

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

In the Matter of the Application by the RAD )  
Nursery Products for an Indoor Marijuana Growing )  
Operation in the Primary Forest (PF-80) Zone near ) FINAL ORDER NO. 55-2016  
Rainier, Oregon (Application No. MO 16-08) )

WHEREAS, on April 4, 2016, RAD Nursery Products, LLC (hereinafter “applicant”) submitted an application for a Marijuana Growing Operation (MO 16-08) on an approximately 83-acre property in the Primary Forest (PF-80) Zone. The subject property is located at 27627 Old Rainier Road, near Rainier, Oregon, and is identified as Tax Map ID No. 7313-000-00300; and

WHEREAS, County planning staff deemed the application complete on April 20, 2016, and on April 25, 2016, staff notified surrounding property owners and other affected parties of the application and the administrative decision-making process for marijuana growing operations; and

WHEREAS, on May 2, 2016, a request for referral of the application to the Planning Commission was timely submitted by the Rainier School District; and

WHEREAS, following proper notice, the Planning Commission held a hearing on the application on July 11, 2016. The Planning Commissioner then deliberated and voted to approve the application with conditions; and

WHEREAS, the Planning Commission’s decision was timely appealed to the Board of Commissioners by the Rainier School District; and

WHEREAS, following proper notice, the Board of Commissioners held a hearing on the application on August 31, 2016. The Board accepted all written evidence submitted into the record prior to the issuance of the staff report, including the record before the Planning Commission, as well as evidence submitted after the staff report and before the close of the hearing; and

WHEREAS, the Board then deliberated and voted to tentatively approve the application with conditions as set forth in the Staff Report dated August 24, 2016.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

- A. The Board of County Commissioners adopts in support of its decision the above recitals and the findings and conclusions in the Staff Report to the Board of County Commissioners dated March 9, 2016, attached hereto as Exhibit A and incorporated herein by this reference; and
- B. Based on the foregoing and the whole record on this matter, the Board of County Commissioners approves **MO 16-08** to allow an indoor marijuana growing operation on the subject 83- acre PF-80 zoned property, subject to the following conditions:
  - 1. **This Marijuana Growing Operation Permit shall remain valid for four (4) years from the date of the final decision.** This permit shall become void, unless the proposal has commenced with a development permit, in conformance with all conditions and restrictions established herein within the four-year validity period.

2. Marijuana is a Schedule I drug under the federal Controlled Substances Act (CSA), and its manufacture, distribution, and possession remain prohibited under federal law. The application requested for MO 16-08 has been approved under local law that is consistent with state law. However, this land use approval provides no immunity from federal prosecution for violation of the CSA.
3. This Marijuana Growing Operation Permit authorizes only the indoor marijuana growing operation within the existing 24,000 square-foot facility as authorized through the applicable provisions in ORS 475B on the 83-acre subject PF-80 zoned property. No outdoor grow operations are allowed. This Permit, in turn, enables the applicant to apply for any necessary building permit and other site development permits for the indoor growing and production of marijuana. This Marijuana Operation Permit addresses and allows this land use only and does not guarantee approval of any other permits necessary for future marijuana operations of the subject property.
4. The applicant shall provide the County confirmation from OLCC that they have completed a majority of their application process and that OLCC will be able to conduct their subsequent site inspection(s). This documentation will be required prior to the commencement of any growing operations and will authorize all new uses of the site's 24,000 square-foot facility. Any and all modifications to this structure shall be made and installed in compliance with the applicable provisions of the Oregon Structural Specialty and Fire Codes. [Here, we require only a majority of the application to be complete; below, we require that they have an actual license prior to commencing growing operations]
5. Columbia County LDS shall receive written confirmation from District 18's Watermaster that applicant's new water use to irrigate the indoor marijuana growing operation is consistent with the applicable provisions of ORS 537 related to the appropriation of public water per the 1909 Oregon Water Rights Act.
6. The applicant shall be required to annually submit to the County written confirmation documenting that the State of Oregon has approved: (1) the subject property and facility as a Registered Marijuana Grow/Production Site, and (2) that the applicant has a License or is Registered to Produce Marijuana on the subject property. Failure to submit this annual documentation to Land Development Services shall invalidate the Marijuana Operation Permit authorized through the approval of MO 16-08.
7. For the lifetime of this proposal, the entire 24,000 square-foot facility authorized to grow or produce marijuana through ORS 475B shall be surrounded on all sides by an established and maintained a 30' minimum Primary Fire break Area pursuant to the provisions in OAR 660-006-0035, and listed in the March 1991 *Recommended Fire Siting Standards for Dwellings & Structures & Fire Safety Design Standards for Roads*, published by the Oregon Department of Forestry.
8. The responsibility for protection from wildlife damage on the property shall be assumed by the property owner.

9. The applicant shall meet the requirements of the applicable agency regarding the installation of all utility lines to all structures associated with the requested marijuana growing operation.
10. The Department of Land Development Services reserves the right to review the application again in the future if it determines that the approved Marijuana Operation Permit is in noncompliance with any of the conditions of approval herein.
11. **The following shall be completed prior to the commencement of any growing of marijuana within the subject building:**
  - a. Written confirmation from the State of Oregon documenting the site presented for MO 16-08 is a current Registered Marijuana Grow Site and the applicant has a current License to Produce Marijuana authorized per the applicable provisions in ORS 475B.
  - b. The applicant shall submit an agricultural waste water plan and statement for the post use/disposal of process water. This documentation shall allow the County Sanitarian to confirm the wastewater generated from the proposed outdoor marijuana grow system is disposed of appropriately and complies with the minimum provisions in the OAR 340-071-0130(4) and OAR 603 Division 95.
  - c. The applicant shall submit a separate Off-Street Parking Plan for the site that designates adequate onsite parking for at least 25 employees. This plan shall be reviewed by and approved by the County Planner for consistency with the applicable minimum requirements in Section 1400.
12. The County may revoke this approval at any time if the site fails to obtain or retain its OLCC registration for marijuana production.

DATED this 7<sup>th</sup> day of September, 2016.

Approved as to form  
 By:   
 Office of County Counsel

BOARD OF COUNTY COMMISSIONERS FOR  
 COLUMBIA COUNTY, OREGON

By:   
 Anthony Hyde, Chair

By:   
 Henry Heimuller, Commissioner

By: not present  
 Earl Fisher, Commissioner

**EXHIBIT A**

**COLUMBIA COUNTY PLANNING COMMISSION  
STAFF REPORT**

July 1, 2016

Proposed Indoor Marijuana Growing Operation in the Forest Zone

**HEARING DATE:** July 11, 2016

**FILE NUMBER:** MO 16 -08

**APPLICANT:** RAD Nursery Products, LLC, 555 Hazel Dell Road, Castle Rock, WA 98611

**OWNER:** Daniel & Josephine Leno, P.O. Box 116, Rainier, OR 97048

**PROPERTY** The property is located at 27627 Old Rainier Road in Rainier, OR 97048

**MAP ID NUMBER:** 7313-000-00300

**ZONING:** Primary Forest (PF-80)

**SIZE:** Approximately 83.31 acres

**REQUEST:** To conduct an indoor Marijuana Growing Operation on a 83.31 acre property in the PF-80 zone provided for in Sections 504.16 and 1803 of the Columbia County Zoning Ordinance

