



Oregon

Theodore R. Kubongski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

01/13/2009

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 001-08

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 02, 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

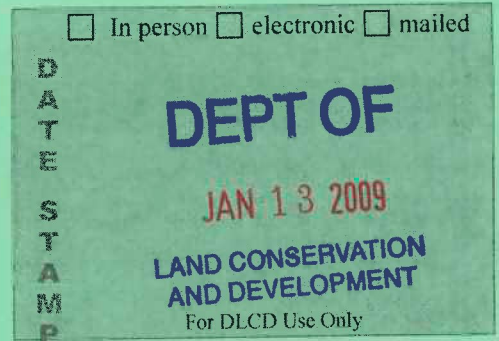
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FORM 2

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



Jurisdiction: **MARION COUNTY**

Local file number: **ZC/CP08-001**

Date of Adoption: **1/7/2009**

Date Mailed: **1/8/2009**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Select one** Date: **1/8/2008**

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

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

Adjust property liens on a 6.29 acre parcel and a 1.23 acre parcel to create a 5.52 acre parcel and a 2.0 acre parcel and to change the zone from Exclusive Farm Use to Commercial and to change the comprehensive plan designation from Primary Agriculture to Commercial and take an exception to Statewide Planning Goal 3 Agriculture Lands on the resulting 2.0 acre parcel

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

Plan Map Changed from: **Primary Agriculture**

to: **Commercial**

Zone Map Changed from: **Exclusive Farm Use**

to: **Commercial**

Location: **8755 Silverton Road NE**

Acres Involved: **7**

Specify Density: Previous:

New:

Applicable statewide planning goals:

- | | | | | | | | | | | | | | | | | | | |
|--------------------------|--------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
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Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD #001-08(16629)

DLCD file No. _____

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

Local Contact: **Sterling Anderson**

Phone: (503) 588-5038 Extension:

Address: **PO Box 14500**

Fax Number: **503-589-3284**

City: **Salem**

Zip: **97309-**

E-mail Address:

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**. 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**.
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** - ATTENTION: PLAN AMENDMENT SPECIALIST.

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

In the Matter of the)	Case No. ZC/CP/PLA08-01
)	
Application of:)	Clerk's File No. 5598
)	
Dean C. and May M. Lovrien, Trustees)	Zone Change/Comprehensive Plan
of the Dean C. and Mary M. Lovrien Trust)	Amendment/Property Line
)	Adjustment

AN ADMINISTRATIVE ORDINANCE

ORDER/ORDINANCE NO. 1280

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 Dean and May Lovrien to adjust the property lines on a 6.29 acre parcel and a 1.23 acre parcel to create a 5.52 acre parcel and a 2.0 acre parcel change the zone from EFU (Exclusive Farm Use) to C (Commercial), to change the Comprehensive Plan designation from Primary Agriculture to Commercial and take an exception to Statewide Planning Goal 3 (Agriculture Lands) on the resulting 2.0 acre parcel located at 8755 Silverton Road NE, Silverton. (T7S; R2W; Section 01B; tax lots 800, 900).

SECTION II. Procedural History

The Marion County Hearings Officer held a duly noticed public hearing on this application on March 12, 2008. Mailed notice was provided to all property owners within 750 feet of the subject property at least 20 days before the hearing. On October 20, 2008, the Hearings Officer issued a report recommending that the Board deny the requested Zone Change and Comprehensive Plan Amendment and recommended approval on the Property Line Adjustment. The Board held a duly noticed public hearing on the application on November 19, 2008. 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 in Exhibit A, attached hereto, and by this reference incorporated herein.

SECTION IV. Action

The requested zone change from Primary Agriculture to Commercial is hereby **GRANTED**. The requested zone change from EFU (Exclusive Farm Use) to C-LU (Commercial Limited Use Overlay) zone is hereby **GRANTED** subject to the conditions and the Limited Use Overlay zone 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 Rural Zoning Map shall be changed pursuant to the Marion County Rural Zoning Ordinance Section 110.660 to reflect the new zoning.

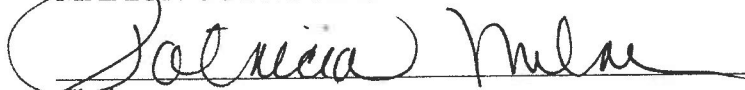
The requested property line adjustment is hereby **GRANTED**.

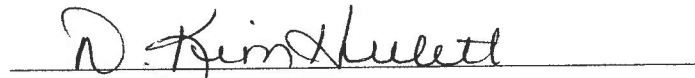
SECTION V. Effective Date

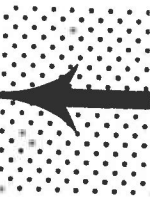
Pursuant to Ordinance 669, this is an Administrative Ordinance and shall take effect 21 days after the adoption and final signatures of the Marion County Board of Commissioners.

SIGNED and FINALIZED this 7th day of January, 2009, 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.

EXHIBIT A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Marion County Board of Commissioners after careful consideration of all the testimony and evidence in the record makes the following findings of fact and conclusions of law in Property Line Adjustment/ Zone Change /Comprehensive Plan Amendment (PLA/ZC/CPA) 08-1.

