



# Portland City Auditor

## Hearings Office

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### RECOMMENDATION OF THE HEARINGS OFFICER

#### I. GENERAL INFORMATION

**File No.:** LU 18-112666 CP ZC  
(Hearings Office 4180003)

**Applicant/Owner:** Tim Sotoodeh  
Southwest Hills LLC  
12802 Bonita Heights Drive  
Santa Ana, California 92705

**Applicant's Representative:** Renee France  
Radler White Parks & Alexander LLP  
111 Columbia Street, Suite 1100  
Portland, Oregon 97201

**Hearings Officer:** Joe Turner

**Bureau of Development Services (BDS) Staff Representative:** Mark Moffett

**Site Address:** 2855 SW Patton Road

**Legal Description:** BLOCK P TL 13200, GREENWAY

**Tax Account No.:** R343104990

**State ID No.:** 1S1E08AA 13200

**Quarter Section:** 3226

**Neighborhood:** Southwest Hills Residential League

**Business District:** None

**District Neighborhood Coalition:** Southwest Neighborhoods Inc.

**Zoning:** CM1 (Commercial/Mixed Use 1)<sup>1</sup>

**Case Type:** CP ZC (Comprehensive Plan and Zoning Map Amendment)

**Land Use Review:** Type III, with a public hearing before the Hearings Officer. The recommendation of the Hearings Officer will be considered at a public hearing before the Portland City Council.

**BDS Staff Recommendation to the Hearings Officer:** Approval with conditions.

**Public Hearing:** The hearing was opened at 1:31 p.m. on May 2, 2018, in the third floor hearing room, 1900 SW 4<sup>th</sup> Avenue, Portland, Oregon, and was closed at 4:02 p.m. The Hearings Officer continued the hearing to 9:00 a.m. on May 30, 2018, in the same location. The May 30, 2018 hearing opened at 9:03 a.m. and was closed at 10:59 a.m. The record was held open until 4:00 p.m. on June 7, 2018 to allow the applicant an opportunity to submit a final written argument. The record was closed to all testimony and/or written submissions at 4:01 p.m. on June 7, 2018.

**Testified at the May 2, 2018 Hearing:**

Mark Moffett  
Renee France  
Michael Kapnick  
Bill Kabeiseman  
Adam Lamotte  
Lauren Danahy  
Blythe Olson  
David Olson  
Mark Von Bergen  
John Neumann  
Christopher Kopca  
Larry Dully  
Aesha Lorenz  
Bill Failing  
Mark van der Veer  
Marcia Weiss  
Johnathan Ater

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<sup>1</sup> When the application was submitted and the first hearing conducted, the site was zoned CN2, the Neighborhood Commercial 2 base zone, and the Comprehensive Plan Map designation was Neighborhood Commercial (NC). However, the zoning and comprehensive plan designation changed on May 24, 2018, when the 2035 Comprehensive Plan took effect.

**Testified at the May 30, 2018 Hearing:**

Mark Moffett  
Patricia Neighbor  
Renee France  
Lauren Danahy  
Christopher Kopca  
Nancy Seton  
John Neumann  
Mark van der Veer  
Larry Dully  
Lisa Caballero  
Adam Lamotte  
Blythe Olson  
Carrie Richter

**Proposal:** The building at 2855 SW Patton Road has been vacant since 2015, but was developed with a grocery store from 1902 until 2015. Launched in 1902 as the Strohecker's Grocery Store, the site eventually became a Lamb's Thriftway and included a post office, pharmacy and liquor store in one location. The building on the site was completely remodeled and expanded in the mid-1980s into the current configuration, with a building along SW Patton Road and parking on the western interior of the site, abutting Portland Heights Park.

Current zoning at the site under the new Comprehensive Plan, which took effect on May 24, 2018, is CM1, the Commercial Mixed-Use 1 base zone. This zone usually allows a variety of commercial, residential and other uses at relatively low densities, including a maximum FAR of 1.5:1 (up to 2.5:1 with affordable housing) and a maximum 35'-0" height limit. The current Comprehensive Plan Map designation at the site, corresponding to the CM1 base zone, is Mixed-Use – Dispersed.

The current proposal is for a Comprehensive Plan Map and Zoning Map Amendment. However, the proposal does not seek to change the Comprehensive Plan Map or zoning designation at the site. The applicant merely requests to delete various conditions of approval that were imposed through a series of City Council actions related to a zone change from residential to commercial at the site in 1984 that changed the site from R5 zoning (single-family residential) to CN2 (commercial), eliminating the nonconforming use status of the grocery store. Through a series of three Ordinances in 1984 (#155609 and #155850) and 1998 (#160473), the City Council imposed conditions of approval tied to this earlier "zone change," including the following specific restrictions:

- Limiting use of the site to a grocery store;
- Preventing future building "outline" expansions;

- Maintaining a special 35-foot north setback, and preventing re-grading north of the building;
- Prohibiting new accessory buildings;
- Prohibiting exterior recycling or trash containers;
- Requirement for employees to park in a specific covered area under the current building;
- Requiring forward motion and on-site loading for all loading activity;
- Requirements addressing buffering per the Parks Bureau abutting Portland Heights Park;
- Requirements for exterior lighting;
- Requiring Design Commission "advice" via Planning Bureau staff prior to permitting of the existing structure;
- Limiting deliveries by "large trucks" from 4:30 to 7:30 p.m., and from 9:00 p.m. to 7:00 a.m.;
- Limiting the size and type of signage;
- Requiring a store entrance on the lower level;
- Ensuring any loudspeaker noise not be audible to any residential property;
- Re-stating that soil stability and drainage requirements of the Building Code apply;
- Requiring a specific driveway layout, at least 58 on-site parking spaces, and a left-turn lane in SW Patton at Old Orchard Road;
- Possibly requiring a right-turn lane from SW Patton Road into the parking lot;
- Re-stating that drainage (stormwater) requirements of City Code will apply;
- Re-stating that Fire Code requirements will apply;
- Requiring certain areas of the parking lot to be closed when the store is closed;
- Limiting the height of the building to no more than 17 feet above the grade of SW Patton Road, except for skylights;
- Limiting rooftop mechanical equipment to specific types, sizes and locations, and with specific screening requirements;
- Requiring window screening inside the store to prevent "light shining onto the neighbors and reduce visibility into the store"; and
- Logistical and timing requirements for the 1980s building permit process.

With this application, the applicant is requesting removal of the various site-specific and use-specific conditions of approval noted above in their entirety. Because the conditions of approval were imposed as part of a City Council process tied to a prior Comprehensive Plan and Zoning Map Amendment in the 1980s, the same process must be followed to remove the conditions. Therefore, the applicant has requested a Comprehensive Plan and Zoning Map Amendment to delete the prior conditions above, but without any changes to the existing Zone or Comprehensive Plan Map designations.

As proposed, future development would be allowed if it met the use regulations and development standards of the CM1 base zone at the time of permit submittal. However, the applicant has proposed a trip cap that would limit future development to a trip generation level that is equal to or less than what would be generated by a grocery store within the existing building on the site. Specifically, the proposed trip cap would limit the trip generation of development on the site to a maximum of 2,168 net new daily trips, 73 net new weekday AM peak hour trips, or 200 net new PM peak hour trips.

The applicant provided a detailed use table with units of measurement and trip generation rates for a range of potential uses at the site (Exhibits A.4 and H-26). The trip cap equivalency table assigns a "trip rate" per various units of measurement for future development at the site, either by the number of dwelling units, fields, students, or square feet. In summary, future development would be evaluated based on the units of measurement and "trip rates," determining whether any future program would be within the maximum capped allotment (2,168 net new daily trips, 73 net new weekday AM peak hour trips, or 200 net new PM peak hour trips).

**Relevant Approval Criteria:** In order to be approved, this proposal must comply with the approval criteria of Title 33, Portland Zoning Code. The applicable approval criteria are:

- **Portland City Code (PCC) 33.810.050.A.1-4, Comprehensive Plan Map Amendment Approval Criteria;**
- **PCC 33.855.050.A-D, Zoning Map Amendment Approval Criteria;**
- *(by reference at PCC 33.810.050.A.1) Comprehensive Plan Policies; and*
- *(by reference at PCC 33.810.050.A.2) Statewide Land Use Planning Goals.*

## **II. ANALYSIS**

**Site and Vicinity:** The site is a roughly triangular parcel of approximately 1.14 acres (49,663 square feet), developed with a two-story brick commercial building and adjacent surface parking lot and loading area. The building is generally oriented to the east central portion of the lot, immediately abutting the SW Patton Road lot line except for a narrow landscaped strip between the building and the sidewalk. A surface parking lot is located west of the building, with driveway access to SW Patton Road. The parking lot has 35 regular parking stalls, one ADA/handicapped stall, and two dedicated loading stalls with loading dock. Additional parking is provided in a basement beneath the building.

The site topography generally slopes downhill from the street frontage in Patton Road to the north and northwest. The ground elevation at the surface parking lot descends downhill to the north from the main floor level at the public sidewalk in SW Patton Road, and the building appears as one-story from the street, but two stories from the lower edge of the parking area (where the loading bays are located). There is approximately 30 feet of landscaped buffering

and trees between the north edge of the building and parking lot and the adjacent residential lots downhill to the north. A narrow landscape strip with limited groundcover and some trees is located along the west edge of the site at the edge of the surface parking.

The surrounding area is hilly and features sloping topography in multiple directions, but generally going downhill to the north. Abutting lots to the north and lots across the street to the south and east of the site are exclusively single-family in character. The abutting lots to the north, along SW Perlander Street, are located well below the site, with clear visibility in places through the vegetation towards the back side of the two-story brick building on the subject site. Lots across the street to the east and south sit generally well above the street grade of the subject site, looking down across and into the property. The surrounding area includes large, well-maintained homes on a diversity of lot sizes and shapes, and the area generally has generous trees and perimeter landscaping or fencing screening on most lots.

Portland Heights Park abuts the entire west property line of the site, with pedestrian access from the sidewalk in SW Patton Road. There is an upper portion of the park near the street with a play structure, restroom, and tennis courts, as well as a lower portion on the north edge with a ball field and additional play equipment. Long concrete stairways provide access to the lower part of the park from the upper portion, as well as from near the middle of the surface parking lot along the west edge of the subject site. There is limited vehicle parking in a surface parking lot near the southern end of Portland Heights Park.

Southwest Patton Road is designated in the City of Portland Transportation System Plan (TSP) as a Community Transit Street, Neighborhood Collector Traffic Street, City Walkway, and City Bikeway. Southwest Homar Avenue, which has a tiny section of street frontage at the extreme northeast corner of the site, is a Local Service Street for all modes in the City of Portland TSP.

**Zoning:** The CM1 or Commercial Mixed-Use 1 base zone is intended for sites in smaller mixed use nodes within lower density residential areas, as well as on neighborhood corridors, and at the edges of neighborhood centers, town centers, and regional centers. This zone allows a mix of commercial and residential uses. The regulations limit the size of commercial structures in some locations to minimize impacts on adjacent residential uses. Buildings in this zone are generally expected to be up to three stories. Development is intended to be pedestrian-oriented and generally compatible with the scale of surrounding residentially zoned areas.

**Land Use History:** City records indicate that prior land use reviews include the following cases:

- VZ 298-63 - Denied Variance from 1963 to enlarge the off-street parking area for a nonconforming use in a residential zone;
- 7334 PA – Approved Comprehensive Plan and Zoning Map Amendment from R5 Residential Single-Family to C3 Commercial. Original Ordinance for approval was

#155609, but the decision was appealed, resulting in an amended decision and amended Ordinance #155850;

- LA 1-89/7770 PA – An Amendment to the decision in 7334 PA was requested and approved under this file, including amended conditions of approval per Ordinance #160473;
- DZ 36-84 – Approved Design Review for the remodel and addition to Strohecker's grocery store in 1984; and
- VZ 113-84 – Approved Variances for setback, landscaping and screening requirements related to the 1984/1985 store remodel.

**Agency Review:** A "Request for Response" was mailed March 2, 2018. The following bureaus have responded:

- The *Bureau of Environmental Services* (BES) has reviewed the proposal and offered technical details in response, as well as a recommended condition of approval. There are public combination sewers serving the site in SW Patton Road, and there is a 16-inch sanitary-only sewer that runs approximately north-south under the existing structure (BES as-built #21100) that was constructed in 1915. Agreements to allow private development atop the sewer easement were approved via Ordinance in 1954 (#101503) and 1985 (#157668). These approvals did not allow future development over the sewer without additional BES review and approval. A new condition of approval is included ensuring that BES concerns must be addressed prior to issuance of any new building permits on the site, up to and including modification of the project, so that it remains outside the easement areas or re-routing the public sewer in a new easement so that the existing easement and alignments can be abandoned. Exhibit E.1 contains BES staff contact and additional information;
- The *Development Review Section of the Portland Bureau of Transportation* (PBOT) provided an original response with the first staff report on April 20, 2018 (Exhibit E.2). PBOT staff provided an addendum to their original response with revised language for the trip cap condition of approval. (Exhibit H-28);
- The *Water Bureau* has reviewed the proposal and responded without objection or concern, indicating that public services for water supply are adequate (Exhibit E.3);
- The *Fire Bureau* has reviewed the proposal and responded without objection or concern, indicating that public services for fire protection are adequate (Exhibit E.4);
- The *Police Bureau* has reviewed the proposal and responded without objection, noting that public services for police protection are adequate to continue serving the site (Exhibit E.5);

- The *Site Development Section of BDS* has reviewed the proposal and responded with no concerns, because no new structures or site grading is proposed at this time (Exhibit E.6);
- The *Urban Forestry Division of Portland Parks and Recreation* has reviewed the proposal and responded without objection or concern, as it appears the proposed changes do not impact any street or park/City trees at this time (Exhibit E.7);
- The *Life Safety Section of BDS* has reviewed the proposal and offered standard comments regarding permitting and building codes, but no objections or concerns with the requested land use review (Exhibit E.8); and
- The *Parks Bureau* has reviewed the proposal and requests a condition of approval that the applicant be required to maintain public access to and from the stairway in Portland Heights Park that connects to the western property edge of the subject site at 2855 SW Patton Road. Parks also requests to review any future applications to ensure proposed development allows for safe and inclusive accessibility to this pedestrian connection. Exhibit E.9 contains staff contact and additional information.

**Neighborhood Review:** A Notice of Public Hearing for this case was mailed on April 11, 2018. Prior to issuance of the Staff Report, a total of 12 written responses were received from nine authors, including two responses each from two individuals, as well as two responses from the Southwest Hills Residential League, the officially-recognized City of Portland neighborhood association. Additional written testimony was submitted at the hearings.

#### **GENERAL FINDINGS AND ANALYSIS:**

The proposal does not seek to change the Comprehensive Plan Map designation at the site, which is Commercial/Mixed Use 1. Instead, the applicant seeks to remove and amend conditions of approval that were imposed through a series of City Council actions related to a zone change from residential to commercial at the site in 1984.

A grocery store operated on the site from 1902 to 2016, and was a nonconforming use from 1902 until the zone change in 1984. Conditions of approval impacting the site were imposed via two City Council ordinances in 1984 (#155609 and #155850). In 1988, two of the original conditions of approval regarding building height and mechanical equipment were amended. Since 2016, the applicant has attempted to market the site to a variety of grocery store firms, but has been unable to attract a grocery store user to the site, as documented in a Broker Letter provided by the applicant that discusses the recruitment attempts and which companies were contacted (Exhibits A.1, H-29, and H-35). As a result, the applicant is requesting removal of the grocery store use condition, as well as other conditions related to building size and grocery store operations identified below.



Specifically, the applicant requests removal of the following conditions:

- Ordinance No. 155609 Conditions c.1.a, c.1.b, c.1.c, c.1.d, c.1.e, c.1.f, c.1.g, c.1.h, c.1.k, c.1[sic], c.2.a, c.2.b, c.2.c, c.2.d, c.2.e, c.3.a, c.3.b, c.3.c, c.3.d, c.4.a, c.4.b, c.5, c.6, c.7, c.8.
- Ordinance No. 160473: Item b (amending Ordinance No. 155609 Condition c.1.i), Item c (amending Ordinance No. 155609 Condition c.1.j), Item d.1 through d.10, and Section 2.

### **Current Zoning Conditions**

The narrative below re-states the language of each condition of approval noted above, and includes a brief discussion of the context of the condition, as well as the Hearings Officer's findings whether it should still be applied.

#### **Ordinance No 155609, Section c**

*1.a) Use of the site shall be restricted to a grocery store.*

As a general rule, Comprehensive Plan Map Amendments are only approved if the range of allowed uses and intensity of development allowed by the proposed base zone are able to meet the approval criteria. The 1984 application that imposed the original conditions of approval, including this grocery store-only condition, was one of the first quasi-judicial zone changes after adoption of Portland's first Comprehensive Plan in 1980. In 1984 there was strong neighborhood opposition to the requested zone change from residential to commercial at the site; the neighbors sought strict controls on the proposed building expansion, but the applicant agreed to the grocery-only condition of approval because it was in line with their business plan at the time for the site. In this case, as detailed in the Broker Letter (Exhibit A.1, H-29, and H-35), the applicant has searched extensively for a grocery use for the site; however, it appears that given current market conditions and grocery store needs, a grocery only use for the existing building is not viable.

The Hearings Officer finds, based on the expert testimony from the applicant's real estate brokers, that a grocery store is no longer viable as the exclusive use on the site, due to changes in the grocery market and shopping behaviors. As detailed in Mr. Kapnick's testimony and Exhibits A.1, H-29, and H-35, brokers at Marcus & Millichap engaged in comprehensive marketing efforts to locate a grocer for the site. They contacted 13 separate grocers and multiple grocery co-ops. They also broadly marketed the site to other brokers and developers with grocer contacts. Despite these extensive and broad marketing efforts, not a single grocer was interested in developing a grocery use on the site. Nearly unanimously it appears that identified grocers reached the conclusion that there was not sufficient density to justify even a small urban grocery store and that a grocery on the site would not be expected to pull customers from other submarkets or neighborhoods. As evidenced by these marketing efforts, the grocery industry has changed to such an extent that a grocery only use on the site is no longer a viable use, and the existing condition that strictly restricts uses on the site to a grocery store prevents the site from redeveloping with any other uses allowed in the CM1 zone. The

site has been vacant for the past two years. According to neighbors, the prior grocery ceased operations 23 months before their lease expired, requiring the tenant to continue making \$30,000 monthly lease payments even though the store on the site ceased operation. (See Exhibits H-5 and H-34).

Neighboring residents and the Neighborhood Association argued that the site can support a grocery store, especially a smaller scale operation. They argued that a two-year vacancy is insufficient time to conclude that the site can no longer support a grocery store. However, they failed to provide any support for their assertions. The Hearings Officer finds that the expert testimony by the applicant's real estate brokers, which is based on discussions with numerous grocery operators of various sizes and serving a variety of markets is more persuasive as to the feasibility of a grocery store on the site than neighbors' unsupported opinions. Neighbors also noted that the applicant did not offer any information about potential lease terms or other financial considerations provided to the potential grocery tenants. However, based on Mr. Kapnick's testimony, discussions with potential grocery tenants never reached that point. After considering the location of the site, all of the potential tenants outright refused the applicant's offer, without any consideration of lease prices or other financial issues. The applicant offered the site to Trader Joe's rent-free for one year to allow the company to assess the viability of a store in this location, but they refused. (Kapnick testimony). Therefore, the Hearings Officer finds that a grocery exclusive use is no longer viable on this site and condition 1.a limiting use of the site to a grocery store only should be removed.

*1.b) Neither the site area nor the building outline shall again be expanded over what is now approved.*

The existing building is designed for a grocery store use. As discussed above, a grocery only use is no longer viable on the site. Development standards of the CM1 zone are designed and intended to limit the scale and intensity of development to a level appropriate for smaller-scale, established residential neighborhoods, with lower building heights and building coverage maximums than all the other commercial zones.

This is evidenced in the characteristics statement for the CM1 base zone at PCC 33.130.030.B, which reads:

**"Neighborhood Commercial 2 zone.** The Neighborhood Commercial 2 (CN2) zone is intended for small commercial sites and areas in or near less dense or developing residential neighborhoods. The emphasis of the zone is on uses which will provide services for the nearby residential areas, and on other uses which are small scale and have little impact. Uses are limited in intensity to promote their local orientation and to limit adverse impacts on nearby residential areas. Development is expected to be predominantly auto accommodating, except where the site is adjacent to a transit street or in a

Pedestrian District. The development standards reflect that the site will generally be surrounded by more spread out residential development.”

The development standards that apply to this property include minimum setbacks from abutting residential or open space zones (north and west site edges), including landscape buffers that are dictated by the height of a building. Specifically, PCC Table 130-2 requires a 10-foot building setback when abutting an R zone lot. A buffer landscaped to the L3 High Screen standard is required within this setback. The CM1 zone development standards also apply a maximum building coverage of 75 percent and a 35-foot maximum height limit.

Under the CM1 zone, the building coverage area and height are limited with sufficient setbacks and buffering to protect surrounding residential uses. As a result, the condition limiting the building footprint is both overly restrictive and unnecessary and should be removed.

- 1.c) The building shall maintain a 35-foot setback from the northerly property line and the area beyond the building shall not be regraded.*

The purpose of this condition is redundant given the building footprint restrictions of Condition 1.b. However, for the reasons discussed under condition 1.b above, this additional setback is not necessary. As noted, development standards for the CM1 zone require a 10-foot landscaped setback from all lot lines abutting residentially zoned properties, such as the ones north of the site. Additionally, as discussed below, the CM1 zone requires step-down heights for buildings within 25 feet of a lot line abutting residentially zoned land, to further reduce the impacts on surrounding residentially zoned properties. As a practical matter, the northernmost 30 feet of the site is a steeply-sloping landscaped area between the northern edge of the existing structure and parking lot and the adjacent homes to the north, facing SW Periander Street, which would be difficult to develop in any event. This area is also the only location where the site directly abuts residential lots, as the site is buffered on the west by Portland Heights Park, and on the east and south by SW Patton Road. Consequently, this setback condition is both overly restrictive and unnecessary and should be removed.

- 1.d) No accessory buildings may be located on the site. The existing accessory buildings shall all be removed prior to occupancy of the addition.*

Once again, the purpose of this condition is not entirely clear. Nonetheless, the allowance, location, and size of any accessory buildings should be dictated by the base zone development standards, which limit building coverage and size. This condition would prevent the development of even a small covered trash enclosure, a covered bike shelter, or other small outbuilding with no significant impact on either abutting homes or the neighborhood. An outright prohibition on all future accessory structures is both overly restrictive and unnecessary. Therefore, this condition should be removed.

- 1.e) No recycling or refuse containers shall be permanently located outside of the building.*

The current Zoning Code includes specific standards for screening garbage and recycling collection areas. Specifically, Portland City Code (PCC) PCC 33.130.235 requires that all exterior garbage cans, garbage collection areas and recycling collection areas in the CM1 zone must be screened from the street and any adjacent properties. Other developments in commercial zones abutting residential zones throughout the City are allowed to develop outdoor trash and recycling enclosures, subject to existing regulations requiring a cover and containment of any potential spills with a sanitary sewer drain under the area, in addition to the screening noted above. Therefore, this condition related to recycling and refuse containers is both overly restrictive and unnecessary and should be removed.

- 1.f) *The owners shall require all employees who drive to this site to park in the covered area under the new addition.*

This condition presumes the existence of a covered parking area. Because future development of the site may not include a covered parking area, this condition is no longer appropriate or applicable. PCC 33.266.130.G requires screening and buffering of parking areas. Therefore, this condition should be removed.

- 1.g) *All delivery vehicles shall enter and exit the site in a forward manner. All loading and unloading must be done on-site.*

Future development will be subject to the PCC loading standards. PCC 33.266.310.F requires that loading facilities be designed to provide for vehicle entrance and exit in a forward motion, which would apply to any future development that has a loading stall. Loading was optional for the Strohecker's store site because the square footage was under 20,000 square feet, but even non-required loading stalls are subject to the forward motion standard. Redevelopment of the site will trigger a loading stall if it is a mixed-use project with at least 40 dwelling units, or if non-residential space is provided in excess of 20,000 square feet (PCC 33.266.310). Current loading standards of the base zone address this condition already, rendering it redundant to existing regulations. Therefore, this condition should be removed.

- 1.h) *The property owners shall provide additional planting for buffering on City park property to the west, as required by the Park Bureau.*

Future site development must comply with setback and landscaping standards designed to appropriately limit the impacts of development on surrounding properties, including open space zones. Furthermore, the condition as written is too vague to be enforceable. The location and level of landscaping is not established in the condition. In addition, this condition was presumably met prior to occupancy approval of the existing building at it is now moot. Therefore, this condition should be removed.

- 1.i) *(amended by Ordinance No. 160473 and addressed below)*
- 1.j) *(amended by Ordinance No. 160473 and addressed below)*
- 1.k) *Exterior lighting shall be as low as feasible and shall not shine onto neighboring residential property.*

The condition, as written, is vague because there is no definition of "feasible." The lighting levels that were feasible for the existing grocery may not be appropriate for future use of the site. Additionally, any future development would be subject to code requirements limiting light impacts on neighboring properties. Specifically, PCC 33.262.080 provides the City's objective glare standard and limits the amount of direct or indirect glare on other properties to no more than 0.5-foot candles of light. Existing glare standards in the Zoning Code address this issue, making this condition redundant and unnecessary. This condition should be removed.

- 1) *[sic] Final plans for the exterior design of the building and for landscaping on the entire site, along with plans for signage and exterior lighting shall be submitted to the Planning Bureau for their review and approval prior to the issuance of Building Permits. To assist the Bureau in determining whether the proposed building, landscaping, signage and lighting are appropriate for this location and adequately protect surrounding residential and park property, the final plans shall be submitted to the Design Commission for their advice prior to Planning Bureau approval. The Commission's review should take place at a meeting of the Commission.*

This condition is problematic for a number of reasons. First, the condition seems to impose something akin to a design review process. However, the site is not located in a Design overlay zone. Second, the condition appears to establish approval standards for future development that are vague and subjective. Specifically, it calls for the Planning Bureau to determine if the proposed building and elements of the building are "appropriate for this location" and "adequately protect" surrounding properties. What is appropriate and adequately protects surrounding properties should be guided by the clear and objective development standards in the PCC, not subject to discretionary interpretation of undefined terms at the time of building permit issuance. Third, the condition calls for "advice" from the Design Commission. However, the condition does not establish standards or guidelines for the Design Commission's review, nor does it establish the legal impact of the advice; it is unclear whether the advice is intended to be binding on the applicant and Planning Bureau or merely a recommendation. Fourth, the condition lacks any procedural guidance for this subsequent review process or Design Commission meeting and subsequent advice. Finally, this condition was written in the specific context of the 1984 proposed addition and was technically met with regards to that work via case file DZ 36-84. It is unclear from the language of this condition whether it applies to all future building and landscaping on the site, or was only intended only as a one-time process for the 1984 project, creating uncertainty and confusion for both staff and the applicant. For these collective reasons, this condition is ambiguous, no longer appropriate and should be removed.

- 2.a) There shall be no deliveries to the site by large trucks from 4:30 p.m. to 7:30 p.m. and from 9:00 p.m. to 7:00 a.m.*

This condition appears to be based on the type of delivery volume expected at a grocery store use, and was generated more as a result of neighborhood livability concerns for the immediately surrounding homes than overall transportation system impacts. Removal of this condition is consistent with the removal of the grocery store use condition.

