

TO: Planning Commission

FROM: Lisa Anderson-Ogilvie, AICP
Deputy Community Development Director and
Planning Administrator

DATE: February 1, 2022

SUBJECT: **Comprehensive Plan Change & Zone Change Case No. CPC-ZC21-04 –
2900 Block of Kuebler Blvd SE**

On November 2, 2021, the Planning Commission held a public hearing and received testimony for consolidated Comprehensive Plan Map Amendment and Zone Change Case No. 21-04. The staff report made available on October 26, 2021 recommended denial of the application. On November 2, 2021, the Planning Commission continued the public hearing to November 16, 2021 and further granted a continuance to December 21, 2021. On December 21, 2021 the Planning Commission closed the hearing, deliberated, and voted to grant the Comprehensive Plan Change and Zone Change application, subject to conditions of approval.

On January 25, 2022, the Planning Commission considered an Order with Fact and Findings supporting their approval of the Comprehensive Plan Change and Zone Change (**Attachment A**). The applicant has submitted a letter objecting to the proposed Facts and Findings as prepared by staff. At the January 25, 2022 meeting, the Planning Commission voted to open the written record to review the applicant's objections regarding the findings (**Attachment B**).

Attachment A: Staff Order with Facts and Findings

Attachment B: Applicant Objection to Staff Facts and Findings & Applicant Findings

FACTS & FINDINGS**COMPREHENSIVE PLAN CHANGE / ZONE CHANGE CASE NO. CPC-ZC21-04****January 25, 2022****PROCEDURAL FINDINGS**

1. On August 25, 2021, an application was filed for a Comprehensive Plan Map Amendment and Quasi-Judicial Zone Change by Mark Shipman of Saalfeld Griggs PC, on behalf of Boone Road Commercial LLC, to change 24.66-acres, the subject property, from RA (Residential Agriculture) to CR (Retail Commercial).
2. The consolidated application was deemed complete for processing on September 23, 2021, and a public hearing to consider the application was scheduled for November 2, 2021.
3. On June 10, 2021, the applicant's representative attended the South Gateway Neighborhood Association meeting, held virtually, to present their proposal, meeting the open house requirements of SRC 300.320.
4. Notice of the consolidated application was provided to surrounding property owners and tenants, pursuant to Salem Revised Code (SRC) requirements, on October 13, 2021. The property was posted in accordance with the posting provision outlined in SRC 300.620.
5. DLCD Notice. State law (ORS 197.610) and SRC 300.620(b)(1) require the City to provide the Oregon Department of Land Conservation and Development (DLCD) a minimum 35-day notice when an applicant or the City proposes an amendment to an acknowledged Comprehensive Plan or land use regulation or to adopt a new land use regulation. The City sent notice of the proposed Comprehensive Plan Change and Zone Change application to DLCD on September 24, 2021.
6. On November 2, 2021, the Planning Commission held a public hearing for the consolidated applications. The Planning Commission received testimony from the applicant and from the public. The public hearing was continued until November 16, 2021.
7. On November 16, 2021, the Planning Commission continued the public hearing until December 21, 2021 by request of the applicant to discuss with staff concerns regarding the Transportation Planning Rule analysis.
8. On December 21, 2021, the Planning Commission took testimony from the application and public, then closed the public hearing. The Commission voted to grant the Comprehensive Plan Change and Zone Change applications with three conditions of approval.
9. 120-Day Rule. Pursuant to Oregon Revised Statutes (ORS) 227.128, amendments to an acknowledged Comprehensive Plan are not subject to the 120-day rule. In addition, the requested Quasi-Judicial Zone Change included with the application is similarly not subject to the 120-day rule because, pursuant to ORS 227.178(10), the zone change has been filed concurrently, and is being considered jointly, with the proposed comprehensive plan amendment.

BACKGROUND / PROPOSAL

The applicant is requesting a comprehensive plan map amendment from RA (Residential Agriculture) to CR (Retail Commercial) for the subject property.

APPLICANT'S STATEMENT

Land use applications must include a statement addressing the applicable approval criteria and be supported by proof they conform to all applicable standards and criteria of the Salem Revised Code. The written statement from the applicant summarizing the request and addressing compliance with the applicable approval criteria can be found in the record 'Written Statement' when the application was submitted. Additional written findings were submitted into the record 'DKS letter dated November 1, 2021' 'DKS letter dated December 10, 2021' and 'Kellington Law Group, PC letter dated December 10, 2021'.

The applicant submitted a conceptual plan indicating commercial retail, lodging, mixed use, office and residential uses on the property. The Transportation Planning Rule analysis submittal also includes conceptual site plans with a shopping center contained in several areas and potential uses on the subject property, and the TPR Study uses a worst-case scenario in the analyses as required by the rule.

Although the applicant's site plan illustrates how the site could be developed under the proposed Comprehensive Plan Map designation; the site plan and illustrations submitted were conceptual only. The applicant has not proposed particular development and has not requested development approval as part of the subject application.

Planning Commission utilized the information included in the applicant's statement to evaluate the proposal and to establish the facts and findings.

SUMMARY OF RECORD

The following items are submitted to the record and are available upon request: 1) All materials and testimony submitted by the applicant, including any applicable professional studies such as traffic impact analysis, geologic assessments, stormwater reports; 2) any materials, testimony, and comments from public agencies, City Departments, neighborhood associations, and the public; and 3) all documents referenced in this report.

FACTS AND FINDINGS

1. Salem Area Comprehensive Plan (SACP)

The Salem Area Comprehensive Plan (SACP) map designates the subject properties as "Developing Residential". The proposal includes changing the Comprehensive Plan designation of the subject property to "Commercial."

The Comprehensive Plan designations of surrounding properties include:

North: (Across Kuebler Boulevard SE) "Commercial"

South: (Across Boone Road SE) “Developing Residential” and “Multiple Family”

East: Right-of-way for Interstate 5

West: (Across 27th Avenue SE) “Commercial”

Components of the Comprehensive Plan

The Salem Area Comprehensive Plan is the long-range plan for guiding development in the Salem urban area. The overall goal of the plan is to accommodate development in a timely, orderly, and efficient arrangement of land uses and public facilities and services that meets the needs of present and future residents of the Salem urban area. Many different documents and maps, when taken together, comprise the Salem Area Comprehensive Plan.

Salem Transportation System Plan (TSP): The TSP uses a Street Classification System to determine the functional classification of each street within the City’s street system. Kuebler Boulevard, designated as a Parkway in the TSP, which abuts the north boundary of the subject property.

Relationship to the Urban Service Area

The subject property is located outside of the City’s Urban Service Area. Pursuant to the Urban Growth Management requirements contained under SRC Chapter 200, an Urban Growth Preliminary Declaration is required. An Urban Growth Preliminary Declaration application was previously approved (UGA09-08) and is now expired.

2. Zoning

The subject property is zoned RA (Residential Agriculture). Surrounding properties are zoned and used as follows:

North: (Across Kuebler Boulevard SE) CR (Retail Commercial)

South: (Across 27th Avenue SE) RA (Residential Agriculture) and RM-II (Multiple Family Residential)

East: Right-of-way for Interstate 5

West: (Across 27th Avenue SE) CR (Retail Commercial)

3. Existing Conditions

The subject site consists of four adjoining rectangular lots totaling 24.66 acres in size (Marion County Assessor’s Map and Tax Lot Number 083W12C / 2201). The subject property is primarily undeveloped. The subject property slopes downward from a high point of approximately 380 feet above mean sea level (AMSL) along the south property line to approximately 298 feet AMSL at the east property line and approximately 312 AMSL at the north property line.

4. City Department Comments

Salem Public Works Department – The Public Works Department, Development Services Section, reviewed the proposal and submitted comments.

Salem Fire Department – The Salem Fire Department submitted comments indicating that they have no concerns with the request.

Salem Building and Safety Division – The Building and Safety Division has reviewed the proposal and indicated no concerns.

5. Public Agency & Private Service Provider Comments

Oregon Department of Land Conservation and Development (DLCD) – No comments received.

Cherriots – Cherriots commented that two stops should be provided to facilitate the expansion of the existing public transportation routes. The applicant and Cherriots discussed providing stops on the proposed north-south street shown on south of the round-about.

6. Neighborhood Association and Public Comments

The subject property is located within the boundaries of the South Gateway Neighborhood Association. The property is adjacent to the Morningside Neighborhood Association (across Kuebler Boulevard SE) and Southeast Mill Creek Association (SEMCA) (across Interstate – 5).

Required Open House/Neighborhood Association Meeting. Prior to application submittal, SRC 300.320 requires the applicant for a proposed minor amendment to the City's comprehensive plan map to either arrange and conduct an open house or present their proposal at a regularly scheduled meeting of the neighborhood association the property is located within. On June 10, 2021, the applicant's representative attended the South Gateway Neighborhood Association meeting, held virtually, to present their proposal. A summary of the comments provided at the neighborhood association meeting was submitted into the record.

Neighborhood Association Comment

The City provided a notice of filing and request for comments to the South Gateway Neighborhood Association, Morningside Neighborhood Association and Southeast Mill Creek Association (SEMCA) pursuant to SRC 300.620(b)(2)(B)(v), which requires notice to be sent to any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property.

Comments were received from the South Gateway Neighborhood Association indicating opposition to the proposal. South Gateway indicated Mixed Use (MU-I or MU-II) would be better suited for the subject property. South Gateway and four surrounding property

owners indicate that traffic is a concern due to the new Costco building being constructed and that the addition of a drive-thru to the area could be detrimental to the traffic system.

Response: Traffic and traffic mitigation is listed below under the Transportation Planning Rule analysis.

Public Comment

Notice was also provided, pursuant to SRC 300.620(b)(2)(B)(iii), (vi), & (vii), to all property owners and tenants within 250 feet of the subject property. Posted notice signs for the public hearing were placed visible from each street frontage of the subject property and remained in place through the day of the public hearing as required by SRC 300.620(b)(3).

Public comments have been received and submitted into the record. Comments raised concerns about traffic.

Response: Traffic and traffic mitigation is listed below under the Transportation Planning Rule analysis.

Homeowners Association

The subject property is not located within a Homeowners Association.

Oregon Department of Land Conservation and Development (DLCD) Notice

State law (ORS 197.610) and SRC 300.602(b)(1) require the City to provide the Oregon Department of Land Conservation and Development (DLCD) a minimum 35-day notice when an applicant or the City proposes an amendment to an acknowledged Comprehensive Plan or land use regulation or to adopt a new land use regulation. The City sent notice of this proposal to DLCD on September 24, 2021. DLCD did not submit any comments.

7. MINOR COMPREHENSIVE PLAN MAP AMENDMENT APPROVAL CRITERIA

Salem Revised Code (SRC) 64.025(e)(2) establishes the approval criteria for Comprehensive Plan Map amendments. In order to approve a quasi-judicial Plan Map amendment request, the decision-making authority shall make findings of fact based on evidence provided by the applicant that demonstrates satisfaction of all of the applicable criteria. The applicable criteria are shown below in **bold** print. Following each criterion is a finding relative to the amendment requested.

SRC 64.025(e)(2)(A): The Minor Plan Map Amendment is justified based on the existence of one of the following:

- (i) ***Alteration in Circumstances.* Social, economic, or demographic patterns of the nearby vicinity have so altered that the current designations are no longer appropriate.**

- (ii) ***Equally or Better Suited Designation.*** A demonstration that the proposed designation is equally or better suited for the property than the existing designation.
- (iii) ***Conflict Between Comprehensive Plan Map Designation and Zone Designation.*** A Minor Plan Map Amendment may be granted where there is conflict between the Comprehensive Plan Map designation and the zoning of the property, and the zoning designation is a more appropriate designation for the property than the Comprehensive Plan Map designation. In determining whether the zoning designation is the more appropriate designation, the following factors shall be considered:
 - (aa) **Whether there was a mistake in the application of a land use designation to the property;**
 - (bb) **Whether the physical characteristics of the property are better suited to the uses in the zone as opposed to the uses permitted by the Comprehensive Plan Map designation;**
 - (cc) **Whether the property has been developed for uses that are incompatible with the Comprehensive Plan Map designation; and**
 - (dd) **Whether the Comprehensive Plan Map designation is compatible with the surrounding Comprehensive Plan Map designations.**

Finding: Since the annexation of the subject property, the properties in the surrounding area have undergone significant economic change. The property west of the subject property was re-zoned to CR (Retail Commercial) and CO (Commercial Office). The property north of the subject property was rezoned to CR in March of 2016. The property south of the subject property has been rezoned to multiple family residential and developed as an assisted living facility. In addition, East of Interstate 5 properties have developed to accommodate various commercial uses including Oregon State Police Headquarters, Parks and Recreation Facility, Amazon Distribution and other facilities that make Kuebler an important commercial corridor.

The Commercial plan designation is equally or better suited for the subject property than the Developing Residential designation. The primary goal of the Commercial designation is to maintain and promote of the City's as a commercial center for Marion-Polk Counties. The location of the subject property, as well as the surrounding uses, makes it well-suited for Commercial designation. The location adjacent to I-5, and possibly being developed into a retail center would promote Salem as a regional commercial center as well as provide the area with a broader range of employment uses. The commercial development is likely to provide the opportunity for commercial offices, including medical offices, which provide higher than average wage jobs as well as retail services and sales jobs. (Salem Economic Opportunities Analysis p. 28 for wage impact analysis).

The proposal is justified based on subsection (ii), Alteration in Circumstances. Social, economic, or demographic patterns of the nearby vicinity have so altered that the current designations are no longer appropriate and subsection (iii), the proposed designation is equally or better suited for the property than the existing designation. The applicant does

not assert that a mistake has been made in the application of the Developing Residential designation to the subject property. Staff concurs with the applicant's characterization of the Developing Residential designation as appropriate for holding areas for future development not currently served by urban levels of infrastructure. The Urban Growth Preliminary Declaration issued for the subject property (UGA09-08) specified the infrastructure improvements needed to develop the subject property as a 26.44-acre shopping center. The Urban Growth Preliminary Declaration has expired and the applicant would need to re-apply to determine current infrastructure improvements needed to develop the property. The subject property provides a site for higher intensity retail development that would maximize investment in public services in the vicinity, especially the existing arterial street network and future master-planned utilities.

There are several Comprehensive Plan policies, which are addressed below, addressing location of commercial properties such as being located on major arterials, creating complete neighborhoods, including clustering of residential and commercial uses. Creating complete neighborhoods is one way to reduce reducing vehicle trips that contribute to climate change, as discussed in the City's draft Climate Action Plan.

The Planning Commission found that physical factors, such as topography or other physical features of the subject property and abutting the I-5 interchange would make the property incompatible for residential development.

In 2015, the City completed an Economic Opportunities Analysis (EOA) for areas within the Salem Urban Growth Boundary for the years 2015 to 2035. The study indicated a shortage of approximately 100 gross acres of retail commercial land within the Salem UGB. Conversely, the accompanying Housing Needs Analysis (HNA) indicated a large surplus of available land for single family detached housing, primarily consisting of lands within the "Single Family Residential" and "Developing Residential" designations.

Several factors make the subject property especially well-suited for the Commercial designation. The subject property has direct access to a collector (27th Avenue SE), local road (Boone Road SE), frontage on a designated parkway (Kuebler Boulevard SE), and close proximity to a major freeway interchange at Kuebler Boulevard and I-5. The site is located across 27th Avenue from a 32-acre site in which a Plan Map and zone change from Developing Residential with RA zoning to a Commercial designation with CR zoning was approved in 2006 (CPC-ZC06-06) and across Kuebler Boulevard from a 31.96-acre site in which also had a Plan Map and zone change from Developing Residential with RA zoning to a Commercial designation with CR zoning in 2016.

The higher classification streets in the vicinity provide sufficient access for commercial uses, particularly those with a regional customer base. Further, the majority of surplus developable acreage identified in the HNA is not benefitted by the confluence of freeway, parkway, and arterial network access that help make the subject property especially well-suited to commercial development. Considering these factors the subject property is equally or better suited for the proposed designation than its current designation.

The Planning Commission finds the application meets this criterion.

SRC 64.025(e)(2)(B): The property is currently served, or is capable of being served, with public facilities and services necessary to support the uses allowed by the proposed plan map designation.

Finding: The subject property is located outside of the City’s Urban Service Area (USA). However, the subject property is currently served, or is capable of being served, with public facilities and services necessary to support the uses allowed by the proposed Commercial designation.

Natural gas, sanitary services, water, and power lines are located within Boone Road SE. Sanitary, power, and natural gas service lines are also available along 27th Street SE. Storm drain infrastructure is available in Kuebler Blvd.

There is an existing 24” public sanitary line located in 27th Avenue SE with manholes approximately mid-way along the front and at the intersection of Kuebler Blvd. that are deep enough to service this property. There is also an eight (8”) inch PVC sewer main located within Boone Road SE east of the Boone Road SE and 27th Avenue SE intersection; however due to topographic constraints it will not be able to service the Subject Property.

There is an existing 24” and 30” S2 water line in Boone Road SE. The Subject Property is within two water service levels: S-1 and S-2. There are no facilities available to serve the S-1 water service level at this time. However, a twenty-four (24”) inch S-2 ductile iron water main is located in Boone Road SE and a thirty (30”) inch S-2 ductile iron water main is located in Boone Road SE. Applicant could connect to the line with a temporary connection agreement with City of Salem, as no S-1 service is available.

There is an overhead power, cable, and telecom line along the north side of Boone Road SE and along the east side of 27th Avenue there is an existing gas main in Boone Road SE along the north side of the road and along 27th Avenue on the east side of the road.

The majority of the Subject Property currently drains to the center of the property where it and then flows north to the existing drainage ditch that flows east to an existing 36” storm drain that crosses north under Kuebler Blvd. The eastern fifth of the project flows east to the I-5 ditches and culverts.

The applicant will be required to apply for an Urban Growth Preliminary Declaration permit prior to development. The permit will identify those public facilities that must be constructed in order to fully serve any proposed development on the subject property consistent with the City’s adopted Master Plans and Area Facilities Plans. The existing streets, water, sewer, and storm water facilities are available to serve the subject property. Site-specific infrastructure requirements will be addressed in the Site Plan Review process in SRC Chapter 220.

The adequacy of the City’s transportation facilities to serve the uses allowed under the requested plan designation and zoning is extensively discussed in the findings below related to Goal 12 and compliance with the Comprehensive Plan and Salem Transportation System Plan. The Planning Commission finds that those findings and the

evidence the findings rely upon, demonstrate that with the transportation improvements proposed by the Applicant, which are imposed as conditions of approval for the zone change application, the proposed uses are capable of being served by the City's transportation system.

The Planning Commission finds that the proposal meets this criterion.

SRC 64.025(e)(2)(C): The proposed plan map designation provides for the logical urbanization of land.

Finding: The development pattern in the vicinity, particularly this segment of the Kuebler corridor, has transitioned over the past several years, shifting from rural residential uses to uses that are primarily commercial in nature. The proposed plan map designation is consistent with the current development pattern and will provide for the logical urbanization of land.

The immediate vicinity of the subject property is in flux with commercial development to the west (Costco), multi-family and single-family developments to the south, commercially zoned property to the north along with a 177-lot single family development and possible Multi-Family development to the northwest of the property. The subject property sits near the center of a large area of future commercial and residential (multiple family) development. A Commercial Plan Map designation would be consistent with the surrounding area of Commercial designations, and the mixture of land uses that have developed according to that designation. As part of its current draft of the "Our Salem" proposal, the City is suggesting a change the Comprehensive Plan map designation of the Subject Property to Commercial., The City's current suggestion is for CO (Commercial Office) zoning for the subject property, due in part to transportation system impacts associated with changing the zoning to CR (Commercial Retail). The "Our Salem" proposal is expected to go through a public hearing process in spring of 2022 and is not final until adoption by City Council.

The Planning Commission recognizes that there is some contention in the record as to what the appropriate zoning for the property should be or whether certain types of commercial uses should not be allowed on the property. Staff indicate that the Our Salem process currently contemplates the property will ultimately be zoned "Commercial Office;" and SGNA indicates that it prefers Mixed Use Zoning. Both implement the "Commercial" Plan designation. The applicant seeks, and this decision approves, "Commercial Retail" zoning. The CR zone also implements the "Commercial" Plan designation. However, the Plan standard articulated above asks about the "Proposed Plan Map designation" and not the zoning and there is little, if any, substantive argument that it would be inappropriate or illogical to plan designate the subject property Commercial.

The Planning Commission finds that the proposal meets this criterion.

SRC 64.025(e)(2)(D): The proposed land use designation is consistent with the Salem Area Comprehensive Plan and applicable Statewide planning goals and administrative rules adopted by the Department of Land Conservation and Development.

Finding: The Planning Commission notes that compliance with the Comprehensive Plan and the statewide planning goals are requirements for both a minor plan change application and a zone change application. Consequently, the findings immediately below refer to the zone change application in instances where a response that is applicable for the Plan change application is not an adequate response for the zone change application or where there is a distinction between different zones within the same plan designation that warrant a specific response as to commercial retail zoning. That said, many of the findings overlap in their entirety. The purpose of consolidating responses where possible is for efficiency and brevity, so that the corresponding zone change standards can and do adopt responses by reference, where appropriate.

The applicable Goals and Policies of the Comprehensive Plan are addressed as follows; the Statewide Planning Goals are addressed after the policies:

Salem Urban Area Goals and Policies, B. General Development Goal (Salem Comprehensive Policies Plan):

To ensure that future decisions concerning the use of land within the Salem urban area are consistent with State Land Use Goals.

Finding: The approval standards for both the comprehensive plan change and zone change applications require a demonstration of compliance with the Statewide Planning Goals. Those findings are included in these findings and demonstrate that the proposal is consistent with the Statewide Planning Goals.

The proposed plan designation and zone change, and the development that will be permitted consistent with SRC development standards will also be consistent with the policies under this Comprehensive Plan goal that apply to such approvals. This includes, but is not limited to, the policies that promote citizen involvement, economic growth, carrying capacity, optimal use of the land, street improvements, development compatibility, and lighting. Each of these policies is implemented by provisions of the zoning code, which will apply to all development permitted under the new plan designation and zoning. Furthermore, no participant in this proceeding has contended that the proposal or development that would be permitted under the Commercial Plan designation and CR zone, would be inconsistent with any of the policies under this Comprehensive Plan Goal.

The Planning Commission finds that the applications are consistent with this Comprehensive Plan Goal and its implementing policies.

Salem Urban Area Goals and Policies, Growth Management Goal (Page 28, Salem Comprehensive Policies Plan):

To manage the growth in the Salem urban area through cooperative efforts of the City of Salem and Marion and Polk Counties, to ensure the quality of life of present and future residents of the area, and to contain urban development to preserve adjacent farm land.

Finding: The public facilities and service needs for the subject property would be

provided at the time of development of the site. All public services and utilities are available in the vicinity of the subject property including water, sewer, storm drainage, streets, sidewalks, fire and police protection, electricity, telecommunications, and solid waste disposal. The proposed Comprehensive Plan Map amendment with concurrent Zone Change is consistent with these policies. Master-planned facilities necessary to support commercial development on the subject property will be evaluated through a Urban Growth Preliminary Declaration.

Salem Urban Area Goals and Policies, E. Residential Development Goal (Salem Comprehensive Policies Plan):

To promote a variety of housing opportunities for all income levels and an adequate supply of developable land to support such housing.

Finding: Although this proposal removes land from the residential lands inventory, evidence in the record demonstrates that there is a surplus of residential lands within the City's UGB. For this reason, the proposal will not result in an inadequate supply of developable land to support the City's housing needs. The proposal promotes a variety of housing opportunities and an adequate supply of developable residential land, by helping to make this south part of the City desirable for such residential uses by ensuring that there are commercial retail opportunities in proximity to residential uses and residentially developing areas, thus contributing to more complete communities, with fewer needs for vehicular trips to such opportunities if they are located further away.

Not only are commercial retail uses complementary to residential uses, the location of this designation and zoning furthers the City's policies aimed at minimizing vehicle travel distances and encouraging non-vehicular access to such services by locating residential areas and commercial services in closer proximity than has historically occurred.

The proposal is consistent with this Comprehensive Plan Goal and its implementing policies.

Salem Urban Area Goals and Policies, F. Mixed-Use Development Goal (Salem Comprehensive Policies Plan):

To provide a mixture of complementary land uses that may include housing, retail, offices, services, industrial and civic uses, to create economic and social vitality.

Findings: The Commercial plan designation and the requested Commercial Retail zoning allows a broad range of uses on the subject property. Although not strictly one of the "mixed use" zones some public comments requested, the requested CR zoning does not preclude mixed use development of the site and the Applicant has indicated a desire for that to occur if at all possible.

One of the reasons for approving the CR zone instead of mandating one of the MU zones is the Comprehensive Plan policy under this goal that encourages flexibility in the siting and design of new developments to respond to the marketplace. As the Applicant explained, the CR zone provides that greater flexibility. Therefore, the Planning

Commission imposed a condition of approval, to limit the subject property to three drive-through facilities on the subject property.

Salem Urban Area Goals and Policies, Commercial Development Goal (Page 35, Salem Comprehensive Policies Plan):

To maintain and promote the Salem urban area as a commercial center for the Marion-Polk County metropolitan area.

Finding: The proposed commercial designation of the subject property would allow development of a mixed-use development or shopping center serving the southeastern portion of the Marion-Polk County metropolitan area. Existing commercial concentrations elsewhere in the region, such as downtown Salem, the Commercial Street SE corridor, and Lancaster Drive are a considerable distance from existing and future development in the southeastern portion of the metropolitan area. Transportation access to the subject property would promote use of a site within the Salem urban area as the commercial center for underserved areas inside and outside of the City limits.

Policy G.4. Community shopping and service facilities shall be located adjacent to major arterials and shall provide adequate parking and service areas. Land use regulations shall include provisions for siting and development which discourage major customer traffic from outside the immediate neighborhoods from filtering through residential streets.

Finding: The subject property is well-served by the street network in the vicinity, which includes collectors, Kuebler Boulevard, and the adjacent I-5 freeway interchange. As surrounding properties develop, the existing network of higher-classification streets will allow regional traffic to access the site without filtering through neighborhood residential streets.

Policy G.5. Unless the existing development pattern along arterials and collectors commits an area to strip development, new commercial development shall be clustered and located to provide convenience goods and services for neighborhood residents or a wide variety of goods and services for a market area of several neighborhoods.

Finding: The proposed Commercial designation of the site would facilitate clustered retail development at one quadrant of the I-5/Kuebler Boulevard interchange, allowing a wide variety of goods and services to be provided in a location where existing transportation facilities provide access from several different neighborhoods.

Salem Urban Area Goals and Policies, J. Transportation Goal (Salem Comprehensive Policies Plan):

To provide a balanced, multimodal transportation system for the Salem Urban Area that supports the safe and efficient movement of goods and people.

Findings: The City has developed the Salem Transportation System Plan (STSP), which

establishes transportation objectives and policies and provides a hierarchical system of streets and highways to provide optimal mobility for all travel modes throughout the City's urban area. Kuebler Boulevard SE abuts the Subject Property to the north and is classified as a Parkway by the STSP street classification system. Kuebler Boulevard SE is interconnected to a network of streets. 27th Avenue abuts the Subject Property to the west and is designated a collector on the STSP street classification map. Boone Road SE abuts the Subject Property to the south and is also a designated collector street. Battle Creek is a designated minor arterial that provides north south connectivity to the site, via Boone Road SE. The Subject Property is well connected to the existing public street system, thereby providing connectivity with the surrounding neighborhood as well as the broader Salem Community. The subject property also is connected to the City's public transportation network, as evidenced by the Cherriots comments in the record that explains that it has discussed with the Applicant placing two public transportation stops to serve the subject property and the Applicant has agreed to do so. Exactly whether there will be one bus stop or two and the precise location of such stop(s) will be decided in the subsequent site plan review application.

The Applicant also recognizes that the development permitted under the proposal could adversely impact the City's transportation system. As discussed under Goal 12 below and referred to elsewhere in these findings, the Applicant has proposed conditions of approval that will mitigate the additional impacts to the transportation system that would result from the proposed plan designation and zoning when compared to existing allowed development. The Planning Commission imposes those conditions of approval as part of this decision.

The proposal is consistent with this Comprehensive Plan goal.

Multimodal Transportation System

4. The transportation system for the Salem Urban area shall consist of an integrated network of facilities and services for a variety of motorized and nonmotorized travel modes.

Connectivity and Circulation

5. The vehicle, transit, bicycle, and pedestrian circulation systems shall be designed to connect major population and employment centers in the Salem Urban Area, as well as provide access to local neighborhood residential, shopping, schools, and other activity centers.

Findings: The evidence in the record establishes that the Subject Property can be served by transit, pedestrian sidewalks and bike lanes, all of which encourage the use of alternative modes of transportation. Additionally, the proposed commercial retail zoning will result in development that can offer an incentive for residents of the neighborhood to walk, bike and use public transport to reach a vibrant commercial hub that can provide for a variety of their needs in this otherwise underserved area of the City.

The proposal is consistent with the above policies.

Supportive of Land Use Plan Designations and Development Patterns

6. The provision of facilities and services shall reflect and support land use designations and development patterns as identified in the Salem Area Comprehensive Plan. The design and implementation of transportation facilities and services shall be based on serving current and future travel demand, residential densities, retail, and employment centers.

7. Local governments shall encourage the expansion of transit services throughout and beyond the Salem Urban Area, especially to areas of increased residential densities, major commercial concentrations, and large institutional and employment centers.

Growth Management

8. The construction of transportation facilities shall be timed to coincide with community needs, and shall be implemented in such a way as to minimize impacts on existing development.

9. Improvements to the transportation system, in addition to those in or abutting a development, may be required as a condition of approval of subdivisions and other intensifications of land use.

Findings: As discussed above, the subject property is proximate to collector streets, a minor arterial, and a parkway. The Applicant proposes not only to utilize this existing street network, but to also enhance it, through improvements, in order to accommodate the additional traffic that will flow from the proposed Commercial designation and Commercial Retail zoning. Such mitigation will minimize the impacts on existing development that would otherwise result from the proposal. The mitigation is imposed in the conditions of approval for the zone change application. The proposal is consistent with the above plan policies regarding transportation facilities. The Planning Commission finds persuasive the Applicant's evidence that with the proposed mitigation imposed by conditions of approval that this Decision requires, the affected area transportation system will function no worse with the property being Commercially designated and CR zoned land, than if it stayed RA although wait times at near-by signal lights will increase substantially. It is approval as outlined in this decision, that meets these Plan policies because approving the proposal as here, responds to anticipated travel demands, coincides with undisputed community needs for more retail opportunities in this part of the city and the Planning Commission imposes conditions of approval to ensure that the affected transportation system functions no worse under the proposal than it would without it.

Policy 6 speaks of facilities and services based, in part, on “future travel demand” and retail services, not just present demand. The Planning Commission finds that wording expressly envisions that future demand may differ from what presently exists and that transportation facilities should respond accordingly, limited by geography and topography of the facility in question. Other policies (7-9) encourage the expansion of transportation facilities and services to reflect and coincide with evolving community needs.

The proposal is estimated to generate 20,000 vehicle trips. The Applicant's traffic analyses make clear, over half of the approximate number of trips estimated per day are either trips between land uses on the subject property and the Costco shopping center or pass-by trips (which are trips that are already on the road that divert to the site before continuing to their primary destination).

The applicable Statewide Planning Goals are addressed as follows:

Statewide Planning Goal 1 – Citizen Involvement: *To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.*

Finding: On June 10, 2021, the applicant's representative attended the Southeast Salem Neighborhood Association Meeting, held virtually, to present their proposal. A public hearing notice was mailed to the affected property owners, all property owners within 250 feet of the subject property, to the South Gateway Neighborhood Association and to the adjacent Southeast Mill Creek Association and Morningside Neighborhood Association. The applicant posted the subject property prior to the public hearing. This satisfies Citizen Involvement described in Goal 1.

Statewide Planning Goal 2 – Land Use Planning: *To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.*

Finding: The City has complied with the Goal requirements for establishing and maintaining a land use planning process. The Oregon Land Conservation and Development Commission have acknowledged the Salem Area Comprehensive Plan to be in compliance with the Statewide Planning Goals.

Statewide Planning Goal 3 – Agricultural Lands and Goal 4 – Forest Lands:

Planning Commission Findings: The proposed plan amendment does not affect any lands designated agricultural lands or forest lands or their inventories. Consequently, Goal 3 and Goal 4 are not invoked by the application.

The proposal is consistent with Goals 3 and 4.

Statewide Planning Goal 5 – Open Spaces, Scenic and Historic Areas, and Natural Resources: *To protect natural resources and conserve scenic and historic areas and open spaces.*

Finding: There are possible scenic, historic, or cultural resources on the subject property. Prior to development, the property owner would need to consult with the City Historic Preservation Program Manager. According to the Salem Keizer Local Wetland Inventory (LWI) there are wetlands mapped on the subject property. The applicant has provided a wetland delineation as part of their application. The City's wetland ordinance, SRC Chapter, requires notice and permitting through the Department of State Lands (DSL).

The application will be reviewed for compliance with the City's tree preservation ordinance and any applicable wetland standards at the time of development. Staff finds that the proposal is consistent with Goal 5.

Statewide Planning Goal 6 – Air, Water and Resources Quality: *To maintain and improve the quality of the air, water and land resources of the state.*

Planning Commission Findings: Goal 6 is largely a planning directive to local governments and, as such, does not provide specific standards applicable to site-specific plan designation decisions. The application narrative notes that the subject property lies within the city limits, where an urban level of development is intended to occur in both scale and density. The application narrative also notes the range of public facilities and services designed to protect air, water and resource quality within the city, which this decision finds are both available and adequate.

The Planning Commission concurs with the applicant that the commercial uses that will flow from the plan designation change will reasonably help reduce impacts to air quality through its proximity to near-by residential lands and access to public transportation, which will reduce the length of or need for vehicle motor trips. The Planning Commission also finds the application has demonstrated that development under the proposed plan designation will not adversely impact natural resources because there are no significant natural resources on the subject property.

The proposal is consistent with Goal 6.

Statewide Planning Goal 7 – Areas Subject to Natural Disasters and Hazards: *To protect people and property from natural hazards.*

Planning Commission Findings: As the application narrative explains, the City has complied with Goal 7 by adopting specific policies and development standards that protect against flood hazards, potential landslides and other natural hazards. The implementing measures are found in the acknowledged SRC under Chapters 809 and 601 and are imposed at the time a development application is reviewed.

The City's adopted landslide hazard susceptibility maps show the subject property is mapped within areas that have 2 to 3 landslide hazard susceptibility points. Given that 3 activity points are associated with commercial building permits and the City's landslide hazard ordinance, SRC Chapter 810, requires any development proposal with a cumulative total of 5 to 8 points submit a geologic assessment in conjunction with the application, the City's implementing measures will be applied at the time a development proposal is submitted. Given the moderate landslide hazard susceptibility classification (5 to 8 points) for the subject property is classified and that the property's point rating is at the lower end of that scale, the Planning Commission concludes that it is feasible that a proposed project that satisfies the requirements of the applicable implementing measures can be designed and approved. Nothing in the record claims, nonetheless demonstrates, that the site cannot be safely developed, whether with commercial or residential uses.

There are no other identified natural disaster or hazards on the subject property.

The Planning Commission finds that the proposal is consistent with Goal 7.

Statewide Planning Goal 8 – Recreational Needs: *To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.*

Planning Commission Findings: The Applicant Statement correctly states:

“The Subject Property is not within a designated or identified open space area and does not contain any structures subject to historic review. Furthermore, the property does not contain any wildlife habitat, groundwater resources, or natural areas other than the wetlands addressed above. Therefore, Goal 8 is not applicable to this proposal.”

Statewide Planning Goal 9 – Economic Development: *To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.*

Finding: The City's Comprehensive Plan contains commercial and economic development policies pertaining to the identification and protection of employment lands. This proposal to amend the comprehensive plan map from Developing Residential to Commercial will increase the City's employment lands, as the change will allow for the development of commercial uses on the Subject Property. The proposal will provide a site for a community level retail center. This consolidated land use proposal increases economic opportunities for City residents. As such, this proposal is consistent with Goal 9's requirement to provide a variety of economic opportunities for City residents, including commercial opportunities. (OAR 660-009-0000).

The proposed comprehensive plan and zoning map amendment will convert approximately 24.66 acres of vacant residentially zoned land to a commercial designation. Consistent with the City's obligations to provide economic opportunities under Goal 9, per OAR 660-009-0015, an Economic Opportunity Analysis (EOA) was conducted by ECONorthwest and adopted by City Council in October 2014. Consistent with economic development protections of Goal 9 and the objectives of understanding the opportunities for the next 20 years, the report compared the supply of suitable buildable commercial land (298 acres) to the projected demand (569 acres) and concluded that there is a deficiency of 271 acres of commercial land to meet the 20-year growth demand. The EOA further concluded that roughly 40 percent of the commercial land deficiency, or approximately 100 acres, are needed for retail services, as detailed by the “Land Sufficiency” section in the EOA (pages 27-28).

As a residentially-designated property, the site's economic development potential is currently limited as compared to regional shopping facilities, community and neighborhood shopping and service facilities, and other uses envisioned by the “Commercial” SACP designation and supported by the accessibility and visibility of the site. The proposed change of designation to “Commercial” will increase the number of permitted uses at the site and better takes into account the location of the subject property, thereby open up additional opportunities for economic development, consistent

with the intent of the goal. The proposal meets the requirements of Goal 9.

Statewide Planning Goal 10 – Housing: *To provide for the housing needs of citizens of the state.*

Finding: Oregon Statewide Planning Goal 10 requires the City to allocate adequate amounts and types of land to accommodate the needed housing units for all incomes. The City has accepted, but not adopted, a Housing Needs Analysis (HNA) prepared in 2015 which includes a Buildable Land Inventory identifying a surplus of approximately 1,975 acres for single family residential development and a deficit of land available for multifamily residential development. According to the Housing Needs Analysis (HNA), “Salem has a deficit of capacity in the MF designation, with a deficit of 2,897 dwelling units and a deficit of 207 gross acres of residential land.” As of December 2020, the City has added 40 net acres of Multiple Family designated land, reducing the projected deficit to 167 acres. Additionally, the City has added 89 acres of Mixed-Use designated land which allows multi-family development as an outright permitted use, thereby further increasing the land available for multi-family development.

On February 8, 2016, the City adopted Resolution 2016-05, which includes a work plan to address the known deficit of Multi Family Residential lands. The City is expected to fully address the multi-family land deficit in 2022 with the adoption of proposed map changes in the *Our Salem* project.

The proposal will remove approximately 24.66 acres from the existing inventory of land that is designated for single family housing. The City underwent a Housing Needs Analysis (HNA) to project the City’s housing needs over the course of 20 years from 2015 to 2035. The report, conducted by ECONorthwest, found that the City of Salem has a surplus of approximately 1,975 acres of land designated for single-family detached housing. Of the total residential and mixed-use comprehensive plan designations, eighty three percent of this area is land within the Developing Residential and Single-Family Residential designations. Through these recent HNA and EOA studies, adequate recent analysis has been conducted to confirm that the applicant’s proposal to convert 24.66 acres of residential agriculture land to retail commercial will improve the balance of residential and commercial land within the City. The existing surplus of land designated for single family detached housing, as identified in the Housing Needs Analysis and cited in the applicant’s written statement, includes more than enough remaining acreage to accommodate demand for single family residential development after deducting the roughly 24.66 acres that would be removed from the Developing Residential designation under the applicant’s proposal. The HNA also indicates a shortage of available land for multifamily housing for the 2015 to 2035 time period. Multiple family housing is not permitted in the existing RA zone and is listed as a conditional (rather than permitted) use in the CR (Retail Commercial) zone requested by the applicant.

Based on the current available supply of land for residential development shown in the Housing Needs Analysis, the proposal would not have an impact on the ability of the City to provide for its projected housing needs, even if no new housing units were added in future development of the site. Therefore, the proposal to change the designation of the subject property to Commercial would not have an impact on the ability of the City to

provide for its projected housing needs. The proposal meets the requirements of Goal 10.

Statewide Planning Goal 11 – Public Facilities and Services: *To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.*

Finding: The City utilizes an Urban Growth Management Program to ensure necessary public facilities and services are available to serve new development. As part of the program, the City has designated an USA boundary delineating the area in the City where all necessary public facilities have either been installed or are fully committed in the adopted Capital Improvement Plan. The Subject Property is located outside the boundary of the USA. However, public services are readily available, as fully described in above. Therefore, all public facilities and services are readily available to serve the Subject Property.

The subject property is capable of being served through extension of public facilities as specified in existing infrastructure master plans. Future development will require an Urban Growth Preliminary Declaration to address linking and boundary facilities required to serve subject property under the standards and requirements of SRC Chapter 200. The applicant submitted a transportation study that is required to address the Transportation Planning Rule (OAR 660-012-0060). The applicant's transportation study identifies seven separate transportation improvements to mitigate the estimated 12,000 new daily trips to the transportation system. One of the mitigation improvements, which is not supported by the Oregon Department of Transportation, cannot be completed without support of Oregon Department of Transportation, who has jurisdiction over the southbound on ramp to I-5.

Oregon Department of Transportation letter dated June 1, 2021 states:

ODOT reviewed the earlier version of the TIA which came to similar conclusions regarding impacts of the zone change request and proportionate shares of necessary improvements. The update TIA provides an appropriate level of analysis and mitigation to address the potential impacts of this proposed rezone.

The mitigation proposed to the Kuebler Boulevard at I-5 SB Ramp intersection (installation of a third southbound right-turn lane on the off-ramp) is the most reasonable mitigation at the intersection and may be expected to acceptably mitigate traffic effects of the proposed zone change and development.

However, as noted in the study, Region 2 Traffic does not currently support this mitigation and does not recommend the installation of a third southbound right-turn lane at the Kuebler Boulevard at I-5 SB Ramps intersection. In addition, it was found that the applicant's methodology used to determine their proportionate share of mitigation measures to addresses potential significant impacts is appropriate.

The evidence in the record shows there is a significant effect to the I-5 southbound ramp and mitigation outlined would address the significant impact. Based on the Oregon Department of Transportation (ODOT) letter, ODOT does not support the mitigation.

Statewide Planning Goal 12 – Transportation: *To provide and encourage a safe, convenient and economic transportation system.*

Transportation issues were the central point of contention in this proceeding. Potential traffic impacts were the primary focus of most of the public comments and was the sole reason why staff recommended denial.

Before addressing specific arguments raised, the Planning Commission provides the following ultimate conclusion and the guiding principles and conclusions that underly the more detailed analysis provided in the findings below. The Planning Commission concludes that the proposal complies with the Goal 12 rule (the "Transportation Planning Rule" or "TPR" reflected in OAR 660-012-000 et seq., and with the transportation requirements for comprehensive plan designation changes and zone changes set forth by the SRC. Supporting that conclusion and underlying much of the analysis behind specific responses contained in the findings are several main points.

First and perhaps foremost is the Goal 12 “no further degradation” standard for situations where, even in the absence of the proposed comprehensive plan change, the planned transportation facilities will fail by the end of the planning period. That standard is set forth in the Goal 12 Rule at OAR 660-012-0060(3). In such instances, the local government may approve a plan change amendment so long as the development will “mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development[.]” OAR 660-012-0060(3)(b). As noted in the findings above, the City also applies this standard to the analysis for City transportation facilities. If an applicant proposes mitigation that will result in “no further degradation” to a facility that will otherwise not satisfy state or city transportation standards under development allowed by the existing zoning, then under the “no further degradation” principle, that proposal can be approved. In this instance, the Planning Commission finds that the Applicant has made that demonstration and imposes conditions of approval accordingly. The City is better off, or at least no worse off, with CR zone development and the proposed mitigation than it would be with development under the existing RA zoning.

The analysis required to reach the above conclusion leads to the second point – the adequacy and credibility of the Applicant’s Transportation Planning Rule Study (TPR Study) and subsequent analysis. The Planning Commission notes that the Oregon Department of Transportation found that the TPR Study provides an appropriate level of analysis and mitigation to address the potential impacts of the proposed rezone and that the Applicant’s methodology used to determine its proportionate share of mitigation measures to address potential significant effects under the Goal 12 rule was appropriate. ODOT identified no shortcomings or deficiencies with Applicant’s TPR Study. Given ODOT’s authority on such technical matters, its views may carry significant weight in deciding whether the Applicant’s evidence is accurate and credible. On that issue, the Planning Commission sides with ODOT and the Applicant’s technical expert in this

instance and finds that the Applicant's traffic analysis is based on the best available evidence and that the analysis is sound, accurate and credible.

The third underlying point concerns the rigidity of the transportation planning and analysis process. The Planning Commission finds there is some flexibility, when examining potential transportation impacts under the Goal 12 rule or under the City's standards and guidelines. For example, the Oregon Highway Plan (OHP), the authoritative statement on volume to capacity ratios, explains:

"In applying OHP mobility targets to analyze mitigation, ODOT recognizes that there are many variables and levels of uncertainty in calculating volume-to-capacity ratios, particularly over a specified planning horizon. After negotiating reasonable levels of mitigation for actions required under OAR 660-012-0060, ODOT considers calculated values for v/c ratios that are within 0.03 of the adopted target in the OHP to be considered in compliance with the target. The adopted mobility target still applies for determining significant effect under OAR 660-012-0060." OHP, p. 8.

In other words, any v/c ratio that is calculated to be within 3/100ths of a percent (0.03) of the mobility target is deemed to comply with the target. There is flexibility in that approach.

Similarly, ODOT has ruled that traffic counts should not be taken during the pandemic because pandemic traffic behavior is not representative of normal traffic behavior. The pandemic is a "disruptive event" that skews the analysis. There is no dispute that the transportation systems at issue here are still affected by the disruptive COVID event although the extent of that disruption is unclear. Further, there is also no dispute that Staff would not accept traffic counts because 27th Ave has been closed due to construction. This is consistent with the Public Works Design Standards which state that traffic counts "taken during construction shall not be used."¹

The City's transportation regulations include a degree of flexibility and discretion in the application of its provisions. For example, as discussed above under consistency with the Comprehensive Plan, STSP policy 4.6 and 4.7, concerning right-of-way and intersection improvements, both provide for variation from the standard requirements.

With the above in mind, the Planning Commission makes the following findings related to Goal 12

As noted above, the Planning Commission finds the TPR Study and subsequent transportation system evidence and responses prepared by DKS, the Applicant's transportation expert, to be credible and accurate. The Planning Commission finds the scope of the study to be proper for the application.

The DKS TPR Study collected and analyzed the data for eight (8) existing transportation

¹ There is no dispute that the Applicant did conduct traffic counts in October 2021 and they showed that there is less traffic on the system than the counts taken or otherwise available immediately before the submittal of the applicant's TPR Study submitted in May 2021.

facilities and one new facility (the 27th Avenue/Project Site Access). The data for most of the existing facilities was taken on May 30 and June 4, 2019. The data for the Commercial Street SE/Kuebler Boulevard facility was collected on February 15, 2017. Two arguments are presented against this data, both focused on PWDS Section 6.33(f)(3), which concerns traffic impact analyses. That standard provides that traffic counts older than two years are not used. The Planning Commission finds that the TPR Transportation Study was dated May 2021 and stamped by a professional engineer. That published date is within 2 years of the date the data was collected. The Planning Commission finds that satisfies the two-year provision regarding traffic counts. The Planning Commission concludes that the 2019 traffic counts are consistent with the PWDS time-frame requirements.

The 2017 traffic count for the Commercial Street SE/Kuebler Boulevard facility is a more complicated matter. On its face, the date lies outside of the two-year window provided in the PWDS for traffic counts. However, these are not ordinary times and there are important factors that weigh towards accepting that data as the most accurate data available. The issue, plainly put, is that more accurate data cannot be collected for the intersection within the reasonably foreseeable future given the pandemic situation, for which ODOT's publication states data should not be collected, and the on-going construction on transportation facilities and other development, for which the PWDS states traffic counts should not be collected and used. ODOT provides guidance for this type of situation – use the most accurate pre-pandemic (“disruptive event”) data available. The PWDS provides no guidance in this situation.

Three primary factors lead the Planning Commission to conclude that the use of the 2017 traffic count is consistent with the TPR and with the PWDS. First, is that the facility at issue is not just a City street, but at certain points, is also a state transportation facility.² For that reason, ODOT's general guidance to use pre-pandemic data as well as ODOT's letter in the record affirming the appropriateness of the Transportation Study's analysis and mitigation proposals is significant.

The Applicant took traffic counts in October 2021. Unsurprisingly, given the current COVID situation on-going construction activity, and the closure of 27th Street SE, the traffic counts and subsequent potential impacts on transportation facilities were greatly reduced. The Applicant's October 2021 counts showed less traffic volume on the affected transportation facilities than the counts relied upon by the Applicant in their TPR Study. The Planning Commission finds that, given the context described above, the data does not reflect normal usage that will flow from the proposal. The Planning Commission agrees with staff and does not base its decision on these latter traffic counts. The Planning Commission finds that the TPR Study from May 2021, the data it relies upon, and supplemental analysis and proposed mitigation to be the most persuasive reflection of the traffic conditions that will exist during normal times.

Turning to the Transportation Study and the Goal 12 analysis, DKS found potential significant effects to six of the nine facilities studied. As Table 9 of the Transportation Study shows, the three facilities that would continue to operate within design standards

² At the particular intersection of Kuebler and Commercial, it is a City street.

were the Kuebler Boulevard/I-5 North Bound Ramp; the Battle Creek Road/Boone Road intersection; and the 27th Avenue/Boone Road intersection. Because there would be a significant effect to the other transportation facilities, the Applicant is required to mitigate the impacts on those facilities consistent with the Goal 12 rule if the application is to be approved. The application and follow-up responses include proposed mitigation.

The Transportation Study's Table 10 shows the study intersections that required mitigation, the standards that mitigation must meet based on either the operational standard for the facility or if it is failing the mobility target under the "no further degradation standard", the proposed mitigation, and the v/c, delay and LOS that will result with the proposed zoning plus mitigation. It demonstrates that the traffic impacts from the proposal with the mitigation proposed by the Applicant and imposed by the conditions of approval, satisfy the TPR requirements.

In summary, one facility, the 27th Avenue/Project Site Access will operate within the designated operating standards with the proposed mitigation. Two facilities, the Kuebler Boulevard/Commercial Street intersection and the Kuebler/I-5 Southbound Ramp require no additional mitigation because the LOS remains the same for the City controlled transportation facility and the V/C, the standard used by ODOT, for both facilities is within the 0.03 range that the Oregon Highway Plan states is in compliance with the target for both of the facilities. Two of the facilities, Kuebler Boulevard/Battle Creek Road and Kuebler Boulevard/27th Avenue, following mitigation, will operate at the same failing LOS as the current zoning and will operate at a V/C ratio lower than the current zoning, thus meeting the "no further degradation" standard. The last intersection, Kuebler Boulevard/36th Avenue, located more than half a mile away on the other side of I-5 from 27th Avenue SE is presently failing and cannot be mitigated by any action taken solely by the Applicant – the traffic issue there requires a greater City effort to widen the bridge over the railroad and Mill Creek to the east. In response, the applicant has offered to contribute its proportional share for the comprehensive improvements necessary to bring that intersection into compliance with City standards. That share is \$118,000.00 based on current estimates. The Planning Commission finds the proposed amount to be accurate, given ODOT's statement that it found the applicant's methodology for determining their proportionate share of mitigation measures was appropriate.

The Applicant has proposed the following mitigation measures, which the Planning Commission imposes as conditions of approval. The Applicant will enter into an Improvement Agreement with the City under which the Applicant shall construct, as mitigation for the transportation impacts generated by the proposed plan designation and zone change, the full mitigation for three facilities and the Applicant's proportionate share for a fourth facility. The facilities the Applicant will construct include: (1) the west bound slip lane (a west bound right turn lane to the roundabout) from the site access onto 27th Avenue SE; (2) improvements to the Kuebler Boulevard and 27th Avenue intersection, which include installing dual north bound right turn and dual north bound left turn lanes, and changing phasing to protected-only for north bound left and south bound left turns; and (3) the second south bound left turn lane at the intersection of Kuebler Boulevard and Battle Creek Road.

All three mitigation improvements are generally represented in conceptual drawings

presented in DKS materials dated December 10, 2021, included in the December 21, 2021 Supplemental Staff Report. Those facilities will be designed and constructed to meet PWDS requirements. The financial mitigation measure imposed as a condition of approval is the deposit of \$118,000.00 to the City of Salem for the Applicant's proportionate share of intersection improvements at Kuebler Boulevard/36th Avenue. Moreover, the Applicant has agreed to a condition that (4) the property will be improved with no more than three drive through window establishments. A single store/restaurant/bank etc. may have more than one drive through feature serving the single establishment and that scenario will count as one drive through window. And has agreed to a condition of approval that (5) No single retail store building shall be composed of more than 70,000 sq. ft. of gross leasable area.

The Planning Commission finds the conditioned mitigation measures, is warranted in order to mitigate for the additional traffic impacts that will flow from the plan designation to Commercial and zone change to CR (Commercial Retail). Such mitigation is necessary for the proposal to be approved under Goal 12 and by the applicable SRC standards for plan designation and zone changes.

Based upon the above findings, the Planning Commission concludes that the proposal, as mitigated by the conditions of approval imposed by this decision, is consistent with Goal 12 and the Transportation Planning Rule, as well as with the transportation-related requirements of the Salem Revised Code.

The following findings address specific concerns presented by Staff in the November 2 and December 21, 2021 Staff Reports that have not already been addressed by these findings.

The issue of weekend counts was raised. However, the PWDS 6.33(f)(2) state that "[t]raffic counts shall be taken on a Tuesday, Wednesday or Thursday that is not a city, state or federal holiday and when K-12 school is in session." The Planning Commission finds that the Applicant's data collection dates comply with that standard.

Staff expressed concerns that the roundabout may be overloaded, however, the DKS analysis included the Costco traffic counts as "in process" in their analysis. The Applicant's traffic numbers incorporate those numbers, thus leading to the proposed mitigation.

