



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: May 1, 2024

Department: Public Works

Title: Schedule final consideration to adopt an administrative ordinance granting Zone Change (ZC) 23-004/Freshour Holdings LLC

Management Update/Work Session Date: N/A Audio/Visual aids []

Time Required: 0 min Contact: John Speckman Phone: 503-566-4173

Requested Action: Schedule adoption of the ordinance at the next board session, May 15, 2024.

Issue, Description & Background: The Marion County Hearings Officer held a duly noticed public hearing on March 7, 2024 and on April 3, 2024 issued a decision approving the request. The Board received the decision and held the application for the mandatory appeal period; no appeals were received. The ordinance and findings have been prepared and the matter needs to be scheduled for final consideration and adoption. Unless there is an appeal, the zoning code provides that the board does not have to hold a hearing on this request because it is for a zone change only; the comprehensive plan isn't changing. The underlying commercial comprehensive plan designation will remain the same.

Financial Impacts: None

Impacts to Department & External Agencies: None

List of attachments: Ordinance

Presenter: John Speckman

Department Head Signature: for Bada Reich

SECTION V. Effective Date

Pursuant to Chapter 1.10 of the Marion County Code, this is an Administrative Ordinance and shall take effect 21 days after the adoption and final signatures of the Marion County Board of Commissioners.

SIGNED and FINALIZED this _____ day of _____, 2024, at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS

Chair

Recording Secretary

JUDICIAL NOTICE

Oregon Revised Statutes, Chapter 197.830, provides that land use decisions may be reviewed by the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days from the date this Ordinance becomes final.

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of)	Case No. ZC 23-004
Freshour Holdings, LLC, and)	
DKG Holdings, LLC)	ZONE CHANGE

DECISION

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the application of Freshour Holdings, LLC and DKG Holdings LLC for a zone change to change the zone from CR (Commercial Retail) to CO (Commercial Office) on a 0.43-acre parcels located at 3745 La Branch Street SE, Salem, Oregon and a .43-acre parcel located at 3770 State Street SE., Salem (T7S, R2W, Section 30CC, Tax lots 3400 & 5500).

II. Relevant Criteria

The standards and criteria relevant to this application are found in the Marion County Code, especially Chapter 16.39, the Salem Comprehensive Plan Goals, and the State of Oregon Planning Goals.

III. Public Hearing

A public hearing was held on this matter on March 7, 2024. The Planning Division file was made part of the record. The following persons appeared and provided testimony on the application:

- 1. John Speckman Marion County Planning Division
- 2. Cody Freshour Representative of Applicant Freshour Holdings, LLC
- 2. Daniel Gonzalez Representative of Applicant DKG Holdings, LLC

No documents were presented, marked, or entered into the record as exhibits. No objections were raised as to notice, jurisdiction, conflict of interest, or to evidence or testimony presented at the hearing.

IV. Executive Summary

Applicants seek a zone change on a zone change to change the zone from CR (Commercial Retail) to CO (Commercial Office) on a 0.43-acre parcels located at 3745 La Branch Street SE, Salem, Oregon and a .43-acre parcel located at 3770 State Street SE., Salem, Oregon. The subject parcels current use is non-conforming within the CR zone, and replacement of the existing non-conforming dwellings at their current density would not be permitted. The proposed zone change would render the current use conforming. The Applicants have met all criteria, and the Hearings Officer APPROVES the Application.

V. 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 properties are within the Salem Urban Growth Boundary (UGB) and designated Commercial in the Salem Area Comprehensive Plan (SACP). The properties' current CR zoning is under the jurisdiction of Marion County. The applicant has not finalized plans but proposes to continue to use, and in the future further develop, the properties with uses permitted in the CO zone.
2. The properties are located south of State Street SE, and North of La Branch Street SE, approximately 600 feet west of both streets' intersections with Lancaster Drive SE. The parcels are generally flat and currently contain multiple dwelling units. 3770 State Street SE has approximately 110-feet of frontage on State Street SE and contains two duplexes and a single family dwelling. 3745 La Branch Street SE has approximately 100-feet of frontage on La Branch Street SE and contains two single family dwellings. The northern edge of 3745 La Branch Street SE contains a city of Salem Sewer main that runs East-West underground across the property.
3. Adjacent properties to the West and South are zoned RM (Multifamily residential) and RS (single family residential). These parcels contain primarily single-family dwellings. Adjacent properties to the North and East are primarily zoned CR and are in commercial use, with the exception of a P (Public) zoned parcel east-adjacent to the 3754 La Branch Street SE property that houses the Suburban East Salem Water District.
4. The Marion County Planning Division requested comments from other agencies. Agencies that provided comments are:

