



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

NOTICE OF DECISION OF THE HEARINGS OFFICER

PROCEDURE TYPE III

CPO: 3

COMMUNITY PLAN:

Raleigh Hills - Garden Home

LAND USE DISTRICT:

Community Business District (CBD)
Office Commercial District (OC)

PROPERTY DESCRIPTION:

ASSESSOR MAP#: 1S1 14BC

LOT#S: 02000, 02100, 02400 & 02401

SITE SIZE: 2.24 acres

ADDRESS: 10535 & 10565 SW Beaverton
Hillsdale Highway, Beaverton, OR 97005

CASEFILE: L2200066-SU/D/PLA/PLA
REMAND

APPLICANT:

In-N-Out Burger

Attn: Cassie Ruiz

13502 Hamburger Lane

Baldwin Park, CA 97106

APPLICANT'S REPRESENTATIVE:

Oregon Architecture, Inc.

Attn: Patrick McKechnie

132 West Main Street, #101

Medford, OR 97501

OWNER:

Angel, Lynne Irene

1815 SW High Street

Portland, OR 97201

LOCATION: On the north side of SW
Beaverton Hillsdale Highway, and the south
side of SW Laurel Street, approximately 250
feet east of their intersections with SW 107th
Avenue.

PROPOSED DEVELOPMENT ACTION: Special Use and Development Review for an
approximate 3,885 square foot eating and drinking establishment (fast food restaurant) with
drive-thru and outdoor seating; and two Property Line Adjustments.

DATE OF DECISION:
April 16, 2024

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

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

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

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

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

Notice of Decision of Hearings Officer
April 16, 2024
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CASEFILE NUMBER: L2200066-SU/D/PLA/PLA REMAND

SUMMARY OF DECISION:

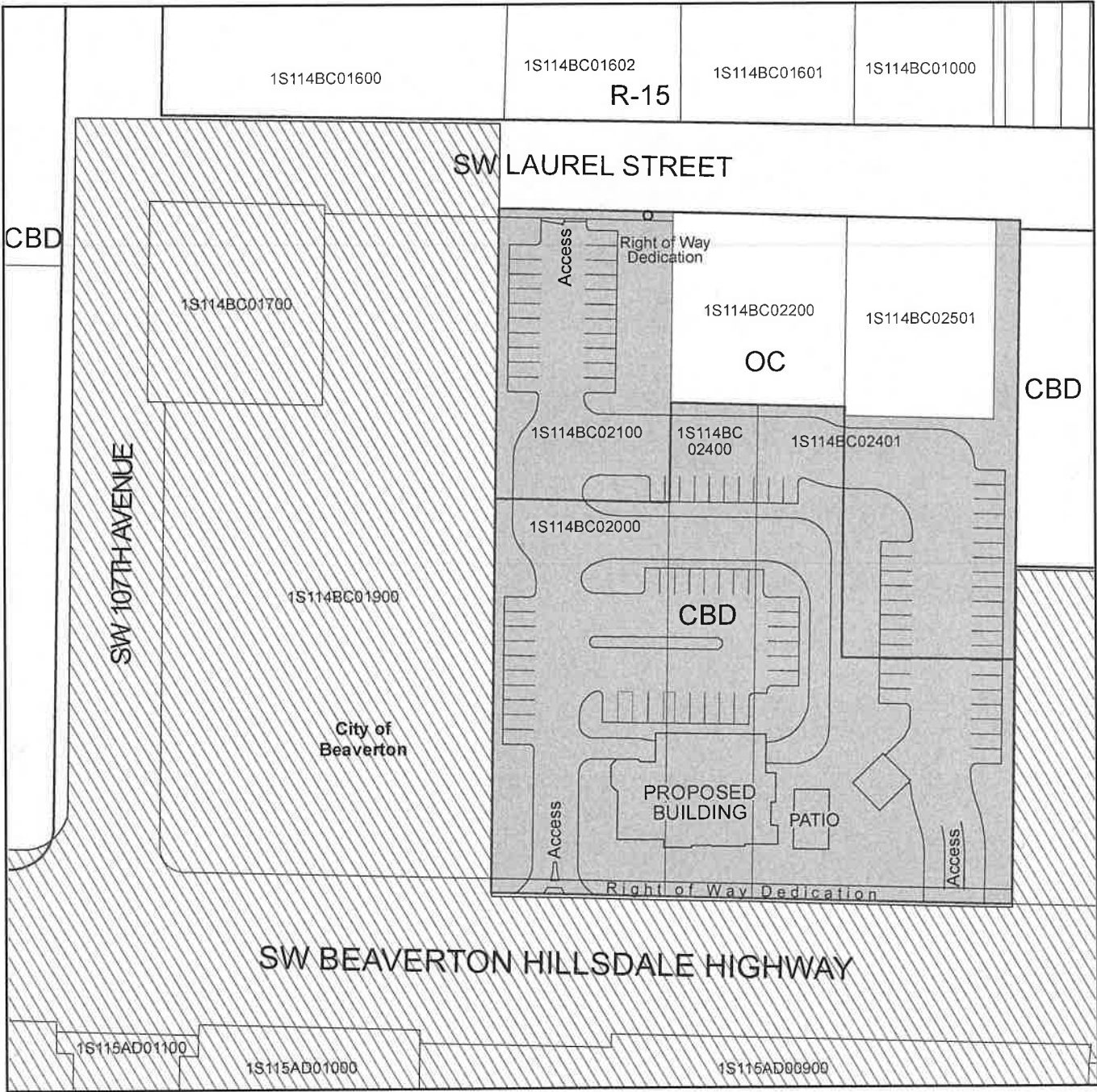
On April 16, 2024, the Washington County Hearings Officer issued a written decision (Attachment 'B') for Special Use and Development Review for an approximate 3,885 square foot eating and drinking establishment (fast food restaurant) with drive-thru and outdoor seating with two Property Line Adjustments. The development site is located on the north side of SW Beaverton Hillsdale Highway, and the south side of SW Laurel Street, approximately 250 feet east of their intersections with SW 107th Avenue in CPO #3. The development site is described as Tax Lots 2000, 2100, 2400 and 2401 Assessor Map 1S1 14BC W.M., Washington County, Oregon. The Hearings Officer's decision is as follows:

ORDER:

The application is Approved Subject to Conditions of Approval.

Attachments:

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



↑ NORTH

NOT TO SCALE



AREA OF CONSIDERATION

SITE & SURROUNDING LAND USE DISTRICTS:

- Community Business District (CBD)
- Office Commercial District (OC)
- R-15 District (Residential 15 units/acre)
- City of Beaverton

REVIEW STANDARDS FROM CURRENT OR APPLICABLE ORDINANCE OR PLAN

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

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

Regarding an application by In-N-Out Burger)	<u>FINAL ORDER</u>
for Special Use and Development Review)	<u>ON REMAND</u>
approval for a fast food restaurant with drive-thru)	Casefile No. L2200066-
at 10535 and 10565 SW Beaverton Hillsdale)	SU/D/PLA/PLA
Highway in unincorporated Washington County)	(In-N-Out Burger)

I. SUMMARY

1. The applicant, In-N-Out Burger, requests Special Use and Development Review for an approximate 3,885 square foot eating and drinking establishment (fast food restaurant) with drive-thru¹ and outdoor seating on a 2.24-acre parcel located at 10535 and 10565 SW Beaverton-Hillsdale Highway (OR 10); also known as tax lots 02000, 02100, 02400 & 02401, 1S1 14BC (the "site"). The applicant also requests approval of two Property Line Adjustments to remove lot lines from Tax Lots 2000, 2400 and 2401 of Assessor's Map 1S1 14 BC, consolidating three of the four existing tax lots into a single lot.

a. The majority of the site and the property abutting the north portion of the east boundary are zoned CBD (Community Business District). The northeast and northwest corners of the site and the property abutting the north boundary of the site are zoned OC (Office Commercial). Properties to the north, across SW Laurel Road, are zoned R-15 (Residential, 15 units per acre). Properties to the west, south, and southeast are in the City of Beaverton. The restaurant and associated drive-thru lanes are located solely in the CBD zoned portion of the site. The OC zoned portion of the site will primarily be used for vehicle parking, drive-aisles, cross-circulation through the site, and landscaping.

b. The site is currently developed with two existing restaurants, one with a drive-thru (Hawaiian Time), the other with dine-in only (Azteca), which is permanently closed. Previous casefiles associated with the site include Development Review 77-00122, 78-00043, 78-00062, 78-00078, 83-00209, 86-00041, 88-00619T, 90-00387, 91-00252.

c. SW Beaverton-Hillsdale Highway abutting the south boundary of the site is a County Arterial but under Oregon Department of Transportation (ODOT) jurisdiction. Therefore, a county Access Management Plan was not required. The applicant will be required to submit a Traffic Management Plan, to be approved by ODOT in coordination with Washington County, the City of Beaverton, the Washington

¹ The CDC uses the terms "Drive-In or Drive-Up Restaurants," which CDC 430-41 defines as "Any establishment or portion of an establishment designed and operated to serve a patron while seated in an automobile (not including drive-in theaters)." For simplicity, the hearings officer uses the term "drive-thru" to refer to "Drive-In or Drive-Up Restaurants."

County sheriff's office, and other impacted service providers. SW Laurel Road a county Local road abuts the north boundary of the site.

d. The site currently has three driveways accessing SW Beaverton-Hillsdale Highway and one driveway in the northwest corner of the site accessing SW Laurel Road. The proposed use will take access from SW Beaverton-Hillsdale Highway (OR-10) using two of the three existing driveways. The applicant will close the middle driveway. The western driveway will be limited to right-in/right-out movements only. This driveway access will be redesigned to include a "pork-chop" island to restrict left turning movements. The eastern access will operate as a "full access" (right-in/right-out/left-in/left-out) under "normalized" operating conditions. The eastern access will be restricted to right-in only, during the "opening period" of the fast-food restaurant. The SW Laurel Road driveway will be restricted to emergency access only. This access will be gated and locked with a Knox-box.

e. Proposed hours of operation are Sunday through Thursday, 10:30 a.m. to 1:00 a.m., and Friday and Saturday, 10:30 a.m. to 1:30 a.m. The Code does not limit hours of operation in the Community Business District (Section 430-41).

f. The applicant must annex the site into the City of Beaverton to receive sewer service. At the time of the original hearing the applicant was in discussion with the City of Beaverton to execute a Deferred Annexation Agreement.

2. Washington County Land Use Hearings Officer Joe Turner (the "hearings officer") conducted a duly noticed online public hearing regarding the application on June 16, 2022. Representatives of the applicant, County staff, and area residents testified orally and in writing. The hearings officer denied the application by Final Order dated August 29, 2022, based on findings that:

a. The applicant proposed to allow vehicle parking, maneuvering, and cross-circulation in the OC zoned portions of the site and excess drive-thru queuing in the OC zoned portions of the site during the "opening" period;

b. Restaurant uses, including vehicle parking, maneuvering, cross-circulation, and drive-thru queuing, are prohibited in the OC zone;

c. The applicant failed to prove that vehicle parking, maneuvering, cross-circulation, and drive-thru queuing in the OC zoned portions of the site was allowed to continue as a legally established use on the site; and

d. Drive-thru queuing could not be approved as a temporary use in the OC zone.

3. The applicant appealed that decision to the Land Use Board of Appeals ("LUBA"). Following a hearing before the Board, an order was entered remanding the August 29, 2022, decision to the hearings officer to make certain additional

determinations. See the Final Opinion and Order LUBA No. 2022-083 dated October 27, 2023 (the “LUBA Decision”, Remand Exhibit PH-1).² LUBA remanded the decision requiring the hearings officer to adopt more complete findings regarding:

a. Whether the applicant demonstrated that vehicle parking, maneuvering, and drive-thru queueing in the OC zoned portions of the site are legally established nonconforming uses that may be continued or modified. (Third assignment of error); and

b. Whether drive-thru queueing can be approved as a temporary use in the OC zoned portions of the site pursuant to CDC 430-135.1.C. Specifically, whether drive-thru queueing can be approved as a “similar temporary use” pursuant to CDC 430-135.1.C(8) and whether the County can approve additional one-year temporary permits allowing a temporary use to continue for more than one year. (Fourth assignment of error).³

4. The hearings officer held an on-the record hearing on remand. The hearings officer allowed all interested parties to submit additional argument, but precluded the submittal of new evidence. County staff, the applicant’s attorney, and five other persons testified orally at the hearing. Other persons testified in writing.

5. Based on the additional findings in this Final Order on Remand the hearings officer finds that:

a. The applicant sustained its burden of proof that restaurant related vehicle parking, maneuvering, and cross-circulation access is permitted as a nonconforming use that may be continued on the site OC zoned portions of the site;

b. Although restaurant drive-thru vehicle queueing was legally established in the OC zoned area in the northeast corner of the site, the applicant failed to demonstrate that this use was not discontinued or abandoned for more than one year. CDC 440-4. Therefore, restaurant drive-thru vehicle queueing may not be continued as a non-conforming use in the OC zoned portions of the site;

c. It is feasible to operate the proposed restaurant drive-thru without allowing vehicles to queue in the OC zoned portions of the site;

d. Drive-thru queueing cannot be approved as a temporary use in the OC zone because:

² The County restarted the exhibit numbering with this remand proceeding. However, the record from the initial proceeding is still part of the record on remand. Therefore, the hearings officer will add the word “Remand” to the remand exhibit numbers, i.e., Remand Exhibit PH-1, to distinguish exhibits submitted during the remand proceeding from those submitted in original proceeding, i.e., Exhibit PH-1 of the original proceeding.

³ LUBA denied the applicant’s first and second assignments of error and affirmed the hearings officer’s decision on those issues.

i. Drive-thru queueing is not a temporary use listed in CDC 430-135; and

ii. Drive-thru queueing cannot be approved as use that is similar to other permitted temporary uses pursuant to CDC 430-135.1.C(8);

e. The Director can approve additional one-year temporary permits allowing a temporary use to continue beyond the original approval period.

6. Based on the findings provided and/or incorporated herein, the hearings officer approves the application subject to the conditions of approval in Attachment B of this Final Order On Remand.

II. HEARING AND RECORD HIGHLIGHTS

1. Washington County Land Use Hearings Officer Joe Turner received testimony at the duly noticed public hearing about this remanded application on March 26, 2023. At the hearing, the hearings officer received into the record and physically inspected the file maintained by the Department of Land Use and Transportation regarding the application. The hearings officer made the declarations required by ORS 197.763. The hearings officer disclaimed any *ex parte* contacts and any bias or conflicts of interest.

