

## Legislation Details (With Text)

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**On agenda:** 9/28/2020 **Final action:** 9/28/2020

**Title:** COUNCIL DELIBERATIONS ONLY, no public comment or testimony is allowed.  
City Council action on remand of the Class 3 Site Plan Review / Class 2 Driveway Approach Permit Case No. SPR-DAP18-15 for development of the Kuebler Gateway Shopping Center, including Costco, a retail fueling station, and four new retail shell buildings.

Ward(s): 4  
Councilor(s): Leung  
Neighborhood(s): South Gateway Neighborhood Association (SGNA)  
Result Area(s): Welcoming and Livable Community

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Vicinity Map, 2. Proposed Site Plan, 3. Request for Remand 6-16-2020, 4. Public Testimony, 5. Applicant's Testimony and Final Argument, 6. Memo to Dan Atchison re vested rights analysis.pdf

Date	Ver.	Action By	Action	Result
9/28/2020	1	City Council	approved	Pass

**TO:** Mayor and City Council

**THROUGH:** Steve Powers, City Manager

**FROM:** Norman Wright, Community Development Director

**SUBJECT:**

COUNCIL DELIBERATIONS ONLY, no public comment or testimony is allowed.  
City Council action on remand of the Class 3 Site Plan Review / Class 2 Driveway Approach Permit Case No. SPR-DAP18-15 for development of the Kuebler Gateway Shopping Center, including Costco, a retail fueling station, and four new retail shell buildings.

Ward(s): 4  
Councilor(s): Leung  
Neighborhood(s): South Gateway Neighborhood Association (SGNA)  
Result Area(s): Welcoming and Livable Community

**ISSUE:**

Shall the City Council APPROVE the Class 3 Site Plan Review and Class 2 Driveway Approach Permit Case No. SRP-DAP18-15 for development of the Kuebler Gateway Shopping Center, including Costco,

a retail fueling station, and four new retail shell buildings?

## **RECOMMENDATION:**

Staff recommends that the City Council APPROVE the Class 3 Site Plan Review and Class 2 Driveway Approach Permit Case No. SRP-DAP18-15 for development of the Kuebler Gateway Shopping Center, including Costco, a retail fueling station, and four new retail shell buildings.

## **SUMMARY:**

The subject property consists of approximately 24.36 acres in size and has frontage along Kuebler Boulevard SE, 27<sup>th</sup> Avenue SE, Boone Road SE and Battle Creek Road SE (Attachment 1). In December 2018, after a public hearing, the City Council denied the application for Site Plan Review for the development of the Kuebler Gateway Shopping Center, which includes plans for a 168,500 square foot building for Costco Wholesale, a retail fueling station with up to 30 pump positions also operated by Costco, and four proposed retail shell buildings that have no confirmed uses at this time.

The 2018 City Council decision was appealed to the Land Use Board of Appeals (LUBA). LUBA remanded (i.e., returned the decision) to the City because LUBA found the City's decision contained errors. LUBA's decision was appealed to the Oregon Court of Appeals by private citizens who participated in the proceeding before the City and LUBA. The Court of Appeals agreed with LUBA's decision and affirmed it.

The applicant submitted a request for the City to issue a decision on remand for this application. The proposed site plan is included as Attachment 2. The City Council must issue a new decision on the application, including addressing the items that were remanded. Documents for this application can be found on the City's website [HERE <https://www.cityofsalem.net/Pages/proposed-kuebler-gateway-shopping-center-costco.aspx>](https://www.cityofsalem.net/Pages/proposed-kuebler-gateway-shopping-center-costco.aspx).

*\*\* The City's agenda system is currently experiencing technical problems that may result in some hyperlinks to record materials being inoperative. All materials in the record of this proceeding are available at: <https://linktr.ee/Cityofsalem>*

*Users may need to cut and paste this URL into their browser to access the webpage.*

## **FACTS AND FINDINGS:**

### **Procedural Findings**

1. In December 2007, the City Council adopted a final order affirming a Comprehensive Plan Change and Zone Change Case No. CPC/ZC06-06 for a portion of the subject property changing the Comprehensive Plan Map Designation from "Developing Residential" to "Commercial" and changing the zoning from RA (Residential Agriculture) to CR (Retail

Commercial). The final order for CPC/ZC06-06 can be downloaded at this link: [HERE](https://www.cityofsalem.net/CityDocuments/2007-16-cpc-za-comprehensive-plan-)  
<<https://www.cityofsalem.net/CityDocuments/2007-16-cpc-za-comprehensive-plan->

2. On June 6, 2018, Class 3 Site Plan Review and Class 2 Driveway Approach Permit applications were submitted to the Planning Division. After receiving additional information, the applications were deemed complete for processing on September 4, 2018.
3. On October 23, 2018, the Planning Administrator issued a decision approving SPR-DAP18-15 subject to conditions of approval.
4. On November 7, 2018, two Notices of Appeal were filed by Karl G. Anuta and the South Gateway Neighborhood Association.
5. At the November 13, 2018 regularly scheduled meeting, the City Council voted to initiate the review of the appeal of the Planning Administrator's decision.
6. On December 10, 2018, City Council held a public hearing, took public testimony, closed the public hearing, and voted to reverse the decision of the Planning Administrator, and deny the applications. The December 10, 2018 decision can be downloaded at the link [HERE](https://www.cityofsalem.net/CityDocuments/costco-city-council-final-order-2018-12-18.pdf)  
<<https://www.cityofsalem.net/CityDocuments/costco-city-council-final-order-2018-12-18.pdf>>.
7. The December 18, 2018 decision by the City Council was appealed to the Land Use Board of Appeals (LUBA).
8. On August 14, 2019 LUBA determined the City's decision contained errors and remanded the decision to the City. LUBA's order can be downloaded at the link [HERE](https://www.oregon.gov/luba/Docs/Opinions/2019/08-19/18143.pdf)  
<<https://www.oregon.gov/luba/Docs/Opinions/2019/08-19/18143.pdf>>. Specifically, LUBA found that the City erred in determining the proposed shopping center violated Condition 14 from Comprehensive Plan Change and Zone Change Case No. CPC/ZC06-16, that a store such as Costco is a permitted use, and that the City's decision failed to address the applicants' argument that the applicant has a vested right to approval of the proposed development by virtue of the applicants' substantial investment in required traffic infrastructure improvements and other on-site improvements.

LUBA also found that the City did not error in determining the application failed to comply with SRC 808.030(a)(2)(L) regarding tree removal, but held that because the City decision failed to address the vested rights argument made by the applicants, that the City must address that argument on remand.

On remand, the City is required to address the errors found by LUBA in addition to making a determination of whether the application complies with all other applicable criteria.

9. LUBA's decision was appealed to the Oregon Court of Appeals by private citizens who participated in the proceeding before the City and LUBA. On February 5, 2020, the Court of Appeals issued a decision affirming the decision by LUBA. The Court of Appeals decision is included [HERE](#)  [<https://cdm17027.contentdm.oclc.org/digital/collection/p17027coll5/id/27258/rec/13>](https://cdm17027.contentdm.oclc.org/digital/collection/p17027coll5/id/27258/rec/13).
10. On June 16, 2020, the applicant submitted a request for the City to issue a decision. The complete submission is included [HERE](#)  [<https://www.cityofsalem.net/Pages/proposed-kuebler-gateway-shopping-center-costco.aspx>](https://www.cityofsalem.net/Pages/proposed-kuebler-gateway-shopping-center-costco.aspx) (Attachment 3).
11. On July 1, 2020, notice of remand was sent to the public, providing for an initial comment period from July 1-July 28, 2020, a public rebuttal period from July 29-August 12, 2020. Comments submitted during the initial comment period and public rebuttal period are included [HERE](#)  [<https://www.cityofsalem.net/Pages/proposed-kuebler-gateway-shopping-center-costco.aspx>](https://www.cityofsalem.net/Pages/proposed-kuebler-gateway-shopping-center-costco.aspx) (Attachment 4).
12. The applicant submitted testimony on July 27, 2020, rebuttal testimony on August 12, 2020, and final written argument on September 10, 2020 (Attachment 5) and found [HERE](#)  [<https://www.cityofsalem.net/CityDocuments/costco-final-argument-pactrust-2020-09-](https://www.cityofsalem.net/CityDocuments/costco-final-argument-pactrust-2020-09-)
13. The notice stated that the City Council will review the record for this case and deliberate toward a final decision at its September 28, 2020 meeting. A public hearing will not be held.
14. ORS 227.181 requires local governments to make a final written decision on remand from LUBA within 120 days of the date that the applicant makes a written request for the local government to take action. The 120-day mandated deadline for this request for remand is October 14, 2020. The applicant has provided a 14-day extension of the decision deadline to allow additional time for public review, comment and rebuttal. The mandated deadline for final action on the request for remand is October 28, 2020.

## Substantive Findings

The applicable criteria and considerations that must be satisfied for the approval of the Class 3 Site Plan Review and Class 2 Driveway Approach Permit are included within the Salem Revised Code (SRC) Site Plan Review chapter (SRC Chapter 220), under section 220.005(f)(3), and the Driveway Approach Permit chapter (SRC Chapter 804), under section 804.025(d).

The application has not substantially changed since it was originally submitted in 2018; however, updated findings addressing the applicable approval criteria for the applicant's Request for Remand of the proposed Class 3 Site Plan Review and Class 2 Driveway Approach Permit are included in this staff report.

1. Public Comments.

Comments and concerns raised during the public comment period and rebuttal period can be found [HERE <https://www.cityofsalem.net/Pages/proposed-kuebler-gateway-shopping-center-costco.aspx>](https://www.cityofsalem.net/Pages/proposed-kuebler-gateway-shopping-center-costco.aspx) and are included as Attachment 4. They are summarized below:

- a. Objections have been raised to the limited time allowed for public comment and rebuttal, and requests have been made for City Council to allow public testimony at a public hearing for this request for remand.

**Staff Response:** The application has not substantially changed since it was originally submitted in 2018. The original application had a public comment period prior to the Planning Administrator's decision and a public hearing before the City Council.

The City has no procedures that apply specifically to a remand from LUBA. The UDC typically provides for a 15-day public comment period before a land use decision is issued. Given the interest in this application, a longer comment period was provided. Between the initial comment period and the rebuttal period, both of which were open to all interested persons, the City provided a 43-day comment period open to the public. Factoring in the time needed for staff to prepare a report to City Council (which occurs after the record closes) and for City Council to deliberate on and adopt a final written decision, there is not enough time to extend the record period any longer.

- b. Objections were raised about the validity of the applicant's Traffic Impact Analysis (TIA) and to the increased traffic the proposed development would bring to the surrounding area.

