded to the central thrust of In-N-Out's argument: that the ability for vehicles to traverse throughout the site and between the OC and CBD zones *is* the relevant question for the non-conforming use analysis under the zone crossing doctrine. Indeed, all of the zone-crossing cases relied upon by the Hearings Officer in his final order address the question of whether vehicle access is permissible in a given zone, not the frequency of that access, access lane storage, or queuing when demand for that access is high. These are necessarily variable for any use from day to day. Thus, the Applicant contends that the substantial evidence in the record, described below, shows that the access and parking scheme actually proposed in the Application is a legal non-conforming use within the OC zone and that excess queuing in the OC not necessary for the proposed drive-thru operations.

As described above, there are two existing buildings on the Property. The existing Hawaiian Time drive-thru restaurant (at 10565 SW Beaverton Hillsdale Highway) was formerly a Burger King drive-thru restaurant, which was originally constructed prior to 1977. A new drive-thru window was approved to be added to the building in April of 1978. *See* "Exhibit 2" to Exhibit B. The site plan approved with that application is similar to existing conditions; that same year, additional parking was also approved to be added between the restaurant and Laurel Street, within an area that is now zoned OC. *See* "Exhibit 3" to Exhibit B. The building remained as a Burger King until it was acquired and used by Hawaiian Time, which kept and currently uses the drive-thru window. *See* "Exhibit 4" to Exhibit B.

The second building on the Property, an Azteca Restaurant (addressed as 10505 SW Beaverton Hillsdale Highway) was originally a Mr. Steak Restaurant, which was approved in 1977. That approval contemplated shared access between the Mr. Steak building to the east and the then Burger King (now Hawaiian Time) to the west:

> "The Portland franchise for the adjacent Burger King has indicated to the staff that joint access between these two uses would be acceptable to him. A joint access between the two uses, as proposed, will provide more flexibility in traffic ingress and egress by allowing Mr. Steak's user's to exit via the Burger King driveway and so on. The proposed location [of the joint access] is at the rear of the proposed restaurant."

See "Exhibit 5" to Exhibit B. The site plan approved for the Mr. Steak Restaurant reflects this shared access point, which gave persons entering the east driveway access to the Burger King

drive-thru, and vice-versa. *See* "Exhibit 6" to Exhibit B. This area is plainly within the portion of the Property currently zoned OC. Therefore, shared access between the existing drive-thru and the east driveway has existed since at least construction of the Mr. Steak Restaurant in the late 1970s, and was approved by the County in 1977.

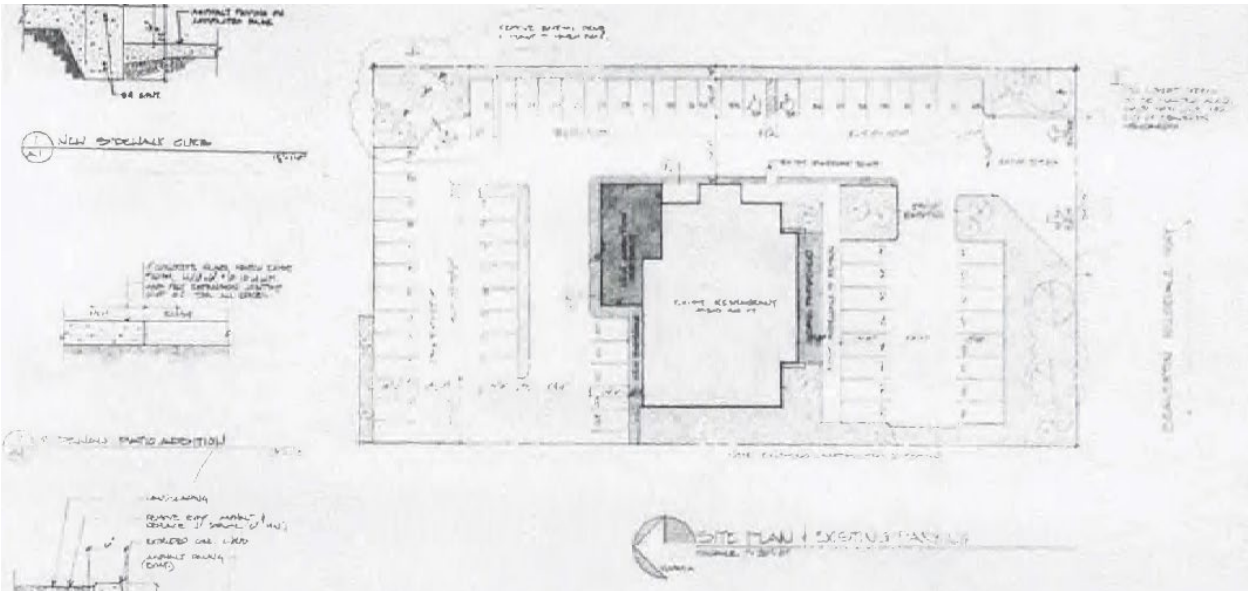
In 1986, the owner of the east parcel obtained a permit approval for a drive-thru window as part of a tenant improvement to convert the Mr. Steak into a D'Lites drive-thru. *See* "Exhibit 7" to Exhibit B. At that time, the entire property was zoned CBD and staff concluded that "a restaurant with a drive-up window is a permitted use in this district." *Id.* Later, the D'Lites became Azteca, which site plan included the shared access between the east driveway and Burger King in roughly the same location as is proposed in the Application. *See* "Exhibit 8" to Exhibit A. The restaurant finally became the Vagabundos Cocina, which the Applicant showed was operational at least as of May 2022, when the record in this case closed. *See* "Exhibit 9" to Exhibit B.

Thus, substantial evidence and argument in the record shows that the proposed access and parking arrangement is a legal non-conforming use due to the existing Hawaiian Time drive-thru restaurant on the Property, which benefits from joint access with another existing restaurant across the OC zone. By way of summary, the evidence collected and submitted by the Applicant in Exhibits B and C demonstrates as follows:

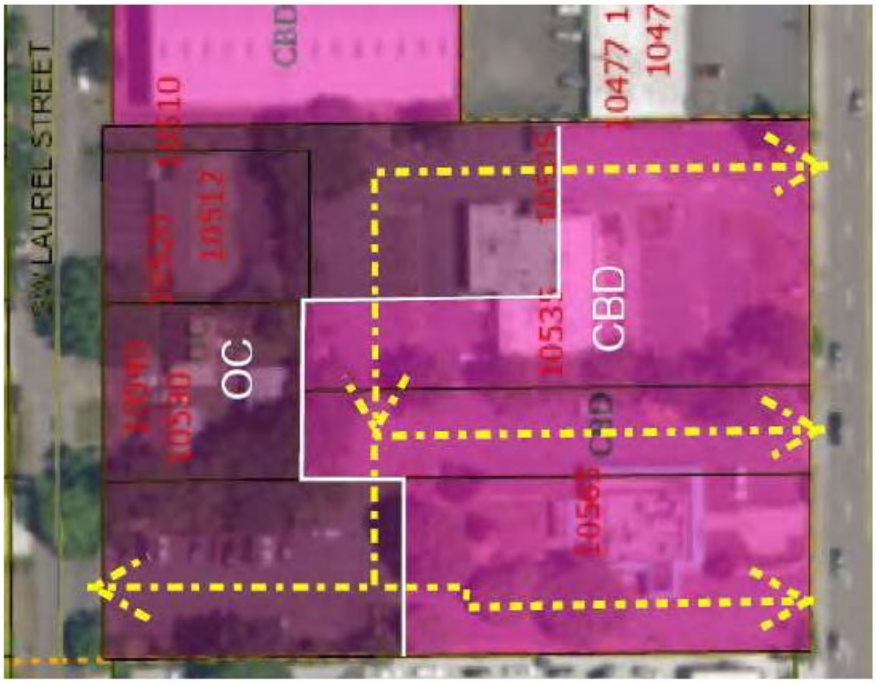
1. There has been a legally-established drive-thru use on the west side of the Property since at least 1978. The parking within the now OC-zoned portion of the site near SW Laurel Street was legally established at that time.

2. The Mr. Steak Restaurant (now an Azteca) was approved in 1977, which allowed joint access between the two sites so both could use all access points on Beaverton-Hillsdale Highway.

3. The conversion of Mr. Steak to D'Lites Restaurant in 1986 included approval of a drive-thru window "at the rear of the building" on the east parcel and directly accessible by the east driveway. This is reflected on the following plan submitted by the Applicant on August 9, 2022, as the darkened portion at the rear of the building:



The queuing for this drive-thru necessarily extends into the OC zoning area, as the entrance movements would be required for the east side of the east drive-aisle or from the west (middle) entrance, as shown on the graphic below (also submitted by the Applicant on August 9, 2022):



Indeed, the drive-thru window area was constructed entirely within what is now the OC zone.

4. Customers have been able to access a drive-thru restaurant through the now OC-zoned drive aisle since the Azteca building was built in the late 1970s.

5. Aerial photos demonstrate that the shared accesses between the existing Hawaiian Time and Azteca restaurant, established in the late 1970s, have remained since that time.

6. Hawaiian Time is currently open and these drives can still be used to access the drive-thru from all access points, including from SW Laurel Street and from Beaverton Hillsdale Highway through the OC zone. Any trips through the Hawaiian Time restaurant drive-thru must traverse the OC-zoned area. See "Exhibit 10" to the Applicant's August 9, 2022 letter.

7. Existing parking serving the Hawaiian Time restaurant is also present between the SW Laurel Street frontage and the existing drive-thru, including in areas currently zoned OC.

8. The code provisions limiting drive-thru uses in the OC zone were applied to the east drive aisle between the two restaurants sometime after 1986, when both restaurants already had joint use of that drive.

The overwhelming evidence in the record therefore demonstrates that customers have been able to access a drive-thru restaurant through the OC-zoned drive aisle since the Azteca was built in the late 1970s. Additionally, the Applicant provided a detailed set of arguments in the form of draft findings explaining why the above facts establish a non-conforming use under CDC 440-3 and met the criteria for an alteration of a non-conforming use under CDC 440-6, as explained below. Exhibit B; Exhibit C.

a. The Applicant also established an allowable alteration of a non-conforming use.

In determining whether to approve a proposed use as an alteration of a non-conforming use, where the local government has not previously determined that a non-conforming use exists, the local government must determine: (1) whether the use was lawfully established when restrictive zoning was first applied; (2) the nature and extent of such use when it became non-conforming; (3) whether the use has been discontinued or abandoned; and (4) whether any proposed alteration of the non-conforming use complies with standards governing alterations of non-conforming uses. *Tylka v. Clackamas County*, 28 Or LUBA 417 (1994). While not defined in the CDC, ORS 215.130(9) defines alteration of a non-conforming use as:

> (a) A change in the use of no greater adverse impact to the neighborhood; and
>
> (b) A change in the structure or physical improvements of no greater adverse impact to the neighborhood.

As stated by LUBA in *Leach v. Lane County*, 45 Or LUBA 580, 607 (2003), "an alteration that happens to reduce off-site adverse impacts is still an alteration."

As explained in detail above, joint access and parking throughout the two zones on the Property is a legally established non-conforming use on the Property. Queuing in the OC zone

would necessarily have occurred to access the Mr. Steak drive-thru. Traversing the OC zone is still necessary to access the existing Hawaiian Time drive-thru. This non-conforming use was never discontinued or abandoned. With respect to the nature and extent of the non-conforming use, as shown on the Burger King Parking Expansion Approval, attached as "Exhibit 1" to Exhibit C, the parking area adjacent to SW Laurel Street included the drive aisle and it appears to include 27 parking spaces on the portion of the property that is now zoned OC. As shown on the Azteca Approved Plot Plan, attached as "Exhibit 2" to Exhibit C, the portion of the property now zoned OC includes the drive aisles providing shared access to the drive-thru as well as at least 28 parking spaces. As shown on the Site Plan attached as "Exhibit 3" to Exhibit C, only 21 parking spaces and a drive-aisle are proposed in the OC-zoned portion of the property located adjacent to SW Laurel Street. In addition, only 23 parking spaces and a drive-aisle are located on the OC-zoned eastern portion of the property. Therefore, the Applicant is proposing a reduction in the scope of the existing non-conforming use.

The Applicant maintains that changes to traffic related to the proposed drive-thru on the west portion of the property is not an alteration of the non-conforming drive aisles and parking area located in the OC zone. However, to the extent the Hearings Officer disagrees, the only traffic analysis submitted into the record by a professional transportation engineer was done by the Applicant's consultant, Kittelson & Associates, and it was reviewed and approved by County and ODOT staff. No other party has offered evidence or analysis of any kind. As such, both the County and ODOT have deemed that traffic-related approval criteria are adequately addressed in the memoranda submitted by Kittelson & Associates. Specifically, the memorandum shows that the project will result in a reduction in traffic generated from the property (*See* Table 1, January 26, 2022 memo).

As a result, there is substantial evidence in the record that a reduction in traffic generated from the property, the closure of Laurel Road, and the closure of one of the three existing access points to Beaverton-Hillsdale Highway will result in a reduction in the use of the drive aisles and parking areas in the portion of the property zoned OC. Thus, to the extent the Hearings Officer concludes that the Applicant is altering the non-conforming use, the Applicant is reducing the nature and extent of the non-conforming use. Coupled with the fact that (i) the Applicant is closing an existing access onto SW Laurel Road and (ii) the entirety of the parking area complies with current landscaping, stormwater, and other applicable standards of the CDC, the Applicant is also reducing the adverse impact on the neighborhood resulting from the non-conforming use.

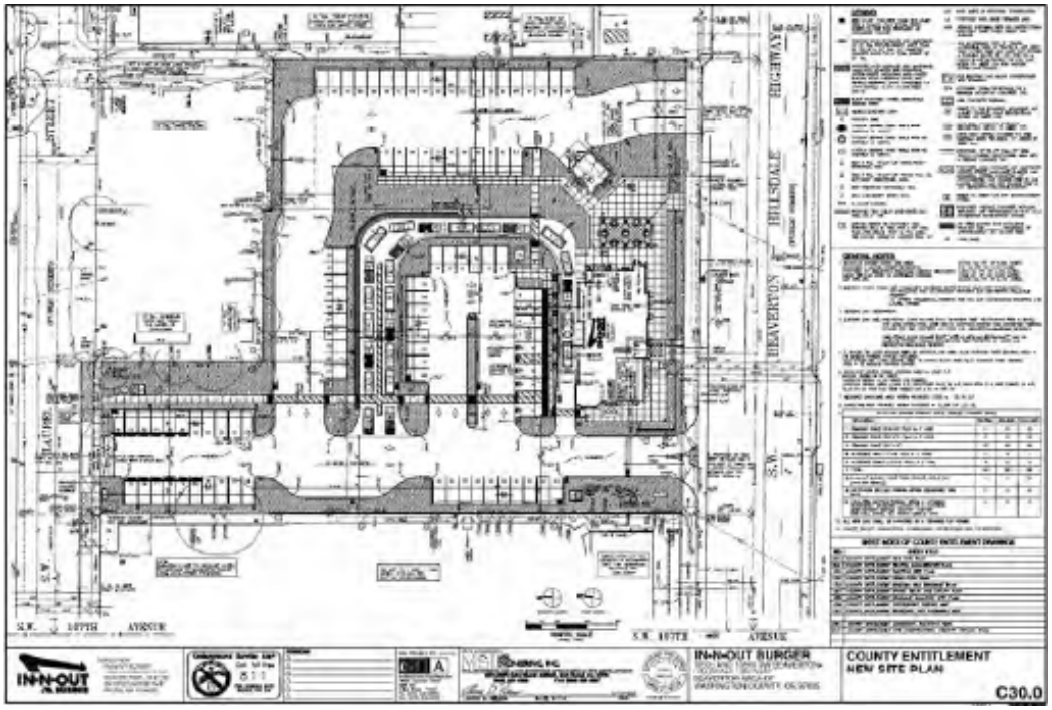
Lastly, "Exhibit 4" to Exhibit C contains additional findings regarding compliance with the applicable non-conforming use provisions of CDC 440-3, 440-4, and 440-6. As a result, the Hearings Officer can find that the use of the OC-zoned portion of the Property is a legal non-conforming use and the proposed use is a permitted alteration to a non-conforming use.

b. Regardless, the substantial evidence in the record established the legal non-conforming use is not necessary for proposed drive-thru operations.

The Hearings Officer's denial appeared to conclude that the below-pictured neighborhood meeting graphic, which shows some additional drive-thru queuing, but was superseded by the

actual site plan in the Application, indicates that the proposed zone crossing is not a continuation or alteration of a legal non-conforming use.

The above graphic was included as "Exhibit T" to the original application, which is the Applicant's neighborhood meeting notes and is not the initial site plan that the Applicant submitted with the Application, or its final annotated site plan submitted during the open record periods. This is clear when comparing the above image, with the below "Exhibit A" to the Application, which shows head-in parking in much of the area originally shown as potential vehicle queuing.



As pictured, the concept plan was fundamentally different from the site plan actually submitted with the Application. The site plan differs in several respects and does not include the excess drive-thru queuing in the OC zone. During the initial hearing, when the issue of zone-crossing was raised by a project opponent, the Applicant's legal counsel explained that "We're showing 24 cars in a queue and […] we anticipate being able to handle the cars […] in the queue that's located, not the OC zone, in the CBD zone where it is permitted." Exhibit D. During the second open record period, the Applicant submitted additional testimony emphasizing this point, including a plan clarifying where vehicle queuing was proposed. Exhibit E. Based on the revised site plan, staff concluded that "drive-thru functions occur strictly in the [CBD zone] only and not in the OC zoning district." *See* July 7, 2022 Memo from Sandy Freund to Joe Turner.

In addition to relying on the above "Exhibit T," the Hearings Officer also relied on the Applicant's hearing testimony through its representative Ms. Cassie Ruiz, to find: "the applicant also proposes to use the OC zoned area in the northeast corner of the site for storing excess drive-thru queues at least during the 'opening' period of the use." *See* Hearings Officer Final Order p. 19. However, Ms. Ruiz never testified that room for excess drive-thru queuing would need to be accommodated in the OC zone. Instead, her testimony concerned the Applicant's desire to reduce traffic impacts to Beaverton-Hillsdale Highway: "The drive thru lane capacity of 24 cars is the longest we have in our current operating Oregon locations and that did not include our capability to continue to hold cars within our drive aisle without impacting circulation through the site." When fairly considered, this testimony reveals two facts. First, it reveals that this site has more designated drive-thru queuing than any other In-N-Out restaurant in Oregon. As evident on the Applicant's site plan (Exhibit F), all of the site's designated queuing areas are within the CBD Zone. The second fact is that it is possible for other cars to be held within drive aisles to avoid impacts to Beaverton-Hillsdale Highway. The Hearings Officer's decision appeared to concede that the travel between the east access and the proposed restaurant is permissible, making this access point legal and requiring a drive aisle to connect it with the restaurant. The fact that the drive aisles could provide space for vehicle storage is evident as a practical engineering matter; this does not relate to whether such storage or queuing is prohibited as a zoning matter. Regardless, Ms. Ruiz's testimony does not include a statement that drive-thru queuing in drive-aisles will be *necessary* during the opening period or otherwise. Further, legal counsel for the Applicant present at the initial hearing clarified the Applicant did not anticipate any excess queueing, as noted above.

Correctly viewed in its context, this testimony simply demonstrates the efforts taken by the Applicant to ensure that cars entering the site will not cause delays on Beaverton-Hillsdale Highway, whether they are attempting to park, access a different part of the site, or access the drive-thru. In this regard, the Hearings Officer's conclusion that "there is no evidence that the use can meet County and ODOT mobility requirements without providing excess drive-thru vehicle queue storage" is problematic. In fact, there is no dispute in the record whether the proposal would meet ODOT or County mobility standards regardless of whether additional queuing is allowed in the OC zone. As the Applicant's May 2021 transportation impact letter explains:

> "As shown, the total trips (not accounting for any pass-by trip making) is anticipated to decrease on a daily and weekday PM peak hour basis. With the revised site plan, all trips will enter/exit the site via SW Beaverton Hillsdale

> Highway, which carries more than 2,700 vehicles during the weekday PM peak hour and more than 30,000 vehicles per day."
>
> "For a facility carrying this level of traffic, Washington County's Resolution and Order 86-95 requires preparation of an access report associated with an increase of 500 or more daily trips and/or 10 percent daily trip increase on an adjacent roadway or intersection. Based on a decrease in trip-making, the need for an Access Report is not triggered by site redevelopment." Exhibit G at 3.

As summarized by the Hearings Officer on pages 4 –5 of the Final Order, Ms. Ruiz's testimony centered on the Traffic Management Plan ("TMP"), which is intended to address potential traffic impacts to Beaverton-Hillsdale Highway and which is required as a proposed condition of approval to the Application. That plan is not in the record and was never before the Hearings Officer because it has not been created yet. Therefore, there is no substantial evidence in the record that the TMP will necessarily involve zone crossing, and it is not required or part of the applicable approval criteria in any event.[1]

With regard to internal queuing, the best evidence of the likely queuing demand is found in a memorandum by the Ganddini Group, attached Kittelson's May 2021 letter, which is a comparative analysis of the queueing demand of nine other In-N-Out locations, which found as follows:

> "Based on the surveyed average peak queue length, a minimum storage capacity of 16 vehicles for the drive-through lane is recommended for the proposed In-N-Out projects to accommodate the average queue length during peak lunch and dinner periods." Exhibit G at 8.

It is notable that at only one of these locations, Vacaville, CA, did queueing ever exceed 24 vehicles at maximum. However, that location still maintained an average queueing of 14.1 vehicles during weekdays and 22.9 vehicles on Saturday. Exhibit G at 10, LUBA Rec. 363. Based on the only actual study of queueing lengths in the record, the proposed queuing capacity of 24 vehicles is more than adequate to accommodate even peak hours. Exhibit G at 12, LUBA Rec. 365. Ultimately, regardless of any speculation in the record that additional queueing might be needed during the opening period and that it must be accommodated in the OC zone, there is better evidence in the record that it is possible to queue all vehicles within the CBD zone.

The Hearings Officer's findings suggested that it is not possible to approve the application subject to a condition prohibiting vehicle queuing within the OC zone. It is not clear why this is so and, to the extent that the Hearings Officer relied on the putative effect of a TMP to conclude that queueing *may* occur in the OC, the TMP conditions themselves demonstrate the feasibility of such a condition. That is, the TMP must satisfy a set of traffic management requirements identified as proposed conditions of approval II.F.7 through II.F.15. These include a temporary restriction

[1] The Hearings Officer agreed that the TMP is not relevant to the approval criteria. *See* Hearings Officer Final Order p. 13.

on access and employee parking during the opening period (proposed conditions II.F.11 and II.F.12), as well as on-site traffic management during this time (proposed condition II.F.13). Given that there is no dispute in the record that such measures can avoid traffic interruptions on Beaverton-Hillsdale Highway (ODOT itself supported these conditions), there is no reason to believe that similar measures could not prevent excess queuing in the OC zone. For example, the onsite traffic management required by ODOT as part of the TMP may be used to prevent excess queuing by, for example, directing excess vehicles to available parking. Other measures may be feasible. For example, the queuing study appended to Kittelson's May 2021 letter recommends "that the proposed project utilize a floating menu/ordering staff during the peak periods to help minimize the drive-through queue." LUBA Rec. 361.

Based on the above, the Hearings Officer should reconsider his finding that a condition regarding queuing is infeasible. Instead, the Applicant recommends that such queuing controls be integrated into the TMP itself. The Hearings Officer can add the following condition of approval to ensure that this happens:

> "As part of the TMP, the Applicant shall impose site controls to ensure that onsite queuing does not exceed the queuing lanes shown on the site plan. Such measures may include, but need not be limited to, onsite traffic control measures, additional staffing, and special ordering and delivery protocols during the Opening Period."

c. The mere possibility of queueing within the OC zone does not justify denial of the Application.

As explained above, the substantial evidence in the whole record demonstrates that the drive-thru functions can be conducted without requiring queuing within the OC zone. Assuming, as the Hearings Officer did, that drive-thru queueing in the OC zone represents the core zone crossing issue here, the mere chance that such zone crossing *can* occur does not require denial of the entire application. Rather, such activity would constitute a zoning violation that the County could enforce, and which the Applicant would have to address. If the Hearings Officer still believes that this is an issue, the Applicant recommends a condition of approval, as explained above.

d. CDC 430-135.1.C can be plausibly interpreted to allow incidental queuing for up to one year within the OC zone, and there is no evidence in the record that the opening period will necessarily last for more than one year.

The CDC gives the Director wide latitude in approving temporary uses for up to one year as a Type I permit. *See* CDC 430-135.1.C.8. Specifically, CDC 430.135.1.C.8 allows "[o]ther similar uses of a temporary nature when approved by the Director." Subsections 1-7 allow a wide variety of temporary uses including, without limitation: (2) storage of equipment during the construction of roads or developments, (3) temporary storage of structures or equipment, (6) temporary housing of office facilities in commercial, industrial, and institutional districts, and (9), farmers markets and mini farmers markets. Virtually all of these temporary uses concern

temporary uses allowed during construction or immediately thereafter (such as real estate offices), or, in the case of farmers markets, actual distinct land uses which generate considerable traffic. In this regard, any incidental zone crossing during the opening period is most like storage of equipment, as it would serve to provide motor vehicle storage within the Property to avoid delays on Beaverton-Hillsdale Highway during the opening period. The Hearings Officer could conclude that this is similar to the listed types of uses in CDC 430-135.1.C for this reason and allow In-N-Out to seek such a temporary permit during the opening period.

The Applicant raised this issue before the Hearings Officer, who found that temporary use of the OC-zoned portion of the subject property is not "similar." Next, the Hearings Officer found that because temporary permits are "limited to 'a period not to exceed 1 year'" that it was somehow not feasible for In-N-Out to comply with the temporary permitting requirements. Final Order at 20. However, there is nothing in the temporary permit provisions of the CDC that precludes or prohibits issuance of temporary permits if there is a chance that the temporary condition could exceed one year; presumably, the temporary permit would expire and only then would the use become unlawful. With regard to this issue, LUBA concluded, in part, as follows:

> "We agree with petitioner that the hearings officer did not identify language in the CDC supporting its conclusion that multiple temporary permits or extensions of temporary permits are not permissible or requiring a finding that the temporary activity will end within one year.
>
> ***
>
> "Similarly here, the hearings officer was required to adopt findings interpreting "similar" uses potentially eligible for a temporary permit."

In-N-Out, LUBA No. 2022-083, slip op at 22-23).

As noted above, CDC 430-135.1.C can be plausibly interpreted to allow the County to grant a temporary queuing permit if the Hearings Officer concludes, notwithstanding the evidence above, that unlawful vehicle queuing is unavoidable. The only evidence that the "opening period" could exceed the one-year limitation is apparently the oral testimony of County Planner Sandy Freund. Final Order at 14. However, as acknowledged by the Hearings Officer, the only comparison for the opening period is that of In-N-Out's location in Keizer Oregon, which the Hearings Officer found is not a comparable facility. Final Order at 5. In addition, In-N-Out is "planning to open multiple locations in the Portland region in the near future . . . which will reduce demand" at the Property. *Id*. Thus, there is no evidence in the record that supports a conclusion that the "opening period" cannot be less than one year. Such a conclusion is particularly problematic due to the fact that the "opening period," including its duration, is governed by an ODOT TMP that is not before the County.

For the above reasons, if the Hearings Officer concludes, notwithstanding the evidence above, that unlawful vehicle queuing is unavoidable, he can find that incidental queuing within the OC zone can be approved for up to one year as a similar use, and could condition In-N-Out's application accordingly.

III. CONCLUSION

For the above reasons, the Hearings Officer can find that the use of the OC-zoned portion of the Property is a legal non-conforming use and the proposed drive-thru is a permitted alteration to a non-conforming use. The Hearings Officer should also find that substantial evidence in the record shows that drive-thru functions will occur strictly in the CBD zone, and any zone-crossing potential beyond that established as a non-conforming use is not necessary to operate the proposed drive-thru restaurant. As a result, the Applicant respectfully requests the Hearings Officer to approve the Application.

Best regards,

Garrett H. Stephenson

GST:jmhi
Enclosures

cc: Ms. Emily Bateman *(via email w/enclosures)*
Ms. Cassie Ruiz *(via email w/enclosures)*

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BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

IN-N-OUT BURGER,
Petitioner,

vs.

WASHINGTON COUNTY,
Respondent.

LUBA No. 2022-083

FINAL OPINION
AND ORDER

Appeal from Washington County.

Garrett H. Stephenson filed the petition for review and reply brief and argued on behalf of petitioner. Also on the brief was Bailey M. Oswald and Schwabe, Williamson & Wyatt, P.C.

No appearance by Washington County.

RUDD, Board Member; RYAN, Board Chair; ZAMUDIO, Board Member, participated in the decision.

REMANDED 10/27/2023

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

1 Opinion by Rudd.

2 **NATURE OF THE DECISION**

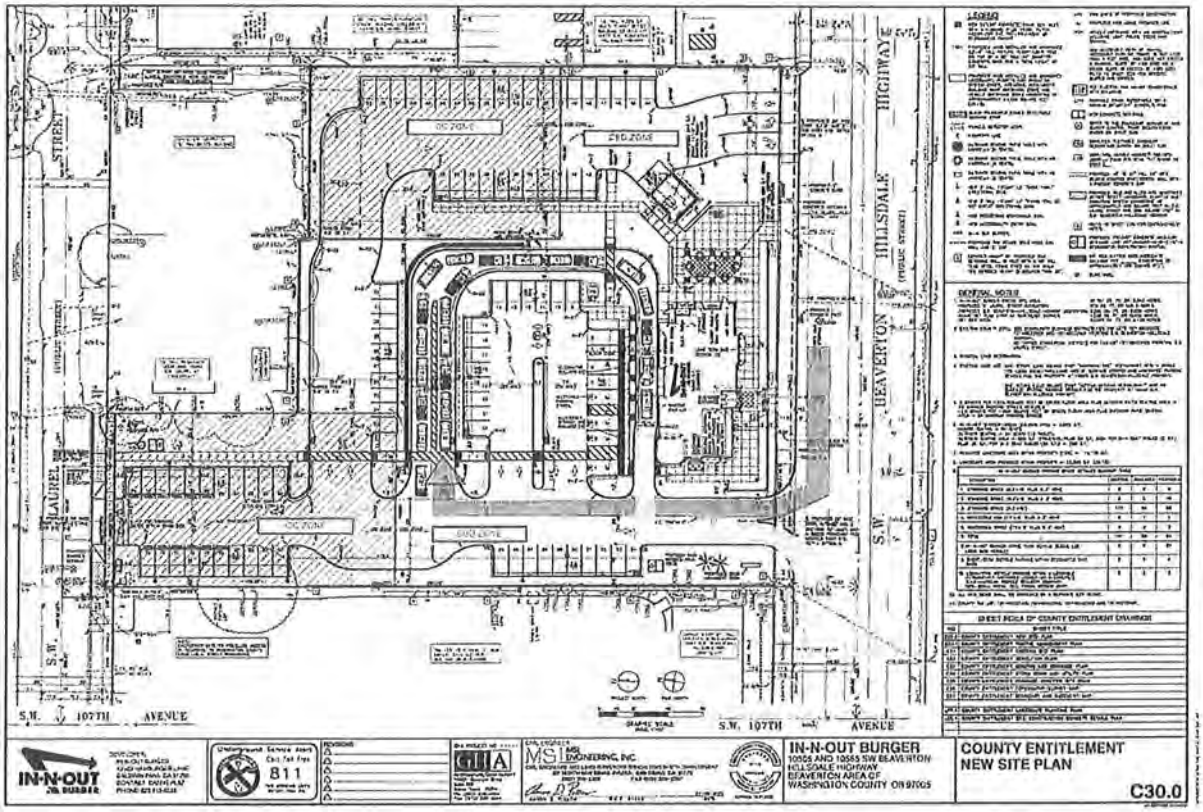
3 Petitioner appeals a county hearings officer's decision denying its request
4 for Special Use and Development Review approval for a drive-thru restaurant.

5 **FACTS**

6 The subject property is a 2.24-acre parcel located at 10535 and 10565 SW
7 Beaverton-Hillsdale Highway. The subject property has three driveway access
8 points to the south on SW Beaverton-Hillsdale Highway and one driveway access
9 point to the north on SW Laurel Street.

10 "The majority of the [subject property] and the property abutting the
11 north portion of the east boundary are zoned CBD (Community
12 Business District). The northeast and northwest corners of the
13 [subject property] and the property abutting the north boundary of
14 the [subject property] are zoned OC (Office Commercial).
15 Properties to the north, across SW Laurel Street, are zoned R-15
16 (Residential, 15 units per acre). Properties to the west, south, and
17 southeast are in the City of Beaverton." Record 8.

18 Petitioner applied to the county for a Special Use and Development
19 Review for an approximately 3,885 square foot restaurant with drive-thru and
20 outdoor seating at the subject property. The proposed site plan is depicted below:



Record 130. North is to the left in this site plan map.

Petitioner proposed removing existing buildings and locating its restaurant and associated drive-thru lanes in the CBD District, with the OC-zoned portion of the subject property used primarily for parking and landscaping. Petitioner proposed a total of 94 on-site parking spaces in response to requests from community members to have as many parking spaces available as possible and in recognition of the popularity of the restaurant brand and the resultant increase in anticipated parking demand. Record 40-41. Based on the site plan provided above, 45 of those parking spaces would be located, in whole or in part, in the OC zone. For the three existing access points on SW Beaverton-Hillsdale Highway, petitioner proposed closing the middle driveway, limiting the western

1 driveway to right-in/right-out turning movements, and operating the left
2 driveway as "'full access' (right-in/right-out/left-in/left-out) under 'normalized'
3 operating conditions. [As proposed,] [t]he eastern access * * * [would] be
4 restricted to right-in only during the 'opening period' of the fast-food restaurant.
5 The SW Laurel Street driveway [would be gated and locked and] restricted to
6 emergency access only." Record 9.

