



**CITY OF LA PINE PLANNING DIVISION
STAFF REPORT TO PLANNING COMMISSION**

FILE NO. SPR 2016-08CU

APPLICANT: NH Medicinals, Inc.
2944 Zuni St. No. 5
Denver, CO 80211
647-985-6727

OWNER: Steward & Simmons, Inc.
PO Box 929
La Pine, OR 97739
541-408-4955

ATTORNEY: Greene Consulting Group
Nickolas J Brait
(303) 495-2500

DESIGNER: Manifold Design
2701 Lawrence St. Unit 1
Denver, CO 80250
303-941-1443

PROJECT SITE: 16481 Bluewood Place, La Pine, OR
The subject property is identified on Deschutes County Assessor's Map 22-10-11CC as Tax Lot 083.

REQUEST: Conditional use application (quasi-judicial) for processing of recreational cannabis edibles within the La Pine Traditional Commercial (C) Zone.

I. APPLICABLE STANDARDS, PROCEDURES, AND CRITERIA:

City of La Pine Land Use Procedures Code, Exhibit B Ordinance No. 2011-03

City of La Pine Zoning Ordinance No. 2012-05

- Traditional Commercial Zone Permitted Uses (Section 10)
- Conditional Uses (Section 14)
- Related provisions pertinent to proposed use

II. FINDINGS OF FACT:

LOCATION: The subject property is located at 16481 Bluewood Place in La Pine and is identified on the Deschutes County Assessor's Map 22-10-11CC as Tax Lot 083.

ZONING: The subject property is zoned Traditional Commercial (C) and designated Traditional Commercial (C) on the La Pine Comprehensive Plan Map.

SITE DESCRIPTION & SURROUNDING USES: The subject property is located west of Hwy 97 and north

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of Reed Rd, on a dead end street. The property includes an existing structure that has been utilized for an auto repair and paint shop. Nearby uses are commercial in nature, including fitness centers, hair/tanning salon, physical therapy clinic, laundromat, dentist office, convenience store, secondhand/hobby store, Department of Human Resources, Taco Bell, and COIC. All the adjacent parcels are zoned Commercial and designated Commercial in the Comprehensive Plan.

PUBLIC NOTICE AND COMMENTS: The City of La Pine sent notices of the April 20, 2016 public hearing before the Planning Commission to property owners within 100 feet of the subject property. The public hearing notice was posted in the regular public locations and posted on the City's website. The notice was sent to the local papers (*Wisebuys*, *Frontier Advertiser*) on March 31, 2016 for publication during the week of April 5, 2016. Notice of the final decision will be sent to property owners within 100 feet of the subject property.

III. APPLICATION OF THE CRITERIA:

1. CONFORMANCE WITH CITY OF LA PINE PROCEDURES CODE, 2011-03

1. Conformance with the Land Use Procedures Code (Exhibit B of Ordinance 2011-03)

SECTION 5.0.0. REVIEW OF LAND USE ACTION APPLICATIONS

Section 5.1.0. Effect of determinations made outside of established processes.

Any informal interpretation or determination, or any statement describing the uses to which a property may be put, made outside the declaratory ruling process (City of La Pine Land Use Procedures Code, Section 11.0.0) or outside the process for approval or denial of a land use permit (Section 7.00) shall be deemed to be a supposition only. Such informal interpretations, determinations, or statements shall not be deemed to constitute final City action effecting a change in the status of a person's property or conferring any rights, including any reliance rights, on any person.

FINDING: The Applicant was made aware of this Land Use Procedures Code and requirements contained therein. Any statements made outside the declaratory ruling process or outside the process for approval or denial of a land use permit are considered supposition only and that final determinations will only be made through this land use process.

Section 5.2.0. Action on land use action applications.

A. Except for Comprehensive Plan amendments and Zone changes, and other instances where a hearing is required by state law or by other Code provisions, the Planning Director or other duly designated City representative may decide upon a land use action application administratively either with prior notice, as prescribed under Section 5.3.0 or without prior notice, as prescribed under Section 5.4.0; or he/she may refer the application to the Planning Commission for hearing.

FINDING: The Planning Director, in coordination with the Assistant City Manager, referred this application to the Planning Commission for a quasi-judicial hearing, scheduled for April 20, 2016 at 6pm at City Hall.

B. The Planning Director's or other duly designated City representative's choice between or among administrative or hearing procedures to apply to a particular application or determination shall not be an appealable decision.

FINDING: The City will not entertain appeals of the decision to refer this application to a hearing before the

Planning Commission.