A. General Findings:

1. The Subject 7.52-acre Property is designated Primary Agriculture in the MCCP and is zoned EFU. The primary intent of this designation and zone is to promote and protect commercial agricultural operations in areas generally well suited for large-scale farming. The zoning is also applied to small inclusions of tracts composed predominantly of non-high value farm soils to avoid potential conflicts between commercial farming activities and a wider range of non-farm uses otherwise allowed on non-high value farmlands. To provide the needed protection within cohesive areas it is sometimes necessary to include incidental land unsuitable for farming and some preexisting residential acreage in the zone.
2. The Subject Property is in the northwest corner of the intersection of Silverton Road (State Highway 213) and Howell Prairie Road. About half of the Subject Property is a grass seed field. The other portions include a riparian area along Howell Prairie Creek, land developed with a dwelling, a medical hardship dwelling with accessory structures, about one acre planted with Christmas trees and about one-half acre devoted to farm stand use. The subject 7.52 acres includes two legal parcels, as determined in Conditional Use Case 75-73 (CU75-73), which approved establishment of a farm stand on the property, effective January 5, 1976. According to the Applicants, a fruit and produce stand had been operating on the site for 38 years and the Applicants, who are the current owners of the property, wished to relocate and expand the existing structure. The approval was amended in 1979 to allow sales of "local raw milk, eggs, honey, and other local non-processed agricultural items." Additional land use cases on the property include Conditional Use Case 03-15 (CU03-15) approving a medical hardship dwelling and Administrative Review Case 02-36 (AR02-36), which approved addition of an espresso stand to the farm stand operation on the Subject Property on June 25, 2002. The espresso stand was later removed and the farm stand is not currently operating.
3. Surrounding properties to the north, west and south contain a mixture of medium and large farming operations in an EFU zone. Across Howell Prairie Road to the east is a gas station in a C zone and a church in an EFU zone. The C zoned property was the subject of a Zone Change in 1975 (ZC75-5) that was approved as an irrevocably committed exception because an industrial use had been located on the property prior to zoning. The proposed use was a farm machinery repair and sales business that would be allowed as a commercial activity in conjunction with farm use in the EFU zone. To the southeast of the Subject Property is an elementary school in an EFU zone and a communications tower, apartment complex, electrical service and repair business in a C zone.

4. The Subject Property contains class I Willamette, class II Amity, and class IV Dayton high value agricultural soils. About five acres of the Subject Property are in farm use.
5. Applicants ask to take an exception from Statewide Goal 3 on EFU zoned property, to change the comprehensive plan designation from Primary Agriculture to Commercial, and to change the zoning from EFU to C for a 2-acre portion of the property. Applicants also ask to adjust the property lines between the parcels to create a 2.0-acre parcel for commercial use and a 5.72-acre agricultural use parcel that would contain the existing grass seed field, riparian area and dwelling with accessory structures. Applicants originally proposed a "small-scale rural commercial enterprise" that would include seasonal uses such as selling local farm products and year-around uses as allowed in the C zone. Applicants later suggested a limited use (LU) overlay zone that would allow only grocery stores on the site.
6. The Marion County Planning Division requested comments on the proposal from various governmental agencies.

The Marion County DPW Engineering Development Services & Permits section commented that approval of the proposed Zone Change, Comprehensive Plan Change, and Property Line Adjustment (ZC/CP/PLA) would allow more intense development on the Subject Property, which would affect Silverton Road, Howell Prairie Road and other roads in the area. The Public Works Department has the following comments, requirements, and recommendations for the proposed ZC/CP/PLA. Conditions must be met prior to operation:

STREETS

1. The intersection at Silverton Road and Howell Prairie Road currently meets signal warrants, but operates at Level of Service (LOS) C. Our analysis indicates that a 25% increase in traffic volumes will cause the intersection to operate at LOS F, which is unacceptable. A signal will be needed, with appropriate turn lanes, as is identified in the Marion County Rural Transportation System Plan (TSP) project list. A project to widen Silverton Road to four lanes (to two lanes in each direction) is also included in the recommended project list. To provide for the future expansion of Silverton Road, the Special Street Setback of 50 feet listed in Section 112.020 of the Marion County Rural Zoning Ordinance (MCRZO) shall be observed. The required front and side yard distances specified for Commercial zone in Section 145.080 shall be measured in addition to the Special Street Setback distance, in accordance with Section 112.020 (b).
2. A transportation impact analysis (TIA) shall be required for any proposed zone change that, in typical build out scenarios, can reasonably be expected to generate more than 300 vehicle trip ends during a single day. The developer will be required to construct or fund mitigating improvements identified in the TIA. A 2-acre parcel has the potential to generate significantly more than 300 trip ends per

day. However, Marion County Public Works may waive the TIA if the Applicants agree to the following:

- a. A LU (Limited Use) overlay limiting the use of the property to selling local produce and ornamental plants, milk, dairy, grains, household goods, and other foods and beverages. (The Applicants has indicated that he is willing to consent to this.)
 - b. The Applicants shall contribute a proportional share of the cost of planning, designing, and constructing a signal and turn lanes, as identified in the TSP. The basis for the proportional share shall be the percentage of traffic added by the development, and was based on using the existing building and proposed use. This is calculated to be \$19,225, and shall be paid as a condition of the zone change. If the use changes, or the building is expanded, then additional proportional share contributions may be required. The Applicants will not be required to contribute to the project to widen Silverton Road to four lanes, as that project is eligible for System Development Charge (SDC) funds, which the Applicants will be paying.
3. The Applicants shall dedicate additional right-of-way to accommodate the signal and turn lanes. This is anticipated to require an additional 10 feet on Silverton Road (for a total right-of way of 40' from centerline) and 7 feet on Howell Prairie Road (for a total right-of-way of 37' from centerline). Additional right-of-way to accommodate the corner radius and signal equipment may be required.
 4. The access shall be restricted to one access on Howell-Prairie Road. No access will be allowed on Silverton Road. The access spacing standard as identified in the TSP is 400' from any intersection with an arterial road. Since the property does not appear to have adequate frontage to meet this standard, an access near the north property line will be acceptable to reduce impact on intersection operations. In the interim, one access directly across from the fuel station access will be allowed. In accordance with Marion County Ordinance #651, access permits are required for any new access or change in use of the existing access to the public right-of-way. The Applicants shall be required to sign a non-remonstrance agreement to move the access when necessary to facilitate roadway operations as determined by Public Works.
 5. If this development is approved, the Applicants will be required to improve Howell Prairie Road along their frontage to county standards as directed by the Public Works Department. This is anticipated to include shoulder widening, drainage work, and vegetation clearing along the roadway.
 6. Driveways will also need to meet fire district standards for emergency access.
 7. Silverton Road has a Pavement Condition Index (PCI) of 75 and Howell Prairie Road has a PCI of 88. The Applicants is reminded of their responsibility to

preserve and protect nearby roads and ditches to the satisfaction of Marion County Public Works throughout the use of the property. Failure to preserve and protect the roads and ditches may result in the user being responsible for replacing or reconstructing the damaged road or ditch at their expense.

