

Zechariah Heck

From: Steven Paulding <sypaulding@mac.com>
Sent: Sunday, July 21, 2019 11:41 PM
To: Tanya Saltzman
Subject: OPT OUT of Marijuana Production in Deschutes County
Attachments: Opt out Petition_Steve Paulding_2019-07_21.pdf; ATT00001.txt

Hello Tanya,

Please find attached my petition to the Commissioners asking them to opt out of allowing any additional marijuana growers or processors to be approved in Deschutes County.

Thank you,
Steve Paulding

Zechariah Heck

From: Tony Oliver <tonyjo@teleport.com>
Sent: Sunday, July 21, 2019 11:31 PM
To: Tanya Saltzman
Subject: OPT OUT
Attachments: July 21 OPT OUT.docx

Good evening Tanya --

Attached is my OPT OUT letter for the commissioners

Thank you,

Tony Oliver
541-504-0027
550 NW 74th Street
Redmond, OR 97756

I am copying it below because I had trouble getting it to attach.

July 21, 2019

Dear Commissioners:

Please add my name to the number of people requesting you to make the decision to OPT OUT. I don't need to repeat the numbers and types of negative impacts introducing marijuana into our county has had on the environment, crime, hospital ER visits, children's access to marijuana, etc. You have had them outlined in other letters in more specific terms.

Please know I protested against marijuana's introduction into Deschutes County and continue to not support its presence.

Respectfully,

Tony Oliver

541-504-0027

550 NW 74 th Street

Redmond, Oregon 97756

July 21, 2019

Dear Commissioners:

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Respectfully,

Tony Oliver

541-504-0027

550 NW 74 th Street

Redmond, Oregon 97756

Zechariah Heck

From: Steven Lee <sjlee3x3@gmail.com>
Sent: Sunday, July 21, 2019 11:11 PM
To: Tanya Saltzman
Subject: Deschutes County opting out of Marijuana Farming

Dear Deschutes County Commissioners,

Oregon doesn't need to grow more marijuana.

Why do we need to keep approving permits to grow more marijuana when we grow more than the State of Oregon already consumes? The net result is that we have become a net exporter of marijuana into the black market in states where marijuana is illegal. And yet Deschutes County continues to go down this path of approving permits to produce more and more unneeded marijuana for consumption in other states. Why?

The environmental costs are too high.

The effects on the environment are nothing but negative – and it's only going to get worse! Growing marijuana is rapidly depleting our water supply. We need to drink water and grow food to live. We don't need to grow marijuana to live. Growing marijuana damages the air quality where it's grown and processed. As a citizen of Deschutes County, I demand that the air not smell noxious from marijuana. Growing Marijuana turns our county into an industrial-looking crime zone with chain link fencing topped with barbed wire protecting these pot farms. This robs the citizens in this county of the natural beauty that makes it desirable to live here.

The financial costs are too high.

Why should I, as a tax-paying citizen of Deschutes County, be saddled with paying for the increased regulation and law-enforcement costs of growing more marijuana? Their permits and business taxes are not paying for the increased law enforcement costs of producing a narcotic drug, probably bound for the black market in another state. Marijuana growers are profiting at my expense. Drug dealers in other states are profiting at my expense. And land owners next to these farms are losing property value. Buyers are backing out of buying homes when they find out they are next to pot farms. Is Deschutes County prepared to re-assess home values that are dropping because of growing marijuana nearby? This will reduce the tax revenue for Deschutes County. Is it really worth it?

The social costs are too high.

Getting high on marijuana is not just a personal decision. It has an impact on our community. When you are mentally impaired, you make bad choices like getting behind the wheel when you have the false sense that you are in control. How many lives will be crippled or lost from the massive increase in traffic accidents caused by marijuana use? The increase in production of marijuana in Deschutes County will facilitate the increase in drug abuse. Please, I urge you to stop the destructive cycle that Deschutes County facilitates.

Please opt out!

Let's preserve the environmental treasure that we have here in Deschutes County and the way of life that we love. I urge you to please ***opt out of Marijuana Regulations that allow marijuana farming in Deschutes County.***

Regards,

Steven Lee
59622 Okanagan Ln
Bend, OR 97702

Zechariah Heck

From: DWLee <dwlee333@gmail.com>
Sent: Sunday, July 21, 2019 10:45 PM
To: Tanya Saltzman
Subject: OPT OUT of Marijuana grows, please?

Dear Ms. Saltzman,

Deschutes County needs to please OPT OUT of more marijuana grows, please?

If the growers complain about the regulations, then the best option is to stop all grows altogether.

Sincerely,
Deborah Lee
59622 Okanagan Lane
Bend, OR 97702

Zechariah Heck

From: N.S.Lee <nslee333@gmail.com>
Sent: Sunday, July 21, 2019 10:43 PM
To: Tanya Saltzman
Subject: opt out marijuana

[EXTERNAL EMAIL]

opt out marijuana

Zechariah Heck

From: james bouziane <jbouziane@me.com>
Sent: Sunday, July 21, 2019 10:23 PM
To: Tanya Saltzman
Subject: Marijuana- Opt Out!

Dear commissioners

I live n rural Deschutes County on acreage and have a small farm. I retired from law enforcement and firefighting to live a moral tranquil life. I have observed the evolution of the marijuana industry desire to transform this area, and have attended many of the meetings the past 2 years. I support that you OPT OUT.

I think in the beginning of this process you may have believed that it would be simply adding a “farm crop” to the agricultural scene happening here. However, as you have seen, it has become a massive undertaking with almost zero upside that I can see.

I want you to consider a few things. If the marijuana supporters continually complain that DC is too tough on them, why don't they go to counties or states that are “easier”? Why is it this big fight for compliance?

The US Attorney for OR has provided you with hard facts on the over-production, crime, violence and human trafficking. Salem acknowledges that there is is the over-production and the political solution is to write a law to allow it to be sold across state lines? That seems absurd and dangerous.

OLCC is understaffed and so is the Sheriff Office so any real inspections and compliance matters are feeble and not fair to those fine officers or the residents.

The state of Colorado is now producing reports that show the negative nexus of marijuana and car crash fatalities.

Marijuana is not a tomato or avocado, it is a very potent psychoactive drug that is still not well understood.

I think now is the perfect time for you to opt out. You have two years of data and real-time observations of grower arrests for significant criminal activities, failure to comply, and other bad-faith actions.

It is time to move on with our lives and OPT OUT.

Respectfully
James Bouziane

Sent from my iPad

Zechariah Heck

From: Sam and Carolyn Davis <sadaca_2@msn.com>
Sent: Sunday, July 21, 2019 8:57 PM
To: Tanya Saltzman
Subject: FW: Op Out of Marijuana

Tanya:

I apologize if this should have been sent to only you.

Regards

Sam Davis

From: Sam and Carolyn Davis
Sent: Sunday, July 21, 2019 8:20 PM
To: Deschutes County Commissioners <board@deschutes.org>
Cc: 'Nick Lelack' <nick.lelack@deschutes.org>
Subject: Op Out of Marijuana

Board of County Commissioners:

We strongly recommend that the Board of County Commissioners vote to Op Out of marijuana as soon as possible, which would be the decision to go to the voters at the next general election.

We are now 3+ years into Deschutes County marijuana experiment that started when you voted to "Opt In" in May of 2016. History has shown the following:

1. Marijuana has plummeted in value due to extreme over production. Reports indicate that the over production has yielded over a 6 year supply of marijuana in Oregon. The only place that the marijuana industry can dispose of their surplus product is the black market. More production is not needed.
2. The Board of County Commissioners, guided by recommendations from a County appointed Marijuana Advisory Committee (with a predominately pro marijuana component), developed the regulations needed to somewhat control the marijuana industry. Unfortunately, the same marijuana industry members, who agreed to the marijuana regulations, are now challenging those regulations to the state, in an effort to have them overturned. The marijuana industry cannot be trusted.
3. There have been a significant number of violations of County regulations by permitted marijuana grows who promised to comply with the regulations when accepting their County permits. Odor control systems proposed and installed by members of the marijuana industry have generally failed to control odors.
4. In addition to the reported violations, there have been untold numbers of violations that neighbors have not reported to the County.
5. The County, OLCC, and Sheriff are dramatically understaffed to deal with the marijuana violations and to assure compliance with the current regulations.
6. There are a significant number of illegal grows in the County with no control or oversight.
7. High profile marijuana grows have been fined by the OLCC, which demonstrates a lack of compliance even with the minimal OLCC regulations.

8. A recent permit was denied by the Board of County Commissioners due to a lack of credibility by the applicant and due to the character of some of the applicants. This shows that there is an undesirable component moving into the marijuana industry that we do not need in Deschutes County.

The marijuana industry has proven itself to be unworthy of the support shown by the Board of County Commissioners in the overturn of the "Opt Out" in 2016. The voting public has now seen and understands how the marijuana industry impacts the County and their eyes are now wide open as to what Measure 91 actually allows. It did not approve just 4 plant recreational grows in the back yard as many of the voting public thought. It also allowed large industrial grows throughout our county and residential neighborhoods! With the voting publics' new knowledge of the impact of Measure 91 and marijuana, the slim approval of marijuana in Deschutes County will be overturned if the voters get to vote again.

Reverse the earlier decision that history has shown was a mistake and "Opt Out" now. It's time to allow an educated voting public to speak.

Regards

Sam and Carolyn Davis

Zechariah Heck

From: Elizabeth A. Dickson <eadickson@dicksonhatfield.com>
Sent: Sunday, July 21, 2019 4:57 PM
To: Tanya Saltzman
Subject: MJ Code Amendment Comment
Attachments: Des Co Record Sbmtl Ltr.docx

[EXTERNAL EMAIL]

Tanya,

Please accept this for the record.

Liz Dickson

DICKSON | HATFIELD LLP

400 SW Bluff Drive, Suite 240

Bend, OR 97702

O: 541.585.2229

F: 541.330.5540

eadickson@dicksonhatfield.com

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DICKSON | HATFIELD LLP

400 SW Bluff Drive, Suite 240
Bend, OR 97702
(O) 541-585-2224 · (D) 541-585-2229

July 21, 2019

Tanya Saltzman, Associate Planner
Deschutes County Community Development
114 NW Lafayette Ave.
Bend, OR 97703

Board of County Commissioners
1300 NW Wall St.
Bend, OR 97702

**RE: Reconsideration of Marijuana Text Amendments
Submittal to the Public Record during Open Record Period**

Dear Planner Saltzman and County Commissioners,

Our offices currently represent and have represented a number of appellants in their opposition to marijuana grows approved in their respective communities. We have submitted 3 binders to the record containing the 1644 views of opponents to grows approved quasi-judicially under the 2016 code. This is approximately 1/3 of the number that would be required to put an "opt out" measure on the Deschutes County ballot.

The attorney-client privilege between myself and my clients precludes me from sharing their sentiments beyond those stated in the letters submitted. However, I have formulated my own thoughts on the code provisions as a result of multiple appeal processes. The testimony I provide in this letter is my own.

I have researched various jurisdictions to compare Deschutes County, as a person looking to enter the industry might. I have found Oregon to be the most lenient of all western states, and Deschutes County to offer the least expensive land of the Oregon jurisdictions allowing marijuana grows, that being Deschutes County EFU land. This may explain why we have attracted growers from New England to Costa Rica.

If this new industry offered benefits to the County that exceed the burdens, it would be smart to try to attract marijuana grows as if the industry was like a new Amazon regional headquarters or a craft beer industry. I have not seen any evidence of such benefits. Yes, the overall recreational marijuana industry (production, processing, retail) generates tax revenue for the County. However, the hundreds of hours

the Board has spent listening to approval appeals, administrative agencies, and law enforcement concerns alone likely outweighs the tax revenue generated. Add in staff hours, law enforcement hours, and public time and expenses fighting appeals, and it seems to me that the costs of this experiment to not warrant continuing it.

To illustrate the way we are legally “too easy,” I will describe the legal requirements for production in Sonoma County, California. I confirmed this information with Diana Gomez, Deputy County Counsel, Sonoma County. She handles cannabis enforcement in the office. They allow grows indoors and outdoors in the county, subject to many requirements. Here are a few:

1. Absolutely no felons
2. No weapons of any kind
3. Property tax surcharge of \$6.50 per foot for “mixed light” (all but outdoor grows)
4. Permit process takes 18 months
5. Penalties of up to \$10,000 per day for violations
6. Zero water impact
7. No displacement of farm activity
8. No impact on any sensitive habitats

These are just a few of the examples of a much tougher environment. Why wouldn't growers who want to evade the tough laws come here instead? Oregon's laws make it very hard for us to compete with such a system. I strongly urge this Board to consider the lessons we've learned, the time we've spent, and the environment in which we're being asked to manage this industry.

Your consideration is appreciated.

Sincerely,

/s/

Elizabeth A. Dickson
EAD/hoh

Zechariah Heck

From: Peter Gutowsky
Sent: Sunday, July 21, 2019 4:50 PM
To: Zechariah Heck
Subject: Fwd: Undeliverable: File #: 247-18-000540-TA

FYI

Peter Gutowsky
Deschutes County
Sent from my iPhone

Begin forwarded message:

From: Carol Clouse <clouseck@gmail.com>
Date: July 21, 2019 at 4:44:02 PM PDT
To: Peter.Gutowsky@deschutes.org
Subject: Fwd: Undeliverable: File #: 247-18-000540-TA

----- Forwarded message -----

From: Carol Clouse <clouseck@gmail.com>
Date: Sun, Jul 21, 2019 at 4:38 PM
Subject: Fwd: Undeliverable: File #: 247-18-000540-TA
To: <Jacob.Ripper@deschutes.org>

----- Forwarded message -----

From: Carol Clouse <clouseck@gmail.com>
Date: Sun, Jul 21, 2019 at 4:36 PM
Subject: Fwd: Undeliverable: File #: 247-18-000540-TA
To: <Peter.Gutowski@deschutes.org>

----- Forwarded message -----

From: Carol Clouse <clouseck@gmail.com>
Date: Sun, Jul 21, 2019 at 4:34 PM
Subject: Fwd: Undeliverable: File #: 247-18-000540-TA
To: <Tanya.Saltzman@deschutes.org>

----- Forwarded message -----
From: **Carol Clouse** <clouseck@gmail.com>
Date: Sun, Jul 21, 2019 at 4:33 PM
Subject: Fwd: Undeliverable: File #: 247-18-000540-TA
To: <Tony.DeBone@deschutes.org>

----- Forwarded message -----
From: **Carol Clouse** <clouseck@gmail.com>
Date: Sun, Jul 21, 2019 at 4:32 PM
Subject: Fwd: Undeliverable: File #: 247-18-000540-TA
To: <Patti.Adair@deschutes.org>

----- Forwarded message -----
From: **Carol Clouse** <clouseck@gmail.com>
Date: Sun, Jul 21, 2019 at 4:31 PM
Subject: Fwd: Undeliverable: File #: 247-18-000540-TA
To: <Phil.Henderson@deschutes.org>

----- Forwarded message -----
From: **Carol Clouse** <clouseck@gmail.com>
Date: Sun, Jul 21, 2019 at 6:06 AM
Subject: Fwd: Undeliverable: File #: 247-18-000540-TA
To: <tanya.saltzman@deschutes.org>

----- Forwarded message -----
From: <postmaster@deschutes.org>
Date: Sun, Jul 21, 2019 at 6:03 AM
Subject: Undeliverable: File #: 247-18-000540-TA
To: <clouseck@gmail.com>

Delivery has failed to these recipients or groups:

tanya.saltzman@deschutes.org

The email address you entered couldn't be found. Please check the recipient's email address and try to resend the message. If the problem continues, please contact your helpdesk.

Diagnostic information for administrators:

Generating server: EX13-2.deschutes.org

tanya.salzman@deschutes.org

Remote Server returned '550 5.1.1 RESOLVER.ADR.RecipNotFound; not found'

Original message headers:

Received: from Excas.deschutes.org (10.151.90.54) by EX13-2.deschutes.org (10.151.90.75) with Microsoft SMTP Server (TLS) id 15.0.1395.4; Sun, 21 Jul 2019 06:03:23 -0700

Received: from Mailscan.deschutes.org (10.151.2.27) by Excas.deschutes.org (10.151.90.54) with Microsoft SMTP Server (TLS) id 15.0.1395.4 via Frontend Transport; Sun, 21 Jul 2019 06:03:24 -0700

Received: from Mailscan.deschutes.org (unknown [127.0.0.1]) by IMSVA (Postfix) with ESMTP id 7EB1F1405B; Sun, 21 Jul 2019 06:03:23 -0700 (PDT)

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Received-SPF: Pass (Mailscan.deschutes.org: domain of clouseck@gmail.com designates 209.85.208.171 as permitted sender) identity=MAILFROM; client-ip=209.85.208.171; envelope-from=clouseck@gmail.com; helo=mail-lj1-f171.google.com)

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Sun, 21 Jul 2019 06:03:20 -0700 (PDT)
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Date: Sun, 21 Jul 2019 06:03:11 -0700
Message-ID: <CA+aQjU4wifer-K7pMTqx5k8Xyx=Fi-pjF8mUeqfO3cniJTnWbg@mail.gmail.com>
Subject: File #: 247-18-000540-TA
To: <tanya.salzman@deschutes.org>, <Phil.Henderson@deschutes.org>, <Tony.Debone@deschutes.org>, <Patti.Adair@deschutes.org>
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WpbdNB156lKx+i+lm9fExh5bqfP82NUgu+G5Y=
X-TMASE-SNAP-Result: 1.821001.0001-0-1-12:0,22:0,33:0,34:0-0
Return-Path: clouseck@gmail.com
X-TM-AS-User-Approved-Sender: No

----- Forwarded message -----

From: Carol Clouse <clouseck@gmail.com>
To: <tanya.salzman@deschutes.org>, <Phil.Henderson@deschutes.org>, <Tony.Debone@deschutes.org>, <Patti.Adair@deschutes.org>
Cc:
Bcc:
Date: Sun, 21 Jul 2019 06:03:11 -0700
Subject: File #: 247-18-000540-TA

[EXTERNAL EMAIL]

Dear Commissioners etc...

I cant believe we are doing this all over again with the MJ text amendments. There is no legitimate reason to change the rules you have made... Everyone spent enormous time with this... I was at all but one of the meetings about this. You all know our County is not prepared to handle this New Commercial Industry as its called.. The pot growers have not adhered to the rules anyone has set forth. They have done nothing but lied and destroyed our trust. Damage to our land, water, air , Humans and animals has taken its toll on our county. Our county has been hit very hard by financial burdens by all. Your job is to do whats right for our county by protecting all of us and our land and resources.

You now need to "STAND UP FOR THAT" by not changing the rules, over THREATS. Even our Law Enforcement has asked for that. How much more Danger are you willing to wager on this ?. We need to OPT OUT NOW, before its too late!.The growers that are in now will still be grandfathered with their grows. I don't believe all Three of you Commissioners want to live next door to a Stinky, Noisy, Unsafe Neighbor !.
Do what is right for all of us. Don't change the rules or OPT OUT NOW.

Tamara D Threlkeld

Ken Clouse

23344 Alfalfa Market RD

Bend, Oregon 97701

I was at the meeting on July 3, 2019 and I heard NO NEW OR EXPANDED ISSUES RAISED BEFORE THE BOARD by this group of "NEW INDUSTRY"

Zechariah Heck

From: Sam Hanks <homesteadharvests.or@gmail.com>
Sent: Sunday, July 21, 2019 1:29 PM
To: Tanya Saltzman
Subject: Reconsideration of Marijuana/land use text amendments

[EXTERNAL EMAIL]

My name is Samuel Hanks. I own Homestead Harvests in NW Redmond. Thank you for the opportunity to express my opinion on the text amendments regarding recreational marijuana.

I would like to see the additional restrictions lifted for the following reasons. They are preventing me from using my producer license to its full potential. The OLCC allows an endorsement on my Micro Tier II license to use my waste to safely process the product. When I received the notice regarding the text amendments in the MUA zone last fall of 2018, I was very concerned and surprised. I immediately called the county office. I was relieved to hear that these text amendments would not affect me as I was grandfathered in the system. When I originally purchased the properly zoned property and invested time and resources in this business plan, the inclusion of the endorsement to safely process was critical for the long term sustainability of the business. The fact that this usage is not allowed is deeply concerning.

My purpose is and always has been to strictly adhere to the guidelines and regulations set forth by the county and state.

Thank you,
Samuel J Hanks

Sent from my iPhone

July 21, 2019

Tanya Saltzman,
Deschutes County, OR

Re: Marijuana Text Amendments

I wish to add my voice to those who are opposed to the relaxing of standards regarding the standards regarding cultivation, processing, and distribution of marijuana in the rural areas of Deschutes County.

My background includes supervising the substance abuse unit in the Ventura County Probation Department (later the Ventura County Corrections Services Agency, before the name returned to the original one). I was also the CEO of a nationally accredited agency in western Washington for decades; our services included substance abuse prevention, education, and treatment, primarily focusing on young people. I also have volunteered and contracted for organizations in Deschutes County where the services included a focus on substance abuse.

My primary concern is with young people and the effect marijuana has on them during their developmental years (especially in the pre-frontal cortex). A good summary of those effects are in a recent publication of the American College of Pediatricians (acpeds.org, April 2017). The article makes detailed references to other sites (all are internet accessible and are not anecdotal).

In my area (I live in a MUA zone), there are public, private, and tutoring educational sites for young people. Given the harm marijuana is demonstrated to cause with young brains, any retraction of the distance between such facilities and marijuana processing or distribution sites would be alarming to me, and any other person with the professional history I've had.

Howard Finck
Gerking Market Rd., Bend, OR

Zechariah Heck

From: MARIA WATTIER <mariawattier@msn.com>
Sent: Saturday, July 20, 2019 9:27 PM
To: Tanya Saltzman
Subject: CANNABIS GROWS

[EXTERNAL EMAIL]

Dear Tanya,

We wanted to add our vote to the OPT OUT option that is coming up for voting.

Richard and Maria Wattier
Bend residents

Zechariah Heck

From: CenturyLink Customer <jrnewman@q.com>
Sent: Saturday, July 20, 2019 7:12 PM
To: Tanya Saltzman
Subject: OPT OUT

County Commissioners,

My husband and I have lived in Deschutes County for over 35 years and would like to take this opportunity to express our concerns about the legalization of marijuana farms, and all the stores in Deschutes County. We have supposable a hemp grow in our back yard as we sit on our back deck we can see the workers planting outside. They also have a green house and was seen taking several big black garbage bags of ?? I can only imagine it was marijuana, Personally we do not feel our property is safe from crime any more. The smell from hemp is the same as marijuana and the majority of time the wind blows from that property towards our back deck. I would like for Deschutes County to OPT OUT of Marijuana, please help the people that have moved here for the beauty, fresh air and great water continue to live here in peace and help keep the crime out of Deschutes County.

Than

k You,

Jerry and Ramona Newman

23042 Donna Ln.

Bend, Oregon 97701

Zechariah Heck

From: Mar Mor Farms <marmorfarms@gmail.com>
Sent: Saturday, July 20, 2019 9:05 AM
To: Tanya Saltzman
Cc: Phil Henderson; Tony DeBone; Patti Adair
Subject: OPT OUT

Commissioners:

After all we have been through, it's time to let the voters decide if there is enough marijuana production in Deschutes County. We **DO NEED MORE ENFORCEMENT** of existing land use regulations. We do **NOT NEED MORE PRODUCTION**.

Existing producers should be able to make a decent profit operating within existing laws and regulations.

Please give your constituents the opportunity to decide how important this industry is to the county's residents... and take the monkey off your backs!

Sincerely,

Margot Barron

Zechariah Heck

From: Mar Mor Farms <marmorfarms@gmail.com>
Sent: Saturday, July 20, 2019 8:57 AM
To: Tanya Saltzman
Cc: Phil Henderson; Tony DeBone; Patti Adair
Subject: Opt OUT

Commissioners,

After all we have been through, it's time to let the voters decide if there is enough marijuana production in Deschutes County. We DO need more enforcement of existing land use regulations. We do NOT need more production.

Existing producers should be able to make a decent profit operating within the existing laws and regulations.

Please give your constituents the opportunity to decide how important this industry is to the county's residents... and take the monkey off your backs!

Sincerely,

Rowan Hollitz

Zechariah Heck

From: Peter Mayer <mayerpc@gmail.com>
Sent: Saturday, July 20, 2019 4:36 AM
To: Tanya Saltzman
Cc: Phil Henderson; Tony DeBone; Patti Adair; Nick Lelack
Subject: Deschutes County Ordinance No. 2019-012 PUBLIC TESTIMONY

Dear concerned

I support the proposed changes to marijuana businesses in our county and urge you opt-out of any future operations.

PLEASE!

Sincerely,

Peter Mayer

RECEIVED

JUL 19 2019

Deschutes County CDD

July 3, 2019: The Board of County Commissioners held a public hearing for the reconsideration of Deschutes County's marijuana text amendments on July 3, 2019. Information regarding the hearing and links to associated documents are posted below.

The oral portion of the public hearing has closed; the written public comment period will be open until 11:59 p.m. on July 21, 2019. See below for how to submit comments.

July 21,
2019 **Written public comment period closes at 11:59 p.m.**
Submit written documents to Tanya Saltzman, Associate Planner, via email to tanya.saltzman@deschutes.org
or by mail to:
Deschutes County Community Development
Attn: Tanya Saltzman
PO Box 6005
Bend, OR 97708-6005

July 15, 2019

RE: Reconsideration of Marijuana Text Amendments

Dear County Commissioners and Planning staff,

I appreciate your efforts to further amend the regulations to address some of the issues that have come up regarding cannabis. I understand that some of the proposed rules exclude grow operations in the MUA zone with the thought that most small acreages are zoned MUA. I live on a 5 acre parcel in Tumalo that is zoned EFU. I am surrounded by 5, 10 and 20 acre parcels – some zoned EFU, some zoned MUA. I am adjacent to 20 acre EFU parcels. So, that rule change won't accomplish what you think it will. There are many other EFU zoned small acreages other than mine, so that new rule will not exclude grow operations on or next to small acreages. The majority of the lands zoned EFU are small acreages and cannabis grow operations are just not appropriate for the small parcel size. There is NO way to adequately mitigate the adverse impacts to neighboring properties. The setbacks from off site homes are also grossly inadequate. Would you want to be 400 feet from a greenhouse growing cannabis? Most of the setbacks in land use are from property lines and this one is written as 400 feet from a residence will not buffer anyone from the adverse impacts of a grow operation.

I want to share with you the reality of living next to a grow operation.

I have a lifetime of experience and exposure to agricultural land and been involved with agriculture activities all my life. I work with agricultural landowners as well as currently operate a farm based business on my 5 acre EFU land. For the last year I have enjoyed a quiet, safe, peaceful and nuisance free agricultural lifestyle on my property as well as successfully running an agriculturally based business on this land. That all changed DRASTICALLY in the last few weeks when activities drastically changed and I was subjected to adverse activities taking place on the property adjacent to mine. It appears that my neighbor is growing cannabis. I discovered it from the smell and with suspicious activity on the property. I have had to contact law enforcement to help determine what is going on and still do not know yet if this is a legal or illegal grow site. It has been over 2 weeks and 3 calls later that I have not been called back. In any instance, it is having a huge impact on my enjoyment of my home and land and my ability to operate my agricultural business. In addition, my safety has been compromised.

I am well aware of the right to farm laws as well as the expected impacts due to typical farming activities. I expect to smell manure from time to time, I expect to be kept awake at night with calves bawling at weaning time, I expect to have haying equipment in the fields early in the morning and late at night twice per year, I expect an occasional stray animal and I expect work together with my neighbors to cooperate when issues arise. I believe the intention of the right to farm was to protect the production of food sources, not protecting the growing of a Class 1 controlled substance.

The things that I am currently experiencing with the adjacent grow operation are well outside of expected and typical farming activities and are having adverse impacts on my rights, safety and ability to conduct my own agricultural business.

TRAFFIC: The traffic I am subjected to is 10-12 vehicles in and out DAILY of the adjacent property which is along my property line – At all times of the day and night and 7 days a week. This is not a normal agricultural practice and has created noise, dust and brings many people who are not residents to the property. With the people come dogs and incessant barking. Some of this traffic comes and goes at all times of the day (7 AM) and night (as late as midnight to 1 AM) and some only linger a short amount of

time. Which brings up the question “what are they doing there for 15 minutes?” I suspect that they are buying illegal cannabis ??

ODOR- I am subjected to the nasty, skunk like odor from the neighbor’s greenhouse which is less than 1000 from my residence and several hundred feet from my property line. I can smell it in my barns and arena as well as other areas of my property. These are areas that I work in and have clients in on a daily basis.

SAFETY – In the last few days, I have been threatened and harassed by my neighbors while carrying out normal activities ON MY PROPERTY. The neighbors have also threatened my animals. If I venture within 500 feet of their greenhouse – while on my property or in my other neighbors pasture – I am immediately verbally accosted and harassed by the landowners as well as the people in the greenhouse. This is an already hostile interaction and I am concerned that it may escalate. This situation is caused by paranoia of the landowners and the people growing on the property. I have not done anything to instigate this hostility other than investigate suspicious activity while staying on my property.

The grow operation is frequented by a variety of people who don’t live there and with them they bring traffic, noise and dogs. These employees, contractors, mentors, buyers, suppliers, etc. have no respect for the land, neighbors or how they drive or impact my animals that are adjacent to the driveway. We have been subjected to dust and dirt, gravel spewed on us and the horses spooked by this traffic as well as by the landowners driving without regard to us or our animals safety. Their dogs bark incessantly creating a nuisance. This behavior is totally disrespectful and unsafe and again, not the normal behavior in an agricultural situation. This behavior creates an un-safe situation for me and my livestock. Most of this traffic is by people that do not live on the property. It could be contract people or the property may have been leased.

In addition, there are only a few ways to access the grower’s property and one of them is across my property as the grower has a locked gate and I do not. The grower’s greenhouse is highly visible from the road and the high value crop will likely draw attention from those that would want to obtain it. That also creates a personal safety issue for myself and my livestock. I understand that in the past, with a previous owner, the other adjacent property had a fence cut in order to gain access to this greenhouse and the neighbor to the North experienced people driving up his driveway to gain access to the greenhouse late at night. The new current owner assured all the neighbors that he would not grow when he purchased the property a year ago.

These are very real threats and the type of safety concerns that do not happen when growing typical agricultural crops. I have not heard of a single instance of someone trying view a hay crop late at night or to steal a hay crop at harvest time. Would you want to live next to a high value crop and take that risk ? We think that we live in a safe community, but we don’t know what the long term effects of these grow operations are in residential neighborhoods. These EFU lands in Deschutes County are typically small acreages (average size of 5-10 acres) lived on by people that are employed outside of agriculture. These are residential areas. The draw to Deschutes county is a rural lifestyle or hobby farm. There are very few true, full time agricultural producers in Deschutes County. We produce incredible hay here and living next to a hay producer is VERY different that living next to a cannabis grower. The growing season here is short, the soil does not support much in the way of crops and most of the land should not have been zoned EFU in the first place. That EFU zoning has always been controversial as those lands typically cannot support much in the way of agriculture for a variety of reasons. The EFU parcels in Deschutes County have been developed predominately for residential uses. The cannabis growers are

using the EFU zoning to grow in areas that are not appropriate and cannot be done without adversely impacting neighbors with the small acreage sizes that are common in Deschutes County.

Crime and drugs (legal or illegal) are connected and have unsafe and negative impacts to communities and neighbors. I didn't realize the full reality of the situation until I experienced it. I wouldn't wish this on anyone. I feel unsafe in my home and on my property due to the grow operation next door. I don't feel that way about any of my other neighbors or their typical agricultural activities. Many of my neighbors are not aware that this grow operation is currently functioning. The secrecy of these grow operations also creates a safety issue. There is already an abundance of cannabis and no need for anyone to grow more.

Law enforcement is overwhelmed with this issue. So, if you believe that they can protect you from this threat, take a number. They are doing the best they can but they can't be everywhere. Their initial advice is to walk away and avoid any confrontation. Call them to mediate the conflict after the fact. The reality for me when this happens is to cease my interaction with a client and horse and vacate the area ON MY PROPERTY so that the situation does not escalate. How do I earn my living that way? How long do you think I can keep clients when this happens? So the answer is to not use half of my property so that I don't stir up a conflict? So to help the situation, I have to drastically change what I do on MY OWN PROPERTY. How does that make sense? I have been advised to install security cameras and use locked gates as well as fence my entire property. To do this is a SUBSTANTIAL expense and may or may not fix the situation. The County regulations are supposed to protect me and to assure the continued health, safety and prosperity of residents. How am I being protected?

Land values- I have very serious concerns about the impact on the value of my property. The existence of a grow operation will DEFINATELY decrease the value of my property as well as impact my ability to sell. I have spoken with a number of realtors and they confirm that properties adjacent to a grow operation are almost impossible to sell unless it is to another grower. The purchase of my residence represents a substantial investment as well as a place that I conduct my own agricultural business. The existence of a hay or cattle operation, (typical agricultural), next door does not negatively impact my property value.

Enjoyment of property- quality of life. I bought this property to live in a peaceful rural area that I could enjoy being outside and enjoy full use of my property as well as to conduct my agriculturally based business. My business is allowed OUTRIGHT in the EFU zone. The grow operation is not compatible with the typical agricultural activities and not compatible with residences, families and other typical agricultural pursuits in the EFU zone. The adverse impacts to neighboring properties is substantial.

Interference with my business. This grow operation impacts my ability to carry out my agricultural activities that are allowed outright in the EFU zone. I work outside on my property with clients with horses. The traffic, noise, smell and harassment will impact my ability to earn my living on my property as well as having an impact on my safety and the safety of my clients. How can I have any level of safety with this work when at any time I could be interrupted in my work? This neighbor is verbally hostile and harassing me when I am on my property. Working with horses that are easily startled can be a safety issue. Any disruption or fast driving while working with my clients and the horses will cause a safety issue. Many of my client's are children. How is it that the right to farm for cannabis grow operations outweighs my agricultural business & personal uses on my property?

At the very least, my work is interrupted and I would need to relocate to another area of my property or cease working with a client due to the actions of those at the grow site. Based upon the apparent

paranoia of my neighbor, the grower, how can I be assured that I will not be harassed at any given time while working anywhere on my property? All my working areas are in the area of the property line with the grow site. My property is a long narrow rectangle that the entire West property line is shared with the grower and the grower's driveway is on that property line. It would be a substantial financial expense to re-locate my working areas and horse pens. Plus, I don't have the room to do that being that I am on only 5 acres. I must have a safe & healthy environment to do my work. In the past year, the other typical agricultural activities on adjacent properties have not impacted my work environment. Haying, cattle, etc.

I don't think that when the right to farm laws were enacted that it could have anticipated this type of crop. The intention of the right to farm laws was to ensure that non-agricultural folks could have an understanding of typical farming activities so that they understood what they were living next to. The cannabis grow operations come with ENTIRELY different methods and adverse impacts that were not anticipated with the right to farm legislation. Those protections were enacted to protect vital and necessary food & animal production, not the production of substances that have no food or medicinal value.

Chapter 9.12 Purpose talks about protecting farm based activities in Deschutes County to assure the continued health, safety and prosperity of residents. Where is my protection for my business and my safety for my farm based activity? We seem to be so focused on finding a way to allow cannabis production that we have lost sight of the rights of the other residents in the EFU zones that are operating businesses that are not producing adverse impacts to neighbors and the community. Just because cannabis is legal in Oregon does not mean we need to accommodate it here. I don't believe the voters fully recognized the consequences that come with legalizing a controlled substance.

I have been advised to purchase and install video surveillance. I have been advised to install locked gates and additional fencing. These are not things that I would have to do with "normal agricultural activities" on adjacent properties. This requires a substantial investment and doesn't ensure any protection. My other neighbors who are engaged in typical agricultural activities are respectful and helpful and considerate in their agricultural operations and I have not had to take any unusual measures to co-exist with their typical agricultural pursuits.

I would suspect that many of the growers are also using their product. Paranoia is a common effect of cannabis. Paranoid people do unsafe things. Why do you think that law enforcement advises me to walk away and don't engage? The opportunity for a high risk event is significant with these types of grow operations. Is this what we want in our County? I say NO.

We have a choice here and we should not be held hostage by the notion that the right to farm or that by legalizing marijuana gives the right to grow cannabis in our County. The right to farm legislation was intended to protect agricultural crops that are vital and necessary to provide food sources. Cannabis is not vital or necessary to our existence. In fact, to the contrary, marijuana is a class I substance under the controlled substance act and the US food and drug administration concluded that marijuana has no federally approved medical use for treatment in the US. There is no need to grow cannabis and there is already an oversupply. Why would we need to allow more growers?

In addition, I believe it is clear that this crop is not compatible with our lifestyle farms in Deschutes County, it poses threats to neighbors and creates adverse impacts on neighbors as well as the community. These grow operations cause huge strains on our law enforcement and other County resources and staff as well as it's listing as a Class 1 substance with a high potential for abuse and unsafe

behavior. Not to mention the substantial increase in cannabis related ER visits and the impact on addiction and mental health resources. The only clear solution is to opt out.

Please OPT OUT for all the reasons listed above. Thanks for your consideration.

I have a concern for further retaliation from my neighbor. Please keep my name and address confidential.

Please see attached Information from DEA Resource Guide regarding marijuana:

Excerpts from : DEA Resource Guide regarding marijuana:

Marijuana is a Schedule I substance under the Controlled Substances Act, meaning that it has a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. Although some states within the United States have allowed the use of marijuana for medicinal purpose, it is the U.S. Food and Drug Administration that has the federal authority to approve drugs for medicinal use in the U.S. To date, the FDA has not approved a marketing application for any marijuana product for any clinical indication. Consistent therewith, the FDA and DEA have concluded that marijuana has no federally approved medical use for treatment in the U.S. and thus it remains as a Schedule I controlled substance under federal law.

Clinical studies show that the physiological, psychological, and behavioral effects of marijuana include: Impaired judgment, reduced coordination, and ataxia, which can impede driving ability or lead to an increase in risk-taking behavior, emotional lability, incongruity of affect, dysphoria, disorganized thinking, inability to converse logically, agitation, paranoia, confusion, restlessness, anxiety, drowsiness, and panic attacks may occur.

What are the Effects of Using Marijuana Concentrates?

Being a highly concentrated form of marijuana, the effects upon the user may be more psychologically and physically intense than plant marijuana use. To date, long term effects of marijuana concentrate use are not yet fully known; but, the effects of plant marijuana use are known. These effects include paranoia, anxiety, panic attacks, and hallucinations. Additionally, the use of plant marijuana increases one's heart rate and blood pressure. Plant marijuana users may also experience withdrawal and addiction problems.