- 2.b) Signage shall be limited to one wall sign no greater than 100 square feet. Changeable readerboards are not permitted. On-site directional signs shall be no greater than 4 square feet each.*

Signage of any future development at the site would need to comply with the City's current sign code at PCC Title 32. Current sign code regulations limit sign size to 50 square feet, so this condition is less restrictive than, and therefore conflicting with, the more modest sign sizes allowed under the current Sign Code. Restrictions on "changeable readerboards" included in this condition are vague and duplicative of Sign Code regulations, which strictly limit changing sign images of all kinds. Directional signs are allowed to be six square feet in current code, which is larger than this condition allows, but the size difference is not significant given directional signs are limited to directing traffic (e.g. enter-only, right-turn only on exit, etc.) and may not even be necessary. In addition, this condition contemplates a single use at the site. Therefore, it is overly restrictive if the single grocery use restriction is removed. This condition creates conflicts and confusion with existing Sign Code regulations and should be removed.

- 2.c) An entrance to the store shall be provided on the lower level.*

This condition may not be applicable to future development on the site, as it assumes a multi-level structure where public pedestrian access is available from multiple levels, whereas a redevelopment project may only have public entries at the sidewalk level in SW Patton Road. The term "lower level" itself may also create confusion if the project has multiple floor plate levels in the basement, depending on the naming conventions used for the future project floor plans. This condition is specific to a singular site and building design and should be removed as overly restrictive.

- 2.d) Noise from the store loudspeakers shall not be audible to any residential property.*

This condition assumes that there will be a store loudspeaker. The condition would likely not be applicable to any future development of the site, as loudspeakers are rarely used in most modern development projects. Furthermore, any future use of the site would be subject to the noise control requirements of PCC Title 18, and noise is generally regulated in the context of specific violations and complaints, with investigation and fines from the Noise Control Officer

as a consequence for violations. It's also unclear, given the language, if this condition would even apply to a commercial use other than a "store," rendering it useless in context of anything besides a "store." Given existing regulations in City Code, and the unclear language, this condition is both redundant and confusing, and should be removed.

- 2.e) All requirements of Chapter 70 of the Building Code relating to soil stability and drainage shall be met.*

Chapter 70 of the Building Code is no longer a meaningful reference. More importantly, any future development of the site must comply with current code requirements, including the Oregon Structural Specialty Code and the current City of Portland Stormwater Management Manual regulations. In addition, a geotechnical report will be required for any future development on the site. Therefore, this specific condition is no longer relevant, as it refers to an outdated code reference and it is redundant, given current regulations. This condition should be removed.

- 3.a) One 40-foot-wide entrance/exit shall be located opposite the intersection of S.W. Old Orchard Road, rather than separate entrances and exit points.*

Any future development of the site will be required to comply with current access standards in Title 17. A single entrance and exit at the described location may be the best solution for any remodel or reconfiguration of development at the site, as it accesses the deepest portion of the site and could re-use the existing curb cut location. However, that should be dictated by the current code requirements (particularly Title 17, Public Improvements) in light of the proposed development project layout, program, and site configuration proposed at the time a specific development is proposed. Therefore, this condition should be removed.

- 3.b) At least 58 parking spaces shall be provided on-site.*

This minimum parking requirement is based upon the grocery use and building size that were proposed at the time the conditions were imposed. The minimum and maximum parking standards for any future development without this prior Ordinance condition would and should be dictated instead by the use and size of proposed future development pursuant to the PCC 33.266 standards related to parking spaces. Given the lack of frequent service transit on SW Patton Road next to the site, minimum parking would be required for retail, commercial, or office uses depending on the building size, and a minimum of one parking space would be required for each dwelling unit. Depending on the size and scope of any building remodel, expansion, or redevelopment on the site, the requirement for at least 58 parking spaces might be excessive or inadequate for what is proposed. This condition potentially conflicts with parking regulations for the site, and was based on the specific grocery store expansion and use as proposed in 1984. Therefore, this condition should be removed.

- 3.c) *A left-turn lane with 30 feet storage southbound and 60 feet storage northbound be installed on S.W. Patton Road at Old Orchard Road by the applicants with the design to be approved by the City Engineer and the City Traffic Engineer.*

There is an existing middle turn lane along Patton Road at the intersection with Old Orchard Road. Therefore, it appears that this condition was satisfied. The center turn lane has "storage" for turning cars within and on both sides of the Old Orchard Road intersection. Because the center turn lane exists near the site as requested, this condition from the 1980's is no longer necessary, and unnecessarily hampers future modifications to the intersection that might be desired by the City of Portland. Therefore, this condition should be removed.

- 3.d) *If room is available and design is acceptable to the City Engineer and the City Traffic Engineer, a right-turn lane shall be provided for the traffic heading south on SW Patton Road to turn into the parking lot.*

There does not appear to be a right-turn lane at the parking lot entrance for traffic heading south on SW Patton Road; presumably there was not sufficient room to safely create a right-turn lane. Because the turn lane in question was evaluated and considered as required by this condition during the permitting process for the building expansion in the 1980's, but no turn lane was either constructed or required, this condition has been satisfied. Leaving this condition in place creates confusion as to whether or not it has been satisfied, and could unnecessarily hamstring future development or redevelopment at the site, given the lack of temporal references in the condition language. In any case, the need for street improvements should be dictated by PCC Title 17, and not site-specific zoning conditions. Therefore, this condition should be removed.

- 4.a) *A site drainage plan must be submitted prior to the issuance of Building Permits, with the plan to be approved by the Bureau of Sanitary Engineering and the Bureau of Buildings, Plumbing Division.*

Building permits for the 1984 expansion and remodel for which this condition was intended were issued and received all final inspections. Regardless of this condition, sanitary services, stormwater management, seismic considerations, soil stability, and all other issues regarding site drainage are addressed during the permitting process. This condition was satisfied in 1984 in the context of that application, and the condition language itself is redundant of other City of Portland regulatory standards that will apply regardless of this condition. Neither of the referenced bureaus currently exist, nor is there a Plumbing Division, adding to the confusion in the language. This condition is unnecessary, confusing and inaccurate and should be removed.

- 4.b) *The issue of the sewer location on-site and the accompanying issues of maintenance, risk, damage, etc., (as discussed in Exhibit 6e) shall be resolved to the satisfaction of the Bureau of Sanitary Engineering prior to the issuance of any Building Permits for this site.*



Building permits for the 1984 expansion and remodel were issued, with review at that time by the Bureau of Sanitary Engineering. This bureau name no longer exists, and BES now does the same functions. Generally speaking, BES has authority to require sewer easements and restrictions to development atop public sewers running through private property at any time regardless of conditions of approval in a land use review. However, there is a significant public sewer line running north-south through the site, and BES has requested a condition of approval similar to the above but with updated language. This condition in the Ordinance should be deleted as satisfied and out-of-date, but a replacement condition for advisory purposes has been requested by BES. This is discussed later in this Recommendation.

- 5) *The applicants shall meet all requirements of the Fire Marshall relating to hydrant location and other fire protection measures.*

This condition was applied in the context of a 1984 remodel and expansion project for which building permits were not yet issued. Those permits were issued, with review by the Fire Marshall at that time, and therefore this condition is satisfied. However, the lack of any timeframe or temporal reference leaves the language of this condition open to interpretation and possible legal challenges during permitting. This condition is also redundant and unnecessary given existing City of Portland Fire Codes which apply to the site both during the building permit review process, as well as over time based on ongoing operations at the site. The Fire Marshall can question and investigate at any time. Because this condition was already met in the context of the 1984 remodel, and because the language is redundant and unnecessary in practice, this condition should be removed.

- 6) *The entrance to the under-building parking area shall be blocked to individuals and vehicles when the store is closed.*

There is a roll-up door at the northernmost edge of the parking area next to the loading dock and loading bay stalls with additional parking behind the door. Therefore, this condition appears to generally be met. However, this condition could create conflicts in the future if the building is remodeled for a use other than a store, in which case the condition would not apply. This condition is very specific to the 1984 proposal and building, parking layout, and market use at the time. The condition hampers the flexibility of future use of the property, and should be removed.

- 7) *Nothing contained in this approval or these conditions authorizes Variances to any provisions*

Variances ceased to exist in the regulatory program of the Portland Zoning Code in 1991, and the comparable process is now the Adjustment Review in PCC 33.805. There is no regulatory need or legal nexus in the Comprehensive Plan or Zoning Map Amendment process addressing

the likelihood of approvability for separate future land use reviews at the site. As was the case in 1984 and remains so today, future land use applications, including requests for adjustments, will only be approved if they can demonstrate that the relevant approval criteria have been satisfied. This condition is unnecessary, uses outdated language, and should be removed.

Ordinance No 160473

Section 1

- b. *Ordinance No. 155609, Section 1, Condition 1(i) is hereby amended to read as follows:*

- 1.i) *The maximum height of the building shall not exceed the roof profile proposed in Case File 7334-PA and may not exceed 17 feet above the grade of S.W. Patton Road pavement, except for skylights*

The condition places a height limitation on the existing market building based upon specific remodeling plans presented to the Hearings Officer and City Council in 1984. The applicant at the time was willing to hamper future development activities at the site via conditions of approval in order to accomplish the immediate short-term objectives of the store remodel and expansion, with no consideration of a changed program or site development in the future. The current height limit for the CM1 zone is 35 feet. Removal of this condition would allow an additional one or perhaps two stories above the sidewalk grade beyond what is built at the site today. Most of the nearby homes present at least two stories above the grade level facing the street, and sometimes three or more floors are exposed on the downhill side. The current zoning regulations require additional setbacks and landscape buffers where the site abuts Open Space and residential zoning to the north and west. This condition is overly restrictive in context with the surrounding area and other commercially-zoned sites in the City, was accepted by a prior land owner in the context of a specific development proposal, and should be removed.

- c. *Ordinance No. 155609, Section 1, Condition 1(i) is hereby amended to read as follows:*

- 1.j) *Mechanical equipment located on the roof shall be limited to the unit venting the deli kitchen, the meat shop, and the office, labeled as "A", "B", and "E" on Exhibit 5 (site plan).*

As with so many other conditions applied to this zone change site in the 1980s, this condition addresses a very specific remodeling and expansion proposal for a now-closed grocery store at the site. It is highly unlikely that future remodeling, expansion, or redevelopment projects at the site would be able to utilize the exact mechanical units on the rooftop as proposed and installed over 30 years ago. Technological changes in the equipment, as well as the varying nature of possible retail, office, or residential uses that could be developed at the site under the base zoning result in a situation where the mechanical needs will change over time. This condition, like many others, was not objected to by the applicant in 1984 because the only

objective was a specific short-term building expansion and remodel project. This condition is unnecessarily restrictive and out-of-date, even assuming the uses at the site are restricted forever to a grocery store only, and should be removed. The current CM1 zone regulates both the height and screening of rooftop equipment, with the purpose of limiting all direct views from adjacent residential properties. Therefore, this condition should be removed.

- d. *Ordinance No. 155609, Section 1 is hereby amended to add the following conditions:*
- 1) *Within 30 days of this approval, the applicant shall comply with all conditions of 7334-PA, DZ 36-84, and VZ 113-84, unless specifically amended by this decision.*

The 30 days originally referenced in this condition ended over 30 years ago, after building permits for the proposed building expansion and remodel were issued in 1985. This condition is unnecessary and should be deleted.

- 2) *The applicant shall remove the mechanical penthouse located in the center of the roof (Shown on Exhibit 5 as "C").*
- 3) *The applicant shall remove the larger mechanical unit which vents the parking area (shown on Exhibit 5 as "D").*
- 4) *The applicant shall screen the mechanical unit which vents the kitchen (shown on Exhibit 5 as "A"). Such screening shall be approved by the Bureau of Planning prior to installation. The applicant shall obtain a Building Permit for said screening.*
- 5) *The applicant shall screen the mechanical unit which vents the office (shown on Exhibit 5 as "E"). Such screening shall be approved by the Bureau of Planning prior to installation. The applicant shall obtain a Building Permit for said screening.*
- 6) *The applicant shall remove the smoker vent shown on Exhibit 5 as "F".*

Conditions d.2 through d.6 are related to vents and mechanical equipment that are specific to the existing market building expansion and remodel project presented to the Hearings Officer and City Council in 1984. These conditions, as do several others imposed at the time, go well beyond the level of detail typically applied to quasi-judicial zone change applications, and were applied in the context of an applicant who sought approval of a specific short-term building expansion and remodel project. No consideration was given before City Council as to potential impacts on future expansions or redevelopment at the site, as this issue was not raised as an objection by the applicant, property owner, or neighbors. The screening standards of the current code apply to all mechanical equipment on the ground, and to any rooftop equipment within 50 feet of a residential zone, so rooftop equipment on the building is likely to be fully screened from adjacent homes regardless of this condition, rendering it redundant to other City requirements. In addition, these conditions were already technically met with the issuance of building and mechanical permits for the remodeling project in 1985, almost 33 years ago. These conditions are already met, and future mechanical equipment will be limited in height and required to be screened from adjacent housing. Therefore, this condition should be removed.

- 7) *The applicant shall screen the windows from the inside to prevent light shining onto the neighbors and reduce visibility into the store.*

This condition was met with the 1980s building remodel, and according to one neighborhood resident, required the store owners to replace all the clear glass already purchased for the store remodel with smoked glass, as found on the store windows today (Exhibit F.4). However, given the lack of clear temporal references in the condition language, it could be construed that this condition of approval applies indefinitely to all future building projects for a "store" at the site. This condition was also applied in the context of an applicant who was primarily interested in achieving a specific short-term building expansion and remodel project for a now-closed grocery store at the site. Impacts of glare on neighboring properties is properly regulated by the current offsite impact standards in Chapter PCC 33.262, which prohibits unreasonable glare in excess of 0.5-foot candles of light trespassing from the subject site onto abutting homes. This condition was already met, but has confusing language with no timeframe and was accepted by the prior applicant to achieve their short-term expansion plans in 1984, without consideration given to future uses and development, as well as in disregard of other City regulations that simultaneously address the issue. Therefore, this condition should be removed.

- 8) *A Building Permit or an Occupancy Permit must be obtained from the Bureau of Buildings at the Permit Center on the first floor of the Portland Building, 1120 SW 5<sup>th</sup> Avenue, Portland, Oregon 97204, 796-7310, before carrying out this project, in order to assure that all conditions imposed here and all requirements of the pertinent Building Codes are met.*

This condition was applied in the context of a specific building remodel and expansion project, for which a building permit was issued and received all final inspections. Building permits will continue to be required for remodeling or expanding or redevelopment at the site, regardless of any conditions of approval tied to a zone change. The Bureau of Buildings no longer exists, having been merged with the development review function that was split off from the Planning Bureau in 1999 to form BDS. This advisory condition is redundant and confusing, as well as unnecessary and outdated, and should be removed.

- 9) *All required work required by this decision shall be completed within six months of the date of the public meeting.*

This six-month deadline expired over 32 years ago, and the building remodel project was completed shortly after final City Council action in the mid-1980s. This condition is outdated and should be removed.

- 10) *The Hearings Officer retains jurisdiction of this matter in order to resolve otherwise*

*irresolvable difficulties which may arise in the implementation of these conditions.*

This unusual condition implies that a reconsideration of the decisions addressed in the decision will be the jurisdiction of the Hearings Officer. The Hearings Officer's role in the current application is to make a recommendation to City Council as to whether or not the specific conditions of approval in question should be removed or stay in place, after consideration of a staff recommendation. The City Council must make the final decision, as they did in the 1980s on the original building expansion project for a grocery store. Because it is unnecessary and will be satisfied through this process to revisit the original conditions anyway, this condition should be removed.

*Section 2 All other terms and conditions of Ordinance No. 155609 shall remain in full force and effect.*

As provided in the section above, the applicant is requesting removal of a majority of the conditions imposed through Ordinance No. 155609. The intent of this condition was primarily to consolidate and reference the still-relevant conditions of approval from the original zone change ordinance for the Strohecker's site in 1984. The eventual Ordinance for this application before City Council will also clarify whether or not and which prior conditions from Ordinances #155609, #155850, and #160473 still apply to the site in the future. Because the language of this condition would create confusion regarding site obligations under the zone change that will remain in effect as articulated under the Ordinance for the current case, this condition should be removed.

#### **Site Specific Consideration in the 2035 Plan**

There is no evidence that the City Council specifically considered this site and affirmed the current restrictive conditions when it adopted the 2035 Comprehensive Plan. Ms. Olson brought that issue to the attention of planning staff, but there is no evidence that her comments regarding this site-specific issue were forwarded to and considered by the City Council as part of its review and adoption of the City-wide 2035 Plan. In addition, the 2035 Plan was adopted through the legislative process. The current restrictive conditions were imposed through a quasi-judicial process. Therefore, any changes to the conditions must be processed using the same quasi-judicial procedure. PCC 33.730.140.A.

#### **Trip Cap**

As discussed in more detail below, the applicant proposed, and PBOT approved, a "trip cap" to ensure that traffic generated by future development on the site without the restrictive conditions will not exceed traffic volumes generated by the former grocery store use on the site. Administrative Rule TRN 10.27 "Traffic Capacity Analysis for Land Use Review Cases" allows applicants to propose a trip cap to mitigate the impacts of an amendment. Based on the applicant's traffic analysis, traffic generated by certain uses on the site could exceed the capacity of the existing transportation system. The trip cap ensures that traffic from future

uses is consistent with previously adopted transportation plans and the City's Transportation Planning Rule (TPR). As noted by the neighbors, the trip cap will limit potential development on the site. But it will not preclude the site from developing with any of the uses allowed in the CM1 zone, or some mix of allowed uses. Absent the trip cap, full development of the site would likely result in a significant impact on the transportation system.

#### **Park Access**

As discussed above, there is an existing concrete stairway near the middle of the existing parking lot on the site that provides access to the lower portion of the adjacent Portland Heights Park. In addition, neighbors and Parks Bureau staff noted that park users frequently park on the site in order to load and unload sports equipment. The Parks Bureau requests a condition of approval requiring the applicant to maintain public access to this stairway and encourage the applicant to continue allowing certain park users to park on the site.

However, the Hearings Officer finds that the City has no authority to impose such a condition. The existing restrictive conditions do not address use of the existing stairway or parking on the site and the condition does not relate to any applicable approval comprehensive plan Goals or Policies. No development is proposed on the site with this application, so there is no nexus between the application and the requested conditions. This stairway has existed on the site for many years. Therefore, the City may have a claim of adverse possession or a prescriptive easement allowing public access to the stairway. But the Hearings Officer has no authority to review any adverse possession or prescriptive easement claims. Parking on the site may be convenient for park users. However, the site is private property, not part of the park. Although the applicant is currently allowing this activity, he is not required to do so. The applicant could fence the site and prohibit parking. Parking on the site without the owner's permission is trespass. Absent condemnation of a public easement on the site, the City has no authority to require the applicant allow park users to park on the site.

It may be in the applicant's best interest to continue allowing public use of the stairway and on-site parking, as the stairway would provide park users with convenient access to any commercial uses that may be developed on the site. However, as the applicant noted, if the site is developed with exclusively residential uses, there is no need for public access through the site to the park. The existing public sidewalk on Patton Road provides adequate access to the park.

#### **ZONING CODE APPROVAL CRITERIA**

##### **PCC 33.810.050 Approval Criteria (Comprehensive Plan Map Amendments)**

- A. Quasi-Judicial.** Amendments to the Comprehensive Plan Map which are quasi-judicial will be approved if the review body finds that the applicant has shown that all of the following criteria are met:

1. *The requested designation for the site has been evaluated against relevant Comprehensive Plan policies and on balance has been found to be equally or more supportive of the Comprehensive Plan as a whole than the old designation*

**Findings:** As required by the standard, the relevant<sup>2</sup> 2035 Comprehensive Plan policies are identified and addressed below. As noted in the 2035 Plan, not all policies are relevant to a particular decision and no decision can advance all policies equally well. The City Council must weigh and balance applicable policies to determine whether the decision “on the whole” is equally or more supportive of the Comprehensive Plan. Some policies weigh or matter more than others. Policies that specifically address the topic or location of a proposed change outweigh general policies that apply to a wide variety of topics or to the city as a whole. Policies that “require” something may outweigh policies that “encourage” something else. The Hearings Officer considered these guidelines in making the findings below.

After considering all of the relevant Goals and Policies, the Hearings Officer finds that removal of the restrictive conditions is, on balance, more supportive of the 2035 Comprehensive Plan. Removal of the current restrictive conditions will allow the site to redevelop consistent the CM1 zone. As discussed below, commercial development on the site would be more supportive of certain applicable Goals and Policies. Residential development would be more supportive of other Goals and Policies. A mixed-use development would be supportive of many of the applicable goals. The applicant did not propose a specific development for the site. Therefore, there is no certainty as to the type or mix or uses that will be provided on the site if the restrictive conditions are removed. However, in adopting the CM1 zoning provisions, the City Council made a policy decision to allow exclusively commercial, exclusively residential, or mixed-use development in the CM1 zone, relying on the market to determine the best use for a particular CM1 zoned property.

Nevertheless, this site is the only commercial zoned parcel in the Southwest Hills Neighborhood and the majority of residents who testified about this application supported some kind of commercial development on the site, specifically some form of grocery store. Given the unique nature of the site, the City Council could impose conditions requiring some form of commercial development on the site, either exclusively commercial or as part of a mixed-use development. In addition, the Council could require some form of food related use – a small market or restaurant – as part of any commercial development. However, as the current application demonstrates, such site-specific conditions can reduce future flexibility for development on the site as shopping habits, consumer preferences, and market conditions change over time. Most other CM1 zoned properties are not subject to such restrictions, allowing the local economy to determine the best use or uses on a particular site.

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<sup>2</sup> Consistent with the wording of the approval criterion, the narrative only addresses those policies that are relevant to the proposed amendment on this site. However, to assist review, the following findings also identify, but do not address, policies that are not relevant.

## CHAPTER 1: THE PLAN

### **Goals:**

#### **Goal 1.A: Multiple goals**

*Portland's Comprehensive Plan provides a framework to guide land use, development, and public facility investments. It is based on a set of Guiding Principles that call for integrated approaches, actions, and outcomes that meet multiple goals to ensure Portland is prosperous, healthy, equitable, and resilient.*

#### **Goal 1.B: Regional partnership**

*Portland's Comprehensive Plan acknowledges Portland's role within the region, and it is coordinated with the policies of governmental partners.*

#### **Goal 1.C: A well-functioning plan**

*Portland's Comprehensive Plan is effective, its elements are aligned, and it is updated periodically to be current and to address mandates, community needs, and identified problems.*

#### **Goal 1.D: Implementation tools**

*Portland's Comprehensive Plan is executed through a variety of implementation tools, both regulatory and non-regulatory. Implementation tools comply with the Comprehensive Plan and are carried out in a coordinated and efficient manner. They protect the public's current and future interests and balance the need for providing certainty for future development with the need for flexibility and the opportunity to promote innovation.*

#### **Goal 1.E: Administration**

*Portland's Comprehensive Plan is administered efficiently and effectively and in ways that forward the intent of the Plan as a whole. It is administered in accordance with regional plans and state and federal law.*

**Findings:** These goals are directly applicable to the City as the goals for its planning document. The 2035 Comprehensive Plan is the result of planning and effort by the City of Portland to create an updated plan that satisfies the identified goals. As discussed in the following findings, the Hearings Officer finds that removal of the current conditions limiting use and development on the site is, on balance, equally or more supportive of the 2035 Comprehensive Plan as a whole than continued application of the restrictive use and development conditions.

### **Policies:**

**Policy 1.1**     ***Comprehensive Plan elements. Maintain a Comprehensive Plan that includes these elements:***

- *Vision and Guiding Principles. The Vision is a statement of where the City aspires to be in 2035. The Guiding Principles call for decisions that meet multiple goals to ensure Portland is prosperous, healthy, equitable, and resilient.*



- *Goals and policies.* The goals and policies of the Comprehensive Plan, including the Urban Design Framework, provide the long-range planning direction for the development and redevelopment of the city.
- *Comprehensive Plan Map.* The Comprehensive Plan Map is the official long-range planning guide for spatially defining the desired land uses and development in Portland. The Comprehensive Plan Map is a series of maps, which together show the boundaries of municipal incorporation, the Urban Service Boundary, land use designations, and the recognized boundaries of the Central City, Gateway regional center, town centers, and neighborhood centers.
- *List of Significant Projects.* The List of Significant Projects identifies the public facility projects needed to serve designated land uses through 2035, including expected new housing and jobs. It is based on the framework provided by a supporting Public Facilities Plan (PFP). The Citywide Systems Plan (CSP) is the City's public facilities plan. The Transportation System Plan (TSP) includes the transportation-related list of significant projects. The list element of the TSP is also an element of the Comprehensive Plan.
- *Transportation policies, street classifications, and street plans.* The policies, street classifications, and street plan maps contained in the Transportation System Plan (TSP) are an element of the Comprehensive Plan. Other parts of the TSP function as a supporting document, as described in Policy 1.2.

**Findings:** The 2035 Comprehensive Plan includes each of the identified elements, and the relevant elements are identified and addressed below in the context of this application.

*Policies 1.2 to 1.9 are directives to the City and are not relevant to this application.*

**Policy 1.10** ***Compliance with the Comprehensive Plan.** Ensure that amendments to the Comprehensive Plan's elements, supporting documents, and implementation tools comply with the Comprehensive Plan. "Comply" means that amendments must be evaluated against the Comprehensive Plan's applicable goals and policies and on balance be equally or more supportive of the Comprehensive Plan as a whole than the existing language or designation.*

- 1.10.a. Legislative amendments to the Comprehensive Plan's elements and implementation tools must also comply with the Guiding Principles.*
- 1.10.b. Legislative amendments to the Comprehensive Plan's elements should be based on the factual basis established in the supporting documents as updated and amended over time.*
- 1.10.c. Amendments to the Zoning Map are considered to be in compliance with the Comprehensive Plan if they are consistent with the Comprehensive Plan Map, the*

*amendment is to a corresponding or allowed zone, and current public services are capable of supporting the uses allowed by the zone, or that public services can be made capable by the time the development is complete. See Policy 10.3 for additional guidance on Zoning Map amendments.*

**Findings:** The applicant is not proposing to amend the Comprehensive Plan, Comprehensive Plan Map, or Zoning Map. Instead, the applicant is requesting to be allowed to develop the site consistent with the 2035 Comprehensive Plan designation of Mixed-Use Dispersed and the current CM1 zoning designation. The applicant is requesting removal of conditions of approval that limit use of the site to a grocery store and impose specific limitations on development on the site. Approval of this application will allow the site to develop with any of the uses allowed in the existing CM1 zone, subject to the development limitations of the Code and applicable regulations.

**Policy 1.11** *Consistency with Metro Urban Growth Management Functional Plan and Urban Growth Boundary.* Ensure that the Comprehensive Plan remains consistent with the Metro Urban Growth Management Functional Plan and supports a tight urban growth boundary for the Portland metropolitan area.

**GOAL 1 METROPOLITAN COORDINATION:** *This goal seeks to ensure that the Comprehensive Plan is coordinated with federal and state law, and supports goals, objectives, and plans adopted by the Metropolitan Service District.*

**Findings:** The *Urban Growth Management Functional Plan* was approved November 21, 1996, by the Metro Council and became effective February 19, 1997. The purpose of the plan is to implement the Regional Urban Growth Goals and Objectives (RUGGO), including the 2040 Growth Concept. Local jurisdictions must address the Functional Plan when Comprehensive Plan Map Amendments are proposed through the quasi-judicial or legislative processes. The *Urban Growth Management Functional Plan* is Section 3.07 of the Metro Code.

