



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED AMENDMENT

July 3, 2007

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 008-06



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: July 18, 2007

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

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

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

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

<paa> ya/email

FORM 2

DLCD 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

(See reverse side for submittal requirements)

DEPT OF

JUN 28 2007

LAND CONSERVATION
AND DEVELOPMENT

Jurisdiction: MARION COUNTY

Local File No.: ZC/CP06-08
(If no number, use none)

Date of Adoption: JUNE 20, 2007
(Must be filled in)

Date Mailed: JUNE 26, 2007
(Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 6/2/06

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other: _____

(Please Specify Type of Action)

Summarize the adopted amendment. Do not use technical terms. Do not write

Change the zone from AR (Acreage Residential) to C (Commercial) and to change the
comprehensive plan from Rural Residential to Commercial

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write
Same. If you did not give notice for the proposed amendment, write

N/A

Plan Map Changed from : RURAL RESIDENTIAL to COMMERCIAL

Zone Map Changed from ACREAGE RESIDENTIAL to COMMERCIAL

Location: 8200 ENCHANTED WAY Acres Involved: .5 ACRES

Specify Density: Previous: _____ New: _____

Applicable Statewide Planning Goals: GOAL 3 AGRICULTURE LANDS AND GOAL 14
URBANIZATION

Was an Exception Adopted? Yes: No: _____

DLCD File No.: 008-06 (15286)

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

In the Matter of the)	Case No. 06-05
)	
Application of:)	Clerk's File No. 5510
)	
Tofte Family, LLC)	ZONE CHANGE/COMPREHEN-
)	SIVE PLAN AMENDMENT

AN ADMINISTRATIVE ORDINANCE

ORDINANCE NO. 1248

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 Tofte Family LLC to change the comprehensive plan designation from Rural Residential to Commercial, and to change the zone from AR (Acreage Residential) to C (Commercial), to take an exception to State Wide Planning Goal 3 (Agriculture Lands) and to take an exception to or demonstrate compliance with Goal 14 (Urbanization) on a 5 acre parcel in the 8200 block of Enchanted Way SE, Turner.

SECTION II. Procedural History

The Marion County Hearings Officer held a public hearing on this application on October 25, 2006. Mailed notice was provided to all property owners within 750 feet of the subject property at least 20 days before the hearing and required notice was provided to the Department of Land Conservation and Development. On April 13, 2007, the Hearings Officer issued a report recommending that the Board grant the requested changes subject to certain conditions. The Board held a duly noticed public hearing on the subject application on June 6, 2007. Official notice was taken of the Planning Division file and the Hearings Officer's recommendation. The Board considered evidence in the record, 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 the Additional Findings of Fact and Conclusions of Law contained in Section IV and V of the Hearings Officer's recommendation dated April 13, 2007 contained in Exhibit A, attached hereto, and by this reference incorporated herein.

SECTION IV. Action

The requested Comprehensive Plan Amendment from Rural Residential to Commercial is hereby **GRANTED**.

The requested zone change from AR (Acreage Residential) to C-LU (Commercial-Limited Use) zone is hereby **GRANTED** subject to the conditions identified in Exhibit B, attached hereto and by this reference incorporated herein.

The property rezoned by this Ordinance is described in Exhibit C, attached hereto and by this reference incorporated herein. The Official Marion County Zoning Map shall be changed pursuant to the Marion County Rural Zoning Ordinance Section 110.660 to reflect the new zoning.

SECTION V. Effective Date

Pursuant to Ordinance 669, 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 30th day of June,
2007, at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS

Janet Carlson
Chair

D Kim Hulett
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.

EXHIBIT A

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of:) Case No. ZC/CP 06-05
) Clerk's File No.
) Zone Change/Comprehensive Plan
Tofte Family LLC)

RECOMMENDATION

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the application of Tofte Family LLC to change the comprehensive plan designation from Rural Residential to Commercial, and to change the zone from AR (ACREAGE RESIDENTIAL) to C (COMMERCIAL), to take an exception to State Wide Planning Goal 3 (Agricultural Lands) and to take an exception to or demonstrate compliance with Goal 14 (Urbanization) on a 5 acre parcel in the 8200 block of Enchanted Way SE, Turner, Marion County, Oregon. (T8S; R3W; Section 36 B; Lots 400 and 500).

