



# PLANNING COMMISSION

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Regular Meeting Minutes  
July 12, 2023

Vice-Chairman Fialka called the regular meeting to order at 7:00PM. Present were Commissioners Collins, Kirkpatrick, Doherty, and Caplinger. Chairman Saylor and Commissioners Hamm and Sargent were excused. City Councilor Linton arrived at 7:10PM. Staff in attendance included Planning Director Clint Spencer, City Attorney Richard Tovey, and Planning Assistant Heather La Beau.

## **Minutes**

Commissioner Caplinger moved, and Commissioner Collins seconded to approve the minutes of the June 14, 2023, regular meeting. Motion passed.

## **Hearings- CONTINUED Infill Designation- Phoenix Builders Investment Group LLC 4N2811DA TL 2700- 945 E Newport Ave**

Vice-Chair Fialka continued the hearing at 7:02PM and called for the staff report.

Planning Director Spencer presented the staff report. The hearing was left open to allow applicants to provide additional evidence. To date, no additional evidence has been submitted. September 7 is the 180-day deadline for a decision unless the applicant waives the clock. Staff discussed the property with the city engineer and determined there are several lot options off the Hurlburt Ave cul-de-sac, and a Hurlburt Ave extension is also feasible with a gravity fed sewer. Based on these designs, there is sufficient support that the in-fill designation is not justified.

## **Testimony**

Anides Guerena- 5321 W 10<sup>th</sup> Ave Kennewick- Mr. Guerena is the CEO of Phoenix Investment Builders Group. He has been in conversations with the City for several months regarding this parcel and would like a decision to be made so they can move forward with a lot plan.

Brian Owens- 665 W Division Ave- Mr. Owens stated he does not have any problems extending Hurlburt and allowing ten lots as this allows him to put in five lots and his three eastern neighbors to divide their properties and put in three additional homes. He spoke again of the placement of the weir and the need to have it fixed. He feels there is a need to keep the Hurlburt extension option and feels it could continue to 8<sup>th</sup> and develop another 7 acres. He also needs access to the rear of the roller rink building. He offered to bring his survey elevations to City staff. He has worked with the applicant to clear their property.

Stacey Stanek- 330 E Carter Drive- Her concerns are the same as they were at the last meeting. It's better, in her opinion, to hear there may be less homes with Newport access. She states there are too many cars, too many kids, and not enough room.

Steve Barrows- 130 SE 9<sup>th</sup> St- After clarifying where the Hurlburt Ave extension would be, Mr. Barrows questioned if the taking of his property was proposed and why the existing 20-foot alley was not adequate. He reminded everyone that at the last meeting, a cul-de-sac was proposed.

Staff replied that these are conceptual drawings only, and an alley does not provide adequate access to lots, should the properties further develop.



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Zion Silver- 315 E Carter Drive-He would like to echo Mrs. Stanek. He likes the idea of 7 or 8 instead of the 12 he originally heard. The road is narrow. He has trouble visualizing it with the slope of the land and has an issue with the size of the proposed homes being small and not fitting in with the size of the neighborhood (like his house) which he thinks will devalue his property.

Mr. Guerena in rebuttal stated that if the infill is granted, the proposed lots will be large, and the intent is to build larger homes than the two recently built on the smaller lots.

Vice-Chairman Fialka closed the hearing at 7:24PM.

After some discussion, Commissioner Doherty moved, and Commissioner Collins seconded to make the project file a part of the record. Motion passed. Commissioner Doherty moved and Commissioner Caplinger seconded to tentatively deny the infill designation. Motion passed. Findings will be adopted at the next meeting.

### **Hearings- Major Variance Amazon Data Services Inc 4N2823 Tax Lot 200- 908 E Penney Ave**

The Hermiston Planning Commission is holding a public hearing to consider a request for a major variance for property located at 908 E Penney Ave and described as 4N2823 Tax Lot 200. The property is zoned Outlying Commercial/Heavy Industrial (C-2/M-2) and is owned by Amazon Data Services, Inc. The applicant, Bob Estlund, of Integrus Architecture, is requesting a variance from 157.175 of the Hermiston Code of Ordinances which establishes off-street parking requirements. The applicant requests a reduction in off-street parking requirements to allow 230 spaces instead of 880 spaces.

