



Department of Land Use & Transportation  
Current Planning Services  
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## NOTICE OF DECISION OF THE HEARINGS OFFICER

PROCEDURE TYPE III

CPO: 1 COMMUNITY PLAN:  
Cedar Hills-Cedar Mill

LAND USE DISTRICT:  
TO:RC (Transit Oriented: Retail Commercial)

PROPERTY DESCRIPTION:

ASSESSOR MAP: 1N1 33DA

LOT#S: 402 & 600

SITE SIZE: 0.08 acres & 0.39 acres

ADDRESS: 12805 NW Cornell Road

CASEFILE: 11-299-D(C)/APPEAL

**APPLICANT:**

PacWest Energy, LLC

DBA Jackson Food Stores, Inc

Attn: Jason O'Very

3450 East Commercial Court

Meridian, ID 83642

**APPLICANT'S REPRESENTATIVE:**

Barghausen Consulting Engineers, Inc

Attn: Ivana Halvorsen

18215 - 72<sup>nd</sup> Avenue South

Kent, WA 98032

**OWNER:**

PacWest Energy, LLC

DBA Jackson Food Stores, Inc

3450 East Commercial Court

Meridian, ID 83642

**LOCATION:** On the north side of NW Cornell  
Road, at its intersection with SW Barnes Road

**PROPOSED DEVELOPMENT ACTION:** Development Review for the Expansion of an Existing Gas  
Station Facility in a Transit Oriented District.

### DATE OF DECISION:

**June 27, 2012**

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.

**CASEFILE NUMBER: 11-299-D(C)/APPEAL**

**SUMMARY OF DECISION:**

On September 21, 2011 the Washington County Hearings Officer issued a written decision (Attachment "C") for Washington County Casefile Number 11-299-D(C)/APPEAL. The decision of the Hearings Officer is as follows:

**ORDER:**

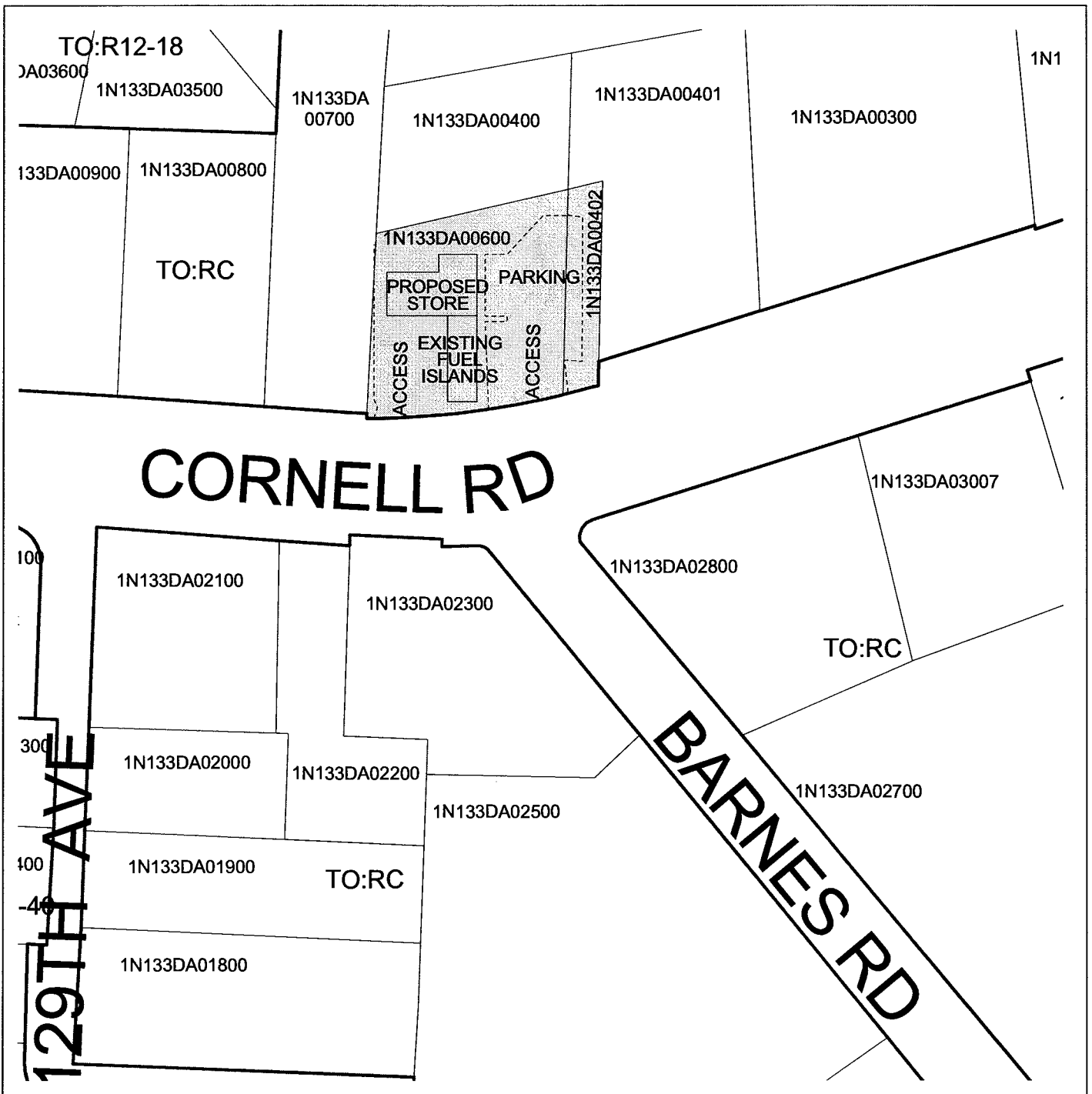
The Hearings Officer hereby DENIES the appeal, and approves the request for Development Review for the Expansion of an Existing Gas Station Facility in a Transit Oriented District, subject to the Conditions of Approval set forth in Exhibit 1 of the Final Order.

**Attachments:**

- A. Vicinity Map**
- B. CONDITIONS OF APPROVAL**
- C. Hearings Officer's Final Order**

# ATTACHMENT A VICINITY MAP

TAX MAP/LOT NO. 1N1 33 DA 00402 & 00600 CASE FILE NO. 11-299-D(C) Appeal



↑ NORTH       AREA OF CONSIDERATION

SCALE: 1" TO 100'

**SITE & SURROUNDING LAND USE DISTRICTS:**

- TO:RC (Transit Oriented Retail Commercial)
- TO-R12-18 (Transit Oriented Res. 12-18 units/acre)
- TO:R24-40 (Transit Oriented Res. 24-40 units/acre)

**REVIEW STANDARDS FROM CURRENT OR APPLICABLE ORDINANCE OR PLAN**

- A. Washington County Comprehensive Plan
- B. Applicable Community Plan (See Front of Notice)
- C. Transportation 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, Design and Construction Standards
- G. ORD. NO. 691-A & 729, Transportation and Development Tax

## Attachment B

# CONDITIONS OF APPROVAL

- I. **PRIOR TO COMMENCING ANY ON-SITE IMPROVEMENTS, INCLUDING GRADING, EXCAVATION AND/OR FILL ACTIVITIES THE APPLICANT SHALL:**
- A. Obtain a Grading Permit from the Building Services Division (503-846-3470). The Grading Permit application must comply with the grading submittal package checklist, and include sections and heights of all proposed retaining walls. Washington County Building Engineers have identified that the applicant will need to demonstrate through the grading permit process that the proposed development will not negatively impact the existing retaining wall along the western property line of the site.
  - B. Obtain a Right-of-Way Permit for construction access to the site. Right-of-Way-Permits for construction access may be obtained from the Washington County Operations Division, and may be consolidated with the Right-of-Way Permit required under Condition II.A.3. below, as determined by the Operations Division.
  - C. Obtain a Clean Water Services (the District) Site Development Permit. Application for the District Site Development Permit must be in accordance with the requirements of the Design and Construction Standards, Resolution and Order No. 04-9 and is to include:
    - 1. Compliance with all provisions of the District's Design and Construction Standards, R&O 07-20.
    - 2. Detailed grading and erosion control plan. An Erosion Control Permit will be required. The area of disturbance must be clearly identified on submitted construction plans. If site area and offsite improvements required for this development exceed one-acre of disturbance, the project will require a 1200-C Erosion Control Permit.
    - 3. A drainage report including a downstream drainage analysis meeting the requirements of R&O 07-20, Section 2.04.2.m will be required. If downstream storm conveyance does not have the capacity to convey the volume during a 25-year, 24-hour storm event, the applicant is responsible for mitigating the flow as provided in the above named design standards.
    - 4. Detailed plans showing the development having direct access by gravity to public storm and sanitary sewer.
    - 5. Any offsite sanitary or storm sewer improvements identified as part of this development may require additional offsite street improvements/restorations. All transportation-related infrastructure, (including but not limited to roadway surfaces and base materials) influenced by sanitary or storm sewer improvements, shall be restored to original or better condition.
    - 6. Provisions for water quality in accordance with the requirements of the above named design standards. Water quality is required for all new development and redevelopment areas per R&O 07-20, Section 4.05.5,

Table 4-1. Access shall be provided for maintenance of facility per R&O 07-20, Section 4.02.4.

7. Plans showing storm service requirements to each lot. If private lot LIDA systems are proposed, they must comply with the current District Design and Construction Standards and Washington County Plumbing Standards.
8. Show all existing and proposed easements on plans. Any required storm sewer, sanitary sewer, and water quality related easements must be granted to Clean Water Services.

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

**II. PRIOR TO FINAL APPROVAL (WITHIN TWO YEARS):**

**A. Submit the following to Washington County Operations Staff (503-846-7623):**

1. Right-of-way Permit Application Form for construction access to the site.
2. \$800.00 Administration Deposit.

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

3. Three (3) sets of complete engineering plans for all work proposed within the NW Cornell Road right-of-way, including, but not limited to:
  - a. Any sidewalk construction, repair, or improvement to public facilities located within the right-of-way.
  - b. Utility work within the right-of-way.

**B. Submit to Current Planning Services, Project Planner (Wayne Hayson, 503-846-9761):**

1. Final Approval form (Type I procedure; two copies).

**NOTE:** *The Final Approval application shall include evidence that all Conditions of Approval have been met.*

2. Final Approval fee.
3. A final plan set, including:
  - (a) Final site plans. The following must be shown on the final site plans:
    - (i) A revised parking plan showing no more than 10 parking spaces, excluding those spaces available at fueling positions. Either the space labeled "5" or that labeled "11" should be eliminated, and the landscaped island expanded to include the eliminated space.
    - (ii) A lighting plan pursuant to Section 415-2, showing compliance with the standards of Section 415-4.
    - (iii) A revised bicycle parking plan, showing a minimum of four bicycle parking spaces meeting the requirements of Section 429-7 and Section 429-8.
    - (iv) Plans showing the installation of striping, elevation changes, speed bumps, a different paving material, or other similar method meeting the requirements of Section 408-10.3.B. to demarcate the pedestrian circulation areas on the site.
    - (v) Revised elevations for the NW Cornell Road frontage of the building showing 75% of the wall length within the first 10 feet of wall height consisting of windows. (Section 431-5.3)
4. A Copy of the Right-of-Way Permit for construction access to NW Cornell Road.

**NOTE:** Contact the Operations Division at 503-846-7623 for Right-of-Way Permit requirements and application forms.

**III. PRIOR TO THE SUBMITTING A BUILDING PERMIT APPLICATION:**

- A. Meet with a commercial plans examiner.

**IV. PRIOR TO THE ISSUANCE OF A BUILDING PERMIT THE APPLICANT SHALL:**

- A. Obtain Final Approval.
- B. Pay the Transportation Development Tax.
- C. Provide a current fire flow test of the nearest fire hydrant demonstrating available fire flow at 20 PSI residual pressure as well as fire flow calculation worksheets. Fire flow calculation worksheets as well as instructions are available on at [www.tvfr.com](http://www.tvfr.com).
- D. Provide a fire hydrant distribution plan based on the fire flow calculations.
- E. Submit with the building plans to Building Services (503-846-3470) plans consistent with those submitted in response to Condition II.B.3.

**V. PRIOR TO BUILDING OCCUPANCY AND/OR FINAL BUILDING INSPECTION:**

- A. Obtain Building Permits, consistent with the conditions listed above.
- B. Install all required bicycle racks and pedestrian amenities.
- C. Plant all required landscaping.
- D. Complete construction of the parking area.
- E. Final Right-of-Way Permits for any improvements within the NW Cornell Road, consistent with Condition II.A.1.
- F. All facilities and improvements required by Clean Water Services shall be completed and approved by the District.

**VI. ADDITIONAL CONDITIONS:**

- A. This development shall be constructed in accordance with the conditions of this decision, the approved final plans and the standards of the Community Development Code (Section 207-5).
- B. All conditions of approval shall be binding upon all heirs, successors and assigns (Section 207-5).
- C. Transferability of this Development Permit shall be in accordance with Section 201-8.
- D. This approval shall automatically expire two years from the date of this approval, unless development has commenced, an application for an extension is filed, or this approval is revoked or invalidated (Section 201-4).
- E. Adequate sight distance shall be continuously maintained by the property owner(s). This may require the property owner(s) to periodically remove obstructing vegetation from the road right-of-way (and on site).
- F. Darkly-tinted and mirrored windows are not allowed as part of this development. Any tinting of the glass will only be that required through the building permit process for the appropriate shading coefficient.
- G. All landscaping shall be continually maintained, including irrigation, weeding, pruning and replacement, in a substantially similar manner as shown in the approved landscaping plans, unless a modification is approved.

BEFORE THE LAND USE HEARINGS OFFICER  
OF WASHINGTON COUNTY, OREGON

In the Matter of a Development Review  
for the Expansion of an Existing Gas  
Station Facility in a Transit-Oriented  
District

**Applicant:** PacWest Energy, LLC, dba  
Jackson Food Stores, Inc.

**Appellants:** KWF Investments LLC  
and Bales Findley LLC

**FINAL ORDER**

**Casefile No. 11-299-D(C)/APPEAL**

APPEAL DENIED  
DEVELOPMENT REVIEW  
APPROVED WITH CONDITIONS

**I. APPLICATION SUMMARY AND HEARING HIGHLIGHTS**

- A. On February 27, 2012, the Director issued a decision granting conditional approval for the request. The decision was appealed in a timely manner on March 12, 2012 by KWF Investments, LLC, and Bales Findley, LLC. In accordance with Section 209-5 of the Washington County Community Development Code (the Code), review of the final decision of the Director in Type II actions shall be de novo, and as such this Order addresses all relevant Code criteria identified in the original Director's decision. The specific appeal issues raised by the appellants are identified and addressed in response to Section 209 in this Order.
- B. The project site (Tax Lots 1N1 33DA 402 and 1N1 33DA 600) is located on the north side of NW Cornell Road at its intersection with NW Barnes Road. The applicant has requested approval to expand the floor area of the existing gas station building by approximately 307 square feet, and to change and expand the use of the existing building from the existing service bays, retail sales and office to a wholly retail use. The fueling islands and canopy will not be altered as part of this development. Because the existing building does not meet the standards of the Transit-Oriented: Retail Commercial (TO:RC) District or Section 431 of the Washington County Community Development Code, the applicant requests approval of the building expansion in accordance with Section 375-6.B, which allows for an up to 20% increase in the gross floor area of a lawfully existing structure. The change of use of the building from service station to wholly retail use is considered a Type I procedure in accordance with section 375-10, as both a service station and a retail use of less than or equal to 5,000 square feet are permitted as Type II uses in the TO:RC District.
- C. The project site has frontage on NW Cornell Road, a County Arterial, and has two existing access points to NW Cornell Road. In accordance with Section 501-8.5.B.(4)(a), direct access to an arterial will be permitted provided that Point 'A' of



such access is more than six hundred (600) feet from any intersection Point 'A' or other access to that minor arterial (Point 'C'). The subject site does not meet the access spacing standards of Section 501-8.5.B.(4)(a). However, in accordance with Section 440-10, the applicant has demonstrated that the proposed development will not increase Average Daily Trips to the site by more than 25%, therefore the existing access points are not subject to the requirements of Section 501-8.5.B.(4)(a).

