

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of the Application of Kristen Dreyer)
for a Major Variance to Kennel Setback Standard) FINAL ORDER NO. 50-2012
(V 12-01) and for a Conditionally Permitted)
Home Occupation in the Primary Forest)
(PF-80) Zone (CU 12-09))

WHEREAS, on May 21, 2012, Kristen Dreyer applied for a Conditional Use Home Occupation Permit (CU 12-09) and Kennel Setback Variance (V 12-01) to continue use of an existing dog kennel on an approximately 10.79-acre parcel in the Primary Forest Zone (PF-80). The subject property is identified as Tax Map Identification Number 6302-000-01100 and is located at 71614 Apiary Road, approximately five miles southwest of Rainier; and

WHEREAS, the application was deemed complete on June 24, 2012; and

WHEREAS, after proper notice, the Planning Commission held a hearing on the application on July 16, 2012. The Planning Commission and received testimony and evidence from interested parties; however, the applicant was not present; and

WHEREAS, following deliberations, the Planning Commission denied the requested Kennel Setback Variance (V 12-01), and as a result, the Conditional Use Home Occupation Permit (CU 12-09) was invalidated. A copy of the Planning Commission's Final Order was mailed to all participants on July 24, 2012; and

WHEREAS, on July 30, 2012, the applicant timely appealed the Planning Commission's decision to the Board of County Commissioners; and

WHEREAS, following proper public notice, the Board held a hearing on the application at its regularly scheduled meeting on September 12, 2012. The Board admitted evidence submitted into the record prior to the hearing, a list of which was entered into the record as Exhibit 1. The Board also received evidence at the hearing, which was entered into the record as Exhibit 2; and

WHEREAS, the Board then closed the hearing and left the record open for additional written evidence and testimony, rebuttal evidence and testimony, and final argument. The Board continued its deliberations to its regularly scheduled meeting on October 3, 2012; and

WHEREAS, on September 12, 2012, the applicant submitted a written statement,

proposing to comply with the Kennel Setback Standard by locating all kennel activities outside of the 100' kennel setback. That statement was entered into record as Exhibit 3. No other written evidence or argument was received; and

WHEREAS, during deliberations on October 3, 2012, individual Board members expressed interest in visiting the site in light of the applicant's revised proposal. Deliberations were thus continued to October 10, 2012 and again to October 31, 2012 to allow for site visits and public notice; and

WHEREAS, on October 4, 2012, the applicant waived the 150-day deadline for final action required by ORS 215.427. The applicant's written waiver was entered into the record as Exhibit 4; and

WHEREAS, on October 16, 2012, the Board notified hearing participants in writing of the Commissioners' site visits and of the October 31, 2012 Board meeting, during which the record would be reopened to receive evidence obtained during the site visits and allow for rebuttal of any such evidence. The notice was entered into the record as Exhibit 5; and

WHEREAS, at its regularly scheduled meeting on October 31, 2012, the Board held a hearing and reopened the record to admit photographs taken by Commissioner Heimuller during his site visit. The photos were entered into the record as Exhibit 6. No other testimony or evidence was presented. The Board then closed the hearing and deliberated; and

WHEREAS, following deliberations, the Board voted to tentatively approve the Conditional Use (CU 12-09) for a home occupation dog kennel and the Kennel Setback Variance (V 12-01) for the existing kennel building only, not for any outdoor kennel activity, subject to conditions.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

- A. The Board of County Commissioners adopts the following findings and conclusions in support of its decision:
 - 1. The Findings of Fact and Conclusions of Law, which are attached hereto as Attachment A and incorporated herein by this reference.
 - 2. The findings and conclusions in the Staff Report to the Board of County Commissioners dated September 5, 2012, which is attached hereto as Attachment B and incorporated herein by this reference, to the extent those findings and conclusions are consistent with the Board's decision.
- B. The Board of County Commissioners adopts and incorporates the above recitals as additional findings in support of its decision.

- C. Based on the foregoing and the whole record in this matter, the Board hereby **APPROVES** a Kennel Setback Variance (V 12-01) to allow the existing 5,000 square-foot kennel building at its current location, which is approximately 30 feet from the north property line, and Conditional Use (CU 12-09) for a Type II Home Occupation for Kristen Dreyer, **subject to the following conditions:**
1. The entire kennel operation including all fencing of dog areas shall be sited so that all kennel activities, except for those activities within the existing 5,000 square-foot kennel building, are a minimum of 100 feet from all property lines.
 2. The kennel building shall be sound-proofed in accordance with the Oregon Structural Specialty Code to minimize noise from dogs in the building. The applicant shall install sound attenuation materials to reduce airborne sound to a minimum of 55 STC rating.
 3. New fencing shall be constructed and maintained to ensure that dogs are contained within and do not escape from the kennel areas. In addition, a continuous screen at least five (5) feet in height of either a continuous evergreen hedge or a fence of sight-obscuring materials shall be installed to visually screen the dogs and kennel activities along the northern property boundary.
 4. The applicant shall submit a revised site plan to LDS delineating the location of all kennel areas.
 5. The applicant shall apply for and obtain any necessary building permits for structures required by this final order from the County Building Official.
 6. The conditions and related permits shall remain valid for six (6) months from the date of this final order. These permits shall become void unless all conditions and restrictions established herein are satisfied within six (6) months.
 7. The applicant shall file an approved Best Management Practices Plan (BMP) with the County Sanitarian to ensure all dog waste is managed and disposed of properly. This BMP shall be developed with the guidance and assistance of the County Sanitarian and Animal Control Officer.
 8. The applicant shall develop and implement a Natural Conservation /Drainage Improvement Plan with the Columbia County Soil & Water Conservation District. This Plan shall include provisions necessary to prevent and/or minimize water damage from increased runoff and volume in the outside run areas abutting Apiary Road to the subject and adjoining properties and to the county roadway. This Plan

shall also include natural alternatives for ground cover for the outdoor kennel run area to provide a healthier environment for the kenneled dogs. A copy of this approved Final Plan shall be filed with LDS, and LDS Planning Staff shall verify all improvements have been installed on site.

9. The applicant shall submit written documentation to LDS confirming the site's driveway along the north property line complies with minimum requirements for Fire Apparatus Access Standards and has been approved by the Columbia River Fire and Rescue.
10. The applicant shall obtain and annually renew a Columbia County Dog Kennel License from Columbia County Animal Control and provide LDS with a copy of the kennel license.
11. There shall be no more than fifty (50) dogs, six (6) months of age or older, on the subject property at any given time.
12. Dogs associated with the kennel facility shall be kept within the kennel structure and/or the outdoor fenced exercise area at all times. If dogs are allowed elsewhere on the property, they shall be under the direct supervision of the applicant or employees.
13. The kennel operation shall comply with the Columbia County Noise Ordinance. In addition, all dogs shall be kept indoors between the hours of 9:00 p.m. and 6:00 a.m.
14. Any new development, expansion or replacement of existing development, following the date of this final order, shall be subject to:
 - a. Building permitting requirements;
 - b. Fire siting standards as outlined in OAR 660-006-0035; and
 - c. All Sections of the Columbia County Zoning Ordinance, including but not limited to Sections 500 (Primary Forest) and 1190 (Big Game Habitat Overlay).
15. The Home Occupation business shall be operated by a resident or employee of a resident of the property on which the business is located.
16. The Home Occupation business shall employ no more than five (5) people, regardless of whether they are full- or part-time positions.

17. This Conditional Use Permit allowing a dog kennel shall be applicable to this applicant only and shall not run with the land.
18. LDS reserves the right to review this application again in the future if it is determined that adjacent properties are being negatively impacted by the operation of this kennel, or if it is determined that said kennel is in violation of the public nuisance provisions of ORS 609.095. Any departure from the conditions of approval shall subject this Conditional Use Permit and Variance to an additional review by the Columbia County Board of Commissioners and may result in the suspension or revocation of this Conditional Use Permit.
19. The responsibility for protection from wildlife damage on the property shall be assumed by the dwelling's owner and/or occupant.
20. The applicant shall sign and record with the County Clerk a Waiver of Remonstrance, that prohibits the current and future property owners from taking legal actions against accepted farm or forest operations occurring on adjoining properties.

Dated this 12th day of December, 2012.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: 

Office of County Counsel

By: 

Anthony Hyde, Chair

By: 

Earl Fisher, Commissioner

By: 

Henry Heimuller, Commissioner

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Dreyer Conditional Use/Home Occupation (CU 12-09)
and Major Variance (V 12-01) for a Dog Kennel

Introduction

The Board of County Commissioners approved the following applications by Kristen Dreyer, subject to conditions: (1) CU 12-09, allowing a conditional use home occupation for a kennel in the Primary Forest zone; and (2) V 12-01, approving a major variance to allow an existing kennel building in the 100-foot kennel setback. In support of its decision, the Board adopts the findings and conclusions in the Staff Report, which is attached as Attachment B to the Board's final order, to the extent those findings are consistent with the Board's decision. As a supplement to the findings in the Staff Report, the Board also adopts the following findings of fact and conclusions of law in support of its decision.

Findings and Conclusions

- 1. With adequate fencing, the application complies with Columbia County Zoning Ordinance (CCZO) § 507.1, Siting of Dwellings and Structures in the PF-80 zone.**

The Board finds that with conditions the kennel facility can comply with this criterion, which requires that new dwellings and structures are sited to have the least impact on nearby or adjacent lands zoned for forest or agriculture use. To be sure, a kennel use is not incompatible with the *forest* use of its neighboring forest-zoned properties. The existing kennel facilities here, however, have deficiencies that adversely affect neighboring forest uses and the Big Game Habitat Area on the property. In particular, evidence in the record indicates that the dogs have routinely escaped from the kennel area. Although dogs running loose can negatively impact the Big Game Habitat Area, the Board finds that the applicant can address this impact by installing and maintaining adequate fencing to contain the dogs.

Testimony from the hearing also identified adverse impacts that the kennel has had on the *residential* uses of the adjacent forest-zoned properties. Although CCZO§ 507.1(A) aims to ensure that new structures are compatible with forest uses, the Board finds that conditions can be imposed to mitigate the kennel's impact on the neighboring residential uses.

Specifically, Dan Hendrickson, who lives on the adjacent property to the north, testified that the applicant's dogs bark incessantly, and that the existing kennel building is unsuitable for barking dogs as it was constructed to house rabbits. The Board finds that the conditions requiring the kennel building to be soundproofed and that the dogs be contained indoors from 9 pm to 6 am will mitigate noise impacts. Furthermore, the approved setback variance is for the kennel building only and does not remove the requirement that all outdoor kennel activities be at least 100 feet from all property lines. The Board's first condition of approval reiterates this

requirement and will ensure that the dogs are kept away from neighboring property lines and therefore less prone to bark at activity on neighboring properties. The Board's third condition also requires a continuous, sight-obscuring fence or hedge to visually screen the dogs from the abutting property to the north. Such a screen will also make the dogs less prone to bark at activity on the Hendrickson property. Mr. Hendrickson also testified the applicant's dogs have frequently escaped onto his property and killed his chickens. As discussed above, the installation and maintenance of new fencing will keep the dogs contained and prevent them from escaping in the future.

2. **The application meets CCZO § 508, General Review Standards for the PF-80 Zone, and CCZO § 1193.B, Development Siting Standards for the Big Game Habitat Overlay, with the condition of approval requiring the installation and maintenance of adequate fencing to contain the dogs.**

Under CCZO § 508.1, the kennel use cannot "force significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands[.]" The Planning Commission found that the application did not comply with this criterion because the dogs' tendency to escape onto neighboring properties could conflict with and increase the cost of forest practices, such as planting and harvesting. The Board agrees that escaped dogs can impact forest practices, but finds that this criterion can be met with the condition requiring the installation and maintenance of fencing to ensure that the dogs do not escape.

