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Report

El Paso County Digital, Strategy & Technology (DST)

Dear Members of the Board of County Commissioners, County Attorney's Office, and Planning and Community Development staff:

I am submitting the attached written public comment and supporting exhibits for inclusion in the administrative record of ADM261 ("Appeal Buc-ee's ADM," per its EDARP project title), the appeal of the Planning and Community Development Director's July 1, 2026 determination in ADM264. I respectfully urge the Board to deny the appeal.

Capacity. This memorandum is submitted solely in my individual capacity as a resident of El Paso County. I currently serve as Mayor Pro Tem of the Town of Monument; that title is stated only for identification and disclosure. This submission does not represent the Town of Monument, its Town Council, or any official Town position, and was prepared without Town staff, resources, or authority. The Monument Town Council separately and unanimously adopted its own official letter dated August 3, 2026, already part of the record; I voted in favor of that letter in my official capacity.

The attached memorandum with exhibits is a distinct, more detailed individual submission.

The narrow question before the Board. The Board is deciding one classification question: whether the proposed 74,000-square-foot, 120-fueling-position facility on C-1 (Commercial, Obsolete) property qualifies as a "Convenience Store" under LDC § 1.15, or is sufficiently similar to an allowed C-1 use under §§ 1.6.7 and 5.3.6.C.1. This hearing does not approve or deny construction of a Buc-ee's, and it is not a referendum on the project's economic merits.

Colorado law limits the Board's discretion here. Colorado courts are clear that a board's deference to interpret its own zoning code "cannot extend to allowing those officials to amend the ordinance in the guise of interpreting it." *Anderson v. Bd. of Adjustment*, 931 P.2d 517, 520 (Colo. App. 1996); *Cherry Hills Resort Dev. Co. v. City of Cherry Hills Village*, 790 P.2d 827 (Colo. 1990). Whatever economic benefits this project might bring, the Board is not free to stretch the Convenience Store definition to reach them; it must apply the Code's actual text.

Why the appeal should be denied in Buc-ee's own words and data:

- **It is not a neighborhood business.** Applicant's own representative, at a December 2024 public meeting, described the project's purpose in these terms: "We are stopping the car that is already on the freeway... our purpose is to get them off and back on that freeway system as easily and comfortably as possible." That same representative said 90% of customers come from outside El Paso County and more than 70% from outside Colorado. Applicant's own traffic study assigns roughly 93% of this site's modeled trips to Interstate 25. The Code asks whether the establishment's purpose is to serve the neighborhood in which it is located; by Applicant's own numbers and its own words, it does not.
- **It fails the Code's similar-use test.** Convenience Store is the only C-1 use that authorizes fuel sales; the other C-1 uses Applicant cites as comparators (hotels, restaurants, shopping centers) do not. No fuel-retail use of any kind has ever been approved in C-1, anywhere in the County. The County's largest fuel-pump approval countywide, in any zone, is 18 positions; this proposal is 120. Applicant's own traffic engineers stated that standard industry data; averaging 14 fueling positions, could not even be used to model a project this size.
- **It matches the Code's separate "Gas Station" use, which is deliberately excluded from C-1.** Applicant's own engineers described this project to the Federal Highway Administration as "a 120-fueling position Buc-ee's gas station." A federal magistrate judge, citing sworn testimony from Buc-ee's owner, described the company as operating "gas stations with convenience stores." The national trade association for the industry has publicly called a similarly sized Buc-ee's the "World's Largest Gas Station." "Gas Station" is an allowed use in C-2 (for large commercial activities) and is omitted from C-1; a deliberate exclusion, not an oversight.
- **Every other source of context confirms the same conclusion.** The County's own Master Plan designates this corridor for limited, neighborhood-scale commercial uses, not a regional destination. The Town of Monument's Council separately and unanimously opposed this classification. Palmer Lake's own Planning Commission rejected this same project as "too big" and

incompatible with community character. Whatever economic benefits the project might offer are not relevant to this classification question, and the Code already provides the right process for a project of this scale: rezoning or Planned Unit Development review, with the full public hearing that process requires.

Request. I respectfully request that the Board deny the appeal and leave the Director's July 1, 2026 determination undisturbed.

The attached memorandum contains the full analysis, citations to Applicant's own materials and the administrative record, comparison tables, and a complete exhibit list, all submitted for the administrative record.

Thank you for your consideration.

Respectfully submitted,

Steve King

Resident of El Paso County, Colorado

(submitted in an individual capacity)

--

Steve King

**IN THE MATTER OF THE APPEAL OF
BUC-EE'S EPCO, LLC
FROM THE ADMINISTRATIVE
DETERMINATION OF THE EL PASO COUNTY
PLANNING AND COMMUNITY
DEVELOPMENT DIRECTOR**

**BEFORE THE BOARD OF COUNTY
COMMISSIONERS OF EL PASO COUNTY,
COLORADO**

WRITTEN PUBLIC COMMENT FOR THE ADMINISTRATIVE RECORD

**Memorandum in Opposition to Appeal and in Support of the Planning and Community
Development Director's Determination**

This Memorandum is submitted by Steve King solely in an individual and personal capacity as a resident of El Paso County, Colorado. Steve King currently serves as Mayor Pro Tem of the Town of Monument; that title is stated here for identification and disclosure purposes only.

This submission does not represent, and should not be construed as, an official position, statement, or action of the Town of Monument, its Town Council, or any Monument town official acting in an official capacity. It has been prepared and submitted without the use of Town of Monument staff, resources, letterhead, or authority, and has not been reviewed, endorsed, or authorized by the Monument Town Council as this document.

The undersigned notes, for the Board's awareness, that the Monument Town Council separately and unanimously adopted its own official letter dated August 3, 2026, addressing this matter, which was transmitted directly to Executive Director Meggan Herington and is understood to already be in the County's possession and part of the administrative record.

The undersigned voted in favor of that letter in his capacity as a Town Council member. This memorandum is a distinct, more detailed submission reflecting the undersigned's individual views as a County resident, prepared with additional factual analysis not contained in the Town's shorter letter, and is not an expansion, restatement, or interpretation of the Town's letter on the Town's behalf. The opinions, analysis, and research contained herein are solely those of the undersigned.

Date Submitted: August 18, 2026

Re: ADM264, "Administrative Determination for Buc-ee's; Appeal to the Board of County Commissioners" (EDARP project title), and ADM261, "Appeal Buc-ee's ADM" (EDARP project title)

This comment is submitted for inclusion in the administrative record of the above-referenced appeal and for consideration by the Board of County Commissioners, the Office of the County Attorney, and the El Paso County Planning and Community Development Department.

SUMMARY FOR THE RECORD

Buc-ee's EPCO, LLC proposes a 74,000-square-foot, 120-fueling-position travel center at the southeast corner of Beacon Lite Road and County Line Road, on a parcel zoned C-1 (Commercial, Obsolete). Among C-1 principal uses, Convenience Store is the only one that expressly permits retail gasoline sales, a term the Land Development Code defines as an establishment that exists **“for the purpose of offering for sale to the neighborhood in which it is located”** certain goods. The other C-1 uses Applicant relies on as comparators, including hotels, restaurants, shopping centers, theaters, and parking lots, do not independently authorize retail fuel sales. On July 1, 2026, the Planning and Community Development Director determined that she was unable to find that the proposal meets that definition, or is sufficiently similar to an allowed C-1 use, and Buc-ee's has appealed that determination to the Board.

This memorandum opposes the appeal. By Buc-ee's own traffic studies, litigation records, and public statements, more than 85% of its customers are not local to its other locations, approximately 93% of this site's modeled traffic is assigned to Interstate 25, and Buc-ee's own retained engineers, a federal magistrate judge expressly citing its owner's sworn testimony, and the national trade association for its own industry all describe the business as a “gas station,” not a neighborhood convenience store.

The memorandum explains, section by section, why the Land Development Code's own text, structure, and similar-use criteria do not support classifying this facility as a Convenience Store **or as a use substantially similar to one**, and why the Board should deny the appeal and leave the Director's determination undisturbed. A table of contents and a list of supporting exhibits follow.

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STATEMENT OF THE CASE

Buc-ee's EPCO, LLC ("Applicant") has appealed the July 1, 2026 written determination of the El Paso County Planning and Community Development Director on Applicant's request for an administrative determination of use (ADM264). Following review of Applicant's materials, the applicable Code definitions, historical approvals, and comparative analysis, the Director was unable to determine that the proposed facility meets the LDC's definition of "Convenience Store," and, because that threshold question was unresolved, was unable to determine whether the facility is instead sufficiently similar to an allowed C-1 use under LDC § 5.3.6.C.1.

"Convenience Store" is the **only** fuel-retail-adjacent use allowed in the C-1 (Commercial, Obsolete) zoning district in which the subject property sits. The proposed facility is a **travel center** of approximately 74,000 square feet, with 120 fueling positions, roughly 20 electric-vehicle charging stations, and approximately 790 parking spaces, on a parcel of more than 30 acres at the southeast corner of Beacon Lite Road and County Line Road.

Buc-ee's appeal depends on treating the County's Convenience Store definition as a merchandise checklist while disregarding its express market-orientation requirement, and on treating the Code's similar-use criteria as satisfied by generic features common to all commercial development.

No party disputes that Buc-ee's will sell groceries, ready-to-eat food, drugs, sundries, and gasoline. The controlling questions are (1) whether this 74,000-square-foot, 120-fueling-position interstate destination is an establishment whose purpose is to offer those goods **"to the neighborhood in which it is located,"** and, if not, (2) whether it is nonetheless *sufficiently similar in character, descriptor, intensity, function, performance characteristics, and location requirements to an allowed C-1 use*. Buc-ee's own customer-origin data, traffic studies, site-selection statements, engineering classifications, and project descriptions establish that the answer to both questions is no.

This memorandum is submitted in support of leaving the Director's July 1, 2026 determination undisturbed. The Board should deny the appeal because the record does not support a finding that the proposed use satisfies the defined "Convenience Store" classification or, alternatively, the Code's requirements for treatment as a substantially similar C-1 use.

As set forth below, that conclusion follows from the LDC's own text, the County's documented approval history, the Code's structural allocation of fuel-retail uses to a separate zoning tier, independent industry and traffic-engineering standards, and, most tellingly, Applicant's own appeal submission and supporting exhibits.

STANDARD OF REVIEW

The Code itself supplies the standard the Board must apply, and it does so in two steps. First, LDC § 1.15 defines “Convenience Store” as an establishment *“for the purpose of offering for sale to the **neighborhood in which it is located**”* specified goods. That definition contains an express limitation: the establishment must be *for the purpose* of offering goods to the neighborhood, and the Board may interpret that language but cannot simply disregard it or treat it as surplusage in order to classify a materially different regional use as a convenience store.

Second, if the facility is not literally a Convenience Store, LDC § 5.3.6.C.1 governs whether it may nonetheless be treated as an allowed C-1 use: *“No use not specifically identified as an allowed use, special use, temporary use, or accessory use shall be allowed unless the PCD Director determines the use is similar to an expressly allowed use, special use, temporary use, or accessory use.”*

To make that determination, the Code requires that *“the function, performance characteristics, and location requirements of the unlisted use shall be consistent with the purpose and description of the zoning district where it is proposed,”* and that the unlisted use be *“compatible with the uses specifically allowed in the district, and similar in characteristics such as traffic and parking generation, noise, glare, vibrations, and dust.”*

LDC § 5.3.6.C.1. LDC § 1.6.7 supplies the companion rule for classification: *similar uses which are not listed or defined fall within the same category of use only where they share the same character, descriptor, and intensity as the defined use.*

Together, these provisions tell the Board exactly what to compare: character, descriptor, intensity, function, performance characteristics, location requirements, traffic, parking, and compatibility, without requiring any square-footage or pump-count cap to exist in the Code's text.

Colorado courts confirm that this textual standard, not an open-ended policy judgment, controls. Colorado courts defer to a local government's reasonable interpretation of its land-use regulations, but that deference has limits. “Judicial deference to the decision of the zoning official and the Board cannot extend to allowing those officials to **amend the ordinance in the guise of interpreting it.**” *Anderson v. Board of Adjustment for Zoning Appeals*, 931 P.2d 517, 520 (Colo. App. 1996). That deference extends only to a reasonable interpretation of the Code; it does not permit the Board to disregard express limiting language or expand an allowed-use classification beyond the characteristics the Code itself prescribes. Likewise, a local governing body may not exercise discretion beyond that granted by its zoning ordinance. *Cherry Hills Resort Dev. Co. v. City of Cherry Hills Village*, 790 P.2d 827, 832–34 (Colo. 1990).

As the County's own July 1, 2026 determination letter states, "staff finds it difficult to classify the proposed use. Because it is unclear whether the use meets the LDC definition of a 'Convenience Store,' staff cannot determine whether it is sufficiently similar to allowed uses within the C-1 zoning district to qualify as an allowed use."

That is the task presented on this appeal. As the County's own public update on this matter confirms, the Board "will decide one question: whether the proposed Buc-ee's use qualifies as an allowed use in the C-1 zoning district under the Land Development Code," and the hearing "does not approve or deny construction of a Buc-ee's." *El Paso Cnty. Planning & Cmty. Dev., Buc-ee's Update* (updated Aug. 10, 2026).

The Board is not being asked to decide whether this project would be a good addition to the County; it is being asked whether the record supports a determination, under §§ 1.15, 1.6.7, and 5.3.6.C.1, that a defined or sufficiently similar use applies. If it does not, the same limits on interpretive authority that bound the agencies in Anderson and Cherry Hills bind the Board here, and the Director's determination should be left undisturbed.

This proceeding is quasi-judicial in character. The Board is not adopting a rule of general applicability; it is applying the Land Development Code's already-established criteria to a specific applicant, parcel, and proposed use through a noticed hearing process at which evidence and testimony may be considered. See LDC § 5.3.6.

Under Colorado law, those are the hallmarks of quasi-judicial decision-making: notice, a hearing at which interested persons may be heard and present evidence, and application of established legal criteria to the facts of a specific case. *Snyder v. City of Lakewood*, 542 P.2d 371, 374 (Colo. 1975).

SUMMARY OF ARGUMENT

The Board faces three logical possibilities, and the record does not support any of the three paths to approval. If Buc-ee's is literally a "Convenience Store," the Board must find that **neighborhood service is this facility's characteristic purpose**: a finding Applicant's own customer-origin data, operational design, and public characterization of its business affirmatively contradict (Section I). If Buc-ee's is instead an unlisted, integrated travel-center use, it cannot become an allowed C-1 use through the similar-use provision unless it satisfies LDC §§ 1.6.7 and 5.3.6.C.1, and the record shows material differences in character, intensity, function, traffic, parking, and location requirements between this facility and any allowed C-1 use (Section II).

And if Buc-ee's is materially a Gas Station, which its own engineers, a federal magistrate judge expressly citing its owner's sworn testimony, and the national trade association for its

own industry all describe as such, that use is excluded from C-1 by the Code's own structure, and cannot be imported through interpretation (Section III).

The remainder of the record independently reinforces each of these three conclusions: the Code's own C-1/C-2 structure allocates uses of this scale to C-2, not C-1 (Section IV); independent industry and traffic-engineering benchmarks confirm the facility is a **statistical outlier** (Section V); the scale of identified public infrastructure improvements confirms the facility's extraordinary intensity and location requirements (Section VI); the County's Master Plan, the obsolete C-1 zoning history, and neighboring jurisdictions' own codes confirm the same conclusion (Section VII); any economic or community benefits the project may offer are not relevant to this classification appeal (Section VIII); and the LDC already supplies an available vehicle for evaluating a project of this scale: rezoning to a correct zone district or Planned Unit Development, rather than an expansive administrative reading of an obsolete classification (Section IX).

ARGUMENT

I. THE PROPOSED FACILITY DOES NOT SATISFY THE LDC'S DEFINITION OF "CONVENIENCE STORE."

The LDC defines "Convenience Store" as "*an establishment for the purpose of offering for sale to the neighborhood in which it is located such items as groceries, ready to eat food, over the counter drugs, and sundries. A convenience store may include retail sale of gasoline and other petroleum products.*" LDC § 1.15. The definition imposes an express neighborhood-serving requirement. Its permissive "may include" language regarding gasoline does not establish that a fueling operation of unlimited scale remains within the classification regardless of its effect on the establishment's overall function, intensity, customer orientation, and location requirements. The record shows the proposed facility satisfies neither the express requirement nor a fair reading of the permissive one.

A. ***"To the neighborhood" limits the Convenience Store classification to a neighborhood-serving establishment: a functional test, not a numeric one.***

The LDC does not define "Convenience Store" solely by the merchandise it sells. It defines the use as "*an establishment for the purpose of offering for sale to the neighborhood in which it is located*" groceries, ready-to-eat food, over-the-counter drugs, and sundries. LDC § 1.15. "**For the purpose of**" focuses on the establishment's intended function; "**to the neighborhood**" identifies its intended market and service area; the listed merchandise describes what is sold, not the land use itself. Read together, "to the neighborhood" performs a substantive limiting function that must be given effect in interpreting the definition. *Cherry Hills Resort Dev. Co. v. City of Cherry Hills Village*, 790 P.2d 827, 830–32 (Colo. 1990).

That limitation does not require the Board to identify a precise mileage radius, or to find that every customer must be a local resident. A neighborhood-serving establishment may serve travelers and other nonresidents without losing its character. Nor does selling the listed merchandise, by itself, establish the required use: supermarkets, pharmacies, and truck stops sell the same categories of goods without becoming neighborhood convenience stores. See Section I.C, *infra*. The relevant inquiry is functional: whether neighborhood service is the *establishment's characteristic purpose*, its intended customer base, operational design, and overall character, rather than an incidental consequence of locating near a neighborhood.

Applicant's reading would convert virtually any commercial site adjacent to an interstate interchange into a "neighborhood" establishment merely by virtue of highway access. That interpretation empties the purpose clause of meaningful content and is inconsistent with the local, community-scale examples the Code itself supplies.

The record here answers that functional inquiry across three independent categories of evidence: the project's own customer-origin data, its physical and operational design, and Applicant's own repeated characterization of its business.

Customer base. Applicant's own traffic materials for this project, prepared by Kimley-Horn and submitted as Exhibit D to the appeal, report that "user specific sales transactions indicate that more than 85 percent of customers are not located local to other Buc-ee's sites." The study applied an 85 percent diverted-link rate and, using its own weighted-average distribution, assigned approximately 93.25 percent of total project trips to Interstate 25 (46.25 percent northbound + 47 percent southbound), with only 3 percent assigned to West County Line Road (the direction toward the local Palmer Lake downtown area). Kimley-Horn Traffic Study at 18–19 (pages 61–62 of the administrative determination request / Exhibit D).

These are two distinct metrics drawn from the same study. The 85 percent figure describes the share of customers who are not local to Applicant's other, existing locations; Applicant's traffic engineers used that figure as a modeling input for this site because the proposed facility has no customer base of its own yet to measure. The 93.25 percent figure is a separate calculation describing the modeled directional distribution of vehicle trips generated by this site. Both point toward the same conclusion: Applicant itself designed and modeled the facility around an overwhelmingly non-local, interstate-oriented customer orientation. Neither figure should be read, standing alone, as a direct measurement of what share of this facility's own future customers will be non-local. Independent professional review of the traffic studies prepared for this site confirmed that approximately 90% or more

of site trips are oriented to and from I-25, not local roads. *Mem. from Brian J. Horan, P.E. & Kevin R. Fellin, P.E., Traffic Impact Study Review 3* (June 12, 2025) (Exhibit 13).

Applicant's own facilities also generate dwell times inconsistent with ordinary quick-stop convenience retail. Jeff Lenard, a spokesman for NACS, the national trade association for the convenience-store industry, has stated that customers spend “about 45 minutes” at a Buc-ee's location, approximately the time spent on a full grocery-store visit. That dwell time materially differs from the brief, in-and-out transaction ordinarily associated with convenience retail and further supports the record's characterization of Buc-ee's as a destination-oriented travel-center use rather than a conventional neighborhood convenience store. The same article reports that Buc-ee's newest 74,000-square-foot format, as described by Buc-ee's general counsel Jeff Nadalo, is approximately four times larger than the biggest Love's Travel Stop & Country Store identified in the article, further illustrating the extraordinary scale of Applicant's format. Timothy Fanning, *Buc-ee's doesn't hold world records for biggest convenience store, car wash, Guinness says*, San Antonio Express-News (Sept. 19, 2022, updated Sept. 20, 2022).

Buc-ee's own federal court record confirms the same pattern. In *Buc-ee's, Ltd. v. Shepherd Retail, Inc., No. 4:15-cv-03704, Report & Recommendation, ECF No. 166* (S.D. Tex. July 21, 2017), a federal magistrate judge, addressing evidence Buc-ee's, Ltd. submitted in support of its claims, observed that “consumers visiting Buc-ee's stores often travel long distances,” citing a Buc-ee's study showing significant sales outside a 100-mile radius. *Report & Recommendation at 25–26, ECF No. 166* (S.D. Tex. July 21, 2017).

Applicant's own representative supplied a direct public confirmation of the same pattern: Stan Beard, speaking on Applicant's behalf at a public meeting in Palmer Lake on December 3, 2024, told the audience that “90% of our customers are visiting us from well outside of El Paso County, more than 70% of them are coming from **outside of the state**.” Stan Beard, remarks on behalf of Buc-ee's, Buc-ee's Community Meeting, Palmer Lake Elementary School, Palmer Lake, Colo. (Dec. 3, 2024), KKTU video at 17:33–17:50 (Exhibit 17).

At the same Buc-ee's-sponsored community meeting, Beard described the site's freeway-oriented purpose in terms that directly bear on the Code's neighborhood-service limitation. Referring to the approximately 80,000 vehicles traveling I-25 adjacent to the site, Beard stated, “our purpose is to get them off and back on that freeway system as easily and comfortably as possible.” Later, he explained: “our customers, like I said, come from miles away. We are stopping the car that is already on the freeway ... and we want them to stop in Palmer Lake.” Stan Beard, remarks on behalf of Buc-ee's, Buc-ee's Community Meeting, Palmer Lake Elementary School, Palmer Lake, Colo. (Dec. 3, 2024), KKTU video at 19:20–19:40, 26:04–26:26 (Exhibit 17).

The Customer Base Extends Well Beyond the Neighborhood, and Even Beyond the State. Taken together, this evidence describes a facility built to serve interstate travelers passing through, not a neighborhood buying groceries and sundries. By Applicant's own representative's admission, 90 percent of its customers come from outside El Paso County and more than 70 percent from outside Colorado. The Code asks whether this establishment's purpose is to serve the neighborhood in which it is located. By its own numbers, it does not. That is not a neighborhood business. Nor is its customer base even primarily from within Colorado; by Applicant's own account, most of it comes from out of state.

Separately, an engineering report prepared for the Town of Palmer Lake's water system, addressing an entirely unrelated regulatory question, independently found that **"Buc-ee's Travel Center serves a high volume of non-local customers."** On that basis, the report determined that an on-site Buc-ee's water system would constitute a "transient non-community water system" under Colorado's Primary Drinking Water Regulations. *Prelim. Eng'g Report, Town of Palmer Lake Water System Improvements for Proposed Buc-ee's Travel Center* 56 (Apr. 2025).

Four separate sources (Applicant's own current traffic engineers, an unaffiliated traffic study, Applicant's own federal litigation record, and Applicant's own executive) converge on the same conclusion: the project's customer base is overwhelmingly non-local.

The Code's own definition of "Neighborhood" does not support Applicant's reading. LDC § 1.15 defines "Neighborhood" as: *"Primarily residential areas unified by shared characteristics, functional connections and spatial perceptions. Elements which define or reinforce a neighborhood orientation include common design themes, pedestrian and bicycle linkages, shared facilities and public spaces and identifiable boundaries, edges or gateways."*

Applicant's appeal quotes this definition but does not meaningfully engage with either sentence. The first sentence begins with the threshold clause "Primarily residential areas." The second sentence supplies concrete examples of the kinds of connections and features the Code contemplates: common design themes, pedestrian and bicycle linkages, shared facilities and public spaces, and identifiable boundaries, edges or gateways. **Every example is local and community-scale.** A term in a list takes its meaning from the company it keeps: the "functional connections" the definition contemplates are pedestrian- and community-scale connections, not an interstate highway interchange.

Applicant reads "functional connections" to include Interstate 25, County Line Road, and Beacon Lite Road. That reading is inconsistent with the definition's own examples and with LDC § 1.6.1, which requires the Code's language to be read literally. An interstate

interchange engineered for a 120-position fueling operation is not a pedestrian or bicycle linkage, does not share a common design theme with the surrounding residential area, and is not a shared community facility or public space. Private commercial amenities on the site (a bike plaza, EV chargers, landscaping) likewise do not become the “shared facilities and public spaces” the definition contemplates merely because Applicant labels them that way.

Read in full, rather than selectively, the Code’s own definition of “Neighborhood” provides little support for treating a predominantly non-local, interstate-oriented destination as an establishment whose purpose is to offer goods “to the neighborhood in which it is located.”

Operational design. The facility's physical and operational features are built around transient highway traffic, not routine neighborhood convenience. Applicant proposes 120 fueling positions generating approximately 22,150 daily trips, operating 24 hours a day, 365 days a year, with dedicated bus and recreational-vehicle accommodations and interstate-oriented site circulation. An independent traffic engineering review commissioned by neighboring landowners, with no affiliation to Applicant, the County, or the Town, evaluated both Applicant's traffic study and a separate study commissioned by the Town of Palmer Lake from Stolfus & Associates, Inc., and concluded in its own professional judgment that **“this type of facility acts more as a destination than a typical travel center.”** *Mem. from Brian J. Horan, P.E. & Kevin R. Fellin, P.E., Traffic Impact Study Review* (June 12, 2025).

These are not incidental details of a neighborhood store; they are the project's defining characteristics, and they are the design choices of a facility built to serve interstate travelers passing through, not a neighborhood buying groceries and sundries.

Buc-ee's own characterization. Buc-ee's own words confirm what its data shows. A federal Complaint filed by Buc-ee's, Ltd. on July 28, 2026 alleges that *“Plaintiff's stores are not like other convenience stores,”* describes them as *“highway oases”* that inspire loyalty *“well beyond rational consumer calculations,”* and quotes an out-of-state visitor: *“I was told we couldn't go to Texas without stopping here.”* Compl. ¶ 9, *Buc-ee's, Ltd. v. Hanes Road Carryout, Inc.*, No. 3:26-cv-00272-MJN-CHG (S.D. Ohio filed July 28, 2026). The same Complaint describes Buc-ee's as *“more than a typical gas station for many who treat it as a destination when on road trips,”* and reports that the April 6, 2026 opening of its Huber Heights, Ohio location *“reportedly broke records and caused nearby hotels to sell out.”* Compl. ¶¶ 14–15.

Beard drew the same distinction between Buc-ee's origins and its present business model when describing the company to the community: *“Back in the day, we were just a little convenience store, neighborhood convenience store. We are now in seven or eight states. We have 32 travel centers.”* That is Applicant's own distinction between a former neighborhood-convenience-store format and its current travel-center model. Stan Beard,

remarks on behalf of Buc-ee's, Buc-ee's Community Meeting, Palmer Lake Elementary School, Palmer Lake, Colo. (Dec. 3, 2024), KKTV video at 21:59–22:17 (Exhibit 17).

Applicant's own repeated description of this project specifically as a “*Travel Center*” and “*Family Travel Center*,” discussed further in Section I.B below, and its executives' consistent site-selection statements emphasizing interstate corridors and road-trip traffic, discussed in Section III below, confirm the same self-understanding: Applicant designs, markets, and describes its own business as a regional and interstate destination, not a neighborhood convenience store that happens to be large.

Applicant's contrary interpretation would make the neighborhood clause nearly meaningless. Under that approach, any regional or interstate destination could qualify as a “Convenience Store” so long as it sold some of the listed merchandise. The Code requires more: *an establishment intended to offer those goods to the neighborhood in which it is located*. The record here does not show merely that the project will attract some regional customers incidental to an otherwise neighborhood-serving business. It shows that regional and interstate traffic are the project's intended and dominant market, while neighborhood service is, at most, incidental to that market. That distinction places the proposal outside the LDC's “to the neighborhood” limitation.

Applicant has relied on this claimed benefit since its original request for administrative determination, asserting there that the project will provide “excess capacity to assist surrounding properties and enhance neighborhood and regional life safety during fire events,” and characterizing the proposed fire-water improvements as having been “coordinated with Monument Fire District.” *Admin. Determination Request at 2, 4 (incorporated into Appeal)*. Applicant, however, identifies no supporting fire-flow calculation, no approved fire-district plan, no application to Monument Fire District, no surrounding properties entitled to use that capacity, and no off-site connection, easement, or other mechanism by which such properties would receive service. The submitted plans instead depict project wells and on-site treatment and chlorination facilities, with no reference anywhere in the administrative record to validate that claim.

As of August 14, 2026, Monument Fire District advised the undersigned that it had no Buc-ee's application before it. The record therefore does not establish the asserted fire-district coordination, and does not establish the broader neighborhood utility benefit Applicant asks the Board to infer from it. Infrastructure necessary to serve Applicant's own unusually intensive development cannot be treated as evidence of neighborhood orientation based solely on an unsupported assertion of unspecified excess capacity.

B. A 120-position fueling operation is a central component of the proposed use, not merely an included feature of neighborhood convenience retail.

The Convenience Store definition states only that gasoline sales are something the use “may include.” That permissive language establishes that fuel sales can be part of a Convenience Store use, but it does not establish that a fueling operation of any scale remains within that classification regardless of its effect on the establishment’s overall purpose, character, intensity, function, customer orientation, and location requirements. The relevant question is therefore not whether fuel sales are literally prohibited or required to be “incidental,” but whether this 120-position fueling operation remains consistent with an establishment whose characteristic purpose is neighborhood convenience retail, or whether it has become a central component of a materially different integrated regional use.

Measured against the County's own approval history for convenience-store and gas-station-adjacent uses countywide, no such use has ever exceeded 18 fueling positions, and none of the County's 26 identified approvals occurred within C-1 itself; the proposed 120-position fueling operation is not merely an included feature of the retail use; it is a central component of the facility’s design, intensity, and market draw, corroborating, not undermining, the conclusion in Section I.A that the project's characteristic purpose is not neighborhood service. The full scale of that gap, measured against both the County's own approval history and Applicant's own cited precedents, is set out in the comparison table in Section V below.

Applicant's own revenue disclosure reinforces this conclusion. The appeal states that “*more than 60% of projected revenue is expected to derive from in-store retail and food sales, rather than fuel sales,*” meaning, by Applicant's own figures, up to approximately 40% of revenue is attributable to fuel sales. A revenue share approaching two-fifths is substantial and weighs against characterizing fuel sales as merely a minor component of the enterprise. *Admin. Determination Request at 6* (incorporated into Appeal).

Applicant's site-area calculation does not establish otherwise. Applicant's own Site Composition Plan reports that approximately 92% of the relevant site area is devoted to the convenience retail building and its associated parking, and only approximately 8% to fuel sales, and argues that this ratio confirms fuel sales are a minor, subordinate feature of the site. *Admin. Determination Request at 6 & Ex. B* (incorporated into Appeal). But a footprint ratio measures land coverage, not functional or economic significance, and a facility can devote a small footprint to an activity that nonetheless dominates the site's traffic generation and revenue.

A fueling operation of 120 positions generating a substantial share of the site's 22,150 daily trips is not rendered subordinate merely because the majority of the site's acreage is consumed by the parking necessary to serve that same volume of fuel customers. A

footprint calculation that assigns fueling-driven parking on the “non-fuel” side of the ledger is not a meaningful measure of whether fuel sales are functionally subordinate.

Applicant's reliance on in-store revenue does not establish that its 120-position fueling operation is subordinate in function; public accounts of Applicant's own business strategy show the opposite. A 2019 industry profile article on Applicant's own co-founder, Arch Aplin, reported that Buc-ee's can *undercut competitors' fuel prices precisely because its locations have so many pumps*, and that the company earns its principal profits on merchandise, confirming that the scale of the fueling operation is what makes the retail model work, not a minor add-on to it. Eric Benson, *Buc-ee's: The Path to World Domination*, Texas Monthly (Mar. 2019) (Exhibit 21), as quoted in *Fuels 50 2019: Retailers in the Fast Lane*, CSP Daily News (2019) (Exhibit 7). Petroleum-market analyst Tom Kloza, discussing Applicant's fuel volumes in the same period, described Buc-ee's locations as “*very, very big pumpers*.” *Id.*

Applicant's own terminology for the identical project, used consistently in its prior Palmer Lake application materials, confirms that the facility is a single, integrated principal use rather than a convenience store with an accessory fueling component. Applicant there described the project as the “*Buc-ee's Travel Center*,” the “*Family Travel Center*,” and a “*74,000 square foot retail travel center*,” and Town staff's own review memorandum characterized the proposal as comprising “one planning area, one primary use, no phases, and one owner.” A developer's own consistent characterization of its project is not controlling, but it is strong evidence of the project's actual integrated function: the retail building, the 120-position fueling operation, the prepared-food service, and the bus and recreational-vehicle accommodations are not a convenience store with minor accessory extras; they are components of one interstate travel-center use.

That same self-characterization appears in a signed, binding contract with a second, unrelated government. In a Chapter 380 Economic Development Incentives Agreement between the City of San Marcos, Texas and Buc-ee's San Marcos, LLC, executed by Joe O'Leary, Vice President of Buc-ee's San Marcos, LLC, the parties jointly defined the “Project” as “*a retail development consisting of a Buc-ee's Travel Center*” of approximately 74,000 square feet with 120 fueling positions, the same figures proposed here. *San Marcos Econ. Dev. Agreement at 1, 3.1* (Feb. 20, 2024). That the identical footprint and fueling count recur, under the identical “Travel Center” label, in a separate contract signed by a Buc-ee's affiliate with an unrelated city in another state provides strong evidence that the 74,000-square-foot, 120-position configuration is a standardized Buc-ee's travel-center format rather than a facility whose design was shaped by, or tailored to, this particular neighborhood.

C. Selling groceries and sundries does not, by itself, make an establishment a “Convenience Store.”

Applicant argues that because the facility will offer groceries, prepared food, beverages, over-the-counter items, and sundries, it necessarily falls within the Convenience Store definition. That argument mistakes a necessary characteristic for a sufficient one. Selling those items is consistent with being a convenience store, but it does not follow that every establishment selling them is one: supermarkets, pharmacies, warehouse stores, and truck stops sell the same categories of goods without thereby becoming convenience stores. They remain distinct land uses because their overall function, market area, traffic generation, and location requirements differ, just as the sale of food inside a stadium does not make the stadium a restaurant. The LDC's Convenience Store definition must be read as a whole, as a description of an establishment serving **“the neighborhood in which it is located,”** not merely an inventory of merchandise, and on that full reading, the proposed facility does not qualify.

D. The Code's decision not to impose a numeric size cap on “Convenience Store” does not mean the definition imposes no limit at all, and Applicant's own appeal confirms as much.

Applicant argues that because the Convenience Store definition does not state a maximum building size or fueling-position count, unlike certain other LDC definitions that carry explicit numeric limits, such as Agritainment's 50-vehicle cap, Accessory Living Quarters' 1,500-square-foot cap, or Auctions' three-per-year cap, the LDC's literal-reading requirement, LDC § 1.6.1, forecloses any size-based limitation on a Convenience Store's scale. See LDC § 1.14.7 (Code definitions “define the limits of specific uses and other standards”).

That argument proves too much, because it treats a numeric cap as the only form a limitation can take. The Code did not need a numeric cap for Convenience Store because it chose a different, and no less binding, limiting mechanism: **a functional-orientation requirement.** The definition confines the use to an establishment offering goods **“to the neighborhood in which it is located,”** and confines fuel sales to something the use “may include”; permitting gasoline sales as a component of the defined use, but not establishing that a fueling operation of any scale remains a convenience store regardless of whether it alters the establishment's *overall character, function, intensity, customer orientation, and location requirements* under LDC §§ 1.6.7 and 5.3.6.

Both phrases are just as much a part of the Code's “literal” text as any numeric threshold, and LDC § 1.6.1 requires that they be read literally and given effect, not disregarded because they happen to be functional rather than numeric. The Code employs the identical technique elsewhere. The Gas Station definition does not state a maximum square footage either, but it caps its incidental repair and servicing function at “not more than 3 vehicles.”

C-2's purpose clause distinguishes itself from C-1 by a qualitative description (“large commercial activities”) rather than an acreage or square-footage threshold. See *Section IV, infra*. If a qualitative, functional limitation is sufficient to distinguish C-1 from C-2 without a number attached, it is equally sufficient to limit Convenience Store without one.

Applicant's own appeal confirms that scale cannot simultaneously be legally irrelevant and legally relevant. Applicant argues, correctly as far as it goes, that the Convenience Store definition contains no numerical cap. But when Applicant turns to its alternative similar-use argument, discussed in Section II below, it spends pages attempting to show that this facility's traffic and parking intensity is comparable to other permitted C-1 uses: an inquiry that is entirely about scale. Applicant cannot have it both ways: *scale cannot be dismissed as legally irrelevant to the Convenience Store definition and simultaneously treated as the central evidence for similar-use classification* under § 5.3.6.

The correct and consistent formulation is this: scale alone is not an independent numerical disqualifier under the Convenience Store definition, but scale is directly relevant evidence wherever it bears on purpose, *character, intensity, function, performance characteristics, traffic, parking, location requirements, or compatibility*, which, as Sections I.A and II below demonstrate, it does throughout this record.

II. IF THE FACILITY IS NOT LITERALLY A CONVENIENCE STORE, IT FAILS THE CODE'S OWN SIMILAR-USE TEST UNDER LDC §§ 1.6.7 AND 5.3.6.C.1.

Applicant's appeal itself requests, in the alternative, a determination that the proposed facility “independently qualifies as a similar permitted use under Section 5.3.6.C.1” of the LDC. That provision does not ask the Board to imagine hypothetical developments that might generate comparable traffic; *it asks whether the function, performance characteristics, and location requirements of the unlisted use are consistent with the purpose of the C-1 district, and whether the use is compatible with, and similar in character to, the uses the district actually allows.*

LDC § 5.3.6.C.1. LDC § 1.6.7 supplies the companion classification rule: **an unlisted or ambiguous use falls within an existing category only where it shares that category's character, descriptor, and intensity.** Measured against those criteria (not against an applicant-selected set of hypothetical comparators) the proposed facility is not similar to an allowed C-1 use:

§ 5.3.6 / § 1.6.7 Criterion	Conventional Convenience-Store / Gas-Station Evidence	Proposed Buc-ee's Facility
Character	Neighborhood convenience retail	Interstate destination / travel center
Descriptor & Intensity	County's largest fuel-pump approval, countywide: 18 positions	120 fueling positions

Function	Quick, local convenience purchases	Retail, prepared food, and large-scale fueling built around road-trip traffic
Traffic	ITE Code 945 (Convenience Store/Gas Station): avg. 14 fueling positions	No applicable ITE dataset used, per Applicant's own traffic engineers
Parking	Conventional convenience-store parking demand	Approximately 790 spaces
Location Requirements	Local commercial access	Interstate interchange-driven; FHWA Minor Interchange Modification Request required
Customer Orientation	Neighborhood	More than 85% non-local per Applicant's own data; ~93% of weighted trips assigned to I-25
Infrastructure Effects	Typical site/access improvements	Interchange reconfiguration analysis (MIMR)

Countywide benchmark; no convenience-store or gas-station use has ever been approved within C-1 itself.

Every row of that comparison traces directly back to Applicant's own submissions, not to any figure this memorandum supplies independently.

Applicant's own representative has also expressly connected that extraordinary physical scale to the volume and intensity of the customer base the facility is designed to accommodate. At Buc-ee's December 3, 2024 community meeting, Stan Beard acknowledged: *“So we’re a big footprint. There’s no doubt about it,”* describing “74,000 square feet” of retail space, *“120 fueling positions,”* and *“lots of parking.”* He then explained why: *“the point of the size of our sites, the size of our stores is the amount of visitors we have, the amount of customers we have dictates how large the store is.”* Stan Beard, remarks on behalf of Buc-ee's, Buc-ee's Community Meeting, Palmer Lake Elementary School, Palmer Lake, Colo. (Dec. 3, 2024), KKTU video at 20:57–21:40 (Exhibit 17). Applicant's own explanation therefore confirms that the proposal's scale is a functional consequence of its anticipated customer volume, making that scale directly relevant to the Code's intensity, traffic, parking, and performance-characteristics inquiry.

A. Applicant's “similar use” argument operates at a level of generality that would erase § 5.3.6's limiting function entirely.

Applicant argues that the facility is similar to permitted C-1 uses (including hotels, restaurants, shopping centers, theaters, and parking lots) because, like those uses, it involves “customer access, vehicular traffic, on-site parking, internal circulation, lighting, and related site infrastructure.”

That is an extraordinarily broad level of abstraction. By that standard, virtually every commercial development would be substantially similar to every other commercial development: a hospital, a stadium, an automobile dealership, a regional mall, a freight

terminal, and an amusement park all have customers, parking, lighting, signs, utilities, traffic, and internal circulation.

Buc-ee's alternative similar-use theory presents an additional structural problem. Convenience Store is the only expressly allowed C-1 principal use whose definition authorizes retail sale of gasoline or other petroleum products. The other C-1 uses Applicant invokes as comparators: hotels, restaurants, shopping centers, theaters, and parking lots do not independently authorize retail fuel sales. Thus, even if Applicant could identify similarities between the proposed facility and those uses in isolated characteristics such as parking, traffic, lighting, or customer access, none supplies an allowed C-1 analogue for the proposal's 120-position retail fueling function, a function that, as Section I.B above establishes, is a central component of the proposed use rather than an incidental or ancillary feature that similarity to other comparators could subsume.

Section 5.3.6 cannot reasonably be read to confer through "similarity" a use characteristic that the proposed comparator itself is not authorized to possess, particularly where the Code separately defines Gas Station, omits that use from C-1, and expressly provides in § 1.6.6 that listing a use in one district excludes it from districts in which it is not listed. Otherwise, an applicant could circumvent the Code's exclusion of a particular use simply by identifying generic characteristics it shares with unrelated permitted uses. That conclusion is independently reinforced by LDC § 5.3.6.E (Limit of Interpretations), which provides that no interpretation may allow a use inconsistent with the zoning district's statement of purpose or have the effect of "amending, abrogating, or waiving" any other Code standard or requirement.

Section 5.3.6 requires **similarity in function, performance characteristics, location requirements, and identified impacts**: criteria that require comparison of the actual operational characteristics of the uses in question, not identification of generic features shared by virtually all commercial development.

B. Applicant's own traffic comparison, properly read, confirms rather than rebuts this conclusion.

Applicant's Trip Generation Memorandum does not compare the proposed facility to actual convenience stores or fuel-retail facilities previously approved by the County. It compares Buc-ee's to a set of hypothetical buildouts: a 9,000-seat theater/concert venue, a 130,500-square-foot shopping plaza, a 120,000-square-foot supermarket, a 200,000-square-foot discount superstore, and several restaurant scenarios, and argues that because Buc-ee's produces fewer peak-hour trips than some of these hypothetical combinations, it has comparable or lesser traffic impacts.

That argument does not answer the § 5.3.6 question. Section 5.3.6 asks whether this use is *substantially similar to an allowed use in function, performance characteristics, and location requirements*; it does not ask whether some other imaginable combination of permitted uses could theoretically generate more traffic. If constructing a sufficiently large hypothetical collection of individually permitted uses could validate any unlisted use so long as the hypothetical traffic number exceeded the proposal's, § 5.3.6 would impose no meaningful limit at all.

More importantly, Applicant's own comparison table contains the one figure that actually answers the § 5.3.6 question, and it does not help Applicant. Buried within Applicant's hypothetical-buildout table is a conventional ITE Land Use Code 945 entry: "Convenience Store/Gas Station," 5,000 square feet, 16 fueling positions, generating approximately 3,212 daily trips. That is Applicant's own selected industry benchmark for the actual use category at issue in this appeal, sitting in the same table as the proposed facility's 74,000 square feet, 120 fueling positions, and 22,150 daily trips.

The comparison is stark: building size roughly 14.8 times larger, fueling positions 7.5 times more numerous, and daily trips approximately 6.9 times greater than Applicant's own conventional Convenience Store/Gas Station comparator. Applicant's own traffic consultant separately confirms why: **"due to the total number of fueling positions for this development, ITE data was not used for project trip generation estimates,"** because *"the average number of fueling positions for the applicable use with ITE Trip Generation is 14 fueling positions,"* against the proposed 120.

Applicant tells the Board that this facility is operationally similar to ordinary C-1 commercial uses, while its own traffic engineer tells the Federal Highway Administration and this application's own record that the recognized national trip-generation category for the relevant convenience-store/gas-station use is so unlike this project that it could not be used to model it. **Those two positions cannot both be correct**, and the record, not Applicant's characterization, should control.

None of this requires the Board to find that 74,000 square feet is inherently "too large" as an abstract matter. It requires only that the Board apply the comparison the Code itself directs: *character, descriptor, intensity, function, performance characteristics, location requirements, traffic, and parking*, rather than the generic-feature or hypothetical-buildout comparisons Applicant offers in their place. Applying that comparison, the record does not establish that the proposed facility is substantially similar to any use allowed in C-1.

III. THE PROPOSED USE EXHIBITS THE DEFINING CHARACTERISTICS OF THE CODE'S SEPARATE "GAS STATION" USE, WHICH IS EXCLUDED FROM C-1.

The LDC separately defines "Gas Station" as "a property where the retail sale of gasoline, diesel fuel, oil, or other fuel for vehicles [occurs], and which may include, as an incidental use, the retail sale and installation of vehicle accessories, the making of minor repairs, and facilities for washing and servicing of not more than 3 vehicles completely enclosed in a structure." LDC § 1.15. The core test under this definition is simply whether the property is one "where the retail sale of gasoline, diesel fuel, oil, or other fuel for vehicles" occurs; vehicle repair, oil-change, and car-wash services are explicitly optional ("may include") and their absence does not remove a fuel-retail property from the definition.

Applicant's appeal argues that the facility cannot be a Gas Station because it will not offer repairs, oil changes, accessory installation, or car washing. That argument reads an optional clause as a mandatory element. The definition first identifies the principal characteristic (property where the retail sale of vehicle fuel occurs) and only then provides that the use "may include" certain incidental automotive services. The absence of those optional services cannot, by itself, establish that the proposed facility falls outside the Gas Station definition. Indeed, Applicant's own original request for administrative determination quotes this "may include" language and then, only a few sentences later, recasts the definition as one requiring a use to be "primarily oriented toward the petroleum fueling and servicing of motor vehicles," a limitation the quoted text itself does not contain, a characterization Applicant repeats on appeal. *Admin. Determination Request at 2, 5* (incorporated into Appeal).

The overlap between the two definitions (both permit fuel sales) must therefore be resolved by principal character and function, not by the bare fact that fuel is sold. On that inquiry, the proposed facility exhibits the defining characteristics of the Code's separately regulated Gas Station use, and its 120-position fueling component cannot simply be disregarded in classifying the integrated facility merely because the Convenience Store definition also permits some fuel sales.

"Gas Station" does not appear in the C-1 Use Table (*Exhibit 2 to the Director's July 1, 2026 determination letter*) as an Allowed use or a Special use. This is reinforced by the LDC's definition of "Store," itself an Allowed use in C-1, which expressly states: "*The term shall not include adult uses or gasoline filling stations.*" The Code's drafters affirmatively distinguished fuel-retail uses from ordinary retail and mercantile uses and did not extend C-1's allowed-use table to reach them.