The City of Salem Community Planning and Development Department commented: "The City of Salem, Development Services Division has no comments on the proposed zone change. For future development of the property, the applicant should be aware that the property is located within the Suburban East Salem Water District and the East Salem Sewer Service District. Any future connections to this sewer district will require an annexation agreement to be filed with the City of Salem, where one has not already been done so. As indicated on the applicant's site plan, there is also a city of Salem Sewer main that runs through the property, new structures are not permitted over City of Salem utility mains. Dedication of easements for the main may be required at time of development."

Marion County Building commented: "No Building Inspection concerns. Permits are required to be obtained prior to any development and/or utilities installation on private property."

All other agencies either failed to comment or stated no comment on the proposal.

VI. Additional Findings of Fact and Conclusions of Law

1. Applicants have the burden of proving all applicable standards and criteria apply.

Applicants have the burden of proving by a preponderance of the evidence that all applicable standards and criteria are met as explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390, 394-395(1987).

“Preponderance of the evidence” means the greater weight of evidence. It is such evidence that when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests. (Citation omitted).

Applicants must prove, by substantial evidence in the record, it is more likely than not that each criterion is met. If the evidence for any criterion is equal or less, Applicants have not met their burden and the application must be denied. If the evidence for every criterion is even slightly in Applicants’ favor, the burden of proof is met.

2. Pursuant to MCC 16.39.010, the hearings officer is authorized to make the initial decision on zone change applications.
3. Pursuant to MCC 16.39.040, a hearings officer’s decision to approve a zone change does not become final until the Board of Commissioners adopts an ordinance implementing the decision.
4. According to the Salem-Keizer Urban Area (Regional) Procedures and Policies of the Salem Area Comprehensive Plan, the following applies to the question of jurisdiction: “Marion County has exclusive jurisdiction over all land use actions applicable within that portion of the Salem Urban Area and Keizer Urban Area that are outside the Salem city limits and outside the Keizer city limits other than regional planning actions and amendments to the urban area policies.”
6. The Co (Commercial Office) zone purpose statement listed under MCC 16.05.000 states:

The purpose of the CO (commercial office) zone is to provide areas suitable for professional and general commercial offices, membership organizations, similar low intensity, nonretail commercial services and medium density residential accommodations. The commercial office zone is appropriate in those areas designated commercial in the applicable urban area comprehensive plan and as a transition between residential and more intensive commercial areas.

The proposed CO zone is appropriate for the underlying SACP designation of Commercial. The subject parcels are both close to State Street SE and Lancaster Drive SE which are both major

arterial streets. While the applicants do not provide plans for future development, expansion of the current residential use of both parcels by way of infill development would create an increase of traffic which could be accommodated by the current infrastructure. The parcels are both currently in use for multiple residential units in a transition zone between residential use to the west and more intensive commercial uses to the east which aligns with the transitional purpose of the proposed CO zone. Therefore, MCC 16.39.050 (C) is met.

7. Under Marion County Code (MCC) 16.39.050, approval of a zone change shall include findings that the change meets the following criteria:

A. The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the description and policies for the applicable Comprehensive Plan land use classification.

The proposed zone is appropriate for the underlying comprehensive plan designation of Commercial. As detailed below in Paragraph 8, the proposal conforms to goals within the City of Salem Comprehensive plan. The criterion is met.

B. Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property.

The frontage of these properties on State Street SE and La Branch Street SE are adequate for potential future development of residential units on this property, or commercial uses permitted in the CO zone. As detailed in Paragraph 9 below, two large public transportation corridors exist to the north and east of the subject parcels. The criterion is met.

C. The request shall be consistent with the purpose statement for the proposed zone.

The current and historical use of these parcels is non-conforming under the current zone and would be conforming and consistent with the purpose of the proposed zone. This criterion is addressed above in Paragraph 6. The criterion is met.

D. If the proposed zone allows uses more intensive than uses in other ones appropriate for the land use designation, the proposed zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.