II. Relevant Criteria

The standards and criteria relevant to this application are found in the Marion County Comprehensive Plan (MCCP); the Marion County Rural Zoning Ordinance (MCRZO), especially chapters 111, 123, 128, and 145; OAR Chapter 660 Division 4; and Statewide Land Use Planning Goals, particularly 3 and 14.

III. Public Hearing

A public hearing was duly held on this application on October 25, 2006. At the hearing, the Planning Division file was made part of the record. The following persons appeared at the hearing and provided testimony on the application:

- | | | |
|----|-----------------|------------------------|
| 1. | Brandon Reich | Planning Division |
| 2. | Susan Vaslev | Applicant |
| 3. | Tony Kreitzberg | Attorney for Applicant |
| 4. | Llama Yoqoub | Opponent |

No documents were presented, marked or entered into the record as exhibits. 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 5-acre property is designated Rural Residential in the Marion County Comprehensive Plan (MCCP) and correspondingly zoned AR (Acreage Residential).
2. The subject property is south of Marche Heights Drive (a private roadway) and east of Enchanted Way SE and undeveloped. The subject property consists of a single 5-acre parcel made up of two tax lots.
3. Property to the north, west and east is in an AR zone, with the highway to the west, residences to the north and east, and a religious center to the southeast. Property to the south is in a C (Commercial) zone and consists of two amusements parks.
4. The applicant is requesting a comprehensive plan change from Rural Residential to Commercial and a zone change from Acreage Residential to Commercial. The applicant intends to use the subject property for parking for their amusement park, Enchanted Forest to the south.
5. The Marion County Planning Division requested comments on the application from various governmental agencies.

Marion County Department of Public Works (DPW) Engineering commented:

"Approval of the proposal would change the zone from Acreage Residential to Commercial on the subject property. According to the application, the subject property would be used as overflow parking for the adjacent Enchanted Forest and Thrillville attractions. The proposed zone change would result in increased traffic on Enchanted Way and other roads in the area. The Public Works Department has the following comments, requirements, and recommendations on this case:

1. Enchanted Way in this vicinity is under the jurisdiction of the Oregon Department of Transportation (ODOT). The applicant shall meet ODOT's requirements for permits, access, Right-of-Way, traffic analysis, mitigation, frontage improvements, etc. The ODOT representative for this location is Mike Rose, (503) 986-2639. It will be the applicant's responsibility to supply proof that this condition has been met.
2. As shown on the applicant's site plan, access to the proposed parking lots shall be via Enchanted Way and not Marche Heights Drive.
3. Site grading shall not impact surrounding properties in a negative manner. Construction of improvements on the property shall not block historical or naturally occurring runoff from adjacent properties. The developer will need to construct facilities as necessary to address drainage issues, and will be required to obtain approval of a site drainage plan to verify this lack of negative impact.
4. Construction of the proposed parking lots would increase the amount of storm water

runoff from the subject property. The County requires any development 0.5 acre or larger to provide storm water detention. The system shall be sized so that it will detain the difference between a 5-year frequency storm with pre-development conditions and a 10-year frequency storm with development conditions.”

Oregon Department of Transportation (ODOT) provided comments regarding access to the subject property and the need for a driveway permit from the state.

All other contacted agencies either failed to comment, or stated no objection to proposal, at the time this decision was written.

V. Additional Findings of Fact and Conclusions of Law

1. Applicants have the burden of proving all applicable standards and criteria are met.
2. All comprehensive plan amendments and goal exceptions are subject to review by DLCD. DLCD was notified as required by state law but did not comment.

COMPREHENSIVE PLAN AMENDMENT

3. The comprehensive plan amendment must be consistent with the applicable MCCP goals and polices.
4. The MCCP plan amendments Policy 2 provides that:

The procedures which Marion County will use to consider Comprehensive Plan amendments in addition to the requirements in state law, is as follows:

Individual Property or Quasi-Judicial Amendments:

Plan changes directly involving five or less properties will be considered a quasi-judicial amendment. 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 one ownership of 5 acres. This is a non-legislative plan amendment. The application includes both a plan amendment and zone change request.