Zechariah Heck

From: Opt Out Deschutes <optoutdeschutes@mail.com>
Sent: Friday, July 19, 2019 9:10 PM
To: Tanya Saltzman
Subject: Marijuana public comments
Attachments: Deschutes County Marijuana Stories - Copy.pdf

These comments are submitted to the record for the marijuana regulations.

It is time for the commissioners to vote to OPT OUT of marijuana production in Deschutes County. Many of the industry players - and most amusing is that it is those who are so outspoken about being shining examples to all - have proven that they are incapable of following the rules and regulations set forth by the OLCC. See attached for articles citing violations, fines, license revocations, and criminal charges.

Just look at the commissioners' own 3-0 decision last week with regard to the proposed production property in Alfalfa. The person who testified before the board about how above-board he is, how he is knowledgeable, how he has the best store in town (they all do), was arrested for criminal conspiracy and other charges. This was supposed to be an example of a "legitimate" grower who does everything above board. Not so.

Cascade Cannabis has commented about stricter rules forcing people into the black market.

Let us get something straight.

People make their own decisions and are responsible for their own behavior. No one is forcing anyone to go to the black market. If a grower makes that choice (everyone has choices to make in life), that is THEIR responsibility, not the responsibility of anyone else.

Cascade Cannabis in their letter asked you to consider "the vast evidence in the record before you that demonstrates responsible operation of cannabis farms." Again, see attached. The evidence shows quite the opposite. Recall Operation Good Harvest last year had Bend at a 55% compliance rate! Would any other industry stand up to such a failure? Hospitals? Restaurants? Liquor stores? Contractors?

Cascade Cannabis wrote "Recreational marijuana was overwhelmingly approved by the voters of the State of Oregon. The new laws considered for adoption by the County would undermine the will of the people, expressed at the ballot box." Not entirely accurate. Measure 91 barely passed in Deschutes County, and the commissioners initially opted out, as was their discretion based on the results of the vote.

"... the Deschutes County Comprehensive Plan specifically calls for Deschutes County to preserve farmland and protect both current and future agricultural opportunities." Preserving farmland is what rural residents would like to do. Ruining farmland is what marijuana growers are doing. Look around the county at high-value farmland - there's not a lot of it. What once was productive dirt is being covered with gravel and either greenhouses or industrial buildings, never to be productive again.

Finally, "The County has two years of evidence of quiet and deliberate compliance with the marijuana regulations that have been in place." Again, see attached. Does that look like evidence of quiet and deliberate compliance? The actions speak for themselves.

It is time to OPT OUT. Let those who are in business stay. Say NO to any more - it isn't needed and it isn't wanted.

Published June 20, 2019 at 04:59PM / Updated June 20, 2019 at 06:07PM

OLCC bars Bend marijuana company from harvesting

Oregrown's license suspended for 34 days



From left, Aviv Hadar, Justin Crawn and Hunter Neubauer stand together in the Oregrown dispensary located on Wall Street in 2015. (Ryan Brennecke/Bulletin file photo)
Buy photo

A Bend-based cannabis firm faces a \$15,000 fine and is barred from harvesting for 34 days while its growers permit is suspended, the Oregon Liquor Control Commission announced Thursday.

The OLCC cited Oregrown for seven violations of state regulations. Oregrown's license violations stem from a former employee and stockholder who took marijuana seeds and plants from its growing facility to an unlicensed location in January 2018.

The OLCC revoked the marijuana worker permit and issued a letter of reprimand to Oregrown's former shareholder and head grower, Justin Crawn. He will not be able to work in any legal marijuana business in Oregon without a worker permit.

"These are very serious offenses," Matthew Van Sickle, OLCC public affairs specialist, said in an email. "But because Oregrown presented evidence that it was the victim of a theft, there were mitigating circumstances for Oregrown. The apparently responsible

party has been penalized to the full extent of the commission's power by revocation of his worker permit, and has also agreed to return the stolen seeds to the licensed system.”

Oregrown's suspension, which begins at 7 a.m., July 20 and ends at 7 a.m., Aug. 23, means the company cannot transfer or harvest product, but can water and tend the plants, Van Sickle said. The fine must be paid by July 15, according to the agreement.

About a quarter of what the company sells in its stores is grown in-house, said Alex Tinker, Oregrown's attorney.

This is not the first OLCC violation for Oregrown. In July 2018, the company's then-president, Hunter Neubauer, was sanctioned for making false statements and had his worker permit suspended for 23 days. The company's processing license was suspended by the OLCC for 46 days, and Oregrown was fined \$4,950.

Neubauer is currently the co-founder. Previously he was chairman of the board.

In May, the cannabis company settled an acrimonious lawsuit filed in Deschutes Circuit Court against the former head grower Crawn. In the lawsuit Oregrown alleged that under Crawn's care, the company's growing facility in Tumalo was a complete loss and didn't produce any shelf-worthy flower. The company discussed parting ways with Crawn, and he took 51 seed packets and at least one clone of all but one strain from the Tumalo facility.

Oregrown was founded in 2014 by Aviv Hadar, his mother, Tsiona Bitton and Crawn, according to the lawsuit. Later Kevin Hogan, Neubauer and Peter and Patricia Neubauer joined the company as shareholders and directors, filings show.

“The OLCC's actions were something that arose out of violations that a former employee committed,” Tinker said. “Hopefully this will be the end of a long story.”

The impact of the suspension on the company's revenues will depend on harvest cycle, Tinker said.

“Oregrown is struggling to minimize the impact of the suspension, but there’s no way to eliminate it,” Tinker said. “It won’t be catastrophic, but it will be substantial.”

— Reporter: 541-633-2117, sroig@bendbulletin.com

Published Feb. 21, 2019 at 05:03PM / Updated February 21, 2019 at 08:33PM

Bend cannabis edible company fined

Lunchbox Alchemy fined for second time



Lunchbox Alchemy extracts the oils from marijuana, like these dried flowers. (Bulletin file photo)

[Buy photo](#)



For the second time in a year, Lunchbox Alchemy, a Bend cannabis processing company that makes cannabis oils, edibles, extracts and tinctures, has been fined by the Oregon Liquor Control Commission.

The company has agreed to pay \$8,415 in fines by March 15 or serve a 51-day suspension for two violations, according to a stipulated agreement approved by the liquor control commission Thursday. One violation is for failing to keep surveillance recordings for 90 days and the other is for destroying potential evidence.

The violations stem from an event that occurred two years before when the company made the switch from a medical-marijuana license to a recreational license, which is controlled by the OLCC. The company failed to enter products into the cannabis tracking system, METRC, within the required 10-day window.

That product became evidence by the OLCC, and Lunchbox Alchemy was required to hold onto it, according to the OLCC. When the company moved into its new processing facility on Layton Avenue, it destroyed that product.

“We tried to do everything right,” said Burl Bryson, Lunchbox Alchemy CEO. “Everything is really complicated in this system. We were completely compliant in METRC, but not with the OLCC. Somehow, the conversation got miscommunicated about what could be destroyed.”

When the OLCC asked Lunchbox Alchemy about the cannabis tagged as evidence, it had been destroyed, Bryson said. The OLCC asked for copies of the video surveillance to show that the company had followed procedures, but Lunchbox Alchemy didn’t have the full 90 days worth.

A neighboring company’s video proved to the OLCC that the cannabis had been destroyed properly, according to the stipulated settlement agreement.

Lunchbox Alchemy started in 2014 as a medical marijuana processor. In 2016, it obtained a recreational license. And last January, it began processing products in California for that market at an 11,000-square-foot manufacturing facility in Santa Rosa. Today, it makes gummy candies, hard candies and cookies. It’s products are found in about 370 recreational marijuana retail outlets in Oregon and California, according to the company’s distribution arm.

Both violations date to 2017, and the company was later fined in July 2018, according to OLCC records. The company paid a \$1,485 fine for the failure to report to the cannabis tracking system. Since that time, Lunchbox Alchemy has hired a compliance officer and several other employees who work with cannabis tracking system, Bryson said.

“The product was too old to be of use to us anymore,” Bryson said. “It had been sitting for more than a year. It was all a miscommunication.”

— *Reporter: 541-633-2117, sroig@bendbulletin.com*

Published Jan. 18, 2019 at 08:20AM

Evio Labs Bend loses license



A marijuana plant. (Tyler Rowe / Submitted photo)

At its monthly meeting Thursday, the OLCC Oregon Liquor Control Commission also approved fines, license suspensions or surrenders for five marijuana licensees, including Bend-based Evio Labs.

Evio Labs Bend and a related business, Evio Labs Eugene, agreed to surrender their licenses after they were caught giving samples of marijuana product to employees, rather than destroying them.

Marijuana products must be tested for potency, pesticides and other contaminants by a certified lab, licensed by the OLCC. Evio was the first Bend lab to be accredited in 2016, according to The Bulletin's archives.

Published Sept. 29, 2018 at 06:01AM

Former legislator tied to black-market marijuana

Charlie Ringo, former Beaverton legislator, eyed in black market pot probe



(123RF)



Charlie Ringo, a former Oregon state senator living in Bend, has been linked to illegal use of marijuana that state regulators thought had been destroyed, according to a search warrant affidavit filed in Deschutes County Circuit Court.

The marijuana was discovered when Bend Police investigated the March explosion of an illegal lab for manufacturing marijuana hash oil using butane. Police found 134 pounds of marijuana that state officials ordered destroyed because it contained unhealthy pesticides.

The investigation connected back to Ringo, who owns 85 percent of High Cascade Farms, which is alleged to have engaged in black market activities. Last week, the Oregon Liquor Control Commission, which regulates marijuana businesses, canceled High Cascade's license due to numerous violations uncovered in the investigation.

Ringo, 60, represented Beaverton in the state Legislature from 2001 until leaving office in 2006 and moving to Bend.

He has not been charged in this matter.

Ringo did not return phone calls seeking comment, and Friday afternoon, no one was at his Mammoth Drive home.

About 5:30 p.m. March 18, a blast rocked a duplex at 3058 NE Weddell St. shared by husband and wife David and Jennifer Paulsen, who lived there with their 3-year-old daughter and David Paulsen's sister.

The explosion lifted the home off its foundation and the roof off the building frame. David and Jennifer Paulsen were transferred to Oregon Health & Science University in Portland, where they underwent weeks of medical treatment for severe burns. David Paulsen received skin grafts on both hands, and Jennifer Paulsen has permanent scarring on her legs, according to Jennifer Paulsen's mother, Jacqueline Phillips,

Phillips said Charlie Ringo visited her daughter and son-in-law at the hospital and told them and their attending relatives not to talk to authorities.

"He was rather gruff," she said.

Hours after the explosion, investigators with the Central Oregon Drug Enforcement team applied for a search warrant to pore over the Paulsen's home and vehicles. It was quickly determined the pair had used their home to illegally manufacture butane honey oil, a marijuana extract, according to law enforcement. Detectives found ledgers in the home containing information such as strain, tag numbers and weight.

The OLCC requires marijuana businesses to input data about their plants into a database called METRC, which tracks marijuana plants from seed to finished product.

CODE investigators found two plant identification tags that traced to High Cascade Farms, which lists a home east of Bend as its principal address and Charles Ringo as president.

The METRC database showed that the marijuana tags found at the Paulsen's home should be attached to plants at High Cascade Farms, wrote Det. Andrew Davis, a CODE team member from the Bend Police Department.

According to the OLCC, the Paulsens had completed paperwork to work for High Cascade Farms but had not paid their fees, so they were ineligible to work there, according to the search warrant affidavit.

There were only two employees listed with for High Cascade Farms on OLCC records, Ringo and Andrew Heller.

Three weeks after the explosion, Heller — or someone using his account — entered in METRC that 205.9 pounds of marijuana had been destroyed at the farm after testing positive for pesticides. Investigators also noticed that earlier, Heller or his account had adjusted 133 pounds of marijuana in METRC to read “entry error” or “waste.” This figure coincided with the amount of marijuana recorded in the log books discovered at the Paulsen's home — 134.5 pounds.

CODE team investigators were told by OLCC there should be no marijuana remaining at High Cascades Farm.

“The only marijuana at the facility should be seeds,” Davis wrote.

On April 6, Ringo wrote to OLCC to say he was temporarily shuttering High Cascades Farm and he intended to sell the business.

Two weeks later, the CODE team searched High Cascade Farms.

As police descended on the property, Ringo and an associate, William Gleich, were in an upstairs drying room, where police discovered marijuana plants being dried for processing, according to the search warrant affidavit.

Ringo reportedly yelled to Gleich, “We aren’t telling them anything,” according to the document.

The CODE team hauled away 107 pounds of marijuana and 465 grams of finely ground marijuana, aka, keef. With his permission, they downloaded the contents of Gleich’s phone. Ringo did not allow police to search his phone, but police later obtained a search warrant for it.

Since their release from the hospital, the Paulsens have moved back to their native Boring, where they currently live.

In late July, they were arrested in Portland by U.S. Marshals on federal charges.

Their 3-year-old daughter is living with them on a “safety plan” approved by the Department of Human Services, which had temporarily placed the girl in foster care after the explosion.

With the legal marijuana market in Oregon at a saturation point, growers and sellers are increasingly looking to the black market to make a profit, according to Oregon’s top federal attorney, Billy Williams.

Local law enforcement officials are committed to tackling the illegal diversion of legal product. Deschutes County Sheriff Shane Nelson and Deschutes District Attorney John Hummel have pushed state officials to hand over lists of sites authorized to grow marijuana to better identify black market producers.

Last week, the OLCC announced it had canceled the license of High Cascades Farm, citing 13 violations. Several violations involved false record-keeping on the account of Ringo’s business partner Andrew Heller.

Heller denied involvement in illegal activity to The Bulletin, saying his OLCC account had been used improperly.

“I haven’t been out there since January,” he said. “I have nothing to do with anything that happened out there.”

A native of Corvallis, Ringo served as a senator and representative in the Oregon Legislature, sitting on influential committees and leading an unsuccessful effort to make the Legislature nonpartisan.

Ringo told The Bulletin in 2006 he would run for office again in 12 years, “after the children are grown.”

— *Reporter: 541-383-0325, gandrews@bendbulletin.com*

Drug agents seize nearly 2,000 marijuana plants in La Pine

Two men arrested at unlicensed grow operation

By:

- [Mike Allen](#)
- [Lauren Melink](#)

Posted: Feb 12, 2019 02:55 PM PST

Updated: Feb 13, 2019 11:12 AM PST

Marijuana grow raided in La Pine

La PINE, Ore. - *(Update: Adding mugshots; Onat released on bail)*

Two La Pine men were arrested and nearly 2,000 marijuana plants and a “substantial amount” of money were seized Tuesday in a raid by the Central Oregon Drug Enforcement Team on a property in La Pine, agents said.

Numerous complaints of a suspected illegal marijuana grow prompted the CODE Team and the Central Oregon Emergency Response Team (CERT) to serve a search warrant around 10 a.m. in the 52800 block of Wayside Loop, Lt. Brian Kindel said.

An investigation determined the location had no license to grow recreational or medical marijuana or hemp, the lieutenant said, adding that “it is apparent the operation has been in existence for a few years.”

“The entire property, which included a converted four-car garage, two outbuildings and two metal transport containers, had been retrofitted to house the illicit growing operation, which included self-contained watering units and climate control equipment,” Kindel said in a news release. The packaging of the marijuana was taking place in the home.

More than 1950 marijuana plants were seized, as well as more than 350 pounds of dried marijuana and some BHO (butane honey oil), though Kindel said drug agents found no evidence of a dangerous BHO lab at the property.

They did, however, find evidence the marijuana grow supported a money-laundering operation, including a “substantial amount of currency and a money counter,” along with other evidence Kindel said.

Sam Osman Onat, 51, and Christopher James Fleming, 41, were booked into the Deschutes County Jail on charges of marijuana delivery, manufacture and possession, as well as criminal conspiracy. Onat also was charged with money laundering.

Onat was released from jail Tuesday night after posting 10 percent of his \$55,000 bail, while Fleming had been released earlier on his own recognizance, a jail officer said.

Earlier, at the scene, Kindel explained the involvement of the CERT team: "In a large-scale operation like this, where there's a lot of people on scene, lot of buildings, lot of movement, we need help. So we call the CERT team in to assist us with securing the premises. We don't mess around with that. We just come in, secure the scene and go from there."

Residents in the area north of Burgess Road and just east of the Deschutes National Forest boundary watched as about 20 vehicles from several agencies arrived to conduct the raid. The team's work at the scene continued into the afternoon.

Neighbor Vivian Taylor said she knew marijuana plants were being grown, but didn't know they were illegal.

"We've always thought it was a legal operation," Taylor said. "He's been growing for a few years now, and he has a big operation going on there. I mean, it may be small compared to others around, but he's got quite a few plants."

Those on scene included Oregon State Police, Bend and Redmond police, Deschutes and Jefferson County sheriff's deputies and BLM law enforcement. One participant was seen wearing a hazardous-materials protective suit.

Published Oct. 14, 2018 at 05:01AM

Oregon faces black-market marijuana problem

Illegal market grows in Deschutes County



Marijuana flowers. (Andy Tullis/Bulletin file photo)

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Law enforcement authorities intercepted \$48 million worth of black-market marijuana headed from Oregon to 37 states over a three-year period, and officers blame the illegal exports on a statewide glut of regulated marijuana and low prices.

Some of the black-market marijuana comes from illegal growers, some diverted from legal recreational producers, processors or retailers and some comes from medical growers, acknowledged the Oregon Liquor Control Commission, which oversees the Oregon's legal recreational marijuana program.

Most of the illegal product seized — about 14,500 pounds — was probably grown on U.S. Forest Service land, and came from Jackson, Multnomah, Josephine, Lane, Deschutes and Washington counties, according to a report from the Oregon-Idaho High Intensity Drug Trafficking Area, a federally funded program that collects data from 14 counties in Idaho and Oregon.

“This could be larger in scope than the data sets show,” said Chris Gibson, executive director of the Oregon-Idaho High Intensity Drug Trafficking Area. “We have a state law that says cannabis cannot go out of state, and that’s our focus.”

Deschutes County has seen a six-fold increase in the amount of seized marijuana so far this year, said Bend Police Lt. Brian Kindel, who is part of Central Oregon Drug Enforcement team. In 2017 the CODE team confiscated about 100 pounds of cannabis, compared to 600 pounds in the first 10 months of this year, Kindel said.

“We’re only stopping a small amount of it,” he said. “There’s a lot more going out. We’re not getting all of it.”

With more than a million pounds of excess cannabis logged into the Oregon cannabis tracking system and retail prices at a record low, black market sales — skimmed product from the legal recreational market, medical growers or illegal growers — have become tempting and profitable.

In many cases, it’s as easy as loading up an SUV and driving it to another state.

Officials say it will take a multipronged approach to combat black market sales. Allowing Oregon-grown cannabis to be sold in other states could relieve the pressure caused by the surplus, said Gary Bracelin, owner of Bend cannabis store Tokyo Starfish.

Many argue in favor of tightening regulations to prevent diversion, when cannabis grown in the regulated market finds its way on the black market.

Three recent criminal cases in Deschutes County underscore the rise of illegal growing and processing sites. One of the cases was even from a Oregon Liquor Control Commission sanctioned site.

In the most recent case, two Bend residents were charged with unlawful manufacture of marijuana and unlawful possession of marijuana for allegedly exporting cannabis products out of state. They are alleged to have used picture frames to hide cannabis to

mail from a farm on Back Alley Road in Bend to Massachusetts. Law enforcement officials seized 93 mature marijuana plants and 55 immature plants, 5.8 pounds of dried marijuana and butane hash oil.

In another case, police charged two Crooked River Ranch residents with unlawful manufacturing of marijuana and charges related to allegedly running a butane hash oil operation used to produce a concentrate.

And in September, the OLCC revoked the license of a legal marijuana producer, High Cascade Farms, after numerous violations were uncovered along with alleged black market activities.

“We acknowledge there may be licensees conducting illegal activity, but it comes to light through anomalous activity in the cannabis tracking system, which is especially noticeable since our monitoring and detection has improved,” said Mark Pettinger, OLCC spokesman.

“Even before the High Cascade case surfaced, we were paying attention to the unusual ‘wasting’ activity and in some instances asking for video recordings to reconcile and do compliance checks,” Pettinger said.

With one cannabis growing site for every 25 users, Oregon has the ability to produce more than 2 million pounds of marijuana per year, far beyond what it can consume, leading law enforcement to believe that the surplus is contributing to diversion into the illegal market.

In addition, prices have fallen in the legal market from over \$3,300 a pound to about \$330 a pound, and cannabis businesses say some enterprising people are taking advantage of the lower prices and shipping product out of state, said Kindel, of the CODE team.

“What we’re seeing now is because it’s become lucrative to ship out of state, and Oregon has a reputation for quality cannabis,” Kindel said.

“Illegal grows are still at heart, illegal,” said Bracelin. “With the legal market and the glut, prices are so good for consumers to buy legal cannabis, I would guess the local black market is actually a pretty bad business model. Black market growers probably opt to ship out of state where they can get better prices. Illegal black market growers have been doing this for years.”

Bracelin said that regulated cannabis growers and retailers take a great risk diverting legally grown cannabis into the black market. They face license revocation and criminal charges by selling to the black market, he said.

“I’m not so naive to think this does not happen,” Bracelin said. “There will always be bad players.”

Lizette Coppinger, an owner of Cannabend, a Bend retail cannabis outlet, believes that legalizing the exportation of cannabis is important and could grow the cannabis industry. Legal exportation would enable growers to sell off the surplus to other states, Coppinger said. Allowing the export of legally grown cannabis to other states where pot is also legal could wipe out black market sales, she said. As of mid-2018, nine states and Washington, D.C, have legalized marijuana for recreational use for adults over the age of 21.

Said Bracelin: “Oregon is stifling its newest bounty crop and craft industry. While we fight over counties and state’s borders and federal acceptance, other countries are moving much faster and looking at international import/export markets.”

A byproduct of export would enable regulated shops, growers and processors to showcase the best Oregon growers have to offer. Products with high THC (tetrahydrocannabinol) content, unique terpenes and flavor all can be found at the corner retail outlet.

“There’s so much talent, and it’s a fun process,” Coppinger said. “You don’t get that in the black market. You don’t have any choices, just what the dealer offers.”

In Oregon the OLCC has taken steps to prevent the diversion of legally grown cannabis to the black market. This summer saw the start of Operation Good Harvest, a program that requires a growers to notify the OLCC when harvesting begins.

Nearly 70 inspections were done of outdoor grow sites, Pettinger said.

“We acknowledge there may be licensees conducting this type of illegal activity, but it comes to light through anomalous activity that comes through the cannabis tracking system, which is noticeable since our monitoring and detection has improved,” he said.

When growers identify plants as waste, they must take them off their inventory, report the waste to the OLCC, store the plants under video surveillance for three days and dispose of the plants by mixing the plants with yard debris, wood chips or sawdust and taking it to the landfill if composting is not feasible.

This summer also saw the transfer of 2,000 medical growing sites that grow for three or more patients in the Oregon Medical Marijuana Program to the regulator authority of the OLCC. Those growing sites must tag and register their plants in the cannabis tracking system.

Another step the OLCC took to tighten the system came in August when it began limiting the daily purchase amount for medical card holders to 1 ounce.

Previously, the limit was 24 ounces for medical card holders. The restriction lifts in six months.

“None of us have figured out where the point of diversion is occurring,” said Carol Yann, Oregon Medical Marijuana Program section manager. “The majority of our growers are growing for themselves. We want to get a handle on the diversion.”

— *Reporter: 541-633-2117, sroig@bendbulletin.com*

Published June 9, 2019 at 05:01AM

Oregon marijuana regulators don't track criminal backgrounds

Six license applicants denied for criminal activity since 2016



Andrew J. Anderson at his Alfalfa Valley Cannabis Farm on Oct. 11, 2018. (Bulletin file photo)

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If Plantae Health owner Andrew J. Anderson is convicted of abuse and other felony charges, he'll join a short list of Central Oregon marijuana business owners who have come under scrutiny by regulators for criminal activity.

The Oregon Liquor Control Commission denied a worker permit to Oregrown CEO Aviv Hadar because of a 2015 assault conviction, though that decision was overturned by an administrative law judge. The OLCC revoked the licenses of Charles Ringo and Leonard Peverieri after their growing operation was linked to an illegal lab making high-potency extracts.

The OLCC takes a case-by-case approach to criminal backgrounds of people applying to work in the marijuana industry and the conduct of current licensees. While the agency has run background checks for 44,622 worker permits, state regulators can't say how many of those turned up criminal records. The criminal background information isn't available because the OLCC doesn't keep track of it after the screening process.

Since the OLCC began issuing recreational cannabis licenses in 2016, only six license applicants and 194 licensed workers have been denied because of criminal issues, false statements or previous denial of a license, according to the most recent OLCC report.

“We’re transitioning from a black market to a recreational system, so it’s important that we don’t exclude the people who really started the industry in Oregon,” said Justin Reed, compliance officer at Shadowbox Farms in southern Oregon. “The overall effect on the industry has been super positive.”

The Legislature recently passed Senate Bill 420, which makes it easier for people previously convicted of possession, delivery or manufacture of marijuana to have a conviction set aside because the offense is no longer illegal.

Regulators and at least one cannabis advocate draw a line at violent crimes and abuse.

“We’re not bad people,” said Madeline Martinez, Oregon National Organization for the Reform of Marijuana Laws executive director. “If you have a record as a black market grower or distributor, you haven’t hurt anyone. But there are bad actors.”

So when Anderson, owner of a retail marijuana shop, was charged in Deschutes County Circuit Court in May with 20 counts including involuntary servitude and kidnapping, it raised the question of how the OLCC would respond.

For those already licensed, convictions and arrests must be reported to the OLCC within 24 hours, spokesman Mark Pettinger said. A felony conviction, even if it’s not related to a the cannabis industry, could affect the license renewal. Arrests unrelated to the licensed marijuana business don’t require any OLCC action, and the worker can continue in the industry, Pettinger said.

“We don’t expect to be their first phone call,” Pettinger said. “Someone charged has to go through the criminal process first. The only time we step in is if that activity directly impacts the licensed activity like by diverting the product into the illegal market.”

The OLCC has 19 people reviewing license applications for retailers, wholesalers, labs and processors, as well as recreational marijuana worker's permits. Each person who works in the industry is required to obtain a worker permit that is valid for five years, Pettinger said.

The agency has the legal latitude to determine the weight of a prior conviction in granting approval, Pettinger said.

The OLCC has discretion when it issues a worker permit, Pettinger said. It can accept or deny an applicant because of DUII, drug or felony convictions and misdemeanor criminal activity, according to the OLCC website. Pettinger said the OLCC reviews "the totality of the circumstances of past behavior."

A factor that can be considered by the OLCC is the length of time between the charges or criminal behavior and the application, he said.

Not everyone agrees with the OLCC's view of past criminal actions.

"Criminal convictions do matter when determining whether or not someone should be working in marijuana businesses," Deschutes County Sheriff Shane Nelson wrote in an email. "Those convicted of drug-related crimes like manufacturing and delivery of controlled substances don't belong owning marijuana businesses or working for them."

Nelson said often the OLCC is hampered by a shortage of investigators. More than a year ago, the OLCC pushed the pause button on accepting new applications while it worked on processing a backlog.

Because of concern for black market activities, the Deschutes County Sheriff's Office and the Bend Police Department have formed a partnership that resulted in 11 search warrants and 14 arrests over the last six months, according to data presented at an April Deschutes County Commission meeting.

Case studies

It was 2015 when Oregrown CEO Hadar was convicted of second-degree assault for an altercation at The Astro Lounge. He served a 30-day sentence and paid a \$24,250 fine, according to court documents. In 2016, Hadar submitted an application for a marijuana worker permit that was initially denied because of the assault conviction, and the conviction was less than two years from the application date, according to court records. An administrative law judge overturned the OLCC's denial, and Hadar was issued a worker permit.

As the CEO of a company that employs about 60 people, Hadar doesn't believe that what happened at the bar should define him.

"The (OLCC) goes to great lengths to ensure that a fair and level playing field is maintained for all," Hadar wrote in an email. "Any individual or aspiring entrepreneur who has a desire to work in this burgeoning industry, yet feels that they may not be welcomed because of their past life experiences — whether they be criminal convictions or mistakes — should not define themselves by those experiences."

Law enforcement officers notified the OLCC after police issued a search warrant in 2018 at a Bend home following an explosion from an illegal lab. At the home, officers found plants using cannabis tracking tags assigned to High Cascade Farms. Ringo, a former Oregon state senator, was registered as owning 85% of the growing facility.

While Ringo was not charged, the OLCC cited numerous license violations stemming from a failure to enter data into the state's cannabis tracking system, suggesting marijuana may have been diverted to the black market.

The OLCC last summer revoked the license held by Ringo and Peverieri, a stockholder, to grow cannabis. A letter of reprimand was also issued and may be used to consider future applications, according to the OLCC stipulated settlement.

Ringo said Thursday he would not comment on the incident.

Anderson was notified by letter of felony charges pending against him in Deschutes County Circuit Court that he abused his wife and another woman, a former employee.

Pettinger confirmed that Anderson notified the OLCC on Tuesday of the pending charges. The OLCC has begun a review.

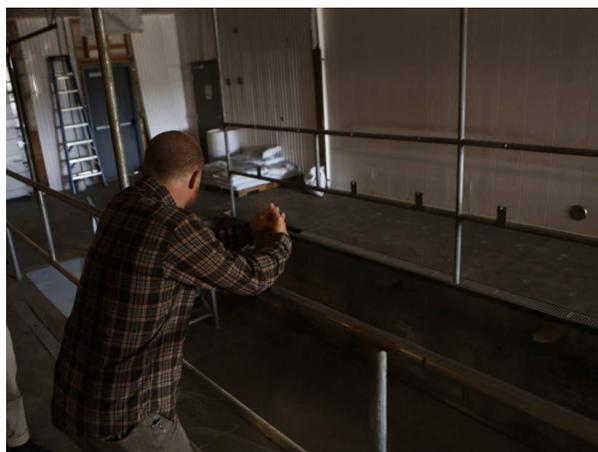
Anderson did not return emails or phone calls from The Bulletin.

— *Reporter: 541-633-2117, sroig@bendbulletin.com*

Published July 26, 2018 at 05:37PM / Updated July 26, 2018 at 07:12PM

Oregon pot regulators cite Oregrown, Lunchbox Alchemy for license violations

Marijuana workers could lose permits for selling to minors



Oregrown co-owner Hunter Neubauer stands over what used to be a milking station for goats at the company's marijuana farm in Tumalo. (Bulletin/file photo)

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One of Bend's most prominent marijuana businesses faces a 46-day suspension for multiple license violations, the Oregon Liquor Control Commission announced Thursday, along with sanctions on several other cannabis businesses around the state, plus new regulations.

Oregrown, a marijuana grower, processor and dispensary operator, will pay a \$4,950 fine and serve a 46-day suspension, which affects the wholesale processing business, co-founder Hunter Neubauer said.

"It affects our business drastically," he said. "We're not allowed to transfer product in or out of our license during the suspension," which starts Aug. 19, he said.

The commission's action against Oregrown stems from its use of hemp oil and false statements that Neubauer and co-founder Aviv Hadar made to inspectors about the hemp oil, according to the commission's press release.

Neubauer himself will serve a 23-day suspension for false statements. Neubauer is on the board of directors of the Bend Chamber and has served on a rules advisory committee for the OLCC.

The inspection at Oregrown, which has a farm and processing plant near Tumalo, took place early this year, Neubauer said. "We didn't have hemp oil at the facility, but we had hemp oil in our products," he said. "At that time I was under the impression we were operating correctly."

Oregrown now has a license endorsement that allows the business to work with hemp, Neubauer said.

The OLCC also dinged Bend edible-products maker Lunchbox Alchemy, which will pay a \$1,485 fine for failing to enter product into the METRC cannabis tracking system within the required 10-day window. Founder Cameron Yee said the violation happened when Lunchbox Alchemy was making the switch from a medical-marijuana license to a recreational license, overseen by the liquor control commission. The METRC tracking system was new, and the business fell behind in entering all of its products, he said.

"It was one of the tribulations of moving into the system," Yee said. "I don't think there was anyone to blame. All of the product was accounted for."

Yee added that Lunchbox Alchemy now has a compliance officer and several other employees who work with METRC.

Oregon's pot regulators are most concerned about sales to minors and preventing leaks to the black market. On Thursday the commission approved a rule that will allow the agency to revoke the permit of any marijuana worker found to be deliberately selling to a minor.

“Today’s action holds individuals with Marijuana Worker Permits as responsible as our licensees because it puts in jeopardy their right to work in the legal cannabis industry,” commission Chairman Paul Rosenbaum stated in a press release.

The commission already raised the penalty on retailers that sell to minors. That improved the compliance rate in minor-decoy operations, “but the commission is increasingly seeing cases with repeated violations,” the commission stated in its press release.

OLCC agents visited more than 20 dispensaries in Bend and Madras in December, and there were no sales to minors.

To prevent leaks to the black market, the commission also approved a rule requiring marijuana growers to notify the agency by 9 a.m. any morning that they decide to harvest a crop.

— *Reporter: 541-617-7860, kmclaughlin@bendbulletin.com*

Published May 9, 2019 at 06:49PM / Updated May 13, 2019 at 10:42AM

Prosecutor outlines slavery, kidnapping case against Plantae co-founder

Andrew Anderson accused of abusing two women in polyamorous relationship



Andrew James Anderson (Deschutes County Sheriff's Office/Submitted photo)

A successful Bend-area cannabis grower was in Deschutes County Circuit Court on Thursday to face a slew of charges — 20 in all — that included strangulation, involuntary servitude and kidnapping, which falls under Oregon's Measure 11 sentencing law for violent crimes.

The case against Andrew James Anderson, 32, stems from a three-way relationship he and his wife had with an employee at their company, Plantae Health.

In arguing for a \$100,000 bond, prosecutor Kelly Monaghan called Anderson's alleged behavior a "long and disturbing timeline of abuse and manipulation."

The Deschutes County District Attorney's Office sought the high bond due to the serious nature of the charges and fear from the two alleged victims, whose 12 hours of recorded testimony is the basis of the state's case.

Anderson's defense attorney asked that the bond be set at \$50,000, citing his client's lack of a prior criminal record and his cooperation in the investigation.

In the end, Judge Randy Miller split the difference and settled on \$75,000, giving Anderson until the end of the day to post it.

As Anderson walked from the courthouse in a dark, tailored suit and his hair slicked back, he asked the public for understanding.

“You know, it’s innocent until proven guilty,” he told The Bulletin. “Don’t crucify me.”

During the arraignment Thursday, Monaghan described the state’s case against Anderson.

Anderson and his wife, Jocelyn, were married in 2015, the same year they founded Plantae Health, one of the area’s first recreational marijuana dispensary chains.

The Andersons lived in a home outside their pot farm in Prineville. Around this time, Jocelyn Anderson was chairwoman of the Bend chapter of Women Grow, an all-female cannabis-industry business group.

One of Anderson’s budtenders, Kristen White, was going through a divorce and moved into the couple’s home.

“She and the Andersons soon entered into a polyamorous relationship,” Monaghan told the court.

During an 18-month period, White told investigators she witnessed numerous instances of Anderson physically abusing and manipulating his wife, Monaghan explained to the court. Andrew Anderson is alleged to have taken Jocelyn’s phone and possessions, and on one occasion, dragged her from their house and locked her out.

But as the Andersons’ marriage unraveled, Jocelyn Anderson left Oregon for her native California in July 2017 and filed for divorce a month later, according to filings from the couple’s ongoing divorce case.

After Jocelyn Anderson left, White continued her relationship with Andrew Anderson, and this is when White says his abuse toward her escalated, Monaghan told the court.

White alleges that while she was in Anderson's home, she essentially worked without payment, other than having a roof over her head. She said she acted as Anderson's driver and managed his dispensaries in Madras and Prineville without ever receiving a paycheck.

In August 2017, White applied for a restraining order against Anderson. But over eight attempts to serve him with the order, Anderson made it clear to deputies he would not make himself available to receive it, Monaghan told the judge.

Anderson later convinced White to drop the restraining order. He put her up in a hotel while the dismissal was being finalized, according to Melanie Kebler, an attorney with Oregon Crime Victims Assistance representing White in this case.

"Your honor, it's part of a pattern," Kebler told the court Thursday. "My client has told me many statements about Mr. Anderson, and there is concern about him coming to court and following the court's orders in this case."

Kebler said that after Jocelyn Anderson left her husband, he tried to convince White to leave the country with him to leave his legal troubles behind and make it difficult for his wife to finalize the divorce. They even began the passport application process, Kebler said.

Though the restraining order White requested in August ultimately was never served to Anderson, a separate one — filed in January — was.

Anderson was arrested in March. He was called to appear in court in April, but by that point, the state had yet to file charges, so Anderson left court a free man. After the case went to grand jury in April, the Deschutes County District Attorney's office mailed a notice informing him of the charges.

Miller on Thursday ordered Anderson to have no contact with his wife, White or any of their immediate relatives.

Anderson didn't object to the no-contact orders.

"My client certainly would not want to contact either Mrs. Anderson or Kristen White," said Anderson's attorney, Ronald Hoebet. He added Anderson hadn't attempted to contact either since they left his house.

Because the state alleges Anderson engaged in violent behavior while impaired with alcohol, the judge further ordered him to not consume it during trial. He was also ordered not to possess firearms. But Miller stopped short of agreeing to ban Anderson from consuming marijuana pending trial.

"I understand that would be onerous," he said.

— *Reporter: 541-383-0325, gandrews@bendbulletin.com*

Published Jan. 31, 2019 at 09:55PM

Report: Oregon has enough marijuana to last 6 ½ years

Lawmakers asked to find solutions to Oregon's oversupply of pot



Marijuana for sale in Bend in 2014. (Ryan Brennecke / The Bulletin file photo)

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Oregon will need legislative help to curb the oversupply of marijuana, according to the Oregon Liquor Control Commission.

Marijuana growers have produced enough cannabis to last the state 6 ½ years, according to the 2019 Recreational Marijuana Supply and Demand Report, presented to the state House Committee on Economic Development on Wednesday.

Lawmakers can decide to limit the number of growers licenses approved, raise license application fees or do nothing and let the market absorb the 2 million metric tons of wet, untrimmed marijuana harvested in 2018.

That harvest number could double, if all the pending license applications were approved by the OLCC.

Rep. Daniel Bonham, R-The Dalles, a vice chair of the committee, said that he'd like to see resources reallocated to eliminate overproduction.

“I think that the state is doing what it should to keep enforcement funded and to make sure there is a legal process for this product,” Bonham said Thursday. “I am definitely a supply and demand guy, but that said, if you don’t enforce laws that eliminate black markets and mitigate leakage, the traditional market functions will be distorted.”