**Staff Response:** A response from Public Works Traffic Engineering staff is found below in section 2(b).

- c. Objections were raised to the applicant's plans for transplanting and relocating all eight of the significant trees located on the subject property, with concerns that the process of transplanting will result in damage to the trees which could cause them to decline in health. Also related, objections have been raised to the applicant's claim that there are no reasonable alternatives to develop the site in a way that would result in preservation of all of the significant trees in their current location.

**Staff Response:** A complete response to the applicant's proposal to transplant each of the significant trees to a new location on the subject property, and the applicant's argument that the proposed development satisfies the requirements of Chapter 808 is included in section 2(c).

2. Remand Items.

- a. Vested rights argument.

The applicant has asserted that it has a vested right in the development that was approved in the 2007 Decision based on its substantial investment in public transportation facilities that were required by the 2007 Decision an investment in on-site improvements, including the Salem Clinic facility. LUBA remanded the application to the City to address this issue.

**Staff Response:** A staff response to the vested rights argument is included as Attachment 6.

b. Traffic Impact.

Greenlight Engineering, on behalf of opponents to the application, submitted their own traffic analysis to contrast the applicant's analysis.

**Staff Response:** City of Salem Traffic Engineering Staff has reviewed the submittals from Greenlight Engineering and the responses from Kittelson & Associates, Inc., the applicant's traffic engineer.

Many of the assertions made by Greenlight Engineering are inaccurate with respect to trip generation, trip distribution, saturation flow rates and seasonal adjustments. The City will always use the most accurate and appropriate information with respect to a traffic analysis. In this case the Costco site-specific data regarding trip generation and trip distribution is far more accurate than that provided by ITE Trip Generation Manual and Mid-Willamette Valley Council of Governments (MWVCOG) cited by Greenlight. The saturation flow rate used by the applicant was verified by actual field collected data. This is also more accurate than using "default" values in the analysis software. The seasonal adjustments discussed on Oregon Department of Transportation (ODOT) facilities, cited by Greenlight, are appropriate to use on State Highways that are recreational routes. The freeway ramps at Kuebler Boulevard are not recreational routes, they are commuter routes, and traffic is highest when school is in session, not during the summer travel months.

The Traffic Impact Analysis submitted by Kittelson & Associates, Inc. (KAI) is not flawed, uses the most accurate information available, and provides the most appropriate and conservative analysis.

The responses provided by KAI accurately and appropriately address each of the assertions raised by Greenlight Engineering and the neighbors. City Staff accepts the analysis and conclusions provided by Kittelson & Associates, Inc.

c. Tree Preservation.

There are eight *significant trees* located on the subject property, defined as Oregon white oaks (*Quercus garryana*) with a diameter at breast height of 24 inches or greater. SRC 808.015 provides that no person shall remove a significant tree, unless the removal is undertaken pursuant to a tree and vegetation removal permit, undertaken

pursuant to a tree variance or meets the exceptions of SRC 808.030(a)(2).

The applicant originally proposed to remove the eight trees through an exception to the permit requirement. The City Council found that the removal was not necessary and did not meet the permit exemption.

The applicant's site plan application on remand has been modified to include a plan to transplant and relocate each of the eight significant trees to an open space area at the east side of the subject property.

**Staff Response:** The applicant addresses this standard in two ways. First, the applicant proposes to move the eight Oregon white oaks to an open space area within the subject property. Moving or transplanting trees does not meet the definition of "removal" under SRC Chapter 808, and therefore, the requirement for a tree removal permit is not applicable.

Second, the applicant asserts that even if moving the trees constitutes "removal" the applicant meets the requirements for an exception to the permit requirement under SRC 808.030(a)(2)(L), because it is not possible to construct the proposed shopping center within the subject property without removing the eight Oregon white oaks.

To be exempt from the tree removal permit requirement SRC 808.030(a)(2)(L) provides it must be "necessary" to remove the trees in order to construct a commercial or industrial facility. Staff interprets "necessary" as used in this Code section to mean that the proposed development cannot be constructed with the trees in place and still meet the applicable development standards and requirements. Development standards include requirements for minimum drive isles, minimum parking spaces, setbacks, required landscaping, and sidewalks, among other requirements.

As discussed below, the applicant asserts that the application complies with SRC 808.030(a)(2)(L), because it is not proposing to "remove" any of the eight Oregon white oaks on the property, and even if they are removing the trees, the applicant is exempt from the permit requirement because their removal is necessary to construct the proposed development.

#### Definition of Tree Removal.

SRC 808.005: "*Tree removal* means to cut down a tree or remove 30 percent or more of the crown, trunk, or root system of a tree; or to damage a tree so as to cause the tree to decline or die. The term "removal" includes, but is not limited to, topping, damage inflicted upon a root system by application of toxic substances, operation of equipment and vehicles, storage of materials, change of natural grade due to unapproved excavation or filling, or unapproved alteration of natural physical conditions. The term "removal" does not include normal trimming or pruning of trees."

Staff believes that moving or transplanting a tree does not constitute removal under

SRC Chapter 808. The applicant's arborist report indicates that seven of the significant trees are currently in fair to good condition, with one significant tree (tree 2838) in poor health. Tree 2838 has the lowest chance of surviving transplant but also has a low chance of survival in its current state.

Chapter 808 does not address the process to transplant an existing mature tree nor does it require permits for transplant. The applicant's arborist has provided a detailed report which outlines the steps that will be taken through each step of the transplanting process to ensure that critical root systems are preserved. As stated by the applicant, the proposal to transplant the eight significant trees will not result in the cutting down, removal of more than 30 percent of the crown or root system, and will not result in damage to the trees so as to cause them to decline or die.

The applicant has offered to accept an additional condition of approval for the Site Plan Review decision on remand requiring the applicant to transplant and care for each of the significant trees consistent with the recommendations and steps outlined in the arborist report.

The Urban Forester has reviewed the applicant's proposal to transplant and relocate the eight significant trees to a new location on the subject property and the arborist report identifying the current condition of the significant trees, and generally agrees with the assessment of the tree's overall health. Per the arborist report, four of the eight trees are identified as being in good health, two in fair-good health, one tree in fair condition, and one tree in poor condition. The Urban Forester notes the significance that the health of the tree prior to transplant plays in its ability to successfully survive transplant, it can be difficult to move healthy trees and expect them to thrive, and the difficulty only increases transplanting trees in declining health.

To ensure that the proposal to transplant the eight significant trees results in the greatest chance for survival with minimum impact to the trees, staff recommends that the City Council adopt the following condition of approval:

**Condition 18:** The eight (8) 'significant' white oak trees on the subject property shall be transplanted and maintained after transplant, consistent with the recommendations of the PacTrust Remand Letter, Exhibit B, Arborist's Report. A report containing final recommendations shall be submitted to the City's Urban Forester prior to any tree transplanting activity.

With the recommended condition of approval, the proposed transplanting activity does not result in the removal of more than 30 percent of the crown or root system of any tree. Large trees have been successfully transplanted around the country. While it is unknown if all eight trees will survive after being transplanting, the applicant has described the processes they will take to ensure that they will not inflict damage to the tree that will cause it to decline or die. The act of transplanting in and of itself is not



considered tree removal as defined by SRC Chapter 808, therefore, with no significant trees proposed for removal, the applicant's request for a Class 3 Site Plan Review complies with all requirements of SRC Chapter 808.

Exception Allowing Removal of Significant Trees.

SRC 808.030(a)(2)(L) provides an exception which allows removal of Oregon white oaks where the removal is necessary in connection with construction of a commercial or industrial facility. The code does not define or provide any further guidance on what is considered necessary. The applicant argues that even though they are relocating and preserving all eight significant trees on the subject property, that they are not required to do so because the alternative plans demonstrate the hardship the location of the significant trees presents to reasonably develop the property with an economically viable shopping center, and there the exception provided in SRC 808.030(a)(2)(L) has been satisfied.

The applicant has provided five alternative site plans along with analysis of each alternative which graphically demonstrate that it is not possible to develop a shopping center with the square footage gross leasable area ("GLA") permitted by the 2007 City Council decision on the subject property in compliance with all applicable zoning standards and preserve the significant trees, and therefore the exception provided in 808.030(a)(2)(L) which allows the removal of Oregon white oaks where the removal is necessary in connection with construction of a commercial or industrial facility, should apply to the proposed development.

The applicant's alternative plans can be found [HERE](https://www.cityofsalem.net/CityDocuments/costco-remand-submission-exhibit-a-tree-)  
<<https://www.cityofsalem.net/CityDocuments/costco-remand-submission-exhibit-a-tree->

The following is staff analysis of the applicant's alternative site plans:

Site Plan Alternative 1 - NW Option

This alternative site plan shows the proposed Costco building moved to the northwest corner of the subject property, the fueling station moved to the southeast corner, and the retail building moved to the northeast. The total floor area for this option includes 174,650 square feet for the uses on the eastern portion of the development site, as well as the approximately 14,900 square feet of retail floor area on the western portion of the site, for a total of 189,550 square feet. This option retains all eight of the significant trees, however, the plan fails to meet development standards of the Salem Revised Code and cannot be approved as proposed.

*Minimum Off-street Parking*

The minimum off-street parking requirement for a shopping center approximately 189,550 square feet in size is 758 spaces ( $189,550 / 250 = 758.2$ ). The NW Option shows 693 off-street parking spaces provided for the shopping center, including the

147 off-street parking spaces on the west side of the development site; 65 spaces fewer than the minimum requirement and therefore does not comply with the approval criteria for a Class 3 Site Plan Review.

*Vehicle Use Area Setback Adjacent to Buildings and Structures*

The proposed site plan does not adequately demonstrate that vehicle use area separation, required by SRC 806.035(c)(4) is provided around the proposed Costco building and therefore does not comply with the approval criteria for a Class 3 Site Plan Review.

*Internal Pedestrian Access*

The proposed site plan does not adequately demonstrate that sidewalks are provided at each driveway entrance to the development site as required by Condition 13 of CPC/ZC06-06.

The NW option alternative plan also provides a less desirable site configuration for the following reasons:

- Vehicle and pedestrian circulation are poorly coordinated with the connected development site to the west.
- The fueling facility is moved closer to the residential neighborhood south of Boone Road SE, fuel trucks would use Boone Road to access the site.
- Loading docks would face residential areas.

Site Plan Alternative 2 - NE Option

This alternative site plan shows the proposed Costco building moved to the northeast corner of the subject property, the fueling station moved to the southwest corner, and the retail building moved to the north portion of the site adjacent to Kuebler Boulevard SE. The total floor area for this option includes 174,650 square feet for the uses on the eastern portion of the development site, as well as the approximately 14,900 square feet of retail floor area on the western portion of the site for a total of 189,550 square feet. This option retains all eight of the significant trees, however, the plan fails to meet development standards of the Salem Revised Code and cannot be approved as proposed.