C. Zone change and Comprehensive Plan amendment applications shall be referred to a hearing before the Planning Commission.

FINDING: This application is not a Comprehensive Plan amendment or Zone change; as such, this section does not apply.

Section 5.3.0. Administrative land use decisions with prior notice.

A. Notice of the application shall be sent within 10 days of submittal of the application to persons entitled to notice under Section 6.3.0. Such notice shall include all the information specified under Sections 6.4.0 (A) except for the information specified in Sections 6.4.0 (A) (7-10).

B. Any person may comment in writing on the application within 10 days from the date notice was mailed or a longer period as specified in the notice.

C. The Planning Director's or other duly designated City representative's decision to approve, deny or send to a hearing shall be made within 30 days after an application is accepted as complete. This time limit may be waived by the written consent of the applicant.

D. Notice of the Planning Director's or other duly designated City representative's decision and the appeal period shall be sent to all persons entitled to notice under Section 6.3.0 and to all persons who commented. The notice shall contain the applicable information required under Section 6.4.0.

E. The applicant, all persons entitled to notice under Section 6.3.0 and all other persons commenting as provided in Section 5.2.0 constitute parties to the administrative decision. Any party can appeal the decision in accordance with Section 9.0.0 (Appeals).

FINDING: The application has been referred to the Planning Commission for a hearing and will follow quasi-judicial hearings procedures as outlined in the Land Use Procedures Code. As such, this section does not apply.

Section 5.4.0. Administrative decision without prior notice.

The procedures for administrative decisions without prior notice shall be the same as those set forth in Section 5.3.0, except that no prior notice shall be given.

FINDING: The application has been referred to the Planning Commission for a hearing and will follow quasi-judicial hearings procedures as outlined in the Land Use Procedures Code. As such, this section does not apply.

Section 5.5.0. Final action in land use actions.

A. Except as otherwise provided, the City shall take final action, including consideration of appeals to the City Council, in land use actions within 120 days after the application is deemed complete.

B. If the applicant refuses or fails to submit missing information within the 30 days specified in Section 2.5.0, the application shall be deemed complete, for purposes of processing the application, on the 31st day after the application was first submitted, and final action of City Council, if required, shall be taken within one hundred fifty-one (151) days after the application was first received unless otherwise provided.

C. The periods set forth in Section 5.5.0 during which a final decision on an application must be made may be extended for a reasonable period of time at the written request of the applicant.

FINDING: The Applicant submitted their application on March 8, 2016. Additional materials were requested by the City on April 4, 2016 and submitted by the Applicant on April 7, 2016. Final action is planned at City Council on May 18, 2016, less than 120 days after the application was deemed complete.

Section 5.6.0. Supplementation of application within first 30 days of submittal.

An applicant shall not submit any evidence to supplement its application during the 30 days following submittal of its application, except to respond to a request for additional information made under Section 2.5.0. Any evidence submitted by an applicant in violation of Section 5.6.0 will not be considered in determining whether the application is complete and will be returned to the applicant.

FINDING: In accordance with this section, no evidence was submitted to supplement the application following application submittal, except to respond to the City's request for additional information.

Section 5.7.0. Modification of application.

A. An applicant may modify an application at any time during the approval process up until the issuance of an administrative decision, or the close of the record for an application reviewed under a hearings process, subject to the provisions of Section 5.6.0 and this section, and payment of the required fee.

B. The Planning Director, or other duly designated City representative or Planning Commission shall not consider any evidence submitted by or on behalf of an applicant that would constitute modification of an application (as that term is defined in Section 1.2.0) unless the applicant submits an application for a modification, pays all required modification fees and agrees in writing to restart the 120-day review period as of the date the modification is submitted. The 120- day time clock for an application, as modified, may be restarted as many times as there are modifications.

C. The Planning Director, or other duly designated City representative or Planning Commission may require that the application be re-noticed and additional hearings be held.

D. Up until the day a hearing is opened for receipt of oral testimony, the Planning Director or other duly designated City representative shall have sole authority to determine whether an applicant's submittal constitutes a modification. After such time, the Planning Commission shall make such determinations. The Planning Director, or other duly designated City representative or Planning Commission determination on whether a submittal constitutes a modification shall be appealable only to LUBA and shall be appealable only after a final decision is entered by the City on an application.

FINDING: The Applicant has not modified their application, nor any of the supporting documentation, with the exception of submittal of additional information requested by the City, in accordance with the Procedures Code.

