

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of the Application by Kirk and)	
Chantel Kightlinger for an Indoor and Outdoor)	
Marijuana Growing Operation in the PF-80)	FINAL ORDER NO. 20-2017
(Primary Forest) Zone near Rainier, Oregon)	
(Application No. MO 17-07))	

WHEREAS, on November 7, 2016, Kirk and Chantel Kightlinger (hereinafter “applicant”) submitted an application for an indoor and outdoor Marijuana Growing Operation (MO 17-07) on an approximately 21.48-acre property in the PF-80 (Primary Forest) Zone. The subject property is located at 27163 Old Rainier Road, near Rainier, Oregon, and is identified as Tax Map ID No. 7313-00-00600; and

WHEREAS, County planning staff deemed the application complete on November 28, 2016, and two days later, notified surrounding property owners and other affected parties of the application and the administrative decision-making process for Marijuana Growing Operations; and

WHEREAS, on December 8, 2016, Lugene Ontiveros timely submitted a request to refer the application to the Planning Commission; and

WHEREAS, on February 6, 2017, the Planning Commission held a hearing on the application, 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 Philip Hamilton; and

WHEREAS, following proper notice, the Board of Commissioners held a hearing on the application on April 5, 2017. The Board accepted all written evidence submitted into the record prior to the issuance of the staff report, a list of which was entered into the record as Exhibit 1, as well as evidence submitted after the staff report and before the close of the hearing, which was entered into the record as Exhibits 2 and 3; and

WHEREAS, the Board then deliberated and voted to tentatively approve the application (MO 17-07) with conditions as set forth in the Staff Report dated March 29, 2017 and as amended by staff at the hearing.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

- A. The Board of County Commissioners adopts the following findings in support of its decision:
 - 1. The above recitals; and
 - 2. The findings and conclusions in the Staff Report to the Board of County Commissioners dated March 29, 2017, which is attached hereto as Attachment A and incorporated herein by this reference, to the extent those findings are consistent with this Final Order; and
 - 3. The following supplemental findings:

- a. The Board received testimony expressing concern about the applicants' alleged criminal history with respect to marijuana operations in Washington. As an initial matter, the applicant responded that such allegations were without merit because the charges against him were dropped. In any event, an applicant's criminal history is not a direct criterion for a County marijuana land use permit. Criminal history, however, indirectly comes into play because the Columbia County Zoning Ordinance (CCZO) Section 1803.1 requires all marijuana land uses to be either licensed by the Oregon Liquor Control Commission (OLCC) or registered by the Oregon Health Authority (OHA). To satisfy that criterion, approval of this application is conditioned upon the applicants obtaining and maintaining a State license or registration to grow marijuana at the property (*see* Condition #4). As part of their licensing/registration process, both the OLCC and the OHA conduct criminal background checks. If the applicants have a criminal history that prevents them from obtaining a license or registration to grow marijuana, this land use approval will become invalid. The Board therefore finds that the concern over the applicants' alleged criminal history is addressed through CCZO Section 1803.1 and Condition #4.
- b. The Board also heard testimony questioning whether the applicants would comply with water regulations based on past noncompliant activity at the site, which involved drawing water from the stream for irrigation. CCZO Section 507.E.2 states, in pertinent part:

“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.”

The criterion focuses on whether the applicants meet the requirements for the proposed use. Here, the Board finds that the applicants have met this criterion by submitting evidence that they will be contracting with Rainier Water Supply, LLC to supply water for the grow operation. Evidence in the record also shows that the District Watermaster has reviewed the application and has no objection. Although past violations at the site may indicate a potential for future violations, they do not provide a basis for determining that this criterion has not been met.

- B. Based on the foregoing and the whole record on this matter, the Board of County Commissioners **APPROVES MO 17-07** for an indoor and outdoor Marijuana Grow Operation on the approximately 21.48-acre subject property located in the PF-80 zone, 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. This application has been approved under state and local law. However, this land use approval provides no immunity from federal prosecution for violation of the CSA.
3. 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 site inspection(s). This documentation will be required prior to the issuance of any building permits and will authorize the use of proposed structures as described in MO 17-07.
4. The applicant shall 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 17-07.
5. The structures authorized in MO 17-07, as part of this indoor grow facility, shall be setback a minimum of 100 feet from all property lines. A County official shall conduct an on-site visit to verify that this setback has been met.
6. All structures authorized in MO 17-07 shall be surrounded on all sides by 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. In areas where the 30' firebreak area overlaps with the riparian corridor, then the requirements of the riparian corridor shall be respected over the firebreak area.
7. If the owner/operator wants to install a sign advertising the facility, they shall first get a sign permit from LDS. Any future onsite signage shall be required to comply with the applicable provisions of Section 1300 of the Zoning Ordinance
8. The responsibility for protection from wildlife damage on the property shall be assumed by the property owner.
9. 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.
10. The following shall be completed prior to Building Permit Issuance of the proposed structures in MO 17-07:

- a. Written confirmation from the State of Oregon documenting the site presented for MO 17-07 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. The County Sanitarian shall work with ODFW to ensure wetland areas are not contaminated. This documentation shall allow the County to confirm the wastewater generated from the proposed marijuana grow system is disposed of appropriately and complies with the minimum provisions in the OAR 340-071-0130(4).
- c. The property owner shall sign and record in the deed records of Columbia County a *WAIVER OF REMONSTRANCE* regarding past, current or future accepted farm or forest operations of adjacent and nearby lands. A copy of this recorded waiver shall be submitted to LDS.
- d. The applicant shall submit to LDS written documentation that Columbia River Fire and Rescue has conducted a final inspection of the driveway and has determined that it is in compliance with emergency vehicle apparatus standards.
- e. The applicant shall obtain a commercial road access permit from the Columbia County Road Department.

DATED this 19th day of April, 2017.

BOARD OF COUNTY COMMISSIONERS FOR
COLUMBIA COUNTY, OREGON

By: 
Henry Heimuller, Chair

By: 
Margaret Magruder, Commissioner

By: 
Alex Tardif, Commissioner

Approved as to form
By: 
Office of County Counsel

**COLUMBIA COUNTY BOARD OF COMMISSIONERS
STAFF REPORT**

March 29, 2017

Marijuana Growing Operation in the Forest Zone

HEARING DATE: April 5, 2017

FILE NUMBER: MO 17-07

**APPLICANT/
OWNER:** Kirk and Chantel Kightlinger 27163 Old Rainier Road, Rainier, OR 97048

PROPERTY The property is located in at 27163 Old Rainier Road, Rainier, OR 97048.

MAP ID NUMBER: 7313-00-00600

ZONING: Primary Forest (PF-80)

SIZE: Approximately 21.48 acres

REQUEST: To conduct a Marijuana Growing Operation on a 21.48 acre property in the PF-80 zone provided for in Sections 504.16 and 1803 of the Columbia County Zoning Ordinance

APPLICATION COMPLETE: November 28, 2016 **150 DAY DEADLINE:** April 27, 2017

APPLICABLE REVIEW CRITERIA: Page

Columbia County Zoning Ordinance

Section 1803	Marijuana Land Uses - Special Use Standards	4
Section 500	Authorized Uses in the Primary Forest (PF-80) Zone	5
Section 507	Siting of Dwellings and Structures	6
Section 508	General Review Standards	9
Section 509	Standards of Development	10
Section 510	Fire Siting Standards for Dwellings, Structures and Roads	12
Section 1170	Riparian Corridors	13
Section 1180	Wetland Area Overlay	14

SUMMARY:

On November 25, 2015, the Columbia County Board of Commissioners adopted Ordinance 2015-4 related to cannabis regulation in Columbia County, Oregon. The State of Oregon regulates cannabis by provisions in the Oregon Revised Statutes in Chapter 475B. County Ordinance No. 2015-4 amends the Columbia County Zoning Ordinance and sets time, place and manner regulations for the growing, processing, and retailing of marijuana operations in the county's unincorporated areas.

This application for Administrative Review was deemed complete on November 28, 2016. On November 30, 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. A Referral was timely received on December 8, 2016 from a notified party, Lugene Ontiveros of 75503 Larsen Road, Rainier, OR. The application was referred to the Planning Commission to review and approve, deny or approve with conditions the request proposed for MO 17-07. The Planning Commission reviewed and approved with conditions this request; and mailed Final Order MO 17-07 on February 7, 2017. A timely appeal of the Planning Commission decision was filed by the Phillip Hamilton, and the Board set the date April 5, 2017 for an appeal hearing.

