

NOTICE OF DECISION

PLANNING DIVISION
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DECISION OF THE SALEM PLANNING COMMISSION

**MINOR COMPREHENSIVE PLAN MAP AMENDMENT / ZONE CHANGE CASE
NO.: CPC-ZC21-04**

APPLICATION NO.: 21-115803-ZO / 21-115805-ZO

NOTICE OF DECISION DATE: February 3, 2022

SUMMARY: A consolidated application to change the Comprehensive Plan Map designation and zoning from “Single Family Residential” with RA (Residential Agriculture) zoning to “Commercial” with CR (Retail Commercial) zoning.

REQUEST: The applicant proposes to change the Comprehensive Plan Map designation and zoning from “Single Family Residential” with RA (Residential Agriculture) zoning to “Commercial” with CR (Retail Commercial) zoning. The subject property is approximately 24.66 acres in size, zoned RA (Residential Agriculture) and located at the southwest corner of the intersection of Kuebler Boulevard and I-5 (Marion County Assessor Map and Tax Lot Number: 083W12C / 2201).

APPLICANT: Mark Shipman, Saalfeld Griggs Lawyers on behalf of Doug Sproul

LOCATION: 2900 Block of Kuebler Blvd SE, Salem OR 97302

CRITERIA: Salem Revised Code (SRC) Chapters 64.025(e)(2) – Comprehensive Plan Map Amendments; 265.005 – Zone Changes

FINDINGS: The findings are in the Decision dated February 3, 2022.

DECISION: The **Planning Commission APPROVED** Minor Comprehensive Plan Map Amendment and Zone Change CPC-ZC21-04 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 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 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 ensure 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.

VOTE:

Yes 7 No 1(Kopcho) Absent 1(Slater)



Chane Griggs, President
Salem Planning Commission

The rights granted by the attached decision have no expiration date.

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|----------------------------------|---------------------------|
| Application Deemed Complete: | <u>September 23, 2021</u> |
| Public Hearing Date: | <u>December 21, 2021</u> |
| Notice of Decision Mailing Date: | <u>February 3, 2022</u> |
| Decision Effective Date: | <u>February 19, 2022</u> |

Case Manager: Olivia Dias, Current Planning Manager, odias@cityofsalem.net, 503-540-2343

This decision is final unless written appeal and associated fee (if applicable) from an aggrieved party is filed with the City of Salem Planning Division, Room 320, 555 Liberty Street SE, Salem OR 97301, or by email at planning@cityofsalem.net, no later than 5:00 p.m., Friday, February 18, 2022. Any person who presented evidence or testimony at the hearing may appeal the decision. The notice of appeal must contain the information required by SRC 300.1020 and must state where the decision failed to conform to the provisions of the applicable code section, SRC Chapter(s) 64 and 265. The appeal fee must be paid at the time of filing. If the appeal is untimely and/or lacks the proper fee, the appeal will be rejected. The Salem City Council will review the

appeal at a public hearing. After the hearing, the Salem City Council may amend, rescind, or affirm the action, or refer the matter to staff for additional information.

The complete case file, including findings, conclusions and conditions of approval, if any, is available for review by contacting the case manager, or at the Planning Desk in the Permit Application Center, Room 305, City Hall, 555 Liberty Street SE, during regular business hours.

<http://www.cityofsalem.net/planning>

FACTS & FINDINGS

COMPREHENSIVE PLAN CHANGE / ZONE CHANGE CASE NO. CPC-ZC21-04

February 3, 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. On January 25, 2022, the Planning Commission considered an Order with attached Facts and Findings prepared by staff. The applicant submitted an objection to the proposed Facts and Findings. The Commission voted to open the written record to review the applicant's objections.
10. On February 1, 2022, the Planning Commission voted to approve the Order and Facts and Findings prepared by staff after reviewing all evidence submitted into the record.

11. 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

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.