The City of Portland's Comprehensive Plan and the implementing Zoning regulations of PCC Title 33 are either in compliance with, or are not inconsistent with, the applicable Metro Titles. The proposal is consistent with the Metro Titles that are applicable.

The 14 Metro Titles in that section are summarized and addressed below.

**Urban Growth Management Functional Plan**

**Title 1 Housing Capacity.** This title calls for compact urban form and a "fair-share" approach to meeting the regional housing needs. It is accomplished by requiring each city and county to maintain or increase its housing capacity. This requirement is generally

implemented through city-wide analysis based on calculated capacities from land use designations.

**Findings:** The requested amendment changes the potential housing capacity of the site. Based on the recently adopted 2035 Comprehensive Planning process, the City of Portland has adequate housing capacity, even excess housing capacity, to serve regional housing needs projected for the City of Portland by Metro. In the 2035 Comprehensive Plan modeling, some modest amount of housing capacity was assigned to commercial zones, where significant housing has been built inside City of Portland limits in recent years. By providing the opportunity for future housing at the site, instead of the grocery store-only limitation created by existing Ordinance conditions, the proposed amendment is equally or more supportive of this policy than the existing situation.

**Title 2     Regional Parking Policy.** This title was repealed and transferred to the Regional Transportation Functional Plan.

**Title 3     Water Quality and Flood Management.** This title protects the beneficial water uses, functions, and values of resources by limiting or mitigating the impact of development activities on these areas.

**Findings:** Compliance with Title 2 is not necessary, as the title was repealed. Compliance with Title 3 is achieved through the review of development against the current City of Portland Stormwater Management Manual regulations at time of building permit. BES has responded to water quality and flood management issues in their response to this application, which recommends approval of the request (Exhibit E.1).

**Title 4     Industrial and Other Employment Areas.** This title seeks to provide and protect a supply of sites for employment by limiting the types and scale of non-industrial uses in Regionally Significant Industrial Areas. The title also seeks to provide the benefits of "clustering" to those industries that operate more productively and efficiently in proximity to one another than in dispersed locations. It further seeks to protect the capacity and efficiency of the region's transportation system for the movement of goods and services and to encourage the location of other types of employment in Centers, Corridors, Main Streets and Station Communities.

**Findings:** The site is not located in a Regionally Significant Industrial Area. It also is not "clustered" around other industries. With commercial Comprehensive Plan designations at the site, this title is not applicable.

**Title 5     Neighbor Cities and Rural Reserves.** This title defines Metro policy with regard to areas outside the Metro urban growth boundary.

**Findings:** The proposal is within the urban growth boundary and has no impact on neighboring cities or rural reserves; therefore, this title is not applicable.

**Title 6 Centers, Corridors, Station Communities and Main Streets.** The Regional Framework Plan identifies Centers, Corridors, Main Streets and Station Communities throughout the region and recognizes them as the principle centers of urban life in the region. This title calls for actions and investments by cities and counties, complemented by regional investments, to enhance this role. A regional investment is an investment in a new high-capacity transit line or designated a regional investment in a grant or funding program administered by Metro or subject to Metro's approval.

**Findings:** Metro's 2040 Concept Growth Map does not identify any Center, Corridor, Main Street, or Station Community designation at the subject site. This title is not relevant.

**Title 7 Housing Choice.** This title calls for the establishment of voluntary affordable housing production goals to be adopted by local governments and assistance from local governments on reports on progress toward increasing the supply of affordable housing.

**Findings:** There are no impacts with regards to the affordability level of housing in this proposal. Existing inclusionary or affordable housing regulations will apply to any future development at the site, triggering a need for affordable housing units (or payment into an affordable housing fund) in the event the site develops with 20 or more dwelling units (PCC 33.245, Inclusionary Housing). The current conditions prohibit housing on the site. The proposed amendment would eliminate this prohibition and allow housing in addition to other uses on this site. However, there is no assurance that the site will develop with housing or that such housing will be "affordable" as that term is used in Title 7. The site could be developed with fewer than 20 housing units, which avoids compliance with the inclusionary housing requirements. Therefore, the proposed amendment is somewhat more supportive of this title than the existing situation, because it would allow, but not ensure or require, affordable housing on the site.

**Title 8 Compliance Procedures.** This title outlines compliance procedures for amendments to comprehensive plans and implementing ordinances.

**Findings:** This proposal meets this title by fulfilling the notice requirements for Type III land use reviews, as outlined in PCC 33.730, Quasi-Judicial Procedures. In addition to notifying the affected neighborhood associations and property owners within a 400-foot radius of the site, a Notice of Proposal has also been sent to Metro and to the Department of Land Conservation and Development. In the same manner that occurs with other land use procedures in the City of Portland, this title is met through the existing process, but is not directly relevant to the current proposal.

**Title 9 Performance Measures.** Title 9 was repealed.

**Title 10 Definitions.** This title defines the words and terms used in the *Urban Growth Management Functional Plan*.

**Title 11 Planning for New Urban Areas.** This title guides planning for areas brought into the Urban Growth Boundary for conversion from rural to urban use.

**Findings:** The requested proposal has no impact on, and is not inconsistent with, Titles 9, 10, and 11. The site is already within the Urban Growth Boundary.

**Title 12 Protection of Residential Neighborhoods.** The purpose of this title is to protect the region's existing residential neighborhoods from air and water pollution, noise and crime and to provide adequate levels of service.

**Findings:** The site has been developed as a commercial operation since 1902, and was under residential zoning until 1984. Noise, crime, and air and water pollution are not pertinent issues to this application, which addresses use and development restrictions on the site imposed in the context of a short-term remodeling and expansion project at the site in 1984. There are no impacts with regards to this title. These purposes are implemented through compliance with applicable zoning and development regulations.

**Title 13 Nature in Neighborhoods.** The purpose of this title is to conserve, protect and restore a continuous ecologically viable streamside corridor system that is integrated with upland wildlife habitat and the surrounding urban landscape.

**Findings:** The site is not designated with either Environmental Conservation (Ec) or Environmental Protection (Ep) Overlay Zones and therefore has not been identified as having any particular resource value. There are no streams on or abutting the site. There are no impacts with regards to this title.

**Title 14 Urban Growth Boundary.** This title prescribes criteria and procedures for amendments to the urban growth boundary.

**Findings:** This site is already located within the Urban Growth Boundary.

**Policy 1.12 Consistency with Statewide Planning Goals.** *Ensure that the Comprehensive Plan, supporting documents, and implementation tools remain consistent with the Oregon Statewide Planning Goals.*

**Findings:** The State Land Conservation and Development Commission (LCDC) has acknowledged the City's *2035 Comprehensive Plan*, and the City goals mentioned in "LCDC and Comprehensive Plan Considerations" are comparable to the statewide planning goals, as follows: City Goal 1 is the equivalent of State Goal 2 (Land Use Planning); City Goal 2

addresses the issues of State Goal 14 (Urbanization); and City Goal 3 deals with local issues of the neighborhoods. Additionally, the following City and State goals are similar: City Goal 4 - State Goal 10 (Housing); City Goal 5 State Goal 9 (Economic Development); City Goal 6 - State Goal 12 (Transportation); City Goal 7 - State Goal 13 (Energy Conservation); City Goal 8 - State Goals 5, 6, 7 and 8 (Open Space, Scenic and Historic Areas and Natural Resources, Air, Water and Land Resource Quality, Areas Subject to Natural Disaster and Hazards, and Recreational Needs); and City Goal 9 - State Goal 1 (Citizen Involvement). Further, City Goal 10 addresses City plan amendments and rezoning, and City Goal 11 is similar to State Goal 11 (Public Facilities and Services).

For quasi-judicial plan amendments, compliance with the City's plan goals, as discussed here, show compliance with applicable state goals. The analysis in this Final Order indicates that the majority of the City goals and policies are supported by the proposal.

Because the proposal overall, with conditions of approval, is equally or more supportive of the City Council Goals and Policies as noted above, this criterion is met.

**Policy 1.13** ***Consistency with State and Federal Regulations.** Ensure that the Comprehensive Plan remains consistent with all applicable state and federal regulations, and that implementation measures for the Comprehensive Plan are well coordinated with other City activities that respond to state and federal regulations.*

**Findings:** Policy 1.13 is directed at development and implementation of the goals and policies by City of Portland government staff and policy amendments, implementation measures, etc. over the years going forward. Therefore, it is not directly relevant to this application.

**Policy 1.14** ***Public facility adequacy.** Consider impacts on the existing and future availability and capacity of urban public facilities and services when amending Comprehensive Plan elements and implementation tools. Urban public facilities and services include those provided by the City, neighboring jurisdictions, and partners within Portland's urban services boundaries, as established by Policies 8.2 and 8.6.*

**Findings:** All relevant service bureaus submitted comments indicating that adequate urban public services are available to serve future development on the site, subject to certain conditions of approval. Subject to those conditions, the application is equally supportive of this policy.

**Policy 1.15** ***Intergovernmental coordination.** Strive to administer the Comprehensive Plan elements and implementation tools in a manner that supports the efforts and fiscal health of the City, county and regional governments, and partner agencies such as school districts and transit agencies.*

**Findings:** This policy requires coordination by the City rather than an applicant for a quasi-judicial amendment. This policy is not directly relevant to this application for a quasi-judicial amendment. Nonetheless, City agencies have reviewed and commented on the application and recommended approval of the request with limited conditions. Therefore, this application is equally supportive of the coordination policy.

*Policies 1.16 and 1.17 are directives to the City and are not relevant to this application.*

**Policy 1.18** *Quasi-judicial amendments to the Comprehensive Plan Map. Applicants for quasi-judicial amendments to the Comprehensive Plan Map must show that the requested change adheres to Policies 1.10 through 1.15 and:*

- *Is compatible with the land use pattern established by the Comprehensive Plan Map.*
- *Is not in conflict with applicable adopted area-specific plans as described in Policy 1.19, or the applicable hearings body determines that the identified conflict represents a circumstance where the area specific plan is in conflict with the Comprehensive Plan and the proposed amendment is consistent with the Comprehensive Plan.*

*The Hearings Officer must review and make recommendations to the City Council on all quasi-judicial amendments to the Comprehensive Plan Map using procedures outlined in the Zoning Code.*

**Findings:** The applicant is not requesting a change in the Comprehensive Plan Map designation for the site. The City Council reaffirmed the commercial Comprehensive Plan designation and zone for this site when it applied the Mixed Use – Dispersed Comprehensive Plan designation and the CM1 zone through the 2035 process. Therefore, the requested change retains the land use pattern established by the 2035 Comprehensive Plan. As discussed below, the request to remove the conditions is not in conflict with the Southwest Community Plan. This application was processed consistent with the procedures outlined in the Zoning Code and is equally supportive of this policy.

**Policy 1.19** *Area-specific plans. Use area-specific plans to provide additional detail or refinements applicable at a smaller geographic scale, such as for centers and corridors, within the policy framework provided by the overall Comprehensive Plan.*

- 1.19.a. Area-specific plans that are adopted after [effective date of this 2035 Comp Plan] should clearly identify which components amend Comprehensive Plan elements, supporting documents, or implementation tools. Such amendments should be appropriate to the scope of the Comprehensive Plan; be intended to guide land use decisions; and provide geographically-specific detail. Such amendments could*

*include policies specific to the plan area, land use designation changes, zoning map changes, zoning code changes, and public facility projects necessary to serve designated land uses.*

- 1.19.b. Area-specific plan components intended as context, general guidance, or directives for future community-driven efforts should not amend the Comprehensive Plan elements or implementation tools but be adopted by resolution as intent. These components include vision statements, historical context, existing conditions, action plans, design preferences, and other background information.*
- 1.19.c. Community, area, neighborhood, and other area-specific plans that were adopted by ordinance prior to [effective date of this 2035 Comp Plan] are still in effect. However, the elements of this Comprehensive Plan supersede any goals or policies of a community, area, or neighborhood plan that are inconsistent with this Plan. See Figure 1-2 – Area-Specific Plans Adopted by Ordinance Prior to January 1, 2018, and Figure 7-2 – Adopted Environmental Plans.*

**Findings:** The Southwest Community Plan (SWCP) is the neighborhood plan for the site and the surrounding neighborhood. The SWCP was adopted by the City of Portland in July of 2000 and is identified on Figure 1-2. The community plan includes 18 neighborhoods in southwest Portland, including the Southwest Hills neighborhood. Based on the findings below, the request to remove the use and development conditions is consistent with the relevant SWCP policies and objectives.<sup>3</sup>

#### **Southwest Community Plan**

***Land Use and Urban Form - Enhance Southwest Portland's sense of place as a community and a collection of distinct neighborhoods. Accommodate Southwest Portland's share of regional growth while protecting the environment in all areas. Encourage the realization of compact, transit and pedestrian-friendly, mixed-use centers while responding to the need for a range of housing types and prices. Outside of the mixed-use areas, allow infill housing opportunities which increase neighborhood diversity, stability and home ownership while limiting redevelopment.***

**Findings:** The request to remove the use and development conditions is consistent with the policy to encourage development of compact, transit and pedestrian friendly, and mixed-use centers, and to respond to the need for a range of housing types. The applicant is not proposing development of the site through this application. Instead the intent is to remove the existing conditions that limit the uses allowed on the site and authorize the full range of uses permitted in the CM1 zone, a zone that is specifically intended to serve and be compatible

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<sup>3</sup> The policies and objectives that are not identified below are not applicable or relevant to this application.



within existing residential neighborhoods.<sup>4</sup> The CM1 zone permits residential, retail sales and services, office use, or a mix of these uses. The reuse or redevelopment of the site with one or more of the spectrum of uses permitted in the CM1 zone is consistent with both a transit and pedestrian friendly mixed-use development, and would permit residential development providing a type of housing (multi-family) that is currently in limited supply in the neighborhood. There is no guarantee that any particular type or mix of uses will occur on the site. Under the CM1 zoning the site could be developed with a mix of retail, commercial and residential uses. However, it could also be developed with just one of these uses. Conversely the current conditions prohibit any residential use on the site, limit commercial uses to a grocery store, and limit the size and scale of commercial development, which could conflict with the realization of a compact mixed-use center. Therefore, the requested removal of the conditions is more supportive of this policy than continued application of the existing conditions.

### ***I. Community-Wide Objectives***

- 1. Ensure compatibility of new development with Southwest Portland's positive qualities.*

**Findings:** The CM1 zone is a small-scale zone intended for sites in dispersed mixed-use nodes within lower density residential areas. The zone includes both uses and development standards that will ensure reuse or redevelopment of the site will be compatible with the positive qualities of the Southwest Hills, specifically, and Southwest Portland, generally.

- 3. Ensure that zoning designations represent densities that are likely to be achieved.*
  - (a) Focus new housing and employment opportunities in "mixed-use areas" in Southwest Portland: in town centers, main streets, and at designated areas along corridors.*
  - (b) Encourage redevelopment that has clear public benefit, fewer adverse consequences, minimal environmental limitations and adequate infrastructure.*
  - (c) Ensure that development and redevelopment occurring outside of mixed-use areas respects the scale and the desired neighborhood character identified in individual neighborhood plans.*

**Findings:** The site is not a town center, main street, or corridor, but the CM1 is a mixed-use zone that allows for new housing and new employment opportunities or a mixture of both. The

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<sup>4</sup> PCC 33.130.030.B provides:

The Commercial/Mixed Use 1 (CM1) zone is a small-scale zone intended for sites in dispersed mixed use nodes within lower density residential areas, as well as on neighborhood corridors and at the edges of neighborhood centers, town centers and regional centers. The zone is also appropriate in core commercial areas of centers in locations where older commercial storefront buildings of 1 to 2 stories are predominant. This zone allows a mix of commercial and residential uses. The size of commercial uses is limited to minimize impacts on surrounding residential areas. Buildings in this zone will generally be up to three stories tall. Development is intended to be pedestrian-oriented and compatible with the scale and characteristics of adjacent residentially zoned areas or low-rise commercial areas.

mix of uses allowed by the CM1 zone is appropriate along Patton Road, a street that has a Community Corridor street design classification and is classified as Neighborhood Collector, a Transit Access Street, and a City Bikeway. Removal of the conditions will allow redevelopment of the currently unused site with housing, various commercial uses, or mix of commercial and residential uses, which will result in some public benefit.

The applicant is not required to demonstrate any particular public benefit from this application. This provision directs the City to “*encourage* redevelopment that has clear public benefit...” This encouragement is accomplished through the zoning and development standards that apply to the CM1 zone. In addition, commercial development on the site would benefit the public by providing goods and services to neighborhood residents. Residential development on the site would benefit the public by providing additional housing opportunities and a housing type (multi-family) that is currently in limited supply in the neighborhood. There is adequate infrastructure to serve the site. Finally, adverse impacts will be minimized through the application of a trip cap to limit transportation impacts and compliance with the CM1 development standards, which limit the height and size of development and require setbacks, screening, and similar design elements to minimize the impacts on surrounding residential areas.

*6. Develop zoning, subdivision and design tools to promote infill development that is compatible with the desired character of established residential areas.*

**Findings:** This objective is directed at the City to establish zoning and design tools for infill development. However, the zoning and design tools developed by the City and applied to this site are consistent with this objective. Specifically, the CM1 allows a mix of uses that are appropriate for the currently unutilized site. The use regulations and development standards are design tools that minimize impacts on surrounding residential area so that infill development will be compatible with the character of the established residential area. Any future development or redevelopment on this site will be subject to those use regulations and standards promoting compatible development.

*9. Land use patterns near existing parks in Southwest should consider the desired neighborhood character, service level of the park, and accessibility as well as the potential impact on sensitive environmental areas.*

**Findings:** The site is located directly east of Portland Heights Park. Redevelopment of the site can benefit and compliment the park by once again providing an active use at the site boundary. There are no environmentally sensitive areas on or near the site that would be impacted by redevelopment. Removal of restrictive conditions is equally or more supportive of the relevant community-wide objectives than continued application of the restrictive conditions.

## **II. Additional Objectives for Mixed-Use Areas**

### **A. General Objectives**

- 2. Create land use patterns that support transit and foster a positive environment for pedestrians in Southwest Portland's town centers, main streets, and at designated areas along corridors.*

**Findings:** The site is not located in a designated town center, main street, or corridor. Therefore, this objective is inapplicable.

- 5. Ensure that plan designations and zoning in mixed-use areas are flexible enough: (a) to allow a wide range of commercial, high density residential, and employment opportunities. (b) that, when subsequent master plan processes are begun, such designations will not act as a hindrance to the planning effort.*

**Findings:** The Hearings Officer agrees with the applicant that the existing restrictive conditions are in direct conflict with this objective; the existing conditions limit the use on the site to grocery only and prohibit residential and any retail or commercial use other than a grocery, severely limiting development flexibility. Removal of the limiting conditions will allow a wide range of commercial, higher density residential, and employment opportunities on this mixed-use site consistent with the CM1 zone. Therefore, the requested removal of limiting condition is more supportive of this general objective for mixed-use areas.

- 6. Balance the need for higher density residential and mixed-use development with the preservation of single-family detached homes on small lots in the town centers, main streets and corridors, to promote a diversity of housing options in these areas.*

**Findings:** The site is not located in a designated town center, on a main street, or on a designated corridor in the SWCP; therefore, this objective is not relevant.

- 9. Link mixed-use areas with an interconnected transportation network and transit services.*

**Findings:** The site is designated a mixed-use area. As noted, SW Patton Road is classified as a Transit Access Street that is served by an established TriMet bus route. Existing bus stops are directly adjacent to the site. Removal of the existing conditions will not change the mixed-use designation or the street classification. Therefore, this objective is not directly relevant.

### **Citizen Involvement**

***Ensure that the policies and objectives of the Southwest Community Plan are used to guide the collaborative actions of the city and Southwest citizens for the next 20 years. Involve citizens integrally in the Southwest Community Plan from concept through evaluation and revision.***

**Findings:** The SWCP has been acknowledged and implemented as part of the 2035 Comprehensive Plan, and, as demonstrated through these findings, the proposed removal of the limiting use and development conditions is consistent with the plan. The citizen involvement objectives are not directly applicable to the requested amendments. The citizen involvement objectives relate to the direct interaction between community members and the City. Nonetheless, as required by the zoning and code and consistent with the 2035 Comprehensive Plan Chapter 2, this amendment is being processed as a Type III Comprehensive Plan and Zoning Map Amendment. The process requires a pre-application conference, which was held on September 14, 2017, followed by an application submittal, public notice and comment period, and a hearing before a Hearings Officer. A second evidentiary hearing is required before the City Council, the final decision maker. Before and after the applicant submitted the application, the applicant reached out to the Southwest Hills Residential League to make them aware of the upcoming application and to discuss their community concerns. Although the neighborhood association would prefer greater involvement in the choice of uses and design of future development on this site, such direct and detailed involvement is not required by the SWCP, the Code, or state law. Therefore, this process is consistent with the objectives related to engaging Southwest Community Plan citizens.

### ***Economic Development***

***Maintain and build upon Southwest Portland's position to attract and support economically viable neighborhood and regional employment centers. Foster businesses and commercial developments that are compatible with the desired scale and character of each center. The most desirable businesses include those which predominantly provide family-wage jobs.***

### ***Objectives***

1. *Foster the development of new jobs in Southwest Portland by encouraging development of new businesses in commercial and employment areas.*

**Findings:** The requested removal of the conditions will allow for a mix of uses at the site and provide the possibility of job creation through new commercial development. It is also possible that the site could redevelop with exclusively residential uses, which would do little or nothing to foster the development of new jobs. However, the site is currently unused and has not generated any jobs for two years and it is unlikely to redevelop and provide jobs if the conditions restricting use of the site to a grocery store are retained. Therefore, the Hearings Officer finds that the requested removal of the limiting conditions is equally or more supportive of this economic development objective than continued application of the existing conditions.

6. *Encourage the construction of residential units as a component of new commercial and*

*employment developments.*

**Findings:** Once the limiting conditions are removed, residential units would be a permitted use within the CM1 zone, and could be a component of any new commercial development on the site. Again, there is no guarantee that the site will be developed with a mixed-use project. The site could be developed with exclusively residential or exclusively commercial uses. However, current conditions prohibit any residential use on the site. Therefore, the requested removal of the limiting conditions is more supportive of this objective.

*7. Encourage the provision of ground floor retail and services in office buildings and in multifamily housing projects.*

**Findings:** The current conditions limit use of the site to a grocery store. Removal of the conditions would allow, but not require, the site to redevelop as a mixed-use project with ground floor retail and services with office or residential uses above. Although there is no certainty that the site will redevelop as a mixed-use project, the current conditions prohibit any mixed-use development on the site. Therefore, the requested removal of restrictive conditions is more supportive of this economic development objective than continued application of the restrictive conditions.

***Housing***

***Provide a variety of affordable housing choices adequate to meet the needs of current and future Southwest residents. Regard the existing housing stock as one resource to meet this need. Encourage development of housing types that will increase home ownership opportunities for Southwest residents.***

***Objectives***

***Housing Supply and Quality***

- 1. Provide opportunities to achieve the development of new housing units over the next 20 years to accommodate new residents and the shift to smaller households.*

**Findings:** The current conditions prohibit any housing units on the site. Therefore, as currently conditioned, the site cannot facilitate this housing objective. Removal of the conditions would allow residential development that would increase the amount of housing available to accommodate new residents. In addition, any housing developed on the site would likely be multi-family, which could facilitate the shift to smaller households. Therefore, the requested removal of the restrictive use conditions is more supportive of this housing supply objective than the continued application of the conditions.

- 2. Provide for diversity of size, type, and affordability of housing to meet the needs of young adults, small and large families, empty nesters, the elderly, and others.*

**Findings:** The Southwest Hills neighborhood is dominated by single-family home development and offers very little diversity in the size, type, or affordability of housing. As demonstrated in Ms. Olson's PowerPoint presentation (Exhibit H-42), there are some multi-family units available in smaller apartment complexes and former single-family homes that have been divided into multiple units. However, the majority of housing stock in the neighborhood is single-family residential. There is no evidence that residential development on this site will increase the affordability of housing in this neighborhood. However, removing the grocery only condition would allow, but not require, multifamily residential development on the site, which could increase the diversity of sizes and types of housing available in the neighborhood. Therefore, the requested removal of the restrictive conditions is more supportive of this housing supply objective than continued application of the restrictive conditions.

**Affordability and Home Ownership**

5. *Encourage public and private developers to vary the affordability, type and size of units in new housing developments to foster the development of inclusive communities.*
6. *Aid Southwest residents of varying income levels to become homeowners, particularly first-time homebuyers.*
7. *Increase the supply of affordable rental housing of all types for families. This includes units with three or more bedrooms.*
8. *Increase Southwest Portland's supply of housing affordable to households below the median income.*
9. *Encourage the provision of an adequate supply of mixed-income housing so that those working in Southwest can live near where they work.*

**Findings:** This policy directs the City to encourage developers to provide housing at a variety of prices, sizes, and types. It does not require the provision of affordable housing. Removal of the existing conditions would allow, but not require, some type of housing on the site as well as allowing the potential for, but no guarantee of, affordable housing. Any type of housing on this site would expand the amount and types of housing available in the area. The existing conditions prohibit any type of housing on the site. Therefore, the Hearings Officer finds that removal of the existing conditions is more supportive of these affordable housing objectives than continued application of the conditions prohibiting residential uses.

**Parks, Recreation and Open Space**

***Enrich neighborhoods and the Southwest community as a whole with ample, accessible, and well-maintained parks and open space. Preserve and enhance the natural habitat features of Southwest Portland's parks and open spaces. Ensure a wide range of recreational opportunities for Southwest citizens.***

**Findings:** The site is adjacent to Portland Heights Park, an established public park. Removal of the conditions and redevelopment on the site would not directly impact the park area and would not negatively impact habitat features or park open spaces. The park is easily accessed

via the public sidewalk on SW Patton Road. There is an existing stairway on the site that provides access between the site and the adjacent park. However, the existing conditions of approval do not require retention of this stairway. Therefore, removal of the conditions will affect the public's right, if any, to use the stairway and will have no impact on park access. For these reasons, the requested amendment is equally supportive of the SWCP parks policy.

### ***Transportation***

***Provide a balanced, multimodal transportation system in Southwest Portland that encourages increases in transit use and pedestrian accessibility and connectivity, discourages non-local traffic in residential areas, manages congestion, and focuses on improving and maintaining arterial and local streets.***

**Findings:** This Policy directs the City to provide a multimodal transportation system that implements the specific objectives set out in this policy. Therefore, this policy is not directly relevant to this proposal. However, the building size and use restrictions imposed by the current restrictive conditions limit the traffic impact of development on this site. Removal of these conditions would allow certain uses that could generate traffic volumes that exceed the capacity of the transportation system. Therefore, the applicant proposed a trip cap limiting development consistent with the maximum traffic volumes that could occur with the restrictive conditions in place. The trip cap satisfies the Oregon Transportation Planning Rule and the City's code requirements for zone changes. The trip cap would also effectively manage and limit congestion in compliance with the SWCP transportation policy. Therefore, with the trip cap in place, the requested elimination of restrictive conditions is equally supportive of this transportation policy than continued application of the condition that limits use of the site to a grocery use within the existing footprint.