There were no conflicts of interest and Vice-Chairman Fialka opened the hearing at 7:27PM and read the following guidelines:

Testimony and evidence must be directed toward the criteria described above or other criteria in the comprehensive plan or land use regulations which the person believes apply to the decision. Failure to raise an issue by the close of the record at or following the hearing, in person or by letter, precludes appeal to the Land Use Board of Appeals (LUBA) or the city council based on that issue. Failure to raise an issue with sufficient specificity to afford the decision maker and the parties an opportunity to respond to that issue precludes appeal to LUBA or the city council based on that issue. Failure to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the local government or its designee to respond to the issue precludes an action for damages in circuit court. Prior to the conclusion of the evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. The planning commission shall grant such a request by continuing the public hearing pursuant to ORS 197.797(6)(B) or leaving the record open for additional written evidence, arguments or testimony pursuant to ORS 197.797(6)(C).



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For this hearing, the process begins with the staff report, followed by testimony from the applicants and any other supporters of the application. This will be followed by opponents to the application. Finally, a rebuttal by the applicant will be allowed. The public hearing portion of the procedure will then be closed, and the planning commission will consider the information and testimony received and may render a decision.

Planning Director Spencer presented the staff report. This is similar to the variance granted for the PDX 138 site currently under construction. The building size and employee counts for data centers are not considered in the City's code.

There was no one wishing to give testimony and Vice-Chairman Fialka closed the hearing at 7:35PM.

## **Findings of Fact**

**Exceptional or extraordinary conditions apply to the property that do not apply generally to other properties in the same zone or vicinity, which conditions are a result of lot size, shape, topography or other circumstances over which the applicant has no control.**

1. The proposed development has four proposed buildings totaling 861,200 square feet at buildout. Each building is 216,000 square feet.
2. Required parking for the development is 861 spaces per Section 157.176 of the Hermiston Code of Ordinances which requires one space per 1,000 square feet of building area for industrial use.
3. The total employee count for each building is projected at 30 employees maximum per shift. The site is secure and not open to the public.
4. The only users of the facility will be data center employees and a limited number of authorized visitors.
5. The required parking is higher than needed to service the employee and visitor count and higher than the number of parking spaces provided for data centers in the region.
6. Strict application of the parking standard for the proposed data center will result in an unused impervious surface of approximately 3.5 acres, requiring additional storm water facilities and creating an unnecessary environmental impact.
7. Strict application of the parking standards will result in 630 unused parking spaces.

**The variance is necessary for the preservation of a property right of the applicant that is substantially the same as is possessed by owners of other property in the same zone or vicinity.**

8. Approval of the variance allows for economic viability and smart development of the parcel as a datacenter with an appropriate parking standard necessary to accommodate the projected employment of 120 employees maximum per shift.



*Where Life is Sweet*

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9. Approval of the variance allows the development of the property as a data center in a heavy industrial zone as a use permitted in this zone.
10. Other data centers in the region have developed with a parking ratio of less than one space per 1,000 square feet. Typically, the overall parking ratio is calculated based on employee count.
11. Requiring review of each variance request through a public hearing and public notice process insures the right of adjoining property owners to participate in the deliberation process, protecting the rights of neighboring property owners.

**The authorization of the variance shall not be materially detrimental to the purposes of the zoning ordinance, be injurious to property in the zone or vicinity in which the property is located, or be otherwise detrimental to the objectives of any development pattern or policy.**

12. The development will provide parking adequate to accommodate the employees on-site each shift, plus visitors.
13. Maintaining land in a vegetated state rather than improving for unneeded parking minimizes urban heat island effects and minimizes potential storm water contamination.
14. Reduction of parking spaces as proposed has a net positive effect limiting impervious surfaces, potentially improving groundwater recharge and vegetative growth.