7 On June 16, 2022, the hearings officer held a public hearing on the
8 application. On August 29, 2022, the hearings officer adopted findings and
9 denied petitioner's application. This appeal followed.

10 **FIRST ASSIGNMENT OF ERROR**

11 **A. Background**

12 Washington County Development Code (CDC) 430-41 defines "Drive-in
13 or Drive-up Establishment" as "[a]ny establishment or portion of an
14 establishment designed and operated to serve a patron while seated in an
15 automobile (not including drive-in theaters)." Drive-in and drive-up
16 establishments are permitted uses in the CBD zone subject to the special use
17 standards in CDC 430-41. CDC 313-3.6. CDC 312-3.2 provides that drive-in and
18 drive-up establishments are allowed as an accessory use to an Office Commercial
19 Center in the OC zone subject to the standards in CDC 430-41.[1] "For simplicity,

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[1] The CDC's special use standards applicable to drive-ins and drive-up establishments are:

1 the hearings officer uses the term 'drive-thru' to refer to 'Drive-In or Drive-Up

2 Restaurants.'" Record 8, n 1. We do so as well.

3 Similarly, eating and drinking establishments are permitted in the CBD

4 zone. CDC 313-3.6. Eating and drinking establishments with 5,000 square feet

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"430-41.1 Entrances and Exits:

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

"(1) Site size;

"(2) Road Classification;

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

"(4) Adjacent development.

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

"C. Driveway entrances and exits shall be clearly marked.

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

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

"430-41.4 In an Office Commercial District, hours of operation shall be limited to normal hours of operation in the Office Commercial District. Normal hours of operation are 7:00 a.m. to 6:00 p.m."

or less gross floor area are permitted accessory uses in the OC zone. CDC 312-3.2.

B. Operations in the OC Zone

Petitioner's first assignment of error is that the hearings officer misconstrued the applicable law by applying and extending what it terms the "'zone crossing doctrine' to a drive-thru eating and drinking establishment that can provably function without any zone crossing." Petition for Review 11. We will reverse or remand a local government decision that improperly construed the applicable law. ORS 197.835(9)(a)(D).

Petitioner argues that the hearings officer erred in extending "the zone crossing doctrine first articulated in *Bowman Park v. City of Albany,* 11 Or LUBA 197 (1984)," maintaining:

> "The Hearings Officer concluded that, notwithstanding the fact that the proposed restaurant would be located in the CBD zone where it is allowed by right, and notwithstanding the fact that this restaurant could be accessed and used without crossing the OC zone (which prohibits stand-alone drive-thru restaurants), that the entire Application must be denied. In so doing, the Hearings Officer erred as a matter of law in applying the zone crossing doctrine to the present Application and by extending that doctrine to situations in which zone crossing is not required to serve the use and to parking, neither of which situations are addressed in the case law. Such decision also conflicts with certain CDC regulations pertaining to drive-thru restaurants that, in certain instances, would require just the sort of zone crossing that is proposed here." Petition for Review 11-12.

Petitioner maintains that customers will be able to access the subject property and the proposed drive-thru without crossing the OC zone. Petitioner argues that its use is therefore distinguishable from those in *Bowman Park*, *Roth v. Jackson County*, 38 Or LUBA 894 (2000), and *Wilson v. Washington County*, 63 Or LUBA 314 (2011), where crossing a zone where the use to be accessed was not allowed was unavoidable. For the reasons set out below, we deny this assignment of error.

As the hearings officer explained, petitioner argued that "[t]he proposed development has two driveways providing access to Beaverton Hillsdale Highway and the western driveway allows customers to access the restaurant and exclusive drive-thru lanes without passing through the OC zoned portions of the site." Record 25. The hearings officer found, however, "the [petitioner] is clearly proposing to utilize the OC zoned portions of the site for vehicle parking and maneuvering associated with the restaurant use." *Id.* The hearings officer concluded that both restaurants and drive-thrus are restricted uses in the OC zone:

> "The majority of the site is zoned CBD. However, the northwest and northeast corners of the site are zoned OC. Restaurants, including drive-thru restaurants, are only allowed as a very limited use in the OC zone (See CDC 312-5.2, CDC 312-3.2.A(2) and (3), and CDC 312-3.2.B). Restaurants (referred to as '[E]ating and Drinking or Food Specialty Establishments') and Drive-In or Drive-Up Restaurants are only allowed as accessory uses in the OC zone, subject to the criteria in See CDC 312-3.2.B (See CDC 312-3.2.A(2) and (3)). Pursuant to CDC 312-3.2.B, restaurants, including drive-thru restaurants in the OC zone must be scaled to serve the tenants of the complex or surrounding office commercial area, no more than

> 20-percent of the gross floor area of new or existing structures, accessed by an internal office complex street with siting and signage internally oriented. *The hearings officer finds that the restaurant proposed in this case is not permitted in the OC zone, as it does not comply with the accessory use approval criteria of CDC 312-3.2.B.*" Record 24 (emphasis added).

The hearings officer also found:

> "Restaurant uses are only allowed in the OC zone as accessory uses serving an Office Commercial Center, where the restaurant use is 'scaled to serve the tenants of the complex or surrounding office commercial area.' CDC 312-3[.2].B. *The [petitioner] is proposing a stand-alone restaurant that is not accessory to an Office Commercial Center, nor is the restaurant use 'scaled to serve the tenants of the complex or surrounding office commercial area.'* Therefore, the proposed uses are prohibited in the OC zone." Record 32 (emphasis added).

The hearings officer ultimately concluded:

> "Based on the findings and discussion provided or incorporated herein, the hearings officer concludes that [petitioner] failed to sustain its burden of proof that the proposed use complies with all of the applicable approval criteria. *Specifically, the [petitioner] failed to demonstrate that the proposal to utilize the OC zoned portions of the site for excess drive-thru vehicle storage during the potentially multi-year 'opening' period is allowed as a permitted, accessory, nonconforming, or temporary use.*" Record 10, 56 (emphasis added).

The hearings officer's findings span almost fifty pages and the statement in the hearings officer's conclusion "specifically" referring to excess vehicle storage must be read in the context of the preceding sentence, relying upon the "findings and discussion provided or incorporated herein." Record 10. These incorporated findings include the hearings officer's findings that the use of the OC-zoned

portion of the property for the accessory restaurant uses, including excess drive-thru vehicle storage, is not allowed as a permitted or accessory use.

We have explained that where a county adopted approximately 77 pages of findings in support of a decision with descriptive section headings and the petitioner "quotes isolated findings contained in the decision without citing to or acknowledging other findings" that address the same approval criteria, and the petitioner fails to address and assign error to all the responsive findings, the petitioner runs the risk that dispositive findings are not challenged in the petition for review. *Protect Grand Island Farms v. Yamhill County*, 66 Or LUBA 291, 295-96 (2012). The hearings officer's references to the "zone crossing" cases were cited as support for the hearings officer's conclusion that

> "the driveways and parking areas are part of the proposed restaurant 'use' based on LUBA's holdings in *Wilson v. Washington County*, 63 Or LUBA 314 (2011)[], *Bowman Park v. City of Albany*, 11 Or LUBA 197 (1984) and *Roth v. Jackson County*, 38 Or LUBA 894, 905 (2000). As LUBA held in *Wilson*:
>
> > "'*Bowman Park* and *Roth* stand for the somewhat unremarkable proposition that where a property is to be developed with a commercial or industrial use, the internal driveway on that property that connects the commercial or industrial buildings to the nearest public right of way is properly viewed as part of the commercial or industrial use. Whether that driveway is labeled as 'accessory' to the business, as in *Roth*, or an integral part of the use itself, as in *Bowman Park*, is not material.'
>
> "The hearings officer acknowledges that LUBA's holdings in *Wilson et. al.* determined that driveways in other zones were part of the proposed use. LUBA did not address the issue of parking in

> another zone. However, the hearings officer finds that LUBA's holdings in those cases should be extended to include parking, as the vehicle parking and maneuvering areas in the OC zoned portion of the site are clearly part of the proposed restaurant 'use,' similar to the driveways at issue in *Wilson, et al.*" Record 24-25.

We provided the following summary of the above cases in *Del Rio Vineyards, LLC v. Jackson County*, explaining:

> "In *Wilson*, we held that an access road/driveway to a winery is an accessory use to the winery, and upheld the county's denial of a permit for the winery on an EFU-zoned parcel where the zoning of the access road did not allow wineries. In *Roth*, we held that an access road/driveway to a winery is an accessory use to the winery and that the county erred in approving the winery where the residential zoning of the access road/driveway did not allow wineries. In *Bowman Park*, we held that an access road/driveway to an industrial use was an accessory use to the industrial use, and that the city erred in approving the industrial use where the residential zoning of the access road/driveway did not permit industrial uses." 73 Or LUBA 301, 309 (2016).

Petitioner maintained before the hearings officer that it was not necessary to cross the OC zone in order to access the drive-thru. Record 77-2. The proposed drive-thru loop and the minimum code-required number of parking spaces (19) are located entirely on the CBD portion of the site where drive-thrus are permitted, if they comply with the applicable criteria. However, the hearings officer explained, uses accessory to or part of petitioner's restaurant and drive-thru use are not permitted outright in the OC zone. The additional parking and parking access is proposed to serve a use not allowed in the zone where parking and parking access is proposed. Petitioner argues that the hearings officer did not identify a provision in the CDC that prohibits parking located in one zone to serve

1 a use allowed in an abutting zone. Petition for Review 20. Petitioner, however,
2 bears the burden of proof for its application. Petitioner has not identified any OC
3 zone provision under which the proposed use is allowed. Petitioner argues that
4 "[t]he parking at issue here is not required or necessary for the permanent use of
5 the Property to function." Petition for Review 21. This may or may not be the
6 case, but petitioner has asked the county to allow parking and related activity in
7 the OC zone as part of its application.

8 Petitioner's argument that joint driveways in shopping centers with
9 multiple zones are common, that shared access points are desirable, and that
10 public policy concerns are not compromised on the present facts are not
11 responsive to the hearings officer's findings concerning what the CDC allows in
12 the OC zone. Petition for Review 15, 17. There is no shopping center here and
13 whether shopping centers with multiple underlying zones are common is
14 irrelevant. Furthermore, nothing in the special use standards encouraging
15 consolidation of access points overrides the OC zone's use restrictions. We agree
16 with the hearings officer that the parking lot (that is the parking and parking
17 accessways) serving the restaurant use are part of the restaurant use and not
18 permitted in the OC zone.

19 Petitioner argues that the hearings officer erred in finding that the proposal
20 for excess parking in the OC zone justified denial of the application because it
21 conflicts with the hearings officer's finding that the parking requirement is met.

We conclude that the hearings officer's findings are not inconsistent. The minimum required parking spaces for a 3,885-square-foot drive-thru restaurant is 19 and the maximum number of parking spaces is generally 48. Record 40. CDC 413-6.1 and 413-6.3 provide that for a "Drive-in restaurant or similar drive-in used for the sale of beverages, food or refreshments for consumption off the premises," the maximum number of off-street parking spaces is "5 per one (1,000) thousand square feet of gross floor area." And in Zone A, "12.4 per one (1,000) thousand square feet of gross floor area." Record 40. CDC 413-6.6 provides, however, that in Zone A, the review authority may approve off-street parking in excess of the maximum parking standards based on findings that:

> "A. The nature of the development will result in higher off-street parking demand relative to similar uses in the same parking zone; and
>
> "B. To the greatest degree practicable, the development includes the implementation of opportunities for shared parking, parking structures, utilization of public parking spaces and other appropriate demand management programs. Demand management programs may include, but are not limited to subsidized transit passes, shuttle service, and carpool programs."

The hearings officer concluded that petitioner had met the requirements to provide more than the maximum amount of parking, 48 spaces, allowed to serve a 3,885 square foot restaurant under the code. The hearings officer's findings that these standards are met include that "[t]here is no dispute that this use is expected to generate greater customer demand than most other drive-in restaurants."

1 Record 41. However, petitioner proposed providing some of that parking and
2 related maneuverability area within a zone where the parking and maneuvering
3 use is not allowed under the OC zone regulations. The hearings officer's
4 conclusion that 94 spaces have been justified is not in conflict with the hearings
5 officer's determination that parking associated with the drive-thru restaurant use
6 is not allowed on the OC-zoned portion of the property.

7 Lastly, petitioner argues that the hearings officer does not explain why
8 limitations on proposed uses in the OC zone requires denial of the entire
9 application. Petitioner relies on *Del Rio Vineyards* for the argument that "a
10 princip[al] use need not be subject to the land use restrictions applying only to its
11 accessory access." Petition for Review 16. In *Del Rio Vineyards*, we determined
12 that an access road accessory to a proposed mining use was a conditional use in
13 the zone in which the road was proposed. We concluded that the mining use itself,
14 located in a zone where mining is permitted, was not subject to the conditional
15 use approval criteria applicable to the road. *Del Rio Vineyards* provides no
16 support for petitioner's argument that the hearings officer was required to
17 approve part of the application (those uses allowed in the CBD zone) when
18 presented with a site plan proposing uses in both the CBD and OC zones.

19 The first assignment of error is denied.

20 **SECOND ASSIGNMENT OF ERROR**

21 Petitioner's second assignment of error is that the hearings officer's
22 findings are not supported by substantial evidence and are inadequate and

1 conclusory. Petitioner argues that the findings do not explain why the hearings
2 officer reached a given conclusion, and the conclusion is not supported by any
3 evidence in the record. Adequate findings identify the relevant criteria, the facts
4 relied upon, and how the facts lead to the conclusion that the criteria are or are
5 not met. *Heiller v. Josephine County*, 23 Or LUBA 551, 556 (1992). Substantial
6 evidence is evidence that a reasonable person would rely on in making a decision.
7 *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993). We will
8 reverse or remand a local government decision that is not supported by substantial
9 evidence in the whole record. ORS 197.835(9)(a)(C).

10 The hearings officer found:

11 "[Petitioner] proposes to use the OC zoned area in the northeast
12 corner of the site *for storing excess drive-thru queues at least during*
13 *the 'opening' period of the use. (See page 29 of Exhibit T of the*
14 *application, which shows excess drive-thru vehicle queuing along*
15 *the west and north boundaries of the site and [petitioner's*
16 *development manager's] testimony at the hearing*)." Record 26.

17 Petitioner argues that the hearings officer's conclusion that excess drive-thru
18 queues will occur in the OC zone, at least during the "opening period," is not
19 supported by substantial evidence. Petitioner maintains that the site plan shows
20 queuing only in the CBD zone as shown at Record 130, reproduced above, and
21 that the hearings officer's contrary conclusion is inconsistent with the site plan
22 and that this evidence clearly outweighs the conflicting evidence. Petition for
23 Review 25-26. Petitioner maintains that no portion of the drive-thru use is
24 proposed in the OC-zoned portion of the Property. Petition for Review 23.

Petitioner cites its argument below that "[s]taff agreed with this assessment, and in its July 7 memo to the Hearings Officer, staff concurred 'that the drive-thru functions occur strictly in the Community Business District (CBD) only and not in the OC zoning district.'" Record 100, Petition for Review 26. Petitioner cites Record 110. Petition for Review 26. This record page includes the statement:

> "[T]he Kittleson Memo, dated June 28, 2022, includes a graphical attachment that addresses questions concerning the Office Commercial (OC) zoning district and how it relates to the drive-thru functions of the propose[d] fast-food restaurant. The graphic identifies where the OC zoning district is on the subject site in relation to the drive-thru of the restaurant. Staff concurs that the drive-thru functions occur strictly in the Community Business District (CBD) only and not in the OC zoning district." Record 110.

Petitioner contends that any conclusion about excess vehicle queuing is merely speculative. Petitioner maintains that there is not substantial evidence that the applicant proposed to use the OC-zoned portion of the site for excess drive-thru vehicle queuing. We deny this assignment of error for the reasons set out below.

In order to prevail on a substantial evidence challenge, a petitioner must identify the challenged findings and explain why a reasonable person could not reach the same conclusion based on all the evidence in the record. In *Stoloff v. City of Portland*, we explained:

> "The hearings officer made detailed findings explaining why the approval criterion is satisfied. Petitioner does not acknowledge, let alone challenge, those findings. In order to prevail on a substantial evidence challenge, a petitioner must identify the challenged findings and explain why a reasonable person could not reach the same conclusion based on all the evidence in the record. Petitioner

> has done neither. A reasonable person could reach the conclusion of the hearings officer that PZC 33.665.310A is satisfied." 51 Or LUBA 560, 568 (2006) (citations omitted).

"LUBA frequently analyzes findings challenges and evidentiary challenges separately. In fact, we generally analyze findings challenges first, because our resolution of the findings challenge frequently affects our resolution of the evidentiary challenge or makes it unnecessary to decide the evidentiary challenge." *Wal-Mart Stores, Inc. v. City of Bend*, 52 Or LUBA 261, 277-78 (2006) (citing *Friends of Linn County v. Linn County*, 37 Or LUBA 844, 856 (2000); *1000 Friends of Oregon v. Columbia County*, 27 Or LUBA 474, 476 (1994); *Holliday Family Ranches v. Grant County*, 10 Or LUBA 199, 205 (1984)).

Petitioner argues:

> "*The Hearings Officer principally relied on pg. 29 of 'Exhibit T' of the original application for his conclusion that In-N-Out proposed excess drive-thru queuing in the OC zone.* (Rec. 26 ER-19.) However, Exhibit T is merely In-N-Out's neighborhood meeting notes and is not the same as the initial site plan that In-N-Out submitted with its Application, or its final annotated site plan submitted during the open record periods. This is plain when comparing the following images. The first, shown below, is the pre-application plan diagram, which was part of In-N-Out's power point presentation, upon which the Hearings Officer relied (Rec 629). * * * The second, shown below, is 'Exhibit A' to the actual Application, which is labeled 'New Site Plan' by In-N-Out and 'Proposed Site Plan – Revised' in the Record. (Rec. 318)."[2] Petition

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[2] The site plan at Record 318 appears to us to be the same as that at Record 130 and reproduced above.

for Review 23-24 (emphasis added).

Petitioner does not explain its reasoning for concluding that the hearings officer relied *principally* on Exhibit T. The hearings officer found:

> "[Petitioner] also proposes to use the OC zoned area in the northeast corner of the site for storing excess drive-thru queues at least during the 'opening 'period of the use. *(See page 29 of Exhibit T of the application, which shows excess drive-thru vehicle queuing along the west and north boundaries of the site and [petitioner's development manager's] testimony at the hearing).*" Record 26 (emphasis added).

The hearings officer cited both Exhibit T of petitioner's application and the testimony of petitioner's development manager. Petitioner does not address the hearings officer's finding that petitioner's development manager's testimony supported the conclusion that the northeast corner of the site would be used for excess drive-thru vehicle queues. Although petitioner argues "both staff and In-N-Out portrayed [the later site plan] as more accurately reflective of the necessity for queuing (and specifically the lack thereof) in the OC zone," the record is ambiguous concerning planning staff's conclusion. Petitioner's counsel's July 14, 2022, letter stated:

> "First, as shown by the graphical attachment to Kittelson & Associate's June 28, 2022 memorandum to the Hearings Officer (the 'Kittelson Memo'), cars do not have to cross the OC zone to get to the drive-through. Staff agreed with this assessment, and in its July 7 memo to the Hearings Officer, staff concurred 'that the drive-thru functions occur strictly in the Community Business District (CBD) only and not in the OC zoning district.'" Record 100.

1 Planning staff's reference to "drive-thru functions" could reasonably be read to
2 mean that the staff agreed with Kittelson that cars do not have to cross the OC
3 zone in order to get to and through the drive-thru loop. Record 110.

4 In its statement of facts, petitioner describes a "conceptional temporary
5 traffic management condition which will occur, to some degree and for some
6 undetermined duration, during the period immediately after the restaurant opens
7 (the 'opening period')." Petition for Review 5. Petitioner argues that the hearings
8 officer found that during the "opening period," the drive-thru vehicle queuing is
9 likely to be extended beyond that shown on petitioner's plan entirely within the
10 drive-thru loop in the CBD zone without pointing to supporting evidence. Petition
11 for Review 26-27. Elsewhere in the findings, however, the hearings officer found:

12 "*[U]se of the OC zoned portions of the site for excess drive-thru*
13 *vehicle queue storage is a necessary part of the proposed*
14 *development. There is no evidence that the use can meet County and*
15 *ODOT mobility requirements without providing excess drive-thru*
16 *vehicle queue storage within the OC zoned portions of the site,*
17 *especially during the restaurant's 'opening' period.* The 'opening'
18 period may continue 'for several years.' ([city planner]
19 testimony)."[3] Record 26.

20 SW Beaverton-Hillsdale Highway is also known as OR-10 and is "a
21 County Arterial but under Oregon Department of Transportation (ODOT)
22 jurisdiction." Record 8. The hearings officer concluded that "[petitioner] will be

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[3] We also observe that the hearings officer found that excess drive-thru vehicle storage to meet mobility requirements was *especially* needed during the opening period, not that it would only occur during the opening period.

1 required to submit a Traffic Management Plan, to be approved by ODOT in
2 coordination with Washington County." *Id.* Petitioner correctly states that
3 petitioner's Traffic Management Plan was not included in the record before the
4 hearings officer. Petitioner also points out that the hearings officer stated that the
5 future traffic management plan will be subject to state and county review without
6 public input. Petition for Review 6. However, neither argument undercuts the
7 hearings officer finding that based on evidence of petitioner's mobility
8 requirements, vehicle queue storage will be an operational necessity.

9 The hearings officer found that petitioner's development manager testified
10 that petitioner plans to open other restaurants in the Portland metro area and that
11 as new restaurants open, demand at the subject property will decrease. Record
12 21. The hearings officer concluded, however, that during the opening period

> 13 "drive-thru vehicle queues are likely to extend beyond the drive-thru
> 14 lanes surrounding the proposed building and exceeding the 24
> 15 vehicle storage shown in [petitioner's] plan. [Petitioner] proposed to
> 16 allow these excess traffic queues to extend into the on the site
> 17 parking lot drive aisles, providing additional on-site queue storage
> 18 in order to limit the potential for traffic queues spilling onto SW
> 19 Beaverton-Hillsdale Highway. [Petitioner] will utilize additional
> 20 on-site traffic control personnel to direct traffic and maintain orderly
> 21 movements during this 'opening' period." Record 22.

22 Consistent with this finding, the hearings officer found that petitioner

> 23 "can manage on-site traffic during the 'opening' period to ensure
> 24 that on-site vehicle queues do not extend past the drive-thru exit and
> 25 prevent customers from leaving the site. On and off-site traffic
> 26 control personnel can direct drive-thru customers to the eastern
> 27 driveway where they will circle around the building to the north and

1 west prior to entering the exclusive drive-thru lanes in the northwest
2 portion of the site." Record 23.

3 Petitioner does not address evidence referenced in the findings that excess vehicle
4 queuing storage is necessary and proposed and therefore does not establish a basis
5 for reversal or remand based on inadequate findings or lack of substantial
6 evidence.

7 The hearings officer stated that "it is not possible to approve this
8 application subject to a condition of approval prohibiting use of the OC zoned
9 portions of the site for excess drive-thru vehicle queue storage." Record 26.
10 Petitioner also argues that the hearings officer's finding that a condition of
11 approval providing that the OC-zoned portion of the property may not be used
12 for this purpose is "not appropriate and is not supported by substantial evidence
13 * * *." Petition for Review 27. ORS 215.416(4)(a) provides that "[a] county may
14 not approve an application if the proposed use of land is found to be in conflict
15 with * * * applicable land use regulation or ordinance provisions. The approval
16 *may* include such conditions as are authorized by statute or county legislation."
17 (Emphasis added.) Petitioner does not identify any CDC provision, statute, or
18 case law that requires the hearings officer to impose conditions of approval to
19 satisfy the county's special use standards, and ORS 215.416(4) provides only that
20 the county has the option of doing so. This argument is insufficiently developed
21 for our review.

22 The second assignment of error is denied.

1 **FOURTH ASSIGNMENT OF ERROR**

2 CDC 430-135 regulates "temporary uses," that is, uses "of an impermanent
3 nature, or one used for a limited time." Petitioner's fourth assignment of error is
4 that the hearings officer's finding "that the temporary use of the OC-zoned
5 portion of the Property cannot be approved by the Director is not supported by
6 an adequate interpretation of the CDC, is not supported by evidence, and such a
7 finding is plainly inadequate." Petition for Review 47. Petitioner also argues that
8 the "Hearings Officer failed to set out the facts which are believed and relied
9 upon, and explain how those facts lead to the decision regarding compliance with
10 CDC 430.135.1.C.8." *Id.*

11 Petitioner stated in its August 9, 2022, letter:

12 "[Petitioner] is cognizant of the Hearings Officer's concerns about
13 the *temporary* primary use of the east access point during the
14 opening period as part of the Traffic Management Plan. However,
15 none of the cases above concern only temporary conditions and the
16 Application is for a permanent use, not a temporary one. Regardless,
17 the Planning Director has wide authority to approve temporary uses
18 for up to one year CDC 430-135.1.C as a Type I permit." Record
19 77-6 n 1 (emphasis in original).

20 The hearings officer found:

21 "[Petitioner] argued that '[t]he Planning Director has wide authority
22 to approve temporary uses for up to one year . . . as a Type I permit'
23 pursuant to CDC 430-135.1.C. (Footnote 1 of Exhibit OR 1-g). The
24 hearings officer disagrees. CDC 430-135.1.C limits temporary uses
25 to those listed in CDC 430-135.1.C(1)-(7), (9), and (10) as well as
26 'Other similar uses of a temporary nature when approved by the
27 Director.' CDC 430-135.1.C(8).

"i. There is no evidence that the use of the OC zoned portions of the site for excess drive-thru vehicle queue storage is one of the uses listed in CDC 430-135.1.C(1)-(7), (9), and (10), or that such use is 'similar' to any of the listed uses. Therefore, the hearings officer cannot find that it is feasible for the applicant to obtain a temporary permit for this use.

"ii. In addition, temporary permits are limited to '[a] period not to exceed 1 year.' CDC 430-135.1.C. The language of the Code does not allow for approval of the extension of a temporary permit approval or back to back one-year temporary permits for the same use." Record 26-27.

We will remand a decision where the findings are inadequate to explain why a hearings officer interprets an applicable criterion in a given manner. *Butcher v. Washington County*, 65 Or LUBA 263, 270 (2012) (decision remanded where the findings were inadequate to explain why a hearings officer interpreted setback provisions that require a 100-foot setback to apply only to a proposed new kennel building and to not apply to outdoor dog play areas). Petitioner argues that the hearings officer did not provide an adequate interpretation of the CDC. We agree with petitioner that the hearings officer did not identify language in the CDC supporting its conclusion that multiple temporary permits or extensions of temporary permits are not permissible or requiring a finding that the temporary activity will end within one year.

The hearings officer also found that there was no evidence that excess drive-thru vehicle storage is similar to those uses that qualify for temporary permits. We have held that a hearings officer's interpretation is inadequate for review where the hearings officer finds that a proposed bed and breakfast inn

1 designed for occupancy by an employee caretaker and up to eight non-resident
2 guests qualifies as a "bed and breakfast inn," without explaining how a caretaker
3 occupancy is consistent with the county code which defines a bed and breakfast
4 inn as an "owner-occupied" "single-family dwelling." *Elenes v. Deschutes*
5 *County*, 78 Or LUBA 483, 494 (2018). Similarly here, the hearings officer was
6 required to adopt findings interpreting "similar" uses potentially eligible for a
7 temporary permit.

8 Because we conclude that the hearings officer did not adopt adequate
9 findings construing the CDC, we will not address petitioner's argument that the
10 hearings officer misconstrued the code or made findings not supported by
11 substantial evidence.

12 The fourth assignment of error is sustained.

13 **THIRD ASSIGNMENT OF ERROR**

14 CDC 106-141 defines a nonconforming use as "[a] structure or use of land
15 which does not conform to the provisions of this Code or Comprehensive Plan
16 lawfully in existence on the effective date of enactment or amendment of this
17 Code or Comprehensive Plan." Petitioner's third assignment of error is that the
18 hearings officer made inadequate and inconsistent findings concerning whether
19 there was a legal nonconforming use right to conduct petitioner's operations in
20 the OC zone.

21 In their summary of facts, the hearings officer stated: "The [subject
22 property] is currently developed with two existing restaurants, one with a drive-

thru (Hawaiian Time), the other with dine in, Azteca, which is permanently closed." Record 8. The hearings officer found:

> "[Petitioner] argues that use of the OC zoned portions of the [subject property] for vehicle parking and maneuvering is allowed as a legal nonconforming use that may be continued. The existing restaurants on the site were legally established when the entire site was zoned CBD. Those approvals included use of the now OC zoned portions of the site for vehicle parking and maneuvering associated with those restaurant uses. (See attachments 2 through 8 of Exhibit OR 1-g). It appears that these uses were legally established more than 20 years ago and [petitioner] argued that the uses have continued without interruption of more than one year. (See attachment 9 of Exhibit OR 1-g). *Assuming, without deciding, that the applicant sustained its burden of proof that the existing restaurant uses were legally established and continued without interruption for one year or more, the applicant would be allowed to continue using these areas for vehicle parking and maneuvering associated with the proposed restaurant use, pursuant to CDC 440-1.*
>
> *"However, [petitioner] also proposes to use the OC zoned area in the northeast corner of the site for storing excess drive-thru queues at least during the 'opening' period of the use. * * * Based on the evidence in the record, the exclusive drive-thru lanes for the existing restaurants on the site were located entirely in the CBD zoned portions of the site. * * * There is no evidence that the existing restaurants ever generated excess drive-thru queuing that extended into the OC zoned portions of the site. Therefore, the hearings officer finds that [petitioner's] proposal to use the OC zoned portions of the site for drive-thru queue storage constitutes an alteration of the legally established non-conforming use of the OC zoned portion of the site and [petitioner] failed to demonstrate that the alteration meets the standards [] for alterations in CDC 440-6.2.B."* Record 25-26 (emphasis added).

The hearings officer found "[petitioner] argues that these uses have continued without interruption for twenty years or more. Therefore, *assuming that the uses*

have been continued, the applicant may continue to use the OC zoned portions of the site for vehicle parking and maneuvering as a continuation of a legal nonconforming use." Record 33 (emphasis added). The hearings officer also found:

> "The site encompasses two land use districts: [CBD] and [OC]. The proposed eating and drinking establishment with drive-thru will be constructed within the CBD district portion of the site, with additional overflow parking in the OC designated portions of the project site. The restaurant structure as well as the drive-thru lanes are proposed only in the CBD portion of the site. However, as discussed above, some uses – parking maneuvering, and excess drive-thru vehicle storage – are proposed in the OC zoned portions of the site. *If the existing restaurant uses were not discontinued for one year or more and the hours of operation of those uses were consistent with the proposed use, the parking and maneuvering uses may continue as a nonconforming use.* However, the use of the OC zone for excess drive-thru vehicle storage is prohibited." Record 44-45 (emphasis added).

The hearings officer found that they were not deciding whether any nonconforming use rights existed, but assuming they did, those rights did not include the proposed storage of vehicle overflow from the drive-thru. The hearings officer also made an inconsistent finding, stating that they

> "must deny this application because the application is proposing to use the OC zoned area in the northeast corner of the site for excess drive-thru vehicle queue storage, *a use prohibited in the OC zone that is beyond the scope of the legally established non-conforming use on the site* * * *." Record 27.

Where a relevant issue is adequately raised in a land use proceeding, the findings supporting the final decision must address the issue and where the

1 findings do not do so, remand is required. *Space Age Fuel, Inc. v. Umatilla*
2 *County*, 72 Or LUBA 92, 97 (2015). Whether the OC zone restrictions are
3 inapplicable to the subject property because petitioner held a nonconforming use
4 right was a relevant issue that petitioner raised during the proceedings before the
5 hearings officer.[4] We conclude that the hearings officer was required to make
6 findings as to whether there was a legal nonconforming use to conduct the
7 proposed activities in the OC zone, what, if any, the extent of that use is, and
8 explain the basis for that finding. The hearings officer's findings "assuming," for
9 purposes of their analysis, that the proposed use is nonconforming does not
10 answer the question of whether the use is nonconforming. The inconsistent
11 finding that a legal nonconforming use right exists does not explain the basis for
12 that finding and is also inadequate.

13 Petitioner also argues that the hearings officer could not rely on county or
14 ODOT mobility standards to conclude excess vehicle storage was proposed and,
15 if proposed, was not allowed as an alteration of a conforming use. The hearings
16 officer found that the traffic demand evidence in the record supported the
17 conclusion that petitioner would store vehicles on the property and we see no
18 reason why the hearings officer could not consider that evidence. We agree with

---

[4] No party intervened on the side of the county and the county did not file a response brief in this appeal. For the purposes of this decision, we assume that petitioner adequately raised the nonconforming use issue during the course of the proceedings and was not required to modify its application or separately apply for verification of a nonconforming use.

1 petitioner, however, that the hearings officer was required to respond to
2 petitioner's argument that this could be permitted as an alteration of a
3 nonconforming use. The hearings officer's findings do not explain the evidence
4 relied upon by the hearings officer to conclude that the applicant failed to meet
5 the alteration standards in CDC 440-6.2.B. Record 26. The hearings officer must
6 address petitioner's argument that its use in the OC zone may be allowed in this
7 proceeding as an alteration of a nonconforming use.