Moreover, as discussed in II.A, above, the application can meet CCZO § 1193.B, which provides that "structures shall be located to avoid habitat conflicts and utilize least valuable habitat areas." Again, the installation and maintenance of fencing will ensure that dogs are out of the Big Game Habitat areas.

3. **CCZO § 1503.4, Suspension or Revocation of a Permit, does not apply in this case because there is no existing Conditional Use Permit to suspend or revoke.**

CCZO § 1503.4 provides for the suspension or revocation of conditional use permits when any conditions or restrictions are not satisfied. The Planning Commission recommended denial of the application on the basis that the kennel has been in operation for 10 years, yet has not been meeting the Special Use Standards for kennels in CCZO § 1800. The Board finds that § 1503.4 does not apply at this time because there is no conditional use permit to revoke or suspend. Should the applicant's approved kennel facilities violate conditions of approval in the future, however, the County may suspend or revoke the applicant's conditional use permit at that time.

4. **The Board finds that with conditions of approval, the kennel facilities can meet CCZO § 1503, Conditional Uses.**

The Planning Commission found that the kennel facilities failed to meet CCZO § 1503.5.C, which requires that the “characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements, and natural features.” The Planning Commission reasoned that by being on the western portion of the property, the kennel facilities had greater impacts on the neighboring residences. The Board finds that this criterion can be met with conditions. First, outdoor kennel activities will be not be allowed within the 100 foot kennel setback area. Consequently, the outdoor dog runs on the western side of the kennel building must be relocated to the eastern side of the building, outside of the 100-foot kennel setback. Second, the existing kennel building, which is partially within the 100-foot kennel setback, will be soundproofed within six months of the final order as a condition of approval. Thus, the kennel facilities that are currently in the westernmost part of the property will either be moved east or mitigated through soundproofing.

Likewise, CCZO § 1503.E provides that the use will not alter the character of the surrounding area in a manner that substantially limits, impairs, or precludes the use of the surrounding properties for the primary uses in the zone. In addition, CCZO § 1503.G, provides that the proposal will not create any hazardous conditions.

The primary use in the PF-80 zone is forest and forest-related use. A kennel use in general neither conflicts with forest and forest-related uses nor creates hazardous conditions. The specific kennel facilities at issue here, however, have deficiencies that could negatively impact surrounding forest uses and create hazardous conditions. In addition to the escaped dogs, the kennel facility has drainage problems due to the outdoor, unpaved kennel areas, and has no waste management plan to address solid and liquid waste from the kennel dogs. The Board finds that the conditions proposed by Staff adequately address the potential for negative impacts of forest uses by requiring adequate fencing, a Resource Conservation/Drainage Improvement Plan for drainage issues, and a Best Practices Management Plan for solid and liquid waste. The Board therefore finds that kennel facilities can meet both criteria.

5. The kennel facilities can meet the requirements of CCZO § 1507, Home Occupations, with conditions.

CCZO § 1507 contains criteria for home occupations, most of which the applicant meets as discussed in the Staff Report. However, CCZO § 1507.3.B provides that the use shall not unreasonably interfere with other uses permitted in the zone. Conflicts between the existing kennel and surrounding residential uses is well documented in the record. Specifically, dogs have routinely escaped onto and caused damage on neighboring properties, and neighbors have complained of constant barking. The Board finds that although the kennel has not been operating in harmony with its neighbors, conditions can be imposed to mitigate kennel impacts to prevent unreasonable interference with neighboring residential uses. As described above, requiring all outdoor kennel activities to be outside of the 100-foot setback will keep dogs at a distance from the property lines. Moreover, a sight-obscuring screen on the north side of the kennel facilities will make the dogs less prone to bark at activity on the neighboring property to the north.

Requiring the kennel building to be soundproofed and the dogs to be kept in the building between 9 pm and 6 am will mitigate the barking noises at night. Finally, if the conditions of approval are not met, the applicant's conditional use permit may be suspended or revoked pursuant to CCZO § 1504.3.

6. The approved kennel will comply with all kennel standards in CCZO § 1800, either by meeting the standard directly or through conditions.

With the conditions imposed and the approved variance for the kennel building only, the applicant can meet the kennel standards in CCZO § 1800. As discussed, all outdoor kennel activities will be subject to the 100-foot kennel setback standard. The only kennel activity allowed in the setback area is the kennel building, provided the building is soundproofed in accordance with the Oregon Structural Specialty Code. Moreover the conditions of approval directly address the kennel standard by requiring the applicant to keep all dogs inside the soundproof building or the house between the hours of 9 pm and 6 am; to renew his kennel license; to develop a Best Management Practices Plan for solid and liquid waste; to develop a Resource Conservation/Drainage Improvement Plan to address drainage problems; and to install and maintain fencing to contain the dogs at all times. Finally, the applicant will be subject to ORS 609.095, Dog as a Public Nuisance. Violation of that statute will may result in the revocation of the applicant's conditional use permit. The Board thus finds that, with the conditions imposed, the criteria in CCZO § 1800 will be met.

7. A variance the 100-foot kennel setback standard for the existing 5,000 square-foot kennel building, provided that the building is soundproofed, is consistent with CCZO § 1504, Variance.

To reiterate, the Board is granting a variance only for the existing kennel building, which is 60 feet from the northern property line. All other kennel activities must comply with the 100-foot kennel setback. Based on testimony from the Hendricksons, the kennel building detrimentally impacts their residential use of their property because it is not soundproof, and barking from inside the building can be heard on their property. As Mr. Hendrickson testified, the building was not designed for barking dogs, but for rabbits. Although the applicant stated that he keeps the dogs contained in the building at night, the Hendricksons can nevertheless hear the barking at night from inside their house. The Board finds that incessant barking at all hours of the night is a detrimental impact that would preclude the granting of a variance. However, the Board finds that it would be a hardship for the applicant to relocate the building and that the applicant can mitigate the impacts caused by barking inside the building by soundproofing the building. Thus, the Board finds that a variance to allow the existing kennel building to encroach into the kennel setback area complies with the variance criteria if the building is soundproofed to Oregon Structural Specialty Code standards.

**COLUMBIA COUNTY LAND DEVELOPMENT SERVICES
BOARD OF COUNTY COMMISSIONERS STAFF REPORT**

September 5, 2012

Appeal of Planning Commission's Decision to Deny a Major Variance from the Special Use Standards for kennels requiring kennel structures be at least 100' from all property lines

BOCC HEARING DATE: September 12, 2012

FILE NUMBERS V 12-01 & CU 12-09

APPLICANT/ Kristen Dreyer
OWNER: 71614 Apiary Road
 Rainier, OR 97048

SITE LOCATION: The site is located approximately five miles southwest of the City of Rainier at the residence addressed at 71614 Apiary Road.

TAX ACCOUNT NO: 6302-000-01100

ZONING: Primary Forest-80 (PF-80)

SITE SIZE: ± 10.79 Acres

REQUEST: A request for the Planning Commission to vary the minimum property line setbacks in Section 1802.2 of the Zoning Ordinance that will enable the applicant to continue operating an existing dog kennel as a Conditionally Permitted Type II Home Occupation in the PF-80 Zone.

APPLICABLE REVIEW CRITERIA:

<u>Columbia County Zoning Ordinance</u>		<u>Page</u>
Section 500	Primary Forest (PF-80)	7
Section 1190	Big Game Habitat Overlay	15
Section 1300	Signs	17
Section 1503	Conditional Uses	17
Section 1507	Home Occupations	23
Section 1802	Special Use Standards - Kennels	25
Section 1504	Variances	30

APPLICATION COMPLETE: 06/24/12

150-DAY DEADLINE: 10/21/12

BACKGROUND OF APPEAL (SUMMARY):

On June 16, 2012, the Planning Commission held a public hearing to hear Kristen Dreyer's Conditional Use Type II Home Occupation Permit (CU 12-09) application that would approve and allow him to continue operating an existing dog kennel from his residence in the PF-80 Zone. The applicant lives on the subject 10.79 acre site addressed at 71614 Apiary Road. Simultaneously, the applicant requested the Planning Commission approve his Major Variance (V12-01) Permit request to vary the provisions in Section 1802.2 of the Zoning Ordinance requiring all kennel facilities be at least 100' from all property lines.

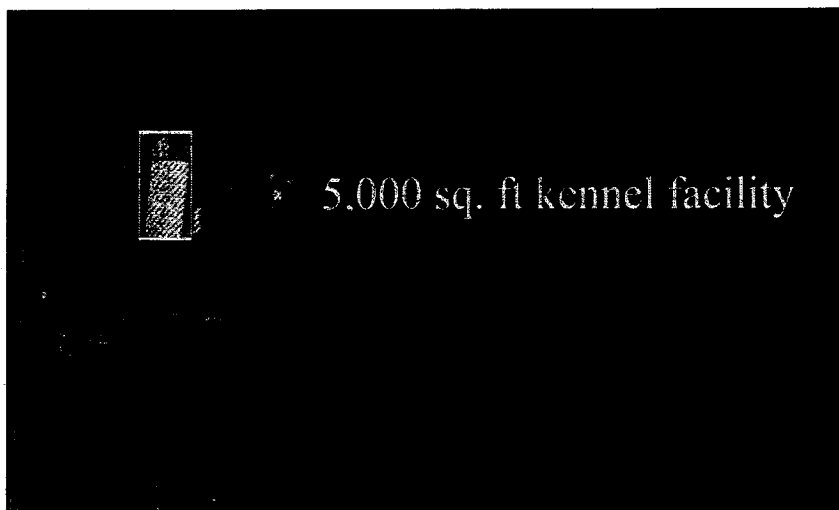
The reason for the Major Variance follows. The existing kennel facilities include one 5,000 square foot kennel structure that is attached to an outdoor concrete and fenced play area for puppies. This structure is located 30' from the west property line and was at this location in 1977 according to the Assessor Records. The kennel facilities also include a separate fence that surrounds the western 4 acres of the 10.79 acre site and is constructed less than 10' of the site's west, south, and north property lines.

The Planning Commission listened to presentation of the June 6, 2012 Staff report and heard testimony from the adjacent property owners/residents stating that the existing kennel has been operating in ways that have interfered with their quiet enjoyment of their properties and substantially impaired their quality of life because the dogs are a public nuisance as defined in the Oregon Revised Statutes 609.095(1). After due consideration of the oral testimony, which the applicant was not present to rebut, the Columbia County Planning Commission denied the application as presented for V 12-01. This Denial, in turn invalidated the Planning Commission from reviewing the related CU 12-09 appearing not to meet many of the applicable provisions of the Zoning Ordinance.

