

# **NOTICE of REMAND**

#### LAND USE REQUEST AFFECTING THIS AREA

This is notice of a development proposal for the property listed in this notice and shown on the attached map. The City is seeking input from neighbors on the proposal. If you have questions or comments about the proposal, contact the case manager.

Esta carta es un aviso sobre una propuesta de desarrollo para la propiedad enumerada y que se muestra en el mapa adjunto. La ciudad está buscando la opinión de los vecinos sobre la propuesta. Si tiene preguntas o comentarios sobre la propuesta, póngase en contacto con nosotros al 503-588-6213.

**CASE NUMBER:** 

SPR-DAP18-15; REMAND

PROPERTY LOCATION:

2500-2600 Block of Boone Road SE / 97306

SUMMARY OF REQUEST AND TIMELINE: A remand from the Land Use Board of Appeals (LUBA) on the City Council's decision on an application for development of the Kuebler Gateway Shopping Center, including a Costco store, a retail fueling station, and four new retail shell buildings. The scope of the City Council's review and decision will be limited to LUBA's remand that requires the City Council to reconsider its denial of the application for site plan review and, if site plan review is approved, the City Council will also consider the application for a Driveway Approach Permit.

See the below timeline of actions for this case:

- October 2018 Planning Administrator approved application
- November 2018 Neighbors appealed the case to the City Council
- December 2018 City Council denied the application
- December 2018 Applicant and neighbors appealed to LUBA
- August 2019 LUBA remanded the case to the City for additional consideration
- October 2019 LUBA decision appealed to Court of Appeals
- February 2020 Court of Appeals affirmed LUBA's decision
- June 2020 Applicant submitted new materials for the City Council's consideration
- July/August/September 2020 Comment and rebuttal period
- September 2020 Salem City Council consideration

ISSUES TO BE DECIDED BY CITY COUNCIL:

- 1. Do the applicants have a vested right to approval of their application, based on expenditures made in reliance on the City Council's 2007 decision ("Order No. 2007-16-CPC/ZC Comprehensive Plan Change/Zone Change No. 06-6-CPC/ZC"), including off-site transportation improvements and dedication of land?
- 2. If the applicants have a vested right to approval of the application, is the City prohibited from applying the otherwise applicable criteria?
- 3. If the City is not prohibited from applying the otherwise applicable criteria, then does the application comply with the applicable criteria on remand?

#### **COMMENT PERIOD:**

## All written comments must be submitted to City Staff within the following comment periods:

- Initial Comment Period: July 1, 2020 July 28, 2020 at 5:00 P.M.
  - This period is for comment on the proposal including information or evidence submitted for the remand (see below for instructions on how to access all material in the record).
- Public Rebuttal Period (to rebut comments submitted during initial comment period): <u>July 29, 2020 – August 12, 2020 at 5:00 P.M.</u>
  - Comments submitted during the initial comment period will be posted for review as resources allow at: <a href="https://www.cityofsalem.net/Pages/proposed-kuebler-gateway-shopping-center-costco.aspx">https://www.cityofsalem.net/Pages/proposed-kuebler-gateway-shopping-center-costco.aspx</a>
  - The complete record will be maintained at the City's Planning Division, and interested persons may contact the Planning Division to view or obtain copies of the record of the application.
  - No public comments regarding this application will be accepted after the public rebuttal period ends.
- Applicant's Final Written Argument Period (Period open only to the applicant to make a final written argument. No new evidence may be submitted): August 13, 2020 - September 10, 2020.

Please direct all comments to: <u>planningcomments@cityofsalem.net</u> Direct mailed comments to the Case Manager listed below. Please include the case number with comments.

Comments received after the close of the public rebuttal period will not be accepted or considered, except for Applicant's final written argument.

**CASE MANAGER:** 

**Aaron Panko, Planner III**, City of Salem Planning Division, 555 Liberty Street SE, Room 305, Salem, Oregon 97301. Telephone: 503-540-2356; E-mail: apanko@cityofsalem.net.

REVIEW CASE INFORMATION:

Please visit this link to review the case file, including the new materials submitted by the applicant updated as resources allow: <a href="https://www.cityofsalem.net/Pages/proposed-kuebler-gateway-shopping-center-costco.aspx">https://www.cityofsalem.net/Pages/proposed-kuebler-gateway-shopping-center-costco.aspx</a> For the most up-to-date information, please contact the Case Manager.

