



April 12, 2023

To: Washington County Board of Commissioners

From: Erin Wardell, Manager *Erin Wardell*
Planning and Development Services

Subject: **Draft FY 2023-2025 Planning Work Program**
Department of Land Use & Transportation

STAFF REPORT

**For the April 18, 2023 Board of Commissioners Work Session
and distribution for public review and comment**

I. STAFF RECOMMENDATION

Release the Draft Fiscal Year (FY) 2023-25 Planning Work Program to the public for a six-week comment period.

Following review of submitted public comments, staff will recommend a 2023-25 Planning Work Program for Board consideration at its July 18 meeting. The work program will include a draft schedule of Board actions associated with the various items in the plan.

II. INTRODUCTION

The Department of Land Use & Transportation (LUT) Planning Work Program identifies ongoing planning responsibilities and identifies and prioritizes other proposed community and transportation planning tasks. Tasks may include ordinances, issue papers, and long-term studies or projects.

The Planning Work Program helps ensure available resources are directed in support of the highest priority needs and aligned with Board policy guidance. In developing the draft Planning Work Program, staff has attempted to balance the following:

- Available staff and budget resources;

- Ongoing routine and nondiscretionary tasks;
- Regulatory requirements (e.g. federal, state and regional regulations and mandates);
- Prior input and policy guidance from the Board of Commissioners; and
- Community input and requests.

Implementing County priorities

Themes identified in the draft Planning Work Program implement Board priorities:

Planning Work Program Themes	Board priorities
Housing	Partner with the state and region to develop, build and manage affordable housing
Natural Resources and Climate	Plan for and respond to emergencies and disasters, including those caused by climate change
Multimodal Transportation System Planning and Funding	Design, build and maintain a connected multimodal transportation system in partnership with the state, cities and region
Plan and Code Updates	Support and continue to improve the major systems of government

Timeframe for tasks

The timeframe for Tier 1 tasks is expected to generally fall between July 2023 and June 2025; however, much of the significant work is long-term and it is expected that some tasks from this biennial work program will continue into future years. Much of the work of planning staff at Washington County involves our day-to-day operations and providing community services and development review. This work is considered “nondiscretionary” and does not require Board approval on an annual or biennial basis.

Planning team staffing and organization

Washington County has three planning teams: Community Planning, Transportation Planning and Current Planning/Development Review. The work of these teams is summarized below:

Community Planning: 14.89 FTE budgeted in FY 2023-24

The Community Planning team maintains the County’s Comprehensive Plan and updates the Community Development Code, Comprehensive Framework Plan for the Urban Area, Rural/Natural Resource Plan, Community Plans and Urban Planning Area Agreements. The Community Planning section coordinates with local and state partners on planning efforts and involves the public and community-based organizations in their projects.

Transportation Planning: 11.88 FTE budgeted in FY 2023-24

The Transportation Planning team prepares and updates Washington County's 20-year Transportation System Plan. They conduct travel demand forecasting, oversee the countywide Transportation Development Tax, manage disbursement of Statewide Transportation Improvement Funds, and transit, bicycle and pedestrian planning. Transportation planners work with the cities and regional partners including Metro, TriMet and the Oregon Department of Transportation on regional transportation issues.

Current Planning/Development Review: 13.52 FTE budgeted in FY 2023-24

The Current Planning/Development Review team works with community members, developers and planning consultants. They review all development proposals to make sure they meet requirements in the elements of the County's Comprehensive Plan, which regulates land use and development activities in unincorporated Washington County. They also provide assistance to community members requesting information about the land development process and provide code compliance services.

III. WHAT'S NEW THIS YEAR?

This year staff are proposing several changes to how this work program is developed and structured:

- Biennial work program: This is the first time that staff have proposed a biennial work program for the Board's consideration. The biennial schedule is a better reflection of the time that most of these planning efforts take to move through to completion and makes it more efficient to allocate staff resources. Additionally, in the past Washington County had language in its charter that limited the time frame in which land use ordinances could be brought forward to the months of March through October. That was removed by a countywide vote in 2020. Now that land use ordinances can go forward at any time, it is less urgent to define our schedule around those limits.
- Equity Framework: In 2022 staff developed an Equity Framework with the support of Espousal Strategies, to use for our Major Streets Transportation Improvement Program '23 - '28 Funding Allocation and implementation of House Bill (HB) 2001. This equity framework will now be updated and applied to each planning project.
- Inclusion of all three planning sections in the work program: Better reflecting our needs to be flexible and efficient with our staff resources, we are now including all three planning sections in this work program. Previous work programs focused on Long Range Planning (Community and Transportation Planning) which did not reflect the full body of planning work that the division does.

- Organization around themes: Structuring the work program around four thematic areas makes it easier to communicate alignment with Board priorities, why this work is important to the community and emphasizes why they should care about our planning work program.
- Online open house: In both English and Spanish, in order to gather more public input than received in previous cycles.
- Reduced tiers: The previous work program included a 'Tier 3' of items of lowest priority. For ease of communication, this work program only has a Tier 1 and Tier 2.

At its Nov. 8, 2022 meeting, the Board approved modifications to the FY 2021-22 Work Program that would direct work through FY 2022-23. Six unanticipated and mandatory tasks were added to Tier 1 (highest priority work). The updated FY 2021-23 Work Program included 23 tasks in Tier 1, and another 11 potential tasks in Tiers 2 and 3 (longer term, or work that requires external funding that has not yet been identified). The Board also directed work to start on the first biennial work program for FYs 2023-25.

Highlights of completed work

A number of important projects were completed this biennium. The following table shows completed work from the current work program (FYs 2021-23).

(see completed work table on next page)

Completed Work for FY 2021-22 & FY 2022-23	
TASK	COMPLETED WORK
<p>R1.3 Urban Planning Area Agreement (UPAA) updates</p> <ul style="list-style-type: none"> ▪ County/city coordination for planning authority in urban reserves, new urban areas and transportation needs. 	<p>One ordinance adopted:</p> <ul style="list-style-type: none"> ▪ Ord. No. 879 (Tigard UPAA) adopted Nov. 9, 2021.
<p>S1.1 House Bill (HB) 2001 (Middle Housing) implementation/housing affordability Implement HB 2001 and Senate Bill (SB) 458, Middle Housing Land Divisions</p>	<p>Three ordinances adopted:</p> <ul style="list-style-type: none"> ▪ A-Eng. Ord. Nos. 885 & 886 (Middle Housing) adopted June 28 and June 7, 2022, respectively. ▪ A-Eng. Ord. No. 890 (Middle Housing Land Divisions) adopted Feb. 7, 2023.
<p>S1.3 Transportation System Plan (TSP) updates including:</p> <ul style="list-style-type: none"> ▪ Urban Reserves Transportation Study (URTS) outcomes ▪ Tonquin Employment Area East-West collector ▪ General Updates 	<p>One ordinance adopted, one rejected and one still under consideration:</p> <ul style="list-style-type: none"> ▪ A-Eng. Ord. No. 881 (General Updates) adopted Feb. 1, 2022. ▪ A-Eng. Ord. No. 882 (Tile Flat Road) cont'd. to Oct. 24, 2023. ▪ A-Eng. Ord. No. 883 (Cornelius Pass Road) rejected Oct. 18, 2022.
<p>S1.5 Minor Comprehensive Plan and Code amendments (rural/urban) including:</p> <ul style="list-style-type: none"> ▪ Rural Omnibus ▪ Staff-generated CDC changes ▪ CCI bylaws change ▪ North Bethany map change ▪ Minor technical code changes 	<p>Two ordinances adopted:</p> <ul style="list-style-type: none"> ▪ A-Eng. Ord. No. 877 (Minor Amendments - rural) adopted Nov. 2, 2022. ▪ A-Eng. Ord. No. 889 (Minor Amendments - general) adopted Feb. 7, 2023.
<p>S1.7 FD-20 in new Urban Growth Boundary (UGB) expansion areas</p>	<p>Ord. No. 865, (FD-20) adopted Jan. 18, 2022.</p>
<p>L1.6 Racial Equity Lens</p> <p>Consider how to incorporate equity principles in planning processes and tasks.</p>	<p>As part of consultant-supported work on community engagement for the MSTIP and Middle Housing (HB 2001) projects, the following were developed:</p> <ul style="list-style-type: none"> ▪ Equity framework and equity index ▪ A model community engagement plan ▪ Best practices for centering equity in engagement for planning projects <p>The outcomes of this report will be used in developing engagement plans for future planning projects. Our work will continue to develop and evolve as the equity framework is applied to all future projects.</p>

IV. 2023-25 PRIORITIES

This draft work program proposes major tasks that planning staff will undertake in addition to numerous ongoing, nondiscretionary tasks. The nondiscretionary tasks are generally required by state statute or are part of providing community services. Development activities over the time period are estimated based on historical trends. If nondiscretionary tasks are less staff-intensive than expected, staff can work on the other identified work program tasks. Conversely, if more nondiscretionary tasks than expected emerge, some of the other tasks may take longer. Anticipated FY 2023-25 nondiscretionary tasks include:

Required County Planning Activities

- Development Review and Assistance:
 - Inform developers and property owners about regulations; review 400+ land development proposals each year
 - Respond to an average of 160 land use code compliance complaints each year
 - Floodplain management
 - 50,000 customer inquiries each year (phone, email and in person)
- Plan amendments
- Special district annexations and coordination
- Planning Commission, Planning Directors, Washington County Coordinating Committee (WCCC) and WCCC Transportation Advisory Committee (TAC) support
- Demographic, economic information, data collection and analysis
- Interdepartmental coordination, including housing issues and economic development as well as studies and projects such as the Code Compliance Study and Climate Action Planning
- Coordination with other LUT divisions to implement the Comprehensive Plan, including support to Capital Projects during project design phases and Engineering for coordinated planning initiatives
- Support government relations staff in legislative analysis and policy development
- Transportation model updates and applications to support transportation planning and projects
- Transportation Development Tax (TDT)/System Development Charge (SDC) review, updates and annual reporting
- Implementation of public transportation service per requirements in the Statewide Transportation Improvement Fund (STIF)
- Identify grant opportunities and prepare applications upon Board authorization
- Continuous process improvement, to ensure that we are providing the best services to our community with limited staff resources

Regional and Interagency Coordination

Given the strong local economy and development pressures throughout the region, County participation in regional, state, and federal planning efforts is critical to ensure County perspectives are addressed. Staff continues to participate in a range of regional, multiyear planning projects, such as:

- Metro’s Urban Growth Management Cycle (Urban Growth Report expected in 2024) and Regional Transportation Plan (RTP) expected to be adopted in late 2023.
- Planning by other agencies, including Oregon Department of Transportation (ODOT), TriMet and the Port of Portland. High profile projects include the Regional Mobility Pricing Project led by ODOT, TV Highway Helping Obtain Prosperity for Everyone (HOPE) grant-funded work led by Metro and the Westside Multimodal Improvements Study led jointly by Metro and ODOT.
- Planning by cities, including planning for new urban growth boundary (UGB) and urban reserve areas, TSP updates and Urban Planning Area Agreements (UPAAs).

In addition to our nondiscretionary tasks, the Board will authorize staff to conduct work on other projects that fit into the County’s overall goals and meet state and local requirements. Public engagement will be conducted to inform the prioritization of the proposed tasks. The proposed Tier 1 work program is organized thematically below and is attached to this staff report as Table 1:

Housing

Several tasks in this work program support the production and affordability of housing. Given the importance of this topic at the local and state level, work on other tasks will continue to be viewed through an affordable housing lens, as staff seeks opportunities to positively influence housing production and affordability. Specific tasks span both short- and long-term timelines and include:

- Housing Production/Housing Affordability
Staff will focus this year on options to increase housing supply and affordability through implementation of expected 2023 housing legislation and coordinating with Metro and local cities on regional housing needs analyses. Staff will participate in rulemaking and implementation processes with the Department of Land Conservation and Development (DLCD) while reviewing County regulations and developing proposed revisions to ensure consistency. (Task 1.1)

- Community Development Code (CDC) Audit
In this era when the production of housing is critical, reviewing the CDC for ways to simplify and clarify the requirements and processes for land development is crucial. This task will consider ways to simplify and streamline the CDC while enhancing its functionality and usability. Work will include review for: consistency with federal, state, regional, and local requirements; inconsistent, outdated, repetitive or subjective standards; equity considerations; and best practices. This would be Phase 1 of a multiphase and multiyear process to update the CDC and would identify the next steps in the update process. (Task 1.2)
- Issue Paper on Rural Housing Options
Recent state legislation has provided more ability to allow Accessory Dwelling Units (ADUs) and other housing in the rural area. An issue paper is a first step in exploring these options. (Task 1.3)

Natural Resources and Climate

- Significant Natural Resources (SNR) – Limited Goal 5 Program Update
Based on Board direction, staff is undertaking an 18-month process to update the County's Significant Natural Resources inventory, focusing on Wildlife Habitat, and further developing land use regulations to address natural resource protection in a clear and objective manner. This work was originally undertaken several years ago, resulting in adoption of A-Eng. Ord. No. 869 in 2020. That ordinance and related guidelines were remanded by the Land Use Board of Appeals (LUBA) to the County for further work, including a requirement to follow appropriate Goal 5 process steps. Work has commenced. (Task 1.4)
- Climate Friendly and Equitable Communities (CFEC) Implementation
New state rules guiding transportation and land use planning were adopted July 2022 and require most local governments in Oregon to make significant changes in their planning processes and documents. The first requirements, which apply to parking standards and necessitate changes to the CDC by ordinance, took effect in early 2023. Additional changes to Comprehensive Plan documents will be required in later phases of this work.

Changes to the rules are expected this year, and the results of a lawsuit and potential legislative action may further modify the requirements. So, while staff expects the work to be extensive, the exact nature and extent of the work is not yet fully known. (Task 1.5)

Multi-modal Transportation System Planning and Funding

- Transportation System Plan (TSP) Major Update Scoping
The last major update of Washington County's Transportation System Plan (TSP) was through ordinances adopted in 2014 and 2015. Since then, only minor updates have been

made and state and Metro policy changes require significant TSP updates. The scoping exercise will involve community engagement as well as working with the Planning Commission and sharing information with the Board. Outcomes of the scoping exercise will include identification of potential funding opportunities. Once started, the major update of the TSP will likely take three years to complete. (Task 1.6)

- Complete Streets Design Update

This review and update of Washington County Road Design and Construction Standards, in partnership with LUT Engineering will implement road standards that better reflect the variety of land use contexts within Washington County. Work includes an update of the transportation development review process and procedures used to determine transportation safety-related conditions of development approval. (Task 1.7)

- Develop Transportation Element of County Capital Improvement Plan (CIP)

The County is in the process of transitioning to a countywide Capital Improvement Plan (CIP) approach to prioritizing County funding for transportation, facilities, and information technology systems needs. Planning staff will continue to support the transportation element of this work. Over the past two years, Planning staff coordinated extensively with Capital Projects Services, County staff in the Office of Equity, Inclusion and Community Engagement (OEICE) and Health and Human Services (HHS), our partners at the cities, and Clean Water Services (CWS) to begin the work of prioritizing future transportation projects. That work included extensive and inclusive community engagement and project evaluation. (Task 1.8)

- Farmington Road Concept Plan

Corridor concept plan for the section of SW Farmington Road under state jurisdiction between SW 198th Avenue and SW Kinnaman Road. The plan will include a framework for future jurisdictional transfer of this section of Farmington Road from state to County. The preferred corridor design concept will be incorporated into relevant plan documents, including the TSP and Aloha-Reedville Community Plan. Funded by a TGM grant in partnership with ODOT and with support from the city of Beaverton. (Task 1.9)

- Transportation Safety Action Plan (TSAP)

Review and update the County's existing TSAP in partnership with LUT Traffic and Operations staff. The TSAP will prioritize near-term, effective strategies to address locally identified safety issues in coordination with Washington County cities and regional partners. Inclusive, culturally appropriate, and meaningful engagement of communities and jurisdictional partners will be used throughout the planning process. Completion of this work will make Washington County eligible for additional federal funds for construction of safety projects. This work is funded by a joint federal Safe Streets and Roads for All (SS4A) grant with Metro and City of Tigard. (Task 1.10)

- Transportation System Plan (TSP) Updates

This is a minor update to the TSP to include outcomes from the Urban Reserves Transportation Study and the Cooper Mountain Transportation Study. A-Engrossed Ordinance No. 882 is an amendment to add a new collector street to the Transportation System Plan in and adjacent to the recent River Terrace 2.0 UGB expansion area. County staff will coordinate with city of Tigard staff. The next hearing is scheduled for Oct. 24, 2023. (Task 1.11)

- Countywide Transit Planning

The Countywide Transit Study is underway in partnership with TriMet, Metro, ODOT and Washington County cities to identify transit options that expand economic opportunities and improve livability for community members in the county. The study will result in a shared vision amongst Washington County jurisdictions and agency partners and create a plan to enhance the transit system to better meet the needs of riders, with a focus on the role of local jurisdictions to support transit access, speed and reliability.

Outcomes could include updates to the County and city transportation system plans, updates to TriMet's Westside and Southwest Service Enhancement Plans, and prioritized project lists for transit improvements.

Additionally, as a recipient of Statewide Transportation Improvement Funds (STIF), which are intended to improve service to low-income communities and reduce service fragmentation between transit providers, Washington County must prepare a Transit Development Plan (TDP) every two years. The TDP identifies and prioritizes public transit investments in areas outside of the TriMet and SMART transit districts, as well as first-last mile connections within the transit districts. The next plan update is required in 2024. (Task 1.12)

- Trails Planning

Continue to actively participate in planning and implementation efforts for Council Creek Regional Trail (CCRT), the Salmonberry Trail, Tualatin Valley Trail, and other regional trail facilities. County transportation planning staff are leading preliminary design of the CCRT in coordination with Capital Project Services (CPS). The CCRT will be an off-street multiuse pathway connecting Forest Grove, Cornelius, and Hillsboro. The CCRT is funded by regional and federal grants as well as local matching funds. Preliminary design of CCRT will be complete by the end of 2023. Construction is anticipated to start in 2025. Staff anticipates filing an ordinance to amend the TSP with the CCRT alignment in 2023. (Task 1.13)

Plan and Code Updates

The work program includes important tasks to keep our Comprehensive Plan elements, including the CDC, updated and reflective of state law changes and community needs.

- UGB Expansion Ordinance(s) and Urban Planning Area Agreement (UPAA) updates
The Roy Rogers East and West Urban Reserve Area (Tigard’s River Terrace 2.0) UGB expansion/land swap was recently approved by Metro and is expected to be acknowledged by LCDC in 2023. Additionally, North Plains is planning to expand its UGB this year. Both UGB expansions will require amendments to the Rural/Natural Resource Plan (RNRP), affected Community Plans and the Comprehensive Framework Plan for the Urban Area (CFP). The process for the North Plains UGB expansion will also include an update to the UPAA. (Task 1.14)

- Issue Papers for Board Consideration
Two issue papers are proposed as part of this task, addressing issues that have arisen in the implementation of the County’s requirements on new development. The papers will describe the topics and offer options for how to address the issues. Direction resulting from the issue papers would be considered as part of future work programs. (Task 1.16) The topics are:
 - a) *Contractors Establishments*
Addressing concerns from adjacent cities and property owners with contractors’ establishments, particularly in the Future Development (FD-20) land use district. Concerns include the challenge such uses pose to future urban industrial development. These uses tend to be long-term rather than temporary, and the uses are often not visually compatible with development envisioned for the area.

 - b) *Interim Parks System Development Charge (SDC) Program Assessment*
An interim parks SDC has been in place since 2004 for areas outside the Tualatin Hills Park & Recreation District (THPRD) boundary but within their ultimate service area. The idea was to capture funding for facilities that would serve the area and once annexed, land and funding would transfer to the district. The SDC amount and provisions for spending the funds have not been updated nor has the program been assessed since 2004.

The full list of proposed planning projects is included in Table 1.

Changes in Priorities Proposed

Remove Short-Term Rental (STR) License Development from Work Program

The topic of short-term rentals (STR) has been on the County’s radar since 2014 when LUT staff began receiving community requests to regulate STRs based on concerns about negative impacts to neighborhoods such as noise, parking, and trash. Preparation of an issue paper on STRs was included as a Tier 1 Task in the 2019-20 LRP Work Program. The STR issue paper, 2020-01: “*Short-term Rentals: Issues and Considerations,*” published Feb. 25, 2020, identified options for Board consideration. The Board directed staff to develop STR regulations and a license process to address

neighborhood impacts. Since this direction, staff has developed draft STR regulations and a license process. This work has included working through code enforcement issues and costs to set up and run the STR license program.

Staff now recommends that this task be removed from the work program for a couple of reasons: The first is a perceived service level issue. During the past year, the Board has expressed concerns about the County's role in providing urban-level services within the urban unincorporated area. An STR license program for the urban unincorporated area would represent an urban-level service. Notably, to staff's knowledge, no cities in Washington County currently regulate short-term rentals. If the County were to adopt such a program, it would be the only jurisdiction providing this urban level of regulation/service within the county.

The second reason that staff recommends task removal is the cost of setting up an STR license program. Staff's estimate of ongoing program costs includes staff time (.33 FTE) for program tasks including license application intake and review, coordination with an STR monitoring company and license revocation proceedings, as well as \$20,000 per year for the STR monitoring company contract. STR license fees would be required to offset these ongoing costs. However, staff estimates that the up-front costs for creating such a program would be approximately \$100,000 – \$150,000, and a funding source for these up-front costs has not been identified. Due to the current pressures on the County's General Fund, creating a new program does not appear currently viable.

V. ELEMENTS OF THE WORK PROGRAM TABLE

Tiering of tasks

Potential ordinances and planning projects, as shown in Table 1, are categorized into two tiers:

- **Tier 1** tasks are the highest priority and include major projects, tasks continued from the last work program and ongoing responsibilities. Some Tier 1 multiyear tasks will continue into future years.
- **Tier 2** tasks are ordinances and projects that do not have sufficient staff resources or funding at this time. Staff recommends addressing Tier 2 projects and ordinances if additional staff resources or funding become available, though many of these tasks are likely to be carried over into the following year.

Staff resources

The level of staff resources for Tier 1 tasks are shown as high, medium, or low in Table 1. Task-specific estimates of staff time, focused on the first year of the biennium, will be provided in the final work program staff report. Adjustments to the work program will be needed if additional tasks are added, existing tasks are expanded, tasks are reprioritized, or the division's proposed budget is reduced through the upcoming budget process.

VI. FY 2023-25 WORK PROGRAM REQUESTS

Throughout the year, the department receives requests from the community, local businesses, staff members and the Committee for Community Involvement (CCI). These were initially summarized in the status report on the [2021-2022 LRP Work Program and New Mandatory Tasks](#) presented to the Board at its Oct. 18, 2022 work session. The following table lists new requests received since adoption of the last work program and staff’s response. Copies of letters are included as Attachment A.

NEW REQUESTS	
<p>1. Amendment to height limit in the industrial district</p> <p>(Staff Proposal)</p> <p>Certain industrial uses related to the semiconductor industry include built elements that have higher height requirements than what is currently allowed by the CDC. Addressing this could be a specific CDC amendment or a broader look at the County’s Industrial (IND) district.</p>	<p>Staff Response:</p> <p>The semiconductor industry has been identified at the federal and state level as a critical industry and the County’s industrial district height limit could discourage semiconductor-related businesses from locating here or being able to expand.</p> <p>Staff recommends this topic be added as part of a Tier 1, minor amendments ordinance for this biennium.</p>
<p>2. Gas station siting requirements</p> <p>(Submitted by Philips, et al., McKee, Knight, Tualatin Riverkeepers, 350 PDX Washington County, Washington County Treekeepers, the CCI)</p> <p>Concerns raised by community members, including a petition with 283 names, related to possible environmental effects from gas station siting in the county. Concerns were an offshoot of the opposition to a 2021 land use application for a proposed Chevron station and convenience market at the West Union/185th Avenue intersection.</p> <p>Letters proposed different ideas for limiting gas stations in the urban unincorporated area, including prohibiting new gas station siting within a certain distance (proposed at 1,500 feet) of other certain public uses and sensitive environmental resources.</p>	<p>Staff Response:</p> <p>The requested siting restrictions would constitute a virtual prohibition on new gas stations in the urban unincorporated area. Staff is not aware of any other Oregon jurisdiction that has similar restrictions.</p> <p>New gas stations are an uncommon development request in the urban unincorporated area; the County has received only one request for a new gas station in the last 10 years.</p> <p>For these reasons staff does not recommend placing a new item on the work program to address this request.</p>

<p>3. Rural Accessory Dwelling Units (ADUs)</p> <p>(Submitted by Barnes)</p> <p>Request to develop regulations to allow rural ADUs, as allowed (but not required) under state law.</p>	<p>Staff Response:</p> <p>Current state law limits the ability to allow rural ADUs due to requirements to address Wildland Urban Interface mapping. That mapping work is currently on hold, and there is interest at the state level in allowing rural ADUs, therefore there is at least one bill currently being considered by the state legislature that would decouple the allowance from the Wildland Urban Interface mapping. If that moves forward, the County could consider developing regulations to allow ADUs in rural residential districts.</p> <p>This state provision is permissive, meaning it is allowed but is up to the County whether to implement it. There are likely pros and cons to allowing rural ADUs, and likely standards we would want to implement if they were allowed.</p> <p>In addition to this ADU provision, there have been other recent changes in state law related to rural housing options.</p> <p>An issue paper exploring these options and recommending future steps is an appropriate first step (Task 1.3). This work would not start until the second year of the biennium.</p>
<p>4. Dog training on resource lands</p> <p>(Submitted by Looney, Ferguson)</p> <p>Revise the requirements in Washington County as they relate to dog training in agricultural buildings (CDC §340-5.1(C) and CDC §344-5.1(C)) to change the land use review process from Type III (Public Notice and Hearing) to Type I (no public process).</p>	<p>Staff Response:</p> <p>Staff review indicates request to change the review procedure for certain dog training facilities from Type III to Type I land use review is inconsistent with state statute, which requires public notice for land use decisions. Dog training facilities are similar to dog kennels, which are contentious uses, and the current Type III review process allows for the greatest amount of public involvement.</p> <p>For these reasons staff does not recommend placing a new item on the work program to address this request.</p>
<p>5. Rural tourism</p> <p>(Submitted by Miller)</p> <p>Implement SB 960, expanding rural tourism by allowing more commercial events on farmland.</p>	<p>Staff Response:</p> <p>This would be a major work task.</p> <p>Staff does not believe this is a high priority currently, and recommends it remain on Tier 2 for possible future implementation.</p>

<p>6. Significant Natural Resources (SNR) – fund expanded SNR protections, including urban tree code</p> <p>(Submitted by CCI, CPO 4M, Long, et al.)</p> <p>Additional work required to respond to remand and update County Wildlife Habitat Inventory</p>	<p>Staff Response:</p> <p>Remand is part of work program, including additional inventory work. This work is currently underway.</p> <p>An urban tree code is not contemplated at this time.</p>
<p>7. Annual CCI letter</p> <p>(Submitted by Bartlett)</p> <p>In addition to items addressed above (where CCI is listed), the group proposed several additional miscellaneous requests, including:</p> <ul style="list-style-type: none"> • Updating neighborhood meeting rules • Instituting a new 1% for the Arts for commercial/ industrial/institutional developments 	<p>Staff Response:</p> <p>Staff will look into the neighborhood meeting rule update request and recommend changes.</p> <p>Staff would need Board direction to develop a new 1% for the Arts program. Given other priorities, staff does not recommend developing such a program at this time.</p>
<p>8. Sidewalk Fee-in-lieu program</p> <p>(Staff proposal)</p> <p>Raised during A-Eng. No. 885, HB 2001 Middle Housing implementation discussions and noted for possible future work program task. Task would include research, analysis, program development and adoption.</p>	<p>Staff Response:</p> <p>While staff believes this is an important task, there is not capacity in this biennium.</p> <p>Staff recommends this item be added to Tier 2 for future consideration.</p>
<p>9. Consider recommendations from the DOGAMI Natural Hazard Risk Report for Washington County (Open-File Report O-22-04)</p> <p>(Staff proposal)</p> <p>A 2022 report provides new information on geological hazards as well as recommendations for future County actions.</p>	<p>Staff Response:</p> <p>This is not a high priority item but is potentially important work.</p> <p>Staff recommends this item be included in Tier 2.</p>
<p>10. Request to do urbanization planning for Peterkort properties west of North Bethany</p> <p>(Submitted by Maher, Jorgenson, Manseau (CPO 7), Beachy)</p> <p>Request to do work for a UGB expansion for the urban reserve property west of North Bethany. This proposal would facilitate construction of the Shackelford Road extension to 185th Ave through development contributions.</p>	<p>Staff Response:</p> <p>Board policy, consistent with Metro policy and the Urbanization Forum, is that new UGB areas should be planned by cities. In addition, potential extension of Shackelford Road would be possible without expansion of the UGB, since a goal exception to allow road extension through a rural area was taken as part of North Bethany planning work.</p> <p>Staff does not recommend that this task be added to the work program.</p>

VI. REMAINING ELEMENTS

The remaining elements of the draft FY 2023-25 Planning Work Program staff report consist of:

- **Table 1.** Categorization of tasks into Tier 1 and 2. The source of each proposal and whether the task has a countywide, rural or urban unincorporated area focus is also noted. New tasks are *italicized*.
- **Attachment A.** Copies of work program request letters.

