



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED AMENDMENT

03/19/2009

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

FROM: Larry French, Plan Amendment Program Specialist

SUBJECT: Marion County Plan Amendment
DLCD File Number 006-08

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: Thursday, April 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: David Epling, Marion County
Doug White, DLCD Community Services Specialist

Gary Fish, DLCD Regional Representative

<paa> YA

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 second page for submittal requirements)

DEPT OF
MAR 12 2009
LAND CONSERVATION
AND DEVELOPMENT

Jurisdiction: Marion County

Local File No.: ZC/CP08-007

number, use none)

(If no

Date of Adoption: 3/4/09
(Must be filled in)

Date Mailed: 3/10/09
(Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 8/29/08

- | | |
|--|--|
| <input type="checkbox"/> Comprehensive Plan Text Amendment | <input checked="" type="checkbox"/> Comprehensive Plan Map Amendment |
| <input type="checkbox"/> Land Use Regulation Amendment | <input checked="" type="checkbox"/> Zoning Map Amendment |
| <input type="checkbox"/> New Land Use Regulation | <input type="checkbox"/> Other: |

(Please Specify Type of Action)

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

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: 5957 Mt. Angel Hwy NE Acres Involved: 0.43

Specify Density: Previous: n/a New:

Applicable Statewide Planning Goals:

Was an Exception Adopted? Yes: No:

Does Adopted Amendment affect the areas in unincorporated Marion County where the

Zoning Code applies? Yes No

DLCD File No.: 006-08 (17115) [15438]

Did the Department of Land Conservation and Development receive a notice of Proposed

Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing.** Yes: No:

If no, do the Statewide Planning Goals apply. Yes: No:

If no, did The Emergency Circumstances Require immediate adoption. Yes: No:

Affected State or Federal Agencies, Local Governments or Special Districts:

Local Contact: Sterling Anderson

Area Code + Phone Number: 503-588-

5038

Address: PO Box 14500

City: Salem

Zip Code+4: 97309

Email Address: smanderson@co.marion.or.us

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 (2) Copies 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. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
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 copy this form on to 8-1/2x11 green paper only ; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to Larry.French@state.or.us - **ATTENTION: PLAN AMENDMENT SPECIALIST.**

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

In the Matter of the)	Case No. ZC/CP08-07
)	
Application of:)	Clerk's File No. 5607
)	
Vasily and Malofey Krivoshein)	

AN ADMINISTRATIVE ORDINANCE

ORDINANCE NO. 1285

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 Vasily and Malofey Krivoshein to change the zone from AR (Acreage Residential) to C (Commercial), to change the Comprehensive Plan designation from rural residential to commercial and to take an exception to Statewide Planning Goal 3 (Agricultural Lands) on a .43 acre parcel located at 5957 Mt. Angel Highway NE, Silverton, Marion County, Oregon. (T6S; R1W; Section 33B; tax lot 300).

SECTION II. Procedural History

The Marion County Hearings Officer held a duly noticed public hearing on this application on October 22, 2008. Mailed notice was provided to all property owners within 250 feet of the subject property at least 20 days before the hearing. On January 5, 2009, the Hearings Officer issued a report recommending the Board grant the requested change subject to certain conditions. The Board held a duly noticed public hearing on the application on February 11, 2009. Official notice was taken of the Planning Division file and the Hearings Officer's recommendation all arguments of the parties and is otherwise fully advised in the premises.

SECTION III. Adoption of Findings and Conclusion

After careful consideration of all facts and evidence in the record, the Board adopts as its own the Findings of Facts and Additional Findings of Fact Conclusions of Law contained in Section IV and V of the Hearings Officer's recommendation dated November 25, 2008 contained in Exhibit A, attached hereto, and by this reference incorporated herein.

SECTION IV. Action

The requested comprehensive plan designation change from Rural Residential to Commercial is hereby **GRANTED**. The requested zone change from AR (Acreage Residential) to C (Commercial) zone is hereby **GRANTED** subject to 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.