**It is impossible to maintain the zoning ordinance requirements and at the same time build, erect or use the structure.**

15. The current parking requirement is appropriate for traditional industrial uses which have a high employee count and a smaller floor area.
16. Data centers have a very large building footprint but low employee count and thus, a low parking demand.
17. Requiring excess parking above what is necessary to accommodate the estimated 120 employees creates an undue economic hardship on the development.
18. The 230 proposed spaces are adequate to handle employee demand, overlap during shift changes, and visitors and deliveries.

**The variance requested is the minimum variance from the provisions and standards of the zoning ordinance which will alleviate the hardship.**

19. The proposed 230 spaces are similar to that provided at other data centers for the owner.
20. Since employee counts per shift and expected visitor counts are known, the requested variance is the minimum that will alleviate the hardship, accommodate necessary parking, and limit unnecessary impervious area.

Commissioner Collins moved and Commissioner Kirkpatrick seconded the motion to make the project file a part of the record. Motion passed. Commissioner Caplinger moved, and Commissioner Kirkpatrick seconded to approve the findings of fact as written. Motion passed. Commissioner



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Doherty moved and Commissioner Collins seconded to approve the variance request reducing the number of required parking spaces from 880 to 230 stalls. Motion passed.

### **New Business – Popeye’s Louisiana Kitchen Restaurant extension of Site Plan and Variance approvals**

Planning Director Spencer presented the staff report. The variance approval was given in June of 2022. The request for extension was made in May, however the first available meeting was July. The administrative site plan approval was given in July of 2022. The authority to grant the extension of land use approvals, including administrative approvals, belongs to the planning commission. Civil drawings were approved for the project in February of 2023.

#### Testimony

Craig Gilbert 1920 SE 34<sup>th</sup> St Suite 115 Vancouver WA-98683- Mr. Gilbert is with the architectural firm for the project. The requests are due to supply chain delays. Switch gear has been secured and construction is able to begin.

Commissioner Caplinger moved, and Commissioner Doherty seconded to approve a one-year extension for the major variance and site plan approvals for Popeye’s Louisiana Kitchen Restaurant. Motion passed.

The restaurant anticipates a late November opening.

### **Final Plat- Amazon Data Services Inc 4N2823 TL 200 908 E Penney Ave**

Planning Director Spencer presented the staff report. The partition creates two parcels and creates the extension of SE 9<sup>th</sup> Street. The 151-acre parcel is the site of PDX 245 and the 44 acre is for non-Amazon development. The first 2 conditions of approval remain in effect and the 3<sup>rd</sup> condition is satisfied by tonight’s review.

#### Testimony

Ryan Thomas-10885 NE 4<sup>th</sup> St Suite 700 Bellevue WA 98004- Mr. Thomas is with Perkins Coie. The final plat conforms to the conditions of approval and there have been no changes.

Commissioner Doherty moved, and Commissioner Collins seconded to approve the final plat subject to the conditions of approval. Motion passed.

### **Final Plat- Amazon Data Services Inc 4N2823 TL 600 994 E Penney Ave**

Planning Director Spencer presented the staff report. This is the PDX 138 site actively under construction. This partition creates two lots, one for the PDX site and one for a substation. Conditions of approval 1 & 2 remain in effect and 3 has been fulfilled.

#### Testimony

Ryan Thomas of Perkins Coie- 10885 NE 4<sup>th</sup> St Suite 700 Bellevue WA- The preliminary plat approval was given on May 11, 2023, and there are no changes to the plat.



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Commissioner Caplinger moved, and Commissioner Doherty seconded to approve the final plat with the conditions. Motion passed.

## **Planner Comments and Unscheduled Communication**

Position #5 of the Planning Commission is still vacant and open for applications.

Commissioners discussed possible dates for an August meeting.

The North Hermiston Urban Renewal Area hearing is scheduled for the July council meeting. ODOT has tentatively offered funding for the signalization portion of the project.

The Human Bean continues to wait for their building to be delivered.

