



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

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:

August 29, 2022

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
August 29, 2022
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CASEFILE NUMBER: L2200066-SU/D/PLA/PLA

SUMMARY OF DECISION:

On August 29, 2022, 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; and 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 Denied.

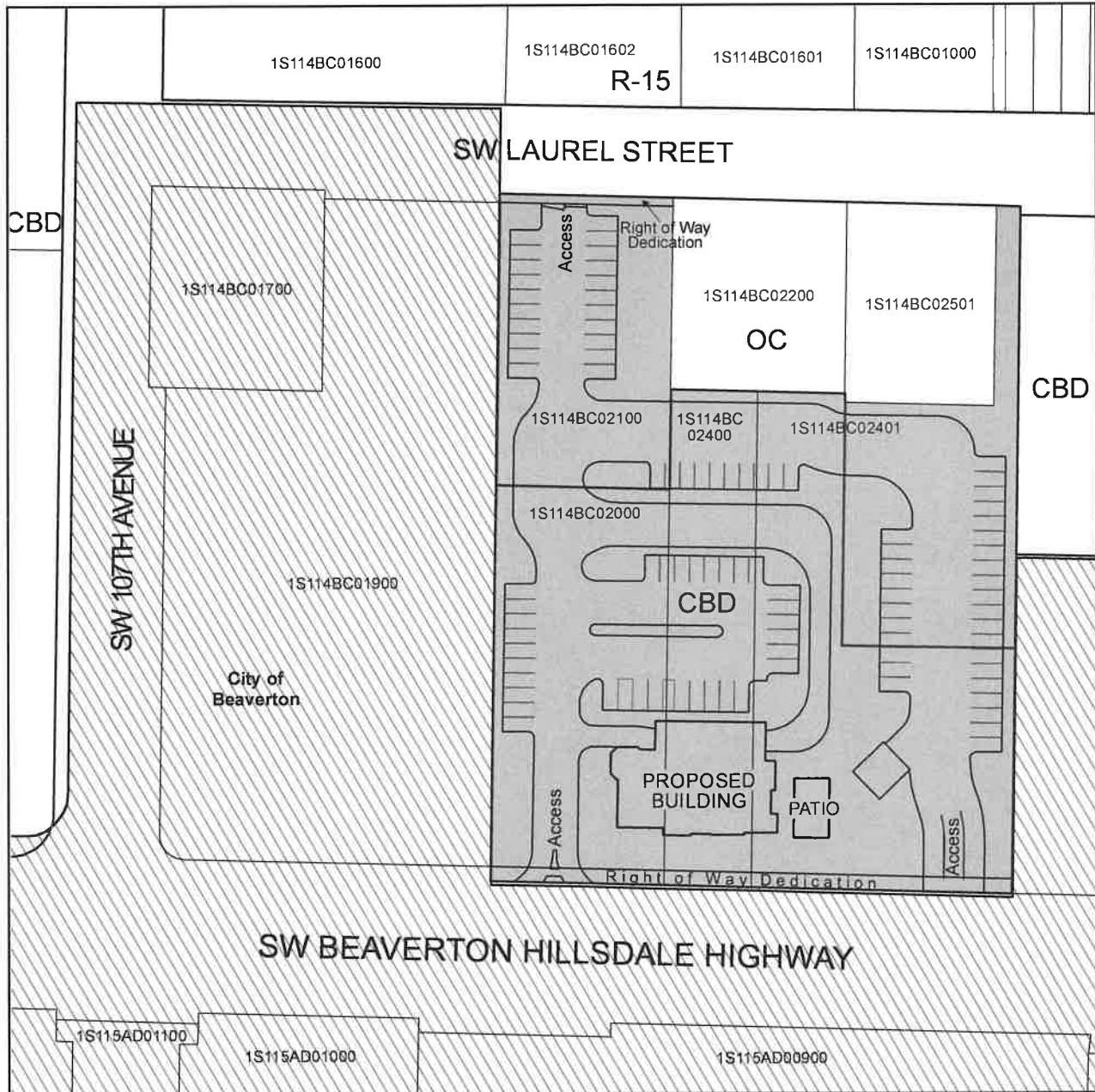
Attachments:

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

ATTACHMENT A VICINITY MAP

TAX MAP/LOT NO. 1S1 14 BC 02000, 02100, 02400, 02401

CASEFILE / PROJECT #: L2200066-SU/D/PLA/PLA



↑ NORTH



AREA OF CONSIDERATION

NOT TO SCALE

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 for Special Use) **FINAL ORDER**
and Development Review approval for a fast food restaurant) **Casefile No. L2200066-**
with drive-thru at 10535 and 10565 SW Beaverton) **SU/D/PLA/PLA**
Hillsdale 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 the 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 Street, 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 exclusive drive-thru lanes are located solely in the CBD District. The OC zoned portion of the site will primarily be used for parking and landscaping.

b. The site is currently developed with two existing restaurants, one with a drive-thru (Hawaiian Time), the other with dine-in, 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. SW Laurel Street a county Local road abuts the north boundary of the site.

d. The site currently has three driveway accesses to SW Beaverton-Hillsdale Highway and one driveway access to SW Laurel Street. The proposed use will

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.”

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 Street 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. The applicant is in discussion with the City of Beaverton to execute a Deferred Annexation Agreement.

g. Additional basic facts about the site and surrounding land are provided in the Staff Report to the Hearings Officer dated June 16, 2022 (the “Staff Report”).

2. Washington County Land Use Hearings Officer Joe Turner (the “hearings officer”) conducted a duly noticed online public hearing regarding the application. County staff recommended that the hearings officer approve the application subject to conditions included in the Staff Report, as modified by Exhibits H-2 and SR-1. The applicant accepted those findings and conditions, as modified, with certain exceptions. 11 persons testified orally in opposition to the proposed development. Other person testified in writing. Contested issues in this case include:

a. Whether traffic generated by the proposed development will exceed the capacity of area streets or create a hazard;

b. Whether the application can provide adequate on-site parking to accommodate expected parking demand;

c. Whether County and City of Beaverton goals and plans for reducing vehicle traffic and pollution, promoting transit, walking, biking, and other sustainability objectives are relevant approval criteria for this use;

d. Whether proposed vehicle parking, maneuvering, and drive-through vehicle queue storage uses are allowed in the OC zoned portions of the site;

e. Whether the proposed use will generate noise, lighting, activity, and other impacts in excess of adopted County standards’

- f. Whether the proposed property line adjustments will alter the current zoning of the site;
- g. Whether alternative uses for the site or alternative locations for the proposed use are relevant to the applicable approval criteria;
- h. Whether the application can be denied “to protect the quality of life for existing residents.”

