



## ***ORDER No. 2010-0028***

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**AN ORDER FINDING THAT THE CONDITIONAL USE PERMIT/DESIGN REVIEW APPLICATION FOR THE PROPOSED FRED MEYER GAS STATION AT 3300 PORTLAND ROAD MEETS THE APPLICABLE NEWBERG DEVELOPMENT CODE CRITERIA, REVERSING THE PLANNING COMMISSION DECISION AND APPROVING THE APPLICATION**

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### **RECITALS:**

1. On January 9, 2009, an application was submitted by Fred Meyer Stores, Inc. requesting a conditional use permit and design review approval for a new gas station at the Fred Meyer property located at 3300 Portland Road. On February 12, 2009, a hearing was held by the Newberg Planning Commission and public testimony was accepted. The hearing was continued to February 26, 2009. This was later extended to May 14, 2009 and then to an undetermined date at the applicant's request to allow the applicant time to work with ODOT and allow the applicant and others time to submit additional information. The applicant submitted additional information on March 10, 2010, and the hearing was finally rescheduled for May 13, 2010.
2. On May 13, 2010, the Newberg Planning Commission held a public hearing, accepted public testimony, closed public testimony, and continued the hearing at the point of deliberation to June 10, 2010. They left the record open for 7 days for additional written testimony to be submitted into the record, and gave the applicant 7 days to respond to the additional testimony. On June 10, 2010, the Planning Commission continued the public hearing, deliberated, and decided that the application did not meet some of the applicable criteria, primarily due to problems with on-site traffic and circulation on neighborhood streets. The Planning Commission tentatively decided to deny the application pending revised findings.
3. On July 8, 2010, the Newberg Planning Commission adopted Resolution 2010-262, finding that the conditional use permit/design review application does not meet the applicable Newberg Development Code criteria, and therefore denying the application.
4. On July 21, 2010, the applicant appealed the Planning Commission decision to the City Council.
5. After proper notice, the Newberg City Council held a hearing on August 16, 2010 to consider the appeal application. After the staff report and public testimony, the City Council continued the hearing to September 7, 2010, at the point of deliberation, and left the record open until September 2, 2010 to allow the applicant to submit a written rebuttal.
6. The Newberg City Council continued the hearing on September 7, 2010. They deliberated and found that the proposal does meet the applicable Newberg Development Code criteria as conditioned. Order No. 2010-0027 had been drafted to affirm the Planning Commission denial of the proposal; the City Council decided to instead approve the project and reverse the Planning Commission denial, and therefore voted to deny Order No. 2010-0027 and directed staff to

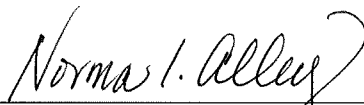
new findings in support of the proposal. A new order number (Order 2010-0028) was assigned for approval of the gas station proposal findings. Approval of Order 2010-0028 with attached findings will formally approve the Fred Meyer gas station proposal.

**THE CITY OF NEWBERG ORDERS AS FOLLOWS:**

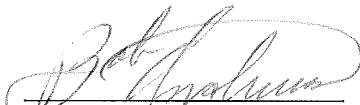
1. The City Council finds that the conditional use permit/design review application does meet the applicable Newberg Development Code criteria as conditioned, and adopts the findings and conditions of approval, which are attached hereto as Exhibit "A". Exhibits "B", "C" and "D" are included for supplemental information. Exhibits "A", "B", "C" and "D" are hereby adopted and by this reference incorporated. This decision reverses the Planning Commission decision.
2. The conditional use permit/design review application is hereby approved with the conditions as shown in Exhibit "A".

➤ **EFFECTIVE DATE** of this order is the day after the adoption date, which is: September 21, 2010.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 20<sup>th</sup> day of September, 2010.

  
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Norma I. Alley, City Recorder

**ATTEST** by the Mayor this 23<sup>rd</sup> day of September, 2010.

  
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Bob Andrews, Mayor

**Exhibits:**

- A: Findings & Conditions of Approval
- B: Overall site plan
- C: Fuel facility site plan
- D: West 99W access drive

**QUASI-JUDICIAL HISTORY**

By and through the Planning Commission Committee at the 7/8/2010 meeting.  
(committee name) (date)

**EXHIBIT A: CONDITIONAL USE PERMIT/DESIGN REVIEW FINDINGS**  
**CUP-08-004/DR2-08-036**  
**Fred Meyer gas station**

**I. Procedural issues:**

- 1) One public comment said that the application should be considered void because state law ORS 227.178(5) requires a decision to be made within 365 days (120 day deadline for a decision, plus a maximum of 245 days of extensions), and the application is older than that. The comment also said that in *Stoloff v. City of Portland*, the Land Use Board of Appeals (LUBA) found that ORS227.178(5) renders void any decisions made after the 365 days has expired.

**Excerpt:**

**ORS 227.178 Final action on certain applications required within 120 days; procedure; exceptions; refund of fees.** (1) Except as provided in subsections (3), (5) and (11) of this section, the governing body of a city or its designee shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 227.180, within 120 days after the application is deemed complete.

(5) The 120-day period set in subsection (1) of this section may be extended for a specified period of time at the written request of the applicant. The total of all extensions, except as provided in subsection (11) of this section for mediation, may not exceed 245 days.

(6) The 120-day period set in subsection (1) of this section applies:

(a) Only to decisions wholly within the authority and control of the governing body of the city; and

(b) Unless the parties have agreed to mediation as described in subsection (11) of this section or ORS 197.319 (2)(b).

**Finding:** ORS 227.178(6) states that the 120-day period applies only to decisions wholly within the authority and control of the governing body of the city. The Planning Commission decided at the first hearing that they did not want to make a decision on the conditional use permit until they knew what ODOT's decision on access permits would be. The applicant waived the 120 day rule at that time to allow time to apply to ODOT for access permits and return to the Planning Commission. This decision by the Planning Commission meant that the timing of the final decision was no longer wholly under the control of the city, and that the 120 day rule should no longer apply to the decision. The applicant has also noted that the intent of the 120 day rule was to protect the applicant against delay by a public decision-making body. ORS 227.179 says that if the city does not take action within the required time then the applicant can file a petition for a writ of mandamus in the circuit court and request approval of the application. The applicant did not request an extension of the 120 day decision deadline in this case. They instead waived their right to the 120 day deadline. This does not make the application void.

The *Stoloff v. City of Portland* LUBA case does not actually apply to this situation. LUBA did not find in this case that ORS 227.178(5) rendered void any decision made after the 365 days has expired. LUBA noted that they did not need to address that argument because the case was under county law, and ORS 227.178 only applies to cities, not counties.

All of the participants had a full and fair opportunity to argue their case and were not prejudiced. There had been no change to the criteria or standards affecting this application between the time the application was filed and the time the decision was made. No one has identified anything in the local code that was violated, nor anything that could not be met because of the timing of the application and hearing. All parties who had appeared at anytime received continuing notices of all subsequent hearings.

- 2) One public comment said that the appeal application should be dismissed for failure to meet code requirements for a complete application.

**151.056 NOTICE OF APPEAL - TYPE I, II AND III.**

**(A) An appeal for Type I, II, and III decisions shall include an identification of the decision sought to be reviewed, the date of the decision and shall be accompanied by a notice of appeal form provided by the Planning and Building Department. The notice of appeal shall be completed by the applicant and shall contain:**

**(1) An identification of the decision sought to be reviewed, including the date of the decision.**

**(2) A statement of the interest of the person seeking review and that they were a party to the initial proceedings.**

**(3) A detailed statement of the specific grounds on which the appeal is filed.**

**(B) Notice shall be filed with the Community Development Department together with the filing fee and deposit for transcript costs.**

**Finding:** The applicant filed an appeal application using the City's appeal form, identified the decision to be reviewed, the date of the decision, provided a statement of interest as the applicant, and detailed the findings that they felt were flawed as the basis of the appeal. The applicant did not request that a transcript be prepared and therefore did not need to deposit funds for transcript costs. The City determined that the application met the code requirements for completeness, and therefore reviewed the application, and made a decision on the application.

**II. Design Review Criteria That Apply - Newberg Development Code § 151.194 (B):**

**(1) Design compatibility. The proposed design review request incorporates an architectural design which is compatible with and/or superior to existing or proposed uses and structures in the surrounding area. This shall include, but not be limited to, building architecture, materials, colors, roof design, landscape design, and signage.**

**Finding:** During design review the City typically compares the proposed building to the existing buildings that would be immediately adjacent to it for the purpose of determining design compatibility. In this case the proposed gas station is only adjacent to two buildings; the main Fred Meyer store, and the bank building to the north (approximately 200 feet away). The next closest building is at Crossroads Plaza, which is over 400 feet away and is west of Springbrook Road. The proposed gas station will consist of a simple metal canopy over seven fuel dispensers, with a small cashier's kiosk. The canopy will be 18 feet tall, flat-roofed, and 43 feet wide by 126 feet long (5,418 square feet). The cashier's kiosk is a small simple box structure (96 square feet). The canopy and kiosk will be painted beige and light brown, which are similar to colors used on the existing main store building. The existing Fred Meyer store is a large simple box structure with a flat roof. It has a flat masonry wall along most of the western side and a garden center at the southwest corner. The bank building north of the proposed site has a simple modern style, with a similar simple metal canopy structure over its drive-up ATMs. Across the street is an additional gas station with canopy structure which is very similar to the proposal yet larger. Directly across the street is an auto repair facility, which when all of its six bay doors are open, resembles a shell type structure in some respects similar to a canopy. The applicant has provided site plan and elevation drawings of the proposed gas station, which is sufficient information to determine if the proposed design is compatible with nearby buildings. The City does not require renderings or models for proposed new buildings. The proposed signs will be similar to the existing signs on site. Exterior lights will be directed onto the site so as to not adversely affect the adjoining properties. The overall design will

blend with the surrounding area by the use of landscaping buffering and screening. As proposed, the Fred Meyer gas station proposal is compatible with structures in the surrounding area because the structure has been designed to match the existing Fred Meyer building in style and color, and the canopy is similar in style to the bank building canopy to the north.

Redevelopment of this portion of the parking lot will take down two large overheard parking lot lights. The applicant has also agreed to shield two lights along the side of the building of the main structure so as to reduce the amount of light generated from this side of the site. All of the new lights utilized by the canopy will be recessed and directed so that the light only shines down. The new light generated from the development will be inconsequential at the property line, and the removal of two parking lot lights and the shielding of two other lights will reduce the amount of light generated by the current site. The applicant also intends to build a fence, and add additional landscaping to the westerly edge of the new development which will further obscure any light intrusion off site.

