



# Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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## AMENDED NOTICE OF ADOPTED AMENDMENT

December 21, 2007

TO: Subscribers to Notice of Adopted Plan  
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Salem Plan Amendment  
DLCD File Number 014-06 A



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures\*

### **DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: January 7, 2007**

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

**\*NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist  
Jason Locke, DLCD Regional Representative  
Matthew Crall, DLCD Transportation Planner  
Judith Moore, City of Salem

<paa> ya

# NOTICE OF ADOPTION

THIS FORM **MUST BE MAILED** BY DLCD  
**WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION**  
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18



Jurisdiction: City of Salem Local File Number: CPC/ZC 06-6  
Date of Adoption: December 10, 2007 Date Mailed: December 13, 2007  
Date this Notice of Proposed Amendment was mailed to DLCD: June 19, 2006

Comprehensive Plan Text Amendment  Comprehensive Plan Map Amendment  
 Land Use Regulation Amendment  Zoning Map Amendment  
 New Land Use Regulation  Other: \_\_\_\_\_

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached."

Amendment to the Salem Area Comprehensive Plan Map to change the designation of the above-described real property from "Developing Residential" to "Commercial" and change to the zoning from RA (Residential Agriculture) to CR (Commercial Retail) for an 18.4-acre site located in the 2500 Block of Boone Road SE, Salem.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "SAME." If you did not give notice to the Proposed Amendment, write "N/A."

Same

Plan Map Changed from: Developing Residential to: Commercial  
Zone Map Changed from: RA (Residential Agriculture) to: CR (Retail Commercial)  
Location: 2500 Block of Boone Road SE Acres Involved: 18.4  
Specify Density: Previous: \_\_\_\_\_ New: \_\_\_\_\_

Applicable Statewide Planning Goals:

Was an Exception Proposed: \_\_\_\_\_ YES  NO

Did the Department of Land Conservation and Development receive a Notice of Proposed Amendment.....

**Forty-five (45) days prior to first evidentiary hearing?**  Yes  No  
If no, do the statewide planning goals apply?  Yes  No  
If no, did Emergency Circumstances require immediate adoption?  Yes  No

Affected State of Federal Agencies, Local Governments or Special Districts:

Local Contact: Judith Moore, Assistant Urban Planning Administrator Phone: (503) 588-6173 Extension: 7598  
Address: 555 Liberty Street SE, Room 305 City: Salem  
Zip: 97301 E-Mail Address: jimoore@cityofsalem.net

DLCD File No: 014-06A(15329) [14102] Ack: 3/2/07

BEFORE THE CITY COUNCIL OF THE CITY OF SALEM

IN THE MATTER OF AFFIRMING )  
THE DECISION OF THE PLANNING )  
COMMISSION FOR )  
COMPREHENSIVE PLAN CHANGE/ )  
ZONE CHANGE CASE )  
NO. 06-6-CPC/ZC FOR PROPERTY )  
LOCATED AT THE 2500 BLOCK OF )  
BOONE ROAD, SE, MARION COUNTY) )  
ASSESSOR'S MAP NUMBER T8S )  
R3W S12, QUARTER SECTION C, TAX) )  
LOTS 1800, 1900, 2000 AND 2100 )

ORDER NO. 2007-16-CPC/ZC  
COMPREHENSIVE PLAN CHANGE/  
ZONE CHANGE NO. 06-6-CPC/ZC

This matter coming regularly for hearing before the City Council of the City of Salem, Oregon, at its August 6, 2007 meeting, and the City Council, having received evidence and heard testimony, hereby references and incorporates the attached Facts and Findings, attached as Exhibit A, and adopts the following Order, with conditions of approval as set forth in Exhibit A, in support of affirming the decision of the Planning Commission in Comprehensive Plan Change and Zone Change Case No. 06-6-CPC/ZC.

**ORDER:**

The Planning Commission decision on Comprehensive Plan Change and Zone Change, Case No. 06-6-CPC/ZC, as proposed and with conditions of approval, and as modified herein, is hereby affirmed.

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

Exhibit A: Facts and Findings, dated December 10, 2007

ADOPTED by the Council this 10<sup>th</sup> day of December, 2007.

ATTEST:

  
City Recorder

**EXHIBIT A**

**FOR CITY COUNCIL MEETING OF: December 10, 2007**  
**AGENDA ITEM NO.: 7 (a)**

**TO:** City Council

**FROM:** Glenn W. Gross, Urban Planning Administrator

**STAFF:** Judith Moore, Senior Planner

**FINAL ADOPTION DATE:** December 10, 2007

**APPLICATION:** Comprehensive Plan Change/Zone Change 06-6

**LOCATION:** 2500 Block Boone Road SE; Marion County Assessor's Map Number T8S R3W S12 Quarter Section C, Tax Lots 1800, 1900, 2000 and 2100

**SIZE:** Approximately 18.4 acres

**REQUEST:** To change the Salem Area Comprehensive Plan Map designation from "Developing Residential" to "Commercial" and to change the zoning from RA (Residential Agriculture) to CR (Commercial Retail) for an 18.4-acre site located in the 2500 Block of Boone Road SE.

**APPLICANT:** Pacific Realty Associates, L.P. (PacTrust)

**APPROVAL CRITERIA:** Comprehensive Plan Map Amendment: Salem Revised Code, Chapter 64  
Zone Map Amendment: Salem Revised Code, Chapter 114

**COUNCIL MOTION:** **APPROVE** the Comprehensive Plan/Zone Change, subject to the following Zone Change Conditions

- (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.
- (2) The intersection of Battle Creek Road SE and Kuebler Boulevard shall be improved to provide exclusive eastbound 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.

- (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.
- (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.
- (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.
- (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 residential 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.
- (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.
- (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.
- (9) The applicant 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.
- (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.

- (11) The developer shall provide landscaping within the street frontage setbacks as required in SRC 132.
- (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.
- (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.
- (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 to exceed 299,000 GLA. As such, the total GLA for a shopping center and offices on the combined properties if developed together, 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.
- (15) All improvements shall be built as outlined and 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).
- (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 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.
- (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.

**Procedural Findings:**

On June 2, 2006, Pacific Realty Associates, LP, (the Applicant) filed a Comprehensive Plan Change/Zone Change application to change the existing Salem Area Comprehensive Plan (SACP) designation from "Developing Residential" to "Commercial" and the zoning from RA (Residential Agriculture) to CR (Retail Commercial) for an 18.4 acres of real property located in the 2500 Block of Boone Road SE, and identified in the tax records for Marion County as T8S R3W S12 Quarter Section C, Tax Lots 1800, 1900, 2000 and 2100 (the Subject Property).<sup>1</sup>

The Subject Property was annexed into the City in November, 2001. The Subject Property is rectangular in shape, and slopes to the northeast. The Applicant's proposal is to develop the Subject Property in conjunction with a 10-acre property abutting the Subject Property on the west (the Abutting Property), to "establish a coordinated and unified retail; service, and office center to serve the major residential district that is emerging in the surrounding area." The Abutting Property is owned by the Salem Clinic and identified in the tax records of Marion County as 083W12C, Tax Lot 702 and 083W11D Tax Lot 600.

The Subject Property is developed with a house and barn located near 27<sup>th</sup> Avenue SE. There are no curbs or sidewalks abutting the Subject Property. Based on the City's aerial photograph taken in 2005 of the Subject Property, off-street access for that property is located along Boone Road SE and 27<sup>th</sup> Avenue SE.

The surrounding area is developed with single-family dwellings to the south, a church to the north across Kuebler Boulevard SE, a church to the southeast across Boone Road SE, and a private elementary school and office building within an area zoned Neighborhood Commercial land across Battle Creek Road SE.

The SACP designates property to the north (across Kuebler Boulevard SE) and east as "Developing Residential" in the SACP, property to the south (across Boone Road SE) as "Single Family Residential" and property the west as "Commercial."

Salem Transportation System Plan (the TSP) Three streets abut the Subject Property – Kuebler Boulevard SE to the north, Boone Road SE to the south, and 27<sup>th</sup> Avenue SE to the east. The functional classifications for these streets in the Salem Transportation System Plan (Salem TSP) are, respectively, "Parkway" (Kuebler Boulevard SE) and "Collector" (Boone Road SE and 27<sup>th</sup> Avenue SE). Battle Creek Road SE lies adjacent to the subject property and abuts the Abutting Property, and is designated Minor Arterial in the TSP.

The Subject Property lies within the South Gateway Neighborhood, which does not have an adopted neighborhood plan under SRC 64.430. Prior to 1995, the property was located within the Morningside Neighborhood, but the Morningside Neighborhood Plan adopted by Ord. No. 67-84 in June, 1984, does not include the Subject Property.

The zoning for the surrounding area is as follows: North, across Kuebler Boulevard SE – RA; South, across Boone Road SE – Single Family Residential (RS); East, across 27<sup>th</sup> Avenue SE –

<sup>1</sup> A pre-application conference was held for the Subject Property on November 3, 2005 (File Pre-App 05-69).

Urban Transition (UT-10), outside city limits; Northeast, across Kuebler Boulevard SE and east of 27<sup>th</sup> Avenue SE – RA; Northwest – Commercial Office (CO); and Southwest – RA

The Application was deemed complete on June 15, 2006. The complete Application contained all required information necessary to determine compliance with applicable criteria.

Pursuant to ORS 197.610, the City provided the Oregon Department of Land Conservation and Development (DLCD) 45-day notice prior to the first evidentiary hearing on the Applicant's proposed amendment to the SACP on June 19, 2006.

A decision on the Application was scheduled for February 6, 2007 before the City of Salem Planning Commission. Notice of the Planning Commission hearing was mailed to property owners within 250 feet of the Subject Property on November 2, 2006. Notice of the hearing was given in accordance with SRC 114.050-114.070. On February 6, 2007, the Planning Commission recommended approval of the Application.

On February 26, 2007, the City Council initiated review of the Planning Commission decision pursuant to SRC 114.210. The review was initiated prior to the adjournment of the first regular Council meeting following Council notification of the Planning Commission decision, as required by SRC 114.200. City Council review under SRC 114.200 is "de novo," unless a hearing "on the record" is designated by the City Council upon its own motion.

Notice of the May 7, 2007 City Council *de novo* hearing was mailed to property owners within 250 feet and to all parties to the Planning Commission hearing. Notice of the City Council hearing was posted on the Subject Property on November 9, 2006.

The City Council hearing was held on May 7, 2007. Members of the public submitted oral and written testimony in favor of and opposition to the Application. City staff recommended approval of the Application. Salem-Keizer Transit and the Salem-Keizer School District reviewed the Application and had no objections. The record was left open for additional submittal and answers to Council questions, as well as the Applicant's final written argument which was due on July 2, 2007. The final deliberations were to occur on July 9, 2007.

On or about July 8, 2007 the "Statesman Journal," a Salem newspaper of general circulation within the City of Salem, published an editorial critical of the Application, encouraged the public to contact their City Councilors regarding the Application, and provided the City Councilors' e-mail addresses. As a result, nine people sent e-mail to Council. Eight of the e-mail opposed the Application, one e-mail supported the Application.

Because the editorial and e-mail occurred after the record was closed, the City Attorney advised Council that the editorial and e-mail were *ex parte* contacts under LUBA precedent, and that in order to comply with state law, Council should allow parties an opportunity to respond to the *ex parte* communications. The Council voted to re-open the hearing to cure the *ex parte* contacts.

On August 6, 2007, Council re-opened the hearing. Notice of the re-opened hearing and its purpose was provided to all persons presenting oral or written testimony at the City Council



hearing, and to all persons owning property within 250 feet of the Subject Property. At the re-opened hearing, attorney Mark Hoyt submitted evidence and argument responding to the single favorable *ex parte* e-mail. No other new evidence or argument was received. Accordingly, The City Council closed the hearing, deliberated and made its oral decision to approve the Application.

#### **APPLICABLE SALEM REVISED CODE CRITERIA FOR A COMPREHENSIVE PLAN CHANGE**

SRC 64.040(g) defines a “minor plan change” as “a single proceeding for amendment to the comprehensive plan map that affects less than five privately and separately owned tax lots or a Category 4 plan change as described in SRC 64.050(d)”. This request is a Category 4 plan change, because it is a petitioner-initiated request to change the comprehensive plan map with a concurrent rezone under SRC 64.100(c) on land entirely within the UGB. Minor plan changes are quasi-judicial decisions under SRC 64.090, which establishes the approval criteria for Category 4 plan changes. In order to approve a minor plan change, the decision-making authority must make findings of fact based on substantial evidence in the record demonstrating satisfaction of all applicable criteria. Under SRC 64.090(b), the criteria are:

**Criterion 1: A lack of appropriately designated suitable alternative sites within the vicinity for a proposed use. Factors in determining the suitability of alternative sites are limited to one or both of the following:**

- (A) Size: Suitability of the size of the alternative sites to accommodate the proposed use; or**
- (B) Location: Suitability of the location of the alternative sites to permit the proposed use.**

The proposal must satisfy Criterion 1 applying the factors of 1A, or 1B.<sup>2</sup> Here, the proposal meets Criterion 1 and the Council finds that both factors 1(A) and (B) are relevant and support a finding of compliance with Criterion 1.

#### **The Standard**

This standard requires evaluation of whether there is a lack of (1) appropriately designated, (2) suitable, (3) alternative sites, (4) within the vicinity, (5) to accommodate the proposed use. Determining the second prong of this standard regarding the suitability of an alternate site is determined based on either or both of the following (A) size of an alternative site to accommodate the proposed use, or (B) location of an alternative site to permit the proposed use. Here, both are relevant.

This standard does not present a public “need” standard. There were claims during the proceedings that SRC 64.090 requires a finding that there is a public need for the proposed use. Council disagrees. The standard does not require a showing of public need, but rather expressly

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<sup>2</sup> SRC 64.090(b)(2) supplies an additional alternate basis to approve a minor plan amendment, but that standard is not relied on for this application and is not discussed further.

refers to whether there is a “lack of” alternate sites. This is an intentional choice of words. Council previously amended this specific standard to remove language which included a public need standard and replaced it with the more flexible standard that applies to this application. *See Salem Golf Club v. City of Salem*, 28 Or LUBA 561 (1995) (explaining a previous Salem LUBA case -- *Roden Properties* -- applied a repealed City standard requiring a public need for a plan amendment and that such standard had been replaced with the “lack of” standard); *compare with Roden Properties v. City of Salem*, 17 Or LUBA 1249 (1989) (interpreting the City’s previous “public need” standard).

#### **What is the Proposed Use and What Constitutes a “Suitable” Site for the Proposed Use?**

The Applicant’s proposed use is the construction of a “community shopping center” having not more than 240,000 square feet of gross leasable area (GLA) on the subject 18.4 acres, but also a combined community shopping and service center and office complex on the Subject Property and the Abutting Property together, composed of up to 299,000 square feet of GLA covering the total of 28.4 acres. Thus, the proposal is for a Community shopping and service facility consisting of up to 299,000 square feet of GLA. In terms of considering whether alternate sites are “suitable”, this size element of the proposed use becomes relevant. Specifically, in this regard, the size of the proposed use triggers the “size” factor of SRC 64.090(1)(A). At the minimum, a site of 15-30 acres of land is generally required for a community shopping and services facility (also referred to as a community center or community facility). The evidence also shows such a community center is generally composed of between 150,000 to 450,000 GLA. Therefore a community center of 299,000 GLA generally requires the mid to upper end of the general parcel size range for a community facility. Further, the Applicant has submitted site plan examples as well as other evidence for the proposed use establishing that the Applicant’s proposed use requires a parcel size larger than the 18.4 acres that is the Subject Property because it plans to develop the property in conjunction with the Abutting Property. The evidence establishes that the Applicant’s proposed use requires the entire 28 acre site for its contemplated community shopping and services facility. The Applicant is an experienced and well-respected developer of such facilities. Therefore, the Council finds that the minimum size required for the proposed use is one that is larger than 18.4 acres and that 28 acres is the Applicant’s needed size for the community facility it proposes and this is a reasonable parcel size to require for the proposed community center. The Applicant also represented that the distinctive characteristics of the selected area around the Subject Property make the site “suitable” for the proposed use. This is because the area has significant existing as well as emerging residential development, as well as the presence of significant traffic carried by Kuebler Blvd. The purpose of the Applicant’s proposal is to provide for commercial retail and medical services at a location that is proximate and accessible to the residential neighborhoods in the surrounding area, including those north and south of Kuebler Boulevard, and east and west of Battle Creek Road. Kuebler Boulevard and Battle Creek Road are the major access routes to the existing and developing neighborhoods in the southeast Salem area. There are no other appropriately designated sites in the vicinity along either of the major streets in southeast Salem.