*Minimum Off-street Parking*

The minimum off-street parking requirement for a shopping center approximately 189,550 square feet in size is 758 spaces ( $189,550 / 250 = 758.2$ ). The NE Option shows 707 off-street parking spaces provided for the shopping center, including the 147 off-street parking spaces on the west side of the development site; 51 spaces fewer than the minimum requirement and therefore does not comply with the approval criteria for a Class 3 Site Plan Review

*Vehicle Use Area Setback Adjacent to Buildings and Structures*

The proposed site plan does not adequately demonstrate that vehicle use area separation, required by SRC 806.035(c)(4) is provided around the proposed Costco

building and therefore does not comply with the approval criteria for a Class 3 Site Plan Review.

*Internal Pedestrian Access*

The proposed site plan does not adequately demonstrate that sidewalks are provided at each driveway entrance to the development site as required by Condition 13 of CPC/ZC06-06.

*Roundabout Driveway Access to 27<sup>th</sup> Avenue SE*

The proposed roundabout provides the most efficient access to the site. Removing the roundabout access from 27<sup>th</sup> would be inconsistent with the City's best practices for site access, which violates the approval criteria for a Class 3 Site Plan Review and the conditions of approval from CPC-ZC06-06.

The NE option alternative plan also provides a less desirable site configuration for the following reasons:

- Inefficient vehicle and pedestrian circulation.
- The fueling facility is moved closer to the residential neighborhood south of Boone Road SE, fuel trucks would use Boone Road to access the site.
- Loading docks would face residential areas.

Site Plan Alternative 3 - SE Option 1

This alternative site plan shows the proposed Costco building moved to the southeast corner of the subject property, the fueling station moved to the northwest corner near the right-in access from Kuebler Boulevard SE, and the retail building moved to the northeast corner. The total floor area for this option includes 174,650 square feet for the uses on the eastern portion of the development site, as well as the approximately 14,900 square feet of retail floor area on the western portion of the site for a total of 189,550 square feet. This option results in the removal of five of the eight significant trees on the subject property and the preservation of three significant trees; tree 2823 (51" dbh in fair condition), tree 2832 (29" dbh in good condition), and tree 2838 (30" dbh in poor condition). However, the plan fails to meet development standards of the Salem Revised Code and cannot be approved as proposed.

*Minimum Off-street Parking*

The minimum off-street parking requirement for a shopping center approximately 189,550 square feet in size is 758 spaces ( $189,550 / 250 = 758.2$ ). SE Option 1 shows approximately 807 off-street parking spaces provided for the shopping center, including the 147 off-street parking spaces on the west side of the development site. SE Option 1 appears to comply with the minimum off-street parking requirements for the proposed shopping center.

*Internal Pedestrian Access*

The proposed site plan does not adequately demonstrate that sidewalks are provided at each driveway entrance to the development site and does not provide adequate

internal pedestrian pathways as required by Condition 13 of CPC/ZC06-06.

*Roundabout Driveway Access to 27<sup>th</sup> Avenue SE*

The proposed roundabout provides the most efficient access to the site. Removing the roundabout access from 27<sup>th</sup> would be inconsistent with the City's best practices for site access, which violates the approval criteria for a Class 3 Site Plan Review and the conditions of approval from CPC-ZC06-06.

The SE Option 1 alternative plan also provides a less desirable site configuration for the following reasons:

- Inefficient vehicle and pedestrian circulation.
- Increased traffic and additional driveways needed along Boone Road SE.
- Results in the removal of five significant trees and one of the significant trees that would be retained (tree 2838) is in poor health.

Site Plan Alternative 4 - SE Option 2

This alternative site plan shows the proposed Costco building moved to the east side of the subject property, the fueling station moved to the northwest corner near the right-in access from Kuebler Boulevard SE, and the retail building moved to the north next to the fueling station. The total floor area for this option includes 174,650 square feet for the uses on the eastern portion of the development site, as well as the approximately 14,900 square feet of retail floor area on the western portion of the site for a total of 189,550 square feet. This option results in the removal of one of the eight significant trees on the subject property; tree 2526 (28" dbh in good condition). However, the plan fails to meet development standards of the Salem Revised Code and cannot be approved as proposed.

*Minimum Off-street Parking*

The minimum off-street parking requirement for a shopping center approximately 189,550 square feet in size is 758 spaces ( $189,550 / 250 = 758.2$ ). SE Option 2 shows 827 off-street parking spaces provided for the shopping center, including the 147 off-street parking spaces on the west side of the development site. SE Option 2 appears to comply with the minimum off-street parking requirements for the proposed shopping center.

*Internal Pedestrian Access*

The proposed site plan does not adequately demonstrate that sidewalks are provided at each driveway entrance to the development site and does not provide adequate internal pedestrian pathways as required by Condition 13 of CPC/ZC06-06.

*Roundabout Driveway Access to 27<sup>th</sup> Avenue SE*

The proposed roundabout provides the most efficient access to the site. Removing the roundabout access from 27<sup>th</sup> would be inconsistent with the City's best practices for site access, which violates the approval criteria for a Class 3 Site Plan Review and the conditions of approval from CPC-ZC06-06.

The SE Option 2 alternative plan also provides a less desirable site configuration for the following reasons:

- Inefficient vehicle and pedestrian circulation.
- Increased traffic and additional driveways needed along Boone Road SE.
- Results in the removal of one significant tree (tree 2526) which is one of the healthier trees identified in the arborist report.

#### Site Plan Alternative 5 - SW Option

This alternative site plan shows the proposed Costco building moved to the west side of the subject property, the fueling station moved to the northeast corner, and the retail building moved to the north. The total floor area for this option includes 174,650 square feet for the uses on the eastern portion of the development site, as well as the approximately 14,900 square feet of retail floor area on the western portion of the site for a total of 189,550 square feet. This option results in the removal of six of the eight significant trees on the subject property and the preservation of two significant trees; tree 2238 (34" dbh in good condition) and tree 2526 (28" dbh in good condition). However, the plan fails to meet development standards of the Salem Revised Code and cannot be approved as proposed.

#### *Minimum Off-street Parking*

The minimum off-street parking requirement for a shopping center approximately 189,550 square feet in size is 758 spaces ( $189,550 / 250 = 758.2$ ). SW Option shows 832 off-street parking spaces provided for the shopping center, including the 147 off-street parking spaces on the west side of the development site. SW Option appears to comply with the minimum off-street parking requirements for the proposed shopping center

#### *Internal Pedestrian Access*

The proposed site plan does not adequately demonstrate that sidewalks are provided at each driveway entrance to the development site and does not provide adequate internal pedestrian pathways as required by Condition 13 of CPC/ZC06-06. The plan does not provide adequate east-west pedestrian connectivity with the western portion of the development site.

The SW Option alternative plan also provides a less desirable site configuration for the following reasons:

- Inefficient vehicle and pedestrian circulation.
- Results in the removal of six significant trees, however this alternative plan does retain two significant trees in good condition.

#### Conclusion

Each of the alternative plans provided by the applicant fail to comply with one or more of the development standards of the Salem Revised Code, and therefore do not comply

with the approval criteria for a Class 3 Site Plan Review.

### 3. Remaining Site Plan Review Approval Criteria.

As noted above, the applicant asserts they have a vested right in the development approved under the 2007 Decision, based on the investments the applicant has made in off-site transportation improvements and on-site improvements in reliance on the 2007 Decision. The applicant argues that the Site Plan Review criteria cannot be used to deny the application based on its vested rights. The City Attorney engaged Jeff Condit of the Miller Nash law firm as special counsel for the City to address this issue. Mr. Condit's legal opinion is attached to this report as Attachment 6.

Mr. Condit's analysis substantially agrees with the applicant and finds that the applicant has both an equitable right to the development due to the applicant's vested rights and a legal right to the development under the "law of the case" doctrine established by the Oregon Supreme Court in Beck v. Tillamook Cty., 313 Or 148 (1992). Mr. Condit determines that the City cannot impose additional traffic mitigation requirements on the applicant, and that the applicant is entitled to develop the property with the uses and square footage expressly approved in the 2007 Decision. The fact that the applicant is entitled to the uses and square footage limits the City's ability to impose conditions that are not consistent, or go beyond, what was required in the 2007 Decision.

Mr. Condit differs somewhat with the applicant in determining that the site plan review criteria and related standards do apply to the application, but their application is limited because of the applicant's vested rights.

Pursuant to SRC 220.005(f)(3), an application for Class 3 Site Plan Review shall be granted if:

#### Criterion 1:

The application meets all applicable standards of the UDC.

The applicant is requesting to develop a new retail shopping center, including four proposed retail shell buildings, a 168,550 square foot building for Costco Wholesale, and a retail fueling station with up to 30 pump positions. The following is a summary of applicable use and development standards for the subject property and an analysis of previous conditions of approval from Comprehensive Plan Change and Zone Change Case No. 06-06. Conditions of approval from prior land use decisions affected property are deemed development standards under the UDC.

#### **Comprehensive Plan Change/Zone Change Case No. 06-06, Conditions of Approval:**

*Condition 1: The intersection of Battle Creek and Boone Roads SE shall be improved to include a traffic signal with dedicated westbound left-turn lane, westbound right-turn lane and an eastbound left-turn lane. The southbound left-turn lane shall be lengthened to provide a minimum of 300 feet of storage.*

**Finding:** This condition remains to be completed. The intersection of Battle Creek and Boone Road SE shall be improved to include a traffic signal with an eastbound left-turn lane. The southbound left-turn lane shall be lengthened to provide a minimum of 300 feet of storage.

*Condition 2: The intersection of Battle Creek Road SE and Kuebler Boulevard shall be improved to provide exclusive right-turn lane and a northbound left-turn lane with a minimum of 300 feet of storage. To provide the necessary northbound left-turn storage at this intersection with the southbound left-turn lane storage at Battle Creek and Boone Roads, side-by-side left turn lanes shall be constructed as approved by the Public Works Director.*

**Finding:** The condition states, "side-by-side left-turn lanes shall be constructed as approved by the Public Works Director." The applicant has proposed a design which includes dual northbound left-turn lanes which provide a minimum of 300 feet of storage. The design also provides the required side-by-side left-turn lane configuration. The City Traffic Engineer has reviewed the proposed design and concurs that it will provide the necessary storage for the left-turn lanes at the intersection of Battle Creek Road SE and Kuebler Boulevard SE, and the intersection of Battle Creek Road SE and Boone Road SE, and is consistent with the language of the original condition.

*Condition 3: The south side of Kuebler Boulevard shall be widened to meet City of Salem Standards with curb, sidewalk and bike lanes. The widening shall extend from 1500 feet west of Battle Creek Road SE to the Interstate 5 ramps to provide an additional lane for a total of two eastbound lanes.*

**Finding:** Capital Improvement Plan project number 713513, which included the widening of Kuebler Boulevard extended from 1500 feet west of Battle Creek Road SE to the Interstate 5 ramps, was accepted as complete on March 5, 2018. The required improvement has been completed.