2. County principle planner Stephen Shanc summarized his Memorandum to the Hearings Officer dated March 19, 2024, (Remand Exhibit PH-3) and his PowerPoint presentation (Remand Exhibit H-1).

a. He testified that the County has previously approved subsequent one-year temporary permits allowing a permitted temporary use to continue for more than one year.

b. The County cannot apply CDC 430-135.1.C(8), as this section authorizes the Director to approve a temporary permit for uses that are similar to uses listed in CDC 430-135.1.C through a Type I procedure. However, the Type I process is limited to permitted uses or development governed by clear and objective review criteria approvals that do not require the exercise of discretion. CDC 202-1.1. Determining whether an unlisted use is similar to other listed uses would require the exercise of discretion, which is beyond the scope of the Type I process. Therefore, CDC 430-135.1.C(8) is unlawful.

c. The existing restaurants on the site were both approved with vehicle parking spaces, drive aisles, and cross-circulation in area of the site that are now zoned OC. It appears those uses continued without interruption or abandonment after portions of the site were rezoned OC, where this type of restaurant use is generally prohibited. Therefore, these uses should be allowed to continue as legally established nonconforming uses.

d. He opined that the Code requires a separate application for determination of a nonconforming use pursuant to CDC 440-3.

3. Attorney Garrett Stephenson appeared on behalf of the applicant, -N-Out Burger, and summarized his Memorandum dated February 13, 2024 (Remand ExhibitPH-2).

a. He argued that a separate application for determination of a nonconforming use is not required in this case. The County did not participate in the LUBA appeal and did not raise the issue of whether a separate nonconforming use application is required. LUBA held that “[T]he 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.” (Remand ExhibitPH-1 at 26).

b. The applicant requested that this remand proceeding be conducted “on the record” with no new evidence allowed. Testimony on remand should be limited to argument only. Testimony received by the County regarding people’s recollections of prior drive-thru operations on the site should be excluded. The new conditions of approval proposed by the applicant are not new evidence, citing *Marine Street LLC v. City of Astoria*, 37 Or LUBA 587, 597 (2000). The hearings officer is not required to hold the record open after the hearing, as ORS 197.797(6)(a) does not apply to this remand proceeding.

c. All parties agree that “zone crossing”, allowing restaurant vehicle traffic to park, maneuver, and travel through the OC zoned portions of the site, is a legal nonconforming use on this site. The County approved the former Mr. Steak Restaurant on the eastern portion of the site and the former Burger King restaurant on the western portion. The approved site plans included vehicle parking spaces and drive aisles for restaurant customers and employees in the portions of the site that are now zoned OC. The entire site was zoned CBD at the time the County approved these uses and restaurants, including drive-throughs, were a permitted use. The County also approved vehicular access between the Mr. Steak and Burger King parcels when it approved the Mr. Steak restaurant on the eastern portion of the site. The approved access allowed restaurant customers to enter the site via the eastern driveway and travel through the OC zoned portion of the site to access the restaurant, parking, and drive-thru on the western portion of the site or to enter from the west and access the restaurant on the eastern portion of the site.

d. Use of the parking, maneuvering, and cross-circulation access in what is now the OC zoned portions of the site has continued without interruption or abandonment. The Hawaiian Time restaurant was operating in the former Burger King building with a drive-thru window and the Azteca restaurant was operating in the former Mr. Steak building when this application was submitted. Therefore, the applicant may continue these activities as lawfully established nonconforming uses

e. The proposed use will not expand the existing nonconforming use. The applicant will reduce the number of parking spaces in the OC zoned portions of the site. In addition, based on the applicant's transportation analysis, the proposed use will reduce the potential number of vehicle trips to the site, as the applicant will reduce the square footage of restaurant uses on the site and close the existing driveway to SW Laurel Avenue and one of the three existing driveways onto SW Beaverton-Hillsdale Highway.

f. The applicant will accept conditions of approval requiring the applicant delineate the boundaries of the OC zone on the site, prohibit drive-thru queuing in the OC zoned portions of the site, and allow County enforcement of this prohibition on drive-thru queuing in the OC zones. The applicant can delineate the OC zoned areas on the site and on-site traffic control personnel can direct drive-thru traffic away from those areas. The County has the ability to enforce compliance with such a condition.

g. It is feasible to accommodate all drive-thru queuing on the CBD zoned portions of the site. The applicant proposed to provide space for 24 vehicles to queue on the CBD zoned portions of the site, which exceeds the maximum demand for existing In-N-Out restaurants reviewed by the applicant. Neighbor's concerns about excess queuing is speculative. The applicant can modify the TMP to include provisions prohibiting queuing in the OC zoned portions of the site. ODOT, the County, and the City of Beaverton, and other impacted service providers must review and approve the applicant's Traffic Management Plan (the "TMP") for traffic operations during the opening period to ensure that traffic from this use does not exceed the capacity of SW Beaverton-Hillsdale Highway or other streets in the area.

h. The County approved a drive-thru window for the existing restaurant on the eastern portion of the site when the former "Mr. Steak" restaurant was changed to a D'Lite restaurant. The drive-thru was constructed as an addition on the northeast portion of the building, which is visible in aerial photos of the site. That portion of the building and the associated vehicle drive-thru queues were located in a portion of the site that is now zoned OC.

i. The applicant's traffic study by Kittelson and Associates used trip generation analyses from other existing In-N-Out Burger locations in addition to the trip generation estimates in the Institute of Traffic Engineers Trip Generation Manual (the "ITE Manual"). The engineers adjusted up the trip generation estimates from the ITE Manual to reflect higher demand generated by In-N-Out Burger. However, that analysis determined that this use will generate 458 fewer average daily trips compared to the potential traffic generated by the two existing restaurants on the site. The applicant has reduced the total square footage of restaurants on the site, reduced the amount of parking on the site, and closed the access to SW Laurel Avenue, which will reduce potential traffic and ensure that this use does not increase the impact of the existing nonconforming use in the OC zoned portions of the site.

4. Michael Hale appeared on behalf of himself and the “SW 103rd Ave Neighborhood Group” consisting of 11 families who live on SW 103rd Avenue, SW Kennedy Street, and SW 103rd Court, and summarized his written testimony, Remand ExhibitPH-7.

a. He testified that he was frequently on the site, as his company was responsible for maintaining the flag and flagpole on the former Burger King restaurant on the western portion of the site. He did not recall a drive-thru restaurant at the former D’Lites restaurant on the eastern portion of the site. The Azteca restaurant that replaced the former D’Lites restaurant did not use a drive-thru. Azteca closed before this application was filed. The shared access drive between the two parcels that make up the site did not always exist. The drive-thru window of the Burger King restaurant did not generate large queues that extended into the OC zoned portions of the site.

b. He argued that drive-thru traffic from the proposed In-N-Out restaurant will queue in the OC zoned portions of the site. His brother-in-law owns a 7-11 store near the existing In-N-Out restaurant in Keizer Oregon and told him that the actual vehicle queues generated by that restaurant greatly exceeded the assumptions in the traffic analysis for that restaurant.

5. Travis Chesney argued that drive-thru queues are not listed as a temporary use in CDC 430-135.1.C and this use is not similar to any of the listed uses. CDC 430-135.1.J allows “Mobile Food Sites (Small)”, but CDC 430-135.1.J(2)(a)(vi) prohibits drive-thru service for this use.

a. He argued that the applicant’s traffic analysis is not an accurate depiction of traffic generated by the proposed use. The analysis was based on traffic volume estimates from the ITE Manual for fast food restaurants. However, the trip generation estimates in the ITE Manual are significantly lower than traffic volumes at In-N-Out restaurants. The In-N-Out restaurant in Yorba Linda California generates 270 vehicles per hour at peak times and the In-N-Out restaurant in Rancho Santa Margarita, California generates 248 vehicles per hour at peak times. Both of these cities have lower populations than Beaverton. Therefore, this restaurant is likely to generate even higher traffic volumes that will exceed the 24 vehicle drive-thru queuing capacity proposed on the site and drive-thru queuing will occur in the OC zoned portions of the site.

b. CDC 311-3.5 allows “Drive-In or Drive-up Establishments” in the OC zone, but this is limited to “beverage venders, film sales, locksmith and other similar uses” and the hours of operation are limited to 7:00 a.m. to 6:00 p.m.

6. Tim Harrison argued that the applicant’s traffic analysis assumed that drive-thru queuing would occur in the OC zoned portions of the site. Prohibiting queuing in those areas will change the analysis. In addition, the background traffic volumes used in the traffic analysis were based on traffic counts during the pandemic, when traffic volumes were much lower. Therefore, a new traffic analysis should be required which should also consider traffic on local roads to the north of the site.

7. Sharon Selberg requested the hearings officer hold the record open to allow her to submit her testimony in writing. She questioned whether the County approved a connection between the two existing restaurants on the site or if that is merely something that drivers have done on their own.

8. Christina Gamgene also requested the hearings officer hold the record open. She questioned how the applicant will address traffic backups on Beaverton-Hillsdale Highway that may occur if queuing is prohibited in the OC zoned portions of the site. She expressed concern that the applicant will use the proposed emergency access onto SW Laurel Road to relieve such congestion.

9. At the end of the hearing the hearings officer denied the requests to hold the record open for additional testimony and evidence. The hearings officer held the record open for one week, until 4:00 p.m. on April 1, 2024, solely to allow the applicant an opportunity to submit a final written argument without any new evidence.

III. APPLICABLE CRITERIA

- A. Washington County Comprehensive Plan
- B. Raleigh Hills-Garden Home Community Plan
- C. Washington County Community Development Code:
 - 1. Article II, Procedures:
 - Section 202-2 Type II Procedure
 - Section 202-3 Type III Procedure
 - Section 207-5 Conditions of Approval
 - 2. Article III, Land Use Districts:
 - Section 312 Office Commercial District (OC)
 - Section 313 Community Business District (CBD)
 - Section 313-3.6 Eating and Drinking Establishments
 - 3. Article IV, Development Standards:
 - Section 404 Master Planning
 - Section 406 Building Siting and Architectural Design
 - Section 407 Landscape Design
 - Section 408 Neighborhood Circulation
 - Section 410 Grading and Drainage
 - Section 411 Screening and Buffering
 - Section 413 Parking and Loading
 - Section 414 Signs
 - Section 415 Lighting
 - Section 416 Utilities
 - Section 417 Irrigation
 - Section 418 Setbacks
 - Section 419 Height
 - Section 426 Erosion Control
 - Section 429 Bicycle Parking

- Section 430 Special Uses
- Section 430-41 Drive-in or Drive-up Establishments
- Section 430-135 Temporary Uses
- Section 440 Nonconforming Uses
- 4. Article V, Public Facilities and Services:
 - Section 501 Public Facility and Service Requirements
 - Section 502 Sidewalk Standards
- 5. Article VI, Land Divisions and Property Line Adjustments Inside a UGB:
 - Section 605-1 Property Line Adjustment (Property Line Relocation)
- D. Ordinance No. 768-A, 783-A, 799-A – Washington County Transportation System Plan.
- E. Ordinance No. 793-A - Washington County Transportation Development Tax Ordinance.
- F. Ordinance No. 738 - Road Design and Construction Standards Uniform Road Improvement Standards.
- G. Resolution & Order 86-95 - Determining Traffic Safety Improvements.
- H. Resolution and Order No. 19-5 - Erosion Control, Water Quality and Water Quantity.

IV. AFFECTED JURISDICTIONS

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

V. REMAND ISSUES

1. This remand proceeding is limited to the four issues on which LUBA remanded the prior Final Order. Concerns regarding off-site traffic and other issues were addressed in the prior Final Order and were not appealed. Therefore, they are not relevant to this remand proceeding. As noted in the prior Final Order:

The applicant will create a traffic management plan (“TMP”) in coordination with the County, City of Beaverton, and ODOT to manage that additional traffic and ensure that it does not create a

hazard. The hearings officer finds, based on the expert testimony from engineers for the applicant, the County, City of Beaverton, and ODOT, that it is feasible to manage this additional traffic consistent with applicable regulations. Neighbors unsupported and subjective concerns are not sufficient to counter the expert analysis of the engineers, which is based on objective analysis, including actual traffic counts and nationally accepted engineering standards and analyses. The County, City, and ODOT all have a vested interest in ensuring that traffic generated by this facility will maintain reasonable traffic flows in the area consistent with adopted standards and not create a hazard.

August 29, 2022, Final Order at 12.

2. Pursuant to the applicant's request, the hearings officer conducted this remand as a closed record proceeding, based on the existing record without new testimony and evidence other than LUBA's remand decision, Exhibit PH-1. The record in this case is limited to argument and reference to exhibits that were submitted during the initial proceeding.

3. The majority of the site is zoned CBD. However, the northwest and northeast corners of the site are zoned OC. See Exhibit OR-1g at page 4). As discussed in the original decision, 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. As determined in the prior decision, and affirmed by LUBA, vehicle parking, drive-aisles, cross-circulation, and drive-thru queuing associated with restaurant uses are part of the proposed restaurant use and are prohibited in the OC zone, unless allowed as a legally established nonconforming use or approved as a temporary use.

4. The applicant argued that vehicle parking, drive-aisles, cross-circulation, and drive-thru queuing associated with the proposed restaurant use are allowed as a nonconforming use in the OC zoned portions of the site. Ordinarily this would require a separate application pursuant to CDC 444-3.⁴ However, the hearings officer finds that a separate application is not required in this case as LUBA ordered the hearings officer to "[m]ake 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." (Remand Exhibit PH-1 at 26).

⁴ CDC 440-3 provides:

In order to proceed with any of the land use actions listed in Sections 440-5 and 440-6, an applicant shall provide evidence that shows the following. Determination of a nonconforming use may be processed independently or concurrently through a Type II procedure with any of the land use actions listed in Section 440-5 and 440-6.

5. The hearings officer finds that use of the OC zoned portions of the site for vehicle parking, maneuvering, and cross-circulation is allowed as a legal nonconforming use that may be continued.

a. The existing restaurant uses, Hawaiian Time drive-thru restaurant (addressed as 10565 SW Beaverton-Hillsdale Highway) on the western portion of the site and the Azteca restaurant (addressed as 10505 SW Beaverton-Hillsdale Highway) on the eastern portion of the site, were both legally established with vehicle parking, maneuvering, and cross-access in what is now the OC zoned portion of the site.

i. The building housing the existing Hawaiian Time Restaurant was originally constructed as a Burger King prior to 1977. The County approved a drive-thru window for the Burger King restaurant in April, 1978. (Exhibit OR1-g, Attachment 2). In 1978 the County also approved additional parking in the northwest corner of the site, between the Burger King restaurant and SW Laurel Road, and a new driveway access to SW Laurel Road within a portion of the site that is now zoned OC. (Exhibit OR1-g at page 4 and Attachments 2 and 3).⁵

ii. The County approved the building housing the Azteca Restaurant as a “Mr. Steak” restaurant in 1977. The approved site plan included vehicle parking spaces, drive aisles, and a portion of the building within what is now the OC zoned portion of the site. (Exhibit OR1-g at page 4 and Attachment 6). The County also approved a shared vehicle accesses between the Mr. Steak and Burger King properties, located at the rear of the proposed restaurants in what is now the OC zoned portion of the site. The shared access was intended to “[allow] Mr. Steak’s user’s to exit via the Burger King driveway and so on.” (Exhibit OR1-g, Attachment 5).

iii. The County approved conversion of the Mr. Steak building to a D’Lites restaurant in 1986. The entire site was zoned CBD at that time. (Exhibit OR1-g, Attachment 7).

iv. The County subsequently approved conversion of the D’Lites restaurant to Azteca Mexican Restaurant. (Exhibit OR1-g, Attachment 8).

v. Portions of the site, including the northeast section of the former Mr. Steak building and the and parking, maneuvering, and cross-circulation uses in the northeast and northwest corners of the site were rezoned OC at some point. (Exhibit OR1-g at page 4). The existing restaurant related structures and activities in the OC zoned portions of the site became nonconforming.