Staff raised concerns regarding the number of additional trips the proposed zoning would add to the system and states that the evidence in the record demonstrates that vehicle movements will be greater than 80 seconds, which is inconsistent with standards established in the PWDS. The Planning Commission notes that the sheer number of vehicle trips that would result from a plan designation change/zone change or increase in vehicle trips is not restricted by any standard so long as the impact from those trips is mitigated. In this case the evidence in the record establishes that it is. The issue is whether the proposal mitigates for the impacts it creates when the intersection exceeds its vehicle movement operational standards under the existing zoning. In this case, for example, Table 9 from the Transportation Study shows that the Kuebler Boulevard/27th Avenue delay under the current zoning is 157.8 and under the unmitigated proposed

zoning is greater than 200. However, with mitigation, as shown on Table 10, that delay is reduced to 87.5, well below the 157.8 that will exist without the approval. While that value still exceeds the operational standard, it is an improvement over the current zoning failing operations and satisfies the “no further degradation” standard.

The Planning Commission finds that the DKS transportation system analysis is persuasive and the proposed and conditioned mitigation measures will mitigate the impacts caused by the traffic that will result from development under the proposed plan designation and zoning.

Statewide Planning Goal 13 – Energy Conservation: *To conserve energy.*

Planning Commission Findings: The Planning Commission notes that Goal 13 is another of the goals focused on directives to local governments to do land use planning and provides little of anything regarding standards for specific development other than what the adopted plan and land use regulations should specify. In other words, Goal 13 is implemented through local government land use planning and the application of the plan and code.

That said, the application narrative discusses the central nature of the subject property, which will provide bikeable and walkable commercial shopping and dining opportunities for the near-by residential development. This will reduce energy consumption by motor vehicles. The application also notes that the location of the site along a major bus route will allow for alternative modes of transportation to development on the property.

Such pedestrian and alternative transportation opportunities will help conserve and promote energy efficiency consistent with Goal 13.

Statewide Planning Goal 14 – Urbanization: *To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.*

Finding: The subject property was annexed into the City of Salem in 2011 and is located within the Urban Growth Boundary (UGB). The proposal does not include extension of services to properties outside of the UGB. The proposed Comprehensive Plan and Zone Change is consistent with an orderly and efficient transition from rural to urban use for incorporated land adjacent to major transportation facilities. The proposal complies with Goal 14.

Statewide Planning Goal 15 – Willamette River Greenway; Goal 16 – Estuarine Resources; Goal 17 – Coastal Shorelands; Goal 18 – Beaches and Dunes; and Goal 19 – Ocean Resources:

Findings: Each of the above are geographic specific goals. The Subject Property is not within the Willamette River Greenway, or in an estuary or coastal area. Consequently, Goals 15, 16, 17, 18 and 19 do not impose any requirements to this proposal.

The proposal is consistent with Goals 15 through 19.

SRC 64.025(e)(2)(E): The amendment is in the public interest and would be of general benefit.

Finding: The proposed plan designation change and zone change satisfies an identified need for commercial retail employment-related uses, and proposes to meet that need through changing land designations and zoning for which City studies have demonstrated that the City has an excess of land. The proposal is also consistent with the City’s planning program and the City Council’s expressed intent to establish commercial services in close proximity to residential neighborhoods. Given the subject property’s location along major access routes to the surrounding residential areas and accessibility by alternative means of transportation, the Planning Commission concludes that the proposal is in the public interest and would be of general benefit to the surrounding neighborhoods and to the City generally.

8. QUASI-JUDICIAL ZONE CHANGE APPROVAL CRITERIA

The following analysis addresses the proposed zone change for the subject property from RA (Residential Agriculture) to CR (Retail Commercial).

SRC Chapter 265.005 provides the criteria for approval for Quasi-Judicial Zone Changes. In order to approve a Quasi-Judicial Zone Map amendment request, the review authority shall make findings based on evidence provided by the applicant demonstrating that all the following criteria and factors are satisfied. The extent of the consideration given to the various factors set forth below will depend on the degree of impact of the proposed change, and the greater the impact of a proposal on the area, the greater is the burden on the applicant to demonstrate that, in weighing all the factors, the zone change is appropriate.

The applicable criteria and factors are stated below in **bold** print. Following each criterion is a response and/or finding relative to the amendment requested.

SRC 265.005(e)(1)(A): The zone change is justified based on one or more of the following:

- (i) **A mistake in the application of a land use designation to the property;**
- (ii) **A demonstration that there has been a change in the economic, demographic, or physical character of the vicinity such that the proposed zone would be compatible with the vicinity’s development pattern; or**
- (iii) **A demonstration that the proposed zone change is equally or better suited for the property than the existing zone. A proposed zone is equally or better suited than an existing zone if the physical characteristics of the property are appropriate for the proposed zone and the uses allowed by the proposed zone are logical with the surrounding land uses.**

Finding: The request satisfies (ii) and (iii); the proposed zone change is within an area of economic change which makes the proposed zone more compatible with the vicinity development pattern and is equally or better suited for the property than the existing zone. As noted in the applicant’s written statement, several properties in the area have been zoned for commercial use or multi-family. The vicinity development pattern has

surrounded the subject property leaving an island of residential zoned property. The City has recognized this location as being an appropriate site for commercial development through its adoption of a CR designation for an approximately 32-acre site located at the southwest corner of the 27th Avenue SE / Kuebler Boulevard intersection and an approximately 34-acre site on the northeast corner of 27th Avenue SE / Kuebler Boulevard intersection. The transportation facilities serving the site are consistent with the physical characteristics necessary to support uses allowed in the CR (Commercial Retail) zone.

It must be noted that a zone change is not an approval of a specific development proposal, but instead is approval of a permanent change in a property's zoning district. The proposed Plan Map amendment would change of the land use designation of the subject properties to "Commercial," which can be implemented by multiple zoning districts contained in the Unified Development Code. In evaluating the proposed zone change, the suitability of the specific zone (Commercial Retail) proposed by the applicant must be considered. For this reason, an additional measure of the suitability of this request is consideration of the nature of the potential future uses allowed by the CR zone when compared to the uses allowed under the existing RA zone, and the character of the existing land uses in the neighborhood. As stated previously, the subject property is located within an area largely characterized by holding uses consistent with the "Development Residential" designation.

The Planning Commission notes that participants at the hearing have argued that other zone designations, specifically CO (Commercial Office), MU-I and MU-II (Mixed Use) zones would, in fact, be a better zone for the property given the adjacent residential uses. Similarly, participants have argued that conditions to restrict certain CR-permitted uses, such as drive-through services, would make for an even better fit. The Planning Commission finds that, the issue of fit can be addressed by the following conditions of approval:

Condition 1: The subject property shall not contain more than three uses with drive through.

Condition 2: The subject property shall have no single retail store building that is constructed with more than 70,000 sq. ft.

The Applicant has carried its burden and made that demonstration. The standard does not require that the Applicant demonstrate that the requested zoning is the best or most ideal zoning for the property, only that it is either compatible with the vicinity's development pattern or better suited than the existing pattern.

SRC 265.005(e)(1)(B): If the zone change is City-initiated, and the change is for other than City-owned property, the zone change is in the public interest and would be of general benefit.

Finding: The proposal is not a City-initiated zone change. This criterion does not apply.

SRC 265.005(e)(1)(C): The zone change complies with the applicable provisions of the Salem Area Comprehensive Plan.

Finding: Findings addressing the minor comprehensive plan map criterion SRC 64.025(e)(2)(D), included above in this report, address the applicable provisions of the Salem Area Comprehensive Plan for this consolidated application. The proposal satisfies this criterion.

SRC 265.005(e)(1)(D): The zone change complies with applicable Statewide Planning Goals and applicable administrative rules adopted by the Department of Land Conservation and Development.

Finding: Similar to the response to conforming with applicable provisions of the Salem Area Comprehensive Plan, the findings above for Comprehensive Plan Change criterion SRC 64.025(e)(2)(D), addressing compliance with the Statewide Planning Goals and administrative rules, also included discussions of the requested CR commercial retail zoning where additional response based upon the zoning is warranted. Examples include the responses for Goal 9 and Goal 10. Other than those instances where the zoning is discussed specifically, the responses for Goal and rule compliance for zoning mirror the response for the requested Commercial plan designation. Therefore, the responses above for SRC 64.025(e)(2)(D) are hereby incorporated. Given that the requested CR zoning implements the Commercial plan designation, and this is a consolidated comprehensive plan change and zone change request, the analysis and conclusions for both applications is the same.

SRC 265.005(e)(1)(E): If the zone change requires a comprehensive plan change from an industrial designation to a non-industrial designation, or from a commercial or employment designation to any other use designation, a demonstration that the proposed zone change is consistent with the most recent economic opportunities analysis and the parts of the Comprehensive Plan which address the provision of land for economic development and employment growth; or be accompanied by an amendment to the Comprehensive Plan to address the proposed zone change; or include both the demonstration and an amendment to the Comprehensive Plan.

Finding: The proposed zone change is from RA (Residential Agriculture) to CR (Retail Commercial). No industrial Comprehensive Plan designations or zoning districts are involved in the proposal. The existing designation is not a commercial or employment designation.

Therefore, this criterion does not apply.

SRC 265.005(e)(1)(F): The zone change does not significantly affect a transportation facility, or, if the zone change would significantly affect a transportation facility, the significant effects can be adequately addressed through the measures associated with, or conditions imposed on, the zone change.

Finding: This zone change standard substantively requires an analysis similar to Goal 12's Transportation Planning Rule. It uses identical wording and lays out the same standard, which allows for mitigation of transportation impacts when a significant affect to a transportation facility is found. In short, it implements Goal 12 and must be interpreted

and applied consistently with Goal 12. The inter-relatedness of Goal 12 and the City's transportation-related requirements, whether expressed in the Comprehensive Plan, the SRC or the PWDS, is further demonstrated through the staff report comments which move freely from discussion of the TPR to City standards and back again. For that reason, the findings for Goal 12 above freely address the City traffic standards and issues in its analysis. Those Goal 12 findings are relevant here and are hereby incorporated in response to this standard.

Furthermore, many of the staff comments pertaining to City transportation standards were also addressed in response to whether the proposal is consistent with Comprehensive Plan goals and policies as well as with the STSP. Those responses are also herein incorporated.

To summarize the findings provided under Goal 12 and under relevant Comprehensive Plan and TSP provisions, the Planning Commission finds that the evidence and analysis submitted by DKS to be credible, as did ODOT. That analysis found that the plan designation change and zone change would lead to development that could cause a significant affect to some transportation facilities, most of which would fail anyway under the existing zoning even without the proposal. For the one that does not now fail - the site access to the subject property from the 27th Ave. round-about, the proposed mitigations ensure that the roundabout will meet City operating standards once constructed. The DKS analyses also demonstrate that the significant effects that would flow from the proposed plan designation and zone change that are greater than those that would occur from the existing zoning, are mitigated by the proposed mitigations imposed as conditions of approval such that transportation facilities would function within their operational standards or, if they already would have failed, there would be no further degradation of the transportation facility. That is what this criterion requires.

Condition 3: Mitigation as detailed in the Transportation Planning Rule analysis shall be completed as follows:

- *Battle Creek Road SE at Kuebler Boulevard SE* –
 - Construct a second southbound left turn lane on the Battle Creek Road SE approach.

- *27th Avenue SE at Kuebler Boulevard SE* –
 - Construct a second northbound right turn lane on 27th Avenue SE. The additional right turn lane shall extend from the site at the roundabout to the intersection with Kuebler. The signal shall be modified to accommodate the right turn lanes and splitter island.
 - Construct a second northbound left turn lane on 27th Avenue SE. The additional left turn land shall extend from the roundabout to the intersection with Kuebler Boulevard SE. The signal shall be modified to accommodate the two left turn lanes.
 - Extend the westbound left turn lanes on Kuebler Boulevard to provide 600 feet of vehicle queueing in each lane.
 - Additional widening, improvements, and signal modifications will be required on the north leg of 27th Avenue to insure proper lane alignment and safe operation at the intersection.

- *36th Avenue SE at Kuebler Boulevard SE –*
 - Construct a westbound right turn lane on Kuebler Boulevard SE at the intersection with 36th Avenue SE. The right turn lane shall provide for 100 feet of vehicle storage. Modify the traffic signal as required to construct the improvements.

The above findings demonstrate that the proposal satisfies this criterion.

The proposal meets this criterion.

SRC 265.005(e)(1)(G): The property is currently served, or is capable of being served, with public facilities and services necessary to support the uses allowed by the proposed zone.

Finding: Findings addressing the Comprehensive Plan Change criterion SRC 64.025(e)(2)(B), included above in this report, address the public facilities and services available to support residential uses allowed on the subject property as a result of the proposed zone change. The proposal satisfies this criterion.

SRC 265.005(e)(2) The greater the impact of the proposed zone change on the area, the greater the burden on the applicant to demonstrate that the criteria are satisfied.

Findings: The Planning Commission finds that the level of information provided in application addressing the factors listed under SRC Chapter 265.005(e) corresponds to the anticipated impact of the zone change proposal. The Planning Commission notes in particular the transportation impact evidence prepared and submitted by the applicant's expert. That evidence is extensive, responsive to the issues raised by public works and ODOT and demonstrates that the potential adverse impacts that could flow from the consolidated plan designation and zone change application will be mitigated by the Applicant. That evidence is also responsive to comments submitted by neighbors and neighborhood associations that focused almost entirely on the potential impacts that could flow from increased automobile use of the property that the proposal would allow.

The proposal satisfies this criterion.

CONCLUSION

Based on the facts and findings presented herein, the Planning Commission concludes the proposed Minor Comprehensive Plan Map Amendment and Zone Change, for property located at the southwest corner of the intersection of Kuebler Boulevard and I-5, satisfy the applicable criteria contained under SRC 64.025(e)(2) and SRC 265.005(e)(1) for approval.

Subject to the following conditions of approval:

Condition 1: The subject property shall not contain more than three uses with drive through.

Condition 2: The subject property shall have no single retail store building that is constructed with more than 70,000 sq. ft.

Condition 3: Mitigation as detailed in the Transportation Planning Rule analysis shall be completed as follows:

- *Battle Creek Road SE at Kuebler Boulevard SE –*
 - Construct a second southbound left turn lane on the Battle Creek Road SE approach.

- *27th Avenue SE at Kuebler Boulevard SE –*
 - Construct a second northbound right turn lane on 27th Avenue SE. The additional right turn lane shall extend from the site at the roundabout to the intersection with Kuebler. The signal shall be modified to accommodate the right turn lanes and splitter island.
 - Construct a second northbound left turn lane on 27th Avenue SE. The additional left turn land shall extend from the roundabout to the intersection with Kuebler Boulevard SE. The signal shall be modified to accommodate the two left turn lanes.
 - Extend the westbound left turn lanes on Kuebler Boulevard to provide 600 feet of vehicle queueing in each lane.
 - Additional widening, improvements, and signal modifications will be required on the north leg of 27th Avenue to insure proper lane alignment and safe operation at the intersection.

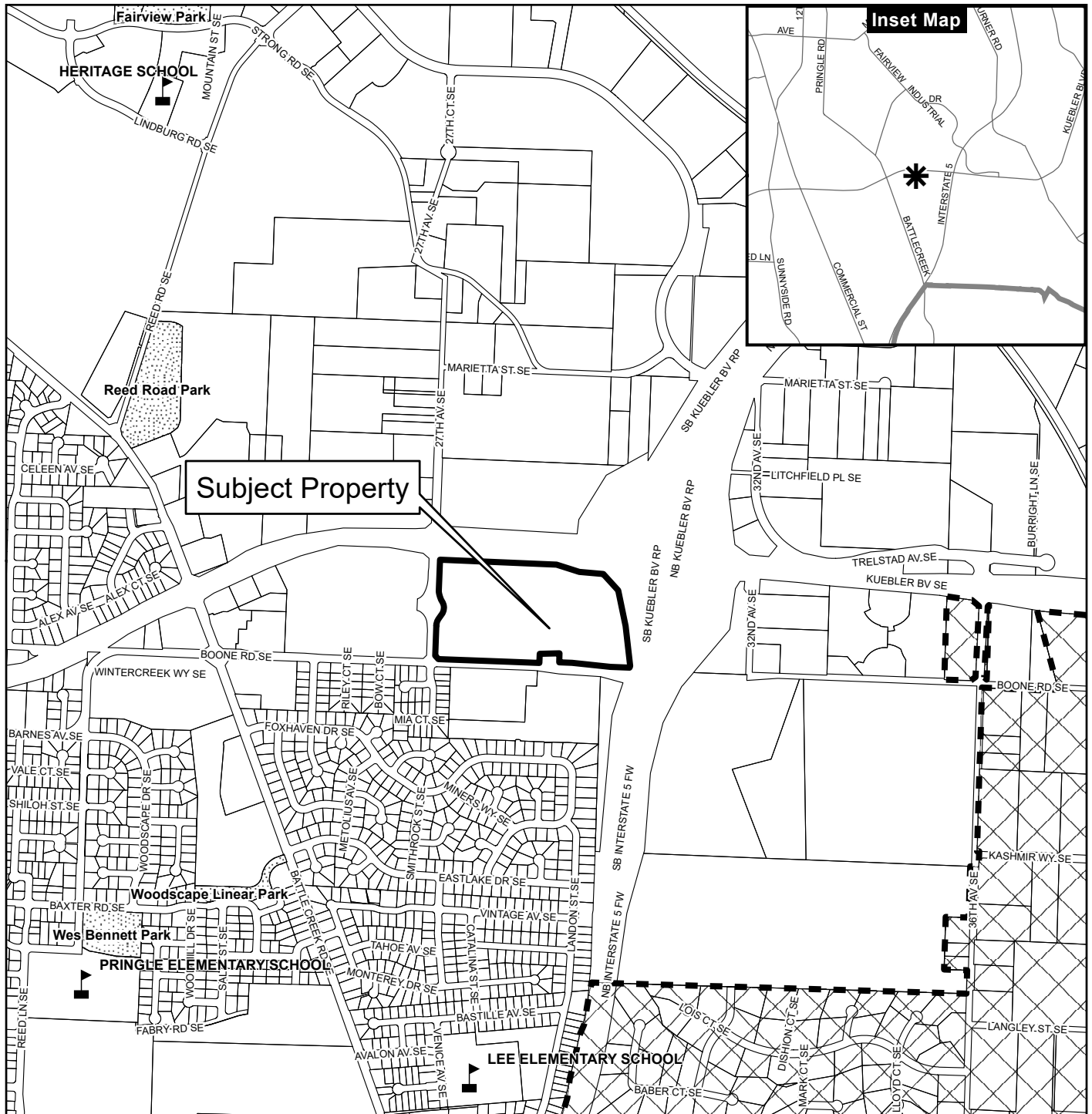
- *36th Avenue SE at Kuebler Boulevard SE –*
 - Construct a westbound right turn lane on Kuebler Boulevard SE at the intersection with 36th Avenue SE. The right turn lane shall provide for 100 feet of vehicle storage. Modify the traffic signal as required to construct the improvements.

Attachments: A. Vicinity Map, Comprehensive Plan Map and Zoning Map








Prepared by Olivia Dias, Current Planning Manager

Vicinity Map

2900 Block Kuebler BLVD SE



Legend

-  Taxlots
-  Urban Growth Boundary
-  City Limits
-  Outside Salem City Limits
-  Historic District
-  Schools
-  Parks

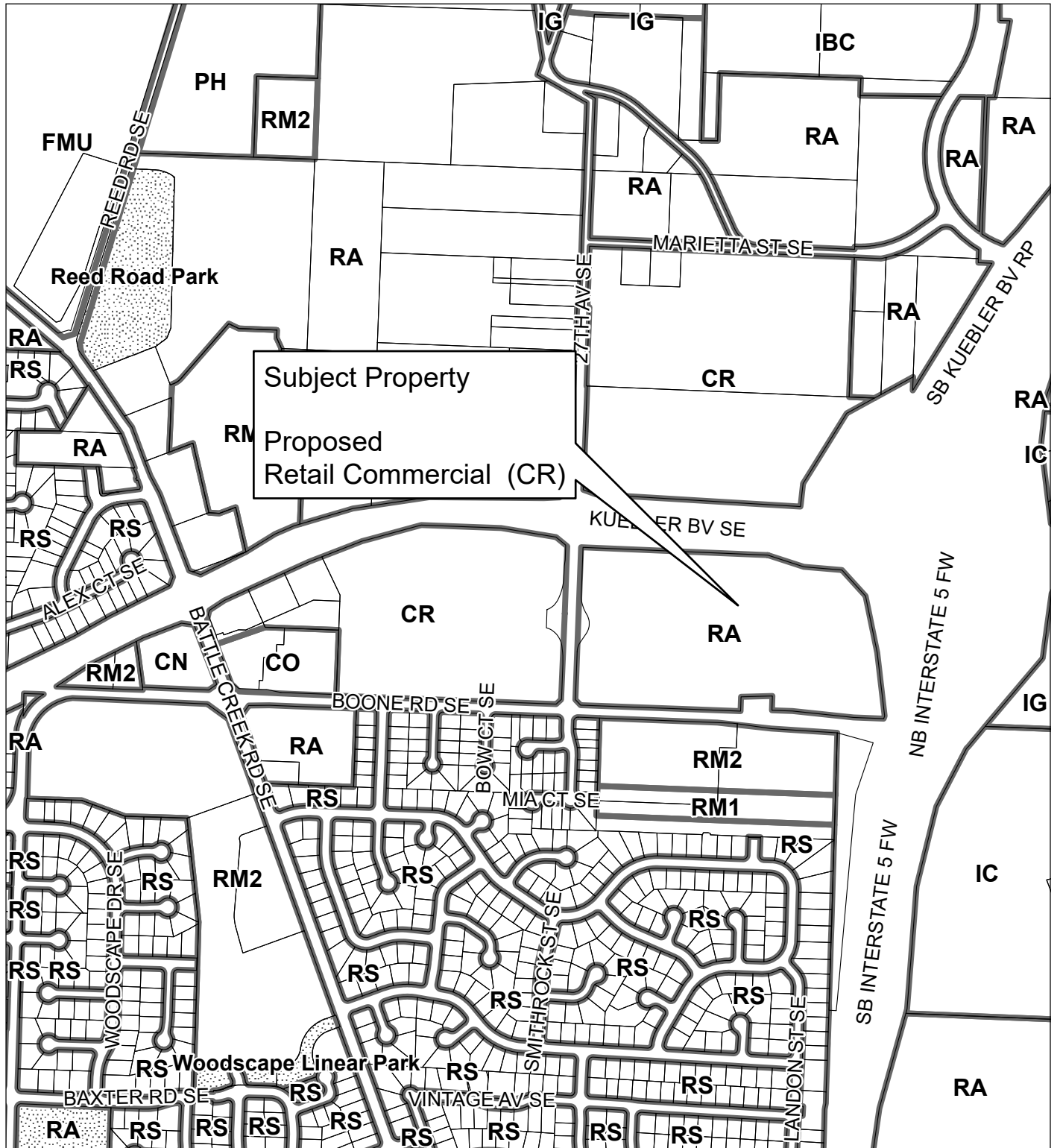


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PROPOSED ZONING MAP CHANGE



Subject Property
Proposed
Retail Commercial (CR)

Legend

- RS Base Zoning
- Urban Growth Boundary
- Outside Salem City Limits
- Taxlots
- Parks
- Schools

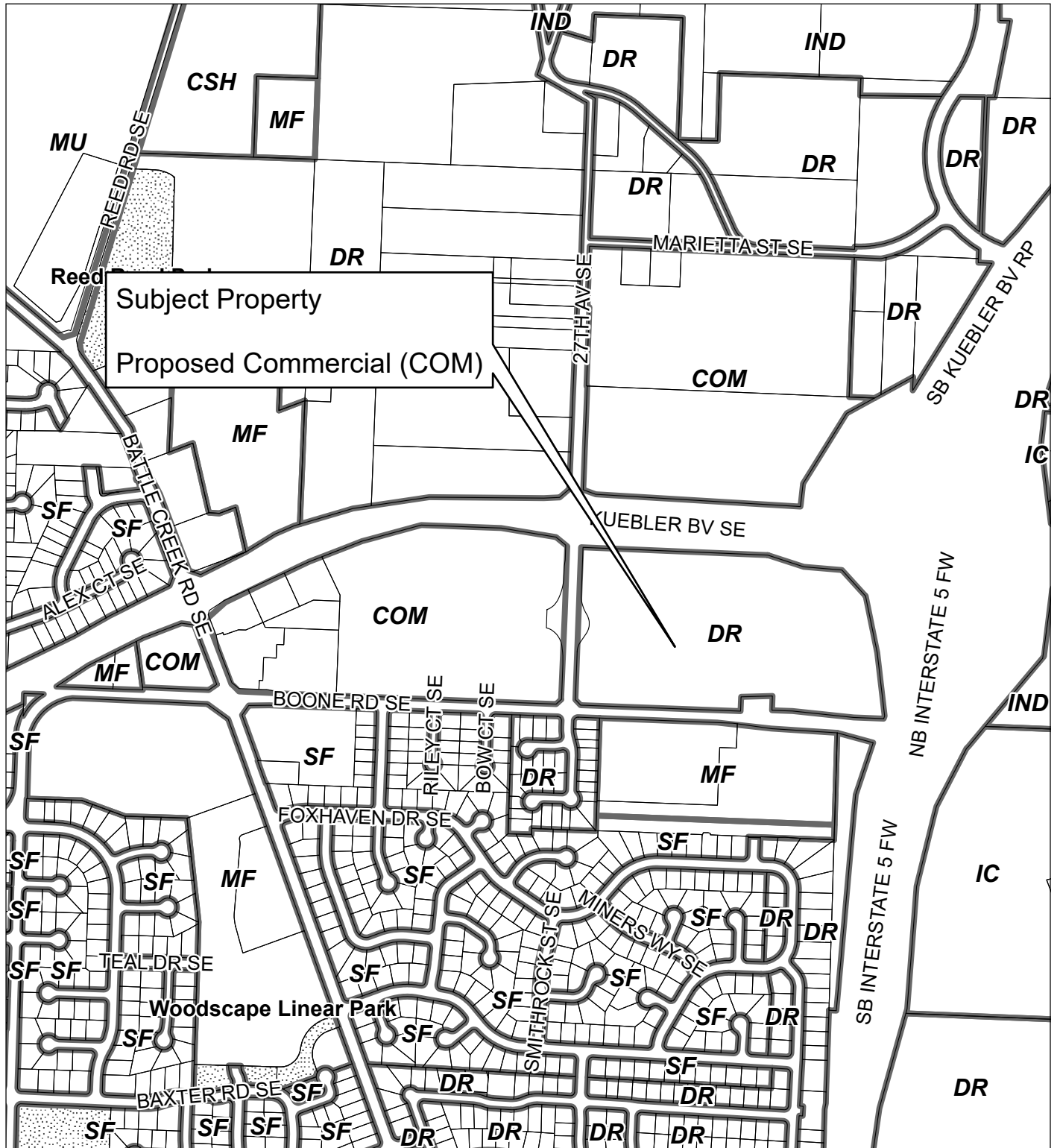
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CITY OF *Salem*
AT YOUR SERVICE
Community Development Dept.

PROPOSED COMPREHENSIVE PLAN CHANGE



Legend

- Comprehensive Plan
- Urban Growth Boundary
- Outside Salem City Limits
- Taxlots
- Parks
- Schools

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0 50' 100' 200 Feet



CITY OF *Salem*
AT YOUR SERVICE
Community Development Dept.



Wendie L. Kellington
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Lake Oswego Or
97034

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Facsimile (503) 636-0102
Email: wk@klgpc.com

January 24, 2022

Via Electronic Mail
City of Salem Planning Commission
C/O Olivia Dias
Planner
555 Liberty St SE
Salem OR 973

RE: CPC-ZC21-04

Dear Chair Griggs and Members of the Planning Commission:

This letter is written with deepest regret. In it, we must report that the findings that staff has placed before you for adoption, are wholly unacceptable - they do not reflect your approval of the above captioned matter; rather they set your approval up to fail. The applicant's findings submitted to the city for your consideration on January 10, 2022 on the other hand, used the two staff reports in this case, as their template. The applicant's findings changed the original two staff report findings only as necessary for accuracy, to reflect and to ensure the defensibility of, your approval. It is respectfully requested that you do not adopt the findings that staff has placed before you. Instead, we hope that you will review the findings the applicant drafted for you and compare those to the significant staff edited version before you tonight.

In the event that staff has not provided you with a copy of the findings the applicant submitted for your consideration, or a copy of the applicant's objections to staff's "redo" now before you - objections that the applicant registered on the same day that staff provided their "redo" - a holiday - January 17, 2022, those documents are attached. Specifically, the original proposed findings the applicant submitted on January 10, 2022 for your consideration and adoption, are Exhibit 1 to this letter. Our January 17, 2022 email objection to staff's redo is Exhibit 2. A redline comparison of the findings that the applicant submitted to you for adoption versus the staff ones you are being asked to adopt, are Exhibit 3 to this letter.¹

Given the fact that the applicant gave the city a week's lead time to review the proposed findings, it is disappointing in the extreme that staff did not reach out for a discussion of their concerns. The unwillingness to cooperatively resolve any issues staff may have had, is what puts the planning commission and the applicant in this difficult position.

¹ The staff findings we received on January 17, 2022 did not even get the location of the property right or correctly identify the involved neighborhood association. Exhibit 2, p 3. After we pointed that out to staff in our lengthy objections, staff revised their findings that the property abutted Mcleay Road SE and that the affected neighborhood was the Northgate neighborhood. But staff made no other significant changes to their findings, largely ignoring the applicant's request.

Primer of What Findings Are Supposed to do

- "Findings are adequate and supported by substantial evidence when the decision maker assembles evidence, identifies the relevant code standard, *sets out the evidence found to be persuasive* and *explains how that evidence led to the decision.*" *Mountain Gate Homeowners v. Washington County*, 34 Or LUBA 169 (1998).
- "Where a relevant issue is adequately raised in a land use proceeding, the findings supporting the final decision *must address the issue* and where the findings do not do so, remand is required." *Space Age Fuel, Inc. v. Umatilla County*, 72 Or LUBA 92 (2015).
- "When specific issues relevant to compliance with applicable approval standards are raised in the proceedings before the county, the county's *findings must address and respond specifically to those issues.*" *Collier v. Marion County*, 29 Or LUBA 462 (1995).
- "Findings are inadequate where a local government's decision makes conclusory statements of compliance with the applicable approval criteria without giving any factual or legal analysis to support the conclusion that the application complies with each of the criteria. *Larvik v. City of La Grande*, 34 Or LUBA 467 (1998).
- "Where petitioners contend the local government failed to adopt findings addressing standards that appear to be relevant to the challenged decision, and the challenged decision includes only a conclusory statement that applicants have adequately demonstrated compliance with such standards, LUBA will remand the decision for lack of adequate findings." *Cummings v. Tillamook County*, 26 Or LUBA 139 (1993).
- "Failure of local government findings to address a specific issue raised by a party below, which is relevant to compliance with applicable approval standards, is a basis for remand." *Moore v. Clackamas County*, 29 Or LUBA 372 (1995).
- "A decision that is not responsive to the inquiry required by applicable zoning ordinances, and does not respond to relevant issues raised during local proceedings pursuant to such ordinances, fails to provide adequate findings." *Wood v. Crook County*, 36 Or LUBA 143 (1999).
- "When the evidence in the record is conflicting, and the local government's findings fail to explain the basis for its conclusion or state which evidence it finds persuasive, LUBA must remand the decision for additional findings." *Moore v. Clackamas County*, 29 Or LUBA 372 (1995).
- "A local government's decision *** is supported by substantial evidence, where the evidence the local government relies on is credible, and the opposing evidence does not

so undermine the evidence relied upon as to render the local government's reliance on supporting evidence unreasonable." *Aman v. City of Tigard*, 35 Or LUBA 353 (1998).

- "The choice between conflicting believable evidence belongs to the local government decision maker." *Neuharth v. City of Salem*, 25 Or LUBA 267 (1993).
- "A hearings officer's decision relying upon intervenor's traffic study is supported by substantial evidence where the hearings officer *addressed petitioner's challenges to the credibility of the traffic study by citing to testimony of the intervenor's traffic engineer responding to each of petitioner's challenges.*" *Willis v. Clackamas County*, 76 Or LUBA 244 (2017).

In sum, findings have to explain what the relevant criteria are and how they are met. Conclusionary findings are always inadequate. Findings have to set out the relevant standards, the evidence relied upon and respond to all relevant issues that are raised by opponents. The term "opponents" in this context includes city staff here. Thus, when staff claimed (for example) in their last staff report that various comprehensive plan policies applied and were not met, it is essential to explain in the findings why staff was mistaken. Similarly, the TPR and city TPR implementing standards, must be addressed in detail; conclusionary responses will not do. Finally, how the Public Works Standards apply is unquestionably relevant and, so for example, it is relevant that, that the city council determined that pandemic traffic counts are unreliable just over a year ago in the Costco decision; a fact confirmed by the undisputed reality seen in the record in this case that the applicant took traffic counts in October 2021 and they were much lower than the pre-pandemic counts suggested should have been the case. The staff revised findings wipe out nearly all of the findings that included the critical elements of proper findings. And the resulting staff package before you, is simply unacceptable.

Summary of the Most Significant Problems with the Staff Revisions to the Findings Provided by the Applicant

- A relevant issue was raised by project opponents that the SRC 64.025(e)(2)(A)² standards are not alternatives, but rather each must be separately satisfied. The proper

² This provision states:

"(A) The minor plan map amendment is justified based on the existence of *one of the following*:

"(i) *Alteration in circumstances.* Social, economic, or demographic patterns of the nearby vicinity have so altered that the current designations are no longer appropriate.

"(ii) *Equally or better suited designation.* A demonstration that the proposed designation is equally or better suited for the property than the existing designation.

"(iii) Conflict between comprehensive plan map designation and zone designation. A minor plan map amendment may be granted where there is a conflict between the comprehensive plan map designation and the zoning of the property, and the zoning designation is a more appropriate designation for the property than the comprehensive plan map designation. In determining whether the zoning designation is the more appropriate designation, the following factors shall be considered:

*****" (Emphasis supplied.)

interpretation of that standard is then important to include in the findings. Staff's removal of the findings that explain that the standard expresses alternatives is unacceptable:

~~The Planning Commission agrees with the above statement and response and incorporates the above analysis as its own. The Planning Commission finds that the standard requires that only one basis be shown and that the proposal satisfies both the "alteration and circumstances" basis and the "equally or better suited" requirement set forth under SRC 64.025(e)(2)(A)(i) and (ii) for the reasons provided above.~~

- Staff includes findings (italicized below) that have no evidentiary support and are designed to support denial, not approval:

"The City's current suggestion is for CO (Commercial Office) zoning for the subject property, due in part to transportation system impacts associated with changing the zoning to CR (Commercial Retail)."

The only evidence in the record is that the functional transportation impacts of CO and CR zoning are the same. This gratuitous and wholly erroneous finding must be removed.

- Staff improperly removed accurate findings explaining the nature of the issues raised by a group of opponents.

~~**Finding:** The Planning Commission **Findings:** The applicable Goals and Policies of the Comprehensive Plan are addressed immediately below followed by findings for the Statewide Planning Goals and administrative rules. The Planning Commission notes that public comments did not raise any specific plan policies or goals, or specific statewide planning goals as issues during the proceeding. Furthermore, public comments did not address directly any specific plan goals or policies, or statewide planning goals discussed in the application narrative or the staff reports. Rather, public testimony referred generally to transportation issues and to what the appropriate zoning for the property should be. The Planning Commission also notes that compliance with the~~

- Staff improperly removed findings responding to the following yellow highlighted standard, in favor of conclusionary findings that ignore the yellow highlighted provisions:

Salem Urban Area Goals and Policies, D. Growth Management Goal (Page 28, Salem Comprehensive Policies Plan):

To manage the growth in the Salem urban area through cooperative efforts of the City of Salem and Marion and Polk Counties, to ~~insure~~ensure the quality of life of present and future residents of the area, and to contain urban development to preserve adjacent farm land.

~~**Planning Commission Findings:** The Planning Commission finds that neither Marion County nor Polk County commented on the proposal and that adhering to the process and standards in the City's land use standards, as is the case here, reflects the contemplated intergovernmental cooperation. Further, the evidence submitted into the record demonstrates that all public facilities and services (other than transportation discussed later), are not only available for the uses allowed by the Commercial Plan designation and CR zone, but are also adequate for those uses, thus contributing to the quality of life in the area. As the Staff Response noted, "Master-planned facilities necessary to support development of a shopping center on the subject property will be evaluated through an Urban Growth Preliminary Declaration." Regarding transportation, as explained in greater detail below, the proposal does not cause the transportation system to function any worse than it would if the property maintained its RA designation and zone and, in some instances, the transportation system is improved by approval of this proposal, at the developer's expense, over its functionality without the proposal. At the same time, there is evidence in the record that the south part of the city where the subject property is located, has a deficit of shopping opportunities for the citizens who live in that area. Accordingly, the proposal not only does not further degrade the transportation system, but also provides an important and useful public benefit of increased shopping opportunities in an area of the city that will benefit from the same.~~

~~Moreover, the SRC standards that will apply to development of the property are designed to further ensure that the quality of life of present and future residents of the area is maintained. Allowing commercial development to occur where needed inside the city and UGB (as here), is a well-known method for containing urban development within acknowledged urban land, taking development pressure off of farmland outside the UGB. Allowing reasonably intensive urban development of urban land, preserves farmland outside of the city.~~

~~The Planning Commission finds that the proposal is consistent with this Comprehensive Plan Goal and its implementing policies.~~

Finding: The public facilities and service needs for the subject property would be provided at the time of development of the site. All public services and utilities are available in the vicinity of the subject property including water, sewer, storm drainage, streets, sidewalks, fire and police protection, electricity, telecommunications, and solid waste disposal. The proposed Comprehensive Plan Map amendment with concurrent Zone Change is consistent with these policies. Master-planned facilities necessary to support commercial development on the subject property will be evaluated through a Urban Growth Preliminary Declaration.

- Issues were raised that MU zoning should be applied to meet the following standard:

"Salem Urban Area Goals and Policies, F. Mixed-Use Development Goal (Salem Comprehensive Policies Plan):

"To provide a mixture of complementary land uses that may include housing, retail, offices, services, industrial and civic uses, to create economic and social vitality."

Staff's findings wipe out the explanation of why CR zoning meets this standard and MU does not. Staff wiped out the findings that explained the MU zone does not allow drive-throughs and why drive-throughs are important:

~~Planning Commission Findings:~~ The ~~Planning Commission notes that the~~ Commercial plan designation and the requested Commercial Retail zoning allows a broad range of uses on the subject property. Although not strictly one of the "mixed use" zones some public comments requested, the requested CR zoning does not preclude mixed use development of the site and the Applicant has indicated a desire for that to occur if at all possible.

~~The Planning Commission notes that one~~ One of the reasons for approving the CR zone instead of mandating one of the MU zones is the Comprehensive Plan policy under this goal that encourages flexibility in the siting and design of new developments to respond to the marketplace. As the Applicant explained, the CR zone provides that greater flexibility. ~~This is also one of the reasons why, despite comments requesting that the Planning Commission prohibit drive-through uses, which the MU zones would achieve, the Planning Commission is not requiring MU zoning. The Planning Commission finds persuasive that the COVID situation has created a consumer dynamic favoring the option of contactless purchases provided by drive up and drive through shopping opportunities. Moreover, in some situations drive up and drive through purchases are the only way some people can obtain needed goods due to their personal health limitations or government imposed quarantine. The MU zone does not allow drive through facilities and so diminishes the flexibility to respond to the need for reasonable opportunities for contactless shopping. On the other hand, the Planning Commission agrees that there can be too many drive through facilities in a development and too many drive throughs can diminish economic and social vitality. Accordingly, as a condition of approval, the Planning Commission limits the number of drive through facilities that may be established on the subject property, to three, via a condition of approval. Therefore, the Planning~~

- The staff revision below ignores that the applicable standard asks about commercial centers and says nothing about mixed use or shopping centers. Staff's revisions are unhelpful, unresponsive and potentially harmful because it suggests that the findings have not addressed the "commercial center" part of the standard:

To maintain and promote the Salem urban area as a commercial center for the Marion-Polk County metropolitan area.

~~Planning Commission Findings~~ Finding: The proposed commercial designation of the subject property would allow development of a ~~commercial~~ mixed-use development or shopping center serving the southeastern portion of the Marion-Polk County metropolitan area. Existing commercial concentrations elsewhere in the region, such as downtown Salem, the Commercial Street SE corridor, and Lancaster Drive are a considerable distance from existing and future development in the southeastern portion of the metropolitan area.

~~The proposal is consistent with this Comprehensive Plan Goal~~ Transportation access to the subject property would promote use of a site within the Salem urban area as the commercial center for underserved areas inside and outside of the City limits.

- Staff proposes to cut out the findings response to the plan policy issues that they raised. It is obvious from the "findings primer" above, that since they raise the relevant issue of plan compliance, their objections must be addressed in findings. The revisions are unacceptable - staff's issues raised in their staff reports cannot be ignored as their findings

propose. The problematic changes in this regard are lengthy and you can see them at Exhibit 3, p 26 et seq., to this letter.

- Staff revisions to the findings at Exhibit 3, p 31-32 are inaccurate and, more importantly, a thinly veiled attempt to convert an approval into a denial. They are inaccurate asserting that the proposal puts 12,000 new traffic trips on the system - the number is 11,966 new trips. However, the more significant problem is that the staff revisions falsely insinuate that ODOT objected to the proposed mitigation. The truth of the matter is that ODOT did not dispute, and its own manual states, that because traffic associated with the proposal is within .03 of the v/c target, the target is met and no mitigation is required. To give you a hint of how the staff revisions twist the truth, the below omission is revealing:

~~The one area of Planning Commission disagreement with the Staff Response lies with transportation facilities. Not included in the above Staff Response quote is Staff's analysis of the Oregon Department of Transportation's response concerning the need, or lack thereof, for improvements to the southbound ramp to I-5. The Planning Commission disagrees with staff's analysis that ODOT's letter states that mitigation is warranted, but that ODOT does not support any action to be taken. The Planning Commission finds that ODOT's decision to not "support" the mitigation improvement was because it concluded that the mitigation was not necessary based upon the Applicant's TPR Study, which ODOT also concluded used appropriate methodologies and levels of analysis. The Planning Commission understands from ODOT's letter that ODOT's decision to not "support" the mitigation came from the fact that ODOT concluded it was not needed. In Transportation Planning Rule (TPR) parlance, because the volume to capacity (v/c) ratio was within 0.03 of the adopted target, ODOT's rule provides that the proposal is to be considered in compliance with the target and, in this instance, there was no significant effect to the I-5 southbound ramp that requires mitigation. Because no mitigation is required, ODOT did not "support" the proposed mitigation. Staff misreads ODOT's letter to the extent Staff believes ODOT was saying that mitigation was required and because ODOT would not support it, the proposal resulted in an unmitigated significant effect to a transportation facility. As discussed below, the~~
The evidence in the record shows there ~~was no significant effect to the I-5 southbound ramp and therefore mitigation is not required.~~

- The entirety of the staff revisions to the findings about compliance with Goal 12 (Transportation), at Exhibit 3, p 33-41 are unacceptable. They take out any discussion of the relevant issues raised and how the planning commission resolves those issues and differences of opinion. Those, as we know from the primer, are fatal defects creating indefensible findings if the staff version is adopted.
- The staff revisions to the findings of compliance with SRC 64.025(e)(2)(E) are wholly unacceptable. See Exhibit 3, p 43-44. What they remove are the original staff report's findings of compliance with that standard. If staff found the standard was met on November 2, 2021, there is no justification for them ignoring those findings now to support the planning commission's decision to approve the proposal. There is no justification for doing so and again, leaves the findings indefensible.

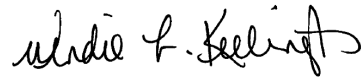
- The staff revisions to the findings of compliance with SRC 265.005(e)(1)(A) (see Exhibit 3, p 44-45) are similarly unacceptable. They omit the critical discussion of how this standard is met, in favor of conclusionary findings, which are, of course, indefensible.
- The findings of compliance with SRC 265.005(e)(1)(C); (1)(F) are similarly unresponsive and inadequate. See Exhibit 3, p 47; and p 48-49. Again, the findings staff wishes to omit, respond to relevant issues staff raised and as such, a response is required as a matter of law. Staff's revisions are designed to result in a denial, not to support the planning commission's approval.
- Finally, The conditions of approval at "Condition 3" are problematic either because they are vague which could cause problems when the site develops or do not reflect your approval at all. The staff conditions are shown below - with our changes to the staff conditions in "track changes":
 - a) **Battle Creek Road SE at Kuebler Boulevard SE –**
 - Construct a second southbound left turn lane on the Battle Creek Road SE approach.
 - b) **27th Avenue SE at Kuebler Boulevard SE**
 - Construct a second northbound right turn lane on 27th Avenue SE. The additional right turn lane shall extend from the site access at the roundabout to the intersection with Kuebler Boulevard SE. The signal shall be modified to accommodate the right turn lanes and splitter island."
 - Construct a second northbound left turn lane on 27th Avenue SE. The additional left turn lane shall extend from the roundabout to the intersection with Kuebler Boulevard SE. The signal shall be modified to accommodate the two left turn lanes."
 - Extend the westbound left turn lanes on Kuebler Boulevard at 27th Avenue SE to provide 600 feet of vehicle queueing in each left turn lane.
 - Additional widening improvements; and signal modifications ~~will~~may be required on the north leg of 27th Avenue ~~to insure proper lane alignment and safe operation at the intersection~~to meet design standards for traffic signal indication placement and intersection lane alignment.
 - c) **36th Avenue SE at Kuebler Boulevard SE -**
~~Construct a westbound right turn lane on Kuebler Boulevard SE at the intersection with 36th Avenue SE. The right turn lane shall provide for 100 feet of vehicle storage. Modify the traffic signal as required to construct the improvements." Pay \$118,000.00 to the City of Salem for the applicant's proportionate share of improving the intersection of Kuebler Boulevard and 36th Avenue.~~

The latter regarding 36th and Kuebler, was always the applicant's proposal for a condition regarding that distant intersection, in all of the hearings. The rationale is that the applicant's proposal only adds 24% of the trips through this intersection, which is quite distant from the subject property and paying the applicant's proportionate share fully mitigates the *applicant's*

impacts. For this reason, it was never contemplated that the applicant would make the improvement that staff has now added as a condition. The condition was certainly never discussed in any of the planning commission hearings. That said, if the planning commission strongly wishes that the applicant make this improvement, in the spirit of cooperation it will do so, but the applicant requests that if so, then what is to be required is specific and stays within the \$500,000 cost estimate to establish.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Wendie L. Kellington". The signature is fluid and cursive, with a large initial "W" and "L".

Wendie L. Kellington

WLK:wlk

CC: Client

BEFORE THE PLANNING COMMISSION OF THE CITY OF SALEM

IN THE MATTER OF APPROVING)	ORDER NO. [REDACTED]
THE APPLICATION FOR)	COMPREHENSIVE PLAN CHANGE/
COMPREHENSIVE PLAN CHANGE/)	ZONE CHANGE NO. CPC-ZC21-04
ZONE CHANGE CASE NO.)	
CPC-ZC21-04 FOR THE PROPERTY)	
LOCATED AT THE 2900 BLOCK OF)	
KUEBLER BLVD SE (AMANDA)	
APPLICATION NO. 21-115803-ZO;)	
21-115805-ZO))	

This matter coming regularly for hearing before the Planning Commission of the City of Salem, at its December 21, 2021 meeting, and the Planning Commission, having received evidence and heard testimony, hereby references and incorporates the attached Facts and Findings, attached as Exhibit A, and adopts the following Order, with conditions of approval as set forth in Exhibit A, in approving the application for Comprehensive Plan Change and Zone Change Case No. CPC-ZC21-04.

ORDER:

The application for Comprehensive Plan Change and Zone Change, Case No. CPC-ZC21-04, as proposed and with conditions of approval provided herein, is approved.

This order constitutes the final land use decision and any appeal hereof must be filed with the Oregon Land Use Board of Appeals within 21 days of the date that notice of this decision is mailed to persons with standing to appeal.

Exhibit A: Facts and Findings, Dated January [REDACTED], 2022.

APPROVED by the Planning Commission this ____ day of January, 2022.

ATTEST:

City Recorder

FOR THE PLANNING COMMISSION MEETING OF: _____
AGENDA ITEM NO: _____

TO: Planning Commission

FROM: Norman Wright, Community Development Director

FINAL ADOPTION DATE: January , 2022

APPLICATION: Comprehensive Plan Change/Zone Change 21-04

LOCATION: 2900 Block of Kuebler Boulevard SE; Marion County Assessor's Map Number T8S R3W S12 Quarter Section C, Tax Lot 2201

SIZE: 24.66 acres

REQUEST: To change the Salem Area Comprehensive Plan Map designation from "Developing Residential" to "Commercial" and to change the zoning from RA (Residential Agriculture) to CR (Commercial Retail) for a 24.66-acre site located in the 2900 Block of Boone Road SE.

APPLICANT: BOONE ROAD COMMERCIAL, LLC

OWNER: KUEBLER CASCADE VIEW, LLC

APPROVAL CRITERIA: Comprehensive Plan Map Amendment: Salem Revised Code, Chapter 64
Zone Map Amendment: Salem Revised Code, Chapter 144

PLANNING COMMISSION MOTION: APPROVE the Comprehensive Plan/Zone Change, subject to the following Zone Change Conditions of Approval

CONDITIONS OF APPROVAL:

- (1) The Applicant will enter into an Improvement Agreement with the City under which the Applicant will:

- (a) Fully construct the west bound slip lane (a west bound right turn lane to the roundabout) from the site access onto 27th Avenue SE;
- (b) Fully construct proposed improvements to the Kuebler Boulevard and 27th Avenue intersection, which include installing dual north bound right turn and dual north bound left turn lanes, and changing phasing to protected-only for north bound left and south bound left turns;
- (c) Construct the second south bound left turn lane at the intersection of Kuebler Boulevard and Battle Creek Road;
- (d) Pay \$118,000.00 to the City of Salem for the applicant's proportionate share of improving the intersection of Kuebler Boulevard and 36th Avenue.

The above improvements shall be constructed in accordance with the Improvement Agreement and conform to Public Works Design Standards.

(2) The property will be improved with no more than three drive through window establishments. A single store/restaurant/bank etc. may have more than one drive through feature serving the single establishment and that scenario will count as one drive through window.

(3) No single retail store building shall be composed of more than 70,000 sq. ft. of gross leasable area.

BACKGROUND INFORMATION

Procedural History

On August 25, 2021, Mark Shipman of Saalfeld Griggs PC, on behalf of Boone Road Commercial, LLC, filed an application for a Comprehensive Plan Change and Zone Change to change the Comprehensive Plan Map designation of the subject property from Developing residential to Commercial and to change the zoning from RA (Residential Agriculture) to CR (Retail Commercial). The application was deemed complete for processing on September 23, 2021.

A public hearing was scheduled with the Planning Commission for November 2, 2021. The staff report, made available on October 26, 2021, recommended denial of the application.

On November 2, 2021, the Planning Commission held a public hearing and received testimony for consolidated Comprehensive Plan Map Amendment and Zone Change Case No. 21-04. The Planning Commission continued the public hearing to November 16, 2021.

At the November 16, 2021 hearing staff and the applicant requested the Planning Commission continue the public hearing until December 21, 2021 to resolve concerns with the Transportation Planning Rule (TPR) Analysis. The Planning Commission granted the continuance to December 21, 2021.

On December 21, 2021, having reviewed the evidence in the record, the Planning Commission closed the public hearing and deliberated. Following deliberations, the Planning Commission voted to approve, CPC-ZC21-04, with conditions.

Proposal

The applicant is requesting to change the zoning of the subject property from RA (Residential Agriculture) to CR (Retail Commercial). The zone change also requires an amendment to the Salem Area Comprehensive Plan (SACP) Map to change the comprehensive plan designation from "Developing Residential" to "Commercial," a designation which is implemented by the CR zone.

The proposal requires the following land use approvals:

- 1) A Minor Comprehensive Plan Map Amendment to change the Comprehensive Plan Map designation of the subject property from "Developing Residential" to "Commercial."
- 2) A Quasi-Judicial Zone Change to change the zoning of the subject property from RA (Residential Agriculture) to CR (Retail Commercial).

Existing Site Conditions

The subject site consists of four adjoining rectangular lots totaling 24.66 acres in size (Marion County Assessor's Map and Tax Lot Number 083W12C / 2201). The subject property is primarily undeveloped. The subject property slopes downward from a high point of approximately 380 feet above mean sea level (AMSL) along the south property line to approximately 298 feet AMSL at the east property line and approximately 312 AMSL at the north property line.

Salem Area Comprehensive Plan (SACP) Designation

The Salem Area Comprehensive Plan (SACP) map designates the subject property as "Developing Residential."

The Comprehensive Plan designations of surrounding properties include:

- North: (Across Kuebler Boulevard SE) "Commercial"
- South: (Across Boone Road SE) "Developing Residential" and "Multiple Family"
- East: Right-of-way for Interstate 5
- West: (Across 27th Avenue SE) "Commercial"

Components of the Comprehensive Plan

The Salem Area Comprehensive Plan is the long-range plan for guiding development in the Salem urban area. The overall goal of the plan is to accommodate development in a timely, orderly, and efficient arrangement of land uses and public facilities and services that meets the needs of present and future residents of the Salem urban area. Many different documents and maps, when taken together, comprise the Salem Area Comprehensive Plan.

Salem Transportation System Plan (STSP): The STSP uses a Street Classification System to determine the functional classification of each street within the City's street system. The subject property is abutted by a designated collector street to the west (27th Avenue SE). Kuebler Boulevard SE, a designated parkway, runs along the north property boundary. Right-of-way for the Interstate 5 freeway and interchange ramps form part of the eastern boundary of the site. Boone Road SE, is a collector street west of 27th Avenue SE and is a local street as it runs along the southern property boundary.