3. Based on the findings and discussion provided or incorporated herein, the hearings officer concludes that the applicant failed to sustain its burden of proof that the proposed use complies with all of the applicable approval criteria. Specifically, the applicant failed to demonstrate that the proposal to utilize the OC zoned portions of the site for excess drive-thru vehicle storage during the potentially multi-year “opening” period is allowed as a permitted, accessory, nonconforming, or temporary use. Therefore, Casefile No. L2200066-SU/D/PLA/PLA (In-N-Out Burger) must be denied.

II. HEARING AND RECORD HIGHLIGHTS

1. Washington County Land Use Hearings Officer Joe Turner received testimony at the duly noticed public hearing about this application on June 16, 2022. 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 planner Sandy Freund summarized the Staff Report and her PowerPoint presentation (Exhibit H-1).

a. The applicant requests special use and development review approval to construct and operate a 3,885 square foot eating and drinking establishment (fast food restaurant) with drive-thru and outdoor seating on a 2.24-acre parcel. The applicant also requests approval of two Property Line Adjustments to reduce the three existing lots to one lot.

b. The site is currently developed with two restaurants that have existed “since the 70s.” The property to the west is currently developed with a Chick-fil-A fast food restaurant with drive-thru.

c. The applicant must annex the site into the City of Beaverton to receive sewer service.

d. The site has three existing driveways onto SW Beaverton-Hillsdale Highway, which abuts the south boundary of the site, and a fourth driveway onto SW Laurel Street, which abuts the north boundary of the site. The applicant proposed to close the middle driveway to SW Beaverton-Hillsdale Highway and restrict the western

driveway to right-in/right-out only turning movements. The eastern driveway will remain a full-access driveway allowing right and left turn movements in and out of the site once “normal” operations begin. The county engineer required that the applicant install gate to restrict the SW Laurel Street driveway to emergency vehicles only.

e. She noted that the County received numerous public comments about this application. The primary concerns relate to traffic, trip generation, and on and off-site vehicle queuing. The applicant will be required to obtain County, ODOT, and City of Beaverton approval of a Transportation Management Plan (“TMP”) regulating traffic to the restaurant during the “opening period,” when significantly higher traffic volumes are expected. The opening period may continue for several years. The applicant must obtain approval of the TMP at least six months prior to opening the restaurant.

f. She requested the hearings officer hold the record open for two weeks to allow the County an opportunity to review and respond to the public comments.

3. ODOT development review engineer Avi Taylor testified that ODOT must approve an access permit for each of the proposed driveways. The specifics of the TMP will be determined in the future. However, the TMP is likely to include a shuttle to transport employees to and from the site from an offsite parking area, limiting the west access to right out only, and other traffic management measures. The TMP will likely include “metrics” related to congestion, vehicle queuing, and other traffic issues. The TMP will authorize ODOT to impose additional restrictions if these metrics are exceeded.

a. ODOT would prefer that the development retain full access to SW Laurel Street, as that would allow customers who want to travel eastbound on SW Beaverton-Hillsdale Highway to access the traffic signal at SW 107th Avenue and SW Beaverton-Hillsdale Highway. However, limiting the SW Laurel Street driveway to emergency access only does not change ODOT’s analysis regarding the feasibility of the TMP.

4. Attorney Joe Gaon, In-N-Out Burger development manager Cassie Ruiz, and traffic engineer Julie Khun appeared on behalf of the applicant.

a. Mr. Gaon requested certain modifications to the recommended conditions of approval in the Staff Report, as outlined in Exhibit PH-5a. He agreed to extend the 120 day clock to August 5, 2022, to accommodate the open record period. He noted that the drive-thru lane is located entirely in the CBD zone, where drive-thrus are permitted.

b. Ms. Ruiz summarized the proposed development and responded to the public comments.

i. She noted that the proposed restaurant and drive-thru is a permitted use in the CBD zone. The use meets ODOT’s mobility standards. The applicant

purchased the adjacent property and expanded the site to provide more on-site parking and vehicle queuing capacity in response to concerns expressed at the initial neighborhood meeting regarding this application. The proposed use will replace two existing restaurants, reducing the development density on the site by 60 percent.

ii. The applicant will limit the existing driveway to SW Laurel Street to emergency vehicle access only and close one of the three existing driveways to SW Beaverton-Hillsdale Highway. The applicant designed the site to maximize on-site parking and reduce demand for off-site parking on streets in the area.

iii. The Code does not require a Traffic Impact Analysis for this use. However, the applicant provided an access analysis plan. This application has been subject to 2.5 years of review by the applicant, Washington County, and ODOT, all of whom determined that it is feasible to accommodate traffic generated by the proposed use and comply with all applicable transportation mobility standards. The applicant has a special “opening” team that will operate the restaurant and regulate traffic during the opening period. In addition, the TMP will require specific changes to the site access and operations in order to maintain traffic flow and limit congestion, including the use of traffic management personnel to direct traffic as needed.

iv. The In-n-Out Burger facility in Keizer Oregon is not comparable to this facility. That restaurant is located on much smaller site with less on-site parking and queuing capacity. It also and draws customers from a much wider area. The nearest In-n-Out Burger is more than 200 miles south of the Keizer location. The Keizer location draws customers from Salem, Springfield, Portland, and beyond. It is “an outlier” for all In-n-Out Burger facilities. The applicant is planning to open multiple locations in the Portland region in the near future, including a recently approved project in the City of Hillsboro, which will reduce demand at this location. In addition, this site is larger than any existing In-n-Out Burger location, providing more than 250 feet of on-site vehicle storage before the drive-thru. Traffic from the Keizer location did not block any public rights-of-way; the applicant utilized the internal private roads and the parking lot of the adjacent baseball stadium to accommodate traffic queues. Traffic did not backup onto public roads or highways.

v. The applicant will provide a number of improvements to mitigate the impacts of the proposed use, including landscaping, road improvements, a bike lane, sidewalks, stormwater facilities, etc.

c. Ms. Khun noted that the City of Hillsboro approved a TMP for the In-n-Out Burger location in that city. That TMP included a set of tiered strategies to address traffic and minimize congestion. The TMP specified traffic control measures that would be implemented if and when certain traffic or congestion levels were exceeded. The opening period will generate higher traffic volumes and cause increased congestion on SW Beaverton-Hillsdale Highway. The applicant will manage that congestion in coordination with the Washington County Sheriff's Office. Washington County, ODOT, and the City of Beaverton will all review and approve the TMP and proposed metric

decisions. The applicant will bring in a special “opening team” that specialize in opening In-n-Out restaurants and dealing with the increased demand.

i. Closing the SW Laurel Street driveway will not cause traffic from the development to exceed County or ODOT standards.

ii. During the opening period the applicant will limit driveways access SW Beaverton-Hillsdale Highway to right-in/right-out only at both driveways. Customers can pick up their orders at the drive through, park on the street and walk to the restaurant, or park on the site and eat in the dining area.