6. The restaurant uses, including vehicle parking, maneuvering, and cross-circulation, continued without interruption after portions of the site were rezoned OC.

⁵ The applicant labeled documents included with Exhibit OR1-g as “Exhibits.” The hearings officer refers to these documents as “attachments” to Exhibit OR1-g in order to avoid confusion that could be created by referring to an exhibit of an exhibit.

a. Both restaurants continued to operate and the parking, drive aisles, and cross-access uses located in what is now the OC zoned portion of the site also continued without interruption for at least the past 20 years.

i. Azteca Mexican Restaurant was later converted to Vagabundos Cosina Mexican Restaurant, which was operating within less than one year from the date the application was filed. (Exhibit OR1-g, Attachment 9).

ii. At some point the Burger King building was converted to the current Hawaiian Time restaurant without changes to the existing building footprint. The Hawaiian Time restaurant was operating at the time this application was filed. (Exhibit OR1-g, Attachments 4, 10, and 11).

iii. All of the historic aerial photographs show the existing parking, drive aisles, and cross-access driveway remain in place in the OC zoned portions of the site and vehicles parked in the parking areas portions of the site. (Attachment J of the application at page 1 and Exhibit OR1-g, Attachments 4, 10, and 11). The County cannot require the applicant to “[p]rove the existence, continuity, nature and extent of [a nonconforming] use for a period exceeding 20 years immediately preceding the date of application.” ORS 215.135(11).

7. Therefore, the hearings officer finds that the restaurant related parking, drive aisle, and cross-access uses in the current OC zoned portions of the site are allowed to continue. ORS 215.135(5) “The lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued.”

8. The proposed alteration to the existing nonconforming uses complies with the approval criteria in CDC 440-6.2.B.⁶ The applicant is not proposing to expand the nonconforming use. The proposed “alterations” will reduce the impacts of the nonconforming use within the OC zone.

a. The alteration will have no greater adverse impact to the neighborhood. CDC 440-6.2.B(2). The alteration will reduce the impacts to the neighborhood by eliminating all existing nonconforming restaurant structures, reducing the number of parking spaces, and limiting the northern drive to emergency vehicles in the OC zoned portions of the site.

b. The applicant will not increase the floor area of nonconforming structures by more than 20%. CDC 440-6.2.B(2). The proposed development will reduce the overall building footprint on the site from 9,598 square feet, for the existing combined Mr. Steak/Azteca and Burger King/Hawaiian Time buildings, to 3,885 square feet for the

⁶ The County amended CDC 430 after this application was filed, Ordinance 885. The hearings officer cites to the version of CDC 430 that was in effect when this application was filed.

proposed In-N-Out building and eliminate all nonconforming structures on the site.⁷ (Attachment J of the application; Exhibit OR1-g, Attachment 1; and Remand Exhibit OR-1). As noted above, the northeast portion of the existing Mr. Steak/Azteca building is located in the OC zoned portion of the site. (Exhibit OR1-g at page 4). The applicant will remove both of the existing restaurant buildings on the site and construct a new restaurant building located entirely in the CBD zoned portion of the site. (Attachment 2 of the application).

c. The applicant will not increase the area of the remaining nonconforming use by more than 10%. CDC 440-6.2.B(3). The proposed development will reduce the area of nonconforming use on the site.

i. The applicant will reduce the amount of nonconforming restaurant parking in the OC zoned portions of the site from 56 to 44 spaces. Currently there are 28 parking spaces associated with the Burger King/Hawaiian Time restaurant in the OC zone in the northwest portion of the site. (Exhibit OR1-g at page 4 and Attachments 3 and 10). The applicant proposed to reduce parking in this portion of the site to 21 spaces. (Exhibit OR1-g, Attachment 1). There are 28 parking spaces associated with the Mr. Steak/Azteca restaurant in the OC zone in the northeast portion of the site. (Exhibit OR1-g at page 4 and Attachments 8 and 10). The applicant proposed to reduce parking in this portion of the site to 23 spaces. (Exhibit OR1-g, Attachment 1).

ii. The applicant will also reduce opportunities for restaurant traffic cross-circulation through OC zone. The applicant proposed to eliminate restaurant access to SW Laurel Road, limiting this existing driveway to emergency vehicles only. The applicant retain the existing cross-circulation drive in roughly the same location within the OC zoned portion of the site without increasing the area of the drive aisle.

d. There are no nonconforming residential uses on the site. Therefore, CDC 440-6.2.B(4) is inapplicable.

e. The proposed alteration to the existing nonconforming uses will not cause any additional adverse impacts; it will reduce the existing adverse impacts in the OC zone. As discussed above, the applicant proposed to eliminate the existing restaurant structure, eliminate restaurant traffic access to SW Laurel Road, reduce the amount of vehicle parking, and maintain, but not expand, the existing cross-circulation drive in the OC zoned portions of the site. These alterations will reduce the impacts of the nonconforming uses in the OC zone. Therefore, CDC 440-6.2.B(5) does not require mitigation because the proposed alteration will not cause any additional adverse impacts.

f. The alteration will meet all applicable standards of the primary district and the standards of Article IV to the extent practicable. CDC 440-6.2.B(6). See the "Code Findings" below.

⁷ The existing Hawaiian Time Restaurant has a 3,555 square foot footprint and the existing Azteca Restaurant has a 6,043 square foot footprint, per "the ALTA survey." (Attachment J of the application, page 1, footnote 1).

g. The applicant is not proposing to “expand” the nonconforming use. As discussed above, the applicant will reduce the nonconforming use, eliminating an existing restaurant structure and reducing the amount of nonconforming parking and opportunities for cross-circulation in the OC zoned portions of the site. As discussed below, drive-thru queuing will be prohibited in the OC zoned portions of the site. Therefore, CDC 440-6.2.B(7) is inapplicable.

h. The hearings officer finds that the application complies with CDC 440-6.2.B(8), which provides “In addition, alterations to change a nonconforming use and structure shall address the following: The alterations will have no greater impact adverse impact on the neighborhood considering factors such as:”

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

i. The currently OC zoned portions of the site have been used for vehicle parking, drive aisles, and cross-circulation associated with the two existing restaurants on the site since at least 1977. (See findings above). The applicant will reduce the impacts of those uses by reducing the amount of parking in the OC zone, limiting the existing SW Laurel Road driveway emergency access only, eliminating all restaurant structures in the OC zone, and reducing the overall square footage of restaurant uses on the site.

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

ii. The proposed alteration will not increase, and may reduce, these types of impacts. As noted above, the alteration will eliminate the existing restaurant structure in the OC zone (the northeast portion of the Mr. Steak/Azteca building), eliminate public access to SW Laurel Road from the site, and reduce the amount of vehicle parking in the OC zone.

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

iii. As noted above, the applicant will eliminate public access to SW Laurel Road from the site and reduce the amount of vehicle parking in the OC zoned portions of the site, which will reduce number of vehicles in the OC zones. The proposed use will not alter the kinds of vehicular trips to the site; the applicant proposed to replace two existing restaurants, one with a drive-thru, with a single restaurant with drive-thru. Changing restaurant brands is unlikely to change the types of vehicles accessing the restaurants.

(1) Opponents may argue that the proposed alteration will increase the volume of traffic using the cross-circulation access in the OC zoned portion

of the site. However, as noted in the applicant's traffic analysis, the proposed restaurant is expected to reduce the overall number of vehicular trips to the site by roughly 458 vehicle trips. (Attachment J of the application). Contrary to opponents assertions, the traffic analysis used trip generation data from existing In-N-Out locations, not the ITE Manual, to determine projected traffic volumes generated by the proposed use. The analysis utilized the ITE Manual trip generation estimates for the existing restaurants. There is no substantial evidence in the record to the contrary. Opponents unsupported testimony is not sufficient to counter the expert analysis of the applicant's engineers, which is based on objective analysis, including actual traffic counts and nationally accepted engineering standards and analyses.

(2) The traffic analysis is based on "normal" operating conditions, not "opening period" operations, when traffic volumes are projected to be higher. However, the majority of this higher traffic volume will occur in the CBD zoned portions of the site. Drivers will merely travel through OC zoned portions of the site to access the drive-thru window in the CBD zone. Reducing the amount of parking in the OC zone will reduce the amount of traffic in those parking areas.

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

iv. As discussed above, the applicant will reduce the amount of parking in the OC zoned portions of the site. No outside storage or loading is proposed in the OC zoned portions of the site.

(e) The comparative visual appearance;

v. The applicant will remove the existing restaurant building within the OC zone. Furthermore, "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." (Exhibit OR3-FA-1, Attachment 4 at page 5). The hearings officer finds that these changes will improve the visual appearance of the nonconforming use. There is no evidence to the contrary.

(f) The comparative hours of operation;

vi. The applicant is proposing to replace two existing restaurants with a single new restaurant. There is no evidence that the existing restaurants have any limitations on their hours of operation. Therefore, even if the existing restaurants were operating on more limited schedules due to lack of demand, there is nothing to prevent them, or another restaurant that could be allowed in the same buildings, from expanding their hours of operation. Therefore, the hearings officer finds that the hours of operation of the existing and proposed restaurants are likely similar.

(g) The comparative effect on existing vegetation;

vii. The applicant proposed to improve the existing landscaping on the site as shown in plan sheet LPP.1 of the application to be consistent with the landscaping requirements of the code, which will increase screening and buffering between the OC zoned portions of the site and adjacent properties.

(h) The comparative effect on water drainage;

viii. The applicant will comply with all stormwater requirements of the CDC, which will ensure that changes to the nonconforming use will not increase, and may improve, water drainage on the property. (Plan sheets C33 and C35 of the application).

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

ix. "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." (Exhibit OR3-FA-1, Attachment 4 at page 5). There is no evidence to the contrary.

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

x. "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." (Exhibit OR3-FA-1, Attachment 4 at page 6).

9. There are no structures or uses that are nonconforming solely as a result of the dimensional standards. Therefore, CDC 440-6.2.C is inapplicable.

10. The hearings officer further finds that the applicant failed to prove that use of the OC zoned portions of the site for storing excess drive-thru queues is allowed to continue as a nonconforming use.

a. The County approved a drive-thru in the northeast corner of the former Mr. Steak building when Mr. Steak was converted to a D'Lites restaurant in 1986. (Exhibit OR1-g, Attachment 7). The approved building addition was constructed. (Compare Exhibit OR1-g, Attachment 6 with Exhibit OR1-g, Attachment 10). The entire site was zoned CBD at the time this addition was approved. (Exhibit OR1-g, Attachment 7). The portion of the site containing the drive-thru window and associated vehicle queuing areas for the D'Lites restaurant were subsequently rezoned OC. (Exhibit OR1-g at page 4). However, there is no evidence in the record that the drive-thru remained in use when this portion of the site was rezoned OC or that the drive-thru use has since continued without interruption or abandonment for more than one year.

b. The County approved drive-thru window for the Burger King/Hawaiian Time restaurant is located in the CBD zone is located more than 100 feet south of the OC zoned portion of the site. (Exhibit OR1-g at page 4 and Attachments 3 and 10 at page 3). There is no evidence that drive-thru queues for this restaurant ever extended into the OC zoned portions of the site.

11. Therefore, the hearings officer finds that use of the OC zoned portions of the site for restaurant vehicle parking, drive-aisles, and cross-circulation is allowed to continue as a nonconforming use. However, use of the OC zoned portions of the site for drive-thru queuing is prohibited.

12. Drive-thru vehicle queuing cannot be approved as a temporary use in the OC zoned portions of the site.

a. Drive-thru vehicle queuing is not listed as a temporary use in CDC 430-135.1.

b. CDC 430-135.1.C(8) authorizes “the Director” to approve temporary permits for “Other similar uses of a temporary nature...” through a Type I review process. Staff argue that CDC 430-135.1.C(8) is unlawful because determining whether an unlisted use is similar to other listed uses would require the exercise of discretion, which exceeds the allowed scope of the Type I process. Staff’s interpretation appears correct. However, there is no need to resolve that issue here, as the hearings officer is making a similar use determination through a Type III procedure, which allows the exercise of discretion. CDC 202-3.1. The County may want to consider amending its Code to delete CDC 430-135.1.C(8) or modify it to require processing of similar use determinations through at least a Type II process with public notice an opportunity to comment.

c. The hearings officer finds that drive-thru vehicle queuing is not similar to any of the uses listed in CDC 430-135.1. Therefore, it cannot be approved pursuant to CDC 430-135.1.C(8).

i. Drive-thru vehicle queuing is not a use or structure incidental to construction work. Therefore, it cannot be approved through CDC 430-135.1.A.

ii. Drive-thru vehicle queuing is not a display, Christmas tree sales lot, open air sales, or carnival. Therefore, it cannot be approved through CDC 430-135.1.B.

iii. Temporary uses listed in CDC 430-135.1.C(1), (4) through (7) and (10) involve buildings or structures, not vehicles. Therefore, the hearings officer finds that drive-thru vehicle queuing is not similar to these uses.

iv. CDC 430-135.1.C(2) allows temporary “Storage of equipment during the construction of roads or developments.” The vehicle queuing proposed by the

applicant is unrelated to the construction of roads or development. Therefore, this is not a use similar to those listed in this section.

v. CDC 430-135.1.C(3) allows “Temporary storage of structures or equipment...” Equipment could be considered similar to vehicles. However, vehicles waiting in a drive-thru queue are not “stored”, which the dictionary defines as “lay away, accumulate.” (“Store.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/store>. Accessed 11 Apr. 2024). The applicant is proposing to allow vehicles to wait in line with the driver remaining at the wheel while they wait to collect their order at the drive-thru window. The vehicles will continue to move forward as the preceding vehicles receive their orders and leave the site. Such vehicles are not being “stored.” Therefore, the hearings officer finds that drive-thru queuing is not similar to the “Temporary storage of structures or equipment...”

vi. Drive-thru vehicle queuing is not similar to a farmers market. Therefore, it cannot be approved as a use similar to those allowed by CDC 430-135.1.C(9).

vii. Drive-thru vehicle queuing is not similar to the temporary uses listed in CDC 430-135.1.D through I and K. (Temporary fund raising and other civic activities, Festival Permit, Permits for any picnic, fair, convention, civic or community enterprise, Temporary Batch Plant, Telecommunication Facilities, or Homeless Shelter).

viii. CDC 430-135.1.J allows mobile food sites as a temporary use. However, the applicant is proposing a permanent restaurant, not a mobile food site. In addition, CDC 430-135.1.J(2)(a)(vi) expressly prohibits “drive-thru service” for mobile food sites approved as a temporary use. Therefore, drive-thru vehicle queuing cannot be approved as similar use pursuant to this section.

ix. CDC 430-135.2.A allows health hardship dwellings and 430-135.2.B. allows temporary homeless shelters as temporary uses. However, the proposed drive-thru vehicle queuing is not similar to these uses.