STORM DRAINAGE

8. Site grading shall not impact surrounding properties, roads, or drainage ways in a negative manner. Construction of improvements on the property shall not block historical or naturally occurring runoff from adjacent properties. The Applicants shall submit a site drainage plan to demonstrate this lack of negative impact.
- 9 Storm drainage improvements shall be built to Marion County Engineering and Construction Standards. Storm drainage shall be discharged to a suitable outlet and, where applicable, evidence provided that an adequate easement exists for transit of the water to this outlet. The County requires any development 0.5 acre or larger to provide storm water detention for any increase in runoff. Acceptable drainage and detention systems must be in place prior to issuance of building permits.

GENERAL

10. The Subject Property is within the unincorporated area of Marion County. Transportation System Development Charges may be assessed upon development of the property.
11. Any work in the public right-of-way will require a permit from Public Works.

The Marion County Building Inspection Division commented that a septic record review is required to show that there is no conflict between the existing septic system, including the replacement area, and the proposed property line adjustment.

Marion County Tax Assessors Office provided property tax information on the Subject Property.

All other responding agencies had no comment on the proposal.

B. Additional Finding of Fact and Conclusions of Law

GOAL EXCEPTION

1. All exceptions and comprehensive plan amendments are subject to DLCD (Department of Land Conservation and Development) review. DLCD was notified as required by state law, but provided no comment on the proposal.

2. There are three types of exceptions to statewide planning goals. The first type of exception is based on the concept that the property itself is too “physically developed” to be available for resource use. The second exception is based on the concept that the land surrounding the Subject Property is developed to such an extent that the property is “irrevocably committed” to uses other than resource use. The third type of exception requires the county to show other “reasons” why a goal exception is appropriate. Applicants propose a physically developed or irrevocably committed exception to goal 3. Physically developed and irrevocably committed exceptions are often addressed together, but each is a different type of exception. OAR 660-004-0025 addresses physically developed exceptions. OAR 660-004-0028 addresses irrevocably committed exceptions.

3. Physically developed

Under OAR 660-004-0025:

- (1) A local government may adopt an exception to a goal when the land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal.
- (2) Whether land has been physically developed with uses not allowed by an applicable goal will depend on the situation at the site of the exception. The exact nature and extent of the areas found to be physically developed shall be clearly set forth in the justification for the exception. The specific area(s) must be shown on a map or otherwise described and keyed to the appropriate findings of fact. The findings of fact shall identify the extent and location of the existing physical development on the land and can include information on structures, roads, sewer and water facilities, and utility facilities. Uses allowed by the applicable goal(s) to which an exception is being taken shall not be used to justify a physically developed exception.

4. Applicants’ proposed development is a rural market that would carry a full line of food, beverages, and household goods, which are produced locally and out of state. The proposed development is not of the “type of use” allowed by Goal 3, as it is a commercial use.

The Exception Area is physically developed to the extent that it is no longer available for farm use as defined by ORS 215.203. It is approximately two-acres in size. While the Soil Conservation Service maps for Marion County identify the Exception Area as consisting of High Value Soil, it is developed to the degree that no reasonable crop can grow on it. The physical development consists of a 933 square foot farm stand, a 288 square foot commercial cooler, a 3,000 square foot parking lot, a gravel driveway, a well, a septic tank, and debris from the former Salem-Silverton Highway. It is bordered on the south and east by Silverton Road and Howell Prairie Road respectively. The Applicants’ residence and mobile home border the Exception Area to the east, and an orchard borders the Subject Property to the north, which is buffered from the Exception Area by a portion of the Applicants’ property currently planted with Christmas Trees.

Tax lot 800 identifies the location of the former State right-of-way. The State removed the paved portion of the road, but it left the rock and gravel roadbed. The area affected by the former highway is much larger than the area of the old right-of-way. In 1948, the State leveled the roadbed by spreading out the gravel out onto the Exception Area. Thus, despite the soil being classified as High Value, Applicants are unable to grow virtually anything on the Exception Area due to the physical developments. As a result of the development associated with the farm stand and state highway, the Applicants cannot farm the Exception Area.

Additionally, Portland General Electric (PGE) owns utility easements over the Exception Area on a 22.5-foot wide strip of land along Silverton Road and a 20-foot wide strip of land on Howell Prairie Road. These utility easements give PGE the right to install power lines, which they have, and effectively prohibits the Applicants' ability to farm the land above the buried lines.

While the amount of physical development is substantial, the County finds that the Applicants have failed to meet their burden of proof under OAR 660-004-0025.

5. Irrevocably Committed - Under OAR 660-004-0028:

- (1) A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable:
 - (a) A "committed exception" is an exception taken in accordance with ORS 197.732(1)(b), Goal 2, Part II(b), and with the provisions of this rule;
 - (b) For the purposes of this rule, an "exception area" is that area of land for which a "committed exception" is taken;
 - (c) An "applicable goal," as used in this section, is a statewide planning goal or goal requirement that would apply to the exception area if an exception were not taken.
- (2) Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:
 - (a) The characteristics of the exception area;
 - (b) The characteristics of the adjacent lands;
 - (c) The relationship between the exception area and the lands adjacent to it; and

- (d) The other relevant factors set forth in OAR 660-004-0028(6).
- (3) Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(1)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule. Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is "impossible." For exceptions to Goals 3 or 4, local governments are required to demonstrate that only the following uses or activities are impracticable:
- (a) Farm use as defined in ORS 215.203;
 - (b) Propagation or harvesting of a forest product as specified in OAR 660-033-0120; and
 - (c) Forest operations or forest practices as specified in OAR 660-006-0025(2)(a).
- (4) A conclusion that an exception area is irrevocably committed shall be supported by findings of fact which address all applicable factors of section (6) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area.
- (5) Findings of fact and a statement of reasons that land subject to an exception is irrevocably committed need not be prepared for each individual parcel in the exception area. Lands which are found to be irrevocably committed under this rule may include physically developed lands.
- (6) Findings of fact for a committed exception shall address the following factors:
- (a) Existing adjacent uses;
 - (b) Existing public facilities and services (water and sewer lines, etc.);
 - (c) Parcel size and ownership patterns of the exception area and adjacent lands:
 - (A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the Goals were made at the time of partitioning or subdivision. Past land divisions made without application of the Goals do not in them demonstrate

irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors make unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for land adjoining those parcels;