**APPLICATION COMPLETE:** April 20, 2016      **150 DAY DEADLINE:** Sept. 17, 2016

**APPLICABLE REVIEW CRITERIA:**

Page

United States Code 860 Section 21	5
[This isn't applicable review criteria for us – I wouldn't put it here. Instead, I would put it in the section that addresses comments/objections. Also, it should be cited as 21 U.S.C. § 860]	
Oregon Revised Statues (ORS) 475B Cannabis Regulation	5

**Columbia County Zoning Ordinance**

Section 1803	Marijuana Land Uses - Special use Standards	8
Section 500	Authorized Uses in the Primary Forest (PF-80) Zone	11
Section 507	Siting of Dwellings and Structures	12
Section 508	General Review Standards	15
Section 509	Standards of Development	17
Section 510	Fire Siting Standards for Dwellings, Structures and Roads	19

**SUMMARY**

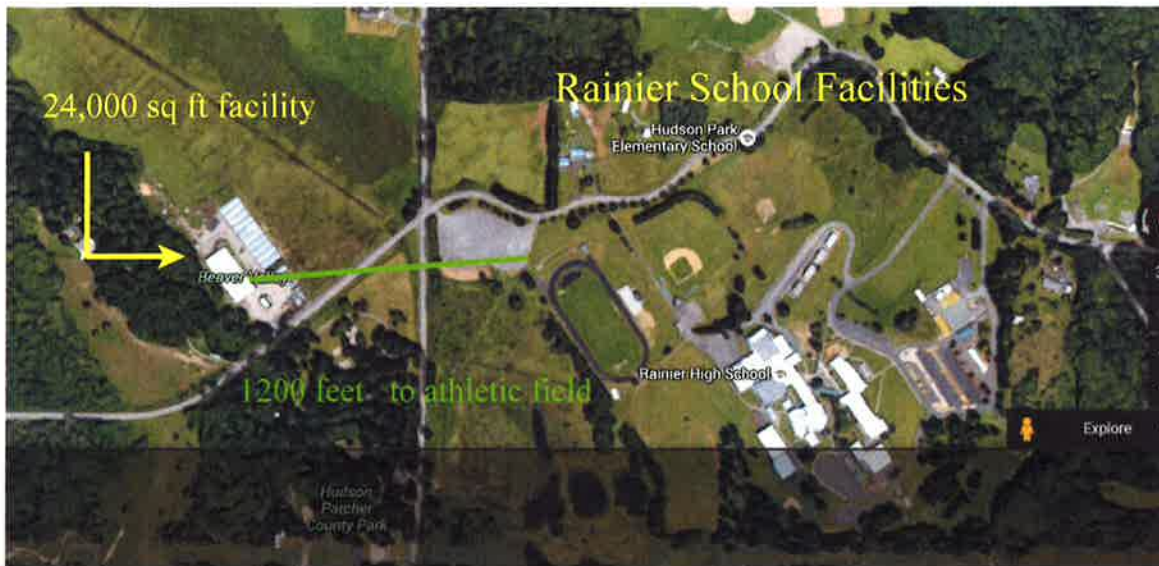
On November 25, 2015 the Columbia County Board of Commissioners adopted Ordinance No. 2015-4 related to cannabis regulation in Columbia County, Oregon. The State of Oregon regulates cannabis by provisions in the Oregon Revised Statutes in ORS Chapter 475B. County Ordinance No. 2015-4 amends the Columbia County Zoning Ordinance and sets the time, place and manner regulations for the growing, processing, and retailing of marijuana operations in the county's unincorporated areas. The County must review and approve the applicant's Marijuana Growing Operation Permit requested for MO 16-08 in order to authorize the applicant's proposed indoor marijuana growing operation in the Primary Forest (PF-80) Zone as provided for in Sections 504.16 and 1803 of the Zoning Ordinance.

~~The MO 16-08~~ This application for Administrative Review was deemed complete on April 20, 2016. On April 25, 2016 notices were mailed out to adjacent property owners within 750 feet and affected government agencies. Those notified were given 10 calendar days in which to submit comments to the Planning Department or to request a public hearing on the matter before the Planning Commission. ~~Within that time period,~~ **A Referral was timely received** on May 2, 2016 ~~a Referral was received~~ from a notified party, R. Michael Carter the Superintendent of the Rainier School District # 13, ~~and the Appeal/Referral to the Planning Commission was filed in the Clerks's Office.~~ **The application is therefore being referred to the** Planning Commission ~~will to~~ review and approve, deny or approve with conditions the request proposed for MO 16-08.

The applicant, RAD Nursery Products LLC, is requesting approval to establish and operate a Oregon Liquor Control Commission (OLCC) Recreational Marijuana production **facility** on a previously developed portion of the ~83 acre property. All marijuana production will occur within the existing 24,000 square foot warehouse that was legally converted (through the county's issuance of Building Permit No. 2008-00409 in April 2008) to a Bark Dust Packaging Facility from an Indoor Fitness Center. Although the 83 acre property contains other accessory structures of greenhouses (shown below), most are no longer on the property, and none of them will be used for the production of marijuana proposed for MO 16-08.

The applicant shall also install an electronic surveillance system throughout the entire 24,000 square foot facility as required by the OLCC for licensed marijuana grow facilities through the provisions in ORS 475B. This will provide the OLCC with 24-hour access to the entire 24,000 square foot facility.

#### **Aerial View of subject 83.13 acre PF-80 site & proposed location of indoor operation**



The applicant has applied for a Recreational Marijuana Growing License from the State of Oregon OLCC which must be issued by the State before the county can authorize the applicant's establishment of a Recreational Marijuana Growing Operation on the subject property. The OLCC producer application number was provided to LDS with MO 16-08.

On May 25, 2016 the County received written confirmation from Amanda Borup, Policy Analysis at OLCC stating that their office will provide written notification to proposed recreational marijuana growers when they have completed a majority of the OLCC application process, including the required criminal background check. This documentation also informs applicants that OLCC would be able to conduct their required site inspection to verify all marijuana-related facilities comply with the minimum licensing requirements. Before LDS can issue any building permits/authorize any onsite growing as presented for MO 16-08, the County will require the applicant to provide LDS with this OLCC written document confirming that all licensing requirements are met except for the final site inspection(s) by OLCC staff.

The proposed marijuana grow operation **is** prohibited from disposing any wastewater into the facility's existing approved septic system; this septic system will serve the restroom facilities for the employees only. The majority of the wastewater will be recycled into the proposed grow operation and the County Sanitarian shall be required to review and approve the Wastewater Management Plan for consistency with the minimum provisions in OAR 603-095-00800 related to the Water Quality Management Plan for the North Oregon Coast Basin.