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 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,

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

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 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 ensure 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:

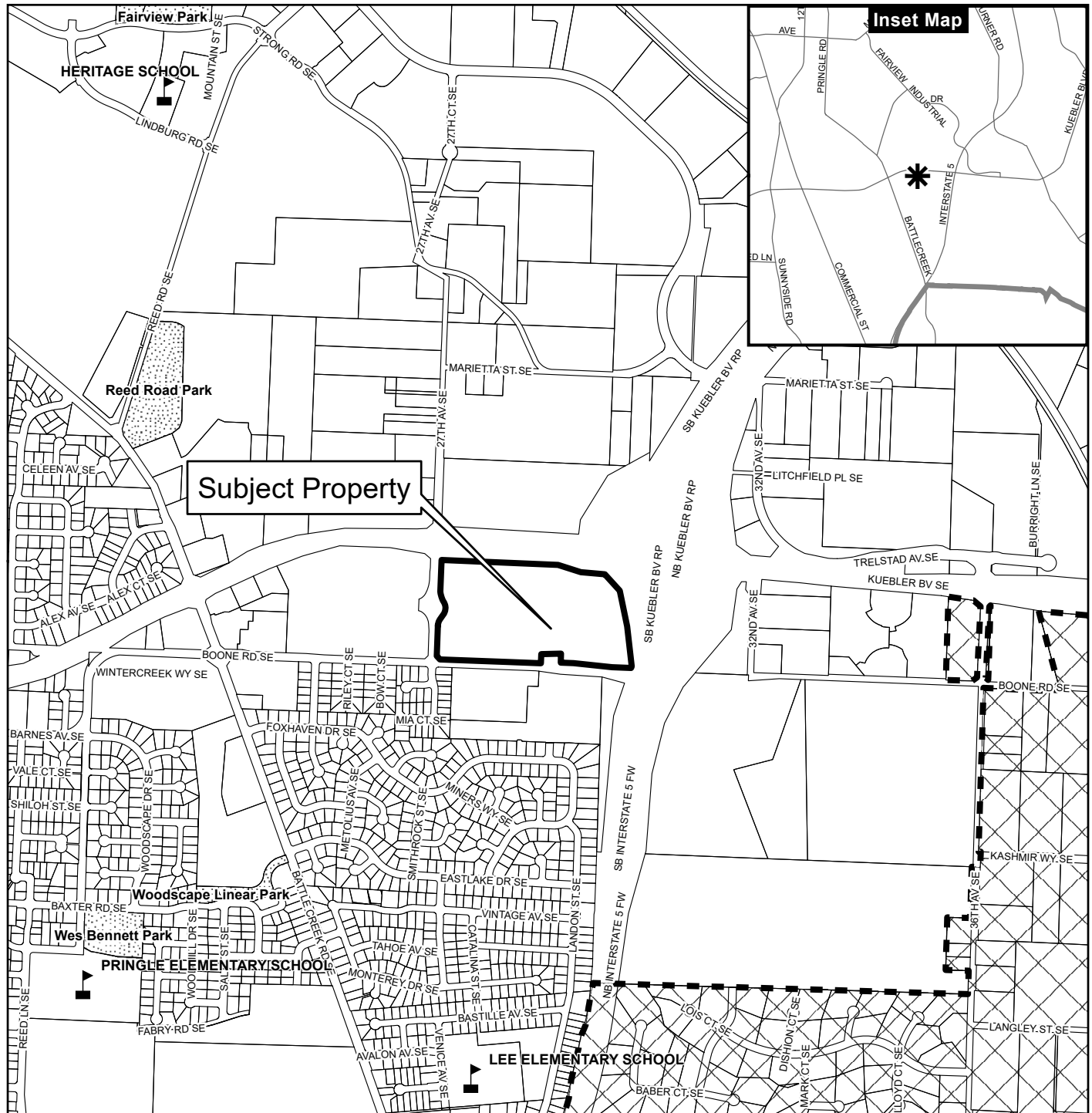
- Condition 1:** The subject property shall not contain more than three uses with drive through.
- Condition 2:** The subject property shall have no single retail store building that is constructed with more than 70,000 sq. ft.
- Condition 3:** Mitigation as detailed in the Transportation Planning Rule 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.
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 - 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 ensure 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