ACCESS:

The Americans with Disabilities Act (ADA) accommodations will be provided on request.

NEIGHBORHOOD ORGANIZATION:

Neighborhood associations are volunteer organizations of neighbors coming together to make neighborhoods the best they can be. They receive notice of land use applications within their boundaries, and they often submit comments on the applications to the City. Neighborhood association meetings are open to everyone. Contact your neighborhood association to get involved:

South Gateway Neighborhood Association, Glenn Baly, Land Use Co-Chair; Phone: 503-588-6924; Email: <a href="mailto:glennbaly12345@gmail.com">glennbaly12345@gmail.com</a>; Mike Hughes, Land Use Co-Chair; Phone: 503-584-0806; Email: <a href="mailto:hughes.m@comcast.net">hughes.m@comcast.net</a>.

PROPERTY OWNER(S):

Pacific Realty Associates LP (PacTrust)

APPLICANT(S):

M&T Partners (Matt Oyen) and Pacific Realty Associates LP (PacTrust)

**APPELLANTS:** 

Karl G. Anuta on behalf of Lora Meisner, William Dalton, and John D. Miller; Glenn Baly on behalf of South Gateway Neighborhood Association; and Pacific Realty Associates LP (PacTrust)

## CRITERIA TO BE CONSIDERED:

### Salem Revised Code (SRC) Chapters 220.005(f)(3) – Class 3 Site Plan Review

Criteria. An application for Class 3 site plan review shall be granted if:

- (A) The application meets all applicable standards of the UDC;
- (B) The transportation system provides for the safe, orderly, and efficient circulation of traffic into and out of the proposed development, and negative impacts to the transportation system are mitigated adequately:
- (C) Parking areas and driveways are designed to facilitate safe and efficient movement of vehicles, bicycles, and pedestrians; and
- (D) The proposed development will be adequately served with City water, sewer, stormwater facilities, and other utilities appropriate to the nature of the development.

#### SRC 804.025(d) - Class 2 Driveway Approach Permit

Criteria. A Class 2 driveway approach permit shall be granted if:

- (1) The proposed driveway approach meets the standards of this chapter and the Public Works Design Standards;
- (2) No site conditions prevent placing the driveway approach in the required location;
- (3) The number of driveway approaches onto an arterial are minimized;
- (4) The proposed driveway approach, where possible:
  - (A) Is shared with an adjacent property; or
  - (B) Takes access from the lowest classification of street abutting the property;
- (5) The proposed driveway approach meets vision clearance standards;
- (6) The proposed driveway approach does not create traffic hazards and provides for safe turning movements and access;
- (7) The proposed driveway approach does not result in significant adverse impacts to the vicinity;
- (8) The proposed driveway approach minimizes impact to the functionality of adjacent streets and intersections; and
- (9) The proposed driveway approach balances the adverse impacts to residentially zoned property and the functionality of adjacent streets.

Another relevant criterion to site plan review is SRC 808.030(a)(2)(L) which authorizes "Removal of Oregon white oaks (Quercus garryana) where the removal is necessary in connection with construction of a commercial or industrial facility."

**Vested Rights** – The "vested rights" criteria require evaluation of four key "factors" set forth in *Clackamas County v. Holmes*, 265 Or 193 (193), and *Friends of Yamhill County v. Bd. of Commissioners of Yamhill County*, 351 OR 219 (2011):

- 1) The ratio of prior expenditures to the total cost of the project;
- 2) The good faith of the landowner in making the prior expenditures.
- 3) Whether the prior expenditures have any relationship to the project or could apply to other uses of the land, and
- 4) The nature of the project, its location and ultimate cost.