***11. Evaluate the transportation impacts on neighborhoods and arterials when changing the development potential of an area.***

**Findings:** As discussed above, and in detail in the original application narrative, future development will be subject to a trip cap that prohibits any development or use(s) that would generate trips in excess of the trip generation capacity of a grocery use in the existing building. Therefore, with the trip cap in place, the requested amendment is equally supportive of this transportation objective.

***12. Analyze potential transportation impacts and require appropriate mitigation measures for new development consistent with review processes and provisions of the City Code.***

***18. Take into consideration the existing condition of streets in the vicinity of a site, as well as their planned function, when considering quasi-judicial land use changes that rely on adequacy of services as an approval criterion.***

**Findings:** As allowed by PCC 33.855.050.B.2, the applicant proposed, and PBOT approved, a trip cap limiting future development on the site to those uses that will generate traffic volumes equal to or less than would be generated by a grocery use in the existing building on the site. As discussed above, without the proposed trip cap certain types of development on the site could generate traffic that would exceed the capacity of the existing transportation system. The trip cap ensures that removal of the conditions will not impact the transportation system more than will occur under existing conditions. Therefore, as conditioned, the requested amendment is equally supportive of these two transportation policies.

## **CHAPTER 2: COMMUNITY INVOLVEMENT**

### **Goals:**

#### **Goal 2.A: Community involvement as a partnership**

*The City of Portland works together as a genuine partner with all Portland communities and interests. The City promotes, builds, and maintains relationships, and communicates with individuals, communities, neighborhoods, businesses, organizations, Neighborhood Associations, Business Associations, institutions, and other governments to ensure meaningful community involvement in planning and investment decisions. Partnerships with historically under-served and under-represented communities must be paired with the City's neighborhood organizations to create a robust and inclusive community involvement system.*

#### **Goal 2.B: Social justice and equity**

*The City of Portland seeks social justice by expanding choice and opportunity for all community members, recognizing a special responsibility to identify and engage, as genuine partners, under-served and under-represented communities in planning, investment, implementation, and enforcement processes, particularly those with potential to be adversely affected by the results of decisions. The City actively works to improve its planning and investment-related decisions to achieve equitable distribution of burdens and benefits and address past injustices.*

#### **Goal 2.C: Value community wisdom and participation**

*Portland values and encourages community and civic participation. The City seeks and considers community wisdom and diverse cultural perspectives, and integrates them with technical analysis, to strengthen land use decisions.*

#### **Goal 2.D: Transparency and accountability**

*City planning and investment decision-making processes are clear, open, and documented. Through these processes a diverse range of community interests are heard and balanced. The City makes it clear to the community who is responsible for making decisions and how community input is taken into account. Accountability includes monitoring and reporting outcomes.*

#### **Goal 2.F: Accessible and effective participation**



*City planning and investment decision-making processes are designed to be accessible and effective, and responsive to the needs of all communities and cultures. The City draws from acknowledged best practices and uses a wide variety of tools, including those developed and recommended by under-served and under-represented communities, to promote inclusive, collaborative, culturally-responsive, and robust community involvement.*

**Goal 2.G: Strong civic infrastructure**

*Civic institutions, organizations, and processes encourage active and meaningful community involvement and strengthen the capacity of individuals and communities to participate in planning processes and civic life.*

**Policies:**

**Policy 2.1**     **Partnerships and coordination.** *Maintain partnerships and coordinate land use engagement with:*

- 2.1.a. Individual community members.*
- 2.1.b. Communities of color (including those whose families have been in this area for generations such as Native Americans, African Americans, and descendants of immigrants), low-income populations, Limited English Proficient (LEP) communities, Native American communities, immigrants and refugees, and other under-served and under-represented communities.*
- 2.1.c. District coalitions, Neighborhood Associations, watershed councils, and business district associations as local experts and communication channels for place-based projects.*
- 2.1.d. Businesses, unions, employees, and related organizations that reflect Portland's diversity as the center of regional economic and cultural activity.*
- 2.1.e. Community-based, faith-based, artistic and cultural, and interest-based non-profits, organizations, and groups.*
- 2.1.f. People experiencing disabilities.*
- 2.1.g. Institutions, governments, and Sovereign tribes.*

**Policy 2.2**     **Broaden partnerships.** *Work with district coalitions, Neighborhood Associations, and business district associations to increase participation and to help them reflect the diversity of the people and institutions they serve. Facilitate greater communication and collaboration among district coalitions, Neighborhood Associations, business district associations, culturally-specific organizations, and community-based organizations.*

*Policies 2.3 through 2.5 apply primarily to City outreach to communities of color and low-income populations are not relevant to the requested amendment.*

*Policies 2.6 through 2.38 and Policy 2.41 are directives to the City related to community involvement and are not relevant to the requested amendment.*

**Policy 2.39** *Notification.* Notify affected and interested community members and recognized organizations about administrative, quasi-judicial, and legislative land use decisions with enough lead time to enable effective participation. Consider notification to both property owners and renters.

**Policy 2.40** *Tools for effective participation.* Provide clear and easy access to information about administrative, quasi-judicial, and legislative land use decisions in multiple formats and through technological advancements and other ways.

The Goals and Policies in this Chapter speak primarily to government agency responsibilities and objectives, as opposed to the obligations of private citizenry or development applications. These Goals and Policies are implemented through the City's citizen involvement process and procedures. This application was processed consistent with those processes and procedures; the City provided all required notices to the neighborhood association and individual property owners. Members of the public, including representatives of the neighborhood association, attended the pre-application conference and participated in the hearings through written and oral testimony. The Goals and Policies of this Chapter do not require the applicant or future developers to allow direct public involvement in the choice of uses or design of development on the site. The Hearings Officer finds that this proposal is equally supportive of this policy as the current situation.

### **CHAPTER 3: URBAN FORM**

#### **Goals:**

##### **GOAL 3.A: A city designed for people**

*Portland's built environment is designed to serve the needs and aspirations of all Portlanders, promoting prosperity, health, equity, and resiliency. New development, redevelopment, and public investments reduce disparities and encourage social interaction to create a healthy connected city.*

##### **GOAL 3.B: A climate and hazard resilient urban form**

*Portland's compact urban form, sustainable building development practices, green infrastructure, and active transportation system reduce carbon emissions, reduce natural hazard risks and impacts, and improve resilience to the effects of climate change.*

##### **GOAL 3.C: Focused growth**

*Household and employment growth is focused in the Central City and other centers, corridors, and transit station areas, creating compact urban development in areas with a high level of service and amenities, while allowing the relative stability of lower-density single-family residential areas.*

##### **GOAL 3.D: A system of centers and corridors**

*Portland's interconnected system of centers and corridors provides diverse housing options and employment opportunities, robust multimodal transportation connections, access to local services and amenities, and supports low-carbon complete, healthy, and equitable communities.*

**GOAL 3.E: Connected public realm and open spaces**

*A network of parks, streets, City Greenways, and other public spaces supports community interaction; connects neighborhoods, districts, and destinations; and improves air, water, land quality, and environmental health.*

**GOAL 3.F: Employment districts**

*Portland supports job growth in a variety of employment districts to maintain a diverse economy.*

**GOAL 3.G: Nature in the city**

*A system of habitat corridors weaves nature into the city, enhances habitat connectivity, and preserves natural resources and the ecosystem services they provide.*

**Findings:** These Goals speak to the design of the City generally and are not directly relevant to this proposal.

**Policies:**

**Policy 3.1**     ***Urban Design Framework.** Use the Urban Design Framework (UDF) as a guide to create inclusive and enduring places, while providing flexibility for implementation at the local scale to meet the needs of local communities. See Figure 3.1 — Urban Design Framework.*

**Findings:** The Urban Design Framework figures designate centers, districts, corridors, greenways, habitat corridors, and pattern areas citywide. Under the Urban Design Framework maps, the site is not located in a designated center. The site is located near the outer edge of the Inner Ring, but is not located within a designated Inner Ring District. SW Patton Road is not a designated UDF corridor, nor does it provide high capacity transit. The site is not within a greenway, but is located within the boundaries of an urban habitat corridor. Finally, the site is located within the western neighborhoods pattern area. As discussed below, allowing redevelopment or reuse of the site is consistent with and supportive of the applicable UDF designations for the site.

**Policy 3.2**     ***Growth and stability.** Direct the majority of growth and change to centers, corridors, and transit station areas, allowing the continuation of the scale and characteristics of Portland's residential neighborhoods.*

**Findings:** The site is not located within a mapped center, a UDF designated corridor, or in close proximity to a transit station area. Therefore, this policy is not applicable.

**Policy 3.3**     ***Equitable development.** Guide development, growth, and public facility investment to reduce disparities; encourage equitable access to opportunities, mitigate the impacts of development on income disparity, displacement and housing affordability; and produce positive outcomes for all Portlanders.*

**Findings:** This policy speaks generally to the City's responsibilities in terms of governance in land use, transportation, and facilities planning. It is not applicable to this application.

**Policy 3.4**     ***All ages and abilities.** Strive for a built environment that provides a safe, healthful, and attractive environment for people of all ages and abilities.*

**Findings:** The subject site is located within a neighborhood with steep slopes and restricted transit service that creates challenges for people of certain ages and abilities who wish to access resources and services. The former grocery use on the site was consistent with this policy, providing convenient access to groceries for surrounding residents of all ages and abilities. However, the grocery use no longer exists and there is no evidence that it is likely to resume. Continued vacancy of the existing building provides no benefit to people of any age or any ability. Removal of the limiting use and development conditions would allow redevelopment of the site with any of the uses allowed within the CM1 zone. Therefore, the site could once again potentially provide retail uses or services in close proximity to surrounding residents of all ages and abilities. The site could also provide multifamily housing to provide a safe, healthy, and attractive home for residents of all ages that do not currently have access to this neighborhood. As dictated by the market, the site could also provide a mix of commercial and residential uses that would benefit all ages and abilities. For these reasons, the request to remove the use and development conditions is equally or more supportive of this policy than continued application of the restrictive conditions.

**Policy 3.5**     ***Energy and resource efficiency.** Support energy-efficient, resource-efficient, and sustainable development and transportation patterns through land use and transportation planning.*

**Findings:** Redevelopment or reuse of the existing site, whether for a new grocery under existing conditions or with new commercial or residential uses without the conditions, would likely be more energy-efficient and resource-efficient than the existing development on the site, as any new development would be subject to City codes and programs that encourage energy efficient and sustainable development. Second, SW Patton Road is classified as a Transit Access Street and TriMet provides bus service during peak demand periods along SW Patton Road. Residents or commercial patrons and employees would be able to take advantage of the transit service to and from the site. Commercial development on the site could encourage pedestrian travel if it included uses, activities, and services that serve the local neighborhood, reducing the need for residents to travel longer distances to fulfill these needs. These objectives could be realized with a redeveloped grocery store subject to the existing conditions

or with other types of commercial or residential development if the conditions are removed. However, based on the applicant's market analysis discussed above, a grocery store is unlikely to resume on this site under existing conditions. The site is more likely to redevelop if the conditions are removed. Therefore, the request to remove the use and development conditions is equally or more supportive of this policy than continued application of the restrictive conditions.

**Policy 3.6**     ***Land efficiency.** Provide strategic investments and incentives to leverage infill, redevelopment, and promote intensification of scarce urban land while protecting environmental quality.*

**Findings:** To the extent this policy is directed at City investments it is not applicable to this application. However, removal of the conditions would provide a greater incentive for privately funded infill, redevelopment, and intensification on this previously developed site within the urban area. The majority of the site is already developed with buildings and pavement, so redevelopment on the site would have little or no impact on environmental quality. Therefore, the request to remove the use and development conditions is more supportive of this policy than continued application of the restrictive conditions.

**Policy 3.7**     ***Integrate nature.** Integrate nature and use green infrastructure throughout Portland.*

**Findings:** Any new development on the site would be subject to code provisions that implement this policy, including the Title 11 urban forestry requirements related to tree protection, mitigation and planting. Additionally, any new development of the site, whether for a grocery or other uses, would be able to take advantage of green and energy efficient building options that did not exist when the site was originally developed or when the building was remodeled in the 1980's. For these reasons, the request to remove the use and development conditions is equally supportive of this policy as continued application of the restrictive conditions.

**Policy 3.8**     ***Leadership and innovation in design.** Encourage high-performance design and development that demonstrates Portland's leadership in the design of the built environment, commitment to a more equitable city, and ability to experiment and generate innovative design solutions.*

**Findings:** This Policy is directed at the City and therefore is not applicable to this application.

**Policy 3.9**     ***Growth and development.** Evaluate the potential impacts of planning and investment decisions, significant new infrastructure, and significant new development on the physical characteristics of neighborhoods and their residents, particularly under-served and under-represented communities, with*

*particular attention to displacement and affordability impacts. Identify and implement strategies to mitigate the anticipated impacts. More detailed policies are in Chapter 5: Housing.*

**Findings:** This Policy is primarily directed at the City, related to its planning and investment decisions and infrastructure as well as the City's review of the design of new development and the implementation of strategies to mitigate impacts consistent with this policy. The Hearings Officer finds that this policy is not applicable to this application.

*Policy 3.10 relates to rural and urbanizable land and is not relevant to this amendment.*

*Policy 3.11 addresses significant places and is not relevant to the subject site.*

*Policies 3.12 through 3.20 relate to centers in the UDF. The site is not located in a center and these policies are not relevant.*

*Policies 3.21 through 3.26 relate to the Central City. The site is not located in the Central City and these policies are not relevant.*

*Policies 3.27 through 3.30 relate to Gateways. The site is not located in a Gateway area and these policies are not relevant.*

*Policies 3.31 through 3.34 relate to Town Centers. The site is not located in a Town Center and these policies are not relevant.*

*Policies 3.35 through 3.38 relate to Neighborhood Centers. The site is not located in a Neighborhood Center and these policies are not relevant.*

*Policy 3.39 through 3.43 relate to Inner Ring Districts. The site is located near the edge of the inner ring but is not located in an Inner Ring District and these policies are not relevant.*

*Policies 3.44 through 3.52 relate to Civic Corridors and Neighborhood Corridors. The subject site is not located in a Civic Corridor or a Neighborhood Corridor and these policies are not relevant.*

*Policies 3.53 through 3.59 related to transit stations. The site is located on transit access street but is not near a transit station and these policies are not relevant.*

*Policies 3.60 through 3.63 relate to City Greenways. The site is not located in a City Greenway and these policies are not relevant.*

**Policy 3.64** *Urban habitat corridors. Establish a system of connected, well-functioning, and diverse habitat corridors that link habitats in Portland and the region, facilitate*

*safe fish and wildlife access and movement through and between habitat areas, enhance the quality and connectivity of existing habitat corridors, and establish new habitat corridors in developed areas.*

**Findings:** Pursuant to Urban Form Figure 3-6 Urban Habitat Corridors, the subject site is located in or near an Existing/Enhanced Habitat Corridor along with a large percentage of the Southwest Hills neighborhood and other neighborhoods west of downtown. Through these designations the City has fulfilled this policy by creating habitat corridor designations and connections between those corridors for wildlife movement. In this case, the subject site is fully developed with an existing building and surface parking area. Therefore, the existing site with the existing conditions contributes little to the functional value of the designated habitat corridor. Any future redevelopment on the site, as a grocery under existing conditions or other commercial or residential uses if the existing conditions were removed, would have to comply with current setback, landscape, and tree standards, which could provide some habitat benefit to birds and other small wildlife within the habitat corridor. Therefore, the request to remove the use and development conditions is equally supportive of this policy as continued application of the restrictive conditions.

**Policy 3.65** *Habitat connection tools. Improve habitat corridors using a mix of tools including natural resource protection, property acquisition, natural resource restoration, tree planting and landscaping with native plants, and ecological design integrated with new development.*

**Findings:** The site was originally developed and remodeled before any of the current habitat provisions were adopted. Therefore, the current site provides few habitat resources. Any redevelopment or reuse of the site would be required to comply with current landscaping, urban forestry, and resource protection provisions of the code intended to implement this policy. Specifically, the CM1 zone requires that 15 percent of the site be landscaped. Future development would also be required to comply with the tree retention, mitigation, and planting requirements of Title 11. These benefits would occur from any redevelopment on the site, with or without the restrictive conditions. However, the site is more likely to redevelop if the conditions are removed. Therefore, the request to remove the conditions is equally or more supportive of this policy than continued application of the restrictive conditions.

**Policy 3.66** *Connect habitat corridors. Ensure that planned connections between habitat corridors, greenways, and trails are located and designed to support the functions of each element, and create positive interrelationships between the elements, while also protecting habitat functions, fish, and wildlife.*

**Findings:** The Figure 3-6 Urban Habitat Corridor map identifies both existing and future or potential habitat corridors. The site and surrounding area is mapped as an existing habitat corridor. Therefore, this policy related to planned or future connections is not directly relevant.

**Policy 3.67** *Employment area geographies. Consider the land development and transportation needs of Portland's employment geographies when creating and amending land use plans and making infrastructure investments.*

**Findings:** The subject site is zoned Commercial/Mixed Use and appears to be identified as a Commercial employment area on the Urban Form Figure 3-7 Employment Areas map. The site has historically provided employment opportunities for the employees of the grocery store. However, since the grocery store closed over two years ago, the site has not created any jobs and the site is unlikely to create employment opportunities with the existing use and development conditions in place. If the conditions are removed, the site could be developed with the full spectrum of uses allowed in the CM1 zone. However, it is not certain that the site would generate employment. Like any other CM1 zoned property anywhere in the City, the site could be developed with multifamily residential uses, commercial uses, or a mix of uses. However, removal of the restrictive conditions maintains the possibility of employment generation at this site. Therefore, the request to remove the use and development conditions is at least equally supportive of this employment policy as the continued application of the restrictive conditions.

*Policy 3.68 relates to truck corridors and is not relevant.*

*Policies 3.69 through 3.82 relate to the Willamette and Columbia River and are not relevant.*

*Policies 3.83 through 3.86 relate to the Central City and are not relevant.*

*Policies 3.87 through 3.97 relate to Inner Neighborhoods and Eastern Neighborhoods are not relevant.*

**Policy 3.98** *Western Neighborhoods village character. Enhance the village character of the Western Neighborhoods' small commercial districts and increase opportunities for more people to live within walking distance of these neighborhood anchors.*

**Findings:** Pursuant to Urban Form Figure 3-8 Pattern Areas, the site is located within a very large swath of land identified as the Western Neighborhoods. The subject site is one of the only commercially zoned properties in the immediate Southwest Hills neighborhood. However, the site is a single property and not a commercial district or a neighborhood village area. Therefore, this policy is not directly relevant. Nonetheless, the site represents a commercial mixed-use node that is appropriate for the full spectrum of uses allowed in the CM1 zone, including residential uses, commercial uses, or a mix of uses. The former grocery store on the site served as a neighborhood anchor and gathering place within walking distance of many neighborhood residents. Removal of the conditions would allow other types of commercial or mixed-use development on the site, which would serve a similar function as a neighborhood anchor. While the request to remove the restrictive conditions does not guarantee that commercial or mixed-use development will occur on the site, the request to remove the conditions limiting the use would create the opportunity for a wider variety of goods and services within walking distance of the surrounding residents, including new residents on the



site in the case of a mixed-use development. For these reasons, the request to remove the use and development conditions is equally or more supportive of this policy than continued application of the restrictive conditions.

**Policy 3.99** *Western Neighborhoods active transportation. Provide safe and accessible pedestrian and bicycle connections, as well as off-street trail connections, to and from residential neighborhoods.*

**Findings:** SW Patton Road is classified as a City Bikeway and provides sidewalks for pedestrian connections within and to and from the neighborhood. Additionally, the 2035 TSP identifies a future bicycle and pedestrian enhancement project along this segment of Patton Road (90054.1). There are no off-street trail connections immediately adjacent to or on the subject site. Any redevelopment of the site would be subject to ground floor window and other pedestrian standards intended to enhance the pedestrian experience along the street frontage of the site. However, the site is more likely to redevelop if the conditions are removed. Therefore, the request to remove the use and development conditions is equally or more supportive of this transportation policy than continued application of the restrictive conditions.

**Policy 3.100** *Western Neighborhoods development. Encourage new development and infrastructure to be designed to minimize impacts on the area's streams, ravines, and forested slopes.*

**Findings:** The site is not adjacent to a stream, a ravine, or forested slopes. Nonetheless, any redevelopment of the site would be required to comply with existing code provisions designed to minimize impacts on those resources, including the BES Stormwater Management Manual. However, the site is more likely to redevelop if the conditions are removed. Therefore, any new development on the site must be designed to minimize impacts and the request to remove the use and development conditions is equally supportive of this policy.

**Policy 3.101** *Western Neighborhoods habitat corridors. Preserve, enhance, and connect the area's network of habitat areas and corridors, streams, parks, and tree canopy.*

**Findings:** As discussed above, the site, along with much of the land located within the Western Neighborhoods, is designated as an existing habitat corridor on Urban Form Figure 3-6. The site is already fully developed and provides little habitat corridor function. However, any redevelopment of the site would be subject to minimum landscaping requirements and the Title 11 urban tree protection, mitigation, and planting requirements. Therefore, redevelopment of the site, with or without the restrictive conditions, would retain or improve the tree canopy on the site. The existing stairway on the site provides a connection to the adjacent park, consistent with this Policy. However, as discussed above, removal of the conditions would have no impact on the retention of this connection. Because the site is more likely to redevelop if the conditions are removed, the request to remove the use and

development conditions is equally or more supportive of this policy than continued application of the restrictive conditions.

**Policy 3.102** *Western Neighborhoods trails. Develop pedestrian-oriented connections and enhance the Western Neighborhoods' distinctive system of trails to increase safety, expand mobility, access to nature, and active living opportunities in the area.*

**Findings:** There are no mapped trail connections on the subject site. There is an existing stairway on the neighboring park that leads to the western edge of the site. However, the existing conditions do not address this stairway and removal of the conditions will not alter the public's rights, if any, to use this stairway. Therefore, the request to remove the use and development conditions is equally supportive of this policy as continued application of the restrictive conditions.

#### **CHAPTER 4: DESIGN AND DEVELOPMENT**

##### **Goals:**

##### **Goal 4.A: Context-sensitive design and development**

*New development is designed to respond to and enhance the distinctive physical, historic, and cultural qualities of its location, while accommodating growth and change.*

**Findings:** Any new development on this site, with or without the current restrictive conditions, must comply with the regulations of the CM1 zone. The CM1 development standards are specifically intended to result in structures that are compatible with the scale and characteristics of adjacent residentially zoned areas. Neighbors argued that this policy supports retention of the restrictive conditions, because this site has historically been used as a grocery store. However, as discussed above, a grocery only use is no longer viable on this site. There is no evidence that the existing building, constructed in the 1980s, is historic. Removal of the restrictive conditions would facilitate redevelopment on this site, accommodating growth and change. Therefore, the request to remove the restrictive conditions is equally or more supportive of this goal as continued application of the restrictive conditions.

##### **Goal 4.B: Historic and cultural resources**

*Historic and cultural resources are identified, protected, and rehabilitated as integral parts of an urban environment that continues to evolve.*

**Findings:** The site does not include any known historic or cultural resources. However, consistent with this goal, if historic or cultural resources were discovered during redevelopment of the site, the site developer would be required to comply with applicable local and state laws designed to protect such resources. Removal of the conditions is equally supportive of this Goal.

**Goal 4.C: Human and environmental health**

*Neighborhoods and development are efficiently designed and built to enhance human and environmental health: they protect safety and livability; support local access to healthy food; limit negative impacts on water, hydrology, and air quality; reduce carbon emissions; encourage active and sustainable design; protect wildlife; address urban heat islands; and integrate nature and the built environment.*

**Findings:** Any future development or redevelopment on this site, with or without current restrictions, would be required to comply with zoning and building code requirements intended to protect safety and livability for the future residents or customers of the site, as well as the surrounding neighborhood. New development would also be required to comply with current code provisions intended to limit negative impacts on water, hydrology and air quality, and could take advantage on energy efficient development options to reduce carbon emissions and provide sustainable design. Finally, new development would be required to satisfy landscaping and tree standards intended to integrate nature and the built environment.

The former grocery use on this site was supportive of this goal; providing convenient access to healthy food, increasing efficiency and reducing pollution and carbon emissions by providing a retail grocer within walking distance of many neighborhood residents, enhancing health by facilitating walking, and other benefits as noted in the testimony in the record. However, the grocery store on the site has been vacant for more than two years and, based on the applicant's market analysis, resumption of a grocery use on the site with the existing conditions is unlikely. Therefore, retention of the conditions, which limit the use of the site to a grocery, would no longer support this Goal.

Removal of the restrictive use and development conditions would allow the site to redevelop with uses that would support this goal. The site could be redeveloped with retail and commercial uses that would encourage walking, increase efficiency, and reduce vehicle travel, pollution, and carbon emissions. Also, as the applicant noted, future development could potentially include a modified food store or a restaurant use that would provide healthy food to the surrounding residents. Although there is no guarantee that the site will redevelop with any commercial use or any type of food use, removal of the conditions provides the opportunity for such uses to occur. Therefore, removal of the conditions is at least equally supportive of this Goal.

**Goal 4.D: Urban resilience**

*Buildings, streets, and open spaces are designed to ensure long-term resilience and to adjust to changing demographics, climate, and economy, and withstand and recover from natural disasters.*

**Findings:** Removing the restrictive conditions that limit development to a single commercial use in the existing building footprint is more supportive of the goal of enabling the site to

adjust to changing demographics and economy. As noted in the applicant's market analysis, a grocery store is no longer a viable stand-alone use on this site due to changes in the grocery market, shopping behaviors, and other factors. By allowing the full range of CM1 uses, development on the site would have the necessary flexibility and resilience to adjust and to change, a feature the current site with the existing conditions does not have. Therefore, removal of the conditions is somewhat more supportive of this policy than continued application of the restrictive conditions.

**Policies:**

**Policy 4.1**     *Pattern areas. Encourage building and site designs that respect the unique built natural, historic, and cultural characteristics of Portland's five pattern areas described in Chapter 3: Urban Form.*

**Findings:** The site is located in the Western Neighborhoods pattern area (See Figure 3-8 of Chapter 3, Urban Form). As detailed above, the request to remove the restrictive conditions is equally supportive of the Urban Form policies for the Western Neighborhoods pattern area. The CM1 zone and associated development standards encourage building and site design that respects the applicable pattern areas, and the request to remove the use and development conditions is equally supportive of this policy than continued application of the restrictive conditions.

**Policy 4.2**     *Community identity. Encourage the development of character-giving design features that are responsive to place and the cultures of communities.*

**Findings:** This policy requires the City to encourage development of identified design features, not uses. The policy does not require a specific design, and does not relate to the uses allowed on a site. The site is not located in a Design overlay zone. Therefore, the design of any redevelopment of the site following removal of the restrictive conditions would be guided by the development standards of the CM1 zone. As discussed earlier, one of the express characteristics of the CM1 zone is to provide development that is compatible with the scale and characteristics of adjacent residentially zoned areas. Compliance with the CM1 regulations will limit the size and scale of any future development to be responsive to place and surrounding uses. Therefore, the request to remove the use and development conditions is equally supportive of this policy as continued application of the restrictive conditions.