5. The applicant is seeking to have the comprehensive plan changed from rural residential to commercial. The general development policies applicable to rural lands in Marion County provide:

1. All land divisions should be reviewed by Marion County for their compatibility with County goals and policies.
 2. "Strip-type" commercial or residential development along roads in rural areas shall be discouraged.
 3. Rural industrial, commercial and public uses should be limited primarily to those activities are best suited to a rural location and are compatible with existing rural developments and agricultural goals and policies.
6. This application does not deal with a land division but rather with the use of land. General development policy 1 is not applicable.
7. The applicant is seeking to provide overflow parking for its existing amusement park business, Enchanted Forest, located near the 5-acre subject property. The property is surrounded on the west by Enchanted Way, a public roadway, which runs somewhat parallel to nearby Interstate 5. The northern side of the property borders Marche Heights Drive, a private roadway, and the east side of the property borders David Lane, also a private roadway. One access will be allowed to Enchanted Way. The applicants provided a site plan of the proposed parking lot that includes a four-part phase in of the parking lot. After the fourth phase in is completed, the lot will provided parking for approximately 280 vehicles. There is no indication that the applicant desires to place a strip-type commercial or residential development on the subject parcel. General development policy 2 is met.
8. The property to the south of the subject property contains an amusement park, Thrillville, and is zoned commercial. The applicant's business, Enchanted Forest, is south of and adjacent to Thrillville and is also zoned commercial. The property to the east across David Lane is a large-scale single family residential area, with a Buddhist Temple located to the southeast of the subject property. The property to the north across Marche' Heights is also a large-scale single family residential area and the property to the west is Enchanted Way, a roadway that is bordered by I-5. The subject property has never been in farm production. Because of its location near the freeway and the uses of the adjacent properties, the subject property is insulated from farm use. The location of the property (surrounded on three sides by roadways) and the geographic make up of the property (the southern portion contains a geohazard area), plus its small size, will limit the size and type of uses feasible for the subject property. The use is compatible with the existing developments in the surrounding area. General development policy 3 is met.
9. Rural development policy 1 is applicable and states – Where there is a demonstrated need for additional commercial uses in rural Marion County they should be located in designated unincorporated communities.

The subject property is not located in an unincorporated community. The applicant needs the subject property to meet its over flow parking needs during the peak season. Without the parking lot, applicant states that vehicles may end up parking on the shoulder of Enchanted Way SE and creating an illegal and hazardous traffic situation. Rural development policy 1 is met.

10. Rural service policy 1 is applicable and states - The impact on existing services and the potential need for additional facilities should be evaluated when rural development is proposed.

Services are adequate for current commercial development at this site. the applicant has met with ODOT and has devised a plan for the needed access and requisite permit. Should the property be redeveloped, applicants will be required to meet any ODOT, DPW and Building Inspection requirements. This policy is met.

11. Rural service policy 2 is applicable and provides - It is the intent of Marion County to maintain the rural character of areas outside of urban growth boundaries by allowing those uses that do not increase the potential for urban services.

As discussed above, the site's size, shape and location will restrict its use to a level not requiring urban services. This policy is met.

Rural service policy 3 is applicable and provides - Only those facilities and services that are necessary to accommodate planned rural land uses should be provided unless it can be shown that the proposed service will not encourage development inconsistent with maintaining the rural density and character of the area.

As discussed above, the site's size, shape and location will restrict its use to a level not requiring urban services. The proposal will not encourage development inconsistent with maintaining the rural density and character of the area. This policy is met.

STATEWIDE PLANNING GOALS 3 and 14

12. The applicant has demonstrated that it meets the applicable MCCP policies. The Comprehensive Plan amendment is recommended.
13. The applicant is requesting to apply the commercial zone to the subject property. The commercial designation has already been acknowledged to be in compliance with Goal 14. As such, an exception is not required.
14. According to the staff report, when MCCP was originally acknowledged, the subject property was part of a "committed/developed" and "needs exception" to Goal 3. The original exception resulted in a rural residential designation. Planning determined that the

current proposal requires a new exception to the goal, and the applicant is proposing an irrevocably committed exception to goal 3.