D. Nineteen letters of comment were received in response to the original public notice for the application. The main issues raised in the letters can be summarized as follows:

- No development should occur without the applicant constructing the proposed extension of NW Barnes Road to NW Dogwood Street.
- The applicant should be required to widen the sidewalk along the NW Cornell Road frontage to 12 feet.
- The applicant should not be able to able to expand the retail use on the site, as no convenience store currently exists.
- The trip generation of the development exceeds the 25% threshold of Section 440-10, or has been improperly calculated.

E. No additional letters of comment were received in response to the notice of the public hearing on the appeal of this application, prior to the hearing. During the hearing and open record proceedings, the following additional submittals were received by the Hearings Officer.

EXHIBIT NO.	DESCRIPTION	NAME OF SUBMITTING PARTY
H 1	Staff Presentation Slides for Case Rile 11-299-D(C) dated 5/23/12	County Staff
H 2	Tab 1 Appeal Memorandum	Sussman Shank D. Christopher Burdett

EXHIBIT NO.	DESCRIPTION	NAME OF SUBMITTING PARTY
H 2	<p>Tab A 10/4/11 Letter from Barghausen to Hayson re Type II Review Submittal, also includes:</p> <ul style="list-style-type: none"> <li>• Screen shot re PacWest Energy application</li> <li>• Copy of check for \$6717</li> <li>• Development Application dated 10/6/11</li> <li>• Planning Services Application Submittal</li> <li>• Development Review Supplemental Information</li> <li>• Written Statement of Criteria &amp; Standards – Jacksons Food Stores w/ specifics relative to applicable standards</li> <li>• Pre-application Conference Summary</li> <li>• Cedar Hills-Cedar Mills Community Plan Map</li> <li>• Fee Schedule for FY 2010-2011 for Current Planning Services Section</li> <li>• List of Service Providers in Washington County and blank form</li> <li>• Rate Calculation from Washington County Code w/ blank TDT form and handwritten note on worksheet</li> <li>• 6/3/11 Letter from Branch Engineering to Hayson re trip generation</li> <li>• 6/28/10 Trip Generation Study</li> <li>• Preliminary site plan and associated drawings</li> <li>• Email from Hayson to Washington County Traffic Engineer re trip generation</li> <li>• Request for Service Availability re Water District, Fire District, Clean Water Services, School District, Solid Waste Recycling</li> <li>• Request for TriMet comment</li> </ul> <p>Tab B: Notice of Decision &amp; Staff Report; Procedure Type II (Approved with Conditions 2/27/12; w/ maps, staff report)            Tab C: Declaration of Robert Hawley re traffic flow, parking, safety issues            Tab D: Photo of Jackson Fuel location w/ handwritten note “tanks under ext. of Barnes”            Tab E: Photo of concrete curb            Tab F: Floor plan schematic of Jackson Fuel            Tab G: Table of Permitted and Prohibited Uses In Transit Oriented Districts            Tab H: 6/3/11 Technical Memo from Branch Engineering to Wayne Hayson re trip generation w/ trip generation study, raw traffic counts            Tab I: 1/6/12 Traffic Analysis Memorandum from Branch Engineering to Hayson re support of land use and building permit            Tab J: Maps of neighborhood            Tab K: Recommendation &amp; Staff Report; Procedure Type III re Transit Oriented</p>	Sussman Shank D. Christopher Burdett
H 3	<b>IDENTICAL TO H 2 EXHIBITS</b>	Sussman Shank D. Christopher Burdett
H 4	5/18/12 Letter from Bales Findley re planning, traffic capacity	County Staff
H 5	5/22/12 Memo from Kleinman to Hearings Officer re traffic and transportation planning. Requesting denial.	Kleinman

EXHIBIT NO.	DESCRIPTION	NAME OF SUBMITTING PARTY
H 6	5/21/12 Letter from Flecker Associates to Kleinman re trip generation assessment and stating that the site will generate 71% more traffic during peak hours	Kleinman Document from Traffic Engineer
H 7	5/21/12 Letter from Virginia Bruce to Hayson re 2020 Transportation Plan	Virginia Bruce
H 8	Vicinity Map and charts and photos- review standards	Robert Hawley
H 11	Shell/Texaco Station Site Plan	Robert Hawley

F. Washington County Land Use Hearings Officer Pamela J. Beery (the "Hearings Officer") conducted a duly noticed public hearing on May 22, 2012.

The applicant and applicant's legal counsel appeared at the public hearing. The appellants and their attorney also appeared at the hearing and requested the record remain open for further comments. That requested was granted, and the record was left open for seven days for new evidence and argument from all parties, followed by an additional seven days for new evidence and argument from the appellants only, and a final seven days for the applicant's final rebuttal. The record closed on June 12, 2012 at 4 p.m. No party objected to any submittal by any other party during the open record period, and the Hearings Officer accepted all submitted evidence and argument.

County Staff recommended denial of the appeal, and approval of the request for Development Review for the Expansion of an Existing Gas Station Facility in a Transit Oriented District, subject to the Recommended Conditions of Approval found in Attachment B of the Staff Report.

The applicant granted an extension of the time limit for a final decision under ORS 215.427 to and including June 27, 2012.

## II. ORDER

The Hearings Officer **DENIES** the appeal, and **APPROVES** the request for Development Review for the Expansion of an Existing Gas Station Facility in a Transit Oriented District, subject to the Recommended Conditions of Approval found in Attachment 1 to this Final Order, and based on the findings and conclusions contained herein.

### III. APPLICABLE STANDARDS and AFFECTED JURISDICTIONS

#### APPLICABLE STANDARDS

- A. Washington County Comprehensive Plan
- B. Cedar Hill-Cedar Mill Community Plan
- C. Washington County Community Development Code:
  - 1. Article II, Procedures:
    - Section 202-2 Type II Procedure
    - Section 207-5 Conditions of Approval
    - Section 209 Appeal
  - 2. Article III, Land Use Districts:
    - Section 375 Transit Oriented Districts (Transit Oriented: Retail Commercial)
  - 3. Article IV, Development Standards:
    - Section 404 Master Planning
    - Section 405 Open Space
    - Section 406 Building, Siting and Architectural Design
    - Section 407 Landscape Design
    - Section 408 Neighborhood Circulation
    - Section 410 Grading and Drainage
    - Section 413 Parking and Loading
    - Section 415 Lighting
    - Section 416 Utilities
    - Section 417 Irrigation
    - Section 418 Setbacks
    - Section 419 Height
    - Section 426 Erosion Control
    - Section 429 Bicycle Parking
    - Section 431 Transit Oriented Design Principles, Standards & Guidelines
    - Section 440 Nonconforming Uses and Structures
  - 4. Article V, Public Facilities and Services:
    - Section 501 Public Facility and Service Requirements
    - Section 502 Sidewalk Standards
- D. Transportation Plan
- E. Ordinance No. 691-A; Washington County Transportation Development Tax Ordinance
- F. Resolution and Order No. 86 95 Determining Traffic Safety Improvements Under the Traffic Impact Fee Ordinance
- G. Ordinance No. 524 Uniform Road Improvement Standards
- H. Resolution and Order No. 07-20 Concerning Erosion Control, Water Quality and Quantity

## AFFECTED JURISDICTIONS

Sewer:	Clean Water Services
Streets:	Washington Co Dept. of Land Use & Transportation
Drainage:	Washington Co Dept. of Land Use & Transportation
Water Quality & Quantity:	Clean Water Services
Erosion Control:	Clean Water Services
Water:	Tualatin Valley Water District
Fire Protection:	Tualatin Valley Fire and Rescue
Police Protection:	Washington County Sheriff
Schools:	Beaverton School District
Transit:	Tri-Met
Parks:	Tualatin Hills Parks and Recreation District

## IV. 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 be in compliance with the Community Development Code and the applicable Community Plan. By demonstrating in this final order that the request complies with the standards of the Code and the Community Plan, this Plan requirement will be satisfied.

### B. **Cedar Hills-Cedar Mill Community Plan:**

The site is located in the Cedar Mill West Subarea.  
The site is located in Area of Special Concern 12 (Subsections a. and e.) and 14.  
The site is not located in a Local Street Connectivity Area.  
The site is identified as being within a Special Area Commercial Street Corridor.  
The site is not identified as including Significant Natural Resource Areas.

Subsections "a" and "e" of Area of Special Concern 12 apply to the project site. Subsection "a" applies to NW Cornell Road between NW Dale Avenue and NW Barnes Road, and requires public improvements for land development actions to include 12 foot sidewalks with street trees, 90 feet of right-of-way, curb extensions at public streets where appropriate, pedestrian scale street lights, and pedestrian scaled amenities such as street furniture and/or plantings in the sidewalk area every 100 feet. Subsection "a" does not address the Special Area Commercial Street Corridor identified on the Washington County Special Area Streets, Street Corridor & Arterial Access Designations for the Cedar Mill Town Center and the Sunset Transit Center Area Community Plan map.

Subsection "e" applies to NW Cornell Road between NW Barnes Road and the eastern Boundary of the Teufel property (to the east of the subject site), and

requires public improvements including 10 foot sidewalks with street trees, curb extensions at public streets where appropriate, pedestrian scale street lights, and pedestrian-scaled amenities such as street furniture and/or plantings in the sidewalk area every 100 feet. Right-of-way is required at 90 feet (45 feet to centerline). Subsection "e" does not address the Special Area Commercial Street Corridor identified on the Washington County Special Area Streets, Street Corridor & Arterial Access Designations for the Cedar Mill Town Center and the Sunset Transit Center Area Community Plan map.

The existing sidewalk along the site's NW Cornell Road frontage is currently 5 feet wide, which is the minimum County standard for public sidewalks. Existing right-of-way width is 32.5 feet to centerline (See Dedication Deeds, Washington County Assessment & Taxation Recording Numbers 2005-108754 and 2005-108754). During the recent County Capital Road Improvement Project along NW Cornell Road (Casefile 04-053-D(CI)/DHA), it was determined that an increase in the sidewalk width to Area of Special Concern 12 requirements and a right-of-way dedication of 45 feet to centerline was not feasible, as the increased width would result in the required removal of fueling pumps and fuel tanks associated with the gas station. As such, the Capital Road Improvement Project was designed to accommodate the reduced width along the frontage of the project site while meeting the requirements of the Cedar Hills – Cedar Mill Community Plan stated above to the extent practicable. The Hearings Officer takes official notice of the final decision in Casefile 04-053-D(CI)/DHA in support of later findings herein with respect to sidewalk width along the site frontage.

Area of Special Concern 14 encompasses land designated for commercial or mixed (commercial, office and residential) development in the vicinity of the intersection of NW Cornell Road and NW Saltzman Road. As properties in the area develop or redevelop, it is intended that the new development be designed to encourage walking, bicycling and transit use in the area. Buildings shall be located to front on adjacent pedestrian streets, and designed to present front facades with a significant percentage of window space. The plan also anticipates that two story buildings or buildings that are at least 20 feet high be located at the corners of the major intersections, including at the intersection of NW Cornell Road and NW Barnes Road. Staff notes that the existing service station is not located at a street corner, and the future special area commercial street is not proposed to be constructed at this time. However, at the time any extension of NW Barnes Road is constructed between NW Cornell Road and NW Dogwood Street, this requirement shall apply to buildings located along the final approved alignment.

The existing building is and will remain oriented toward NW Cornell Road, with a significant increase in the length of the building façade consisting of windows. Additional pedestrian access to adjoining uses will be provided, along with bicycle parking facilities. As such, when the proposed project is implemented in accordance with the findings in this Final Order and the Conditions of Approval, the proposed project will comply with the Cedar Hills-Cedar Mill Community Plan.

## **C. Washington County Community Development Code (CDC):**

### **1. Article II, Procedures:**

(a) Section 202-2.1 states that 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 the Code.

The proposed development is permitted in the TO:RC District through a Type II process, pursuant to Section 375-6.B. Section 375-6.B. deals with Change or Expansion of Existing Uses or Structures, and is examined in more detail later in this Final Order.

(b) Section 207-5 addresses Conditions of Approval, and states that 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.

Conditions of approval may be imposed to ensure compliance with the standards of the Code and other County regulations and to mitigate any adverse impacts the development may have on the surrounding area. Such Conditions of Approval are attached to this Final Order as Exhibit 1.

(c) Section 209 relates to the Appeal process.

On February 27, 2012, the Director issued a decision of conditional approval for the request. The decision was appealed in a timely manner on March 12, 2012 by KWF Investments, LLC, and Bales Findley, LLC. In accordance with Section 209-5 of the Washington County Community Development Code (the Code), review of the final decision of the Director in Type II actions shall be de novo, and as such this Final Order readdresses all relevant Code criteria identified in the original Director's decision. The specific appeal issues raised by the appellants are identified and addressed in response to Section 209.

The appellants specified eleven specific grounds for appeal in their pre-hearing materials, although as a de novo hearing, the appellants were not limited to these points and all issues raised during the hearing are addressed herein. Each of the grounds for appeal identified is listed and addressed below, together with additional issues raised during the hearing and open record period.

**Appeal Issue 1:** CDC 440-10 and CDC 501-8.5.B Access Spacing Standards: increase in daily trips to the site will exceed the 25% threshold of CDC 440-10, allowing for expansion of nonconforming uses.

- *The applicant's traffic study (technical memorandum and subsequent traffic analysis addendum) contains erroneous assumptions, especially as to (1) whether the convenience store or the fuel pumps comprise the dominant use, and (2) whether the existing, totally unused service station bays and tiny snack sales counter (with no beer and wine sales) justify the assumption that the incremental increase in the convenience store building area will be only 19.96 percent. The existing snack stand comprises approximately 100 square feet; it is simply incorrect to state there is an "existing 1,568 gross square foot convenience market." (Applicant's Trip Generation Memo, 6/3/11 at 2) The proposed 1,881 square foot "C-store" reflects an increase in size of as much as 19 times, or 1900 percent. The character of the store, with beer and wine sales and a full range of convenience store products, would also be completely different. While the fuel pumps now represent the predominant use on the site, the reverse would be true if this project were allowed to proceed.*

*The conclusion of Traffic Engineering staff that there will be "only" a 22 percent increase in daily trips is similarly in error.*

*The increase in daily trips will significantly exceed the 25 percent threshold of CDC 440-10 (Alteration or Expansion of Uses Not Conforming to the Access Requirements to Public or County Roads.) The applicant will thus need to comply with the Roadway Access standards of CDC 501-8.5.B, including the access spacing standard in CDC 501-8.5.B.(4)(a). The applicant is far from compliance with the relevant standards. Moreover, any finding or determination that compliant access is unavailable and impracticable is not supported by the evidence in the case file or the facts on the ground.*

In response to the above appeal issue, wherein the appellants state that the increase in daily trips will significantly exceed the 25 percent threshold of Code Section 440-10, the Hearings Officer notes that the applicant's Traffic Engineer submitted a Traffic Generation Analysis demonstrating compliance with the requirements of Section 440-10. Washington County Traffic Engineering staff reviewed the submitted information, and stated that they agreed with the conclusion in the applicant's January 6, 2012 addendum, that the proposed site renovations will not result in a 25 percent increase in the weekday daily trips. See Staff Exhibits 4 and 7, dated April 2, 2012 and January 30, 2012, respectively.