At the proposed location, commercial services will be accessible from surrounding neighborhoods by multiple, alternate modes of transportation, including pedestrian, bicycle, and public transit. The existing commercial locations along Commercial Street, aside from being too

small to accommodate the proposed use, are not readily accessible by alternate modes of transportation due to their distance from these neighborhoods, and due to a general lack of street connectivity between the neighborhoods and Commercial Street.

The proposed use requires these nearby residential developments and the planned future residential developments in this vicinity, as well as the high traffic of this part of Kuebler Blvd. to supply local consumers requiring shopping services. Conversely, these area characteristics create a strong underserved based of consumers for community commercial services. The Applicant requires a location where the market lacks community shopping services. The subject vicinity is such an area. These are demographic elements that go to the "location" factor of SRC 64.090(1)(B) applicable when considering alternative sites. As used in the SACP, the Applicant's proposed use would be classified as a "Community" level "commercial" use.

The "Goal 1 Coalition" argues the proposed use is a "development," not a use. It is unclear what, if any, difference there is between a "proposed use" and a "proposed development." A "use" is the goal, object or purpose that is sought to be obtained. Therefore, if the use that the Applicant seeks for its property is the construction of a community shopping center, the development and use are identical.

Pursuant to the SRC 64.090(b)(1), a "proposed use" of Subject Property is the purpose that the Applicant intends for the Subject Property, as contemplated by the Applicant.

#### **Appropriately Designated**

The appropriate SACP plan map designation is one that allows outright the Applicant's proposed use. Here, the proposed use has been specifically identified by the Applicant as a community shopping center; therefore, the appropriate SACP plan map designation is "Commercial." As used in SRC 64.090(b)(1), the term "appropriately designated" means that, at the time of application, there must be property with a "Commercial" SACP designation that would allow a community retail shopping center and office building complex outright. Property cannot be considered "appropriately designated" if not appropriately designated for the proposed use including where an opponent speculates land could possibly be changed to a "Commercial" designation at some unspecified future time. According to the SACP Plan Map, there are no appropriately sized parcels designated "Commercial" in the south or southeast part of the City. Similarly, there are no such parcels along Kuebler Blvd. in SE Salem.

Opponents identified two parcels that they believe should be considered "Appropriately Designated." One property is located at State Street and Cordon Road, in the northeast part of the Salem urban area (the "Pictsweet Property"). The Pictsweet Property is not within City limits, and is designated "Industrial," not Commercial." The other property is located North of Chemawa Road in North Salem (the "Chemawa Property"). The Chemawa Property is within Salem City limits, but is zoned "Residential Agriculture" and designated "Developing Residential" in the SACP. This is also not a site that is "Appropriately Designated" for the proposed use. Also, the Chemawa Property was annexed into Salem City limits in 2007, and must maintain the SACP and zoning designations for five (5) years from the date of annexation.

(SRC 165.170). Therefore, neither of these two properties has an “appropriate” Commercial” designation for the proposed use, as required by SRC 64.090(1)(b).

### **Vicinity**

The term “vicinity” refers to an area that must be evaluated to determine if the area lacks appropriately designated suitable alternatives for the proposed use. The “vicinity” selected by the Applicant is appropriate, reasonable and consistent with the City’s standard. As explained in the application, the “vicinity” of the proposed project is the area within the City from east of Commercial Street to the east side of I-5, and from Madrona Avenue on the north to the City limits on the south.

The vicinity selected in this case is reasonable, does not violate any SACP policy and is consistent with the dictionary definition of the term. Within the vicinity selected by the applicant and found reasonable by this Council, there are no sites alone or in combination, of similar size that are already designated Commercial -- appropriately designated -- to accommodate the proposed use. There are only two sites designated for commercial uses east of Commercial Street. One is the Abiqua School site, which is currently fully developed in school and office uses and zoned CN [Neighborhood Commercial]. It is not suitable for the proposed use because of its size and the fact that the property is already fully developed with other uses. The only other property is the so-called Salem Clinic property which abuts the subject property on the west side and is proposed to be developed with the proposed use. Specifically, the 10.0-acre Abutting Property is designated *Commercial*, and its development is intended to be coordinated with the development of the subject PacTrust property to facilitate the development of the proposed use. It is, however, too small standing alone for the proposed use. There are no other Commercially designated sites in the selected vicinity. Further, there are no suitable and available, designated commercial sites along Commercial Street that are of comparable size to the Subject Property alone or the Subject Property and the Abutting Property which are to be developed together. Council finds there is a “lack” of suitable alternative locations for the proposed use in the vicinity selected by the Applicant. Moreover, and in the alternative only, Council finds based on the evidence in the record that it does not matter how vicinity is defined for purposes of this minor plan change, as that there is a lack of appropriately designated suitable alternative sites for the proposed use within the City or even the southeastern part of the UGB – which UGB is irrelevant as explained below.

Evidence was placed into the record from another situation regarding commercially designated land supply in the City. Specifically, evidence was placed into the record regarding the inventory of commercial land within the entire Salem urban area which was examined as a part of the Salem Regional Employment Center “Economic Opportunities Analysis” (EOA) report of October, 2004. This document is attached to the Tross December 5, 2006 submittal. This City of Salem sponsored EOA found that there is a deficit of available commercial land within the UGB for the 20-year planning period (p. 1). According to data provided in the EOA, the total City-wide inventory of vacant commercial land was 239 acres (Table 6). As shown in Table 7, there was only one parcel of 20 acres or larger; and only three parcels between 10 and 19.9 acres. The parcel larger than 20 acres is located at State Street and Cordon Road, in the northeast part of the urban area (the “Picsweet” property). According to the Comprehensive Plan and Zoning

Maps, none of the 10-19.9 acre parcels are found in the south part of the City. None of these parcels are in the “vicinity” of the subject property, and they are not located to provide commercial services to the residential area surrounding Kuebler and Battle Creek. This is further evidence that there are no alternative sites that are appropriately designated in the vicinity of the subject property, and the designation of the PacTrust property for commercial use will provide for commercial services at a location that lacks a similar commercial site. It is important to note that the Council does not rely on this evidence as anything other than evidence. It is not relied on as a City planning document to which adherence is required.

Opponents argued that the vicinity the Applicant used is incorrect and that a different vicinity should have been used, up to and including the whole City and the UGB. Council rejects these arguments.

SRC Chapter 64 does not define the term “vicinity.” The dictionary definition for “vicinity” is “a nearby, surrounding or adjoining region.” Webster’s II, 1286 (1984). The SACP’s only guidance about what the “vicinity” is for the proposed Community Shopping Center, is that a community shopping center serves several neighborhoods. The applicant has shown, and the evidence in the record supports, that the proposal will serve three South Salem neighborhoods and the substantial existing and forecasted traffic on Kuebler Boulevard. The “vicinity” selected by the Applicant represents a large subarea of the south part of the City containing developed and developing residential properties that now lack and will continue to lack commercial shopping and services as are proposed. The “vicinity” that the applicant picked – composed of parts of several developing and developed residential areas within several neighborhoods – is a reasonable one. Where there are no specific criteria that establish how the vicinity must be determined, an area that is reasonable and that does not violate SACP policies may be designated as the vicinity for a particular proposed use. *Standard Insurance Company v. Washington County*, 16 Or LUBA 30 (1987), *aff’d* 93 Or App 78 (1988). The selected vicinity is consistent with City plan policies as well as other City guidance documents for the proposed Community commercial shopping and service facility.

The SACP’s Commercial Development Goal is “[t]o maintain and promote the Salem urban area as a commercial center” for Marion and Polk counties. The SACP Commercial Development Goal divides “shopping and service facilities” into three types: regional facilities, community facilities and neighborhood facilities (the three types are identified in the Definitions and Intent section of the SACP which precedes the Comm Devel Goal). The SACP does not quantify the size of neighborhood or community shopping and service facilities. City Council Resolution 87-136, adopted November 9, 1987, defines the terms “regional retail and employment center” and “regional commercial or retail center” to include, among other things, a development composed of “300,000 square feet or more of gross leasable space.” The Applicant’s proposal is for less than 300,000 square feet of GLA, and therefore is not a “regional retail and employment center” or “regional commercial or retail center” as the Resolution interprets the term. Moreover, the SACP provides general guidance for defining the “vicinity” of each type of facility including the Applicant’s proposed Community facility.

Further, the term “Regional” is defined as “of, relating to, or characteristic of a large geographic area.” Webster’s II, 990 (1988). SACP Policy G(1) contemplates that the “region” is the area

comprised of “the Salem urban area.” For purposes of the SACP, the Salem Urban Area is “the area within the Salem City limits and the area within the Salem/Keizer urban growth boundary which is unincorporated and is located to the southeast and west of the common city limits boundary between the cities of Salem and Keizer.” See SACP III, “Salem/Keizer Urban Area (Regional) Procedures and Policies,” A. “Definitions.” Regional, therefore, refers to all territory lying within the Salem/Keizer Urban Growth Boundary. Further, City Resolution 87-126 specifically interprets the term “regional retail and employment center” in the SACP, and makes clear that if a development does not fit these criteria, it must be a community or neighborhood facility. The proposal does not fit the characteristics outlined in Resolution 87-126 for a regional facility. Therefore, this is further evidence that the proposal is for a community level facility and that the appropriate vicinity is for the proposed use as a community facility. Other support for this conclusion is in the context of the SCAP.

The Commercial Development Goal contemplates that community shopping and service facilities will generate “major customer traffic” and that a community shopping and service facility will provide “a wide variety of goods and services for a market area of several neighborhoods.” See SACP IV, “Salem Area Goals and Policies, G. “Commercial Development,” Policies 4 and 5. The market area here is for several neighborhoods but is not “regional.”

The Subject Property lies along the north boundary of the South Gateway Neighborhood, which abuts the Morningside Neighborhood to the north. In this regard, the SCAP does not define the term “Neighborhood”. The dictionary defines the term “Neighborhood” to mean “a district or area with distinctive characteristics.” Webster’s II, 789 (1988). A neighborhood therefore can mean either an area with distinctive characteristics or land within Neighborhood Association boundaries, which would approximate a “district.”. The applicant has also pointed out that there are three neighborhood associations lying within the Applicant’s proposed “vicinity;” all or part of which can be served by the proposed community shopping center. Morningside Neighborhood encompasses approximately 2,100 acres (3.28 square miles), South Gateway Neighborhood encompasses approximately 3,241 acres (5.06 square miles), and Southeast Mill Creek encompasses approximately 5,793 acres (9.05 square miles).<sup>3</sup> The evidence establishes that these three neighborhoods lack suitably designated alternative sites for the proposed use.

Opponents claim vicinity necessarily means a market area of particular stores. Opponents mistakenly stated in the proceedings that “there is no dispute that a 3 to 6 mile radius population will be required to support the use.” (Hoyt 6/25/07 p 7). They also state somewhat inconsistently that “a minimum radius of three to five miles” is needed. (Hoyt June 8, 2007 p 10). Opponents also state that the *entire* city is required to serve the proposed community shopping center use. (Hoyt June 8, 2007 Submittal, p 7). Council finds the opponents’ claims unpersuasive and do not undermine the Applicant’s selected “vicinity”.

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<sup>3</sup> If the “market area” of these several neighborhoods is 3 to 6 miles as the project opponents’ claim, then the evidence establishes that there is a lack of large enough Commercially designated suitable alternative sites within that 3 to 6 mile “vicinity” of the Subject Property, whether the size range is 15-30 acres or a minimum of 18 or of 28 acres.

First, Council rejects the interpretation of the standard that “vicinity” for a community facility as proposed means a market area for a particular store, or several stores. Council notes that LUBA has rejected the opponents’ interpretation of the term “vicinity” determining that Salem’s use of the term “vicinity” does not mean a “market area.” *Salem Golf Club v. City of Salem*, 28 Or LUBA 561 (1995). Council’s determination of “vicinity” need simply be reasonable in light of what is proposed and courts will defer to a Council’s determination of “reasonable” vicinity.

Using a “market area” of particular stores for the “vicinity” analysis area for a plan amendment is inconsistent with the context in which the term “vicinity” is used. The context of the term “vicinity” relates to a proposed use. Here, the applicant’s proposed use is not particular stores, but rather a community shopping and service facility in which it has tenants. The record establishes that a market area for particular stores changes depending on the type of store, and a market area can be larger or smaller based on particular tenant stores in a shopping center. While it is relevant that people in the selected neighborhoods are likely to shop at the proposed community center (the subject property is in *their* market area), it is not relevant to the determination of “vicinity” whether people in other neighborhoods might also shop at a community center. Council further finds that it is not possible to accurately predict the “market area” of a community facility as proposed because a market area will vary with the composition of the tenant stores. Moreover, there is no necessary correlation between the size of stores in a community shopping facility and its “vicinity”. For example, the record establishes that Fred Meyer stores range from 60,000 to over 200,000 square feet in size and draw from neighborhoods ranging from 1.6 to 3.6 miles, not whole cities. Further, the Applicant testified that the primary tenants to be sought for the proposed community shopping center are retail, drug store and grocery:

Those are the primary tenants – again you don’t know who is going to show up until you get there. But if you take a look at it, Lancaster is just down the road and has every kind of retail imaginable. Nobody from down there is driving to this shopping center. North Salem is taken care of. Commercial is taken care of. We’re not creating something drawing for ten miles, we are responding to a market that exists. A road with 27,000 cars on it that is only going to go up, a neighborhood with very good demographics, which allows you to get good restaurants and uses that people will enjoy. That is what we’ll respond to. This idea that we are pulling from all over Salem just isn’t going to happen.

On the other hand, it is possible to reasonably predict that the selected “vicinity” which includes SE Salem Kuebler Blvd. traffic and portions of three neighborhoods will use the shopping and services at the Subject Property because the Subject Property is within their market area – meaning the area within which they shop.

The opponents asked Council to restrict the proposed development to the “area to be served.” Council does not understand how this would be accomplished. SRC 64.090(1) does not impose a requirement of only specific persons residing in a specific areas be allowed to use shopping services. Similarly, no standard requires that community shopping center serve only those in an “area to be served.” Such a requirement would be unreasonable and impossible to enforce. Council declines to impose such a restriction.

Further, Council finds that the term “vicinity” looks to the surrounding area of a particular property, not geographically distant areas. Here, the proposal is for a community shopping center to serve a particular geographic area with distinct characteristics: that of a large existing and emerging residential area and a major transportation facility – Kuebler Blvd. fronting the property. This area lacks suitable alternative sites for the proposed use. It would not be a reasonable or correct interpretation of the term “vicinity” to require geographically distinct areas lacking these characteristics to be considered for the proposed use where the proposed use is to capture consumers travelling on Kuebler Blvd. and the residential consumers in the underserved, large existing and developing residential area of southeast Salem that is the vicinity here.

Accordingly, Council finds it is reasonable to conclude that Kuebler travelers as well as many of the residents within the selected “vicinity” which includes parts of three neighborhoods would consider a retail shopping and service center on the subject property to be in their market area.

Opponents rely on Urban Land Institute (ULI) data to argue the proposal is not for a community shopping center but rather for a “regional” one, necessitating evaluation of a larger “vicinity”. However, City Council finds that the ULI data supports the opposite conclusion – *i.e.*, that the proposed development will be a community shopping center. The ULI data establishes the general size range for a community shopping center is between 150,000 to 450,000 square feet. Council finds the Applicant’s proposal is for a shopping center of 240,000 square feet on the 18.4 acre Subject Property, combined with the adjoining 10.0 acre property, will result in a total development of up to 299,000 GLA on the combined site of 28.4 acres. Therefore, Council finds that the proposal is a community shopping center, as defined by ULI.

Opponents stated that the lowest end of the ULI community shopping center range (150,000 square feet) is a “typical” community shopping center. Council finds, based on the ULI data as well as the expert testimony of Mr. Loffelmacher, that community shopping centers typically range from a low of 150,000 square feet to a high of 450,000 square feet. Council finds that even if the lowest end of the community shopping center range can reasonably be interpreted as the average or median, that this does not define the “range” and a shopping center can be a “community shopping center” so long as it falls anywhere within the range. Council finds that the proposed facility of 240,000 GLA on 18.4 acres or of up to 299,000 GLA on the totality of the 28.4 acres is within the mid range of the ULI data having the characteristics of a community center.

Opponents state ULI data shows that community shopping centers can serve a range of people – from about 40,000 to 150,000 (Hoyt 6/8/2007 page 8). From this they argue that if there is a vacant Commercially designated site in the entire City, it is a suitable alternative site in the vicinity.

Council has three responses to this position. First, the term “vicinity” cannot be viewed in isolation, but rather must be applied with reference to the rest of the standard in which the term is found and which makes the “vicinity” relevant. The area the proposed use is to serve is a three-neighborhood area in southeast Salem and its significant emerging residential growth as well as the traffic flowing through this area on Kuebler Blvd. which abuts the subject property.