Even if consumption grows, at the current rate, there will be an overabundance, the report stated. The 40-page report outlines the supply and four possible solutions:

- Let the industry establish its own equilibrium. The U.S. Bureau of Labor Statistics says that 20 percent of all businesses fail in the first two years, and 40 percent fail in the first four years. When the legal recreational market was created it was designed for low barriers to entry to encourage the illicit market to become legal.
- Restrict the canopy size and ratio of plants in growing facilities for all four license tiers.
- Increase license fees. In June, the OLCC hit the pause button on processing new license applications. Yet, before the pause, there was a spike in application submissions, the report states.
- Place a moratorium on new licenses for the recreational market based on market conditions. This would limit supply by controlling the number of operators allowed to produce marijuana, the report states.

Neither Colorado nor Washington, two states that made recreational marijuana legal before Oregon voters passed Measure 91 in 2014, have an oversupply. In Colorado, the report states, regulators enforce producer canopy allotments by making them demonstrate there is a market for what they produce. This has resulted in supply being much closer to demand, the report states.

Gary Bracelin, an owner and founder of Tokyo Starfish, a vertically integrated retail outlet in Bend, supports letting the market find its footing versus more government regulation. He also said that exporting Oregon-produced cannabis to other legal states

could offset the oversupply.

“It’s letting the market work itself out based on the laws of supply and demand,” Bracelin said. “In the end, the consumer will be the deciding factor. Some business will survive and some will die. That’s the way it goes in any maturing industry. I believe in the free market and the law of supply of demand.”

— Reporter: 541-633-2117, sroig@bendbulletin.com

Zechariah Heck

From: TCC - Alice Tye <tyecattleco@yahoo.com>
Sent: Friday, July 19, 2019 8:55 PM
To: Tanya Saltzman
Subject: Comments regarding Ordinance #2019-012 (marijuana text amendments)
Attachments: Tye Comments- Ord 2019-012 071919.pdf

[EXTERNAL EMAIL]

Tanya Saltzman,
Please accept my attached comments.
Please also add me to any related mailing lists.
Thank you very much,
Alice Tye

Alice Tye
1214 NE Watson Dr.
Bend, OR 97701
tyecattleco@yahoo.com

July 19, 2019

Tanya Saltzman, Associate Planner
Deschutes County Community Development
PO Box 6005
Bend, OR 97708
tanya.saltzman@deschutes.org

Re: Ordinance Number 2019-012 (Response to Notice of Public Hearing of July 3, 2019)

Dear Ms. Saltzman,

Please accept my comments as written testimony to the public hearing held July 3, 2019 regarding reconsideration of text amendments refining regulation and use of marijuana production on rural lands.

In my opinion based on research and residing next door to a marijuana facility in Alfalfa, I strongly urge the County Commissioners to OPT OUT of allowing marijuana production, and processing facilities in rural Deschutes County. Now that we have all experienced the pros and cons of marijuana production... I do not believe there are any "pros", but there certainly is a long list of "cons". Allowing this use in the first place was a huge mistake and a great disservice to the residents of rural Deschutes County.

Opting Out is the only good decision. If for some reason that is not possible, then rules, regulations, and requirements need to be made much stronger. There must also be a moratorium on any marijuana production until it can be PROVEN that odor, noise, light, and water usage are not going to impact adjoining neighbors or the surrounding community.

Please consider the following points:

1. The individuals representing or involved in the marijuana industry tend to be of questionable character, some have criminal records, almost none that I am aware of owned or lived on the property they use for production. They have not shown themselves to be good neighbors.
2. These bad actors do not tell the truth and many things I have heard them say or present in testimony is misleading or not accurate. My late husband, Bill Tye, was first approached by a grower planning to use property adjacent to our ranch in Alfalfa to request Bill's approval to use an easement across our property. Bill mentioned he heard that marijuana smells bad, and this person responded, "We have a medical marijuana grow and *medical* marijuana has no odor. Only *recreational* marijuana smells."
3. This has been a headache that has cost the County too much time, money, and resources. In hindsight, the County should have opted out to start with. Consider how much time, stress, and funds Commissioners, County staff, and rural residents have put toward this. The County needs to refocus on issues and programs that benefit the communities they serve instead of harming them.
4. We were all blind-sided. Only those in the marijuana industry knew the true impacts of marijuana production. They fooled everyone by letting us believe that the odors, light, noise, traffic, and water use could be properly controlled and managed to not have adverse impacts. It was (mistakenly) labeled as a farm crop, but in reality it is a manufactured commodity that dries up true farmland and displaces green rural landscapes with security fencing and white plastic structures. We didn't know it would threaten

the rural lifestyle of the communities or put rural domestic water wells in jeopardy. In-depth studies should have been required prior to decisions being made whether to allow this.

5. Water impacts are not fully known. Research needs to be done to understand the true impacts to the water table in Alfalfa and how it is affecting domestic groundwater wells. Marijuana facilities have not been very transparent about water use or waste water disposal, and must be closely monitored.
6. Odor control is obviously not possible and mechanisms promised to work, do NOT work. Lighting cannot be adequately shielded. Noise cannot be abated. Vehicle traffic is greater than stated.
7. Monitoring and enforcement is not effective. The so-called legal grows are not following the rules and are not adequately monitored. Grows are given too much leeway and problems are hidden when someone finally does go out to look around.
8. Ballot measure 91, approved in 2014, did not provide sufficient information to properly inform rural voters that approval would allow an invasion of marijuana production facilities in rural farm and ranch communities. It did not state the impacts and problems it would bring to rural residents. Ballot measure 91 misled voters to think they were only allowing the "use and possession" of the product. It didn't disclose that it also involved *production and processing* of marijuana in our neighborhoods. We never considered it could mean out-of-control production facilities sited on ranch or farm land next door, or that it would involve huge plastic structures in place of pastures and real farm crops. We had no idea it would create such a multitude of issues impacting our daily lives.
9. I believe the marijuana industry had too much influence over the creation of rules and regulations that were to guide the County in permitting and regulating them. The industry made sure everything was written to be in their best interest. It is time to do a rewrite.

This has been a learning experience, and what we learned is that marijuana production and processing didn't turn out as purported. We were misled. We found little solace or relief in the governing rules, even though we believed facilities were required to control odor, lights, noise, etc. We soon came to the realization that the rules were not sufficient to protect neighbors or the community, but instead seemed to enable the growers to carry on as they like and thumb their noses at the rules. There seemed to be little recourse or ability for the County to deny applications, adequately enforce rules, or effectively monitor sites. It was up to neighbors to submit complaints and file extremely costly appeals to try to get some relief. Deschutes County got snookered and let their rural residents down in favor of a new impactful industry that does not want to abide by any rules.

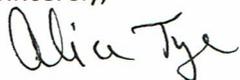
Now that we know what really happens with this industry, it is time to OPT OUT completely. At a minimum, a moratorium should be placed on any new permits and much stricter regulations and requirements need to be adopted for existing and future facilities. The moratorium should not be lifted until we can be certain there is adequate monitoring and enforcement in place.

In closing, please consider your rural residents and take steps to ensure the well-being of the rural communities. Do not allow this industry to further degrade the landscape and everything that is valued in a rural lifestyle. It is not right that rural communities suffer so that this dubious industry can invade places where they do not fit.

Thank you for considering my comments.

Please notify me of any related decisions or information.

Sincerely,



ALICE TYE

Zechariah Heck

From: Adam Smith
Sent: Friday, July 19, 2019 3:56 PM
To: Tanya Saltzman; Peter Gutowsky; Zechariah Heck
Subject: Record: Reconsideration of Marijuana Text Amendment: Email 1 of 4.
Attachments: Attachment 1_Work Session_4_9_19_Marijuana Code Enforcement.pdf; Attachment 2_Minutes_Work Session_4_9_19.pdf; Attachment 3_Work Session_4_22_19_Marijuana Annual Inspections and Code Enforcement.pdf; Attachment 4_Minutes_Work Session_4_22_19.pdf; Attachment 5_Example Code Enforcement Decision.pdf

Tanya, Zechariah, and Peter,

Please include this email and the following documents in the subject record. Although what follows is a summary for each attachment, please note that the actual attachments are included in a series of four emails.

- Attachment 1: Portion of Agenda Packet from April 9, 2019 work session regarding: “Marijuana Code & Law Enforcement Update.” The packet includes a spreadsheet documenting the escalating number of code enforcement complaints since 2016.
- Attachment 2: Minutes from April 9, 2019 work session. The minutes reiterated the escalating number of code enforcement complaints since 2016, and likewise documents the Sheriff’s Office’s increased activities due to the 31 cases referred to the Sheriff’s Office by Code Enforcement. Although the complaints include medical grows, unlicensed grows, etc, the volume of complaints demonstrates that the Original Marijuana Regulations were not universally followed and/or understood by the recreational marijuana industry and the community at large. This factor, and others, motivated the County to undertake the technical corrections resulting in the revised Marijuana Text Amendments currently at issue.
- Attachment 3: Portion of Agenda Packet from April 22, 2019 work session regarding “Marijuana Items: Code Enforcement Follow Up and Planning Division Annual Inspection Policy.” The packet includes a table further responsive to the Board’s request pending from the April 9 work session regarding the marijuana code enforcement cases classified as “unfounded.” As demonstrated by the April 22 table, “unfounded” does not mean unwarranted. Instead, “unfounded” is a catch-all term used to indicate that a Code Enforcement case was not proceeding. For example, the “unfounded” cases include 18 cases whereby after investigation it could not be determined if marijuana was or was not onsite often because of lack of access to the property in question, etc., but only a handful of the “unfounded” cases were determined to be permitted marijuana production facilities.

The packet also includes information regarding the County’s annual reporting and site inspection program, including a revised check list to be used by County staff seeking “to minimize discretion in favor of an objective checkbox-style format wherever applicable.” Overall, the goal with the revised checklist was to ensure the inspections are “as straightforward and unambiguous as possible for both applicant and staff.”

- Attachment 4: Minutes from April 22, 2019 work session. The minutes confirm that the Board directly approved the new Annual Site Inspection Checklist (as slightly modified by Board direction) via a motion and unanimous vote.
- Attachment 5: Hearings Officer Decision from January 29, 2019. This example decision documents how the odor provision in the Original Marijuana Regulations are intended to operate by imposing what is best described as a “nuisance-like standard.” The decision also demonstrates that although difficult, it is not impossible to

enforce that odor provision even when hemp is grown in the vicinity of a marijuana production facility. Lastly, differing from a nuisance suit filed in court seeking an injunction or otherwise attempting to drastically curtail a neighboring land use, the decision demonstrates that the goal in code enforcement cases is simply code compliance. The outcome of this example case was a \$2,000 civil penalty, with \$1,500 of that penalty stayed so long as the marijuana production facility came into compliance within four months.

- Attachment 6: September 23, 2016 BoCC Letter to Joint Interim Committee on Marijuana Legalization. This letter is an early example of Deschutes County's continued and persistent involvement with the State Legislature on marijuana policy issue.
- Attachment 7: February 28, 2019 presentation to Senate Committee on Business and General Government. This is a more recent example of Deschutes County's participation in marijuana legislation. Attachments 6 and 7 show that Deschutes County has consistently testified that farming is different in the high desert of Central Oregon, and farmland is particularly different in Deschutes County. Further, the fact that marijuana is illegal federally requires extensive regulation at the state level to minimize state vs federal conflicts. Those state regulations coupled with the unique farming challenges in Deschutes County necessitate the County's unique "TPM regulations." Deschutes County's decision to opt-in was induced by the promise of reasonable "TPM regulations" as an exception to pre-existing right-to-farm statutes. As such, the County devoted (and continues to devote) substantial resources developing those reasonable "TPM regulations" in cooperation with both the industry and engaged constituents.
- Attachment 8: *LandWatch Lane County v. Lane County*, 77 Or LUBA 368 (2018). See highlighted section of opinion wherein even LUBA distinguished marijuana production from other types of agriculture, noting that "marijuana cultivation 'can occur equally as well on a parking lot as it could on 80 acres of high value farmland.'"
- Attachment 9: *Diesel v. Jackson County*, 284 Or App 301 (2017). This case is being included because the LUBA case that preceded this Court of Appeals' decision was cited repeatedly by the petitioners.
- Attachment 10: *Diesel v. Jackson County*, __ Or App __ (LUBA No. 2016-039/055, September 13, 2016). See comment above regarding Court of Appeals' decision.
- Attachment 11: October 23, 2017 letter from the City of Redmond objecting to a proposed marijuana production application due to the facility's proximity to the City.
- Attachment 12: December 2, 2017 letter from the BLM objecting to a proposed marijuana production application. These two letters (Attachments 11 and 12) are examples of comments received by the County from other governments or governmental agencies prompting the County to reconsider several separation distances. More broadly, the letters are examples of how the Board's numerous experiences adjudicating quasi-judicial land use appeals informed the Marijuana Text Amendment.
- Attachment 13: Judge Collins (Yamhill County) decision denying motion to dismiss in *Harihara Mahesh, Parvathy Mahesh & Momtazi Family LLC v. Steven Wagner, Mary Wagner, Richard Wagner*, 17 CV 15941. This decision allows a case brought by a vineyard to proceed against an anticipated marijuana production facility proposed to be located near the vineyard. Notably, the decision highlights that Oregon's right to farm statute – i.e. ORS 30.936 – is not absolute. This case is an example of when and how certain codified exceptions allow nuisances cases to proceed. Also, it should be noted that ORS 30.936 only protects "farming practice," with that term defined in ORS 30.930(2) as "a mode of operation on a farm that: (a) is or may be used on a farm of a similar nature; (b) is generally accepted, reasonable and prudent method for the operation of the farm to obtain a profit in money; (c) is or may become a generally accepted, reasonable and prudent method in conjunction with farm use; (d) complies with applicable laws; and (e) is done in a reasonable and prudent matter." Considering that even LUBA has determined that marijuana production is often divorced from the

actual land (see Attachment 8 above), it is unclear if all aspects of marijuana production fall under the aforementioned “farming practice” definition.

- Attachment 14: April 2019 *Planning* article.
- Attachment 15: July 17, 2019 *Santa Barbara Independent* article.
- Attachment 16: December 19, 2018 *New York Times* article. Collectively, these three articles (attachments 14, 15, and 16) demonstrate that many jurisdictions are struggling with the odor impacts of marijuana production.
- Attachment 17: County staff’s summary of OLCC’s July 10, 2019 Listening Session.
- Attachment 18: July 10, 2019 memo from Peter LeMessurier of Dalkita Architecture & Construction regarding the County’s odor provision in the Marijuana Text Amendment. LeMessurier is a professional engineer based in Colorado and has extensive experience with marijuana production in that state. After reviewing the Marijuana Text Amendment, LeMessurier concluded that the “existing regulations” and the new revisions “all make sense and appear to be enforceable.”
- Attachment 19: July 15, 2019 memo from LeMessurier regarding the County’s noise provision in the Marijuana Text Amendment. Again, LeMessurier concluded that “existing regulations” and the new revisions “are all solid [and] appear to be enforceable.”
- Attachment 20: July 15, 2019 memo from LeMessurier regarding industry best practices for odor mitigation.

Thanks,
-Adam

D. Adam Smith
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Deschutes County Board of Commissioners
1300 NW Wall St, Bend, OR 97703
(541) 388-6570 – Fax (541) 385-3202 – <https://www.deschutes.org/>

AGENDA REQUEST & STAFF REPORT

For Board of Commissioners BOCC Tuesday Meeting of April 9, 2019

DATE: April 3, 2019

FROM: Lori Furlong, Community Development,

TITLE OF AGENDA ITEM:

Marijuana Code & Law Enforcement Update

RECOMMENDATION & ACTION REQUESTED:

Discussion item.

BACKGROUND AND POLICY IMPLICATIONS:

CDD has coordinated with the Deschutes County Sheriff's Office (DCSO) since 2016 to enforce the County's marijuana land use regulations. This discussion will provide an update on both marijuana code and law enforcement activities. This discussion may inform the Board's review of the marijuana text amendments.

FISCAL IMPLICATIONS: None. Enforcement activities are included in current budgets.

ATTENDANCE: Lori Furlong, Angela Havniear, Nick Lelack, Todd Kloss, Laura Conard, and others.



**Deschutes County
Community Development Department**

Planning Building Safety Environmental Soils Code Enforcement
P.O. Box 6005 117 NW Lafayette Ave., Bend, OR 97703

Telephone: 541-388-6575
www.deschutes.org/cd

MEMORANDUM

TO: Board of County Commissioners

FROM: Lori Furlong, Administrative Manager
Angie Havnear, Administrative Manager

DATE: April 8, 2019

SUBJECT: Marijuana Enforcement Update

PURPOSE

The purposes of this work session are to present and discuss:

- An update on marijuana related Code Enforcement cases, including key issues, resolution of cases, status of pending cases, and the nature of the complaints/issues (e.g., odor);
- Coordination among code and law enforcement with the Central Oregon Drug Enforcement (CODE) team and Deschutes County Sheriff's Office (DCSO) to achieve compliance; CODE and DSCO staff will also provide updates on marijuana-related law enforcement activities; and
- A proposed FY 2019-20 project to update the Code Enforcement Policy & Procedures Manual to reflect the Board's direction on marijuana enforcement, among other Manual updates.

CODE and DCSO staff will also attend and participate in this work session.

Subsequently, on April 22, CDD will schedule a second work session with the Board to discuss annual administrative inspections of approved marijuana production and processing facilities (to be conducted in spring) to verify compliance with land use decisions.

BOARD DECISION / DIRECTION

Staff is not seeking a Board decision or direction at this meeting.

ATTACHMENT(S)

Marijuana Code Enforcement Statistics 2016-present.

Table 1: Marijuana Complaints / Cases / Investigations,

Marijuana Complaints and Investigations	2016	2017	2018	2019	Total	Notes
Total Investigations By Year	5	57	56	2	89	
Unfounded						
Marijuana Production	2	22	26		50	
Marijuana Odor		2	2		4	
Marijuana Lighting			1		1	
Complaints - Resolved						
RV Occupancy at proposed grow site			1		1	
Marijuana Greenhouse Lighting		1		1	2	
Marijuana production	3	12	5		20	
Marijuana odor		2			2	
Marijuana Noise		1			1	
Violation of Conditions of Approval			1		1	
Court Hearing (Hearings Officer Hearings)						
Marijuana Production			1		1	Non-conforming OMMP Grow Odor violation - CE prevailed in hearing and fines issued.
Pending						
Marijuana odor			1		1	CE prevailed at hearing - fines issued.
Marijuana production		1			1	Referred to DCSO.
Marijuana Production				1	1	Alteration of OMMP grow without approval
Violation of the Conditions of Approval			1		1	Water delivery correction required, conditions of approval need to be modified
Under Investigation (DCSO)						
Marijuana Production			2		2	Pending investigation by DCSO.
Referrals to DCSO						
		16	15			



**BOARD OF
COMMISSIONERS**

1300 NW Wall Street, Bend, Oregon
(541) 388-6570

FOR RECORDING STAMP ONLY

BOCC TUESDAY MEETING MINUTES

2:00 PM

TUESDAY, April 9, 2019

ALLEN CONFERENCE ROOM

Present were Commissioners Phil Henderson, Patti Adair, and Anthony DeBone. Also present were Tom Anderson, County Administrator; Erik Kropp, Deputy County Administrator; David Doyle, County Counsel; and Sharon Keith, Board Executive Assistant. Several citizens and representatives of the media were in attendance.

CALL TO ORDER: Chair Henderson called the meeting to order at 2:07 p.m.

ACTION ITEMS

1. Staff Report on Request of PacificSource for Memoranda of Understanding

Health Services staff Hillary Saraceno and Janice Garceau presented the item and reported Health Services is recommending the partnership with Pacific Source that relates to the Coordinated Care Organization application. The documents will be included on tomorrow's Board meeting for consideration of signature.

2. Marijuana Code & Law Enforcement Update

Community Development Staff Nick Lelack, Lori Furlong, and Angela Haviear along with Sheriff's Office staff Joe DeLuca, Todd Kloss, Laura Conard presented case history over the past three years regarding enforcement of the County's marijuana land use regulations. There were a total of 89 complaints and investigations were documented by Community Development Department from the years 2016 to present. Annual inspections are scheduled within the next few weeks. Mr. Kloss reported on the last six months law enforcement activity regarding marijuana incidents. 31 cases were referred to the Sheriff's Office by CDD. Mr. Kloss reported on the issue of illegal exportation of marijuana. There are 954 medical marijuana grow operations in Deschutes County with the majority not being inspected by the Oregon Health Authority. For the Sheriff's Office to acquire a search warrant is time consuming and necessitates 20 - 40 people on site to gather evidence. The Sheriff's Office was awarded a grant to fund a criminal analyst position to research data on property complaints.

3. New Neighborhood - Groundwater Protection, Transferable Development Credit/Pollution Reduction Credit, Sewer Loan

Community Development Department Director Nick Lelack and Planning Manager Peter Gutowsky presented the history and concept of the New Neighborhood in South County. A copy of the presentation is attached for the record. Four property owners that were in the audience approached the Board and presented their request to simplify this program to allow development in that neighborhood.

RECESS: At the time of 4:36 p.m., the Board took a recess and the meeting was reconvened at 4:43 p.m.

4. Planning Commission Joint Meeting Recap & Next Steps

Community Development Department staff Nick Lelack and Peter Gutowsky presented this item to review the follow-up from the joint planning commission and Board of Commissioners meeting of March 21, 2019. Commissioner Henderson expressed interest in forming a group to have discussions on housing. Commissioner DeBone commented on the challenges of zoning. Mr. Gutowsky reported on upcoming community meetings. Mr. Lelack recommended a discussion on the cost of land use, provide a summary of other counties going through the same housing concern, and what are the other options that we could look at. The Board recommended holding a joint meeting with the Planning Commission with the next meeting to be held after the legislative session.

Mr. Lelack reported there are two planning commissioners up for reappointment on July 1st. Both members expressed interest in reappointment. Mr. Lelack also reported there is interest by the Historic Landmarks Commissioner to increase the amount of ex-officio members.

5. Committee Appointment Selection logistics for the Public Safety Coordinating Council, Audit Committee, Investment Advisory Committee, and Cohesive Strategy Steering Committee

This item will be moved to the agenda of Wednesday, April 10.

EXECUTIVE SESSION:

At the time of 5:18 p.m., the Board went into Executive Session under ORS 192.660 (2) (e) Real Property Negotiations. The Board came out of Executive Session at 5:37 p.m. and directed staff to proceed as discussed.

At the time of 5:38 p.m., the Board went back in Executive Session under ORS 192.660 (2) (e) Real Property Negotiations. The Board came out of Executive Session at 5:50 pm and directed staff to proceed as discussed.

At the time of 5:50 p.m., the Board went back in Executive Session under ORS 192.660 (2) (d) Labor Negotiations. The Board came out of Executive Session at 6:44 p.m.

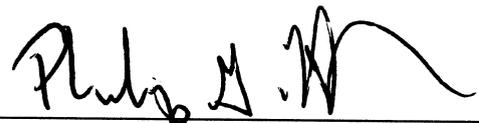
OTHER ITEMS: *None reported*

COMMISSIONER UPDATES: *None reported*

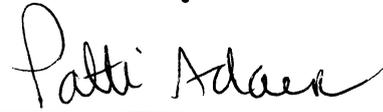
ADJOURN

Being no further items to come before the Board, the meeting was adjourned at 6:44 p.m.

DATED this 1 Day of May 2019 for the Deschutes County Board of Commissioners.



PHILIP G. HENDERSON, CHAIR



PATTI ADAIR, VICE CHAIR



ANTHONY DEBONE, COMMISSIONER

ATTEST:


RECORDING SECRETARY



Deschutes County Board of Commissioners
1300 NW Wall St, Bend, OR 97703
(541) 388-6570 – Fax (541) 385-3202 – <https://www.deschutes.org/>

AGENDA REQUEST & STAFF REPORT

For Board of Commissioners BOCC Monday Meeting of April 22, 2019

DATE: April 17, 2019

FROM: Tanya Saltzman, Community Development,

TITLE OF AGENDA ITEM:

CDD Marijuana Items: Code Enforcement Follow Up and Planning Division Annual Inspection Policy

Two discussion items: Code Enforcement follow-up information regarding cases classified as "unfounded," and Planning Division annual marijuana site visit policy and revised inspection checklist.



MEMORANDUM

TO: Deschutes County Board of Commissioners

FROM: Angie Havnear, Administrative Manager
Tanya Saltzman, Associate Planner

DATE: April 17, 2019

SUBJECT: CDD Marijuana Topics: Code Enforcement Follow Up and Marijuana Annual Inspection Policy

The Board of County Commissioners (Board) will meet on April 22, 2019 to discuss two Community Development Department (CDD) items pertaining to marijuana. The first is a brief follow-up from Code Enforcement regarding the status of “unfounded” Code Enforcement cases. The second is a discussion item from the Planning Division regarding the County’s approach to annual marijuana site inspections as codified in DCC 18.116.330(D). Staff seeks Board approval of a revised site visit checklist (Attachment A) for the marijuana annual reporting requirement. Following Board approval, it is staff’s intention to recommence marijuana annual site inspections beginning in May 2019.

I. CODE ENFORCEMENT CLARIFICATION

In the April 9 Board work session, Code Enforcement presented statistics from marijuana-related cases to date. The Board expressed further interest in the cases categorized as “unfounded.” Staff presents the following additional information:

CASES CLASSIFIED AS “UNFOUNDED” SINCE 2016
Referred to DCSO: 11
Verified no MJ at site: 6
Unable to verify if MJ was present onsite: 18 <ul style="list-style-type: none"> Of these 18 complaints, 10 were submitted anonymously
Personal Use: 3
Medical Grow: 7
Complaint received after harvest was completed: 2
Hemp: 3
Permitted grows/no violation: 5

II. ANNUAL REPORTING AND SITE INSPECTION OVERVIEW

Deschutes County Code requires annual reporting documents to be submitted by the applicant or licensee by February 1st of each year to report on the previous calendar year. The annual reporting form, which is mailed at the end of December to all property owners/applicants/licensees with land use approval for marijuana production, processing, or retail, requires the applicant to document items including approval date, OLCC license and status, mature canopy size, SDC payment status, and verification of noise and odor systems and water supply. Upon receipt of this form (and fee when applicable), CDD schedules a site visit, utilizing a checklist that was developed and reviewed by the Board in 2018. This checklist verifies the observed conditions of land use approval, including setbacks, structure type, mature canopy size, lighting, and odor and noise control systems. For sites that have land use approval but the OLCC license is pending, staff performs site visits to verify that the use has not yet been initiated.

For the reporting year 2018, Deschutes County had 16 properties with OLCC licenses for production or retail (one additional license has since been received in January 2019, and two others are for wholesale), 23 properties with land use approval but OLCC license pending, and 8 properties that are in the process of converting from medical grow to recreational production, for which the OLCC license is pending. This totals 47 site visits.

III. INSPECTION STATUS

Annual inspection visits were scheduled beginning in early March 2019. Staff conducted nine site visits before adverse weather conditions began to create logistical complications. The snowstorms of March 2019 eventually caused staff to cancel all remaining visits after March 8. Winter weather caused multiple issues: staff members were not able to drive safely to most of the sites; many of the sites were inaccessible for the owners themselves, particularly those that were not yet in operation and therefore had no people or vehicles entering or exiting the property for some time; lastly, a few sites suffered damage to their property due to the snow, such as collapsed greenhouses and other structures. While this year's winter conditions may seem unprecedented, staff recommends considering conducting annual inspections at a later time of year in the future, which will ensure the most efficient use of Planning Division resources as well as applicants' time.

IV. REVISED SITE VISIT CHECKLIST

The forced pause in site inspections afforded staff and legal counsel an opportunity to refine the site visit checklists based on experience thus far. Staff recognizes that while the inspections are clearly noted in Deschutes County Code as well as land use approval and annual reporting documents, they are unique to this type of land use and as such should be as straightforward and unambiguous as possible for both applicant and staff.

Currently the annual site inspections are conducted by Long Range Planning staff members, who traditionally are not trained to perform in-depth site inspections. Recognizing this, members of the

Planning and Legal staff held two meetings in March and April with representatives from Building Safety, Code Enforcement, and Law Enforcement to provide feedback on the checklist as well as best practices for site visits. Inherent in this annual inspection process is recognizing the limitations of a land use approval inspection and identifying potential triggers that a planner could readily detect for a site to be referred to a specialist department such as Code Enforcement. The revised checklist seeks to minimize discretion in favor of an objective checkbox-style format wherever applicable, with room for notes to provide context, as well as clear criteria for escalating a property to another department.

V. NEXT STEPS

Staff seeks Board direction on the revised site visit checklist as well as the remainder of the annual inspections.

Attachments

- A. Draft Revised Site Inspection Checklist
- B. Current (2018) Site Inspection Checklist

Attachment A: Draft Revised Site Inspection Checklist



COMMUNITY DEVELOPMENT

SITE VISIT CHECKLIST

Application No. _____

Applicant _____

Date Approved _____

Situs Address _____

Staff Reviewer(s) _____

Inspection Date/Time _____

Type of Use _____ Is Use Initiated? _____

	Approved	Observed
Setbacks		MEETS APPROVAL CRITERIA: Y N
Structure		MEETS APPROVAL CRITERIA: Y N
Canopy Size		MEETS APPROVAL CRITERIA: Y N OBSERVED CANOPY SIZE:
Hemp Present?	N/A	Y N COMMENTS:
Lighting		MEETS APPROVAL CRITERIA: Y N
Screening/Fencing		MEETS APPROVAL CRITERIA: Y N
Security Cameras		MEETS APPROVAL CRITERIA: Y N

Attachment: CDD Marijuana BOCC Discussion 04 22 2019 (2589 : CDD Marijuana Items: Code Enforcement Follow Up and Planning Division

<p>Secure Waste Disposal</p>		<p>MEETS APPROVAL CRITERIA: Y N</p>
<p>Building Code Compliance</p>	<p>N/A</p>	<p>BUILDING/STRUCTURAL ISSUES Y N</p> <p>WIRING/ELECTRICAL ISSUES Y N</p> <p>COMMENTS:</p>
<p>Odor</p>		<p>DETECTED AT PROPERTY LINES?</p> <p>NORTH Y N (HOW FAR? ____ FT)</p> <p>SOUTH Y N (HOW FAR? ____ FT)</p> <p>EAST Y N (HOW FAR? ____ FT)</p> <p>WEST Y N (HOW FAR? ____ FT)</p> <p>WIND DIRECTION: _____</p> <p>CANNABIS OBSERVED IN SURROUNDING AREA? IF SO, NOTE LOCATION: _____</p> <p>ODOR CONTROL SYSTEM (CIRCLE):</p> <p>NOT INSTALLED</p> <p>INSTALLED/NOT OPERATIONAL</p> <p>INSTALLED/OPERATIONAL</p> <p>COMMENTS:</p>

DRAFT

Attachment: CDD Marijuana BOCC Discussion 04 22 2019 (2589 : CDD Marijuana Items: Code Enforcement Follow Up and Planning Division

<p>Noise</p>		<p>DETECTED OUTSIDE STRUCTURE?</p> <p>Y N</p> <p>IF YES: DETECTED AT PROPERTY LINES?</p> <p>NORTH Y N (HOW FAR? ____)</p> <p>SOUTH Y N (HOW FAR? ____)</p> <p>EAST Y N (HOW FAR? ____)</p> <p>WEST Y N (HOW FAR? ____)</p> <p>COMMENTS:</p>
<p>Water Source</p>		<p>INFRASTRUCTURE OBSERVED (CIRCLE):</p> <p>WELL HAULED WATER</p> <p>IRRIGATION OTHER</p> <p>COMMENTS:</p>

FOLLOW UP WITH OTHER DEPARTMENT REQUIRED FOR ANY CRITERIA? Y N
DEPARTMENT:

Notes:

Attachment: CDD Marijuana BOCC Discussion 04 22 2019 (2589 : CDD Marijuana Items: Code Enforcement Follow Up and Planning Division

Attachment B: Current (2018) Site Inspection Checklist



COMMUNITY DEVELOPMENT

SITE VISIT CHECKLIST

Application No. _____

Applicant _____

Date Approved _____

Situs Address _____

Staff Reviewer(s) _____

Inspection Date/Time _____

Type of Use _____

Is Use Initiated? _____

	Approved	Observed
Setbacks		
Canopy Size		
Structure		
Lighting		
Odor		NONE SLIGHT SIGNIFICANT
Noise		
Screening/Fencing		
Security Cameras		
Secure Waste Disposal		

Attachment: CDD Marijuana BOCC Discussion 04 22 2019 (2589 : CDD Marijuana Items: Code Enforcement Follow Up and Planning Division



**BOARD OF
COMMISSIONERS**

1300 NW Wall Street, Bend, Oregon
(541) 388-6570

FOR RECORDING STAMP ONLY

BOCC MONDAY MEETING MINUTES

1:00 PM

MONDAY, April 22, 2019

ALLEN CONFERENCE ROOM

Present were Commissioners Phil Henderson, Patti Adair, and Anthony DeBone. Also present were Tom Anderson, County Administrator; Erik Kropp, Deputy County Administrator; David Doyle, County Counsel; and Sharon Keith, Board Executive Assistant. Several citizens and representatives of the media were in attendance.

CALL TO ORDER: Chair Henderson called the meeting to order at 1:00 p.m.

ACTION ITEMS

1. Statewide Transportation Improvement Fund Recommendations

Judith Ure, Management Analyst presented along with Andrea Brent, Cascades East Transit; Michelle Rhodes and Derek Hofbauer, COIC; Gary Farnsworth and Theresa Conely, ODOT. Further information from the STIF Advisory Committee was presented to the Board regarding project prioritization. Commissioner DeBone defined the services provided to the community and those agencies involved. Commissioner Adair expressed concern on hours and span of service proposed for the La Pine to Sunriver service and feels they should be increased. Commissioner Henderson explained his view of the Advisory Committee for the future. An outline of

vehicle purchase requests was reviewed. The Advisory Committee ranked the projects. Commissioner Henderson pointed out the Advisory Committee was appointed the same week the public forums were scheduled and feels they did not have much opportunity to review the recommended projects. Commissioner DeBone commented on density for transit riders for the future based on population growth. There are 56 buses currently in the system. Commissioner DeBone acknowledges the level of work done into the process and supports expanding services with transit dollars that are available. Commissioner Adair suggested hours of service from 7:00 a.m. to 7:00 p.m. for the Sunriver to La Pine bus route. Commissioner Henderson would also support adding money to that project. Commissioner Henderson recommends a list of projects be submitted to the Board prior to a presentation for consideration of approval. The project plan is due for submittal by Tuesday.

Gary Farnsworth, ODOT, recommended that COIC provide a review of the decision making process for the fleet. This item will be included for consideration on the Board's agenda of Wednesday April 24 at 1:30 p.m. in the Allen Conference Room.

2. Deschutes County Stabilization Center – Progress Update

Health Services staff presented an update on the project design and a list of the service projections for the proposed stabilization center. Commissioner Henderson reported on a meeting scheduled April 23 with representatives of St. Charles. Dr. Conway stated when the stabilization center is open, the hope is for 24/7 coverage for services for mental health respite. Lee Randall, Facilities Director spoke on parking needs in the public safety campus master plan.

RECESS: At the time of 2:42 p.m., the Board took a recess and reconvened the meeting at 2:49 p.m.

3. CDD Marijuana Items: Code Enforcement Follow Up and Planning Division Annual Inspection Policy

Community Development Department staff Nick Lelack, Tanya Saltzman, Lori Furlong, and Angie Havniar presented regarding the code enforcement and inspection process for marijuana production facilities. Eleven code enforcement cases were referred to the Sheriff's Office and six were found to not have marijuana on the premises. Commissioner DeBone inquired on anonymous complaints. Ms. Furlong reported most complaints received are not anonymous. The annual reports are on hold currently. A site inspection checklist was drafted which gives certainty to the property owner to inform them what will occur during the inspection. A draft checklist was presented to the Board for additional input. Commissioner Henderson recommended the inspections occur during the time of mature canopy. County Administrator Anderson inquired on the department's procedure if during an annual inspection they view another code enforcement issue on the property. CDD staff would report the violation if it concerns public health/life safety. Commissioner Henderson recommended inclusion of the identified type of odor control system on the property.

DEBONE: Made motion to approve the Annual Site Inspection Checklist as Modified.

ADAIR: Second

VOTE: DEBONE: Yes
ADAIR: Yes
HENDERSON: Chair votes yes. Motion Carried

The Board strongly recommended the site inspection forms should be submitted by the property owner in February and inspections done during July, August, and September.

4. Repealing of Ordinance No. 2018-005: Flood Plain Amendments

Community Development Department staff Nicole Mardell, Nick Lelack and Peter Gutowsky along with Adam Smith Assistant Legal Counsel presented a

brief background of the text amendments relative to flood plain and the concern on findings and evidence. The amendments were withdrawn from the LUBA process. The next step is to formally issue a decision prior to May 22. A public hearing is scheduled for May 8. Ms. Mardell recommended to hold the public hearing and deliberations on the same date.

EXECUTIVE SESSION:

At the time of 3:36 p.m. the Board went into Executive Session under ORS 192.660 (2) (h) Pending Litigation. The Board came out of Executive Session at 3:47 p.m.

5. Preparation for Bend UGB Amendment Public Hearing

Community Development Department staff Zechariah Heck and Nick Lelack reviewed the application requesting approval to adjust the Bend UGB and amendments to Deschutes County comprehensive plan and zoning maps. The Board supports the May 17 date for emergency clause on the draft ordinance.

COMMISSIONER UPDATES

- Regarding the fire lab event of April 18, "Can Central Oregon be the next Paradise", Commissioner Henderson recommended a debrief with Emergency Manager Nathan Garibay and Road Department Director Chris Doty
- Commissioner Henderson will attend a meeting with Health Services and St. Charles tomorrow regarding the crisis stabilization center.
- Commissioner Adair reported on last week's AOC County College session in Salem.

- Commissioner DeBone attended the La Pine Chamber Breakfast on Friday. He also participated in several food inspections with the Environmental Health department.
-

EXECUTIVE SESSION:

At the time of 4:11 p.m., the Board went into Executive Session under ORS 192.600 (2) (e) Property Negotiations. The Board came out of Executive Session at 5:06 p.m.

OTHER ITEMS:

- County Administrator Anderson presented the agenda for the Joint Meeting with the BOCC and City of La Pine on Wednesday, April 24 at 4:30 p.m.
-

EXECUTIVE SESSION:

At the time of 5:10 p.m., the Board went into Executive Session under ORS 192.660 (2) (h) Pending Litigation. The Board came out of Executive Session at 5:16 p.m.

At the time of 5:17, the Board went into Executive Session under ORS 192.660 (2) (h) Pending Litigation. The Board came out of Executive Session at 5:23 p.m.