Salem Revised Code (SRC) is available to view at this link: <a href="http://bit.ly/salemorcode">http://bit.ly/salemorcode</a>. Type in the chapter number(s) listed above to view the applicable criteria. Clackamas County v. Holmes and Friends of Yamhill County are available to view at this link: <a href="https://www.cityofsalem.net/Pages/proposed-kuebler-gateway-shopping-center-costco.aspx">https://www.cityofsalem.net/Pages/proposed-kuebler-gateway-shopping-center-costco.aspx</a>

## LAND USE PROPOSAL REQUEST:

A remand from the Land Use Board of Appeals (LUBA) on the City Council's decision on a Class 3 Site Plan Review for construction of a new retail shopping center, including four proposed retail shell buildings, a 168,550 square foot building for Costco Wholesale, and a retail fueling station with up to 30 pump positions, and a Class 2 Driveway Approach permit for proposed driveway access to Boone Road SE and 27th Avenue SE, for property approximately 23.47 acres in size, zoned CR (Retail Commercial), and located in the 2500-2600 Block of Boone Road SE - 97306 (Marion County Assessors Map and Tax Lot numbers: 083W12C / 01800, 01900, 02000, and 02100, also 083W11D / 02400, 02500, 02600, and 02700).

#### APPLICATION PROCESS:

Following the close of the comment periods, the City Council will review the record for this case and deliberate toward a final decision at its September 28, 2020 meeting. A public hearing will not be held. Once City Council adopts a final written decision, a copy of the decision will be mailed to the applicant, property owner, affected neighborhood association, anyone who submitted written comments, and anyone who received notice of the land use request.

Failure to raise an issue in writing prior to the close of the Public Comment Period with sufficient specificity to provide the opportunity to respond to the issue, precludes appeal to the Land Use Board of Appeals (LUBA) on this issue. A similar failure to raise constitutional issues relating to proposed conditions of approval precludes an action for damages in circuit court.