The proposed new structures will be of the same color pattern as the current structure. This will allow the new structure to blend in with the current structure. The proposed structure has a very similar design to the two canopies near by (US Bank and gas station) and is similar in nature to the auto repair facility. Its architectural design is compatible and /or superior to the surrounding structures. Signage proposed also is of similar style to the signage at these nearby buildings. There is sufficient detail in all of the materials provided by the applicant to make this determination. It is not necessary to have a rendering or three dimensional images to assess the compatibility of the development.

Because of these design features, the Council finds that the architectural design is compatible with and/or superior to existing or proposed uses and structures in the surrounding area in terms of building architecture, materials, colors, roof design, landscape design, and signage.

- (2) ***Parking and on-site circulation. Parking areas shall meet the requirements of § 151.610. Parking studies may be required to determine if adequate parking and circulation are provided for uses not specifically identified in § 151.610. Provisions shall be made to provide efficient and adequate on-site circulation without using the public streets as part of the parking lot circulation pattern. Parking areas shall be designed so that vehicles can efficiently enter and exit the public streets with a minimum impact on the functioning of the public street.***

**Finding:** The site includes the main Fred Meyer store, the proposed fueling facility, an in-store bank, a beauty shop, a print shop, and a key shop. The parking requirements are calculated below:

<b>USE</b> (square feet)	<b>PARKING STANDARD</b>	<b>SPACES REQUIRED</b>
Existing F.M. store (143,181 s.f.)	1 space per 300 s.f.	477.3
Fueling facility kiosk (96 s.f.)	1 space per 300 s.f.	0.32
Bank (736 s.f.)	1 space per 400 s.f.	1.84
Beauty shop (1,500 s.f.)	1 space per 75 s.f.	20
Key shop (288 s.f.)	1 space per 300 s.f.	0.96
Print shop (1,500 s.f.)	1 space per 300 s.f.	5
<b>Total required parking</b>		<b>506</b>
<b>Parking available after project completed</b>		<b>666</b>
<b>Surplus parking</b>		<b>160</b>

The minimum number of required parking spaces for the site is 506. The proposed fueling facility and southeast pedestrian walkway will remove approximately 60 spaces, leaving a total of 666 spaces. The site will still have 160 more parking spaces than required. The reduction of surplus parking is a positive step and makes more efficient use of the site.

The surplus parking spaces near the garden center are lightly used by customers most of the year. One question that was asked at the February hearing was how the fueling facility would affect the garden center during the times when the garden center was active (typically spring and summer weekends). Staff has observed that the garden center is currently open on the weekends, and a recent visit on a Saturday afternoon showed that approx. 1/3 of the nearby parking was being used. While this was not a thorough parking study, it did not appear that adding a fueling facility near the garden center would create a parking conflict. The applicant does not expect parking conflicts to occur during peak garden center use.

One concern raised at the hearing was that there were many storage containers on the south and west portions of the site. Fred Meyer has offered to remove all storage containers from the site. Storage containers should not be placed in the parking areas, even though the applicant has surplus parking. Storage containers can reasonably be left for a time in the loading area south of the building. The applicant is therefore conditioned to remove storage containers from the parking areas, and to only place storage containers in the loading area on the south side of the building.

The driveway access on Springbrook Road was changed to right-in/right-out approximately two years ago, and should limit the amount of traffic that travels south on Springbrook Road to reach the gas station.

As part of this project, the applicant will widen the radius of the west 99W entrance to better accommodate large vehicles, and widen the one-lane access driveway to provide separate left- and right-turn lanes at the intersection with the Fred Meyer access drive. This new widened entry will have a 3 way stop sign control and speed bumps will be removed. These changes will improve the flow of traffic turning right at the access drive to reach the gas station, and keep traffic from backing up onto 99W. By adding a three way stop control at this location, there will be a quicker absorption on the site of the incoming traffic. However, that stop control will continuously create gapping in front of the main entrance. The main entrance on this site is a bit of a misnomer, because the grocery store entrance is actually utilized the most with about sixty percent of the traffic from the site. However, the main entry has the potential for pedestrian conflict because the main drive aisle crosses in front of the main entry between the entry and parking area. The stop signs at the entry mentioned above, and stop signs at the secondary 99W entry, will create gapping and slowing of the traffic as it approaches the main entry. The applicant has also proposed in two different locations adding a concrete surface with differentiated color where the pedestrians will cross. There are also stop signs at the pedestrian crossing, so not only are the vehicles to stop at the entry ways, but they are also required to stop at the pedestrian crossing area which because of its different material and color will be quite noticeable to vehicles. These changes on the entry and/or pedestrian ways will improve pedestrian safety throughout the site. These changes will provide efficient and adequate on site circulation for both automobiles and for pedestrians. There was no testimony in any of the extensive public hearings that indicated that there had ever been any pedestrian accidents and/or injuries on the site. In the absence of any such evidence, and in consideration of these changes, pedestrian safety and vehicle circulation will be improved.

The applicant supplied a drawing showing the travel path of a semi-truck (type WB-50, approx. 50 feet long) using the redesigned west access drive. The consultant also furnished a drawing showing

how fuel delivery vehicles would access the site from Springbrook Road, and commented that while the delivery truck is at the fuel facility, only the two southernmost pumps will be blocked. Fred Meyer has committed to limiting fuel deliveries to off-peak times.

ODOT reviewed the revised access plan and fuel delivery vehicle drawings in the March 10, 2010 submittal. The Roadway Engineer's comments on the Fred Meyers right-in approach road improvement schematic are:

The proposed WB-50 should be adequate for the fuel delivery design vehicle.

The consultant's off-tracking design looks adequate.

ODOT will still need to ensure that all work within ODOT right-of-way meets ODOT standards and engineering plans will need to be review and approved by ODOT, therefore our recommend condition remains the same.

- Prior to the insurance of a building permit for construction, the applicant shall provide evidence that all improvements required by the Oregon Department of Transportation are constructed and provide evidence of valid approach road permits to serve the new proposed use have been obtained from the Oregon Department of Transportation.

The proposed modifications to the western access involve changes in the public right-of-way, which is under ODOT's jurisdiction, and on private property, which is under the City's jurisdiction. In order to ensure coordination with both ODOT and the City the condition above will be modified to state that ODOT permits for the western access drive modifications must be obtained before the City will issue a building permit for the gas station and other on-site improvements, and that the ODOT and City approved modifications must be completed before the City will approve occupancy of the gas station.

The applicant has proposed changes to the on-site pedestrian circulation. The current pedestrian walkway from the NW corner of the Fred Meyer store to the U.S. Bank building is a long diagonal path. The fueling facility is expected to increase the amount of vehicle traffic near the bank driveway, so the diagonal walkway has been changed to two shorter walkways at right angles to vehicle traffic. The total walking distance is longer but should be safer. Stop bars have been added to improve the control of vehicle traffic between Fred Meyer and the bank building. The applicant has also proposed adding another pedestrian walkway at the southeast corner of the site. This SE walkway will help the existing building better meet the pedestrian connectivity standards in the Newberg Development Code.

This criterion requires adequate on-site circulation without using the public streets as part of the parking lot circulation pattern. The City Council interprets this provision to mean that vehicles, once entering the site, should not have to exit the site onto a public street to access a different potential destination on the site, nor should the public streets serve essentially the same function as the drive aisle in a parking lot. There is no evidence to suggest that vehicle circulation on site will utilize public streets. There is complete access in and around the structures on the site. This includes access completely around the large grocery store structure. With the ability to go in front of or behind the store to access the other sides of the site, there is no rational basis to believe that vehicles will go offsite utilizing a public street to circulate to another part of the site. Once on site, all vehicle trips to other parts of the site will occur on site.

When Fred Meyer was initially designed, Newberg did not have a maximum parking standard. As a result, Fred Meyer parking lot contains many more spaces than would now be allowed. The changes have occurred because Newberg has taken a more proactive approach to avoid under utilizing impervious surfaces. This area is a great example of an unutilized and impervious surface as this

parking area is often empty and even during the growing season, only a small portion of it is utilized. By allowing this redevelopment, the City is meeting their strategic goal of supporting infill development.

Some public comments were concerned about the increase in vehicle traffic in front of the north entrance to the main store. The applicant's traffic engineer has estimated that the increase will be approximately 41 trips per hour in each direction, and that the total volume will be below that at other Fred Meyer stores in the region. The applicant has proposed revising the traffic controls in front of the north entrance by adding stop signs, striping and textured concrete crossing areas to reinforce that the area is a pedestrian crossing, which will mitigate the impact of the project to pedestrians.

Following completion of design review conditions, the parking lot design will enable improved and more efficient use of the existing parking area and will also provide an internal pedestrian connection with adjacent property. The proposal meets this criterion as conditioned because it will provide efficient and adequate on-site circulation without using the public streets as part of the parking lot circulation pattern, and vehicles will be able to efficiently enter and exit the public streets with a minimum impact on the functioning of the public street.

- (3) ***Setbacks and general requirements. The proposal shall comply with §§ 151.535 through 151.540 dealing with height restrictions and public access; and §§ 151.550 through 151.568 dealing with setbacks, coverage, vision clearance, and yard requirements.***

***Exterior Lighting: 151.588 REQUIREMENTS.***

- (A) ***General requirements: All zoning districts.***

- (1) ***Low level light fixtures include exterior lights which are installed between ground level and six feet tall. Low level light fixtures are considered non-intrusive and are unrestricted by this code.***

- (2) ***Medium level light fixtures include exterior lights which are installed between six feet and 15 feet above ground level. Medium level light fixtures must either comply with the shielding requirements of division (B) below, or the applicant shall show that light trespass from a property has been designed not to exceed 0.5 foot-candle at the property line.***

- (3) ***High level light fixtures include exterior lights which are installed 15 feet or more above ground level. High level light fixtures must comply with the shielding requirements of (B) below, and light trespass from a property may not to exceed 0.5 foot-candle at the property line.***

- (B) ***Table of shielding requirements***

<i>Fixture Lamp Type</i>	<i>Shielded</i>
<i>Low/High Pressure Sodium, Mercury Vapor, Metal Halide and Fluorescent over 50 watts</i>	<i>Fully</i>
<i>Incandescent over 160 watts</i>	<i>Fully</i>
<i>Incandescent 160 watts or less</i>	<i>None</i>
<i>Fossil fuel</i>	<i>None</i>
<i>Any light source of 50 watts or less</i>	<i>None</i>
<i>Other sources</i>	<i>As approved by § <a href="#">151.587</a></i>

*Note: Incandescent includes tungsten-halogen (quartz) lamps*

**Finding:** The proposed canopy is 18 feet tall, setback over 70 feet from any property line, and does not create any corner vision clearance problems. The proposed freestanding sign on Springbrook Road is close to the vision clearance area; the applicant will need to confirm at the building permit stage that the sign is outside the vision clearance setback. The C-2 zone does not have a set height



limit, and only requires a 10 foot setback from the front property line. The site has public access. Following compliance with design review conditions, the proposed project will meet the height restrictions and public access requirements, setback, coverage, vision clearance and yard requirements of the Code.