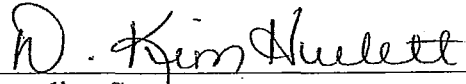
SECTION V. Effective Date

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 4th day of March,
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

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of:) Case No. ZC/CP 08-07
Vasily and Malofey Krivoschien)
Zone change/Comprehensive
Plan Amendment

RECOMMENDATION

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the application of Vasily and Malofey Krivoshein to change the zone from AR (Acreage Residential) to C (Commercial), to change the Comprehensive Plan designation from rural residential to commercial and to take an exception to Statewide Planning Goal 3 (Agricultural Lands) on a .43 acre parcel located at 5957 Mt. Angel Highway NE, Silverton, Marion County, Oregon. (T6S; R1W; Section 33B; tax lot 300).

II. Relevant Criteria

The standards and criteria relevant to this application are found in the Marion County Comprehensive Plan (MCCP) and the Marion County Zoning Ordinance (MCZO) (Rural), especially Chapters 123, 136, and 145.

III. Public Hearing

A public hearing was duly held on this application on October 22, 2008. 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. Dave Epling Planning Division
2. Norman Bickell Representative for Applicant

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

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 .43-acre property is designated Rural Residential in the Marion County Comprehensive Plan (MCCP) and correspondingly zoned AR (Acreage Residential).
2. The subject property is located at the northwest corner of Hazelgreen Road and Mt. Angel Highway. According to the Marion County Assessor's Office, the .43-acre parcel is

developed with a commercial shop and an equipment building. The parcel is described in its current configuration by deed recorded March 3, 1958 (Volume 509; Page 094). At that time, there were no requirements for this type of land division. Subsequently, the property is considered legally created for land use purposes.

3. The properties to the north, west, and east are within the AR zone and are developed with rural residential uses. The property to the south is zoned EFU (Exclusive Farm Use) and is a mixture of small and large farming operations.
4. The applicants are requesting a comprehensive plan amendment from Rural Residential to Commercial and a zone change from Acreage Residential to Commercial. The applicants intend to use the subject property for an unspecified commercial use.
5. The Marion County Planning Division requested comments on the proposal from various governmental agencies.

Marion County Public Works:

Marion County Public Works had the following comments for the ZC/CP:

Streets

In accordance with Marion County Driveway Ordinance No. 651, the Applicant will be required to obtain an access "Permit" for the new access and for any change in access use of the existing access, and make changes if necessary to establish safe and compliant access. Driveways must meet sight distance, design, spacing, and safety standards.

Because the property's northern and western property lines are in such close proximity to a major rural intersection, safe ingress and egress is a concern. Initially, a single designated access (driveway) point to the property would be permitted from Mt. Angel Hwy NE, since Mt. Angel Hwy NE has a lower functional classification compared to Hazelgreen Road NE, and that access point would need to be located adjacent to the northern property boundary. If the applicant desires a second access (to Hazelgreen Road), then a traffic circulation plan shall be submitted to justify the need.

Access to the property from any point other than the future designated driveway(s) shall be restricted. Suitable means of access restriction in a rural environment is generally accomplished with frontage improvements that include landscaping and accent materials that conform to Marion County Rural Zoning Ordinance.

All accesses will also need to meet fire district standards for emergency access.

Marion County's Rural Transportation System Plan (MCRTSP) functionally classifies Hazelgreen Road as an Arterial and Mt. Angel Hwy as a Major Collector. For the subject type of planning action, Chapter 172 of the Rural Zoning Ordinance of Marion County,

Oregon, requires the applicant to dedicate sufficient right-of-way (R/W) to provide the public dedicated right-of-way half-width of 33 feet along Hazelgreen Road NE and 30 feet along Mt. Angel Highway NE, adjacent to the entire parent parcel. Based on available survey and tax assessor map information, it appears that three (3) additional feet of width is necessary along Hazelgreen Road NE, including the re-inscribing of a 30-foot radius corner. Dedications shall be made to the public, not Marion County.