*Condition 4: Dual left turn lanes shall be constructed on eastbound and westbound Kuebler Boulevard at 27<sup>th</sup> Avenue SE. Only one eastbound left-turn lane will be striped as there is only one receiving lane. For the westbound left turn lanes, an additional receiving lane shall be constructed which will drop immediately south of the subject property's driveway on 27<sup>th</sup> Avenue. The intersection of Kuebler Boulevard at 27<sup>th</sup> Avenue SE shall also be improved to provide an exclusive eastbound right-turn lane.*

**Finding:** The condition is partially complete. Remaining improvements include installation of striping for dual left-turn lanes on westbound Kuebler Boulevard at 27<sup>th</sup> Avenue SE. For the westbound left-turn lanes, an additional receiving lane shall be constructed which will drop immediately south of the subject property's driveway on 27<sup>th</sup> Avenue SE.

*Condition 5: In addition to boundary street improvements required by Salem Revised Code (SRC) 77.150, the developer shall coordinate with the city and use best practices for design and location of site access and shall construct left-turn lanes and pedestrian refuge islands where appropriate.*

**Finding:** Capital Improvement Plan project number 713513, which included the widening of Kuebler Boulevard extended from 1500 feet west of Battle Creek Road SE to the Interstate 5 ramps, was accepted as complete on March 5, 2018. The required improvement has been completed.

*Condition 6: The developer shall commit up to \$5,000 for traffic calming devices (such as speed humps or other traffic calming measures) to be used in the neighborhood south of the proposed development if a need is identified. The Neighborhood Traffic Management Program is the process used to identify traffic calming needs.*

**Finding:** This condition remains to be complete. If no need for traffic calming measures is identified, the applicant may provide a bond or security deposit in the amount of \$5,000 to be dedicated to mitigation for future impacts that may not anticipated at this time.

*Condition 7: The developer shall provide right-in access from Kuebler Boulevard with a design that minimizes impact to through vehicles and provides a safe driveway crossing for bicycle and pedestrian traffic the final design of which to be approved by the Salem Public Works Director. In addition, the developer shall complete the widening of the eastbound lanes of Kuebler Boulevard west to Commercial Street. This additional widening of approximately 1300 feet of Kuebler Boulevard is considered as payment for a grant of access on Kuebler Boulevard to allow a right-in driveway on the Subject Property.*

**Finding:** Capital Improvement Plan project number 713513, which included the construction of the right-in access from Kuebler Boulevard to the subject property, was accepted as complete on March 5, 2018. The required improvement has been completed.

*Condition 8: The developer shall offset their access driveway along Boone Road SE from Cultus Avenue at a location approved by the Salem Public Works Director.*

**Finding:** The shopping center has an existing driveway along Boone Road SE that is offset from Cultus Avenue SE, the proposed site plan shows one additional driveway on Boone Road SE that is directly across from Bow Court SE, in compliance with this condition of approval.

*Condition 9: The developer shall establish a landscaped setback along the street frontages of the project area to provide buffering and screening from the street frontage. Along Kuebler Boulevard, the setback shall be a minimum of five (5) feet in depth from the property line, as required in the CR Zone, Salem Revised Code (SRC) 152.080. Along Boone Road SE and 27<sup>th</sup> Avenue SE, the setback shall be a minimum of fifteen (15) feet in depth where the project area lies opposite residential uses.*

**Finding:** The building and vehicle use area setbacks provided along Boone Road SE and 27<sup>th</sup> Avenue SE, opposite of residential uses and residentially zoned property, are greater than 15 feet in depth, in compliance with this condition of approval.

*Condition 10: The developer shall provide sidewalks along all street frontages. The sidewalks*



*may be located inside the setback area as part of a landscape plan.*

**Finding:** This condition is partially complete. The developer shall provide sidewalks along all remaining street frontages. The sidewalk shall be located along the curb line only where needed to reduce conflicts with the previously mitigated wetland areas; all other sidewalks shall be located parallel to and one foot from the adjacent right-of-way.

Existing sidewalks are provided along the Kuebler Boulevard, a portion of Boone Road and Battle Creek Road street frontages. Sidewalks will be provided along 27<sup>th</sup> Avenue and the remaining portion of Boone Road.

*Condition 11: The developer shall provide landscaping within the street frontage setbacks as required in SRC 132.*

**Finding:** Required setback areas adjacent to a street are proposed to be landscaped consistent with the landscaping requirements as conditioned, and as required by SRC Chapter 807 (Landscaping and Screening) which replaced SRC 132 (Landscaping) in the Unified Development Code (UDC) in 2014. The landscaping standards for street frontage did not change.

*Condition 12: The developer shall provide a brick or masonry wall with a minimum height of six (6) feet along the interior line of the landscaped setback along Boone Road SE and 27<sup>th</sup> Avenue SE, opposite residential uses. The applicant/developer may provide a landscaped berm within the setback in lieu of a wall.*

**Finding:** Prior to issuance of building permit, the applicant is required to identify which screening method will be provided along the Boone Road and 27<sup>th</sup> Avenue frontages.

**Condition 1:** Prior to issuance of building permit, the applicant shall identify which screening method will be provided along the Boone Road and 27<sup>th</sup> Avenue frontages in compliance with CPC/ZC06-06 Condition 12.

*Condition 13: The developer shall provide sidewalks at all driveway entrances to the development. The internal pedestrian accessway shall be distinct from the vehicular travel lanes by means such as striping, distinctive pavement, elevation, or other method that clearly distinguishes the area for pedestrian travel from vehicle travel.*

**Finding:** The proposed site plan provides for internal pedestrian pathways leading to the main entrance for Costco, however, the internal pedestrian pathway does not connect the other buildings within the shopping center. Internal pedestrian pathways shall be provided throughout the development site connecting to each building.

**Condition 2:** Prior to issuance of building permit, the site plan shall be revised to provide internal pedestrian pathways which connect each of the proposed buildings within the shopping center, and which connect to public sidewalks along adjacent streets. The internal pedestrian pathways shall be distinct

from the vehicular travel lanes by means such as striping, distinctive pavement, elevation, or other method that clearly distinguishes the area for pedestrian travel from vehicle travel.

*Condition 14: The subject 18.4 acre property shall be developed with a retail shopping center. The maximum amount of gross leasable area (GLA) for the retail shopping center on the subject property shall be 240,000 GLA. If the subject property is developed in conjunction with the abutting 10.08 acre property (for simplicity referred to as a 10.0 acre property) currently owned by the Salem Clinic (083W12C tax lot 702 5.5 acres and 083W11D tax lot 600 4.58 acres), the total amount of retail GLA and medical/dental offices on the two properties shall not exceed 299,000 GLA). The City shall have the right to enforce this condition through the enforcement procedures in its code or through a post acknowledgement plan amendment using required City and state procedures restoring the Residential plan designation and RA zone to the property.*

**Finding:** The combined gross floor area for buildings within the proposed shopping center is approximately 189,550 square feet. The total floor area for the two existing medical/dental office buildings (Salem Clinic) are approximately 38,306 square feet in size. The combined gross leasable area for the shopping center development site is approximately 227,856 square feet, less that the maximum amount of gross leasable area allowed for the subject property.

*Condition 15: All improvements shall be built as outlined as set forth in the November 21, 2006 staff report to City Council, including the widening of Kuebler Blvd. from the I-5 Interchange to Commercial Street and the right-in access from Kuebler to the property (except as modified by this Order).*

**Finding:** Capital Improvement Plan project number 713513, was accepted as complete on March 5, 2018. The required improvement along Kuebler Boulevard has been completed, all remaining improvements from CPC/ZC06-06 will be built as discussed in the findings of this staff report.

*Condition 16: Prior to issuance of a certificate of occupancy for any building on the subject property the following traffic improvements shall be completed; 1) The funded City CIP project to construct improvements on Kuebler Boulevard as identified in the applicant's September 2006 TIA; 2) All traffic mitigation improvements required to be constructed by the Developer as conditions of approval in this decision, and; 3) In addition to the other traffic mitigation improvements required as conditions of approval, the Developer shall construct an exclusive right-turn lane at the westbound Kuebler Boulevard intersection with 27<sup>th</sup> Avenue. The traffic improvements that the Developer is responsible for, in addition to the right-turn lane at westbound Kuebler and 27<sup>th</sup> Avenue, are as specified in conditions of approval 1 through 7 of this decision.*

**Finding:** Capital Improvement Plan project number 713513, was accepted as complete on March 5, 2018. The required improvement has been completed.

*Condition 17: The applicant, at the time of development application, shall coordinate with the*

*Salem Area Transit District to enhance transportation and bus facilities on the site.*

**Finding:** The applicant has contacted Cherriots Transit regarding enhancement of transportation and bus facilities on the site. Cherriots Transit has responded with a recommendation for additional transit stops along Boone Road SE. In addition, Cherriots has requested that wider sidewalks be provided to accommodate bus stops, and that the location for the stops should be close to street lighting. If space is available, Cherriots will consider adding a shelter. Pursuant to Condition 17, the application shall continue to coordinate with Cherriots to enhance transit opportunities for the proposed development.

As indicated in the findings above, some of the conditions of approval from CPC/ZC 06-06 have been complete or are partially complete. All remaining conditions shall be complete prior to final occupancy for the proposed development.

**Condition 3:** All remaining unsatisfied conditions of approval from CPC/ZC06-06 as specified in the November 30, 2015, "Certificate of Partial Satisfaction of Conditions of Approval and Deferral Agreement" shall be completed prior to final occupancy for the proposed development.

### **Development Standards - CR (Retail Commercial) Zone:**

*SRC 522.005(a) - Uses:*

**Finding:** The proposed development includes four retail shell buildings, a 168,550 square foot building for Costco Wholesale, and a retail fueling station with up to 30 pump positions. Permitted, special and conditional uses for the CR zone are found in SRC Chapter 522, Table 522-1. The proposed retail sales use (Costco Wholesale) and gasoline service station are listed as outright permitted uses in the CR zone per Table 522-1.

Future uses for the proposed retail shell buildings will be determined at the time of occupancy permit, Class 1 Site Plan Review will be required to determine permitted uses in the proposed shell buildings.

*SRC 522.010(a) - Lot Standards:*

There are no minimum lot area or dimension requirements in the CR zone. All uses are required to have a minimum of 16 feet of street frontage.

**Finding:** The subject property consists of eight taxlots with a combined size of approximately 24.38 acres in size and has approximately 108 feet of frontage along Battle Creek Road SE, 1,855 feet of frontage along Kuebler Boulevard SE, 750 feet of frontage along 27<sup>th</sup> avenue SE and 1,112 feet of frontage along Boone Road SE, exceeding the minimum lot standards of the CR zone.