13. Although this issue is moot given the above findings, the hearings officer finds that the County has the authority to approve consecutive one-year temporary permits. CDC 430-135.1.C(4) expressly limits permits for “Temporary storage of relocated dwelling structures: to “[a] single, 1 year temporary permit...” and prohibits the approval of “[s]ubsequent temporary permits granted unless the storage site is the subject of an active land use application...” Therefore, by implication, the County may approve subsequent temporary permits for other uses. Otherwise there would be no need for this language in CDC 430-135.1.C(4).

14. The hearings officer finds, based on the expert testimony of the applicant’s traffic engineers, that it is feasible to operate the proposed restaurant without vehicle queuing in the OC zoned portions of site without causing excessive traffic spillover onto Beaverton-Hillsdale Highway.

a. As noted in the applicant's site plan, the drive-thru lanes provide storage for 24 vehicles in the queue. (Attachment 2 of the application). The hearings officer finds that it is feasible to provide additional drive-thru queuing on the site using during the opening period when higher traffic volumes are expected.

i. The applicant proposed to create two-way drive aisles through the site connecting the east and west driveways. However, the applicant proposed to limit the eastern driveway to right-in only movement during the opening period, thereby limiting the on-site driveways on the east and north portions of the site to one-way traffic. This would allow the applicant to use one of the two drive aisle lanes for drive-thru queuing with the other lane available for drivers wishing to park and enter the restaurant, similar to what is shown at page 29 of Exhibit T of the application. The applicant could utilize on-site traffic control personnel to limit such queuing to the CBD zoned portions of the site to the north and east of the restaurant building. Based on the dimensions of the vehicle queues shown in the site plan and the length of the drive aisle segments in the CBD zoned portions of the site (Exhibit OR1-g, Attachment 1), five additional vehicles could queue in the eastbound drive aisle in the CBD zoned portion of the site north of the restaurant and two or three vehicles could queue in the northbound drive aisle in the CBD zoned portion of the site east of the restaurant.

ii. The applicant may be able to provide additional drive-thru queue storage in the CBD zoned portions of the site or utilize other measures such as additional onsite traffic control measures, additional staffing, and special ordering and delivery protocols to accommodate higher drive-thru queuing demand during the Opening Period. The applicant can include such measures in the TMP, which will be subject to additional review by the County, City of Beaverton, ODOT and other affected agencies. The hearings officer finds, based on the expert testimony from engineers for the applicant, the County, City of Beaverton, and ODOT, that it is feasible to manage traffic, including drive-thru queuing, to ensure compliance with applicable regulations. Neighbors unsupported and subjective concerns are not sufficient to counter the expert analysis of the engineers, which is based on objective analysis, including actual traffic counts and nationally accepted engineering standards and analyses. The County, City, and ODOT all have a vested interest in ensuring that traffic generated by this facility will maintain reasonable traffic flows in the area consistent with adopted standards and not create a hazard.

(1) The hearings officer finds that the County is not required to provide for public review and comment on the TMP. The purpose of this preliminary review is to determine whether it is feasible to comply with applicable criteria. The preliminary engineering plans, including traffic control measures, are conceptual, and analysis of all technical details is not required. See *Meyer v. City of Portland*, 67 Or App 274, n 6, 678 P2d 741, rev den 297 Or 82 (1984). (“[C]onditions of approval may include conditions that specific technical solutions to identified development problems be submitted and reviewed and approved by the government's technical staff.”). To require complete, detailed plans prior to preliminary approval would

require re-working the entire design any time amendments or modifications of the project are required. This would be highly inefficient and is not necessary to protect the public interest. County, ODOT, and other agencies' review of the final engineering plans provides adequate protection of the public interest.

iii. The applicant's traffic analysis did not include excess drive-thru queuing in the OC zoned portions of the site. The TMP will be required to address excess vehicle queuing outside of the OC zoned portions of the site.

b. The applicant should be required to clearly mark the boundaries of the OC zone on the site, indicate that drive-thru queuing is prohibited in those areas, and instruct traffic control personnel to prohibit drive-thru queuing in the marked OC zones. A condition of approval is warranted to that effect.

c. It is feasible for the County to enforce such a condition. Suggestions that conditions attached to a land use decision may be violated are speculative, and are not grounds for denial of the application. *Canfield v. Lane County*, 16 Or LUBA 951 (1988). The County can monitor and enforce compliance with the conditions of approval, including limitations on drive-thru queues. The County Code Enforcement section exists for that purpose. Neighbors can initiate the enforcement process by reporting any violations they observe. The fact that neighbors can assist in monitoring the use does not shift the responsibility to them to do so. The County continues to bear the responsibility for enforcing its laws. However neighbors may be in a better position to monitor the use on a continuing basis because of their proximity, and it may be in their interests to do so given the complaint-driven nature of the enforcement process.

VI. CODE FINDINGS

The following reiterates the hearings officer's findings from the original Final Order dated August 29, 2022, with modifications necessary to address the above findings regarding the remanded issues.

A. Washington County Comprehensive Framework Plan:

There are no specific Plan policies or goals that affect this request that are not implemented by the Code or the Community Plan. The Framework Plan requires development applications to comply with the Community Development Code and the applicable Community Plan. Findings in this Final Order that the request complies with the standards of the Code and the Community Plan, satisfy this Plan requirement.

B. Raleigh Hills-Garden Home:

- The site is located in an Area of Special Concern – Subarea 2, Design Element 4 as related to Area of Special Concern (ASC) H, and General Design Element #11.

- The site is not designated as a Significant Natural Resource nor does it contain any flood plain or drainage hazard areas.
- The site does not contain a Historic Resource.

The following General Design Elements are considered relevant to this proposal:

11. Proposed new commercial uses and expansion of existing uses along either Canyon Road Beaverton-Hillsdale Highway shall be evaluated against the community plan goal to discourage strip commercial development. Designs shall include features such as shared access, orientation, parking, signage and landscaping, as required by the Community Development Code, which mitigate the detrimental effects of commercial strip development.

The proposed project is considered a new commercial development not a strip commercial development, as the proposed restaurant is a single use. The proposal will reduce the number of existing driveways from three to two on SW Beaverton-Hillsdale Highway; all proposed signage and landscaping will meet the Code requirements as applicable.

13. Where the impact of noise and lighting associated with commercial or industrial uses adjacent to residential areas does not meet the standards in the Community Development Code, the commercial development shall be subject to limited hours of operation.

The proposed project can be conditioned to meet all applicable standards of the Code. The site has been developed with commercial uses since the 1970s and the proposed commercial use will generate similar impacts. This development will replace two existing restaurants with a single restaurant. All on-site lighting will be mitigated consistent with Code Section 415. Section 430-41.4 of the Code limits hours of operation of drive-in facilities in the Office Commercial (OC) zoning district, but not the Community Business District (CBD). As discussed above, use of the OC zoned portions of the site for excess drive-thru vehicle storage is prohibited. The restaurant building is also located entirely within the CBD District. Noise standards are enforced by the Health and Human Services Department, as stated in County Code of Ordinances Chapter 8.24, "Noise." The nearest residentially zoned properties are located north of the site, across SW Laurel Road. With the exception of the parking area in the northwest corner, the site is screened from residentially zoned properties by intervening development and landscaping. The applicant will limit the existing SW Laurel Road access to emergency vehicles only, which, compared to existing conditions, will reduce the impact of commercial uses on the site on nearby residential properties.

14. New development shall dedicate, when determined to be appropriate through the development review process, rights-of-way for road extensions and alignments as indicated in the

Washington County's Transportation System Plan and the Raleigh Hills-Garden Home Community Plan. However, improved traffic flow should be achieved by redesign when feasible, rather than by widening roads or building new ones. New development shall also be subject to conditions set forth in the County's growth management policies and public facility standards during the development review process.

The applicant will be required to dedicate additional right-of-way along SW Beaverton-Hillsdale Highway (OR-10) as conditioned by the Oregon Department of Transportation (ODOT), as well as dedicate right-of-way along SW Laurel Road as conditioned by the Washington County Engineer. The applicant will also be required to develop, submit, and obtain approval of a Traffic Management Plan (TMP), in accordance with conditions of approval provided by ODOT, in coordination with the Department of Land Use & Transportation and the City of Beaverton.

- 15. New access onto Arterials and Collectors shall be limited as detailed in the Community Development Code provisions on Circulation and Access. Shared or consolidated access shall be required prior to issuance of a development permit for land divisions or structures located adjacent to these facilities, unless demonstrated to be unfeasible.*

No new access is proposed onto SW Beaverton-Hillsdale Highway (OR-10). The applicant will close one of the three existing access driveways. Access to state highways is subject to ODOT approval. ODOT has provided conditions of approval related to all access to and from SW Beaverton-Hillsdale Highway (OR-10). Shared access is infeasible due to existing development on, and different ownership of, adjacent parcels.

Community Plan Subarea 2: Specific Design Elements

- 4. Land designated for commercial uses adjacent to Canyon Road and Beaverton-Hillsdale Highway comprises **Area of Special Concern H**. In order to promote the elimination of those strip commercial features which are vehicle and pedestrian traffic safety hazards and the addition of features which will enhance the business advantage of overall appearance of the subarea, the following standards shall apply to development of structures, land division and significant remodeling of existing structures within this area.*
 - a. Access drives and curb cuts shall be consolidated and, if feasible, shared between adjoining parcels.*

As noted above, the applicant will close one of the three existing access driveways onto SW Beaverton-Hillsdale Highway. Shared access is infeasible due to existing development on, and different ownership of, adjacent parcels.

- b. Where no curb cuts onto Canyon Road or Beaverton-Hillsdale Highway now exist, new direct access shall be allowed only for an interim use until alternative access is completed, pursuant to access management provisions in the Comprehensive Framework Plan and Community Development Code.*

The applicant will use existing curb cuts. No new curb cuts are proposed onto Beaverton-Hillsdale Highway.

- c. A safe and convenient means of pedestrian circulation shall be provided to each use. The pedestrian system shall provide access from each use to the property line of adjacent uses and from the use to the nearest public transit facility or stop. The design of new pedestrian facilities shall complement the design of those already constructed in adjacent uses.*

The applicant proposes a new ten-foot-wide sidewalk along OR-10, as well as a six-foot-wide bike lane to match that of adjoining uses to the west (Chick fil-A). The proposed site plan (Exhibit-A of the application) shows sidewalk connections to each of the adjacent uses to the east, north and west. Existing and proposed sidewalks will provide pedestrian access to the nearest transit stop at the intersection of SW 107th Avenue and OR-10. Walkways on the site will connect the proposed use to the sidewalk on Beaverton-Hillsdale Highway.

- d. A landscape buffer area shall be established and maintained along that portion of the property abutting SW Canyon Road or Beaverton-Hillsdale Highway. This landscaping shall be done at least to the level of Type 1 Screening and Buffering Standards in the Community Development Code.*

The applicant will landscape the site in compliance with the CDC and Community Plan, as shown in Exhibit-Q of the application materials.

- e. Business identification and directional signs shall be brought into conformance with sign standards in the Community Development Code and consolidated whenever feasible.*

All existing signs on the site will be removed and all new signage is subject to County review and approval.

The project has been reviewed for conformance with the applicable Community Plan General Design Elements. The Community Plan is implemented by the Community

Development Code. When built in conformance with the Conditions of Approval, the project will comply with the Community Plan.

C. Washington County Community Development Code:

1. Article II, Procedures:

202-2 Type II Procedures

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

The applicant has chosen to elevate this application to the Type III (public hearing) procedure as outlined below.

202-3 Type III Procedures

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

The proposed development for a fast-food restaurant with drive-thru and outdoor seating is a *Permitted* use within the CBD land use district under the Type II Procedure (no public hearing) as stated in CDC Sections 313-3.6, *Eating and Drinking Establishments*. However, the applicant, in coordination with the Director, has chosen to have the application reviewed as a Type III Procedure (public hearing) per Community Development Code Section 202-5.4. The remand was also subject to a Type III procedure.

207-5 Conditions of Approval

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

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

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

Conditions of Approval, listed in Attachment B of this Final Order have been imposed to ensure the project complies with applicable code standards and comments from other departments and agencies.

**2. Article III, Land Use Districts:
Section 312 Office Commercial District (OC)**

As discussed in Section V above, the applicant is proposing vehicle parking, maneuvering, and cross-circulation in the OC portions of the site. These uses are part of the proposed restaurant use, based on LUBA's holdings in *Wilson v. Washington County*, 63 Or LUBA 314 (2011)(LUBA No. 2011-007), *Bowman Park v. City of Albany*, 11 Or LUBA 197 (1984) and *Roth v. Jackson County*, 38 Or LUBA 894, 905 (2000). LUBA affirmed the hearings officer's findings to that effect in response to the first assignment of error. (Exhibit PH-1 at pages 6-13).

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.B. The applicant 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.

However, as discussed above, vehicle parking and maneuvering related to the proposed restaurant use is permitted to continue as a legally established nonconforming use. The County approved two existing restaurants on the site, including vehicle parking, drive aisles, and cross-circulation access in those portions of the site that are currently zoned OC, at a time when the entire site was zoned CBD. These uses have continued without interruption for twenty years or more. Therefore, the applicant may continue to use the OC zoned portions of the site for vehicle parking, drive aisles, and cross-circulation access as a continuation of a legal nonconforming use.

The applicant failed to demonstrate that use of the OC zoned portions of the site for excess drive-thru vehicle queue storage existed at the time a portion of the site was zoned OC or that any drive-thru vehicle queue storage that was occurring continued without interruption or abandonment for more than one year. Therefore, the applicant cannot use the OC zoned portions of the site for excess drive-thru vehicle queue storage as a continuation of a legal nonconforming use. The applicant should be required to clearly identify the boundaries of the OC zone on the site and use signage, traffic control personnel, and other measures that may be approved as part of the TMP to ensure that drive-thru vehicle queuing does not occur in the OC zoned portions of the site.