5. Travis Chesney disputed the analysis and conclusions in the applicant’s traffic analysis. He argued that actual traffic volumes at this site will be much higher than assumed in the applicant’s analysis. The applicant’s analysis relied on the trip generation estimates in the Institute of Transportation Engineers trip generation manual (the “ITE Manual”) to determine the traffic volumes at the existing restaurants on the site. However, actual traffic volumes at those restaurants were much lower. Based on his observations, the two existing restaurants together generated 40 to 50 vehicle trips per day, significantly less than the 175 trips per weekday hour listed in the ITE Manual. The Mexican restaurant on the site closed two years ago.

a. The traffic analysis failed to account for the larger population of the Portland area. The population of Salem/Keizer is roughly 400,000. The population of the Portland metro region is 2.5 million, not including Vancouver Washington and areas further north. There are no other In-n-Out Burger restaurants north of the Keizer location. Therefore, this facility will generate significantly higher traffic volumes. The Keizer location continues to generate significant traffic three years after it opened.

b. An analysis by the City of Yorba Linda California measured traffic volumes of 270 vehicles per hour at the In-n-Out Burger restaurant in that city and 248 vehicles per hour at the In-n-Out Burger restaurant in Rancho Santa Margarita California, even though there are other In-n-Out Burger restaurants in those areas. These cities have populations of about 70,000 but they are located near other large population centers. These restaurants are more representative of the traffic the proposed facility will generate.

c. The applicant argues that an office building north of the site will block noise from the site. However, there are three residential buildings abutting the north boundary of the site, on the south side of SW Laurel Street.

6. Elizabeth Levy argued that the most direct route to the site from Portland is via Highway 8/SW Canyon Road and SW 107th Avenue. SW 107th Avenue “is not a thoroughfare.” There are no lane markings or sidewalks on many sections of this roadway between Highway 8/SW Canyon Road and SW Beaverton-Hillsdale Highway. Much of the traffic from the existing Chick-fil-A restaurant turns left onto SW 107th Avenue. She

questioned whether SW 107th Avenue can be restricted to residential access only or that traffic calming measures be installed to force drivers to slow down.

7. Jake Rosenberg, Executive Director National Facility Services for Kaiser Permanente, expressed concern that traffic from this use will impact Kaiser's Beaverton Medical & Dental office, located southeast of the site, on the south side of SW Beaverton-Hillsdale Highway, especially during the opening period. That clinic sees roughly 1,000 patients per day, has roughly 150 staff members and medical providers, and generates an average of three ambulance trips per day. The clinic includes an Urgent Care clinic with extended hours of operation. The facility is limited to two access points: from Beaverton-Hillsdale Highway and Western Avenue. He questioned how the end of the "opening period" is defined. Based on media reports, customers at an In-n-Out Burger location in Colorado waited in line for 12 to 14 hours. He argued that there are alternative locations for this use that can better accommodate the projected traffic volumes.

a. He argued that the TMP should provide for input from residents and businesses in the surrounding area regarding the proposed traffic metrics and mitigation as well as for how the end of the opening period is determined.

8. Ed Trotter agreed with Mr. Chesney's testimony. The Keizer location frequently has vehicle queues in excess of 50 vehicles. He recently counted 48 cars in the queue. Those queues blocked access to some businesses in the area. This location will be the furthest north of any existing In-n-Out Burger and draw from a much larger area. The applicant's traffic analysis is based on traffic from In-n-Out Burger facilities in Los Angeles, where there are more than 150 In-n-Out Burger restaurants, which disperses demand and limits traffic at any individual location. The applicant should have used traffic counts from the existing Keizer location, as it is more similar to this facility. The applicant argues that it will provide 15 Portland area locations in the future, but those will have no impact on traffic when this facility opens.

a. He noted that the OC zoning district prohibits drive-thru facilities, The OC zoned portion of the site can only be used for vehicle parking. However, vehicles waiting to access the drive-thru will queue in the OC zoned portion of the site in violation of this prohibition.

b. Measures to prevent left turns in and out of the site will impact existing businesses on the south side of SW Beaverton-Hillsdale Highway, preventing westbound drivers from turning left to access those businesses' driveways. Drivers leaving the site and wanting to travel eastbound on SW Beaverton-Hillsdale Highway and eastbound vehicles wanting to turn into the site will make illegal U-turns, creating a hazard. Vehicles waiting to turn into the site will queue in the north lane of SW Beaverton-Hillsdale Highway, blocking access for TriMet buses and emergency services.

c. The applicant should be required to develop the TMP prior to approval of this application so the public has the opportunity to review and comment on the plan.

9. Christina Gamgene, president of the Grand Fir Commons homeowners association agreed with prior witnesses' testimony about traffic and congestion. This development is likely to generate demand for on-street parking on SW Laurel Street, which is an unimproved residential street. Restaurant employees should be required to park on the site rather than on adjacent streets or parking lots. The applicant should be required to analyze the impact of emissions from vehicles waiting to access the site. She questioned whether the applicant will provide security on the site or rely on local law enforcement.

10. Ambur Phillips argued that the applicant's traffic analysis underestimates the volume of traffic this facility will generate. The Chick-fil-A restaurant west of the site generated similar traffic issues when it opened. Drivers became frustrated with the traffic congestion and made rash decisions, creating a hazard for pedestrians and other drivers. There is another Chick-fil-A restaurant two miles away and there are eight others in the surrounding area, but this Chick-fil-A restaurant continues to generate significant traffic volumes. Those issues disappear on Sundays, when Chick-fil-A is closed. Similar issues will occur when this facility opens. However, traffic will likely be much worse, as this is the only In-n-Out Burger north of Keizer. Although the site provides two driveway entrances, there is only one drive-thru lane. Drivers entering the site from both driveways will create congestion on the site. There is an existing TriMet bus stop on SW Beaverton-Hillsdale Highway at SW 107th Avenue that will be impacted by traffic from this use.