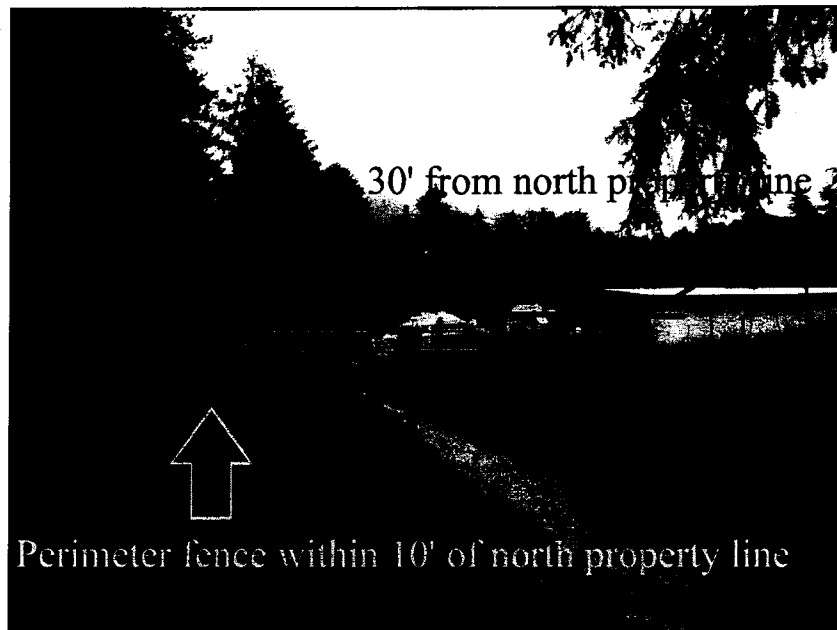
As outlined in this Staff Report, the Planning Commission's denial of V 12-01 is based on the provisions in Section 1802.9 of the Zoning Ordinance that requires (1) all kennels be sited to minimize impacts on neighboring properties and in Section 1504.1(A.1) and (2) the granting of the variance to not be detrimental to the public's health or welfare or be injurious to other properties. In light of the new evidence received at the public hearing and evaluated in the report dated September 5, 2012, the Planning Staff recommends the Board uphold the Planning Commission's decision to deny V 12-01 and the related CU 12-09.

PICTURES OF SUBJECT PROPERTY AND EXISTING KENNEL FACILITIES

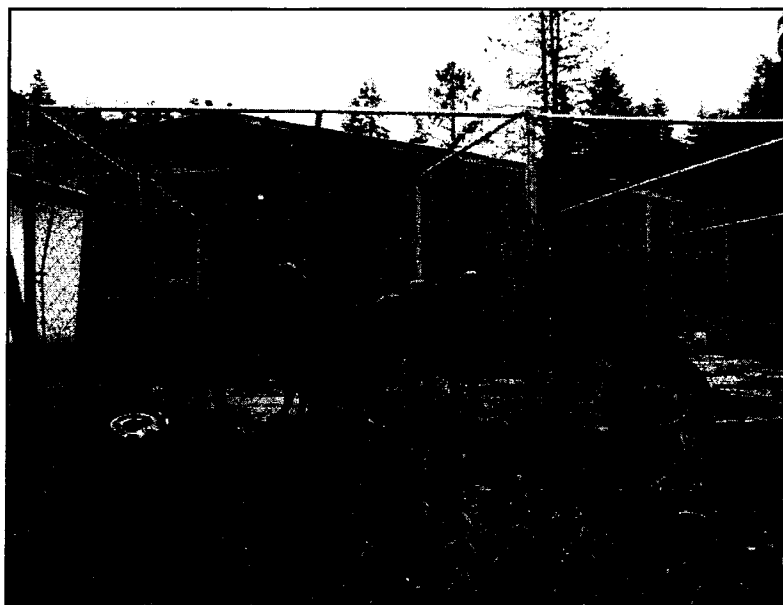
Western 4 acres of site showing (1) 5,000 sq ft kennel facility and (2) fencing than runs between 10 - 20 feet of site's north, south, and west property lines



View of 5,000 square foot kennel structure located within 30' of the west property line



**Outdoor fenced puppy area west of 5,000 sq ft kennel structure
and 30' from west property line**



FACTUAL BACKGROUND OF APPLICATIONS FOR V 12-01 AND CU 12-09:

The submitted applications for Variance 12-01 and Conditional Use Permit 12-09 are the applicant's, Kristen Dreyer, proposals that, if approved, will allow him to continue operating a kennel from his residence at 71614 Apiary Road as a Conditionally Permitted Type II Home Occupation. Although the applicant has been operating this kennel for the past ten (10) years, the applicant did not request any land use authorization from Land Development Services until May 2012, sixteen (16) months after the Board's January 4, 2011 adoption of Special Use Standards for dog kennels codified in Section 1800 of the Zoning Ordinance. County records show that the applicant was notified of the January 2011 zoning amendments that established the kennel setback standard.

The applicant raises Great Danes, Poodles and Yorkies and sells puppies from his residence on a 10.79 acre PF-80 zoned property. The kennel has existed on the property for approximately 10 years and has been licensed with Columbia County Animal Control continuously since that time. As of May 2012, the applicant's kennel is licensed for up to 50 adult dogs, and information from the Animal Control Officer indicates that the applicant sells over 100 dogs per year. The Animal Control Officer will require the applicant obtain land use approval from the county prior to renewing the applicant's kennel license.

Columbia County's Kennel Ordinance defines a kennel as:

A. As applied in this Ordinance, "Kennel" means:

- (1) Any property that houses ten (10) or more dogs over six (6) months of age.
- (2) Any "Animal Pound" or "Animal Shelter" as defined by OAR 603-015-0025(1).
- (3) Any "Boarding Kennel" as defined by OAR 603-015-0025(2).
- (4) Any "Commercial Kennel" as defined by OAR 603-015-0025(3).
- (5) Any "Grooming Parlor" as defined by OAR 603-015-0025(5).
- (6) Any "Pet Shop" or "Animal Dealer" as defined by OAR 603-015-0025(7) that handles dogs.

Any operation meeting the definition of a kennel must satisfy two application requirements to lawfully operate in Columbia County; 1) all kennels must apply for and obtain a Kennel License through Columbia County Animal Control, and 2) all kennels must apply for and receive land use approval for a Conditional Use and/or Home Occupation Permit through Columbia County Land Development Services. This is the first land use permit application LDS has received requesting the authorization of this existing kennel. It also requires an approval of a Major Variance to the provisions in Section 1802.2 which require kennel facilities to be at least 100' from all property lines.

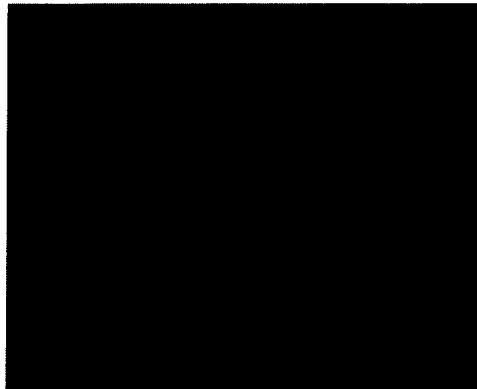
Specifically, the perimeter kennel fencing is between 10 - 20 feet of the site's north, west, and

south property lines, and the 5,000 square foot kennel structure and attached outdoor fenced play area for puppies is 30' from the north property line. Although this accessory structure was at this location in 1977 according to the Assessor's Records, it has never been approved for kennel use. Because the applicant now seeks approval to use the building for a kennel, the building is subject to current zoning requirements. Therefore, it is not exempt for the siting provisions in Section 1802.2 since all kenneled dogs are boarded in it.

The subject property is located on the east side of Apiary Road approximately five miles southwest of the City of Rainier. Existing development of the site consists of a single-family dwelling, a temporary hardship manufactured home, one onsite septic system, one domestic well, one greenhouse, one detached garage, one 5,000 square foot kennel structure, and one outdoor concrete play area (fenced) that allows puppies to spend time outdoors. The entire western ~ 4 acres is surrounded by perimeter fencing as well as a network of fenced areas that separates outside areas for dogs and humans. Water is provided to the site from a private well and residential wastewater is disposed of through an onsite septic system. All development of the 10.79 acre property is clustered together in the western approximate 4 acres along Apiary Road.

The application states the individual kennels and outside concrete puppy run areas are both power washed daily after solid waste is picked up and disposed of in plastic bags. The County Sanitarian required the applicant to develop a Best Management Practices Plan for the disposal of the dogs' liquid and solid waste for her to approve. In addition, the applicant spreads shredded cedar bark in the outside run areas connected to the kennel facility that abut Apiary Road. Since this base is not permanent, it often washes off in the rain and causes this outdoor run area to be wet and muddy and possible cause runoff onto Apiary Road. During the site visit, the applicant informed LDS Planning Staff it is his intent to apply a more permanent ground cover in this area when it becomes financially possible. To rectify this drainage problem the Columbia County Soil & Water Conservation District can work with the applicant to develop a Resource Conservation/Drainage Improvement Plan. This plan will address this area's drainage problem in ways that will help preserve the site's natural resources, provide a healthier natural environment for dogs, and will improve the site's inadequate drainage facilities

The current zoning map shows the subject property is surrounded in every direction by other PF-80 or Forest Agriculture (FA-80) zoned properties, ranging in size from approximately 3 to 53 acres. The closest dwellings on the adjacent forest tracts north and south of the subject site appear to be built at least 200' away from the applicant's north and south property lines.



According to the FEMA Flood Insurance Rate Map (FIRM) No. 41009CO175 D, the site has no flood hazard areas. Likewise, according to the Delena Oregon National Wetlands Inventory(NWI) and the Rainier- Fern Hill CPAC Area Beak Maps, the site does not contain any identified wetland areas and is located within a Peripheral Big Game Habitat Overlay Zone. Emergency services are provided to the site by the Columbia County Sheriff's Department and Columbia River Fire and Rescue.

REVIEW CRITERIA, FACTS, ANALYSIS & FINDINGS:

Beginning with the *applicable portions* of the Columbia County Zoning Ordinance:

Section 500 Primary Forest (PF-80)

TABLE OF AUTHORIZED USES & DEVELOPMENT

COMMERCIAL	AUTHORIZATION	PF - 80 SECTION
Kennel as a Home Occupation	CUP/PC	505.17, 507 - 510

505 Conditional Uses.

- .17 Kennel as a home occupation carried on by the resident as an accessory use within dwellings or other buildings allowed in conjunction with farm or forest use subject to standards contained in Section 1507 and Section 1802.
 - A. Consistent with all home occupations, land use approval for a kennel granted as a home occupation shall be granted only to the person or persons named on the application and shall not be transferable to or include any other person or organization, unless approved through a new home occupation permit; and
 - B. A home occupation permit for a kennel shall be granted only to an individual resident or residents of the dwelling and shall not be granted to an organization, such as but not limited to a business or non-profit

Finding 1: Residents in the PF-80 Zone are conditionally permitted to operate kennels as an accessory home occupation per CCZO Section 505.17. The submitted application for CU 12-09 is for a proposed Type 2 Home Occupation that may be permitted through approval of a Conditional Use Permit by the Planning Commission. Concurrent with CU 12-09 the Planning Commission needed to review and approve the applicant's request for a Major Variance (V 12-01) to the provisions in Section 1802.2 requiring all kennel facilities be at least 100' from all property lines.

Kristen Dreyer is named as the applicant on the submitted application. In accordance with Section 505.17(A) of the Columbia County Zoning Ordinance, the proposed kennel occupation may only be granted to the person named on the application and shall not be transferable to other persons or organizations. Approval of this application shall be specific to the applicant as named. In reference to CCZO Section 505.17(B), Kristen Dreyer resides at 71614 Apiary Road and does not solely represent an outside business or corporation. This requirement shall be made as a condition of approval and shall be adhered to by the applicant for the life of the proposal. The Planning Commission and Staff find these criteria can be met subject to conditions.