The applicant's photometric plan shows that the proposed lighting for the fueling facility does meet the light trespass standard (maximum 0.5 foot-candles) at the property lines. The canopy lights are all located under the canopy, and do not project on the sides of the canopy. The western side of the canopy only has an internally illuminated logo sign. The underside canopy lights are required to be fully shielded, and therefore should all be recessed lights. The recessed lights will control light more effectively than the flat Encore or movable Focus light fixtures. The applicant has also offered to add shields to the existing wall-mounted lights above the garden center, which will further reduce the light impact. The development will also remove two tall parking lot lights. As a result there will be a net reduction in light.

Many public comments were concerned about the impact of increased ambient light on the drive-in theater to the west. This is a concern that the City shares, and is an example of why light-trespass standards were added to the Development Code in the past. The applicant is removing two tall parking lot lighting standards from the site, and will provide recessed lighting under the canopy to ensure that it does not exceed the light trespass standard. As conditioned, this may actually reduced the amount of ambient light that currently comes from the site. One other light source that should be considered are the headlights of vehicles using the gas station. Some of these headlights will point west in the general direction of the theater. This impact can be controlled by a dense landscape buffer along the western edge of the site. The existing western landscape buffer is quite dense and largely meets the need for a light barrier. There are a few gaps in the buffer that should be filled in with additional evergreen trees. The applicant will also build a light obscuring fence at this location. The applicant has agreed to also add a fence along the western side of the gas station in the landscape buffer to block headlights (approx. 5-6 feet tall). The applicant will also need to ensure that construction lights are not pointed towards the drive-in during times when movies will be shown. If all of the previously mentioned conditions are required then a light study done in the field is not necessary. It should be noted that the proposed development site is approximately 950 feet from the drive-in screen, which will further diminish any potential light impact from the site. As conditioned, the proposed fueling facility will meet the Development Code light trespass standard and control the impact of lights from the facility.

The Council finds the proposal complies with §§ 151.535 through 151.540 dealing with height restrictions and public access; and §§ 151.550 through 151.568 dealing with setbacks, coverage, vision clearance, and yard requirements as conditioned.

**(4) *Landscaping requirements. The proposal shall comply with § 151.580 dealing with landscape requirements and landscape screening.***

**Finding:** The proposed fueling facility will remove some parking lot landscape islands and reconfigure a few others. The overall amount of landscaping coverage on site will decrease slightly to 15.47%. This exceeds the 15% minimum landscape requirement. As noted above, the western landscape buffer is in good condition and will be an effective buffer against headlights once the few gaps are filled in. The gaps without evergreen trees should be planted with evergreens similar to the existing trees. The applicant intends to plant the reconfigured parking lot landscape islands with trees and shrubs similar to the existing landscape islands in the parking lot. The landscape plan should include replacement trees along the reconfigured western 99W access drive. The existing parking lot

islands elsewhere on the site should be inspected; any missing or damaged parking lot trees should be replaced. The code also requires that a parking or loading area must have at least 25 square feet of landscaping per parking space. As proposed, the site will have 666 parking spaces, which requires at least 16,650 square feet of landscaping. The site has approx. 116,970 square feet of landscaping overall, and over 23,000 square feet of landscaping in the parking area, which exceeds the standard. All areas subject to the final design review plan and not otherwise improved are landscaped. Following compliance with design review conditions, the landscape plan and parking lot complies with § 151.580.

(5) ***Signs. Signs shall comply with § 151.590 et seq. dealing with signs.***

**Finding:** The existing freestanding sign on Portland Road is just under 20 feet tall, setback 25 feet from the front property line, and has 119 square feet of signage. This sign meets the height and setback requirements and is allowed to have up to 200 square feet of signage because the site is larger than 10 acres and has over 200 feet of frontage on Portland Road. The applicant is proposing to remove one panel from the sign and replace it with price signs for the fueling station. This will meet the code standards as long as the sign remains under 200 square feet in area.

The applicant is also proposing a new freestanding sign on Springbrook Road that will be 9'6" tall, setback approximately 12 feet from the front property line, and have 40 square feet of signage. The applicant will need to move the sign location slightly so that it is setback at least 15 feet from the front property line, and verify that it meets the vision clearance setback at the corner.

The canopy will have attached signs on each side. There will be a 26 square foot logo and Fred Meyer sign on each side, and an additional 60 square foot sign on the east side facing the store. The proposed signs are under the maximum size for the canopy (43 square feet on the short sides, and 126 square feet on the long sides) and are allowed.

Following compliance with design review conditions, the proposed signage complies with § 151.590.

(6) ***Manufactured home, mobile home and RV parks. Manufactured home, mobile home, and recreational vehicle parks shall also comply with the standards listed in §§ 151.655 et seq., in addition to the other criteria listed in this section.***

**Finding:** Not applicable - not a manufactured home, mobile home or RV park.

(7) ***Zoning district compliance. The proposed use shall be listed as a permitted or conditionally permitted use in the zoning district in which it is located as found in §§ 151.280 through 151.438. Through this site review process, the Director may make a determination that a use is determined to be similar to those listed in the applicable zoning district, if it is not already specifically listed. In this case, the Director shall make a finding that the use shall not have any different or more detrimental effects upon the adjoining neighborhood area than those specifically listed.***

**Finding:** The site is zoned C-2 Community Commercial. A service station is a permitted use in the C-2 zone. The proposed use is a service station, the use is listed as a permitted use.

(8) ***Sub-district compliance. Properties located within sub-districts shall comply with the provisions of those sub-districts located in §§ 151.450 through 151.526.***

**Finding:** A portion of the Fred Meyer site has a Stream Corridor zoning sub-district on it. The Stream Corridor is west of the proposed fueling facility, and no development will take place within the overlay area. Erosion control measures will be required as part of the grading plan to ensure that

demolition and construction will not create any short-term impacts on the stream. Following compliance with design review conditions, the project meets the provisions of §§ 151.450 through 151.526.

- 9) *Alternative circulation, roadway frontage improvements and utility improvements. Where applicable, new developments shall provide for access for vehicles and pedestrians to adjacent properties which are currently developed or will be developed in the future. This may be accomplished through the provision of local public streets or private access and utility easements. At the time of development of a parcel, provisions shall be made to develop the adjacent street frontage in accordance with city street standards and the standards contained in the transportation plan. At the discretion of the city, these improvements may be deferred through use of a deferred improvement agreement or other form of security.*

**Finding:** The proposed development will be within the existing Fred Meyer site and will use existing driveway accesses and drive aisles. The applicant has applied for and obtained access permits from ODOT for the project. One requirement was to modify the western 99W access drive (a right-in only access). The modifications would widen the radius of the entrance to better accommodate large vehicles, and would widen the one-lane access driveway to provide separate left- and right-turn lanes at the intersection with the Fred Meyer access drive and add stop sign on all legs of the intersection. No modifications were required at the eastern right-in/right-out 99W access drive.

No other major roadway, driveway, or utility improvements are proposed. The pedestrian walkways and traffic controls in the drive aisle directly north of the site will be reconfigured to make pedestrian crossings safer (at right angles to traffic) and change the vehicle flow so that it will be easier to access the fuel facility area of the site. The pedestrian walkway in the SE area will improve pedestrian access to the site for the Springbrook Oaks neighborhood. The traffic controls in front of the north entrance to the main store will be improved by adding stop signs, striping and textured concrete crossing areas, which will mitigate the impact of the project to pedestrians. Following compliance with design review conditions, the new development will meet the standards contained within the Transportation Plan. All utilities, including telephone, cable and power, are required to be placed underground.

The Fire Department commented that the construction site cannot hinder fire access to the main building. New fire hydrants may be necessary.

The existing parking lot catch basins discharge stormwater into a vegetated bioswale located west of the parking lot. Public Works commented that all on-site utilities are to be private, constructed per the plumbing code. Provide an oil-water separator for the under canopy drainage area that is in use at all times. The utility plan does not show any water lines, but one will be needed for the water/air service area. This water line must be a private water line. If a fire hydrant is required then the hydrant and line to it will be public, and will need a public utility easement. Following compliance with design review conditions, the proposal will meet the City's stormwater standards and other public utility standards.

- (10) *Traffic study improvements. If a traffic study is required, improvements identified in the traffic study shall be implemented as required by the Director.*

**Finding:** Some public comments have said that the City is relying solely on the applicant's traffic

study to identify impacts. That is incorrect. The Development Code requires projects that will generate over 40 trips in the p.m. peak hour to supply a traffic study by a professional traffic engineer. The city Planning and Engineering divisions then review the traffic study as part of their review of the proposal and decide whether they think the traffic study's analysis and conclusions are reasonable. Staff also uses the input from ODOT to determine if the traffic study results are reasonable. ODOT focuses primarily on impacts to state highways, but their input provides another valuable perspective on the project and its overall traffic impacts. The ultimate findings and conditions are based on the facts that have been judged reasonable and relevant, based on input from the applicant, the public, ODOT, and staff.

A traffic impact study was prepared for the proposed development by Group Mackenzie, a professional engineering firm. ODOT required that the applicant change how they performed the peak hour factor analysis, queuing analysis, and TIS capacity analysis. Group Mackenzie revised the traffic study and submitted it to the city and ODOT. The study reviewed the impact of the fuel facility development on the driveways and surrounding intersections. The study also looked at the crash history in the area, completed a site distance review, and considered the queuing impact at the entrances. The review projected the traffic impact in 2009 as well as in 2025, both with and without the bypass. The study also reviewed the on-site circulation, and recommended that the traffic controls in the drive aisle north of the fuel facility be changed to an all-way stop, as mentioned above, which will both better control vehicle traffic and improve the safety of pedestrian crossings.

The study concluded that the site distances at the existing driveways exceeded AASHTO (American Association of State and Highway Transportation Officials) standards and did not require any improvements. The crash history of nearby intersections and the queuing analysis also did not indicate a need for any improvements. The queuing analysis indicates that vehicles on Springbrook may spill back to the Fred Meyer access under existing conditions, and this would continue with the addition of fuel facility trips. This does not pose a safety problem, as the Fred Meyer driveway is limited to right turns. Vehicles entering Springbrook from the Fred Meyer driveway would simply need to wait for the queue to clear before entering the roadway. This only occurs occasionally during peak times.