The applicant's traffic engineers, Branch Engineering, submitted trip generation estimates that predict that increased average daily trips will be less than 25%. The first,



dated June 3, 2011, (the "Trip Generation Memo" Exhibit H) and the second, dated January 6, 2012 (the "Addendum" Exhibit I). These memos demonstrated that the proposed remodel would not result in trip generation of more than 25% using three different methodologies. See Applicant's May 22, 2012 Land Use Appeal Memorandum at pp. 6-9. County staff concurred with this analysis. See Washington County's February 27, 2012 Notice of Decision and Staff Report at pp. 3-4, 13 and May 22, 2012 Recommendation & Staff Report at 3-4, 31. The analysis submitted by the applicant's engineer contains detailed traffic count data for the site, and a copy of an analysis from a Lane County application for the same applicant.

Branch Engineering employed the Washington County traffic impact fee methodology, which is expressly approved by Washington County to establish Transportation Development Taxes (TDT). See Trip Generation Memo at p. 3; Addendum at pp. 2-3. This methodology relies upon the number of vehicle fueling positions to assess the number of daily trips generated by a land use that includes the selling of gas and convenience retail items and is based on the Institute of Transportation Engineers ("ITE") trip generation rates. Using Washington County's TDT methodology, there is no basis for an increase in site generated traffic because the number of vehicle fueling positions would not be changed from the eight existing fueling positions.

The traffic flow analysis was calculated a second way, but assuming the existing use of the site to be a "gasoline/service station" (ITE Land Use Code 944-including service bays) and the proposed use as a gas station with a convenience store (ITE Land Use Code 945). Even assuming a change in the existing use and proposed use, the results were the same, a determination that there will be no additional daily trips. (See Addendum at p. 6).

A third method used relies on data collected from Branch Engineering's analysis of other Jacksons' sites. Branch Engineering used a trip generation rate that was based on a study that surveyed five Lane County area sites to determine the site usage of trips that were generated by Jacksons' sites that utilized both refueling and retail convenience store functions. The study was attached as "Attachment 1" to the Trip Generation Memorandum. This trip generation rate has been developed specifically for application to Jacksons' project sites with a combination of existing fuel and convenience item sales. This trip generation rate has been approved for use by the Oregon Department of Transportation (to determine incremental site trips resulting from the remodeling of a Jacksons Food Store in Eugene, Oregon) and by the City of Springfield, Oregon (to address increases to site traffic resulting from remodeling a Jacksons Food store). See Trip Generation Memorandum at pp. 4-5. Branch Engineering has independently verified the accuracy of its trip generation rate based upon observations of post-build driveway traffic counts. *Id.* p. 4. Using this Jacksons-specific methodology, Branch Engineering determined that average daily trips would increase by approximately 20%. *Id.*<sup>1</sup>

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<sup>1</sup> The trip rate applied to the Property was based on the gross square footage of the onsite buildings at representatives' sites offering convenience retail items for sale. The existing floor area utilized in the traffic analyses for the Property was floor space used for the existing retail amenities, including but not

Finally, in addition to the three methods employed above, Washington County's traffic engineering staff independently verified the trip generation data by employing ITE trip generation data, the number of pumps, and the size of the proposed renovations. Washington County concluded that:

"ITE trip generation data can very well predict the trip generations both for the site with 8 existing gas pumps and with the proposed renovations. Washington County Traffic Engineering staff found that based on the trip generation information in the ITE Trip Generation manual, when using the size of the convenience market with the proposed renovations, the site will generate 22% more daily trips than the existing gas station with 8 gas pumps."

Staff Report at pp. 3-4.

In response to the applicant's traffic analysis, the appellants retained a traffic consultant to refute the applicant's findings. Flecker Associates' reports are dated May 21, 2012 (Exhibit H6) and June 4, 2012 (Exhibit OR-2-2).

There are two fundamental differences between the applicant's engineer's analysis and that of the appellants. First, appellants' engineer applies an ITE trip generation rate based on the floor area of what he deems to be the "retail space" of the Property. Because ITE rates are intended to be applied to new development sites, the appellants' engineer's estimate counts new trips to both uses of the property (gas station and convenience store) that would be expected of a new development on vacant land. As a result, the engineer's use of ITE rates and square footage increase contemplates both the size of the convenience store and the number of fueling stations increasing. However, the existing eight vehicle fueling positions on the site will remain unchanged. Therefore, the appellants' engineer's estimate of additional trips to the remodeled convenience store overestimates average daily trips by including increased trips to the vehicle fueling positions that will not actually occur, since the number of vehicle fueling stations will remain unchanged. The ITE manual expressly disapproves of the methodology employed by the appellants' engineer. See Applicant's Supplemental Land Use Appeal Memorandum (the "Supplemental Memorandum") at p. 3.

The second fundamental difference between the applicants' and appellants' engineers' analyses is that the appellants' engineer employed a different mechanism for measuring the size of the existing convenience store. According to appellants, only 180 square feet of the existing building can be included as a "convenience store," excluding all non-retail floor space when calculating the degree of change of use. The ITE land use code that is accepted by both engineers is that for a gas station with a convenience store. This land use code accounts for the fact that the primary business is the fueling of vehicles. As a result, the gross floor area should include closet space,

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limited to: employee break areas; manager's offices; restrooms; storage (for oil, food, beverages, gas cans, etc.) freezers/refrigerators; cleaning supply closets and other areas which are typical of refueling and convenience retail uses. See Addendum at pp. 1-2. This issue is discussed in detail herein.

restroom space, storage areas for retail and service station supplies, cooler space, shelf space, employee break areas, and any gross area within the four walls of the existing building.

The Hearings Officer finds that the ITE definition of "gross floor area" should be applied when determining the increased size of the building as contrasted with the gross leasable area ("GLA") advocated for by the appellants' engineer which would result in only 180 square feet being used to calculate the existing size of the facility being increased. The applicant's engineer, Branch Engineering, attached to its May 29, 2012 Memorandum (Supplemental Memorandum, Exhibit A at p. 14) an excerpt from the Institute of Transportation Engineering Trip Generation, 8th Edition Volume 1, User's Guide, which defined GFA as "all areas that have floor spaces with clear standing head room (6 feet 6 inches minimum) regardless of their use." (emphasis added). On that same page is the definition of GLA which states that GLA includes, "the total floor area designed for tenant occupancy and exclusive use, including any basements, mezzanines, or upper floors, expressed in square feet and measured from the centerline of joint partitions and from outside wall faces." The definition indicates the shopping center industry uses the "gross leasable area" concept. *Id.* The last sentence of the definition states, "For specialty retail centers, strip centers, discount stores and free standing retail facilities, GLA usually equals GFA." Therefore, even if using GLA were appropriate, GLA would equal GFA for this freestanding facility on the site and the Hearings Officer finds that appellants' contention that the use of GLA would lead to a different result is incorrect.

The site plan and testimony elicited in response to questions from the Hearings Officer make clear that the four walls of the existing building enclose one space. An interior wall formerly separated the office and retail sales area from the now-abandoned service bays, but these activities are all housed within one building. The "gross floor area" should include the entire area within the building as calculated by the applicant's engineer.

The appellants' engineer also asserts that the County TDT is not a reliable method for estimating traffic impacts because "There is no nexus between ITE Trip Generation and Washington County development fees." Flecker Memorandum at 4. This is simply incorrect, as the Development Tax Code does in fact utilize ITE Trip Generation rates based on the number of vehicle fueling positions. See Washington County Code Chapter 3.17, Appendix B (incorporating ITE land use codes). In any event, the Hearings Officer finds that any disconnect between the calculation of an impact fee and the interpretation of the CDC provision at issue here is not relevant and even to the extent it is relevant does not form a sufficient basis to undermine the applicant's analysis.

Finally, the appellants' engineer contends that a data set based on Jacksons sites in Lane County (as opposed to Washington County) is not credible evidence in support of this application. The Hearings Officer finds that no evidence presented in opposition to the Lane County data explains why an operation in one county would differ in terms of traffic from the same operation conducted in Washington County. Further, in analyzing

the Lane County data, it appears that the average daily trips of all of the Lane County sites had higher average daily trips on the adjacent street than the subject site. See Supplemental Memorandum, Exhibit A at p. 7. Accordingly, there is no basis to disregard the applicant's engineer's data simply because the sites were located in Lane County.

Where two conflicting expert opinions are presented in support of a proffered finding with respect to a relevant approval criterion, the Hearings Officer's obligation has been articulated clearly by the State Land Use Board of Appeals. In *Wal-Mart Stores, Inc., v City of Bend* 52 Or LUBA 261 (2006), LUBA examined the standard for analysis to be used in choosing among conflicting expert evidence, noting the choice must be "reasonable based on a review of all the evidence in the record." 52 Or LUBA at 271 (citations omitted). Unless credible evidence apparently "weighs overwhelmingly in favor of one finding and the [Review Authority] finds the other without giving a persuasive explanation," the decision will be deemed reasonable and upheld on review. 52 Or LUBA at 274, citing *Armstrong v Asten-Hill Co.*, 90 Or App 200, 206 (1988).

LUBA noted, specifically with reference to traffic impact analyses, the "larger more technically sophisticated effort," typically put forward by the Applicant, is not automatically to be viewed as requiring that the Applicant prevail. Rather, the question is "whether any expert or lay testimony offered by permit opponents raises questions or issues that undermine or call into question the conclusions or supporting documentation that are presented by the applicant's experts and, if so, whether any such issues are adequately rebutted by the applicant's experts." 52 Or LUBA at 276.

The parties did not submit credentials for either traffic engineer. Both are listed as having PE certification based on a review of their submittals, both of which are stamped with the appropriate documentation of certification. The applicants' engineering firm clearly has far more experience with the kind of use proposed in this application, and has conducted post-development actual counts to verify the accuracy of their predictions in past applications for similar projects. The applicants' submittals rely on "thousands of data sets" for similar developments, and are more detailed and thorough in addition to reflecting actual traffic counts at the site and post-development counts at similar properties. The appellants' engineer did visit the site once, reviewed data from the applicant's engineer, and conducted his own analysis but did not do actual traffic counts at the site or study the applicant's other developments.

Based on the above findings, the Hearings Officer concludes that the traffic engineering analysis submitted by the applicant is sufficient to meet its burden of demonstrating that trip generation to the site will not increase by more than 25% as a result of the proposed project, and that the appellants' engineer did not submit sufficient evidence to undermine the applicant's submittal such that it would be unreasonable to rely upon it. Therefore, trip generation to the site will increase by less than 25%, which is within the threshold for expansion of a nonconforming use under CDC 440-10.

As demonstrated below in findings with respect to CDC Section 375-6, the existing development on the site was established prior to the current transit oriented retail

commercial zoning being applied to the site. As such, it is a nonconforming use and subject to limitations where expansion greater than 20 percent in gross floor area is proposed.

**Appeal Issue 2:** CDC 375.6.B – 20 Percent Expansion

- *The nature of the proposed expansion is such that it does not fall within the 20 percent expansion-of-gross-floor area limit of CDC 375.6.B. As a result, the applicant must submit a master plan for approval by the county, describing how additional development on the site will achieve, through phases if necessary, full compliance with all applicable standards and provisions of the Community Development Code and the applicable community plan.*

This appeal issue is addressed fully below in discussion of Section 375-6, Change or Expansion of Existing Uses or Structures.

**Appeal Issue 3:** Extension of NW Barnes Road

- *It is reasonably practicable for the applicant to comply with the requirement of the Washington County Special Area Streets, Street Corridor & Arterial Access Designations for the Cedar Mill Town Center and the Sunset Transit Center Area Community Plan map, specifically for the southerly [sic] extension of NW Barnes Rd. to NW Dogwood St., through cooperation with the willing owners of adjacent and surrounding properties. The applicant has not attempted a showing of any kind in this regard, and has hence failed to meet its burden of proof herein.*

This ground for appeal suggests that the applicant be compelled, presumably through Conditions of Approval, to negotiate with adjoining property owners to obtain the necessary right of way and then complete the construction of the future extension of NW Barnes Road to NW Dogwood Street. The Hearings Officer notes that the signatory on the Petition for Review (Exhibit A3) is also identified as the President or Manager of each of the three properties adjoining the subject site, and at the hearing indicated a willingness to negotiate construction of the future road extension. Several drawings were presented showing potential alignments of the Barnes extension through the property and adjacent properties and are included in the hearing record at Exhibit 2, Tab J. None of the proposed alignments connecting NW Barnes Road and NW Dogwood Street were ever adopted through any formal planning process. Staff Report at p. 2; no party contested this determination. As such, any alignment is speculative at this point and the amount of required right of way and its configuration are undetermined.

Moreover, the Hearings Officer does not believe that Conditions of Approval compelling the applicant to enter into binding agreements with neighboring property owners would be valid or enforceable. In order to be valid, conditions of approval must be feasible for the applicant to perform, and must be capable of being performed by the applicant

without reliance on third parties. *Gould v. Deschutes County*, 57 Or LUBA 403, *aff'd* 227 Or App 601 (2009); *Butte Conservancy v. City of Gresham*, 51 Or LUBA 194 (2006); *Holbrook v. City of Rockaway Beach, et al*, 59 Or LUBA 179 (2009).

The “reasonably practicable” limitation on the applicant’s obligation here arises from CDC 375-6.B. The provision requires conformance of an expanded use lawfully in existence at the time of an application with applicable development standards “to the extent reasonably practicable.” The standard thus recognizes that expansion of an existing use does not present the same opportunities as a new development; the site of an existing use is necessarily constrained by buildings and other physical improvements to the site. The County does not have an adopted or previously applied interpretation of the term “reasonably practicable” and since the term is ambiguous it requires interpretation. In this case, the facts are not controverted, and result in the following findings:

An extension of NW Barnes Road through the site would render the current use no longer viable, as demonstrated by the unadopted alignments referenced above. In this regard, the staff correctly determined, “What is clear from each of these [informal] alignments is that construction of the extension of NW Barnes Road through the subject site will result in significant impacts to the operation of the existing gas station, ranging from the removal of existing fuel tanks and several fuel pumps, to the removal and relocation of the entire gas station facilities and buildings.” Staff Report at p.2.

In addition, the costs associated with the proposed extension of NW Barnes Road and the necessary property acquisitions are likely to be significant. As staff reasoned, the road extension is completely out-of-proportion to the impact and cost of the floor expansion:

“In this instance, the expansion of the floor area of the existing building by approximately 300 square feet is not considered proportional to the cost incurred through a requirement to complete the road extension. Construction of the road extension would clearly [and] significantly eliminate most, if not all, of the economic use of the property, and as such would be liable to be considered a taking.”