SRC 800.015 provides that every building or structure shall be entirely located on a lot. Where two or more lots are under single ownership to accommodate a single development, the entire combined area shall be considered as a single lot for purposes of the UDC. However, the Building Code does not allow buildings to cross over existing property lines. SRC 205.065(a)

provides that the property boundary verification process may be used whereby the outside boundary of two or more contiguous units of land held under the same ownership may be established as the property line for purposes of application of the Building Code.

**Condition 4:** Prior to building permit issuance, where a proposed building crosses over an existing property line, either (1) pursuant to SRC 205.065, a property boundary verification shall be recorded, or (2) a property line adjustment shall be recorded to remove or relocate the property line.

*SRC 522.010(b) - Setbacks:*

Setbacks within the CR zone shall be provided as set forth in Tables 522-3 and 522-4.

***Kuebler Gateway Shopping Center East:***

*Buildings include Gas Station, Costco Wholesale, and Retail Shell Building*

**North:** Adjacent to the north is right-of-way for Kuebler Boulevard SE. There is a minimum 5 foot building setback and a minimum 6-10 foot vehicle use area setback adjacent to a street.

**Finding:** The proposed off-street parking area is setback approximately 10 feet from the property line adjacent to Kuebler Boulevard SE, in compliance with the minimum standard. The proposed buildings are setback from the property line adjacent to Kuebler Boulevard as follows:

- Gas Station - Approximately 75 feet
- Costco Wholesale - Approximately 395 feet
- Retail Shell Building - Approximately 10 feet

**South:** Adjacent to the south is right-of-way for Boone Road SE. There is a minimum 5 foot building setback and a minimum 6-10 foot vehicle use area setback adjacent to a street.

CPC/ZC 06-06 Condition 9 requires a minimum 15 foot setback adjacent to Boone Road SE, and Condition 12 requires a minimum six foot tall brick or masonry wall along the interior line of the landscaped setback. The applicant/developer may provide a landscaped berm within the setback in lieu of a wall.

**Finding:** The proposed off-street parking area is setback approximately 42 feet from the property line adjacent to Boone Road SE, in compliance with the minimum standard. The proposed buildings are setback from the property line adjacent to Boone Road SE as follows:

- Gas Station - Approximately 650 feet
- Costco Wholesale - Approximately 26 feet
- Retail Shell Building - Approximately 715 feet

Additional screening required by CPC/ZC06-06 shall be provided adjacent to Boone Road SE.

**East:** Adjacent to the east is right-of-way for 27<sup>th</sup> Avenue SE. There is a minimum 5 foot

building setback and a minimum 6-10 foot vehicle use area setback adjacent to a street.

CPC/ZC 06-06 Condition 9 requires a minimum 15 foot setback adjacent to Boone Road SE, and Condition 12 requires a minimum six foot tall brick or masonry wall along the interior line of the landscaped setback. The applicant/developer may provide a landscaped berm within the setback in lieu of a wall.

**Finding:** The proposed off-street parking area is setback approximately 50 feet from the property line adjacent to 27<sup>th</sup> Avenue SE, in compliance with the minimum standard. The proposed buildings are setback from the property line adjacent to 27<sup>th</sup> Avenue SE as follows:

- Gas Station - Approximately 55 feet
- Costco Wholesale - Approximately 400 feet
- Retail Shell Building - Approximately 800 feet

Additional screening required by CPC/ZC06-06 shall be provided adjacent to Boone Road SE.

**West:** Adjacent to the west is the western portion of the shopping center, zoned CR (Retail Commercial) and CO (Commercial Office). There is no building setback required adjacent to a commercial zoned property, vehicle use areas require a minimum five foot setback.

**Finding:** A shared driveway providing access to all existing and proposed uses within the shopping center is provided along the western property line. SRC 806.040(b)(2) provides that driveways may not be located within required setbacks except where the driveway is a shared driveway located over the common lot line and providing access to two or more uses.

***Kuebler Gateway Shopping Center West:***

*Three new retail shell buildings and integrated parking area.*

**North:** Adjacent to the north is right-of-way for Kuebler Boulevard SE. There is a minimum 5 foot building setback and a minimum 6-10 foot vehicle use area setback adjacent to a street.

**Finding:** The proposed off-street parking and vehicle use areas are setback approximately 10 feet from the property line adjacent to Kuebler Boulevard SE, in compliance with the minimum standard. The proposed buildings are setback from the property line adjacent to Kuebler Boulevard SE as follows:

- Shell Building A - Approximately 25 feet
- Shell Building B - Approximately 22 feet
- Shell Building C - Approximately 44 feet

**South:** Adjacent to the south is an existing office complex within a CO (Commercial Office) zone. Per Table 522-4, there is no building setback required adjacent to a commercial zoned property, vehicle use areas require a minimum five foot setback.

**Finding:** A shared driveway providing access to all existing and proposed uses within the

shopping center is provided along the southern property line. SRC 806.040(b)(2) provides that driveways may not be located within required setbacks except where the driveway is a shared driveway located over the common lot line and providing access to two or more uses.

**East:** Adjacent to the east is the eastern portion of the shopping center, zoned CR (Retail Commercial).

**Finding:** The proposed off-street parking area is setback approximately 16 feet from the eastern property line.

**West:** Adjacent to the west is right-of-way for Battlecreek Road SE. There is minimum 5 foot building setback and a minimum 6-10 foot vehicle use area setback adjacent to a street.

**Finding:** The proposed off-street parking area is setback approximately 10 feet from the western property line adjacent to Battle Creek Road SE, in compliance with the minimum standard. The proposed buildings are setback from the property line adjacent to Battle Creek Road SE as follows:

- Shell Building A - Approximately 40 feet
- Shell Building B - Approximately 321 feet
- Shell Building C - Approximately 550 feet

*SRC 522.010(c) - Lot Coverage, Height:*

There is no maximum lot coverage standard in the CR zone, the maximum height allowance for all buildings and structures is 50 feet.

**Finding:** The applicant's statement indicates that the proposed buildings are 35 feet or less in height, the development complies with the lot coverage and height limitation of the CR zone.

*SRC 522.010(d) - Landscaping:*

**(1) Setbacks.** Required setbacks shall be landscaped. Landscaping shall conform to the standards set forth in SRC Chapter 807.

**(2) Vehicle Use Areas.** Vehicle use areas shall be landscaped as provided under SRC Chapter 806 and SRC Chapter 807.

**(3) Development Site.** A minimum of 15 percent of the development site shall be landscaped. Landscaping shall meet the Type A standard set forth in SRC Chapter 807. Other required landscaping under the UDC, such as landscaping required for setbacks or vehicle use areas, may count towards meeting this requirement.

**Finding:** The combined area for the shopping center is approximately 24.36 acres (1,061,122 square feet) in size, requiring a minimum of 3.65 acres (159,168 square feet) of landscaping ( $24.36 \times 0.15 = 3.654$ ). The total amount of landscaping provided for the development site is approximately 4.69 acres (204,296 square feet), approximately 19.3 percent, exceeding the minimum requirement.

Development plans for the Kuebler Gateway Shopping Center shall demonstrate that a

minimum of 15 percent landscaping will be provided for the development site with the first building permit.

**Condition 5:** A minimum of 15 percent of the development site, approximately 159,168 square feet, shall be landscaped with the issuance of the first building permit for the Kuebler Gateway Shopping Center.

## **General Development Standards - SRC Chapter 800**

### *Solid Waste Service Areas - SRC 800.055*

#### *SRC 800.055(a) - Applicability.*

Solid waste service area design standards shall apply to all new solid waste, recycling, and compostable services areas, where use of a solid waste, recycling, and compostable receptacle of 1 cubic yard or larger is proposed.

**Finding:** The proposed shopping center will include new solid waste service areas. The proposed site plan does not provide construction details for the proposed solid waste service areas. At the time of building permit application, the plans for the solid waste service area shall demonstrate compliance with all applicable development standards of SRC Chapter 800.

**Condition 6:** At the time of building permit application, the plans for the solid waste service areas shall demonstrate compliance with all applicable development standards of SRC Chapter 800.

### *Exterior Lighting - SRC 800.060*

- (a) Exterior lighting shall not shine or reflect onto adjacent properties, or cast glare onto the public right-of-way.
- (b) Exterior light fixtures shall be located and designed so that the light source, when viewed at a height of five feet above the ground at a distance of five feet outside the boundary of the lot, shall be either:
  - (1) Completely shielded from direct view; or
  - (2) No greater than five foot-candles in illumination.

**Finding:** The applicant has provided an illumination plan for the proposed development, indicating that lighting on the site will not shine, reflect or cast glare onto neighboring properties or onto the public right-of-way. The illumination plan indicates that when viewed at a height of five feet above the ground at a distance of five feet outside the boundary of the lot, the maximum illumination will be three foot-candles, in compliance with this section.

## **Off-Street Parking, Loading, and Driveways - SRC Chapter 806**

### *SRC 806.005 - Off-Street Parking; When Required.*

Off-street parking shall be provided and maintained for each proposed new use or activity.

### *SRC 806.010 - Proximity of Off-Street Parking to Use or Activity Served.*

Required off-street parking shall be located on the same development site as the use or activity it serves.

*SRC 806.015 - Amount of Off-Street Parking.*

- a) *Minimum Required Off-Street Parking.* A minimum of 1 space per 250 square feet of floor area is required for shopping centers.
- b) *Compact Parking.* Up to 75 percent of the minimum off-street parking spaces required under this Chapter may be compact parking spaces.
- c) *Carpool and Vanpool Parking.* New developments with 60 or more required off-street parking spaces, and falling within the Public Services and Industrial use classifications, and the Business and Professional Services use category, shall designate a minimum of 5 percent of their total off-street parking spaces for carpool or vanpool parking.
- d) *Maximum Off-Street Parking.* Unless otherwise provided in the SRC, off-street parking shall not exceed the amounts set forth in Table 806-2.

**Finding:** The proposed floor area for the shopping center is 189,550 square feet in size, requiring a minimum of 758 off-street parking spaces ( $189,550 / 250 = 758.2$ ). A minimum of 189.5 spaces are required to be standard size, the remaining spaces may be compact. A maximum of 1,327 off-street parking spaces are allowed for the shopping center ( $758 \times 1.75 = 1,326.5$ ). No carpool/vanpool spaces are required for the proposed shopping center use.

The proposed site plan indicates that 1,013 off-street parking spaces will be provided for the shopping center, including 24 accessible parking spaces (ADA) and six compact spaces. The off-street parking meets the requirements of SRC Chapter 806.