Table 1 – DRAFT FY 2023-25 PLANNING WORK PROGRAM TASKS FOR BOARD AND COMMUNITY INPUT

Tier 1 – Recommended for FY 2023-25 Work Program

No.	Tier 1 Tasks	Staff Time	Ordinance	Public Involvement	Source of Proposal	Area
Housing						
1.1	<p>Housing Production/Housing Affordability</p> <p>Collaborate with Department of Housing Services and Office of Community Development to modify County regulations to encourage development of a greater variety of housing types, enhance housing affordability and address housing-related legislative changes made in 2022 and 2023. The expected modifications will be extensive. Staff will:</p> <ul style="list-style-type: none"> a) Participate in development and implementation of state legislation, including rulemaking, as needed. b) Propose changes to Comprehensive Plan elements, including the CDC, to meet state law and rule requirements and reduce regulatory barriers to encourage growth and diversity in housing supply. c) Participate in local implementation of middle housing and identify CDC refinements for consistency with policy changes for middle housing. d) Coordinate with Metro and local cities on Regional Housing Needs Analysis, Housing Capacity Analyses and Housing Production Strategies (extent of work is still to be determined). e) Propose amendments to Comprehensive Framework Plan for the Urban Area (CFP) policies related to anti-harassment and anti-discrimination. f) Work with Housing Services to amend the CDC to allow conversions of existing hotels and motels to affordable housing and shelter facilities in all land use districts as required under recent state law changes (HB 3261 and HB 2006). 	H	Y	M	Staff, Equitable Housing Site Barriers and Solutions, state law	U
1.2	<p>Community Development Code (CDC) Audit</p> <p>Perform audit of the CDC to assess its structure and function. Consider ways to simplify and streamline to enhance its usability to reduce barriers to development. Work will include review for: consistency with federal, state, regional and local requirements; inconsistent, outdated, repetitive or subjective standards; equity considerations; and best practices. This would be Phase 1 of a multiphase and multiyear process to update the CDC and would identify the next steps in the update process. Intent to hire consultant to assist with audit and include stakeholders to identify issues to be addressed.</p>	H	Y	M	Staff	U, R

No.	Tier 1 Tasks	Staff Time	Ordinance	Public Involvement	Source of Proposal	Area
1.3	<p>Rural Housing Options Issue Paper <i>State legislation adopted over the last several years, as well as some currently being considered, addresses rural housing options. Many of the existing provisions are permissive, meaning the County may (but is not required to) implement them. This issue paper would address these options, including rural Accessory Dwelling Units (ADUs), ADU allowance for historic dwellings in rural residential districts, voluntary relative forest dwelling units (2021) and other dwelling uses possible from the 2023 legislature. Work likely to start in second year of biennium. Recommendations for work resulting from the issue paper would be addressed in future work programs.</i></p>	M	?	M	Community request, Staff	R
Natural Resources and Climate Change						
1.4	<p>Significant Natural Resources (SNR) – Limited Goal 5 Program Update Work with Planning Commission (PC) and community to prepare a B-Engrossed Ordinance No. 869 in response to the Land Use Board of Appeals (LUBA) remands of A-Eng. Ord. No. 869 and Habitat Assessment Guidelines. Work includes:</p> <ul style="list-style-type: none"> a) Updating the SNR maps, reflecting a revised inventory of Wildlife Habitat and water-related resources, focused on the urban unincorporated area. b) Incorporating inventory work of Beaverton and other cities, as appropriate, for SNRs in new UGB areas. c) Following all Goal 5 steps, including Economic, Social, Environmental and Energy (ESEE) analysis and adopting a local Goal 5 Program decision. d) Developing Comprehensive Plan policies for the urban and rural areas. e) Developing clear and objective standards for the CDC. f) Effective public engagement. <p>Additional work includes development of a web-based SNR mapping tool for community to identify and verify general locations of SNRs on properties and developing a database to monitor and enforce new CDC provisions.</p>	H	Y	H	Community requests, SNR Assessment, A-Eng. Ord. No. 869, LUBA appeals and remands, Department of Land Conservation and Development (DLCD) Enforcement Order	U, R
1.5	<p>Climate Friendly and Equitable Communities (CFEC) Implementation <i>New state rules guiding transportation and land use planning were adopted July 2022 require most local governments in Oregon to make significant changes in their planning regulations and processes. The first requirements, which apply to parking standards and necessitate changes to the CDC by ordinance, took effect in early 2023. Additional changes to Comprehensive Plan documents will be required in later phases of this work.</i></p>	H	Y	H	DLCD	U

No.	Tier 1 Tasks	Staff Time	Ordinance	Public Involvement	Source of Proposal	Area
Multi-Modal Transportation System Planning and Funding						
1.6	<p>Transportation System Plan (TSP) Major Update Scoping</p> <p>The County's TSP was updated by several ordinances adopted in 2014 and 2015. State and Metro policy changes now require significant TSP updates. This scoping exercise will include community engagement, work with the Planning Commission and sharing information with the Board. Outcomes of the scoping exercise could determine identification of potential funding sources. This is the scoping exercise. Once the work on the major update of the TSP starts, it will take around three years to complete</p>	L		M	Staff and Climate Friendly and Equitable Communities Rules	C, U, R
1.7	<p>Complete Streets Design Update</p> <p>Review and update County Road Design and Construction Standards, in partnership with LUT Engineering, to implement road standards that better reflect the variety of land use contexts within the county. Includes an update of the transportation development review process and procedures used to determine transportation safety-related conditions of development approval. Current procedures were adopted by Resolution and Order (R&O) 86-95 in 1986. Technical work is underway and will be completed in 2023 or 2024. This will be followed by ordinances to amend the TSP, Road Design and Construction Standards, and an R&O to adopt new transportation development review procedures in 2023 or 2024.</p>	M	Y	M	Staff	C
1.8	<p>Develop Transportation Element of County Capital Improvement Plan (CIP)</p> <p>The County is in the process of transitioning to a countywide Capital Improvement Plan (CIP) approach to prioritizing County funding for transportation, facilities, and information technology systems needs. Planning staff will continue to support the transportation element of this work. Over the past two years, Planning staff coordinated extensively with Capital Projects Services, County staff in the Office of Equity, Inclusion and Community Engagement (OEICE) and Health and Human Services (HHS), our partners at the cities, and Clean Water Services (CWS) to begin the work of prioritizing future transportation projects. That work included extensive and inclusive community engagement and project evaluation.</p>	M	?	H	Staff and Board	U, R
1.9	<p>Farmington Road Concept Plan</p> <p>Corridor concept plan for the section of SW Farmington Road under state jurisdiction between SW 198th Avenue and SW Kinnaman Road. The plan will include a framework for future jurisdictional transfer of this section of Farmington Road from state to County. The preferred corridor design concept will be incorporated into relevant plan documents, including the TSP and Aloha-Reedville Community Plan. Funded by a TGM grant in partnership with ODOT and with support from the city of Beaverton. Project to be initiated in Q1 of FY 2023 and completed in 2024. Ordinance in 2024 or 2025 as part of a TSP update.</p>	M	Y	M	Aloha-Reedville Study, ODOT's Active Transportation Needs Inventory	U

No.	Tier 1 Tasks	Staff Time	Ordinance	Public Involvement	Source of Proposal	Area
1.10	<p>Update Transportation Safety Action Plan (TSAP) Review and update the County's existing TSAP in partnership with LUT Traffic and Operations staff. The TSAP will prioritize near-term, effective strategies to address locally identified safety issues in coordination with Washington County cities and regional partners. Inclusive, culturally appropriate, and meaningful engagement of communities and jurisdictional partners will be used throughout the planning process. Funded by a joint federal Safe Streets and Roads for All (SS4A) grant with Metro and city of Tigard.</p>	M	Y	H	Staff	C
1.11	<p>Minor Transportation System Plan (TSP) updates Minor update of the TSP to include outcomes from the Urban Reserves Transportation Study (URTS) and Cooper Mountain Transportation Study (CMTS). This task has been ongoing since 2021, when Ord. No 882 was filed. The ordinance was engrossed and has been continued to Oct. 24, 2023. County staff will coordinate with City of Tigard staff since a large part of the area affected by this ordinance was brought into the UGB in February 2022 by Metro ordinance.</p>	M	Y	M	Staff, Urban Reserves Transportation Study, Cooper Mountain Transportation Study	C, U, R
1.12	<p>Countywide Transit Planning a) Implement transit services funded by Statewide Transportation Improvement Fund (STIF). b) As a recipient of Statewide Transportation Improvement Funds, which are intended to improve service to low-income communities and reduce service fragmentation between transit providers, Washington County must prepare a Transit Development Plan (TDP) every two years. Next update required in 2024. Countywide Transit Study in partnership with TriMet, Metro, ODOT and Washington County cities to identify transit options that expand economic opportunities and improve livability for community members in the county. The study will develop a shared vision and a plan to enhance the transit system to better meet the needs of riders, with a focus on the role of local jurisdictions to support transit access, speed, and reliability. Consultant under contract for Countywide Transit Study and project initiated June 2022. Ordinance may go forward in 2024 as part of a TSP update.</p>	M	Y	M	HB 2017, Transportation Futures Study, Strategic Solutions for First/Last Mile Transit Connections Plan, State rules for STIF allocation	C
1.13	<p>Trails Planning and Coordination Continue to actively participate in planning and implementation efforts for Council Creek Regional Trail (CCRT), Salmonberry Trail, Tualatin Valley Trail, and other regional trail facilities. Staff are leading preliminary design of the CCRT in coordination with Capital Project Services (CPS). The CCRT will be an off-street multiuse pathway connecting Forest Grove, Cornelius, and Hillsboro. CCRT is funded by regional and federal grants as well as local matching funds. Preliminary design of CCRT will be complete by the end of 2023. Construction is anticipated to start in 2025. Staff anticipates filing an ordinance to amend the TSP with the CCRT alignment in 2023.</p>	H	Y	M	Aloha Tomorrow, Board, Metro regional trails plan	C

No.	Tier 1 Tasks	Staff Time	Ordinance	Public Involvement	Source of Proposal	Area
Minor code and plan updates						
1.14	<p>UGB Expansion Ordinance(s) and Urban Planning Area Agreement (UPAA) updates <i>The Roy Rogers East and West Urban Reserve Area (Tigard's River Terrace 2.0) UGB expansion/land swap was recently approved by Metro and is expected to be acknowledged by LCDC in 2023. Additionally, North Plains is planning to expand its UGB this year. Both UGB expansions will require amendments to the Rural/Natural Resource Plan (RNRP), affected Community Plans and the Comprehensive Framework Plan for the Urban Area (CFP). The process for the North Plains UGB expansion is different from what we use for expansions to the Metro UGB and will include Comprehensive Plan changes, including an update to the UPAA.</i></p>	M-L	Y	M		R
1.15	<p>Minor Comprehensive Plan Amendments Responses to changes in state law, regional decisions, and issues raised by staff, other agencies, or the public. These generally have limited policy implications and may need to be brought forward within the work program timeframe due to requirements or to facilitate other work.</p> <ul style="list-style-type: none"> a) Height limit changes for certain Industrial uses (semiconductor-related). b) Manufactured Housing Code changes to address revisions in state law. c) Minor technical code changes to improve usability of CDC, including clarifications and revisions of standards. d) Other 	M	Y	M	Staff	U, R
1.16	<p>Issue Papers for Board Direction <i>Exploration of topics that could become larger projects or ordinances in the next work program, depending on Board direction. Work likely to start in second year of biennium.</i></p> <ul style="list-style-type: none"> a) <u>Contractors Establishments</u> <i>Address concerns from adjacent cities and property owners with contractors' establishments, particularly in the Future Development (FD-20) land use district. Concerns include the challenge such uses pose to future urban industrial development, that they tend to be long term rather than temporary uses, and that the uses are not compatible with existing and future development envisioned for the area.</i> b) <u>Interim Parks System Development Charge (SDC) Program Assessment</u> <i>An interim parks SDC has been in place since 2004 for areas outside the Tualatin Hills Park & Recreation District (THPRD) boundary but within their ultimate service area. The idea was to capture funding for facilities that would serve the area and once annexed, land and funding would transfer to the district. The SDC amount and provisions for spending the funds have not been updated nor has the program been assessed since 2004.</i> 	M	?	M	Community interest, city of Wilsonville, staff	U, R

Tier 2 – Recommended for future year work programs if funding or staff resources are available

No.	Tier 2 Tasks	Staff Time	Ordinance	Source of Proposal	Area
2.1	<p>Initiate community planning for Raleigh Hills Town Center (Beaverton Hillsdale/Scholls Ferry/Oleson Road)</p> <p>Prepare Area Background and Existing Conditions Report for Raleigh Hills Town Center (RHTC) as a first step in the planning process for this town center and potential future transportation infrastructure improvements. The report would address topics including history of past land use and transportation planning efforts, identification of and coordination with area stakeholders (including cities, ODOT, property owners, CWS), community demographics, current land uses, assessment of existing land use designations, transportation issues, infrastructure assessment, market and retail feasibility assessment, housing affordability, and opportunities for additional housing. Project will need grant or other funding source to move forward. Depending on available funding, project could update proposed intersection improvements and identify housing and other development opportunities in partnership with Beaverton, Portland and ODOT.</p> <p>The County will be required to adopt a boundary for the Raleigh Hills Town Center by Dec. 31, 2025. Since Metro will be amending its Urban Growth Management Functional Plan (UGFMP) requirements for town centers and potentially town center boundaries in late 2024, the extent of this work is not yet known. Metro’s plans to update the 2040 Growth Concept in 2024 may also affect our planning requirements for town centers. Extent of work is uncertain, but it is anticipated to be extensive.</p>	H	?	State rules, staff	U
2.2	<p>Revisit recommendations of the Rural Tourism Study</p> <p>Potential implementation measures could include CDC changes, preparation of educational materials and legislative proposals. CDC changes could include implementing SB 960 (2011) and expanding it to other rural districts, as well as minor changes to the “intent” statements and allowed uses in certain land use districts. Work would start with Board work sessions to present findings of the 2016 study and determine Board interest. Rural Tourism Study acknowledged by the Board in 2016.</p>	M	?	Staff	R
2.3	<p>Psilocybin Time, Place and Manner Regulations</p> <p>Measure 109, passed by the state’s voters in 2020, legalized the regulated production, sale, and use of psilocybin (hallucinogenic mushrooms) in Oregon. The state completed rulemaking in December 2022 and started accepting license applications for psilocybin-related land uses and services in Jan. 2023. State rules allow the County to establish limited regulations for psilocybin manufacturers, processors, and service centers. This task includes development of an ordinance to clarify the districts where such uses are allowed and establish possible time, place, and manner regulations.</p>	L-M	Y	State law change	U
2.4	<p>Comprehensive Plan review</p> <p>Prepare several issue papers analyzing the status of Comprehensive Plan elements, focusing initially on the Comprehensive Framework Plan for the Urban Area (CFP) and possibly community plans. Start with scoping the extent of language/maps that may be outdated and the level of work needed to update, as well as the implications of updating. The CFP is the source document that establishes issues of countywide concern and minimum criteria for community plans and other elements of the Comprehensive Plan. It was prepared in 1983; many references are outdated. Would require outside funding.</p>	M-H	Y	Staff	U

No.	Tier 2 Tasks	Staff Time	Ordinance	Source of Proposal	Area
2.5	<p>Floodplain CDC updates</p> <p>In 2016, the National Marine Fisheries Service (NMFS) released a Biological Opinion to address potential impacts to federally-listed anadromous fish (salmon and steelhead) from development within the Federal Emergency Management Agency (FEMA)-regulated floodplain. To remain compliant with the National Flood Insurance Program (NFIP) in Oregon, changes will be required to existing state and local regulations specific to development within these federally-regulated floodplains. The extent of amendments to County regulations may be limited and will not be known until additional clarification of FEMA's recent announcement is available. This work has been delayed by court cases and staffing issues at FEMA. FEMA has delayed the implementation timeline for the Oregon Biological Opinion. New release from FEMA has restarted the implementation process. It is unknown when DLCD guidance will be forthcoming and when changes will be required.</p>	L-M	Y	NMFS, FEMA	U, R
2.6	<p>Sidewalk Fee-In-Lieu program</p> <p>Raised during A-Eng. Ord. No. 885, HB 2001 Middle Housing implementation discussions and noted for possible future work program task. Task would include research, analysis, program development and adoption.</p>	H	?	Community, Planning Commission	U
2.7	<p>Comprehensive Community Development Code update</p> <p>CDC update would include work recommended by the audit performed in Task 1.2. Work could proceed in phases, possibly scoping to focus on specific sections identified as being most in need of revision. Funding would need to be identified to do this work. A consultant would likely be required, and a CDC work group would be formed to assist with this task.</p>	H	Y	Staff	U, R
2.8	<p>Implications of DOGAMI Natural Hazard Risk Report for Washington County (Open-File Report O-22-04)</p> <p>Consider 2022 report, which provides new information on geological hazards and recommendations for future County actions.</p>	L	?	Staff	C
2.9	<p>Homeless shelter/services/camping regulations</p> <p>Coordinate with the Department of Housing Services, the Office of Community Development, and LUT Building Services on potential CDC amendments related to homeless shelter/services/supportive housing project. Staff would play a supportive role to other departments on their work in this area. Address state law changes as required.</p>	H	Y	Staff	C, U
2.10	<p>Centers and Corridors study – Follow on work</p> <p>The Centers and Corridors assessment in 2020 indicated the county has available housing capacity across all its residential land use districts. Middle housing provisions added to the CDC in 2022 increase the capacity and may require reassessment of the study's findings. Follow on work could include incentives for developers to use more allowed development capacity, particularly in higher-capacity and mixed-use land use districts near centers and corridors.</p>	H	Y	Staff	U

To: LUTplan@washingtoncountyor.gov, bcc@washingtoncountyor.gov, Lutplanningcommission@washingtoncountyor.gov
CC: Pam_Treece@washingtoncountyor.gov, nafisa_fai@washingtoncountyor.gov,
Kathryn_Harrington@washingtoncountyor.gov, Suzanne_Savin@washingtoncountyor.gov,
Theresa_Cherniak@washingtoncountyor.gov, roy_rogers@washingtoncountyor.gov,
jerry_willy@washingtoncountyor.gov, Stephen_Roberts@washingtoncountyor.gov,
andy_back@washingtoncountyor.gov
From: Brandon Philips <brandon@ifup.org>

Subject: LRP: Gas Station Siting Restrictions for Sensitive Areas

Hello Washington County Land Use Staff and Commissioners-

Update: I am submitting this updated request and petition for the Long Range Planning Work Plan backlog item titled: "Gas station siting requirements" at the request of Suzanne Savin and Theresa Cherniak after our June 15, 2022 meeting. This updated petition includes 283 signatures from residents representing all districts in the County and a full reproduction of "Governing the Gas Spigot" from the Environmental Law Institute's 2021 journal as a summary of the supporting evidence for Staff and Commissioner review.

We are citizens and organizations that want to see Washington County put land use restrictions on gas stations near sensitive areas. Data from Oregon DEQ, Federal EPA, and other organizations clearly show the economic, health, and environmental risks that gas stations and their underground petroleum tanks pose¹. And land use restrictions are the right tool to reduce and isolate these risks from sensitive public and private lands.

In fact, many other municipalities have made similar land use code updates coast-to-coast from Santa Rosa, California (pop 176,000) to Montgomery County, Maryland (pop 1.055mil)².

Our request: We want Washington County land use codes updated to require that gas stations, currently operating gas stations excluded, be a minimum of 1,500 feet from any public park or playground, school, hospital, church, theater, dwelling unit, public library or building for public assembly; or any wetland, stream, river, flood plain, or environmentally sensitive area. We also want to see this applied to all zones across the County without an option for variance to ensure equitable and objective application of this requirement.

We believe this is an urgent issue: here are just two catastrophic examples from 2021 of how gas station storage can fail and endanger public lands and infrastructure:

- 14,000 gallons were released under Highway 99 in Monmouth Oregon April 2021. This caused damage to public property, ground water, created traffic issues, and incalculable ecological damage.³

¹ <https://www.postpump.org/reports/>

² <https://www.postpump.org/gas-station-land-use-codes>

³ <https://deqblog.com/2021/04/07/updates-gasoline-leak-in-monmouth/>

- 1,300 gallons of fuel leaked after a driver hit a gas pump in Pasadena California in December 2021. The fuel was pulled into the Alhambra wash where hazmat crews did their best to clean up the spill.⁴⁵

We have a shared belief that land use codes should both encourage economic development and “provide for the health, safety and general welfare of the citizens of Washington County” as the Washington County Community Development Code states⁶. And we believe that the data and reports we have provided supports the case for restricting gas station siting to promote the health, safety and welfare of the County.

Enclosed:

- Frequently Asked Questions
- 2 Letters from Tualatin Riverkeepers
- 1 Letter from 350 PDX Washington County
- 1 Letter from Washington County Treekeepers
- Example gas station setback municipal codes
- "Governing the Gas Spigot" from the Environmental Law Institute's 2021 journal

Thank You,

Brandon Philips
Lead Organizer

283 Signers of the Letter

(addresses for signatures available to the County)

Adam Ritenour, Adewale Adeosun, Aida Mendoza, Aidan Gardner-O'Kearny, Alan & KJ John, Aleks Magi, Alex Dommasch, Allen Morgan, Amity Overall-Laib, Amy Clay, Amy McCullough, Amy Westfall, Angela Parrish, Ann Kitchen, Ann Stenzel, Anne Ashton Goldfeld, MSW, MPH, Anne Goetz, Audrey Farrell, Barbara M. Getty, Barbara Olson, Bart Lemmen, Ben Bedard, Benjamin Silver, Beth A. Estock, Beverly Alexander, Bob Ehlen, Bob and Niki Steele, Brandon Philips, Brett Campbell, Brian Torres, Brittyn Lindsey, Caren Magi, Carey K. Wille, Carey K. Wille, Carole Maloney, Charles Pfeiffer, Charly Beavers, Cheryl Grilli, Cheryl Labavitch , Chris Oliver, Chris Oliver, Christina Torgeson, Cindy Thomas, Claire Morgan, Cody Carrete, Colby Clay, Colin Fox, Colleen Bogard, Corrinne Annette Chavez, Cristina D'Souza, Cyndi Wending, Dan Grilli, Dan M. W. Johnson, Dan Penrod, Dan Silver, Dan Silver, Dana Markunas, Daniel Silver, Daniel Zimmerman, Daryl Nishida, David Henely, David R. Thomas., Debra Gisler, Debra Henely, Del Pellicano, Dian Kubo, Diane Vireday, Douglas Daly, Douglas W. Cooper, Ed Harrison, Elaine Bueffel, Elizabeth Butcher, Elizabeth Moreno, Elizabeth Silver, Elizabeth Staly, Ellen Harrison, Eric Simantel, Fenghua Liu, Florentina Perjeru, Gena Connelly, George Cabaniss, George Cabaniss, Gerald Wolf, Hailey Oliver, Hayley Johannesen, Heather Comerford, Heather Davis, Heather Gillis, Heidi Nishida, Henry Burns, Hillary Harris Moldovan, Hillary Moldovan, Holly Daly, Jacob Frazier, Jamie Shields, Jane Burch-Pesses, Janet Platt, Jason Burdge, Jean Fox, Jean Harkin, Jeb Smythe, Jeffrey S. Petrillo, Jennifer Carter, Jeremy Orem, Jess Shuman, Jessica Fox, Jim Christensen, Joanne Dunatchik, Jodi Bean, John Blyler, John Connelly, John Hembroff, John Maloney, John Randy Wiltgen, John Signett, John Staly, Jonathan Laib, Jonathan McGinley, Joseph Parker, Joseph and Weilan Ladeau, Joyce Brizendine, Julia Smythe, Karen Marie Trumper, Karen Peters, Karen Smith, Kathleen Lange, Kathryn Oliver-Garnett, Kathy Zhang, Katie Murry, Kaye Gardner-O'Kearny, Kelly Reed, Kelsey Lemons, Ken Jackson, Kevin Hood, Kira Wright, Krista Reynolds, Kristina LeVelle,

⁴ <https://twitter.com/KNXBaird/status/1472977818619301891>

⁵

<https://www.cbsnews.com/losangeles/news/gasoline-spill-in-pasadena-has-spilled-into-alhambra-wash-prompting-emergency-response/>

⁶

https://library.municode.com/or/washington_county/codes/community_development_code?nodeId=ARTIINGEPR_102PU

**Board of Commissioners Staff Report
Draft FY 2023-25 Planning Work Program
April 18, 2023**

Lahni Skinner, Lance Sundberg, Larry Willis, Laurel Nakano, Layton Rosencrance, Lee Grunes, Leigh Anne Chavez, Les Kangas, Leslie Holder, Lester Fishkin, Liane Ledbetter, Linda Bucsay Welsh, Linda Robison, Lindsey Bailey, Lisa Cairns, Lisa Haworth, Lisa Ritter, Lisa Stefanowicz, Louise Watkins, Lynn Huerta, Madeleine Silver, Maggie Myers, Mai-Lill Magi, Mara Clay, Marc Herbert, Marc Schluper, Marcellous Fambrough, Maria Choban, Maria Gabriela Buamscha, Maria Gaynor, Maria Valentina Barrett, Marilyn Bramwell, Marilyn Martin, Marilyn Speirn, Marilynn Robillard, Marion Kessler, Maristela Fuke, Mark Barte, Mark Makler, Marta Amar, Marta Amar, Mary Arden, Mary Manseau, Masako Jankovsky, Matthew Whitaker, Maureen Dannen, Maureen Dannen, Maureen O'Rourke, Melissa Dingle-Hood, Melissa Martin, Mesut Ali Ergin, Michael E. Wille, Michael Gillis., Michael Maloney, Michael Willie, Mike Joshi, Mike Ollinger, Milorad Micic, Mindy Kondo, Missy Martin, Monica Spisla, Nancy J. Knight, Nancy Zeng, Natalie Noyes, Nathaniel Silver, Nicola Robertson, Nicole Bender, Nicole D Bender, Nicole Eilers, Nisha George, Pamela Venable, Parteek Bansal, Pat Sandquist, Patricia BURros, Paul Baker, Paul D Robillard, Paul Kwitek, Paul Lloret, Paula Wolf, Peggy Bodner, Peggy Erick, Peter O'Brien, Peter Oliver, Phillip Craig Penny, Pratik Koirala, Rakesh Koul, Ramona Bundus Rex, Renee Halpern, Rhonda Taylor, Richard Reynolds, Richard Vernon Rex, Robert Satchell, Robin Pope, Rodney Chavez, Roger Sandquist, Rosa Seda, Sallie Fogarty, Sam Golden, Samantha Domenach, Samuel Golden, Sander Torgeson, Saori Satchell, Sara Bhat, Sara Bosch, Sarah Orem, Scott McKee, Sharon L Penny, Sharon MacDonald, Sharon Makler, Shelley Signett, Shirley and Alex Toth, Stackhouse Nicky, Steven Birkel, Sue Reu, Suganya Shanthini, Suriah Nakano, Susan Mates, Susan Nolte, Susan Penrod, Susannah E Robillard, Sydney Richey, Tanja Micic, Tanya Rosencrance, Teiana Nakano, Teresa Hill, Tess Strand, Thom Cheney, Thomas Kiley, Timothy K Maloney, Tina Le, Tomas Jankovsky, Travis Clay, Treekeepers of Washington County, Valerie Zacha, Veronica Harrell, Vicky Siah, Vijay Agrawal, Vijay Bhat, Virginia Bruce, Wendy Maple, Wendy Maple, William Gardner-O'Kearny, Yvonne Wilson, Robert Elliott

FAQ

Q: How did you arrive at the 1,500ft setback requirement?

A: We chose 1,500 ft setback because it was the highest municipal restriction we had found in our research short of an outright ban on new gas stations. For example it is the setback in Rock Hill, CT. The minimum consensus amongst municipalities we researched seems to be around 500 ft. You can see a few examples and direct links to example codes on this page:

<https://www.postpump.org/gas-station-land-use-codes>

Q: Is there Washington County Community Participation Organization (CPO) engagement?

A: Yes, presentations were made in Feb. 2022 to both CPO1 and CPO7. There was positive reception at both meetings and many members signed the letter after the meetings.

Q: Are County Commissioners aware of these requests?

A: Yes, a number of public comments have been made on the topic to both the Board of Commissioners and the Planning Commission. Also, this topic appeared on the Long Range Planning Work Plan status report presented at the October 18 2022 BCC work session:

<https://nabgas.com/assets/docs/lrpwp-oct-2022.pdf>

Q: Do you understand that future changes to land use code will not affect accepted land use applications?

A: Yes. Although this campaign is an offshoot of the opposition to Land Use Case L2200199 (prev L2100244) we understand that any changes to code will not affect the outcome of this case. However, we are motivated to ensure that gas station developments with the potential negative economic, environmental, and health impacts of that development are not considered again in Washington County.



Treekeepers of Washington County
835 SW Touchmark Way
Portland, OR 97225

February 19, 2022

Board of County Commissioners
Washington County
155 N First Avenue
Hillsboro, OR 97124

Re: Adding Gas/Fuel Station Setbacks to Municipal Code

Dear Chair Harrington and Commissioners,

Treekeepers of Washington County is a volunteer organization with a mission to protect and advocate for mature trees. Those trees depend on the health of their surrounding watershed. We write today to entreat the Board of Commissioners to strengthen protections for wetlands and other sensitive areas by requiring fuel station setbacks from sensitive areas. The upland area surrounding the wetland is essential to its survival of functionality. A setback of 300-500'—even a minimum of 100'—would help prevent these areas from the dangers related to underground storage tanks.

A well-designed buffer can protect and maintain wetland functions by removing sediments and associated pollutants from surface water runoff, removing, detaining, or detoxifying nutrients and contaminants from upland sources, influencing the temperature and microclimate of a water body, and providing organic matter to the wetland. As our governing body, you have the opportunity to conserve these resource lands from activities and development that might impair their benefits to our community and the environment.

At our February meeting, our Treekeepers of Washington County core team members voted to approve the following request:

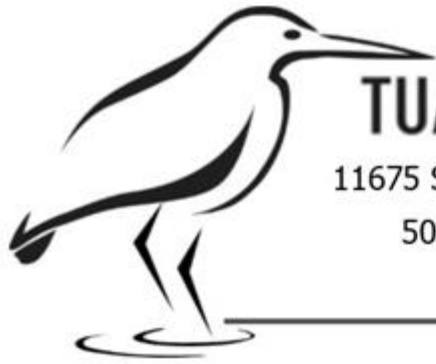
“We respectfully request the Washington County Community Development Code be updated to require all new gas stations or expansion of existing stations be located a minimum of 1,500 feet from any public park or playground, school, hospital, church, theater, dwelling unit, public library, or building for public assembly; or any wetland, stream, river, flood plain, or environmentally sensitive area. This code change should be applied to all zones

across the county without an option for variance to ensure equitable and objective application of this requirement.”

Thank you for considering this code change.

Sincerely,
Susan Mates
Outreach Projects and Communication
Treekeepers of Washington County
treescountwc@gmail.com

https://www.epa.gov/sites/default/files/2014-03/documents/final_40.pdf



TUALATIN RIVERKEEPERS.

11675 SW Hazelbrook Road, Tualatin, Oregon 97062

503-218-2580 • tualatinriverkeepers.org

info@tualatinriverkeepers.org

November 19, 2021

Board of County Commissioners
Washington County
155 N. First Ave
Hillsboro, OR 97124

Submitted via email

Re: Consider Adding Gas/Fuel Station Setbacks to Municipal Code

Chair Harrington and Commissioners:

Tualatin Riverkeepers (TRK) is a community-based organization that protects and restores the Tualatin River watershed. We build watershed stewardship through engagement, advocacy, restoration, access, and education. We write today to urge the Board of Commissioners to take steps to better protect wetlands and other sensitive areas by requiring fuel station setbacks from sensitive lands of at least 100 feet, ideally 500 feet. A setback of at least 100 feet will help ensure wetlands do not suffer costly damage from underground storage tank leaks in addition to somewhat mitigating their other potential impacts on wetlands and sensitive species including stormwater, light pollution, noise pollution, etc.¹

Adding this type of protection into the municipal code is a sensible solution that many community members will likely support and appreciate. As you know, many community members are very concerned when a fuel station is proposed to be located directly next to a wetland or sensitive area. Those concerns are with good reason. If an underground tank were to leak the damage would impact the wetlands and species reliant on those wetlands and be very costly to clean up. Small precautions like a setback of at least 100 feet would help address these valid concerns which have been voiced in several land use application processes including but not limited to the recently proposed Chevron at 185th & West Union.

¹ Note, a 500-foot setback would better mitigate noise and light impacts on sensitive species than a 100-foot setback.

The use of setbacks for fuel stations is not a new idea, communities across the United States² have taken such measures to protect sensitive lands. Those communities' codes could be used as a blueprint to help alleviate stress on Land Use and Transportation staff's valuable time. We encourage the Board of Commissioners to be responsive to the community and adopt a setback for fuel stations of at least 100 feet from wetland and sensitive areas.

Thank you for your time and attention.

Sincerely,

A handwritten signature in black ink, appearing to read 'AS' followed by a long horizontal stroke.