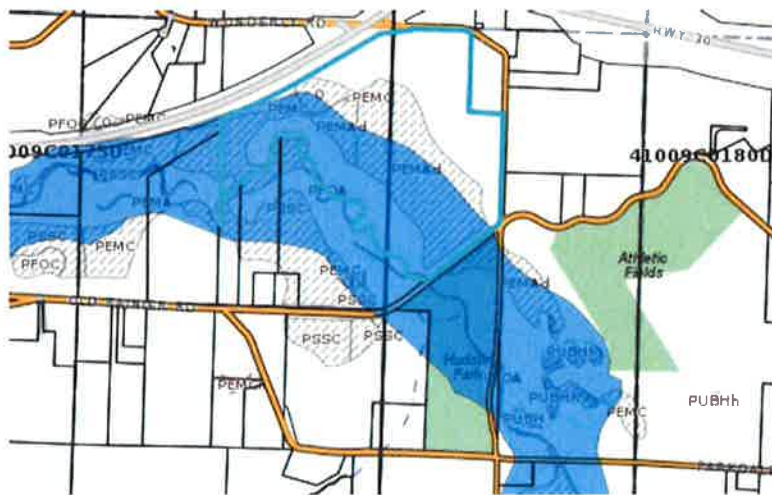
On June 13, 2016 during a phone conversation between the **Project Planner-County planning staff** and Dave Busch (partner of RAD Nursery Products LLC), **Dave Busch** confirmed the applicant will purchase all irrigation water from Water Safety LLC based in Rainier, Oregon. After talking with the District 1 Watermaster, the applicant has decided not to use the site's existing well (which ties into Beaver Creek) and to consider supplementing Water Safety's water by collecting rain water from the 24,000 sq ft facility's roof. Rainwater collection from an impervious surface is exempt from needing a Water Right pursuant to ORS 537.141. Confirmation from the District 1 Watermaster that the applicant is authorized to irrigate the grown marijuana from Water Safety LLC as well as any collected rainwater shall be required as one condition of approval for MO 16-08.

According to the FEMA FIRM Map No. 41009CO175D, all of the property south and west of the intersection of Old Rainier Road and Larson Road are within Beaver Creek's 100 year floodplain. Likewise the National Wetlands Inventory Maps of Rainier and Delena indicate the site contains wetlands associated with Beaver Creek and the Department of Forestry Stream Classification Map designates Beaver Creek as a large fish-bearing waterway at this location. The submitted site plan shows the subject facility is at least 113' from Beaver Creek's ordinary high water mark indicating the proposal requested for MO 16-08 does not appear to impact these protected wetlands or its 50' riparian corridor. The Rainier Fernhill Beak Map confirms the wetlands and hydric soils associated with Beaver Creek but does not designate the 83-acre property as a Big Game Habitat Area.

### Current Zoning of subject and adjacent properties



### Beaver Creek's Floodplain/Wetlands



As shown above, the property is surrounded by PF-80 zoned properties to the south and east, Community Service - Institutional (CS-I) properties (Cemetery and Rainier School Facilities) to the east and by Community Service - Recreational (CS-R) (Hudson Park) to the south. This property is within the Columbia River Fire & Rescue District's service area and emergency services are provided to the site by the this fire district and the County Sheriff. The remainder of this report will evaluate and make findings on whether the proposal for MO 16-08 complies with the minimum land use provisions of the County's Zoning Ordinance related to proposed Marijuana Growing Operations on PF-80 zoned properties.



Beginning with the provisions of the United States Code Section 860: [Don't begin with this, especially because it isn't an approval criterion. This should go in the comments/objections section].

## **21 United States Code § 860 - Distribution or manufacturing in or near schools and colleges**

### (a) Penalty

Any person who violates section 841(a)(1) of this title or section 856 of this title by distributing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within one thousand feet of, the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or a playground, or housing facility owned by a public housing authority, or within 100 feet of a public or private youth center, public swimming pool, or video arcade facility, is (except as provided in subsection (b) of this section) subject to (1) twice the maximum punishment authorized by section 841(b) of this title; and (2) at least twice any term of supervised release authorized by section 841(b) of this title for a first offense..... (emphasis added)

**Discussion:** The Rainier School District objects to this application on the basis that it violates 21 U.S.C. § 860, which prohibits the distribution, possession with intent to distribute, and manufacturing of a controlled substance in, on or within 1,000 feet of a school. **The Federal laws are codified in the United States Code, and the provision the school district cited is part of the federal Controlled Substances Act. Marijuana remains a controlled substance under federal law and violation of the Controlled Substances Act exposes the applicant to criminal liability under federal law.** is the permanent laws of the United States and is prepared by the Office of the Law Revision Counsel of the United States House of Representatives. The provisions in **US Code Section 860** identifies the “penalties for the Distribution or Manufacturing of federally controlled substances in or near schools and colleges” and is the basis for the Rainier School District’s Referral of this Administrative Decision to be heard by the Planning Commission at a public hearing.

**However,** the attached 8/29/15 Memorandum from the Office of the Deputy Attorney General of the U.S. Department of Justice Titled “Guidance Regarding Marijuana Enforcement” essentially states that the federal government will not focus on prosecuting marijuana crimes under federal law if there are strong state regulations in place for the marijuana production, processing, selling etc.

Specifically on Page 1 the Deputy Attorney General states *“Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels....the Department is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way.”* Continuing on Page 2 (second paragraph) states *“Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws.”* **Page 3 further explains that in states that have “enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above” and that “enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity.”**

Staff finds that the State of Oregon’s regulatory system in ORS 475B is our state’s own marijuana

based narcotics law. Therefore, in states where marijuana is legal, the federal government will rely on those states to enforce their state marijuana laws.

The State of Oregon November 4, 2014 passage of Ballot Measure 91 legalized recreational marijuana for people ages 21 and older and allows adults over this age to possess up to eight ounces of "dried" marijuana and up to four plants. Additionally, Measure 91 tasked the Oregon Liquor Control Commission with regulating sales of the drug and allowing the production, processing, delivery, possession, sale of marijuana to adults, licensed, regulated by Oregon Liquor Control Commission (OLCC). Licensed marijuana producers, processors, wholesalers may deliver "marijuana items" (defined) only to/on licensed retail premises. In addition ORS 475B.065 states that "*The production, delivery and possession of marijuana items by a licensee or a licensee representative in compliance with ORS 475B.010 to 475B.395 does not constitute a criminal or civil offense under the laws of this state.*"

The provisions in ORS Chapter 475B.070 identify the OLCC's minimum requirements for issuing Licenses to Produce Marijuana, none of which include the 1,000 foot separation from elementary or secondary schools. The only provision in ORS 475B that prohibits marijuana operations from locating within 1,000 feet of public, private or parochial elementary or secondary schools are in ORS 475B.110 (2)(d), which that pertains to the retail selling of marijuana items and ORS 475B.450(3)(d), which pertains to medical marijuana dispensaries. In addition, the provisions in ORS 475B.115 also allow licensed marijuana retailers to remain at their premises if a school establishes itself within 1,000 feet of the licensed retailer unless OLCC has grounds for revoking the license under ORS 475B.210. In sum, Oregon law only prohibits marijuana retailers and dispensaries from being located within 1,000 feet of a school, not marijuana producers such as this applicant.

[I would put the following as footnotes to the provisions cited above.]