8 Petitioner also argues that the hearings officer's findings that the proposed
9 use is beyond the scope of its legally nonconforming use is not supported by
10 substantial evidence. Because the hearings officer has not adopted adequate
11 findings, it would be premature for us to address this element of the assignment
12 of error.

13 This assignment of error is sustained.

14 The decision is remanded.

Certificate of Mailing

I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 2022-083 on October 27, 2023, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

Garrett H. Stephenson
Schwabe, Williamson & Wyatt PC
1211 SW 5th Avenue, Suite 1900
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Robert Bovett
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155 N First Ave, #340, MS 24
Hillsboro, OR 97124

Dated this 27th day of October, 2023.

Erin Pence
Executive Support Specialist

Hannah Barkemeyer Baker
Executive Support Specialist

Oregon Land Use Board of Appeals
775 Summer St NE Ste 330
Salem, OR 97301-1283

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August 9, 2022

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VIA E-MAIL

Washington County Hearings Officer
Department of Land Use and Transportation
155 N 1st Avenue, #350-13
Hillsboro, OR 97124

RE: In-N-Out Burger
Case File L2200066-SU/D/PLA/PLA

Dear Hearings Officer Turner:

This firm represents In-N-Out Burger, Applicant (the "Applicant") in the above-referenced file. We received the Hearings Officer's draft order re-opening the record on August 1, which addressed zone-crossing issues raised in the June 16, 2022 hearing and later addressed in the Applicant's July 14, 2022 final written argument. In that order, the Hearings Officer explained that "if the Applicant submits a written agreement to accommodate an additional open record period and submits a written agreement to that effect to the County by 4:00 PM on Tuesday, August 2, 2022, the hearings officer order the public record to be held open […]." The Applicant did so, and the final order dated August 2, 2022 provided the following record re-opening timeframes:

- Until August 9, 2022, for any person to submit new evidence or argument concerning zone crossing.
- Until August 16, 2022, for all parties to respond in writing to the new legal arguments received by the County by 4 P.M., Tuesday August 9, 2022.
- Until August 23, 2022 for the applicant alone to submit a final written argument.

This letter is respectfully submitted to address the zone crossing issues discussed in the Hearings Officer's August 2, 2022 memorandum.

Zone crossing was raised in public comments and at the June 16th hearing. Specifically, other parties argued that to get to the drive-through, cars must cross the OC zone. During the initial open record phase, the Applicant demonstrated that this is not true for two reasons. First, as shown by the graphical attachment to Kittelson & Associate's June 28, 2022 memorandum to the Hearings Officer (the "Kittelson Memo"), cars do not have to cross the OC zone to use the drive-through. **Exhibit 1**. Staff agreed with this assessment, and in its July 7 memo to the Hearings Officer, staff concurred "that the drive-thru functions occur strictly in the Community Business District (CBD) only and not in the OC zoning district." The Applicant also pointed out that *Wilson*

v. Washington County, 63 Or LUBA 314 (2011) supports a finding that Application should be approved notwithstanding the fact that the eastern parking area (and eastern access to Beaverton Hillsdale Highway) is connected to the rest of the subject property by a drive aisle that passes through the OC zone.

The Hearings Officer raised a number of concerns with the Applicant's analysis of this issue, asserting that a drive-thru restaurant (defined as "drive-up" or "drive in" in the CDC) may not be permitted in this instance. The Hearings Officer also focused on *Bowman Park v. City of Albany*, 11 Or LUBA 197 (1984) and *Roth v. Jackson County*, 38 Or LUBA 894, 905 (2000), which the Applicant did not cite in its final written argument. The Applicant understands the Hearings Officer's concerns and analysis of the issue and greatly appreciates the opportunity to respond. For the following reasons, the Applicant maintains its position that none of the holdings discussed in the Hearings Officer's order prohibit a drive-thru use on the subject property for this Application. The Applicant also provides the Hearings Officer with alternative bases to approve the Application with the proposed access points.

I. *Bowman Park* and its progeny are distinguishable from the facts in this case.

The zone crossing doctrine has developed over time but relies on a number of different theories, none of which addresses this situation, where there are three proposed access points (two on Beaverton Hillsdale Highway for customer access and one on Laurel Street for emergency access).

Bowman Park was the first LUBA case to articulate a theory that a driveway necessary to connect a given use of land to the nearest right-of-way is essentially a component of the principle use. *Bowman Park*, 11 Or LUBA at 203. In so doing, LUBA relied on the city's definition of "use" and "development," but in denying the principle use itself, LUBA considered the driveway as an industrial use "which is <u>necessary</u> to Permawood's industrial plant." *Id*. (Emphasis added).

Like *Wilson*, *Roth* concerned a winery use that was permitted in the zone where it was proposed, but which relied on a private drive crossing a zone that did not allow wineries. As in *Bowman Park*, the use itself relied on the accessway as its <u>sole</u> means of access. *Roth* added little to nothing to the analysis and simply relied on *Bowman Park* to conclude that "a parcel providing access to a winery is an accessory use to the winery. Because wineries are not allowed in the SR 2.5 zone, an access road to the winery may not be established on the SR 2.5-zoned parcel." *Roth*, 38 Or LUBA at 905.

Wilson concerned facts similar to *Roth* and stated that *Bowman Park* and *Roth* stand for the proposition "that where a property is to be developed with a commercial or industrial use, the internal driveway on that property that connects the commercial or industrial buildings to the nearest public right of way is properly viewed as part of the commercial or industrial use." *Wilson*, 63 Or LUBA at 318. However, *Wilson* (like *Bowman Park*) only extended its logic to the driveway that is <u>necessary</u> to connect the principle use <u>to the nearest public right-of-way</u>: "Where, as here, the proposal includes establishing and operating a winery under CDC 430-145, the proposed winery use includes the driveway that is <u>necessary</u> to connect that winery with the nearest public right of way." *Id*. at 319 (emphasis added).

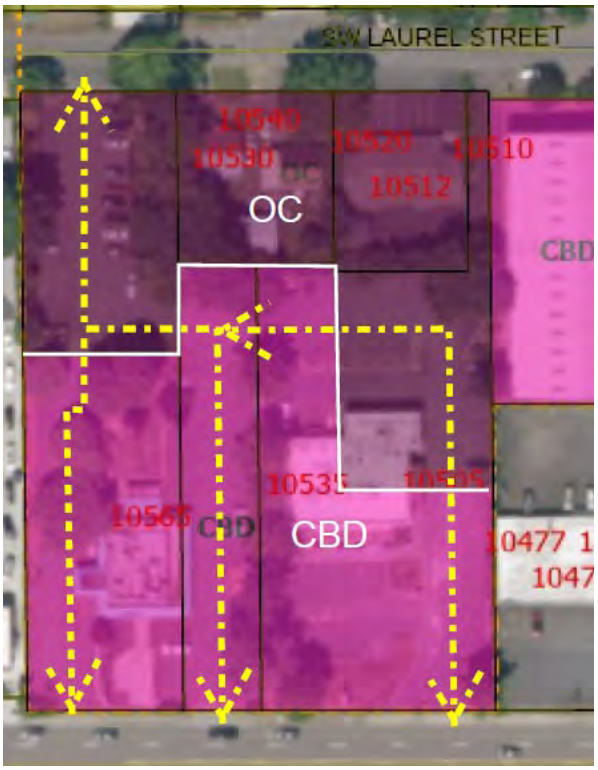
Stated simply, all of these cases addressed uses which obtained their sole access points through zones which do not allow those uses. *Wilson*, in particular, clearly stated that the driveway included in the "use" is the one "necessary to connect" the use with the nearest public right-of-way. None of these cases stand for, or support, the proposition that any use that can be accessed by traveling over a zone that does not allow that use, must be denied.

Additional cases on the issue all address situations concerning a single available access. *Del Rio Vineyards v. Jackson County*, 73 Or LUBA 301 (2016); *Lost Creek Rock Products v. Lane County*, 67 Or LUBA 96 (2013). *Lost Creek Products* specifically relied on the concept that a driveway is part of a principle use when that "driveway is necessary to provide access." *Lost Creek Products*, 67 Or LUBA at 105. In fact, this office was unable to locate a single case in which the mere *ability* to access a use through a zone that does not specifically allow that use requires either the principle use itself, or the driveway, to be denied.

There is presumably a very good reason for this: many shopping centers consist of multiple zones and provide for cross-vehicular traffic through these areas, which may allow people to access uses that would not be allowed by one or more of the private routes that take them there. In fact, the County itself requires that all drive-in facilities "located in the parking lot or part of a larger commercial structure shall not have separate access points to the street and shall utilize the center's access points." CDC 430-41.2. This is so regardless of whether those access points permit a drive-in facility to the same degree as the property on which it is built. And generally speaking, CDC 430-41.1 encourages "consolidation of access with adjoining uses."

Take, for example, the shared accessways utilized by both the Cedar Mills Target and the Cedar Royal Apartments, which are located at the NW corner of NW Cornell and Saltzman Road. The Target is zoned Transit Oriented: Retail Commercial (TO: RC), while the Cedar Royal Apartments is zoned Transit Oriented Residential District, 24-40 units per acre (TO: R24-40). The Target and its surrounding shopping center can be accessed through the TO: R24-40 zoned drive used to access the Cedar Royal Apartments, even though there is no allowance for a retail use larger than 5,000 sq. ft. in the TO: R24-40 zone.

The Subject Property already includes the existing east access and an access to Laurel Street, both of which allow access to the Hawaiian Time drive-thru restaurant, and both of which cross the OC zone, as shown below:



In summary, no LUBA precedents on this issue specifically prohibit zone crossing in instances where, as here, multiple driveways can provide access to the use but only some of those traverse zones that do not allow the proposed use. The Hearings Officer should not extend the holdings in *Wilson, Roth,* or *Bowman Park* to this Application because (1), as explained above, the doctrine in those cases has never been used that way and (2) joint driveways in shopping centers with multiple zones are common. The two examples above, including the existing uses on the subject property, show how shared drives commonly cross zones that may or may not allow the use that the person using those drives intends to access. Such access arrangements are likely *required* by the CDC in some circumstances. *See, e.g.*, CDC 430-41.2. Extending the zone crossing doctrine to sites with multiple means of access would upend what is a common and desirable aspect of commercial development.[1]

II. The principle use itself need not be denied when it includes an access to a right-of-way that does not violate the zone crossing principles of *Wilson, Roth,* and *Bowman Park.*

As a corollary to the points above, the zone crossing issue in this case pertains not to the principle use itself but only to driveways crossing the OC zone, because the Application includes a direct access from the CBD zone to Beaverton Hillsdale Highway as the west driveway. This point is supported by LUBA's holding in *Del Rio Vineyards*, 73 Or LUBA at 301. In that case, LUBA declined to subject the principle mining use (which was allowed outright) to the permitting requirements applicable only in the zone crossed by the project's driveway (which allowed mining only as a conditional use). In so doing, LUBA clearly articulated the common-sense principle that the zoning restrictions of the driveway do not extend to the principle use if the principle use is zoned differently. When reviewing the holdings of *Wilson, Roth,* and *Bowman Park,* LUBA held:

> "We disagree with petitioner that any of those cases compel a conclusion that the mining uses occurring on the AR-zoned portions of the property are required to satisfy the conditional use standards of the WR-zone. <u>The holdings in each of those cases conclude that the *driveway* is an accessory use to the primary use, and therefore the driveway may not be approved if the primary use is not allowed in the zone over which the driveway crosses.</u> Those cases dictate in the present case that the accessory driveway in the WR zone is subject to the WR conditional use standards that would apply to a mining use in the WR zone. We held as much in *Del Rio Vineyards I*. However, those cases do not stand for the very different proposition that the primary mining activities that occur *only* in the AR zone are

[1] The Applicant is cognizant of the Hearings Officer's concerns about the *temporary* primary use of the east access point during the opening period as part of the Traffic Management Plan. However, none of the cases above concern only temporary conditions and the Application is for a permanent use, not a temporary one. Regardless, the Planning Director has wide authority to approve temporary uses for up to one year CDC 430-135.1.C as a Type I permit.

> themselves subject to the WR zone conditional use standards. We reject petitioner's attempt to extend the holdings in the above-cited cases to include that proposition."

Id. at 309 (emphasis added). Thus, even under their strictest application, neither *Wilson, Roth, n*or *Bowman Park* require denial of the Application in its entirety. This is especially true of this case because, unlike all of the other cases considered above, the Application includes a primary access in the CBD zone.

III. The existing parking and accessways in the OC zone are legal nonconforming uses that may be continued.

There are two buildings within the subject property. The existing Hawaiian Time drive-thru restaurant (addressed as 10565 SW Beaverton Hillsdale Hwy.) was formerly a Burger King drive-thru restaurant, which was originally constructed prior to 1977. A new drive-thru window was approved to be added to this building in April, 1978. **Exhibit 2**. The site plan approved for the project is similar to existing conditions. That same year, additional parking was approved to be added between the restaurant and Laurel Street, within an area that is now zoned OC. **Exhibit 3**. This building remained as a Burger King until it was acquired and used by Hawaiian Time, which kept and currently uses the drive-thru window. **Exhibit 4**.

The second building, the Azteca Restaurant (addressed as 10505 SW Beaverton Hillsdale Hwy.) was originally the Mr. Steak Restaurant, which the County approved in 1977. The approval contemplated shared accesses between the Mr. Steak building to the east and the then- Burger King (now Hawaiian Time) to the west:

> "The Portland franchise for the adjacent Burger King has indicated to the staff that joint access between these two uses would be acceptable to him. A joint access between the two uses, as proposed, will provide more flexibility in traffic ingress and egress by allowing Mr. Steak's user's to exit via the Burger King driveway and so on. The proposed location [of the joint access] is at the rear of the proposed restaurant."

Exhibit 5. The site plan approved for the Mr. Steak restaurant reflects this shared access point, which gave persons entering the east driveway access to the Burger King drive-thru, and vice-versa. **Exhibit 6**. Thus, the shared access between the existing drive-thru restaurant and the east driveway has existed since at least construction of the Mr. Steak restaurant in the late 1970s, and was approved by the County in 1977.

In 1986, the owner of the east parcel obtained a permit approval for a drive-thru window as part of a tenant improvement to convert Mr. Steak into the D'Lites drive-thru restaurant. **Exhibit 7**. At that time, the entire property was zoned CBD and staff concluded that "a restaurant with a drive-up window is a permitted use in this district." **Exhibit 7**.[2] Later, the D'Lites became Azteca,

[2] It is not clear when the zoning of a portion of the property changed to OC zoning, however, the fact that the entire property (then and now, 1 acre) was zoned CBD at the time indicates that the

which site plan included the shared access between the east driveway and Burger King in roughly the same location as is proposed in this Application. **Exhibit 8**. The restaurant finally became the Vagabundos Concina, which based on Google reviews was in operation at least as of three months ago. **Exhibit 9**.

Thus, a preponderance of the evidence in the record demonstrates the following with regard to the east access and drive aisle (now zoned OC):

- There has been a legally-established drive-thru use on the west side of subject property since at least 1978. The parking within the now-OC-zoned portion of the site near Laurel Avenue was legally established at that time.

- The Mr. Steak restaurant (now Azteca) was approved in 1977 and that approval allowed joint access between the two sites so both could use all access points on Beaverton-Hillsdale Highway.

- The conversion of Mr. Steak to D'Lites Restaurant in 1986 included approval of a drive-thru use on the east parcel, directly accessible by the east driveway.

- Customers have been able to access a drive through restaurant through the now OC-zoned drive aisle since the Azteca building was built in the late 1970s.

Aerial photos demonstrate that the shared accesses between the existing Hawaiian Time and Azteca restaurant, established in the late 1970s, has remained since that time. **Exhibit 10**. Hawaiian Time is currently open and these drives can still be used to access the drive-through from all access points, including from Laurel Street and from Beaverton Hillsdale Highway through the OC zone. **Exhibit 11**. Existing parking serving the Hawaiian Time restaurant is also present between the Laurel Street frontage and the existing drive-through, including in areas currently zoned OC. **Exhibit 11**. As noted above, the code provisions limiting drive-thru uses in the OC zone were applied to the east drive aisle between the two restaurants sometime after 1986, when both restaurants already had joint use of that drive. The existing Hawaiian Time restaurant and its drive-thru is still in use and there is no evidence that it has been discontinued for more than one year. CDC 440-3.3.

Given that *Wilson, Roth,* and *Bowman Park* all consider a driveway to be a "use" connected with whatever principle land use it serves, the Applicant need not prove that proposed In-N-Out Burger restaurant is an expansion, replacement, or continuance of a nonconforming use, only that the proposed uses of OC-zoned land that are proposed to be continued are legally nonconforming. This includes the drive-aisle within the OC zone is itself and the existing parking near the Laurel Street frontage. In other words, the Application for the proposed restaurant is for a conforming

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drive-thru use of the Azteca Restaurant was approved and legal in 1986. However, the timing of the change to OC zoning is not relevant to this inquiry because, as explained above, the east access point was legally shared with the Burger King on the west parcel since 1978 and has remained in drive-thru use ever since.

use and, to the extent that *Wilson*, *Roth*, or *Bowman Park* apply here, they pertain only to the drive-aisle between the Azteca Restaurant and other existing parking areas within the OC zone.

According to the nonconforming use provisions of CDC 440-3.3, the hearings officer can find that these uses are legally nonconforming in the OC Zoning District, based on the following criteria:

> "40-3.1 The nonconforming use was lawfully established in accordance with applicable land use standards. Building permits or tax records may be used as evidence to prove when the use was established."

RESPONSE: As explained above, aerial photos and County permit records demonstrate that the existing drive aisles and parking areas have been in place on the Subject Property since at least 1995 and the prior Burger King Restaurant added its drive-through in 1978, before the OC-zone drive-thru limitations were enacted.

> "440-3.2 The nature and extent of the nonconforming use at the time it became nonconforming. Sporadic and intermittent nonconforming uses may continue as nonconforming uses provided the continuation of the use continues to be sporadic and intermittent."

RESPONSE: Aerial photos and site photos demonstrate that the driveways were maintained in their current form for at least the last 25 years, which exceeds the maximum 20-year timeframe for proving ongoing use in ORS 215.130(11).

> "440-3.3 The nonconforming use has continued since it became nonconforming. Utility bills, tax records, business licenses or telephone directory listings may be used as evidence to demonstrate how the use has continued."

RESPONSE: Building and land use permit records demonstrate that the use of the drive aisles and OC-zoned parking has continued since at least 1978 to serve a drive-through use.

In summary, the record demonstrates that the east driveway, the driveway to Laurel Street, and parking areas now within the OC zone have been in existence since at least 1978 and have been used to service a drive-through restaurant since that time. Therefore, the Hearings Officer can find that they are legal nonconforming uses.

IV. CONCLUSION

For the above reasons, the Hearings Officer can find that the zone crossing doctrine does not prohibit either the principle use or the drive aisle used to access the east driveway, and in the alternative, that all proposed uses of the OC are legal nonconforming activities that have not been abandoned and may continue to used.

Best regards,

Garrett H. Stephenson

GST:jmhi
Enclosures

cc: Ms. Cassie Ruiz (*via email w/enclosures*)
Ms. Emily Bateman (*via email w/enclosures*)
Ms. Julia Kuhn (*via email w/enclosures*)
Ms. Chris Brehmer (*via email w/enclosures*)
Ms. Sandra Freund (*via email w/enclosures*)

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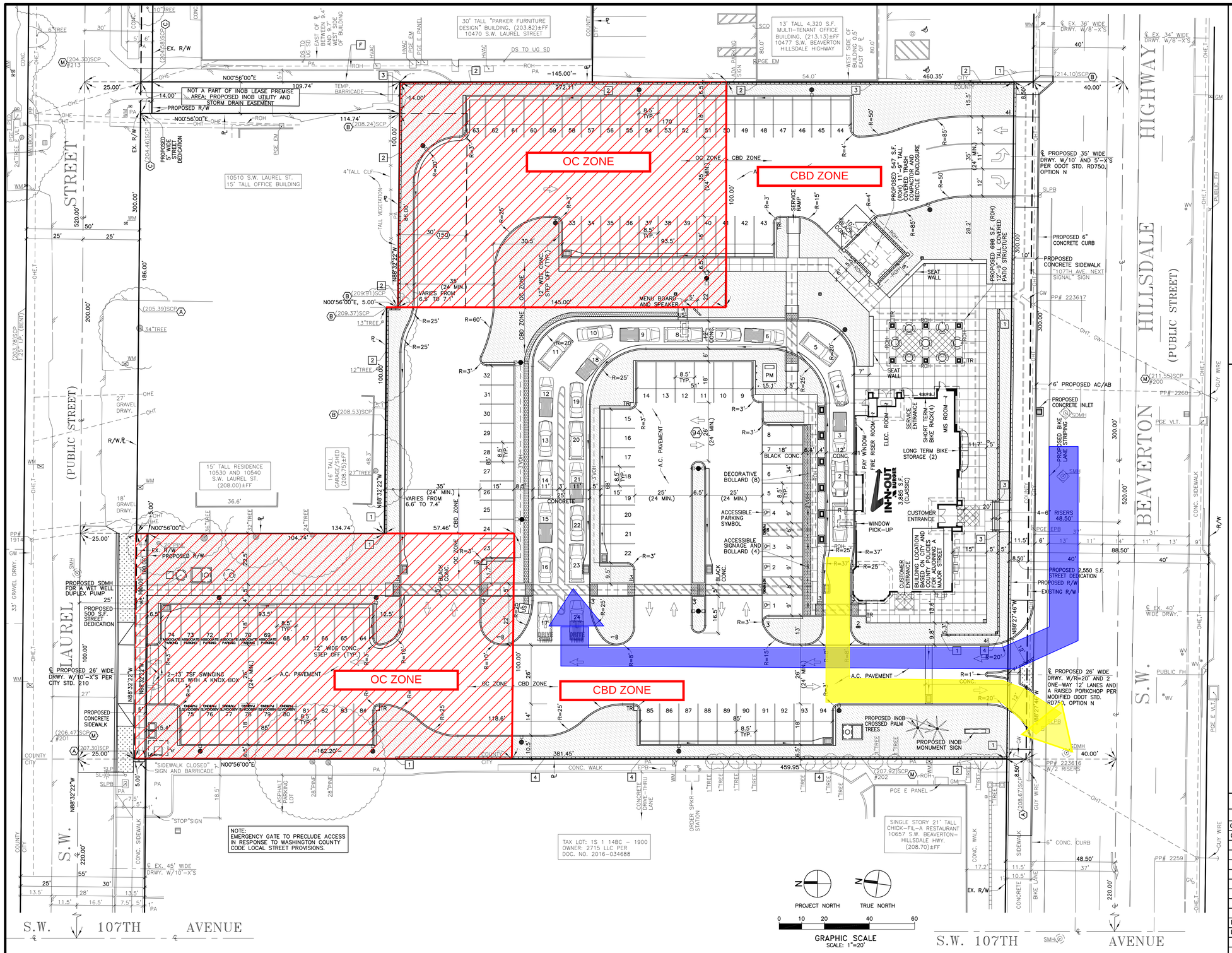


LEGEND

- NEW 24"x36" CONCRETE DRAIN BOX INLET WITH A FLOGARD PLUS FOSSIL FILTER INSERT FOR THE PRE-TREATMENT OF STORMWATER RUNOFF.
- PROPOSED INOB INSTALLED AND MAINTAINED 22'-6" TALL FIXTURE HEIGHT LIGHT POLE ON TOP OF A 30" TALL 24" DIAMETER CONCRETE BASE FOR A TOTAL HEIGHT OF 25' TALL.
- PROPOSED INOB INSTALLED AND MAINTAINED LANDSCAPED PLANTER AND IRRIGATION SYSTEM ONSITE, INCLUDING AREA UNDER BUILDING ROOF OVERHANG (ROH) AND VEHICLE OVERHANG (VOH) CONSISTING OF APPROXIMATELY 23,326 SQUARE FEET (25.1%).
- BLACK TRUNCATED DOMES DETECTABLE WARNING STRIP.
- VEHICLE DETECTOR LOOP.
- PROPERTY LINE.
- OUTDOOR SEATING PATIO TABLE WITH UMBRELLA (4 SEATS).
- OUTDOOR SEATING PATIO TABLE WITH NO UMBRELLA (4 SEATS).
- OUTDOOR SEATING PATIO TABLE WITH NO UMBRELLA (2 SEATS).
- 1 NEW 3' TALL 18"x24" LIT "DRIVE THRU" DIRECTIONAL SIGN.
- 2 NEW 3' TALL 18"x24" LIT "THANK YOU, DO NOT ENTER" DIRECTIONAL SIGN.
- 3 NEW PEDESTRIAN CROSSWALK SIGN.
- 4 NEW ACCESSIBILITY ENTRY SIGN.
- INOB IN-N-OUT BURGER.
- PROPOSED TAN COLOR SPLIT-FACE CMU WALL AND 2" CAP.
- 2 EXPOSED HEIGHT OF PROPOSED CMU RETAINING WALL IN FEET WITH A 46" TALL TUBE STEEL FENCE (TSF) ON TOP WHEN THE EXPOSED HEIGHT IS GREATER THAN 30".
- LOC INOB LIMITS OF PROPOSED CONSTRUCTION.
- LL PROPOSED INOB LEASE PREMISES LINE.
- VOH VEHICLE OVERHANG WITH NO OBSTRUCTIONS INCLUDING LIGHT POLES, TREES AND SIGNAGE.
- ADA ACCESSIBLE PATH OF TRAVEL. ACCESSIBLE PATH OF TRAVEL IS NOT LESS THAN 4 FEET WIDE, AND DOES NOT EXCEED A RUNNING SLOPE OF 1:20 (5%) OR A CROSS SLOPE IN EXCESS OF 1:50 (2%). REFER TO SHEET C33 FOR SPECIFIC SLOPES AND GRADES.
- PGE ELECTRIC PAD MOUNT TRANSFORMER WITH BOLLARDS.
- TR PORTABLE TRASH RECEPTACLE ON A MINIMUM 24"x24"x4" CONCRETE PAD.
- NEW CONCRETE SIDEWALK.
- A REFER TO THE BOUNDARY MONUMENT AND SURVEY CONTROL POINT DESCRIPTIONS SHOWN ON SHEET C36.
- 15Q SIMPLIFIED PLOTTABLE EASEMENT DESCRIPTION SHOWN ON SHEET C36.
- US DRIVE-THRU CATWALK CONCRETE PAD WITH UMBRELLA STAND PER DETAIL "11" SHOWN ON SHEET C___.
- PROPOSED 18" TO 27" TALL 22" WIDE STUCCO COVERED SEAT/SCREEN WALL WITH A PRECAST CONCRETE CAP.
- PROPOSED INOB INSTALLED AND MAINTAINED OFFSITE STREET LANDSCAPE PLANTER AND IRRIGATION SYSTEM CONSISTING OF APPROXIMATELY 429 SQUARE FEET IN S.W. LAUREL STREET AND 266 SQUARE FEET IN S.W. BEAVERTON-HILLSDALE HIGHWAY.
- B REFER TO SHEET C36 FOR ENCROACHMENT NOTES.
- PROPOSED PRECAST CONCRETE MODULAR WETLANDS UNIT WETLANDMOD-6-8-5'-0"-V STORMWATER BIOFILTRATION SYSTEM.
- 24" WIDE MATTED INOB ASSOCIATE WALKWAY PER ___ CONSISTING OF APPROXIMATELY 360 SQUARE FEET.
- CF CURB FACE.

GENERAL NOTES

1. IN-N-OUT BURGER GROSS SITE AREA: 97,701 SQ. FT. OR 2.243 ACRES.
   PROPOSED 5' LAUREL STREET DEDICATION: 570 SQ. FT. OR 0.013 ACRES.
   PROPOSED 8.5' BEAVERTON-HILLSDALE HIGHWAY DEDICATION: 2,550 SQ. FT. OR 0.059 ACRES.
   MINUS NET FLAG STRIP AT NORTHEAST CORNER: 1,536 SQ. FT. OR 0.035 ACRES.
   NET SITE AREA: 93,045 SQ. FT. OR 2.136 ACRES.
2. EXISTING COUNTY ZONE: CBD (COMMUNITY BUSINESS DISTRICT) FOR TAX LOTS 1S114BC02000, 1S114BC02400 AND 1S114BC02401 FRONTING S.W. BEAVERTON-HILLSDALE HIGHWAY.
   OC (OFFICE COMMERCIAL DISTRICT) FOR TAX LOT 1S114BC02100 FRONTING S.W. LAUREL STREET.
3. GENERAL LAND DESIGNATION:
4. EXISTING LAND USE: ONE-STORY 3,555 SQUARE FOOT "HAWAIIAN TIME" RESTAURANT WITH A SINGLE 170' LONG DRIVE-THRU LANE AND 81 SURFACE STRIPED AND UNSTRIPED PARKING SPACES FOR THE PROPERTY AT 10565 S.W. BEAVERTON-HILLSDALE HIGHWAY.
   ONE-STORY 6,043 SQUARE FOOT "AZTECA MEXICAN RESTAURANT" AND 60 SURFACE STRIPED PARKING SPACES FOR THE PROPERTY AT 10505 S.W. BEAVERTON-HILLSDALE HIGHWAY.
5. 5 SPACES PER 1,000 SQUARE FEET OF GROSS FLOOR AREA PLUS OUTDOOR PATIO SEATING AREA = 24 MINIMUM PARKING SPACES REQUIRED.
   12.4 SPACES PER 1,000 SQUARE FEET OF GROSS FLOOR AREA PLUS OUTDOOR PATIO SEATING AREA = 58 MAXIMUM PARKING SPACES
6. IN-N-OUT BURGER URBAN BUILDING AREA = 3,885 S.F.
   INDOOR SEATING = 84 SEATS.
   OUTDOOR SEATING = 34 SEATS (10 TABLES).
   OUTDOOR SEATING AREA = 698 S.F. STRUCTURE PLUS 64 S.F. EACH FOR 0-4 SEAT TABLES (0 S.F.) PLUS 20 S.F. FOR 3-2 SEAT TABLES (60 S.F.) = 758 S.F.
7. REQUIRED LANDSCAPE AREA WITHIN PROPERTY (15%) = 14,178 S.F.
8. LANDSCAPE AREA PROVIDED WITHIN PROPERTY = 23,326 S.F. (25.1%).
9. IN-N-OUT BURGER PARKING SPACE DETAILED SUMMARY TABLE

DESCRIPTION	EXISTING	REQUIRED	PROPOSED
1. STANDARD SPACE (8.5'x18' PLUS A 2' VOH)	0	0	4
2. STANDARD SPACE (8.5'x15' PLUS A 3' VOH)	0	0	18
3. STANDARD SPACE (8.5'x18')	137	55	68
4. ACCESSIBLE VAN (17'x18' PLUS A 2' VOH)	0	1	1
5. ACCESSIBLE SPACE (15'x18' PLUS A 2' VOH)	4	2	3
7. TOTAL	141	58	94
8. IN-N-OUT BURGER DRIVE THRU VEHICLE QUEUE (20' LONG INOB VEHICLE)	0	0	24
9. SHORT-TERM BICYCLE PARKING WITHIN DESIGNATED BIKE RACK.	0	2	4
10. LONG-TERM BICYCLE PARKING WITHIN A LOCKABLE PERMANENTLY ANCHORED LOCKER ON A CONCRETE SLAB-AMERICAN BICYCLE SECURITY COMPANY BIKE-SHELL MODEL 302, FINISH: MEDIUM GRAY.	0	2	2

10. ALL NEW SIGNS SHALL BE APPROVED BY A SEPARATE CITY PERMIT.
11. COUNTY TAX LOT: 1S114BC02100, 1S114BC02000, 1S114BC02400 AND 1S114BC02401.

SHEET INDEX OF COUNTY ENTITLEMENT DRAWINGS

IN-N-OUT BURGER

DEVELOPER:
IN-N-OUT BURGER
13502 HAMBURGER LANE
BALDWIN PARK, CA 91706
CONTACT: CASSIE RUIZ
PHONE: 626 813-8226

Underground Service Alert
Call: Toll Free
811
TWO WORKING DAYS BEFORE YOU DIG

REVISIONS

GHA PROJECT NO. -----
GHA
Architecture/Development
14901 Quorum Drive
Suite 300
Dallas Texas 75254
Ph: (972) 239-8884
Fax: (972) 239-5054

CIVIL ENGINEER:
MSI ENGINEERING, INC.
CIVIL ENGINEERS AND LAND SURVEYORS SPECIALIZING IN SITE DEVELOPMENT
301 NORTH SAN DIMAS AVENUE, SAN DIMAS, CA. 91773
(909) 305-2395 FAX (909) 305-2397
AARON D. PELLOW R.C.E. 91119 01-26-2022 DATE
REGISTERED PROFESSIONAL ENGINEER 91119 OREGON MARCH 08, 2016 AARON D. PELLOW
EXPIRES: 12-31-2022

IN-N-OUT BURGER

10505 AND 10565 SW BEAVERTON-HILLSDALE HIGHWAY
BEAVERTON AREA OF
WASHINGTON COUNTY, OR 97005

COUNTY ENTITLEMENT NEW SITE PLAN

Exhibit 1 **C30.0**

JN 20011-20011 C30.0censp

5/23/2022 11:54:52 AM, MSI ENGINEERING, INC., AP

78-62-D

WASHINGTON COUNTY

ADMINISTRATION BUILDING – 150 N. FIRST AVENUE
HILLSBORO, OREGON 97123

BOARD OF COMMISSIONERS
MILLER M. DURIS, Chairman
BILL BLOOM
VIRGINIA DAGG
DAVID FROST
RICHARD C. HEISLER

September 13, 1978

PLANNING DEPARTMENT
LARRY K. FRAZIER, AIP, Director
(503) 648-8761

Joe Angel
Stark Bank Corporation
627 NE Halsey
Portland, Oregon 97232

PROJECT: Burger King North Parking Lot

FILE NUMBER: 78-62-D

PROPERTY DESCRIPTION: 1S1 14BC, 2000, 2400 & 2100

Dear Joe:

The above project has been reviewed for conformance to the criteria and policies of the Design Review District. It has been determined that the proposal meets those standards subject to the following conditions:

1. Parking area lights shall be directed away from residential properties around this project.

2. There shall be a landscape island at the south end of the new easternmost row of parking is to be located.

3. There shall be three street trees of at least 1½" caliper planted along but outside the right-of-way of SW Laurel Street. (i.e. oak, maple or sycamore = street tree).