Ashley Short
Tualatin Riverkeeper & In-House Counsel
Tualatin Riverkeepers
Ashley@tualatinriverkeepers.org

² For example, Montgomery County, Maryland requires large fuel stations have a 500 foot setback from residential, park, wetland and environmentally sensitive areas. (Section 3.5.13.C.2.c : https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md_zone2014/0-0-0-2044)



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February 15, 2022

Board of County Commissioners
Washington County
155 N. First Ave
Hillsboro, OR 97124

Submitted via email

Re: Consider Adding Gas/Fuel Station Setbacks to Municipal Code

Chair Harrington and Commissioners:

Tualatin Riverkeepers (TRK) is a community-based organization that protects and restores the Tualatin River watershed. We build watershed stewardship through engagement, advocacy, restoration, access, and education. We write today to amend our earlier letter dated Nov. 19, 2021. In that November letter we urged the Board of Commissioners to take steps to better protect wetlands and other sensitive areas by requiring fuel station setbacks from sensitive lands of at least 100 feet, ideally 500 feet. After further research by partners and community members, TRK would like to amend that ask and instead request a 1,500-foot setback for wetlands and other sensitive lands from fuel stations as this is the largest buffer used by other communities across the country. We feel like this larger buffer will better accomplish the goals outlined in our Nov. 19 letter.

Thank you for your time and attention.

Sincerely,

A handwritten signature in black ink, appearing to be "Ashley Short", written in a cursive style.

Ashley Short
Tualatin Riverkeeper & In-House Counsel
Tualatin Riverkeepers
Ashley@tualatinriverkeepers.org



February 17, 2022

Washington County Board of Commissioners
155 N First Avenue
Hillsboro, OR 97124

Dear Chair Harrington and Commissioners,

At our monthly meeting on February 8, 2022, the 350.org Washington County grassroots climate activist members voted to approve the following request:

“We respectfully request the Washington County Community Development Code be updated to require all new gas stations or expansion of existing stations be located a minimum of 1,500 feet from any public park or playground, school, hospital, church, theater, dwelling unit, public library, or building for public assembly; or any wetland, stream, river, flood plain, or environmentally sensitive area. This code change should be applied to all zones across the county without an option for variance to ensure equitable and objective application of this requirement.”

Thank you for your thoughtful consideration of our request for this code change.

Sincerely,

Debby Garman

350WashCo Team Lead

CC via email:

andy_back@co.washington.or.us

stephen_roberts@co.washington.or.us

Post Pump

Gas/Fuel/Service Station Land Use & Zoning for an EV World

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Gas Station Land Use Codes

This is a collection of gas/fuel/service station land use codes from different towns and counties across the United States. In their various forms they protect people, public property, and watersheds from the risks of gas stations.

If you have additions or correction please email brandon@postpump.org

Petaluma, California

Summary: No new construction of fuel stations anywhere in the city.

[Source](#) - note all zones Fuel Stations are marked as "Use Not Allowed"

TABLE 4.4 Allowed Land Uses and Permit Requirements for Commercial, Business Park, and Industrial Zones	P(16)	Permitted Use			
	CUP	Conditional Use Permit Required			
	S	Permit Requirement in Specific Use Regulations			
	A	Accessory Use			
	—	Use Not Allowed			
LAND USE TYPE (1)	Permit Required by Zone				Specific Use Regulations
	C1	C2	BP	I	
Fueling Station/Gas Station	—	—	—	—	

Rocky Hill, Connecticut

Summary: No gasoline or diesel filling station shall be erected less than 1,500 feet from any part of any lot or plot of a public park or playground, school, hospital, church, theater, public library or building for public assembly.

[Source](#)

6.1.2 Separation Distances

1. **General Separation Distances** - No automotive service station or establishment for the sale of new or used automobiles shall be located:
 - a. Within 500 feet of any entrance to a public park or playground, excluding small park areas within the boundaries of a highway, or
 - b. Within 500 feet of the nearest point of any building in which there is established or maintained a school, hospital, church, theater, public library or building for public assembly.

If any of the above-mentioned uses shall locate within 500 feet of any existing automotive service station or establishment for the sale of new or used automobiles, such location shall not result in the automotive use becoming non-conforming.

2. **Fuel Separation Distances** - No gasoline or diesel filling station shall be erected less than 1,500 feet from any part of any lot or plot used for the above stated purposes.

Harper Woods, Michigan

Summary: Gasoline or service stations shall not be operated, existing stations excepted, within five hundred (500) feet from places of public assembly, nor shall any gasoline service station be located, existing stations excepted, within seven hundred fifty (750) feet measured along the same side of the street, to an existing gasoline service station.

[Source](#)

Sec. 12-72. - Location restrictions.

Gasoline or service stations shall not be operated, existing stations excepted, within five hundred (500) feet from places of public assembly, nor shall any gasoline service station be located, existing stations excepted, within seven hundred fifty (750) feet measured along the same side of the street, to an existing gasoline service station.

(Code 1962, § 3-403(i))

Clarkston, GA

Summary: There shall be a minimum distance of five hundred (500) feet measured from the nearest points of lot boundaries between a proposed gasoline service station and any existing gasoline service station or between a proposed gasoline service station and any lot occupied by a church, hospital, school, or other place of public assembly.

[Source](#)

Sec. 9.5-11. - Location.



There shall be a minimum distance of five hundred (500) feet measured from the nearest points of lot boundaries between a proposed gasoline service station and any existing gasoline service station or between a proposed gasoline service station and any lot occupied by a church, hospital, school, or other place of public assembly.

(Ord. No. 131, § 1, 11-4-86)

Montgomery County, Maryland

Summary: Any filling station facility designed to dispense a minimum of 3.6 million gallons per year must be located at least 500 feet from the lot line of any land with a dwelling unit; public or private school; park; playground; day care center; any outdoor use categorized as a Civic and Institutional use or a Recreation and Entertainment use; or any wetland, stream, river, flood plain, or environmentally sensitive area.

> [Montgo...](#) > [Section 3.5.13...](#)



c. Any Filling Station facility designed to dispense a minimum of 3.6 million gallons per year must be located at least 500 feet from the lot line of any land with a dwelling unit; public or private school; park; playground; day care center; any outdoor use categorized as a Civic and Institutional use or a Recreation and Entertainment use; or any wetland, stream, river, flood plain, or environmentally sensitive area.

Borough of Bergenfield, New Jersey

Summary: No gas station, or vehicular repair service shop shall be located within 300 feet of the following uses when located along the same street or the same block: schools, playgrounds, churches, hospitals, libraries, institutions for dependent children, or other similar places of public assembly.

[Source](#)

§ 186-68 **Gasoline stations.**

Gasoline stations are defined, for purposes of this article, as any retail facility dispensing or selling fuel for the operation of motor vehicles.

- A.** Location of exits and entrances. No gas station, or vehicular repair service shop shall be located within 300 feet of the following uses when located along the same street or the same block: schools, playgrounds, churches, hospitals, libraries, institutions for dependent children, or other similar places of public assembly.
-

GOVERNING THE GASOLINE SPIGOT: GAS STATIONS AND THE TRANSITION AWAY FROM GASOLINE

by Matthew N. Metz and Janelle London

Matthew N. Metz is the founder and Co-Executive Director of Coltura, a nonprofit working to accelerate the switch from gasoline and diesel to cleaner alternatives. Janelle London is Co-Executive Director of Coltura.

SUMMARY

Gas stations are America's largest carbon spigot, a leading source of neighborhood-based pollution, and a sacred cow. This Article takes a comprehensive look at gas stations through the lens of the climate crisis and the rise of electric vehicles, and proposes steps to improve and shrink the country's gas station network in an environmentally and fiscally prudent manner. It argues that state and local government should regulate gas stations to advance their climate goals, reduce pollution of air, soil, and groundwater, improve public health, and save taxpayers money. They should require them to clean up their contaminated soils, install modern tanks and piping, and abide by strict limits on carcinogenic benzene emissions. They should also halt construction of new gas stations and eliminate subsidies for existing ones.

On 45th Street, in the heart of Seattle's vibrant Wallingford district, amidst a jumble of coffee shops, restaurants, offices, and houses, is a business prominently exhibiting the logo of one of the world's largest corporations. For more than a decade, this business has been polluting the water flowing into nearby Lake Union with benzene, a known carcinogen and fish toxin, at a level more than 360 times the legal limit.¹

It spews benzene vapors at the window of a house 10 feet away and at the other tightly packed, expensive homes clustered nearby. About six million pounds of carbon flows from the business into the atmosphere every year. What is this business, and how can it get away with such copious pollution in an upscale neighborhood just a stone's throw from the University of Washington?

The business is the Wallingford Shell gas station, and the pollution it causes is typical of gas stations in every neighborhood in the United States.

Occupying busy street corners everywhere, gas stations have long been an inexhaustible source of gasoline for drivers and a powerful symbol of the centrality of gasoline in American life. They are the final link in a long supply chain that starts in distant oil fields and ends in air pollution and atmospheric carbon dioxide (CO₂).

Government took a laissez-faire approach to regulating gas stations from their emergence in the 1910s until the 1980s. In 1984, a *60 Minutes* exposé of gasoline contamination of drinking water in Long Island spurred a wave of federal and state laws mandating replacement of gas stations' underground storage tanks (USTs) and vapor recovery systems.² While regulations instituted in the 1980s and 1990s reduced some sources of gas station pollution, gas stations have continued to pollute the air, soil, and water.³

Gas stations have received little attention from policy-makers in recent years, even though their toxins are widely present in neighborhoods and their pumps are one of the largest sources of carbon pollution.⁴ Of the 14 legal journal articles relating to gas stations published since 1990, all focus narrowly on financial responsibility related to leaking USTs and contaminated soils.⁵ None provides a broader

1. Washington State Department of Ecology, *Shell 120877*, <https://apps.ecology.wa.gov/gsp/Sitepage.aspx?csid=5569> (last visited Nov. 9, 2020).

2. Candace Gauthier, *The Enforcement of Federal Underground Storage Tank Regulations*, 20 ENV'T L. 261, 266-67 (1990); Mark D. Oshinskie, *Tanks for Nothing: Oil Company Liability for Discharges of Gasoline From Underground Storage Tanks Divested to Station Owners*, 18 VA. ENV'T L.J. 1, 3 (1999).

3. E. Blaine Rawson, *Are We Properly Controlling Our LUSTs?: A Review of the Problems With Underground Storage Tank Regulation*, 40 IDAHO L. REV. 111, 114-17 (2003).

4. U.S. Environmental Protection Agency (EPA), *Sources of Greenhouse Gas Emissions*, <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions> (last updated Sept. 9, 2020).

5. See Scott Owens, *State v. Green: Redefining the Environmental Responsibility of Landowners in New York*, 8 ALB. L. ENV'T OUTLOOK J. 108 (2002); Amanda Cohen Leiter, *Environmental Insurance: Does It Defy the Rules?*, 25 HARV. ENV'T L. REV. 259 (2001); Sharman Braff, *Oil Companies and*

view of the full scope of harms caused by gas stations and the need for a new regulatory framework to address them.

Now, four emerging issues are challenging the gas station status quo:

- The transportation sector is now the single biggest source of carbon pollution in the United States in a time of climate crisis, with the majority of the emissions coming from burning gasoline and diesel. In many American cities, gasoline use causes about one-half of total carbon pollution. Local and state governments are making climate action plans calling for deep cuts in carbon emissions in their jurisdictions, and cutting gasoline use will be critical in meeting their goals.⁶
- Electric vehicles (EVs) have broken gasoline's 100-year monopoly on automotive drivetrains.⁷ Plug-in vehicles constituted 7.7% of all new vehicles sold in California in 2019, double the 2016 total.⁸ Many analysts predict that EVs will continue to erode the market share of gasoline vehicles, and that EVs will have a majority of new vehicle market share before 2040.⁹

In September 2020, California Gov. Gavin Newsom issued an order phasing out the sale of new gas vehicles in 2035.¹⁰ Numerous other states are considering measures to stop the sale of new gas vehicles between 2030 and 2035.¹¹ The rise of EVs will likely



Source: Matthew Metz.

shrink the demand for gasoline, and threaten the viability of many gas stations, which rely on gasoline for nearly 70% of their total sales.¹²

- The USTs that were installed in the 1980s and 1990s in response to tightened regulation are reaching or exceeding their useful safe life of 25-30 years.¹³ Their risk of leaking grows every year.¹⁴ A survey of Seattle gas stations found that about two-thirds of their USTs were at least 25 years old.¹⁵
- New scientific research is establishing that gas stations pollute the air to a much greater extent than previously understood, and that exposure to benzene is a significant cause of leukemia and other cancers.

These issues have pushed gas stations to a critical juncture. While the trend away from gasoline and gas stations promises a less carbon-intensive transportation system and less pollution, it also portends more abandoned and contaminated gas station sites pockmarking the landscape and draining public coffers. The growing demand of citizens for

Their Branded Dealers' Contaminated Gas Stations: The Case for Arranger Liability Under Washington's and Alaska's Environmental Cost Recovery Statutes, 19 HASTINGS W.-NW. J. ENV'T L. & POL'Y 129 (2013); Derek Nagel, *Not Quite Off the Hook: Why There Should Be a Legislative Solution for MTBE Contamination Without a Safe Harbor for MTBE Producers*, 1 ENV'T & ENERGY L. & POL'Y J. 319 (2007); Gauthier, *supra* note 2; William W. Sapp, *Field Citation Programs: The "Ticket" to Better Environmental Compliance*, 20 COLUM. J. ENV'T L. 1 (1995); Christen Carlson White, *Regulation of Leaky Fuel Tanks: An Anatomy of Regulatory Failure*, 14 UCLA J. ENV'T L. & POL'Y 105 (1995/1996); William Stanley Sneath, *Pennsylvania's Storage Tank Act: Statute, Regulations, and Guidances*, 6 VILL. ENV'T L.J. 75 (1995); Rawson, *supra* note 3; Allison Rittenhouse Hayward, *Common Law Remedies and the UST Regulations*, 21 B.C. ENV'T AFF. L. REV. 619 (1994); Oshinski, *supra* note 2; Haitao Yin et al., *Risk-Based Pricing and Risk-Reducing Effort: Does the Private Insurance Market Reduce Environmental Accidents?*, 54 J.L. & ECON. 325 (2011); B. Suzi Ruhl & Sharon K. Lowe, *Review of Florida Legislation: A Super Response to LUST in Florida*, 14 FLA. ST. U. L. REV. 607 (1986).

6. In 2020, Menlo Park, California, set a goal of reducing gasoline sales by 10% per year from a 2018 baseline as part of its climate action plan. CITY COUNCIL OF MENLO PARK, CALIFORNIA, RESOLUTION OF THE CITY COUNCIL OF MENLO PARK ADOPTING SUSTAINABLE VEHICLE FLEET POLICY NO. CC-20-011 TO REDUCE GREENHOUSE GAS EMISSIONS BY INCREASING THE NUMBER OF ZERO-EMISSION FLEET VEHICLES: RESOLUTION NO. 6552 (2020), https://menlopark.org/AgendaCenter/ViewFile/Minutes/_03262020-3417; ENVIRONMENTAL QUALITY COMMISSION, 2030 CLIMATE ACTION PLAN (2020), <https://www.menlopark.org/ArchiveCenter/ViewFile/Item/11486>.

7. U.S. Department of Energy (DOE), *U.S. Plug-In Electric Vehicle Sales by Model*, <https://afdc.energy.gov/data/10567> (last updated Jan. 2020); Rebecca Matulka, *The History of the Electric Car*, DOE, Sept. 15, 2014, <https://www.energy.gov/articles/history-electric-car>.

8. *Hybrid Vehicle Market Share Increased to 5.5 Percent in 2019*, CAL. AUTO OUTLOOK, Fourth Quarter 2019, at 2, <https://www.cnca.org/wp-content/uploads/Cal-Covering-4Q-19.pdf>.

9. See, e.g., BLOOMBERGNEF, *ELECTRIC VEHICLE OUTLOOK 2020*, <https://bnf.turtl.co/story/evo-2020/>.

10. Cal. Exec. Order No. N-79-20 (Sept. 23, 2020), <https://www.gov.ca.gov/wp-content/uploads/2020/09/9.23.20-EO-N-79-20-Climate.pdf>.

11. A New York State senator introduced a bill setting a 2035 gas car phaseout date (Michelle Lewis, *A New York Bill Quietly Seeds the Ban of New ICE*

Cars by 2035, ELECTREK, Oct. 5, 2020, <https://electrek.co/2020/10/05/new-york-bill-ban-new-ice-cars-2035/>), and the New Jersey Department of Environmental Protection similarly called for a 2035 sunset on sales of new gas cars in that state (David Iaconangelo, *N.J. Calls for 100% EVs by 2035, a First for East Coast*, E&E NEWS, Oct. 19, 2020, <https://www.eenews.net/stories/1063716489>). A legislator in Washington State introduced a bill providing that all new vehicles registered in the state must be electric starting with model year 2030 (H.B. 2515, 66th Leg., 2020 Reg. Sess. (Wash. 2020), <https://app.leg.wa.gov/billssummary?BillNumber=2515&Initiative=false&Year=2019>).

12. *NACS: Strong Fuel Sales Drove Overall U.S. C-Store Business to \$654.3B in 2018*, CONVENIENCE STORE NEWS, Apr. 4, 2019, <https://csnews.com/nacs-strong-fuel-sales-drove-overall-us-c-store-business-6543b-2018>.

13. MICHAEL MANIS, LOCKTON COMPANIES, *UNDERGROUND STORAGE TANKS: A CHANGING MARKETPLACE* (2015), https://www.lockton.com/whitepapers/Underground_Storage_Tanks.pdf.

14. *Id.*

15. Matthew Metz, *Ban New Gas Stations and Require Cleanups to Tackle the Big Polluter on the Corner*, URBANIST, May 14, 2020, <https://www.theurbanist.org/2020/05/14/ban-new-gas-stations/>.

climate action intensifies the need for tighter governance of the gasoline spigot.

State and local governments, which exercise substantial regulatory authority over gas stations, are able to have an enormous impact on the future direction of the gas station industry and ultimately the future of gasoline sales in their states.

As they address the modernization of gas station regulation, policymakers will face a raft of difficult and novel questions, including: How would the aging storage tanks beneath roughly one-half of existing gas stations best be addressed? Who should bear the costs of cleaning up the growing number of abandoned and contaminated gas stations, which now account for roughly one-half of America's 450,000 brownfields? What levels of pollution should be tolerated, if any? Should state and local governments seek to accelerate the decline of gas stations as a carbon reduction strategy? Does local government have a responsibility to ensure the flow of inexpensive gasoline? How should economic impacts to gas station owners and their employees be mitigated? What powers do state and local jurisdictions already possess to regulate gas stations, and what additional powers may be necessary?

This Article explores these questions and maps a regulatory path for addressing the emerging challenges facing governments and gas stations. It argues that state and local governments should regulate toward an increasingly smaller and cleaner network of gas stations for a smooth and rapid transition to a gasoline-free future.

Parts I and II review the environmental, health, and economic trends affecting gas stations and the convenience stores that typically accompany them. Part III outlines a new approach to regulating gas stations, examining how better enforcement of existing laws and implementation of new regulatory measures can best serve public health, economic, and climate goals. Part IV concludes.

I. The Harms of Gas Stations

Gas stations' harms flow in many directions. This part describes the principal pathways of pollution from gas stations and the resulting health effects. It explores other gas station harms that are less commonly discussed, including the atmospheric carbon pollution caused by gasoline, the inequitable distribution of gasoline's harms to communities of color, the sale of tobacco and other unhealthy products in gas station convenience stores, and the crime associated with gas stations.

A. Gas Station Pollution Pathways

1. Gas Pumps

Gasoline spills occur when the nozzle is moved back and forth from the gas pump to the car, when the automatic

shutoff valve fails, or when the customer disconnects the nozzle.¹⁶ One study found that between .007% and .01% of gasoline dispensed was spilled in liquid form while refueling.¹⁷ Based on the figures cited in the study, a typical gas station dispensing one million gallons a year would spill 70 to 100 gallons. For large volume gas stations at Costco and other large box stores, which can sell 20 million gallons of gasoline per year, the spillage could reach 2,000 gallons.

Gasoline from fueling spills can enter runoff water,¹⁸ from which it can make its way into drinking water, groundwater, streams, and other bodies of water.¹⁹ Contaminant levels in convenience store/gas station runoff can be five to 30 times higher than in residential runoff.²⁰ Spilled gasoline can also penetrate the concrete near the gas pumps and contaminate the soil and groundwater beneath it.²¹

Some of the spilled gasoline evaporates.²² A 2019 study conducted in New York State found that in 14 of 16 fueling sessions, gasoline vapors escaped from the pump nozzle, vehicle, and tank,²³ despite the fact that all cars but one were equipped with onboard refueling vapor recovery systems, designed to prevent leakage.²⁴ Leakage of gasoline vapors was also found in the hose joints in four of the six gas stations surveyed.²⁵

2. USTs and Piping

Gasoline is typically stored at gas stations in USTs.²⁶ The storage tanks are connected to piping that connects to the fuel dispensers (gas pumps). Leaks can occur at any point in the system.²⁷ A study of 31 new petroleum releases in California found that 16 occurred in the UST, seven in the piping, five in the fuel dispensers, and in eight cases, the source was unknown.²⁸

16. Markus Hilpert et al., *Hydrocarbon Release During Fuel Storage and Transfer at Gas Stations: Environmental and Health Effects*, 2 CURRENT ENV'T HEALTH REP. 412 (2015), available at <https://pubmed.ncbi.nlm.nih.gov/26435043/>.
17. James J. Morgester et al., *Comparison of Spill Frequencies and Amounts at Vapor Recovery and Conventional Service Stations in California*, 42 J. AIR & WASTE MGMT. ASS'N 284 (1992).
18. Markus Hilpert et al., *Infiltration and Evaporation of Small Hydrocarbon Spills at Gas Stations*, 170 J. CONTAMINANT HYDROLOGY 39 (2014).
19. Philipp Göbel et al., *Storm Water Runoff Concentration Matrix for Urban Areas*, 91 J. CONTAMINANT HYDROLOGY 26 (2007), available at <http://wanko.free.fr/COURS/Ges.eaux%20pluviales/Storm%20water%20runoff%20concentration%20matrix%20for%20urban%20areas.pdf>.
20. Thomas R. Schueler, *Hydrocarbon Hotspots in the Urban Landscape: Can They Be Controlled?*, in THE PRACTICE OF WATERSHED PROTECTION 13 (Thomas R. Schueler & Heather K. Holland eds., Center for Watershed Protection 2016), available at http://owl.cwp.org/mdocs-posts/elc_pwp2/.
21. Hilpert et al., *supra* note 18.
22. *Id.*
23. Jenni A. Shearston & Markus Hilpert, *Gasoline Vapor Emissions During Vehicle Refueling Events in a Vehicle Fleet Saturated With Onboard Refueling Vapor Recovery Systems: Need for an Exposure Assessment*, 8 FRONT. PUB. HEALTH 1 (2020), available at <https://doi.org/10.3389/fpubh.2020.00018>.
24. *Id.*
25. *Id.*
26. U.S. EPA, *Underground Storage Tanks (USTs)*, <https://www.epa.gov/ust> (last updated Sept. 29, 2020).
27. U.S. EPA, *Leaking Underground Storage Tanks Corrective Action Resources*, <https://www.epa.gov/ust/leaking-underground-storage-tanks-corrective-action-resources> (last updated July 16, 2020).
28. CALIFORNIA WATER BOARDS, CALIFORNIA UST LEAK PREVENTION: JANUARY-JUNE 2019 SEMI-ANNUAL REPORT (2019), https://www.waterboards.ca.gov/water_issues/programs/ust/adm_notices/final_accessibility_california_ust_leak_prevention_report-Jan-June2019.pdf.

Figure 2. Gas Station Air Pollution Pathways



Source: Google Street View.

When gasoline leaks from a failed UST system, it moves from the backfill surrounding the tank and piping into the native soil and groundwater.²⁹ The movement of leaked gasoline depends on numerous physical, chemical, and biological factors.³⁰ Gasoline leaks can move underground and contaminate neighboring properties.³¹

A 10-gallon spill of petroleum can contaminate 12 million gallons of groundwater.³² Groundwater is the source of drinking water for one-half of all Americans.³³ Discharge from leaking USTs can also contaminate surface water.³⁴

As of March 2020, there were approximately 542,000 USTs nationwide storing petroleum or hazardous substances at 193,000 facilities,³⁵ and there was a backlog of 63,677 leaking UST sites awaiting cleanup.³⁶ Even after the “cleanup” of a contaminated site occurs, in many cases, large amounts of gasoline are left in the ground.³⁷

The total number of leaking tanks in the United States is unknown. Detection of leaks most often occurs when USTs are removed.³⁸ Leak reporting often depends on the good-faith cooperation of gas station operators, who sometimes have strong incentives not to report them. Tampering with leak control technology is common.³⁹

3. Vent Pipes

USTs vent through four-meter tall pipes to equilibrate pressures.⁴⁰ Gasoline vapors can be released through vent pipes when gasoline is pumped into or out of the USTs and when vapor expands or contracts due to temperature or barometric pressure changes.⁴¹

B. Health Risks of Gas Stations

1. Exposure to Benzene

Benzene typically constitutes 1%-3% of the volume of gasoline.⁴² It is a carcinogen associated with lung cancer,

29. GROUND WATER PROTECTION COUNCIL, GROUND WATER REPORT TO THE NATION: A CALL TO ACTION (2007) [hereinafter GROUND WATER REPORT], <http://www.gwpc.org/sites/default/files/GroundWaterReport-2007-.pdf>.
 30. *Id.*
 31. See, e.g., Brandon Macz, *Long Cleanup Ahead Around Former Lower Queen Anne Gas Station*, QUEEN ANNE & MAGNOLIA NEWS, June 28, 2019, <https://queenannenews.com/MobileContent/Business/Business/Article/Long-cleanup-ahead-around-former-Lower-Queen-Anne-gas-station/108/468/40266>.
 32. GROUND WATER REPORT, *supra* note 29.
 33. *Id.*
 34. *Id.*
 35. U.S. EPA, SEMIANNUAL REPORT OF UST PERFORMANCE MEASURES, MID FISCAL YEAR 2020 (2020), <https://www.epa.gov/sites/production/files/2020-06/documents/ca-20-12.pdf>.
 36. U.S. EPA, 20 YEARS OF PROGRESS CLOSING LUST SITES (2020), <https://www.epa.gov/sites/production/files/2020-05/documents/percent-backlog-reduction-4-27-20-508.pdf>.
 37. GROUND WATER REPORT, *supra* note 29.

38. CALIFORNIA WATER BOARDS, *supra* note 28.
 39. Margaret Talev, *Officials Guard Against Leaks at Gas Stations*, L.A. TIMES, Aug. 19, 2002, <https://www.latimes.com/archives/la-xpm-2002-aug-19-me-gas19-story.html>; see also *Santa Barbara Gas Station Ordered to Pay \$25k for Environmental Violations*, KEYT, Oct. 27, 2020, <https://keyt.com/news/environment/2020/10/27/santa-barbara-gas-station-ordered-to-pay-25k-for-environmental-violations/>.
 40. Markus Hilpert et al., *Vent Pipe Emissions From Storage Tanks at Gas Stations: Implications for Setback Distances*, 650 SCI. TOTAL ENV'T 2239 (2019), available at <https://doi.org/10.1016/j.scitotenv.2018.09.303>.
 41. *Id.*
 42. Peter F. Infante, *Residential Proximity to Gasoline Stations and Risk of Childhood Leukemia*, 185 AM. J. EPIDEMIOLOGY 1 (2017).

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non-Hodgkin's lymphoma, chronic lymphoid leukemia, multiple myeloma, chronic myeloid leukemia, and acute myeloid leukemia.⁴³ Long-term exposure to benzene can cause blood cancers, affect bone marrow, and result in anemia, low white blood cell count, and low blood platelet count.⁴⁴ Benzene is linked with leukemia in children, even at relatively low levels of exposure.⁴⁵ Animal studies suggest that exposure to benzene in gasoline fumes can lower sperm counts and impede fertility.⁴⁶

Organizations differ on how much, if any, exposure to benzene is safe for humans. The World Health Organization maintains that there is no safe level of exposure.⁴⁷ The National Institute for Occupational Safety and Health (NIOSH) sets unsafe benzene exposure as anything above 0.1 parts per million (ppm) on average for a 10-hour workday.⁴⁸ The Occupational Safety and Health Administration defines unsafe workplace benzene exposure as anything above 1 ppm based on eight hours of exposure per day,⁴⁹ and requires protective equipment such as respirators at higher exposure levels.⁵⁰

Gas station workers, gas station customers, and those occupying residences, businesses, and schools near gas stations can be exposed to elevated levels of air pollution—primarily due to benzene exposure.⁵¹ Benzene levels were found to be at unsafe levels 160 meters from one gas station, and 10 times higher than the estimates used to derive safe setback distances from gas stations.⁵²

Numerous studies indicate increased risk of leukemia for people living near gas stations.⁵³ A French study found that children living next to a gas station were 7.7 times more likely to contract acute nonlymphocytic leukemia.⁵⁴ Leukemia is the most common cancer in children and adolescents.⁵⁵ In another study, gas station workers were

found to be at elevated risk of contracting leukemia.⁵⁶ A study of female gas station workers indicated that exposure to gasoline vapors was associated with menstrual and hormonal disorders.⁵⁷

Gas station workers can be exposed to concentrations of benzene up to .23 ppm for many hours in a week⁵⁸—more than double the NIOSH safe level of .1 ppm over a 10-hour day. This is of particular concern in Oregon and New Jersey, where self-service of gasoline is prohibited and attendants pump gasoline for customers.⁵⁹ Gas station customers also breathe in substantial volumes of gasoline vapors; a study measuring the breath of persons before and after refueling found a mean 18-fold increase in breath benzene levels.⁶⁰

A Canadian study found benzene at the boundaries of service stations 1.4 times higher than NIOSH safe levels in summer and 4.61 times higher in winter, with levels spiking as high as 54 times safe levels.⁶¹ Another study found vapor concentrations three times NIOSH safe levels at residences within 30 meters of a gas station.⁶² A Spanish study found that gas stations can create unsafe vapor levels up to 100 meters away. It recommended a minimum distance of 50 meters between gas stations and housing, and a distance of 100 meters for facilities such as hospitals, schools, and retirement homes.⁶³

2. Exposure to Other Toxic Substances

The other primary toxic substances in gasoline include toluene, ethylbenzene, and xylene, which also carry significant health risks. Toluene is a solvent that naturally occurs in crude oil and that is added to gasoline along with benzene and xylene to improve octane ratings.⁶⁴ It affects the nervous system and is associated with cognitive impairment.⁶⁵

Breathing high levels of ethylbenzene for short periods can cause eye and throat irritation and dizziness.⁶⁶ It has been shown to damage hearing and kidney function in

43. *Carcinogenicity of Benzene*, 18 LANCET 1574 (2017), available at <http://www.hpac.co.uk/wp-content/uploads/2018/01/Carcinogenicity-of-benzene.pdf>.

44. American Cancer Society, *Benzene and Cancer Risk*, <https://www.cancer.org/cancer/cancer-causes/benzene.html> (last revised Jan. 5, 2016).