Continuing with the Columbia County Zoning Ordinance:

507 Siting of Dwellings and Structures

- .1 All new dwellings and structures are subject to the siting standards in this section. Relevant physical and locational factors including, but not limited to, topography, prevailing winds, proximity to existing roads, access, surrounding land use and source of domestic water shall be used to identify a site which:
 - A. Has the least impact on nearby or adjacent lands zoned for forest or agricultural use;
 - B. Ensures that forest operations and accepted farming practices on the tract will not be curtailed or impeded by locating dwellings and structures as near to each other and to existing developed areas as possible considering topography, water features, required setbacks and firebreaks;
 - C. Minimizes the amount of forest lands used for building sites, road access and service corridors;
 - D. Is consistent with the provisions of Section 510 related to Fire Siting Standards and minimizes the risk associated with wildfire; and
 - E. Is consistent with other requirements contained in the Comprehensive Plan or implementing ordinances, including, but not limited to, regulations which apply to flood, steep slopes, and landslide hazard areas, development within the Willamette River Greenway, development in forested areas or development in significant resource and natural areas, such as wetland riparian and slide-prone areas.

Aerial Map of residential development in this portion of Apiary Road.



Finding 2: Concerning the criterion in Section 507.1 (A) the aerial map above and Zoning Map on Page 6 shows the site is surrounded by PF-80 or FA-80 zoned properties that are residentially developed. There are three (3) other houses that are immediately adjacent to the subject site; one property owner was present at the public hearing and another submitted the attached Complaint about the kennel's barking dogs to LDS on 6/21/12. The 6/5/12 comments from the County Animal Control Officer also confirm he receives regular complaints from one neighbor about noise from the dogs. This is the same neighbor who testified at the June 16, 2012 public hearing who stated that not only do the dogs bark continuously, but that dogs have come onto his property and killed his chickens over the past ten years. With this additional evidence, the Planning Commission finds that the proposals do not appear to be consistent with the criterion in Section 501.1(A) because impacts to adjacent properties along Apiary Road are not minimized when kennel dogs escape the site and/or are not prevented from continually barking.

Finding 3: The submitted applications do not propose any new kennel facilities and all existing site development (kennel and residential) is within the western fenced 4 acres; this area's vegetation and site development already comply with the requirements of the Department of Forestry's (DOF) Fire Siting Standards for structures in the forest zone. The western portion does not have any significant natural features (water ways, steep slopes, wetlands, floodplain etc.) that are impacted by the kennel operation. If the Board does not uphold the Planning Commission's denial, the Commission recommends keeping the condition of approval that requires all future site development to comply with the minimum Fire Siting Standards. With this condition, the Planning Commission and Staff find the criteria in Section 507.1(B, C, and D) can

be met with conditions of approval, if necessary.

Finding 4: As discussed in the Background, the western portion does not contain any Wetlands and is within a Peripheral Big Game Habitat Area, per the respective Delena NWI Map and the Rainier- Fern Hill CPAC Area Beak Maps. Peripheral Big Game Habitat Areas are considered to be one of the county's significant natural resources that are protected by Statewide Planning Goal 5. The western fenced portion does not contain any steep slopes, nor is the subject site located within a flood hazard area according to the FEMA FIRM # 41009CO175 D. With new evidence from the neighbor stating dogs escape from the site's western portion's perimeter fencing, the Planning Commission finds that over the past ten years the applicant has not been able to secure all kenneled dogs so they cannot access Peripheral Big Game Habitat Areas along Apiary Road or remaining in the eastern portion of his property. Without any additional improvements to the existing fencing, the Planning Commission finds the submitted proposals do not comply with the criterion in Section 507.1(E) and are not consistent with the County's Comprehensive Plan and provisions of the Zoning Ordinance that implement it in order to help preserve the county's Peripheral Big Game Habitat Areas.

Continuing with Section 507 of the Zoning Ordinance:

507.2 The applicant shall provide evidence consistent with OAR 660-006-0029(3) that domestic water supply is from a source authorized in accordance with the Department of Water Resources' administrative rules for the appropriation of ground water or surface water in OAR Chapter 690 and not from a Class II stream as defined in the Forest Practices Rule in OAR Chapter 629. If the water supply is unavailable from public sources or sources located entirely on the subject property, then the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.

Finding 5: LDS Staff obtained a copy of the State of Oregon's Water Supply Well Report for a well that is located on the subject property. The attached well log COLU # 53665 certifies the residences and home occupation are served by an approved domestic water source per OAR 550-006-0029(3). The Planning Commission finds this condition has been met.

Continuing with Section 507 of the Zoning Ordinance:

507.5 Dwellings and other structures to be located on a parcel within designated Big Game Habitat areas pursuant to the provisions of Section 1190 are subject to the additional siting criteria contained in Section 1190.

Finding 6: Peripheral Big Game Habitat Areas are considered to be one of the county's significant natural resources that are protected by Statewide Planning Goal 5 and referred to in Section 507.1(E) for Finding 4. A more in-depth discussion addressing the siting criteria in Section 1190 will be covered later in this report in Finding 17.

Continuing with Section 508 of the Zoning Ordinance:

508 General Review Standards The Planning Director or hearings body shall determine that a use authorized by Sections 504 and 505 meets all of the following requirements:

- .1 The proposed use will not force significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands;
- .2 The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel;
- .3 A waiver of remonstrance shall be recorded with the County Clerk certifying that the owner will not remonstrate against or begin legal action or suit proceeding to cause or persuade the owner or operator of any farm or forest lands to modify the conduct of legal and accepted farm or forest operations; and
- .4 The proposed use is consistent with requirements contained in the Comprehensive Plan or implementing ordinances, including, but not limited to, regulations which apply to flood hazard areas, development within the Willamette River Greenway, development in forested areas or development in significant resource areas, such as riparian, wetlands or slide-prone areas.

Finding 7: Pertaining to the testimony received at the public hearing (Finding 2) where the neighbor to the north stated that the dogs have escaped from the site's fenced areas and killed his chickens, the Planning Commission finds that the kennel operation has the potential to significantly change and/or increase the costs of farming and forest practices occurring on adjacent Primary Forest or Forest Agriculture zoned properties. Escaped dogs should not be able to access adjacent resource zoned properties when their natural resources are being processed (planted, harvested, logged, thinned etc...). The kennel has been operating for ten years and this problem should have been rectified before the applicant/kennel operator requested land use authorization from the county. With this new evidence, the Planning Commission finds the submitted proposal does not comply with the criterion in Section 508.1.

Finding 8: The fire safety siting criterion in Section 508.2 was covered during the discussion for Finding 3. Since no new structures are permitted or authorized with the proposal, the Planning Commission finds the site's existing Primary and Secondary Firebreak areas are already established and maintained consistent with the Department of Forestry's Fire Siting Standards for Dwelling and Structures in the PF-80 Zone.

Finding 9: The criteria in Section 508.3 can be complied with by requiring the applicant to sign and record a notarized *Waiver of Remonstrance* with the County Clerk that will prohibit him from

taking legal actions against accepted farm or forest operations on adjoining properties. A copy of this recorded document will be filed with LDS as one condition of approval.

Finding 10: The criteria in Section 508.4 have been addressed for Findings 4 and 6 and found that because dogs are not contained within the existing fencing, the submitted proposals do not comply with minimum requirements for preserving this area of the county's designated Peripheral Big Game Habitat Areas along this portion of Apiary Road.

Continuing with Columbia County Zoning Ordinance:

509 Standards of Development

- .1 The minimum average lot or parcel width and minimum average lot or parcel depth shall be 100 feet for all activities except farming or forestry.
- .2 Access to parcels in this zone shall meet Fire Safety Design Standards for Roads in the County Road Standards and access standards found in Section 510 of the Zoning Ordinance.
- .3 There shall be no height limitation for forest operation and management-related structures unless otherwise permitted in the Primary Forest Zone. The maximum building height for all non-farm, non-forest structures shall be 50 feet or 2 ½ stories, whichever is less.
- .4 The standards and requirements described in Section 1300 of the Zoning Ordinance shall apply to all signs and name plates in the Primary Forest Zone.
- .5 The Oregon Department of Fish & Wildlife shall be notified and provided with the opportunity to comment on any development within major and peripheral Big Game Habitat.

Finding 11: According to the County's GIS Maps, the subject property average width is 350' and average depth is 1,222', both of which far exceed the minimum 100' requirements for new activities in the PF-80 zone.

The kennel customers utilize the existing driveway along the north property line. Since this driveway is over 150' long one condition of approval required the applicant to submit written documentation from Columbia River Fire & Rescue (CRF&R) Fire District to LDS confirming this private access complies with the minimum requirements for Fire Apparatus Access Standards per the County Road Standards Ordinance. If the Board approves the proposals the Planning Commission recommends this condition be kept.

The applicant is not authorized to construct any new structures on the subject site per the information submitted for V 12-01 and CU 12-09. The existing 5,000 sq ft kennel structure complies with the height limitations in Section 509.3.

The applicant's response to Section 1507.2(C) state he would like to install signs on site provided the Board approves V 12-01 and CU 12-09. If the Board approves the two proposal, the Planning Commission recommends the Board keep this original condition of approval requiring the applicant to apply for and be issued permits for all signs prior to any installation. The maximum sign area for rural home occupations identified in Section 1306 of the Zoning Ordinance limit it to only one (1) six square foot sign.

The Oregon Department of Fish & Wildlife was notified of these proposals on May 29, 2012. As of the date of this report, LDS has not received any comments from this agency.

For the aforementioned reasons and with the related conditions, the Planning Commission finds that should the Board approve the proposals submitted for V 12-01 and CU 12-09, the applicant will be able to comply with the criteria in Section 509.1 through 509.5 with conditions

Continuing with Section 509 of the Zoning Ordinance:

.6 Setbacks:

- A. There shall be a minimum setback of 50' for front, side, and rear yards for all development in the Primary Forest Zone.
- B. When this Ordinance or any other ordinance requires a greater or lesser setback than is required by this subsection, the greater setback shall apply.
- C. All structures are subject to any special setbacks when adjacent to arterial or collector streets designated in the County Transportation Systems Plan.
- D. No structure or use shall be established in a manner likely to cause contamination of a stream, lake or other body of water. Riparian and natural hazard setbacks set forth in Sections 1170 and 1182 of the Zoning Ordinance shall apply.
- E. When land divisions create parcels of less than 40 acres for uses listed in Subsection 511.2A., provided those uses have been approved pursuant to this Ordinance, required building setbacks for these parcels will be determined on a case-by-case basis by the Director or the hearings body.
- F. The owner shall provide and maintain primary fuel-free fire break and secondary fire break areas on land surrounding the dwelling and primary fuel-free break areas surrounding accessory structures in the Primary Forest Zone pursuant to the provisions in Subsections 510.2 and .3.

Finding 12: Pertaining to the provisions in Section 509.6(A) as already discussed, no new structures are being applied for with the authorization of this existing kennel at its current location. The County Assessor records indicate a structure existed at this location in 1977. During the public hearing the northern neighbor testified that this structure has been modified over the years including the attachment of the concrete fenced puppy area on its north side closer to the northern neighbor. The Planning Commission finds that the more restrictive siting criteria in Section 1800 should apply to the submitted proposals authorizing this kennel. Findings 39 - 45 of this report will review, address and evaluate the extent that the existing kennel complies with the Major Variance provisions.

Finding 13: Since the County Road Department did not reference or require any alternative setbacks provided for in Section 506.6(B and C), the Planning Commission finds this criterion does not apply to these two proposal. Likewise, since the proposals do not include any partitioning of land, the criterion in Section 506.(E) does not apply to these requests.

Finding 14: Because the 10.79 acre site does not contain any stream, lake or other body of water according to the National Wetlands Inventory Maps of Delena, the requirements in Sections 509.6(D), 1170, and 1182 do not apply to the applicant's proposal submitted for V 12-01 and CU 12-09.