11. Tim Harrison testified that he owns a business on SW Kennedy Street. He agreed with prior witnesses' testimony about traffic and congestion. He noted that there is significant opposition to this application. He argued that traffic counts taken during the Covid pandemic are null and void as many people are working from home, significantly altering normal traffic conditions. The applicant should be required to provide the public with copies of the TMP.

a. Canyon Road/Highway 8 and SW 107th and SW 103rd Avenues provide the primary access to the Chick-fil-A restaurant for customers coming from Portland. Many drivers SW Laurel Street and Kennedy Street as cut-through routes to avoid congestion on SW 107th Avenue, increasing traffic and speeding on these local roads and creating a hazard for children and other residents. Customers park on Kennedy Street and walk the restaurant. This use will generate similar impacts, adding to the existing problems. He questioned whether the applicant will monitor traffic and mitigate traffic impacts on these side roads.

12. Eric Christenson argued that County staff's recommendation to close access to SW Laurel Street conflicts with ODOT's recommendation that that driveway remain open to allow customers to access to the signal SW Beaverton-Hillsdale Highway and SW 107th Avenue. This project conflicts with the County's sustainability plans and has generated significant public opposition.

a. The applicant should be required to conduct a traffic analysis of this use. Table 1 of the applicant's alternative access analysis projects a reduction of 458

vehicle trips per day compared to the two existing restaurants on the site. However, the existing restaurants on the site generated little traffic. This facility will be the northernmost In-n-Out Burger and will attract customers from all over the region. Based on the applicant's plans, the Keizer location has 94 parking spaces and 24 cars in line with additional vehicle queuing in the parking lot. This conflicts with the applicant's access analysis for this site. Actual vehicle queues will be much longer than what is shown in the applicant's analysis. This facility is more likely to generate 250 to 270 vehicle per hour. The applicant should be required to utilize traffic data from the Keizer location, as it provides a more accurate model of the likely traffic impacts of this site. That location has been open and operating for more than three years. The applicant should be required to submit the TMP prior to approval of this application.

b. The applicant should locate this restaurant at Washington Square, where adequate parking and vehicle queuing space is available.

c. This use, which is proposed to operate from 10:30 a.m. to 1:00 or 1:30 a.m. will generate significant new traffic noise and lighting impacts on the surrounding neighborhood.

13. Michael Hale testified on behalf of himself, his spouse, and nine of his neighbors on SW 103rd Avenue. He agreed with prior witnesses' testimony in opposition to this use. The application and Staff Report failed to consider the impact of this facility on the livability of the surrounding neighborhood and its impact on local businesses. His brother in law owned a 7-11 store down the street from the Keizer location and experienced drastic negative impacts when that restaurant opened. This facility will cause significant traffic backups on SW Beaverton-Hillsdale Highway. It will attract customers from all over the region, as there are no other In-n-Out Burger locations north of Keizer. Traffic at the Keizer location conflicts with the traffic assumptions in the applicant's access analysis. In addition, this area lacks much of the traffic infrastructure that exists in Keizer. He questioned whether the applicant will be allowed to open the gate on the SW Laurel Street access in order to alleviate congestion on SW Beaverton-Hillsdale Highway. Traffic from this use will create a safety hazard for pedestrians, cyclists, TriMet buses, and other traffic on SW Beaverton-Hillsdale Highway.

14. Donna Randall agreed with prior witnesses' testimony. She has lived in this area since the 1970s. Prior developments in the area altered access to properties in the area. She often sees drivers making illegal U-turns and parking on SW 107th Avenue in order to access the Chick-fil-A restaurant. Traffic from this use will exacerbate those issues, creating a hazard for area residents and limiting access to local streets. Area residents should not be required to travel north to SW Canyon Road just to leave their neighborhood without running into congestion.

15. Danielle Chesney argued that traffic from this development will impact local streets in the area, including SW 107th, SW 103rd, and Western Avenues and SW Laurel Street. There is an existing park at the south end of SW 102nd Avenue and churches, schools, daycare, and similar uses in the area but there are no sidewalks to accommodate

pedestrian traffic. These streets are used as a thoroughfare between Canyon Road and SW Beaverton-Hillsdale Highway and many drivers greatly exceed the posted speed limits, creating a hazard for children. There are two school bus stops on SW Beaverton-Hillsdale Highway. She has seen many near misses as children cross the road to access the bus. The Target store west of the site also has an entrance on SW 107th Avenue and sight distance is limited for drivers trying to turn left onto SW 107th Avenue. It is impossible for pedestrians to cross SW 107th Avenue. A proposed multi-unit residential development on Western Avenue will also contribute traffic to this area. This facility will increase traffic and noise impacts in the area due to the extended hours of operation.

16. At the end of the hearing the hearings officer held the record open for two weeks, until 4:00 p.m. on June 30, 2022, to allow all parties an opportunity to submit additional testimony and evidence. The hearings officer held the record open for a third week, until 4:00 p.m. on July 7, 2022, to allow all parties an opportunity to respond to testimony and evidence submitted during the first week, and for a final week, until 4:00 p.m. on July 14, 2022, to allow the applicant an opportunity to submit a final written argument without any new evidence. Exhibits 4p through 4yy and SR-1 were submitted during the initial open record period ending on July 14, 2022.

17. By order dated August 3, 2022, (Exhibit OR1-a) the hearings officer reopened the record until August 23, 2022, for the limited purpose of allowing all parties the opportunity to address what the applicant refers to as “the zone crossing doctrine;” whether use of the OC zoned portions of the site for driveways, parking, and drive-thru queue storage for the proposed restaurant is permitted. Exhibits OR1-a through OR1-g, OR2-a and OR2-b, and OR3/FA-1 were submitted during the second open record period ending at 4:00 p.m. August 23, 2022.

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
- 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. RECORD ISSUES

1. As stated in the Order Reopening the Record (Exhibit OR1-a) “The open record period is strictly limited to the issue discussed above; whether parking lots and drive aisles in the OC zone are allowed or prohibited as part of a drive-thru restaurant use in the CBD zone.” (paragraph 9, page 5 of Exhibit OR1-a).