Drivers will need to pass through the OC zoned portions of the site in order to access the drive-thru queuing areas in the CBD zoned portions of the site. The hearings officer finds that this traffic is not part of the drive-thru queue, because the vehicles are not stopping and waiting in the OC zone. Vehicles are merely passing through on the way to access the drive-thru queue in the CBD zoned portion of the site, similar to what is currently occurring as customers pass through the OC zone to access the drive-thru window of the Hawaiian Time restaurant.

Section 313 Community Business District (CBD)

313-3 Uses Permitted Through a Type II Procedure

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

313-3.6 Eating and Drinking Establishments - Those with a drive-in or drive up windows shall address Section 430-41.

The applicant proposes a 3,885 square foot eating and drinking establishment with drive-thru and outdoor seating, a permitted use in the Community Business District (CBD). See Section 430 below.

313-6 Dimensional Requirements

313-6.1 Lot Area:

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

The development site is approximately 2.24 acres (97,574 square feet) with about 1.5 acres designated CBD, the remaining 0.74 acres designated OC. As proposed all

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

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

Compliance with these requirements is addressed in Section 313 above.

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

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

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

Compliance with the Americans with Disabilities Act will be evaluated and ensured through the Building Services Section's review of development permits for the site.

- 406-2.4 Arrange structures and use areas for compatibility with adjacent developments and surrounding land uses, using the following design and siting techniques:*
 - A. Locate and design structures and uses not to obscure or degrade identified scenic views or vistas from adjacent properties and public thoroughfares, considering setbacks, building height, bulk and landscaping;*
 - B. Orient major service activity areas (e.g., loading and delivery areas) of the proposed development away from existing dwellings;*
 - C. "Street furniture" such as bus shelters, streetlights, drinking fountains, benches and mailboxes shall be similar in design and materials to the buildings of the development.*

There are two existing structures on the site. Both structures will be demolished and replaced with one 3,885 square foot structure for the proposed restaurant, an associated 698 square foot outdoor patio seating area, and a 547 square foot trash enclosure. All proposed structures meet the dimensional standards of the CBD District. The exclusive drive-thru lane portion of the proposed restaurant will be located entirely within the CBD zoned portion of the site, behind the building and out of view from SW Beaverton-

Hillsdale Highway (OR-10) and approximately 165 feet away from SW Laurel Road to the north.

The restaurant structure, outdoor seating area, and trash enclosure will be set back a minimum 20-feet from the future edge of right-of-way of SW Beaverton-Hillsdale Highway (OR-10), with the main customer entrance facing directly onto the public right-of-way to create ease of access. The applicant proposes additional right-of-way on OR-10 to match the frontage improvements completed Chick fil-A to the west. Improvements include extension of the bicycle lane and pedestrian sidewalk along the frontage of the site, approximately 300 feet in length. See the Transportation Findings below.

All right-of-way improvements will be required to meet the standards of the Oregon Department of Transportation (ODOT) and Washington County as applicable. All proposed structures have been designed to match architecturally in materials and colors throughout the site. The proposed restaurant is compatible with existing and surrounding properties. Surrounding land uses are comprised of a mix of retail and commercial; a neighborhood shopping center to the west and south; specialty grocery store and restaurants across OR-10 to the south; small retail uses to the east, small offices adjacent to the site to the north, and residential uses to the north across SW Laurel Road. Deliveries will be to the interior of the site and away from existing residential uses on the north side of SW Laurel Road.

406-3 Energy Conservation Guidelines

Type II and Type III Developments:

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

- A. East-west street direction so that principal building facades will face south;*
- B. Make configuration of lots to allow orientation of the front or rear of buildings within twenty (20) degrees of true south in order to maximize potential solar access.*

The applicant indicates the proposed building will face east-west with the main customer entrance facing south. Additionally, the proposed development includes a dining area designed to maximize natural daylight, including placement of windows and automatic lighting that adjusts to natural daylight.

406-6 Mixed Solid Waste and Recyclables Storage Facilities

The trash enclosure is located to the east of the restaurant adjacent to the drive-aisle, approximately 45-feet to the north of OR-10 (Exhibit A, Plan Sheet C.30.0). The enclosure will be approximately 547 square feet (Plan Sheet C30.0). Per Section 406-6.1 B.(2), retail uses require a minimum enclosure size of ten square feet plus ten square feet

dimensional requirements have been satisfied in accordance with minimum Code requirements.

313-6.2 Yard Requirements:

The minimum yard requirements shall be as follows:

A. Twenty (20) foot front yard;

B. Side Yards:

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

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

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

C. Twenty (20) foot rear yard; and

The subject property fronts on SW Beaverton-Hillsdale Highway (OR-10), with access at the rear of the site to SW Laurel Road. The SW Laurel Road access will be a gated access accessible only by emergency services. The proposed restaurant and accessory structures, outdoor seating, and trash enclosure, meet minimum setbacks of 20-feet from Beaverton-Hillsdale Highway. No structures are proposed at the rear of the site near SW Laurel Road. All structures will comply with all applicable minimum setbacks.

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

As proposed, all on site screening and buffering complies with the applicable Sections of 411. All proposed structures are setback from future right-of-way as required per Section 418.

313-6.3 Height:

A. The maximum height for structures shall be 100 feet except as modified by other Sections of this Code.

The proposed restaurant structure is 23-feet high, the trash enclosure proposed to be up to 12 feet high. All proposed structures comply with the standard.

**3. Article IV, Development Standards:
Section 404 Master Planning**

The applicant has submitted materials showing on-site and off-site topography and tax lot lines, as well as roadways in proximity to the site. This information adequately represents the Master Planning requirements of CDC Section 404.

**Section 406 Building, Siting and Architectural Design
406-1 Review Standards**

per 1,000 square feet of gross floor area. The applicant proposed a 3,885 square foot restaurant requiring a minimum 398.50 square foot trash enclosure with a minimum 12-foot wide gate access. The enclosure will be fully enclosed with three walls, a roof, lighted, and have two swing gates that are lockable. The enclosure will match the overall development in building materials and color. Landscaping is proposed to the south, east and west to mitigate any visual impacts.

The applicant has provided a Service Provider Letter from Washington County Health and Human Services/Solid Waste and Recycling program indicating the facilities will adequately serve the proposed development. Due to the design of the access gates, HHS proposed a condition requiring that the applicant roll out the trash bin(s) to facilitate access for the waste hauler. The applicant shall work with HHS if access design changes in the future, per the Service Provider Letter, signed by HHS on February 11, 2022.

Section 407 Landscape Design

407-1 Minimum Landscape Standards

407-1.4 Commercial, Industrial and Institutional Districts:

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

The project site totals approximately 93,045 square feet. Per Section 407-1.4, 15 percent of the buildable land area equates to approximately 5,583 square feet of required landscaping.

The applicant has proposed to landscape 23,326 square feet (25.1-percent) of the total net project area, exceeding the minimum requirements. (See Plan Sheet page LPP.1 of the application materials). This requirement has been satisfied.

407-6 Parking Area Landscaping

- 407-6.1 The landscaping located within and adjacent to access roads and parking areas shall consist of a mixture of ground cover, shrubs and trees.*
- 407-6.2 Landscaped areas shall be located to provide shade for parking lots and to create small clusters of parking.*
- 407-6.3 In addition to pedestrian ways, parking areas and access roads shall be separated from the exterior wall of a structure with landscaping except where loading and access ways exist.*
- 407-6.4 A minimum five (5) foot landscape strip shall be created along any parking lot boundary, including access roads, except where the use of joint parking or a zero (0) setback is approved.*
- 407-6.5 Landscape "islands" located within parking areas shall maintain a minimum width and length dimension of five (5) feet (see Section 407-1.6).*

- 407-6.6 *Entryways into parking lots shall be bordered by a minimum five (5) foot wide landscape strip.*
- 407-6.7 *Landscape plans that do not meet the minimum area standard through requirements intended to provide landscaping around buildings and in parking and loading areas, and screening and buffering as required under Section 411, are required to focus landscaping along pedestrian walkways linking on-site building(s) to the street in order to meet the minimum area standard.*

The applicant's site plan (Exhibit-Q of the application, Plan Sheet LPP1.0) demonstrates compliance with the requirements of Sections 407-6. The site will be redeveloped in its entirety. Therefore, parking area landscaping consistent with 407-6.5 as well as other applicable landscaping requirements is required.

407-7 Urban Street Tree Standards

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

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

The development is required to provide street trees meeting the standards of this section. Street trees are proposed along the street frontage of SW Beaverton-Hillsdale Highway

(OR-10) and SW Laurel Road as part of the required half-street improvements. (Exhibit-Q of the application, Site Plan Sheet LPP.1)

407-8 Installation and Maintenance

Maintenance of landscaping shall comply with the standards of this section.

Section 408 Neighborhood Circulation

408-10 Internal Pedestrian Circulation

408-10.1 Number of Pedestrian Connections

- A. *All developments that generate fourteen (14) or more additional ADT shall provide a pedestrian connection between the street and the main entrance of the primary structure on the lot. For lots with more than one street frontage, a connection shall be provided to each street. As an alternate for new development on lots with multiple buildings, a pedestrian connection shall be provided between the street and the center of the internal pedestrian network. The requirements do not apply to single family or duplex residential development.*
- B. *All developments that generate five hundred (500) or more ADT shall provide:*
 - (1) *A connection from the main entrance of the primary structure to within twenty (20) feet of any transit stop located along the frontage of the subject property;*
 - (2) *A connection to within twenty (20) feet of any mid-block pedestrian crossing; and*
 - (3) *A connection for every two hundred (200) feet of street frontage including connections provided per (1) and (2) above. Connections shall be generally spaced to ensure direct access to buildings on the lot for pedestrians accessing the lot from any direction.*
- C. *As an alternative to 408-10.1 A. and B. (1-3) above, pedestrian connections shall be provided for new development as part of campus development which connect each building within the campus area and directly connect the building complex to the most appropriate street(s) or pedestrian route(s). More than one (1) pedestrian connection may be required to a particular street or pedestrian route in order to decrease out of direction travel.*

The applicant proposes a five (5) foot-wide internal pedestrian pathway connecting the parking areas to the restaurant. Main restaurant access will be provided from SW Beaverton-Hillsdale Highway. The applicant proposes the continuation of the ten-foot-wide sidewalk along the site's frontage on SW Beaverton-Hillsdale Highway as part of the right-of-way improvements required by the Oregon Department of Transportation (ODOT). The site has approximately 300 linear feet of street frontage on SW Beaverton-Hillsdale Highway. The proposed sidewalk will provide uninterrupted pedestrian connections to the east and west of the site, including access the Chick fil-A restaurant and Tri-Met bus stop #54, located east of SW 107th Avenue on SW Beaverton-Hillsdale Highway. The applicant also proposes a five (5) foot-wide internal pedestrian pathway connecting the restaurant to the sidewalks to be constructed on SW Laurel Road. As a result, the proposed development provides pedestrian connections between both street frontages. The proposed connection(s) are adequate and meet the standards.

Section 410 Grading and Drainage

The applicant proposes grading of the site to remove existing structures and construct the new restaurant and related uses; i.e., parking, landscaping, internal pedestrian walkways, outdoor seating area, trash enclosure, etc. and to construct the proposed building, parking, and other improvements. The applicant has provided a grading plan (Plan Sheet C33) which provides information for all cut and fill amounts for the proposed on-site earthwork. A Grading Permit meeting the requirements of Section 410 shall be obtained prior to any on-site work and shall comply with the Conditions of Approval of this Casefile.

The applicant also provided a Drainage Analysis site plan (Plan Sheet C35) as well as a complete Drainage Analysis prepared by MSL Engineering, Inc. The report concludes the proposed project has been designed in accordance all CWS guidelines. Pursuant to Resolution and Order No. 19-5, Clean Water Services (the District) has the responsibility for review and approval of storm drainage plans as well as erosion control plans. The District submitted service provider letters affirming that storm sewer service is available to the site. The applicant will be required to obtain approval from the District for the proposed drainage plan prior to any on-site work.

Section 413 Parking and Loading

413-3 Off-Street Parking Lot Design

The applicant proposed 94 striped parking spaces on the site: 18 compact spaces, 72 standard spaces, and four handicapped accessible spaces, including one van accessible. All required parking spaces will be angled at 90° and striped according to the dimensional standards of this section.

413-6 Minimum Off-Street Parking Requirements

The minimum and maximum amount of required parking is based on the following:

USE		MAXIMUM NUMBER OF STANDARD OFF-STREET PARKING SPACES PER UNIT OF MEASURE
413-6.1	C. Business and Commercial:	<i>Maximum number of spaces:</i>
(6)	<i>Drive-in restaurant or similar drive-in used for the sale of beverages, food or refreshments for consumption off the premises</i>	<i>5 per one (1,000) thousand square feet of gross floor area</i>
413-6.3	B. Maximum Off-Street Parking Ratios in Zone A:	
Zone A.	<i>Drive-in restaurant or similar drive-in used for the sale of beverages, food or refreshments for consumption off the premises</i>	<i>12.4 per one (1,000) thousand square feet of gross floor area</i>

Per the requirements above, the minimum parking spaces for the proposed 3,885 square foot restaurant with drive-thru is 19 spaces, and the maximum number is 48 spaces. The applicant has proposed a total of 94 on-site parking spaces in anticipation of the site needing additional overflow parking spaces for several reasons: 1) In response to requests made by community members to have as many parking spaces as possible, and 2) the popularity of the restaurant and its recognition along the West Coast region of the country resulting in increased parking demand.

- 413-6.6 In either Zone A or B, the Review Authority may approve through a Type II procedure off-street parking in excess of the maximum parking standards based on findings that:*
- A. The nature of the development will result in a 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 finds that the proposed excess parking meets this standard. There is no dispute that this use is expected to generate greater customer demand than most other drive-in restaurants. Therefore, the application complies with CDC 413-6.6.A. As the applicant notes in Exhibit PH-5a, it is not feasible for this use to include most of the parking reduction measures listed in CDC 413-6.6. There are no parking structures located in the vicinity of the project, nor are there any opportunities for potential customers to utilize public parking. TriMet operates a bus line on SW Beaverton-

Hillsdale Highway and some customers may choose to utilize that service to access the site. The applicant will implement a shuttle service for employees of the site, reducing demand for employee parking on the site. However, the applicant has no ability to provide shuttle services or carpool programs for customers. This application was reviewed through a Type III procedure, which exceeds the required Type II review. Therefore, the hearings officer finds that this application complies with CDC 413-6.6 and approves the proposed off-street parking in excess of the maximum parking standards. Recommended condition of approval II.G.4 in the Staff Report should be deleted.