Finding 15: As discussed previously for Findings 3, 8 and 11 the Planning Commission finds that all of the site's existing structures and kennel facilities have established primary and secondary fire breaks on all sides in compliance with the DOF's Fire Siting Standards for Dwellings and Structures in the PF-80 Zone. One condition of approval required the applicant to submit documentation to LDS from CRF&R confirming the private access along the north property line has been improved to Fire Apparatus Access Standards. The Planning Commission finds the criterion in Section 509.6(F) can be satisfied with conditions should the Board approve the two proposals submitted for V 12-01 and CU 12-09.

Continuing with the applicable provisions in Section 510 of the Zoning Ordinance:

510 Fire Siting Standards for Dwellings, Structures and Roads:

The following fire siting standards or their equivalent shall apply to new dwellings in this zone:

- .2 The owner of the dwelling shall establish and maintain a primary fuel-free fire break surrounding the dwelling and accessory structure(s) no less than 30 feet wide in accordance with the provisions in "Protecting Your Home From Wildfire" published by the National Fire Protection Association. The owner may be required to increase the primary fuel-free fire break if the dwelling or structure is located on a 10% or greater slope. The primary fuel-free fire break could include a lawn, low ornamental shrubbery less than 24" in height and/or individual or groups of trees separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. All existing tree limbs shall be pruned from the base to at least eight feet in height. Dead fuels shall also be

removed.

- .4 All roads in this zone, except private roads and bridges for commercial forest uses, shall be constructed so as to provide adequate access for fire fighting equipment according to the standards provided by the local rural fire protection district, the County Road Department, or the State Department of Forestry.

Finding 16: These provisions have already been covered and evaluated per the discussions for Findings 3, 8, 11, and 15.

Continuing with Columbia County Zoning Ordinance:

Section 1190 BIG GAME HABITAT OVERLAY

- 1191 Purpose: To protect sensitive habitat areas for the Columbian white-tailed deer and other Big Game by limiting uses and development activities that conflict with maintenance of the areas. This section shall apply to all areas identified in the Comprehensive Plan as a major and peripheral big game range or Columbian white-tailed deer range, as shown on the 1995 Beak Consultant's map, entitled "Wild Game Habitat" in the Comprehensive Plan in Appendix Part XVI, Article VIII(A). *[Amended by Ordinance 2003-06, eff. 7/30/03].*

- 1193 Development Siting Standards: *[Amended by Ordinance 2003-06, eff. 7/30/03].*

All new residential development and uses located in Major and Peripheral Big Game or Columbian White-tailed Deer Habitat shall be subject to following siting standards:

- A. Dwellings and structures shall be located as near each other and existing developed areas as possible considering topography, water features, required setbacks, and firebreaks.
 - B. Dwellings and structures shall be located to avoid habitat conflicts and utilize least valuable habitat areas.
 - C. Road development shall be minimized to that which is necessary to support the proposed use and the applicant shall utilize existing roads as much as possible.
 - D. The owner/occupant of the resource parcel shall assume responsibility for protection from damage by wildlife.
 - E. Riparian and Wetland areas shall be protected in accordance with Sections 1170 and 1180.
1194. The County shall notify the Oregon Department of Fish and Wildlife (ODFW) of all proposed uses or development activities which require a permit and are located in Major or Peripheral Big Game Habitat. The County will consider the comments and

recommendations of ODFW, if any, before making a decision concerning the requested use or activity. *[Added by Ordinance 2003-06, eff. 7/30/03].*

Finding 17: Since the 10.79 acre site is located within a Peripheral Big Game Habitat Area per the Rainier- Fern Hill CPAC Area BEAK Maps, the applicant's submitted proposals are subject to the siting standards in Section 1190 of the Zoning Ordinance. In addition Article VIII of Part XVI of the County's Comprehensive Plan states that Peripheral Habitat Areas occur in lower elevations and are particularly important for sustaining big game populations and habitat during severe winter months.

The two submitted proposals do not include any new structures or site development. From the pictures below taken during LDS staff's field visit it appears that all existing development (kennel and non-kennel related) is located in the western fenced approximate 4-acre portion that does not contain any wetlands or riparian areas, is within the site's fire safety areas and is consistent with the siting criteria in Section 1193.(A, C, & E).



Pertaining to criteria in Section 1193.B, although the applicant has tried to contain dogs in the fenced western portion of this property, the neighbor's oral testimony demonstrates this fence's inability to secure dogs onsite so they cannot access adjacent residential and forested properties. By not securing kenneled dogs onsite demonstrates dogs cannot be kept away from Peripheral Big Game Habitat Areas in this portion of Apiary Road. In addition, allowing dogs to escape onto adjacent properties is not minimizing potential detrimental impacts to wildlife who need these habitat areas during winter months. Without additional measures to secure all dogs onsite, the Planning Commission finds the kennel's operation is not consistent with the siting standards in Section 1193 (B).

The applicant has been living here for at least ten years, the Planning Commission finds the applicant has assumed all responsibility for protection from damage by wildlife as required by Section 1193.D.

The Oregon Department of Fish & Wildlife was sent a Referral and Acknowledgment on May 29, 2012 and has yet to submit any comments regarding the applicant's two proposals. The criterion in Section 1194 has been met.

Continuing with Columbia County Zoning Ordinance:

Section 1300 Signs

1306 Signs pertaining to rural home occupations:

- .1 Shall not exceed 6 square feet.
- .2 Only one such sign shall be permitted upon the premises.
- .3 Shall not be artificially illuminated.
- .4 Shall be located at least 5-feet from the front property line.

Finding 18: The submitted application states that the applicant intends to install a sign after his two proposals are approved. The Planning Commission finds that should the Board approve these proposals, prior to installing the 6 square foot sign, the applicant shall apply for a sign permit and meet all planning and building requirements in Section 1306.

Continuing with County Zoning Ordinance:

Section 1503 Conditional Uses

1503 .4 Suspension or Revocation of a Permit: A Conditional Use Permit may be suspended or revoked by the Commission when any conditions or restrictions imposed are not satisfied.

- A. Conditional Use Permit shall be suspended only after a hearing before the Commission. Written notice of the hearing shall be given to the property owner at least 10 days prior to the hearing.

- B. A suspended permit may be reinstated, if in the judgment of the Commission, the conditions or restrictions imposed in the approval have been satisfied.
- C. A revoked permit may not be reinstated. A new application must be made to the Commission.

Finding 19: Should the Board approve the submitted requests for V 12-01 and CU 12-09, it will authorize the kennel the applicant has been operating for the last ten years. In January 2011 the Board adopted the Special Use Standards specifically for kennels after approximately two years of public input and meetings. Section 1802 specifically states that dog kennels “...*Due to their public convenience and necessity and their effect upon the surrounding area...are subject to conditions and standards that differ from those required of other uses.*” The testimony from the kennel’s northern neighbor heard by the Planning Commission exemplifies the public inconveniences and negative effects this kennel has had on the adjoining property owners over the past ten years. These include, but are not limited to, dogs that are heard barking while they are inside and outside the 5,000 square foot kennel structure, dogs escaping the fenced site, dogs killing chickens on adjoining properties, dogs fighting among themselves and/or with neighbors dogs, and generally disrupting neighbors from enjoying living in the quiet and more remote rural areas of our county.

The neighbor’s testimony moreover exemplifies why the Special Use Standards in Section 1800 are necessary for all kennels; they can be very incompatible with other land uses in close proximity, in this case, the surrounding single family residentially developed area along this portion of Apiary Road. The Planning Commission finds that since the applicant has not been able to successfully minimize his kennel operations’ detrimental impacts on nearby residents over the past ten years, the current kennel operation on this 10.79 acre property should not be authorized unless the kennel can be sited consistent with all the provisions in Section 1800. For these reasons, the Planning Commission recommends the Board uphold the Planning Commission’s denial of V 12-01 and not authorize the requested land use proposal submitted for CU 12-09.

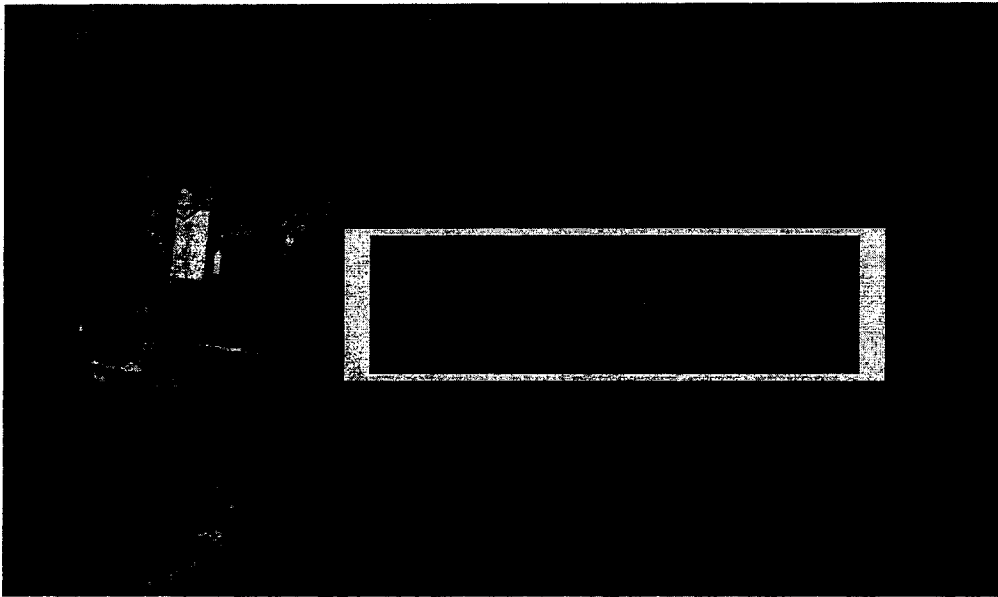
1503 .5 Granting a Permit: The Commission may grant a Conditional Use Permit after conducting a public hearing, provided the applicant provides evidence substantiating that all the requirements of this ordinance relative to the proposed use are satisfied and demonstrates the proposed use also satisfies the following criteria:

- A. The use is listed as a Conditional Use in the zone which is currently applied to the site;

Finding 20 : Kennels as home occupations are listed as a Conditional Use in Section 505.17 of the Zoning Ordinance. Staff finds that the criterion is met.

- B. The use meets the specific criteria established in the underlying zone;

Finding 21: The PF-80 standards generally apply to new development or land divisions. No new site development or division of land is proposed as part of the applicant's two submitted requests. As stated earlier, the County Assessor records indicate an accessory structure existed at this location in 1977. The neighbor testimony also stated that the concrete fenced puppy area was attached to the structure within the past few years; this attachment sited this structure ~ 20 feet closer (shown below) to the northern neighbor's property. LDS Planning Staff verified during the site visit that the applicant has installed fences that are either 3 ½ feet, 5 feet, or 6 feet tall, none of which require a building permit. The Planning Commission finds that the site's existing structures either comply with or pre-date the PF-80's zone's minimum setbacks for structures. The siting criterion for the kennel facilities required in Section 1802 will be evaluated later for Findings 30 - 38.



- C. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements, and natural features;

Finding 22: Although the western portion of the 10.79 acre site is already developed with the site's existing kennel facilities, this is the area that is closer to the adjoining neighbors who also live in this residentially developed portion of Apiary Road seen in the aerial map above. The testimony at the public hearing provided evidence to the Planning Commission that the current location of the kennel facilities is not suitable for a kennel since the constantly barking dogs unreasonably interfere with typical residential uses on adjoining properties.