Staff Report at p. 2 (emphasis added). The applicant contends that if such request to build a street extension was required as a condition of this application, it would be a taking, citing *Dolan v. City of Tigard*, 512 U.S. 374, 396 (U.S. 1994). The Hearings Officer notes that under the latest judicial decisions, the cost of a road improvement – as contrasted with the value of real property – is no longer subject to a *Dolan* analysis in Oregon *West Linn Corporate Park, LLC v. City of West Linn*, 349 Or 58 (2010). However, there still must be a nexus between the development proposed and the improvement required under *Nollan v. California Coastal Commission* 483 US 825 (1987). No testimony or other evidence was presented to indicate that the expansion of this building and the change in use would support extension of a roadway clearly designed to serve area-wide circulation needs. The Hearings Officer finds that

imposing a requirement for the road extension on this limited expansion would be invalid.

The alternative of the County completing the road extension is also completely speculative based on the staff report, wherein staff noted that “as the equivalent of a local street, no funding mechanism currently exists for the public completion of the road.” Staff report, p. 13.

Finally, the road extension has not been demonstrated to be required to go through the applicant’s property; Washington County’s attorney noted that “the road does not need to [be] located on the site, but merely within the designated corridor, so an alignment within the subject site is not strictly required.” Staff Report at 13.

It appeared from testimony at the hearing that the underlying concern of Appellants appears to be over the access to Appellants’ adjacent properties to NW Cornell Road. From uncontroverted testimony, an unidentified party has previously removed a fence in order to allow access to NW Cornell Road through the gas pump and parking areas of the subject project and to the adjacent shopping center. See Exhibit B, Attachment A (Vicinity Map). There was also testimony from Ms. Peters concerning what appear to be significant traffic issues in the area and the safety of pedestrians trying to navigate the area, these concerns do not warrant the requirement that the applicant be responsible for correcting area-wide existing traffic and safety issues. While it may be true that improved access to the adjacent properties is desirable, and that long term circulation plans for the area will benefit from extension of NW Barnes Road, the Hearings Officer finds that the County lacks authority in this context to require the extension as a condition of the pending application.

Finally, as discussed above and again below in the findings with respect to conformance with Section 501-8.1.B., as the Special Area Commercial Street Corridor does not lie wholly within the boundaries of the subject property, nor is the future roadway alignment adopted in the Washington County Transportation Plan, it would be inappropriate for the County to condition the applicant to construct the future extension at this time.

***Appeal Issue 4:*** Block length and Perimeter standards of Section 431

- *The same holds true with respect to the block length and perimeter block length requirements of CDC 431-4.2, discussed at pages 11-13 of the staff report appended to the Notice of Decision.*

As noted extensively above, pursuant to Section 375-6.B, the applicant is required to comply with the applicable standards of Section 431 to the extent reasonably practicable, and as such, modifications to this standard are permitted where it is not considered reasonably practicable to comply with the block length and perimeter block length standards of Section 431-4.2. Further discussion is contained in Section 431-4 of this Final Order.

### **Appeal Issue 5: Type II or Type III Process**

- *As shown by even the limited discussion of the issues in this Petition for Review, the review criteria herein are not reasonably objective, and necessarily require the application of more than limited discretion. Accordingly, it was error to review this application under a Type II rather than a Type III procedure.*

*Moreover, CDC 375-4.1 provides:*

*“If a Type I use does not follow all of the applicable minimum design standards in Section 431, the use shall be reviewed as a Type III use, shall demonstrate compliance with the applicable design principles or standards in Section 431, and shall not be subject to Section 403-3.1.”*

*In addition, CDC 375-4.2 provides:*

*“If a Type II use does not follow the minimum design standards in Section 431, the use shall be reviewed as a Type III use, shall be required to demonstrate compliance with the applicable design principles or standards in Section 431, and shall not be subject to Section 403-3.1.”*

*As the proposed use does not comply with the minimum design standards, it is subject to Type III review and must demonstrate compliance with the applicable design principles or standards in CDC 431. This has not occurred here.*

In accordance with Section 375-6.2, structures that were lawfully in existence at the time of application of the transit oriented district may be expanded upon findings that the proposed expansion complies with the development standards of Section 375 and Section 431, but only to the extent reasonably practicable. Where the use, design or configuration of an existing development makes it not reasonably practicable to apply a particular development standard or the applicant provides an alternative development proposal which equally or better meets the purpose of the particular development standard, Section 375-6.2 allows the review authority to waive the application of that standard. As such, Section 375-6.2 does not require the applicant to demonstrate compliance with the applicable design principles, as would otherwise be required pursuant to Section 375-4.2, and therefore does not require the application to be heard through a Type III procedure.

The Hearing Officer notes that these appeal proceedings are subject to the same notice, participation, and approval criteria as would be applied were the application heard through a Type III procedure in the first instance, with the same continuing right of appeal. Regardless of whether the application is processed through a Type II or Type III procedure, the Type III denial criteria of Section 403-3.1 do not apply to this application merely because a Type II action is processed through a Type III procedure.



Appellants had a full and fair opportunity to raise all issues at a de novo hearing and requested and were provided with additional open record periods ending seven and fourteen days following the hearing. Appellants have not demonstrated any prejudice to their substantial rights and as such the Hearings Officer finds that any consequence of the initial processing of this application as a Type II does not warrant denial of this application.

The only difference procedurally between Type II and Type III is the requirement to hold a neighborhood meeting. Such meetings are only required as provided under CDC 203-3.2A which does not apply in this case as the site is surrounded by TO:RC zoning and does not abut a residential district.

**Appeal Issue 6:** Existence of existing convenience grocery, nonconforming use determination required

- *There is no existing convenience grocery (CDC 430-35) or retail business (CDC 375-3.12) on this site, under the definitions set out in those provisions.*

While the application is not subject to the requirements of Section 430-35, beyond demonstrating that the use was lawfully in existence prior to the adoption of the TO:RC District designation, the Hearings Officer finds that the current use of the site includes a convenience grocery, albeit in a limited fashion. Section 430-35 of the Code defines convenience grocery as follows:

“A convenience grocery store is one which sells frequently purchased foods and sundries to residents of an immediate area and/or to the traveling public.”

The existing “Snack Shop” on site sells a range of cold drinks, snacks (candy, nuts, chewing gum etc.), cigarettes, maps, and automotive accessories (windscreen washer fluid, oil etc.), which meet the definition of selling frequently purchased foods and sundries to the travelling public. The Hearings Officer finds additionally that there are no minimum floor area requirements which must be met in order for space to be considered convenience grocery.

Further, Section 375-3.12 of the Code defines a retail business as follows:

“Retail Business Include businesses such as variety, hardware, drug, dry goods, clothing, book, office supply and similar stores, as well as eating and drinking establishments.”

The existing and proposed use of the site are consistent with both of these definitions because the site presently sells fuel, oil, food, beverages, tobacco, personal care items, lottery, and convenience items and proposes to continue to do so after remodel, based on uncontroverted testimony from Mr. Hawley on behalf of the applicant. Hearing

Exhibit 2, Tab C. These retail items are all frequently purchased by residents of the immediate area and the traveling public, and the sales of which validates the business as a retail establishment. This conclusion was confirmed by Washington County staff through visits to the site and by information received in the public comment letters. Staff Report at p. 6.

In addition, as staff noted, whether an existing retail use exists is irrelevant to the processing of the application, since regardless of whether the development is considered as an expansion of an existing use or as a change in use, the establishment of the retail use as proposed is considered to be permitted as a Type I procedure in accordance with Section 375-10 Table A. Even if no retail use exists, it would not change the way the application is reviewed. Staff report page 3.

Also relevant to this appeal issue is the appellants' contention that a nonconforming use determination was required and that absent such a determination the application must be denied because the application relies upon its status as a "use or structure lawfully in existence at the time of application of the transit oriented district" pursuant to CDC 375-6.B.

More specifically, the appellants contend that the applicant must make a showing under CDC section 440-3 that a nonconforming use was lawfully established as of the effective date of enactment or amendment of the current zoning. Appellants reason that since the applicant relies on CDC section 440-10, which provides that there is no need to comply with section 501-8.5 when trip generation is less than 25%, the applicant must also comply with CDC section 440-6 (alterations to a nonconforming use or structure), which, according to applicants, invokes CDC section 440-3.

As an initial matter, CDC section 440-10 does not, by its own terms, require compliance with CDC section 440-6 or 440-3. CDC section 440-10 states:

Approval of an alteration, expansion, or change in occupancy of a Type II use which currently does not conform with the requirements of Section 501-8.5 (Access to County and Public Roads) shall require that the use be brought into compliance with these standards when such changes create a twenty-five (25) percent increase in the existing Average Daily Trips (ADT). Compliance must be assured prior to the issuance of final approval or building permits for the expansion, addition or alteration.

Similarly, CDC section 375-6.B, also governing this application, does not state that compliance with CDC sections 440-3 or 440-6 is necessary:

All other uses and structures that were lawfully in existence at the time of application of the transit oriented district may be expanded upon findings that the proposed expansion complies with the development standards in this Section and Section 431, to the extent reasonably practicable.

CDC § 375-6.B (emphasis added). The Hearings Officer declines to add words to these sections of the CDC. If there had been an intent to liken this provision (a "use or structure lawfully in existence") with a "nonconforming use" which is a term of art in

Oregon land use law, it would have been a simple matter to reference the nonconforming use standards in the CDC. Clearly, these provisions and the nonconforming use definitions in the CDC make a distinction between a “nonconforming use” and a “use and structure lawfully in existence at the time of application of the transit oriented district.”

According to the CDC, “A nonconforming use is a structure or use of land which does not conform to the provisions of this Code or Comprehensive Plan.” CDC § 440-1. The record herein demonstrates that the uses on the site complied with requirements in the Code at the time the new zoning was put into place. Indeed, the existing uses of the site, (a) retail sales of less than 5,000 square feet and (b) service station, are both allowed Type II uses pursuant to CDC section 375, Table A. Although the applicant’s legal counsel mentioned the term “non-conforming use” the Hearings Officer finds that this use of the term is inaccurate based on the record herein.

There is no dispute, either, that the existing facility on the site in fact was in existence at the time the new Transit Oriented District came into effect. In a May 1, 2012 email, County staff explained that Casefile 90-400-D was approved in 1990 as a Development Review for the exterior remodel of an existing gas station, and was approved when the property was designated as Community Business District (CBD), rather than TO:RC. The Transit Oriented District was put in place in 1998.” Staff’s email and the Staff Report & Notice of Decision for the 1990 remodel are included in the hearing record. Pursuant to CDC section 440-3.1, building permits may be used as evidence to prove when the use was established. The Hearings Officer concludes based on the staff email and the permit materials for Casefile 90-400-D the subject use was lawfully in existence at the time the Transit Oriented District was applied to the site. The appellants did not present any evidence to undermine this conclusion.

#### ***Appeal Issue 7: Parking Spaces***

- *The applicant’s plan shows 11 parking spaces for a 1,875 square foot building, which equals 5.87 spaces/1,000 SF building. The TO:RC Zoning District has a maximum allowable parking ratio of 4.0/1,000 SF.*

The Hearings Officer concurs with the appellant that the 11 parking spaces shown on site plans submitted with the application exceed the maximum number of parking spaces allowed for the development. The Hearings Officer finds that per Section 413-5.2, for a 1,875 square foot retail building, a maximum of 10 parking spaces are permitted ( $5.1(1,875/1,000) = 9.56$ ). As stated above, the applicant has shown 11 parking spaces; therefore a Condition of Approval included in Exhibit 1 requires the applicant to submit revised parking plans showing no more than 10 parking spaces, prior to Final Approval, and defining one of two spaces shown on the proposed site plan for removal and replacement with landscaping. Additional findings appear below in the discussion of Section 413 – Parking and Loading below.

**Appeal Issues 8 and 9:** Landscaping and street trees CDC 431

- *CDC 431-5.1.B.2 requires street trees with an average spacing of no more than 30 feet on center. The proposed site plan does not include the requisite street trees.*
- *The applicant has not complied with the requirements for landscape buffering/screening along its western property line.*

Screening and buffering is not required between two properties in the TO:RC District in accordance with Section 411-5, as is the case in this instance. As such, the screening and buffering requirements of Section 411 do not apply to this application.

Findings regarding landscaping and street trees are included below in the discussion of Section 407 – Landscape Design, Section 431-6 – Parking Areas, Garages and Parking Structures, and Section 431-9 – Landscaping.

**Appeal Issue 10:** CDC 414 Signage

- *The signage on the applicant's pylon sign is substantially larger than the allowable 32 square feet. CDC 414-2.2.B.*

Sign permits are limited to a Type I procedure in accordance with Section 414-4, Procedures, and are issued through the building permit process. It is not necessary to provide a decision regarding signage at this time as this is not a relevant approval criterion for this application.

**Appeal Issue 11:** Sidewalk Width

- *The decision is in error in allowing the applicant to avoid compliance with the identified requirements for sidewalk width (12 feet, not five) and for minimum right-of-way on NW Cornell Rd. The applicant has not met its burden of proof in attempting to escape these requirements.*

Findings with respect to this last appeal issue are included in discussion of Section 502, Sidewalk Standards, below.

**2. Article III: Land Use Districts:**

Section 375 is concerned with Transit Oriented Districts. As relevant here, Section 375-6 addresses Change or Expansion of Existing Uses or Structures. Specifically, subsection B reads as follows:

“All other uses and structures that were lawfully in existence at the time of application of the transit oriented district may be expanded upon findings that the proposed expansion complies with the development standards in this Section and Section 431, to the extent reasonably practicable. Where

the use, design or configuration of an existing development makes it not reasonably practicable to apply a particular development standard or the applicant provides an alternative development proposal which equally or better meets the purpose of the particular development standard, the Review Authority shall waive the application of that standard.

Notwithstanding the above, future expansions shall be limited in total to a maximum of twenty (20) percent of the gross floor area present at the time of application of the transit oriented district, unless a master plan is prepared by the applicant and approved by the County which describes how additional development on the site will achieve, through phases if necessary, full compliance with all applicable standards and provisions of this Code and the applicable community plan.”

(a) 20% gross floor area:

The project site is located in the Transit Oriented Retail Commercial District (TO:RC). The applicant proposes to expand and remodel the existing 1,568 square foot building by approximately 307 square feet, resulting in a new gross floor area of 1,875 square feet. The increase in floor area is approximately 19.5%, meeting the 20% maximum described above. The increase in floor area is proposed to be achieved through removing an approximately 204 square foot section of the western portion of the building, and expanding the building by approximately 511 square feet to the north, for a net increase of approximately 307 square feet. No alterations to the existing fuel canopy or fuel islands are proposed as part of this application.

The existing gas station building was lawfully in existence prior to the application of the transit oriented district designation, and housed three vehicle service bays, a snack shop, and associated office facilities. As such, the structure may be expanded upon compliance with the requirements of Section 375-6.B, which requires the applicant to meet the standards of Section 375 and Section 431 only to the extent “reasonably practicable”. It is noted that the 20% expansion restriction applies to the floor area of the building, and is not apportioned to the specific uses inside the building.