*SRC 806.035 - Off-Street Parking and Vehicle Use Area Development Standards.*

- a) *General Applicability.* The off-street parking and vehicle use area development standards set forth in this section apply to the development of new off-street parking and vehicle use areas.
- b) *Location.* Off-street parking and vehicle use areas shall not be located within required setbacks.
- c) *Perimeter Setbacks and Landscaping.* Perimeter setbacks shall be required for off-street parking and vehicle use areas abutting streets, abutting interior front, side, and rear property lines, and adjacent to buildings and structures.

**Adjacent to Buildings and Structures:** Except for drive-through lanes, the off-street parking or vehicle use area shall be setback from the exterior wall of the building or structure by a minimum 5 foot wide landscape strip or by a minimum 5 foot wide paved pedestrian walkway.

**Finding:** The proposed vehicle use area complies with the minimum perimeter setback



standards identified in the CR zone development standards and by SRC Chapter 806, and the minimum 5 foot setback requirement adjacent to buildings and/or structures.

- d) *Interior Landscaping.* Interior landscaping shall be provided in amounts not less than those set forth in Table 806-5. For parking areas 50,000 square feet and greater in size, a minimum of 8 percent of the interior parking area shall be landscaped.

**Finding:** The off-street parking area for Kuebler Gateway Shopping Center East is approximately 532,560 square feet in size, requiring a minimum of 42,605 square feet of landscape area ( $532,560 \times 0.08 = 42,604.8$ ). The proposed site plan indicates that 43,670 square feet of interior parking landscaping will be provided, exceeding the minimum landscape requirement.

The off-street parking area for Kuebler Gateway Shopping Center West is approximately 66,813 square feet in size, requiring a minimum of 5,345 square feet of landscape area ( $66,813 \times 0.08 = 5,345.04$ ). The proposed site plan indicates that 5,750 square feet of interior parking landscaping will be provided, exceeding the minimum landscape requirement.

A minimum of 1 deciduous shade tree shall be planted for every 12 parking spaces within the off-street parking area. Landscape islands and planter bays shall have a minimum planting area of 25 square feet, and shall have a minimum width of 5 feet.

- e) *Off-Street Parking Area Dimensions.* Off-street parking areas shall conform to the minimum dimensions set forth in Table 806-6.

**Finding:** The proposed parking spaces, driveway and drive aisle for the off-street parking area meet the minimum dimensional requirements of SRC Chapter 806.

- f) *Additional Off-Street Parking Development Standards 806.035(f)-(m).*

**Finding:** The proposed off-street parking area is developed consistent with the additional development standards for grade, surfacing, and drainage. Bumper guards and wheel barriers are not shown on the proposed site plan.

**Condition 7:** The proposed off-street parking area shall include bumper guards or wheel barriers so that no portion of a vehicle will overhang or project into required setbacks, landscape areas, or pedestrian pathways.

The parking area striping, marking, signage and lighting shall be consistent with SRC Chapter 806, required compact parking spaces shall be marked and signed per SRC 806.035(k)(2).

Off-street parking area screening per SRC 806.035(m) is not required for the proposed development, because the property does not directly abut residentially zoned property.

## Bicycle Parking

*SRC 806.045 - General Applicability.*

Bicycle parking shall be provided and maintained for each proposed new use or activity.

*SRC 806.050 - Proximity of Bicycle Parking to use or Activity Served.*

Bicycle parking shall be located on the same development site as the use or activity it serves.

*SRC 806.055 - Amount of Bicycle Parking.*

Per SRC Chapter 806, Table 806-8, shopping centers require the greater of four bicycle parking spaces, or a minimum of one space per 10,000 square feet for the first 50,000 square feet of floor area, plus one space per 20,000 square feet for 50,000-100,000 square feet, plus one space per 30,000 square feet for remaining square footage over 100,000 square feet.

**Finding:** The proposed Costco building is approximately 168,550 square feet in size, requiring a minimum of 10 bicycle parking spaces ( $50,000 / 10,000 = 5$ , plus,  $50,000 / 20,000 = 2.5$ , plus  $68,550 / 30,000 = 2.28$ ). Each remaining building within the shopping center will require a minimum of four bicycle parking spaces, for a total of 30 bicycle parking spaces.

The proposed site plan indicates that 22 bicycle parking spaces will be provided for the shopping center, less than the minimum requirement.

**Condition 8:** Bicycle parking areas shall be provided for each proposed building within the shopping center meeting the applicable amount and development requirements of SRC Chapter 806.

*SRC 806.060 - Bicycle Parking Development Standards.*

Bicycle parking areas shall be developed and maintained as set forth in this section.

- (a) Location. Bicycle parking areas shall be located within a convenient distance of, and shall be clearly visible from, the primary building entrance. In no event shall bicycle parking areas be located more than 50 feet from the primary building entrance.
- (b) Access. Bicycle parking areas shall have direct and accessible access to the public right-of-way and the primary building entrance.
- (c) Dimensions. Bicycle parking spaces shall be a minimum of six feet by two feet, and shall be served by a minimum four-foot-wide access aisle.
- (d) Bicycle racks. Where bicycle parking is provided in racks, the racks may be floor, wall, or ceiling racks. Bicycle racks shall accommodate the bicyclist's own locking device.

**Finding:** The location and design of the bicycle parking areas will be reviewed at the time of building permit application for conformance with this section.

## **Off-Street Loading Areas**

*SRC 806.065 - General Applicability.*

Off-street loading areas shall be provided and maintained for each proposed new use or activity.

*SRC 806.075 - Amount of Off-Street Loading.*

Per SRC Chapter 806, Table 806-9, uses falling under the retail sales and service category require a minimum of one off-street loading space for floor area between 5,000 square feet to 60,000 square feet in size and a minimum of two loading spaces for buildings between 60,001 to 250,000 square feet in size. Loading spaces shall have a minimum width of 12 feet, minimum length of 30 feet, and minimum unobstructed vertical clearance of 14 feet.

**Finding:** The proposed Costco building is approximately 168,550 square feet in size, and requires a minimum of two off-street loading spaces. The proposed site plan indicates that four loading spaces will be provided on the north side of the building, with additional loading spaces on the west side of the building, meeting the minimum requirements of SRC Chapter 806.

Two proposed retail buildings on the Kuebler Gateway Shopping Center West plan are greater than 5,000 square feet in size and will each require one off-street loading space per Table 806 -9. The site plan indicates that these buildings will have a dedicated off-street loading space meeting the minimum requirements of SRC Chapter 806.

## Landscaping

All required setbacks shall be landscaped with a minimum of 1 plant unit per 20 square feet of landscaped area. A minimum of 40 percent of the required number of plant units shall be a combination of mature trees, shade trees, evergreen/conifer trees, or ornamental trees. Plant materials and minimum plant unit values are defined in SRC Chapter 807, Table 807-2.

All building permit applications for development subject to landscaping requirements shall include landscape and irrigation plans meeting the requirements of SRC Chapter 807.

**Finding:** As conditioned, the first building permit for development of the shopping center will require a minimum of 159,168 square feet of landscape area. A minimum of one plant unit per 20 square feet, or 7,958 plant units ( $159,168 / 20 = 7,958.4$ ) are required at the time of building permit. Of the required plant units, a minimum of 3,183 plant units ( $7,958 \times 0.4 = 3,183.2$ ) shall be a combination of mature trees, shade trees, evergreen/conifer trees, or ornamental trees.

Landscape and irrigation plans will be reviewed for conformance with the requirements of SRC 807 at the time of building permit application review. Additional plant units may be required if the proposed landscape area increases.

## Natural Resources

*SRC 808 - Preservation of Trees and Vegetation:* The City's tree preservation ordinance, under SRC Chapter 808, provides that no person shall remove a significant tree (Oregon White Oak greater than 24 inches in diameter at breast height) (SRC 808.015) or a tree or native vegetation in a riparian corridor (SRC 808.020), unless the removal is excepted under SRC 808.030(a)(2), undertaken pursuant to a permit issued under SRC 808.030(d), undertaken pursuant to a tree conservation plan approved under SRC 808.035, or permitted by a variance

granted under SRC 808.045.

The existing conditions plan indicates that there are eight significant trees on the subject property; the applicant is proposing to transplant and relocate each of the significant trees to another location on the same development site. As discussed in Section 2(c) of this report, the proposal to transplant existing mature trees does not meet the definition of removal in SRC Chapter 808, further, the applicant has demonstrated that the removal of the significant trees is necessary for the proposed development, therefore, pursuant to SRC 808.030(a)(2)(L), the applicant is not required to preserve or transplant the proposed trees. The applicant has previously accepted a condition of approval to incorporate 16 new Oregon white oaks into the landscape design for the shopping center.

**Condition 9:** A minimum of 16 Oregon White Oaks shall be incorporated into the landscape design for the shopping center. Replanted trees shall have a minimum two-inch caliper.

To ensure that the proposal to transplant the eight significant trees results in the greatest chance for survival with minimum impact to the trees, staff recommends that the City Council adopt the following condition of approval:

**Condition 18:** The eight (8) 'significant' white oak trees on the subject property shall be transplanted and maintained after transplant, consistent with the recommendations of the PacTrust Remand Letter, Exhibit B, Arborist's Report. A report containing final recommendations shall be submitted to the City's Urban Forester prior to any tree transplanting activity.

*SRC 809 - Wetlands:* Grading and construction activities within wetlands are regulated by the Oregon Department of State Lands (DSL) and US Army Corps of Engineers. State and Federal wetland laws are also administered by the DSL and Army Corps, and potential impacts to jurisdictional wetlands are addressed through application and enforcement of appropriate mitigation measures.

Wetland remediation work was completed under Army Corp of Engineers permit number #NWP-2012-48. Wetlands remain on the property along the north side of Boone Road and the west side of 27th Avenue SE. The applicant's site plan does not propose to negatively impact the wetland areas. Wetland notice was sent to the Oregon Department of State Lands pursuant to SRC 809.025.

*SRC 810 - Landslide Hazards:* A geological assessment or report is required when regulated activity is proposed in a mapped landslide hazard area. According to the City's adopted landslide hazard susceptibility maps and SRC Chapter 810 (Landslide Hazards), there are mapped 2-point and 3-point landslide hazard areas on the subject property. The proposed activity of a commercial building adds 3 activity points to the proposal, which results in a total of 5-6 points. Therefore, the proposed development is classified as a moderate landslide risk and requires a geological assessment and/or geotechnical engineering report. A Geotechnical

Engineering Report, prepared by Terracon Consultants, Inc. and dated April 16, 2018, prepared for Costco Wholesale was submitted to the City of Salem. A second Report of Geotechnical Engineering Services, prepared by GeoDesign Inc. and dated June 13, 2016, prepared for Pac Trust was also submitted to the City of Salem. These reports demonstrate the subject property can be developed without increasing the potential for slope hazard on the site or adjacent properties.

