

## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005

Phone: (541) 388-6575 Fax: (541) 385-1764

<http://www.deschutes.org/cd>

### FINDINGS & DECISION

**FILE NUMBER:** 247-16-000600-AD

**OWNER:** Rubio Real Estate Investments, LLC  
2979 NW 17<sup>th</sup> St.  
Redmond, OR 97756

**APPLICANT/AGENT:** Douglas R. White  
Oregon Planning Solutions  
60762 River Bend Dr.  
Bend, OR 97702

**PROPOSAL:** The applicant is requesting approval of an Administrative Determination to establish a marijuana production facility in the Exclusive Farm Use (EFU) Zone.

**STAFF CONTACT:** Jacob Ripper, Associate Planner

#### I. APPLICABLE CRITERIA

Title 18 of the Deschutes County Code, the County Zoning Ordinance  
Chapter 18.16, Exclusive Farm Use Zones  
Chapter 18.80, Airport Safety Combining Zone  
Chapter 18.116, Supplementary Provisions

Title 22 of the Deschutes County Code, the Development Procedures Ordinance

#### II. BASIC FINDINGS

- A. Location:** The subject property has an assigned address of 23105 Alfalfa Market Rd., Bend, and is identified on County Assessor's Map 17-13-33A, as tax lot 201.
- B. Lot of Record:** The subject property is a legal lot of record because it is Parcel 2 of the Minor Land Partition MP-83-13, and recorded with the County Surveyor as CS03304.
- C. Zoning:** The subject property is zoned Exclusive Farm Use – Tumalo/Redmond/Bend Subzone (EFU-TRB) and is within the Airport Safety (AS) combining zone.

- D. Proposal:** The applicant is requesting approval of an Administrative Determination to establish a marijuana production facility in the Exclusive Farm Use (EFU) zone. The proposal consists of a maximum mature plant canopy size of 9,760 square feet within three structures. Those three structures are one 6,000 square foot building with 4,000 square feet of mature plant canopy, and two 2,880 square foot greenhouses with a combined 5,760 square feet of mature plant canopy.
- E. Site Description:** The subject property is approximately 20.05 acres in size according to County Assessor's records, and rectangular in shape. The property slopes slightly down to the southwest and has a vegetative cover of juniper trees scattered in pockets throughout. A large rock outcrop exists in the eastern-center of the property.
- F. Surrounding Land Uses:** The subject property is surrounded to the north, east, and west by rural residential uses and small-scale hobby farms on lands zoned EFU-TRB. To the south and southwest are other rural residential uses and hobby farms on lands zoned Multiple-Use Agricultural (MUA-10). The hobby farm uses consist of livestock, irrigated pasture and hay production. Approximately 1,300 feet to the east are Federally-owned vacant lands and zoned EFU-AL.
- G. Land Use History:** The subject property received a conditional use permit approval to establish a nonfarm dwelling under file CU-05-6. That land use permit expired prior to the use being established. Another conditional use permit under file 247-15-000103-CU approved an application to re-establish the expired nonfarm dwelling approval. The nonfarm dwelling has not been established as of the date of mailing of this Findings & Decision. A property line adjustment under file 247-15-000280-LL approved an adjustment between the subject property and the properties identified on County Assessor's Map 17-13-28 as tax lots 1600 and 1601. The result of the property line adjustment would be a consolidation of tax lot 1601 with tax lot 201. The property line adjustment has not received final approval because copies of the recorded survey and new deeds have not been submitted to the Planning Division as of the date of mailing of this Findings & Decision.
- H. Public Agency Comments:** The Planning Division mailed notice and received comments from the following agencies:

*Deschutes County Building Division: The Deschutes County Building Safety Divisions code required Access, Egress, Setback, Fire & Life Safety Fire Fighting Water Supplies, etc. will be specifically addressed during the plan review process for any proposed structures and occupancies. All Building Code required items will be addressed, when a specific structure, occupancy, and type of construction is proposed and submitted for plan review.*

*Deschutes County Senior Transportation Planner, Peter Russell: I have reviewed the transmittal materials for 247-16-000600-AD for a 10,000-square-foot marijuana production (growing) operation within one 4,000-square foot building and two greenhouses of 3,000 square feet each in the Exclusive Farm Use (EFU) zone at 23105 Alfalfa Market Road, aka 17-13-33A, Tax Lot 201.*

*The most recent edition of the Institute of Traffic Engineers (ITE) Trip Generation Handbook does not contain a category for marijuana production. In consultation with*

the Road Department Director and Planning staff, the County has determined the best analog use is Warehouse (Land Use 150) based on the storage requirements and employees of this activity. Warehouse generates daily trips at a rate of 3.56 trips per 1,000 square feet. The application indicates the site will have 10,000 square feet of building devoted to cannabis production. The resulting trip rate would be 36 daily trips (3.56 X 10). Deschutes County Code (DCC) at 18.116.310(C)(3)(a) states no further traffic analysis is needed if there are 50 or less new weekday trips generated from the use. The proposed land use will not meet this minimum threshold for additional traffic analysis.

Board Resolution 2013-020 sets a transportation system development charge (SDC) rate of \$3,852 per p.m. peak hour trip. The ITE indicates Warehouse generates 0.32 p.m. peak hour trips per 1,000 square feet, which in this instance would result in 3.2 p.m. peak hour trips (0.32 X 10). Thus the applicable SDC would be \$12,326 (1.6 X \$3,852). The SDC is due prior to issuance of certificate of occupancy; if a certificate of occupancy is not applicable, then the SDC is due within 60 days of the land use decision becoming final.

**Bend Fire Department:**

*General Safety Provisions:*

*Hazard Communication*

- *Material Safety Data Sheets shall be on property and made easily accessible to the fire code official. Section 5003.4 of the 2014 Oregon Fire Code*
- *Containers and/or packages related to hazardous materials shall be properly labeled and warning signage shall be properly displayed and easily visible. Section 5003.5.1 of the 2014 Oregon Fire Code.*
- *All persons shall be trained on what to do in the event of an emergency involving hazardous materials on the property. Sections 406 and 407 of the 2014 Oregon Fire Code.*
- *NFPA 704 hazard identification signs shall be placed on stationary containers and above ground tanks and at entrances to locations where hazardous materials are stored, dispensed, used, or handled in quantities requiring a permit and at specific entrances and locations designated by the fire code official. Section 5003.5 of the 2014 Oregon Fire Code.*

*Building and Equipment Design Features:*

*Interior Finishes*

- *Interior finishes (Visqueen® or Mylar® type plastic/polyethylene or polyester to cover walls and ceilings) must comply with flame spread ratings in accordance with Table 803.3 of the 2014 Oregon Fire Code.*

*Exits and Exit Signage, Egress:*

*Security measures shall not conflict with the maintenance and operation of exiting and egress.*

- *Means of egress shall not be concealed in any way. Section 1008.1 of the 2014 Oregon Fire Code.*
- *Exit doors and their function shall not be eliminated or modified in any way without prior approval of the Building Official. Section 1001.2 of the 2014 Oregon Fire Code.*
- *Slide bolts and security bars installed on emergency egress doors are prohibited. Section 1008.1.9.4 of the 2014 Oregon Fire Code.*

*Fire Extinguishers:*

- *Provide 10 lb. ABC 4A:80B:C portable fire extinguishers through the facility to achieve a maximum travel distance of no more than 75 feet to each fire extinguisher. Section 906.1 of the 2014 Oregon Fire Code.*