The proposed zone is the most restrictive of the Commercial zones, and therefore, more appropriate as a transition zone between residential and commercial uses than the current Commercial Retail zone. The Commercial Office zone allows multi-family developments where other commercial zones do not. This could be seen as more intensive residential use than other zones that are appropriate for underlying designation of Commercial, but

overall, the CO zone does not permit more intensive uses. The continued use of these parcels for residential purposes would not adversely affect the allowed uses on adjacent properties as most of those uses are residential in nature as well.

The proposed CO zone allows many of the same uses as the current CR zoning, with the addition of residential use. The current and historic use of the subject parcels is for multiple residential units. These are non-conforming within the current zoning but would be conforming under the proposed zoning as per 16.05.120(B). While the applicant does not provide redevelopment plans, the benefit of the zone change to the current use pattern is the conformity of the current residential unit use and permitting of redevelopment to increase density of residential units on the subject properties. This could be seen as more intense use than the west-adjacent RS zoned parcel, but is less so than the adjacent RM, CR, and P zoned parcels. The adjacent RS zoned parcel is already adjacent to an RM zoned parcel. The continued use of the subject parcels as multi-unit residential properties would not significantly adversely affect uses on any of the adjacent parcels. Therefore, MCC 16.30.050 (D) is met. The criterion is met.

8. The existing Plan designation in the Salem Area Comprehensive Plan (SACP) is Commercial, and this Plan designation provides for the application of the CO zone proposed by the applicant. Policies applicable to the proposal are:

H 1 Housing Choice Goal: Promote a variety of housing options to meet the needs, abilities, and preferences of all current and future residents. (SUA)

H 1.1 Housing types: A variety of housing types shall be allowed and encouraged throughout the Salem Urban Area, including single-family homes, accessory dwelling units, manufactured homes, townhouses, middle housing, and multifamily housing. (SUA)

H 1.2 Innovation: The development of new and innovative housing types and designs such as cottage clusters, cohousing, and multigenerational housing should be encouraged in the Salem Urban Area to diversify the housing stock and meet different housing needs.

H 1.4 Adaptability: Flexibility shall be provided in regulations to allow existing homes to convert to middle housing to adapt to changing housing needs in the future.

H 1.5 Housing diversity: New residential developments should be encouraged to incorporate a diversity of housing types and sizes to attract residents of varying income levels, lifestyles, and housing preferences.

The properties currently contain both multi-family and single-family dwellings, but they are non-conforming uses in the current CR zoning of the subject parcels. Under the current zoning, the dwelling units are not replaceable (MCC 16.48.100 & MCC 16.48.140(B)(2)). The proposed zone change would allow for future replacement of the current dwellings as well as the development of additional dwelling units. Multi-unit infill would be allowed as per MCC 16.05.120 at a rate of one dwelling unit per 1,500 square feet of net lot area (MCC

16.27.050(D)). Under CO zoning each of the subject parcels could be eligible for a maximum of 12 units each, where currently there are five units on tax lot 3400 and two units on tax lot 5500. The proposed zone would offer the opportunity for innovative, adaptable development of these parcels in line with their historic uses providing residential opportunities.

The proposed zone change would support these aspects of the H1 Housing Choice Goal.

L 1 Urbanization and Growth Management Goal: Manage growth in the Salem Urban Area through cooperative efforts between the City of Salem, Marion and Polk counties, and other jurisdictions to provide area residents with a high quality of life, contain urban development, promote the City's efficient delivery of services, and preserve adjacent agricultural lands. (SUA)

LL.10 Infill: Development of vacant and underutilized land with existing urban services should be encouraged before converting urbanizable lands to urban uses and extending services beyond presently served areas.

The subject parcels current use is non-conforming within the CR zone, and replacement of the existing non-conforming dwellings at their current density would not be permitted. The proposed zone change would render the current use conforming and, as per 16.05.120(B), sustainable infill development would be permitted under the proposed zone. Therefore, the proposed zone change would promote potential development of underutilized land within the existing urban services area. The location of the subject parcels has convenient access to jobs, services and amenities.

The parcels are within a mixed-use neighborhood and create a transition zone between single/multi-family dwellings and commercial uses. The dwellings on these subject parcels are in a well-connected location on the State Street corridor which sees Cherriots service every 30 minutes on Route 4, and one block away the Lancaster corridor sees Cherriots service every 15 minutes on Route 11.

The proposed zone change therefore aligns with the L 1 Urbanization and Growth Management Goal.

