



# Oregon

Theodore R. Kubongski, Governor

Department of Land Conservation and Development

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## NOTICE OF ADOPTED AMENDMENT

02/04/2009

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Marion County Plan Amendment  
DLCD File Number 003-08

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: Monday, February 23, 2009

This amendment was submitted to DLCD for review 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 THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc: Sterling Anderson, Marion County  
Doug White, DLCD Community Services Specialist  
Gary Fish, DLCD Regional Representative

<paa> YA/

Notice of Adoption

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

DATE STAMP: DEPT OF LAND CONSERVATION AND DEVELOPMENT, FEB 03 2009, For DLCD Use Only

Jurisdiction: MARION COUNTY

Local file number: ZC/CP08-004

Date of Adoption: 1/28/2009

Date Mailed: 1/30/09

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Select one Date:

- Comprehensive Plan Text Amendment, Land Use Regulation Amendment, New Land Use Regulation, Comprehensive Plan Map Amendment, Zoning Map Amendment, Other

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

CHANGE THE ZONE FROM COMMUNITY COMMERCIAL TO ACREAGE RESIDENTIAL 10 ACRE MINIMUM LOT SIZE AND TO CHANGE THE COMPREHENSIVE PLAN DESIGNATION FROM COMMERCIAL TO RURAL RESIDENTIAL

Does the Adoption differ from proposal? No, no explanation is necessary

Plan Map Changed from: COMMERCIAL to: RURAL RESIDENTIAL
Zone Map Changed from: COMMUNITY COMMERCIAL to: ACREAGE RESIDENTIAL 10 ACRE
Location: 11192 AND 11193 KATHY LN SE STAYTON Acres Involved: 5
Specify Density: Previous: New:

Applicable statewide planning goals:

- Goals 1 through 19 with checkboxes

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

- 45-days prior to first evidentiary hearing? If no, do the statewide planning goals apply? If no, did Emergency Circumstances require immediate adoption?

DLCD # 003-08 (16796)



**DLCD file No.** \_\_\_\_\_

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

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Local Contact: **GILMAN FENNIMORE**

Phone: **(503) 588-5038** Extension:

Address: **PO BOX 14500**

Fax Number: - -

City: **SALEM**

Zip: **97309**

E-mail Address:

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## **ADOPTION SUBMITTAL REQUIREMENTS**

This form must be mailed to DLCD within 5 working days after the final decision  
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO Complete Copies (documents and maps) of the Adopted Amendment to:  

**ATTENTION: PLAN AMENDMENT SPECIALIST  
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
635 CAPITOL STREET NE, SUITE 150  
SALEM, OREGON 97301-2540**
2. **Electronic Submittals:** At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: [webserver.lcd.state.or.us](http://webserver.lcd.state.or.us). To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing [mara.ulloa@state.or.us](mailto:mara.ulloa@state.or.us).
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at <http://www.lcd.state.or.us/>. Please print on 8-1/2x11 green paper only. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to [mara.ulloa@state.or.us](mailto:mara.ulloa@state.or.us) - ATTENTION: PLAN AMENDMENT SPECIALIST.

**BEFORE THE BOARD OF COMMISSIONERS  
FOR MARION COUNTY, OREGON**

In the Matter of the	)	Case No. ZC/CP08-04
	)	
Application of:	)	Clerk's File No. 5603
	)	
Joshua and Loreli Abbott	)	

AN ADMINISTRATIVE ORDINANCE

**ORDINANCE NO. 1382**

THE MARION COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

SECTION I. Purpose

This matter comes before the Marion County Board of Commissioners ("Board") on the application of Joshua and Loreli Abbott to change the zone from CC (Community Commercial) to AR-10 (Acreage Residential – 10 Acre Minimum Lot Size) and to change the Comprehensive Plan designation from Commercial to Rural Residential on a 1.54-acre, 1.5-acre, and a 2.69-acre parcel located at 11192 and 11193 Kathy Ln SE, Stayton. (T9S; R1E; Section 13A; tax lots 101, 102, and 104).