- (B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations.
 - (d) Neighborhood and regional characteristics;
 - (e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;
 - (f) Physical development according to OAR 660-004-0025; and
 - (g) Other relevant factors.
- (7) The evidence submitted to support any committed exception shall, at a minimum, include a current map, or aerial photograph which shows the exception area and adjoining lands, and any other means needed to convey information about the factors set forth in this rule. For example, a local government may use tables, charts, summaries, or narratives to supplement the maps or photos. The applicable factors set forth in section (6) of this rule shall be shown on the map or aerial photograph.
- (8) The requirement for a map or aerial photograph in section (7) of this rule only applies to the following committed exceptions:

- (a) Those adopted or amended as required by a Continuance Order dated after the effective date of section (7) of this rule; and
 - (b) Those adopted or amended after the effective date of section (7) of this rule by a jurisdiction with an acknowledged comprehensive plan and land use regulations.
6. Under OAR 660-004-0028(1), the first issue that must be addressed is whether the proposed use is allowed by the applicable goal. Applicants propose a commercial use for the Subject Property. There are many possible commercial uses but Applicants propose a limited use overlay zone that would allow only Standard Industrial Classification (SIC) Manual use code 5411, grocery stores:

Stores, commonly known as supermarkets, food stores, and grocery stores, primarily engaged in the retail sale of all sorts of canned foods and dry goods, such as tea, coffee, spices, sugar, and flour; fresh fruits and vegetables; and fresh and prepared meats, fish, and poultry.

Convenience food stores-retail
Food markets-retail
Frozen food and freezer plans, except meat-retail
Grocery stores, with or without fresh meat-retail
Supermarkets, grocery-retail

Statewide Planning Goal 3 allows various uses, including some commercial uses, such as commercial activities in conjunction with farm use. The goal does not allow grocery stores. Applicants may seek an exception to goal 3 for the proposed use.

7. Proposed Exception Area. The proposed Exception Area is 2.00 acres and would be a portion of two current tax lots, 72W1B 800 and 900. Tax lot 900 contains a dwelling that would be outside of the Exception Area. The southern portion of the proposed Exception Area is developed with a fruit stand building, separate walk-in cooler and gravel parking lot. Utility easements encumber 22.5-foot wide strip of land along Silverton Road and a 20-foot wide strip of land on Howell Prairie Road. A significant portion of the proposed Exception Area contains an old roadway bed, left over from the realignment of Silverton Road in the 1940s. The roadway was on what is now tax lot 800 and covers the southern portion of the proposed Exception Area. According to Applicants, the old roadbed extends beyond the boundaries of tax lot 800 because the debris from the roadbed was spread out beyond its original site when the area was leveled out. Applicants supplied photographs of graveled areas on the property, diagrams, and testimony indicating that the road bed covers the southern 80 feet of the Exception Area, including the area under the farm stand improvements. A small portion of the proposed Exception Area is planted in Christmas trees, some serving the farm stand as a retail product and other trees acting as a natural buffer between the Exception Area and the northern property. The evidence demonstrates that farming is impractical on the Subject Property given the encroachments and physical improvements. Additionally, evidence was submitted that certain types of nursery activities

or hydroponic plant operations that do not depend on soil were possible, given substantial contributions of capital and training, but were nevertheless impractical.

8. Adjacent lands. A filbert orchard is north of the proposed Exception Area. Across Howell Prairie Road in an EFU zone, is the Apostolic Christian Church. The Pratum Co-op owns the property south of the church and east across Howell Prairie Road from the proposed Exception Area. The Pratum property is zoned C and contains a card lock gas station, a Shell gas station open to the general public, and a coffee wagon. South of the gas station, across Silverton Road and kitty corner from the proposed Exception Area is a C zoned electrical shop, communications facility and apartment complex, and an EFU zoned elementary school. An EFU zoned grass seed field is west of the school across Howell Prairie Road and south of the proposed Exception Area across Silverton Road. A home, hardship dwelling, and small grass seed field are on Applicants' property west of the proposed Exception Area.
9. Relationship between Exception Area and adjacent lands. The Exception Area is almost completely separated from agricultural use by the physical development of the surrounding parcels. The Subject Property, which surrounds the Exception Area, is physically developed with a manufactured home, a residence, and farm building. These developments separate the Exception Area from agricultural use to the west and north. The Exception Area is separated from the parcels on the east and south by Howell Prairie Road and Silverton Road respectively. The only portion of the Exception Area that abuts agricultural use is an area approximately 75-feet long in the northeast corner of the Exception Area.

The physical developments of the immediate surrounding parcels commit the Exception Area to commercial use. The parcel to the immediate east is a gas station and coffee shack, to the immediate northeast is a church, and to the immediate southeast is a school, apartment building, electrical repair shop, and wireless communication facility (WCF). The trips generated by these uses already draw a large number of people to this intersection and create potential conflicts between customers, school children, and other users with ordinary farm practices such as spraying, burning, and other practices.

Lastly, the relationship between the Exception Area and the surrounding rural residents also irrevocably commits the Exception Area to commercial use. A significant number of local residents in the Pratum and surrounding areas have relied on the farm stand in the past for local produce and dairy products. The surrounding farmers also use the Exception Area as a retail outlet for their products. However, the increased regulations on farm stands now prohibit Applicants from meeting those needs. Specifically, the expansion of the farm stand to a rural residential market will allow the market to sell dairy, meat, grains, and household goods in addition to local produce and ornamental plants. Without this expansion, the farm stand will be prohibited under the new regulations, the Exception Area will be vacant, and the local needs will not be met.

Thus, the best use of the Exception Area is to expand the product line of the farm stand to serve the rural residents needs for food and household goods, so they may purchase such goods as they drive to school, worship, or purchase gas.

10. Other relevant factors. OAR 660-004-0028 (6) contains the following “other factors” to be considered when taking an exception to statewide planning goals.

Existing adjacent uses. Finding 9 is incorporated by this reference herein.

Existing public facilities and services. No public water or sewer services are available to serve the site. The two public roadways, Silverton Road and Howell Prairie Road, serve the site and will be improved pursuant to the conditions of approval. The current use is adequately served by onsite well and septic systems. As discussed further below, the approved use is essentially the same use with an expansion of the buildings less than 800 square feet. Therefore, the existing private services are adequate for the use, no new public services will be needed, and the existing public services will be improved.

