



# Oregon

John A. Kitzhaber, M.D., Governor

**Department of Land Conservation and Development**

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## **NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION**

Date: February 18, 2015

Jurisdiction: City of Eugene

Local file no.: Z 14-9

DLCD file no.: 007-14

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 02/10/2015. A copy of the adopted amendment is available for review at the DLCD office in Salem and the local government office. This amendment was submitted without a signed ordinance.

Notice of the proposed amendment was submitted to DLCD 42 days prior to the first evidentiary hearing.

### Appeal Procedures

Eligibility to appeal this amendment is governed by ORS 197.612, ORS 197.620, and ORS 197.830. Under ORS 197.830(9), a notice of intent to appeal a land use decision to LUBA must be filed no later than 21 days after the date the decision sought to be reviewed became final. If you have questions about the date the decision became final, please contact the jurisdiction that adopted the amendment.

A 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).

If the amendment is not appealed, it will be deemed acknowledged as set forth in ORS 197.625(1)(a). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

### DLCD Contact

If you have questions about this notice, please contact DLCD's Plan Amendment Specialist at 503-934-0017 or [plan.amendments@state.or.us](mailto:plan.amendments@state.or.us)



# NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

**FOR DLCD USE**  
 File No.: 007-14 {22570}  
 Received: 2/10/2015

Local governments are required to send notice of an adopted change to a comprehensive plan or land use regulation **no more than 20 days after the adoption.** (See [OAR 660-018-0040](#)). The rules require that the notice include a completed copy of this form. **This notice form is not for submittal of a completed periodic review task or a plan amendment reviewed in the manner of periodic review.** Use [Form 4](#) for an adopted urban growth boundary including over 50 acres by a city with a population greater than 2,500 within the UGB or an urban growth boundary amendment over 100 acres adopted by a metropolitan service district. Use [Form 5](#) for an adopted urban reserve designation, or amendment to add over 50 acres, by a city with a population greater than 2,500 within the UGB. Use [Form 6](#) with submittal of an adopted periodic review task.

Jurisdiction: City of Eugene

Local file no.: **Z 14-9**

Date of adoption: 2/10/15

Date sent: 2/11/2015

Was Notice of a Proposed Change (Form 1) submitted to DLCD?

Yes: Date (use the date of last revision if a revised Form 1 was submitted): 12/15/14

No

Is the adopted change different from what was described in the Notice of Proposed Change?    Yes    No

If yes, describe how the adoption differs from the proposal:

Local contact (name and title): Gabe Flock, Senior Planner

Phone: 541-682-5697

E-mail: [gabriel.flock@ci.eugene.or.us](mailto:gabriel.flock@ci.eugene.or.us)

Street address: 99 West 10<sup>th</sup> Avenue

City: Eugene

Zip: 97401-

**PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY**

**For a change to comprehensive plan text:**

Identify the sections of the plan that were added or amended and which statewide planning goals those sections implement, if any:

**For a change to a comprehensive plan map:**

Identify the former and new map designations and the area affected:

- |             |    |        |  |
|-------------|----|--------|--|
| Change from | to | acres. | A goal exception was required for this         |
| change.     |    |        |  |
| Change from | to | acres. | A goal exception was required for this         |
| change.     |    |        |  |
| Change from | to | acres. | A goal exception was required for this         |
| change.     |    |        |  |
| Change from | to | acres. | A goal exception was required for this change. |

Location of affected property (T, R, Sec., TL and address):

The subject property is entirely within an urban growth boundary

The subject property is partially within an urban growth boundary



**DECISION OF THE HEARINGS OFFICIAL  
FOR THE CITY OF EUGENE, OREGON**

**ZONE CHANGE REQUEST**

**INTRODUCTION**

**Application File Name (Number):**

MWIC Eugene, LLC (Z 14-9)

**Applicant's Request:**

Zone change from R-2/SR Medium-Density Residential with Site Review overlay to R-2 Medium-Density Residential, to remove the Site Review overlay.

**Subject Property/Location:**

Located at 3120 and 3150 County Farm Road; Tax Lots 6100, 6101, and a portion of 9200 of Tax Assessor's Map 17-03-08-44.