2. Exhibits OR1-c, OR1-d, and OR2, submitted during the second open record period, exceeded the limited scope of the open record, raising issues unrelated to the uses in the OC zoned portion of the site. Therefore, these exhibits are excluded from record in this case. In addition, those portions of Exhibits OR1-e and OR1-f that address issues beyond the “the zone crossing doctrine” are also excluded from the record.

VI. PUBLIC COMMENTS

The following issues were raised in public comments submitted to the public record in this case.

Traffic and Parking

1. There is no dispute that this use will generate a significant increase in traffic volumes on area streets, especially during the “opening” period. As many persons noted, this facility will be unique to the Portland area. The nearest existing In-n-Out Burger is in Keizer. This facility is expected to draw customers from all over the Portland metro region, including Vancouver and further north. Vehicle queues are expected to backup onto Beaverton-Hillsdale Highway. (Exhibit 4vv). 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.

a. The traffic analyses are based on traffic counts from existing In-n-Out Burger locations and existing conditions on streets in the area near the site.

i. The applicant compared the current traffic counts to prior traffic counts taken before the onset of the Covid pandemic and determined that the current counts accurately reflect expected, non-Covid, traffic conditions. (p 10 of Attachment J of the application, Exhibit PH-5). There is no substantial evidence to the contrary.

ii. Many persons argued that the applicant should have used traffic counts from the existing In-n-Out Burger location in Keizer, Oregon. However, as discussed by the applicant’s representatives, the location, design, and operation of the Keizer location are different than this site. In addition, the Keizer location is still

operating under “opening” conditions, when higher traffic volumes are expected. The applicant’s traffic analysis is based on “normal” operating conditions, when traffic volumes are lower. The traffic counts used in the applicant’s analysis are 25-30 percent higher than the traffic volumes listed in the ITE Manual. (p. 2 of Attachment 1 of Exhibit 4uu).

iii. The traffic analysis deducted traffic generated by the existing restaurants on the site, based on counts of actual traffic generated by those restaurants, not the higher traffic generation projections in the ITE Manual. (p. 5 of Attachment J of Exhibit PH-5).

2. As noted above, the applicant will create and implement a TMP to manage additional traffic during the “opening” period. The TMP will include methods for monitoring traffic conditions on the site and the surrounding street system as well as additional traffic controls to direct and control traffic traveling to and from the site. Those measures include shuttling restaurant employees from an off-site location in order to preserve on-site parking, prohibiting left turns in and out of the site, utilizing trained traffic control personnel in coordination with the Washington County Sheriff’s Office to direct traffic on the site and the adjacent highway, and other measures that will be determined by the applicant in consultation with the County, the City of Beaverton, and ODOT. The TMP will include “metrics” to trigger additional controls if specific traffic conditions occur. The TMP will also include an emergency access plan to maintain adequate emergency vehicle access through the area.

a. The proposed traffic controls, including temporary barriers on Beaverton-Hillsdale Highway to prevent left turn movements, may impact adjacent businesses. Specifically left turn movements at the primary entrance to the Uwajimaya store and potentially at the Kaiser clinic’s SW Beaverton-Hillsdale Highway driveway. However, the Code does not prohibit such impacts. Beaverton-Hillsdale Highway is a state highway managed by ODOT. ODOT has exclusive authority to restrict access as necessary to regulate traffic operations on the highway, including restricting turning movements at existing private driveways. See OAR 734-051-1065. These restrictions will not preclude access to these uses. Uwajimaya drivers wishing to turn left on or off of Beaverton-Hillsdale Highway can do so at SW Western Avenue or utilize the traffic signal at SW 107th Avenue. Kaiser patients and staff can access the clinic via the clinic’s SW Western Avenue driveway.

b. The applicant is not required to submit the TMP prior to preliminary approval of this application. As noted above, there is sufficient evidence in the record to support a finding that it is feasible to accommodate traffic from this development. The final details of how that will be accomplished will be determined through the final engineering review process, including review of the TMP by all relevant agencies. The applicant is not required to provide detailed engineering designs and analysis at this stage of review. The purpose of this preliminary review is to determine whether it is feasible to comply with applicable criteria. The preliminary engineering plans 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. Public agency review of the final engineering plans, including the TMP, provides adequate protection of the public interest. An opportunity for public review of the TMP is not required by law. However the TMP and other final engineering plans are public records that the public may review.

c. The TMP and associated access restrictions and traffic monitoring will remain in effect until traffic volumes and queue lengths resemble the conditions described in Table 8 of the applicant’s Access Alternatives Review (Attachment J of Exhibit PH-5). This is required by condition of approval II.F.9. The applicant proposed certain changes to the “performance metrics” in that condition, altering how the “opening” and “normal” traffic conditions are determined. (Exhibit PH-5a). ODOT and the County objected to those changes (Exhibits 4vv and OR2) and the applicant did not provide specific support for why the changes are warranted. The hearings officer relies on these agencies expertise to find that the current condition language should be retained.

i. As Ms. Freund testified, the “opening” period may continue for several years. However, Ms. Ruiz testified that the applicant has plans to open several more restaurants in the Portland metro area, including a previously approved location in Hillsboro. As those new facilities open, traffic at this location will likely decline, as customer traffic is able to disperse to other locations. The TMP will remain in effect until “normal” operations exist.

3. Neighbors discussed their observations of drivers making illegal U-Turns, speeding, failing to stop for school buses, and other issues of illegal behavior. That is unfortunate and can only be addressed through increased enforcement. Reasonably prudent drivers will obey applicable traffic regulations and controls. Unfortunately, not all drivers are prudent. However, there is no evidence that the development proposed in this application will contribute a disproportionate share of imprudent drivers.

4. The proposed development will increase traffic on local streets in the neighborhood. The applicant agreed to expand the scope of the TMP to monitor traffic on those streets and, if necessary, impose additional restrictions to encourage customers to utilize other routes and traffic calming to force drivers to slow down. This is included in the conditions of approval in Attachment B of the Staff Report, as modified by Exhibit SR-1. Some of the local streets in the area are not improved to current standards, lacking curbs, sidewalks, and other improvements. However, this is an existing condition that is not unusual in the older urban areas of the County. Although the proposed development contributes to problems with substandard streets in the area, those problems exist largely because of existing development. It would be inequitable to require the applicant to bear the full burden of such improvements where the proposed development is only

responsible for a small portion of the problem. Sidewalks in the area will interconnect over time as properties in the area develop, but the applicant is not required to make such off-site connections at this time.