Parcel size and ownership patterns of the Exception Area and adjacent lands. The Subject Property is generally in an area of large parcels in farm use, but there are smaller parcels in the immediate area of the Howell Prairie Road-Silverton Road intersection. The Subject Property, tax lots 800 and 900, 1.23 and 6.29 acres respectively, were created by deed and transferred to the current owners in 1972 by a single deed that described the two parcels as tract 1 and tract 2. At one time, tax lot 800 was owned by the State of Oregon through its Highway Commission and was a part of the Salem-Silverton Highway (*see deed*). In the 1940s, the highway was realigned and tax lot 800, the former right-of-way, was conveyed out of state ownership. The proposed Exception Area consists of the easterly portions of tax lots 800 and 900, and would become a separate legal 2.0-acre parcel if the property line adjustment is approved. The remaining portions of tax lots 800 and 900 would become a separate legal 5.52-acre EFU zoned parcel.

Tax lot 72W1B400, north of the Subject Property, owned by Santos and Graciela Garcia, is in orchard use and is 39.48 acres.

Tax lot 72W1B500, northeast of the Subject Property across Howell Prairie Road, is a five-acre parcel owned by the Apostolic Christian Church that is fully developed for church purposes. The church parcel was enlarged from four to five acres, and the church established at the site with BOC approval of CU/LLA 91-52. The size of the church facility has expanded since the initial approval, but the parcel size has not changed.

Tax lot 72W1B700, east of the Subject Property across Howell Prairie Road, is owned by the Pratum Co-op. The parcel was once two separate parcels zoned EFU and CR (Commercial Retail). In ZC 75-5 the zoning was changed to CG (Commercial General). According to the MCCP, Appendix A, the parcels were designated commercial and zoned CR during initial MCCP acknowledgement in the early 1980s. The parcels were later converted to C zoning. PLA 07-18 combined the pieces of property into one parcel and expanded it to 1.05 acres.

The Sanders, et al parcel, tax lot 072W1C100, is 0.83 acre. It is developed with a seven unit apartment complex, a 2,304 square-foot electrical service and repair facility, and a

wireless communication facility (WCF). The property is designated Commercial and zoned Commercial Retail.

The Silver Falls School District owns tax lot 072W1C200. The parcel is 3.07-acres and is in school use.

Across Howell Prairie Road from the school and south and southwest of the proposed Exception Area are two parcels owned by Cecil and Lois Roth. The origin of these large parcels is not identified, but they are in farm use (grass seed) and cannot justify a committed exception.

Directly west of the Subject Property is an approximately four acre parcel, owned by Jose and Isidra Villegas (tax lot 072W1B1000). It contains nursery stock and green houses.

When viewed as a whole, the surrounding properties' sizes and particularly the developments that make them unsuitable for resource uses demonstrate that the Howell Prairie Road–Silverton Road intersection is a commercial/non-farm node that provides non-resource education, communication, church, and gas services to the rural residents. Resource uses on the site are impractical, and the proposed small scale market is a use that is consistent with the size and use of the area surrounding the properties and the historical use of the Exception Area. Thus, the parcel size and ownership patterns of the surrounding properties and Exception Area irrevocably commit the Exception Area to limited commercial use.

Neighborhood and regional characteristics. The Subject Property is at the intersection of two major roadways in an active commercial farming area. The intersection area is known as Central Howell. Central Howell was previously an MCCP identified rural service center, but does not fit the state's current unincorporated communities rule. The area is no longer a designated rural service center so certain rural development policies no longer apply.

Nevertheless, the former designation evidences the fact that surrounding residents have historically relied on the Exception Area to provide retail services and as an outlet for their produce, live stock products, and ornamental crops. Residents of the surrounding area still lack a nearby source for dairy, meat, grains, and other household goods. Moreover, there are no vacant commercial parcels available to serve the residences in the surrounding 2.5 miles. Therefore, the proposed development will provide a historical and presently needed service to the greater rural community.

Natural or man-made features or other impediments separating the Exception Area from adjacent resource land. The Exception Area is almost entirely separated from adjacent agricultural uses. The Subject Property, which surrounds the Exception Area, is physically developed with a manufactured home, a residence, and a farm building. These developments separate the Exception Area from agricultural use to the west. The Exception Area is separated from the parcels to the east and south by Howell Prairie Road and Silverton Road respectively. The only portion of the Exception Area that abuts

agricultural use is an approximate 75 foot long portion of the northeast corner of the Exception Area. The Applicants have proposed a vegetative buffer, and as conditioned, the Exception Area will be adequately separated from adjacent resource lands so as not to further commit adjacent parcels to commercial use.

Physical development according to OAR 660-004-0025. While the Board finds that the physical development does not independently constitute a physically developed exception, the Board does find that the physical development on the Exception Area makes farm uses impractical, even if not impossible. Specifically, the Board finds that the Exception Area is not practical, even for nursery uses, given its small size, proximity to commercial uses, the significant need for capital investment both in infrastructure and training, and the lack of onsite residence. The fact that some nursery operators with unique financial and technical situations in the County use greenhouses, grow plants in pots on gravel, or use other specialized practices that are irrelevant to the quality of the soil, or size of the parcel only means that a nursery use is not impossible. However, the standard is whether farm uses are impractical, and the Board finds the physical development, particularly the road debris, makes farm uses impractical.

Other relevant factors. The Exception Area is adjacent to commercial and non-farm uses. It is located in the area formerly designated as a Rural Services Center in Marion County's Comprehensive Plan. It will provide services necessary for the surrounding rural community, which depends on this commercial node for education, communication services, gas, and food. Applicants constructed a farm stand, commercial cooler, other associated buildings, and parking lot for the purpose of permitted commercial-farm use. However, the new County and State rules severely restrict the Subject Property from continuing a farm stand at the Exception Area. The Subject Property has been vacant for more than a year because of the inability to conform to these laws.

Applicants propose an LU overlay zone limiting use of the proposed Exception Area to grocery store uses. This use will be essentially the same use as a farm stand, but it will allow incidental goods to be sold without being limited to 25 percent of the gross receipts (as compared to local farm products).