Neighborhood Plan: The subject property is within the boundary of the South Gateway Neighborhood Association (SGNA), which does not have an adopted neighborhood plan.

Zoning

The subject property is zoned RA (Residential Agriculture). Surrounding properties are zoned as follows:

- North: (Across Kuebler Boulevard SE) CR (Retail Commercial)
- South: (Across 27th Avenue SE) RA (Residential Agriculture) and RM-II (Multiple Family Residential)
- East: Right-of-way for Interstate 5
- West: (Across 27th Avenue SE) CR (Retail Commercial)

Relationship to the Urban Service Area

The subject property is located outside of the City's Urban Service Area. Pursuant to the Urban Growth Management requirements contained under SRC Chapter 200, an Urban Growth Preliminary Declaration is required prior to applying for a building permit or subdividing the property. An Urban Growth Preliminary Declaration application was previously approved (UGA09-08) and is now expired.

Land Use History

Comprehensive Plan Change/ Zoning Change (CPC/ZC 93-15); A joint Annexation, Comprehensive Map Change and Zone Change. (Not approved by voters, Expired).

Annexation Case (ANXC-688); Annexation of subject property effective April 4, 2011.

Urban Growth Preliminary Declaration (UGA09-08); A UGA Development permit for approximately 40 acres (subject property and property south of Boone Road) to determine public facilities required for the properties. (Expired).

Public and Private Agency Review

Salem Public Works Department – The Public Works Memo identified the storm drainage, water and sanitary sewer facilities adjacent to the property and concluded the subject property is capable of being served through the extension of public facilities as specified in existing infrastructure master plans. The memo also noted future development will require an Urban Growth Preliminary Declaration pursuant to SRC Chapter 200 as noted above.

The Public Works Department, Development Services Section, also reviewed the proposal and submitted comments, recommending denial on transportation grounds.

Salem Fire Department – The Salem Fire Department submitted comments indicating that they have no concerns with the request.

Salem Building and Safety Division – The Building and Safety Division has reviewed the proposal and indicated no concerns.

Oregon Department of Land Conservation and Development (DLCD) – No comments received.

Cherriots – Cherriots commented that two stops should be provided to facilitate the expansion of the existing public transportation routes. The applicant and Cherriots discussed providing stops on a proposed north-south street south of the roundabout as shown in application materials. The exact bus stop(s) location, and decision about whether there will be one bus stop or two, will be decided in the subsequent site design review processes.

Neighborhood Association and Public Comments

The subject property is located within the boundaries of the South Gateway Neighborhood Association. The property is across Kuebler Boulevard SE to the Morningside Neighborhood Association and near to the Southeast Mill Creek Association (SEMCA), the boundary for which is across Interstate – 5.

Required Open House/Neighborhood Association Meeting. Prior to application submittal, SRC 300.320 requires the applicant for a proposed minor amendment to the City's comprehensive plan map to either arrange and conduct an open house or present their proposal at a regularly scheduled meeting of the neighborhood association the property is located within. On June 10, 2021, the applicant's representative attended the South Gateway Neighborhood Association meeting, held virtually, to present their

proposal. A summary of the comments provided at the neighborhood association meeting was part of the application materials.

Neighborhood Association Comment

The City provided a notice of filing and request for comments to the South Gateway Neighborhood Association, Morningside Neighborhood Association and Southeast Mill Creek Association (SEMCA) pursuant to SRC 300.620(b)(2)(B)(v), which requires notice to be sent to any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property.

Comments were received from the South Gateway Neighborhood Association indicating opposition to the proposal. South Gateway stated that they preferred Mixed Use (MU-I or MU-II) zoning for the subject property. South Gateway and four surrounding property owners also indicated that traffic is a concern due to the new Costco building being constructed and that the addition of a drive-thru to the area could be detrimental to the traffic system.

Public Comment

Notice was also provided, pursuant to SRC 300.620(b)(2)(B)(iii), (vi), & (vii), to all property owners and tenants within 250 feet of the subject property. Posted notice signs for the public hearing were placed in a location that was visible from each street frontage of the subject property and remained in place through the day of the public hearing as required by SRC 300.620(b)(3). Public comment was received and entered into the record.

Homeowners Association

The subject property is not located within a Homeowners Association.

Oregon Department of Land Conservation and Development (DLCD) Notice

State law (ORS 197.610) and SRC 300.602(b)(1) require the City to provide the Oregon Department of Land Conservation and Development (DLCD) a minimum 35-day notice when an applicant or the City proposes an amendment to an acknowledged Comprehensive Plan or land use regulation or to adopt a new land use regulation. The City sent notice of this proposal to DLCD on September 24, 2021. DLCD did not submit any comments.

Site Plan

A site plan is not required as part of a Comprehensive Plan Map Amendment/Zone Change application. The applicant submitted a conceptual plan indicating commercial retail, lodging, mixed use, office and residential uses on the property. The Transportation Planning Rule analysis submittal also includes conceptual site plans with a shopping center contained in several areas and potential uses on the subject

property, and the TPR Study uses a worst-case scenario in the analyses as required by the rule.

Although the applicant's site plans illustrates how the site could be developed under the proposed Comprehensive Plan Map designation, the site plan and illustrations submitted were conceptual only, the applicant has not proposed particular development and has not requested development approval as part of the subject application.

Applicant Submittal Information:

Requests for Minor Comprehensive Plan Changes and zone changes must include a statement addressing each applicable approval criterion and standard. The applicant submitted such statements and proof, which are included in the record. Staff utilized the information from the applicant's statements to evaluate the applicant's proposal and to submit staff responses. Where appropriate, these findings identify the respective applicant statements, the staff response, and public responses as part of the Planning Commission's analysis and findings.

1. FINDINGS APPLYING THE APPLICABLE SALEM REVISED CODE CRITERIA FOR A COMPREHENSIVE PLAN AMENDMENT

Salem Revised Code (SRC) 64.025(e)(2) establishes the approval criteria for Comprehensive Plan Map amendments. In order to approve a quasi-judicial Plan Map amendment request, the decision-making authority shall make findings of fact based on evidence in the record that demonstrates satisfaction of all of the applicable criteria. The applicable criteria are shown below in **bold** print. Following each criterion is a finding relative to the amendment requested. The excerpts and summaries of the Applicant Statements and Staff Report are drawn largely from the application written statement and the Staff Reports dated November 2, 2021 and December 21, 2021.

SRC 64.025(e)(2)(A): The Minor Plan Map Amendment is justified based on the existence of one of the following:

- (i) ***Alteration in Circumstances.*** Social, economic, or demographic patterns of the nearby vicinity have so altered that the current designations are no longer appropriate.
- (ii) ***Equally or Better Suited Designation.*** A demonstration that the proposed designation is equally or better suited for the property than the existing designation.
- (iii) ***Conflict Between Comprehensive Plan Map Designation and Zone Designation.*** A Minor Plan Map Amendment may be granted where there is conflict between the Comprehensive Plan Map designation and the zoning of the property, and the zoning designation is a more appropriate designation for the property than the Comprehensive Plan Map designation. In determining whether the zoning designation is the more

appropriate designation, the following factors shall be considered:

- (aa) Whether there was a mistake in the application of a land use designation to the property;**
- (bb) Whether the physical characteristics of the property are better suited to the uses in the zone as opposed to the uses permitted by the Comprehensive Plan Map designation;**
- (cc) Whether the property has been developed for uses that are incompatible with the Comprehensive Plan Map designation; and**
- (dd) Whether the Comprehensive Plan Map designation is compatible with the surrounding Comprehensive Plan Map designations.**

Planning Commission Findings: The Applicant's Statement provided the following analysis for this approval standard:

"Since the annexation of the subject property, the properties in the surrounding area have undergone significant economic change. The property west of the subject property was re-zoned to CR (Retail Commercial) and CO (Commercial Office). The property north of the subject property was rezoned to CR in March of 2016 and the property south of the subject property has been rezoned to multiple family residential and developed as an assisted living facility. In addition, East of Interstate 5 properties have developed to accommodate various commercial uses including Oregon State Police Headquarters, Parks and Recreation Facility, Amazon Distribution and other facilities that make Kuebler an important commercial corridor. The change in the area has been acknowledged by the City's 'Our Salem' proposed map, which designates the property as 'Commercial'.

"The Commercial plan designation is equally or better suited for the subject property than the Developing Residential designation. The primary goal of the Commercial designation is to maintain and promote of the City's as a commercial center for Marion-Polk Counties. The location of the subject property, as well as the surrounding uses, makes it well-suited for Commercial designation. The location adjacent to I-5, and possibly being developed into a retail center would promote Salem as a regional commercial center as well as provide the area with a broader range of employment uses. The commercial development is likely to provide the opportunity for commercial offices, including medical offices, which provide higher than average wage jobs. Salem Economic Opportunities Analysis p. 28; as well as retail services and sales jobs."

The Staff Response agreed with that analysis and elaborated on it:

"The proposal is justified based on [i] Alteration in Circumstances. Social, economic, or demographic patterns of the nearby vicinity have so altered that the current designations are no longer appropriate and [ii]; the proposed designation is equally or better suited for the property than the existing designation. The

applicant does not assert that a mistake has been made in the application of the Developing Residential designation to the subject property. Staff concurs with the applicant's characterization of the Developing Residential designation as appropriate for holding areas for future development not currently served by urban levels of infrastructure. The Urban Growth Preliminary Declaration issued for the subject property (UGA09-08) specified the infrastructure improvements needed to develop the subject property as a 26.44-acre shopping center. The Urban Growth Preliminary Declaration has expired and the applicant would need to re-apply to determine current infrastructure improvements needed to develop the property. The subject property provides a site for higher intensity retail development that would maximize investment in public services in the vicinity, especially the existing arterial street network and future master-planned utilities.

"In 2015, the City completed an Economic Opportunities Analysis (EOA) for areas within the Salem Urban Growth Boundary for the years 2015 to 2035. The study indicated a shortage of approximately 100 gross acres of retail commercial land within the Salem UGB. Conversely, the accompanying Housing Needs Analysis (HNA) indicated a large surplus of available land for single family detached housing, primarily consisting of lands within the "Single Family Residential" and "Developing Residential" designations.

"Several factors make the subject property especially well-suited for the Commercial designation. The subject property has direct access to a collector (27th Avenue SE), local road (Boone Road SE), frontage on a designated parkway (Kuebler Boulevard SE), and close proximity to a major freeway interchange at Kuebler Boulevard and I-5. The site is located across 27th Avenue from a 32-acre site in which a Plan Map and zone change from Developing Residential with RA zoning to a Commercial designation with CR zoning was approved in 2006 (CPC-ZC06-06) and across Kuebler Boulevard from a 31.96 acre site in which also had a Plan Map and zone change from Developing Residential with RA zoning to a Commercial designation with CR zoning in 2016.

"The higher classification streets in the vicinity provide sufficient access for commercial uses, particularly those with a regional customer base. Further, the majority of surplus developable acreage identified in the HNA is not benefitted by the confluence of freeway, parkway, and arterial network access that help make the subject property especially well-suited to commercial development. Considering these factors the subject property is equally or better suited for the proposed designation than its current designation."

The Planning Commission agrees with the above statement and response and incorporates the above analysis as its own. The Planning Commission finds that the standard requires that only one basis be shown and that the proposal satisfies both the "alteration and circumstances" basis and the "equally or better suited" requirement set forth under SRC 64.025(e)(2)(A)(i) and (ii) for the reasons provided above.

The proposal satisfies this criterion.

SRC 64.025(e)(2)(B): The property is currently served, or is capable of being served, with public facilities and services necessary to support the uses allowed by the proposed plan map designation;

Planning Commission Findings: The Applicant's Statement provides the following analysis regarding public facilities and services:

"The subject property is located outside of the City's Urban Service Area (USA). However, the subject property is currently served, or is capable of being served, with public facilities and services necessary to support the uses allowed by the proposed Commercial designation.

"Natural gas, sanitary services, water, and power lines are located within Boone Road SE. Sanitary, power, and natural gas service lines are also available along 27th Street SE. Storm drain infrastructure is available in Kuebler Blvd.

"There is an existing 24" public sanitary line located in 27th Avenue SE with manholes approximately mid-way along the front and at the intersection of Kuebler Blvd. that are deep enough to service this property. There is also an eight (8") inch PVC sewer main is located within Boone Road SE east of the Boone Road SE and 27th Avenue SE intersection; however due to topographic constraints it will not be able to service the Subject Property.

"There is an existing 24" and 30" S2 water line in Boone Road SE. The Subject Property is within two water service levels: S-1 and S-2. There are no facilities available to serve the S-1 water service level at this time. However, a twenty-four (24") inch S-2 ductile iron water main is located in Boone Road SE and a thirty (30") inch S-2 ductile iron water main is located in Boone Road SE. Applicant could connect to the line with a temporary connection agreement with City of Salem, as no S-1 service is available.

"There is an overhead power, cable, and telecom line along the north side of Boone Road SE and along the east side of 27th Avenue there is an existing gas main in Boone Road SE along the north side of the road and along 27th Avenue on the east side of the road.

The majority of the Subject Property currently drains to the center of the property where it and then flows north to the existing drainage ditch that flows east to an existing 36" storm drain that crosses north under Kuebler Blvd. The eastern fifth of the project flows east to the I-5 ditches and culverts."

The Staff Response agreed, explaining in relevant part:

“The applicant will be required to apply for an Urban Growth Preliminary Declaration permit prior to development. The permit will identify those public facilities that must be constructed in order to fully serve a shopping center on the subject property consistent with the City’s adopted Master Plans and Area Facilities Plans. As indicated in the comments from the Public Works Department, streets, water, sewer, and storm water facilities are available to serve the subject property. Site-specific infrastructure requirements will be addressed in the Site Plan Review process in SRC Chapter 220. The proposal meets this criterion.”

The Planning Commission concurs with the applicant and staff analysis quoted above that the evidence in the record, to include the submitted surveys that show existing utilities and the Public Works Department comments, with the exception of the Public Works Department’s transportation analysis, demonstrates that the subject property is capable of being served with public facilities and services necessary to support the uses allowed by the proposed plan map designation. The Planning Commission further notes that although the prior approved Urban Growth Preliminary Declaration has expired, it is further evidence that obtaining such an approval is feasible for this property and that the property is capable of being served with the public facilities and services necessary to support uses allowed in the Commercial plan designation.

The adequacy of the City’s transportation facilities to serve the uses allowed under the requested plan designation and zoning is extensively discussed in the findings below related to Goal 12 and compliance with the Comprehensive Plan and Salem Transportation System Plan. The Planning Commission finds that those findings and the evidence the findings rely upon, demonstrate that with the transportation improvements proposed by the Applicant, which are imposed as conditions of approval for the zone change application, the proposed uses are capable of being served by the City’s transportation system. The Planning Commission hereby incorporates those findings concerning the City’s transportation system and facilities.

The proposal satisfies this criterion.

SRC 64.025(e)(2)(C): The proposed plan map designation provides for the logical urbanization of land;

Planning Commission Findings: The Applicant Statement provided the following for this approval criterion:

“As addressed above, the development pattern in the vicinity, particularly this segment of the Kuebler corridor, has transitioned over the past several years, shifting from rural residential uses to uses that are primarily commercial in nature. The proposed plan map designation is consistent with the current development pattern and will provide for the logical urbanization of land. The plan change to the Commercial designation will support the City’s proposed

change of status of the Subject Property through the Our Salem planning process.”

The Staff Response provided the following, in relevant part:

“The immediate vicinity of the subject property is in flux with commercial development to the west (Costco), multi-family and single family developments to the south, commercially zoned property to the north along with a 177-lot single family development and possible Multi-Family development to the northwest of the property. The subject property sits near the center of a large area of future commercial and residential (multiple family) development. A Commercial Plan Map designation would be consistent with the surrounding area of Commercial designations, and the mixture of land uses that have developed according to that designation. The City is proposing to change the Comprehensive Plan map designation of the Subject Property to Commercial through the *Our Salem* planning process[.]”

The Planning Commission concurs with and adopts the above analysis. The Planning Commission recognizes that there is some contention in the record as to what the appropriate zoning for the property should be or whether certain types of commercial uses should not be allowed on the property. Staff indicate that the Our Salem process currently contemplates the property will ultimately be zoned "Commercial Office;" and SGNA indicates that it prefers Mixed Use Zoning. Both implement the "Commercial" Plan designation. The applicant seeks, and this decision approves, "Commercial Retail" zoning. The CR zone also implements the "Commercial" Plan designation. However, the Plan standard articulated above asks about the "Proposed Plan Map designation" and not the zoning and there is little, if any, substantive argument that it would be inappropriate or illogical to plan designate the subject property Commercial. The record indicates that both the "Our Salem" planning processes have envisioned the appropriate plan designation for the subject property to be Commercial. And although the Our Salem plan has not been formally adopted at this time, it is still further evidence that supports the conclusion that the proposed Commercial plan designation will provide for the logical urbanization of the subject property.

The Planning Commission concludes that the proposal satisfies this criterion.

SRC 64.025(e)(2)(D): The proposed land use designation is consistent with the Salem Area Comprehensive Plan and applicable statewide planning goals and administrative rules adopted by the Department of Land Conservation and Development; and

Planning Commission Findings: The applicable Goals and Policies of the Comprehensive Plan are addressed immediately below followed by findings for the Statewide Planning Goals and administrative rules. The Planning Commission notes that public comments did not raise any specific plan policies or goals, or specific statewide planning goals as issues during the proceeding. Furthermore, public

comments did not address directly any specific plan goals or policies, or statewide planning goals discussed in the application narrative or the staff reports. Rather, public testimony referred generally to transportation issues and to what the appropriate zoning for the property should be.

The Planning Commission also notes that compliance with the Comprehensive Plan and the statewide planning goals are requirements for both a minor plan change application and a zone change application. Consequently, the findings immediately below refer to the zone change application in instances where a response that is applicable for the Plan change application is not an adequate response for the zone change application or where there is a distinction between different zones within the same plan designation that warrant a specific response as to commercial retail zoning. That said, many of the findings overlap in their entirety. The purpose of consolidating responses where possible is for efficiency and brevity, so that the corresponding zone change standards can and do adopt responses by reference, where appropriate.

The Planning Commission's findings regarding consistency with the Salem Area Comprehensive Plan follow.

Salem Urban Area Goals and Policies, B. General Development Goal (Salem Comprehensive Policies Plan):

To ensure that future decisions concerning the use of land within the Salem urban area are consistent with State Land Use Goals.

Planning Commission Findings: The approval standards for both the comprehensive plan change and zone change applications require a demonstration of compliance with the Statewide Planning Goals. Those findings are included in these findings and demonstrate that the proposal is consistent with the Statewide Planning Goals.

The proposed plan designation and zone change, and the development that will be permitted consistent with SRC development standards will also be consistent with the policies under this Comprehensive Plan goal that apply to such approvals. This includes, but is not limited to, the policies that promote citizen involvement, economic growth, carrying capacity, optimal use of the land, street improvements, development compatibility, and lighting. Each of these policies is implemented by provisions of the zoning code, which will apply to all development permitted under the new plan designation and zoning. Furthermore, no participant in this proceeding has contended that the proposal or development that would be permitted under the Commercial Plan designation and CR zone, would be inconsistent with any of the policies under this Comprehensive Plan Goal.

The Planning Commission finds that the applications are consistent with this Comprehensive Plan Goal and its implementing policies.

Salem Urban Area Goals and Policies, D. Growth Management Goal (Salem Comprehensive Policies Plan):

To manage the growth in the Salem urban area through cooperative efforts of the City of Salem and Marion and Polk Counties, to insure the quality of life of present and future residents of the area, and to contain urban development to preserve adjacent farm land.

Planning Commission Findings: The Planning Commission finds that neither Marion County nor Polk County commented on the proposal and that adhering to the process and standards in the City's land use standards, as is the case here, reflects the contemplated intergovernmental cooperation. Further, the evidence submitted into the record demonstrates that all public facilities and services (other than transportation discussed later), are not only available for the uses allowed by the Commercial Plan designation and CR zone, but are also adequate for those uses, thus contributing to the quality of life in the area. As the Staff Response noted, "Master-planned facilities necessary to support development of a shopping center on the subject property will be evaluated through an Urban Growth Preliminary Declaration." Regarding transportation, as explained in greater detail below, the proposal does not cause the transportation system to function any worse than it would if the property maintained its RA designation and zone and, in some instances, the transportation system is improved by approval of this proposal, at the developer's expense, over its functionality without the proposal. At the same time, there is evidence in the record that the south part of the city where the subject property is located, has a deficit of shopping opportunities for the citizens who live in that area. Accordingly, the proposal not only does not further degrade the transportation system, but also provides an important and useful public benefit of increased shopping opportunities in an area of the city that will benefit from the same.

Moreover, the SRC standards that will apply to development of the property are designed to further ensure that the quality of life of present and future residents of the area is maintained. Allowing commercial development to occur where needed inside the city and UGB (as here), is a well-known method for containing urban development within acknowledged urban land, taking development pressure off of farmland outside the UGB. Allowing reasonably intensive urban development of urban land, preserves farmland outside of the city.

The Planning Commission finds that the proposal is consistent with this Comprehensive Plan Goal and its implementing policies.

Salem Urban Area Goals and Policies, E. Residential Development Goal (Salem Comprehensive Policies Plan):

To promote a variety of housing opportunities for all income levels and an adequate supply of developable land to support such housing.

Planning Commission Findings: Although this proposal removes land from the residential lands inventory, evidence in the record demonstrates that there is a surplus of residential lands within the City's UGB. Furthermore, the one type of housing for which evidence shows there is an inadequate land supply will have that need met by the conclusion of the *Our Salem* planning process, which has identified other lands as better suited to meeting that need than the subject property. For this reason, the proposal will not result in an inadequate supply of developable land to support the City's housing needs. The proposal promotes a variety of housing opportunities and an adequate supply of developable residential land, by helping to make this south part of the City desirable for such residential uses by ensuring that there are commercial retail opportunities in proximity to residential uses and residentially developing areas, thus contributing to more complete communities, with fewer needs for vehicular trips to such opportunities if they are located further away.

Not only are commercial retail uses complementary to residential uses, the location of this designation and zoning furthers the City's policies aimed at minimizing vehicle travel distances and encouraging non-vehicular access to such services by locating residential areas and commercial services in closer proximity than has historically occurred.

The proposal is consistent with this Comprehensive Plan Goal and its implementing policies.

Salem Urban Area Goals and Policies, F. Mixed-Use Development Goal (Salem Comprehensive Policies Plan):

To provide a mixture of complementary land uses that may include housing, retail, offices, services, industrial and civic uses, to create economic and social vitality.

Planning Commission Findings: The Planning Commission notes that the Commercial plan designation and the requested Commercial Retail zoning allows a broad range of uses on the subject property. Although not strictly one of the "mixed use" zones some public comments requested, the requested CR zoning does not preclude mixed use development of the site and the Applicant has indicated a desire for that to occur if at all possible.

The Planning Commission notes that one of the reasons for approving the CR zone instead of mandating one of the MU zones is the Comprehensive Plan policy under this goal that encourages flexibility in the siting and design of new developments to respond to the marketplace. As the Applicant explained, the CR zone provides that greater flexibility. This is also one of the reasons why, despite comments requesting that the Planning Commission prohibit drive-through uses, which the MU zones would achieve, the Planning Commission is not requiring MU zoning. The Planning Commission finds persuasive that the COVID situation has created a consumer dynamic favoring the option of contactless purchases provided by drive up and drive through shopping

opportunities. Moreover, in some situations drive up and drive through purchases are the only way some people can obtain needed goods due to their personal health limitations or government imposed quarantine. The MU zone does not allow drive through facilities and so diminishes the flexibility to respond to the need for reasonable opportunities for contactless shopping. On the other hand, the Planning Commission agrees that there can be too many drive through facilities in a development and too many drive throughs can diminish economic and social vitality. Accordingly, as a condition of approval, the Planning Commission limits the number of drive through facilities that may be established on the subject property, to three, via a condition of approval.

The Planning Commission further notes that the juxtaposition of the subject property to the area's residential development fulfills many of the Comprehensive Plan goal's policies that encourage pedestrian and bicycle travel as well as access to public transit.

The proposal is consistent with this Comprehensive Plan Goal and its implementing policies.

Salem Urban Area Goals and Policies, G. Commercial Development Goal (Salem Comprehensive Policies Plan):

To maintain and promote the Salem urban area as a commercial center for the Marion-Polk County metropolitan area.

Planning Commission Findings: The proposed commercial designation of the subject property would allow development of a commercial center serving the southeastern portion of the Marion-Polk County metropolitan area. Existing commercial concentrations elsewhere in the region, such as downtown Salem, the Commercial Street SE corridor, and Lancaster Drive are a considerable distance from existing and future development in the southeastern portion of the metropolitan area.

The proposal is consistent with this Comprehensive Plan Goal.

Policy G.4. Community shopping and service facilities shall be located adjacent to major arterials and shall provide adequate parking and service areas. Land use regulations shall include provisions for siting and development which discourage major customer traffic from outside the immediate neighborhoods from filtering through residential streets.

Planning Commission Findings: The subject property is well-served by the street network immediately adjacent to the property and does not rely for its access on people from outside of neighborhoods travelling through the immediate neighborhoods to reach it. The immediately surrounding street network includes the Kuebler Boulevard parkway, Battle Creek Road, a minor arterial street, 27th Avenue, a collector street, and

Boone Road, a collector street west of 27th Avenue. The existing network of these higher-classification streets, as improved by the Applicant as part of this approval, will allow traffic to access the site without having to filter through neighborhood residential streets.

The proposal is consistent with this implementing policy.

Policy G.5. Unless the existing development pattern along arterials and collectors commits an area to strip development, new commercial development shall be clustered and located to provide convenience goods and services for neighborhood residents or a wide variety of goods and services for a market area of several neighborhoods.

Planning Commission Findings: The proposed Commercial designation of the site would facilitate clustered retail development at one quadrant of the I-5/Kuebler Boulevard interchange, allowing a wide variety of goods and services to be provided in a location where existing transportation facilities provide access from several different neighborhoods. Given the relationship of the subject property to the surrounding street network and its shape, “strip” development is not feasible on the property. Future development of the property will necessarily be in a clustered fashion and designed consistent with SRC development standards.

The proposal is consistent with this implementing policy.

Salem Urban Area Goals and Policies, J. Transportation Goal (Salem Comprehensive Policies Plan):

To provide a balanced, multimodal transportation system for the Salem Urban Area that supports the safe and efficient movement of goods and people.

Planning Commission Findings: The City has developed the Salem Transportation System Plan (STSP), which establishes transportation objectives and policies and provides a hierarchical system of streets and highways to provide optimal mobility for all travel modes throughout the City’s urban area. Kuebler Boulevard SE abuts the Subject Property to the north and is classified as a Parkway by the STSP street classification system. Kuebler Boulevard SE is interconnected to a network of streets. 27th Avenue abuts the Subject Property to the west and is designated a collector on the TSP street classification map. Boone Road SE abuts the Subject Property to the south and is also a designated collector street. Battle Creek is a designated minor arterial that provides north south connectivity to the site. The Subject Property is well connected to the existing public street system, thereby providing connectivity with the surrounding neighborhood as well as the broader Salem Community. The subject property also is connected to the City’s public transportation network, as evidenced by the Cherriots comments in the record that explains that it has discussed with the Applicant placing two public transportation stops to serve the subject property and the Applicant has

agreed to do so. However, exactly whether there will be one bus stop or two and the precise location of such stop(s) will be decided in the subsequent site design review processes.

The Applicant also recognizes that the development permitted under the proposal could adversely impact the City's transportation system. As discussed under Goal 12 below and referred to elsewhere in these findings, the Applicant has proposed conditions of approval that will mitigate the additional impacts to the transportation system that would result from the proposed plan designation and zoning when compared to existing allowed development. The Planning Commission imposes those conditions of approval as part of this decision.

The proposal is consistent with this Comprehensive Plan goal.

Multimodal Transportation System

4. The transportation system for the Salem Urban area shall consist of an integrated network of facilities and services for a variety of motorized and nonmotorized travel modes.

Connectivity and Circulation

5. The vehicle, transit, bicycle, and pedestrian circulation systems shall be designed to connect major population and employment centers in the Salem Urban Area, as well as provide access to local neighborhood residential, shopping, schools, and other activity centers.

Planning Commission Findings: The evidence in the record establishes that the Subject Property is currently served by transit, pedestrian sidewalks and bike lanes, all of which encourage the use of alternative modes of transportation. Additionally, the proposed commercial retail zoning will result in development that can offer an incentive for residents of the neighborhood to walk, bike and use public transport to reach a vibrant commercial hub that can provide for a variety of their needs in this otherwise underserved area of the City.

The proposal is consistent with the above policies.

Supportive of Land Use Plan Designations and Development Patterns

6. The provision of facilities and services shall reflect and support land use designations and development patterns as identified in the Salem Area Comprehensive Plan. The design and implementation of transportation facilities and services shall be based on serving current and future travel demand, residential densities, retail, and employment centers.

7. Local governments shall encourage the expansion of transit services throughout and beyond the Salem Urban Area, especially to areas of increased residential densities, major commercial concentrations, and large institutional and employment centers.

Growth Management

8. The construction of transportation facilities shall be timed to coincide with community needs, and shall be implemented in such a way as to minimize impacts on existing development.

9. Improvements to the transportation system, in addition to those in or abutting a development, may be required as a condition of approval of subdivisions and other intensifications of land use.

Planning Commission Findings: As discussed above, the subject property is proximate to collector streets, a minor arterial, and a parkway. The Applicant proposes not only to utilize this existing street network, but to also enhance it, through improvements, in order to accommodate the additional traffic that will flow from the proposed Commercial designation and Commercial Retail zoning. Such mitigation will minimize the impacts on existing development that would otherwise result from the proposal. The mitigation is imposed by the Planning Commission in the conditions of approval for the zone change application. The proposal is consistent with the above plan policies regarding transportation facilities.

The Planning Commission further finds the above policies provide useful guidance in evaluating positions taken by some participants in this process with respect to transportation system improvements proposed by the Applicant. As discussed in greater detail below, the above policies indicate that planning and development generally guides transportation system needs and improvements, and not the other way around. In instances such as this, where an Applicant is willing to accept conditions of approval to improve the transportation system in order to mitigate the impacts of potential uses, these policies lean towards approving that development and requiring the expansion of and improvements to the transportation system to accommodate that future need.

There are several mistaken assertions in this regard in the Supplemental Staff Report, dated December 21, 2021, at page 3 where the report cites several STSP policies as reasons for denial. The law requires that relevant issues raised be addressed in these findings. Accordingly, each is addressed here.

Staff initially contends that the transportation system in the area “is designed to support the current comprehensive plan designation of RA” not CR, and therefore the proposal is not consistent with Transportation Policy 6 above. The Planning Commission finds that premise to be mistaken. In the first place, the evidence demonstrates that the transportation system in the area fails over the planning horizon even if the RA zone is

maintained. That is not a transportation system that is "designed to support" RA zoning. In fact, there is no dispute that the area transportation system fails whether it is planned and zoned RA, or Commercial. In this regard, the Planning Commission finds persuasive the Applicant's evidence that with the proposed mitigation imposed by conditions of approval that this Decision requires, the affected area transportation system will function no worse with the property being Commercially designated and CR zoned land, than if it stayed RA. It is approval as outlined in this decision, that meets these Plan policies because approving the proposal as here, responds to anticipated travel demands, coincides with undisputed community needs for more retail opportunities in this part of the city and the Planning Commission imposes conditions of approval to ensure that the affected transportation system functions no worse under the proposal than it would without it.

Further, contrary to the Staff assertion that Policy 6 requires that plan and zone designations not change, the plain wording of Policy 6 speaks of facilities and services based, in part, on "future travel demand" and retail services, not just present demand. The Planning Commission finds that wording expressly envisions that future demand will differ from what presently exists and that transportation facilities will respond accordingly. Other policies (7-9) also demonstrate that staff's position that any plan designation other than existing designations must lead to denial, is mistaken. Those other Plan policies encourage the expansion of transportation facilities and services to reflect and coincide with evolving community needs. That is what this approval does. Finally, the Planning Commission notes that the Staff position that only the RA designation and zone is allowed, is inconsistent with the undisputed fact that the City Council in the "Our Salem" process has so far identified the property as appropriate for Commercial designation. If the reasoning reflected in the Supplemental Staff Report, dated December 21, 2021, at page 3 were adopted, the City could not approve the Our Salem proposal to make the property commercially designated or in fact could not approve the Our Salem proposal at all, in any part of the City where the plan and zone would change. The Staff position is contrary to the Planning Commission's understanding of the City's dynamic responsibilities to "plan" for the needs of its citizens and to respond as those needs change and evolve

Staff next argues that, because 27th Ave SE is designated as a collector street and Street System Element, Table 3-1 says the daily volumes for collectors is 1,600 to 10,000 vehicle trips, the proposal is projected to generate 20,000 vehicle trips, and so the proposal cannot be consistent with the street designation. However, as the Applicant's traffic analyses make clear, over half of the approximate number of trips estimated per day per day are either internal trips (between land uses on the subject property and the Costco shopping center) or pass-by trips (which are trips that are already on the road that divert to the site before continuing to their primary destination). While as discussed below is not dispositive, the Planning Commission finds that the net new trips that a reasonable worst case establishes will be added to the system under the proposal, is not 20,000 trips as staff asserted, but rather is 11,966 new trips as shown on Table 8 (page 21) of the DKS Traffic Study, which is 9,686 trips above under the current zoning. .

On the main issue Staff raises, the Planning Commission understands that what Staff is asserting is that Table 3-1 is a "land use designation" that is "Identified in the Salem Area Comprehensive Plan" and so the proposal does not meet Policy 6.

The Planning Commission first finds this understanding of Policy 6 is mistaken. The Planning Commission does not interpret Plan Policy 6 to refer to STSP Tables, to include Table 3-1. Rather, the Planning Commission interprets Policy 6 to refer to Comprehensive Plan land use designations like "Commercial", Residential, "Industrial" and the like. Therefore, Table 3-1 is irrelevant to Policy 6.

However, even if Policy 6 referred to STSP Tables, the *proposal* to plan and zone the property Commercial is not inconsistent with the collector designation of 27th Ave. This is because regardless of whether RA zoning is maintained, 27th Ave SE will exceed the projected volumes for collectors shown on Table 3-1 immediately and over the planning horizon. The Costco shopping center has its main access as the 27th Ave. access and it alone is projected to generate 13,305 daily trips per the applicant's TPR Study at p 15. Accordingly, both existing conditions, in process development that the City has approved and the expected the future condition of 27th Ave. demonstrate that the Table 3-1 collector range is exceeded with or without the proposal.

Further, the Planning Commission notes that Table 3-1 is a summary of the basic factors for classifying streets and provides "basic design guidelines." The statements provided in the table are guidelines, not fixed standards intended to prohibit any development that may include traffic loads that deviate from the guidelines. This view is reflected in the text of the preceding STSP policies, such as Policy 4.6 Right-of-way Requirements, which discusses that the table indicates minimum right of way requirements and that variation from those requirements may be necessary. Similarly, Policy 4.7 Additional Intersection Improvements and Right-of-way states, "Additional right-of-way and roadway improvements may be required at the intersections of arterial and collector streets" and expressly mentions "access points for high traffic generators such as shopping centers[.]" The STSP policies fully recognize that arterials and collectors that provide access to shopping centers, for example, may require deviation from the standards set forth in Table 3-1 if such deviation is appropriate.

Functional classification is not established based on traffic volumes. The functional classification of a roadway is established based on its desired functionality, and typical traffic volume ranges for each functional classification are provided as a general guideline of expected traffic levels. As noted in STSP Table 3-1, a collector "Primarily distributes traffic between neighborhoods, activity centers, and the arterial street system. Secondarily provides property access." This perfectly describes the current and future functionality of 27th Avenue SE. The next higher functional classification, a minor arterial, is described as "High capacity street that primarily serves regional and intracity travel. Serves as main radial and peripheral routes through the City". 27th Avenue SE clearly does not function as an arterial roadway, today or in the future, as it dead-ends as a cul-de-sac less than 500 feet south of the property. Regardless of the level of traffic

on 27th Avenue SE, this street will always function as a collector as its primary purpose is to facilitate travel between activity centers (like shopping centers) and the arterial system (Kuebler Boulevard). Therefore, the Planning Commission finds that this proposal will not change the functional classification of 27th Avenue.

The Planning Commission observes that if the subject property were located elsewhere and the collector that provided primary access to a high traffic generator such as a shopping center required traffic to drive through a residential neighborhood, a stronger argument would be made that the limitation of the street classification would warrant denial of a requested plan designation and zone change to that use. However, in this instance where the collector provides immediate access from a parkway to the possible shopping center and does not require traffic to run through a residential area, the fact that the collector will have traffic levels above those normally attributed to a collector by Table 3-1 is, itself, not a basis to deny the application. The Planning Commission finds that the Ultimate Design ADT column in STSP Table 3-1 is not a fixed cap on development so long as an applicant is willing to provide additional intersection improvements that mitigate their impact, as here, and right-of-way consistent with Policies 4.6 and 4.7 as here, and the location of the proposal does not introduce other transportation impacts and concerns such as depending upon general shopping center access being through a residential neighborhood, which is not the case here. The Planning Commission finds that the proposal is consistent with these STSP policies and that the guidelines from Table 3-1 do not require denial of the proposal given the mitigation measures proposed by the applicant and imposed by this decision.

Staff also posits that STSP, Street System Element, Policy 2.2 Multimodal Intersection Design, which promotes safe and accessible crossings for pedestrians warrants denial of the proposal because the mitigation measures include double turn lanes and will require pedestrians to cross seven lanes of traffic. The Planning Commission disagrees with staff's conclusions. Pedestrian and bicycle safety is a transportation design issue, which the Public Works Design Standards (PWDS) address. In short, Staff is contending that the Public Works Design Standards for street designs are inadequate to protect pedestrian and bicycle safety, a position the Planning Commission cannot support. The Planning Commission further notes that the evidence in the record included as part of the Applicant's transportation analysis shows that pedestrians have to cross seven lanes of traffic on the east and west legs of the Kuebler Boulevard and 27th Avenue intersection. Nobody has contended, nonetheless staff, that that intersection design is unsafe or otherwise inadequate. The proposal does not violate Policy 2.2. Neither will any of the intersection improvements proposed by this application. The Planning Commission concludes that the proposal is consistent with STSP Street System Element Policy 2.2 because adherence to the adopted PWDS standards in the intersection design will ensure the intersection is designed to promote safe and accessible crossings for pedestrians and bicyclists regardless of the number of lanes involved. No evidence in the record demonstrates otherwise.

Staff turns to STSP Street System Element, Policy 2.5 Capacity Efficient Design and Level of Service (LOS) Standards and Policy 5.1 Traffic Impact Analysis Requirements

and argues that the Applicant's TPR analysis results in levels of congestion and delay that do not meet established thresholds, and so the proposal should be denied. However, staff also agrees with two important principles that demonstrate that this analysis is mistaken: (1) the affected transportation system exceeds relevant thresholds regardless of whether the proposal is approved, and (2) that when transportation facilities fail to meet STSP standards over the planning horizon, the City applies the "no further degradation standard," which means an Applicant must ensure that its impacts are mitigated so the transportation system functions no worse than under current zoning.

Policy 2.5 applies to the design of City streets and contemplates varying levels of City transportation system management measure to respond to traffic demands including constructing capacity. It does not prohibit plan amendments and zone changes that do not further degrade an already failing system. Rather, Policy 2.5 requires the City to respond by considering design and construction to add capacity. The proposal will do that for the City - the proposal includes mitigation that designs and constructs additional capacity. Policy 2.5.5(c) says that traffic impacts created by "new development" must "be mitigated to maintain peak hour LOS D or better." However, a plan amendment and zone change does not approve any "new development" and in fact to be clear this decision approves no development at all. Moreover, it is impossible to "maintain" a "peak hour LOS D or better" when the transportation system begins lower than that level, as is the case here. Rather, the Planning Commission finds that the proper interpretation of Policy 2.5 here is that the Applicant must demonstrate (and has demonstrated) that the affected systems "Peak Travel Periods" will not fail any worse under the proposed Commercial plan and CR zone, than it would under the RA plan and zone.

Further, the City's "maximum operational standards" for signalized intersections are found in the "Public Works Design Standards" and establishes the standard target as an LOS E or a v/c of 0.90. Here, the evidence in the record demonstrates that the affected signalized intersections will, following the Applicant's proposed mitigation, operate at the same LOS with or without the proposal and in some instances, will operate with a lower v/c ratio under the proposal (Kuebler Boulevard/Battle Creek Road and Kuebler Boulevard/27th Avenue, TPR Study Table 10). This is consistent with what the STSP has long been interpreted to require: that the Applicant mitigate its transportation impacts such that the failing facility will not get worse. The proposed mitigation does that and the Planning Commission finds is consistent with Policy 2.5.

Staff last argues that the proposal should be denied under STSP Street System Element Policy 2.8, because the proposed street improvements do not comport with Figure 3-2 Typical Street Design Cross Sections Collector and Local Streets.

Policy 2.8 provides:

Policy 2.8 Physical Improvements to Existing City Streets

Existing streets that are to be widened or reconstructed shall be designed to the adopted street design standards for the appropriate street classification. Adjustments to the design standards may be necessary to avoid existing topographical constraints, historic properties, schools, cemeteries, existing on-street parking, and significant cultural features. Whenever possible, the design of the street shall be sensitive to the livability of the surrounding neighborhood.

Policy 2.8 expressly contemplates that "adjustments to design standards" will occur where there are listed constraints or as otherwise valuable to the livability of the surrounding neighborhood. Accordingly, flexibility in street design is contemplated where such helps with the "livability of the surrounding neighborhood". Here, in the absence of the transportation improvements proposed by the Applicant in this case, the transportation system will fail and all that the "surrounding neighborhood" will get is that failing transportation system but with more residential development, which the surrounding neighborhood does not need. However, if the proposal is approved as is the case here, the "surrounding neighborhood" will get retail shopping opportunities that there is no dispute are needed in this part of the City and the transportation system will function no worse than it would without the proposal. Further, the evidence in the record establishes that an enhanced collector (27th Avenue) that intersects a parkway (Kuebler Boulevard) and that facilitates the efficient movement of traffic into and out of the subject property is by far more sensitive to the livability of the surrounding residential neighborhood than would be full development of the property under the existing zoning without improvements to the intersection. Accordingly, approving the proposal is consistent with Policy 2.8 because it "designs the street[s]" in a manner that is "sensitive to the livability of the surrounding neighborhood."

Furthermore, the City's typical street design cross sections shown in Figure 3-2 describe what a typical segment should entail (number and width of vehicle lanes, bicycle and pedestrian facilities, parking, etc.). They have no implication on the appropriate lane configuration at intersections, which is determined based on intersection operations and associated traffic volumes approaching the intersection. The portion of 27th Avenue in question does not include a "typical segment" because it seamlessly transitions from the roundabout into the approach lanes required at Kuebler Boulevard to the north and Boone Road to the south. Therefore, it is impossible for the portion of 27th Avenue between Boone Road and Kuebler Boulevard to comply or not comply with Figure 3-2 because it does not contain a typical segment.

Staff's position also does not account for the context of Policy 2.8, which includes Street System Element Policy 4.6 that explains that Figure 3-2 provides the "minimum right-of-way" requirements and states that street improvements may necessitate variation from the typical right-of-way requirements. That comports with the "Typical" descriptor for the Figure 3-2 examples. The policies plainly state that rigid adherence to the diagram, to include number of travel lanes, is not required. The Planning Commission disagrees with staff's position and finds it to be a mistaken interpretation of both Policy 2.8, 4.6 and Figure 3-2. The Planning Commission finds that the proposed mitigation is consistent with STSP Street System Element Policies 2.8 and 4.6.

One final STSP-related issue should be addressed. Staff inquired why the DKS Transportation Study did not study the year of "opening," arguably 2023. The City Public Works Design Standards decisively answer that staff inquiry:

Division 006—Streets Design Standards

Proposed Development	Horizon Year
Allowed under existing zoning	Year of Opening
Multi-phased Development	Year of opening each phase
Comp Plan Amendment and/or Zone Change.*	Salem TSP Horizon Year
Multi-Jurisdictional (ODOT, Marion or Polk County, Keizer)	As required by Jurisdiction
<i>*Subject to the requirements of the Transportation Planning Rule (OAR 660-012)</i>	

Table 6-33. Horizon Year for Various Proposed Developments

There is no "year of opening" for a plan amendment and/or zone change as the Public Works standards plainly show. In practical terms, this is because no particular "development" is proposed or approved in this decision. Accordingly, DKS correctly responded to that staff inquiry that the table under PWDS 6.33(e) Horizon Year indicates that the horizon year for "Comp Plan Amendment and/or Zone Change" is the "Salem TSP Horizon Year", subject to the requirements of the Transportation Planning Rule (OAR 660-012). And there is no dispute that the TPR imposes looks to the end of the City's TSP planning horizon based upon an analysis of a reasonable worst case scenario for the ultimate development of the property. The applicant's TPR Study correctly evaluated traffic impacts under the TPR's requirements. The City standards simply do not require a year of opening analysis for a plan change/zone change. The proposal is consistent with the PWDS requirements in this respect.

For the above reasons, the Planning Commission finds the proposal, as conditioned, is consistent with the Comprehensive Plan Transportation goal and policies as well as with the STSP's policies.

The Planning Commission concludes that the proposal is consistent with the Salem Area Comprehensive Plan.

The Planning Commission's findings regarding consistency with the Statewide Planning Goals follow.

Statewide Planning Goal 1 – Citizen Involvement: *To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.*

Planning Commission Findings: With respect to Goal 1, the Staff Response explains:

“On June 10, 2021, the applicant’s representative attended the Southeast Salem Neighborhood Association Meeting, held virtually, to present their proposal. A public hearing notice was mailed to the affected property owners, all property owners within 250 feet of the subject property, to the South Gateway Neighborhood Association and to the adjacent Southeast Mill Creek Association and Morningside Neighborhood Association. The applicant posted the subject property prior to the public hearing. This satisfies Citizen Involvement described in Goal 1.”

The Planning Commission further notes that the application narrative discusses the citizen outreach and involvement the applicant has conducted as part of this application. Those efforts are confirmed by the staff response from the November 2, 2021 staff report quoted above. The Planning Commission finds that the applicants and City have implemented the City’s Goal 1 program with this application.

Consequently, the proposal is consistent with Goal 1.

Statewide Planning Goal 2 – Land Use Planning: *To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.*

Planning Commission Findings: The Staff Response summarizes the City’s overall compliance with the requirements of Goal 2:

“The City has complied with the Goal requirements for establishing and maintaining a land use planning process. The Oregon Land Conservation and Development Commission have acknowledged the Salem Area Comprehensive Plan to be in compliance with the Statewide Planning Goals.”

As the Staff Response above observes, the City has complied with all requirements for land use comprehensive planning and policy development and for establishing and maintaining a land use planning process and approval standards. Under the Goal 2 heading, Applicant’s written narrative discusses some of the standards at issue in this proposal and the fact that the City’s Comprehensive Plan and code have been acknowledged by LCDC.

Because the application has been reviewed consistent with that acknowledged land use framework, process and standards, the proposal is consistent with Goal 2.

Statewide Planning Goal 3 – Agricultural Lands and Goal 4 – Forest Lands

Planning Commission Findings: The proposed plan amendment does not affect any lands designated agricultural lands or forest lands or their inventories. Consequently, Goal 3 and Goal 4 are not invoked by the application.

The proposal is consistent with Goals 3 and 4.

Statewide Planning Goal 5 – Open Spaces, Scenic and Historic Areas, and Natural Resources: *To protect natural resources and conserve scenic and historic areas and open spaces.*

Planning Commission Findings: The Staff Response discusses how development of the property will be required to comply with the City’s acknowledged Goal 5 program, as reflected in the SRC:

“There are possible scenic, historic, or cultural resources on the subject property. Prior to development, the property owner would need to consult with the City Historic Preservation Program Manager. According to the Salem Keizer Local Wetland Inventory (LWI) there are wetlands mapped on the subject property. The applicant has provided a wetland delineation as part of their application. The City’s wetland ordinance, SRC Chapter, requires notice and permitting through the Department of State Lands (DSL).

“The application will be reviewed for compliance with the City’s tree preservation ordinance and any applicable wetland standards at the time of development. Staff finds that the proposal is consistent with Goal 5.”

The Planning Commission finds that the Staff Response is correct that the City has conducted its Goal 5 planning and any identified Goal 5 resources will be protected through the acknowledged SRC at the time a development proposal is reviewed. The application narrative provided additional detail regarding the three identified wetlands on the property as well as an ephemeral stream on the subject property. The application narrative also noted that compliance with the SRC and with applicable DSL requirements will be required for development of the property. There is no evidence in the record that compliance with the City’s and state Goal 5 standards is not feasible. Implementation of the City’s Goal 5 program through the SRC will assure compliance with Goal 5.

The proposal is consistent with Goal 5.

Statewide Planning Goal 6 – Air, Water and Resources Quality: *To maintain and improve the quality of the air, water and land resources of the state.*

Planning Commission Findings: Goal 6 is largely a planning directive to local governments and, as such, does not provide specific standards applicable to site-specific plan designation decisions. The application narrative notes that the subject property lies within the city limits, where an urban level of development is intended to occur in both scale and density. The application narrative also notes the range of public facilities and services designed to protect air, water and resource quality within the city, which this decision finds are both available and adequate.

The Planning Commission concurs with the applicant that the commercial uses that will flow from the plan designation change will reasonably help reduce impacts to air quality through its proximity to near-by residential lands and access to public transportation, which will reduce the length of or need for vehicle motor trips. The Planning Commission also finds the application has demonstrated that development under the proposed plan designation will not adversely impact natural resources because there are no significant natural resources on the subject property.

The proposal is consistent with Goal 6.

Statewide Planning Goal 7 – Areas Subject to Natural Disasters and Hazards: *To protect people and property from natural hazards.*

Planning Commission Findings: As the application narrative explains, the City has complied with Goal 7 by adopting specific policies and development standards that protect against flood hazards, potential landslides and other natural hazards. The implementing measures are found in the acknowledged SRC under Chapters 809 and 601 and are imposed at the time a development application is reviewed.

The City's adopted landslide hazard susceptibility maps show the subject property is mapped within areas that have 2 to 3 landslide hazard susceptibility points. Given that 3 activity points are associated with commercial building permits and the City's landslide hazard ordinance, SRC Chapter 810, requires any development proposal with a cumulative total of 5 to 8 points submit a geologic assessment in conjunction with the application, the City's implementing measures will be applied at the time a development proposal is submitted. Given the moderate landslide hazard susceptibility classification (5 to 8 points) for the subject property is classified and that the property's point rating is at the lower end of that scale, the Planning Commission concludes that it is feasible that a proposed project that satisfies the requirements of the applicable implementing measures can be designed and approved. Nothing in the record claims, nonetheless demonstrates, that the site cannot be safely developed, whether with commercial or residential uses.

There are no other identified natural disaster or hazards on the subject property.

The Planning Commission finds that the proposal is consistent with Goal 7.

Statewide Planning Goal 8 – Recreational Needs: *To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.*

Planning Commission Findings: The Applicant Statement correctly states:

“The Subject Property is not within a designated or identified open space area and does not contain any structures subject to historic review. Furthermore, the property does not contain any wildlife habitat, groundwater resources, or natural

areas other than the wetlands addressed above. Therefore, Goal 8 is not applicable to this proposal.”

Statewide Planning Goal 9 – Economic Development: *To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.*

Planning Commission Findings: The Planning Commission finds that the evidence in the record demonstrates that the City has a shortage of land plan designated for commercial uses and, therefore, a demonstrated need for additional land plan designated Commercial.

The Applicant Statement provides the broader analysis about how the proposal meets that demonstrated need:

“The City’s Comprehensive Plan contains commercial and economic development policies pertaining to the identification and protection of employment lands. This proposal to amend the comprehensive plan map from Developing Residential to Commercial will increase the City’s employment lands, as the change will allow for the development of commercial uses on the Subject Property. The proposal will provide a site for a community level retail center. This consolidated land use proposal increases economic opportunities for City residents. As such, this proposal is consistent with Goal 9’s requirement to provide a variety of economic opportunities for City residents, including commercial opportunities. (OAR 660-009-0000).”

The Staff Report provides the evidentiary and numerical analysis that supports the Planning Commission’s conclusion that the proposal is consistent with Goal 9. The Staff Response explains:

“The proposed comprehensive plan and zoning map amendment will convert approximately 24.66 acres of vacant residentially-zoned land to a commercial designation. Consistent with the City’s obligations to provide economic opportunities under Goal 9, per OAR 660-009-0015, an Economic Opportunity Analysis (EOA) was conducted by ECONorthwest and adopted by City Council in October 2014. Consistent with economic development protections of Goal 9 and the objectives of understanding the opportunities for the next 20 years, the report compared the supply of suitable buildable commercial land (298 acres) to the projected demand (569 acres) and concluded that that there is a deficiency of 271 acres of commercial land to meet the 20-year growth demand. The EOA further concluded that roughly 40 percent of the commercial land deficiency, or approximately 100 acres, are needed for retail services, as detailed by the “Land Sufficiency” section in the EOA (pages 27-28).

“As a residentially-designated property, the site’s economic development potential is currently limited as compared to regional shopping facilities,

community and neighborhood shopping and service facilities, and other uses envisioned by the “Commercial” SACP designation and supported by the accessibility and visibility of the site. The proposed change of designation to “Commercial” will increase the number of permitted uses at the site and better takes into account the location of the subject property, thereby open up additional opportunities for economic development, consistent with the intent of the goal.”

The Planning Commission concurs with and adopts as its own the above analysis.

Because the combined comprehensive plan designation change and zone change proposal will help satisfy both the commercial land and more specifically the retail commercial land need, the proposal is consistent with and meets the requirements of Goal 9.