SECTION 6.0.0. LAND USE ACTION HEARINGS

Section 6.1.0. Filing of staff report for hearing.

A. At the time an application that in the judgment of the Planning Director or other duly designated City representative requires a hearing is deemed complete, a hearing date shall be set.

FINDING: The City set the hearing date for April 20, 2016, at 6pm before the Planning Commission at the La Pine City Hall.

B. A staff report shall be completed no less than seven days prior to hearing. If the report is not completed by such time, the hearing shall be held as scheduled, but any party may at the hearing or in writing prior to the hearing request a continuance of the hearing to a date that is at least seven days after the date the initial staff report is complete.

C. A copy of the staff report shall be mailed to the applicant, shall be made available to such other persons who request a copy and shall be filed with the Planning Commission.

FINDING: This staff report will be available to the public on or before April 13, 2016, at least seven days prior to the hearing. A copy of the staff report will be mailed to the Applicant and the Property Owner and will be filed with the Planning Commission.

D. Oral or written modifications and additions to the staff report shall be allowed prior to or at the hearing.

FINDING: Modifications and addition to the staff report are not anticipated, but if necessary, will be allowed prior to or at the hearing.

Section 6.2.0. Hearings Body.

A. The following shall serve as the hearings body:

1. Planning Commission.
2. City Council

B. The Hearing's Body order shall be as set forth in Section 6.2.0 (A), except that the Council may call up an administrative decision for review without the necessity of an application going before the Planning Commission.

FINDING: The application will follow a quasi-judicial process and a hearing will be held before the Planning Commission on April 20, 2016 at 6pm at the La Pine City Hall.

Section 6.3.0 Notice of hearing or administrative action.

A. Individual Mailed Notice.

1. Except as otherwise provided for herein, notice of a land use application shall be mailed at least 20 days prior to the hearing for those matters set for hearing, or within 10 days after receipt of an application for those matters to be processed administratively with notice. Written notice shall be sent by mail to the following persons:

- a. The applicant.
- b. Owners of record of property as shown on the most recent property tax assessment roll of property located within 100 feet of the property that is the subject of the notice where any part of the subject property is within an urban growth boundary;
- c. The owner of a public use airport if the airport is located within 10,000 feet of the subject property.
- d. The tenants of a mobile home park when the application is for the rezoning of any part or all of a mobile home park.
- e. The Planning Commission.

f. Any neighborhood or community organization formally recognized by the City Council, whose boundaries include the site.

2. The failure of a property owner to receive mailed notice shall not invalidate any land use approval if the Planning Division can show by affidavit that such notice was given.

FINDING: Notice was mailed to the Applicant, Property Owner, property owners within 100' of the subject property, and the Planning Commission.

B. Published Notice. In addition to notice by mail and posting, notice of an initial hearing shall be published in a newspaper of general circulation in the County at least 10 days prior to the hearing.

FINDING: Notice of the initial hearing was published in the weekly edition of the *Frontier Advertiser* and *Wise Buys*, starting April 5, 2016, in accordance with this section.

Section 6.4.0. Contents of notice.

A. All mailed notices of a land use action hearing shall:

1. Describe the nature of the applicant's request and the nature of the proposed uses that could be authorized.
2. List the criteria from the Zoning Code and the plan applicable to the application at issue.
3. Set forth the street address or easily understood geographical reference to the subject property.
4. State the date, time and location of any hearing or date by which written comments must be received.
5. State that any person may comment in writing and include a general explanation of the requirements for submission of testimony and the procedures for conduct of testimony, including, but not limited to, a party's right to request a continuance or to have the record held open.
6. If a hearing is to be held, state that any interested person may appear.
7. State that failure to raise an issue in person at a hearing or in writing precludes appeal by that person to the Land Use Board of Appeals (LUBA), and that failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to LUBA based on that issue.
8. State the name of a City representative to contact and the telephone number where additional information may be obtained.
9. State that a copy 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 and will be provided at reasonable cost.
10. State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost.

B. All mailed and published notices for hearings shall contain a statement that recipients may request a copy of the staff report.

C. All mailed and published notices concerning applications necessitating an exception to one of the statewide land use planning goals shall state that a goal exception is proposed and shall summarize the issues in an understandable manner.

FINDING: Mailed, posted and published notices regarding the application and the associated public hearing were consistent with all the above requirements.

Section 6.5.0. Burden of proof

Throughout all local land use proceedings, the burden of proof rests on the applicant.

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FINDING: The Applicant provided a burden of proof document as well as supporting documentation to demonstrate compliance with applicable standards and criteria, in accordance with this section.