There has been no challenge to Mr. Tross' evidence (Tross letter December 5, 2006) in the record that the three neighborhoods served at least in part by the proposal are expected to have a population of 37,416 when the projects the Applicant was required to anticipate in its TIA -- Falcon Ridge and Fairview -- come on line. Moreover, there is no dispute that Kuebler traffic fronting the Subject Property is estimated to reach 50,000 vehicles per day in the mid to long term.<sup>4</sup> All of which populations are in the "vicinity" and all of which the Applicant was required to, and did account for, in its TIA. In other words, the applicant was required to assume all of these new developments occurred and that Kuebler traffic grew as background traffic as stated above. There has been no dispute about any of these projections or regarding the applicability of these projections. Council finds persuasive the evidence in the record that the proposal serves the three neighborhoods in the "vicinity" that the Applicant and City Staff have identified, and the Kuebler Boulevard pass-by traffic, all of which are proximate to the subject property and as noted, within the "vicinity" the Applicant has selected. Accordingly Council finds it is likely that people who pass by will stop to enjoy the commercial amenities for the property. Council finds that the evidence in the record supports that there is easily a population of 40,000 if not more that will be served by the proposal in the vicinity.

Opponent claims that Kuebler Blvd. traffic counts should be used to determine whether the project is for a Community facility. They argued that using their counts, they estimated that the proposed use will exceed 300,000 square feet. Council rejects this contention and finds that the size of the project is limited by that which is proposed by the applicant and is as stated by the applicant. Moreover, Council finds that the size of the project has been expressly limited by a condition of approval in this decision. In any event, Council finds that traffic counts do not determine the size of a project. The traffic impact analysis supporting the proposal was developed based on a likely "reasonable worst case" scenario of a theoretical mixture of possible uses based on site conditions and the *Institute of Transportation Engineers (ITE) Trip Generation Manual*. The evidence establishes that a project can be a low-traffic generator even though there is more square footage, or a project with less square footage can produce greater trips. Accordingly, while the total traffic volume predicted determines likely impacts and mitigations, the square footage that produces traffic volume is variable depending on the particular nature of uses. Council also notes that under the City's "vicinity" standard, the suitability factors look to the size of a site to accommodate the proposed use as the relevant consideration. SRC 64.090.

Opponents claimed that the term vicinity includes not only land within the City limits, but also land that is outside the City in the County UGB east of the property. Council rejects this interpretation as unreasonable. Opponents' interpretation would set a precedent that eviscerates the term "vicinity" of a proposed use, and replaces it with the term "in the City or the City's UGB." This is an unreasonable and incorrect interpretation of the term.<sup>5</sup> It is also relevant that the description of "vicinity" used in the analysis in this case is consistent with the description of

<sup>4</sup> Kuebler Blvd. currently carries more than 27,000 trips per day and is projected to carry 50,000 trips.

<sup>5</sup> Council notes that this issue is largely irrelevant as the record establishes that there is no commercially designated land in the UGB around south eastern I-5 -- that is designated "Industrial." Accordingly, regardless of whether land in the UGB near south east I-5 is relevant, there is no suitable appropriately designated alternative sites for the proposed use in any case.

vicinity the City has affirmed in other cases. Including land within the UGB in the “vicinity” of a proposal is not consistent with previous City interpretations. For example, in the recently approved “Kale Road” decision (CPC/ZC 05-12), cited by opponents,, the “vicinity” was simply described as: “For purposes of this application, the vicinity was defined as the area extended to the UGB on the east and north, Silverton Road on the south and Interstate-5 on the west.” (Kale Road staff report, page 9).

Opponents identified two parcels that they claimed were suitable alternative sites for the proposed use. One property is located at State Street and Cordon Road, in the northeast part of the Salem urban area (the “Picsweet Property”). The Picsweet Property and Chemawa Property are not in the “vicinity” of, but rather are distant from, the Subject Property. These two properties would not be located close enough to serve the three neighborhoods north and south of Kuebler Boulevard, and east and west of Battle Creek Road or the SE Salem Kuebler Blvd. traffic. The Picsweet Property is approximately five miles northeast of the Subject Property. The Chemawa Property is approximately eight miles from the Subject Property in North Salem. These sites are not within the scope of the term “vicinity” based on the dictionary definition of the term or any other reasonable definition of the term “vicinity.”

The selected vicinity represents a logical geographical area for the proposed community commercial facility based on the existing and emerging residential growth in the area and key adjoining transportation corridors.<sup>6</sup>

#### **Lack of Suitable Alternative Sites**

The standard requires that there be a lack of Commercially designated, suitable alternative sites for the proposed use within the “vicinity” of the proposed use. In this standard, there are two alternative evaluation “factors” for making this suitability determination. Neither of the factors is stated as an approval standard, and both factors need not be evaluated. Rather one or both of the factors may be considered in determining whether an alternate site is “suitable” for the proposed use. They are alternative factors to consider in determining suitability. Those two alternative evaluation factors are SRC 64.090(1)(A) “Suitability of the size of the alternative sites to accommodate the proposed use;” or SRC 64.090(1)(B) “Location: Suitability of the location of the alternative sites to permit the proposed use.” Both factors are relevant to this case. The record shows that in the selected vicinity there are no parcels of sufficient size (between 18 and 30 acres in size<sup>7</sup>) designated “Commercial” in the City plan, for the proposed use. Therefore, the record shows that in the selected vicinity considering the size of alternate sites, there is a lack of suitable alternative sites for the proposed use. Similarly, there are no suitably designed alternative sites in the vicinity for the proposed use that have the locational characteristic of being situated along Kuebler Blvd., with its high traffic counts.

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<sup>6</sup> Council notes in the alternative only that the dispute about the “vicinity” does not change the result in this case regardless of the interpretation of that term, because no matter how big or small the “vicinity” is determined to be, there is no alternate, appropriately designated site for the proposed use, either in the City or the southeastern UGB.

<sup>7</sup> There are also no parcels between 15-30 acres in size designated Commercial in the vicinity.

As explained above, the Picsweet and Chemawa sites selected by the opponents are not appropriately designated for the proposed use.

A suitable alternative site must be able to accommodate the proposed use of up to 299,000 square feet of community commercial shopping and services. This means considering the “size” factor for suitability, a suitable alternative site must be composed of about 28 acres of land. However, if there were potential alternative sites between 15-30 acres those would have been reviewed, but there were no such sites in South Salem.

Opponents contend that the 10.0 acre abutting property which is a part of the site for the “proposed use” is by itself suitable and “appropriately designated” as an alternative site for the proposed use, if the proposed use is changed. Opponents do not dispute that the adjoining 10.0 acre site is too small for the proposed use sought by the Applicant – even if only 240,000 square feet is sought. In this regard, Council agrees that the 10.0 acre abutting property while Commercially designated is too small for the proposed use of a commercial facility of up to 299,000 square feet. Council interprets the term “proposed use” to be the use as proposed by the Applicant, not a use as suggested by others. Accordingly, Council determines the opponents’ interpretation and desired application of this standard to include sites not suitable for the proposed use is incorrect. Moreover, this abutting 10.0 acre property is already included as a part of the site for the proposed use. It cannot accommodate the proposed use alone. Therefore, the abutting 10.0 acre site is not a suitable alternative because of its size.

Further, Council declines to set a precedent that any vacant site in the City is “suitable” for a “proposed use” by simply changing the proposed use to something other than that which is proposed. This is not what the standard says and is inconsistent with the text, context and policy of the Salem Revised Code. The opponents’ interpretation would make the standard meaningless. Moreover, Council finds that to adopt such an interpretation of the City standard which focuses on the suitability for the proposed use, is an improper amendment by interpretation. *Goose Hollow Foothills League v. City of Portland*, 117 Or App 211, 218, 843 P2d 992 (1992) (to amend legislation de facto or to subvert its meaning in the guise of interpretation is not a permissible exercise); *Stahl v. Tillamook County*, 43 Or LUBA 518 (2003); *Loud v. City of Cottage Grove*, 26 Or LUBA 152 (1993). Consequently, Council finds that the City standard requires identification of alternative sites for the proposed use up to 299,000 GLA.

### Summary

Based on the data and an examination of land currently designated “Commercial” on the SACP Plan map, Council finds that there is a lack of appropriately designated, suitable alternative sites within the vicinity for the Subject Property, based on size or location. This criterion is satisfied.

**Criterion 3: The proposed plan change considers and accommodates as much as possible all applicable statewide planning goals; and**

The following Statewide Planning Goals apply to the Applicant’s proposal. The City finds that the proposed SACP minor plan change complies with all applicable statewide planning goals.

### *GOAL 1 – CITIZEN INVOLVEMENT*

This application was reviewed according to the public review process established by the City. Notice of the proposal was provided to property owners and public agencies, published in the Statesman Journal, a newspaper of general circulation in the City, and posted on the Subject Property. The notice described the nature of the request and the applicable criteria. The Neighborhood Association in which the property is located (South Gateway) conducted seven meetings and as a result the Board provided comments to the City recommending approval of the Applicant's proposal. The Applicant conducted one meeting with the Morningside Neighborhood Association which neighborhood voted to recommend the proposal be denied. A public hearing to consider the request was held by the Planning Commission and three public hearings were conducted by Council.

Through the City notice and public hearing process all interested persons were afforded the opportunity to review the application, comment on the proposal, and participate in the public hearings. These procedures meet the requirements of this Goal for citizen involvement in the land use planning process.

Goal One alleges that the South Gateway Neighborhood Association meetings and resulting Board recommendations prejudiced their substantial rights because there is no neighborhood plan. There is nothing in the City's land use regulations that requires that a neighborhood plan be adopted. The process to adopt a neighborhood plans must be initiated by neighborhood organization. A neighborhood plan, if adopted, is merely a refinement of the SACP, and must be consistent with the SACP. Because neighborhood plans are not required under Salem's land use regulations, Goal One's "substantial rights" could not be prejudiced.

A neighborhood association provides valuable information to Council regardless of whether there is an adopted neighborhood plan. In making a decision on a quasi-judicial land use proceeding, the Council considers the recommendation of neighborhood boards; however, these recommendations must be considered along with any and all other evidence in the proceeding.

The Goal One Coalition also claims that the City has relied on "unacknowledged city reports and documents" and this causes a Statewide Planning Goal One problem. First, the allegation is mistaken to the extent it asserts that required adopted plans or inventories are ignored. All relevant adopted plans and inventories have been applied in determining compliance with relevant standards. Second, all parties had an opportunity to submit and respond to evidence submitted into the record. To the extent that some of that evidence includes evidence submitted by parties to the case that was submitted in another proceeding, all parties had an opportunity to review and respond to all such evidence. Council notes that no document considered as evidence in the record has been transmogrified as a mandatory standard or to supply a mandatory policy or mandatory guidance. All submitted evidence has an equal footing as evidence submitted into the record. Third, Council is uncertain how this issue applies to Goal 1 compliance. The City has provided numerous opportunities for all interested persons to participate in the public processes including complying with the City's acknowledged ordinances governing public participation. Council finds that this decision complies with Goal 1.

## *GOAL 2 – LAND USE PLANNING*

The SACP is acknowledged to be in compliance with the Statewide Planning Goals. This proposal is made under the goals, policies and procedures of the SACP and its implementing ordinances, as well as the Statewide Planning Goals. A description of the proposal in relation to the methodology and intent of the SACP, its applicable goals and policies, the comprehensive plan change criteria, the zone change criteria, and the Statewide Planning Goals, is addressed by the applicant's submittals and the City's corresponding staff report. Facts and evidence have been provided to support and justify the proposed Comprehensive Plan Change. For these reasons, the proposal conforms to the land use planning process established by this Goal.

The Goal One Coalition argues the determination that the proposed use is a community shopping facility is not consistent with "information or policies in the SACP" and is a violation of Goal 2. Council is not clear on what basis the Goal One Coalition claims a violation. If they are arguing the proposal for a 240,000 square foot of gross leasable area of shopping center on the subject 18.4 acres or up to 299,000 square feet of GLA on the totality of the combined Subject Property and Abutting Property can never be a community level center, they are mistaken. City Council Resolution 87-136 adopted November 9, 1987, defines the terms "regional retail and employment center" and "regional commercial or retail center" to include among other things a development including "300,000 square feet, or more, of gross leasable space." Because the proposal is for less than 300,000 square feet of gross leasable space and a specific condition of approval is included in this decision to assure that this limitation is observed. This is support for and evidence that the proposal is for a community, not "regional" center. The analysis under SRC 64.090(1) that the proposal is for a "Community" facility is incorporated herein. Moreover, to the extent the issue has to do with the opponents' speculation about an "outlet" mall, the applicant specifically represented and Council specifically relies on the Applicant's representation, that the property will not be developed with a "Factory Outlet" mall. The evidence in the record supports Council's determination that the proposal is for a community level shopping and service facility.

The Goal One Coalition also argues that the staff reports relied on unadopted plans for compliance with applicable standards. Council does not rely on unadopted plans as approval standards or as mandatory policy or other statements. The City's EOA was supplied as evidence in the record as factual evidence on a relevant point about commercial sites in the city. This document was not relied on as an approval standard or as supplying mandatory standards or benchmarks which must be applied. It was submitted and considered as evidence in the record on a particular point. It was not the only evidence on the point and the decision herein could stand without it. Council relies on adopted plans as the approval standards guiding this decision and that this decision is based on an application of adopted plans. All required determinations of compliance with relevant standards are supported by substantial evidence in the record.

## *GOAL 6 – AIR, WATER AND LAND RESOURCES QUALITY*

The Subject Property is within the City, where development at an urban scale and density is intended. The effects of using the Subject Property for commercial retail, service/ office activity

on air, water and land resources will be similar to those of other similar commercial activities in the City. The effects of urban development are anticipated on lands that are within the city.

The major impact to air quality in the vicinity is vehicle traffic along Kuebler Boulevard and I-5, which are the major traffic routes in the area. Kuebler Boulevard is designated as a Parkway in the Salem Transportation System Plan (STSP), which is defined as an arterial designed to carry 30,000 to 60,000 vehicles per day. I-5 is a Freeway, with a design capacity of 50,000+ vehicles per day. Under the “worst case” traffic impact scenario for development of the Subject Property, as described in the Applicant’s TIA, the Subject Property could generate 10,820 net new trips per day. Under its current zoning, the Subject Property could generate an estimated 4,575 net new trips per day. The net increase over these two development scenarios is 6,245 vehicles per day. (“Pass-by” traffic, which is those vehicles that are already on the street, is expected to make up about a third of the estimated total traffic volume.) New traffic generated by the Applicant’s proposed use will be a part of the exceptionally high volume traffic that is already in this area.

The proposed use itself will not create a significant air quality impact. Also, part of the traffic generated by commercial uses on the site will be in place of traffic that would otherwise have to travel to similar services located elsewhere, and at greater distance; therefore any impact to air quality will simply be relocated and will not compound air quality problems, at the worst. There is a reasonable expectation that the proposed use will comply with state and federal environmental standards that it must satisfy in order to be built. However, there are no state or federal air quality standards that will be required to be satisfied in order for the proposed use to be built. Nevertheless, Council finds that there are no additional impacts to air quality from the proposed use. *See Friends of the Applegate v. Josephine County*, 44 Or LUBA 786 (2003).

Further, Council finds that the proposal supplies a walkable or bikeable destination for a significant number of occupants of the residential developments in the vicinity served as well as significant pass-by trips from vehicles on Kuebler Blvd. stopping as a part of a trip they otherwise have to make. Council finds that this opportunity for people residing in the vicinity to have a nearby community facility as proposed supplies a significant incentive to use alternate modes of transportation for medical services, shopping, restaurants and services than otherwise exists in the vicinity. To the extent that even a few people would walk or bike instead of drive for a cup of coffee with friends or for a doctor appointment, the proposal has a reasonable chance to reduce impacts to air quality from what otherwise would be a car trip.

The Subject Property will be provided with City sewer and water services. The City maintains a sewage treatment system and is responsible for assuring that wastewater discharges are processed to meet the applicable standards for environmental quality. Through the use of these facilities there will be no withdrawals of groundwater, or discharges of waste water directly to a water body. The site will be provided with a storm water detention and drainage system as specified by the City’s adopted design and engineering standards.

The Subject Property is primarily a vacant field. There are no identified significant natural resources on the Subject Property. Development of vacant urban land is expected. The proposed change will have no significant negative impact on the quality of the land.

Considering the location of the Subject Property within the City, the availability of public facilities to provide water, sewage disposal and storm drainage services, and the surrounding transportation system, the proposal will have no significant impacts to the quality of the air, water or land.