The trip generation study used standard ITE (Institute of Transportation Engineers) trip generation estimates, which assume that approximately 20% of the trips to the fuel facility would be internal trips or shared trips. This is probably a conservative estimate, as Fred Meyer surveys at other stores have shown that approx. 70% of the fuel customers also had Reward cards and had shopped at the store at least once in the previous month. The actual percentage of shared or internal trips may be as high as 30 or 40%. Using the conservative 20% internal trip assumption, the study estimated that the fuel facility would generate 74 new trips in the PM peak hour. These trips were assigned to nearby intersections and their impact was analyzed. The study concluded that the impact was minor and no mitigating improvements were required to meet city standards. The nearby intersections will meet City level of service standards in 2009. The Springbrook and Brutscher intersections on 99W, however, are above ODOT's desired v/c (volume to capacity ratio) of 0.75 already, and the addition of traffic from this development has some impact on intersection capacity (increases the v/c ratio by 0.01). ODOT required the applicant to propose mitigation to address the v/c increase in the revised traffic study.

The study determined that modifying the existing Springbrook lane configurations could improve the v/c ratio from 0.84 to 0.81 but would create other issues. The overall intersection performance would not improve, and the study did not recommend making these changes. Any significant mitigation would require widening and redesign of the intersection. ODOT commented that they did not support

the mitigation as it would not improve the overall intersection operation, and agreed that any significant mitigation would require widening and redesign of this intersection. The study found that the 99W/Brutscher intersection could be mitigated to reduce the v/c ratio from 0.86 to 0.80 by switching the signal from a northbound/southbound common green to split phases, and changing the northbound lane configurations to a left turn only and shared left/through/right turn. ODOT has commented that they do not support the mitigation, due to expected increase in property damage crashes caused by shared left/through/right lanes and increased delays on 99W due to split-phasing the traffic lights.

ODOT commented that if the city places a condition requiring the developer to contribute towards future improvements at the Springbrook/99W intersection then that will satisfy ODOT's concerns regarding impacts from this development at those intersections. The city will require a traffic impact fee for future improvements at the Springbrook/99W intersection, as ODOT requested, based on the impact from this development. The traffic study estimated that this project would add 45 trips during the PM peak hour to the Springbrook/99W intersection. This is approximately 8/10 of 1% of the total trips through the intersection in the peak hour. The estimated cost of a future intersection improvement is \$1,500,000.00, so the applicant's impact fee will be \$12,400.00. These funds would be used to either improve the intersection directly or indirectly by providing alternate improvements that would reduce volumes through the intersection.

The applicant has applied for and obtained access permits from ODOT for the project. One requirement was to modify the western 99W access drive (a right-in only access). The modifications would widen the radius of the entrance to better accommodate large vehicles, and would widen the one-lane access driveway to provide separate left- and right-turn lanes at the intersection with the Fred Meyer access drive. ODOT's specific comments in the access permit were:

1. The two lane right-in only approach shall be constructed so that it is long enough to ensure that traffic going to the fueling station in the right lane is not blocked by traffic turning left to go to the store. If necessary to correct any problems caused by queuing, an all-way stop shall be added to the main aisle later if it is needed.
2. The radius of the right-in approach shall be constructed in such a way that it can accommodate large vehicles without being damaged. Fred Meyer shall be required to obtain ODOT's approval for a design vehicle and approach design.

ODOT access permit approval letter noted that two conditions would apply:

1. If traffic backs up to the property line at any time, ODOT reserves the right to review approval of the right-in only approach.
2. If the crash history changes due to the weaving pattern between Springbrook and the right-in only approach, ODOT reserves the right to review approval of the right-in only approach.

ODOT did not require any modifications at the eastern right-in/right-out 99W access drive. The access permit included one condition:

1. If the eastbound traffic queue backing up from the signal at Brutscher begins to block the right-in right-out approach, ODOT reserves the right to review approval of the approach and to require changes.

In the March 10, 2010 submittal the traffic engineer supplied a drawing showing the travel path of a semi-truck (type WB-50, approx. 50 feet long) using the redesigned west access drive. The consultant also furnished a drawing showing how fuel delivery vehicles would access the site from Springbrook Road, and commented that while the delivery truck is at the fuel facility, only the two southernmost pumps will be blocked. Fred Meyer has committed to limiting fuel deliveries to off-peak times. The

traffic engineer also addressed comments from Robert Bernstein about the impact at the Springbrook/99W intersection and the utilization factors in the analysis. The traffic engineer summarized that the utilization factors are appropriate, consistent with ODOT standards, and that the project will add only slight delays at the intersection, not significant congestion. This seems to be a reasonable conclusion, as ODOT tends to take a conservative approach to traffic analysis and it seems unlikely that the addition of 74 new trips in the p.m. peak hour, distributed across all of the Fred Meyer accesses, could create significant additional congestion at the Springbrook/99W intersection.

ODOT reviewed the March 10, 2010 submittal, including the revised access plan and fuel delivery vehicle drawings. The Roadway Engineer's comments on the Fred Meyer right-in approach road improvement schematic are:

The proposed WB-50 should be adequate for the fuel delivery design vehicle.

The consultant's off-tracking design looks adequate.

ODOT will still need to ensure that all work within ODOT right-of-way meets ODOT standards and engineering plans will need to be review and approved by ODOT, therefore our recommend condition remains the same.

- Prior to the insurance of a building permit for construction, the applicant shall provide evidence that all improvements required by the Oregon Department of Transportation are constructed and provide evidence of valid approach road permits to serve the new proposed use have been obtained from the Oregon Department of Transportation.

The proposed modifications to the western access involve changes in the public right-of-way, which is under ODOT's jurisdiction, and on private property, which is under the City's jurisdiction. In order to ensure coordination with both ODOT and the City the condition above will be modified to state that ODOT permits for the western access drive modifications must be obtained before the City will issue a building permit for the gas station and other on-site improvements, and that the ODOT and City approved modifications must be completed before the City will approve occupancy of the gas station.

The applicant also submitted an analysis of the traffic impacts if the gas station was located on the eastern side of Fred Meyer, near the bottle return. The net result was a decrease in traffic at the Springbrook and 99W driveways, and an increase in traffic at the Brutscher driveways. This would also put the gas station farther from the drive-in and reduce the potential light impact. Staff would not recommend approving the eastern location, however, due to the increase in traffic at a busy part of the Fred Meyer site, and the potential for negative impacts on the residential properties to the south.

At the conclusion of this project, the following transportation and access improvements will be completed:

- Reconfigure the private walkway and traffic controls north of the fueling facility as proposed on the site plan.
- Add a new private walkway on the southeast portion of the site as proposed on the site plan.
- Revise the traffic controls in front of the north entrance to the main store by adding stop signs, striping and textured concrete crossing areas.
- Change main pedestrian striping, to concrete of a contrasting color.
- City will collect a traffic impact fee towards future improvements at the Springbrook/99W intersection.
- Widen the radius of the west 99W entrance to better accommodate large vehicles, and widen the one-lane access driveway to provide separate left- and right-turn lanes at the intersection with the Fred Meyer access drive and add stop signs.

- Obtain construction permits from ODOT for any work within the right of way.

Several public comments were concerned about the proposal increasing the amount of traffic in the area, especially cutting through residential neighborhoods south of the site and making it more dangerous for children playing outside. One neighbor collected information on traffic traveling through the townhouses southeast of the Fred Meyer store (Little Oak Street area), and stated that most of the traffic was due to Fred Meyer, and not due to neighborhood residents. It should be noted that the streets in this neighborhood are public streets that anyone may travel on, and that the neighborhood is not a cul-de-sac. When the townhouses were built the streets were already in place and connected from Hayes Street through to the existing Fred Meyer exit as an access to Brutscher Street. It would not be reasonable to expect that only neighborhood residents will use the streets, and it would also not be reasonable to make changes that would add substantial through traffic to the neighborhood streets. The traffic study determined that this proposal would only generate a small increase in trips to the Fred Meyer site, which would be split between all of the Fred Meyer driveways. The traffic engineer also thought that most trips to the fuel facility from the residential area south of the site would travel west on Hayes Street and then north on Springbrook, which would be faster than driving through the Fred Meyer site to reach the fuel facility. If traffic could be discouraged from cutting through behind Fred Meyer then that would probably reduce the amount of traffic that cuts through the neighborhood. One condition of this project should be a requirement to post the loading area behind the store “No through traffic – delivery trucks only.” The 5/27/10 follow-up letter from Group Mackenzie estimated that one-half of one percent of the trips generated by the existing Fred Meyer store cut through the Little Oak neighborhood. Applying this percentage to the additional trips from the fuel facility would only add one trip through the neighborhood during the p.m. peak. Even if Group Mackenzie’s estimates are too low, and the traffic is four times larger than they estimated, then that would still be only 4 additional through trips in the neighborhood in the p.m. peak hour, which is not a substantial increase.

Following compliance with the design review conditions noted above, the proposal meets the applicable Newberg Development Code criteria for transportation improvements.

### **III. § 151.196 ADDITIONAL REQUIREMENTS FOR DEVELOPMENT IN THE C-2 ZONING DISTRICT.**

*The purpose of this section is to ensure that development in the C-2 Zoning District is designed to promote pedestrian and bicycle uses and improve aesthetics and compatibility. An applicant for a new development or redevelopment within the C-2 Zoning District, which is subject to the Site Design Review process, must demonstrate that the following site and building design elements have been incorporated into the design of the project. Exceptions to these additional development requirements may be granted if the requirements would result in construction that is out of character with surrounding development. Applicants for redevelopment of a designated landmark will not be subject to these additional requirements, except for requirements regarding parking and service drives.*

*(A) Building entrances. Each building on a lot shall have a primary pedestrian entrance oriented to the primary street. “Oriented to a street” means that the building entrance faces the street or is connected to the street by a direct and convenient pathway not exceeding 60 feet in length. “Primary street” means the street which has the highest estimated volume of pedestrian traffic. This requirement does not apply to buildings that are located behind other buildings on the lot such that 50% or more of their building frontage is blocked by*

*the front building, as measured by sight lines that are perpendicular to the street right-of-way. Such rear buildings shall have a primary entrance oriented to an internal sidewalk or pedestrian pathway system which is internally connected and provides a connection to the primary street.*

**Finding:** The primary street in this case is Portland Road to the north. Portland Road has extensive sidewalks and high pedestrian utilization and Springbrook does not. The site of the kiosk and canopy will be obscured by the U.S. Bank such that 50% or more of the building frontage is blocked by the front building. As a result, this requirement does not apply. The kiosk will be connected to internal pedestrian pathways that are connected to 99W.

