ATTACHMENT D – (Corrected) STAFF REPORT

File Number: PLANCU-16-05-0001

Applicant: Brooks Foster, 510 SW 5th Ave, 5th Floor, Portland, OR 97204

Owner: Loren Dana, 2040 Seven Mile High Rd, The Dalles, OR 97058

Request: Verification of a legal nonconforming use for the production and primary processing of medical marijuana in a portion of an existing dwelling, two (2) greenhouses, and an outdoor grow area, and the alteration of this use to include the addition of five temporary hoop houses to be used as shelter for the plants and a shop to be used for production and primary processing.

Decision: Approval, with conditions.

Correction Request: *All information and findings of fact found within the Corrected Notice of Decision and Staff Report are considered a reaffirmation of the previous findings and found to be consistent with the Wasco County LUDO. Any corrected findings shall be indicated with a strikethrough (~~strikethrough~~) for deletions and underlined and italics (underlined and italics) for additions and/or modifications.*

Corrections reflect clarifications of wording as requested by applicant and are consistent with application materials provided in the official request.

Decision Date: October 20, 2016
Corrected Date: *October 24, 2016*

Appeal Deadline: November 1, 2016
Corrected Deadline: *November 5, 2016*

Location: The subject property is located on the east side of Seven Mile High Rd, 0.2 miles north of it's intersection with Seven Mile Hill Rd, approximately 4 miles west of The Dalles, OR and 5 miles east of Mosier, OR; more specifically described as:

Existing Tax Lot	Acct #	Acres
2N 12 E 22 300	871/1184	9.94

Zoning District: R-R (10) Rural Residential; Environmental Protection District 8, Impacted Low Elevation

Past Actions: CODENF-15-06-0026 (Marijuana), CUP-78-123-A (Place MH not connected w/ agriculture in A-1), RRD-99-102-WARR1-A (Replacement dwelling), LOC-99-WARR1-BP (Replace dwelling), LOC-99-WARR1-BP (Decks), LOC-99-WARR1-BP-A (10' X 20' X 15' carport accessory to SRD), LOC-88-BP (Roof over MH), LOC-80-BP (Placement of MH), PLAMNS-14-09-0040 (Construct a shop and 2 greenhouses)

Procedure Type: Administrative Action

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Prepared By: Will Smith, Associate Planner

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I. APPLICABLE STANDARDS

Wasco County Land Use & Development Ordinance (LUDO)

A. Chapter 13 – Nonconforming Uses, Buildings and Lots

Section 13.050	Verification of Nonconforming Use or Structure
Section 13.060	Restoration or Alteration of Nonconforming Use

B. Chapter 3 – Basic Provisions

Section 3.250, R-R(10), Rural Residential

Section 3.250.F	Standards for Establishment of a Dwelling and Accessory Structures
Section 3.250.G	Property Development Standards

Section 3.920, EPD-8, Sensitive Wildlife Habitat Overlay Zone

Section 3.920.F.2.	Siting Standards, Big Game Winter Range
Section 3.920.G.	Fencing Standards

C. Chapter 4 – Supplemental Provisions

Section 4.100	Fences

D. Chapter 10 – Fire Safety Standards

Section 10.110	Siting Standards
Section 10.120	Defensible Space
Section 10.130	Construction Standards for Dwellings and Structures
Section 10.140	Access Standards
Section 10.150	Fire Protection or On-Site Water Required

E. Chapter 20 – Site Plan Review

Section 20.090	Home occupations

II. BACKGROUND

A. Proposed Use: The applicant, Loren Dana, has requested to verify an existing medical marijuana operation as a lawfully established non-conforming use. The existing use includes the production and primary processing of medical marijuana on a 9.94 acre property in the Rural Residential, R-R (10) zone.

Mr. Dana provided information to demonstrate that in 2015 (prior to the adoption of marijuana regulations in Wasco County), he was producing a maximum of 96 *mature and flowering* marijuana plants at a time for medical use and conducting primary processing activities for those plants on the subject property in a portion of the house, in two (2) greenhouses, in five (5) hoop houses, within the interior fenced area shown on the site plan, and in an outdoor area which is now the location of a shop building.

Through the verification process identified in Chapter 13 of the LUDO, the applicant has also requested an alteration to the existing use to allow for the containment of existing outdoor medical marijuana plants and the use of the shop. Additionally this application requests to retroactively review and approve fences that were built in 2015.

B. Site Description: The subject parcel is 9.94 acres and lies at an elevation of 1,640 feet. The majority of the property is lightly wooded with Oregon white oak along the northern and eastern portions. The remainder of the property is grassy. There are slopes of 8-13% heading uphill from the west to east across the parcel.

C. Land Use History: A mobile home not in conjunction with agriculture was approved in 1978. A roof was added in 1988. This home was replaced with a new mobile home in 1999, which included the additions of a deck and a carport.

In 2014, Mr. Dana was approved to construct three accessory buildings: two greenhouses and a shop. The use of these buildings was not specified at the time of approval except that they were approved to be accessory to the residential use of the property. Staff has since learned that in April of 2015, the buildings were used for a medical marijuana production and primary processing facility, accessory to the residential use of the property. The applicant has provided evidence to document that the medical marijuana operation was established in a manner allowed by the Oregon Health Authority and the Oregon Medical Marijuana Program.

Also in April of 2015, a fence and five hoop houses were constructed without permits to accommodate the medical marijuana business. As noted above, Mr. Dana has proposed to legalize these structures through the alteration of a non-conforming use provisions contained in Chapter 13 and discussed below.