#### *GOAL 9 – ECONOMY OF THE STATE*

The proposed change to the Comprehensive Plan Map is to redesignate 18.4 acres from “Developing Residential” to “Commercial,” for the purpose of providing a site for a community level retail and service center. The proposal increases economic opportunities for Salem citizens. As such the proposal is consistent with Goal 9’s requirement to provide a variety of economic opportunities for Salem area citizens, including commercial opportunities (OAR 660-009-0000). Further, given the evidence in the record that there are no other Commercially designated properties even between the 15-30 minimally required for a community center in the selected vicinity of the Subject Property suitable for the proposed use, the proposal is consistent with Goal 9’s requirement to provide a variety of economic opportunities for Salem area citizens, including commercial opportunities (OAR 660-009-0000). Moreover, the record establishes that in the absence of the proposal or something like it, the costs of supplying infrastructure in the area are so high that a single commercial use like a medical office cannot establish a new office on the abutting 10-acre property and provide commercial medical services to Salem citizens in south and southeast Salem. This is why the Abutting Property has remained vacant since it was designated Commercial several years ago. The record establishes that south Salem lacks appropriate levels of medical services. The proposal will enable that important commercial service to be established

Goal 9 does not require an economic opportunities analysis (EOA) to support the proposed minor plan change and zone change, because the proposal changes the SACP plan map from a “Residential” to a “Commercial” designation. Rather, the requirement for an EOA *only* applies where property is proposed to be changed from a commercial or industrial designation or zone to a noncommercial or industrial designation or zone. OAR 660-009-0010(4). Neither is the case here where the proposal is to change from Developing Residential to Commercial. No EOA requirement is triggered and none is relied upon. There is an EOA from another case (CPC/ZC 05-12) that provides support for the concern that the City lacks commercial sites for the proposed use. It is probative to that extent.

Opponents of the proposal argue that there is no showing that there is a public need for the proposal and they cite this EOA from CPC/ZC 05-12. However, as explained above, there is no requirement that the applicant prove that there is a public need for the proposal. These opponents also argue that the EOA from CPC/ZC 05-12 cannot be relied on. The Council has considered it as evidence as requested by the parties, but it has not relied on the EOA as an adopted plan or mandatory guidance document. Their point concerning Goal 9 is a difficult one to discern in light of these inconsistent arguments that they make, in any case.

#### *GOAL 10 – HOUSING*

The Subject Property was annexed to the City in November 2001. It was annexed as residentially designated land and zoned RA (Residential Agriculture) which is a single family residential district. The explanatory statement in the voter pamphlet stated that “the petitioner for annexation indicates, however, that the future development of the land would be for commercial uses.”

The City has an adopted housing inventory developed as a part of periodic review. As established in the City’s periodic review submittal dated October 25, 2001 and approved by DLCD on November 23, 2001, the City’s housing inventory is composed of existing SFR residential zoned lands, and the additional lands identified in Ordinances 60-200, 16-99, 93-98, 92-98. With these documents the City’s planning actions included “sufficient land to meet twenty-year housing needs” and “are sufficient to meet the State Planning Goal 10 housing needs.”

The Periodic Review order and its attached submittals establish that there are additional housing strategies and lands that were not included in the inventory, assuring an adequate supply of housing for the city over the 20-year planning horizon. These include plan amendments and zone changes for the former Fairview Training Center which at the time was planned and zoned for institutional use, which is now planned and zoned for at least 1,000 dwelling units. Furthermore, as explained in the 1997 Residential Lands Inventory (RLS) included as a part of the findings supporting Ordinance Bill Nos. 92-98 and 93-98, the Salem Area Comprehensive Plan designates adequate land for single family residential needs for the 20-year planning horizon apart from these actions (1997 RLS p. 10).

The Subject Property is currently designated Developing Residential, which establishes future development for single-family housing. Redesignating the Subject Property as Commercial will remove the land from the single-family housing inventory. The site totals 18.4 acres, and represents just 0.17% (.0017) of the land in the single family residential land inventory.

The Subject Property is vacant land except for one single-family house, which results in a current housing density of one unit per 18.4 acres. This is far below an urban residential density, and the Subject Property is not an existing significant source of housing. The minimum lot size for single-family residential lots in the City is 4,000 square feet, which could provide for a density of 9.25 homes per net acre (43,560 s.f.-15%÷4,000 s.f.). SACP Part IV.B., General Development, Policy 7 states an average residential density goal of 6.5 units per gross acre. As currently designated, using an average density of 6.5 homes per acre, the Subject Property would provide for just under 120 single family homes.

According to the Mid-Willamette Valley Council of Governments (MVWCOG) 1994 housing forecast for the Salem/Keizer UGB, which was included as Table 5 in the 1998 City of Salem Data Report to the SACP, a total of 68,760 single-family homes would be needed in the combined Salem/Keizer UGB by the year 2015. The number of homes needed for Salem or Keizer individually was not provided. Therefore, according to these figures, the inventory of vacant land for single-family homes that existed in the Salem UGB in 1997 could provide for 3,337 more single family homes than required by the housing forecast for the entire urban area.



A reduction of 120 homes would still provide for 3,217 more homes than required by the forecast.

Other records were consulted to determine whether the proposal would have an adverse effect on the City's continued compliance with Goal 10. City and County records show the subdivisions approved from 1998 to 2006 have created 5,280 single-family lots. Using the 1994 MVWCOG forecast for 2015 housing needs (combined Salem/Keizer UGB), the remaining number of needed single-family homes is 63,489 (68,769-5,280). At a density of six units per acre, the remaining vacant acreage (10,797.5) could provide for an additional 64,785 homes, which are 1,296 more than the forecasted need. A reduction of 120 homes would still provide for 1,176 more homes than required by the forecast.

At issue in the Kale Street case (CPC/ZC 05-12) the opponents cite, is an application for "large scale mixed density residential development" (Opponents' December 5, 2006 Exhibit 6 p. 9). The plan amendment criteria for "lack of appropriately designated suitable sites within the vicinity of the subject property" required the Kale Street applicant to find land in the "vicinity" (within which the subject PacTrust property is not located) that was appropriately designated for "large scale mixed density residential" use. *Id.*

In the Kale Street project's selected vicinity, the applicant there found there was no such appropriately designated suitable land for that particular "large scale mixed density" use and the City agreed. Because "large scale mixed density residential" use is what the Kale Street application proposed and the adopted findings approved, this means the City decided that in the vicinity of that proposal, there was a lack of suitably designated lands for that use. The size of the proposed use meant that parcels of less than 20 acres were rejected as too small. *Id.*

The Subject Property is 18.4 acres, and therefore not "suitable" by size or location for the use proposed by the Kale Street application. Thus, even if the Subject Property has been in the Kale Street property's vicinity, it would have been rejected as too small "for the proposed use." Therefore, the Subject Property is not "appropriately designated suitable land" for "large scale mixed density residential development" under the applicable City standard. In other words, the Kale Street case does not stand for the idea that there is a City wide need for a certain type of land for housing. Rather, it only stands for the idea that the City lacked in the vicinity of that land suitably designated alternative sites for the use that the Kale Street developer was proposing, considering size or location.

Further, explained in other findings supporting this decision, the terms "need" and "lack of" do not express the same legal standard (*see Salem Golf Club, supra*). Second, the Subject Property is zoned for Single Family Residential use, not the mixed residential type of use that the Kale Street application sought.

There have been other recent additions to the City's housing inventory including CPC/ZC 05-4, Santiam Village, which added 9 acres of RS zoned land and 38 lots, and the Sustainable Fairview project, which is planned to add at least 1000 units and at last count in the record for this case, approximately 1,686 residential units, both of which are estimates from approved plan amendments. These recent additions to the single family residential inventory via quasi-judicial

plan amendments reinforces the information in the City's adopted inventory that the proposal does not adversely impact the City's ability to supply single family residential housing to its citizens.

Based on the available data, without the Subject Property being designated residential and zoned RA, the inventory of land for housing within the City and UGB remains adequate to meet the projected need for housing.

#### *GOAL 11 - PUBLIC FACILITIES AND SERVICES*

The City maintains an infrastructure of public facilities and services to support urban development. The existing public services and facilities in the area, and those required to serve commercial uses on the Subject Property can be made available to the Subject Property at adequate levels to provide for commercial uses. The City will determine the appropriate service levels, in keeping with adopted design standards and engineering practices, when development permits are requested as a part of the required Urban Growth Area Development Permit, pursuant to SRC Chapter 66. The facility extensions necessary to serve development on the Subject Property are required to be provided by the developer at the time of development, according to adopted City requirements and this decision. In this manner the provision of services and facilities will be timely, orderly and efficient. By providing adequate levels of public services and facilities for the proposed use, the requirements of this Goal are met.

#### *GOAL 12 – TRANSPORTATION*

The subject site is located along Kuebler Boulevard, Battle Creek Road SE, 27<sup>th</sup> Avenue SE, and Boone Road SE. Kuebler Boulevard is classified as a Parkway, Battle Creek is a Minor Arterial, 27<sup>th</sup> is a Collector, and Boone Road is a Collector, according to the Salem Transportation System Plan (TSP).

The relationship of the proposal to the transportation system and its impacts have been established in the Traffic Impact Analysis prepared by Kittelson and Associates, "PacTrust Kuebler Project," September 2006, and a supplemental traffic impact analysis entitled "November 14, 2006 Supplemental to the September 2006 PacTrust Kuebler Project TIA" (collectively "the TIA"). The TIA examines the proposal according to the requirements of the Transportation Planning Rule (TPR), OAR 660-012-0060 et seq. The TIA is consistent with the Highway Capacity Manual and City of Salem traffic operation standards from the City's TIA Guidelines. See TIA pp 14.

Traffic volumes for the TIA were collected in a manner that is consistent with ODOT and City standards. ODOT's concurrence letter states: "The TIS in its current form is acceptable as it is consistent with the requirements of the ODOT Analysis Procedures Manual (APM) dated April 2006. The APM is the ODOT 'standard' for evaluating such documents" (ODOT November 14, 2006 Letter from Daniel Fricke to Michael Cerbone). Goal 12 compliance is established through compliance with the state Transportation Planning Rule (TPR). Such compliance is explained below.

The applicant's traffic engineer further supplied the following additional reports: December 4, 2006 memo - Response to Public Comments from the November 21 Public Hearing; December 19, 2006 memo - Supplemental to the September 2006 PacTrust Kuebler Project TIA; June 1, 2007, Response to City Council Traffic Related Questions; June 6, 2007 Response to Mr. John Miller Traffic Related Questions; June 25, 2007 Response to Public Comments from the June 11 Public Hearing; June 25, 2007 Response to DKS Associates Traffic Count Updates.

The proposed minor plan change satisfies the requirements of Goal 12 and its implementing requirements in the TPR. Both ODOT and City transportation staff have established their concurrence in this regard. The TIA is complete, accurate and transparent. ODOT's concurrence is established in the agency's November 14, 2006 letter from Daniel Fricke (ODOT) to Mike Cerbone (City of Salem). The City of Salem's concurrence is established in the November 13, 2006 report from Eric Destival, Assistant City Traffic Engineer.

At build out estimated to be in 2009, the transportation system will function consistently with all performance level of service standards, and none of the adverse consequences listed in OAR 660-0012-0060(1)(a-c) will occur (*see* Kittelson May 7, 2007 Memorandum). At present, the system currently fails. Therefore, the proposal and its required mitigation efforts will improve the transportation system adequately mitigating its own impacts to enable and establish Goal 12 and TPR compliance. Also, Council finds that the evidence in the record establishes that in the long term (20 year) scenario, the transportation system will not be further degraded by the proposal (*see* September 2006 PacTrust Kuebler Project TIA pp. 42-45). These two elements are the TPR requisites and both are met here.

#### **The TPR**

OAR 660-012-0060(1) states:

Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g., level of service, volume to capacity ratio, etc.) of the facility.

"Significant affect" is defined in OAR 660-0012-0060(1)(a)-(c). 660-012-0060(1)(a)-(c) determines that a proposal has a significant affect if it will:

- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
- (b) Change standards implementing a functional classification system; or
- (c) As measured at the end of the planning period identified in the adopted transportation system plan:
  - (A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

- (B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or
- (C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

The TSP identifies the planning period as 2020. *See* TSP p 1-1. The applicant's TIA evaluates the transportation system for a planning horizon longer than the TSP. In this regard, the applicant's TIA is conservative as it analyzes impacts to the transportation system from all sources through 2025 (*see* September 2006 TIA p. 20, 38).

Moreover, the proposed minor plan change will not require or result in any changes to the functional classification of any transportation facilities in the vicinity of the site or the standards that implement the functional classification system (OAR 660-0012-0060(1(a-b) at the time of opening or planning horizon year (*see* TIA p. 44).

The proposed minor plan change ensures that at the time of opening (estimated in 2009), none of the adverse consequences listed in OAR 660-0012-0060(1)(a)-(c) will occur. The proposal also ensures that none of the adverse consequences listed in OAR 660-0012-0060(1)(a)-(c)(A) or (B) will occur in the planning horizon year under the plan amendment or existing zoning if the plan amendment did not occur. In the year 2025, the system is anticipated to fall below the performance standards of the type listed in OAR 660-0012-0060(1)(c)(C) with or without the proposed plan amendment and zone change. Here, however, Council finds that the evidence in the record establishes that the project is mitigated such that the impacts on the performance standards for the transportation system are the same in the 2025 horizon as would occur under existing zoning. In other words, the applicant as conditioned in this decision, under the TIA, will put measures in place such that at the end of the 2025 planning horizon it has mitigated all of its impacts from the proposed plan amendment in a manner that the plan amendment does not cause any of the adverse consequences to the transportation system listed in OAR 660-0012-0060(1)(a)-(c), including (c)(A)-(C).

The applicant's TIA and the required transportation improvements to mitigate the traffic impact of the proposed Comprehensive Plan designation change rely on and assume that certain City funded improvements to the north side of Kuebler Boulevard will be completed. These improvements are referred to as the "Funded Transportation Improvements" in the applicant's September 2006 TIA, page 39. It is necessary for all transportation improvements, the applicant's and the City's, to be completed prior to occupancy of the subject property to assure the proposal will not have a significant effect on the transportation system.

Accordingly, OAR 660-0012-0060(1) and (2) are met.

In the alternative only and without waiver of the above, Council further notes that the TPR at OAR 660-0012-0060(3) authorizes a determination of compliance with Goal 12/TPR OAR 660-0012-0060(1) where:

- (a) The facility is already performing below the minimum acceptable performance standard identified in the TSP or comprehensive plan on the date the amendment application is submitted.

Under existing zoning conditions, the transportation system is already failing. This is clear from the record including the TIA and supplemental traffic information from the Applicant's engineer and the City's engineer. The transportation system will fall below applicable performance standards in 2025 regardless of the proposal and regardless of planned infrastructure improvements. Under the proposal, however, the Applicant will as conditioned ensure that the system functions the same as it would under existing zoning. In these circumstances the plan amendment meets TPR requirements if it is established that:

Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures.

Council determines that the City and Applicant's traffic engineer have established that at the date of opening – estimated in 2009 (*see* Kittelson Supplemental Memoranda dated May 7 and June 6, 2007) the proposal will not have a significant effect on area transportation systems so long as the applicant adheres to mitigation strategies outlined in the TIA and in the conditions of approval to this decision. Moreover, the proposal does not further degrade the performance of the transportation system in the year 2025.

In this regard, the proposal meets the terms of OAR 660-012-060(3)(e). Therefore, OAR 660-0012-0060(3)(a)-(d) need not be applied.

ODOT responded to the TIA explaining it was adequate and correctly prepared, but chose to supply no comment on the elements contained in OAR 660-0012-0060 (3)(e).

Under these circumstances as the rule states:

If a local government provides the appropriate ODOT regional office with written notice of a proposed amendment in a manner that provides ODOT reasonable opportunity to submit a written statement into the record of the local government proceeding, and ODOT does not provide a written statement, *then the local government may proceed with applying subsections (a) through (d) of this section.* (Emphasis supplied.)

Accordingly under OAR 660-0012-0060(3):

[The City] may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility.

Thus, under either OAR 660-0012-0060 (3) or (3)(a)-(e), the proposed use complies with Goal 12 and the TPR. Council finds that the most credible evidence in the record is that while the proposal if unmitigated has a significant affect as defined, that with the improvements in place as set forth in the applicant's TIA and the conditions appended to this decision, at the time of the likely opening of the proposed shopping center and medical offices, the proposal will be adequately mitigated to avoid having a "significant affect" on the area transportation facilities as required in OAR 660-0012-0060(1).

Council further finds the proposal complies with Goal 12 and the TPR in the 2025 horizon because the transportation system has been established to be mitigated, based on the improvements required by this decision as conditions of approval and the City funded improvements, such that it will not fail any worse than it would if the property were developed as Residential land rather than as Commercial land. Council also finds that ODOT was given the appropriate notice as required by OAR 660-0012-0060(3)(e) and did not supply the comment specified in OAR 660-0012-0060(3)(e). ODOT stated its concurrence in the applicant's TIA including the methods it used. Under these circumstances, Council is free to approve the proposal as provided in OAR 660-0012-0060(3) and (3)(e).