At the time of 5:23 p.m., the Board went into Executive Session under ORS 192.660 (2) (d) Pending Litigation. The Board came out of Executive Session at 5:27 p.m.

ADJOURN

Being no further items to come before the Board, the meeting was adjourned at 5:30 p.m.

DATED this 15 Day of May 2019 for the Deschutes County Board of Commissioners.



PHILIP G. HENDERSON, CHAIR



PATTI ADAIR, VICE CHAIR

ATTEST:



RECORDING SECRETARY



ANTHONY DEBONE, COMMISSIONER

BEFORE THE DESCHUTES COUNTY
CODE ENFORCEMENT HEARINGS OFFICER

COUNTY OF DESCHUTES,

Petitioner,

vs.

Linda Hopmann, Linda A. Hopmann, Trustee of
the Linda A. Hopmann Revocable Trust, and
Total Living Organic Farms, LLC,

Respondents.

File No: 247-18-000679-CE

FINAL ORDER

I. INTRODUCTION

Code Enforcement Hearings Officer Will Van Vactor held a hearing in the matter of Linda Hopmann (individually), Linda Hopmann, Trustee of the Linda A. Hopmann Revocable Trust ("Respondent Trust"), and Total Living Organic Farms, LLC ("Respondent TLO Farms") on Tuesday, January 15, 2019 (the "Hearing"), at the County Services Center at 1300 NW Wall Street, Bend, Oregon. The three respondents named above are collectively referred to as "Respondents".

The Hearings Officer had jurisdiction to hear this matter pursuant to Chapter 1.17 of the Deschutes County Code (referred to as either the "Code" or "DCC").

At the Hearing, John Griley, Deschutes County Code Enforcement Technician, appeared and testified on behalf of Deschutes County (the "County"). Mr. Griley called Chris Tiboni, another Code Enforcement Deciliation for Deschutes County, as a witness. Respondent Linda Hopmann was present at the Hearing. Brad Wehde appeared and testified on behalf of the Respondents at the Hearing. Before opening the Hearing to testimony, Mr. Griley, Ms. Hopmann, Mr. Tiboni and Mr. Wehde all declared by oath or affirmation the truthfulness of their testimony.

II. ISSUES

The issues are whether one or more Respondent violated the following provisions of the Code:

(A) DCC 13.36.010/DCC 18.144.040, by creating a nuisance on the property as a result of violating a condition of approval found in land use decisions in Deschutes County File Nos. 247-16-000820-AD, 247-16-0000821-AD, and 247-18-000822-SP.

(B) DCC 18.116.330(B)(10)(a), for failing to install adequate greenhouse odor control.

III. FINDINGS OF FACT

- (A) In support of the Notice of Violation and Proposed Civil Penalty (“Notice”), Mr. Griley introduced eight (8) exhibits at the Hearing.
- (B) **County Exhibits 1a, 1b, and 1c** are the copies of the Notice served on each of the three Respondents. These notices contain the same allegations. The allegations on each of the notices are the same as described in paragraphs (A) and (B) in the “Issues” section above.
- (C) Deschutes County Code section 1.17.060(B) allows for service of the Notice by First Class Mail and Certified Mail with Return Receipt Requested. Mr. Griley testified he served the Notice to the three Respondents by both First Class and Certified Mail as required by DCC 1.17. Mr. Griley testified that two of the certified mailings came back unclaimed. The Notice sent by certified mail to Total Living Organic Farms, LLC (“TLO Farms”) was received by its registered agent.
- (D) Although Respondents, through Mr. Wehde, had a question about what how service was accomplished, Respondents made no attempt to contend that one or more Respondents were not reasonably apprised of the alleged violation and the pending code enforcement action. Moreover, there was no contention that the copies of the Notice sent to the Respondents by First Class mail were not received. Additionally, Linda Hopmann was present at the Hearing. Ms. Hopmann is the Trustee of the Respondent Hopmann Trust and is a member of Respondent TLO Farms, so all Respondents were represented at the Hearing.
- (E) The Notice alleges violations that occurred on October 22, 2018, and does not allege a continuing violation. The Notice established an initial hearing date of December 18, 2018, at 1:30 pm, at Deschutes County Service Center, 1300 NW Wall Street, Bend, Oregon 97703. A request for a continuance was made by Respondents and the Hearing was reschedule for January 15, 2019 (see Exhibit 1b).
- (F) **County Exhibit 1d** is a property information report (commonly known as a “DIAL Report”). Exhibit 1d shows that Respondent Trust owns the property located at 65320 Hwy 20, Bend, Oregon (the “Premises”). The Premises is also identified as Deschutes County Tax Lot 1611230000521.
- (G) The Premises is the location of the violations alleged in the Notice. The Premises is located within the boundaries of Deschutes County and is not inside any municipal boundary. Therefore, it is subject to the jurisdiction of Deschutes County.
- (H) **County Exhibit 2** includes copies of the code sections applicable to the alleged violations. Specifically, Exhibit 2 contains copies of DCC 13.36.10 (Nuisances and Abatement,

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Creation of Nuisance), DCC 18.144.040 (General Provisions, Violation Declared a Nuisance), and DCC 18.116.330 (Marijuana Production, Processing, and Retailing).

- (I) **County Exhibit 3** is a copy of the *Black's Law Dictionary* (10th ed. 2014) definition of "interest" including the definition of "interest in the use and enjoyment of land". The *Black's Law Dictionary* definition of "interest in the use and enjoyment of land" is:

The pleasure, comfort, and advantage that a person may derive from the occupancy of land. The term includes only the interests that a person may have for residential, agricultural, industrial, and other purposes, but also interests in having the present-use values of the land unimpaired by changes in its physical condition.

- (J) Exhibit 3 also included a copy of *Jewett v. Deerhorn Enterprises, Inc.*, 281 Or 469 (1978).
- (K) **County Exhibit 4** is a copy of the Findings and Decision from Deschutes County File Nos 247-16-000820-AD, 247-16-000821-AD, and 247-16-000822-SP. The Findings and Decision relate to approval a marijuana and production facility on the Premises. The applicant was Respondent TLO Farms. The Findings and Decision include conditions of approval relating to odor control.¹ Specifically, Condition G (pg. 35 of the Findings and Decision) requires that an odor control system be equipped on the building and must at all times prevent unreasonable interference of neighbors' use and enjoyment of their properties.
- (L) **Exhibit 5** is a Code Enforcement Complaint Form dated August 3, 2017, and signed by Arleigh Mooney (the "Complainant"). Exhibit 5 also includes an email exchange between Complainant and Mr. Griley beginning May 31, 2018 through October 9, 2018.
- (M) **Exhibit 6** is a map of the area surrounding the Premises, including Complainant's property. The Premises is outlined in red on Exhibit 6. The Complainant's property is to the immediate south of the Premises. Exhibit 6 depicts the location of three greenhouses on the Premises that were active in 2018.
- (N) Mr. Griley testified that he visited the area depicted on Exhibit 6 on five different occasions; October 3, 2018, October 5, 2018, October 9, 2018, October 10, 2018, and October 22, 2018.
- (O) According to Mr. Griley's testimony, the letters "A", "B", and "C" denoted on Exhibit 6 represent the different locations around the Premises that Mr. Griley would observe whether or not any marijuana odor was detectable. Site A is more or less immediately south of the three greenhouses on the Premises. Site B is to the immediate east of the

¹ The only "odor" control issue in this relates to the odor from marijuana production. Therefore, all references to "odor" in this Final Order relate to the odor from marijuana, unless otherwise distinguished.

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three greenhouses on the Premises. Site C is to the northwest of the three greenhouses on the Premises and is adjacent to a hemp farm.

- (P) Mr. Griley testified that he has been inside buildings used for marijuana production, has seen marijuana plants at various stages of production, and is familiar with the odor produced by marijuana plants.
- (Q) Mr. Griley also testified that on October 9, 2018, and October 10, 2018, Chris Tiboni was with present with him for the site visits. This fact is also reflected on Exhibit 6.
- (R) At the Hearings, Mr. Tiboni testified that he is a Deschutes County Code Enforcement Specialist. He also stated that in his prior career he was a police officer involved in drug investigations, and that his training for that job involved learning to identify the smell of marijuana.
- (S) On October 3, 2018, Mr. Griley visited the area by himself. He noted the wind direction from was from the west. He visited Sites A, B, and C, and noted marijuana odor only at Site B. On this date, Site B was downwind from the three greenhouses on the Premises.
- (T) On October 5, 2018, Mr. Griley visited the area with the Complainant. There was no discernable wind. They only made an observation from Site A and did not smell any marijuana. The Complainant testified, in regard to this visit, that she had smelled marijuana for several days preceding the site visit, but confirmed that there was no smell on October 5, 2018, when Mr. Griley was on site.
- (U) On October 9, 2018, Mr. Griley visited the area with Mr. Tiboni. The wind was blowing from the northwest. They made observations from Site A and Site C (not Site B). They observed marijuana odor at Site A, but not Site C. Mr. Tiboni testified during the October 9, 2018, site visit the smell of marijuana at Site A was so strong that it made him cough.
- (V) Mr. Griley testified that since the wind was blowing from the northwest and there was no odor at Site C and that the odor did not appear to be coming from the nearby hemp farm. The only marijuana or hemp production facility noted by the parties between Site C and Site A are the greenhouses on the Premises.
- (W) The next day, on October 10, 2018, Mr. Griley visited the site again with Mr. Tiboni. There was no discernable wind. They made observations from all three sites. There was no odor at Site A or Site C, but there was odor at Site B.
- (X) Both Mr. Griley and Mr. Tiboni testified that on October 10, 2018, they observed exhaust fans running on the north side of the greenhouses from Site B. Mr. Wehde questioned Mr. Griley regarding the exhaust fans at the north side of the greenhouses because, according to Mr. Wehde, there are no fans on the north end of the greenhouses, only vents.

- (Y) Mr. Wehde also noted that directly east of Site B by approximately 800 feet (see Finding of Fact (JJ) below), are two greenhouses used for growing marijuana. Mr. Griley testified in prior growing seasons that was true, but that during the 2018 growing season, the owner of those two greenhouses only grew 12 marijuana plants for personal use.
- (Z) On October 22, 2018, Mr. Griley visited Site A with the Complainant. During this Site Visit, there was no discernable wind. According to testimony from Mr. Griley and the Complainant, the odor was noticeable on that day.
- (AA) Mr. Wehde contended in regard to the October 22, 2018, observations, that the odor may have originated from two greenhouses immediately south of the Complainants home. In support of that contention Mr. Wehde submitted a photograph that he contends shows the greenhouses to the south and that they show marijuana in at least one of the greenhouses. He also states that he knows the aerial photographs are from 2018 because of changes made to the Premises during or prior to that year.
- (BB) The Complainant testified that she can see inside the greenhouses to the south from her property and claims the greenhouses are not used for growing marijuana (anymore) and that one greenhouse is used to store a motor vehicle in the first greenhouse and that there was no marijuana growing in the second greenhouse.
- (CC) **Exhibit 7** are photos taken by Mr. Griley as part of his investigation. He testified the photograph dated October 22, 2018, was taken at Site A identified on Exhibit 6. Mr. Griley testified the photo dated October 10, 2018, was taken from Site B as shown on Exhibit 6. The photos dated October 9, 2018, were taken from Site A (but a little further east) as shown on Exhibit 6.
- (DD) **Exhibit 8** is another DIAL report showing ownership of the Premises, land use permits, and buildings on the Premises.
- (EE) The Complainant testified she has lived on her property for 43 years and that she started smelling marijuana about four years ago. The odor was not too strong at first. However, it has gotten to the point that between August and November the smell is too strong for her to spend more than 15-30 minutes outside before her throat starts to hurt.
- (FF) The Complainant testified she never had allergies but starting the second year of the marijuana grow she started having to take allergy medication. She also testified she cannot sleep in her bed or lay down flat.
- (GG) Similarly, she noted her dad has had a sinus infection every year since the marijuana grow was started on the Premises. The Complainant also testified that her daughter, who recently moved back to the area, developed allergies within two or three days. The Complainant also testified her husband never had allergies until the list two or three

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years. The Complainant is also worried about letting her grandson outside because he already has respiratory issues already.

- (HH) The Complainant testified in detail regarding how the odor impacts the use of her property. Specifically, she noted she is an avid gardener and due to the odor she cannot stand to be outside for extended periods of time because the odor makes her throat hurt. She testified she cannot use her outside dinette table and cannot use her pool during the summer. She noted people make fun of the smell and that people do not want to visit her house because of the smell. Complainant also testified she cannot leave her windows open in the summer due to the odor.
- (II) Respondent submitted four (4) exhibits (referred to herein as “Respondent Exhibit” A through D).
- (JJ) **Exhibit A** is a series of eight aerial photographs. Each of the photographs depicts something different as described here:
- a. Measures the distance between the Complainants house and a field to the northeast. The distance measured is 1.1 miles.
 - b. Another notes a large hemp project that is 4,500 feet from the Complaints home to the southeast.
 - c. The third photo depicts a hemp field 1917 feet from the Complaints to the northwest.
 - d. The fourth photo shows another hemp field to the northwest, this one is 3,500 feet from the Complainant’s home.
 - e. The fifth depicts a hemp field 1,961 feet to the west of the Complaint’s home.
 - f. The sixth photo depicts the two greenhouses east of Site B and 818 east of the Complaint’s house. Mr. Wehde also contended that the aerial photograph shows marijuana plants being grown in the greenhouses visible in the photo.
 - g. The seventh photo depicts the two greenhouses on the Premises as shows that they are 325 feet from the Complainant’s home.
 - h. The last photograph shows two greenhouses 209 feet to the south of Complainant’s home. Mr. Wehde also contended you could see marijuana growing in these green houses.
- (KK) Respondents’ **Exhibit B** is an email from Mr. Griley to Lesley Jones that indicates the odor control complaint is resolved since the odor control devices are now installed.
- (LL) **Exhibit C** is an invoice from NCM Environmental Solutions for over \$4,000. The items listed on the invoice show certain odor control items being purchased by Respondent TLO Farms.
- (MM) **Exhibit D** is a portion of the Land Use Approval, including Findings, for Respondent TLO Farms marijuana production facility on the Premises.

IV. DISCUSSION

(A) Service

The County served the Notice on the three Respondents by both First Class and Certified Mail Return Receipt Requested. Notwithstanding that two of the Notices mailed by Certified Mail went unclaimed and were returned to the County, the County has complied with the notice requirements in DCC 1.17.060(B)(2)(b).

At the hearing, Mr. Wehde asked a question about the content of the Notice sent to the three Respondents and was told the Respondents each received the same Notice. Respondents did not, however, challenge the adequacy of service of the Notice to any of the Respondents.

The Hearings Officer finds that all three Respondents were reasonably apprised of the pendency of the proceedings.

(B) Burden of Proof

Pursuant to DCC 1.17.090(L), the County has the burden of establishing the alleged violations by a preponderance of evidence. The preponderance standard is often described as more likely than not (or 51%). This is a lower standard than applied in criminal proceedings where a defendant must be convicted by the "no reasonable doubt" standard.

(C) Liability for the Respondents

Since there are three named Respondents, the Hearings Officer believes it appropriate to consider whether each Respondent is potentially liable and how liability should be shared between the Respondents.

The Hearings Officer finds that as the owner of the Premises, Respondent Hopmann Trust can be liable for any alleged violations and related civil penalty under DCC 1.16.015(C)(4). Respondent TLO Farms is the operator of the marijuana grow on the Premises pursuant to the land use decisions included in the record. Therefore, Respondent TLO Farms can be liable for the alleged violations under DCC 1.16.015(C)(1) and (3). Respondent Linda Hopmann has an interest in the Premises through the Linda A. Hopmann Revocable Trust. Therefore, Linda Hopmann is potentially liable under DCC 1.16.015(C)(4).

(D) Finding Regarding Alleged Violations

The alleged violations can be summed up as a failure on the part of the Respondents to utilize an odor control system to prevent odor from the onsite marijuana grow from unreasonably interfering with the use of neighboring properties.

Complainant testified that she has lived on her property for 43 years and only started smelling marijuana four years ago. She noted in her testimony that from August to November the odor is

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consistent, although not every day. The site visits from Mr. Griley and Mr. Tiboni corroborated the Complainant's testimony that marijuana can be smelled on Complainant's property and a times is very strong. Based on the described testimony, the Hearings Officer finds there is sufficient evidence to establish that it is more likely than not that the Complainant regularly smells marijuana between August and November.

Complainant also testified in detail regarding how the odor impacts the use of her property. Specifically, she noted she is an avid gardener and due to the odor she cannot stand to be outside for extended periods of time because the odor makes her throat hurt. She testified she cannot use her outside dinette table and cannot use her pool during the summer. She noted people make fun of the smell and that people do not want to visit her house because of the smell. Complainant also testified she cannot leave her windows open in the summer due to the odor.

No one introduced evidence countering Complainant's testimony regarding how the odor impacts the use of her property. The Hearings Officer finds that the testimony provided by complainant is substantial and that the interference complained of is unreasonable for the following reasons:

1. She cannot leave her windows open during summer months due to the odor.
2. Complainant enjoys gardening, using her outdoor dinette, and using a pool, but cannot due to the odor.
3. Visitors no longer come to her property due to the odor.
4. Complainant did not move to the alleged nuisance, unlike cases where a complaining neighbor moves to an area and then complains about existing uses.

It is unreasonable to expect a property owner to adjust the use of their property to accommodate a neighboring land use. The Hearings Officer believes the above listed complaints are something a person with ordinary habits and sensibilities would complain about.

As noted in the Findings of Fact above, the Complainant also testified regarding her belief that the odor has caused herself, as well as several family members, to suffer from allergies. Such testimony did not support a finding of substantial interference, and the Hearings Officer did not base his decision on that testimony. This is because: (1) it is unclear that such allergies are from the odor of marijuana (a medical study confirming such allergies are possible or a doctor note confirming the Complainant's allergies might help provide the necessary link), (2) it is unclear whether someone can be allergic to the odor, or whether they would be allergic to the pollen. In short, the alleged violations relate to odor, not pollen, and the Hearings Officer did not feel there was a sufficient link between the odor and the allergies. Regardless, for the reasons noted above, there is still substantial interference with Complainant's enjoyment and use of her property.

The primary counter argument from Respondents representative, Mr. Wehde, was that the odor came from another marijuana or hemp grow site. In support of this argument, Respondents submitted aerial photographs that show the location of other marijuana and hemp grow sites.

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For the following reasons, the Hearings Officer does not find the testimony and exhibits presented by Respondents to be enough to overcome the County's substantial evidence:

1. Most of the marijuana and hemp sites identified by Respondents are much further away from the Complainant's house than the three greenhouses on the Premises.
2. The only greenhouses closer to Complainant's home are located just to the south. The Complainant testified she can see inside those greenhouses and that during the 2018 growing season there were no plants grown in those greenhouses. Respondents contend the aerial photo of those two greenhouses to the south show marijuana plants. The Hearings Officer cannot distinguish marijuana plants in that photo and finds Complainant's testimony to be convincing in regard to what was in those two greenhouses during the 2018 growing season. Mr. Griley made several site visits to different areas around the Premises.
 - a. On October 3, 2018, Mr. Griley only smelled marijuana from Site B. On that day, Site B was downwind from the three greenhouses on the Premise. The Hearings Officer finds this testimony indicates it is more likely than note that the odor came from the three greenhouses on the Premises, just downwind from Site B. Moreover, while the maps submitted by Mr. Wehde do show some hemp grows to the west (and thus downwind of Site B on October 3, 2018), the hemp grows are almost 2000 feet from Site B. Given how far away those hemp grows are, the Hearings Officer finds it more likely than not the smell detected by Mr. Griley on this date originated from the greenhouses on the Premises.
 - b. The site visit on October 9, 2018, to Site A and Site C is also a strong indication that the odor originated from the three greenhouses on the Premises. This is because the wind was blowing from the northwest and the odor was discernable at Site A, but not Site C. Since Site A was downwind from the three greenhouses on the Premises on October 9, 2018, and there was no odor at Site C, the odor must have originated between Site A and Site C. Moreover, notwithstanding the fact that Site C is adjacent to a hemp grow, there was no odor at Site C.
 - c. Similarly, the site visits October 10, 2018 and October 22, 2018, provide evidence that the marijuana odor likely originated from the three greenhouses on the Premises, since greenhouses are the nearest grow. As previously noted, the two greenhouses south of the Complainants property were not active growing marijuana in 2018. Additionally, the two greenhouses to the east of Site B, while possibly growing 12 plants for personal use, are at least twice as far from the Complainant's home as the three greenhouses on the Premises.²

As to the two greenhouses to the east of Site B, Mr. Wehde contended, notwithstanding what the owners of those greenhouses may have represented, that multiple plants were being grown in those greenhouses. Mr. Wehde contended the aerial photograph of those greenhouses show plants being grown in 2018. The Hearings Officer does not agree that the photograph clearly

² The Hearings Officer used a ruler to measure the distance from the southeast corner of the nearest greenhouse on the Premises to the Complainant's house and did the same from the southwest corner of the nearest greenhouse on the property to the east of Site B to the Complainant's house.

depicts marijuana plants. Instead, the dark areas inside the greenhouses look to be rectangular tables.

For the above reasons, the Hearings Officer finds that it is more likely than not that the odor complained of by Complainant originates on the Premises.

DCC 13.36.010 makes it unlawful to create or maintain a nuisance. DCC 18.144.040 makes it a nuisance to violate a land use permit. As noted above, the Land Use Approval includes a condition that requires that an odor control system be equipped on the building and must at all times prevent unreasonable interference of neighbors' use and enjoyment of their properties.

While there is an odor control system installed on the three greenhouses, it either has not been operated correctly or is inadequate to prevent unreasonable interference with the Complainant's use and enjoyment of her property. As a result, Respondents have violated the Land Use Approval and consequently created a nuisance under DCC 18.36.010 and DCC 18.144.040.

DCC 18.116.330(B)(1)(a) requires installation of an *effective* odor control system that prevents unreasonable interference with use and enjoyment of neighboring lands. While a system is installed in the three greenhouses, it is not effective to prevent unreasonable interference with neighboring properties.

(E) Compliance Possible

The Conditions of Approval cited in this Final Order and the Deschutes County Code require that marijuana production facilities not unreasonably interfere with neighboring properties. Although the Code also requires a mechanical engineer's report, obtaining the report and installing the recommended odor control system does not guarantee that the system will ultimately be effective unreasonable interference with neighboring properties.

In this case, the evidence is that the report was obtained, and the system was installed for the 2018 system. However, as noted above, the odor from the production facility still unreasonably interfered with the Complainants use of her property. Therefore, improvements to the odor control system must be made.

The Hearings Officer believes that compliance is possible by either installing a new system or improving the current system. To ensure adequate improvements are made, the Respondents should retain a mechanical engineer to recommend improvements or a new system.

Since the Hearings Officer believes compliance is possible and because the Respondents previously acted in good faith in attempting to install an adequate odor control system, the Hearings Officer finds that it is appropriate to stay a portion of the \$2,000 fine.

(F) Right-to-Farm

Oregon has a right to farm law protects farm uses on lands zoned for farm use. The right to farm extends to marijuana use. However, local governments do have the right to adopt reasonable

time, place and manner regulations. Deschutes County adopted such regulations, including DCC 18.116.330. Those regulations were adopted and were not appealed. Consequently, the regulations apply to the marijuana production facility on the Premises. The Hearings Officer does not have the authority to find any of the regulations to be unreasonable and must apply them as adopted and currently in effect.

V. CONCLUSION

For the above reasons, the Hearings Officer finds that the County has met its burden of proof regarding the two alleged violations.

VI. FINAL ORDER

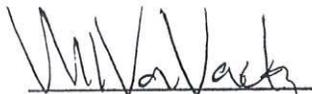
Based on the foregoing Findings of Fact and Discussion, the Hearings Officer enters the following Final Order:

- 1) Deschutes County has proved by a preponderance of evidence in the record that Respondents are in violation of DCC 13.36.010/DCC 18.144.040, for creating a nuisance on the Premises as a result of violating a condition of approval found in land use decisions in Deschutes County File Nos. 247-16-000820-AD, 247-16-0000821-AD, and 247-18-000822-SP.
- 2) Deschutes County has proved by a preponderance of evidence in the record that Respondents are in violation of DCC 18.116.330(B)(10)(a), for failing to install adequate greenhouse odor control.
- 3) Respondents are subject to civil penalties for the above-described violations because they have not complied with the county code provisions (and cited condition of approval) as set forth above.
- 4) The Hearings Officer hereby imposes a \$2,000 (two thousand dollar) civil penalty for the above-described violations set forth in paragraph 1) and 2) of this Final Order on Respondents Hopmann Trust and TLO Farms, LLC.
- 5) Respondents have until May 31, 2019, to correct the violations described in paragraphs 1) and 2) of this Final Order to the reasonable satisfaction of the County. Since there is no evidence of bad faith, and to encourage compliance, imposition of \$1,500 (one thousand five hundred dollars) of the \$2,000 (two thousand dollars) fine will be stayed for the period during which Respondents are allowed to correct the nuisance caused by the inadequate system currently installed. To correct the nuisance, Respondents must retain a mechanical engineer to prepare a report that recommends improvements to the current odor control system to better control odor, install the recommended improvements, and provide a copy of the report from the mechanical engineer that identifies the improvements to a Deschutes County Community Development Department.

ATTACHMENT 5

- 6) If by May 31, 2019, Respondents Hopmann Trust and TLO Farms, LLC, have not corrected the violation described in paragraphs 1) and 2) of this Final Order, the stay of the remainder of the total \$2,000 (two thousand dollars) civil penalty shall be lifted and the total sum shall be paid by June 3, 2019.
- 7) Notwithstanding the foregoing, Respondents Hopmann Trust and TLO Farms, LLC shall pay \$500 (five hundred dollars) to the Deschutes County Treasurer at 1300 NW Wall Street, Bend, OR 97702 for the portion of the civil penalty imposed in this final order that has not been stayed, no later than March 1, 2019.
- 8) If Respondents do not comply with the terms of this Final Order, the County may record a lien against subject Premises for the total amount of all maximum civil penalties assessed in this order, and may seek enforcement of this Final Order through the Deschutes County Circuit Court.

Dated this 29th day of January, 2019



William A. Van Vactor
Code Enforcement Hearings Officer

NOTICE

Any aggrieved party may, within 60 days of the issuance of any Final Order, file a writ of review as provided in ORS 34.010-34.100 to seek judicial review of a Final Order of a Code Enforcement Hearings Officer, unless the Code Enforcement Hearings Officer makes a land use decision, which case the decision may be reviewed by the Oregon Land Use Board of Appeal pursuant to ORS 197.

CERTIFICATE OF SERVICE

I, Will Van Vactor, do certify that on this date I sent a true and accurate copy of the foregoing FINAL ORDER by United States Mail, first class, postage pre-paid, in a properly addressed and sealed envelope, to the following person at the addresses shown below, the last known address in the County's files:

Linda A. Hopmann
67411 Otter Run Lane
Bend, OR 97701

Linda A. Hopmann, Trustee
Linda A. Hopmann Revocable Trust
67411 Otter Run Lane
Bend, OR 97701

Total Living Organics Farm, LLC
c/o Paul Loney
1618 SW 1st Avenue Ste 250
Portland, OR 97201

Total Living Organics, LLC
4682 Cook Avenue, No. 26
Bend, OR 97703

Will Van Vactor
Will Van Vactor

Dated this 29th, day of January 2019



Board of County Commissioners

P.O. Box 6005 • Bend, Oregon 97708

1300 NW Wall Street, Suite 206 • Bend, Oregon 97703

TEL (541) 388-6570 • FAX (541) 385-3202

www.deschutes.org

September 23, 2016

Sen. Ginny Burdick, Co-Chair
Rep. Ann Lininger, Co-Chair
Joint Interim Committee on Marijuana Legalization
Oregon State Capitol
900 Court Street NE
Salem, Oregon 97301

RE: Marijuana Related Land Use Regulation in Deschutes County

Dear Co-Chairs Burdick and Lininger:

Thank you for the opportunity to provide comments pertaining to marijuana regulations in Deschutes County. Please find below a summary of Deschutes County's unique circumstances and inclusive processes to develop and adopt reasonable time, place and manner (TPM) regulations pertaining to the marijuana industry rather than referring an "opt out" ballot measure to voters in November 2016.

- **Farmland is different in Deschutes County.** High desert farmland is different from farmland in other regions of the state. Our dry high altitude climate; rocky landscape and poor soil quality; lack of water availability; distance to markets; land use pattern, including the number, size and locations of farm and rural residential parcels; negative average annual farm income; and rural population all contribute to the uniqueness of lands zoned Exclusive Farm Use (EFU) in Deschutes County. We actively supported SB 1598 in the 2016 Legislative Session to clarify that Oregon's Right-to-Farm Law does not apply to marijuana TPM regulations. The passage of this law was critical to our decisions to move forward and collaboratively develop and adopt TPM regulations to mitigate adverse impacts generated by marijuana land uses in the high desert while allowing this emerging industry to succeed, and to rescind our ordinance opting-out of marijuana businesses. Please find attached a map illustrating the number, size, zoning, and location of parcels in the greater Bend area.
- **Collaborative Process to develop TPM regulations.** The County engaged in an extensive, thoughtful, and comprehensive 10-month public process to develop and adopt marijuana land use standards that are unique to our rural high desert environment. The process included eight (8) public hearings before the Board and Planning Commission, and seven (7) Marijuana Advisory Committee¹ (MAC)

¹ The MAC consisted of marijuana industry representatives and rural residents.

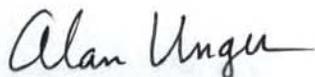
meetings at which public comments were accepted and staffed by a professional facilitator. We temporarily opted-out of all marijuana land uses to provide adequate time to conduct a thorough and complete public process in the development of a new, local marijuana regulatory program.

- **Reasonable TPM regulations.** We considered and balanced extensive public comments, committee recommendations, and state law (HB 3400 and SB 1598) in formulating the final package of regulations. The adopted standards provide a carefully crafted compromise to support this emerging industry and protect rural quality of life through mitigating sight, sound, smell, water, waste disposal, and more. The regulations were not appealed, and do not prohibit or effectively eliminate marijuana businesses or grow sites in the EFU or Multiple Use Agricultural-10 zones. Some industry representatives requested regulatory flexibility in mitigating off-site impacts (i.e., odor control systems) rather than establishing “one-size fits all” standards. The Board responded by adopting a few discretionary regulations to provide such flexibility. In Oregon, if discretion is exercised in the land use review process, then public notice is required and public hearings and appeals are possible. In addition, Deschutes County embraces Goal 1 of the Oregon Statewide Planning Program to involve citizens in the processes to develop and adopt regulations, and to implement regulations during site specific review processes.
- **Regulatory Review.** During our adoption of the marijuana land use ordinances, it recognized that this new regulatory program would need to be evaluated and updated to determine if it is working as intended – to support this emerging industry and to preserve the high quality of life for rural residents – and to address changing circumstances, interpretative matters, and amendments to State law. County staff will provide the first update to the Board in early October and then on a regular basis to determine whether, when, and what amendments should be drafted to update the program.
- **More Information.** The County’s regulations and background information are available online at www.deschutes.org/marijuana.

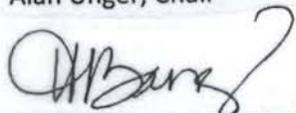
Thank you for the opportunity to provide comments. We are available to answer questions.

Sincerely,

DESCHUTES COUNTY BOARD OF COMMISSIONERS



Alan Unger, Chair

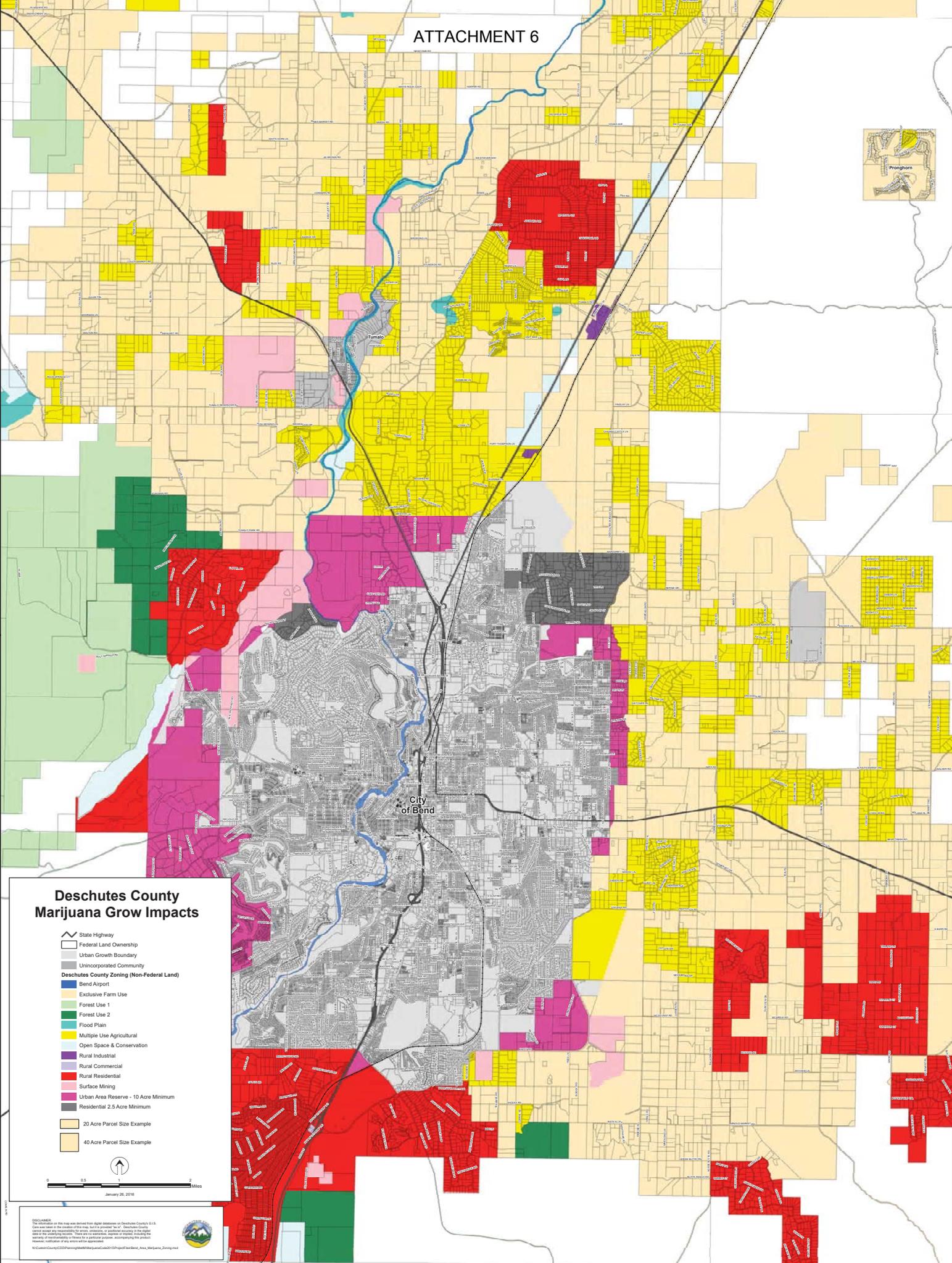


Tammy Baney, Vice Chair



Anthony DeBone, Commissioner

ATTACHMENT 6



Deschutes County Marijuana Grow Impacts

- State Highway
- Federal Land Ownership
- Urban Growth Boundary
- Unincorporated Community
- Deschutes County Zoning (Non-Federal Land)**
- Bend Airport
- Exclusive Farm Use
- Forest Use 1
- Forest Use 2
- Flood Plain
- Multiple Use Agricultural
- Open Space & Conservation
- Rural Industrial
- Rural Commercial
- Rural Residential
- Surface Mining
- Urban Area Reserve - 10 Acre Minimum
- Residential 2.5 Acre Minimum
- 20 Acre Parcel Size Example
- 40 Acre Parcel Size Example



0 0.5 1 2 Miles

January 20, 2010

DISCLAIMER: The information on this map was derived from public databases on Deschutes County GIS. Care was taken in the creation of this map, but it is provided "as is". Deschutes County cannot accept any responsibility for errors, omissions, or outdated information in the original data or in the data derived therefrom. This map is not intended to be used for any purpose not intended by the product creator. Liability of any kind will be disclaimed.



Deschutes County opposes any Legislative measure to eliminate or restrict time, place, manner (TPM) regulations and/or the marijuana carve out from Right-to-Farm protections as approved by the Legislature in 2016 (SB 1598).



Reasons for Opposition

1. Deschutes County would have maintained its adopted opt out ordinance without the Right-to-Farm (RTF) carve out for marijuana approved by the Legislature in 2016 (SB 1598).
2. Deschutes County regulations do not actually prohibit marijuana in the rural County. In the EFU Zone, 49 marijuana production applications have been approved and only 5 denied, a 90% approval rate of such decisions.
3. Regulations are not onerous; compliance costs and regulations are reasonable measures to mitigate odor, sustained noise, lighting, traffic, and related impacts.
4. Rural residents express significant opposition to appealed marijuana applications heard by the Board of Commissioners. Rural Deschutes County residents voted against Ballot Measure 91 with 54.6% of the vote.
5. Deschutes County's unique rural land use pattern, including the number, size, and locations of EFU and rural residential parcels, require TPM regulations to ensure compatibility between this industry and rural residents.
6. TPM protects rural residential property values through mitigating impacts.
7. If TPM regulations are eliminated, conflicts between neighbors will increase. Impacts may be unmitigated.
8. Although some have testified that Deschutes County is the problem, the County has 49 applications, but fewer than 20 have received OLCC licenses.