*Fire Apparatus and Building Access:*

- *Buildings/facilities associated with the production of marijuana shall have at least one all-weather road 20 feet wide and supporting fire apparatus up to 60,000 GVW. Section 503.2 of the 2014 Oregon Fire Code.*
- *Gates across fire apparatus access road shall be approved by the fire code official. Section 503.6 of the 2014 Oregon Fire Code.*
- *The installation of a Knox Box® and/or Knox® Key Override shall be installed to provide rapid entry. Section 506.1 of the 2014 Oregon Fire Code.*

*Fire Protection Water Supplies:*

- *An approved water supply capable of supplying the required fire flow for fire protection shall be provided to premises upon which facilities, buildings or portions of buildings are hereafter constructed or moved into or within the jurisdiction. Section 507.1 of the 2014 Oregon Fire Code.*
- *Fire flow requirements for buildings or portions of buildings shall be determined by an approved method. Documentation of the available fire flow shall be provided to the fire code official prior to final approval of the water supply system.*
- *In areas without water supply systems, the fire code official is authorized to use NFPA 1142 in determining fire flow requirements. Appendix B107.1 of the 2014 Oregon Fire Code.*

*Hazardous Materials and Operations:*

- *Provide information to the fire code official on the use of Carbon Dioxide and Carbon Dioxide generators related to the marijuana production operation. The use of Carbon Dioxide or Carbon Dioxide Generators creating an asphyxiation hazard shall require monitoring, detection and an audible alarm. Chapter 50 of the 2014 Oregon Fire Code.*

*Other Fire Service Features:*

- *New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. Numbers shall be a minimum 4 inches high with a minimum stroke width of 0.5 inch. Where access is by means of a private road and the building cannot be viewed from the public way, a monument, pole, or other sign or means shall be used to identify the structure. Address signs are available through the Deschutes Rural Fire Protection District #2. An address sign application can be obtained from the City of Bend Fire Department website or by calling 541-388-6309 during normal business hours. Section 505.1 of the 2014 Oregon Fire Code.*

**The following agencies either had no comment or did not respond to the notice:**

Avion Water Company, Bend/La Pine School District, Bend Municipal Airport, Central Oregon Irrigation District, Deschutes County Assessor, Deschutes County Environmental Soils Division, and Oregon Liquor Control Commission.

I. **Public Comments:** The Planning Division mailed a written notice of this application to property owners within 750 feet of the subject property on October 12, 2016. Two public comment letters were received and raised the following concerns:

1. Odor control
2. Light pollution
3. Use of a secure waste receptacle
4. Visual impacts
5. Neighborhood crime
6. Criminal trespassing
7. Environmental impacts from the use of pesticides and fungicides
8. Property value impacts

Staff Comment: The Deschutes County Code (DCC) does not authorize the Planning Division to review concerns 5 - 8 above in relation to the proposal. Applicable criteria of the DCC are addressed in the findings below.

J. **Review Period:** This application was submitted on October 4, 2016. It was deemed incomplete on November 2, 2016. After the applicant submitted additional information, the application was accepted and deemed complete on December 19, 2016. The 150<sup>th</sup> day on which the county must take final action on this application is May 18, 2017.

### III. CONCLUSIONARY FINDINGS

#### A. Chapter 18.16, Exclusive Farm Use Zones

1. Section 18.16.020. Use Permitted Outright.

*The following uses and their accessory uses are permitted outright:*

...

**S. Marijuana production, subject to the provisions of DCC 18.116.330.**

**FINDING:** The proposed marijuana production facility is an allowable use permitted outright in the EFU zones, subject to the provisions of DCC 18.116.330, which are reviewed below.

2. 18.16.060. Dimensional Standards.

**E. Building height. No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed under DCC 18.120.040.**

**FINDING:** No elevation drawings were submitted by the applicant. This criterion can be met by the imposition of a condition of approval.

Prior to issuance of building permits, the applicant shall submit elevation plans demonstrating all structures shall not exceed 30 feet in height.

3. Section 18.16.070. Yards.

- A. *The front yard shall be a minimum of: 40 feet from a property line fronting on a local street, 60 feet from a property line fronting on a collector street, and 100 feet from a property line fronting on an arterial street.*
- B. *Each side yard shall be a minimum of 25 feet, except that for a nonfarm dwelling proposed on property with side yards adjacent to property currently employed in farm use, and receiving special assessment for farm use, the side yard shall be a minimum of 100 feet.*
- C. *Rear yards shall be a minimum of 25 feet, except that for a nonfarm dwelling proposed on property with a rear yard adjacent to property currently employed in farm use, and receiving special assessment for farm use, the rear yard shall be a minimum of 100 feet.*
- D. *In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.*

**FINDING:** Staff finds the subject property's northern property line is the front property line. Alfalfa Market Road to the north is an arterial road, therefore the required front yard setback is 100 feet. The revised site plan indicates the three proposed structures are clustered together and the closest structure is approximately 330 feet from the northern front property line. The proposal is not for a non-farm dwelling, therefore, the required side and rear yard setbacks are 25 feet. The submitted plot plan indicates the clustered structures will have a western side yard setback of 115 feet, an eastern side yard setback of approximately 445 feet, and a southern rear yard setback of approximately 820 feet. The required yard setbacks of subsections A, B, and C are met.

Any greater setbacks required by applicable building or structural codes will be addressed during building permit review.

B. **Chapter 18.116, Supplementary Provisions**

1. Section 18.116.330, Marijuana Production, Processing, and Retailing.

- A. **Applicability. Section 18.116.330 applies to:**
  - 1. *Marijuana Production in the EFU, MUA-10, and RI zones.*
  - 2. *Marijuana Processing in the EFU, MUA-10, TeC, TeCR, TuC, Tul, RI, and SUBP zones*
  - 3. *Marijuana Retailing in the RSC, TeC, TeCR, TuC, Tul, RC, RI, SUC, SUTC, and SUBP zones.*
  - 4. *Marijuana Wholesaling in the RSC, TeC, TeCR, TuC, RC, SUC, and SUBP zones.*

**FINDING:** The applicant has proposed Marijuana Production in the EFU zone. This section applies.

**B. Marijuana production and marijuana processing. Marijuana production and marijuana processing shall be subject to the following standards and criteria:**

**1. Minimum Lot Area.**

- a. *In the EFU and MUA-10 zones, the subject legal lot of record shall have a minimum lot area of five (5) acres.*

**FINDING:** The subject property is a legal lot of record and is 20.05 acres in size. This standard is met.

**2. Indoor Production and Processing.**

- a. *In the MUA-10 zone, marijuana production and processing shall be located entirely within one or more fully enclosed buildings with conventional or post framed opaque, rigid walls and roof covering. Use of greenhouses, hoop houses, and similar non-rigid structures is prohibited.*
- b. *In the EFU zone, marijuana production and processing shall only be located in buildings, including greenhouses, hoop houses, and similar structures.*
- c. *In all zones, marijuana production and processing are prohibited in any outdoor area.*

**FINDING:** The subject property is within the EFU zone. The applicant has proposed that production will occur within one (1) 6,000-square-foot fully enclosed structure, and two (2) 2,880 square foot greenhouses, complying with these criteria. These criteria can be met.

As an ongoing condition of approval, marijuana production and processing are prohibited in any outdoor area.