D. Surrounding Land Use: The property to the north is zoned A-1 (160) while all other properties around the subject parcel are either R-R (10) or R-R (5). Most of the properties on this road contain rural residences (non-farm dwellings). These surrounding properties contain similar slopes, with steeper slopes down to the north into Rowena Creek, which lies 1000 feet from and 200 feet below the northern property line. The large A-1 property to the north does not appear to be farmed in aerial photographs from Wasco County GIS, but is in farm deferral. Several properties in the area are engaged in marijuana grow operations and the production of hay and alfalfa beginning about 0.6 miles to the east and northeast. The entrance to the subject property is on Seven Mile High Road, approximately 0.5 miles north of it's intersection with Seven Mile Hill Road.

E. Public Comment: Notice of Administrative Action was mailed on May 19, 2016, to all owners of property within 300' of the subject parcel, affected agencies, and other interested parties registered with Wasco County. Two comments were received.

<u>May 29, 2016 James Yuhas, Adjoining property owner</u>
Mr. Yuhas supported Mr. Dana's request and expressed his opinion that the property is ideal for the production of medical marijuana as it is remote and isolated.
<u>Staff Response:</u> Staff acknowledges the support for these activities in the neighborhood.

June 14, 2016, Garrett Boothe, Adjoining property owner
Mr. Boothe expressed concern in regards to the odor, especially on hot days. He is also concerned about potential over use of water from Mr. Dana's well for these activities. *Note: This comment was received late due to an error in the database used by staff. Mr. Boothe did not receive the notice until after the deadline for comment. He presented his concerns to us in person immediately upon receiving the notice, and in writing shortly thereafter.*
Staff Response: Chapter 11 in the Wasco County LUDO addresses odor concerns from permitted marijuana grows. These rules were added on January 11, 2016, after Mr. Dana legally established as a medical marijuana grower at the site and thus do not apply to his operation. Air quality violations in Wasco County are regulated by the Department of Environmental Quality.

The application states the source of water is not from a well, but through an agreement with Chenowith PUD. Given this information, staff finds that the neighbor's water supply will be unaffected. Additionally, much of the site is designed to recycle gray water runoff. Mr. Boothe's concerns are further addressed throughout the report.

June 30, 2016, Brooks Foster, Applicant
Mr. Foster concurred that Chapter 11 odor restrictions do not expressly apply to this use as they were added to the WC LUDO after this site had legally established itself as a medical marijuana grow operation. There are several other marijuana grows in the area and Mr. Dana does not believe his site is the source of Mr. Boothe's odor concerns. He does not believe his property generates odor issues. However, in the interest of maintaining good neighborly relations, Mr. Dana is willing to work with Mr. Boothe to find practical ways to mitigate his odor complaints.
Staff Response: Staff conducted a site visit on May 26, 2016 and did not detect any intense odors on the property. Temperatures that day were mild. Staff conducted another site visit on August 4, 2016 when temperatures were close to 100 degrees and there was a slight breeze. Two staff members could detect marijuana odor from the property boundary on the downwind side during this visit.

Despite the applicant's assertions that there is no odor impact, it is well known that marijuana grow operations often create nuisance odors. Though there are other grow operations in the area, grow operations in general can create nuisance odors that should be mitigated. These concerns are addressed in the findings in Section 13.060.C.2.h and conditions of approval.

III. FINDINGS:

A. Chapter 13 – Nonconforming Uses, Buildings and Lots

Section 13.050, Verification of Nonconforming Use or Structure
Must meet lawfully established and discontinuance or abandonment criteria below.

A. Lawfully Established: For a nonconforming use to be verified as lawfully established it shall be consistent with all of the following:

1. *The nonconforming use has not been expanded in size or area or changed in purpose or use beyond what was lawfully established;*

FINDING: Growing of medical marijuana was a lawful use allowed by the state of Oregon prior to Wasco County's adoption of marijuana regulations in the Land Use & Development Ordinance. These regulations were approved by the Board of Commissioners on January 11, 2016. Mr. Dana provided a declaration dated April 18, 2106 and medical card documentation for eight clients to demonstrate he had been legally growing medical marijuana prior to this date. Mr. Dana's declaration further provided information on the areas that had been in use for production or primary processing of marijuana in 2015. These included a portion of the house, the two (2) greenhouses, and an outdoor grow area. Thus a legal use was established prior to adoption of the ordinance and it has not expanded in size or area since January 11, 2016.

2. *The property on which the nonconforming use is located meets the definition of legal parcel in Chapter 1 of this ordinance;*

FINDING: This property, 2N 12E 22 Tax Lot #300, was originally created as Lot 4 in the Martin Tracts subdivision which was recorded on Sept 28, 1976 and has remained in the same configuration since then. As a "lot in an existing, duly recorded subdivision", staff finds that this lot meets the definition of a legal parcel.