The highlighted internal area above delineates the approximate 3.5 acre portion of the 10.79 acre site which can satisfy the 100' property line setback requirements in Section 1802.2 for kennel facilities. Better fencing can be installed around its perimeter within which all kennel facilities can be relocated or newly constructed with sound-proofing materials. There is an already cleared area in

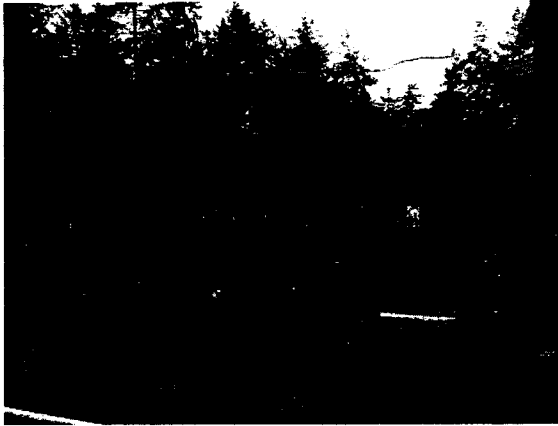
the western portion of the "back" acreage that would be suitable for the larger kennel structure. Relocating the kennel facilities (kennel structure, outdoor concrete play area, and fences) to the further eastern portion of the property and installing improved kennel structures would potentially help to alleviate the neighbors concerns expressed to the Planning Commission. Although some thinning would need to occur within this portion, it could be accomplished in ways that reduce fire hazards and provide a more natural outdoor exercise area for dogs to explore. On June 18, 2012 the Planning Commission approved CU 12-08 that authorized the resident at 17633 Keasy Road in Vernonia to operate a dog kennel as a home operation in the PF-80 zone. The applicant installed fencing in the forested portion of the property, thinned and removed vegetation consistent with the Fire Siting Standards for Structures in the forest zone, and sited all kennel facilities at least 100' from all property lines.

For these reasons, the Planning Commission finds that the eastern portion of the 10.79 acre property is not suitable for the proposals since this area is closest to the nearby residential uses along Apiary Road and the applicant has not been able to minimize the disruptive impacts the kennel activities have imposed on nearby residents. Because the kennel operation's ten year history demonstrates that this location is not suitable for its requested use the Planning Commission finds it does not comply with the siting criterion in Section 1503.5.

- D. The site and proposed development is timely, considering the adequacy of transportation systems, public facilities, and services existing or planned for the area affected by the use;

Finding 23: Although the kennel operation has existed on the subject site for the past ten years. LDS has no documentation that any of the site's existing private (septic system, driveway, well) or public (Apiary Road, electricity, communications) facilities have been compromised by it.

However, the following pictures indicate that drainage is a problem in the outdoor unpaved kennel run area located between the 5,000 sq ft kennel structure and Apiary Road. The application states the applicant would like to improve the ground cover in this outdoor area and the Animal Control Officer's comments verify this area's drainage problems. Consequently, during a follow-up phone conversation between LDS Planning Staff and the County Soil and Water Conservation District (SWCD) Resource conservationist, Tyler Joki, Mr Joki stated he would be able to assist the applicant develop a Resource Conservation/Drainage Improvement Plan that will not only provide better and healthier ground cover for dogs in this area, but will also help prevent property and road damage from inadequately controlled water runoff.



If the Board elects to approve the proposals, the Planning Staff recommends the applicant file a copy of this approved Resource Conservation/Drainage Improvement Plan with LDS as one condition of approval. LDS Planning Staff will need to verify this Plan has been implemented with a field visit prior to final approval.

The County Sanitarian submitted comments on 6/11/12 stating the applicant will need to meet the applicable requirements of the county Kennel Ordinance and at a minimum, will need to develop and file an approved Best Management Practices Plan (BMP) with the County Sanitarian to ensure all dog waste is managed and disposed of properly for the duration of its operation.

The Columbia County Road Department was notified of the request and had no objection to its approval as submitted. They also have a current Road Access Permit on file for the subject property.

Finally, emergency services are provided to the site by the Columbia County Sheriff's Department and the Columbia River Fire & Rescue Fire District. The fire district's comments stated they have no objections to the approval of the proposals as submitted.

If the Board approves the proposals, the Planning Staff recommends the Board also require these original conditions of approval to help ensure the kennel's dog waste disposal and drainage facilities are adequate.

- E. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying district;

Finding 24: The subject 10.79 acre PF-80 zoned property is surrounded by similar sized PF-80 or FA-80 zoned properties that are either vacant forestland or are developed with residential uses. The adjacent property owner's testified that the existing kennel is operating in ways that has interfered with surrounding residents' quiet enjoyment of their property that substantially impairs he

and his family's quality of life because the dogs are a public nuisance.

Although he application states that all dogs are inside at night, the neighbor, Daniel Hendrickson, testified he and his family hear dogs barking all night long except for a couple hours in the early morning. Mr. Hendrikson also questions whether or not the dogs are kept inside at night because, if they are, then the 5,000 sq ft kennel structure is not sound-proofed. Kenneled dogs have come onto Mr. Hendrickson's property and killed his chickens. Mr. Hendrikson finally expressed frustration as to why the applicant was entitled to request a Major Variance to the 100' setback requirements for new kennels since the applicant did not request land use authorization prior to the January 4, 2011 effective date of the Special Use Provisions for kennels in Section 1800 of the Zoning Ordinance. For these reasons, the Planning Commission finds the proposals do not comply with the required provision in Section 1503.5(E) and that the existing kennel has, over the past ten years, substantially altered the quiet character of this residentially developed area of Apiary Road.

F. The proposal satisfies the goals and policies of the Comprehensive Plan which apply to the proposed use;

Finding 25: With regard to the County's Comprehensive Plan, Part X - Economy, the Planning Commission recognizes that allowing the applicant to continue operating his existing kennel as a home occupation recognizes these small enterprises as legitimate ways for county residents to supplement their income and diversify the county's traditional resource-related economy. Nevertheless, the evidence presented at the public hearing and Complaint filed with LDS indicate that the applicant has not successfully minimized the negative impacts his kennel operation has imposed on surrounding neighbors, which is an integral siting criteria for these conditionally permitted uses.

In addition, Findings 4, 6, and 10 have already found that because dogs escape the fenced kennel facilities, the submitted proposals do not comply with minimum requirements for preserving the site's and adjoining properties' significant natural resources, specifically the Peripheral Big Game Habitat Areas along this portion of Apiary Road. For these reasons, the Planning Commission finds that the proposals do not comply with the provision in Section 1503.5(F).

G. The proposal will not create any hazardous conditions.

Finding 26: The hazardous conditions related to dogs leaving the kennel, poor onsite drainage and adequate dog waste disposal have already been addressed for Findings 4, 6, 10, 22, and 23. The Planning Commission finds that the existing kennel's on-site and off-site hazardous conditions can be decreased and/or rectified with more secure fencing, sound-proofing the kennel structure, and implementing both the Resource Conservation/Drainage Improvement and the Best Management (Dog Waste Disposal) Plans if the Board approves the proposals.

Continuing with Section 1503 of the County Zoning Ordinance:

Section 1503 Conditional Uses

1503 .6 Design Review: The Commission may require the Conditional Use be subject to a site design review by the Design Review Board or Planning Commission.

Finding 27: After the testimony heard at the public hearing, the Planning Staff recognizes that the kennel, should it be authorized to continue operating at 71614 Apiary Road, would be better suited to this 10.79 acre site and the surrounding residents if it were:

1. Relocated to the eastern portion;
2. Site all new kennel facilities at least 100' from all property lines;
3. Construct more secure fencing and
4. Sound-proof the kennel structure where dogs spend time indoors and overnight.

These improvements and re-locations can be accomplished without a formal Site Design Review and may help ensure that the nearby residents' general health, safety and welfare will not continue to be diminished and/or compromised.

Continuing with County Zoning Ordinance:

Section 1507 Home Occupations

1507 .2 Type 2: A Type 2 home occupation is reviewed as a Conditional Use by the Planning Commission and may be visible to the neighborhood in which it is located. In addition to the general criteria in Subsection 1507.3, the following criteria shall apply to a Type 2 home occupation:

- A. It shall be operated by a resident or employee of a resident of the property on which the business is located.
- B. It shall employ on the site no more than five full-time or part-time persons.
- C. Signs are permitted as per Section 1300 of the CCZO.

Finding 28: The Assessors records and site visit both confirm the applicant resides on the subject property. The applicant's one additional employee complies with the provisions in Section 1507.2 (A & B). Throughout the duration of his kennel, the applicant will be prohibited from having no more than five full or part time employees. Since the submitted application indicates the applicant would like to install onsite signage, prior to installing this new sign the applicant shall obtain a Sign Permit from LDS to ensure consistency with the provisions for rural home occupations in Section 1306 of the Zoning Ordinance. If the Board approves the two proposals, the Planning Commission finds that these criteria can be met and shall be made conditions of approval to ensure compliance with these mandated provisions for the life of the proposed Type 2 Home Occupation as presented

for both proposals.

1507 .3 The following criteria shall apply to all home occupations:

- A. A home occupation shall be operated substantially in:
 - 1. The dwelling; or
 - 2. Other buildings normally associated with uses permitted in the zone in which the property is located.
- B. A home occupation shall not unreasonably interfere with other uses permitted in the zone in which the property is located.

Finding 29: The Planning Commission and Staff find that the existing 5,000 sq ft kennel structure and outside fenced areas are similar in appearance to fences, barns, gardens, and outdoor play areas that are typically used for cattle, horses, tree farms, small animals, and humans that are often found on forested properties and permitted outright in the PF-80 Zone. Requiring all kennel related activities to be conducted indoors however, is not a practical or reasonable option for these types of home occupations. This is one of the reasons why the Board adopted the Special Use Standards criteria in 2011 that specifically require tall facilities of authorized dog kennels to be at least 100' away from all property lines and potentially incompatible land uses on adjacent properties. As covered earlier in this report, the Planning Commission and Staff heard compelling testimony from the neighbor who resides immediately north of the kennel operation stating numerous ways this kennel has consistently interfered with his quiet enjoyment of and quality of life in this rural residentially developed PF-80 zoned portion of Apiary Road. The neighbor presented no evidence demonstrating the applicant has been able to reduce any of these detrimental impacts that have accumulated over the last ten years because, in the neighbor's opinion, it has operated without the land use authorization that would have required him to help minimize negative impacts on his neighbors.

This testimony supports another neighbor's Leonard Sterling who lives at 71360 Apiary Road 6/25/12 Complaint filed (attached) with LDS stating that the kennel operation "is approximately 3/10 of a mile from my house and you can hear the dogs barking constantly." For these reasons, the Planning Commission finds the proposal does not comply with these provisions for conditionally permitted rural home occupations.

Continuing with County Zoning Ordinance:

ARTICLE IX – SPECIAL USE STANDARDS

Section 1800 SPECIAL USE STANDARDS

1801 GENERAL PROVISIONS

Special uses are those included in Section 1800. Due to their public convenience and necessity and their effect upon the surrounding area, these uses are subject to conditions and standards that differ from those required of other uses. Special uses shall be subject to the provisions of the section that regulates the specific use and the provisions of the zoning district in which the special use will be located. Special uses are permitted only when specified as a primary, accessory, or conditional use in the subject zoning district. Where a dimensional or development standard for a special use differs from that of the subject zoning district, the standard for the special use shall apply.

1802 KENNELS

- .1 Minimum Site Area: The minimum site area in RR-5, PF-76, FA-19 and PA-38 zones shall be five acres.

Finding 30: The subject property is approximately 10.79 acres in size and meets this criterion.

- _____.2 Setbacks: The minimum setback for all kennel facilities including exercise and waste disposal areas in RR-5, PF-76, FA-19 and PA-38 zones shall be 100 feet. In all other zones in which kennels are allowed, the setback shall be as prescribed by zoning district standards of the zone in which it is located.