**Relevant Dates:**

Zone change application submitted on October 23, 2014; application deemed complete on November 17, 2014; public hearing held on January 14, 2015.

**Applicant's Representative:**

Nick Klingensmith from the Law Office of Bill Kloos, PC.

**Lead City Staff:**

Gabe Flock, Senior Planner, Eugene Planning Division.

**Summary of the Public Hearing**

The Hearings Official held a public hearing on this application on January 14, 2015. The Hearings Official stated he had no conflicts of interests, was not biased, and had no *ex parte* communications to disclose. No person objected to the Hearings Official conducting the hearing. Gabe Flock (Flock), Senior Planner, and Steve Nystrom, Principal Planner, were present for the hearings. Flock presented the staff report at the public hearing, recommending approval of the zone change request to remove the Site Review overlay. Nick Klingensmith testified that he agreed with the staff report. There was no testimony in opposition to the application. At the conclusion of the public hearing, the Hearings Official closed the record.

**FACTS**

The subject property is approximately .91 acres at the northwest corner of Lake View Drive and County Farm Road. The subject property seeking the removal of the Site Review

overlay consists of two rectangular areas separated by an island of unincorporated land that does not have the Site Review overlay. There is a single-family residence on the site. The subject property is zoned R-2/SR Medium-Density Residential with a Site Review overlay. The Site Review overlay was originally imposed in 1993 to satisfy a refinement plan policy regarding medium and high density residential designations directly abutting low density residential use. The applicant seeks to remove the Site Review overlay because medium and high density residential uses no longer abut low density uses.

### **DOCUMENTS CONSIDERED BY THE HEARINGS OFFICIAL**

I have considered all of the documents in the planning file for the proposed zone change (Z 14-9) as well as the testimony and documents provided at the public hearing.

### **ANALYSIS**

Eugene Code (EC) 9.8865 provides the criteria for approval of a zone change:

“Zone Change Approval Criteria. Approval of a zone change application, including the designation of an overlay zone, shall not be approved unless it meets all of the following criteria:

- “(1) The proposed change is consistent with applicable provisions of the Metro Plan. The written text of the Metro Plan shall take precedence over the Metro Plan diagram where apparent conflicts or inconsistencies exist.
- “(2) The proposed zone change is consistent with applicable adopted refinement plans. In the event of inconsistencies between these plans and the Metro Plan, the Metro Plan controls.
- “(3) The uses and density that will be allowed by the proposed zoning in the location of the proposed change can be served through the orderly extension of key urban facilities and services.
- “(4) The proposed zone change is consistent with the applicable siting requirements set out for the specific zone \* \* \*.
- “(5) In cases where the NR zone is applied based on EC 9.2510(3), the property owner shall enter into a contractual arrangement with the city to ensure the area is maintained as a natural resource area for a minimum of 50 years.”

### **EC 9.8865(1)**

EC 9.8865(1) requires that the proposed zone change be consistent with applicable provisions of the Metro Plan. The most obviously applicable provision of the Metro Plan is the plan designation for the property. The plan designation for the property is Medium Density Residential. The proposed zone change would retain the existing R-2 Medium-Density Residential zoning. No specific Metro Plan policies were identified as being applicable to the application. Therefore, I find that the proposed zone change is consistent with the provisions of the Metro Plan and that EC 9.8865(1) is satisfied.

**EC 9.8865(2)**

EC 9.8865(2) requires that the proposed zone change be consistent with the applicable adopted refinement plans. In the present case, the applicable refinement plan is the Willakenzie Area Refinement Plan (WAP). The WAP designates the subject property for Medium-Density Residential use, which is consistent with the existing and proposed zoning. The Site Review overlay was originally imposed in 1993 to implement WAP General Land Use Policy 8 and Proposed Action 8.1, which provide:

“Promote compatibility between low-density residential land uses and medium- to high-density residential uses.”

“Apply the site review /SR suffix to all parcels designated medium- or high-density residential which directly abut low-density residential land use.”

The Site Review overlay was imposed under this policy because in 1993 when the property was rezoned from AG Agricultural to R-2 Medium-Density Residential there were abutting low-density residential uses. The subject property is now bordered by multiple-family developments to the west and north and public streets to the east and south. Because there are no longer any abutting low-density residential uses abutting the property, there is no longer any need for the Site Review overlay under this policy.