**Policy 4.3**     *Site and context. Encourage development that responds to and enhances the positive qualities of site and context — the neighborhood, the block, the public realm, and natural features.*

**Findings:** Once again, this policy requires the City to encourage the identified development rather than requiring a specific development or a specific footprint. In any case, the design of any redevelopment of the site following removal of the restrictive conditions would be guided

by the development standards of the CM1 zone, including allowed uses, height limitations, minimum setback standards for lot lines abutting residentially zoned property, and pedestrian oriented development along SW Patton Road. Therefore, the request to remove the use and development conditions is equally supportive of this policy as continued application of the restrictive conditions.

**Policy 4.4**     ***Natural features and green infrastructure.** Integrate natural and green infrastructure such as trees, green spaces, ecoroofs, gardens, green walls, and vegetated stormwater management systems, into the urban environment. Encourage stormwater facilities that are designed to be a functional and attractive element of public spaces, especially in centers and corridors.*

**Findings:** Any redevelopment of the site would be able to implement the natural and green infrastructure in the building design and will be required to comply with the BES Stormwater Management Manual which emphasizes the use of vegetated stormwater management systems. Additionally, site redevelopment would be subject to the minimum landscaping and applicable outdoor area requirements of the CM1 zone as well as the street tree and on-site tree preservation, protection, and mitigation requirements of Title 11. However, the site is more likely to redevelop if the conditions are removed. For these reasons, the request to remove the use and development conditions is equally or more supportive of this policy than continued application of the conditions.

**Policy 4.5**     ***Pedestrian-oriented design.** Enhance the pedestrian experience throughout Portland through public and private development that creates accessible, safe, and attractive places for all those who walk and/or use wheelchairs or other mobility devices.*

**Findings:** Future development at the site would be subject to the pedestrian standards that encourage a safe, attractive, and usable circulation system in all developments. The developer would also need to demonstrate compliance with other code provisions intended to enhance the pedestrian experience along the SW Patton Road frontage, including building length and façade articulation, ground floor window requirements, minimum landscaping requirements, and Title 11 street tree requirements, among others. This list includes code provisions that did not apply at the time the existing building was built or when it was remodeled in the 1980's, and the existing building has limited pedestrian-oriented design features. The existing building could be removed and the site could be redeveloped with the existing conditions in place and such redevelopment would be subject to the same provisions. However, the site is more likely to redevelop if the conditions are removed. Therefore, the request to remove the use and development conditions is equally or more supportive of this policy than the continued application of the restrictive conditions.

**Policy 4.6** *Street orientation. Promote building and site designs that enhance the pedestrian experience with windows, entrances, pathways, and other features that provide connections to the street environment.*

**Findings:** Future development at the site, with or without restrictive conditions, would be subject to the pedestrian standards and other development standards that promote building and site designs that enhance the pedestrian experience. Specifically, the developer would need to demonstrate compliance with code provisions intended to enhance the pedestrian experience along the SW Patton Road frontage, including transit street main entrance requirements, pedestrian standards, building length and façade articulation standards, ground floor window requirements, minimum landscaping requirements, and Title 11 street tree requirements, among others. Therefore, the request to remove the use and development conditions is equally supportive of this policy as the continued application of the restrictive conditions.

**Policy 4.7** *Development and public spaces. Guide development to help create high- quality public places and street environments while considering the role of adjacent development in framing, shaping, and activating the public space of streets and urban parks.*

**Findings:** Once again, redevelopment of the site would be guided by the CM1 development standards intended to implement this policy, including the pedestrian standards, transit street main entrances, and street tree requirements of Title 11. The developer would also have the opportunity to consider neighboring Portland Heights Park in the building design and orientation. For these reasons, the request to remove the use and development conditions is equally supportive of this policy as the continued application of the restrictive conditions.

*Policy 4.8 relates to alleys and is not relevant.*

*Policy 4.9 relates to transitions to urban areas and is not relevant.*

**Policy 4.10** *Design for active living. Encourage development and building and site design that promotes a healthy level of physical activity in daily life.*

**Findings:** As previously noted, the former grocery store on the site encouraged walking and biking by provided necessary retail uses within a reasonable distance of surrounding residents. However, that use has ceased and is unlikely to resume. Redevelopment on the site could provide the same encouragement, depending on the type of use(s) that occur. In addition, compliance with the above-referenced pedestrian related standards would create a safe, attractive, and enhanced pedestrian experience along the SW Patton Road frontage that would support walking in the area. Moreover, if the site is developed with residential uses, residents would have easy access to the neighboring park area for physical activity. Therefore, the

request to remove the use and development conditions is equally supportive of this policy as the continued application of the restrictive conditions.

**Policy 4.11** *Access to light and air. Provide for public access to light and air by managing and shaping the height and mass of buildings while accommodating urban- scale development.*

**Findings:** Any redevelopment of the site would be subject to the CM1 building height, maximum FAR, and minimum landscaping standards. Any residential development on the site would also be subject to the required outdoor areas standard. The standards are intended to minimize impacts on surrounding residential development and to create access to light and air for pedestrians, as well as residents and visitors of the site and surrounding residents, while still allowing an urban scale of development. The existing conditions impose greater restrictions on building height and setbacks from residential areas than the current CM1 regulations. However, those conditions limit the full urban development potential of the site and prevent any expansion of the existing building. The language of this policy requires the provision of light and air *and* the accommodation of urban-scale development. The language of the policy gives equal weight to both objectives. Retention of the conditions would maintain greater access to light and air. Removal of the conditions would facilitate urban-scale development. Therefore, the Hearings Officer finds that removal of the use and development conditions is equally supportive of this policy as continued application of the restrictive conditions.

**Policy 4.12** *Privacy and solar access. Encourage building and site designs that consider privacy and solar access for residents and neighbors while accommodating urban-scale development.*

**Findings:** Once again, any redevelopment of the site would be subject to the CM1 development standards. The height of the building would be limited to 35 feet and a 10-foot setback and L3 landscaping would be required along the northern property line that abuts the residentially zoned areas. The existing downward slope to the north would further protect the privacy of neighbors to the north because the change in grade would largely prevent views into those homes. Because the existing homes are generally located north and south of the site and because of the 35-foot height limit, a new structure would have limited impact on the solar access for neighboring residents. However, as discussed above, the existing conditions impose greater restrictions on building height and setbacks while limiting the full urban development potential of the site. The language of this policy also gives equal weight to privacy and solar access vs. urban-scale development. For these reasons, the Hearings Officer finds that the request to remove the use and development conditions is equally supportive of this policy as continued application of the restrictive conditions.

**Policy 4.13** *Crime-preventive design. Encourage building, site, and public infrastructure design approaches that help prevent crime.*

**Findings:** Any redevelopment at the site would be required to comply with applicable development standards. The ground floor window standards and other pedestrian standards that provide an active pedestrian experience and views of the surrounding area from the building would help deter crime. However, the site is more likely to redevelop if the conditions are removed. Therefore, the request to remove the use and development conditions is equally or more supportive of this policy as the continued application of the restrictive conditions.

**Policy 4.14** *Fire prevention and safety. Encourage building and site design that improves fire prevention, safety, and reduces seismic risks.*

**Findings:** Any redevelopment at the site would be required to comply with current fire code and building code standards that encourage or require fire safety and prevention in building design. A new structure would also be required to comply with current building code requirements for seismic risks specific to this region. At the time the existing building was constructed, and even when the building was remodeled in the 1980's, the full scope of seismic risk in this region was not fully understood, and therefore, the building code requirements did not account for a subduction zone seismic event. However, the site is more likely to redevelop if the conditions are removed. For these reasons, the request to remove the use and development conditions is equally or more supportive of this policy than continued application of the restrictive conditions.

**Policy 4.15** *Residential area continuity and adaptability. Encourage more housing choices to accommodate a wider diversity of family sizes, incomes, and ages, and the changing needs of households over time. Allow adaptive reuse of existing buildings, the creation of accessory dwelling units, and other arrangements that bring housing diversity that is compatible with the general scale and patterns of residential areas.*

**Findings:** Notwithstanding the housing types and styles noted in Ms. Olson's PowerPoint presentation (Exhibit H-42), the Southwest Hills neighborhood is almost exclusively a moderate to high-income single-family neighborhood that provides little to no housing diversity. Consistent with this policy, the removal of the use and development conditions would allow residential development on the site, either exclusively residential or in a mixed-use development. As Ms. Richter noted, the site could be developed with a single-family residence. However, that is highly unlikely. Any residential development on this site would likely be some form of attached multi-family housing: apartments or condominiums. This would increase the diversity of housing choices available for people wishing to move to the area or stay in the area as family sizes, incomes, and ages of existing Southwest Hills residents change. In contrast, the existing grocery only use condition prevents any residential use of the site. As a result, the



request to remove the use and development conditions is more supportive of this policy than continued application of the restrictive conditions.

**Policy 4.16** *Scale and patterns. Encourage design and development that complements the general scale, character, and natural landscape features of neighborhoods. Consider building forms, scale, street frontage relationships, setbacks, open space patterns, and landscaping. Allow for a range of architectural styles and expression.*

**Findings:** Any redevelopment at the site would be required to comply with applicable development standards. As discussed above, the standards dictate building setbacks, maximum building height, massing and coverage, as well as required pedestrian oriented development. The CM1 zone characteristics state that development is intended to be pedestrian-oriented and compatible with the scale and characteristics of adjacent residentially zoned areas. These development objectives are appropriately achieved through application of the CM1 development standards. The site is not subject to a design overlay, and a range of architectural styles and expressions would be permitted. In contrast, the existing building was constructed before the current development standards were implemented and the building has limited to no street frontage relationship and instead is a parking and auto-oriented development with little architectural interest. Therefore, because the site is more likely to redevelop without the restrictive conditions, the request to remove the use and development conditions is equally or more supportive of this policy than continued application of the conditions.

**Policy 4.17** *Demolitions. Encourage alternatives to the demolition of sound housing, such as rehabilitation and adaptive reuse, especially affordable housing, and when new development would provide no additional housing opportunities beyond replacement.*

**Findings:** While housing is an allowed use in the CM1 zone, the existing use and development conditions currently preclude housing on the site. Therefore, if the existing building were demolished following removal of the conditions, there would be no loss of housing. In contrast, by removing the conditions, the site could support multifamily housing. Therefore, to the extent this policy is relevant, the request to remove the use and development conditions is more supportive of this policy than continued application of the restrictive conditions.

*Policy 4.18 relates to single-family development and is not relevant.*

**Policy 4.19** *Resource efficient and healthy residential design and development. Support resource efficient and healthy residential design and development. See other related policies later in this chapter and in Chapter 5: Housing.*

**Findings:** The current conditions prohibit any residential development on this site. Future residential development of the site would be subject to current building code requirements related to healthy design and development, and would be subject to applicable CM1 development code provisions. In addition, residential development on this site would provide convenient access to the abutting park, which could facilitate exercise and active recreation by the residents. Therefore, the request to remove the use and development conditions is more supportive of this policy than continued application of the restrictive conditions.

**Policy 4.20** ***Walkable scale.** Focus services and higher-density housing in the core of centers to support a critical mass of demand for commercial services and more walkable access for customers.*

**Findings:** As discussed in the Urban Form section above, the site is not located within a UDF designated center. Therefore, this policy is not directly relevant. However, this policy highlights one of the problems that has led to an inability to attract a grocery use to the site under the existing conditions. The Southwest Hills neighborhood is a relatively low-density single-family neighborhood that is not easily accessible. Therefore, it does not support the critical mass of demand for grocery services that exists in the designated City centers. Following removal of the use and development restrictions, however, commercial and mixed-use development would be allowed on the site, which could provide a variety of goods and services within walking distance of many of the surrounding neighbors. Therefore, while the policy is not directly relevant, the request to remove the use and development conditions is more supportive of the general purpose of the policy than continued application of the restrictive conditions.

**Policy 4.21** ***Street environment.** Encourage development in centers and corridors to include amenities that create a pedestrian-oriented environment and provide places for people to sit, spend time, and gather.*

**Policy 4.22** ***Relationship between building height and street size.** Encourage development in centers and corridors that is responsive to street space width, thus allowing taller buildings on wider streets.*

**Policy 4.23** ***Design for pedestrian and bicycle access.** Provide accessible sidewalks, high-quality bicycle access, and frequent street connections and crossings in centers and corridors.*

**Findings:** The site is not located within a UDF designated center or along a UDF designated corridor. Therefore, these three policies are not directly relevant.

**Policy 4.24** ***Drive-through facilities.** Prohibit drive through facilities in the Central City, and limit new development of new ones in the Inner Ring Districts and centers in order to support a pedestrian-oriented environment.*

**Findings:** The site is not located within the Central City or within an Inner Ring District or center. Therefore, this policy is not directly relevant. Nonetheless, pursuant to the new zoning code and consistent with the general policy supporting pedestrian-oriented development, new drive-through facilities are prohibited in the CM1 zone and would be prohibited on this site.

**Policy 4.25** *Residential uses on busy streets. Improve the livability of places and streets with high motor vehicle volumes. Encourage landscaped front setbacks, street trees, and other design approaches to buffer residents from street traffic.*

**Findings:** The City has implemented this policy by requiring a minimum setback along selected Civic Corridors. SW Patton Road is a Neighborhood Collector and a relatively busy street within the neighborhood, but is not a Civic Corridor. Therefore, the CM1 zone does not apply a minimum street setback requirement for the site. The development standards, however, allow a 10-foot setback on the street lot line, and therefore new development on the site could provide a landscaped setback that is not present at the existing building. Additionally, the Title 11 street tree requirements would apply to any redevelopment of the site once the conditions are lifted. For these reasons, the request to remove the use and development conditions is equally or more supportive of the general purpose of the policy than continued application of the restrictive conditions.

**Policy 4.26** *Active gathering places. Locate public squares, plazas, and other gathering places in centers and corridors to provide places for community activity and social connections. Encourage location of businesses, services, and arts adjacent to these spaces that relate to and promote the use of the space.*

**Findings:** Once again, the site is not located within a UDF designated center or along a UDF designated corridor. Therefore, this policy is not directly relevant.

Even if it were relevant because of the location, the policy directs the City to provide public spaces. The subject site is private property. The neighborhood has explained that the former grocery store served as a de facto community gathering space and location for social connection. However, that function was directly related to the commercial use on the site and the site has never provided a true public space. Neighbors argued that the term "other gathering places" includes private property. However, the language of this Policy does not support that interpretation, which encourages the location of businesses and services adjacent to these spaces. Construing the term "gathering places" to include private businesses would render this requirement redundant.

The neighboring park does serve as an appropriate public gathering place for the community and commercial uses on the site, adjacent to this public space, would be consistent with this policy. While there is no guarantee that redevelopment of the site would provide an active gathering space, the CM1 zone allows a range of commercial uses that could serve as a *de facto*

community gathering space in a manner similar to the former grocery store. Therefore, to the extent this policy is relevant, the request to remove the use and development conditions is equally or more supportive of the general purpose of the policy than continued application of the restrictive conditions.

As staff noted, members of the public have used the on-site stairway to access the sports field (e.g. little league games, etc.) on the lower field of the adjacent Portland Heights Park. The existing development and use conditions that apply to the site do not address this access. Therefore, removal of the conditions will have no impact on this use.

**Policy 4.27** *Protect defining features. Protect and enhance defining places and features of centers and corridors, including landmarks, natural features, and historic and cultural resources, through application of zoning, incentive programs, and regulatory tools.*

**Policy 4.28** *Historic buildings in centers and corridors. Identify, protect, and encourage the use and rehabilitation of historic resources in centers and corridors.*

**Findings:** Once again, the site is not located within a UDF designated center or along a UDF designated corridor. Therefore, these 2 policies are not directly relevant. In any case, there are no landmarks, natural features, or known historic and cultural resources on the site. Additionally, the existing building on the site is not a designated historic building. Therefore, these policies are not relevant.

**Policy 4.29** *Public art. Encourage new development and public places to include design elements and public art that contribute to the distinct identities of centers and corridors, and that highlight the history and diverse cultures of neighborhoods.*

**Findings:** Under this policy, the City must encourage, rather than require, public art. The City has implemented this policy in the new commercial zones outside of the Central City, including the CM1 zone, by allowing public art to meet up to one half of the required window coverage of the ground floor window provision. Any new development on the site could take advantage of the public art exception. However, the site is more likely to redevelop if the conditions are removed. Therefore, the request to remove the use and development conditions is equally or more supportive of this policy than continued application of the restrictive conditions.

**Policy 4.30** *Scale transitions. Create transitions in building scale in locations where higher-density and higher-intensity development is adjacent to smaller-scale single-dwelling zoning. Ensure that new high-density and large-scale infill development adjacent to single dwelling zones incorporates design elements that soften transitions in scale and limit light and privacy impacts on adjacent residents.*

**Findings:** The CM1 zoning designation that applies to this site is consistent with this Policy. However, as discussed above, the existing conditions impose greater limits on building heights and require larger setbacks from adjacent residential properties than the CM1 zone. Consequently, the continued application of the development conditions is more supportive of this policy than the requested removal of the development conditions.

**Policy 4.31** *Land use transitions. Improve the interface between non-residential uses and residential uses in areas where commercial or employment uses are adjacent to residentially-zoned land.*

**Findings:** As discussed above, the CM1 zoning designation for this site is consistent with this Policy. Specifically, the zone is a small-scale zone intended for sites in dispersed mixed-use nodes within lower density residential areas and development is intended to be compatible with the scale and characteristics of adjacent residentially zoned areas. The development standards of the CM1 zone achieve that compatibility in scale and provide an appropriate interface between non-residential uses and residential uses. Any redevelopment of the site would be subject to the CM1 development standards. The height of the building would be limited to 35 feet and a 10-foot setback would be required along the northern property that abuts the residentially zoned areas. However, as discussed above, the existing conditions impose setbacks and height limits that are more restrictive than the CM1 zone. Therefore, the request to remove the use and development conditions is somewhat less supportive of this policy than continued application of the restrictive conditions.

*Policy 4.32 relates to properties on the industrial edge and is not relevant.*

**Policy 4.33** *Off-site impacts. Limit and mitigate public health impacts, such as odor, noise, glare, light pollution, air pollutants, and vibration that public facilities, land uses, or development may have on adjacent residential or institutional uses, and on significant fish and wildlife habitat areas. Pay particular attention to limiting and mitigating impacts to under-served and under-represented communities.*

**Findings:** The existing use and development conditions are consistent with this Policy: requiring additional setbacks from residential areas; providing specific limits on indoor and outdoor lighting, truck deliveries, signage, loudspeakers; requiring screening of rooftop mechanical equipment; and prohibiting outdoor solid waste facilities. Current code requirements are also consistent with this policy, imposing similar restrictions that protect all properties from public health impacts from odor, noise, glare, and light pollution, and requiring screening of solid waste facilities. Any future development of the site following removal of the restrictive use and development conditions would be subject to the current code requirements. Therefore, the request to remove the use and development conditions is equally supportive of this policy than continued application of the restrictive conditions.

**Policy 4.34** *Auto-oriented facilities, uses, and exterior displays. Minimize the adverse impacts of highways, auto-oriented uses, vehicle areas, drive-through areas, signage, and exterior display and storage areas on adjacent residential uses.*

**Findings:** The City has implemented this policy through code provisions addressing each of the identified impacts. The subject site is not near a highway and drive-through facilities would be prohibited on the site. The location and impact of vehicle areas would be minimized by the parking and loading standards of the zoning code. The development standards on the new CM1 zone limit exterior displays and prohibit exterior storage areas. Finally, any signage would be subject to the City's sign code standards, which are more restrictive than the existing conditions. For these reasons, the request to remove the use and development conditions is equally or more supportive of this policy than continued application of the restrictive conditions.

**Policy 4.35** *Noise impacts. Encourage building and landscape design and land use patterns that limit and/or mitigate negative noise impacts to building users and residents, particularly in areas near freeways, regional truckways, major city traffic streets, and other sources of noise.*

**Findings:** Any future uses on the site would be subject to the noise provisions of the existing code. The specific noise conditions that currently apply to the site are only applicable to a grocery use and would not be appropriate for other uses following removal of the restrictive use condition. Therefore, the request to remove the use and development conditions is equally supportive of this policy than continued application of the restrictive conditions.

**Policy 4.36** *Air quality impacts. Encourage building and landscape design and land use patterns that limit and/or mitigate negative air quality impacts to building users and residents, particularly in areas near freeways, regional truckways, high traffic streets, and other sources of air pollution.*

**Findings:** One of the largest sources of air quality impacts is vehicle trips. The proposed trip cap would limit vehicle trips to and from the site to the number of trips that would be generated by a grocery use under the existing development conditions. It is the case that without a grocery use on the site, neighboring residents may have to travel farther than they did when the grocery use existed by either vehicle or transit. However, those additional trips to get groceries have occurred over the past two years and are very likely to continue to occur if the conditions are not lifted, because a grocery in the existing building is no longer a viable use on the site. In contrast, the new uses on the site could include commercial uses that provide a variety of goods and services in close proximity to neighbors that they currently have to travel to obtain. Additionally, any new development on the site could take advantage of energy efficiency technologies that did not previously exist to limit the energy footprint of a new development. Finally, the tree preservation and mitigation of Title 11 and landscaping

requirements would help mitigate negative air quality impacts. Therefore, the request to remove the use and development conditions is equally or more supportive of this policy than continued application of the restrictive conditions.

*Policy 4.37 relates to diesel emissions from truck traffic and is not relevant.*

**Policy 4.38** *Light pollution. Encourage lighting design and practices that reduce the negative impacts of light pollution, including sky glow, glare, energy waste, impacts to public health and safety, disruption of ecosystems, and hazards to wildlife.*

**Findings:** Any redevelopment at the site would be subject to the City's code requirements for light and glare on neighboring properties. Therefore, the request to remove the use and development conditions is equally supportive of this policy than continued application of the restrictive conditions.

*Policies 4.39 relates to airport noise is not relevant.*

**Policy 4.40** *Telecommunication facility impacts. Mitigate the visual impact of telecommunications and broadcast facilities near residentially-zoned areas through physical design solutions.*

**Findings:** The existing restrictive conditions prohibit the development of any new structures on the site, including either new rooftop wireless telecommunications equipment or a new tower. With removal of the restrictive conditions of approval at the subject site, future alterations at the property could potentially include a rooftop wireless telecommunications facility or communications tower with antennas and accessory equipment, subject to the regulations in Portland Zoning Code Chapter PCC 33.274, Radio-Frequency Telecommunications Facilities. These regulations could theoretically allow a small rooftop facility on the building by right, if the entire facility was located at least 50 feet from any residential zone (PCC 33.274.035.A). Any rooftop facility closer than 50 feet to an R zone would trigger a Type II Conditional Use review, and any new telecommunications tower would trigger a Type III Conditional Use review, with the requirement for a Pre-Application Conference prior to submittal of the land use review. Therefore, removal of the restrictive conditions is less supportive of the policy than the current situation.

*Policies 4.41 through 4.59 relate to scenic and historic resources that are not present on the site and are not relevant.*

**Policy 4.60** *Rehabilitation and adaptive reuse. Encourage rehabilitation and adaptive reuse of buildings, especially those of historic or cultural significance, to conserve natural resources, reduce waste, and demonstrate stewardship of the built environment.*

**Findings:** While the existing building does not have certified historic or cultural significance, the request to remove the restrictive use and development standards would not preclude reuse of the existing building. In fact, the applicant is specifically requesting condition language that protects the ability of a future site owner to reuse the existing building. Therefore, the request to remove the use and development conditions is equally supportive of this policy than continued application of the restrictive conditions.

*Policies 4.61 through 4.78 are development specific policies and are not relevant because development is not proposed through this application.*

**Policy 4.79** ***Natural hazards and climate change risks and impacts.** Limit development in or near areas prone to natural hazards, using the most current hazard and climate change-related information and maps.*

**Policy 4.80** ***Geological hazards.** Evaluate slope and soil characteristics, including liquefaction potential, landslide hazards, and other geologic hazards.*

**Policy 4.81** ***Disaster-resilient development.** Encourage development and site- management approaches that reduce the risks and impacts of natural disasters or other major disturbances and that improve the ability of people, wildlife, natural systems, and property to withstand and recover from such events.*

**Findings:** The site is not prone to flooding or other natural hazards that could result from climate change. However, the site and many of the surrounding residential properties are located on steep slopes and within a potential landslide hazard area. Therefore, the City will require submittal of a geotechnical report at the time of plan review for any future development to ensure that any new construction accounts for the landslide hazards and is disaster resilient. Additionally, future development must comply with the Stormwater Management Manual for landslide hazard areas to confirm that the stormwater management approach is appropriate for the site. The existing building on the site may not be compliant with current code requirements for landslide hazard areas, and the existing stormwater system at the site has not been reviewed under the current Stormwater Management Manual requirements. The site could redevelop subject to the existing conditions. However, the site is more likely to redevelop if the conditions are removed. For these reasons, the request to remove the use and development conditions is more supportive of these related policies than continued application of the restrictive conditions.

*Policy 4.82 relates to the Portland harbor and is not relevant.*

*Policies 4.83 and 4.84 relate to heat islands and disaster recovery and are not relevant.*

**Policy 4.85** ***Grocery stores and markets in centers.** Facilitate the retention and development of grocery stores, neighborhood-based markets, and farmers markets offering fresh produce in centers. Provide adequate land supply to accommodate a full*



*spectrum of grocery stores catering to all socioeconomic groups and providing groceries at all levels of affordability.*

**Findings:** The subject site is not located in a UDF designated center and therefore, this policy is not relevant.

**Policy 4.86** *Neighborhood food access. Encourage small, neighborhood-based retail food opportunities, such as corner markets, food co-ops, food buying clubs, and community-supported agriculture pickup/drop-off sites, to fill in service gaps in food access across the city.*

**Findings:** This policy acknowledges that the current situation for the Southwest Hills Neighborhood is not unique and that there are service gaps in food access across the city. Due to changes in the grocery industry and a demonstrated lack of interest by traditional grocers in this site, continued application of the restrictive use and development conditions will not resolve the service gap for this neighborhood. However, removal of the use and development restrictions could potentially result in some food service at the site, including a small corner market or restaurant as part of a mixed-use development. However, this policy does not require the City to mandate neighborhood based food opportunities. Instead, the policy is to encourage those opportunities and that is done through designating appropriate neighborhood commercial zones that allow the uses and encouraging alternative food options such as food buying clubs and community agricultural pick-up and drop-off for residents in the service gaps. For these reasons, the request to remove the use and development conditions is equally or more supportive of this policy than continued application of the restrictive conditions.

*Policies 4.87 and 4.88 relate to growing food and community gardens and are not relevant.*

## **CHAPTER 5: HOUSING**

### **Goals:**

#### **Goal 5.A: Housing diversity**

*Portlanders have access to high-quality affordable housing that accommodates their needs, preferences, and financial capabilities in terms of different types, tenures, density, sizes, costs, and locations.*

**Findings:** Multifamily housing is allowed either exclusively or as a part of mixed-use development in the CM1 zone, and multifamily housing is a housing type that is currently in limited supply in the Southwest Hills neighborhood, which is dominated by mid- to high-cost single-family homes. However, housing is prohibited under the existing site conditions. Therefore, despite the zoning designation recently applied by the City Council, the site does not further this goal with the strict use and development conditions in place. The request to

remove those conditions to allow the full scope of uses allowed in the CM1 zone is consistent with this housing goal.