Section 414 Signs

The applicant proposes a 35 square foot monument sign at the western edge of the site along SW Beaverton-Hillsdale Highway (OR-10) with a ground clearance of 23 feet, and overall height of 28 feet. All proposed signage will be reviewed, processed, and approved under a separate signage permit(s).

Section 415 Lighting

The proposed development is commercial, and lighting is not required per Sections 413 or 415. The applicant has proposed on-site lighting (Plan Sheet C30.1 of Exhibit-K and Exhibit-R of the application). All proposed lighting shall meet the requirements of Section 415-4. The applicant shall provide a detailed illumination plan with lighting fixture schedule for lighting specifications. Illumination plans shall show proposed on-site and off-site lighting locations, elevations and lumincs (foot candles). Access lighting along SW Beaverton-Hillsdale Highway (OR-10) shall be reviewed and approved by ODOT. As conditioned, this standard can be met.

Section 417 Irrigation

The minimum required landscape area for the site exceeds 1,000 square feet. Irrigation is required (and proposed) for the site in compliance with Section 417.

Section 416 Utility Design

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

Section 418 Setbacks

Section 313 establishes setback requirements for the CBD District, and Section 312 for the OC District. The proposed restaurant and related appurtenances, as proposed, demonstrate compliance with these sections of the Code.

Section 419 Height

Section 313 establishes height requirements for the CBD District, and Section 312 for the OC District. The proposed restaurant and related appurtenances, fences, retaining wall(s), projections into setbacks, and clear vision at driveways shall demonstrate compliance with these sections of the Code.

Section 426 Erosion Control

Section 426 requires erosion control measures in the Tualatin River and Oswego Lake sub-basins during construction to control and limit soil erosion. Section 426-5.2 allows the erosion control plan submission and review to be deferred until the time of any on-site work or construction. Therefore, the applicant shall be required to submit an erosion control plan consistent with the requirements of Section 426 prior to any physical change or construction on the site.

Section 429 Bicycle Parking

429-6 Number of Bicycle Parking Spaces Required

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

Table A for long-term bicycle parking, Section 429-6.3.B, requires one (1) space for each fifty (50) employees and a minimum of two (2) spaces. The applicant proposes 10-15 employees per shift; three shifts per day. Therefore, a minimum two long-term bicycle parking spaces are required.

Table B for short-term bicycle parking, Section 429-6.8. D (eating establishment) requires one (1) space per five thousand (5,000) square feet of gross floor space and a minimum of two (2) spaces. Therefore, a minimum two short-term bicycle parking spaces are required.

The applicant has proposed a total of six (6) bicycle parking spaces; two long term spaces and four short term spaces. All bicycle parking spaces are proposed near the patio and customer front entrances, with direct access to SW Beaverton-Hillsdale Highway (OR-10). The proposed bicycle parking satisfies the requirements of Section 429.

Section 430 Special Uses

430-41 Drive-in or Drive-Up Establishment

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

430-41.1 Entrances and Exits:

- A. Access shall be determined based upon a site inspection which considers the following:***
- (1) Site size;***

- (2) *Road Classification;*
- (3) *Sight distance and allowed m.p.h.;*
- (4) *Adjacent development.*
- B. *Consolidation of access with adjoining uses shall be encouraged; and,*
- C. *Driveway entrances and exits shall be clearly marked.*

The development site fronts SW Beaverton-Hillsdale Highway (OR-10), classified as a “Principal Arterial.” Currently there are three (3) access driveways from the project site onto OR-10, a transportation facility owned and maintained by the Oregon Department of Transportation (ODOT). The applicant proposes to close the middle access, limiting access to the existing west and east driveway locations. Sight distance is adequate along OR-10, per the traffic study Memo (May 2021), page 4, prepared by Kittleson & Associates (Exhibit J of the application). The applicant did not propose to consolidate access with adjacent developments.

All driveways’ entrances and exits shall be clearly marked as required by Code. R&O 86-95 requires that accesses to Collectors and Arterials, such as SW Beaverton-Hillsdale Highway, be illuminated. The western access driveway is proposed as right-in/right-out with a “pork-chop” island in order to restrict left turn vehicle movements in and out of the western driveway. The eastern access is proposed to be a full-turning movement access, i.e., right-in/right-out, left-in/left-out. SW Beaverton-Hillsdale Highway (OR-10) is controlled and maintained by ODOT. As a result, ODOT has provided conditions of approval to mitigate traffic and access to the site. (See *Attachments B and D*).

ODOT has indicated the eastern access will be restricted to right-in/right-out only, during the “opening-period” of the proposed restaurant, and not opened to full-movement access until such time that the traffic impacts lessen and the restaurant enters a period of “normal” operations regarding overall volume of vehicles entering and exiting the site, as well as surrounding roadways.⁸ As conditioned, the applicant will be required to develop, submit, and obtain approval of, a Traffic Management Plan (TMP) that demonstrates how traffic impacts will be mitigated during the “opening period” and subsequently during “normal” business operations. The TMP shall provide coordination between the applicant, ODOT, Washington County, and City of Beaverton for continuous monitoring of the traffic for said project. ODOT will install a temporary traffic separator (i.e., lane restrictor) in the middle lane of SW Beaverton-Hillsdale Highway (OR-10) between SW 107th and SW 103rd Avenue to temporarily restrict the eastern access to right-in only during “opening period” to ensure safe traffic flow along OR-10.

No public vehicular access will be permitted from SW Laurel Road per the County Engineer. The access will be fully gated and locked with a Knox-box and restricted for emergency vehicles only.

⁸ ODOT originally proposed to limit the eastern driveway to right-out only during the “opening” period. However, ODOT subsequently revised its requirements and agreed to allow right-in movements at the western driveway during the “opening” period. (p. 2 of Exhibit 4vv).

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;*

The proposed development is not part of a larger commercial center. This criterion is inapplicable.

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.*

The site encompasses two land use districts: Commercial Business District (CBD) and Office Commercial (OC). The proposed eating and drinking establishment with drive-thru will be constructed within the CBD district portion of the project 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 cross-circulation – are proposed in the OC zoned portions of the site. As discussed above, the applicant is allowed to continue these uses as a nonconforming use. However, the use of the OC zone for excess drive-thru vehicle storage is prohibited.

4. **Article V, Public Facilities and Services:**
Section 501 Public Facility and Service Requirements
501-2 Application of the Public Facility and Service Standards
Inside a UGB

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

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

- A. *Contains two thousand (2000) square feet or less;*
- B. *Does not, in itself, generate more than fourteen (14) vehicle trips per day, as defined by the Institute of Traffic Engineers, Trip Generation Information Report;*

- C. *Contains no plumbing fixtures, or has less than twelve (12) additional fixtures attached to an existing, approved septic system or public sewer; and*
- D. *Does not pose any unique public health or safety issues.*

Article V is applicable to the proposed development per Section 501-2.2 in that it includes more than 2,000 square feet of floor area and generates more than 14 ADT. See the *Transportation Findings* below.

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

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

501-4 Deferral of Public Facility and Service Standards

The applicant has not proposed to defer the public facility and service standards that are applicable to this proposal and no deferral is warranted.

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

The proposed commercial development is not exempt from Section 501-2. Therefore, this provisions is inapplicable. See also the *Transportation Findings* below.

501-6 Exceptions for Critical and Essential Services

The applicant has not requested exceptions to Critical or Essential Services for this development and no exceptions are warranted.

501-7 Levels of Public Facilities and Services

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

501-8 Standards for Development

501-8.1 Critical Services

- A. *An applicant for development shall provide documentation from the appropriate non-County service provider that adequate water, sewer and fire protection can be provided to the proposed development prior to occupancy. The*

documentation shall be no more than ninety (90) days old.

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

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

Findings for the requirements under this Section are in the Transportation Findings below.

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

The applicant has provided documentation from Clean Water Services. As noted in Attachment B, Conditions of Approval, the development will be reviewed by Clean Water Services for compliance with Resolution & Order 19-5 - Erosion Control, Water Quality, and Water Quantity.

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

As noted in the Transportation Findings below, the site is in the Urban Road Maintenance District.

E. For development in a Transit Oriented District, or development outside a Transit Oriented District but

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

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

501-8.2 Essential Services

A. Service Provider Documentation

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

B. Adequate Level of Arterial and Collector Roads

Findings for the requirements under this Section are in the Transportation Findings below.

C. Street Lighting

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

Street lighting does not exist along SW Beaverton-Hillsdale Highway (OR-10) or along SW Laurel Road. Access and improvements to OR-10 shall be reviewed by ODOT. Improvements to SW Laurel Road, including half-street improvements at property frontage and street lighting, if applicable, will be reviewed by Washington County. Further, in accordance with R&O 86-95 access lighting shall be provided at each of the

accesses on SW Beaverton-Hillsdale Highway. See the Transportation Findings below for required street improvements.

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

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

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

SW Beaverton-Hillsdale Highway (OR-10) is an Arterial Street adjacent to the site. Requirements regarding half-street improvements are described in the Transportation Findings below and ODOT comments dated April 22, 2022.

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

The site is not located in a Transit Oriented District.

- I. *Where off-site road improvements are otherwise required as a condition of development approval, they shall include facilities accommodating convenient pedestrian and bicycle travel, including*

bicycle ways along Arterials and Collectors. The level of pedestrian and bicycle improvement shall be determined by the Review Authority, based upon the impact of the proposed development.

Findings for the requirements under this Section are provided in the Transportation Findings below.

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

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

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

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

501-8.3 Desirable Services

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

The applicant has provided pedestrian walkways internally to the site, as well as pedestrian accesses to SW Laurel Road and SW Beaverton-Hillsdale Highway (OR-10). The applicant, in coordination with ODOT, will construct the continuation of the ten-foot-wide sidewalk from west to east, as well as a six-foot-wide bicycle lane along the site's SW Beaverton-Hillsdale Highway frontage (per ODOT requirements and specifications), as part of the future right-of-way dedication and half-street improvements associated with the proposed development.

- B. Park and recreation facilities*

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

501-8.4 *Dedication of Right-of-Way*

501-8.5 *Access to County and Public Roads*

Findings for the requirements under these Sections are in the Transportation Findings below.

501-8.6 *Methods to Assure Facilities and Services*

Findings for the requirements under these Sections are in the Transportation Findings below.

Section 502 Sidewalk Standards

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

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

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

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

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

The proposal is subject to Section 501, per the applicability standard in Section 501-2. Sidewalks are required and will be constructed along all abutting street frontages, as applicable. See the Transportation Findings below, and in ODOT comments for the specific sidewalk requirements for this proposal.

5. Article VI, Land Division and Property Line Adjustments Inside a UGB:

Section 605 Land Divisions and Property Line Adjustments inside the UGB

605-1 *A property line adjustment is the relocation or consolidation of a common boundary line between two or more abutting properties where an additional lot or parcel is not created.*

605-1.1:

A. General Limitations: property line adjustments are limited as follows:

(2) For property line adjustments on lots or parcels with two or more land use districts, the minimum lot size shall be based on the predominant land use district of the parcel.

The proposed property line adjustment involves four lots in two land use districts, Commercial Business District (CBD) and Office Commercial (OC). The predominant land used district for the project is the CBD and the minimum lot size is 8,500 square feet. The resultant lots from the property line adjustment will result in consolidation of three lots into one lot; the two resulting lots will exceed 8,500 square feet. The smaller lot that fronts SW Laurel Road is and will remain designated OC; while the other larger lot will be designated predominantly CBD with a small portion in the northeast and northwest corners designated OC. The applicant shall comply with applicable provisions of the Community Development Code as set forth in Sections 501-8.5 and 605.

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

The findings and recommendations for transportation standards are found in the Transportation Findings below.

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

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

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

The findings and recommendations for transportation standards are found in the Transportation Findings below.

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

The findings and recommendations for transportation standards are found in the Transportation Findings below and in Attachment D-1 (ODOT comments). These are hereby incorporated as findings. Traffic Engineering have not identified any off-site improvements necessary to satisfy R&O 86-95. The new accesses to SW Beaverton-Hillsdale Highway shall be illuminated pursuant to R&O 86-95. Additionally, Attachment B includes Conditions of Approval recommended by ODOT requiring a Traffic Impact Plan (TMP). The TMP will provide actionable mitigation measures for all off-site traffic related impacts generated as a result of the proposed eating and drinking establishment with drive thru.

H. R & O No. 19-5 regarding Erosion Control, Water Quality and Water Quantity:

Resolution and Order 19-5 contains adopted standards and regulations for Clean Water Service's (The District) review and approval of erosion control measures.

I. Transportation Findings:

1. PROJECT PROPOSAL AND TRIP GENERATION:

Use	Trip Generation Rate (ITE Code)	Units/Square Feet	Trips
<i>Proposed Uses</i>			
<i>Fast Food Restaurant with Drive-Thru</i>	470.95 ADT/ 1,000 sq ft GFA (ITE Code 934, 10 th Edition)	3,885 sq ft	1,832

The Transportation Development Tax is required of all new development and constitutes an assurance to satisfy a development's requirement to provide additional capacity to Collectors and Arterial streets needed for development. This tax is based on the number of daily vehicle trips a site generates and is due at issuance of a building permit.

2. TRANSPORTATION SYSTEM DESIGNATIONS AND REQUIREMENTS:

a. SW Beaverton-Hillsdale Highway (OR-10)

SW Beaverton-Hillsdale Highway (OR-10) is designated as a 4-5 lane Washington County "Arterial" (A-2) road per the Washington County Transportation System Plan. As OR-10 is an Oregon Department of Transportation (ODOT) facility, right-of-way dedication will be required. SW Beaverton-Hillsdale Highway (OR-10) is also designated as an Enhanced Major Street Bikeway in the TSP, which requires 51 feet of right-of-way from centerline. Existing right-of-way is 40 feet from centerline. The applicant will dedicate right-of-way as necessary to provide 51-feet from the legal centerline (noting that the process to assign right-of-way to ODOT is to donate the land to ODOT).

Section 501-8.2 G. requires the construction of street improvements (as defined in CDC 501-8.8 A) to State (Oregon Department of Transportation) standards along the site's frontage of SW Beaverton-Hillsdale Highway (OR-10). Washington County's Road Designation for the site's frontage is A-2, a five lane Arterial. Improvements required by ODOT to incorporate into the half-street Arterial design are set forth in their agency comments dated April 22, 2022, included in the Casefile.