The Code makes the consequence of that omission explicit: "*The listing of any use as being permitted in a particular zoning district shall be deemed to be an exclusion of the use from any other zoning district in which the use is not listed.*" LDC § 1.6.6 (Exclusion of Uses). If the

proposed facility's core function exhibits the defining characteristics of "Gas Station," that use's absence from the C-1 Use Table is not an oversight the Board may correct through interpretation; it is a deliberate exclusion the Code itself directs the Board to enforce.

This is not merely an inference from the absence of gasoline-related terms in "Store." It is confirmed, repeatedly, by Applicant's own record. This section catalogs that record in descending order of evidentiary weight: the federal court's description expressly based on sworn testimony first, followed by Applicant's own pleadings and project-specific engineering submissions, and finally corroborating industry usage and public statements that reinforce, but do not independently establish, the same conclusion.

A federal magistrate judge, expressly relying on the sworn testimony of Buc-ee's owner Arch Aplin, described the company in a Report and Recommendation, issued in *Buc-ee's, Ltd. v. Shepherd Retail, Inc.*, No. 4:15-cv-03704, Report & Recommendation, ECF No. 166 (S.D. Tex. July 21, 2017), litigation Buc-ee's, Ltd. itself brought, as having "*gas stations with convenience stores, which sell food and merchandise, located throughout Texas.*" *Report & Recommendation at 1*, ECF No. 166 (S.D. Tex. July 21, 2017) (citing testimony of Arch Aplin, owner of Buc-ee's).

Buc-ee's, Ltd. has said the same thing again within the last month. In its own Complaint, filed July 28, 2026, in the Southern District of Ohio, Buc-ee's, Ltd. alleges that "Plaintiff has offered high quality convenience store, **gas station**, and related goods and services" for over four decades. Compl. ¶ 7, *Buc-ee's, Ltd. v. Hanes Road Carryout, Inc.*, No. 3:26-cv-00272-MJN-CHG (S.D. Ohio filed July 28, 2026).

Applicant's own retained traffic engineers describe this specific project the same way in an official federal filing. Exhibit D to the appeal, a *Minor Interchange Modification Request memorandum* prepared by Kimley-Horn and addressed to the Division Administrator of the Federal Highway Administration, Colorado Division, states without qualification that **"the primary development anticipated to affect the interchange is a 120-fueling position Buc-ee's gas station with a 74,000 square foot convenience store."** *MIMR Mem. at 229* (Exhibit D to Applicant's appeal letter).

That characterization is objective evidence of the project's function, intensity, and location requirements under § 5.3.6 (it was written for a federal regulator, not for this dispute) and it directly contradicts the appeal letter's assertion that the proposed facility "does not meet the Code definition of a Gas Station."

Industry usage independently confirms the same description. NACS, the leading national trade association for the convenience and fuel-retailing industry, reported the opening of Buc-ee's 74,000-square-foot Sevierville, Tennessee facility (materially comparable in scale to the proposed El Paso County project) under the headline, "*Buc-ee's Opens World's*

Largest Gas Station in Tennessee.” NACS's terminology does not control interpretation of the LDC, but it is relevant evidence of ordinary usage within the very industry at issue, and it refutes any suggestion that a facility lacking repair bays or vehicle-servicing functions cannot reasonably be described as a gas station.

Taken together, the record contains a consistent description of Buc-ee's as an integrated gas-station/convenience-store travel-center model, rather than a conventional convenience store with accessory fuel sales. That characterization appears across four separate sources spanning nearly a decade: the federal court's description expressly citing Arch Aplin's sworn testimony, Applicant's retained engineers in an official federal filing, the national trade association for Applicant's own industry, and Applicant's most recent federal pleading.

A fifth, separate source corroborates the same point: a Chapter 380 Economic Development Incentives Agreement between the City of San Marcos, Texas and Buc-ee's San Marcos, LLC defines this identical 74,000-square-foot, 120-fueling-position format as a “*Buc-ee's Travel Center*,” and was executed by Joe O'Leary, Vice President, on behalf of Buc-ee's San Marcos, LLC and by the City's City Manager. *San Marcos Econ. Dev. Agreement at 1, 3.1 & signature pages* (Feb. 20, 2024) (Exhibit 24). Unlike the litigation records and press statements above, this is a formal governmental agreement bearing both parties' signatures and using “Buc-ee's Travel Center” as the defined description of the project itself, further undercutting any suggestion that Buc-ee's “Travel Center” terminology is loose or contextual rather than a considered description of its standard product.

The remainder of this record (offered as corroborating evidence of Applicant's own self-understanding of its business, not as independently dispositive proof) points the same direction. Buc-ee's own representatives have consistently described the company's site-selection logic, marketing, and customer base in terms that are irreconcilable with the LDC's requirement that a convenience store serve “**the neighborhood in which it is located.**” Stan Beard, Buc-ee's Director of Real Estate Development (the same company representative who has spoken publicly about the Monument Hill/El Paso County proposal) has repeatedly justified new locations by reference to regional and interstate traffic volumes rather than neighborhood demand.

Announcing the proposed Palmer Lake-area site, Beard cited its exposure to “80,000 cars zooming back and forth in front of it” as the site's principal advantage. *Colo. Springs Gazette, Texas-based Buc-ee's eyes site north of Colorado Springs for its next giant-sized travel center* (Nov. 4, 2024) (quoting Stan Beard).

Discussing the company's first Arizona store, Beard explained that the location was chosen because it is “*perfectly placed for our road-trippers headed out to California or coming in for the destination-rich Phoenix area.*” LiveNOW from FOX, *More Buc-ee's locations announced*

in national expansion (June 26, 2026) (quoting Stan Beard); accord Fox Business, *Buc-ee's opens first Arizona location as chain plans 15 new travel centers* (June 25, 2026).

And in announcing a Mississippi Gulf Coast location, Beard emphasized that the site was selected because it is “*perfectly situated along I-10 between our Texas and Alabama stores*”: siting logic organized around a multi-state corridor connecting other Buc-ee's locations, not around serving a discrete local population. Buc-ee's press release, *Buc-ee's To Debut New Travel Center in Harrison County, MS* (May 29, 2025) (quoting Stan Beard).

At the opening of another Texas travel-center location, Buc-ee's representative Stan Beard welcomed “locals, as well as I-35 travelers” to the facility, expressly identifying local residents and interstate travelers as distinct customer constituencies. That distinction is consistent with the project-specific evidence here showing that Buc-ee's is deliberately designed to serve a substantial non-local highway-traveling market, rather than principally *the neighborhood in which it is located*. Fort Worth Star-Telegram, *Newest North Texas Buc-ee's store to hold grand opening in mid-April*.

The World Record Academy accepted and published a materially identical 74,000-square-foot, 120-pump Buc-ee's under the category “World's Largest Gas Station.” World Record Academy, *World's Largest Gas Station: World Record in Sevierville, Tennessee* (Oct. 2023). That designation is not a land-use determination, but it confirms that describing the integrated Buc-ee's format as a gas station is neither artificial nor limited to opponents of this application.

Applicant's own marketing is built on the same premise: Buc-ee's has placed interstate billboards advertising specific stores hundreds, and in one case over a thousand, miles away, including a Wisconsin billboard marking the distance to a Kentucky location, and similar signs in California (1,327 miles) and Michigan (444 miles) from their target stores. Applicant's own general counsel has confirmed the strategy is to notify highway travelers hundreds of miles in advance that a Buc-ee's location is “in their path.” CSP Daily News, *What's Driving Buc-ee's Interstate Billboards?* (2026) (quoting Jeff Nadalo, Gen. Counsel, Buc-ee's).

IV. THE CODE'S C-1/C-2 STRUCTURE REINFORCES THE DISTINCTION BETWEEN ORDINARY AND LARGE-SCALE COMMERCIAL USES.

The LDC contains a parallel commercial district, C-2, whose stated purpose is expressly broader in scale than C-1's:

District	Stated Purpose (LDC § 4.4)
C-1	“providing for commercial activities”
C-2	“providing for large commercial activities”

“Gas Station” is an Allowed use in the C-2 Use Table. That placement demonstrates that the Code's authors contemplated fuel-retail uses at a scale warranting their own commercial tier, and deliberately placed that use in the district built for “large commercial activities” rather than the district built for ordinary “commercial activities.” The C-1/C-2 structure reinforces the conclusion that scale and intensity are relevant to classification. C-2 is expressly intended for “large commercial activities,” and Gas Station is separately permitted there while omitted from C-1. That structure weighs against interpreting C-1's Convenience Store classification so broadly that it absorbs a 120-position interstate fueling operation without regard to character or intensity.

This structural allocation directly informs the compatibility test under LDC § 5.3.6, which requires that **an unlisted or ambiguous use's** “*function, performance characteristics, and location requirements*” be “**consistent with the purpose and description of the zoning district.**” A 74,000-square-foot, 120-pump facility bears the characteristics of a large commercial activity aligning with C-2's stated purpose, not C-1's. Applicant's incorporated administrative-determination request confirms one side of this architecture by acknowledging that “Convenience Store” is listed as an Allowed Use in CC, CR, CS, C-1, C-2, and M. *Admin. Determination Request at 5* (incorporated into Appeal). The Code's use tables supply the other: Gas Station is expressly allowed in C-2 but omitted from C-1.

The LDC itself reinforces this reading. Section 1.6.1 provides that the Code's language “**shall be read literally,**” and directs that the definitions in Chapter 1 govern its interpretation. That literal-reading requirement applies to the Code's classifications and use tables as well as its definitions, including the separate definitions of “**Convenience Store,**” “**Gas Station,**” “**Compatibility,**” and “**Neighborhood,**” each of which must be given effect within the Code's overall structure. Read literally and *as a whole*, the Code maintains a series of deliberate distinctions: “Convenience Store” and “Gas Station” are separately defined; principal and accessory uses are separately regulated; C-1 and C-2 are different districts; C-2 exists specifically “for the purpose of providing for large commercial activities”; and gas stations are permitted in C-2 but not as a principal use in C-1.

A reading under which a 120-position fueling operation is treated as merely subordinate to a C-1 convenience store risks erasing every one of those distinctions: if any scale of fueling operation may be authorized in C-1 simply by pairing it with a sufficiently large retail building, the Code's separate classification of “Gas Station,” and its deliberate exclusion from C-1, becomes meaningless.

The Code's own definition of “Compatibility” reinforces the relevance of scale to this inquiry. The LDC defines compatibility as the characteristics of different uses, activities, or designs that allow them to be located near or adjacent to one another “*in harmony,*” and expressly identifies “*height, scale, mass and bulk of structures,*” together with landscaping, lighting,

noise, odor, and architecture, as characteristics affecting compatibility. The definition further explains that compatibility “*does not mean ‘the same as,’*” but concerns the “*sensitivity of the proposed use, activity or design in maintaining the character of existing development within the vicinity.*” Thus, although scale alone does not establish incompatibility, the Code expressly makes scale one of the characteristics relevant to the compatibility analysis required by § 5.3.6.C.1.

That consideration has concrete relevance here. Property directly across the street from the subject parcel is zoned RR-5, Residential Rural District, which the County's LDC describes as “*a 5 acre district intended to accommodate low-density, rural, single-family residential development.*” The presence of that development context does not itself determine whether the proposed use is permissible in C-1, but it is part of the “*existing development within the vicinity*” to which the Code's Compatibility definition expressly directs attention. Against that context, the scale, 24-hour operation, lighting, traffic generation, and 120-position fueling component of the proposed facility are relevant characteristics for the Board to consider in determining whether this use satisfies the Code's compatibility and similar-use criteria.

Consistent with this structure, no Convenience Store of any kind has ever been approved within C-1. As the Director's own determination letter states: “*Notably, there are no previous convenience store approvals within the C-1 zoning district on record.*” LDC Determination Letter at 4. The County's complete identified approval history (26 approvals, reviewed by staff across all EDARP and County Assessor records) supplies empirical evidence of the character and intensity the County has historically associated with convenience-store and fuel-retail uses, and the proposal lies far outside that range, as the comparison table in Section V below sets out in detail. There is **no administrative precedent** for extending C-1 Convenience Store treatment to a fuel-retail facility remotely approaching this intensity.

A closely related land-use conclusion was reached independently by a different jurisdiction reviewing the identical project. Palmer Lake's zoning code and land-use standards are, of course, not controlling here, and the two jurisdictions use different regulatory classifications. The relevance of that review is therefore not as legal precedent, but as independent evidence of how the same proposed facility was characterized when evaluated for scale, function, regional draw, compatibility, and local-serving orientation. Before pursuing the current C-1 administrative determination, Applicant sought annexation and a negotiated Planned Development (PD) zone from the Town of Palmer Lake for this same facility. Palmer Lake staff's review memorandum identified seven separate reasons a negotiated PD was necessary, beginning with the finding that “there is no existing zone district that allows both retail and gas station services,” and continuing through the need for non-standard interstate-oriented signage, non-standard lighting to support continuous 24-

hour operation, setback modifications, non-standard parking standards, non-standard dimensional standards including a 40-foot building height, and specialized landscaping standards.

That a government reviewer in a different jurisdiction concluded no ordinary zoning category, negotiated or otherwise, could accommodate this facility without bespoke treatment is strong, independent confirmation that the same facility does not fit within C-1's ordinary, unmodified Convenience Store allowance. The failure of the annexation did not change the proposed land use; it changed only the jurisdiction in which Applicant now seeks approval.

The Palmer Lake Planning Commission's own vote confirms the same point on the merits, not merely on process. On September 3, 2025, that Commission voted 3–2 to recommend denial of the proposed Planned Development zoning for this project, notwithstanding the property's location within a designated commercial node. *Fox21 News, Palmer Lake Planning Commission Denies Buc-ee's Annexation Plans* (Sept. 3, 2025); KOAA, *Palmer Lake Planning Commission Votes to Not Recommend Buc-ee's Annexation Proposal* (Sept. 3, 2025).

The Commission's own written findings, adopted the same day, concluded that the proposed Planned Development “*is simply too big of a development for the Town of Palmer Lake,*” “*fails to maintain the small-town character of the Town,*” and “**is incompatible with surrounding areas,**” among other findings regarding impermeable surface coverage, water sustainability, and night-sky impacts. *Resolution No. 61-2025 § 2* (Town of Palmer Lake Planning Comm'n, Sept. 3, 2025) (Exhibit 16). The body charged with administering that jurisdiction's own master plan and compatibility standards concluded that this regional travel center **was inconsistent with neighborhood-serving expectations** even under a designation intended to permit commercial use: the same conclusion the LDC's compatibility definition compels here.

V. INDEPENDENT INDUSTRY AND TRAFFIC-ENGINEERING STANDARDS CONFIRM THE FACILITY IS AN OUTLIER, NOT A CONVENIENCE STORE AT SCALE.

At approximately 74,000 square feet, the proposed facility is roughly 15 to 18 times larger than the largest defined convenience-store format recognized by the National Association of Convenience Stores (“Hyper Convenience Store,” 4,000–5,000 sq ft), and does not fall within any recognized industry size category for the term “convenience store.”

NACS Format	Size Range
Kiosk	Under 800 sq ft
Mini Convenience Store	800–1,200 sq ft
Traditional	~2,400 sq ft
Hyper Convenience Store (largest defined format)	4,000–5,000 sq ft

Independent academic analysis points in the same direction. Venky Shankar, the Coleman Chair Professor of Marketing and Director of Research at the Center for Retailing Studies at Texas A&M University, has explained that Applicant “*is basically reinventing this idea of gas and convenience store,*” concluding: “*It’s a category on its own.*” Fanning, *supra*. That independent assessment of Buc-ee’s business model is consistent with the conclusion that the proposed facility is not readily captured by a single conventional use label and instead must be evaluated under the Code’s own criteria for *character, intensity, function, performance characteristics, and location requirements*, including LDC §§ 1.6.7 and 5.3.6.

Even Wally’s, the Midwestern chain most frequently compared to Buc-ee’s and marketed as a large-format travel center under the tagline, “Home of the Great American Road Trip”, has materially fewer fuel pumps than the proposed facility.

Industry trade reporting likewise describes Applicant as an outlier among high-volume operators, stating that its per-location fuel volumes exceed those of its competitors “by far” because its pump counts “approach triple digits.” OPIS, *Top Retail Fuel Station Brands Revealed* (2023) (Exhibit 27). Federal industry classifications reflect a similar distinction between convenience retail and combined fuel-and-convenience operations.

Under the current North American Industry Classification System, “Convenience Retailers” (NAICS 445131) expressly excludes convenience stores operating fuel pumps, while NAICS 457110 separately classifies “Gasoline Stations with Convenience Stores.” Although NAICS does not control classification under the LDC, that distinction provides additional industry context for the Code’s own decision to define “Convenience Store” and “Gas Station” as separate uses. Buc-ee’s extraordinary fueling scale, with 120 positions proposed here, places the operation well beyond the characteristics of ordinary convenience retail and, according to industry reporting, at the **extreme end** even of high-volume fuel-and-convenience operations.

An independent professional peer review of two traffic studies prepared for the site, commissioned by neighboring landowners and prepared by engineers unaffiliated with Applicant, the County, or the Town, confirmed that “both studies relied on actual field measurements at existing Buc-ee’s sites which does provide the most accurate representation of the traffic generated by this **unique use given the [ITE] Trip Generation Manual does not provide equivalent data.**” That same independent review concluded, in the reviewing engineers’ own professional judgment rather than by adopting Applicant’s framing, that “**this type of facility acts more as a destination than a typical travel center**” and that “**it should be anticipated that a greater percentage of the total site trips will be destination and diverted in nature**” than either traffic study assumed, if anything, understating the facility’s regional draw rather than overstating it.

The following table consolidates the County's own approval history, Applicant's own cited comparables (Exhibit A), and representative industry benchmarks against the current proposal. Four of the five comparables in Applicant's own Exhibit A are confirmable against the County's approval-history data below; the fifth, identified in Applicant's exhibit only as "Circle K at 11769 US-24 in Falcon," is a real, operating location, but it does not appear in the County's own approval-history dataset (Exhibit 1 to the Director's determination letter) and is omitted here for lack of confirmed pump-count and building-size figures from that source. The County's own approval history and Applicant's own Exhibit A comparables are smaller than the proposal by a factor of 6.7 to 30 times in pump count and 13 to 21 times in building size:

Example / Chain	Zoning	Fueling Positions	Building Size	Parcel Size
Circle K, 613 Meadowbrook Pkwy (Applicant's Ex. A)	PUD	14	4,480 sq ft	1.74 acres
Fuel B's / Sinclair, Hwy 94 (Applicant's Ex. A)	CS	8	3,524 sq ft	4.5 acres
Carlie's Convenience & Mobil, Meadowbrook Pkwy (Applicant's Ex. A)	CS	12	5,040 sq ft	1.24 acres
Loaf N Jug, Space Village Ave (Applicant's Ex. A)	CR	4	3,621 sq ft	0.49 acres
King Soopers (County's largest fuel-pump approval, countywide)	CR	18	0 sq ft	1.31 acres
Maverick, 2017 (County's largest prior building, countywide)	CC	12	~5,550 sq ft	6.76 acres
Buc-ee's Proposal	C-1	120	~74,000 sq ft	~30+ acres

No convenience-store or gas-station use has ever been approved in C-1; the comparators above are drawn from other commercial zoning districts and are offered as general County and industry benchmarks, not as C-1 precedent.

Rather than establishing a pattern the proposal fits into, Applicant's own Exhibit A illustrates precisely how far outside that pattern the proposal falls.

VI. THE SCALE OF IDENTIFIED PUBLIC INFRASTRUCTURE IMPROVEMENTS CONFIRMS THE FACILITY'S EXTRAORDINARY INTENSITY AND LOCATION REQUIREMENTS.

The scale of public infrastructure improvements identified in the traffic and interchange analyses is itself evidence of the proposed use's intensity and location requirements under LDC § 5.3.6. Traffic engineering analysis for the I-25/County Line Road interchange, including Applicant's own Exhibit D submission, identifies the need for conversion of both I-25 ramp-terminal intersections from stop control to signal control; a fifth travel lane added to the interchange bridge itself; reconfiguration of the northbound and southbound off-

ramps with additional approach and spillback storage lanes; realignment of the County Line Road/Beacon Lite Road intersection requiring full signalization or roundabout control; and a separate Minor Interchange Modification Request process with the Federal Highway Administration evaluating multiple full interchange reconfiguration alternatives.

As already noted in Section III, Applicant's own MIMR memorandum, addressed to FHWA's Colorado Division Administrator, identifies this project itself as *“the primary development anticipated to affect the interchange.”* MIMR Mem. at 229 (Exhibit D to Applicant's appeal letter). This is not a case of incremental contribution to previously planned improvements; by Applicant's own submission, this facility is the principal project identified by Applicant's engineer as affecting the interchange and prompting analysis of the proposed interchange modifications. That is a scale of public infrastructure impact difficult to reconcile with a **“neighborhood”-oriented** convenience use, and materially different in kind from the local turn-lane and signal improvements typically associated with conventional convenience-store development.

The same MIMR findings and interchange-improvement scope are carried forward, without material change, into Applicant's February 24, 2026 *Travel Center Beacon Lite & County Line Traffic Study*: the traffic study prepared for, and submitted in connection with, the current El Paso County C-1 application now before the Board. That study confirms the same 74,000-square-foot, 120-fueling-position program, the same 22,150-daily-trip generation figure, and the same interchange reconfiguration scope discussed above, on the subject property as it exists today.

VII. ADDITIONAL CONFIRMING CONTEXT: THE MASTER PLAN, THE OBSOLETE C-1 ZONING HISTORY, AND REGIONAL PRACTICE.

Three further, independent sources of context all point to the same conclusion reached above on the LDC's own text and structure. None is independently dispositive, but each confirms that the proposed facility falls well outside the neighborhood-serving category the Convenience Store definition contemplates.

A. The County's own Master Plan confirms the site is not intended for regional-scale commercial development.

The County's adopted comprehensive plan, *Your El Paso Master Plan*, provides further, independent confirmation. The Master Plan organizes the County into twelve “placetypes” defined by character, scale, and function, and distinguishes each placetype's “primary” uses from its “supporting” or ancillary uses.

The subject property lies within the corridor the Master Plan identifies as Priority Development Area “Highway 105 & Interstate 25,” described as “located between

Monument, Woodmoor, and Palmer Lake,” a corridor the Plan states *“has largely developed to match that community's style of suburban residential and should continue to do so.”*

The Master Plan's Suburban Residential placetype, in turn, “comprises the County's traditional residential neighborhoods with *supporting commercial uses* at key intersections,” and is *“characterized by predominantly residential areas with mostly single-family detached housing.”* Commercial activity is expressly a **supporting**, not a primary, use: *“Although primarily a residential area, this placetype includes limited retail and service uses, typically located at major intersections or along perimeter streets.”* The Plan’s discussion of the *“Function of Supporting Uses”* in this placetype is more specific still: *“Few commercial uses may be appropriate in Suburban Residential. Those allowed **must** be small-scale standalone businesses that serve a **neighborhood** population.”* Your El Paso Master Plan 28–29.

That description closely parallels the LDC's own Convenience Store definition, which likewise confines the use to an establishment serving *“the neighborhood in which it is located.”* Read together, the LDC and the Master Plan contemplate convenience-oriented retail in a Suburban Residential setting as a limited, supporting use serving the surrounding residential community, not a major regional commercial destination.

The Master Plan **separately** defines a distinct placetype for commercial development of the scale and character Applicant proposes. **The Regional Center** placetype is “a commercial destination for County residents to purchase goods, procure services, and enjoy a variety of entertainment options,” providing “a level of goods and services that attract people from across the County, and depending on location, from adjacent counties.” Regional Centers “include large scale shopping centers” and other “major retailers,” and “are major commercial destinations for residents and are easily accessible from major transportation routes throughout the County.” *Your El Paso Master Plan* 35.

The proposed facility bears the hallmarks of a Regional Center, not a Suburban Residential supporting use. Its approximately 74,000-square-foot building, 120 fueling positions, hundreds of parking spaces, 24-hour operation, interstate-oriented signage and circulation, and business model built specifically around Interstate 25 traffic are not incidental to a residential neighborhood, they are the defining characteristics of a major commercial destination drawing from well beyond the immediately surrounding community. Applicant's own repeated description of the project as a “Travel Center,” rather than a neighborhood convenience store, is consistent with this characterization rather than at odds with it.

Buc-ee's own recent experience elsewhere confirms the scale of draw a single Buc-ee's location generates. A Complaint filed by Buc-ee's, Ltd. on July 28, 2026 alleges that the April 6, 2026 opening of its Huber Heights, Ohio location *“reportedly broke records and caused nearby hotels to sell out,”* and describes its stores generally as *“highway oases”* that are

“more than a typical gas station for many who treat it as a destination when on road trips.” Compl. ¶¶ 9, 14–15, *Buc-ee's, Ltd. v. Hanes Road Carryout, Inc.*, No. 3:26-cv-00272-MJN-CHG (S.D. Ohio filed July 28, 2026).

An opening reportedly associated with nearby hotels selling out is further evidence of a destination-scale regional draw, rather than ordinary neighborhood-serving retail, consistent with a Regional Center-scale destination, not a Suburban Residential supporting use.

This comparison does not suggest that the Master Plan independently prohibits commercial development on the property, nor that a placetype designation itself overrides existing zoning. It does, however, supply important interpretive context: the County's own planning vocabulary distinguishes exactly the kind of large-scale, regionally oriented commercial activity Applicant proposes from the limited, supporting neighborhood retail the Suburban Residential placetype, and the LDC's Convenience Store definition, contemplate. *Classifying this facility as an ordinary C-1 “Convenience Store” would use a land-use category defined by service to “the neighborhood in which it is located” to authorize a Regional Center-scale destination in an area the County's own Master Plan identifies as Suburban Residential, where commercial uses are described as limited and supporting.*

B. The obsolete C-1 zoning history confirms that C-1 was never calibrated to a use of this kind.

C-1 and C-2 were frozen as "obsolete" districts by Zoning Resolution 91-59, effective May 1, 1991 (as replaced by Resolution 92-46), which provides that "no land shall be zoned or rezoned to C-1 on or subsequent to May 1, 1991." The Convenience Store definition did not originally include gasoline sales at all; the sentence "A convenience store may include retail sale of gasoline and other petroleum products" was not added until the 2007 LDC update, sixteen years after C-1 had already been frozen and declared obsolete. LDC Determination Letter at 3.

That 2007 amendment made one narrow change: it added a single permissive sentence allowing fuel sales. It left entirely untouched the definition's pre-existing, and controlling, requirement that the establishment exist *"for the purpose of offering for sale to the neighborhood in which it is located"* the specified goods.

Had the drafters intended the 2007 amendment to accommodate a fundamentally different, regional-scale category of fuel-and-retail operation, the natural place to say so would have been in that same amendment, by revising or qualifying the neighborhood-orientation clause itself. They did not. The narrowest textual conclusion is that the 2007 amendment permitted gasoline sales without eliminating or modifying the pre-existing neighborhood-serving limitation. It did not state that gasoline sales of any scale would remain within the

Convenience Store classification regardless of their effect on the use's character, intensity, function, or customer orientation. This conclusion is consistent with the County's own 26-property approval history, which remains concentrated in the 4-to-18-pump range even decades later.

Applicant's own corporate history supplies a separate, independent caution. Whatever the drafters intended in 2007, the format itself kept growing well beyond it: Applicant's first store, opened July 28, 1982 in Lake Jackson, Texas, was approximately 3,000 square feet, already larger than the roughly 2,400-square-foot industry average of the time. The large-format "travel center" model reflected in the current proposal originated with the Luling, Texas location, opened in 2003, which Applicant nearly doubled in size in 2006 to approximately 17,000 square feet and nearly doubled again in 2009 to roughly 34,000 square feet, the same year Applicant opened comparably sized travel centers in Madisonville and Wharton, Texas, a format the press has described as the point at which Applicant's stores stopped being ordinary "pit stops" and became "highway oases." Eric Benson, *Buc-ee's: The Path to World Domination*, Texas Monthly (Mar. 2019) (Exhibit 21).

By 2019, even after nearly two decades of this large-format expansion, Applicant operated only 34 stores nationwide, a small fraction of the 9,000-plus locations operated by the industry leader, 7-Eleven, at that time. *Id.* This historical trajectory illustrates why the Code's character-, intensity-, and similarity-based provisions in §§ 1.6.7 and 5.3.6 matter: a modern use vastly exceeding the intensity associated with the defined Convenience Store category must be tested under those provisions rather than assumed to fit merely because it sells similar merchandise.

C. Regional land-use standards confirm that a 74,000-square-foot facility is not convenience-scale retail.

Although the LDC does not state a numerical maximum floor area for a Convenience Store, the manner in which the Town of Monument, the closest incorporated neighbor to the subject property, defines and regulates the identical land-use category is corroborative evidence of the term's ordinary planning meaning and the relative intensity associated with it, not evidence that independently defines what the County's own term legally means. Monument's code treats "convenience store" as a small-format, neighborhood-oriented retail classification, not an unlimited category defined solely by the merchandise sold.

The Town of Monument's governing body has independently reached the same conclusion. On August 3, 2026, the Monument Town Council unanimously adopted and transmitted to the Director a letter opposing classification of the proposed facility as a Convenience Store, observing that the practical effect of the requested classification "*raises concerns similar to those commonly associated with spot zoning*" because it "could effectively provide 'a

special entitlement unavailable to similarly situated properties” without the public process ordinarily required for a land-use decision of this kind. Exhibit 20.

The Town Council's letter separately identifies traffic, public-safety, and emergency-response impacts specific to the surrounding community, including the potential for the proposed facility to divert regional traffic through Monument's historic downtown core. Id. These institutional concerns, raised independently by an adjacent municipality's elected governing body, corroborate the conclusion reached throughout this memorandum: the proposed facility's character and impacts extend well beyond what the Convenience Store classification, or an administrative determination process, was designed to accommodate.

Jurisdiction	Convenience-Store Standard
Town of Monument	Less than 5,000 sq ft (retail establishment serving “the convenience of the neighborhood”)
Buc-ee's Proposal	Approximately 74,000 sq ft

The proposed facility is not marginally larger than the convenience-store scale recognized by the Town of Monument. At approximately 74,000 square feet, it is roughly 15 times Monument's 5,000-square-foot standard. This regional provision does not bind the County's interpretation of its own Code, but it is corroborative evidence of the ordinary and accepted land-use meaning of “convenience store” in the immediate region in which the subject property sits, and that understanding tracks the LDC's own functional limitation: an establishment serving “*the neighborhood in which it is located.*” Monument's definition makes that neighborhood orientation express, tying its own size limitation directly to “the convenience of the neighborhood”, the identical functional concept embedded in the LDC definition at issue here.

VIII. THE PROJECT'S CLAIMED ECONOMIC AND COMMUNITY BENEFITS DO NOT BEAR ON THE CLASSIFICATION QUESTION BEFORE THE BOARD.

Applicant is also likely to point to the jobs, sales-tax revenue, infrastructure contributions, and other claimed community benefits the project could bring to the County, and to argue that these benefits support approval. Even assuming Applicant's asserted community benefits are ultimately substantiated, they may be legitimate considerations somewhere in the County's land-use process, but not here. As the County itself has confirmed, this appeal is limited to a single, narrow legal question: whether the proposed use is an allowed use in the C-1 zoning district, or is similar enough to an allowed use to be considered as such. It is not a referendum on whether the project would be good for El Paso County, and it does not ask the Board to weigh costs against benefits.

Applicant's asserted economic benefits do not alter the classification question before the Board. Broader land-use processes such as rezoning or Planned Unit Development review, discussed in Section IX below, address the project's site-specific intensity, compatibility, traffic, infrastructure, water, dimensional standards, and Master Plan conformance, through a public hearing with defined findings. Whatever weight economic considerations might receive elsewhere in the County's decision-making process, they cannot change the text of the Convenience Store definition or the similar-use criteria governing this appeal.

IX. THE LDC ALREADY PROVIDES AN AVAILABLE MECHANISM FOR A DEVELOPMENT OF THIS SCALE AND COMPLEXITY: PLANNED UNIT DEVELOPMENT.

The County's own Land Development Code already contains a mechanism designed to evaluate developments of unusual mix, scale, and complexity: Planned Unit Development (“PUD”) zoning. LDC § 4.2.6 describes PUD as a flexible zoning mechanism intended to accommodate innovative development, combinations of commercial and other uses, customized dimensional standards, development intensity, infrastructure considerations, and coordinated land-use controls. A PUD specifically establishes the permitted mix and intensity of uses, including maximum nonresidential square footage, building heights, and other development standards tailored to the actual project proposed.

The proposed facility, a 74,000-square-foot retail and food-service building, 120 fueling positions, approximately 790 parking spaces, 24-hour operation, interstate-oriented signage and lighting, and substantial associated transportation infrastructure, is precisely the type of unusually large and integrated commercial development for which the PUD mechanism exists. There is no need to expand the meaning of an obsolete C-1 “Convenience Store” classification beyond its ordinary neighborhood-serving character in order to accommodate this project, because the Code already provides a process through which the County can evaluate the development as a whole, establish appropriate intensity and dimensional standards, assess compatibility with the Master Plan, and provide the public review a project of this magnitude warrants.

That distinction reflects a difference in procedural rigor, not a difference between judicial and non-judicial process. Both a PUD approval and this administrative appeal are ultimately decided by applying established criteria to the facts of a specific proposal, and both are properly understood as quasi-judicial in character. See Standard of Review, *supra*.

A PUD or rezoning process addresses a materially broader set of site-specific questions concerning intensity, compatibility, infrastructure, dimensional standards, and Master Plan conformance than the classification question presented here. That process requires a full public hearing, a complete evidentiary record addressing dimensional standards, infrastructure, and Master Plan conformance, and detailed, criteria-specific findings.

The Convenience Store determination Applicant seeks here, by contrast, originates as a staff-level administrative classification decision under LDC § 5.3.6, **and is before the Board only because Applicant has appealed it.** This memorandum does not ask the Board to decide that PUD is the only legally available route for a project of this kind; rezoning or another process might conceivably apply. The narrower and sufficient point is that the administrative-determination process is not a license to distort an existing use definition merely because Applicant prefers not to pursue a land-use process suited to the actual scale and intensity of what it proposes.

The PUD process asks precisely the questions this project's scale and character raise: whether the development is in general conformity with the Master Plan; whether the property is suitable for the proposed uses; whether the project is compatible with existing and allowed uses on neighboring properties; whether the development is harmonious with the character of the surrounding area; whether the project will adversely affect future development; whether the use will be detrimental to public health, safety, or welfare; and whether the development will impose an undue burden on existing infrastructure. Those are exactly the considerations Sections IV through VI of this memorandum address, and the LDC assigns their evaluation to that kind of public, quasi-judicial process, not to an administrative convenience-store determination.

LDC Chapter 1's statement of purpose reinforces this reading. Section 1.4 directs that the Code be applied to *“implement the Master Plan and related elements,”* to *“promote predictability, consistency and efficiency in the land development process,”* to *“ensure appropriate opportunities for participation and involvement in the development process by all affected parties,”* and to guide growth *“in accordance with the Master Plan.”*

Chapter 6's general development standards likewise apply broadly to development in all zoning districts and are intended to encourage **“sound, economical, stable neighborhoods.”** Stretching an obsolete C-1 definition to accommodate a 74,000-square-foot regional travel center serves none of these purposes: **it forecloses the public participation,** Master Plan review, and tailored development standards a public rezoning or PUD process would otherwise supply.

If Buc-ee's is in fact an appropriate use at this location, Applicant should be able to demonstrate that through the County's modern land-use process, which exists for exactly this purpose. The County should not have to stretch an obsolete zoning entitlement to make the project fit when the Code already provides an available vehicle for evaluating it properly.

CONCLUSION

The Board has three logical possibilities, and the record does not support any of the three. If Buc-ee's is literally a "Convenience Store," the Board must find that **neighborhood service is the purpose** of this overwhelmingly interstate-oriented destination: a finding Applicant's own customer-origin data, traffic engineering, and public statements do not support. If Buc-ee's is instead an **unlisted travel-center use**, LDC §§ 1.6.7 and 5.3.6.C.1 require comparison of *character, descriptor, intensity, function, performance characteristics, location requirements, traffic, parking, and compatibility*, and the record shows material differences across every one of those criteria, not the generic commercial features or hypothetical traffic comparisons Applicant offers in their place. And if Buc-ee's is **materially a Gas Station**, as its own engineers, a federal magistrate judge expressly citing its owner's sworn testimony, and the national trade association for its own industry all describe it, the Code's separate treatment of that use, together with its exclusion from districts where it is not listed, cannot be bypassed by attaching a 74,000-square-foot retail building to 120 fueling positions.

Each of those conclusions is reinforced by the fact that much of the supporting evidence comes from Buc-ee's entities, representatives, retained engineers, application materials, and contractual documents, rather than from characterizations created for purposes of opposing this application. That evidence spans nearly a decade and reaches into the current month: a federal Complaint filed by Buc-ee's, Ltd. within the last month, stating that **"Plaintiff's stores are not like other convenience stores"** and describing them as *"highway oases"* and destinations whose opening reportedly caused nearby hotels to sell out; Buc-ee's representative describing the project's customer base as more than 90% from outside the County and more than 70% from outside the state; Applicant's own traffic study assigning approximately 93.25% of weighted site trips to Interstate 25; the Kimley-Horn federal filing describing the project as a *"gas station"*; the federal court's description of Buc-ee's as having *"gas stations with convenience stores,"* expressly citing the sworn testimony of owner Arch Aplin; the Trip Generation Memorandum's own ITE Convenience Store/Gas Station comparator, showing the proposal at 6.9 to 14.8 times its scale; the selective reading of the "Neighborhood" definition; the revenue disclosure conceding up to 40% fuel-derived revenue; and the Code's express allowance of Gas Station in C-2 and its omission from C-1.

Those statements are particularly probative because they come from Applicant's own owner, executive, federal court filings, retained engineers, application materials, and contractual documents, rather than from characterizations created for purposes of opposing this application.

Under Anderson and Cherry Hills Resort Development, the Board may interpret the Code, *but it may not do so in a manner that effectively amends the Code, disregards its express*

limitations, or exercises authority the Code does not confer. Classifying the proposed facility as a “Convenience Store,” or as a use similar to one, would not be interpretation of the LDC; it would use administrative determination to dispense with the express limitations LDC §§ 1.15, 1.6.7, and 5.3.6.C.1 place on that classification.

Nothing in the El Paso County LDC, the applicable El Paso County Master Plan, the Town of Monument’s Comprehensive Plan, Three-Mile Plan, or Future Land Use Map, or the corresponding planning framework of the Town of Palmer Lake suggests that a regional commercial use of this scale and intensity was contemplated at this location. The surrounding land-use context reinforces that conclusion: immediately north of County Line Road in Douglas County lies approximately 36,000 acres of permanently protected conservation easement and open space, while the planning documents governing the areas to the south and west likewise do not identify this location for an interstate-oriented commercial use approaching the intensity of the proposed 74,000-square-foot, 120-fueling-position travel center. Taken together, those adopted planning frameworks provide consistent evidence that this site was not envisioned for a regional destination use of this magnitude.

The proposal is fundamentally out of character with the surrounding land-use framework. When approval depends on stretching definitions and technical interpretations merely to place the use within the same regulatory category as an allowed use, that is strong evidence that the proposed use does not fit the classification Applicant asks the Board to apply.

For the foregoing reasons, the Board should deny Applicant's appeal and leave the Director's July 1, 2026 determination undisturbed, because the record does not support a finding that the proposed use satisfies the defined “Convenience Store” classification or, alternatively, the Code's requirements for treatment as a substantially similar C-1 use. The proposal may sell merchandise listed in the Convenience Store definition, but the record does not establish that its principal character, customer orientation, intensity, traffic, parking, and location requirements are consistent with a neighborhood-serving C-1 Convenience Store or with any substantially similar C-1 use under the County's Code. To the extent Applicant believes a development of this scale and character warrants approval, the Code already provides an available vehicle for that inquiry through the public process: a Planned Unit Development or rezoning application, not an expansive administrative reading of an obsolete C-1 classification.

Respectfully submitted,

/s/ Steve King
Steve King
Resident of El Paso County, Colorado
(submitted in an individual capacity, as set forth above)

TABLE OF AUTHORITIES (SELECTED)

Letter from Meggan Herington, AICP, Exec. Dir., El Paso Cnty. Planning & Cmty. Dev., to Buc-ee's EPCO, LLC, Re: ADM264: Administrative Determination for Buc-ee's (LDC Determination Letter) (July 1, 2026).

El Paso Cnty. Planning & Cmty. Dev., Buc-ee's Update (updated Aug. 10, 2026), <https://planningdevelopment.elpasoco.com/buc-ees/>.

Letter from Buc-ee's EPCO, LLC to El Paso Cnty. Bd. of Cnty. Comm'rs (Appeal Letter) (July 2, 2026), and Request for Administrative Determination with Exhibits A–E (Admin. Determination Request) (identified by Applicant's appeal as submitted June 22, 2026; identified by the Director's determination letter as submitted June 19, 2026).

Anderson v. Board of Adjustment for Zoning Appeals, 931 P.2d 517 (Colo. App. 1996).

Cherry Hills Resort Dev. Co. v. City of Cherry Hills Village, 790 P.2d 827 (Colo. 1990).

Snyder v. City of Lakewood, 542 P.2d 371, 374 (Colo. 1975).

El Paso County Land Development Code § 1.15 (definitions: “Convenience Store,” “Gas Station,” “Store,” “Neighborhood”, Compatibility).

El Paso County Land Development Code § 1.6.7 (classification of similar uses by character, descriptor, and intensity).

El Paso County Land Development Code § 5.3.6.C.1 (determination of similar uses).

El Paso County Land Development Code § 4.4 (C-1 and C-2 district purposes).

El Paso County Land Development Code § 1.6.1 (literal-reading requirement).

El Paso County Land Development Code § 1.14.7 (definitions define the limits of specific uses and other standards).

El Paso County Land Development Code § 1.6.6 (Exclusion of Uses).

El Paso County Land Development Code § 5.3.6.E (Limit of Interpretations).

El Paso County Land Development Code § 1.4 (statement of purpose).

El Paso County Land Development Code § 4.2.6 (Planned Unit Development).

El Paso County Land Development Code, Chapter 6 (general development standards).

El Paso County Land Development Code, Chapter 3 (General Zoning Districts) (RR-5, Residential Rural District: “a 5 acre district intended to accommodate low-density, rural, single-family residential development.”).

Your El Paso Master Plan (2021), at 28–29 (“Placetype: Suburban Residential”), 35 (“Placetype: Regional Center”), and 52 (Priority Development Area: Highway 105 & Interstate 25).

Town of Monument, Colorado, Municipal Code (“Convenience Store” definition, less than 5,000 sq ft).

Mem. from Brian J. Horan, P.E. & Kevin R. Fellin, P.E., Traffic Impact Study Review (June 12, 2025) (independent peer review of the Kimley-Horn and Stolfus & Associates traffic studies).

GMS, Inc., Preliminary Engineering Report, Town of Palmer Lake Water System Improvements for Proposed Buc-ee’s Travel Center (Apr. 2025), pp. 55–56 (transient non-community water system classification).

Palmer Lake Development Review Team, Staff Memorandum, Buc-ee's Annexation and Development Items (Aug. 15, 2025) (identifying reasons a negotiated Planned Development zone was required).

Town of Palmer Lake Planning Commission, Resolution No. 61-2025 (Sept. 3, 2025) (3–2 vote recommending denial of proposed Planned Development zoning, with findings).

KKTV 11 News, video recording, “WATCH: Public meeting held on Tuesday to discuss possibility of Buc-ee’s in Palmer Lake” (published Dec. 4, 2024), <https://www.kktv.com/video/2024/12/04/watch-public-meeting-held-tuesday-discuss-possibility-buc-ees-palmer-lake/>, recording Buc-ee's community meeting held Dec. 3, 2024 at Palmer Lake Elementary School, including remarks of Stan Beard on behalf of Buc-ee's (Exhibit 17).

Buc-ee's, Ltd. v. Shepherd Retail, Inc., No. 4:15-cv-03704, Report & Recommendation at 1, 25–26, ECF No. 166 (S.D. Tex. July 21, 2017).

Fuels 50 2019: Retailers in the Fast Lane, CSP Daily News (2019) (Kloza and Aplin statements on Buc-ee's fuel pricing and pump volume).

OPIS, Top Retail Fuel Station Brands Revealed (2023) (per-site fuel-volume and pump-count comparison).

Buc-ee's, Ltd. v. Hanes Road Carryout, Inc., No. 3:26-cv-00272-MJN-CHG (S.D. Ohio filed July 28, 2026) (Complaint).

NACS, Buc-ee's Opens World's Largest Gas Station in Tennessee (June 27, 2023), https://www.convenience.org/stay-current/news/2023/june/27/6-bucees-worlds-largest-gas-station_ops.

Colorado Springs Gazette, Texas-based Buc-ee's eyes site north of Colorado Springs for its next giant-sized travel center (Nov. 4, 2024), <https://gazette.com/2024/11/04/texas-based-buc-ees-eyes-site-north-of-colorado-springs-for-its-next-giant-sized-travel-center/> (quoting Stan Beard).

LiveNOW from FOX, More Buc-ee's locations announced in national expansion (June 26, 2026), <https://www.livenowfox.com/news/more-buc-ees-locations-announced-national-expansion> (quoting Stan Beard); accord Fox Business, Buc-ee's opens first Arizona location as chain plans 15 new travel centers (June 25, 2026), <https://www.foxbusiness.com/retail/buc-ees-expands-national-footprint-15-more-locations-pipeline>.

Buc-ee's press release, Buc-ee's To Debut New Travel Center in Harrison County, MS (May 29, 2025), <https://markets.financialcontent.com/stocks/article/accwirecq-2025-5-29-buc-ees-to-debut-new-travel-center-in-harrison-county-ms> (quoting Stan Beard).

Fort Worth Star-Telegram, Newest North Texas Buc-ee's store to hold grand opening in mid-April, <https://www.aol.com/north-texas-buc-ee-hold-200134067.html> (quoting company spokesperson Stan Beard).

CSP Daily News, What's Driving Buc-ee's Interstate Billboards? (2026), <https://www.cspdailynews.com/company-news/whats-driving-buc-ees-interstate-billboards> (quoting Jeff Nadalo, General Counsel, Buc-ee's, on interstate billboard strategy).

Eric Benson, Buc-ee's: The Path to World Domination, Texas Monthly (Mar. 2019).

Timothy Fanning, *Buc-ee's doesn't hold world records for biggest convenience store, car wash, Guinness says*, San Antonio Express-News (Sept. 19, 2022, updated Sept. 20, 2022) (Lenard dwell-time statement and Shankar "category on its own" statement).

World Record Academy, *World's Largest Gas Station: World Record in Sevierville, Tennessee* (Oct. 2023), <http://www.worldrecordacademy.org/2023/10/worlds-largest-gas-station-world-record-in-sevierville-tennessee-423491>.

Chapter 380 Economic Development Incentives Agreement between the City of San Marcos, Texas and Buc-ee's San Marcos, LLC (effective date stated as Feb. 20, 2024; Developer executed Apr. 30/May 1, 2024; City executed May 2, 2024).

Fox21 News, Palmer Lake Planning Commission Denies Buc-ee's Annexation Plans (Sept. 3, 2025).