15. Statewide Planning Goal 2 governs goal exceptions and is implemented through OAR 660 Division 4. Planning and zoning for exception areas is governed by OAR 660-004-0018 which provides:
 - (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:
 - (a) When a local government takes an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception;
 - (b) When a local government changes the types of intensities of uses or public facilities and services within an area approved as a "Reasons" exception, a new "Reasons" exception is required;
 - (c) When a local government includes land within an unincorporated community for which an exception under the "Reasons" section of ORS 197.321(1)(c) and OAR 660-004-0020 through 660-004-0022 was previously adopted, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that were justified in the exception or OAR 660-022-0030, which ever is more stringent.
16. Although the applicant purposed an irrevocably committed exception, a reasons exception was already taken and if the proposal is consistent with the original exception, no new exception is required as long as OAR 660-004-018 is met.
17. At the time of acknowledgement of the Marion County Comprehensive Plan, an exception to the statewide planning goal was taken and codified in Appendix A of the Goal Exceptions to the Marion County Comprehensive Plan. It provided that:

When the Agricultural and Forestry Goal is not applied to lands because of identified need for other rural uses, the full exception findings contained in LCDC Goal No. 2 are required. These required findings are:

- "(a) Why these other uses should be provided for;
- (b) What alternative locations within the area could be used for the proposed uses;
- (c) What are the long term environmental, economic, social and energy consequences to the locality, the region or the state from not applying the goal or permitting the alternative use;
- (d) A finding that the proposed uses will be compatible with other adjacent uses."

The only types of land falling into this needed category are vacant parcels at the interstate Freeway [sic] (I-5) interchanges that are designated for commercial development and the vacant industrially designated lands in rural Marion County.

18. The exception was taken at the time the MCCP was acknowledged and is still applicable to the subject property. The subject five acre parcel is located in rural Marion County, is an undeveloped parcel near an I-5 interchange and is bordered to the south by commercially zoned property.
19. The applicant states that no facility or public services will be need and no dwellings will be placed on the property. OAR 660-004-018 is met.

STATEWIDE PLANNING GOALS

20. Relief from one goal does not excuse compliance with other Statewide Planning Goals, and, comprehensive plan amendments must be consistent with Statewide Planning Goals.

Goal 1: Citizen Involvement. To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

The notice and hearings process before the hearings officer and BOC provides an opportunity for citizen involvement.

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 basis for such decisions and actions.

Under this goal, each plan and related implementation measure shall be coordinated with the plans of affected governmental units. Affected governmental units are those local governments, state and federal agencies and special districts which have programs, land ownerships, or responsibilities within the area included in the plan. Implementation measures can be site specific.

Applicants propose a site-specific comprehensive plan amendment. Marion County notified the Salem-Keizer Schools, ODOT and DLCD of the proposed comprehensive plan amendment. The only entity that responded was ODOT and that was in relation to access and permits. As a condition of approval the requests of ODOT will be met. Goal 2 is satisfied.

Goal 3: Agricultural Lands. To preserve and maintain agricultural lands.

The subject site is currently under an exception from the requirements of Goal 3. A further exception to Goal 3 was discussed above and is recommended.

Goal 4: Forest Lands. To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest species as the leading use on forest land consistent with sound management of soil, air, water, fish and wildlife resources and to provide for recreational opportunities and agriculture.

The subject site is not in a forest zone and has no known forestland capability. This goal is not applicable.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources. To conserve open space and protect natural and scenic resources.

No goal 5 resources are identified on or near the subject site. This goal is not applicable.

Goal 6: Air, Water and Land Resources Quality. To maintain and improve the quality of the air, water and land resources of the state.

Normal commercial use of this property will not generate significant particulate discharges. The subject site is not in an identified sensitive groundwater overlay zone. The applicants indicated that sewer and water services would not be needed. Goal 6 is satisfied.

Goal 7: Areas Subject to Natural Disasters and Hazards. To protect life and property from natural disasters and hazards.

The subject site is not in an identified floodplain. The southern portion of the subject property contains a geologic slide hazard area. However, the development of the parking lot is considered part of the infrastructure. A point scale is used to determine the severity of the slide area. Factors used in determining the severity of the slide area include the proposed use of the subject property and the steepness of the slope. The current proposal is to place a parking lot on the subject property. The proposed use rates one point. The steepness of the slopes rates three points. The total points assessed are four points. A total of four points does not require any additional assessments or conditions. In addition, the proposed use will not be built on the geohazard area of the subject property. Goal 7 is met.