You may appeal the above action or conditions to the Planning Commission. A hearing date will be set if written notice of appeal stating your reasons based on the criteria of Section 120 (Design Review District) and payment of the $25.00 fee pursuant to Section 2401-8.2 (Appeal of Administrative Actions) is delivered to the Planning Director within 10 days following your receipt of this notice.

Please call me if you have any questions.

Sincerely,

Jeffrey S. Lakey
Community Design Planner

JSL:lh

cc: Roy Wold, Building Division
Barbara Gassner

BURGER KING MASTER REDEVELOPMENT PLAN 78-62-D

FINDINGS:

1. Burger King is already built and needs more parking.

2. An additional park lot to the north is proposed for office use at a future date.

3. The overall proposal is for 2 phases.
   I. Add Drive up window & change layout.
   - Make "Right turn only" exit on B-H Hwy.
   - Connect to Laurel Street with roadway in future location of office parking lot.

   II. Build office & parking

4. PARKING calculation

Restaurant: 1 p/ [illegible] 1435 ÷ 3.0 = 47.5
lot to empl. [illegible]
[illegible]

Office: [illegible] = 3.5
[illegible]

Exhibit 2, Page 1 of 2

WASHINGTON COUNTY PLANNING DEPARTMENT

DESIGN REVIEW RESEARCH WORKSHEET

Design Review File No. _____

Use: _____

Research By _____ Date 5-12-78 CPO7 ___

TAX MAPS

1. Legal Description 1S 1W 14 BC 2000 2100 2100 or

Acreage _____

Dimensions _____

2. Existing Zoning B3-B2 B2a RU-20

3. Abutting Zones: N _____, E _____, S _____, W _____

4. Previous or current case File no.'s and/or pre-app date; Baker Letter

B-77 PPA B2-2

(attach a copy of approval conditions by staff, Planning Commission, Board of County Commissioners, and/or pre-app notes - hearing minutes).

5. Street Names & R.O.W. width Walnut at North E.W. R.O.W. 50'

B.H. at South E.W. R.O.W. 80

at East N.S. R.O.W. ___

at West N.S. R.O.W. ___

6. Drainage Hazard Area? No Yes

Flood Plain? No Yes Page no. ____ Elevation (if possible) _____

COMPREHENSIVE FRAMEWORK PLAN

1. CFP Designation URBAN

POD # 17 Designation Commercial

ZONING ORDINANCE

1. Is Use Allowed? By Right _____

By Prescribed Conditions _____

What Conditions _____

By Conditional Use _____

2. Setback Requirements

Front _____

Side _____

Rear _____

3. Building Height _____

4. Distance Between Buildings _____

5. Additional _____

6. Special Standards (RE: CASE FILE CONDITIONS)

a. Number of units approved _____

b. Other _____

APPLICATION FOR DESIGN REVIEW

DO NOT WRITE IN THIS SPACE

DESIGN REVIEW _____ FEE 30.00

PLAN CHECK _____ RECEIPT NO. 76685

PROJECT TITLE ADDITION BEAVERTON AREA BURGER KING DATE FILED 4-18-78

OWNER/DEVELOPER STARK BK CORPORATION PHONE 288-7295

ADDRESS 627 NE HALSEY Portland Ore 97232

PLANNER _____ PHONE _____

ARCHITECT CARTER CASE 2874 NW RALEIGH PHONE 227 0383

LANDSCAPE ARCHITECT SAME PHONE _____

ENGINEER DINKWATER PHONE _____

DESIGNER _____ PHONE _____

OTHER _____ PHONE _____

DESCRIPTION OF PROPERTY

ADDRESS BURGER KING RESTAURANT EXISTING ZONE OC

LEGAL DESCRIPTION, LOCATION, SIZE _____

DESCRIPTION OF PROJECT

PROPOSED USE	# BUILDINGS	# UNITS	BUILDING MATERIALS	SQ. FT.	# BEDROOMS

TOTAL SQ. FT. BUILDINGS 1417 (NEW CARRY OUT DRIVING THRU + RET. STORAGE) SQ. FT. PAVING _____ SQ. FT. LANDSCAPE EXISTING

ESTIMATED NO. EMPLOYEES 16 ANTICIPATED DEVELOPMENT DATE JUNE 1978

ANTICIPATED DEVELOPMENT PHASES JUNE - DRIVE THRU - OFFICE NOT KNOWN

TOTAL COST OF PROJECT 10M

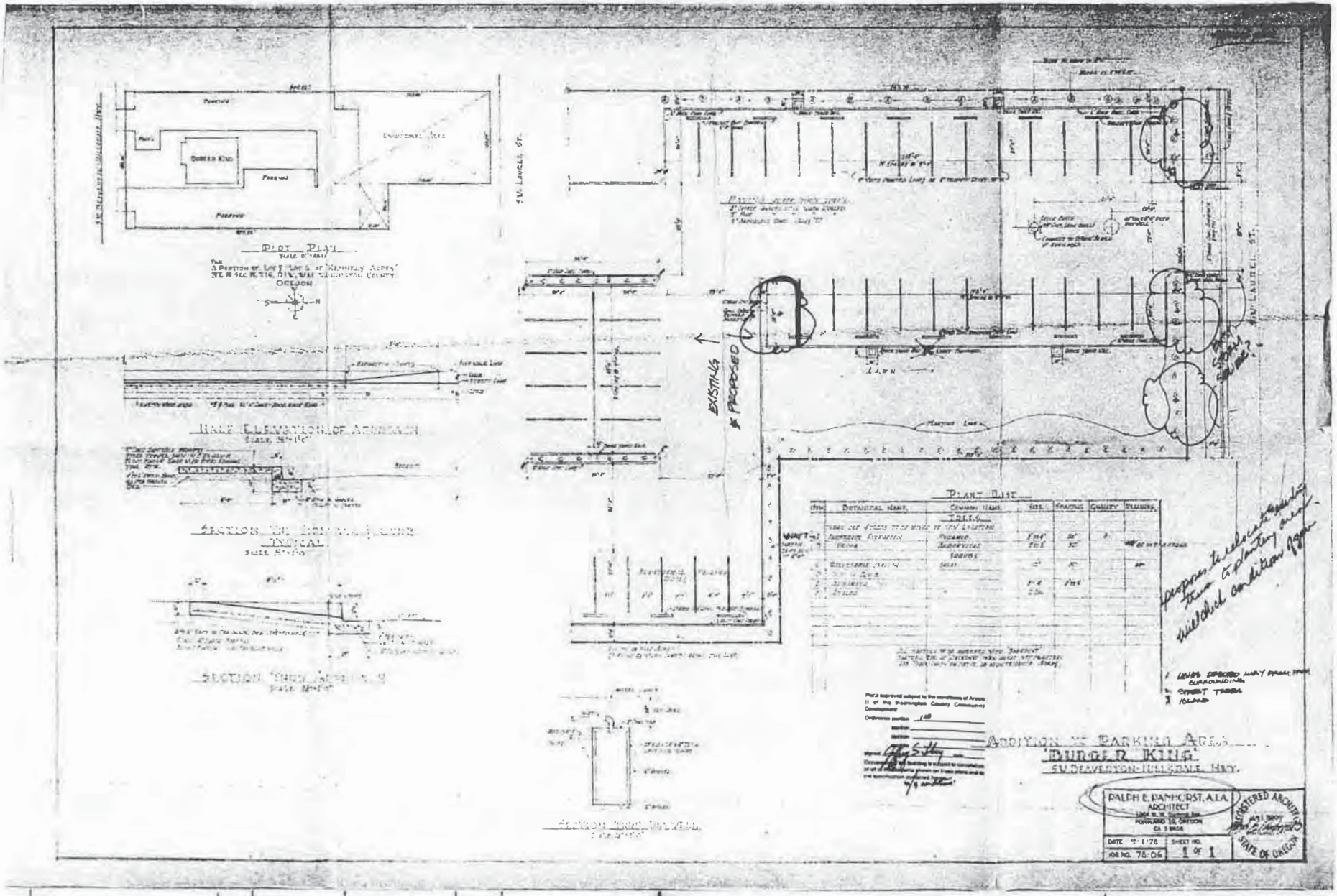
COMMENTS EXISTING AREA AND DEST. - ADD NEW DRIVE THRU WINDOW - MAKE FLOW ONE-WAY

I hereby acknowledge that I have read this application and state that the above is correct and agree to comply with all County Ordinances and State Laws regulating building construction and land use.

SIGNATURE Frank J. Sarafinny DATE 4/18/78

ADDRESS 627 NE HALSEY PORTLAND ORE 97232

Exhibit 2, Page 2 of 2


PLOT PLAN
HALF ELEVATION OF ADDITION
SECTION OF ADDITION
TYPICAL
SECTION THRU ADDITION
EXISTING
PROPOSED
SW LAUREL ST.
PLANT LIST
ADDITION TO PARKING AREA
BURGER KING
SW BEAVERTON-HILLSDALE HWY.
RALPH E. PANHORST, A.I.A.
ARCHITECT
PORTLAND 20, OREGON
REGISTERED ARCHITECT
STATE OF OREGON
DATE 9-1-78
JOB NO. 78-06
SHEET NO. 1 OF 1

Home Search New Schedule

Announcements Register for an Account Reports (7) Login

NOTE: This site does not support Internet Explorer (IE) browser.

NOTE: Possible delays associated with Building Services and Current Planning/Code Compliance services.

1S114BC02000

Building Permits Current Planning Facility Permits Septic Permits

Right-of-Way Traffic Eng Code Compliance

Search Applications Select Record and Request an Inspection

Search Results

Your search for '1S114BC02000' returned the following results.

Explore by Category: Records(44) Property Information(1)

Records

Showing 11-20 of 44

Date	Record Number	Record Type	Address	Short Notes	Project Name
01/26/2011	11000702	Commercial Plumbing	10565 SW BEAVERTON HILLSDALE HWY, BEAVERTON, OR 97005		
01/04/2011	11000060	Commercial Plumbing	10565 SW BEAVERTON HILLSDALE HWY, BEAVERTON, OR 97005		
10/05/2010	10008039	Commercial	10565 SW		

		Electrical	BEAVERTON HILLSDALE HWY, BEAVERTON, OR 97005	
05/27/2010	10003950	Commercial Electrical	10565 SW BEAVERTON HILLSDALE HWY, BEAVERTON, OR 97005	
05/18/2010	10003690	Commercial Mechanical	10565 SW BEAVERTON HILLSDALE HWY, BEAVERTON, OR 97005	
05/18/2010	10003689	Commercial Mechanical	10565 SW BEAVERTON HILLSDALE HWY, BEAVERTON, OR 97005	
04/12/2010	10002545	Commercial Plumbing	10565 SW BEAVERTON HILLSDALE HWY, BEAVERTON, OR 97005	
04/12/2010	P0166919	Building Project	10565 SW BEAVERTON HILLSDALE HWY, BEAVERTON, OR 97005	HAWAII TIME - KITCHE EQUIPM
04/12/2010	10002544	Commercial Addition-Alteration	10565 SW BEAVERTON HILLSDALE HWY, BEAVERTON, OR 97005	
05/03/2005	05195962	Commercial Electrical	10565 SW BEAV HILLS HWY, BEAVERTON, OR	

< Prev 1 2 3 4 5 Next >

Property Information

Showing 1-1 of 1

Address	Parcel Number
10565 SW BEAVERTON HILLSDALE HWY, BEAVERTON, OR 97005	1S114BC02000

155 N First Avenue, Hillsboro, OR 97124-3072, Suite: 350
Phone: (503) 846-3470
Email: Land Use and Transportation

This page maintained by: Land Use & Transportation
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Home Search New Schedule

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NOTE: This site does not support Internet Explorer (IE) browser.

NOTE: Possible delays associated with Building Services and Current Planning/Code Compliance services.

1S114BC02000

Building Permits Current Planning Facility Permits Septic Permits

Right-of-Way Traffic Eng Code Compliance

Search Applications Select Record and Request an Inspection

Record Number 10002544:

Commercial Addition-Alteration

Record Status: Final

Record Info

Work Location

10565 SW BEAVERTON HILLSDALE HWY, BEAVERTON, OR

Record Details

Applicant:

PO BOX 2093
OREGON CITY, OR, 97045
Main Phone:5419545169
Mobile Phone:5033056728

Licensed Professional:

ADW LLC
PO BOX 2093
OREGON CITY, OR, 97045
Main Phone:5419545169
Contractor 172229

Project Description:

HAWAIIAN TIME - REPLACE KITCHEN EQUIPMENT

More Details

Parcel Information

155 N First Avenue, Hillsboro, OR 97124-3072, Suite: 350
Phone: (503) 846-3470
Email: Land Use and Transportation

This page maintained by: Land Use & Transportation
Disclaimer and Privacy Statement

WASHINGTON COUNTY

ADMINISTRATION BUILDING – 150 N. FIRST AVENUE
HILLSBORO, OREGON 97123

PLANNING DEPARTMENT
LARRY K. FRAZIER, AIP, Director
(503) 648-8761

November 23, 1977

RESTAURANT REVIEW: 77-122-D

PROJECT: Mr. Steak Restaurant

APPLICANT: Lyle Cummings
Resource Investment
114 SE 101st
Portland, OR 97233

LEGAL: 1S1 14BC, 2500 and 2502, located on the north side of Beaverton-Hillsdale Highway, between SW 103rd and SW 107th.

REQUEST: The applicant is requesting approval for a restaurant on the above tax lots.

FINDINGS:

1. Site suitability and existing conditions:

   a. The tax lots involved in the proposal are flat and occupied by some fruit and fir trees and by two structures which were originally houses, but are now used for offices. These structures will be demolished if the proposal is approved.

   b. The property is bordered on the south by Beaverton-Hillsdale Highway, on the west by Burger King, on the east by a small multi use commercial building, and on the north by two existing residences.

   c. The total area encompassed by the proposal is 47,135 square feet or 1.08 acres.

   d. There are 2 or 3 pre-existing curb cuts onto Beaverton-Hillsdale Highway along the subject property frontage which is 150' in length.

   e. The parcel is already committed to commercial uses.

2. Relationship to surrounding land uses:

   a. The general character of the vicinity surrounding the subject parcels is commercial with interpersed high and low density residential development.

   b. The proposal is auto-oriented which mirrors the orientation of existing adjacent developments.

   c. POD #17 designates Office Commercial uses on the abutting residential properties to the north. The plan also designates a large area just north of that area for medium density development.

   d. The City of Beaverton has jurisdiction over all properties south of, and on property immediately to the east of the subject property.

   e. There are no other economical steak houses within the vicinity.

3. Traffic impacts analysis:

   a. The applicant's statement in the case file indicates that the traffic count on Beaverton-Hillsdale Highway is 22,900 ADT.

   b. There is a left turn refuge in the center of Beaverton-Hillsdale Highway. The right-of-way width is 80'.

   c. Tom Spear of Public Works has issued a statement on traffic circulation for the proposed development. The memo is contained in the case file and will be discussed later in this report.

   d. The applicant proposes access by means of a left and right-turn-in, right-turn-only-out, driveway at the frontage on Beaverton-Hillsdale Highway.

   e. The exit from the site is proposed via a 14 foot wide exit only driveway fronting onto SW Laurel Street to decrease conflicts with Beaverton-Hillsdale Highway traffic by routing traffic to either 103rd or 107th, where there are more convenient intersections.

4. Applicable policies and goals of the Comprehensive Framework Plan are analyzed by looking at the site plan and by the 3 previous findings. Analysis of the site plan follows:

   a. The applicant is proposing 55 parking spaces which conforms to ordinance standards.

   b. The Portland franchise for the adjacent Burger King has indicated to the staff that joint access between these two uses would be acceptable to him. A joint access between the two uses, as proposed, will provide more flexibility in traffic ingress and egress by allowing Mr. Steak users to exit via the Burger King driveway and so on. The proposed location is at the rear of the proposed restaurant.

   c. Landscaping of the site meets district criteria.

   d. Detention of storm water is provided for in the plans.

   e. No sidewalks exist along Beaverton-Hillsdale Highway. The applicant has not proposed to install a sidewalk.

f. Tom Spear, as mentioned above, has indicated that an additional 10' of right-of-way is necessary for Beaverton-Hillsdale Highway. It, therefore, would be mandatory that the applicant dedicate the additional footage at this time to provide 50' from centerline.

g. Tom Spear has also indicated that the applicant should be required not be remonstrate against forming an LID for improvement of Laurel Street. The share of the cost for the LID would be determined by traffic generation figures with the higher generators paying a greater share of the improvement costs.

h. The third recommendation of Mr. Spear is that the applicant acquire driveway permits from the state and the county.

RECOMMENDATION:

Based on the findings, the staff recommends approval of the restaurant and the site plan subject to the following conditions:

1. Landscaping must be completed within 120 days following occupancy of the building.

2. The applicant must dedicate additional right-of-way to provide 50' from centerline where the site abuts Beaverton-Hillsdale Highway within one year following approval.

3. The applicant shall agree not to remonstrate against formation of an LID for improvement of SW Laurel Street where cost share shall be determined by established traffic generation counts.

4. The applicant must provide a 5' sidewalk along Beaverton-Hillsdale Highway.

5. Signs will be limited to one free standing sign at least 5' from the right-of-way of the highway, not to exceed the maximum size as described in Section 1950 (Signs) of the Washington County Zoning Article.

PLANNING DIRECTOR'S ACTION:

Approval _____

Approval with staff conditions X

Denial _____

Signature [signature] Date 12/1/77

mp

file

WASHINGTON COUNTY

ADMINISTRATION BUILDING – 150 N. FIRST AVENUE
HILLSBORO, OREGON 97123

BOARD OF COMMISSIONERS
RAY MILLER, Chairman
BILL BLOOM
VIRGINIA DAGG
MILLER M DURIS
RICHARD C HEISLER

PLANNING DEPARTMENT
LARRY K. FRAZIER, AIP, Director
(503) 648-8761

August 19, 1977

Mr. Russell Weber
114 SE 181
Portland, OR 97233

SUBJECT: 77-122-D MR STEAK RESTAURANT

Dear Russ:

Following our August 19 telephone conversation, I checked your building permit application to verify the fees you have paid. I found that $70.00 was given to us for the design review. The fee called for in the new restaurant ordinance which I have enclosed is $250.00. We need the balance of $180.00 before we can proceed with the review process. In addition, a written statement as called for in the ordinance is necessary as support for your proposal. You may mail them into the department if you so desire. If you have any questions, please call me or Roger Superneau at 648-8761.

Sincerely,

[signature]

Jeff Lakey
Assistant Planner

JSL:mp

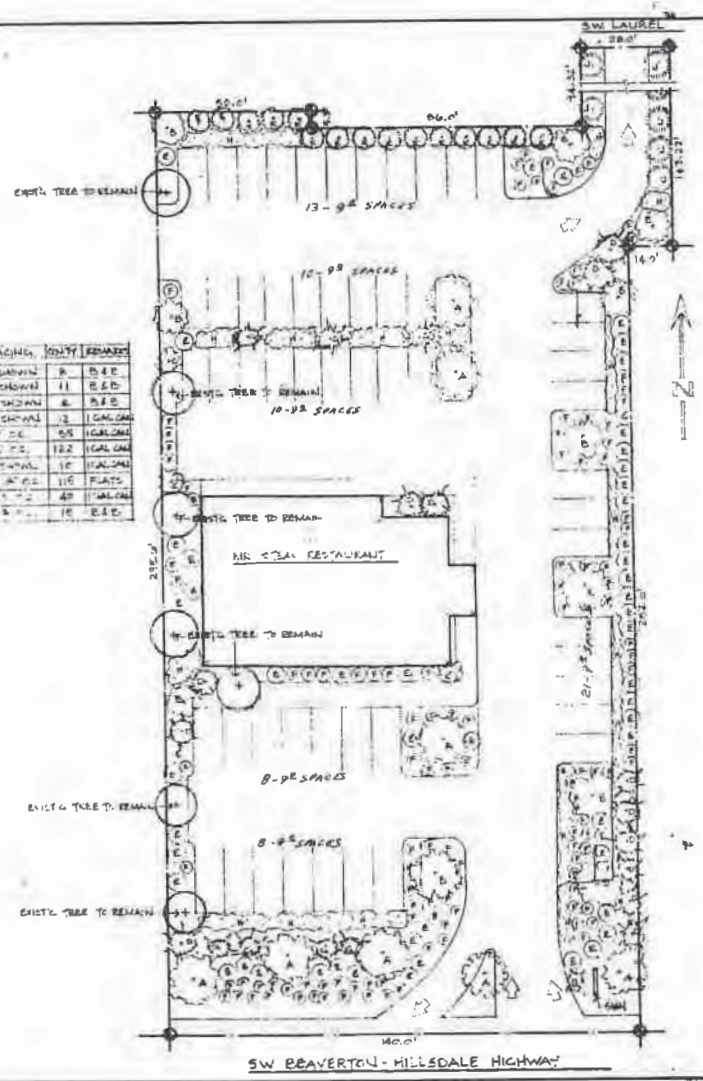
Enclosure

Exhibit 5
Page 2 of 2

77-122-D

NO	BOTANICAL NAME	COMMON NAME	SIZE	SPACING	QUANTY	REMARKS
A	QUERCUS PALUSTRIS	PIN OAK	[illegible] HT	AS SHOWN	8	B&B
B	ACER PLATANOIDES	NORWAY MAPLE	[illegible] HT	AS SHOWN	11	B&B
C	PRUNUS BIRELIANA	FLOWERING PLUM	[illegible] HT	AS SHOWN	6	B&B
D	PINUS MUGO MUGHUS	MUGO PINE	[illegible] HT	AS SHOWN	2	1 GAL CAN
E	RHODODENDRON	[illegible]	[illegible]	[illegible]	65	1 GAL CAN
F	AZALEAS MOLLIS	[illegible]	[illegible] HT	[illegible]	122	1 GAL CAN
G	TAMARIX JANIKER	[illegible]	[illegible] HT	AS SHOWN	10	1 GAL CAN
H	MAHONIA AQUIFOLIUM COMPACTA	OREGON GRAPE	[illegible] HT	[illegible]	115	FLATS
J	JC "PFITZERIANA AUREA"	GOLDEN PFITZER JUNIPER	[illegible] HT	[illegible]	49	1 GAL CAN
K	PINUS CONTORTA	SHORE PINE	[illegible] HT	[illegible]	18	B&B

TOTAL LANDSCAPE AREA = [illegible] S.F.
TOTAL PROJECT AREA = [illegible] S.F.
LANDSCAPING REQUIRED [illegible]
(47,186)(15%) = [illegible] S.F.



MR. STEAK RESTAURANT
WASHINGTON CO
LANDSCAPE PLAN
1" = 20'-0"

REVISIONS MARKED AND NOTED IN RED INK APPROVED MARCH 22 1978. LANDSCAPING TO REMAIN AS SHOWN EXCEPT IN AREAS THAT WILL BE ASPHALTED PER REVISIONS. REVISED PLAN PROVIDES 70 SPACES.

[illegible] Mr Steak Inc.
3-22-78

Revised Plan approved
3-22-78
Arthur [illegible]
W.C.P.D. as noted

Approved subject to the conditions of Article [illegible] of the Washington County Community Development Ordinance section 120
section
section
section
signed [illegible] date 12-1-77
Occupancy of the building is subject to completion of all of the elements shown on these plans and to the requirements contained herein.
with conditions

NOV 9 3 REC'D

BUILDERS DESIGN INC.
[illegible] N.E. Halsey Portland, Oregon 97220 252-3455 - 252-3464

11-22-77

MR. STEAK RESTAURANT

Exhibit 6
Page 1 of 1

WASHINGTON COUNTY
DEPARTMENT OF LAND USE
AND TRANSPORTATION
LAND DEVELOPMENT SERVICES DIVISION
150 NORTH FIRST
HILLSBORO, OREGON 97124 648-8761

STAFF REPORT & NOTICE OF DECISION

PROCEDURE TYPE: I

CPO: 3 COMMUNITY PLAN: Raleigh Hills

LAND USE DISTRICT(S): CBD (Community Business District)

CASE FILE NO: 86-41-D

APPLICANT:
Raymond J. Bartel, Architect
2515 SE Harrison Street
Milwaukie, OR 97222

OWNER:
Eastro Investment
901 SW Highland Drive
Gresham, OR 97030

PROPERTY DESCRIPTION:

ASSESSOR MAP NO: 1S1 14 BC
TAX LOT NO(S): 2401
SITE SIZE: 45,842 square feet, 1 acre
ADDRESS: 10505 SW Beaverton-Hillsdale Hwy.
LOCATION:

PROPOSED DEVELOPMENT ACTION: Development Review of an Addition for a Drive-Up Window and change in occupancy from a Mr. Steak Restaurant to D'Lites Restaurant

February 14, 1986

I. APPLICABLE REGULATIONS:

A. 1985 Washington County Comprehensive Framework Plan
B. 1985 Raleigh Hills/Garden Home Community Plan
C. 1985 Washington County Community Development Code:
Section 202-1 (Type I Application)
Section 313 (Community Business District)
Section 402 (Development Review Intent & Purpose)
Section 403 (Development Review Applicability)
Section 404 (Master Planning)
Section 406 (Building, Siting and Architectural Design)
Section 407 (Landscape Design)
Section 409 (Circulation and Access)
Section 413 (Parking and Loading)
Section 414 (Signs)
Article V (Public Facilities and Services)

II. FINDINGS:

A. Background:

1. The applicant proposes to remodel the existing restaurant (formerly Mr. Steak Restaurant) for use as a "D'Lites Restaurant".

2. The following alterations are proposed:

a. A 300 square foot addition at the front of the building.

b. Addition of a drive-up window at the rear of the building.

86-41-D

c. Remodeling 300 square feet of the building into office space.

d. Closing the site's access to SW Laurel Avenue.

B. 1985 Comprehensive Framework Plan:

The Preface of the Comprehensive Framework Plan requires development applications to be in compliance with the standards of the Community Development Code and the applicable Community Plan, which in this case is the Raleigh Hills/Garden Home Community Plan. It will be shown in this report that the proposed addition complies to these standards.

C. 1985 Raleigh Hills/Garden Home Community Plan:

There are no specific policies in this Plan which affect this request.

D. 1985 Washington County Community Development Code:

1. Article II, Procedures:

Section 202-1 Type I

§202-1.1 Type I development actions involve permitted uses or development governed by clear and objective review criteria. Type I actions do not encompass discretionary land use decisions. Impacts have been recognized by the development standards. The intent and purpose of the District is not a consideration of approval in Type I uses.

STAFF: This application is being reviewed as a Type I application.

2. Article II, Land use Districts:

Section 313 Central Business District

STAFF: A restaurant with a drive-up window is a permitted use in this District. The additions comply with the dimensional standards of this District.

3. Article IV, Development Standards:

Section 402 Intent and Purpose

Section 403 Availability

Section 404 Master Planning

STAFF: The applicant has submitted the following information as required by these Sections:

(1) Master Plan
(2) On-Site Analysis

This information is included in the casefile.

Section 406 Building Siting and Architectural Design

STAFF: The applicant has submitted the required building plans. These include a site plan, building floor plans, building elevations and sections.

Section 407 Landscape Design

STAFF: The applicant proposes to provide new plant material to the existing landscape areas. New landscaping will also be provided to the exit driveway at the rear of the site.

Section 409 Circulation and Access

STAFF: The existing access to the site is from the Beaverton-Hillsdale Highway and from from SW Laurel Avenue by exit only. The developer intends to close the driveway to SW Laurel so they do not have to do improvements (asphalt overlay) to SW Laurel. Landscaping will be provided to this area. The County's traffic engineer has reviewed this application and has stated that the Laurel Avenue exit is not needed to handle the site's traffic. See Attachment "A" for additional findings.

Section 413 Parking and Loading

STAFF: The existing parking area is adequate for the proposed use.

An extruded concrete or asphalt curb will have to be added to the parking lot where the new landscape area is to be added at the rear of the site, per Section 413-5.5.

Section 414 Signs

STAFF: A wall mounted sign is proposed to be located on the front of the building. The approximate area of this sign is 24 square feet. With this sign, the remaining amount of allowable sign area is 48 square feet per face for one freestanding sign.

A sign permit will have to be obtained for the proposed sign and any other signs prior to their erection.

4. Article V, Public Facilities and Services:

STAFF: If the site's driveway on SW Laurel Avenue is to be reopened some time in the future, the standards of this Article will have to be reviewed at that time. This change will require the submission and review of a Type II application. The application will review the impact upon Public Facilities from the change in occupancy from the existing Mr. Steak Restaurant to the D'Lites Restaurant, particularly impacts upon roads. Possible conditions of approval could include an asphalt overlay over SW Laurel Avenue. See Attachment "A" for additional findings.

III. CONCLUSION:

Based upon the findings and material in the casefile, Staff finds the applicant's request meets the applicable Plan Policies and Community Development Code standards, subject to compliance with recommended conditions of approval.

IV. STAFF RECOMMENDATION:

Based upon the conclusion and the material contained in the casefile, this request is approved subject to the following conditions:

1. The exit driveway to SW Laurel Avenue shall be closed and it shall not be used for access to the site.

2. If the applicant desires to reopen the driveway to SW Laurel Avenue, an application requesting this modification shall first be made. This application shall be a Type II application. This application shall review the impact on public services and facilities from the change in occupancy from the Mr. Steak Restaurant to the D'Lites Restaurant. Conditions of approval regarding road improvements shall be made if they are warranted.

3. Construct an asphalt or concrete extruded curb adjacent to the new landscape areas.

4. A sign permit shall be obtained prior to the erection of any signs, including the proposed wall sign on the front of the restaurant.

5. The existing driveway onto the Beaverton-Hillsdale Highway shall not be altered.

6. In addition to the Ordinance requirements and Conditions listed above, the applicant must also obtain all building permits and pay all associated fees including the Traffic Impact Fee as may be required prior to any development on the subject property, including but not limited to construction, change of occupancy or placement of mobile homes on the site.

V. ACTION:

Approval _____ Approval with Conditions ✓ Denial _____

Signature John E. Rosenberger, Land Development Manager Date 2-14-86

NOTE: Appeal Information is attached to this report as Attachment "B".

jr:emc

ATTACHMENT A

WASHINGTON COUNTY

Inter-Department Correspondence

Date February 14, 1986

To : Casefile 85-41-D

From : Joanne Rice, Associate Planner JR

Subject : D'LITES RESTAURANT - SW BEAVERTON HILLSDALE HWY & SW LAUREL AVENUE

Staff has reviewed the above-referenced application and viewed the site for adequacy of transportation facilities and services and submits the following findings. The subsequent recommendations are based on the Community Development Code, Article V.

Findings of Fact

1. SW Beaverton-Hillsdale Highway is an urban major arterial and a State facility. The existing right-of-way width is 90 feet; required right of way is 100 feet.

2. SW Laurel Avenue is a County minor collector. Existing right of way is 55 feet; required right of way is 60 feet.

3. Pedestrian facilities are adequate along the Beaverton-Hillsdale Highway.

4. The roadway surface and width of the Beaverton-Hillsdale Highway is acceptable.

5. The roadway surface condition of SW Laurel west of the site is unacceptable. The roadway surface condition of SW 107th between SW Laurel and the Beaverton-Hillsdale Highway is unacceptable. Both road surfaces are cracking and have ravelling edges.

6. The applicant intends to close the driveway on SW Laurel Avenue. All traffic will now access the site from the Beaverton-Hillsdale Highway. The Beaverton-Hillsdale Highway driveway can adequately handle all the traffic entering and leaving the site.

Recommendations

If the driveway to SW Laurel Avenue is reopened, the site shall be subject to the standards of Article V - Public Facilities and Services. This review shall assess the impact on roads from the change in occupancy from the Mr. Steak Restaurant to D'Lites' Restaurant.

JD

ATTACHMENT A

WASHINGTON COUNTY

Inter-Department Correspondence

Date February 14, 1986

To : Casefile 85-41-D

From : Joanne Rice, Associate Planner JR

Subject : D'LITES RESTAURANT - SW BEAVERTON HILLSDALE HWY & SW LAUREL AVENUE

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5. The roadway surface condition of SW Laurel west of the site is unacceptable. The roadway surface condition of SW 107th between SW Laurel and the Beaverton-Hillsdale Highway is unacceptable. Both road surfaces are cracking and have raveling edges.