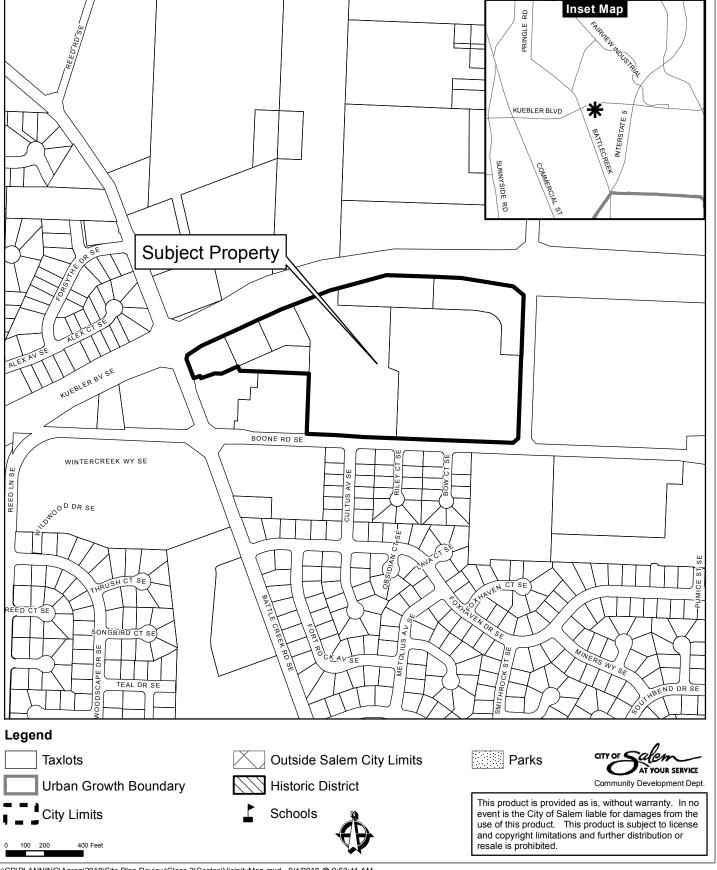
#### **NOTICE MAILING DATE:**

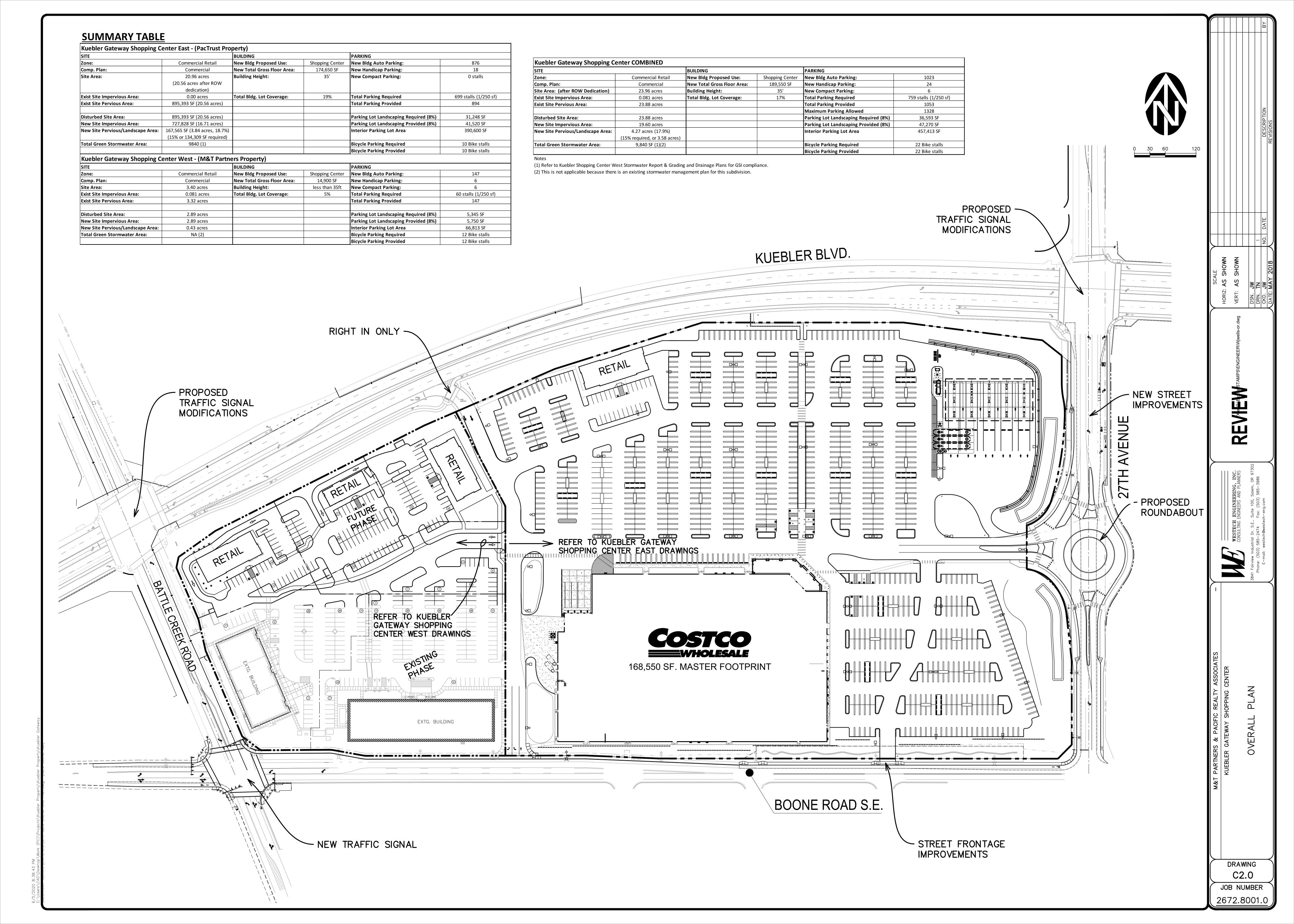
July 1, 2020

It is the City of Salem's policy to assure that no person shall be discriminated against on the grounds of race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity and source of income, as provided by Salem Revised Code Chapter 97. The City of Salem also fully complies with Title VI of the Civil Rights Act of 1964, and related statutes and regulations, in all programs and activities. Disability-related modification or accommodation, including auxiliary aids or services, in order to participate in this meeting or event, are available upon request. Sign language and interpreters for languages other than English are also available upon request. To request such an accommodation or interpretation, contact the Community Development Department at 503-588-6173 at

least <u>three business days</u> before this meeting or event. TTD/TTY telephone 503-588-6439 is also available 24/7.