SECTION II. Procedural History

The Marion County Hearings Officer held a duly noticed public hearing on this application on May 14, 2008. Mailed notice was provided to all property owners within 250 feet of the subject properties at least 20 days before the hearing. The record was originally kept open until May 28, 2008, for participants to submit additional information. On May 22, 2008, the hearings officer informed hearing participants that the recording equipment failed to record the proceedings. On May 28, 2008, in response to a request by an opponent, the hearings officer extended the open record period to June 4, 2008, for opponents and until June 11, 2008, for applicants. On November 25, 2008 the Hearings Officer issued a report recommending the Board grant the requested change subject to certain conditions. The Board held a duly noticed public hearing on the application on January 14, 2009. Official notice was taken of the Planning Division file and the Hearings Officer's recommendation all arguments of the parties and is otherwise fully advised in the premises.

SECTION III. Adoption of Findings and Conclusion

After careful consideration of all facts and evidence in the record, the Board adopts as its own the Findings of Facts and Conclusions of Law contained in Section IV and V of the Hearings



# EXHIBIT A

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the application of:	)	Case No.	ZC/CP 08-004
	)		
	)	Clerk's File No.	
	)		
JOSHUA and LORELI ABBOTT	)	Zone change/comprehensive plan	
	)	amendment	

## RECOMMENDATION

### I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the application of Joshua and Loreli Abbott to change the zone from CC (Community Commercial) to AR-10 (Acreage Residential - ten acre minimum parcel size) and to change the Comprehensive Plan designation from Commercial to Rural Residential on a 1.54-acre parcel, a 1.5-acre parcel and a 2.69-acre parcel at 11192 and 11193 Kathy Lane SE, Stayton, Marion County, Oregon (T9S; R1E; Section 13A; tax lots 101, 102 and 104).

### II. Relevant Criteria

The standards and criteria relevant to this application are found in the Marion County Comprehensive Plan (MCCP) and the Marion County Zoning Ordinance (MCZO) (Rural), especially chapters 123, 128 and 143.

### III. Public Hearing

A public hearing was duly held on this application on May 14, 2008. At the hearing, the Planning Division file was made part of the record. The record was originally kept open until May 28, 2008, for participants to submit additional information. On May 22, 2008, the hearings officer informed hearing participants that the recording equipment failed to record the proceedings. On May 28, 2008, in response to a request by Opponent Bullington, the hearings officer extended the open record period to June 4, 2008, for opponents and until June 11, 2008, for applicants. The following persons appeared at the hearing:

- |    |                   |                      |
|----|-------------------|----------------------|
| 1. | Diane Rolph       | Planning Division    |
| 2. | Mark Hoyt         | Applicants' attorney |
| 3. | Joshua Abbott     | Applicant            |
| 4. | Clara Bullington  | Opponent             |
| 5. | Eugene Bullington | Opponent             |

The following documents were presented, marked and entered into the record as exhibits:

- Ex. 1 Map of Kathy Lane SE
- Ex. 2 May 14, 2008 letter from Mark Hoyt
- Ex. 3 May 21, 2008 letter from Mark Hoyt
- Ex. 4 May 28, 2008 letter from Mark Hoyt
- Ex. 5 June 3, 2008 letter and a copy of a May 19, 2008 letter (without attachments) from Eugene and Clara Bullington
- Ex. 6 June 11, 2008 letter from Mark Hoyt

No objections were raised as to notice, jurisdiction, conflicts of interest, or to evidence or testimony presented at the hearing.

#### **IV. Findings of Fact**

The hearings officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. The subject property is designated Commercial in the MCCP and zoned CC. The property is within the rural unincorporated community of Mehama. The CC zoning is intended to allow for commercial uses in a rural community at a size and intensity consistent with the rural community designation.
2. The subject property is made up of three parcels addressed off of Kathy Lane SE, west of the North Santiam Highway 22 - Fern Ridge Road intersection. Tax Lot 101 contains a manufactured home that applicant indicates is an office, and an adjacent 4,416 square foot metal component building. The other two properties contain no structures. Tax Lots 101 and 104 were created by Partition Plat 2005-94, and are considered legal parcels. Tax lot 102 was created by Partition Plat 99-123, and is considered a legal parcel.
3. Properties to the north of the subject property are zoned AR and EFU (Exclusive Farm Use); and are mostly in rural residential use with the farms further to the north. Properties to the east contain a mixture of CC and AR zoned parcels and are in rural residential and small commercial uses. Properties to the west are zoned AR and IUC (Unincorporated Community Industrial). The IUC property contains a trucking business and the rest of the area is mostly in rural residential use. Property south of Highway 22 is zoned AR and is in rural residential use.
4. Applicants ask to change the Comprehensive Plan designation from Commercial to Rural Residential and the zone from CC to AR-10.
5. The Planning Division requested comments on the proposal from various governmental agencies.