CONFLICTS

New Home



New Greenhouse



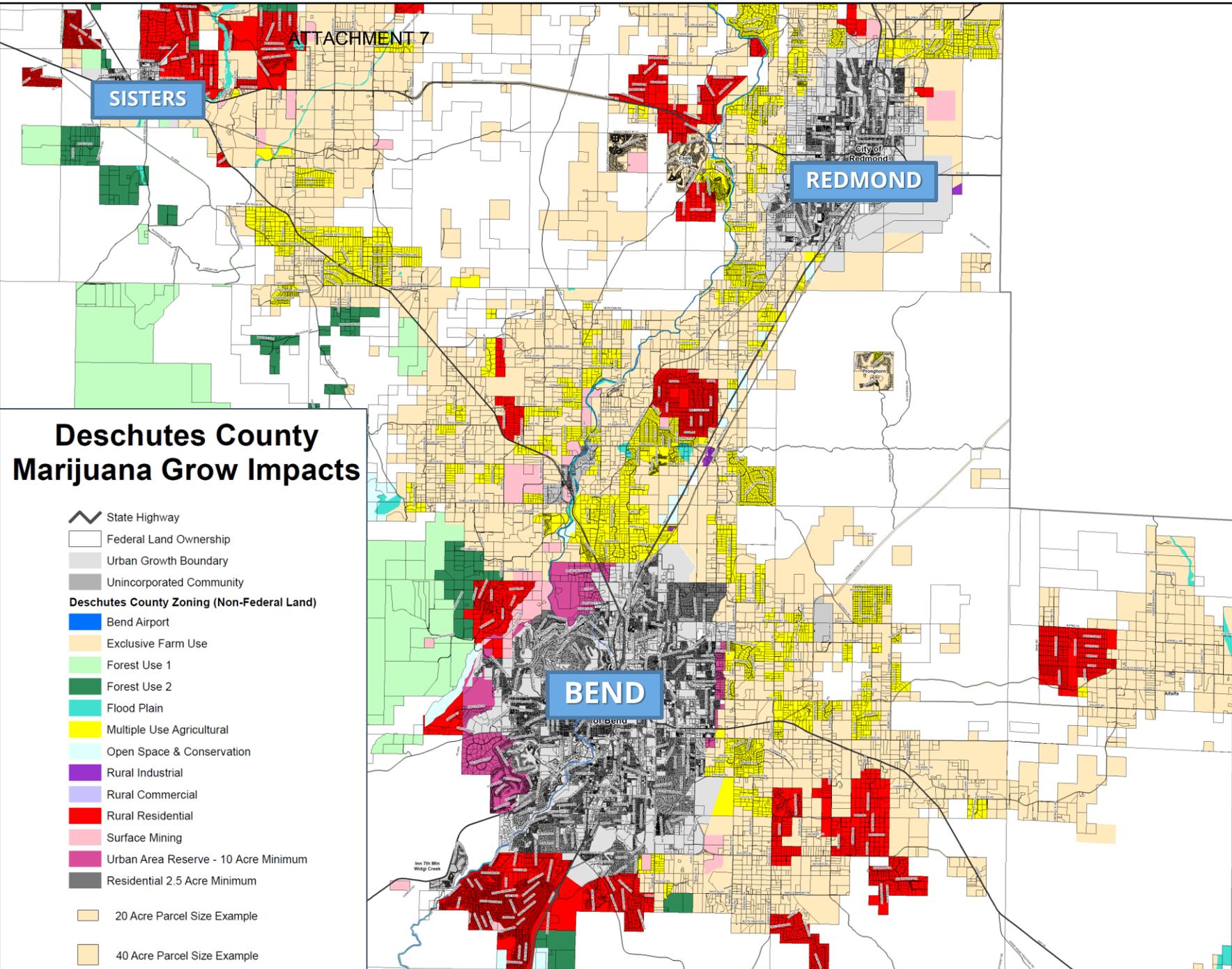
- Case study of conflicts in rural areas.
- New home under construction prior to new medical marijuana greenhouse. The greenhouse is located on a 20-acre property, but built to the minimum setback in the EFU zone – approximately 30 feet from the property line.
- Significant odor impacts.
- New homeowner built accessory structures to mitigate impacts, but to no avail.
- Homeowner sold the property for far less than original value.



Mixed Zoning & Small Parcels

- Deschutes County has extensive rural residential zoning surrounding and inter-mixed with EFU lands.
- This map highlights the Bend-Redmond-Sisters area.

EFU Zoning	
Tax Lot Size	# Tax Lots
0-5 acres	4,428
5-10 acres	980
10-20 acres	1,084
20-40 acres	956
40+ acres	966
Total Lots	8,414



Total County Marijuana Permit Statistics

- 49 Production approvals (all EFU): 90% approved
- 7 Processing approvals: 88% approved
- 3 Wholesaling approvals: 100% approved
- 2 Retail approvals: 67% approved
- 7 denials (5 production in EFU, 1 production in non-EFU, 1 processing)
- 8 Pending



Conclusion: Regulations do **NOT** prohibit marijuana



77 Or LUBA 368 (Or Luba), 2018 WL 8059065

Land Use Board of Appeals

State of Oregon

LANDWATCH LANE COUNTY, Petitioner,

vs.

LANE COUNTY, Respondent,

and

BILL SPROUL, Intervenor-Respondent.

LUBA No. 2017-114

AFFIRMED May 8, 2018

Appeal from Lane County.

****1** Sean T. Malone, Eugene, filed the petition for review and argued on behalf of petitioner.

No appearance by Lane County.

Bill Kloos, Eugene, filed a response brief and argued on behalf of intervenor-respondent. With him on the brief was the Law Office of Bill Kloos, P.C.

BASSHAM, Board Member; RYAN, Board Chair; HOLSTUN, Board Member, participated in the decision.

1. 7.2.2 Goal 3 - Agricultural Lands/ Goal 3 Rule - Agricultural Land Definition - Soil Classes.

7.2.3 Goal 3 - Agricultural Lands/ Goal 3 Rule - Agricultural Land Definition - Other Suitable Land.

For purposes of determining whether land in soil capability classes other than Class I-IV soils according to the U.S. Natural Resources Conservation Service (NRCS), is “agricultural land” under [OAR 660-033-0020\(1\)\(a\)\(B\)](#), a factor that a local government may consider in addition to the seven factors listed in the rule is whether a reasonable farmer would be motivated to put the land to agricultural use, for the primary purpose of obtaining a profit in money. The suitability for farm use inquiry must also consider the potential for use in conjunction with adjacent or nearby land. [OAR 660-033-0030\(3\)](#).

***369 2. 7.2.2 Goal 3 - Agricultural Lands/ Goal 3 Rule - Agricultural Land Definition - Soil Classes.**

7.2.3 Goal 3 - Agricultural Lands/ Goal 3 Rule - Agricultural Land Definition - Other Suitable Land.

49. Marijuana Laws.

For purposes of determining whether land is agricultural land under [OAR 660-033-0020\(1\)\(a\)\(B\)](#), a county's findings are not deficient when they do not address whether marijuana production is a viable farm use or crop on the subject property. The analysis under [OAR 660-033-0020](#), which gives effect to Statewide Planning Goal 3, focuses on the land and its suitability for farm use, not on whether a particular crop can be grown on the site regardless of the qualities of the land. Such an analysis would be entirely removed from an analysis of the agricultural qualities of the land, which is contrary to the plain text of the rule, and therefore a county's failure to adopt findings addressing that issue does not provide a basis for reversal or remand.

Opinion by Bassham.

NATURE OF THE DECISION

Petitioner appeals a decision determining that a 33-acre property is non-resource land and approving a concurrent comprehensive plan designation and zoning map amendment to allow rural residential development.

FACTS

The challenged decision is Lane County's approval of intervenor-respondent's (intervenor's) request for an amendment to the comprehensive plan map designation from forest land to nonresource land, and a corresponding zoning map amendment from Impacted Forest Land (F-2) to Rural Residential 10-acre minimum (RR-10) for a 33-acre tract located in the foothills of the Coburg Hills, east of Coburg and I-5. The subject property consists of two parcels -a 20-acre parcel designated tax lot 102, developed with a single-family dwelling, and a 13-acre portion of an adjoining parcel designated TL 111. The remainder of TL 111 (which is not part of this appeal) is zoned RR-10 and developed with a dwelling. Both parcels are also developed with several agricultural buildings, some of which had been used as part of a former owner's alpaca operation that ended in 2004. The subject property has no irrigation rights and is located in a restricted groundwater area.

****2** Based on a soil study provided by intervenor's expert, the county concluded that the subject property is not predominantly composed of agricultural soils, and based on several other factors, the county concluded ***370** the property is not suitable for farm use. On appeal, petitioner challenges that conclusion.

ASSIGNMENT OF ERROR

Statewide Planning Goal 3 (Agricultural Land) provides, in part:

“Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state's agricultural land use policy express in [ORS 215.243](#) and [215.700](#).”

[OAR 660-033-0020\(1\)\(a\)](#), in turn, defines “agricultural land” for purposes of Goal 3 to include:

“(A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon * * *;

“(B) Land in other soil classes that is suitable for farm use as defined in [ORS 215.203\(2\)\(a\)](#), taking into consideration soil fertility; suitability for grazing; climactic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices[.]”

The predominant soils on the subject property are Class VI soils, and therefore the subject property does not qualify as agricultural land under [OAR 660-033-0020\(1\)\(a\)\(A\)](#). The “suitable for farm use” test in [OAR 660-033-0020\(1\)\(a\)\(B\)](#) refers to the definition of “farm use” at [ORS 215.203\(2\)\(a\)](#),¹ which in relevant part means “the current employment of ***371** land for the primary purpose of obtaining a profit in money” by engaging in a number of listed agricultural pursuits, including the “harvesting and selling crops,” or the “feeding, breeding, management and sale of, or the produce of, livestock, poultry, furbearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof.

1 For purposes of determining whether land is agricultural land under [OAR 660-033-0020\(1\)\(a\)\(B\)](#), a factor that a local government may consider in addition to the seven factors listed in the rule is whether a reasonable farmer would be motivated to put the land to agricultural use, for the primary purpose of obtaining a profit in money. *Wetherell v. Douglas County*, 342

Or 666, 160 P3d 614 (2007). The suitability for farm use inquiry must also consider the potential for use in conjunction with adjacent or nearby land. OAR 660-033-0030(3).

Under a single assignment of error, petitioner argues that the findings regarding suitability for farm use are “not supported by substantial evidence in the whole record.” ORS 197.835(9)(a)(C). Substantial evidence is evidence a reasonable person would rely on in reaching a decision. *City of Portland v. Bureau of Labor and In.*, 298 Or 104, 119, 690 P2d 475 (1984); *Bay v. State Board of Education*, 233 Or 601, 605, 378 P2d 558 (1963); *Carsey v. Deschutes County*, 21 Or LUBA 118, *aff'd* 108 Or App 339, 815 P2d 233 (1991). In reviewing the evidence, however, we may not substitute our judgment for that of the local decision maker. Rather, we must consider and weigh all the evidence in the record to which we are directed, and determine whether, based on that evidence, the local decision maker's conclusion is supported by substantial evidence. *Younger v. City of Portland*, 305 Or 346, 358-60, 752 P2d 262 (1988); *1000 Friends of Oregon v. Marion County*, 116 Or App 584, 588, 842 P2d 441 (1994).

****3** Specifically, under three sub-assignments of error, petitioner argues that despite the soil characteristics of the subject property, the county's findings fail to demonstrate that the applicant could not put the subject property to profitable “farm use” by (1) growing and processing marijuana; or (2) continuing the previous property owner's operation by feeding, breeding, managing and selling livestock, such as alpacas. ORS 215.203(2)(a). Finally, petitioner argues the county's findings fail to ***372** demonstrate that the subject property cannot qualify as “agricultural land” because the findings fail to adequately demonstrate a lack of “existing and future availability of water for farm irrigation purposes.” OAR 660-033-0020(1)(a)(B). We address each of petitioner's arguments in turn.

A. Marijuana as a Crop.

As set forth above, the definition of “farm use” includes “the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops * * *.” ORS 215.203(2)(a); *see n 1*. In turn, state statute defines marijuana as “[a] crop for the purposes of ‘farm use’ as defined in ORS 215.203.” ORS 475B.526(1)(a). Lane County Code (LC) provides that marijuana production, wholesale distribution and research are permitted uses on the subject property, subject to its current impacted forest lands zoning (F-2). LC 16.211(2)(p)-(r); LC 16.420. Therefore, according to petitioner, the county erred in approving intervenor's request to re-designate the subject property from resource to non-resource land, because the county's findings fail to demonstrate the subject property could not be put to the farm use of marijuana cultivation.

Further, petitioner argues the county failed to address the testimony it submitted below, which argued that marijuana production is a viable farm use or crop on the subject property because it can be cultivated regardless of the existing soil type on the property. As petitioner testified, marijuana cultivation “typically will utilize cloth pots or buckets, and, therefore, the suitability or agricultural class of the soils is not a relevant inquiry for marijuana production. Many types of soils specifically for marijuana are readily available.” Supplemental Record (Record) 64. Petitioner argues the county's findings failed to demonstrate that “technology or energy cannot allow for production of viable economic crops” such as marijuana, and therefore the county's findings are insufficient. Record 65.

2 In response, intervenor contends the standard at issue, OAR 660-033-0020, which gives effect to Goal 3, focuses on the *land* and its suitability for farm use, not on whether a particular *crop* can be grown on the site regardless of the qualities of the land. Second, intervenor asserts there is “nothing in Goal 3 or the Goal 3 Rule that even remotely suggests” that Oregon law requires property owners “to commit a federal crime and risk forfeiture of their property to the federal government in order to receive a nonresource designation for the land because, as Petitioner contends, marijuana can be grown anywhere and under any conditions because its production is totally divorced from the land or property.” Response Brief 12. We agree with intervenor.

****4 *373** The first step in the analysis under the rule is to determine whether the predominant *soil* type located on the subject property classifies the property as “agricultural *land*.” OAR 660-033-0020(1)(a)(A)(emphasis added). Here, there is no dispute that because the predominant soil type is not within Classes I-IV, the subject property is not “agricultural land.” *Id.* Under OAR

660-033-0020(1)(a)(B), the next step (sometimes referred to as the “other suitable lands” test) is to determine whether the *land* is, despite its non-agricultural soil classification, nevertheless “suitable for farm use”:

“Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility, suitability for grazing; climactic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices[.]” *Id.*

Pursuant to *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993), as modified by *State v. Gaines*, 346 Or 160, 171, 206 P3d 1042 (2009), “[t]here is no more persuasive evidence of the intent of the legislature than the words by which the legislature undertook to give expression to its wishes.” (Internal citations omitted.) The focus of the text of the rule is clearly on the *soil*, or *land* itself, and whether, despite poor agricultural soils, the land is nonetheless “suitable for farm use” given other specified factors. The obvious error in petitioner's interpretation of the rule is that some uses, like marijuana cultivation, are entirely separate and disconnected from the *land*. As intervenor points out, marijuana cultivation ““can occur equally as well on a parking lot as it could on 80 acres of high value farmland.” Response Brief 13-14.

Statewide Planning Goal 3 is to “preserve and maintain agricultural lands.” In turn, Goal 3's definition of “agricultural lands” is primarily based upon soil type. Only when the subject property's soil type does not qualify as agricultural land, is the local government to look to other factors--each of which focus on whether those “other *lands* [] are suitable for farm use * * *.” (Emphasis added.) To adopt petitioner's suggested interpretation would render the rule and its focus on the land itself meaningless. We decline to adopt such an interpretation. *Thompson v. IDS Life Ins. Co.*, 274 Or 649, 656, 549 P2d 510 (1976).

Because we have rejected petitioner's interpretation of the rule to require the county to consider whether the property is suitable for farm use based on the cultivation of marijuana (or any other crop) in ways that are entirely removed from the agricultural qualities of the land, it follows that *374 the county's failure to adopt findings addressing that issue does not provide a basis for reversal or remand.

**5 This subassignment of error is denied.

B. Suitability for Animal Husbandry

Under the second subassignment of error, petitioner argues the county's decision should be remanded because the county's findings related to the subject property's suitability for animal husbandry are inadequate. ORS 215.203(2)(a); *see* n 1. During the proceedings below, petitioner supplied testimony that prior to 2004 a previous owner operated an alpaca farm on portions of the subject property. When selling the property in 2004, the previous owner advertised that the subject property generated revenue ranging from \$12,000 to \$120,000 per year. Record 128. Further, petitioner pointed to agricultural buildings already existing on the property, which were previously identified as being used for purposes of animal husbandry. Finally, petitioner presented evidence that the former owner received a farm tax deferral for TL 111. According to petitioner, “[a]ll of this information demonstrates that the subject property has a history of farm uses, and nothing has changed to demonstrate that such uses cannot continue. Therefore, the property should remain agricultural land.” Record 64.

In response, intervenor pointed the county to contrary evidence regarding the poor suitability of the land on the subject property for grazing based on a soils analysis. Record 20, 351, 357. Intervenor further pointed to evidence in the record that demonstrates that although the former owner attempted to run a profitable alpaca farm, if anything, they “gave it a good shot, but totally failed at making the farm commercially viable prior to selling the property in 2004.” Response Brief 21; Record 131, 138-39. Finally, intervenor argued that testimony from county staff indicated that the farm tax deferral was a property tax designation assigned by the county assessor, given at an unknown time, and was therefore inconclusive evidence as to the property's suitability for grazing. Record 741. The county was persuaded by intervenor's evidence and argument over petitioner's, and adopted detailed findings explaining its reasoning for declining to rely on petitioner's evidence. As the county's findings state:

“The inability to match livestock grazing to the period of maximum nutrient value of the forage available without being destructive to soil and plant resources, and the inability to use the area as holding/feeding for all of the wet season contribute to the lack of suitability for farm use.

“* * * * *

***375** “The actual grazing history of the property offers solid, practical substantiation for the evaluation of the soil scientist that the soils on the subject property are not suitable for farm use.

“Climatic conditions combined with soil conditions create poor conditions for grazing. * * *” Record 200.

In reviewing the evidence, we may not substitute our judgment for that of the local decision maker. Rather, we must consider and weigh all the evidence in the record to which we are directed, and determine whether, based on that evidence, the local decision maker's conclusion is supported by substantial evidence. *Younger*, 305 Or at 358-60. Where evidence is conflicting and the contrary evidence does not so undermine the evidence relied upon by the local decision maker that it is unreasonable for the decision maker to rely upon it, the choice between such conflicting believable evidence belongs to the local government decision maker, and LUBA will not disturb that choice. *Harwood v. Lane County*, 23 Or LUBA 191, 198 (1992).

****6** While both petitioner and intervenor presented evidence in support of their positions, the county found intervenor's evidence more credible. We conclude that petitioner's evidence does not so undermine intervenor's evidence as to make the county's decision to rely on intervenor's evidence unreasonable. The county's findings addressing the “other suitable lands” test are supported by substantial evidence.

This subassignment of error is denied.

C. Future Availability of Water for Farm Irrigation Purposes

In its third subassignment of error, petitioner argues that the county failed to demonstrate that that the subject property cannot qualify as “agricultural land” based on “existing and future availability of water for farm irrigation purposes[.]” [OAR 660-033-0020\(1\)\(a\)\(B\)](#).

During the proceedings below, petitioner pointed to evidence in the record, which petitioner contends establishes adequate water exists on the property. Petitioner pointed out that the property was used for agricultural uses in the past and argued that water is available for agricultural use in the future. Petition for Review 17-18. According to petitioner, the record includes evidence that the various watercourses run through the property, including two intermittent creeks and associated seasonal wetlands and ponds. Further, petitioner contends prior property owners used these watercourses for agricultural uses. Petition for Review ***376** 28. Petitioner also presented evidence of irrigation used to supply various domestic uses such as a vegetable and flower garden, small orchard and greenhouse.

The county's findings state: “No irrigation water exists. Existing wells are for residential use only.” Record 20. According to intervenor, the record contains no evidence that irrigation rights of any kind exist on the property. The county evidently agreed with the intervenor's position, which is that without a recorded irrigation water right, no water may be drawn for agricultural irrigation purposes from either surface or ground water. Record 348. We do not understand petitioner to dispute otherwise.

Thus, the existence of some surface water on the property at certain times of the year does not undermine the county's finding that the subject property is not suitable for farm use considering the “existing and future availability of water for farm irrigation purposes[.]” Petitioner cites to no evidence that it is possible for intervenor to obtain an agricultural water right to use water

from seasonal sources on the property. Petitioner's arguments regarding the availability of water for irrigation do not provide a basis for reversal or remand of the challenged decision.

This subassignment of error is denied.

The assignment of error is denied.

The county's decision is affirmed.

Footnotes

1 [ORS 215.203\(2\)\(a\)](#) provides:

“As used in this section, ‘farm use’ means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. ‘Farm use’ includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. ‘Farm use’ also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. ‘Farm use’ also includes the propagation, cultivation, maintenance and harvesting of aquatic bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the commission. ‘Farm use’ includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. ‘Farm use’ does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees as defined in subsection (3) of this section or land described in [ORS 321.267\(3\)](#) or [321.824\(3\)](#).”

77 Or LUBA 368 (Or Luba), 2018 WL 8059065

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284 Or.App. 301
Court of Appeals of Oregon.

Sandra DIESEL, Petitioner,
v.
JACKSON COUNTY, Respondent.

A163267

|
Argued and submitted December 9, 2016.

|
March 8, 2017

Synopsis

Background: County resident sought judicial review of decision of Land Use Board of Appeals (LUBA) affirming county board of commissioners' adoption of ordinance, which amended county's land development ordinance (LDO) to establish the types of land on which medical and commercial marijuana cultivation would be permitted.

Holdings: The Court of Appeals, [Shorr, J.](#), held that:

ordinance did not conflict with county's comprehensive plan, which contained paragraph that encouraged a variety of types of agriculture on land zoned rural-residential in county, and thus LUBA was not required to reverse county's ordinance;

board was not required to demonstrate a substantial government interest to adopt ordinance under statute governing reasonable regulations of commercial recreational marijuana cultivation by cities and counties; and

ordinance was reasonable regulation of production of recreational marijuana under statute.

Affirmed.

****974** Land Use Board of Appeals, 2016039

Attorneys and Law Firms

[Ross A. Day](#), Portland, argued the cause for petitioner. With him on the brief were Matthew Swihart and Day Law & Associates, PC.

Joel Benton argued the cause and filed the brief for respondent.

****975** Before [Armstrong](#), Presiding Judge, and [Tookey](#), Judge, and [Shorr](#), Judge.

Opinion

[SHORR, J.](#)

***302** Petitioner seeks judicial review of an order by the Land Use Board of Appeals (LUBA) affirming the adoption of two ordinances by respondent Jackson County. Those ordinances amended the county's Land Development Ordinance (LDO) to

establish, among other things, the types of land on which medical and commercial marijuana cultivation would be permitted. In the first of her two assignments of error, petitioner contends that LUBA erred when it concluded that the ordinances' prohibition of marijuana production on lands zoned "rural residential" was consistent with the county's comprehensive plan. In her second assignment of error, petitioner contends that LUBA erred when it concluded that the ordinances' prohibition of marijuana production on rural residential lands is a "reasonable regulation" of marijuana cultivation authorized by [ORS 475B.340](#). As explained below, we affirm LUBA's decision.

We begin with a brief overview of the relevant law and procedural history. In 1998, Oregon voters approved the Oregon Medical Marijuana Act (OMMA), legalizing under state law the production and sale of marijuana for medical purposes. Or. Laws 1999, ch. 4. The OMMA was codified in ORS chapter 475B. In 2014, Oregon voters approved Ballot Measure 91, which legalized the production and sale of marijuana for recreational use under state law. Or. Laws 2015, ch. 614.¹ Following the passage of Ballot Measure 91, the legislature adopted additional legislation enacting changes to both the medical and recreational marijuana statutes, including the provisions at issue in this appeal. Ballot Measure 91 and the subsequent enactments were also codified in ORS chapter 475B.

¹ The manufacture, distribution, dispensation, and possession of marijuana are illegal under federal law, even when authorized by state law. See Federal Controlled Substances Act, 21 USC § 801 *et seq.*; *Gonzales v. Raich*, 545 U.S. 1, 29, 125 S.Ct. 2195, 162 L.Ed.2d 1 (2005); *United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483, 486, 121 S.Ct. 1711, 149 L.Ed.2d 722 (2001) (no medical necessity exception to federal prohibition of marijuana production and distribution).

[ORS 475B.370](#) and [ORS 475B.340](#) are central to this case. As relevant, [ORS 475B.370](#) establishes that marijuana is "a crop" as the term is used in various farming and *303 agriculture statutes. Those statutes include [ORS 215.203](#), which authorizes local governments to adopt "exclusive farm use" zones and defines "farm use," in part, as "the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops." [ORS 475B.340](#) authorizes local governments to "adopt ordinances that impose reasonable regulations" on businesses licensed to produce or process marijuana or sell marijuana wholesale or retail under Oregon's recreational marijuana scheme. [ORS 475B.340\(2\)](#). The statute sets out some exceptions to what types of conditions a local government may impose on those activities and defines the term "reasonable regulations" to include, among other things, "reasonable limitations on where a premises for which a license or certificate for [recreational marijuana production, processing, or wholesale or retail sale] may be located." [ORS 475B.340\(1\)\(g\)](#).²

² [ORS 475B.500](#) similarly authorizes "reasonable regulations" on *medical* marijuana production and, as relevant, similarly defines "reasonable regulations" as including "[r]easonable limitations on where the marijuana grow site of a person designated to produce [medical marijuana] * * * may be located." The zoning provisions at issue in this case treat recreational and medical marijuana production the same. Accordingly, and because petitioner focuses her arguments on the recreational-use statutes, we similarly refer primarily to those statutes in our analysis.

The facts relevant on review are brief and are drawn from LUBA's order and the local government record.³ *McPhillips Farm, Inc. v. Yamhill County*, 256 Or.App. 402, 404, 300 P.3d 299 (2013). Following the enactment of the relevant provisions of [ORS 475B.340](#) and **976 [ORS 475B.370](#), the county approved the two ordinances that are the subject of this appeal: Ordinance 2016-3 and Ordinance 2016-4. The two ordinances are identical, except that Ordinance 2016-4 was enacted as an emergency ordinance of temporary duration and has since been superseded by the permanent Ordinance 2016-3. For the sake of clarity, we refer to both the ordinances as "the ordinance" for the remainder of this opinion. The ordinance amended the county's LDO, which regulates land use within the county, to include various *304 regulations on marijuana-related land use. Among various changes it made, the ordinance established the types of land on which medical and recreational marijuana production would be allowed and on which types it would be prohibited.⁴

³ We note that petitioner asserts that, as a factual matter, marijuana was "an outright permitted use" on rural residential land in the county before the enactment of the ordinances, while respondent asserts that it was not. We do not decide that issue, however, as it is immaterial to our conclusion that LUBA's order was not "unlawful in substance."

4 By their terms, the zoning regulations on marijuana production at issue in this appeal do not apply to marijuana produced in smaller quantities exclusively for personal use.

Section 2 of the ordinance, under the heading Legal Findings, states that, as a result of the recent legislative enactments, “recreational and medical marijuana production are considered a ‘farm use.’ The Board of Commissioners finds the Jackson County Land Development Ordinance does not allow a ‘farm use’ to occur within the Rural Residential and Rural Use zoning districts.” The ordinance amended the LDO to allow marijuana production on lands zoned exclusive farm use (EFU), forest, and general and light industrial. Marijuana production was not authorized on lands zoned rural residential, rural use, urban residential, and commercial.

Petitioner, a resident of Jackson County, testified against the ordinance before the county board of commissioners. After the board of commissioners adopted the ordinance, petitioner appealed to LUBA, arguing that the ordinance was unlawful because it conflicted with the county's comprehensive plan. Petitioner also argued that the ordinance was invalid because it was not a “reasonable regulation” as described and authorized under [ORS 475B.340](#). Specifically, petitioner argued that the county had to demonstrate that it had a “substantial government interest” in adopting the regulation in order for it to be reasonable. LUBA ultimately rejected petitioner's arguments and affirmed the county's adoption of the ordinances. Petitioner's arguments and LUBA's determination of petitioner's assignments of error are discussed in the course of our analysis below.

We begin our analysis with our standard of review. On review, we may reverse or remand a LUBA order only if it is “unlawful in substance or procedure,” “unconstitutional,” or “not supported by substantial evidence in the whole record as to facts found” by LUBA. [ORS 197.850\(9\)](#). *305 Petitioner appears to contend in each assignment of error that the LUBA order is “unlawful in substance,” in that LUBA erroneously interpreted the law. For that reason, our role is to determine whether LUBA has made a “mistaken interpretation of the applicable law.” *Mountain West Investment Corp. v. City of Silverton*, 175 Or.App. 556, 559, 30 P.3d 420 (2001). Based on our analysis below, we conclude that LUBA correctly interpreted the applicable law.

In petitioner's first assignment of error, she contends that LUBA “erred as a matter of law” when it concluded that the ordinance did not conflict with the county's comprehensive plan. Before LUBA, petitioner argued that, “[t]o the extent the Ordinance prohibits marijuana production (a farm use) on rural residential lands within the County, the Ordinance conflicts with the County's comprehensive plan,” and is therefore invalid. See [ORS 197.835\(7\)\(a\)](#) (“[LUBA] shall reverse or remand an amendment to a land use regulation or the adoption of a new land use regulation if * * * [t]he regulation is not in compliance with the comprehensive plan.”). Petitioner argued that the county's comprehensive plan “requires that marijuana be allowed to be grown on rural residential lands” and, as evidence, quoted a paragraph from the comprehensive plan that discusses the benefits of small-scale agriculture in rural areas where “parcelization and/or residential development” has occurred. That paragraph states:

“However, in areas where parcelization and/or residential development has already **977 occurred, small scale agriculture is often the only way to keep land in productive farm use. Encouraging a variety of types of agriculture in the county provides a greater possibility of innovation and resiliency in the agricultural economy.”

Additionally, petitioner quoted language from a memorandum and a staff report by the county's Development Services Department in which county staff appear to anticipate that marijuana production would be authorized on rural residential lands.

On appeal, LUBA concluded that petitioner failed to show that the ordinance was inconsistent with the county's comprehensive plan.

*306 “The provision of the [comprehensive plan] that petitioner relies on merely describes the predominant farm uses in the county and describes small scale agriculture on parcelized lands as one of those farm uses. The language does not *require*

the county to allow marijuana production on [rural residential]-zoned land and the county's decision to prohibit it on those lands is not inconsistent with anything in the [comprehensive plan] cited by petitioner.”

(Emphasis in original.) LUBA did not address the commentary from the county staff included in the memorandum and the staff report.

On review to us, petitioner argues that LUBA “erred as a matter of law” in concluding that the ordinance does not conflict with the county's comprehensive plan. Petitioner asserts that the ordinance's prohibition of marijuana production on rural residential lands “directly conflicts with the County's comprehensive plan[,] which states the purpose of rural residential lands is to allow small-scale agriculture.” We disagree. The language cited by petitioner from the comprehensive plan is not language of requirement—neither grammatically nor substantively. As LUBA noted, the quoted paragraph makes a broad declarative statement, but does not instruct or require the county to take any particular action.

Even assuming, without deciding, that the paragraph does require the county to encourage “a variety of types of agriculture” in “areas where parcelization and/or residential development has already occurred,” the county's decision not to allow marijuana production on rural residential lands—just one type of agricultural use—would not violate that command, because requiring the county to encourage “a *variety* of types of agriculture” is not the same as requiring the county to permit *all* types of agriculture. (Emphasis added.)

Finally, as to the statements by the county planning staff, petitioner does not argue—nor can she—that such statements are binding interpretations of the county comprehensive plan such that they could be understood to impose a requirement on the county where the text of the comprehensive plan itself does not. Accordingly, LUBA did ***307** not legally err in rejecting petitioner's arguments related to the county's comprehensive plan.

In petitioner's second assignment of error, she argues that LUBA erred in concluding that the ordinance was a “reasonable regulation” authorized by [ORS 475B.340](#). Petitioner does not contend that LUBA erred in reviewing the evidence; rather, petitioner contends that LUBA mistakenly applied the law. As noted, we therefore review to determine if LUBA's order is unlawful in substance because it made a “mistaken interpretation of the applicable law.” [Mountain West Investment Corp., 175 Or.App. at 559, 30 P.3d 420](#).

In her arguments before LUBA, petitioner contended that, because the county did not make a finding in the ordinance declaring “any substantial governmental interest the Ordinance is supposed to promote,” the county failed to sufficiently justify its decision not to authorize marijuana production on lands zoned rural residential, making that restriction invalid.⁵ Noting that [ORS 475B.340](#) is ****978** captioned “Local time, place and manner regulations,” petitioner asserted:

“Of course, the phrase ‘time, place and manner’ is a term of art in the law to denote the limits to which the government may restrict a right guaranteed a person by law. ‘Time, place and manner’ regulations are most often litigated in the context of cases involving freedom of speech.”

Petitioner then cited a pair of United States Supreme Court cases that each considered whether a government regulation restricting rights guaranteed by the First Amendment to the United States Constitution was “reasonable.” Those cases held, respectively, that such restrictions are permissible only where the regulation advances a “substantial government interest,” [United States v. Albertini, 472 U.S. 675, 689, 105 S.Ct. 2897, 86 L.Ed.2d 536 \(1985\)](#), and the restriction is “narrowly tailored” to that interest, ***308** [Ward v. Rock Against Racism, 491 U.S. 781, 791, 109 S.Ct. 2746, 105 L.Ed.2d 661 \(1989\)](#).⁶ Accordingly, petitioner argued that, in the absence of a sufficient governmental interest, “the Ordinance is nothing more than an arbitrary execution of the County's police powers.”

- 5 Petitioner also briefly argued before LUBA that the ordinance was not a “reasonable regulation” because it conflicted with the comprehensive plan. As previously noted, LUBA rejected the argument that the ordinance conflicted with the comprehensive plan, and thus did not address it again under petitioner's second assignment of error. Because we conclude that LUBA did not err in that respect, we also do not address petitioner's argument in connection with her second assignment of error.
- 6 Petitioner cited a third case in which the Oregon Supreme Court ruled that an order of the Oregon State Board of Barber Examiners setting the minimum price a barber could charge for a haircut at \$ 0.75 was a violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *Christian et al. v. La Forge*, 194 Or. 450, 477, 242 P.2d 797 (1952). Petitioner cites *Christian* again on appeal to argue that “[a] legislative action which is arbitrary is by definition unreasonable.” However, petitioner makes no arguments under the Fourteenth Amendment, and we conclude that neither the facts nor holding of *Christian* inform the legal issue in this case.

As to that argument, LUBA concluded that petitioner had “not established that marijuana production is a protected interest under the First Amendment,” and, therefore, the analogy to First Amendment case law was inapposite.

“That [ORS 475B.340](#) and [475B.500](#) use the similar phrase ‘reasonable regulation’ in listing the kinds of regulations that a county or city can impose on the sale or production of recreational and medicinal marijuana does not mean that the legislature intended to import into review of local zoning codes the doctrines and standards of review that courts have applied to First Amendment speech cases.”

On review, petitioner argues that LUBA erred as a matter of law and generally repeats the same argument, asserting again before us that the ordinance is invalid because the county failed to make a finding that identified “any substantial government interest” advanced by the zoning decision.

We agree with LUBA that petitioner's citation to First Amendment case law is unavailing. Petitioner cites no authority for the proposition that a county's decision to prohibit marijuana production in some zoning districts, but not others, is subject to heightened constitutional scrutiny such that the county was required to justify its decision by identifying a “substantial government interest” to justify its regulation. Here, the county's contested zoning decisions are authorized, both generally and specifically, by statutes that petitioner does not contend are unconstitutional or ***309** otherwise invalid. See [ORS 215.050\(1\)](#) (authorizing county governments to adopt and revise zoning ordinances); [ORS 475B.340](#) (authorizing local governments to “adopt ordinances that impose reasonable regulations” on the production and sale of recreational marijuana, and listing as an example of such regulations “[r]easonable limitations on where a premises for which a license [to produce marijuana] may be located”).

We pause here to note that, based on the arguments presented, we are not deciding what is a “reasonable regulation” of marijuana production under [ORS 475B.340](#). Rather, we merely hold that, contrary to petitioner's contention, Jackson County did not need to demonstrate a “substantial government interest” to reasonably regulate marijuana production on rural residential lands.

We turn to an additional argument that petitioner asserts before us but did not fully develop before LUBA. Petitioner contends that the ordinance, at least as applied ****979** to the facts that exist in Jackson County, is unreasonable because, “[b]y making the overwhelming majority of grow sites in Jackson County illegal, the County has managed to effectively eliminate grow sites in Jackson County.” We understand petitioner's argument to be that LUBA made a “mistaken interpretation of the applicable law,” *Mountain West Investment Corp.*, 175 Or.App. at 559, 30 P.3d 420, when determining what is a “reasonable regulation” as applied to the facts existing in Jackson County.

Petitioner did not develop a significant factual record on this issue before LUBA. Before LUBA, petitioner cited a statement that Representative Ken Helm made during deliberations of House Bill (HB) 3400 (2015), the bill that enacted the provisions

authorizing and defining “reasonable regulations” on recreational marijuana production. In discussing those “reasonable regulations,” Representative Helm stated, in relevant part:

“I want to say a brief thing about what it means to be reasonable because it is a subjective term. * * * The legislative history that is important to discuss is for those jurisdictions which allow medical and adult-use recreational marijuana and do not opt out in some prescribed fashion, they ***310** may not use their local zoning code to effectively eliminate marijuana businesses or growth sites in their communities by, for example, finding zones in which it is very difficult to site these businesses, or putting them on the edge of town where nobody wants to go, or in some other way making it so difficult for these businesses to be sited that the businesses won't site in their communities. That's not reasonable.”

Audio Recording, House Third Reading, HB 3400, June 24, 2015, at 1:45:30 (statement of Rep. Ken Helm), <https://olis.leg.state.or.us> (accessed Mar. 2, 2017). In her briefing before LUBA, petitioner did not further explain how that legislative history supported her argument. In her oral argument before LUBA, petitioner argued that Jackson County had effectively eliminated sites for growing marijuana in the county by barring such sites in rural residential lands where county residents currently grew medical marijuana.

As to the legislative history cited by petitioner, LUBA concluded that, rather than help petitioner, “that legislative history tends to defeat petitioner's argument.” LUBA focused on Representative Helm's statement that, in his view, an unreasonable regulation would be one where a local government attempts to “use their local zoning code to effectively eliminate marijuana businesses or growth sites” by zoning those businesses or grow sites into difficult locations or otherwise “making it so difficult for these businesses to be sited that the businesses won't site in their communities.” Audio Recording, House Third Reading, HB 3400, June 24, 2015, at 1:45:30 (statement of Rep. Ken Helm), <https://olis.leg.state.or.us> (accessed Mar. 2, 2017). LUBA concluded:

“Given that the county allows marijuana production in the EFU zone and on lands zoned farm and forest, which together comprise more than a million acres in the county, and on industrial zoned land, the concerns stated by that legislator about the reasonableness of zoning regulations do not appear to be present in this case.”

LUBA drew the one-million-acre figure from a footnote in the county's brief, which, in turn, relied on statistics presented to the county when it enacted the ordinance.

***311** Petitioner argues to us that, contrary to LUBA's statement, “there are not more than a million acres in the county of land zoned EFU, forest uses and industrial uses.” Rather, petitioner argues, the record reflects that there are only 642,661 acres of land in *private ownership* in the EFU, forest resource, and commercial/industrial zoning districts in the county. Petitioner argues further that, “just because the land is *eligible* to grow marijuana does not, in fact, mean it is *available* to grow marijuana,” and asserts that, in 2015, only four properties zoned EFU were either sold or listed for sale. (Emphases in original.) Petitioner also asserts that “most marijuana growers in Jackson County are on smaller pieces of land, primarily zoned rural residential,” and that, by prohibiting marijuana production on such land, “the County has made the overwhelming majority of grow sites in Jackson County illegal.”