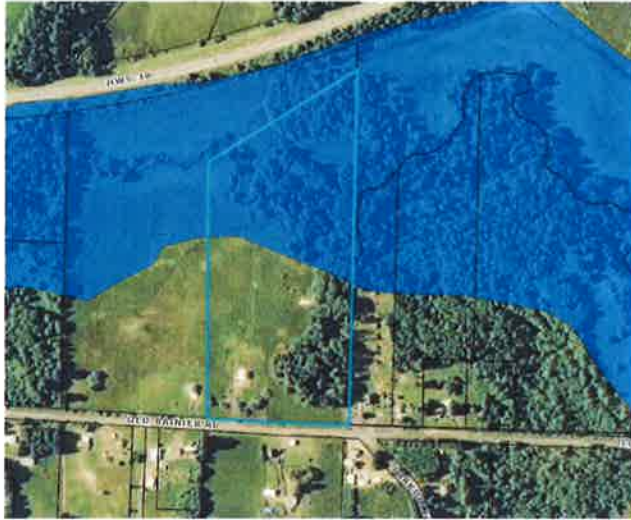
The applicants, Kirk and Chantel Kightlinger, are requesting approval to establish and operate a future mixed OLCC Recreational Marijuana and OHA Medical Marijuana production operation on the subject ~21.48 acre property. The applicants intend to grow marijuana both indoors and outdoors. The indoor grow will take place in four (4) separate 30x40 structures that are clustered together and the outdoor grow will take place in a 19,000 square foot area to the north of the proposed indoor structures. The whole area will be surrounded by an 8 foot cyclone fence and will be approximately two acres in size.

The applicants currently have an existing medical marijuana grow that is being conducted in their storage barn which will be demolished to make room for the new recreational/medical grow. This is a legal medical grow and both growers are licensed by the OHA for the subject site. The registration number for Kirk Kightlinger is 541980 and the registration number for Chantel Kightlinger is 541981.

The site is already developed with the applicant's residence, a detached garage, a storage barn, a septic system and a well. The property is large enough to safely accommodate its intended new use in compliance with the required minimum 100' setback from all property lines for structures used for marijuana operations in the PF-80 Zone.

The applicant has applied for a Recreational Marijuana Growing License from the State of Oregon Liquor Control Commission (OLCC). This license will need to be issued by the State as a condition of County approval of the applicant's establishment of a Recreational Marijuana Growing Operation on the subject property as requested for MO 17-07 and issuance of any building permits. The remainder of this report will evaluate and make findings on whether the proposal for MO 17-07 complies with the minimum land use provisions of Columbia County's Zoning Ordinance.

Aerial View with Flood Plain



Zoning Map of Subject Property



**Building Site
with Flood Plain &
Wetlands**



The property is surrounded by forest zoned properties on the North, East and West and is bordered by Rural Residential Zoned Properties on the South. Emergency Services are provided by the Columbia River Fire and Rescue and the County Sheriff. There are flood hazard areas in the northern portion of the subject property, according to the FEMA Flood Insurance Rate Map No. 41009CO 175D. The National Wetlands Inventory Map indicates the site contains a palustrine forested wetland approximately 500 feet north of the building site and the County GIS Maps indicate that

there is a creek that runs through the northern portion of the property approximately 600 feet from the proposed building site. Beaver Creek is a fish bearing stream that is under 1,000 cfs. The Rainier Beak Maps identify that there are no Big Game Habitat Areas and does not contain any threatened or endangered plant or animal species.

Beginning 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.

Finding 1: The applicant submitted documentation dated 9/26/2016 from the Oregon Health Administration indicating that they have been designated as an Oregon Medical Marijuana Program grower. The OHA registration number for Kirk Kightlinger is 541981 and the registration number for Chantel Kightlinger is 541981. The indoor operation is proposed to take place in four buildings of 30'x40'. The signed LUCS 17-19 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.

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. The applicant has already submitted licensing documents provided from OHA. A condition of approval should state that the applicant shall submit documentation confirming that the OLCC has licensed all growers on this site, staff finds the proposal requested for MO 17-07 can be satisfied with conditions for the provisions in Section 1803.1.

Another condition of approval should state that the applicant shall continue to submit written documentation to Land Development Services (LDS) confirming 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 comply with the minimum provisions in Section 1803.1.

Continuing with Section 1803 of CCZO:

- .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.

Finding 2: The submitted materials and site plan indicate that the subject property will not contain a dispensary. The applicant states that “Marijuana production is not taking place on the same site as a dispensary.” There are no indications of a dispensary planned for this site. Staff finds the provision in Section 1803.2 (A) will be met.