45. Jorunn Kirkeleit et al., *Maternal Exposure to Gasoline and Exhaust Increases the Risk of Childhood Leukemia in Offspring—A Prospective Study in the Norwegian Mother and Child Cohort Study*, 119 BRIT. J. CANCER 1028 (2018), available at <https://doi.org/10.1038/s41416-018-0295-3>.

46. Folarin O. Owagboriaye et al., *Effect of Gasoline Fumes on Reproductive Function in Male Albino Rats*, 25 ENV'T SCI. & POLLUTION RES. 4309 (2018).

47. Roy Harrison et al., *Benzene*, in WHO GUIDELINES FOR INDOOR AIR QUALITY: SELECTED POLLUTANTS 15 (World Health Organization 2010), available at <https://www.ncbi.nlm.nih.gov/books/NBK138708/>.

48. Centers for Disease Control and Prevention (CDC) NIOSH, *Pocket Guide to Chemical Hazards: Benzene*, <https://www.cdc.gov/niosh/npg/npgd0049.html> (last reviewed Oct. 30, 2020).

49. 29 C.F.R. §1910.1028(c)(1) (2012).

50. *Id.*

51. Hilpert et al., *supra* note 16.

52. Hilpert et al., *supra* note 40.

53. Jean D. Brender et al., *Residential Proximity to Environmental Hazards and Adverse Health Outcomes*, 101 AM. J. PUB. HEALTH SUPPLEMENT S37 (2011), available at <https://ajph.aphapublications.org/doi/10.2105/AJPH.2011.300183>.

54. Christoph Steffen et al., *Acute Childhood Leukaemia and Environmental Exposure to Potential Sources of Benzene and Other Hydrocarbons: A Case-Control Study*, 61 OCCUPATIONAL & ENV'T MED. 773 (2004), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1763669/pdf/v061p00773.pdf>.

55. Jessica L. Barrington-Trimis et al., *Trends in Childhood Leukemia Incidence Over Two Decades From 1992-2013*, 140 INT'L J. CANCER 1000 (2017), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5550103/>.

56. Sunisa Chaikleng et al., *Risk Assessment on Benzene Exposure Among Gasoline Station Workers*, 16 INT'L J. ENV'T RES. & PUB. HEALTH 2545 (2019); Tanasorn Tunsaringkarn et al., *Cancer Risk Analysis of Benzene, Formaldehyde, and Acetaldehyde on Gasoline Station Workers*, J. ENV'T ENGINEERING & ECOLOGICAL SCI. (2012), https://www.academia.edu/8175058/Cancer_risk_analysis_of_benzene_formaldehyde_and_acetaldehyde_on_gasoline_station_workers.

57. Christopher E. Ekpenyong et al., *Effects of Gasoline Inhalation on Menstrual Characteristics and the Hormonal Profile of Female Petrol Pump Workers*, 4 J. ENV'T PROTECTION 65 (2013), available at <http://dx.doi.org/10.4236/jep.2013.48A1009>.

58. *Id.*

59. OR. REV. STAT. §480.330 (2019); N.J. STAT. ANN. §34:3A-7 (2019).

60. Peter P. Egeghy et al., *Environmental and Biological Monitoring of Benzene During Self-Service Automobile Refueling*, 108 ENV'T HEALTH PERSP. 1195 (2000), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1240202/pdf/ehp0108-001195.pdf>.

61. Gerald G. Akland, *Exposure of the General Population to Gasoline*, 6 ENV'T HEALTH PERSP. SUPPLEMENTS 27 (1993), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1520004/pdf/envhper00383-0033.pdf>.

62. Hilpert et al., *supra* note 40.

63. *Gas Stations Pollute Their Immediate Surroundings, Spanish Study Finds*, SCI. DAILY, Feb. 5, 2011, <https://www.sciencedaily.com/releases/2011/02/110204130315.htm>.

64. AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, TOXICOLOGICAL PROFILE FOR TOLUENE 1 (2017).

65. *Id.*

66. *Id.*

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animals.⁶⁷ Xylene exposure at high levels can cause irritation of the skin, eyes, nose, and throat; difficulty in breathing; impaired function of the lungs; delayed response to a visual stimulus; impaired memory; stomach discomfort; and possible changes in the liver and kidneys.⁶⁸ Animal research indicates that long-term inhalation exposure of xylene at low levels can cause nervous system effects.⁶⁹

C. Atmospheric Carbon Pollution

Gas stations are the last link in the supply chain connecting the oil field and internal combustion engine (ICE) vehicles.⁷⁰ ICE vehicles produce CO₂ at the rate of 20 pounds of CO₂ per gallon of gasoline burned.⁷¹

The transportation sector is the largest source of CO₂ emissions in the United States,⁷² with gasoline and diesel responsible for 77% of those emissions.⁷³ In 2019, about 142 billion gallons of gasoline were consumed in the United States, an average of about 390 million gallons per day.⁷⁴ Gasoline and diesel use accounted for 1,091 million metric tons of CO₂ equivalent, or roughly 21% of U.S. energy-related carbon emissions.⁷⁵ The average U.S. driver purchases 522 gallons of gasoline every year.⁷⁶

D. Negative Equity and Social Justice Impacts

A study of leaking USTs in South Carolina found that African Americans and poor people there are significantly more likely to live close to a leaking UST.⁷⁷ Another study found that majority-Black neighborhoods are 44% more likely to be located near a gas station than those with small Black populations.⁷⁸ People living close to a gas station are

at higher risk for pollution exposure. **April 18, 2023** as stations in Black neighborhoods has a strongly negative effect on property values, which in turn restricts upward income mobility for Black children.⁸⁰

E. Other Harms of Gas Stations

1. Sale of Unhealthy Products in Associated Convenience Stores

Convenience stores, 80% of which sell gasoline, are distribution platforms for many unhealthy products.

❑ *Tobacco and vaping products.* Seventy-one percent of cigarettes are sold through convenience stores.⁸¹ Cigarettes accounted for about 27% of all in-store sales.⁸² The sale of vaping products, cigars, papers, and other non-cigarette tobacco products in convenience stores rose 27% in 2019 relative to 2018.⁸³ Cigarette smoking causes more than 480,000 deaths each year in the United States, nearly one in five deaths.⁸⁴

❑ *Sugary drinks.* Sodas, energy drinks, ice teas, and other packaged beverages are the principal in-store revenue source for convenience stores after tobacco.⁸⁵ Fifty-one percent of Americans purchase a beverage at a gas station every week, with 20% doing so daily.⁸⁶ Sodas and other sugary drinks are strongly associated with obesity, type 2 diabetes, heart disease, gout, poor bone health, and premature death.⁸⁷ Energy drinks are associated with binge drinking, and other adverse health effects in children, teenagers, and young adults.⁸⁸

❑ *Alcohol.* Fifty-six percent of all beer not sold in bars and restaurants is sold in convenience stores.⁸⁹ Twenty-two states permitted convenience stores to sell liquor as of

67. *Id.*

68. AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, PUBLIC HEALTH STATEMENT: XYLENE, CAS#1330-20-7 (2007), <https://www.atsdr.cdc.gov/ToxProfiles/tp71-c1-b.pdf>.

69. *Id.*

70. U.S. Energy Information Administration (EIA), *Weather and Other Events Can Cause Disruptions to Gasoline Infrastructure and Supply*, TODAY IN ENERGY, Feb. 1, 2013, <https://www.eia.gov/todayinenergy/detail.php?id=9811>.

71. FuelEconomy.gov, *How Can a Gallon of Gasoline Produce 20 Pounds of Carbon Dioxide?*, https://www.fueleconomy.gov/feg/contentIncludes/co2_inc.htm (last visited Nov. 9, 2020).

72. EIA, *Frequently Asked Questions (FAQS): How Much of U.S. Carbon Dioxide Emissions Are Associated With Electricity Generation?*, <https://www.eia.gov/tools/faqs/faq.php?id=77&t=11> (last updated May 26, 2020).

73. EIA, *Use of Energy Explained: Energy Use for Transportation*, <https://www.eia.gov/energyexplained/use-of-energy/transportation.php> (last updated June 2, 2020).

74. EIA, *Frequently Asked Questions (FAQS): How Much Gasoline Does the United States Consume?*, <https://www.eia.gov/tools/faqs/faq.php?id=23> (last updated Sept. 4, 2020).

75. EIA, *Frequently Asked Questions (FAQS): How Much Carbon Dioxide Is Produced From U.S. Gasoline and Diesel Fuel Consumption?*, <https://www.eia.gov/tools/faqs/faq.php?id=307> (last updated May 20, 2020).

76. NACS, CONVENIENCE STORES KEEP DRIVERS FUELED, https://www.convenience.org/Topics/Fuels/Documents/USDDrivers_infographic.pdf.

77. Sacoby Wilson et al., *Leaking Underground Storage Tanks and Environmental Injustice: Is There a Hidden and Unequal Threat to Public Health in South Carolina?*, 6 ENV'T JUST. 175 (2013), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3980862/>.

78. ANDRE PERRY ET AL., METROPOLITAN POLICY PROGRAM AT BROOKINGS & GALLUP, THE DEVALUATION OF ASSETS IN BLACK NEIGHBORHOODS: THE CASE OF RESIDENTIAL PROPERTY 4 (2018), <http://btbcoalition.org/>

[index%20page%20images/2018.11_Brookings-Metro_Devaluation-Assets-Black-Neighborhoods_final.pdf](https://www.brookings.edu/wp-content/uploads/2018/11/Brookings-Metro_Devaluation-Assets-Black-Neighborhoods_final.pdf).

79. Brender et al., *supra* note 53, at S37-S52.

80. PERRY ET AL., *supra* note 78.

81. Melissa Kress, *Data Highlights Important Relationship Between C-Stores & Tobacco*, CONVENIENCE STORE NEWS, Feb. 12, 2019, <https://csnews.com/data-highlights-important-relationship-between-c-stores-tobacco>.

82. CONVENIENCE STORE NEWS, CONVENIENCE STORE NEWS INDUSTRY REPORT 2020: LITTLE TIME TO CELEBRATE (2020) [hereinafter LITTLE TIME TO CELEBRATE], <https://csnews.com/convenience-store-news-industry-report-2020-little-time-celebrate>.

83. *Id.*

84. CDC, *Health Effects of Cigarette Smoking*, https://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm (last reviewed Apr. 28, 2020).

85. LITTLE TIME TO CELEBRATE, *supra* note 82.

86. Beth Newhart, *Convenience Store Beverage Purchases Rise in the U.S.*, BEVERAGE DAILY, Aug. 1, 2019, <https://www.beveragedaily.com/Article/2019/08/01/C-store-drink-consumption-is-up-20-of-Americans-shop-daily>.

87. Harvard T.H. Chan School of Public Health, *Sugary Drinks*, <https://www.hsph.harvard.edu/nutritionsource/healthy-drinks/sugary-drinks/> (last visited Nov. 9, 2020).

88. National Center for Complementary and Integrative Health, *Energy Drinks*, <https://www.nccih.nih.gov/health/energy-drinks> (last updated July 2018).

89. Terri Allan, *Chugging Along*, NACS MAG., Oct. 2019, <https://www.nacs-magazine.com/issues/october-2019/chugging-along>.

Great American Cities, termed them “April 18, 2023” consistent instrument of city destruction.”¹⁰¹

II. Gas Station Industry Trends

Effective modernization of gas station regulation requires understanding the many trends and challenges facing the industry. This part explores the competitive dynamics of gasoline retailing, provides a glimpse into the convenience stores that are operated in conjunction with 80% of gas stations, and examines the lingering problems of aging and leaking USTs and abandoned gas stations. It also explores the rising challenges posed by EVs and the climate crisis.

A. Fewer Gas Stations Are Selling More Gasoline

The number of gas stations in the United States decreased from 250,000 in 1976 to roughly 130,000 by 2018.¹⁰² In 2015, the decline leveled off,¹⁰³ with the building of new gas stations in some areas offset by declines in other areas.¹⁰⁴ Particularly in high-cost urban markets, rising land values are reducing the number of gas stations. The number of gas stations in San Francisco declined by 40% between 2007 and 2017,¹⁰⁵ and in Manhattan, they declined 60% between 2008 and 2017.¹⁰⁶

Despite the decline, the United States still has more than twice the per capita number of gas stations as the European Union. The United States has one gas station for every 2,524 people and 1,928 cars.¹⁰⁷ The European

2018.⁹⁰ A high density of alcohol outlets, particularly those that sell alcohol late at night, as many gas stations do, is also associated with disorderly conduct, noise, neighborhood disruption, public nuisance, and property damage in nearby neighborhoods.⁹¹

Excessive alcohol use is responsible for 88,000 deaths in the United States annually, and one in 10 deaths among adults aged 20–64. In 2010, it cost the United States \$249 billion in health care and related costs.⁹²

❑ *Displacement of healthy food sources.* Less than 5% of convenience store sales are edible groceries.⁹³ Low-income zip codes have 30% more convenience stores and 25% fewer chain supermarkets than middle-income zip codes.⁹⁴ Schools located in low-income neighborhoods or communities of color are more likely to have at least one convenience store nearby.⁹⁵ Proximity of convenience stores is associated with lower fruit and vegetable intake.⁹⁶ People with access only to convenience stores and not supermarkets have the highest rates of obesity (32%–40%) and excess weight (73%–78%).⁹⁷

2. Crime

Convenience store employees’ rate of death by workplace homicide is second only to that of taxicab drivers.⁹⁸ Convenience store robberies account for approximately 6% of all robberies reported to police.⁹⁹

3. Blight

Gas stations have also been blamed for blight, negative alteration of community character, and noise.¹⁰⁰ Jane Jacobs, in her urban planning classic *The Death and Life of*

90. Peter Callaghan, *Hearing Offers Snapshot of Next Battle Over Minnesota’s Liquor Laws: Selling Booze in Grocery Stores*, MINNPOST, May 16, 2018, <https://www.minnpost.com/politics-policy/2018/05/hearing-offers-snapshot-next-battle-over-minnesotas-liquor-laws-selling-booze/>.

91. CDC, *GUIDE FOR MEASURING ALCOHOL OUTLET DENSITY* (2017), <https://www.cdc.gov/alcohol/pdfs/CDC-Guide-for-Measuring-Alcohol-Outlet-Density.pdf>; Shelley Ross Saxer, *Down With Demon Drink: Strategies for Resolving Liquor Outlet Overconcentration in Urban Areas*, 35 SANTA CLARA L. REV. 123 (1994); NACS, *Convenience Media Unite to Combat Human Trafficking*, CONVENIENCE STORE NEWS, Jan. 4, 2019, <https://csnews.com/nacs-convenience-media-unite-combat-human-trafficking>; Robert A. Hahn et al., *Effectiveness of Policies Restricting Hours of Alcohol Sales in Preventing Excessive Alcohol Consumption and Related Harms*, 39 AM. J. PREVENTIVE MED. 590 (2010), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3712516/>.

92. CDC National Center for Chronic Disease Prevention and Health Promotion, *Excessive Alcohol Use*, <https://www.cdc.gov/chronicdisease/resources/publications/factsheets/alcohol.htm> (last reviewed Sept. 21, 2020).

93. LITTLE TIME TO CELEBRATE, *supra* note 82.

94. POLICY LINK & FOOD TRUST, *THE GROCERY GAP: WHO HAS ACCESS TO HEALTHY FOOD AND WHY IT MATTERS* (2010), http://thefoodtrust.org/uploads/media_items/grocerygap.original.pdf.

95. *Id.*

96. *Id.*

97. *Id.*

98. ALICIA ALTIZIO & DIANA YORK, U.S. DEPARTMENT OF JUSTICE, *ROBBERY OF CONVENIENCE STORES* (2007), https://popcenter.asu.edu/sites/default/files/sites/default/files/problems/pdfs/convenience_store_robbery.pdf.

99. *Id.*

100. Community and Environmental Defense Services, *Gas Stations & Convenience Stores*, <https://ceds.org/gasstation/> (last visited Nov. 9, 2020).

101. JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* 338 (Vintage Books 1961), available at http://www.petkovstudio.com/bg/wp-content/uploads/2017/03/The-Death-and-Life-of-Great-American-Cities_Jane-Jacobs-Complete-book.pdf.

102. *Selling America’s Fuel*, NACS, Apr. 12, 2019, <https://www.convenience.org/Topics/Fuels/Who-Sells-Americas-Fuel>.

103. Jeff Lenard, *The 2020 NACS Consumer Fuels Survey*, NACS MAG., Mar. 2020, <https://www.nacsmagazine.com/issues/march-2020/2020-nacs-consumer-fuels-survey>; Ronda Kaysen, *A Clean New Life for Grimy Gas Stations*, N.Y. TIMES, July 10, 2012, <https://www.nytimes.com/2012/07/11/real-estate/commercial/a-clean-new-life-for-grimy-gas-stations.html>; NACS, *U.S. Convenience Store Count*, <https://www.convenience.org/Research/Fact-Sheets/ScopeofIndustry/IndustryStoreCount> (last visited Nov. 9, 2020).

104. See, e.g., Judy Smestad-Nunn, *New Stores Under Construction*, JERSEY SHORE ONLINE, July 20, 2020, <https://www.jerseyshoreonline.com/brick/new-stores-under-construction/>; Rebecca Sitzes, *Murphy Gas Station in the Works for Shelby*, GASTON GAZETTE, July 31, 2020, <https://www.gastongazette.com/news/20200731/marathon-gas-station-in-works-for-shelby>; Shea Lazansky, *Several New Oswego Businesses Eye Fall Openings*, KENDALL COUNTY NOW, July 24, 2020, <https://www.kendallcountynow.com/2020/07/17/several-new-oswego-businesses-eye-fall-openings/awxcdmu/>; Nathalie Graham, *Hey Seattle, Where Are All of Your Gas Stations?*, STRANGER, Aug. 29, 2018, <https://www.thestranger.com/news/2018/08/29/31438154/gas-stations-in-seattle-are-disappearing>; NACS, *supra* note 103.

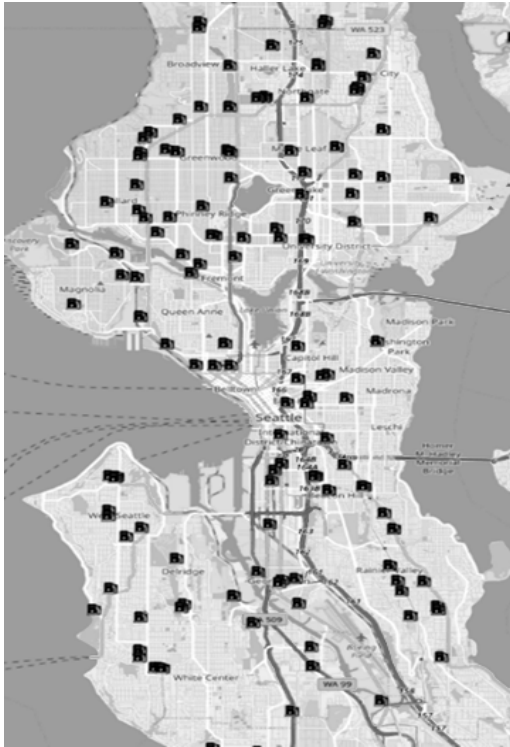
105. Michael Buhr, *Gas Stations Will Disappear Sooner Than You Think*, HILL, Oct. 1, 2017, <https://thehill.com/opinion/technology/352884-gas-stations-will-disappear-sooner-than-you-think>.

106. *Id.*; *With Gas Station’s Closing, a Fuel Desert Expands in Manhattan*, N.Y. TIMES, Apr. 16, 2016, <https://www.nytimes.com/2016/04/16/nyregion/a-gas-station-closes-in-soho-making-lower-manhattan-a-gasoline-desert.html>.

107. See Bureau of Transportation Statistics, *Number of U.S. Aircraft, Vehicles, Vessels, and Other Conveyances*, <https://www.bts.gov/content/number-us-aircraft-vehicles-vessels-and-other-conveyances> (last visited Nov. 30, 2020); U.S. Census Bureau, *Quick Facts*, <https://www.census.gov/quickfacts/fact/table/US/PST045219> (last visited Nov. 30, 2020).

B. Gas Station Ownership Is Increasing and Oil Companies Divesting

Figure 3. Map of Seattle Gas Stations



Source: Matthew Metz.

Union has one gas station for every 6,686 residents and 3,492 cars.¹⁰⁸

Gas stations are a low-density use of land, typically housing only gas pumps, a convenience store, and many parking spaces. As land values and the density of surrounding properties in urban areas increase, the highest and best use of land tends toward dense, multistory structures. Gas stations are unable to increase their density because gas pumps must be open to the air. Meanwhile, property taxes increase as assessed land values rise. In some cases, urban gas stations can raise the price of gasoline to meet these higher costs, but such cost increases are constrained by competition from other gas stations and non-gasoline-dependent modes of travel.¹⁰⁹

Despite the decreasing number of gas stations, sales of gasoline increased 50% from 1975 to 2005, and then plateaued until COVID-19 led to a dip in gasoline consumption in 2020.¹¹⁰

108. See FUELS EUROPE, STATISTICAL REPORT (2019), <https://www.fuels-europe.eu/wp-content/uploads/FuelsEurope-Statistical-Report-2019-2.pdf>; European Automobile Manufacturers Association, *Vehicles in Use*, <https://www.acea.be/statistics/tag/category/vehicles-in-use#:~:text=There%20are%20some%20308.3%20million,one%20for%20every%20two%20European> (last visited Nov. 30, 2020); European Union, *Living in the EU*, https://europa.eu/european-union/about-eu/figures/living_en#size-and-population (last visited Nov. 30, 2020).

109. William P. Nowak & Ian Savage, *The Cross Elasticity Between Gasoline Prices and Transit Use: Evidence From Chicago*, 20 TRANSPORT POL'Y 38 (2013).

110. EIA, *Petroleum & Other Liquids: Series History*, https://www.eia.gov/dnav/pet/pet_cons_psup_a_EPM0F_VPP_mbb1_a.htm (last released Oct. 30,

2020); EIA, *Short-Term Energy Outlook*, <https://www.eia.gov/outlooks/steo/> (last released Nov. 10, 2020).

111. U.S. Convenience Store Count Stands at 152,720 Stores, NACS, Feb. 3, 2020, https://www.convenience.org/Media/Daily/2020/Feb/3/1-US-C-Store-Count-Stands-at-152720-Stores_NACS; see also Chris Blasinsky, *Adaptable for Change*, NACS MAG., June 2019, <https://www.nacsmagazine.com/issues/june-2019/adaptable-change>.

112. *Selling America's Fuel*, supra note 102.

113. Samantha Oller & Greg Lindenberg, *Fuels 50 2019: Retailers in the Fast Lane*, CSP DAILY NEWS, Apr. 4, 2019, <https://www.cspdailynews.com/fuels/fuels-50-2019-retailers-fast-lane>.

114. *Photo Gallery: The Design Behind the First-Ever Shell Select Convenience Store*, CONVENIENCE STORE NEWS, Oct. 4, 2018, <https://csnews.com/photo-gallery-design-behind-first-ever-shell-select-convenience-store>.

115. See, e.g., Mark E. Battersby, *Rewards for Owning the Building*, CSTORE DECISIONS, Sept. 11, 2014, <https://cstoredecisions.com/2014/09/11/rewards-owning-building/>. The authors were not able to find reliable statistics on the percentage of gas station operators that own the land their gas station rests on.

116. Braff, supra note 5.

117. JOHN A. JAKLE & KEITH A. SCULLE, *THE GAS STATION IN AMERICA* 156 (Johns Hopkins Univ. Press, 1994).

118. Robert Ferris, *America's Gas Stations and Convenience Stores Grapple With an Uncertain Future*, CNBC, Mar. 18, 2020, <https://www.cnbc.com/2020/03/18/americas-gas-stations-and-convenience-stores-grapple-with-an-uncertain-future.html>.

119. SANTA BARBARA COUNTY 2018 MVFF ANNUAL REPORT (2019), available at https://drive.google.com/file/d/1Nz3RyJ_WbZ7fEKXxNUeX2DSEyRjR-D7B/view.

Consolidation in the gas station/convenience store industry is accelerating, as well-capitalized owners of large chains enter the market and small businesses exit.¹¹¹ While single-store owners constitute 58% of convenience store gas operations, 30% are now owned by operators of more than 50 locations.¹¹² Warehouse stores such as Costco are taking increasing market share, fueled by their ability to sell large volumes at prices nearly 10% below other retailers.¹¹³ Since the 1980s, oil majors have largely divested from direct ownership of gas stations, with the exception of a few gas stations operated with higher-end convenience stores.¹¹⁴

Ownership of the land that a gas station sits on is often distinct from the ownership of the gas station. In many cases, the gas station/convenience store operator leases from a third-party landowner who is often also a petroleum distributor.¹¹⁵ Gas station lease agreements can lock station operators into long-term gasoline purchasing contracts.¹¹⁶

C. Gas Stations Are Increasingly Operated With Convenience Stores

Beginning in the 1970s, convenience stores began to displace auto repair shops as the complementary business operated alongside gas stations. In 1980, 16% of all gas stations were operated with convenience stores, rising to 80% by 2019.¹¹⁷ Gas station/convenience store combinations account for 80% of all gasoline sales.¹¹⁸ Large retailers such as Costco sell most of the rest.¹¹⁹

The customer base for convenience stores is predominantly lower-income, with 40% of convenience store customers coming from households earning less than \$29,000

per year, and 72% from households earning \$70,000 or less.¹²⁰ The average land parcel for a convenience store/gas station nationally is 27,900 square feet (.64 acres),¹²¹ enough to accommodate about 15 three-story rowhouses.¹²²

In 2018, the average convenience store employee made \$10.74 per hour.¹²³ Convenience store employee annual turnover was 118%—double the 59% turnover rate for all retail.¹²⁴ Only 34% of all new convenience store hires lasted 90 days on the job.¹²⁵ The convenience store industry employs 2.36 million people.¹²⁶

Convenience stores increasingly find themselves in competition with dollar stores, which are proliferating especially in lower-income communities.¹²⁷ Additional competition comes from new mobile fueling companies that deploy tanker trucks to fill cars with gasoline at large employers and in other parking lots, thereby allowing consumers to fuel while avoiding gas stations altogether.¹²⁸

D. USTs Are Aging and Difficult to Insure on Private Markets

Roughly one-half of USTs and piping systems now in use are either past their 25 to 30-year useful life, or are only single-walled rather than the current double-walled standard.¹²⁹ A 2015 study found that the average age of USTs was 22.6 years and one-third of the piping was older than 20 years.¹³⁰ Given the wave of UST replacements that occurred in the early 1990s, the number of USTs past their useful age is likely to continue increasing. The odds of USTs leaking rise sharply as they age.¹³¹ Modern fuel blends can accelerate tank failure. For example, ethanol, a common additive to gasoline, is known to accelerate degradation of fiberglass USTs.¹³²

There are no uniform criteria for assessing the risk of release from USTs and piping systems.¹³³ Although the



Source: Matthew Metz.

2005 Energy Policy Act required states to report on the “source and cause” of leaks, states have not complied with the requirement, and there remains considerable doubt as to the cause of most UST leaks.¹³⁴ Two studies suggest that piping, joints, connectors, gaskets, and dispensers are more likely to leak than the USTs.¹³⁵

In a 2019 routine inspection of 7,076 California UST facilities, 69% were found to have priority violations of UST rules, and a total of 13,373 such priority violations were found.¹³⁶ Priority violations include such practices as falsification, unsafe UST operation, and failure to record unauthorized releases.¹³⁷

The U.S. Environmental Protection Agency (EPA) requires that owners or operators of USTs provide adequate assurance of financial responsibility.¹³⁸ This requirement is generally met by private insurance or by insurance through a state insurance fund.¹³⁹ Thirty-six states presently provide UST insurance to gas stations.¹⁴⁰ At least four of these

120. Blasinsky, *supra* note 111.

121. Liam O’Connell, *Average Area of Convenience Stores in the United States in 2019*, STATISTA, June 15, 2020, <https://www.statista.com/statistics/1016023/convenience-store-square-footage-us/>.

122. John G. Ellis, *Explaining Residential Density*, 16 PLACES 34 (2004), available at <https://placesjournal.org/assets/legacy/pdfs/explaining-residential-density.pdf>.

123. Blasinsky, *supra* note 111.

124. *Id.*

125. *Id.*

126. Marianne Wilson, *Convenience Stores Getting Bigger; Building, Operating Costs Going Up*, CHAIN STORE AGE, Apr. 3, 2019, <https://chainstoreage.com/store-spaces/convenience-stores-getting-bigger-building-operating-costs-going-up>.

127. Tammy Mastroberte, *How C-Stores Can Play Defense Against Dollar Stores*, CONVENIENCE STORE NEWS, Jan. 9, 2020, <https://csnews.com/how-c-stores-can-play-defense-against-dollar-stores>.

128. Monica Nickelsburg, *Washington State Authorizes Mobile Fueling; Legislators Call It “Timely” as Residents Practice Social Distancing*, GEEKWIRE, Mar. 20, 2020, <https://www.geekwire.com/2020/washington-state-authorizes-mobile-fueling-legislator-calls-timely-residents-practice-social-distancing/>.

129. AGING TANKS WORKGROUP, ASSOCIATION OF STATE AND TERRITORIAL SOLID WASTE MANAGEMENT OFFICIALS, AN ANALYSIS OF UST SYSTEM INFRASTRUCTURE IN SELECT STATES: FINAL REPORT 3 (2015), <https://plia.wa.gov/wp-content/uploads/2016/12/2015-10-ASTSWMOAgingTanks-Report-Final.pdf>.

130. *Id.*

131. MANIS, *supra* note 13.

132. AGING TANKS WORKGROUP, *supra* note 129, at 8-9.

133. *Id.* at 9-10.

134. *Id.*

135. *Id.*

136. CALIFORNIA WATER BOARDS, *supra* note 28.

137. *Id.*

138. 40 C.F.R. §§280.90-.115 (2019) (Subpart H, Financial Responsibility).

139. STATE FUNDS TASK FORCE, ASSOCIATION OF STATE AND TERRITORIAL SOLID WASTE MANAGEMENT OFFICIALS, GUIDE TO TANK INSURANCE (2011), http://astswmo.org/files/policies/Tanks/2011.10_Guide_to_Tank_Insurance_FINAL.pdf; ASSOCIATION OF STATE AND TERRITORIAL SOLID WASTE MANAGEMENT OFFICIALS, 2019 STATE FUND SURVEY tbl.1 (2020), http://astswmo.org/files/Policies_and_Publications/Tanks/2019_State_Funds_Survey/2019-Table-1.pdf.

140. ASSOCIATION OF STATE AND TERRITORIAL SOLID WASTE MANAGEMENT OFFICIALS, 2019 STATE FUND SURVEY summary tbl. (2020), http://astswmo.org/files/Policies_and_Publications/Tanks/2019_State_Funds_Survey/2019-summary-table.pdf.

funds have claims exceeding the fund balance.¹⁴¹ State insurance funds paid an average of \$152,000 per release in 2019.¹⁴² Outstanding claims on state funds increased from \$160 million in 2015 to \$354 million in 2019.