KOAA, Palmer Lake Planning Commission Votes to Not Recommend Buc-ee's Annexation Proposal (Sept. 3, 2025).

EXHIBIT LIST

The following exhibits are submitted in support of the factual and legal arguments contained in this comment. Materials identified as “in County record” are already contained in the ADM264 or ADM261 administrative record through submissions by Applicant or the County, and are cited but not duplicated here. All other exhibits are submitted with this comment, or electronically where the source is audiovisual, for consideration by the Board and for inclusion in the administrative record before the record is closed. Where an exhibit consists of or references audiovisual material, the exhibit identifies the publicly available source, URL, relevant timestamps, and any transcript excerpts relied upon.

No.	Description	Status
1	Letter from Meggan Herington, AICP, El Paso County Planning and Community Development, Re: ADM264 (July 1, 2026), including Exhibit 1 (historical convenience-store/gas-station approval data table) and Exhibit 2 (C-1 zoning district Use Table)	in County record
2	Buc-ee's EPCO, LLC Appeal Letter to the Board of County Commissioners, incorporating the Request for Administrative Determination and Exhibits A–E (July 2, 2026), including the Kimley-Horn Traffic Study, Trip Generation Memorandum, and MIMR Memorandum	in County record
3	El Paso County Planning and Community Development, “Buc-ee's Update” webpage (printout dated Aug. 10, 2026)	attached
4	Buc-ee's, Ltd. v. Shepherd Retail, Inc., No. 4:15-cv-03704, Report & Recommendation at 1, 25–26, ECF No. 166 (S.D. Tex. July 21, 2017).	attached: complete filing
5	Buc-ee's, Ltd. v. Hanes Road Carryout, Inc., No. 3:26-cv-00272-MJN-CHG (S.D. Ohio), Complaint (filed July 28, 2026), with Exhibits A–E, including a Texas Monthly article (Exhibit A) also cited independently in this comment as Exhibit 21	attached: complete filing
6	NACS, “Buc-ee's Opens World's Largest Gas Station in Tennessee” (June 27, 2023)	attached: complete article
7	CSP Daily News, “Fuels 50 2019: Retailers in the Fast Lane” (2019)	attached: complete article
8	Colorado Springs Gazette, “Texas-based Buc-ee's eyes site north of Colorado Springs for its next giant-sized travel center” (Nov. 4, 2024)	attached: complete article
9	LiveNOW from FOX (June 26, 2026) and Fox Business (June 25, 2026) articles on Buc-ee's Arizona opening	attached: complete articles

10	Buc-ee's press release, "Buc-ee's To Debut New Travel Center in Harrison County, MS" (May 29, 2025)	attached: complete release
11	Fort Worth Star-Telegram, North Texas Buc-ee's grand-opening article	attached: complete article
12	CSP Daily News, What's Driving Buc-ee's Interstate Billboards? (2026)	attached: complete article
13	Memorandum from Brian J. Horan, P.E. and Kevin R. Fellin, P.E., Traffic Impact Study Review (June 12, 2025)	attached: complete memorandum
14	GMS, Inc., Preliminary Engineering Report, Town of Palmer Lake Water System Improvements for Proposed Buc-ee's Travel Center (Apr. 2025), pp. 55–56	attached: relevant excerpt with title/context pages; complete report available on request
15	Palmer Lake Development Review Team, Memorandum to Palmer Lake Planning Commission re: Buc-ee's Annexation and Development Items on August 20, 2025 Agenda (Aug. 15, 2025).	attached: complete memorandum
16	Town of Palmer Lake Planning Commission, Resolution No. 61-2025 (Sept. 3, 2025) (Planned Development zoning denial recommendation, 3–2 vote, with findings)	attached: complete resolution
17	KKTV 11 News, video recording, "WATCH: Public meeting held on Tuesday to discuss possibility of Buc-ee's in Palmer Lake" (published Dec. 4, 2024), https://www.kktv.com/video/2024/12/04/watch-public-meeting-held-tuesday-discuss-possibility-buc-ees-palmer-lake/ , recording Buc-ee's community meeting held Dec. 3, 2024 at Palmer Lake Elementary School, including remarks of Stan Beard on behalf of Buc-ee's; unofficial transcript excerpts with full-video timestamps	submitted electronically by URL; transcript excerpts attached; full video publicly available
18	Your El Paso Master Plan (2021), excerpts at pp. 28–29, 35, and 52	attached (excerpts)
19	Town of Monument, Colorado, Municipal Code ("Convenience Store" definition, less than 5,000 sq ft)	attached (excerpts)
20	Letter from the Monument Town Council to the El Paso County Board of County Commissioners, Support for Administrative Determination ADM264 and Opposition to Classification of Buc-ee's as an Allowed Convenience Store Use (Aug. 3, 2026)	in County record
21	Eric Benson, Buc-ee's: The Path to World Domination, Texas Monthly (Mar. 2019) (same article referenced in Applicant's own Complaint, Exhibit A to Exhibit 5 above)	attached: complete article
22	Timothy Fanning, <i>Buc-ee's doesn't hold world records for biggest convenience store, car wash, Guinness says</i> , San	attached: complete article

	Antonio Express-News (Sept. 19, 2022, updated Sept. 20, 2022)	
23	World Record Academy, <i>World's Largest Gas Station: World Record in Sevierville, Tennessee</i> (Oct. 2023)	attached: complete article
24	Chapter 380 Economic Development Incentives Agreement between the City of San Marcos, Texas and Buc-ee's San Marcos, LLC (effective date stated as Feb. 20, 2024; Developer signature dated Apr. 30/May 1, 2024; City signature dated May 2, 2024), defining the "Project" as a "retail development consisting of a Buc-ee's Travel Center" of approximately 74,000 square feet and 120 fueling positions, and executed by Joe O'Leary, Vice President, on behalf of Buc-ee's San Marcos, LLC, and by Stephanie Reyes, City Manager, on behalf of the City of San Marcos	attached: complete agreement
25	Fox21 News, Palmer Lake Planning Commission Denies Buc-ee's Annexation Plans (Sept. 3, 2025)	attached: complete article
26	KOAA, Palmer Lake Planning Commission Votes to Not Recommend Buc-ee's Annexation Proposal (Sept. 3, 2025)	attached: complete article
27	OPIS, Top Retail Fuel Station Brands Revealed (2023)	attached: complete article

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EXHIBIT 3

BUC-EE'S UPDATE

Home / Buc-ee's Update

Latest Buc-ee's Update

Update August 10, 2026

On August 27, 2026, the Board of County Commissioners will hear Buc-ee's appeal of an administrative determination issued by the Development Director. **The Board will decide one question: whether the proposed Buc-ee's use qualifies as an allowed use in the C-Land Development Code.** The hearing does not approve or deny construction of a Buc-ee's. It only resolves the land-use classification. Development would still require additional County reviews and approvals, as applicable.

El Paso County is committed to providing a public hearing process that is transparent, respectful, and fair. Public input is part of the Commissioners' hearing process, and residents may participate by submitting written comments, attending the hearing, or speaking in the comment portion of the hearing. To learn more about how to participate, please visit the [Public Hearing Participation](#) webpage.

Update July 7, 2026

Buc-ee's EPCO, LLC has filed an appeal of the Planning and Community Development Director's written administrative determination. The Director was unable to determine the appropriate classification for the proposed development under the Land Development Code.

The appeal will be considered by the Board of County Commissioners at a future public meeting. The BoCC is the ultimate authority on the meaning and application of this Code as to the type, nature and rights of uses. Additional information, including the meeting agenda item, and instructions for public participation and comment, will be provided as it becomes available.

The appeal is limited to a single issue: whether the proposed Buc-ee's use is an allowed use in the C-1 zoning district or is similar enough to be considered as such. The Board of County Commissioners is only deciding the land-use classification, and their decision does not affect actual development. The criteria for determining if the use is a similar use is located under Section 5.3.6.C.1 of the [Land Development Code](#).

5.3.6.C.1 Determination of Similar Uses. No use not specifically identified as an allowed use, special use, temporary use, or accessory use shall be allowed in a zoning district or overlay zoning district unless the PCD Director determines the use is similar to an expressly allowed use, special use, temporary use, or accessory use. The use shall be identified in Chapter 5.

When a use is not specifically identified as allowed in a zoning district or overlay district, it shall not be allowed in the zoning district unless it meets the following criteria in determining the use is a similar use:

- The function, performance characteristics, and location requirements of the unlisted use shall be consistent with the purpose and character of the district where it is proposed;



- *The unlisted use is compatible with the uses specifically allowed in the district, and similar in characteristics such as traffic and glare, vibrations, and dust.*

Update June 23, 2026

El Paso County received a request for an administrative determination regarding whether the proposed Buc-ee's use should be classified as a "Convenience Store" under the Land Development Code.

Following review of the applicant's materials, applicable Land Development Code definitions, historical approvals, and comparative analysis, the Community Development Director was unable to make a determination. Because it is unclear whether the proposed use meets the definition of a "Convenience Store," the Director was unable to determine whether the proposed use is sufficiently similar to allow it in the zoning district.

The administrative determination is a limited code interpretation that addresses only how the proposed use is classified under the Land Development Code.

In accordance with LDC Section 5.3.6(F), an aggrieved party may appeal an administrative determination on use within 30 days of the determination. Appeals must follow the procedures adopted by the Board of County Commissioners (BoCC) or the Executive Director. The purpose of the appeal is to interpret the meaning and application of this Code as to the type, nature and rights of uses.

"Aggrieved" is defined in LDC Section 1.15 as the owner of the property that is the subject of the request and, when notice to adjacent owners is required, those adjacent owners entitled to such notice.

Until the appeal period has expired, or an appeal has been filed, the County cannot determine what the next procedural step will be. The County does not know whether an appeal or another land use application will be submitted.

If an appeal or another application is submitted, it will be reviewed in accordance with the applicable provisions of the Land Development Code and the County's established review process.

Stay Up-to-Date

The Administrative Determination application is viewable online [ADM264](#).

For all other projects, visit [EDARP](#).

Answering Community Questions

> What was submitted?

Buc-ee's EPCO, LLC is asking the County to determine whether their proposed land use should be classified as a "Convenience Store," which is one of the defined land use types in the County's zoning code, and if not, whether the land use is similar enough to a "Convenience Store" to be considered a permitted use within the C-1 zone district.

> What is an administrative determination?

An administrative determination is a written interpretation by the Planning and Community Development Director when a proposed use may not be clearly listed or defined in the Land Development Code for a specific zoning district.

The Land Development Code provides this process so staff can determine whether a proposed use falls within an existing definition or is substantially similar to a use already allowed in the zoning district.

> What is the Director considering in the administrative review?



The Planning and Community Development Director is considering whether the proposed Buc-ee's use, as described in the applicant's materials, is an allowed use in the C-1 zoning district, or is similar enough to an allowed use to be considered as such.

In this case, the applicant is asking whether the proposed use should be classified as a **Convenience Store** under the County Land Development Code.

As part of the review, the Director may consider whether the function, performance characteristics, and location requirements of the proposed use are consistent with the purpose and description of the zoning district. The Director may also consider whether the proposed use is compatible with uses allowed in the district and similar in characteristics such as traffic, parking, noise, glare, vibration, and dust.

This review is limited to the use-classification question. It does not approve construction, business operations, a site development plan, grading, drainage, traffic improvements, utilities, signage, lighting, or building permits.

› **What is the C-1 Commercial Zone?**

The property Buc-ee's is considering is located in a C-1 commercial zone, which is an obsolete zone district intended for general commercial uses.

› **Who makes the decision?**

The determination is made in writing by the Planning and Community Development Director. The Director may also refer the decision to the Board of County Commissioners.

› **Does this approve Buc-ee's?**

No. This determination only addresses how the proposed use is classified under the Land Development Code. It does not approve construction, site design, traffic access, grading, drainage, utilities, signage, lighting, or any other development details.

The administrative determination does not require notification to adjacent property owners.

› **Can the determination be appealed?**

Yes, the Land Development Code states that an appeal may be filed by an **aggrieved party** within 30 days of the administrative determination. The Code defines "aggrieved" as the person or party who owns the property subject to the application.

› **How long does staff review take?**

Staff review of the administrative determination may take up to **14 business days**, after which a written response and determination will be issued.

› **What was the Director's determination?**

Following review of the applicant's materials, applicable Land Development Code definitions, historical approvals, and comparative analysis, the Planning and Community Development Director was unable to make a determination. Because it is unclear whether the proposed use meets the Land Development Code definition of a "Convenience Store," the Director was unable to determine whether the proposed use is sufficiently similar to allowed uses within the C-1 zoning district to qualify as an allowed use.

› **Did the County deny Buc-ee's?**

No. The administrative determination is limited to interpreting the Land Development Code. It is not an approval or denial of a development application and does not authorize construction, site development, grading, drainage, traffic improvements, utilities, signage, lighting, building permits, or business operations.

› **Can the determination be appealed?**

-
- › Yes. In accordance with LDC Section 5.3.6(F), an aggrieved party may appeal an administrative determination on use within 30 days of the date of this determination. Appeals must follow the procedures adopted by the Board of County Commissioners (BoCC) or the Executive Director. The BoCC is the ultimate interpreter of the meaning and application of this Code as to the



type, nature and rights of uses. "Aggrieved" is defined in LDC Section 1.15 as the owner of the property that is the subject of the request and, when notice to adjacent property owners is required, those adjacent owners entitled to such notice.

➤ **What happens next?**

Until the 30-day appeal period has expired, or an appeal has been filed, the County cannot determine what the next procedural step will be.

If an appeal is filed, it will proceed in accordance with the appeal procedures established under the Land Development Code or by Board resolution.

The County cannot speculate about whether the applicant or another aggrieved party may pursue an appeal or another land use application.

Any future development application would be reviewed separately under the applicable County process.

➤ **What happens if an appeal is filed?**

If an appeal is filed, it will proceed in accordance with the appeal procedures established under the Land Development Code or by Board resolution. Information regarding the review process, including any public hearing, will be provided once the appeal has been initiated.



EXHIBIT 4

ENTERED

July 21, 2017

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

BUC-EE'S, LTD.,

Plaintiff,

v.

SHEPHERD RETAIL, INC, et al.,

Defendants.§
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Civil Action No. 15-CV-3704

**REPORT AND RECOMMENDATION ON
DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

On January 13, 2017, United States District Judge Keith P. Ellison referred Defendants' motion for partial summary judgment, ECF No. 74-13, pursuant to 28 U.S.C. § 636(b)(1)(B). Order of Referral, ECF No. 117. The Court recommends that Defendants' motion should be granted in part and denied in part.

I. BACKGROUND

This is a trademark infringement and unfair competition suit. **Buc-ee's, Ltd.** ("Buc-ee's") has gas stations with convenience stores, which sell food and merchandise, located throughout Texas. Resp. Mot. Summ. J., Ex. 1 8:15-23, ECF No. 85-2 (testimony of Arch Aplin, owner of Buc-ee's). In 1982, Buc-ee's developed a logo design of a buck-toothed cartoon beaver wearing a red hat inside of a yellow circle (referred to as the "Buc-ee's Marks"). *Id.* Ex. 1 109:3-9, ECF

No. 85-2 (testimony of Arch Aplin, owner of Buc-ee's); Ex. 3, ECF No. 85-4 (certificate of trademark). Buc-ee's owns three registrations with the United States Patent and Trademark Office ("PTO")¹ and four with the Texas Secretary of State.² *Id.* Ex. 3, ECF No. 85-4. Buc-ee's uses these marks in connection with marketing and selling its goods and services.

Defendants have restaurants and gas stations with convenience store services, which sell food and merchandise. Defendants developed a mark in 2012 to be used in connection with these services. This mark features a green cartoon alligator wearing a cowboy hat inside of a yellow circle (referred to as the "Alligator Logos"). Mot. Summ. J., ECF No. 74-1 (certificates of marks from PTO). Defendants assert that they are the owners of the two registrations for service marks with the PTO. Mot. Summ. J., ECF No. 74-13 at p.2. Defendants also use a few variations of the Alligator Logo throughout the restaurant and travel centers which are not registered with the PTO. Mot. Summ. J., p. 5 & ECF No. 74-8 & 9.

Buc-ee's claims that, when Defendants originally designed the Alligator Logo, they did not use elements of the Buc-ee's Marks. Buc-ee's claims that the

¹ Registration Nos. 3,246,893; 4,007,064; and 4,316,461.

² Registration Numbers TX 800651507, TX 800651502, TX 800651500, and TX 800478206.

graphic designer was instructed to incorporate elements of the Buc-ee's marks. *Id.* Ex. 14 16:21-17:5, 24:4-9, 25:3-9, 28:10-29:4, 31:7-14, 41:18-42:14, ECF No. 85-15 (deposition of Gerard Bowden, graphic designer of Alligator Logos). Buc-ee's argues that Defendants' use of the Alligator Logos infringes on and dilutes the Buc-ee's Marks. Third Am. Compl., ¶¶ 53-75, ECF No. 78.

Buc-ee's filed suit against eight Defendants, who are the various owners and operators of travel centers, gas stations, restaurants, and convenience stores that use the Alligator Logos. *Id.* ¶¶ 8-15.³ Buc-ee's alleges various trade mark infringement and dilution claims under federal and state law, including federal trademark infringement, false designation of origin, and unfair competition under 15 U.S.C. §§ 1114 and 1125(a); and state law trademark infringement under § 16.102. *Id.* ¶¶ 53-81. Buc-ee's also seeks a permanent injunction prohibiting Defendants from using the Alligator Logos. *Id.* ¶¶ 82-86.

Defendants moved for partial summary judgment on Buc-ee's claims under state law for trademark dilution, unjust enrichment, and misappropriation. Mot. Summ. J., ECF No. 74-13.

³ Shepherd Retail, Inc. ("Shepherd Retail"); Blanco Restaurant, Inc.; Live Oak Retail, Inc.; Mariam, Inc., S.W. Retail, Inc.' Falfurrias Highway Foods, Inc.; and Highway 46 Retail, Inc. own and operate gas stations, travel centers and/or convenience stores. Third Am. Compl., ¶¶ 6-10, 12-15, ECF No. 78. Harlow Food, Inc. is involved with the operation of a travel center and a restaurant. *Id.* ¶ 11.

II. SUMMARY JUDGMENT STANDARD

A motion for summary judgment requires a court to determine whether the moving party is entitled to judgment as a matter of law based on the evidence thus far presented. Fed. R. Civ. P. 56(c). Summary judgment is proper “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Kee v. City of Rowlett*, 247 F.3d 206, 210 (5th Cir. 2001) (internal quotation marks omitted) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)). A genuine issue of material fact exists if a reasonable jury could enter a verdict for the non-moving party. *Crawford v. Formosa Plastics Corp.*, 234 F.3d 899, 902 (5th Cir. 2000); accord *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986) (the question is “whether a fair-minded jury could return a verdict for the plaintiff on the evidence presented”).

The Court views all evidence in the light most favorable to the non-moving party and draws all reasonable inferences in that party’s favor. *Crawford*, 234 F. 3d at 902; accord *Anderson*, 744 U.S. at 252 (“Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether [s]he is ruling on a motion for summary judgment or for a directed verdict.”).

III. ANALYSIS

Defendants argue the Court should grant it summary judgment because the federal registration defense bars Buc-ee's state law dilution claim. In addition, Defendants assert that Buc-ee's cannot establish an essential element, that its mark was famous prior to Defendants' first use of their marks. Mot. Summ. J., pp. 7-11, ECF No. 74-13. Defendants assert that they are entitled to summary judgment on the unjust enrichment claim because, among other things, Buc-ee's cannot show any lost profits after 2012. *Id.* at 12-13. These arguments are without merit. Finally, Defendants move for summary judgment on Buc-ee's misappropriation of a trademark claim, which should be granted because no such claim exists under Texas law.

A. Buc-ee's State Law Dilution Claim Is Not Barred by the Federal Registration Defense

"Trademark dilution is the weakening of the ability of a mark to clearly and unmistakably distinguish the source of a product." *Dall. Cowboys Football Club, Ltd. v. Am.'s Team Props., Inc.*, 616 F. Supp. 2d 622, 642 (N.D. Tex. 2009). Federal and Texas law protect an owner's "famous" marks against dilution. 15 U.S.C. § 1125(c); Tex. Bus. & Com. Code § 16.103.⁴ Buc-ee's has alleged dilution through blurring.

⁴ Tex. Bus. & Com. Code § 16.103 was recently recodified from § 16.29 "to make the Texas dilution standard substantially consistent with federal law, including changing the dilution

Dilution through blurring occurs with the “diminution in the uniqueness or individuality of a mark because of its use on unrelated goods.” *Dall. Cowboys*, 616 F. Supp. 2d at 9642; Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 24:69 (4th ed.) (hereinafter “*McCarthy*”). Professor McCarthy explains the principle of dilution by blurring claim as follows:

[I]f customers or prospective customers see the plaintiff’s famous mark used by other persons to identify other sources for many different goods and services, then the ability of the famous mark to clearly identify and distinguish only one source might be “diluted” or weakened. This diminution of the strength of the famous mark could occur even though no confusion as to source, sponsorship, affiliation or connection has occurred.

Id.

1. Defendants cannot use the federal registration defense because Buc-ee’s is simultaneously seeking to cancel the registrations

Defendants assert that Buc-ee’s dilution claim is barred because Defendants have federally registered their Alligator Logos. *Id.* Buc-ee’s claims that the federal registration defense does not apply because it is simultaneously seeking to cancel the Alligator Logos with the Trademark Trial & Appeal Board (“TTAB”). Resp. Mot. Summ. J., Ex. 20, ECF No. 85-21.

analysis so that only famous—as opposed to distinctive—marks receive protection from dilution.” *Bulbs 4 E. Side, Inc. v. Ricks*, 199 F. Supp. 3d 1151, 1172 (S.D. Tex. 2016) (Harmon, J.) (quoting *US Risk Ins. Grp., Inc. v. U.S. Risk Mgmt., LLC*, No. 3:11-cv-2843, 2013 WL 4504754, at *20 (N.D. Tex. Aug. 20, 2013) (citing Notes to Tex. Bus & Com. Code § 16.103)) (internal citations omitted).

The Lanham Act bars a state law dilution claim where the allegations are based on the defendant's use of its federally registered trademark. This provision reads:

The ownership by a person of a valid registration . . . on the principal register under this chapter shall be a complete bar to an action against that person, with respect to that mark, that—

(A) is brought by another person under the common law or a statute of a State; and

(B) (i) seeks to prevent dilution by blurring or dilution by tarnishment; or

(ii) asserts any claim of actual or likely damage or harm to the distinctiveness or reputation of a mark, label, or form of advertisement.

15 U.S.C. § 1125(c)(6) (emphasis added).⁵ The federal registration defense provides an incentive for the federal registration of marks. H.R. Rep. No. 104-374, 1996 U.S.C.C.A.N. 1029, 1034 (Nov. 30, 1995).

The two Alligator Logos are federally registered. Mot. Summ. J., Ex. A, ECF No. 74-1 (copies of certificates of registrations issued in 2016 to Shepherd Retail for Registration Nos. 4,446,867 and 5,010931). At first glance, it appears

⁵ Section 1125 was amended on October 6, 2006, to change subsection (c)(3) to (c)(6). This change did not omit any language to what was required to use the federal registration defense. It added additional language to clarify the types of state law dilution claims under subsections (c)(6)(A) and (B) that would be barred by the federal registration defense. *Compare* 15 U.S.C. § 1125(c)(6) *with* § 1125(c)(3) (repealed Oct. 6, 2006). This change did not alter how courts have interpreted the federal registration defense. *See, e.g., Jada Toys, Inc. v. Mattel, Inc.*, 518 F.3d 628, 635 n.4 (9th Cir. 2008); *Jet, Inc. v. Sewage Aeration Sys.*, 165 F.3d 419, 424 (6th Cir. 1999).

that Defendants' federal registration bars Buc-ee's state law dilution claim. *See* 15 U.S.C. § 1125(c)(6); *Westchester Media*, 103 F. Supp. 2d at 977.

A number of exceptions, however, prevent Defendants from asserting this defense. Most notably, a defendant cannot use the federal registration defense to bar a state law dilution claim when the plaintiff simultaneously seeks to cancel the mark's federal registration. *Jada Toys*, 518 F.3d at 635 n.4 ("if Mattel can succeed in obtaining that cancellation, the bar to state unfair competition actions found in 15 U.S.C. § 1125(c)(6) will be inapplicable"); *V.V.V. & Sons Edible Oils Ltd. v. Meenakshi Overseas LLC*, No. 2:14-cv-296, 2016 WL 1268008, at *11 (E.D. Cal. Mar. 31, 2016) ("Because VVV is currently seeking to cancel Meenakshi's registrations, . . . 15 U.S.C. section 1125(c)(6) does not bar it from bringing a California dilution claim."); *see Waiter.com, Inc. v. Waitr, Inc.*, No. 2:16-CV-01041, 2016 WL 7443656, at *5 (W.D. La. Dec. 22, 2016) (recognizing that the plaintiff could have brought a state law dilution claim because it also sought to cancel the registered mark under 15 U.S.C. § 1119).

When a plaintiff seeks to cancel the federal registration, courts allow a state law dilution claim to proceed to trial because, if the plaintiff succeeds in cancelling the registration at trial, the federal registration defense would not apply. *See Jet, Inc.*, 165 F.3d at 424. When a plaintiff files a claim to cancel the mark, the federal registration defense, that would otherwise bar a state law dilution claim, is

temporarily blocked. *See Sanofi-Aventis*, 453 F. Supp. 2d at 854. In such instances, courts will deny a motion to dismiss or for summary judgment based on the federal registration defense as a bar to a state law dilution claim pending the outcome of the cancellation claim at trial. *See id.* If the plaintiff succeeds in establishing infringement and cancelling the mark at trial, then the fact-finder can determine the merits of the state law dilution claim. *See id.* If the plaintiff does not succeed in its claim to cancel the registration, then the federal registration defense bars the fact-finder from considering the state law dilution claim.

Buc-ee's has not filed a claim in this Court to cancel the two Alligator Logo registrations. Rather, it filed a cancellation petition with the TTAB. Resp. Mot. Summ. J., Ex. 20, ECF No. 85-21 Buc-ee's petition before the TTAB still serves to temporarily block the federal registration defense because Buc-ee's infringement claims pending in this Court will have a bearing on the TTAB cancellation proceeding. *See V.V.V. & Sons Edible Oils*, 2016 WL 1268008, at *11 (denying motion to dismiss based on federal registration defense because the plaintiff simultaneously seeking to cancel the registrations before the TTAB).⁶

⁶ Defendants incorrectly argue that this case is not instructive because it determined whether to stay the case pending the result in the TTAB proceeding. Reply Mot. Summ. J., p. 2, ECF No. 89. The defendant in *V.V.V. & Sons Edible Oils* was attempting to stay the proceedings, but it also sought to dismiss the state law dilution claim based on the federal registration defense. *See* 2016 WL 1268008 at *11.

Both Buc-ee's infringement claims in this Court and its petition to cancel the marks under § 1052(d) before the TTAB are based on a likelihood of confusion. Third Am. Compl., ¶¶ 59-73, ECF No. 78; Resp. Mot. Summ. J., Ex. 20. The determination in both instances is identical. *B & B Hardware, Inc. v. Hargis Indus.*, 135 S. Ct. 1293, 1307 (2015) (The "likelihood of confusion for purposes of registration [and cancellation] is the same standard as likelihood of confusion for purposes of infringement."); *Tillamook Country Smoker, Inc. v. Tillamook Cnty. Creamery Ass'n*, 465 F.3d 1102, 1111 (9th Cir. 2006) ("Under [] 15 U.S.C.A. § 1052(d), the test for trademark registration uses the same 'likelihood of confusion' standard as the test for trademark infringement," under § 1114); *McCarthy* § 23:78 ("The statutory test of likelihood of confusion for a bar to registration [and to cancel a registration] and for infringement are worded slightly differently. But the test is the same.").

Based on collateral estoppel or issue preclusion, a finding in federal court that the Alligator Logos causes a likelihood of confusion will be binding on the TTAB's cancellation proceeding. *See B & B Hardware*, 135 S. Ct. at 1303 (issue preclusion occurs "when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim"); *Mother's Rest., Inc. v. Mama's Pizza, Inc.*, 723

F.2d 1566, 1569-1573 (Fed. Cir. 1983) (“Under the doctrine of issue preclusion, traditionally called ‘collateral estoppel’ issues which are actually and necessarily determined by a court of competent jurisdiction are conclusive in a subsequent suit involving the parties to the prior litigation.” (quoting Restatement (Second) of Judgments § 27 (Am. Law. Inst. 1980))). “When a district court, as part of its judgment, decides an issue that overlaps with part of the TTAB's analysis, the TTAB gives preclusive effect to the court’s judgment.” *B & B Hardware*, 135 S. Ct. at 1305-06.

Accordingly, if Buc-ee’s succeeds on its infringement claims in the trial court based on a likelihood of confusion, the TTAB will have no choice but to cancel the two Alligator Logo registrations. *See Mother’s Rest.*, 723 F.2d at 1569 (affirming Board’s decision that “the state court findings of confusing similarity and priority of use should be accorded collateral estoppel effect in the cancellation proceeding.”). Defendants acknowledge as much. In their motion before the TTAB, Defendants argued that the district court’s judgment will “be dispositive and binding upon the PTO.” Reply Mot. Summ. J., Ex. A, ECF No. 89-1. The TTAB also anticipates issue preclusion and it is common practice for the TTAB to suspend its proceedings pending the outcome of a federal district court case. Trademark Trial and Appeal Board Manual of Procedure (TBMP) 510.02(a), 2016 WL 4165480 (3rd Ed. Rev. 3, June 2016). Here, Defendants moved to suspend the

TTAB proceeding and the TTAB has stayed the proceedings Buc-ee's instituted to cancel the Alligator Logos pending the outcome of this case.

It would waste judicial resources to require Buc-ee's to pursue its infringement claims in federal court, succeed, then take its likelihood of confusion judgment to the TTAB to cancel the registrations, only to then return to federal court to pursue its state law dilution claim. *Cf. Sanofi-Aventis*, 453 F. Supp. 2d at 855 n.10. Moreover, because Defendants moved to suspend the TTAB cancellation proceeding Buc-ee's was prevented from obtaining a ruling on the cancellation issue prior to disposition of this lawsuit. Reply Mot. Summ. J., Ex. A, ECF No. 89-1.

Because Buc-ee's is simultaneously seeking to cancel the federal registrations for the Alligator Logos, the federal registration defense does not bar the jury from considering Buc-ee's state law dilution claim if the jury finds for Buc-ee's on the infringement claim. Accordingly, the Court recommends Defendants be denied summary judgment on the state dilution claim.

If Buc-ee's does not succeed on the infringement claims, then the federal registration defense bars the state law dilution claim, subject to the restrictions set forth below.

2. The federal registration defense is limited

Buc-ee's alleges that Defendants have used unregistered variations of the Alligator Logos and, therefore, the federal registration defense would not bar its claim based on those uses. Buc-ee's also alleges that Defendants have used the Alligator Logos on goods that are not listed in the federal registration. Finally, Buc-ee's asserts that only Shepherd Retail can claim the benefit of the defense because it is the only recorded owner of the mark. All of these arguments have merit.

a. The federal registration defense does not apply to unregistered variations or depictions of the mark

The statute controls whether the federal registration defense applies to variations of the registered mark. 15 U.S.C. § 1125(c)(6). “[T]here is a paucity of judicial authority directly on point” and only one case analyzed this issue. *Exxon Mobil Corp. v. FX Networks, LLC*, 39 F. Supp. 3d 868, 871 (S.D. Tex. 2014) (Hittner, J.).

In this case, FX Networks had a standard character form registration of the FXX mark. *FX Networks, LLC*, 39 F. Supp. 3d at 870-72. A “standard character mark makes no claim as to any particular font, style, color or size of display.” *Id.* at 871.⁷ Exxon challenged FX's use of the interlocking X design. *Id.* at 870. The

⁷ Conversely, the Alligator Logs are “special form marks.” Registration Nos. 5,010,931 and 4,446,867. A special form mark claims uniqueness in its “font style, color, or size of

issue before the court was whether FX's ownership of the standard character mark covered all unregistered stylized variations of these letters such that Exxon's state law dilution claim was barred. *Id.*

The court relied on the plain language of the statute to hold that the provision "preempts state dilution claims against a federally registered mark only 'with respect to that mark.'" *Id.* at 871 (citing *Tesfamichael v. Gonzales*, 411 F.3d 169, 173 (5th Cir. 2005)). The relevant language of § 1125(c)(6) provides:

The ownership by a person of a valid registration . . . on the principal register under this chapter shall be a complete bar to an action against that person, *with respect to that mark*.

15 U.S.C. § 1125(c)(6). The court found "'that mark' is a limiting phrase in reference to the specific mark that is the subject of the 'valid registration' mentioned earlier in the same sentence." *FX Networks*, 39 F. Supp. 3d at 872. The court concluded that the plain language of the statute "does not encompass unregistered stylized variations of a registered standard character mark. *Id.* Thus, Exxon's state law dilution claim was not barred.

Buc-ee's cites five examples showing that Defendants used variations of the two federally registered Alligator Logos that are different in color, do not include lettering, use different lettering, or place the lettering on other parts of mark. Resp.

display." *FX Networks*, 39 F. Supp. 3d at 871; 37 C.F.R. § 2.52(B) ("Applicants who seek to register a mark that includes a two or three-dimensional design; color; and/or words, letters, or numbers or the combination thereof in a particular font style or size must submit a special form drawing.").

Mot. Summ. J., pp. 11-14, ECF No. 85. Defendants argue that there is no material difference between the various uses of the two registered marks and claim it would be duplicative to register these marks. Mot. Summ. J., pp. 9-10, ECF No. 74-13. However, this argument ignores the plain language of the statute which provides a defense for use of “that mark.” As the court found in *FX Networks*, the statutory language leaves no room for variations. *See* 15 U.S.C. § 1125(c)(6); *FX Networks*, 39 F. Supp. 3d at 871-72. Even if Defendants had the right to depict these marks as similar variations, the federal registration defense does not protect their usage. *Id.* Nothing prevents Defendants from registering each variation it wishes to protect against state law dilution. The federal registration defense does not protect these unregistered marks against a state law dilution claim. *Id.*

Defendants also argue that variations of the mark without the term “Choke Canyon Bar-B-Q” still bar the dilution claim because the PTO deemed this phrase merely descriptive when it registered the mark and required the owner to disclaim it. Mot. Summ. J., pp. 9-10, ECF No. 74-13. Defendants’ misunderstand the purpose of a disclaimer. A disclaimer limits a registrant’s rights in a mark, it does not expand them. In some circumstances, the PTO requires the registrant to disclaim part of the mark to show that it does not have rights to that individual component of the mark. Trademark Manual of Examining Procedure

§ 1202.02(c)(i)(A) (Jan. 2017 ed.) (“TMEP”).⁸ “The purpose of a disclaimer is to permit the registration of a mark that is registerable *as a whole*, but contains matter that would not itself be registerable alone.” *McCarthy* § 19:63 (emphasis added). This practice “prevents any false impression that the registrant owns registered rights to the individual part that is disclaimed.” *Id.*

Shepherd Retail has disclaimed the phrase “Choke Canyon Creek Bar-B-Q,” which prevents it from claiming rights in this phrase while still allowing it to claim rights in the registration *as a whole*. *See* TMEP § 1202.02(c)(i)(A). Defendants cannot rely on this disclaimer to support their federal registration defense on a variation of the registered mark. An unregistered variation of a mark will not bar a state law dilution claim. *See* 15 U.S.C. § 1125(c)(6); *FX Networks*, 39 F. Supp. 3d at 872.

b. The federal registration defense only applies to the goods and services listed in the registration

Again, the statute controls whether the federal registration defense applies when an owner uses the registered mark on goods and services not listed in the registration. 15 U.S.C. § 1125(c)(6).

⁸ Unregistrable components of a registrable mark typically include “the name of the goods or services, other matter that does not indicate source, matter that is merely descriptive or deceptively misdescriptive of the goods or services, or matter that is primarily geographically descriptive of the goods or services.” TMEP § 1213.03(a).

Only one case has addressed whether the owner of a registered mark can be protected for using the mark on goods not listed in the registration. *See Amy's Ice Creams, Inc. v. Amy's Kitchen, Inc.*, 60 F. Supp. 3d 738, 745-46 (W.D. Tex. 2014). In *Amy's Ice Creams*, Amy's Kitchen had a federal registration for frozen vegetarian meals, vegetarian refried beans, candy bars, and cookies. *See* Registration Nos. 1,885,120; 2,465,620; 2,954,885; 4,951,498. Amy's Kitchen argued that these federal registrations protect its new products, not listed in the federal registration and for which Amy's Kitchen sought additional federal registrations, from state law dilution claims.

The court disagreed and held that the federal registration defense is limited to "situations where [the owner of the federally registered mark] used the marks on goods or services *actually described in the registration*." *Id.* (emphasis added). The court explained that a registrant should not be allowed to use a mark "on any good or service it wants and be immune from any state dilution claim because it has registrations in those marks." *Id.* Accordingly, the court denied summary judgment based on the federal registration defense for use on products not listed in the registration. *Id.*

The United States Supreme Court previously found that the usage list serves an important function to the PTO. *See B & B Hardware*, 135 S. Ct. at 1300. "The applicant's right to register must be made on the basis of the goods described in the

application.” *Id.* (citing *McCarthy*, § 20:24). The PTO cannot register a mark if it “so resembles another mark as to be likely, when *used on or in connection with the goods of the applicant*, to cause confusion, or to cause mistake, or to deceive.” *Id.* (quoting 15 U.S.C. § 1052(d)) (internal citations omitted). This list provides “public notice” to a new applicant to current registrants to potentially oppose the application under 15 U.S.C. § 1062. *See id.*

Furthermore, Defendants’ use of the Alligator Logos on *goods* is not protected against Buc-ee’s state law dilution claim because Defendants registered the logos as *service marks*, to be used in connection with the providing of services, not with the sale of goods. Mot. Summ. J., Ex. A, ECF No. 74-13 (certificates for Registration Nos. 4,446,867 and 5,010,931; are both “service marks”).⁹

Defendants argue that their service mark registrations cover goods that it sells in its stores. However, a service mark and a trademark are two different concepts. A service mark identifies and distinguishes “the services of one person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown.” 15 U.S.C. § 1127. A trademark

⁹ Registration No. 4,446,867 is registered to be used in connection with “retail gasoline supply services; retail store services featuring convenience store items and gasoline.” Mot. Summ. J., Ex. A, ECF No. 74-13. Registration No. 5,010,931 is registered to be used in connection with “Restaurant services; Restaurant services featuring barbeque dishes and traditional Southern cuisine; Restaurant services, including sit-down service of food and take-out restaurant services; Restaurant services, namely, providing of food and beverages for consumption on and off the premises.” *Id.*

identifies and distinguishes a person's goods. *Id.* A person can register a mark both as a trademark and a service mark. For example, Buc-ee's Registration No. 4,007,064 is both a trademark and service mark, and contains both listed services and an extensive list of the goods covered. In contrast, Defendants listed only services in their registrations, not goods. Defendants cannot now claim protection under the federal registration defense for goods that are not actually described in the Alligator Logos' registrations.

c. The federal registration defense applies to the owner of the mark

Buc-ee's argues that Shepherd Retail alone can rely on the federal registration defense because it is the listed owner in the registration; but the other seven Defendants cannot rely on this defense because they are not the listed owners. Resp. Mot. Summ. J., pp. 10-11, ECF No. 85.¹⁰

The relevant statutory language provides:

The ownership by a person of a valid registration . . . on the principal register under this chapter shall be a complete bar to an action against that person, with respect to that mark that is brought by another person

15 U.S.C. § 1125(c)(6). A person includes a corporation. The question here is whether it also includes the corporation's wholly owned subsidiaries. There is no

¹⁰ The other seven Defendants are Blanco Restaurant, Inc.; Live Oak Retail, Inc.; Mariam, Inc., S.W. Retail, Inc.; Falfurrias Highway Foods, Inc.; Highway 46 Retail, Inc.; and Harlow Food, Inc. (referred to "the Remaining Defendants").

authority on point. The facts concerning ownership are necessary to determine who the proper applicant is for the registration and therefore the owner. *See McCarthy* § 16.37; TMEP 1201.03(b) (“Either a parent corporation or a subsidiary corporation may be the proper applicant, depending on the facts concerning ownership of the mark.”).

Shepherd Retail is listed as the owner of the Alligator Logos on the principal register with the PTO. Mot. Summ. J., Ex. 1, ECF No. 74-1 (Registration 4,446,867¹¹ lists “title to be in Shepherd Retail;” Registration No. 5,010,931 lists “title to be in Registrant,” and the Registrant was Shepherd Retail). The Remaining Defendants argue they are “wholly owned” subsidiaries of Shepherd Retail, and, as such, claim they too can assert the federal registration defense. Reply Mot. Summ. J., p. 3, ECF No. 89.

Here, the only evidence of ownership is the federal registration, which identifies Shepherd Retail as the current owner. The Remaining Defendants have failed to submit any other evidence of the facts of ownership or of their corporate structure. Therefore, the summary judgment evidence does not support the

¹¹ Live Oak apparently was the original registrant, ECF No. 74-1 at 3, but assigned it on February 10, 2016, to Shepherd Retail. PTO Trademark Status & Document Retrieval (TSDR) (viewable assignment document); ECF No. 74-1 at 2 (registration as of April 22, 2016, to Shepherd Retail).

Remaining Defendants' claim of ownership of the mark or Shepherd Retail's ownership of the Remaining Defendants.

Defendants also argue that Shepherd Retail licensed the Remaining Defendants to use the logos. Reply Mot. Summ. J., p. 3, ECF No. 89. The Remaining Defendants may be entitled to use the mark as licensees as a matter of contract, but this does not make them "owners of a valid registration" under 15 U.S.C. § 1125(c)(6). Under federal law, "a 'licensee' is known as a 'related company.'" *McCarthy* § 18:38. The Lanham Act does not equate being a related company as being an owner of a mark. For example, the Act defines a "related company" as "any person whose use of a mark is controlled by the *owner of the mark* with respect to the nature and quality of the goods or services on or in connection with which the mark is used." 15 U.S.C. § 1055; *see McCarthy*, § 18:38 (related company "does not denote any corporate ownership or affiliation . . .").

Thus, Defendants have failed to establish that the Remaining Defendants are owners of the mark. Only Shepherd Retail is entitled to rely on the federal registration defense.

B. A Genuine Issue of Material Fact Exists as to Whether the Buc-ee's Marks Were Famous Prior to Defendants' First Use

A claim for dilution under Texas law is consistent with federal law, requiring proof of the same elements. Tex. Bus. & Com. Code § 16.103; *Galvotec Alloys, Inc. v. Gaus Anodes Int'l, LLC*, No. 7:13-cv-664, 2014 WL 6805458, at *10

(S.D. Tex. Dec. 2, 2014) (Crane, J.); *see* 15 U.S.C. § 1125(c). To establish a claim for dilution, the plaintiff must show that

(1) it owns a famous and distinctive mark; (2) the defendant subsequently commenced using a mark in a manner that dilutes the plaintiff's mark; (3) the similarity between the plaintiff and defendant's marks gives rise to an association between the two marks; and (4) the association is likely to cause dilution by either impairing the distinctiveness of the plaintiff's mark (dilution by blurring) or harming the reputation of the plaintiff's mark (dilution by tarnishment).

Nat'l Bus. Forms & Printing, Inc. v. Ford Motor Co., 671 F.3d 526, 536 (5th Cir. 2012); *Viacom Int'l Inc. v. IJR Capital Invs., LLC*, No. H-16-cv-257, 2017 WL 1037294, at *7 (S.D. Tex. Mar. 17, 2017) (Miller, J.). A plaintiff must also show that its mark was famous before the defendant began using the mark that allegedly dilutes the plaintiff's mark. Tex. Bus. Com. & Code § 16.103(a).

Defendants assert that Buc-ee's marks were not famous prior to their first use of the Alligator Logos. Mot. Summ. J., pp. 10-11, ECF No. 74-13. Specifically, they argue that Buc-ee's revenue in 2012 was only half of what was in 2015 and the Buc-ee's marks were not famous throughout Texas, because its stores were concentrated in the Houston area as of 2012. *Id.*

Determining whether a mark is "famous" is a factual inquiry where the court considers a non-exclusive list of four factors, including:

(1) the duration, extent, and geographic reach of the advertisement and publicity of the mark in this state, regardless of whether the mark is advertised or publicized by the owner or a third party;

- (2) the amount, volume, and geographic extent of sales of goods or services offered under the mark in this state;
- (3) the extent of actual recognition of the mark in this state; and
- (4) whether the mark is registered in this state or in the United States Patent and Trademark Office.

Id.; *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1373 (Fed. Cir. 2012) (noting that the famous inquiry for a federal dilution claim is a factual question); *US Risk Ins. Grp., Inc. v. U.S. Risk Mgmt., LLC*, No. 3:11-cv-2843, 2013 WL 4504754, at *21 (N.D. Tex. Aug. 20, 2013) (“there is no bright line rule for determining whether a mark is famous”).¹²

Buc-ee’s has submitted evidence of each factor to create an issue of fact as to whether its mark was famous prior to June 1, 2012, the date Defendants first used the Alligator Logos. *See US Risk Ins. Grp.*, 2013 WL 4504754, at *21.

First, Buc-ee’s has offered evidence in support of the sweeping reach of recognition and publicity of its marks. Buc-ee’s has received third-party publicity on television, radio, newspaper and the internet. Resp. Mot. Summ. J., Exs. 7-8, ECF No. 85-8, 85-9 (examples of publicity). Over two hundred and fifty thousand people have “liked” Buc-ee’s on Facebook. *Id.* Ex. 9, ECF No. 85-10 (Facebook page); *see Emerald City Mgmt., LLC v. Kahn*, No. 4:14-cv-358, 2016 WL 98751,

¹² “[A] mark is considered famous if the mark is widely recognized by the public throughout [Texas] or in a geographic area in [Texas] as a designation of source of the goods or services of the mark’s owner.” Tex. Bus. & Com. Code § 16.103(b).

at *10 (E.D. Tex. Jan. 8, 2016) (noting that the plaintiff had advertised over the internet, YouTube, and Facebook).

In analyzing this factor, the Court can also consider the plaintiff's advertising efforts to expand the mark's reach and publicity. *See US Risk Ins. Grp.*, 2013 WL 4504754, at *21 ("most relevant [to the fame determination is] the time and money that Plaintiff has spent marketing, promoting, and selling its products and services to insurance agents and companies across the country."). Buc-ee's has spent over a million dollars advertising and marketing and has displayed the mark on many billboards since 2011.¹³ Resp. Mot. Summ. J., Ex. 4-5, ECF Nos. 85-5, 85-6 (advertising figures since 2001); *see Emerald City*, 2016 WL 98751, at *10 (noting that the plaintiff had advertised its mark on a variety of internet websites and has a database of approximately 8,000 potential customers). Defendants even acknowledge the presence of this factor. *See* Mot. Summ. J., p.14, ECF No. 74-13 ("It cannot be denied that Plaintiff has developed the Buc-ee's Marks and the recognition associated with them through extensive time, labor, skill, and money.").