11. Maps and aerial photographs. The record contains an Assessor's Office map, zoning maps and several aerial photographs showing the subject and surrounding properties and depicting the proposed Exception Area.
12. Conclusion. On balance, the evidence in the record supports an irrevocably committed exception. The Exception Area is substantially physically developed, the historical and current nature of the Exception Area and surrounding properties is commercial and non-resource use such that resource uses within the Exception Area are no longer practical. Therefore, the Applicants satisfy OAR 660-004-0028.
13. Planning and zoning for Exception Area 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.)

All statewide planning goals are examined below to determine whether a Goal 3 exception will run afoul of the remaining goal requirements per OAR 660-004-0018(1).

14. OAR 660-004-0018(2)(a) does apply and is satisfied because the proposed use, a rural market, is the same use as the former farm stand. Currently, the farm stand is allowed to sell all of the proposed goods allowed under the proposed use, but it is limited to 25 percent of the gross receipts. Thus, the only change is the intensity of the use, but not the nature of the use. Additionally, the changes to the use will be limited to an expansion of the current facility to less than 800 square feet. Therefore, the Applicants satisfy this criterion.

STATEWIDE PLANNING GOALS

15. 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. Goal 3 applies to the subject site. Applicants are requesting an exception to this goal and have provided sufficient evidence grant a Goal 3 exception.

Goal 4: Forest Lands. The Subject Property is not in a forest zone. This goal is not applicable.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources. No MCCP identified wetlands, riparian ways, aggregate sites, big game habitat, sensitive waterways or cultural sites are identified on or immediately adjacent to this site. The Howell Prairie Creek riparian area that crosses the Lovrien property is not an MCCP identified goal 5 resource and is not considered in evaluating this goal. This goal is not applicable.

Goal 6: Air, Water, and Land Resources Quality. The Subject Property 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 commercial 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. On-site septic and water services are feasible. This goal is satisfied.

Goal 7: Areas Subject to Natural Disasters and Hazards. The Subject Property 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 Property 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. No homesites will be displaced by the proposed use. The housing goal is not applicable.

Goal 11: Public Facilities and Services. The proposed exception area, with conditions discussed below, will be adequately served by public roadways and private facilities and services. This goal can be 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.

Silverton Road, in this area, is a major arterial way and is under county jurisdiction. Howell Prairie Road, a major collector, is a county road. The proposed exception will not change the functional classification of either roadway or change the standards implementing either roadway classification. The application was coordinated with Marion County DPW, the roadway authority for Marion County. DPW noted that the Silverton Road-Howell Prairie Road intersection now functions at a level of service C, an acceptable LOS. According to the RTSP, Marion County considers LOS D and above as acceptable for four-way-stop intersections in rural areas. According to DPW, 300 additional traffic trips per day at the intersection will cause it to fail (LOS F). Per the RTSP, LOS E would also be an unacceptable LOS.

DPW recommended mitigation measures, including an LU overlay zone that would limit uses on the property to lower traffic impact uses. According to Applicants, during the open record period in this case, their representative met with DPW's senior traffic engineer and they agreed that the LU overlay zone should be limited to uses covered by SIC code 5411, grocery stores, with a maximum area of 2,000 square feet. This would help keep the intersection from operating at an unacceptable level due to the impacts of the proposed use. Along with the LU overlay zone, DPW noted that Silverton Road is scheduled for widening and signalization. DPW calculated that Applicants' proportional share for widening and signalization of the intersection would be about \$19,225 based on the additional traffic the proposed use would generate. A special 50' street setback also applies to the property's Silverton Road frontage. Additionally, right-of-way dedication is requested as a part of the mitigation plan. An additional ten feet is needed on the Silverton Road frontage and an additional seven feet is required along the Howell Prairie Road frontage. The request for dedication is reasonably related to Applicants proposed use and potential impact on the roadway and should be required as a condition of any approval, along with frontage improvements. With these mitigation measures imposed as conditions of approval, the proposed exception will not reduce the performance of the roadways or intersection to unacceptable levels and Goal 12 will be met.

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

Goals 14: Urbanization. If an exception is taken, it will not lead to urbanization of the area provided that the limited use overlay as proposed is applied. With the LU overlay, 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 Property is not within the Willamette River Greenway or near any ocean or coastal related resources.

COMPREHENSIVE PLAN AMENDMENT

16. 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 one parcel and is a quasi-judicial plan amendment. Applicable MCCP policies are reviewed.

17. The following MCCP policies are considered:

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

The Silverton Road-Howell Prairie Road intersection has commercial development in two quadrants. The proposed Exception Area has been in quasi-commercial use with the fruit stand for some time. Regular commercial use of the property would not result in strip development because the commercial uses would remain clustered at the intersection. This policy is met.

Rural Development Policy 3: Rural industrial, commercial, and public uses should be limited to those activities that are best suited to a rural location and are compatible with existing rural developments and agricultural goals and policies.

A grocery store use at the proposed square footage would be an allowed use in the acknowledged rural C zone and is appropriate in a rural location. The Applicants submitted evidence demonstrating that the Exception Area is centrally located to an underserved rural population who need both a retail outlet for their farm goods and traditional grocery goods. This policy is met.

Rural Services Policy 1. The impact on existing services and the potential need for additional facilities should be evaluated when rural development is proposed.

Transportation services are addressed below in the statewide planning Goal 12 discussion. With conditions proposed by DPW, transportation concerns should be adequately addressed. DPW also requested stormwater services conditions to address runoff issues generated by the proposed additional development. The conditions are reasonably related to the proposed comprehensive plan amendment and should be required as conditions of any approval.

The current well and septic system are adequate to serve the proposed use on the current site. Future development will be conditioned on septic approvals. As conditioned, this policy is met.

Rural Services Policy 2. It is the intent of Marion County to maintain the rural character of the areas outside of urban growth boundaries by only allowing those uses that do not increase the potential for urban services.

Planning staff and the Applicants submitted testimony that no urban services would be needed and the current rural services are sufficient. This policy is met.

Transportation System Management Policy 7. Land use changes that could result in increased development levels and thus higher traffic levels will be assessed for their impact to current and future traffic volume and flow, and these impacts must be appropriately mitigated (as determined by the Public Works Director in accordance with applicable standards and practices) in order for the development to be allowed.

Mitigation measures recommended by DPW were addressed above and are deemed appropriate and necessary. With the proposed conditions of approval, this policy will be met.