****980** Petitioner does not argue that property in the zoning districts where marijuana production is authorized is unsuitable for marijuana production such that the owners of that land cannot engage in that use. Petitioner's argument is that, because only a few such properties happen to have been for sale in 2015, she and others in her position do not have easy access to that land. We note that the only evidence petitioner presents on appeal in support of her assertion that such land is insufficiently available is a

statistic drawn from a letter that she herself wrote to the Jackson County Board of Commissioners stating that there were only four EFU-zoned properties that were sold or listed for sale in 2015. However, that assertion says nothing about whether other land was available for rent or lease under some other agreement, let alone the availability of land in the other zoning districts where marijuana production is authorized. Additionally, any zoning decision that prohibits a use in some zoning districts, but not others, will have the effect of making that activity unavailable to certain landowners.

Based on the limited record before LUBA and the narrow argument presented by petitioner to us, we conclude that LUBA did not err in concluding that, as applied to the facts before it, the ordinance was a “reasonable regulation” of marijuana under [ORS 475B.340](#). Here again, petitioner’s *312 argument does not call on us to define what is a “reasonable regulation” of marijuana under [ORS 475B.340](#) for all purposes. Rather, it asks us to decide whether LUBA correctly concluded that this ordinance was reasonable as applied to the limited facts that were presented to LUBA. Even were we to assume that there are closer to 650,000 acres—rather than one million—of land on which a marijuana production business could be sited in Jackson County, petitioner still has not shown that LUBA legally erred in concluding that the ordinance is a “reasonable regulation.” [Mountain West Investment Corp.](#), 175 Or.App. at 559, 30 P.3d 420.

Lastly, although petitioner argues that the county “has made the overwhelming majority of grow sites in Jackson County illegal” by not authorizing marijuana production on rural residential land, that argument is undercut, first, by petitioner’s *own* assertion elsewhere in her brief that the county “was actively encouraging those who are growing on rural residential and rural use lands to make application with the county for a ‘non-conforming use verification permit’ in order to make legal grow operations located on these lands”; and, second, by evidence in the record indicating that the county did take into consideration and included measures in the ordinance intended to allow marijuana producers on rural residential properties an opportunity to come into compliance with those regulations.

In sum, petitioner has not shown that LUBA’s decision “represented a mistaken interpretation of the applicable law.” [Mountain West Investment Corp.](#), 175 Or.App. at 559, 30 P.3d 420. Therefore, LUBA’s order upholding the ordinance was not “unlawful in substance.” *Id.*

Affirmed.

All Citations

284 Or.App. 301, 391 P.3d 973

1 Opinion by Ryan.

2 **NATURE OF THE DECISION**

3 Petitioner appeals two county ordinances, Ordinance 2016-3 and
4 Ordinance 2016-4, adopting amendments to the Jackson County Land
5 Development Ordinance.

6 **MOTION TO DISMISS PETITIONER BRODKEY**

7 David Brodkey, one of two petitioners in LUBA No. 2016-055, moves
8 for permission to withdraw from the appeal. The motion is granted, and
9 petitioner Brodkey is dismissed from LUBA No. 2016-055.¹

10 **BACKGROUND**

11 A brief explanation of the state's laws regulating the growing of
12 marijuana is necessary in order to understand this appeal.² In 1998, Oregon
13 voters approved the Oregon Medical Marijuana Act (OMMA), which allowed
14 the production and use of medical marijuana. The OMMA is now codified at

¹ Ordinance 2016-4, the decision that is appealed in LUBA No. 2016-039, is a temporary ordinance that expired on July 14, 2016. Both parties agree for purposes of these appeals that the ordinances are identical except for the expiration date of Ordinance 2016-4.

The county transmitted separate records for LUBA No. 2016-039 and LUBA No. 2016-055. As we understand it, the record in LUBA No. 2016-055 includes all of the materials that are included in the record for LUBA No. 2016-039, and additional materials. All citations to the record in this opinion are to the record in LUBA No. 2016-055.

² The Federal Controlled Substances Act, 21 USC § 801 *et seq.*, prohibits the manufacture, distribution, dispensation, and possession of marijuana.

1 ORS 475B.400 to 475B.525. The Oregon Health Authority (OHA) administers
2 the state’s medical marijuana program and has adopted rules regulating the
3 growing of marijuana for medical purposes at OAR chapter 333, divisions 7
4 and 8.

5 In November 2014, Oregon voters approved Ballot Measure 91, which
6 legalized recreational marijuana under state law. Measure 91 placed
7 administrative authority over the state’s recreational marijuana program with
8 the Oregon Liquor Control Commission (OLCC). After the passage of
9 Measure 91, in 2015 and 2016 the legislature enacted changes to the OMMA
10 and the state’s recreational marijuana program. Measure 91, the OMMA, and
11 the 2015 and 2016 changes are now codified at ORS 475B.005 *et seq.*

12 With respect to producing marijuana for recreational use, ORS
13 475B.340(1)(a) and (g), and (2) allow local governments to adopt “reasonable
14 conditions on the manner in which a marijuana producer licensed under [the
15 state’s recreational marijuana program] may produce marijuana[,]” and
16 “[r]easonable limitations on where a premises for which a license has been
17 issued [to produce marijuana] may be located.” For medical marijuana
18 production, ORS 475B.500 allows the governing body of a city or county to
19 adopt “reasonable regulations on the operation of marijuana grow sites” by
20 holders of grow cards under the OMMA. ORS 475B.500(2). “Reasonable
21 regulations” in that section are defined as including “reasonable limitations on
22 where the marijuana grow site of a person designated to produce marijuana by

1 a registry identification cardholder * * * may be located.” ORS
2 475B.500(1)(d).

3 In April 2016, the board of county commissioners adopted Ordinance
4 2016-3. *See* n 1. Ordinance 2016-3 adopted amendments to the Jackson County
5 Land Development Ordinance (LDO) to regulate the production, processing,
6 wholesaling, and retail sale of marijuana. This appeal followed.

7 **REPLY BRIEF**

8 Petitioner moves for permission to file a reply brief to respond to alleged
9 new matters raised in the county’s response brief. OAR 661-010-0039.
10 Petitioner argues that the response brief raised a new matter, namely, the
11 response brief’s position that ORS 197.620(1) divests LUBA of jurisdiction
12 over the appeals.

13 We agree with petitioner that a reply brief is warranted to respond to a
14 jurisdictional challenge in the response brief. *See Sievers v. Hood River*
15 *County*, 46 Or LUBA 635, 637 (2004) (“[A]lthough all petitions for review
16 must state why the challenged decision is subject to LUBA’s jurisdiction,
17 jurisdiction does not become an issue in an appeal until respondents contend
18 that LUBA lacks jurisdiction”). The reply brief is allowed.

1 **MOTION TO TAKE EVIDENCE**

2 Petitioner moves to take evidence not in the record under OAR 661-010-
3 0045.³ Petitioner must establish that the evidence concerns “unconstitutionality
4 of the decision, standing, ex parte contacts, actions for the purpose of avoiding
5 the requirements of ORS 215.427 * * * or other procedural irregularities not
6 shown in the record and which, if proved, would warrant reversal or remand of
7 the decision.”

8 According to petitioner, marijuana production was allowed in the Rural
9 Residential (RR) zone prior to the enactment of Ordinance 2016-3. Petitioner
10 moves to take evidence in the form of two newspaper articles that petitioner
11 alleges support petitioner’s assertion in the motion to take evidence that
12 marijuana production is now a nonconforming use in the RR zone, because
13 prior to the enactment of Ordinance 2016-3 marijuana production was an
14 allowed use in the RR zone, and Ordinance 2016-3 effectively prohibited
15 marijuana production in the RR zone.

³ OAR 661-010-0045(1) provides in relevant part:

“Grounds for Motion to Take Evidence Not in the Record: The Board may, upon written motion, take evidence not in the record in the case of disputed factual allegations in the parties’ briefs concerning unconstitutionality of the decision, standing, ex parte contacts, actions for the purpose of avoiding the requirements of ORS 215.427 or 227.178, or other procedural irregularities not shown in the record and which, if proved, would warrant reversal or remand of the decision.”

1 In this appeal, petitioner challenges the county’s enactment of Ordinance
2 2016-3, and argues that the amendments to the LDO are inconsistent with the
3 county’s comprehensive plan. Petitioner does not explain why, even if
4 Ordinance 2016-3 amends the LDO to prohibit marijuana production in the RR
5 zone, establishing whether marijuana production was formerly allowed in the
6 RR zone and may now be allowed as a nonconforming use in the RR zone is
7 relevant to the only issues raised in this appeal, which are (1) whether the LDO
8 amendments enacted in Ordinance 2016-3 are consistent with the county’s
9 comprehensive plan, and (2) whether the LDO amendments are “reasonable
10 regulations” within the meaning of ORS 475B.340 and 475B.500. Petitioner
11 has not met her burden.

12 The motion to take evidence is denied.

13 **FIRST ASSIGNMENT OF ERROR**

14 **A. Ordinance 2016-3**

15 As relevant to this appeal, Ordinance 2016-3 adopts a definition of
16 “marijuana production” at LDO 13.3(166), and lists the zones in which
17 “marijuana production” is permitted and not allowed.⁴ Marijuana production is

⁴ LDO 13.3(166) defines “marijuana production” as “the manufacture, planting, cultivation, growing, trimming, harvesting or drying of marijuana, provided that the marijuana producer is licensed by the Oregon Liquor Control Commission, or registered with the Oregon Health Authority and a ‘person designated to produce marijuana by a registry identification cardholder.’”

1 allowed in the exclusive farm use (EFU) zone, in forest zones, and in industrial
2 zones. LDO Chapter 3.13.

3 LDO Chapter 6 contains “Use Regulations” for all use districts in the
4 county other than resource districts, which are regulated in LDO Chapter 4.
5 LDO 6.2, Table of Permitted Uses, explains that “Table 6.2-1 sets forth the
6 uses permitted within all base zoning districts, except for the resource
7 districts.” LDO 6.2.1 includes an “Explanation of Table Abbreviations.” As
8 relevant here, LDO 6.2.1(F), “Uses Not Allowed,” explains that “[a] dash (-)
9 indicates that the use type is not allowed in the respective zoning district,
10 unless it is otherwise expressly allowed by other regulations of this
11 Ordinance.”

12 Ordinance 2016-3 amended Table 6.2-1 to include “marijuana
13 production” as a specific use in the general category of “Farm Use.” Table 6.2-
14 1 contains a “dash” for the specific use “marijuana production” in the column
15 for the RR zone, and in all other zones except the Industrial zone, where the
16 table indicates that marijuana production is a “Type 1/2” use in that zone.

17 Petitioner and the county disagree over what changes Ordinance 2016-3
18 actually made to the LDO.⁵ According to petitioner, Ordinance 2016-3
19 amended the LDO to prohibit marijuana production in the RR zone, where

⁵ We also understand petitioner to argue that marijuana production is allowed in the RR zone under the separate “farm use” category identified as “non-intensive agricultural use.” Petitioner does not sufficiently develop the argument for review, and we do not consider it in this opinion.

1 according to petitioner it was previously allowed. Petition for Review 4. As we
2 understand the county's position, it is that marijuana production was not
3 allowed in the RR zone prior to the enactment of Ordinance 2016-3. From
4 there, the county argues, Ordinance 2016-3 does not amend the LDO because
5 the LDO still does not allow marijuana production in the RR zone. Response
6 Brief 5. Therefore, the county argues, petitioner is challenging the county's
7 decision to continue to *not* allow marijuana production as a permitted use in the
8 RR zone. According to the county, ORS 197.620(1) divests LUBA of
9 jurisdiction to review the county's decision because it is a decision to not
10 amend the LDO.⁶

11 We reject the county's argument. It is undisputed that the county did in
12 fact adopt legislative amendments to the LDO to, among other things, expressly
13 prohibit marijuana production in the RR zone. While the parties disagree
14 whether that amendment represents a change in the status quo in the RR zone
15 as a matter of substance, there can be no question that the decision amends the
16 LDO. Therefore, ORS 197.620(1) does not apply to this appeal. *ODOT v.*
17 *Klamath County*, 25 Or LUBA 761 (1993). The county's argument relates to

⁶ ORS 197.620(1) provides in relevant part that "a decision to not adopt a legislative amendment or a new land use regulation is not appealable unless the amendment is necessary to address the requirements of a new or amended goal, rule, or statute."

1 the substance or scope of petitioner’s challenges to those legislative
2 amendments.

3 Accordingly, we reject the county’s argument that ORS 197.620(1)
4 makes the county’s decision to adopt Ordinance 2016-3 “not appealable”
5 within the meaning of the statute.

6 **B. Assignment of Error**

7 ORS 197.835(7)(a) provides in relevant part that LUBA shall reverse or
8 remand an amendment to a land use regulation “[if] the regulation is not in
9 compliance with the comprehensive plan[.]” In her first assignment of error, we
10 understand petitioner to argue that Ordinance 2016-3 does not comply with the
11 Jackson County Comprehensive Plan (JCCP). In support, petitioner cites the
12 Agricultural Lands Element of the JCCP, which provides in relevant part:

13 “Predominant Farm Uses in Jackson County: Full-time agricultural
14 production and employment are limited in the county. The major
15 farm crops and farm uses are described below and compared in
16 Table II. Hobby farming and small scale agriculture provide
17 opportunities for agricultural diversity and are particularly
18 appropriate for specialty crops and specialty or exotic livestock.

19 “The median size range for farms that annually gross more than
20 \$10,000 dollars is from 100 to 139 acres, and the median gross
21 sales income is \$25,000 to \$40,000. These farms include about 48
22 per cent of the land in farms in Jackson County (Tables 2 and 16,
23 1987 Census of Agriculture), leaving about 52% of land in farms
24 either in small scale agriculture or unmanaged. Farms with gross
25 incomes less than \$10,000 only account for 8 percent of the
26 county’s gross annual farm receipts. These figures strongly
27 support the need to preserve farm land in large blocks in order to
28 preserve and maintain those farms that contribute in a substantial
29 way to the area's existing agricultural economy. *However, in areas*

1 *where parcelization and/or residential development has already*
2 *occurred, small scale agriculture is often the only way to keep*
3 *land in productive farm use. Encouraging a variety of types of*
4 *agriculture in the county provides a greater possibility of*
5 *innovation and resiliency in the agricultural economy.” JCCP*
6 *Agricultural Lands Element, 8-2 (underlining in original, italics*
7 *added).*

8 According to petitioner, the emphasized language above requires the county to
9 allow Marijuana Production as a permitted use on RR lands. In support,
10 petitioner also points to statements in the record by the county’s planning staff
11 that interpreted the emphasized language as requiring the county to allow
12 marijuana production on RR zoned lands.

13 The county responds, and we agree, that petitioner has not demonstrated
14 that amending the LDO to prohibit marijuana production on RR-zoned lands is
15 inconsistent with the JCCP. The provision of the JCCP that petitioner relies on
16 merely describes the predominant farm uses in the county and describes small
17 scale agriculture on parcelized lands as one of those farm uses. The language
18 does not *require* the county to allow marijuana production on RR-zoned land
19 and the county’s decision to prohibit it on those lands is not inconsistent with
20 anything in the JCCP cited by petitioner.

21 Finally, we understand petitioner to challenge findings adopted by the
22 board of county commissioners. The findings appear to take the position that
23 the county’s decision to prohibit marijuana production in the RR zone is
24 consistent with a 2016 amendment to the state’s recreational and medical

1 marijuana programs, Senate Bill 1598 (SB 1598).⁷ As we understand it, the
2 county takes the position that the legislature’s decision to classify marijuana as
3 a crop for purposes of the definition of “farm use” at ORS 215.203 supports the
4 county’s decision to prohibit marijuana production in the RR zone. As we
5 understand petitioner’s argument, it is that the county erred to the extent it
6 found that SB 1598 requires the county to prohibit marijuana production in the
7 RR zone. Petition for Review 15-16.

8 We are not sure we understand the county’s findings to say what
9 petitioner alleges that they say.⁸ However, the county’s findings appear to
10 simply provide additional support for the board of commissioners’ decision to
11 prohibit marijuana production in the RR zone. Even if the county
12 misunderstood SB 1598, and in fact that legislation does not provide support
13 for the decision to prohibit marijuana production in the RR zone, petitioner
14 does not explain why any faulty interpretation of SB 1598 compels the
15 conclusion that the amendments to the LDO are not in compliance with the

⁷ Senate Bill 1598 provides that “marijuana is * * * [a] crop for the purpose of ‘farm use’ as defined in ORS 215.203[.]” and applies the definition to producers of medical marijuana. Or Laws 2016, ch 23, §3 (SB 1598).

⁸ The county found:

“Based upon the passage of Senate Bill 1598, recreational and medical marijuana production are both now determined to be a ‘farm use.’ The Board of Commissioners finds the [LDO] does not allow a ‘farm use’ to occur within the Rural Residential and Rural Use zoning districts.” Record A0005.

1 JCCP. Petitioner’s arguments provide no basis for reversal or remand of the
2 decision.

3 The first assignment of error is denied.

4 **SECOND ASSIGNMENT OF ERROR**

5 In her second assignment of error, petitioner argues that the county’s
6 prohibition on production of marijuana in the RR zone is not a “reasonable
7 regulation[]” under ORS 475B.340(2) and 475B.500(2). ORS 475B.340, as
8 amended by SB 1598 (2016), provides in relevant part:

9 “(1) For purposes of this section, ‘reasonable regulations’
10 includes:

11 “(a) Reasonable conditions on the manner in which a
12 marijuana producer licensed under ORS 475B.070
13 may produce marijuana or in which a person who
14 holds a certificate issued under ORS 475B.235 may
15 produce marijuana or propagate immature marijuana
16 plants;

17 “(b) Reasonable conditions on the manner in which a
18 marijuana processor licensed under ORS 475B.090
19 may process marijuana or in which a person who
20 holds a certificate issued under ORS 475B.235 may
21 process marijuana;

22 “(c) Reasonable conditions on the manner in which a
23 marijuana wholesaler licensed under ORS 475B.100
24 may sell marijuana at wholesale;

25 “(d) Reasonable limitations on the hours during which a
26 marijuana retailer licensed under ORS 475B.110 may
27 operate;

- 1 “(e) Reasonable conditions on the manner in which a
2 marijuana retailer licensed under ORS 475B.110 may
3 sell marijuana items;
- 4 “(f) Reasonable requirements related to the public’s
5 access to a premises for which a license or certificate
6 has been issued under ORS 475B.070, 475B.090,
7 475B.100, 475B.110 or 475B.235; and
- 8 “(g) Reasonable limitations on where a premises for which
9 a license or certificate may be issued under ORS
10 475B.070, 475B.090, 475B.100, 475B.110 or
11 475B.235 may be located.”
- 12 “(2) Notwithstanding ORS 30.935, 215.253 (1) or 633.738, the
13 governing body of a city or county may adopt ordinances
14 that impose reasonable regulations on the operation of
15 businesses located at premises for which a license has been
16 issued under ORS 475B.070, 475B.090, 475B.100 or
17 475B.110, or for which a certificate has been issued under
18 ORS 475B.235, if the premises are located in the area
19 subject to the jurisdiction of the city or county, except that
20 the governing body of a city or county may not:
- 21 “(a) Adopt an ordinance that prohibits a premises for
22 which a license has been issued under ORS 475B.110
23 from being located within a distance that is greater
24 than 1,000 feet of another premises for which a
25 license has been issued under ORS 475B.110.
- 26 “(b) Adopt an ordinance after January 1, 2015, that
27 imposes a setback requirement for an agricultural
28 building used to produce marijuana located on a
29 premises for which a license has been issued under
30 ORS 475B.070 if the agricultural building:
- 31 “(A) Was constructed on or before July 1, 2015, in
32 compliance with all applicable land use and
33 building code requirements at the time of
34 construction;

1 “(B) Is located at an address where a marijuana
2 grow site first registered with the Oregon
3 Health Authority under ORS 475B.420 on or
4 before January 1, 2015;

5 “(C) Was used to produce marijuana pursuant to the
6 provisions of ORS 475B.400 to 475B.525 on or
7 before January 1, 2015; and

8 “(D) Has four opaque walls and a roof.”

9 ORS 475B.500, as amended by SB 1598 (2016), provides in relevant part:

10 “(1) For purposes of this section, ‘reasonable regulations’
11 includes:

12 “(a) Reasonable limitations on the hours during which the
13 marijuana grow site of a person designated to produce
14 marijuana by a registry identification cardholder, a
15 marijuana processing site or a medical marijuana
16 dispensary may operate;

17 “(b) Reasonable conditions on the manner in which the
18 marijuana grow site of a person designated to produce
19 marijuana by a registry identification cardholder, a
20 marijuana processing site or a medical marijuana
21 dispensary may transfer usable marijuana, medical
22 cannabinoid products, cannabinoid concentrates,
23 cannabinoid extracts, immature marijuana plants and
24 seeds;

25 “(c) Reasonable requirements related to the public’s
26 access to the marijuana grow site of a person
27 designated to produce marijuana by a registry
28 identification cardholder, a marijuana processing site
29 or a medical marijuana dispensary; and

30 “(d) Reasonable limitations on where the marijuana grow
31 site of a person designated to produce marijuana by a
32 registry identification cardholder, a marijuana

1 processing site or a medical marijuana dispensary
2 may be located.

3 “(2) Notwithstanding ORS 30.935, 215.253 (1) or 633.738, the
4 governing body of a city or county may adopt ordinances
5 that impose reasonable regulations on the operation of
6 marijuana grow sites of persons designated to produce
7 marijuana by registry identification cardholders, marijuana
8 processing sites and medical marijuana dispensaries that are
9 located in the area subject to the jurisdiction of the city or
10 county.”

11 In support of her argument, petitioner cites and relies on cases that have
12 addressed the reasonableness of restrictions on speech, conduct or expression
13 that is protected by the First Amendment of the US Constitution.⁹ Government
14 restrictions on protected speech, conduct or expression are subject to a higher
15 level of scrutiny, and will generally be upheld if the restrictions are content
16 neutral and narrowly tailored to serve a substantial government interest. *Ladue*
17 *v. Gilleo*, 512 US 43 (1994). According to petitioner, the amendments to the
18 LDO to prohibit marijuana production on RR zoned land must serve a
19 significant government interest, and the county has not identified any
20 significant government interest those LDO amendments serve.

21 The county responds, and we agree, that petitioner has not established
22 that marijuana production is a protected interest under the First Amendment.

⁹ The First Amendment provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

1 Absent any argument that establishes such a protected interest in marijuana
2 production, the cases petitioner cites are inapposite. That ORS 475B.340 and
3 ORS 475B.500 use the similar phrase “reasonable regulation” in listing the
4 kind of regulations a county or city can impose on the sale or production of
5 recreational and medicinal marijuana does not mean that the legislature
6 intended to import into review of local zoning codes the doctrines and
7 standards of review that courts have applied to First Amendment speech cases.

8 We also understand petitioner to argue that the LDO’s prohibition of
9 marijuana production on RR zoned lands is not a “reasonable regulation”
10 within the meaning of ORS 475B.340 and ORS 475B.500 because the county
11 did not choose to prohibit other crops that the county may perceive also to have
12 negative effects on neighboring properties from being grown on RR zoned
13 land. The county responds that the choice to not allow marijuana production on
14 RR-zoned lands is reasonable, given that the county chose to allow marijuana
15 production in several base zoning districts, including on EFU and farm and
16 forest zoned land, which the county approximates to include more than one
17 million acres in the county.

18 The term “reasonable regulations” is not defined in the statutes
19 regulating marijuana production and use. Accordingly, we first look to the
20 ordinary meaning of the word “reasonable.” “Reasonable” is defined as
21 relevant here to mean “[1] b: being or remaining within the bounds of reason:
22 not extreme: not excessive * * *; c: MODERATE : as (1) not demanding too

1 much[.]” *Webster’s Third New Int’l Dictionary* 1892 (unabridged ed. 2002).
2 We agree with the county that allowing marijuana production in zones that
3 constitute over a million acres in the county, while not allowing it in a
4 residential zone that would presumably present more potential for conflicts
5 with residential uses, does not seem “extreme” or “excessive,” and could
6 accurately be described as “moderate.”

7 We may also look to legislative history. ORS 174.020(3). In support of
8 her claim that the county’s prohibition of marijuana production in the RR zone
9 is not a “reasonable regulation,” petitioner cites statements made by a legislator
10 on the floor of the House of Representatives in connection with 2015
11 amendments to Measure 91. However, that legislative history tends to defeat
12 petitioner’s argument. The cited legislator stated his belief about what is meant
13 by “reasonable regulation,” and expressed that an unreasonable regulation
14 would be present when a local government attempts to:

15 “* * * use their local zoning code to effectively eliminate
16 marijuana businesses or grow sites in their communities by, for
17 example, finding zones in which it is very difficult to site these
18 businesses, or putting them on the edge of town where nobody
19 wants to go or in some other way making it so difficult for these
20 businesses to be sited that the businesses won’t site in their
21 communities.” Audio Recording, House of Representatives, HB
22 3400, June 24, 2015, 1:45:30-1:46:03 (statement of Representative
23 Ken Helm).

24 Given that the county allows marijuana production in the EFU zone and on
25 lands zoned farm and forest, which together comprise more than a million acres
26 in the county, and on industrial zoned land, the concerns stated by that

1 legislator about the reasonableness of zoning regulations do not appear to be
2 present in this case. Accordingly, petitioner has not established that the
3 amendments to the LDO to prohibit marijuana production in the RR zone are
4 not “reasonable regulations” within the meaning of ORS 475B.340 and
5 475B.500, or that the county acted unreasonably when it decided to allow
6 marijuana production in some, but not all, county zones.

7 The second assignment of error is denied.

8 The county’s decision is affirmed.



CITY OF REDMOND
Office of the Mayor

716 SW Evergreen Avenue
Redmond OR 97756
(541) 948-3219
Fax (541) 548-0706
george.endicott@ci.redmond.or.us
www.ci.redmond.or.us

October 23, 2017

Deschutes County Board of Commissioners
PO Box 6005
Bend OR 97708-6005

Re: Land Use Appeal of Evolution Concepts, LLC Marijuana Production and Processing Facility

Dear Commissioners,

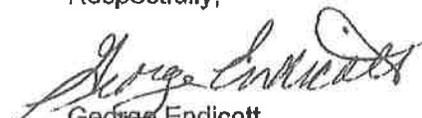
I have become aware of the application of Evolution Concepts, LLC for a very substantial marijuana production and processing facility located on Highland Avenue just west of Helmholtz. On behalf of the City of Redmond, please accept this letter as our deep concern and opposition to this facility. Our community is not in favor of commercial marijuana operations. We have prohibited them from being located within the City limits as well as retail marijuana outlets. The facility that is proposed here is located right on the western gateway of the Redmond community. It is very close to public and private schools as well as churches. This facility is not harmonious with the surrounding environment or the community at large.

I would point out that the Urban Reserve is only one lot away from this facility. It is anticipated, as the City grows, there will be a mixed-use employment center at the intersection of Helmholtz and Highway 126. The proposed marijuana facility is almost "kiddy corner" to this property.

There are other significant concerns of having such a facility almost adjacent to the City as well. These are essentially cash operations. Their legality is questionable under federal law. As I understand it, the investors and operators here are from Costa Rica. That raises a red flag as to why persons from Central America would be interested in establishing a large operation here in Central Oregon, particularly because the Redmond community has expressed a strong opinion against such types of facilities.

As government entities, we have a mutual responsibility to guide land uses and enhance our communities. However, in this case we will not be developing as intended. If approved, you will be creating areas of extreme conflict. The development regulations need to be modified to ensure there is a process for locating such facilities to areas where they do no harm and do not create conflicts. The current regulations need to be enhanced to ensure that smell, noise from fans, light, traffic, and chemicals do not negatively affect other properties. The operation of such facilities must be compatible with adjacent uses and avoid unexpected impacts to existing residents. Existing residents who developed their properties before the marijuana laws were enacted deserve protection. What really needs to happen here is that a Moratorium needs to be put in place so there is time to further refine the local regulations.

Respectfully,


George Endicott
Mayor, City of Redmond, Oregon



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Prineville District Office

3050 NE 3rd Street

Prineville, Oregon 97754

DEC 22 2017



In Reply Refer To:
2800 (ORP000)

CERTIFIED MAIL – 7012 2920 0000 4958 0818
Return Receipt Requested

Cynthia Smidt
Deschutes County Planning Division
P.O. Box 6005
117 NW Lafayette Ave.
Bend, OR 97708-6005

Dear Ms. Smidt:

The Bureau of Land Management (BLM) Prineville District Office provides the below comments regarding a recreational marijuana production facility off Harper Road file number 247-17-000962-A (247-17-000645-CU).

Upon recent review of the project area BLM does have concern on a number of issues regarding this proposal. The location of this proposed production facility is very close to a BLM managed public land boundary. BLM does not concur with the granting of a variance to the setback requirement, the closeness of the production facility to an actively used public trail could have an adverse impact to people recreating on public lands. BLM recommends that the applicant have a boundary survey of the parcel conducted to ensure no unintentional future trespass onto public lands occurs.

Second, the BLM has concerns over the use of pesticides and herbicides and chemical residue migration onto public lands. It is requested that if chemicals are used in the operation, that protocols are required to ensure that any chemical residue is contained and does not migrate onto public lands.

If you have any questions on these information requests, please contact April Rabuck, Acting Assistant Field Manager Lands and Minerals at (541) 416-6853.

Sincerely,

Dennis C. Teitzel
District Manager, Prineville District Office



THE CIRCUIT COURT OF THE STATE OF OREGON
TWENTY-FIFTH JUDICIAL DISTRICT
YAMHILL COUNTY

JOHN L. COLLINS
CIRCUIT COURT JUDGE

Yamhill County Courthouse
McMinnville, Oregon 97128
Phone (503) 434-7497

November 20, 2017

Mr. John Bridges Attorney at Law 515 E. 1 st Street Newberg, OR 97132	Ms. Allison C. Bizzano Attorney at Law 805 SW Broadway, Suite 2400 Portland, OR Suite 2400	LETTER SENT MY EMAIL. NO HARD COPY TO FOLLOW
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Re: *Harihara Mahesh, Parvathy Mahesh & Momtazi Family LLC v. Steven Wagner, Mary Wagner & Richard Wagner*, 17CV15941

Counsel:

This matter came before the court on defendants’ motion to dismiss. The court heard argument of counsel and took the matter under advisement in order to more fully study the pleadings. This letter is the court’s ruling on the motion.

Background. A detailed restatement of the circumstances of this case is not necessary to this motion. However, a brief summary provides some context. The parties are owners of adjacent farm property. Defendants also have an easement over plaintiff’s property. Plaintiffs are primarily involved in growing wine grapes on their property. Defendants have taken steps to establish a large scale (20,000 to 40,000 square feet) outdoor marijuana crop and to process the harvested marijuana on the property.¹

Plaintiffs’ first amended complaint states claims for trespass (odor intrusion), nuisance, trespass (Unauthorized entry into easement area) and preliminary injunction. Preliminary injunction is stated as the fourth claim for relief, though the court sees that less as a separate claim than as a statement of the relief or remedy sought arising from the other claims. As required by law for purposes of this motion, the court must treat the allegations as true.

Plaintiffs allege present harm to their wine growing operation in the form of the loss of a sale of future grape crops by a buyer concerned with what might be called marijuana contamination of the grapes coming from the defendants growing and/or processing operations. Plaintiffs have presently also delayed planting of vines that could be affected by marijuana growing and/or processing on the Wagner property.

More to the point is plaintiffs’ allegations regarding future harm. Though defendants have not yet established a crop, the growing and/or processing of marijuana, plaintiffs allege, would result in odor intrusion in the form of “foul-smelling particles” from defendants’ growing and/or processing that would attached to grape crops and, in essence, contaminate the product. While the pleadings are not quite that specific and don’t need to be, the inference is that particles adhering to grapes would significantly

¹ Since the filing of the complaint, necessary county approval for the processing operation was denied and the court will assume, at this time, that development of a processing operation has been abandoned or is at least “on hold.”

diminish the quality of wine made from those grapes and possibly pass on unwanted elements of marijuana to the wine.

Plaintiffs' second claim for relief is for nuisance. The central aspect of that claim is that plaintiffs allege the growing/processing operation will pose an unreasonable risk of substantial interference with plaintiffs' grape vineyards and will cause actual damage to vines and/or delay development of a vineyard, cause cleanup and/or mitigation costs from the foul-smelling particles, lost profits and loss of crop certifications.

Plaintiffs also allege that defendants' will use the easement for heavy equipment or otherwise exceed the scope of permissible use of the easement across their property. Again, this is not pled as a present problem, but is one anticipated by plaintiffs and which, among other harms, plaintiffs seek to avert through injunctive relief.

Defendants have filed a motion to dismiss all claims with prejudice and that motion is before the court in this opinion. Defendants maintain that the complaint fails to state ultimate facts sufficient to constitute a claim. Within that position, they maintain that they are immune from liability under the Right to Farm Act, ORS 30.930 *et seq.*

Analysis. As stated earlier, on any pretrial motion against the pleadings, the court must view the allegations as true and otherwise view the allegations and inferences to be drawn from those allegations in a light most favorable to the plaintiffs. Moreover, the court is to liberally and reasonably construe pleadings with a view of "substantial justice between the parties." This last concept might be viewed here as allowing a party their "day in court." That is particularly applicable where the motion is at the very start of the case.

Plaintiffs, in their response, have stated their intention to seek the court's permission to file a third amended complaint. Arguably, the proposed third amended complaint, submitted with the response as a preview of their intended motion to amend, addresses some of defendants' issues by "cleaning up" the pleadings, alleging "fall back" positions such as setback restrictions, seeking more specific clarification of the scope of the easement and adding one or more declaratory judgment claims which could give rise to the injunctive relief they seek. This court bases its ruling on the present second amended complaint, though plaintiff's intent to seek permission to file a third amended complaint is duly noted.

Plaintiffs concede that their second amended complaint, insofar as it seeks equitable relief, does not plead an essential element: That they do not have an adequate remedy at law. This will be discussed later.

Defendants' take the position that plaintiffs cannot get injunctive relief at this point because the cultivation of marijuana and/or processing is not taking place at this time. The injunction, essentially, would be against implementing a plan that plaintiffs' allege would harm their vineyards, as opposed to stopping an operation presently causing harm.

Injunctive relief can be a preventative remedy and, as cited by plaintiffs, "is designed in general to stay the lawless hand before it strikes the blow." *Wiegand v. West*, 73 OR 249, 254 (1914). While this language from an old case might be seen as somewhat arcane today, the principle remains: A party may seek injunctive relief not just to halt an ongoing harm, but also to head off that harm if the harm can reasonably be predicted to occur in the reasonably near future.

An element of this analysis is whether the pleadings adequately assert ultimate facts which, if true, could lead the fact-finder, without speculation, to reasonably foresee the potential for substantial harm to the party seeking injunctive relief. Here plaintiff sets forth allegations which, if true, would likely lead to harm to plaintiffs' crops. Specifically, that harm would come from "foul-smelling particles" that could adhere to plants and grapes and substantially impair their productivity and/or value. This allegation is central to the trespass and nuisance claims.

Plaintiffs' also set forth sufficient facts that, if true, could constitute an unpermitted use of the easement.² There are undoubtedly legal and factual disputes about this issue, but that can be the subject of summary judgment motions and/or trial.

Defendant also asks the court to dismiss the complaint as, essentially, invalid on its face based on the Right to Farm Act. ORS 30.936, in relevant part, provides:

30.936 Immunity from private action based on farming or forest practice on certain lands; exceptions. (1) No farming or forest practice on lands zoned for farm or forest use shall give rise to any private right of action or claim for relief based on nuisance or trespass.
 (2) Subsection (1) of this section shall not apply to a right of action or claim for relief for:
 (a) Damage to commercial agricultural products; or

The first section does appear to have applicability here. However, plaintiff has alleged certain facts, if true, would fall under the section (2)(a) exception for damage to commercial agricultural products. Essentially, then, the statute does not provide immunity where the "private right of action or claim for relief based on nuisance or trespass" involves "damage to commercial agricultural products." Plaintiffs' vineyard and, more specifically, grapes, certainly fall within this term and plaintiff adequately alleges damage or potential damage to that product.

I find that the Right to Farm Act does not provide such blanket immunity as to support dismissal of the complaint on its face. It *could*, as noted, be an affirmative defense to be addressed at a later stage in the case.

Conclusion: The complaint, when viewed in a light most favorable to the pleader sufficiently states claims and is not, on its face, to be dismissed based on the Right to Farm Act.

As acknowledged in a footnote herein, there may be flaws in the pleadings that, while insufficient to prompt dismissal, would likely be remedied by a third amended complaint along the lines of the one included with plaintiff's response. Defendant did not move to dismiss the counts based on failure to plead no remedy at law. I am reluctant to grant permission to file that amended complaint without a motion to do so. Accordingly, a motion should be filed and, if unopposed, granted. If opposed, the court will conduct a hearing or decide the motion on the pleadings if the parties so choose.

² On this point, the court also considers plaintiffs proposed third amended complaint. That complaint seeks clarification of the scope of the easement and, among other things, asserts, at least by implication, that use of the easement to support a marijuana cultivation and/or processing could be a violation of federal law. So, even if the present pleadings are insufficient, the court anticipates the insufficiency could be cured by an amended complaint. The same is true of the deficiency plaintiff admits – failure to plead no remedy at law. If that is a fatal flaw, and it likely is, that flaw can be cured by an amended complaint.

Ruling. Defendants' motion to dismiss is denied.

Mr. Bridges or Mr. Brown, you may submit the order.

Sincerely,

A handwritten signature in black ink, appearing to read "John L. Collins". The signature is fluid and cursive, with a long horizontal stroke at the end.

JOHN L. COLLINS
Circuit Court Judge

Cc: file.