Statewide Planning Goal 10 – Housing: *To provide for the housing needs of citizens of the state.*

Planning Commission Findings: Goal 10 is of particular concern given that the property is presently planned for residential uses and that under the proposal this acreage will not be available for general housing development. As the staff report explains and the record supports, the City has an overall surplus of residentially planned and zoned land, however there is a deficit in land zoned for multi-family residential housing. However, staff explains that the *Our Salem* planning project has identified properties other than the subject property that are better suited to address the multi-family residential land deficit and that at the end of the *Our Salem* planning process, the multi-family residential land deficit will no longer exist. The Staff Response provides the details behind the Planning Commission’s reasoning as to why the proposal is consistent with Goal 10:

“Oregon Statewide Planning Goal 10 requires the City to allocate adequate amounts and types of land to accommodate the needed housing units for all incomes. The City has accepted, but not adopted, a Housing Needs Analysis (HNA) prepared in 2015 which includes a Buildable Land Inventory identifying a surplus of approximately 1,975 acres for single family residential development and a deficit of land available for multifamily residential development. According to the Housing Needs Analysis (HNA), ‘Salem has a deficit of capacity in the MF designation, with a deficit of 2,897 dwelling units and a deficit of 207 gross acres of residential land.’ As of December 2020, the City has added 40 net acres of Multiple Family designated land, reducing the projected deficit to 167 acres. Additionally, the City has added 89 acres of Mixed-Use designated land which allows multi-family development as an outright permitted use, thereby further increasing the land available for multi-family development.

“On February 8, 2016, the City adopted Resolution 2016-05, which includes a work plan to address the known deficit of Multi Family Residential lands. The City

is expected to fully address the multi-family land deficit in 2022 with the adoption of proposed map changes in the *Our Salem* project.

“The proposal will remove approximately 24.66 acres from the existing inventory of land that is designated for single family housing. The City underwent a Housing Needs Analysis (HNA) to project the City’s housing needs over the course of 20 years from 2015 to 2035. The report, conducted by ECONorthwest, found that the City of Salem has a surplus of approximately 1,975 acres of land designated for single-family detached housing. Of the total residential and mixed-use comprehensive plan designations, eighty three percent of this area is land within the Developing Residential and Single Family Residential designations. Through these recent HNA and EOA studies, adequate recent analysis has been conducted to confirm that the applicant’s proposal to convert 24.66 acres of residential agriculture land to retail commercial will improve the balance of residential and commercial land within the City. The existing surplus of land designated for single family detached housing, as identified in the Housing Needs Analysis and cited in the applicant’s written statement, includes more than enough remaining acreage to accommodate demand for single family residential development after deducting the roughly 24.66 acres that would be removed from the Developing Residential designation under the applicant’s proposal. The HNA also indicates a shortage of available land for multifamily housing for the 2015 to 2035 time period. Multiple family housing is not permitted in the existing RA zone, and is listed as a conditional (rather than permitted) use in the CR (Retail Commercial) zone requested by the applicant.

“Based on the current available supply of land for residential development shown in the Housing Needs Analysis, the proposal would not have an impact on the ability of the City to provide for its projected housing needs, even if no new housing units were added in future development of the site. Therefore, the proposal to change the designation of the subject property to Commercial would not have an impact on the ability of the City to provide for its projected housing needs.”

The Planning Commission concurs with the above analysis and concludes that the proposal is consistent with Goal 10.

Statewide Planning Goal 11 – Public Facilities and Services: *To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.*

Planning Commission Findings: The record supports a conclusion that the full range of public facilities and services necessary to serve Commercial uses on the subject property is available. The application materials include site surveys that show the location of public facilities that can be extended to the property as well as a Transportation Study and responses that document not only the surrounding transportation facilities, but also their capacities and, where necessary, transportation

facility improvements that will mitigate the significant effects on transportation facilities caused by potential worst case scenario development of the property. The record also establishes that a separate application will be required to extend those public facilities and services, but that does not mean they are not available and cannot be extended. As the Applicant Statement explains:

“The City utilizes an Urban Growth Management Program to ensure necessary public facilities and services are available to serve new development. As part of the program, the City has designated an USA boundary delineating the area in the City where all necessary public facilities have either been installed or are fully committed in the adopted Capital Improvement Plan. The Subject Property is located outside the boundary of the USA. However, public services are readily available, as fully described in above. Therefore, all public facilities and services are readily available to serve the Subject Property.”

The Staff Response generally agrees with the Applicant’s Statement:

“The subject property is capable of being served through extension of public facilities as specified in existing infrastructure master plans. Future development will require an Urban Growth Preliminary Declaration to address linking and boundary facilities required to serve subject property under the standards and requirements of SRC Chapter 200.”

The Planning Commission agrees with the above analysis and finds that the full range of public facilities and services are both available and adequate to serve the uses that would be permitted under the proposed Commercial plan designation.

The one area of Planning Commission disagreement with the Staff Response lies with transportation facilities. Not included in the above Staff Response quote is Staff’s analysis of the Oregon Department of Transportation’s response concerning the need, or lack thereof, for improvements to the southbound ramp to I-5. The Planning Commission disagrees with staff’s analysis that ODOT’s letter states that mitigation is warranted, but that ODOT does not support any action to be taken. The Planning Commission finds that ODOT’s decision to not “support” the mitigation improvement was because it concluded that the mitigation was not necessary based upon the Applicant’s TPR Study, which ODOT also concluded used appropriate methodologies and levels of analysis. The Planning Commission understands from ODOT’s letter that ODOT’s decision to not “support” the mitigation came from the fact that ODOT concluded it was not needed. In Transportation Planning Rule (TPR) parlance, because the volume to capacity (v/c) ratio was within 0.03 of the adopted target, ODOT’s rule provides that the proposal is to be considered in compliance with the target and, in this instance, there was no significant effect to the I-5 southbound ramp that requires mitigation. Because no mitigation is required, ODOT did not “support” the proposed mitigation. Staff misreads ODOT’s letter to the extent Staff believes ODOT was saying that mitigation was required and because ODOT would not support it, the proposal resulted in an unmitigated significant effect to a transportation facility. As discussed

below, the evidence in the record shows there was no significant effect to the I-5 southbound ramp and therefore mitigation is not required.

The Planning Commission finds that the proposal is consistent with Goal 11.

Statewide Planning Goal 12 – Transportation: *To provide and encourage a safe, convenient and economic transportation system.*

Planning Commission Findings: Transportation issues were the central point of contention in this proceeding. Potential traffic impacts were the primary focus of most of the public comments and was the sole reason why staff recommended denial. While public comments expressed generalized concerns that the traffic generated by commercial use of the property would be disruptive to the neighborhood, staff's comments were very specific. For these reasons and the fact that the Planning Commission reaches a conclusion different than that recommended by staff, the findings below and elsewhere that address the transportation issues raised are more detailed than the responses for other approval criteria.

Before addressing specific arguments raised, the Planning Commission provides the following ultimate conclusion and the guiding principles and conclusions that underly the more detailed analysis provided in the findings below. The Planning Commission concludes that the proposal complies with the Goal 12 rule (the "Transportation Planning Rule" or "TPR" reflected in OAR 660-012-000 et seq., and with the transportation requirements for comprehensive plan designation changes and zone changes set forth by the SRC. Supporting that conclusion and underlying much of the analysis behind specific responses contained in the findings are several main points.

First and perhaps foremost is the Goal 12 "no further degradation" standard for situations where, even in the absence of the proposed comprehensive plan change, the planned transportation facilities will fail by the end of the planning period. That standard is set forth in the Goal 12 Rule at OAR 660-012-0060(3). In such instances, the local government may approve a plan change amendment so long as the development will "mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development[.]" OAR 660-012-0060(3)(b). As noted in the findings above, the City also applies this standard to the analysis for City transportation facilities. If an applicant proposes mitigation that will result in "no further degradation" to a facility that will otherwise not satisfy state or city transportation standards under development allowed by the existing zoning, then under the "no further degradation" principle, that proposal can be approved. In this instance, the Planning Commission finds that the Applicant has made that demonstration and imposes conditions of approval accordingly. The City is better off, or at least no worse off, with CR zone development and the proposed mitigation than it would be with development under the existing RA zoning.

The analysis required to reach the above conclusion leads to the second point – the adequacy and credibility of the Applicant's Transportation Planning Rule Study (TPR

Study) and subsequent analysis. Staff argues that the Applicant's analyses are inadequate. As explained in greater detail below, the Planning Commission disagrees with the reasons why staff contends the data and analysis are inadequate and finds them to be adequate in fact. Furthermore, the Planning Commission notes that the Oregon Department of Transportation found that the TPR Study provides an appropriate level of analysis and mitigation to address the potential impacts of the proposed rezone and that the Applicant's methodology used to determine its proportionate share of mitigation measures to address potential significant effects under the Goal 12 rule was appropriate. ODOT identified no shortcomings or deficiencies with Applicant's TPR Study. Given ODOT's authority on such technical matters, its views carry significant weight in deciding whether the Applicant's evidence is accurate and credible. On that issue, the Planning Commission sides with ODOT and the Applicant's technical expert in this instance and finds that the Applicant's traffic analysis is based on the best available evidence and that the analysis is sound, accurate and credible.

The third underlying point concerns the rigidity of the transportation planning and analysis process. Some in this process have sought to frame the process as a numbers game and that when you're on one side of a number the proposal must be approved, on the other side, denied. The Planning Commission finds this to not be the case, whether when examining potential transportation impacts under the Goal 12 rule or under the City's standards and guidelines. For example, the Oregon Highway Plan (OHP), the authoritative statement on volume to capacity ratios, explains:

"In applying OHP mobility targets to analyze mitigation, ODOT recognizes that there are many variables and levels of uncertainty in calculating volume-to-capacity ratios, particularly over a specified planning horizon. After negotiating reasonable levels of mitigation for actions required under OAR 660-012-0060, ODOT considers calculated values for v/c ratios that are within 0.03 of the adopted target in the OHP to be considered in compliance with the target. The adopted mobility target still applies for determining significant effect under OAR 660-012-0060." OHP, p. 8.

In other words, any v/c ratio that is calculated to be within 3/100ths of a percent (0.03) of the mobility target is deemed to comply with the target. There is flexibility in that approach.

Similarly, ODOT has ruled that traffic counts should not be taken during the pandemic because pandemic traffic behavior is not representative of normal traffic behavior. The pandemic is a "disruptive event" that skews the analysis. The City has ruled similarly a year ago when it approved the Costco development, instead of concluding that all development must halt until the end of the disruptive COVID event. There is no dispute that the transportation systems at issue here are still affected by the disruptive COVID event.¹ Further, there is also no dispute that Staff would not accept traffic counts

¹ Staff suggested that Costco's opening should be considered a "disruptive event" and that no traffic counts supporting any amendments or developments should be allowed to be taken or considered until some period of time after Costco opens - which would the evidence establishes likely be somewhere between 6 months to a year from

because 27th Ave has been closed due to construction. This is consistent with the Public Works Design Standards which state that traffic counts "taken during construction shall not be used."² Again, this shows a flexibility within the process and a reliance on the best available data instead of halting development.

Likewise, the City's transportation regulations include a degree of flexibility and discretion in the application of its provisions. For example, as discussed above under consistency with the Comprehensive Plan, STSP policy 4.6 and 4.7, concerning right-of-way and intersection improvements, both provide for variation from the standard requirements. Likewise, other STSP provisions point to "guidelines" and "typical" designs; neither term is absolute.

With the above in mind, the Planning Commission makes the following findings related to Goal 12 and in response to the transportation issues raised in the staff reports and not otherwise addressed previously in these findings. Given that staff comments often intermix Goal 12 related concerns with City transportation regulation concerns, these findings respond accordingly and address both sets of standards when appropriate.

As noted above, the Planning Commission finds the TPR Study and subsequent transportation system evidence and responses prepared by DKS, the Applicant's transportation expert, to be credible and accurate. The Planning Commission also finds credible DKS's statement in its December 10, 2021 submittal that DKS originally scoped the study intersections for the TPR analysis with Staff in 2017, but when they attempted to scope the study more recently for this application, public works indicated that they would not support a transportation study being completed until Costco opened sometime in May 2022 (a year after the TPR Study was prepared) and so Staff provided no scope of work. The Planning Commission also finds credible the DKS statement that the study area used in the transportation analysis is consistent with other TIA and TPR studies completed for development in the vicinity of the subject property. Consequently, the Planning Commission finds the scope of the study to be proper for the application.

The DKS TPR Study collected and analyzed the data for eight (8) existing transportation facilities and one new facility (the 27th Avenue/Project Site Access). The data for most of the existing facilities was taken on May 30 and June 4, 2019. The data for the Commercial Street SE/Kuebler Boulevard facility was collected on February 15, 2017. Two arguments are presented against this data, both focused on PWDS Section 6.33(f)(3), which concerns traffic impact analyses. That standard provides that traffic counts older than two years not be used. First, staff contends that the traffic counts

now. The Planning Commission rejects this Staff position that the opening of Costco is a disruptive event. The opening of a particular store, that the City Council has approved in a wholly public process cannot be and is not properly considered a "disruptive event."

² There is no dispute that the Applicant did conduct traffic counts in October 2021 and they showed that there is less traffic on the system than the counts taken or otherwise available immediately before the submittal of the applicant's TPR Study submitted in May 2021. There is no dispute that if those October 2021 counts were used, the Applicant could not be required to make the improvements to the Battle Creek and Kuebler Intersection that are herein imposed as a condition. There is also no dispute that Staff did not want the Applicant to use those October 2021 counts either.

conducted in May and June of 2019 are not valid because the application was not filed until August 2021. The Planning Commission disagrees. The TPR Transportation Study was dated May 2021 and stamped by a professional engineer. That published date is within 2 years of the date the data was collected. The Planning Commission finds that satisfies the two-year provision regarding traffic counts. It has been argued that the two-year restriction should be measured from the date an application is deemed complete, or the date of submittal of an application. Nobody has pointed to any reference to a land use application date in the PWDS or any other applicable regulation that would suggest that the land use application or completion dates are the proper standard. Furthermore, completing a TPR Transportation Analysis in May in support of a land use application filed in August is not an unreasonable delay given that preparation of the application is, in part, contingent upon whether the transportation analysis demonstrates the proposal is even possible. The Planning Commission concludes that the 2019 traffic counts are consistent with the PWDS time-frame requirements.

The 2017 traffic count for the Commercial Street SE/Kuebler Boulevard facility is a more complicated matter. On its face, the date lies outside of the two-year window provided in the PWDS for traffic counts. However, these are not ordinary times and there are important factors that weigh towards accepting that data as the most accurate data available. The issue, plainly put, is that more accurate data cannot be collected for the intersection within the reasonably foreseeable future given the pandemic situation, for which ODOT's publication states data should not be collected, and the on-going construction on transportation facilities and other development, for which the PWDS states traffic counts should not be collected and used. ODOT provides guidance for this type of situation – use the most accurate pre-pandemic (“disruptive event”) data available. The PWDS provides no guidance in this situation.

Three primary factors lead the Planning Commission to conclude that the use of the 2017 traffic count is consistent with the TPR and with the PWDS. First, is that the facility at issue is not just a City street, but at certain points, is also a state transportation facility.³ For that reason, ODOT's general guidance to use pre-pandemic data as well as ODOT's letter in the record affirming the appropriateness of the Transportation Study's analysis and mitigation proposals is significant. If ODOT had taken issue with the use of 2017 data on its facility, it would have flagged that data as out-of-date or inappropriate. ODOT did not object to the use of that data in the Transportation Study.

Second, is that the City Council in its recent Costco approval decision repeatedly stated that the data used in the transportation analysis in that proceeding was valid and that pandemic counts should not be used. Staff also contends that since the applicant in that proceeding was not required to prepare a TIA for its site review application, the data relied upon in that proceeding is somehow deficient. The Planning Commission finds that staff is mistaken and that they confuse the issues of whether the applicant in the Costco situation was required to prepare a TIA with whether the TIA it did prepare was supported by credible data. It is the latter that is relevant, not the former. As noted

³ At the particular intersection of Kuebler and Commercial, it is a City street.

above, the City Council repeatedly found that the data relied upon in the Costco approval TIA submitted in that proceeding to be accurate and credible and, most importantly, sufficient to base its decision upon. The Planning Commission reaches the same conclusion in this proceeding: (1) pandemic traffic counts should not be used, and (2) it is conclusive that the City Council decided that the Costco approval transportation analyses were credible and accurate. This proceeding provides no occasion for the Planning Commission to look behind or collaterally attack that decision.

Third, the Applicant here did take traffic counts in October 2021 and Staff did not like what those counts showed. Unsurprisingly, given the current COVID situation and on-going construction activity, the traffic counts and subsequent potential impacts on transportation facilities were greatly reduced. So much so that the data showed no significant effect to the Battle Creek Road and Kuebler Boulevard intersection. Consequently, the developer would not be required to improve the intersection of Battle Creek Road and Kuebler Boulevard. In all, the Applicant's October 2021 counts showed less traffic volume on the affected transportation facilities than the counts relied upon by the Applicant in their TPR Study. Staff took the position that those 2021 counts too could not be used, mostly because of area transportation facility construction. Relatedly, Staff took the position that no development applications may be considered at all, including this one, until some period of time after Costco opens, and only then when traffic counts can then be taken reflecting Costco traffic.

The Planning Commission notes that the Applicant also prepared traffic counts in 2021 in response to staff's arguments concerning the age of the 2019 data. Staff contends that, given the context described above, the data does not reflect normal usage that will flow from the proposal. The Planning Commission agrees with staff and does not base its decision on these latter traffic counts. The Planning Commission finds that the TPR Study from May 2021, the data it relies upon, and supplemental analysis and proposed mitigation to be the most accurate reflection of the traffic conditions that will exist during normal times and reflects the best transportation engineering practices in its analysis and mitigation proposal.

However, the Planning Commission finds that it cannot be the case that no counts are valid and that it is unreasonable for Staff to essentially declare a moratorium on development until such time as Costco opens and a period thereafter.

State law does not allow the City to foreclose any development applications being considered on this property or other property until either after the pandemic, or after Costco opens or after all road construction in the area is completed. ORS 197.520 provides specific standards for declaring a moratorium including rules about notice, hearings, approval standards, standards requiring a demonstration of a solution strategy and limiting the duration of the moratorium. None of those standards have been met here or attempted to be met. Further, the Planning Commission finds the City Council's findings that pandemic counts should not be taken and that the extraordinary disruptive event of the global pandemic reasonably overrides the PWDS requirement that in normal times, traffic counts should not be older than two years before the TIA is

prepared. The Planning Commission therefore finds that it is most appropriate to rely upon the best available evidence and sound engineering practices which are both reflected in the DKS traffic analyses.

The Planning Commission finds that the data relied upon by the DKS study is credible, accurate and reliable, and reflects the best transportation engineering practices as the City Council has articulated in the Costco decision (regarding not using pandemic counts) and which ODOT has confirmed for the Transportation analysis here.

Turning to the Transportation Study and the Goal 12 analysis, DKS found potential significant effects to six of the nine facilities studied. As Table 9 of the Transportation Study shows, the three facilities that would continue to operate within design standards were the Kuebler Boulevard/I-5 North Bound Ramp; the Battle Creek Road/Boone Road intersection; and the 27th Avenue/Boone Road intersection. Because there would be a significant effect to the other transportation facilities, the Applicant is required to mitigate the impacts on those facilities consistent with the Goal 12 rule if the application is to be approved. The application and follow-up responses include proposed mitigation.

The Transportation Study's Table 10 shows the study intersections that required mitigation, the standards that mitigation must meet based on either the operational standard for the facility or if it is failing the mobility target under the "no further degradation standard", the proposed mitigation, and the v/c, delay and LOS that will result with the proposed zoning plus mitigation. It demonstrates that the traffic impacts from the proposal with the mitigation proposed by the Applicant and imposed by the conditions of approval, satisfy the TPR requirements.

In summary, one facility, the 27th Avenue/Project Site Access will operate within the designated operating standards with the proposed mitigation. Two facilities, the Kuebler Boulevard/Commercial Street intersection and the Kuebler/I-5 Southbound Ramp require no additional mitigation because the LOS remains the same for the City controlled transportation facility and the V/C, the standard used by ODOT, for both facilities is within the 0.03 range that the Oregon Highway Plan states is in compliance with the target for both of the facilities. Two of the facilities, Kuebler Boulevard/Battle Creek Road and Kuebler Boulevard/27th Avenue, following mitigation, will operate at the same failing LOS as the current zoning and will operate at a V/C ratio lower than the current zoning, thus meeting the "no further degradation" standard. The last intersection, Kuebler Boulevard/36th Avenue, located more than half a mile away on the other side of I-5 from 27th Avenue SE is presently failing and cannot be mitigated by any action taken solely by the Applicant – the traffic issue there requires a greater City effort to widen the bridge over the railroad and Mill Creek to the east. In response, the applicant has offered to contribute its proportional share for the comprehensive improvements necessary to bring that intersection into compliance with City standards. That share is \$118,000.00. The Planning Commission finds the proposed amount to be accurate, given ODOT's statement that it found the applicant's methodology for determining their proportionate share of mitigation measures was appropriate. The Planning Commission further finds that that amount is all that can be exacted from the

Applicant consistent with the U.S. Constitution because it represents Applicant's proportionate share. Furthermore, because that sum properly mitigates the traffic impacts generated by the proposed development, it is consistent with the purpose for traffic impact analysis.

The Applicant has proposed the following mitigation measures, which the Planning Commission imposes as conditions of approval. The Applicant will enter into an Improvement Agreement with the City under which the Applicant shall construct, as mitigation for the transportation impacts generated by the proposed plan designation and zone change, the full mitigation for three facilities and the Applicant's proportionate share for a fourth facility. The facilities the Applicant will construct include: (1) the west bound slip lane (a west bound right turn lane to the roundabout) from the site access onto 27th Avenue SE; (2) improvements to the Kuebler Boulevard and 27th Avenue intersection, which include installing dual north bound right turn and dual north bound left turn lanes, and changing phasing to protected-only for north bound left and south bound left turns; and (3) the second south bound left turn lane at the intersection of Kuebler Boulevard and Battle Creek Road. All three mitigation improvements are generally represented in conceptual drawings presented in DKS materials dated December 10, 2021, included in the December 21, 2021 Supplemental Staff Report. Those facilities will be designed and constructed to meet PWDS requirements. The financial mitigation measure imposed as a condition of approval is the deposit of \$118,000.00 to the City of Salem for the Applicant's proportionate share of intersection improvements at Kuebler Boulevard/36th Avenue. Moreover, the Applicant has agreed to a condition that (4) the property will be improved with no more than three drive through window establishments. A single store/restaurant/bank etc. may have more than one drive through feature serving the single establishment and that scenario will count as one drive through window. And has agreed to a condition of approval that (5) No single retail store building shall be composed of more than 70,000 sq. ft. of gross leasable area.

Based upon the evidence in the record, which the Planning Commission finds credible, the total mitigation costs for the Applicant will be approximately \$3.6 million. Based upon the Applicant's proportionate share calculations, which ODOT concluded was based on appropriate methodologies, the \$3.6 million represents more than double their proportionate share of costs for these improvements. Although greater than its proportionate share, the Planning Commission finds the conditioned mitigation measures, particularly the measures where the Applicant bears the full cost of construction, is warranted in order to mitigate for the additional traffic impacts that will flow from the plan designation to Commercial and zone change to CR (Commercial Retail). Such mitigation is necessary for the proposal to be approved under Goal 12 and by the applicable SRC standards for plan designation and zone changes.

Based upon the above findings, the Planning Commission concludes that the proposal, as mitigated by the conditions of approval imposed by this decision, is consistent with Goal 12 and the Transportation Planning Rule, as well as with the transportation-related requirements of the Salem Revised Code.

As noted above, neither the general public nor any of the neighborhood associations submitted any specific comments regarding the DKS TPR Study or compliance with Goal 12 or City standards. Those public comments were framed in generalized statements such as that the proposal “will add significant traffic” to the area, that “this is an area that already has traffic problems”, that “complete gridlock” will result, and expressing a “concern for pedestrian and bicycle safety.” Such generalized concerns fall within the scope of the approval standards and are addressed by the conclusions reached in these findings.

The following findings address specific concerns presented by Staff in the November 2 and December 21, 2021 Staff Reports that have not already been addressed by these findings. The Planning Commission notes that Staff raised many concerns with the original transportation study in the December 21, 2021 Staff Report that were not but should have been raised in the earlier staff report. Consequently, the findings focus on comments from the December Staff Report.

Staff dispute DKS’s analysis that traffic flows from CO zoning are not significantly different from the requested CR zoning and that development under both zones would result in the same TPR significant effect outcomes. Staff contend that the Applicant’s analysis represents a “worst-case” scenario under CO and would require several multi-level office buildings, which “may not be realistic in Salem’s market.” The trouble with Staff’s position is the Goal 12 rule requires a “worst-case” analysis for plan change proposals that are not accompanied by a specific development proposal, as is the case here. The TPR analysis for the CR zoning was based on a worst-case methodology and the same methodology must be applied to determine potential CO transportation impacts. The Planning Commission finds DKS’s CR vs CO traffic impact analysis comments to be credible and accurate.

Staff contends that the traffic counts should be weekend counts. However, the PWDS 6.33(f)(2) state that “[t]raffic counts shall be taken on a Tuesday, Wednesday or Thursday that is not a city, state or federal holiday and when K-12 school is in session.” The Planning Commission finds that the Applicant’s data collection dates comply with that standard. The Planning Commission also notes that the City Traffic Engineer has the authority to deviate from that standard. However, given Staff’s refusal to scope the TPR Study in its early stages, the Planning Commission concludes that staff effectively waived their right to demand, after the fact, that an applicant go back and perform the analysis again, particularly when Staff also maintains the position that any data collected now is invalid. Goal 2 demands that the City comport with the City’s land use processes so that land use applications can proceed along a predicable, logical course where government bodies inform applicants of what is required at an appropriate time in the application process. The City Traffic Engineer did not require weekend traffic counts at the scoping stage of the transportation analysis; consequently, the Applicant’s TPR Study complied with the PWDS requirements by using counts taken on days prescribed by the PWDS. Moreover, TPR analyses must be completed for a horizon year and peak period consistent with the City’s adopted TSP. For City of Salem, this is

the weekday PM peak hour in 2035. Because the STSP does not evaluate other peak hours or weekends, there is no means to verify whether a land use application is consistent with the traffic patterns accounted for in the adopted TSP outside of the weekday PM peak hour.

Staff's comments about the round-about on 27th Ave., that once Costco opens the roundabout may be overloaded, does not recognize that the DKS analysis included the Costco traffic counts as "in process" relying on those that the City Council repeatedly found credible and accurate in its Costco approval decision. The Applicant's traffic numbers incorporate those numbers, thus leading to the proposed mitigation. As to Staff's arguments that those numbers are mere estimates, the Planning Commission notes, as does ODOT, that all traffic studies involve estimates as does land use transportation planning in general. The relevant question in this proceeding is whether the estimates and methodology used for evaluation are credible and represent best practices. The Planning Commission finds that the DKS data and analysis does.

Furthermore, the fact that there may be long vehicle queues, delays and even transportation system failures is not the point or a basis to deny the application. The evidence in the record plainly demonstrates that all of those will occur without the proposal being approved. The relevant inquiry is whether the proposal makes the failing facilities worse, or whether the mitigation measures mitigate the impacts of future development such that the system performs equally well or better than it otherwise would. In this instance the Applicant has made that latter demonstration.

Staff next focuses on the number of additional trips the proposed zoning would add to the system and states that the evidence in the record demonstrates that vehicle movements will be greater than 80 seconds, which is inconsistent with standards established in the PWDS. The Planning Commission notes that the sheer number of vehicle trips that would result from a plan designation change/zone change or increase in vehicle trips is not restricted by any standard so long as the impact from those trips is mitigated. In this case the evidence in the record establishes that it is. Regarding the vehicle movement timing, the Planning Commission first notes that this is not a Goal 12 consideration, which focuses on LOS and v/c ratios, but may not be relevant to the related zone change standard. In any event, again the issue in the present context is not whether the delay exceeds the intersection operational standards, but whether the proposal mitigates for the impacts it creates when the intersection exceeds its vehicle movement operational standards under the existing zoning. In this case, for example, Table 9 from the Transportation Study shows that the Kuebler Boulevard/27th Avenue delay under the current zoning is 157.8 and under the unmitigated proposed zoning is greater than 200. However, with mitigation, as shown on Table 10, that delay is reduced to 87.5, well below the 157.8 that will exist without the approval. While that value still exceeds the operational standard, it is an improvement over the current zoning failing operations and satisfies the "no further degradation" standard. Furthermore, as DKS pointed out, the argument made by staff looks at the timing of individual turn lanes, but that the best engineering practices and City standards require considering overall intersection delays, not individual movements. As the DKS

testimony explained, movement operations fluctuate drastically and are strongly influenced by signal timing. Staff's position would have the Planning Commission deviate from best practices and City standards to adopt a different approach in the review of this particular traffic study. The Planning Commission declines to do so.

Staff then lists the "many factors" why Staff does not support the proposed zone change. Several of the stated factors do not relate expressly to approval standards or are beside the point given the analysis required for the TPR and City zoning standards. Concerns such as site limitations forcing most site traffic to one access, the large amount of traffic generated by the proposed zone, and staff's perceived timing of peak traffic volumes do not directly correlate to approval criteria. They cannot be a basis for denying this application. Other concerns, such as the fact that intersections in the area are already failing, Costco traffic is directed to the same entrance/exit as the subject property, and the long vehicle queues, are all accounted for in the DKS data and analysis in which the Planning Commission finds that the Applicant has demonstrated that the proposal complies with applicable approval standards. For example, while the vehicle queues in the TPR Study Table 11 shows excessive queue lengths are possible on northbound 27th Avenue even after mitigation, it also demonstrates that the 95th percentile queue lengths with the proposal will be the same as, or better than, they will be without the proposal. In other words, this proposal actually reduces the likelihood that queues will encroach into the roundabout or crosswalk. All other queue lengths comport with available storage and do not cause spillback into cross walks as Staff posits.

Staff's final argument is that the Applicant's transportation system analysis is "not persuasive because of the changed circumstances associated with the passage of time, the pandemic, and the opening of the Costco in the near vicinity of the subject property have made prediction of the actual traffic impacts too uncertain." Staff's approach would be to wait for some period of time for things to settle down and then do a new traffic analysis based on "normal" conditions. As Applicant and DKS have noted, not only will construction at Costco continue until at least March or April (or perhaps longer), established transportation data demonstrates that traffic flows at a newly-opened Costco are anything but normal for several more months after opening. Factor in the continuously evolving pandemic situation and potential new construction in the area given recent land use approvals, which will potentially further skew traffic data, and one is left with the question of "when will traffic counts ever be "normal"?" As ODOT's OHP notes, there are always many variables and levels of uncertainty in transportation planning. And while the Planning Commission agrees with Staff that the traffic tolerances in this part of Salem are narrow, the Planning Commission finds that Staff's approach would lead to an impermissible *de facto* moratorium prohibited by state statute. The Applicant's analysis is based upon the best available data and represents best transportation engineering practices. Consequently, the Planning Commission disagrees with Staff's opinion of the evidence. The Planning Commission finds that the DKS transportation system analysis is persuasive and the proposed and conditioned mitigation measures will mitigate the impacts caused by the traffic that will result from development under the proposed plan designation and zoning.

To reiterate from above, based upon the above findings, the Planning Commission concludes that the proposal, as mitigated by the conditions of approval imposed by this decision, is consistent with Goal 12 and the Transportation Planning Rule, as well as with the transportation-related requirements of the Salem Revised Code.

The Planning Commission concludes the proposal, as conditioned, is consistent with Goal 12 and the Goal 12 Rule.

Statewide Planning Goal 13 – Energy Conservation: *To conserve energy.*

Planning Commission Findings: The Planning Commission notes that Goal 13 is another of the goals focused on directives to local governments to do land use planning and provides little of anything regarding standards for specific development other than what the adopted plan and land use regulations should specify. In other words, Goal 13 is implemented through local government land use planning and the application of the plan and code.

That said, the application narrative discusses the central nature of the subject property, which will provide bikeable and walkable commercial shopping and dining opportunities for the near-by residential development. This will reduce energy consumption by motor vehicles. The application also notes that the location of the site along a major bus route will allow for alternative modes of transportation to development on the property.

Such pedestrian and alternative transportation opportunities will help conserve and promote energy efficiency consistent with Goal 13.

Statewide Planning Goal 14 – Urbanization: *To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.*

Planning Commission Findings: The subject property is located within the City's UGB and is designated for urban development. Given that existing or approved development surrounds the subject property, development of the property will provide for an orderly and efficient transition from rural to urban land, ensure the efficient use of land and will help provide for a livable community by providing commercial retail uses to the near-by residential development. As the Staff Response explained:

“The subject property was annexed into the City of Salem in 2011 and is located within the Urban Growth Boundary (UGB). The proposal does not include extension of services to properties outside of the UGB. The proposed Comprehensive Plan and Zone Change is consistent with an orderly and efficient transition from rural to urban use for incorporated land adjacent to major transportation facilities.”

The proposal complies with Goal 14.

Statewide Planning Goal 15 – Willamette River Greenway; Goal 16 – Estuarine Resources; Goal 17 – Coastal Shorelands; Goal 18 – Beaches and Dunes; and Goal 19 – Ocean Resources.

Planning Commission Findings: Each of the above are geographic specific goals. The Subject Property is not within the Willamette River Greenway, or in an estuary or coastal area. Consequently, Goals 15, 16, 17, 18 and 19 do not impose any requirements to this proposal.

The proposal is consistent with Goals 15 through 19.

The Planning Commission finds that the proposal is consistent with the Statewide Planning Goals and implementing regulations.

Because the proposal is consistent with the Salem Area Comprehensive Plan and with the Statewide Planning Goals and their implementing regulations, the proposal satisfies SRC 64.025(e)(2)(D).

SRC 64.025(e)(2)(E): The amendment is in the public interest and would be of general benefit.

Planning Commission Findings: The proposed plan designation change and zone change satisfies an identified need for commercial retail employment-related uses, and proposes to meet that need through changing land designations and zoning for which City studies have demonstrated that the City has an excess of land. The proposal is also consistent with the City's planning program and the City Council's expressed intent to establish commercial services in close proximity to residential neighborhoods. Given the subject property's location along major access routes to the surrounding residential areas and accessibility by alternative means of transportation, the Planning Commission concludes that the proposal is in the public interest and would be of general benefit to the surrounding neighborhoods and to the City generally.

The portions of the November 2, 2021 Staff Report quoted below are consistent with and support the Planning Commission's conclusion that the proposal is in the public interest.

“The proposed Comprehensive Plan Map amendment from Developing Residential to Commercial is in the public interest and would be of general benefit because it would facilitate the provision of goods and services to a developing part of the City with relatively few commercial areas. An analysis of city-wide demand for buildable commercial land over the next 20 years was completed in the October 2014 EOA and determined that an additional 271 acres of commercial land is needed to meet demand the commercial land needs of the City over this period. Of this deficiency, roughly 100 acres are needed to

accommodate retail commercial services. The conversion of the site to a Commercial plan designation and a Retail Commercial zoning designation will reduce this current deficit of commercial retail land.

“The City has recently completed a Housing Needs Analysis (HNA) that evaluated the City’s housing needs over the course of 20 years from 2015 to 2035. The report, conducted by ECONorthwest, found that the City has a surplus of approximately 1,975 acres for single family residential development and a deficit of land available for multifamily residential development. According to the Housing Needs Analysis (HNA), “Salem has a deficit of capacity in the MF designation, with a deficit of 2,897 dwelling units and a deficit of 207 gross acres of residential land.” As of December 2020, the City has added 40 net acres of Multiple Family designated land, reducing the projected deficit to 167 acres. Additionally, the City has added 89 acres of Mixed-Use designated land which allows multi-family development as an outright permitted use, thereby further increasing the land available for multi-family development.

“The applicant’s proposal to convert 24.66 acres of residential agriculture land to retail commercial will reduce this residential land surplus and improve the balance of residential and commercial land within the City. The Plan Map amendment would help address a deficit of approximately 100 acres of retail commercial services identified in the Economic Opportunities Analysis.

“The proposed change in land use designation is consistent with the location and character of the property, with Comprehensive Plan policies for siting commercial facilities, and with the transportation facilities available to serve the property.”

The proposal satisfies this standard.

Conclusion: For the reasons provided above and based upon the evidence in the record, the Applicant has demonstrated that the proposal satisfies each of the applicable criteria for granting a minor comprehensive plan (map) amendment designation for the subject property from Developing Residential to Commercial.

2. FINDINGS APPLYING TO THE APPLICABLE SALEM REVISED CODE CRITERIA FOR THE ZONING MAP AMENDMENT

The following analysis addresses the proposed zone change for the subject property from RA (Residential Agriculture) to CR (Retail Commercial).

SRC Chapter 265.005 provides the criteria for approval for Quasi-Judicial Zone Changes. In order to approve a quasi-judicial Zone Map amendment request, the review authority shall make findings based on evidence provided by the applicant demonstrating that all the following criteria and factors are satisfied. The extent of the consideration given to the various factors set forth below will depend on the degree of impact of the proposed change, and the greater the impact of a proposal on the area,

the greater is the burden on the applicant to demonstrate that, in weighing all the factors, the zone change is appropriate.

SRC 265.005(e)(1)(A). The zone change is justified based on one or more of the following:

- (i) **A mistake in the application of a land use designation to the property**
- (ii) **A demonstration that there has been a change in the economic, demographic, or physical character of the vicinity such that the zone would be compatible with the vicinity's development pattern.**
- (iii) **A demonstration that the proposed zone change is equally or better suited for the property than the existing zone. A proposed zone is equally or better suited than an existing zone if the physical characteristics of the property are appropriate for the proposed zone and the uses allowed by the proposed zone are logical with the surrounding land uses.**

Planning Commission Findings: The Planning Commission finds that the evidence in the record supports the conclusion that the proposal satisfies both the "change in character of the vicinity" and the "equally or better suited for the property than the existing zoning" requirements of SRC 265.005(e)(1)(A)(ii) and (iii). The evolving integration of new commercial uses in close proximity to the existing residential developments is consistent with the vicinity's recent economic development pattern and reflects changing concepts in land use planning and economic development. The proposed zone change to CR (Commercial Retail), as opposed to other zoning that implements the Commercial plan designation, is also consistent with the gently sloping site and, given the juxtaposition to both residential development, recently approved commercial uses and key transportation routes, to include public transportation, the retail uses allowed by the proposed zone change logically fit with the surrounding uses better than the existing RA zoning.

The Applicant Statement appropriately documents the significant economic changes that have occurred in the vicinity of the subject property:

"Since the annexation of the Subject Property, the properties in the surrounding area have undergone significant economic change.

"Pacific Realty Associates LP (PacTrust) Property: The PacTrust property located directly to the west of the Subject Property was re-zoned from a split-zoned Commercial office/Residential Agriculture zoning to a split-zoned Commercial Office/Commercial Retail. The Commercial Office portion of that property has been developed and there is a proposed move of the Mission Street Costco to the Commercial Retail portion of the property. This change and the proposed development make the Subject Property particularly unsuitable for residential development.

“Clark Property: The property directly north of the Subject Property was rezoned in March of 2016 from Residential Agriculture to Commercial Retail to allow for future commercial development of the site.

“Boone Road Land SL LLC: The property directly south of the Subject Property has been rezoned to Multiple Family Residential with plans for development of an assisted living facility similar to the Bonaventure complex to the east of the Subject Property. As with the Bonaventure complex, an adjacent commercial complex would benefit the residents of the future assisted living development by providing nearby access to commercial retail.

“East of Interstate 5: East of the Subject Property on Kuebler Blvd. there has been substantial development of various uses including the new State Police Headquarters, the Parks and Recreation Facility, the Bonaventure facility and corresponding expansion of commercial office and residential services to serve that community, as well as the Amazon Distribution center and other industrial operations that will impact the character of the vicinity and decreases the suitability of the Subject Property for single family residential development.

“In addition, the CR zoning designation is better suited for the Subject Property than the RA zoning designation. There has been and continues to be ongoing residential development of the southeast part of the City, and the amount of nearby commercial services has not kept pace with this growth. The increase in population, employment, and the number of households in the area creates a local market for goods and services. This proposed zone change will create a commercial center to serve the population of the southeast part of the City. This will provide an opportunity for neighborhoods to have shopping and other retail services that the area currently lacks. The proposed zone change will create a commercial retail facility to serve the surrounding community and will reduce vehicle miles traveled to reach commercial services. The overall project will increase the inventory of commercial land available to retail businesses. It will provide an opportunity to expand and diversify the range of commercial and retail services available to the neighborhoods in the vicinity. The change will have a beneficial impact on the surrounding area.”

The Planning Commission further notes that the Staff Response concurs with the Applicant’s analysis and reiterates that no specific development proposal has been proposed or approved. The Staff Response states:

“The request satisfies (ii) and (iii); the proposed zone change is within an area of economic change which makes the proposed zone more compatible with the vicinity development pattern and is equally or better suited for the property than the existing zone. As noted in the applicant’s written statement, several properties in the area have been zoned for commercial use or multi-family. The vicinity development pattern has surrounded the subject property leaving an island of

residential zoned property. The City has recognized this location as being an appropriate site for commercial development through its adoption of a CR designation for an approximately 32-acre site located at the southwest corner of the 27th Avenue SE / Kuebler Boulevard intersection and an approximately 34-acre site on the northeast corner of 27th Avenue SE / Kuebler Boulevard intersection. The transportation facilities serving the site are consistent with the physical characteristics necessary to support uses allowed in the CR (Commercial Retail) zone.

“It must be noted that a zone change is not an approval of a specific development proposal, but instead is approval of a permanent change in a property’s zoning district. The proposed Plan Map amendment would change of the land use designation of the subject properties to “Commercial,” which can be implemented by multiple zoning districts contained in the Unified Development Code. In evaluating the proposed zone change, the suitability of the specific zone (Commercial Retail) proposed by the applicant must be considered. For this reason, an additional measure of the suitability of this request is consideration of the nature of the potential future uses allowed by the CR zone when compared to the uses allowed under the existing RA zone, and the character of the existing land uses in the neighborhood. As stated previously, the subject property is located within an area largely characterized by holding uses consistent with the “Development Residential” designation.

“The City is proposing to change the Comprehensive Plan map designation of the Subject Property to Commercial through the *Our Salem* planning process[.]”

The Planning Commission notes that participants at the hearing have argued that other zone designations, specifically CO (Commercial Office), MU-I and MU-II (Mixed Use) zones would, in fact, be a better zone for the property given the adjacent residential uses. Similarly, participants have argued that conditions to restrict certain CR-permitted uses, such as drive-through services, would make for an even better fit. The Planning Commission finds that, for this standard, such arguments are misdirected. Relevant here, this criterion requires that the applicant demonstrate a change of circumstances such that the proposed zone would be compatible with the vicinity’s development pattern or that the proposed zone is better suited for the property than the existing zoning. The Applicant has carried its burden and made that demonstration. The standard does not require that the Applicant demonstrate that the requested zoning is the best or most ideal zoning for the property, only that it is either compatible with the vicinity’s development pattern or better suited than the existing pattern. The Applicant has demonstrated that both standards are met.

The proposal satisfies this standard.

(B) If the zone change is City-initiated, and the change is for other than City-owned property, the zone change is in the public interest and would be of general benefit.

Planning Commission Findings: The proposal is not a City-initiated zone change. Consequently, this criterion imposes no standards for this proposal.

(C) The zone change conforms with the applicable provisions of the Salem Area Comprehensive Plan.

Planning Commission Findings: This proposal is a consolidated comprehensive plan change and zone change request. The findings above for Comprehensive Plan Change criterion SRC 64.025(e)(2)(D), address the applicable provisions of the Salem Area Comprehensive Plan that apply to this consolidated application. For the most part, the responses for the requested CR zoning mirror the response to plan provisions for the proposed Commercial plan designation. Where the response to the plan provision may differ based upon the zone designations permitted under the plan designation, the findings address specifically the zoning as well. Consequently, the findings for SRC 64.025(e)(2)(D) are herein incorporated as responses to this standard.

The Planning Commission notes that public comments did not raise any specific plan policies or goals as applicable to the application proposal.

The Planning Commission further notes that the CR (Commercial Retail) zone implements the Commercial plan designation, as do the CO (Commercial Office) and MU-I and MU-II (Mixed Use) zones the planning staff, neighborhood groups and neighbors argued for. The Applicant could have requested any of these zones and been consistent with the requested plan designation under the Salem Area Comprehensive Plan. The choice of which zone to request is the Applicants and so long as that choice conforms to the requested plan designation and satisfies the applicable provisions of the Salem Area Comprehensive Plan, which the Planning Commission finds the Applicant has done in this instance for the reasons provided under SRC 64.025(e)(2)(D), the proposal complies with this standard.

The proposal satisfies this criterion.

(D) The zone change complies with applicable Statewide Planning Goals and applicable administrative rules adopted by the Department of Land Conservation and Development.

Planning Commission Findings: Similar to the response to conforming with applicable provisions of the Salem Area Comprehensive Plan, the findings above for Comprehensive Plan Change criterion SRC 64.025(e)(2)(D), addressing compliance with the Statewide Planning Goals and administrative rules, also included discussions of the requested CR commercial retail zoning where additional response based upon the zoning is warranted. Examples include the responses for Goal 9 and Goal 10. Other than those instances where the zoning is discussed specifically, the responses for Goal and rule compliance for zoning mirror the response for the requested Commercial plan designation. Therefore, the responses above for SRC 64.025(e)(2)(D) are hereby incorporated. Given that the requested CR zoning implements the Commercial plan

designation, and this is a consolidated comprehensive plan change and zone change request, the analysis and conclusions for both applications is the same.

The zone change application complies with this standard.

(E) If the zone change requires a comprehensive plan change from an industrial use designation to a non-industrial use designation, or from a commercial or employment designation to any other use designation, a demonstration that the proposed rezone is consistent with its most recent economic opportunities analysis and the parts of the Comprehensive Plan which address the provision of land for economic development and employment growth; or be accompanied by an amendment to the Comprehensive Plan to address the proposed rezone; or include both the demonstration and an amendment to the Comprehensive Plan.

Planning Commission Findings: The proposed zone change is from RA (Residential Agriculture) to CR (Retail Commercial). No industrial Comprehensive Plan designations or zoning districts are involved in the proposal. The existing designation is not a commercial or employment designation. Therefore, this criterion does not impose any approval standards for the application and generally does not apply to the proposal.

(F) The zone change does not significantly affect a transportation facility, or, if the zone change would significantly affect a transportation facility, the significant effects can be adequately addressed through the measures associated with, or conditions imposed on, the zone change.

Planning Commission Findings: This zone change standard substantively requires an analysis similar to Goal 12's Transportation Planning Rule. It uses identical wording and lays out the same standard, which allows for mitigation of transportation impacts when a significant affect to a transportation facility is found. In short, it implements Goal 12 and must be interpreted and applied consistently with Goal 12. The inter-relatedness of Goal 12 and the City's transportation-related requirements, whether expressed in the Comprehensive Plan, the SRC or the PWDS, is further demonstrated through the staff report comments which move freely from discussion of the TPR to City standards and back again. For that reason, the findings for Goal 12 above freely address the City traffic standards and issues in its analysis. Those Goal 12 findings are relevant here and are hereby incorporated in response to this standard.

Furthermore, many of the staff comments pertaining to City transportation standards were also addressed in response to whether the proposal is consistent with Comprehensive Plan goals and policies as well as with the STSP. Those responses are also herein incorporated.

There is one final staff concern that has not been addressed in these findings. Staff inquired about whether the Transportation Study considered lane utilization factors with respect to queuing. DKS responded that it utilized Synchro software, which provides

default factors for lane utilization based upon various factors and does not assume equal distribution among multiple lanes. Staff does not respond that the Synchro software is in anyway inadequate or does not reflect best engineering practices. Without any evidence or directed argument as to why using the Synchro software would undermine the credibility of the DKS analysis, the Planning Commission finds that the Transportation Study was correct to use it.

To summarize the findings provided under Goal 12 and under relevant Comprehensive Plan and TSP provisions, the Planning Commission finds that the evidence and analysis submitted by DKS to be credible, as did ODOT. That analysis found that the plan designation change and zone change would lead to development that could cause a significant affect to some transportation facilities, most of which would fail anyway under the existing zoning even without the proposal. For the one that does not now fail - the site access to the subject property from the 27th Ave. round-about, the proposed mitigations ensure that the roundabout will meet City operating standards once constructed. The DKS analyses also demonstrate that the significant effects that would flow from the proposed plan designation and zone change that are greater than those that would occur from the existing zoning, are mitigated by the proposed mitigations imposed as conditions of approval such that transportation facilities would function within their operational standards or, if they already would have failed, there would be no further degradation of the transportation facility. That is what this criterion requires.

The above findings demonstrate that the proposal satisfies this criterion.

(G)The property is currently served, or is capable of being served, with public facilities and services necessary to support the uses allowed in the proposed zone.

Planning Commission Findings: Findings addressing the Comprehensive Plan Change criterion SRC 64.025(e)(2)(B), included earlier in this report, address the public facilities and services available to support commercial uses allowed on the subject property. Those findings are hereby incorporated.

The conclusion that the property is capable of being served with public facilities and services necessary to support the uses allowed in the proposed zone is supported by the Applicant's surveyed drawings that show, among other things, the location of utility facilities and their capacities, Public Works statements such facilities are available, and the Applicant's willingness to improve key the transportation facilities to mitigate the adverse impacts that could flow from development allowed under the CR zone, which are imposed as conditions of approval.

The proposal satisfies this criterion.

(2) The greater the impact of the proposed zone change on the area, the greater the burden on the applicant to demonstrate that the criteria are satisfied.

Planning Commission Findings: The Planning Commission finds that the level of information provided in application addressing the factors listed under SRC Chapter 265.005(e) corresponds to the anticipated impact of the zone change proposal. The Planning Commission notes in particular the transportation impact evidence prepared and submitted by the applicant's expert. That evidence is extensive, responsive to the issues raised by public works and ODOT and demonstrates that the potential adverse impacts that could flow from the consolidated plan designation and zone change application will be mitigated by the Applicant. That evidence is also responsive to comments submitted by neighbors and neighborhood associations that focused almost entirely on the potential impacts that could flow from increased automobile use of the property that the proposal would allow.

The proposal satisfies this criterion.

Conclusion: For the reasons provided above and based upon the evidence in the record, the Applicant has demonstrated that the proposal satisfies each of the applicable criteria for granting a zone change for the subject property from Residential Agriculture (RA) to Commercial Retail (CA).

3. SUMMARY AND CONCLUSION

As discussed above, the Planning Commission finds the evidence in the record supports approval of the proposal, CPC-ZC21-04. Consequently, the Planning Commission approves the consolidated applications subject to the conditions of approval set forth in this decision.

Wendie Kellington

Subject: FW: Problems with Staff Revisions to Findings Provided by the Applicant.docx
Attachments: Problems with Staff Revisions to Findings Provided by the Applicant.docx

From: Wendie Kellington
Sent: Monday, January 17, 2022 2:12 PM
To: Olivia Dias <ODias@cityofsalem.net>; Dan Atchison (DAtchison@cityofsalem.net) <datchison@cityofsalem.net>
Cc: mshipman@sglaw.com; lacy.brown@dksassociates.com; jeremys@mosaicdevelopmentservices.com
Subject: Problems with Staff Revisions to Findings Provided by the Applicant.docx

Olivia, (and copying Dan as well)

With all due respect, to say the staff revisions to the findings are a disappointment is an understatement. They undermine the PC decision, remove required responses to relevant issues raised and the required discussion of evidentiary credibility choices, all of which are required, given the record. The applicant cannot support the staff revision to the findings and unfortunately must object.

As you no doubt understand, we were given inadequate time for review and comment (first seeing them today – a holiday, for apparent distribution tomorrow), but nonetheless I provide the attached that outlines the most serious issues.

Please understand these issues are not trivial and that it is black letter law that the findings must respond to all criteria, all issues raised and make credibility determinations about the evidence. These staff revised findings remove critical findings that do that, in their place provide no replacement and, as such, they set the PC decision up to fail. Respectfully, that is unfair to the planning commission and the applicant who deserve solid, comprehensive findings that reflect the PC's decision and it is also unfair to participants who deserve an answer to their concerns. If you would like to discuss this, we are of course open to that. Thank you. Best, Wendie



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Problems with Staff Revisions to Findings Provided by the Applicant

Salem Transportation System Plan (~~STSP~~TSP): The ~~STSP~~TSP uses a Street Classification System to determine the functional classification of each street within the City's street system. ~~The subject property is abutted by a Macleay Road SE, designated collector street to the west (27th Avenue SE). Kuebler Boulevard SE, a designated parkway, runs along the north property as a minor arterial in the TSP, which abuts the west/southwest boundary. Right-of-way for the Interstate 5 freeway and interchange ramps~~

Macleay is no where near the property. This was correct as written.

Cherriots – Cherriots commented that two stops should be provided to facilitate the expansion of the existing public transportation routes. The applicant and Cherriots discussed providing stops on ~~at the~~ proposed north-south street ~~shown on~~ south of the roundabout ~~as shown in application materials. The exact bus stop(s) location, and decision about whether there will be one bus stop or two, will be decided in the subsequent site design review processes.~~

Cherriots has not decided how many stops they want or where. Marrying the approval to such specificity is inappropriate.

Required Open House/Neighborhood Association Meeting. Prior to application submittal, SRC 300.320 requires the applicant for a proposed minor amendment to the City's comprehensive plan map to either arrange and conduct an open house or present their proposal at a regularly scheduled meeting of the neighborhood association the property is located within. On June 10, 2021, the applicant's representative attended the ~~South-Gateway~~Northgate Neighborhood Association meeting, held virtually, to present their proposal. A summary of the comments provided at the neighborhood association meeting was ~~part of~~submitted into the ~~application materials~~record.

South Gateway is correct. Northgate is not.