Section 6.6.0. Standing

- A. Any interested person may appear and be heard in a land use action hearing, except that in appeals heard on the record, a person must have participated in a previous hearing on the subject application.**
- B. Any person appearing on the record at a hearing (including appeals) or presenting written evidence in conjunction with an administrative action or hearing shall have standing and shall be a party. A person whose participation consists only of signing a petition shall not be considered a party.**

FINDING: This procedure will be followed by the City throughout the review and hearing process.

Section 6.7.0. Disclosure of ex parte contacts

Prior to making a decision, the Hearings Body or any member thereof shall not communicate directly or indirectly with any party or his representative in connection with any issue involved in a pending hearing except upon notice and opportunity for all parties to participate. Should such communication - whether written or oral - occur, the Hearings Body member shall:

- A. Publicly announce for the record the substance of such communication; and**
- B. Announce the parties' right to rebut the substance of the ex parte communication during the hearing. Communication between City staff and the Hearings Body shall not be considered to be an ex parte contact.**

Section 6.8.0. Disclosure of personal knowledge.

- A. If the Hearings Body or any member thereof uses personal knowledge acquired outside of the hearing process in rendering a decision, the Hearings Body or member thereof shall state the substance of that knowledge on the record and allow all parties the opportunity to rebut such statement on the record.**
- B. For the purposes of this section, a site visit by the Hearings Body shall be deemed to fall within this rule. After the site visit has concluded, the Hearings Body must disclose its observations and conclusions gained from the site visit in order to allow for rebuttal by the parties.**

Section 6.9.0. Challenge for bias, prejudice or personal interest.

Prior to or at the commencement of a hearing, any party may challenge the qualification of the Hearings Body, or a member thereof, for bias, prejudice or personal interest. The challenge shall be made on the record and be documented with specific reasons supported by facts. Should qualifications be challenged, the Hearings Body or the member shall disqualify itself, withdraw or make a statement on the record of its capacity to hear.

FINDING: The Planning Commission has been notified of these land use hearing disclosure procedures. In addition, these procedures will be reviewed at the beginning of the hearing, to provide opportunity for appropriate disclosure and challenge prior to the proceedings.

Section 6.10.0. Hearings procedure.

A hearing shall be conducted as follows:

- A. The Hearings Body shall explain the purpose of the hearing and announce the order of proceedings, including reasonable time limits on presentations by parties.**
- B. A statement by the Hearings Body regarding pre-hearing contacts, bias, prejudice or personal interest shall be made.**
- C. Any facts received, noticed or recognized outside of the hearing shall be stated for the record.**
- D. Challenges to the Hearings Body's qualifications to hear the matter shall be stated and challenges entertained.**
- E. The Hearings Body shall list applicable substantive criteria, explain that testimony and evidence must be directed toward that criteria or other criteria in the comprehensive plan or land use regulations that the person believes to apply to the decision, and that failure to address an issue with sufficient specificity to afford the decision maker and the parties an opportunity to respond precludes appeal to LUBA based on that issue.**
- F. Order of presentation:**
 - 1. Open the hearing.**
 - 2. Staff report.**
 - 3. Proponents' presentation.**
 - 4. Opponents' presentation.**
 - 5. Proponents' rebuttal.**
 - 6. Opponents' rebuttal may be allowed at the Hearings Body's discretion.**
 - 7. Staff comment.**
 - 8. Questions from or to the chair may be entertained at any time at the Hearings Body's discretion.**
 - 9. Close the hearing.**
- G. The record shall be available for public review at the hearing.**

FINDING: These procedural requirements will be adhered to during the hearing process. The Planning Commission Chair will explain the purpose of the hearing, announce the order of the hearing, allow appropriate time for all parties and remind attendees that failure to address an issue with sufficient specificity precludes appeal to LUBA based on that specific issue. The Planning Director will list and review all applicable substantive criteria.

Section 6.11.0. Setting the hearing.

- A. After an application is deemed accepted a hearing date shall be set. A hearing date may be changed by the City staff, or the Hearings Body up until the time notice of the hearing is mailed. Once the notice of hearing is mailed any changes in the hearing date shall be processed as a continuance in accordance with Section 6.13.0.**
- B. If an applicant requests that a hearing date be changed, such request shall be granted only if the applicant agrees that the extended time period for the hearing shall not count against the 120-day time limit set forth in Section 5.5.0.**

FINDING: The hearing date was scheduled for April 20, 2016 before the Planning Commission and has been publicly noticed as such. A change in hearing date has not occurred and is not anticipated; however the above requirements will be adhered to if the Applicant requests a hearing date.