Also as part of this application, the applicant proposes to expand the existing retail use on the site (snack shop) into the area previously used for vehicle service. As the findings above under Appeal Issue 1 make clear, the square footage inside the four walls of the building being remodeled is the gross floor area of the building and should be treated as such both for purposes of the trip generation calculations, and for purposes of determining the scope of the proposed expansion. The site plans and application drawings make clear that the square footage increase is 313 square feet. The CDC specifically references “gross floor area” (CDC § 375-6.B), not floor area for any specific use. The site includes an existing structure with a gross floor area of 1,568 square feet, which includes retail convenience area, employee areas, freezer space, cooler space, restrooms, space for storage, etc. The proposal to increase the gross floor area to 1,881 square feet would add 313 square feet to the existing building footprint, for a code-compliant increase of 19.96 percent.

(b) Type II or Type III procedure:

As to the type of procedure employed in this review, while many of the letters of comment have contended that no convenience/retail use exists on the site, the Hearings Officer believes that the existing snack shop meets the minimum definitions of convenience grocery (Section 430-35) and a retail business (Section 375-3.12). Both the existing gas station and the retail use of the site are identified as Type II uses in the TO:RC District. The snack shop is considered a retail business less than or equal to 5,000 square feet.

Specifically, "Table A. Permitted and Prohibited Uses in Transit Oriented Districts" in Section 375-10 is applicable.

The Hearings Officer notes that both retail uses less than 5,000 square feet and service stations are permitted as Type II uses in the TO:RC District. The application comprises a reduction in the area of the site dedicated to the service station, and an expansion of the existing retail use on the site. Both an expansion of an existing Type II use and a change of a Type II use are considered Type I activities in the TO:RC District. However, as noted above, because the application is associated with the Type II expansion of the existing structure, this application is being processed through a Type II procedure. The Hearings Officer finds that Staff acted correctly in processing the application in this manner. Both an expansion of an existing Type II use and a change of a Type II use are considered to be Type I applications in accordance with Section 375-10 Table A, so the presence of an existing retail use would be irrelevant in this instance. As the application is associated with the Type II expansion of the existing structure, however, the Hearings Officer finds that this application was correctly processed through a Type II procedure. The Hearings Officer finds additionally that should the applicant choose not to proceed with the building expansion, the application to expand the use for a retail snack shop within the existing structure would be considered as a Type I change of an existing use application in accordance with Section 375-10 Table A.

Finally, the Hearings Officer adopts the additional findings with respect to the procedural aspects of each process and the procedures followed in this case as described above under Appeal Issue 5.

(c) Site development standards:

The maximum front yard building setback for the site is 10-feet, consistent with the requirements of Section 375-10 Table B. As proposed, the front yard setback will not change as part of this development. The Hearings Officer finds that due to the location of the existing fuel pumps and canopy, it is not practicable to obtain further compliance with the front yard setback standard. There are no interior minimum or maximum side or rear yards in the TO:RC District.

In accordance with Table C of Section 375-10, the required Floor Area Ratio (FAR) for the project site is 0.35 (within the Cedar Mill Town Center Core, as defined by Area of Special Concern 14 of the Cedar Hills – Cedar Mill Community Plan). The FAR for the project site is based on the buildable area, as defined by Section 300 of the Code. The buildable area on the site is 0.47 acres, with a total floor area of 0.043 acres (1,875 square feet). Accordingly, the development has a FAR of 0.091 ( $0.043/0.47 = 0.091$ ). However, the development constitutes a 19.5% increase in the gross floor area existing on the site, therefore the Hearings Officer finds the increase in FAR from existing to be the maximum practicable in order to comply with Section 375-6.B.

Specifically, “Table A. Permitted and Prohibited Uses in Transit Oriented Districts” in Section 375-10 is applicable.

The Hearings Officer notes that both retail uses less than 5,000 square feet and service stations are permitted as Type II uses in the TO:RC District. The application comprises a reduction in the area of the site dedicated to the service station, and an expansion of the existing retail use on the site. Both an expansion of an existing Type II use and a change of a Type II use are considered Type I activities in the TO:RC District. However, as noted above, because the application is associated with the Type II expansion of the existing structure, this application is being processed through a Type II procedure. The Hearings Officer finds that Staff acted correctly in processing the application in this manner.

(d) “Reasonably practicable”:

The Hearings Officer’s interpretation of this standard appears above under the discussion of Appeal Issue number 3.

### **3. Article IV: Development Standards:**

Section 404 is concerned with Master Planning. The Hearings Officer finds that as is required, the applicant submitted the information necessary. This information is located in the Casefile.

Section 405 is concerned with Open Space. The standards of this section are discussed more fully in analysis found in Section 431-7 regarding findings for the provision of common open space.

Section 406 is concerned with Building, Siting and Architectural Design.

The proposed uses are permitted in the TO:RC District. The Hearings Officer finds that all setbacks, lot coverage, and building height requirements will be maintained to the extent practicable, as allowed by Section 375-6.B.

The applicant provided a site plan, building floor plans and building elevations, as required.

The applicant is required to provide a mixed solid waste and recyclables storage facility on the site. The area needed for the mixed solid waste and recyclables storage facility may be calculated in one of the three ways provided in Sections 406-6.1, 6.2 and 6.3. The applicant chose to meet the minimum standards requirement of Section 406-6.1.

The submitted plans, specifically Sheets Sp.3, SD.1, and SD.2, show the location of the trash and recyclables enclosure at the north east corner of the site, located within a fenced, covered area. The fenced area is 20 feet wide by 8 feet deep, for a total floor area of 160 square feet. Using the minimum waste assessment method provided in Section 406-6.1, the applicant is required to provide a minimum storage area of 10 square feet, plus 10 square feet per 1,000 square feet of gross floor area, for a total required storage area for the development of 28.75 square feet ( $10 + 10(1,875/1,000)$ ). The applicant is providing more than five times the required storage, and as such is considered to comply with the requirements of the minimum standards method. The applicant provided a service provider letter from the Washington County Health and Human Services Solid Waste and Recycling Program Co-coordinator, confirming that service levels are adequate to serve the proposed project. As such, the Hearings Officer finds that the applicant has met the standards of Sections 404, 405, and 406.

Section 407 deals with Landscape Design procedures and requirements.

Street trees are required by Section 407-7 to be planted along all public and private roadways and access drives. Street trees were installed along the frontage of the subject site through the County Capital Road Improvement Project along NW Cornell Road, as required to meet this standard, while also meeting the requirements of Section 418-3 – Corner Vision. Because the street trees already exist on the site, no additional street trees are required as part of this development.

Section 407-6.4 requires that a minimum 5 foot wide landscaping strip be created along any parking lot boundary, including access roads, except where a zero setback is approved. Required setbacks for rear and side yards are zero in the TO:RC District, in accordance with Table C of Section 375, and the Hearings Officer finds, therefore, that landscaping strips along the northern (rear), eastern, and western (side) property lines are not required in accordance with this Section.

Landscape islands have been provided within the parking area in accordance with Section 407-6.2. In accordance with Section 407-6.5, each landscape island has a minimum width and depth dimension of 5 feet and 10 feet respectively. In accordance with Section 407-1.7, 10 square feet of interior landscaping shall be provided per parking space for all parking areas exceeding 10 or more vehicles. The applicant is proposing 11 parking spaces which are being reduced to 10 spaces pursuant to this Order, requiring a minimum of 110 square feet of interior parking landscaping. The landscape island at the northern end of the proposed parking area alone exceeds this requirement.

Additional findings regarding landscaping requirements are addressed in Section 431 of this Final Order.



Section 408 addresses Neighborhood Circulation. This Section requires the applicant to provide a circulation plan for the area based on the proposed development. Additionally this Section requires the applicant to design the proposed project in a fashion that either provides for neighborhood circulation or does not preclude it.

This application is subject to the requirements of Section 408; however, where the requirements of Section 408 and 431-4 conflict, the standards in Section 431-4 shall control. Please refer to Section 431-4 for findings regarding Circulation System Design.

Section 410 addresses Grading and Drainage. The applicant will grade the site in order to alter the parking area and the existing building. The applicant has provided a Preliminary Grading and Drainage Plan, Sheet 1 of 3, showing that existing site contours will only be minimally altered as part of the development.

Washington County Building Engineers have reviewed the preliminary grading plan, and have determined that the applicant has met the requirements of Section 410-1.2. As a Condition of Approval to this Final Order, a Grading Permit must be obtained from the Building Services Division prior to performing any work on the site. The final grading plan must be substantially similar to the grading plan submitted as part of this application. Washington County Building Engineers have, however, identified that the applicant will need to demonstrate through the grading permit process that the proposed development will not negatively impact the existing retaining wall along the western property line of the site. This is also made a Condition of Approval.

Pursuant to Resolution and Order No. 07-20, Clean Water Services (the District) has the responsibility for review and approval of storm drainage plans as well as erosion control plans. The applicant will be required as a Condition of Approval to obtain approval from the District for the proposed drainage plan prior to any on-site work. Based upon the forgoing, the Hearings Officer finds the standards of Section 410 to be met.

Section 413 addresses Parking and Loading requirements in the CDC.

Pursuant to Section 413-9.3.C, automobile service stations are required to provide 2 spaces for each lubrication, stall rack or pit, and 1 for each gasoline pump. As part of this application, the existing service station building is to be changed to a solely retail use; no lubrication, stall rack or pit will remain on site. As such, parking requirements for the gas station are restricted to 1 space for each gasoline pump or refueling position. The applicant has shown that 8 refueling positions are currently available on site, and stated that each has the capacity to accommodate 1 vehicle. Parking for the existing gas station is considered adequate.

In accordance with the requirements of Section 413-9.3.O., retail stores shall provide a minimum of 4.1 parking spaces for each 1,000 square feet of gross area. Accordingly, for a 1,875 square foot retail building, a minimum of 8 parking spaces are required ( $4.1(1,875/1,000) = 7.68$ ). The applicant has proposed 11 parking spaces. As noted

earlier, the parking on site will be reduced to 10 spaces. As such, the Hearings Officer finds that available parking meets the requirements of this section.

The Hearings Officer notes, however, that in accordance with the Cedar Hills – Cedar Mill Community Plan, the proposal is located within Maximum Parking Zone A. Accordingly, as per Section 413-5.2, for a 1,875 square foot retail building, a maximum of 10 parking spaces are permitted ( $5.1(1,875/1,000) = 9.56$ ). The applicant has proposed 11 parking spaces; therefore available parking exceeds the requirements of this section. As a Condition of Approval included in Exhibit 1, the applicant shall be required to submit revised parking plans showing no more than 10 parking spaces.

The applicant has indicated the availability of 1 handicapped accessible parking space, meeting the minimum requirement of one space for the first 50 spaces or fraction thereof. Handicapped accessible parking shall be designed in accordance with the requirements of Section 413-7, and according to Planning Staff, will be further reviewed at the time of building permit issuance.

Site plans show that parking stalls are proposed to be striped at a parking angle of 90°. As such, each of the parking stalls shall be required to measure no less than 8.5 feet by 18 feet (or 7.5 feet by 15 feet for the 8 proposed compact spaces), with drive aisles of at least 24 feet in width, in accordance with the dimensional standards of Section 413-4. Site plans submitted with the application show the proposed parking area meets these requirements. The parking area must be striped in accordance with the requirements of Section 413-5.6.

Pursuant to Section 413-16.4, 1 loading space of 35 feet in length by 12 feet in width is required to be provided for a commercial building of between 5,000 and 25,000 square feet. Site plans submitted with the application show the required loading area to be accommodated to the south of the proposed building.

The Hearings Officer finds that the standards of Section 413 have been met by the applicant. Further analysis and findings relating to parking and loading will be discussed in Section 431 of this Final Order.

Section 414 addresses Signs. The applicant must obtain a sign permit for any proposed signage. Signage permits shall be obtained from Current Planning Services separately from this application process prior to installation of any signs.

Section 415 is concerned with Lighting. The applicant did not submit a lighting plan for the proposed project. As a Condition of Approval included in Exhibit 1, the applicant shall be required to submit a lighting plan pursuant to Section 415-2, showing compliance with the standards of Section 415-4.

Section 416 addresses 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 utilities. The Hearings Officer finds that upon a review of the site plans, the standards of Section 416 will be met.

Section 417 addresses Irrigation. Landscaping for the site will exceed 1,000 square feet. Accordingly, an automatic irrigation system is required under the standards of Section 417, unless alternative methods of irrigation are approved. The applicant has submitted a landscaping irrigation plan, identified as Sheets L3 and L4 in the Casefile, demonstrating compliance with the requirements of Section 417. All landscaping irrigation shall be installed and completed prior to final building inspection/occupancy. The Hearings Officer finds that the irrigation requirements of Section 417 have been met.

Section 418 addresses Setback requirements and Section 419 addresses Height restrictions and requirements. In addition to the setback requirements established by the primary district, Section 418 establishes setback requirements for yard obstructions, corner vision and fences and retaining walls. According to plans submitted with the application, the applicant will construct a retaining wall along the north property line. The wall will not exceed seven feet in height. The height of the retaining wall, as well as sections of the wall, shall be included in the Grading Permit application materials. As such, the Hearings Officer finds that the conditions of Sections 418 and 419 are met.

Section 426 is concerned with 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. The applicant submitted preliminary erosion control drawings. As a Condition of Approval, the applicant shall be required to submit a final erosion control plan consistent with the requirements of Section 426 prior to any physical change or construction on the site.

On July 1, 1990, Unified Sewerage Agency (now known as Clean Water Services) assumed responsibility for erosion control within their district boundaries. The applicant shall obtain approval for an erosion control plan from Clean Water Services. With these conditions in place, the Hearings Officer finds that the standards of Section 426 are met.

Section 429 addresses the issue of Bicycle Parking.

The applicant is required to provide a minimum of two long-term bicycle parking spaces, and two short-term bicycle parking spaces in accordance with the requirements of Section 429-6.

The applicant has shown two bicycle parking spaces located near the east entrance to the remodeled building. The bicycle parking spaces are located within 50-feet of the main access in a well-lit and accessible area, and have direct access to public right-of-way. However, as described above, the applicant is required to provide a minimum of four spaces. As a Condition of Approval included in Exhibit 1, the applicant shall be required to submit a revised bicycle parking plan, showing a minimum of four bicycle

parking spaces meeting the requirements of Section 429-7 and Section 429-8. The Hearings Officer finds that the standards of Section 429 are thus met.

Section 431 establishes Transit Oriented Design Principles, Standards and Guidelines. Pursuant to Section 375-6.B, the applicant shall be required to comply with the applicable standards of Section 431 to the extent reasonably practicable.

Section 431-4 details the Circulation System Design. In particular, Section 431-4.2 (Standards) is applicable is controlling over sections 408, 409, and Article V, and requires specific block perimeters and block lengths:

Subsection (3) of section 431-4.2 allows exceptions to these standards as follows:

Except for specific transportation facilities identified in the community plan, the Review Authority may modify these standards based on findings that strict compliance with the standards is not reasonably practicable due to:

- (a) Topography;
- (b) The standards of Section 421 and 422;
- (c) Existing development patterns on abutting property which preclude the logical connection of streets or access ways;
- (d) Railroads;
- (e) Traffic safety concerns;
- (f) The functional and operational need to create a large building; or
- (g) The provision of Significant Natural Resources as identified in the Community Plan.