The Marion County Public Works (DPW) commented:

Approval of the proposed Zone Change/Comprehensive Plan Amendment would allow the applicant to change the zoning from Community Commercial to Acreage Residential (10 acre minimum lot size) on the subject properties. The Public Works Department has the following comments, requirements and recommendations for the ZC/CP:

#### Streets

1. Prior to development of the lots, the applicant shall provide a Declaration of Covenants for Road Maintenance Agreement regarding Kathy Lane (form available from Public Works).
2. North Santiam Highway is under the jurisdiction of ODOT. Any change in use or addition of users for the existing access to North Santiam Highway serving these parcels will require ODOT approval.
3. All accesses will also need to meet fire district standards for emergency access.

#### Storm Drainage

4. Construction of any improvements on the subject properties shall not block historical or naturally occurring runoff from adjacent properties. Site grading shall not impact surrounding properties, roads, or drainage ways in a negative manner.

#### General

5. The subject property is within the unincorporated area of Marion County. Transportation and Parks Systems Development Charges will be assessed upon any development on the subject parcels at the time of application for building permits.
6. Any work in ODOT's right-of-way will require a permit from ODOT.

The Stayton Fire District commented that the property owners shall comply with the Emergency Vehicle Access Standards for all driveways.

The Oregon Department of Transportation (ODOT) commented:

Please consider the review comments as testimony to your local land use notification. ODOT should be considered a party to the hearing and be entitled to notices of future hearings, or continuances or extensions. Please forward me a copy of the County's decision, including findings and conditions of approval for ODOT's records.

1. Site access to the state highway is regulated by OAR 734-051. Until ODOT has completed its review of the application for state highway approach, ODOT cannot make a determination on the number, location, design and/or highway improvements necessary to mitigate the impacts of the proposed development on

the state highway. Therefore, ODOT recommends that the local jurisdiction not approve any site plan or building permit until ODOT has rendered its decision on the application for state highway approach.

2. ODOT has reviewed its records and has determined there is an existing approach road permit. This permit is subject to review under OAR 734-051-0045, Change of Use of an Approach and a new application for state highway approach may be necessary based on review of applicant's land use application. Applicant must submit an application for state highway approach.

The Marion County Tax Department submitted information on the tax status of the property.

Other contacted agencies either failed to respond or stated that they had no comments.

#### **V. Additional Findings of Fact and Conclusions of Law**

1. Applicant has the burden of proving all applicable standards and criteria are met.
2. All comprehensive plan amendments are subject to DLCDD (Department of Land Conservation and Development) review. DLCDD was notified as required by state law, but provided no comment on the proposal.

OAR 660-004-0018

3. The subject property is within an acknowledged exception area. Planning and zoning for exception areas is governed by OAR 660-004-0018:
  - (1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule.
  - (2) For "physically developed" and "irrevocably committed" exceptions to goals, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density, and public facilities and services to those:
    - (a) That are the same as the existing land uses on the exception site;



(b) That meet the following requirements:

(A) The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals and are consistent with all other applicable Goal requirements; and

(B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028; and

(C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;

(c) For which the uses, density, and public facilities and services are consistent with OAR 660-022-0030, "Planning and Zoning of Unincorporated Communities", if applicable, or

(d) That are industrial development uses, and accessory uses subordinate to the industrial development, in buildings of any size and type, provided the exception area was planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714

(3) Uses, density, and public facilities and services not meeting section (2) of this rule may be approved only under provisions for a reasons exception as outlined in section (4) of the rule and OAR 660-004-0020 through 660-004-0022.

(4) "Reasons" Exceptions. (No reasons exception is requested. Subsection 4 does not apply.)

4. As noted above, exceptions to one goal or a portion of one goal do not relieve a jurisdiction from the remaining goal requirements. Each statewide planning goal is examined for compliance.

Goal 1: Citizen Involvement. The notice and hearings process provides an opportunity for citizen involvement.