The opponents raised an objection to the age of applicant's traffic counts. The applicant's traffic counts were collected in July 2005 and the final TIA was prepared in September 2006. As such, the applicant's traffic counts are not stale and are well within the City's guideline that counts used in a TIA should not be more than two (2) years old (Kittelsohn December 19, 2006 letter Attachment D). This reference in the City guideline regarding the age of counts refers to the age of traffic counts taken in relation to the date of the TIA, not in relation to the date of Council's decision. Accordingly, Council finds the Applicant's traffic counts are not stale and are appropriate to use as a foundation for analysis. Moreover, the Applicant did a "sensitivity check" as explained in its June 6, 2007 analysis regarding its counts and explained:

As a supplemental sensitivity check, additional traffic volumes at each study intersection were collected in March 2007. These base volumes were compared to the 2005 base volumes, and found to have an overall increase in traffic volume that is slightly lower than the 2007 background volumes from the September 2006 TIA. This comparison suggests that the methodology and assumptions used to determine background traffic in the TIA are valid and conservative.

Council finds the Applicant's traffic counts to be the more credible and persuasive evidence in the record. This is supported by the City's professional engineering staff. *See* City Staff June 18, 2007 analysis.

Council finds that traffic counts are designed to determine the peak hour, typically the p.m. peak hour. Accordingly, whether school is in session is irrelevant as the weekday p.m. peak hours (5:00 -6:30 p.m.) is a time when school is not in session (Kittelsohn December 4, 2006 p. 2). "[A]lthough many schools are not in session during the summer months, the traffic analysis analyzed peak time periods when schools are not typically in operation or their traffic flows are not at their peaks (weekday p.m. peak hours and Saturday midday peak hours)" (Kittelsohn, December 4, 2006 letter).

The Applicant's traffic counts were not taken at an unrepresentative time of year. Rather, Council finds that the Applicant's July 14, 2005 Thursday traffic count was taken on a day that was higher than average traffic days as confirmed by ODOT traffic counters in the area (*see* Kittelson December 19, 2006 analysis, page 2 and Appendix E; Kittelson November 14, 2005 letter p. 10). Thus, the Applicant's counts have the benefit of corroborating ODOT traffic counter information establishing they are actually high, if anything, and not low.

Further, Council finds more credible the evidence in the record that traffic counts should be taken at representative days of the week and not on Mondays or Fridays (*see* ODOT APM Manual; Kittelson Letter December 19, 2006 page 2). In this regard, ODOT's APM manual states: "It is common to avoid Monday and Friday counts when weekday data is desired, as the trip characteristics on these days generally differ from the remainder of the week" (*see* Kittelson December 19, 2006 Letter p. 2; City Staff memorandum June 18, 2007).

Council finds that the traffic counts for the proposal were taken by a respected firm on a Thursday in July 2005 consistent with sound engineering practice (Kittelson December 19, 2006 page 2; September 2006 TIA page 14, Appendix B). ODOT, the City and opponents' traffic engineer were all given the courtesy of an opportunity to review the traffic volumes and supply comment and objection in advance of the final TIA. All of the above indicated their agreement that the traffic volumes were appropriate and the City confirmed that agreement with others in an e-mail dated August 9, 2006 from Eric Destival to DKS (the opponents' engineer) among others.

Further, the opponent's traffic counts were taken on a Friday, the week after Thanksgiving. Council finds those counts to be less reliable than the Applicant's counts which Applicant counts were taken at times and in a manner consistent with sound engineering practice. The weekend of the opponent's counts is known by Council to be one of the busiest traffic days of the year and this is supported by evidence in the record (*see* Kittelson December 19, 2006 letter page 2, *and also* City Staff Memorandum dated June 18, 2007). The ODOT APM manual states: "In general, days potentially influenced by state or federal holidays or other significant events that may alter normal traffic patterns should be avoided." The opponents' engineer applied no seasonal adjustment for his counts at a seasonably busy time of year as would be consistent with sound engineering practice (Kittelson December 4, 2006 letter page 2 and *also* Kittelson December 19, 2006 page 2). Council finds these opposing counts to be less persuasive and rejects them.

Further, opponents' counts that were taken in March 2007 do not undermine the counts underlying the applicant's TIA. As explained in the Applicant's July 25, 2007 Kittelson submittal, the opponents' March 2007 counts' base volumes were compared to the Applicant's 2005 base volumes and found to have an overall increase in traffic volume that is consistent with the Applicant's forecast 2007 background volumes from the September 2006 TIA. This comparison does not undermine, but rather supplies some confirmation that, the methodology and assumptions used to determine background traffic in the TIA are valid and accurate. Therefore, opponents' March 2007 counts are in conformity with the counts that were predicted by the Applicant using the Applicant's July 2005 counts that were analyzed in the September 2006 TIA.

The opponents' March 2007 counts show one deviation from the counts relied on in the applicant's TIA. This deviation is that there are more counts at the Boone Road/Battle Creek Road intersection than the two (2) percent growth rate used in the TIA would predict. Council finds persuasive, however, the applicant's explanation that this is because Kuebler Boulevard currently functions at a failing LOS and the March 2007 counts very likely represents substantial cut-through traffic currently utilizing Boone Road and 27<sup>th</sup> Avenue. Council finds that this cut-through traffic pattern is very likely to continue in the absence of the project improvements required in this decision and the transportation improvements that will be provided by the City in the area. Council finds persuasive and credible that if the transportation improvements required by this decision in concert with other improvements in the area occur, the traffic system will function appropriately and adequately as outlined in the applicant's TIA.

Council further finds that the applicant's TIA meets the TPR standard requiring that "allowable" uses be analyzed because the proposal is specifically limited by conditions of approval in this decision. In this regard, the proposal is limited to a 299,000 GLA of retail shopping center/services (medical offices) on the totality of the 28 acres or 240,000 GLA of retail shopping center space over the subject 18.4 acres. Allowable uses have been properly considered and analyzed.

In addition to the specific square footage and use condition of approval, Council also finds that the use of a "reasonable worst case" analysis for determining allowable uses in the TIA is proper. Moreover, Council finds that the "reasonable worst case" of allowable uses selected in the TIA was reasonable within the meaning of the TPR, notwithstanding that Council limited the size of the project by conditions of approval provided in this decision. The TIA for the proposed 18.4 acre plan amendment to which the TPR applies is conservative. It evaluated a shopping center and office complex proposal over a 28-acre property rather than just the Subject 18.4 acre property. This was in response to the Applicant's stated intention to develop the subject property and the Abutting Property concurrently. Further, the TIA evaluated a larger shopping facility than was ultimately proposed by the Applicant and allowed by the conditions of approval to this decision. The TIA thus likely overstates trips, rather than understates them and serves as a highly conservative analysis which is well within the meaning of the terms "reasonable worst case" analysis. Given the Applicant's clearly stated intentions in the application and hearing process, as well as the conditions imposed in this decision, it is reasonable to assume for purposes of the TIA that the proposal is for a community level retail shopping and service center as described in the Applicant's submittals and as limited in this decision. Additionally, both ODOT and the City's professional staff concurred in the scope of the TIA. Finally, the statement from the opponents that there is a report from a person posted on the "Against the Wal" website that stores having more than 200,000 square feet should show a greater traffic impact is rejected. First, it is irrelevant as the proposal is not for a Wal-Mart, as the applicant has so represented and Council has relied on that representation. Second, Council specifically finds more credible the evidence in the record from the Applicant, the City's professional staff and the final ODOT letter of approval of the TIA that the TIA's traffic estimate is appropriate for a determination of the traffic from the "allowed uses" of the property.

The scope of the TIA is adequate and complies with Goal 12.



Further, Council finds it persuasive and credible that ODOT manuals regarding TPR compliance and regarding preparing TIAs look to a “reasonable worst case” analysis for preparation of a TIA that complies with OAR 660-0012-0060, as follows:

ODOT 2005 Development Review Guidelines  
Chapter 3 – Section 3

*In the case of a local land use proposal where specific uses have not been identified, a reasonable worst-case land use should be assumed based on the uses allowed outright under the current or requested zoning.*

ODOT 2005 Development Review Guidelines  
Appendix 7 – TIS/TIA  
Appendix 7-10

4. Transportation Planning Rule OAR 660-012-0060 Compliance Analysis for Zone Changes or Comprehensive Plan Amendments must address the following:

*It is particularly important that the applicant’s transportation engineer provide ODOT the opportunity to review and concur with the mix of land uses and square footage they propose to use for the “reasonable worst case” traffic analysis for both existing and proposed zoning prior to commencing the traffic analysis.*

Therefore, the TIA assumption regarding allowed uses including square footage is appropriate; although as noted, Council has reduced the amount of allowable square footage and gross leasable area in this decision in response to comments received in the proceedings. Council further notes that the mitigation recommended in the TIA is required in its entirety with certain additions provided in this decision, notwithstanding that the total gross leasable area for the project is reduced in this decision below what the Applicant originally requested.

Based on the above, it is apparent that the TIA likely overstates rather than understates trips. This is because the TIA analyzes the same use categories under the Trip Generation manual, but for a greater square footage of gross leasable area than Council allowed in this decision. According to the TIA, the predicted traffic generated by the combined Pac Trust and Salem Clinic property under existing circumstances considering the existing RA and CO zoning is 4,575 trips. If the 18.4 acre property is designated Commercial and rezoned to CR as proposed, then the 18.4 acres, zoned CR, together with the existing Salem Clinic property assuming CO zoning for the entire 10 acres, will generate 9,660 trips. Thus, Council finds the proposal will add 5,085 net new trips over the predicted trips for the existing RA zoning. Kittelson September 2006 TIA p 24-25. The conditions of approval allow the Applicant to adequately mitigate for these 5,085 trips and for existing deficiencies so that at the time of opening the proposed shopping center, the area transportation systems function adequately.

Council also finds that the applicant’s TIA is transparent and a reviewer can easily determine the ITE land use categories relied upon by the traffic engineer to determine predicted trips associated with the particular land uses. As a result, Council finds the TIA complete, adequate and reliable.

There was testimony during the hearings that objected to a lack of long term queuing analysis in the over saturated conditions of 2025. Council finds that in 2025, area traffic conditions will be over saturated regardless of the proposal or if the existing zoning is maintained. Council finds persuasive that sound engineering practice does not attempt a queuing analysis in over saturated conditions and that it would be unhelpful to do so here. Council finds credible the applicant's engineer's expert opinion that a queuing analysis would not provide probative evidence of long term queues in the over saturated conditions of 2025. This is because queuing characteristics are sensitive to factors such as vehicle arrival patterns and detailed settings within the signal controller, neither of which can be accurately predicted 20 years hence for a series of oversaturated signalized intersections (Kittelsohn letter December 19, 2006 p. 3). Accordingly, the absence of a queuing analysis in 2025 conditions outlined in the expert reports in the record does not affect any relevant standard in this case.

There was controversy about the impact of the proposal on the Boone Road Collector Street status. Council finds that under the PacTrust proposal, the average vehicle trips per day (ADT) levels under 2007 build-out conditions (now 2009) along all segments of Boone Road and 27th Avenue are forecast below 10,000 (ADT); within the guidelines for a Collector. Council notes that it has approved the right-in from Kuebler Boulevard and that this further reduces the ADT on Boone Road.

As noted above, under the TPR OAR 660-0012-0060(3), the proposal may be approved consistent with the requirements of Goal 12 and the TPR so long as the system functions adequately at the time of opening (2009) so that at that point the "significant affect" impacts are adequately mitigated. This is the case here. Further, Council notes that under long-term 2025 conditions, the forecast ADT along Boone Road between Battle Creek Road and the proposed Boone Road site driveway (estimated 10,650 ADT) and along 27<sup>th</sup> Avenue between Kuebler Boulevard and the proposed 27th Avenue site driveway (estimated 10,800 ADT) are estimated near the design guideline of 10,000 ADT. Council finds that the design guidelines are not inflexible standards but rather guidelines which operate as rules of thumb. Being within an estimated 800 ADT of the design guideline in 2025 conditions does not change the functional classification of Boone Road: it will maintain its functional classification notwithstanding it is within its functional classification range. Council finds that the 2025 estimated ADT of 10,800 is within the allowable sphere of the Collector street guideline. There is no standard that is violated by approving access to Boone Road. Further, the proposal is to develop the Subject Property jointly with the Abutting Property. The Abutting Property already has a commercial access to Boone Road which will be shared with the shopping center proposed use.

Council also notes that even in the 2025 conditions, the forecast ADT along Boone Road and 27th Avenue between the proposed site driveways (*i.e.*, roadway segments that fronts the existing residential neighborhood) is forecast to be less than 6,000 ADT (*see* Kittelson, December 19, 2006 letter p. 2-3). This further support's Council's view that the proposal's Boone Road trips are within the ADT guideline, as applied here.

The trips along Boone Road and 27<sup>th</sup> Avenue are further minimized by the condition of approval requiring the Kuebler Boulevard right-in access. There was concern expressed in the

proceedings that the City lacked authority to authorize an access from Kuebler. Council disagrees that it lacks authority to authorize the right in access from Kuebler into the project area.

The City's guidance documents make clear that the City has the power to authorize access to Kuebler Boulevard. In this regard, the City standards provide:

## **PARKWAY**

### **Access**

Access spacing along Parkways shall be limited to one-mile intervals for Arterial or Collector Street intersections and/or major intersections. A spacing of less than one-mile will only be granted on approval of the Public Works Director.

### **Permitted Access Uses**

Uses permitted direct access are limited to major public and/or private developments generating traffic volumes of 10,000 or more vehicles per day (Public Works January 11, 2000 Development Bulletin #34 p 1, Kittelson November 14, 2006 Letter App G.) (Emphasis supplied.)

The proposal will generate a total traffic volume of 14,270 vehicles per day (although it will only add 5,085 net new trips to the system over what would be added if the property were developed as it is now planned and zoned) (*see* Kittelson November 14, 2006 letter page 12 and Appendix F, *see also* September 2006 TIA page 25). The proposal meets the test for the required limited Kuebler access. The City has the discretion to authorize right-in only access to Kuebler Boulevard as proposed and the City's Public Works Department has recommended approval of the same<sup>8</sup> (*see* City Public Works letter from Eric Destival to Anthony Yi, dated November 13, 2006). Council finds the right-in access from Kuebler Boulevard is reasonable and an appropriate requirement to minimize traffic impacts from the proposal. All necessary funding for the project is either in place or it is feasible (*see* Kittelson September 2006 Kittelson TIA p. 22). Opponents claimed that the City cannot fund the \$400,000 for its share of improvements, however, there is evidence in the record that it is feasible for the City to do so.

The City and ODOT currently have plans to complete improvement projects at the I-5/Kuebler Boulevard interchange, and along the westbound direction of Kuebler Boulevard. PacTrust will be responsible for all site frontage improvements as well as other off-site improvements to mitigate their traffic impact.

## **GOAL 13 - ENERGY CONSERVATION**

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<sup>8</sup>As is explained in the Kittelson Reports, such access onto Kuebler is not required for the project traffic to flow, but among other positive attributes, it helps the traffic situation on Boone Rd. and in this regard as a good neighbor proposal it deserves strong consideration.

The location of the property is central to the surrounding residential neighborhoods that are otherwise a block of residential uses lacking in bikeable or walkable commercial shopping and service opportunities. The proposal includes a number of bike and pedestrian improvements that will further facilitate alternative modes of transportation for a meeting with friends, eating, shopping or medical services opportunities. Making commercial and service opportunities available within large residential areas, helps to encourage either shorter trips or the use of alternative modes for making a trip. The transportation system in this area makes access to the property direct, efficient and convenient. Its proximity to several residential neighborhoods is likely to reduce the vehicle miles traveled to access commercial services. Due to its location, and proximity to the surrounding neighborhoods, the site will be accessible using alternate modes of transportation. A bus turnout is required in the Salem Clinic conditions of approval and will be established to accommodate the Battle Creek Route 22 bus patrons, something they cannot now enjoy. The bus turnout is made feasible by the fact that the proposal enables the Salem Clinic site to be developed with its medical offices. The site will provide commercial services that would otherwise require travel to more distant locations along the Commercial Street corridor. The location of the site and its use for commercial services promotes the conservation of energy needed for transportation. For these reasons the proposal will help to conserve energy and promote energy efficiency consistent with this Goal.

#### *GOAL 14 – URBANIZATION*

The subject property is inside the city. All required public facilities and services can be made available to the property. The site is currently vacant urban land. The use of the site as proposed will contribute to an efficient arrangement of land uses within the UGB, and to the efficient use of urban services, consistent with this Goal. The proposal does not affect the size or location of the Urban Growth Boundary.

For the facts and reasons presented, the proposed Comprehensive Plan Change is consistent with the applicable Statewide Planning Goals.