Transportation Development and Access Policy 7. To prevent exceeding the function and capacity of any component of the transportation system, the County will consider roadway functional classification, capacity, and current conditions as primary criteria for proposed changes in land use designations and proposed land use developments. In addition, present and anticipated safety issues shall also be significant criteria.

Mitigation measures recommended by DPW were addressed above and are deemed appropriate and necessary. With the proposed conditions of approval, this policy will be met.

Transportation Development and Access Policy 11. a.) Direct access to arterials from adjacent parcels should not be allowed if alternative access is available or can be made available. b) If a parcel has access options onto more than one roadway, the access should be derived from the road with the lower functional class, and if of the same functional class, the road with the lower traffic volume and fewer potential conflicts. c) Likewise, where property abuts both a county or public use road and a State highway, the preferred access will be onto the county or public use road (unless the roads' functional classification would indicate otherwise).

DPW is restricting access to Howell Prairie Road. With this condition, this policy will be met.

Transportation Development and Access Policy 13. a) To minimize and eliminate hazards along public roadways, the County shall review and approve all proposed driveways and accesses (including all measurable access modifications and significant increases in use of an access) to County roads; and to local access roads as resources allow. b) Accesses shall be located at the safest site possible and shall meet the stopping sight distance requirements specified in Marion County's design standards. Actions required to obtain these stopping sight distances shall be required as a condition of

approval of the access permit. c) Accesses should be consolidated, whenever feasible, to minimize the number of access points.

DPW suggests consolidating the current access points to one access off of Howell Prairie Road. With this condition and the requirement that Applicants' obtain a driveway permit, this policy will be met.

Transportation Development and Access Policy 14. Driveways, internal circulation areas, and parking areas shall be designed so that traffic will not back onto arterials or major collectors or any other facility where such conditions would create a hazard.

With DPW approval of access and internal circulation on the proposed Exception Area, this policy will be met.

Transportation Development and Access Policy 25. All new developments shall be reviewed to ensure that they have an adequate stormwater system. Specific requirements can be found in Marion County's Engineering Standards (or subsequent document).

With DPW approval of the stormwater system for the proposed Exception Area, this policy will be met.

ZONE CHANGE

18. 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.

19. If an exception is taken and the MCCP designation is changed to Commercial then the proposed C zone would be consistent with the designation. Appropriate MCCP policies have been addressed and are met. MCZO 123.060(a) is met.
20. Applicants have provided sufficient information to determine whether the zone change is appropriate considering surrounding agricultural uses and the pattern of development in the area. MCZO 123.060(b) is met.
21. The existing water and septic services can support the proposed zone change. Future development will be conditioned on septic approvals. As conditioned, MCZO 123.060(c) is met.
22. Applicants state that other lands in the county designated for the proposed commercial market are either unavailable or not as well suited for the use due to the Exception Area's central location between Salem and Silverton. County zoning maps demonstrate that there is no available commercial space within a 2.5 mile radius. Additionally, the nearest UGB is over 4 miles from the Exception Area. The record contains written and oral testimony from the surrounding residents that the lack of services is a hardship on their rural living and the grocery store was needed. MCZO 123.060(d) is met.
23. The C zone is the only MCZO zone in the Commercial designation appropriate for this property. MCZO 123.060(e) is met.

PROPERTY LINE ADJUSTMENT

24. Under MCZO 172.12, the following requirements apply to all property line adjustments:
 - (a) Regardless of the size of the adjustment, when a property line to be adjusted is part of a division of land previously approved by Marion County it shall be subject to the approval of the Planning Director.
 - (b) Except as provided in (a) above, no approval is necessary for property line adjustments in the RM (MULTIPLE FAMILY RESIDENTIAL), C (COMMERCIAL), CC (COMMUNITY COMMERCIAL), ID (INTERCHANGE DISTRICT), I (INDUSTRIAL), OR IUC (UNINCORPORATED COMMUNITY INDUSTRIAL) zones.
 - (c) Except as provided in (b) above, all property line adjustments shall require approval under the partitioning procedure if the adjustment exceeds 10% of the total land area of the smallest affected parcel.
25. As EFU zoned parcels, MCZO 172.12(c) applies because an adjustment of greater than 10% is requested.
26. Under MCZO 136.090(c), for property line adjustments in the EFU zone:
 - (1) When one or more parcels subject to a proposed line adjustment are larger than the minimum parcel size pursuant to Section 136.090(a)(1), the same number of parcels shall be as large or larger than the minimum parcel size after the adjustment. When all parcels subject to the proposed adjustment are as large or

larger than the minimum parcel size, no parcel shall be reduced below the applicable minimum parcel size.

- (2) If the minimum parcel size in subsection 136.090(a)(1) is larger than 80 acres, and a parcel subject to property line adjustment is smaller than the minimum parcel size but larger than 80 acres, the parcel shall not be reduced in size through property line adjustment to less than 80 acres.
- (3) Any property line adjustment shall result in a configuration of parcels that are at least as suitable for commercial agriculture as were the parcels prior to the adjustment.

27. Neither parcel is greater than the minimum parcel size. MCZO 136.090(c)(1) and (2) do not apply. The property line adjustment would consolidate the grass seed field onto one parcel and the Exception Area on the other parcel. The property line adjustment would result in a configuration of parcels at least as suitable for commercial agriculture as before. MCZO 136.090(c)(3) is satisfied.

Conclusion:

It is hereby found that Applicants have met the burden of proving the applicable standards and criteria for approval of the Property Line Adjustment/ Zone Change /Comprehensive Plan Amendment criteria and the application is approved.

EXHIBIT B

The Marion County Board of Commissioners adopts the following conditions in ZC/CP/PLA 08-01/Lovrien Trust.

CONDITIONS OF APPROVAL:

Pursuant to the Marion County Rural Zoning Ordinance Chapter 123.070, the following conditions apply to the 2 acres of C-LU (Commercial, Limited Use) 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.