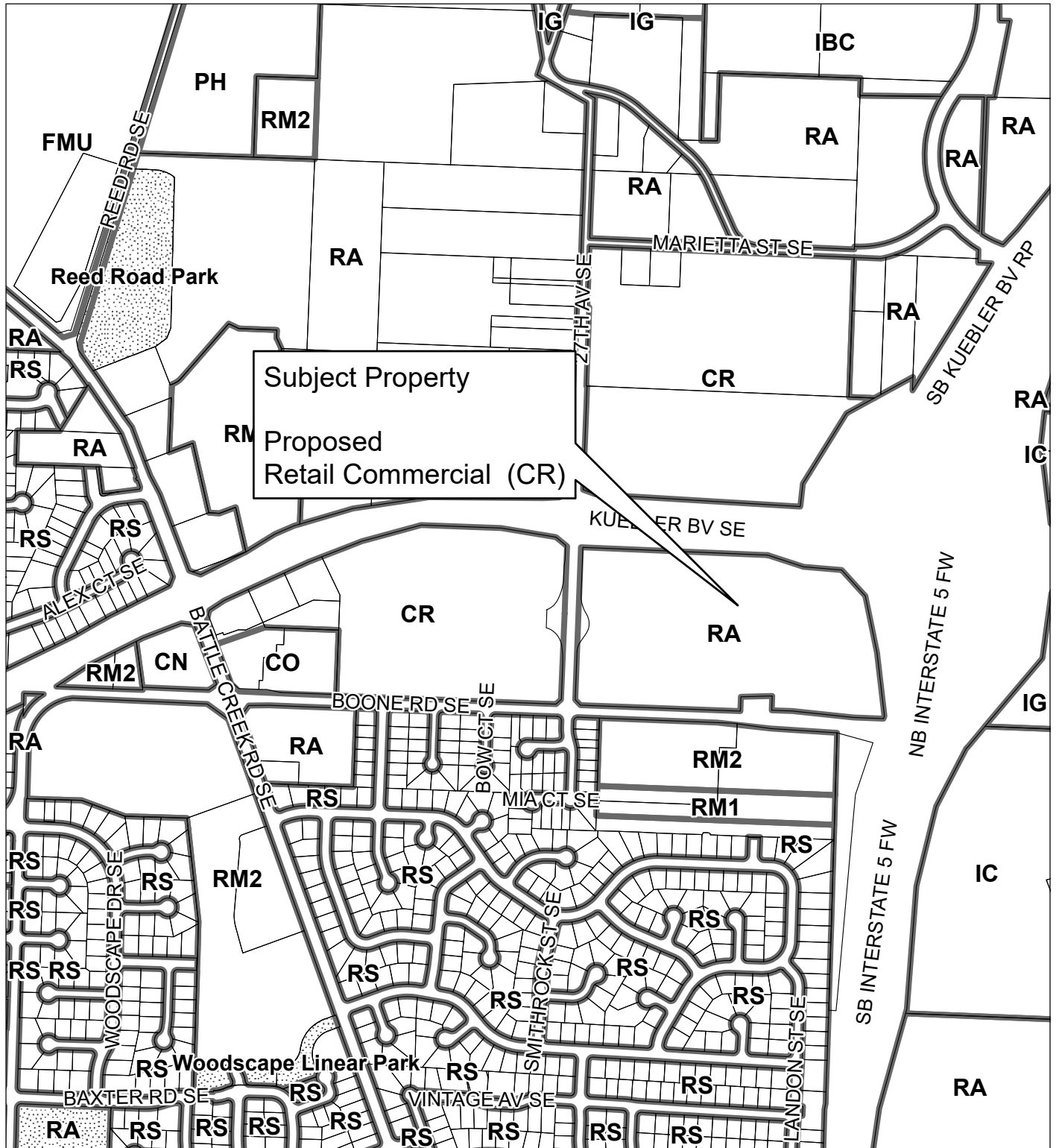
Prepared by Olivia Dias, Current Planning Manager