**3. Maximum Mature Plant Canopy Size. In the EFU zone, the maximum canopy area for mature marijuana plants shall apply as follows:**

- a. *Parcels from 5 acres to less than 10 acres in lot area: 2,500 square feet.*
- b. *Parcels equal to or greater than 10 acres to less than 20 acres in lot area: 5,000 square feet. The maximum canopy area for mature marijuana plants may be increased to 10,000 square feet upon demonstration by the applicant to the County that:*
- i. *The marijuana production operation was lawfully established prior to January 1, 2015; and*
- ii. *The increased mature marijuana plant canopy area will not generate adverse impact of visual, odor, noise, lighting, privacy or access greater than the impacts associated*

*with a 5,000 square foot canopy area operation.*

- c. Parcels equal to or greater than 20 acres to less than 40 acres in lot area: 10,000 square feet.*
- d. Parcels equal to or greater than 40 acres to less than 60 acres in lot area: 20,000 square feet.*
- e. Parcels equal to or greater than 60 acres in lot area: 40,000 square feet.*

**FINDING:** The applicant has proposed a maximum of 9,760 square feet in mature plant canopy area, as allowed under subsection (c) for properties with a lot area equal to or greater than 20 acres and less than 40 acres. The subject property is 20.05 acres in size. This criterion will be met.

- 4. *Maximum Building Floor Area. In the MUA-10 zone, the maximum building floor area used for all activities associated with marijuana production and processing on the subject property shall be:***
  - a. Parcels from 5 acres to less than 10 acres in lot area: 2,500 square feet.*
  - b. Parcels equal to or greater than 10 acres: 5,000 square feet.*

**FINDING:** The subject property is not located in the MUA-10 Zone. This criterion does not apply.

- 5. *Limitation on License/Grow Site per Parcel. No more than one (1) Oregon Liquor Control Commission (OLCC) licensed marijuana production or Oregon Health Authority (OHA) registered medical marijuana grow site shall be allowed per legal parcel or lot.***

**FINDING:** The proposed use includes only one (1) Oregon Liquor Control Commission (OLCC) licensed marijuana production site. This criterion will be met.

- 6. *Setbacks. The following setbacks shall apply to all marijuana production and processing areas and buildings:***
  - a. Minimum Yard Setback/Distance from Lot Lines: 100 feet.*
  - b. Setback from an off-site dwelling: 300 feet. For the purposes of this criterion, an off-site dwelling includes those proposed off-site dwellings with a building permit application submitted to Deschutes County prior to submission of the marijuana production or processing application to Deschutes County.*
  - c. Exception: Any reduction to these setback requirements may be granted by the Planning Director or Hearings Body provided the applicant demonstrates the reduced setbacks afford equal or*



**greater mitigation of visual, odor, noise, lighting, privacy, and access impacts.**

**FINDING:** The submitted plot plan indicates the marijuana production structures are a minimum of 115 feet from all property lines. The applicant submitted a revised site plan demonstrating the closest off-site dwelling is 320 feet northwest of the subject marijuana production area, meeting the requirement under subsection (b) above. These criteria will be met.

- 7. Separation Distances. Minimum separation distances shall apply as follows:**
  - a. The use shall be located a minimum of 1000 feet from:**
    - i. A public elementary or secondary school for which attendance is compulsory under Oregon Revised Statutes 339.010, et seq., including any parking lot appurtenant thereto and any property used by the school;**
    - ii. A private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a), including any parking lot appurtenant thereto and any property used by the school;**
    - iii. A licensed child care center or licensed preschool, including any parking lot appurtenant thereto and any property used by the child care center or preschool. This does not include licensed or unlicensed child care which occurs at or in residential structures;**
    - iv. A youth activity center; and**
    - v. National monuments and state parks.**
  - b. For purposes of DCC 18.116.330(B)(7), all distances shall be measured from the lot line of the affected properties listed in DCC 18.116.330(B)(7)(a) to the closest point of the buildings and land area occupied by the marijuana producer or marijuana processor.**
  - c. A change in use of another property to those identified in DCC 18.116.330(B)(7) shall not result in the marijuana producer or marijuana processor being in violation of DCC 18.116.330(B)(7) if the use is:**
    - i. Pending a local land use decision;**
    - ii. Licensed or registered by the State of Oregon; or**
    - iii. Lawfully established.**

**FINDING:** The applicant states the closest use requiring separation is approximately 15,000 feet from the subject property and is the New Leaf Academy, a private school. Twenty-seven (27) properties are wholly or partially within 1,000 feet of the subject property. According to

Deschutes County GIS, none of these properties are in a use described in the above section or are subject to subsection (c). These criteria are met.

8. **Access. Marijuana production over 5,000 square feet of canopy area for mature marijuana plants shall comply with the following standards.**
  - a. **Have frontage on and legal direct access from a constructed public, county, or state road; or**
  - b. **Have access from a private road or easement serving only the subject property.**
  - c. **If the property takes access via a private road or easement which also serves other properties, the applicant shall obtain written consent to utilize the easement or private road for marijuana production access from all owners who have access rights to the private road or easement. The written consent shall:**
    - i. **Be on a form provided by the County and shall contain the following information;**
    - ii. **Include notarized signatures of all owners, persons and properties holding a recorded interest in the private road or easement;**
    - iii. **Include a description of the proposed marijuana production or marijuana processing operation; and**
    - iv. **Include a legal description of the private road or easement.**

**FINDING:** The applicant proposes a maximum canopy size of 9,760 square feet. These criteria apply. The tract<sup>1</sup> owned by Rubio Real Estate Investments includes a 0.22 acre tax lot (Assessor's Map 17-13-28, tax lot 1601) which is north of and adjacent to the subject property. Tax lot 1601 has frontage on Alfalfa Market Road. A property line adjustment approval under file 247-15-000280-LL approved a consolidation of tax lot 1601 with the subject tax lot 201. According to Planning Division records, it does not appear the property line adjustment was perfected, meaning a survey and/or deeds, as required by the decision, were recorded with the County Clerk and copies of those recorded documents returned to the Planning Division for review. Regardless, staff finds both tax lots comprise a tract of land which has frontage on a public road and the access requirements of this section are met.

9. **Lighting. Lighting shall be regulated as follows:**
  - a. **Inside building lighting, including greenhouses, hoop houses, and similar structures, used for marijuana production shall not be visible outside the building from 7:00 p.m. to 7:00 a.m. on the following day.**
  - b. **Lighting fixtures shall be fully shielded in such a manner that all light emitted directly by the lamp or**

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<sup>1</sup> "Tract," as used in DCC 18.16, 18.36 and 18.40 means one or more contiguous lots or parcels in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway. DCC 18.04.030.

*a diffusing element, or indirectly by reflection or refraction, is projected below the horizontal plane through the lowest light-emitting part.*

- c. Light cast by exterior light fixtures other than marijuana grow lights shall comply with DCC 15.10, Outdoor Lighting Control.*

**FINDING:** The agent states, "No lighting from inside [the] building or greenhouse[s] will be visible from 7:00 p.m. to 7:00 a.m. on the following day or projected upward. No lighting will be visible from the buildings' interior, and greenhouses will have black-out light deprivation systems installed and operated by auto timers. Light cast by exterior light fixtures other than marijuana grow lights will comply with DCC 15.10, Outdoor Lighting Control". These criteria can feasibly be met.

Staff adds the following ongoing conditions of approval to ensure compliance with the above section: Inside building lighting, including greenhouses, hoop houses, and similar structures, used for marijuana production shall not be visible outside the building from 7:00 p.m. to 7:00 a.m. on the following day. Lighting fixtures shall be fully shielded in such a manner that all light emitted directly by the lamp or a diffusing element, or indirectly by reflection or refraction, is projected below the horizontal plane through the lowest light-emitting part. The light cast by exterior light fixtures other than marijuana growing lights shall comply with DCC 15.10, Outdoor Lighting Control.