Section 6.12.0. Close of the record.

- A. Except as set forth herein, the record shall be closed to further testimony or submission of further argument or evidence at the end of the presentations before the Hearings Body.**
- B. If the hearing is continued or the record is held open under Section 6.13.0, further evidence or testimony shall be taken only in accordance with the provisions of Section 6.13.0.**
- C. Otherwise, further testimony or evidence will be allowed only if the record is reopened under Section 6.14.0.**
- D. An applicant shall be allowed, unless waived, to submit final written arguments in support of its application after the record has closed within such time limits as the Hearings Body shall set. The Hearings Body shall allow applicant at least seven days to submit its argument, which time shall be counted against the 120-day time limit for decision.**

FINDING: These procedures for closing the record will be adhered to by the City. The Applicant will be allowed to submit final written arguments in support of its application after the record has closed within reasonable time limits set by the Planning Commission.

Section 6.13.0. Continuances or record extensions.

- A. Grounds.**
 - 1. Prior to the date set for an initial hearing, an applicant shall receive a continuance upon any request if accompanied by a corresponding suspension of the 120 day limit for decision. If a continuance request is made after the published or mailed notice has been provided by the City, the Hearings Body shall take evidence at the scheduled hearing date from any party wishing to testify at that time after notifying those present of the continuance.**
 - 2. Any party is entitled to a continuance of the initial evidentiary hearing or to have the record left open in such a proceeding in the following instances:**
 - a. Where additional documents or evidence are submitted by any party; or**
 - b. Upon a party's request made prior to the close of the hearing for time to present additional evidence or testimony.**

For the purposes of 6.13.0 (2)(a), "additional documents or evidence" shall mean documents or evidence containing new facts or analysis that are submitted after notice of the hearing.

- 3. The grant of a continuance or record extension in any other circumstance shall be at the discretion of the Hearings Body.**
- B. Continuances.**
 - 1. If the Hearings Body grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial hearing.**
 - 2. An opportunity shall be provided at the continued hearing for persons to rebut new evidence and testimony received at the continued hearing.**
 - 3. If new written evidence is submitted at the continued hearing, any person may request**

prior to the conclusion of the continued hearing that the record be left open for at least seven days to allow submittal of additional written evidence or testimony. Such additional written evidence or testimony shall be limited to evidence or testimony that rebuts the new written evidence or testimony.

C. Leaving record open.

If at the conclusion of the hearing the Hearings Body leaves the record open for additional written evidence or testimony, the record shall be left open for at least 14 additional days, allowing at least the first seven days for submittal of new written evidence or testimony and at least seven additional days for response to the evidence received while the record was held open. Written evidence or testimony submitted during the period the record is held open shall be limited to evidence or testimony that rebuts previously submitted evidence or testimony.

D. A continuance or record extension granted under Section 6.13.0 shall be subject to the 120-day time limit unless the continuance or extension is requested or otherwise agreed to by the applicant. When the record is left open or a continuance is granted after a request by an applicant, the time period during which the 120-day time limit is suspended shall include the time period made available to the applicant and any time period given to parties to respond to the applicant's submittal.

Section 6.14.0. Reopening the record.

A. The Hearings Body may at its discretion reopen the record, either upon request or on its own initiative. The Hearings Body shall not reopen the record at the request of an applicant unless the applicant has agreed in writing to a suspension of the 120-day time limit.

B. Procedures.

- 1. Except as otherwise provided for in this section, the manner of testimony (whether oral or written) and time limits for testimony to be offered upon reopening of the record shall be at the discretion at the Hearings Body.**
- 2. The Hearings Body shall give written notice to the parties that the record is being reopened, stating the reason for reopening the record and how parties can respond. The parties shall be allowed to raise new issues that relate to the new evidence, testimony or criteria for decision-making that apply to the matter at issue.**

FINDING: The Planning Commission has been notified of the process, timing, and procedural requirements that are detailed in these sections. Throughout the review and hearing process, the City will adhere to these sections, as necessary and applicable.

SECTION 7.0.0. LAND USE ACTION DECISIONS

Section 7.1.0. Decision.

A. Approval or denial of a land use action shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based upon the criteria standards and facts set forth.

FINDING: The City provides this staff report in accordance with this procedural requirement, documenting all applicable criteria and the facts relied upon to determine how/whether the Applicant's request meets the criteria and standards.