Finding: Since the annexation of the subject property, the properties in the surrounding area have undergone significant economic change. The property west of the subject property was re-zoned to CR (Retail Commercial) and CO (Commercial Office). The property north of the subject property was rezoned to CR in March of 2016 ~~and the~~. The property south of the subject property has been rezoned to multiple family residential and developed as an assisted living facility. In addition, East of Interstate 5 properties have developed to accommodate various commercial uses including Oregon State Police Headquarters, Parks and Recreation Facility, Amazon Distribution and other facilities that make Kuebler an important commercial corridor. ~~The change in the area has been acknowledged by the City's 'Our Salem' proposed map, which designates the property as 'Commercial'.~~

This is true, why remove it?

The Planning Commission found that physical factors, such as topography or other physical features of the subject property and abutting the I-5 interchange would make the property incompatible for residential development.

Should be the planning commission FINDS, not FOUND.

~~The Planning Commission agrees with the above statement and response and incorporates the above analysis as its own. The Planning Commission finds that the standard requires that only one basis be shown and that the proposal satisfies both the "alteration and circumstances" basis and the "equally or better suited" requirement set forth under SRC 64.025(e)(2)(A)(i) and (ii) for the reasons provided above.~~

We strongly object to the omission of this critical finding. It is an accurate statement and essential. The law says you have to address all relevant issues raised. Some argued you had to meet each factor as independent approval criteria rather than recognize that they are written as alternatives. This finding is therefore essential and it is inappropriate to remove it.

The following is simply not true, not supported by the record and undermines the PC decision. If it remains, we will have to object strongly to it to the PC. The only evidence in the record is that the differences between CR and CO impacts is negligible:

CO (CommercialOffice) zoning for the subject property, due in part to transportation system impacts associated with changing the zoning to CR (Commercial Retail).

It is part of the following statement

The immediate vicinity of the subject property is in flux with commercial development to the west (Costco), multi-family and single family developments to the south, commercially zoned property to the north along with a 177-lot single family development and possible Multi-Family development to the northwest of the property. The subject property sits near the center of a large area of future commercial and residential (multiple family) development. A Commercial Plan Map designation would be consistent with the surrounding area of Commercial designations, and the mixture of land uses that have developed according to that designation. ~~The~~ As part of its current draft of the "Our Salem" proposal, the City is proposing to suggesting a change the Comprehensive Plan map designation of the Subject Property to Commercial. The City's current suggestion is for CO (CommercialOffice) zoning for the subject property, due in part to transportation system impacts associated with changing the zoning to CR (Commercial Retail). The "Our Salem" proposal is expected to go through the Our Salem planning a public hearing process[.]"

The following was accurate as it was originally written and should not be changed as proposed

The Planning Commission recognizes that there is some contention in the record as to what the appropriate zoning for the property should be or whether certain types of commercial uses should not be allowed on the property. Staff indicate that the Our Salem process currently contemplates the property will ultimately be zoned "Commercial Office;" and SGNA indicates that it prefers Mixed Use Zoning. Both implement the "Commercial" Plan designation. The applicant seeks, and this decision approves, "Commercial Retail" zoning. The CR zone also implements the "Commercial" Plan designation. However, the Plan standard articulated above asks about the "Proposed Plan Map designation" and not the zoning and there is little, if any, substantive argument that it would be inappropriate or illogical to plan designate the subject property Commercial. ~~The record indicates that both the "Our Salem" planning processes have envisioned the appropriate plan designation for the subject property to be Commercial. And although the Our Salem plan has not been formally adopted at this time, it is still further evidence that supports the conclusion that the proposed Commercial plan designation will provide for the logical urbanization of the subject property.~~

Finding: ~~The~~ Planning Commission ~~Findings:~~ ~~The applicable Goals and Policies of the Comprehensive Plan are addressed immediately below followed by findings for the Statewide Planning Goals and administrative rules. The Planning Commission notes that public comments did not raise any specific plan policies or goals, or specific statewide planning goals as issues during the proceeding. Furthermore, public comments did not address directly any specific plan goals or policies, or statewide planning goals discussed in the application narrative or the staff reports. Rather, public testimony referred generally to transportation issues and to what the appropriate zoning for the property should be. The Planning Commission also~~ notes that compliance with the

The above finding is true and important. Again it goes to the law that says you have to respond to relevant issues raised. When relevant issues are expressed in only general terms, the law also says you do not have to make up specific arguments for opponents to tear them down. The original statement should be restored.

Strongly object to the omission of these important findings.

~~**Planning Commission Findings:** The Planning Commission finds that neither Marion County nor Polk County commented on the proposal and that adhering to the process and standards in the City's land use standards, as is the case here, reflects the contemplated intergovernmental cooperation. Further, the evidence submitted into the record demonstrates that all public facilities and services (other than transportation discussed later), are not only available for the uses allowed by the Commercial Plan designation and CR zone, but are also adequate for those uses, thus contributing to the quality of life in the area. As the Staff Response noted, "Master-planned facilities necessary to support development of a shopping center on the subject property will be evaluated through an Urban Growth Preliminary Declaration." Regarding transportation, as explained in greater detail below, the proposal does not cause the transportation system to function any worse than it would if the property maintained its RA designation and zone and, in some instances, the transportation system is improved by approval of this proposal, at the developer's expense, over its functionality without the proposal. At the same time, there is evidence in the record that the south part of the city where the subject property is located, has a deficit of shopping opportunities for the citizens who live in that area. Accordingly, the proposal not only does not further degrade the transportation system, but also provides an important and useful public benefit of increased shopping opportunities in an area of the city that will benefit from the same.~~

~~Moreover, the SRC standards that will apply to development of the property are designed to further ensure that the quality of life of present and future residents of the area is maintained. Allowing commercial development to occur where needed inside the city and UGB (as here), is a well-known method for containing urban development within acknowledged urban land, taking development pressure off of farmland outside the UGB. Allowing reasonably intensive urban development of urban land, preserves farmland outside of the city.~~

~~The Planning Commission finds that the proposal is consistent with this Comprehensive Plan Goal and its implementing policies.~~

Finding: The public facilities and service needs for the subject property would be provided at the time of development of the site. All public services and utilities are available in the vicinity of the subject property including water, sewer, storm drainage, streets, sidewalks, fire and police protection, electricity, telecommunications, and solid waste disposal. The proposed Comprehensive Plan Map amendment with concurrent Zone Change is consistent with these policies. Master-planned facilities necessary to support commercial development on the subject property will be evaluated through a Urban Growth Preliminary Declaration.

The rewritten findings fail to respond to the approval criterion, completely ignoring the yellow highlighted part of the standard:

Salem Urban Area Goals and Policies, ~~D.~~ Growth Management Goal (Page 28, Salem Comprehensive Policies Plan):

To manage the growth in the Salem urban area through cooperative efforts of the City of Salem and Marion and Polk Counties, to ~~insure~~ensure the quality of life of present and future residents of the area, and to contain urban development to preserve adjacent farm land.

Omitting the original findings below is inappropriate - the original findings explained why drive-throughs are important, again responding to a relevant issue raised by an opponent:

~~Planning Commission Findings:~~ The ~~Planning Commission notes that the~~ Commercial plan designation and the requested Commercial Retail zoning allows a broad range of uses on the subject property. Although not strictly one of the “mixed use” zones some public comments requested, the requested CR zoning does not preclude mixed use development of the site and the Applicant has indicated a desire for that to occur if at all possible.

~~The Planning Commission notes that one~~One of the reasons for approving the CR zone instead of mandating one of the MU zones

is the Comprehensive Plan policy under this goal that encourages flexibility in the siting and design of new developments to respond to the marketplace. As the Applicant explained, the CR zone provides that greater flexibility. ~~This is also one of the reasons why, despite comments requesting that~~Therefore, the Planning Commission ~~prohibit drive-through uses, which the MU zones would achieve, the Planning Commission is not requiring MU zoning. The Planning Commission finds persuasive that the COVID situation has created a consumer dynamic favoring the option of contactless purchases provided by drive up and drive through shopping opportunities. Moreover, in some situations drive up and drive through purchases are the only way some people can obtain needed goods due to their personal health limitations or government imposed quarantine. The MU zone does not allow drive through facilities and so diminishes the flexibility to respond to the need for reasonable opportunities for contactless shopping. On the other hand, the Planning Commission agrees that there can be too many drive~~

~~through facilities in a development and too many drive throughs can diminish economic and social vitality. Accordingly, as~~imposed a condition of approval, to limit the Planning Commission ~~limits the number of~~subject property to three drive-through facilities ~~that may be established on the subject property, to three, via a condition of approval.~~

~~The Planning Commission further notes that the juxtaposition of the subject property to the area's residential development fulfills many of the Comprehensive Plan goal's policies that encourage pedestrian and bicycle travel as well as access to public transit. The proposal is consistent with this Comprehensive Plan Goal and its implementing policies.~~

Omission below inappropriate. The standard asks about commercial centers; it says nothing about mixed use or shopping centers. The additions are unhelpful, unresponsive and potentially harmful:

To maintain and promote the Salem urban area as a commercial center for the Marion-Polk County metropolitan area.

~~Planning Commission Findings~~Finding: The proposed commercial designation of the subject property would allow development of a ~~commercial~~mixed-use development or shopping center serving the southeastern portion of the Marion-Polk County metropolitan area. Existing commercial concentrations elsewhere in the region, such as downtown Salem, the Commercial Street SE corridor, and Lancaster Drive are a considerable distance from existing and future development in the southeastern portion of the metropolitan area.

~~The proposal is consistent with this Comprehensive Plan Goal~~Transportation access to the subject property would promote use of a site within the Salem urban area as the commercial center for underserved areas inside and outside of the City limits.

Revision is inappropriate; unresponsive to the standard (which asks about discouraging major traffic filtering through residential streets); Kuebler as a parkway is a major arterial. Freeway is not:

Policy G.4. Community shopping and service facilities shall be located adjacent to major arterials and shall provide adequate parking and service areas. Land use regulations shall include provisions for siting and development which discourage major customer traffic from outside the immediate neighborhoods from filtering through residential streets.

Planning Commission Findings Finding: The subject property is well-served by the street network ~~immediately adjacent to the property and does not rely for its access on people from outside of neighborhoods travelling through the immediate neighborhoods to reach it. The immediately surrounding street network~~ in the vicinity, which includes ~~the collectors, Kuebler Boulevard parkway, Battle Creek Road, a minor arterial street, 27th Avenue, a collector street, and Boone Road, a collector street west of 27th Avenue. The~~ and the adjacent I-5 freeway interchange. As surrounding properties develop, the existing network of ~~these~~ higher-classification streets, ~~as improved by the Applicant as part of this approval,~~ will allow regional traffic to access the site without ~~having to filter~~ filtering through neighborhood residential streets.

"Via Boone Road" is an inappropriate addition - it is not N/S. And as for e/w streets accessed from Battle Creek Kuebler and Boone are both relevant. The addition of Boone should be removed.

Planning Commission Findings: The City has developed the Salem Transportation System Plan (STSP), which establishes transportation objectives and policies and provides a hierarchical system of streets and highways to provide optimal mobility for all travel modes throughout the City's urban area. Kuebler Boulevard SE abuts the Subject Property to the north and is classified as a Parkway by the STSP street classification system. Kuebler Boulevard SE is interconnected to a network of streets. 27th Avenue abuts the Subject Property to the west and is designated a collector on the ~~TSP~~ STSP street classification map. Boone Road SE abuts the Subject Property to the south and is also a designated collector street. Battle Creek is a designated minor arterial that provides north south connectivity to the site, via Boone Road SE. The Subject Property is well connected to the existing public street system, thereby providing connectivity with the

The omission of the original findings is inappropriate - staff raised these issues and they must be addressed. That is what the law says. They cannot be ignored as the findings propose:

Planning Commission Findings: As discussed above, the subject property is proximate to collector streets, a minor arterial, and a parkway. The Applicant proposes not only to utilize this existing street network, but to also enhance it, through improvements, in order to accommodate the additional traffic that will flow from the proposed Commercial designation and Commercial Retail zoning. Such mitigation will minimize the impacts on existing development that would otherwise result from the proposal. The mitigation is imposed ~~by the Planning Commission~~ in the conditions of approval for the zone change application. The proposal is consistent with the above plan policies regarding transportation facilities. ~~The Planning Commission further finds the above policies provide useful guidance in evaluating positions taken by some participants in this process with respect to transportation system improvements proposed by the Applicant. As discussed in greater detail below, the above policies indicate that planning and development generally guides transportation system needs and~~

improvements, and not the other way around. In instances such as this, where an Applicant is willing to accept conditions of approval to improve the transportation system in order to mitigate the impacts of potential uses, these policies lean towards approving that development and requiring the expansion of and improvements to the transportation system to accommodate that future need. There are several mistaken assertions in this regard in the Supplemental Staff Report, dated December 21, 2021, at page 3 where the report cites several STSP policies as reasons for denial. The law requires that relevant issues raised be addressed in these findings. Accordingly, each is addressed here. Staff initially contends that the transportation system in the area "is designed to support the current comprehensive plan designation of RA" not CR, and therefore the proposal is not consistent with Transportation Policy 6 above. The Planning Commission finds that premise to be mistaken. In the first place, the evidence demonstrates that the transportation system in the area fails over the planning horizon even if the RA zone is maintained. That is not a transportation system that is "designed to support" RA zoning. In fact, there is no dispute that the area transportation system fails whether it is planned and zoned RA, or Commercial. In this regard, the Planning Commission finds persuasive the Applicant's evidence that with the proposed mitigation imposed by conditions of approval that this Decision requires, the affected area transportation system will function no worse with the property being Commercially designated and CR zoned land, than if it stayed RA although wait times at near-by signal lights will increase substantially. It is approval as outlined in this decision, that meets these Plan policies because approving the proposal as here, responds to anticipated travel demands, coincides with undisputed community needs for more retail opportunities in this part of the city and the Planning Commission imposes conditions of approval to ensure that the affected transportation system functions no worse under the proposal than it would without it.

Further, contrary to the Staff assertion that Policy 6 requires that plan and zone designations not change, the plain wording of Policy 6 speaks of facilities and services based, in part, on "future travel demand" and retail services, not just present demand. The Planning Commission finds that wording expressly envisions that future demand will may differ from what presently exists and that transportation facilities will should respond accordingly, limited by geography and topography of the facility in question. Other policies (7-9) also demonstrate that staff's position that any plan designation other than existing designations must lead to denial, is mistaken. Those other Plan policies encourage the expansion of transportation facilities and services to reflect and coincide with evolving community needs. That is what this approval does. Finally, the Planning Commission notes that the Staff position that only the RA designation and zone is allowed, is inconsistent with the undisputed fact that the City Council in the "Our Salem" process has so far identified the property as appropriate for Commercial designation. If the reasoning reflected in the Supplemental Staff Report, dated December 21, 2021, at page 3 were adopted, the City could not approve the Our Salem proposal to make the property commercially designated or in fact could not approve the Our Salem proposal at all, in any part of the City where the plan and zone would change. The Staff position is contrary to the Planning Commission's understanding of the City's dynamic responsibilities to "plan" for the needs of its citizens and to respond as those needs change and evolve

Staff next argues that, because 27th Ave SE is designated as a collector street and Street System Element, Table 3-1 says the daily volumes for collectors is 1,600 to 10,000 vehicle trips, the The proposal is projected estimated to generate 20,000 vehicle trips, and so the proposal cannot be consistent with the street designation. However, as the The Applicant's traffic analyses make clear, over half of the approximate number of trips estimated per day per day are either internal trips (between land uses on the

subject property and the Costco shopping center) or pass-by trips (which are trips that are already on the road that divert to the site before continuing to their primary destination). While as discussed below is not dispositive, the Planning Commission finds that the net new trips that a reasonable worst case establishes will be added to the system under the proposal, is not 20,000 trips as staff asserted, but rather is 11,966 new trips as shown on Table 8 (page 21) of the DKS Traffic Study, which is 9,686 trips above under the current zoning.

On the main issue Staff raises, the Planning Commission understands that what Staff is asserting is that Table 3-1 is a "land use designation" that is "Identified in the Salem Area Comprehensive Plan" and so the proposal does not meet Policy 6.

The Planning Commission first finds this understanding of Policy 6 is mistaken. The Planning Commission does not interpret Plan Policy 6 to refer to STSP Tables, to include Table 3-1. Rather, the Planning Commission interprets Policy 6 to refer to Comprehensive Plan land use designations like "Commercial", "Residential", "Industrial" and the like. Therefore, Table 3-1 is irrelevant to Policy 6.

However, even if Policy 6 referred to STSP Tables, the proposal to plan and zone the property Commercial is not inconsistent with the collector designation of 27th Ave. This is because regardless of whether RA zoning is maintained, 27th Ave SE will exceed the projected volumes for collectors shown on Table 3-1 immediately and over the planning horizon. The Costco shopping center has its main access as the 27th Ave. access and it alone is projected to generate 13,305 daily trips per the applicant's TPR Study at p 15. Accordingly, both existing conditions, in process development that the City has approved and the expected the future condition of 27th Ave. demonstrate that the Table 3-1 collector range is exceeded with or without the proposal.

Further, the Planning Commission notes that Table 3-1 is a summary of the basic factors for classifying streets and provides "basic design guidelines." The statements provided in the table are guidelines, not fixed standards intended to prohibit any development that may include traffic loads that deviate from the guidelines. This view is reflected in the text of the preceding STSP policies, such as Policy 4.6 Right-of-way Requirements, which discusses that the table indicates minimum right of way requirements and that variation from those requirements may be necessary. Similarly, Policy 4.7 Additional Intersection Improvements and Right-of-way states, "Additional right-of-way and roadway improvements may be required at the intersections of arterial and collector streets" and expressly mentions "access points for high traffic generators such as shopping centers[.]". The STSP policies fully recognize that arterials and collectors that provide access to shopping centers, for example, may require deviation from the standards set forth in Table 3-1 if such deviation is appropriate.

Functional classification is not established based on traffic volumes. The functional classification of a roadway is established based on its desired functionality, and typical traffic volume ranges for each functional classification are provided as a general guideline of expected traffic levels. As noted in STSP Table 3-1, a collector "Primarily distributes traffic between neighborhoods, activity centers, and the arterial street system. Secondarily provides property access." This perfectly describes the current and future functionality of 27th Avenue SE. The next higher functional classification, a minor arterial, is described as "High capacity street that primarily serves regional and intracity travel. Serves as main radial and peripheral routes through the City". 27th Avenue SE clearly does not function as an arterial roadway, today or in the future, as it dead-ends as a cul-de-sac less than 500 feet south of the property. Regardless of the level of traffic on 27th Avenue SE, this street will always function as a collector as its primary purpose is to facilitate travel between activity centers (like shopping

centers) and the arterial system (Kuebler Boulevard). Therefore, the Planning Commission finds that this proposal will not change the functional classification of 27th Avenue.

The Planning Commission observes that if the subject property were located elsewhere and the collector that provided primary access to a high traffic generator such as a shopping center required traffic to drive through a residential neighborhood, a stronger argument would be made that the limitation of the street classification would warrant denial of a requested plan designation and zone change to that use. However, in this instance where the collector provides immediate access from a parkway to the possible shopping center and does not require traffic to run through a residential area, the fact that the collector will have traffic levels above those normally attributed to a collector by Table 3-1 is, itself, not a basis to deny the application. The Planning Commission finds that the Ultimate Design ADT column in STSP Table 3-1 is not a fixed cap on development so long as an applicant is willing to provide additional intersection improvements that mitigate their impact, as here, and right-of-way consistent with Policies 4.6 and 4.7 as here, and the location of the proposal does not introduce other transportation impacts and concerns such as depending upon general shopping center access being through a residential neighborhood, which is not the case here. The Planning Commission finds that the proposal is consistent with these STSP policies and that the guidelines from Table 3-1 do not require denial of the proposal given the mitigation measures proposed by the applicant and imposed by this decision.

Staff also posits that STSP, Street System Element, Policy 2.2 Multimodal Intersection Design, which promotes safe and accessible crossings for pedestrians warrants denial of the proposal because the mitigation measures include double turn lanes and will require pedestrians to cross seven lanes of traffic. The Planning Commission disagrees with staff's conclusions. Pedestrian and bicycle safety is a transportation design issue, which the Public Works Design Standards (PWDS) address. In short, Staff is contending that the Public Works Design Standards for street designs are inadequate to protect pedestrian and bicycle safety, a position the Planning Commission cannot support. The Planning Commission further notes that the evidence in the record included as part of the Applicant's transportation analysis shows that pedestrians have to cross seven lanes of traffic on the east and west legs of the Kuebler Boulevard and 27th Avenue intersection. Nobody has contended, nonetheless staff, that that intersection design is unsafe or otherwise inadequate. The proposal does not violate Policy 2.2. Neither will any of the intersection improvements proposed by this application. The Planning Commission concludes that the proposal is consistent with STSP Street System Element Policy 2.2 because adherence to the adopted PWDS standards in the intersection design will ensure the intersection is designed to promote safe and accessible crossings for pedestrians and bicyclists regardless of the number of lanes involved. No evidence in the record demonstrates otherwise.

Staff turns to STSP Street System Element, Policy 2.5 Capacity Efficient Design and Level of Service (LOS) Standards and Policy 5.1 Traffic Impact Analysis Requirements and argues that the Applicant's TPR analysis results in levels of congestion and delay that do not meet established thresholds, and so the proposal should be denied. However, staff also agrees with two important principles that demonstrate that this analysis is mistaken: (1) the affected transportation system exceeds relevant thresholds regardless of whether the proposal is approved, and (2) that when transportation facilities fail to meet STSP standards over the planning horizon, the City applies the "no further degradation standard," which means an Applicant must ensure that its impacts are mitigated so the transportation system functions no worse than under current zoning.

Policy 2.5 applies to the design of City streets and contemplates varying levels of City transportation system management measure to respond to traffic demands including

constructing capacity. It does not prohibit plan amendments and zone changes that do not further degrade an already failing system. Rather, Policy 2.5 requires the City to respond by considering design and construction to add capacity. The proposal will do that for the City—the proposal includes mitigation that designs and constructs additional capacity. Policy 2.5.5(c) says that traffic impacts created by "new development" must "be mitigated to maintain peak-hour LOS D or better." However, a plan amendment and zone change does not approve any "new development" and in fact to be clear this decision approves no development at all. Moreover, it is impossible to "maintain" a "peak hour LOS D or better" when the transportation system begins lower than that level, as is the case here. Rather, the Planning Commission finds that the proper interpretation of Policy 2.5 here is that the Applicant must demonstrate (and has demonstrated) that the affected systems "Peak Travel Periods" will not fail any worse under the proposed Commercial plan and CR zone, than it would under the RA plan and zone.

Further, the City's "maximum operational standards" for signalized intersections are found in the "Public Works Design Standards" and establishes the standard target as an LOS E or a v/c of 0.90. Here, the evidence in the record demonstrates that the affected signalized intersections will, following the Applicant's proposed mitigation, operate at the same LOS with or without the proposal and in some instances, will operate with a lower v/c ratio under the proposal (Kuebler Boulevard/Battle Creek Road and Kuebler Boulevard/27th Avenue, TPR Study Table 10). This is consistent with what the STSP has long been interpreted to require: that the Applicant mitigate its transportation impacts such that the failing facility will not get worse. The proposed mitigation does that and the Planning Commission finds is consistent with Policy 2.5.

Staff last argues that the proposal should be denied under STSP Street System Element Policy 2.8, because the proposed street improvements do not comport with Figure 3-2 Typical Street Design Cross Sections Collector and Local Streets.

Policy 2.8 provides:

Policy 2.8 Physical Improvements to Existing City Streets
Existing streets that are to be widened or reconstructed shall be designed to the adopted street design standards for the appropriate street classification. Adjustments to the design standards may be necessary to avoid existing topographical constraints, historic properties, schools, cemeteries, existing on-street parking, and significant cultural features. Whenever possible, the design of the street shall be sensitive to the livability of the surrounding neighborhood.

Policy 2.8 expressly contemplates that "adjustments to design standards" will occur where there are listed constraints or as otherwise valuable to the livability of the surrounding neighborhood. Accordingly, flexibility in street design is contemplated where such helps with the "livability of the surrounding neighborhood". Here, in the absence of the transportation improvements proposed by the Applicant in this case, the transportation system will fail and all that the "surrounding neighborhood" will get is that failing transportation system but with more residential development, which the surrounding neighborhood does not need. However, if the proposal is approved as is the case here, the "surrounding neighborhood" will get retail shopping opportunities that there is no dispute are needed in this part of the City and the transportation system will function no worse than it would without the proposal. Further, the evidence in the record establishes that an enhanced collector (27th Avenue) that intersects a parkway (Kuebler Boulevard) and that facilitates the efficient movement of traffic into and out of the subject property is by far more sensitive to the livability of the surrounding residential neighborhood than would be full development of the property under the existing zoning without improvements to the intersection. Accordingly, approving the proposal is consistent with Policy 2.8 because it "designs the street[s]" in a manner that is "sensitive to the livability of the surrounding neighborhood."

Furthermore, the City's typical street design cross sections shown in Figure 3-2 describe what a typical segment should entail (number and width of vehicle lanes, bicycle and pedestrian facilities, parking, etc.). They have no implication on the appropriate lane configuration at intersections, which is determined based on intersection operations and associated traffic volumes approaching the intersection. The portion of 27th Avenue in question does not include a "typical segment" because it seamlessly transitions from the roundabout into the approach lanes required at Kuebler Boulevard to the north and Boone Road to the south. Therefore, it is impossible for the portion of 27th Avenue between Boone Road and Kuebler Boulevard to comply or not comply with Figure 3-2 because it does not contain a typical segment.

Staff's position also does not account for the context of Policy 2.8, which includes Street System Element Policy 4.6 that explains that Figure 3-2 provides the "minimum right-of-way" requirements and states that street improvements may necessitate variation from the typical right-of-way requirements. That comports with the "Typical" descriptor for the Figure 3-2 examples. The policies plainly state that rigid adherence to the diagram, to include number of travel lanes, is not required. The Planning Commission disagrees with staff's position and finds it to be a mistaken interpretation of both Policy 2.8, 4.6 and Figure 3-2. The Planning Commission finds that the proposed mitigation is consistent with STSP Street System Element Policies 2.8 and 4.6.

One final STSP-related issue should be addressed. Staff inquired why the DKS Transportation Study did not study the year of "opening," arguably 2023. The City Public Works Design Standards decisively answer that staff inquiry:

Division 006—Streets Design Standards	
Proposed Development	Horizon Year
Allowed under existing zoning	Year of Opening
Multi-phased Development	Year of opening each phase
Comp Plan Amendment and/or Zone Change,*	Salem TSP Horizon Year
Multi-Jurisdictional (ODOT, Marion or Polk County, Keizer)	As required by Jurisdiction
*Subject to the requirements of the Transportation Planning Rule (OAR 660-012)	

Table 6-33. Horizon Year for Various Proposed Developments

There is no "year of opening" for a plan amendment and/or zone change as the Public Works standards plainly show. In practical terms, this is because no particular "development" is proposed or approved in this decision. Accordingly, DKS correctly responded to that staff inquiry that the table under PWDS 6.33(e) Horizon Year indicates that the horizon year for "Comp Plan Amendment and/or Zone Change" is the "Salem TSP Horizon Year", subject to the requirements of the Transportation Planning Rule (OAR 660-012). And there is no dispute that the TPR imposes looks to the end of the City's TSP planning horizon based upon an analysis of a reasonable worst case scenario for the ultimate development of the property. The applicant's TPR Study correctly evaluated traffic impacts under the TPR's requirements. The City standards simply do not require a year of opening analysis for a plan change/zone change. The proposal is consistent with the PWDS requirements in this respect.

For the above reasons, the Planning Commission finds the proposal, as conditioned, is consistent with the Comprehensive Plan Transportation goal and policies as well as with the STSP's policies.

~~The Planning Commission concludes that the proposal is consistent with the Salem Area Comprehensive Plan.~~

The following revised findings are inappropriate:

Statewide Planning Goal 2 – Land Use Planning: *To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.*

~~**Planning Commission Findings:** The Staff Response summarizes the City's overall compliance with the requirements of Goal 2:~~

~~"The City has complied with the Goal requirements for establishing and maintaining a land use planning process. The Oregon Land Conservation and Development Commission have acknowledged the Salem Area Comprehensive Plan to be in compliance with the Statewide Planning Goals."~~

~~As the Staff Response above observes, the~~

~~**Finding:** The City has complied with all the Goal requirements for land use comprehensive planning and policy development and for establishing and maintaining a land use planning process and approval standards. Under the Goal 2 heading, Applicant's written narrative discusses some of the standards at issue in this proposal and the fact that the City's Comprehensive Plan and code have been acknowledged by LCDC.~~

~~Because the application has been reviewed consistent with that acknowledged land use framework, process and standards, the proposal is consistent with Goal 2. The Oregon Land Conservation and Development Commission have acknowledged the Salem Area Comprehensive Plan to be in compliance with the Statewide Planning Goals.~~

What is the justification for the revisions below? I cannot think of any legitimate reason:

Statewide Planning Goal 5 – Open Spaces, Scenic and Historic Areas, and Natural Resources: *To protect natural resources and conserve scenic and historic areas and open spaces.*

~~Planning Commission Findings: The Staff Response discusses how development of the property will be required to comply with the City's acknowledged Goal 5 program, as reflected in the SRC:~~

Finding: There are possible scenic, historic, or cultural resources on the subject property. Prior to development, the property owner would need to consult with the City Historic Preservation Program Manager. According to the Salem Keizer Local Wetland Inventory (LWI) there are wetlands mapped on the subject property. The applicant has provided a wetland delineation as part of their application. The City's wetland ordinance, SRC Chapter, requires notice and permitting through the Department of State Lands (DSL).

~~"The application will be reviewed for compliance with the City's tree preservation ordinance and any applicable wetland standards at the time of development. Staff finds that the proposal is consistent with Goal 5."~~

~~The Planning Commission finds that the Staff Response is correct that the City has conducted its Goal 5 planning and any identified Goal 5 resources will be protected through the acknowledged SRC at the time a development proposal is reviewed. The application narrative provided additional detail regarding the three identified wetlands on the property as well as an ephemeral stream on the subject property. The application narrative also noted that compliance with the SRC and with applicable DSL requirements will be required for development of the property. There is no evidence in the record that compliance with the City's and state Goal 5 standards is not feasible. Implementation of the City's Goal 5 program through the SRC will assure compliance with Goal 5. The proposal is consistent with Goal 5.~~

Without the original finding, there is no PC finding on Goal 9:

Finding: The City's Comprehensive Plan contains commercial and economic development policies pertaining to the identification and protection of employment lands. This proposal to amend the comprehensive plan map from Developing Residential to Commercial will increase the City's employment lands, as the change will allow for the development of commercial uses on the Subject Property. The proposal will provide a site for a community level retail center. This consolidated land use proposal increases economic opportunities for City residents. As such, this proposal is consistent with Goal 9's requirement to provide a variety of economic opportunities for City residents, including commercial opportunities. (OAR 660-009-0000)."~~—~~

~~The Staff Report provides the evidentiary and numerical analysis that supports the Planning Commission's conclusion that the proposal is consistent with Goal 9. The Staff Response explains:—~~

The proposed comprehensive plan and zoning map amendment will convert approximately 24.66 acres of vacant residentially- zoned land to a commercial designation. Consistent with the City's obligations to provide economic opportunities under Goal 9, per OAR 660-009-0015, an Economic Opportunity Analysis (EOA) was conducted by ECONorthwest and adopted by City Council in October 2014. Consistent with economic development protections of Goal 9 and the objectives of understanding the opportunities for the next 20 years, the report compared the supply of suitable buildable commercial land (298 acres) to the projected demand (569 acres) and concluded that that there is a deficiency of 271 acres of commercial land to meet the 20-year growth demand. The EOA further concluded that roughly 40 percent of the commercial land deficiency, or approximately 100 acres, are needed for retail services, as detailed by the "Land Sufficiency" section in the EOA (pages 27-28).

~~"As a residentially-designated property, the site's economic development potential is currently limited as compared to regional shopping facilities, community and neighborhood shopping and service facilities, and other uses envisioned by the "Commercial" SACP designation and supported by the accessibility and visibility of the site. The proposed change of designation to "Commercial" will increase the number of permitted uses at the site and better takes into account the location of the subject property, thereby open up additional opportunities for economic development, consistent with the intent of the goal." The Planning Commission concurs with and adopts as its own the above analysis. Because the combined comprehensive plan designation change and zone change proposal will help satisfy both the commercial land and more specifically the retail commercial land need, the proposal is consistent with and~~proposal ~~meets the requirements of Goal 9.~~

--

The following revisions are inappropriate for obvious reasons. They are an attempt to convert the PC approval into a denial and significantly undermines the PC's approval decision:

Statewide Planning Goal 11 – Public Facilities and Services: *To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a*

framework for urban and rural development.

~~**Planning Commission Findings:** The record supports a conclusion that the full range of public facilities and services necessary to serve Commercial uses on the subject property is available. The application materials include site surveys that show the location of public facilities that can be extended to the property as well as a Transportation Study and responses that document not only the surrounding transportation facilities, but also their capacities and, where necessary, transportation facility improvements that will mitigate the significant effects on transportation facilities caused by potential worst case scenario development of the property. The record also establishes that a separate application will be required to extend those public facilities and services, but that does not mean they are not available and cannot be extended. As the Applicant Statement explains:~~

~~“~~

~~**Finding:** The City utilizes an Urban Growth Management Program to ensure necessary public facilities and services are available to serve new development. As part of the program, the City has designated an USA boundary delineating the area in the City where all necessary public facilities have either been installed or are fully committed in the adopted Capital Improvement Plan. The Subject Property is located outside the boundary of the USA. However, public services are readily available, as fully described in above. Therefore, all public facilities and services are readily available to serve the Subject Property.”~~

~~The Staff Response generally agrees with the Applicant's Statement:~~

~~The subject property is capable of being served through extension of public facilities as specified in existing infrastructure master plans. Future development will require an Urban Growth Preliminary Declaration to address linking and boundary facilities required to serve subject property under the standards and requirements of SRC Chapter 200.”~~
~~The Planning Commission agrees with the above analysis and finds that the full range of public facilities and services are both available and adequate to serve the uses that would be permitted under the proposed Commercial plan designation applicant submitted a transportation study that is required to address the Transportation Planning Rule (OAR 660-012-0060). The applicant's transportation study identifies seven separate transportation improvements to mitigate the estimated 12,000 new daily trips to the transportation system. One of the mitigation improvements, which is not supported by the Oregon Department of Transportation, cannot be completed without support of Oregon Department of Transportation, who has jurisdiction over the southbound on ramp to I-5.~~

~~The one area of Planning Commission disagreement with the Staff Response lies with transportation facilities. Not included in the above Staff Response quote is Staff's analysis of the Oregon Department of Transportation's response concerning the need, or lack thereof, for improvements to the southbound ramp to I-5. The Planning Commission disagrees with staff's analysis that ODOT's letter states that mitigation is warranted, but that ODOT does not support any action to be taken. The Planning Commission finds that ODOT's decision to not “support” the mitigation improvement was because it concluded that the mitigation was not necessary based upon the Applicant's TPR Study, which ODOT also concluded used appropriate methodologies and levels of analysis. The Planning Commission understands from ODOT's letter that ODOT's decision to not “support” the mitigation came from the fact that ODOT concluded it was not needed. In Transportation Planning Rule (TPR) parlance, because the volume to capacity (v/c) ratio was within 0.03 of the adopted target, ODOT's rule provides that the proposal is to be considered in compliance with the target and, in this instance, there was~~

~~no significant effect to the I-5 southbound ramp that requires mitigation. Because no mitigation is required, ODOT did not “support” the proposed mitigation. Staff misreads ODOT’s letter to the extent Staff believes ODOT was saying that mitigation was required and because ODOT would not support it, the proposal resulted in an unmitigated significant effect to a transportation facility. As discussed below, the~~

Oregon Department of Transportation letter dated June 1, 2021 states:

ODOT reviewed the earlier version of the TIA which came to similar conclusions regarding impacts of the zone change request and proportionate shares of necessary improvements. The update TIA provides an appropriate level of analysis and mitigation to address the potential impacts of this proposed rezone.

The mitigation proposed to the Kuebler Boulevard at I-5 SB Ramp intersection (installation of a third southbound right-turn lane on the off-ramp) is the most reasonable mitigation at the intersection and may be expected to acceptably mitigate traffic effects of the proposed zone change and development.

However, as noted in the study, Region 2 Traffic does not currently support this mitigation and does not recommend the installation of a third southbound right-turn lane at the Kuebler Boulevard at I-5 SB Ramps intersection. In addition, it was found that the applicant’s methodology used to determine their proportionate share of mitigation measures to addresses potential significant impacts is appropriate.

The evidence in the record shows there ~~was no significant effect to the I-5 southbound ramp and therefore mitigation is not required.~~

~~The Planning Commission finds that the proposal is consistent with Goal 11.~~is a significant effect to the I-5 southbound ramp and mitigation outlined would address the significant impact. Based on the Oregon Department of Transportation (ODOT) letter, ODOT does not support the mitigation.

The following is erroneous and the original should be left in place:

The analysis required to reach the above conclusion leads to the second point – the adequacy and credibility of the Applicant’s Transportation Planning Rule Study (TPR Study) and subsequent analysis. ~~Staff argues that the Applicant’s analyses are inadequate. As explained in greater detail below, the Planning Commission disagrees with the reasons why staff contends the data and analysis are inadequate and finds them to be adequate in fact. Furthermore, the~~ The Planning Commission notes that the Oregon Department of Transportation found that the TPR Study provides an appropriate level of analysis and mitigation to address the potential impacts of the proposed rezone and that the Applicant’s methodology used to determine its proportionate share of mitigation measures to address potential significant effects under the Goal 12 rule was appropriate. ODOT identified no shortcomings or deficiencies with Applicant’s TPR Study. Given

ODOT’s authority on such technical matters, its views may carry significant weight in deciding whether the Applicant’s evidence is accurate and credible. On that issue, the Planning Commission sides with ODOT and the Applicant’s technical expert in this instance and finds that the Applicant’s traffic analysis is based on the best available evidence and that the analysis is sound, accurate and credible.

The third underlying point concerns the rigidity of the transportation planning and analysis process. ~~Some in this process have sought to frame the process as a numbers game and that when you’re on one side of a number the proposal must be approved, on the other side, denied.~~ The Planning Commission finds ~~this to not be the case, whether~~ there is some flexibility, when examining potential transportation impacts under the Goal 12 rule or under the City’s standards and guidelines. For example, the Oregon Highway Plan (OHP), the authoritative statement on volume to capacity ratios, explains:

“In applying OHP mobility targets to analyze mitigation, ODOT recognizes that there are many variables and levels of uncertainty in calculating volume-to-capacity ratios, particularly over a specified planning horizon. After negotiating reasonable levels of mitigation for actions required under OAR 660-012-0060,

DIVISION
ODOT considers calculated values for v/c ratios that are within 0.03 of the adopted target in the OHP to be considered in compliance with the target. The adopted mobility target still applies for determining significant effect under OAR 660-012-0060.” OHP, p. 8.

In other words, any v/c ratio that is calculated to be within 3/100ths of a percent (0.03) of the mobility target is deemed to comply with the target. There is flexibility in that approach.

Similarly, ODOT has ruled that traffic counts should not be taken during the pandemic because pandemic traffic behavior is not representative of normal traffic behavior. The pandemic is a “disruptive event” that skews the analysis. ~~The City has ruled similarly a year ago when it approved the Costco development, instead of concluding that all development must halt until the end of the disruptive COVID event.~~ There is no dispute that the transportation systems at issue here are still affected by ~~the disruptive COVID event~~ the disruptive COVID event although the extent of that disruption is unclear.⁴ Further, there is also no dispute that Staff would not accept traffic counts because 27th Ave has been closed due to construction. This is consistent with the Public Works Design Standards which state that traffic counts “taken during construction shall not be used.”² ~~Again, this shows a flexibility within the process and a reliance on the best available data instead of halting development.~~⁴

~~Likewise, the~~ The City’s transportation regulations include a degree of flexibility and discretion in the application of its provisions. For example, as discussed above under consistency with the Comprehensive Plan, STSP policy 4.6 and 4.7, concerning right-of-way and intersection improvements, both provide for variation from the standard requirements. ~~Likewise, other STSP provisions point to “guidelines” and “typical” designs; neither term is absolute~~

¹ There is no dispute that the Applicant did conduct traffic counts in October 2021 and they showed that there is less traffic on the system than the counts taken or otherwise available immediately before the submittal of the applicant's TPR Study submitted in May 2021.

With the above in mind, the Planning Commission makes the following findings related to Goal 12 ~~and in response to the transportation issues raised in the staff reports and not otherwise addressed previously in these findings.~~ ~~Given that staff comments often intermix Goal 12 related concerns with City transportation regulation concerns, these findings respond accordingly and address both sets of standards when appropriate.~~

As noted above, the Planning Commission finds the TPR Study and subsequent transportation system evidence and responses prepared by DKS, the Applicant’s transportation expert, to be credible and accurate. ~~The Planning Commission also finds credible DKS’s statement in its December 10, 2021 submittal that DKS originally scoped the study intersections for the TPR analysis with Staff in 2017, but when they attempted to scope the study more recently for this application, public works indicated that they would not support a transportation study being completed until Costco opened sometime in May 2022 (a year after the TPR Study was prepared) and so Staff provided no scope of work.~~ ~~The Planning Commission also finds credible the DKS statement that the study area used in the transportation analysis is consistent with other TIA and TPR studies completed for development in the vicinity of the subject property.~~ ~~Consequently, the Planning Commission finds the scope of the study to be proper for the application.~~

The DKS TPR Study collected and analyzed the data for eight (8) existing transportation facilities and one new facility (the 27th Avenue/Project Site Access). The data for most of

the existing facilities was taken on May 30 and June 4, 2019. The data for the Commercial Street SE/Kuebler Boulevard facility was collected on February 15, 2017. Two arguments are presented against this data, both focused on PWDS Section 6.33(f)(3), which concerns traffic impact analyses. That standard provides that traffic counts older than two years are not be used. ~~First, staff contends that the traffic counts conducted in May and June of 2019 are not valid because the application was not filed until August 2021. The Planning Commission disagrees. The finds that the~~ TPR Transportation Study was dated May 2021 and stamped by a professional engineer. That published date is within 2 years of the date the data was collected. The Planning Commission finds that satisfies the two-year provision regarding traffic counts. ~~It has been argued that the two-year restriction should be measured from the date an application is deemed complete, or the date of submittal of an application. Nobody has pointed to any reference to a land use application date in the PWDS or any other applicable regulation that would suggest that the land use application or completion dates are the proper standard. Furthermore, completing a TPR Transportation Analysis in May in support of a land use application filed in August is not an unreasonable delay given that preparation of the application is, in part, contingent upon whether the transportation analysis demonstrates the proposal is even possible. The Planning Commission concludes that the 2019 traffic counts are consistent with the PWDS time-frame requirements.~~

The 2017 traffic count for the Commercial Street SE/Kuebler Boulevard facility is a more complicated matter. On its face, the date lies outside of the two-year window provided in the PWDS for traffic counts. However, these are not ordinary times and there are important factors that weigh towards accepting that data as the most accurate data available. The issue, plainly put, is that more accurate data cannot be collected for the intersection within the reasonably foreseeable future given the pandemic situation, for which ODOT's publication states data should not be collected, and the on-going construction on transportation facilities and other development, for which the PWDS states traffic counts should not be collected and used. ODOT provides guidance for this type of situation – use the most accurate pre-pandemic (“disruptive event”) data available. The PWDS provides no guidance in this situation.

Three primary factors lead the Planning Commission to conclude that the use of the 2017 traffic count is consistent with the TPR and with the PWDS. First, is that the facility at issue is not just a City street, but at certain points, is also a state transportation facility.^{3 2} For that reason, ODOT's general guidance to use pre-pandemic data as well as ODOT's letter in the record affirming the appropriateness of the Transportation Study's analysis and mitigation proposals is significant. ~~If ODOT had taken issue with the use of 2017 data on its facility, it would have flagged that data as out-of-date or inappropriate. ODOT did not object to the use of that data in the Transportation Study.~~

~~Second, is that the City Council in its recent Costco approval decision repeatedly stated that the data used in the transportation analysis in that proceeding was valid and that pandemic counts should not be used. Staff also contends that since the applicant in that proceeding was not required to prepare a TIA for its site review application, the data relied upon in that proceeding is somehow deficient. The Planning Commission finds that staff is mistaken and that they confuse the issues of whether the applicant in the Costco situation was required to prepare a TIA with whether the TIA it did prepare was supported by credible data. It is the latter that is relevant, not the former. As noted above, the City Council repeatedly found that the data relied upon in the Costco approval TIA submitted in that proceeding to be accurate and credible and, most importantly, sufficient to base its decision upon. The Planning Commission reaches the same conclusion in this proceeding: (1) pandemic traffic counts~~

~~should not be used, and (2) it is conclusive that the City Council decided that the Costco approval transportation analyses were credible and accurate. This proceeding provides no occasion for the Planning Commission to look behind or collaterally attack that decision.—~~

~~Third, the~~

~~The Applicant here did take~~took traffic counts in October 2021 ~~and Staff did not like what those counts showed.~~ Unsurprisingly, given the current COVID situation and on-going construction activity, and the closure of 27th Street SE, the traffic counts and subsequent potential impacts on transportation facilities were greatly reduced. ~~So much so that the data showed no significant effect to the Battle Creek Road and Kuebler Boulevard intersection. Consequently, the developer would not be required to improve the intersection of Battle Creek Road and Kuebler Boulevard. In all, the~~The Applicant's October 2021 counts showed less traffic volume on the

² At the particular intersection of Kuebler and Commercial, it is a City street.

affected transportation facilities than the counts relied upon by the Applicant in their TPR Study. ~~Staff took the position that those 2021 counts too could not be used, mostly because of area transportation facility construction. Relatedly, Staff took the position that no development applications may be considered at all, including this one, until some period of time after Costco opens, and only then when traffic counts can then be taken reflecting Costco traffic.—~~The Planning Commission notes that the Applicant also prepared traffic counts in 2021 in response to staff's arguments concerning the age of the 2019 data. ~~Staff contends~~finds that, given the context described above, the data does not reflect normal usage that will flow from the proposal. The Planning Commission agrees with staff and does not base its decision on these latter traffic counts. The Planning Commission finds that the TPR Study from May 2021, the data it relies upon, and supplemental analysis and proposed mitigation to be the most accurate persuasive reflection of the traffic conditions that will exist during normal times and reflects the best transportation engineering practices in its analysis and mitigation proposal.

~~However, the Planning Commission finds that it cannot be the case that no counts are valid and that it is unreasonable for Staff to essentially declare a moratorium on development until such time as Costco opens and a period thereafter.—~~

~~State law does not allow the City to foreclose any development applications being considered on this property or other property until either after the pandemic, or after Costco opens or after all road construction in the area is completed.—~~ORS 197.520 provides specific standards for declaring a moratorium including rules about notice, hearings, approval standards, standards requiring a demonstration of a solution strategy and limiting the duration of the moratorium.—None of those standards have been met here or attempted to be met.—Further, the Planning Commission finds the City Council's findings that pandemic counts should not be taken and that the extraordinary disruptive event of the global pandemic reasonably overrides the PWDS requirement that in normal times, traffic counts should not be older than two years before the TIA is prepared. The Planning Commission therefore finds that it is most appropriate to rely upon the best available evidence and sound engineering practices which are both reflected in the DKS traffic analyses.

~~The Planning Commission finds that the data relied upon by the DKS study is credible, accurate and reliable, and reflects the best transportation engineering practices as the City~~

~~Council has articulated in the Costco decision (regarding not using pandemic counts) and which ODOT has confirmed for the Transportation analysis here.—~~

Why is this omitted? It is accurate and no one ever said otherwise in the proceeding.: that intersection into compliance with City standards. That share is \$118,000.00 based on current estimates. The Planning Commission finds the proposed amount to be accurate, given ODOT's statement that it found the applicant's methodology for determining their proportionate share of mitigation measures was appropriate. ~~The Planning Commission further finds that that amount is all that can be exacted from the Applicant consistent with the U.S. Constitution because it represents Applicant's proportionate share. Furthermore, because that sum properly mitigates the traffic impacts generated by the proposed development, it is consistent with the purpose for traffic impact analysis.—~~

The revisions below are also inappropriate to support the PC decision, obviously. They remove the critical findings about why the PC chooses the applicant's evidence and argument. The law says that this must be addressed. It is not an option to ignore that legal requirement

~~Based upon the evidence in the record, which the Planning Commission finds credible, the total mitigation costs for the Applicant will be approximately \$3.6 million. Based upon the Applicant's proportionate share calculations, which ODOT concluded was based on appropriate methodologies, the \$3.6 million represents more than double their proportionate share of costs for these improvements. Although greater than its proportionate share, the~~The Planning Commission finds the conditioned mitigation measures, ~~particularly the measures where the Applicant bears the full cost of construction,~~ is warranted in order to mitigate for the additional traffic impacts that will flow from the plan designation to Commercial and zone change to CR (Commercial Retail). Such mitigation is necessary for the proposal to be approved under Goal 12 and by the applicable SRC standards for plan designation and zone changes.

Based upon the above findings, the Planning Commission concludes that the proposal, as mitigated by the conditions of approval imposed by this decision, is consistent with Goal 12 and the Transportation Planning Rule, as well as with the transportation-related requirements of the Salem Revised Code.

~~As noted above, neither the general public nor any of the neighborhood associations submitted any specific comments regarding the DKS TPR Study or compliance with Goal 12 or City standards. Those public comments were framed in generalized statements such as that the proposal "will add significant traffic" to the area, that "this is an area that already has traffic problems", that "complete gridlock" will result, and expressing a "concern for pedestrian and bicycle safety." Such generalized concerns fall within the scope of the approval standards and are addressed by the conclusions reached in these findings.~~

The following findings address specific concerns presented by Staff in the November 2 and December 21, 2021 Staff Reports that have not already been addressed by these findings.

~~The Planning Commission notes that Staff raised many concerns with the original transportation study in the December 21, 2021 Staff Report that were not but should have been raised in the earlier staff report. Consequently, the findings focus on comments from the December Staff Report.~~

~~Staff dispute DKS's analysis that traffic flows from CO zoning are not significantly different from the requested CR zoning and that development under both zones would result in the same TPR significant effect outcomes. Staff contend that the Applicant's analysis represents a "worst-case" scenario under CO and would require several multi-level office buildings, which "may not be realistic in Salem's market." The trouble with Staff's position is the Goal 12 rule requires a "worst-case" analysis for plan change proposals that are not accompanied by a specific development proposal, as is the case here. The TPR analysis for the CR zoning was based on a worst-case methodology and the same methodology must be applied to determine potential CO transportation impacts. The Planning Commission finds DKS's CR vs CO traffic impact analysis comments to be credible and accurate.~~

~~Staff contends that the traffic counts should be issue of weekend counts was raised. However, the PWDS 6.33(f)(2) state that "[t]raffic counts shall be taken on a Tuesday, Wednesday or Thursday that is not a city, state or federal holiday and when K-12 school is in session." The Planning Commission finds that the Applicant's data collection dates comply with that standard. The Planning Commission also notes that the City Traffic Engineer has the authority to deviate from that standard. However, given Staff's refusal to scope the TPR Study in its early stages, the Planning Commission concludes that staff effectively waived their right to demand, after the fact, that an applicant go back and perform the analysis again, particularly when Staff also maintains the position that any data collected now is invalid. Goal 2 demands that the City comport with the City's land use processes so that land use applications can proceed along a predictable, logical course where government bodies inform applicants of what is required at an appropriate time in the application process. The City Traffic Engineer did not require weekend traffic counts at the scoping stage of the transportation analysis; consequently, the Applicant's TPR Study complied with the PWDS requirements by using counts taken on days prescribed by the PWDS. Moreover, TPR analyses must be completed for a horizon year and peak period consistent with the City's adopted TSP. For City of Salem, this is the weekday PM peak hour in 2035. Because the STSP does not evaluate other peak hours or weekends, there is no means to verify whether a land use application is consistent with the traffic patterns accounted for in the adopted TSP outside of the weekday PM peak hour.~~

~~Staff's comments about the round-about on 27th Ave., expressed concerns that once Costco opens the roundabout may be overloaded, does not recognize that however, the DKS analysis included the Costco traffic counts as "in process" relying on those that the City Council repeatedly found credible and accurate in its Costco approval decision in their analysis. The Applicant's traffic numbers incorporate those numbers, thus leading to the proposed mitigation. As to Staff's arguments that those numbers are mere estimates, the Planning Commission notes, as does ODOT, that all traffic studies involve estimates as does land use transportation planning in general. The relevant question in this proceeding is whether the estimates and methodology used for evaluation are credible and represent best practices. The Planning Commission finds that the DKS data and analysis does.~~

~~Furthermore, the fact that there may be long vehicle queues, delays and even transportation system failures is not the point or a basis to deny the application. The evidence in the record plainly demonstrates that all of those will occur without the proposal being approved. The relevant inquiry is whether the proposal makes the failing facilities worse, or whether the mitigation measures mitigate the impacts of future development such that the system performs equally well or better than it otherwise would. In this instance the Applicant has made that latter demonstration.~~

~~Staff next focuses on raised concerns regarding the number of additional trips the proposed zoning would add to the system and states that the evidence in the record~~

PRWA

demonstrates that vehicle movements will be greater than 80 seconds, which is inconsistent with standards established in the PWDS. The Planning Commission notes that the sheer number of vehicle trips that would result from a plan designation change/zone change or increase in vehicle trips is not restricted by any standard so long as the impact from those trips is mitigated. In this case the evidence in the record establishes that it is. ~~Regarding the vehicle movement timing, the Planning Commission first notes that this is not a Goal 12 consideration, which focuses on LOS and v/c ratios, but may not be relevant to the related zone change standard. In any event, again the~~ The issue in the present context is not whether the delay exceeds the intersection operational standards, but is whether the proposal mitigates for the impacts it creates when the intersection exceeds its vehicle movement operational standards under the existing zoning. In this case, for example, Table 9 from the Transportation Study shows that the Kuebler Boulevard/27th Avenue delay under the current zoning is 157.8 and under the unmitigated proposed zoning is greater than 200. However, with mitigation, as shown on Table 10, that delay is reduced to 87.5, well below the 157.8 that will exist without the approval. While that value still exceeds the operational standard, it is an improvement over the current zoning failing operations and satisfies the “no further degradation” standard. ~~Furthermore, as DKS pointed out, the argument made by staff looks at the timing of individual turn lanes, but that the best engineering practices and City standards require considering overall intersection delays, not individual movements. As the DKS testimony explained, movement operations fluctuate drastically and are strongly influenced by signal timing. Staff’s position would have the Planning Commission deviate from best practices and City standards to adopt a different approach in the review of this particular traffic study. The Planning Commission declines to do so.~~

~~Staff then lists the “many factors” why Staff does not support the proposed zone change. Several of the stated factors do not relate expressly to approval standards or are beside the point given the analysis required for the TPR and City zoning standards. Concerns such as site limitations forcing most site traffic to one access, the large amount of traffic generated by the proposed zone, and staff’s perceived timing of peak traffic volumes do not directly correlate to approval criteria. They cannot be a basis for denying this application. Other concerns, such as the fact that intersections in the area are already failing, Costco traffic is directed to the same entrance/exit as the subject property, and the long vehicle queues, are all accounted for in the DKS data and analysis in which the Planning Commission finds that the Applicant has demonstrated that the proposal complies with applicable approval standards. For example, while the vehicle queues in the TPR Study Table 11 shows excessive queue lengths are possible on northbound 27th Avenue even after mitigation, it also demonstrates that the 95th percentile queue lengths with the proposal will be the same as, or better than, they will be without the proposal. In other words, this proposal actually reduces the likelihood that queues will encroach into the roundabout or crosswalk. All other queue lengths comport with available storage and do not cause spillback into crosswalks as Staff posits.~~

~~Staff’s final argument is that the Applicant’s transportation system analysis is “not persuasive because of the changed circumstances associated with the passage of time, the pandemic, and the opening of the Costco in the near vicinity of the subject property have made prediction of the actual traffic impacts too uncertain.” Staff’s approach would be to wait for some period of time for things to settle down and then do a new traffic analysis based on “normal” conditions. As Applicant and DKS have noted, not only will construction at Costco continue until at least March or April (or perhaps longer), established transportation data demonstrates that traffic flows at a newly opened Costco are anything but normal for several more months after opening. Factor in the continuously evolving pandemic situation and potential new construction in the area given recent land use approvals, which will potentially further skew traffic data, and one is left with the question of “when will traffic counts ever be “normal”?” As ODOT’s OHP~~

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~~notes, there are always many variables and levels of uncertainty in transportation planning. And while the Planning Commission agrees with Staff that the traffic tolerances in this part of Salem are narrow, the Planning Commission finds that Staff's approach would lead to an impermissible *de facto* moratorium prohibited by state statute. The Applicant's analysis is based upon the best available data and represents best transportation engineering practices. Consequently, the Planning Commission disagrees with Staff's opinion of the evidence.~~

The Planning Commission finds that the DKS transportation system analysis is persuasive and the proposed and conditioned mitigation measures will mitigate the impacts caused by the traffic that will result from development under the proposed plan designation and zoning.