- 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.

Finding 3: The submitted Site Plan identifies the four proposed 1,200 sq ft buildings as well as the 19,000 square foot outdoor grow will be enclosed by an 8' cyclone fence which will be located over 130' from the closest property line to the south. All other property lines are over 150' away from this two-acre fenced area. The total minimum setback required for an indoor marijuana grow is 100'. This includes the usual required setbacks for all structures in the PF-80 Zone of 50', plus an additional setback of 50' as required in 1803.2(C). During the site visit on 12/12/16 the project planner verified that the applicant has sufficient property to meet the minimum required setbacks. Staff finds the proposal requested for MO 17-07 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.

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

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] ...left out on purpose.

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

Finding 4: Staff finds the proposal requested for MO 17-07 is an authorized use in the PF-80 Zone. In addition the field visit on 12/12/16 provided no evidence that the property's topographical characteristics and significant natural areas (wetlands or riparian corridors) would prohibit the location of the proposed buildings and outdoor grow area. The application presented for MO 17-07 demonstrates that the applicant is applying to the State of Oregon for a license to Produce Marijuana on the subject PF-80 zoned property, pursuant to the provisions in ORS 475B.

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;

Finding 5: The property is in an area of mixed forest lands and rural residentially zoned properties along Old Rainier Road. The proposed structures for the marijuana grow will be clustered together with already existing development and will use the same driveway thereby minimizing the amount of forest lands used for building sites, road access and service corridors.

In response to the above criteria staff finds that the site map submitted by the applicant indicates that the fenced area which houses all of the proposed buildings as well as the proposed outdoor grow is over 130' from the property line to the south, which is greater than the minimum 100' required for the proposed use in this zone. Staff finds that the proposal submitted for MO 17-07 to allow the establishment of an authorized Indoor and Outdoor Marijuana Growing Operation will have no foreseeable adverse impact on forest or farm operations on neighboring properties provided setbacks are adhered to and all necessary building permits and state licenses are obtained. For these reasons staff finds the criteria in Section 507.1 will be met.

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

Proposed Indoor Building Site



Proposed Outdoor Grow Site



Finding 6: The proposed buildings will be located over 130' from the closest property line to the south and several hundred feet from the property lines to the north, east and west. There is plenty of room for the primary fire safety setbacks. The provisions of 507.1 require that a 30' primary fire break be established on all sides of any structures built in the PF-80 zone. Trees in primary fire breaks should be spaced greater than 15' between the crowns and pruned to remove dead and low branches (less than 8 feet). Accumulated leaves, needles, limbs and other dead vegetation should be removed from beneath the trees. Vegetation within the primary safety zone could include green lawns and low shrubs (less than 24 inches in height). The applicant should refer to the Oregon Department of Forestry's March 1991 Recommended Fire Siting Standards for Dwellings & Structures & Fire Safety Design Standards of Roads for further details about the minimum provisions of the required primary fire break. The provisions in Section 510 are reviewed later in this report beginning on page 12. With the conditions listed in this report pertaining to Section 510 and found in Finding 22 & 23, Staff finds that the criteria in 507.1(D) will be met.

Continuing with Section 507 of CCZO:

- 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.

Finding 7: The National Wetlands Inventory Map indicates that the site contains an identified palustrine forested wetland running through the western portion of the property that is approximately

500 feet north of the proposed grow site. In addition, the County GIS map indicates that Beaver Creek runs through the northern portion of the property that is approximately 600 feet north of the proposed grow site. Beaver Creek is a fish bearing stream that is less than 1,000 cfs. Riparian setbacks of fish bearing streams are a minimum of 50 feet from the top of the bank. The proposed buildings and outdoor grow site associated with this marijuana operations permit appear to be located far enough away as to not negatively affect the wetlands or encroach in the riparian corridor. The submitted site map indicated that the buildings are located at least 600 feet south of the stream. As a result, the proposed grow operation will have no impacts on the Beaver Creek riparian corridor. Vegetation within this riparian corridor shall be left in its natural wild state.