5. The county engineer determined that the driveway to SW Laurel Street should be gated, with use limited to emergency vehicles only. SW Laurel Street is a County roadway subject to the exclusive jurisdiction of the county engineer. The hearings officer has no authority to reconsider the county engineer's decision in this proceeding.

6. The applicant also proposed that certain conditions listed in Section II of Attachment B of the Staff Report should be moved Section IV or VI. Conditions in Section II must be completed prior to final approval. Conditions in Section IV must be completed prior to issuance of building permits and conditions in Section VI must be completed prior to building occupancy or final building inspection approval. The applicant argued that they are unable to comply with these conditions until after final approval is granted "because the final approval will ultimately dictate design and the Applicant's ability to develop permit drawings, donate rights-of-way, and provide the required fees and assurances to satisfy these conditions." (Exhibit PH-5a). However, the applicant failed to provide any support for why dedication of rights-of-way, payment of administrative deposits, submittal of engineering plans, reviewing pavement conditions, providing financial assurance, etc. will affect the project's final design. These are standard development conditions that most developments have no issue complying with. In addition, delaying these conditions could potentially impact the County's ability to ensure compliance, as the County may lack the authority to withhold final occupancy approval if the building otherwise complies with applicable building permit requirements. The administrative deposit required by condition II.C.2 is necessary to fund the County's review of the applicant's plans. Therefore, the hearings officer denies the applicant's request to modify these conditions.

7. During the opening period, drive-thru vehicle queues are likely to extend beyond the drive-thru lanes surrounding the proposed building and exceeding the 24 vehicle storage shown in the applicant's plan. The applicant proposed to allow these excess traffic queues to extend into the on the site parking lot drive aisles, providing additional on-site queue storage in order to limit the potential for traffic queues spilling onto SW Beaverton-Hillsdale Highway. The applicant will utilize on-site traffic control personnel to direct traffic and maintain orderly movements during this "opening" period.

8. The hearings officer finds that the proposed development makes adequate provisions for parking. The applicant proposed to provide double the maximum number of parking spaces allowed by the Code. CDC 413-6.3 allows a maximum 12.4 parking spaces per one (1,000) thousand square feet of gross floor area of a drive-in restaurant on this site. This equates to a maximum 48 parking spaces for the proposed 3,885 square foot restaurant with drive-thru. The applicant proposed to provide 96 on-site parking

spaces.² Therefore, the use is unlikely to generate significant demand for off-site parking on local streets in the area. However, to the extent such demand occurs, it is not prohibited. Public streets are available to any member of the public for any legal use. Where on-street parking is available it is not reserved for the owners of adjacent properties. It is available to all members of the public on a first come/first served basis.

a. As Mr. Christenson noted, on site vehicle queues may block access to some parking spaces on the site, as the applicant proposed to store excessive vehicle queues within the parking lot drive aisles during the “opening” period. Such vehicle queues could limit customers’ ability to move in and out of the on-site parking spaces. However, the applicant will provide on-site traffic personnel during the opening period to direct traffic on the site to facilitate access to and from parking spaces.

9. The applicant can manage on-site traffic during the “opening” period to ensure that on-site vehicle queues do not extend past the drive-thru exit and prevent customers from leaving the site. On and off-site traffic control personnel can direct drive-thru customers to the eastern driveway where they will circle around the building to the north and west prior to entering the exclusive drive-thru lanes in the northwest portion of the site. Drivers exiting the exclusive drive-thru lanes will turn left (south) and exit the site onto westbound Beaverton-Hillsdale Highway. Dine-in customers will be allowed to enter the site via the western driveway, driving past the exit from drive-thru lane. On-site traffic control personnel can direct and control this traffic as necessary to prevent conflicts between vehicles entering the site at the western driveway and those exiting the exclusive drive-thru lanes. Lower traffic volumes during “normal” operations will not create significant on-site vehicle queues.

10. As discussed above, drivers will be prohibited from turning left out of the site onto eastbound Beaverton-Hillsdale Highway during the “opening” period. During “normal” operations left turn movements will be allowed at the eastern driveway. The proposed driveway design provides separate left and right turn lanes, ensuring that drivers who wish to turn right onto Beaverton-Hillsdale Highway are not forced to wait behind drivers attempting to turn left. There is no dispute that heavy traffic volumes on Beaverton-Hillsdale Highway may limit drivers’ ability to turn left during peak traffic times. However, that limitation is obvious and likely occurs at many driveways on Beaverton-Hillsdale Highway under existing conditions. Reasonable drivers will observe this and choose alternate routes. If necessary, ODOT has the authority to reimpose left turn restrictions at any time if warranted based on actual traffic conditions.

11. Opponents argued that the proposed drive-thru restaurant conflicts with the various County and City of Beaverton goals and plans for reducing vehicle traffic and pollution, promoting transit, walking, and biking, and other sustainability objectives. However, those plans and goals are not applicable approval criteria for this use. Drive-thru restaurants, coffee shops, banks, and other uses are expressly allowed in many

² The issue of exceeding the maximum number of parking spaces is addressed in the findings below related to CDC 413-6.6.

commercial zones. The hearings officer has no authority to impose a moratorium on drive-thru facilities. Residents should address those concerns to the Board of County Commissioners, who do have the authority to consider restrictions on drive-thru facilities and other methods of reducing auto demand and achieving sustainability goals.

Uses in the OC zone

12. There is a dispute about whether the proposed use is permitted in the OC zoned portions of the site.

a. The majority of the site is zoned CBD. However, the northwest and northeast corners of the site are zoned OC. Restaurants, including drive-thru restaurants, are only allowed as a very limited use in the OC zone. (See CDC 312-5.2, CDC 312-3.2.A(2) and (3), and CDC 312-3.2.B). Restaurants (referred to as “eating and Drinking or Food Specialty Establishments”) and Drive-In or Drive-Up Restaurants are only allowed as accessory uses in the OC zone, subject to the criteria in See CDC 312-3.2.B. (See CDC 312-3.2.A(2) and (3)). Pursuant to CDC 312-3.2.B, restaurants, including drive-thru restaurants in the OC zone must be scaled to serve the tenants of the complex or surrounding office commercial area, no more than 20-percent of the gross floor area of new or existing structures, accessed by an internal office complex street with siting and signage internally oriented. The hearings officer finds that the restaurant proposed in this case is not permitted in the OC zone, as it does not comply with the accessory use approval criteria of CDC 312-3.2.B.