- 10. Odor. As used in DCC 18.116.330(B)(10), building means the building, including greenhouses, hoop houses, and other similar structures, used for marijuana production or marijuana processing.**
  - a. The building shall be equipped with an effective odor control system which must at all times prevent unreasonable interference of neighbors' use and enjoyment of their property.*
  - b. An odor control system is deemed permitted only after the applicant submits a report by a mechanical engineer licensed in the State of Oregon demonstrating that the system will control odor so as not to unreasonably interfere with neighbors' use and enjoyment of their property.*
  - c. Private actions alleging nuisance or trespass associated with odor impacts are authorized, if at all, as provided in applicable state statute.*
  - d. The odor control system shall:*
    - i. Consist of one or more fans. The fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three. The filter(s) shall be rated for the required CFM; or*
    - ii. Utilize an alternative method or technology to achieve equal to or greater odor mitigation than provided by (i) above.*

- e. ***The system shall be maintained in working order and shall be in use.***

**FINDING:** The agent has submitted a letter dated November 23, 2016, from Registered Professional Engineer Robert James stating that odor will be controlled in the greenhouses by an automatic exhaust fan system that utilizes a fogger to control odor and will satisfy the requirements of DCC 18.116.330(B)(10)(d)(ii) above. The engineer goes on to state the odor control system inside the building will use carbon filters to satisfy these requirements. This criterion can be met.

As an ongoing condition of approval, proposed odor control system must at all times prevent unreasonable interference with neighbors' use and enjoyment of their property. The odor control system shall be maintained in working order and shall be in use.

- 11. ***Noise. Noise produced by marijuana production and marijuana processing shall comply with the following:***
  - a. ***Sustained noise from mechanical equipment used for heating, ventilation, air condition, odor control, fans and similar functions shall not exceed 30 dB(A) measured at any property line between 10:00 p.m. and 7:00 a.m. the following day.***
  - b. ***Sustained noise from marijuana production is exempt from protections of DCC 9.12 and ORS 30.395, Right to Farm. Intermittent noise for accepted farming practices is permitted.***

**FINDING:** The agent has submitted a letter dated November 23, 2016, from Registered Professional Engineer Robert James, which states, "*The greenhouse exhaust fans will not operate at night between the hours of 10 pm and 7 am. The HVAC equipment for the shop building does not run continuously. It runs only intermittently, similar to a typical home HVAC system. Therefore, there is no sustained noise from this equipment. Additionally, the outdoor condensing units will be screened on one side by the shop building and will be screened on the other three sides by a concrete wall. Our calculations indicate that [the] sound level from operating HVAC equipment should not exceed 30 dBA at any property lines between the hours of 10 pm and 7 am, and meets the requirements of County Code Chapter 18.116.330(B)(11)*" Staff finds the Engineer's statements satisfy the requirements of this section. These criteria can be met.

As an ongoing condition of approval, sustained noise from mechanical equipment used for heating, ventilation, air conditioning, odor control, fans and similar functions shall not exceed 30 dB(A) measured at any property line between 10:00 p.m. and 7:00 a.m. the following day.

- 12. ***Screening and Fencing. The following screening standards shall apply to greenhouses, hoop houses, and similar non-rigid structures and land areas used for marijuana production and processing:***
  - a. ***Subject to DCC 18.84, Landscape Management Combining Zone approval, if applicable.***
  - b. ***Fencing shall be finished in a muted earth tone that blends with the surrounding natural landscape and shall not be constructed of temporary materials***

*such as plastic sheeting, hay bales, tarps, etc., and shall be subject to DCC 18.88, Wildlife Area Combining Zone, if applicable.*

- c. Razor wire, or similar, shall be obscured from view or colored a muted earth tone that blends with the surrounding natural landscape.*
- d. The existing tree and shrub cover screening the development from the public right-of-way or adjacent properties shall be retained to the maximum extent possible. This provision does not prohibit maintenance of existing lawns, removal of dead, diseased or hazardous vegetation; the commercial harvest of forest products in accordance with the Oregon Forest Practices Act; or agricultural use of the land.*

**FINDING:** The applicant states that fencing is proposed to enclose the marijuana production area, that no temporary materials will be used, and that all proposed fencing and all wires will be in a muted earth tone color. The applicant has not provided the specific colors or materials of the fencing. The subject property is not in the Landscape Management or the Wildlife Area Combining Zones. The property contains numerous trees that partially screen the proposed structures from view from the public right of way and from adjacent properties. Furthermore, the structure exceeds setbacks from property lines required by DCC sections 18.16.070 and 18.116.330(B)(6). These criteria can be met, and staff adds the following conditions to ensure compliance with the above criteria of this section.

As an ongoing condition of approval, fencing and wire shall be finished in a muted brown, green, or natural wood color and shall not be constructed of temporary materials such as plastic sheeting, hay bales, tarps, etc.

As an ongoing condition of approval, the existing tree and shrub cover screening the development from the public right-of-way or adjacent properties shall be retained to the maximum extent possible. This provision does not prohibit the maintenance of existing lawns, removal of dead, diseased or hazardous vegetation; the commercial harvest of forest products in accordance with the Oregon Forest Practices Act; or agricultural use of the land.

- 13. *Water. The applicant shall provide:***
  - a. A copy of a water right permit, certificate, or other water use authorization from the Oregon Water Resource Department; or*
  - b. A statement that water is supplied from a public or private water provider, along with the name and contact information of the water provider; or*
  - c. Proof from the Oregon Water Resources Department that the water to be used is from a source that does not require a water right.*

**FINDING:** The applicant states that water is provided by Avion and irrigation is provided by Central Oregon Irrigation District. The applicant references a letter from Avion in the file 247-15-000103-CU that states Avion will serve the subject property with potable water. Staff was able to locate this letter dated March 3, 2015. The applicant has also submitted a "Parton

Taxlot Inquiry” from Central Oregon Irrigation District stating the property is served with 10.0 acres of irrigation water for use from April 1<sup>st</sup> to October 31<sup>st</sup>. These criteria can be met.

- 14. Fire protection for processing of cannabinoid extracts. Processing of cannabinoid extracts shall only be permitted on properties located within the boundaries of or under contract with a fire protection district.**

**FINDING:** No processing is proposed and this section does not apply.

- 15. Utility Verification. A statement from each utility company proposed to serve the operation, stating that each such company is able and willing to serve the operation, shall be provided.**

**FINDING:** The applicant states, “in the above referenced CUP, the record also demonstrates that Central Electric Cooperatives ‘will serve’ the subject property with electricity”. Staff was not able to locate the “will serve” letter associated with the CUP file 247-15-000103-CU in Planning Division records. Regardless, a “will serve” letter from the electric utility for the referenced CUP would have been for residential use and would not satisfy this criterion. A commercial marijuana production facility can reasonably be expected to consume more electricity than a typical residential use. Staff finds this criterion can feasibly be met through a condition of approval.

Prior to issuance of building permits, a statement from the electric utility company proposed to serve the marijuana production operation, stating that the electric utility company is able and willing to serve the operation, shall be provided to the Planning Division.

- 16. Security Cameras. If security cameras are used, they shall be directed to record only the subject property and public rights-of-way, except as required to comply with requirements of the OLCC or the OHA.**

**FINDING:** The applicant agrees to these requirements and states all cameras will only record the subject property.

As an ongoing condition of approval, security cameras shall be directed to record only the subject property and public rights-of-way, except as required to comply with requirements of the OLCC or the OHA.