Second, Buc-ee's, has submitted evidence of extensive sales of goods and services using the Buc-ee's marks. Without even considering its highest grossing

¹³ The exact marketing and advertising figures are sealed and the Court speaks of these figures in general terms.

product, fuel, since 2001, Buc-ee's has earned many millions of dollars. Resp. Mot. Summ. J., Ex. 12, ECF No. 85-13 (spreadsheet listing non-fuel sales at each location); *see Emerald City*, 2016 WL 98751, at *10 (finding sufficient to defeat summary judgment regarding the extent of sales and recognition with the plaintiff having performed 700 events in over six years); *Dall. Cowboys*, 616 F Supp. 2d at 631 (noting that the plaintiff had made "millions of dollars selling" items with the logo at issue for federal dilution claim).

Third, Buc-ee's has offered evidence of actual recognition in the form of a survey that shows a high percentage of adults in "Texas who are familiar with Buc-ee's logo," which is a higher recognition rate than many national brands. Resp. Mot. Summ. J., Ex. 22, p. 2, 17, ECF No. 85 (Expert Report of Alex Simonson, Ph.D.).

Fourth, Buc-ee's has two PTO registrations that were registered before 2012. Resp. Mot. Summ. J., Ex. 3 pp. 2-3, ECF No. 85 (U.S. Registration Nos. 3,246,893 and 4,007,064 registered before 2012); *US Risk Ins. Grp.*, 2013 WL 4504754, at *21 (the fact that Plaintiffs mark is federally registered found to be important in the determining fame).

Fifth, although not a listed factor in the statute, other courts have considered a defendant's admission that a plaintiff's mark is famous. *See Dall. Cowboys*, 616 F. Supp. 2d at 643. Defendants acknowledge that Buc-ee's marks are currently

famous, thereby suggesting that they were famous in 2012, a few years prior. Mot. Summ. J., p. 10, ECF No. 74-13.

Defendants argue that the Buc-ee's marks were not famous prior to 2012 outside the Houston area. Mot. Summ. J., p. 10-11, ECF No. 74-13. Buc-ee's has offered evidence supporting state-wide fame. It has a customer survey report that shows a high state-wide consumer recognition rate of the Buc-ee's logo by name. Resp. Mot. Summ. J., Ex. 22 p. 13, ECF No. 85 (expert report). Further, Buc-ee's had two locations in the San Antonio area as of 2003. *Id.* Ex. 12 (detailing high sales figures from these two stores). Moreover, consumers visiting Buc-ee's stores often travel long distances, expanding the scope of recognition of the marks beyond the precise location of its stores. See Resp. Mot. Summ. J., Ex. 23 (study detailing that a list of ten stores have "significant sales outside of a 100 mile radius").

Accordingly, Buc-ee's has produced competent evidence to show that a fact issue exists with respect to whether its marks were famous prior to Defendants' first use. See *Emerald City*, 2016 WL 98751, at *10 (denying the defendant summary judgment based on the presence of a high level of sales and recognition and the fact that the plaintiff owned a Texas registration for the mark); *US Risk Ins. Grp.*, 2013 WL 4504754, at *21 (denying summary judgment after finding two factors present).

C. A Genuine Issue of Material Fact Prevents Granting Summary Judgment on the Unjust Enrichment Claim

Defendants argue they are entitled to summary judgment on Buc-ee's unjust enrichment claim because Buc-ee's has no evidence of Defendants' fraud, duress, or taking undue advantage or that Buc-ee's was damaged after 2012. Defendants assert, to the contrary, that Buc-ee's profits have continually increased. Mot. Summ. J., p. 12, ECF No. 74-13.

The Fifth Circuit recently identified three essential factors to establish unjust enrichment in a trademark infringement case: did the defendants willfully infringe on the plaintiff's trademark, did the defendants attempt to palm off its goods as those of the plaintiff's, and did the plaintiff lose sales to defendants. *See Streamline Prod. Sys., Inc. v. Streamline Mfg., Inc.*, 851 F.3d 440, 462 (5th Cir. 2017) (finding that none of these factors were present and reversing unjust enrichment jury award). While no one factor is a prerequisite, lack of evidence of all three will defeat a claim. *Id.*

In response to Defendants' motion, Buc-ee's argues that Defendants' intentionally infringed Buc-ee's marks and used Buc-ee's reputation and goodwill to their advantage. *See* Resp. Mot. Summ. J., Ex. 14 41:18-25, 42:1-14, ECF No. 85-15 (deposition testimony of graphic designer of Alligator Logos, concerning the progression of the design of the mark showing transformation that incorporates components of Buc-ee's marks); Ex. 24, ECF No. 85-25 (expert report regarding

survey results). This is sufficient to raise fact questions for the jury. *See, e.g., Tex. Pig Stands, Inc. v. Hard Rock Cafe Int'l, Inc.*, 951 F.2d 684, 694-96, 697 (5th Cir. 1992) (analyzed evidence to support findings of a palming off and goodwill, as well as jury instruction on willfulness).

Notwithstanding that it earns a profit, Buc-ee's claims it could have earned a greater profit if not for the harm it suffered. Resp. Mot. Summ. J., pp. 22-23, ECF No. 85. Buc-ee's profitability does not mean that sales were not in fact diverted to Defendants. Further, at the summary judgment stage, a plaintiff need only show it was damaged; it is the jury's role to determine the amount of damages that a plaintiff has incurred. *Terrell v. Household Goods Carriers' Bureau*, 494 F.2d 16, 20 (5th Cir. 1974) ("There is a clear distinction between the measure of proof necessary to establish the fact that petitioner had sustained some damage and the measure of proof necessary to enable the jury to fix the amount.").

Accordingly, Defendants are not entitled to summary judgment because they have not met their burden to show that there is no genuine issue as to any material fact on the unjust enrichment claim. *See Kee*, 247 F.3d at 210.

D. Misappropriation of a Trademark is Not a Cause of Action Under Texas Law

Buc-ee's has alleged a claim for misappropriation of a trademark under Texas common law. Third Am. Compl., ¶¶ 80-81, ECF No. 78. Defendants argue that they have not gained any unfair or special advantage and that Buc-ee's has not

suffered any commercial harm. Mot. Summ. J., pp. 14-15, ECF No. 74-13. Buccie's responds to these arguments. Resp. Mot. Summ. J., pp. 24-25.

The Parties have not cited to¹⁴ and the Court has not found any authority that suggests that a plaintiff, under Texas common law, can maintain a cause of action for misappropriation of a trademark.¹⁵

Misappropriation is a branch of the tort of unfair competition which involves the appropriation and use by the defendant, in competition with the plaintiff, of a unique pecuniary interest created by the plaintiff through the expenditure of labor, skill and money.

Seatrax, Inc. v. Sonbeck Int'l, Inc., 200 F.3d 358, 368 (5th Cir. 2000) (citing *Conan Props., Inc. v. Conans Pizza, Inc.*, 752 F.2d 145, 156 (5th Cir. 1985)). It serves to “protect the labor—the so-called ‘sweat equity’—that goes into creating a work or a product.” *PrevMED, Inc. v. MNM-1997, Inc.*, No. H-15-cv-2856, 2017 WL

¹⁴ The Parties cite the following cases: *Orthoflex, Inc. v. ThermoTek, Inc.*, 983 F. Supp. 2d 866, 883 (N.D. Tex. 2013) (misappropriation of a trade secret); *Schwimmer v. Presidio Indus. LLC*, No. 3:10-cv-2213, 2011 WL 13089398, at *5 (N.D. Tex. Feb. 11, 2011) (misappropriation of a trade secret); *Shell Trademark Mgmt. B.V. v. Warren Unilube, Inc.*, 765 F. Supp. 2d 884, 902 (S.D. Tex. 2011) (Ellison, J.) (misappropriation of a product); *Healthpoint, Ltd. v. River's Edge Pharm., LLC*, No. 03-cv-984, 2005 WL 356839, at *7 (W.D. Tex. Feb. 14, 2005) (misappropriation of a product); *Schuchart & Assocs., Prof'l Eng'rs v. Solo Serve Corp.*, 540 F. Supp. 928, 943-944 (W.D. Tex. 1982) (misappropriation of drawings and specifications for architectural designs); *U.S. Sporting Prod., Inc. v. Johnny Stewart Game Calls, Inc.*, 865 S.W.2d 214, 216 (Tex. App.—Waco 1993, writ denied) (audio recordings of bird sounds sold to hunters is a form of misappropriation of a product).

¹⁵ Trademark infringement has been analyzed in cases discussing insurance coverage under commercial general liability (CGL) policies to determine if infringement fits within the policy's coverage for “misappropriation of advertising ideas.” See, e.g., *Sport Supply Grp., Inc. v. Columbia Cas. Co.*, 335 F.3d 453, 455 (5th Cir. 2003). These cases analyze the language of the policy to determine whether coverage exists and have no bearing on whether misappropriation of a trademark is a cause of action. See, e.g., *Bay Elec. Supply, Inc. v. Travelers Lloyds Ins. Co.*, 61 F. Supp. 2d 611, 615 (S.D. Tex. 1999) (Kent, J.).

785656, at *21 (S.D. Tex. Feb. 28, 2017) (Lake, J.) (quoting *Alcatel USA, Inc. v. DGI Techs., Inc.*, 166 F.3d 772, 788 (5th Cir. 1999)) (internal citations omitted).

The leading treatise on trademark and unfair competition law cautions against finding a cause of action for misappropriation based on alleged trademark violations. *McCarthy* § 10.47. As Professor McCarthy explains, “misappropriation is a state common law, judge-made offshoot of the general law of unfair competition” and invoked when the plaintiff creates a valuable “thing” that the defendant has “appropriated” at little cost. *Id.* The “thing” that the plaintiff seeks to protect must not otherwise be protected “(1) by federal patent or copyright legislation or (2) by one of the traditional common law theories of unfair competition, such as trademark infringement or breach of confidential relationship.” *Id.* §§ 10.47-48; accord *Mueller Co. v. U.S. Pipe & Foundry Co.*, No. 03-cv-170, 2003 WL 22272135, at *3 (D.N.H. Oct. 2, 2003) (“the misappropriation theory [] has been reserved for the vindication of commercial rights left unprotected by trademark principles”).

[T]he misappropriation doctrine should not be used in ordinary trademark infringement cases to short-circuit trademark law’s carefully crafted standards of protection. That is, a plaintiff should not be permitted to dispense with the traditional requirements for trademark protection by blithely claiming that defendant “misappropriated” some symbol of plaintiff which may or may not be capable of trademark protection. Like claiming that a trademark has

been “converted,”¹⁶ “misappropriation” law is not suited for the task of sorting out infringing uses from legitimate uses of marks. Trademark law was specifically constructed to balance the private and public interests inherent in commercial symbols: the unfair competition tort of “misappropriation” was not. It is the wrong tool for the job.

Id. § 10:50; *accord* Restatement (Third) of Unfair Competition § 38 cmt. e (1995).

Numerous other courts have rejected the theory of misappropriation of a trademark under state common law.¹⁷

Accordingly, Buc-ee’s misappropriation of a trademark claim under Texas common law is not a valid theory of recovery under Texas law. *See McCarthy*, § 10:50. Buc-ee’s interests in its marks are sufficiently protected in trademark law and its misappropriation claim should be dismissed.

¹⁶ Texas does not recognize a cause of action for conversion of a trademark. *E.g.*, *Beardmore v. Jacobsen*, 131 F. Supp. 3d 656, 667 (S.D. Tex. 2015) (Harmon, J.).

¹⁷ *See Toho Co. v. Sears, Roebuck & Co.*, 645 F.2d 788, 794 (9th Cir. 1981) (California law); *Bd. of Dirs. Sapphire Bay Condos. W. v. Simpson*, No. 04-cv-62, 2014 WL 4067175, at *11 (D.V.I. Aug. 13, 2014), *aff’d*, 641 F. App’x 113 (3d Cir. 2015); *Stevo Design, Inc. v. SBR Mktg. Ltd.*, 919 F. Supp. 2d 1112, 1127 (D. Nev. 2013); *Mueller*, 2003 WL 22272135, at *4-5; *DeGidio v. W. Grp. Corp.*, 205 F. Supp. 2d 806, 810 (N.D. Ohio 2002), *aff’d*, 355 F.3d 506 (6th Cir. 2004); *Duffy v. Charles Schwab & Co., Inc.*, 97 F. Supp. 2d 592, 598 n.2 (D.N.J. 2000); *Heirs of Estate of Jenkins v. Paramount Pictures Corp.*, 90 F. Supp. 2d 706, 714 n.26 (E.D. Va. 2000), *aff’d sub nom. Evans v. Paramount Pictures Corp.*, 7 F. App’x 270 (4th Cir. 2001); *Eagle’s Eye, Inc. v. Ambler Fashion Shop, Inc.*, 627 F. Supp. 856, 861 (E.D. Pa. 1985); *but see ITC Ltd. v. Punchgini, Inc.*, 880 N.E.2d 852, 860 (N.Y. 2007) (recognizing the cause of action of misappropriation of a mark and goodwill of another as a branch of unfair competition under New York common law).

IV. CONCLUSION

The Court **RECOMMENDS** that Defendants' Motion for Partial Summary Judgment be **DENIED** with respect to the state law dilution claim, but to the extent that Buc-ee's does not succeed at trial on its infringement claims and the Court bars the state law dilution claims based on the federal registration defense, the Court **RECOMMENDS** that the defense be limited as described in § III.A.2. The Court also **RECOMMENDS** that Defendants' Motion for Partial Summary Judgment be **DENIED** with respect to the state law unjust enrichment claim and **GRANTED** as to the state law misappropriation claim.

The parties have fourteen days from service of this Report and Recommendation to file written objections. 28 U.S.C. § 636(b)(1)(C); Fed R. Civ. P. 72(b). Failure to file timely objections will preclude appellate review of factual findings or legal conclusions, except for plain error. *Ortiz v. City of San Antonio Fire Dep't*, 806 F.3d 822, 825 (5th Cir. 2015).

Signed on July 21, 2017, at Houston, Texas.

A handwritten signature in black ink that reads "Dena Palermo". The signature is written over a yellow rectangular highlight.

Dena Hanovice Palermo
United States Magistrate Judge

EXHIBIT 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

BUC-EE'S, LTD.,

Plaintiff,

v.

HANES ROAD CARRYOUT, INC.,

Defendant.

CIVIL ACTION NO. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Buc-ee's, Ltd. ("Plaintiff" or "Buc-ee's"), appearing through its undersigned counsel, alleges as follows:

NATURE OF ACTION AND JURISDICTION

1. This is an action for trademark infringement and unfair competition, under the Trademark Act of 1946, as amended, 15 U.S.C. § 1051 *et seq.*
2. This Court has jurisdiction over the subject matter of this action pursuant to Section 39 of the Lanham Act, 15 U.S.C. § 1121, and Chapter 85 of the Judiciary and Judicial Procedure Code, 28 U.S.C. §§ 1331 and 1338.
3. This Court has personal jurisdiction over Defendant due to its residency and business activities in this judicial district.
4. Venue is proper in this district under 28 U.S.C. § 1391(b) as Defendant resides in this judicial district.

PARTIES

5. Plaintiff is a Texas limited partnership with a principal place of business at 327 FM 2004, Lake Jackson, Texas 77566.

6. On information and belief, Defendant Hanes Road Carryout, Inc. is an Ohio corporation with a principal place of business at 1592 Hanes Road., Beavercreek, Ohio 45437.

FACTS

BUC-EE'S AND ITS TRADEMARKS

7. Plaintiff owns and operates a chain of stores and travel centers under the name “Buc-ee’s.” For over four decades, Plaintiff has offered high quality convenience store, gas station, and related goods and services to the public through its Buc-ee’s stores.

8. In connection with these goods and services, in addition to the mark BUC-EE’S, Plaintiff has long and continuously used the distinctive logos shown below, which feature a cartoon beaver character as well as the mark BEAVER’S (collectively, the “Buc-ee’s Marks”).



9. Plaintiff's stores are not like other convenience stores. They are “highway oases,” as *Texas Monthly* put it in 2019. For legions of fans, Buc-ee’s “has become the rare brand—like Apple and Costco—that inspires loyalty that goes well beyond rational consumer calculations.” See **Exhibit A**. Over 10,000 customers visited Buc-ee’s in New Braunfels on opening day in 2012. Consumers likewise began lining up at 6:00 a.m. when Plaintiff opened its Fort Worth store in 2016. Out-of-state visitors often remark: “I was told we couldn’t go to Texas without stopping here.”

10. Plaintiff and the Buc-ee’s Marks have become iconic brands. A segment about Buc-ee’s that aired on CBS News’ nationally syndicated Sunday Morning program begins: “We all know that feeling. You’re out on the open road. Your gas tank is empty, and your bladder is full.

Well in Texas, a lot of folks in this predicament, look for [Plaintiff's] cartoon beaver." The segment goes on to compare the Buc-ee's logo's renown to Mickey Mouse, observing: "Perhaps not since Mickey Mouse has a cartoon rodent captured the hearts . . . of so many." *See Exhibit B.*

11. The Buc-ee's Marks prominently appear on signs visible from the highway, above entrances to Buc-ee's stores, on top of the gas-pump canopies, on signage inside the stores, and on an array of Buc-ee's branded products and apparel sold in-store.



12. One of the predominant colors used at Plaintiff's stores is red, with employees wearing red uniforms, interior red signage, and the name BUC-EE'S appearing in giant red lettering outside the stores. Among the BUC-EE'S-branded souvenir items are red shirts featuring the Buc-ee's Marks.

13. Plaintiff has grown its business from a single convenience store in the Lake Jackson, Texas area to more than 50 stores across Ohio, Florida, Texas, Missouri, Alabama, Georgia, South Carolina, Tennessee, Kentucky, Mississippi, Virginia, Arizona, and Colorado. Additional stores are in the planning or construction phases in several more states, including Arkansas, Kansas, North Carolina, Wisconsin, Louisiana, Utah, and Idaho.

14. A January 21, 2026, article announcing the upcoming opening of the first Ohio location near Dayton, Ohio informs readers:

Best known for its massive locations, extensive food and retail offerings, and quirky brand identity centered around a smiling beaver mascot, Buc-ee's is more than a typical gas station for many who treat it as a destination when on road trips. It's sometimes referred to as the "Disneyland of convenience stores".

See Exhibit C.

15. The April 6, 2026, opening of the Huber Heights, Ohio location reportedly broke records and caused nearby hotels to sell out. *See Exhibit D.*

16. The Buc-ee's Marks are inherently distinctive and serve to identify and indicate the source of Plaintiff's products and services to the consuming public.

17. The Buc-ee's Marks have become distinctive in the marketplace to designate Plaintiff, to distinguish Plaintiff and its offerings from those of others, and to distinguish the source or origin of Plaintiff's offerings. The consuming public in Texas and elsewhere in the United States widely recognizes and associates the Buc-ee's Marks with Plaintiff.

18. As a result of Plaintiff's long use and promotion of the Buc-ee's Marks, Plaintiff has acquired valuable common law rights in the Marks.

19. In accordance with the provisions of federal law, Plaintiff has registered the Buc-ee's Marks on the Principal Register of the United States Patent and Trademark Office in connection with a wide variety of goods and services, including retail store services featuring convenience store items and gasoline. *See* U.S. Reg. Nos. 6,059,078; 5,885,946; 4,316,461; 4,007,064; 7,419,559; 3,246,893; 4,973,185; 4,973,077; 8,113,899; and 8,113,900.

20. Plaintiff's registrations are valid and subsisting, and all but U.S. Reg. Nos. 7,419,559; 8,113,899; and 8,113,900 are incontestable pursuant to 15 U.S.C. § 1065. True and correct copies of these registrations are attached as **Exhibit E**.

DEFENDANT AND ITS UNLAWFUL ACTIVITIES

21. On information and belief, Defendant owns and operates a retail store offering a range of convenience store items.

22. Defendant is the owner of the Ohio Trade Name Registration (Doc. No. 202529601158) for “BEAVERS MINI MART.”

23. In addition, Defendant has used the trade name “Beaver’s” and a cartoon beaver logo in connection with its convenience store operations hereinafter referred to as “Defendant’s Marks”), an example of which is depicted below:



24. Like the Buc-ee’s Marks, Defendant’s Marks incorporate a cartoon beaver with wide eyes and a smile.

25. Defendant also uses red as a predominant color in its exterior signage with its anthropomorphic representation of a cartoon beaver mascot.

26. Upon information and belief, Defendant’s use of Defendant’s Marks began after Plaintiff developed rights in its Buc-ee’s Marks.

27. Plaintiff has priority based on the Buc-ee’s Registrations and the Buc-ee’s Marks, some of which have been used in United States commerce for over four decades.

28. Plaintiff has never authorized Defendant to use and/or register Defendant's Marks. Thus, Defendant has used and promoted Defendant's Marks in commerce without Plaintiff's authorization.

EFFECTS OF DEFENDANT'S UNLAWFUL ACTIVITIES

29. Defendant's unauthorized use of Defendant's Marks is likely to cause confusion among consumers. Consumers are likely to perceive a connection or association as to the source, sponsorship, or affiliation of the parties' products and services, when in fact none exists, given the similarity of the parties' logos, trade channels, and consumer bases.

30. This likelihood of confusion is exacerbated by Defendant's collective use of the tradename "Beaver's," predominant use of the color red, as well as a cartoon beaver logo that also closely resembles Plaintiff's distinctive logos in style and subject matter.

31. Defendant's unauthorized use of Defendant's Marks falsely designates the origin of its products and services and falsely represents circumstances with respect to Defendant and its products and services.

32. Defendant's unauthorized use of Defendant's Marks enables Defendant to trade on the goodwill built up at great labor and expense by Plaintiff over many years, and to gain acceptance for its goods and services not solely on its own merits, but on the reputation and goodwill of Plaintiff, its Buc-ee's Marks, and its products and services.

33. Defendant's unauthorized use of Defendant's Marks unjustly enriches Defendant at Plaintiff's expense. Defendant has been and continues to be unjustly enriched by obtaining a benefit from Plaintiff by taking undue advantage of Plaintiff and its goodwill. Specifically, Defendant has taken undue advantage of Plaintiff by trading on and profiting from the goodwill in the Buc-ee's Marks developed and owned by Plaintiff, resulting in Defendant wrongfully obtaining a monetary and reputational benefit for its own business.

34. Defendant's unauthorized use of Defendant's Marks removes from Plaintiff the ability to control the quality of products sold under the Buc-ee's Marks. This places the valuable reputation and goodwill of Plaintiff in the hands of Defendant, over whom Plaintiff has no control.

35. Unless these acts of Defendant are restrained by this Court, they will continue, and they will continue to cause irreparable injury to Plaintiff and to the public for which there is no adequate remedy at law.

**COUNT I: FEDERAL TRADEMARK INFRINGEMENT
(15 U.S.C. § 1114)**

36. Plaintiff repeats the allegations above as if fully set forth herein.

37. The acts of Defendant complained of herein constitute infringement of Plaintiff's federally registered Buc-ee's Marks in violation of 15 U.S.C. § 1114(1).

38. On information and belief, Defendant's acts complained of herein have been deliberate, willful, intentional, or in bad faith, with full knowledge and conscious disregard of Plaintiff's rights in the Buc-ee's Marks and with intent to cause confusion and to trade on Plaintiff's vast goodwill in the Buc-ee's Marks. In view of the egregious nature of Defendant's infringement, this is an exceptional case within the meaning of 15 U.S.C. § 1117(a).

**COUNT II: FEDERAL UNFAIR COMPETITION
(15 U.S.C. § 1125(a))**

39. Plaintiff repeats the allegations as if fully set forth herein.

40. The Acts of Defendant complained of herein constitute trademark infringement, false designation of origin, false or misleading descriptions or representations of fact, and unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

41. Plaintiff has been damaged by Defendant's acts of trademark infringement, false designation of origin, false or misleading descriptions or representations of fact, and unfair competition.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands that:

(a) Defendant, its officers, agents, servants, employees, and attorneys, and other persons who are in active concert or participation with any of them, be permanently enjoined and restrained from designing, displaying, advertising, offering for sale, manufacturing, shipping, delivering, selling, or promoting any product that incorporates or is marketed in conjunction with Defendant's Marks, the Buc-ee's Marks, and/or any other mark, name, or design confusingly similar to the Buc-ee's Marks, and from any attempt to retain any part of the goodwill misappropriated from Plaintiff;

(b) Defendant, its officers, agents, servants, employees, and attorneys, and other persons who are in active concert or participation with any of them, be required to deliver up and destroy all products, packaging, signage, advertisements, internet postings and advertisements, and any other materials bearing or using Defendant's Marks, Plaintiff's Buc-ee's Marks, and/or any other mark, name, or design that is confusingly similar to those marks, names, or designs;

(c) Defendant be ordered to file with this Court and to serve upon Plaintiff, within thirty days after the entry and service on Defendant of an injunction, a report in writing and under oath setting forth in detail the manner and form in which Defendant has complied with the injunction;

(d) Plaintiff recover all damages it has sustained as a result of Defendant's infringement, unfair competition, and deceptive trade practices, and that said damages be trebled;

- e) An accounting be directed to determine Defendant's profits resulting from Defendant's activities, and that such profits be paid over to Plaintiff;
 - g) Plaintiff recover its reasonable attorneys' fees;
 - h) Plaintiff recover its costs of this action and prejudgment and post-judgment interest;
- and
- i) Plaintiff recover such other relief as the Court may find appropriate.

JURY TRIAL DEMAND

Plaintiff demands a jury trial on all issues triable by jury under Federal Rule of Civil Procedure 38.

Respectfully submitted,

Dated: July 28, 2026

/s/ Christina J. Moser
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EXHIBIT 6

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OPERATIONS

Buc-ee's Opens World's Largest Gas Station in Tennessee

The location is 74,000 square feet and offers items from brisket to bathing suits.

Jun 27, 2023 | 2 min read



Advertisement

Buc-ee's has opened the [world's largest gas station](#) in Sevierville, Tennessee, reports TODAY. The 74,000 square-foot location has 120 gas pumps and employs more than 350 people.

The new store includes Buc-ee's signature brisket sandwiches and other barbecue items made fresh at the location, as well as a plethora of other items from fresh fudge to bathing suits.

"We slow-smoke [the brisket], we season it, and we get it out to the store and slice it up fresh right in front," Randy Pauly, the director of barbecue operations at the new Buc-ee's, said on TODAY.

A recent survey by [Payless Power](#) found that customers spent an average of 20 minutes and \$69.95 per visit to their favorite gas station, so Buc-ee's is leaning into the trend of entertaining c-store customers for longer. The survey also found that customers prioritize cleanliness, prices, food quality and customer service when visiting their favorite c-store. Buc-ee's was No. 1 in customer service in the survey and also took the top spot as a Forbes' Customer Experience All-Star in February.

Although the Tennessee location is currently the world's largest gas station, it won't be for long. Buc-ee's is opening an even [bigger location in Luling, Texas](#).

Look for a profile of Wally's, another mega-sized convenience retailer, in the upcoming July issue of NACS Magazine.

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EXHIBIT 7

FUELS (/FUELS)

Fuels 50 2019: Retailers in the Fast Lane

CSP's third annual brand ranking reveals the different paths to more gallons

By Samantha Oller (/profile/samantha-oller) and Greg Lindenberg (/profile/greg-lindenberg) on Apr. 04, 2019

CHICAGO -- In the quest to gain more fuel gallons in an environment of flattening demand, retailers have a few levers to pull.

There's price, a core strategy for hypermarket operators such as Costco. The warehouse retail chain priced its fuel 22.62 cents per gallon (CPG) below its direct competition in 2018, according to Oil

Price Information Service (OPIS)—and reportedly has fuel volumes that can range from 700,000 to 1 million gallons per month.

“There’s no question that that strategy is magical for Costco in the United States and Canada,” says Tom Kloza, global head of energy analysis for OPIS, Gaithersburg, Md. “They have a lot of places where they can be 20 cents below the competitive average and still be profitable. If your business plan is less about making a lot of money on fuel and more about making a lot of money on inside sales, like with Costco, you’re going to stand out.”

Location is the common No. 2 factor in gas-station choice, which is why major oil, by sheer number of branded locations, dominates in market share. The king of the hill here: Shell, which had more than 12% share of the U.S. fuel market in 2018, according to OPIS, thanks to its 14,000 branded locations.

Brand also has a role—although, depending on whom you speak to, its magic has shifted from the iconic Big Oil brands of the past to the “new era” privately owned independent c-store chains. Judging by the names leading CSP’s 2019 Fuels 50 ranking of the most effective gasoline brands in the United States, created in partnership with OPIS, brand strength is increasingly tied to large stores and a compelling foodservice offer—think fried chicken and hoagies—over a premium fuel offer.

The Fuels 50 list ranks brands by market efficiency, a metric that OPIS determines by dividing a brand’s market share by its outlet share. The top half of the list is dominated by brands such as Buc-ee’s, Wawa, Sheetz, RaceTrac, QuickChek, Royal Farms, Maverik and Spinx, which are perhaps better known nowadays for their expansive menus than their low gas prices, although many do price aggressively.

“Foodservice is magical for most of these companies,” says Kloza. He points to RaceTrac, which has greatly expanded its foodservice program over the past decade along with the footprints of its stores. The Atlanta-based, 500-store chain, which ranks fifth in market efficiency, recently introduced its Crazy Good Coffee bean-to-cup coffee program alongside an offer that includes Swirl World frozen yogurt.

Click here to see the complete list.
(<https://www.cspdailynews.com/fuels-50>)

It’s a growing sign that the traditional levers of fuel price and location are not enough to grab volumes in today’s retail fuel business. Instead, brands need an in-store differentiator.

“Once you have the store, it’s where it is, so the only other real mechanism that drives sales is price, and we both know that the consumer is highly sensitive to gas prices,” says Michael Lorenz, executive vice president of petroleum supply for Sheetz Inc., Altoona, Pa., which has more than 580 sites.

Sheetz is focused on a bigger goal: using fuel to attract store sales. Low gas prices, Lorenz says, is not the magic bullet for this strategy. “You only can drive so many customers to the site based on gas, right? You get to a point of not only diminishing returns but you’re also just attracting the cherry picker who’s not going to come inside anyway,” he says. “That’s just not a productive customer overall. They’re just coming for the cheap gas.”

When it comes to its fuel business, Sheetz aims for sustainable sales, which requires it to balance gallon and margin growth. But it also relies on providing a one-stop shopping experience, with high-quality foodservice at its core. On the forecourt, having an adequate number of pumps and a clean, well-lit fuel island are “table stakes today,” Lorenz says. “In our case, I would say that the differentiator is going to be the rest of the offer.”

The Sheetz gasoline brand ranks No. 4 in the Fuels 50 list, despite pricing less than four-tenths of a cent below its direct competition in 2018, according to OPIS figures.

“You don’t need to match Costco-level prices to do well,” says Kloza. “You can do very, very well at a nickel below the average price, and that’s pretty obvious in a number of the companies that show up very, very high on this list.”

The gasoline brand for Spinx, an 80-store chain based in Greenville, S.C., ranks No. 9 in the 2019 Fuels 50 list, despite pricing more than 5 CPG above its direct competition in 2018, according to OPIS figures. Kloza suggests Spinx might have a positive price differential because its local competition is limited—or it could be the chain’s famous fried chicken.

Click here for the "Top 5 Store Brands by Market Share" (<https://platform.winsightmedia.com/cspdn/fuels/fuels-50-2019-top-5-store-brands-market-share>)

For the third year in a row, the Buc-ee’s fuel brand of Buc-ee’s Ltd., Lake Jackson, Texas, tops the Fuels 50 ranking. The chain, which recently opened its 35th location and its first site outside of Texas in January, is famous for its 50,000-square-foot c-stores with more than 100 MPDs. It has three more sites set to begin construction in Florida, the beachhead of a battle between some of the c-store industry’s biggest heavyweights, including Wawa and RaceTrac.

In 2018, Buc-ee's had a market efficiency of 7.06 (compared to an industry average of 1), placing it nearly 2 points ahead of the nearest brand, according to OPIS figures. As the chain has grown over the past two years, this market efficiency figure has slipped somewhat, from 8.86 in 2016 and 9.13 in 2017, thanks to a slightly smaller market share.

Its price differential has also narrowed from 10.20 cents per gallon in 2016 and 10.34 CPG in 2017 to 8.40 in 2018.

Buc-ee's declined comment for this story. A 2019 profile by Texas Monthly, which included an interview with co-founder Arch Aplin Jr., said, "The company can afford to undercut rivals not only because its locations have so many pumps but [also] because it makes its real money on jerky and stuffed beavers."

In February, Buc-ee's new Alabama site was sued by a rival travel center for selling gasoline and diesel "dramatically below cost" as defined by the Alabama Motor Fuel Marketing Act.

"They obviously have tremendous sales, and they're very efficient and very, very big pumpers," says Kloza.

Click here to view the "Top 10 Low-Price Leaders"

(<https://platform.winsightmedia.com/cspdn/fuels/fuels-50-2019-top-10-low-price-leaders>)

Continuing to grow volumes means building new sites, and location—or, rather, geography—matters.

"One of the recipes for success is to be in the suburbs or maybe the exurbs," says Kloza, pointing to site selection preferences of brands such as QuikTrip. The gasoline brand for the Tulsa, Okla.-based chain ranks third in the 2019 Fuels 50 list, with a market efficiency of 4.88. This is higher than QuikTrip's 4.66 market efficiency score in 2017, and is due in part to higher market share. In 2018, QuikTrip entered its first new markets in six years by opening sites in San Antonio and Austin, Texas. It plans to open more than 100 new sites as part of its initial wave in the cities.

"The new market in San Antonio and Austin has been great," says Mike Thornbrugh, manager of public and government affairs for QuikTrip Corp., which has more than 780 locations. "We have been accepted early by the consumer as their choice for gasoline and convenience-store items. We have five open stores and around 20 sites under construction, and a lot under development. [We have a] long way to go, but the early results leave us very optimistic."

As it grows in site count, QuikTrip also continues to expand its QT Kitchens, which offer fresh, made-to-order food such as pizza, specialty drinks and frozen desserts.

Among gasoline brands with 50 or more sites, Wawa Inc.'s Wawa brand has ranked No. 1 for the past three years. The market efficiency for the Wawa, Pa.-based retailer, which has approximately 830 sites, was 5.3 in 2018, up from 5.22 in 2017, according to OPIS. The chain's price differential of 3.6 CPG in 2018 is about the middle of the pack for those top Fuels 50 brands. But this figure is somewhat deceptive, because it hides regional variations in pricing strategy.

"The way Wawa prices from Virginia north and the way Wawa prices [in Florida] are completely different," Kloza says. "When they go into new markets, they tend to be very, very aggressive, so ... they're probably still very, very aggressive in Florida. But my hunch is if Florida were excluded from that ... they would be closer to an average price."

For RaceTrac, which priced an average of 3.72 CPG below its direct competition in 2018, the goal is to stay competitive relative to the market.

"We price based on the markets that we serve, and we define those markets pretty narrowly, so we are always looking at competition and we are always looking at the communities around us," says President Natalie Morhous. "As a result, you will see those prices vary as you look from Texas to Georgia to Florida to Louisiana, but what you will always see is that we are competitive on the street with the people around us."

Click here to view the "Top 10 Most Efficient Store Brands" (<https://platform.winsightmedia.com/cspdn/fuels/fuels-50-2019-top-10-most-efficient-store-brands>)

With 2018 an active year in mergers and acquisitions, the repercussions on the Fuels 50 ranking will not fully be reflected for another year.

For example, Rockford, Ill.-based travel-center chain Road Ranger made its first appearance in the Fuels 50 ranking, with its gasoline brand placing No. 10 with a market efficiency of 2.63. It was acquired in 2018 by Empresa Nacional de Energia Enx S.A. (Enx), a subsidiary of Chilean conglomerate Quinenco, which promises to invest in and grow the chain. (Road Ranger declined comment for this story.)

And Thorntons, which slipped from No. 17 in 2017 to No. 49 in terms of market efficiency in 2018, was acquired by a nonoperating joint venture formed by BP and ArcLight Capital Partners in December.

Simon Richards, former head of regional development for BP Products North America, was recently named CEO, replacing Matt Thornton, who led the family-owned chain for several years.

Kloza sees this return to retail among refiners as a longer-term trend to watch [CSP—March '19, p. 20].

“If you believe, like I do, that gasoline is going to be sloppy more than it’s going to be tight over the next few years, it’s going to be more compelling to have that downstream real estate ... to know that your product is going to go to dedicated places,” Kloza says, and that it is “probably half of the BP rationale” for partnering with ArcLight to acquire Thorntons.

But there’s another possible rationale for refiners such as BP refocusing on retail: biofuel blending credits. For many retailers who sell E15—which includes Thorntons, as well as Sheetz, QuikTrip, Casey’s General Stores and Murphy USA—one economic incentive has been Renewable Identification Numbers (RINs), the biofuel credits blenders earn under the Renewable Fuel Standard (RFS) and sell to obligated parties such as refiners who need to meet biofuel blending targets.

“One of the big motivations for refineries to get more involved in the downstream was RINs and the incredible compliance costs that they have to pay if they didn’t have downstream, if they were a pure merchant refinery,” Kloza says. While RIN prices have fallen to about 20 cents, from more than 90 cents when President Trump was elected in 2016, “the notion of reintegrating, I think it’s still valid,” Kloza says.

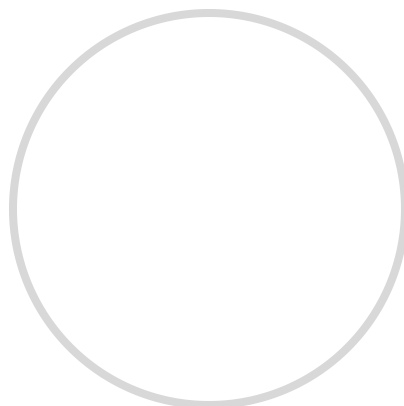
While the sites will retain the Thorntons fuel brand, it’s not clear whether they will continue to sell E15 under the new ownership. Thorntons has been selling E15 since 2016 and had plans to roll it out to up to 100 sites in the Chicago area. Regardless, expect a shakeup of the Fuels 50 in 2020.

Click here for the complete 2019 Fuels 50 report.
(<https://www.cspdailynews.com/fuels-50>)

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(/profile/samantha-oller)

Samantha Oller is the former managing editor, CSP/Winsight. She joined CSP in 2004 as fuels editor and continues to cover this beat for the magazine and online. In addition, Samantha oversees the C...

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Texas-based Buc-ee's eyeing site north of Colorado Springs

The Colorado Springs Gazette · 5 Nov 2024 · A1 · BY RICH LADEN rich.laden@gazette.com

Buc-ee's, the Texas-based travel center chain with a cult-like following, plans to bring its popular beaver nuggets, dozens of fuel pumps and self-described world's cleanest bathrooms to the Pikes Peak region, just north of Colorado Springs.

A proposal submitted to the town of Palmer Lake, north of Colorado Springs, has started a process that could lead to the annexation of roughly 25 acres southwest of Interstate 25 and County Line Road.

That's where Buc-ee's plans to build a 74,000-square foot travel center that would match the size of its first Colorado location that opened in March in Johnstown, north of Denver, Stan Beard, the chain's real estate and development director, said Monday.

"We love Colorado," Beard said. "We've had a really good experience with our Johnstown store. ... This site, on the same freeway (Interstate 25), is about an hour south of Denver and so it's a good separation for us.

"The state of Colorado has our kind of folks, travelers, going from one fun place to another to enjoy their summers and winters and we want to be right there in the middle of it so they can come enjoy our clean restrooms and really good barbecue," he said.

Buc-ee's often seeks out

small communities on the edge of a large metro area, Beard said. In the case of Palmer Lake, the site at I-25 and County Line Road will offer Buc-ee's high visibility, with "80,000 cars zooming back and forth in front of it," he said.

Palmer Lake officials have been welcoming in initial conversations about the travel center proposal, Beard said.

The project would mean an increase in local sales tax revenues, while Buc-ee's is prepared to help pay for improvements to the town's water system that will serve the travel center site, he said.

"I would hope and I'd kind of believe at the end of the day that the city leadership is going to see that this is a needle mover for them, this is a game changer for the town of Palmer Lake," Beard said.

Buc-ee's also has begun talks with the Colorado Department of Transportation and El Paso County officials over potential upgrades that will be needed at the I-25 and County Line Road intersection to accommodate travel center traffic, he said.

Buc-ee's has contracted to purchase the I-25 and County Line Road site, Beard said; El Paso County land records show the property is owned by a Colorado Springs limited liability company. In a best case scenario, Buc-ee's would hope to begin construction on the travel center in a year, he said.

When it opens, Buc-ee's would expect to employ about 175 to 225 full-time employees — workers who receive health coverage, paid vacation, a 401(k) and other benefits, Beard said. Starting

pay for workers in Johnstown is \$18 to \$20 an hour, he said.

Founded in 1982, Buc-ee's has just 50 locations in 16 states, with the bulk of them in Texas. Even so, it's gained a sizable following among visitors who often see Buc-ee's as part of their road trip and even a tourist attraction.

Its mammoth travel centers — roughly 30 times larger than some convenience stores — offer a wide variety of fresh food, snacks, gifts, apparel, toys and other items. The chain's walking beaver mascot is a popular figure with visitors, while its super-sized washrooms — the Johnstown location has 34 stalls for women, 17 for men and 19 urinals — have daylong attendants to make sure they're clean and in what Buc-ee's calls "pristine" condition for travelers.

"Ninety per cent of our customers know that they're coming to a Buc-ee's before they ever get into their car," Beard said. "We are part of the trip. If you're going to stop at Royal Gorge (the scenic Arkansas River canyon near Cañon City), also on your list is going to be the stop at Buc-ee's."

And something else that sets Buc-ee's apart: It's not a truck stop and doesn't accommodate 18-wheel, tractor trailers, Beard said.

"Those are different people," he said of the truck-driving crowd. "Our people are not truck drivers."

Before Buc-ee's moves forward, however, it still needs regulatory approvals from Palmer Lake officials.

Palmer Lake's board of trustees last month was presented with a petition for annexation from the I-25 and County Line Road property owner — a first step in a process that could lead to the town's annexation of the Buc-ee's location.

The board has scheduled a Dec. 12 hearing when it would determine the site's eligibility for annexation and whether the property owner could then move forward with the annexation process, Palmer Lake Mayor Glant Havenar said in a Facebook post. The hearing isn't to annex the land, she stressed in response to questions from area residents.

If the property owner is determined at the Dec. 12 hearing to be eligible to move forward on the annexation, a series of community meetings likely would be triggered where the public can learn more about the proposal, she said.

"This process could be followed by an eventual annexation hearing, which is also open for public input," Havenar said in her post. "As reiterated, we do not yet know if the annexation request will be granted to proceed, but we are required to hold a hearing to ascertain eligibility."

Town officials can't comment at this time on the possible pros and cons of the Bucee's proposal, she added.

Because the Buc-ee's site isn't contiguous to Palmer Lake, it would require a so-called flagpole annexation. Under that sometimes controversial method, Palmer Lake would need to annex land along a street or road that would serve as the "pole" or connection to reach the larger desired parcel, or "flag," that's targeted for annexation.

As word spread on social media sites about the Bucee's proposal, some residents weren't happy.

One Face book commenter complained that Buc-ee's would "further destroy the beautiful area in the name of greed." Another commenter feared it would increase traffic con gestion and become an eye sore.

For the most part, Beard said he had no response to the cri ticisms. The chain, however, has sched uled a meeting for 6 p.m. Dec. 3 at Palmer Lake Elementary School, 115 Upper Glenway Road, to present details of its plan to area res idents.

"It's a com mercially zoned tract on an interstate in between Colorado Springs and Denver," Beard said of the pro posed Buc-ee's site. "I mean, 95% of our customers will get off of that free - way, go into our store and get back on that free way. So the impact to the physical town of Palmer Lake will be, I'd hate to say non-exist ent, but pretty close."

EXHIBIT 9

[Watch Live](#)

More Buc-ee's locations announced in national expansion

By Jason Gunn FOX Local Consumer **Published** June 26, 2026 10:11 AM EDT

The Brief

- Popular mega-gas station chain Buc-ee's opened up their first location in Arizona this week, bringing their nationwide total to 56 locations across 13 states.
- Buc-ee's confirmed three more locations are set to open this year in Texas, Arkansas and Tennessee.
- More locations are expected starting in 2029 in Ocala, Florida; West Memphis, Arkansas; Oak Grove, Kentucky; and Hardeeville, South Carolina.

Popular mega-gas station chain Buc-ee's opened up their first location in Arizona this week, bringing their nationwide total to 56 locations across 13 states.

Ohio also saw a new location in Huber Heights open up just weeks ago.

Their newest location in Goodyear, Arizona boasts 120 gas pumps on a 74,000 square foot property near Interstate 10 and Bullard Avenue.

What they're saying: Stan Beard, Buc-ee's director of real estate development, said in a statement, "We could not have picked a better location for our first store in the Grand Canyon State.

Perfectly placed for our road-trippers headed out to California or coming in for the destination-rich Phoenix area, Goodyear will be the place to stop."

RELATED: [Buc-ee's is expanding to several new states; here's where](#)

Other locations planned

Earlier this year, Buc-ee's confirmed the chain will open in at least seven new states over the next two years: Arizona, Arkansas, Kansas, Louisiana, North Carolina, Ohio and Wisconsin.

A Buc-ee's spokesperson confirmed to FOX Business that three more locations are set to open this year in Texas, Arkansas and Tennessee. In total, 12 new locations by 2028.

- **San Marcos, Texas Aug. 12**
- **Benton, Arkansas Aug. 17**
- **Murfreesboro, Tennessee Nov. 16**
- **Ruston, Louisiana 2027**
- **Kansas City, Kansas 2027**
- **Gallaway, Tennessee 2027**
- **St. Lucie, Florida 2027**
- **Boerne, Texas 2027**
- **Monroe County, Georgia 2027**
- **Oak Creek, Wisconsin 2027**
- **Mebane, North Carolina 2028**

- **Lafayette, Louisiana 2028**

What's next: More locations are expected starting in 2029 in Ocala, Florida; We Memphis, Arkansas; Oak Grove, Kentucky; and Hardeeville, South Carolina.

RELATED: [A history of Buc-ee's: 5 things you didn't know about the popular convenience store chain](#)

The backstory: Founded in 1982, Buc-ee's is known for its large-scale gas station and convenience stores. The chain holds multiple records for the largest convenience store in the world and the longest car wash clocks.

The Source: This story was written with information provided by FOX Business and previous reporting by LiveNOW from FOX. This story was reported from Orlando.

Consumer U.S.

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EXHIBIT 10



Buc-ee's To Debut New Travel Center in Harrison County, MS

Thursday, 29 May 2025 01:00 PM

Topic: Company Update

HARRISON COUNTY, MS / [ACCESS Newswire](#) / May 29, 2025 / Buc-ee's, home of the world's cleanest bathrooms, freshest food, and friendliest beaver, will unveil its newest travel center in **Harrison County, MS** on **Monday, June 9, 2025**. Doors will open to the public at **6 a.m. CDT**, and a ribbon-cutting ceremony will follow **at 10:00 a.m. CDT**.

Located at **8245 Firetower Road, Pass Christian, MS**, Buc-ee's Harrison County will occupy **74,000 square feet** and offer **120 fueling positions** and **24 EV charging**

stations. Buc-ee's favorites include Texas barbeque, homemade fudge, kolaches, Beaver Nuggets, jerky and fresh pastries.

Local leaders attending the ribbon-cutting ceremony will include Harrison County Board of Supervisors: Rebecca Powers, Marlin Ladner, Beverly Martin, Connie Rockco, and Kent Jones.