475B.065 Lawful production, delivery and possession of marijuana items. Licensees and licensee representatives may produce, deliver and possess marijuana items subject to the provisions of ORS 475B.010 to 475B.395. The production, delivery and possession of marijuana items by a licensee or a licensee representative in compliance with ORS 475B.010 to 475B.395 does not constitute a criminal or civil offense under the laws of this state. [2015 c.1 §13; 2015 c.614 §43]

ORS 475B.110 (License to Sell Marijuana Items at Retail)

475B.110 Retail license: fees; rules. (1) The retail sale of marijuana items is subject to regulation by the Oregon Liquor Control Commission.

(2) A marijuana retailer must have a retail license issued by the commission for the premises at which marijuana items are sold. To hold a retail license under this section, a marijuana retailer:

(a) Must apply for a license in the manner described in ORS 475B.040;

(b) Must, until January 1, 2020, provide proof that an applicant listed on an application submitted under ORS 475B.040 has been a resident of this state for two or more years, and must provide proof that the applicant is 21 years of age or older;

(c) May not be located in an area that is zoned exclusively for residential use;

(d) May not be located within 1,000 feet of:

(A) A public elementary or secondary school for which attendance is compulsory under ORS

339.020; or

(B) A private or parochial elementary or secondary school, teaching children as described in ORS 339.030 (1)(a); and

(e) Must meet the requirements of any rule adopted by the commission under subsection (3) of this section.

(3) The commission shall adopt rules that:

(a) Require a marijuana retailer to annually renew a license issued under this section;

(b) Establish application, licensure and renewal of licensure fees for marijuana retailers;

(c) Require marijuana items sold by a marijuana retailer to be tested in accordance with ORS 475B.555; and

(d) Require a marijuana retailer to meet any public health and safety standards and industry best practices established by the commission by rule.

(4) Fees adopted under subsection (3)(b) of this section:

(a) May not exceed the cost of administering ORS 475B.010 to 475B.395 with respect to marijuana retailers; and

(b) Shall be deposited in the Marijuana Control and Regulation Fund established under ORS 475B.240. [2015 c.1 §22; 2015 c.614 §16]

475B.115 Establishment of school after issuance of license. If a school described in ORS 475B.110 (2)(d) that has not previously been attended by children is established within 1,000 feet of a premises for which a license has been issued under ORS 475B.110, the marijuana retailer located at that premises may remain at that location unless the Oregon Liquor Control Commission revokes the license of the marijuana retailer under ORS 475B.210. [2015 c.614 §17]

[include ORS 475B.450 for dispensaries]

**On November 25, 2015 the Columbia County Board of Commissioners adopted Ordinance No. 2015-4 covering cannabis regulation in unincorporated areas of the Columbia County.**

Consistent with the provisions in the Oregon Revised Statutes in ORS Chapter 475B, County Ordinance No. 2015-4 amended the Columbia County Zoning Ordinance to include Section 1803 - Marijuana Land Uses – that regulates the time, place and manner for the growing, processing, and retailing of marijuana operations in the county’s unincorporated areas.

Although the County did not include any minimum separation between proposed Marijuana Growing/ Producing Operations and elementary or secondary schools, it does require the same 1,000 foot separation between proposed Marijuana Dispensaries/Retailers and ~~public, private or parochial elementary or secondary schools, public parks and child care centers~~ [state law doesn’t include parks and child care centers in the prohibition] that are required by ~~OLCC in~~ **ORS 475B.110 and 475B.450** for licensed sellers of marijuana items **and dispensaries of medical marijuana**. The first provision in Section 1803.1 requires all proposed marijuana land uses to provide Land Development Services (LDS) with documentation of the issuance of the state issued marijuana license or registration at the time of application. The applicant for MO 16-08 provided the OLCC application number **(LDS NEEDS THIS INFO FROM RAD)** confirming they are in the process of obtaining their license from the State as provided for in ORS 475B.

Finally, the provisions in ORS Chapter 633 — Grades, Standards and Labels for Feeds, Soil Enhancers and Seeds – prohibits local governments from enacting legislation that quarantines, inhibits, or prevents the production or use of agricultural, flower, nursery, vegetable seed of products thereof. Consequently, **unless a restriction is otherwise allowed by ORS 475B, state law prohibits the County from enacting zoning regulations that prevent or inhibit the production of**

**marijuana. The County's regulations are consistent with ORS 475B and therefore, prohibit marijuana retailers and dispensaries – but not marijuana production – within 1000 feet of a school.** the county cannot require the applicant's growing operation to be separated any distance from another land use or activity as requested by the Rainier School District.

ORS 633.738 Prohibition of local laws to inhibit or prevent production or use of seeds or products of seeds. (1) As used in this section:

(a) "Local government" has the meaning given that term in ORS 174.116.

(b) "Nursery seed" means any propagant of nursery stock as defined in ORS 571.005.

(2) Except as provided in subsection (3) of this section, a local government may not enact or enforce a local law or measure, including but not limited to an ordinance, regulation, control area or quarantine, to inhibit or prevent the production or use of agricultural seed, flower seed, nursery seed or vegetable seed or products of agricultural seed, flower seed, nursery seed or vegetable seed.

**Finding 1:** Staff finds that the Passage of Oregon Ballot Measure 91, the subsequent Oregon Legislative Assembly amendments to ORS 475B related to Cannabis Regulation, and the County's adoption of Ordinance No. 2015-4 amending the County's Zoning Ordinance to include Marijuana Land Uses in Section 1803, all authorize an applicant's request to grow or produce marijuana in accordance with an OLCC licensed Marijuana Grower/Producer License.

**Finding 2:** Before the County can approve the proposal requested for MO 16-08 it will be required to comply with all the applicable provisions in Sections 500 and 1803 of the Zoning Ordinance which will be addressed for the remainder of this report, Findings 4 through 25.

**Finding 3:** Staff finds **that in light of the inconsistency between state and federal law on marijuana, whether the applicant is criminally liable under federal law is beyond the scope of the County's review of this application.** the May 2, 2016 Appeal/Referral filed by the Rainier School District # 13 is requesting the county to apply federal regulation to state statute and county ordinance. Staff finds that the provisions in ORS 475B.065 and ORS 633.738 provides authorizes the OLCC to issue Marijuana Production Licenses. The subsequent production, delivery and possession of marijuana items by a licensee or a licensee representative is in compliance with ORS 475B.010 to 475B.395 and does not constitute a criminal or civil offense under the laws of this state. **The County has enacted zoning regulations that comply with state law. Moreover, as stated in This is also supported by the US Deputy Attorney General's August 29, 2015 Memorandum "Guidance Regarding Marijuana Enforcement," in states where marijuana is legal, the federal government will rely on states to enforce state marijuana laws as the "primary means of addressing marijuana-related activity."**

For these reasons, staff finds that the land use proposal requested for MO 16-08 can be reviewed by the Planning Commission for consistency with the provisions in Section 500 and 1803 authorized under the provisions in ORS 475B for potential OLCC licensed marijuana producers. [Add a statement about what county staff propose to address/mitigate the school district's concerns – i.e., requiring production be indoors only, etc.]