L 2 Regional Coordination Goal: Coordinate land use and public facility planning and investment decisions with Marion and Polk counties and the City of Keizer to promote equitable, efficient, and sustainable growth. (SUA)

L 2.1 Plan and code coordination: Zoning ordinances, subdivision regulations, Comprehensive Plan components, and specific development standards pertaining to the Salem urban area and prepared by the City of Salem, Marion County, Polk County, special districts and functional planning agencies shall support the Salem Area Comprehensive Plan.

L 2.2 Land use coordination: The City and Marion and Polk Counties shall maintain an exchange of information and recommendations relating to land use applications and activities in the urban growth area. Information on land division applications and other

land use activities being considered within the urban growth boundary by the Counties shall be forwarded by Counties to the City of Salem for comments and recommendations prior to a decision being made by the Counties. (SUA)

L 2.3 Development standards coordination: The City shall coordinate with Marion and Polk Counties regarding lands within the Salem urban area to ensure their development standards are compatible with the City of Salem development standards to the extent possible to avoid creating nonconformities when properties are annexed. (SUA)

L 2.4 Public facility coordination: The City shall forward to Marion and Polk Counties for review and comment information on public facility improvements or extensions that are proposed for areas outside city limits. (SUA)

L 2.5 CIP coordination: An exchange of information shall be maintained between the City, Marion and Polk Counties, and the City of Keizer regarding proposed capital improvement programs to ensure coordination of construction projects. (SUA)

The proposed zone change is within Marion County Planning jurisdiction of lands inside the Salem UGB. To ensure coordination and exchange of information, the City of Salem has been contacted in request for comments on this application. Those comments have been considered by Planning Staff and are presented above in Paragraph 4. Consideration of the proposed zone change relative Salem's underlying comprehensive plan designation of Commercial has been made and found compatible. Consideration of relevant goals (H 1, L 1, & L 2) of the City of Salem comprehensive plan have been considered here and above.

Based on the above findings, the proposed zone change from CR to CO is appropriate for the Commercial designation of these parcels under the SACP and is consistent with the applicable policies of the relevant goals of the SACP. Therefore, the proposed zone change can meet the criterion in MCC 16.39.050(A).

9. The subject parcels are in an area with existing infrastructure, including water and sewer services. The northern parcel is located on State Street, a well-developed five lane major arterial road with transit service stops approximately 800-feet to the West, and 800-feet to the East by Cherrlots every 30 minutes from 6:30AM to 11PM on weekdays. Therefore, the criterion MCC 16.39.050(B) is met.
10. The relevant Oregon Planning Goals must be considered and assessed:

Goal 2 – Land Use Planning

To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

The process for evaluating the proposed zone change is outlined in MCC 16.39.050 and addressed above in sections 7 through 10. This process implements policy framework of both

Marion County Code and consideration of the underlying City of Salem comprehensive plan goals. The process also allows the opportunity for public comment and requires review by a hearings officer. Therefore, the planning process is consistent with Goal 2 – Land Use Planning.

Goal 12 – Transportation

To provide and encourage a safe, convenient and economic transportation system.

The subject parcels of the proposed zone change are next to two major arterial roads, State St and Lancaster Dr SE. The State Street corridor sees Cherrriots service every 30 minutes on Route 4, and one block away the Lancaster corridor sees Cherrriots service every 15 minutes on Route 11. Both are four lane roads and could easily accommodate the increased traffic which may result from potential infill development made possible by the proposed zone change. Therefore, the proposed zone change is compatible with Goal 12 – Transportation.

Goal 14 – Urbanization

To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

The subject parcels are within the Salem Urban Growth Boundary and designated Commercial in the Salem Area Comprehensive Plan. The proposed zone change to Commercial Office under Marion County is consistent with Salem’s Comprehensive Plan designation. The parcels are currently used to accommodate urban populations by providing residences. The proposed zone change would ensure the efficient use of the land if its current use is to continue and/or expand. Therefore, the proposed zone change is compatible with Goal 14 – Urbanization.

11. Marion County Planning Staff recommended approval of the proposal to change in zone from CR to CO, with application of the following conditions:
 - A. The applicant shall obtain all permits required by the Marion County Building Inspection Division.
 - B. The applicant shall meet the requirements of MCC 16.05.250 and MCC 16.05.100, which also includes MCC 16.30.220. These sections require landscaping, screening of outdoor storage areas, and appropriate exterior lighting for parking and storage areas that is directed away from adjacent residential properties.
 - C. All current and future development on the property must satisfy the specific development standards in the CO zone (MCC 16.05.000) and the general development standards found in Chapters 16.26.00 through 16.40.00 of the MCC.