Goal 2: Land Use Planning. The subject application for goal exception is examined under the implementing regulations for this goal.

Goal 3: Agricultural Lands. An exception to goal 3 was taken when the MCCP was acknowledged in the early 1980s. Therefore this goal is not applicable.

Goal 4: Forest Lands. The subject site is not in a forest area. This goal is not applicable.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources. No MCCP identified riparian ways, aggregate sites, big game habitat, and sensitive cultural sites are identified on or immediately adjacent to this site. An MCCP identified wetland is adjacent to tax lot 104 and Stout Creek, an MCCP identified sensitive stream, crosses tax lot 104. As noted below under the examination of MCCP Fish and Wildlife Policies, policies 2 and 3, retaining riparian vegetation as much as possible within the MCZO 113.140 required stream setback, keeping residential development to the southwest of Stout Creek, drainage conditions, septic approval conditions, and the stream setback imposed by the MCZO lessen the potential for interference with the creek and the neighboring wetlands. As conditioned, this policy will be met. This goal is satisfied.

Goal 6: Air, Water and Land Resources Quality. The subject site is not within an identified air or watershed area. State law, administered through the county, governs septic disposal systems. State and county regulations are consistent with this goal. The limited residential use of the property will not result in significant particulate discharge into the air. The area is not in an MCCP identified sensitive groundwater area. This goal is satisfied.

Goal 7: Areas Subject to Natural Disasters and Hazards. The subject site is not within an identified floodplain or geologic slide hazard area. This goal is not applicable.

Goal 8: Recreational Needs. No recreational uses of the property are proposed or implicated by this application. This goal is not applicable.

Goal 9: Economic Development. This goal focuses on commercial and industrial development, mostly within urban growth boundaries (UGBs). OAR chapter 660, division 9, the Goal 9 implementing regulation, applies only to comprehensive plans for areas within UGBs. The subject site is not within a UGB. This goal is not applicable.

Goal 10: Housing. This goal applies to buildable lands. Buildable lands, as defined in Goal 10, occur in urban and urbanizable areas. Urbanizable lands are, by Statewide Planning Goal definition, within urban growth boundaries. The subject property is not considered urbanizable under this goal. Three potential homesites will result from the proposed use. Although the housing goal is technically not applicable, the proposal supports additional housing for the area.

Goal 11: Public Facilities and Services. The Lyons-Mehama Water District serves the properties. Tax Lot 102 currently has a septic system and access onto Kathy Lane. According to applicants, tax lots 101 and 104 have septic system approvals and access to Kathy Lane. Electric, telephone, other services are available to the site. A road maintenance agreement for Kathy Lane and proof of approved ODOT access will be required as conditions of approval. AR-10 zoning is proposed so the property cannot be further divided so there is no potential for requiring services beyond those needed to either commercially or residentially develop the three parcels. As conditioned, the subject property will be adequately served by public and private facilities and services. This goal is met.



Goal 12: Transportation. Under OAR 660-012-0060(1), where an amendment to 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. A plan or land use regulation amendment significantly affects a transportation facility if it would:

- (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 Santiam Highway is a major arterial way and is under state jurisdiction. Kathy Lane is a private road. The proposed exception will add three homesites rather than three commercial development sites and will not change the functional classification of Highway 22 or change the standards implementing the roadway classification. Goal 12 is met.

Goal 13: Energy Conservation. Limited, normal residential use of the property will not significantly impact energy consumption.

Goals 14: Urbanization. The proposal will not lead to urbanization of the area. This goal is met.

Goals 15-19: Goals 15 (Willamette River Greenway), 16 (Estuarine Resources), 17 (Coastal Shore Lands), 18 (Beaches and Dunes), and 19 (Ocean Resources), are not applicable because the subject site is not within the Willamette River Greenway or near any ocean or coastal related resources.

The subject application is or can be made consistent with statewide planning goals. As conditioned, that portion of OAR 660-004-0018(1) dealing with statewide planning goal compliance is met and OAR 660-004-0018(2) is examined.

5. An exception was originally taken when the MCCP was adopted in the early 1980s. The exception included Rural Residential, Commercial and Industrial designations. Applicants are asking to go from one designation allowed by the exception to another designation allowed by the exception. There will be no change in uses, density of use, or need for public facilities and services for the exception area. OAR 660-004-0018(2)(a) is satisfied.