The project site is located on the north side of the intersection of NW Cornell Road and NW Barnes road. The existing block length along NW Cornell Road greatly exceeds the 330-foot block length standard. The perimeter block length also greatly exceeds the 1,600 foot standard.

The existing block length and perimeter block length will ultimately be modified through the construction of the extension of NW Barnes Road to intersect with NW Dogwood Street to the north of the site, as described earlier in this Order. The intention to create the through street is demonstrated through the identification of the Special Area Commercial Street Corridor on the Washington County Special Area Streets, Street Corridor & Arterial Access Designations for the Cedar Mill Town Center and the Sunset Transit Center Area Community Plan map. While as discussed above the final

alignment of the extension within the Special Area Commercial Street Corridor has not been adopted, the Hearings Officer finds that even if the alignment could be located within the subject property boundaries, the block length along NW Cornell road would remain greatly in excess of the standard, while the perimeter block lengths would remain the same or potentially increase. As such, requiring the extension for the stated purpose of creating conformance to these standards would be futile.

In addition, as previously described, pursuant to Section 375-6.B, the applicant is required to comply with the applicable standards of Section 431 only to the extent "reasonably practicable."

During the public consultation process for the recent County Capital Road Improvement Project along NW Cornell Road (Casefile 04-053-D(CI)/DHA), a number of informal alignments for the extension of NW Barnes Road were established. As demonstrated above, these alignments within the Special Area Commercial Street Corridor were never adopted through any formal planning process. What is clear from each of these alignments is that construction of the extension of NW Barnes Road through the subject site will result in significant impacts to the operation of the existing gas station, ranging from the removal of the existing fuel tanks and several fuel pumps, to the removal and relocation of the entire gas station facilities and buildings. Some of these alignments require the removal of the gas station entirely, with relocation to adjoining property which is not currently under the control of the applicant. The question then becomes whether or not the construction of the extension of NW Barnes Road through the subject site, as might ordinarily be required in response to Section 431-4.2, is reasonably practicable pursuant to Section 375-6.B., given the impacts of such a requirement on the existing and proposed facility.

Planning Staff consulted with Washington County Counsel about the ability to lawfully impose conditions of approval to either require the applicant to dedicate property and construct the roadway; dedicate property only; or to otherwise construct the use at this time such that a future roadway can be constructed without removing any building. County Counsel cautioned Staff against the imposition of conditions of approval related to the future road, or indeed denial of the application. County Counsel identified several reasons for this position, including the fact that the road does not need to be located on the site, but merely within the designated corridor, so an alignment within the subject site is not strictly required. Further, as the equivalent of a local street, no funding mechanism currently exists for the public completion of the road. Third, construction of the road would necessitate the removal of essential components to the operation of the business. Finally, any restrictions on the site to accommodate the construction of the road may very well eliminate most if not all of the economic use of the property, potentially leaving the county liable for a taking.

The Hearings Officer concurs that requiring the applicant to modify the existing block length and perimeter block length through the construction of the extension of NW Barnes Road to intersect with NW Dogwood Street to the north of the site is not reasonably practicable, in accordance with Section 375-6.B. The findings under the discussion of Appeal Issue 3 are adopted herein by this reference.

A. Design

- (1) Streets complying with the provisions of this Section may be public or private. Where a private street is used...

As described above, the applicant is not required to provide a public or private street connection as part of this development.

- (2) When streets are utilized to meet the block length and block perimeter standards within the TO:R24-40, TO:R40-80, TO:R80-120, TO:EMP, TO:BUS, and TO:RC Districts, the Special Area Commercial Street standards shall be used, except for existing or planned arterials or collectors or other specific street designations in the Community Plan. The Review Authority may permit Special Area Local Street in these Districts based on findings that vehicle traffic volumes and pedestrian activity are likely to be found on a special area local street. If the Review Authority does permit a Special Area Local Street, it may be utilized to meet block length and block perimeter standards.

As described above, the applicant is not required to provide a public or private street connection as part of this development.

- (3) When streets are utilized to meet the block length and block perimeter standards within the TO:R9-12, TO:R12-18, and TO:R18-24 Districts...

The project site is in the TO:RC District.

- (4) Streets in transit oriented districts shall incorporate the following traffic management elements consistent with the Washington County Uniform Road Improvement Design Standards:
  - (a) Curb extensions at all intersections of Special Area Local Streets with Special Area Local Streets, Special Area Neighborhood Routes, and Special Area Commercial Streets.

Existing street improvements were constructed as part of a County Capital Road Improvement Project along NW Cornell Road. The Hearings Officer finds that no further improvements are required at this time based on the above findings.

- (b) Landscaped center medians at all Special Area Collector and Special Area Neighborhood Route street intersections.

Existing street improvements were constructed as part of a County Capital Road Improvement Project along NW Cornell Road. The Hearings Officer finds that no further improvements are required at this time.

- (c) In addition to the above requirements, curb extensions, colored and/or textured pavement treatments, or medians may be allowed on any special area public street based on prior approval from the County Engineer and findings that the treatment will be safe, will not result in an unreasonable amount of public maintenance, and will maintain the functional classification of the facility.

Existing street improvements were constructed as part of a County Capital Road Improvement Project along NW Cornell Road. The Hearings Officer finds that no further improvements are required at this time.

- (5) In addition to the requirements of Section 431-4.2 D.(4) above, the Review Authority may approve other traffic management measures on an Special Area Street...

Approval of other traffic management measures was not requested, and as such the Hearings Officer finds the requirement to be unnecessary.

- (6) The required minimum rights-of-way listed in Table 6, Functional Classification Design Parameters for Special Area Streets do not assume the presence of neighborhood traffic management devices are used, additional right-of-way shall be required to provide three feet behind the curb face, except when the curb extensions are used, the right-of-way shall remain three feet behind the standard curb face extended through the curb extension area.

Existing street improvements were constructed as part of a County Capital Road Improvement Project along NW Cornell Road. The Hearings Officer finds that no further improvements are required at this time.

- (7) Use of the Special Area Local Street standard which provides a twenty (20) foot paved width...

The applicant will not construct a Special Area Local Street.

- (8) The Special Area Local Street – Alley (SAL-5) standard may be allowed in any transit oriented district...

The applicant will not construct a Special Area Local Street – Alley.

- (9) Private streets. In addition to the standards of Section 409, private streets in transit-oriented districts shall meet the following standards:

The applicant will not construct any private streets as part of this development.

- (10) Whether publicly or privately owned, a pedestrian street, access way or greenway shall conform to the section design specified for its functional classification and remain accessible to the public at all times.

The applicant will not construct a private street as part of this development.

- (11) Pedestrian crossing of streets, driveways, surface parking lots and loading areas shall be designed consistent with the provisions of Section 408-10.3 B. In transit oriented districts, striping alone is not an acceptable way to identify connections.

The applicant has provided site plans showing delineated pedestrian circulation through the site, which crosses the proposed drive and parking lot areas. Accordingly, as a Condition of Approval to this Final Order, the applicant shall be required to clearly identify pedestrian areas on-site in accordance with Section 408-10.3.B, which shall require the installation of striping, elevation changes, speed bumps, a different paving material, or other similar method. Striping alone is not considered acceptable. As a Condition of Approval included in Exhibit 1, the applicant shall be required to submit a revised site plan indicating the method being used to identify pedestrian circulation within the site. Installation shall be required prior to final building inspection/occupancy.

- (12) Special Area Off-Street Pathways (Access ways and Greenways) shall be developed consistent with Section 408. Special Area Off-Street Pathways shall be at least ten (10) feet in paved, unobstructed width when bicycles are intended to share the Special Area Off-Street Pathway. When bicycle travel is otherwise adequately provided, Special



Area Pathways shall be at least five (5) feet in paved width.

- (13) Special Area Trails shall incorporate all of the following design criteria:

Special Area Off-street Pathway and Special Area Trails are not required at this location.

- (14) Parking lot driveways. In transit oriented districts, Parking Lot Driveways that link public streets and/or private streets with parking stalls shall be designed as private streets, unless one of the following is met:

The parking lot driveway will not link any streets.

B. Circulation/Connections

- (1) Connections shall be provided between existing and planned pedestrian streets, as specified in the applicable community plan or in the Transportation Plan or Community Development Code.

According to its submitted site plans, the applicant will provide pedestrian connections to all abutting streets.

- (2) When connecting new streets in transit oriented districts to existing local and Neighborhood route streets...

The applicant is not connecting any new streets to any existing local and Neighborhood Route streets.

- (3) The street alignment corridors shown in the Community Plan allow planned street centerlines to be moved to a limited degree through a Type II process...

The applicant has not requested approval to move any street centerlines.

Based upon the foregoing, the Hearings Officer concludes that the standards and criteria of Section 431-4 concerning Circulation System Design are met or are not required as they are not reasonably practicable.

Section 431-5 concerns Streetscapes for Pedestrians. Of significance to this Final Order is subsection 431-5.1, which addresses standards of Streetscapes within Transit Oriented Districts. Section 431-5.1 reads as follows:

431-5.1 Streetscapes – Transit Oriented Districts

A. Standards

- (1) In the TO:BUS and TO:RC Districts along pedestrian streets where on-street parking is allowed, except as provided in Section 431-12 or in an applicable Community Plan provision, buildings shall be built to the sidewalk edge for a minimum of ninety (90) percent of their site's pedestrian street frontage (excluding street, driveway and access way intersections). However, where a development site has frontage on two or more pedestrian streets with on-street parking, buildings are not required to meet the frontage requirements on both streets. Notwithstanding the above, a building shall be built to the sidewalk edge of both intersecting streets at their intersection.

Where a development site has frontage on two pedestrian streets with on street parking on only one of the streets, buildings are required to meet the frontage requirement on the street that allows on street parking. Notwithstanding the above, a building shall be built to the sidewalk edge of both intersecting streets at their intersection.

Where a development site in a TO:BUS District fronts only on a pedestrian street that does not allow on street parking, buildings shall be built to the sidewalk edge for a minimum of seventy five (75) percent of the site's pedestrian street frontage (excluding street and access way intersections).

Where a development site in a TO:RC District fronts only on a pedestrian street that does not allow on street parking, buildings shall be built to the sidewalk edge for a minimum of fifty (50) percent of their site's pedestrian street frontage (excluding street and access way intersections).

Although Staff stated in the staff report that parking is not permitted on NW Cornell Road, testimony from Ms. Peters identified that although cars do not park directly in

front of the site, cars do park at points further down NW Cornell. The Hearings officer finds that this standard should be interpreted in light of parking that is allowed along the frontage of the subject site regardless of the fact that cars may park at other locations nearby. Because parking is not allowed directly in front of the station, Section 431-5.1.B. (1) requires that the building be built to the sidewalk edge for a minimum of fifty (50) percent of the site's pedestrian street frontage (excluding street and access way intersections) along the frontage of the entire site. Currently the entire façade is located approximately 60 feet from the street. In this case, requiring the modification of the building to meet the standard would in all probability eliminate the pumps, prevent circulation through the refueling area, and exceed the 20% increase in floor area standard because the building, improvements and utilities on the site already exist.

Given the existing site design and site circulation, the Hearings Officer finds that it is not reasonably practicable to require the applicant to comply with this requirement.

- (2) Street trees are required on all pedestrian streets with an average spacing of not more than thirty (30) feet on center on both sides and two (2) to four (4) feet from the back of curb. Street trees shall not be spaced or located so as to result in violation of Section 418-3. Trees in the County right-of-way or in sidewalk easements shall be approved by the County as to size, quality, tree well design if applicable, and irrigation.

Street trees were installed in the vicinity of the subject site through the County Capital Road Improvement Project along NW Cornell Road, as required to meet this standard. The Hearings Officer thus finds that no additional street trees are required as part of this development.

- (3) All utility lines shall be underground but utility vault access lids may be located in the sidewalk area, provided that they are flush with the sidewalk and provide for a safe pedestrian walking surface during all types of weather.

Any alterations to the existing improvements along NW Cornell Road are required to comply with this standard.

- (4) Minimum sidewalk widths in Transit Oriented Districts shall be the widest identified by the Washington County Uniform Road Improvement Design Standards for the adjacent Special Area Street (as shown in the 2020 Transportation Plan, Figures 6 through 8), except for Special Area Commercial Streets. Special Area Commercial Streets shall have sidewalks that are a minimum of twelve (12) feet in

width. On arterials within or adjacent to Transit Oriented Districts and which are designated as 'Boulevards' on the Regional Street Design Overlay Map in the 2020 Transportation Plan, the minimum sidewalk width shall be twelve (12) feet (see Technical Appendix B-8 of the 2020 Transportation Plan for typical roadway cross-sections).

The existing sidewalk along the site's NW Cornell Road frontage is currently 5 feet wide, which is the minimum County standard for public sidewalks. During the recent County Capital Road Improvement Project along NW Cornell Road (Casefile 04-053-D(CI)/DHA), it was determined that an increase in the sidewalk width to Area of Special Concern 12 requirements was not feasible, as the increased width would result in the required removal of fueling pumps and fuel tanks associated with the gas station. As such, the Capital Road Improvement Project was designed to accommodate the reduced width along the frontage of the project site while meeting the requirements of the Cedar Hills – Cedar Mill Community Plan to the extent practicable.

Testimony from Mr. Bruce during the hearing raised the issue of the fact that the County road project had not complied with the walkable town center standards because of the anticipated redevelopment on review in this casefile. Staff responded that the decision was made not to condemn additional right of way along the frontage of this site based on the findings above with respect to existing utilities and underground gas tanks, site circulation and improvements already in place on the subject site. The prior decision may not be collaterally attacked in the context of this application. Based on the foregoing, the Hearings Officer finds that requiring an increase of width is not necessary or practicable.

- (5) Sidewalks along pedestrian streets adjacent to undeveloped parcels may be temporary.

The parcel is already developed; therefore the Hearings Officer find that this standard does not apply.

- (6) Pedestrian scale street lighting, such as that described in the County's Pedestrian Design Guidelines Booklet shall be provided along all pedestrian streets.

Sufficient street lighting exists along the NW Cornell Road frontage, as installed during the recent County Capital Improvement Project. Planning Staff testified during the hearing that it discussed the proposal with Washington County Traffic Engineering staff, who determined that existing street lighting meets the requirements of the District and roadway classification. As such, the Hearings Officer concurs with Staff that no further review of street lighting is required.

- (7) Pedestrian street lights shall be no taller than twenty (20) feet along Special Area Neighborhood Routes, Special Area Commercial Streets, and Special Area Local Streets.

NW Cornell Road is an Arterial street; the Hearings Officer finds, therefore, that this requirement does not apply.

Subsections (8), (9), and (10) pertain to designated pedestrian focus areas.

Because the project site is not located in a designated pedestrian focus area, the Hearings Officer finds the standards of subsections (8)-(10) to be irrelevant.

- (11) The design character of an individual building shall be compatible with its neighbors, but each building shall be unique. Attention shall be paid to similarities and contrasts between the following architectural elements: building forms and massing; building height; rooflines and parapet features; special building features (e.g., towers, arcades, entries, canopies, signs and artwork); window size, orientation and detailing; materials and color; the buildings' relationship to the site.