ODOT comments incorporated by reference herein also include a requirement that six months prior to issuance of Certificate of Occupancy, the applicant submit a

performance-based Traffic Management Plan (TMP) to ODOT, Washington County Sheriff, Washington County Department of Land Use & Transportation, and City of Beaverton Planning/Transportation Department addressing the seven key elements. Other conditions contained in the ODOT memo dated April 22, 2022, have been incorporated into the Conditions of Approval.

b. SW Laurel Road

SW Laurel Road is designated as a Washington County "Local" street per the Washington County Transportation System Plan. The right-of-way dedication shall be 30-feet from the legal centerline of 17 feet of paved width. Existing right-of-way is 25 feet and the applicant proposes to dedicate an additional five feet of right-of-way.

Section 501-8.1 B. (4) requires half-street improvements on an existing Local or Neighborhood Route when they are not improved. SW Laurel Road is not improved to current road standards. Therefore, the applicant shall construct half-street improvements in accordance with Washington County standards, per the County Engineer Memo, dated May 24, 2022. The applicant proposes to complete half-street improvements to SW Laurel Road as required (noting that the improvements will be designed to match the half-street improvements completed by Chick-Fil-A to the west of the site).

- c. The Transportation Development Tax is required of all new development and constitutes an assurance to satisfy a development's requirement to provide additional capacity to Collectors and Arterial streets needed for development. This tax is based on the number of daily vehicle trips a site generates and is due at issuance of a building permit.

3. **ACCESS:**

CDC Section 501 8.5 governs access to County and public roads and ODOT governs access to state facilities. SW Beaverton-Hillsdale Highway (OR-10) is designated as a county Arterial in the TSP but is under the jurisdiction of ODOT.

Access to the site will be provided from two of three existing access driveways from SW Beaverton-Hillsdale Highway (OR-10). The applicant will close the third existing driveway. The new western access will be limited to right-in and right-out; while the new eastern access will be designed as a full access. Noting that during the initial "opening period" (i.e., from opening day until "normal operations" are achieved, to be determined by the applicant in coordination with ODOT, based on standard trip generation, Table 8 of Kittleson Memo, dated May 21, 2021, Exhibit J of application materials) the eastern access will be temporarily restricted to right-in/right-out only, through the installation by ODOT of a lane restrictor (i.e., candlestick vehicle barriers), extending along the entire frontage of SW Beaverton-Hillsdale Highway (OR-10). The purpose of the lane restrictors is to ensure safe vehicular circulation and traffic flow along heavily traveled

SW Beaverton-Hillsdale Highway (OR-10). The temporary lane restrictors are anticipated to extend from SW 107th Avenue east to about SW 103rd Avenue.⁹

Access onto SW Laurel Road shall be restricted to emergency access only with a gate and locked with a Knox-box, accessible by emergency services/public safety personnel only, on a permanent basis, per the County Engineer.

CDC Section 501 8.5. F. and WCRDCS Section 210.7 require adequate intersection sight distance at a site's access to a County or public road and at all intersections of County or public roads, in accordance with the standards of CDC 501 8.5. F.

R&O 86-95: The accesses to SW Beaverton-Hillsdale Highway (OR-10) shall be illuminated pursuant to R&O 86-95. Street lighting does not currently exist along the project site frontage on SW Beaverton-Hillsdale Highway (OR-10), or on the SW Laurel Road project frontage. Access and improvements to OR-10 shall be reviewed by ODOT; improvements to SW Laurel Road, including half-street improvements at the property frontage and street lighting, if applicable, will be reviewed by Washington County. The applicant can direct technical questions concerning this condition or the current roadway illumination standards to Traffic Engineering at (503) 846-7950.

Commercial driveway (#1040) for access with SW Laurel Road (to be used for emergency access only) and SW Beaverton-Hillsdale Highway (OR-10).

Per CDC Section 501-8.5 G, the applicant shall record a vehicular access restriction along the entire frontage of SW Beaverton-Hillsdale Highway (10), except at the approved accesses.

4. DRAINAGE:

Section 501-8.1.C requires the site to have adequate roadway drainage. The applicant has submitted a Drainage analysis; all site drainage shall comply with the county Drainage Master Plan or the adopted Drainage Ordinance or Resolution and Order, and adequate provisions for stormwater, surface water and water quality management as required by the Clean Water Services' "Design and Construction Standards for Sanitary Sewer and Surface Water Management" or its successor.

Drainage will be provided along each street as part of the half-street improvements.

5. SIDEWALKS:

Section 502-6 of the CDC requires a sidewalk to be constructed along a site's road frontage when one does not exist. Five-foot-wide sidewalks exist along SW Beaverton-

⁹ The April 22, 2022, ODOT Memo defined the "opening period" as the initial opening of the restaurant until traffic volumes and queue lengths normalize based on the TMP performance-based measures, as well as standard trip generation as provided for in Table 8 of the Traffic Study from Kittleson & Associates Memo, dated May 21, 2021.

Hillsdale Highway (OR-10). To the west of the site the new curb tight sidewalk constructed by Chick-Fil-A is ten-feet wide, and to the east of the site, the existing curb tight sidewalks are five-feet wide. The applicant proposes additional right-of-way on OR-10 to match the frontage improvements completed to the west by Chick-Fil-A. Said improvements include extension of the bicycle lane and pedestrian sidewalk (ten-feet in width) along the approximately 300 frontage of the site.

Sidewalks will be constructed on SW Laurel Road as required and separated from the curb by the required landscape strip. The sidewalks will connect to the new sidewalk constructed by Chick-Fil-A and measure five-feet wide.

6. MAINTENANCE PROVISIONS:

Annexation into Urban Road Maintenance District (URMD). CDC Section 501 8.1 D. requires properties to be annexed into URMD prior to approval of development or redevelopment. The subject property is currently within the URMD.

7. TRAFFIC SAFETY REVIEW:

Resolution and Order (R&O) 86 95 sets forth criteria for determining necessary traffic safety improvements due to development proposals that impact County and public roads. The Traffic Management Plan (TMP) required by ODOT addresses traffic safety as it pertains to SW Beaverton-Hillsdale Highway (OR-10), a county Arterial that is also a state highway.

As required by R&O 86 95, the accesses to SW Beaverton-Hillsdale Highway (OR-10) shall be illuminated (R&O 86-95 requires access lighting for accesses to Collectors and Arterials).

Per CDC 501-8.2 C., the applicant shall assure the maintenance and power costs of all required illumination on public roads through the annexation and petition for service to an existing County service district for lighting (SDL) or other means of assurance approved by the Operations Division.

8. ODOT REQUIREMENTS:

The Oregon Department of Transportation (ODOT) has reviewed this development proposal. The key relevant site design elements include limiting the western access to SW Beaverton-Hillsdale Highway (OR-10) permanent right-in and right-out (with a “pork-chop” island to prevent left turns). ODOT comments are incorporated by reference into this Final Order.

9. SIGHT DISTANCE:

CDC Section 501 8.5. F. and WCRDCS Section 210.7 require adequate intersection sight distance at a site's access to a County or public road and at all intersections of County or public roads, in accordance with the standards of CDC 501 8.5. F.

SW Beaverton-Hillsdale Highway (OR-10): The required sight distance is 350 feet based upon the posted speed limit of 35 m.p.h. Provision and certification of adequate sight distance is imperative to the safety of the proposed accesses as required by Article V of the Code. Therefore, the applicant shall provide Final Certification of Sight Distance to confirm that adequate sight distance can be achieved at the accesses to SW Beaverton-Hillsdale Highway (OR-10) prior to issuance of the occupancy permit.

SW Laurel Road: The required sight distance at SW Laurel Road is 250 feet based upon the posted speed limit of 25 m.p.h. Evidence of adequate sight distance will be provided to Washington County upon completion of the half street improvements. Final Certification of Sight Distance to confirm that adequate sight distance has been achieved and shall be provided prior to issuance of the occupancy permit.

Periodic trimming of vegetation may be required to maintain adequate sight distance at all intersections.

10. PERMITS REQUIRED:

A Facility Permit will be required from the Assurances section of the Current Planning division for any construction of required public improvements for SW Laurel Road.

ODOT permits will be required for the construction of improvements for SW Beaverton-Hillsdale Highway.

VII. CONCLUSION

Based on the findings and discussion provided or incorporated herein, the hearings officer concludes that Casefile No. L2200066-SU/D/PLA/PLA (In-N-Out Burger) should be approved subject to the conditions of approval recommended by county staff, because the applicant sustained the burden of proof that the proposal does or will comply with the applicable approval standards in the Washington County Community Development Code subject to those conditions.

VIII. ORDER

The hearings officer hereby approves the Special Use, Development Review, and Property Line Adjustment approvals requested in Casefile No. L2200066-SU/D/PLA/PLA (In-N-Out Burger), subject to the conditions of approval in Attachment B of this decision.

DATED this 16TH day of April 2024.

A handwritten signature in black ink, appearing to read 'Joe Turner', written over a horizontal line.

Joe Turner, Esq., AICP
Washington County Land Use Hearings Officer

ATTACHMENT B
CONDITIONS OF APPROVAL
L2200066-SU/D/PLA/PLA
(In-N-Out Burger),

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

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

1. A Grading Permit application. The application shall include detailed plans as required under CDC Section 410-1.2, as well as submittal requirements noted under CDC Section 410-2.1 and 410-2.2 of the Community Development Code.
2. A site utility permit may be required for all private work.
3. Site specific geotechnical engineering report with recommendations for development of the site. The report should be stamped and signed *(electronic signature accepted) by and Oregon registered engineer.
4. Provide private road/driveway/parking lot structural details on the plans per site specific geotechnical engineering recommendations.
5. A demolition permit is required prior to issuance of a grading permit to remove existing structures from County tax records.
6. Provide a drainage analysis report stamped by a civil engineer that shows the additional impervious areas resulting from the proposed project site work will not impact the surrounding properties negatively per WCC 14.12.310.
7. The applicant shall submit to the City of Beaverton for review and approval utility permits for any connection to or alteration of utilities provided by the City of Beaverton. (City of Beaverton/Khoi Le - kle@beavertonoregon.gov)

NOTE: Any retaining wall over four feet in height requires a building permit. No retaining wall shall exceed seven feet in height in any required yard. Tiered retaining wall structures shall not exceed seven feet in height in any required yard.

B. A Clean Water Services (CWS) Site Development Permit must be obtained. Application for CWS Site Development Permit must be in accordance with the requirements of the Design and Construction Standards, Resolution and

Order No. 19-5 as amended by R&O 19-22 (CWS Standards), or prior standards as meeting the implementation policy of R&O 18-28, and is to include:

1. Compliance with all provisions of CWS Standards.
2. Detailed grading and erosion control plan. An Erosion Control Permit will be required. Area of Disturbance must be clearly identified on submitted construction plans. If site area and any offsite improvements required for this development exceed one-acre of disturbance; project will require a 1200-CN Erosion Control Permit.
3. A drainage report including a downstream drainage analysis meeting the requirements of R&O 19-5 Section 2.04.2m will be required. If downstream storm conveyance does not have the capacity to convey the volume during a 25-year, 24-hour storm event, the applicant is responsible for mitigating the flow as provided in the above name design standards.
4. Detailed plans showing the development having direct access by gravity to public storm and sanitary sewer.
5. Plan showing storm service requirements to each lot. If private lot LIDA systems proposed, must comply with the current CWS Standards and Washington County Plumbing Standards.
6. Any offsite sanitary or storm sewer improvements identified as part of this development may require additional offsite street improvements/restorations. All transportation-related infrastructure, (including but not limited to roadway surfaces and base material) influenced by sanitary or storm sewer improvements, shall be restored to original or better condition.
7. Provisions for water quality in accordance with the requirements of the above named design standards. Water Quality is required for all new development and redevelopment areas per R&O 19-5 Section 4.04. Access shall be provided for maintenance of facility per R&O 19-5, Section 4.07.6.
8. Show all existing and proposed easements on plans. Any required storm sewer, sanitary sewer, and water quality related easements must be granted to Clean Water Services, and City of Beaverton as applicable.
9. Application may require additional permitting and plan review from CWS Source Control Program. For any questions or additional information, please contact Source Control at (503) 681-5175.
10. Any proposed offsite construction activities will require an update to the current Service Provider Letter for this project.

11. Applicant shall comply with the conditions as set forth in the Service Provider Letter No. 22-000888, dated March 21, 2022.

NOTE: The above noted improvements must be completed to the District's satisfaction prior to the issuance of a sewer connection permit. The as-constructed drawings (as-builts), or a bond guaranteeing the as-builts, shall be submitted and accepted by the District.

- C. The applicant shall provide written confirmation from the City of Beaverton of submission to the City of Beaverton of a petition for annexation of the subject site or have entered into an annexation agreement with the City of Beaverton.**

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

- A. Record the property line survey and deed reflecting the approved property lot line adjustments as shown on the preliminary site plans in the Casefile to complete the approved property line adjustments:**

1. A common property line that is relocated through a property line adjustment shall be surveyed and monumented unless the parcels are greater than (10) acres. It is the property owner's responsibility to have this completed. (Section 602-11.1A.)
2. If any easement(s) exist along the property lines, they are to be adjusted and shall be vacated and rededicated along the new property lines. It is the property owner's responsibility to have this completed. (Section 605-1.2 B.)
3. All property line adjustments shall be executed by deed and must comply with ORS Chapter 92. It is the property owner's responsibility to have this completed. (Section 602-1.1)
4. New deeds reflecting the property line adjustment must be recorded within FOUR (4) years of the approval date shown on this document or a request for an extension must be filed prior to the expiration date, or the approval will expire. It is the property owner's responsibility to complete the deed recordation or the request for an extension. (Section 201-4.1)

- B. Record the following documents (Contact John Kidd, Survey Division, 503-846-7932):**

1. Dedication of five (5) feet additional right-of-way to provide 30 feet from legal centerline of the SW Laurel Road frontage.

2. Vehicular access restriction along SW Beaverton-Hillsdale Highway, except at the approved locations.

C. Submit to Current Planning Services, Public Assurance Staff (503-846-3843; assurances@co.washington.or.us):

1. Completed "Design Option" form.
2. \$21,000.00 Administration Deposit.

NOTE: The Administration Deposit is a cost-recovery account used to pay for County services provided to the developer, including plan review and approval, field inspections, as-built approval, and project administration. The Administration Deposit amount noted above is an estimate of what it will cost to provide these services. If, during the course of the project, the Administration Deposit account is running low, additional funds will be requested to cover the estimated time left on the project (at then-current rates per the adopted Washington County Fee Schedule). If there are any unspent funds at project close out, they will be refunded to the applicant. PLEASE NOTE: Any point of contact with County staff can be a chargeable cost. If project plans are not complete or do not comply with County standards and codes, costs will be higher. There is a charge to cover the cost of every field inspection. Costs for enforcement actions will also be charged to the applicant.

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

Upload documents into the "Document" folder; reference Washington County Road Engineering Plan Submittal Checklist, preliminary completeness verification matrix, for a complete list of required documents.