After the opening of Buc-ee's Harrison County, Buc-ee's will operate 52 stores across Texas and the South. Since beginning its multi-state expansion in 2019, Buc-ee's has opened travel centers in Alabama, Florida, Georgia, Kentucky, South Carolina, Tennessee, Missouri, and Colorado.

"Harrison County is a vibrant community with five thriving cities and stunning beaches. It is perfectly situated along I-10 between our Texas and Alabama stores, and we can't wait to be the best place to stop on the Mississippi Coast," said Stan Beard of Buc-ee's.

Buc-ee's Harrison County will bring 200+ jobs to the area, with starting pay beginning well above minimum wage, full benefits, a 6% matching 401k, and three weeks of paid vacation. Buc-ee's remains committed to providing a friendly, safe, and fun stop for travelers everywhere.

About Buc-ee's

Buc-ee's is the world's most-loved travel center. Founded in 1982, Buc-ee's now has 36 stores across Texas, including the world's largest convenience store, as well as 15 locations in other states. Buc-ee's is known for pristine bathrooms, a large amount of fueling positions, friendly service, Buc-ee's apparel and fresh, delicious food. Originally launched and still headquartered in Texas, Buc-ee's has combined traditional quality and modern efficiency to redefine the pit stop for their customers. For more information, visit www.buc-ees.com.

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EXHIBIT 11

BUSINESS

Newest North Texas Buc-ee's store to hold grand opening in mid-April

By Harriet Ramos

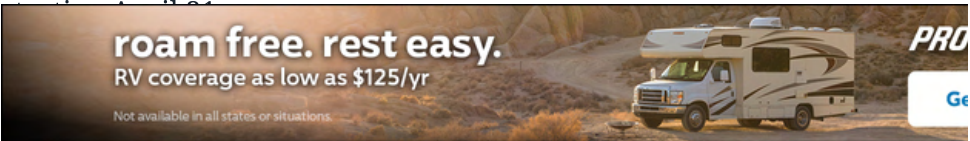
Updated April 10, 2024 8:07 PM Gift Article



A selection of fresh food and snacks inside a Buc-ee's, the Texas-based chain of large travel centers. *Courtesy of Buc-ee's*

Listen to this article

Buc-ee's will begin welcoming customers to its [brand new Hillsboro travel center](#)



The new location, which will be one of the largest Buc-ee's, covers 74,000 square feet and sits just off Interstate 35 south of Fort Worth.

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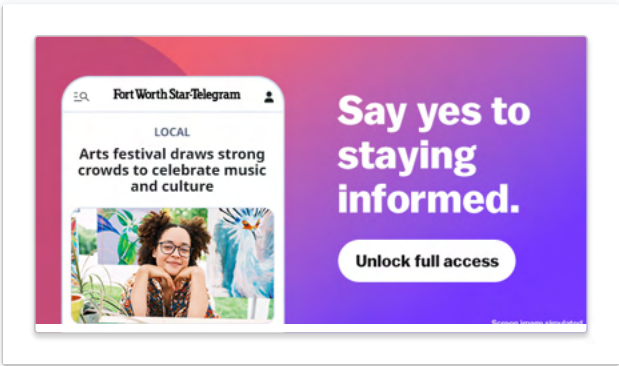


The doors open at 6 a.m. Customers can expect to find all their Buc-ee's favorites, like Beaver Nuggets, Texas barbecue and homemade fudge. The new travel center also boasts 120 fueling positions.

"We're thrilled to open our newest travel center in Hillsboro," said company spokesperson Stan Beard. "This community has been nothing but supportive and we can't wait to welcome locals, as well as I-35 travelers ... to enjoy all that Buc-ee's has to offer."

A ribbon-cutting ceremony is scheduled for 1 p.m.

Buc-ee's Hillsboro will be the 49th store in the franchise, which now operates travel centers outside the borders of Texas in Alabama, Florida, Georgia, Kentucky, Tennessee and South Carolina. The first Buc-ee's in Colorado opened in mid-March.



The Hillsboro travel center is expected to bring 200 new jobs to the area.



A view of fountain drinks inside a Buc-ee's, the popular Texas-based chain of large-format travel centers. *Courtesy of Buc-ee's*

This story was originally published April 10, 2024 at 3:01 PM.

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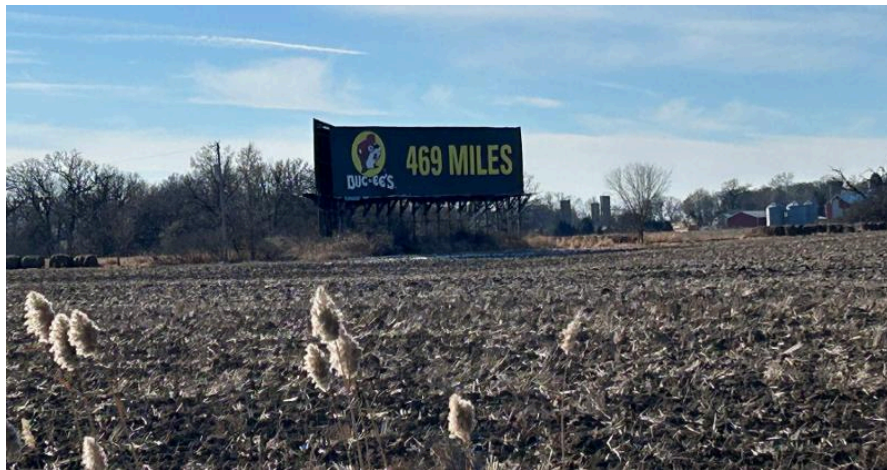
EXHIBIT 12

COMPANY NEWS (/COMPANY-NEWS)

What's Driving Buc-ee's Interstate Billboards?

Consultants and a restaurant owner weigh in on sign near Wisconsin-Illinois border touting location 469 miles away

By *Chuck Ulie (/profile/chuck-ulie)* on Jan. 29, 2025



Photograph by CSP Staff

Driving south on Interstate 94—south of Milwaukee, about 10 miles from the Wisconsin-Illinois state line and not far from the Mars Cheese Castle—there's a billboard off to the right in farmland with the Buc-ee's name and logo proclaiming: "469 MILES."

The distance, in yellow, all-capped type, grabs one's attention. The location **469 miles away** is in Richmond, Kentucky.

The sign has been in place for several months, long before the **recent announcement**

(<https://www.cspdailynews.com/company-news/buc-ees-expects-open-its-first-wisconsin-store-early-2027>) of the convenience-store chain opening its first store in Wisconsin in early 2027 in Oak Creek, just south of Milwaukee (but after news of Buc-ee's intentions to build a location in DeForest, Wisconsin, near Madison—plans that are now delayed).

Buc-ee's has had other such signs as well, **one in California** (<https://x.com/SoCal360/status/1846289331268604220>) noting a location **1,327 miles away** and one in Michigan advertising a location **444 miles away**.

Jeff Nadalo, general counsel for Buc-ee's, last year **told WOOD TV8** (<https://www.youtube.com/watch?v=LS1AdszDSGs>) in Grand Rapids, Michigan, "We're growing across the country, and we have identified certain locations, including in Michigan, where we believe those folks going south **will appreciate getting notified 400, 500 miles in advance** that a Buc-ee's is likely to be in their path on their travels south, and we just want to make sure that they think of us as they are coming near our stores."

CSP reached out to convenience-store consultants and a restaurant owner to get their take on this advertising. Here's what they said:

Rachel Toner

"I love this," said **Rachel Toner** (<https://www.cspdailynews.com/foodservice/do-you-smell-experts-talk-power-scents-more-convenience-stores>), founder and technical director of Chalfont, Pennsylvania-based Taste Strategy. "It's a lighthearted and strategic marketing play by Buc-ee's. Simple yet so complex. The use of 469 miles is humorous. They could have rounded up to 470, but they didn't."

From a consumer perspective, "it could mean a variety of things, but I'd hypothesize it's to build brand awareness and connection," Toner said.

From the viewer's perspective, if they have limited awareness of Buc-ee's, they might think:

- What's Buc-ee's?
- **It must be an attraction**, I've got to stop next time.
- That's funny. Buc-ee's must be a fun brand.

Assuming awareness of the brand, a consumer might think, seriously or humorously:

- Why is it so far away?
- Buc-ee's, please build one closer to home.
- Nostalgia: I miss Buc-ee's. Maybe I'll just up and move closer to Buc-ee's.

“Maybe it’s a ‘flex’ to other brands to show that consumers would really drive 469 miles to go to Buc-ee’s,” Toner added. “Or maybe it’s a teaser. ‘Coming soon’?”

Kyle Drenon

Kyle Drenon

(<https://www.cspdailynews.com/foodservice/grow-fans-convenience-stores-must-pinpoint-what-makes-them-different-craveability>), co-owner of the Springfield, Missouri-based ad agency Supper Co., said placing a billboard so far away suggests Buc-ee’s is worth the wait and is a destination. The billboard builds intrigue about the brand as more than a gas station.

“That route is still a common one on I-75 northbound, and Richmond is a common stopover for car travelers,” Drenon said. “Buc-ee’s is also known for being quirky and clever. Their strategy did get you to write a piece on it after all!”

Richard Poye

Richard Poye

(<https://www.cspdailynews.com/foodservice/podcast-your-promotion-100-ready-go>), founder of Nashville-based Fresh Foods Think Tank, said these signs are not simply advertisements—they’re part of the journey. “They draw parallels to iconic marketing techniques used along historic Route 66, South of the Border in South Carolina and trading posts across Arizona and New Mexico,” he said. “Brands like Buc-ee’s tap into the nostalgia of long road trips, using billboard placement to build anticipation.”

‘Brands like Buc-ee’s tap into the nostalgia of long road trips, using billboard placement to build anticipation.’

These destination billboards are often spaced strategically to cover a long stretch of highway, teasing features like food, shopping or unique amenities every few miles, Poye said. “As

travelers get closer, the frequency of billboards increases, maintaining engagement and building curiosity,” he said.

Destination billboards appeal to emotions and the sense of adventure, positioning the brand as a cultural icon or bucket-list stop, Poye said. “Buc-ee’s, with its playful and over-the-top messaging, leans into this approach by making the store an attraction in itself,” he said.

By placing a sign **469 miles away**, Buc-ee’s is harnessing this tradition to cultivate intrigue and brand awareness, Poye said. “For Buc-ee’s, the billboard isn’t just about selling gas or snacks—it’s about positioning the brand as an iconic part of the American road trip, capturing travelers’ imaginations like Route 66 and South of the Border did for generations before.”

‘The sign reinforces its reputation as not just a gas station but a destination.’

Using billboards can be a good idea under specific conditions:

Buc-ee’s is trying to drive brand awareness; it isn’t just promoting the Richmond, Kentucky, location—it’s promoting the brand. The sign serves as a teaser for future expansions, such as the proposed location in DeForest, Wisconsin. It primes the audience to anticipate Buc-ee’s arrival in their area.

Buc-ee’s and locations like South of the Border in South Carolina have cultivated a fanbase using billboards. “It seems like consumers now fear of missing out if they don’t make a stop at these locations.”

Buc-ee’s is known for its over-the-top marketing, he added. “Its strategic playfulness aligns with its quirky, larger-than-life brand personality,” Poye said. “The sign reinforces its reputation as not just a gas station but a destination.”

Measuring success in this case can be challenging but possible through several metrics, Poye said:

- Look for spikes in digital engagement (Google searches) for “Buc-ee’s near me” or website visits from the Milwaukee/Illinois region.
- Monitor social media mentions on platforms like Bluesky, X or Instagram for posts and photos of the sign. Buc-ee’s fans often share their experiences and excitement online.

- Conduct in-market brand recognition surveys in the region to see if brand awareness has increased since the billboard was placed.

Poye added that while this sign promotes a distant location, it is a teaser for future expansion and lays the groundwork for the local location by familiarizing the regional audience with the brand.

"It's a long-term brand investment rather than a direct call-to-action," he said.

Signs like this are buzz-creation conversation starters, Poye said. "They're designed to generate word-of-mouth and social marketing, often more impactful than the sign itself," he said.

Stafford Shurden

Stafford Shurden

(<https://www.cspdailynews.com/foodservice/crafting-identity-must-plans-bolster-business-expert-says-nacs-show>), owner of Stafford's Market in Drew, Mississippi, said billboards don't work as effectively as they used to, largely because so many people, even drivers, are distracted by their cell phones.

"For a billboard like that to succeed it would need incredible brand loyalty," he said. "Buc-ee's has that. Could you imagine the same billboard saying, 'Insert Random Shell Station Here'? It wouldn't be the same."

Buc-ee's has created such a strong brand that people on long road trips actually plan their stops around its locations, Shurden said. "Their billboards capitalize on loyalty, serving more as confirmation than persuasion," he said.

'Their billboards capitalize on loyalty, serving more as confirmation than persuasion.'

"As a restaurant owner, I don't use billboards like that because long-distance travelers aren't my target market nor are they even aware of me from such a long distance," he said. "My advice for anyone considering billboards is to first know your buyer persona

before spending money on marketing. Buc-ee's deeply understands its customers, and that's why this approach works for them."

Many billboards fail because they cram in too much information, making them hard to read at 70 mph, Shurden said. "Buc-ee's keeps it simple with just a clean design with logo, name and mileage," he said.

Bill Nolan

Bill Nolan

(<https://www.cspdailynews.com/foodservice/foodservice-technology-today-focuses-safety-savings-freshness-speed>), a partner with the Business Accelerator Team, Phoenix, said most people in Wisconsin are probably not aware of Buc-ee's, so the billboard initiates brand recognition for those with inquisitive minds.

"And the mileage message just adds to the 'what the hell' does that mean?" he said. "So, this may just draw you in. If this makes you go to the Buc-ee's website, the reader will probably be blown away by the Buc-ee's story and retail experience that's coming to Wisconsin. Interestingly, the billboard doesn't even have the website address listed."

'Interestingly, the billboard doesn't even have the website address listed.'

As far as measuring the billboard's success, initially it will probably be via social media, he said. "The creator of this billboard realizes total understanding is just a swipe away on your smartphone, and bingo, Buc-ee's now has an interested consumer wondering when and where!

"Think of it this way: If you're an avid fly fisherman and you hear that the trout fishing is great in Wisconsin, but nothing else about where in Wisconsin to go, you begin your research, and if you have a successful learning experience, the result is much more rewarding than someone drawing you a map."

Steve Morris

Steve Morris

(<https://www.cspdailynews.com/foodservice/podcast-steve-morris-retail-management-talks-c-store-foodservice-menu-consistency>), president of Saint Paul, Minnesota-based Retail Management Inc., said, “Billboards such as Buc-ee’s and the [South Dakota’s] incomparable Wall Drug tend to work as these types of destinations are truly fan favorites and the stores and shopping complexes become something of lore.”

The use of out-of-store advertising by Buc-ee’s is consistent for their brand and their stores across the country, Morris said. “Creating that desire to ‘stop and see,’ the adventure that has to be planned in the drive time, to spend a solid 30 minutes or more exploring the site,” he said.

Morris, a former marketing director for a medium-sized c-store retailer, said his out-of-home budget was always difficult to directly connect to a return-on-investment value, “even though savvy ad reps will equate a value per impression that marketing folks cling to as proof of value. In truth, this former marketing director thinks it’s a bit of a smokescreen if one hopes to solicit provable data points of transactions and customers specifically driven by out-of-home or out-of-store advertising.”

**‘Billboards such as Buc-ee’s
and the Midwest’s
incomparable Wall Drug
tend to work as these types
of destinations are truly
fan favorites.’**

“We’re not the only ones that sell Snickers bars and Monster Energy drinks,” Morris said. “Advertising our typical promotions may not be enough to drive an additional transaction, so the out-of-store and out-of-home advertising should focus on what makes your location different. Loyalty program? Amazing customer service? Creative and unique offerings? The vast majority of us are not going to have the Wall Drug mall or the 35,000-square-foot behemoth destinations that are Buc-ee’s to be able to tease for 100-mile radiuses.”

“The average retailer in the industry likely doesn’t think they have a budget to compete with this type of advertising dollars, as the return of the investment is so mysterious,” Morris said. “I’d tend to agree, thinking that if I had \$2,800 to spend in advertising for a 30-day period, where do I get the biggest bang. What’s my goal? What’s my offer?”

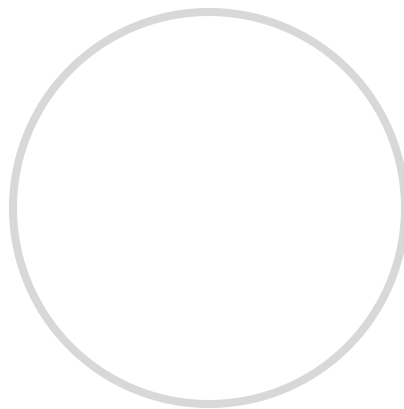
Morris added that, arguably, growing brand awareness and location/brand recall can be valuable—and that out-of-home advertising is an effective method of gaining those impressions.

“But the number of impressions and the number of times that has to get in front of somebody’s eyeballs to create an action is most likely more than one time,” he said. “And remember, what do I have that’s different than the guy across the street? Because if that answer is ‘nothing,’ then I say that money is better spent elsewhere, perhaps in creating that point of differentiation that can then be leveraged moving forward.”

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(/profile/chuck-ulie)

Chuck Ulie is foodservice editor for CSP.



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To: Ian Griffis

From: Brian J. Horan, P.E.
Kevin R. Fellin, P.E.

Cc: Caitlin S. Quander

Date: June 12, 2025

Re: **Proposed Palmer Lake, Co - Buc-ee's**

Subject: **Traffic Impact Study Review**

The purpose of this memorandum is to summarize a review of the traffic impact studies that have been prepared for the Buc-ee's travel center that is proposed to be located in the southwest quadrant of the I-25/County Line Road interchange in what is now part of El Paso County, Colorado. **This memorandum does not support or oppose the proposed project, however, it provides a technical review of the submitted traffic impact studies to highlight any potential critical traffic related considerations that may have not been fully addressed.**

As such, the following documents were reviewed in detail by our traffic engineering team:

TRAVEL CENTER PALMER LAKE – TRAFFIC IMPACT STUDY

Dated: November 19, 2024

Prepared by: Kimley-Horn and Associates, Inc.

Prepared for: Ratcliff Engineering Services, LLC

TOWN OF PALMER LAKE – TRAFFIC IMPACT STUDY

Dated: February 27, 2025

Prepared by: Stolfus & Associates, Inc.

Prepared for: Town of Palmer Lake, CO

This assessment was undertaken at the request of Ian Griffis who represents a consortium of local landowners and entities that depend on safe and convenient access to their local/regional road network to meet their transportation needs. As a result, this memorandum assesses the traffic impact studies that were prepared to evaluate this new use with respect to best practices and sound assumptions.



OVERVIEW

Overall, we found that each traffic study reviewed generally followed typical guidelines and practices in preparation of a traffic impact study.

Traffic Counts. Both traffic studies conducted existing traffic counts during acceptable periods (weekday AM and PM periods) with the Stolfus study also collecting traffic counts during a peak weekend period.

Given the highlighted impacts to the existing Tri Lakes Church of Christ, an additional traffic count collected on a Sunday that correlated with their Sunday service would better demonstrate the Buc-ee's impact and emphasis to maintain adequate access for the church beyond a right-in/right-out access point as currently provided in the future.

Spot checks of the existing traffic count figures would suggest traffic balancing was warranted at certain locations, but it should be noted such balancing would ultimately not fundamentally impact the reported results.

Trip Generation. Both studies relied on actual field measurements at existing Buc-ee's sites which does provide the most accurate representation of the traffic generated by this unique use given the Institute of Transportation Engineer's (ITE) Trip Generation Manual does not provide equivalent data.

The Kimley-Horn study utilized a more conservative trip generation assessment based on existing sites across the country while the Stolfus study concentrated on an existing Buc-ee's in Colorado.

The Kimley-Horn study assumed that 85 percent of the future site traffic would predominately already exist on I-25 and then divert their trip to Buc-ee's on the way to their final destination. The Stolfus study assumed 75 percent. For both studies, these assumptions appear to be based on the ITE Trip Generation Handbook for a typical gasoline station with convenience store. Based on our knowledge of a Buc-ee's travel center, this type of facility acts more as a destination than a typical travel center so it should be expected that a lesser percent of site trips will be attracted from the adjacent roadways and that a greater percentage will be new trips added to the road network as destination trips. The difference between diverted link and destination trips does not materially impact the study intersections given all trips (primary and diverted link) show up at the site entrances. It should be expected the overall volume of traffic on I-25 will increase in the area as a result of the Buc-ee's site.

Site Access. The site access for the proposed Buc-ee's site is proposed to include two (2) full-movement access points on Beacon Lite Road and one (1) right-out only on County Line Road. In review of other Buc-ee's sites, they typically provide more access opportunities to support efficient circulation into and out of the site.

The limited access line should be verified for the proposed right-out access on County Line Road. Also, the proposed right-out was identified to require a deviation from access management minimum spacing standards. Impacts should be evaluated if the deviation is not approved.

Site Distribution. Both studies assumed that approximately 90 percent or more of the site trips will be oriented to/from I-25. This evaluation concurs and as a result focuses in part on the I-25/County Line Road interchange in the subsequent Traffic Operations section of this memorandum.

TRAFFIC OPERATIONS

I-25/County Line Road Interchange

As noted in both traffic studies, nearly all of the site generated traffic would be oriented to/from the I-25/County Line Road interchange. Therefore, the analysis and recommendations from the previously prepared traffic studies were reviewed in detail. The results are summarized below.

Roadway Geometry. The previously prepared traffic studies provided the following improvements at the I-25/County Line Road interchange:

- Restripe the existing bridge lanes to provide three (3) westbound and two (2) eastbound lanes.
- Construct an additional lane on the I-25 NB off-ramp and the I-25 SB off-ramp at their intersection with County Line Road.
- Reconstruct the eastbound approach to provide a total of three lanes at the intersection with the I-25 SB off-ramp.
- Install traffic signals on County Line Road at both I-25 off-ramp intersections.

The fifth travel lane on the interchange bridge would require the reduction of existing striped shoulders. Therefore, the lateral offset requirements from the bridge wall need to be considered to ensure proper clearance from heavy vehicles. Additionally, the alignment of the relocated through lanes with the corresponding receiving lanes would need to be reviewed.

The relocation of the roadway edge lines would also impact sight distance considerations. The driver's viewing (eye) location would need to be shifted further back on each of the I-25 off-ramps. As shown below, with the shift in viewing location, the bridge wall and fence on top of the wall would likely obstruct the line on sight. While the installation of a traffic signal would help resolve sight distance concerns, right-turn-on-red (RTOR) maneuvers would likely be prohibited which would impact vehicle throughput and increase vehicle queues exiting the off-ramp.

I-25 Northbound Ramp Looking Left



I-25 Southbound Ramp Looking Left



Traffic Analysis. While a traditional macroscopic analysis using Highway Capacity Manual methodologies was used in both studies to assess the lane use configuration at the I-25 ramp intersections at County Line Road, a more detailed microsimulation would be required to fully evaluate how the interchange operates due to the following reasons:

- The two I-25 ramp intersections are in close proximity to each other (less than 400 feet centerline-to-centerline) and may experience impacts due to queue spillback.
- The proposed traffic signals would likely operate under clustered or highly coordinated signal timing patterns, created platooning effects.
- The I-25 ramps would impact operations on I-25 at the merge and diverge points especially if traffic spills back into the mainline interstate travel lanes.

While a full analysis of the interchange and freeway operations would likely be required as part of the interchange modification process, a preliminary assessment was performed as part of this review. Specifically, the 2045 Synchro analysis from the Kimley Horn study was replicated based on the analysis worksheets and signal timing sheets provided in the report appendices. The following modifications were then made to support the SimTraffic model:

- The yellow and red times were increased from the Synchro default values (3.5 sec. yellow, 1.0 sec. red) to values (4.1-4.3 sec. yellow, 2.6 sec. red) consistent with CDOT's "Guidelines for Traffic Signal Vehicle Change and Clearance Intervals".
- Right-turns-on-Red (RTOR) was turned off for the I-25 Off-Ramp approaches to the proposed traffic signals for the sight distance constraints outlined above.
- The Link Origin-Destination settings were revised to account for the fact that few (if any) vehicles would exit I-25 at one intersection and re-enter at the adjacent intersection.

Using the revised Synchro files described above, a SimTraffic simulation analysis was performed, and the results are summarized below:

- During the PM peak hour, queues on the I-25 NB off-ramp would periodically extend to the gore point. It is noted that based on AASHTO standards and a design speed of 80 mph (posted 75 mph + 5 mph), an additional 705 feet of deceleration distance would be required to ensure mainline freeway operations are not impacted.



- The peak southbound left queue on the ramp would extend approximately 500 feet. The proposed right turn lane would need to be constructed to this length to avoid being blocked by the adjacent queue. The 705 feet of deceleration distance beyond the queue would extend to the taper area of the ramp.
- During the AM and PM peaks, queues for the eastbound and westbound left-turn movements onto I-25 would extend to the adjacent ramp intersection. Thus, the delays and queuing would likely be greater than the results presented in the traffic studies that did not account for vehicle spillback effects.



While the acceleration distance requirements for the on-ramps would not fundamentally be affected by the proposed interchange modifications, the traffic generated by the site would create the need for an increased number of gaps within the I-25 mainline traffic in order to adequately merge onto the highway. Neither study provided traffic volume data for I-25. Therefore, performing a traffic merge analysis to ensure I-25 traffic operations would be maintained is not possible at this time.

It is noted that items mentioned in the section above would be addressed during the formal interchange modification process. However, interchange modification reports are typically at the time of project funding and the timeline for this process is typically hard to predict. Given the need for the I-25/County Line Road interchange to adequately serve site project, a preliminary interchange and freeway traffic analysis is recommended as part of the project approval process.

CONCLUSIONS

Based on a preliminary review of the traffic impact studies prepared by Kimley-Horn and Stolfus, the following conclusions are presented:

- 1) In general, the traffic studies followed typical guidelines and practices in preparation of a traffic impact study. Minor errors and/or typos were observed but were determined to not fundamentally change the presented results.
- 2) Given the characteristics of Buc-ee's to draw destination trips beyond a typical gasoline station with a convenience store, it should be anticipated that a greater percentage of the total site trips will be destination and diverted in nature thereby adding more site trips to I-25 than assumed in each study.
- 3) The primary vehicular site impacts to the public road network will occur at the I-25/County Line Road interchange. Neither study focused nor provided adequate details to evaluate whether off-ramp vehicle queues would spill back into the mainline interstate travel lanes. Based on a preliminary SimTraffic model, critical attention should be given to the adequacy of this interchange beyond adding traffic signals at the end of the interstate ramps and adding turn lanes to the approaches of those traffic signals. This is critical to the future operation of this interchange and whether it is adequate to support the proposed new use. The following elements should also be considered:
 - a. Available intersection sight distance for the exiting off-ramp approaches to the proposed traffic signals and likely prohibition of assuming right-turns on red to improve vehicle capacity and queuing.
 - b. The spacing between the proposed interchange traffic signals and potential spill back of vehicle queues into each other.
 - c. Lengths of the interstate off-ramps with respect to debilitating vehicle queues that may spill back in the interstate mainline.
 - d. Review of historical crash data over the past 3-years to identify any existing issues that could be exacerbated by the project.
- 4) Analysis of the on-ramp merge area on I-25 is recommended to measure the adequacy of the freeway facility.
- 5) Given the need for the I-25/County Line Road interchange to adequately serve site project, a preliminary interchange and freeway traffic analysis is recommended as part of the project approval process.
- 6) Impacts should be evaluated if the deviation for the proposed right-out entrance on County Line Road is not approved.

PRELIMINARY ENGINEERING REPORT
TOWN OF PALMER LAKE
WATER SYSTEM IMPROVEMENTS

FOR

PROPOSED BUC-EE'S TRAVEL CENTER

PROJECT NO. 2024-079.100

DRAFT: MARCH 2025
FINAL: APRIL 2025

OWNER:

TOWN OF PALMER LAKE
28 VALLEY CRESCENT
PALMER LAKE, CO 80133

PREPARED BY:

GMS, INC.
CONSULTING ENGINEERS
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SECTION VIII

ALTERNATIVES TO PALMER LAKE WATER SERVICE

The majority of this report is focused on the infrastructure required for the Town of Palmer Lake's water system to provide satisfactory service to the proposed development and potential future annexation customers without compromising service to existing and future Town customers. This section provides brief summaries of other available options for providing water service to the proposed commercial development. The details of the alternatives are presented below with consideration given to feasibility, costs, regulatory requirements, and long-term sustainability. Recommendations presented in a subsequent section of this report are based on the alternative evaluations and are intended to ensure the most effective and practical solution for meeting the development's water needs.

A. ALTERNATIVE 1 - ON-SITE PRIVATE WATER SUPPLY AND TREATMENT IN TOWN

This alternative assumes the proposed annexation continues to completion, but the Town's water system is not extended to the development for water service. In this case, the new commercial development has the option to drill a private individual well and pay the Town fee for an alternative water supply. According to Palmer Lake's Municipal Code Chapter 13.28 – Underground Water, the Town has appropriated all water rights underlying all lands within the boundaries of the Town which includes the lower Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifers. However, if water service is not available, the property can apply for an alternative water supply. If the Town determines that it is unable to provide water services to the specified area, the Town can accept the request and consent to withdrawal of the specified groundwater rights. The property would then pay a fee as set in the master fee schedule to the Town for each permit granted for the alternate water supply. However, when the Town can provide water service to the specified region in the future, the Town may require all properties to connect to the Town's facilities and acquire all individual water facilities and rights by purchase or condemnation.

The alternate source of supply for the proposed development must comply with Town Municipal Code Chapter 13.32. This ordinance requires a well permit issued by the Town in addition to all other permits from state or federal governments or agencies. Building a new well within a newly annexed portion of the Town would likely require a water court filing to

comply with legal restrictions, requesting a formal location of the permitted well through the Colorado Division of Water Resources, adding cost, complexity, and time to the project. Additionally, the Town's water court filing denotes withdrawals from the specified aquifers which would require a deeper well to be drilled in a deeper aquifer, which is a timely and costly endeavor. Lastly, the water rights of the annexed land would need to be analyzed against the demands of the proposed development to ensure equity for the Town and its water rights portfolio.

Since Buc-ee's Travel Center serves a high volume of non-local customers, the water system facilities would be classified as a "transient non-community water system" under Regulation No. 11 – Colorado Primary Drinking Water. This regulation classifies a water supplier as a "public water supplier" when the provider has "at least fifteen service connections or regularly serves an average of at least 25 individuals daily at least 60 days per year." The commercial development meets this classification and is subject to full compliance under Colorado Regulation No. 11 to ensure safe drinking water. Historically, most areas of the Denver and Arapahoe aquifers have had high concentrations of radium in the raw water, data suggests this will continue and potentially increase in the future. To meet Colorado's primary drinking water standards, the development well would require a treatment system to reduce radium concentrations to acceptable levels, since radium concentrations in the aquifers are likely to be above the maximum contaminant levels. Such a treatment facility would be classified as a treatment compliance facility and require redundant treatment equipment. This type of facility would require certified operators to run the treatment facility; which adds not only short and long-term operation and maintenance costs to this approach, but also involves a perpetual commitment to proper operation to meet all CDPHE regulations in the future.

The new commercial development would also be required to meet building and fire code regulations. If the proposed development pursues an individual well on-site, it will require a large above-ground or ground-level storage tank on the proposed property to meet local Insurance Service Office (ISO) storage requirements. The tank would need to be designed for proper fire flow requirements and that may include fire pumps. These items would result in reduced parking to reallocate the land use of the site, additional expenses to the project and continuous commitments to operation and maintenance to meet all regulatory requirements.



TO: PALMER LAKE PLANNING COMMISSION

FROM: PALMER LAKE DEVELOPMENT REVIEW TEAM (DRT)

RE: BUC-EE'S ANNEXATION AND DEVELOPMENT ITEMS ON AUGUST 20, 2025
AGENDA

DATE: August 15, 2025

Introduction

The Planning Commission has three items before it: annexation; zoning in the form of a Planned Development (PD) (including PDP Graphic Plan and PDP Written Plan); and the first stage of subdivision, referred to as sketch plan. All three relate to a request to annex property to the Town of Palmer Lake that is located approximately 1.5 miles from the Town's current boundary, at the southwest corner of the intersection of County Line Road and I-25, for the purpose of developing a Buc-ee's Travel Center comprised of approximately 74,000 sq. ft. of retail and 120 fueling stations.

A note regarding Planned Developments and Annexations generally

Usually, the PC is charged with looking at a land use application and deciding whether it satisfies certain criteria that apply to the type of application involved. If the criteria set forth in the Town Code are not satisfied, then the PC generally recommends denial of the application. However, it is different when the PC or the BOT consider a PD, and particularly in the annexation context, as there is substantial flexibility to be negotiated between the Town and the applicant with regard to matters addressed in the Town Code.

This increased flexibility in creating a Planned Development (PD), particularly in the context of an annexation, is recognized in the draft annexation agreement you will be receiving before your meeting. As discussed in greater detail below, the PD sections of the Town Code contemplate the negotiation and modification of dimensional requirements and development standards, among other things, than what would otherwise apply to the subject property. In addition, as part of an annexation, the Town and the applicant are able, by agreement, to exempt the property from provisions of the

code that would otherwise apply or to vary such requirements, as applied to the subject property.

1. Annexation

Please note: Certain aspects of a proposed draft annexation agreement are in the process of being refined and finalized by the staff and the applicant, including updating based on discussions with the BOT, as recently as last night. A draft annexation agreement will be provided prior to the PC hearing on August 20, 2025. Although the ultimate issue of annexation, including the negotiation of the annexation agreement is to be determined by the BOT, the Palmer Lake Town Code, provides for the Planning Commission's review of certain aspects of the annexation. It provides, in part:

17.14.040. Annexation of land.

...

(b) Specific procedure

...

- (7) The town shall provide to the applicant a draft annexation agreement prior to the zoning public hearing before the planning commission. The annexation agreement shall outline the responsibilities of the applicant and the town regarding the provision and extension of streets and utilities, the dedication of water rights, the payment of fees and charges related to the annexation and proposed development, the provision of facilities for the public and for residents and occupants of the annexed land, and other matters related to the impacts of the annexation on the town. Any changes or additions to the annexation agreement proposed by the town or suggested by the applicant shall be resolved before the public hearing before the planning commission. ...The final annexation agreement shall be signed by the applicant and made available to the town clerk before final action by the town board of trustees on the proposed annexation.

...

- (e) *Criteria for decision.* In making their recommendation or decision, the planning commission, and board of trustees, respectively, shall approve the annexation of land, only if it makes the findings required by C.R.S. § 31-12-110. In addition, the annexation shall comply with the annexation policies of the town's community master plan (aka comprehensive plan).

C.R.S. §31-12-110, requires the following findings:

§ 31-12-110. Findings

(1) Upon the completion of the hearing, the governing body of the annexing municipality, by resolution, shall set forth its findings of fact and its conclusion based thereon with reference to the following matters:

(a) Whether or not the requirements of the applicable provisions of section 30 of article II of the state constitution and sections 31-12-104 and 31-12-105 have been met;

(b) Whether or not an election is required under section 30(1)(a) of article II of the state constitution and section 31-12-107(2).

(2) The governing body shall also determine whether or not additional terms and conditions are to be imposed.

(3) A finding that the area proposed for annexation does not comply with the applicable provisions of section 30 of article II of the state constitution or sections 31-12-104 and 31-12-105 shall terminate the annexation proceeding.

At the conclusion of the eligibility hearing on May 29, 2025, the Board of Trustees adopted Resolution 46-2025 making all of the findings required by Section 31-12-110, C.R.S. Accordingly, this aspect of the criteria has been satisfied and no further action is needed by the PC or BOT on this this criteria.

The remaining criteria for the PC to provide a recommendation on with regard to the annexation portion of the application, is whether the proposed land uses are consistent with the Town's master plan. This is essentially the PC consideration of the PD zoning, which is discussed in greater detail in the next section of this memo.

Although a draft annexation agreement must be provided prior to the PC's public hearing on this development application, the PC's consideration of the annexation agreement should be limited to the land use aspects of the agreement. This is consistent with the general authority of the PC under the Town Code and Colorado statute. Those provisions create the Palmer Lake Planning Commission and authorize it to exercise all rights and powers granted by §§ 31-23-201, et seq., C.R.S. Those

statutes authorize a planning commission to develop the community master plan and to review and provide recommendations on land use matters such as zoning and subdivision, as provided for in the Town Code.

Accordingly, the Planning Commission's review of the proposed annexation and the draft annexation agreement should be limited to consideration of the land use aspects. All other items in the annexation agreement are solely a matter of negotiation between the Board of Trustees and the applicant.

In reviewing the applicant's land use proposal for a PD, there are a few provisions of the draft annexation agreement that the PC should keep in mind. As discussed above, in the PD context, and particularly in the annexation context, where there is a conflict between the provisions of the Town Code and the PDP/FDP or Annexation Agreement, the terms that were negotiated related to this specific piece of property as reflected in the FDP/PDP and the annexation agreement, govern over any contrary provisions of the Town Code. With regard to the subdivision regulations, the applicant has stated they are not seeking any modifications to the subdivision requirements as allowed by the adopted PD ordinance. As discussed in greater detail below, you will see that the applicant seeks to vary Town Code provisions related to lighting, sign and landscape standards, among others.

My understanding is that the lighting, sign, and landscape standards adopted by the Town were primarily directed at development and land uses within the area that was included in the Town of Palmer Lake at the time of their adoption and were not necessarily tailored to apply to a development along a well-lit and highly traveled interstate highway located well outside the Town limits as they existed at the time the standards were adopted. . The site in question was included in the 3-Mile Annexation Plan during the drafting of the Community Master Plan. The reasoning was that it was better to have a say in the development and control of a development at this site because this site is also included in the Town of Monument's 3-Mile Annexation and is currently zoned for commercial development in El Paso County. Accordingly, it is appropriate for the Planning Commission to consider and provide recommendations on lighting, signs, and landscaping that fit the land use and development of the subject property, independent of whether they vary from the standards that apply within the existing Town.

2. Zoning – Planned Development (PD)

The applicant is proposing a Planned Development Zoning designation pursuant to Section 17.72 of the municipal code. The PD zone designation allows *"the negotiation of a specialized zoning district that accommodates innovative patterns of development. This district is*

intended to be used only when no district in this Code, and no combination of districts can be used to approve a new development that provides substantial additional benefits to the town that would not otherwise be required by this Code, nor is it intended to be used to approve variations from the standards and criteria in this Code. Since the planned development accommodates innovative patterns of development, development standards, dimensional requirements, and permitted uses are negotiated and shall be allowed as set forth in the planned development plan (PDP) and final development plan (FDP). Significant additional benefits to the town must be demonstrated. This chapter is to implement the provisions of the Planned Unit Development Act of 1972 (C.R.S. § 24-67-101 et seq.) as amended."(17.72.010)

The PDP is comprised of two required submittal items: A written plan and a graphic plan. the applicant's proposal is for a 74,000 square foot retail travel center, supported by 820 parking spaces and 120 fueling stations. Sheet 5 of the drawing set outlines all proposed uses. Unlike many PD developments, this development has one planning area, one primary use, no phases, and one owner.

The reason for the request to zone the property PD is 7-fold:

1. There is no existing zone district that allows both retail and gas station services.
2. The applicant has proposed different sign standards given its location along Interstate 25.
3. The applicant has proposed different lighting standards and operates 24 hours a day, 365 days a year.
4. The applicant has suggested modifications to the required setbacks found in 17.72.070 by allowing specific encroachments into the setbacks.
5. The applicant has proposed different parking standards. The proposed Parking Ratio is: 1 parking stall per every 100 square feet of travel center building (minimum).
6. The applicant is allowed to propose different dimensional standards. This is a negotiated item and allowed per 17.72.140 (7). For example, lot coverage is 80% per their written PDP and the maximum building height is 40 ft.
7. The applicant has proposed landscaping standards for both the perimeter of the site and the parking lot.

The criteria for approval of the requested zoning to PD can be found in Section 17.72.050. - Conditions and standards and also in Section 17.14.010. The applicant's written plan addresses these criteria. It is the role of the Planning Commission to determine if these criteria have been met and if the Planning Commission is satisfied with the negotiated items proposed by the applicant. The DRT's suggestion is to review the written plan and proposed standards, and Sheet 5 of the drawing set. The lighting plan and landscape plan should also be reviewed.

3. Subdivision

- a. Overview of Subdivision Codes. The general requirements of a subdivision are outlined in the Town Codes under Title 16. The proposed project is classified as a Major Subdivision in accordance with Section 16.20.030 of the Town Code. The Major Subdivision classification is due to the requirement for public infrastructure to serve the proposed development. In accordance with Section 16.20.030 of the Town Code, a Major Subdivision consists of three phases: sketch plan, preliminary plat and final plat. This submittal has been prepared by the applicant pursuant to the first phase of the process, the sketch plan. Section 16.20.020 of the Town Code outlines the procedures and requirements for the sketch plan phase of a subdivision submittal and is the basis upon which the applicant should prepare the sketch plan submittal documents.
- b. Criteria for Approval. The criteria by which a sketch plan submittal is evaluated to determine approval are given in Section 16.20.080, Paragraph (5). Based on the review of the sketch plan submittal documents against the specified criteria, the Planning Commission may decide to approve the sketch plan, approve it with conditions, or deny approval of the sketch plan.
- c. Applicant's Proposal. The submitted sketch plan documents have been prepared to address the items required in Section 16.20.020 of the Town Code. It is noted that the proposed project is a PD zoning, which allows for negotiation of certain project parameters through the PD process and through the annexation agreement. Negotiated project parameters may deviate from Town Code requirements as described above for the reasoning of the PD zoning. Although those negotiated processes are outside the sketch plan process, the negotiated project parameters are reflected in the Sketch Plan submittal documents.
- d. Proposal Review. The proposal has addressed the required items stated in Section 16.20.020 of the Town Code with regard to the Sketch Plan submittal. The following items are noted for the Sketch Plan submittal documents:
 - i. The negotiated project parameters which may deviate from Town Code requirements as described above for the PD zoning rationale are included in the drawing set. The DRT's suggestion is to review those items and the drawings' representations of those items.

- ii. A table of open space dedication was provided on the Sketch Plan drawings. The table appears to indicate the land dedication areas provided to meet the Title 17 Zoning requirements, with a note that the annexation agreement includes cash in lieu. The cash in lieu negotiated as part of the annexation agreement appears to be applied to the Title 16 Subdivision requirements for land dedication. The table also references the Grading and Erosion Control drawing. The Grading and Erosion Control drawing was included in the PDP submittal package rather than including that drawing in the Sketch Plan drawing set.
- iii. The legal description included in the drawing set appears inconsistent with the legal description provided in the annexation maps and should be corrected.

We look forward to discussing these matters with you on August 20, 2025.

TOWN OF PALMER LAKE, COLORADO

RESOLUTION NO. 61 - 2025

**A RESOLUTION RECOMMENDING TO THE PALMER LAKE BOARD OF TRUSTEES THAT
THE APPLICATION TO ZONE THE PROPOSED MONUMENT RIDGE WEST, LLC
ANNEXATION PROPERTY, A/K/A BUC-EE'S ANNEXATION PROPERTY, AS A PLANNED
DEVELOPMENT, BE DENIED BUT WITH CONDITIONS IF IT IS APPROVED BY THE
BOARD
(DENY)**

WHEREAS, the Palmer Lake Town Code and applicable provisions of the Colorado statutes authorize the Planning Commission of the Town of Palmer Lake (the "Commission") to review certain land use applications and other matters and, based on that review, to provide recommendations to the Board of Trustees of the Town of Palmer Lake (the "Board"); and

WHEREAS, the Town has received an application for annexation submitted by Monument Ridge West, LLC, a Colorado limited liability company, as the owner of certain property described in the annexation petitions (the "Property"), and Buc-ee's Ltd, a Texas limited partnership, as the developer of the Property (referred to collectively herein as the "Applicant") seeking to annex the Property to the Town of Palmer Lake; and

WHEREAS, as part of its application, the Applicant has requested that if the Property is annexed to the Town that it be zoned as a Planned Development District, pursuant to the provisions of the Town Code, including but not limited to Section 17.14.010 (Rezoning) and Chapter 17.72 (Planned Development District) as described in the Planned Development Plan (PDP) submitted by the Applicant;

WHEREAS, the Town Code requires that applications for planned developments be referred to the Commission for review and recommendation to the Board; and

WHEREAS, following proper notice, on August 20, 2025, the Commission conducted a public hearing to consider the application and make recommendations to the Board regarding zoning of the Property as a Planned Development and continued the hearing to September 3, 2025; and

WHEREAS, at the public hearing the Commission considered the application, the statements and presentation of the Applicant, the statements and presentations of the public and all other relevant materials; and

WHEREAS the criteria to be evaluated by the Commission in deciding whether to recommend rezoning of property as a Planned Development are set forth in the Town Code, including Section 17.14.010(f)(5); and Chapter 17.72; and

WHEREAS, in deciding whether to recommend the Property should be zoned as a Planned Development District as described in the PDP, the Commission is to consider all applicable provisions of Chapter 17.72 of the Town Code, including but not limited to the intent and purposes of the planned development district as set forth in Section 17.72.010; whether the Applicant's proposed PDP satisfies the provisions of Section 17.72.020 regarding substantial conformance or nonconformance with the master plan; Section 17.72.030 regarding modification of subdivision regulations; Section 17.72.050 regarding conditions and standards; and Section 17.72.100 regarding open space requirements, and all other applicable provisions of the Town Code; and

WHEREAS, based on the matters submitted in the application and matters presented at the public hearing, and after considering and evaluating the criteria in Section 17.14.010(f)(5) and Chapter

17.72, the Commission finds and concludes that the Property should not be zoned as a Planned Development District, as described in the Planned Development Plan, for the reasons set forth in Section 2, below.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE TOWN OF PALMER LAKE, COLORADO AS FOLLOWS:

1. The Planning Commission hereby recommends that if the Property is annexed to the Town of Palmer Lake, that the Property should not be zoned as a Planned Development District, as described in the Planned Development Plan (PDP) as submitted by the Applicant for the reasons set forth in Section 2., below.
2. The Commission's recommendation to deny the Planned Development application is based on the following findings and conclusions of the Planning Commission that the Planned Development, as proposed by the Applicant:
 - a. Is not in substantial compliance with the Town's Comprehensive Plan, which identifies the subject intersection as a commercial development, but on a more limited scale;
 - b. Is simply too big of a development for the Town of Palmer Lake;
 - c. Fails to maintain the small-town character of the Town;
 - d. Raises concerns with the amount of impermeable surface;
 - e. Does not contain sufficient provisions regarding water sustainability and water conservation;
 - f. Fails to satisfy adequately address night sky concerns; and
 - g. Is incompatible with surrounding areas.
3. If, despite the Planning Commission's recommendation of denial, the Board of Trustees considers approval of the proposed Planned Development, the Planning Commission recommends, in addition to addressing the grounds for the Commission's recommendation of denial set forth in Section 2, above, the following additional conditions:
 - a. The maximum height of the sign for the development be reduced to 75 feet or less;
 - b. A bike trail be added along County Line Road from Buc-ee's to the Santa Fe Trail; and
 - c. A pedestrian walkway be provided from Buc-ee's to the open space across County Line Road;
4. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Resolution is held to be unconstitutional or invalid for any reason such decision shall not affect the validity or constitutionality of the remaining portions of this Resolution. The Board of Trustees hereby declares that it would have passed this resolution and each part or parts thereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.
5. Repeal. Existing resolutions or parts of resolutions covering the same matters embraced in this Resolution are hereby repealed and all resolutions or parts of resolutions inconsistent with the provisions of this Resolution are hereby repealed.