3. *The nonconforming use was lawfully established on or before the effective date of the provisions of this ordinance prohibiting the use verified by either a or b below. No unlawful use of property existing at the time of the effective date of the provisions of this ordinance shall be deemed a nonconforming use.*

   a. *Type I Verification: Lawfully established is verified by non-discretionary evidence including but not limited to zoning approval or County Assessor records verifying the date of establishment. This type of verification is not subject to any review process because it does not involve the exercise of any discretion or judgment. If the applicant wishes documentation of this it shall be done as a Land Use Verification Letter.*

   b. *Type II Verification: Lacking non-discretionary evidence, lawfully established is verified by a discretionary process consistent with Section 2.060(A)(9).*

      It is the burden of the applicant to provide a preponderance of evidence which will allow the Planning Director to conclude the nonconforming use was lawfully established. Such evidence includes but is not limited to:

      -Utility Bills and Records (phone, power, sewer, water)
      -Aerial Photographs
      -Dated Photos
      -Notarized Letters or Affidavits affirming the date of establishment

FINDING: In Oregon, growth of medical marijuana by and for medical marijuana cardholders is a legal practice managed by the Oregon Health Authority. It was not regulated by the county until the county adopted an ordinance regulating time, place, and manner of all marijuana growth on January 11, 2016. In order to produce Type II verification and confirm this as a legally established nonconforming use, the applicant submitted sufficient evidence to support this argument. Staff reviewed affidavits from medical marijuana patients, along with copies of their medical marijuana cards. All testified to the date on which they had designated Mr. Dana's property at 2040 Seven

Mile High Road as their registered grow site, for which it was permitted to have up to 96 *mature and flowering* marijuana plants grown on this property in 2015. The earliest date was May 5, 2015; all the dates were prior to the County's adoption of marijuana regulations as of January 11, 2016.

The applicant submitted photo evidence from August 2015 that showed the fully grown plants in and around the greenhouses. Further evidence of this use prior to January 11, 2016 includes building permits for the construction of two greenhouses in December of 2014, mechanical permits for installation of the propane tank and delivery line to the greenhouses from May 2015, dates of propane delivery, as well as an affidavit from Mr. Dana himself detailing the history of the use on the property, which includes primary processing in the shop area, and a cultivation area inside the house. Staff finds that the information submitted qualifies as a preponderance of evidence and verifies the use was lawfully established prior to the effective date of the provisions, meeting the Type II requirements for such a proof required by (b) above.

B. Discontinuance or Abandonment: For a nonconforming use to be verified as lawfully established it must not have been discontinued or abandoned according to the following criteria. Based on the circumstances, the Director shall determine whether discontinuance or abandonment shall be reviewed as a Type I or Type II process as described in A above.

1. The reference period for determining whether an abandonment or interruption of a nonconforming use or an aspect thereof has occurred shall be twelve (12) consecutive months in any of the ten (10) years preceding the date of the application. Proof of intent to abandon is not required to determine that a nonconforming use has been discontinued or abandoned.

FINDING: The nonconforming use has continued since the date of establishment and no aspect of it has been discontinued or abandoned since it's inception. Based on the information provided by the applicant, there has been no cessation or change in the nature of the use at any point since it began. Staff finds the proposal complies with the requirements set forth in B.

Section 13.060, Restoration or Alteration of Nonconforming Use

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B. Alteration of a nonconforming use to Comply with State or Local Health or Safety Requirements:

No conditions shall be placed upon the continuation or alteration of a nonconforming use when necessary to comply with state or local health or safety requirements, or to maintain in good repair the existing structures associated with the use.

Proof of compliance with health or safety requirements or the necessity to maintain in good repair existing structures associated with the use shall be submitted with the application.

FINDING: The applicant has proposed to alter the development to comply with OAR 333-008-0640 "PRMG Security Requirements" to increase public safety and security by obscuring the crops from view with five new hoop houses. The fences will increase security. According to testimony submitted by Mr. Dana, all structures are, and shall remain, in good repair, consistent with this requirement. According to the application, the proposed alteration "will create little or

no increased noise, light, vibration, dust, odor, fumes, glare, or smoke impacts detectable within the neighborhood… The enclosure will reduce and not increase the likelihood of noise and odor being detectable off the Property… all of the high intensity light that will used for cultivation will be contained inside the (shop) building" according to Mr. Dana. Odor issues that may arise will be reduced through a **condition** requiring adequate filtration. Staff finds this proposal satisfies criterion B.

C. Alteration of a nonconforming use including but not limited to any combination of the following:

-Replacing a structure not damaged or destroyed by fire, other casualty or disaster;

-Expanding a structure beyond its current size;

-Relocating a structure to a different location on the same legal parcel;

1. Alteration will result in no greater adverse impact on the neighborhood or shall result in less of an adverse impact on the neighborhood considering the criteria listed below.

a. Residential Uses Only

FINDING: Section b., Non-Residential Use (below), requires the application of this Section 13.C.1.a. This property is zoned Rural Residential, R-R (10). In his 2014 application for the shop and two (2) greenhouses, these buildings were described as "Accessory." On page one of that application, Mr. Dana listed the "Current Use of property" as "Residential". Those greenhouses were later used for the purpose of growing marijuana, and the shop is being proposed as an alteration to also be involved in the production and processing of medical marijuana. No farm management plan was presented and the property is not in farm deferral. The primary use of this property is residential. Staff finds that this proposed use is accessory to the residential use. Therefore, staff is addressing these criteria below.