~~To reiterate from above, based upon the above findings, the Planning Commission concludes that the proposal, as mitigated by the conditions of approval imposed by this decision, is consistent with Goal 12 and the Transportation Planning Rule, as well as with the transportation-related requirements of the Salem Revised Code.~~

~~The Planning Commission concludes the proposal, as conditioned, is consistent with Goal 12 and the Goal 12 Rule. |~~

These revisions are inappropriate - the PC has to make the required finding.

Planning Commission Findings: Each of the above are geographic specific goals. The Subject Property is not within the Willamette River Greenway, or in an estuary or coastal area. Consequently, Goals 15, 16, 17, 18 and 19 do not impose any requirements to this proposal.

The proposal is consistent with Goals 15 through 19.

~~The Planning Commission finds that the proposal is consistent with the Statewide Planning Goals and implementing regulations.~~

~~Because the proposal is consistent with the Salem Area Comprehensive Plan and with the Statewide Planning Goals and their implementing regulations, the proposal satisfies SRC 64.025(e)(2)(D).~~

The following revisions are inappropriate and unresponsive to the standard:

SRC 64.025(e)(2)(E): The amendment is in the public interest and would be of general benefit.

Finding:

Planning Commission Findings: The proposed plan designation change and zone change satisfies an identified need for commercial retail employment-related uses, and proposes to meet that need through changing land designations and zoning for which City studies have demonstrated that the City has an excess of land. The proposal is also consistent with the City's planning program and the City Council's expressed intent to establish commercial services in close proximity to residential neighborhoods. Given the subject property's location along major access routes to the surrounding residential areas and accessibility by alternative means of transportation, the Planning Commission concludes that the proposal is in the public interest and would be of general benefit to the surrounding neighborhoods and to the City generally.

~~The portions of the November 2, 2021 Staff Report quoted below are consistent with and support the Planning Commission's conclusion that the proposal is in the public interest.~~

~~"The proposed Comprehensive Plan Map amendment from Developing Residential to Commercial is in the public interest and would be of general benefit because it would facilitate the provision of goods and services to a developing part of the City with relatively few commercial areas. An analysis of city-wide demand for buildable commercial land over the next 20 years was completed in the October 2014 EOA and determined that an additional 271 acres of commercial land is needed to meet demand the commercial land needs of the City over this period. Of this deficiency, roughly 100 acres are needed to accommodate retail commercial services. The conversion of the site to a Commercial plan designation and a Retail Commercial zoning designation will reduce this current deficit of commercial retail land.~~

~~“The City has recently completed a Housing Needs Analysis (HNA) that evaluated the City’s housing needs over the course of 20 years from 2015 to 2035. The report, conducted by ECONorthwest, found that the City has a surplus of approximately 1,975 acres for single family residential development and a deficit of land available for multifamily residential development. According to the Housing Needs Analysis (HNA), “Salem has a deficit of capacity in the MF designation, with a deficit of 2,897 dwelling units and a deficit of 207 gross acres of residential land.” As of December 2020, the City has added 40 net acres of Multiple Family designated land, reducing the projected deficit to 167 acres. Additionally, the City has added 89 acres of Mixed-Use designated land which allows multi-family development as an outright permitted use, thereby further increasing the land available for multi-family development.~~

~~“The applicant’s proposal to convert 24.66 acres of residential agriculture land to retail commercial will reduce this residential land surplus and improve the balance of residential and commercial land within the City. The Plan Map amendment would help address a deficit of approximately 100 acres of retail commercial services identified in the Economic Opportunities Analysis.~~

~~“The proposed change in land use designation is consistent with the location and character of the property, with Comprehensive Plan policies for siting commercial facilities, and with the transportation facilities available to serve the property.”~~

~~The proposal satisfies this standard.~~

~~**Conclusion:** For the reasons provided above and based upon the evidence in the record, the Applicant has demonstrated that the proposal satisfies each of the applicable criteria for granting a minor comprehensive plan (map) amendment designation for the subject property from Developing Residential to Commercial.~~

Revisions below are inappropriate and unresponsive to the standard:

~~**Planning Commission Findings:** The Planning Commission finds that the evidence in the record supports the conclusion that the proposal satisfies both the “change in character of the vicinity” and the “equally or better suited for the property than the existing zoning” requirements of SRC 265.005(e)(1)(A)(ii) and (iii). The evolving integration of new commercial uses in close proximity to the existing residential developments is consistent with the vicinity’s recent economic development pattern and reflects changing concepts in land use planning and economic development. The proposed zone change to CR (Commercial Retail), as opposed to other zoning that implements the Commercial plan designation, is also consistent with the gently sloping site and, given the juxtaposition to both residential development, recently approved commercial uses and key transportation routes, to include public transportation, the retail uses allowed by the proposed zone change logically fit with the surrounding uses better than the existing RA zoning.~~

~~The Applicant Statement appropriately documents the significant economic changes that have occurred in the vicinity of the subject property:~~

~~“Since the annexation of the Subject Property, the properties in the surrounding area have undergone significant economic change.~~

~~“Pacific Realty Associates LP (PacTrust) Property: The PacTrust property located directly to the west of the Subject Property was re-zoned from a split-zoned Commercial office/Residential Agriculture zoning to a split-zoned Commercial Office/Commercial Retail. The Commercial Office portion of that property has been developed and there is a proposed move of the Mission Street Costco to the Commercial Retail portion of the property. This change and the proposed development make the Subject Property particularly unsuitable for residential development.~~

~~“Clark Property: The property directly north of the Subject Property was rezoned in March of 2016 from Residential Agriculture to Commercial Retail to allow for future commercial development of the site.~~

~~“Boone Road Land SL LLC: The property directly south of the Subject Property has been rezoned to Multiple Family Residential with plans for development of an assisted living facility similar to the Bonaventure complex to the east of the Subject Property. As with the Bonaventure complex, an adjacent commercial complex would benefit the residents of the future assisted living development by providing nearby access to commercial retail.~~

~~“East of Interstate 5: East of the Subject Property on Kuebler Blvd. there has been substantial development of various uses including the new State Police Headquarters, the Parks and Recreation Facility, the Bonaventure facility and corresponding expansion of commercial office and residential services to serve that community, as well as the Amazon Distribution center and other industrial operations that will impact the character of the vicinity and decreases the suitability of the Subject Property for single family residential development.~~

~~"In addition, the CR zoning designation is better suited for the Subject Property than the RA zoning designation. There has been and continues to be ongoing residential development of the southeast part of the City, and the amount of nearby commercial services has not kept pace with this growth. The increase in population, employment, and the number of households in the area creates a local market for goods and services. This proposed zone change will create a commercial center to serve the population of the southeast part of the City. This will provide an opportunity for neighborhoods to have shopping and other retail services that the area currently lacks. The proposed zone change will create a commercial retail facility to serve the surrounding community and will reduce vehicle miles traveled to reach commercial services. The overall project will increase the inventory of commercial land available to retail businesses. It will provide an opportunity to expand and diversify the range of commercial and retail services available to the neighborhoods in the vicinity. The change will have a beneficial impact on the surrounding area."~~

~~The Planning Commission further notes that the Staff Response concurs with the Applicant's analysis and reiterates that no specific development proposal has been proposed or approved. The Staff Response states:~~

~~*****~~

~~"It must be noted that a zone change is not an approval of a specific development proposal, but instead is approval of a permanent change in a property's zoning district. The proposed Plan Map amendment would change of the land use designation of the subject properties to "Commercial," which can be implemented by multiple zoning districts contained in the Unified Development Code. In evaluating the proposed zone change, the suitability of the specific zone (Commercial Retail) proposed by the applicant must be considered. For this reason, an additional measure of the suitability of this request is consideration of the nature of the potential future uses allowed by the CR zone when compared to the uses allowed under the existing RA zone, and the character of the existing land uses in the neighborhood. As stated previously, the subject property is located within an area largely characterized by holding uses consistent with the "Development Residential" designation.~~

~~"The City is proposing to change the Comprehensive Plan map designation of the Subject Property to Commercial through the *Our Salem* planning process[.]"~~

~~The Planning Commission notes that participants at the hearing have argued that other zone designations, specifically CO (Commercial Office), MU-I and MU-II (Mixed Use) zones would, in fact, be a better zone for the property given the adjacent residential uses. Similarly, participants have argued that conditions to restrict certain CR-permitted uses,~~

such as drive-through services, would make for an even better fit. The Planning Commission finds that, ~~for this standard, such arguments are misdirected. Relevant here, this criterion requires that the applicant demonstrate a change of circumstances such that the proposed zone would be compatible with the vicinity's development pattern or that the proposed zone is better suited for the property than the existing zoning. the issue of fit can be addressed by the following conditions of approval:~~

Condition 1: The subject property shall not contain more than three uses with drive through.

Condition 2: The subject property shall have no single retail store building that is constructed with more than 70,000 sq. ft.

The Applicant has carried its burden and made that demonstration. The standard does not require that the Applicant demonstrate that the requested zoning is the best or most ideal zoning for the property, only that it is either compatible with the vicinity's development pattern or better suited than the existing pattern. ~~The Applicant has demonstrated that both standards are met.~~

~~The proposal satisfies this standard.~~

These revisions are inappropriate and leave relevant parts of the standard and relevant issues completely unaddressed:

SRC 265.005(e)(1)(C): The zone change complies with the applicable provisions of the Salem Area Comprehensive Plan.

~~**Planning Commission Finding:** Findings: This proposal is a consolidated addressing the minor comprehensive plan change and zone change request. The findings above for Comprehensive Plan Change map criterion SRC 64.025(e)(2)(D), included above in this report, address the applicable provisions of the Salem Area Comprehensive Plan that apply to for this consolidated application. ~~For the most part, the responses for the requested CR zoning mirror the response to plan provisions for the proposed Commercial plan designation. Where the response to the plan provision may differ based upon the zone designations permitted under the plan designation, the findings address specifically the zoning as well. Consequently, the findings for SRC 64.025(e)(2)(D) are herein incorporated as responses to this standard.~~~~

~~The Planning Commission notes that public comments did not raise any specific plan policies or goals as applicable to the application proposal.~~

~~The Planning Commission further notes that the CR (Commercial Retail) zone implements the Commercial plan designation, as do the CO (Commercial Office) and MU-I and MU-II (Mixed-Use) zones the planning staff, neighborhood groups and neighbors argued for. The Applicant could have requested any of these zones and been consistent with the requested plan designation under the Salem Area Comprehensive Plan. The choice of which zone to request is the Applicants and so long as that choice conforms to the requested plan designation and satisfies the applicable provisions of the Salem Area Comprehensive Plan, which the Planning~~

~~Commission finds the Applicant has done in this instance for the reasons provided under SRC 64.025(e)(2)(D), the proposal complies with this standard. The proposal satisfies this criterion.~~

The following issue was raised by staff and so it must be responded to. It cannot be ignored:

Furthermore, many of the staff comments pertaining to City transportation standards were also addressed in response to whether the proposal is consistent with Comprehensive Plan goals and policies as well as with the STSP. Those responses are also herein incorporated.

~~There is one final staff concern that has not been addressed in these findings. Staff inquired about whether the Transportation Study considered lane utilization factors with respect to queuing. DKS responded that it utilized Synchro software, which provides default factors for lane utilization based upon various factors and does not assume equal distribution among multiple lanes. Staff does not respond that the Synchro software is in anyway inadequate or does not reflect best engineering practices. Without any evidence or directed argument as to why using the Synchro software would undermine the credibility of the DKS analysis, the Planning Commission finds that the Transportation Study was correct to use it.~~

The following condition is inconsistent with the PC approval:

- 36th Avenue SE at Kuebler Boulevard SE –
 - Construct a westbound right turn lane on Kuebler Boulevard SE at the intersection with 36th Avenue SE. The right turn lane shall provide for 100 feet of vehicle storage. Modify the traffic signal as required to construct the improvements.

The following conditions do not reflect Lacy's requested clarifying revisions:

- Battle Creek Road SE at Kuebler Boulevard SE –
 - Construct a second southbound left turn lane on the Battle Creek Road SE approach.

- 27th Avenue SE at Kuebler Boulevard SE –
 - Construct a second northbound right turn lane on 27th Avenue SE. The additional right turn lane shall extend from the site at the roundabout to the intersection with Kuebler. The signal shall be modified to accommodate the right turn lanes and splitter island.
 - Construct a second northbound left turn lane on 27th Avenue SE. The additional left turn land shall extend from the roundabout to the intersection with Kuebler Boulevard SE. The signal shall be modified to accommodate the two left turn lanes.
 - Extend the westbound left turn lanes on Kuebler Boulevard to provide 600 feet of vehicle queueing in each lane.
 - Additional widening, improvements, and signal modifications will be required on the north leg of 27th Avenue to insure proper lane alignment and safe operation

We are aware of no justification for the omission of this important finding:

~~**Conclusion:** For the reasons provided above and based upon the evidence in the record, the Applicant has demonstrated that the proposal satisfies each of the applicable criteria for granting a zone change for the subject property from Residential Agriculture (RA) to Commercial Retail (CA).~~

As explained previously, these fns should not be omitted. They contain relevant clarifications.

~~¹Staff suggested that Costco's opening should be considered a "disruptive event" and that no traffic counts supporting any amendments or developments should be allowed to be taken or considered until some period of time after Costco opens—which would the evidence establishes likely be somewhere between 6 months to a year from now. The Planning Commission rejects this Staff position that the opening of Costco is a disruptive event. The opening of a particular store, that the City Council has approved in a wholly public process cannot be and is not properly considered a "disruptive event."~~

~~²There is no dispute that the Applicant did conduct traffic counts in October 2021 and they showed that there is less traffic on the system than the counts taken or otherwise available immediately before the submittal of the applicant's TPR Study submitted in May 2021. There is no dispute that if those October 2021 counts were used, the Applicant could not be required to make the improvements to the Battle Creek and Kuobler Intersection that are herein imposed as a condition. There is also no dispute that Staff did not want the Applicant to use those October 2021 counts either.~~

~~³At the particular intersection of Kuobler and Commercial, it is a City street.~~

~~BEFORE THE PLANNING COMMISSION OF THE CITY OF SALEM~~ FACTS & FINDINGS

~~IN THE MATTER OF APPROVING) ORDER NO. [REDACTED]~~
~~THE APPLICATION FOR)~~

~~COMPREHENSIVE PLAN CHANGE /~~
~~COMPREHENSIVE PLAN CHANGE /) ZONE CHANGE CASE NO. CPC-ZC21-04~~
~~ZONE CHANGE CASE NO.)~~
~~CPC-ZC21-04 FOR THE PROPERTY)~~
~~LOCATED AT THE 2900 BLOCK OF)~~
~~KUEBLER BLVD SE (AMANDA)~~
~~APPLICATION NO. 21-115803-ZO;)~~
~~21-115805-ZO))~~

~~This matter coming regularly for hearing before the Planning Commission of the City of Salem, at its December 21, 2021 meeting, and the Planning Commission, having received evidence and heard testimony, hereby references and incorporates the attached Facts and Findings, attached as Exhibit A, and adopts the following Order, with conditions of approval as set forth in Exhibit A, in approving the application for Comprehensive Plan Change and Zone Change Case No. CPC-ZC21-04.~~

ORDER:

~~The application for Comprehensive Plan Change and Zone Change, Case No. CPC-ZC21-04, as proposed and with conditions of approval provided herein, is approved.~~

~~This order constitutes the final land use decision and any appeal hereof must be filed with the Oregon Land Use Board of Appeals within 21 days of the date that notice of this decision is mailed to persons with standing to appeal.~~

~~Exhibit A: Facts and Findings, Dated~~

January 25, 2022.

PROCEDURAL FINDINGS

~~APPROVED by the Planning Commission this ____ day of January, 2022.~~

ATTEST:

City Recorder

~~FOR THE PLANNING COMMISSION MEETING OF: _____~~

~~AGENDA ITEM NO: _____~~

~~TO: _____ Planning Commission~~

~~FROM: _____ Norman Wright, Community Development Director~~

~~FINAL ADOPTION~~

~~DATE: _____ January 25, 2022~~

~~APPLICATION: _____ Comprehensive Plan Change/Zone Change 21-04~~

~~LOCATION: _____ 2900 Block of Kuebler Boulevard SE; Marion County Assessor's Map Number T8S R3W S12 Quarter Section C, Tax Lot 2204~~

~~SIZE: _____ 24.66 acres~~

~~REQUEST: _____ To change the Salem Area Comprehensive Plan Map designation from "Developing Residential" to "Commercial" and to change the zoning from RA (Residential Agriculture) to CR (Commercial Retail) for a 24.66-acre site located in the 2900 Block of Boone Road SE.~~

~~APPLICANT: _____ BOONE ROAD COMMERCIAL, LLC~~

~~OWNER: _____ KUEBLER CASCADE VIEW, LLC~~

~~APPROVAL CRITERIA: _____ Comprehensive Plan Map Amendment: Salem Revised Code, Chapter 64~~

~~Zone Map Amendment: Salem Revised Code, Chapter 144~~

~~PLANNING~~

~~COMMISSION MOTION: _____ APPROVE the Comprehensive Plan/Zone Change, subject to the following Zone Change Conditions of Approval _____~~

~~CONDITIONS OF APPROVAL:~~

- ~~(1) _____ The Applicant will enter into an Improvement Agreement with the City under which the Applicant will:~~
- ~~(a) _____ Fully construct the west bound slip lane (a west bound right turn lane to the roundabout) from the site access onto 27th Avenue SE;~~
 - ~~(b) _____ Fully construct proposed improvements to the Kuebler Boulevard and 27th Avenue intersection, which include installing dual north bound right turn and dual north bound left turn lanes, and changing phasing to protected only for north bound left and south bound left turns;~~
 - ~~(c) _____ Construct the second south bound left turn lane at the intersection of Kuebler Boulevard and Battle Creek Road;~~
 - ~~(d) _____ Pay \$118,000.00 to the City of Salem for the applicant's proportionate share of improving the intersection of Kuebler Boulevard and 36th Avenue.~~

[Facts & Findings – Comprehensive Plan Change / Zone Change Case No. CPC-ZC21-04](#)

[January 25, 2022](#)

[Page 3](#)

~~The above improvements shall be constructed in accordance with the Improvement Agreement and conform to Public Works Design Standards.~~

~~(2) The property will be improved with no more than three drive through window establishments. A single store/restaurant/bank etc. may have more than one drive through feature serving the single establishment and that scenario will count as one drive through window.~~

~~(3) No single retail store building shall be composed of more than 70,000 sq. ft. of gross leasable area.~~

BACKGROUND INFORMATION

Procedural History

1. On August 25, 2021, [an application was filed for a Comprehensive Plan Map Amendment and Quasi-Judicial Zone Change by Mark Shipman of Saalfeld Griggs PC, on behalf of Boone Road Commercial, LLC, filed an application for a Comprehensive Plan Change and Zone Change to change the Comprehensive Plan Map designation of to change 24.66-acres,](#) the subject property ~~from Developing residential to Commercial and to change the zoning,~~ from RA (Residential Agriculture) to CR (Retail Commercial).

2. The [consolidated](#) application was deemed complete for processing on September 23, 2021.

~~A public hearing was scheduled with the Planning Commission for November 2, 2021. The staff report, made available on October 26, 2021, recommended denial of the application. and a public hearing to consider the application was scheduled for November 2, 2021.~~

3. [On June 10, 2021, the applicant's representative attended the South Gateway Neighborhood Association meeting, held virtually, to present their proposal, meeting the open house requirements of SRC 300.320.](#)

4. [Notice of the consolidated application was provided to surrounding property owners and tenants, pursuant to Salem Revised Code \(SRC\) requirements, on October 13, 2021. The property was posted in accordance with the posting provision outlined in SRC 300.620.](#)

5. [DLCD Notice. State law \(ORS 197.610\) and SRC 300.620\(b\)\(1\) require the City to provide the Oregon Department of Land Conservation and Development \(DLCD\) a minimum 35-day notice when an applicant or the City proposes an amendment to an acknowledged Comprehensive Plan or land use regulation or to adopt a new land use regulation. The City sent notice of the proposed Comprehensive Plan Change and Zone Change application to DLCD on September 24, 2021.](#)

6. [On November 2, 2021, the Planning Commission held a public hearing and for the consolidated applications. The Planning Commission received testimony for consolidated Comprehensive Plan Map Amendment and Zone Change Case No. 21-04. The from the applicant and from the public. The public hearing was continued until November 16, 2021.](#)

7. [On November 16, 2021, the Planning Commission continued the public hearing to November 16 until December 21, 2021.](#)

~~At by request of the November 16, 2021 hearing staff and the applicant requested the Planning Commission continue the public hearing until December 21, 2021 to resolve to discuss with staff~~

concerns ~~with regarding~~ the Transportation Planning Rule (TPR) Analysis. ~~The Planning Commission granted the continuance to December 21, 2021 analysis.~~

8. On December 21, 2021, ~~having reviewed the evidence in the record,~~ the Planning Commission took testimony from the application and public, then closed the public hearing ~~and deliberated. Following deliberations, the Planning.~~ The Commission voted to ~~approve, CPC-ZC21-04,~~ grant the Comprehensive Plan Change and Zone Change applications with three conditions of approval.

Proposal

9. 120-Day Rule. Pursuant to Oregon Revised Statutes (ORS) 227.128, amendments to an acknowledged Comprehensive Plan are not subject to the 120-day rule. In addition, the requested Quasi-Judicial Zone Change included with the application is similarly not subject to the 120-day rule because, pursuant to ORS 227.178(10), the zone change has been filed concurrently, and is being considered jointly, with the proposed comprehensive plan amendment.

BACKGROUND / PROPOSAL

The applicant is requesting ~~to change the zoning of the subject property~~ a comprehensive plan map amendment from RA (Residential Agriculture) to CR (Retail Commercial). ~~The zone change also requires an amendment to the Salem Area Comprehensive Plan (SACP) Map to change the comprehensive plan designation from "Developing Residential" to "Commercial," a designation which is implemented by the CR zone.~~ for the subject property.

~~The proposal requires the following land use approvals:~~

- ~~1) A Minor Comprehensive Plan Map Amendment to change the Comprehensive Plan Map designation of the subject property from "Developing Residential" to "Commercial."~~
- ~~2) A Quasi-Judicial Zone Change to change the zoning of the subject property from RA (Residential Agriculture) to CR (Retail Commercial).~~

Existing Site Conditions

~~The subject site consists of four adjoining rectangular lots totaling 24.66 acres in size (Marion County Assessor's Map and Tax Lot Number 083W12C / 2201). The subject property is primarily undeveloped. The subject property slopes downward from a high point of approximately 380 feet above mean sea level (AMSL) along the south property line to approximately 298 feet AMSL at the east property line and approximately 312 AMSL at the north property line.~~

APPLICANT'S STATEMENT

Land use applications must include a statement addressing the applicable approval criteria and be supported by proof they conform to all applicable standards and criteria of the Salem Revised Code. The written statement from the applicant summarizing the request and addressing compliance with the applicable approval criteria can be found in the record

[Facts & Findings – Comprehensive Plan Change / Zone Change Case No. CPC-ZC21-04](#)

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[‘Written Statement’ when the application was submitted. Additional written findings were submitted into the record ‘DKS letter dated November 1, 2021’ ‘DKS letter dated December 10, 2021’ and ‘Kellington Law Group, PC letter dated December 10, 2021’.](#)

[The applicant submitted a conceptual plan indicating commercial retail, lodging, mixed use, office and residential uses on the property. The Transportation Planning Rule analysis submittal also includes conceptual site plans with a shopping center contained in several areas and potential uses on the subject property, and the TPR Study uses a worst-case scenario in the analyses as required by the rule.](#)

[Although the applicant’s site plan illustrates how the site could be developed under the proposed Comprehensive Plan Map designation, the site plan and illustrations submitted were conceptual only. The applicant has not proposed particular development and has not requested development approval as part of the subject application.](#)

[Planning Commission utilized the information included in the applicant’s statement to evaluate the proposal and to establish the facts and findings.](#)

SUMMARY OF RECORD

[The following items are submitted to the record and are available upon request: 1\)All materials and testimony submitted by the applicant, including any applicable professional studies such as traffic impact analysis, geologic assessments, stormwater reports; 2\) any materials, testimony, and comments from public agencies, City Departments, neighborhood associations, and the public; and 3\) all documents referenced in this report.](#)

FACTS AND FINDINGS

1. Salem Area Comprehensive Plan (SACP) ~~Designation~~

The Salem Area Comprehensive Plan (SACP) map designates the subject ~~property~~[properties](#) as "Developing Residential." [The proposal includes changing the Comprehensive Plan designation of the subject property to “Commercial.”](#)

The Comprehensive Plan designations of surrounding properties include:

North: (Across Kuebler Boulevard SE) “Commercial”

South: (Across Boone Road SE) “Developing Residential” and “Multiple Family”

East: Right-of-way for Interstate 5

West: (Across 27th Avenue SE) “Commercial”

Components of the Comprehensive Plan

The Salem Area Comprehensive Plan is the long-range plan for guiding development in the Salem urban area. The overall goal of the plan is to accommodate development in a timely, orderly, and efficient arrangement of land uses and public facilities and services that meets the needs of present and future residents of the Salem urban area. Many

different documents and maps, when taken together, comprise the Salem Area Comprehensive Plan.

Salem Transportation System Plan (~~STSP~~TSP): The ~~STSP~~TSP uses a Street Classification System to determine the functional classification of each street within the City's street system. ~~The subject property is abutted by a designated collector street to the west (27th Avenue SE).~~

~~Kuebler Boulevard SE, a designated parkway, runs along~~ as a Parkway in the TSP, which abuts the north ~~property~~ boundary. ~~Right-of-way for the Interstate 5 freeway and interchange ramps form part of the eastern boundary of the site. Boone Road SE, is a collector street west of 27th Avenue SE and is a local street as it runs along the southern property boundary.~~

~~Neighborhood Plan: The subject property is within the boundary of the South Gateway Neighborhood Association (SGNA), which does not have an adopted neighborhood plan.~~ subject property.

Relationship to the Urban Service Area

The subject property is located outside of the City's Urban Service Area. Pursuant to the Urban Growth Management requirements contained under SRC Chapter 200, an Urban Growth Preliminary Declaration is required. An Urban Growth Preliminary Declaration application was previously approved (UGA09-08) and is now expired.

2. Zoning

The subject property is zoned RA (Residential Agriculture). Surrounding properties are zoned and used as follows:

North: (Across Kuebler Boulevard SE) CR (Retail Commercial)

South: (Across 27th Avenue SE) RA (Residential Agriculture) and RM-II (Multiple Family Residential)

East: Right-of-way for Interstate 5

West: (Across 27th Avenue SE) CR (Retail Commercial)

Relationship to the Urban Service Area

3. Existing Conditions

~~The subject property is located outside of the City's Urban Service Area. Pursuant to the Urban Growth Management requirements contained under SRC Chapter 200, an Urban Growth Preliminary Declaration is required prior to applying for a building permit or subdividing the property. An Urban Growth Preliminary Declaration application was previously approved (UGA09-08) and is now expired.~~ site consists of four adjoining rectangular lots totaling 24.66 acres in size (Marion County Assessor's Map and Tax Lot Number 083W12C / 2201). The subject property is primarily undeveloped. The subject property slopes downward from a high point of approximately 380 feet above mean sea level (AMSL) along the south property line to approximately 298 feet AMSL at the east property line and approximately 312 AMSL at the north property line.

Land Use History

~~Comprehensive Plan Change/ Zoning Change (CPC/ZC 93-15); A joint Annexation, Comprehensive Map Change and Zone Change. (Not approved by voters, Expired).~~

~~Annexation Case (ANXC-688); Annexation of subject property effective April 4, 2011.~~

~~Urban Growth Preliminary Declaration (UGA09-08); A UGA Development permit for approximately 40 acres (subject property and property south of Boone Road) to determine public facilities required for the properties. (Expired).~~

Public and Private Agency Review

4. City Department Comments

~~**Salem Public Works Department** – The Public Works Memo identified the storm drainage, water and sanitary sewer facilities adjacent to the property and concluded the subject property is capable of being served through the extension of public facilities as specified in existing infrastructure master plans. The memo also noted future development will require an Urban Growth Preliminary Declaration pursuant to SRC Chapter 200 as noted above. – The Public Works Department, Development Services Section, also reviewed the proposal and submitted comments, recommending denial on transportation grounds.~~

Salem Fire Department – The Salem Fire Department submitted comments indicating that they have no concerns with the request.

Salem Building and Safety Division – The Building and Safety Division has reviewed the proposal and indicated no concerns.

5. Public Agency & Private Service Provider Comments

Oregon Department of Land Conservation and Development (DLCD) – No comments received.

Cherriots – Cherriots commented that two stops should be provided to facilitate the expansion of the existing public transportation routes. The applicant and Cherriots discussed providing stops on at the proposed north-south street shown on south of the roundabout as shown in application materials. ~~The exact bus stop(s) location, and decision about whether there will be one bus stop or two, will be decided in the subsequent site design review processes.~~

6. Neighborhood Association and Public Comments

The subject property is located within the boundaries of the South Gateway Neighborhood Association. The property is ~~across Kuebler Boulevard SE~~ adjacent to the Morningside Neighborhood Association (across Kuebler Boulevard SE) and ~~near to the~~ Southeast Mill Creek Association (SEMCA), ~~the boundary for which is~~ (across Interstate – 5).

Required Open House/Neighborhood Association Meeting. Prior to application submittal, SRC 300.320 requires the applicant for a proposed minor amendment to the City's comprehensive plan map to either arrange and conduct an open house or present their proposal at a regularly scheduled meeting of the neighborhood association the property is located within. On June 10, 2021, the applicant's representative attended the South Gateway Neighborhood Association meeting, held virtually, to present their proposal. A summary of the comments provided at the neighborhood association meeting was ~~part of~~ submitted into the ~~application materials~~ record.

Neighborhood Association Comment

The City provided a notice of filing and request for comments to the South Gateway Neighborhood Association, Morningside Neighborhood Association and Southeast Mill Creek Association (SEMCA) pursuant to SRC 300.620(b)(2)(B)(v), which requires notice to be sent to any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property.

Comments were received from the South Gateway Neighborhood Association indicating opposition to the proposal. South Gateway ~~stated that they preferred~~ indicated Mixed Use (MU-I or MU-II) ~~zoning would be better suited~~ for the subject property. South Gateway and four surrounding property owners ~~also indicated~~ indicate that traffic is a concern due to the new Costco building being constructed and that the addition of a drive-thru to the area could be detrimental to the traffic system.

[Response: Traffic and traffic mitigation is listed below under the Transportation Planning Rule analysis.](#)

Public Comment

Notice was also provided, pursuant to SRC 300.620(b)(2)(B)(iii), (vi), & (vii), to all property owners and tenants within 250 feet of the subject property. Posted notice signs for the public hearing were placed ~~in a location that was~~ visible from each street frontage of the subject property and remained in place through the day of the public hearing as required by SRC 300.620(b)(3).

Public ~~comment was~~ comments have been received and ~~entered~~ submitted into the record. Comments raised concerns about traffic.

[Response: Traffic and traffic mitigation is listed below under the Transportation Planning Rule analysis.](#)

Homeowners Association

The subject property is not located within a Homeowners Association.

Oregon Department of Land Conservation and Development (DLCD) Notice

State law (ORS 197.610) and SRC 300.602(b)(1) require the City to provide the Oregon Department of Land Conservation and Development (DLCD) a minimum 35-day notice when an applicant or the City proposes an amendment to an acknowledged Comprehensive Plan or land use regulation or to adopt a new land use regulation. The

City sent notice of this proposal to DLCD on September 24, 2021. DLCD did not submit any comments.

Site Plan

~~A site plan is not required as part of a Comprehensive Plan Map Amendment/Zone Change application. The applicant submitted a conceptual plan indicating commercial retail, lodging, mixed-use, office and residential uses on the property. The Transportation Planning Rule analysis submittal also includes conceptual site plans with a shopping center contained in several areas and potential uses on the subject property, and the TPR Study uses a worst-case scenario in the analyses as required by the rule.~~

~~Although the applicant's site plans illustrates how the site could be developed under the proposed Comprehensive Plan Map designation, the site plan and illustrations submitted were conceptual only, the applicant has not proposed particular development and has not requested development approval as part of the subject application.~~

Applicant Submittal Information:

~~Requests for Minor Comprehensive Plan Changes and zone changes must include a statement addressing each applicable approval criterion and standard. The applicant submitted such statements and proof, which are included in the record. Staff utilized the information from the applicant's statements to evaluate the applicant's proposal and to submit staff responses. Where appropriate, these findings identify the respective applicant statements, the staff response, and public responses as part of the Planning Commission's analysis and findings.~~

7. 1. FINDINGS APPLYING THE APPLICABLE SALEM REVISED CODE CRITERIA FOR A MINOR COMPREHENSIVE PLAN MAP AMENDMENT APPROVAL CRITERIA

Salem Revised Code (SRC) 64.025(e)(2) establishes the approval criteria for Comprehensive Plan Map amendments. In order to approve a quasi-judicial Plan Map amendment request, the decision-making authority shall make findings of fact based on evidence in provided by the record applicant that demonstrates satisfaction of all of the applicable criteria. The applicable criteria are shown below in **bold** print. Following each criterion is a finding relative to the amendment requested. ~~The excerpts and summaries of the Applicant Statements and Staff Report are drawn largely from the application written statement and the Staff Reports dated November 2, 2021 and December 21, 2021.~~

SRC 64.025(e)(2)(A): The Minor Plan Map Amendment is justified based on the existence of one of the following:

- (i) ***Alteration in Circumstances.*** Social, economic, or demographic patterns of the nearby vicinity have so altered that the current designations are no longer appropriate.

- (ii) ***Equally or Better Suited Designation.*** A demonstration that the proposed designation is equally or better suited for the property than the existing designation.
- (iii) ***Conflict Between Comprehensive Plan Map Designation and Zone Designation.*** A Minor Plan Map Amendment may be granted where there is conflict between the Comprehensive Plan Map designation and the zoning of the property, and the zoning designation is a more appropriate designation for the property than the Comprehensive Plan Map designation. In determining whether the zoning designation is the more appropriate designation, the following factors shall be considered:
 - ~~(aa)~~ **(aa)** Whether there was a mistake in the application of a land usedesignation to the property;
 - ~~(bb)~~ **(bb)** Whether the physical characteristics of the property are better suitedto the uses in the zone as opposed to the uses permitted by the Comprehensive Plan Map designation;
 - ~~(cc)~~ **(cc)** Whether the property has been developed for uses that are incompatible with the Comprehensive Plan Map designation; and
 - ~~(dd)~~ **(dd)** Whether the Comprehensive Plan Map designation is compatible withthe surrounding Comprehensive Plan Map designations.

~~**Planning Commission Findings:** The Applicant's Statement provided the following analysis for this approval standard:~~

Finding: Since the annexation of the subject property, the properties in the surrounding area have undergone significant economic change. The property west of the subject property was re-zoned to CR (Retail Commercial) and CO (Commercial Office). The property north of the subject property was rezoned to CR in March of 2016 ~~and the~~ The property south of the subject property has been rezoned to multiple family residential and developed as an assisted living facility. In addition, East of Interstate 5 properties have developed to accommodate various commercial uses including Oregon State Police Headquarters, Parks and Recreation Facility, Amazon Distribution and other facilities that make Kuebler an important commercial corridor. ~~The change in the area has been acknowledged by the City's 'Our Salem' proposed map, which designates the property as 'Commercial'.~~

~~“The Commercial plan designation is equally or better suited for the subject property than the Developing Residential designation. The primary goal of the Commercial designation is to maintain and promote of the City’s as a commercial center for Marion-Polk Counties. The location of the subject property, as well as the surrounding uses, makes it well-suited for Commercial designation. The location adjacent to I-5, and possibly being developed into a retail center would promote Salem as a regional commercial center as well as provide the area with a broader range of employment uses. The commercial development is likely to provide the opportunity for commercial offices, including medical offices, which provide higher than average wage jobs as well as retail services and sales jobs. (Salem Economic Opportunities Analysis p. 28; ~~as well as retail services and sales jobs.”~~~~

~~The Staff Response agreed with that [for wage impact](#) analysis and elaborated on it:).~~

“The proposal is justified based on ~~§~~[subsection \(ii\)](#). Alteration in Circumstances. Social, economic, or demographic patterns of the nearby vicinity have so altered that the current designations are no longer appropriate and ~~§~~[subsection \(iii\)](#), the proposed designation is equally or better suited for the property than the existing designation. The applicant does not assert that a mistake has been made in the application of the Developing Residential designation to the subject property. Staff concurs with the applicant’s characterization of the Developing Residential designation as appropriate for holding areas for future development not currently served by urban levels of infrastructure. The Urban Growth Preliminary Declaration issued for the subject property (UGA09-08) specified the infrastructure improvements needed to develop the subject property as a 26.44-acre shopping center. The Urban Growth Preliminary Declaration has expired and the applicant would need to re-apply to determine current infrastructure improvements needed to develop the property. The subject property provides a site for higher intensity retail development that would maximize investment in public services in the vicinity, especially the existing arterial street network and future master-planned utilities.

[There are several Comprehensive Plan policies, which are addressed below, addressing location of commercial properties such as being located on major arterials, creating complete neighborhoods, including clustering of residential and commercial uses. Creating complete neighborhoods is one way to reduce reducing vehicle trips that contribute to climate change, as discussed in the City’s draft Climate Action Plan.](#)

[The Planning Commission found that physical factors, such as topography or other physical features of the subject property and abutting the I-5 interchange would make the property incompatible for residential development.](#)

“In 2015, the City completed an Economic Opportunities Analysis (EOA) for areas within the Salem Urban Growth Boundary for the years 2015 to 2035. The study indicated a shortage of approximately 100 gross acres of retail commercial land within the Salem UGB. Conversely, the accompanying Housing Needs Analysis (HNA) indicated a large surplus of available land for single family detached housing, primarily consisting of lands within the “Single Family Residential” and “Developing Residential” designations.

“Several factors make the subject property especially well-suited for the Commercial designation. The subject property has direct access to a collector (27th Avenue SE), local road (Boone Road SE), frontage on a designated parkway (Kuebler Boulevard SE), and close proximity to a major freeway interchange at Kuebler Boulevard and I-5. The site is located across 27th Avenue from a 32-acre site in which a Plan Map and zone change from Developing Residential with RA zoning to a Commercial designation with CR zoning was approved in 2006 (CPC-ZC06-06) and across Kuebler Boulevard from a 31.96 -acre site in which also had a Plan Map and zone change from Developing Residential with RA zoning to a Commercial designation with CR zoning in 2016.

“The higher classification streets in the vicinity provide sufficient access for commercial uses, particularly those with a regional customer base. Further, the majority of surplus developable acreage identified in the HNA is not benefitted by the confluence of freeway, parkway, and arterial network access that help make the subject property especially well-

sited to commercial development. Considering these factors the subject property is equally or better suited for the proposed designation than its current designation.”

~~The Planning Commission agrees with the above statement and response and incorporates the above analysis as its own. The Planning Commission finds that the standard requires that only one basis be shown and that the proposal satisfies both the "alteration and circumstances" basis and the "equally or better suited" requirement set forth under SRC 64.025(e)(2)(A)(i) and (ii) for the reasons provided above.~~

~~The proposal satisfies~~

[The Planning Commission finds the application meets](#) this criterion.

SRC 64.025(e)(2)(B): The property is currently served, or is capable of being served, with public facilities and services necessary to support the uses allowed by the proposed plan map designation.

~~**Planning Commission Findings:** The Applicant's Statement provides the following analysis regarding public facilities and services:~~

Finding: The subject property is located outside of the City's Urban Service Area (USA). However, the subject property is currently served, or is capable of being served, with public facilities and services necessary to support the uses allowed by the proposed Commercial designation.

~~“Natural gas, sanitary services, water, and power lines are located within Boone Road SE. Sanitary, power, and natural gas service lines are also available along 27th Street SE. Storm drain infrastructure is available in Kuebler Blvd.~~

There is an existing 24” public sanitary line located in 27th Avenue SE with manholes approximately mid-way along the front and at the intersection of Kuebler Blvd. that are deep enough to service this property. There is also an eight (8”) inch PVC sewer main located within Boone Road SE east of the Boone Road SE and 27th Avenue SE intersection; however due to topographic constraints it will not be able to service the Subject Property.

There is an existing 24” and 30” S2 water line in Boone Road SE. The Subject Property is within two water service levels: S-1 and S-2. There are no facilities available to serve the S-1 water service level at this time. However, a twenty-four (24”) inch S-2 ductile iron water main is located in Boone Road SE and a thirty (30”) inch S-2 ductile iron water main is located in Boone Road SE. Applicant could connect to the line with a temporary connection agreement with City of Salem, as no S-1 service is available.

There is an overhead power, cable, and telecom line along the north side of Boone Road SE and along the east side of 27th Avenue there is an existing gas main in Boone Road SE along the north side of the road and along 27th Avenue on the east side of the road.

The majority of the Subject Property currently drains to the center of the property where it and then flows north to the existing drainage ditch that flows east to an existing 36” storm drain that crosses north under Kuebler Blvd. The eastern fifth of the project flows east to the I-5 ditches and culverts.”

The ~~Staff Response agreed, explaining in relevant part:~~“~~The~~ applicant will be required to apply for an Urban Growth Preliminary Declaration permit prior to development. The permit will identify those public facilities that must be constructed in order to fully serve ~~a shopping center~~[any proposed development](#) on the subject property consistent with the City’s adopted Master Plans and Area Facilities Plans. ~~As indicated in the comments from the Public Works Department,~~[The existing](#) streets, water, sewer, and storm water facilities are available to serve the subject property. Site-specific infrastructure requirements will be addressed in the Site Plan Review process in SRC Chapter 220. ~~The proposal meets this criterion.”~~

~~The Planning Commission concurs with the applicant and staff analysis quoted above that the evidence in the record, to include the submitted surveys that show existing utilities and the Public Works Department comments, with the exception of the Public Works Department’s transportation analysis, demonstrates that the subject property is capable of being served with public facilities and services necessary to support the uses allowed by the proposed plan map designation. The Planning Commission further notes that although the prior approved Urban Growth Preliminary Declaration has expired, it is further evidence that obtaining such an approval is feasible for this property and that the property is capable of being served with the public facilities and services necessary to support uses allowed in the Commercial plan designation.~~

The adequacy of the City’s transportation facilities to serve the uses allowed under the requested plan designation and zoning is extensively discussed in the findings below related to Goal 12 and compliance with the Comprehensive Plan and Salem Transportation System Plan. The Planning Commission finds that those findings and the evidence the findings rely upon, demonstrate that with the transportation improvements proposed by the Applicant, which are imposed as conditions of approval for the zone change application, the proposed uses are capable of being served by the City’s transportation system. ~~The Planning Commission hereby incorporates those findings concerning the City’s transportation system and facilities.~~

The [Planning Commission finds that the](#) proposal ~~satisfies~~[meets](#) this criterion.

SRC 64.025(e)(2)(C): The proposed plan map designation provides for the logical urbanization of land~~;~~

~~**Planning Commission Findings:** The Applicant Statement provided the following for this approval criterion:~~

~~“As addressed above, the~~

~~**Finding:** [The](#) development pattern in the vicinity, particularly this segment of the Kuebler corridor, has transitioned over the past several years, shifting from rural residential uses to uses that are primarily commercial in nature. The proposed plan map designation is consistent with the current development pattern and will provide for the logical urbanization of land. ~~The plan change to the Commercial designation will support the City’s proposed change of status of the Subject Property through the Our Salem planning process.”~~~~

~~The Staff Response provided the following, in relevant part:~~

“
The immediate vicinity of the subject property is in flux with commercial development to the west (Costco), multi-family and single-family developments to the south, commercially zoned property to the north along with a 177-lot single family development and possible Multi-Family development to the northwest of the property. The subject property sits near the center of a large area of future commercial and residential (multiple family) development. A Commercial Plan Map designation would be consistent with the surrounding area of Commercial designations, and the mixture of land uses that have developed according to that designation. ~~The~~ As part of its current draft of the “Our Salem” proposal, the City is ~~proposing to~~ suggesting a change the Comprehensive Plan map designation of the Subject Property to Commercial. The City’s current suggestion is for CO (Commercial Office) zoning for the subject property, due in part to transportation system impacts associated with changing the zoning to CR (Commercial Retail). The “Our Salem” proposal is expected to go through ~~the Our Salem planning~~ a public hearing process.”

~~The Planning Commission concurs with and adopts the above analysis in spring of 2022 and is not final until adoption by City Council.~~

The Planning Commission recognizes that there is some contention in the record as to what the appropriate zoning for the property should be or whether certain types of commercial uses should not be allowed on the property. Staff indicate that the Our Salem process currently contemplates the property will ultimately be zoned "Commercial Office;" and SGNA indicates that it prefers Mixed Use Zoning. Both implement the "Commercial" Plan designation. The applicant seeks, and this decision approves, "Commercial Retail" zoning. The CR zone also implements the "Commercial" Plan designation. However, the Plan standard articulated above asks about the "Proposed Plan Map designation" and not the zoning and there is little, if any, substantive argument that it would be inappropriate or illogical to plan designate the subject property Commercial. ~~The record indicates that both the “Our Salem” planning processes have envisioned the appropriate plan designation for the subject property to be Commercial. And although the Our Salem plan has not been formally adopted at this time, it is still further evidence that supports the conclusion that the proposed Commercial plan designation will provide for the logical urbanization of the subject property.~~

The Planning Commission ~~concludes~~ finds that the proposal ~~satisfies~~ meets this criterion.

SRC 64.025(e)(2)(D): The proposed land use designation is consistent with the Salem Area Comprehensive Plan and applicable ~~statewide~~ Statewide planning goals and administrative rules adopted by the Department of Land Conservation and Development; ~~and.~~

Finding: ~~The~~ Planning Commission ~~Findings:~~ ~~The applicable Goals and Policies of the Comprehensive Plan are addressed immediately below followed by findings for the Statewide Planning Goals and administrative rules. The Planning Commission notes that public comments did not raise any specific plan policies or goals, or specific statewide planning goals as issues during the proceeding. Furthermore, public comments did not address directly any specific plan goals or policies, or statewide planning goals discussed in the application narrative or the staff reports. Rather, public testimony referred generally to transportation issues and to what the appropriate zoning for the property should be.~~

~~The Planning Commission also~~ notes that compliance with the Comprehensive Plan and the statewide planning goals are requirements for both a minor plan change application and a zone change application. Consequently, the findings immediately below refer to the zone change application in instances where a response that is applicable for the Plan change application is not an adequate response for the zone change application or where there is a distinction between different zones within the same plan designation that warrant a specific response as to commercial retail zoning. That said, many of the findings overlap in their entirety. The purpose of consolidating responses where possible is for efficiency and brevity, so that the corresponding zone change standards can and do adopt responses by reference, where appropriate.

The ~~Planning Commission's findings regarding consistency with~~ [applicable Goals and Policies of the Salem Area Comprehensive Plan](#) ~~follow~~ [are addressed as follows: the Statewide Planning Goals are addressed after the policies:](#)

Salem Urban Area Goals and Policies, B. General Development Goal (Salem Comprehensive Policies Plan):

To ensure that future decisions concerning the use of land within the Salem urban area are consistent with State Land Use Goals.

~~Planning Commission Findings~~ **Finding:** The approval standards for both the comprehensive plan change and zone change applications require a demonstration of compliance with the Statewide Planning Goals. Those findings are included in these findings and demonstrate that the proposal is inconsistent with the Statewide Planning Goals.

The proposed plan designation and zone change, and the development that will be permitted consistent with SRC development standards will also be consistent with the policies under this Comprehensive Plan goal that apply to such approvals. This includes, but is not limited to, the policies that promote citizen involvement, economic growth, carrying capacity, optimal use of the land, street improvements, development compatibility, and lighting. Each of these policies is implemented by provisions of the zoning code, which will apply to all development permitted under the new plan designation and zoning. Furthermore, no participant in this proceeding has contended that the proposal or development that would be permitted under the Commercial Plan designation and CR zone, would be inconsistent with any of the policies under this Comprehensive Plan Goal.

The Planning Commission finds that the applications are consistent with this Comprehensive Plan Goal and its implementing policies.

Salem Urban Area Goals and Policies, D. Growth Management Goal ([Page 28](#), Salem Comprehensive Policies Plan):

To manage the growth in the Salem urban area through cooperative efforts of the City of Salem and Marion and Polk Counties, to ~~insure~~ [ensure](#) the quality of life of present and future residents of the area, and to contain urban development to preserve adjacent farm land.

~~**Planning Commission Findings:** The Planning Commission finds that neither Marion County nor Polk County commented on the proposal and that adhering to the process and standards in the City's land use standards, as is the case here, reflects the contemplated intergovernmental cooperation. Further, the evidence submitted into the record demonstrates that all public facilities and services (other than transportation discussed later), are not only available for the uses allowed by the Commercial Plan designation and CR zone, but are also adequate for those uses, thus contributing to the quality of life in the area. As the Staff Response noted, "Master-planned facilities necessary to support development of a shopping center on the subject property will be evaluated through an Urban Growth Preliminary Declaration." Regarding transportation, as explained in greater detail below, the proposal does not cause the transportation system to function any worse than it would if the property maintained its RA designation and zone and, in some instances, the transportation system is improved by approval of this proposal, at the developer's expense, over its functionality without the proposal. At the same time, there is evidence in the record that the south part of the city where the subject property is located, has a deficit of shopping opportunities for the citizens who live in that area. Accordingly, the proposal not only does not further degrade the transportation system, but also provides an important and useful public benefit of increased shopping opportunities in an area of the city that will benefit from the same.~~

~~Moreover, the SRC standards that will apply to development of the property are designed to further ensure that the quality of life of present and future residents of the area is maintained. Allowing commercial development to occur where needed inside the city and UGB (as here), is a well-known method for containing urban development within acknowledged urban land, taking development pressure off of farmland outside the UGB. Allowing reasonably intensive urban development of urban land, preserves farmland outside of the city.~~

~~The Planning Commission finds that the proposal is consistent with this Comprehensive Plan Goal and its implementing policies.~~

Finding: The public facilities and service needs for the subject property would be provided at the time of development of the site. All public services and utilities are available in the vicinity of the subject property including water, sewer, storm drainage, streets, sidewalks, fire and police protection, electricity, telecommunications, and solidwaste disposal. The proposed Comprehensive Plan Map amendment with concurrent Zone Change is consistent with these policies. Master-planned facilities necessary to support commercial development on the subject property will be evaluated through a Urban Growth Preliminary Declaration.

Salem Urban Area Goals and Policies, E. Residential Development Goal (Salem Comprehensive Policies Plan):

To promote a variety of housing opportunities for all income levels and an adequate supply of developable land to support such housing.