B. Any portion of an application not addressed in a Hearings Body's decision shall be deemed to have been denied.

FINDING: The Hearing Body's decision shall address the Applicant's specific request for a conditional use permit for processing marijuana edibles. No other applications are being decided at this time and will be subject to separate reviews, procedures and criteria.

C. A decision on a land use action is not final until the Planning Director or other duly designated City representative, or Hearings Body issues a written decision, the decision has been mailed and the appeal period to the next higher Hearings Body within the City has run.

FINDING: The City and Applicant are aware that the decision on this land use action will not be final until the Hearings Body issues a written decision, the decision has been mailed and the appeal period to the City Council has run.

D. No building permit shall be issued until a decision is final. Appeal of a final decision to LUBA does not affect the finality of a decision at the local level for purposes of issuing building permits.

FINDING: The Applicant has not submitted building permits; however, in the event that any building permits are submitted, the City will not allow approval until this land use decision and other State requirements are final.

Section 7.2.0. Notice of decision.

A Hearings Body's decision shall be in writing and mailed to all parties; however, one person may be designated by the Hearings Body to be the recipient of the decision for a group, organization, group of petitioners or similar collection of individual participants.

FINDING: The Hearing Body's decision will be mailed to all parties in accordance with this procedure.

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SECTION 10.0.0. LIMITATIONS ON APPROVALS

Section 10.1.0. Expiration of approval.

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B. Duration of Approvals.

1. Except as otherwise provided under this section or under applicable Zoning Code provisions, a land use permit is void two years after the date the discretionary decision becomes final if the use approved in the permit is not initiated within that time period.

FINDING: The Applicant has noted several times in telephone calls that it is their intent to implement the proposed use within the next year, after receiving all applicable State permits and approvals.

2. CONFORMANCE WITH CITY OF LA PINE ZONING ORDINANCE, 2012-05

Traditional Commercial Zone

Conditional Uses

Single-family dwellings (701.1)

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Parking lots not associated with a principal use

Any use that emits fumes or noxious odors such as paint booths, refinishing, sand blasting, food processing, animal processing, tanneries, composting, and the like

...

FINDING: The Applicant is requesting approval of a conditional use permit for a marijuana edibles processing facility, including processing of infused oils, extracts, tinctures, and capsules, in the Traditional Commercial Zone. Staff interprets this use to fit within the conditional use of “Any use that emits fumes or noxious odors such as paint booths, refinishing, sand blasting, food processing, animal processing, tanneries, composting, and the like,” as it is the processing of edible products. No retail sales will occur at the facility.

Additional Commercial Use Regulations

- 1. Any permitted principal and/or accessory commercial use shall be subject to the following use regulations.**

FINDING: While the proposal is for a conditional use permit, not a principal or accessory commercial use, the conditional use approval criteria require “compliance with the requirements set forth by the applicable primary zone, by any applicable combining or overlay zone, and other provisions set forth by this ordinance that are determined applicable to the subject use.” As such, these regulations are required.

- 2. For commercial uses located on corner lots where one street is predominantly residential and one street is predominantly commercial, any commercial structure shall front on the street that is predominantly commercial.**

FINDING: The subject lot is not a corner lot. This criterion is not applicable.

- 3. Any business, servicing, or processing shall be conducted within a completely enclosed building, except for parking and loading facilities and for “drive-in” type establishments offering goods or services to customers waiting in parked motor vehicles.**

FINDING: The Applicant proposes that all processing will be conducted within a completely enclosed structure. Only parking and loading facilities shall be outside of the structure.

- 4. All accessory storage of junk, waste, discarded or salvaged material, machinery or equipment, including automobile, truck, or other vehicle parts shall not be permitted except within a completely enclosed structure.**

FINDING: Applicant is not proposing to store any junk, waste, discarded or salvaged material, machinery or equipment. A continuing condition of approval shall be that the site contain no storage of junk, waste, discarded or salvaged material, machinery or equipment, except within a completely enclosed structure.

- 5. Any business establishment shall deal directly with the consumer only and any manufacturing done on the premises shall be for sale on the premises; using commercial structures for only non-public wholesaling is prohibited.**

FINDING: At the time of application, retail sales of marijuana products are not allowed in the City of La Pine. As such, the Applicant is not proposing retail sales as part of the conditional use application.

6. Any display of goods shall be located behind the building setback line.

FINDING: Applicant is not proposing a retail establishment or display of goods.