- 17. Secure Waste Disposal. Marijuana waste shall be stored in a secured waste receptacle in the possession of and under the control of the OLCC licensee or OHA Person Responsible for the Grow Site (PRMG).**

**FINDING:** The applicant acknowledged this requirement and states, “marijuana waste will be stored in a secured waste receptacle in the possession of and under the control of the OLCC licensee”. The applicant did not specify where the waste will be stored or how it will be secured. The OLCC’s licensing requirements in OAR 845-025-7750(1)(b) require the applicant to, “store marijuana waste in a secured waste receptacle in the possession of and

*under the control of the licensee". Staff finds this criterion can feasibly be met by both an ongoing condition of approval and as part of the licensing requirements for the OLCC.*

As an ongoing condition of approval, marijuana waste shall be stored in a secured waste receptacle in the possession of and under the control of the OLCC licensee.

- 18. Residency. In the MUA-10 zone, a minimum of one of the following shall reside in a dwelling unit on the subject property:**
- a. An owner of the subject property;**
  - b. A holder of an OLCC license for marijuana production, provided that the license applies to the subject property; or**
  - c. A person registered with the OHA as a person designated to produce marijuana by a registry identification cardholder, provided that the registration applies to the subject property.**

**FINDING:** The subject property is not in the MUA-10 zone. This section does not apply.

- 19. Nonconformance. All medical marijuana grow sites lawfully established prior to June 8, 2016 by the Oregon Health Authority shall comply with the provisions of DCC 18.116.330(B)(9) by September 8, 2016 and with the provisions of DCC 18.116.330(B)(10-12, 16, 17) by December 8, 2016.**

**FINDING:** The proposal is not for an existing medical marijuana grow site. This section does not apply.

- 20. Prohibited Uses.**
- a. In the EFU zone, the following uses are prohibited:**
    - i. A new dwelling used in conjunction with a marijuana crop;**
    - ii. A farm stand, as described in ORS 215.213(1)(r) or 215.283(1)(o), used in conjunction with a marijuana crop;**
    - iii. A commercial activity, as described in ORS 215.213(2)(c) or 215.283(2)(a), carried on in conjunction a marijuana crop; and**
    - iv. Agri-tourism and other commercial events and activities in conjunction with a marijuana crop.**
  - c. ... In the EFU, MUA-10, and Rural Industrial zones, the following uses are prohibited on the same property as marijuana production:**
    - i. Guest Lodge.**
    - ii. Guest Ranch.**
    - iii. Dude Ranch.**
    - iv. Destination Resort.**

- v. *Public Parks.*
- vi. *Private Parks.*
- vii. *Events, Mass Gatherings and Outdoor Mass Gatherings.*
- viii. *Bed and Breakfast.*
- ix. *Room and Board Arrangements.*

**FINDING:** None of the prohibited uses have been proposed by the applicant.

As an ongoing condition of approval, the uses listed in DCC 18.116.330(20) shall be prohibited on the subject property so long as Marijuana Production is conducted on the site.

**D. Annual Reporting**

1. *An annual report shall be submitted to the Community Development Department by the real property owner or licensee, if different, each February 1, documenting all of the following as of December 31 of the previous year, including the applicable fee as adopted in the current County Fee Schedule and a fully executed Consent to Inspect Premises form:*
  - a. *Documentation demonstrating compliance with the:*
    - i. *Land use decision and permits.*
    - ii. *Fire, health, safety, waste water, and building codes and laws.*
    - iii. *State of Oregon licensing requirements.*
  - b. *Failure to timely submit the annual report, fee, and Consent to Inspect Premises form or to demonstrate compliance with DCC 18.116.330(C)(1)(a) shall serve as acknowledgement by the real property owner and licensee that the otherwise allowed use is not in compliance with Deschutes County Code; authorizes permit revocation under DCC Title 22, and may be relied upon by the State of Oregon to deny new or license renewal(s) for the subject use.*
  - c. *Other information as may be reasonably required by the Planning Director to ensure compliance with Deschutes County Code, applicable State regulations, and to protect the public health, safety, and welfare.*
  - d. *Marijuana Control Plan to be established and maintained by the Community Development Department.*
  - e. *Conditions of Approval Agreement to be established and maintained by the Community Development Department.*
  - f. *This information shall be public record subject to ORS 192.502(17).*

**FINDING:** Compliance with the annual reporting obligation of this section is required.



As an ongoing condition of approval, the annual reporting requirements of DCC 18.116.330(D) shall be met.

**C. Chapter 18.80, Airport Safety Combining Zone**

1. Section 18.80.020. Application of Provisions.

*The provisions of DCC 18.80.020 shall only apply to unincorporated areas located under airport imaginary surfaces and zones, including approach surfaces, transitional surfaces, horizontal surfaces, conical surfaces and runway protection zones. While DCC 18.80 identifies dimensions for the entire imaginary surface and zone, parts of the surfaces and/or zones do not apply within the Redmond, Bend or Sisters Urban Growth Boundaries. The Redmond Airport is owned and operated by the City of Redmond, and located wholly within the Redmond City Limits.*

*Imaginary surface dimensions vary for each airport covered by DCC 18.80.020. Based on the classification of each individual airport, only those portions (of the AS Zone) that overlay existing County zones are relevant.*

*Public use airports covered by DCC 18.80.020 include Redmond Municipal, Bend Municipal, Sunriver and Sisters Eagle Air. Although it is a public-use airport, due to its size and other factors, the County treats land uses surrounding the Sisters Eagle Air Airport based on the ORS 836.608 requirements for private-use airports. The Oregon Department of Aviation is still studying what land use requirements will ultimately be applied to Sisters. However, contrary to the requirements of ORS 836.608, as will all public-use airports, federal law requires that the FAA Part 77 surfaces must be applied. The private-use airports covered by DCC 18.80.020 include Cline Falls Airpark and Juniper Airpark.*

**FINDING:** The subject property lies within the conical surface of the Bend Municipal Airport. Therefore, the provisions of this chapter apply.

2. Section 18.80.028. Height Limitations.

*All uses permitted by the underlying zone shall comply with the height limitations in DCC 18.80.028. When height limitations of the underlying zone are more restrictive than those of this overlay zone, the underlying zone height limitations shall control. [ORS 836.619; OAR 660-013-0070]*

*A. Except as provided in DCC 18.80.028(B) and (C), no structure or tree, plant or other object of natural growth shall penetrate an airport imaginary surface. [ORS 836.619; OAR 660-013-0070(1)]*

**FINDING:** The subject property is located within the conical surface of the Bend Municipal Airport. The conical surface extends outward and upward from the periphery of the horizontal surface at a slope of 20:1<sup>2</sup> for a horizontal distance of 4,000 feet and to a vertical height of

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<sup>2</sup> This ratio is equivalent to 20 feet of horizontal distance for every 1 foot of vertical distance.

350 above the airport elevation. The proposed marijuana production facility is limited to a maximum height of 30 feet and will be located more than 10,000 feet from the airport. Staff finds that the proposed marijuana production facility will not penetrate the conical surface. This criterion will be met.

- B. For areas within airport imaginary surfaces but outside the approach and transition surfaces, where the terrain is at higher elevations than the airport runway surfaces such that existing structures and permitted development penetrate or would penetrate the airport imaginary surfaces, a local government may authorize structures up to 35 feet in height.**

**FINDING:** The subject property is within the conical surface, therefore this criterion applies. The elevation above sea level for the Bend Municipal Airport is approximately 3,436 feet. The elevation above sea level for the subject property is approximately 3,484 feet. The proposed marijuana production facility will be limited to a maximum height of 30 feet. Therefore, maximum elevation of the structures on the subject property is 3,514 feet. As noted above, the subject property is located more than 10,000 feet from the airport. Staff finds that this maximum elevation will not penetrate the conical surface.