#### **Criterion 4: The proposed change is logical and harmonious with the land use pattern for the greater area as shown on the detailed and general plan maps.**

As shown on the Comprehensive Plan map the land use pattern for the greater area consists largely of residential land. There are two areas of commercial land, the Abiqua School and the Abutting Property (so called the “Salem Clinic” site), and an area of industrial land located east of I-5, outside the City. The residential lands include developed single-family neighborhoods, newly developing subdivisions, and tracts of vacant land. The vacant residential lands in the greater area have the potential for an estimated 3386 new single family homes. The primary street system that serves this area is also part of the land use pattern. This includes Kuebler Boulevard, Battle Creek Road, I-5, and the Kuebler/I-5 interchange.

The subject property is vacant land save one single family residential house developed on it, and it is currently designated for single-family residential use. However, it is centrally located to the surrounding residential lands, it fronts along the primary city streets that serve the area, and it is just west of the I-5 interchange. There are no retail or medical commercial services east of

Commercial Street that serve this residential area, which results in motor vehicle travel from this area to Commercial Street and beyond, which adversely impacts the Kuebler/Commercial intersection. As additional residential development occurs, this impact to Kuebler from trips for needed retail and medical services that only exist in other parts of the City, will increase.

By contrast, commercial uses on the subject property will be proximate to and accessible from the surrounding residential neighborhoods facilitating fewer or shorter trips as well as alternate modes of transportation. The proposed change to allow commercial uses on the subject property is logical with the land use pattern for the greater area because of the proximity of the site to the surrounding residential areas, its location relative to these residential lands and the transportation system, and with regards to its accessibility from the surrounding neighborhoods by use of alternate modes of transportation. All these factors weigh in favor of the logic of having nearby commercial retail and medical services to minimize the need for and length and duration of automobile trips for such services. Further, the presence of Kuebler Blvd. creates a great deal of traffic that can be served by the proposal. This is another factor making the Subject Property a logical one for the proposed use and vice versa. Kuebler Blvd. is a part of the land use pattern for the greater area and providing retail and medical services to the travelers on Kuebler Blvd. makes sense in the context of the greater area as well as the specific vicinity of the Subject Property.

Similarly, the proposed change is harmonious with the land use pattern for the greater area because of its location and proximity to the surrounding residential area, its accessibility by alternative modes of transportation, and because it is located along the major city streets that serve the area. The location of the site provides an alternative to the Commercial Street corridor. This will reduce impacts on Kuebler and at the Kuebler/Commercial intersection. Its proximity to the surrounding residential area will reduce the travel distance to reach commercial services. The accessibility of the site provides the opportunity to reduce the use of motor vehicles to reach commercial services. The site does not abut any "local" streets, and the use of local streets is not necessary in order to reach the site. The location along the major street system, the opportunity to reduce the distance to commercial services, and its accessibility by alternate modes of transportation, make the proposed change harmonious with the land use pattern of the greater area.

Further, previous land use reports concerning the area surrounding the subject property identify it as a place with potential for people to live, work and shop in close proximity (Kampe Associates, 1994); a "community service node which provides community scale office and service-oriented uses with limited I-5 services" (City of Salem Southwest Quadrant Overlay Zone (Staff Report), 1996); and as an area to provide neighborhood services to surrounding and regional residential uses (Salem Futures). Pages 11 through 13 of the applicant's narrative summarize the specific relationship of their request to the transportation system and its project impacts that is detailed in their submitted Transportation Impact Analysis (TIA).

Salem has voter approved annexation. As established in the record, when the land was annexed, the explanatory statement in the voter pamphlet explained that "the petitioner for annexation indicates, however, that the future development of the land would be for commercial uses." The annexation measure was passed by the people of Salem by a 72 percent voter approval.

Based on the factors, the proposed change is logical and harmonious with the land use pattern for the greater area, and this criterion is satisfied.

**Criterion 5: The proposed change conforms to all criteria imposed by applicable goals and policies of the comprehensive plan in light of its intent statements; and**

The proposal conforms to the applicable goals and policies of the Comprehensive Plan as follows:

Part II. Definitions and Intent Statements

A. Comprehensive Land Use Plan Map

I. Intent:

As described in Part II.A.1 of the Plan, its intent is to project the goal of the most desirable pattern of land use in the Salem area, taking into account various factors such as the transportation system, location of public facilities, and the needs of the people which are important to the creation and maintenance of a healthful and pleasing urban environment. The Plan map demonstrates a commitment that land for a wide variety of uses will be available at appropriate locations. The plan envisions meeting this commitment through the phased provision of land for various uses over time, through annexation and rezoning in response to demand for specific land uses. The Plan recognizes the need to remain responsive to changing and evolving land demands. The intent of this approach is to retain flexibility in order to remain responsive to changing conditions, and to recognize the legitimacy of existing zoning and plan implementation. The Plan recognizes that land use and zoning are expected to change as conditions change.

This proposal is made in conjunction with the evolving and emerging pattern of land use and development that is occurring in southeast Salem. It takes into account the relationship of the subject property to the existing transportation system, and to the improvements to the transportation system that are planned and that will be required to support expected development in the area. The proposal is consistent with the intent of the Plan to provide for the appropriate variety of land uses at an appropriate location, in response to changing conditions in the area. The proposal is made in the context of the plan policies and implementing measures. It is also in keeping with the stated intent of the Plan to remain flexible and responsive to changing conditions, to provide for the phased provision of land for various uses over time, and with the expectation that land use and zoning will change in response to changing conditions.

The on-going changes to the character of the area, in particular the intensification or residential development and the improvements to the transportation system, support the proposed Plan change. The change in the conditions of the area affect the appropriate use of the subject property, and support flexibility in the application of the Plan designation. The proposed Commercial designation is consistent with the Plan's intent to respond to the changes in land use that are occurring, and to provide for the phased provision of land through rezoning, over time,

as conditions change. For these reasons, the proposal is consistent with the intent and methodology of the Plan.

A.3. Plan Map Designation

b. Commercial

The site is proposed to be designated Commercial on the Plan map. As described in the Plan, the intent of the Commercial designation is to provide for the full variety of shopping and service opportunities found throughout the urban area. It includes the category "Community and Neighborhood Shopping and Service Facilities," which is defined to include convenience goods for neighborhood residents and community scale facilities for a market area of several neighborhoods. The subject site is intended to serve a market area of several neighborhoods, which includes the surrounding area to the north and south of Kuebler, including the impending Fairview project, and the residential lands located in the UGB east of I-5. The proposed use is consistent with the category of commercial activity that is provided for in the Plan. A condition of approval has been imposed to limit the scale of the proposal to a community level commercial and service facility.

SACP Residential Development Policy 1 and 2

Opponents argue these policies apply. However, the proposal is to change the designation from Developing Residential to Commercial. Policy 1 speaks to establishing residential uses and residential densities. This policy is inapplicable. Policy 2 speaks to residential facilities and services. Council finds that the proposal complies with this plan policy. By providing a community shopping and service center for the three adjacent neighborhoods to use to shop and enjoy other services together with the significant required bike, pedestrian and vehicle improvements under this decision the proposal furthers the goal of Policy 2. The current situation in the residential area affected here is that the transportation system is failing and lacks multimodal improvements. The proposal accommodates pedestrian, bicycle and vehicle access, it also accommodates population growth and avoids the hazards of a failing transportation system. As such, policy 2 is met.

Part IV. Salem Urban Area Goals and Policies

B. General Development Goal: To insure that future decisions concerning the use of land within the Salem urban area are consistent with State Land Use Goals.

The relationship of this proposal to the Statewide Planning Goals has been addressed above in these findings. The proposal has been shown to be consistent with the applicable Goals.

Policies:

3. Economic Growth: Economic growth which improves and strengthens the economic base of the Salem area should be encouraged.

The proposal is to provide a community commercial center for the residential neighborhoods in the southeast part of the city. The proposed uses include retail, service, and office activities. The project will improve and strengthen the economic base of the urban area, which is consistent with this policy.

6. Carrying Capacity: All public and private development shall meet the requirements of applicable local, state and federal standards.

Development of the site will require connections to public facilities to provide for utility services. Public facilities are available at this location at adequate levels to serve the proposed use. The City's utility services are required to meet all applicable local, state and federal standards. By utilizing public services at the levels specified by the City, the proposal will operate within the carrying capacity of the land and the available public services. Opponents argue this provision is not met because of their claims that the TPR is not met. Council disagrees that the requirements of the TPR are not satisfied or that this policy is not met. As explained in detailed findings in other parts of this decision, the proposal meets all Goal 12 and TPR standards. This plan standard is met.

7. Optimal Use of the Land: Structures and their siting in all residential, commercial, and industrial developments shall optimize the use of land . . . Development should minimize adverse alteration of the natural terrain and watercourses, the potential for erosion and adverse effects upon the existing topography and soil conditions.

Development of the site can optimize the use of the land by providing a development density so that a range of services are provided at this location. The use of the land can also be optimized through efficient on-site circulation, specified and limited points of access to the adjacent streets, by providing for access from alternate modes of non-motorized transportation, and by planning for transit access. It can also optimize the use of the land by providing setbacks and buffers from adjacent residential lands, and by maintaining appropriate setbacks from adjacent streets.

Required parking and driveway circulation, setbacks and landscaping, will be provided on the site. The site presents no special or unusual terrain features that will be adversely affected or unusual obstacles to development. There are no watercourses within the site. The development as proposed will have no unusual effects upon the existing topography or soil conditions at the site, other than grading and site preparation that is typical for building construction. Based on these factors, the proposed use will optimize the use of the land in keeping with this policy.

12. Development Compatibility: Land use regulations which govern the siting of any development shall encourage development to reduce its impact on adjacent properties by screening, landscaping, setback, height, and mass regulations.

This plan provision guides the development of implementing land use regulations. It is inapplicable here.

14. Screening of Storage: Outdoor storage areas should be screened from the public streets and from adjacent uses.



Any outdoor storage areas will be screened in accordance with City standards.

15. Lighting: Exterior lighting shall be designed to provide illumination to the site and not cause glare into the public right-of-way and adjacent properties.

Any outdoor lighting included as a part of the project will be designed to illuminate the site, to provide safety and security for the premises, and to meet the standards required by the zone code to prevent glare into the public right of way or adjacent property, consistent with this policy.

- G. Commercial Development Goal: To maintain and promote the Salem urban area as a commercial center for the Marion-Polk County metropolitan area.

Salem serves as the commercial center for the Marion-Polk metropolitan area. The downtown central business district is regarded as the regional business center. With the exception of Lancaster Mall, which is also regarded as a regional facility, commercial development in outlying parts of the urban area are “specialized” commercial areas, “community and neighborhood shopping and service facilities” that provide goods and services to local residents or an area of several neighborhoods, or “convenience” stores. Providing “community and neighborhood” level commercial facilities at various locations maintains the city as the center of commercial activity for the Marion-Polk metropolitan area. The proposal is to designate a site to provide community and neighborhood level commercial activity, in a developing area that is lacking a location for this type of activity. By providing this developing, outlying area with an appropriate level of commercial facilities, the proposal will contribute to maintaining the Salem urban area as a commercial center for the Marion-Polk metropolitan area, consistent with this goal.

#### Policies

2. Shopping and Service Facilities: Development of shopping and service facilities may be approved only after reviewing a development plan consisting of maps and written statements.

This policy applies to the development of shopping and service facilities, and is not directly applicable to this application. Information required by this policy will be provided at the time the site is proposed for development. The location of buildings, arrangement of parking and loading facilities, on-site circulation, buffer yards, setbacks, and landscaping, and other features as may be required, will be shown on the detailed building plans that will be submitted for permits. The impact of the redesignation of the site on adjacent neighborhoods is discussed in these findings, and the traffic impact of a “worst-case” commercial development on the adjacent street network has been analyzed in the TIA. The availability of transit service is a part of the pre-application comments from the Transit District. Utility and storm water plans are subject to City design standards and will be reviewed and approved prior to site development. The necessary information will be provided on the plans submitted at the time development permits are requested. The requirements of this policy are met by providing the referenced information for review and approval prior to development of the site.

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

The subject site is adjacent to the two major streets that serve this part of the urban area. Kuebler Boulevard is a Parkway and a type of “major arterial,” and Battle Creek is a Minor Arterial (TSP). Based on its location along these major streets, the subject property is appropriate for the category of use proposed. Adequate parking will be provided on the site according to zone code standards for the type of use, and will be shown on the development plans. The location along the major thoroughfares in this area provides for access that does not impact local neighborhood streets. The location along Kuebler and Battle Creek will allow traffic from outside the immediate neighborhoods to access the site without filtering through residential streets.

An objection was raised concerning whether the proposal was consistent with the SACP Policy that requires Community Shopping and Service Facilities to be located along a “major arterial.” Opponents of the proposal stated that Kuebler was not a “major arterial.” Council finds that Kuebler Boulevard is classified as a “Parkway” and a “Parkway” is a type of arterial – a major arterial. Council further finds that the point of the Policy as is clear from its words and context is to ensure that community shopping and service facilities are located on high traffic streets that are able to accommodate the traffic such facilities involve. Kuebler as a major arterial – a “Parkway”. Thus the purpose of the SACP Commercial Development Policy is to ensure that community commercial development has adequate access and that traffic coming to and going from such development does not cause significant adverse impacts on nearby residential neighborhoods. As explained in the TIA, Kuebler Blvd. is able to accommodate the traffic from the proposed use and in fact under the proposal the area transportation system including Kuebler Blvd, will function better than it currently does under the proposal.

However, the opponents’ primary premise: that Kuebler as a “Parkway” is not a “major arterial” as that term is used in the SACP is incorrect in any event. Neither the SACP nor the Salem Transportation System Plan (TSP) expressly defines a “major arterial.” However, Council finds that the most reasonable interpretation of “major arterial” includes a Parkway as a type of high-capacity, high-volume arterial. The text and context of the City’s TSP supports this interpretation. Specifically, Kuebler Boulevard is expressly defined as an “Arterial” street in the City’s TSP Street Classification Chapter;

The City’s TSP “Street System Element” Chapter at 3-59 states the following:

Arterial Street System - South Salem has few north-south arterial streets and even fewer east-west arterials. North-south arterials include: Commercial Street SE (Major Arterial), Liberty Road S (Minor Arterial), Skyline Road S (Major Arterial), River Road S (Minor Arterial), and Croisan Scenic Way S (future Minor Arterial). East-west arterials include: Madrona Avenue S (Minor Arterial),

Mission Street SE (Minor Arterial), Mildred Lane SE (Minor), and Kuebler Boulevard S (Parkway). (Emphasis supplied.) See also City TSP at 3-66:

Arterial Street System - Southeast Salem has several north-south arterials. They include Commercial Street SE (Major Arterial), 12<sup>th</sup> Street SE/13<sup>th</sup> Street SE (Major Arterials), Lancaster Drive SE (Major Arterial), 25<sup>th</sup> Street SE (Major Arterial) Pringle Road SE (Minor Arterial), Battle Creek Road SE (Minor Arterial), Sunnyside Road SE (Minor Arterial), Turner Road SE (Minor Arterial), Aumsville Highway SE (Minor Arterial), and Airport Road SE (Minor Arterial). The east-west arterials are fewer and include: Mission Street SE/Highway 22 (Parkway/Freeway), State Street (Major Arterial), Madrona Avenue SE (Minor Arterial/Major Arterial east of Fairview Industrial Drive SE), McGilchrist Street SE (Major Arterial), Kuebler Boulevard SE (Parkway), and Mildred Lane SE/Fabry Road SE (Minor Arterial). Kuebler Boulevard SE provides a major portion of the region's circumferential travel route. Mission Street SE (Highway 22) also serves as a major east-west route through Salem, connecting via Pringle Parkway SE and Front Street SE to the Willamette River bridges. (Emphases supplied.)

While for purposes of street design, "Parkways" and "Major Arterials" have different design characteristics; this does not change the fact that a Parkway is a type of major arterial that simply must be designed differently because it carries more traffic (TSP Table 11 - the city Street Classification System and Basic Design Guidelines).

The SACP never uses the term "parkway." Rather it speaks in terms of "major" arterials. This is further contextual support that the term "major arterial" used in the SACP is a generic one and includes parkways as a type of major arterial.

The Salem TSP glossary includes definitions of different classes of streets, arterials, collectors, and local streets, but does not include a separate definition of "parkway." Arterial streets are defined as "high capacity-and typically high speed-streets that serve both intra- and intercity travel needs of the community." This is a blend of the Table 11 identification of functions for Parkways and Major Arterials:

Parkway - High Capacity, high speed roadway that primarily serves regional and intracity travel.

Major Arterial - High-capacity street that primarily serves regional and intracity travel. Serves as main radial and peripheral routes through the City.

This further supports that a Parkway is a type of major arterial.

The policy of locating commercial facilities near major arterials has been in the SACP, in one form or another, since at least 1975. The 1975 SACP states: "Community shopping and service facilities shall be located *close* to major arterials and shall provide adequate parking and service

areas.” (Emphasis added). That language remained unchanged until 1992, when the policy was amended and “close to” was amended to say “adjacent to.”