The applicant is reminded of their responsibility to preserve and protect the current integrity of the adjacent County roadway, ditch, and other public facilities from any damage that the applicant's activities would have the potential to cause. Failure to preserve and protect the roads, ditches, or other facilities may result in the applicant being responsible for replacing or reconstructing the damaged facility at their expense.

Storm Drainage

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

Storm-water detention may potentially be required for parcels containing a total of 0.5-acre or more impervious (hard) surfaces. However, at this level of development, storm-water detention will not be necessary, unless the site were to be demolished and reconstructed.

General

The subject property is within the unincorporated area of Marion County. Transportation and Parks Development Charges will be assessed upon any development or change in use on the subject parcels.

Marion County Building Inspection:

The Marion County Building Inspection commented that a building permit is required for a change of use.

Silverton Fire District:

The Silverton Fire District stated that a plan review for building and fire codes is necessary for any future commercial development on the property.

All other contacted agencies either failed to comment, or stated no objection to the proposal.

V. Additional Findings of Fact and Conclusions of Law

1. The applicants have the burden of proving all applicable standards and criteria are met.

GOAL EXCEPTION

2. The applicants request to change the Comprehensive Plan designation from Rural Residential to Commercial and change the zoning from AR (Acreage residential) to C (Commercial). Land use applications of this nature must be consistent with Statewide Planning Goals. The subject .43-acre parcel is covered by Statewide Goal 3 (Agriculture).
3. The subject property is located within the Bethel Exception Area 13.1 that was acknowledged in 1980 and was part of a "committed/developed" and "needs exception" to Goal 3 taken as a part of the county's original acknowledgment. This original exception was taken for rural residential uses, and in the event that this exception does not include a rural commercial use, the applicants request an exception for Statewide Land Use Goal 3 (Agricultural) to obtain approval for the proposed change. An exception to Goal 14 will not be taken because the applicants are proposing to apply the County's rural Commercial zone, which has been acknowledged as being in compliance with Goal 14.
4. There are three types of exceptions to statewide planning goals. Goal exceptions are governed by Statewide Planning Goal 2. Goal 2 is implemented through Oregon Administrative Rule (OAR) 660-04. Planning and zoning for exception areas is governed by OAR 04-018, which states:

This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or portion of a one goal do not relieve a jurisdiction from remaining goal requirements and to 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 660-004-028 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule.

PHYSICALLY DEVELOPED

5. 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 the 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, road, 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.

The applicants did not ask for a Physically Developed Goal Exception.

IRREVOCABLY COMMITTED

6. 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 requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified as to 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 660-003-0120; 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) Finding 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) The following factors shall be addressed in the findings of fact for a committed exception pursuant to OAR 660-04-0028(6):
- (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;
 - (i) 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 any subdivision, past land divisions made without application of the Goals do not in themselves 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;

- (ii) 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 practical 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.

7. The applicants presented information that addressed the above criteria for an "irrevocably committed" exception; provided documentation that reflects the historical use of the property; and provided a current map that shows the exception area and adjoining lands. The applicants contend that the parcel was developed and committed to a non-agricultural/non-residential commercial use when the building was constructed in 1948 prior to implementation of the Statewide Planning Goals or acknowledgment of the exception area. The applicants further contend that the property has remained in commercial use since that date. A Marion County Planning Division staff review concurs with the applicant's contentions. The following factors are applicable to the recommendation:

PROPOSED EXCEPTION AREA

- (1) The obvious structural design of the primary building on the site is common construction for a gas station in 1948. Information indicates that the building was

placed in 1948 and documented as a gas station as early as 1958.