(1) The nonconforming use is in compliance with all conditions or limitations associated with its creation or approval;

FINDING: The use of this property to grow medical marijuana was established in 2015 in a manner consistent with state law in effect at the time. There were no zoning regulations in effect by Wasco County concerning medical marijuana growing until January 11, 2016. Therefore, there were no conditions or limitations placed on its creation by Wasco County until January 11, 2016. At the time, the State of Oregon mandated a maximum of 16 cardholders and 96 *mature and flowering* plants on any parcel (6 plants for each cardholder, 4 cardholders per grower, 4 growers per property maximum). This is the legally established use which became non-conforming in the R-R (10) zone after January 11, 2106. No expansion of that use is approved by this decision. There shall be no increase in the number of plants that were allowed in 2015, nor any increase in the square footage of structures (a portion of the dwelling, one shop, two greenhouses, and five hoop houses) or area (depicted on the site plan) dedicated to this use. A **condition** is included that there shall be no increase of these areas dedicated to production and processing beyond what is expressly permitted by this decision.

The use established in 2015 was as a medical marijuana facility serving up to a maximum of 16 cardholders and 96 *mature and flowering* plants (6 plants for each cardholder, 4 cardholders per grower, 4 growers per property maximum). Excess marijuana was permitted by state law to be

sold to retailers after October 2015, which Mr. Dana did. The use shall remain the growing of marijuana for medical use serving a maximum of 16 cardholders at any time with sales of excess to retailers permitted as incidental to that primary use, as was the legal use in 2015. With a **condition** of approval requiring that this medical marijuana grow not exceed the 2015 legally established use, the request complies with (1).

(2) The comparative visual appearance between the existing nonconforming use and the proposed alteration;

FINDING: Staff conducted a site visit and confirmed that hoop houses and outdoor grow sites are not visible from Seven Mile Hill Road. The top of the existing greenhouses can be seen from the ridge that runs across Seven Mile High Road just south of the driveway; the proposed hoop houses have a lower profile. Seven Mile High Road is a dead end gravel road and the buildings can only be seen from within a few hundred feet of the property. Additionally, the hoop houses are smaller in scale and design to the existing structures and layout of the site. Permitting the primary processing inside the shop building (approved in 2014 with the greenhouses) and growing in the temporary hoop houses will decrease the existing visibility of the marijuana plants. Therefore, Staff finds the proposed alteration will decrease the adverse visual impact on the surrounding area.

(3) The alteration shall not change the manner or purpose of the use;

FINDING: The previous purpose was to grow medical marijuana on this property and engage in primary processing; the proposed development is for the same purpose. The manner of growing and primary processing will be the same, but some of the plants that were not enclosed and screened from view will be. As proposed, the alteration will not change the manner or purpose of the use, except to decrease its impact on adjacent property. This is not an approval of an increase in production of marijuana beyond what was legally grown in 2015, nor is it an approval of any alteration in the purpose of the use away from marijuana grown primarily for medical marijuana cardholders.

(4) The proposed alteration shall not result in greater nonconformity to property line setbacks or resource buffer requirements unless the alteration will extend a structure further away from and perpendicular to the property line or resource. Any proposal that would extend an existing structure further toward the property line or resource, or expand an existing structure parallel into a setback or buffer shall also be subject to Chapters 6 & 7, Variances and any other applicable review criteria;

FINDING: No relocation is proposed. As noted above, the request is found to be consistent with current property development standards. No variance is necessary. Property line setbacks and creek setbacks are discussed in Section 3.120.I. Property Development Standards.

(5) Relocation shall result in conformity with all property line setbacks and resource buffer requirements unless there is no other location on the property that could comply with all setback and buffer requirements and the relocation would remove the structure from an undesirable location according to the Wasco County Land Use and Development Ordinance such as a water buffer or floodplain. If the relocation cannot conform to all setback and buffer requirements the application shall also be subject to Chapters 6 & 7, Variances and any other applicable review criteria;

FINDING: The request is found to be consistent with current property development standards. No variance is necessary. Property line setbacks and creek setbacks are discussed in Section 3.120.I. Property Development Standards.

(6) The alteration must be consistent with Health and Safety Regulations including but not limited to Geologic Hazard Overlay (Section 3.750) Fire Safety Standards (Chapter 10) and Flood Damage Prevention (Chapter 22);

FINDING: The development site is not located in a flood hazard area or geologic hazard area. The shop proposed to be used in the alteration was previously reviewed for compliance (See file # PLAMNS-14-09-0040), has already been erected, and was able to pass final inspection from building codes. A **condition** of approval is included that the proposed temporary hoop houses shall also comply with all fire safety standards which are addressed in Chapter 10.

(7) Other factors which impact the character or needs of the neighborhood;

FINDING: As noted above, the use was legally established under OHA in 2015. The proposed development should contain the visual and odor impacts of the current use, improving the existing situation. Because no other changes in use are proposed, staff finds no other factors that will impact the character or needs of the neighborhood.

b. Non-Residential Nonconforming Uses Only

(1) Criteria (1) – (7) in subsection a. above;

FINDING: These criteria have been addressed above.

(2) The alteration will result in an overall reduction in adverse impacts to the neighborhood. Each application for alteration will include an analysis of the current adverse impacts to the neighborhood utilizing a – b below, and how the alteration reduces the total of the adverse impacts. An increase in one individual adverse impact may be offset by reductions in others as to effect a total reduction in adverse impacts;

FINDING: The proposed alterations will further enclose and screen the use. Based on this information, staff finds that the proposed alteration will result in an overall reduction of adverse impacts to the neighborhood consistent with this requirement.