~~**Planning Commission Findings Finding:** Although this proposal removes land from the residential lands inventory, evidence in the record demonstrates that there is a surplus of residential lands within the City's UGB. Furthermore, the one type of housing for which evidence shows there is an inadequate land supply will have that need met by the conclusion of the Our Salem planning process, which has identified other lands as better suited to meeting that need than the subject property.~~ For this reason, the proposal will not result in an inadequate supply of developable land to support the City's housing needs. The proposal promotes a variety of housing opportunities and an

adequate supply of developable residential land, by helping to make this south part of the City desirable for such residential uses by ensuring that there are commercial retail opportunities in proximity to residential uses and residentially developing areas, thus contributing to more complete communities, with fewer needs for vehicular trips to such opportunities if they are located further away.

Not only are commercial retail uses complementary to residential uses, the location of this designation and zoning furthers the City's policies aimed at minimizing vehicle travel distances and encouraging non-vehicular access to such services by locating residential areas and commercial services in closer proximity than has historically occurred.

The proposal is consistent with this Comprehensive Plan Goal and its implementing policies.

Salem Urban Area Goals and Policies, F. Mixed-Use Development Goal (Salem Comprehensive Policies Plan):

To provide a mixture of complementary land uses that may include housing, retail, offices, services, industrial and civic uses, to create economic and social vitality.

Planning Commission Findings: The ~~Planning Commission notes that the~~ Commercial plan designation and the requested Commercial Retail zoning allows a broad range of uses on the subject property. Although not strictly one of the "mixed use" zones some public comments requested, the requested CR zoning does not preclude mixed use development of the site and the Applicant has indicated a desire for that to occur if at all possible.

~~The Planning Commission notes that one~~ One of the reasons for approving the CR zone instead of mandating one of the MU zones is the Comprehensive Plan policy under this goal that encourages flexibility in the siting and design of new developments to respond to the marketplace. As the Applicant explained, the CR zone provides that greater flexibility. ~~This is also one of the reasons why, despite comments requesting that the Planning Commission prohibit drive-through uses, which the MU zones would achieve, the Planning Commission is not requiring MU zoning. The Planning Commission finds persuasive that the COVID situation has created a consumer dynamic favoring the option of contactless purchases provided by drive up and drive through shopping opportunities. Moreover, in some situations drive up and drive through purchases are the only way some people can obtain needed goods due to their personal health limitations or government imposed quarantine. The MU zone does not allow drive through facilities and so diminishes the flexibility to respond to the need for reasonable opportunities for contactless shopping. On the other hand, the Planning Commission agrees that there can be too many drive through facilities in a development and too many drive throughs can diminish economic and social vitality. Accordingly, as a condition of approval, the Planning Commission limits the number of drive through facilities that may be established on the subject property, to three, via a condition of approval. Therefore, the Planning~~

~~The Planning Commission further notes that the juxtaposition of the subject property to the area's residential development fulfills many of the Comprehensive Plan goal's policies that encourage pedestrian and bicycle travel as well as access to public transit.~~

~~The proposal is consistent with this Comprehensive Plan Goal and its implementing policies.~~

Commission imposed a condition of approval, to limit the subject property to three drive-through facilities on the subject property.

Salem Urban Area Goals and Policies, G. Commercial Development Goal (Page 35, Salem Comprehensive Policies Plan):

To maintain and promote the Salem urban area as a commercial center for the Marion-Polk County metropolitan area.

Planning Commission Findings Finding: The proposed commercial designation of the subject property would allow development of a ~~commercial~~ mixed-use development or shopping center serving the southeastern portion of the Marion-Polk County metropolitan area. Existing commercial concentrations elsewhere in the region, such as downtown Salem, the Commercial Street SE corridor, and Lancaster Drive are a considerable distance from existing and future development in the southeastern portion of the metropolitan area.

~~The proposal is consistent with this Comprehensive Plan Goal~~ Transportation access to the subject property would promote use of a site within the Salem urban area as the commercial center for underserved areas inside and outside of the City limits.

Policy G.4. Community shopping and service facilities shall be located adjacent to major arterials and shall provide adequate parking and service areas. Land use regulations shall include provisions for siting and development which discourage major customer traffic from outside the immediate neighborhoods from filtering through residential streets.

Planning Commission Findings Finding: The subject property is well-served by the street network ~~immediately adjacent to the property and does not rely for its access on people from outside of neighborhoods travelling through the immediate neighborhoods to reach it. The immediately surrounding street network in the vicinity, which~~ includes the collectors, Kuebler Boulevard ~~parkway, Battle Creek Road, a minor arterial street, 27th Avenue, a collector street, and Boone Road, a collector street west of 27th Avenue. The~~ and the adjacent I-5 freeway interchange. As surrounding properties develop, the existing network of ~~these~~ higher-classification streets, ~~as improved by the Applicant as part of this approval,~~ will allow regional traffic to access the site without ~~having to filter~~ filtering through neighborhood residential streets.

~~The proposal is consistent with this implementing policy.~~

Policy G.5. Unless the existing development pattern along arterials and collectors commits an area to strip development, new commercial development shall be clustered and located to provide convenience goods and services for neighborhood residents or a wide variety of goods and services for a market area of several neighborhoods.

Planning Commission Findings Finding: The proposed Commercial designation of the site would facilitate clustered retail development at one quadrant of the I-5/Kuebler Boulevard interchange, allowing a wide variety of goods and services to be provided in a location where existing transportation facilities provide access from several different neighborhoods. ~~Given the relationship of the subject property to the surrounding street~~

~~network and its shape, “strip” development is not feasible on the property. Future development of the property will necessarily be in a clustered fashion and designed consistent with SRC development standards.~~

~~The proposal is consistent with this implementing policy.~~

Salem Urban Area Goals and Policies, J. Transportation Goal (Salem Comprehensive Policies Plan):

To provide a balanced, multimodal transportation system for the Salem Urban Area that supports the safe and efficient movement of goods and people.

Planning Commission Findings: The City has developed the Salem Transportation System Plan (STSP), which establishes transportation objectives and policies and provides a hierarchical system of streets and highways to provide optimal mobility for all travel modes throughout the City’s urban area. Kuebler Boulevard SE abuts the Subject Property to the north and is classified as a Parkway by the STSP street classification system. Kuebler Boulevard SE is interconnected to a network of streets. 27th Avenue abuts the Subject Property to the west and is designated a collector on the ~~TSP~~STSP street classification map. Boone Road SE abuts the Subject Property to the south and is also a designated collector street.

Battle Creek is a designated minor arterial that provides north south connectivity to the site, via Boone Road SE. The Subject Property is well connected to the existing public street system, thereby providing connectivity with the surrounding neighborhood as well as the broader Salem Community. The subject property also is connected to the City’s public transportation network, as evidenced by the Cherriots comments in the record that explains that it has discussed with the Applicant placing two public transportation stops to serve the subject property and the Applicant has agreed to do so. ~~However,~~ Exactly whether there will be one bus stop or two and the precise location of such stop(s) will be decided in the subsequent site design plan review ~~processes~~application.

The Applicant also recognizes that the development permitted under the proposal could adversely impact the City’s transportation system. As discussed under Goal 12 below and referred to elsewhere in these findings, the Applicant has proposed conditions of approval that will mitigate the additional impacts to the transportation system that would result from the proposed plan designation and zoning when compared to existing allowed development. The Planning Commission imposes those conditions of approval as part of this decision.

The proposal is consistent with this Comprehensive Plan goal.

Multimodal Transportation System

~~4. 4.–~~*The transportation system for the Salem Urban area shall consist of an integrated network of facilities and services for a variety of motorized and nonmotorized travel modes.*

Connectivity and Circulation

~~5. 5.–~~*The vehicle, transit, bicycle, and pedestrian circulation systems shall be designed to connect major population and employment centers in the Salem Urban Area, as well*

as provide access to local neighborhood residential, shopping, schools, and other activity centers.

Planning Commission Findings: The evidence in the record establishes that the Subject Property ~~is currently~~can be served by transit, pedestrian sidewalks and bike lanes, all of which encourage the use of alternative modes of transportation. Additionally, the proposed commercial retail zoning will result in development that can offer an incentive for residents of the neighborhood to walk, bike and use public transport to reach a vibrant commercial hub that can provide for a variety of their needs in this otherwise underserved area of the City.

The proposal is consistent with the above policies.

Supportive of Land Use Plan Designations and Development Patterns

~~6. 6.~~ *The provision of facilities and services shall reflect and support land use designations and development patterns as identified in the Salem Area Comprehensive Plan. The design and implementation of transportation facilities and services shall be based on serving current and future travel demand, residential densities, retail, and employment centers.*

~~7. 7.~~ *Local governments shall encourage the expansion of transit services throughout and beyond the Salem Urban Area, especially to areas of increased residential densities, major commercial concentrations, and large institutional and employment centers.*

Growth Management

~~8. 8.~~ *The construction of transportation facilities shall be timed to coincide with community needs, and shall be implemented in such a way as to minimize impacts on existing development.*

~~9. 9.~~ *Improvements to the transportation system, in addition to those in or abutting a development, may be required as a condition of approval of subdivisions and other intensifications of land use.*

Planning Commission Findings: As discussed above, the subject property is proximate to collector streets, a minor arterial, and a parkway. The Applicant proposes not only to utilize this existing street network, but to also enhance it, through improvements, in order to accommodate the additional traffic that will flow from the proposed Commercial designation and Commercial Retail zoning. Such mitigation will minimize the impacts on existing development that would otherwise result from the proposal. The mitigation is imposed ~~by the Planning Commission~~ in the conditions of approval for the zone change application. The proposal is consistent with the above plan policies regarding transportation facilities. ~~The Planning Commission further finds the above policies provide useful guidance in evaluating positions taken by some participants in this process with respect to transportation system improvements proposed by the Applicant. As discussed in greater detail below, the above policies indicate that planning and development generally guides transportation system needs and improvements, and not the other way around. In instances such as this, where an Applicant is willing to accept conditions of approval to improve the transportation system~~

~~in order to mitigate the impacts of potential uses, these policies lean towards approving that development and requiring the expansion of and improvements to the transportation system to accommodate that future need.~~

~~There are several mistaken assertions in this regard in the Supplemental Staff Report, dated December 21, 2021, at page 3 where the report cites several STSP policies as reasons for denial. The law requires that relevant issues raised be addressed in these findings. Accordingly, each is addressed here.~~

~~Staff initially contends that the transportation system in the area “is designed to support the current comprehensive plan designation of RA” not CR, and therefore the proposal is not consistent with Transportation Policy 6 above. The Planning Commission finds that premise to be mistaken. In the first place, the evidence demonstrates that the transportation system in the area fails over the planning horizon even if the RA zone is maintained. That is not a transportation system that is “designed to support” RA zoning. In fact, there is no dispute that the area transportation system fails whether it is planned and zoned RA, or Commercial. In this regard, the Planning Commission finds persuasive the Applicant's evidence that with the proposed mitigation imposed by conditions of approval that this Decision requires, the affected area transportation system will function no worse with the property being Commercially designated and CR zoned land, than if it stayed RA [although wait times at near-by signal lights will increase substantially](#). It is approval as outlined in this decision, that meets these Plan policies because approving the proposal as here, responds to anticipated travel demands, coincides with undisputed community needs for more retail opportunities in this part of the city and the Planning Commission imposes conditions of approval to ensure that the affected transportation system functions no worse under the proposal than it would without it.~~

~~Further, contrary to the Staff assertion that Policy 6 requires that plan and zone designations not change, the plain wording of Policy 6 speaks of facilities and services based, in part, on “future travel demand” and retail services, not just present demand. The Planning Commission finds that wording expressly envisions that future demand [will may](#) differ from what presently exists and that transportation facilities [will should](#) respond accordingly, [limited by geography and topography of the facility in question](#). Other policies (7-9) ~~also demonstrate that staff's position that any plan designation other than existing designations must lead to denial, is mistaken. Those other Plan policies encourage the expansion of transportation facilities and services to reflect and coincide with evolving community needs. That is what this approval does. Finally, the Planning Commission notes that the Staff position that only the RA designation and zone is allowed, is inconsistent with the undisputed fact that the City Council in the “Our Salem” process has so far identified the property as appropriate for Commercial designation. If the reasoning reflected in the Supplemental Staff Report, dated December 21, 2021, at page 3 were adopted, the City could not approve the Our Salem proposal to make the property commercially designated or in fact could not approve the Our Salem proposal at all, in any part of the City where the plan and zone would change. The Staff position is contrary to the Planning Commission's understanding of the City's dynamic responsibilities to “plan” for the needs of its citizens and to respond as those needs change and evolve~~~~

~~Staff next argues that, because 27th Ave SE is designated as a collector street and Street System Element, Table 3-1 says the daily volumes for collectors is 1,600 to 10,000 vehicle trips, the The proposal is projected estimated to generate 20,000 vehicle trips, and so the proposal cannot be consistent with the street designation. However, as the The Applicant's traffic analyses make clear, over half of the approximate number of trips estimated per day per day are either internal trips (between land uses on the subject property and the Costco shopping center) or pass-by trips (which are trips that are already on the road that divert to the site before continuing to their primary destination). While as discussed below is not dispositive, the Planning Commission finds that the net new trips that a reasonable worst case establishes will be added to the system under the proposal, is not 20,000 trips as staff asserted, but rather is 11,966 new trips as shown on Table 8 (page 21) of the DKS Traffic Study, which is 9,686 trips above under the current zoning.~~

~~On the main issue Staff raises, the Planning Commission understands that what Staff is asserting is that Table 3-1 is a "land use designation" that is "Identified in the Salem Area Comprehensive Plan" and so the proposal does not meet Policy 6.~~

~~The Planning Commission first finds this understanding of Policy 6 is mistaken. The Planning Commission does not interpret Plan Policy 6 to refer to STSP Tables, to include Table 3-1. Rather, the Planning Commission interprets Policy 6 to refer to Comprehensive Plan land use designations like "Commercial", Residential, "Industrial" and the like. Therefore, Table 3-1 is irrelevant to Policy 6.~~

~~However, even if Policy 6 referred to STSP Tables, the *proposal* to plan and zone the property Commercial is not inconsistent with the collector designation of 27th Ave. This is because regardless of whether RA zoning is maintained, 27th Ave SE will exceed the projected volumes for collectors shown on Table 3-1 immediately and over the planning horizon. The Costco shopping center has its main access as the 27th Ave. access and it alone is projected to generate 13,305 daily trips per the applicant's TPR Study at p 15. Accordingly, both existing conditions, in process development that the City has approved and the expected the future condition of 27th Ave. demonstrate that the Table 3-1 collector range is exceeded with or without the proposal.~~

~~Further, the Planning Commission notes that Table 3-1 is a summary of the basic factors for classifying streets and provides "basic design guidelines." The statements provided in the table are guidelines, not fixed standards intended to prohibit any development that may include traffic loads that deviate from the guidelines. This view is reflected in the text of the preceding STSP policies, such as Policy 4.6 Right-of-way Requirements, which discusses that the table indicates minimum right-of-way requirements and that variation from those requirements may be necessary. Similarly, Policy 4.7 Additional Intersection Improvements and Right-of-way states, "Additional right-of-way and roadway improvements may be required at the intersections of arterial and collector streets" and expressly mentions "access points for high traffic generators such as shopping centers[.]" The STSP policies fully recognize that arterials and collectors that provide access to shopping centers, for example, may require deviation from the standards set forth in Table 3-1 if such deviation is appropriate.~~

~~Functional classification is not established based on traffic volumes. The functional classification of a roadway is established based on its desired functionality, and typical traffic volume ranges for each functional classification are provided as a general guideline of expected traffic levels. As noted in STSP Table 3-1, a collector "Primarily distributes traffic between neighborhoods, activity centers, and the arterial street system. Secondarily provides property access." This perfectly describes the current and future functionality of 27th Avenue SE. The next higher functional classification, a minor arterial, is~~

~~described as “High capacity street that primarily serves regional and intracity travel. Serves as main radial and peripheral routes through the City”. 27th Avenue SE clearly does not function as an arterial roadway, today or in the future, as it dead-ends as a cul-de-sac less than 500 feet south of the property. Regardless of the level of traffic on 27th Avenue SE, this street will always function as a collector as its primary purpose is to facilitate travel between activity centers (like shopping centers) and the arterial system (Kuebler Boulevard). Therefore, the Planning Commission finds that this proposal will not change the functional classification of 27th Avenue.~~

~~The Planning Commission observes that if the subject property were located elsewhere and the collector that provided primary access to a high traffic generator such as a shopping center required traffic to drive through a residential neighborhood, a stronger argument would be made that the limitation of the street classification would warrant denial of a requested plan designation and zone change to that use. However, in this instance where the collector provides immediate access from a parkway to the possible shopping center and does not require traffic to run through a residential area, the fact that the collector will have traffic levels above those normally attributed to a collector by Table 3-1 is, itself, not a basis to deny the application. The Planning Commission finds that the Ultimate Design ADT column in STSP Table 3-1 is not a fixed cap on development so long as an applicant is willing to provide additional intersection improvements that mitigate their impact, as here, and right-of-way consistent with Policies 4.6 and 4.7 as here, and the location of the proposal does not introduce other transportation impacts and concerns such as depending upon general shopping center access being through a residential neighborhood, which is not the case here. The Planning Commission finds that the proposal is consistent with these STSP policies and that the guidelines from Table 3-1 do not require denial of the proposal given the mitigation measures proposed by the applicant and imposed by this decision.~~

~~Staff also posits that STSP, Street System Element, Policy 2.2 Multimodal Intersection Design, which promotes safe and accessible crossings for pedestrians warrants denial of the proposal because the mitigation measures include double turn lanes and will require pedestrians to cross seven lanes of traffic. The Planning Commission disagrees with staff’s conclusions. Pedestrian and bicycle safety is a transportation design issue, which the Public Works Design Standards (PWDS) address. In short, Staff is contending that the Public Works Design Standards for street designs are inadequate to protect pedestrian and bicycle safety, a position the Planning Commission cannot support. The Planning Commission further notes that the evidence in the record included as part of the Applicant’s transportation analysis shows that pedestrians have to cross seven lanes of traffic on the east and west legs of the Kuebler Boulevard and 27th Avenue intersection. Nobody has contended, nonetheless staff, that that intersection design is unsafe or otherwise inadequate. The proposal does not violate Policy 2.2. Neither will any of the intersection improvements proposed by this application. The Planning Commission concludes that the proposal is consistent with STSP Street System Element Policy 2.2 because adherence to the adopted PWDS standards in the intersection design will ensure the intersection is designed to promote safe and accessible crossings for pedestrians and bicyclists regardless of the number of lanes involved. No evidence in the record demonstrates otherwise.~~

~~Staff turns to STSP Street System Element, Policy 2.5 Capacity Efficient Design and Level of Service (LOS) Standards and Policy 5.1 Traffic Impact Analysis Requirements and argues that the Applicant’s TPR analysis results in levels of congestion and delay that do not meet established thresholds, and so the proposal should be denied. However, staff also agrees with two important principles that demonstrate that this analysis is mistaken: (1) the affected transportation system exceeds relevant thresholds regardless of whether the proposal is approved, and (2) that when transportation facilities fail to meet STSP standards over the planning horizon, the City applies the “no further degradation standard,” which means an Applicant must ensure that its impacts are mitigated so the transportation system functions no worse than under current zoning.~~

~~Policy 2.5 applies to the design of City streets and contemplates varying levels of City transportation system management measure to respond to traffic demands including constructing capacity. It does not prohibit plan amendments and zone changes that do not further degrade an already failing system. Rather, Policy 2.5 requires the City to respond by considering design and construction to add capacity. The proposal will do that for the City—the proposal includes mitigation that designs and constructs additional capacity. Policy 2.5.5(c) says that traffic impacts created by "new development" must "be mitigated to maintain peak hour LOS D or better." However, a plan amendment and zone change does not approve any "new development" and in fact to be clear this decision approves no development at all. Moreover, it is impossible to "maintain" a "peak hour LOS D or better" when the transportation system begins lower than that level, as is the case here. Rather, the Planning Commission finds that the proper interpretation of Policy 2.5 here is that the Applicant must demonstrate (and has demonstrated) that the affected systems "Peak Travel Periods" will not fail any worse under the proposed Commercial plan and CR zone, than it would under the RA plan and zone.~~

~~Further, the City's "maximum operational standards" for signalized intersections are found in the "Public Works Design Standards" and establishes the standard target as an LOS E or a v/c of 0.90. Here, the evidence in the record demonstrates that the affected signalized intersections will, following the Applicant's proposed mitigation, operate at the same LOS with or without the proposal and in some instances, will operate with a lower v/c ratio under the proposal (Kuebler Boulevard/Battle Creek Road and Kuebler Boulevard/27th Avenue, TPR Study Table 10). This is consistent with what the STSP has long been interpreted to require: that the Applicant mitigate its transportation impacts such that the failing facility will not get worse. The proposed mitigation does that and the Planning Commission finds is consistent with Policy 2.5.~~

~~Staff last argues that the proposal should be denied under STSP Street System Element Policy 2.8, because the proposed street improvements do not comport with Figure 3-2 Typical Street Design Cross Sections Collector and Local Streets.~~

~~Policy 2.8 provides:~~

Policy 2.8 Physical Improvements to Existing City Streets

Existing streets that are to be widened or reconstructed shall be designed to the adopted street design standards for the appropriate street classification. Adjustments to the design standards may be necessary to avoid existing topographical constraints, historic properties, schools, cemeteries, existing on-street parking, and significant cultural features. Whenever possible, the design of the street shall be sensitive to the livability of the surrounding neighborhood.

~~Policy 2.8 expressly contemplates that "adjustments to design standards" will occur where there are listed constraints or as otherwise valuable to the livability of the surrounding neighborhood. Accordingly, flexibility in street design is contemplated where such helps with the "livability of the surrounding neighborhood". Here, in the absence of the transportation improvements proposed by the Applicant in this case, the transportation system will fail and all that the "surrounding neighborhood" will get is that failing transportation system but with more residential development, which the surrounding neighborhood does not need. However, if the proposal is approved as is the case here, the "surrounding neighborhood" will get retail shopping opportunities that there is no dispute are needed in this part of the City and the transportation system will function no worse than it would without the proposal. Further, the evidence in the record establishes that an enhanced collector (27th Avenue) that intersects a parkway (Kuebler Boulevard) and that facilitates the efficient movement of traffic into and out of the subject property is by far more sensitive to the livability of the surrounding residential neighborhood than would be full development of the property under the existing zoning without improvements to the intersection. Accordingly, approving the proposal is consistent with Policy~~

2.8 because it "designs the street[s]" in a manner that is "sensitive to the livability of the surrounding neighborhood."

Furthermore, the City's typical street design cross sections shown in Figure 3-2 describe what a typical segment should entail (number and width of vehicle lanes, bicycle and pedestrian facilities, parking, etc.). They have no implication on the appropriate lane configuration at intersections, which is determined based on intersection operations and associated traffic volumes approaching the intersection. The portion of 27th Avenue in question does not include a "typical segment" because it seamlessly transitions from the roundabout into the approach lanes required at Kuebler Boulevard to the north and Boone Road to the south. Therefore, it is impossible for the portion of 27th Avenue between Boone Road and Kuebler Boulevard to comply or not comply with Figure 3-2 because it does not contain a typical segment.

Staff's position also does not account for the context of Policy 2.8, which includes Street System Element Policy 4.6 that explains that Figure 3-2 provides the "minimum right of way" requirements and states that street improvements may necessitate variation from the typical right of way requirements. That comports with the "Typical" descriptor for the Figure 3-2 examples. The policies plainly state that rigid adherence to the diagram, to include number of travel lanes, is not required. The Planning Commission disagrees with staff's position and finds it to be a mistaken interpretation of both Policy 2.8, 4.6 and Figure 3-2. The Planning Commission finds that the proposed mitigation is consistent with STSP Street System Element Policies 2.8 and 4.6.

One final STSP-related issue should be addressed. Staff inquired why the DKS Transportation Study did not study the year of "opening," arguably 2023. The City Public Works Design Standards decisively answer that staff inquiry:

Division 006—Streets Design Standards	
Proposed Development	Horizon Year
Allowed under existing zoning	Year of Opening
Multi-phased Development	Year of opening each phase
Comp Plan Amendment and/or Zone Change.*	Salem TSP Horizon Year
Multi-Jurisdictional (ODOT, Marion or Polk County, Keizer)	As required by Jurisdiction
*Subject to the requirements of the Transportation Planning Rule (OAR 660-012)	

Table 6-33. Horizon Year for Various Proposed Developments

There is no "year of opening" for a plan amendment and/or zone change as the Public Works standards plainly show. In practical terms, this is because no particular "development" is proposed or approved in this decision. Accordingly, DKS correctly responded to that staff inquiry that the table under PWDS 6.33(e) Horizon Year indicates that the horizon year for "Comp Plan Amendment and/or Zone Change" is the "Salem TSP Horizon Year", subject to the requirements of the Transportation Planning Rule (OAR 660-012). And there is no dispute that the TPR imposes looks to the end of the City's TSP planning horizon based upon an analysis of a reasonable worst case scenario for the ultimate development of the property. The applicant's TPR Study correctly evaluated traffic impacts under the TPR's requirements. The City standards simply do not require a year of opening analysis for a plan change/zone change. The proposal is consistent with the PWDS requirements in this respect.

~~For the above reasons, the Planning Commission finds the proposal, as conditioned, is consistent with the Comprehensive Plan Transportation goal and policies as well as with the STSP's policies.~~

~~The Planning Commission concludes that the proposal is consistent with the Salem Area Comprehensive Plan.~~

The ~~Planning Commission's findings regarding consistency with the~~[applicable](#) Statewide Planning Goals ~~follow~~[are addressed as follows](#):

Statewide Planning Goal 1 — Citizen Involvement: *To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.*

~~**Planning Commission Findings:** With respect to Goal 1, the Staff Response explains:~~

Finding: On June 10, 2021, the applicant's representative attended the Southeast Salem Neighborhood Association Meeting, held virtually, to present their proposal. A public hearing notice was mailed to the affected property owners, all property owners within 250 feet of the subject property, to the South Gateway Neighborhood Association and to the adjacent Southeast Mill Creek Association and Morningside Neighborhood Association. The applicant posted the subject property prior to the public hearing. This satisfies Citizen Involvement described in Goal 1."

~~The Planning Commission further notes that the application narrative discusses the citizen outreach and involvement the applicant has conducted as part of this application. Those efforts are confirmed by the staff response from the November 2, 2021 staff report quoted above. The Planning Commission finds that the applicants and City have implemented the City's Goal 1 program with this application.~~

~~Consequently, the proposal is consistent with Goal 1.~~

Statewide Planning Goal 2 — Land Use Planning: *To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.*

~~**Planning Commission Findings:** The Staff Response summarizes the City's overall compliance with the requirements of Goal 2:~~

~~"The City has complied with the Goal requirements for establishing and maintaining a land use planning process. The Oregon Land Conservation and Development Commission have acknowledged the Salem Area Comprehensive Plan to be in compliance with the Statewide Planning Goals."~~

~~As the Staff Response above observes, the~~

Finding: The City has complied with ~~all~~[the Goal](#) requirements ~~for land use comprehensive planning and policy development and~~ for establishing and maintaining a land use planning process ~~and approval standards. Under the Goal 2 heading, Applicant's written narrative discusses some of the standards at issue in this proposal and the fact that the City's Comprehensive Plan and code~~. [The Oregon Land Conservation and Development Commission](#) have ~~been~~ acknowledged ~~by~~ [LGDC](#).

~~Because the application has been reviewed consistent with that acknowledged land use framework, process and standards, the proposal is consistent with Goal 2. Salem Area Comprehensive Plan to be in compliance with the Statewide Planning Goals.~~

Statewide Planning Goal 3 — Agricultural Lands and Goal 4 — Forest Lands
Planning Commission Findings:

Planning Commission Findings: The proposed plan amendment does not affect any lands designated agricultural lands or forest lands or their inventories. Consequently, Goal 3 and Goal 4 are not invoked by the application.

The proposal is consistent with Goals 3 and 4.

Statewide Planning Goal 5 — Open Spaces, Scenic and Historic Areas, and Natural Resources: *To protect natural resources and conserve scenic and historic areas and open spaces.*

~~**Planning Commission Findings:** The Staff Response discusses how development of the property will be required to comply with the City's acknowledged Goal 5 program, as reflected in the SRC:~~

Finding: There are possible scenic, historic, or cultural resources on the subject property. Prior to development, the property owner would need to consult with the City Historic Preservation Program Manager. According to the Salem Keizer Local Wetland Inventory (LWI) there are wetlands mapped on the subject property. The applicant has provided a wetland delineation as part of their application. The City's wetland ordinance, SRC Chapter, requires notice and permitting through the Department of State Lands (DSL). "The application will be reviewed for compliance with the City's tree preservation ordinance and any applicable wetland standards at the time of development. Staff finds that the ~~proposal is consistent with Goal 5.~~"

~~The Planning Commission finds that the Staff Response is correct that the City has conducted its Goal 5 planning and any identified Goal 5 resources will be protected through the acknowledged SRC at the time a development proposal is reviewed. The application narrative provided additional detail regarding the three identified wetlands on the property as well as an ephemeral stream on the subject property. The application narrative also noted that compliance with the SRC and with applicable DSL requirements will be required for development of the property. There is no evidence in the record that compliance with the City's and state Goal 5 standards is not feasible. Implementation of the City's Goal 5 program through the SRC will assure compliance with Goal 5.~~

The proposal is consistent with Goal 5.

Statewide Planning Goal 6 — Air, Water and Resources Quality: *To maintain and improve the quality of the air, water and land resources of the state.*

Planning Commission Findings: Goal 6 is largely a planning directive to local governments and, as such, does not provide specific standards applicable to site-specific plan designation decisions. The application narrative notes that the subject property lies within the city limits, where an urban level of development is intended to occur in both scale and density. The application narrative also notes the range of public facilities and services designed to protect air, water and resource quality within the city, which this decision finds are both available and adequate.

The Planning Commission concurs with the applicant that the commercial uses that will flow from the plan designation change will reasonably help reduce impacts to air quality through its proximity to near-by residential lands and access to public transportation, which will reduce the length of or need for vehicle motor trips. The Planning Commission also finds the application has demonstrated that development under the proposed plan designation will not adversely impact natural resources because there are no significant natural resources on the subject property.

The proposal is consistent with Goal 6.

Statewide Planning Goal 7 — **Areas Subject to Natural Disasters and Hazards:** *To protect people and property from natural hazards.*

Planning Commission Findings: As the application narrative explains, the City has complied with Goal 7 by adopting specific policies and development standards that protect against flood hazards, potential landslides and other natural hazards. The implementing measures are found in the acknowledged SRC under Chapters 809 and 601 and are imposed at the time a development application is reviewed.

The City's adopted landslide hazard susceptibility maps show the subject property is mapped within areas that have 2 to 3 landslide hazard susceptibility points. Given that 3 activity points are associated with commercial building permits and the City's landslide hazard ordinance, SRC Chapter 810, requires any development proposal with a cumulative total of 5 to 8 points submit a geologic assessment in conjunction with the application, the City's implementing measures will be applied at the time a development proposal is submitted. Given the moderate landslide hazard susceptibility classification (5 to 8 points) for the subject property is classified and that the property's point rating is at the lower end of that scale, the Planning Commission concludes that it is feasible that a proposed project that satisfies the requirements of the applicable implementing measures can be designed and approved. Nothing in the record claims, nonetheless demonstrates, that the site cannot be safely developed, whether with commercial or residential uses.

There are no other identified natural disaster or hazards on the subject property.

The Planning Commission finds that the proposal is consistent with Goal 7.

Statewide Planning Goal 8 — **Recreational Needs:** *To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.*

Planning Commission Findings: The Applicant Statement correctly states:

"The Subject Property is not within a designated or identified open space area and does not contain any structures subject to historic review. Furthermore, the property does not contain any wildlife habitat, groundwater resources, or natural areas other than the wetlands addressed above. Therefore, Goal 8 is not applicable to this proposal."

Statewide Planning Goal 9 — Economic Development: *To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.*

~~**Planning Commission Findings:** The Planning Commission finds that the evidence in the record demonstrates that the City has a shortage of land plan designated for commercial uses and, therefore, a demonstrated need for additional land plan designated Commercial.~~

~~The Applicant Statement provides the broader analysis about how the proposal meets that demonstrated need:~~

Finding: The City's Comprehensive Plan contains commercial and economic development policies pertaining to the identification and protection of employment lands. This proposal to amend the comprehensive plan map from Developing Residential to Commercial will increase the City's employment lands, as the change will allow for the development of commercial uses on the Subject Property. The proposal will provide a site for a community level retail center. This consolidated land use proposal increases economic opportunities for City residents. As such, this proposal is consistent with Goal 9's requirement to provide a variety of economic opportunities for City residents, including commercial opportunities. (OAR 660-009-0000)."

~~The Staff Report provides the evidentiary and numerical analysis that supports the Planning Commission's conclusion that the proposal is consistent with Goal 9. The Staff Response explains:~~

The proposed comprehensive plan and zoning map amendment will convert approximately 24.66 acres of vacant residentially-zoned land to a commercial designation. Consistent with the City's obligations to provide economic opportunities under Goal 9, per OAR 660-009-0015, an Economic Opportunity Analysis (EOA) was conducted by ECONorthwest and adopted by City Council in October 2014. Consistent with economic development protections of Goal 9 and the objectives of understanding the opportunities for the next 20 years, the report compared the supply of suitable buildable commercial land (298 acres) to the projected demand (569 acres) and concluded that there is a deficiency of 271 acres of commercial land to meet the 20-year growth demand. The EOA further concluded that roughly 40 percent of the commercial land deficiency, or approximately 100 acres, are needed for retail services, as detailed by the "Land Sufficiency" section in the EOA (pages 27-28).

"As a residentially-designated property, the site's economic development potential is currently limited as compared to regional shopping facilities, community and neighborhood shopping and service facilities, and other uses envisioned by the "Commercial" SACP designation and supported by the accessibility and visibility of the site. The proposed change of designation to "Commercial" will increase the number of permitted uses at the site and better takes into account the location of the subject property, thereby open up additional opportunities for economic development, consistent with the intent of the goal." ~~The Planning Commission concurs with and adopts as its own the above analysis.~~

~~Because the combined comprehensive plan designation change and zone change proposal will help satisfy both the commercial land and more specifically the retail commercial land need, the proposal is consistent with and [proposal](#) meets the requirements of Goal 9.~~

Statewide Planning Goal 10 — Housing: *To provide for the housing needs of citizens of the state.*

~~**Planning Commission Findings:** Goal 10 is of particular concern given that the property is presently planned for residential uses and that under the proposal this acreage will not be available for general housing development. As the staff report explains and the record supports, the City has an overall surplus of residentially planned and zoned land, however there is a deficit in land zoned for multi-family residential housing. However, staff explains that the *Our Salem* planning project has identified properties other than the subject property that are better suited to address the multi-family residential land deficit and that at the end of the *Our Salem* planning process, the multi-family residential land deficit will no longer exist. The Staff Response provides the details behind the Planning Commission's reasoning as to why the proposal is consistent with Goal 10:~~

Finding: Oregon Statewide Planning Goal 10 requires the City to allocate adequate amounts and types of land to accommodate the needed housing units for all incomes. The City has accepted, but not adopted, a Housing Needs Analysis (HNA) prepared in 2015 which includes a Buildable Land Inventory identifying a surplus of approximately 1,975 acres for single family residential development and a deficit of land available for multifamily residential development. According to the Housing Needs Analysis (HNA), “Salem has a deficit of capacity in the MF designation, with a deficit of 2,897 dwelling units and a deficit of 207 gross acres of residential land.” As of December 2020, the City has added 40 net acres of Multiple Family designated land, reducing the projected deficit to 167 acres. Additionally, the City has added 89 acres of Mixed-Use designated land which allows multi-family development as an outright permitted use, thereby further increasing the land available for multi-family development.

“On February 8, 2016, the City adopted Resolution 2016-05, which includes a work plan to address the known deficit of Multi Family Residential lands. The City is expected to fully address the multi-family land deficit in 2022 with the adoption of proposed map changes in the *Our Salem* project.

The proposal will remove approximately 24.66 acres from the existing inventory of land that is designated for single family housing. The City underwent a Housing Needs Analysis (HNA) to project the City's housing needs over the course of 20 years from 2015 to 2035. The report, conducted by ECONorthwest, found that the City of Salem has a surplus of approximately 1,975 acres of land designated for single-family detached housing. Of the total residential and mixed-use comprehensive plan designations, eighty three percent of this area is land within the Developing Residential and Single Family Residential designations. Through these recent HNA and EOA studies, adequate recent analysis has been conducted to confirm that the applicant's proposal to convert 24.66 acres of residential agriculture land to retail commercial will improve the balance of residential and commercial land within the City. The existing surplus of land designated for single family detached housing, as identified in the Housing Needs Analysis and cited in the applicant's written statement, includes more than enough remaining acreage to accommodate demand for single family residential development after deducting the roughly 24.66 acres that would be removed from the Developing Residential designation under the applicant's proposal. The HNA also indicates a shortage of available land for multifamily housing for the 2015 to 2035 time period. Multiple family housing is not permitted in the existing RA zone, and is listed as a conditional (rather than permitted) use in the CR (Retail Commercial) zone requested by the applicant.

“Based on the current available supply of land for residential development shown in the Housing Needs Analysis, the proposal would not have an impact on the ability of the City to provide for its projected housing needs, even if no new housing units were added in future development of the site. Therefore, the proposal to change the designation of the subject property to Commercial would not have an impact on the ability of the City to provide for its projected housing needs.” The ~~Planning Commission concurs with the above analysis and concludes that the~~ proposal ~~is consistent with~~meets the requirements of Goal 10.

Statewide Planning Goal 11 — Public Facilities and Services: *To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.*

~~**Planning Commission Findings:** The record supports a conclusion that the full range of public facilities and services necessary to serve Commercial uses on the subject property is available. The application materials include site surveys that show the location of public facilities that can be extended to the property as well as a Transportation Study and responses that document not only the surrounding transportation facilities, but also their capacities and, where necessary, transportation facility improvements that will mitigate the significant effects on transportation facilities caused by potential worst case scenario development of the property. The record also establishes that a separate application will be required to extend those public facilities and services, but that does not mean they are not available and cannot be extended. As the Applicant Statement explains:~~

Finding: The City utilizes an Urban Growth Management Program to ensure necessary public facilities and services are available to serve new development. As part of the program, the City has designated an USA boundary delineating the area in the City where all necessary public facilities have either been installed or are fully committed in the adopted Capital Improvement Plan. The Subject Property is located outside the boundary of the USA. However, public services are readily available, as fully described in above. Therefore, all public facilities and services are readily available to serve the Subject Property.”

~~The Staff Response generally agrees with the Applicant’s Statement:~~

The subject property is capable of being served through extension of public facilities as specified in existing infrastructure master plans. Future development will require an Urban Growth Preliminary Declaration to address linking and boundary facilities required to serve subject property under the standards and requirements of SRC Chapter 200.”
~~The Planning Commission agrees with the above analysis and finds that the full range of public facilities and services are both available and adequate to serve the uses that would be permitted under the proposed Commercial plan designation~~applicant submitted a transportation study that is required to address the Transportation Planning Rule (OAR 660-012-0060). The applicant’s transportation study identifies seven separate transportation improvements to mitigate the estimated 12,000 new daily trips to the transportation system. One of the mitigation improvements, which is not supported by the Oregon Department of Transportation, cannot be completed without support of Oregon Department of Transportation, who has jurisdiction over the southbound on ramp to I-5.

~~The one area of Planning Commission disagreement with the Staff Response lies with transportation facilities. Not included in the above Staff Response quote is Staff’s analysis of the Oregon Department~~

~~of Transportation's response concerning the need, or lack thereof, for improvements to the southbound ramp to I-5. The Planning Commission disagrees with staff's analysis that ODOT's letter states that mitigation is warranted, but that ODOT does not support any action to be taken. The Planning Commission finds that ODOT's decision to not "support" the mitigation improvement was because it concluded that the mitigation was not necessary based upon the Applicant's TPR Study, which ODOT also concluded used appropriate methodologies and levels of analysis. The Planning Commission understands from ODOT's letter that ODOT's decision to not "support" the mitigation came from the fact that ODOT concluded it was not needed. In Transportation Planning Rule (TPR) parlance, because the volume to capacity (v/c) ratio was within 0.03 of the adopted target, ODOT's rule provides that the proposal is to be considered in compliance with the target and, in this instance, there was no significant effect to the I-5 southbound ramp that requires mitigation. Because no mitigation is required, ODOT did not "support" the proposed mitigation. Staff misreads ODOT's letter to the extent Staff believes ODOT was saying that mitigation was required and because ODOT would not support it, the proposal resulted in an unmitigated significant effect to a transportation facility. As discussed below, the~~

Oregon Department of Transportation letter dated June 1, 2021 states:

ODOT reviewed the earlier version of the TIA which came to similar conclusions regarding impacts of the zone change request and proportionate shares of necessary improvements. The update TIA provides an appropriate level of analysis and mitigation to address the potential impacts of this proposed rezone.

The mitigation proposed to the Kuebler Boulevard at I-5 SB Ramp intersection (installation of a third southbound right-turn lane on the off-ramp) is the most reasonable mitigation at the intersection and may be expected to acceptably mitigate traffic effects of the proposed zone change and development.

However, as noted in the study, Region 2 Traffic does not currently support this mitigation and does not recommend the installation of a third southbound right-turn lane at the Kuebler Boulevard at I-5 SB Ramps intersection. In addition, it was found that the applicant's methodology used to determine their proportionate share of mitigation measures to addresses potential significant impacts is appropriate.

~~The evidence in the record shows there was no significant effect to the I-5 southbound ramp and therefore mitigation is not required.~~

~~The Planning Commission finds that the proposal is consistent with Goal 11. is a significant effect to the I-5 southbound ramp and mitigation outlined would address the significant impact. Based on the Oregon Department of Transportation (ODOT) letter, ODOT does not support the mitigation.~~

Statewide Planning Goal 12 — Transportation: *To provide and encourage a safe, convenient and economic transportation system.*

Planning Commission Findings: ~~Transportation issues were the central point of contention in this proceeding. Potential traffic impacts were the primary focus of most of the public comments and was the solereason why staff recommended denial. ~~While~~~~

~~public comments expressed generalized concerns that the traffic generated by commercial use of the property would be disruptive to the neighborhood, staff's comments were very specific. For these reasons and the fact that the Planning Commission reaches a conclusion different than that recommended by staff, the findings below and elsewhere that address the transportation issues raised are more detailed than the responses for other approval criteria.~~

Before addressing specific arguments raised, the Planning Commission provides the following ultimate conclusion and the guiding principles and conclusions that underly the more detailed analysis provided in the findings below. The Planning Commission concludes that the proposal complies with the Goal 12 rule (the "Transportation Planning Rule" or "TPR" reflected in OAR 660-012-000 et seq., and with the transportation requirements for comprehensive plan designation changes and zone changes set forth by the SRC. Supporting that conclusion and underlying much of the analysis behind specific responses contained in the findings are several main points.

First and perhaps foremost is the Goal 12 "no further degradation" standard for situations where, even in the absence of the proposed comprehensive plan change, the planned transportation facilities will fail by the end of the planning period. That standard is set forth in the Goal 12 Rule at OAR 660-012-0060(3). In such instances, the local government may approve a plan change amendment so long as the development will "mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development[.]" OAR 660-012-0060(3)(b). As noted in the findings above, the City also applies this standard to the analysis for City transportation facilities. If an applicant proposes mitigation that will result in "no further degradation" to a facility that will otherwise not satisfy state or city transportation standards under development allowed by the existing zoning, then under the "no further degradation" principle, that proposal can be approved. In this instance, the Planning Commission finds that the Applicant has made that demonstration and imposes conditions of approval accordingly. The City is better off, or at least no worse off, with CR zone development and the proposed mitigation than it would be with development under the existing RA zoning.

The analysis required to reach the above conclusion leads to the second point — the adequacy and credibility of the Applicant's Transportation Planning Rule Study (TPR Study) and subsequent analysis. ~~Staff argues that the Applicant's analyses are inadequate. As explained in greater detail below, the Planning Commission disagrees with the reasons why staff contends the data and analysis are inadequate and finds them to be adequate in fact. Furthermore, the~~ The Planning Commission notes that the Oregon Department of Transportation found that the TPR Study provides an appropriate level of analysis and mitigation to address the potential impacts of the proposed rezone and that the Applicant's methodology used to determine its proportionate share of mitigation measures to address potential significant effects under the Goal 12 rule was appropriate. ODOT identified no shortcomings or deficiencies with Applicant's TPR Study. Given ODOT's authority on such technical matters, its views may carry significant weight in deciding whether the Applicant's evidence is accurate and credible. On that issue, the Planning Commission sides with ODOT and the Applicant's technical expert in this

instance and finds that the Applicant's traffic analysis is based on the best available evidence and that the analysis is sound, accurate and credible.

The third underlying point concerns the rigidity of the transportation planning and analysis process. ~~Some in this process have sought to frame the process as a numbers game and that when you're on one side of a number the proposal must be approved, on the other side, denied.~~ The Planning Commission finds ~~this to not be the case, whether~~ there is some flexibility, when examining potential transportation impacts under the Goal 12 rule or under the City's standards and guidelines. For example, the Oregon Highway Plan (OHP), the authoritative statement on volume to capacity ratios, explains:

"In applying OHP mobility targets to analyze mitigation, ODOT recognizes that there are many variables and levels of uncertainty in calculating volume-to-capacity ratios, particularly over a specified planning horizon. After negotiating reasonable levels of mitigation for actions required under OAR 660-012-0060, ODOT considers calculated values for v/c ratios that are within 0.03 of the adopted target in the OHP to be considered in compliance with the target. The adopted mobility target still applies for determining significant effect under OAR 660-012-0060." OHP, p. 8.

In other words, any v/c ratio that is calculated to be within 3/100ths of a percent (0.03) of the mobility target is deemed to comply with the target. There is flexibility in that approach.

Similarly, ODOT has ruled that traffic counts should not be taken during the pandemic because pandemic traffic behavior is not representative of normal traffic behavior. The pandemic is a "disruptive event" that skews the analysis. ~~The City has ruled similarly a year ago when it approved the Costco development, instead of concluding that all development must halt until the end of the disruptive COVID event.~~ There is no dispute that the transportation systems at issue here are still affected by ~~the disruptive COVID event~~ the disruptive COVID event although the extent of that disruption is unclear.⁴ Further, there is also no dispute that Staff would not accept traffic counts because 27th Ave has been closed due to construction. This is consistent with the Public Works Design Standards which state that traffic counts "taken during construction shall not be used."² ~~Again, this shows a flexibility within the process and a reliance on the best available data instead of halting development.~~¹

~~Likewise, the~~ The City's transportation regulations include a degree of flexibility and discretion in the application of its provisions. For example, as discussed above under consistency with the Comprehensive Plan, STSP policy 4.6 and 4.7, concerning right-of-

⁴ ~~Staff suggested that Costco's opening should be considered a "disruptive event" and that no traffic counts supporting any amendments or developments should be allowed to be taken or considered until some period of time after Costco opens—which would the evidence establishes likely be somewhere between 6 months to a year from now. The Planning Commission rejects this Staff position that the opening of Costco is a disruptive event. The opening of a particular store, that the City Council has approved in a wholly public process cannot be and is not properly considered a "disruptive event."~~

² ~~There is no dispute that the Applicant did conduct traffic counts in October 2021 and they showed that there is less traffic on the system than the counts taken or otherwise available immediately before the submittal of the applicant's TPR Study submitted in May 2021. There is no dispute that if those October 2021 counts were used, the Applicant could not be required to make the improvements to the Battle Creek and Kuebler Intersection that are herein imposed as a condition. There is also no dispute that Staff did not want the Applicant to use those October 2021 counts either.~~

way and intersection improvements, both provide for variation from the standard requirements. ~~Likewise, other STSP provisions point to “guidelines” and “typical” designs; neither term is absolute.~~

With the above in mind, the Planning Commission makes the following findings related to Goal 12 ~~and in response to the transportation issues raised in the staff reports and not otherwise addressed previously in these findings. Given that staff comments often intermix Goal 12 related concerns with City transportation regulation concerns, these findings respond accordingly and address both sets of standards when appropriate.~~

As noted above, the Planning Commission finds the TPR Study and subsequent transportation system evidence and responses prepared by DKS, the Applicant’s transportation expert, to be credible and accurate. ~~The Planning Commission also finds credible DKS’s statement in its December 10, 2021 submittal that DKS originally scoped the study intersections for the TPR analysis with Staff in 2017, but when they attempted to scope the study more recently for this application, public works indicated that they would not support a transportation study being completed until Costco opened sometime in May 2022 (a year after the TPR Study was prepared) and so Staff provided no scope of work. The Planning Commission also finds credible the DKS statement that the study area used in the transportation analysis is consistent with other TIA and TPR studies completed for development in the vicinity of the subject property. Consequently, the~~ Planning Commission finds the scope of the study to be proper for the application.

The DKS TPR Study collected and analyzed the data for eight (8) existing transportation

¹ [There is no dispute that the Applicant did conduct traffic counts in October 2021 and they showed that there is less traffic on the system than the counts taken or otherwise available immediately before the submittal of the applicant's TPR Study submitted in May 2021.](#)

facilities and one new facility (the 27th Avenue/Project Site Access). The data for most of the existing facilities was taken on May 30 and June 4, 2019. The data for the Commercial Street SE/Kuebler Boulevard facility was collected on February 15, 2017. Two arguments are presented against this data, both focused on PWDS Section 6.33(f)(3), which concerns traffic impact analyses. That standard provides that traffic counts older than two years are not be used. ~~First, staff contends that the traffic counts conducted in May and June of 2019 are not valid because the application was not filed until August 2021. The Planning Commission disagrees. The [finds that the](#) TPR Transportation Study was dated May 2021 and stamped by a professional engineer. That published date is within 2 years of the date the data was collected. The Planning Commission finds that satisfies the two-year provision regarding traffic counts. ~~It has been argued that the two-year restriction should be measured from the date an application is deemed complete, or the date of submittal of an application. Nobody has pointed to any reference to a land use application date in the PWDS or any other applicable regulation that would suggest that the land use application or completion dates are the proper standard. Furthermore, completing a TPR Transportation Analysis in May in support of a land use application filed in August is not an unreasonable delay given that preparation of the application is, in part, contingent upon whether the transportation analysis demonstrates the proposal is even possible.~~ The Planning Commission concludes that the 2019 traffic counts are consistent with the PWDS time-frame requirements.~~

The 2017 traffic count for the Commercial Street SE/Kuebler Boulevard facility is a more complicated matter. On its face, the date lies outside of the two-year window provided in the PWDS for traffic counts. However, these are not ordinary times and there are important factors that weigh towards accepting that data as the most accurate data available. The issue, plainly put, is that more accurate data cannot be collected for the intersection within the reasonably foreseeable future given the pandemic situation, for which ODOT's publication states data should not be collected, and the on-going construction on transportation facilities and other development, for which the PWDS states traffic counts should not be collected and used. ODOT provides guidance for this type of situation — use the most accurate pre-pandemic (“disruptive event”) data available. The PWDS provides no guidance in this situation.

Three primary factors lead the Planning Commission to conclude that the use of the 2017 traffic count is consistent with the TPR and with the PWDS. First, is that the facility at issue is not just a City street, but at certain points, is also a state transportation facility.^{3 2} For that reason, ODOT's general guidance to use pre-pandemic data as well as ODOT's letter in the record affirming the appropriateness of the Transportation Study's analysis and mitigation proposals is significant. ~~If ODOT had taken issue with the use of 2017 data on its facility, it would have flagged that data as out-of-date or inappropriate. ODOT did not object to the use of that data in the Transportation Study.~~

~~Second, is that the City Council in its recent Costco approval decision repeatedly stated that the data used in the transportation analysis in that proceeding was valid and that pandemic counts should not be used. Staff also contends that since the applicant in that proceeding was not required to prepare a TIA for its site review application, the data relied upon in that proceeding is somehow deficient. The Planning Commission finds that staff is mistaken and that they confuse the issues of whether the applicant in the Costco situation was required to prepare a TIA with whether the TIA it did prepare was supported by credible data. It is the latter that is relevant, not the former. As noted above, the City Council repeatedly found that the data relied upon in the Costco approval TIA submitted in that proceeding to be accurate and credible and, most importantly, sufficient to base its decision upon. The Planning Commission reaches the same conclusion in this proceeding: (1) pandemic traffic counts should not be used, and (2) it is conclusive that the City Council decided that the Costco approval transportation analyses were credible and accurate. This proceeding provides no occasion for the Planning Commission to look behind or collaterally attack that decision.—~~

~~Third, the~~

~~The Applicant here did take~~took traffic counts in October 2021 ~~and Staff did not like what those counts showed.~~ Unsurprisingly, given the current COVID situation ~~and~~ on-going construction activity, and the closure of 27th Street SE, the traffic counts and subsequent potential impacts on transportation facilities were greatly reduced. ~~So much so that the data showed no significant effect to the Battle Creek Road and Kuebler Boulevard intersection. Consequently, the developer would not be required to improve the intersection of Battle Creek Road and Kuebler Boulevard. In all, the~~The Applicant's October 2021 counts showed less traffic volume on the affected transportation facilities than the counts relied upon by the Applicant in their TPR Study. ~~Staff took the position that those 2021 counts too could not be used, mostly because of area transportation~~

³~~At the particular intersection of Kuebler and Commercial, it is a City street.—~~

~~facility construction. Relatedly, Staff took the position that no development applications may be considered at all, including this one, until some period of time after Costco opens, and only then when traffic counts can then be taken reflecting Costco traffic. The Planning Commission notes that the Applicant also prepared traffic counts in 2021 in response to staff's arguments concerning the age of the 2019 data. Staff contends~~finds that, given the context described above, the data does not reflect normal usage that will flow from the proposal. The Planning Commission agrees with staff and does not base its decision on these latter traffic counts. The Planning Commission finds that the TPR Study from May 2021, the data it relies upon, and supplemental analysis and proposed mitigation to be the most accuratepersuasive reflection of the traffic conditions that will exist during normal times ~~and reflects the best transportation engineering practices in its analysis and mitigation proposal.~~

~~However, the Planning Commission finds that it cannot be the case that no counts are valid and that it is unreasonable for Staff to essentially declare a moratorium on development until such time as Costco opens and a period thereafter.—~~

~~State law does not allow the City to foreclose any development applications being considered on this property or other property until either after the pandemic, or after Costco opens or after all road construction in the area is completed. ORS 197.520 provides specific standards for declaring a moratorium including rules about notice, hearings, approval standards, standards requiring a demonstration of a solution strategy and limiting the duration of the moratorium. None of those standards have been met here or attempted to be met. Further, the Planning Commission finds the City Council's findings that pandemic counts should not be taken and that the extraordinary disruptive event of the global pandemic reasonably overrides the PWDS requirement that in normal times, traffic counts should not be older than two years before the TIA is prepared. The Planning Commission therefore finds that it is most appropriate to rely upon the best available evidence and sound engineering practices which are both reflected in the DKS traffic analyses.~~

~~The Planning Commission finds that the data relied upon by the DKS study is credible, accurate and reliable, and reflects the best transportation engineering practices as the City Council has articulated in the Costco decision (regarding not using pandemic counts) and which ODOT has confirmed for the Transportation analysis here.—~~

Turning to the Transportation Study and the Goal 12 analysis, DKS found potential significant effects to six of the nine facilities studied. As Table 9 of the Transportation Study shows, the three facilities that would continue to operate within design standards

² [At the particular intersection of Kuebler and Commercial, it is a City street.](#)

were the Kuebler Boulevard/I-5 North Bound Ramp; the Battle Creek Road/Boone Road intersection; and the 27th Avenue/Boone Road intersection. Because there would be a significant effect to the other transportation facilities, the Applicant is required to mitigate the impacts on those facilities consistent with the Goal 12 rule if the application is to be approved. The application and follow-up responses include proposed mitigation.