The only other potential WAP policy is WAP General Land Use Policy 5, which provides:

“Site review procedures or special development standards shall be considered for properties which abut or face another, when the uses permitted on those properties are potentially incompatible.”

Although the City has adopted multi-family development standards to address compatibility issues, those standards are not necessarily sufficient to satisfy the compatibility concerns expressed in WAP policies. As no one has suggested that the Site Review overlay is

necessary to implement WAP General Land Use Policy 5 or any other policies, I do not see that a lengthy analysis is warranted. I agree with the staff report's analysis that there are not any potentially incompatible uses to be concerned with under General Land Use Policy 5, and I adopt and incorporate the staff report's findings regarding EC 9.8865(2). Staff Report 2-4.

EC 9.8865(2) is satisfied.

**EC 9.8865(3)**

EC 9.8865(3) requires that the uses and densities allowed by the proposed zoning can be served through the orderly extension of key urban facilities and services. Key urban facilities and services are defined in the Metro Plan as: wastewater service, stormwater service, transportation, water service, fire and emergency medical services, police protection, city-wide parks and recreation programs, electric service, land use controls, communication facilities, and public schools.

Key urban facilities and services are available to the property as explained by the staff report and the referral comments. Therefore, I find that EC 9.8865(3) is satisfied.

**EC 9.8865(4)**

EC 9.8865(4) requires that the proposed zone change be consistent with certain applicable siting requirements set out for the specific zone. These requirements do not relate to the removal of the Site Review overlay. Therefore, I find that EC 9.8865(4) is satisfied.

**EC 9.8865(5)**

EC 9.8865(5) requires that certain arrangements must be made with the City when an NR Natural Resource zone is applied based on EC 9.2510(3). The proposed zone change does not include any NR Natural Resource zoning, so this criterion does not affect the application. Therefore, I find that EC 9.8865(5) is satisfied.

**Transportation Planning Rule**

Oregon Transportation Planning Rule (TPR), OAR 660-012-0060(1) provides:

“(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. 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) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.
  - “(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
  - “(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or
  - “(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.”

If a proposed zone change would “significantly affect an existing or planned transportation facility” then certain measures must be put in place to approve the zone change. An applicant for a zone change may avoid the analysis of OAR 660-012-0060(1) if it qualifies for an exception under OAR 660-012-0060(9), which provides:

“Notwithstanding section (1) of this rule, a local government may find that an amendment to a zoning map does not significantly affect an existing or planned transportation facility if all of the following requirements are met.



- “(a) The proposed zoning is consistent with the existing comprehensive plan map designation and the amendment does not change the comprehensive plan map;
- “(b) The local government has an acknowledged TSP and the proposed zoning is consistent with the TSP; and
- “(c) The area subject to the zoning map amendment was not exempted from this rule at the time of an urban growth boundary amendment as permitted in OAR 660-024-0020(1)(d), or the area was exempted from this rule but the local government has a subsequently acknowledged TSP amendment that accounted for urbanization of the area.”

As discussed above, the proposed R-2 Medium-Density Residential zoning for the property is consistent with the existing comprehensive plan Medium Density Residential designation, and the amendment does not change the comprehensive plan map. Thus, OAR 660-012-0060(9)(a) is satisfied.

The City’s acknowledged Transportation System Plan (TSP) is TransPlan. When TransPlan was adopted in 2001, the subject property was designated Medium Density Residential and the designation has remained unchanged. Thus, the proposed zoning is consistent with the TSP, and OAR 660-012-0060(9)(b) is satisfied.

The subject property was not exempted from the TPR at the time of an urban growth boundary agreement. Thus, OAR 660-012-0060(9)(c) is satisfied. Therefore, the proposed zone change does not significantly affect a transportation facility for purposes of the TPR and therefore complies with the TPR.

**DECISION**

Based upon the available evidence and preceding findings, the Hearings Official APPROVES the applicant’s request for a zone change from R-2/SR Medium-Density Residential with Site Review overlay to R-2 Medium-Density Residential zoning. Pursuant to the above findings, the Site Review overlay for the subject property is removed.