(a) An evaluation of the character and history of the use, its relationship to development in the neighborhood and how the alteration would affect this;

FINDING: The character of the existing use is described in II.A Site Description, above. Public Notice of Administrative Action was mailed to agencies and adjacent property owners on May 19, 2016. One comment was received from a neighbor in support of the use, and one neighbor indicated concerns with the use. Staff conducted a site visit on May 26, 2016, and did not directly observe any obvious evidence that the use disrupts the neighborhood. On a second site visit on August 4, 2016, staff did detect the odor of marijuana from the road downwind of the property. A **condition** of approval is included to minimize the impact of odor on the neighborhood.

The top of the existing greenhouses can be seen from the ridge that runs across Seven Mile High Road just south of the driveway; the proposed hoop houses have a lower profile and cannot be seen from the road. This subject property is adjacent to A-1 (160) Exclusive Farm Use land, as well as other R-R (10) and R-R (5) Rural Residential properties; the farm activity is familiar to the area. Several other marijuana grow facilities exist near this property, as noted by the application materials and on the site visit. Staff finds that the verification and alteration of this use will not negatively affect the current character of development in the neighborhood.

(b) The comparable degree of noise, light, vibration, dust, odor, fumes, glare or smoke detectable within the neighborhood between the existing nonconforming use and the proposed alteration;

FINDING: According to the applicant, the recently approved and constructed building and the proposed hoop houses will reduce impacts such as noise, light, vibration, dust, odor, fumes, glare and smoke at the site. The applicant also contends that the enclosure of the cultivation, drying, and trimming activities will reduce the likelihood of noise and odor being detectable off the property. Outdoor lighting will be of low intensity and compatible with other outdoor lighting approved in residential areas. All high intensity lighting will be enclosed indoors.

The greenhouses are equipped with a light blocking "curtain" system manufactured by Wadsworth Control Systems of Arvada, Colorado. This system was custom designed for these greenhouses. The applicant submitted a white paper written by David Story, Ph.D. in November 2014. Dr. Story's experiments with these systems in greenhouses demonstrated that they prevent 99.93% of the light from inside a greenhouse from passing through.

In his September 28, 2016 Declaration, Mr. Dana stated "during the winter of 2015 when I approached the property at night, I was startled to notice the primary grow area, including both greenhouses, appeared completely dark … upon checking the greenhouses, I saw that the grow lights remained on". Mr. Dana stated that he operates these lights between October 16 and June 14 and that they are removed during the sunnier months. Staff finds that with the curtains these measures comply with Wasco County Lighting Standards, Attachment E, and that the applicant has demonstrated that this use is compatible with other outdoor lighting approved in residential areas. A **condition** of approval is included ensuring that Attachment E, Lighting Standards, is adhered to by all light emitted from this property, and that the light deprivation curtain systems shall be deployed whenever the interior high intensity grow lights are on *at night, from sunset to sunrise*.

No increase in lighting for growing is proposed outside any of the structures. Any lighting that is added in the future will be required to comply with Wasco County Lighting Standards, Attachment E.

(c) The comparative impact to public facilities and services including but not limited to: roads, fire and police protection, sewer and water facilities, telephone and electrical service, or solid waste disposal facilities between the existing nonconforming use and the proposed alteration;

FINDING: The proposed hoop houses to enclose the existing use will not change or increase the use. Therefore there will be no change to public services and facilities needed to access them. All uses of road, fire and police protection, sewer facilities and telephone shall remain at the same level since the use was established in 2015. According to a June 30, 2016 letter from the applicant there is a catchment system with a storage capacity of 20,000 gallons used to

store and reuse gray water that has been sufficient for the site's irrigation needs so far this year. This quantity of water exceeds the 13,000 gallon maximum amount for wildland fire response discussed in Chapter 10 Fire Safety Standards. Mr. Dana had previously supplemented this with water obtained from other properties and delivered with his personal pickup truck and trailer. As of March 31, 2016 Mr. Dana has entered into a contract with Chenowith PUD for these needs. Mr. Dana estimates these needs to be 60,000 gallons per year; the EPA estimates average annual water use for a family of four to be 400 gallons a day, or 146,000 gallons a year. Mr. Dana estimates approximately one PUD water truck delivery per month, which will replace the previous system of more frequent truck and trailer deliveries, reducing any adverse impact on local road usage or maintenance. There will be a slight in increase in electrical service due to the addition of the A/C unit and potential air filters comparable to other uses allowed in the zone. Staff finds a slight increase in electrical service would have a negligible impact on public service providers.

(d) The comparative amount and nature of outside storage, loading and parking between the existing nonconforming use and the proposed alteration;

FINDING: There will be no increase in outside storage with this alteration. There will continue to be loading and unloading at the site, but no more than what has been in use since 2015. Staff finds no impact on or increase of available and necessary parking. A **condition** of approval is included to limit employees to family members who reside in the dwelling.

(e) The comparative hours of operation between the existing nonconforming use and the proposed alteration;

FINDING: This site has legally operated between 7 am and 10 pm throughout the week. The proposed alteration has no effect on these hours of operation. A **condition** of approval is included to limit employees to family members who reside in the dwelling.

(f) The comparative effect on identified natural resources between the existing nonconforming use and the proposed alteration; and

FINDING: This site is located in Environmental Protection Division 8, Sensitive Wildlife Habitat Overlay, with a classification of Impacted Low Elevation. These concerns will be addressed below in Section 3.920. No other natural resources have been identified on the subject parcel for the proposed alteration to effect.

(g) The comparative effect on water quality, quantity or drainage in the neighborhood between the existing nonconforming use and the proposed alteration.