**Goal 5.B: Equitable access to housing**

*Portland ensures equitable access to housing, making a special effort to remove disparities in housing access for people with disabilities, people of color, low-income households, diverse household types, and older adults.*

**Findings:** Consistent with this goal, removing the use and development conditions would create an opportunity for development of multifamily housing, which may be available at a lower cost than the existing primarily moderate- to high-end single-family homes in the neighborhood. Such multi-family housing could benefit people who have previously been unable to afford housing in the neighborhood, including comparatively lower-income households, diverse families, or older adults who are seeking a smaller dwelling size. There is no guarantee that the site will be developed with any housing or, if housing is provided, that it will be affordable. However, the current conditions preclude any housing on the site. Removal of the conditions would support this goal by allowing the potential for housing on the site.

**Goal 5.C: Healthy connected city**

*Portlanders live in safe, healthy housing that provides convenient access to jobs and to goods and services that meet daily needs. This housing is connected to the rest of the city and region by safe, convenient, and affordable multimodal transportation.*

**Findings:** One of the concerns raised by the neighborhood is the lack of goods and services in the neighborhood to meet daily needs. If the site were to be developed exclusively with housing, that fact would not change. However, while allowing housing only development within the CM1 zone and other commercial zones is a policy choice that the City has made, the requested removal of restrictive use and development conditions would also allow commercial uses and mixed-use development. Nevertheless, even if the site were to be developed exclusively with housing, new housing in that area would be safe and healthy housing on a designated transit street with existing bus service, and the surrounding neighbors would have the same access to goods and services that they have now with the restrictive conditions in place and no existing commercial use on the site. For these reasons, the request is supportive of this goal as implemented through the policies addressed below.

**Goal 5.D: Affordable housing**

*Portland has an adequate supply of affordable housing units to meet the needs of residents vulnerable to increasing housing costs.*

**Findings:** Because development is not proposed at this time, it is not possible to determine if the site would contribute to the City's affordable housing supply or funds. Residential development on the site would be subject to the inclusionary housing provisions if the

development were to include more than 19 units. Therefore, the requested change is more supportive of the City's affordable housing goals, as implemented through the policies identified below, than the continued application of the use and development conditions that prohibit housing on this site.

**Goal 5.E: High-performance housing**

*Portland residents have access to resource-efficient and high-performance housing for people of all abilities and income levels.*

**Findings:** New housing development on the site could provide resource-efficient and high-performance housing as envisioned by this goal, as implemented through the policies addressed below.

**Policies:**

**Policy 5.1**     ***Housing supply.** Maintain sufficient residential development capacity to accommodate Portland's projected share of regional household growth.*

**Policy 5.2**     ***Housing growth.** Strive to capture at least 25 percent of the seven-county region's residential growth (Multnomah, Washington, Clackamas, Yamhill, Columbia, Clark, and Skamania counties).*

**Findings:** The City made the policy choice to allow housing, either exclusively or as a mixed-use development, in the City's Commercial/Mixed Use zones, including the CM1 zone. Therefore, commercial zones are accounted for as part of the City's housing supply inventory. With the current use and development conditions in effect, however, this site cannot contribute to the housing supply. Therefore, the request to remove the use and development conditions is more supportive of these related housing policies than continued application of the restrictive conditions.

**Policy 5.3**     ***Housing potential.** Evaluate plans and investments for their impact on housing capacity, particularly the impact on the supply of housing units that can serve low- and moderate-income households, and identify opportunities to meet future demand.*

**Findings:** As discussed above, continued application of the restrictive use and development conditions prevents this site from contributing to the housing supply in the same way that other CM1 zoned properties across the City do. While the price point for any future housing at the site is not known, by providing an opportunity for multifamily housing in a neighborhood that is exclusively moderate- to high-cost single family homes, the housing units are likely to be more accessible to low- or moderate-income households than the existing single-family housing supply in the neighborhood. Therefore, the request to remove the use and development conditions is more supportive of this housing policy than continued application of the restrictive conditions that prohibit any housing on the site.

**Policy 5.4**     ***Housing types.** Encourage new and innovative housing types that meet the evolving needs of Portland households, and expand housing choices in all neighborhoods. These housing types include but are not limited to single-dwelling units; multi-dwelling units; accessory dwelling units; small units; pre-fabricated homes such as manufactured, modular, and mobile homes; co-housing; and clustered housing/clustered services.*

**Findings:** Once again, the Southwest Hills neighborhood is dominated by moderate- to high-cost single-family homes. The multifamily unit housing type is prevalent in many Portland neighborhoods, but there is little multifamily housing or mixed-use housing within the core of the Southwest Hills neighborhood. Removal of the strict use and development conditions would allow those housing types under the designated CM1 zone, expanding the housing choices available in the neighborhood. Therefore, the request to remove the use and development conditions is more supportive of the general purpose of the policy than continued application of the restrictive conditions.

*Policy 5.5 relates to housing in designated centers and is not relevant.*

**Policy 5.6**     ***Middle housing.** Enable and encourage development of middle housing. This includes multi-unit or clustered residential buildings that provide relatively smaller, less expensive units; more units; and a scale transition between the core of the mixed use center and surrounding single family areas. Where appropriate, apply zoning that would allow this within a quarter mile of designated centers, corridors with frequent service transit, high capacity transit stations, and within the Inner Ring around the Central City.*

**Findings:** The CM1 zone would also allow middle housing on the site under the household living use category. The site is located at the edge of the Inner Ring around the Central City and on a transit street. However, middle housing is currently prohibited under the restrictive use and development conditions. Therefore, the request to remove the use and development conditions is more supportive of this policy than continued application of the restrictive conditions.

*Policies 5.7 through 5.21 relate to housing design, housing stability and other housing issues that are not relevant to the requested amendment.*

**Policy 5.22**     ***New development in opportunity areas.** Locate new affordable housing in areas that have high/medium levels of opportunity in terms of access to active transportation, jobs, open spaces, high-quality schools, and supportive services and amenities. See Figure 5-1 — Housing Opportunity Map.*

**Findings:** Based upon Figure 5-1, it appears that the site is located in a medium to low opportunity area. Therefore, to the extent this policy is relevant, the request to remove the use and development conditions is more supportive of this policy as continued application of the restrictive conditions, which prohibit any housing on the site.

**Policy 5.23** ***Higher-density housing.** Locate higher-density housing, including units that are affordable and accessible, in and around centers to take advantage of the access to active transportation, jobs, open spaces, schools, and various services and amenities.*

**Findings:** The site is not located in a designated center. Therefore, this policy is inapplicable.

**Policy 5.24** ***Impact of housing on schools.** Evaluate plans and investments for the effect of housing development on school enrollment, financial stability, and student mobility. Coordinate with school districts to ensure plans are aligned with school facility plans.*

**Findings:** The site is located within the Portland Public School district. As discussed above, if the restrictive use and development conditions were removed, the site could be developed with a relatively wide range of household living uses. However, the site is 1.14 acres and the number of housing units that would fit on the site is relatively limited. Additionally, the higher density possibilities would result in smaller dwellings that would be less likely to be occupied by families with school aged children. Finally, a service letter from the school district is not required by the zoning code in effect at the time the application was originally submitted. Therefore, to the extent the policy is relevant, the request to remove the use and development restrictions would result in minimal impact on school enrollment. Therefore, the request is equally supportive of this policy as continued application of the conditions.

**Policy 5.26** ***Regulated affordable housing target.** Strive to produce and fund at least 10,000 new regulated affordable housing units citywide by 2035 that will be affordable to households in the 0-80 percent MFI bracket.*

**Findings:** This policy is implemented through the City's inclusionary zoning program. Inclusionary zoning requirements would apply to the site if more than 19 dwellings were proposed. The density of residential development on the site, if any, is not known at this time. Therefore, it is not certain that the housing on the site would contribute to the affordable housing target or not. However, if the current conditions are retained it is certain that development on the site will not help reach the City's affordable housing target. Therefore, the request to remove the use and development conditions is equally or more supportive of this policy than continued application of the restrictive conditions.

*Policy 5.25 and 5.27 through 5.51 relate to affordable housing, housing types and housing design issues that are not directly relevant to the requested amendment.*

**Policy 5.52** *Walkable surroundings. Encourage active transportation in residential areas through the development of pathways, sidewalks, and high-quality onsite amenities such as secure bicycle parking.*

**Findings:** SW Patton Road has existing sidewalks on both side of the street and any new development would be required to comply with minimum bicycle parking standards. Therefore, the request to remove the use and development conditions is equally supportive of this policy than continued application of the restrictive conditions.

**Policy 5.53** *Responding to social isolation. Encourage site designs and relationship to adjacent developments that reduce social isolation for groups that often experience it, such as older adults, people with disabilities, communities of color, and immigrant communities.*

**Findings:** Neighbors testified that the former grocery store served as a quasi-community space that attracted residents from throughout the neighborhood and encouraged social interaction. The location of the site within the neighborhood allows residents to walk there, improving access for those who cannot drive. However, the existing vacant building does not alleviate any issues of social isolation felt by elderly neighbors or people with disabilities in the neighboring single-family homes. Following removal of the restrictive use and development conditions, the site could provide multifamily residential uses, commercial uses, or a mixed-use development. Multifamily residential development could provide an opportunity for greater interaction between residents than currently exists with single-family homes. Commercial development could provide a wide variety of goods or services that attracts neighbors to the site and provides opportunities for interaction. Finally, a mixed-use development could do both. In any case, the request to remove the use and development conditions is equally or more supportive of this policy than continued application of the restrictive conditions that prevents active use of the site.

*Policy 5.54 relates to rental protection issues that are not relevant.*

## **CHAPTER 6: ECONOMIC DEVELOPMENT**

### **Goals:**

#### **Goal 6.A: Prosperity**

*Portland has vigorous economic growth and a healthy, diverse economy that supports prosperity and equitable access to employment opportunities for an increasingly diverse population. A strong economy that is keeping up with population growth and attracting resources and talent can:*

- *Create opportunity for people to achieve their full potential.*
- *Improve public health.*
- *Support a healthy environment.*
- *Support the fiscal well-being of the city.*

**Findings:** The request to remove restrictive conditions that limit development on the site to a single use that is no longer viable is supportive of this goal for vigorous economic growth as applied through the policies below. Due to changes in the grocery industry, the limited density of the neighborhood, the location of the site, and the development conditions that strictly limit development to the existing building, a grocery only use is not a viable use at the site with the existing conditions in place. Therefore, the site is no longer able to provide a use and development that creates job opportunities or supports the fiscal well-being of the City. Consistent with the City's policy to allow residential uses on Commercial/Mixed-Use zoned land, including the CM1 zone, it is not certain that future development of the site will include commercial uses. However, the removal of the limiting conditions provides an opportunity for economic growth that is currently lacking under the existing conditions, and in that way the request is supportive of this goal.

#### **Goal 6.B: Development**

*Portland supports an attractive environment for industrial, commercial, and institutional job growth and development by 1) maintaining an adequate land supply; 2) a local development review system that is nimble, predictable, and fair; and 3) high-quality public facilities and services.*

**Findings:** The site is part of the City's mixed-use land supply, but is unable to fully live up to its mixed-use development potential because of the restrictive use and development conditions that preclude all but one of the uses allowed in the zone. Removing the restrictive conditions would allow the site to develop with a broader range of employment generating commercial uses. Limiting development to a single use severely limits the commercial development potential for the site. Therefore, removal of the restrictive conditions and allowing the site to develop with the full range of uses allowed in the CM1 is supportive of this development goal, as applied through the policies addressed below.

#### **Goal 6.C: Business district vitality**

*Portland implements land use policy and investments to:*

- *Ensure that commercial, institutional, and industrial districts support business retention and expansion.*
- *Encourage the growth of districts that support productive and creative synergies among local businesses.*
- *Provide convenient access to goods, services, and markets.*

- *Take advantage of our location and quality of life advantages as a gateway to world-class natural landscapes in Northwest Oregon, Southwest Washington, and the Columbia River Basin, and a robust interconnected system of natural landscapes within the region's Urban Growth Boundary.*

**Findings:** The site is a single mixed-use zone rather than a business district. Therefore, this goal is not directly relevant. However, allowing the full scope of uses permitted in the CM1 zone is more supportive of the goal for business retention and expansion and convenient access to goods and services than continued application of the conditions that strictly limit development on the site to a grocery use that is no longer viable.

**Policies:**

- Policy 6.1**     *Diverse and growing community. Expand economic opportunity and improve economic equity for Portland's diverse, growing population through sustained business growth.*
- Policy 6.2**     *Diverse and expanding economy. Align plans and investments to maintain the diversity of Portland's economy and status as Oregon's largest job center with growth across all sectors (commercial, industrial, creative, and institutional) and across all parts of the city.*
- Policy 6.3**     *Employment growth. Strive to capture at least 25 percent of the seven-county region's employment growth (Multnomah, Washington, Clackamas, Yamhill, Columbia, Clark, and Skamania counties).*
- Policy 6.4**     *Fiscally-stable city. Promote a high citywide jobs-to-households ratio that supports tax revenue growth at pace with residential demand for municipal services.*

**Findings:** The site is currently burdened by a set of conditions that limits use of the site to a grocery store in the existing building footprint. Therefore, there is no opportunity for economic or employment growth or diversification of the economy at the site. Removal of the conditions would create the opportunity for business and employment growth at the site through new commercial or mixed-use development. The City Council has made a policy decision not to require commercial development in the CM1 zone or in other Commercial/Mixed-Use zones. Therefore, economic and employment growth from commercial development at the site would not be guaranteed with the removal of the conditions. However, removal of the restrictive conditions would expand the possibility for economic and employment growth and development at the site that does not currently exist with the restrictive use and development conditions in place. For these reasons, the request to remove the use and development conditions is equally or more supportive of these four related policies than continued application of the restrictive conditions.



**Policy 6.5**     ***Economic resilience.** Improve Portland's economic resilience to impacts from climate change and natural disasters through a strong local economy and equitable opportunities for prosperity.*

**Findings:** The use and development limitations are not directly connected to impacts of climate change or natural disasters. Therefore, this policy is not directly relevant.

**Policy 6.6**     ***Low-carbon and renewable energy economy.** Align plans and investments with efforts to improve energy efficiency and reduce lifecycle carbon emissions from business operations. Promote employment opportunities associated with the production of renewable energy, energy efficiency projects, waste reduction, production of more durable goods, and recycling.*

**Findings:** As noted in the testimony, the former grocery store on the site reduced carbon emissions and conserved energy by providing a needed service, groceries, in close proximity to neighborhood residents, thereby reducing the need to travel longer distances to fulfill this need. However, as discussed above, a grocery store is no longer viable at this site. Removal of the conditions would allow potential development consistent with this policy. Although there is no guarantee of any commercial uses on the site, allowing the opportunity for commercial development in close proximity to existing and new residential uses is generally consistent with a low-carbon economy. Therefore, to the extent this policy is relevant, the request to remove the use and development conditions is equally or more supportive of this policy than continued application of the restrictive conditions.

**Policy 6.7**     ***Competitive advantages.** Maintain and strengthen the city's comparative economic advantages including access to a high-quality workforce, business diversity, competitive business climate, and multimodal transportation infrastructure.*

**Policy 6.8**     ***Business environment.** Use plans and investments to help create a positive business environment in the city and provide strategic assistance to retain, expand, and attract businesses.*

**Findings:** The restrictive use and development conditions stifle the opportunity for the site to provide business or economic diversity. The applicant was unable to retain the former grocery use on the site and is unable to attract a new grocery business. Removal of the conditions would create the opportunity for commercial space that could attract and retain businesses that are allowed in the CM1 zone. As noted above, the City Council has made a policy decision not to require commercial development in the CM1 zone or in other Commercial/Mixed-Use zones, allowing the market to determine the best mix of uses on a particular CM1 zoned parcel. Therefore, economic growth and business diversity at the site would not be guaranteed with the removal of the conditions. However, there would be a possibility for new commercial uses

and development at the site that does not currently exist with the restrictive use and development conditions in place. For these reasons, the request to remove the use and development conditions is equally or more supportive of these related business policies than continued application of the restrictive conditions.

*Policies 6.9 through 6.11 relate to specific business development issues that are not relevant.*

**Policy 6.12** ***Economic role of livability and ecosystem services.** Conserve and enhance Portland's cultural, historic, recreational, educational, food-related, and ecosystem assets and services for their contribution to the local economy and their importance for retention and attraction of skilled workers and businesses.*

**Findings:** The site historically provided food-related services as a grocery store. However, a grocery store is no longer economically viable with the restrictive conditions in place and the current vacant building provides neither food related services to the neighborhood, jobs for skilled workers, nor opportunities for business success. Continuing to apply conditions that limit the site to a single food-related use is not consistent with this policy. In contrast, removal of the conditions would allow the full scope of uses allowed in the CM1 zone, which could include food-related services. Therefore, the request to remove the use and development conditions is equally or more supportive of this policy than continued application of the restrictive conditions.

**Policy 6.13** ***Land supply.** Provide supplies of employment land that are sufficient to meet the long-term and short-term employment growth forecasts, adequate in terms of amounts and types of sites, available and practical for development and intended uses. Types of sites are distinguished primarily by employment geographies identified in the Economic Opportunities Analysis, although capacity needs for building types with similar site characteristics can be met in other employment geographies.*

**Findings:** While the CM1 zoned site is likely considered part of the City's employment land supply, the restrictive conditions severely limit the use of the site for employment generation. Therefore, the request to remove the use and development conditions is equally or more supportive of this policy than continued application of the restrictive conditions.

*Policy 6.14 relates to brownfield redevelopment is not relevant.*

**Policy 6.15** ***Regionally-competitive development sites.** Improve the competitiveness of vacant and underutilized sites located in Portland's employment areas through the use of incentives, and regional and state assistance for needed infrastructure and site readiness improvements.*

**Findings:** The building on the site has been vacant and the site has been underutilized for over two years because the conditions limit use of the site to a grocery and the applicant cannot find a grocery tenant. Removal of the restrictive conditions will allow the site to redevelop with the full range of uses allowed in the CM1 zone, which will improve the competitiveness of this vacant and underutilized site. Therefore, the request to remove the use and development conditions is more supportive of this policy than continued application of the restrictive conditions.

**Policy 6.16** *Regulatory climate. Improve development review processes and regulations to encourage predictability and support local and equitable employment growth and encourage business retention, including:*

- 6.16.a. Assess and understand cumulative regulatory costs to promote Portland's financial competitiveness with other comparable cities.*
- 6.16.b. Promote certainty for new development through appropriate allowed uses and "clear and objective" standards to permit typical development types without a discretionary review.*
- 6.16.c. Allow discretionary-review as a way to facilitate flexible and innovative approaches to meet requirements.*
- 6.16.d. Design and monitor development review processes to avoid unnecessary delays.*
- 6.16.e. Promote cost effective compliance with federal and state mandates, productive intergovernmental coordination, and efficient, well-coordinated development review and permitting procedures.*
- 6.16.f. Consider short-term market conditions and how area development patterns will transition over time when creating new development regulations.*

**Findings:** This policy is aimed at the City's regulatory climate and is not directly applicable to this application. However, to the extent it is applicable, removal of the existing conditions would be more supportive of this policy by eliminating the existing development restrictions and allowing the full range of uses permitted in the CM1 zone. Therefore, to the extent this policy applies, the request to remove the use and development conditions is equally or more supportive than continued application of the restrictive conditions.

**Policy 6.17** *Short-term land supply. Provide for a competitive supply of development- ready sites with different site sizes and types, to meet five-year demand for employment growth in the Central City, industrial areas, campus institutions, and neighborhood business districts.*

**Findings:** While the CM1 zoned site is considered part of the City's employment land supply, the restrictive conditions currently prevent the use of the site for employment generation in the short term and likely the long term. Therefore, the request to remove the use and development conditions is equally or more supportive of this policy than continued application of the restrictive conditions.

*Policies 6.18 through 6.65 include directives for the City to encourage economic development, industrial land issues, policies that apply in designated business districts and other economic policies that are not relevant.*

**Policy 6.66** *Neighborhood-serving business. Provide for neighborhood business districts and small commercial nodes in areas between centers to expand local access to goods and services. Allow nodes of small-scale neighborhood-serving commercial uses in large planned developments and as a ground floor use in high density residential areas.*

**Findings:** The site is a small commercial node in an area between centers. As neighbors testified at the hearings, it is the only commercial node in the Southwest Hills Neighborhood. The former grocery store on the site provided local access to goods and services. However, the grocery use no longer exists and the site has been vacant for the past two years. The conditions of approval preclude any other commercial uses on the site. Removing the restrictive conditions would create the opportunity for a variety of small-scale neighborhood-serving commercial uses on the site in a commercial or mixed-use development. Although there is no certainty that site will develop with commercial uses, the City Council made a policy decision to allow a wide range of commercial, residential, and mixed-uses in the new Commercial/Mixed Use zones. In other words, and consistent with this policy, the CM1 zone allows, but does not require, neighborhood-serving commercial uses, and does not dictate specific goods or services that must be provided if commercial uses are provided. Therefore, consistent with this policy, if the restrictive use and development conditions were removed, a variety of commercial uses would be allowed on this small commercial node. In contrast, the restrictive conditions limit use of the site to a single commercial use in a single building footprint. Based on the unrebutted evidence from the applicant, an exclusive grocery use is no longer viable on the site. As a result, the restrictive conditions prevent the site from providing neighborhood access to goods or services. For these reasons, the request to remove the use and development conditions is equally or more supportive of this policy than continued application of the restrictive conditions.

**Policy 6.67** *Retail development. Provide for a competitive supply of retail sites that support the wide range of consumer needs for convenience, affordability, accessibility, and diversity of goods and services, especially in under-served areas of Portland.*

**Findings:** Once again, the CM1 zoning designation applied by the City Council to this site allows retail development, among other commercial uses. However, rather than providing a wide range of consumer needs, the building has been vacant for two years because the restrictive conditions limit the allowed uses to a single good – groceries. Therefore, the request to remove the use and development conditions is equally or more supportive of this policy than continued application of the restrictive conditions.

**Policy 6.68** *Investment priority. Prioritize commercial revitalization investments in neighborhoods that serve communities with limited access to goods and services.*

**Findings:** This policy is directed at City investments and is not directly relevant.

*Policy 6.69 applies to nonconforming uses and is not relevant.*

**Policy 6.70** *Involuntary commercial displacement. Evaluate plans and investments for their impact on existing businesses.*

*6.70.a. Limit involuntary commercial displacement in areas at risk of gentrification, and incorporate tools to reduce the cost burden of rapid neighborhood change on small business owners vulnerable to displacement.*

*6.70.b. Encourage the preservation and creation of affordable neighborhood commercial space to support a broad range of small business owners.*

**Findings:** To the extent this policy relates to City investment it is not directly relevant. However, the restrictive conditions were adopted as part of the comprehensive plan and zoning that apply to the site. Therefore, removal of the conditions is relevant to the “evaluate plans” portion of this Policy. The previous commercial use on the site, a grocery, was displaced, but not due to gentrification. Instead, the grocery failed to stay in business due to changes in the grocery industry. The grocery business was not replaced by another commercial use, a residential use, or a mix of uses that would have been allowed in the base zone because of strict use and development standards that only allow the displaced use, a grocery, on the site. Removal of the conditions and allowing the range of uses permitted on every other CM1 zone in the City could encourage the creation of affordable neighborhood commercial space and support a broad range of small business owners. Therefore, the request to remove the use and development conditions is equally or more supportive of this policy than continued application of the restrictive conditions.

*Policy 6.71 relates to temporary markets and is not relevant.*

**Policy 6.72** *Community economic development. Encourage collaborative approaches to align land use and neighborhood economic development for residents and business owners to better connect and compete in the regional economy.*

*6.72.a. Encourage broad-based community coalitions to implement land use and economic development objectives and programs.*

*6.72.b. Enhance opportunities for cooperation and partnerships between public and private entities that promote economic vitality in communities most disconnected from the regional economy.*

*6.72.c. Encourage cooperative efforts by area businesses, Business Associations, and Neighborhood Associations to work together on commercial revitalization efforts, sustainability initiatives, and transportation demand management.*

**Findings:** This policy directs the City to encourage partnerships and cooperation between a variety of public and private groups for community economic development and is not directly relevant to this request.

*Policy 6.73 relates to designated centers and is not relevant.*

## **CHAPTER 7: ENVIRONMENT AND WATERSHED HEALTH**

### **Goals:**

#### **Goal 7.A: Climate**

*Carbon emissions are reduced to 50 percent below 1990 levels by 2035.*

#### **Goal 7.B: Healthy watersheds and environment**

*Ecosystem services and ecosystem functions are maintained and watershed conditions have improved over time, supporting public health and safety, environmental quality, fish and wildlife, cultural values, economic prosperity, and the intrinsic value of nature.*

#### **Goal 7.C: Resilience**

*Portland's built and natural environments function in complementary ways and are resilient in the face of climate change and natural hazards.*

#### **Goal 7.D: Environmental equity**

*All Portlanders have access to clean air and water, can experience nature in their daily lives, and benefit from development designed to lessen the impacts of natural hazards and environmental contamination.*

#### **Goal 7.E: Community stewardship**

*Portlanders actively participate in efforts to maintain and improve the environment, including watershed health.*

**Findings:** The request for relief from restrictive conditions to allow reuse or redevelopment of a site that is already developed is generally consistent with the stated goals as implemented through the relevant policies addressed below. As Mr. van der Veer discussed in his oral and

written testimony (Exhibit H-38), a grocery use on this site would reduce carbon emissions by reducing vehicle miles traveled and encouraging walking, supporting Goal 7A. However, exclusive grocery use on the site is no longer viable. Therefore, under existing conditions area residents must travel to other stores located further away to obtain groceries. Removal of the restrictive conditions would allow the site to develop with any of the uses allowed in the CM1 zone, including commercial or mixed-use development. Commercial development on the site would help reduce carbon emissions by providing commercial uses in closer proximity to residents. Again, there is no assurance that the site will develop with commercial uses, but the existing conditions limit use of the site to a single commercial use that is no longer viable in this location.

**Policies:**

**Policy 7.1** *Environmental quality. Protect or support efforts to protect air, water, and soil quality, and associated benefits to public and ecological health and safety, through plans and investments.*

**Findings:** Any redevelopment or reuse of the site, including reuse of the existing building as a grocery store, would be required to comply with current code provisions that have been adopted to implement this general environmental quality policy that were not in place during the original site development or even site redevelopment in the 1980s. The relevant provisions include, but are not limited to, the BES Stormwater Management Manual, seismic upgrades, landscaping standards, energy efficiency programs, and the Urban Forestry requirements of Title 11. However, the site is more likely to redevelop if the restrictive conditions are removed. Therefore, the request to remove the use and development conditions is equally or more supportive of this policy as continued application of the restrictive conditions.

*Policies 7.2 through 7.8 are directives to the City and are not relevant to this amendment request.*

**Policy 7.9** *Habitat and biological communities. Improve, or support efforts to improve, fish and wildlife habitat and biological communities. Use plans and investments to enhance the diversity, quantity, and quality of habitats habitat corridors, and especially habitats that:*

- *Are rare or declining.*
- *Support at-risk plant and animal species and communities.*
- *Support recovery of species under the Endangered Species Act, and prevent new listings.*
- *Provide culturally important food sources, including those associated with Native American fishing rights.*

**Findings:** The site is a developed site with limited wildlife habitat. However, as discussed above, any redevelopment of the site would require compliance with landscaping and tree protection and mitigation requirements that create small wildlife and bird habitat. Additionally, redevelopment would require compliance with the current Stormwater Management Manual, which protects the City waterways and fish habitat. However, the site is more likely to redevelop if the restrictive conditions are removed. For these reasons, the request to remove the use and development conditions is equally or more supportive of this policy as continued application of the restrictive conditions.