The fueling facility is an unusual addition in that it does not have a pedestrian entrance. There is a pedestrian connection to the main store via internal walkways to Springbrook Road and Portland Road. Almost all customers to the fueling facility, however, will naturally be in vehicles. The only pedestrians on the site will typically be the station attendants. The main Fred Meyer building does have a main pedestrian entrance that faces Portland Road.

*(B) Parking and service drives. No off-street parking or service drives shall be placed within the required front yard setback. No off-street parking shall be placed between the front property line of the primary street, as defined in division (A) above, and the building. This requirement does not apply to buildings that are located behind other buildings on the lot such that 50% or more of their building frontage is blocked by the front building, as measured by sight lines that are perpendicular to the street right-of-way.*

**Finding:** The proposal will not place off-street parking or a service drive within the required 10 foot deep front yard setback, and will not place off-street parking between the building and any street. The proposal therefore meets this criterion. The existing site does have parking between the west side of the main building and Springbrook Road. This fueling facility will remove some of this parking and bring the overall site closer to meeting this criterion.

The primary street is Portland Road not Springbrook, because Portland Road has extensive sidewalks and high pedestrian utilization and Springbrook does not. The site of the kiosk and canopy will be obscured from Portland Road by the U.S. Bank Building. As a result, the requirement that no parking be placed between the building and the road does not apply.

*(C) Exceptions. The review body may approve exceptions to the above provided there are no reasonable alternatives that would allow access to or parking on the lot.*

**Finding:**

The building is not required to meet the building orientation rules of Section A (see above), and the proposal meets the standards under Section (B). Therefore an exception is not needed.

*(D) Building mass. Where building elevations are oriented to the street in conformance with (A) above, architectural features such as windows, pedestrian entrances, building offsets, projections, detailing, change in materials or similar features, shall be used to break up and articulate large building surfaces and volumes.*

**Finding:** The building is not required to meet the building orientation rules of Section A (see above).



Therefore this provision does not apply. Nevertheless, the proposed building is a canopy and has very little mass. No architectural detailing or off-sets are needed to break up the mass of the building because there are no large building surfaces or volumes. The gas station meets this criterion as proposed.

***(E) Corner lots. Buildings on corner lots shall have their primary entrance oriented to the street corner, or within 40 feet of the street corner (i.e., as measured from the lot corner). In this case, the street corner shall provide an extra-wide sidewalk or plaza area with landscaping, seating or other pedestrian amenities. The building corner shall provide architectural detailing or beveling to add visual interest to the corner.***

**Finding:** This standard does not apply, as the fueling facility is not near a corner. The corner of the lot at Springbrook/99W is dedicated to a stormwater detention pond.

If the site were deemed to be a corner lot then an exception should be approved. Orienting the kiosk to the corner would be out of character with the adjacent gas station, bank and car repair shop and would serve no pedestrian or aesthetic purpose.

***(F) Pedestrian-scale building entrances. Recessed entries, canopies, and/or similar features shall be used at the entries to buildings in order to create a pedestrian-scale.***

**Finding:** The canopy does not have a pedestrian entrance, and the kiosk and is not open to the public. The kiosk building, although not open to the public, is of pedestrian scale (at 96 square feet) and is served by a canopy. This standard is met.

***(G) Windows.***

***(1) On commercial building facades facing a public street, windows shall comprise a minimum of 40% of the ground floor facade. For large-scale buildings and developments meeting the standards under subsection (H) below, windows shall comprise a minimum of 20% of the ground floor façade.***

***(2) For large-scale buildings and developments meeting the standards under subsection (H) below, 50% of all required window area shall allow view into an active space. An active space is defined as any area within a building that is used for shopping, dining, office space, and so forth. Merchandise display windows with displays that change at least semi-annually shall be considered an active space. Examples of areas that are considered non-active spaces are storage and mechanical equipment areas, and windows that are obscured by shelving or material affixed to the window.***

**Finding:** The canopy does not have any walls and therefore does not have any windows. It is an active open work space. The cashier's kiosk is a small building that is not open to the public. It does have windows, and its interior is an active space. The area under the canopy can also be considered an active space. The nature of the structure does not allow the canopy to meet this window standard, but it meets the intent of not allowing a large blank wall on a structure. If the structure was required to add walls and windows then it would be out of character with surrounding development, such as the drive-through canopy on the bank to the north. An exception to this standard is therefore justified under the conditional use permit. The fueling facility helps the main building come closer to meeting this standard by adding activity to a side of the building that is largely a blank wall.

***(H) Design of large-scale buildings and developments. All buildings on a development site***

*shall conform to the design standards included under § 151.196 (H) where the total square footage of one commercial building exceeds 30,000 square feet of total ground floor area or all commercial buildings exceed 50,000 square feet of total ground floor area. Deviations from these standards may be approved, where appropriate, through the conditional use permit process.*

*(1) Façade articulation. Incorporate changes in building direction (i.e., articulation), and divide large masses into varying heights and sizes. Such changes may include building offsets; projections; changes in elevation or horizontal direction; sheltering roofs; terraces; a distinct pattern of divisions in surface materials; and use of windows, screening trees; small-scale lighting (e.g., wall-mounted lighting); and similar features. At least five of the following elements shall be included along each 100 feet of building frontage facing a street:*

*(a) A building offset or projection of at least 6 feet depth and width.*

*(b) An awning or roof sheltering a pedestrian walkway or seating area.*

*(c) A building façade shall be comprised of at least two building materials, with the lesser comprising not less than 10% of the total façade.*

*(d) Contrasting brick, stone, or natural wood trim.*

*(e) Pitched roofs or gable-end roofs.*

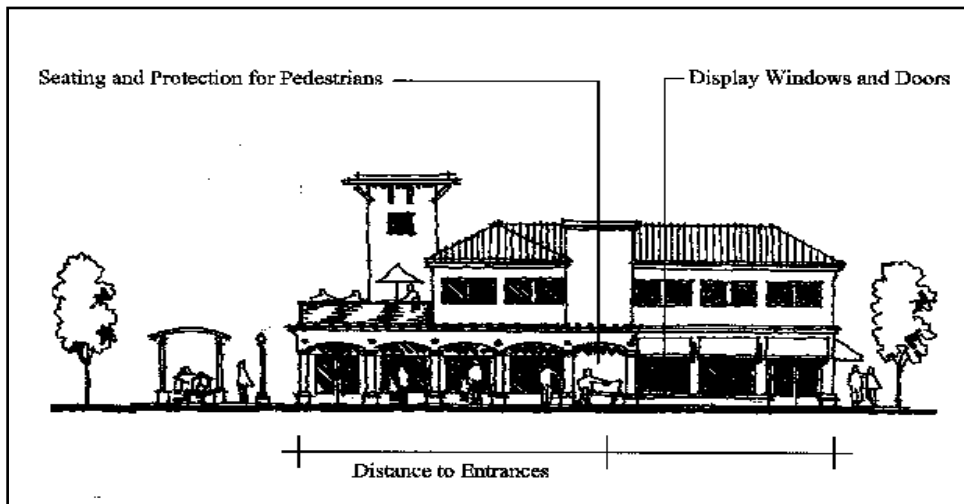
*(f) Curved arches or roof line features.*

*(g) A tower, spire, or cupola.*

*(h) A cornice.*

*(i) Second story windows that comprise a minimum of 10 percent of the second floor façade.*

*[Note: the example shown here is meant to illustrate these building design elements, and should not be interpreted as a required architectural style.]*



**Finding:** The proposed canopy structure does not have a large mass and therefore does not need an articulated façade to break up its mass. An exception to this standard is required and can be granted as long as the proposal meets the conditional use permit criteria. The applicant has applied for a conditional use permit and addressed the conditional use permit criteria below. The canopy will help make the flat western wall of the main Fred Meyer building less visible.

Alternatively, these large scale building code provisions apply when the commercial building exceeds 30,000 square feet. The kiosk will be 96 square feet and the total space over which the canopy will cover is 5,530 square feet. The size of this proposed improvement does not trigger these code requirements. It is not practicable to apply all of the code provisions to the pre-existing main structure when adding an unattached kiosk and canopy. The proposed improvements do not make the site more nonconforming in contrast it improves the conformity by breaking up the blank wall of the main structure.

***(2) Pedestrian entrance. Every building elevation facing a street with a horizontal dimension of more than 100 feet, as measured from end-wall to end-wall, shall have a building entrance no more than 100 from another entrance or end-wall; except that buildings elevations that are unable to provide an entrance due to the internal function of the building space (e.g., mechanical equipment, areas where the public or employees are not received, etc.) may not be required to meet this standard. Pathways shall connect all entrances to the street right-of-way.***

**Finding:** The kiosk does not have a horizontal dimension of 100 feet and therefore this provision does not apply. Alternatively, the fueling facility does not have a pedestrian entrance and an exception to this requirement is appropriate. An exception to this standard can be granted as long as the proposal meets the conditional use permit criteria. The applicant has applied for a conditional use permit and addressed the conditional use permit criteria below

***(3) Building facades not fronting a street. For all ground floor facades that do not face a public street, windows shall comprise a minimum of 20 % of the ground floor façade or a landscape strip shall be provided adjacent to the building. The landscape strip shall be a minimum of 5 feet in width and include a combination of trees, shrubs, and groundcover or grass. Plant material shall be selected from at least two of the different plant material groups (example: trees and shrubs, or lawn and shrubs, or lawn and trees and shrubs). The type of tree selected shall have a crown of less than 15 feet at maturity. Exceptions to this standard include building facades that abut outdoor storage areas, loading docks, and mechanical equipment areas.***

**Finding:** The canopy structure does not have walls or windows, and needs vehicle access on the east and west sides. The kiosk has 20% of its ground floor is made up of windows and has planting strips greater than 5 feet in width. The north and south sides will have landscape buffers nearby, but the proposal may require an exception to this standard. An exception to this standard can be granted as long as the proposal meets the conditional use permit criteria. The applicant has applied for a conditional use permit and addressed the conditional use permit criteria below

***(4) Building orientation. All buildings shall be oriented to a primary street as defined in division (A) or oriented to a plaza or open space within the development site that connects to the primary street. "Oriented to a plaza or open space" means that the building entrance faces the plaza, open space, shared parking area or is connected to the plaza by a direct and convenient pathway not exceeding 60 feet in length.***

**Finding:** The kiosk is oriented toward 99W, however it is not open to the public. The nature of the fueling facility makes it difficult to meet this requirement. If the proposal requires an exception to this standard, an exception to this standard can be granted as long as the proposal meets the conditional use permit criteria. The applicant has applied for a conditional use permit and addressed

the conditional use permit criteria below

**(5) On-site landscaping and screening.**

**(a) A continuous landscape strip, with a five foot minimum width, shall be located perpendicular to groups of 2 or more parking stalls. Within the landscape strip, at a minimum, one deciduous shade tree per seven parking spaces shall be planted to create a partial tree canopy over and around the parking area. The type of tree shall be chosen from the City of Newberg Preferred Street Tree List and have a minimum crown spread of 25 feet. This standard shall apply unless otherwise approved by the Director based on the following alternative standards:**

**1. No more than seven parking stalls shall be grouped together without a landscape island. The landscape island shall have a width and depth no less than 5 feet and contain no less than one deciduous shade tree.**

**or**

**2. Provision of tree planting landscape islands, each of which is at least 16 square feet in size, and spaced no more than 50 feet apart on average, with a maximum of 75 feet, within areas proposed for grouped parking. For every 7 planting landscape islands, 1 shall be no less than 500 square feet in size.**

**Finding:** The proposal will not create new parking areas. Most of the existing parking lot has mature landscaping. The new parking lot landscaping islands will be designed to match the existing landscaping. The western landscape buffer will have a few gaps filled in to complete a dense landscape buffer along that edge.