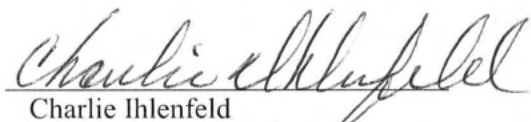
INTRODUCED, RESOLVED, AND PASSED AT A REGULAR MEETING OF THE PLANNING COMMISSION OF THE TOWN OF PALMER LAKE ON THIS 3rd DAY OF SEPTEMBER 2025.

ATTEST:



Erica Romero
Town Clerk

TOWN OF PALMER LAKE, COLORADO

BY: 

Charlie Ihlenfeld
Planning Commission Chair



PLANNING COMMISSION

Wednesday, August 20, 2025 at 5:00 PM

Palmer Lake Town Hall – 28 Valley Crescent, Palmer Lake, Colorado

MINUTES

Call to Order

- Meeting Called to order at 5:00PM

Roll Call

- Present: Charlie Ihlenfeld, Bill Fisher, Andre Bergeron, Herb Tomitsch, Matt Stephen, and Michael Beeson.

Pledge

Public Hearing – *Chair will introduce the item and hear the applicant request. Chair will ask if any public member wishes to speak for or against the request. Public should address the Commission members directly while members listen. Applicant may provide closing remarks and members may ask questions of the applicant. Chair will close the hearing and members will discuss the item, move a recommendation, and/or continue the hearing to a particular date.*

1. Staff Memo - Attorney Scott Krob
 - a. Attorney Krob addressed a potential conflict of interest concern and concluded that the Chair of the commission is not disqualified because his prior comments were a permissible expression of opinion on a policy/legislative matter and he has no disqualifying conflict of interest.
 - b. Attorney Krob recommended that the commission focus the majority of their efforts on the zoning part of the Annexation agreement, as deciding on the planned development/zoning part of the agreement helps provide direction on the rest of the agreement.
 - c. Commissioner Beeson inquired about whether the hearing is Quasi-Judicial hearing or not.
 - i. Attorney Krob responded that it is both a Quasi-Judicial hearing and a legislative hearing. Further explaining that annexation is a legislative matter and that zoning and the sketch plan are both quasi-judicial matters. Commissioner Beeson then followed up with asking if all testimony is binding. Attorney Krob responded that the expectation is that all representations from the applicant be accurate and that all public comments be accurate.
2. Planned Development Plan - Drawing

-
- a. Applicant Presented their proposed plan for developing the property, which included signage, lighting, and wildlife mitigation.
 - b. Commissioner Stephen inquired about the zoning designation no longer being enforced.
 - i. The response from the applicant was that the county has made it an obsolete zoning designation. Meaning that while new land cannot be zoned into it, existing land already zone can be developed.
 - c. Commissioner Beeson inquired about the land's lack of conservation and open space designation from the county.
 - i. The applicant responded that designation of open space or as a conservations space is provided by El Paso County.
 - d. Applicant Presented their proposed plan for developing the property, which included signage, lighting, and wildlife mitigation.
3. Planned Development Plan - Written Plan
- a. Applicant addressed the content of their written plans including, zoning requirements, Planned development zone districts, dimensional standards, land use provisions, water usage, and engineering design standards. The applicant also covered an overview of the draft annexation agreement.
 - b. Question from Commissioner Beeson asking about traffic modeling used.
 - i. Applicant responded that they used a variety of modeling techniques including Synchro modeling, vehicle queuing analysis, Vissim analysis, and both IDOT & XCap intersection capacity analysis.
 - c. Question from Commissioner Fisher for comment on the traffic counts now vs what's in the traffic study.
 - i. Applicant responded that the improvements to the roadways around the proposed planned development account for the increase in traffic.
 - d. Question from Commissioner Beeson for clarification on the phrasing of "conservation of the value of land."
 - i. Applicant responded that specific phrasing is in regards to the proposed planned development land only, not surrounding properties.
 - e. Question from Commissioner Beeson about the 100 foot sign.
 - i. The applicant responded that the sign will emit less lumens than their parking lot lights and that it will not be a 100 foot sign. Applicant informed the commission that they are prepared to have further conversations about sign height.
4. Sketch Plan
- a. Applicant addressed the criteria that the town of Palmer Lake specifically had put forth. This included zoning, applicability to Palmer Lake Master Plan, lighting, traffic, and wildlife management.
 - b. Question from Commissioner Beeson about guiding objective ED2.2
 - i. Response from the applicant said that where the proposed development is already adjacent to where other franchises and big box stores already are, and that when the master plan was written, the town did not have any land adjacent to I-25. The applicant also noted that Buc-ee's is not a franchise business.
 - c. Question from Commissioner Beeson about connectivity and multimodal transportation, particularly a bike lane.

- i. The applicant responded that they did coordinate with El Paso County, but they are not at a stage of development where they could commit or promise to include that in their plans.
- d. Question from Commissioner Beeson about Sketch Plan D and open space criteria.
 - i. Applicant responded that out of the 24.77 acres in the proposed planned development 3.72 acres of open space is what is required. They continued to say that they currently have 4.13 acres of open space in their plans.
- e. Question from Commissioner Beeson about how the community will benefit from the proposed open space.
 - i. Applicant responded that the community would have access to green spaces, a bike plaza, and dog walking provisions.
- f. Question from Commissioner Fisher about how community members would access the bike plaza.
 - i. Applicant responded that they could access the bike plaza through public roadways.
- g. Question from Commissioner Beeson on encroachments into Douglas County.
 - i. Response from the applicant is that there is a stipulation from Douglas County, El Paso County, and Douglas Land Conservancy regarding any areas of encroachments.
- h. Question from Commissioner Beeson about how Buc-ee's a tourist destination and what effects it will have on local businesses.
 - i. Buc-ee's will have a kiosk with local activities and will work with local businesses to bring their products to within the store.
- i. Question from Commissioner Fisher to Attorney Krob about potential changes the commission could request.
 - i. Attorney Krob responded that the commission has several options. He stated that the commission can approve it the way it's presented. They can approve it subject to conditions, additional things they would like to see in it, or the commission can deny it. If the commission thinks there are additional things that should be in it, then they would approve it subject to those conditions and that would go to the board of trustees as a as part of their recommendation.
- j. Question from Commissioner Stephen for clarification on not asking for reimbursement on development costs.
 - i. The applicant responded that the developer is not asking for cost recovery, instead they have proposed that 1% of the sales tax revenue will be rebated to the owner of the property for a period of 20 years.
- k. Question from Commissioner Stephen about the taxable sales for the property.
 - i. The applicant responded that any sales event on the property would be subject to the three penny tax and that they are asking that the town keep two pennies. They continued that based on comparable stores the total sales tax on two pennies would be plus or minus one million dollars.
- l. Question from Commissioner Beeson about the fiscal impact part of the annexation agreement on page 5 part B.
 - i. The applicant responded that the financial obligation he was asking about was part of the financial impact study done before the annexation agreement. The

applicant then clarified that in the annexation agreement no financial obligations were placed on the town.

5. Addendum

- a. Materials were presented in the meeting packet but not explicitly discussed. Addendum was documentation on proof of ownership.

Recess of proceedings

- 8:15PM – 8:30PM

Public Comment

- Mr. Todd Messenger, a land use attorney representing the United Congressional Church. Spoke on Colorado State Law he believed was relevant and asked commission to continue this hearing based on this. He requested that the commission recommend to the Board of Trustees that they deny the annexation petition, and the application for initial zoning. He continued to support this request with examples from the master plan, comments from citizen interviews, wildlife concerns, and water conservation concerns.
- Mr. Ian Griffis – Stated his opposition to the proposed annexation and urged the commission to verify statements given by the applicant with various agencies.
- Mr. Dan Neimela, a Water Resource Consultant speaking on behalf of John Malone and Ian Griffis. Spoke on the increased water demands from the proposed development. He then continued to speak about the long-term effects on increased water consumption in the town.
- Ms. Caitlin Quander, a land use attorney speaking on behalf of Protect Greenland Ranch LLC. Requested a continuance of the public hearing based on documents that were not a part of the packet provided to the Planning Commission. She continued to recommend denial of the application for initial zoning.
- Ms. Haley Griffis – Stated her opposition to the proposed annexation and gave examples of wildlife impacts in the annexation area.
- Mr. Brian Horan, a Traffic Engineer speaking on behalf of local landowners. Spoke on the two studies included in the presentations. Stated that there is not enough information to understand the impacts and said that additional studies are needed. He continued to point out specific issues he found in the existing studies.
- Mr. Steve Draper – Stated that the commission must vote for a continuance. Continued to express his disapproval against approving the proposed annexation.
- Ms. Kellie Currie – Question if the Planning Commission used the El Paso County zoning codes throughout the application process. Requested that the fire code be provided to the public.
- Ms. Lanette Posseda – Asked the Planning Commission about a Wall Street Journal article concerning the number of pumps. Gave concerns on garbage truck noise, and quiet hours. Requested that a Buc-ee's button be placed in the center of the town.
- Ms. Karen McVay – Expressed concerns about the proposed annexation, construction and increased traffic.
- Mr. Logan McConnel – Spoke about an environmental assessment that he conducted about the proposed planned development site. Expressed concerns about the impact this development site could have on local wildlife.

-
- Mr. J. Rene Trudel – Stated his opposition to the proposed planned development site. Expressed concerns about water usage, traffic, and snow removal.
 - Ms. Grace Foy – Stated concerns about traffic impacts from the proposed annexation and expressed concerns about the accuracy of the provided traffic study from the applicant. Expressed concerns over the trustworthiness of the annexation process.
 - Mr. Bill Benson – Expressed concerns about water levels in the aquifer and the increase in water usage. Stated that not having enough water should take priority.
 - Mr. John Sweet – Stated that he did not agree that a planned development could not proceed with variations from the town code. Expressed that the property should not be annexed or rezoned. Continued with concerns with the environmental impacts, zoning applicability, lighting & sign standards.
 - Ms. Genevieve Gustavson – Asked the commission to not proceed with the annexation. Expressed concerns about water usage in the Denver Basin Aquifer, traffic impacts, and financial impacts related to water usage on surrounding residences.
 - Ms. Beth Harris – Stated that the Town of Palmer Lake’s Master Plan should be the primary document considered. Expressed concerns with light pollution, the sign height and the increased water usage.
 - Ms. Terre Christensen – Stated her opposition to the proposed annexation. Expressed that the project does not fit with the town master plan and that it is not wanted by its residents.
 - Ms. Laurel Schow – Stated her recommendation that the Planning Commission give a recommendation to deny the proposed zoning application. She expressed with concerns with property values, views, traffic, light pollution, proposed zoning changes, and compliance with the town master plan.
 - Ms. Kat Gayle – Chief Legal Counsel to Integrity Matters and Westside Watch. Objected to Charlie Ihlenfeld presiding over this hearing. Expressed concerns with the proposed zoning changes and wildlife concerns. Asked the commission to look at alternative locations and development options.
 - Mr. David Parks – Stated his opposition to the proposed annexation. Expressed concerns about wildlife impacts, light pollution and wants of the town’s residents.
 - Mr. Roger Moseley – Stated his surprise about the lack of continuance given the size of the packet provided. Expressed concerns about the sign height, parking, master plan applicability, size of the development, proposed zoning changes, financial recompense to the town, and environmental impacts.
 - Mr. Drew Walton – Stated his concerns about the impact of noise, light pollution, traffic, and air pollution to the neighbors to this proposed development.
 - Mr. Shaun Sawyer – Expressed concerns about the lack of discussion at the hearing about water. Expressed concerns about the light ordinance, increase in hydrocarbons, and change in small town feel & character.
 - Mr. Matt Dunston – Spoke about his concerns about misinformation, mob mentality, and intimidation involved in the public discourse on the proposed annexations. Continued to point out that the town sits in the Denver Basin Aquifer, infrastructure improvements, and long-term water resource benefits.
 - Mr. Larry Widra – Stated his concern with the amount of time the applicant had to speak vs how much time is available for public comment. Expressed concerns with wildlife impacts, light pollution, traffic concerns, and noise increase.

- Ms. Debbie Hall – Stated her concerns about views, light pollution, traffic concerns, water drainage, property values and highway access. Continued to ask the Planning Commission to not approve this.
- Mr. David Moon – Stated concerns about snow removal, winter storm safe haven feasibility, and safety of potential customers due to ice. Expressed additional concerns about master plan applicability and the updated three-mile plan.
- Ms. Kathleen Coblur – Expressed concerns about the applicant coming back in the future and requesting more land than is currently proposed.
- Ms. Mary Scott – Spoke about the financial impact of the proposed development to the town. Expressed concerns that the numbers provided have changed and are of concern. Continued with concerns about the proposed zoning changes and the loss of open space.
- Mr. Rian Snowbarger – Expressed concerns about lack of storm water upgrades, traffic concerns, increase in tourists, increase in large trucks, lack of emergency personnel and challenges with snow removal.
- Mr. Chase Olivier – Spoke in opposition to the proposed annexation and development. Expressed concerns about safety, community character, icy road conditions, supposed revenue benefits, and the fiscal transparency of the town. Continued to urge the Planning Commission recommend denial.
- Mr. Kane Cotton – Representing the Cotton, McGuire, and the close families. Stated that this should be denied, and if not, a continuance issued. Continued with concerns about the proposed development not aligning with the El Paso County master plan and the Palmer Lake master plan.
- Mr. Jeffery Dunston – Stated his support for Buc-ee's and the annexation. Continued that he believes the increase in tax revenue and the applicant has been very willing to meet town conditions in the application process.
- Ms. Trina Shook – Admonished the Planning Commission for behavior during the public hearing. Requested that the Planning Commission listen to the engineers who have given public comments. Expressed concern over sex trafficking along I-25, community character, environmental impacts, and adherence with the master plan.
- Ms. Alex Olivier – Stated her disagreements with how the surrounding community has been treated during this application process. Expressed concerns that the proposed development will result in the surrounding community visiting Palmer Lake's businesses and events.
- Ms. Ashley Stieber – Stated her desire for Palmer Lake to remain a small town and that she believes that Buc-ee's does not meet the qualifications to be annexed.

Discussion of Matters before the Commission

- Commissioner Fisher raised issues with master plan compliance with the town code, potential consideration for a lower sign, more time to study the water reports addressing the aquifers, the percentage of impermeable surfaces, the parking count, and environmental impacts
- Commissioner Beeson asked for clarification on two traffic study reports mentioned by the applicant in their presentation and requested a copy of them.
 - o Attorney Krob added that these reports were not from any town consultant.
- Commissioner Tomitsch commented that he would also like to see those two reports and that more time is needed to fully review the application.

- The commission discussed among themselves the logistics, timing, and date for a potential continuance.
- A motion to continue the public hearing to the 27th of August. (Ihlenfeld, Tomitsch) 3-3 Motion fails due to tie.
- A motion to continue the public hearing to the 3rd of September. (Beeson, Fisher) 6-0 Motion passed unanimously.
- The applicant clarified that they felt confident that they could provide a response to any question posed by the commission. They continued that if third party reports were mailed in to the town, then that may change. The applicant also requested that if questions are provided in seven days, then they could provide answers the following Monday.
- Attorney Krob requested the commission that any questions to the applicant should be provided to Town Clerk Romero by August 27th.

Next Meeting and Future Items**Adjourn**

- Meeting adjourned at 11:29PM

EXHIBIT 17

KKTV 11 NEWS VIDEO RECORDING – BUC-EE’S COMMUNITY MEETING

Palmer Lake Elementary School, Palmer Lake, Colorado – December 3, 2024

Publisher	KKTV 11 News
Webpage title	“WATCH: Public meeting held on Tuesday to discuss possibility of Buc-ee’s in Palmer Lake”
Publication date	December 4, 2024, 3:53 PM MST
Video source	https://www.kktv.com/video/2024/12/04/watch-public-meeting-held-tuesday-discuss-possibility-buc-ees-palmer-lake/
Speaker excerpted	Stan Beard, speaking on behalf of Buc-ee’s

Transcript note. The following are unofficial transcript excerpts from the publicly available KKTV video. Timestamps refer to the full KKTV video. Ellipses indicate omitted filler, repetition, or intervening words that do not change the quoted proposition. The complete video is identified above and is submitted electronically by URL so the quoted remarks may be reviewed in context.

17:33–17:50 – Customer origin

“90% of our customers are visiting us from well outside of El Paso County. ... more than 70% of them are coming from outside the state.”

19:20–19:40 – Freeway-oriented purpose

“So the 80,000 cars a day that are traveling along I-25 adjacent to this site, ... our purpose is to get them off and back on that freeway system as easily and comfortably as possible.”

21:59–22:17 – Buc-ee’s distinction between its former neighborhood-store format and current travel-center model

“Back in the day, we were just a little convenience store, neighborhood convenience store. We are now in seven or eight states. We have 32 travel centers.”

26:04–26:26 – Customer draw and freeway interception

“So our customers, like I said, come from miles away. We are stopping the car that is already on the freeway ... that is going to stop somewhere and we want them to stop in Palmer Lake.”

Record-use note. These excerpts are offered as statements by Applicant’s representative concerning Buc-ee’s customer origin, freeway-oriented site function, and the company’s own description of its evolution from a neighborhood convenience-store format to its current travel-center model. The video is offered for the Board’s consideration together with the complete source URL above.

EXHIBIT 18

PLACETYPE: SUBURBAN RESIDENTIAL

The Suburban Residential placetype comprises the County's traditional residential neighborhoods with supporting commercial uses at key intersections.

Character

Suburban Residential is characterized by predominantly residential areas with mostly single-family detached housing. This placetype can also include limited single-family attached and multifamily housing, provided such development is not the dominant development type and is supportive of and compatible with the overall single-family character of the area. The Suburban Residential placetype generally supports accessory dwelling units. This placetype often deviates from the traditional grid pattern of streets and contains a more curvilinear pattern.

Although primarily a residential area, this placetype includes limited retail and service uses, typically located at major intersections or along perimeter streets. Utilities, such as water and wastewater services are consolidated and shared by clusters of developments, dependent on the subdivision or area of the County.

Some County suburban areas may be difficult to distinguish from suburban development within city limits. Examples of the Suburban Residential placetype in El Paso County are Security, Widefield, Woodmen Hills, and similar areas in Falcon.

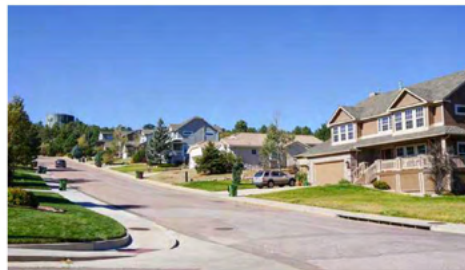
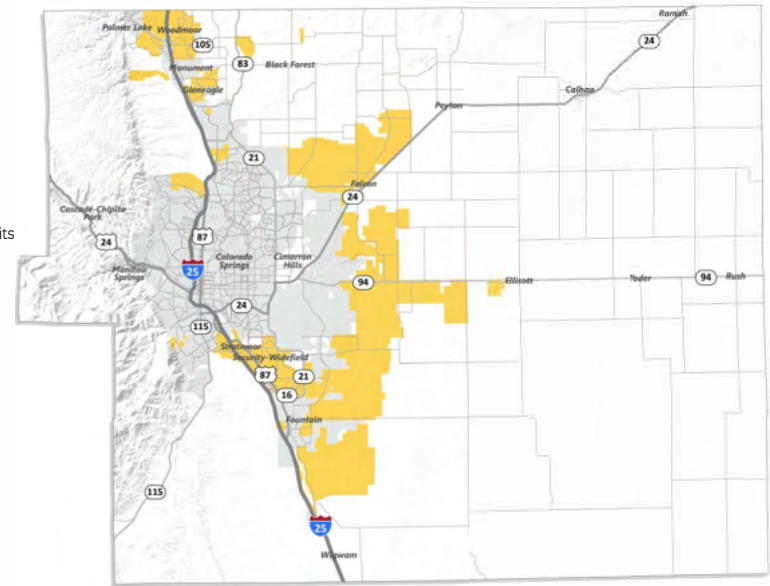
Land Uses

Primary

- Single-Family Detached Residential with lots sizes smaller than 2.5 acres per lot, up to 5 units per acre

Supporting

- Single-family Attached
- Multifamily Residential
- Parks/Open Space
- Commercial Retail
- Commercial Service
- Institutional





SUBURBAN RESIDENTIAL

Placetype Characteristics

- A** Properties are generally connected through a network of sidewalks often on both sides of the street.
- B** Most roadways support all modes of transportation with sidewalks on both sides of the street. Major highways and County roads may provide multimodal facilities on frontage roads, adjacent trails or sidewalks. Existing gravel roads may need to be paved. County roads will be improved as new development occurs to meet current standards.
- C** Street design standards encourage compatible best management practices adjacent to the street from private development.
- D** Major Roads are paved in a grid-like fashion and local roads may be curvilinear if maintenance, snow plowing, and emergency access can be efficiently and effectively provided while maintaining compact block structure.
- E** Connectivity to trails, hiking paths, and bike lanes provide access to parks, open space, different neighborhoods, jobs, services, and transit if available.
- F** Primarily consists of single-family detached homes, that follow a uniform setback from street. Homes may reflect a variety of architectural design but maintain a similar scale and character to the surrounding homes.

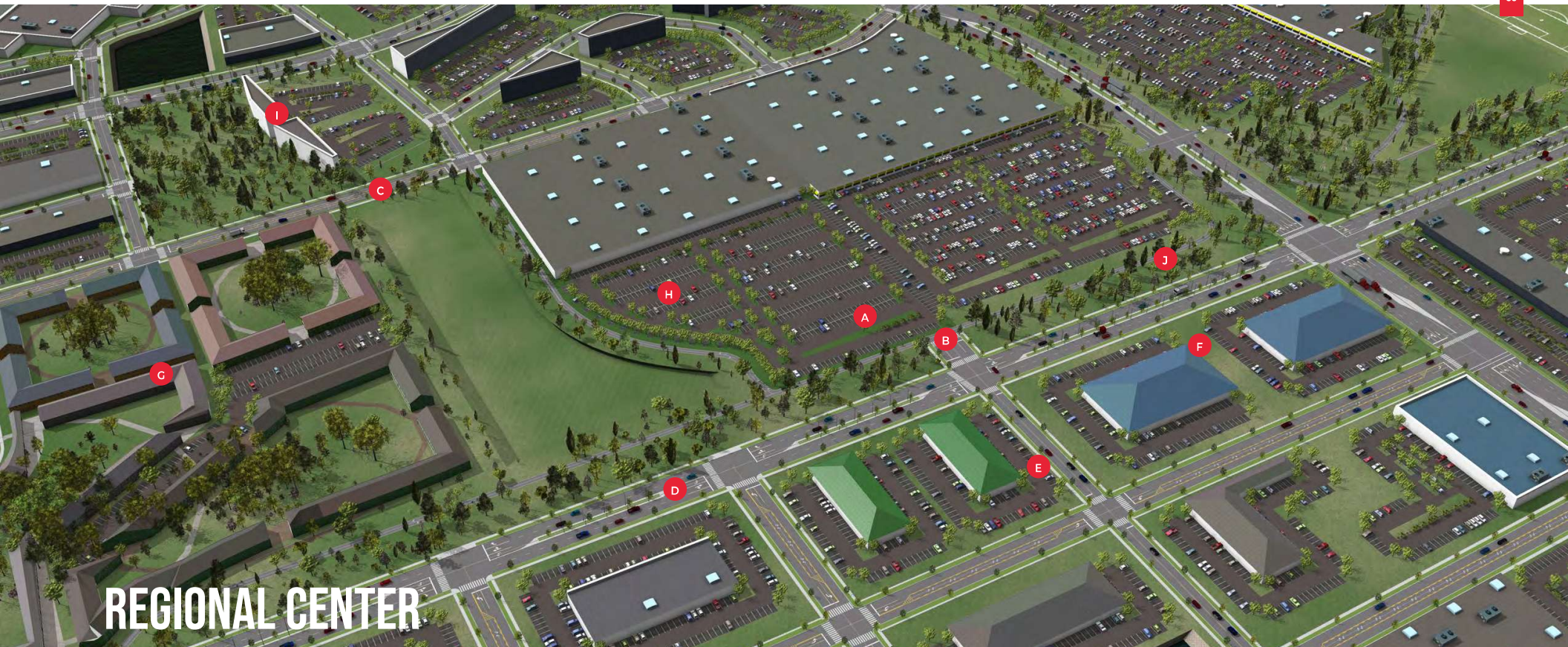
- G** Neighborhood scale parks and open space are distributed throughout the residential development and support community gathering and recreation.
- H** All right of way is preserved in association with new development. Major roads support longer trips to help connect higher-density and commercial areas, accommodate truck travel, and prioritize access control.
- I** Residential blocks are fully developed and well-maintained with higher-density uses adjacent to urban residential placetypes.
- J** Sidewalks or other multimodal facilities on both sides of the street connect to sidewalks of adjacent placetypes.

Additional Design Considerations

- Stormwater infrastructure adheres to best management practices and is strategically integrated into the design of each neighborhood. Curb and gutter are required.
- ADA accessibility is required and may be provided as depicted within the typical design cross sections for the function of the road.
- Incompatible land uses such as some nonresidential and/or regional commercial are hidden from public view with setbacks, screening, and landscaping buffers from all pedestrian paths and adjacent residences.

Function of Supporting Uses

Few commercial uses may be appropriate in Suburban Residential. Those allowed must be small-scale standalone businesses that serve a neighborhood population. Additionally, certain unique businesses that mirror the development style of residential development are also allowed. Accessory Dwelling Units (ADUs) are compatible in this placetype and should function in the context of the existing neighborhood.



Placetype Characteristics

- A** Shopping center development provides ADA compliant internal network of pedestrian sidewalk connections and highly visible crosswalks.
- B** Vehicular access points into commercial development ensure major transportation routes and intersections throughout the County are not affected by traffic generated by the Regional Center.
- C** All right of way is preserved in association with new development. Major roads support longer trips to help connect higher-density and commercial areas, accommodate truck travel, and prioritize access control.
- D** Most roadways support access via all modes of transportation with sidewalks on both sides of the street. Major highways and major county roads may provide multimodal facilities on frontage roads, adjacent trails or sidewalks. Existing gravel roads that receive increased development will need to be paved. County roads that do not meet current standards will be improved as new development occurs.
- E** Sidewalks and other multimodal facilities (including greenways) connect and allow access to neighboring placetypes.
- F** Buildings are setback from public roadways and have well defined public entrances.
- G** Architectural style and design of overall place (including signage) is intentional and follows a masterplan or motif creating a sense of place.
- H** Surface parking is landscaped, incorporates best management practices, and is well maintained by the development.
- I** Development is typically 1-3 stories, apart from mixed-use, office, or multifamily structures which may be up to 5 stories in height.
- J** Off-street parking is screened by plantings or other methods of screening from other noncommercial uses.

Additional Design Considerations

- ADA accessibility is required and may be provided as depicted within the typical design cross sections for the function of the road.
- Stormwater infrastructure adheres to best management practices and is strategically integrated into the design of each development. Curb and gutter are required.
- Highly accessible by public transit with covered bus stops and regular routes.
- Storefronts are inviting and attractive and outside display areas are well integrated and appropriately screened.
- Appropriate intersections controls are provided as warranted.

Function of Supporting Uses

Similar to multifamily uses, single-family attached provides a larger potential consumer base to which the primary commercial uses can sell their goods and services. This residential use provides a scalable transition between the multifamily uses in this placetype and smaller residential uses in adjacent placetypes. Office uses are appropriate to provide employment opportunities to residents.



Suburban Residential Priority Development Areas

1 Highway 105 & Interstate 25

The area is located between Monument, Woodmoor, and Palmer Lake. Due to its proximity to these communities, this area has largely developed to match that community's style of suburban residential and should continue to do so without impediment. It would also be supported by commercial and public services, both of which are important factors when considering denser development. Furthermore, increased density at the northern end of the County would help support residents who commute north for work every day.

- New and infill development should be encouraged within the significant area of available vacant or underutilized agricultural, land across Interstate 25 to continue the expansion of existing Suburban Residential areas.
- Single-family attached and detached housing units should be developed in a cohesive manner that establishes a seamless transition between different housing types, as opposed to large, isolated clusters or blocks of a single type of housing. Maintaining this mixed development pattern should be prioritized by the County to preserve the existing residential character of this area.

2 Falcon

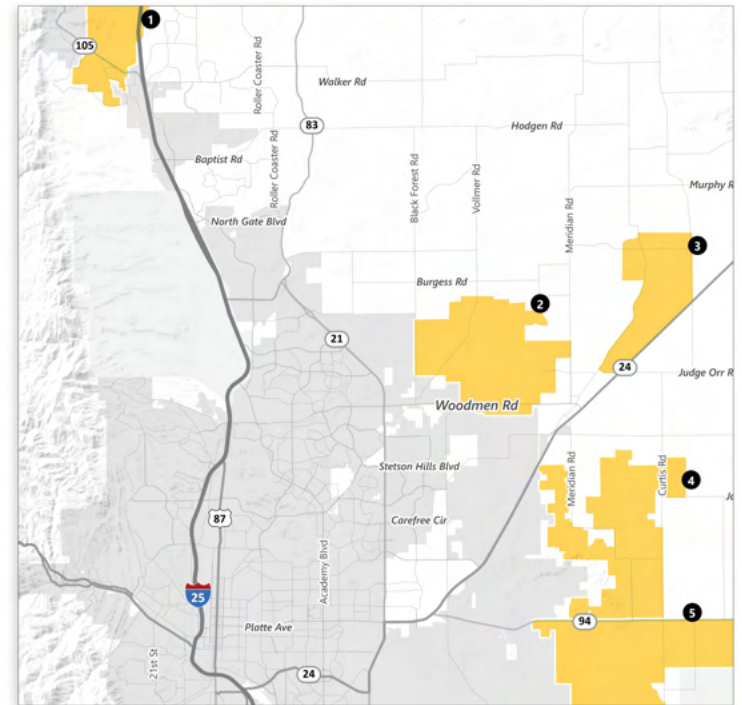
The Falcon community has developed its own unique character and functions like a small municipality. New Suburban Residential development would not only match the existing development pattern in Colorado Springs and Falcon to the east and west but also act as a density buffer between more urban development to the south and large-lot to the north.

- Residential development near the municipal boundaries adjacent to this area may include single-family attached and multifamily units.
- The County should emphasize Stapleton Road, Woodmen Road and Vollmer Road as connectivity corridors that would provide important access to necessary goods and services in surrounding communities, generally supporting suburban residential development.
- The County should support the completion of Stapleton Road to improve connectivity between Falcon and Colorado Springs.
- Neighborhood-level commercial uses and public services should also be considered in these areas at key intersections.

3 Highway 24

Falcon, and the surrounding area, is already growing, with the majority of homes being developed in the last two decades. The amount of vacant land along Highway 24 should not be set aside for Large-Lot Residential alone. Just as with the proposed Large-Lot Residential in this part of the County, proximity to Highway 24 and availability of central services is another benefit to expanding suburban development. The corridor provides important access south to Colorado Springs. Additionally, Curtis Road provides similar access to Schriever Air Force Base.

- To sustain Falcon's growth momentum, the County should continue to prioritize Suburban Residential in this area. Doing so would match the community's existing character and utilize available land to accommodate a sizable portion of the County's expected population growth without negatively impacting adjacent areas.
- The County should emphasize Stapleton Road as a connectivity corridor that would provide important access to necessary goods and services in this community, generally supporting suburban residential development.
- Immediate adjacency to Highway 24 should also be utilized for larger commercial development, not only to support neighborhoods but also to capture commuters.



Suburban Residential Priority Development Areas

EXHIBIT 19:
CONVENIENCE STORE
DEFINITIONS

Chapter 18.07. DEFINITIONS

Article 1. Glossary

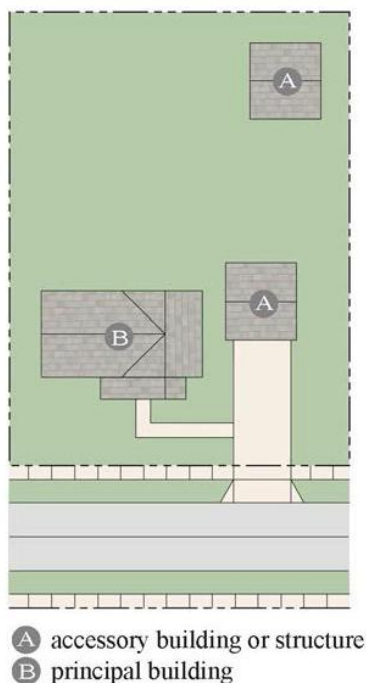
18.07.110 Words and terms.

The following words, terms and phrases when used in these regulations shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abutting means touching. An abutting condition shall not be affected by the division of land that results in an incidental, non-buildable, remnant lot, tract or parcel.

Accessory Dwelling Unit means an internal, attached, or detached dwelling unit that provides complete independent living facilities for one or more individuals, is located on the same lot as a proposed or existing primary residence, and includes facilities for living, sleeping, eating, cooking, and sanitation.

Accessory Building or Structure means a building or structure on the same lot with the building or structure housing the principal use, but housing a use customarily incidental and subordinate to the principal use.



Accessory Use means a use naturally and normally incidental to, subordinate to and devoted exclusively to the principal use of the premises.

Adjacent means nearby, but not necessarily touching. Adjacency shall not be affected by the existence of a platted street or alley, a public or private right-of-way, or a public or private transportation right-of-way or area.

Alley means a public or private way permanently reserved as a secondary means of access to abutting property.

Alteration means change in the size or shape of an existing sign. Copy or color change of an existing sign is not an alteration. Changing or replacing a sign face or panel is not an alteration.

Amateur Radio Antennas means antennas which the Federal Communications Commission ("FCC") has designated as "over-the-air-reception-devices," which are typically associated with residential uses, which are generally referred to as amateur ("HAM") radio antennas, and which do not include facilities used for commercial purposes or the provision of personal wireless telecommunication services to people who do not reside on the lot on which the antenna is located (CMRS facilities).

Animated means the use of movement or change of lighting to depict action or to create a special effect or scene.

Apartment means a part of a building consisting of a room or rooms intended, designed, or used as a residence by an individual or a single family.

Appeal means a request for a review of a Town staff interpretation of any provision of this title or a request for a variance.

Applicant, used interchangeably with the term "developer", means the owner of land or his or her representative who is responsible for any undertaking that requires review and approval under these regulations.

Approval means the approval by formal action of the Town Staff, Planning Commission, Board of Trustees or Board of Adjustment as assigned by Table 1.1, for a land use, land use change, or development, and subject to such conditions and limitations as are imposed as a part of that approval.

Architectural Features or Treatments mean finished elements of a building that define a structure's architectural style and physical uniqueness, including, but not limited by windows, doors, trim, and ornamental features.

Area of Special Flood Hazard means land in a floodplain subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Insurance Rate Map (FIRM). After detailed ratemaking has been completed in the preparation for publication of the FIRM, Zone A usually is redefined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH or AR/A. For purposes of Section RBC313 of the Pikes Peak Regional Building Department's Flood Code, the term "special flood hazard area" is synonymous in meaning with the phrase "area of special flood hazard".

Assisted Living Facility or Nursing Home means an establishment, other than a hospital, licensed by the state, which operates and maintains continuous day and night facilities providing room and board, personal service, and skilled nursing care.

Bank means a financial institution that is open to the public and engaged in deposit banking, and that performs closely related functions, such as making loans, investments, and fiduciary activities.

Banner. See definition for fabric sign.

Banner, Wave. Wave banner means a type of temporary fabric sign consisting of cloth, bunting, canvas or similar fabric, attached to a single vertical support structure with color, words, patterns or symbolic logos for display. Also known as a feather banner, flying banner or a teardrop banner sign.

Bar/Tavern means an area or structure primarily devoted to the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages.

Base Station means a structure or equipment, other than a tower, at a fixed location that enables FCC licensed or authorized wireless communications between user equipment and a communications network.

The term includes any equipment associated with wireless communications services, including radio receivers, antennas, coaxial or fiber optic cable, regular and backup power supplies and comparable equipment,

regardless of technological configuration (inclusive of Distributed Antenna Systems and small cell networks). The term also includes any structure, other than a tower, to which any of the equipment described herein is attached.

Batch Plant means a facility for mixing or combining of materials to produce concrete or asphalt.

Bed and Breakfast Inn mean an establishment operated in a private residence, or portion thereof, where short-term lodging rooms and meals are provided for a fee and which is occupied by the operator of such establishment.

Block means land or a group of lots, surrounded by streets or other rights-of-ways other than an alley, or land which is designated as a block on any recorded subdivision tract.

Board of Trustees means the elected board of trustees of the Town of Monument.

Boarding and Rooming House means a building or portion thereof which is used to accommodate, for compensation, five or more boarders or roomers, not including members of the occupant's immediate family who might be occupying such building.

Buffer means open spaces, landscaped areas, fences, walls, berms, or any combination thereof, used to visually cushion and provide a physical separation between adjacent structures or uses.

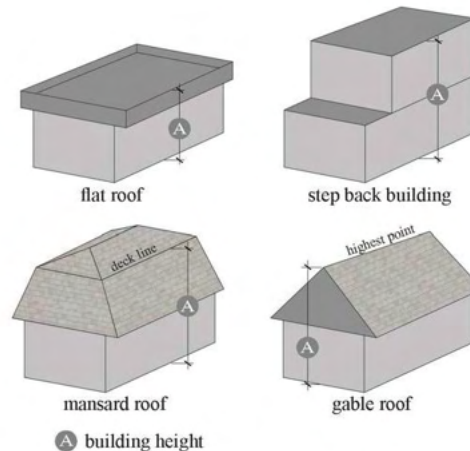
Building means any structure built for the shelter or enclosure of persons, animals, chattels or property or substances of any kind, excluding fences.

Building Frontage means the horizontal, linear dimension of that side of a building which abuts a street, parking area, plaza, alley or other circulation area open to the general public.

1. Where more than one use occupies a building, each such use having a public entrance or main window display for its exclusive use shall be considered to have its own building frontage, which shall be the front width of the portion of the building occupied by that use.
2. In the case of a corner or double-frontage lot, the building frontage may be either of the street frontages, but not both, at the option of the property owner or lessee.

Building Height means the vertical distance above a reference datum measured to the highest point of a flat roof or deck line of a mansard roof or the midpoint of the highest gable of a pitched or hipped roof. The height of a stepped or terraced building is the maximum height of any segment of the building. The reference datum shall be selected by either of the following, whichever yields a greater height of building:

1. The point of the lowest preconstruction elevation on any building face. The owner shall have the burden of proving pre-construction elevation.
2. The point of the lowest elevation of any building face.
3. The elevation of the lowest point of an exposed foundation or a wall.



Building Materials and Lumber Sales means an establishment for the sale of materials, hardware and lumber customarily used in the construction of buildings and other structures, which includes facilities for storage.

Car Wash means a facility for the cleaning of automobiles, providing either self-serve facilities or employees to perform washing operations.

Caretaker Quarters means an accessory dwelling unit on a nonresidential property occupied by the person who oversees or guards the operation.

CDOT means the Colorado Department of Transportation.

Cemetery means land used or dedicated to the interment of human or animal remains, including columbaria, mausoleums, mortuaries and associated maintenance facilities when operated in conjunction with, and within the boundaries of, such cemetery.

Check-Cashing Facility means an establishment that for compensation engages in the business of cashing checks, warrants, drafts, money orders, or other commercial paper serving the same purpose. This classification does not include a State or Federally chartered bank, savings association, credit union, or industrial loan company. Further, this classification does not include establishments selling consumer goods, including consumables, where the cashing of checks or money orders is incidental to the main purpose of the business.

Child Care means facilities that provide care for children on a regular basis away from their primary residence. This category does not include public or private schools or facilities operated in connection with an employment use, shopping center, or other principal use, where children are cared for while parents or guardians are occupied on the premises or in the immediate vicinity.

Child Care Center, Large means a facility that is maintained for the whole or part of the day for the care of sixteen (16) or more children who are eighteen (18) years of age or younger and who are not related to the owner, operator or manager, whether such facility is operated with or without compensation for such care and with or without stated educational purposes. The term includes, but is not limited to, facilities commonly known as day care centers, school-age child care centers, before and after school programs, nursery schools, kindergartens, preschools, day camps, summer camps, and centers for developmentally disabled children and those facilities that give twenty four (24) hour care for children and includes those facilities for children under the age of six years with stated educational purposes operated in conjunction with a public, private or parochial elementary school system of at least six grades or operated as a component of a school district's preschool program operated pursuant to Article 28 of Title 22, Colorado Revised Statutes. The term shall not include any facility licensed as a family care home or foster care home.

Child Care Center, Small means the same type of facility defined as large child care center above, except that the facility cares for more than five, but less than sixteen (16) children.

Clearance means the distance between the bottom of a sign elevated above the ground and the ground below.

Clinic means a facility that is established primarily to furnish outpatient medical services.

Clinic, Small Animal. Small animal clinic means a building and its appurtenant structures where veterinary practice is being conducted for cats, dogs, fowl, reptiles and other small domestic animals by or under the direct supervision of a veterinarian licensed by the state.

Club, Lodge or Service Organization means an association of persons, whether incorporated or unincorporated, for some common purpose but not including groups organized primarily to render a service carried on as a business. The consumption of marijuana and/or marijuana-related products within this use are prohibited.

Color Rendering Index (CRI) means the measured effect of light on objects. To determine the CRI of a lamp, the color appearances of a set of standard color chips are measured with special equipment under a reference light source with the same correlated color temperature as the lamp being evaluated. If the lamp renders the color of the chips identical to the reference light source, the CRI is one hundred (100). If the color rendering differs from the reference light source, the CRI is less than one hundred (100). A low CRI indicates that some color may appear unnatural when illuminated by the lamp.

Commercial Mobile Radio Service (CMRS) Accessory Equipment means equipment, including unmanned cabinets, used to protect and enable operation of radio switching equipment, back-up power and other devices, but not including antenna, that is necessary for the operation of a CMRS facility.

1. *Ground-mounted CMRS accessory equipment* means equipment, including unmanned cabinets, located on or beneath the ground, used to protect and enable operation of radio switching equipment, back-up power and other devices, but not including antenna, that is necessary for the operation of a CMRS facility including base stations.

Commercial Mobile Radio Service (CMRS) Facility means an unmanned building or structure consisting of equipment for the reception, switching and transmission of wireless telecommunications, including, but not limited to, personal communications service (PCS), enhanced specialized mobile radio (ESMR), paging, cellular telephone and similar technologies.

1. *Building or Structure-Mounted CMRS Facility* means a CMRS facility in which antenna are mounted to an existing structure (e.g., water tower, light pole, steeple, etc.) or building face, but excluding roof-mounted facilities.
2. *Freestanding CMRS Facility* means a CMRS facility that consists of a stand-alone support facility or tower (monopole and/or lattice structure), antennae, and associated equipment.
3. *Microcell Facility* means a form of a small cell CMRS facility used to provide increased capacity in high-call demand areas or to improve coverage in areas of weak coverage that is no larger in dimensions than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height and that has an exterior antenna, if any, that is no more than eleven (11) inches in length.
4. *Roof-Mounted CMRS Facility* means a CMRS facility in which antenna are mounted on an existing building roof.
5. *Small Cell Facility* means a wireless service facility that is either a microcell facility, as defined in this section, or meets both of the following qualifications:
 - a. Each antenna is located inside an enclosure of no more than three cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet; and

-
- b. Primary equipment enclosures are not larger than seventeen (17) cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: Electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, and cut-off switch.
 6. *Small Cell Network* means a collection of interrelated small cell facilities designed to deliver wireless service.

Community Facility means uses that include buildings, structures, or facilities owned, operated, or occupied by a non-profit or governmental agency to provide a service to the public. Specific use types include, but are not limited to: municipal buildings, post office or public safety station.

Community Recreational Facilities means indoor and outdoor structures or areas for community recreation to include, but not be limited to, swimming pools, tennis courts, facilities for other indoor or outdoor recreational activities together with incidental restaurants, lounges, shops and personal service establishments.

Compatibility means the characteristics of different uses or activities or design which allow them to be located near or adjacent to each other in harmony. Some elements affecting compatibility include height, scale, mass and bulk of structures. Other characteristics include pedestrian or vehicular traffic, circulation, access and parking impacts. Other important characteristics that affect compatibility are landscaping, lighting, noise, odor and architecture. Compatibility does not mean "the same as". Rather, compatibility refers to the sensitivity of development proposals in maintaining the character of existing development.

Comprehensive Plan means the Comprehensive Plan as adopted by the Town, and which includes any unit or part of such plan separately adopted and any amendment to such plan or parts thereof.

Compensation means money, services or other things of value.

Conditional Use means a use permitted in a zoning district only if reviewed and approved as a conditional use in accordance with the procedures of Section 18.03.320 of this title.

Condominium means a type of ownership which consists of a separate fee simple estate in an individual airspace unit of a multi-unit property, together with an undivided fee simple interest in common elements.

1. *Individual Air Space* means any enclosed room or rooms occupying all or part of a floor in a building of one or more floors to be used for residential, professional, commercial or industrial purposes and capable of and intended to be conveyed as separate interests in real property.
2. *Common Elements*, unless otherwise provided in the declaration or by written consent of all the condominium owners, means the land or the interest therein on which a building or buildings are located; the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances and exits of such building or buildings; the basements, yards, gardens, parking area and storage spaces; the premises for lodging of custodians or persons in charge of the property; installations of central services such as power, light, gas, water, heating, refrigeration, central air conditioning and incinerating; the elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use; such community and commercial facilities as may be provided for in the declaration; and all other parts of the property necessary or convenient to its existence, maintenance or safety in common use.
3. *Condominium Unit* means an individual air space unit, together with the interest in the common elements appurtenant to such unit.
4. *Declaration* means an instrument which defines the character, duration, rights, obligations and limitations of condominium ownership.

Construction Permit means a permit issued by the Town for any site, building or infrastructure construction activity.

Contractor's Shop or Storage Yard means a building or part of a building or land area for the construction or storage of materials, equipment, tools, products, and vehicles.

Convenience Store means a retail establishment with a gross floor area of less than five thousand (5,000) square feet, which sells a limited line of groceries and household items, gasoline, or beer and wine generally intended for the convenience of the neighborhood.

Copy means the wording, symbols, figures or images on a sign.

Copy, Change of means replacement or alteration to any portion of a sign that includes copy. This includes any change that alters the script, size, color or arrangement of copy on a sign face, or replacement of a sign face. This does not include any change to changeable copy, such as electronic message centers and marquee signs.

Correctional Facility means a facility for the purpose of incarcerating and rehabilitating offenders.

Cultural Facility means a cultural facility which displays or preserves objects of interest or provides facilities for one or more of the arts or sciences. Specific use types include, but are not limited to: library, museum, or zoo.

Dedication means an appropriation of land to some public use, made by the owner and by which the owner reserves no other rights than such as are compatible with the full exercise and enjoyment of the public uses to which the property has been devoted.

Density means the ratio of the number of dwelling units per gross acre of the entire development parcel.