The Rainier Beak Map shows that the site is not within a Peripheral Big Game Habitat Area, it does not contain any threatened or endangered plant or animal species. Maintaining the riparian corridor of Beaver Creek and clustering the proposed structures in the already developed southern portion of the site will help to avoid future conflicts with the site's remaining valuable habitat areas and complies with the provisions of Big Game Habitat protection. Riparian Corridors and Wetland areas will be discussed further in Sections 1172 and 1180 of this report. For these reasons, Staff finds this criterion can be met with the conditions listed in this report.

- .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 8: The residence on the subject property is served by a private well, however the applicant has submitted a Marijuana Producer Exempt Water Form. This form indicates that the applicants have contracted with Rainier Water Supply, LLC to supply them the estimated 13,500 gallons of water for the outdoor grow and 36,000 gallons for the indoor grow per year. The source of this water will not require a water right permit or certificate. . On January 18, 2017 Jake Constance, Watermaster for Oregon District 18', submitted documentation indicating that he reviewed the application for MO 17-07 and has no objection to its approval as submitted. Staff finds that this criterion has been met.

Continuing with Section 507 of CCZO:

- .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 9: This criterion does not apply to MO 17-07 since Old Rainier Road is a County road and is owned by the public.

- .4 [...]
- .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 10: The subject parcel is not located in the Peripheral Big Game Habitat, therefore provisions in Section 1190 will not be reviewed.

Continuing with Section 508 of CCZO:

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 11: As shown in the aerial and zoning maps on Page 2, the subject tract is surrounded on three sides by other PF-80 zoned properties and small forestry and residential uses on all sides. There is no evidence that the existing forest dwelling nor the proposed new use will affect farming or forest uses in the area. Allowing the new authorized use of the Indoor and Outdoor Marijuana Growing Operation will be consistent with the applicable State of Oregon’s provisions in ORS 475B. The necessary Building Permits will include adequate documentation to ensure the Oregon Structural Speciality and Fire Codes are met.

Allowing the replacement of the existing accessory structures in the site’s already cleared and developed south-central area will not require any more removal of the site’s vegetation other than what is necessary to maintain the required firebreak on all sides of the proposed structures. Trees should be spaced 15 feet between crowns and pruned to remove branches less than 8 feet from the ground. For these reasons and with conditions, Staff finds the criteria in Section 508 can be met.

- .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

Finding 12: A condition of approval should require the owner to sign and record a Waiver of Remonstrance prior to building permit issuance. With this condition Staff finds the criterion in 508.3 can be met.

- .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 13: The siting requirements in 508.4 have already been discussed during the Summary and throughout this report (See Findings 3, 5, 6, & 7) and found to be consistent with the siting criteria identified in Section 507.1(E) of the Zoning Ordinance.

Continuing with Section 509 of CCZO:

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 14: The submitted site plan and characteristics of the subject 21.48 acre tract far exceed the 100' minimum average width and depth dimensional requirements for this new authorized activity on the PF-80 zoned existing 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 15: The property is accessed via a graveled driveway off of Old Rainier Road. On December 5, 2016 the Transportation Planner commented that a commercial access permit is required for this new use. In the submitted site plan, the graveled driveway appears to be over 150' which will require Columbia River Fire and Rescue to do a final inspection on the property prior to final occupancy. With the condition of Columbia River Fire and Rescue sign off, staff finds that the provisions of 509.2 can be met.

Continuing with Section 509 of CCZO:

- .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 16: The proposed structures comply with the 50' or 2 ½ stories height limitations in Section 509.3. The application for MO 17-07 does not include any onsite signage. If the applicant wants any

signage in the future, all signage will 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 that MO 17-07 meets the criteria in Section 509.3 & 4.

- .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 17: The subject property is not located within a Peripheral Big Game Habitat Area per the Rainier Beak Map. Staff finds that this criteria 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 18: The subject application is for a marijuana grow in the forest zone. As stated above, the PF-80 setbacks are 50 feet from all property lines; per CCZO 1803 the setbacks for marijuana grows in enclosed buildings are subject to an additional 50 feet. Therefore, the total setbacks for the proposed structures involved in the marijuana grow operation are to be 100 feet from all property lines. The current County Transportation Systems Plan does not specify any other special setbacks from properties fronting Old Rainier Road. With the condition listed previously in Finding 3 that all structures pertaining to the marijuana grow operation be setback 100 feet from all property lines in the PF-80 zone, staff finds that the proposal for MO 17-07 meets the conditions of Section 509.6 (A, B & C).