**Policy 7.10** *Habitat connectivity. Improve or support efforts to improve terrestrial and aquatic habitat connectivity for fish and wildlife by using plans and investments, to:*

- *Prevent and repair habitat fragmentation.*
- *Improve habitat quality.*
- *Weave habitat into sites as new development occurs.*
- *Enhance or create habitat corridors that allow fish and wildlife to safely access and move through and between habitat areas.*
- *Promote restoration and protection of floodplains.*

**Findings:** Pursuant to Urban Form Figure 3-6 Urban Habitat Corridors, the subject site is located in or near an Existing/Enhanced Habitat Corridor along with a large percentage of the Southwest Hills neighborhood and all neighborhoods west of downtown. The subject site is fully developed with an existing building and surface parking area. Therefore, the existing site with the existing conditions contributes little to the functional value of the designated habitat corridor. As discussed above, any redevelopment on the site would be subject to compliance with landscaping and tree protection and mitigation requirements that create small wildlife and bird habitat the current Stormwater Management Manual, which protects the City waterways and fish habitat within the corridor area. However, the site is more likely to redevelop if the restrictive conditions are removed. Therefore, the request to remove the use and development conditions is equally or more supportive of this policy as continued application of the restrictive conditions.

**Policy 7.11** *Urban forest. Improve, or support efforts to improve the quantity, quality, and equitable distribution of Portland's urban forest through plans and investments.*

**7.11.a. Tree preservation.** *Require and incent preservation of large healthy trees, native trees and vegetation, tree groves, and forested areas.*

**7.11.b. Urban forest diversity.** *Coordinate plans and investments with efforts to improve tree species diversity and age diversity.*

**7.11.c. Tree canopy.** *Coordinate plans and investments toward meeting City tree canopy goals.*



- 7.11.d. Tree planting. Invest in tree planting and maintenance, especially in low-canopy areas, neighborhoods with under-served or under-represented communities, and within and near urban habitat corridors.*
- 7.11.e. Vegetation in natural resource areas. Require native trees and vegetation in significant natural resource areas.*
- 7.11.f. Resilient urban forest. Encourage planting of Pacific Northwest hardy and climate change resilient native trees and vegetation generally, and especially in urban habitat corridors.*
- 7.11.g. Trees in land use planning. Identify priority areas for tree preservation and planting in land use plans, and incent these actions.*
- 7.11.h. Managing wildfire risk. Address wildfire hazard risks and management priorities through plans and investments.*

**Findings:** These Urban Forest policies are largely implemented through the Title 11 tree preservation, protection, mitigation, and street tree requirements. Any redevelopment or reuse of the site would be subject to compliance with Title 11. However, the site is more likely to redevelop if the restrictive conditions are removed. Therefore, the request to remove the use and development conditions is equally or more supportive of this policy as continued application of the restrictive conditions.

*Policies 7.12 and 7.13 are general directives to the City related to invasive species and soils that Policies are not relevant to the requested amendment.*

**Policy 7.14** *Natural hazards. Prevent development-related degradation of natural systems and associated increases in landslide, wildfire, flooding, and earthquake risks.*

**Findings:** The site, along with many of the surrounding residential properties, is located on steep slopes and is within a potential landslide hazard area. Therefore, the City will require submittal of a geotechnical report at the time of plan review for any future development to ensure that any new buildings are constructed to account for the landslide hazards and earthquake risks. Additionally, future development must comply with the Stormwater Management Manual for landslide hazard areas to confirm that the stormwater management approach is appropriate for the site. The site is more likely to redevelop if the restrictive conditions are removed. For these reasons, the request to remove the use and development conditions is equally or more supportive of this policy.

*Polices 7.15 through 7.18 are directives to the City that are not relevant to the requested amendment.*

**Policy 7.19** *Natural resource protection. Protect the quantity, quality, and function of significant natural resources identified in the City's natural resource inventory, including:*

- *Rivers, streams, sloughs, and drainageways.*
- *Floodplains.*
- *Riparian corridors.*
- *Wetlands.*
- *Groundwater.*
- *Native and other beneficial vegetation species and communities.*
- *Aquatic and terrestrial habitats, including special habitats or habitats of concern, large anchor habitats, habitat complexes and corridors, rare and declining habitats such as wetlands, native oak, bottomland hardwood forest, grassland habitat, shallow water habitat, and habitats that support special-status or at-risk plant and wildlife species.*
- *Other resources identified in natural resource inventories.*

**Findings:** The site does not include, and is not located in close proximity to, water bodies, floodplains, riparian corridors, wetlands, critical habitat areas, or other resources identified in a natural resources inventory. To the extent this policy is relevant, the request to remove the use and development conditions is equally supportive of this policy as continued application of the restrictive conditions.

*Policies 7.20 through 7.25 are directives to the City that are not relevant to the requested amendment.*

**Policy 7.26** *Improving environmental conditions through development. Encourage ecological site design, site enhancement, or other tools to improve ecological functions and ecosystem services in conjunction with new development and alterations to existing development.*

**Findings:** Redevelopment of the site would be required to comply with development standards adopted to improvement environmental conditions, including landscaping and stormwater management. The future site developer could also take advantage of additional technologies and incentives to apply ecological site design. For these reasons, the request to remove the use and development conditions is equally supportive of this policy as continued application of the restrictive conditions.

*Policies 7.27 through 7.29 relate to aggregate resources and are not relevant to the requested amendment.*

*Policies 7.30 through 7.32 relate to the Columbia River Watershed and are not relevant to the subject site.*

**Willamette River Watershed**

**Policy 7.33** *Fish habitat. Provide adequate intervals of ecologically-functional shallow- water habitat for native fish along the entire length of the Willamette River within the city, and at the confluences of its tributaries.*

**Findings:** The site is located within the Willamette River Watershed, but is a great distance from the river itself. The Willamette River Watershed policies generally apply to areas in much closer proximity to the river. However, any redevelopment at the site must comply with the BES Stormwater Manual standards designed to protect nearby water bodies, which in turn protects the Willamette River tributaries and the Willamette River itself. In this way the request to remove the conditions limited redevelopment are equally protective of the Willamette River Watershed policies than continued application of the conditions.

*Policies 7.43 through 7.49, 7.50 through 7.52, and 7.53 through 7.57 relate to the Fanno and Tryon Creek Watersheds, the Johnson Creek Watershed and the Columbia Slough Watershed respectively and are not relevant to the subject site.*

## **CHAPTER 8: PUBLIC FACILITIES AND SERVICES**

### **Goals:**

#### **Goal 8.A: Quality public facilities and services**

*High-quality public facilities and services provide Portlanders with optimal levels of service throughout the city, based on system needs and community goals, and in compliance with regulatory mandates.*

#### **Goal 8.B: Multiple benefits**

*Public facility and service investments improve equitable service provision, support economic prosperity, and enhance human and environmental health.*

#### **Goal 8.C: Reliability and resiliency**

*Public facilities and services are reliable, able to withstand or recover from catastrophic natural and manmade events, and are adaptable and resilient in the face of long-term changes in the climate, economy, and technology.*

#### **Goal 8.D: Public rights-of-way**

*Public rights-of-way enhance the public realm and provide a multi-purpose, connected, safe, and healthy physical space for movement and travel, public and private utilities, and other appropriate public functions and uses.*

#### **Goal 8.E: Sanitary and stormwater systems**

*Wastewater and stormwater are managed, conveyed, and/or treated to protect public health, safety, and the environment, and to meet the needs of the community on an equitable, efficient, and sustainable basis.*

**Goal 8.F: Flood management**

*Flood management systems and facilities support watershed health and manage flooding to reduce adverse impacts on Portlanders' health, safety, and property.*

**Goal 8.G: Water**

*Reliable and adequate water supply and delivery systems provide sufficient quantities of high-quality water at adequate pressures to meet the needs of the community on an equitable, efficient, and sustainable basis.*

**Goal 8.H: Parks, natural areas, and recreation**

*All Portlanders have safe, convenient, and equitable access to high-quality parks, natural areas, trails, and recreational opportunities in their daily lives, which contribute to their health and well-being. The City manages its natural areas and urban forest to protect unique urban habitats and offer Portlanders an opportunity to connect with nature.*

**Goal 8.I: Public safety and emergency response**

*Portland is a safe, resilient, and peaceful community where public safety, emergency response, and emergency management facilities and services are coordinated and able to effectively and efficiently meet community needs.*

**Goal 8.J: Solid waste management**

*Residents and businesses have access to waste management services and are encouraged to be thoughtful consumers to minimize upstream impacts and avoid generating waste destined for the landfill. Solid waste — including food, yard debris, recyclables, electronics, and construction and demolition debris — is managed, recycled, and composted to ensure the highest and best use of materials.*

**Goal 8.K: School facilities**

*Public schools are honored places of learning as well as multifunctional neighborhood anchors serving Portlanders of all ages, abilities, and cultures.*

**Goal 8.L: Technology and communications**

*All Portland residences, businesses, and institutions have access to universal, affordable, and reliable state-of-the-art communication and technology services.*

**Goal 8.M: Energy infrastructure and services**

*Residents, businesses, and institutions are served by reliable energy infrastructure that provides efficient, low-carbon, affordable energy through decision-making based on integrated resource planning.*

The Hearings Officer finds that the policies of Chapter 8 are not relevant to this proposal. All the policies in Chapter 8 are obligations of the City agencies and bureaus over time as they

implement or amend regulations. The proposal is neutral with regards to the Goals and Policies in this Chapter, or at least equally supportive of the 2035 Comprehensive Plan as the current situation.

## **CHAPTER 9: TRANSPORTATION**

### **Goals:**

#### **GOAL 9.A: Safety**

*The City achieves the standard of zero traffic-related fatalities and serious injuries. Transportation safety impacts the livability of a city and the comfort and security of those using City streets. Comprehensive efforts to improve transportation safety through equity, engineering, education, enforcement and evaluation will be used to eliminate traffic-related fatalities and serious injuries from Portland's transportation system.*

#### **Goal 9.B: Multiple goals**

*Portland's transportation system is funded and maintained to achieve multiple goals and measurable outcomes for people and the environment. The transportation system is safe, complete, interconnected, multimodal, and fulfills daily needs for people and businesses.*

#### **GOAL 9.C: Great places**

*Portland's transportation system enhances quality of life for all Portlanders, reinforces existing neighborhoods and great places, and helps make new great places in town centers, neighborhood centers and corridors, and civic corridors.*

#### **GOAL 9.D: Environmentally sustainable**

*The transportation system increasingly uses active transportation, renewable energy, or electricity from renewable sources, achieves adopted carbon reduction targets, and reduces air pollution, water pollution, noise, and Portlanders' reliance on private vehicles.*

#### **GOAL 9.E: Equitable transportation**

*The transportation system provides all Portlanders options to move about the city and meet their daily needs by using a variety of safe, efficient, convenient, and affordable modes of transportation. Transportation investments are responsive to the distinct needs of each community.*

#### **GOAL 9.F: Positive health outcomes**

*The transportation system promotes positive health outcomes and minimizes negative impacts for all Portlanders by supporting active transportation, physical activity, and community and individual health.*

#### **GOAL 9.G: Opportunities for prosperity**

*The transportation system supports a strong and diverse economy, enhances the competitiveness of the city and region, and maintains Portland's role as a West Coast trade gateway and freight hub by providing efficient and reliable goods movement, multimodal access to employment areas and educational institutions, as well as enhanced freight access to industrial areas and intermodal freight facilities. The transportation system helps people and businesses reduce spending and keep money in the local economy by providing affordable alternatives to driving.*

**GOAL 9.H: Cost effectiveness**

*The City analyzes and prioritizes capital and operating investments to cost effectively achieve the above goals while responsibly managing and protecting our past investments in existing assets.*

**Findings:** The transportation goals are broad goals for the City's transportation system. The applicant proposed a trip cap to ensure that future development does not create new impacts on the transportation facilities, thereby remaining consistent with the overall goals. The trip cap limits future development to a level commensurate with what a grocery store use within the existing building would generate. Additionally, and as discussed under the implementing policies below, reuse and redevelopment of this underutilized site is consistent with the City's transit goals and transportation priorities. The request to remove restrictive use and development conditions is supportive of the transportation goals as implemented through the policies addressed below.

**Policies:**

- Policy 9.1**     ***Street design classifications.** Maintain and implement street design classifications consistent with land use plans, environmental context, urban design pattern areas, and the Neighborhood Corridor and Civic Corridor Urban Design Framework designations.*
- Policy 9.2**     ***Street policy classifications.** Maintain and implement street policy classifications for pedestrian, bicycle, transit, freight, emergency vehicle, and automotive movement, while considering access for all modes, connectivity, adjacent planned land uses, and state and regional requirements.*
- 9.2.a. Designate district classifications that emphasize freight mobility and access in industrial and employment areas serving high levels of truck traffic and to accommodate the needs of intermodal freight movement.*
  - 9.2.b. Designate district classifications that give priority to pedestrian access in areas where high levels of pedestrian activity exist or are planned, including the Central City, Gateway regional center, town centers, neighborhood centers, and transit station areas.*
  - 9.2.c. Designate district classifications that give priority to bicycle access and mobility in areas where high levels of bicycle activity exist or are planned,*

*including Downtown, the River District, Lloyd District, Gateway Regional Center, town centers, neighborhood centers, and transit station areas.*

**Policy 9.3**     ***Transportation System Plan.** Maintain and implement the Transportation System Plan (TSP) as the decision-making tool for transportation-related projects, policies, programs, and street design.*

**Policy 9.4**     ***Use of classifications.** Plan, develop, implement, and manage the transportation system in accordance with street design and policy classifications outlined in the Transportation System Plan.*

**Findings:** These policies, which direct the City to maintain and implement street classifications, the TSP, and to manage the transportation system, are not directly relevant to this request.

**Policy 9.5**     ***Mode share goals and Vehicle Miles Travelled (VMT) reduction.** Increase the share of trips made using active and low-carbon transportation modes. Reduce VMT to achieve targets set in the most current Climate Action Plan and Transportation System Plan, and meet or exceed Metro's mode share and VMT targets.*

**Findings:** The former grocery store on the site was supportive of this Policy by providing needed goods in closer proximity to residents, reducing VMTs and facilitating walking and biking. However, a grocery exclusive use is no longer viable on this site and the restrictive conditions preclude redevelopment of the site. The request to allow the full spectrum of uses allowed within the applicable CM1 creates the possibility for new commercial uses at the site that would provide other types of goods and services in proximity to residents, potentially resulting in similar VMT reductions and facilitating walking and biking trips. Even if redevelopment were limited to residential uses, the residents of the site would have direct and easy access to bus route 51, which provides direct access to the Central City during peak AM and PM weekday times. This would help the City achieve the identified targets. Therefore, the request to remove the use and development conditions is equally supportive of this policy as continued application of the restrictive conditions.

**Policy 9.6**     ***Transportation strategy for people movement.** Implement a prioritization of modes for people movement by making transportation system decisions according to the following ordered list:*

- 1. Walking*
- 2. Bicycling*
- 3. Transit*
- 4. Taxi / commercial transit / shared vehicles*
- 5. Zero emission vehicles*

*6. Other single-occupant vehicles*

*When implementing this prioritization, ensure that:*

- The needs and safety of each group of users are considered, and changes do not make existing conditions worse for the most vulnerable users higher on the ordered list.*
- All users' needs are balanced with the intent of optimizing the right of way for multiple modes on the same street.*
- When necessary to ensure safety, accommodate some users on parallel streets as part of a multi-street corridor.*
- Land use and system plans, network functionality for all modes, other street functions, and complete street policies, are maintained.*
- Policy-based rationale is provided if modes lower in the ordered list are prioritized.*

**Findings:** The proposed removal of the conditions is supportive of this transportation hierarchy. The restrictive use and development conditions have prevented a viable commercial use at the site that could provide a wide variety of goods and services to the surrounding neighborhood, beyond that available within a grocery store. Following removal of the conditions, the full range of commercial uses allowed within the CM1 zone would be allowed on the site. Therefore, the site would have the potential to once again provide goods and services within walking or biking distance of the surrounding neighborhood, consistent with the first and second priorities. If residential development were to occur, alone or as a mixed-use development, residents could take advantage of the City Bikeway or transit service along SW Patton Road under the second and third priorities. If commercial uses were developed, alone or as part of a mixed-use development, customers would also be able to walk, bike, or take transit to the site. Finally, increased residential densities would increase the likelihood of shared vehicle options under the fourth priority. For these reasons, permitting the full spectrum of uses allowed in the CM1 zone is consistent with these people movement priorities, and the request to remove the use and development conditions is equally or more supportive of this policy than continued application of the restrictive conditions.

*Policies 9.7 through 9.10 are transportation related directives to the City that are not relevant to the requested amendment.*

**Policy 9.11** *Land use and transportation coordination. Implement the Comprehensive Plan Map and the Urban Design Framework through coordinated long-range transportation and land use planning. Ensure that street policy and design classifications and land uses complement one another.*



**Findings:** The proposed amendment is consistent with the adopted comprehensive plan and zoning designation for the site. The amendment allows for reuse of the site with any of the uses allowed in the underlying zoning while the trip cap limits the level of development to that commensurate with trips associated with a grocery store in the existing building, ensuring that traffic generated by future development on the site will not exceed the planned capacity of the transportation system. The TSP projects, policies and plans are based on the zoning designations in the Comprehensive Plan, enabling compliance with this policy. Further, consistent with the Goal for coordinated planning between transportation and land use planning and as required by the City code and state law, the applicant assessed the expected impact from the requested amendment on the surrounding transportation system and proposed a trip cap to ensure that traffic from future development on the site will not exceed levels allowed under the existing restrictive conditions; i.e., future development on the site is limited based on the maximum vehicle trip generation by a grocery store within the existing building. The proposed trip cap provides the necessary coordination between transportation planning and land use planning. Additionally, and as addressed above, redevelopment of the site with the full spectrum of uses allowed in the CM1 zone, subject to the trip cap, compliments the street policies and design classifications for SW Patton Road. For these collective reasons, the request to remove the use and development conditions is equally supportive of this policy than continued application of the restrictive conditions.

**Policy 9.12** ***Growth strategy.** Use street design and policy classifications to support Goals 3A-3G in Chapter 3: Urban Form. Consider the different design contexts and transportation functions in Town Centers, Neighborhood Centers, Neighborhood Corridors, Employment Areas, Freight Corridors, Civic Corridors, Transit Station Areas, and Greenways.*

**Findings:** The site is not within one of the identified UDF areas. Therefore, this policy is not relevant to this application.

**Policy 9.13** ***Development and street design.** Evaluate adjacent land uses to help inform street classifications in framing, shaping, and activating the public space of streets. Guide development and land use to create the kinds of places and street environments intended for different types of streets.*

**Findings:** As noted, SW Patton Road has a Community Corridor street design classification. As described in the TSP, Community Corridors primarily serve surrounding neighborhoods and are designed to emphasize multimodal mobility between neighborhoods. Community Corridors emphasize mobility for all modes between neighborhoods while also accommodating access to adjacent land uses along the corridor. The request to allow the full scope of uses permitted in the CM1 zone, subject to the trip cap, is supportive of the Community Corridor street design classification and does not require a change to the adopted designation. Additionally, redevelopment at the site would be guided by development standards adopted to implement

the Community Corridor street design goals. The trip cap will ensure that traffic generated by future development is consistent with the current street classifications. For these reasons, the request to remove the use and development conditions is equally supportive of this policy as continued application of the restrictive conditions.

*Policies 9.14 through 9.16 relate to street repurposing and design and are not relevant to the requested amendment.*

**Policy 9.17** ***Pedestrian transportation.** Encourage walking as the most attractive mode of transportation for most short trips, within neighborhoods and to centers, corridors, and major destinations, and as a means for accessing transit.*

**Findings:** The former grocery store on the site encouraged walking by providing needed goods within walking distance of residents. However, that use is no longer viable on this site and the restrictive conditions prevent redevelopment on the site that could provide goods and services and employment opportunities within walking distance of the surrounding neighborhood. Following removal of the conditions, the full range of commercial uses allowed within the CM1 zone would be allowed on the site. Therefore, the site could potentially again provide goods and services and employment within walking distance of the surrounding neighborhood. Therefore, the request to remove the use and development conditions is equally supportive of this policy than continued application of the restrictive conditions.

**Policy 9.18** ***Pedestrian networks.** Create more complete networks of pedestrian facilities, and improve the quality of the pedestrian environment.*

**Findings:** The site is well served by existing sidewalks along SW Patton Road as well as a marked pedestrian crossing on SW Patton Road along the site frontage, providing a linkage to both the site and the adjacent park. Redevelopment of the site would have to demonstrate compliance with applicable pedestrian standards, as well as other standards related to building orientation, ground floor windows, building length and façade articulation, landscaping and street tree requirements that are intended, in part, to improve the quality of the pedestrian experience for those walking along SW Patton Road. Therefore, the request to remove the use and development conditions is equally supportive of this policy than continued application of the restrictive conditions.

**Policy 9.19** ***Pedestrian safety and accessibility.** Improve pedestrian safety, accessibility, and convenience for people of all ages and abilities.*

**Findings:** Once again, the site is currently served by public sidewalks along SW Patton Road and a marked pedestrian crossing on the site frontage. The sidewalks along the site frontage in combination with the surrounding sidewalk system provide safe and convenient pedestrian access to the site from surrounding neighborhood areas. Removal of the restrictive conditions

would allow development on the site that would once again create a reason for pedestrian traffic to and from the site. For these reasons, the request to remove the use and development conditions is equally supportive of this policy than continued application of the restrictive conditions.

**Policy 9.20** ***Bicycle transportation.** Create conditions that make bicycling more attractive than driving for most trips of approximately three miles or less.*

**Findings:** As noted above, SW Patton is classified as a City Bikeway under the new TSP. Site residents, employees, or customers would be able to use the existing bicycle accommodations. There are currently no bicycle trips to or from the vacant building. Additionally, the TSP includes plans for pedestrian and bicycle improvements along SW Patton Road (Project 90054.1). The redevelopment and reuse of the site could contribute to the timing and effectiveness of the identified improvements. Therefore, the request to remove the use and development conditions is equally supportive of this policy than continued application of the restrictive conditions.

**Policy 9.21** ***Accessible bicycle system.** Create a bicycle transportation system that is safe, comfortable, and accessible to people of all ages and abilities.*

**Findings:** This policy directs the City to create a bicycle transportation system and is not directly relevant to this application.

**Policy 9.22** ***Public transportation.** Coordinate with public transit agencies to create conditions that make transit the preferred mode of travel for trips that are not made by walking or bicycling.*

**Findings:** This policy requires City coordination and is not directly relevant to this request.

**Policy 9.23** ***Transportation to job centers.** Promote and enhance transit to be more convenient and economical than the automobile for people travelling more than three miles to and from the Central City and Gateway. Enhance regional access to the Central City and access from Portland to other regional job centers.*

**Findings:** First, the site is not located more than three miles from the Central City. Second, this policy directs the City to promote and enhance transit. Therefore, portions of this policy are not directly relevant to this application. Nonetheless, and as noted above, SW Patton Road is a Transit Access Street and Bus 51 provides service from stops directly adjacent to the site to the City Center. This transit service would be available to site residents, employees, or customers traveling to and from Gateway and other regional job centers. While the schedule is currently limited to AM and PM peak hours on weekdays, those are the most relevant periods for job center transportation needs. Additionally, increased density and transit use in the area could

result in improved schedules. Therefore, to the extent this policy is relevant, the request to remove the use and development conditions is equally supportive of this policy than continued application of the restrictive conditions.

**Policy 9.24** ***Transit service.** In partnership with TriMet, develop a public transportation system that conveniently, safely, comfortably, and equitably serves residents and workers 24 hours a day, 7 days a week.*

**Findings:** This policy requires coordination and partnership between the City and TriMet and is not directly relevant to this amendment request.

*Policies 9.25 through 9.29 are City directives related to transit services that are not relevant to the requested amendment.*

*Policies 9.30 through 9.37 relate to the City's freight system and heliport system and are not relevant to the requested amendment.*

**Policy 9.38** ***Automobile transportation.** Maintain acceptable levels of mobility and access for private automobiles while reducing overall vehicle miles traveled (VMT) and negative impacts of private automobiles on the environment and human health.*

**Findings:** As discussed above, the applicant has agreed to a trip cap that is based upon the grocery development allowed under the existing use and development conditions. The trip cap would limit future use of the site commensurate with the number vehicle trips generated by the currently allowed grocery store, ensuring that future development on the site will not create any new impacts to the transportation system, thereby maintaining existing levels of mobility and access for private automobiles. Commercial development on the site would allow surrounding residents to access goods, services, and employment opportunities in close proximity to their homes, reducing VMTs. Therefore, the request to remove the use and development conditions is equally supportive of this policy than continued application of the restrictive conditions.

*Policies 9.39 and 9.40 are City directives related to automobile efficiency and emergency response that are not relevant to the requested amendment.*

*Policies 9.41 through 9.44 relate to airports and are not relevant to the requested amendment.*

*Policies 9.45 through 9.54 are City directives related to traffic management and coordination that are not relevant to the requested amendment.*

**Policy 9.55** ***Parking management.** Reduce parking demand and manage supply to improve pedestrian, bicycle and transit mode share, neighborhood livability, safety,*

*business district vitality, vehicle miles traveled (VMT) reduction, and air quality. Implement strategies that reduce demand for new parking and private vehicle ownership, and that help maintain optimal parking occupancy and availability.*

**Findings:** The City has adopted parking maximums and minimum in furtherance of this policy. Any redevelopment following removal of the restrictive conditions would be required to satisfy applicable parking maximum and minimums set forth in the zoning code for the proposed uses. In contrast, existing condition 3.b requires at least 58 parking spaces be maintained on the site. Therefore, the request to remove the use and development conditions is more supportive of this policy than continued application of the restrictive conditions.

*Policies 9.56 and 9.57 relate to on-street parking and are not relevant to the subject site or the requested amendment.*

**Policy 9.58** ***Off-street parking.** Limit the development of new parking spaces to achieve land use, transportation, and environmental goals, especially in locations with frequent transit service. Regulate off-street parking to achieve mode share objectives, promote compact and walkable urban form, encourage lower rates of car ownership, and promote the vitality of commercial and employment areas. Use transportation demand management and pricing of parking in areas with high parking demand. Strive to provide adequate but not excessive off-street parking where needed, consistent with the preceding practices.*

**Findings:** Consistent with the response above, the City has adopted parking maximums and minimums in furtherance of this policy. Existing condition 3.b requires at least 58 parking spaces be maintained on the site, which is less than the minimum parking required by the current code for the existing 33,140 square foot grocery use.<sup>5</sup> Any redevelopment on the site would be required to satisfy applicable parking minimums and maximums for the proposed uses. Therefore, the request to remove the use and development conditions is equally supportive of this policy than continued application of the restrictive conditions.

*Policies 9.59 and 9.60 relate to shared parking and parking costs that are not relevant to the requested amendment.*

**Policy 9.61** ***Bicycle parking.** Promote the development of new bicycle parking facilities including dedicated bike parking in the public right-of-way. Provide sufficient bicycle parking at high-capacity transit stations to enhance bicycle connection opportunities. Require provision of adequate off-street bicycle parking for new development and redevelopment. Encourage the provision of parking for*

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<sup>5</sup> Table 266-2 requires a minimum of one parking space per 500 square feet of retail building area. Therefore, the existing 33,140 square foot store would require a minimum 66 parking spaces.