FINDING: The proposed development includes a gray water catchment system; Chenowith PUD will provide additional clean water. The estimated need will be less than half that used by an average family of four, according to data from the EPA. Because the structures are existing and the drainage patterns can be observed, there will be no change in drainage patterns associated with the proposed hoop house and the new structure. Given this information, there will be no impact on local well water supply with this system. Staff finds the proposed alteration will cause no adverse impacts on water quality, quantity, or drainage in the area.

Staff finds all requirements are met to show that the alteration will result in an overall reduction in adverse impacts to the neighborhood caused by the existing lawfully established use.

2. *The Planning Director may impose conditions of approval on any alteration of a nonconforming use, structure(s) or other physical improvements permitted under this section when deemed necessary to ensure the mitigation of any adverse impacts.*

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h. Control of noise, light, vibration, dust, odor, fumes, glare, smoke, or other similar nuisances.

FINDING: Based on feedback from adjacent property owners during the rulemaking process in this non-conforming zone, a **condition** of approval is added limiting the effect this facility's odor will have on neighboring properties by requiring carbon filtration systems be added to permanent structures that grow or process marijuana. Another **condition** is included ensuring that the alteration does not increase the light impacts to the neighborhood, and that they continue to be in compliance with LUDO Section 3.257(K), Lighting Standards which is further described in Attachment E, below.

B. Chapter 3 – Basic Provisions

Section 3.250, R-R (10) Rural Residential

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G. Property Development Standards

3. Setbacks - No structure other than a fence or sign shall be located closer than twenty-five (25) feet from the right-of-way of a public road (front yard), twenty-five (25) feet from side yard property lines and forty (40) feet from the rear yard property line.

FINDING: Buildings currently permitted on the site conform to the setback requirements. Proposed hoop houses will all be set up within the fenced in area approximately 180 feet from the property lines, which complies with setback requirements. As proposed, the alterations comply with property development standards.

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6. Stream Setbacks - All structures, or similar permanent fixtures (except hydroelectric facilities) shall be set back from the high water line or mark along all streams or lakes a minimum distance of one hundred (100) feet when measured horizontally at a right angle.

FINDING: Rowena creek is approximately 600' northeast of the northeast corner of the subject property and does not cross the property. Given this information, the development is located outside of the 100' setback and is consistent with this requirement.

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9. Parking – Off street parking shall be provided in accordance with Chapter 20 – Site Plan Review

FINDING: This proposal does not indicate an increase in parking beyond it's prior legal use. There will continue to be commercial trucks for loading and unloading, and water delivery trucks, but this proposed alteration will not affect parking onsite. Employees are limited to residents of the dwelling and do not necessitate additional parking.

> *11. Lighting - All outdoor lighting shall be sited, limited in intensity, shielded and hooded in a manner that prevents the lighting from projecting onto adjacent properties, roadways, and waterways. Shielding and hooding materials shall be composed of nonreflective, opaque materials.*

FINDING: No information was provided to staff regarding existing or proposed exterior lighting. A **condition** is included requiring outdoor lighting to be sited, limited in intensity, shielded and hooded in a manner that prevents the lighting from projecting onto adjacent properties, roadways, and waterways. Shielding and hooding materials shall be composed of nonreflective, opaque materials. This condition includes the requirement that the curtain system be deployed any time the interior greenhouse grow light systems are used *at night, from sunset to sunrise*.

Section 3.920, EPD-8, Environmental Protection Division 8 – Sensitive Wildlife Habitat Overlay Zone

> *(***)*
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> *Section 3.920.G., Fencing Standards: The following fencing standards could apply to new fences constructed as a part of development of a property in conjunction with conditional use permit. These standards shall be a voluntary agreement by the applicant.*
>
> *New fences in the Big Game overlay zone are designed to permit wildlife passage. The following standards are guidelines approved by the County after consultation with the Oregon Department of Fish and Wildlife:*
>
> *1. To make it easier for deer to jump over the fence, the top wire shall not be more than 42 inches high.*
>
> *2. A 3-wire or 4-wire fence with the bottom wire at least 18 inches above the ground to allow fawns to crawl under the fence. It should consist of smooth wire to avoid injury to animals.*
>
> *3. A gap of at least 10 inches shall be maintained between the top two wires to make it easier for deer to free themselves if they become entangled.*

FINDING: According to Wasco County GIS inventories informed by the Oregon Department of Fish and Wildlife, the subject property is located in "Low elevation impacted" wildlife zone, which means the landscape is of lesser quality habitat for migratory deer. The fence standards in the impacted zone are voluntary. Given this information, the interior security fence built around the grow area will not be built to the County's standards in EPD-8, Sensitive Wildlife Habitat Overlay Zone. Staff findings on fencing for this parcel are discussed in the next section, 4.100 – Fences.

C. Chapter 4 – Supplemental Provisions

Section 4.100 - Fences

No fence shall exceed six (6) feet in height or two and one half (2 1/2) feet in a vision clearance area. Game fences designed to protect agricultural crops from game animals shall be included in the definition of fence (protective), however, they are exempt from the height limit.

FINDING: As noted above, the perimeter fence is not required to meet the EPD-8 standards. However, it does need to meet this County standard. The 2,325' perimeter fence was built in 2015 and was not included in the previous application. It has been included in the site plan for this proposal. It is a 72 inch "no-climb" metal wire fence, with several gates, and two strands of barbed wire reaching an additional 8 inches high. Pursuant to 4.100 above, the fence may only be six (6) feet in height. A **condition** of approval is included requiring that the barbed wire be removed or relocated to meet Wasco County fence height standard of six (6) feet.