- 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 19: As previously mentioned the subject property has wetlands and a creek located in the northern portion of the property. The Sections of CCZO that address criteria for riparian corridors (Section 1170) and wetlands (Section 1180) will be reviewed later in this report.

The provisions in OAR 340-071-0130(4) regulate the manner in which wastewater resulting from the cultivation of marijuana is disposed of and specifically prohibits its disposal into an onsite septic system. Any agricultural process wastewater must be managed per the Oregon Department of

Agriculture standards in OAR 603-095-00800; i.e riparian streambanks maintained, erosion sediment controlled and nutrients/pesticides managed. A condition of approval should require the applicant to submit a plan to the County demonstrating appropriate disposal/reuse of wastewater generated from its proposed marijuana grow system. This wastewater plan shall be reviewed and approved by the County Sanitarian prior to building permit issuance. The County Sanitarian submitted comments on November 30, 2016 which states, "*Applicant will need to submit a detailed MO process waster water disposal plan ("waste plan" not sufficient). Proposal for employees may trigger the requirement for an authorization.*" Staff finds that this criteria can be met with conditions outlined above.

E. [...]

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 20: These criteria have already been researched and covered for Finding 6 and will be required to be approved by the County Building Official prior to the final approval of any building permits for the proposed marijuana grow facility requested. Staff finds this criterion will be satisfied with conditions already covered.

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 21: 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 22: This criterion does not apply to MO 17-07 as the subject property does not contain any water courses that are suitable for fire protection.

- .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 23: The Oregon Department of Forestry's March 1991 Recommended Fire Siting Standards for Dwellings & Structures & Fire Safety Design Standards for Roads requires property owners in forest zones to "maintain a primary fuel-free fire break area surrounding all structures". A condition of approval should state that the owner shall maintain a primary fire safety zone of 30 feet in all directions around the accessory structures, and prior to final occupancy, either the County Planner or Building Inspector will verify visit that the full 30' diameter fire safety zone complies with these State and local standards. Staff finds that the criteria in Section 510 can be met with the above condition.

Columbia County Zoning Ordinance, Section 1170, RIPARIAN CORRIDORS, WETLANDS, WATER QUALITY, AND FISH AND WILDLIFE HABITAT PROTECTION OVERLAY ZONE

1171 Purpose.

- A. The purpose of this Section is to protect and restore water bodies and their associated riparian corridors, thereby protecting and restoring the hydrological, ecological and land conservation function these areas provide. Specifically, this Section is intended to protect habitat for fish and other aquatic life, protect habitat for wildlife, protect water quality for human uses and for aquatic life, control erosion and limit sedimentation, prevent property damage during floods and storms, protect native plant species, and conserve the scenic and recreational values of riparian areas.
- B. This Section meets the above purpose by prohibiting structures and other development from riparian areas around fish-bearing lakes, rivers, streams

and associated wetlands, and by prohibiting vegetation removal and/or other vegetative alterations in riparian corridors. In cases of hardship, the Section provides a procedure to reduce the riparian corridor boundary. Alteration of the riparian corridor boundary in such cases shall be offset by appropriate restoration or mitigation, as stipulated in this Section.

- C. For the purposes of this Section, “development” includes buildings and/or structures which require a building permit under the State of Oregon Uniform Building Code, as amended, or any alteration in the riparian corridor by grading, placement of fill material, construction of an impervious surface, including paved or gravel parking areas or paths, and any land clearing activity such as removal of trees or other vegetation.

1172 Riparian Corridor Standards:

- A. The inventory of Columbia County streams contained in the Oregon Department of Forestry Stream Classification Maps specifies which streams and lakes are fish-bearing. Fish-bearing lakes are identified on the map entitled, “Lakes of Columbia County.” A copy of the most current Stream Classification Maps is attached to the Comprehensive Plan, Technical Appendix Part XVI, Article X(B) for reference. The map, “Lakes of Columbia County” is attached to the Comprehensive Plan, Technical Appendix Part XVI, Article X(B), and is incorporated therein. Based upon the stream and lake inventories, the following riparian corridor boundaries shall be established: [...]
4. Other rivers, lakes, streams, and sloughs. Along all other rivers, streams, and sloughs, the riparian corridor boundary shall be 25 feet upland from the top-of-bank, except as provided in CCZO Section 1172(A)(5), below.
5. Wetlands. Where the riparian corridor includes all or portions of a significant wetland, as identified in the State Wetlands Inventory and Local Wetlands Inventories, the standard distance to the riparian corridor boundary shall be measured from, and include, the upland edge of the wetland. Significant wetlands are also regulated under provisions in the Wetland Overlay Zone, Columbia County Zoning Ordinance, Section 1180.