- C. Other height exceptions or variances may be permitted when supported in writing by the airport sponsor, the Department of Aviation and the FAA. Applications for height variances shall follow the procedures for other variances and shall be subject to such conditions and terms as recommended by the Department of Aviation and the FAA (for Redmond, Bend and Sunriver.)**

**FINDING:** No height exceptions or variances are sought by this application; therefore, this criterion does not apply.

3. Section 18.80.044. Land Use Compatibility.

**Applications for land use or building permits for properties within the boundaries of this overlay zone shall comply with the requirements of DCC 18.80 as provided herein. When compatibility issues arise, the Planning Director or Hearings Body is required to take actions that eliminate or minimize the incompatibility by choosing the most compatible location or design for the boundary or use. Where compatibility issues persist, despite actions or conditions intended to eliminate or minimize the incompatibility, the Planning Director or Hearings Body may disallow the use or expansion, except where the action results in loss of current operational levels and/or the ability of the airport to grow to meet future community needs. Reasonable conditions to protect the public safety may be imposed by the Planning Director or Hearings Body. [ORS 836.619; ORS 836.623(1); OAR 660-013-0080]**

- A. Noise. Within airport noise impact boundaries, land uses shall be established consistent with the levels identified in OAR 660, Division 13, Exhibit 5 (Table 2 of DCC 18.80). Applicants for any subdivision or partition approval or other land use approval or building permit affecting land within airport noise impact boundaries, shall sign and record in the Deschutes County Book of Records, a Declaration of Anticipated Noise declaring that the**

***applicant and his successors will not now, or in the future complain about the allowed airport activities at the adjacent airport. In areas where the noise level is anticipated to be at or above 55 Ldn, prior to issuance of a building permit for construction of a noise sensitive land use (real property normally used for sleeping or as a school, church, hospital, public library or similar use), the permit applicant shall be required to demonstrate that a noise abatement strategy will be incorporated into the building design that will achieve an indoor noise level equal to or less than 55 Ldn. [NOTE: FAA Order 5100.38A, Chapter 7 provides that interior noise levels should not exceed 45 decibels in all habitable zones.]***

**FINDING:** The subject property is not within the noise impact boundary associated with the Bend Municipal Airport. Since the noise level at the subject property is anticipated to be less than 55 Ldn, staff finds that no noise abatement strategy is necessary.

- B. *Outdoor lighting. No new or expanded industrial, commercial or recreational use shall project lighting directly onto an existing runway or taxiway or into existing airport approach surfaces except where necessary for safe and convenient air travel. Lighting for these uses shall incorporate shielding in their designs to reflect light away from airport approach surfaces. No use shall imitate airport lighting or impede the ability of pilots to distinguish between airport lighting and other lighting.***

**FINDING:** The proposed marijuana production facility is a new commercial use. The subject property is outside of the airport approach surface and is further than 10,000 feet from the runway, therefore staff finds lighting will not project into or onto any of the protected areas associated with the airport. This criterion is met.

- C. *Glare. No glare producing material, including but not limited to unpainted metal or reflective glass, shall be used on the exterior of structures located within an approach surface or on nearby lands where glare could impede a pilot's vision.***

**FINDING:** The submitted application does not indicate what building materials or finishes are proposed. A condition of approval has been added to ensure compliance.

Prior to issuance of building permits, the applicant shall submit building plans demonstrating no glare producing materials, including but not limited to unpainted metal or reflective glass, shall be used on the exterior of the proposed structures.

- D. *Industrial emissions. No new industrial, mining or similar use, or expansion of an existing industrial, mining or similar use, shall, as part of its regular operations, cause emissions of smoke, dust or steam that could obscure visibility within airport approach surfaces, except upon demonstration, supported by substantial evidence, that mitigation measures imposed as approval conditions will reduce the potential for safety risk or incompatibility with airport operations to an insignificant level.***

***The review authority shall impose such conditions as necessary to ensure that the use does not obscure visibility.***

**FINDING:** The proposed marijuana production facility is not an industrial, mining or similar use. This criterion does not apply.

***E. Communications Facilities and Electrical Interference. No use shall cause or create electrical interference with navigational signals or radio communications between an airport and aircraft. Proposals for the location of new or expanded radio, radiotelephone, and television transmission facilities and electrical transmission lines within this overlay zone shall be coordinated with the Department of Aviation and the FAA prior to approval. Approval of cellular and other telephone or radio communication towers on leased property located within airport imaginary surfaces shall be conditioned to require their removal within 90 days following the expiration of the lease agreement. A bond or other security shall be required to ensure this result.***

**FINDING:** The proposed marijuana production facility will not cause or create electrical interference. This criterion will be met.

***F. Limitations and Restrictions on Allowed Uses in the RPZ, Approach Surface, and Airport Direct and Secondary Impact Areas.***

***For the Redmond, Bend, Sunriver, and Sisters airports, the land uses identified in DCC 18.80 Table 1, and their accessory uses, are permitted, permitted under limited circumstances, or prohibited in the manner therein described. In the event of conflict with the underlying zone, the more restrictive provisions shall control. As used in DCC 18.80.044, a limited use means a use that is allowed subject to special standards specific to that use.***

**FINDING:** The proposed marijuana production facility will not be located within the runway protection zone (RPZ), the approach surface, or the airport direct and secondary impact areas. This criterion does not apply.

#### **IV. CONCLUSION**

Based on the foregoing Basic and Conclusionary Findings, staff finds that the proposed marijuana production facility can comply with the applicable standards and criteria of the Deschutes County zoning ordinance if conditions of approval are met.

#### **V. DECISION**

**APPROVAL**, subject to the following conditions of approval.

## **VI. CONDITIONS OF APPROVAL**

- A. Use & Location:** Marijuana production is conditionally approved inside the three proposed structures consisting of one 6,000 square foot building and two 2,880 square foot greenhouses. This approval is based upon the application, site plan, specifications, and supporting documentation submitted by the applicant. Any substantial change in this approved use will require review through a new land use application.
- B. Height:** Prior to issuance of building permits, the applicant shall submit elevation plans demonstrating all structures shall not exceed 30 feet in height.
- C. Glare:** Prior to issuance of building permits, the applicant shall submit building plans demonstrating no glare producing materials, including but not limited to unpainted metal or reflective glass, shall be used on the exterior of the proposed structures.
- D. Utility Verification:** Prior to issuance of building permits, a statement from the electric utility company proposed to serve the marijuana production operation, stating that the electric utility company is able and willing to serve the operation, shall be provided to the Planning Division.

## **ONGOING CONDITIONS OF APPROVAL**

- E. Lighting:** The following lighting standards shall be met.
  - 1. Inside building lighting used for marijuana production shall not be visible outside the building from 7:00 p.m. to 7:00 a.m. on the following day.
  - 2. Lighting fixtures shall be fully shielded in such a manner that all light emitted directly by the lamp or a diffusing element, or indirectly by reflection or refraction, is projected below the horizontal plane through the lowest light-emitting part.
  - 3. The light cast by exterior light fixtures other than marijuana growing lights shall comply with DCC 15.10, Outdoor Lighting Control.
  - 4. All exterior lighting shall be shielded so that direct light does not project off site.
- F. Odor:** The proposed odor control system must at all times prevent unreasonable interference with neighbors' use and enjoyment of their property. The odor control system shall be maintained in working order and shall be in use.
- G. Noise:** Sustained noise from mechanical equipment used for heating, ventilation, air conditioning, odor control, fans and similar functions shall not exceed 30 dB(A) measured at any property line between 10:00 p.m. and 7:00 a.m. the following day.
- H. Fencing:** Fencing and wire shall be finished in a muted brown, green, or natural wood color and shall not be constructed of temporary materials such as plastic sheeting, hay bales, tarps, etc.