Finding 31: Since none of the kennel facilities are at least 100' from any property lines, the applicant was required to submit his Major Variance request with his Conditional Use Permit. A thorough analysis of V 12-01 will be conducted in the next section of this report for Findings 39 - 45.

- _____.3 Signs: There shall be a maximum sign area of six(6) square feet in RR-5, PF-76, FA-19 and PA-38 zones. In all other zones in which kennels are allowed, the maximum sign area shall be as prescribed by sign standards contained in Section 1300.

Finding 32: As stated for Finding 18 the kennel operation is limited to a maximum face area of six square feet and shall be approved by Land Development Services for both the design (Planning) and permits (Building) prior to its siting and/or construction.

- .4 Kennel Licence: A Columbia County kennel licence shall be obtained.

Finding 33: The applicant is required to obtain land use approval before the Animal Control Officer will renew his license. Provided the Board approves the proposals, the applicant shall renew his license with the County Animal Control Office and provide LDS with a copy of such license. Said licensing shall be continuously maintained for the life of the kennel operation on this property and will not transfer with the property's ownership. The Animal Control Officer's comments dated 6/5/12 stated he has no objections to the proposal as submitted provided the applicant address the drainage of the outside run areas. Annual kennel license renewal requirements further includes the Animal Control Officer's inspection of all buildings and structures used as kennel facilities.

- .5 Dog Waste: All kennels shall comply with dog waste handling and disposal standards contained in Section 10 D. of the Columbia County Kennel Ordinance.

Finding 34: The submitted application indicates this existing kennel does not produce or use any hazardous conditions or poisonous materials; the only waste generated is dog waste. All solid waste is picked up and put in heavy plastic bags before disposed of in the dumpster that is emptied weekly. All liquid waste in the outdoor exercise areas is absorbed into the ground. The fenced outdoor concrete run area for puppies and 5,000 sq ft kennel structure are both power-washed daily after solid waste is picked up and bagged. There is no mention of the adequate disposal of these larger quantities of water.

If the Board approves the proposals, one condition of approval will require the applicant to develop a new Best Management Practices Plan that will need to address the kennel's Solid and Liquid Waste Cleaning and Grey Water Removal Programs as covered for Findings 22 and 23. The Best Management Plan and the Resource Conservation/Drainage Improvement Plan will most likely include the installation of a more permanent ground cover in the outside run areas that will allow this natural area to be better drained and a healthier environment for kenneled dogs. The BMP should be developed with guidance and assistance from both the County Sanitarian and the Animal Control Office to ensure the final plan will sufficiently address their respective concerns. A copy of the approved BMP shall be filed with the LDS Planning files.

For these reasons, the Planning Commission finds that the newly developed and approved BMP will not compromise the site's septic system. With guidance from the County Sanitarian and Animal Control Officer the applicant will be handling all dog waste in accordance with standards set forth in Section 10.D of the Columbia County Kennel Ordinance. Dog waste handling is addressed at the time of kennel licensing and the disposal standards of the Kennel Ordinance enforced by the Columbia County Animal Control Officer. This criterion will be met with conditions.

- .6 Outside Hours: All dogs shall be brought into an enclosed building between the hours of 9pm and 6am.

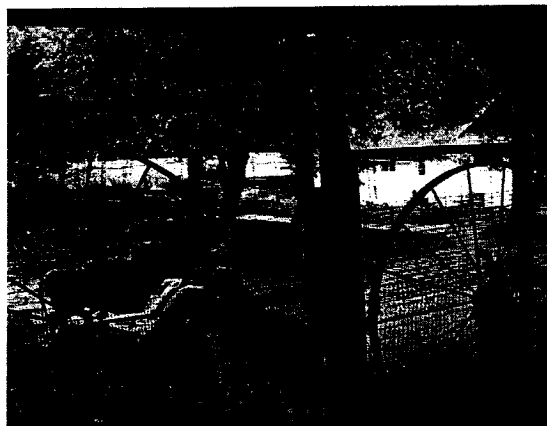
Finding 35: The application states that dogs are kept in the 5,000 sq ft kennel facility or his home at night. However, both the northern and southern neighbor stated that they hear dogs barking all the

time. The northern neighbor, Mr. Hendrikson, stated that quiet times are the exception rather than the rule in this residentially developed area near the existing kennel operation. With only the applicant and his single employee to take care of the kennel's 50 dogs, it is likely that all dogs are inside the kennel structure or home between 9 pm and 6 am. Consequently, the Planning Commission finds that in light of the neighbors' testimony, the 5,000 sq ft. kennel structure should be required to be sound proofed as one condition of approval should the Board approve the submitted proposal.

- .7 Control of Dogs: All dogs shall be confined within an enclosed building or within secure fencing at all times when not under the direct control of a keeper.

Kenneled dogs in various portions of western 4-acres





Finding 36: The submitted application states that the kenneled dogs are kept inside at night and are in fenced areas only when they are outside. As seen in the pictures above and on the previous page, it appears the kenneled dogs have access to and from the kennel structure and within western 4-acre various fenced areas during the day. With only the applicant and one employee to manage the 50 dogs, there are legitimate concerns about adequate supervision of these dogs when they are outside the kennel in numerous fenced areas. The neighbor's testimony also stated that kenneled dogs have come onto his property and killed his chickens. On the morning of July 17th, 2012, the applicant informed LDS Planning Staff that he was not able to attend the (previous night's) Planning Commission hearing because needed to get stitches after he was able to stop his kenneled dogs from fighting. With this new evidence, the Planning Commission and Staff finds that the existing kennel operation has not adequately addressed this criterion over the past 10 years since the dogs do not appear to be well supervised and/or under the direct control/supervision of the kennel employees at all times.

- .8 A kennel and/or keeper of a dog shall be subject to ORS 609.095. A violation of ORS 609.095 shall be a basis for denial or revocation of a kennel land use approval.

Finding 37: As stated previously, the applicant will be required to renew his existing Columbia County Kennel License as one condition of approval for CU 12-09 and V 12-01. Continuation of his existing kennel however, shall be subject to the public nuisance laws of Oregon Revised Statute (ORS) 609.095 which states the following:

609.095 Dog as public nuisance; public nuisance prohibited; complaint. (1) A dog is a public nuisance if it:

- (a) Chases persons or vehicles on premises other than premises from which the keeper of the dog may lawfully exclude others;
- (b) Damages or destroys property of persons other than the keeper of the dog;
- (c) Scatters garbage on premises other than premises from which the keeper of the dog may lawfully exclude others;
- (d) Trespasses on private property of persons other than the keeper of the dog;
- (e) Disturbs any person by frequent or prolonged noises;
- (f) Is a female in heat and running at large; or
- (g) Is a potentially dangerous dog, but is not a dangerous dog as defined in ORS 609.098.

(2) The keeper of a dog in a county, precinct or city that is subject to ORS 609.030 and 609.035 to 609.110 maintains a public nuisance if the dog commits an act described under subsection (1) of this section. Maintaining a dog that is a public nuisance is a violation.

(3) A keeper of a dog maintains a public nuisance if the keeper fails to comply with reasonable restrictions imposed under ORS 609.990 or if a keeper fails to provide acceptable proof of compliance to the court on or before the 10th day after issuance of the order imposing the restrictions. If the court finds the proof submitted by the keeper unacceptable, the court shall send notice of that finding to the keeper no later than five days after the proof is received.

(4) Any person who has cause to believe a keeper is maintaining a dog that is a public nuisance may complain, either orally or in writing, to the county, precinct or city. The receipt of any complaint is sufficient cause for the county, precinct or city to investigate the matter and determine whether the keeper of the dog is in violation of subsection (2) or (3) of this section.

With the new testimony heard at the public hearing stating how over the past ten years that the kenneled dogs have trespassed onto his property, killed his chickens, and barked continuously the Planning Commission finds that these kenneled dogs should be considered to be a public nuisance per the definitions in ORS 609.095 (1) (b, d, and e). This is supported by Leonard Sterling's complaint (Finding 29). For these aforementioned reasons, the Planning Commission finds that the location where the kennel has been operating for the past ten years is not suitable for this specific use since neighbors testified that the dogs' regular behavior meets the definition of public nuisance in ORS 609.095.

- .9 All kennels must be sited to minimize impacts on neighboring properties and resource uses.

Finding 38: Throughout this report the Planning Commission has consistently found that over the past ten years, the existing 50 dog kennel operation has not minimized detrimental impacts on neighboring residents, their properties and adjacent resource uses. In addition, the Animal Control Officer's comments dated 6/5/12 referenced regular complaints about the kennels' continually barking dogs. The potential for 50 kenneled dogs to escape the subject site and run onto adjoining

vacant forested properties is also not consistent with the siting standards for structures in designated Peripheral Big Game Habitat Areas. For these reasons, the Planning Commission finds the proposals are not consistent with this provision in Section 1802.9 of the Zoning Ordinance for authorized kennels operating in the county.

Continuing with the County Zoning Ordinance:

1504 VARIANCES: Except as provided in Section 1504.4 below, there are 2 classes of variances to the standards established in this ordinance. A Minor Variance is defined as a request for a variance of less than 25% from a dimensional requirement such as setbacks, height, lot or parcel coverage, lot or parcel width, or lot or parcel depth, or a request for a variance of less than 10% from a minimum lot or parcel size requirement. All other variances are defined as Major Variances. Use variances are not permitted under this ordinance except as permitted under Section 1505.1 "Temporary Permits: Use Not Allowed in District".

Major Variances from the lot or parcel size requirements of the Primary Agriculture (PA-38), Forest Agriculture (FA-19), Primary Forest (PF-76) and Rural Residential (RR-5) zones are not permitted under this ordinance.

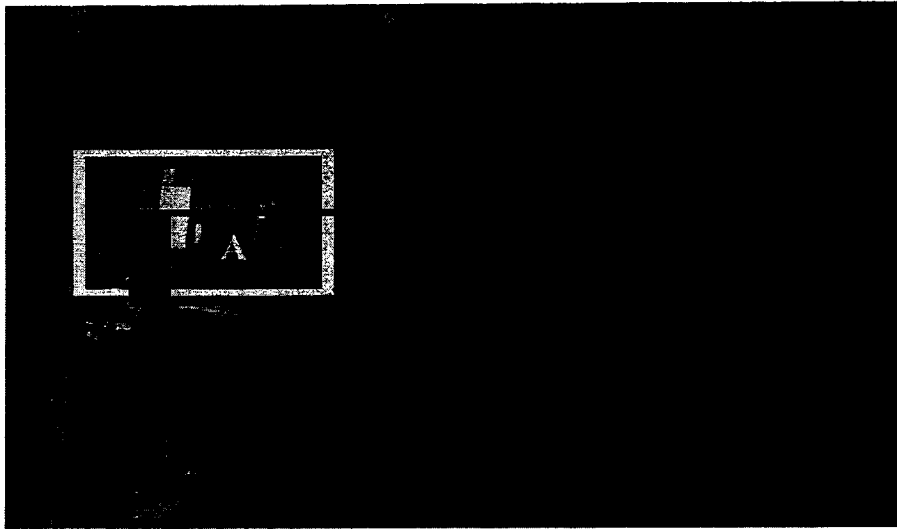
- .1 **Major Variances:** The Planning Commission may permit and authorize a variance from the requirements of this ordinance when unusual circumstances cause undue hardship in the application of it. The granting of such a variance shall be in the public interest.