**(b) At a minimum 50 percent of the parking area shall drain to a storm water mitigation area. The mitigation area shall be designed using best management storm water practices including, but not limited to, bio-swailes, rain gardens, or similar design intended to reduce storm water flow and improve storm water quality.**

**Finding:** No new parking areas are being created, so this criterion does not directly apply. The fuel facility will actually remove approximately 60 parking spaces. There will be a slight increase in impervious surface from this project (approx. 900 square feet). The City Engineering Division has reviewed the application and determined that no stormwater detention is required in order to meet City standards. The stormwater drainage from the gas station location discharges to an existing vegetated bioswale that runs along the western edge of the parking lot. This qualifies as storm water mitigation. The applicant will add an oil/water separator to treat the stormwater collected under the canopy before it is discharged to the bioswale.

If this provisions is applied to the whole site, the proposal would require an exception to this mitigation standard, however, as there is not enough room on the site to make half of the entire existing Fred Meyer parking lot drain to a storm water mitigation area. An exception to this standard can be granted as long as the proposal meets the conditional use permit criteria. The applicant has applied for a conditional use permit and addressed the conditional use permit criteria below. Several people have commented that the applicant's stormwater proposal is substandard, does not meet City standards, and is not state of the art. This proposal has been reviewed by the City Engineering division; it is not substandard, and does meet City standards for stormwater. One public

comment mentioned a filtration system that would provide better stormwater treatment than the oil/water separator. While there may be a better system, it is not required by City stormwater standards and has not been required for any other project in Newberg. The proposed gas station with oil/water separator is, in fact, superior to other gas stations in Newberg because the drainage goes to a large vegetated bioswale before entering the public stormwater system.

*(c) A 20-foot wide landscaped buffer shall be provided between the development and any adjoining residential district. The buffer shall include a continuous 6-foot high sight-obscuring fence or wall, a continuous hedge and/or berm designed to achieve a height of 6-feet upon maturity, a row of trees not more than 35 feet on-center, and shrubs or living groundcover.*

**Finding:** The site has an existing landscape buffer along most of the southern edge of the site adjacent to the residential area. The buffer includes many mature trees. The western part of the southern border only has grass, however, and is adjacent to a multifamily residential site. The applicant should add trees to this southwest buffer similar to the existing trees to the east, spaced not more than 35 feet on-center. As conditioned, the proposal meets this criterion.

*(d) Outdoor storage areas, loading docks, and mechanical equipment areas shall be fenced with 75% opaque site obscuring fencing or screened with landscaping between the area and public streets.*

**Finding:** This requirement is not applicable to the fueling facility as it does not have outdoor storage areas, loading docks or mechanical equipment areas. The site is elevated above the closest streets and has landscape buffers, however, so much of the lower part of the facility will not be visible from adjoining public streets.

*(e) One square foot of interior open space or plaza space shall be required for every 5 square feet of gross floor area. The following features shall be included in the open space or plaza area:*

- 1. One linear foot of seating space shall be required for every 30 square feet of open space or plaza space.*
- 2. One tree shall be provided for every 800 square feet of plaza space or open space.*
- 3. Pedestrian scale lighting according to subsection §151.196(H)(7).*

**Finding:** The fueling facility has only one small cashier's kiosk (96 square feet). The applicant requests an exception to this requirement. An exception to this standard can be granted as long as the proposal meets the conditional use permit criteria. The applicant has applied for a conditional use permit and addressed the conditional use permit criteria below. There is existing pedestrian scale lighting on the western wall of the main Fred Meyer building, which would aid any pedestrians walking from the western parking lot to the main entrance.

*(6) Vehicle and pedestrian connectivity.*

- (a) Public streets may be required to be dedicated where needed to improve internal circulation, to connect to neighboring properties or streets, to break up large blocks, or to reduce travel around a site.*
- (b) At a minimum, 95% of the parking spaces shall be located within 75 feet of a private walkway or public sidewalk.*

**Finding:** The fueling facility will not create a need to dedicate internal streets and will not create any new parking spaces, so the proposal complies with this standard. The existing parking areas for the main building will come closer to meeting these standards when the new pedestrian walkway in the SE corner of the lot is constructed as part of this project.

*(7) Pedestrian-scale lighting. Pedestrian scale lighting shall be located along all internal walkways and provide a minimum illumination of 1 foot candle. Building entrances shall have a minimum illumination of 5 foot candles. Lighting shall be fully shielded so that no light is emitted at an angle above the horizontal plane as illustrated by the lighting plan. The type of features that should be considered, but are not limited to; street lamps, light fixtures attached to buildings, and light bollards. All pedestrian scale light fixtures shall not exceed a maximum height of 15 feet as measured from grade to the fixture lamp. The lens material for all pedestrian scale lighting shall be constructed of acrylic or similar shatter resistant material as determined by the Director. Glass lenses shall not be used for any pedestrian scale lighting.*

**Finding:** There is existing pedestrian scale lighting along the western wall of the main Fred Meyer building, so the proposal meets this criterion.

*(8) Parking. The number of parking stalls shall not exceed 125 percent of the minimum number of stalls required. Parking stalls constructed of grass blocks, grasscrete, pervious asphalt or concrete, or similar pervious material shall not be counted in this limit.*

**Finding:** No additional parking is being constructed as part of this project, so the proposal complies with this criterion. Approximately 60 parking spaces are being removed by this project, which brings the existing site closer to meeting this standard. The site is required to have at least 506 spaces, so 125% of the minimum would be 633 spaces. The site will have 666 spaces after the completion of this project.

*(9) Existing development. Any existing legal conforming site, through future development, exceeds the square footage threshold contained in § 151.196 (H) shall follow the standards contained in § 151.140 NON-CONFORMING USES AND BUILDINGS.*

**151.144 NON-CONFORMING BUILDINGS WITH LEGALLY CONFORMING USES.**  
*Unless completely or partially destroyed, pursuant to § [151.146](#), non-conforming buildings or structures with legal, conforming uses may be altered or modified subject to any of the following requirements. This shall be processed as a Type I application for single family homes and duplexes and as a Type II application for all commercial, industrial, and multi family uses.*

- (A) The addition or modification affects a part of the structure which will meet the current setback, height, yard or similar regulations and the addition or modification will not worsen the non-conforming status of the building.*
- (B) The addition or modification provides a logical expansion of the building and is within the existing building setback lines where:
  - (1) In the opinion of the Director, the expansion or modification will not adversely affect neighboring properties;*
  - (2) Building Code requirements can be met;*
  - (3) The expansion or modification proposed is similar to other non-conforming buildings or structures in the area; and**

- (4) *Reasonable provisions have been made to minimize the impact of the non-conforming status of the building or structure.*
- (C) *A building or parking area that is non-conforming to the standards of this code but otherwise conforms to the use provisions of the zoning district, may be expanded, provided that the portion of the building or parking area proposed for expansion complies with the provisions of this code.*

**Finding:** The existing building and site development is non-conforming because it does not meet some of the standards for large scale retail buildings under NDC 151.196, including (A) building orientation, (B) parking and service drives, (D) building mass, (G) windows, and (H) design of large scale buildings. Some public comments have stated that the existing Fred Meyer store is a non-conforming **use** and therefore cannot be expanded and should have to be brought up to current code. The City Council does not interpret the proposed use to be expansion of a non-conforming **use**. The Development Code distinguishes between non-conforming **uses** and non-conforming **buildings, structures, and parking areas** with legally conforming uses, and has different requirements for the two situations. The existing Fred Meyer store is an allowed use in the C-2 zone. The proposed gas station is an allowed use in the C-2 zone. The city recently changed the large-scale retail design standards, and the existing store does not meet many of these design standards. That makes the existing development a non-conforming **building, structure or parking area** with a **legally conforming use**. This is treated differently from a non-conforming use in the Development Code.

The application is to add additional structures and uses on the site. The City Council interprets the provisions of NDC 151.144 regulating non-conforming buildings or structures with legally conforming uses to apply to this application. Some public comments have argued that because the application does not physically enlarge the existing large retail building on the site, this section regulating modification of non-conforming buildings should not apply. The Council does not take such a strict view of this section. The language of this section clearly shows that it applies to buildings **and** structures, parking areas, yards, and other site elements, and is not just limited to the enlargements to the existing building. The application does affect compliance with some of the site design standards for the existing buildings, such as whether parking is in front of a building or whether a building is blocked by other buildings, thus the existing buildings are being “altered or modified.” The Council interprets “addition” to include addition of structures to the site, whether or not they are physically attached existing buildings. Thus, the application is an addition that may be allowed if it meets the criteria under NDC 151.144.

Under NDC 151.144, an addition or modification may be allowed under any of three criteria (A), (B), or (C). The City Council interprets this provision to mean that the application may be approved if any **one** the three criteria are met; all three need not be met. Under NDC 151.144 (A), an addition may be allowed provided that they do not worsen the non-conforming status of the existing building, and the addition otherwise meets standards. The application for the new gas station has addressed the new code requirements, and, under the process allowed in the code, applied for a conditional use permit because it has requested exceptions to some standards. The gas station will not make the existing site more non-conforming, however, and will make the site come closer to meeting the maximum parking standard, will remove parking between the building and the street, will help hide the blank western wall of the main building, and will create a better landscape buffer along the western and southern edges of the site. The proposal therefore meets the criterion 151.144(A) for additions or modifications of non-conforming buildings with legally conforming uses.