- (2) Marion County Assessor's information currently lists the structures on the parcel as a commercial shop constructed in 1948 and a shop/equipment building.
- (3) Documentation provided by the applicants includes a Marion County Sanitarian's Report, dated April 22, 1958, that refers to the location as a Union Oil Station. Another Sanitarian's Report dated May 28, 1964, identifies the business at the location as the Bethany Corners Service Station.
- (4) A Marion County Building Inspection file card recorded issuance of commercial permits for the address on July 29, 1960 and June 16, 1964.
- (5) Department of Environmental Quality (DEQ) documentation evidences the removal of fuel tanks in 1999, and the property was determined to be clean in accordance with OAR requirements for removal of fuel tanks. However, the site has been significantly impacted by commercial use of the property for an extended period of time. Evidence of any rural residential or agricultural use is not present and seems impracticable in the future.
- (6) The primary structure on the property is a specialized design that would require replacement or extreme remodeling to meet building code requirements for use as a residence, and there is no evidence that the site was occupied for any use other than commercial since the 1948 construction date.
- (7) Aerial photographs from 1966 reveal structures in the same locations on the property as the current buildings, and the commercial use encompasses the property.
- (8) The development of a commercial building and accessory structures on the 0.43-acre parcel left the property more physically developed for commercial use than rural residential or agricultural uses common to the agriculture lands planning goal.
- (9) The size of the property and the use of well and septic system will restrict the parcel and limit development of commercial uses on the property. The proposed exception does not provide for any expansion of public facilities.

ADJACENT LANDS

As previously mentioned, the subject property is located within the Bethel Exception Area 13.1 that was acknowledged in 1980. The findings and conclusion section notes a total of 48 acres containing small parcels of less than four acres with a variety of uses, including commercial businesses. On adjacent lands is a mixture of small and large farming operations and is developed with rural residential uses.

RELATIONSHIP BETWEEN EXCEPTION AREA AND ADJACENT LANDS

The characteristics of the exception area and adjacent lands are that of developed rural lots clustered along the highway that border farmland to the north, south, west, and east. The different uses have coexisted as compatible since the creation of the small lots.

8. **The subject parcel is irrevocably committed as a commercial use in an area of small lots with some variety of uses and meets the criteria for an “irrevocably committed” exception to Goal 3.**
9. Planning and zoning for exception areas are 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 exceptions 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.
10. 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).

STATEWIDE PLANNING GOALS

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 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 information to support granting the exception.
- Goal 4: Forest Lands. The subject site 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. This goal is not applicable.
- Goal 6: Air Water and Land Resources Quality. The subject site is not within an identified air or watershed area. State law, administered through the county, governs septic disposal systems. State and county regulations are consistent with this goal. The limited 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. Applicants need to provide proof that on-site septic and water services are feasible to ensure protection of

groundwater and land resources. With this proof, this goal will be satisfied.

- Goal 7: Areas Subject to Natural Disasters and Hazards. The subject site is not within an identified floodplain or geologic slide hazard area. This goal is not applicable.
- Goal 8: Recreational Needs. No recreational uses of the property are proposed or implicated by this application. This goal is not applicable.
- Goal 9: Economic Development. This goal focuses on commercial and industrial development, mostly within urban growth boundaries (UGBs). OAR Chapter 660, Division 9, the Goal 9 implementing regulation, applies only to comprehensive plans for areas within UGBs. The subject site is not within a UGB. This goal is not applicable.
- Goal 10: Housing. This goal applies to buildable lands. Buildable lands, as defined in Goal 10, occur in urban and urbanizable areas. Urbanizable lands are, by Statewide Planning Goal definition, within urban growth boundaries. The subject property is not considered urbanizable under this goal. 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 will be adequately served by public roadways and private facilities and services. This goal will 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.