b. The restaurant structure and exclusive drive-thru lanes are located entirely in the CBD zoned portion of the site. However, the applicant proposed to provide driveways and parking areas associated with the restaurant use in the OC zoned portions of the site. (See site plan Sheet 30.0). The hearings officer finds that the driveways and parking areas are part of the proposed restaurant “use” based on LUBA’s holdings in *Wilson v. Washington County*, 63 Or LUBA 314 (2011)(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). As LUBA held in *Wilson*:

Bowman Park and *Roth* stand for the somewhat unremarkable proposition that where a property is to be developed with a commercial or industrial use, the internal driveway on that property that connects the commercial or industrial buildings to the nearest public right of way is properly viewed as part of the commercial or industrial use. Whether that driveway is labeled as “accessory” to the business, as in *Roth*, or an integral part of the use itself, as in *Bowman Park*, is not material.

i. The hearings officer acknowledges that LUBA’s holdings in *Wilson et. al.* determined that driveways in other zones were part of the proposed use. LUBA did not address the issue of parking in another zone. However, the hearings officer finds that LUBA’s holdings in those cases should be extended to include parking, as the

vehicle parking and maneuvering areas in the OC zoned portion of the site are clearly part of the proposed restaurant “use,” similar to the driveways at issue in *Wilson et. al.*

ii. The applicant argues that the holdings of *Wilson et. al.* are limited to situations where there is only one driveway access. The proposed development has two driveways providing access to Beaverton Hillsdale Highway and the western driveway allows customers to access the restaurant and exclusive drive-thru lanes without passing through the OC zoned portions of the site. However, the applicant is clearly proposing to utilize the OC zoned portions of the site for vehicle parking and maneuvering associated with the restaurant use. Therefore, the hearings officer finds that these parking and maneuvering “uses” are part of proposed restaurant use and those uses are not permitted in the OC zone.

iii. The applicant is proposing a single stand-alone restaurant on the site. Therefore, the applicant’s references to shopping centers and other mixed-use developments with multiple access points, some of which may pass through other zones where some uses in the development are prohibited, are not applicable in this case. (p. 5 of Exhibit OR1-g).

iv. The facts of this case are distinguishable from those in *Del Rio Vineyards v. Jackson Co.*, 73 Or LUBA 301 (2016), LUBA No. 2015-104.

(A) In *Del Rio Vineyards*, the applicant proposed to expand an aggregate mining and asphalt manufacturing operation in the AR (Aggregate Resources) zone where these uses are permitted. The proposed haul road for the mining operation passed through the WR (Woodland Resource) zone. Petitioners in that case argued that mining operations on the AR zoned portions of the site were subject to conditional use review because the haul road through the WR zoned portions of the site provided access to those uses and therefore, mining in the AR zoned portions was “part of” the haul road use in the WR zone, citing *Wilson et. al.* LUBA disagreed, holding that *Wilson et. al.* “[d]o not stand for the very different proposition that the primary mining activities that occur *only* in the AR zone are themselves subject to the WR zone conditional use standards.” LUBA No. 2015-104 at p. 13 (emphasis in original).

(B) In this case, the proposed restaurant and drive-thru are permitted in the CBD zoned portions of the site. However, unlike the facts in *Del Rio Vineyards*, the use in this case is not limited solely to the CBD zoned portion of the site. The applicant proposed to provide vehicle parking, maneuvering, and excess drive thru vehicle queue storage needed to support the restaurant use in the OC zoned portion of the site, where these uses are prohibited.

c. The applicant argues that use of the OC zoned portions of the site for vehicle parking and maneuvering is allowed as a legal nonconforming use that may be continued. The existing restaurants on the site were legally established when the entire site was zoned CBD. Those approvals included use of the now OC zoned portions of the site for vehicle parking and maneuvering associated with those restaurant uses. (See

attachments 2 through 8 of Exhibit OR1-g). It appears that these uses were legally established more than 20 years ago and the applicant argued that the uses have continued without interruption of more than one year. (See attachment 9 of Exhibit OR1-g). Assuming, without deciding, that the applicant sustained its burden of proof that the existing restaurant uses were legally established and continued without interruption for one year or more, the applicant would be allowed to continue using these areas for vehicle parking and maneuvering associated with the proposed restaurant use, pursuant to CDC 440-1.

d. However, the applicant also proposes to use the OC zoned area in the northeast corner of the site for storing excess drive-thru queues at least during the “opening” period of the use. (See page 29 of Exhibit T of the application, which shows excess drive-thru vehicle queuing along the west and north boundaries of the site and Ms. Ruiz’ testimony at the hearing). Based on the evidence in the record, the exclusive drive-thru lanes for the existing restaurants on the site were located entirely in the CBD zoned portions of the site. (See attachment 10 of Exhibit OR1-g). There is no evidence that the existing restaurants ever generated excess drive-thru queuing that extended into the OC zoned portions of the site. Therefore, the hearings officer finds that the applicant’s proposal to use the OC zoned portions of the site for drive-thru queue storage constitutes an alteration of the legally established non-conforming use of the OC zoned portion of the site and the applicant failed to demonstrate that the alteration meets the standards of for alterations in CDC 440-6.2.B. Specifically the applicant failed to demonstrate that:

i. The alteration will have no greater adverse impact on the neighborhood. CDC 440-6.2.B(1);

ii. The alteration is limited to ten-percent or less of the site. CDC 440-6.2.B(3);

iii. The alteration is designed to mitigate to the extent practicable adverse impacts caused by the alteration. CDC 440-6.2.B(5); and

iv. The alteration is necessary to avoid future deterioration or obsolescence relocation would create undue hardship. CDC 440-6.2.B(7).

e. The hearings officer finds that use of the OC zoned portions of the site for excess drive-thru vehicle queue storage is a necessary part of the proposed development. There is no evidence that the use can meet County and ODOT mobility requirements without providing excess drive-thru vehicle queue storage within the OC zoned portions of the site, especially during the restaurant’s “opening” period. The “opening” period may continue “for several years.” (Freund testimony). Therefore, it is not possible to approve this application subject to a condition of approval prohibiting use of the OC zoned portions of the site for excess drive-thru vehicle queue storage.

f. The applicant argued that “[t]he Planning Director has wide authority to approve temporary uses for up to one year... as a Type I permit” pursuant to CDC 430-

135.1.C. (Footnote 1 of Exhibit OR1-g). The hearings officer disagrees. CDC 430-135.1.C limits temporary uses to those listed in CDC 430-135.1.C(1)-(7), (9), and (10), as well as “Other similar uses of a temporary nature when approved by the Director.” CDC 430-135.1.C(8).