#### Continuing with the provisions in Section 1803 of the Zoning Ordinance - Marijuana Operations:

#### 1803 MARIJUANA LAND USES

.1 State Issued Marijuana License or Registration Required. All marijuana land uses

except for those not required to be licensed by the Oregon Liquor Control Commission (OLCC) or registered by the Oregon Health Authority (OHA), such as home grown or home made marijuana, shall provide to the Land Development Services Department document of the issuance of the applicable state issued marijuana license or registration at the time of application for a required land use permit. Applicants for recreational marijuana land uses including producing, processing, wholesaling, and retailing shall also show evidence of a completed County land use compatibility statement for the use for which the application is being submitted.

**Discussion:** The applicant submitted the OLCC License Application form and documentation (dated , 2016) indicating they have applied for the required Recreational Marijuana License Application. This License Application confirms that the applicant has been assigned a OLCC License Investigator to work with in obtaining a Recreational Marijuana License for the authorized establishment of an outdoor marijuana growing facility on the subject property.

On April 4, 2016 Land Development Services completed an OLCC Land Use Compatibility Statement (LUCS No. 16-63) on the subject property that was submitted with the applicant's OLCC's licensing application for establishing the outdoor grow presented for MO 16-08 on the subject property. The signed LUCS stated that the proposed marijuana grow is an authorized use of the subject PF-80 zoned property subject to approval of a County Marijuana Grow Operation Permit consistent with this review.

**Finding 4:** The applicant submitted a copy of a LUCS requested by OLCC for the licensing and establishment of the Indoor Marijuana Producer/Growing Operation in the 24,000 square foot existing facility as presented for MO 16-08. The provisions in Section 1803.1 require the applicant to submit documentation of the state granting a license or registration through one or both the dual state marijuana programs. With the submittal of the OLCC Licensing application confirming the applicant has applied to OLCC for a Marijuana Growing/Producing License, staff finds the proposal requested for MO 16-08 is consistent with these provisions in Section 1803.1.

**Finding 5:**As stated during the Summary, and prior to the county's issuance of any building permits allowing the proposed growing operation to commence, the applicant shall submit documentation from the OLCC confirming the State will be able to conduct their required site investigation to approve all facilities intended for the grow operation. This confirmation verifies that the applicant has completed the majority of all OLCC's Marijuana Production licensing requirements and will authorize the County's issuance of necessary building permits. With this additional confirmation from OLCC, staff finds the applicant will comply with the applicable provisions in ORS 475B for licensed Marijuana Growing Operations. LDS shall require the applicant to continue submitting written confirmation (to the county) that the State of Oregon has annually renewed all necessary licensing for this Marijuana Grow Operation for the lifetime of this operation on the subject property. With these conditions of approval staff finds the proposal will continually comply with Section 1803.1's minimum provisions.

.2 Marijuana Growing or Producing Uses. The following standards shall apply to marijuana growing or producing uses:

A. Co-location with a Dispensary. Medical grows may not be on the same site as a dispensary.

- B. Within an Enclosed Building in Certain Zones. Growing and producing must be within an enclosed building in the RR-5, RC, M-3, M-2 and M-1 zones. For the purposes of growing and producing, an enclosed building includes an enclosed greenhouse.
- C. Additional Setbacks for Indoor Grows in Certain Zones. In the FA-80, PF-80, and RR-5 zoning districts, minimum front, side and rear yard setbacks for buildings accommodating marijuana growing and producing shall be increased by 50 feet.

**Views of property on all sides of proposed indoor grow facility**

**View from north property line on Larson Road - showing 2 structures accessed/addressed at 75801 Larson Road and existing facility at 27627 Old Rainier Road**

2 Structures on Larson Road

24,000 sq ft structure



**View south to Old Rainier Road &**



**From Old Rainier Road**



**View West of MO Structure towards Beaver Creek behind trees**



**View east to Rainier School Facilities**

**School Facilities** 1,200' away from proposed MO structure



**Finding 6:** In compliance with the provisions in 1803.2.(A), MO 16-08's submitted documentation and site plan confirm the property will not include a dispensary. Likewise, the OLCC's licensing requirements prohibit locating a dispensary on the same site as a licensed grow operation. The provisions in 1803.2.(C) have also been met since the existing 24,000 sq ft facility will be at least 115' from the west property line and well over 100' from all other property lines. None of the 83-acre site's other structures (3 greenhouses and one detached 1,350 sq ft shop, and other structures addressed at 78501 Larson Road) will be used for this requested Indoor Marijuana Grow Operation. The applicant is not requesting any outdoor grows with MO 16-08 and the siting criterion in Section 1803.2(B) do not apply to Indoor Marijuana Grow Operations in the PF-80 Zone. With these characteristics and documentation, staff finds the criteria in Sections 1803.2(A, B & C) have been satisfied.

The Project Planner’s June 8, 2016 site visit verified these locational siting criteria as shown in the pictures on Pages 8 and 9. One condition of approval shall require any future expansions and/or new structures related to the growing operation/facilities likewise comply with these siting requirements for the lifetime of this operation. With this condition, staff finds the proposal requested for MO 16-08 will comply with the provisions in Section 1803.2.

Continuing with Section 500 of the Zoning Ordinance - Primary Forest:

**Section 500 PRIMARY FOREST ZONE - 80**

**PF-80**

501 .1 Purpose. The purpose of this zone is to retain forest land for forest use and to encourage the management of forest land for the growing, harvesting, and processing of forest crops consistent with the Oregon Forest Practices Act. Uses in this zone will also provide for other forest uses including watershed protection, soil protection, maintenance of clean air and water, wildlife and fisheries habitat, outdoor recreation activities, open space and scenic preservation, and agricultural activities free from the encroachment of conflicting non-forest uses and influences.

502 Table of Authorized Uses & Development.

RESOURCE USES	AUTHORIZATION	PF - 80 SECTION
Marijuana Growing and Producing subject to standards in Section 1803	AR	504.16

504 Uses Subject to Administrative Review. The following uses are permitted, subject to review and approval under prescriptive standards specified herein and as may otherwise be indicated by federal, state and local permits or regulations using the process contained in Section 1601. All authorized dwellings and permanent structures shall meet the standards listed in Sections 506, 507, 508, 509 and 510 of this Ordinance.

[.1 - .15] ...identify other proposed PF-80 uses subject to Administrative Review that were left out on purpose .

.16 Marijuana growing and producing subject to standards in Section 1803.  
*[Amd. Ordinance 2015-4, eff. 11-25-15]*

**Finding 7:** Staff finds the proposal requested for MO 16-08 is an authorized use in the PF-80 Zone. In addition LDS staff’s June 8, 2016 field visit provided no evidence that the property’s topographical characteristics and significant natural areas (Beaver Creek’s wetlands and 50' protected riparian corridor) would prohibit the new use of the subject property. Prior to commencing any growing however, the applicant will be required to apply for and obtain all necessary authorization and licensing requirements from OLCC, the Oregon District 1 Watermaster, and the County Sanitarian prior to submitting any building permits. The application presented for MO 16-08 and the related LUCS 16-63 submitted to OLCC demonstrate the applicant is applying to Columbia County for the land use authorization of the State of Oregon’s License to Produce Marijuana on the subject PF-80 zoned property. Staff finds the uses identified in Sections 504.1 through 504.15 were left from this staff report and do not apply to the proposal requested for MO 16-08.