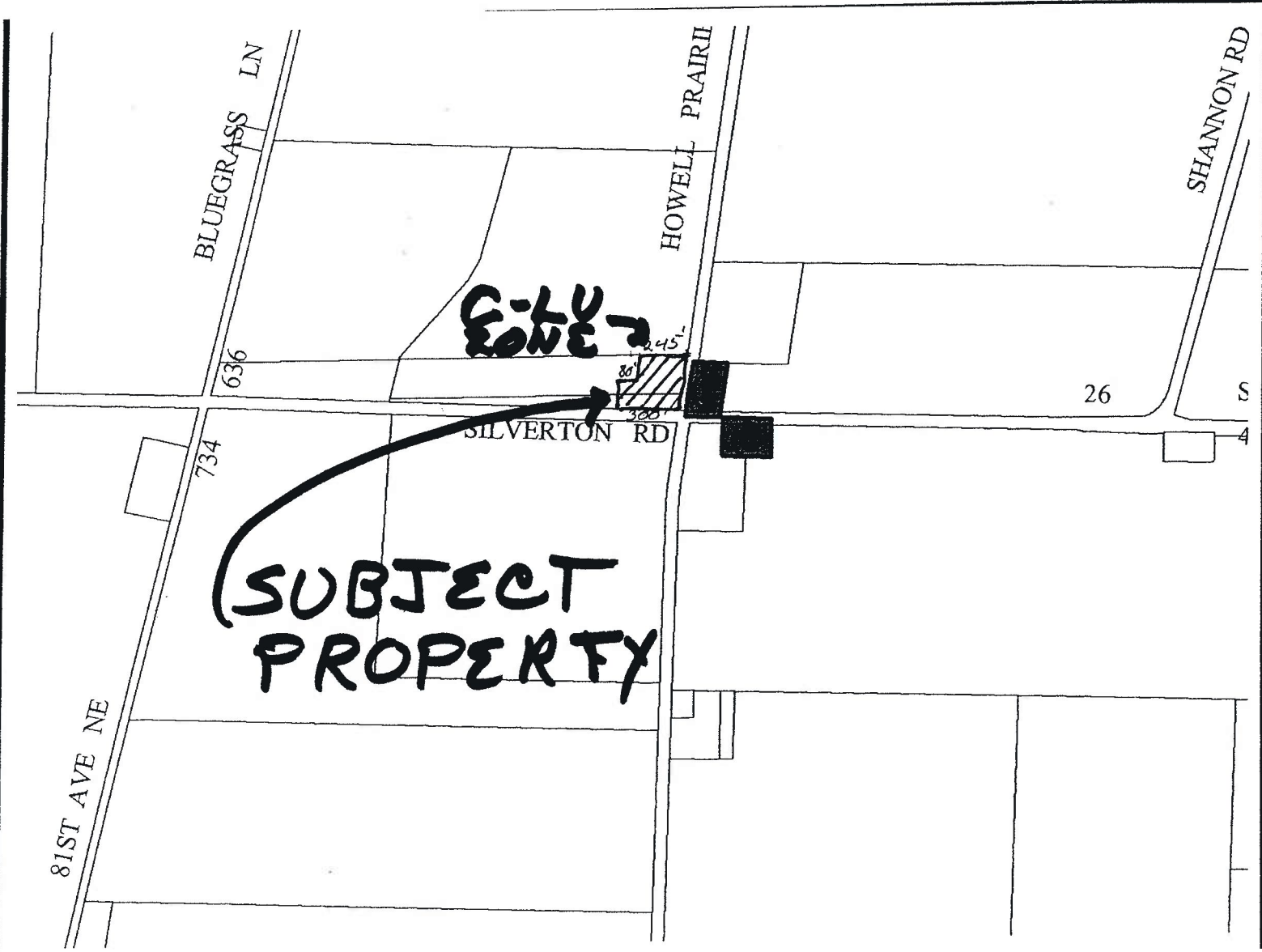
1. Limited Use Overlay Zone
 - a. Pursuant to Marion County Rural Zoning Ordinance Section 176.030, no zone included a list of permitted and conditional uses where all uses would be appropriate. The proposed C zone is the best suited to accommodate the desired use, however it is necessary to limit the permitted or conditional uses in C zone. The maximum number of acceptable uses in the zone has been retained as permitted uses.
 - b. A Limited Use Overlay zone is applied to the C zoning. The following uses are permitted outright in the overlay zone are limited to SIC 5411 which includes:
 - Convenience food stores-retail
 - Food markets-retail
 - Frozen food and freezer plans, except meat-retail
 - Grocery stores, with or with out fresh meat-retail
 - Supermarkets, grocery-retail
 - c. The use identified in 1(b) above is limited to a maximum of 3,500 square feet of floor area.
2. Prior to the issuance of building permits, or prior to submitting the final plat, the applicant shall address the Marion County Public Works provisions outlined in paragraph in Exhibit A. The requirements shall be met to the department's satisfaction.
3. Prior to issuance of building permits the applicants shall sign and submit a Farm/Forest Declaratory Statement to the Planning Division for each parcel. The

applicant shall record this statement with the Marion County Clerk after it has been reviewed and signed by the Planning Director.

4. Prior to issuance of building permits the applicant shall submit for the review and approval of the Planning Manager a site plan that conforms to the Marion County zoning ordinance standards.
5. Property line adjustment deeds meeting requirements identified in ORS 92.190(4) shall be recorded with the County Clerk. The deeds shall include a perimeter description of both adjusted parcels.
6. Prior to recording the deeds, the applicants shall obtain any septic review and/or evaluations that may be required from the Marion County Building Inspection Division.
7. Prior to recording the deeds, the applicants shall provide evidence to the Planning Division that all taxes due have been paid to the Marion County Tax Department (Contact Rex Weisner at 503-588-5215).
8. The resulting lots shall significantly conform to the site plan submitted with the proposal and shall follow zone change boundaries, minor variations are permitted upon review and approval of the Planning Manager.
9. Applicants shall record property line adjustment deeds meeting ORS 92.190(4) requirements with the Marion County Clerk. The deeds shall include a perimeter description of both adjusted parcels.
10. Prior to recording the deeds, applicants shall obtain any septic review and/or evaluations that may be required from the Marion County Building Inspection Division.
11. Applicants shall obtain any required 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.

EXHIBIT C

The following described property is rezoned from EFU (Exclusive Farm Use) to C (Commercial) zone.





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

**STATE OF OREGON LCDC
MARA ULLOA
635 CAPITOL ST NE SUITE 200
SALEM OR 97301-6033**