Finding 24: This property contains Beaver Creek within it, running through the northern portion of the parcel. The site map submitted by the applicant shows the proposed marijuana grow to be approximately 600 feet from the creek, which far exceeds the 50 foot setback listed in 1172(A)2. Staff finds that MO 17-07 complies with the criteria in Section 1170 of the Columbia County Zoning Ordinance and will not have any adverse impacts on the riparian corridor of Beaver Creek.

Section 1180 WETLAND AREA OVERLAY WA

- 1181 Purpose: The purpose of this zone is to protect significant wetlands within the identified Wetland Areas as shown on the State Wetland Inventory and Local Wetland Inventories, from filling, drainage, or other alteration which would destroy or reduce their biological value. The Wetland Area Overlay does not apply to land legally used for commercial forestry operations or standard farm practices, both of which are exempt from these wetland area corridor standards. The use of land for

commercial forestry is regulated by the Oregon Department of Forestry. The use of land for standard farm practices is regulated by the Oregon Department of Agriculture, with riparian area and water quality issues governed by ORS 568.210 to ORS 568.805.

- 1182 Definition: A significant wetland is an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. In case of dispute over whether an area is of biological value and should be considered a significant wetland, the County shall obtain the recommendation of the Oregon Department of Fish and Wildlife, the Columbia County Soil and Water Conservation District, and the Division of State Lands.
- 1183 Permitted Uses: Uses and development activities permitted outright or conditionally in the underlying zone shall be permitted in the Wetland Area Overlay Zone if they will not result in filling, drainage, removal of vegetation, or other alteration which would destroy or degrade a significant wetland as defined in Section 1182. Minor drainage improvements necessary to ensure effective drainage on surrounding agricultural lands under Oregon Department of Agriculture wetland rules shall be allowed where such an action has been fully coordinated with the Oregon Department of Fish and Wildlife, the Columbia County Soil and Water Conservation District, and the Division of State Lands. Existing drainage ditches may be cleared to original specifications without County review.
- 1184 Development Standards:
- A. Riparian Corridor Standards for Wetlands. For the purposes of this Section, “Fish-bearing streams” shall mean all streams identified as being fish-bearing, by the Oregon Department Forestry in the Stream Classification Maps, as amended, and “Fish-bearing lakes” shall mean those streams identified in “Lakes of Columbia County”. The current Oregon Department of Forestry Stream Classification Map is attached to the Comprehensive Plan, Technical Appendix, Part XVI, Article X(B), for reference. The Map, “Lakes of Columbia County” is also attached to the Comprehensive Plan, Technical Appendix, Part XVI, Article X(B), and is incorporated therein. Significant Wetlands are identified on the State Wetlands Inventory (SWI), and Local Wetlands Inventories (LWI's). The SWI is attached to the Comprehensive Plan, Part XVI, Article X(A), for reference.
[...]
4. Wetlands not associated with Streams, Rivers, Sloughs, or Fish-Bearing Lakes. Along all wetlands not associated with a stream, river, slough, or non-fish-bearing lake, there shall not be a protective riparian corridor boundary. However, development is prohibited from encroaching within a delineated wetland boundary.

Finding 25: There is a documented wetland on the property classified as “PEMC” by the National Wetlands Inventory (NWI). The wetland is a Palustrine forested wetland that is only temporarily flooded. Palustrine wetlands are freshwater wetlands commonly referred to as marches, bogs, and swamps. Included are wetlands dominated by trees, shrubs, persistent emergents, emergent mosses or lichens and some non-vegetated wetlands that do not meet the criteria for Lacustrine wetlands. Staff finds that MO 17-07 complies with Section 1180 of the Columbia County Zoning Ordinance, as the structures are more than 500 feet from the delineated wetland boundary, and will not result in filling,

drainage, removal of vegetation, or any other alteration which would destroy or degrade the wetland.

COMMENTS:

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

County Transportation Planner: Has reviewed the proposal submitted for MO 17-07 and has no objection to its approval, but provided the applicant obtains a commercial access permit prior to Final Occupancy.

County Sanitarian: Applicant will need to submit a detailed MO process waste water disposal plan ("waste plan" not sufficient). Proposal for employees may trigger the requirement for an authorization.