In the 1980's the Salem Transportation Plan (precursor to the Salem Transportation System Plan) classified city streets in three categories: Local Streets, Collectors and Arterials. Arterials were further separated into designations based on the volume of traffic each type of arterial was meant to carry. There was no “parkway” subset at this time.

In 1982, the SACP was acknowledged by DLCD. The Salem Transportation Plan was created as a detailed plan for the SACP and was intended to “guide the actions of the City in developing the portion of the transportation system within its boundaries.” The Transportation Plan created six “Functional Classifications” for streets: Freeway, Expressway, Principal Arterial, Minor Arterial, Collector and Local. The Transportation Plan Street System Map states that the classification system:

“[Has] been officially adopted by the SATS [Salem Area Transportation Study], however, the entire system is not utilized on this map. Expressways, Major Arterials, and Minor Arterials are all grouped under the same heading - Arterials.”

Therefore, as far back as 1982, the City, through its Transportation Plan, considered Expressways (now termed “Parkways”) a type of arterial. In fact, the Plan did not even have a class of road called “Major Arterial.” The phrase “Major Arterial” as used in the quoted text is used in the generic sense to identify all “major” arterials.

In 1990 a new Salem Transportation Plan was adopted as a detailed plan for the SACP. The Transportation Plan expanded and renamed some street classifications. The 1990 Transportation Plan street classifications contained:

Freeway	A major, limited access highway or interstate freeway.
Beltline arterial	A <i>major</i> , limited access <i>arterial street</i> that forms a continuous route around the City.
Principal Arterial	An arterial anticipated to carry generally over 30,000 vehicles per day.
Major Arterial	An arterial anticipated to carry generally over 15,000 vehicles per day. This classification also includes Phased Arterials which are anticipated to only need two travel lanes until after 2005, when four lanes will be needed.
Minor Arterial	A street serving an arterial function carrying less than 15,000 vehicles per day.
Collector	A through street that carries traffic from local streets to arterials or major activity centers.

Local                      A street providing local access to adjacent land uses and carrying traffic to a collector or arterial street. (Emphasis supplied).

Salem Transportation Plan, page 108, adopted August 1990.

As set forth above, it is apparent that the City, through its planning policies, has long considered the SACP policy regarding locating "Community Shopping and Service Facilities" along major arterials as referring to arterials that carry major amounts of traffic, not "Major Arterials" referring to a design classification. For example, when the 1990 Transportation Plan was drafted and adopted by the City as part of the Comprehensive Plan, Lancaster Drive was classified as a "Principal Arterial." 1990 Salem Transportation Plan. Therefore, narrowly interpreting the phrase "major arterial" would mean that the various community level commercial developments on Lancaster Drive would not be permitted there after all, because it was classified as a "Principal Arterial" and not a "Major Arterial."

Further evidence that a Parkway is a type of "major arterial" is found in the TSP which states:

The Street Classification System determines the function or "mission" of each street in the City's street system. A street's functional classification determines what type of traffic should use the street - regional, intra-city, or neighborhood. The type of traffic combined with expected traffic volumes, determines whether a street is an *arterial, collector, or local street*. (Emphasis supplied.)

The TSP uses these classifications when it identifies "Arterials" and "Collector Streets" for South Salem. The TSP expressly classifies Kuebler Boulevard as a type of "Arterial" (see the list of South Salem Arterial Streets in the TSP at 3-59).

Arterial Street System - South Salem has few north-south arterial streets and even fewer east-west arterials. North-south arterials include: Commercial Street SE (Major Arterial), Liberty Road S (Minor Arterial), Skyline Road S (Major Arterial), River Road S (Minor Arterial), and Croisan Scenic Way S (future Minor Arterial). East-west arterials include: Madrona Avenue S (Minor Arterial), Mission Street SE (Minor Arterial), Mildred Lane SE (Minor), and **Kuebler Boulevard S (Parkway)**. (Emphasis supplied.). (TSP 3-43-44, 3-49)

See also TSP at 3-66:

Arterial Street System - Southeast Salem has several north-south arterials. They include Commercial Street SE (Major Arterial), 12<sup>th</sup> Street SE/13<sup>th</sup> Street SE (Major Arterials), Lancaster Drive SE (Major Arterial), 25<sup>th</sup> Street SE (Major Arterial) Pringle Road SE (Minor Arterial), Battle Creek Road SE (Minor Arterial), Sunnyside Road SE (Minor Arterial), Turner Road SE (Minor Arterial), Aumsville Highway SE (Minor Arterial), and Airport Road SE (Minor Arterial). The east-west arterials are fewer and include: Mission Street SE/Highway 22 (Parkway/Freeway), State Street (Major Arterial), Madrona Avenue SE (Minor Arterial/Major Arterial east of Fairview Industrial Drive SE),

McGilchrist Street SE (Major Arterial), **Kuebler Boulevard SE (Parkway)**, and Mildred Lane SE/Fabry Road SE (Minor Arterial). Kuebler Boulevard SE provides a major portion of the region's circumferential travel route. Mission Street SE (Highway 22) also serves as a major east-west route through Salem, connecting via Pringle Parkway SE and Front Street SE to the Willamette River bridges. (Emphases supplied.)

Moreover, throughout the TSP, there are references to arterials, collectors and local streets, as the three basic street types in the City. (Council finds that this classification is consistent with the SACP, and the generally accepted classifications used by other municipalities and the Federal Highway Administration (*see Just v. City of Lebanon*, 49 Or LUBA 180, 198 n 11 (2005, explaining a parkway in that city is a type of arterial). Based on these references and the specific identification of Kuebler Boulevard at 3-59 of the TSP, Parkways are considered part of the arterial street system that carry a high volume of traffic – they are “major arterials” in this sense, and as that phrase is used by the SACP. They have a different functional classification within the street system to reflect this high level of travel.

SACP Policy IV (G)(4) for Commercial Development requires that community shopping and service facilities shall be located adjacent to major arterials. In the context in which this standard exists and has been used by the City over time, this refers to high travel streets in the city – major arterials including Parkways, as opposed to only those arterials that carry the design classification of “Major Arterial.” Consistent throughout the TSP, the Salem street system is described as being composed of arterials, collectors and local streets, and that parkways are part of the system of arterials.

Council finds that based on the text and context of the SACP use of the term “major arterial”, the phrase “major arterial” is used in SACP Policy IV (G)(4) in a generic sense to indicate a high capacity, high volume arterial street, and that Kuebler Boulevard is such a street. Accordingly, the proposal is consistent with this plan policy.

5. Commercial Development – Neighborhood and Community Shopping and Service Facilities: Unless the existing development pattern along arterials and collectors commits an area to strip development, new commercial development shall be clustered and located to provide convenience goods and services for neighborhood residents or a wide variety of goods and services for a market area of several neighborhoods.

There is no other commercial development similar to the proposed community level retail shopping and medical facility in the vicinity. The area is not committed to strip development. Commercial Street SE generally provides “strip development” in contrast to the subject property and proposed project area that is rectangular in shape and facilitates clustered commercial development. Council interprets the term “clustered” to mean that the development of the subject site form a single commercial service cluster or group. The proposal is for such a cluster that is located to serve a market area of the surrounding neighborhoods in the sense that people in the surrounding neighborhoods are likely to shop for retail goods and services there. The site is bordered by four streets, which are Kuebler Boulevard, Battle Creek Road, Boone Road, and 27<sup>th</sup> Avenue. Development will be confined within these boundaries. The depth of the property from the frontage along Kuebler Boulevard avoids formation of a strip development pattern

along that frontage. The CN (Commercial Neighborhood) zoning at the southwest corner of Kuebler Boulevard and Battle Creek Road is the only other commercial zoning along either major street. Due to its location adjacent to the arterial streets that serve this part of the urban area, and the nature of the transportation system that serves the location, the site is appropriately located to provide services for neighborhood residents as well as a market area of several southeast Salem neighborhoods. For these reasons the location of the site is consistent with this policy.

8. Buffer strips from residential uses shall be provided for all commercial development.

Single-family residential neighborhoods are located to the south of the subject site, across Boone Road. The buffer yard setback, screening and landscaping requirements of SRC Chapter 132 will apply to the site to provide the required buffer.

Landscaping, buffering, and screening of land, as required by SRC 132, preserve the livability of the community, aesthetically and environmentally; safeguard and enhance property values; and protect public and private investments. The intent of Chapter 132 is provided by the use of plant materials to provide buffering and screening to mitigate harmful effects of the sun, wind, rain, noise, lack of privacy, and differing adjacent uses. The use of plant materials also defines spaces, articulates the uses of specific areas, and unifies elements of a site. Landscaped buffer strips will be provided along the boundaries of the subject property, visually separating the site from adjacent residential uses. The buffer strips policy can be met at the time of development.

A sight-obscuring fence or wall as well as landscaping can be provided along the property lines, as required. The Zoning Code requirement for buffer yards and screening as a development standard serves to address this policy.

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

The site is designated Developing Residential for future single family housing. As noted above, there will be adequate land for additional single family housing within the UGB after this 18.4 acre site is removed from the housing inventory. As explained above, the site constitutes .17% percent of the existing inventory of vacant land for single family housing, and the remaining inventory is adequate to provide for the forecasted need for single family housing.

Redesignating the subject property to Commercial will not have an adverse effect on the ability to provide a variety of single family housing opportunities in the city, within the UGB, or in this local area. For these reasons the proposal does not affect the Residential Development goal.

For the reasons, factors, and circumstances presented, the proposal conforms to the criteria imposed by the applicable goals and policies of the Comprehensive Plan in light of its intent statements, and this criterion is satisfied.

Policy 11 considers handicapped access: "Building facilities open to the public should be well designed to fulfill their specified function, taking into consideration the needs of handicapped persons." Any commercial development must take the needs of disabled ("handicapped")

persons into consideration. All parking and other access requirements must meet Americans with Disabilities Act (ADA) requirements. This Policy is not applicable to a Comprehensive Plan Change, and can be met at the time of development.

The City's goals and policies pertaining to transportation are found in the City's TSP and as relevant to the proposal are discussed below.

Council generally finds that compliance with the Statewide Planning Goal 12 and the TPR establishes compliance with City plan standards regarding transportation.

Transportation Goal: To provide a balanced, multi-modal transportation system for the Salem Urban Area that supports the safe and efficient movement of goods and people.

1. The Salem Transportation System Plan shall contain goals, objectives, policies, plan maps, and project lists that will guide the provision of transportation facilities and services for the Salem Urban Area.

This provision is not an applicable standard for the proposal. Rather, it guides how the City's TSP is developed. The TSP contains Goals, Objectives and Policies. Policy 1.1, Multi-modal capacity, a subsection of Street System Element Objective 1, Street System Element Goal 1 states "[t]he City shall fulfill its system wide travel capacity needs through the utilization of multiple travel modes within the public right-of-way."

The subject property is adjacent to a parkway (Kuebler Boulevard) which is a type of major arterial as that term is used in the SACP. It is also near a minor arterial (Battle Creek Road SE), and two collector streets (27<sup>th</sup> Avenue SE and Boone Road SE). Battle Creek Road SE is served by public transit (22 Battle Creek) and bicycle lanes that extend from north of Kuebler Boulevard to south of Boone Road SE. According to the Salem TSP, extensions of the bicycle lanes are planned south from Battle Creek Road SE to the terminus of Robins Lane at Commercial Street SE. There are bike lanes north of Kuebler Boulevard, along Battle Creek/Pringle Road.

TSP Street System Element Objective No. 2: Design City streets in a manner that maximizes the utility of public rights-of-way, is appropriate to their functional role, and provides for multiple travel modes, while minimizing their impact on the character and livability of surrounding neighborhoods and business districts.

TSP Policy 2.1 Multi-modal Street Design. The City of Salem shall design its streets to safely accommodate pedestrian, bicycle, and motor vehicle travel.

The proposed development of the subject property will provide additional right-of-way along Battle Creek Road SE and Kuebler Boulevard. This standard is met by the imposition of the conditions of approval as outlined in this decision and the applicant's TIA. The proposal is consistent with the functional role of all affected streets as explained in other parts of these findings. The design of streets under the proposal will maintain livability and the character of



the area by improving transportation circulation so that the transportation system functions. The Boone Road driveway is required in this decision to be unified on the Salem Clinic property and offset from Cultus Avenue to minimize impacts to the residential uses on Cultus. Further, while Council finds that the evidence supports a conclusion that the proposal will not create cut-through traffic problems on Cultus, this decision also imposes a condition of approval that if traffic calming devices are warranted, the applicant is required to pay \$5,000 toward their installation as required by the City Public Works Director. The area currently does not have safe and adequate pedestrian and bicycle facilities. The proposal will significantly improve the affected area streets to City standards and such facilities will be supplied under the proposal. This provision is met.

Policy 2.2 Multimodal Intersection Design. Arterial and collector street intersections shall be designed to promote safe and accessible crossings for pedestrians and bicyclists. Intersection design should incorporate measures to make pedestrian crossings convenient and less of a barrier to pedestrian mobility. Accommodations shall be made for transit stops at or near street intersections.

This standard is met as explained in the TIA and under the conditions of approval required by this decision. The proposal includes significant street improvements including sidewalks and bike facilities which do not now exist. The area is served by transit from Battle Creek Road Route 22. As a condition of the previous Salem Clinic plan amendment and zone change, the Salem Clinic site is required to establish a transit shelter and stop. The applicant is required under this decision to assure that condition is met for its development as it necessarily involves the concurrent development of the Salem Clinic property and the shared driveway from the property onto Boone Road. This standard is met.

Policy 2.3 Arterial and Collector Street Intersections. Left-turn pockets shall be incorporated into the design of all intersections of arterial streets with other arterial and collector streets, as well as collector streets with arterials and other collectors.

A left-turn pocket is provided at 27<sup>th</sup> Avenue onto Kuebler Boulevard, and at Battle Creek Road SE onto Kuebler Boulevard. Provisions for additional right-of-way along the roads that border the property will provide for an enhancement of their street intersections at a future date.

Policy 2.4 City of Salem Street Design Standards. The City of Salem Design Standards shall be the basis for all street design within the Salem Urban Area.

The TIA and conditions of approval are based on assumptions contained in the Street Design Standards.

Policy 2.8 Physical Improvements to Existing City Streets: Existing streets that are to be widened or reconstructed shall be designed to the adopted street design standards for the appropriate street classification. Whenever possible, the design of the street shall be sensitive to the livability of the surrounding neighborhood.

The proposed development of the subject property will provide additional right-of-way on adjacent streets. The additional right-of-way will accommodate pedestrians, bicycles and motor vehicles in a safe manner and provide for landscape strips adjacent to the street. A condition of approval is imposed requiring a contribution of \$5,000 for neighborhood street calming improvements to be distributed by the City as it deems appropriate. The location of the driveway to the property from Boone Road shall be shared with the Salem Clinic property to further limit traffic on Boone Road. Moreover, the location of the Boone Road entrance to the subject property is to be coordinated with the City to develop an entrance having the least possible impact on the adjacent residential area while still maintaining adequate site mobility. The decision includes a requirement that the developer offset their access driveway along Boone Road SE from Cultus Avenue at a location approved by the Salem Public Works Director. Other findings in this document explain that appropriate street classifications will be observed in the reconstruction and street widening. This standard is met.

Street System Element Objective No. 5: A street system that is improved to accommodate travel demand created by growth and development in the community.

Policy 5.1 – Traffic Impact Analysis Requirements: The City shall require Traffic Impact Analyses as a part of land use development proposals to assess the impact that a development will have on the existing and planned transportation system. Thresholds for having to fulfill this requirement and specific analysis criteria are established in the City of Salem Street Design Standards.

City staff advised the applicant to prepare a Transportation Impact Analysis (TIA) prior to submitting an application for the Comprehensive Plan Map and Zone Change. At City staff's request, the applicant submitted a TIA that addressed the proposed Plan and zone change and also the development of the entire project area composed of 28.4 acres. The applicant submitted a draft TIA to the City Traffic Engineer prior to submitting the Comprehensive Plan Map change request, in April 2006. Based on City and ODOT comments, the applicant submitted a final TIA which accommodated the requests of these agencies and is supported by both City staff and ODOT. Council finds that the final, September 2006 TIA submitted by the applicant meets all legal standards and is adequate. As Council explained above, the traffic counts used in that TIA were appropriate and are not stale. The age of traffic counts for purposes of a TIA under city guidelines is measured from the time counts are taken to the time the TIA is prepared. The TIA meets all city standards and establishes that the transportation improvements recommended in the applicant's TIA and required herein are consistent with the City of Salem Design Standards. The applicant's TIA is an adequate basis upon which the City based mitigation requirements.

Policy 5.2 – Exactions Required of Development: The City may require new development to make site-related, right-of-way dedication and transportation system improvements that are identified through the Traffic Impact Analysis process and other Code requirements.