The majority of properties in the immediate area have not yet been redeveloped according to the Transit Oriented District standards. The Hearings Officer considers the redevelopment of the existing building to be compatible with its neighbors, and the Hearings Officer concurs. The alterations to the existing building will retain the orientation to pedestrian facilities, and increase desirable elements including window size and detailing. The redevelopment of the existing building is considered to be compatible with its neighbors in that it is surrounded by other commercial development of a similar age and design, with consistent setbacks. The Hearings Officer agrees with this conclusion, and finds the standards of the forgoing subsection to be met.

#### 431-5.2 Building Entrances

##### B. Standards

- (1) Non-residential and mixed-use buildings fronting a pedestrian street where on-street parking is allowed adjacent to the building, shall have at least one main building entrance oriented to the pedestrian street.

The project has frontage on NW Cornell Road. Parking is not permitted in the vicinity of the development; the Hearings Officer finds therefore that this standard does not apply.

(2) Residential buildings.

This application does not include residential elements; the Hearings Officer finds therefore that this standard does not apply.

- (3) In all transit oriented districts, except the TO:EMP District, building facades over three hundred (300) feet in length facing a pedestrian street where on street parking is allowed adjacent to the building, shall provide two (2) or more main building entrances. In the TO:EMP District...

Because none of the proposed building facades exceed 300-feet, the Hearings Officer finds this subsection does not apply.

- (4) If a building fronts on a pedestrian street where on-street parking is not allowed adjacent to the building, a main building entrance does not have to be oriented to the pedestrian street. If the main building entrance is not oriented to the main pedestrian street, a well-demarcated, unobstructed and well-lighted pathway shall be provided to the entrance from the pedestrian street. The pathway shall not be located within or require passage through a garage, parking structure or loading area.

On-street parking is not permitted on NW Cornell Road, and as such the entrance is not required to be oriented toward the street. However, as per the site plans and elevations submitted with the application, the main entrance to the building is to be facing NW Cornell Road, with a second access point to the east side of the building facing the parking lot. Based upon the submitted plans, the Hearings Officer finds that this requirement is satisfied.

- (5) Minimum lighting levels shall conform to the standards as set forth in Section 415-4.

Section 415 and Section 431-5.1.B.(6) contains findings regarding lighting.

- (6) For non-residential buildings, or non-residential portions of mixed-use buildings, main building entrances fronting on pedestrian streets shall remain open during normal business hours for that building.

The Hearings Officer concludes, based upon testimony from the applicant, that this requirement will be met.

- (7) All entries fronting on a pedestrian route shall be sheltered with a minimum four (4) foot overhang or shelter.

Plans submitted with the application (Sheet C2.0 and Sheet A2) indicate the main building entrance fronting NW Cornell Road will be sheltered by the fuel island canopy overhanging the entrance.

- (8) An exception to the requirements of Section 431-5.2 B. (1)...

The applicant did not request an exemption to Section 431-5.2 B. (1), as such, the Hearings Officer finds that this subsection does not apply.

Based upon the forgoing, the Hearings Officer finds that the standards within Section 431-5.2 are met.

#### 431-5.3 Building Facades

##### B. Standards

- (1) Ground floor windows shall be provided on building facades facing a pedestrian route or common open space. Garage door windows shall not count towards compliance with this standard.

Ground floor windows are provided on the street-facing façade, and as such, the conditions are met.

- (2) Darkly tinted windows and mirrored windows that block two-way visibility are prohibited as ground floor windows.

The Hearings Officer finds that darkly-tinted and mirrored windows are not allowed as part of this development. Any tinting of the glass will only be that required through the building permit process for the appropriate shading coefficient.

- (3) Except as provided in Section 431-12, ground floor building facades along a pedestrian street in the TO:RC or TO:BUS Districts must contain unobscured windows for at least fifty (50) percent of the wall area and seventy-five percent of the wall length within the first ten (10) feet of wall height. Required windows shall allow views in to lobbies or

other similar areas of activity, building entrances, or merchandise type displays. Lower window sills shall not be more than three feet above grade except where interior flood levels prohibit such placement, in which case the lower window sill shall not be more than a maximum of four (4) feet above the finished exterior grade.

The applicant has submitted site plans and elevations (Sheet A1.1 and Sheet A2.1) showing the location of windows along the façade facing NW Cornell Road. The bottom sills of the windows will be at grade, according to the plans.

Planning Staff calculated that approximately 69% of the wall area and 72% of the wall length within the first 10 feet of wall height will consist of windows, therefore the length of windows falls below the standard by 3%, or a shortfall of 1.5 feet along the length of the proposed 50 foot long façade. As a Condition of Approval to this Final Order, the applicant shall be required to extend the windows an additional 1.5 feet west along the façade facing NW Cornell Road. The windows along NW Cornell Road will look into the main retail sales areas of the building.

- (4) In all other transit oriented districts, for any exterior wall which is within twenty (20) feet of and facing onto a pedestrian street or common open space, at least twenty (20) percent of the ground floor wall area shall be comprised of either display area, windows or doorways. The square footage of garage doors shall not count toward compliance with this standard.

As previously noted, the project site is in the TO:RC District, and as such subsection (4) is not applicable.

- (5) Ground floor openings in parking structures...

Because no parking structures are proposed, the Hearings Officer finds subsection (5) to be inapplicable.

- (6) In all transit oriented districts, building frontages greater than two hundred (200) feet in length along pedestrian routes shall break any flat, monolithic façade by including architectural elements such as bay windows, recessed entrances, changes in materials, or other articulation so as to provide pedestrian scale to the ground floor.

Because none of the building façades exceed 200 feet, the Hearings Officer finds that this standard is not applicable.



- (7) Except as provided in Section 431-12, building facades along a pedestrian route in the TO:RC or TO:BUS Districts shall have no more than forty (40) linear feet of ground floor wall area without a change in materials or an eight (8) inch minimum vertical or horizontal wall relief.

The proposed project complies with this standard, with the transition from window to concrete/masonry veneer occurring at approximately 37.5 feet along the 50 foot long façade. As such, the Hearings Officer finds this standard to be met.

- (8) In transit oriented districts, the exterior walls of building facades along pedestrian routes shall be of suitable durable building materials including the following: stucco, stone, terra-cotta, tile, cedar shakes and shingles, beveled or ship-lap or other narrow course horizontal boards or siding, vertical board and batten siding, articulated architectural concrete masonry units (CMU), or similar materials which are low maintenance, weather resistant, abrasion resistant and easy to clean. Prohibited building materials include the following: plain, smooth untextured concrete block; corrugated metal; unarticulated board siding (e.g., T1-11 siding, plain plywood, sheet pressboard); and similar quality, non-durable materials.

The Hearings Officer finds that proposed building materials comply with this standard.

- (9) No exterior lighting shall be provided above the second floor of buildings for the purpose of highlighting the presence of the building, except for façade sign lighting.

Because no exterior second story building lighting is proposed, the Hearings Officer finds this subsection to be inapplicable.

- (10) Buildings and sites shall be organized to group the utilitarian functions away from the public view. Delivery and loading operations, mechanical equipment (HVAC), trash compacting/collection, and other utility and service functions shall be incorporated into the overall design of the buildings) and the landscaping. The visual and acoustic impacts of these functions, along with all wall or ground mounted mechanical, electrical and

communications equipment shall be out of view from adjacent properties and public pedestrian streets. Screening materials and landscape screens shall be architecturally compatible with and not inferior to the principle materials of the building and primary landscaping. The visual and acoustic aspects of roof-mounted equipment, vents and chimneys shall be minimized by placing equipment behind parapets, within architectural screening, roof-top landscaping, or by using other aesthetically pleasing methods of screening and deadening the sound of such equipment.

Delivery and loading operations will be located in the parking area to the west of the building, and shielded as far as possible from NW Cornell Road, while the proposed trash enclosure is located at the far north eastern corner of the site, surrounded by landscaping. Mechanical/utility functions appear to be either located inside the building or screened from view. As such, the Hearings Officer finds the standards of this subsection to be met.

(11) and (12) The facades of single-family attached and detached residences...

Because this is not a residential development, the Hearings Officer finds the standards of this subsection to be inapplicable.

#### 431-6 Parking Areas, Garages and Parking Structures

##### 431-6.1 Location

##### B. Standards

(1) Off-street surface parking lots shall not be located between a front façade of a building adjacent to a pedestrian street where on-street parking is allowed, and the pedestrian street.

Because the proposed off-street parking area is not located between a front façade and a pedestrian street where on-street parking is allowed, the Hearings Officer finds this subsection to be inapplicable.

(2) Garages and off-street parking areas shall be set back at least five (5) feet from adjacent primary building facades.

The Hearings Officer find that the proposed site design complies with this standard.

- (3) Parking lots, garages, including garages serving residential uses, and parking structures shall not be located within forty (40) feet of a street corner, except when the first floor of the parking structure is developed with (to be occupied by) commercial/retail uses.

The Hearings Officer finds that because the proposed parking areas are not located within 40 feet of a street corner, this section is not applicable.

- (4) If a building adjoins a pedestrian route on two (2) or more sides, off-street parking may be allowed between the building and the pedestrian route in the following order of priority:

- 1<sup>st</sup>. Access ways
- 2<sup>nd</sup>. Pedestrian streets that are non-transit streets and do not allow on-street parking.
- 3<sup>rd</sup>. Pedestrian streets that are transit streets and do not allow on-street parking.
- 4<sup>th</sup>. Pedestrian streets that are transit streets and allow on-street parking.

Because the building does not adjoin a pedestrian route on two or more sides, the Hearings Officer finds this subsection to be inapplicable.

- (5) Notwithstanding Sections 431-6.1 A. and 431-6.1 B. (1) off-street surface parking for campus development within the TO:EMP District may be located between an adjacent building and a pedestrian route, a transit street or a light rail station upon finding that:

Because the project is not located in the TO:EMP District, the Hearings Officer finds that this subsection is inapplicable.

#### 431-6.2 Parking Area and Garage Design

##### B. Standards

- (1) Garage doors for single-family dwellings...
- (2) Except at access points, parking structure openings...

Because the applicant's proposal is not a single family residential development, and only uncovered surface parking is proposed, the Hearings Officer finds these subsections to be inapplicable.

- (3) Surface parking areas shall provide perimeter parking lot landscaping adjacent to a pedestrian street which meets one of the following standards:

Sheet L1-0 of 4 of the submitted site plans indicates that the parking area is separated from NW Cornell Road by a setback of approximately 30 feet, and is also proposed to include landscaping between sidewalks and parking areas. As such, the Hearings Officer finds the conditions of this subsection to be met.

- (4) Surface parking areas shall provide interior landscaping which meets the following standards:

- (a) Angled or perpendicular parking spaces shall provide, where needed, extruded curbs (tire stops) or widened curbs to prevent bumper overhang into required landscape areas and/or over walkways.

The applicant's submitted site plans show a widened 10 foot sidewalk along the east side of the building to allow for parking overhang. Allowance has also been made for parking overhang along the eastern parking area boundary, adjacent to the landscaped areas. The Hearings Officer finds the standards of this subsection to be met.

- (b) Landscaping shall be installed within planting bays, and in any other area where parking stalls, circulation aisles, driveways, or pedestrian movements would not be precluded by the landscaping. Landscaping around and within surface parking areas shall not be less than ten (10) percent of the total of the parking area (see Section 407 for additional landscape requirements).

The parking area surface consists of approximately 2,880 square feet, including the drive aisle. Landscaping around and within the parking area equals approximately 1,300 square feet, greatly exceeding the minimum 10% requirement listed above.

The appellants contend that landscaping is inadequate along the western property line of the site, however has not cited a relevant approval standard for such. The Hearings Officer finds that landscaping has been shown along the western property line on the Preliminary Landscape Planting Plan submitted with the application (Sheet L-1 of 4). Unlike Section 407-6.4, Section 431-6.2.B.(4)(b) does not stipulate a minimum width for the landscaping area. The Hearings Officer finds that the landscaping along the

western property line, which abuts an internal circulation aisle, has been designed in a manner which maximizes landscaping along the circulation aisle to the extent practicable, without unreasonably restricting vehicle movements around the corner of the building, and therefore meets the requirements of this Section. A landscaping strip has not been provided along the northern (rear) property line as the area is being used for circulation; however a 3 foot masonry wall is proposed. Additionally, the applicant has provided a minimum 5 foot wide landscaping strip along the eastern parking area boundary, as shown on the proposed Preliminary Landscape Planting Plan, Sheet L-1 of 4.

- (5) Except in residential areas, parking associated with new development shall be designed to the extent practicable to connect with auto parking areas on adjacent sites to eliminate the necessity of utilizing the pedestrian street for parallel movements.

The Hearings Officer heard testimony from the applicant and from Staff during the hearing regarding a connection to the existing parking and circulation areas of the site which had previously been made through the removal of curb sections from the adjoining supermarket parking lot, allowing supermarket customers to access NW Cornell Road through the subject site. However, it is noted that no reciprocal access easements exist to allow the use of the subject site as access to the supermarket, and the connection was subsequently closed by the applicant. The Hearings Officer finds that requiring such a connection is not reasonably practicable, because the existing site layout does not allow for increased traffic volumes from neighboring businesses to utilize the access to NW Cornell Road without significantly impacting the functioning and operational safety of the existing and proposed business on site. Moreover, such a requirement would not implement the identified approval standard since the parking is not serving a new development but rather a permitted expansion of an established use.

- (6) In the TO:BUS and TO:RC Districts, the portion of the first floor of a parking structure fronting on a pedestrian route shall contain space for retail and/or office or other active uses, or shall be designed to allow for conversion to such space at later time in accordance with an approved phased development.
- (7) Surface parking, garages and carports for apartment developments...
- (8) Detached garages or carports shall...

The parking area is not structured parking. This is not a residential project. Detached garages or carports are not proposed. As such, the Hearings Officer finds that the preceding subsections (6), (7), and (8) are not applicable.

## 431-7 Common Open Space

Because the proposal is for a non-residential development of less than one-half acre, the Hearings Officer finds that the requirement for common open space does not apply.

Section 431-8 considers Transitions in Density. The project site is located in the TO:RC District and is surrounded by other properties in the same Planning District. The Hearings Officer finds this standard to be inapplicable.

Section 431-9 addresses Landscaping. Specifically, Section 431-9.2 states, "No minimum landscaping standard shall be set as a percentage of a development site. Landscaping may be required, however, in conjunction with parking lot design (see Section 431-6.2), building design or the provision of common open space." The applicant indicated in testimony at the hearing and in plans submitted with its application packet that it would provide landscaping in and around the parking areas as required. As such, the Hearings Officer finds the standards of this subsection to be met.

Section 431-10 is concerned with Water Quantity/Quality Facilities. Because a water quality facility is not shown on the plans submitted with the application, the Hearings Officer finds this section to be inapplicable.

Section 431-11 is concerned with Sign standards. Since no sign approvals are requested at this time, it is noted that the applicant must obtain a sign permit for any proposed signage. Sign permits shall be obtained from the Current Planning Services counter prior to installation of any signs.

Section 440 addresses Nonconforming Uses and Structures. Specifically, Section 440-10 relates to Alteration or Expansion of Uses Not Conforming to the Access Requirements to Public or County Roads. It reads as follows:

"Approval of an alteration, expansion or change in occupancy of a Type II use which currently does not conform with the requirements of Section 501-8.5 (Access to County and Public Roads) shall require that the use be brought into compliance with these standards when such changes create a twenty-five (25) percent increase in the existing Average Daily Trips (ADT). Compliance must be assured prior to the issuance of final approval or building permits for the expansion, addition or alteration."