Dated this 27<sup>th</sup> day of January, 2015. Mailed this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

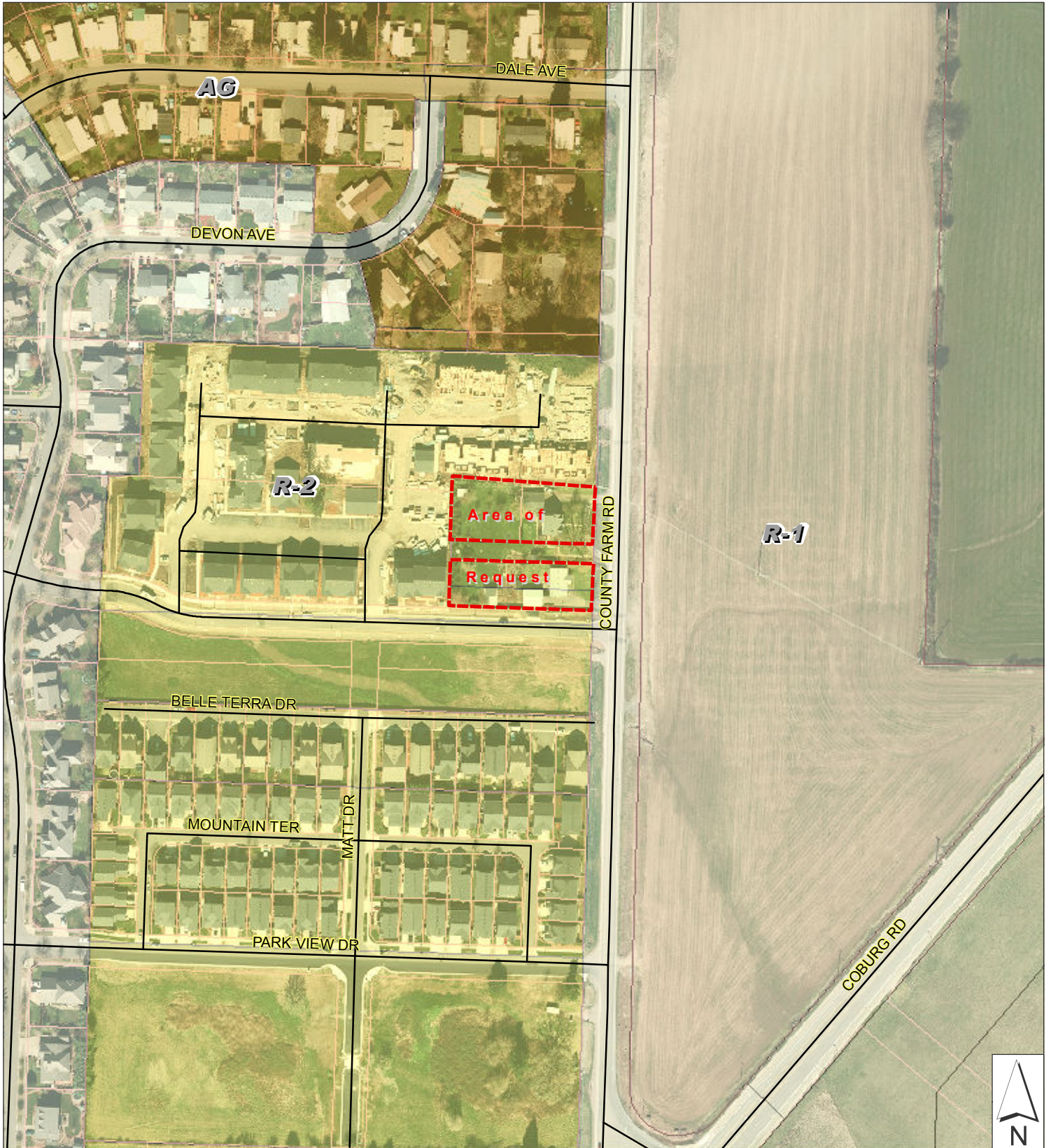
*F. Wilson*

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Fred Wilson  
Hearings Official

SEE NOTICE OF HEARINGS OFFICIAL DECISION FOR STATEMENT OF APPEAL RIGHTS

# MWIC Eugene LLC (Z 14-9)



Caution:  
This map is based on imprecise  
source data, subject to change,  
and for general reference only.

December 03, 2014