Developer, used interchangeably with the term "applicant", means the owner of land proposed for development or his or her representative, who is responsible for any undertaking that requires review and approval under these regulations.

Development means any change in the use of land or improvements thereon, including, but not limited to:

1. The construction, enlargement, reconstruction or renovation of any improvements which require a building permit.
2. A change in use or intensity of use on the land, or within a structure.
3. The placement of temporary structures on the land.
4. Site clearance, removal or addition of vegetation, grading, dredging, mining, drilling, cut and fill activities, dumping soil or other materials, removal of soil or contouring of a site.

Notwithstanding the foregoing, the following shall not be deemed to constitute development:

1. Normal maintenance and repair of improvements which do not involve a change in use or intensity of use.
2. Nonstructural interior improvements when they have no effect on the square footage of the existing improvements and are not associated with a change of use.

Director means the chief administrative officer of the Planning Department.

Distillery means a commercial facility for the manufacture, blending, fermentation, processing, and packaging of alcoholic liquor other than wine or beer. A distillery may include a tasting room as defined in this chapter.

Distribution Facility means a facility often utilizing cross docking to move goods in and out quickly: a facility that is used for receipt, temporary storage, and redistribution of goods according to orders as they are received serving as a bridge between the supplier and its customers.

EXHIBIT 21



Beaver Aplin.

Photograph by Jeff Wilson

Buc-ee's: The Path to World Domination

Beaver Aplin built the quirky convenience chain into a Texas empire. Will his tactics translate outside the state?



By Eric Benson

March 2019



About a century ago, in central Louisiana, in the town of Harrisonburg, the seat of Catahoula Parish, Arch and Mae Aplin opened a general mercantile store. The Aplins sold everything—dried goods and leather shoes, medicine and cotton shirts, cuts of beef and hammers and nails—and their store was successful, in large part because of its location.

Harrisonburg sits on the western bank of the Ouachita River, and back then the town was a hub for travelers. If you were heading east to Mississippi or west into the Louisiana Hill Country, you had to traverse the Ouachita, and the ferry that docked at the bottom of Main Street in Harrisonburg was one of the only ways to do that. The Aplins' store stood on Main Street, just inland from the ferry. No one crossing the river in either direction could miss it.

But the Aplins didn't just want customers of convenience. They took pride in their store. They called it Arch Aplin's Biggest Little Store in Catahoula Parish, and they offered travelers products they couldn't get anywhere else. The Aplins stocked turnip greens they'd harvested on their farm, and they sold syrup they'd made from their own sugarcane. Arch raised cattle and

hogs, and he'd built a smokehouse on the family property to cure the meat he produced. It became famous throughout their corner of the Deep South.

"It was so good that the salesmen coming from Alexandria, Monroe, and Natchez, Mississippi, they'd put their order in for so many hams and so many pounds of sausage," Arch and Mae's son Arch Aplin Jr. remembered.

Arch Jr. was born in 1925, and he was more or less raised at the store. His mother nursed him in the back room when he was a baby. He worked there as a kid. And as a young man, when he'd returned home from the Pacific after World War II, he helped his parents run their business.

But Arch Jr. didn't want that life. He went off to college, started work as a teacher and basketball coach, and soon moved with his wife, Lorita, to Lake Jackson, Texas, which had been built a decade earlier as a company town for Dow Chemical.

Arch Jr. had an entrepreneurial streak, like his parents, and he started to build houses. He was good at it, and soon he left teaching to work full-time constructing churches, post offices, apartments, and entire subdivisions.

In 1958 Lorita gave birth to Arch Aplin III. Like his father, Arch III was raised in his family's businesses. On trips to visit his grandparents in Harrisonburg, Arch III would eagerly throw himself into pumping gas and the work of the general store, while forever pestering Arch and Mae to let him man the cash register. (They told him he was too young.) In Lake Jackson, he absorbed the home-building trade, spending his teenage summers working on his father's construction crews. When Arch III went off to Texas A&M, he majored in construction sciences. He wanted to follow in his father's path, but he wanted to do it bigger. "I thought I would build skyscrapers," Arch III said.

But in 1982, two years after graduating from college, Arch III got another idea. He knew that there was an unused property next to a four-way stop sign on the border between Lake Jackson and the town of Clute. He thought he could talk its owner, a well-to-do Houston banker named A. G. McNeese Jr.,

into selling. He did. His plans for the property seemed modest: at 23 years old, Arch III decided he would not build a skyscraper but a kind of general mercantile store of his own.

Arch III wanted to make his store just a little special. Sure, he would offer the same beef jerky and chips and soda as everyone else, but he installed brass ceiling fans and wrapped the upper parts of the walls in rough cedar. His store would be a little more inviting too, a roomy 3,000 square feet instead of the industry-average 2,400.



Aplin at his first store, in Lake Jackson, a week after it opened in 1982.

On July 28, 1982, Arch III opened his store at 899 Oyster Creek Drive, right where it crossed Old Angleton Road. Early on, he decided he'd need a good name and a good logo, something he could build on. The logo wasn't ready by the time the store opened, but he'd already commissioned it. It would be a cartoon riff on his nickname since childhood, Beaver.

The name of the store, too, drew inspiration from his life. When Beaver was a kid, one of his father's colleagues called him Bucky Beaver, after a cartoon

character featured in Ipana toothpaste ads. Beaver had also had a beloved hunting dog, a Lab that he named Buck. The nearby high school in Brazoswood had the Buccaneers as their mascot. It all added up.

“I think you’ll see it’s the nicest, prettiest store around. It’s very sharp looking,” Aplin told the *Brazosport Facts* on the store’s opening day. “I believe everyone who comes in will be in awe over the way it looks.” He made clear his ambitions were bigger than that one location. “If this one goes like we hope it will, you never can tell, we might have a chain of Buc-ee’s.”

If he dreamed that one day his creation might become a Texas icon, a temple of roadside convenience and everything’s-bigger abundance, and that it would even reach a point, in 2019, when it would outgrow Texas, he certainly didn’t share the thought at the time. He was just a kid from Lake Jackson following in his family’s footsteps.

On a rainy afternoon in early December last year, I met Beaver Aplin inside the Buc-ee’s location in Bastrop. He’d agreed to walk me around the store only if I promised I wouldn’t make him sound like he was bragging. Aplin, now sixty, is only five foot seven and slight, but inside a store full of casually dressed highway travelers and peppy uniformed employees, he cut an outsized figure. He wore a wide-brimmed hat and a dark windowpane blazer, and he kept his gray hair and beard a little long and shaggy, like Jeff Bridges or Kris Kristofferson. Tucked under both legs of Aplin’s jeans were big red-and-yellow Buc-ee’s beaver logos sewn onto the shins of his cowboy boots. The tip of his right index finger was wrapped in a Buc-ee’s bandage.

The Bastrop Buc-ee’s opened in 2012, and it has more or less the same relationship to the first Buc-ee’s store that a Boeing 747 has to the biplane the Wright brothers flew at Kitty Hawk. The store occupies 56,000 square feet and has aisles wide enough to drive a golf cart through. It has 71 toilets and urinals and a team of custodians whose entire job is to clean the bathrooms 24 hours a day. It has 96 gas pumps under two canopies selling Buc-ee’s-branded fuel. There are 655 parking spaces that fan out from the store on three sides, and they’re extra roomy, 10 feet by 20 feet instead of the standard 9 by 18, so as to better accommodate Texans’ trucks.

It might all seem “a touch overkill,” Aplin allowed. “But I don’t ever want to be over capacity. We like to make it spacious, give everybody their own space and their own shopping experience. It’s one of the reasons it gets so big, because if you try to enhance the space everywhere, it just grows, and then the next thing you know . . .” He trailed off.



“The selection is almost overwhelming, which is good,” Aplin says.
Photograph by Jeff Wilson

As we walked the floor, it became clear just how many times “the next thing you know” has happened at Buc-ee’s. We stared up at a towering wall of

gummy candies, taffies, candy corn, and cherry sours. (“The selection is almost overwhelming, which is good,” Aplin said.) He led me to a corner of the store stocked with cooking gear—Buc-ee’s spatulas, Lodge cast-iron pans, open-fire cookbooks, a \$1,000 offset smoker. (“I just think it’s cool. I think it’s Texas. It’s chuck wagon. It’s cooking the cowboy way.”) He wended his way past the shelves of hot sauce and mayhaw jelly, Buc-ee’s barbecue spice rub and Buc-ee’s raw wildflower honey. (“This comes from a young man in Lake Jackson. He’s quite a beekeeper.”) He marveled at the refrigerated deli counter with hunks of jerky (thirteen varieties), dried sausage links, and spicy venison sticks. He stopped in front of an easy-to-miss refrigerator stocked with an assortment of prepared dishes, among them crawfish fettuccine, bacon-wrapped pork tenderloin, and chicken cordon bleu.

By the time Aplin made it to the barbecue station, a circular island Buc-ee’s calls the Texas Round Up, he couldn’t resist a sample. Two employees were methodically slicing brisket and placing portions onto hamburger buns, but Aplin decided to grab a bag of freshly made potato chips instead. They were still warm from the fryer, crisp and browned with just a little chewiness on the inside—perfection. “We’re slicing the potatoes, cooking them right here,” Aplin said.

At that point, aromas became our guide. “They’re roasting the nuts right here, right now,” Aplin told me, pointing to a nearby station. “It’s fresh, it’s wonderful, they bag it.”

The woman roasting the nuts smiled at Aplin. “You sell a million times more when you’re roasting than when you’re not,” she said. Aplin played it cool. She didn’t seem to recognize him as the direct beneficiary of all those extra sales.

The nut roaster also made the store’s fudge, and Aplin asked for a couple of samples. She handed them over with a smile. She said she’d made 23 pans that morning.

“I love my job,” she said.

“I love that you love what you do,” Aplin replied.

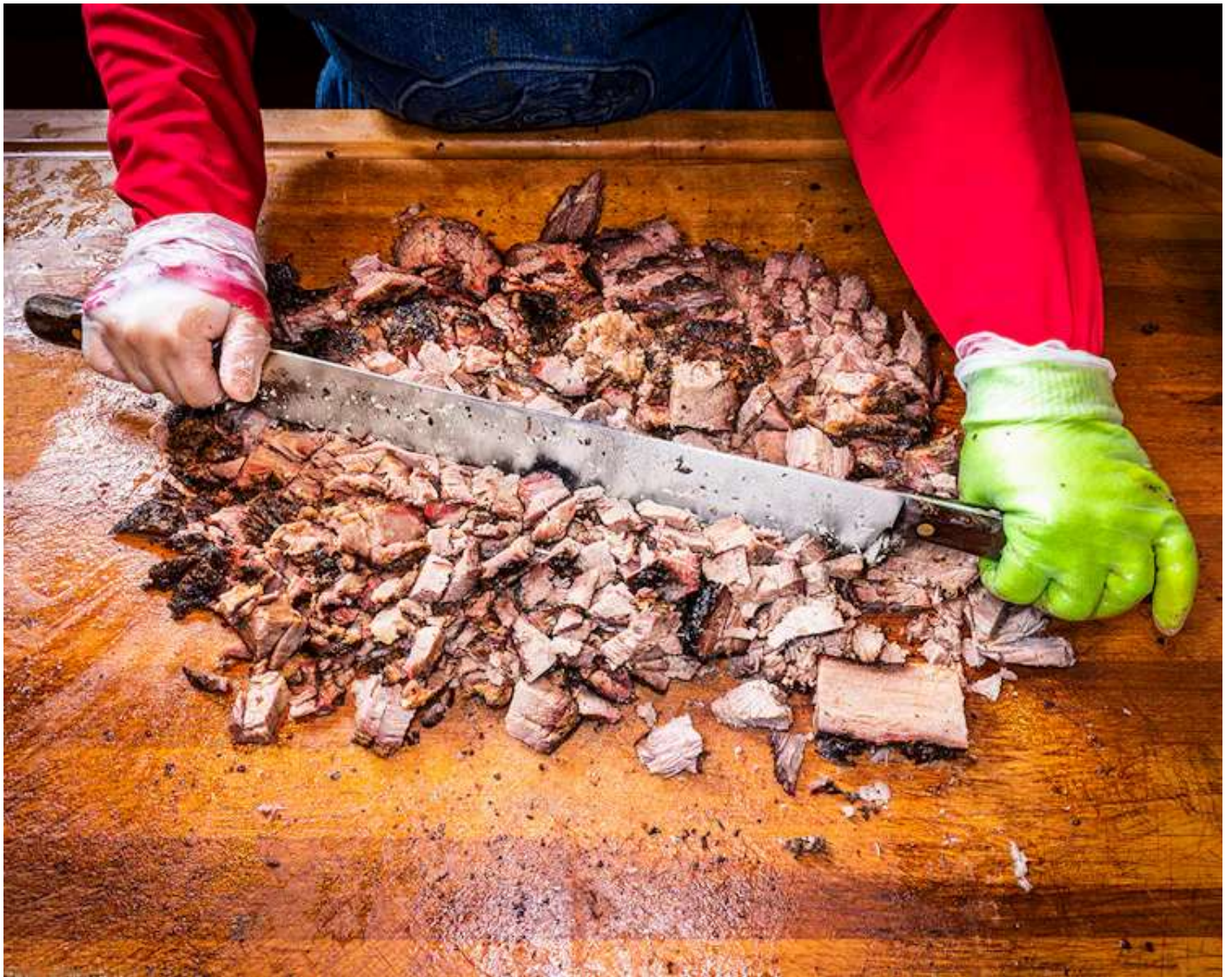
The interaction wasn’t staged, but it was by design. Buc-ee’s pays its employees well above market rate; cashiers start at \$14 per hour in most locations and get three weeks’ paid vacation and a 401(k) plan, in an industry where it’s common for cashiers to make minimum wage, about half as much. Aplin expects smiles and attentive service in exchange. There’s no sitting on the job and no using cellphones. Like cast members in an elaborate theatrical production, employees also must adhere to certain wardrobe and grooming standards. They are not allowed to display visible tattoos or body piercings. Men are prohibited from having long hair; nobody can have unnaturally colored hair. There are no open-toed shoes, no torn or faded clothing.

Buc-ee’s employees who buy into this don’t just love their jobs, they tend to become evangelists. And as Aplin walked through the store, he met up with one of them, Mallory Bevers, the Bastrop store’s 26-year-old gift manager. Back in high school, Bevers said, everyone she knew had to have a Buc-ee’s T-shirt. They needed to stop at Buc-ee’s on trips. Buc-ee’s was cool. She still pinched herself that she was now working there. “It’s just so crazy looking back on that, and now I have the Buc-ee’s name tag,” she said.

Bevers is responsible for the store’s most eclectic department. In the gift section, you can find everything from a slinky leopard-print kimono to twelve-inch stuffed beavers to designer totes to a vast grab-bag category of all things Texana: dueling UT and A&M gear, cowhide rugs and cowhide koozies. “Anything that has the Duke, Willie, or Nolan Ryan on it is a big seller here,” Bevers said.

Bevers had known that Buc-ee’s was big before she went to work there, but she’d come to appreciate just how widespread the store’s cult following had become.

“We’ll have people come from out of state and say, ‘I was told that we couldn’t go to Texas without stopping here.’”



At the Texas Round Up in each Buc-ee's travel center, customers can get freshly chopped brisket, among other items.

Photograph by Jeff Wilson



Customers stand little chance of having to wait their turn for a fountain soda.

Photograph by Jeff Wilson

The Buc-ee's store in Bastrop may be staggeringly oversized in just about every way, but in the Buc-ee's empire, it's not particularly special, just one of fourteen enormous stores and not even close to the biggest. (The chain's New Braunfels location, at 68,000 square feet, has been recognized as the “world's largest c-store” by the National Association of Convenience Stores.) Still, Buc-ee's has a tiny footprint in the national convenience-store landscape. The industry leader, 7-Eleven, has more than 9,000 locations nationwide. Circle K, running a close second, has nearly 8,500. Buc-ee's has 34 stores total.

But Buc-ee's has a reputation far greater than its store count. It has become the rare brand—like Apple and Costco—that inspires loyalty that goes well

beyond rational consumer calculations. People love Buc-ee's, and they like to talk about how much they love Buc-ee's. When the company opened its New Braunfels location, in 2012, ten thousand people came to shop on the first day. When the company opened its Fort Worth location, in 2016, fans lined up to wait for the 6 a.m. grand opening like Black Friday deal-seekers trying to nab a cheap 4K TV. When the comedian and UFC commentator Joe Rogan stopped at a Buc-ee's, in 2015, he became an instant convert, posting a string of ecstatic Instagram videos showing the towering wall of candies and endless rows of gas pumps. "I'm not making any of this up!" Rogan shouted. Texas chefs have expressed their devotion to various Buc-ee's-branded snacks. (The restaurateur Ford Fry, who owns La Lucha, in Houston, called Buc-ee's "the gold standard for road-trip junk food.") Texas-themed social media routinely post Buc-ee's content. As the Texas Humor Twitter account wrote in 2016: "If you bypass gas stations because you're waiting to stop at Buc-ee's instead, you're definitely from Texas."

Quips like those make it sound as if Buc-ee's has always been there, that it's been a fixture of the state for decades, a tradition passed down through generations and immortalized in the prose of Larry McMurtry, like Dairy Queen trips on summer nights. In truth, the store's cult following is a recent phenomenon.

When Aplin opened the first Buc-ee's in 1982, he may have had ambitions for more stores, but he grew his chain slowly. He didn't open the second Buc-ee's until 1985, and while it was bigger (six thousand square feet) and more innovative than the first (it had an on-site kitchen that churned out sandwiches, breakfast tacos, and doughnuts), it was still a far cry from the stores to come. Aplin didn't open the second location alone; by then he had partnered with another area convenience-store owner, Don Wasek.

For the first three years of their partnership, Aplin and Wasek shared a desk, and the close quarters created a mind-meld. "After three years working off the same desk, you get to know a person," Wasek once said.

The two men brought complementary skill sets. Wasek, whose father had been a Lone Star beer distributor, was fluent in supply chains and retail

operations. He also preferred to stay in the background. Aplin was the resident Buc-ee's dreamer and not only the brand's public face but its personification, a Gulf Coast good ol' boy named Beaver who had come to the convenience-store business honestly. "He'd be comfortable gigging frogs in the creek in the country somewhere," said Lou Congelio, a Houston adman who worked with Buc-ee's in the mid-2000s. "It takes you by surprise that he has the business acumen."

During its first two decades, Buc-ee's became a regional powerhouse, opening twenty stores, most of them in Brazoria County. The expansion was relatively conservative and deliberate. Aplin and Wasek financed their projects with bank loans instead of raising capital by giving up equity to outside investors. (Today they still own the company outright, as 50-50 shareholders.) But the partners were also constantly looking for the next big thing. In 1989 they opened Buc-ee's Beach Store, in Freeport, marking the first time the company sold clothing and fishing gear. In 1991 they entered the live-music business, starting a Lake Jackson icehouse called Uncle Buck's. Their regular stores became ever spiffier too, with Aplin enlisting the well-known convenience-store designer Jim Mitchell to help make Buc-ee's both more welcoming and more profitable.

"I try to accomplish a free-form effect that I believe brings in more sales by encouraging the customer to meander through the store," Aplin told *Convenience Store Merchandiser* in 1986.

Still, these were subtle tweaks. If Joe Rogan had stopped by a Brazoria County Buc-ee's location in the eighties or nineties, he wouldn't have felt the need to say, "I'm not making any of this up!" But in 2003, when Aplin and Wasek opened a store in Luling, they were ready to take their business to another level. Luling was the first Buc-ee's location that looked like what most Texans now think of as a Buc-ee's location. It was off an interstate and geared toward long-distance travelers. Eighteen-wheelers were banned in an effort to differentiate the store from truck stops and attract families. It offered barbecue sandwiches and soon added Buc-ee's-branded T-shirts and a caramel-covered corn-puff snack the company called Beaver Nuggets.

And Luling kept expanding. In 2006 Aplin and Wasek nearly doubled the store's square footage, to 17,000. Then, in 2009, they nearly doubled it again. In the same year, Buc-ee's opened similarly sized stores in Madisonville and Wharton. These three locations weren't just convenience stores; they were, in industry parlance, travel centers, and they created what has become the Buc-ee's model. They were situated on major roads that connected major population centers. They were far enough away from big cities that they could serve as logical stopping points on multi-hour car trips. They weren't just pit stops. They were highway oases.



The Buc-ee's beaver is everywhere. "It's more of a Disney experience than a gas station experience," says one marketing expert.

Photograph by Jeff Wilson

The travel centers made Buc-ee's famous. In 2006, three years after the launch of the Luling store, Aplin and Wasek hired the Houston advertising firm Stan & Lou to help them rethink their highway marketing approach. "The mission on my part was to let people know about the brand," Congelio, the principal creative, told me. "I pictured myself traveling across Texas, two

screaming kids in the back. The idea was to put a smile on people's faces. It would be a safe space to go and a fun place to go."

Congelio helped Aplin and Wasek refine the firm's voice, and he proposed a series of billboard ideas to sell the stores' offerings with a chuckle. One read, "Only 262 Miles to Buc-ee's. You Can Hold It." Another said, "If It Harms Beavers We're Against It." Still another: "Top Two Reasons to Stop at Buc-ee's: #1 and #2."

Congelio's focus on bodily functions wasn't by accident. Aplin and Wasek "really wanted to stress the clean rest-rooms," he remembers. Because, well, a comfortable place to relieve oneself is a universal need, one not well met by existing options. And the early plaudits for Buc-ee's tended to focus on that. In 2009, when the company was profiled on ABC's *World News Tonight*, the segment concluded with the words "this is a business built purely on porcelain." In 2012 the New Braunfels store was awarded the honor of America's Best Restroom in a survey by the corporate-restroom-supply firm Cintas. But the Buc-ee's reputation for excellence has expanded. In 2016 *Bon Appétit* named Buc-ee's "America's Best Rest Stop" in honor of its food. In 2018 Gas Buddy, a fuel-price app, gave Buc-ee's the distinction of the country's best gas station. The Katy Buc-ee's, which opened in late 2017, has been certified by the *Guinness Book of World Records* as having the world's longest car wash. (It has 25 separate rolling brushes and takes five minutes to pass through.)

"They've hit a really sweet spot in a couple ways," said Matt McCutchin, a longtime advertising creative director who now teaches at the University of Texas's Stan Richards School of Advertising and Public Relations. "Every time you stop, you're going to have an overwhelming experience—the best bathrooms, the most gas pumps, the best coffee and tea and brisket. Everything is sort of to the nth level, but they also have found this perfect symbol, this eager little beaver, that connects with people on an emotional level. It's magical, almost."

McCutchin told me he'd seen this connection happen personally. His eight-year-old son collects Buc-ee's T-shirts, and on road trips the boy asks

specifically to stop there. “There’s so much merchandise involved. Kids get a keepsake stuffed animal, they take a picture with the bronze beaver statue in the front. It’s more of a Disney experience than a gas station experience.”

Offering a family-friendly, clean-restroom, Texas-proud retail experience has proved to be very good business for Aplin and Wasek. Two years before the Luling store opened, the chain’s sales totaled \$63 million, according to a court filing. By 2006, when the Luling store expanded from 10,000 to 17,000 square feet, total sales had more than tripled to \$202 million. In 2015 the company took in \$959 million. Since then, Aplin and Wasek have opened up four more 50,000-square-foot stores.

One morning in early January, I visited Aplin’s office in Lake Jackson. It looked like a Hollywood set for a movie about a Texas CEO. There were floor-to-ceiling windows looking out over a grove of oak trees, gauzy watercolors of fishermen casting into the surf, and trophies from Aplin’s hunting and fishing adventures—a big speckled trout caught while wade-fishing off Port O’Connor; a sling of ducks inside a wooden case; photographs of impressive bucks nabbed at Corazón Ranch, a South Texas property that Aplin and Wasek share. Then there was a different kind of trophy, from Bank of America, commemorating a \$15 million construction loan. There was a framed and signed photograph of Aplin and then-Governor George W. Bush and a scale model of the Cessna Citation Jet that Aplin and Wasek co-own. (Aplin is a multi-engine, instrument-rated pilot and can fly second-in-command on some light jets.) On Aplin’s desk sat a copy of *Leading Matters*, a management book by the Silicon Valley grandee John L. Hennessy, a former Stanford University president and chairman of Google’s parent company, Alphabet. On a wall, Aplin had hung the \$52,800 check he wrote to A. G. McNeese Jr. as a payment on the property for the first Buc-ee’s.

Aplin and Wasek no longer work at the same desk, of course, or even in the same building. While Aplin works from Lake Jackson, Wasek now has an office on the nineteenth floor of the Google tower in downtown Austin. The two men have distinct roles. Wasek runs operations—everything from HR to negotiating with oil refineries. Aplin handles “conception to completion”—

where the stores will be, what they'll look like, and how they're going to get built.

In one corner of his office, Aplin had hung up a handy guide to this part of the business. It was a road map of the United States, and he'd pressed dozens of thumbtacks into it. In Texas, the markers clearly showed the existing Buc-ee's locations, as well as under-construction stores in Royse City, Ennis, and Melissa. Each represented years of work for Aplin: finding or piecing together twelve- to fifteen-acre plots of land; pushing cities to create better infrastructure, from water lines to overpasses; and lobbying for incentives to compensate the company for its investment and the promise of hundreds of new jobs and gobs of tax revenue. (Buc-ee's has not always been welcomed with open arms. In Denton, residents mounted a campaign to stop Buc-ee's from coming, but **the company prevailed** after Aplin offered \$2 million for road improvements.)

As Buc-ee's has become an ever bigger part of Texas, Aplin has gotten more active in the politics of the state. He has donated \$325,000 to Governor Greg Abbott since 2014 and has also contributed generously to the campaigns of Lieutenant Governor Dan Patrick and House Speaker Dennis Bonnen. (After Patrick announced Aplin's and Wasek's endorsements in the 2014 primaries, a short-lived #BoycottBucees hashtag trended on Twitter.) In the early days of Buc-ee's, Aplin served on the local school board. Last November, Abbott named him to the Texas Parks and Wildlife Commission.

But Aplin's ambitions are now outgrowing the state. That map in the corner of his office included thumbtacks outside Texas—lots of them, stretching over to North Carolina and down to Florida. I told Aplin it looked like he was planning an invasion.

"It does kind of look like an invasion, doesn't it?" he said.

Over the past several years, the company has begun buying land throughout the Southeast, and on January 21 it opened a new, 53,000-square-foot location off I-10 in Robertsdale, Alabama, its first store outside Texas. The initial signs were promising. Just as they had in Fort Worth, Buc-ee's fans

lined up outside the store in the hours before it opened, eager to be the first to grab a bag of Beaver Nuggets or use the much-ballyhooed bathrooms. But Robertsedale is just a beachhead. Three Florida projects—in Daytona Beach, St. Augustine, and Fort Myers—will break ground soon.

The most audacious plans on the map were still in the conceptual stage, Aplin said. Atlanta was encircled by no fewer than six thumbtacks pressed into locations where Aplin is still looking for the right deal. The plan is simple: If you are driving from Atlanta to Nashville, you will pass a Buc-ee's. If you are driving from Atlanta to Charlotte, you will pass a Buc-ee's. If you are driving from Atlanta to Birmingham, you will pass a Buc-ee's. At that point, Aplin hopes, Buc-ee's will become just as much a way of life for Georgians as it is for Texans.

Aplin believes this is possible, even as Buc-ee's has built its reputation in part by piggybacking on the brand of Texas itself. The store has parlayed the hoariest Texas clichés into a playground of excess. But Aplin thinks these cultural signifiers are not really so exclusively Texan. “I theorize that the people traveling in Texas are very similar to the people traveling in Florida or Alabama,” he told me. “They’re looking for basically the same thing.” Instead of UT and A&M duking it out in the gift section, he’ll have Auburn and Alabama or FSU and Florida.

But consider a store between Atlanta and Charlotte. Those cities may be the same number of miles away from each other as Houston and Dallas, but culturally they’re farther apart. They have different college rivalries and regional cuisines and histories. Will a peach cobbler in Georgia give North Carolinian travelers the same feeling of home that a slice of brisket gives Texans in New Braunfels? Sure, many Texas-born brands have gone national—Southwest Airlines, Whole Foods, Tito's Handmade Vodka—but not every big Texas brand has translated to differing tastes in other states.

In the eighties, Whataburger embarked on an aggressive expansion strategy outside Texas. The company added menu items like popcorn shrimp salads and steak sandwiches that it hoped would diversify its appeal. Instead, the company failed to catch on in locations including Las Vegas and Memphis,

where residents greeted the arrival of new Whataburgers with little enthusiasm. “We got spread too thin,” one Whataburger executive told *Texas Monthly* in 2000. “People didn’t know who we were. We didn’t have that Texas heritage and Texas tradition to play off of.”

Whataburger eventually righted itself, partially by retrenching, but the lesson remains. Sometimes a business can expand beyond its appeal. Sometimes the magic that makes people identify emotionally with a profit-seeking enterprise can evaporate. Maybe the good people of Alabama and Florida will thrill to Buc-ee’s just as much as Texans do. Or maybe they’ll look at the Disney World of convenience stores and just see an oversized convenience store.

“Buc-ee’s kind of has that cachet of being a rare place, so if they expand too big, too quickly, they could lose some of that charm,” said Greg Lindenberg, an editor at convenience-store trade publication *CSP Daily News*. “I remember when you couldn’t get Coors beer and Krispy Kreme doughnuts [in a lot of places], and once you could get those things, you realized, ‘They’re okay, but I’m not sure what all the fuss was about.’”



The Bastrop Buc-ee's has 71 toilets and urinals and a dedicated 24-hour team of custodians. Photograph by Jeff Wilson

Aplin is dedicated to making sure Buc-ee's is worth the fuss. No matter how big the stores have gotten, he sees the formula as basically unchanged. Since 1982, he has emphasized the importance of keeping the facilities spotless, offering good customer service, and making sure the shelves are always full. His motto was and remains "Clean, Friendly, and In Stock."

But Aplin is also a ruthless competitor. Take the fuel prices at Buc-ee's, which are among the lowest in the nation. **The company can afford to undercut rivals not only because its locations have so many pumps** but because it makes its real money on jerky and stuffed beavers. Less than two weeks after the Alabama store opening, a nearby travel center sued Buc-ee's for "unfair and predatory" gas pricing (which Buc-ee's denies).

Aplin aggressively defends his company's turf, too. Over the past six years, Buc-ee's has pursued trademark-infringement lawsuits against a series of smaller convenience stores—Chicks, in Bryan; B&B Grocery, in Uvalde; Irv's Field Store, in Waller—all of which Buc-ee's believed had ripped off part of its brand. Last year, a Buc-ee's lawsuit against an Atascosa travel center called Choke Canyon made it all the way to trial in federal court, where Buc-ee's accused its rival of stealing key parts of the Buc-ee's brand, among them a “friendly smiling cartoon animal similarly oriented within a circle and wearing a hat pointed to the right” (in Choke Canyon's case, the animal was an alligator) and even Beaver Nuggets themselves, which Choke Canyon passed off as “Golden Caramel Corn Nuggets.” (The jury decided in favor of Buc-ee's.)

Aplin knows that the risk of someone else copying his business increases the more Buc-ee's grows. But he hopes to stay ahead of copycats by trying to go one step further, one step bigger. Next to the map in Aplin's office, there's a drafting table. Aplin isn't a trained architect, but he knows how to draw (“just enough to be dangerous,” he told me), and he pens new construction layouts, new placements for products, new paths to keep customers meandering through the store with smiles and open wallets. No feature is too sacred for tinkering. Earlier this year, the company began installing a new technology called Tooshlights above each restroom stall; they turn green if the door is unlocked and red if it's locked, which not only makes finding an empty stall quicker and less awkward for customers but gives Buc-ee's a never-ending stream of data about how people use the facilities—the better to optimize them with.

When I arrived at the Lake Jackson office that January morning, Aplin told me I'd come just in time for a taste test. Last year, in anticipation of the company's next big phase of expansion, Aplin had hired his first culinary director, a career chef named Jim Mills, to focus on “the artistry of creation rather than the execution day to day.” On a table in the office, Mills had arranged pairs of similar products. One item in the pair was a product Buc-ee's currently served. The second was what Mills hoped was an improved version that would replace it.

Buc-ee's bacon was up first. Mills thought it wasn't flavorful enough and could be a little limp. He'd sourced new bacon that he hoped would be smokier and crunchier. Mills's deputy, Randy Pauly, placed two bacon-and-egg croissants in front of Aplin. Aplin examined them both, twisting the breakfast sandwiches in his hand. He nibbled the first, then sampled the second, then turned his attention back to the first. Mills, Pauly, and Buc-ee's pastry chef Susan Molzan stared at their boss. Aplin was poker-faced. His lips didn't curl into a satisfied smile. His eyes didn't wince in disgust. He seemed lost in his own thoughts. Then he looked up.

"I find this crumbled bacon superior. It's crunchier, but it also distributes better over the whole sandwich. Your every bite has bacon, whereas with the strip, maybe not."

"It's also a more flavorful product," Mills replied. "It's naturally smoked, just has more pop in the mouth, I think."

Aplin kept going. He judged new recipes for red and green salsas ("I don't know what I want. It already has *bam*"). He gamed out the reintroduction of a discontinued jalapeño-cheddar sausage biscuit ("I'd like the follow-up opinion of the numbers, what really happened"). He tasted and approved an overhaul of the entire chicken-salad line. He considered a new concept for more travel-friendly salad shakers. Most vexingly, he puzzled over yogurt parfait.

Mills and his team had identified a problem. The current packaging included two distinct parts: a granola-filled dome lid and a yogurt-filled cup. Customers were supposed to pry the dome lid open, then mix the granola into the cup. But the cup was filled to the top with yogurt. There was "no headspace to put the granola in," Mills explained.

The chef had a solution. Instead of a dome lid, he wanted to use a flat-topped lid with a plastic compartment that would sit inside the top of the cup. That way, when customers lifted the granola-filled lid off of the yogurt-filled cup, there would be some empty space in which to put the granola. But if you did

that, the cup also looked three-quarters full, like Buc-ee's was skimping on its portion sizes.

"This looks cool," Mills said of the current product, "but you don't know the trouble that lurks within, whereas this one is more user-friendly."

Aplin nodded. "The lid will have a big impact on you," he said.

They went back and forth. Aplin needed to balance utility with pizzazz. Ultimately he wanted more information. He wanted to try out additional lids and packaging options. Maybe there was a solution that could be as attractive as it was practical. "Let's play with the lids. Bring them here. Let me put them on. Let me experience it," Aplin said. Then he moved on to dessert.

Aplin was stuffed, but it was banana pudding, and banana pudding was a fan favorite at Buc-ee's. He wanted to see what Mills and Molzan had dreamed up.

"We had dang good banana pudding, but this is a nice tweak, which is what we want to do. If big improvements are to be had, then we probably didn't have the right product, the right recipe, the right mixture to begin with," Aplin said.

"A lot of what we do is incremental," Mills said.

"Incremental adds up," Aplin finished.

An hour later, Aplin and I were alone in his office. He was between meetings, and it was a rare moment of calm. His day was packed. His month was packed. His life was packed. Aplin likes to cast himself as an aw-shucks shopkeep, but creating Buc-ee's had clearly required monumental ambition and a few sharp elbows. I wondered if Aplin would cop to that. I pointed out to him that he could have stopped at the first Buc-ee's location and made a halfway-decent living. He could have stopped with a handful of stores around Brazoria County and been wealthy enough to own a hunting ranch. Now he had a map in his office plotting a corporate expansion that looked like

Sherman's March. There was a pretty big difference between his current life and how he'd started 37 years ago.

"I guess there is a little difference in that," he said. "You know, I built the first store within a half mile of where I lived. It's still there. It's a nice store."

I tried again.

"I always pushed the envelope," he said. "The standard-size store was twenty-four-hundred square feet, and my first store was three thousand square feet. My second store was bigger than almost anyone had seen in the area. I assume it's in my blood, because, as I say, my grandpa had a store."

As his grandpa had, Aplin just wanted his store to be a little better than the others. He just wanted to take care of customers. Expand the square footage a little, add some gas pumps, clean the restrooms a few extra times a day, make sure the granola fit just so in the yogurt parfait, and maybe—just maybe—a gas station convenience store at 899 Oyster Creek Drive, on the border of Lake Jackson and Clute, would grow and grow and grow until, the next thing you knew, it had fanned out and conquered America's highways.

*This article originally appeared in the March 2019 issue of Texas Monthly. **Subscribe today.***

BUSINESS

Buc-ee's doesn't hold world records for biggest convenience store, car wash, Guinness says

By **Timothy Fanning**, *Capitol Bureau news producer*

Updated Sep 20, 2022 2:15 p.m.



A Buc-ee's employee cleans up around the store on IH-10 east of Luling.

JERRY LARA/SAN ANTONIO EXPRESS-NEWS



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Buc-ee's doesn't hold world records for biggest convenience store, car wash, Guinness says

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Everlit

A Texas passion for big Texas things is what feeds Buc-ee's.

While the chain of colossal travel centers has for years touted that it is the largest convenience store in the world and hosts the longest car wash in the world, those titles are not recognized by Guinness World Records, the global authority on human achievements.

Kylie Galloway, a spokeswoman for Guinness World Records, told the Express-News that the buck-tooth behemoth's Katy location no longer holds its 2017 title for the world's longest car wash station.

"There is no current record holder for this title," Galloway said. "Since the competitive landscape of this record is continuously changing, the record is only valid for one calendar year and the title is further researched at that time."

You might also like: 'Buc-ee's stole my money': Iconic Texas chain has amassed nearly 100 complaints from the Better Business Bureau

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As for the “largest convenience store” title, trumpeted by the company for the last decade, Galloway said Guinness does not monitor it.

Neither does anyone else. Unlike the world's tallest buildings, there is no authority that officially tracks the largest footprint.

The general counsel for Buc-ee's, Jeff Nalado, says the company started bragging about its size when it built its “world record holder” travel center in New Braunfels on Interstate 35 in 2012. The title likely came from news organizations, Nalado said.



Shoppers browse the selection during at Buc-ee's in Luling.
Michael Miller/San Antonio Express-News

“The media would come to us and say, ‘wow, you’re building such a large store and we’re not aware of any other store that size,’” Nalado said. “And so the media

started printing it. Obviously, we are not aware of another travel center that is bigger than us.”

Buc-ee's world records are notable because of how the company uses them in its branding. There is a “World Record Holder” section on its website dedicated to its two titles.

More recently, the size of the next largest Buc-ee's has grabbed headlines nationwide as the company announced plans to outgrow its “world record holder” travel center in New Braunfels on Interstate 35.

At 66,355-square-feet, it's 20 times the size of the average 7-Eleven. This store will be eclipsed by three new 75,000-square-foot Buc-ee's, one of which will be located in Tennessee, the other about 60 miles east of San Antonio in Luling.

Related: Before & After: Buc-ee's locations around Texas

Experts say that the hype over Buc-ee's size also taps into the myth and stereotype of the Lone Star State, with its large land mass, big trucks and oversized highways. And as the company expands outside of the Lone Star State, so does the Texas myth.

“To a certain extent, Buc-ee's is a sort of ambassador to Texas, where people just say, ‘Oh yeah, they're from Texas and everything is bigger in Texas,’” said Jeff Lenard, a spokesman for the National Association of Convenience Stores, a trade organization that represents about a third of the industry.

“The phrase ‘everything is bigger in Texas’ applies to how Buc-ee's came to be,” Lenard said. “It used to be a traditional convenience store and it just became Texified to the point where it's as large as it is.”

Can you even call Buc-ee's a convenience store?

Nowadays, Buc-ee's is difficult to define. Inside is fresh barbecue, homegoods, a beef jerky wall and a lifesize mascot greeting customers.

If you had walked into one of the first 3,000-square-foot Buc-ee's in Lake Jackson in the 1980s, you might not have thought it was any different from its competitors.



Gordon Spradley, of Houston, gasses up at Buc-ees, on IH-10 east of Luling, Texas, Tuesday, August 24, 2010.

JERRY LARA/SAN ANTONIO EXPRESS-NEWS

Like other convenience stores, Buc-ee's had extended hours, a convenient location and a limited range of household goods and groceries. But that changed when Buc-ee's opened its first travel center in Luling in 2003.

Also on ExpressNews.com: The Proud Boys are co-opting Buc-ee's brand, report says

The large store along Interstate 10, which has doubled its original size in recent years, resembled what most Buc-ee's fans recognize today. The store was designed for long-distance travelers, and it sold gasoline, branded T-shirts, snacks, and Beaver nuggets.

At their core, convenience stores act as a quick means to get gas, a soda, milk or any other item. Lenard said customers spend about 45 minutes in Buc-ee's — about the amount of time you'd spend in the grocery store.

And unlike convenience stores, Buc-ee's are along the highway on the way to some place. The company also offers an experience that appeals to someone on the road for a long time.

"They're actually trying to turn the concept of convenience on its head," said Venky Shankar, the Coleman chair professor of marketing and director of research at the center for retailing studies at Texas A&M. "Buc-ee's is basically reinventing this idea of gas and convenience store. It's a category on its own."

Why is size so important to Buc-ee's?

For Buc-ee's size really isn't that important, Nalado said.

"I don't think size is driven by a desire for size," said Nalado. "It's driven by a desire to serve our customers. The store's popularity necessitates the size."

The goal is to provide a unique customer experience for people who have been on the road for a long time, Nalado said.

"I think that's kind of what our goal is," Nalado said. "I don't think we set out to be something that we're not. We try to deliver a consistent experience, and that's our primary objective."



The Buc-ee's store in New Braunfels as seen in 2012.

ROBIN JERSTAD/SPECIAL TO THE EXPRESS-NEWS

Still, Buc-ee's continues to increase the size of its stores over time. The newest format for Buc-ee's is 74,000-square-feet, Nalado said. That is four times larger than Love's biggest Travel Stop & Country Store in Madison, Georgia, which comes in at 17,000-square-feet.

If a company can make the economics work, the larger the store, the greater the quantity of items it can sell and the cheaper it is to operate, Shankar said. While increasing the size of Buc-ee's stores might not have an enormous economic advantage, it does give the company news value and bragging rights, he said.

But it does come at a cost.

"It's a slippery slope," Shankar said. "You can be the largest convenience store until somebody else overtakes you with the next biggest store."

In the end, Buc-ee's is trying to capitalize on that size advantage that Texas and other southern states offer, he said.

But the store's size isn't the main attraction, Shankar said. It's the experience, which just happens to come in a very large size.

"The key is that Buc-ee's as a Texas heritage brand is being increasingly accepted in all non-Texas states," Shankar said. "That is primarily due to Buc-ee's reputation and the myth that it has created by creating an experience at the store, not just the size. The size is just incidental."

timothy.fanning@express-news.net

Sep 19, 2022 | Updated Sep 20, 2022 2:15 p.m.



Timothy Fanning

CAPITOL BUREAU NEWS PRODUCER



Timothy Fanning joined the Times Union's Capitol Bureau in 2025. Before becoming a journalist, he was losing his voice in a metal band in Florida. Playing bass in the "death metal capitol of the world" taught him to gravitate toward stories hiding in plain sight, something he carried with him as a reporter for the Sarasota Herald-Tribune and San Antonio Express-News. He was most recently an adviser to The Oracle, the University of South Florida's student newspaper. He can be reached at Timothy.Fanning@timesunion.com.

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World's Largest Gas Station: world record in Sevierville, Tennessee

October 10, 2023



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"[Buc-ee's](#) has opened the world's largest gas station in Sevierville, Tennessee, reports TODAY. The 74,000 square-foot location has 120 gas pumps and employs more than 350 people," the [Convenience.org](#) says.

"The new store includes Buc-ee's signature brisket sandwiches and other barbecue items made fresh at the location, as well as a plethora of other items from fresh fudge to bathing suits."

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"Buc-ee's is an American chain of country stores, gas stations, and electric vehicle chargers created and owned by Arch "Beaver" Aplin III, headquartered in Lake Jackson, Texas. The chain was first founded in 1982 in Clute, Texas and began expansion with its first travel center in Luling, Texas in 2003. The company began expanding outside of Texas in 2018 with the opening of a location in Baldwin County, Alabama, and has since opened locations in Georgia, Florida, Kentucky, South Carolina, and Tennessee, with new locations planned for North Carolina, Colorado, Louisiana, Mississippi, Missouri, Ohio, Virginia, and Wisconsin.

"The chain is well known for the large size of its locations, alongside its product offerings of fuel, snacks (particularly beef jerky and candy), brisket, baked goods and commodities, tacos, fresh sandwiches, souvenirs, and travel items. It holds the record for the largest gas station in the world, as of June 2023 its Sevierville, TN location. The chain has also become well known for the cleanliness of its bathrooms, mascot, and the company's prohibition of 18-wheelers at their locations.

"The chain has since developed a highly loyal customer base and often ranks among the most favorited gas stations in the country. Its bathrooms have also gained significant acclaim, winning the Cintas award for "Best Restroom in America" in 2012." ([Wikipedia](#))

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"At a gargantuan 74,000 square feet, the newest location for the gas station chain Buc-ee's has everything from fresh fudge to barbecue sandwiches to even bathing suits. It also is open 24 hours a day, seven days a week," the [Today.com](https://www.today.com) says.

"Buc-ee's originated in Texas in 1982 and has expanded across the South to become a travel destination unto itself. The new store includes their signature brisket sandwiches and other barbecue items made fresh right at the location.

"Customers cited cleanliness, prices, food quality and customer service as the most important factors that keep them coming back to a specific location. Buc-ee's finished No. 1 in customer service in the survey and also took the top spot as a Forbes' Customer Experience All-Star in February."

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"Sevierville, Tennessee is now home to one of the world's largest gas station! This store is part of a chain called Buc-ee's. Buc-ee's is known for its clean bathrooms, plentiful gas pumps, and quirky snacks and gifts. There will be so much to explore in this large

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browse through all the unique merchandise scattered around the store. You could spend hours here shopping for gifts and checking out all the unique foods!

"The Buc-ee's in Sevierville, Tennessee is actually part of a much larger plan that has been in the works for a while! The 407: Gateway to Adventure project will include not only Buc-ee's, but plenty more fun and excitement as well! Developers are working on a huge addition for tourists who go to the Smoky Mountains. The 407: Gateway to Adventure project will feature attractions, dining, shopping experiences, and so much more! These attractions will encompass a 200 acre area and will soon be a top attraction stop in the Smoky Mountains!"





"The location in Sevierville lifts Buc-ee's total number of stores to 46, with roughly two-thirds of those located in Texas, where the company has its headquarters. Tennessee is home to one other Buc-ee's, also located in the eastern portion of the state."



"Buc-ee's Sevierville is officially open and welcoming travelers and super fans to its mega gas station convenience store. The Sevierville location is the biggest Buc-ee's at 74,000 square feet," the [Knoxville News Sentinel](#) says.

"With Gatlinburg, Dollywood and Great Smoky Mountains National Park nearby, it's a no-brainer to put a popular gas station in the most visited area of Tennessee. Even with fewer visitors last year, Great Smoky Mountains National Park remains the most-visited national park in the country."

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"A 74,000-square-foot Buc-ee's gas station has opened for business near Sevierville, Tennessee. Located along Interstate 40 outside of Knoxville, the rest stop chain's newest location is the largest refilling spot in the world, featuring 120 fuel pumps, a massive shopping center that doubles as a rest area, and jobs for 350 locals," [The Drive](#) says.



employee pay, and its ban on 18-wheelers, which it says makes its locations safer for passenger cars and pedestrians."