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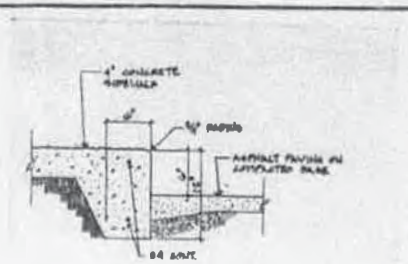
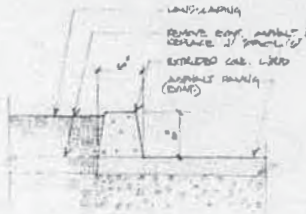
JR

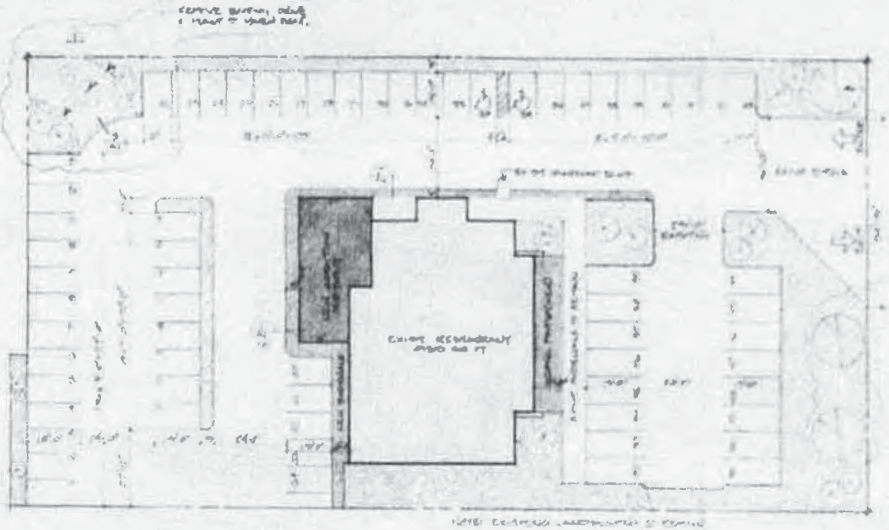


NEW SIDEWALK CURB

SIDEWALK PATIO ADDITION



EXTENDED CURB



SITE PLAN + EXISTING PARKING

SITE LOCATION

VICINITY MAP

PROJECT NOTES

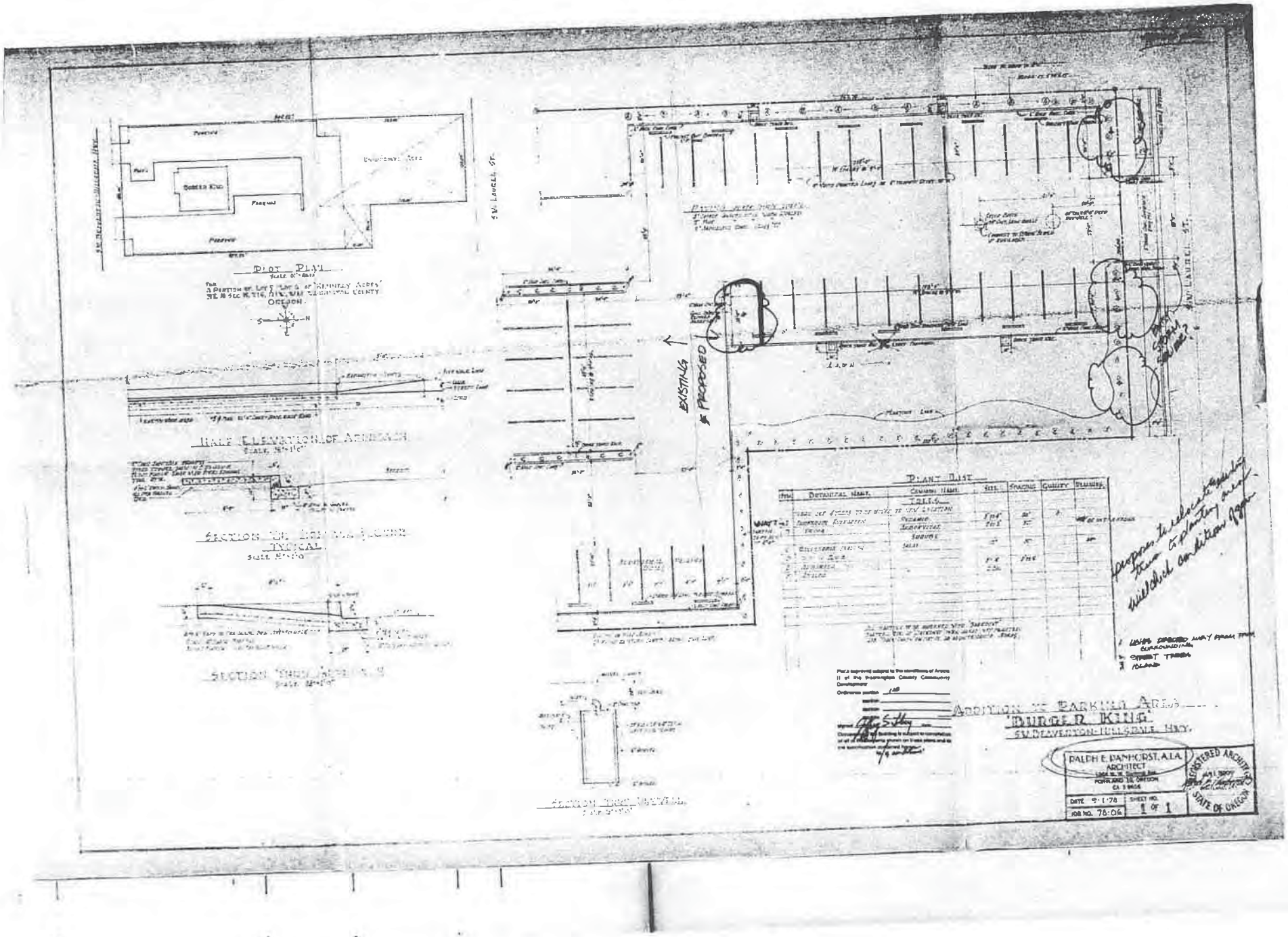
AZTECA MEXICAN RESTAURANT

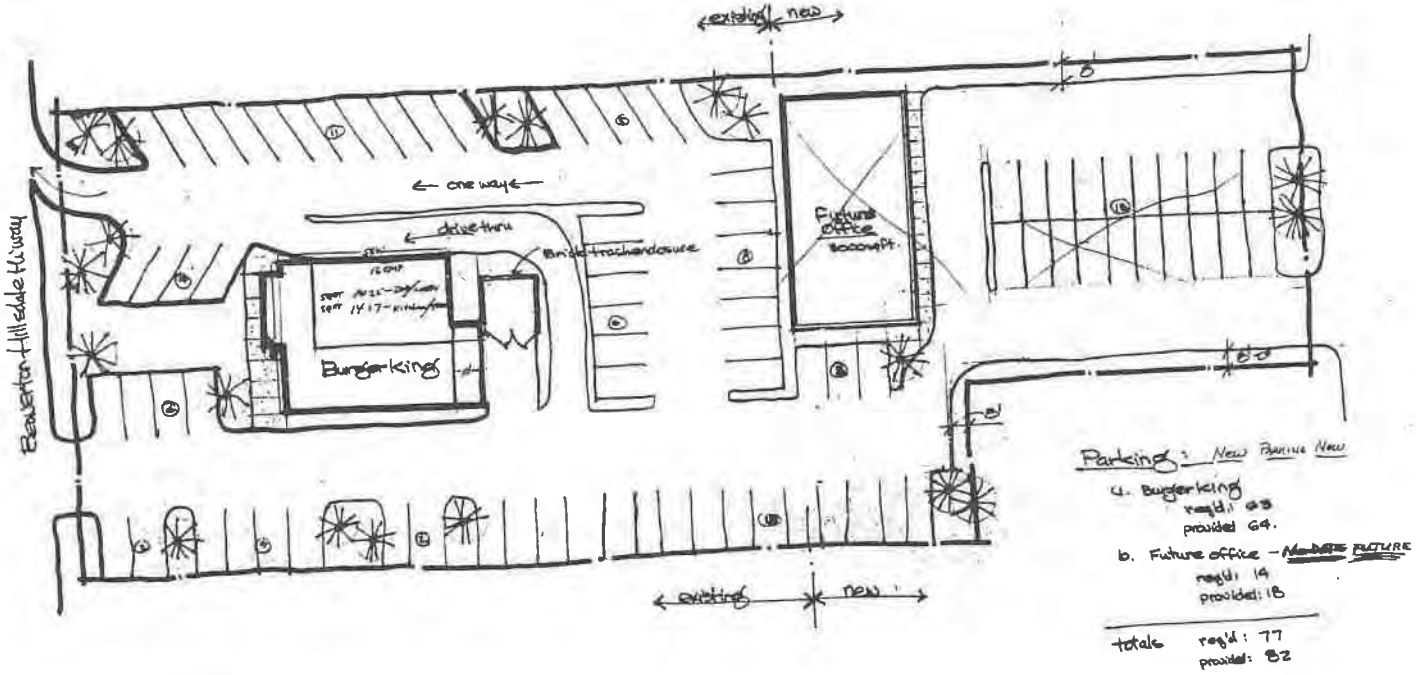
10505 SW BEAVERTON-HILLSDALE HWY. BEAVERTON, OR

MERRICK LENTZ ARCHITECT

A1

Exhibit 8
Page 1 of 8


PLOT PLAN
OREGON
BURGER KING
EXISTING
PROPOSED
PLANT LIST
ADDITION TO PARKING AREA
BURGER KING
SW BEAVERTON-HILLSDALE HWY.
RALPH E. DANHORST, A.I.A.
ARCHITECT
REGISTERED ARCHITECT
STATE OF OREGON
DATE 9-1-78
JOB NO. 78-06
SHEET NO. 1 OF 1



north

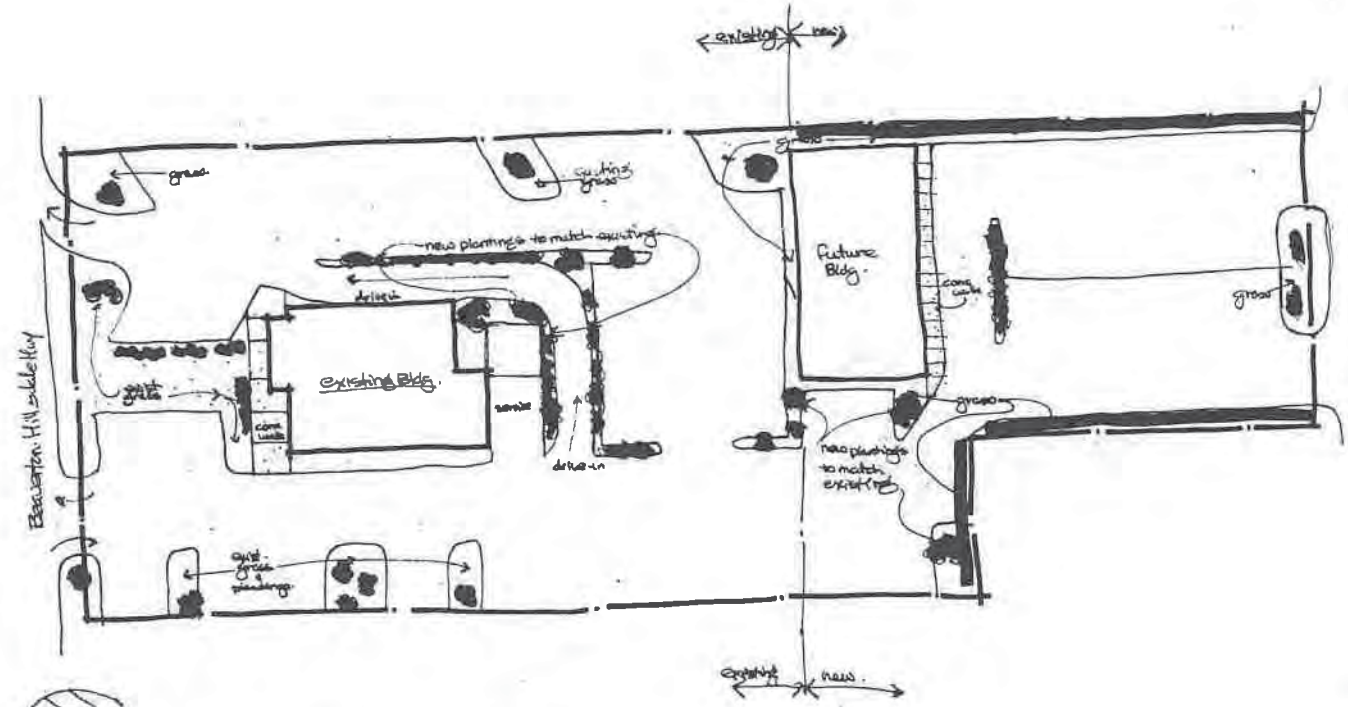
Scale 1" = 20'-0"

preliminary site plan

additions to Beaverton Burger king

CARTER CASE ARCHITECT

4-14-78



north

Scale 1" = 20'-0"
7809

landscape plan

additions to Beaverton Burger King

CARTER CASE ARCHITECT
2924 nw raleigh
portland 227 0283

4-14-78

Use this one.

77-122-D

MR. STEAK RESTAURANT

WASHINGTON CO

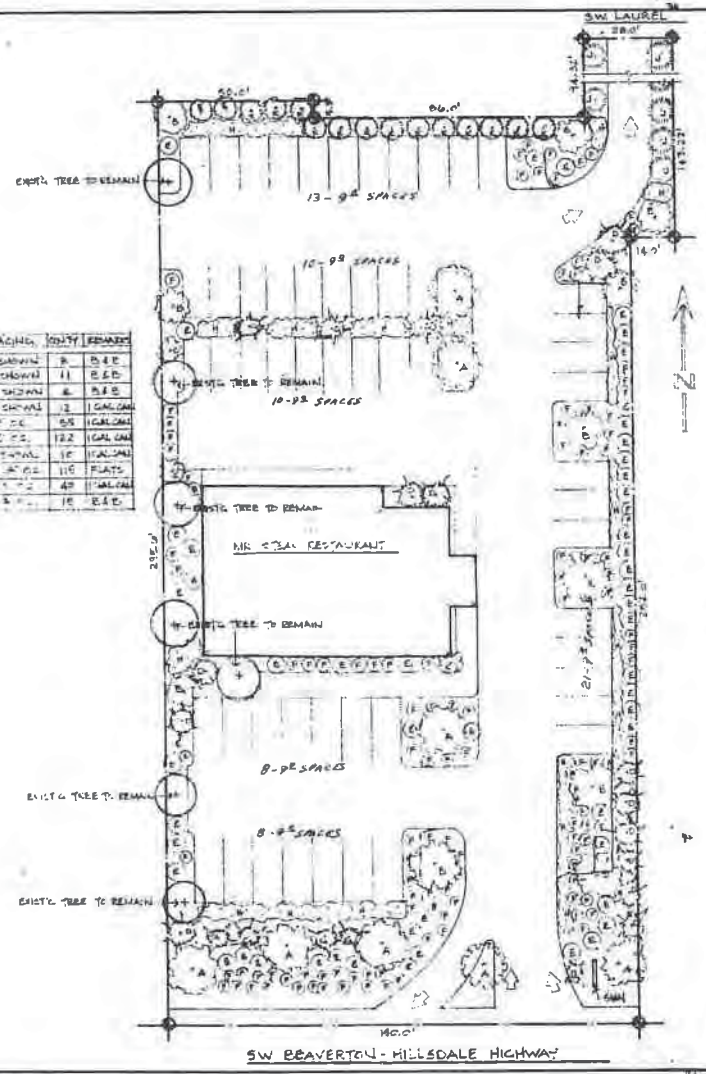
LANDSCAPE PLAN

1" = 20'-0"

SYM	BOTANICAL NAME	COMMON NAME	SIZE	SPACING	QUANT	REMARKS
A	QUERCUS PALUSTRIS	PIN OAK	[illegible] HT	AS SHOWN	8	B&B
B	ACER PLATANOIDES	NORWAY MAPLE	[illegible] HT	AS SHOWN	11	B&B
C	PRUNUS BIRELIANA	FLOWERING PLUM	[illegible] HT	AS SHOWN	6	B&B
D	PINUS MUGO MUGHUS	MUGO PINE	24"-30" HT	AS SHOWN	12	1 GALLON
E	RHODODENDRON	[illegible]	24"-30" SPRD	6'-0" O.C.	65	1 GALLON
F	AZALEAS MOLLIS	[illegible]	[illegible] HT	4'-0" O.C.	122	1 GALLON
G	TAMARIX JANIBER	TAMARIX JANIBER	[illegible] HT	AS SHOWN	15	1 GALLON
H	MAHONIA AQUIFOLIUM 'COMPACTA'	OREGON GRAPE	[illegible] HT	12" O.C.	115	FLATS
J	JUNIPERUS HETZERI 'HETZERI'	HETZER JUNIPER	[illegible] HT	[illegible]	49	1 GALLON
K	PINUS CONTORTA	SHORE PINE	[illegible] HT	[illegible]	15	B&B

TOTAL LANDSCAPE AREA = 14,822 SQ. FT.
TOTAL PROJECT AREA = 47,186 SQ. FT.

LANDSCAPING REQUIRED [illegible]
(47,186)(15%) = 7077 SQ. FT.



REVISIONS MARKED AND NOTED IN RED INK APPROVED MARCH 22 1978. LANDSCAPING TO REMAIN AS SHOWN EXCEPT IN AREAS THAT WILL BE ASPHALTED PER REVISIONS. REVISED PLAN APPROVES 70 SPACES.

[illegible] Mr. Steak Inc.
3-23-78

Revised Plan approved
3-22-78
Arthur [illegible]
W.C.P.D. as noted

Approved subject to the conditions of Article [illegible] of the Washington County Community Development Ordinance section 120
section
section
section
signed [illegible] date 12-1-77
Construction of the building is subject to completion of all of the elements shown on these plans and to the conditions contained herein.
with conditions

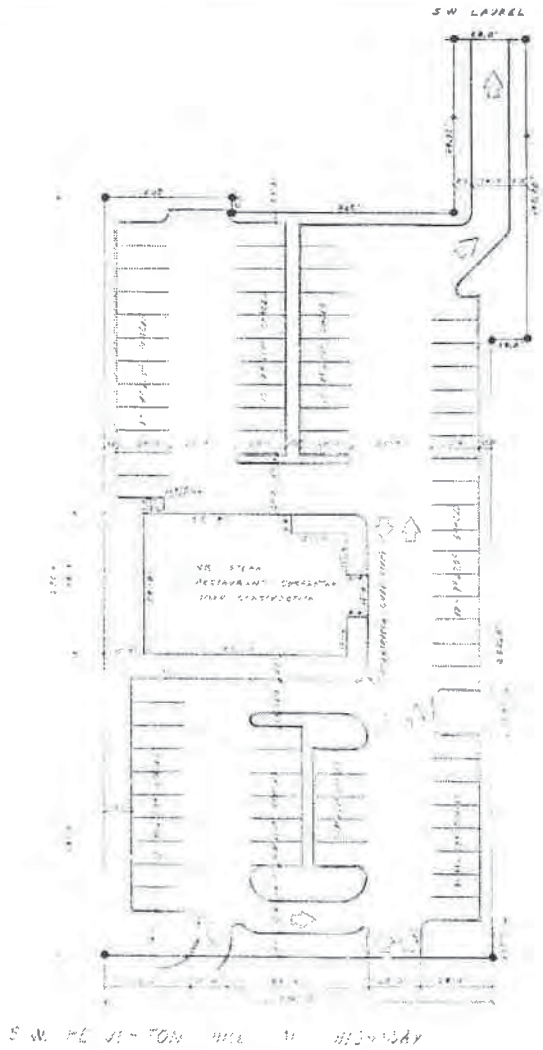
NOV 23 REC'D

BUILDERS DESIGN INC.
[illegible] N.E. Halsey Portland, Oregon 97220 252-3453 - 252-3464

11-22-77

MR. STEAK RESTAURANT

LANDSCAPE - ALT #2



PROPOSED PLOT PLAN
MR. STEAK RESTAURANT
WASHINGTON COUNTY, OREGON

LEGAL DESCRIPTION

[illegible]

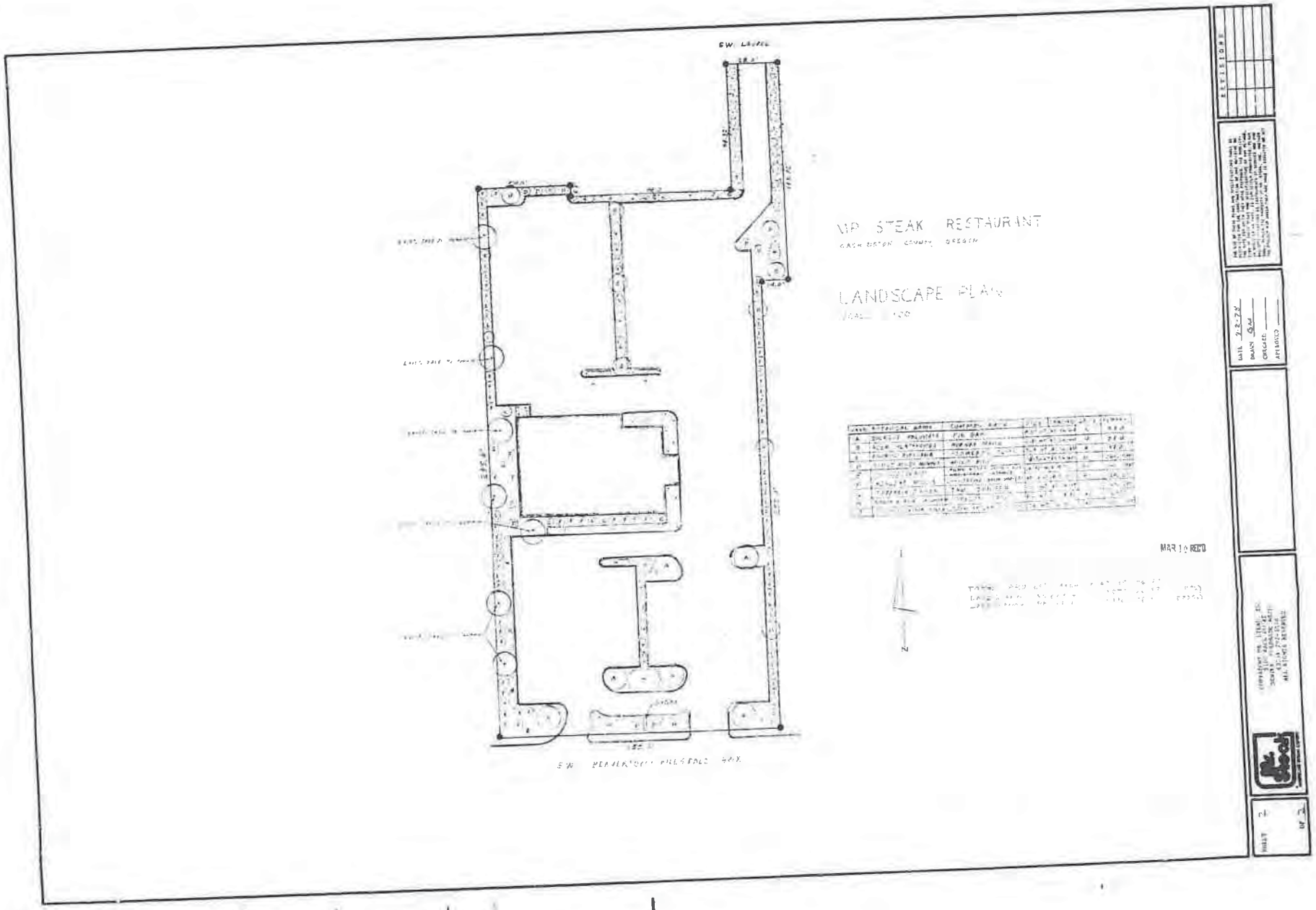
LEGEND

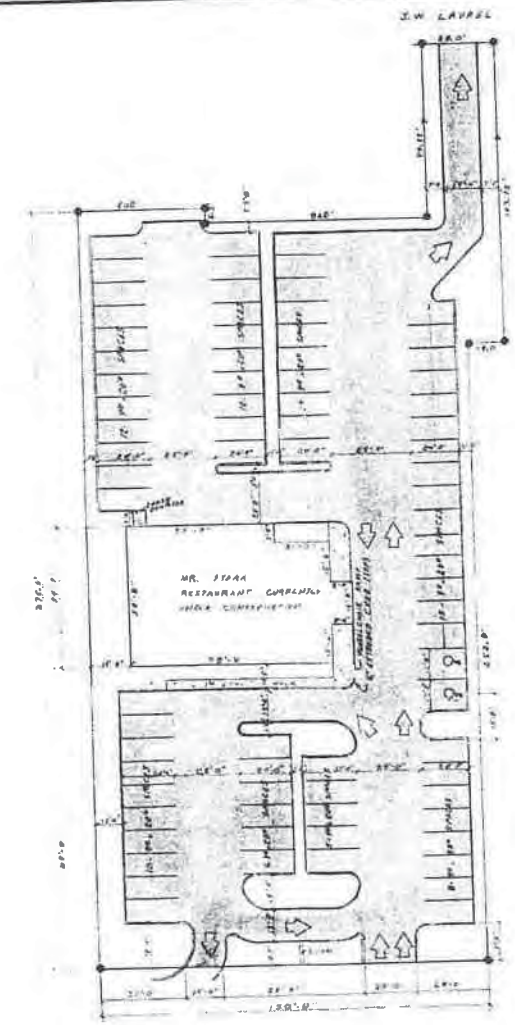
AREA [illegible] [illegible]
[illegible] AREA [illegible]
PARKING [illegible] SPACES

REVISIONS

DATE [illegible]
DRAWN [illegible]
CHECKED
APPROVED

SHEET 1


S.W. LAUREL
VIP STEAK RESTAURANT
LANDSCAPE PLAN
MAR 10 REC'D
N



PROPOSED PLOT PLAN
MR. STEAK RESTAURANT
WASHINGTON COUNTY, OREGON

LEGAL DESCRIPTION

[illegible] 1S, 1W, TAX LOTS [illegible], [illegible] AND [illegible] PLUS A 1W 103.78' EASEMENT ON THE WEST SIDE OF TAX LOT [illegible].

MAR 10 [illegible]

LEGEND

AREA [illegible] 47,135 SQ. FT.
LANDSCAPE AREA 11,992 SQ. FT. (25%)
PARKING 78 SPACES (2 HANDICAP)

REVISIONS

DATE 1-5-78
DRAWN: G.A.L.
CHECKED
APPROVED

SHEET 1 of 2

HOFFMEISTER ARCHITECTS, INC.
[illegible]
BEAVERTON, OREGON 97005
(503) 292-9010

Vagabundos Cosina Mexican Restaurant

10505 SW Beaverton Hillsdale Hwy, Beaverton, OR

4.2 995 reviews

Dale McElmurry
Local Guide · 338 reviews · 36 photos

4 months ago

The food was good and the service was great. Our waiter was fun and it made the evening fun for us...

The food is a bit pricey but the plates are big with generous portions. We spent about $5 more per person here compared to other places.

We had a good time. The restaurant wasn't busy so we had some private space.

The store was clean and smelled wonderful as we came in.

The lot was clean. It seemed like it was well run.

Vagabundos Cosina Mexican Restaurant

10505 SW Beaverton Hillsdale Hwy, Beaverton, OR

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Vagabundos Cosina Mexican Restaurant

10505 SW Beaverton Hillsdale Hwy, Beaverton, OR

4.2 995 reviews

1

Nilmini Hoyt
Local Guide · 46 reviews · 78 photos

3 years ago

Well prepared food presented very well. Very tasty and quality food. When I order my meal, I always look for a balanced diet. More vegetables, less carbs and some protein. The meal they have prepared for us had everything. Loved every … More

Exhibit 9
Page 3 of 8

Vagabundos Cosina Mexican Restaurant

10505 SW Beaverton Hillsdale Hwy, Beaverton, OR

4.2 995 reviews

1

Nilmini Hoyt
Local Guide · 46 reviews · 78 photos

3 years ago

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Vagabundos Cosina Mexican Restaurant

10505 SW Beaverton Hillsdale Hwy, Beaverton, OR

4.2 995 reviews

People often mention

All | bar 32 | brunch 23 | buffet 16 | happy hour 9 | +6

Sort by

Most relevant | Newest | Highest | Lowest

John Coppedge
Local Guide · 191 reviews · 9 photos
3 months ago

Vagabundos Cosina Mexican Restaurant

10505 SW Beaverton Hillsdale Hwy, Beaverton, OR

4.2 995 reviews

People often mention

All | bar 32 | brunch 23 | buffet 16 | happy hour 9 | +6

Sort by

Most relevant | Newest | Highest | Lowest

John Coppedge
Local Guide · 191 reviews · 9 photos
3 months ago

Vagabundos Cosina Mexican Restaurant

10505 SW Beaverton Hillsdale Hwy, Beaverton, OR

4.2 995 reviews

3 months ago

This place is absolutely gross never have I been at a place were the staff is rude ! Have no baby swings prices over rated and the food was the worst!

1

D

DeeDee Fowler
78 reviews · 1 photo

3 months ago

Food was good and the blackberry Margarita was phenomenal.

Like

Vagabundos Cosina Mexican Restaurant

10505 SW Beaverton Hillsdale Hwy, Beaverton, OR

4.2 995 reviews

3 months ago

This place is absolutely gross never have I been at a place were the staff is rude ! Have no baby swings prices over rated and the food was the worst!

1

DeeDee Fowler
78 reviews · 1 photo

3 months ago

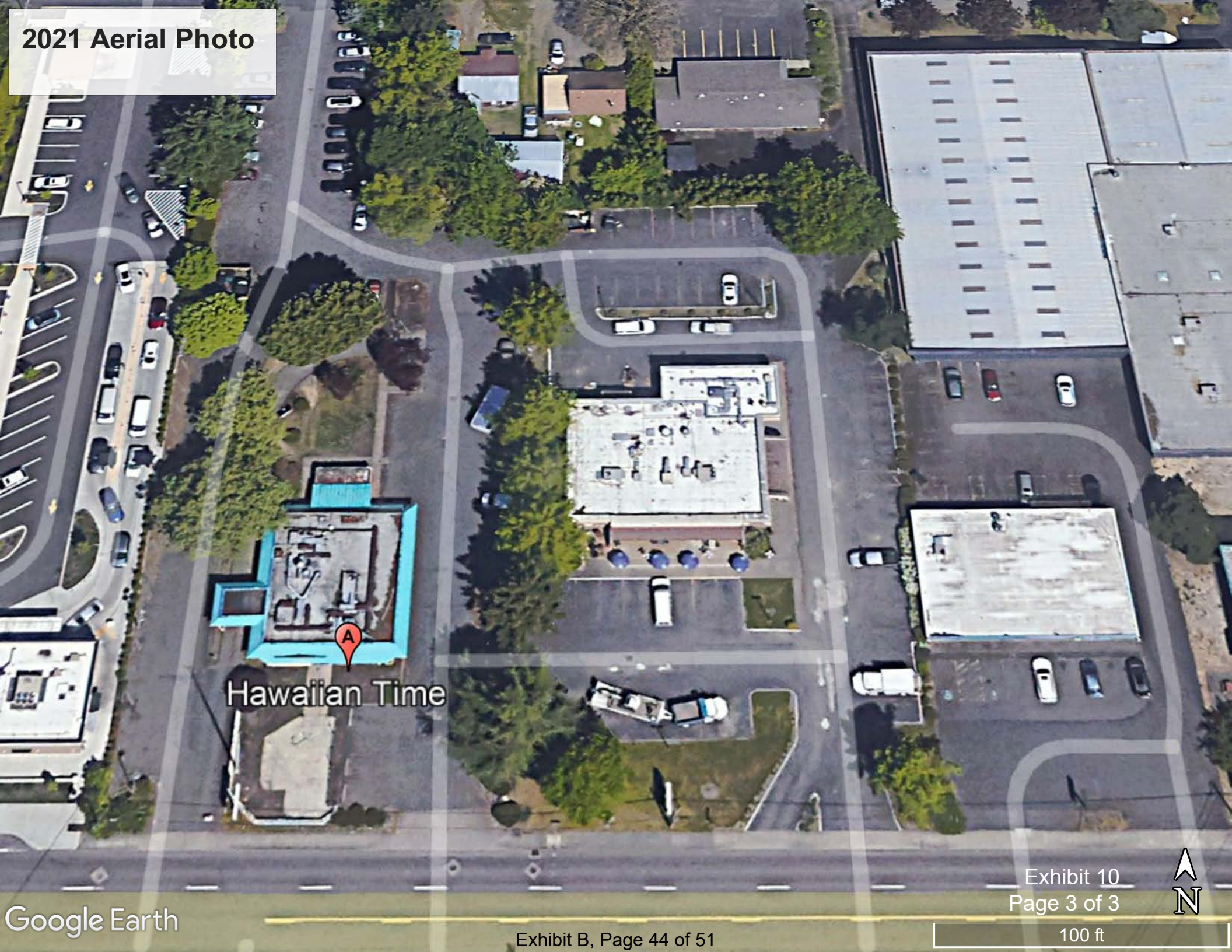
Food was good and the blackberry Margarita was phenomenal.