The interior fence that surrounds the greenhouses and hoop houses is exempt from the height limit because it is a game fence designed to protect agricultural crops from game animals. Identifying marijuana as an agricultural crop is not a recognition of this activity as a "Farm Use" as OHA designated (registered) marijuana grows were not recognized as a "crop for the purposes of Farm Use" by the State of Oregon until Senate Bill 1598 which was signed into law in March 2016, amending ORS 475B.370, and were not recognized as such for the period prior to January 11, 2016 in which Wasco County is verifying this legal non-conforming use.

D. Chapter 10 – Fire Safety Standards

Section 10.110	*Siting Standards – Locating Structures for Good Defensibility*
Section 10.120	*Defensible Space – Clearing and Maintaining a Fire Fuel Break*
Section 10.130	*Construction Standards for Dwellings and Structures - Decreasing the Ignition Risks by Planning for a more Fire-Safe Structure*
Section 10.140	*Access Standards – Providing Safe Access to and Escape From Your Home*
Section 10.150	*Fire Protection or On-Site Water Required – Ensuring Dwellings Have Some Fire Protection Available Through Manned or Unmanned Response)*

FINDING: With a **condition**, the request is consistent with Chapter 10 – Fire Safety Standards as this application involves new temporary structures and there are other buildings currently on the parcel subject to these standards.

The Fire Safety Standards, adopted by the Wasco County Court in 2007, require property owners to be aware of potential fire risks in areas outside of urban areas of Wasco County, and requires compliance with siting standards, fuel break requirements, construction standards, access standards, and on-site water storage requirements.

The subject property is located within the boundaries of the Mid Columbia Fire and Rescue Fire Department (structural) and Oregon Department of Forestry (wildfire) for fire protection. The property owners have completed a Fire Safety Standard Self-Certification Form, which shall remain located in the Planning Department file. By signing the self-certification form, the owners have acknowledged that they understand these standards and commit to achieve

compliance with them within one year of the date of approval and maintain them through the life of the development. This certification further commits all future property owners to this same requirement. A copy of this self-certification form is available for inspection at the Wasco County Planning Department under Files PLANCU-16-05-0001. A **condition** making current and future owners aware of this is included.

E. Chapter 20 – Site Plan Review

(***)

M. The following uses are prohibited from all minor and major home occupations:

1. Marijuana production;
2. Marijuana processing;
3. Marijuana wholesaling; and
4. Marijuana retailing.

A home occupation is defined in the Wasco County LUDO Section 1.090 Defintions as:

Home Occupation - Any lawful activity carried on within a dwelling or other building normally associated with uses permitted in the zone and which said activity is secondary to the primary use of the property for residential purposes. (Revised 1/92)

FINDING: Criterion M was added on January 11, 2016 and did not apply to the proposed development which was established in 2015. No major home occupation was permitted on this parcel for this use at that time. In 2015, Mr. Dana established what Wasco County considers a minor home occupation, a use allowed without review, which may only be carried on by members of the family who reside in the dwelling. A **condition** of approval is included requiring that employees be restricted to members of the family who reside in the dwelling.

ATTACHMENT E – LIGHTING STANDARDS

Good Neighbor OUTDOOR LIGHTING

PRESENTED BY THE NEW ENGLAND LIGHT POLLUTION ADVISORY GROUP (NELPAG) AND SKY PUBLISHING CORP.

What is good lighting?

Good outdoor lights improve visibility, safety, and a sense of security, while minimizing energy use, operating costs, and ugly, dazzling glare.

Why should we be concerned?

Many outdoor lights are poorly designed or improperly aimed. Such lights are costly, wasteful, and distractingly glary. They harm the nighttime environment and neighbors' property values.

Glare Here's the basic rule of thumb: If you can see the bright bulb from a distance, it's a bad light. With a good light, you see lit ground instead of the dazzling bulb. "Glare" is light that beams directly from a bulb into your eye. It hampers the vision of pedestrians, cyclists, and drivers.

Light Trespass Poor outdoor lighting shines onto neighbors' properties and into bedroom windows, reducing privacy, hindering sleep, and giving the area an unattractive, trashy look.

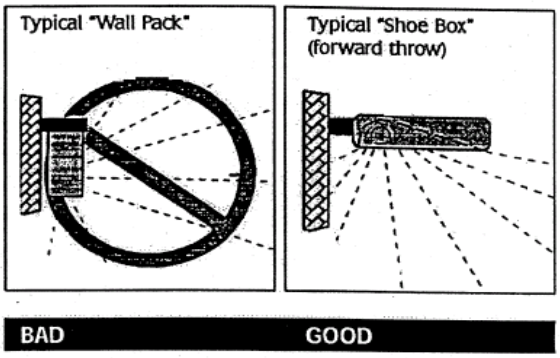
Energy Waste Many outdoor lights waste energy by spilling much of their light where it is not needed, such as up into the sky. This waste results in high operating costs. We waste over a billion dollars a year in the United States needlessly lighting the night sky.