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

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

g. Therefore, the hearings officer must deny this application because the application is proposing to use the OC zoned area in the northeast corner of the site for excess drive-thru vehicle queue storage, a use prohibited in the OC zone that is beyond the scope of the legally established non-conforming use on the site and this use cannot be approved as a temporary use pursuant to CDC 430-135.1.C.

Other Issues

13. This site and surrounding properties to the east, west, and south, as well as properties to the north of the site but south of SW Laurel Street, are zoned for commercial uses and have been since the 1970s. Commercial uses can be expected to generate more noise, lighting, activity, and other impacts. However, noise generated on the site is subject to the limitations in Section 8.28 of the Washington County Code, on-site lighting is subject to the requirements of CDC 415 to minimize offsite impacts, and landscaping and buffering are required pursuant to CDC 407 and to screen and buffer adjacent properties. The hearings officer finds that although the use may generate such impacts, compliance with the requirements of the Code will ensure that the proposed use will not cause excessive impacts on surrounding properties

14. Mr. Trotter argued that “Combining three of parcels [sic] rezones all or part of one of the parcels to a less restrictive zone.” (p. 1 of Exhibit 411). This is incorrect. The proposed property line adjustments will combine the three existing parcels into a single lot. However, it will not alter the existing zoning. The northeast and northwest corners of the site will continue to be zoned OC and the remainder of the site will continue to be zoned CBD.

15. The site is private property and zoned for commercial uses. The applicant has proposed this use on this site and that is what the hearings officer must review. If the application complies with the Code, it must be approved. Assertions that there are subjectively “better” locations for this use or subjectively “better” uses for the site are irrelevant. The County has no authority to determine the highest and best use of the site

and whether there is a “need” for the proposed uses. The applicant is a private property owner and has the right to develop their property as allowed by the Code based on their determination of market demand, provided the use complies with all applicable approval criteria.

16. Opponents argued that this application should be denied to protect the quality of life for existing residents. However, quality of life is protected through compliance with the adopted zoning and approval criteria. Extensive community opposition to the proposed use is not relevant. The only issue that the hearings officer may consider is whether the application does or does not comply with the applicable approval criteria.

VII. FINDINGS

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."

- 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 Street 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 I 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.

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.*

If this application were approved, conditions of Approval, listed in Attachment B of the Staff Report as amended by Exhibit SR-1, can be imposed to ensure the project is in conformance 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 VI.12 above, the applicant is proposing vehicle parking, maneuvering, and excess drive-thru vehicle queue storage in the OC portions of the site. These uses are part of the proposed restaurant use, based on LUBA's holdings in *Wilson et. al.*

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.

Vehicle parking and maneuvering related to the proposed restaurant use may be permitted to continue as a legal established nonconforming use. The two existing restaurants on the site, including vehicle parking, maneuvering areas in those portions of the site that are

currently zoned OC, were approved by the County at a time when the entire site was zoned CBD. The applicant argues that these uses have continued without interruption for twenty years or more. Therefore, assuming that the uses have been continued, the applicant may continue to use the OC zoned portions of the site for vehicle parking and maneuvering as a continuation of a legal nonconforming use.

However, the applicant failed to demonstrate that use of the OC zoned portions of the site for excess drive-thru vehicle queue storage was legally established. Therefore, the applicant cannot use the OC zoned portions of the site for excess drive-thru vehicle queue storage use as a continuation of a legal nonconforming use. Use of the OC zoned portions of the site for excess drive-thru vehicle queue storage is necessary to allow the use to function, at least during the potentially multi-year "opening" period. Therefore, the application cannot be approved subject to a condition prohibiting use of the OC zoned portions of the site for excess drive-thru vehicle queue storage and the application must be denied.

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 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 Street. The SW Laurel Street 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 Street. 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

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 Street 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 Street. Deliveries will be to the interior of the site and away from existing residential uses on the north side of SW Laurel Street.

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 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 Street 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 to 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 Street. 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:

<i>USE</i>		<i>MAXIMUM NUMBER OF STANDARD OFF-STREET PARKING SPACES PER UNIT OF MEASURE</i>
413-6.1	<i>C. Business and Commercial:</i>	<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	<i>B. Maximum Off-Street Parking Ratios in Zone A:</i>	
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 lumines (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.³ 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 Street per the County Engineer. The access will be fully gated and locked with a Knox-box and restricted for emergency vehicles only.

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 excess drive-thru vehicle storage – are proposed in the OC zoned portions of the site. If the existing

³ 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).

restaurant uses were not discontinued for one year or more and the hours of operation of those uses were consistent with the proposed use, the parking and maneuvering uses may continue as a nonconforming use. However, the use of the OC zone for excess drive-thru vehicle storage is prohibited.

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 Street. Access and improvements to OR-10 shall be reviewed by ODOT. Improvements to SW Laurel Street, 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 Street 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 Street 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 Recommended Conditions of Approval.

b. SW Laurel Street

SW Laurel Street 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 Street 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 Street 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.⁴

Access onto SW Laurel Street 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 Street project frontage. Access and improvements to OR-10 shall be reviewed by ODOT; improvements to SW Laurel Street, 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 Street (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-

⁴ 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 Street 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 Street: The required sight distance at SW Laurel Street 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 Street.

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

VIII. CONCLUSION

Based on the findings and discussion provided or incorporated herein, the hearings officer concludes that the applicant failed to sustain its burden of proof that the proposed use complies with all of the applicable approval criteria. Specifically, the applicant failed to demonstrate that the proposal to utilize the OC zoned portions of the site for excess drive-thru vehicle storage during the potentially multi-year "opening" period is allowed as a permitted, accessory, or temporary use. Therefore, Casefile No. L2200066-SU/D/PLA/PLA (In-N-Out Burger) must be denied.

IX. ORDER

The hearings officer hereby denies the Special Use, Development Review approval requested in Casefile No. L2200066-SU/D/PLA/PLA (In-N-Out Burger).

DATED this 29th day of August 2022.

A handwritten signature in black ink, appearing to read 'Joe Turner', with a long horizontal flourish extending to the right.

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