A. A variance shall be made only when all the following conditions and facts exist:

1. The granting of the variance will not be detrimental to the public safety, health, or welfare, or injurious to other property;

Finding 39: To save the Board from redundancy, the Planning Commission finds that granting the variance from the 100' setback in Section 1802.2 as presented for V 12-01 will not comply with the siting criteria for rural home occupations listed in Section 1507. A.1) of the Zoning Ordinance. This recommendation is based on the testimony heard at the public hearing, the neighbor's complaint filed with LDS on 6/25/12, and the evaluations and subsequent Findings made consistently throughout this Report. The Planning Commission finds the Special Use Standards for authorized kennels in the county are vitally important for the renewal of this kennel license. Over the past ten year its operation has accumulated and significantly interfered with and become detrimental to the nearby residents' health, safety, and welfare and the kenneled dogs have damaged at least one neighbor's property(chickens).

2. The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property;



Finding 40: The aerial picture above delineates with "B" the portion of the site that would be able to fully comply with the kennel facilities' 100' setback from all property lines. As stated for Finding 22, the "A" area approximates the existing kennel operation's perimeter fencing in the eastern only portion where none of the kennel facilities comply with the Special Use Siting Standards for kennels in Section 1802.2 of the Zoning Ordinance.

The existing 5,000 sq ft kennel structure has never been inspected and/or approved for its use as an overnight and indoor facility for dogs and neighbors' testimony indicates barking dogs can be heard when they are inside their home and even when the dogs are inside this 5,000 sq ft facility. In addition, the existing perimeter fencing needs to be improved since neighbors state that it does not prevent dogs from going onto adjacent properties. For these reasons, the Planning Commission finds that the existing kennel facilities are not adequate for their intended use and do not minimize the kennel operation's negative impacts on adjoining properties.

Reviewing the information in Finding 22, the Planning Commission recommends that, if the Board approves the applicant's two proposals, the applicant should be required to relocate his kennel operations (perimeter and interior fenced areas and all kennel structures) further east into the "B" area above so that all areas used by dogs will be at least 100' from all property lines. These new kennel facilities can be improved (sound proofed and with sturdier fencing) so that neighbors cannot hear dogs when they are inside and that will help prevent dogs from running onto adjacent properties. Requiring outside dogs to be at least 100' from all property lines will also help to minimize noise pollution affecting nearby residents.

The Planning Commission finds that there are no unique characteristics of the subject 10.79 acre

property that prohibit it from complying with the minimum provisions in Section 1802.2. Consequently, the Planning Commission recommends denial of the proposals, but if the Board approves them, it recommends the kennel facilities be relocated further east so that kenneled dogs are always 100' from all adjacent properties in compliance with the minimum requirements in Section 1802.2.

3. Approval of the application will allow the property to be used only for purposes authorized by the Zoning Ordinance;

Finding 41: Granting the applicant's requests will only authorize the operation of one kennel on the subject property. The applications as presented for V 12-01 and CU 12-09 do not include any additional site development either for the kennel or for any other current uses. The Planning Commission finds that all new site development shall require additional land use and/or building permits approval prior to the commencement of any such activities.

4. Strict compliance with the Zoning Ordinance would create an unnecessary hardship;

Finding 42: Should the applicant's request as presented for V 12-01 not be approved, the applicant would not be able to renew his kennel license and would need to either remove all dogs or submit a revised conditional use permit application to LDS asking permission to relocate or construct a new kennel in the eastern portion of his 10.79 acre site, as discussed for Finding 40.

5. The granting of the variance will not adversely affect the realization of the Comprehensive Plan nor violate any other provision of the Zoning Ordinance.

Finding 43: Again to avoid redundancy for the Board, the Planning Commission recommends the Board deny the two proposals as submitted since they will adversely affect the realization of the Comprehensive Plan's preservation of Peripheral Big Game Habitat Areas and will not be consistent with the provisions of Sections 1504, 1507, and 1801 of the Zoning Ordinance.

Continuing with Section 1504.1(B) of the County Zoning Ordinance:

- B. A variance so authorized shall become void after the expiration of 1 year if the next step in the development process has not been applied for.

Finding 44: If the Board approves the submitted requests they shall remain valid for one (1) year from the date of the final decision. All Major Variance and Conditional Use Conditions and related Permits shall become void, unless the proposals have commenced in conformance with all conditions and restrictions established herein within the one-year validity period.

Continuing with Section 1504.1(C) of the County Zoning Ordinance:

- C. The Planning Commission may impose whatever reasonable requirements it feels will fulfill

the intent of this ordinance.

Finding 45: Although the Planning Commission recommends the Board deny both of the requested two proposals, the Board has authority to require the applicant to reasonably relocate the kennel facilities further east of the site as outlined in Finding 40 should they approve the relocation of the kennel on the existing 10.79 acre site. The evidence submitted by neighbors indicate that additional requirements are warranted in order to minimize the kennel's detrimental affects it has had on neighbors and their residential uses for the past ten years in this residentially developed PF-80 zoned area of Apiary Road.

COMMENTS RECEIVED:

County Animal Control Officer: The Animal Control Officer's comments and concerns have been addressed and incorporated into this report.

Columbia River Fire & Rescue: Has reviewed the proposed application and has no objections to its approval as submitted.

County Sanitarian: The property owner will need to meet the requirements of the Kennel Ordinance. At a minimum, a Best Management Practices Plan will be required to be submitted to and approved by the County Sanitarian.

County Transportation Planner: This property has an approved Road Access Permit on file.

Clatskanie- Quincy CPAC: As of the date of this report, no comments have been received from this CPAC.

County Building Official: No Objection to the approval of CU 12-09 as submitted.

Oregon Department of Fish & Wildlife: As of the date of this report, no comments have been received from the ODF&W.

Columbia County Soil & Water Conservation District: Tyler Joki, Resource Conservationist stated in the 6/20/12 phone conservation with LDS Planning Staff that the SWCD would like the applicant to work with him to develop a Resource Conservation/Drainage Improvement Plan that will address the Animal Control Officer's concerns about the kennel's outside run area's poor drainage. This Plan would also recommend natural alternatives to the current shredded cedar bark used as ground cover for the outside run areas abutting Apiary Road.

OSU Agricultural Extension Office: No comments have been received.

Leonard Sterling residing at 71860 Apiary Road: Filed a complaint on 6/25/12 stating he can

hear the dogs barking constantly on the property.

No further comments from agencies, citizens or otherwise have been received regarding this proposal as of the date of this staff report, September 5, 2012.

CONCLUSION, & RECOMMENDED DECISION & CONDITIONS:

Based on the facts, findings and comments herein, the Planning Commission and Planning Staff recommend the Board of County Commissioners **deny the Major Variance (V 12-01) and related Conditional Use Permit (CU 12-09)** for a Type II Home Occupation at 71614 Apiary Road, further identified as Tax Lot ID # 6302-000-01100.

In the alternative, if the Board decides to approve the applicant's operation of a kennel on this property, the Planning Commission and Planning Staff recommend the applicant submit a revised site plan and Conditional Use Permit application to LDS showing all the kennel facilities can be relocated to the eastern portion of the property and comply with the 100' property line setbacks requirements in Section 1802.2. This revised Conditional Use Permit application shall be submitted provided it includes and/or is compatible with the following conditions:

1. The entire kennel operation including all fencing and kennel structures shall be relocated to the eastern portion of the subject property and sited so all kennel facilities shall be a minimum of 100' from all property lines.
 - A. The applicant shall submit a revised Site Plan to LDS delineating the relocation of the kennel facilities.
 - B. The new kennel structure shall be sound-proofed per the Oregon Structural Special Code so dogs cannot be heard by neighbors.
 - C. The new fencing shall be constructed and maintained to ensure dogs cannot easily escape kenneled areas.
 - D. Prior to building permit issuance, the County Planning Official shall verify the accurate location of relocated kennel facilities with a field visit.
2. The applicant shall apply for and be issued building permits by the County Building Official for all kennel structures that are to be relocated in the eastern portion of site.
3. The CU 12-09 Conditions and related Permits shall remain valid for one (1) year from the date of the final decision. These permits shall become void unless all conditions and restrictions established herein are satisfied within the one-year validity period.
4. The applicant shall file an approved Best Management Practices Plan (BMP) with the County Sanitarian to ensure all dog waste is managed and disposed of properly. This BMP shall be developed with the guidance and assistance of the County Sanitarian and Animal Control

Officer.

5. The applicant shall develop and install a Natural Conservation/Drainage Improvement Plan with the Columbia County Soil & Water Conservation District. This Plan shall include provisions necessary to prevent and/or minimize water damage from increased runoff and volume in the outside run areas abutting Apiary Road to the subject and adjoining properties and to the county roadway. This Plan shall also include natural alternatives for ground cover for the outdoor kennel run area to provide a healthier environment for kenneled dogs. A copy of this approved Final Plan shall be filed with LDS, and LDS Planning Staff shall verify all improvements have been installed on site.
6. The applicant shall submit written documentation to LDS confirming the site's driveway along the north property line complies with minimum requirements for Fire Apparatus Access Standards and has been approved by CRF&R.
7. The applicant shall obtain and annually renew a Columbia County Dog Kennel license from the Columbia County Animal Control and provide LDS with a copy of their renewed licenses.
8. There shall be no more than 50 dogs, six months of age or older, on the subject property at any given time.
9. Dogs associated with the kennel facility shall be kept within the kennel structure and/or the outdoor fenced exercise areas at all times. If dogs are allowed elsewhere on the property, they shall be under the direct supervision of the applicant or employees.
10. The kennel operation shall comply with the Columbia County Noise Control Ordinance. In addition, all dogs shall be kept indoors between the hours of 9:00 PM. and 6:00 AM.
11. Any new development or expansion or replacement of existing development, following the date of Conditional Use Permit approval, shall be subject to:
 - a. Building permitting requirements
 - b. Fire siting standards as outlined in OAR 660-06-035
 - c. Section 500 (Primary Forest) and Section 1190 (Big Game Habitat Overlay) of the Columbia County Zoning Ordinance
11. The Home Occupation business shall be operated by a resident or employee of a resident of the property on which the business is located.
12. The Home Occupation business shall employ no more than five (5) people, regardless of

whether or not they are full-time or part-time positions.

13. This Conditional Use Permit shall be applicable to this applicant only and shall not run with the land.
14. Before any new sign is established for this Home Occupation business, approval and all applicable permits shall be obtained from the County. All applicable sign standards in effect at the time of County review shall apply.
15. The Department of Land Development Services reserves the right to review this application again in the future if it is determined that adjacent properties are being negatively impacted by the operation of this kennel or if it is determined that said kennel is in violation of the public nuisance provisions in ORS 609.095. Any departure from the conditions of approval shall subject this Conditional Use Permit to an additional review by the Columbia County Board of Commissioners and may result in the suspension or revocation of this Conditional Use Permit.
16. The responsibility for protection from wildlife damage on the property shall be assumed by the dwelling's owner and/or occupant.
17. The applicant shall sign and record with the County Clerk a **Waiver of Remonstrance**, that prohibits the current and future property owners from taking legal actions against accepted farm or forest operations occurring on adjoining properties.

ATTACHMENTS:

CU 12-09 and V 12-01 Applications & Site Plan
Zoning, Address and Vicinity Maps
Comments from County Animal Control Officer and County Sanitarian
6/21/12 Complaint from Leonard Sterling at 71860 Apiary Road

cc Daniel Hendrickson, 71710 Apiary Road, Rainier OR 97048
Leonard Sterling 71860 Apiary Road, Rainier, OR 97048

Final Order: Roger Kadell, Columbia County Animal Control Officer

Erin O'Connell, County Sanitarian
Tyler Joki, SWCD Resource Conservationist