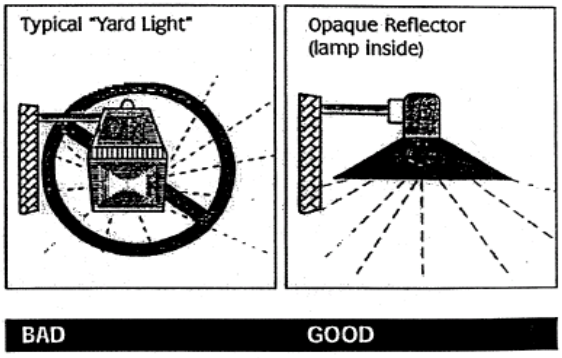
Sky Glow Rays that beam uselessly above the horizon create murky skyglow – the "light pollution" that washes out our view of the stars.

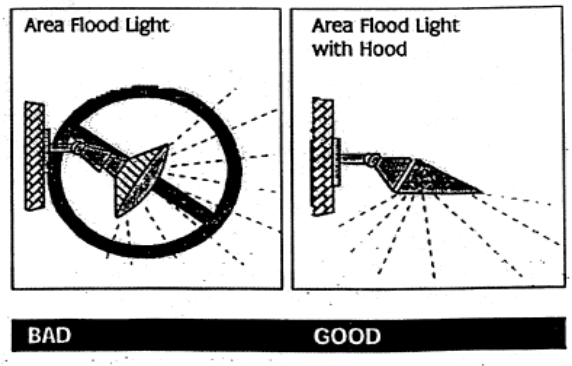
How do I switch to good lighting?

1 Provide only enough light for the task at hand; don't over-light, and don't spill light off your property. Specifying enough light for a job is sometimes hard to do on paper. Remember that a full Moon can make an area quite bright. Some lighting systems illuminate areas 100 times more brightly than the

Some Good and Bad Light Fixtures







full Moon! More importantly, by choosing properly shielded lights, you can meet your needs without bothering neighbors or polluting the sky.

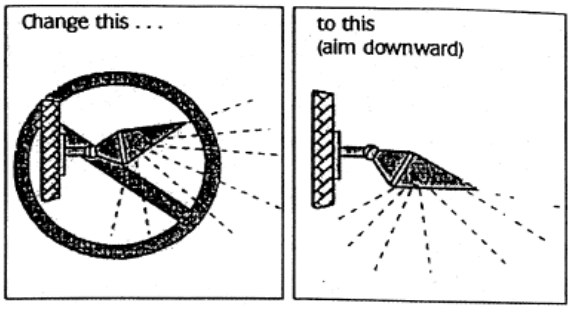
2. Aim lights down. Choose "full-cutoff shielded" fixtures that keep light from going uselessly up or sideways. Such fixtures produce minimum glare. They create a pleasant-looking environment. They increase safety because you see illuminated people, cars, and terrain, not dazzling bulbs.
3. Install fixtures carefully to maximize their effectiveness on the targeted area and minimize their impact elsewhere. Proper aiming of fixtures is crucial. Most are aimed too high. Try to install them at night, when you can see where all the rays actually go.

   Properly aimed and shielded lights may cost more initially, but they save you far more in the long run. They can illuminate your target with a low-wattage bulb just as brightly as a wasteful light does with a high-wattage bulb.
4. Choose energy-efficient low-pressure sodium (LPS) or high-pressure sodium (HPS) lamps wherever yellowish light will do the job. Use less efficient white lights only where ideal color rendition is important.
5. Where feasible, put lights on timers to turn them off each night after they are no longer needed. Put home security lights on a motion-detector switch, which turns them on only when someone enters the area; this provides a great deterrent effect!

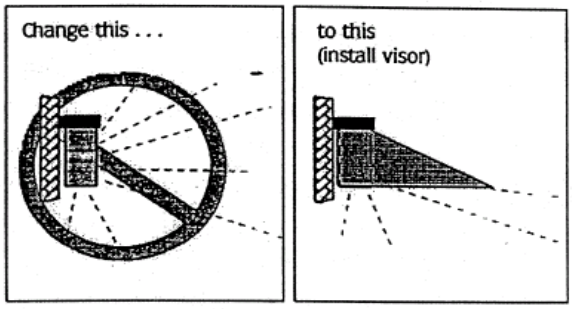
Replace bad lights with good lights.

You'll save energy and money. You'll be a good neighbor. And you'll help preserve our view of the stars.

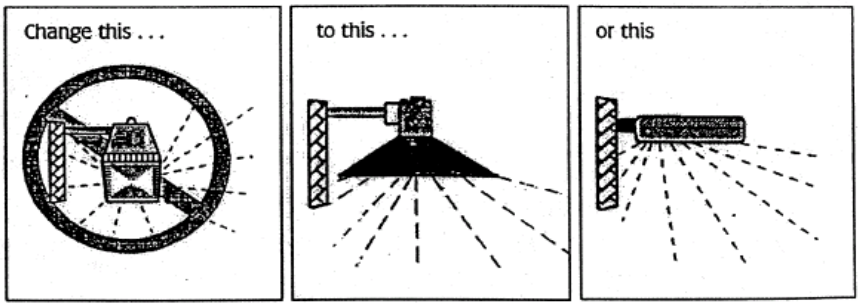
What You Can Do To Modify Existing Fixtures



FLOOD LIGHT



WALL PACK



YARD LIGHT | OPAQUE REFLECTOR | SHOE BOX

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We urge all individuals and groups interested in the problems of light pollution and obtrusive lighting to support the IDA and subscribe to its newsletter. IDA membership costs $30 per year; send your check to IDA, 3225 N. First Avenue, Tucson, AZ 85719, U.S.A.

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