Private insurers are reluctant to insure USTs over 20 years old.¹⁴³ For older tank systems, deductibles can reach \$50,000 or more per claim.¹⁴⁴

E. Sales and Redevelopment of Gas Station Properties Are Hindered by Contamination

Gas station properties are often difficult to transfer because of concerns about petroleum contamination of the soil.¹⁴⁵ Contamination at gas stations is very common.¹⁴⁶ A survey of 109 gas stations in Seattle identified 74 with a documented history of contamination.¹⁴⁷ In Long Island, New York, 32 of 52 gas stations surveyed were found to have previously unidentified petroleum spills.¹⁴⁸ Because small spills caused by consumer fueling are also very common,¹⁴⁹ and because some of those spills pass through the concrete pad into the soil below,¹⁵⁰ it is likely that virtually all gas stations have at least some contaminated soil.

The gas station sales process often triggers prepurchase assessment of site contamination.¹⁵¹ Banks often require as a condition of financing that prospective purchasers of gas station properties conduct Phase I and Phase II environmental site assessments.¹⁵² A Phase I assessment includes a site inspection, record review, and review of surrounding areas.¹⁵³ A Phase II assessment involves taking soil samples from the areas around the USTs, piping system, and fuel dispensers to determine if contamination has occurred. However, because the findings of a Phase II assessment are limited to the areas sampled, they often fail to disclose the full scope of contamination and cost of cleanup.

Often, gas station site owners are reluctant to try to sell gas stations because of the likelihood of contamination, uncertainty as to the scope and cost of cleanup, and the discount that risk-averse buyers will seek. Additionally, negative Phase II findings can stigmatize a property, and even cause a shutdown or forced cleanup of the gas station



Source: Matthew Metz.

if an active spill is identified. By the same token, many real estate developers avoid purchasing gas station sites because of the fear of an expensive cleanup.¹⁵⁴

Gas station property owners are thus incentivized to maintain the status quo by operating or leasing the station with existing (and often aging) tanks and piping. Many states allow “natural attenuation” of contaminated soil and groundwater, whereby site owners are only required to monitor and wait for groundwater, volatilization, bacteria, and other natural processes to slowly carry away or lower the levels of contaminants in the soil, thereby reducing or eliminating the need for an active cleanup.¹⁵⁵

In urban areas with rising property values, site owners are incentivized to delay selling and wait for appreciation of their land. All of these factors favor the survival of “zombie” gas stations—polluting and contaminated gas stations that continue operating long after economic and land use changes would ordinarily dictate their replacement.

F. Advocacy Against New Gas Stations Is Emerging

In recent years, climate advocates have been organizing, often successfully, against the permitting of new gas stations. In Hayward, California, a proposal to build a 24-pump gas station as part of an existing Costco was rejected in July 2020.¹⁵⁶ One council member who voted against the proposal said it ran against the city’s goals to promote environmentally friendly projects.¹⁵⁷ Also in California, residents of Tustin have mobilized to block construction of a new gas station in the Tustin Ranch neighborhood, arguing that the harms to traffic flow and air quality are not worth it for a region already served by

141. *Id.*

142. *Id.*

143. Parker Bunbury, *The Problem With Storage Tanks: What You Need to Know to Own or Operate*, WOODRUFFSAWYER, Aug. 8, 2019, <https://woodrufflaw.com/property-casualty/storage-tank-problems/>.

144. MANIS, *supra* note 13.

145. Kaysen, *supra* note 103.

146. A survey of 52 gas stations in Long Island found 32 of them to have previously unidentified petroleum spills. Matt Mabe, *32 Gas Stations in Report Show Spillage Signs*, N.Y. TIMES, Apr. 27, 2008, <https://www.nytimes.com/2008/04/27/nyregion/nyregionspecial2/27mtbeli.html>.

147. Metz, *supra* note 15.

148. Mabe, *supra* note 146.

149. Hilpert et al., *supra* note 18.

150. *Id.*

151. *Don't Let Due Diligence Missteps Tank Your Next Gas Station Purchase*, PM ENV'T, Mar. 19, 2018, <https://www.pmenv.com/articles/don%E2%80%99t-let-due-diligence-missteps-tank-your-next-gas-station-purchase>.

152. Joseph Philip Forte, *Environmental Due Diligence: A Guide to Liability Risk Management in Commercial Real Estate Transactions*, 5 FORDHAM ENV'T L. REV. 349 (2011).

153. *Id.*

154. Kaysen, *supra* note 103.

155. U.S. EPA, HANDBOOK OF GROUNDWATER PROTECTION AND CLEANUP POLICIES FOR RCRA CORRECTIVE ACTION (2004) (EPA530-R-04-030), <https://www.epa.gov/sites/production/files/2017-02/documents/gwhb041404.pdf>.

156. Peter Hegarty, *Divided Hayward Council Rejects Costco Gas Station*, MERCURY NEWS, July 23, 2020, <https://www.mercurynews.com/2020/07/22/hayward-possible-service-station-at-costco-rejected/>.

157. *Id.*

plenty of other gas stations.¹⁵⁸ And in Charleston, South Carolina, residents successfully opposed two separate proposals for a new gas station in the historic West Ashley neighborhood.¹⁵⁹

G. EVs Are Challenging Gas Stations' Core Business

EVs do not use gasoline and thus pose a major long-term challenge to gas stations. In 2019, about 2% of all new cars sold in the United States were EVs.¹⁶⁰ The Edison Electric Institute and Boston Consulting Group estimate that EVs will make up around 21% of annual new car sales by 2030.¹⁶¹ Bloomberg predicts EVs will reach 60% market share of vehicles in the United States by 2040.¹⁶² Uber and Lyft, the leading ride-sharing companies in the United States, have announced that all vehicles on their platform will be electric by 2030.¹⁶³

Regulation phasing out gasoline-powered vehicles could sharply accelerate EV adoption rates. Twenty countries and provinces have announced plans to phase out the sale of new gasoline vehicles by or before 2040.¹⁶⁴ Nearly a dozen countries (most of them in Europe) have announced a goal of phasing out gas car sales by or before 2035,¹⁶⁵ a goal matched in a plan released by Democrats in the U.S. House of Representatives in 2020.¹⁶⁶ California Governor Newsom issued an executive order calling for an end to the sale of gasoline-powered cars by 2035, and other states are considering similar measures.¹⁶⁷

Some analysts believe that autonomous driving vehicles will be all or mostly electric.¹⁶⁸ To the extent such vehicles gain market share, they could further accelerate the movement away from gasoline.¹⁶⁹ The trend away from cars powered by gasoline will result in significant cuts in gasoline use and will threaten the economic model on which gas stations rely.¹⁷⁰

Some have proposed that gas stations transition to fueling electric cars.¹⁷¹ There is uncertainty around the extent to which gas stations will be able to make this transition. Currently, EV drivers do more than 80% of charging at home (using an ordinary household 110-volt electrical outlet or a 240-volt outlet like that used for electric clothes dryers), where electricity is generally cheaper than that provided by public fast chargers.¹⁷² EV charging is often available at workplaces as well—in many instances free of charge.¹⁷³

Currently, even high-speed charging takes 30 minutes or more, and so it is often located in parking lots of businesses and restaurants where drivers can use that time for shopping or dining. However, as fast-charging times approach the time required to fill up with gasoline, offering EV charging may become an option for gas stations—especially those located near highways. And already today, some gas stations in the United States and Europe are adding EV charging.¹⁷⁴ Germany is requiring all gas stations to install EV.¹⁷⁵

H. Abundance of Gas Stations Is Impacting Gasoline Price and Use

As noted above, the United States has twice the per capita number of gas stations as Europe. The United States has the highest per capita gasoline consumption in the world, at 1.15 gallons per day.¹⁷⁶ An analysis of the extent

158. Protect Tustin Ranch, *Home Page*, <http://protecttustinranch.org/> (last visited Nov. 9, 2020).

159. Alexis Simmons, *Gas Station Design Rejected for Old Piggly Wiggly Site*, LIVE 5 WCSC, Sept. 19, 2016, <https://www.live5news.com/story/33132276/gas-station-design-rejected-for-old-piggly-wiggly-site/>.

160. *FOTW #1124, March 9 2020: U.S. All-Electric Vehicle Sales Level Off in 2019*, DOE, Mar. 9, 2020, <https://www.energy.gov/eere/vehicles/articles/fotw-1124-march-9-2020-us-all-electric-vehicle-sales-level-2019>.

161. ADAM COOPER & KELLEN SCHEFFER, EDISON FOUNDATION INSTITUTE FOR ELECTRIC INNOVATION & EDISON ELECTRIC INSTITUTE, *ELECTRIC VEHICLE SALES FORECAST AND THE CHARGING INFRASTRUCTURE REQUIRED THROUGH 2030* (2018), <http://www.ehcar.net/library/rapport/rapport233.pdf>; Xavier Mosquet et al., *Who Will Drive Electric Cars to the Tipping Point?*, BOSTON CONSULTING GROUP, Jan. 2, 2020, <https://www.bcg.com/publications/2020/drive-electric-cars-to-the-tipping-point>.

162. BLOOMBERGNEF, *supra* note 9.

163. Tina Bellon, *Lyft Promises Switch to 100% Electric Vehicles by 2030*, REUTERS, June 17, 2020, <https://www.reuters.com/article/us-lyft-electricvehicles/lyft-promises-switch-to-100-electric-vehicles-by-2030-idUSKBN23O37R>; Andrew J. Hawkins, *Uber Pledges to Shift to "100 Percent" Electric Vehicles by 2030*, THE VERGE, Sept. 8, 2020, <https://www.theverge.com/2020/9/8/21427196/uber-promise-100-percent-electric-vehicle-ev-2030>.

164. Coltura, *Gasoline Vehicle Phaseout Advances Around the World*, <https://www.coltura.org/world-gasoline-phaseouts> (last visited Nov. 9, 2020).

165. SANDRA WÄPPELHORST, INTERNATIONAL COUNCIL ON CLEAN TRANSPORTATION, *THE END OF THE ROAD? AN OVERVIEW OF COMBUSTION-ENGINE CAR PHASE-OUT ANNOUNCEMENTS ACROSS EUROPE* (2020), <https://theicct.org/sites/default/files/publications/Combustion-engine-phase-out-briefing-may-11-2020.pdf>.

166. Anthony Adragna, *Democrats Unveil Sweeping Plan to Tackle Climate Change*, POLITICO, June 30, 2020, <https://www.politico.com/news/2020/06/30/democrats-unveil-sweeping-plan-to-tackle-climate-change-345503>.

167. Cal. Exec. Order No. N-79-20, *supra* note 10; *see also supra* note 11. For a comprehensive discussion of state-based efforts to phase out gasoline-powered vehicles, *see Metz & London, infra* note 252.

168. Chanan Bos, *Self-Driving Gas Car—A Horse Led by a Carrot on a Stick?*, CLEANTECHNICA, July 13, 2019, <https://cleantechnica.com/2019/07/13/self-driving-gas-car-this-is-why-elon-musk-calls-it-a-horse/>.

169. Andrew Slaughter & Thomas Shattuck, *Your Mileage May Vary: The Future of Mobility and the Downsizing of U.S. Gasoline Demand*, DELOITTE INSIGHTS, Nov. 15, 2016, <https://www2.deloitte.com/us/en/insights/focus/future-of-mobility/impact-on-transportation-fuel-gasoline-demand.html>.

170. *Id.*

171. Brittany Chang, *A Maryland Gas Station Became the First EV Charging Station in the U.S. That Converted From Selling Oil—Here's How It's Doing*, BUS. INSIDER, Jan. 24, 2020, <https://www.businessinsider.com/gas-station-ditched-oil-first-electric-vehicle-charging-station-2019-10>.

172. DOE Office of Energy Efficiency and Renewable Energy, *Charging at Home*, <https://www.energy.gov/eere/electricvehicles/charging-home> (last visited Nov. 9, 2020).

173. Donna Marbury, *Electric Vehicle Charging: Creating a Workplace Charging Plan of Action*, SMART COLUMBUS, Oct. 2, 2020, <https://smart.columbus.gov/playbook-assets/electric-vehicle-charging/creating-a-workplace-charging-plan-of-action>.

174. Fred Lambert, *Chevron Starts Deploying EV Charging Stations at Its Gas Stations*, ELECTREK, May 20, 2019, <https://electrek.co/2019/05/20/chevron-ev-charging-gas-stations/>; Roddy Scheer & Doug Moss, *Shell, BP, Chevron Offer EV Charging at Select Stations*, EARTHTALK, Sept. 3, 2020, <https://emagazine.com/oil-companies-and-evs>.

175. Christoph Steitz & Edward Taylor, *Germany Will Require All Petrol Stations to Provide Electric Car Charging*, REUTERS, June 4, 2020.

176. *Gasoline Consumption Per Capita Around the World*, GLOBALPETROLPRICES.COM, Aug. 4, 2016, <https://www.globalpetrolprices.com/articles/52/>.

to which its relatively abundant gas stations drive higher gasoline consumption has not been published.

However, analogies can be made to other products. For instance, a causal link has been found between the increased availability of fast food outlets and greater consumption of fast food.¹⁷⁷ Many studies have found that alcohol consumption grows along with the number of alcohol outlets in a neighborhood.¹⁷⁸

Gas stations' ubiquitous presence and highly visible signage are frequent reminders of gasoline's availability. A study found that alcohol advertising influences consumption and can diminish the impact of public health guidelines advising moderation.¹⁷⁹ Similarly, the ubiquity and high visibility of gas stations may help create norms encouraging gasoline consumption, and diminish the impact of messaging concerning the urgency of transitioning away from fossil fuel use.

The pervasiveness of gas stations, especially those operated by independent retailers, tends to lower the price of gasoline.¹⁸⁰ Increases in the price of gasoline lower gasoline consumption and encourage adoption of more fuel-efficient vehicles.¹⁸¹

I. Gas Station Abandonment Is Common and Expensive

EPA estimates that about one-half of the 450,000 brownfield sites in the United States are contaminated by petroleum, largely from leaking USTs at abandoned gas stations.¹⁸²

The cleanup of abandoned gas stations can be a heavy burden on state budgets. For instance, Kiel Bros. Oil Co., owned in part by the family of Vice President Mike Pence, operated a chain of more than 200 gas stations in Illinois, Indiana, and Kentucky.¹⁸³ In 2004, the company

went bankrupt, leaving behind many contaminated sites that leaked toxic chemicals into soil, streams, and wells.¹⁸⁴ As of 2018, the state of Indiana had spent more than \$20 million cleaning up about 40 sites, and cleanups are still outstanding on the remainder of the company's sites.¹⁸⁵

Further waves of gas station abandonment are likely as accelerating EV penetration reduces gasoline demand, rendering gas stations increasingly obsolete.¹⁸⁶ One real estate expert estimates that 50% of gas stations will close by 2030, in significant part due to the rise of the electric car.¹⁸⁷ Increased gasoline sales competition from large retailers such as Costco and Sam's Club, mobile fueling, and convenience store competition from dollar stores will likely continue to drive some gas stations out of business. Meanwhile, gas station property owners will face environmental cleanups and declines in underlying property values.¹⁸⁸

III. Modernizing Gas Station Regulation

The four emerging trends affecting gas stations—the climate crisis, rise of EVs, aging of gas stations' USTs, and growing understanding of the health risks of gas station pollution—require a new regulatory regime. Jurisdictions that effectively regulate gas stations will realize a shrinking, cleaner network of gas stations, reduce carbon and vehicle pollution, reduce taxpayer expenditure, and enhance public health. Jurisdictions that fail to address these trends will likely perpetuate the existing sprawling and ramshackle network of gas stations, experience more vehicle and carbon pollution, spend more money on cleanups, and achieve poorer public health outcomes.

This part describes options for modernizing regulation of gas stations. It proposes both stricter state and local enforcement of existing regulation and options for new regulations.

A. Requiring Upgrades of Obsolete USTs and Piping Systems

1. Federal and State Regulation of USTs

USTs are federally regulated pursuant to the Resource Conservation and Recovery Act (RCRA) and its implementing regulations.¹⁸⁹ RCRA, like many other federal environmental statutes, employs a cooperative federalism approach. The federal government creates and enforces UST regulations unless a state steps in with its own alter-

177. Mark D. Jekanowski et al., *Convenience, Accessibility, and the Demand for Fast Food*, 26 J. AGRIC. & RES. ECON. 58 (2001), available at <https://ageconsearch.umn.edu/record/31162>.

178. Carla A. Campbell et al., *The Effectiveness of Limiting Alcohol Outlet Density as a Means of Reducing Excessive Alcohol Consumption and Alcohol-Related Harms*, 37 AM. J. PREVENTIVE MED. 556 (2009), available at <https://www.thecommunityguide.org/sites/default/files/publications/Alcohol-AJPM-evrev-outlet-density.pdf>.

179. MARK PETTICREW ET AL., ALCOHOL ADVERTISING AND PUBLIC HEALTH: SYSTEM PERSPECTIVES VERSUS NARROW PERSPECTIVES (London School of Hygiene and Tropical Medicine, Working Paper, 2016), https://discovery.ucl.ac.uk/id/eprint/1524310/1/O%27Mara-Eves_FINAL%20VERSION%20Alcohol%20advertising%20and%20public%20health%2014th%20July%202016.pdf.

180. Justine S. Hastings, *Vertical Relationships and Competition in Retail Gasoline Markets: Empirical Evidence From Contract Changes in Southern California*, 94 AM. ECON. REV. 317 (2004), available at <https://pubs.aeaweb.org/doi/pdf/10.1257/000282804322970823>.

181. WEIWEI LIU, MODELLING GASOLINE DEMAND IN THE UNITED STATES: A FLEXIBLE SEMIPARAMETRIC APPROACH (State University of New York at Binghamton, Working Paper, 2011), <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.363.1203&rep=rep1&type=pdf>; Arie Beresteanu & Shanjun Li, *Gasoline Prices, Government Support, and the Demand for Hybrid Vehicles in the United States*, 52 INT'L ECON. REV. 161 (2011), available at http://li.dyson.cornell.edu/pdf/IER_2011.pdf.

182. U.S. EPA, *Underground Storage Tanks (USTs): Petroleum Brownfields*, <https://www.epa.gov/ust/petroleum-brownfields> (last updated July 15, 2020).

183. Brian Slodysko, *Cleanup of Pence Family Gas Stations Cost Indiana More Than \$20 Million*, CHI. TRIB., July 14, 2018, <https://www.chicagotribune.com/business/ct-pence-family-gas-stations-indiana-20180713-story.html>.

[com/business/ct-pence-family-gas-stations-indiana-20180713-story.html](https://www.chicagotribune.com/business/ct-pence-family-gas-stations-indiana-20180713-story.html).

184. *Id.*

185. *Id.*

186. Marc Dunec, *5 Questions: Electric Vehicles and the End of Gasoline Stations*, REAL ASSETS ADVISER, Dec. 1, 2019, <https://irei.com/publications/article/5-questions-electric-vehicles-end-gasoline-stations/>.

187. *Id.*

188. *Id.*

189. 42 U.S.C. §§6991-6991(m), ELR STAT. RCRA §§9001-9014; 40 C.F.R. pt. 280 (2019).

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native program.¹⁹⁰ State regulation of UST owners and operators can displace EPA authority if it is at least as stringent as EPA requirements covering release detection, prevention, and correction.¹⁹¹ States are free to go beyond the federal rules and develop stricter regulation of USTs.¹⁹² Forty-seven states have UST regulations meeting the federal UST requirements.¹⁹³

In 2015, EPA tightened regulations for USTs, going beyond the initial requirements of RCRA to match key portions of the Energy Policy Act of 2005.¹⁹⁴ The 2015 regulations require all new tanks and piping to have secondary containment, or double walls.¹⁹⁵ They do not, however, impose such requirements on existing USTs, even if they are obsolete or beyond their recommended life.¹⁹⁶

2. Policy Option: Mandatory Replacement of Aging USTs

Mandated replacement of tanks with single walls and those beyond a certain age is a cost-effective means to reduce the biggest sources of gasoline pollution of soil and water. At least nine states of 38 polled in 2015 already impose at least a partial version of this policy.¹⁹⁷ Connecticut requires that all USTs be replaced within 30 years of their installation. New Hampshire required that all single-walled USTs and piping be closed by 2015.¹⁹⁸ Rhode Island began phasing out old single-walled USTs in 2017, with a requirement that they all be replaced by 2024.¹⁹⁹ California requires that single-walled USTs be removed by the end of 2025.²⁰⁰

Many state regulators have not used their existing statutory authority to regulate USTs to mandate replacement of single-walled or aged-out existing USTs and piping. In Washington State, for example, a statute²⁰¹ directs the Depart-

ment of Ecology to enact statewide regulations for USTs “consistent with and no less stringent than the requirements in the federal regulations and the underground storage tank compliance act of 2005,” and to develop regulations upgrading existing UST systems.²⁰² Despite the statutory direction, the Department of Ecology regulations do not yet require upgrades to double-walled tanks.²⁰³

3. Impact of Mandated UST Upgrades

Mandated UST upgrades of existing USTs to federal standards for new USTs will substantially reduce the risk of soil and water contamination. Further, removal and replacement of USTs generally requires soil sampling for petroleum around the tanks and piping after the USTs are pulled out of the ground,²⁰⁴ a process that frequently uncovers gasoline contamination and can trigger a cleanup. In certain jurisdictions, such as in the city of Seattle, UST upgrades can also trigger requirements to install surface water retention and separation systems.²⁰⁵

Mandated UST upgrades thus force a reckoning upon gas stations—either spend the money to upgrade to modern USTs and clean up existing contamination or exit the business.

B. Requiring Cleanup of Gas Stations With Known Contamination

1. Federal and State Regulation of Contaminated Gas Stations^s

RCRA created a duty for owners and operators of USTs to report and clean up their spills.²⁰⁶ Federal regulations implementing RCRA mandate investigation and cleanup of leaking USTs, and allow EPA (or a state acting pursuant to a delegation from EPA) to recover costs of cleanup from current and prior owners and operators of USTs.²⁰⁷

Under RCRA, states can enact programs governing cleanups of USTs.²⁰⁸ Many state governments have the statutory right to order cleanups of existing contamination or conduct the cleanup themselves and require the landowner and/or polluter to pay for it.²⁰⁹ If the polluter fails to pay, the state agency can in many cases clean up the property and put a lien on the land to recoup the cost of the cleanup.

190. 42 U.S.C. §6991(e).

191. *Id.* §6991b(a) (defining scope of federal regulatory authority over USTs); *id.* §6991c(b)(1) (allowing for approval of state regulatory programs that “are no less stringent” than the corresponding federal law).

192. See U.S. EPA, *State Underground Storage Tank (UST) Programs*, <https://www.epa.gov/ust/state-underground-storage-tank-ust-programs> (last updated Oct. 19, 2020) (describing EPA approval for state programs that are “no less stringent than federal standards,” language that leaves room for states to go beyond the federal baseline).

193. *Id.*

194. 40 C.F.R. pts. 280 & 281 (2015); see also U.S. EPA, *Revising Underground Storage Tank Regulation—Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training: Final Rule*, <https://www.epa.gov/ust/revising-underground-storage-tank-regulation-revisions-existing-requirements-and-new> (last updated Sept. 18, 2019); U.S. EPA, *Secondary Containment for Underground Storage Tank Systems—2005 Energy Policy Act*, <https://www.epa.gov/ust/secondary-containment-underground-storage-tank-systems-2005-energy-policy-act> (last updated May 30, 2017).

195. 40 C.F.R. pts. 280 & 281 (2015).

196. See U.S. EPA, IMPLEMENTATION TIME FRAMES FOR 2015 UNDERGROUND STORAGE TANK REQUIREMENTS (2015), <https://www.epa.gov/sites/production/files/2015-09/documents/implementationbrochure091515.pdf> (outlining deadlines for compliance with various aspects of the 2015 UST regulations, but not including a deadline by which all outdated tanks must be closed or upgraded).

197. AGING TANKS WORKGROUP, *supra* note 129.

198. N.H. CODE ADMIN. R. ENV-OR 408.05(c) (2020), <https://www.des.nh.gov/organization/commissioner/legal/rules/documents/env-or400.pdf>.

199. RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, FACT SHEET: SINGLE-WALL CLOSURE DEADLINE (2017), <http://www.dem.ri.gov/programs/benviron/waste/pdf/ustfs-swcd.pdf>.

200. S.B. 445, 2013/2014 Leg., Reg. Sess. (Cal. 2014).

201. WASH. REV. CODE §70A.355.020 (2020).

202. Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (tit. XV, subtit. B), 42 U.S.C. §§15801-16524; see also 430 ILL. COMP. STAT. ANN. 15/2(1)(b) (2020) (granting the Office of the State Fire Marshal authority to “promulgate rules providing for the . . . revocation of permits” for gas stations that fail to comply with UST rules).

203. See WASH. ADMIN. CODE ch. 173-360A (2020).

204. See, e.g., *id.* §§173-360A-0810, 173-360A-0730.

205. SEATTLE DEPARTMENT OF CONSTRUCTION AND INSPECTIONS, CLARIFICATION SHEET FOR BMP 10 FUELING AT DEDICATED STATIONS (2016), <https://www.seattle.gov/Documents/Departments/SDCI/Codes/Clarification-SheetAttachment2.pdf>.

206. 42 U.S.C. §6991.

207. 40 C.F.R. §§280.50-.66 (2019).

208. 42 U.S.C. §§6991b et seq.; 40 C.F.R. pt. 281 (2019).

209. RCRA does not provide for recovery of cleanup costs by private parties when cleanup has already been performed. *Meghrig v. KFC W., Inc.*, 116 S. Ct. 1251, 1256, 26 ELR 20820 (1996).

States often fail to exercise their regulatory powers, however.²¹⁰ The Wallingford Shell station in Seattle discussed in the introduction has operated for more than 10 years despite the gasoline spill underneath it leaching benzene into the groundwater at 360 times the legal limit.²¹¹ Seventy-four of 109 operating Seattle gas stations have a documented history of contamination of the soil or groundwater.²¹²

Due to underfunding of agencies charged with cleanups, inadequate cleanup and insurance funds, and concern about the impact on small business, states often allow gas stations with significant contamination to continue operating indefinitely. The analysis below reviews the authority of four states to order cleanups.

□ *Washington.* In Washington, the state may investigate and conduct remedial actions of toxic sites, or require potentially liable persons to do so.²¹³ Property owners and persons responsible for site contamination are liable for the costs of cleanup.²¹⁴ The state has lien authority to recover cleanup costs by placing a lien for cleanup costs on the property.²¹⁵

□ *California.* The California Department of Toxic Substances Control administers the Site Remediation Account, which funds investigation, remediation, and maintenance of contaminated sites and sites suspected of contamination with hazardous material.²¹⁶ The state can recover costs incurred pursuant to a remedial action from liable parties.²¹⁷ Responsible parties include current owners/operators and the owner/operator at the time of a release.²¹⁸

Responsible parties are strictly liable for cleanup costs. A liable party who establishes by a preponderance that it is only liable for a portion of the costs shall only be liable to pay that portion.²¹⁹ Costs recoverable from owners of property subject to or affected by the remedial action are secured by a lien on the property.²²⁰ Cleanup actions are prioritized according to factors including current and historical activities, site characteristics, hydrology, evidence of poor management of materials, and complaints.²²¹

□ *Illinois.* The Illinois EPA operates the state's Site Investigation and Remedial Activities Program, which is responsible for investigation into and remediation of sites contaminated by hazardous material other than oil spills.²²²

210. See, e.g., Brenda Flanagan, *Toxic NJ: Cleanup Backlog*, NJ SPOTLIGHT NEWS, Dec. 10, 2015, <https://www.njtvonline.org/news/video/toxic-nj-cleanup-backlog/>.

211. See *supra* the introduction.

212. Metz, *supra* note 15.

213. WASH. REV. CODE §70A.305.030(1)(a)-(b) (2020).

214. *Id.* §70A.305.040(2).

215. *Id.* §70A.305.060.

216. CAL. HEALTH & SAFETY CODE §25337 (2020).

217. *Id.* §25360(a).

218. *Id.* §25323.5(a)(1).

219. *Id.* §25363.

220. *Id.* §25365.6(a).

221. California Water Boards, *Site Cleanup Program (SCP): Resolution 92-49*, https://www.waterboards.ca.gov/water_issues/programs/site_cleanup_program/resolution_92_49.html (last updated June 11, 2018).

222. 415 ILL. COMP. STAT. ANN. 5/58.3(a) (2020).

When seeking recovery, the agency must prove that the person at issue is the proximate cause of the release. If more than one person is the proximate cause, neither is responsible for more than their share of the responsibility.²²³ In addition to cost recovery, liable parties can be subject to civil penalties of up to \$50,000, plus \$10,000 per day of violation.²²⁴

□ *New Jersey.* New Jersey's Spill Compensation and Control Act covers releases of hazardous material into the ground as well as water.²²⁵ When a hazardous substance is discharged, the New Jersey Department of Environmental Protection may clean it up itself, contract with a third party to clean it up, or direct the discharger to clean it up. Any discharger who fails to comply will be liable for three times the cost of cleanup and removal.²²⁶

Liability extends to any person who actually discharged the hazardous substance as well as the owner/operator of a facility, without regard to fault, jointly and severally, for up to \$50 million. That monetary cap is removed and the owner/operator is responsible for the full cost of cleanup if it is shown that the release was the result of gross negligence or willful misconduct.²²⁷ Until paid off, the debt owed by any liable party is secured by a lien on that party's property.²²⁸

2. Policy Option: Strict Exercise of Existing State Cleanup Authority

As previously discussed in Section II.E, owners of gas stations operating on contaminated sites have an incentive to keep their stations operating indefinitely, with the goal of kicking the can down the road until such time as the contamination is carried away by groundwater or otherwise disappears, or until the land values of the property have increased substantially. States can discourage such "zombie" gas stations by using their existing authorities to require that operating gas stations on contaminated sites undergo prompt cleanup or face closure. Cleanups will in many cases trigger upgrades to modern UST standards.

Owners may drag their feet in response to state cleanup orders. In such cases, state regulators may take necessary actions to protect the environment from a release and impose institutional controls on the offender.²²⁹ If cleanups still do not occur, many states have the authority to initiate a cleanup on their own and lien the land for the cost of the cleanup. States may use discretion regarding which stations are ordered to clean up first. For example, states might prioritize locations where there is strong demand for housing or other uses for gas station land, liability is clear, a third-party deep pocket is responsible, and communities are already adequately served by other gas stations.

225. See, e.g., *Morristown Assocs. v. Grant Oil Co.*, 220 N.J. 360, 45 ELR 20025 (2015).

226. N.J. STAT. §58:10-23.11f(a)(1) (2020).

227. *Id.* §58:10-23.11g(b); *id.* §58:10-23.11g(c)(1).

228. *Id.* §58:10-23.11g(c)(2).

229. See, e.g., WASH. REV. CODE §70A.305.030(1)(f)-(g) (2020).

States should seek, where possible, contribution from the oil companies whose product is contaminating the ground.²³⁰ Oil majors frequently maintain long-term fuel supply contracts with convenience store operators, and provide them with marketing support and signage to promote the fuel brand.²³¹ Under an “arranger liability” theory, for example, a state may be able to hold an oil refiner responsible when the company sells gasoline to a petroleum retailer pursuant to an exclusive supply agreement.²³²

3. Impact of Mandated Cleanups

Mandated cleanups will force contaminated stations to reckon with their contamination and upgrade to modern USTs or exit the gas station business. In dense urban environments where land values are high, cleanups may cause land to be redeveloped for other uses, particularly housing.