"How does a gas station cultivate such a devoted following? Buc-ee's spokesman and general counsel Jeff Nadalo said the brand keeps it simple: "Buc-ee's has remained committed to providing award-winning clean restrooms, freshly prepared food, cheap gas, and outstanding customer service," the [CNN Travel](#) reports.

"Buc-ee's provides those necessities — food, fuel, restrooms — in such overwhelming quantities that a trip might extend a drive by 30 minutes to an hour, Lenard said. Its biggest store in Sevierville, Tennessee, is also the world's largest convenience store at 74,707 square feet — almost 30 times the size of the industry average of 2,500 square feet, per NACS. It advertises its pristine bathrooms for hundreds of miles along interstates and delivers, too — Buc-ee's bathrooms have won awards for their otherworldly cleanliness. And its food selection is more comparable to a Trader Joe's than a vending machine, with a bakery, an entire wall of bagged jerky of varying flavors and a brisket station manned by employees in straw hats who holler every time a new hot slab of beef is ready for chopping.

"At the biggest Buc-ee's stores, there are countless aisles for customers to get lost in. There's seasonal merchandise that dresses the Buc-ee's beaver in a Santa costume or throws his gaping maw on a tie-dye T-shirt, along with far more expensive fare — Lenard said he's spotted a gas grill worth more than \$1,400 on sale at Buc-ee's."

Photos: World's Largest Gas Station: world record in Sevierville, Tennessee

CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVES AGREEMENT

This Chapter 380 Economic Development Incentives Agreement (this “Agreement”) is made and entered into by and between the City of San Marcos (“City”) and Buc-ee’s San Marcos, LLC, a Texas limited liability company (“Developer”), as of February 20, 2024 (the “Effective Date”). City and Developer are sometimes individually referred to herein as a “Party” and are sometimes collectively referred to herein as the “Parties.”

RECITALS:

WHEREAS, Developer is contemplating the purchase of a certain tract of land consisting of approximately 21.92 acres within the City of San Marcos, generally depicted in **Exhibit A**, attached hereto (“Property”); and

WHEREAS, in accordance with Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Gov’t Code, City may establish and provide for the administration of a program for making loans and grants of public money to promote state or local economic development and to stimulate business and commercial activity within the City; and

WHEREAS, in consideration for Developer’s agreement to purchase the Property and develop the Project (hereinafter defined) on the Property, City has agreed to offer incentives to Developer in the form of grants described in Article III of this Agreement; and

WHEREAS, the Project may require one or more alternatives to the application of certain provisions of the San Marcos Code of Ordinances with respect to certain requirements including, but not limited to, sign height and size limitations, outside storage screening requirements, landscape/parking design requirements, and building materials classifications; and the staff recommendation of approval of said alternatives, if necessary, shall be included as a material inducement to purchase the Property and develop the Project, and;

WHEREAS, Developer has agreed, in exchange for and as consideration for the incentives offered by the City, to satisfy and comply with the terms and conditions hereinafter set forth; and

WHEREAS, The City has concluded and hereby finds that this Agreement substantially advances a legitimate interest of the City by promoting economic development, attracting new consumers to the City, expanding the sales tax base of the City, increasing employment, and generating new ad valorem tax revenue for jurisdictions in Hays County, which will help stimulate the overall local economy; and

NOW, THEREFORE, by and in consideration of the mutual covenants and agreements contained herein, the City of San Marcos and Developer hereby agree as follows:

**ARTICLE I
DEFINITIONS**

Whenever used in this Agreement, the following terms shall have the meanings ascribed to them:

“**Affiliate**” means any entity directly or indirectly controlling or controlled by under direct or indirect common control with, or which directly or indirectly owns voting securities of an entity directly or indirectly controlled by, such specific entity.

“**Grant Payment(s)**” means the amount paid by the City to Developer under this Agreement.

“Overpayment Amount” means the percentage of a Grant Payment which Developer must reimburse to the City after delivery of a Job Compliance Affidavit showing Developer did not maintain the Minimum Job Threshold for the prior calendar year, which percentage shall be equal to the following: (175 minus Annual Job Average) divided by 175. For illustrative purposes, if Developer only maintains, on average, one-hundred fifty (150) full-time jobs in any given calendar year, then Developer shall reimburse to the City fourteen percent (14%) of the Grant Payments for such calendar year. Upon payment of the Overpayment Amount, Developer will be eligible to receive the Grant Payments in future calendar months for the remainder of the Term.

“Project” means the development of approximately 21.92 acres as generally depicted on Exhibit B and the construction and operation of a retail development consisting of a Buc-ee’s Travel Center being approximately seventy-four thousand (74,000) square feet in size and providing approximately one hundred twenty (120) fueling positions. The Project shall have resulted in a minimum capital investment by Developer of \$50,000,000.00.

“Project Term” shall mean a period beginning on Tax Payment Effective Date and continuing for a period of fifteen (15) years.

“Property” means the real property described on Exhibit A, attached hereto.

“Purchase Agreement” means the Contract for the Purchase and Sale of Real Estate executed by and between Blanco Trace Development, LLC and CSMS Management, LLC dated as of September 22, 2022 for the sale of approximately 21.92 acres of real property in Hays County, Texas, as may be amended from time to time and/or assigned to Developer.

“Real Property Improvements” means any improvements constructed on the Project.

“Sales Tax Revenues” means the actual sales tax revenue derived from the sale of taxable items at the Project and collected by the City during the Project Term less any fees deducted by the Texas Comptroller.

“Tax Payment Effective Date” shall mean January 1 following the date the Project opens for business to the public.

ARTICLE II

CONDITIONS TO PROJECT PERFORMANCE

2.1 Conditions to Project Performance. The obligations of the parties hereunder are conditioned upon Developer acquiring title to the Property on or before the later to occur of June 1, 2024 or within 10 business days of the Property seller’s approval of a Final Plat creating the Buc-ee’s Parcel. In the event Developer does not acquire the title to the Property, Developer shall not have any obligation to construct or operate the Project and the City shall have no obligation to provide any economic development grant or other economic incentive to Developer.

ARTICLE III

ECONOMIC DEVELOPMENT OBLIGATIONS OF DEVELOPER

In consideration for the incentives provided by the City, Developer agrees and covenants, provided the conditions precedent set forth in Section 2.1 are satisfied, to construct and put into place real property improvements described in this Article, and to place all other economic development benefits set forth in this Article as follows:

Economic Development Agreement

3.1 Construction and Operation of Project. Developer agrees to construct and operate a retail development consisting of a Buc-ee's Travel Center being approximately seventy-four thousand (74,000) square feet in size and providing approximately one hundred twenty (120) fueling positions on a tract of 21.92 acres as described on **Exhibit B** ("Project"). Developer shall submit to the City an application for a building permit no later than June 1, 2024 and shall commence construction of the Project on or before that date which is 90 days from Developer's receipt of the building permit. In no event shall Developer, having received an approved building permit from the City, commence construction of the Project later than March 31, 2025. Developer further agrees that the Project will be completed no later than eighteen (18) months after it commences construction of the Project. If requested in writing by the Developer, the City shall extend these deadlines for the period of delay, if (a) an event of Force Majeure delays commencement of construction of or delays or suspends construction of the Project; or (b) disruption due to construction of infrastructure improvements by the City delays commencement of construction or delays or suspends construction of the Project. In addition, Developer and City each have the one-time right to extend any deadlines set forth herein for a period of up to 120 days for the convenience of such party, such right to be exercised by written notice to the other party on or before such deadline to be extended.

3.2 Operations. Developer agrees to operate the Project continuously for a period of fifteen (15) years beginning on the Tax Payment Effective Date (as defined below); provided, neither (a) minor interruptions due to emergency conditions nor (b) interruptions due to Force Majeure shall be a Default.

3.3 Certificate of Completion and Subsequent Job Creation. On or before the date that is twelve (12) months after Developer receives its Certificate of Occupancy for the Project (the "Job Threshold Commencement Date"), Developer shall create at least one hundred seventy-five (175) full time equivalent jobs (the "Minimum Job Threshold") on the Project and shall maintain on average, as calculated every year from and after the Job Threshold Commencement Date, such level of employment during the Project Term. Full time employees are those employees employed in positions scheduled to work at least one thousand eight hundred twenty (1,820) hours per year or forty-five (45) weeks per year. By the Job Threshold Commencement Date, Developer shall provide to the City an affidavit certifying its compliance with the foregoing employment requirements in the form attached hereto as **Exhibit C** ("Job Compliance Affidavit") and thereafter, on or before February 1 of each year until the end of the Project Term or earlier termination of this Agreement, Developer shall provide a supplementary Job Compliance Certificate to the City. If the average number of full-time jobs maintained by Developer and/or its Affiliate(s) for any calendar year (the "Annual Job Average") does not meet or exceed the Minimum Job Threshold, the Developer shall reimburse the City the Overpayment Amount. A failure to meet the Minimum Job Threshold shall not be a Default under this Agreement. The City's sole and exclusive remedy with respect to a failure to meet the Minimum Job Threshold shall be to demand the Overpayment Amount from Developer and to offset the Overpayment Amount from future Grant Payments if such Overpayment Amount is not paid as required herein.

3.4 Construction and Dedication of Public ROW Improvements. Provided Developer obtains all required permits and approvals, Developer shall construct, at its sole cost and expense, public ROW improvements required for the Project and shall convey the rights-of-way and the ROW improvements to the applicable governmental authority. All such public ROW improvements shall be constructed in consultation with the City and in accordance with all state and local requirements.

3.5 Additional Developer Agreements. Developer also agrees to the following requirements of the Project:

- a. Include the words "SAN MARCOS" within a panel of no less than 90 square feet attached to the Primary Freestanding Sign as generally depicted on **Exhibit D**. The Primary

Freestanding Sign shall be substantially similar in design and appearance to that shown in **Exhibit D.**

b. Maintain membership in the San Marcos Area Chamber of Commerce for the Term of the Agreement.

c. Upon opening for business to the public, provide space within the retail space of the Project for the location of an electronic kiosk provided by the City, at the City's sole cost and expense, which will provide digital access about various community-oriented sites venues, events, and programs. Developer shall have the right to designate the location, design, and hours of operation of the kiosk.

d. Install a rainwater reclamation system as part of the initial construction of the Project.

e. Within 30 days of the Project's opening to the public, make a one-time \$100,000.00 contribution to the City of San Marcos Community Fund.

f. Make an effort to hire qualified residents of the City of San Marcos for the travel center.

g. Make an effort to hire local contractors and suppliers in constructing the Project.

h. The Project will not provide for the servicing and/or fueling of 18 wheeled tractor-trailer or similar vehicles (excepting those 18 wheeled tractor-trailer or similar vehicles delivering merchandise, supplies and/or fuel to the Project).

i. Install one or more oil and water separators through which stormwater collected on the Property within the boundaries of the area depicted in **Exhibit E** shall pass prior to entering the city drainage or detention systems."

j. All exterior lighting fixtures will be high efficiency LED (or equivalent future technology), having time or light sensing controls with fully shielded, full cut-off and all downward directional fixtures mounted as low as practical.

j. The requirements set forth in subsections 3.5(a), (c), (d) and (i) above shall survive expiration of the Project Term or termination of this Agreement due to Developer Default if and so long as Developer operates the Project on the Property. Notwithstanding anything to the contrary in this Agreement, the Property and the Project shall not be bound by this Agreement following any sale of the Property **after** termination of this Agreement or any foreclosure or deed in lieu of foreclosure by any lender with a deed of trust or other security interest in the Property or Project.

3.6. Developer shall comply with all obligations of state law relating to the timely collection, payment or remission of sales tax to the State of Texas. Developer shall be authorized to file such protest or make such objection to the payment of sales taxes as may be authorized by law.

ARTICLE IV ECONOMIC INCENTIVES

4.1 Project - Economic Development Grant. Provided the conditions precedent set forth in **Section 2.1** are satisfied, for a fifteen (15) year period commencing on the Tax Payment Effective Date,

City agrees to pay to Developer an economic development grant in the form of monthly payments made solely from Sales Tax Revenues collected at the Project as allowed by Chapter 380 of the Texas Local Government Code, and as more particularly set forth in Subsection 4.1(a) below. The Grant Payments shall be payable to Developer as provided hereinafter, unless this Agreement is earlier terminated pursuant to the terms hereof. Developer understands and agrees the City is not certifying or otherwise encumbering any funds for the Grant Payments. Developer agrees not to make any claims against City for any monies other than those from Sales Tax Revenues from the Project. Nothing in this Agreement shall require City to make payment from revenue sources other than from Sales Tax Revenues from the Project.

4.2 City's Chapter 380 Payments. In consideration for the performance by Developer of its obligation under this Agreement, the City shall make monthly grant payments to Developer in the amount of fifty percent (50%) of the Sales Tax Revenues. For illustrative purposes, the City's current sales tax rate is 1.5 percent. As such, the City's grant payment to Developer would equal 50 percent of 1.5 percent, minus any fees deducted by the Texas Comptroller. Such monthly Grant Payments shall constitute the grant payment due and payable to Developer. Such monthly Grant Payments will be paid monthly for a period of fifteen (15) years beginning on the Tax Payment Effective Date. At the conclusion of each month during the Project Term, Developer shall provide an invoice to the City stating the amount of the Grant Payment due for such month and the documented basis for such calculation. Thereafter, the City will pay the Grant Payment within thirty days of the receipt of the invoice or within sixty days after the end of the month covered by the invoice, whichever is later until all payments are made in accordance with this Agreement. If the City disagrees with the invoice calculations, the parties shall consult to determine the correct amount for the Grant Payment. In recognition that Grant Payments are calculated and paid after taxes have been assessed and paid to the City, and therefore always run in arrears, the term of this Agreement shall be deemed to include any payments otherwise due and payable to Developer which extend beyond the original term of the Agreement. Within thirty (30) days after the City makes the last (twelfth) Grant Payment of each year of the Project Term, the City and Developer shall consult to determine if there is any difference between (1) the total amount of Grant Payments paid for the previous twelve month period, and (2) the total amount of such payments that are to be made under this Agreement based on the sales tax actually collected by the City on taxable sales at the Project (minus any fees deducted by the Comptroller and any refund by Developer or refunds required to be made by the City) for that one year period. If necessary, the parties shall then conduct a reconciliation. If, based on actual sales tax receipts, the amount of Grant Payments paid are less than the amount that should have been paid (based on the provisions of this Agreement) during such twelve (12) month period, the City shall pay the difference to Developer within sixty (60) days of the reconciliation calculation. If the amount of Grant Payments paid by the City exceeds the amount that should have been paid during that period, the City shall be entitled to a credit against the next Grant Payment(s) due to Developer in the amount that the total Grant Payments for that period exceeded the amount required by this Agreement. If the amount paid for the last year of the Project Term exceeds the amount that this Agreement requires, Developer shall pay an amount equal to such excess to the City within sixty (60) days of the reconciliation calculation.

4.4 Payment from Current Revenues. Any payments required to be made by the City under this Agreement will be paid only from current revenues or other funds lawfully available to the City for such purpose in each fiscal year during the Term.

4.5. Modification of Sign Standards. The City agrees to allow deviations from certain requirements under the San Marcos Development Code applicable to the construction of the Freestanding Pole Sign under Section 3.5(a) and shown in Exhibit D as follows:

- a.** The freestanding pole sign shall be permitted up to 68 feet in height instead of the 42.5 feet permitted in the San Marcos Development Code.

b. The freestanding pole sign shall be permitted for a sign face area up to 360 square feet (inclusive of the “San Marcos” panel) instead of the 260 square feet of area permitted in the San Marcos Development Code. A minimum of 90 square feet shall be dedicated for the “San Marcos” panel as depicted in the attached “WITH CITY PANEL” elevation.

Except as specifically modified in this section, all signs on the Property shall meet the applicable requirements of the San Marcos Development Code, including the location restrictions in Section 7.3.1.6.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF THE CITY

5.1 The City represents and warrants that:

a. The City is a home rule Texas municipal corporation and has the power to enter into and has taken all required actions to date required to authorize this Agreement and carry out its obligations hereunder.

b. The City knows of no litigation, proceedings, initiative, referendum, investigation or threat of any of the same contesting the powers of the City or its officials with respect to this Agreement that has not been disclosed to Developer.

ARTICLE VI DEVELOPER REPRESENTATIONS AND WARRANTIES.

6.1 Developer represents and warrants that:

a. Developer is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas during the Project Term. As used herein, the term “good standing” means the status of Developer with the Comptroller of the State of Texas shall be “Active”.

b. No litigation or governmental proceeding is pending or, to the knowledge of Developer, threatened against or affecting Developer with respect to the Property or the Project that may result in any material adverse change in Developer’s business or operation.

c. No bankruptcy proceedings or other similar proceedings are currently pending or contemplated against Developer, and Developer has not been informed of any potential involuntary bankruptcy proceedings.

d. Developer shall remain current and in good standing with all sales taxes, property taxes, fees and other recurring charges of City, the State of Texas, and Hays County taxing jurisdictions with respect to the Property and the Project throughout the Project Term; provided Developer or its Affiliates may contest any such taxes as provided for by applicable law.

ARTICLE VII DEFAULT, TERMINATION, AND REMEDIES

7.1 Developer’s Representation and Covenants limited to Project. The City agrees and acknowledges that Developer’s representations, warranties, covenants, agreements and performance obligations under this Agreement are limited to and apply exclusively to the operations of Developer at the Property for the Project and any determination as to whether Developer is in violation or Default of this Agreement will be limited to Developer’s operations on the Property for the Project.

7.2 Termination for Misrepresentation. Notwithstanding any provision for notice of non-compliance and any opportunity to cure, the City may terminate this Agreement immediately by providing written notice to Developer if Developer, its officers or signatories to this Agreement intentionally misrepresented or misrepresent any material fact or information: (a) upon which the City relied in entering into this Agreement; (b) upon which the City relies in making an incentive payment; or (c) as an inducement for the City to make an incentive payment.

7.3 Developer Default and City Remedies.

a. Developer Default. Developer will be deemed to be in “Default” of this Agreement if during the Project Term (1) it, or any successor thereof, discontinues business operations at the retail development described in Section 3.1 for a period of more than three hundred sixty five (365) consecutive days or (2) if it fails to substantially comply with any other material provision of this Agreement and does not cure such failure within sixty (60) days after receipt of notice from the City describing such failure in reasonable detail; provided, such failure shall not be a Default if such failure is not reasonably susceptible to cure within sixty (60) days and Developer commences curing such failure within such sixty (60) day period and thereafter continuously and diligently pursues such cure to completion. A failure under Section 3.3 of this Agreement shall not in any event be a Default.

b. City Remedies. Upon an un-cured Default by Developer, the City has the right to terminate this Agreement and/or pursue any legal or equitable remedies it may have under this Agreement or applicable law. Notwithstanding anything to the contrary in this Agreement, the City expressly releases Developer from any claims for speculative, indirect, consequential, or punitive damages arising from a breach of this Agreement.

7.4 City Default and Developer Remedies.

a. City Default. Except as provided in Section 4.4, the City will be deemed to be in “Default” of this Agreement only if it fails to substantially comply with any material provision of this Agreement and does not cure such failure within sixty (60) days after receipt of notice from Developer describing such failure in reasonable detail; provided, such failure shall not be a Default if such failure is not reasonably susceptible to cure within sixty (60) days and the City commences curing such failure within such sixty (60) day period and thereafter continuously and diligently pursue such cure to completion.

b. Developer Remedies. Upon Default by the City, Developer has the right to terminate this Agreement and/or pursue any legal or equitable remedies it may have under this Agreement or applicable law. Notwithstanding anything to the contrary in this Agreement, Developer expressly releases the City from any claims for speculative, indirect, consequential, or punitive damages arising from a breach of this Agreement.

7.5 Limitations.

a. Effect of Force Majeure Event. A Party will not be deemed to be in Default or otherwise in violation of any term of this Agreement to the extent such Party’s action, inaction or omission is the result of Force Majeure (defined in Section 8.13 herein) event. The Parties agree to use commercially reasonable efforts to promptly resolve any Force Majeure event that adversely and materially impacts their performance under this Agreement. A Force Majeure event pauses a Party’s performance obligation for the duration of the event but does not excuse it.

b. **Overpayments.** Notwithstanding the limitations on remedies in this Article, it is understood and agreed that, because the incentive payments are from public funds, any verified overpayments to Developer may be recovered by the City or, at the City's sole discretion, through available remedies at law or in equity, or by reducing future incentive payments by the amount of an overpayment.

c. **Offset.** The City may deduct from any Grant Payments, as an offset, any delinquent and unpaid fees, sums of money or other fees, charges or taxes owed to or for the benefit of the City by Developer; provided that before offsetting any amounts the City must provide Developer with (a) advance notice of such offset, (b) sixty (60) days to take action to remedy the situation giving rise to the offset, and (c) reasonable opportunity, at Developer's own expense, to contest such offset.

d. **Limitation on Damages.** Notwithstanding anything contained in this Agreement to the contrary, under no circumstance shall a Party be entitled to punitive, special or consequential damages.

e. **Personal Liability of Public Officials.** No employee or elected official of the City shall be personally responsible for any liability arising under or growing out of this Agreement.

With respect to the above-referenced remedies afforded to Developer under this Agreement, to the extent of the holding of the Texas Supreme Court in *City of League City, Texas v. Jimmy Chargas, Inc.* (No. 21-0307), the City's execution of this Agreement constitutes a waiver certain immunities of the City from liability or suit solely with respect to (a) actions to enforce City's obligations under this Agreement and (b) writs of mandamus with respect to the performance of City's obligations under this Agreement. In all other respects, the Parties agree that City has not waived, nor shall be deemed hereby to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein.

7.6 Indemnity. DEVELOPER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS COMMISSION MEMBERS, BOARD MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, AND CAUSES OF ACTIONS, LIABILITIES AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, OF ANY NATURE WHATSOEVER, ASSERTED BY A THIRD PARTY AND ARISING OUT OF DEVELOPER'S PERFORMANCE OF THIS AGREEMENT. THE RIGHTS AND OBLIGATIONS CREATED BY THIS SECTION 7.6 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT BUT, WITH RESPECT TO ANY IMPROVEMENTS DEDICATED TO THE CITY, SHALL TERMINATE UPON FINAL ACCEPTANCE OF SUCH IMPROVEMENTS OR ACCEPTANCE OF SUCH CONVEYANCE BY THE CITY.

7.7 Acknowledgement of City's Compliance with Applicable Law.

a. Developer acknowledges and agrees that:

i. The conveyances, dedications, easements and/or payment of money required by this Agreement to be performed by Developer, in whole or in part, do not constitute a:

(A) Taking under the Texas or United States Constitution;

(B) Violation of the Texas Water Code, as it exists or may be amended;

(C) Nuisance; or

(D) Claim for damages or reimbursement against City for a violation of any federal or state constitution, statute or case law or any federal, state or local ordinance, rule or regulation.

ii. The amount of Developer's financial or infrastructure contribution or conveyance of real property or interests therein (after receiving all contractual offsets, credits and reimbursements, if any) agreed to in this Agreement is roughly proportional to the demand that such Developer's development places on City's infrastructure.

iii. Developer hereby releases City from any obligation to perform or commission a takings impact assessment under Chapter 2007 of the Texas Government Code, as it exists or may be amended.

iv. Developer hereby agrees that any property which it conveys to City pursuant to this Agreement is roughly proportional to the benefit received by Developer for such land, and Developer hereby waives any claim therefore that it may have. Developer further acknowledges and agrees that all prerequisites to such a determination of rough proportionality have been met, and that any value received by City relative to said conveyance are related both in nature and extend to the impact of the development of Developer's adjacent property on City's infrastructure. Developer and City further agree to waive and release all claims one may have against the other related to any and all rough proportionality and individual determination requirements mandated by the United States Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and its progeny, as well as any other requirements of a nexus between development conditions and the projected impact of the public infrastructure.

v. DEVELOPER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, AND CAUSES OF ACTIONS, LIABILITIES AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, OF ANY NATURE WHATSOEVER, ASSERTED BY THIRD PARTIES, INCLUDING BUT NOT LIMITED TO, DEVELOPER'S PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEES OR TRUSTEES, BROUGHT PURSUANT TO THIS SECTION 7.7.

b. Developer releases City, its council members, officers, agents, representatives and employees from any and all claims or causes of action based on excessive or illegal exactions.

c. Developer waives any claim for damages or reimbursement against City for a violation of any federal or state constitution, statute or case law or any federal, state or local ordinance, rule or regulation.

d. This Section shall survive the termination of this Agreement.

7.8 Vested Rights/Chapter 245 Waiver. This Agreement shall confer no vested rights on the Property, or any portion thereof, unless specifically enumerated herein. In addition, nothing contained in this Agreement shall constitute a "permit" as defined in Chapter 245 of the Texas Local Government Code,

as amended, and nothing in this Agreement provides City with fair notice of any project of Developer. Developer waives any statutory claim under Chapter 245 of the Texas Local Government Code, as amended, arising out of any acts or omissions under this Agreement. This Section shall survive the termination of this Agreement.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

8.1 Binding Agreement. Except as provided herein, this Agreement shall be binding upon and inure to the benefit of the heirs, successors, and assigns of the respective parties.

8.2 Reports. During the term of this Agreement, upon written request of the City, Developer shall provide public records reasonably requested by the City to confirm compliance with the Minimum Job Threshold requirement. Failure to provide such assistance shall be grounds for the City to withhold grant payments until assistance is provided and records received.

8.3 No Waiver. Except as set forth in Section 7.5 above, nothing contained in this Agreement shall be construed in any way to limit or to waive the City's sovereign immunity. However, the Parties agree that they have entered into this Agreement in good faith, intend to deal with each other in good faith, and intend for this Agreement to be enforceable as to its terms under Texas law.

8.4 Applicability of Ordinances. Developer acknowledges and agrees this Agreement does not alter the applicability of the ordinances of the City. Further, this Agreement does not waive or limit any of the obligations of Developer to City under any other ordinance whether now existing or in the future arising. This Agreement (i) is not in any manner to be considered a waiver by the Parties of any requirement contained in the City's ordinances and/or development requirements. (ii) will not and does not conflict with said ordinances, and in the event of such a conflict the terms of said ordinances control; and (iii) does not modify any City ordinances and/or development requirements. Where silent in this Agreement, the terms of City ordinances and/or development requirements shall control.

8.5 Separate Status. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint ventures or members of any joint enterprise.

8.6 Construction and Interpretation.

a. Whenever required by the context of this Agreement, (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa, and (ii) use of the words "including", "such as", or words of similar import, when following any general term, statement or matter, shall not be construed to limit such statement, term or matter to specific terms, whether or not language of non-limitation, such as "without limitation" or "but not limited to" are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, term or matter.

b. The captions preceding the text of each article and section of this Agreement are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Agreement. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Agreement.

c. This Agreement may be executed in several counterparts, each of which shall be deemed an original. The signatures to this Agreement may be executed and notarized on separate pages, and when attached to this Agreement shall constitute one (1) complete document.

8.7 Revenue Sharing Agreement. The City designates this Agreement as materially similar to a revenue sharing agreement, thereby entitling the City to request and receive sales and use tax information from the State of Texas Comptroller, pursuant to Section 321.3022 of the Texas Tax Code for any and all projects associated with this Agreement.

8.8 Assignability. Developer may assign or transfer its rights (including the right to receive payments), duties and obligations under this Agreement to any person or entity only with prior written approval and consent by City, which approval shall not be unreasonably withheld, conditioned or delayed; provided, Developer may assign this Agreement to an Affiliate if such Affiliate assumes all obligations under this Agreement. In the event Developer desires to assign or transfer its rights, duties or obligations under this Agreement to any party, Developer or its proposed assignee, shall provide the City with such information that it reasonably requires to determine the ability of the assignee to comply with the terms of this Agreement, including the obligation to repay incentives in the event of default. Any buyer, assignee or transferee must agree in writing to assume all obligations of this Agreement. Any approval by the City must be in writing.

8.9 Severability. If any provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction, the entire Agreement shall not be void; but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the Parties.

8.10 Entire Agreement. This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior written and oral matters related to this Agreement. Any amendment to this Agreement must be in writing and signed by all Parties hereto or permitted or approved assignees.

8.11 Exhibits. All exhibits attached to this Agreement are incorporated herein by reference and are expressly made part of this Agreement as if copied verbatim.

8.12 Notice. Any notice or demand, which any party is required to or may desire to serve upon the other, must be in writing, and shall be sufficiently served if (i) personally delivered, (ii) sent by registered or certified mail, postage prepaid, or (iii) sent by commercial overnight carrier, and addressed to:

If to City:

City of San Marcos
ATTN: City Manager
630 East Hopkins Street
San Marcos, TX 78666

If to Developer:

Buc-ee's San Marcos, LLC
327 FM 2004
Lake Jackson, Texas 77566

With Copy to:

Buc-ee's, Ltd

Economic Development Agreement

Attn: Legal Department
327 FM 2004
Lake Jackson, TX 77566

or such other address or addresses which any Party may be notified in writing by any other Party to this Agreement.

Such notice shall be deemed to have been served (a) four (4) business days after the date such notice is deposited and stamped by the U.S. Postal Service, except when lost, destroyed, improperly addressed or delayed by the U.S. Postal Service, or (b) upon receipt in the event of personal service, or (c) the first business day after the date of deposit with an overnight courier, except when lost, destroyed or improperly addressed; provided, however, that should such notice pertain to the change of address to either of the Parties hereto, such notice shall be deemed to have been served upon receipt thereof by the Party to whom such notice is given.

8.13 Force Majeure. In the event any party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, it is agreed that on such party's giving notice and full particulars of such force majeure in writing to the other party as soon as possible after the occurrence of the cause relied upon, then the obligations of the party giving such notice, to the extent it is affected by force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability but for no longer period. Such cause shall as far as possible be remedied with all reasonable dispatch.

a. The term "force majeure" as used herein, shall include, but not be limited to, pandemics, acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, war, blockades, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of governments and people, explosions, breakage or damage to machines or pipelines and any other incapacities of either party, whether similar to those enumerated or otherwise and not within the control of the parties claiming such inability, which by the exercise of due diligence and care such party could not have avoided ("Force Majeure").

8.14 Governing Law and Venue. This Agreement and the relationship between the Parties shall be governed by the laws of the State of Texas, and venue for any action pertaining to this Agreement shall be in the State District Court of Hays County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of the said Court.

8.15 Appointment of Representatives. To further the commitment of the Parties to cooperate in the implementation of this Agreement, the Parties shall designate and appoint a representative to act as a liaison between the Parties. The initial representative for the City shall be the City Manager or his designee ("City Representative"), and the initial representative for Developer shall be Stan Beard ("Developer Representative"). The representatives shall be available at all reasonable times and places to discuss and review the performance of the Parties to this Agreement and the development of the Property.

8.16 Effective Date. This Agreement shall be binding and take effect only upon all Parties signatures hereto, attachment of all required exhibits, and receipt by the Parties of a fully executed copy hereof. For the purposes of timetables provided in this Agreement, the Effective Date shall be the date first above written.

8.17 Legal Contest. This Agreement is entered into in accordance with applicable law as understood by the Parties. In the event any part, provision or paragraph hereof shall become unenforceable

by reason of judicial decree or determination, the Parties agree to the extent possible to ensure that all other provisions of this Agreement, including the intent of this Agreement, be honored and performed.

8.18 Economic Incentives Constitute a Program. This Agreement constitutes an economic development program to promote state or local economic development and to stimulate business and commercial activity in the City and the area annexed for limited purposes pursuant to Article III, Sec. 52- a, Texas Constitution and Chapter 380, Texas Local Government Code.

8.19 Public and Confidential Information. Information provided by or on behalf of Developer pursuant to this Agreement that Developer considers to be proprietary and/or confidential and marked as such shall be maintained by City as confidential to the extent allowed by law. If proprietary financial or trade secret information is requested under the Texas Public Information Act ("Act"), City shall follow the standards set out in the Act and under the Texas Attorney General's procedures for such requests and Developer shall be responsible for defending the confidentiality of such information.

8.20 Automatic or Optional Termination.

a. In the event Developer elects not to proceed with the acquisition of the Property or the development of the Project, Developer will notify City in writing and this Agreement and the obligations of the Parties hereunder shall automatically terminate and be of no further force or effect as of the date of such notice.

b. If Hays County does not approve a Chapter 381 economic development incentive agreement acceptable to Developer prior to acquiring the Property, Developer may, at its option, notify City in writing and this Agreement and the obligations of the Parties hereunder shall automatically terminate and be of no further force or effect as of the date of such notice.

If a term, covenant or condition of this Agreement does not have an earlier express termination date, all terms covenants and conditions of this Agreement shall automatically terminate upon the expiration of the Project Term.

8.21 Undocumented Workers. During the term of this Agreement and in accordance with Chapter 2264 of the Texas Government Code, Developer agrees to not knowingly employ any undocumented worker and if convicted of a violation under 8 U.S.C § 1324a(f), grant payments shall terminate.

8.22 Disclosure of Interested Parties. Developer agrees that it shall comply with the requirements of Section 2252.908 by filing form 1295 with the Texas Ethics Commission to the extent applicable.

8.23 Incorporation of Recitals. The Recitals set forth hereinabove are declared true and correct and are hereby incorporated into and made a part of this Agreement for all purposes.

EXHIBITS ATTACHED:

Exhibit A	Property Description (Survey and Legal Description)
Exhibit B	Project (Site plan for Buc-ee's)
Exhibit C	Job Compliance Affidavit (form)
Exhibit D	Pole Sign
Exhibit E	Oil/Water Separator Locations

(Signature Pages Follow)

Economic Development Agreement

EXECUTED on this _____ day of _____, 2024.

CITY OF SAN MARCOS:

By: _____
Stephanie Reyes, City Manager

EXECUTED on this 30th day of April, 2024.

DEVELOPER:

BUC-EE'S SAN MARCOS, LLC

By:   

Joseph O'Leary (May 1, 2024 16:08 CDT) RF JFN
Joe O'Leary, Vice President

EXECUTED on this May day of 2nd, 2024.

CITY OF SAN MARCOS:

By: 
Stephanie Reyes, City Manager

Economic Development Agreement

60°

EXHIBIT 25

WEATHER ALERT

There are 3 areas with 3 active weather alerts.



TOP STORIES

Palmer Lake Planning Commission denies Buc-ee's annexation plans

by: [Chris Crymes](#)

Posted: Sep 4, 2025 / 03:25 PM MDT

Updated: Sep 5, 2025 / 08:58 AM MDT

SHARE



(PALMER LAKE, Colo.) — The battle over the proposed Buc-ee's travel center in Palmer Lake continued during a Planning Commission Special Meeting on Wednesday, Sept. 3, resulting in the Planning Commission shooting down Buc-ee's proposed annexation plan.

The planned annexation for the center calls for almost 25 acres of land to make room for the 74,000 square-foot interior, 120 gas pumps, 12 electric vehicle charging stations, and over 750 parking spaces.

The [fiscal impact analysis](#) made by Economic & Planning Systems Inc. estimates the Texas-based gas station could generate roughly \$950,000 in sales tax revenue for Palmer Lake as early as 2027.

The members who denied the plan cited concerns like the sheer scale, water use, concerns regarding town wells, impact on Palmer Lake's small-town feel, and Palmer Lake's town master plan.

Meanwhile, Commission Chair Charlie Ihlenfeld stated, "I don't think we're going against our master plan at all... And I think for our small-town feel and everything, we're not bringing Buc-ee's into town. It's over two miles away, which is going to allow us to keep our natural county line corridor."

He also disagreed with the concerns about light pollution from the location, saying he can see the glow from Colorado Springs. Ihlenfeld also said that the I-25 corridor was “always” intended for commercial development.

According to Ihlenfeld, the representation from Buc-ee’s agreed to additional conditions like confining the sign to under 75 feet tall, and to make considerations for biking and hiking trails.

While the Planning Commission voted against the annexation in a three-to-two vote, the final decision for acceptance comes down to the Palmer Lake Board of Trustees, whose next meeting is scheduled for Sept. 9.

ADD AS PREFERRED SOURCE ON GOOGLE

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HOLIDAY / 20 Hours Ago

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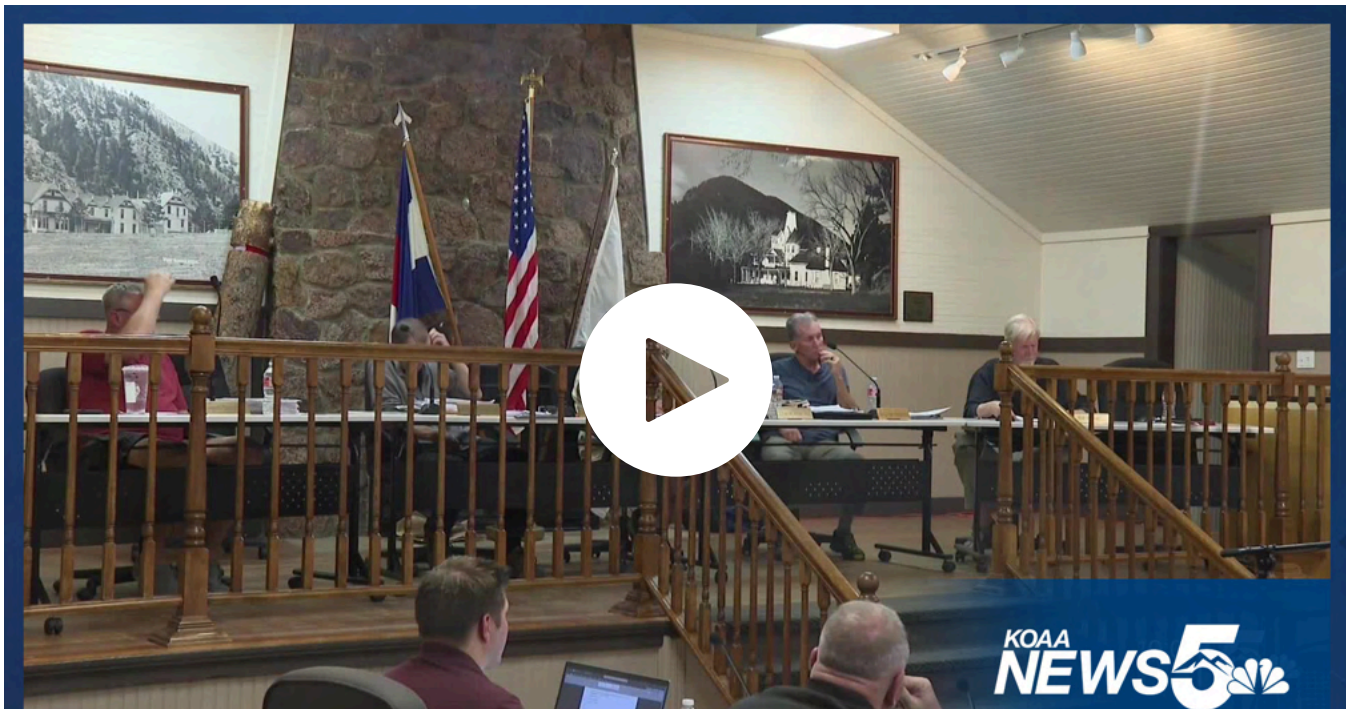
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NEWS > COVERING COLORADO

EXHIBIT 26
EXHIBIT 26

Palmer Lake Planning Commission votes to not recommend Bu-gee's annexation proposal



The Palmer Lake Planning Commission voted not to recommend an annexation proposal from Buc-ee's during a meeting on Wednesday.





By: Noah Caplan , James Gavato

Posted 10:01 PM, Sep 03, 2025 and last updated 12:04 AM, Sep 04, 2025

PALMER LAKE, Colo. (KOAA) — PALMER LAKE, Colo. — Palmer Lake's planning commission voted 3-2 Wednesday to deny a recommendation for Buc-ee's annexation proposal, dealing another blow to the controversial travel center project.

The commission argued the plan is shortsighted and does not cover who bears financial responsibility for the space and infrastructure Buc-ee's requires. Opponents to the project say this sends a message to the town's government.

"This is a clear sign to the folks under recall that the townspeople feel like they haven't been heard," Palmer Lake resident Beth Harris said.

Even with a denied recommendation, the town's Board of Trustees still has the final say. Harris who is campaigning for a trustee seat in the event the September 9 recall passes, says it's possible the board could still vote yes.

"That would be ill-advised, because the planning commission spent many, many hours discussing this issue," Harris said.

The meeting, which adjourned before 8 p.m. Wednesday, did not allow for public comment. The town's attorney argued this meeting is a continuation of the August 20 meeting where public comment closed.

Harris argued the lack of public comment violated people's free speech rights, while Buc-ee's team member Mark Waller disagreed.

"They clearly said in the last meeting, public comment was closed," Waller said.

As for next steps, Waller says Wednesday's decision was "expected," and hopes the town's board will make the right decision for its citizens.

"Ultimately, it's up to the elected leaders in a town to make the determination a project is going to move forward," Waller said.

The planning commission had tabled the August 20 meeting, saying they needed more time to review the annexation proposal.

On September 9, the town will vote to recall two trustees. Harris and two other Palmer Lake citizens have entered their names as potential replacements.

Also in that election, citizens will decide if future annexations into Palmer Lake go to a people's vote. Similar to what happened in June with the Karman Line annexation going to a referendum, a "yes" vote next Tuesday could pave the way for something similar to be set up.

TRENDING ON KOAA NEWS5



Colorado gun law may face federal legal challenge over permit-to-purchase requirements

Colorado's newest gun law has been in effect for less than two weeks, and gun rights advocates are already taking their fight against it to federal court.



EXHIBIT 27 EXHIBIT 27

OPIS Insights

[insights home](#) » [Top Retail Fuel Station Brands Revealed](#)

Top Retail Fuel Station Brands Revealed

Posted by [OPIS Staff](#) on Aug 25, 2023 6:32:13 PM

An updated report for 2022 on the top retail gasoline and diesel chains in the country showed surprising results. Here are some highlights.

The just-released [OPIS report on retail fuel station brand power](#) compiled performance rankings of 275 chains based on estimated volumes, margins, profits, market share, brand efficiency and head-to-head win percentage against directly competing brands.

The report was geared toward helping retailers – of any size – understand the effectiveness of their strategy and opportunities to improve their margins, volumes, and overall bottom line.

How Is Gas Station Price Data Collected? Who Was Top?

Volume estimates were based on market share from both fleet card transactions as well as foot-traffic data that comes from tracking nearly 120 million cell phones.

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Through a partnership with a location-based data tracking company, OPIS geo-fenced every [fuel station](#) in the US, and market share was determined by seeing when cell phones pinged on each location.

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While the rankings have changed from previous years, the top 10 chains remained mostly unchanged in 2022 with some light position shuffling. Thorntons (8th in 2022, 12th in 2021) moved into the top 10 along with Holiday (9th in 2022, 14th in 2021). Royal Farms dropped out of the top 10 to 14th, while Kum & Go, which was acquired by Maverik earlier this year, slid to 18th.

Based on the number of sites operated, it is no surprise that 7-Eleven, Circle K, and Speedway had the highest total volumes; all three of the national giants saw volumes grow year on year. Casey's also saw impressive volume growth year over year.

While 7-Eleven, Circle K and Speedway by far moved the most volume in 2022, none of the chains were in the top 10. Speedway was the closest in 2022 at 11th, but there are multiple criteria that go into the OPIS retail gasoline chain rankings.

A Deeper Dive into the Elements of the Rankings

While the mega-chains sold the most fuel annually, when looking at it on a per-site basis, **Buc-ees by far sells the most fuel as the giant footprints and pumps that approach triple digits.**

Mainstays of the annual top 5 also see strong average monthly sales as Wawa, Sheetz, QuikTrip, Racetrac and QuickChek all averaged more than 200,000 gallons per month based on the combined fleet card transactions and cell phone traffic metrics.

The rapid rise in wholesale and retail prices followed by an even sharper decline during the summer of 2022 after retail gasoline prices hit an all-time high of \$5.016/gal in mid-June led to a margin environment that was in a word "spectacular." In some cases the average gross margin in 2022 just about doubled year on year thanks to the summer swoon in wholesale prices.

As is normally the case, the strongest gross margins are found in Western states and in 2022 ExtraMile with 503 sites spanning four of the highest priced states in the country (California, Idaho, Oregon, Washington) saw an average gross margin that approached 91cts/gal. Based on the gross margin and estimated volumes an ExtraMile site averaged a little over \$100,000 per month.

Other West Coast operators secured high average gross margins with Astro, Rotten Robbie and Flyers all notching an average margin of 85cts/gal or better in 2022.

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There were five chains that saw average site profits top six figures in 2022, but only two, ExtraMile and Rotten Robbie, operate on the high margin West Coast.

Another category in the OPIS ranking is a local market share and Buc-ees once again leads this category at just over 50% market share, the only chain that gathered more than 50% local market share. Oklahoma and Texas based Oncue Express had the second highest local market share, followed by Wawa, Sheetz and QuikTrip.

Several chains, mostly in Northeast locations are mired in intense competition. OPIS measures “local competitor density” which accounts for the radius around a site before four competitors are found.

Global, while only having 36 sites in a handful of Northeast states, sees some of the highest competition with a competitor density of just 1.1 miles.

However, close competition is not just a Northeast thing. Green Valley Grocery (Nevada), GOLO (Illinois/Indiana) U Gas (Florida/Missouri) and We Got It (California) all have a local competitor density of 1.2 miles. Of the 255 brands in the OPIS brand report, 61 all have a competitor density of less than 2 miles.

NTIs and Acquisitions Fuel Station Growth

New to industry builds and acquisitions were fueling site counts amongst multiple chains in 2022.

7-Eleven saw the strongest growth, adding 394 sites over the past year. Based on the latest OPIS count, 7-Eleven is just shy of 5,000 sites and catching up to the national leader of Circle K, which saw 50 sites divested in 2022. Meanwhile, Refuel saw its station count grow more than three-fold to 159 sites.

Casey's came close to reaching 100 new stations, adding 85 in 2022, bringing the total to 2,460 in 16 states.

The 2023 rankings could also look much different thanks to M&A activity. Earlier in 2023, Maverik acquired Kum & Go and its 421 stores and they plan to expand the Maverik footprint to seven more states and extend as far east as Arkansas and Missouri. Another one to look out for is the pending deal for Circle K and Tri-Star to acquire differing numbers of sites from MAPCO.

Casey's is not sitting still either with a recent purchase of 63 sites from EG America as well as another 26 Minit Mart stores in 2023.

Not only are some regional chains growing in their traditional markets but have also announced

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Buc-ees has broken away from its traditional I-10 corridor recently with expansion into Tennessee and South Carolina, but plans for Ohio, Wisconsin and Virginia.

Over 250 chains were ranked in more than 15 separate categories, with estimated profit per site weighted the highest towards the overall rankings and total estimated profits weighted second highest.

Other categories that were included in the total score were foot-traffic efficiency, estimated rack-to-retail margin, overall market share based on both fleet cards and cell phone tracking, market share in a 1-mile radius of the chain's site, win percentage in head-to-head battles and price differentials.

Tags: [C-stores](#), [Gas & Diesel](#), [Refined Fuels](#)

Brand Power Ranking Report



GET RETAIL FUEL BRAND DATA FOR TRADITIONAL BRANDS & C-STORES/CHAINS

Sell more fuel and make smarter business decisions with margins, volumes, efficiency, competitor pricing data and more.

The **Brand Power Ranking Report** includes two analysis bonuses :

- Top 50 convenience store chains
- Top 24 traditional gasoline brands.

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