The applicant is required to install the system improvements identified in the TIA as appropriate applicant mitigation including dedications as required in that TIA analysis and in this decision.

Bicycle System Element Goal: To provide a comprehensive system of connecting and direct on-street bicycle facilities that will encourage increased ridership and safe bicycle travel.

Bicycle System Element Objective No. 1: The City of Salem will create a comprehensive system of bicycle facilities.

Policy 1.1 – Provide Bicycle Facilities on Arterial and Collector Streets:

When improvements are made to the intersections surrounding the Subject Property, Policy 1.1 of the Bicycle System Element Objective will be met by providing bicycle lanes.

Pedestrian System Element Goal: To provide a comprehensive system of connecting sidewalks and walkways that will encourage and increase safe pedestrian travel.

Pedestrian System Element Objective No. 1: The City of Salem shall create a comprehensive system of pedestrian facilities.

Policy 1.3 – Focus Attention on Intermodal Connections.

Policy 1.4 – Ensuring Future Sidewalk Connections.

Policy 1.5 – Complete Connections with Crosswalks.

Policy 1.6 – Compliance with ADA Standards.

Pedestrian connections will be provided from the public sidewalks through the Subject Property as part of the development of the property. There are no existing sidewalks along the perimeter of the Subject Property. Improvements along Battle Creek Road SE, Boone Road SE and 27<sup>th</sup> Avenue SE include street lights and sidewalks on the development side of the Subject Property. ADA compliance will occur at the time of completion of all pedestrian-related improvements, which are required as part of and prior to the development of the property. This standard is met.

Pedestrian System Element Objective No. 2: The City of Salem shall seek to double the 1995 percentage of trips made by pedestrians by the Year 2015.

Policy 2.2 – Pedestrian Supportive Land Uses.

Policy 2.3 – Promotion of Walking for Health and Community Living.

At present there are no pedestrian connections or safe pedestrian walking opportunities to and around the Subject Property. The proposal allows for crosswalks, and sidewalks. The proposal enables people living at least within a one-quarter (0.25) mile of the Subject Property to walk to medical services as well as to shopping and related services. This is a significant improvement in the pedestrian opportunities currently provided. This standard is met.

Transportation – Neighborhood Livability Policy 19.

Transportation – Aesthetics and Landscaping Policy 20.

The Subject Property abuts the intersections of a minor arterial street with a parkway and collector street. Additional pedestrian connections to and through the Subject Property will encourage people to walk to the Subject Property and will encourage the use of public transit to the Subject Property. Salem-Keizer Transit serves the Subject Property (22 Battle Creek) and development of the Subject Property will encourage the use of the public transit system. Policy 19 can be met. The provision of additional right-of-way will provide extra areas for landscaping in addition to on-site landscaping and screening. Policy 20 is met by the proposal.

**Criterion 6: The proposed change benefits the public.**

The proposed change will benefit the public by providing a center for goods and services at a central location within a major existing and developing residential sub-area. The location of the Subject Property is consistent with the intent to establish residential neighborhoods in proximity to such services, as expressed in SACP Residential Development Policy 1.d. The Subject Property is located along the major access routes to the surrounding residential areas, and the availability of services at this location will decrease the travel distance from the neighborhoods to commercial services, which are currently located along Commercial Street. A commercial center at this location will also change the direction of travel that is currently required to obtain commercial services from this area, and as a result decrease the traffic impact at the Kuebler-Commercial intersection. In addition, as a result of its proximity to the surrounding neighborhoods, the Subject Property will be accessible by alternate means of transportation, and provide the opportunity to decrease usage of private motor vehicles.

The proposed SACP plan map amendment will benefit the public because the change will promote commercial development that can serve several neighborhoods, and will provide for the mechanism to upgrade all adjacent transportation facilities to meet current standards so that they perform at an adequate level of service which they do not now do. The proposal will provide for additional right-of-way along Kuebler Boulevard and Battle Creek Road SE for bike lanes, and provide for future up-grades to all adjacent existing intersections.

For these reasons, the Council finds that the proposed minor plan change is a benefit to the public.

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

SRC 114.160 provides the criteria for approval for Zone Map amendments. In order to approve a quasi-judicial Zone Map amendment request, the administrative body shall make findings based on evidence provided by the applicant demonstrating that all the criteria and factors are satisfied. The extent of the consideration given to the various factors set forth below will depend on the nature and circumstances of each individual case. Unless any of the factors are deemed irrelevant, something more than an unsupported conclusion will be required, but the degree of detail in the treatment of relevant factors will depend on the degree of proposed change or deviation, and the scale and intensity of the proposed use or development. The requisite degree

of consideration is directly related to the impact of the proposal – the greater the impact of a proposal in an area, the greater is the burden on the proponent.

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

**Criterion 1: The applicant for any quasi-judicial land use action under this zoning code shall have the burden of proving justification for the proposal. The greater the impact of the proposal in an area, the greater is the burden on the proponent.**

**Criterion 2: The proposal must be supported by proof that it conforms to all applicable criteria imposed in this zoning code; that it conforms to all standards imposed by applicable goals and policies of the comprehensive plan in light of its intent statements, including adopted neighborhood plans; and that it conforms with all applicable land use standards imposed by state law or administrative regulation. The burden rests ultimately on the proponent to bring forward testimony or other evidence sufficient to prove compliance with these standards. At a minimum, the proponent's case should identify and evaluate the proposal in the context of all applicable standards.**

**Criterion 2 The intent and purpose for zone changes is described in SRC 113.100(a). The zone change at issue in this case is a zone change from RA to CR for the Subject Property composed of 18.4 acres. In this section, it is recognized that due to a variety of factors including normal and anticipated growth, changing development patterns and concepts, and other factors which cannot be specifically anticipated, the zoning pattern is not anticipated to remain static. The zone change review and that it conforms with all applicable land use standards imposed by state law or administrative regulation. The burden rests ultimately on the proponent to bring forward testimony or other evidence sufficient to prove compliance with these standards. At a minimum, the proponent's case should identify and evaluate the proposal in the context of all applicable standards.**

The intent and purpose for zone changes is described in SRC 113.100(a). The zone change proposal at issue in this case is from RA to Commercial Retail (CR) for the Subject Property composed of 18.4 acres. In this section, it is recognized that due to a variety of factors including normal and anticipated growth, changing development patterns and concepts, and other factors which cannot be specifically anticipated, the zoning pattern is not anticipated to remain static. The zone change review process is established as a means of reviewing proposals and determining when they are appropriate. This proposal responds to ongoing development of the extensive areas of residential land in the southeast part of the city. The basis for the proposal is the recognition that commercial services should be located in proximity to residential neighborhoods in order to reduce travel distances, make more efficient use of the transportation system, and afford the public transportation alternatives, among others. These factors have been

recognized in various land use and transportation studies that have focused on the lands around the Kuebler interchange. There are no other vacant sites in the area that are designated for commercial use, and this zone change is the means provided for addressing the lack of commercial services for this area.

The Subject Property is proposed to be rezoned to CR to implement the requested Commercial SACP plan map designation. The proposed zone change is based on the relationship of the site to the land use and transportation patterns that are present at this location. These factors are consistent with the provision for zone changes as described in SRC 113.100(a). Council finds that the proposed zone change is “appropriate” based on the application of these factors. Moreover, the Council finds that the Applicant has met its burden of proof on all relevant criteria.

**Criterion 3: In addition to the proof under [Criteria 1 and 2] above, the following factors should be evaluated by the proponent and shall, where relevant, be addressed by the administrative body in its final decision:**

- Factor 1: The existence of a mistake in the compilation of any map, or in the application of a particular land use designation to any property in this zoning code or the comprehensive plan;**
- Factor 2: A change in the social, economic, or demographic patterns of the neighborhood or of the community;**
- Factor 3: A change of conditions in the character of the neighborhood in which the use or development is proposed;**
- Factor 4: The effect of the proposal on the neighborhood, the physical characteristics of the subject property, and public facilities and services;**
- Factor 5: All other factors relating to the public health, safety, and general welfare which the administrative body deems relevant.**

In applying this provision, Council finds that these factors are not approval standards for the proposal. Rather, they are factors to be weighed and balanced. No particular factor is weighed any heavier than any other. The absence of the applicability of a particular factor is not dispositive.

Factor 1:

The lack of a site for commercial services in this area could be regarded as a mistake in the land use plan. Originally, however, Salem’s plan was Euclidean and separated uses such as commercial and residential uses creating a driving economy. Social policy has changed and the focus now is on mixing land uses to facilitate multiple modes of travel. Accordingly, a mistake in the land use designation is not the basis for this change, rather it is a change in land use policy

in favor of mixing land uses to provide for fewer vehicle miles traveled, and greater pedestrian, bicycle and transit opportunities. Accordingly, this factor is not relevant to the proposal.

Factor 2:

As explained above, Council finds there is a social policy shift regarding land use planning, focusing on mixing uses to support multiple modes of travel. This is a social change in the community. The ongoing development of the southeast part of the community has resulted in changes in its social, economic, and demographic patterns in the sense that the area has grown without commercial service opportunities keeping pace. The construction of large numbers of new homes to the north and south of the site have increased the population in the area, and converted vacant land to developed neighborhoods. According to the "SKATS Population Growth by Subarea 1993-2015" map, included in the STSP as Map 2, the population of south Salem is projected to increase by 58 percent. According to the "SKATS Employment Growth by Subarea 1990-2015" map, included in the STSP as Map 3, employment in south Salem is projected to increase by 91 percent. Council finds that these are changes in the social, economic and demographic patterns of this part of the community. The increase in the population, employment, and the number of households in the area creates a local market for goods and services. This is a change in the economic pattern of the area. Despite the ongoing increase in the number of households and the population, no land has been designated for commercial uses to serve the population. The proposed zone change will create a commercial center to serve the population of the southeast part of the city, specifically the general three-neighborhood area identified as the "vicinity." This will provide an opportunity for neighborhoods to have shopping and other services that the area currently lacks. For these reasons, the proposed zone change is consistent with the changes in the social, demographic, and economic patterns of the neighborhood and the community.

Factor 3:

As discussed previously and as described in (2), there has been a change in the conditions in the character of the neighborhood as a result of the ongoing development of formerly vacant land. At the time the plan was developed southeast Salem was a small relatively rural area of the City with relatively few retail and service needs. Since then, housing and population density in the vicinity has increased, with resultant increases in traffic and a lack of commercial retail services has exacerbated the traffic problems in the area. Additional development is continuing this change. Currently, the traffic system in the area fails. The proposed zone change to CR will create a commercial retail and service facility to serve the surrounding community, reduce vehicle miles traveled to reach commercial services, and create adequate levels of transportation service. The proposal is consistent with a policy to respond to the changes that have occurred in this area. The proposal will provide a community center that will be appropriate for the existing and continuing changes to the conditions of the character of the neighborhood.

Factor 4:

The effect of the proposal on the neighborhood will be to provide commercial services in proximity to residential areas, rather than additional residential development. Another effect will

be that the commercial retail services established under the proposal will be accessible by alternate, non-vehicular modes of transportation.

This zone change is proposed in response to the lack of commercial services to serve the abutting neighborhoods. The overall project will increase the inventory of commercial land available to retail businesses. The zone change provides an opportunity to expand and diversify the range of commercial, retail and professional services available to the neighborhoods in the vicinity of the subject property. The change in use from residential to commercial will have a beneficial impact on the surrounding area and will improve the appearance of the area with the provision of landscaped areas, buffering and screening. The proposal will also improve the functionality of the intersections of 27<sup>th</sup> Avenue and Battle Creek Road SE with Kuebler Boulevard, where the applicant proposes pedestrian-friendly gateways to the proposed commercial development.

The effect on the property will be to develop the existing vacant land that was annexed into the City with the statement of intent that the land is contemplated for commercial uses. This annexation was approved by the people by a 72 percent popular vote.

Public services can be made available to the property at adequate levels to support the type of use proposed, and there are no unusual physical obstacles or special physical features that require consideration.

There will be no significant adverse effects on public facilities. Public facilities can be made available to the site at levels that will be adequate to serve the type of use proposed. The facility requirements of the uses will be reviewed by the City for conformance to standards prior to construction. All necessary public facilities and services will be provided at adequate levels to support the use. The actual facilities and services to be required will be specified through the building permit review process.

Factor 5:

The proposed use will benefit the public health, safety and welfare, by providing frequently used commercial services in closer proximity to the residential population than is currently available. This will result in fewer vehicle miles traveled, reduced travel times, less impact on the transportation system, and the opportunity to access those services without the use of a motor vehicle. Buffer yards and landscaping will be provided as specified by the Zoning Code for screening and separation from surrounding residential areas. All necessary public services and facilities are available to the property. The condition of the transportation system in the area will be enhanced by the improvements to the street system that serves the area, including the Battle Creek-Kuebler intersection, the Kuebler at 27<sup>th</sup> intersection, the widening of Kuebler to four lanes, and additional turn lanes at the southbound I-5 off ramp.

With the development standards for buffer yards and landscaping, specified street improvements, and appropriate connections to public facilities and services, the proposed development of the property will not create impacts that would be detrimental to the public health, safety or welfare.



Council finds that by balancing these factors, rezoning the property to CR is appropriate to supply commercial retail opportunities in an area that currently lacks such facilities as well as needed transportation and multimodal movement infrastructure.

**Criterion 4: The extent of the consideration given to the various factors set forth in [criterion 3 above] will depend on the nature and circumstances of each individual case. Unless any of the factors is deemed relevant, something more than an unsupported conclusion will be required, but the degree of detail in the treatment of relevant factors will depend on the degree of proposed change or deviation and scale and intensity of the proposed use or development. The requisite degree of consideration is directly related to the provision of [criterion 1] of this section that the greater impact of a proposal in an area, the greater is the burden on the proponent.**

The proposed use is a community level retail shopping center composed of no more than 240,000 square feet of gross leasable area on the subject property and no more than 299,000 square feet of gross leasable shopping center area and medical offices use over the 28.4 acre combined PacTrust and Salem Clinic properties, if developed together. This is the proposal and Council relies on it as such. Council has also conditioned its decision on the use ultimately being developed at these scales and no more.

The proposed change to CR has been contemplated for the area in various plans and in the annexation. Therefore, while the proposal is a change from residential to commercial, it is a logical change that supplies pedestrian destinations that are lacking in this residential area, supplies a means to bring the adjacent transportation system up to an adequate level of service, and for pedestrian and bicycle improvements. The appropriate use of the subject site is influenced by its location, by the transportation system in the vicinity, and by local travel patterns. Based on these factors, the CR (Retail Commercial) zone is appropriate for the location, and it will be consistent with the land use and development pattern in the area. The proposed Comprehensive Plan and zone change is consistent with the Plan methodology to consider changes to the use of land over time and in response to changes in conditions, and to the factors for considering a Zone Change which, as Council finds, weigh in favor of approval. Based on the changes that have occurred to the pattern, character, and conditions of the neighborhood and the community, the proposal satisfies the relevant zone change considerations.

#### SUMMARY

Council finds the evidence in the record supports approval of the proposal. As such, Council approves the proposal subject to the conditions of approval outlined in this decision.

#### EXHIBITS

- Exhibit 1: Vicinity Map
- Exhibit 2: Materials Submitted by Applicant
- Exhibit 3: Salem Public Works comments concerning applicant's TIA
- Exhibit 4: Comments from Oregon Department of Transportation

- Exhibit 5: Page 1 of Salem Public Works Development Bulletin Dated January 12, 2000
- Exhibit 6: Public Comments submitted as of the writing of the staff report
- Exhibit 7: September 2006 PacTrust Kuebler Project Traffic Impact Analysis
- Exhibit 8: November 14, 2006 Supplemental to the September 2006 PacTrust Kuebler Project TIA
- Exhibit 9: December 4, 2006 Response to Public Comments from the November 21 Public Hearing
- Exhibit 10: December 19, 2006 Supplemental to the September 2006 PacTrust Kuebler Project TIA
- Exhibit 11: June 1, 2007 Response to City Council Traffic Related Questions
- Exhibit 12: June 6, 2007 Response to Mr. John Miller Traffic Related Questions
- Exhibit 13: June 25, 2007 Response to Public Comments from the June 11 Public Hearing
- Exhibit 14: June 25, 2007 Response to DKS Associates Traffic Count Updates

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CERTIFICATION OF MAILING

STATE OF OREGON )  
CITY OF SALEM )

I, Judy Copeland, do hereby certify that I, on the 13<sup>th</sup> day of December 2007 caused to be sent interoffice to the Department of Land Conservation and Development Notice of Adoption for Comprehensive Plan Change/Zone Change 06-6

A copy of which is filed in the case file.

DATED at Salem, Oregon, this 13<sup>th</sup> day of December 2007

  
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Judy Copeland, Staff Assistant