In the cases where third-party deep pockets are responsible for the costs of cleanup,²³³ mandated cleanups will bring resources into the community. Cleanups help unlock the land for redevelopment, which can better serve the public’s needs while boosting property and sales tax revenues.

C. Preventing Air Pollution

1. Federal and State Regulation of Gas Station Air Pollution

Federal and state law do not set limits on overall vapor emissions from gas stations. Some states mandate technology designed to limit vapor emissions from vent pipes and gas pumps. For example, California has laws regarding vapor recovery systems designed to control emissions during fueling.²³⁴

2. Policy Option: Measure, Report, and Strictly Limit Gas Station Air Pollution

There are no existing reliable field measurements of benzene levels in or at the perimeter of gas stations in the United States, but they can be obtained at reasonable cost.²³⁵ Such

measurements have been made in other jurisdictions. Governmental agencies responsible for air quality should first measure the benzene pollution emanating from the gas stations in their jurisdiction.

Once data are collected on a sample of gas stations, air quality management districts and state pollution agencies should set limits on benzene concentrations at gas stations and at the property perimeter consistent with public health needs and technological advancement. Compliance should be monitored by regular measurement of benzene levels in the gas station and at the gas station perimeter, and stations not meeting limits should be prevented from operating until they are able to reliably control their air emissions.

3. Impact of Limiting Gas Station Air Pollution

Measurement and control of overall levels of benzene emissions from gas stations should improve health outcomes of people who live, work, or spend time at or near gas stations. Making the measurements publicly accessible will allow cities, air pollution districts, and others to take informed action to reduce nearby residents’ risk of benzene exposure.

D. Controlling Stormwater Pollution

1. Federal, State, and Local Protection of Stormwater From Gasoline Spills

Gasoline contaminates stormwater when small spills of gasoline that occur during fueling are carried away by rainwater into storm drains. Local governments have increasingly developed expansive stormwater control programs that are separate from and broader than the requirements of the Clean Water Act (CWA).²³⁷ While municipal programs vary widely, many localities have moved to adopt green infrastructure that moves surface runoff into natural areas rather than sewers, and contractual provisions requiring developers to allow inspections, take corrective action, or guarantee the performance of stormwater runoff controls.²³⁸

2. Policy Option: Required Installation of Surface Water Control Systems

In the city of Seattle, stormwater regulations require a catch basin underneath the concrete pad where the gas pumps are and a roof canopy covering the pump area.²³⁹ Gasoline caught by the catch basin is separated from the water flowing into the sewer system and channeled into a dead-end

230. A review of all the different theories upon which oil companies can be made to pay for cleanups is beyond the scope of this Article. For discussion of those theories, see Oshinskie, *supra* note 2.

231. *How Branded Stations Operate*, NACS, Feb. 17, 2020, <https://www.convenience.org/Topics/Fuels/How-Branded-Gasoline-Stations-Work>.

232. Braff, *supra* note 5.

233. As the federal government imposed regulation on USTs, oil majors began divesting themselves of gas stations and moving to a franchise model, in an apparent effort to avoid liability. See Oshinskie, *supra* note 2, at 4. However, liability may still be imposed on major oil companies for leaks at their franchisees under theories of ability to control, products liability, or fraudulent concealment. *Id.*

234. See, e.g., CAL. HEALTH & SAFETY CODE §41954 (2020).

235. Robert M. Healy et al., *Assessment of a Passive Sampling Method and Two On-Line Gas Chromatographs for the Measurement of Benzene, Toluene, Ethylbenzene, and Xylenes in Ambient Air at a Highway Site*, 10 ATMOSPHERIC POLLUTION RSCH. 1123 (2019), available at <https://www.sciencedirect.com/science/article/abs/pii/S1309104218306561>.

236. See, e.g., Sergio M. Correa et al., *The Impact of BTEX Emissions From Gas Stations Into the Atmosphere*, 3 ATMOSPHERIC POLLUTION RSCH. 163 (2012).

237. MELINE G. MACCURDY, STORMWATER PERMITTING AND MANAGEMENT PROGRAMS (2019); 33 U.S.C. §§1251-1387, ELR STAT. FWPCA §§101-607.

238. *Id.*

239. SEATTLE DEPARTMENT OF CONSTRUCTION AND INSPECTIONS, *supra* note 205.

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septic.²⁴⁰ Other cities should follow Seattle and require a full surface water control system to control gasoline runoff at all gas stations installing new tanks, pipes, or pumps.²⁴¹

3. Impact of Protecting Stormwater From Gasoline Spills

Improved stormwater management will reduce the incidence of gasoline contamination of groundwater, streams, rivers, and lakes.

E. Prohibiting Construction of New Gas Stations

1. Federal, State, and Local Authority Over New Gas Station Construction

Broadly speaking, state governments are assumed to have all powers not expressly delegated to the federal government by the U.S. Constitution or preempted by federal statutory or constitutional law.²⁴² State “police power” encompasses a broad range of regulatory authority to promote public health, safety, and welfare.²⁴³ This includes the authority to regulate local commerce, pass health laws, punish offenses, and a number of other actions, as long as they do not run afoul of the federal powers or individual rights enumerated in the Constitution.²⁴⁴

The scope of state and local police power can be limited by the U.S. Congress’ exercise of its Article I, Section 8 authority over interstate commerce, as well as by the “dormant Commerce Clause,” a judicially created doctrine that limits state interference with interstate commerce even where federal law is silent.²⁴⁵ In considering dormant Commerce Clause challenges, a court weighs the impact of state or local regulation on interstate commerce against the legitimate state interest in the regulation, scrutinizing the regulation closely for economic protectionism.²⁴⁶

Forty states provide “home rule” to cities in their state constitutions or by statute (although some states require that cities be of a certain size to be eligible).²⁴⁷ Home rule grants localities authority to regulate their local affairs, except when a conflicting state statute preempts a local

measure.²⁴⁸ Cities without home-rule authority often have broad implied powers.²⁴⁹ However, the specifics of municipal power vary across states, and sometimes even among municipalities within a state.²⁵⁰ States generally do provide local governments with broad control over zoning and land use decisions under state law, subject to overarching state priorities, and to the reasonableness of the regulation.²⁵¹

Because federal law does not regulate where gasoline is sold, it is unlikely to prevent a city or state from exercising its traditional powers over land use to limit the locations where a gas station can be sited.²⁵² City and county zoning powers are broad, and most cities already have regulations strictly limiting the locations where gasoline can be sold.²⁵³ These regulations could be tightened to ban the new construction of gas stations citywide or countywide. Given the traditional strength of local control over land use decisions, city- and county-level zoning restrictions are likely to be upheld if challenged in court.²⁵⁴

248. See Erin Adele Scharff, *Hyper Preemption: A Reordering of the State-Local Relationship?*, 106 GEO. L.J. 1469 (2018).

249. *Id.*

250. For example, Pennsylvania allows municipalities to opt for “home rule” governments. Home rule, established by state law, gives local governments all powers not specifically denied to them by the state constitution, state assembly, or home rule charter. Alternatively, cities that have not opted for home rule can only act in ways specifically authorized by state law. Kate Lao Shaffner, *What Is Home Rule*, WHY?, July 24, 2014, <https://why.org/articles/what-is-home-rule/>. Forty-four states have some form of home-rule provision in state law. *Id.*

251. ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, THE GOVERNANCE OF LAND USE: COUNTRY FACT SHEET UNITED STATES 1-2 (2017), <https://www.oecd.org/regional/regional-policy/land-use-United-States.pdf> (“States have the authority to regulate land use, but all states have, to a large degree, delegated this authority to local governments.”); see also Hannah J. Wiseman, *Disaggregating Preemption in Energy Law*, 40 HARV. ENV’T L. REV. 293, 309-10 (2016) (arguing that courts in “home rule” states may be hesitant to preempt local decisions in areas of traditional municipal control, such as land use).

Some states, including Pennsylvania and New Jersey, place restrictions on local zoning authority if the zoning ordinance in question is shown to be unduly restrictive or exclusionary. *C & M Dev., Inc. v. Bedminster Zoning Hearing Bd.*, 820 A.2d 143, 151 (Pa. 2002); *Southern Burlington County NAACP v. Township of Mount Laurel*, 67 N.J. 151, *appeal dismissed*, 423 U.S. 808 (1975); see also *Beaver Gasoline Co. v. Osborne Borough*, 445 Pa. 571, 577 (1971) (Pennsylvania Supreme Court remanded a case to a zoning hearing board to give a borough the opportunity to provide evidence of a valid public purpose to justify a zoning ordinance that would have excluded gas stations from being located anywhere within a borough). See also *In re Appeal of Elocin, Inc.*, 461 A.2d 771, 772-73 (Pa. 1983) (“the constitutionality of a zoning ordinance which totally excludes a legitimate use is regarded with circumspection and, therefore, such ordinance must bear a more substantial relationship to a stated public purpose than a regulation which merely confines that use to a certain area within the municipality”).

252. For a more detailed discussion of the limits federal law places on the ability of states to regulate motor vehicle fuel, see Matthew N. Metz & Janelle London, *State Vehicle Electrification Mandates and Federal Preemption*, 9 MICH. J. ENV’T & ADMIN. L. 433 (2020). We conclude that while certain types of state regulation of motor fuel would be preempted by federal laws that contemplate gas-powered vehicles, most state action would survive a legal challenge. *Id.* The case that a regulation of gas stations would be upheld against a challenge based on a fuel-economy-focused statute is even stronger than in the area of EVs, because regulation of the gas pump is one step further removed from fuel economy than regulation concerning EVs. See also Ohm, *supra* note 243, at 626.

253. *E.g.*, SEATTLE, WASH., CODE §23.47A.028 (2020), https://library.municode.com/wa/seattle/codes/municipal_code?nodeId=TIT23LAUSCO_SUBTITLE_IIIILASRE_CH23.47ACO_23.47A.028STDRBU.

254. See Ferrey, *supra* note 245.

240. A “septic” is a pit or reservoir serving as a drain or receptacle for liquids. MERRIAM-WEBSTER, *Septic*, <https://www.merriam-webster.com/dictionary/septic> (last visited Nov. 9, 2020).

241. SEATTLE DEPARTMENT OF CONSTRUCTION AND INSPECTIONS, *supra* note 205.

242. See, e.g., *Bond v. United States*, 572 U.S. 844, 854 (2014) (“The States have broad authority to enact legislation for the public good—what we have often called a ‘police power.’”).

243. See Brian W. Ohm, *Some Modern Day Musings on the Police Power*, 47 URB. LAW. 625, 626, 631 (2015).

244. *Id.*

245. See Steven Ferrey, *Sustainable Energy, Environmental Policy, and States’ Rights: Discerning the Energy Future Through the Eye of the Dormant Commerce Clause*, 12 N.Y.U. ENV’T L.J. 507, 578-79 (2004).

246. See *Pike v. Bruce Church*, 397 U.S. 137, 143 (1970).

247. JOHN D. RUSSELL & AARON BOSTROM, AMERICAN CITY COUNTY EXCHANGE, FEDERALISM, DILLON RULE, AND HOME RULE 1-11 (2016), <https://www.alec.org/app/uploads/2016/01/2016-ACCE-White-Paper-Dillon-House-Rule-Final.pdf>.

2. Policy Option: Ban Construction of New Gas Stations

A ban on construction of new gas stations would most likely be enacted via an amendment to a municipal or county zoning code.²⁵⁵ In Baltimore, Maryland, a city council member introduced legislation in July 2020 to ban the construction or establishment of a new gas station in any zoning district within the city.²⁵⁶

The California Air Resources Board recommends that large gas stations (stations dispensing 3.6 million gallons or more per year) not be sited within 300 feet of sensitive land uses such as schools, parks, and residential communities.²⁵⁷ A buffer zone similar to that recommended by California's Air Resources Board could be expanded to 160 meters, the distance at which acutely harmful levels of benzene have been shown to spread.²⁵⁸

3. Impact of Ban on New Gas Stations

Banning the construction of new gas stations is a powerful policy to arrest the growth of retail gasoline outlets in the implementing jurisdiction. It also provides an effective backstop preventing gas stations shuttered because of environmental concerns from reopening in another location.

The larger the jurisdiction that implements a ban, the less likely drivers will simply travel to neighboring jurisdictions to purchase gasoline. If a city implements a ban, neighboring cities allowing gas stations might see a surge in new permitting applications. If a county implements one, gas stations would be impeded from moving from one city within a county to another. A state ban would prevent all new gas station construction within the state.

A ban on the construction of new gas stations will help jurisdictions contain the spread of the environmental impacts associated with gas station operation. It will prevent the contamination of air, soil, and water in a new location, and avert impacts to the uses and values of neighboring properties.

A ban will prevent new gas stations from increasing the number of outlets advertising gasoline for sale, will tend to make purchasing of gasoline less convenient, and will impede the expansion of "gasoline culture" to new areas. It will decrease the likelihood of abandonment of existing gas stations, because the ban will lead to fewer stations competing for the gasoline market.

Controversial impacts of a ban on new gas station construction could include the possibility of some persons traveling greater distance to purchase gasoline and less competition between gas stations, which could lead to higher gasoline prices.

255. See, e.g., Juliana Maantay, *Zoning, Equity, and Public Health*, 91 AM. J. PUB. HEALTH 1033 (2001), available at <https://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.91.7.1033>.

256. Baltimore, Md., Ordinance 20-0561 (introduced July 6, 2020).

257. CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY, CALIFORNIA AIR RESOURCES BOARD, AIR QUALITY AND LAND USE HANDBOOK: A COMMUNITY HEALTH PERSPECTIVE (2005), <https://ww3.arb.ca.gov/ch/handbook.pdf>.

258. See Shearston & Hilpert, *supra* note 23.

F. Phasing Out of Existing Gas Stations

1. State and Local Authority to Phase Out Existing Gas Stations

The authority of state and local jurisdictions to phase out existing gas stations rests on the same police powers that allow the banning of new gas stations. However, with existing gas stations, jurisdictions need to be careful to avoid "regulatory takings" that could trigger requirements to pay compensation, unless the jurisdiction has the budget allocation to pay such compensation.

Constitutional protection of existing uses under the Takings Clause²⁵⁹ is often assumed, but is not mandated under existing law.²⁶⁰ In a takings analysis of an existing use, courts seek to balance the "reliance interests" (essentially, expectation that the regulatory environment will stay the same) of an owner or investor with the need for regulators to have flexibility in adapting to changed circumstances.²⁶¹

Nuisance law typically permits elimination of existing land uses for the purpose of preventing harm without the requirement of payment of compensation under the Takings Clause.²⁶² Gas stations' contribution to air, water, and soil pollution makes them strong candidates for application of nuisance doctrine, particularly if it could be demonstrated that air pollution from a gas station is above NIOSH safe thresholds.

A jurisdiction could also avoid payment of compensation by giving gas stations a reasonable period of time to exit the business. This concept, known as amortization, occurs when a government allows a nonconforming existing use to continue for a defined period of time.²⁶³ Under this doctrine, a city could order gas stations to sunset their operations within 10 years or some other reasonable period.²⁶⁴

A city may also consider using eminent domain authority to acquire gas stations at a reasonable cost, particularly those that are near sensitive locations such as schools, universities, or housing. The appraisal of a

259. The Takings Clause of the Fifth Amendment provides, in pertinent part, "nor shall private property be taken for public use, without just compensation."

260. See generally Christopher Serkin, *Existing Uses and the Limits of Land Use Regulation*, 84 N.Y.U. L. Rev. 1222 (2009) (arguing that although many people presume that preexisting uses are constitutionally protected in the face of zoning changes, the actual status of such protections is unclear and not based on sound policy or constitutional reasoning).

261. See Kenneth A. Stahl, *Reliance in Land Use Law*, 2013 BYU L. Rev. 949, 958-59 (2013).

262. See, e.g., *Hadacheck v. Sebastian*, 239 U.S. 394 (1915) (upholding statute eliminating existing brickyard from residential neighborhood).

263. See Serkin, *supra* note 260. Pennsylvania does not allow amortization of an ongoing nonconforming use unless the use is a nuisance. *Pennsylvania N.W. Distribs. v. Zoning Hearing Bd.*, 526 Pa. 186, 195, 584 A.2d 1372 (Pa. 1991). A federal district court in Pennsylvania held that a leaking gas station could constitute a public nuisance. *Graham Oil Co. v. BP Oil Co.*, 885 F. Supp. 716, 723, 26 ELR 20432 (W.D. Pa. 1994).

264. In *City of Garland v. Valley Oil Co.*, 482 S.W.2d 342, 346 (Tex. Civ. App. 1972), a court ruled that a one-year amortization period for a nonconforming gas station was lawful. See also *Standard Oil Co. v. City of Tallahassee*, 185 F.2d 410, 413 (5th Cir. 1950) (upholding discontinuance of a gas station use by a zoning ordinance enacted after the construction of the gas station).

property for eminent domain purposes should take into account the cost of cleanup, legal costs, financing effects, future liability, stigma, and other financial impacts of property contamination.

G. Reducing or Eliminating Insurance Subsidies for Gas Stations

1. Federal and State Laws Pertaining to UST Insurance

Federal regulations require owners and operators of UST systems to have insurance of a minimum of \$1 million per occurrence for corrective action and third-party claims.²⁶⁵ Thirty-six states help their gas stations meet federal insurance requirements by offering UST insurance to gas station owners and operators through state financial assurance funds.²⁶⁶ The state of Washington reinsures policies written by private insurers.²⁶⁷

State financial assurance funds are typically financed by a fee or tax on gasoline. California, for example, charges \$.02 per gallon, while Idaho charges only \$.002 per gallon.²⁶⁸ Gas station owners insured pursuant to state insurance funds typically pay a flat annual fee per UST, typically less than \$100 per year, regardless of tank age.²⁶⁹

A number of state cleanup programs are facing financial difficulty, making it unclear how effectively they will be able to handle necessary cleanups going forward. For example, Illinois' UST Fund was \$20 million short of being able to cover its obligations as of 2016.²⁷⁰

North Carolina has ensured its fund will not run dry, but at the cost of limiting cleanups. The state's Department of Environment and Natural Resources is now only permitted to order cleanups to the extent the fund can reimburse the cleanup activity within 90 days of completion.²⁷¹

2. Policy Option: Strengthen State Cleanup Funds by Charging Risky Gas Stations More

Because state insurance funds do not price discriminate between low-risk gas stations operating with new USTs and high-risk stations operating with aging USTs, they subsidize aging tank operation, thereby creating "moral hazard." Moral hazard occurs when the provision of insur-

ance implies that individuals do not take into account the consequences of their actions.²⁷² Rather than subsidize risky operations, states should adopt a risk-based pricing mechanism whereby operators pay more to insure single-walled tanks and those over 20 years old.

States should also fully fund their insurance funds. North Carolina's practice of limiting cleanups to available funds is a subsidy to gas stations, because it allows gas stations to avoid paying the full cost of their environmental risk.

3. Impact of Risk-Based Insurance

States that abandoned state insurance funds and required private coverage have caused operators to upgrade their tanks to make them more insurable in the private market.²⁷³ By abandoning unnecessary subsidies for older USTs, states can better protect the public and avoid subsidizing a product with substantial negative environmental and health consequences. A movement to risk-based pricing will likely increase UST replacement and reduce contamination, while forcing "zombie" gas stations to exit the business.

States fully funding their cleanup funds will allow them to better protect the environment and avoid subsidizing pollution-causing activity.

H. Placing Climate Change Warning Labels on Gas Pumps

1. Federal, State, and Local Authority to Require Warning Labels

Cambridge, Massachusetts,²⁷⁴ recently enacted an ordinance that would require gas pumps to display labels warning consumers that gasoline use is a cause of climate change, and Santa Monica, California,²⁷⁵ and Berkeley, California,²⁷⁶ have considered similar ones. Authority to require gas pump warning labels has been challenged on First Amendment grounds.

265. 40 C.F.R. §281.37 (2019).

266. U.S. EPA, *State Financial Assurance Funds*, <https://www.epa.gov/ust/state-financial-assurance-funds> (last updated Sept. 9, 2020).

267. See WASH. REV. CODE §§70.148.005-900 (2020); WASH. ADMIN. CODE §§374-30-010, 374-30-060 (2020).

268. ASSOCIATION OF STATE AND TERRITORIAL SOLID WASTE MANAGEMENT OFFICIALS, *supra* note 140.

269. *Id.*

270. Tim Landis, *State of Illinois Has \$20.3 Million Hole in Fuel-Tank Cleanup Program; U.S. EPA Threatening to Pull Approval*, ST. J.-REG., Apr. 7, 2016, <https://www.sj-r.com/article/20160407/NEWS/160409652>.

271. NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY, FINANCIAL ASSURANCE FOR UNDERGROUND STORAGE TANK CLEANUPS: EXECUTIVE SUMMARY 1 (2005), <https://files.nc.gov/ncdeq/Waste%20Management/DWM/UST/Reports/UST%20Insurance%20White%20Paper%202005.pdf>.

272. See also JOSEPH E. STIGLITZ, RISK, INCENTIVES, AND INSURANCE: THE PURE THEORY OF MORAL HAZARD 5 (Geneva Papers on Risk and Insurance No. 26, 1983), <https://edisciplinas.usp.br/mod/resource/view.php?id=1462897>.

273. Haitao Yin et al., *Risk-Based Pricing and Risk-Reducing Effort: Does the Private Insurance Market Reduce Environmental Accidents?*, 54 J. L. & ECON. 325, 326-27 (2011) (finding that Michigan's decision to eliminate its financial assurance fund in the mid-1990s resulted in more than 3,000 UST releases avoided over an eight-year period, avoiding roughly \$400 million in cleanup costs).

274. Cambridge, Mass., Ordinance No. 1418 (2020), http://cambridgema.iqm2.com/Citizens/Detail_LegiFile.aspx?ID=10472 (last visited Nov. 9, 2020).

275. SANTA MONICA, CALIFORNIA, CITY COUNCIL REPORT, CITY COUNCIL REGULAR MEETING: SEPTEMBER 8, 2015 (2015), <https://publicdocs.smgov.net/WebLink/edoc/2325128/SR-09-08-2015-3J.pdf?dbid=0&repo=SMGOV> (last visited Nov. 9, 2020).

276. *Berkeley May Consider Gas Pump Warnings About Global Warming*, L.A. TIMES, June 17, 2014, <https://www.latimes.com/local/lanow/la-me-ln-berkeley-gas-pump-warnings-20140617-story.html>.

mined that gasoline use causes global warming, according to statistics around the proven harms of gasoline. **April 18, 2023**

The Western States Petroleum Association (WSPA), an oil industry trade group, wrote a letter in 2014 to the city of Berkeley opposing Berkeley's proposed gas pump warning label ordinance, arguing that such an ordinance would constitute compelled speech in violation of the First Amendment.²⁷⁷ The letter states that, pursuant to decisions in *Zauderer v. Office of Disciplinary Counsel*²⁷⁸ and *Video Software Dealers Ass'n v. Schwarzenegger*,²⁷⁹ governments cannot compel product disclosures that do not convey "purely factual and uncontroversial information" and do not prevent deception of consumers. WSPA argued that because the labels would force businesses to advance California's contested policy position that global warming caused by greenhouse gases is a threat to California's economy and environment, and because they do not prevent consumer deception, they impermissibly compel speech.²⁸⁰

In *CTIA v. City of Berkeley*,²⁸¹ the U.S. Court of Appeals for the Ninth Circuit, in upholding a Berkeley city ordinance requiring that cell phone retailers display a poster warning of cell phone radiation, clarified that government can compel speech to further public health and welfare, provided that it can show a substantial government interest in doing so. It further held that a compelled disclosure can satisfy the "purely factual and uncontroversial" criterion if it is factual, even if it relates to a topic that can be controversial.

Applying the *CTIA* logic to the gasoline context, governments could argue that they have a substantial "public health and welfare interest" in avoiding excessive carbon in the atmosphere. Whether a statement such as "The U.S. government has determined that gasoline use causes global warming" would be considered "purely factual and uncontroversial" is less clear. While the statement is factual in that the U.S. government has determined that gasoline use causes global warming,²⁸² it may remain controversial for many.

The *CTIA* court applied a commonsense factual analysis to the cell phone radiation warnings, and held that a warning relating to subjects that are controversial, such as the health impacts from cell phone radiation, are not inherently controversial when the facts within the compelled statement are not themselves controversial.²⁸³ Accordingly, federal, state, and local jurisdictions have grounds on which to claim authority to require warning labels on gas pumps despite a First Amendment challenge.

2. Policy Option: Require Warning Labels on Gas Pumps

Cities or states could require labels on gas pumps stating a provable fact such as "The U.S. government has deter-

3. Impact of Requiring Warning Labels

Impacts of warning labels will vary depending on the content, design, and placement of the warning, and the extent to which purchasers of gasoline pay attention to the warnings or disregard them.

The evidence of the effectiveness of warning labels in other contexts is mixed. Cigarette warning labels have been shown to stimulate thoughts about the risk of smoking, which lead to stronger intentions to quit and attempts to quit.²⁸⁴ Conversely, labels regarding the dangers of driving, operating machinery, and pregnancy while using alcohol have been shown to have little influence on drinking behavior, although they appear to have increased awareness of the message on the labels.²⁸⁵

I. Mandated Gasoline Sales Reporting and Disclosure

1. Federal, State, and Local Authority to Mandate Gasoline Sales Reporting

The federal government collects gasoline sales information, and states collect such information to provide to the federal government. States are required to report total monthly sales of gasoline taxed by the state to the Federal Highway Administration (FHWA),²⁸⁶ and to report fuel sales to the Internal Revenue Service (IRS).²⁸⁷

States can also require reporting of gasoline sales data from retail fuel outlets in connection with vehicle emissions standards. For instance, in Iowa, the Department of Revenue obtains gasoline sales data for the Retailers Fuel Gallons Annual Report to measure progress toward its renewable fuel standards.²⁸⁸ The California Air Resources Board requires retail fueling stations to report "throughput data," or annual gasoline sales volumes, as part of its Air Toxics "Hot Spots" Emission Inventory Criteria and Guidelines Regulation.²⁸⁹ In California, fueling stations must also report annual gasoline

277. SANTA MONICA, CALIFORNIA, *supra* note 275.

278. 471 U.S. 626 (1985).

279. 556 F.3d 950, 965-67 (9th Cir. 2009), *aff'd sub nom.* Brown v. Entertainment Merchs. Ass'n, 564 U.S. 786 (2011).

280. *Id.*

281. 928 F.3d 832, 844 (9th Cir. 2019), *cert. denied*, 140 S. Ct. 658 (2019).

282. *See, e.g.*, U.S. EPA, *Overview of Greenhouse Gases*, <https://www.epa.gov/ghgemissions/overview-greenhouse-gases> (last updated Sept. 8, 2020).

283. *CTIA*, 928 F.3d at 844.

284. Hua-Hie Yong et al., *Mediational Pathways of the Impact of Cigarette Warnings on Quit Attempts*, 33 HEALTH PSYCH. 1410 (2014).

285. Claire Wilkinson & Robin Room, *Warnings on Alcohol Containers and Advertisements: International Experience and Evidence on Effects*, 28 DRUG & ALCOHOL REV. 426 (2009).

286. U.S. Department of Transportation Office of Highway Policy Information, *Motor Fuel Data and the Highway Trust Fund*, <https://www.fhwa.dot.gov/policyinformation/motorfueldata.cfm> (last modified Apr. 2, 2020).

287. INTERNAL REVENUE SERVICE, PUBLICATION No. 510, EXCISE TAXES (2020), <https://www.irs.gov/pub/irs-pdf/p510.pdf>.

288. *See, e.g.*, Iowa Department of Revenue Releases 2018 Retailers Fuel Gallons Annual Report, FUEL IOWA, Apr. 2, 2019, <https://www.fueliowa.com/latest-news.cfm/Article/LATEST-kaigNEWS/Iowa-Department-of-Revenue-Releases-2018-Retailers-Fuel-Gallons-Annual-Report/2019-4-2>.

289. CAL. CODE REGS. tit. 17, §§93400-93410 (2020), <https://ww3.arb.ca.gov/regact/2018/ctr2018/ctrfro.pdf>; California Air Resources Board, "Hot Spots" Inventory Guidelines, <https://ww2.arb.ca.gov/hot-spots-inventory-guidelines> (last visited Nov. 9, 2020).

and diesel sales, identified by specific type of fuel, to the California Energy Commission.²⁹⁰

Local jurisdictions may also have authority to compel gas stations to provide gasoline sales data to them. For example, the California Constitution provides that cities and counties may make and enforce within their limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.²⁹¹ This “police power” is the source of counties’ and cities’ regulatory authority to protect public health, safety, and welfare.²⁹²

It could be argued that understanding gasoline sales volumes from gas stations within city limits is necessary to protect the public health of residents living near gas stations. A “dose-response” connection has been established between gasoline sales volumes and health impacts. For instance, benzene emissions from gas stations are correlated with volumes of gasoline sold.²⁹³

2. Policy Option: Mandate Gasoline Sales Volume Reporting and Disclosure

State governments, and possibly local governments, could mandate that retail fuel outlets report their gasoline sales volume data at least annually and make public these gasoline sales figures at the most detailed level possible—ideally at the gas station level, city level, and zip code level.

3. Impact of Mandating Gasoline Sales Volume Reporting and Disclosure

Local governments armed with gasoline sales volume data will be able to set goals around reducing gasoline sales, and then track and measure progress toward those goals. As such, they will be able to assess the effectiveness of their transportation emissions reduction strategies and refine those strategies based on the gasoline sales data. For instance, Menlo Park, California, has adopted a climate action plan goal of reducing gasoline sales at retail fueling stations within the city by 10% annually from a 2018 baseline.²⁹⁴ With gasoline sales volume data, it will be able to

track progress toward this goal and announce and promote citywide goals on achieving it.

Obtaining gasoline sales volume data at the gas station level will also enable “dose-response” correlations to be made between volumes of gasoline sold and demographics of the surrounding areas such as health, property values, crime rates, smoking, and obesity. Further, it will enable measurement of the impact of steps to reduce gasoline consumption, including ordinances requiring EV charging infrastructure in new or existing construction, EV car-sharing programs, adding bike lanes, and increasing housing density near transit.

IV. Conclusion

The climate crisis requires prompt reappraisal of all major pathways of carbon use and pollution. Gas stations have largely escaped scrutiny, despite their status as America’s biggest carbon spigot and their ubiquitous and highly visible presence in American cities.

Gas station regulation has historically prioritized low gasoline prices over public health, environmental protection, and climate recovery. Gas stations have been permitted to pass the costs of pumping gas onto unwitting neighbors and employees, government, and future generations. While this approach served past goals of expanding use of private, gas-powered passenger vehicles, it does not fit the 21st-century imperatives of rapidly drawing down carbon emissions, decreasing pollution of air, soil, and groundwater, and increasing equity in health outcomes.

To do their part to meet their climate goals, city, state, and federal governments will need to act quickly and decisively to curb carbon emissions. Tighter regulation of gas stations offers a powerful and effective means for reducing the gas stations’ contamination of air, soil, and water. It will also disincentivize gasoline consumption by preventing gas stations from externalizing the costs of their environmental harms by reducing the reach and omnipresence of the gasoline spigot.