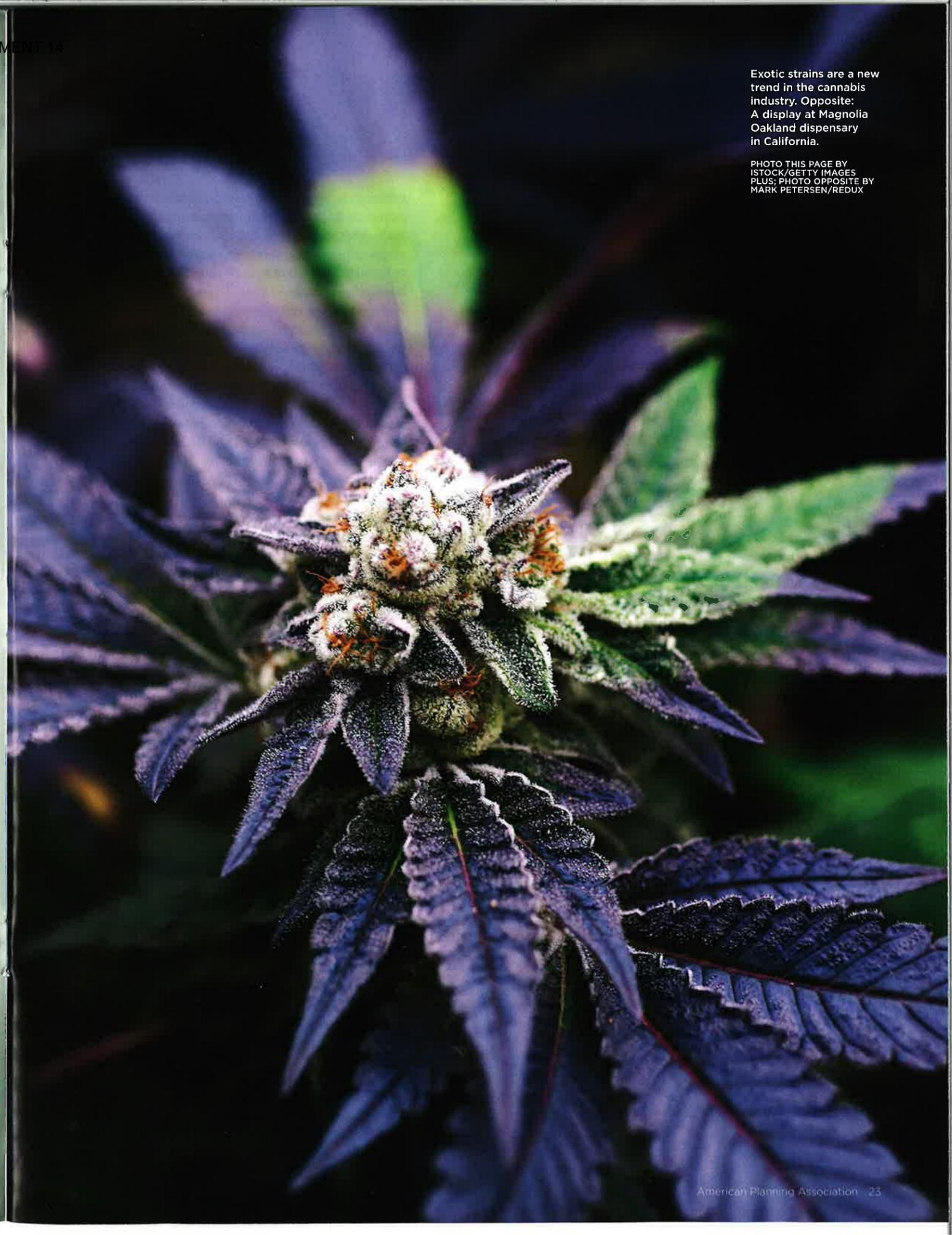
Exotic strains are a new trend in the cannabis industry. Opposite: A display at Magnolia Oakland dispensary in California.

PHOTO THIS PAGE BY ISTOCK/GETTY IMAGES PLUS; PHOTO OPPOSITE BY MARK PETERSEN/REDUX

From Seed to Sale

As more states legalize marijuana, local planners tackle land-use and zoning challenges to make the new industry work for their community.

By JUELL STEWART



Against the backdrop of an eventful national election,

2016 was a pivotal year at the polls for California: 57 percent of state voters approved the Adult Use of Marijuana Act (Proposition 64), a statewide ballot initiative that legalized the possession, sale, cultivation, and use of recreational marijuana and required the state to create a regulatory structure to encompass all commercial aspects, including licensing and taxation.

While nine states plus Washington, D.C., have legalized recreational marijuana use in recent years, in many ways, California is an outlier. While other states are developing regulatory approaches to create entirely new marijuana economies, the Golden State has long had a reputation for having a permissive and progressive marijuana culture. In 1996, it became the first state to legalize medical marijuana for qualified patients via the Compassionate Use Act (sometimes referred to as Proposition 215).

As a result, California already had a thriving infrastructure of cannabis cultivators, manufacturers, and retailers by the time Prop 64 passed. But because there were no official regulatory or

licensing structures in place, these businesses existed on the legal periphery, or what some refer to as the “gray market”—not quite in the underground market, since their business activities were enabled by the state, but also not squarely within the realm of legal compliance.

Prop 64, which officially went into effect last January, was the first time that regulators across the state were called upon to develop strategies to formalize the relationship between government and the marijuana industry, from seed to sale. The measure has allowed state regulators to create a broad regulatory infrastructure for licensing while providing local jurisdictions quite a bit of latitude in determining specific planning and zoning approaches according to their communities’ needs and priorities.

A year in, many counties and municipalities are still working out the details. Where states like Colorado have realized the potential revenue opportunity by collecting business and sales taxes, in California, where land values are already at a premium, local planners have a unique challenge to contain disruptive economic effects as much as possible.

Some California counties and communities see Prop 64 as an opportunity to introduce new economic activity. Others have taken a more restrictive approach, handling land use and zoning for cannabis similarly to the regulations already in place for liquor stores and other locally undesirable land uses. However, the precedent of cannabis being treated like medicine prompted officials statewide to consider the nuances of public and industry opinion.

State and local regulators are still learning and revising their regulations to acknowledge the complicated nature of balancing so many priorities. The lessons learned and wide range of approaches taken so far offer a different perspective—and valuable insights—for planners and policy makers looking to regulate recreational cannabis in their own jurisdictions.

Licensing and regulations

In January 2018, California introduced a two-tiered licensing structure that requires businesses to secure local business permits before they can receive a state cannabis business license. On the state’s end, the licensing process is complicated, with the Bureau of Cannabis Control regulating commercial licenses for retailers, distributors, laboratories, and events; the California Department of Food and Agriculture issuing licenses for cultivators; and the California Department of Public

Blunts & Moore was the first dispensary to open under Oakland, California’s cannabis equity program. To qualify, individuals must have had a cannabis conviction or live in a community found to be overpoliced with regards to cannabis arrests. The goal of the program is to help them overcome the challenges of marginalized business owners.



PHOTO COURTESY BLUNTS & MOORE

FROM TOP: JUAN HAVILICEK/SHUTTERSTOCK; PUBLIC DOMAIN VIA WIKIMEDIA; VANBEEEL/ISTOCK/GETTY IMAGES PLUS; DOROTHEA LANGE, COURTESY LIBRARY OF CONGRESS; COURTESY HASH, MARIJUANA & HEMP MUSEUM, AMSTERDAM; BARCELONA; PUBLIC DOMAIN VIA WIKIMEDIA; JIPGUTENBERG/ISTOCK/GETTY IMAGES PLUS; AGAPAPAPER/APUNTA; ISTOCK/GETTY IMAGES PLUS; COURTESY RICHARD NIXON PRESIDENTIAL LIBRARY AND MUSEUM; DARWIN BRANDIS, ISTOCK EDITORIAL/GETTY IMAGES PLUS; FATCAMERA/E+; PROCURATOR/DIGITALVISION VECTORS; PATEL MINABEN/ISTOCK/GETTY IMAGES PLUS

Health handling the manufacturing of edibles. This dual system has required local agencies to create their own processes and mechanisms for permitting businesses if commercial cannabis activities are allowed locally.

Some counties have developed entire cannabis departments to handle the regulatory burden; others have relied on the existing conditional use permitting process as a means for signaling local approval to state regulators.

Many jurisdictions that already had substantial cannabis business activity under Prop 215 rules have formed advisory committees to instruct local leaders on how to move forward. “We had dozens of growers that were allowed under the medical market, but we didn’t have a regulatory structure to permit them,” says Tim Ricard, the cannabis program manager at Sonoma County’s Economic Development Board. “We had to think both about how to transition those folks into the legal, regulated market and also how, as this industry grew and matured, it would fit into the traditional agriculture.”

Some farmers in Sonoma County were apprehensive about cannabis cultivation on land adjacent to theirs because of the common perception that it would bring illegal activity. There was also concern that cannabis cultivation would quickly turn into a speculative market, driving up land values and making the area prohibitively expensive for existing farmers.

Ricard notes that reassuring community members over concerns about displacement of existing economic activities—even in areas like Sonoma County that have traditionally accommodated cannabis cultivation—is a big challenge for planners.

That makes outreach and education key. The county held an eight-part “Dirt to Dispensary” workshop series to introduce both existing and prospective operators to all aspects of the county’s cannabis program—including zoning, permitting, inspections, communicating with neighbors constructively, standards, and business requirements. The program attracted more than 300 participants.

“By bringing [existing cannabis business operators] into the legal market, we’re bringing them into the permitting structure that is available to wineries and everyone else,” notes Amy Lyle, supervising planner in Sonoma County’s Planning Division. The county also implemented a penalty relief program at the outset to allow existing cannabis businesses to continue operations while they pursued their business permit.

A Cannabis History

1600–1890s		The U.S. government encourages domestic production of hemp to make rope, sails, and clothing. In the late 19th century, cannabis becomes a popular ingredient in over-the-counter medicinal products.
1906		Federal Pure Food and Drug Act requires cannabis labeling in over-the-counter remedies.
1900–1920s		Mexican immigrants flood into the U.S. after the Mexican Revolution of 1910 and introduce recreational use to American culture. Now frequently called by the Spanish word <i>marijuana</i> , it is connected to fear and prejudice about the Spanish-speaking newcomers.
1930		The Federal Bureau of Narcotics is created.
1931		The list of states outlawing cannabis rises to 29 as fear and resentment of Mexican immigrants increases.
1932		The Federal Bureau of Narcotics wages the infamous “Reefer Madness” propaganda campaign and encourages state governments to adopt the Uniform State Narcotic Act.
1937		Congress passes the Marijuana Tax Act, which effectively criminalizes cannabis by restricting possession of the drug to individuals who pay an excise tax for certain authorized medical and industrial uses.
1952, 1956		The federal government establishes mandatory minimum sentences for marijuana possession and use.
1970		Congress repeals most mandatory minimum sentences for possession of small amounts of marijuana and categorizes it separately from other more harmful drugs.
1971		President Richard M. Nixon officially declares the War on Drugs and introduces an era of new mandatory sentencing minimums for possession and distribution of marijuana.
1973		The Drug Enforcement Administration is created.
1989		Congress creates the Office of National Drug Control Policy.
1996		California passes the Compassionate Use Act of 1996, legalizing medical marijuana.
2012		Washington and Colorado permit retail sales of cannabis.
2014		Alaska, Oregon, and Washington D.C., legalize recreational use through ballot measure.
2016		California, Nevada, Maine, and Massachusetts approve ballot measures to legalize recreational cannabis.
2018		Vermont becomes the first state to legalize recreational cannabis by way of state legislature, and Michigan approves a ballot measure legalizing recreational use.

SOURCES: PBS.ORG, ONLINE PARALEGAL DEGREE CENTER

Building regulatory capacity

Developing a regulatory structure to handle permitting is an important and necessary first step in building a local cannabis economy. The approach a community chooses will often depend on the size of its jurisdiction and the activities that are likely to take place within it.

Many municipalities are finding that housing all cannabis-related functions in a single office that acts as an intermediary with other local departments is an efficient way to go: It helps streamline permitting, outreach, and community relations, and builds cooperation and buy-in among diverse stakeholders.

In July 2015, the San Francisco Board of Supervisors formed a Cannabis State Legalization Task Force to inform the scope and role of what would eventually become the San Francisco Office of Cannabis. That office is responsible for issuing permits and acting as a liaison for business owners, community members, and local agencies.

Centralized offices that coordinate the efforts of multiple city departments are also useful in terms of outreach and education to community members, which is necessary when introducing something like cannabis into a new context, including destigmatization efforts in the wake of the decades-long War on

Drugs. Giving the general public a clear point of contact in case of any issues, as well as providing them with the proper resources and information about business developments, can help assuage confusion.

Communities introducing new cannabis regulations can also benefit from working closely with cannabis businesses, both existing and new, to navigate challenges and ensure mutually beneficial outcomes. For example, in its original iteration of state regulations, California's Bureau of Cannabis Control prohibited cannabis manufacturers from sharing kitchen facilities. However, as a result of ongoing outreach and relationship-building with local cannabis operators, the city of Oakland found that rule to be problematic.

"As a practical matter, the cost of building a new kitchen facility was prohibitive to cannabis business owners. We saw an opportunity to help businesses reduce costs by going to Sacramento and advocating to the BCC to create a shared kitchen model because of the need we observed on the ground," says Greg Minor, assistant to Oakland's city administrator, who deals specifically with cannabis, special permits and nuisance abatement.

Because of the close relationships Minor has cultivated with local cannabis businesses, he's been

able to effectively advocate on behalf of operators, and the BCC has updated its regulations to allow for shared-use commercial kitchen facilities in jurisdictions across the state.

Economic development opportunities

Besides lowering administrative and enforcement expenditures, the potential for economic stimulation is an attractive reason behind legalization. Local governments can collect sales tax and business licensing fees. Local economies can also benefit from a range of ancillary economic activity, from tourism to commercial corridor revitalization. Pete Parkinson, AICP, former planning director in Sonoma County, pointed out that cannabis legalization has even been a boon to the region's existing wine industry.

"There's a close connection between wine industry tourism and a burgeoning connection between craft brewing and tourism, so I would guess there will be synergies without a doubt," Parkinson notes.

In fact, the popular Francis Ford Coppola winery headquartered in Geyserville, California, recently introduced an independent operation that markets luxury marijuana products in conjunction with the signature Francis Ford Coppola wine brand.

The Sonoma County Fairgrounds also hosts the

annual Emerald Cup—a showcase and competition between local cannabis producers considered to be the "Academy Awards of Cannabis." The event consistently draws tens of thousands of people to Santa Rosa, along with economic activity.

The opening of the recreational market has brought some in real estate changes in the area too. Although the Sonoma County Economic Development Board is still collecting data on the specific effects of the cannabis industry, Cannabis Program Manager Tim Ricard says that it has driven vacancy rates in commercial and industrial zones down, while price per square foot has risen since legalization in Santa Rosa, Sonoma's county seat.

Zoning and land-use considerations

The biggest tools planners have wielded in regulating cannabis activities are buffering, zoning overlays, and permitting. California state law delegates land-use and zoning authority to cities and towns, leading to quite a varied landscape statewide in terms of location and type of business activity.

In many cities, a buffer zone of 1,000 feet from sensitive uses like schools, parks, and day care centers is required; in San Francisco, the most densely populated city in the state, that buffer was reduced to



Hollywood director and winemaker Francis Ford Coppola has invested in a new venture that markets luxury marijuana products along with his signature wine brand.

Planning and Policy Lessons from Colorado

MITIGATE NUISANCES

Implementing standards for mitigating nuisances can be an opportunity to set industry best practices.

Kim Kreimeyer, a planner with Aurora, Colorado's Marijuana Enforcement Division, says that Aurora wanted to distinguish its cultivation facilities from surrounding cities, which had a reputation for having a noticeable and distinct marijuana smell outside of the

industrial buildings.

The result is what Kreimeyer describes as the most stringent odor control standards in the entire state. But they left the "how" up to the individual businesses.

"We did not prescribe how the industry was to mitigate odor. We left it up to them," Kreimeyer says of the regulation and incentive-driven effort.

"Initially we saw licensees use carbon filters, while some

transitioned to ozone filtration, while others utilize both," she says.

In an industry with rapidly evolving technology, this kind of approach encourages businesses to innovate to satisfy local requirements.

REGULATE LIGHTING AND ENERGY USAGE

Similarly, Aurora's indoor-only cultivation offers an opportunity to affect energy reduction benchmarks

by introducing rigid guidelines for lighting. Grow operations in the city are required to have extra cooling mechanisms, and most of the growers have transitioned from fluorescent lighting to more energy-efficient LED lights, keeping costs and usage low.

ENCOURAGE REVITALIZATION

Aurora's cannabis cultivators were also limited in the spaces they

could access shortly after recreational legalization.

Because many new developments and shopping centers were still bound by bank-backed mortgages, property owners were hesitant to jeopardize their investments by running afoul of federal law.

This shutout from leases in new construction meant cannabis businesses had no choice but

TOP PHOTO BY JUSTIN HARGRAVES; RIGHT, PHOTOS COURTESY AURORA MARIJUANA ENFORCEMENT DIVISION



Before and after in Aurora, Colorado: New cannabis businesses have spurred rehab projects in vacant commercial properties, such as this former Taco Bell.



to occupy vacant properties, which spurred adaptive reuse across the city.

"In the economic downturn, we had vacant buildings that operators were able to lease. From a land-use perspective, we required that the site plan was up to date, so we got replaced dead or dying landscaping, renovated parking lots, etc.," she says.

Kreimeyer says this was a catalyst behind

many rehabilitation projects in commercial and industrial buildings.

BE FLEXIBLE

Kreimeyer's advice to planners grappling with regulating cannabis—whether they are in communities introducing an entirely new industry or in towns balancing a new regulatory framework for a legacy business sector—is simple: "Be flexible. It's going to be changing constantly.

It will be a learning process, and things will come up continuously that will need to be addressed."

Planners and policy makers can work together with constituents and business owners to determine the appropriate approach that fits their community's needs.

In a rapidly changing industry, government officials have to be willing to learn and share best practices.

OAKLAND'S GREEN ZONES FOR CANNABIS

Oakland allows and licenses all major types of medical and adult-use cannabis businesses, but steers most cannabis activities to designated areas. This "Green Zone" map dovetails with its existing zoning code, with restrictions for each area as noted below. Right now most of the cannabis businesses are located in industrial zones.



- KEY**
- Noticing required (area within 300 feet of residential)
 - Restricted area (600 feet around school sites)
 - Zoning review by Port of Oakland
 - Delivery-only dispensary permitted zones
 - Cultivation, distribution, lab transport permitted zones
 - Non-volatile manufacturing permitted zones
 - Volatile manufacturing permitted zones

SOURCE: ESRI

RESOURCES

FROM APA

APA Marijuana-Related Uses Knowledgebase: planning.org/knowledgebase/marijuana

"Pot Report," *Planning*, July 2015: planning.org/planning/2015/jul/potreport.htm.

"Regulating Medical and Recreational Marijuana Land Use," *Zoning Practice*, August 2016: planning.org/publicationsdocument/9107502.

600 feet to compensate for the relatively small size of the city. Generally, commercial manufacturing and cultivation are prohibited in residential areas.

"Green Zones" have also been established in some municipalities to steer cannabis activities to designated areas. This typically allows businesses to be established by right, without being subject to a lengthy zoning review process. This strategy has the bonus of stimulating growth in previously blighted industrial areas and can strategically introduce new activity in areas that need new life. That was the case in Oakland, where the city aligned cannabis business uses with its existing zoning code; currently the majority of cannabis activity is located in industrial zones, since they are typically not open to the public.

Oakland has also used municipal code and permitting processes to incorporate its equity priorities directly into cannabis regulation. It was the first city in the country to launch a cannabis equity program, designed specifically to acknowledge the barriers that black and brown business owners face in the wake of the War on Drugs, in hopes of repairing some of the harm that overpolicing has done within these communities.

As a result of a race and equity analysis of medical cannabis regulations conducted by Oakland City Council shortly after Prop 64 passed, the city set an

ambitious goal of requiring that half of all cannabis business permits issued in the initial permitting phase must go to equity applicants. To qualify, individuals must have either had a cannabis conviction or lived in a community that has been found to be overpoliced with regards to cannabis arrests, and they must make no more than 80 percent of Oakland's area median income.

The Oakland model also looks to overcome the challenges marginalized business owners might face in securing operations space. It introduced a mentorship component by pairing each equity applicant with an incubator business, which agrees to provide equity applicants with free space to operate on their premises in exchange for receiving incentives and expedited permitting.

Since Oakland launched its program, San Francisco and Los Angeles have both followed suit, iterating on the eligibility criteria and incentives. Oakland's Greg Minor emphasizes the importance of centering equity in local cannabis discussions: "The sooner a jurisdiction has these conversations and tries to address these systemic issues, the sooner they'll be on the path toward resolving them, as opposed to tackling them later down the line." ■

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Can Cannabis Policies Catch Up?

FINANCING

By far, the biggest hurdle for cannabis operators is access to capital. Financial institutions are regulated by the Federal Deposit Insurance Corporation, which guarantees a bank's deposits. However, doing business with a cannabis operator puts this insurance at risk since it runs afoul of federal regulations.

The effect is essentially a de facto ban on banks doing business with the cannabis industry. Since they're cut off from more mainstream methods of fundraising and financing, a significant number of businesses rely on cash and private investors.

This reliance on cash financing means that business owners from marginalized communities are all but excluded from entering the marketplace, even in cities like San Francisco and Oakland that have provisions to prioritize eligible applicants that meet certain income and residency criteria in equity programs.

Cash transactions also pose a security risk; for neighbors near dispensaries that handle tens of thousands of dollars of cash daily, this can be a serious point of contention.

California State Treasurer John Chiang convened a Cannabis Banking Working Group to explore the feasibility of introducing a statewide public bank that would allow cannabis businesses to circumvent the conventional banking industry and to alleviate the state-federal conflict. Ultimately, it was deemed too much of a legal and financial risk for the state to take on, and Chiang urged federal regulators to remove cannabis from the list of scheduled drugs to resolve the issue once and for all.

EVENT PERMITS

In September 2018, California Governor Jerry Brown signed Assembly Bill 2020,

which allows local jurisdictions to approve temporary cannabis events, reversing previous Bureau of Cannabis Control rules that restricted events with cannabis consumption and sales to county fairgrounds. In cities like San Francisco—which is home to an annual "unofficial" (and thus unregulated) 4/20 event that attracts more than 10,000 visitors each year—this presents an opportunity to introduce a clear process for event producers that aligns the need



A man dressed as a marijuana leaf walks among attendees at the cannabis-themed Kushstock Festival at Adelanto, California, in 2018.

the Mission—developed an intentionally broad framework that gives the Office of Cannabis latitude in issuing permits while also recognizing the need for other agencies to have control over their jurisdictions; for instance, the Recreation and Park Department and the Port of San Francisco both have the power to decline cannabis events on their respective land.

The Office of Cannabis plays the role of an intermediary between the BCC's state-level process and the local interests of the city and county, while maintaining a balance between the authority of existing local agencies. The panel was an example of city agencies working together to include the public on important decisions regarding this new regulatory structure.

Even in a city like San Francisco, which has political will and a history of cannabis events, creating new regulation can be a lengthy process. Community and industry input goes a long way.

PUBLIC CONSUMPTION

Outside of the context of one-time special events, public consumption remains a complex hot-button issue.

People who live in federally subsidized housing are still bound by the rules of the federal government and face eviction if they consume marijuana, even when it's legal in their jurisdiction.

People who live in multiunit rental housing are also subject to restrictions on their method of consumption.

Aurora planner Kim Kreimeyer believes that public consumption is a key issue that's yet to be resolved on the state level in Colorado; currently, allowing on-site consumption is up to the municipality's discretion in California.

Offering people safe places to consume takes the burden off of law enforcement and ensures that people aren't penalized for enjoying something that is recreationally legal or medically necessary.

PHOTO BY RICHARD VOGEL/AP



Santa Barbara County in an Uproar over Cannabis Odors

From Carpinteria to Santa Ynez Valley, Lawsuits, Public Hearings, and Civic Protests Complain About the Smell Emitting from Greenhouses and Fields

By Nick Welsh | Published June 6, 2019



Photo: **Paul Wellman**

If County Supervisor Das Williams led more with his nose and less with his chin, perhaps he'd be getting more love in his own hometown. Carpinteria, the cozy coastal community which Williams represents, has become ground zero for this year's most hotly disruptive news story – the unintended consequences of legalizing cannabis, and the stink it is causing, both in the air and on the ground.

But it's not only Carpinteria. Almost all corners of Santa Barbara County are in an uproar.

About a month ago, an angry, disparate group of activists – from the very north to the southern tip of the county – came together to form the Santa Barbara Coalition for Responsible Cannabis Cultivation. Singularly missing from their roster are any actual pot cultivators, but there are plenty of Santa Ynez Valley vintners, who worry that the skunk-like scent of cannabis wafting from nearby cannabis fields will destroy the economic viability of their wine tasting rooms and avocado orchards. Besides odious odors, the coalition also has a laundry list of complaints, including round-the-clock generator noise, late-night lights, new fences, barking guard dogs, and security personnel, some of whom are reportedly armed.

A couple of formidable former county officials and at least one big-money philanthropist are behind the group, which has already filed one lawsuit. And beginning this week, members of the coalition will be embarking on a campaign of house-to-house political warfare, challenging every one of the 16 land-use permits the county has issued to the cannabis industry.

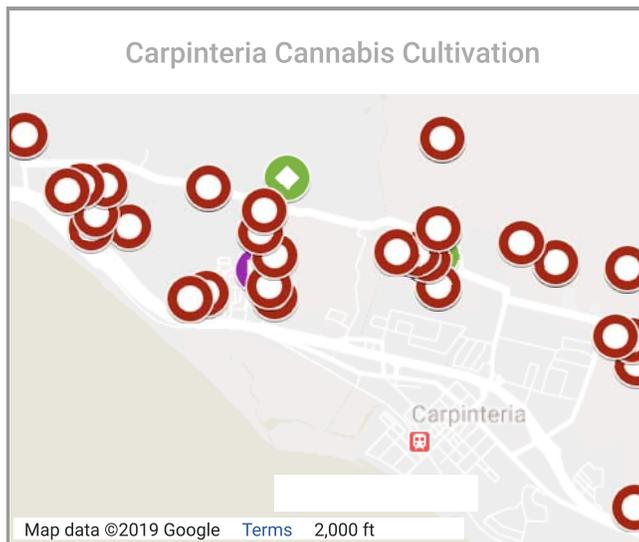
First District Supervisor Williams, who has lived in Carpinteria for six years, is known for his brash legislative style. But is it fair to say he could have cooled the intensity of this public outrage if only he had shown more sympathy when the cannabis critics first began complaining? After all, Williams is only one of five supervisors. But there's a reason he and North County supervisor Steve Lavagnino are unofficially dubbed the "Doobie Brothers." They are behind the record-setting speed with which the county's new cannabis ordinance was approved.

Red Shirts and Clothespins

The issue blew up last Thanksgiving when the popular social media website Nextdoor Carpinteria all but melted down with complaints about the penetrating stench of cannabis rippling out of Carp greenhouses. By January, angry Carpentierians, wearing red shirts and carrying symbolic clothespins, stormed the supervisors' chambers, demanding relief. Williams was singled out for personal vilification. Never one to shy away from a fight, Williams launched a verbal counterattack against one particularly outspoken critic. And from the dais, no less. As a rule, elected officials who operate at the retail level – such as county supervisors and city councilmembers – don't do that.

So it is perhaps understandable that Williams opted not to attend a special meeting convened by the Carpinteria City Council on May 28 to discuss cannabis woes. To be fair, the meeting posed a lose-lose proposition for Williams, a political pro who combines a preacher's fervor with a policy wonk's granularity. Over the past 16 years, Williams, a liberal Democrat and an environmental flag-waver, has gotten himself elected first as a Santa Barbara city councilmember, then as a state assemblymember, and now, in 2017, as the Santa Barbara supervisor. Recently, he took out papers indicating he plans to run for reelection in 2020. (His critics in the anti-cannabis front have already been trolling for candidates to run against him.) Or he could decide to run for state Senate when Hannah-Beth Jackson's term expires a year from now. So if Williams showed up at the Carpinteria council's cannabis fest, he'd have found himself assigned the unhappy role of human piñata.

The numbers surrounding Santa Barbara’s cannabis industry are changing all the time. They fluctuate almost daily and, like all “facts,” are subject to bitter dispute. For example, state stats indicate there are 42 acres of cannabis under cultivation in Carpinteria. But such metrics depend on how one defines “canopy.” Is it the bushes themselves or the buildings they inhabit? If you assume the latter, Carpinteria has closer to 200 acres in the cannabis permit pipeline. But Carpinteria, it turns out, has a cap of 186 acres. So where does that leave us? In the county, one must first secure the necessary land-use permits. Then one can apply for the necessary business license. Only one operator has achieved both feats.



This map shows locations of cannabis greenhouses in Carpinteria with pending permits (red dots). | Source: County of Santa Barbara (<https://sbcopad.maps.arcgis.com/apps/webappviewer/index.html?id=f287d128ab684ba4a87f1b9cff438f91>)

Total Temporary Licenses, Santa Barbara County: 928

Total Temporary Licenses, Humboldt County: 773

Total Temporary Licenses, State of California: 2,858
Total Number of Individual Operations: 52
Total Acreage: 174.33 acres*

(*This assumes 42 acres in Carpinteria rather than 200)

Land-Use Permit Applications Filed: 153

Land-Use Permits Approved: 16

Land-Use Permits Issued: 9

Land-Use Permits Appealed: 5

Business License Applications Filed: 15

Business Licenses Approved: 1

Williams first said he didn’t attend the meeting due to confusion over the timing. He then said he didn’t want to get “derailed” from the important issues that made him run for office in the first place: environmental sustainability, climate change, public safety. He stressed his willingness to meet with anyone – “I’m showing my

face all the time,” he said — just as long as they’re serious about “solving problems and finding solutions.” Too many of his critics, he worried, “are just looking to fight.”

If the debate over cannabis becomes at times poisonously personal, there’s no shortage of theories why. A spokesperson for the cannabis industry blames post-traumatic stress disorder. The Carpinteria Valley did come within a hair’s width from being wiped out during last year’s debris flow, but that doesn’t explain the hotbeds of discontent boiling over in the Santa Ynez Valley and the scenic Tepusquet Canyon outside Santa Maria.

The Psychology of Smell

Smell is a strange and powerful thing. Humans, it turns out, don’t experience smell the same way we experience the other four senses. Smell bypasses the part of the human brain that governs rational thought, where the other four senses are first processed. Instead, smell goes directly to a part of the brain governing emotions and memory. Consequently, smell wields a profound effect on mood and behavior. But because humans lack the same detailed and descriptive vocabulary where smell is concerned, it’s hard to talk about. And what can’t be put into words is hard to acknowledge.

Smell is also notoriously subjective. Different people can experience the same odors at the same location completely differently. Once experienced, a smell memory can be easily retriggered, and the brain reaction is not necessarily proportional to the stimuli. Unlike sound and light, there are no agreed-upon metrics by which units of smell can be measured and recorded.

Smell was the main topic of conversation at last Tuesday’s Carpinteria City Council meeting — smell and the county’s apparent lack of interest in it. Joan Esposito, a longtime resident and a former professional hell-raiser on behalf of kids with dyslexia, blamed cannabis odors for migraine headaches and asthma attacks. Even with the aggressive odor-control systems touted by the industry and Supervisor Williams, Esposito said, “It still stinks.” Charlotte Brownlee, representing Cate School, the elite prep school located near Lion’s Park, said there are five greenhouses located within a mile of their campus: “We continue to

suffer from noxious, persistent odors.” And another woman described how her throat started to constrict after she drove through a curtain of fumes around Padaro Lane on her way home one night.



Carpinteria Vice Mayor Al Clark (left) accused the county of treating the city residents like “guinea pigs,” and Councilmember Gregg S. Carty said: “I hope Das Williams is watching on TV. I don’t see him in the audience.”

Councilmember Al Clark, the old man of the mountain with more than 20 years seniority, said Carpinterians were being treated like “guinea pigs.” “We’re experiencing reported health complaints while we’re waiting for something to happen,” he said. That “something” was a regulatory and enforcement scheme that is supposed to address the so-called bad actors. Councilmember Gregg Carty said, “I hope Das Williams is watching on TV. I don’t see him in the audience.”

A handful of cannabis growers did show up, braving the sea of rolling eyeballs as they sought to put the industry’s best face forward. Council chair Wade Namura frequently found himself forced to remind those in attendance to be respectful. But not all 20 of those making public comments took heed. Scott Van Der Kar, a longtime avocado rancher, sarcastically noted that he hadn’t realized he was allergic to cannabis smells until Sophie Van Wingerden, a third-generation greenhouse farmer and a main player in the Carpinteria cannabis industry, walked by. Then, he said, his eyes began to water and his throat began to constrict.

Though the Carpinteria meeting was only supposed to be informational, the City Council voted unanimously to take some kind of action on June 17. Just what action remains to be seen. More letters? And if so, to whom? An official resolution? Another threatened lawsuit?

A Hot, Steaming Mess

Carpinteria and the rest of Santa Barbara County are experiencing the collective, localized whiplash inflicted when state voters attempted – three years ago – to overturn 90 years of just-say-no federal drug laws. Back in 1937, the federal government effectively outlawed cannabis by taxing it into oblivion. Then in 1970, the United States government declared marijuana a dangerous drug with no redeeming medical virtues – on par with heroin. In 1996, however, Californians, in opposition to the federal laws, voted to decriminalize pot for medicinal purposes. And then, in November 2016, the state voted overwhelmingly to legalize weed for the sheer euphoric, recreational fun of it.

Ever since, it's been a hot, steaming mess.

The unintended consequence of this initiative has been a case study in hyperactive incoherence and operational dysfunction. While California growers are reportedly producing eight times more legal product than state consumers can ingest, 380 of 540 cities and counties are refusing to allow retail outlets to open shop within their borders. No wonder the price of cannabis has been in perpetual freefall. Two years ago, the price per pound hovered above \$2,000; today, it's closer to \$500.

Some alarmed state legislators have pushed desperate remedies; one proposed bill, for example, would mandate local governments to approve one retail outlet for every six licensed liquor stores in their jurisdiction. Late last week, that bill died in committee. Meanwhile, the industry is calling for tax relief. State taxes and fees are tough enough, they say, but those exacted by cities and counties are killers. This high cost of doing business, they claim, puts the legal cannabis industry at a serious competitive disadvantage with black-market operators.



Sofia Van Wingerden (left) a third-generation greenhouse farmer, praised the industry, while Maureen Foley Claffey, who has been complaining about her neighbor's next-door cannabis grow, is now taking her case to the planning commission.

Even in Santa Barbara County, one of the few California counties to embrace cannabis, the only city to have retail outlets is Lompoc, an agricultural town once famous for flower fields but currently in the depths of fiscal despair. (Santa Barbara is on the verge of opening two retail dispensaries, and Goleta is allowing six. When these open remains a long way down the road, as are the eight that might be allowed in unincorporated Santa Barbara.) Worse is the bottleneck stopping up the supply chain because California only has a very small number of laboratories able to test if cannabis products are pesticide-free — a critical component, since the state's initiative promised it would be. To date, there is not one such lab operating in Santa Barbara County, though an application is pending in Goleta.

Most of the greenhouses in the Carpinteria Valley are not within the City of Carpinteria, which has never been cannabis-friendly. It always worried that the county, which has jurisdiction over the Carp Valley, would not provide enough protection for city residents. This might explain why, even though California law allows adults the right to grow six cannabis plants for their own personal use, Carpinteria city law requires that they be grown indoors and no retail storefront dispensaries are allowed.

Earlier on, in fact, the Carpinteria council had given serious thought to suing the county over the cannabis ordinance and had set aside funding for just such an effort. Although nothing would come of such saber-rattling, city administrators testified at public hearings and submitted reams of protesting letters. The city

has, however, indicated an openness to locating a cannabis lab and a distribution center in the industrial park section of town located on the mountain side of the freeway.

And the \$64-billion question remains, as it always has, what to do with all the cannabis cash its growers and retailers are hoping to earn. Federally insured banks are naturally gun-shy about accepting revenues generated from a federally prohibited product. To help navigate all this confusion, a new cottage industry has emerged populated by lobbyists, political consultants, \$800-an-hour attorneys, land-use agents, and commercial real estate speculators. It's enough to make anyone want to take a bath.

Big Tree in the Forest

The State of California gave counties the option of passing their own rules to regulate and tax the cannabis industry. Santa Barbara County, already home to a massive, quasi-underground medicinal cannabis business, jumped in headfirst. In a series of votes, the county supervisors opened their arms to the new incarnation of an old industry. By bringing the "gray market" operators out of the shadows and into compliance, the supervisors maintained they could create a safer, saner industry for consumers, while generating the tax revenues, as much as \$25 million a year, needed to eradicate the criminal element and black-market operators.

When the dust of legalization settles, it's all but certain Santa Barbara will be the tallest tree in the forest when it comes to cannabis cultivation. Right now, Santa Barbara has the most temporary and provisional licenses of any county in the state by far. In fact, Santa Barbara County has roughly 32 percent of all the provisional licenses California has issued.



Graham Farrar (left) one of the best faces forward for the cannabis industry, confronts a sea of rolling eyes, while Anna Carrillo, who continues to birddog the cannabis process like no one else on behalf of the Carpinteria Valley Association, is far from happy with the results.

Many of these are for greenhouses along Highway 192 that until only a few years ago were sprouting gerbera daisies for global beautification. But when that market disappeared, cannabis emerged. Today, Carpinteria Valley is home to 25 greenhouse cannabis operations.

For champions of the new industry, cannabis means, among other things, economic vitality and lots of high-paying new jobs that pay considerably better than tourist-trap wages. It means fewer big 16 wheelers rumbling through the Carpinteria Valley, laden with daisies. It means less pesticides being used, and cleaner, safer cannabis products, properly labeled for potency and strain. At the Carpinteria council meeting, Graham Farrar, a major greenhouse operator, talked wistfully about riding his bike through Goleta's lemon orchards as a kid, only to grow up and see them replaced by condos. Cannabis, he said, could save agriculture in Carpinteria from a similar fate.

But there's a hitch. Greenhouses are hot inside, and hot air rises. As that happens, the rich, ripe aromas blooming inside these cannabis plantations escape out rooftop vents and fan out everywhere the winds blow.

Getting it Right

Since 2018, Carpinteria residents have filed 166 complaints with various county officials about the intrusions by cannabis odors. Given how unclear it's been which government agency was responsible for processing such complaints, that number does not reflect the magnitude of the problem. The real question now is: Has it gotten better or worse, and how effective is the technology to neutralize fugitive smells before they can escape?

In Carpinteria, the possibility of odor control appears to be technically feasible. Many greenhouses there have been fitted with an expensive odor-neutralization system created by Byers Scientific out of Bloomington. It shoots vapors infused with essential oils 10 feet above the greenhouse roof lines at speeds of 106 miles per hour and costs about \$150,000 to install and about \$15,000 a month to operate. However, the precise number of greenhouses fitted with odor-control systems is hard to come by. The City of Carpinteria says it doesn't know how many of the 25 greenhouses now operating have odor-control systems installed. The county says there are 33 greenhouses with applications; of those, they claim 15 are currently under cultivation and 14 have odor-control systems. Mark Byer of Byers Scientific claims he has 95 percent of Carpinteria's market of odor-control systems.