The Transportation Study's Table 10 shows the study intersections that required mitigation, the standards that mitigation must meet based on either the operational standard for the facility or if it is failing the mobility target under the "no further degradation standard", the proposed mitigation, and the v/c, delay and LOS that will

result with the proposed zoning plus mitigation. It demonstrates that the traffic impacts from the proposal with the mitigation proposed by the Applicant and imposed by the conditions of approval, satisfy the TPR requirements.

In summary, one facility, the 27th Avenue/Project Site Access will operate within the designated operating standards with the proposed mitigation. Two facilities, the Kuebler Boulevard/Commercial Street intersection and the Kuebler/I-5 Southbound Ramp require no additional mitigation because the LOS remains the same for the City controlled transportation facility and the V/C, the standard used by ODOT, for both facilities is within the 0.03 range that the Oregon Highway Plan states is in compliance with the target for both of the facilities. Two of the facilities, Kuebler Boulevard/Battle Creek Road and Kuebler Boulevard/27th Avenue, following mitigation, will operate at the same failing LOS as the current zoning and will operate at a V/C ratio lower than the current zoning, thus meeting the “no further degradation” standard. The last intersection, Kuebler Boulevard/36th Avenue, located more than half a mile away on the other side of I-5 from 27th Avenue SE is presently failing and cannot be mitigated by any action taken solely by the Applicant — the traffic issue there requires a greater City effort to widen the bridge over the railroad and Mill Creek to the east. In response, the applicant has offered to contribute its proportional share for the comprehensive improvements necessary to bring that intersection into compliance with City standards. That share is \$118,000.00 [based on current estimates](#). The Planning Commission finds the proposed amount to be accurate, given ODOT’s statement that it found the applicant’s methodology for determining their proportionate share of mitigation measures was appropriate. ~~The Planning Commission further finds that that amount is all that can be exacted from the Applicant consistent with the U.S. Constitution because it represents Applicant’s proportionate share. Furthermore, because that sum properly mitigates the traffic impacts generated by the proposed development, it is consistent with the purpose for traffic impact analysis.~~

The Applicant has proposed the following mitigation measures, which the Planning Commission imposes as conditions of approval. The Applicant will enter into an Improvement Agreement with the City under which the Applicant shall construct, as mitigation for the transportation impacts generated by the proposed plan designation and zone change, the full mitigation for three facilities and the Applicant’s proportionate share for a fourth facility. The facilities the Applicant will construct include: (1) the west bound slip lane (a west bound right turn lane to the roundabout) from the site access onto 27th Avenue SE; (2) improvements to the Kuebler Boulevard and 27th Avenue intersection, which include installing dual north bound right turn and dual north bound left turn lanes, and changing phasing to protected-only for north bound left and south bound left turns; and (3) the second south bound left turn lane at the intersection of Kuebler Boulevard and Battle Creek Road.

All three mitigation improvements are generally represented in conceptual drawings presented in DKS materials dated December 10, 2021, included in the December 21, 2021 Supplemental Staff Report. Those facilities will be designed and constructed to meet PWDS requirements. The financial mitigation measure imposed as a condition of approval is the deposit of \$118,000.00 to the City of Salem for the Applicant’s proportionate share of intersection improvements at Kuebler Boulevard/36th Avenue. Moreover, the Applicant has agreed to a condition that (4) the property will be improved with no more than three drive through window establishments. A single store/restaurant/bank etc. may have more than one drive through feature serving the

single establishment and that scenario will count as one drive through window. And has agreed to a condition of approval that (5) No single retail store building shall be composed of more than 70,000 sq. ft. of gross leasable area.

~~Based upon the evidence in the record, which the Planning Commission finds credible, the total mitigation costs for the Applicant will be approximately \$3.6 million. Based upon the Applicant's proportionate share calculations, which ODOT concluded was based on appropriate methodologies, the \$3.6 million represents more than double their proportionate share of costs for these improvements. Although greater than its proportionate share, the~~ The Planning Commission finds the conditioned mitigation measures, ~~particularly the measures where the Applicant bears the full cost of construction,~~ is warranted in order to mitigate for the additional traffic impacts that will flow from the plan designation to Commercial and zone change to CR (Commercial Retail). Such mitigation is necessary for the proposal to be approved under Goal 12 and by the applicable SRC standards for plan designation and zone changes.

Based upon the above findings, the Planning Commission concludes that the proposal, as mitigated by the conditions of approval imposed by this decision, is consistent with Goal 12 and the Transportation Planning Rule, as well as with the transportation-related requirements of the Salem Revised Code.

~~As noted above, neither the general public nor any of the neighborhood associations submitted any specific comments regarding the DKS TPR Study or compliance with Goal 12 or City standards. Those public comments were framed in generalized statements such as that the proposal "will add significant traffic" to the area, that "this is an area that already has traffic problems", that "complete gridlock" will result, and expressing a "concern for pedestrian and bicycle safety." Such generalized concerns fall within the scope of the approval standards and are addressed by the conclusions reached in these findings.~~

The following findings address specific concerns presented by Staff in the November 2 and December 21, 2021 Staff Reports that have not already been addressed by these findings.

~~The Planning Commission notes that Staff raised many concerns with the original transportation study in the December 21, 2021 Staff Report that were not but should have been raised in the earlier staff report. Consequently, the findings focus on comments from the December Staff Report.~~

~~Staff dispute DKS's analysis that traffic flows from CO zoning are not significantly different from the requested CR zoning and that development under both zones would result in the same TPR significant effect outcomes. Staff contend that the Applicant's analysis represents a "worst-case" scenario under CO and would require several multi-level office buildings, which "may not be realistic in Salem's market." The trouble with Staff's position is the Goal 12 rule requires a "worst-case" analysis for plan change proposals that are not accompanied by a specific development proposal, as is the case here. The TPR analysis for the CR zoning was based on a worst-case methodology and the same methodology must be applied to determine potential CO transportation impacts. The Planning Commission finds DKS's CR vs CO traffic impact analysis comments to be credible and accurate. Staff contends that the traffic counts should be issue of weekend counts was raised. However, the PWDS 6.33(f)(2) state that "[t]raffic counts shall be taken on a Tuesday, Wednesday or Thursday that is not a city, state or federal holiday and when K-12 school is in session." The Planning Commission finds that the Applicant's data collection dates comply with that standard. ~~The Planning Commission~~~~

~~also notes that the City Traffic Engineer has the authority to deviate from that standard. However, given Staff's refusal to scope the TPR Study in its early stages, the Planning Commission concludes that staff effectively waived their right to demand, after the fact, that an applicant go back and perform the analysis again, particularly when Staff also maintains the position that any data collected now is invalid. Goal 2 demands that the City comport with the City's land use processes so that land use applications can proceed along a predictable, logical course where government bodies inform applicants of what is required at an appropriate time in the application process. The City Traffic Engineer did not require weekend traffic counts at the scoping stage of the transportation analysis; consequently, the Applicant's TPR Study complied with the PWDS requirements by using counts taken on days prescribed by the PWDS. Moreover, TPR analyses must be completed for a horizon year and peak period consistent with the City's adopted TSP. For City of Salem, this is the weekday PM peak hour in 2035. Because the STSP does not evaluate other peak hours or weekends, there is no means to verify whether a land use application is consistent with the traffic patterns accounted for in the adopted TSP outside of the weekday PM peak hour.~~

~~Staff's comments about the round-about on 27th Ave., expressed concerns that once Costco opens the roundabout may be overloaded, ~~does not recognize that~~ however, the DKS analysis included the Costco traffic counts as "in process" ~~relying on those that the City Council repeatedly found credible and accurate in its Costco approval decision~~ in their analysis. The Applicant's traffic numbers incorporate those numbers, thus leading to the proposed mitigation. ~~As to~~~~

~~Staff's arguments that those numbers are mere estimates, the Planning Commission notes, as does ODOT, that all traffic studies involve estimates as does land use transportation planning in general. The relevant question in this proceeding is whether the estimates and methodology used for evaluation are credible and represent best practices. The Planning Commission finds that the DKS data and analysis does.~~

~~Furthermore, the fact that there may be long vehicle queues, delays and even transportation system failures is not the point or a basis to deny the application. The evidence in the record plainly demonstrates that all of those will occur without the proposal being approved. The relevant inquiry is whether the proposal makes the failing facilities worse, or whether the mitigation measures mitigate the impacts of future development such that the system performs equally well or better than it otherwise would. In this instance the Applicant has made that latter demonstration.~~

~~Staff next focuses on raised concerns regarding the number of additional trips the proposed zoning would add to the system and states that the evidence in the record demonstrates that vehicle movements will be greater than 80 seconds, which is inconsistent with standards established in the PWDS. The Planning Commission notes that the sheer number of vehicle trips that would result from a plan designation change/zone change or increase in vehicle trips is not restricted by any standard so long as the impact from those trips is mitigated. In this case the evidence in the record establishes that it is. ~~Regarding the vehicle movement timing, the Planning Commission first notes that this is not a Goal 12 consideration, which focuses on LOS and v/c ratios, but may not be relevant to the related zone change standard. In any event, again the The issue in the present context is not whether the delay exceeds the intersection operational standards, but is whether the proposal mitigates for the impacts it creates when the intersection exceeds its vehicle movement operational standards under the existing zoning. In this case, for example, Table 9 from the Transportation Study shows that the Kuebler Boulevard/27th Avenue delay under the current zoning is 157.8 and under the unmitigated proposed zoning is greater than 200. However, with mitigation, as shown on Table 10, that delay is reduced to 87.5, well below the 157.8 that will exist without the approval. While that value still exceeds the operational standard, it is an improvement over the current zoning failing operations and satisfies the "no further degradation" standard. ~~Furthermore, as DKS pointed out, the argument made by staff looks at the timing of~~~~~~

~~individual turn lanes, but that the best engineering practices and City standards require considering overall intersection delays, not individual movements. As the DKS testimony explained, movement operations fluctuate drastically and are strongly influenced by signal timing. Staff's position would have the Planning Commission deviate from best practices and City standards to adopt a different approach in the review of this particular traffic study. The Planning Commission declines to do so.~~

~~Staff then lists the "many factors" why Staff does not support the proposed zone change. Several of the stated factors do not relate expressly to approval standards or are beside the point given the analysis required for the TPR and City zoning standards. Concerns such as site limitations forcing most site traffic to one access, the large amount of traffic generated by the proposed zone, and staff's perceived timing of peak traffic volumes do not directly correlate to approval criteria. They cannot be a basis for denying this application. Other concerns, such as the fact that intersections in the area are already failing, Costco traffic is directed to the same entrance/exit as the subject property, and the long vehicle queues, are all accounted for in the DKS data and analysis in which the Planning Commission finds that the Applicant has demonstrated that the proposal complies with applicable approval standards. For example, while the vehicle queues in the TPR Study Table 11 shows excessive queue lengths are possible on northbound 27th Avenue even after mitigation, it also demonstrates that the 95th percentile queue lengths with the proposal will be the same as, or better than, they will be without the proposal. In other words, this proposal actually reduces the likelihood that queues will encroach into the roundabout or crosswalk. All other queue lengths comport with available storage and do not cause spillback into cross walks as Staff posits.~~

~~Staff's final argument is that the Applicant's transportation system analysis is "not persuasive because of the changed circumstances associated with the passage of time, the pandemic, and the opening of the Costco in the near vicinity of the subject property have made prediction of the actual traffic impacts too uncertain." Staff's approach would be to wait for some period of time for things to settle down and then do a new traffic analysis based on "normal" conditions. As Applicant and DKS have noted, not only will construction at Costco continue until at least March or April (or perhaps longer), established transportation data demonstrates that traffic flows at a newly opened Costco are anything but normal for several more months after opening. Factor in the continuously evolving pandemic situation and potential new construction in the area given recent land use approvals, which will potentially further skew traffic data, and one is left with the question of "when will traffic counts ever be "normal"?" As ODOT's OHP notes, there are always many variables and levels of uncertainty in transportation planning. And while the Planning Commission agrees with Staff that the traffic tolerances in this part of Salem are narrow, the Planning Commission finds that Staff's approach would lead to an impermissible *de facto* moratorium prohibited by state statute. The Applicant's analysis is based upon the best available data and represents best transportation engineering practices. Consequently, the Planning Commission disagrees with Staff's opinion of the evidence.~~

The Planning Commission finds that the DKS transportation system analysis is persuasive and the proposed and conditioned mitigation measures will mitigate the impacts caused by the traffic that will result from development under the proposed plan designation and zoning.

~~To reiterate from above, based upon the above findings, the Planning Commission concludes that the proposal, as mitigated by the conditions of approval imposed by this decision, is consistent with Goal 12 and the Transportation Planning Rule, as well as with the transportation-related requirements of the Salem Revised Code.~~

~~The Planning Commission concludes the proposal, as conditioned, is consistent with Goal 12 and the Goal 12 Rule.~~

Statewide Planning Goal 13 — **Energy Conservation:** *To conserve energy.*

Planning Commission Findings: The Planning Commission notes that Goal 13 is another of the goals focused on directives to local governments to do land use planning and provides little of anything regarding standards for specific development other than what the adopted plan and land use regulations should specify. In other words, Goal 13 is implemented through local government land use planning and the application of the plan and code.

That said, the application narrative discusses the central nature of the subject property, which will provide bikeable and walkable commercial shopping and dining opportunities for the near-by residential development. This will reduce energy consumption by motor vehicles. The application also notes that the location of the site along a major bus route will allow for alternative modes of transportation to development on the property.

Such pedestrian and alternative transportation opportunities will help conserve and promote energy efficiency consistent with Goal 13.

Statewide Planning Goal 14 — **Urbanization:** *To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.*

~~**Planning Commission Findings:** The subject property is located within the City's UGB and is designated for urban development. Given that existing or approved development surrounds the subject property, development of the property will provide for an orderly and efficient transition from rural to urban land, ensure the efficient use of land and will help provide for a livable community by providing commercial retail uses to the near-by residential development. As the Staff Response explained:~~

Finding: The subject property was annexed into the City of Salem in 2011 and is located within the Urban Growth Boundary (UGB). The proposal does not include extension of services to properties outside of the UGB. The proposed Comprehensive Plan and Zone Change is consistent with an orderly and efficient transition from rural to urban use for incorporated land adjacent to major transportation facilities." The proposal complies with Goal 14.

Statewide Planning Goal 15 — **Willamette River Greenway;** **Goal 16** — **Estuarine Resources;** **Goal 17** — **Coastal Shorelands;** **Goal 18** — **Beaches and Dunes;** and **Goal 19** — **Ocean Resources.**

~~**Planning Commission Findings:** Each of the above are geographic specific goals. The Subject Property is not within the Willamette River Greenway, or in an estuary or coastal area. Consequently, Goals 15, 16, 17, 18 and 19 do not impose any requirements to this proposal.~~

The proposal is consistent with Goals 15 through 19.

~~The Planning Commission finds that the proposal is consistent with the Statewide Planning Goals and implementing regulations.~~

~~Because the proposal is consistent with the Salem Area Comprehensive Plan and with the Statewide Planning Goals and their implementing regulations, the proposal satisfies SRC 64.025(e)(2)(D).~~

SRC 64.025(e)(2)(E): The amendment is in the public interest and would be of general benefit.

Planning Commission Findings Finding: The proposed plan designation change and zone change satisfies an identified need for commercial retail employment-related uses, and proposes to meet that need through changing land designations and zoning for which City studies have demonstrated that the City has an excess of land. The proposal is also consistent with the City's planning program and the City Council's expressed intent to establish commercial services in close proximity to residential neighborhoods. Given the subject property's location along major access routes to the surrounding residential areas and accessibility by alternative means of transportation, the Planning Commission concludes that the proposal is in the public interest and would be of general benefit to the surrounding neighborhoods and to the City generally.

~~The portions of the November 2, 2021 Staff Report quoted below are consistent with and support the Planning Commission's conclusion that the proposal is in the public interest.—~~

~~"The proposed Comprehensive Plan Map amendment from Developing Residential to Commercial is in the public interest and would be of general benefit because it would facilitate the provision of goods and services to a developing part of the City with relatively few commercial areas. An analysis of city-wide demand for buildable commercial land over the next 20 years was completed in the October 2014 EOA and determined that an additional 271 acres of commercial land is needed to meet demand the commercial land needs of the City over this period. Of this deficiency, roughly 100 acres are needed to accommodate retail commercial services. The conversion of the site to a Commercial plan designation and a Retail Commercial zoning designation will reduce this current deficit of commercial retail land.~~

~~"The City has recently completed a Housing Needs Analysis (HNA) that evaluated the City's housing needs over the course of 20 years from 2015 to 2035. The report, conducted by ECONorthwest, found that the City has a surplus of approximately 1,975 acres for single family residential development and a deficit of land available for multifamily residential development. According to the Housing Needs Analysis (HNA), "Salem has a deficit of capacity in the MF designation, with a deficit of 2,897 dwelling units and a deficit of 207 gross acres of residential land." As of December 2020, the City has added 40 net acres of Multiple Family designated land, reducing the projected deficit to 167 acres. Additionally, the City has added 89 acres of Mixed-Use designated land which allows multi-family development as an outright permitted use, thereby further increasing the land available for multi-family development.—~~

~~"The applicant's proposal to convert 24.66 acres of residential agriculture land to retail commercial will reduce this residential land surplus and improve the balance of residential and commercial land within the City. The Plan Map amendment would help address a deficit of approximately 100 acres of retail commercial services identified in the Economic Opportunities Analysis.—~~

~~"The proposed change in land use designation is consistent with the location and character of the property, with Comprehensive Plan policies for siting commercial facilities, and with the transportation facilities available to serve the property.—~~

~~The proposal satisfies this standard.~~

~~**Conclusion:** For the reasons provided above and based upon the evidence in the record, the Applicant has demonstrated that the proposal satisfies each of the applicable criteria for granting a minor comprehensive plan (map) amendment designation for the subject property from Developing Residential to Commercial.—~~

~~2. FINDINGS APPLYING TO THE APPLICABLE SALEM REVISED CODE CRITERIA FOR THE ZONING MAP AMENDMENT~~

8. QUASI-JUDICIAL ZONE CHANGE APPROVAL CRITERIA

The following analysis addresses the proposed zone change for the subject property from RA (Residential Agriculture) to CR (Retail Commercial).

SRC Chapter 265.005 provides the criteria for approval for Quasi-Judicial Zone Changes. In order to approve a ~~quasi-judicial~~Quasi-Judicial Zone Map amendment request, the review authority shall make findings based on evidence provided by the applicant demonstrating that all the following criteria and factors are satisfied. The extent of the consideration given to the various factors set forth below will depend on the degree of impact of the proposed change, and the greater the impact of a proposal on the area, the greater is the burden on the applicant to demonstrate that, in weighing all the factors, the zone change is appropriate.

The applicable criteria and factors are stated below in bold print. Following each criterion is a response and/or finding relative to the amendment requested.

SRC 265.005(e)(1)(A): The zone change is justified based on one or more of the following:

- (i) **A mistake in the application of a land use designation to the property;**
- (ii) **A demonstration that there has been a change in the economic, demographic, or physical character of the vicinity such that the proposed zone would be compatible with the vicinity’s development pattern; or**
- (iii) **A demonstration that the proposed zone change is equally or better suited for the property than the existing zone. A proposed zone is equally or better suited than an existing zone if the physical characteristics of the property are appropriate for the proposed zone and the uses allowed by the proposed zone are logical with the surrounding land uses.**

~~**Planning Commission Findings:** The Planning Commission finds that the evidence in the record supports the conclusion that the proposal satisfies both the “change in character of the vicinity” and the “equally or better suited for the property than the existing zoning” requirements of SRC 265.005(e)(1)(A)(ii) and (iii). The evolving integration of new commercial uses in close proximity to the existing residential developments is consistent with the vicinity’s recent economic development pattern and reflects changing concepts in land use planning and economic development. The proposed zone change to CR (Commercial Retail), as opposed to other zoning that implements the Commercial plan designation, is also consistent with the gently sloping site and, given the juxtaposition to both residential development, recently approved commercial uses and key transportation routes, to include~~

~~public transportation, the retail uses allowed by the proposed zone change logically fit with the surrounding uses better than the existing RA zoning.~~

~~The Applicant Statement appropriately documents the significant economic changes that have occurred in the vicinity of the subject property:~~

~~“Since the annexation of the Subject Property, the properties in the surrounding area have undergone significant economic change.~~

~~“Pacific Realty Associates LP (PacTrust) Property: The PacTrust property located directly to the west of the Subject Property was re-zoned from a split-zoned Commercial office/Residential-Agriculture zoning to a split-zoned Commercial Office/Commercial Retail. The Commercial Office portion of that property has been developed and there is a proposed move of the Mission Street Costco to the Commercial Retail portion of the property. This change and the proposed development make the Subject Property particularly unsuitable for residential development.~~

~~“Clark Property: The property directly north of the Subject Property was rezoned in March of 2016 from Residential Agriculture to Commercial Retail to allow for future commercial development of the site.~~

~~“Boone Road Land SL LLC: The property directly south of the Subject Property has been rezoned to Multiple Family Residential with plans for development of an assisted living facility similar to the Bonaventure complex to the east of the Subject Property. As with the Bonaventure complex, an adjacent commercial complex would benefit the residents of the future assisted living development by providing nearby access to commercial retail.~~

~~“East of Interstate 5: East of the Subject Property on Kuebler Blvd. there has been substantial development of various uses including the new State Police Headquarters, the Parks and Recreation Facility, the Bonaventure facility and corresponding expansion of commercial office and residential services to serve that community, as well as the Amazon Distribution center and other industrial operations that will impact the character of the vicinity and decreases the suitability of the Subject Property for single family residential development.~~

~~“In addition, the CR zoning designation is better suited for the Subject Property than the RA zoning designation. There has been and continues to be ongoing residential development of the southeast part of the City, and the amount of nearby commercial services has not kept pace with this growth. The increase in population, employment, and the number of households in the area creates a local market for goods and services. This proposed zone change will create a commercial center to serve the population of the southeast part of the City. This will provide an opportunity for neighborhoods to have shopping and other retail services that the area currently lacks. The proposed zone change will create a commercial retail facility to serve the surrounding community and will reduce vehicle miles traveled to reach commercial services. The overall project will increase the inventory of commercial land available to retail businesses. It will provide an opportunity to expand and diversify the range of commercial and retail services available to the neighborhoods in the vicinity. The change will have a beneficial impact on the surrounding area.”~~

~~The Planning Commission further notes that the Staff Response concurs with the Applicant’s analysis and reiterates that no specific development proposal has been proposed or approved. The Staff Response states:~~

“

Finding: The request satisfies (ii) and (iii); the proposed zone change is within an area of economic change which makes the proposed zone more compatible with the vicinity development pattern and is equally or better suited for the property than the existing zone. As noted in the applicant’s written statement, several properties in the area have been zoned for commercial use or multi-family. The vicinity development pattern has surrounded the subject property leaving an island of residential zoned property. The City has recognized this location as being an appropriate site for commercial development through its adoption of a CR designation for an approximately 32-acre site located at the southwest corner of the 27th Avenue SE / Kuebler Boulevard intersection and an approximately 34-acre site on the northeast corner of 27th Avenue SE / Kuebler Boulevard intersection. The transportation facilities serving the site are consistent with the physical characteristics necessary to support uses allowed in the CR (Commercial Retail) zone.

“It must be noted that a zone change is not an approval of a specific development proposal, but instead is approval of a permanent change in a property’s zoning district. The proposed Plan Map amendment would change of the land use designation of the subject properties to “Commercial,” which can be implemented by multiple zoning districts contained in the Unified Development Code. In evaluating the proposed zone change, the suitability of the specific zone (Commercial Retail) proposed by the applicant must be considered. For this reason, an additional measure of the suitability of this request is consideration of the nature of the potential future uses allowed by the CR zone when compared to the uses allowed under the existing RA zone, and the character of the existing land uses in the neighborhood. As stated previously, the subject property is located within an area largely characterized by holding uses consistent with the “Development Residential” designation.

~~“The City is proposing to change the Comprehensive Plan map designation of the Subject Property to Commercial through the *Our Salem* planning process[.]”~~

The Planning Commission notes that participants at the hearing have argued that other zone designations, specifically CO (Commercial Office), MU-I and MU-II (Mixed Use) zones would, in fact, be a better zone for the property given the adjacent residential uses. Similarly, participants have argued that conditions to restrict certain CR-permitted uses, such as drive-through services, would make for an even better fit. The Planning Commission finds that, ~~for this standard, such arguments are misdirected. Relevant here, this criterion requires that the applicant demonstrate a change of circumstances such that the proposed zone would be compatible with the vicinity’s development pattern or that the proposed zone is better suited for the property than the existing zoning. the~~ issue of fit can be addressed by the following conditions of approval:

Condition 1: The subject property shall not contain more than three uses with drive through.

Condition 2: The subject property shall have no single retail store building that is constructed with more than 70,000 sq. ft.

The Applicant has carried its burden and made that demonstration. The standard does not require that the Applicant demonstrate that the requested zoning is the best or most ideal zoning for the property, only that it is either compatible with the vicinity’s

development pattern or better suited than the existing pattern. ~~The Applicant has demonstrated that both standards are met.~~

~~The proposal satisfies this standard.~~

(B) [SRC 265.005\(e\)\(1\)\(B\)](#): If the zone change is City-initiated, and the change is for other than City-owned property, the zone change is in the public interest and would be of general benefit.

~~**Planning Commission Findings Finding:** The proposal is not a City-initiated zone change. Consequently, this criterion imposes no standards for this proposal.~~

~~**(C) The** zone change **conforms**. [This criterion does not apply.](#)~~

[SRC 265.005\(e\)\(1\)\(C\)](#): The zone change complies with the applicable provisions of the Salem Area Comprehensive Plan.

~~**Planning Commission Findings Finding:** Findings: This proposal is a consolidated [addressing the minor](#) comprehensive plan change and zone change request. The findings above for [Comprehensive Plan Change map](#) criterion SRC 64.025(e)(2)(D), [included above in this report](#), address the applicable provisions of the Salem Area Comprehensive Plan that apply [to for](#) this consolidated application. For the most part, the responses for the requested CR zoning mirror the response to plan provisions for the proposed Commercial plan designation. Where the response to the plan provision may differ based upon the zone designations permitted under the plan designation, the findings address specifically the zoning as well. Consequently, the findings for SRC 64.025(e)(2)(D) are herein incorporated as responses to this standard.~~

~~The Planning Commission notes that public comments did not raise any specific plan policies or goals as applicable to the application proposal.~~

~~The Planning Commission further notes that the CR (Commercial Retail) zone implements the Commercial plan designation, as do the CO (Commercial Office) and MU I and MU II (Mixed Use) zones the planning staff, neighborhood groups and neighbors argued for. The Applicant could have requested any of these zones and been consistent with the requested plan designation under the Salem Area Comprehensive Plan. The choice of which zone to request is the Applicants and so long as that choice conforms to the requested plan designation and satisfies the applicable provisions of the Salem Area Comprehensive Plan, which the Planning Commission finds the Applicant has done in this instance for the reasons provided under SRC 64.025(e)(2)(D), the proposal complies with this standard. The proposal satisfies this criterion.~~

(D) [SRC 265.005\(e\)\(1\)\(D\)](#): The zone change complies with applicable Statewide Planning Goals and applicable administrative rules adopted by the Department of Land Conservation and Development.

~~**Planning Commission Findings Finding:** Similar to the response to conforming with applicable provisions of the Salem Area Comprehensive Plan, the findings above for Comprehensive Plan Change criterion SRC 64.025(e)(2)(D), addressing compliance with the Statewide Planning Goals and administrative rules, also included discussions of the requested CR commercial retail zoning where additional response based upon the zoning is warranted. Examples include the responses for Goal 9 and Goal 10. Other than those instances where the zoning is discussed specifically, the responses for Goal and rule compliance for zoning mirror the response for the requested Commercial plan designation.~~

Therefore, the responses above for SRC 64.025(e)(2)(D) are hereby incorporated. Given that the requested CR zoning implements the Commercial plan designation, and this is a consolidated comprehensive plan change and zone change request, the analysis and conclusions for both applications is the same.

~~The zone change application complies with this standard.~~

~~(E) SRC 265.005(e)(1)(E):~~ If the zone change requires a comprehensive plan change from an industrial ~~use~~ designation to a non-industrial ~~use~~ designation, or from a commercial or employment designation to any other use designation, a demonstration that the proposed ~~rezonezone change~~ is consistent with ~~its~~the most recent economic opportunities analysis and the parts of the Comprehensive Plan which address the provision of land for economic development and employment growth; or be accompanied by an amendment to the Comprehensive Plan to address the proposed ~~rezonezone change~~; or include both the demonstration and an amendment to the Comprehensive Plan.

~~Planning Commission Findings~~Finding: The proposed zone change is from RA (Residential Agriculture) to CR (Retail Commercial). No industrial Comprehensive Plan designations or zoning districts are involved in the proposal. The existing designation is not a commercial or employment designation.

Therefore, this criterion does not ~~impose any approval standards for the application and generally does not~~ apply ~~to the proposal~~.

~~SRC 265.005(e)(1)(F): (F)~~—The zone change does not significantly affect a transportation facility, or, if the zone change would significantly affect a transportation facility, the significant effects can be adequately addressed through the measures associated with, or conditions imposed on, the zone change.

~~Planning Commission Findings~~Finding: This zone change standard substantively requires an analysis similar to Goal 12's Transportation Planning Rule. It uses identical wording and lays out the same standard, which allows for mitigation of transportation impacts when a significant affect to a transportation facility is found. In short, it implements Goal 12 and must be interpreted and applied consistently with Goal 12. The inter-relatedness of Goal 12 and the City's transportation-related requirements, whether expressed in the Comprehensive Plan, the SRC or the PWDS, is further demonstrated through the staff report comments which move freely from discussion of the TPR to City standards and back again. For that reason, the findings for Goal 12 above freely address the City traffic standards and issues in its analysis. Those Goal 12 findings are relevant here and are hereby incorporated in response to this standard.

Furthermore, many of the staff comments pertaining to City transportation standards were also addressed in response to whether the proposal is consistent with Comprehensive Plan goals and policies as well as with the STSP. Those responses are also herein incorporated.

~~There is one final staff concern that has not been addressed in these findings. Staff inquired about whether the Transportation Study considered lane utilization factors with respect to queuing. DKS responded that it utilized Synchro software, which provides default factors for lane utilization based upon various factors and does not assume equal distribution among multiple lanes. Staff does not~~

~~respond that the Synchro software is in anyway inadequate or does not reflect best engineering practices. Without any evidence or directed argument as to why using the Synchro software would undermine the credibility of the DKS analysis, the Planning Commission finds that the Transportation Study was correct to use it.~~

To summarize the findings provided under Goal 12 and under relevant Comprehensive Plan and TSP provisions, the Planning Commission finds that the evidence and analysis submitted by DKS to be credible, as did ODOT. That analysis found that the plan designation change and zone change would lead to development that could cause a significant affect to some transportation facilities, most of which would fail anyway under the existing zoning even without the proposal. For the one that does not now fail - the site access to the subject property from the 27th Ave. round-about, the proposed mitigations ensure that the roundabout will meet City operating standards once constructed. The DKS analyses also demonstrate that the significant effects that would flow from the proposed plan designation and zone change that are greater than those that would occur from the existing zoning, are mitigated by the proposed mitigations imposed as conditions of approval such that transportation facilities would function within their operational standards or, if they already would have failed, there would be no further degradation of the transportation facility. That is what this criterion requires.

Condition 3: Mitigation as detailed in the Transportation Planning Rule analysis shall be completed as follows:

- *Battle Creek Road SE at Kuebler Boulevard SE –*
 - Construct a second southbound left turn lane on the Battle Creek Road SE approach.

- *27th Avenue SE at Kuebler Boulevard SE –*
 - Construct a second northbound right turn lane on 27th Avenue SE. The additional right turn lane shall extend from the site at the roundabout to the intersection with Kuebler. The signal shall be modified to accommodate the right turn lanes and splitter island.
 - Construct a second northbound left turn lane on 27th Avenue SE. The additional left turn land shall extend from the roundabout to the intersection with Kuebler Boulevard SE. The signal shall be modified to accommodate the two left turn lanes.
 - Extend the westbound left turn lanes on Kuebler Boulevard to provide 600 feet of vehicle queueing in each lane.
 - Additional widening, improvements, and signal modifications will be required on the north leg of 27th Avenue to insure proper lane alignment and safe operation at the intersection.

- *36th Avenue SE at Kuebler Boulevard SE –*
 - Construct a westbound right turn lane on Kuebler Boulevard SE at the intersection with 36th Avenue SE. The right turn lane shall provide for 100 feet of vehicle storage. Modify the traffic signal as required to construct the improvements.

The above findings demonstrate that the proposal satisfies this criterion.

The proposal meets this criterion.

(G) SRC 265.005(e)(1)(G): The property is currently served, or is capable of being served, with public facilities and services necessary to support the uses allowed ~~in~~by the proposed zone.

Planning Commission Findings Finding: Findings addressing the Comprehensive Plan Change criterion SRC 64.025(e)(2)(B), included ~~earlier~~above in this report, address the ~~public facilities and services available to support commercial uses allowed on the subject property. Those findings are hereby incorporated.~~

~~The conclusion that the property is capable of being served with~~ public facilities and services ~~necessary~~available to support ~~the~~residential uses allowed ~~in~~on the subject property as a result of the proposed zone ~~is supported by the Applicant's surveyed drawings that show, among other things, the location of utility facilities and their capacities, Public Works statements such facilities are available, and the Applicant's willingness to improve key the transportation facilities to mitigate the adverse impacts that could flow from development allowed under the CR zone, which are imposed as conditions of approval~~change. The proposal satisfies this criterion.

SRC 265.005(e)(2) The greater the impact of the proposed zone change on the area, the greater the burden on the applicant to demonstrate that the criteria are satisfied.

Planning Commission Findings: The Planning Commission finds that the level of information provided in application addressing the factors listed under SRC Chapter 265.005(e) corresponds to the anticipated impact of the zone change proposal. The Planning Commission notes in particular the transportation impact evidence prepared and submitted by the applicant's expert. That evidence is extensive, responsive to the issues raised by public works and ODOT and demonstrates that the potential adverse impacts that could flow from the consolidated plan designation and zone change application will be mitigated by the Applicant. That evidence is also responsive to comments submitted by neighbors and neighborhood associations that focused almost entirely on the potential impacts that could flow from increased automobile use of the property that the proposal would allow.

The proposal satisfies this criterion.

~~**Conclusion:** For the reasons provided above and based upon the evidence in the record, the Applicant has demonstrated that the proposal satisfies each of the applicable criteria for granting a zone change for the subject property from Residential Agriculture (RA) to Commercial Retail (CA).~~

~~3. SUMMARY AND~~

CONCLUSION

~~As discussed above, the Planning Commission finds the evidence in the record supports approval of the proposal, CPC-ZC21-04. Consequently, the Planning Commission approves the consolidated applications subject~~

Based on the facts and findings presented herein, the Planning Commission concludes the proposed Minor Comprehensive Plan Map Amendment and Zone Change, for property located at the southwest corner of the intersection of Kuebler Boulevard and I-5, satisfy the applicable criteria contained under SRC 64.025(e)(2) and SRC 265.005(e)(1) for approval.

Subject to the following conditions of approval ~~set forth in this decision.~~

Condition 1: The subject property shall not contain more than three uses with drive through.

Condition 2: The subject property shall have no single retail store building that is constructed with more than 70,000 sq. ft.

Condition 3: Mitigation as detailed in the Transportation Planning Rule analysis shall be completed as follows:

- *Battle Creek Road SE at Kuebler Boulevard SE –*
 - Construct a second southbound left turn lane on the Battle Creek Road SE approach.

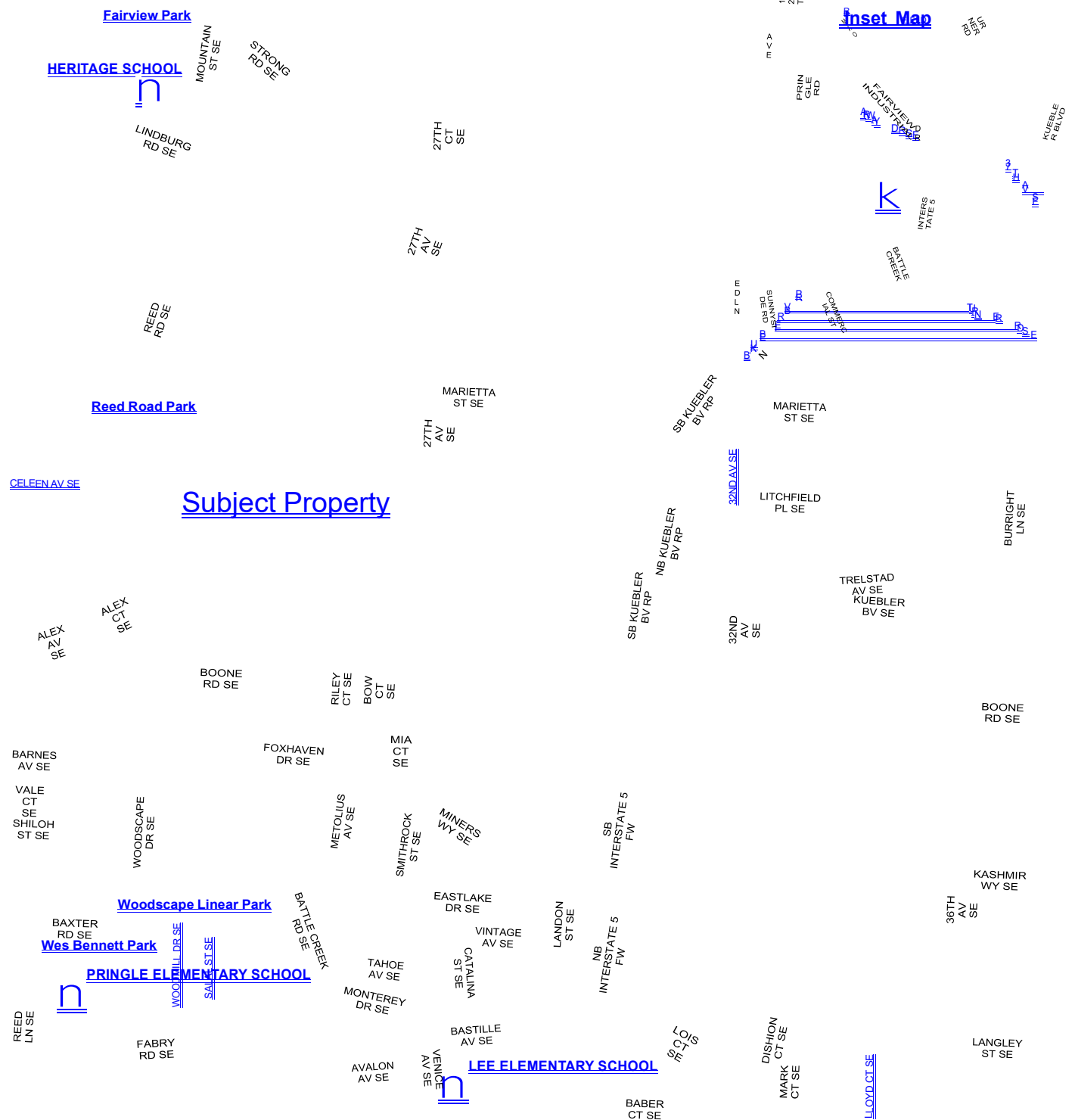
- *27th Avenue SE at Kuebler Boulevard SE –*
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 - Construct a westbound right turn lane on Kuebler Boulevard SE at the intersection with 36th Avenue SE. The right turn lane shall provide for 100 feet of vehicle storage. Modify the traffic signal as required to construct the improvements.

Attachments: A. Vicinity Map, Comprehensive Plan Map and Zoning Map

Prepared by Olivia Dias, Current Planning Manager

Vicinity Map 2900 Block Kuebler BLVD SE



Inset Map

Subject Property

Legend

- Taxlots
- Outside Salem City Limits
- Parks
- Urban Growth Boundary
- Historic District
- City Limits

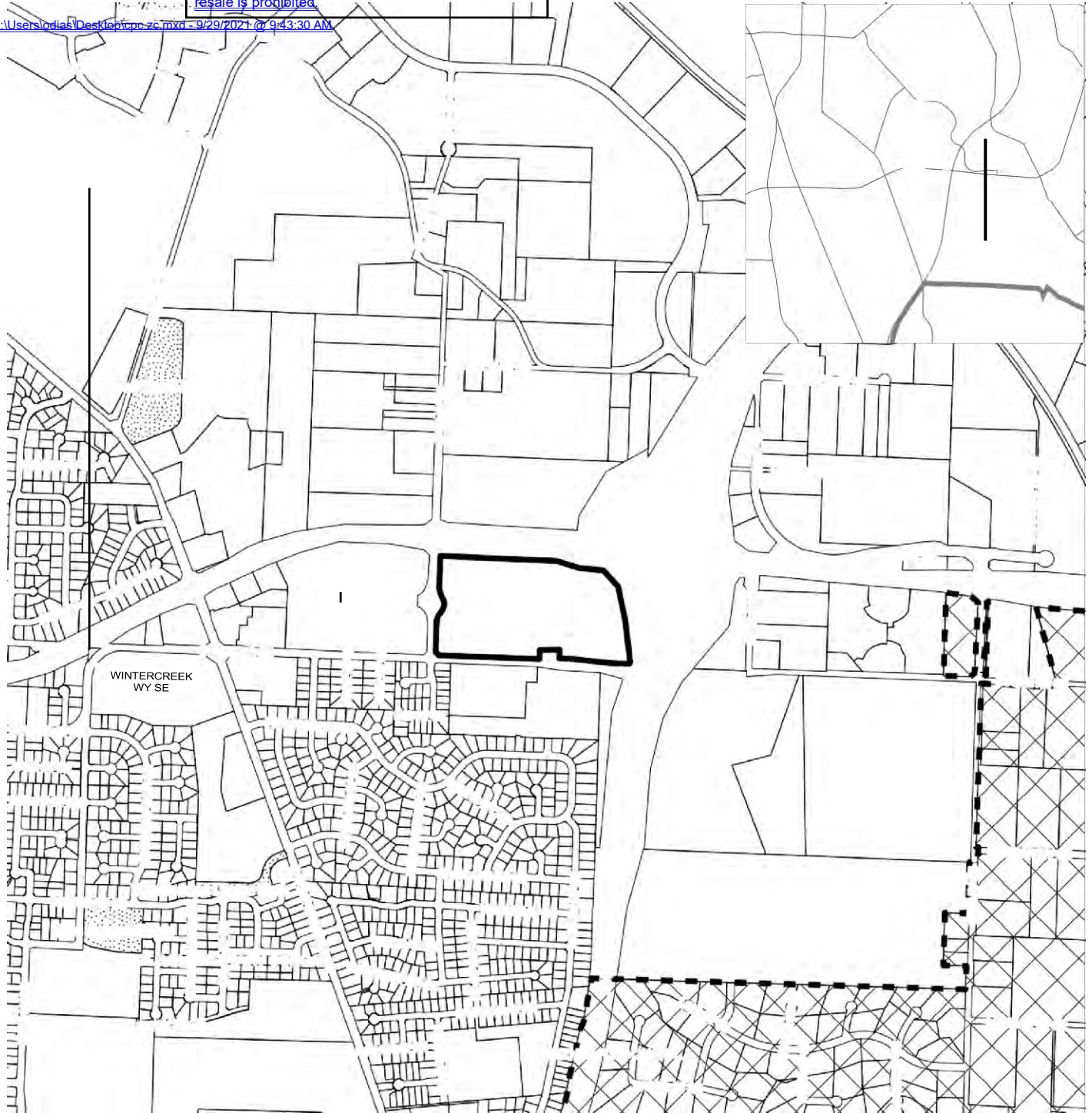
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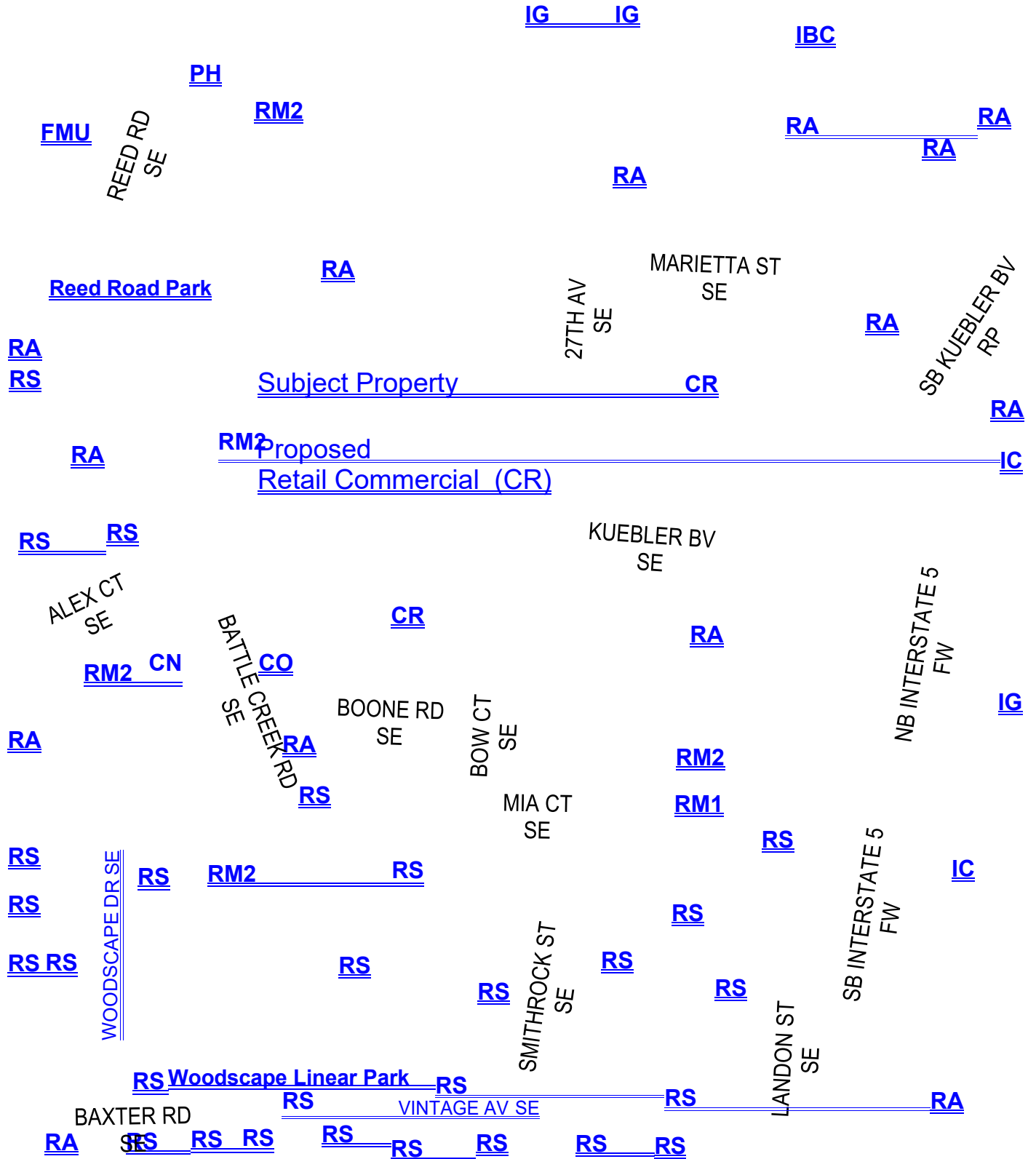
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PROPOSED ZONING MAP CHANGE



Legend

- RS Base Zoning
- Urban Growth Boundary
- Outside Salem City Limits
- Taxlots
- Parks
- Schools

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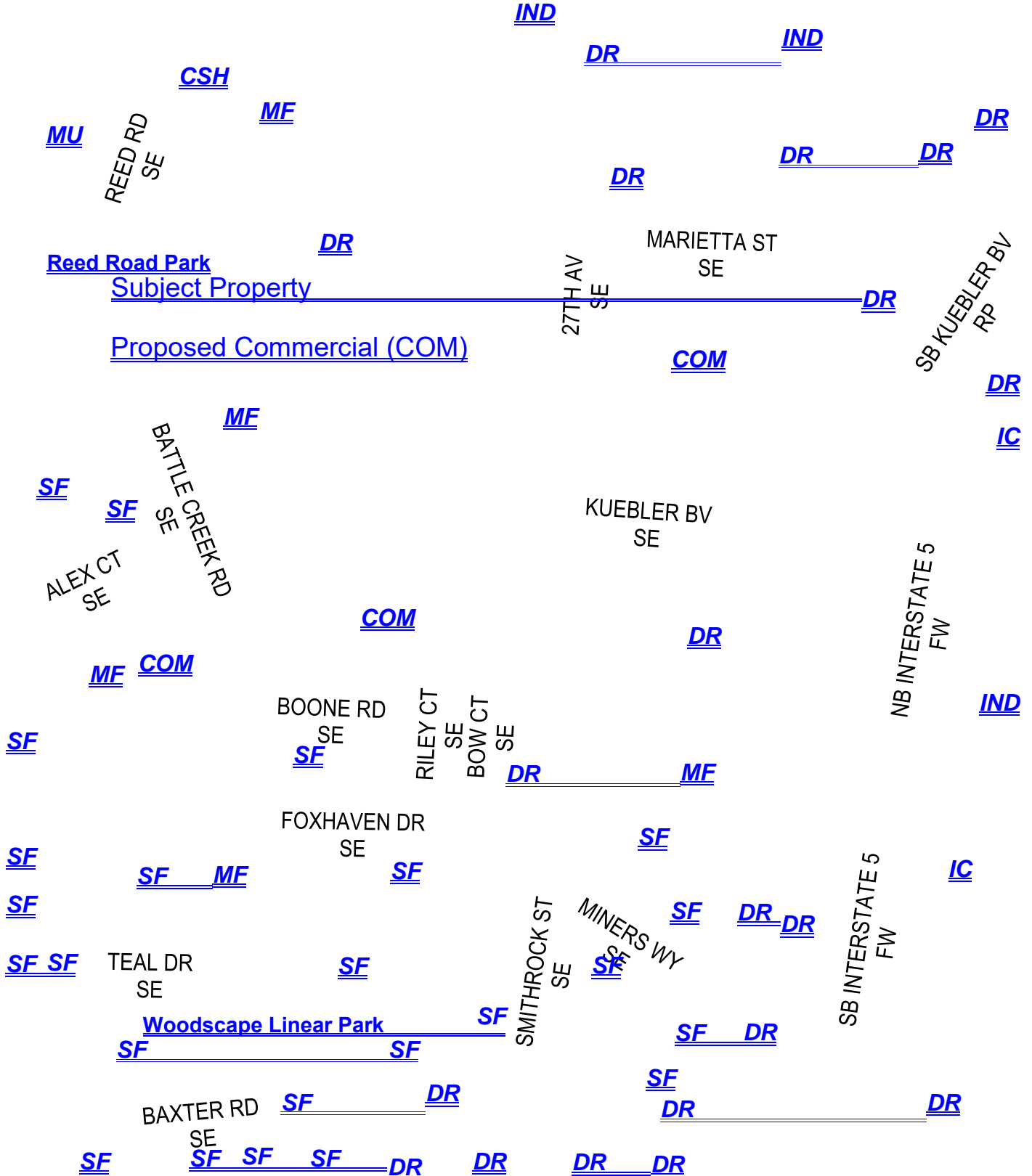


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PROPOSED COMPREHENSIVE PLAN CHANGE



Legend

- SF** Comprehensive Plan
- Urban Growth Boundary
- Outside Salem City Limits
- Taxlots
- Parks
- Schools

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Document 2 ID	netdocuments://4893-0702-9258/2
Description	CPC-ZC21-04 PC Approval Facts Findings (Final sent out to PC on 0-18-2022)
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