Like

1995 Aerial Photo

2002 Aerial Photo

Exhibit 10
Page 2 of 3


2021 Aerial Photo
A
Hawaiian Time
Google Earth
Exhibit 10
Page 3 of 3
N
100 ft

EXISTING HAWAIIAN TIME RESTAURANT

Exhibit 11

HAWAIIAN TIME RESTAURANT

EXISTING HAWAIIAN TIME DRIVE-THRU

Exhibit 11
Page 3 of 7

EXISTING HAWAIIAN TIME
DRIVE-THRU (FROM REAR)

Exhibit 11

PHOTO OF DRIVE-THROUGH ACCESS
BETWEEN PROPERTIES
Exhibit 11

EXISTING PARKING IN OC ZONE
OFF OF LAUREL STREET
Exhibit 11

EXISTING PARKING IN OC ZONE
FROM HAWAIIAN TIME

Exhibit 11
Page 7 of 7

Schwabe
WILLIAMSON & WYATT®

August 23, 2022

Garrett H. Stephenson
Admitted in Oregon
T: 503-796-2893
gstephenson@schwabe.com

VIA E-MAIL

Washington County Hearings Officer
Department of Land Use and Transportation
155 N 1st Avenue, #350-13
Hillsboro, OR 97124

RE: In-N-Out Burger
Case File L2200066-SU/D/PLA/PLA

Dear Hearings Officer Turner:

This firm represents In-N-Out Burger (the "Applicant") in the above-referenced file. This letter is respectfully submitted as a final written argument supporting the zone crossing issues discussed in the Hearings Officer's August 2, 2022 memorandum and to address the public comments received during the re-opened record period. This letter supplements our letter dated August 9, 2022. As previously stated, the zone crossing issue was raised in public comments and at the June 16th hearing. During the initial open record phase and during the re-opened record phase, the Applicant demonstrated that there is no zone crossing issue by providing a graphical attachment to Kittelson & Associate's June 28, 2022 memorandum to the Hearings Officer (the "Kittelson Memo"), that clearly indicates that cars do not have to cross the OC zone to use the drive-thru. We reiterate that Staff agreed with this assessment, and in its July 7 memo to the Hearings Officer, staff concurred "that the drive-thru functions occur strictly in the Community Business District (CBD) only and not in the OC zoning district."

The Hearings Officer raised a number of concerns with the Applicant's analysis of this issue, suggesting that a drive-thru restaurant (defined as "drive-up" or "drive in" in the CDC) may not be permitted under LUBA's holding in *Wilson v. Washington County*, 63 Or LUBA 314 (2011), *Bowman Park v. City of Albany*, 11 Or LUBA 197 (1984), and *Roth v. Jackson County*, 38 Or LUBA 894, 905 (2000).

The Applicant provided an initial response to these concerns in a letter dated August 9, 2022, and the Applicant maintains its position that none of the holdings discussed in the Hearings Officer's order prohibit a drive-thru use on the subject property for this Application. The Applicant also provides the Hearings Officer with alternative bases to approve the Application with the proposed access points because the drive aisles and parking areas located in the OC-zoned portion of the property are nonconforming uses and any alteration to these nonconforming uses complies with the applicable nonconforming use requirements of Washington County Community Development Code ("CDC") and ORS 215.130 *et seq.*

I. Response to Public Comments

During the re-opened record period, the County received six emails and public comments on the subject application. However, only Mr. Ed Trotter's email marked as OR2-b of the record addresses the limited issue raised in the Hearings Officer's August 2, 2022 memorandum. First Mr. Trotter argues "by the applicant's own admission, and drawings provided as part of the hearing, the intent is that the aisle from the east entrance will be used for drive thru queuing." However, the Kittleson Memo clearly shows that cars do not have to cross the OC zone to use the drive-thru and all anticipated queuing can be accommodated on the CBD-zoned portion of the property.

Next, Mr. Trotter argues that the nonconforming use has been abandoned for more than one year. However, Mr. Trotter confuses the Applicant's argument. Whether the Azteca restaurant currently has a drive-thru use is irrelevant. The use question at issue is whether the drive aisles and parking areas located in the OC-zoned portions of the property are a nonconforming use.[1] As a result, the fact that Azteca (located on the eastern portion of the property) does not include a drive-thru is not relevant because the existing drive aisles and parking provide shared access to the drive-thru currently located on the western portion of the property since at least 1978 when the County approved the expansion of the Burger King parking, as shown by the documentation provided in our previous letter dated August 9, 2022.

Lastly, Mr, Trotter argues that the Application does not satisfy the criteria in the CDC for alteration of a nonconforming use. To the contrary, as discussed in detail in Section IV below, the Applicant is reducing the nature and extent of the nonconforming use and thus the proposed alteration of the nonconforming use complies with the nonconforming use requirements of both the CDC and ORS 215.130 *et seq.*

II. *Bowman Park* and its progeny are distinguishable from the facts in this case.

As discussed at length in our letter dated August 9, 2022, *Bowman Park* and its progeny are distinguishable from the instant application because the proposed drive-thru use includes three access points (two on Beaverton Hillsdale Highway for customer access and one on SW Laurel Street for emergency access) and not merely a single point of access. Importantly, in *Bowman Park*, *Wilson*, and *Roth*, the use itself relied on the accessway in question as its <u>sole</u> means of access. Stated simply, all of these cases addressed uses which obtained their sole access points through zones which do not allow those uses. *Wilson*, in particular, clearly stated that the driveway included in the "use" is the one "necessary to connect" the use with the nearest public right-of-way. None of these cases stand for, or support, the proposition that any use that can be accessed by traveling over a zone that does not allow that use, must be denied. As previously stated, this office was unable to locate a single case in which the mere *ability* to access a use through a zone

[1] To the extent it is relevant, the Applicant provided evidence in its August 9, 2022 letter that neither of the existing restaurants on the property have been abandoned for more than one year.

that does not specifically allow that use requires either the principle use itself, or the driveway, to be denied.

As a result, the Hearings Officer should not extend the holdings in *Wilson, Roth,* or *Bowman Park* to this Application because (1) the doctrine in those cases has never been used that way and (2) as explained in our August 9, 2022 letter, joint driveways in shopping centers with multiple zones are common. The two examples previously provided, including the existing uses on the property, show how shared drives commonly cross zones that may or may not allow the use that the person using those drives intends to access. Such access arrangements are likely *required* by the CDC in some circumstances. *See, e.g.*, CDC 430-41.2. Extending the zone crossing doctrine to sites with multiple means of access would upend what is a common and desirable aspect of commercial development.

III. The principle use itself need not be denied when it includes an access to a right-of-way that does not violate the zone crossing principles of *Wilson, Roth,* and *Bowman Park.*

As a corollary to the points above, the zone crossing issue in this case pertains not to the principle use itself but only to drive aisles crossing the OC zone. Thus, even under their strictest application, neither *Wilson, Roth, n*or *Bowman Park* require denial of the Application in its entirety. This is especially true of this case because, unlike all of the other cases considered above, the Application includes a primary access in the CBD zone. As stated in our August 9, 2022 letter, this point is supported by LUBA's holding in *Del Rio Vineyards v. Jackson County*, 73 Or LUBA 301 (2016).

IV. The existing parking and accessways in the OC zone are legal nonconforming uses that may be continued.

As submitted with our August 9, 2022 letter, a preponderance of the evidence in the record demonstrates the following with regard to the east access and drive aisle and the parking areas now zoned OC:

- There has been a legally-established drive-thru use on the west side of property since at least 1978. The parking within the now-OC-zoned portion of the site near SW Laurel Street was legally established at that time.

- The Mr. Steak restaurant (now Azteca) was approved in 1977 and that approval allowed joint access between the two sites so both could use all access points on Beaverton-Hillsdale Highway.

- The conversion of Mr. Steak to D'Lites Restaurant in 1986 included approval of a drive-thru use on the east parcel, directly accessible by the east driveway.

- Customers have been able to access a drive-thru restaurant through the now OC-zoned drive aisle since the Azteca building was built in the late 1970s.

- Aerial photos demonstrate that the shared accesses between the existing Hawaiian Time and Azteca restaurant, established in the late 1970s, have remained since that time.

- Hawaiian Time is currently open and these drives can still be used to access the drive-thru from all access points, including from SW Laurel Street and from Beaverton Hillsdale Highway through the OC zone.

- Existing parking serving the Hawaiian Time restaurant is also present between the SW Laurel Street frontage and the existing drive-thru, including in areas currently zoned OC.

- The code provisions limiting drive-thru uses in the OC zone were applied to the east drive aisle between the two restaurants sometime after 1986, when both restaurants already had joint use of that drive.

- The existing Hawaiian Time restaurant and its drive-thru is still in use.

Given that *Wilson*, *Roth*, and *Bowman Park* all consider a driveway to be a "use" connected with whatever principle land use it serves, the Applicant need not prove that proposed In-N-Out Burger restaurant is an expansion, replacement, or continuance of a nonconforming use, only that the proposed uses of OC-zoned land that are proposed to be continued are legally nonconforming. Stated simply, the Application for the proposed restaurant is for a conforming use and the nonconforming use provisions of the CDC and ORS 215.130 *et seq*. only apply to the drive-aisle between the Azteca Restaurant and other existing parking areas within the OC zone.

In determining whether to approve a proposed use as an alteration of a nonconforming use, where the local government has not previously determined that a nonconforming use exists, the local government must determine (1) whether the use was lawfully established when restrictive zoning was first applied; (2) the nature and extent of such use when it became nonconforming; (3) whether the use has been discontinued or abandoned; and (4) whether any proposed alteration of the nonconforming use complies with standards governing alterations of nonconforming uses. *Tylka v. Clackamas County*, 28 Or LUBA 417 (1994). While not defined in the CDC, ORS 215.130(9), defines "alteration" of a nonconforming use as follows:

> (a) A change in the use of no greater adverse impact to the neighborhood; and
>
> (b) A change in the structure or physical improvements of no greater adverse impact to the neighborhood.

As stated by LUBA in *Leach v. Lane County*, 45 Or LUBA 580, 607 (2003) "an alteration that happens to reduce off-site adverse impacts is still an alteration, albeit one that almost certainly will be approved under ORS 215.130(9)."

As stated above, and in our August 9, 2022 letter, that use of the drive-aisles and parking areas now located in the OC zone to access a drive-thru located on the western portion of the property was lawfully established when the restrictive zoning was first applied sometime after

1986. Moreover, the nonconforming use was never discontinued or abandoned, even though a drive-thru is no longer located on the eastern portion of the property. With respect to the nature and extent of the nonconforming use, as shown on the Burking King Parking Expansion Approval, attached as **Exhibit 1**, the parking area adjacent to SW Laurel Street included the drive aisle and it appears to include 27 parking spaces on the portion of the property that is now zoned OC. As shown on the Azteca Approved Plot Plan, attached as **Exhibit 2**, the portion of the property now zoned OC includes the drive aisles providing shared access to the drive-thru as well as at least 28 parking spaces. As shown on the Site Plan attached as **Exhibit 3**, and as previously submitted, only 21 parking spaces and a drive-aisle are proposed in the OC-zoned portion of the property located adjacent to SW Laurel Street. In addition, only 23 parking spaces and a drive-aisle are located on the OC-zoned eastern portion of the property.

The Applicant maintains that changes to traffic related to the proposed drive-thru on the west portion of the property is not an alteration the nonconforming drive aisles and parking area located in the OC zone. However, to the extent the Hearings Officer disagrees, the only traffic analysis submitted into the record by a professional transportation engineer was done by the Applicant's consultant, Kittelson & Associates, and it was reviewed and approved by County and ODOT staff. No other party has offered evidence or analysis of any kind. As such, both the County and ODOT have deemed that traffic-related approval criteria are adequately addressed in the memoranda submitted by Kittelson & Associates. Specifically, the memoranda show:

- The project will result in a <u>reduction</u> of traffic generated from the property (Table 1, January 26 memo);
- The trip generation data, which supports the above point, was based upon actual traffic counts at existing In-N-Out Burger restaurants, which are higher than would be estimated using nationally-relied upon fast food restaurant data;
- After the initial opening period, all intersections studied will satisfy ODOT and Washington County mobility targets; and
- The proposed site has been designed to meet peak queuing needs measured at other In-N-Out locations.

As a result, there is substantial evidence in the record that a reduction in traffic generated from the property will result in a reduction in the use of the drive aisles and parking areas in the portion of the property zoned OC. Thus, to the extent the Hearings Officer concludes that the Applicant is altering the nonconforming use, the Applicant is reducing the nature and extent of the nonconforming use. Coupled with the fact that (i) the Applicant is closing an existing access onto SW Laurel Road and an existing access on Beaverton Hillsdale Highway; and (ii) the entirety of the parking area complies with current landscaping, stormwater, and other applicable standards of the CDC, the Applicant is also reducing the adverse impact on the neighborhood resulting from the nonconforming use.

Attached as **Exhibit 4** are additional findings regarding compliance with the applicable nonconforming use provisions of CDC 440-3, 440-4, and 440-6. As a result, the Hearings Officer can find that the use of the OC-zoned portion of the property is a legal nonconforming use and the proposed use is a permitted alteration to a nonconforming use.

V. CONCLUSION

For the above reasons, the Hearings Officer can find that the zone crossing doctrine does not prohibit either the principle use or the drive aisle used to access the east driveway, and in the alternative, that all proposed uses in the OC zone constitute existing nonconforming uses that have not been abandoned and the Applicant proposes to continue these uses. As a result, the Applicant respectfully request the Hearings Officer to approve the application.

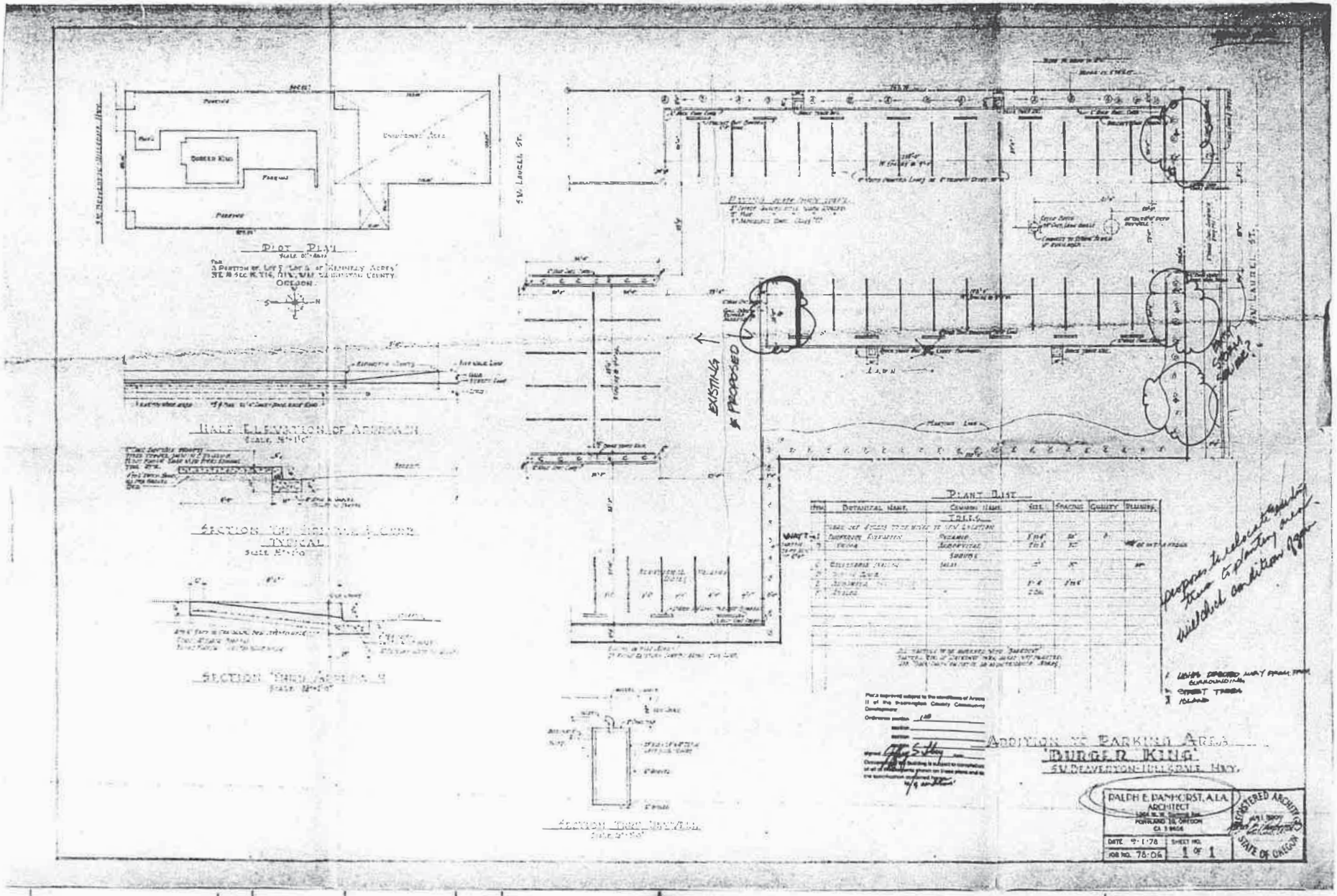
Best regards,

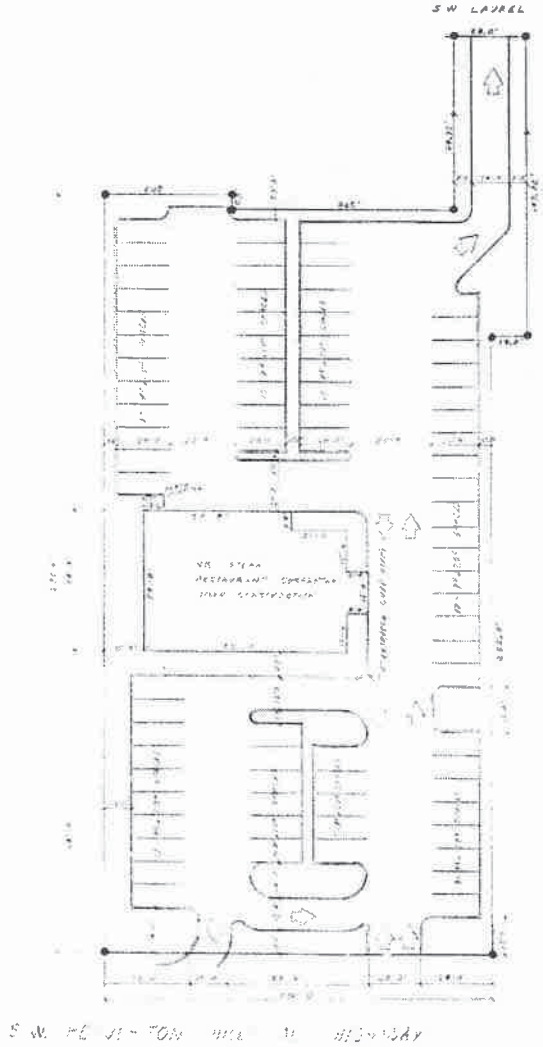
Garrett H. Stephenson

GST:jmhi
Enclosures

cc: Ms. Cassie Ruiz (*via email w/enclosures*)
Ms. Emily Bateman (*via email w/enclosures*)
Ms. Julia Kuhn (*via email w/enclosures*)
Ms. Chris Brehmer (*via email w/enclosures*)
Ms. Sandra Freund (*via email w/enclosures*)
Mr. Joseph O. Gaon (*via email w/enclosures*)

PDX\138634\268779\JOG\34578432.1


PLOT PLAN
HALF ELEVATION OF ADDITION
SECTION THRU ADDITION
EXISTING
PROPOSED
SW LAUREL ST.
PLANT LIST
ADDITION TO PARKING AREA
"BURGER KING"
SW BEAVERTON-HILLSDALE HWY.
RALPH E. PANHORST, A.I.A.
ARCHITECT
PORTLAND 20, OREGON
DATE
JOB NO. 78-06
SHEET NO.
1 OF 1
REGISTERED ARCHITECT
STATE OF OREGON



PROPOSED PLOT PLAN
MR. STEAK RESTAURANT
WASHINGTON COUNTY, OREGON

LEGAL DESCRIPTION

[illegible]

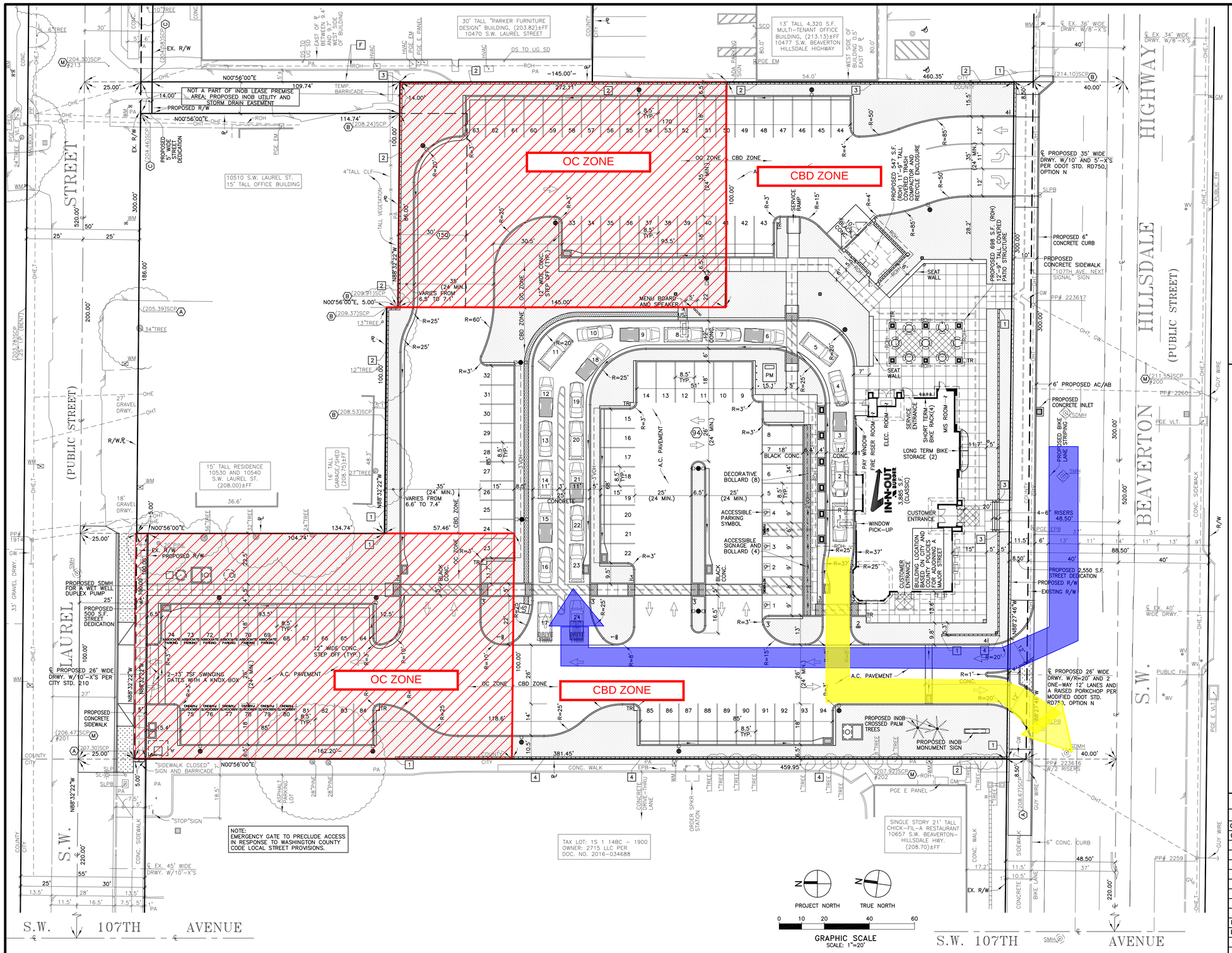
LEGEND

AREA [illegible] [illegible]
CONCRETE AREA [illegible]
PARKING 78 SPACES

REVISIONS

DATE [illegible]
DRAWN: [illegible]
CHECKED
APPROVED

SHEET 1 OF 1



LEGEND

- NEW 24"x36" CONCRETE DRAIN BOX INLET WITH A FLOGARD PLUS FOSSIL FILTER INSERT FOR THE PRE-TREATMENT OF STORMWATER RUNOFF.
- PROPOSED INOB INSTALLED AND MAINTAINED 22'-6" TALL FIXTURE HEIGHT LIGHT POLE ON TOP OF A 30" TALL 24" DIAMETER CONCRETE BASE FOR A TOTAL HEIGHT OF 25' TALL.
- PROPOSED INOB INSTALLED AND MAINTAINED LANDSCAPED PLANTER AND IRRIGATION SYSTEM ONSITE, INCLUDING AREA UNDER BUILDING ROOF OVERHANG (ROH) AND VEHICLE OVERHANG (VOH) CONSISTING OF APPROXIMATELY 23,326 SQUARE FEET (25.1%).
- BLACK TRUNCATED DOMES DETECTABLE WARNING STRIP.
- VEHICLE DETECTOR LOOP.
- PROPERTY LINE.
- OUTDOOR SEATING PATIO TABLE WITH UMBRELLA (4 SEATS).
- OUTDOOR SEATING PATIO TABLE WITH NO UMBRELLA (4 SEATS).
- OUTDOOR SEATING PATIO TABLE WITH NO UMBRELLA (2 SEATS).
- 1 NEW 3' TALL 18"x24" LIT "DRIVE THRU" DIRECTIONAL SIGN.
- 2 NEW 3' TALL 18"x24" LIT "THANK YOU, DO NOT ENTER" DIRECTIONAL SIGN.
- 3 NEW PEDESTRIAN CROSSWALK SIGN.
- 4 NEW ACCESSIBILITY ENTRY SIGN.
- INOB IN-N-OUT BURGER.
- PROPOSED TAN COLOR SPLIT-FACE CMU WALL AND 2" CAP.
- 2 EXPOSED HEIGHT OF PROPOSED CMU RETAINING WALL IN FEET WITH A 46" TALL TUBE STEEL FENCE (TSF) ON TOP WHEN THE EXPOSED HEIGHT IS GREATER THAN 30".
- LOC INOB LIMITS OF PROPOSED CONSTRUCTION.
- LL PROPOSED INOB LEASE PREMISES LINE.
- VOH VEHICLE OVERHANG WITH NO OBSTRUCTIONS INCLUDING LIGHT POLES, TREES AND SIGNAGE.
- ADA ACCESSIBLE PATH OF TRAVEL. ACCESSIBLE PATH OF TRAVEL IS NOT LESS THAN 4 FEET WIDE, AND DOES NOT EXCEED A RUNNING SLOPE OF 1:20 (5%) OR A CROSS SLOPE IN EXCESS OF 1:50 (2%). REFER TO SHEET C33 FOR SPECIFIC SLOPES AND GRADES.
- PGE ELECTRIC PAD MOUNT TRANSFORMER WITH BOLLARDS.
- TR PORTABLE TRASH RECEPTACLE ON A MINIMUM 24"x24"x4" CONCRETE PAD.
- NEW CONCRETE SIDEWALK.
- A REFER TO THE BOUNDARY MONUMENT AND SURVEY CONTROL POINT DESCRIPTIONS SHOWN ON SHEET C36.
- 15Q SIMPLIFIED PLOTTABLE EASEMENT DESCRIPTION SHOWN ON SHEET C36.
- US DRIVE-THRU CATWALK CONCRETE PAD WITH UMBRELLA STAND PER DETAIL "11" SHOWN ON SHEET C___.
- PROPOSED 18" TO 27" TALL 22" WIDE STUCCO COVERED SEAT/SCREEN WALL WITH A PRECAST CONCRETE CAP.
- PROPOSED INOB INSTALLED AND MAINTAINED OFFSITE STREET LANDSCAPE PLANTER AND IRRIGATION SYSTEM CONSISTING OF APPROXIMATELY 429 SQUARE FEET IN S.W. LAUREL STREET AND 266 SQUARE FEET IN S.W. BEAVERTON-HILLSDALE HIGHWAY.
- B REFER TO SHEET C36 FOR ENCROACHMENT NOTES.
- PROPOSED PRECAST CONCRETE MODULAR WETLANDS UNIT WETLANDMOD-6-8-5'-0"-V STORMWATER BIOFILTRATION SYSTEM.
- 24" WIDE MATTED INOB ASSOCIATE WALKWAY PER ___ CONSISTING OF APPROXIMATELY 360 SQUARE FEET.
- CF CURB FACE.

GENERAL NOTES

1. IN-N-OUT BURGER GROSS SITE AREA: 97,701 SQ. FT. OR 2.243 ACRES.
   PROPOSED 5' LAUREL STREET DEDICATION: 570 SQ. FT. OR 0.013 ACRES.
   PROPOSED 8.5' BEAVERTON-HILLSDALE HIGHWAY DEDICATION: 2,550 SQ. FT. OR 0.059 ACRES.
   MINUS NET FLAG STRIP AT NORTHEAST CORNER: 1,536 SQ. FT. OR 0.035 ACRES.
   NET SITE AREA: 93,045 SQ. FT. OR 2.136 ACRES.
2. EXISTING COUNTY ZONE: CBD (COMMUNITY BUSINESS DISTRICT) FOR TAX LOTS 1S114BC02000, 1S114BC02400 AND 1S114BC02401 FRONTING S.W. BEAVERTON-HILLSDALE HIGHWAY.
   OC (OFFICE COMMERCIAL DISTRICT) FOR TAX LOT 1S114BC02100 FRONTING S.W. LAUREL STREET.
3. GENERAL LAND DESIGNATION:
4. EXISTING LAND USE: ONE-STORY 3,555 SQUARE FOOT "HAWAIIAN TIME" RESTAURANT WITH A SINGLE 170' LONG DRIVE-THRU LANE AND 81 SURFACE STRIPED AND UNSTRIPED PARKING SPACES FOR THE PROPERTY AT 10565 S.W. BEAVERTON-HILLSDALE HIGHWAY.
   ONE-STORY 6,043 SQUARE FOOT "AZTECA MEXICAN RESTAURANT" AND 60 SURFACE STRIPED PARKING SPACES FOR THE PROPERTY AT 10505 S.W. BEAVERTON-HILLSDALE HIGHWAY.
5. 5 SPACES PER 1,000 SQUARE FEET OF GROSS FLOOR AREA PLUS OUTDOOR PATIO SEATING AREA = 24 MINIMUM PARKING SPACES REQUIRED.
   12.4 SPACES PER 1,000 SQUARE FEET OF GROSS FLOOR AREA PLUS OUTDOOR PATIO SEATING AREA = 58 MAXIMUM PARKING SPACES
6. IN-N-OUT BURGER URBAN BUILDING AREA = 3,885 S.F.
   INDOOR SEATING = 84 SEATS.
   OUTDOOR SEATING = 34 SEATS (10 TABLES).
   OUTDOOR SEATING AREA = 698 S.F. STRUCTURE PLUS 64 S.F. EACH FOR 0-4 SEAT TABLES (0 S.F.) PLUS 20 S.F. FOR 3-2 SEAT TABLES (60 S.F.) = 758 S.F.
7. REQUIRED LANDSCAPE AREA WITHIN PROPERTY (15%) = 14,178 S.F.
8. LANDSCAPE AREA PROVIDED WITHIN PROPERTY = 23,326 S.F. (25.1%).
9. IN-N-OUT BURGER PARKING SPACE DETAILED SUMMARY TABLE

DESCRIPTION	EXISTING	REQUIRED	PROPOSED
1. STANDARD SPACE (8.5'x18' PLUS A 2' VOH)	0	0	4
2. STANDARD SPACE (8.5'x15' PLUS A 3' VOH)	0	0	18
3. STANDARD SPACE (8.5'x18')	137	55	68
4. ACCESSIBLE VAN (17'x18' PLUS A 2' VOH)	0	1	1
5. ACCESSIBLE SPACE (15'x18' PLUS A 2' VOH)	4	2	3
7. TOTAL	141	58	94
8. IN-N-OUT BURGER DRIVE THRU VEHICLE QUEUE (20' LONG INOB VEHICLE)	0	0	24
9. SHORT-TERM BICYCLE PARKING WITHIN DESIGNATED BIKE RACK.	0	2	4
10. LONG-TERM BICYCLE PARKING WITHIN A LOCKABLE PERMANENTLY ANCHORED LOCKER ON A CONCRETE SLAB-AMERICAN BICYCLE SECURITY COMPANY BIKE-SHELL MODEL 302, FINISH: MEDIUM GRAY.	0	2	2

10. ALL NEW SIGNS SHALL BE APPROVED BY A SEPARATE CITY PERMIT.
11. COUNTY TAX LOT: 1S114BC02100, 1S114BC02000, 1S114BC02400 AND 1S114BC02401.

SHEET INDEX OF COUNTY ENTITLEMENT DRAWINGS

IN-N-OUT BURGER

DEVELOPER:
IN-N-OUT BURGER
13502 HAMBURGER LANE
BALDWIN PARK, CA 91706
CONTACT: CASSIE RUIZ
PHONE: 626 813-8226

Underground Service Alert
Call: Toll Free
811
TWO WORKING DAYS BEFORE YOU DIG

REVISIONS

GHA PROJECT NO. -----
GHA
Architecture/Development
14901 Quorum Drive
Suite 300
Dallas Texas 75254
Ph: (972) 239-8884
Fax: (972) 239-5054

CIVIL ENGINEER:
MSI ENGINEERING, INC.
CIVIL ENGINEERS AND LAND SURVEYORS SPECIALIZING IN SITE DEVELOPMENT
301 NORTH SAN DIMAS AVENUE, SAN DIMAS, CA. 91773
(909) 305-2395 FAX (909) 305-2397
AARON D. PELLOW R.C.E. 91119 01-26-2022 DATE
REGISTERED PROFESSIONAL ENGINEER 91119 OREGON MARCH 08, 2016 AARON D. PELLOW
EXPIRES: 12-31-2022

IN-N-OUT BURGER

10505 AND 10565 SW BEAVERTON-HILLSDALE HIGHWAY
BEAVERTON AREA OF
WASHINGTON COUNTY, OR 97005

COUNTY ENTITLEMENT NEW SITE PLAN

C30.0

JN 2001I-2001I C30.0censp

5/23/2022 11:54:52 AM, MSL ENGINEERING, INC., AP

<u>Exhibit 4</u>

Alteration of Nonconforming Use

Relevant Code Sections are shown in *italics* with responses following.