*different types of bicycles. In establishing the standards for long-term bicycle parking, consider the needs of persons with different levels of ability.*

**Findings:** To implement this policy, the City has adopted minimum long-term and short-term bicycle parking standards that are based upon the specific use of the site. Any redevelopment or reuse of the site must satisfy the applicable minimum bicycle parking standards. Therefore, the request to remove the use and development conditions is equally supportive of this policy than continued application of the restrictive conditions.

*Policy 9.62 requires government coordination on parking that is not relevant to the requested amendment.*

**Policy 9.63** ***New development impacts.** Prevent, reduce, and mitigate the impacts of new development and redevelopment on the transportation system. Utilize strategies including transportation and parking demand management, transportation system analysis, and system and local impact mitigation improvements and fees.*

**Findings:** Consistent with this policy and as required by the City code and state law, the applicant assessed the expected impact from the requested amendment on the surrounding transportation system. Specifically, as described in the Kittelson & Associates reports (Attachment 3 of Exhibit A.1), the applicant's traffic engineer evaluated the potential impact of removing the grocery only use condition and the conditions related to building footprint and height on the surrounding transportation system. Kittelson conducted a trip generation comparison by evaluating the trip generation potential of the site assuming continued application of these conditions, evaluating the "reasonable worst-case" development scenarios under the CM1 zone, and comparing the two for both the weekday AM and PM peak hours. As discussed in the report, Kittelson evaluated the trip generation for both a medical office and a retail use as the reasonable worst-case scenarios. Kittelson concluded that development of medical office uses under the CM1 zone could result in an increase in total daily trips and weekday AM and PM peak hour trips when compared to a grocery use. Therefore, the applicant proposed a trip cap that would limit future development to a trip generation level that is equal to or less than the trips that would be generated by use of the site for a grocery store under the existing conditions (taking into consideration pass-by trips). Kittelson provided a supplemental memo (Exhibit A.3) that provided study area operations analysis that confirms that removal of the conditions could result in a significant effect on the transportation system and that a trip cap is an appropriate form of mitigation. Based upon the updated grocery store trip generation table provide in Exhibit H-26, a trip cap would be based upon a 33,140-square foot grocery use, and would limit the trip generation of any redevelopment or reuse of the site to a maximum of 2,168 net new total daily trips, 73 net new weekday AM peak hour trips, and 200 net new weekend PM peak hour trips. The proposed trip cap provides the necessary coordination between transportation planning and land use planning. Therefore, the request

to remove the use and development conditions is equally supportive of this policy than continued application of the restrictive conditions.

*Policies 9.64 through 9.67 are City directives related to transportation education and programs that are not relevant to the requested amendment.*

## **CHAPTER 10: LAND USE DESIGNATIONS AND ZONING**

### **Goals:**

#### **Goal 10.A: Land use designations and zoning**

*Effectively and efficiently carry out the goals and policies of the Comprehensive Plan through the land use designations, Zoning Map, and the Zoning Code.*

**Findings:** Much like the Goals and Policies in Chapter 8, this Chapter speaks to City of Portland responsibilities, and does not create a regulatory burden or other impact on this proposal by a private property owner. Both the existing and proposed zones correspond to the correct Comprehensive Plan Map designations. The policies of Chapter 10 are not relevant to this specific private proposal to eliminate restrictive conditions of approval on a site in the Commercial zone designation. The Hearings Officer finds that the proposal is neutral with regards to the Goals and Policies in this Chapter, or at least equally supportive of the 2035 Comprehensive Plan as the current situation.

## **DEVELOPMENT STANDARDS**

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. Future plans submitted for a building or zoning permit must demonstrate that all requirements of Title 11 can be met, and that all development standards of Title 33 can be met or have received an Adjustment or Modification via a land use review, prior to the approval of a building or zoning permit.

## **III. CONCLUSIONS**

The applicant is requesting removal of a host of conditions imposed on the site of a now-closed grocery store in the heart of Portland Heights. The area has extremely limited commercial services following the closure of the grocery store at this site in 2016, and many neighborhood residents are eager to maintain prior conditions of approval requiring the site to operate as a grocery store and prohibiting further changes to or expansions of the building on the site, or the addition of new floor area or different uses.

The existing conditions of approval were applied in a very specific context in 1984, and then amended in 1988 in response to difficulties the applicant was having during construction of the

store remodel. The original condition regarding height was increased from 15 to 17 feet above Patton Road to allow for skylights. The original condition regarding rooftop mechanical was modified to allow for some limited rooftop equipment, as opposed to none as originally required. In addition, the entire proposal was for a specific short-term building expansion and remodel project for a grocery store, with presentation of specific site plans, landscape plans, and building elevations. The applicant at that time had no reason to object about the long-term implications of the conditions of approval, since the objective was a one-time building expansion.

The level of restrictive detail in the conditions is unusual in that similar conditions are not usually applied; a zone change should generally only be approved if the entire range and intensity of uses allowed by the zone is able to meet the approval criteria. In addition, many of the conditions are confusing and unclear in their language, have already been met through permitting for the expansion in 1985, and are redundant in imposing other City regulations that will continue to apply at the site anyway. Many of the conditions also refer to agency names and regulatory requirements that either no longer exist or have been re-named.

In an analysis of the relevant approval criteria, an evaluation of the City's Comprehensive Plan Goals and Policies is key. The analysis is a "balancing" analysis, whereby the entire universe of City Goals and Policies are considered comprehensively, to gauge whether or not, "on balance," the spirit and intention of the overall Comprehensive Plan is equally or better met than the existing situation. With this application, removing the restrictive regulations and conditions is on balance equally or more supportive of all but three of the applicable 2036 Goals and Policies. Removal of the restrictive conditions is somewhat less supportive of Policy 4.40- Telecommunication facility impacts, Policy 4.30-Scale transitions, and Policy 4.31-Land use transitions. However, "on balance," these impacts are outweighed by the impacts of all the other ways this project supports City of Portland policy. With conditions of approval as requested by PBOT, and BES, the proposal is able to meet the relevant criteria and should be conditionally approved.

#### **IV. RECOMMENDATION**

**Approval of a Comprehensive Plan Map Amendment and Zoning Map Amendment** for the site at 2855 SW Patton Road, Tax Lot 13200 of Block P, Greenway Addition, to eliminate various conditions of approval from prior zone change-related Ordinances at the site, as follows:

1. Delete Ordinance No. 155609 Conditions c.1.a, c.1.b, c.1.c, c.1.d, c.1.e, c.1.f, c.1.g, c.1.h, c.1.k, c.1[sic], c.2.a, c.2.b, c.2.c, c.2.d, c.2.e, c.3.a, c.3.b, c.3.c, c.3.d, c.4.a, c.4.b, c.5, c.6, c.7, c.8; and
2. Delete Ordinance No. 160473: item b (amending Ordinance No. 155609 Condition c.1.i), item c (amending Ordinance No. 155609 Condition c.1.j), item d.1 through d.10, and Section 2.



The above approvals are granted subject to the following conditions of approval:

- A. As part of the future building permit applications at the site, any of the following development-related conditions (B through C) that are relevant to the project must be noted on each of the four required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "REQUIRED ZONING COMPLIANCE PAGE - Case File LU 18-112666 CP ZC." All requirements must be graphically represented on the site plan, landscape, or other required plan and must include descriptive written notes documenting conformance with the conditions as necessary.
- B. (*Bureau of Environmental Services*) Prior to the issuance of any building permit that would result in an increase or modification of building area within existing City of Portland sewer easements, the proposed work must be evaluated by the Bureau of Environmental Services and any concerns related to the project must be addressed by the property owner to the satisfaction of the Bureau of Environmental Services, up to and including project modification to remain outside the easement areas, or re-routing the public sewer in a new easement so that the existing alignment and easements can be abandoned. This condition does not apply to tenant improvements within the existing building or to repair and maintenance of the existing building within the existing easement areas.
- D. (*Portland Bureau of Transportation*) The following conditions of approval apply to all future proposed development, alterations, and uses on the subject site:
  - 1) **New development or building expansion or reuse of the existing building**, as defined by the Bureau of Development Services, shall be allowed only if limited to land use and trip rate allocations per *Table 1*, below. That table specifies that total trips for new construction shall not exceed 73 AM peak hour trips. The applicant shall be responsible for providing an accounting of all square footages of each proposed use, as well as existing uses, and the conversion to trips for each Building Permit application.

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Table 1. Trip Cap

Land Use and Trip Rate Allocations <sup>1</sup>		
Maximum 73 AM Peak Hour Trips		
Land Use <sup>2</sup>	Independent Variable	ITE 10th Ed. Trip Rate per Independent Variable <sup>3</sup>
Household Living (Multifamily Housing Low-Rise, ITE 220)	1 dwelling unit	0.46 trips
Group Living (Senior Adult Housing - Attached, ITE 252)	1 dwelling unit	0.20 trips
Schools (Elementary School, ITE 520)	1 student	0.67 trips
Colleges (University/College, ITE 550)	1 student	0.15 trips
Day Care (Day Care Center, ITE 565)	1,000 square feet	11.00 trips
General Office (General Office Building, ITE 710)	1,000 square feet	1.16 trips
Medical Office (Medical-Dental Office Building, ITE 720)	1,000 square feet	2.78 trips
Retail Sales and Services (High-Turnover Sit-Down Restaurant, ITE 932)	1,000 square feet	5.67 trips

<sup>1</sup>The independent variable shall be converted to trips and compared to the maximum established. The established trip rates for these land use categories shall not be altered.

<sup>2</sup>Per Zoning Code chapter PCC 33.920, Description of Use Categories.

<sup>3</sup>All trip rates in this table are based on the highest and most reasonable AM Peak Hour ITE Trip Generation 10th Edition rates for uses in each category.

- 2) **For reuse of the existing building, not to include building expansion, the applicant may opt to enter into a Type II Transportation Impact Review to document that the proposed development complies with the trip cap.** For the Transportation Impact Review required by this condition, the application is not subject to the supplemental application requirements noted at PCC 33.852.105.A-I. As part of the application materials, and as the sole approval criterion for the Transportation Impact Review required by this application (replacing those at PCC 33.852.110.A-D), the applicant must provide a memo from a traffic engineer licensed in the State of Oregon successfully demonstrating that the proposed use(s) is (are) not expected to generate vehicle trips that exceed any of each of the following thresholds:

- A) 2,168 daily trips, OR
- B) 73 weekday AM peak hour trips, OR
- C) 200 PM peak hour trips.

In documenting that the proposed development complies with the trip cap, the memo provided shall be reviewed by a Portland Bureau of Transportation Traffic Engineer and shall include the information referenced below. If the memo sufficiently demonstrates that the proposed reuse of the existing building will not exceed the trip caps referenced immediately above, the Transportation Impact Review will be approved. Under this option, approval of the Transportation Impact Review shall be required prior to approval of any Building Permit or Change of Occupancy Permit associated with the existing building.

The memo, to be included in the Transportation Impact Review application, shall provide information, to include a written description, as well as possible drawings/tables, to describe:

- 1) All proposed and existing uses and the square footage of those uses; and
- 2) An estimate of the vehicle trips generated by the proposed and existing uses (based upon the current *ITE Trip Generation Manual*).

  
\_\_\_\_\_  
Joe Turner, Hearings Officer

6.21.18  
\_\_\_\_\_  
Date

<b>Application Determined Complete:</b>	February 15, 2018
<b>Report to Hearings Officer:</b>	April 20, 2018
<b>Revised Report to Hearings Officer:</b>	May 18, 2018
<b>Recommendation Mailed:</b>	June 21, 2018

**Conditions of Approval.** This project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

**City Council Hearing.** The City Code requires the City Council to hold a public hearing on this case and you will have the opportunity to testify. The hearing will be scheduled by the City Auditor upon receipt of the Hearings Officer's Recommendation. You will be notified of the time and date of the hearing before City Council. If you wish to speak at the Council hearing, you are encouraged to submit written materials upon which your testimony will be based, to the City Auditor.

If you have any questions contact the Bureau of Development Services representative listed in this Recommendation (503-823-7700).

The decision of City Council, and any conditions of approval associated with it, is final. The decision may be appealed to the Oregon Land Use Board of Appeals (LUBA), as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that:

- an appellant before LUBA must have presented testimony (orally or in writing) as part of the local hearings process before the Hearings Officer and/or City Council; and
- a notice of intent to appeal be filed with LUBA within 21 days after City Council's decision becomes final.

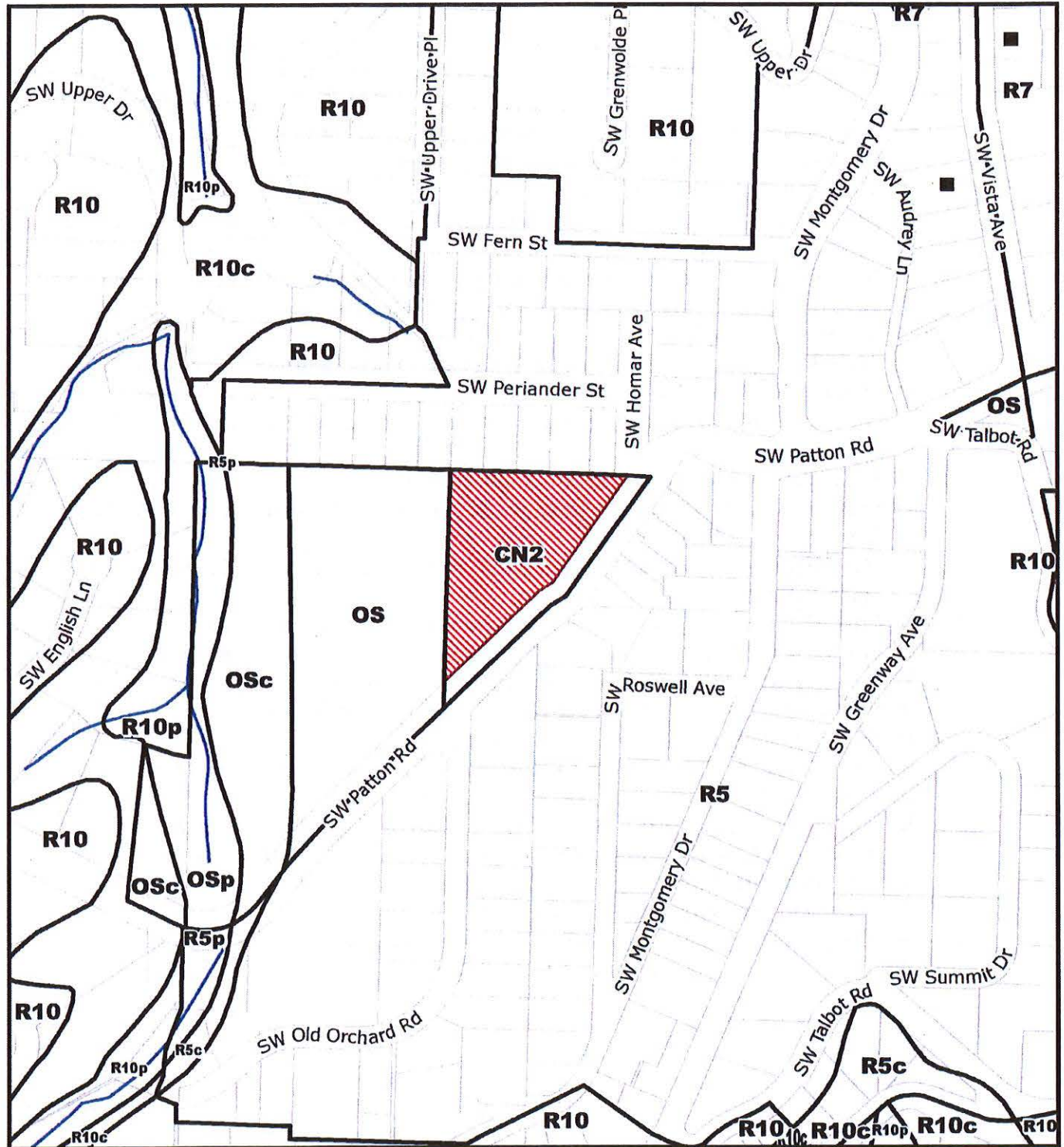
Please contact LUBA at 1-503-373-1265 for further information on filing an appeal.

**EXHIBITS**  
**NOT ATTACHED UNLESS INDICATED**

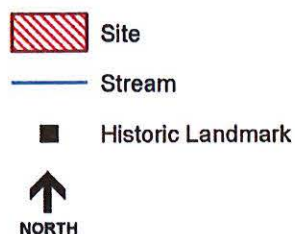
- A. Applicant's Statements
  - 1. Original narrative and traffic study
  - 2. Title report provided by applicant
  - 3. Kittelson Traffic Engineer Memo: Supplemental Information Regarding Trip Cap, dated 3/23/18
  - 4. Kittelson Traffic Engineer Memo: Proposed Trip Cap Equivalency Table, dated 4/4/18
- B. Existing and Proposed Zoning Map (**attached**)
- C. Plans and Drawings
  - 1. Utility/Site Plan (**attached**)
  - 2. Large, Scalable Site/Utility Plan
- D. Notification information
  - 1. Request for response
  - 2. Posting information and notice as sent to applicant
  - 3. Applicant's statement verifying posting
  - 4. Public hearing notice with mailing list
  - 5. Public hearing notice – postmarked copy
  - 6. Revised hearing date posting notice, applied to signs on site by staff on 4/9/18
- E. Agency Responses
  - 1. Bureau of Environmental Services
  - 2. Development Review Section of the Portland Bureau of Transportation
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Police Bureau
  - 6. Site Development Section of the Bureau of Development Services
  - 7. Urban Forestry Division of Portland Parks and Recreation
  - 8. Life Safety Section of the Bureau of Development Services
  - 9. Portland Parks and Recreation
- F. Letters
  - 1. E-mail comments from Bill Failing, rec'd. 2/13/18
  - 2. E-mail comments from Jennifer Andres, rec'd. 3/9/18
  - 3. E-mail comments from Brook and Ann Howard, rec'd. 3/12/18
  - 4. E-mail comments from Elizabeth Neuwelt, rec'd. 3/12/18
  - 5. E-mail comments from Elizabeth Neuwelt, rec'd. 3/12/18
  - 6. E-mail comments from Deborah Mandell, rec'd. 3/12/18
  - 7. E-mail comments from SWHRL Neighborhood Assn., rec'd. 3/17/18
  - 8. E-mail comments from Blythe Olson, rec'd. 3/19/18
  - 9. E-mail comments from SWHRL Neighborhood Assn., rec'd. 3/27/18

10. Color copies of grocery map and Bus #51 frequency table matching Exhibit F.8 from Blythe Olson, rec'd. 4/4/18
  11. E-mail comments from Aesha Lorenz, rec'd. 4/11/18
  12. Letter with comments from Jamie Strohecker, rec'd. 4/13/18
- G. Other
1. Original LU application form and receipt
  2. Request for Completeness memo, sent 2/14/18
  3. Letter from staff to applicant regarding trip cap issues, sent 2/28/18
  4. Documents and state notices submitted to Department of Land Conservation and Development, sent 2/28/18
  5. Pre-Application Conference Notes: EA 17-207761 PC
  6. Hearing Reschedule Request Form, 3/20/18
  7. Utility plan issues relayed to applicant from BES, sent 3/20/18
  8. Transportation staff feedback to Kittelson Traffic Engineer regarding need for specific trip cap, sent 4/2/18
  9. Report and Recommendation of the Hearings Officer for 7334 PA (original 1984 zone change)
  10. Copies of prior Ordinances #155609, #155850 & #160473
- H. Received in the Hearings Office
1. Request for Reschedule - Moffett, Mark
  2. Notice Of A Public Hearing On A Proposal In Your Neighborhood - Moffett, Mark
  3. Staff Report - Moffett, Mark
  4. Letter dated 5/2/18 to Mark Moffett from Blythe Olson with Statement for City Council - Olson, Blythe
  5. Letter dated 5/2/18 to Hearings Officer from Bill Kabeiseman and Carrie A. Richter - Kabeiseman, Bill
  6. Letter from Adam Lamotte - Kabeiseman, Bill
  7. Letter from Lauren Danahy dated 5/2/18 - Kabeiseman, Bill
  8. Graph - Infrequent Public Transportation to Portland Heights - Kabeiseman, Bill
  9. Letter to Mark Moffett dated 5/2/18 (With duplicate) - Olson, David
  10. Written Testimony dated 5/2/18 - Neumann, John
  11. Written Testimony dated 5/2/18 (with duplicate) - Kopca, Christopher M.
  12. Written Testimony dated 5/2/18 (with duplicate) - Dully, Lawrence L.
  13. Written Testimony - Failing, Bill
  14. Written Testimony - Koon, Craig
  15. Written Testimony dated 5/2/18 - van der Veer, Mark
  16. We The Neighbors PowerPoint Presentation Printout (12 pages) - Kabeiseman, Bill
  17. Email to Mark Moffett from Marianne King dated 5/1/18 - Moffett, Mark
  18. Email to Mark Moffett from Lauren Danahy dated 4/29/18 - Moffett, Mark
  19. Email to Mark Moffett from Eileen Galen dated 4/30/18 - Moffett, Mark
  20. Email to Mark Moffett from Jerome Schiller and Juliet Ching dated 4/30/18 - Moffett, Mark

21. Letter to Mark Moffett from Johnathan and Deanne Ater dated 4/30/18 - Moffett, Mark
22. Strohecker's Testimony by Aesha Lorenz dated 5/2/18 - Moffett, Mark
23. PowerPoint Presentation Printout - Moffett, Mark
24. Record Closing Information - Hearings Office
25. Zone Change and Comprehensive Plan Amendment Supplemental Narrative for 2035 Comprehensive Plan - France, Renee
26. Memorandum dated 5/9/18 re Modified Trip Cap Equivalency Table - Kuhn, Julia
27. Revised Staff Report and Recommendation to the Hearings Officer Prior to a Continued Hearing - Moffett, Mark
28. PBOT Response to the Bureau of Development Services Land Use Review - Addendum dated 5/17/18 - Moffett, Mark
29. Fax Cover Letter to Mark Moffett with attached letter dated 5/24/18 - Neville, Steven J.
30. Power Point Presentation Printout - Moffett, Mark
31. Memorandum dated 5/30/18 Amended BES and PBOT condition language - Moffett, Mark
32. Letter dated May 30, 2018 Re: Requested change to BES Proposed Condition (2 pages) - France, Renee
33. Letter dated May 30, 2018, written testimony (3 pages) - Danahy, Lauren
34. Written testimony dated May 30, 2018 (6 pages) - Kopca, Christopher M.
35. Letter dated 1/23/18 to Renee M. France from Kapnick and Shall - Kapnick, Michael
36. Written Testimony dated May 30, 2018 (3 pages) - Seton, Nancy
37. Written Testimony (3 pages) - Neumann, John
38. Letter dated May 30, 2018, written testimony (3 pages) - van der Veer, Mark
39. Written testimony dated May 30, 2018 - Dully, Lawrence L.
40. Letter dated May 30, 2018 - Additional endorsements (3 pages) - Olson, Blythe
41. Letter dated May 30, 2018 as written testimony (11 pages) - Richter, Carrie
42. PowerPoint Presentation Printout - Olson, Blythe
43. Record Closing Information - Hearings Office
44. 6/7/18 Applicant's Final Legal Argument (12 pages) - France, Renee

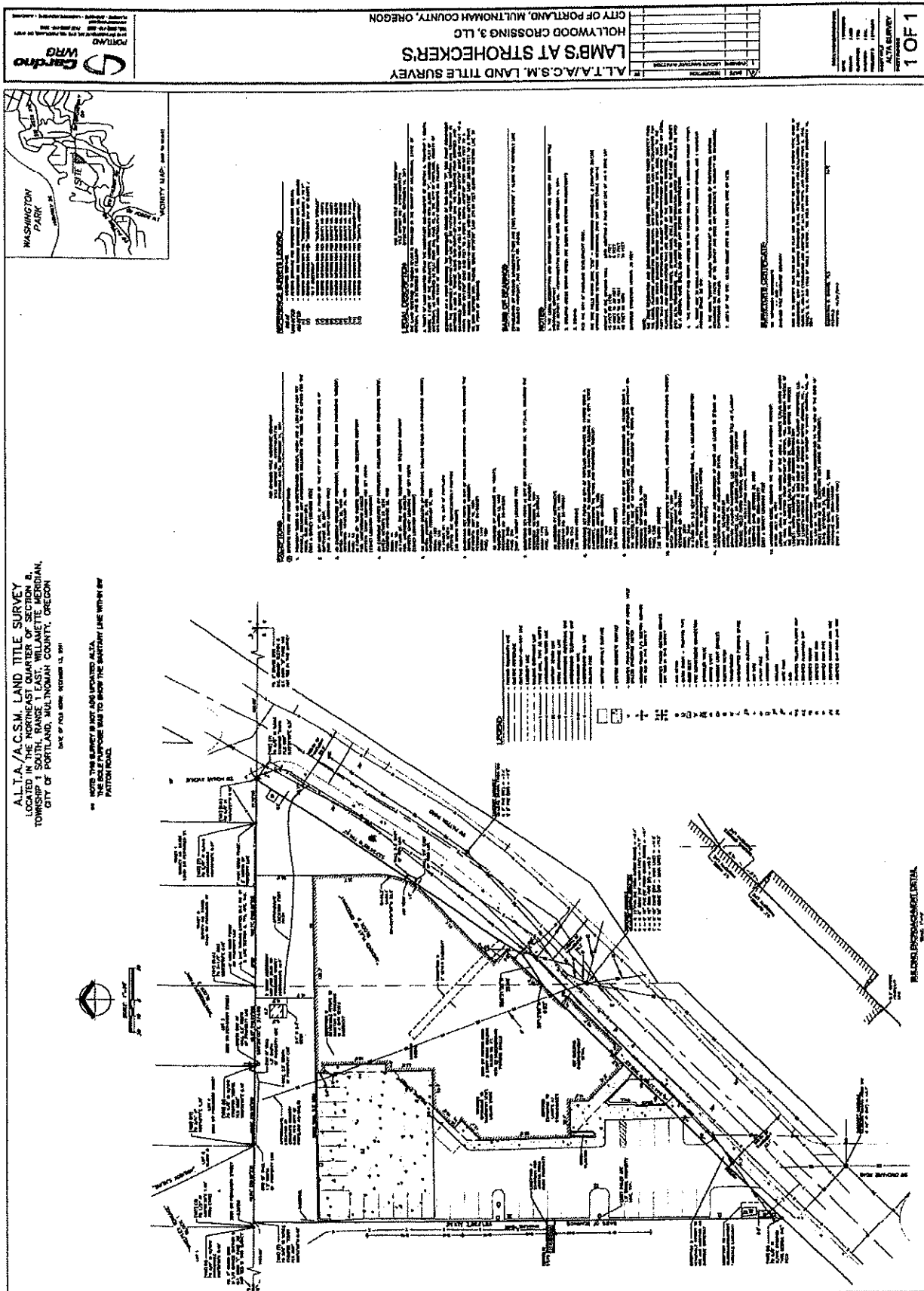


# EXISTING PROPOSED ZONING



File No.	LU 18-112666 CP ZC
1/4 Section	3226,3326
Scale	1 inch = 200 feet
State ID	1S1E08AA 13200
Exhibit	B.1 Jan 26, 2018





LU18-112666 CP2C

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 EXHIBIT C-1