## COMPREHENSIVE PLAN AMENDMENT

6. Under the MCCP amendment procedures, plan changes directly involving five or fewer properties are quasi-judicial amendments. Quasi-judicial amendments may be initiated by the subject property owners with an application form supplied by the Marion County Planning Division. The amendment will be reviewed by the zone change procedure established in the Marion County Zoning Ordinance. A plan amendment application of this type may be processed simultaneously with a zone change request.

This application involves three parcels and is a quasi-judicial plan amendment. Applicable MCCP policies are reviewed.

7. The subject property is within the rural community of Mehama. Stout Creek, an MCCP identified sensitive perennial stream, crosses tax lot 104 and an MCCP identified wetland is on property to the east of tax lot 104. The following MCCP policies are considered:

Rural Development Policy 2: "Strip type" commercial or residential development along roads in rural areas shall be discouraged.

Mehama is an MCCP designated rural unincorporated community. The development pattern for this area along Highway 22 was established years before and was acknowledged when an exception was taken for the area in the early 1980s. The proposed comprehensive plan amendment will not change the development pattern but will merely replace potential commercial development with potential residential development. This policy is met.

Rural Communities Development Policy 1: Where there is a demonstrated need for additional commercial uses in rural Marion County they should be located in designated rural communities or rural service centers

The proposed use is residential rather than commercial. This policy does not apply.

Rural Communities Development Policy 2: The boundaries of identified unincorporated communities shall not be expanded to accommodate additional development.

No boundary expansion is proposed. This policy is satisfied.



Rural Communities Development Policy 3: Service districts within unincorporated communities may be created and expanded to serve the entire designated rural community; however, services shall not be extended outside of the community unless necessary to correct a health hazard.

No service district expansion is proposed. This policy is satisfied.

Rural Communities Development Policy 4: Public facilities in rural communities and rural service centers should be designed to service low-density rural development and not encourage urbanization.

The Lyons-Mehama Water District serves the properties. Tax Lot 102 has a septic system and access onto Kathy Lane. According to applicants, tax lots 101 and 104 have septic system approvals and access to Kathy Lane. Electric, telephone, and other services are available to the site. AR-10 zoning is proposed so the property cannot be further divided. Further urbanization will not be encouraged. This policy is satisfied.

Rural Communities Development Policy 5: Additional residential development should be discouraged within Interchange District zones at rural service centers. Only rural service businesses and related uses should be located at these centers.

Mehama is not in an interchange area. This policy does not apply.

Rural Communities Development Policy 6: Zoning ordinance provisions shall ensure that new uses permitted in unincorporated communities will not adversely affect agricultural and forestry uses.

The AR-10 zone has provisions to ensure uses in that zone will not adversely affect surrounding agricultural uses. Additionally, the subject parcel is well insulated from farm and forest uses to the east, south and west. An intervening AR zoned parcel and the Fern Ridge Road right-of-way are between the subject property and EFU zoned land to the north. This policy is satisfied.

Rural Communities Development Policy 6: Multi-family zoning shall not be permitted in Rural Communities or Rural Service Centers.

No multifamily zoning is allowed in the AR-10 zone and no multifamily uses are proposed. This policy is satisfied.

Rural Communities Development Policy 8 and 9: These policies are concerned with highway interchanges and are not applicable.

Fish and Wildlife Habitat Policy 1. New roads requiring County approval shall be located to avoid identified habitat areas whenever possible. Bridges, roads and access rights-of-way should be designed to avoid restriction of channel capacity and minimize removal of shoreline vegetation.

The subject property is accessed by existing public and private roadways. No new roadways are proposed. This policy is not applicable.

Fish and Wildlife Habitat Policy 2. Developments should retain vegetation along streams, lakes, reservoirs (and fence-rows) to provide for shelter, shade, food and nesting.

Stout Creek, an MCCP identified sensitive perennial stream, crosses tax lot 104 and wetlands are adjacent to tax lot 104. Retaining riparian vegetation as much as possible within the MCZO 113.140 required stream setback shall be made a condition of approval in this case. As conditioned, this policy will be satisfied.