CDC 440-3 Determination of a Nonconforming Use

40-3.1 The nonconforming use was lawfully established in accordance with applicable land use standards. Building permits or tax records may be used as evidence to prove when the use was established.

<u>RESPONSE</u>: As provided in our August 9, 2022 letter, aerial photos and County permit records demonstrate that the existing drive aisles providing shared access and parking areas have been in place on the subject property since the late 1970s and the prior Burger King Restaurant added its drive-through in 1978, before the OC-zone drive-thru limitations were enacted.

440-3.2 The nature and extent of the nonconforming use at the time it became nonconforming. Sporadic and intermittent nonconforming uses may continue as nonconforming uses provided the continuation of the use continues to be sporadic and intermittent.

RESPONSE: Aerial photos and site photos demonstrate that the driveways were maintained in their current form for at least the last 25 years, which exceeds the maximum 20-year timeframe for proving ongoing use in ORS 215.130(11).

440-3.3 The nonconforming use has continued since it became nonconforming. Utility bills, tax records, business licenses or telephone directory listings may be used as evidence to demonstrate how the use has continued.

RESPONSE: Building and land use permit records demonstrate that the use of the drive aisles and OC-zoned parking has continued since at least 1978 to serve a drive-thru use.

CDC 440-4 Discontinue 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.

<u>RESPONSE</u>: Building and land use permit records demonstrate that the use of the drive aisles and OC-zoned parking has continued since at least 1978 to serve a drive-thru use on the western portion of the property, which is still in operation. To the extent that it is relevant, the Azetca restaurant use on the eastern portion of the property has been in operation as recently as March 2022. As a result, the nonconforming use of land or structure has not be discontinued or abandoned for more than one year.

440-6 Alterations to a Nonconforming Use or Structure

Alterations to a nonconforming use or structure are permitted through a Type I or II procedure. Alteration includes a change in nonconforming use of a structure or parcel of land; or replacement, addition or modification in construction to a structure.

440-6.2 Alterations Permitted Through a Type II Procedure

B. An alteration to change or expand a lawful nonconforming use, or to change, repair or remodel a structure associated with a lawful nonconforming use other than a single dwelling unit, or a structure used as a single dwelling unit in a commercial, mixed-use, industrial or institutional district, may be permitted provided:

(1) The alteration will have no greater adverse impact on the neighborhood;

RESPONSE: The alteration will have no greater adverse impact on the neighborhood because the Applicant is proposing to reduce the amount of parking in the OC-zoned portion of the property while maintaining the drive aisles. Moreover, the proposed alteration will comply with the current landscaping and stormwater regulations, which will result in increased landscaping and screening from the surrounding neighborhood and less stormwater runoff affecting the surrounding neighborhood. Importantly, the project will result in closure of an existing access onto SW Laurel Road and an existing access on Beaverton Hillsdale Highway. These closures are consistent with the designated function of both streets and the agency access guidelines and will result in reducing the adverse impacts on the surrounding neighborhood.

Changes to traffic related to the proposed drive-thru on the west portion of the property is not an alteration of the nonconforming drive aisles and parking areas located in the OC zone. However, to the extent the Hearings Officer disagrees, the Applicant has submitted a Traffic Analysis that specifically, shows:

- The project will result in a reduction of traffic generated from the property (Table 1, January 26 memo);
- The trip generation data, which supports the above point, was based upon actual traffic counts at existing In-N-Out Burger restaurants, which are higher than would be estimated using nationally-relied upon fast food restaurant data;
- After the initial opening period, all studied intersections will satisfy ODOT and Washington County mobility targets; and
- The proposed site has been designed to meet peak queuing needs measured at other In-N-Out locations.

As a result, the proposed alteration will result in a reduction in the use of the drive aisles and parking areas in the portion of the property zoned OC. Thus, the alteration will have no greater adverse impact on the neighborhood.

(2) Any increase in floor area shall be limited to a one time increase up to 20 percent;

RESPONSE: The Applicant is not proposing to increase the floor area of the nonconforming use.

(3) Any increase in the area of the nonconforming use, excluding floor area, shall be limited to a one time increase up to 10%;

RESPONSE: The Applicant is not proposing to increase the area of the nonconforming use, excluding floor area.

(4) For residential uses, there shall be no increase in the number of dwelling units;

RESPONSE: No residential use is proposed.

(5) The alteration is designed to mitigate to the extent practicable adverse impacts caused by the alteration; and

RESPONSE: The alteration results in a reduction in the amount of parking provided in the OC-zoned portion of the property and a maintenance of the drive aisles serving the drive-thru use on the western portion of the property. Thus, the alteration results in a reduction in the scope of the nonconforming use.

(6) The alteration will meet all applicable standards of the primary district and the standards of Article IV to the extent practicable.

RESPONSE: As shown on the plans submitted with this application, the alteration of the nonconforming use complies with all applicable standards of the OC zone and the standards of Article IV, including all landscaping and stormwater requirements.

(7) In addition, alterations to expand a nonconforming use or structure shall address the following:

(a) The alteration is necessary to avoid future deterioration or obsolescence; and

(b)Relocation would create undue hardship.

RESPONSE: The Applicant is not proposing to expand the nonconforming use.

(8) In addition, alterations to change a nonconforming use and structure shall address the following:

The alteration will have no greater adverse impact on the neighborhood considering factors such as:

(a) The character and history of the development and of development in the surrounding area;

RESPONSE: The alteration will have no greater adverse impact on the neighborhood based on the character and history of the development and of the development in the surrounding area. Specifically, the drive aisles and parking areas serving a drive-thru have existed at the property since at least 1978. The development history of the property is outlined below.

- There has been a legally-established drive-thru use on the west side of property since at least 1978. The parking within the now-OC-zoned portion of the site near Laurel Avenue was legally established at that time.

- The Mr. Steak restaurant (now Azteca) was approved in 1977 and that approval allowed joint access between the two sites so both could use all access points on Beaverton-Hillsdale Highway.

- The conversion of Mr. Steak to D'Lites Restaurant in 1986 included approval of a drive-thru use on the east parcel, directly accessible by the east driveway.

- Customers have been able to access a drive-thru restaurant through the now OC-zoned drive aisle since the Azteca building was built in the late 1970s.

- Aerial photos demonstrate that the shared accesses between the existing Hawaiian Time and Azteca restaurant, established in the late 1970s, have remained since that time.

- Hawaiian Time is currently open and these drives can still be used to access the drive-thru from all access points, including from Laurel Street and from Beaverton Hillsdale Highway through the OC zone.

- Existing parking serving the Hawaiian Time restaurant is also present between the Laurel Street frontage and the existing drive-thru, including in areas currently zoned OC.

- The code provisions limiting drive-thru uses in the OC zone were applied to the east drive aisle between the two restaurants sometime after 1986, when both restaurants already had joint use of that drive.

- The existing Hawaiian Time restaurant and its drive-thru is still in use.

(b) The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line;

RESPONSE: The nonconforming use on the subject property has provided access to commercial use and a drive-thru since at least 1978. Therefore, anticipated impacts associated with the alteration of the nonconforming use will be similar if not less in nature. As required by CDC 423-6 (Environmental Performance Standards), the project will comply with Chapter 8.24 of the Washington County Code of Ordinances which regulates noise control. The alteration of the nonconforming use will result in a reduction in vehicles using the parking areas and drive aisles, which will result in a reduction in vibrations, dust, odor, fumes, glare or smoke detectable at the property line.

(c) The comparative numbers and kinds of vehicular trips to the site;

RESPONSE: Changes to traffic related to the proposed drive-thru on the west portion of the property is not an alteration to the nonconforming drive aisles and parking areas located in the OC zone. However, to the extent the County disagrees, as stated above, a reduction in traffic generated

from the property will result in a reduction in the use of the drive aisles and parking areas in the portion of the property zoned OC. Additionally, the project will result in closure of an existing access onto SW Laurel Road and an existing access on Beaverton Hillsdale Highway. These closures are consistent with the designated function of both streets and the agency access guidelines and both will result in reducing the adverse impacts on the surrounding neighborhood.

(d) The comparative amount and nature of outside storage, loading and parking;

RESPONSE: The Applicant is proposing to reduce the amount of parking within the OC-zoned portion of the property. No outside storage or loading are located in this portion of the property.

(e) The comparative visual appearance;

REPONSES: The Applicant is proposing to repave and stripe this OC-zoned portion of the property. In addition, the project will comply with all landscaping and screening requirements in the CDC, which will improve the visual appearance of the property from the surrounding neighborhood.

(f) The comparative hours of operation;

RESPONSE: The hours of operation are only relevant criteria insofar as they would have an adverse impact on the neighborhood. There is no evidence in the record that there has been a limitation on the hours when people could access the drive aisles and parking areas on the property. While the Applicant has stated that the hours of operation for the drive-thru use on the CBD zoned portion of the will be 10:30 AM to 1:00 AM Sunday through Thursday, and 10:30 AM to 1:30 AM Friday and Saturday, there is no evidence in the record that the proposed hours of operation will have a greater adverse impact on the neighborhood. To the contrary, the Applicant is proposing to close an existing access from SW Laurel Road, which will reduce the adverse impacts on the surrounding neighborhood.

(g) The comparative effect on existing vegetation;

RESPONSE: As shown on the landscaping and planning plan (LPP.1) submitted with this application, the project will comply with all landscaping requirements in the CDC, which will improve the existing vegetation on the property.

(h) The comparative effect on water drainage;

RESPONSE: As shown on the (i) drainage analysis plan (C35); and (ii) the grading and drainage plan (C33) submitted with this application, the Applicant will comply with all stormwater requirements of the CDC, which will improve water drainage on the property.

(i) The degree of service or other benefit to the area; and

RESPONSE: The alteration to the nonconforming use will not result in a decrease in the degree of service to the area. The Applicant submitted relevant service provider letters with its application confirming same.

(j) Other factors which tend to reduce conflicts or incompatibility with the character or needs of the area;

RESPONSE: While not necessarily related to the alteration of the nonconforming use itself, the Applicant is proposing a Traffic Mitigation Plan to address the public's concerns regarding traffic generated from the entirety of the project.

Schwabe

Memorandum

To: FILE

From: Bailey Oswald

Date: February 1, 2024

Subject: Washington County Hearings Officer hearing - May 24, 2023 Testimony of Joseph O. Gaon, counsel for In-N-Out Burgers

File No.: 138634-268779

Testimony by Joseph O. Gaon, counsel for In-N-Out Burgers before the Washington County Hearings Officer on May 24, 2023.

[1:56:20-1:57:55]

JOG: Joseph O. Gaon

MV: Unknown male voice

JOG: I just want to kind of offer one piece of rebuttal. As shown on the site plan, the drive thru is only located in the OC zone. We're showing 24 cars in a queue and it is my understanding that we anticipate being able to handle the cars, you know, in the queue that's located, not the OC zone, in the CBD zone where it is permitted. I'm happy to provide kind of additional submission during the open record period to provide additional clarity on that, but I just wanted to let you know the drive thru is completely located within the zone in which it is permitted.

MV: And I think the map clearly shows that. Looking at C… I'm looking at Plan C30.1 which is the Applicant's County Entitlement Traffic Management Plan is how that's documented and a title rather, and it does show a, the boundaries of the CBD and OC zones. That boundary is to the east, to the right of the drive thru lanes. For vehicles to get there, so that after they enter off of the Beaverton Hillsdale from the eastern access, they have to drive through the parking lot which is in the OC zone…

JOG: Yes, that's correct.

MV: In order to access it. But it is my understanding that there's an argument made about that issue and I share the Applicant's argument to the contrary.

BMOW:jmhi

PDX\138634\268779\BMOW\41200478.1

KITTELSON & ASSOCIATES
851 SW 6th AVENUE, SUITE 600
PORTLAND, OR 97204
P 503.228.5230 F 503.273.8169

MEMORANDUM

Date:	June 28, 2022	Project #: 25622
To:	Garrett Stephenson & Joe Gaon, Schwabe Cassie Ruiz, In-N-Out Burger	
From:	Julia Kuhn	
Project:	In-N-Out Burger	
Subject:	Response to Comments Received at the Hearing's Officer Hearing on June 16, 2022	

This memorandum is intended to supplement our oral testimony to the Hearing's Officer as well as our previously submitted reports into the land use record for the proposed In-N-Out Burger on Beaverton-Hillsdale Highway. In particular, the following topics are addressed:

- Traffic during opening conditions versus trip generation during stabilized conditions
- Trip estimates for the two restaurants currently on-site
- Traffic Management Plan performance metrics
- Potential additions to the geographic scope addressed by the TMP

Traffic during the Opening versus Stabilized Conditions

The evaluation of the four access scenarios studied in collaboration with the Oregon Department of Transportation (ODOT) and Washington County staff are based on a "stabilized" scenario:

- A "stabilized" trip generation scenario is one in which more than one store is open in the Metro area and the store is operating under what can be considered typical (i.e., not opening period) conditions.
- In-N-Out Burger stores are not open until 10:30 AM so the analysis focused on the weekday PM peak hour.
- The trip generation rates (discussed herein) are based on measured rates at other In-N-Out locations and reflective of both in-store dining and drive-through options available to customers. In-N-Out Burger stores typically operate with approximately 50 percent in-store dining and 50 percent drive-through.

In contrast, opening period traffic conditions (i.e., during the initial period in which heavier traffic is anticipated) are addressed through a Transportation Management Plan (TMP) that will be custom-tailored for this site in coordination with the City, County, TriMet (if applicable), ODOT, the Washington County sheriff's office, and any other impacted service providers.

Trip Generation

On behalf of In-N-Out Burger, Ganddini Group, Inc. (traffic engineers headquartered in California) has collected and analyzed trip generation and queuing data at several In-N-Out Burger stores to help guide the evaluation of transportation impacts during "stabilized" conditions. As discussed in our access report, the stores evaluated were agreed upon with the agency staff and include:

- Fort Worth, Texas – at the time of the data collection, this store represented a relatively new/emerging market for INO in the geographic area
- Six locations within California, including Redwood City, Rocklin, Vacaville, Fairfield, Long Beach and near the Los Angeles Airport (LAX).

Based on the seven stores surveyed, Table 1 presents the trip generation for the stabilized condition; this trip generation was included in our report and applied in our access evaluation.

Table 1. Trip Generation

Land Use	Data Source	Size (sq ft)	Total Daily Trips	Weekday PM Peak Hour		
				Total Trips	In	Out
Fast Food Restaurant	In-N-Out Burger Data	3,885	1,894	162	85	77

In reviewing Table 1, we note that the rates are 25 – 30 percent higher than those presented in the *Trip Generation Manual* (as published by the Institute of Transportation Engineers (ITE)) for a fast-food restaurant with a drive-through window. We did not use the ITE data for our access evaluation.

Trip Generation for the Existing Restaurants

Our access evaluation presented a table comparing the trip generation that could be expected if the existing restaurants on-site were re-occupied and fully operational. However, as noted in our report, the access evaluation did not rely on those estimates but rather the actual trips measured at the driveways on the day of the traffic counts, when both restaurants had below average traffic.

Traffic Management Plan

As discussed in our reports, In-N-Out Burger opens its stores with a carefully crafted Traffic Management Plan (TMP) specific to the surrounding street network, the adjacent land uses, the number of stores in the market, and collaboration with agency staff and emergency service providers. These TMPs are prepared in detail at the time in which opening is anticipated to ensure that they reflect the conditions anticipated when the store will be opened.

As noted at the hearing, In-N-Out Burger brings in their "All-Star" team, which is a dedicated team that travels to new stores to staff operations during opening conditions and to train the locally-hired staff who will take over once it is appropriate to do so for the market. Off-site traffic management is handled by licensed traffic management firms and/or law enforcement personnel retained by In-N-Out Burger to facilitate opening period operations.

The specifics of the TMP will be developed in collaboration with the agency partners, including the applicable performance metrics. Example performance metrics can be tiered and might include, but are not limited to, the following:

- Left-turn lane providing entry access to the site exceeds available queue storage
- Entry queue at the site driveway extends to the state highway

As noted at the hearing, the metrics are not volume-to-capacity (V/C, i.e., "congestion") based but instead are related to safety. They will also address the need to identify "dynamic performance triggers" to help In-N-Out Burger and agency partners address and respond to changing conditions during the opening period.

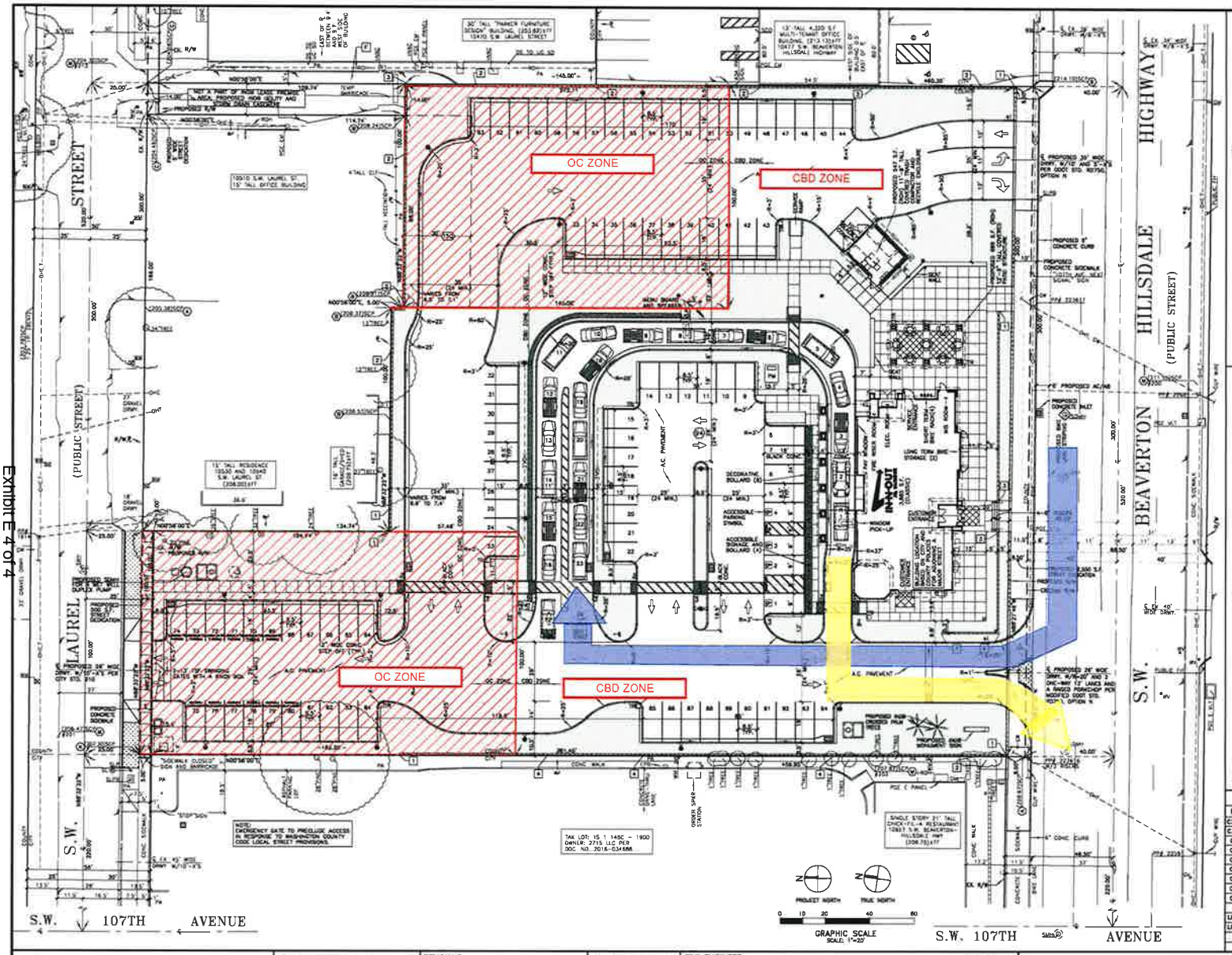
Specific transportation management actions will be identified and will include specific tactical measures to be implemented by the designated professional traffic control firm, law enforcement personnel or other parties identified in the plan.

Potential Additions to the Geographic Scope Addressed by the TMP

City of Beaverton staff and some of the residents testifying at the hearing expressed a desire to include both SW Western Avenue and the SW 102nd Avenue/SW 103rd Avenue corridor (including a segment of SW Kennedy Street connecting the two roadways) included in the TMP. Based on discussions with In-N-Out staff, the following modification to land use Condition of Approval II.8 to add II.8.f and II.8.g is proposed:

> 8. The TMP shall monitor and address traffic operations along the following roadways (coverage area):
>
> f. SW Western Avenue between SW Beaverton-Hillsdale Highway (OR-10) and SW 5th Avenue
>
> g. The SW 102nd Avenue/SW 103rd Avenue corridor (including the segment of SW Kennedy Street) between SW Beaverton-Hillsdale Highway and SW Canyon Road.

Please let us know if you need any additional information.



LEGEND

- NEW 24"x36" CONCRETE DRAIN BOX INLET WITH A FLOWARD PLUS FOSBEL FILTER INSERT FOR THE PRE-TREATMENT OF STORMWATER RUNOFF.
- CHBO — PROPOSED INGB INSTALLED AND MAINTAINED 22'-6" TALL FIXTURE HEIGHT LIGHT POLE ON TOP OF A 36" TALL 24" DIAMETER CONCRETE BASE FOR A TOTAL HEIGHT OF 33" TALL.
- PROPOSED INGB INSTALLED AND MAINTAINED LANDSCAPED PLANTER AND IRRIGATION SYSTEM ONSITE, INCLUDING AREA UNDER BUILDING ROOF OVERHANG (INOH) AND VEHICLE OVERHANG (VOH) CONSISTING OF APPROXIMATELY 23,329 SQUARE FEET (25.1%).
- BLACK TRUNCATED DOMES DETECTABLE WARNING STRIP.
- VEHICLE DETECTOR LOOP.
- PROPERTY LINE.
- OUTDOOR SEATING PATIO TABLE WITH UMBRELLA (4 SEATS).
- OUTDOOR SEATING PATIO TABLE WITH NO UMBRELLA (4 SEATS).
- OUTDOOR SEATING PATIO TABLE WITH NO UMBRELLA (2 SEATS).
- NEW 3' TALL 18"x24" LIT "DRIVE THRU" DIRECTIONAL SIGN.
- NEW 3' TALL 18"x24" LIT "THANK YOU, DO NOT ENTER" DIRECTIONAL SIGN.
- NEW PEDESTRIAN CROSSWALK SIGN.
- NEW ACCESSIBILITY ENTRY SIGN.
- INDB — IN-N-OUT BURGER.
- PROPOSED TAN COLOR SPLIT-FACE CMU WALL AND 2" CAP.
- 2 — EXPOSED HEIGHT OF PROPOSED CMU RETAINING WALL IN FEET WITH A 48" TALL TUBE STEEL FENCE (TSF) ON TOP WHEN THE EXPOSED HEIGHT IS GREATER THAN 30".
- LOC — INGB UNITS OF PROPOSED CONSTRUCTION.
- PROPOSED INGB LEASE PREMISES LINE.
- VOH — VEHICLE OVERHANG WITH NO OBSTRUCTIONS INCLUDING LIGHT POLES, TREES AND SIGNAGE.
- ADA ACCESSIBLE PATH OF TRAVEL. ACCESSIBLE PATH OF TRAVEL IS NOT LESS THAN 4 FEET WIDE, AND DOES NOT EXCEED A RUNNING SLOPE OF 1:20 (5%) OR A CROSS SLOPE IN EXCESS OF 1:50 (2%). REFER TO SHEET C33 FOR SPECIFIC SLOPES AND GRADES.
- PGE ELECTRIC PAD MOUNT TRANSFORMER WITH BOLLARDS.
- TTR — PORTABLE TRASH RECEPTACLE ON A MINIMUM 24"x24"x4" CONCRETE PAD.
- NEW CONCRETE SIDEWALK.
- A — REFER TO THE BOUNDARY MONUMENT AND SURVEY CONTROL POINT DESCRIPTIONS SHOWN ON SHEET C36.
- 150 — SIMPLIFIED PLOTTABLE EASEMENT DESCRIPTION SHOWN ON SHEET C36.
- 128 — DRIVE-THRU DATMALK CONCRETE PAD WITH UMBRELLA STAND PER DETAIL "11" SHEETS ON SHEET C___.
- PROPOSED 18" TO 27" TALL 22" WIDE STUCCO COVERED SEAT/SCREEN WALL WITH A PRECAST CONCRETE CAP.
- PROPOSED INGB INSTALLED AND MAINTAINED OFFSITE STREET LANDSCAPE PLANTER AND IRRIGATION SYSTEM CONSISTING OF APPROXIMATELY 428 SQUARE FEET IN S.W. LAUREL STREET AND 268 SQUARE FEET IN S.W. BEAVERTON-HILLSDALE HIGHWAY.
- B — REFER TO SHEET C36 FOR ENCROACHMENT NOTES.
- PROPOSED PRECAST CONCRETE MODULAR WETLANDS UNIT WETLANDMOD-6-6-5'-0"-V STORMWATER BIOFILTRATION SYSTEM.
- 24" WIDE MATTED INGB ASSOCIATE WALKWAY PER ——— CONSISTING OF APPROXIMATELY 380 SQUARE FEET.
- CURB FACE.

GENERAL NOTES

1. IN-N-OUT BURGER GROSS SITE AREA: 97,701 SQ. FT. OR 2.243 ACRES.
   PROPOSED S.W. LAUREL STREET DEDICATION: 570 SQ. FT. OR 0.013 ACRES.
   PROPOSED S.W. BEAVERTON-HILLSDALE HIGHWAY DEDICATIONS: 2,560 SQ. FT. OR 0.059 ACRES.
   MINUS NET FLAG STRIP AT NORTHEAST CORNER: 1,534 SQ. FT. OR 0.035 ACRES.
   NET SITE AREA: 93,045 SQ. FT. OR 2.136 ACRES.
2. EXISTING COUNTY ZONE: CBD (COMMUNITY BUSINESS DISTRICT) FOR TAX LOTS 1S114BC02000, 1S114BC02400 AND 1S114BC02401 FRONTING S.W. BEAVERTON-HILLSDALE HIGHWAY.
   OC (OFFICE COMMERCIAL DISTRICT) FOR TAX LOT 1S114BC02100 FRONTING S.W. LAUREL STREET.
3. GENERAL LAND DESIGNATION:
4. EXISTING LAND USE: ONE-STORY 3,505 SQUARE FOOT "HAWAIIAN TIME" RESTAURANT WITH A SINGLE 170' LONG DRIVE-THRU LANE AND 81 SURFACE STRIPED AND UNSTRIPED PARKING SPACES FOR THE PROPERTY AT 10565 S.W. BEAVERTON-HILLSDALE HIGHWAY.
   ONE-STORY 8,043 SQUARE FOOT "AZTECA MEXICAN RESTAURANT" AND 60 SURFACE STRIPED PARKING SPACES FOR THE PROPERTY AT 10505 S.W. BEAVERTON-HILLSDALE HIGHWAY.
5. 3 SPACES PER 1,000 SQUARE FEET OF GROSS FLOOR AREA PLUS OUTDOOR PATIO SEATING AREA = 24 MINIMUM PARKING SPACES REQUIRED.
   12.4 SPACES PER 1,000 SQUARE FEET OF GROSS FLOOR AREA PLUS OUTDOOR PATIO SEATING AREA = 38 MAXIMUM PARKING SPACES.
6. IN-N-OUT BURGER URBAN BUILDING AREA = 3,885 S.F.
   INDOOR SEATING = 84 SEATS.
   OUTDOOR SEATING = 34 SEATS (10 TABLES).
   OUTDOOR SEATING AREA = 696 S.F. STRUCTURE PLUS 64 S.F. EACH FOR 0-4 SEAT TABLES (0 S.F.) PLUS 20 S.F. FOR 3-2 SEAT TABLES (60 S.F.) = 756 S.F.
7. REQUIRED LANDSCAPE AREA WITHIN PROPERTY (15%) = 14,176 S.F.
8. LANDSCAPE AREA PROVIDED WITHIN PROPERTY = 23,329 S.F. (25.1%).
9. IN-N-OUT BURGER PARKING SPACE DETAILED SUMMARY TABLE

DESCRIPTION	EXISTING	REQUIRED	PROPOSED
1. STANDARD SPACE (8.5'x16' PLUS A 2' VOH)	0	2	4
2. STANDARD SPACE (8.5'x15' PLUS A 2' VOH)	0	2	18
3. STANDARD SPACE (8.5'x18')	137	55	66
4. ACCESSIBLE VAN (17'x16' PLUS A 2' VOH)	0	1	1
5. ACCESSIBLE SPACE (13'x16' PLUS A 2' VOH)	4	2	3
7. TOTAL	141	58	94
8. IN-N-OUT BURGER DRIVE THRU VEHICLE QUEUE (20' LONG INGB VEHICLE)	0	0	24
9. SHORT-TERM BICYCLE PARKING WITHIN DESIGNATED BIKE RACK	0	3	4
10. LONG-TERM BICYCLE PARKING WITHIN A LOCKABLE PERMANENTLY ANCHORED LOCKER ON A CONCRETE SLAB-AMERICAN BICYCLE SECURITY COMPANY BRC-SHELL MODEL 302, FINISH: MEDIUM GRAY.	0	2	2

10. ALL NEW SIGNS SHALL BE APPROVED BY A SEPARATE CITY PERMIT.
11. COUNTY TAX LOT: 1S114BC02100, 1S114BC02000, 1S114BC02400 AND 1S114BC02401.

SHEET INDEX OF COUNTY ENTITLEMENT DRAWINGS

NO.	SHEET TITLE
C30.0	COUNTY ENTITLEMENT NEW SITE PLAN
C30.1	COUNTY ENTITLEMENT TRAFFIC MANAGEMENT PLAN
C31	COUNTY ENTITLEMENT EXISTING SITE PLAN
C32	COUNTY ENTITLEMENT DEMOLITION PLAN
C33	COUNTY ENTITLEMENT GRADING AND DRAINAGE PLAN
C34	COUNTY ENTITLEMENT STORM DRAIN AND UTILITY PLAN
C35	COUNTY ENTITLEMENT DRAINAGE ANALYSIS SITE PLAN
C36	COUNTY ENTITLEMENT TOPOGRAPHY SURVEY MAP
C37	COUNTY ENTITLEMENT BOUNDARY AND EASEMENT MAP
LPP.1	COUNTY ENTITLEMENT LANDSCAPE PLANTING PLAN
LCC.1	COUNTY ENTITLEMENT SITE CONSTRUCTION CONCEPT DETAILS PLAN

IN-N-OUT BURGER

DEVELOPER:
IN-N-OUT BURGER
13502 HAMBURGER LANE
BALDWIN PARK, CA 91706
CONTACT: CASSIE RUIZ
PHONE: 626 813-8226

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CIVIL ENGINEERS AND LAND SURVEYORS SPECIALIZING IN SITE DEVELOPMENT
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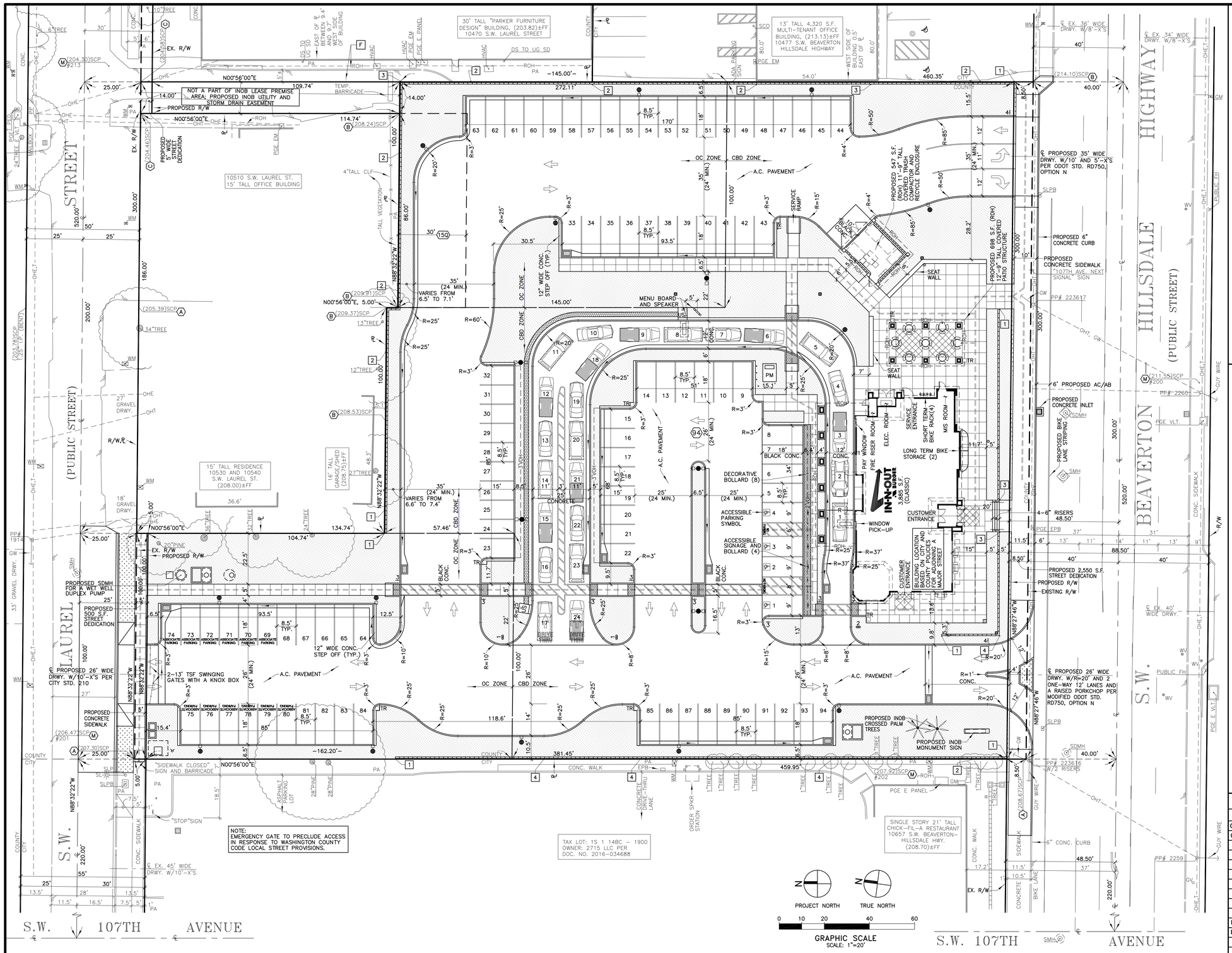
(909) 305-2285 FAX (909) 305-2397
AARON D. PELLOW R.C.E. 91119 01-26-2022 DATE
EXPIRES: 12/31/2022

IN-N-OUT BURGER

10505 AND 10565 SW BEAVERTON-HILLSDALE HIGHWAY
BEAVERTON AREA OF
WASHINGTON COUNTY, OR 97005

COUNTY ENTITLEMENT NEW SITE PLAN

C30.0



LEGEND

- NEW 24"x36" CONCRETE DRAIN BOX INLET WITH A FLOGARD PLUS FOSSIL FILTER INSERT FOR THE PRE-TREATMENT OF STORMWATER RUNOFF.
- PROPOSED INOB INSTALLED AND MAINTAINED 22'-6" TALL FIXTURE HEIGHT LIGHT POLE ON TOP OF A 30" TALL 24" DIAMETER CONCRETE BASE FOR A TOTAL HEIGHT OF 25' TALL.
- PROPOSED INOB INSTALLED AND MAINTAINED LANDSCAPED PLANTER AND IRRIGATION SYSTEM ONSITE, INCLUDING AREA UNDER BUILDING ROOF OVERHANG (ROH) AND VEHICLE OVERHANG (VOH) CONSISTING OF APPROXIMATELY 23,326 SQUARE FEET (25.1%).
- BLACK TRUNCATED DOMES DETECTABLE WARNING STRIP.
- VEHICLE DETECTOR LOOP.
- PROPERTY LINE.
- OUTDOOR SEATING PATIO TABLE WITH UMBRELLA (4 SEATS).
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- OUTDOOR SEATING PATIO TABLE WITH NO UMBRELLA (2 SEATS).
- 1 NEW 3' TALL 18"x24" LIT "DRIVE THRU" DIRECTIONAL SIGN.
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- 3 NEW PEDESTRIAN CROSSWALK SIGN.
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- INOB IN-N-OUT BURGER.
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- PROPOSED PRECAST CONCRETE MODULAR WETLANDS UNIT WETLANDMOD-6-8-5'-0"-V STORMWATER BIOFILTRATION SYSTEM.
- 24" WIDE MATTED INOB ASSOCIATE WALKWAY PER ___ CONSISTING OF APPROXIMATELY 360 SQUARE FEET.
- CF CURB FACE.