7. Access driveways and entrances shall be permitted in a number and locations in which sight distance is adequate to allow safe movement of traffic in or out of the driveway or entrance, the free movement of normal highway traffic is not impaired, and the driveway or entrance will not create a hazard or an area of undue traffic congestion on highways to which it has access. The City may require the permit applicant to submit engineering data and/or traffic analyses to support its proposed plan of access driveways and entrances.

FINDING: No new access driveways/entrances are proposed by the Applicant and the existing driveway has adequate site distance, allows free movement of traffic and does not create a hazard or area of undue traffic conditions. The trip generation study submitted by the Applicant estimates an addition of 4 peak hour trips to the site, which will not have a measurable impact on the driveway access operation.

8. Adequate storm drainage facilities shall be installed to ensure that stormwater does not flow onto abutting property, sidewalks, or streets.

FINDING: The subject property includes an existing building, parking and landscaping. The property's perimeter appears to be lined by pervious surface area that can capture stormwater running off the parking lot. The current application is a conditional use application, and does not include site plan details. A continuing condition of approval shall require compliance with this criterion that stormwater from the site does not flow off the property. Additionally, if any site development is proposed, a stormwater management plan shall be submitted, in accordance with the site plan criteria within the Zoning Ordinance.

9. Any part or portion of a lot developed for "C" type zone uses which are not used for buildings, other structures, parking or loading spaces, or aisles, driveways, sidewalks, and designated storage areas shall be planted and maintained with grass or other all season groundcover vegetation. Grass shall be kept neatly mowed. Landscaping with trees and shrubs is permitted and encouraged.

FINDING: The proposed plans show landscaping in areas not intended for buildings, parking, loading or aisles. As a continuing condition of approval, landscaped areas shall be maintained through mowing, weeding and appropriate watering.

10. Any off-street parking area located in a required front yard building setback shall be located at least 5 feet from the road right-of-way with the area in between the road right-of-way and parking maintained according to Section 702.1(8).

FINDING: The building and parking located at the address provided for the conditional use application are existing; parking is located at the rear of the property and not in the front yard building setback.

11. It shall not emit any noxious, toxic, or corrosive fumes or gases nor shall it emit any offensive odors.

FINDING: The Applicant states in their application: "The equipment and processes used in the manufacturing process have been designed and selected for their ability to reduce the fumes and odors...The facility will be equipped with commercial grade hoods, fans, ventilation systems, and odor reduction equipment that will reduce and even eliminate any fumes or noxious odors produced during the business operations." A continuing condition of approval shall require continuing conformance with this criterion.

12. It shall provide necessary shielding or other protective measures against interference occasioned by mechanical equipment, or uses or processes with electrical apparatus.

FINDING: No external mechanical equipment has been proposed. If any site development is proposed, Applicant shall submit a site plan application.

13. All exterior lighting shall be so placed and shielded so as not to create a nuisance for adjacent properties.

FINDING: The current application is a conditional use application, and does not include development. If any site development is proposed, Applicant shall submit a site plan application that includes a lighting plan designed in conformance Exhibit G to Ordinance 2011-03.

Buffering and Screening Requirements

Where any permitted principal and/or accessory use abuts any land zoned RSF, RMF, RMP, CRMX, or CMX the following buffer and screening shall be required. These requirements shall apply in instances where such use is being newly developed on vacant land, expanded in floor area by 50% or greater, or removed and a new use developed.

...

FINDING: The subject property does not abut any land zoned RSF, RMP, RMP, CRMX or CMX; therefore, this criteria does not apply.

14. CONDITIONAL USES

AUTHORIZATION TO GRANT OR DENY.

Conditional uses may be permitted, enlarged or otherwise altered when authorized in accordance with the standards and procedures set forth in this ordinance. In the case of a use listed as conditional existing prior to the effective date of this ordinance, a change in use, enlargement or alteration of such use shall conform with the provisions of a conditional use if so classified. Any new or transferred owner or assign is required to abide by the authorized permit. An application for a conditional use may be approved, modified, approved with conditions or denied by the City.

GENERAL CRITERIA.

In determining whether or not a conditional use proposal shall be approved or denied, it shall be determined that the following criteria are either met or can be met through compliance with specific conditions of approval.

(A) The proposal is in compliance with the requirements set forth by the applicable primary zone, by any applicable combining or overlay zone, and other provisions set forth by this ordinance that are determined applicable to the subject use.