Goal 8: Recreational Needs. To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

No goal 8 resources are identified on the subject site or implicated by this application. This goal is not applicable.

Goal 9: Economic Development. To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

This goal addresses commercial and industrial development, primarily in urban areas. Under OAR 660-009-0010(1), OAR Chapter 660, Division 9 applies only to comprehensive plans for areas within urban growth boundaries. Additional planning for commercial development outside urban growth boundaries is not required or restricted by this rule. The subject property is not inside an urban growth boundary. Goal 9 is not applicable.

Goal 10: Housing. To provide for the housing needs of citizens of this state.

OAR 660-08-000 is intended to define standards for compliance with Goal 10. OAR 660-08 deals with the provision of adequate numbers of needed housing units, and the efficient use of buildable land within urban growth boundaries. Though housing might be displaced by this comprehensive plan amendment, the subject site is not within a UGB and goal 10 does not apply.

Goal 11: Public Facilities and Services. To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

Public services are not required as a result of this application. Roadway access is controlled by ODOT. ODOT was notified of the proposal and commented on the need for access and other permits. As conditioned, Goal 11 is satisfied.

Goal 12: Transportation. To provide and encourage a safe, convenient and economic transportation system.

Under OAR 660-012-0060(1), amendments to acknowledged comprehensive plans and land use regulations which significantly affect a transportation facility shall 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.

Under OAR 660-012-0060(2), a plan or land use regulation amendment significantly affects a transportation facility if it:

- (a) Changes the functional classification of an existing or planned transportation facility;
- (b) Changes standards implementing a functional classification system;
- (c) Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or
- (d) Would reduce the performance standards of the facility below the minimum acceptable level identified in the TSP.

The proposed use is for a parking lot to relieve over crowding during the peak season at the Enchanted Forest amusement park. The peak season generally is from July through Labor Day. The peak traffic time for the amusement park that the parking lot will serve is Saturday afternoons during the peak season. The proposed parking lot will not be used full time, only during those times that overflow parking is needed which generally is Saturday afternoons from July through Labor Day. The subject application does not seek, and is not likely to result in, change in the functional classification of any road, or change the standards implementing the functional classification system, or reduce performance levels of the facility. ODOT is responsible for Enchanted Way because of its proximity to the Sunnyside-Turner I-5 interchange. A condition of approval requiring applicant to provide proof of conformance with ODOT requirements prior to development of the subject property will ensure that Goal 12 is satisfied.

Goal 13: Energy Conservation. To conserve energy.

No energy will be consumed with proposed use. New uses of the property will be restricted by its size and configuration restraints. Goal 13 is satisfied.

Goal 14: Urbanization. To provide for an orderly and efficient transition from rural to urban land use.

As stated above, the commercial designation, the designation the applicant is seeking, has already been acknowledged to be in compliance with Goal 14.

Goals 15, Willamette River Greenway, 16, Estuarine Resources, 17, Coastal Shorelands, 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.

21. The proposal complies with the statewide planning goals.

ZONE CHANGE

22. MCRZO 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 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 use 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.
23. If the comprehensive plan amendment is approved, the proposed CO zone will be appropriate for the Commercial comprehensive plan designation. As noted above, with conditions, the subject application is in conformance with applicable M CCP policies. MCRZO 123.060 (a) is satisfied.
24. As noted above, the property to the south of the subject property is Thrillville, an amusement park, and is already zoned commercial. South of Thrillville is Enchanted Forest, another amusement park owned by the applicant. The property to the east is bordered by a private roadway, David Lane. David Lane is bordered on the east by two large scale residential areas that are zoned AR. Both residences are on parcels consisting of more than two-acre each. The property to the north is bordered by Marche Lane, another private roadway. The property north of Marche Lane is also zoned AR and consists of large acreage residential parcels. To the east is a public roadway, Enchanted Way. Enchanted Way is a frontage road for I-5 and controlled by ODOT. The subject parcel is five acres and has never been farmed. It is unlikely such a small parcel, located in an area bordered by commercial and large acre residential property will ever be farmed. MCRZO 123.060(b) is met.
25. No facility services are needed with this application. The applicant's proposal is to provide overflow parking for its business to the south. The parking lot will not be used fulltime but will be used for approximately three months a year. There is no anticipated need for public facilities. Transportation networks are in place as the property is bordered on three sides by roadways and an interstate freeway is located nearby. As a condition of approval, applicant will be required to obtain a driveway permit for access on to Enchanted Way from ODOT. MCRZO 123.060(c) is met.
26. There does not appear to be any other land in the area that is available for the applicant's proposed use. The subject piece of property is not located adjacent to applicant's amusement park which would be the ideal location for a parking lot to handle overflow parking. Another piece of property, Thrillville amusement park, separates the applicant's business from the subject property. The applicant will have a shuttle service running between its amusement park business and the subject property when the use of the