GENERAL NOTES

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   PROPOSED 5' LAUREL STREET DEDICATION: 570 SQ. FT. OR 0.013 ACRES.
   PROPOSED 8.5' BEAVERTON-HILLSDALE HIGHWAY DEDICATION: 2,550 SQ. FT. OR 0.059 ACRES.
   MINUS NET FLAG STRIP AT NORTHEAST CORNER: 1,536 SQ. FT. OR 0.035 ACRES.
   NET SITE AREA: 93,045 SQ. FT. OR 2.136 ACRES.
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   OC (OFFICE COMMERCIAL DISTRICT) FOR TAX LOT 1S114BC02100 FRONTING S.W. LAUREL STREET.
3. GENERAL LAND DESIGNATION:
4. EXISTING LAND USE: ONE-STORY 3,555 SQUARE FOOT "HAWAIIAN TIME" RESTAURANT WITH A SINGLE 170' LONG DRIVE-THRU LANE AND 81 SURFACE STRIPED AND UNSTRIPED PARKING SPACES FOR THE PROPERTY AT 10565 S.W. BEAVERTON-HILLSDALE HIGHWAY.

   ONE-STORY 6,043 SQUARE FOOT "AZTECA MEXICAN RESTAURANT" AND 60 SURFACE STRIPED PARKING SPACES FOR THE PROPERTY AT 10505 S.W. BEAVERTON-HILLSDALE HIGHWAY.
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6. IN-N-OUT BURGER URBAN BUILDING AREA = 3,885 S.F.
   INDOOR SEATING = 84 SEATS.
   OUTDOOR SEATING = 34 SEATS (10 TABLES).
   OUTDOOR SEATING AREA = 698 S.F. STRUCTURE PLUS 64 S.F. EACH FOR 0-4 SEAT TABLES (0 S.F.) PLUS 20 S.F. FOR 3-2 SEAT TABLES (60 S.F.) = 758 S.F.
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3. STANDARD SPACE (8.5'x18')	137	55	68
4. ACCESSIBLE VAN (17'x18' PLUS A 2' VOH)	0	1	1
5. ACCESSIBLE SPACE (15'x18' PLUS A 2' VOH)	4	2	3
7. TOTAL	141	58	94
8. IN-N-OUT BURGER DRIVE THRU VEHICLE QUEUE (20' LONG INOB VEHICLE)	0	0	24
9. SHORT-TERM BICYCLE PARKING WITHIN DESIGNATED BIKE RACK.	0	2	4
10. LONG-TERM BICYCLE PARKING WITHIN A LOCKABLE PERMANENTLY ANCHORED LOCKER ON A CONCRETE SLAB-AMERICAN BICYCLE SECURITY COMPANY BIKE-SHELL MODEL 302, FINISH: MEDIUM GRAY.	0	2	2

10. ALL NEW SIGNS SHALL BE APPROVED BY A SEPARATE CITY PERMIT.
11. COUNTY TAX LOT: 1S114BC02100, 1S114BC02000, 1S114BC02400 AND 1S114BC02401.

SHEET INDEX OF COUNTY ENTITLEMENT DRAWINGS

IN-N-OUT BURGER

DEVELOPER:
IN-N-OUT BURGER
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CONTACT: CASSIE RUIZ
PHONE: 626 813-8226

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Fax: (972) 239-5054

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MSI ENGINEERING, INC.
CIVIL ENGINEERS AND LAND SURVEYORS SPECIALIZING IN SITE DEVELOPMENT
301 NORTH SAN DIMAS AVENUE, SAN DIMAS, CA. 91773
(909) 305-2395 FAX (909) 305-2397
AARON D. PELLOW R.C.E. 91119 01-26-2022 DATE
REGISTERED PROFESSIONAL ENGINEER 91119 OREGON MARCH 08, 2016 AARON D. PELLOW
EXPIRES: 12-31-2022

IN-N-OUT BURGER

10505 AND 10565 SW BEAVERTON-HILLSDALE HIGHWAY
BEAVERTON AREA OF
WASHINGTON COUNTY, OR 97005

COUNTY ENTITLEMENT NEW SITE PLAN

C30.0

JN 20011-20011 C30.0censp

5/23/2022 11:54:52 AM, MSI ENGINEERING, INC., AP

KITTELSON & ASSOCIATES
851 SW 6th AVENUE, SUITE 600
PORTLAND, OR 97204
P 503.228.5230 F 503.273.8169

MEMORANDUM

Date: May 21, 2021 Project #: 25622-4

To: Jinde Zhu, PE, Washington County
Jabra Khasho, PE, City of Beaverton
Avi Tayar, PE & Marcela Rodriguez, PE, Oregon Department of Transportation (ODOT)
Cassie Yee, In-N-Out Burger

From: Julia Kuhn, PE & Chris Brehmer, PE
Project: In-N-Out Burger – Washington County Site
Subject: Transportation Memo

In-N-Out Burger is proposing a new restaurant to the northeast of the SW Beaverton Hillsdale Highway/SW 170th Avenue intersection in Washington County. Today the site is occupied by a 3,555 square foot Hawaiian Time Restaurant and a 6,043 square foot Azteca Restaurant[1]. The two restaurants are served by three accesses on SW Beaverton Hillsdale Highway and one on SW Laurel Road. As proposed, the two restaurants will be replaced by a 3,885 square foot In-N-Out Burger that is served by two accesses on SW Beaverton Hillsdale Highway, including a right-in-right-out access on the west side of the site and a full movement access on the east side of the site. A gated, emergency only access will be provided via SW Laurel Road.

Based on the change in vehicular trip-making, the redevelopment of the site does not trigger the preparation of an Access Report per Washington County guidelines nor does it meet the traffic volume-based change of use criteria established by Oregon Department of Transportation (ODOT) guidelines that would require preparation of a Traffic Impact Study. To inform the site plan application, this memorandum summarizes the change in vehicular trip-making associated with site redevelopment as well as transportation-related recommendations.

[1] Existing restaurant sizes provided through the ALTA survey.

DESCRIPTION OF THE PROPOSED REDEVELOPMENT

Upon redevelopment, the site will be rebuilt to include a 3,885 square foot In-N-Out Burger with indoor and outdoor seating. A drive through lane will be provided on the north side of the building with the capacity to queue 32 vehicles during "typical" conditions and an additional 23 vehicles during high demand periods (representing a 55-car on-site drive through storage area[2]). In addition, 76 vehicular parking spaces will be provided to the east and north of the building. The three existing SW Beaverton Hillsdale Highway accesses will be replaced with one right-in-right-out access near the western boundary of the site and one full access on the eastern boundary of the site. The SW Laurel access will be converted to a gated access that can only be used by emergency vehicles.

As part of a multi-store strategy in the Portland Metro area, occupancy of the new restaurant is anticipated in 2022. The site plan is attached to this memo.

Trip Generation Estimates

The change in the estimated site trip generation was calculated based on rates included in the *Trip Generation Manual, 10th Edition* (as published by the Institute of Transportation Engineers, ITE) and a trip generation study performed by Gandddini Group, Inc. on behalf of In-N-Out-Burger.

Table 1 presents the anticipated change in vehicular trip generation using data presented from In-N-Out Burger. In addition, as shown in the table, the restaurants are not during the weekday AM peak hour[3] so no change in weekday AM peak hour trips are anticipated. The In-N-Out rates shown are based on a comparison of the measured vehicular trip making at seven sites in California and Texas. A summary included in Appendix A. *Note that Table 1 does not account for any pass-by trips associated with the restaurants as the analyses focused solely on the change in total site access trips.*

[2] There is room on-site to provide 23 additional queue spaces in a second temporary queue lane during opening conditions.

[3] http://www.hawaiiantime.com/locations-1 and https://www.aztecamex.com/locations/

Table 1. Anticipated Site Trip Generation Change*

Land Use	ITE Code	Size (sq ft)	Total Daily Trips	Weekday PM Peak Hour		
				Total Trips	In	Out
Existing Hawaiian Time Restaurant						
Fast Food	934	3,555	1,674	116	60	56
Existing Azteca						
High Turnover/Sit Down	932	6,043	678	59	37	22
Existing Site Trips			2,352	175	97	78
Proposed In-N-Out						
Fast Food	INO Data	3,885	1,894	162	85	77
Change in Driveway Trips			-458	-13	-12	-1

*Does not include pass-by trips.

As shown, the total trips (not accounting for any pass-by trip making) is anticipated to decrease on a daily and weekday PM peak hour basis. With the revised site plan, all trips will enter/exit the site via SW Beaverton Hillsdale Highway, which carries more than 2,700 vehicles during the weekday PM peak hour and more than 30,000 vehicles per day.

For a facility carrying this level of traffic, Washington County's Resolution and Order 86-95 requires preparation of an access report associated with an increase of 500 or more daily trips and/or 10 percent daily trip increase on an adjacent roadway or intersection. Based on a decrease in trip-making, the need for an Access Report is not triggered by site redevelopment.

Further, Oregon Administrative Rule (OAR) 734-051-3020[4] establishes the trip generation thresholds associated with ODOT's change of use. These include:

> *2) Changes of Use Requiring an Application for State Highway Approach. Except as provided under section (5) of this rule, a new application is required for a change of use when any one of the following:*
>
> *(a) The number of peak hour trips increases by fifty (50) trips or more from that of the property's prior use and the increase represents a twenty (20) percent or greater increase in the number of peak hour trips from that of the property's prior use; or*
>
> *(b) The average daily trips increases by five hundred (500) trips or more from that of the property's prior use and the increase represents a twenty (20) percent or greater increase in the average daily trips from that of the property's prior use; or*

[4] OAR 734-051-3020 - Change of Use of a Private Connection (2014) (public.law)

(c) The daily use of a connection increases by ten (10) or more vehicles with a gross vehicle weight rating of twenty-six thousand (26,000) pounds or greater; or

(d) ODOT demonstrates that safety or operational concerns related to the connection are occurring as identified in OAR 734-051-4020 (Standards and Criteria for Approval of Private Approaches)(3); or

(e) The connection does not meet the stopping sight distance standards, as measured in feet, of ten (10) times the speed limit established in ORS 811.111 (Violating a speed limit) or the designated speed posted under 810.180 (Designation of maximum speeds) for the highway as measured in miles per hour, or ten (10) times the 85th percentile speed of the highway where the 85th percentile speed is higher or lower than the speed limit established in 811.111 (Violating a speed limit) or the designated speed posted under 810.180 (Designation of maximum speeds).

As noted in Table 1, the redevelopment of the two restaurants as one In-N-Out Burger would result in a decrease in trip-making associated with the two properties. Further, the redevelopment is not anticipated to increase large truck trips to the property (instead, it is possible a reduction could be realized recognizing deliveries to a single restaurant should be fewer in number than the potential deliveries associated with two different restaurants with different supply vendors). As such, we conclude that ODOT's trip generation thresholds are not met per the change in use policy. Further, preliminary review suggests that adequate stopping sight distance should be possible to achieve for the proposed right-turn only west access and the full movement east access per ODOT's Change of Use criteria (e) above.

TRAFFIC MANAGEMENT PLAN

In-N-Out Burger opens its stores with a carefully crafted Traffic Management Plan (TMP) specific to the surrounding street network, the adjacent land uses, the number of stores in the market, and collaboration with agency staff and emergency service providers. These TMPs are prepared in detail at the time in which opening is anticipated to be sure that they reflect the conditions anticipated when the store will be opened. In-N-Out Burger brings in their "all-star" team to open stores. This team's responsibilities solely lie in traveling to new stores to staff operations during opening conditions and to then train the local staff that will take over once it is appropriate to do so for the market. Off-site traffic management is handled by licensed traffic management firms and/or law enforcement personnel retained by In-N-Out Burger to facilitate opening period operations.

Based on In-N-Out Burger's experience at others stores as well as our experience in developing TMPs for other clients, we propose to address opening period conditions using a Performance Based TMP approach. Specific transportation management actions will be identified for each of the performance metrics and would include specific tactical measures to be implemented by the designated professional traffic control firm, law enforcement personnel or other party identified in the plan.

We propose that the County consider imposing conditions of approval related to the preparation and implementation of a TMP for the site. The County could consider condition language similar to that currently being refined for the proposed City of Hillsboro In-N-Out Burger site. Using key aspects of the draft condition Hillsboro site condition as a template, the condition language might read:

1. *Six months prior to issuance of the certificate of occupancy, the Applicant shall develop and submit a performance-based Traffic Management Plan (TMP) to the Washington County Department of Land Use and Transportation. This TMP shall define performance metrics, management actions, and corresponding triggers related to on-site and access operations and specify a tiered traffic management system that addresses a range of vehicular traffic demands, including opening conditions. The performance metrics shall be defined within the TMP through coordination with Washington County, the Oregon Department of Transportation (ODOT), and City of Beaverton staff to enable evaluation of the objective of ensuring that motor vehicles entering and exiting the site do not queue onto Highway 217, Beaverton-Hillsdale Highway, SW 107th Avenue, or SW Laurel Street. The TMP shall consist of traffic control, emergency vehicle accessibility, communication protocols, coordination with emergency responders, permits, the frequency of the traffic observations during operations, metrics on which TMP tier to implement based on the most recent traffic observation, and other needs to address the safety of the adjacent and nearby public roadways with the Washington County, City and ODOT consultation. The TMP shall cover SW Beaverton Hillsdale Highway (SW Lombard Avenue to SW 91st Avenue), SW 107th Avenue (SW Canyon Road to SW Beaverton-Hillsdale Highway), SW Canyon Road (Highway 217 to SW 91st Avenue), and Highway 217 (Walker Road to Denney Road). Compliance to be verified by Washington County Department of Land Use and Transportation.*

2. *Prior to issuance of the Certificate of Occupancy, the applicant shall obtain approval of the performance-based Traffic Management Plan (TMP) from the Washington County Department of Land Use and Transportation. In addition to the County-approved TMP, the applicant shall provide documentation of purchase/renting of temporary traffic control devices and contracts executed with a traffic control contractor to implement the TMP. Compliance to be verified by the Washington County Department of Land Use and Transportation.*

3. *Prior to issuance of the Certificate of Occupancy, the applicant shall implement the County-approved performance-based Traffic Management Plan (TMP).*

RECOMMENDATIONS

Subject to approval by the Washington County, the primary recommendations of our review of site redevelopment are summarized below.

- Six months prior to issuance of the certificate of occupancy, the Applicant shall develop and submit a performance-based Traffic Management Plan (TMP) to Washington County. This TMP shall define performance metrics, management actions, and corresponding triggers related to on-site and access operations and specify a tiered traffic management system that addresses a range of vehicular traffic demands, including opening conditions. The performance metrics shall be defined within the TMP through coordination with the Washington County, the Oregon Department of Transportation (ODOT), and City of Beaverton staff.
- Prior to issuance of the Certificate of Occupancy, the applicant shall obtain approval of and subsequently implement the County-approved performance-based TMP.
- Site landscaping, above-ground utilities, and site signage should be located and maintained such that they provide minimum required sight lines within the site as well as at the site driveway on SW Laurel Road per applicable Washington County requirements and on SW Beaverton-Hillsdale Highway per applicable Oregon Department of Transportation requirements.

Please let us know if you have any questions regarding our analyses or findings.

LIST OF APPENDICES

A. Trip Generation Data

TECHNCIAL MEMORANDUM

TO: Ms. Cassie Yee, Project Manager | IN-N-OUT BURGER

FROM: Giancarlo Ganddini, Principal Traffic Engineer | GANDDINI GROUP, INC.

DATE: September 14, 2020

SUBJECT: In-N-Out Trip Generation Study
(GGI Project No. 19276)

The purpose of this trip generation study is to determine trip generation rates specific to In-N-Out restaurants and to provide a recommended storage length for the drive-through lane.

TRIP GENERATION RATE CALCULATIONS

To determine a trip generation rate specific to In-N-Out fast-food restaurants, a new trip count survey was conducted in July 2020 at an In-N-Out in Fort Worth, Texas as shown in Figure 1. The new trip count survey data was combined with other historic trip count survey data previously collected at various locations in Northern and Southern California to derive the average trip generation rates. These restaurant locations were selected as survey sites because they are generally comparable to the proposed project in terms of the building size, site configuration, and typical operations. In total, the survey sites used as the basis for calculating average trip generation rates include the following seven existing In-N-Out restaurant locations:

- Fort Worth, TX – 4620 South Hulen Street, Fort Worth, TX 76132
- Redwood City, CA – 949 Veterans Boulevard, Redwood City, CA 94063
- Rocklin, CA – 5490 Crossings Drive, Rocklin, CA 95677
- Vacaville, CA – 170 Nut Tree Parkway, Vacaville, CA 95687
- Fairfield, CA – 1364 Holiday Lane, Fairfield, CA 94534
- Long Beach, CA – 6391 East Pacific Coast Highway, Long Beach, CA 90815
- Los Angeles, CA – 9149 South Sepulveda Boulevard, CA 90045

The new trip generation surveys were collected one hour before and one hour after store hours of operation (9:30 AM - 2:00 AM) on a Thursday and Saturday. The peak hour trip generation data used in this analysis has been taken from the highest hour within the weekday PM peak period (4:00 PM to 7:00 PM) and Saturday mid-day peak period (11:00 PM to 4:00 PM). The weekday PM peak hour was observed to occur from 5:45 PM to 6:45 PM and the Saturday mid-day peak hour was observed to occur from 12:15 PM to 1:15 PM. AM peak period data are not presented because In-N-Out restaurants do not serve breakfast and will not be operational during the typical AM commute peak period from 7:00 AM - 9:00 AM. Although the new trip count survey was conducted during the COVID-19 pandemic, the trip count results are within the range of trips observed by the historical trip counts at other locations prior to the pandemic. Detailed traffic count worksheets and trip generation calculations are contained in Appendix A.

Table 2 summarizes the In-N-Out trip generation survey data. As shown in Table 2, the surveyed In-N-Out trip rates are higher than standard trip rates for "fast-food restaurant with drive through window" that are published in the Institute of Transportation Engineer (ITE) Trip Generation Manual (10th Edition, 2017), with

exception of the Saturday daily rate. Therefore, it is more conservative to utilize the surveyed In-N-Out trip rates to estimate the proposed project trip generation forecasts, with exception of the Saturday daily rate that is slightly lower than the ITE Saturday daily trip rate.

DRIVE-THROUGH LANE QUEUEING ASSESSMENT

The drive-through lane queue assessment provides a recommended storage capacity for the drive through lane based on the average peak queue lengths observed from new and historic surveys of comparable In-N-Out sites. In addition to the seven locations used for the trip generation surveys, historic drive through queue data was available at the following two additional locations and included in this analysis for a total of nine survey locations for the drive through queueing assessment:

- Corona, CA – 2305 Compton Avenue, Corona, CA 92881
- Highland, CA – 28009 Greenspot Road, Highland, CA 92346

The drive-through vehicular queues were observed and documented in 15-minute intervals from 5:00 PM to 7:00 PM on a typical weekday and from 12:00 PM to 2:00 PM on a typical Saturday; based on the trip generation data, these survey windows capture the periods of peak demand. Appendix A includes the drive-through lane queueing survey data.

Table 2 summarizes the peak drive-through lane queue lengths observed at the nine In-N-Out survey locations. As shown in Table 2, the average peak drive through queue length is 15 vehicles on a weekday and 16 vehicles on Saturday.

Based on the surveyed average peak queue length, a minimum storage capacity of 16 vehicles for the drive-through lane is recommended for the proposed In-N-Out projects to accommodate the average queue length during peak lunch and dinner periods. As shown on Figure 2, the drive through queue may occasionally exceed the drive through lane storage capacity by 1-3 vehicles during the weekday and Saturday peak lunch hours; however, more than adequate drive through storage capacity would be provided during the remaining non-peak hours of operation. It is recommended that the proposed project utilize a floating menu/ordering staff during the peak periods to help minimize the drive-through queue.

CONCLUSION

It is recommended that In-N-Out projects utilize the surveyed In-N-Out trip rates to estimate the proposed project trip generation forecasts, with exception of the Saturday daily rate that is slightly lower than the ITE Saturday daily trip rate.

A minimum storage capacity of 16 vehicles for the drive-through lane is recommended for In-N-Out projects. It is also recommended that the proposed project utilize a floating menu/ordering staff during the peak periods to help minimize the drive-through queue.

Should you have any questions or if we can be of further assistance, please do not hesitate to call at (714) 795-3100.

Table 1
In-N-Out Site Survey and Average Trip Generation Rate Calculations

Surveyed Trips										
Survey Site Location			Weekday PM Peak			Weekday Daily	Saturday Mid-Day			Saturday Daily
No.	City	Size[1]	In	Out	Total		In	Out	Total	
1	Fort Worth, TX[2]	3.750 TSF	86	83	169	1,984	112	102	214	2,046
2	Redwood City, CA[3]	3.750 TSF	66	75	141	2,225	152	149	301	2,929
3	Rocklin, CA[3]	3.750 TSF	84	75	159	1,720	88	96	184	1,761
4	Vacaville, CA[3]	3.750 TSF	87	65	152	1,879	94	103	197	2,244
5	Fairfield, CA[3]	3.750 TSF	75	57	132	1,662	105	103	208	2,081
6	Long Beach, CA[3]	3.600 TSF	69	73	142	n/a	121	114	235	n/a
7	Los Angeles, CA[3]	3.800 TSF	127	111	238	n/a	224	200	424	n/a
Average Surveyed Trips		3.736 TSF	85	77	162	1,894	128	124	252	2,212

Surveyed Site Trip Rates										
Survey Site Location			Weekday PM Peak			Weekday Daily	Saturday Mid-Day			Saturday Daily
No.	City	Size[1]	In	Out	Total		In	Out	Total	
1	Fort Worth, TX[2]	3.750 TSF	22.93	22.13	45.06	529.07	29.87	27.20	57.07	545.60
2	Redwood City, CA[3]	3.750 TSF	17.60	20.00	37.60	593.33	40.53	39.73	80.26	781.07
3	Rocklin, CA[3]	3.750 TSF	22.40	20.00	42.40	458.67	23.47	25.60	49.07	469.60
4	Vacaville, CA[3]	3.750 TSF	23.20	17.33	40.53	501.07	25.07	27.47	52.54	598.40
5	Fairfield, CA[3]	3.750 TSF	20.00	15.20	35.20	443.20	28.00	27.47	55.47	554.93
6	Long Beach, CA[3]	3.600 TSF	19.17	20.28	39.45	n/a	33.61	31.67	65.28	n/a
7	Los Angeles, CA[3]	3.800 TSF	33.42	29.21	62.63	n/a	58.95	52.63	111.58	n/a
Average Surveyed Trip Rates		3.736 TSF	22.67	20.59	43.26	505.07	34.21	33.11	67.32	589.92
Typical Fast-Food Restaurant with Drive-Thru Window (ITE 934)[4]		TSF	16.99	15.68	32.67	470.95	26.47	28.68	55.15	616.12
Difference			+5.68	+4.91	+10.59	+34.12	+7.74	+4.43	+12.17	-26.20
Percent Difference			33%	31%	32%	7%	29%	15%	22%	-4%

Notes:

(1) TSF = Thousand Square Feet

(2) 2020 survey conducted at In-N-Out located at 4620 South Hulen Street, Fort Worth, TX.

(3) Historic survey conducted at various In-N-Out locations in California.

(4) ITE = Institute of Transportation Engineers, Trip Generation Manual, 10th Edition, 2017; XXX = Land Use Code

n/a = not available

Table 2
Survey Site Drive-Through Queue Summary

Time Period	Peak Number of Vehicles in Drive Through Queue																			
	1 - Fort Worth, TX		2 - Redwood City		3 - Rocklin		4 - Vacaville		5 - Fairfield		6 - Long Beach		7 - Los Angeles		8 - Corona		9 - Highland		Average	
	Weekday	Saturday	Weekday	Saturday	Weekday	Saturday	Weekday	Saturday	Weekday	Saturday	Weekday	Saturday	Weekday	Saturday	Weekday	Saturday	Weekday	Saturday	Weekday	Saturday
12:00 PM - 12:15 PM	11	12		18		10		20		13	15	16	20	20	15	13	18	16	16	15
12:15 PM - 12:30 PM	12	10		21		13		19		18	15	14	18	16	14	16	18	20	15	16
12:30 PM - 12:45 PM	14	10		20		12		15		17	13	16	21	20	13	20	17	20	16	17
12:45 PM - 1:00 PM	14	13		18		11		23		18	8	10	19	20	14	22	18	21	15	17
1:00 PM - 1:15 PM	10	14		21		12		22		23	12	15	22	23	16	22	18	18	16	19
1:15 PM - 1:30 PM	12	15		20		14		28		17	13	16	21	22	18	23	14	20	16	19
1:30 PM - 1:45 PM	13	14		19		13		27		15	8	10	20	20	17	24	13	20	14	18
1:45 PM - 2:00 PM	11	15		21		12		29		18	7	9	20	20	14	23	13	22	13	19
4:00 PM - 4:15 PM			14		5		11		5		6	8	17	10	15	18	15	14	11	13
4:15 PM - 4:30 PM			16		8		14		8		5	10	15	14	11	16	16	15	12	14
4:30 PM - 4:45 PM			16		7		16		9		3	8	12	18	9	16	14	14	11	14
4:45 PM - 5:00 PM			15		6		17		16		6	5	10	8	15	16	17	15	13	11
5:00 PM - 5:15 PM	12	15	14		8		13		17		5	9	9	8	18	23	19	15	13	14
5:15 PM - 5:30 PM	11	15	14		9		11		16		7	10	14	9	21	24	19	18	14	15
5:30 PM - 5:45 PM	11	15	15		11		13		8		7	10	17	20	16	24	18	22	13	18
5:45 PM - 6:00 PM	16	17	15		12		18		17		5	9	19	19	18	23	21	17	16	17
6:00 PM - 6:15 PM	16	22									12	13	20	20	23	18	21	23	18	19
6:15 PM - 6:30 PM	17	20									7	9	19	19	24	23	19	19	17	18
6:30 PM - 6:45 PM	10	16									10	10	20	20	24	23	18	19	16	18
6:45 PM - 7:00 PM	13	13									12	14	18	18	23	20	17	19	17	17
Maximum	17	22	16	21	12	14	18	29	17	23	15	16	22	23	24	24	21	23	18	19
85th Percentile	15.5	16.8	16.0	21.0	10.9	13.0	17.0	28.0	17.0	18.0	13.0	15.2	20.2	20.0	23.0	23.2	19.0	21.2	16.2	19.0
Average	12.7	14.8	14.9	19.8	8.3	12.1	14.1	22.9	12.0	17.4	8.8	11.1	17.6	17.2	16.9	20.4	17.2	18.4	14.6	16.4

Figure 1
Survey Site Location - 4620 South Hulen Street, Fort Worth, TX

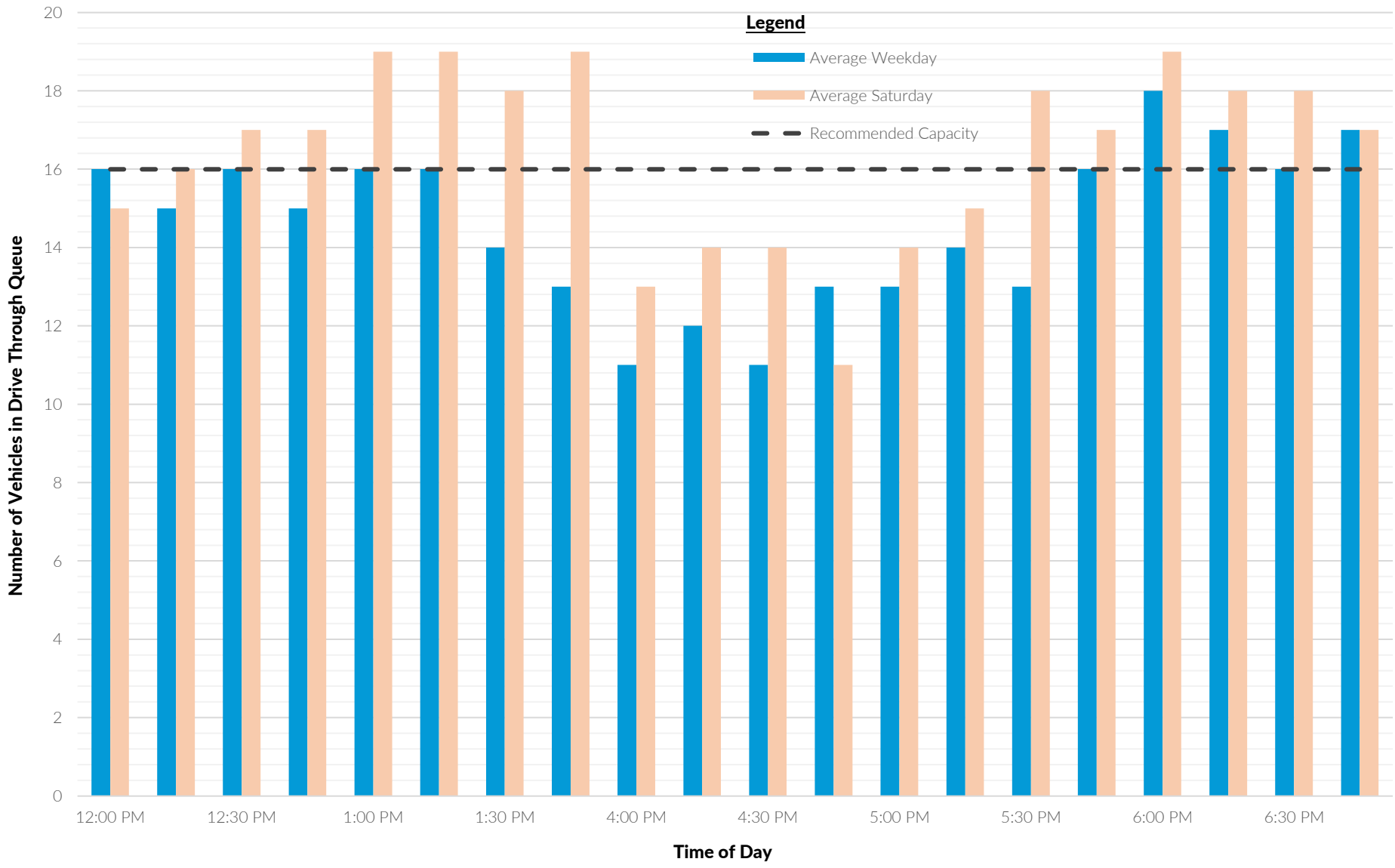

Figure 2
Average Drive-Through Queue