**The new odor-control system
doesn't mask the smell but
instead changes the fundamental
chemistry into something that
human brains don't register as
smell.**

According to company chief Marc Byers, these vapors "surf" the same air currents occupied by the odor-producing terpenes associated with cannabis. It doesn't mask the smell, Byers stated; it changes the fundamental chemistry, creating new compounds that the human brain doesn't register as smell. Byers estimated that when his systems first went in, they reduced odor problems by

about 80 percent. Since then, he noted, the number of operations and the number of plants have increased, so existing systems will need to be reconfigured. Byers said he's recently hired a "dream team" of experts to conduct the most comprehensive study of Carpinteria's odor issues ever undertaken. Nothing, he stressed, will make the problem go away 100 percent. Smell being so subjective and some residents being so sensitive, he said, some people will smell things that aren't even there.

Industry representatives insist that these high-end odor-control systems are already making a big difference. To critics who insist the county's typical process was short-circuited to benefit the new industry at the public's expense, growers point to the lengthy collaborative public process that resulted in the county's cannabis ordinance. Bad actors had been targeted in numerous law enforcement and eradication raids — 30 to date, involving the destruction of 850,000 plants — which, they stressed, were paid for with funds generated by the new industry. Santa Barbara's regulatory straitjacket, they insisted, was the tightest of any county in the state. If county government was so in the thrall of the new industry, they asked, why has only one cannabis grower been able to obtain the two required licenses? Anecdotally, reports of the smell remain all over the map. Tracking them down is akin to hunting ghosts. Independent intern Skyler DePaoli, who attended an open house held at the Ever-Bloom greenhouse, said the stretch of road up Cravens Road toward Foothill Road "reeked" of cannabis. But at the greenhouse itself, she said, there was precious little smell. Reports of odor infestations near and around Carpinteria High School — which has long been a target for anti-cannabis outrage — have not evaporated but seem significantly fewer and further in between. John Stineman, who lives within 500 feet of Ever-Bloom, said that for months the greenhouse infused the community with strong, skunk-like odors. Since the odor-control systems have been installed, he said, they've been replaced by a more subtle smell reminiscent of burnt leaves.

Into the Great Wide Open

Controlling odors in greenhouses is one thing. But how can odors emitting from a 70-acre cannabis field be contained? It's a question grape growers and vintners in North County are asking. Leading the charge for the new coalition is Blair Pence, a former developer from Bakersfield who has reincarnated himself as a Santa Ynez vintner on Highway 246. Pence — who grows 50 acres of grapes on his 200-acre ranch — claims he's now all but totally hemmed in by three nearby

grows, ranging in size from 40 to 70 acres. His wife suffers constant headaches from the smell, and they've had to move. Though he hasn't suffered any consequences himself, he smells it all the time, and some of his workers are having problems. Now his tasting room has been compromised by the ambient odors. Since there's no way to install an odor-control system on a 50-acre field, Pence said, he's begun filing administrative challenges and appeals against neighbors who've converted over to cannabis. Beginning this week, the county's Planning Commission will begin hearing these appeals.

The front line of attack for Pence and other critics is that they believe many cannabis operators falsely claimed they had been raising cannabis medicinally before January 2016 and thus, under county regulations, are entitled to certain legal privileges not afforded cannabis growers who applied after that time. When supervisors adopted this plan, the only thing required of these medicinal growers was to sign a one-page affidavit claiming they were cultivating prior to 2016. (Santa Cruz County, by contrast, requires an eight-page affidavit.)



Cannabis

Photo: Paul Wellman

County administrators decided it would take too much time and resources to verify these affidavits, so planners rely on the county sheriff and the District Attorney's Office to do so. To date, the District Attorney has filed six criminal perjury charges against operators who made false claims on their affidavits. Pence and his posse plan to challenge the validity of land-use permits issued to many other cannabis growers.

At the planning commission, this will be a huge, complicated mess.

It is this legal loophole that has many cannabis critics most enraged, even more than the odors or PTSD. They have been told time and time again by Supervisor Williams to have patience in the process. Bad apples will be winnowed out. Growers who make it through will have to comply with the county's strict rules regarding odor control. Those who fail to comply will be shut down. But all this takes more and more time. But many residents are smelling the cannabis now.

In Carpinteria, the clock is ticking for the cannabis growers now applying for their permits. Only 186 acres of cultivation are allowed there, and that ceiling will soon be breached. Delays of the kind Blair Pence intends could prove fatal. On the table are various legislative fixes for cannabis growers. But the political quid pro quo could well be a temporary moratorium on new applications. It's not certain who has the votes to get what. To effectively navigate these waters, Supervisor Williams will need to rely less on his chin and more on his nose.

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The New York Times

'Dead Skunk' Stench From Marijuana Farms Outrages Californians

By [Thomas Fuller](#)

Dec. 19, 2018

CARPINTERIA, Calif. — They call it fresh skunk, the odor cloud or sometimes just the stink.

Mike Wondolowski often finds himself in the middle of it. He may be on the chaise longue on his patio, at his computer in the house, or tending to his orange and lemon trees in the garden when the powerful, nauseating stench descends on him.

Mr. Wondolowski lives a half-mile away from greenhouses that were originally built to grow daisies and chrysanthemums but now house thousands of marijuana plants, part of a booming — and pungent — business seeking to cash in on recreational cannabis, which has been legal in California since January.

"If someone is saying, 'Is it really that bad?' I'll go find a bunch of skunks and every evening I'll put them outside your window," Mr. Wondolowski said. "It's just brutal."

When Californians voted to legalize recreational marijuana in 2016, there were debates about driving under the influence and keeping it away from children. But lawmakers did not anticipate the uproar that would be generated by the funk of millions of flowering cannabis plants.

As a result of the stench, residents in Sonoma County, north of San Francisco, are suing to ban cannabis operations from their neighborhoods. Mendocino County, farther north, recently created zones banning cannabis cultivation — the sheriff's deputy there says the stink is the No. 1 complaint.



Cannabis buds on plants at New Family Farm in Sebastopol, Calif.
Jim Wilson/The New York Times

In Santa Barbara County, cannabis growers confronting the rage of neighbors are spending hundreds of thousands of dollars installing odor-control systems that were designed for garbage dumps.

The smell from commercial cannabis farms, which brings to mind a mixture of rotting lemons and sulfur, is nothing like the wafting cloud that might hover over a Phish show, pot farm detractors say.

"It's as if a skunk, or multiple skunks in a family, were living under our house," said Grace Guthrie, whose home sits on the site of a former apple orchard outside the town of Sebastopol. Her neighbors grow pot commercially. "It doesn't dissipate," Ms. Guthrie said. "It's beyond anything you would imagine."

When cannabis odors are at their peak, she and her husband, Robert, sometimes wear respirators, the kind one might put on to handle dangerous chemicals. During Labor Day weekend, relatives came to stay at the house, but cut short their visit because they couldn't stand the smell.

"I can't be outside more than 30 minutes," Mr. Guthrie said of peak odor times, when the cannabis buds are flowering and the wind sweeps the smell onto his property. "The windows are constantly closed. We are trapped inside. There's no escape."



Britt Christiansen and her neighbors in Sonoma County banded together and sued the operators of a local pot business over the smell. Jim Wilson/The New York Times

After nearly one year of recreational sales in California, much of the cannabis industry remains underground. Stung by taxes and voluminous paperwork, only around 5 percent of marijuana farmers in the state have licenses, according to Hezekiah Allen, the executive director of the California Growers Association, a marijuana advocacy group. Sales of legal cannabis are expected to exceed \$3 billion this year, only slightly higher than medical marijuana sales from last year. Tax revenues have been lower than expected, and only about one-fifth of California cities allow sales of recreational cannabis. The dream of a fully regulated market seems years off.

The ballot measure legalizing recreational marijuana passed in 2016 with a comfortable majority of 57 percent. Many of those complaining about cannabis odors say they were among those who supported it. They just don't want it stinking up their property, they say.

"Just because you like bacon doesn't mean you want to live next to a pig farm," said Lynda Hopkins, a member of the Sonoma County Board of Supervisors, whose office has been inundated with complaints about the smell.

The odor question is also roiling local politics.

Marijuana businesses in Carpinteria recently donated \$28,000 worth of lab equipment to Carpinteria High School, according to Philip Greene, the chief of operations for Ever-Bloom, a cannabis producer that helped coordinate the donation. The high school is flanked by cannabis greenhouses that have sent odors wafting in. In the past two years, students have complained of headaches, parents have grown angry and the high school has had to warn visiting sports teams that they might encounter the odor.

The donation has not yet been made public, but is seen by some as an effort to offset the damage done by the stench. In an interview, Maureen Foley Claffey, a member of the Carpinteria School Board, said it would send a "confusing and problematic" message to students to accept it. Ms. Claffey lashed out at the superintendent, Diana Rigby, for soliciting donations from the cannabis industry at a time when members of the community are battling the stink.

U.S.



The New York Times
A Nasal Ranger, a device that measures the odors in the air. It is in use in Colorado, the first state to legalize recreational marijuana.
Dave Kolpack/Associated Press

“Are we that desperate for cash that we are willing to take it from anyone without regard to the source and the message?” she said. “I guess money talks.”

Ms. Rigby, the superintendent, did not return phone calls or email requesting comment.

In Sonoma County, hearings on cannabis ordinances at the board of supervisors overflow with representatives from the cannabis industry, who wear green, and angry residents, who wear red.

Of the more than 730 complaints Sonoma County has received about cannabis this year, around 65 percent are related to odor, according to Tim Ricard, the county’s cannabis program manager.

“There’s been a tremendous amount of tension in the community,” said Ms. Hopkins, the Sonoma supervisor. “If I had to name an ice-cream flavor for cannabis implementation it would definitely be rocky road.”

Cannabis executives recognize that pot grows can be odorous, but say their industry is no different from others that produce smells.

Dennis Hunter, right, a co-founder of CannaCraft, a marijuana business in Santa Rosa in Sonoma County, watching Matt Kulczycki filling a mold with cannabis-infused dark chocolate. Jim Wilson/The New York Times

“You have a smell issue that sometimes can’t be completely mitigated,” said Dennis Hunter, a co-founder of CannaCraft, a large marijuana business based in Santa Rosa in Sonoma County. “But we have dairy farms here in the area or crush season for the vineyards — there’s agricultural crops, and a lot of them have smells.”

Britt Christiansen, a registered nurse who lives among the dairy farms of Sonoma County, acknowledges that her neighborhood smells of manure, known locally as the Sonoma aroma.

But she says she made the choice to live next to a dairy farm and prefers that smell to the odor that drifted over from the

marijuana farm next door to her house.

The New York Times

"We opened the door and the smell kicked us in the face," Ms. Christiansen said. Her neighbors banded together in October and sued the operators of the pot business; the case is ongoing.

One problem for local governments trying to legislate cannabis odors is that there is no objective standard for smells. A company in Minnesota, St. Croix Sensory, has developed a device called the Nasal Ranger, which looks like a cross between a hair dryer and a radar gun. Users place the instrument on their nose and turn a filter dial to rate the potency on a numerical scale. Charles McGinley, the inventor of the device, says a Level 7 is the equivalent of "sniffing someone's armpit without the deodorant — or maybe someone's feet — a nuisance certainly."

Lawmakers did not anticipate the uproar that would be generated by the funk of millions of flowering cannabis plants. Jim Wilson/The New York Times

A Level 4, he said, is the equivalent of a neighbor's freshly cut grass. "It could still be a nuisance, but it wouldn't drive you away from your front porch," Mr. McGinley said.

Standing next to a flowering cannabis bud, the smell would easily be a Level 7, Mr. McGinley said.

The Nasal Ranger is in use in Colorado, the first state to legalize recreational marijuana, but California counties and cities are still struggling with the notion that smells are subjective.

Ever-Bloom in Carpinteria is one of a number of marijuana businesses that have invested hundreds of thousands of dollars to mitigate the stink. Two previous systems failed, but the current one, modeled on devices used to mask the smell of garbage dumps, sprays a curtain of vapor around the perimeter of the greenhouses. The vapor, which is made up of essential oils, gives off a menthol smell resembling Bengay.

Dennis Bozanich, a Santa Barbara County official charged with cannabis implementation who has become known as the cannabis czar, says the essential oil odor control has been largely successful. But not every grower can afford to install it.

On weekends, Mr. Bozanich becomes a cannabis odor sleuth, riding his bicycle through Carpinteria sniffing the air for pot plants. He recently drove through the area with a reporter, rolling down the windows on a stretch of road with cannabis greenhouses. He slowed the car and puzzled over where a cannabis odor was coming from.

"I've got one stinky location right here and I can't quite figure it out," he said.

His description of the stink?

"Dead skunk."

A version of this article appears in print on Dec. 21, 2018, Section A, Page 13 of the New York edition with the headline: Lucrative and Legal, But, Whew, It Stinks To High Heaven

U.S.

The New York Times

READ 342 COMMENTS

Tanya Saltzman

From: Tanya Saltzman
Sent: Wednesday, July 10, 2019 10:44 AM
To: _CDD Planning Division; CodeEnforcement
Subject: OLCC Listening Session
Attachments: OLCC Listening Session - SB 218.pdf

All,

Please see the attached handout from yesterday's OLCC listening session for details on SB 218, which establishes a temporary producer moratorium. As noted in our planning meeting, timeframes and further details will hopefully emerge in the future with respect to applications in the pipeline.

Other items of note:

- 4,219 applications statewide thus far
- 2,197 active licenses
- Approximately 150 license surrenders thus far statewide
- OLCC now has increased penalty authority (from \$5,000 to \$10,000)
- Most common violations are camera violations; OLCC acknowledged some initial technology problems but say they've improved

Inspections

- Aiming for more targeted activity based on data patterns rather than random inspections
- Pre-inspection occurs before license is issued once an investigator is assigned
- Growers are required to notify OLCC when they are harvesting, which may inform inspections (not sure if this is applicable to indoor grows as well)
- Inspections are unannounced and it is a violation if the applicant does not allow the inspection
- Some sites might have one visit in a year and some may have twelve; it all depends on the data from complaints, seed-to-sale tracking, renewals, reporting, etc. For instance, if OLCC sees that the amount of product being reported as destroyed seems suspicious, they may perform additional inspections and/or request camera data. Every site does not necessarily have an inspection every single year.
- Emphasized good relationship with both law and code enforcement in Deschutes County
- Trying to improve inter-agency coordination, for instance with ODA for hemp; documentation of presence of hemp seems to be on a case-by-case basis as they encounter it but generally it is outside their purview.

Canopy

- OLCC has stringent mapping requirements for canopy dimensions as well as for camera locations and other site details
 - Emphasized the strictness of the mapping requirements; OLCC will not perform a pre-inspection until they are satisfied with the map and will work with applicants to finalize
- Applicants can have up to 20 separate canopy areas
- Required to be quadrilateral (but they have seen some creative shapes)
- Inspectors rely on these maps for their inspections

That's about it (Nick, feel free to add anything I may have missed). Please feel free to reach out with any questions, and we will keep you all in the loop with any new developments.

Thanks,
Tanya



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Producer Moratorium (SB 218)

The producer moratorium (SB 218) was signed by the Governor on June 17, 2019 and allows the OLCC to establish a temporary moratorium on recreational marijuana producer licenses until January 2, 2022.

- Only affects PRODUCER applicants
- Does NOT affect other license types
- Does NOT affect current licensees
- Does NOT affect renewals, change of ownership or change of location for current producer licensees

Producer applications received before June 15th 2018 that include an approved Land Use Compatibility Statement (LUCS):

- Transfer of producer applications to new locations will NOT be allowed after June 17, 2019
- Producer applicants will NOT be allowed to transfer ownership of the application after June 17, 2019
 - OLCC will use the same standard defining a change of ownership of a license in this context (currently 51% or more)
- *Changes submitted prior to June 17, 2019 will be accepted*
- OLCC is required by law to set timelines in rule for processing applications

Producer applications received before June 15th 2018 without an approved LUCS:

- Applicants had until July 8, 2019 to submit an approved LUCS and be placed in the assignment queue
- The agency is required to inactivate applications that do not meet this timeframe

Producer applications received after June 15th 2018:

- The agency is required to inactivate producer applications received after June 15, 2018

Rulemaking for the producer moratorium will be made by emergency rule in August of 2019

DALKITA ARCHITECTURE & CONSTRUCTION

July 10, 2019

Memorandum

RE: The economic and technological feasibility of Deschutes County's marijuana land use regulations regarding odor control as adopted by Ordinance No. 2018-012

Background / Qualifications

After receiving my BSME from MIT in 1984 I have pursued a career in mechanical engineering focused on designing and managing the construction of commercial and industrial HVAC systems. Most of my employment has been as an in-house engineer for mechanical or electrical contractors so I am very conscious of system costs and finding reliable solutions for clients.

I have been lucky enough to work on numerous food and beverage projects, paper mill, lumber mill, metal forge, and now indoor marijuana industrial ventilation projects. Prior to the advent of the legal marijuana industry my experiences with odor control have been primarily troubleshooting poorly designed systems that needed remedies. Those cases are usually poorly placed grease exhaust, generator exhaust, gas burner vents and plumbing stack vents. Indoor food courts tend to get some nasty odors when mechanical or plumbing systems back up or fail altogether. In all cases except one (grease exhaust needed a scrubber to reduce odor due to discharge proximity to neighbors) the corrective actions were to properly locate the noxious discharges and/or to consistently repair and maintain the mechanical systems already in place.

Recently I have worked on medical and retail marijuana sales outlets as well as grow facilities. They have all used at least carbon filters on all exhaust fans and one used a liquid absorption refrigeration / dehumidification system that chemically removed odors from recirculated air only. None of them were in locations where there were rigorous odor control regulations but all but one had jurisdictional guidelines that required us to design HVAC systems to mitigate marijuana odors. Those were two retail outlets and some small indoor grow facilities (3,000, 5,000 and 10,000 square feet).

A recent grow facility was a 16,000 square foot greenhouse with another 6,000 square feet of warehouse, processing, employee and office spaces. The client's operating license was contingent in part on maintaining a lack of marijuana odors at the neighbor's property. The definition of what that meant was non-existent so we designed in two systems to address the odor discharges, with a third system that could be easily added if we ran into trouble. We considered additional chemical and mechanical systems before deciding on chemically enhanced carbon filters and photo catalytic oxidizers at each exhaust fan, with the back-up option to directly introduce ozone in the grow areas near the exhaust inlets. For cost reasons we chose not to use scrubbers, essential oil sprays that cancel specific odors or to build extended exhaust ducts well above the roof line to enhance dilution.

By the time the whole facility was in full production it was easy to smell odors outside the building so the third measure was added after a complaint was filed and the odors have been mitigated noticeably. We have improved on the air balance and reduced the amount of outside air and exhaust that is

used. One day I got a call because the third tier system (ozone generators) had already failed in one greenhouse. It turned out to be just a fuse and no other fuses have blown since.

Recently the jurisdiction has adopted the use of the Nasal Ranger sniffer device and they came by the facility, took some readings and exonerated the client and closed out the complaint. Unfortunately the client's crops were going through a fungal issue and were immature or non-existent in most rooms so very little odor was being produced when the jurisdiction took their readings. So we expect when the building gets filled with healthy, mature crops again we may get another complaint filed

Problem Statement - How effective can the existing regulations be expected to be and how might they be augmented to reduce complaints, excessive county costs, and litigation of law suits?

Currently the regulations and the technologies for odor measurement are in a similar pickle: they both are quite subjective. Consensus within the industry as to how best to measure odor problems does not exist but the use of the Nasal Ranger is growing rapidly. Although the Nasal Ranger relies on good science to concentrate odors, the positive or negative decision is based on the users training and nasal memory (consistency), which cannot entirely remove subjectivity.

One interesting ordinance (Spokane, WA) simply uses a rather subjective 6 part scale that relies on judgement and the ability to pick from one of six relative conditions to place the case on a spectrum, rather than the more common positive or negative reading. It remains to be seen if that simplicity can keep most investigations brief and out of court. It may make sense as part of a tiered set of tools that the jurisdiction can use to try and reduce overall county management costs.

I believe that propagating good solid knowledge on how to control odors, requiring that building plans show detailed odor control measures that meet accepted design standards, ensuring that equipment inspections, Test & Balance reports and commissioning processes are accurately and thoroughly completed, and finally, requiring a preventative maintenance plan be documented, implemented, and the periodic tasks logged for potential use in a complaint case will be an important resource and tool going forward. If all of these steps are taken, and the entire construction community can be cajoled into believing in the system, I am certain that the number of complaints will decline significantly. Furthermore, many if not most of the complaints that still arise will be resolved by reviewing the required steps and finding that some item has fallen through the cracks.

The use of the Nasal Ranger or similar tool, by a team of trained specialists may be a good first assessment, if fairly detailed guidelines are followed, such as: making sure the product is in full production when measured; working with the client to determine if there is a time of day that is worse due to some automated HVAC cycle; and returning several times during a short window to get consistent readings. One jurisdiction requires that the specialists return 4 times in a 48 hour period and must detect unacceptable odors all four times to sustain a complaint.

The intent of the code is important for the harmonious side by side living of growers and non-growers alike in beautiful Deschutes County, that is, to prevent problematic odors from frequenting neighboring properties. But the need for the code to not cause undue financial stress on big and small businesses that borders on eliminating profitability of the business is important as well. It is likely

that providing best practice guidelines and requiring evidence of them being followed will do a lot to reduce complaints such that County management costs will be reduced.

Each grow facility is unique and depending on how much outside air is used and how successful the client is at producing premium product, the measures needed may vary from simple carbon filters to the entire suite of odor controlling design options. Once a consistent, minimum level of attention is paid to odor control it is likely that the problem sites will be the ones that are particularly successful at producing smelly product. These clients are likely doing quite well and can afford more odor remediation

The existing regulations and the proposed changes found in Exhibit C to Ordinance No. 2018-012 Section 18.116.330.A.9 regarding odor control all make sense and appear to be enforceable. Sub section 9.A.IV regarding contingency plans is particularly important because it gives the engineer and builder the opportunity to plan and budget for 1, 2 or more odor control technologies as needed if the first steps are not sufficient. However the Ordinance may still benefit from further augmentation:

- 1) By providing a list of known odor mitigation systems that the engineer can prescriptively apply in lieu of providing a “detailed analysis of the methodology”, the engineers could be more cost effective if they can apply prescriptive, approved techniques that don’t require a lot of analysis time and custom report writing.
- 2) Due to the subjective nature of the current code regulations and odor measuring technologies I suggest that any difficult case that is seemingly unresolvable have a mechanism to allow it to proceed to a jury whereby a number of unrelated, briefly trained, yet unavoidably subjective parties will have to concur that a problem exists and does or does not constitute a violation of the intent of the code.
- 3) Consideration of the use of the Nasal Ranger for an intermediate step to avoid a jury after all prescriptive or engineered odor control efforts have been installed, tested and maintained properly should be given.

Peter LeMessurier

DALKITA ARCHITECTURE & CONSTRUCTION

July 15, 2019

Memorandum

RE: The economic and technological feasibility of Deschutes County's marijuana land use regulations regarding sound control as adopted by Ordinance No. 2018-012

Background / Qualifications

After receiving my BSME from MIT in 1984 I have pursued a career in mechanical engineering focused on designing and managing the construction of commercial and industrial HVAC systems. Most of my employment has been as an in-house engineer for mechanical or electrical contractors so I am very conscious of system costs and finding reliable solutions for clients.

I have been lucky enough to work on numerous food and beverage projects, paper mill, lumber mill, metal forge, and now indoor marijuana industrial ventilation projects. Noise has rarely been a design or a troubleshooting problem. Generators and high pressure steam discharges are often installed without enough attention to noise control and fan bearings, or motor mount problems are common. Plenty of duct systems are built without designing out unacceptable noise.

Many years ago I used software to model the sound attenuation in my duct systems but learning what is important in mechanical systems to keep them quiet has proven to be sufficient. I detail unusual duct fittings, specify sound attenuating devices when needed and intentionally pick slightly larger fans (they run slower and quieter for the same duty as smaller fans) than needed whenever noise could be an issue. Good design and common sense has kept me out of any noise disputes for 35 years.

Recently I have worked on medical and retail marijuana sales outlets as well as grow facilities. We have not had any noise issues. As part of this work for Deschutes County I have found that a majority of noise complaints in this industry revolve around generators. Generators can be selected with varying levels of sound attenuation. It cost's real money but depending on the need they can be quieted plenty. If it can be done outdoors right beside a 5 star hotel, we can handle it on a marijuana grow project.

Some generators will run continuously and may require a lower continuous noise limitation in the daytime hours as well in order not to be a public nuisance.

Problem Statement - How effective can the existing regulations be expected to be and how might they be augmented to reduce complaints, excessive county costs, and litigation of law suits?

The existing regulations and the proposed changes found in Exhibit C to Ordinance No. 2018-012 Section 18.116.330.A.10 regarding sound control are all solid appear to be enforceable. Sub section 10.A.I regarding aggregate duration of sustained sound above the limit is well written. Time may tell that the duration limit may need to be adjusted but 5 minutes seem sufficient to start with.

Some items to consider that might help the county reduce complaints include:

- 1) It is important to propagate good solid knowledge on how to control sound, requiring that building plans show detailed sound control measures that meet accepted design standards, ensuring that equipment inspections, Test & Balance reports and commissioning processes are accurately and thoroughly completed, and finally, requiring a preventative maintenance plan be documented, implemented, and the periodic tasks logged for potential use in a complaint case. If all of these steps are taken, I am certain that the number of complaints will decline significantly. Furthermore, many if not most of the complaints that still arise will be resolved by reviewing the required steps and finding that some item has fallen through the cracks.
- 2) Requiring the full definition of commissioning were the CX agent works with the design team early to ensure that important design strategies are used (where noise is a concern many vibration isolation systems can be upgraded and good duct design strategies and smart equipment selections can be selected for low noise levels.
- 3) The 45 dB(A) limit from 10 pm to 7 am is workable and mechanical systems can be designed to achieve that for the well maintained life of the equipment, without undue expense. It may be just low enough that complaints from builders and designers don't subside much but it is far more workable than the existing 35 dB(A) limit. Over time we may learn that 50 dB (A) or even 55 may be the middle ground that makes the most parties happy but I agree with 45 unless and until that happens.
- 4) Regarding ambient noise levels, it is OK to allow ambient noise as part of the measurement if the owners have the ability to document (and record) pre-existing noise levels that may be a problem if and when the owner gets a complaint. And when new construction next door comes in after a grow facility, there might need to be a mechanism to allow owners to add that new sound data to the record (might need to shut off grow facility for a short period to measure new sounds from across the property line. Noise levels would need to be measured at each individual octave so that the components of any new or existing noises can be identified in the measured total dB (A).

Peter LeMessurier

DALKITA ARCHITECTURE & CONSTRUCTION

July 15, 2019

Memorandum

RE: Recommended Best Practices for Odor Mitigation at Indoor Marijuana Grow Facilities

Some facilities will require multiple tiers of odor control while others work fine with simple carbon filters. We strongly recommend use of special activated carbon filters for any facility that has jurisdictional requirements concerning odor control.

Depending on the intensity of the marijuana production, two or three odor control technologies may be required to achieve desired results. It makes sense to install at least one system and plan for an added system in the future in case the first effort(s) are not sufficient.

All-in installation costs for these kinds of systems, including equipment, labor, taxes, shipping, warranty and miscellaneous installation materials usually amount to 2.5 to 3.5 times the equipment costs.

In order of relative cost from least costly to most, for equipment purchase costs only for grow areas, based on recent purchases (last 12 months):

Standard Carbon Filters < \$1.00/sf

We recommend MERV 8 pre-filters or better ahead of carbon filters. Face velocities should be low (250 to 300 FPM) if possible, to give the carbon filter more time to absorb VOC's from the exhaust air stream. Depending on crop intensity the carbon filters need to be changed anywhere from every 6 weeks to every 26 weeks.

Virgin Activated Carbon Filters ~ \$1.25/sf

Enhanced carbon filters can be purchased with different levels of virgin activated carbon fill. If a lower fill percentage can do the job, less power is needed to push air through these units. The air pressure filter drop can be quite high when the 100% fill options are used. Care must be taken to design into the exhaust fan static pressure capability the ability to overcome filter pressure drops from multiple filter systems. The use of electrically commutated motors (ECM's) with manual or PC driven variable speed control for the exhaust fans makes balancing easy at start-up and in the future when changes are made to the filters

Photo Catalytic Oxidizers (PCO) ~ \$1.00/sf

PCO systems use UV light to create photons that are then catalyzed to form hydroxyl radicals, that breakdown hydrocarbons. The systems require cut-out switches so nobody gets zapped by UV rays when inspecting the unit. The materials of construction must be considered so that long term UV damage does not degrade the system. Our experience suggests that the efficacy of the odor control is inversely proportional to the PCO filter face velocity.

Low intensity ozone generators

> \$1/sf

Ozone destroys VOC's and mold spores in the air. These units can be free hung in the space near exhaust outlets, they can be inserted in duct systems. With multiple staged elements installed over time, the necessary ozone intensity can be determined.

Concentrated Ozone Generators

~ \$3.00/sf

These units can distribute ozone to the space near exhaust outlets or they can be inserted in duct systems. With variable delivery rates, the necessary ozone intensity can be determined. For concentrated ozone applications like this, the duct materials resistance to ozone driven oxidation should be considered.

The use of essential oils selected to cancel cannabis odors sprayed into the exhaust airstream was investigated and priced (equipment costs about \$1.00/sf) but we have not found any satisfied customers and would need to do more research before we would recommend this system.

In addition it is possible to construct exhaust stack extensions to create exhaust air dwell time and increase the efficacy of essential oils and ozone systems and to enhance dilution mixing of the exhaust above the roof. Including design and installation costs this will likely cost between \$1.50 and \$2.00 per square foot of the area served.

Airflow Issues – (Minimum) – cannabis growers will nearly all want to elevate CO2 and reduce use of outside air to an absolute minimum. Odor control is less costly if less air is exhausted.

This makes self – contained de-odorizers (HEPA & carbon combination, or small amounts of ozone) that only re-circulate air within the space a good way to tackle part of the odor problems. Large amounts of ozone in the space can have deleterious effects on the plants so these systems should be used only on exhaust air streams. Re-circulated PCO systems designed to use up or destroy the hydroxyl radicals inside the unit can be used distributed around the facility without duct work or installation expense.

Peter LeMessurier

Zechariah Heck

From: Donna Griggs <donnagriggs64@gmail.com>
Sent: Friday, July 19, 2019 3:12 PM
To: Tanya Saltzman
Subject: OPT OUT

Hello Tanya,

Thank you for being willing to consider OPT OUT.

I respectfully request you note that I strongly support Deschutes County "opting out" which includes banning new cannabis companies from locating within the Mixed Use Agriculture zone, increasing separation distances between marijuana businesses and tighter rules with regard to odor-mitigation.

I hope you see the wisdom in this.

Sincerely,
Donna Griggs

Zechariah Heck

From: Pamela Lovegren <pklovegren@gmail.com>
Sent: Friday, July 19, 2019 11:40 AM
To: Tanya Saltzman
Subject: OPT OUT

Good Morning Tanya,

Thank you for being willing to consider OPT OUT. I respectfully request you note that I strongly support Deschutes County opting out which includes banning new cannabis companies from locating within the Mixed Use Agriculture zone, increasing separation distances between marijuana businesses and tighter rules with regard to odor-mitigation. I hope you see the wisdom in this and do the same.

Sincerely,
Pamela Lovegren

19650 Blue Sky Lane
Bend, OR 97702
541-977-0011
pklovegren@gmail.com

God's peace is joy resting...
His joy is peace dancing!

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Zechariah Heck

From: monika@rescueresponse.com
Sent: Friday, July 19, 2019 9:53 AM
To: Tanya Saltzman
Subject: Opting out of Marijuana

Importance: High

Hi Tanya,

Thank you for serving in our amazing Deschutes County! I have been a resident here for 24 years, what an incredible place to live, work, raise a family and explore the outdoors all year round!

Most of this time, we have lived in Sisters, but for 3 years, we had the privilege of living in rural Deschutes County in the FAR East of Bend! We were surrounded by 20 acre parcels and had 3 acres of land, where we lived and also operated our small internet based business.

Upon settling in, I baked some cookies and walked over to my neighbors on all sides to introduce myself and exchange phone numbers. It's how I roll and part of being a good neighbor, right?

We found we were surrounded by great families, except for the vacant 20 acres south of us, which we later found out had never had a dwelling or family residing there...

This property changed hands three times, during those 3 years and the last one seemed like they would be a family as well. However, it would soon become the first application for a HUGE marijuana grow in the midst of 30 families who resided all around (there's a subdivision south of this property). Those of us within a short distance were thankfully notified by mail....

Since, I had relationship with my neighbors, I reached out to them and they reached out to additional neighbors. We learned we could appeal the application and I believe we were the first neighborhood in our county to do so. We met together weekly at our home and ended up hiring an incredible land use attorney, who ironically had grown up in the neighborhood!

Miraculously, by the grace of God, the application for this massive grow was denied and our neighborhood was saved from the odor, traffic (dangerous intersection), crime etc etc!! We all remain friends, neighbors and so extremely grateful to our county and wonderful commissioners!

Since we have been so blessed, word got out and I've had residents from Tumalo, Alfalfa, Sisters, Redmond, Bend and Three Rivers reach out to me personally for help in battling for their neighborhoods. This joint effort was the spearhead for "Preserve Deschutes County" as a way of communicating and educating others in our county who otherwise would have no idea of how these grow operations have impacted even our precious resource of water! Wells have gone dry in Alfalfa and Tumalo where there are clusters of grow operations.

It's my understanding that our county and commissioners are considering opting out of growing marijuana! Looking at other counties and states as an example of the horrific changes, crimes such as diverting out of state, non-compliance etc our county does not NEED or want this. Please trust that I have heard from a multitude of concerned residents, as well as those afraid to move out to rural areas, which was once a dream for their families.

Thank you for listening and considering my perspective! We appreciate you!

Sincerely,
Monika Piatt

Zechariah Heck

From: Dale Clark <daleclark.bend@gmail.com>
Sent: Friday, July 19, 2019 9:17 AM
To: Tanya Saltzman
Cc: Tony DeBone; Phil Henderson; Patti Adair; Nick Lelack
Subject: Deschutes County Ordinance No. 2019-012 PUBLIC TESTIMONY

To Country Commissioners,

As a resident of the Tumalo area, I ask that you please opt-out of future marijuana operations in Deschutes County and support the current proposals.

Thank you for listening carefully to all the input you've received and trying to do what's best for the residents of Deschutes County.

Dale Clark
Tyler Road

Zechariah Heck

From: Ruth Barrios <rvankrier@gmail.com>
Sent: Friday, July 19, 2019 8:04 AM
To: Tanya Saltzman

[EXTERNAL EMAIL]

Dear Tanya, I appreciate that we still have a voice. I'm speaking out against having any growers. I work at a High school and I see how they are being affected. There isn't enough regulations to prevent minors from getting the merchandise. Not to mention the stench that comes from these factories.

Sincerely,

Ruth

Zechariah Heck

From: wayne <hhhranchn@aol.com>
Sent: Friday, July 19, 2019 7:55 AM
To: Tanya Saltzman
Subject: Cannabis grow operations in Deschutes County

Dear County Commissioners and Planning Staff

I reside in a residential rural area outside of Tumalo. The parcels are mainly 5 to 10 acres in size and not capable of supporting a full time large crop producing operation. These parcels are mostly limited to hobby farmers and horse enthusiast. Most of us that live here are simply trying to enjoy the rural life style the area is known for.

This peaceful and tranquil area is now being disrupted in a serious way by cannabis grow operations. These activities are not farming. They generate belligerent and antagonistic encounters from cannabis growers toward neighbors that live close to these operations and has a threatening effect to anyone that innocently happens to venture close to these locations.

These growers may portray their best behavior when meeting with the County Commission but show a very different side of themselves out here. Law enforcement seem to have their "hands tied" when it comes to helping the residents that are experiencing these abuses and the growers seem to believe that they can hide behind county regulations and behave anyway they choose to non growers. In many cases is pure intimidation.

I firmly believe that the best way to end this negative affect on law abiding residents is to OPT OUT of the current practice of allowing cannabis grow operation to exist in residential rural communities. To not do this will allow the problem to continue to get worse and result in the beautiful area we live in to become very inhospitable to many very good people.

Due to the conditions I have just described, I would like to remain anonymous.

Thank you for your consideration.

Zechariah Heck

From: Nick Lelack
Sent: Friday, July 19, 2019 7:02 AM
To: Zechariah Heck
Subject: Fwd: Nick, Please, Please Opt out of the Marijuana development program!

Nick Lelack, AICP
Deschutes County Community Development Director
(541) 639-5585

Begin forwarded message:

From: Marcy Monte <marcylmonte@gmail.com>
Date: July 19, 2019 at 6:52:36 AM PDT
To: nick.lelack@deschutes.org
Subject: Nick, Please, Please Opt out of the Marijuana development program!

[EXTERNAL EMAIL]

My initial concern is for kids here in Bend as I have been a teacher for 31 years and have seen enough Pot in their lives to be sad. Pot makes kids dumb....
My other concern is for our water. Already with the growth in Bend we see one of our water sources being heavily used-Tumalo Creek. Even today the creek is lower and the water it takes to grow marijuana could be better used. I know the opt out will not affect the growers that have already gone through the correct hoops but Please Opt Out for no further development.

Sincerely,
Marcy Monte

Zechariah Heck

From: Lance Piatt <lancejpiatt@gmail.com> on behalf of Lance Piatt <welcomehomebend@gmail.com>
Sent: Wednesday, July 17, 2019 8:25 PM
To: Tanya Saltzman
Subject: DC Opt Out

[EXTERNAL EMAIL]

Hi Tanya

The bottom line with me is that MJ... pot, is an illegal drug and that being run on the backs of rural DC citizens and in large part because of a hell bent and criminal mindset in Salem. People can argue all they want about the lame odor, water, set backs or whatever. They tools are ruining this county and forcing long time resident outs. We left because of the Rubio and his cartel clan... they sat behind use. Fortunately we won our battle but most aren't so lucky.

These people are scum and only care about themselves. Land Use must concern itself FIRST, with the safety and well being of the citizens who live, work, play and pay taxes. Not these TOOLS from God knows where.

We barely won our battle because of small opening in the electrical side of things. Small but it worked. Everything was in favor of a known felon who was lying and cheating the system... and almost got away with it.

Opt Out!!!!!!

Lance Piatt
Red Ibex Solutions

Rescue Response Gear
Raven Collective Media
Rigging Lab Academy

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