Columbia River PUD: Has reviewed the submitted proposal and has no objections to its approval as submitted. The Engineering Supervisor commented, "*significant upgrades will likely be required for additional electrical loads at this location. We would like notification if approved.*"

Columbia River Fire and Rescue: As of the date of this report, LDS has no received any comments for MO 17-07.

District 18 Watermaster: Has reviewed the application and has no objection to its approval as submitted.

CONCLUSION, RECOMMENDATION, & CONDITIONS:

On November 28, 2016 the Marijuana Operation Application, MO 17-07, was accepted as complete and was to be processed administratively in accordance with subsection 1601 of the Columbia County Zoning Ordinance which requires notifications to neighboring property owners and affected agencies for comments related to the pending decision. Property owners within 750 feet of the subject properties were notified of the request on November 30, 2016 and 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 the time period, on December 8, 2016, a Referral was post marked and received from a notified party and the Appeal/Referral to Planning Commission was filed in the Clerks Office.

The referral to the Planning Commission was submitted by Lugene Ontiveros of 75503 Larsen Road, Rainier, OR 97048. The reasons for the referral are listed as "*wetlands use and watertable, area wells contamination; concern for property values, odor, increased neighborhood traffic, security issues, light and noise pollution.*"

Staff acknowledges that Ms. Ontiveros' concerns are shared by the County Board of Commissioners, Sheriff, and LDS, and that the provisions in Section 1803 have been designed to help mitigate these potential impacts by not only prohibiting the onsite selling of marijuana, but also requiring all indoor growing facilities to be at least 100' feet away from all property lines. If in the future, it is evident that these provisions are not successful in mitigating these threats to the public's safety, the Board of Commissioners has the authority to amend the applicable provisions of the Zoning Ordinance to do so.

On February 6, 2017 The Columbia County Planning Commission approved, with conditions, the application MO 17-07. Within the allotted appeal period, Phillip Hamilton submitted an appeal to Land Development Services, on February 14, 2017, stating that he does not agree with the decision made by the Planning Commission. This appeal will be heard by the Board of County Commissioners on April 5, 2017

Based upon research about the property, observations of the field visits and findings of the Staff Report for **MO 17-07** Staff recommends the Planning Commission **APPROVES** this request to conduct an indoor/outdoor marijuana grow operation on the subject ~21.48 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. This application has been approved under state and local law. However, this land use approval provides no immunity from federal prosecution for violation of the CSA.
3. 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 site inspection(s). This documentation will be required prior to the issuance of any building permits and will authorize the use of proposed structures as described in MO 17-07.
4. The applicant shall 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 17-07.
5. The structures authorized in MO 17-07, as part of this indoor grow facility, shall be setback a minimum of 100 feet from all property lines. A County official shall conduct an on-site visit to verify that this setback has been met.

6. All structures authorized in MO 17-07 shall be surrounded on all sides by 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. In areas where the 30' firebreak area overlaps with the riparian corridor, then the requirements of the riparian corridor shall be respected over the firebreak area.
7. If the owner/operator wants to install a sign advertising the facility, they shall first get a sign permit from LDS. Any future onsite signage shall be required to comply with the applicable provisions of Section 1300 of the Zoning Ordinance
8. The responsibility for protection from wildlife damage on the property shall be assumed by the property owner.
9. 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.
10. The following shall be completed prior to Building Permit Issuance of the proposed structures in MO 17-07:
 - a. Written confirmation from the State of Oregon documenting the site presented for MO 17-07 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. The County Sanitarian shall work with ODFW to ensure wetland areas are not contaminated. This documentation shall allow the County to confirm the wastewater generated from the proposed marijuana grow system is disposed of appropriately and complies with the minimum provisions in the OAR 340-071-0130(4).
 - c. The property owner shall sign and record in the deed records of Columbia County a *WAIVER OF REMONSTRANCE* regarding past, current or future accepted farm or forest operations of adjacent and nearby lands. A copy of this recorded waiver shall be submitted to LDS.
 - d. The applicant shall submit to LDS written documentation that Columbia River Fire and Rescue has conducted a final inspection of the driveway and has determined that it is in compliance with emergency vehicle apparatus standards.

Attachments:

MO 17-07 submitted application & proposed site plan
Address, Zoning and Vicinity Maps

ATTACHMENT A