Hazelgreen Road, in this area, is a major arterial way and is under county jurisdiction. Mt. Angel Hwy., 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. The DPW noted that a single designated access point to the property would be permitted from Mt. Angel Hwy., since it has a lower functional classification compared to Hazelgreen Road NE, and that access point would need to be located adjacent to the northern property boundary. If the applicant desires a second access (to Hazelgreen Road), then a traffic circulation plan shall be submitted to justify the need. 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.
- Goal 14: Urbanization. If an exception is taken, it will not lead to urbanization of the area. There is no potential for an increase in urban services. Goal 14 is met.
- Goal 15: Willamette River Greenway. Goal 15 is not applicable because the subject site is not within the Willamette River Greenway.
- Goal 16: Estuarine Resources. Goal 16 is not applicable because the subject site is not near estuarine resources.
- Goal 17: Coastal Shore Lands. Goal 17 is not applicable because the subject site is not near any ocean or coastal related resources.
- Goal 18: Beaches and Dunes. Goal 18 is not applicable because the subject site is not near any ocean or coastal related resources.
- Goal 19: Ocean Resources. Goal 19 is not applicable because the subject site is not near any ocean or coastal related resources.

COMPREHENSIVE PLAN AMENDMENT

11. All comprehensive Plan changes are subject to review by the State Department of Land Conservation and Development (DLCD). The DLCD was notified as required by state law. The DLCD did not comment.

12. The Marion County Comprehensive Plan established procedures to be used when considering Plan amendments. Plan changes directly involving five or less properties will be considered a quasi-judicial amendment. The amendment will be reviewed by the zone change procedure established in the Marion County Rural Zoning Ordinance. A plan amendment application of this type may be processed simultaneously with a zone change request. Chapter 123 of the Marion County Rural Zoning Ordinance sets forth the zone change procedure and criteria.
13. The applicants are requesting the Comprehensive Plan designation be changed from Rural Residential to Commercial. The following MCCP policies are considered:

General Development Policy 1: All land divisions should be reviewed by Marion County for their compatibility with County goals and policies.

General Development Policy 2: "Strip type" commercial or residential development along roads in rural areas shall be discouraged; and

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

14. With respect to General Development Policy 1, the request does not involve a land division, so policy 1 does not apply. With respect to Rural Development Policy 2, strip-type commercial development is not proposed, and the parcel is separated from adjacent properties. The conversion of this property would not create a "strip" commercial zone because it involves the only property within this rural residential area that would be zoned commercial. Policy 2 is met. With respect to General Development Policy 3, as indicated, the subject parcel has been used for commercial purposes since 1948. This property is located on a corner and is buffered from any agricultural use by the existing residential properties to the north, east, and west. There should be little if any impact to agricultural properties. Based upon the small size of the parcel, being surrounded on two sides by existing roads, and the limited types of commercial uses that can use the property, the change to a commercial plan designation would be compatible with surrounding developments. This property is and has been historically part of the community in which it is located and the change in the comprehensive plan designation would be the recognition of that fact. Policy 3 is met. As such, MCCP General Development Policies 1-3 is met.
15. The following rural development and service policies are also considered:

Rural Development Policy 1 states that where there is a demonstrated need for additional commercial uses in rural Marion County, they should be located in designated unincorporated communities. The subject parcel is not within a designated unincorporated community. The applicant did not propose a demonstrated need for an additional use but submitted information that supported an irrevocably committed existing commercial use in an acknowledged exception area. The rural development policy does not apply.

Rural Service Policy 1 states that the impact on existing services and the potential need for additional facilities should be evaluated when rural development is proposed. The well and septic system are in place on the property and there are no urban services required. The necessary rural services needed for commercial uses are available and currently do exist at the site. Commercial use of the property is limited by septic, parcel size and available services on the parcel. Because the proposed use can use existing services and not require additional facilities, rural service policy 1 is met.

Rural Service Policy 2 states that 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. No utilization or extension of urban services is proposed in this application. It should be noted that if the property is approved for the proposed use, the only limitation would be the uses that are permitted in the zone and the development area, 0.43-acres. All of the uses listed in the zone would be permitted or conditional uses upon approval of the zone change and property redesignation. Section 145.010 of the MCRZO states that the commercial zone is to provide needed commercial uses that are not dependent on urban services. Commercial use of the property is limited by septic, parcel size, and available services. Any future commercial use on the property would not warrant expansion of urban services to the site. Rural service policy 2 is met.