# Vicinity Map 2500-2600 Block of Boone Road SE





MIN. 2" CAL., MIN. 10-12' HT., MATCHED, FULL

MIN. 8'-10' HT., FULL AND BUSHY TO BASE, B&B

MIN. 5 GAL. CONT., 21-24" HT. AND SPREAD,

MIN. 5 GAL. CONT., 18-21" HT. AND SPREAD,

MIN. 2 GAL. CONT., MIN. 15" HT. & SPREAD,

FULL & BUSHY, SPACING AS SHOWN

FULL AND BUSHY, SPACING AS SHOWN.

FULL AND BUSHY, SPACING AS SHOWN.

& WELL-BRANCHED ABOVE 6' HT., B&B.



## PLANTING NOTES

- 1. ALL NEW LANDSCAPE AREAS ARE TO BE WATERED WITH AN AUTOMATIC WATER CONSERVING IRRIGATION SYSTEM. SEE IRRIGATION PLANS.
- 2. MULCH ALL SHRUB AND GROUNDCOVER AREAS WITH A MINIMUM 3" DEPTH OF SPECIFIED MULCH.
- 3. WHERE GROUNDCOVER IS SHOWN, IT SHALL BE PLANTED AT THE SPECIFIED SPACING THROUGHOUT THE BED, INCLUDING AREAS UNDERNEATH TREES AND SHRUBS, START FIRST ROW 12" FROM EDGE OF BED.
- 4. SEE CIVIL DRAWINGS FOR GRADING UTILITIES AND EROSION CONTROL.
- 6. CONTRACTOR SHALL PROVIDE DIGITAL PHOTOS OF A REPRESENTATIVE TREE SHRUB, OR GROUNDCOVER FOR ALL MATERIALS IN LEGEND BELOW FOR LANDSCAPE ARCHITECT REVIEW AND ACCEPTANCE PRIOR TO PROCUREMENT. THIS SHALL ESTABLISH THE STANDARD FOR APPROVED MATERIAL.
- 6. REFER TO SPECIFICATIONS FOR ADDITIONAL REQUIREMENTS.

#### ADDITIONAL NOTES FOR PRICING OF PRELIMINARY LANDSCAPE PLAN:

1. ALL PLANT MATERIALS TO BE OF THE HIGHEST QUALITY. PROVIDE DIGITAL PHOTOS FOR LANDSCAPE ARCHITECT'S APPROVAL PRIOR TO PROCUREMENT. 2. INSTALL MINIMUM 4" DEPTH HIGH QUALITY IMPORT TOPSOIL. USE ADDITIONAL TOPSOIL AS NEEDED TO CROWN BEDS MINIMUM 6" ABOVE

3. IMPORT TOPSOIL SHALL BE SELECT, FERTILE, SCREENED (1/2"), WELL-DRAINED, WEED-FREE, BALANCED MATERIAL COMPOSED OF SAND, COMPOST AND A SMALL AMOUNT OF CLAY/SILT TO BE CLASSIFIED AS SANDY LOAM UNDER USDA CLASSIFICATION. TOPSOIL SHALL BE TESTED AT APPROVED TESTING LAB FOR CONFIRMATION OF SOIL TEXTURE AND CLASSIFICATION. IF CLASSIFIED AS SANDY LOAM, THEN TEST FOR PH, TRACE MINERALS, SALINITY, N, P, K AND AMENDMENT RECOMMENDATIONS TO ACHIEVE A PH BALANCED FERTILE TOPSOIL WITH MINIMUM 6% ORGANIC MATERIALS DERIVED FROM VEGETATIVE COMPOST. INCORPORATE STARTER FERTILIZER AND PLANT TABS PLUS FERTILIZER AND SOIL AMENDMENTS AS RECOMMENDED IN

4. ALL LANDSCAPE AREAS TO BE PROVIDED WITH A IRRIGATION SYSTEM

- HUNTER MP—ROTATOR SPRAY HEADS AT PERIMETERS
- NETAFIM TECHLINE CV DRIP LINES IN INTERIOR SCHEDULE 40 PVC MAINLINE CLASS 200 PVC LATERALS
- 40 RAINBIRD PEB-PRS-D CONTROL VALVES RAINBIRD ESP-LXD CONTROLLER WITH IQ CLOUD SEPARATE IRRIGATION METER AND BACKFLOW DEVICE WITH **ENCLOSURE**
- 5. INSTALL 4" PERFORATED SUB DRAINS FOR ALL INTERIOR LANDSCAPE ISLANDS, CONNECTING TO STORM DRAIN SYSTEM.
- 6. REFER TO COSTCO STANDARD PLANTING AND IRRIGATION SPECIFICATIONS AND DETAILS FOR INSTALLATION AND REVIEW REQUIREMENTS.