Criterion 2:

The transportation system provides for the safe, orderly, and efficient circulation of traffic into and out of the proposed development, and negative impacts to the transportation system are mitigated adequately.

**Finding:**

As noted above, the applicant has a vested right in development consistent with the 2007 Decision. The 2007 Decision imposed multiple conditions of approval requiring substantial traffic mitigation measures. The City cannot impose additional traffic mitigation measures at this time.

Land Use Decision CPC-ZC06-6 directed future developments to meet certain conditions of approval in order to ensure that the transportation system provides for the safe, orderly, and efficient circulation of traffic into and out of the site. Successive developments and City of Salem Capital Improvement Projects have since completed portions of the conditions of approval dictated in the original decision.

The following conditions of approval from CPC/ZC06-6 have been constructed:

1. Condition 2: The intersection of Battle Creek Road SE and Kuebler Boulevard SE shall be improved to provide exclusive eastbound right-turn lane.
2. Condition 3: The south side of Kuebler Boulevard shall be widened to meet City of Salem Standards with curb, sidewalk, and bike lanes. The widening shall extend from 1500 feet west of Battle Creek Road SE to the Interstate 5 ramps to provide an additional lane for a total of two eastbound lanes.
3. Condition 4: Dual left-turn lanes shall be constructed on eastbound and westbound Kuebler Boulevard at 27th Avenue SE. Only one eastbound left-turn lane will be striped as there is only one receiving lane. The intersection of Kuebler Boulevard at 27th Avenue SE shall also be improved to provide an exclusive eastbound right-turn lane.
4. Condition 5: The developer shall construct left-turn lanes and pedestrian refuge islands where appropriate.
5. Condition 7: The developer shall provide right-in access from Kuebler Boulevard with a design that minimizes impact to through vehicles and provides a safe driveway crossing for

bicycle and pedestrian traffic, the final design of which to be approved by the Salem PW Director. In addition, the developer shall complete the widening of the eastbound lanes of Kuebler Boulevard west to Commercial Street. This additional widening of approximately 1300 feet of Kuebler Boulevard is considered as payment for a grant of access on Kuebler Boulevard to allow a right-in driveway on the Subject Property.

6. Condition 8: Offset the access driveway along Boone Road SE from Cultus Avenue SE at a location approved by the PW Director.
7. Condition 16: The funded City CIP project for improvements on Kuebler Boulevard as identified in the applicant's September 2006 TIA, and an exclusive right-turn lane at the westbound Kuebler Boulevard intersection with 27th Avenue SE.

The following conditions are what remain for Public Works of the CPC/ZC06-6 conditions of approval:

1. Condition 1: The intersection of Battle Creek and Boone Roads SE shall be improved to include a traffic signal with an eastbound left-turn lane. The southbound left-turn lane shall be lengthened to provide a minimum of 300 feet of storage.
2. Condition 2: The intersection of Battle Creek Road SE and Kuebler Boulevard SE shall be improved to provide a northbound left-turn lane with a minimum of 300 feet of storage. To provide the necessary northbound left-turn storage at this intersection with the southbound left-turn lane storage at Battle Creek and Boone Roads, side-by-side left-turn lanes shall be constructed as approved by the Public Works Director.
3. Condition 4: Install striping for dual left-turn lanes on westbound Kuebler Boulevard at 27th Avenue SE. For the westbound left-turn lanes, an additional receiving lane shall be constructed which will drop immediately south of the subject property's driveway on 27th Avenue SE.
4. Condition 6: Pay \$5,000 for traffic calming devices (such as speed humps or other traffic calming measures) to be used in the residential neighborhood south of the proposed development as determined through the City's Neighborhood Traffic Management Program.
5. Condition 10: The developer shall provide sidewalks along all street frontages. The sidewalk shall be located along the curb line only where needed to reduce conflicts with the previously mitigated wetland areas; all other sidewalks shall be located parallel to and one foot from the adjacent right-of-way.

Pursuant to SRC 803.015, the applicant was required to provide a Transportation Impact Analysis (TIA) to identify the impacts of this proposed development on the public transportation system in the area, and construct any necessary mitigation measures identified in that report. The applicant submitted a TIA, prepared by Kittelson & Associates and dated May 31, 2018. The City Traffic Engineer reviewed the TIA and determined that the report

meets the requirements of SRC 803.015.

The following mitigation measures are recommended in the TIA and shall be required as conditions of approval:

**Condition 10:** The east site driveway on 27<sup>th</sup> Avenue SE should be constructed as a single-lane roundabout, with southbound right-turn by-pass lane to the site.

**Condition 11:** A stop sign should be installed at the new south site driveway (southbound) approach to Boone Road SE.

**Condition 12:** The westbound left-turn lane at intersection of Kuebler Boulevard SE and Battle Creek Road SE should be restriped to provide 400 feet of storage.

**Condition 13:** All future landscaping, above-ground utilities, and site signage should be located and maintained to ensure adequate sight-distance is provided at the site driveways.

Condition 2 of CPC/ZC06-06 requires a northbound left-turn lane with a minimum of 300 feet of storage at the intersection of Battle Creek Road SE and Kuebler Boulevard SE. The condition states, "side-by-side left turn lanes shall be constructed as approved by the Public Works Director." The applicant has proposed a design which includes dual northbound left-turn lanes which provide a minimum of 300 feet of storage. The design also provides the required side-by-side left-turn lane configuration. The City Traffic Engineer has reviewed the proposed design and concurs that it will provide the necessary storage for the left-turn lanes at the intersection of Battle Creek Road SE and Kuebler Boulevard SE, and the intersection of Battle Creek Road SE and Boone Road SE, and is consistent with the language of the original condition.

Condition 3 of CPC/ZC06-6 required that the south side of Kuebler Boulevard was widened to meet City of Salem Standards with curb, sidewalk, and bike lanes. The widening extended from 1500 feet west of Battle Creek Road SE to the Interstate 5 ramps to provide an additional lane for a total of two eastbound lanes. This condition was met by the Capital Improvement Plan project number 713513, which was accepted as complete on March 5, 2018. No additional right-of-way or street improvement is required on Kuebler Boulevard along the frontage of the proposed development. However, the applicant shall install the appropriate striping to the westbound dual left-turn lanes to allow for traffic flow into the future dual collection lanes on 27<sup>th</sup> Avenue SE.

The existing configurations of Boone Road SE and 27<sup>th</sup> Avenue SE along the frontages of the proposed development do not meet current standards for a Collector street classification per the *Salem Transportation System Plan*. The applicant shall construct a half-street improvement along both frontages to Collector street standards as specified in the City Street Design Standards and consistent with the provisions of SRC Chapter 803.

**Condition 14:** Along the frontages of Boone Road SE and 27<sup>th</sup> Avenue SE, construct a

half-street improvement to Collector street standards as specified in the City Street Design Standards and consistent with the provisions of SRC Chapter 803. The fee-in-lieu amounts previously collected may be used towards the security amount required for the public construction pursuant to SRC 110.100.

Street standards require that sidewalks shall be located parallel to and one foot from the adjacent right-of-way (SRC 803.035(I)(2)(A)); however, the mitigated wetlands were placed between the future curb line and the right-of-way line along the frontages of Boone Road SE and 27<sup>th</sup> Avenue SE. These wetland channels conflict with the location of the sidewalk as required by the street standards. In order to protect the wetland areas, the sidewalk may be located along the curb line only as needed to reduce conflicts between the existing wetland channels and proposed improvements; all other sidewalks shall be located parallel to and one foot from the adjacent right-of-way pursuant to SRC 803.035(I).

**Condition 15:** Sidewalks shall be located parallel to and one foot from the adjacent right-of-way, however, if topography or other physical conditions, such as the previously mitigated wetland areas, make the construction of sidewalks impossible or undesirable, then a different location may be allowed per SRC 803.035(I)(2)(B).

No special setbacks are required because the existing rights-of-way meet or exceed the standards for the boundary street classifications.

Criterion 3:

Parking areas and driveways are designed to facilitate safe and efficient movement of vehicles, bicycles, and pedestrians.

**Finding:** The driveway access onto Boone Road SE is proposed to be located directly across from Bow Court SE and provides for safe turning movements into and out of the property. The driveway access onto 27<sup>th</sup> Avenue SE is proposing a single-lane roundabout with southbound right-turn by-pass lane to the site, as recommended by the TIA submitted. The eastbound right-turn only access from Kuebler Boulevard SE was approved by a previous Land Use Decision and was designed to facilitate safe and efficient movement of vehicles, bicycles, and pedestrians.

The proposed site plan provides for internal pedestrian pathways leading to the main entrance for Costco, however, the internal pedestrian pathway does not provide a connection to the other buildings within the shopping center. Internal pedestrian pathways shall be provided throughout the development site connecting to each building. As previously conditioned (Condition 2), the site plan shall be revised to provide internal pedestrian pathways which connect each proposed building within the shopping center.

Criterion 4:



The proposed development will be adequately served with City water, sewer, stormwater facilities, and other utilities appropriate to the nature of the development.

**Finding:** The Public Works Department has reviewed the applicant's preliminary plan for this site. The water, sewer, and storm infrastructure are available within surrounding streets/areas and is adequate to serve the proposed development.

The portion of the subject property within Kuebler Gateway Subdivision is subject to the stormwater management plan adopted under SRC 71.180(c) that was submitted and approved with SUB14-01. New stormwater requirements in SRC Chapter 71 and PWDS became effective January 1, 2014. The proposed subdivision was submitted prior to the effective date of the new requirements. As specified in SRC 71.080(c), because the applicant submitted a stormwater management plan as a part of the subdivision application prior to the effective date of the new ordinance, future Site Plan Review applications shall comply with the applicant's stormwater management plan instead of the stormwater requirements that became effective January 1, 2014. The applicant's engineer for the portion of the subject property within the Kuebler Gateway Subdivision indicated that the future development will comply with the previously submitted stormwater management plan.

**Condition 16:** For the portion of the subject property within Kuebler Gateway Subdivision, the applicant shall comply with the stormwater management plan that was adopted under SRC 71.180(c) and approved with SUB14-01.

The portion of the subject property outside the Kuebler Gateway Subdivision shall be designed and constructed to current water quality and flow control standards as found in SRC Chapter 71 and 2014 Public Works Design Standards (PWDS). The applicant's engineer for the portion of the subject property outside the Kuebler Gateway Subdivision submitted a statement demonstrating compliance with Stormwater PWDS Appendix 004-E(4)(b) and SRC Chapter 71. The preliminary stormwater design demonstrates the use of green stormwater infrastructure to the maximum extent feasible.

**Condition 17:** For the portion of the subject property outside Kuebler Gateway Subdivision, the applicant shall design and construct a storm drainage system for areas of new and replaced impervious surface in compliance with SRC Chapter 71 and the current Public Work Design Standards (PWDS).