Applicants had no objections to any proposed conditions and requirements.

12. The Hearings Officer finds that these conditions and requirements are reasonable and consistent with the purpose and standards of the CO zone.

VII. Recommendation

It is hereby found that Applicant has met the burden of proving the applicable standards and criteria for approval of a zone change from CR to CO have been met. Therefore, the Hearings Officer **GRANTS** the zone change application, subject to the conditions set forth below. The conditions are necessary for the public health, safety and welfare.

- A. The applicant shall obtain all permits required by the Marion County Building Inspection Division.
- B. The applicant shall meet the requirements of MCC 16.05.250 and MCC 16.05.100, which also includes MCC 16.30.220. These sections require landscaping, screening of outdoor storage areas, and appropriate exterior lighting for parking and storage areas that is directed away from adjacent residential properties.
- C. All current and future development on the property must satisfy the specific development standards in the CO zone (MCC 16.05.000) and the general development standards found in Chapters 16.26.00 through 16.40.00 of the MCC.

VIII. Referral of Decision

This document is a referral to the Marion County Board of Commissioners. A hearings officer's decision to approve a zone change does not become final until the Board adopts an ordinance implementing the decision. Any aggrieved or affected person may file with the Marion County Clerk (555 Court Street NE, Salem, Oregon), a written request for a public hearing before the Board within fifteen (15) days of the date of mailing of this decision. The request must be accompanied by and will not be accepted without payment of a \$500.00 fee. If the Board denies the appeal, \$300 of the fee will be refunded. The Board has discretion whether to hold a public hearing. After fifteen (15) days, the Board may take final action on this application without conducting another public hearing.

DATED this 3rd day of April, 2024.



Jill F. Foster, Hearings Officer

CERTIFICATE OF MAILING

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

Freshour Holdings LLC and
DKG Holdings LLC
1900 Commercial St NE
Salem, OR 97301

Cody Freshour
1900 Commercial St NE
Salem, OR 97301

Daniel Gonzalez
1900 Commercial St NE
Salem, OR 97301

City: Salem (via email)
apanko@cityofsalem.net
developmentsservices@cityofsalem.net
Planning@cityofsalem.net
withams@keizer.org

Area Advisory Committee 3:
N/A

Roger Kaye (via email)
Friends of Marion County
P.O. Box 3274
Salem, OR 97302

County Agencies Notified:
Assessor's Office (via email)
assessor@co.marion.or.us

Tax Collector (via email)
NMcVey@co.marion.or.us
ADhillon@co.marion.or.us

Surveyor's Office (via email)
KInman@co.marion.or.us

Fire District: (via email)
Marion County Fire District #1
300 Cordon Rd NE
Salem, OR 97301
PaulaS@mcfcd1.com

Planning Division (via email)
breich@co.marion.or.us
abarnes@co.marion.or.us
ANajeraSanchez@co.marion.or.us

Building Inspection (via email)
pwolterman@co.marion.or.us
Kaldrich@co.marion.or.us
ABammes@co.marion.or.us
Ctate@co.marion.or.us

Public Works LEPD Section (via email)
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mcldep@co.marion.or.us
JShanahan@co.marion.or.us

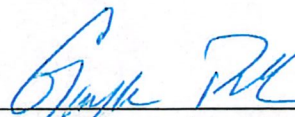
School District: (via email)
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Code Enforcement (via email)
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ccballero@co.marion.or.us