- I. Screening: The existing tree and shrub cover screening the development from the public right-of-way or adjacent properties shall be retained to the maximum extent possible. This provision does not prohibit the maintenance of existing lawns, removal of dead, diseased or hazardous vegetation; the commercial harvest of forest products in accordance with the Oregon Forest Practices Act; or agricultural use of the land.
- J. Security Cameras: If security cameras are used, they shall be directed to record only the subject property and public rights-of-way, except as required to comply with requirements of the OLCC or the OHA.
- K. Waste: Marijuana waste shall be stored in a secured waste receptacle in the possession of and under the control of the OLCC licensee.
- L. Prohibited Uses: The uses listed in DCC 18.116.330(20) shall be prohibited on the subject property so long as Marijuana Production and/or Processing are conducted on the site. Marijuana production and processing are prohibited in any outdoor area.
- M. Annual Reporting: The annual reporting requirements of DCC 18.116.330(D) shall be met.

**VII. DURATION OF APPROVAL:**

The applicant shall complete all conditions of approval and obtain placement permits the proposed use within two (2) years of the date this decision becomes final, or obtain an extension of time pursuant to Section 22.36.010 of the County Code, or this approval shall be void.

**This decision becomes final twelve (12) days after the date of mailing, unless appealed by a party of interest.**

**DESCHUTES COUNTY PLANNING DIVISION**



Written by: Jacob Ripper, Associate Planner



Reviewed by: Peter Gutowsky, Planning Manager

Dated this 11<sup>th</sup> day of January, 2017

Mailed this 11<sup>th</sup> day of January, 2017

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY.

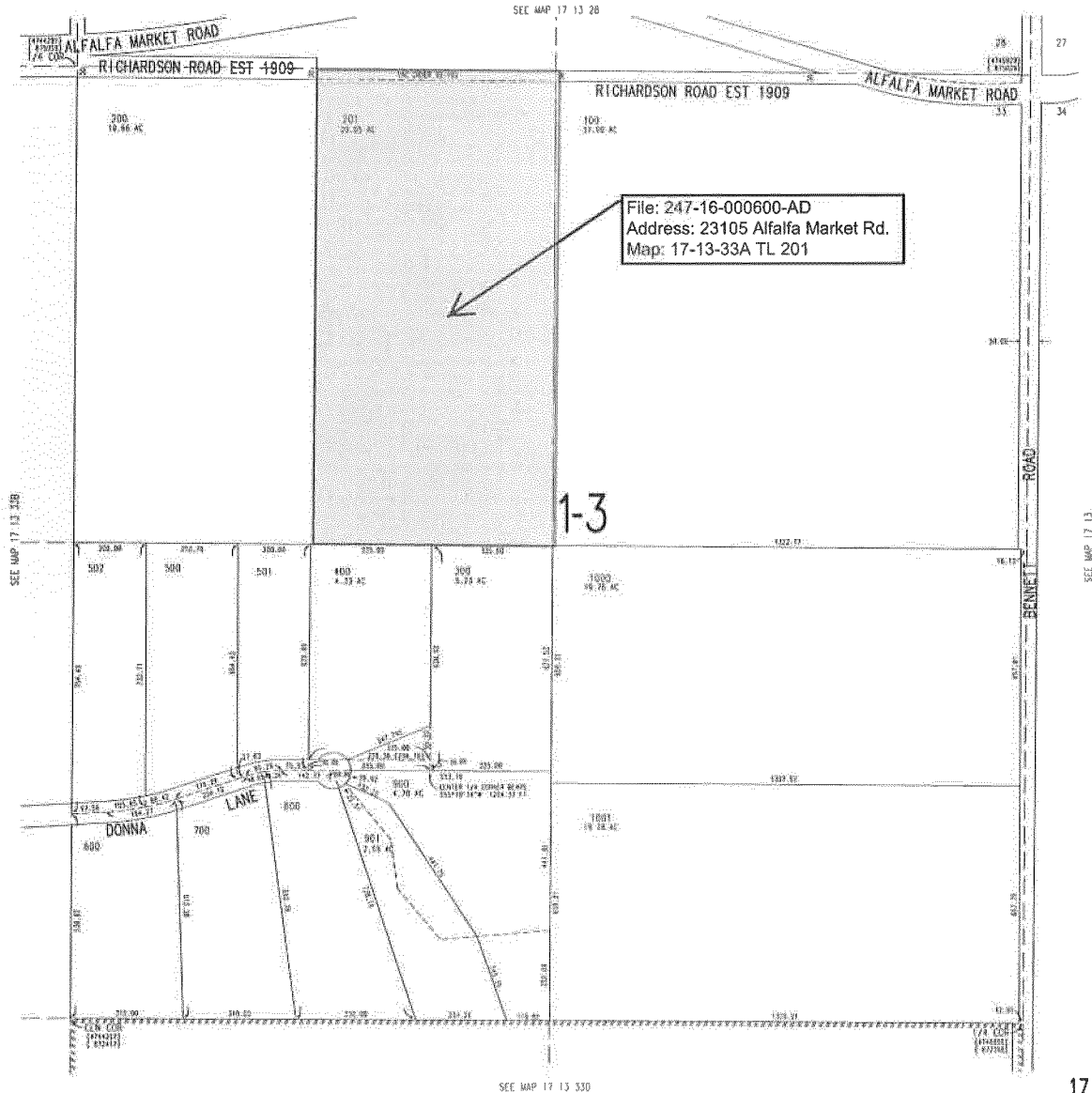
COORDINATES SHOWN IN PARENTHESES ARE FOR MAP PREPARATION PURPOSE ONLY.

REVISED: 10/04/2000

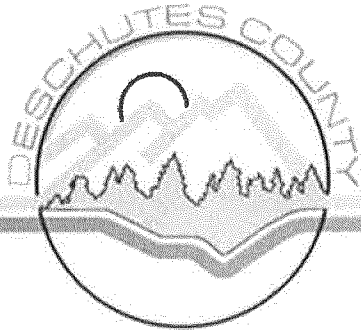
NE1/4 SEC. 33 T.17S. R.13E. W.M.  
DESCHUTES COUNTY

17 13 33A

1" = 200'



17 13 33A



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005

Phone: (541) 388-6575 Fax: (541) 385-1764

<http://www.deschutes.org/cd>

### NOTICE OF DECISION

The Deschutes County Planning Division has approved the land use application described below:

- FILE NUMBER:** 247-16-000600-AD
- LOCATION:** 23105 Alfalfa Market Rd., Bend, described on the County Assessor's Map 17-13-33A as Tax Lot 201.
- OWNER:** Rubio Real Estate Investments, LLC  
2979 NW 17<sup>th</sup> St.  
Redmond, OR 97756
- APPLICANT/AGENT:** Douglas R. White  
60762 River Bend Dr.  
Bend, OR 97702
- SUBJECT:** The Deschutes County Planning Division has approved a request for an Administrative Determination to establish a marijuana production facility in the Exclusive Farm Use (EFU) Zone.
- STAFF CONTACT:** Jacob Ripper, Associate Planner, (541) 385-1759
- APPLICABLE CRITERIA:** The Planning Division reviewed this application for compliance against criteria contained in Chapters 18.16, 18.80, and 18.116 in Title 18 of the Deschutes County Code (DCC), the Deschutes County Zoning Ordinance, as well as against the procedural requirements of Title 22 of the DCC.