Continuing with the applicable provisions in Section 507 of the Zoning Ordinance - Siting of



## Dwellings and Structures.:

### 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;

#### **Discussion:**

During the site visit, the applicant and his RAD Nursery Products LLC's partner explained how they are designing the proposed Indoor Grow Operation to minimize its potential impact on nearby PF-80 and PA-80 properties and their accepted resource related operations.

1. The entire 24,000 sq ft facility will be equipped with a 24-hour electronic surveillance system that will be also be available for OLCC to access 24 - 7.
2. The applicant will only utilize the 24,000 sq ft structure; none of the site's other structures including the 3 greenhouses and detached shop nearby as well as the two other structures located and addressed off Larson Road will be used for growing marijuana. No new structures are proposed or authorized for MO 16-08.
3. The applicant will not have any onsite signage advertising the marijuana grow operation..
4. The weekly deliveries and shipping of products and materials will occur inside and not outside the 24,000 sq ft structure and will use medium size trucks between 10,000 lbs. to 20,000 lbs gvw.
5. The applicant will not use Beaver Creek or the existing well that is tied to Beaver Creek for irrigation. All water will be either be purchased from and delivered by Water Safety LLC or be rainwater that is collected from the roof of the 24,000 sq ft structure.
6. The marijuana will be grown using Deepwater Culture grow practices which is a combination of hydroponic and aeroponic growing techniques. All water will be recycled and/or reused for the proposed operation.
7. The applicant will install odor control carbon air filters and odor control equipment in this facility to reduce odors associated with marijuana grow operations.
8. State and County regulations (in ORS 475B and Section 1803 of the Zoning Ordinance, respectively) prohibit any dispensaries from being located on the same site as grow operations. The State's licensing requirements mandate all products are sold only to licensed dispensaries and electronically tracks the location of all marijuana he produces.

**Finding 8:** No new buildings or structures are requested for the proposed marijuana operation. The

proposal submitted for MO 16-08 will allow the applicant to establish an authorized Indoor Marijuana Growing Operation on the PF-80 zoned property provided all necessary mechanical and electrical permits are obtained from the County Planning and Building Officials including the County Sanitarian's approval of the Wastewater Management Plan. The County will also require the applicant to submit documentation from District 18's Watermaster authorizing the new use of the applicant's delivered water as well as the proposed collection of rainwater from the existing structure's roof. Finally the applicant shall submit confirmations to the County verifying that he has complied with the minimum OLCC's licensing requirements except for the final site inspection to verify all structures/facilities comply with the minimum and applicable requirements of the Oregon Structural Speciality Code and the OLCC licensing requirements. For these reasons, staff finds the applicant has designed his proposal in ways that minimize impacts on nearby PF-80 zoned properties consistent with the provisions in Section 507.1(B)

**Finding 9:** Conducting all marijuana growing and harvesting operations inside the existing structure that will include a 24 hour electronic surveillance system (accessed by OLCC) in the far SW portion of the 83-acre property appears to be a reasonable way of reducing its potential negative impact on nearby adjacent properties' forestry and farming operations. No new signs displaying this new use, installing carbon filters, recycling and/or reusing all irrigated water, and not disturbing Beaver Creek's wetlands and riparian corridor will also help to reduce impacts on adjacent properties.

State and county regulatory requirements prohibit any customers from buying the product onsite and the applicant utilize armored vehicles to transport all harvested products to licensed dispensaries as required by OLCC licensing requirements. The existing facility will not disturb or impact Beaver Creek's identified wetlands or 50' protected riparian corridors located along the western property line and at least 75 feet away from this facility.

The applicant intends to continue using the 83-acre site's other permitted and resource related structures for their existing and authorized agricultural and/or forestry related uses and will not bring any undue attention to the new use of the existing 24,000 sq ft facility that has served as an indoor soccer arena and bark dust packaging facility over the past 10 years. These are all effective mitigation measures for not exposing surrounding property owners, residents, and students of the Rainier School District to the typical activities associated with marijuana production. The new electronic security system will be reviewed by the County Building Official for compliance with the applicable Oregon Structural Speciality Codes.

There are no indications included in MO 16-08 that the historic agricultural and forestry uses of the subject and adjacent PF-80 properties will be significantly impeded or curtailed by the new use since all work will be conducted indoors. No processing other than cutting and drying will occur onsite and the applicant shall be required to develop and maintain a system for tracking the transfer of all marijuana according to the provisions in ORS 475B.150 that are necessary to help "prevent the diversion of marijuana items to criminal enterprises, gangs, cartels, and other states." These OLCC licensing tracking requirements require tracking to occur at the propagation and production of marijuana by a licensed marijuana producer, per the provisions in ORS 475B.150(3).

The applicant has already established a full 30' primary firebreak surrounding all sides of the facility and Columbia River Fire & Rescue has no objections to the applicant's request proposed for MO 16-08. For these reasons and with conditions of occupancy, building permit issuance, and prohibiting any future outdoor marijuana growing operations, staff finds the criteria in Section 507.1 will be met

provided the applicant obtains the necessary authorization from the County and State or Oregon..

Continuing with Section 507.1:

- D. Is consistent with the provisions of Section 510 related to Fire Siting Standards and minimizes the risk associated with wildfire; and

**Finding 10:** The pictures on Page 9 confirm the applicant has successfully established a 30' primary fire break on all sides of the facility according to the minimum provisions of the Oregon Department of Forestry's March 1991 Recommended Fire Siting Standards for Dwellings & Structures & Fire Safety Design Standards of Roads. This accessory structure has a minimum 30-foot Primary Fire Break area on all sides, is not on a steeply sloped portion of the forest tract, and is accessed by the existing driveway. The provisions in Section 510 are reviewed later in this report beginning on page 18. These criteria in 507.1(D) will be met for the new uses of the existing structure according to the applicable provisions of the Oregon Structural Speciality and Fire Codes.

Continuing with Section 507.1:

- 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.

**Discussion:** The attached Oregon Department of Water Resources brochure dated 10/09/2015 "*Understanding Water-Use Regulations: Medical and Recreational Marijuana*" states that marijuana related water uses are subject to the same water-use regulations as any irrigated crop. As already covered during the Summary, the applicant intends to irrigate his marijuana from water he purchases from Water Safety LLC and to supplement this water with rainwater that is collected from the 24,000 sq ft facility's roof. The Watermaster for Oregon's District 18 comments stated there are currently no water rights pertaining to this property. Prior to the county approving any building permits for this conversion, LDS will require written confirmation from the District 18 Watermaster that the applicant is authorized to use both Water Safety LLC's water as well as the collected rainwater to irrigate the proposed marijuana grow operation. This documentation will verify that the applicant's new water use is consistent with the applicable provisions of ORS 537 related to the appropriation of public water consistent with the 909 Oregon Water Rights Act.

The provisions in OAR 340-071-0130(4) prohibit any sort of processed wastewater resulting from the cultivation of marijuana from being discharged into an onsite septic system. Any agricultural process wastewater must be managed according to the Oregon Department of Agriculture standards in OAR 603-095-00800 related to the Water Quality Management Plan for the North Coast Basin; i.e riparian streambanks maintained, erosion sediment controlled and nutrients/pesticides managed. The applicant shall submit a plan to the County demonstrating appropriate disposal/reuse of wastewater generated from its proposed indoor marijuana grow system. This wastewater plan shall be reviewed and approved by the County Sanitarian for consistency with Water Quality Management Plan for the North Coast Basin prior to the planting of any marijuana.