Vicinity Map

2900 Block Kuebler BLVD SE



PROPOSED ZONING MAP CHANGE



Legend

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

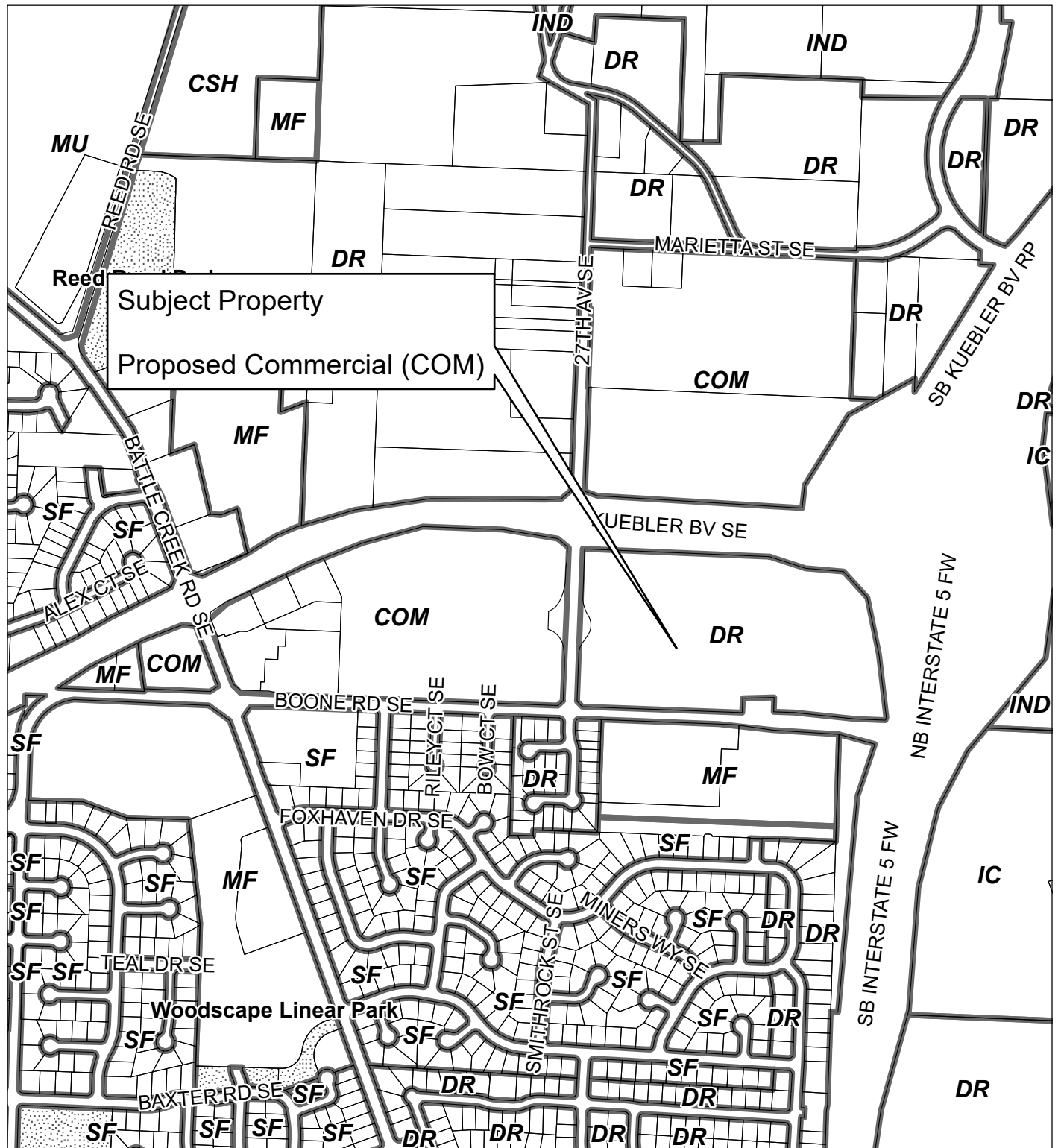
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CITY OF *Salem*
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Community Development Dept.

PROPOSED COMPREHENSIVE PLAN CHANGE



Legend

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

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