Fish and Wildlife Habitat Policy 3. To maintain stream quality and protect sensitive waterfowl areas, land uses that require drainage, excessive removal of riparian vegetation, alteration of streambanks and filling shall be discouraged in these locations.

Under MCZO 113.140, outdoor storage, fill, and structures except for bank stabilization structures, dams, weirs, cable crossings, power poles, docks, bridges, culverts, and ramps and streets leading to them are prohibited within 20 feet from perennial streams as measured horizontally and perpendicularly from the non-aquatic vegetation or the ordinary high waterline, which ever is farthest from the waterway. DPW has requested conditions regarding drainage for development of the subject property to help alleviate any drainage or water runoff problem associated with the proposal. Opponents Bullington are concerned about the effect flooding of tax lot 104 would have on Stout Creek should the septic system become inundated. Applicants' site development plan shows the septic field for tax lot 104 on the southwest portion of the parcel, farthest away from Stout creek and from the wetlands on the adjacent property. Additionally, proof of an existing septic system and/or septic site evaluation approval shall be made a condition of any approval. Keeping residential development to the southwest of Stout Creek, drainage conditions, septic approval conditions, and the stream setback imposed by the MCZO, lessen the potential for interference with the creek and the neighboring wetlands. As conditioned, this policy will be met.

Fish and Wildlife Habitat Policy 4. Conflicts with wildlife (especially big game) shall be considered in land development. Development adjacent to streams, sensitive waterfowl areas and critical wildlife areas shall incorporate adequate setbacks and buffer zones.

As noted above under policies 2 and 3, retaining riparian vegetation as much as possible within the MCZO 113.140 required stream setback, keeping residential development to the southwest of Stout Creek, drainage conditions, septic approval conditions, and the stream setback imposed by the MCZO, lessen the potential for interference with the creek and the neighboring wetlands. As conditioned, this policy will be met.

8. The proposed Rural Residential comprehensive plan designation complies with MCCP rural development, rural communities, and fish and wildlife polices. The comprehensive plan amendment is appropriate for the subject property and approval is recommended.



## ZONE CHANGE

9. MCZO 123.060 contains the following zone change criteria:
- (a) The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the goals and policies of the Comprehensive Plan and the description and policies for the applicable land use classification in the Comprehensive Plan; and
  - (b) The proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area; and
  - (c) Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property; and
  - (d) The other lands in the County already designated for the proposed use are either unavailable or not as well suited for the anticipated uses due to location, size or other factors; and
  - (e) If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the new zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.
10. If the MCCP designation is changed to Rural Residential, then the proposed AR-10 zone would be consistent with the designation. Appropriate MCCP policies have been addressed and are met. MCZO 123.060(a) is met.
11. The subject parcel is well insulated from farm and forest uses to the east, south and west. An intervening AR zoned parcel and the Fern Ridge Road right-of-way are between the subject property and EFU zoned land to the north. Additionally, the AR-10 zone has provisions to ensure uses in that zone will not adversely affect surrounding agricultural uses. The zone change is appropriate considering surrounding agricultural uses and the pattern of development in the area. MCZO 123.060(b) is met.
12. One of the three parcels has a septic system and the other two, according to applicants, have septic approval. A condition of approval can require applicants to provide approved septic site evaluations and an existing septic approval as required by the Building Inspection Division. The site is in the Lyons-Mehama water district and adequate water service can be provided. Opponents Bullington are concerned with the potential impacts the addition of three homesites will have on their adjacent business. Marion County DPW and ODOT reviewed the proposal. ODOT will require a new approach road application. Proof of compliance with ODOT requirements can be made a condition of approval. DPW requested conditions of approval directly relating to proposed development of the subject property, such as a road maintenance agreement for Kathy Lane, access in accordance with fire district standards, and appropriate drainage plans. The subject property is in three

legally separate parcels and could be developed with three commercial uses rather than three residential uses and have comparable traffic impacts with no conditions imposed. Here, the conditions will help protect the roadways, and as conditioned, adequate public facilities, services, and transportation networks are in place, or can be provided concurrently with the development of the property. MCZO 123.060(c) is met.

13. The west Mehama exception area allows for AR zoning. The site is well suited for the anticipated uses due to its location within the west Mehama exception area. MCZO 123.060(d) is met.
14. The AR-10 zone is the only MCZO zone in the Rural Residential designation appropriate for this property. State law for new rural residential properties requires the ten-acre minimum parcel size designation. MCZO 123.060(e) is met.
15. The zone change is recommended.