FINDING: The Applicant is requesting approval of a conditional use permit for a marijuana edibles processing facility, including processing of infused oils, extracts, tinctures, and capsules, in the Traditional Commercial Zone. Staff interprets this use to fit within the conditional use of "Any use that emits fumes or noxious odors such as paint booths, refinishing, sand blasting, food processing, animal processing, tanneries, composting, and the like," as it is the processing of edible products.

(B) That, for a proposal requiring approvals or permits from other local, state and/or federal agencies, evidence of the approval or permit compliance is established or can be assured

prior to final approval.

FINDING: Recreational marijuana uses are controlled and licensed by the State of Oregon Liquor Control Commission (OLCC). All requirements and permits from the State OLCC must be obtained prior to establishing the proposed business in the City of La Pine. The Applicant submitted, as part of their Conditional Use application, their operating plan that will be submitted to OLCC to address the state requirements for permit approvals. This operating plan addresses security, recordkeeping, employee hiring and training, product transport and measures to prevent minors from entering facilities and/or obtaining marijuana items at the business. The Applicant cannot receive approval from the State without a signed Land Use Compatibility Statement (LUCS) from the City, which requires the approval of the Conditional Use application. As such, a continuing condition of approval for this conditional use application shall include approval all necessary State permits and licenses.

(C) The proposal is in compliance with specific standards, conditions and limitations set forth for the subject use in the applicable zone, this section and this ordinance.

FINDING: The ordinance does not set forth specific standards, conditions or limitations for the subject use (food/edibles processing).

(D) That no approval be granted for any use which is or expected to be found to exceed resource or public facility carrying capacities, including but not limited to: transportation, water, sewer, and utility systems.

FINDING: The Applicant states in their burden of proof that traffic will be generated by the employees coming and going from work, and receiving/initiating delivery vehicles. The Applicant states that 8-12 people will work in two shifts of 4-6 employees and will operate during the hours of 8 am to 8 pm Monday through Saturday. The Applicant anticipates receiving, at most, 2-3 deliveries per week and initiating no more than 10 per week. These minimal traffic numbers would not exceed carrying capacities of the area transportation facilities.

The Applicant states that the facility will minimize water usage and waste generation, as water will not be used in the manufacturing process, except incidentally for the employee restroom and break area. This type of water usage would not be greater than other potential commercial uses. The Applicant states that all recovered solvents, chemicals, and other liquid wastes generated in the manufacturing process will be safely stored on site and disposed of on a monthly basis using a licensed professional chemical waste disposal service. The Applicant states that all solid waste products containing cannabis plant materials will be ground and mixed with other organic, compostable waste products to render it unusable and unrecognizable as cannabis. The Applicant states that this mixture will be taken to an offsite composting facility and deposited there.

A continuing condition of approval shall require that the proposed use not exceed resource or public facility carry capacities, including but not limited to: transportation, water, sewer and utility systems.

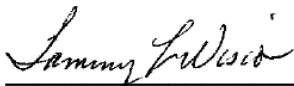
(E) For any use which is found to require compliance with air, water, land, solid waste and/or noise pollution standards, that the compliance be a condition of approval and compliance therewith shall be a continuing condition.

FINDING: The Oregon Liquor Control Commission (OLCC) maintains regulations related to marijuana processing facilities that the Applicant must comply with to obtain a State license. Compliance with these State regulations shall be a continuing condition of approval.

IV. CONCLUSION: The Applicant has met or can meet the applicable Zoning Ordinance requirements, subject to the following conditions of approval.

RECOMMENDED CONDITIONS OF APPROVAL:

1. Approval is based on the application and information submitted by the Applicant. Any substantial change to the application, beyond requested changes in these conditions, will require a modification of approval.
2. Upon building permit application, any construction plans that include all proposed and/or required public improvements, water/sewer service connections, site grading/drainage and utilities shall be submitted to the City for review and approval, prior to construction.
3. Continuing conditions of approval include:
 - a. The proposed use shall not exceed resource or public facility carry capacities, including but not limited to: transportation, water, sewer and utility systems.
 - b. The site shall contain no storage of junk, waste, discarded or salvaged material, machinery or equipment, except within a completely enclosed structure.
 - c. Landscaped areas shall be maintained through mowing, weeding and appropriate watering.
 - d. Stormwater shall be maintained onsite and not flow off the property onto abutting properties, sidewalks or streets.
4. If any site development is proposed, Applicant shall submit a site plan application detailing all required approval criteria.
5. Applicant must obtain and maintain all required State permits and licenses.
6. Applicant shall maintain a current City business license.



Tammy Wisco, Planning Director
City of La Pine

4/12/16

Date