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

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

- a. SW Laurel Road:

- i. Dedication of Right of Way shall be 30-feet from the legal centerline of 17 feet of paved width.
- ii. Construct half-street improvements to Washington County Local Street designation. Improvements shall include but not be limited to paving, sidewalk, planter strip, curb and gutter, street trees, signing, illumination, utility re-location and drainage.
- iii. Pay Fee-in Lieu for narrow flagpole that abuts SW Laurel Road (east of the access).
- iv. Commercial driveway (#1040) access onto SW Laurel Road shall be restricted to emergency access only with a gate and locked with a Knox-box, accessible by emergency services/public safety personnel only, on a permanent basis, per the County Engineer.

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

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

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

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

8. Revise the site plan to show striping, signing, and/or other delineations of the boundaries of the OC zone on the site and signage and/or other markings prohibiting drive-thru queuing in the OC zone.

D. Obtain Departmental approval, provide financial assurance and obtain a Facility Permit for construction of the public improvements listed in Conditions II.C.3.

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

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

NOTE: Contact Stacia Sheelar, 503-846-3679. The formation process takes approximately 3 to 4 weeks. You must also establish a job with PGE by contacting 503-323-6700.

F. Obtain an Oregon Department of Transportation (ODOT) Miscellaneous Permit for the following on SW Beaverton-Hillsdale Highway right-of-way. Contact ODOT District 2B Permits at d2bup@odot.oregon.gov to request an Access Coordinator be assigned to the project.

SW Beaverton-Hillsdale Highway Frontage Improvements and Right-of-Way:

1. Six (6) foot bike lane and ten (10) foot sidewalk, which shall be constructed as necessary to be consistent with local, ODOT and Americans with Disabilities Act (ADA standards along SW Beaverton-Hillsdale Highway.
2. Access lighting at each of the new accesses (R&O 86-95).
3. Right-of-Way donation to ODOT to provide fifty-one (51) feet from legal centerline to accommodate the planned cross section, shall be provided by the applicant. The deed must be to the State of Oregon, Oregon Department of Transportation The ODOT District contact will assist in coordinating the transfer. ODOT will provide verification to the local jurisdiction that this requirement has been fulfilled. The property owner must be the signatory for the deed and will be responsible for a certified environmental assessment of the site prior to transfer of property to the Department. (Note: It may take up to **3-months** to transfer ownership of property to ODOT)

Access to State Highway:

4. State Highway Approach Road Permits from ODOT is required for access to the state highway. Truck turning templates shall be provided as needed to ensure vehicles can enter and exit the approach safely. Site access to the state highway is regulated by OAR 734.51.
 - a. For application information go to:
[http://www.oregon.gov/ODOT/HWY/ACCESSMGT/Pages/Application - Forms.aspx](http://www.oregon.gov/ODOT/HWY/ACCESSMGT/Pages/Application-Forms.aspx). (Note: it may take **2 to 3 months** to process a State Highway Approach Road Permit)

Permits and Agreements to Work in State Right-of-Way:

5. An ODOT Miscellaneous Permit must be obtained for all work in the highway right-of-way. When the total value of improvements within the ODOT right-of-way is estimated to be \$100,000 or more, an agreement with ODOT is required to address the transfer of ownership of the improvement to ODOT. An Intergovernmental Agreement (IGA) is required for agreements involving local governments and a Cooperative Improvement Agreement (CIA) is required for private sector agreements. The agreement shall address the work standards that must be followed, maintenance responsibilities, and compliance with ORS 276.071, which includes State of Oregon prevailing wage requirements. (Note: If a CIA is required, it may take up to **6 months** to process).
6. Illumination within the ODOT right-of-way must be in accordance with AASHTO illumination standards and the ODOT Lighting Policy and Guidelines, which states that local jurisdictions must enter into an Intergovernmental Agreement (IGA) with ODOT wherein the local jurisdiction is responsible for installation, maintenance, operation, and energy costs.

Traffic Management Plan - Six (6) months prior to issuance of Certificate of Occupancy:

7. The applicant shall develop and submit a performance-based Traffic Management Plan (TMP) to ODOT, Washington County Sheriff, Washington County Department of Land Use & Transportation, and City of Beaverton Planning/Transportation Department addressing the following key elements:
 - a. Traffic control, including measures to prohibit drive-thru queuing in the OC zoned portions of the site. 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;
 - b. Emergency vehicle access routes;

- c. Communication protocols between all applicable agencies (including but limited to Washington County Sheriff, Beaverton Police Department, ODOT District 2B, and Tualatin Valley Fire & Rescue) and the applicant's on-site staff;
 - d. Coordination with all public safety emergency responders;
 - e. Necessary street and access permits;
 - f. Metrics to determine when a different tier of strategies from the TMP should be implemented; and,
 - g. All other elements necessary to address safety of adjacent and nearby public roadways.
8. The TMP shall monitor and address traffic operations along the following roadways (*coverage area*):
- a. SW Beaverton-Hillsdale Highway (OR-10) between OR 217 and SW Jamison Road;
 - b. SW Canyon Road (OR-8) between OR 217 and SW 102d Avenue;
 - c. SW 107th Avenue between SW Canyon (OR-8) and SW Beaverton-Hillsdale Highway;
 - d. SW Laurel Road between SW 107th Avenue and SW 103rd Avenue (to include potential traffic calming measures); and,
 - e. OR 217 from Walker SW Walker Road to SW Allen Boulevard.
 - 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.
9. The TMP shall reflect ***Performance Based Measures*** for the "opening period" and "normal period" *scenarios* of traffic flow for the restaurant operations. The applicant shall provide documentation to ODOT, Washington County Sheriff, Washington County Department of Land Use & Transportation, and Beaverton Planning/Transportation Department showing that average traffic volumes and queue lengths under both scenarios resemble those stated in Table 8 (pg. 21) of the *Access Alternative Memorandum* of the Traffic Study,

prepared by Kittleson and Associates, dated January 26, 2022, (Exhibit J of application materials). The average traffic volumes and queue lengths shall resemble Table-8 for five (5) consecutive weeks. At that time, if all applicant-provided metrics are consistent with Table-8, ODOT will consider the "opening period" as complete and provide written notice to the applicant that the TMP's second phase can be implemented.

10. Western site access shall be limited to right-in/right-out only movements onto SW Beaverton-Hillsdale Highway (OR-10). Access shall include a raised "porkchop" at driveway approach.
11. Eastern site access shall be restricted to right-in entry only during the "opening period". Until "normalized" operating conditions occur (per Table-8 of submitted Traffic Study/Memorandum dated January 26, 2022), ODOT will restrict full turning movements onto SW Beaverton-Hillsdale Highway (OR-10) with the installation of temporary traffic implements, to be placed within the middle lane(s) of SW Beaverton-Hillsdale Highway (OR-10). Said traffic implements shall extend eastward from SW 107th Avenue to SW 103rd Avenue as necessary to maintain safe traffic flow. A portion of the traffic implements will be removed when the restaurant reaches "normalized" operating conditions and ODOT considers the "opening period" complete.

If, as a result of the applicant's proposed fast-food restaurant with drive-thru, traffic patterns within its functional area deteriorate, which may include, but not be limited to, blocking through access west and eastbound on SW Beaverton-Hillsdale Highway (OR-10), it is likely that ODOT will require additional permanent approach turn movement restrictions to the project site onto OR-10.

12. Employees of the fast-food restaurant with drive-thru commuting by personal vehicle shall park their private vehicles at a pre-arranged off-site location identified by the applicant and be shuttled to the restaurant site accordingly.
13. Off-site traffic control shall be provided by a licensed traffic management firm to be retained and paid for by the applicant, in coordination with the Washington County Sheriff's Office.
 - a. The applicant shall provide documentation of contracts) executed with a traffic control contractor to implement the TMP to Washington County Department of Land Use & Transportation.
 - b. The applicant shall be responsible for costs to implement and maintain the TMP.

14. All promotional events shall have time ranges of *weeks and months*, rather than *hours and days*. This will allow for traffic volume stratification over longer periods of time.
15. All alterations within the State highway right-of-way are subject to the ODOT Highway Design manual (HDM) standards. Alterations along the State highway but outside of ODOT right-of-way may also be subject to ODOT review pending its potential impact to safe operation of the highway. If proposed alterations deviate from ODOT standards, a Design Exception Request must be prepared by a licensed engineer for review by ODOT Technical Services. Preparation of a Design Exception request does not guarantee its ultimate approval. Until more detailed plans have been reviewed, ODOT cannot make a determination whether design elements will require a Design Exception. (Note: Design Exception Requests may take up to **3 months** to process)

Note: All ODOT permits and approvals must reach **100%** plans before the District Contact will sign-off on a local jurisdiction building permit, or other necessary requirement prior to construction.

G. Submit to Current Planning Services, Project Planner (Stephen Shane, 503-846-8127):

1. Final Approval form (Type I procedure).

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

2. Final Approval fee.
3. A draft *Performance-Based Traffic Management Plan* (TMP) to Washington County Department of Land Use & Transportation. The TMP shall define performance metrics, management actions, and corresponding triggers related to on-site and access operations. In addition, the TMP shall outline a tiered traffic management system that addresses a range of vehicular traffic demands, including "opening" conditions. The TMP performance metrics shall be refined through coordination with Washington County, ODOT and City of Beaverton staff to provide an objective evaluation of ways to monitor and minimize the potential for motor vehicles queuing, entering and exiting the site onto SW Beaverton-Hillsdale Highway (OR-10). The TMP shall consist of traffic control, emergency vehicle access routes, communication protocols between the agencies and the fast food restaurant on-site staff, coordination with emergency responders, the needed street and access permits, the frequency of the traffic observations during peak hours of restaurant operations, metrics to determine when a different tier of strategies from the TMP should be implemented, and other elements that may be needed

to address the safety of the adjacent and nearby public roadways. The TMP shall address operations along SW Beaverton-Hillsdale Highway (OR-10) between OR 217 and SW Jamison Road, SW Canyon Road (OR-8) between OR 217 and SW 102nd Avenue, SW 107th Avenue between SW Canyon Road and SW Beaverton-Hillsdale Highway, SW Laurel Road between SW 107th Avenue and SW 103rd Avenue, and OR 217 from SW Walker Road to SW Allen Boulevard. The applicant's compliance with the performance based TMP will be monitored and approved by the Washington County Department of Land Use & Transportation in coordination with ODOT, Washington County Sheriff, and City of Beaverton.

4. Final plans in substantial conformance with the plans stamped "preliminary approval" in the casefile.
5. The applicant shall provide a detailed illumination plan with lighting fixture schedule for all on-site lighting specifications. Illumination plan shall show proposed on-site lighting locations, elevations and lumines (foot candle) as appropriate. Access lighting along SW Beaverton-Hillsdale Highway (OR-10) shall be reviewed and approved by ODOT as applicable.
6. Copy of ODOT approvals for the improvements listed in II.F above and verification from ODOT that a total of 51 feet of right-of-way from legal centerline has been donated to ODOT.

III. PRIOR TO SUBMITTAL OF A BUILDING PERMIT APPLICATION:

- A. Shall obtain Final Approval, in accordance with Condition II.G.**

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

- A. Pay Transportation Development Tax, and other System Development Charges as applicable.**

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

- B. Submit with the building plans to Building Services (503-846-3470) plans showing the following:**

- 1. Building plans in conformance with the Final Approval plans.**
- 2. Compliance with Fire Marshal requirements from TVF&R Service Provider letter, dated February 15, 2022.**

V. SIX (6) MONTHS PRIOR TO ISSUANCE OF CERTIFICATE OF OCCUPANCY: THE APPLICANT SHALL OBTAIN APPROVAL OF, AND

SUBSEQUENTLY IMPLEMENT, THE COUNTY-APPROVED PERFORMANCE-BASED TRAFFIC MANAGEMENT PLAN (TMP). SAID TMP SHALL BE APPROVED BY THE OREGON DEPARTMENT OF TRANSPORTATION (ODOT), IN COORDINATION WITH WASHINGTON COUNTY AND CITY OF BEAVERTON, AS APPLICABLE.

1. The TMP shall address City of Beaverton comments related to traffic flow on city streets, to include, but not limited to: SW Allen Boulevard, SW Western Avenue and SW 110th Avenue.
2. Additionally, the TMP shall consider traffic calming mitigation measures, if necessary, on SW Laurel Road from 107th Avenue to 103rd Avenue and 103rd Avenue to SW Beaverton-Hillsdale Highway (OR-10).

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

- A. The public improvements as required by Conditions II.C.3. and as shown on the final approved plans shall be completed and accepted by the County.
- B. The public improvements as required by Conditions II.F. and as shown on the final approved plans shall be completed and accepted by ODOT.
- C. As applicable, facilities and improvements required by Clean Water Services shall be completed and approved by the District.
- D. The utility improvements reviewed and permitted by the City of Beaverton shall be completed and accepted.
(City of Beaverton/Khoi Le - kle@beavertonoregon.gov)
- E. Submit to project planner a copy of the approved Traffic Management Plan (TMP).
- F. Contact Stephen Shane (503-846-8127) to arrange on-site inspection of the following items per the Final Approval plans. Please allow (3) business days from contacting the planner for the inspection to occur.
 1. Completion of site landscaping, including street trees and planter strip as applicable
 2. Installation of bicycle parking.

VII. ADDITIONAL CONDITIONS:

- A. Adequate sight distance shall be continuously maintained by the property owners) at any access to a public road serving the subject site. This may

require the property owners) to periodically remove obstructing vegetation from the road right of way (and on site) as necessary.

- B. Signage, striping, and other measures delineating the boundaries of the OC zone on the site shall be maintained.**
- C. The applicant shall take steps necessary to ensure that drive-thru queuing does not occur in the OC zoned portions of the site after the “opening period.”**
- D. This development shall be constructed in accordance with the conditions of this decision, the approved final plans, and the standards of the Community Development Code (Section 207-5).**
- E. All conditions of approval shall be binding upon all heirs, successors, and assigns (Section 207 5).**
- F. Transferability of this Development Permit shall be in accordance with Section 201-8.**
- G. This approval shall automatically expire four (4) years from the date of this approval, unless development has commenced, an application for an extension is filed, or this approval is revoked or invalidated (Section 201-4).**

VIII. SPECIAL CONDITIONS:

- A. The applicant shall be required to review the conditions of approval with the Washington County Department of Land Use & Transportation, ODOT and the City of Beaverton two (2) years after issuance of the Certificate of Occupancy at the subject site. Applicable conditions of approval shall be adjusted to reflect real-time impacts within the first two (2) years and mitigated accordingly.**
- B. The applicant shall work with Washington County Health & Human Services (HHS) if trash enclosure access design changes in the future, per the HHS Service Provider Letter, signed by HHS on February 1, 2022.**