CERTIFICATE OF MAILING

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

Tofte Family LLC
8462 Enchanted Way SE
Turner, OR 97392

Tony Kreitzberg
P. O. Box 749
Salem, OR 97308

Susan Vaslev
3161 Ridgway
Turner, OR 97392-9321

Lama Yaqoub
2675 Marche Heights
Turner, OR 97392-9593

Agencies Notified
Planning Division
Public Works Engineering
Building Inspection
AAC Member No. 1

Aileen Kaye
10095 Parrish Gap Road SE
Turner, OR 97392

Laurel Hines
10371 Lake Drive SE
Salem, OR 97306

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 13th day of April, 2007, and that the postage thereon was prepaid.

Christi Klug
Secretary to Hearings Officer

11. Any utility work in the public right-of-way will require a utility permit from Public Works and/or ODOT.
 12. Systems Development Charges will be assessed upon development of the subject property at the time of application for permits.
 13. Applicant shall place a barrier across the access point when the parking lot is not in use.
 14. The use of the parking lot shall not begin before 8:30 a.m. and shall not continue after 8:00 p.m. The use of the parking lot shall be limited to the months of March through September. In any event, the parking lot shall not be used during the hours of darkness. In the event that lighting is needed or required in the future, then applicant will comply with the conditions and regulations set forth by Marion County.
 15. The parking lot shall be developed in stages as set forth in the site plan.
 16. Limited Use Overlay Zone
 - a. Pursuant to Marion County Rural Zoning Ordinance Section 176.030, no zone included a list of permitted and conditional uses where all uses would be appropriate. The proposed C zone is the best suited to accommodate the desired uses, however it is necessary to limit the permitted or conditional uses in C zone. The maximum number of acceptable uses in the zone have been retained as permitted or conditional uses.
 - b. The only outright permitted use is for a parking lot. All other uses listed in the C zone shall become conditional uses.
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EXHIBIT B

The Marion County Board of Commissioners adopts the following conditions in ZC/CP 06-05/Tofte Family, LLC:

CONDITIONS OF APPROVAL:

Pursuant to the Marion County Rural Zoning Ordinance Chapter 123.070, the following conditions apply to the C (Commercial-Limited Use Overlay) 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 C-LU zoning significantly intensified the use of the land.

1. Prior to issuance of building permits, the applicant shall provide evidence of compliance with Marion County Public Works conditions and requirements.
 2. Access to the proposed parking lot shall be via Enchanted Way. The applicant shall meet ODOT's requirements for permits, access, right of way, traffic analysis, mitigation, frontage improvement and other ODOT requirements. ODOT's representative for this area is Mike Rose and his phone number is (503) 986-2639.
 3. Site grading shall not impact surrounding properties in a negative manner.
 4. Construction of improvements shall not block historical or naturally occurring runoff from the adjacent properties.
 5. Storm water detention facilities are required. The system shall be sized so that it will detain the difference between a 5-year frequency storm with predevelopment conditions and a 10-year frequency storm with development conditions.
 6. All trash receptacle areas shall be screened from adjacent residential uses and from public and private streets and roadways.
 7. The natural trees and shrubs shall be left in place to provide a buffer between the parking lot and the surrounding residences.
 8. Landscaping of the entrance area shall be in conformance with MCRZO chapter 145.
 9. Location and height of signs shall be approved by the Marion County Planning Division and DPW Engineering Development Services and Permits section. All signage shall comply with Marion County Urban Ordinance requirements.
 10. No development shall take place in the geohazard portion of the subject property.
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EXHIBIT C

The following described property is rezoned from AR (Acreage Residential) to C-LU (Commercial-Limited Use Overlay) zone.