290. CAL. CODE REGS. tit. 20, art. 3, §§1361-1371 (2020).

291. CAL. CONST., art. XI, §7.

292. INSTITUTE FOR LOCAL GOVERNMENT, LOCAL AGENCY POWERS AND LIMITATIONS (2012), http://www.ca-ilg.org/sites/main/files/file-attachments/local_agency_powers_and_limitations.pdf.

293. Hilpert et al., *supra* note 40. Gasoline sales volumes at the city level are not generally available. Cities typically estimate carbon emissions by using International Council for Local Environmental Initiatives’ (ICLEI’s) U.S. Community Protocol for Accounting and Reporting of Greenhouse Gas Emissions. ICLEI USA, U.S. COMMUNITY PROTOCOL FOR ACCOUNTING AND REPORTING OF GREENHOUSE GAS EMISSIONS, <https://icleiusa.org/publications/us-community-protocol/>. This method of calculating greenhouse gases from transportation relies on assumptions, estimates, and derivations from regional or state-level data about vehicle miles traveled and the types of vehicle used to travel those miles. Its metrics do not provide cities with a tool that is readily understandable to determine whether their policies and practices are having an impact on greenhouse gas emissions. In contrast, gasoline sales relate directly to greenhouse gas emissions. Every gallon of gasoline burned sends 20 pounds of CO₂ into the atmosphere. FuelEconomy.gov, *supra* note 71. Reducing gasoline sales from a city’s gas stations means reducing CO₂ emissions enabled by that city.

294. See CITY COUNCIL OF MENLO PARK, CALIFORNIA, SPECIAL AND REGULAR MEETING MINUTES FOR JULY 14, 2020 (2020) (adopting Resolution No. 6575, including Agenda Item F1(3)(a): “Set citywide goals for increasing

EVs and decreasing gasoline sales. Announce and promote citywide goals of 1) making all new vehicles be electric by 2025 and 2) reducing gasoline sales each year by 10%, based on the total reported in 2018.”), https://www.menlopark.org/AgendaCenter/ViewFile/Minutes/_07142020-3470.

To: LUTplan@co.washington.or.us
CC: [Pam Treece@co.washington.or.us](mailto:Pam_Treece@co.washington.or.us)
Subject: Gas Station Siting Restrictions for Sensitive Areas

2022-02-23

Hello Washington County Land Use Staff-

We are citizens and organizations that want to see Washington County put land use restrictions on gas stations near sensitive areas. Data from Oregon DEQ, Federal EPA, and other organizations clearly show the economic, health, and environmental risks that gas stations and their underground petroleum tanks pose ([see reports](#)). And land use restrictions are the right tool to reduce and isolate these risks from sensitive public and private lands.

In fact, many other municipalities have made similar land use code updates coast-to-coast from Petaluma, California to Montgomery County, Maryland ([see municipal codes](#)).

Our request: We want Washington County land use codes updated to require that gas stations, currently operating gas stations excluded, be a minimum of 1,500 feet from any public park or playground, school, hospital, church, theater, dwelling unit, public library or building for public assembly; or any wetland, stream, river, flood plain, or environmentally sensitive area. We also want to see this applied to all zones across the County without an option for variance to ensure equitable and objective application of this requirement.

We believe this is an urgent issue: here are just two catastrophic examples from 2021 of how gas station storage can fail and endanger public lands and infrastructure:

- 14,000 gallons were released under Highway 99 in Monmouth Oregon April 2021. This caused damage to public property, ground water, created traffic issues, and incalculable ecological damage. ([Oregon DEQ Blog](#))
- 1,300 gallons of fuel leaked after a driver hit a gas pump in Pasadena California in December 2021. The fuel was pulled into the Alhambra wash where hazmat crews did their best to clean up the spill ([video](#), [news](#)).

We have a shared belief that land use codes should both encourage economic development and “provide for the health, safety and general welfare of the citizens of Washington County” as the Washington County Community Development Code states ([municode](#)). And we believe that the data and reports we have provided supports the case for restricting gas station siting to promote the health, safety and welfare of the County.

Enclosed:

- Frequently Asked Questions
- 2 Letters from Tualatin Riverkeepers
- 1 Letter from 350 PDX Washington County

- 1 Letter from Washington County Treekeepers
- Example gas station setback municipal codes
- Summary of economic, environmental, and leak reports

Thank You,

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Lead Organizer
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Lisa Haworth

Maureen Dannen

Mesut Ali Ergin

Patricia Burros

Robert Elliott

Teresa Hill

Mark Bartee

Hillary Moldovan

Liane Ledbetter

**Board of Commissioners Staff Report
Draft FY 2023-25 Planning Work Program
April 18, 2023**

FAQ

Q: How did you arrive at the 1,500ft setback requirement?

A: We chose 1,500 ft setback because it was the highest municipal restriction we had found in our research short of an outright ban on new gas stations. For example it is the setback in Rock Hill, CT. The minimum consensus amongst municipalities we researched seems to be around 500 ft. You can see a few examples and direct links to example codes on this page:

<https://www.postpump.org/gas-station-land-use-codes>

Q: Is there Washington County Community Participation Organization (CPO) engagement?

A: Yes, presentations were made in Feb. 2022 to both CPO1 and CPO7. There was positive reception at both meetings and many members signed the letter after the meetings.

Q: Are County Commissioners aware of these requests?

A: Yes, a number of public comments have been made on the topic to both the Board of Commissioners and the Planning Commission.

Q: Do you understand that future changes to land use code will not affect accepted land use applications?

A: Yes. Although this campaign is an offshoot of the opposition to Land Use Case L2100244 we understand that any changes to code will not affect the outcome of this case. However, we are motivated to ensure that gas station developments with the potential negative economic, environmental, and health impacts of that development are not considered again in Washington County.



Treekeepers of Washington County
835 SW Touchmark Way
Portland, OR 97225

February 19, 2022

Board of County Commissioners
Washington County
155 N First Avenue
Hillsboro, OR 97124

Re: Adding Gas/Fuel Station Setbacks to Municipal Code

Dear Chair Harrington and Commissioners,

Treekeepers of Washington County is a volunteer organization with a mission to protect and advocate for mature trees. Those trees depend on the health of their surrounding watershed. We write today to entreat the Board of Commissioners to strengthen protections for wetlands and other sensitive areas by requiring fuel station setbacks from sensitive areas. The upland area surrounding the wetland is essential to its survival of functionality. A setback of 300-500'—even a minimum of 100'—would help prevent these areas from the dangers related to underground storage tanks.

A well-designed buffer can protect and maintain wetland functions by removing sediments and associated pollutants from surface water runoff, removing, detaining, or detoxifying nutrients and contaminants from upland sources, influencing the temperature and microclimate of a water body, and providing organic matter to the wetland. As our governing body, you have the opportunity to conserve these resource lands from activities and development that might impair their benefits to our community and the environment.

At our February meeting, our Treekeepers of Washington County core team members voted to approve the following request:

“We respectfully request the Washington County Community Development Code be updated to require all new gas stations or expansion of existing stations be located a minimum of 1,500 feet from any public park or playground, school, hospital, church, theater, dwelling unit, public library, or building for public assembly; or any wetland, stream, river, flood plain, or environmentally sensitive area. This code change should be applied to all zones

across the county without an option for variance to ensure equitable and objective application of this requirement.”

Thank you for considering this code change.

Sincerely,
Susan Mates
Outreach Projects and Communication
Treekeepers of Washington County
treescountwc@gmail.com

https://www.epa.gov/sites/default/files/2014-03/documents/final_40.pdf



TUALATIN RIVERKEEPERS.

11675 SW Hazelbrook Road, Tualatin, Oregon 97062

503-218-2580 • tualatinriverkeepers.org

info@tualatinriverkeepers.org

November 19, 2021

Board of County Commissioners
Washington County
155 N. First Ave
Hillsboro, OR 97124

Submitted via email

Re: Consider Adding Gas/Fuel Station Setbacks to Municipal Code

Chair Harrington and Commissioners:

Tualatin Riverkeepers (TRK) is a community-based organization that protects and restores the Tualatin River watershed. We build watershed stewardship through engagement, advocacy, restoration, access, and education. We write today to urge the Board of Commissioners to take steps to better protect wetlands and other sensitive areas by requiring fuel station setbacks from sensitive lands of at least 100 feet, ideally 500 feet. A setback of at least 100 feet will help ensure wetlands do not suffer costly damage from underground storage tank leaks in addition to somewhat mitigating their other potential impacts on wetlands and sensitive species including stormwater, light pollution, noise pollution, etc.¹

Adding this type of protection into the municipal code is a sensible solution that many community members will likely support and appreciate. As you know, many community members are very concerned when a fuel station is proposed to be located directly next to a wetland or sensitive area. Those concerns are with good reason. If an underground tank were to leak the damage would impact the wetlands and species reliant on those wetlands and be very costly to clean up. Small precautions like a setback of at least 100 feet would help address these valid concerns which have been voiced in several land use application processes including but not limited to the recently proposed Chevron at 185th & West Union.

¹ Note, a 500-foot setback would better mitigate noise and light impacts on sensitive species than a 100-foot setback.

The use of setbacks for fuel stations is not a new idea, communities across the United States² have taken such measures to protect sensitive lands. Those communities' codes could be used as a blueprint to help alleviate stress on Land Use and Transportation staff's valuable time. We encourage the Board of Commissioners to be responsive to the community and adopt a setback for fuel stations of at least 100 feet from wetland and sensitive areas.

Thank you for your time and attention.

Sincerely,

A handwritten signature in black ink, appearing to read 'AS' followed by a long horizontal stroke.

Ashley Short
Tualatin Riverkeeper & In-House Counsel
Tualatin Riverkeepers
Ashley@tualatinriverkeepers.org

² For example, Montgomery County, Maryland requires large fuel stations have a 500 foot setback from residential, park, wetland and environmentally sensitive areas. (Section 3.5.13.C.2.c : https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md_zone2014/0-0-0-2044)



11675 SW Hazelbrook Road | Tualatin, OR | 97062 | (503) 218 2580 | tualatinriverkeepers.org | info@tualatinriverkeepers.org

February 15, 2022

Board of County Commissioners
Washington County
155 N. First Ave
Hillsboro, OR 97124

Submitted via email

Re: Consider Adding Gas/Fuel Station Setbacks to Municipal Code

Chair Harrington and Commissioners:

Tualatin Riverkeepers (TRK) is a community-based organization that protects and restores the Tualatin River watershed. We build watershed stewardship through engagement, advocacy, restoration, access, and education. We write today to amend our earlier letter dated Nov. 19, 2021. In that November letter we urged the Board of Commissioners to take steps to better protect wetlands and other sensitive areas by requiring fuel station setbacks from sensitive lands of at least 100 feet, ideally 500 feet. After further research by partners and community members, TRK would like to amend that ask and instead request a 1,500-foot setback for wetlands and other sensitive lands from fuel stations as this is the largest buffer used by other communities across the country. We feel like this larger buffer will better accomplish the goals outlined in our Nov. 19 letter.

Thank you for your time and attention.

Sincerely,

A handwritten signature in black ink, appearing to be "Ashley Short", written in a cursive style.

Ashley Short
Tualatin Riverkeeper & In-House Counsel
Tualatin Riverkeepers
Ashley@tualatinriverkeepers.org



February 17, 2022

Washington County Board of Commissioners
155 N First Avenue
Hillsboro, OR 97124

Dear Chair Harrington and Commissioners,

At our monthly meeting on February 8, 2022, the 350.org Washington County grassroots climate activist members voted to approve the following request:

“We respectfully request the Washington County Community Development Code be updated to require all new gas stations or expansion of existing stations be located a minimum of 1,500 feet from any public park or playground, school, hospital, church, theater, dwelling unit, public library, or building for public assembly; or any wetland, stream, river, flood plain, or environmentally sensitive area. This code change should be applied to all zones across the county without an option for variance to ensure equitable and objective application of this requirement.”

Thank you for your thoughtful consideration of our request for this code change.

Sincerely,

Debby Garman

350WashCo Team Lead

CC via email:

andy_back@co.washington.or.us

stephen_roberts@co.washington.or.us

Post Pump

Gas/Fuel/Service Station Land Use & Zoning for an EV World

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[Land Use & Zoning](#)

[Example Municipal Codes](#)

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[Home](#) / Gas Station Land Use Codes

Gas Station Land Use Codes

This is a collection of gas/fuel/service station land use codes from different towns and counties across the United States. In their various forms they protect people, public property, and watersheds from the risks of gas stations.

If you have additions or correction please email brandon@postpump.org

Petaluma, California

Summary: No new construction of fuel stations anywhere in the city.

[Source](#) - note all zones Fuel Stations are marked as "Use Not Allowed"

TABLE 4.4 Allowed Land Uses and Permit Requirements for Commercial, Business Park, and Industrial Zones	P(16)	Permitted Use			
	CUP	Conditional Use Permit Required			
	S	Permit Requirement in Specific Use Regulations			
	A	Accessory Use			
	—	Use Not Allowed			
LAND USE TYPE (1)	Permit Required by Zone				Specific Use Regulations
	C1	C2	BP	I	
Fueling Station/Gas Station	—	—	—	—	

Rocky Hill, Connecticut

Summary: No gasoline or diesel filling station shall be erected less than 1,500 feet from any part of any lot or plot of a public park or playground, school, hospital, church, theater, public library or building for public assembly.

[Source](#)

6.1.2 Separation Distances

1. **General Separation Distances** - No automotive service station or establishment for the sale of new or used automobiles shall be located:
 - a. Within 500 feet of any entrance to a public park or playground, excluding small park areas within the boundaries of a highway, or
 - b. Within 500 feet of the nearest point of any building in which there is established or maintained a school, hospital, church, theater, public library or building for public assembly.

If any of the above-mentioned uses shall locate within 500 feet of any existing automotive service station or establishment for the sale of new or used automobiles, such location shall not result in the automotive use becoming non-conforming.

2. **Fuel Separation Distances** - No gasoline or diesel filling station shall be erected less than 1,500 feet from any part of any lot or plot used for the above stated purposes.

Harper Woods, Michigan

Summary: Gasoline or service stations shall not be operated, existing stations excepted, within five hundred (500) feet from places of public assembly, nor shall any gasoline service station be located, existing stations excepted, within seven hundred fifty (750) feet measured along the same side of the street, to an existing gasoline service station.

[Source](#)

Sec. 12-72. - Location restrictions.

Gasoline or service stations shall not be operated, existing stations excepted, within five hundred (500) feet from places of public assembly, nor shall any gasoline service station be located, existing stations excepted, within seven hundred fifty (750) feet measured along the same side of the street, to an existing gasoline service station.

(Code 1962, § 3-403(i))

Clarkston, GA

Summary: There shall be a minimum distance of five hundred (500) feet measured from the nearest points of lot boundaries between a proposed gasoline service station and any existing gasoline service station or between a proposed gasoline service station and any lot occupied by a church, hospital, school, or other place of public assembly.

[Source](#)

Sec. 9.5-11. - Location.



There shall be a minimum distance of five hundred (500) feet measured from the nearest points of lot boundaries between a proposed gasoline service station and any existing gasoline service station or between a proposed gasoline service station and any lot occupied by a church, hospital, school, or other place of public assembly.

(Ord. No. 131, § 1, 11-4-86)

Montgomery County, Maryland

Summary: Any filling station facility designed to dispense a minimum of 3.6 million gallons per year must be located at least 500 feet from the lot line of any land with a dwelling unit; public or private school; park; playground; day care center; any outdoor use categorized as a Civic and Institutional use or a Recreation and Entertainment use; or any wetland, stream, river, flood plain, or environmentally sensitive area.

> [Montgo...](#) > [Section 3.5.13...](#)



c. Any Filling Station facility designed to dispense a minimum of 3.6 million gallons per year must be located at least 500 feet from the lot line of any land with a dwelling unit; public or private school; park; playground; day care center; any outdoor use categorized as a Civic and Institutional use or a Recreation and Entertainment use; or any wetland, stream, river, flood plain, or environmentally sensitive area.

Borough of Bergenfield, New Jersey

Summary: No gas station, or vehicular repair service shop shall be located within 300 feet of the following uses when located along the same street or the same block: schools, playgrounds, churches, hospitals, libraries, institutions for dependent children, or other similar places of public assembly.

[Source](#)

§ 186-68 **Gasoline stations.**

Gasoline stations are defined, for purposes of this article, as any retail facility dispensing or selling fuel for the operation of motor vehicles.

- A.** Location of exits and entrances. No gas station, or vehicular repair service shop shall be located within 300 feet of the following uses when located along the same street or the same block: schools, playgrounds, churches, hospitals, libraries, institutions for dependent children, or other similar places of public assembly.
-

Post Pump

Gas/Fuel/Service Station Land Use & Zoning for an EV World

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Reports and Research

Do you have a suggestion on data to add? Please email brandon@postpump.org

Frequency of Leaks

Oregon DEQ Annual Leak Report, 2021

Oregon DEQ reported 50 Underground Storage Tank releases between October 1st 2020 and September 30th 2021 in their [annual report](#). For a sense of scale, 50 leaks means 2.8% of the 1,796 regulated Oregon Underground Storage Tank facilities leaked in one year. And many of the leaks in the DEQ database are not detected until the tank is decommissioned. Also, it is worth understanding from the Oregon DEQ annual report that even if the tank itself is working perfectly USTs can leak from their dispensers, piping, or have spills caused from delivery hardware.

Source			Causes											Board of Commissioners Staff Report		
			Spill		Overfill		Phys/Mech Damage		Corrosion		Install Problem		Other		Unknown	
#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	
Tank	20	40%	0	0%	1	2%	1	2%	8	16%	0	0%	0	0%	10	20%
Piping	6	12%	0	0%	0	0%	1	2%	2	4%	0	0%	0	0%	4	8%
Dispenser	4	8%	1	2%	1	2%	1	2%	0	0%	0	0%	0	0%	1	2%
STP	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Delivery Problem	1	2%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	1	2%
Other	16	32%	0	0%	0	0%	0	0%	0	0%	0	0%	4	8%	12	24%
Unknown	3	6%	0	0%	0	0%	0	0%	0	0%	0	0%	1	2%	2	4%
Totals	50	100%	1	2%	2	4%	3	6%	10	20%	0	0%	5	10%	30	50%

= number, % = percent of total number

Summary of State Programs and Data on Abandoned Underground Storage Tanks and Facilities, 2017

This report has a lot of data from a bunch of different states. Unfortunately, due to the use of averages, no information on cleanup requirements, and the wide range of dates covered no useful conclusions can really be drawn from the report. It is included for completeness primarily and as a reference for to the variety of State laws that apply to USTs.

- [Summary of State Programs and Data on Abandoned Underground Storage Tanks and Facilities](#)

Economic

The total cost of gas station cleanup can be difficult to find. If the government has to step in the number of involved agencies and funding sources often complicate matters. However, we are trying our best to find examples.

Senz Automotive Service, Yamhill Oregon

In November 2021 Brandon Philips made a public records request for Senz Automotive Service in Yamhill, Oregon. This site has a long and complex cleanup history with thousands of gallons of petroleum products lost which contaminated on-site soil, groundwater, and neighboring properties. So, far Oregon DEQ's cleanup costs have been **\$514,466.53**. However, the cleanup is not complete and the damage to adjacent property values due to contamination is difficult to calculate.

- [Oregon DEQ Leaking Underground Storage Tank](#)
- [Spreadsheet of Oregon DEQ's costs](#)

Drinking Water and Environmental Risks

Preventing Groundwater Contamination at Gas Stations – What

This 2020 report outlines how municipalities can and should use land use zoning restrictions to protect public health and the environment from leaks from gas stations. The report begins:

Generations of automobile drivers have become accustomed to finding gas stations conveniently located along busy roads and highways, at intersections, and in village centers, to support our automobile-dependent lifestyles. As the environmental risks associated with gas stations – particularly the risk of gasoline leaked from underground storage tank (UST) systems – have become increasingly clear, vast improvements have been made in the design, construction and operation of UST systems. Unfortunately, federal and state regulators and UST system designers and installers have not succeeded in engineering all of the groundwater contamination risk out of these systems. A study by the U.S. Geological Survey, which randomly sampled 225 water supply wells in Rockingham County in 2003, detected the gasoline additive MtBE in 40% of public wells, and found a correlation between MtBE concentration and proximity to USTs.

- [Read the New Hampshire Department of Environmental Services report](#)
-

AIR, LAND & WATER

Stories of environmental protection in Oregon

Updates: Gasoline Leak in Monmouth

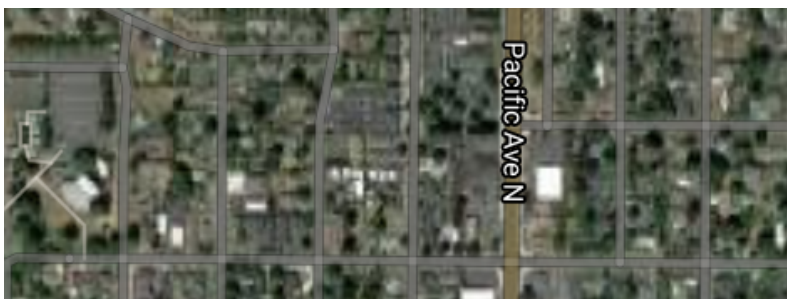
 [Oregon Department of Environmental Quality](#)  [April 7, 2021](#)



Cleanup of a gasoline leak at Highway 99 and Main Street in Monmouth in April 2021. [Department of Environmental Quality]

This is the most current information about DEQ’s response efforts in Monmouth, where gasoline leaked into the sewer system and caused gasoline vapors to enter several buildings on Main Street.

[See current update.](#)

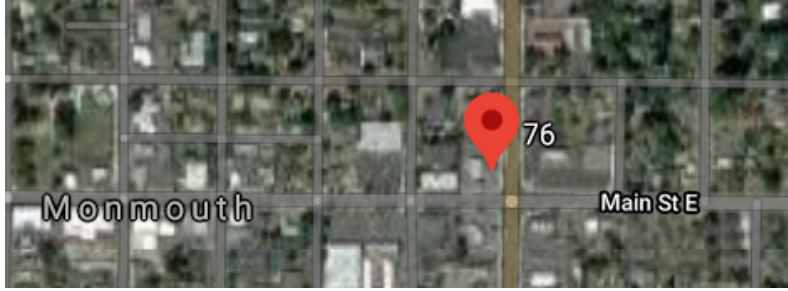


QUICK FACTS

Date of incident: April 2, 2021

Location: Monmouth, Main Street and Highway 99

Product: Gasoline, estimated 14,000 gallons



Cause: Leaking underground gas storage tank
Board of Commissioners Staff Report
Strategic 2023-25 Planning Work Program
April 18, 2023
Responding entities: Oregon DEQ,
City of Monmouth, Polk County Fire
District No. 1, Northwest Dealerco
Holdings LLC

Status Updates

April 23, 4 p.m.

Road repair is complete and Main Street is fully open at Highway 99 in Monmouth. Main Street reopened earlier this week, but a portion of the sidewalk remains closed.

Air monitoring in nearby buildings indicates fuel vapor levels are dropping. Sampling at the city's wastewater treatment plant also indicate fuel levels in the sewer system are dropping. Cleanup crews have dug a trench to intercept gasoline moving underground at the gas station where the leak occurred. Crews have recovered approximately 3,500 gallons of gasoline.

Additional soil removal will be conducted at the station, along with long-term monitoring of air, soil and groundwater.

This will likely be the final update for the emergency response portion of the cleanup.



A repaved portion of Main Street in Monmouth on Monday, April 19, 2021. Cleanup crews dug into the road to remove gasoline that leaked from an underground tank system at a gas station at Main Street and Highway 99. [Department of Environmental Quality]

April 16, 5 p.m.

Cleanup and road work at Main Street and Highway 99 in Monmouth will continue this weekend. Crews aim to reopen Main Street as soon as possible.

Find the latest road conditions at [TripCheck.com](https://www.tripcheck.com).

April 14, 4:30 p.m.

Cleanup crews at the gas station leak at Main Street and Highway 99 in Monmouth will move to a 24-hour work schedule starting Thursday in an effort to reopen Main Street as soon as possible. NWFF Environmental will be notifying nearby businesses and residents of the schedule change.

The afterhours contact number for NWFF is [800-942-4614](tel:800-942-4614).

For the latest on road conditions go to [TripCheck.com](https://www.tripcheck.com).



Cleanup on April 14, 2021, of a gasoline leak at the intersection of Main Street and Highway 99 in Monmouth. [Oregon Department of Environmental Quality]



April 18, 2023



Cleanup on April 14, 2021, of a gasoline leak at the intersection of Main Street and Highway 99 in Monmouth. [Oregon Department of Environmental Quality]

April 13, 4:30 p.m.

Following a review of records, DEQ estimates that up to 14,000 gallons of gasoline may have been released into soil beneath the gas station at Highway 99 and Main Street in Monmouth. The full amount of the release is still being calculated. Cleanup crews have recovered 2,700 gallons of fuel so far and progress continues.

DEQ is overseeing the cleanup with the goals of protecting public health and the environment. Cleanup crews have stopped the release of fuel into the municipal sewer system, and air monitoring field meters have shown no new reports of gas odors in nearby buildings. Monmouth's drinking water system does not appear to be affected and DEQ is collecting water samples to ensure water is safe.

A line failure at the top of a 12,000-gallon underground gasoline storage tank appears to have caused the release of fuel. The tank was periodically filled without knowledge of the release. The majority of the release occurred from late March to early April.

The cleanup includes heavy equipment and digging, which has prompted the closure of a portion of Main Street near the intersection. Crews are mitigating traffic impacts as much as possible, but

the closure will continue the remainder of this week and into next week. The detour takes travelers on Jackson Street to Catron Street or Clay Street. For more information, please go to [TripCheck.com](https://www.tripcheck.com) for the latest road conditions.

April 9, 4:45 p.m.

The gasoline leak cleanup is ongoing and involves digging to find where fuel has spread into groundwater.

We are currently trying to eliminate any impact to the City of Monmouth's sewer system. DEQ and the cleanup contractor, NWFF Environmental, are also monitoring air near the spill for gasoline vapors, both outside and inside nearby buildings. Air monitoring indicates that gasoline vapor is decreasing in the sewer.

Cleanup for a spill such as this involves heavy equipment and lane or road closures. We're asking people to please slow down and be aware of congestion at Highway 99 and Main Street in Monmouth. Go to [TripCheck.com](https://www.tripcheck.com) for the latest road conditions.





Removing gasoline that spilled from an underground storage tank at Highway 99 and Main Street in Monmouth in April 2021.
[Department of Environmental Quality]





Fuel mixed with groundwater at a gasoline leak at Highway 99 and Main Street in Monmouth in April 2021. [Department of Environmental Quality]

April 8, 5 p.m.

The cleanup contractor hired by the owner of the 76 station in Monmouth, NWFF, has a team of eight people monitoring the air at the site and along the sewer line.

So far, crews have removed 800 gallons of gasoline from groundwater. Cleanup activities will extend into Main Street and may affect traffic through the intersection with Highway 99.

The Oregon Department of Transportation advises travelers to avoid the area or use alternative routes. Go to [TripCheck.com](https://www.tripcheck.com) for the latest road conditions.

April 7, 3:30 p.m.

The Oregon Department of Environmental Quality, City of Monmouth and Polk County Fire District No. 1 are responding to a gasoline leak that entered the sewer system and caused gasoline odors in several buildings near the corner of Main Street and Highway 99 in Monmouth.

The agencies are monitoring air quality to ensure public safety. The city is cleaning gas from the sewer system. Sewer service for residents is not affected.

The leak has stopped, and Oregon DEQ is overseeing cleanup at the 76 gas station. The current estimated release is 2,500 gallons.

If you are in a building and smell gas, evacuate and call 911.

Information on this site is considered to be accurate at the time of posting but is subject to change as new information becomes available.

Media contacts

Dylan Darling, [541-600-6119](tel:541-600-6119), dylan.darling@deq.state.or.us

Laura Gleim, [503-577-3697](tel:503-577-3697), laura.gleim@deq.state.or.us

 [Oregon Department of Environmental Quality](#)  [April 7, 2021](#)  [Spill response](#)
 [76](#), [deq](#), [emergency reponse](#), [gas](#), [gasoline](#), [leak](#), [monmouth](#), [odors](#), [oregon](#), [vapors](#)

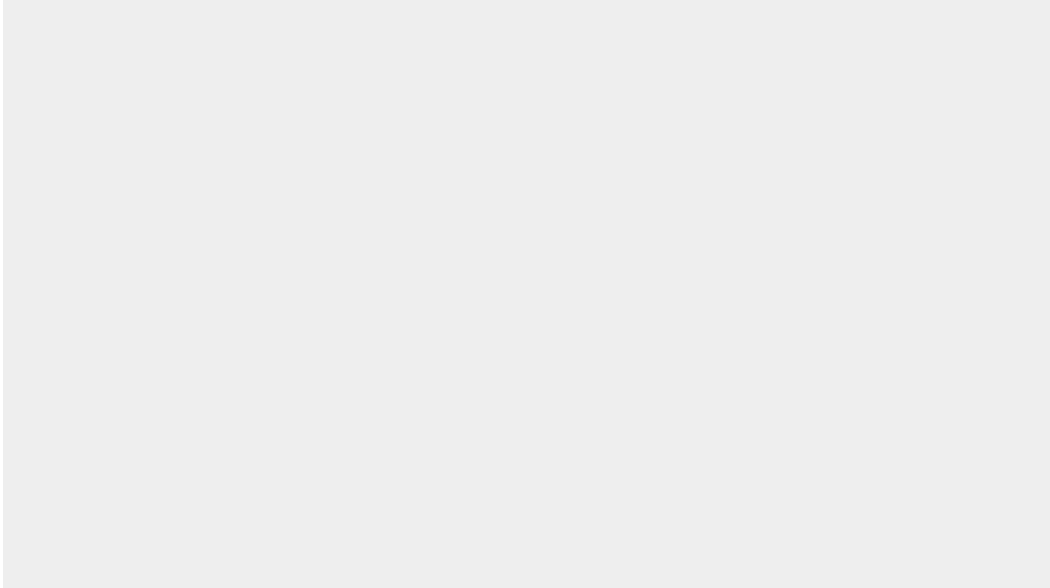
Published by Oregon Department of Environmental Quality

DEQ's mission is to be a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water. [View more posts](#)

Pasadena Crash Leaks 1,300 Gallons Of Fuel Into Alhambra Wash

By CBSLA Staff December 20, 2021 at 9:30 am

Filed Under: 76 Station, Alhambra Wash, Gasoline Spill, Pasadena, San Marino, San Marino Fire Department, San Marino Police Department



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Pit Bull Puppy Returned To Family Days After Being Stolen

PASADENA (CBSLA) — A crash in Pasadena Sunday afternoon caused a spill that sent hundreds of gallons of fuel draining into the Alhambra Wash.



Dec. 19, 2021. (city of Alhambra/Twitter)

At around 3:15 p.m., a vehicle struck a fuel pump at the Union 76 Gas Station on Arroyo Parkway and Glenarm Street, according to the city of Pasadena.

A witness told CBSLA that a female driver behind the wheel hit the pump in such a way that it disabled the mechanism that would normally prevent gasoline from spilling as it did. The emergency shutoff malfunctioned, and authorities were instead forced to cut power to the gas station.

The city said the collision caused about 1,300 gallons of fuel to spill and then drain into the Alhambra Wash.