## VI. Recommendation

It is hereby found that applicants have met the burden of proving the applicable standards and criteria for approval of a comprehensive plan amendment from Commercial to Rural Residential and a zone change from CC to AR-10 have been met. Therefore, the hearings officer recommends the comprehensive plan and zone change applications be **APPROVED**, subject to the conditions set forth below. These conditions are necessary for the public health, safety and welfare.

1. Prior to issuance of building permits for new uses, applicants shall provide evidence that the Mehama Water District has approved water service for the new uses, or evidence that a functional well is available to serve the uses.
2. Prior to development of the lots, the applicants shall provide a Declaration of Covenants for Road Maintenance Agreement regarding Kathy Lane.
3. Applicants must provide proof to Marion County Planning that all accesses meet Stayton Fire Department emergency access and site identification standards.
4. Construction of any improvements on the subject properties shall not block historical or naturally occurring runoff from adjacent properties. Site grading shall not impact surrounding properties, roads, or drainage ways in a negative manner.
5. Prior to development, applicants shall obtain any septic review and/or evaluations that may be required from the Marion County Building Inspection Division.
6. Applicants shall obtain any required ODOT approach road and access permits for any new access or change in use of the existing access to the public right-of-way and provide proof to the Planning Division that permits have been obtained or that no permits are required.

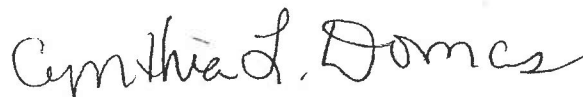


7. Outdoor storage, fill, and structures except for bank stabilization structures, dams, weirs, cable crossings, power poles, docks, bridges, culverts, and ramps and streets leading to them are prohibited within 20 feet from perennial streams as measured horizontally and perpendicularly from the non-aquatic vegetation or the ordinary high waterline, which ever is farthest from the waterway.
8. Applicants shall retain riparian vegetation as much as possible within the MCZO 113.140 required stream setback to Stout Creek.
9. Development shall be in accordance with site plan subject to minor variations as required by Building Inspection.

#### VII. Referral

This document is a recommendation to the Marion County Board of Commissioners. The Board will make the final determination on this application after holding a public hearing. The Planning Division will notify all parties of the hearing date.

DATED at Salem, Oregon, this 25<sup>th</sup> day of November 2008.



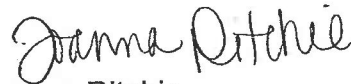
Cynthia L. Domas  
Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing recommendation on the following persons:

Joshua and Loreli Abbott P. O. Box 9129 Salem, OR 97305	<u>Agencies Notified</u> Planning Division Building Inspection AAC Member No. 2 ODOT
Mark Hoyt Sherman Sherman Johnnie & Hoyt, LLP P. O. Box 2247 Salem, OR 97308	Joe Spenner 15016 Coon Hollow SE Stayton, OR 97383
Eugene and Clara Bullington P. O. Box 67 Lyons, OR 97358	Raymond Bartosz 10443 W Stayton Rd SE Aumsville, OR 97325
Gerard Juster Oregon Department of Transportation 455 Airport Road SE, Bldg. B Salem, OR 97301	Dennis Koenig 7538 Stayton Rd SE Turner, OR 97392

by mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 20th day of November 2008, and that the postage thereon was prepaid.



Joanna Ritchie  
Secretary to Hearings Officer



## EXHIBIT B

The Marion County Board of Commissioners adopts the following conditions in ZC/CP 08-4/ Abbott.

### CONDITIONS OF APPROVAL:

Pursuant to the Marion County Rural Zoning Ordinance Chapter 123.070, the following conditions apply to the AR-10 (Acreage Residential – 10 acre minimum) zoning granted in this action. These conditions are reasonably related to the specific development proposed, will serve the public interest of reducing land use conflicts, and are based upon standards adopted by the County. The AR-10 zoning significantly intensifies the use of the land. The conditions are necessary for the public health, safety and welfare.