Additionally, the 96 feet kiosk and the canopy do not exceed the square footage threshold of 151.196(H).

### III. Conditional Use Permit Criteria That Apply - Newberg Development Code § 151.210.

**The Planning Commission may grant or deny the application, or may require such changes or impose such reasonable conditions as are in their judgment necessary to ensure conformity to the conditional use permit criteria. A conditional use permit may only be granted if the proposal conforms to the following:**

- A. *The location, size, design and operating characteristics of the proposed development are such that it can be made reasonably compatible with and have minimal impact on the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage and density; to the availability of public facilities and utilities; to the generation of traffic and the capacity of surrounding streets, and to any other relevant impact of the development.*

**Finding:** The proposed fuel facility is required to apply for a conditional use permit because it has requested exceptions to some of the standards for large-scale retail development. The fuel facility would not require a conditional use permit on any other site in the C-2 zoning district. The scale, bulk and coverage of the proposed facility are minor compared to the adjacent main Fred Meyer building. The location of the facility raised concerns that it might increase the level of ambient light that impacts the drive-in theater to the west. The development will remove two tall parking lot lights and shield two building lights. The canopy facility will only have recessed lights. , The project will improve the landscape buffer along the western edge of the site and add a sight obscuring fence. As conditioned, the design will effectively mitigate the impact of light from this development. The fuel facility will increase the amount of traffic on the western side of the Fred Meyer site, so the traffic controls and pedestrian walkways in that area will be revised to regulate traffic flow and improve pedestrian safety. A pedestrian walkway from the main building to the SE corner of the site will make the Fred Meyer site more compatible with nearby residential development. The applicant will pay a traffic impact fee towards future improvements at the Springbrook/99W intersection to mitigate the impacts of this development on public roads. As conditioned, the proposal will effectively mitigate the on-site and off-site traffic impacts from this development.

The facility will be open from 7 AM – 11 PM, which will match the hours the main store is open. One public comment was concerned that the fueling facility could be operated 24 hours a day, which would increase the noise from the site. The applicant has not applied for permission to do this, but one condition of approval will be that the operating hours are limited to from 7 am to 11 pm. The main building is located between the proposed gas station site and the existing residential area to the southeast, which will further reduce any potential noise impact on the residents. As conditioned, the proposal will effectively mitigate the impact of noise from this development.

One other public comment mentioned that they had problems with noise from the loading area behind the store, which took some time to get resolved. It should be noted that the Fred Meyer store had been in place for many years before the new housing was built behind the loading area, and that Fred Meyer has taken steps to change delivery hours to reduce noise late at night and early in the morning. Nevertheless, it would aid communication with neighbors if Fred Meyer appointed a contact person to address and resolve neighborhood issues, and posted that person's contact information on the community bulletin board in the store.

Some public comments questioned what would be done in the event of a spill. The applicant has stated that Kroger operates 1,490 fueling stations across the United States and has a standardized



safety and training program for fuel station employees. The plan includes detailed information on responding to spills and leaks. The response depends on the size of the spill, ranging from cleanup by onsite employees to complete emergency action with agencies including the Oregon Emergency Response System. Emergency contractors, including ODOT certified vactor trucks, are pre-arranged as part of the emergency response plan. Employees are also trained to inspect equipment and identify maintenance needs.

Emergency shut-off switches are installed both inside and outside the kiosk as dictated by the fire code. The underground storage tanks will be double-walled fiberglass with leak detection sensors. The tank and piping monitoring system operates at all times and will sound alarms if any part of the system fails. The equipment to be installed will meet all State and Federal environmental standards, including the latest vapor recovery standards for delivery vehicles. The facility will be staffed with full-time attendants and will have closed circuit cameras for additional security, fire extinguishers, emergency shut-off switches and an alarm system. The applicant will submit a spill containment plan for the fuel facility for review and approval before building permits would be issued. There will also be an emergency shut-off valve located immediately downstream of the oil/water separator for stormwater. The valve will be closed during the unlikely event of a spill and during required periodic maintenance.

As noted above, there are adequate public facilities and utilities available to serve the site.

The location, size, design and operating characteristics of the proposed development are therefore such that, as conditioned, it can be made reasonably compatible with and have minimal impact on the livability or appropriate development of abutting properties and the surrounding neighborhood.

***B. The location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping or civic environment, and will be as attractive as the nature of the use and its location and setting warrants.***

**Finding:** The fuel facility location on the Fred Meyer site will be convenient for many shoppers who already use the store. The location on the western side of the main building will minimize the impact to on-site circulation, as that is the least used part of the existing site. The traffic controls and pedestrian walkways immediately north of the fuel facility have been redesigned to make the site safer for pedestrians and better regulated for vehicles. The fuel facility will be reasonably attractive, and will have extensive nearby landscape buffers that soften the view of the facility from the street.

Fred Meyer facilities have experienced a utilization of their rewards customers at their gas facilities at a very high rate. Eighty nine percent of all fuel customers use rewards cards. Seventy percent of all gas buyers receive the highest discount. To receive the highest discount, you must have spent more than the monthly minimum. That is strong evidence that there will be utilization of shared trips. The full shopping experience provided by Fred Meyer with grocery and household goods, in conjunctions with this gas station, will allow a person to make one stop to cover all of their needs. This improvement will provide convenience to the shopping public.

The proposal therefore meets this criterion because the location, design and site planning will provide a convenient and functional shopping environment, and will be as attractive as the nature of the use and its location and setting warrants.

***C. The proposed development will be consistent with this code.***

**Finding:** The preceding design review findings reviewed the development code standards that apply to this project. As conditioned, the proposed development will be consistent with the development code.

#### **IV. CONCLUSION:**

Based on the above-mentioned findings, the application meets the required Conditional Use Permit/Design Review criteria within the Newberg Development Code, subject to completion of the attached conditions:

## CONDITIONS OF APPROVAL- FILE CUP-08-004/DR2-08-036

### A. THE FOLLOWING MUST BE COMPLETED BEFORE THE CITY WILL ISSUE A BUILDING PERMIT:

1. Permit Submittal: Submit a building permit application, two (2) complete working drawing sets of the proposed project, two (2) complete electrical plans, and two (2) copies of a revised site plan. Show all the features of the plan approved through design review, including the following:
  - Existing and finish grade elevations
  - Existing and proposed sewer, water, and storm sewer connections
  - Fire hydrant locations on and within 250 ft. of the site
  - Landscaping plan including existing and proposed landscaping and method of irrigation
  - Lighting plan
  - Plumbing details
  - Sign details
  - Site circulation, pedestrian circulation, and parking stall layout
  - Vision clearance areas
2. Conditions of Approval: Either write or otherwise permanently affix the conditions of approval contained within this report onto the first page of the plans submitted for building permit review.
3. Utility Plan: Revise the utility plan to show the private water line to the air/water station. All on-site utilities are to be private, constructed per the plumbing code. Provide an oil-water separator for the under canopy drainage area that is in use at all times. All utilities, including power, cable and telephone, are required to be placed underground.
4. Spill containment: Submit a spill containment plan for the fuel facility for review and approval as part of the building permit.
5. Fire hydrants: Show the location of all fire hydrants on and near the site, and show on the drawings that the water system has adequate fire flow. New fire hydrants may be necessary. If a fire hydrant is required then the hydrant and line to it will be public, and will need a public utility easement.
6. Signage: Submit sign details with the building permit which include:
  - Portland Rd existing freestanding sign – show modifications to sign face (must be less than 200 s.f. in total area)
  - Springbrook Rd new freestanding sign – show 15' setback from front property line and compliance with vision clearance setback from corner.
7. Disabled/ADA Requirements: Coordinate with the Building Division to comply with O.S.S.C. Chapter 11 requirements.
8. Garbage: Provide garbage containers near the fueling station pumps and empty to existing dumpster on site as necessary.

9. Neighborhood contact person: Fred Meyer shall appoint a contact person to address and resolve neighborhood problems such as noise issues, and post the person's name, phone number and responsibilities on the community bulletin board in the Newberg Fred Meyer store.
10. Landscape Plan: Submit a revised landscape plan, subject to review and approval by the City Planner, with the following additions or modifications:
  - Method of irrigation
  - Western landscape buffer: add evergreen trees where there are gaps without trees (at least two gaps noted). New trees must be large enough for the buffer to be effective when planted. Retain all existing shrubs and trees.
  - Southern landscape buffer: add trees to the western portion of the southern buffer up to the park to match the existing trees to the east, spaced not more than 35 feet on-center.
  - West 99W access drive: replacement plan for any trees removed by widening the drive.
  - Parking lot trees: survey the entire site and replace any damaged or missing parking lot trees (one tree noted in SE corner)
  - Add a minimum six-foot high fence sight obscuring fence west of the canopy at the edge of the paved area.
11. Lighting Plan:
  - Canopy lights must be recessed.
  - Fill in gaps in vegetation on western border noted above.
  - Add shields to the existing wall-mounted lights above the garden center.
  - Ensure that construction lights will not point west during times when movies will be shown at the drive-in theater (late March until November on Friday, Saturday and Sunday evenings at dusk).
12. Easements: If a new fire hydrant line is necessary then record a public utility easement over the hydrant and water line and provide a copy of the recorded instrument to the Planning & Building Department. The location and language for any easement must be reviewed and approved by the Planning & Building Director and Public Works Director prior to recordation.
13. Transportation improvements:
  - Post the loading area south of the store "No through traffic – delivery trucks only."
  - Remove any storage containers in parking areas. Storage containers may be kept only in the loading area on the south side of the building.
  - Applicant to pay a traffic impact fee of \$12,400.00 towards future improvements at the Springbrook/99W intersection based on this project's impact on the intersection.
  - Widen the radius of the west 99W entrance to better accommodate large vehicles, and widen the one-lane access driveway to provide separate left- and right-turn lanes at the intersection with the Fred Meyer access drive, as shown in Exhibit D. The two lane right-in only approach shall be constructed so that it is long enough to ensure that traffic going to the fueling station in the right lane is not blocked by traffic turning left to go to the store. , an all-way stop shall be added to the main aisle. . The radius of the right-in approach shall be constructed in such a way that it can accommodate large

vehicles without being damaged. Fred Meyer shall be required to obtain ODOT's approval for a design vehicle and approach design.