LANDSCAPE CALCULATIONS (PROVIDED FOR PERMITTING PURPOSES ONLY)

TOTAL EAST SIDE BUILDING AREA = EAST SIDE SITE AREA = EAST SIDE LANDSCAPE AREA REQUIRED = 134,309 S.F. (15%)EAST SIDE LANDSCAPE AREA PROVIDED = 167,565 S.F. (18.7%)INTERIOR LANDSCAPING:

TOTAL INTERIOR PARKING LOT AREA = TOTAL INTERIOR LANDSCAPING REQUIRED = 31,248 S.F. (8%) TOTAL INTERIOR LANDSCAPING PROVIDED = 41,520 S.F. (10.6%)

EAST SIDE PARKING STALLS = EAST SIDE INTERIOR TREES REQUIRED = 75 (894/12 STALLS)(1 TREE PER 12 STALLS) EAST SIDE INTERIOR TREES PROVIDED = 170+ LANDSCAPE ISLANDS AND PLANTER BAYS = MIN. 5' WIDTH, MIN. 25 S.F.

PLANT UNITS:

EAST SIDE LANDSCAPED AREA = TOTAL PLANT POINTS REQUIRED = (1 P.U. PER 20 S.F. LANDSCAPED AREA) TOTAL PLANT POINTS PROVIDED = PLANT POINTS REQUIRED FROM TREES = PLANT POINTS PROVIDED FROM TREES =

> $259 \times 10 = 2,590$ SHADE TREES = EVERGREEN/CONIFER TREES = 57 X 5 = ORNAMENTAL TREES = LARGE SHRUBS = SMALL/MEDIUM SHRUBS = 3,356 X 1 = 3,356LAWN OR GROUNDCOVER (SF)=120,000/50 = 2,400

174,650 S.F. (168,550 + 6,100) TREE MITIGATION

20.56 ACRES (895,393 SF) EXISTING SIGNIFICANT TREES (TO BE TRANSPLANTED): 8 TOTAL EXISTING TREES (10"+) TO BE REMOVED: (SEE CIVIL DRAWINGS FOR TREE MAP & TABLE)

390,600 S.F. (EXCL. DRIVEWAYS) NUMBER OF TREES REQUIRING MITIGATION:

ADDITIONAL TREES REQUIRED FOR MITIGATION: ADDITIONAL TREES PROVIDED FOR MITIGATION:

145,835 S.F. (EXCL. EXISTING EASEMENTS) 7,292 P.U.

11,099 P.U. 2,917 P.U. (40% OF TOTAL REQUIRED)

 $82 \times 2 = 164$  $1,152 \times 2 = 2,304$  LANDSCAPE LEGEND (SYMBOLS SHOWN AT 1"=20')

COMMON NAME SIZE / CONDITION BOTANICAL NAME TRANSPLANTED OREGON WHITE OAK TREES SEE ARBORIST REPORT FOR TREE INFORMATION (QUERCUS GARRYANA) TRANSPLANTING. AND MAINTENANCE. INSTALL WITH 3" DEPTH COARSE ARBORIST CHIPS

**DECIDUOUS SHADE TREES** 

ACER TRUN. X ACER PLAT. PACIFIC SUNSET MAPLE 'WARRENRED'

ACER RUBRUM 'OCTOBER GLORY' OCTOBER GLORY RED MAPLE GINKGO BILOBA 'AUTUMN GOLD' AUTUMN GOLD GINKGO (MALE ONLY)

GLEDITSIA T. INERMIS 'SHADEMASTER' SHADEMASTER HONEYLOCUST QUERCUS GARRYANA OREGON WHITE OAK

ZELKOVA SERRATA 'VILLAGE GREEN' VILLAGE GREEN ZELKOVA

DECIDUOUS ACCENT TREES

MIN. (3) 1" CAL., 8'-10' HT., MULTI-TRUNKED. ACER CIRCINATUM VINE MAPLE MATCHING SPECIMEN, WELL-BRANCHED, B&B. AMELANCHIER ALNIFOLIA WESTERN SERVICEBERRY