**DECISION:** Staff finds that the application meets applicable criteria, and approval is being granted subject to the following conditions:

#### CONDITIONS OF APPROVAL

- A. Use & Location: Marijuana production is conditionally approved inside the three proposed structures consisting of one 6,000 square foot building and two 2,880 square foot greenhouses. This approval is based upon the application, site plan, specifications, and supporting documentation submitted by the applicant. Any substantial change in this approved use will require review through a new land use application.



- B. Height: Prior to issuance of building permits, the applicant shall submit elevation plans demonstrating all structures shall not exceed 30 feet in height.
- C. Glare: Prior to issuance of building permits, the applicant shall submit building plans demonstrating no glare producing materials, including but not limited to unpainted metal or reflective glass, shall be used on the exterior of the proposed structures.
- D. Utility Verification: Prior to issuance of building permits, a statement from the electric utility company proposed to serve the marijuana production operation, stating that the electric utility company is able and willing to serve the operation, shall be provided to the Planning Division.

#### ONGOING CONDITIONS OF APPROVAL

- E. Lighting: The following lighting standards shall be met.
  - 1. Inside building lighting used for marijuana production shall not be visible outside the building from 7:00 p.m. to 7:00 a.m. on the following day.
  - 2. Lighting fixtures shall be fully shielded in such a manner that all light emitted directly by the lamp or a diffusing element, or indirectly by reflection or refraction, is projected below the horizontal plane through the lowest light-emitting part.
  - 3. The light cast by exterior light fixtures other than marijuana growing lights shall comply with DCC 15.10, Outdoor Lighting Control.
  - 4. All exterior lighting shall be shielded so that direct light does not project off site.
- F. Odor: The proposed odor control system must at all times prevent unreasonable interference with neighbors' use and enjoyment of their property. The odor control system shall be maintained in working order and shall be in use.
- G. Noise: Sustained noise from mechanical equipment used for heating, ventilation, air conditioning, odor control, fans and similar functions shall not exceed 30 dB(A) measured at any property line between 10:00 p.m. and 7:00 a.m. the following day.
- H. Fencing: Fencing and wire shall be finished in a muted brown, green, or natural wood color and shall not be constructed of temporary materials such as plastic sheeting, hay bales, tarps, etc.
- I. Screening: The existing tree and shrub cover screening the development from the public right-of-way or adjacent properties shall be retained to the maximum extent possible. This provision does not prohibit the maintenance of existing lawns, removal of dead, diseased or hazardous vegetation; the commercial harvest of forest products in accordance with the Oregon Forest Practices Act; or agricultural use of the land.
- J. Security Cameras: If security cameras are used, they shall be directed to record only the subject property and public rights-of-way, except as required to comply with requirements of the OLCC or the OHA.

- K. Waste: Marijuana waste shall be stored in a secured waste receptacle in the possession of and under the control of the OLCC licensee.
- L. Prohibited Uses: The uses listed in DCC 18.116.330(20) shall be prohibited on the subject property so long as Marijuana Production and/or Processing are conducted on the site. Marijuana production and processing are prohibited in any outdoor area.
- M. Annual Reporting: The annual reporting requirements of DCC 18.116.330(D) shall be met.

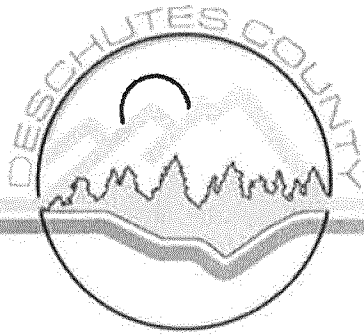
**This decision becomes final twelve (12) days after the date mailed**, unless appealed by a party of interest. To appeal, it is necessary to submit a Notice of Appeal, the appeal fee of \$250.00 and a statement raising any issue relied upon for appeal with sufficient specificity to afford the Hearings Body an adequate opportunity to respond to and resolve each issue.

Copies of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost. Copies can be purchased for 25 cents per page.

**NOTICE TO MORTGAGEE, LIEN HOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST BE PROMPTLY FORWARDED TO THE PURCHASER.**

Dated this 11<sup>th</sup> day of January, 2017

Mailed this 11<sup>th</sup> day of January, 2017



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005

Phone: (541) 388-6575 Fax: (541) 385-1764

<http://www.deschutes.org/cd>

### CERTIFICATE OF MAILING

**FILE NUMBER:** 247-16-000600-AD

**DOCUMENT/S MAILED:** Findings and Decision  
Notice of Decision

**LOOKUP AREA:** 750 Feet

**MAP/TAX LOT NUMBER:** 17-13-33A TL 201

I certify that on the 11<sup>th</sup> day of January, 2017, the attached notice(s)/report(s), dated January 11<sup>th</sup>, 2017, was/were mailed by first class mail, postage prepaid, to the person(s) and address(es) set forth below/on the attached list.

Dated this 11<sup>th</sup> day of January, 2017.

### COMMUNITY DEVELOPMENT DEPARTMENT

By: Sher Buckner

Applicant: Douglas R. White 60762 River Bend Dr. Bend, OR 97702	Rubio Real Estate Investments, LLC 2979 NW 17th St. Redmond, OR 97756
County Assessor, via email	22 Lookups

BERNARD, PATRICK E & CORRIE L	SUITE 610 #10	2660 NE HWY 20	BEND, OR 97701
BEST, GILBERT D & MARILYN K		22989 ALFALFA MKT RD	BEND, OR 97701
CABE, LANCE C & CORNETT, TAMMY J		22980 DONNA LN	BEND, OR 97701
DUPLANTIS ALTMAN TRUST	DUPLANTIS, COLIN M TTEE ET AL	62231 BENNETT RD	BEND, OR 97701
FAIR, KATIE		23058 DONNA LN	BEND, OR 97701
FAIR, ROBERT CALVIN & CAROL LYNN		23054 DONNA LN	BEND, OR 97701
FISHER, KEVIN & NICOLE M		23130 ALFALFA MKT RD	BEND, OR 97701
FISHER, RANDALL D & LYNNETTE L		PO BOX 9724	BEND, OR 97708-9724
FREDRICKS, TONY W & ERICKA C		23031 DONNA LN	BEND, OR 97701
GONZALEZ EDGAR & LETICIA		6552 OXFORD DR	HUNTINGTON BEACH, CA 92647
HERMANSON, DOUG & WALLING, ERIN		234 NW REVERE AVE	BEND, OR 97703
KILLPACK, MATTHEW J & BAYLEY A		22980 ALFALFA MARKET RD	BEND, OR 97701
KOZOWSKI, ERIC & KRISTEN		23145 ALFALFA MARKET RD	BEND, OR 97701
NAPIER, JON & SHELLEY M		62467 STENKAMP RD	BEND, OR 97701
NEWMAN, JERRY L & RAMONA L		23042 DONNA LN	BEND, OR 97701
PIATT LIVING TRUST	PIATT, LANCE J & MONIKA E TTEES	23095 ALFALFA MARKET RD	BEND, OR 97701
POWELL, JERRY C & BEVERLY JO		23030 DONNA LN	BEND, OR 97701
RANDALL & CHERYL FLANARY TRUST	FLANARY, RANDALL & CHERYL TTEES	62275 BENNETT RD	BEND, OR 97701
RUBIO REAL ESTATE INVESTMENTS LLC		2979 NW 17TH ST	REDMOND, OR 97756
RUDOLPH, WILLIAM H & IVA		23057 DONNA LN	BEND, OR 97701
WALKER, GILBERT A & JOAN E		23008 DONNA LN	BEND, OR 97701
WITTE, GAIL D & PATCHETT, JANICE D		23053 DONNA LN	BEND, OR 97701