The applicant shall design and construct all utilities (sewer, water, and storm drainage) according to the PWDS and to the satisfaction of the Public Works Director. The applicant is advised that a sewer monitoring manhole may be required, and the trash area shall be designed in compliance with Public Works Standards.

### 3. Analysis of Class 2 Driveway Approach Permit Approval Criteria

The approval criteria for a Class 2 Driveway Approach Permit are found in SRC 804.025(d), findings for each proposed driveway are included below.

Driveway approach to 27<sup>th</sup> Avenue SE:

Criterion 1:

The proposed driveway approach meets the standards of this Chapter and the Public Works Design Standards.

**Finding:** The proposed driveway meets the standards for SRC 804 and Public Works Design Standards (PWDS).

Criterion 2:

No site conditions prevent placing the driveway approach in the required location.

**Finding:** The construction of the roundabout as recommended in the TIA provided by Kittelson & Associates and is required in order to locate the driveway along the frontage of 27<sup>th</sup> Avenue SE. There are no other site conditions prohibiting the location of the proposed driveway.

Criterion 3:

The number of driveway approaches onto an arterial are minimized.

**Finding:** The proposed driveway is not accessing onto an arterial street.

Criterion 4:

The proposed driveway approach, where possible:

- a) Is shared with an adjacent property; or
- b) Takes access from the lowest classification of street abutting the property.

**Finding:** The proposed driveway is currently located with access to the lowest classification of street abutting the subject property.

Criterion 5:

The proposed driveway approach meets vision clearance standards.

**Finding:** The proposed driveway meets the PWDS vision clearance standards set forth in SRC Chapter 805.

Criterion 6:

The proposed driveway approach does not create traffic hazards and provides for safe turning movements and access.

**Finding:** The proposed driveway approach follows the recommendations found in the TIA submitted by Kittelson & Associates on May 31, 2018. No evidence has been submitted to indicate that the proposed driveway will create traffic hazards or unsafe turning movements.

Criterion 7:

The proposed driveway approach does not result in significant adverse impacts to the vicinity.

**Finding:** The analysis provided in the TIA of the proposed driveway and recommended roundabout indicate that the proposed driveway will not have any adverse impacts to the adjacent properties or streets.

Criterion 8:

The proposed driveway approach minimizes impact to the functionality of adjacent streets and intersections.

**Finding:** The property is fronted by a Parkway street (Kuebler Boulevard SE), a Minor Arterial street (Battle Creek Road SE) and two Collector streets (Boone Road SE and 27<sup>th</sup> Avenue SE). The applicant is proposing the driveway approach to the lower classification of street and as recommended by the TIA provided by Kittelson & Associates. By complying with the requirements of SRC Chapter 804, constructing the required improvements found in the Conditions of Approval for CPC/ZC06-6, and following the recommendations of the TIA, the applicant has minimized impacts to the functionality of adjacent streets and intersections.

Criterion 9:

The proposed driveway approach balances the adverse impacts to residentially zoned property and the functionality of adjacent streets.

**Finding:** The proposed driveway approach to 27<sup>th</sup> Avenue SE is located adjacent to a residentially zoned area. However, the direction of travel by the majority of drivers is into the commercially zoned area utilizing the single-lane roundabout. Installation of the southbound right-turn by-pass lane to the site, along with the single lane roundabout, significantly limits cut-through traffic into the residential areas, and minimizes the effect on the functionality of the adjacent streets.

*Driveway approach to Boone Road SE:*

Criterion 1:

The proposed driveway approach meets the standards of this Chapter and the Public Works Design Standards.

**Finding:** The proposed driveway meets the standards of SRC Chapter 804 and PWDS.

Criterion 2:

No site conditions prevent placing the driveway approach in the required location.

**Finding:** There are no site conditions prohibiting the location of the proposed driveway.

Criterion 3:

The number of driveway approaches onto an arterial are minimized.

**Finding:** The proposed driveway is not accessing onto an arterial street.

Criterion 4:

The proposed driveway approach, where possible:

- a) Is shared with an adjacent property; or
- b) Takes access from the lowest classification of street abutting the property.

**Finding:** The proposed driveway is currently located with access to the lowest classification of street abutting the subject property.

Criterion 5:

The proposed driveway approach meets vision clearance standards.

**Finding:** The proposed driveway meets the PWDS vision clearance standards set forth in SRC Chapter 805.

Criterion 6:

The proposed driveway approach does not create traffic hazards and provides for safe turning movements and access.

**Finding:** The proposed driveway approach meets the criteria set by previous land use decisions and shall follow the recommendations found in the TIA submitted by Kittelson & Associates. No evidence has been submitted to indicate that the proposed driveway will create traffic hazards or unsafe turning movements.

Criterion 7:

The proposed driveway approach does not result in significant adverse impacts to the vicinity.

**Finding:** The driveway approach to Boone Road SE is located directly across from Bow Court SE. Our analysis of the proposed driveway and the evidence that has been submitted indicate that the location of the proposed driveway will not have any adverse impacts to the adjacent properties or streets.

Criterion 8:

The proposed driveway approach minimizes impact to the functionality of adjacent streets and intersections.

**Finding:** The property is fronted by a Parkway street (Kuebler Boulevard SE), a Minor Arterial street (Battle Creek Road SE) and two Collector streets (Boone Road SE and 27<sup>th</sup> Avenue SE). The applicant is proposing the driveway approach to the lower classification of street and as recommended by the TIA provided by Kittelson & Associates. By complying with the requirements of SRC Chapter 804, constructing the required improvements found in the conditions of approval for CPC/ZC06-6, and following the recommendations of the TIA, the applicant has minimized impacts to the functionality of adjacent streets and intersections.

Criterion 9:

The proposed driveway approach balances the adverse impacts to residentially zoned property and the functionality of adjacent streets.

**Finding:** The driveway approach to Boone Road SE is located directly across from a residentially zoned area. Locating the driveway directly across from Bow Court SE provides for safe turning movements into and out of the property. This additional driveway balances the adverse impacts to the residentially zoned area south of the subject property and will not have an adverse effect on the functionality of adjacent streets.

**RECOMMENDATION:**

1. Staff recommends that the City Council find that the proposed Class 3 Site Plan Review satisfies the applicable approval criteria of SRC Chapter 220, and find that the proposed Class 2 Driveway Approach Permit satisfies the applicable approval criteria of SRC Chapter 804, for Case No. SPR-DAP18-15, and APPROVE the application subject to the following conditions of approval:

**Condition 1:** Prior to issuance of building permit, the applicant shall identify which screening method will be provided along the Boone Road and 27<sup>th</sup> Avenue frontages in compliance with CPC/ZC06-06 Condition 12.

**Condition 2:** Prior to issuance of building permit, the site plan shall be revised to provide internal pedestrian pathways which connect each of the proposed buildings within the shopping center, and which connect to public sidewalks along adjacent streets. The internal pedestrian pathways shall be distinct from the vehicular travel lanes by means such as striping, distinctive pavement, elevation, or other method that clearly distinguishes the area for pedestrian travel from vehicle travel.

- Condition 3:** All remaining unsatisfied conditions of approval from CPC/ZC06-06 as specified in the November 30, 2015, "Certificate of Partial Satisfaction of Conditions of Approval and Deferral Agreement" shall be completed prior to final occupancy for the proposed development.
- Condition 4:** Prior to building permit issuance, where a proposed building crosses over an existing property line, either (1) pursuant to SRC 205.065, a property boundary verification shall be recorded, or (2) a property line adjustment shall be recorded to remove or relocate the property line.
- Condition 5:** A minimum of 15 percent of the development site, approximately 159,168 square feet, shall be landscaped with the issuance of the first building permit for the Kuebler Gateway Shopping Center.
- Condition 6:** At the time of building permit application, the plans for the solid waste service areas shall demonstrate compliance with all applicable development standards of SRC Chapter 800.
- Condition 7:** The proposed off-street parking area shall include bumper guards or wheel barriers so that no portion of a vehicle will overhang or project into required setbacks, landscape areas, or pedestrian pathways.
- Condition 8:** Bicycle parking areas shall be provided for each proposed building within the shopping center meeting the applicable amount and development requirements of SRC Chapter 806.
- Condition 9:** A minimum of 16 Oregon White Oaks shall be incorporated into the landscape design for the shopping center. Replanted trees shall have a minimum two-inch caliper.
- Condition 10:** The east site driveway on 27<sup>th</sup> Avenue SE should be constructed as a single-lane roundabout, with southbound right-turn by-pass lane to the site.
- Condition 11:** A stop sign should be installed at the new south site driveway (southbound) approach to Boone Road SE.
- Condition 12:** The westbound left-turn lane at intersection of Kuebler Boulevard SE and Battle Creek Road SE should be restriped to provide 400 feet of storage.
- Condition 13:** All future landscaping, above-ground utilities, and site signage should be located and maintained to ensure adequate sight-distance is provided at the site driveways.
- Condition 14:** Along the frontages of Boone Road SE and 27<sup>th</sup> Avenue SE, construct a half-street improvement to Collector street standards as specified in the City Street Design Standards and consistent with the provisions of SRC Chapter

803. The fee-in-lieu amounts previously collected may be used towards the security amount required for the public construction pursuant to SRC 110.100.

**Condition 15:** Sidewalks shall be located parallel to and one foot from the adjacent right-of-way, however, if topography or other physical conditions, such as the previously mitigated wetland areas, make the construction of sidewalks impossible or undesirable, then a different location may be allowed per SRC 803.035(l)(2)(B).

**Condition 16:** For the portion of the subject property within Kuebler Gateway Subdivision, the applicant shall comply with the stormwater management plan that was adopted under SRC 71.180(c) and approved with SUB14-01.

**Condition 17:** For the portion of the subject property outside Kuebler Gateway Subdivision, the applicant shall design and construct a storm drainage system for areas of new and replaced impervious surface in compliance with SRC Chapter 71 and the current Public Work Design Standards (PWDS).

**Condition 18:** The eight (8) 'significant' white oak trees on the subject property shall be transplanted and maintained after transplant, consistent with the recommendations of the PacTrust Remand Letter, Exhibit B, Arborist's Report. A report containing final recommendations shall be submitted to the City's Urban Forester prior to any tree transplanting activity.

## **ALTERNATIVES:**

1. The City Council may approve or deny the application for Class 3 Site Plan Review and Class 2 Driveway Approach Permit Case No. SPR-DAP18-15.
  - a. **APPROVE** the application; or
  - b. **DENY** the application

Aaron Panko  
Planner III

## **Attachments:**

1. Vicinity Map
2. Proposed Site Plan
3. Request for Remand 6-16-2020
4. Public Testimony
5. Applicant's Testimony and Final Argument
6. City Response to Applicant's Vested Rights Argument