KOUSA DOGWOOD

CONIFEROUS EVERGREEN TREES

CALOCEDRUS DECURRENS INCENSE CEDAR PSEUDOTSUGA MENZIESII DOUGLAS FIR THUJA PLICATA 'HOGAN' HOGAN RED CEDAR

LARGE SHRUBS

CORNUS KOUSA

ARBUTUS UNEDO 'COMPACTA' DWARF STRAWBERRY TREE 24-30" HT., FULL & BUSHY, B&B OR CONT., SPACING AS SHOWN. RED OSIER DOGWOOD CORNUS SERICEA CONVEXA JAPANESE HOLLY ILEX CRENATA 'CONVEXA' MAHONIA AQUIFOLIUM OREGON GRAPE

PACIFIC WAX MYRTLE ROSA RUGOSA RUGOSA ROSE SYMPHOCARPUS ALBUS COMMON SNOWBERRY

MEDIUM SHRUBS

MYRICA CALIFORNICA

COMPACT BURNING BUSH EUONYMUS A. 'COMPACTA' RIBES SANGUINEUM RED FLOWERING CURRANT

MAHONIA A. 'COMPACTA' COMPACT OREGON GRAPE ROSA NUTKANA NOOTKA ROSE VACCINIUM OVATUM EVERGREEN HUCKLEBERRY

SMALL SHRUBS CORNUS KELSEYI KELSEY DOGWOOD DWARF MUGHO PINE PINUS M. MUGO

VIBURNUM DAVIDII DAVID VIBURNUM ORNAMENTAL GRASSES / ACCENTS

CALAMAGROSTIS A. 'KARL FOERSTER' FEATHER REED GRASS 1 GAL. CONT., FULL & BUSHY, SPACING AS SHOWN. HELICTOTRICHON SEMPERVIRENS BLUE OAT GRASS

POLYSTICHUM MUNITUM SWORD FERN 5 GAL. CONT., FULL & BUSHY, SPACING AS SHOWN. **GROUNDCOVERS** 

ARCTOSTAPHYLOS UVA-URSI 1 GAL. CONT. AT 18" O.C. KINNIKINNICK TRIANG. SPACING, START FIRST ROW 12" FROM EDGE. FRAGARIA CHILOENSIS WILD STRAWBERRY

SALAL

CREEPING MAHONIA

SWORD FERN

SLOUGH SEDGE

OREGON IRIS

GREAT SPIKE RUSH

MAHONIA REPENS CREEPING MAHONIA RHUS AROMATICA 'GRO-LOW' GRO-LOW SUMAC

NATIVE GROUNDCOVER MIX: GAULTHERA SHALLON

CAREX OBNUPTA

IRIS TENAX

ELEOCHARIS PALUSTRIS

MAHONIA REPENS POLYSTICHUM MUNITUM SWALE PLANTING MIX:

36 (EVERGREENS)

18 (25%)

SOD LAWN

1 GAL. CONT. AT 18" O.C. TRIANG. SPACING, START FIRST ROW 12" FROM EDGE. EQUAL QUANTITIES OF EACH. PLANT IN GROUPS OF 5-7 IN RANDOM DRIFTS.

1 GAL. CONT. AT 18" O.C. TRIANG. SPACING, START FIRST ROW 12" FROM EDGE. EQUAL QUANTITIES OF EACH. PLANT IN GROUPS OF 5-7 IN RANDOM DRIFTS. 90% TURF-TYPE TALL FESCUE,

SEE SPECIFICATIONS

10% KENTUCKY BLUEGRASS.

WEISMAN**DESIGN**GROUP

2329 E MADISON ST 206-322-1732 SEATTLE WA 98112 WWW.WDGINC.COM

PRELIMINARY LANDSCAPE PLAN

17-0413-01

JUNE 2, 2020

SALEM, OR

SALEM, OR

TO APE ARCHIV

KUEBLER GATEWAY SHOPPING CENTER - EAST SIDE LANDSCAPE PLAN

SALEM, OREGON

JUNE 2, 2020