Hazmat crews with the city of Pasadena and Los Angeles County responded, as a portion of the intersection was closed. The spill was partly contained Sunday night. Cleanup efforts were expected to continue well into Monday afternoon, the city of Alhambra said.

During the cleanup process, residents in the surrounding area were advised to stay indoors and close windows. Anyone who reports feeling sick from the fumes should call 911.



(city of Alhambra)



'Family Reunion' Actress Jaida Benjamin Found Safe In Studio City



Report: New Health Order Would Allow Vaccinated People To Take Masks Off Indoors

Fisherman Stranded Out At Sea Swims Five Hours To Safety

From: [Theresa Cherniak](#)
To: [Joel Cvetko](#)
Subject: FW: Constituent Inquiry - All Board members
Date: Tuesday, June 14, 2022 2:27:24 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[PlanAmendmentsAnnexations_web_2_3.jpg](#)

Joel can you save this into the folder for the next Work program? Thanks.

Theresa Cherniak, AICP, MLA | Principal Planner
(503) 846-3961 direct | theresa_cherniak@co.washington.or.us

In an effort to mitigate the spread of COVID-19, I am working from home in accordance with County policy.

Please continue to contact me via email or call me at 971-282-1676.

From: Melissa De Lyser <Melissa_De_Lyser@co.washington.or.us>
Sent: Wednesday, June 8, 2022 5:22 PM
To: jmckee2012@gmail.com
Cc: Stephen Roberts <Stephen_Roberts@co.washington.or.us>; Board of County Commissioners <BCC@co.washington.or.us>; Theresa Cherniak <Theresa_Cherniak@co.washington.or.us>
Subject: RE: Constituent Inquiry - All Board members

Hello Jennifer:

Thank you for your email! I am the Communications Manager for Washington County Department of Land Use & Transportation, and I have been asked to respond to your email on behalf of the Board of Commissioners.

As you know, our Community Development Code (CDC) does not include setback requirements as outlined in your email below. Changing setbacks would require a change to the CDC. CDC changes are implemented through the land use ordinance process, which begins when LUT's Long Range Planning section prepares its annual draft work program.

The draft outlines potential land use ordinances and other Long Range Planning activities for the year. It is reviewed by the Board before it is released to the public and interested parties for review and comment. Using these comments, staff finalizes the work program and sends it back to the Board for adoption.

The request to change setbacks in the CDC would need to be included in the 2022-23 Work Program. For more information, please review the [Annual Long Range Planning Work Program](#) and the attached infographic "How an Idea or Issue Becomes a Land Use Ordinance."

I have shared your email with our Community Planning staff who is responsible for the annual work

program.

Thank you for your email.

Melissa De Lyser

Melissa De Lyser | Public Affairs and Communications Manager

Pronouns: She/Her/Hers

503-846-4963

melissa_de_lyser@co.washington.or.us | www.co.washington.or.us/lut | wc-roads.com

Monday, Tuesday, Wednesday: In Office | Thursday, Friday: Remote



From: noreply@co.washington.or.us <noreply@co.washington.or.us>

Sent: Wednesday, June 8, 2022 1:55 PM

To: Board of County Commissioners <BCC@co.washington.or.us>

Subject: Constituent Inquiry - All Board members

Email for: All Board members

Name:

Jennifer McKee

Email address:

jmckee2012@gmail.com

Is this inquiry in reference to a property within Washington County?

No

Property address:

Property ZIP code:

Message:

Hello Commissioner-

In the Bethany area of Washington County there is a proposed gas station that will store 52,000 gallons of petroleum 80 ft from the THPRD Rock Creek trail and Bethany Lake. A large spill or leak would be a financial and environmental disaster. Large scale issues aside, the cumulative run-off

from small spills of gas and oil on the pavement when it rains, air quality concerns with idling cars and the 24-hour light pollution will be detrimental to wildlife and human visitors in the wetland directly adjacent to the property. We have already infringed on open spaces and the wildlife who depend upon them all through the area, and now we are planning to put an unnecessary gas station right in their front yard?

Do you support Washington County adding a setback requirement to protect public lands from damage from gas station leaks? Many other counties and cities across the country have done this already— Washington County should catchup. Our county deserves this protection of our quality of life.

I want to see Washington County pass a land use update to ban the development of gas stations within 1,500 feet of a public park, playground or school; or any wetland, stream, river, flood plain, or environmentally sensitive area.

See <https://www.postpump.org/gas-station-land-use-codes> for examples of setback requirements from other counties. See <https://nabgas.com> for information on the Bethany gas station.

There are other locations North of Highway 26 that could accommodate a gas station that are not next to a wetland/lake. I presently reside about a half mile East of the proposed gas station site, near West Union and NW 174th and have never felt the need to have a gas station closer to my home - I plan ahead and purchase gas when I am out running other errands or at a station near Highway 26 (there are at least two at Tanasbourne, one on Cornell and one at Murray Blvd. The associated convenience store is also redundant, as there is an Albertsons grocery store right across the street which is readily accessible to traffic from any direction. Residents further North into Bethany may feel that this would provide gas closer to them, however a station up near the QFC center or one that is thoughtfully planned into all of the new construction going in near Springville and Germantown certainly would make more sense from a convenience standpoint.

Thank You,
Dr. Jennifer McKee

Attachment provided: No

The following response was emailed to constituent following their inquiry:

Thank you for your email. If your inquiry requires a response, someone will be in contact with you soon. If your inquiry is a comment or information to be shared with the Board and staff, please be assured that it will be.

Again, thank you for taking the time to write us.

ADVISORY: Information contained in this email is "Level 3 – Restricted" per the Oregon Statewide Policy Information Asset Classification 107-004-050. Users are requested to maintain the privacy and security of this information. Forwarding or copying to unsecured recipients is strictly prohibited.

From: Melissa De Lyser
Sent: Sunday, 31 July, 2022 8:25 PM
To: 'knight4252@comcast.net' <knight4252@comcast.net>
Cc: Stephen Roberts <Stephen_Roberts@co.washington.or.us>; Board of County Commissioners <BCC@co.washington.or.us>; Daniel Nava <Daniel_Nava@co.washington.or.us>
Subject: RE: Constituent Inquiry - Kathryn Harrington (Chair)

Hello Nancy:

Thank you for your email! I am the Communications Manager for Washington County Department of Land Use & Transportation, and I have been asked to respond on behalf of Chair Harrington.

As you know, our Community Development Code (CDC) does not include setback requirements as outlined in your email. Changing setbacks would require a change to the CDC. CDC changes are implemented through the land use ordinance process, which begins when LUT's Long Range Planning section prepares its annual draft work program. The draft outlines potential land use ordinances and other Long Range Planning activities for the year. It is reviewed by the Board before it is released to the public and interested parties for review and comment. Using these comments, staff finalizes the work program and sends it back to the Board for adoption.

The request to change setbacks in the CDC would need to be included in the 2022-23 Work Program. For more information, please review the [Annual Long Range Planning Work Program](#) and the attached infographic "How an Idea or Issue Becomes a Land Use Ordinance." I have shared your email with our Community Planning staff who is responsible for the annual work program. With your permission, I can also subscribe you to the e-newsletter providing updates on the status of the work program process.

The developer of the proposed Chevron gas station has submitted a new application, which is currently being reviewed by staff. We are [posting updates to our website](#) as they become available. The application for this property is a Type III development application. An independent Hearings Officer reviews Type III applications to make sure they comply with the CDC. In addition to accepting public testimony, the Hearings Officer will then approve or deny the application. The Board does not have a role in this process.

Thank you again for your email.

Melissa De Lyser

Melissa De Lyser | Public Affairs and Communications Manager

Pronouns: She/Her/Hers

503-846-4963

melissa_de_lyser@co.washington.or.us | www.co.washington.or.us/lut | wc-roads.com

Monday, Tuesday, Wednesday: In Office | Thursday, Friday: Remote



From: noreply@co.washington.or.us <noreply@co.washington.or.us>

Sent: Thursday, July 28, 2022 10:48 AM

To: Board of County Commissioners <BCC@co.washington.or.us>

Subject: Constituent Inquiry - Kathryn Harrington (Chair)

Email for: Kathryn Harrington (Chair)

Name:

NANCY J KNIGHT

Email address:

knight4252@comcast.net

Is this inquiry in reference to a property within Washington County?

Yes

Property address:

SE corner of NW 185th & NW West Union

Property ZIP code:

97229-2151

Message:

Hello Commissioner Harrington,

In the Bethany area of Washington County there is a proposed gas station that will store 52,000 gallons of petroleum 80 ft from the THPRD Rock Creek trail and Bethany Lake. A spill would be a disaster and would likely cost hundreds of thousands to millions to clean up. And besides the cost, it would cause irreparable damage to this public park and ecosystem.

Do you support Washington County adding a setback requirement to protect public lands from damage from gas station leaks? Many other counties and cities across the country have done this already– Washington County should catchup.

I want to see Washington County pass a land use update to ban the development of gas stations within 1,500 feet of public park or playground, school, hospital, church, theater, public library or building for public assembly; or any wetland, stream, river, flood plain, or environmentally sensitive area.

See <https://www.postpump.org/gas-station-land-use-codes> for examples of setback requirements from other counties. See <https://nabgas.com> for information on the Bethany gas station

Thank You,

Nancy J. Knight

Attachment provided: No

The following response was emailed to constituent following their inquiry:

Thank you for your email. If your inquiry requires a response, someone will be in contact with you soon. If your inquiry is a comment or information to be shared with Chair Harrington and staff, please be assured that it will be.

Again, thank you for taking the time to write us.

ADVISORY: Information contained in this email is "Level 3 – Restricted" per the Oregon Statewide Policy Information Asset Classification 107-004-050. Users are requested to maintain the privacy and security of this information. Forwarding or copying to unsecured recipients is strictly prohibited.

From: Theresa Cherniak <Theresa_Cherniak@co.washington.or.us>
Sent: Monday, December 6, 2021 9:30 AM
To: Miki Barnes <miki@psg.com>
Cc: Joel Cvetko <Joel_Cvetko@co.washington.or.us>
Subject: RE: [EXTERNAL] Accessory Dwellings

Miki -

State law provides two possible routes for Counties to potentially allow rural ADUs. One was passed by the state legislature several years ago and has to do with historic homes, and one was passed this year and allows counties to allow ADUs in rural residential zones under certain circumstances. This second bill requires, first, that other work related to wildland urban interface mapping and regulations be done. That fire-related work is underway.

Given other pressing priorities, the Board has not included work on rural ADUs on the annual Long Range Planning work program. If this is something you are interested in asking the Board to prioritize, you can submit a work program request to us. This request should include the issue you are concerned with, what you would like us to work on, and some explanation as to why you would like us to do this work. The letter should be addressed to me or Andy Back, the Planning and Development Services Manager, and can be sent as an attachment to an email or by regular mail.

Please let me know if you have further questions.

Theresa Cherniak, AICP, MLA | Principal Planner Washington County Department of Land Use & Transportation
Planning & Development Services | Long Range Planning
155 N First Avenue, Suite 350 MS14 | Hillsboro, OR 97124
(503) 846-3961 direct | (503) 846-4412 fax theresa_cherniak@co.washington.or.us |
www.co.washington.or.us/lut

Plan Responsibly. Build Safely. Live Well.

In an effort to mitigate the spread of COVID-19, I am working from home in accordance with County policy.

Please continue to contact me via email or call me at 971-282-1676.

-----Original Message-----

From: Miki Barnes <miki@psg.com>
Sent: Wednesday, December 1, 2021 10:09 AM
To: Theresa Cherniak <Theresa_Cherniak@co.washington.or.us>
Subject: [EXTERNAL] Accessory Dwellings

Hi Theresa,

Genny Bond identified you as a contact person about long range plans for accessory dwellings in rural Washington County. I am curious to learn about possible considerations in this regard.

Thank you.

Miki Barnes
503-324-0291

Sent from my iPad

CAUTION: This email originated from outside the County. Exercise caution when opening attachments or clicking links from unknown senders. Always follow the guidelines defined in the KnowBe4 training when opening email received from external sources. Contact the ITS Service Desk if you have any questions.

1/3/21

Long Range Planning Division

C/O Andy Back, Planning & Development Services Manager

Washington County, Oregon

To the Long Range Planning Division,

I'm writing on behalf of myself and my family as Washington County Residents. **I propose that the committee consider revising the Land Use Review requirements in Washington County as they relate to dog training in agricultural buildings (CDC §344-5.1(C) and CDC §340-5.1(C)) and change the Land Use Review from Type III to Type I.**

Background on Dog Training in EFU/AF-20 Zones:

According to ORS 215.213(1)(z), dog training is allowed in EFU zones according to the following limitations:

Dog training classes or testing trials, which may be conducted outdoors or in farm buildings in existence on January 1, 2019, when:

(A)

The number of dogs participating in training does not exceed 10 dogs per training class and the number of training classes to be held on-site does not exceed six per day; and

(B)

The number of dogs participating in a testing trial does not exceed 60 and the number of testing trials to be conducted on-site is limited to four or fewer trials per calendar year.

These criteria are identical to the criteria found in CDC §344-5.1(C) (AF-20 zoning) and CDC §340-5.1(C) (EFU zoning).

As you know, the Oregon Supreme Court has held that the uses found in subsection (1) of ORS 215.213, including dog training facilities, are "uses of right" which are not subject to additional county criteria. *Brentmar v. Jackson County*, 321 Or 481 (1995). Consequently, there are no additional Special Use Standards in CDC Chapter 430 that apply to dog training facilities. If the applicant meets the requirements in CDC §344-5.1(C) (AF-20 zoning) or CDC §340-5.1(C) (EFU zoning) then the County must approve the use.

The legislature has authorized two types of dog training facilities in EFU (and AF-20) zones. Smaller dog training facilities are allowed by ORS 215.213(1)(z). Larger dog training facilities with potentially more significant impacts are allowed by ORS 215.213(2)(k)(B).

Because of the potential for more significant impacts, the legislature has placed the larger dog training facilities in subsection (2) of ORS 215.213, which means that counties are free to impose additional standards on those uses, or not allow them at all. Washington County allows these larger dog training facilities, but does not subject them to any additional requirements in CDC Chapter 430. CDC §§344-5.2(G), 340-5.2(G).

Washington County Procedural Types and Distinctions – CDC Section 202

CDC Chapter 202 discusses procedure types and how the County determines what uses are subject to each procedure type. According to that Chapter, Type I procedures are designed for those uses that “governed by clear and objective review criteria” that “do not encompass discretionary land use decision.” CDC §202-1.1.

In contrast to Type I decisions, Type III procedures are designed for those uses that “may be approved or denied, thus requiring the exercise of discretion and judgment when applying the development criteria contained in this Code or the applicable Community Plan. Impacts may be significant and the development issues complex.”

Applying CDC Section 202 to Dog Training Classes

There is nothing requiring the exercise of discretion and judgment in making the determination of whether an application for dog training classes should be approved under CDC §§344-5.1(C) or 340-5.1(C). To receive approval, the applicant must demonstrate:

1. That the classes/trials will be held outside or in a farm building that was in existence before 2019;
2. That the classes/trials will not include more than 10 dogs and won't exceed 6 per day; and
3. There won't be more than 4 testing trials per year with no more than 60 dogs/trial.

These requirements are about as clear and objective as possible, and require no discretion. Either the applicants meets them or they don't, and there are no additional siting criteria to apply under CDC Chapter 430. In short, this is the exact type of use that fits within the criteria for a Type I determination.

A Type III (or Type II) determination might be a more appropriate process for a larger classes authorized by CDC §§344-5.2(G) or 340-5.2(G), and the County would certainly have the ability to add additional criteria in CDC Chapter 430 for those larger classes, but has chosen not to do so. Nevertheless, the larger facilities are subject to the requirements of CDC §§344-5.3 and CDC 340-5.3, which contain discretionary standards requiring the County to exercise judgment. These larger facilities should remain as Type III determinations, while the smaller classes/trials, which are not subject to the discretionary standards of CDC §§344-5.3 or 340-5.3, should be moved to Type I decisions.

How Dog Training is Conducted in Agricultural Buildings

Dog training inside agricultural buildings is for sport dog training, consisting of activities like agility, obedience or rally. These dogs are on leash when not working and have often have some behavior training in place before arrival onsite. While the state law makes no specific mention of behavioral training vs. sport dog training, canine behavioral modification training is generally held in residences (one-on-one) or commercial training facilities. Therefore, there is very little risk to any livestock or neighbors due to dog training in agricultural buildings.

Classes in EFU zones in horse arenas are generally attended by fewer than 4 – 5 dogs at one time, to make teaching efficient and worthwhile for participants. Given that each building is limited to 6 classes per day, the number of participants in a single day is far lower than the law allows.

Additionally, these types of limitations do not lend themselves to having activity in the building 7 days a week, as the instructors are typically owners that teach no more than 4 – 5 days per week, and whom take 4 – 6 weeks of vacation each year.

Classes are usually 1 hour each, which means the buildings are empty of dogs for 18 hours per day, and that is IF the instructor is teaching a full 6 classes.

In short, these buildings are not used in the same way that a commercially operated dog training center would be. The regulated use also significantly limits the amount of revenue that an owner can produce. The high cost of the Type III land use review and associated engineering studies are considerable barriers to these smaller operations.

Final Thoughts

In closing, I encourage this committee to reconsider the land use review type for dog training in agricultural buildings and reduce it from Type III to Type I.

- The current limits on class sizes and quantity per day, along with nuisance barking laws and unattended animal clauses, protects neighbors from excessive noise and traffic.
- The most recent House Bill 3318-B (2021) excludes this use from the structural building code, negating the need for building permits and associated reviews.
- Both the legislature and the County do not require the applicant for small dog training classes to demonstrate compliance with the discretionary requirements of ORS 215.296 (codified by the County at CDC §§344-5.3 and 340-5.3) because the uses are not impactful on neighboring farm uses.
- The current Type III review and associated engineering study requirements are cost prohibitive for smaller operations, which both the legislature and county have recognized are not large commercial operations that create impacts on neighboring farm uses and public facilities.

I appreciate your time in reading this letter and giving careful consideration to this modification to the review required for dog training.

Should you have further questions for me, you're welcome to contact me at elooney@perlo.biz or 503.927.7706.

Sincerely,

Elissa Looney and Brody Ferguson

29865 SW McNay Road

Hillsboro, OR 97123

Received 04/05/21
Wash. Co. LUT

Theresa –

Following up on some email correspondence between my lawyer, Ty Wyman, and you, this relates to DLUT's work program for 2021 and implementation of the SB 960 adopted several years ago. Specifically, I ask the County to implement at least those portions of ORS 215.213(11) authorizing limited commercial events on rural lands, viz., subsection (d), under which the County may authorize events "incidental and subordinate to existing commercial farm use."

The 2014 Washington County Rural Tourism Study states that "Washington County is part of a 'world-class growing region' recognized as both a state and national leader according to the Oregon Department of Agriculture." Incorporating SB 960 into the land use laws will protect the farms in the County by allowing them to diversify.

The study acknowledged that a number of farms struggle with profitability. Allowing agritourism, especially events that are incidental and subordinate to existing commercial farm use, would enable farmers to diversify their revenue streams and in turn increase their profitability. Bringing more guests to farmland is also viewed with optimism in order to educate, but more importantly protect, these farmlands by ensuring the farms have the revenue needed in order to continue.

It is well known that the picturesque offerings within the county are highly sought after. "The beauty and rural richness of Washington County makes it an attractive destination for visitors who seek the scenic treasures." These charming elements are a perfect backdrop for commercial events, many guests will look for these views as a critical element in their search for a venue. Now more than ever there is a desire for spaces outside of an urban environment, and this trend is expected to continue post-Covid. Adopting SB 960 will allow farms the option to host these commercial events and capitalize on the beauty the County has to offer.

Commercial events are the ideal opportunity to add value to existing farms. Many farm families are searching for additional opportunities, agritourism gives these farms just that. Allowing farms to host weddings, family gatherings, along with corporate meetings will provide alternative revenue streams all while increasing long term respect for farming. These activities give the flexibility of adapting into their existing farming schedule.

Now more than ever the world is at an inflection point and enabling farms to diversify their options to include more agritourism will protect the farms and their families. Adopting SB 960 is the ideal option to create value add and encourage revenue to flow within Washington County, overall increasing its leadership in the state of Oregon.

Thank you for your consideration.

Always,


Kiza Miller



Washington County
Committee for Community Involvement

RECEIVED

NOV 23 2020

PLANNING AND DEVELOPMENT SERVICES
LAND USE AND TRANSPORTATION

November 17, 2020

Washington County Board of Commissioners
c/o Andy Back, Planning and Development Services Manager
Department of Land Use and Transportation
155 N First Avenue, Suite 450
Hillsboro, OR 97124

RE: 2021-22 Long Range Planning Work Program

Dear Commissioners and Mr. Back,

The Committee for Community Involvement (CCI) would like to recommend the following for inclusion in the 2021-22 Work Program:

Cleanup of Ordinance 869

Changes are needed to address concerns identified during the public comments periods for Ordinance 869 by community members, including Tualatin Riverkeepers, Urban Greenspaces, Audubon, CPO 4M, Ken Dobson, Fran Warren and others.

Improved Incentives for SNR Preservations

Additional incentives are needed to ensure preservation of our ever decreasing upland/wildlife habitat resources. Consideration should be given to creating tools, such as tax incentives and/or consideration for options such as co-housing, row houses, cottage and cluster housing, micro houses and tiny homes, to help facilitate saving these precious resources.

Tree Code

Protection of existing tree canopy is a top priority of residents of urban unincorporated residents. It is well past the time for this important issue to move to Tier 1 of the Work Program. Tools need to be developed—including, but not limited to creating a heritage tree program, providing for additional protections for trees inside of a SNR, but outside of the "Preservation Area," adopting Protected Root Zone Standards, and developing a community based stewardship program--to preserve existing trees. CCI welcomes the opportunity to partner with staff and the development community during the coming year to create tools to provide protections for trees.

Update to County's Infill Policy

We support moving this 2020-21 Work Program Tier 2 issue to Tier 1 for the 2021-22 Ordinance Season, but understand the work on Infill is delayed until decisions are made for Significant Natural Resources and Centers and Corridors. We encourage completion of the work on the Significant Natural Resource and the Centers and Corridor issues to allow the needed updates to the county's Infill Policy.

Issue Paper on Governance of Urban Unincorporated Areas in Washington County

CCI continues to support an Issue Paper to study the governance of urban unincorporated areas, focusing on gaps in urban services and alternatives for the future. This Issue Paper might include: updating Community Plans with their outdated zoning and transportation plans; creating Urban Service districts to provide locally focused services; ways to coordinate and improve economic development; exploring ways to include cultural and community support for these areas that are more commonly provided by cities; and a plan for annexation of areas best served by a directly adjacent city.

Parking for Multi-family Units

A consistent complaint we hear from neighborhoods with multi-family units is about on-street parking conflicts. Although the CDC requires specific numbers of parking spaces per unit, landlords will often charge an additional fee to renters for these on-site parking spaces. Because of this practice, many renters will opt to use on-street parking instead of paying fees for the parking provided by the CDC regulations. This practice leads to neighborhood friction due to the unavailability of parking for others in the neighborhood, blocked mailboxes and chaos on trash days. Could there be a code fix for this issue? Or would this issue be better addressed through the Neighborhood Street Program providing for permit parking only in areas adjacent to multi-family units?

Light Pollution

Light pollution is wasted energy that affects human health, wildlife behavior and our ability to observe the heavens. It has been found that of all the pollution we face, light pollution is the one that is most easily remedied. We recommend adopting lighting regulations for all new construction and remodeling projects to require all outdoor lighting, including landscape lighting, to be directed downward and to not extend onto neighboring properties. Limits should be placed on light output and color temperature. Consideration should be given to policies encouraging retrofitting of existing lighting to meet these requirements.

Climate Change

Climate change issues are real and solutions to address climate change are important to Washington County residents. We support updates to the Comprehensive Framework Plan, as identified as a Tier 2 task on the 2020-21 Work Program to include provisions to address Climate Change.

Alignment of Rural Regulations with State Goal 3

We look forward to being able to review and comment of the draft 2017 Issue Paper comparison of Washington County rural regulations to State Law. We are hopeful that steps will be taken to ensure farm building approved outside the Urban Growth Boundary will only be approved when they have a specific farm use.

Changes to CCI Membership

In 2017, to be more inclusive, CCI updated their Bylaws to include representatives from other organizations with interest in land use and livability issues in Washington County. Although our intention was an honest attempt to be more inclusion, we just realized that this change does not comply with either R&O 86-58 or CDC 107-6.2. To increase the inclusiveness of CCI, we respectfully request updates to R&O 86-58 and CDC 107-6.2 to bring CCI Bylaws into compliance with other Washington County provisions.

Clarifications to Group Testimony

Both Planning Commission and the Board of Commissioners allow additional time during public comments or Public Hearings for groups. CDC 205-3 identifies the parties who may participate in a Public Hearing, but is silent on who qualifies as a group. Is a group just more than one person? Does the group need to be formal? Who is responsible for determining who qualifies as a group?

- From the webpage for the Planning Commission, only CPO representatives qualify for additional speaking time for non-agenda items. Time limit for Public Hearings is listed as three minutes and no indication is made that additional time will be provided for groups.
- From the webpage for the Board's webpage, groups are identified as having additional time for 1) items on the agenda and 2) for oral communications. However, what constitutes a "group" is not defined.

The rules for identifying which groups qualify for additional time to speak before the Planning Commission and before the Board of Commissioners needs to be clarified. These time limits should be spelled out on the web pages to allow the public to prepare for their speaking time appropriately.

Sidewalk Gaps

Continue to pursue solutions for addressing walkway gaps in Urban Unincorporated Washington County from the 2016 Walkway Gap Issue Paper, including development of a LID matching program in which the property owners dedicate right-of-way in exchange for the county providing frontage improvements.

Thank you for this opportunity to provide input into the 2021-22 Work Program.

Sincerely,

Kathy Stallkamp

Kathy Stallkamp
CCI Chairperson

Cc: Stephen Roberts
Theresa Cherniak

Letter Approved 11/17/2020

 12 Yes

 0 No

 0 Abstain



Washington County
Committee for Community Involvement

155 N First Avenue, Suite 370 MS20, Hillsboro, OR 97132 | 503-846-6288 | www.WashCoCCI.org

March 17, 2022

Washington County Board of Commissioners
% Andy Back, Planning and Development Services Manager
Department of Land Use and Transportation
155 N First Avenue, Suite 450
Hillsboro, OR 97124

RE: 2022-23 Long Range Planning Work Program

Dear Commissioners and Mr. Back,

The Committee for Community Involvement (CCI) would like to recommend the following for inclusion in the 2022-23 Work Program:

Updates to the Neighborhood Meeting Rules

With the option of holding these meetings electronically and the widespread use of email for communications, it is time for a critical look at the dated Neighborhood Meeting Rules. CCI is ready to partner with LUT staff and the development community to update the current rules to meet the needs of the public, staff and the developers.

Update to the CDC to limit gas station locations

We request the Community Development Code be updated to require all new gas stations or expansion of existing gas stations be located a minimum of 1,500 feet from any public park or playground, school, hospital, church, theater, dwelling unit, public library or building for public assembly; or any wetland, stream, river floodplain, water quality facility, or environmentally sensitive area. This code change should be applied to all zones in unincorporated Washington County without an option for variance to ensure equitable and objective application of this requirement.

1% for Art

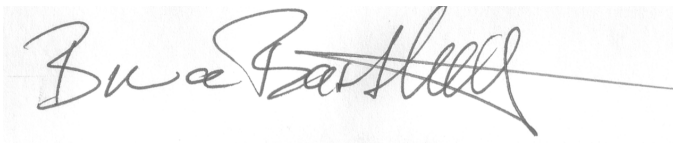
We request LUT to study the possibility of a plan to create a “1% for Art” option for commercial / industrial / institutional development over a certain size in unincorporated Washington County. Use other jurisdictions as a model. Work with Arts organizations and possibly include a focus on equity as a theme for some projects. Work with developers to create a program they’ll support. Incentives TBD.

Requests from our 2021-22 CCI letter dated November 17, 2020

Understandably , Long Range Planning staff's time during 2021-22 has been focused on Middle Housing, as well as having been hampered by the pandemic. Our requests from our November 17, 2020 letter remain valid. We continue to recommend these issues be included in the 2022-23 Work Program. A copy of our November 17, 2020 Work Program letter is attached.

Thank you for this opportunity to provide input into the 2022-23 Work Program.

Sincerely,

A handwritten signature in black ink that reads "Bruce Bartlett". The signature is written in a cursive style with a long horizontal line extending to the right.

Bruce Bartlett for CCI membership
CCI Secretary

Letter Approved 3/15/2022, 13 Ayes, 0 Nays, 0 Abstains

Attachment: Copy of our CCI letter on the 2021-22 Long Range Planning Work Program, dated 3/17/2020

Cc via email to theresa_cherniak@co.washington.or.us,
Stephen_Roberts@co.washington.or.us

Potential Changes to the Comprehensive Plan
per the Natural Hazards Mitigation Plan (NHMP)

The following mitigation action items were present in the 2017 NHMP and/or recommended by the 2022 NHMP. These may require changes to the Comprehensive Plan:

- Update regional landslide risk maps using available LIDAR data and collaborate with DOGAMI to work on landslide risk reduction efforts; determine areas and buildings at risk to landslides; and ***propose revisions to the County's Comprehensive Plan and land use policies as necessary to reduce risks.***
- ***Utilize the final multi-hazard risk report and assessment currently being developed by DOGAMI to inform an update to the Comprehensive Plan. (DOGAMI's report covers several different types of natural hazard risks)***

Washington County Board of Commissioner
155 N First Avenue
Hillsboro, OR 97124

February 27, 2023

RE: Request for Urbanization Planning for the "Peterkort Cousins" parcels

Dear Chair Harrington and Commissioners,

The adopted North Bethany Plan included a direct connection of Shackelford Road to 185th Avenue. Because of funding issues and because the existing road network was deemed adequate until North Bethany was closer to full build-out, construction of this connection was delayed until the Peterkort Cousins parcels could be brought inside the UGB or other funding was identified.

As North Bethany build-out nears completion, the planning for completion of the planned road system needs to be addressed. Without the connection of Shackelford Road to 185th Avenue, the North Bethany Plan is not complete and the planned transportation grid is broken. We feel the most feasible way for this promised road connection to be completed is to urbanize the Peterkort Cousins property.

We respectfully request that staff time be allocated in the 2023-2024 Planning Work Plan to allow for the planning necessary to bring the Peterkort Cousins parcels into the UGB to facilitate urbanization of these parcels and to complete the North Bethany Plan, including the needed connection of Shackelford Road to 185th Avenue through the Peterkort Cousins parcels.

Sincerely,

Pamela Ann Maher

Pamela Maher
Peterkort Cousins Co Representative
718 Lacy Lane, Las Vegas, NV 89107
pamaher@mc.com

Mary Manseau

Mary Manseau
CPO 7 Community Member
5230 NW 137th Ave, Bethany, OR 97229
marymanseau@gmail.com

Jeffery Jorgenson

Jeffery Jorgenson
Peterkort Cousins Co-Representative
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Sarah Beachy

Sarah Beachy
North Bethany Resident
Member of the North Bethany County Service District for Roads
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sarahfisherbeachy@gmail.com