There have been no applications or discussion with staff of the roof-top bistro in downtown, neither have there been any applications for the vacant areas east of 7-Eleven.

## **Adjournment**

Vice-Chairman Fialka adjourned the meeting at 7:59PM.





# Hermiston Planning Commission

July 12, 2023

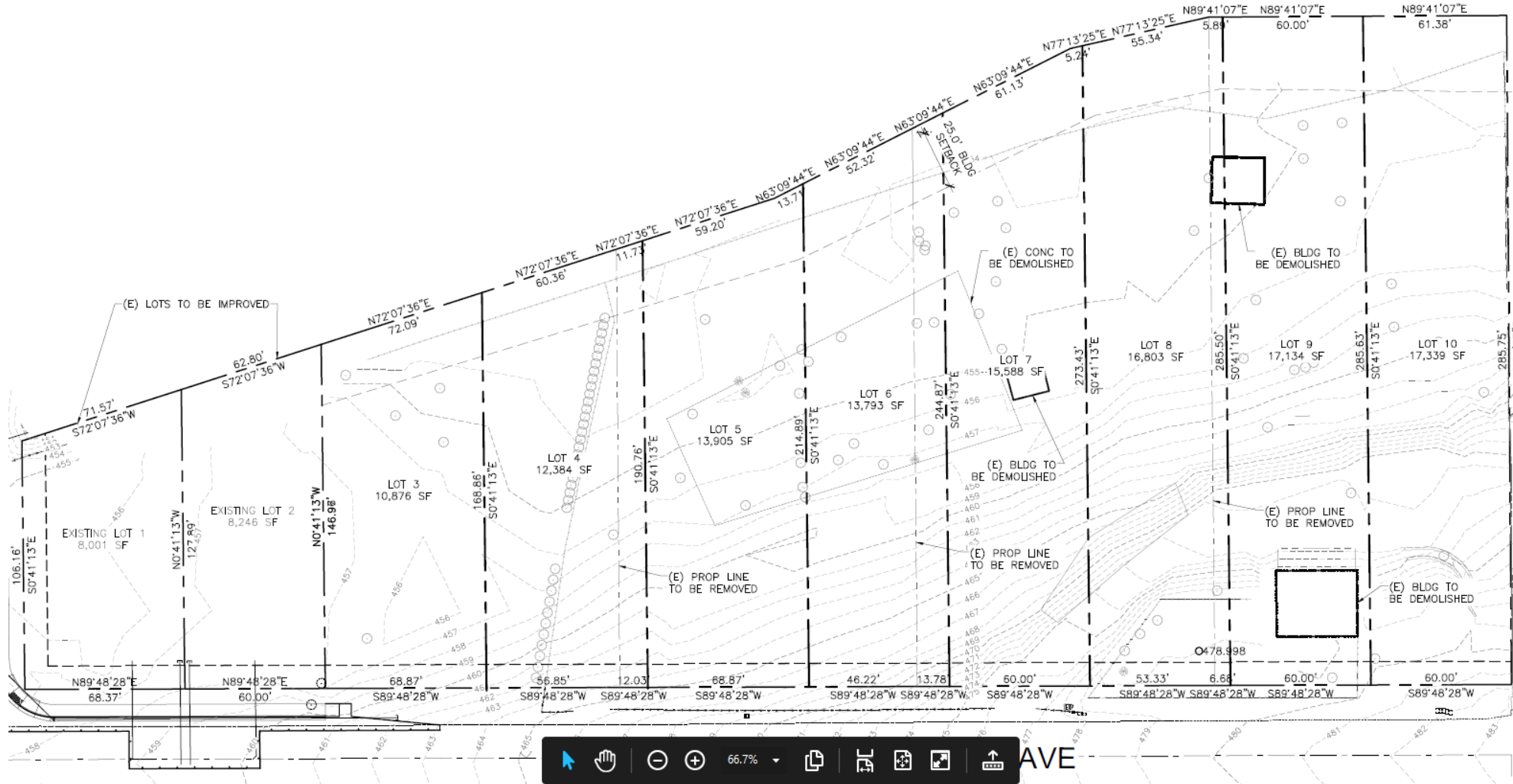




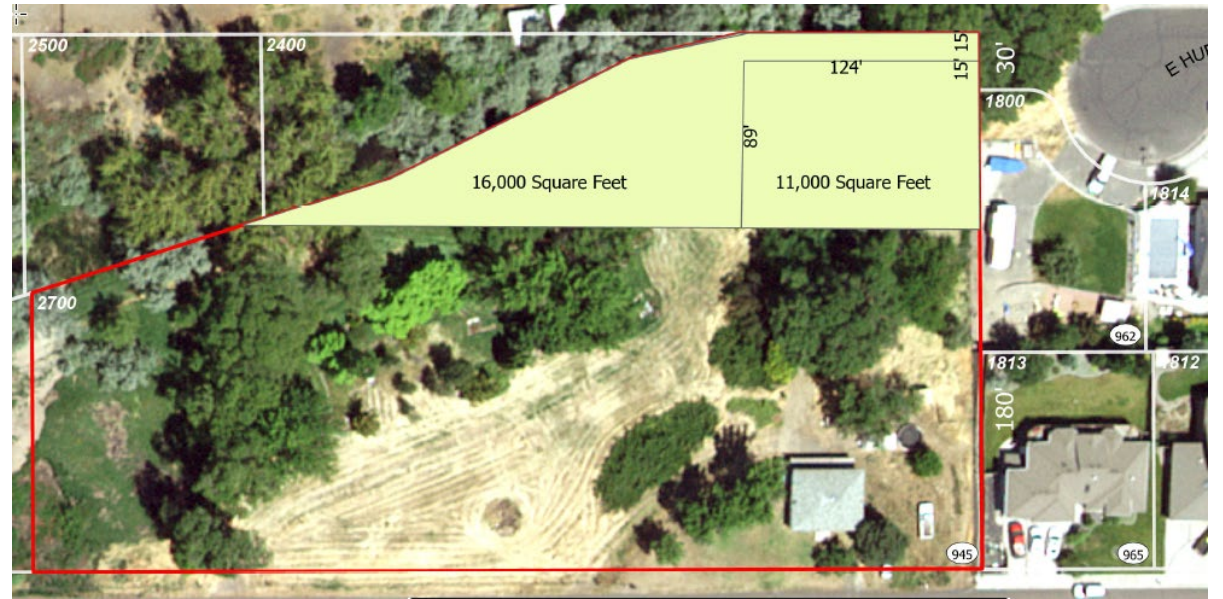