- ODOT will need to ensure that all work within ODOT right-of-way meets ODOT standards, and engineering plans will need to be reviewed and approved by ODOT. Prior to the issuance of a City building permit for construction, the applicant shall provide evidence that they have obtained any required permits from ODOT for all improvements required by ODOT. The ODOT and City-approved improvements must be completed before the City will approve occupancy of the gas station.

**B. THE FOLLOWING MUST BE ACCOMPLISHED PRIOR TO OCCUPANCY:**

1. On-site circulation:
  - Revise the private walkway and traffic controls north of the fueling facility as shown on the site plan.
  - Add a new private walkway on the southeast portion of the site as shown on the site plan.
  - Construct two concrete pedestrian crossing of contrasting color
  - Revise the traffic controls in front of the north entrance to the main store by adding stop signs, striping and textured concrete crossing areas.
2. Access improvements on 99W: The ODOT and City-approved improvements to the western access drive must be completed before the City will approve occupancy of the gas station.
3. Fire Department Requirements: This project is subject to compliance with all Fire Department standards relating to access and fire protection. The construction site cannot hinder fire access to the main building.
4. Design Review Conditions: Contact the Planning Division (503-537-1215) to verify that all design review conditions have been completed.
5. Site Inspection: Contact the Building Division (503-537-1240) for Building, Mechanical, and Plumbing final inspections. Contact the Fire Department (503-537-537-1260) for Fire Safety final inspections. Contact Yamhill County (503-538-7302) for electrical final inspections. Contact the Planning Division (503-537-1215) for site & landscaping final inspections.

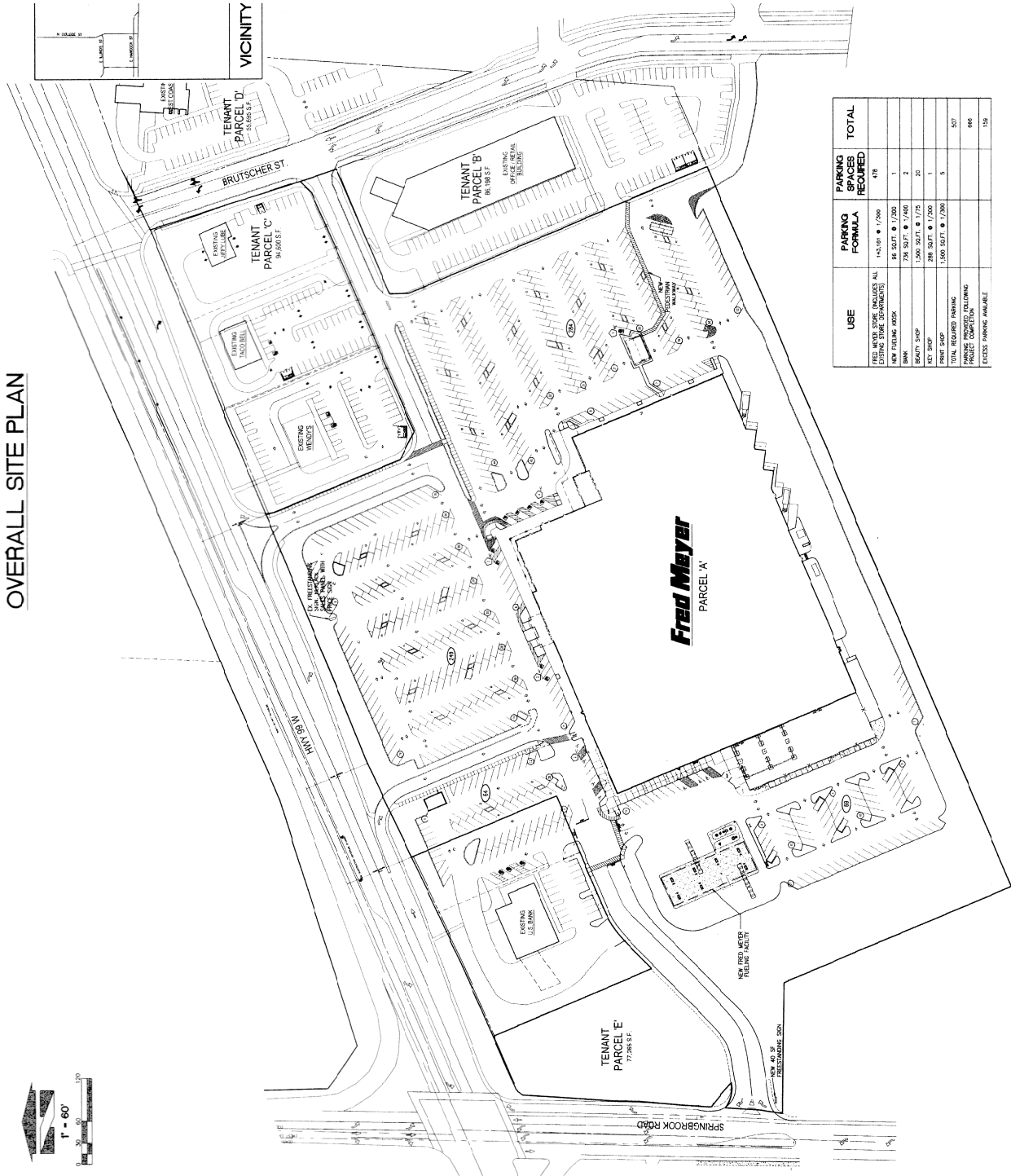
**C. DEVELOPMENT NOTES:**

1. Operating hours for the fueling facility are limited to from 7 am to 11 pm.
2. NW Natural commented that Fred Meyer will need to coordinate with NW Natural for the relocation of the existing gas line as noted on their plans.
3. The design review fee collected for this application was \$2,200.00. This fee was based on a total project cost of \$366,667.00. If the City determines that the actual project cost exceeds the original estimate, at time of construction of each of the units, there may be additional design review fees collected.

4. Systems development charges will be collected when building permits are issued. For questions regarding SDCs please refer to the City fee packet and contact the Engineering Division.
5. ODOT's access permit conditions:
  - If traffic backs up to the property line at any time, ODOT reserves the right to review approval of the right-in only approach.
  - If the crash history changes due to the weaving pattern between Springbrook and the right-in only approach, ODOT reserves the right to review approval of the right-in only approach.
  - If the eastbound traffic queue backing up from the signal at Brutscher begins to block the right-in right-out approach, ODOT reserves the right to review approval of the approach and to require changes.

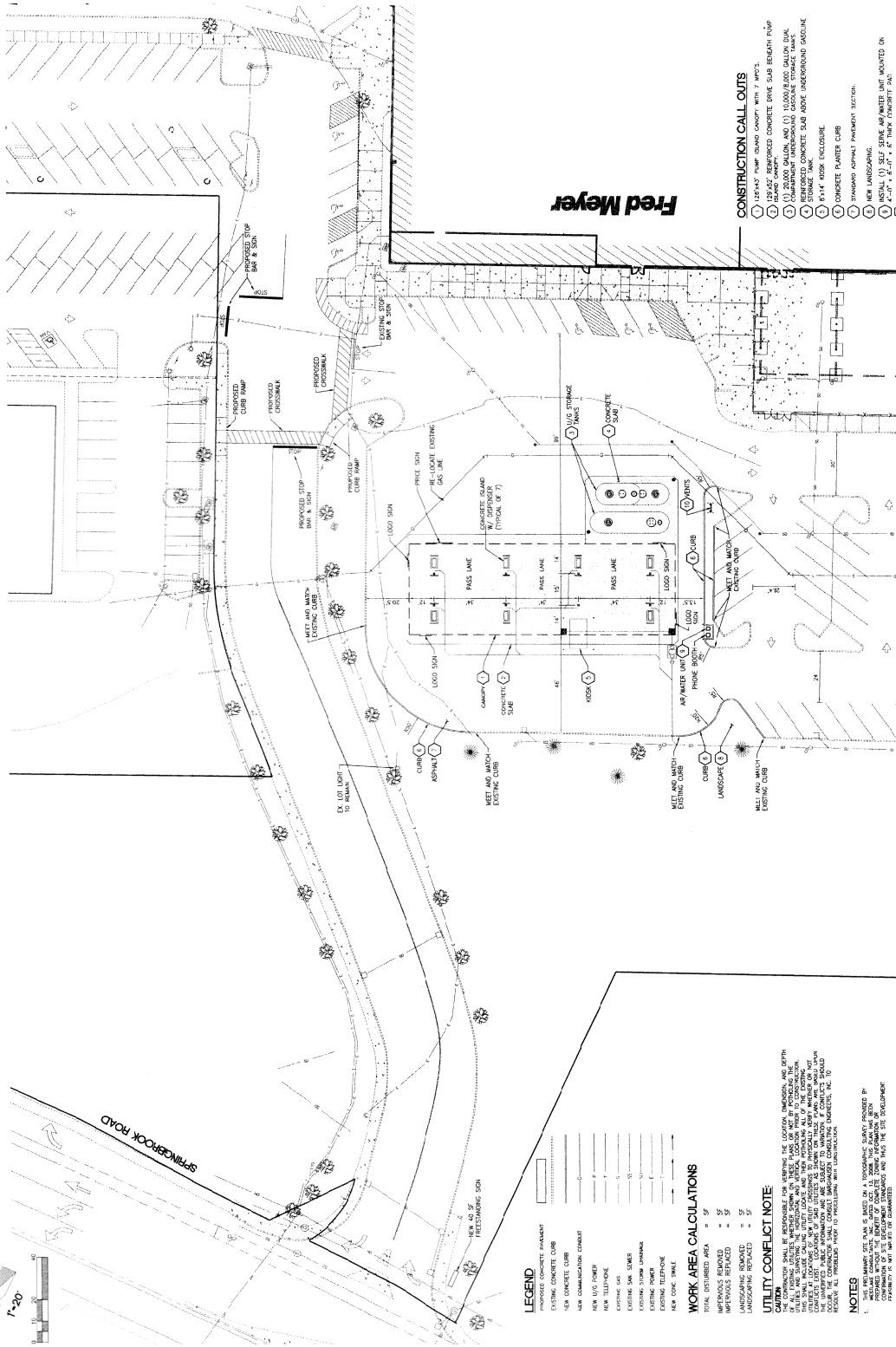
# EXHIBIT B: OVERALL SITE PLAN

## OVERALL SITE PLAN



# EXHIBIT C: SITE PLAN FOR FUEL FACILITY

## PRELIMINARY SITE AND UTILITY PLAN





**EXHIBIT D: REVISED WEST 99W ACCESS**