**Finding 11:** As stated in the Summary, the protected wetlands and riparian corridor associated with

Beaver Creek are located at least 75 feet west of the existing facility. The proposal requested for MO 16-08 does not include any expansions of this structure, new structures, or new outdoor growing areas. The Rainier Fernhill Beak Map shows that although the site contains wetlands and hydric soils it is not within a Big Game Habitat Area nor does it contain any threatened or endangered plant or animal species. Conducting all marijuana growing, harvesting and loading operations entirely indoors, installing a 24 hour electronic surveillance system that can be accessed by OLCC, and installing odor reduction equipment will also help to avoid future conflicts with the site's environmentally sensitive areas. Because this existing facility is within Beaver Creek's identified 100 year Floodplain, any future expansions of this structure will require consistency with the applicable provisions of the County's Flood Hazard Overlay Zone. The 83-acre site does not include any identified slide prone or historically significant areas that may preclude the proposal requested for MO 16-08. For these reasons, staff finds this criterion can be met with conditions of future site development.

Continuing with Section 507.3:

- .3 As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry or the U.S. Bureau of Land management, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

**Finding 12:** This criterion does not apply to MO 16-08 since Old Rainier Road is a county road and is owned by the public. The graveled driveway already contains an established turnaround which neither the Road Department nor the CRF&R fire district have requested any improvements to. The applicant will be required to obtain a current Road Access Permit from the County Roadmaster that will help to ensure this access meets the minimum specifications of the County Road Standards Ordinance. Staff finds the proposal submitted for MO 16-08 will be met with these conditions.

Continuing with Section 508 of the Zoning Ordinance - General Review Standards:

- 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;

**Finding 13:** As shown in the aerial and zoning maps and site pictures on Pages 2, 4, 8 & 9, the subject tract is surrounded by other PF-80 and FA-80 zoned properties to the north and west, by Hudson Park zoned for Community Service- Recreational (CS-R) to the south and by the Rainier Cemetery and the Rainier School properties zoned for Community-Service - Institutional (CS-I) uses to the east.

There is no evidence that the proposed new use will affect farming or forest uses in this area since the

indoor growing operation will occur inside a 24,000 sq ft existing facility on the 83-acre site. No changes in use are proposed or authorized for any of the site's other resource related structures (green houses, shops and storage structures) along Larson and Old Rainier Road with the proposal requested for MO 16-08. The applicant hopes to employ 25 workers (in three 8-hour daily shifts) and will be required to provide adequate on-parking for all employees consistent with the minimum requirements of the County's Off-Street Parking and Loading Zoning Ordinance. The applicant does not want to bring any special attention to this new use as demonstrated by the following:

1. Not installing any new signage onsite;
2. Limiting all growing, harvesting and loading and unloading activities to occur entirely inside the electronically monitored structure and installing new odor reducing equipment;
3. Using only delivered water and lawfully collected rainwater for irrigation that helps to preserve and protect Beaver Creek's wetlands and riparian corridor as well other surface (creeks) and ground water (wells) sources; and
4. Not proposing any new outdoor growing operations to occur within the nearby existing greenhouses.

The site's existing graveled driveway complies with the County's minimum fire apparatus access standards and the applicant has established a full 30' primary fire break around the structure that will be used for the proposal requested for MO 16-08. The necessary Building Permits and authorization from the County Building Official, County Roadmaster, and County Sanitarian as well as from the District 18 Watermaster will all include adequate documentation to ensure the applicable provisions of the Oregon Structural Speciality and Fire Codes, as well as provisions related to Water Quality in OAR 603 Division 95 and to Appropriate Water Use in ORS 357 are all met prior to the applicant's commencement of any onsite marijuana growing operations requested for MO 16-08. With these conditions, staff finds the applicant will be able to satisfy these provisions in Section 508.

- .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 14:** The siting requirements in 508.4 have already been discussed during the Summary and for Findings 10 and 11 and found to be consistent with the siting criteria identified in Section 507.1(E) of the Zoning Ordinance.

Continuing with Section 509 of the Zoning Ordinance- Standards of Development:

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.

**Finding 15:** The submitted site plan and characteristics of the 83 acre tract far exceed the 100' minimum average width and depth dimensional requirements for this new authorized activity on the PF-80 zoned property.

- .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.

**Finding 16:** This provision has already been covered and addressed for Finding 12 and will be required as a condition of approval for MO 16-08.

- .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.

**Finding 17:** There are no height limitations required for the existing 24,000 sq ft that was permitted for a bark dust packaging plant according to the provision in Section 509.3. The application submitted for MO 16-08 does not include any onsite signage. However, if the applicant wants any signage in the future, all signage shall be required to comply with the applicable provisions of Section 1300 of the Zoning Ordinance and the applicant will be required to submit the required building permit application(s) to LDS. Staff finds the criterion in Section 509.4 can be satisfied with conditions .

- .5 The Oregon Department of Fish & Wildlife (ODFW) shall be notified and provided with the opportunity to comment on any development within major and peripheral Big Game Habitat.

**Finding 18:** Although the 83 acre site is not within a designated Big Game Habitat Area, the County notified the ODFW of proposed MO 16-08 on April 25, 2016; as of the date of this report no comments have been received. Without any additional comments from ODFW, this criterion has been met.

Continuing with Section 509 of the Zoning Ordinance- Standards of Development:

- .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.

**Finding 19:** As already covered and confirmed during the site visit and for Findings 7, 9 and 11, the proposed indoor growing operation will be located at least 100 feet from all property lines and at least 75 feet from Beaver Creek's identified wetlands and riparian corridor . The SW portion of the

83-acre site does not contain any topographical characteristics requiring greater or less setbacks from the minimum 100' setbacks from all property lines for marijuana facilities located in the PF-80 Zone. The current County Transportation Systems Plan does not specify any other special setbacks from properties fronting Old Rainier Road. For these reasons, staff finds these criteria have been met.

- 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.

**Finding 20:** These provisions have been evaluated in Findings 9 and 11 and conditions will be required prior to the authorization of and all future expansions of the proposal requested for MO 16-08.

- 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 21:** These criteria have been addressed with conditions.

Continuing with Section 509 of the Zoning Ordinance- Standards of Development:

- .7 Approval Period for Use Permits. For all uses approved under sections 504 and 505, the approval period shall be valid for four (4) years. At a minimum, a development construction permit must be issued by the Land Development Services within the approval period. If a construction permit is not issued within the approval period, the land use permit expires.

**Finding 22:** This Marijuana Grow Operation land use permit shall remain valid for four (4) years from the date of the final decision, and shall become void unless the proposal has commenced by issuance of a building permit, in complete conformance with all conditions and restrictions established herein within the four-year validity period. Staff finds this criterion will be satisfied with conditions.