# Phoenix Builders Infill Designation (Cont'd)



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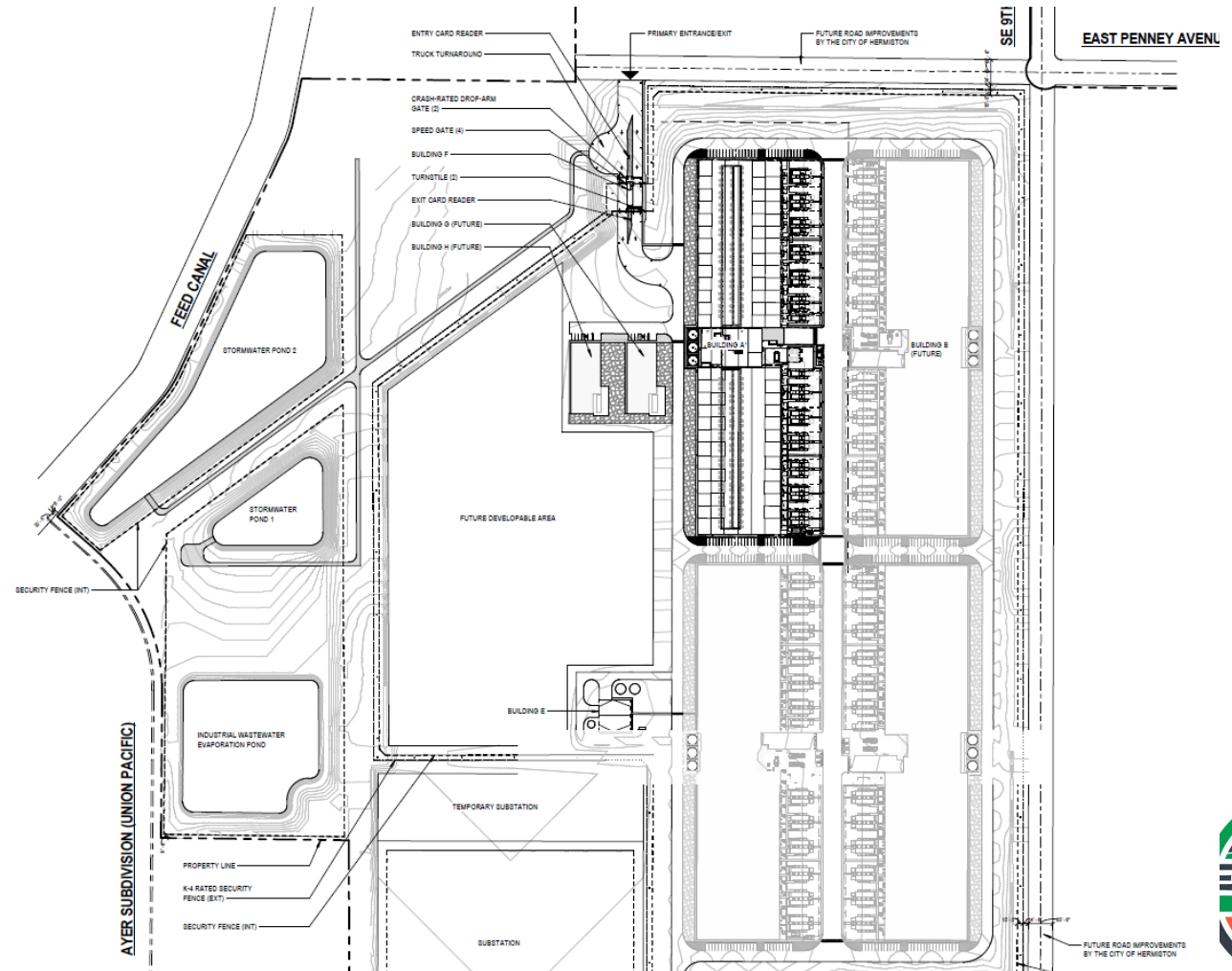
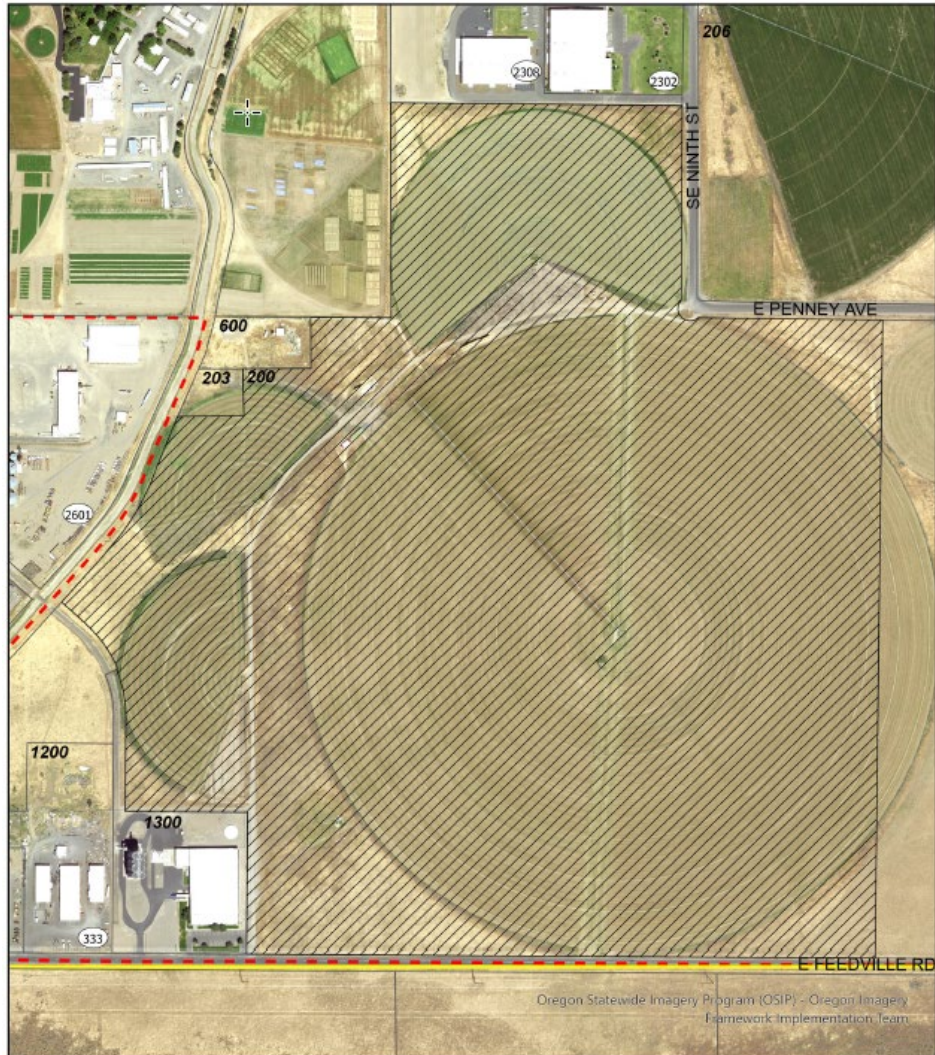