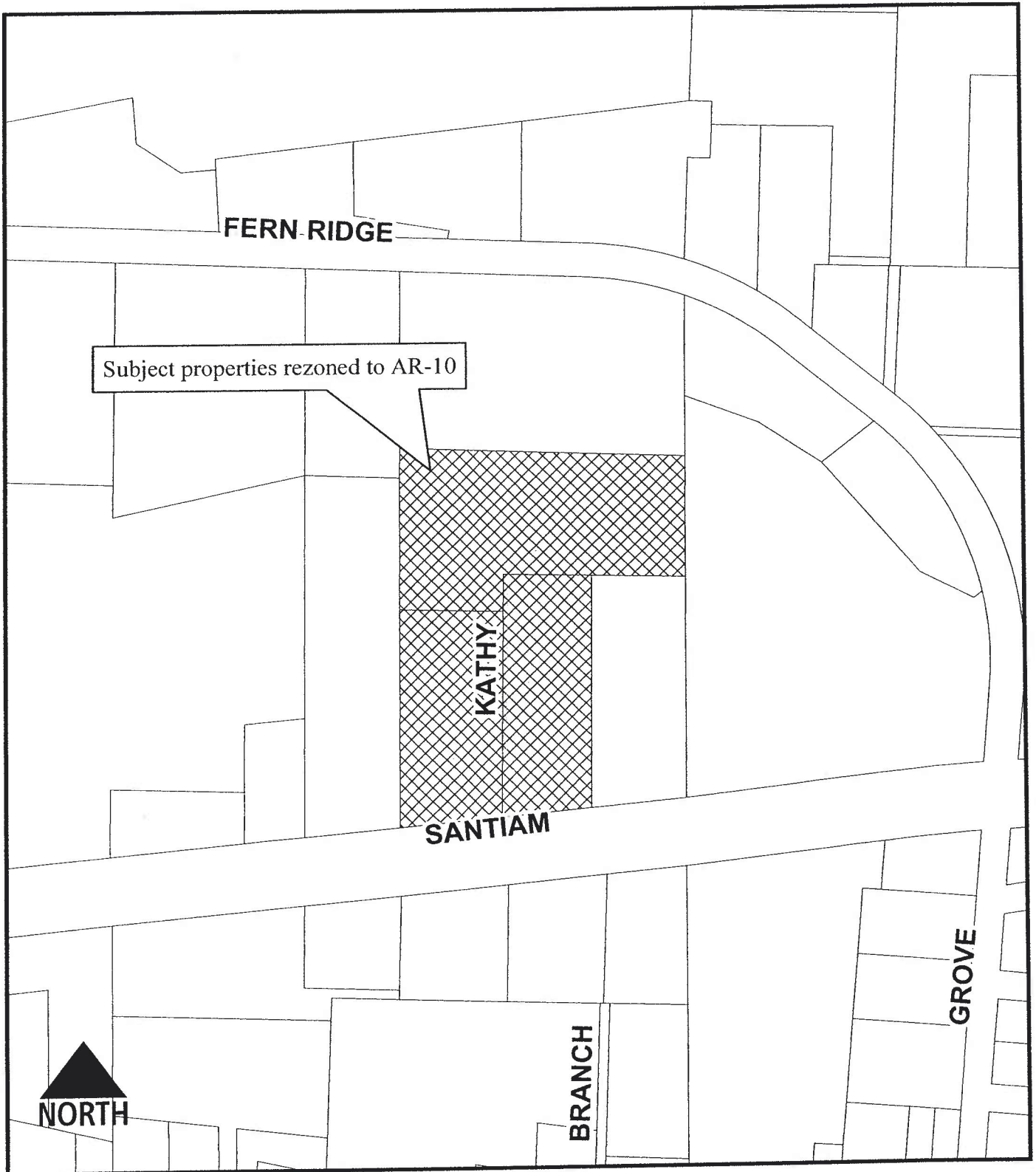
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8. Applicants shall retain riparian vegetation as much as possible within the MCZO 113.140 required stream setback to Stout Creek.

9. Development shall be in accordance with site plan subject to minor variations as required by Building Inspection.



EXHIBIT C

The following described property is rezoned from CC (Community Commercial) to AR-10 (Acreage Residential - 10 Acre Minimum) zone. ZC/CP08-4/Abbott



Washington County Planning Division  
555 Court St. NE, 2nd Floor  
PO Box 14500  
Salem OR 97309

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