Continuing with Section 510 of the Zoning Ordinance- Fire Siting Standards for Dwellings, Structures and Roads:

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:

- .1 If a water supply is available, suitable and acceptable for fire protection by the fire protection district, such as a swimming pool, pond, stream, or lake, then road access to within 15 feet of the water's edge shall be provided for pumping units. The road access to the dwelling and access to the on-site water supply shall accommodate the turnaround of fire fighting equipment during the fire season. The applicant shall provide verification from the

Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.

**Finding 23:** Although Beaver Creek is the 83-acre site's western property line, the CRF&R did not request the applicant make any site improvements to make this creek accessible for fire protection. For this reason, staff finds the criterion in section 510.1 has been satisfied.

- .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.

**Finding 24:** As stated during the Summary and discussion related to Findings 10 and 13 and demonstrated in the pictures on Pages 9 and 10, the applicant has already established a minimum 30' primary firebreak on all sides of the existing facility. Prior to the commencement of growing operations, the County Building Official will ensure this facility complies with the applicable provisions of the Oregon Structural Speciality and Fire Codes. For these reasons and with these conditions, staff finds the proposal requested for MO 16-08 can satisfy the siting criterion in Section 510.2.

#### **COMMENTS:**

**Columbia River Fire & Rescue Fire District:** Has reviewed the applicant's proposal and has no objections to its approval as presented.

**Oregon Department of Fish & Wildlife:** No comments have been received as of the date of this report.

**County Roadmaster:** Has reviewed the proposal requested for MO 16-08, has no objections to its approval as submitted but will require the applicant to obtain a road access permit since none could be found on file.

**County Building Official:** Has reviewed the submitted proposal and has no objections to its approval as submitted, provided all necessary building permits are obtained for the conversion of this structure.

**County Sanitarian:** Will require all wastewater generated from the marijuana grow operation to comply with the applicable provisions in OAR 340-071-0130(4) and OAR 603-095-00800

**District 18 Watermaster:** The Watermaster has confirmed that the property has no existing water



rights.

**Columbia River PUD:** Has reviewed the application and has no objection to its approval as submitted provided all electrical work is authorized by the County and installed to their minimum specifications.

**R. Michael Carter, Superintendent Rainier School District # 13:** Comments have been addressed and incorporated into the Discussion and Findings 1 -3 of this staff report

As of the date of this report, July 1, 2016 no other comments have been received by Land Development Services.

### **CONCLUSION, RECOMMENDATION, & CONDITIONS:**

Based upon research about the property and findings of the Staff Report for **MO 16-08** staff recommends the Planning Commission **APPROVE** this request to convert the existing 24,000 sq ft facility to an indoor marijuana production on the subject 83- acre PF-80 zoned property, subject to the following conditions:

#### **CONDITIONS OF APPROVAL:**

1. **This Marijuana Growing Operation Permit shall remain valid for four (4) years from the date of the final decision.** This permit shall become void, unless the proposal has commenced with a development permit, in conformance with all conditions and restrictions established herein within the four-year validity period.
2. Marijuana is a Schedule I drug under the federal Controlled Substances Act (CSA), and its manufacture, distribution, and possession remain prohibited under federal law. The application requested for MO 16-08 has been approved under ~~state and~~ local law **that is consistent with state law**. However, this land use approval provides no immunity from federal prosecution for violation of the CSA.
3. This Marijuana Growing Operation Permit authorizes only the indoor marijuana growing operation within the existing 24,000 sq ft facility as authorized through the applicable provisions in ORS 475B on the 83 acre subject PF-80 zoned property. No outdoor grow operations are allowed. This Permit, in turn, enables the applicant to apply for any necessary building permit and other site development permits for the indoor growing and production of marijuana. This Marijuana Operation Permit addresses and allows this land use only and does not guarantee approval of any other permits necessary for future marijuana operations of the subject property.
4. The applicant shall provide the County confirmation from OLCC that they have completed a **majority** of their application process and that OLCC will be able to conduct their subsequent site inspection(s). This documentation will be required prior to the commencement of any growing operations and will authorize all new uses of the site's 24,000 sq ft facility. Any and all modifications to this structure shall be made and installed in compliance with the applicable provisions of the Oregon Structural Speciality and Fire Codes. **[Here, you require only a majority**

of the application to be complete; below, you require that they have an actual license prior to commencing growing operations]

5. Columbia County LDS shall receive written confirmation from District 18's Watermaster that applicant's new water use to irrigate the indoor marijuana growing operation is consistent with the applicable provisions of ORS 537 related to the appropriation of public water per the 1909 Oregon Water Rights Act.
6. The applicant shall be required to annually submit to the County written confirmation documenting that the State of Oregon has approved (1) the subject property and facility as a Registered Marijuana Grow/Production Site, and (2) that the applicant has a License or is Registered to Produce Marijuana on the subject property. Failure to submit this annual documentation to Land Development Services shall invalidate the Marijuana Operation Permit authorized through the approval of MO 16-08.
7. For the lifetime of this proposal, the entire 24,000 sq ft facility authorized to grow or produce marijuana through ORS 475B shall be surrounded on all sides by a established and maintained a 30' minimum Primary Fire break Area pursuant to the provisions in OAR 660-006-0035, and listed in the March 1991 Recommended Fire Siting Standards for Dwellings & Structures & Fire Safety Design Standards for Roads, published by the Oregon Department of Forestry.
8. The responsibility for protection from wildlife damage on the property shall be assumed by the property owner.
9. The applicant shall meet the requirements of the applicable agency regarding the installation of all utility lines to all structures associated with the requested marijuana growing operation.
10. The Department of Land Development Services reserves the right to review the application again in the future if it determines that the approved Marijuana Operation Permit is in noncompliance with any of the conditions of approval herein.
11. The following shall be completed prior to the commencement of any growing of marijuana within the subject building:
  - a. Written confirmation from the State of Oregon documenting the site presented for MO 16-08 is a current Registered Marijuana Grow Site and the applicant has a current License to Produce Marijuana authorized per the applicable provisions in ORS 475B.
  - b. The applicant shall submit an agricultural waste water plan and statement for the post use/disposal of process water. This documentation shall allow the County Sanitarian to confirm the wastewater generated from the proposed outdoor marijuana grow system is disposed of appropriately and complies with the minimum provisions in the OAR 340-071-0130(4) and OAR 603 Division 95.
  - c. The applicant shall submit an separate Off Street Parking Plan for the site that designates adequate onsite parking for at least 25 employees. This plan shall be reviewed by and approved by the County Planner for consistency with the applicable minimum requirements in Section 1400.

- 12. The County may revoke this approval at any time if the site fails to obtain or retain its OLCC registration for marijuana production.**

**Attachments:**

RDF 16-08 submitted application & proposed site plan

Address, Zoning and Vicinity Maps

Applicant's signed Land Use Compatibility Statement filed with OLCC & Recreational Marijuana

Licensing Application received 4/4/16

5/2/16 Appeal/Referral filed for MO 16-08

"Guidance Regarding Marijuana Enforcement" dated August 29, 2015 from the U.S. Department of Justice

*Understanding Water-Use Regulations; Medical and Recreational Marijuana* from Oregon Water Resources Department dated 10/09/2015

OAR 603 Division 95 Water Quality Management for the North Coast Basin

**cc:** R. Michael Carter, Superintendent Rainier School District # 13,, 28168 Old Rainier Road,  
Rainier, OR 97048