# Phoenix Builders Infill Designation (Cont'd)



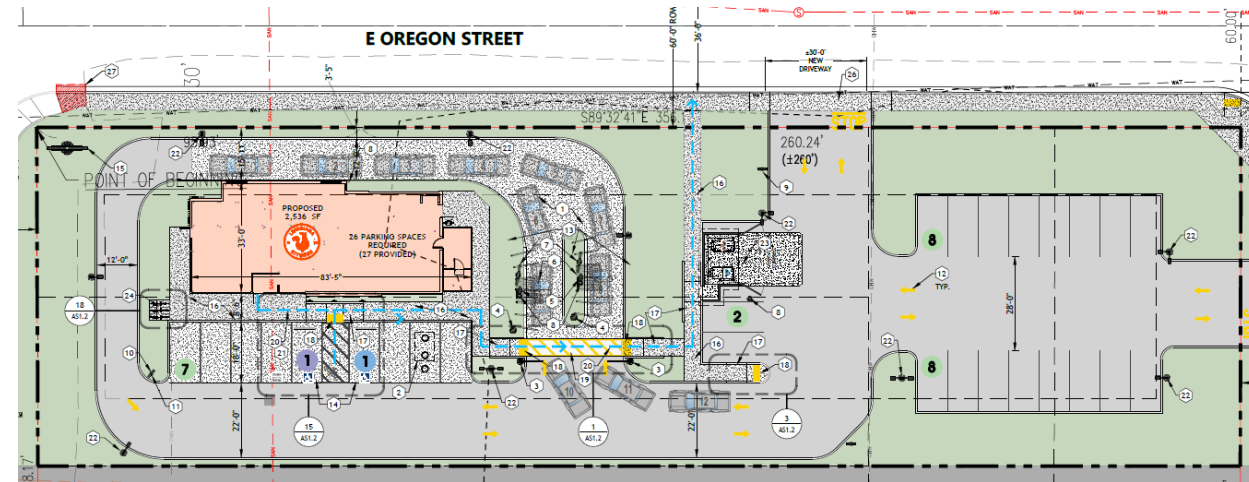


# ADS Major Variance



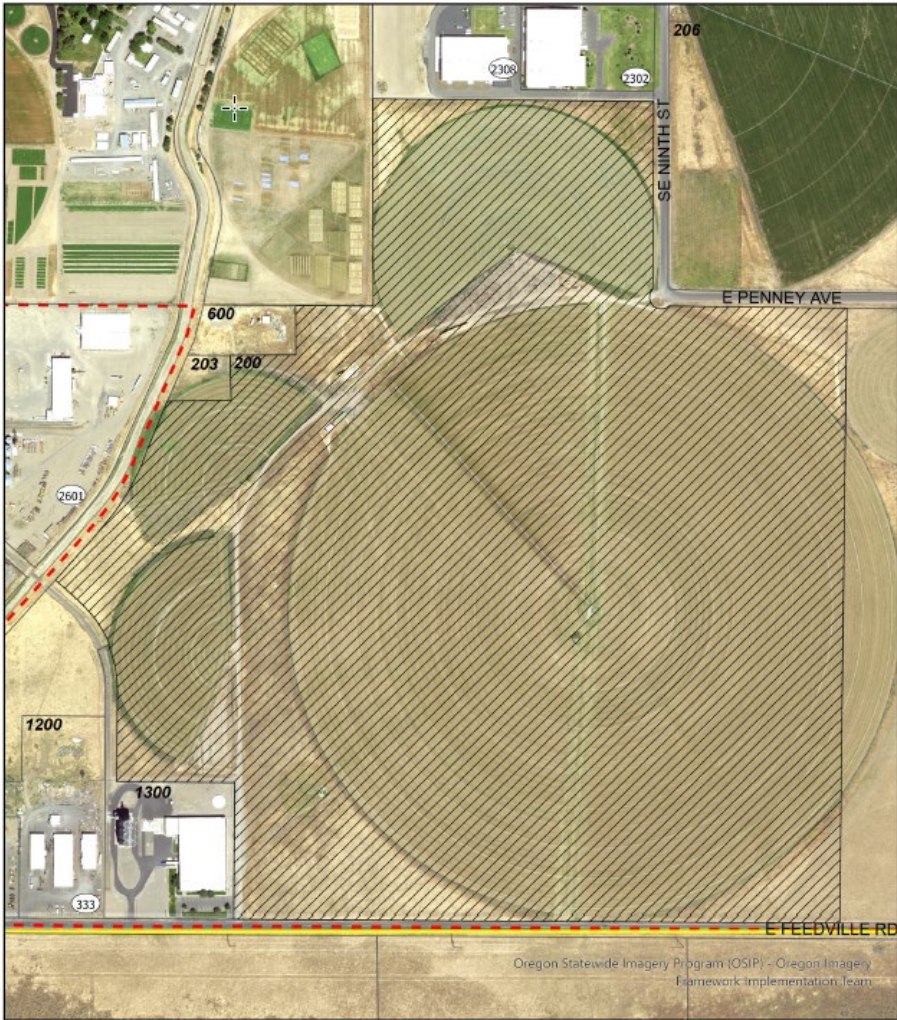


# Popeye's Time Extension Request





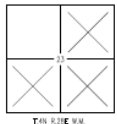
# ADS Final Plat 908 E Penney Ave



Oregon Statewide Imagery Program (OSIP) - Oregon Imagery Framework Implementation Team

## PARTITION PLAT NO. 2023-

A PARTITION PLAT OF LOT 1 OF THE "STAHL REPLAT",  
 LOCATED IN SECTION 23, TOWNSHIP 4 NORTH, RANGE 28 EAST,  
 WILLAMETTE MERIDIAN, CITY OF HERMISTON, UMATILLA COUNTY, OREGON



I HEREBY CERTIFY THAT THIS IS A TRUE AND EXACT COPY OF THE ORIGINAL PLAT AS FILED FOR AMAZON DATA SERVICES, INC. IN UMATILLA COUNTY, OREGON.

CHRISTOPHER J. D'ORAZIO, RLS 98906