Rural Service Policy 3 states that 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. Facilities and services that are necessary to accommodate planned rural land uses include wells, septic systems, private access easements, and rural roadways. Those services are available at this site; and as indicated, the size of the parcel and the existing commercial buildings limit the uses of the parcel to those uses that do not require urban services. The change in zone will recognize the existing commercial buildings for what they have historically been and will not change the character of the area. Rural service policy 3 is met.

16. **The proposal to change the property designation from rural residential to commercial is consistent with the applicable policies in the Marion County Comprehensive Plan for rural development.**

ZONE CHANGE

17. 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 descriptions 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.
18. If a goal exception and the comprehensive plan are approved as recommended, the proposed C zone is appropriate to the proposed Commercial designation in the Comprehensive Plan. Based on the past activities on the property and the above policy discussion, MCZO 123.060(a) is met.
19. The subject parcel was developed as a commercial property as early as 1948 when it was in use as a service station. The parcel has had multiple uses since then, but has always been used as a commercial property. The exception area (13.1) that included the subject parcel was acknowledged in 1980 and remains essentially the same since that date. The surrounding area has been developed with residential uses to the north, west, and to the east with the knowledge and impact of the subject commercial property. The area consists of several small parcels developed with a variety of uses, including commercial. The parcel is located at the intersection of two county roads and there are adequate services to the property for small-scale commercial use. MCZO 123.060(b) and (c) are met.
20. The subject parcel has been in commercial use since 1948 and meets Goal Exception criteria. This request is not to establish a new commercial use on a vacant parcel but to recognize the existing development on the subject property. There are significant limitations to the development of this parcel for anything other than a commercial purpose, *e.g.* the size of the property and its location. Commercial activities have taken place on the site for a long time with no evidence of adverse impacts to surrounding uses. The C zone is the only zone appropriate for this use under the commercial designation because the C zone applies only in unincorporated communities, rural communities, and rural service centers and does not apply to the subject property. MCZO 123.060(d) and (e) are met.
21. **The zone change is recommended.**

VI. Recommendation

IT IS HEREBY FOUND that the applicants have met the burden of proving the applicable standards and criteria for approval of an exception to Statewide Planning Goal 3, a comprehensive
 15 – KRIVOSHEIN ZC/CP 08-07
 RECOMMENDATION

plan amendment and zone change. The Marion County Comprehensive Plan designation amendment from Rural Residential to Commercial and the zone change from AR (Acreage Residential) to C (Commercial) should be **APPROVED** subject to the conditions set forth below. These conditions are necessary for the public health, safety, and welfare:

1. The applicants shall apply for a driveway permit from Marion County Public Works. (Contact (503) 588-5036).
2. The applicants shall sign and submit a Farm/Forest Declaratory Statement to the Planning Division for all parcels. The applicant shall record this statement with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
3. The applicants shall obtain any septic or building permits required by Marion County Building Inspection.

VII. Referral

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

DATED at Salem, Oregon, this _____ day of January 2009.

Jill F. Foster
Marion County Hearings Officer

EXHIBIT B

The Marion County Board of Commissioners adopts the following conditions in ZC/CP 08-7/ Krivoshein.

CONDITIONS OF APPROVAL:

Pursuant to the Marion County Rural Zoning Ordinance Chapter 123.070, the following conditions apply to the C (Commercial) 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 zoning significantly intensifies the use of the land. The conditions are necessary for the public health, safety and welfare.

1. The applicants shall apply for a driveway permit from Marion County Public Works. (Contact (503) 588-5036).
2. The applicants shall sign and submit a Farm/Forest Declaratory Statement to the Planning Division for all parcels. The applicant shall record this statement with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
3. The applicants shall obtain any septic or building permits required by Marion County Building Inspection.

EXHIBIT C

The following described proerty is rezoned from AR (Acreage Residential) to C (Commercial) zone.
ZC/CP08-7/Krivoshein.