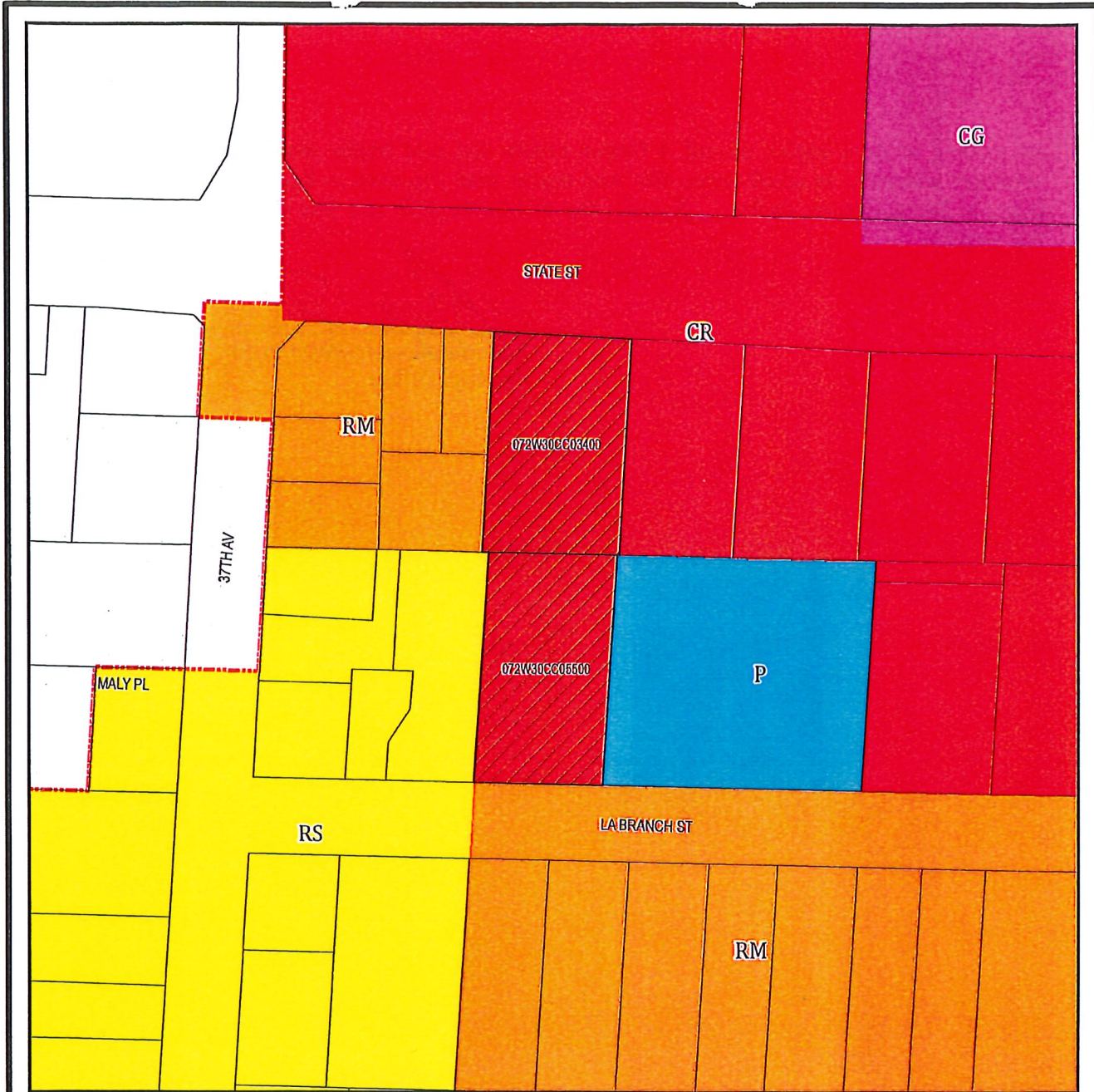
State Agencies Notified: (via email)
Nicole.mardell@dlcd.oregon.gov

Special Agencies Notified: (via email)
Suburban East Salem Water District
kurtzm@qwestoffice.net

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 3rd day of Month, 2024 and that the postage thereon was prepaid.



Administrative Assistant to the
Hearings Officer



ZONING MAP

Input Taxlot(s): 072W30CC03400, 072W30CC05500

Owner Name: VANDENBURGH, DEREK
VANDENBURGH, JELENA

Situs Address: 3745 LA BRANCH ST SE

City/State/Zip: SALEM, OR, 97317

Land Use Zone: CR

School District: SALEM-KEIZER

Fire District: MARION COUNTY NO.1

Legend

 Input Taxlots

 Lakes & Rivers

 Highways

 Cities



scale: 1 in = 112 ft

DISCLAIMER: This map was produced from Marion County Assessor's geographic database. This database is maintained for assessment purposes only. The data provided hereon may be inaccurate or out of date and any person or entity who relies on this information for any purpose whatsoever does so solely at his or her own risk. In no way does Marion County warrant the accuracy, reliability, scale or timeliness of any data provided on this map.