The subject site has two existing access points to NW Cornell Road, a County arterial route. In accordance with Section 501-8.5.B.(4)(a), direct access to an arterial will be permitted provided that Point 'A' of such access is more than six hundred (600) feet from any intersection Point 'A' or other access to that minor arterial (Point 'C'). The subject site does not meet the access spacing standards of Section 501-8.5.B.(4)(a).

The applicant has requested an alteration and expansion of the uses on the site. In accordance with Section 440-10, the applicant submitted a Technical Memorandum

dated June 3, 2011 and a Traffic Analysis Addendum dated January 6, 2012, demonstrating that the proposed development will not create a 25% increase in the existing Average Daily Trips (ADT) to the site.

Washington County Traffic Engineering staff reviewed the submitted documents, and agreed with the conclusion in the January 6, 2012 addendum, that the proposed site renovations will not result in a 25 percent increase in the ADT to the site. As noted in extensive findings above under Appeal Issue 1 above, which are incorporated herein by this reference, the Hearings Officer has concluded that this conclusion is supported by the evidence.

Accordingly, the existing access points are not required to be brought into compliance with the requirements of Section 501-8.5.B.(4)(a).

**4. Article V, Public Facilities and Services:**

Section 501 relates to Public Facilities and Service Requirements.

All of the agencies listed in Section II of this Final Order have provided service provider letters stating that they can adequately serve the development. Where appropriate, recommended agency Conditions of Approval have been included in Exhibit 1 of this Order.

Section 501-8 addresses Standards for Development and is reviewed below.

501-8.1 Critical Services

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:

- (1) Those Local and Neighborhood Route roads, new or existing, lying wholly within the property's real property boundaries, or future roadway alignments designated in the Washington County Transportation Plan, shall be developed in accordance with Washington County's Uniform Road Improvement Design Standards; and

As described previously, the subject site includes a Special Area Commercial Street Corridor as identified on the Washington County Special Area Streets, Street Corridor & Arterial Access Designations for the Cedar Mill Town Center and the Sunset Transit Center Area Community Plan map. Special Area Commercial Streets have the same classification as a local street. As stated above, new local streets lying wholly within the

property's real property boundaries, or future roadway alignments designated in the Washington County Transportation Plan, shall be developed in accordance with Washington County's Uniform Road Improvement Design Standards. However, in this instance, the Special Area Commercial Street Corridor does not lie wholly within the boundaries of the subject property, nor is the future roadway alignment adopted in the Washington County Transportation Plan. As such, the Hearings Officer concurs with Planning Staff's assessment that the County is not directed by this Section to require the applicant to construct the future extension at this time. The Hearings Officer was made aware by citizen testimony, both written and verbal, that members of the Cedar Mill community would like to see the connection built as part of this application. Washington County Counsel advised Planning Staff against imposing conditions related to the construction of the future road, or denying the application for the same reasons. The Hearings Officer concurs with the opinion of County Counsel in this instance, and finds that construction of the future road extension imposes a cost on the applicant that is not proportional to the cost incurred in accommodating the development of the road extension at this time, with this particular proposal. The findings above under the discussion under section 431-4 are not repeated again here but are incorporated herein by this reference. Additional developments on the subject site, including for example, applications which propose modifications to the fueling positions or the underground fuel tanks, may be subject to this requirement.

Section 501-8.4 addresses Dedication of Right-of-Way, and states,

“Except as provided in Section 418-2.2, dedication of right-of-way shall be required pursuant to the classification of the facility as designated by the Washington County Transportation Plan and based upon the County Road Standards.”

Required right-of-way along the frontage of the subject site is 45 feet to centerline, in accordance with the Cedar Hills – Cedar Mill Community Plan. Existing right-of-way is 32.5 feet to centerline. Staff noted in its report that during the recent County Capital Road Improvement Project along NW Cornell Road (Casefile 04-053-D(CI)/DHA), it was determined that an increase in right-of-way dedication of 45 feet to centerline was not feasible, as the increased width would result in the required removal of fueling pumps and fuel tanks associated with the gas station, and may result in a taking. As such, the Capital Road Improvement Project was designed to accommodate the reduced width along the frontage of the project site while meeting the requirements of the Cedar Hills – Cedar Mill Community Plan stated above to the extent practicable. Because of this, the Hearings Officer finds that no further right-of-way dedication is required at this time. The road has been approved and constructed, and no purpose would be served by revisiting this improvement in the context of this application.

Section 501-8.5 addresses Access to County and Public Roads, and states that all developments shall have legal access to a County or public road. Except for interim access as provided in Section 501-8.5 E. [Interim Access], access onto any County road in the unincorporated or incorporated urban area shall be permitted only upon



issuance of an access permit upon demonstration of compliance with the provisions of the County road standards and the standards of Section 501.

The applicant has requested an exemption from the requirements of Section 501-8.5 in accordance with Section 440-10, for a Type II use which does not create a 25% increase in the existing average daily trips to the site. The discussion under Section 440-10 of this Order includes the applicable analysis.

Section 502 relates to Sidewalk Standards. Pursuant to Section 502-1.4, this development is subject to the requirement for sidewalk construction along all street frontages.

Staff testified at the hearing to the fact that during the recent County Capital Road Improvement Project along NW Cornell Road (Casefile 04-053-D(CI)/DHA), it was determined that an increase in the sidewalk width to Area of Special Concern 12 requirements was not feasible, as the increased width would result in the required removal of fueling pumps and fuel tanks associated with the gas station. As such, the Capital Road Improvement Project was designed to accommodate the reduced width along the frontage of the project site while meeting the requirements of the Cedar Hills – Cedar Mill Community Plan to the extent practicable, and a 5 foot wide sidewalk was constructed along the NW Cornell Road frontage of the subject site. The Hearings Officer finds that construction of 12 foot sidewalks imposes a cost on the applicant that is not proportional to the impacts of the development of the sidewalk extension at this time, with this particular proposal.

The applicant shall, however, obtain a right-of-way permit for any improvements located within the public right-of-way, and for any repairs to public facilities including sidewalks and curb and gutter section damaged during the construction process associated with this approval.

#### **D. Washington County Transportation Plan**

The findings and recommendations for transportation standards are found throughout the body of this Order, and are incorporated as findings herein.

#### **E. Ordinance No. 691-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. The TDT superseded the Traffic Impact Fee Ordinance (TIF), effective July 1, 2009.

This tax is based on the number of daily vehicle trips a site generates and is due at issuance of a building permit.

**F. R & O No. 86 - 95 - Determining Traffic Safety Improvements under the Traffic Impact Fee Ordinance:**

The findings and recommendations for transportation standards are found throughout the body of this Order, and are incorporated as findings herein.

**G. Ordinance No. 524 - Uniform Road Improvement Standards:**

The findings and recommendations for transportation standards are found throughout the body of this Order, and are incorporated as findings herein.

**H. Resolution and Order No. 07-20 Erosion Control, Water Quality and Water Quantity:**

R & O 07-20 adopted standards and regulations for the Clean Water Services review and approval of erosion control, water quality and water quantity measures. Conditions of Approval to this Final Order, listed on Exhibit 1, relate to requirements under R & O No. 07-20.


**I. Summary and Conclusion**

The required findings have been made for all of the applicable Code sections. When implemented in accordance with the Exhibit 1 Conditions of Approval and the approved final plans, the project will be in compliance with the Community Development Code and the Comprehensive Plan. Therefore, the Hearings Officer concludes that the appeal should be denied, and approval should be issued for a Development Review for the Expansion of an Existing Gas Station Facility in a Transit Oriented District, subject to the Conditions of Approval set forth in Exhibit 1 to this Final Order.

**V. DECISION**

Based on the foregoing findings and conclusions, the Hearings Officer hereby DENIES the appeal, and approves the request for Development Review for the Expansion of an Existing Gas Station Facility in a Transit Oriented District, subject to the Conditions of Approval set forth in Exhibit 1 to this Final Order.

DATED this 27<sup>th</sup> day of June, 2012.

  
\_\_\_\_\_  
Pamela J. Beery  
Washington County Land Use Hearings Officer

**Exhibit 1**  
**Conditions of Approval**  
**Casefile 11-299-D(C)/APPEAL**  
**PacWest Energy, LLC/Jackson Food Stores, Inc.**

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

- A. Obtain a Grading Permit from the Building Services Division (503-846-3470). The Grading Permit application must comply with the grading submittal package checklist, and include sections and heights of all proposed retaining walls. Washington County Building Engineers have identified that the applicant will need to demonstrate through the grading permit process that the proposed development will not negatively impact the existing retaining wall along the western property line of the site.**
- B. Obtain a Right-of-Way Permit for construction access to the site. Right-of-Way-Permits for construction access may be obtained from the Washington County Operations Division, and may be consolidated with the Right-of-Way Permit required under Condition II.A.3. below, as determined by the Operations Division.**
- C. Obtain a Clean Water Services (the District) Site Development Permit. Application for the District Site Development Permit must be in accordance with the requirements of the Design and Construction Standards, Resolution and Order No. 04-9 and is to include:**
  1. Compliance with all provisions of the District's Design and Construction Standards, R&O 07-20.
  2. Detailed grading and erosion control plan. An Erosion Control Permit will be required. The area of disturbance must be clearly identified on submitted construction plans. If site area and offsite improvements required for this development exceed one-acre of disturbance, the project will require a 1200-C Erosion Control Permit.
  3. A drainage report including a downstream drainage analysis meeting the requirements of R&O 07-20, Section 2.04.2.m will be required. If downstream storm conveyance does not have the capacity to convey the volume during a 25-year, 24-hour storm event, the applicant is responsible for mitigating the flow as provided in the above named design standards.

4. Detailed plans showing the development having direct access by gravity to public storm and sanitary sewer.
5. Any offsite sanitary or storm sewer improvements identified as part of this development may require additional offsite street improvements/restorations. All transportation-related infrastructure, (including but not limited to roadway surfaces and base materials) influenced by sanitary or storm sewer improvements, shall be restored to original or better condition.
6. Provisions for water quality in accordance with the requirements of the above named design standards. Water quality is required for all new development and redevelopment areas per R&O 07-20, Section 4.05.5, Table 4-1. Access shall be provided for maintenance of facility per R&O 07-20, Section 4.02.4.
7. Plans showing storm service requirements to each lot. If private lot LIDA systems are proposed, they must comply with the current District Design and Construction Standards and Washington County Plumbing Standards.
8. Show all existing and proposed easements on plans. Any required storm sewer, sanitary sewer, and water quality related easements must be granted to Clean Water Services.

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

**II. PRIOR TO FINAL APPROVAL (WITHIN TWO YEARS):**

**A. Submit the following to Washington County Operations Staff (503-846-7623):**

1. Right-of-way Permit Application Form for construction access to the site.
2. \$800.00 Administration Deposit.

***NOTE:*** *The Administration Deposit is a cost-recovery account used to pay for County services provided to the developer, including plan review and approval, field inspections, as-built approval, and project administration. The Administration Deposit amount noted above is an estimate of what it will cost to provide these services. If, during the course of the project, the Administration Deposit*

*account is running low, additional funds will be requested to cover the estimated time left on the project (at then-current rates per the adopted Washington County Fee Schedule). If there are any unspent funds at project close out, they will be refunded to the applicant. PLEASE NOTE: Any point of contact with County staff can be a chargeable cost. If project plans are not complete or do not comply with County standards and codes, costs will be higher. There is a charge to cover the cost of every field inspection. Costs for enforcement actions will also be charged to the applicant.*

3. Three (3) sets of complete engineering plans for all work proposed within the NW Cornell Road right-of-way, including, but not limited to:
  - a. Any sidewalk construction, repair, or improvement to public facilities located within the right-of-way.
  - b. Utility work within the right-of-way.

**B. Submit to Current Planning Services, Project Planner (Wayne Hayson, 503-846-9761):**

1. Final Approval form (Type I procedure; two copies).

**NOTE:** The Final Approval application shall include evidence that all Conditions of Approval have been met.

2. Final Approval fee.
3. A final plan set, including:
  - (a) Final site plans. The following must be shown on the final site plans:
    - (i) A revised parking plan showing no more than 10 parking spaces, excluding those spaces available at fueling positions. Either the space labeled "5" or that labeled "11" should be eliminated, and the landscaped island expanded to include the eliminated space.
    - (ii) A lighting plan pursuant to Section 415-2, showing compliance with the standards of Section 415-4.
    - (iii) A revised bicycle parking plan, showing a minimum of four bicycle parking spaces meeting the requirements of Section 429-7 and Section 429-8.

- (iv) Plans showing the installation of striping, elevation changes, speed bumps, a different paving material, or other similar method meeting the requirements of Section 408-10.3.B. to demarcate the pedestrian circulation areas on the site.
  - (v) Revised elevations for the NW Cornell Road frontage of the building showing 75% of the wall length within the first 10 feet of wall height consisting of windows. (Section 431-5.3)
4. A Copy of the Right-of-Way Permit for construction access to NW Cornell Road.

**NOTE:** Contact the Operations Division at 503-846-7623 for Right-of-Way Permit requirements and application forms.

**III. PRIOR TO THE SUBMITTING A BUILDING PERMIT APPLICATION:**

- A. Meet with a commercial plans examiner.

**IV. PRIOR TO THE ISSUANCE OF A BUILDING PERMIT THE APPLICANT SHALL:**

- A. Obtain Final Approval.
- B. Pay the Transportation Development Tax.
- C. Provide a current fire flow test of the nearest fire hydrant demonstrating available fire flow at 20 PSI residual pressure as well as fire flow calculation worksheets. Fire flow calculation worksheets as well as instructions are available on at [www.tvfr.com](http://www.tvfr.com).
- D. Provide a fire hydrant distribution plan based on the fire flow calculations.
- E. Submit with the building plans to Building Services (503-846-3470) plans consistent with those submitted in response to Condition II.B.3.

**V. PRIOR TO BUILDING OCCUPANCY AND/OR FINAL BUILDING INSPECTION:**

- A. Obtain Building Permits, consistent with the conditions listed above.
- B. Install all required bicycle racks and pedestrian amenities.
- C. Plant all required landscaping.

- D. Complete construction of the parking area.
- E. Final Right-of-Way Permits for any improvements within the NW Cornell Road, consistent with Condition II.A.1.
- F. All facilities and improvements required by Clean Water Services shall be completed and approved by the District.

**VI. ADDITIONAL CONDITIONS:**

- A. This development shall be constructed in accordance with the conditions of this decision, the approved final plans and the standards of the Community Development Code (Section 207-5).
- B. All conditions of approval shall be binding upon all heirs, successors and assigns (Section 207-5).
- C. Transferability of this Development Permit shall be in accordance with Section 201-8.
- D. This approval shall automatically expire two years from the date of this approval, unless development has commenced, an application for an extension is filed, or this approval is revoked or invalidated (Section 201-4).
- E. Adequate sight distance shall be continuously maintained by the property owner(s). This may require the property owner(s) to periodically remove obstructing vegetation from the road right-of-way (and on site).
- F. Darkly-tinted and mirrored windows are not allowed as part of this development. Any tinting of the glass will only be that required through the building permit process for the appropriate shading coefficient.
- G. All landscaping shall be continually maintained, including irrigation, weeding, pruning and replacement, in a substantially similar manner as shown in the approved landscaping plans, unless a modification is approved.